

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION.**

**LYDIA SANTOS,
*Petitioner,***

-versus-

**G.R. No. 76721
September 21, 1987**

**NATIONAL LABOR RELATIONS
COMMISSION and SECURITY BANK
AND TRUST COMPANY,**

Respondents.

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D E C I S I O N

FELICIANO, J.:

The present Petition for *Certiorari* is directed at: (1) the Decision of the National Labor Relations Commission (NLRC) dated 29 August 1985 in NLRC Case No. RB-IV-20056-78-T, entitled "Lydia Santos, complainant-appellee, versus Security Bank and Trust Company, respondent-appellant;" and (2) the Resolution issued by the NLRC on 7 November 1986 denying petitioner Lydia Santos's Motion for Reconsideration of the mentioned Decision.

The background facts are not disputed:

1. Petitioner was employed by the private respondent Bank from 10 December 1951 until 30 April 1976, when her services were terminated. Her last position was that of Branch Manager, with a monthly basic salary of P1,750.00 plus a monthly living allowance of P650.00 and a monthly transportation allowance of P250.00, or a total of P2,650.00 per month. In addition, she also enjoyed a mid-year bonus equivalent to one (1) month's salary; a christmas bonus equivalent to two (2) months' salary; and vacation and sick leave with pay.
2. On 10 January 1978, petitioner filed a complaint for a legal dismissal. On 16 October 1978, Labor Arbiter Bienvenido S. Fernandez rendered a decision finding petitioner's dismissal to be illegal and ordering private respondent Bank to reinstate her with backwages and other accrued benefits. The dispositive portion of the Labor Arbiter's decision reads as follows:

“IN VIEW OF ALL THE FOREGOING, respondent is ordered to immediately reinstate complainant to her position as Branch Manager without loss of rights and with backwages from May 1976 at P2,650.00 per month, plus other accrued benefits. The Socio-Economic Analyst of the Commission is directed to make the proper computation for execution of this decision.” (Emphasis supplied.)

3. On appeal by private respondent Bank from the Labor Arbiter's decision, the First Division of the NLRC promulgated a decision modifying the decision of the Labor Arbiter. In its decision dated 28 December 1979, the NLRC (First Division) said:

“After a close scrutiny of the record of this case and consideration of the issues raised in the appeal, we find no sufficient justification to disturb the appealed decision, except that portion which orders the reinstatement of the complainant with full backwages. The complainant, being a branch manager of the respondent bank, is undisputedly a managerial employee as defined in Article 212 of the Labor Code. If the complainant is to be reinstated, then this would mean forcing unto the respondent a manager upon whom it has lost its trust and confidence. Furthermore, considering

that the relationship between the complainant and the respondent bank lies become strained as a result of the filing of this case, the remedy of reinstatement with full backwages would not be appropriate and conducive to smooth employee relationship within the company. Because of this, we order the respondent to pay to the complainant her separation pay, equivalent to one-half month pay for every year of service, in lieu of reinstatement.

WHEREFORE, the appealed decision is hereby MODIFIED as explained above.” (Emphasis supplied.)

4. Dissatisfied with the decision of the NLRC (First Division), private respondent Bank filed a Motion for Reconsideration while petitioner Lydia Santos moved for the reinstatement of the original decision of the Labor Arbiter or, in the alternative, for a clarification as to how the separation pay should be computed. The NLRC (First Division) denied both private respondent Bank’s Motion for Reconsideration as well as petitioner’s Motion.^[1]

Petitioner Lydia Santos then filed with the NLRC an Urgent Motion seeking clarification of the meaning of the decision of the NLRC (First Division) of 28 December 1979. In a Resolution dated 18 February 1982, the NLRC (First Division) declared that the modification of the decision of the Labor Arbiter referred only to the reinstatement of the petitioner with full backwages, and that in lieu thereof, payment of separation pay equivalent to one-half (1/2) month’s salary for every year of service was ordered. The same Resolution emphasized that the award of “other accrued benefits” was not affected in any way as that was a separate award.

5. The decision of the NLRC (First Division) became final and the petitioner moved for execution. The Socio Economic Analyst submitted a report dated 15 July 1982 recommending payment to petitioner of the total amount of P353,295.89. This amount included backwages of P122,202.00 and provident fund benefits of P25,844.61.

