

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

DANNY T. RASONABLE,
Petitioner,

-versus-

**G.R. No. 117195
February 20, 1996**

**NATIONAL LABOR RELATIONS
COMMISSION, JOEY GUEVARRA AND
VICTORY LINER, INC.,**
Respondents.

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D E C I S I O N

PUNO, J.:

On March 19, 1993, petitioner DANNY T. RASONABLE filed a complaint for illegal dismissal with the Regional Arbitration Branch No. III, San Fernando, Pampanga, against private respondents VICTORY LINER, INC. and JOEY GUEVARRA, praying for reinstatement, payment of backwages and other benefits, damages and attorney's fees.^[1]

In a Decision,^[2] dated November 8, 1993, Labor Arbiter Ariel C. Santos found private respondents guilty of illegal dismissal. They were ordered to pay petitioner the total sum of P84,957.47, representing the latter's backwages from March 1, 1993 (when

petitioner was illegally dismissed) up to November 8, 1993 (the date of the Labor Arbiter's Decision), 13th month pay, separation pay equivalent to one-half month salary for every year of service and ten percent (10%) of the total award as attorney's fees.

Dissatisfied, both parties appealed to the National Labor Relations Commission (NLRC). In his Appeal,^[3] petitioner prayed that the Labor Arbiter's Decision be modified by awarding him instead full backwages, separation pay equivalent to one (1) month pay for every year of service, and other benefits which he would have received had he not been illegally dismissed.

Upon the other hand, private respondents claimed that the Labor Arbiter decided their case when it was not as yet submitted for decision as the parties were then in the verge of striking an amicable settlement. They prayed that the case be remanded to the Labor Arbiter for settlement and/or reception of further evidence of both parties.^[4]

In a Decision,^[5] dated March 30, 1994, the NLRC modified the Decision of the Labor Arbiter by increasing the award of separation pay from one-half (1/2) month pay to one (1) month pay for every year of service and by deleting the award of attorney's fees. Both parties moved for reconsideration. Both motions were denied.^[6]

They filed separate petitions for certiorari to this Court. Private respondents' petition, entitled "Victory Liner, Inc. vs. NLRC, et al." (G.R. No. 116848) was filed on September 8, 1994 and they reiterated their position before the NLRC. The Third Division of this Court, in a Minute Resolution, dated September 21, 1994, denied due course to private respondents' petition. Their motion for reconsideration was denied with finality on November 16, 1994.^[7]

Upon the other hand, petitioner filed the petition at bar against private respondents and the NLRC on October 6, 1994. His petition was given due course and the parties were directed to file their respective Memorandum.

In his petition, petitioner charges that public respondent NLRC committed grave abuse of discretion: (a) in deleting the award of

attorney's fees, and; (b) in failing to award other benefits, like holiday pay, service incentive leave pay, 13th month pay, backwages and separation pay accruing from November 8, 1993 (the date of the labor arbiter's Decision) up to the finality thereof.

At the outset, it bears emphasis that when the Third Division of this Court denied due course to private respondents' petition (G.R. No. 116848), the Court in effect wrote *finis* to the issue of illegal dismissal. It is thus settled that petitioner was illegally dismissed from service. Similarly a non-issue is the labor arbiter's award of separation pay in lieu of reinstatement which was not challenged by petitioner in his appeal to the NLRC. What then remains is the determination of the monetary awards to be adjudged to petitioner and the period covered thereby.

We hold that public respondent NLRC committed grave abuse of discretion when it ruled that there is no basis for the award of attorney's fees in favor of petitioner. It is settled that in actions for recovery of wages or where an employee was forced to litigate and incur expenses to protect his rights and interests, he is entitled to an award of attorney's fees.^[8]

We come now to the other monetary benefits being claimed by petitioner. Public respondent denied petitioner's claim for service incentive pay and holiday pay on the ground that petitioner failed to present substantial evidence to support his claim. In the absence of a clear showing by petitioner of grave abuse of discretion on the part of the public respondent, its factual finding binds this Court.