6. On 9 August 1982, private respondent Bank questioned the correctness of the computation of the Analyst. On 19 April 1983, the First Division of the NLRC issued a resolution which held:

“In resume, we rule that the complainant is only entitled to separation pay, equivalent to one-half month pay for every year of service computed on the basic pay of the employee. While we ruled that complainant is entitled to ‘other accrued benefits’ it, however appears from the record that no such benefits are actually accruing to the complainant at the time of her separation from the company.” (Emphasis supplied.)

7. Acting on a motion for reconsideration filed by petitioner Lydia Santos, the NLRC, this time sitting en banc, rendered the disputed decision on 29 August 1985, the dispositive portion of which reads:

“WHEREFORE, let the Resolution of the First Division dated 19 April 1983 be, as it is hereby, SET ASIDE. The respondent is hereby ordered to pay the complainant the total sum of One Hundred Fifteen Thousand Six Hundred Eighty-Five Pesos and Fifty Centavos P115,685.50), representing the totality of the benefits to which she is entitled.” (Emphasis supplied.)

Under the above decision, the NLRC would limit the benefits recoverable by petitioner Lydia Santos to: (1) her separation pay (i.e., P24,500.00), in lieu of reinstatement and backwages; and (2) gratuities which accrued in her favor during the period from her illegal dismissal on 30 April 1976 until 28 December 1979, when the NLRC (First Division) declared that reinstatement with full backwages would not be appropriate and ordered in lieu thereof payment of separation pay (i.e., P91,185.50), making a total award of P115,685.50.

The only issue raised in the present petition is whether or not petitioner is entitled to an award for backwages, in addition to: (1) her separation pay; and (2) gratuities accruing before the Labor Arbiter’s order for reinstatement was modified. That petitioner’s dismissal was unlawful, is not in issue.

The normal consequences of a finding that an employee has been illegally dismissed are, firstly, that the employee becomes entitled to reinstatement to his former position without loss of seniority rights and, secondly, the payment of backwages corresponding to the period from his illegal dismissal up to actual reinstatement.^[2] The statutory intent on this matter is clearly discernible. Reinstatement restores the employee who was unjustly dismissed to the position from which he was removed, that is, to his status quo ante dismissal, while the grant of backwages allows the same employee to recover from the employer that which he had lost by way of wages as a result of his dismissal.^[3] These twin remedies — reinstatement and payment of backwages — make the dismissed employee whole who can then look forward to continued employment. Thus do these two remedies give meaning and substance to the constitutional right of labor to security of tenure.^[4] The two forms of relief are distinct and separate, one from the other. Though the grant of reinstatement commonly carries with it an award of backwages, the inappropriateness or non-availability of one does not carry with it the inappropriateness or non-availability of the other. Separation pay was awarded in favor of petitioner Lydia Santos because the NLRC found that her reinstatement was no longer feasible or appropriate. As the term suggests, separation pay is the amount that an employee receives at the time of his severance from the service and, as correctly noted by the Solicitor General in his Comment, is designed to provide the employee with “the wherewithal during the period that he is looking for another employment.”^[5] In the instant case, the grant of separation pay was a substitute for immediate and continued re-employment with the private respondent Bank. The grant of separation pay did not redress the injury that is intended to be relieved by the second remedy of backwages, that is, the loss of earnings that would have accrued to the dismissed employee during the period between dismissal and reinstatement. Put a little differently, payment of backwages is a form of relief that restores the income that was lost by reason of unlawful dismissal; separation pay, in contrast, is oriented towards the immediate future, the transitional period the dismissed employee must undergo before locating a replacement job. It was grievous error amounting to

grave abuse of discretion on the part of the NLRC to have considered an award of separation pay as equivalent to the aggregate relief constituted by reinstatement plus payment of backwages under Article 280 of the Labor Code. The grant of separation pay was a proper substitute only for reinstatement; it could not be an adequate substitute both for reinstatement and for backwages. In effect, the NLRC in its assailed decision failed to give to petitioner the full relief to which she was entitled under the statute.