Next, petitioner contends that as a result of his illegal dismissal, he is entitled to an award of separation pay, backwages and 13th month pay not only from the time the complaint was filed up to the November 8, 1993 Decision of the Labor Arbiter but also from the time the arbiter's decision was rendered up to the finality of said decision. He faults the ruling of the public respondent that under Art. 279 of the Labor Code, as amended by Section 34 of R.A. 6715, an illegally dismissed employee shall be entitled to reinstatement and to his full backwages and other benefits computed from the time his compensation was withheld from him up to the time of his actual reinstatement. In the case at bar, instead of ordering petitioner's reinstatement, the Labor

Arbiter awarded to petitioner separation pay. It computed the separation pay on the basis of petitioner's length of service, i.e. from the time of his employment up to the time of dismissal. Petitioner is thus deemed separated from service as of the date of the arbiter's decision awarding him separation pay.

Hence, public respondent held that petitioner is no longer entitled to an award of 13th month pay and backwages after the date of the decision of the labor arbiter granting petitioner separation pay, the employer-employee relationship having ceased.

We find merit in petitioner's contention.

A look back on our law and jurisprudence on illegal dismissal is in order. Originally, an illegally dismissed employee is entitled to the payment of backwages from the date of dismissal to the date of reinstatement less the amount he may have earned elsewhere during said period. Should the laborer decide not to return to work, the deduction should be made up to the time the judgment becomes final.^[9] Hence, under the old law, payment of backwages is computed from the time of dismissal up to finality of decision in case the laborer is not reinstated. To prevent double compensation, the earnings derived by a dismissed employee in other jobs during the period his case is pending is deducted from the grant of backwages to be awarded to him. Likewise, the award of backwages would carry with it payment of the benefits to which an employee would have been entitled if he were not dismissed.

Thereafter, in the case of Mercury Drug Co. vs. Court of Industrial Relations,^[10] the Court simplified the computation of backwages which was unduly delaying the speedy termination of illegal dismissal cases by limiting its payment to three (3) years without qualification or deduction. Under the Mercury Drug rule, the worker is to be paid his backwages fixed as of the time of his dismissal without deduction for their earnings elsewhere during their lay-off and without qualification of their wages as thus fixed, i.e., unqualified by any increases or other benefits that may have been received by their co-workers who were not dismissed.^[11] Such award is understood to be inclusive of leave benefits: in making the award, the court necessarily takes into consideration holidays, vacation leaves; all working days

are paid for regardless of whether or not the same fall on holidays or employee's leave days; the regular allowances that the employee had been receiving should however be included in the salary base.^[12]

The Mercury Drug rule was changed by Article 279 of the Labor Code, as amended by Section 34 of R.A. 6715.^[13] It provides:

“ART. 279. Security of Tenure. —In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.”
(Emphasis supplied)

As the law stands now, an employee who has been illegally dismissed after the effectivity of R.A. 6715 shall be entitled to reinstatement, full backwages and other benefits for the entire period that he was out of work and until actual reinstatement. However, in lieu of reinstatement, petitioner may instead be awarded separation pay. Separation pay is the amount that an employee receives at the time of his severance from the service and is designed to provide the employee with the wherewithal during the period that he is looking for another employment.^[14] The grant of separation pay does not preclude an award for backwages for the latter represents the amount of earnings lost by reason of the unjustified dismissal. Additionally, a dismissed employee is entitled to 13th month pay.^[15]

Public respondent holds that award of separation pay implies termination of employment as of the date of the decision. Hence, from the date of the decision of the labor arbiter granting separation pay, an illegally dismissed employee is no longer entitled to an award of backwages and 13th month pay, the employer-employee relationship having been severed.

We are not persuaded. In a number of cases,^[16] we ruled that there is no inconsistency in the grant of both backwages and separation pay to

an illegally dismissed employee. In *Lim vs. NLRC*, supra, the Court elucidated the propriety of awarding both separation pay and backwages in this wise:

“We have ordered the payment of both (separation pay and backwages) as otherwise, the employee might be deprived of benefits justly due him. Thus, if an employee who has worked only one year is sustained by the labor court after three years from his unjust dismissal, granting him separation pay only would entitle him to only one month salary. There is no reason why he should not also be paid three years backwages corresponding to the period when he could not return to his work or could not find employment elsewhere.”

A mere order for reinstatement issued by the labor arbiter is totally different from actual restoration of an employee to his previous position. It is for this reason that Article 279, as amended by R.A. 6715, provides for payment of full backwages and other benefits from the time of dismissal up to the time of actual reinstatement. Thus, in case reinstatement is adjudged, the award of backwages and other benefits continues beyond the date of the labor arbiter's decision ordering reinstatement and extends up to the time said order of reinstatement is actually carried out. Correlatively, an award of separation pay, in lieu of reinstatement, and other benefits due to the employee, without actual payment thereof, does not have the effect of terminating the employment of an illegally dismissed employee. The award of the labor arbiter could still be overturned or modified and, in most cases, its execution could be unreasonably delayed.^[17] Thus, until actual receipt of the award of separation pay, the employer-employee relationship subsists, entitling the illegally dismissed employee to an award of backwages, 13th month pay and other benefits from the time of his dismissal until finality of the decision of the labor arbiter.

With the enactment of R.A. 6715, we now go back to the policy adopted by this Court prior to the Mercury Drug rule, i.e., payment of full backwages shall be made from the date of dismissal up to finality of the judgment should reinstatement be not decreed, less the amount which the dismissed employee may have earned during said period, taking into consideration the increases and other benefits, including

the 13th month pay, received by his co-employees who were not dismissed. Payment of separation pay shall be computed from the date of the dismissed employee's service until finality of our decision.^[18]

IN VIEW WHEREOF, the Petition is hereby **GRANTED**. The Decision of public respondent NLRC is **MODIFIED**. The labor arbiter's award of attorney's fees is reinstated. Payment of backwages, less earnings elsewhere, and qualified by increases and other benefits (including the 13th month pay) shall be computed from the date of his dismissal until the finality of our decision. Payment of the separation pay, on the other hand, shall be computed from the date of petitioner's employment until finality of our decision. No cost.

SO ORDERED.

Regalado, Romero and Mendoza, JJ., concur.

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- [1] Petitioner's Position Paper, Original Records, at p. 19.
- [2] Rollo, pp. 28-35.
- [3] Complainant's Memorandum of Appeal, Original Records, at 115.
- [4] Appeal, Original Records, pp. 200-206.
- [5] Penned by Commissioner Joaquin A. Tanodra and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Ireneo B. Bernardo; Rollo, pp. 16-23.
- [6] Resolution, dated July 6, 1994, Rollo, pp. 25-27.
- [7] See Resolution, Rollo, p. 106.
- [8] Article 2208 (7), New Civil Code; Sebuguero vs. National Labor 1995; Labor 1994, Relations Commission, G.R. No. 115394, September 27, Article 2208 (2), New Civil Code; Gaco vs. National Relations Commission, G.R. No. 104690, February 23 20 SCRA 260, 266.
- [9] Itogon-Suyoc Mines, Inc. vs. Sangilo-Itogon Workers Union G.R. No. L-24189, August 30, 1968, 24 SCRA 873.
- [10] No. L.-23357, April 30, 1974, 56 SCRA 694; known as the Mercury Drug Rule.
- [11] Durabuilt Recapping Plant & Co., et al. vs. National Labor Relations Commission, G.R. No. 76746, July 27, 1987.
- [12] Insular Life Assurance Co. Ltd., et al. vs. NLRC, G.R. No. 74191, December 21, 1987; Soriano vs. NLRC, G.R. No. 75510, October 27 1987; Santos vs. NLRC, G.R. No. 76721, September 21, 1987. 13. Took effect on March 21, 1989.
- [13] Took effect on March 21, 1989.

- [14] Guatson International Travel and Tours, Inc. vs. NLRC, G.R. No. 100322, March 9, 1994, 230 SCRA 815.
- [15] Paragraph 6, Revised Guidelines on the Implementation of 13th Month Pay Law (P.D. 851, as amended); Paramount vs. NLRC, G.R. No. 81200, October 17, 1990, 190 SCRA 525.
- [16] E.g.: Gaco vs. NLRC, G.R. No. 104690, February 23, 1994, SCRA 260; Lim vs. NLRC, G.R. No. 79907, March 16, 1989 171 SCRA 328; City Trust Finance Corporation vs. NLRC, No. L-75740, January 15, 1988, 157 SCRA 87.
- [17] In the case at bar, not a single centavo of the monetary award adjudged to petitioner has been paid by private respondents despite the earlier dismissal of private respondent's petition before this Court; See Memorandum, Rollo, at p. 242.
- [18] Ledesma vs. NLRC, G.R. No. 110930, July 13, 1995, citing Gaco vs. NLRC, G.R. No. 104690, February 23, 1994, 230 SCRA 260; Durabuilt Recapping Plant & Co., et al., vs. NLRC, supra.