We conclude that petitioner Lydia Santos is entitled to receive, and private respondent Bank is obligated to pay, (1) the benefits which had accrued in petitioner's favor during the period from her illegal dismissal and until reinstatement was declared non-available; (2) separation pay equivalent to one half (1/2) month's pay for every year of service, in lieu of reinstatement; and (3) backwages for three (3) years without qualification and deduction. The monetary value of the above items is to be computed in accordance with the following guidelines: (a) in the computation of accrued benefits and separation pay, the appropriate cut-off date is 28 December 1979, when the NLRC declared that reinstatement of petitioner Lydia Santos had become non-feasible and inappropriate; and (b) in the computation of backwages and separation pay, amount must be taken not only of the basic salary of petitioner but also of her transportation and emergency living allowance,^[6] as was correctly done by the Labor Arbiter.

Petitioner was unjustly dismissed in 1976. Eleven years later, she had yet to receive a single centavo. In the interest of expeditious justice and to avoid any further ambiguities, we hold that the total amount due petitioner Lydia Santos is P223,685.50, computed as follows:

A. Accrued Benefits (1 May 1976 to 28 December 1979).

1. Mid-Year and Christmas Bonuses:

1976 Mid-year bonus 1.0 mos.	P 1,750.00
Christmas bonus 2 mos.	3,500.00

1977 Mid-year bonus 1.0 mo.	1,750.00
Christmas bonus 2 mos.	3,500.00
1978 Mid-year bonus 1.0 mo.	1,750.00
Christmas bonus 2 mos.	3,500.00
1979 Mid-year bonus 1.0 mo.	1,750.00
Christmas bonus 2 mos.	3,500.00

Sub-total	<u>P21,000.00</u>

2. Vacation and Sick Leaves (15/15 days per year):

a) 1 May to 31 December 1976 (2/3) (20 days x P69.30)	P 1,386.00
b) 1977 (30 days x P69.30)	2,079.00
c) 1978 (30 days x P69.30)	2,079.00
d) 1979 (30 days x P69.30)	2,079.00

Sub-Total	<u>P 7,623.00</u>

3. Gratuity pay:

a) First 10 years (10 December 1951 to 10 December 1961 x 1 mo. salary per year	P17,500.00
b) Next 5 years (11 December 1961 to 10 December 1966) x 1.25 mos. salary per year	P 10,937.50
c) Next succeeding yrs. (11 December 1966 to	

28 December 1979)	
1.5 mos. salary x 13 years	34,125.00

Sub-Total	<u>P62,562.50</u>
Total Accrued Benefits	P 91,185.50
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B. Separation Pay (10 December 1951 to 28 December 1979)

Monthly salary	P 1,750.00
Living allowance	650.00
Transpo. Allowance	250.00

Salary base	P2,650.00

(1/2) P2,650.00 x 28 years P 37,100.00

C. Backwages (3 years without qualification and deduction)
P2,650.00 x 3 years P95,400.00

GRAND TOTAL P223,685.00
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WHEREFORE, the Petition for *Certiorari* is granted. The private respondent Bank is ordered to pay petitioner the amount of P223,685.50, which represents the totality of the accrued benefits petitioner is entitled to as a result of her illegal dismissal. The decision of public respondent NLRC dated 29 August 1985 in NLRC Case No. RB-IV-20056-78-T is hereby modified accordingly. This decision is immediately executory. No pronouncement as to costs.

SO ORDERED.

Fernan, Gutierrez, Jr., Bidin and Cortes, JJ., concur.

[1] Two petitions for *certiorari* assailing the decision of the NLRC were filed with this Court — G.R. No. L-53618 filed on 17 April 1980 by petitioner, and G.R. No. L-53601 filed on 23 April 1980 by respondent Bank — but were both

dismissed on 29 October 1980 for lack of merit. The motion for reconsideration in G.R. No. L-53601 was denied by this Court on 17 December 1980.

- [2] Article 280, Labor Code. See also *Alzosa vs. National Labor Relations Commission*, 120 SCRA 611 [1983].
- [3] *Union of Supervisors (RB) NATU vs. Secretary of Labor*, 128 SCRA 442 [1984]; and *Bachiller vs. National Labor Relations Commission*, 98 SCRA 393 [1980].
- [4] Article II (9), 1978 Constitution; and Article XIII (3), second paragraph, 1987 Constitution.
- [5] The Solicitor General here cited *Fernandez. The Law of Employee Dismissal* [1976 Rev. Ed.].
- [6] *Pan-Philippine Life Insurance Corporation vs. National Labor Relations Commission*, 114 SCRA 866 [1982] and *General Bank and Trust Company vs. Court of Appeals*, 135 SCRA 569 [1985].