SUPREME COURT
FIRST DIVISION

ST. LOUIS COLLEGE OF TUGUEGARAO,
***Petitioner*,**

-versus-

G.R. No. 74214
August 31, 1989

NATIONAL LABOR RELATIONS COMMISSION, JOSE SIMANGAN and BERNABE AVERA,
***Respondents*.**
x----------x

D E C I S I O N

CRUZ, *J.*:

The petitioner is questioning the award to the private respondents of back wages as excessive in amount and duration. The private respondents contend that the challenged decision has long become final and executory and can no longer be amended at this late hour.

The petitioner had earlier employed the private respondents as members of its faculty, Bernabe Avera in 1974 when he was 66 years old and Jose Simangan in 1978 when he was 68 years old. Simangan's appointment was for a definite period ending on March 13, 1979.

The case arose on May 31, 1979, when the petitioner filed an application to terminate the services of the private respondents on the ground of old age. The labor arbiter, to whom the matter was referred because of the private respondent's opposition, upheld the dismissal of Simangan but not of Avera.

Both Simangan and the petitioner appealed to the National Labor Relations Commission. The public respondent dismissed the petitioner's appeal on the ground that it was not under oath but upheld Simangan and ordered his immediate reinstatement.

The dispositive portion of the labor arbiter's decision dated March 11, 1980, read as follows:

> IN VIEW OF THE FOREGOING FACTS, applicant is hereby ordered to reinstate respondent Bernabe Avera to his former position with full backwages from the time of his dismissal up to actual reinstatement without loss of seniority rights.
>
> With respect to respondent Jose Simangan, the cash deposit made by applicant in respondent's name is proper as separation pay.
>
> This Decision will take effect after 10 days from receipt hereof.[1]

The dispositive portion of the decision of the NLRC dated November 26, 1982, read as follows:

> WHEREFORE, in view of the foregoing, the appealed Decision is hereby MODIFIED only in the sense that the applicant St. Louis College of Tuguegarao is hereby directed to reinstate respondent Jose Simangan to his former position with full backwages from the time that his contract should have been renewed without loss of seniority rights and other privileges formerly appertaining thereto, instead of paying said respondent Jose Simangan his separation pay.[2]

St. Louis College came to this Court on *certiorari*, but we dismissed its petition for lack of merit on August 15, 1983. Entry of judgment was made on September 21, 1983.[3]

The decision of the public respondent could not be enforced, however, because the records of the case were burned in a fire that gutted the main office of the NLRC at Intramuros, Manila, on December 13, 1984.

On Petition of the private respondents,[4] these records were reconstituted and on the basis thereof a Decision[5] was rendered on July 18, 1984, awarding back pay of P58,050.00 to Simangan and P59,910.00 to Avera computed from 1979 to July 1984. The petitioner was also ordered to reinstate both Simangan and Avera without loss of seniority and other rights.

This decision was also elevated to this Court, which again denied *certiorari*. For their part, the private respondents went to the NLRC and complained that the computation of their back wages was not in accordance with law because it took into account only their basic salaries. They contended that the other benefits, such as their sick and vacation leaves, should have also been included.

The NLRC agreed and remanded the case to the Executive Labor Arbiter for recomputation of the awards.[6]

The petitioner moved for reconsideration, contending that the back wages: (1) should not include fringe benefits; (2) should be limited to three years; (3) should be reckoned by academic school years and not calendar years; and (4) should not include the separation pay already withdrawn by the private respondents.[7]

In its decision dated December 27, 1985, the NLRC granted the motion for reconsideration on the last two issues but not on the first two.[8]

St. Louis is now before us again, on a third petition for *certiorari*, claiming that the public respondent committed grave abuse of discretion in:

(1) including fringe benefits in the computation of the award of back wages; and

(2) in not limiting the said award to three years in accordance with existing doctrine.

The private respondents argue that the decisions of the public respondent dated November 26, 1982, and July 18, 1982, can no longer be disturbed, the same having become final and executory. For his part, the Solicitor General, while conceding that the above-stated issues are "decided matters," invokes equity in the proper implementation of the NLRC decision, considering the factual antecedents.[9]

Actually, what is involved here is not the validity of the original decisions of November 26, 1982, and July 18, 1984, which have indeed already become final. We are concerned in this petition only with the correct interpretation thereof in connection with the computation of the awards.

On the first issue, the weight if not uniformity of authority is against the petitioner.

Its position is that payment of additional vacation and sick leaves to the private respondents would constitute double compensation as these are already included in the computation of the back wages due them for the full academic year whether or not such leaves are taken.[10] It is settled, however, that —

> It is the obligation of the employer to pay an illegally dismissed employee or worker the whole amount of the salaries or wages, plus all other benefits and bonuses and general increases, to which he would have been normally entitled had he not been dismissed and had not stopped working.[11]
>
> x x x
>
> In the computation of back wages and separation pay, account must be taken not only of the basic salary of the employee but also of her transportation and emergency allowances.[12]

x x x

> The salary base properly used in computing the separation pay and the back wages due to petitioner should include not just the basic salary but also the regular allowances that petitioner had been receiving.[13]

x x x

> Anent the respondent Arbiter's award of leave benefits, the decree on back wages is understood to be inclusive of such benefits. The grant of three years back wages without qualification and deduction by the court necessarily takes into consideration holidays, vacation leaves and service incentive leaves, paying for all working days regardless of whether or not the same fall on holidays or employees' leave days.[14]

The second issue must be resolved against the private respondents.

It is true that the decision of the NLRC dated November 26, 1982, ordered the payment of back wages to the private respondents from the time of their dismissal in 1979 until the date of their reinstatement, covering a period of more than three years. It is not true, however, that this period can no longer be reduced because the decision has already become final and executory.

The open-ended duration of the period prescribed in the said decision renders it subject to the limitation suggested by the Solicitor General, who pleads the special circumstances of this case in justification.

At the time of their dismissal in 1979, Avera and Simangan were already 71 and 73 years old, respectively, and could not be expected to continue much longer, or indefinitely, in the petitioner's employ. It is only fair, therefore, that they be allowed back pay only for the period of three years as in the case of other illegally dismissed employees. Indeed, such a concession would be generous in their case as it could not be expected that they could obtain employment elsewhere at their age, especially with tenure.

Independently of this consideration, and more importantly, there is the case of Mariners Polytechnic School vs. Leogardo,[15] which we decided only five months ago.

Here, an Order of a Labor District Officer directing that —

> If the complainant is not reinstated at the opening of classes in June, 1978, he shall continue to be entitled to and shall be paid back wages up to and until he is finally reinstated to his former position.

was subsequently modified by the Regional Director, who limited the award to three years "consistently with a long line of decisions of the Supreme Court." He was in turn reversed by the Deputy Minister of Labor on the ground that substantial alteration of the decision was no longer possible because it had already become final.

In granting *certiorari*, this Court, after tracing the history of the three-year doctrine, concluded through Justice Andres R. Narvasa:

> The Court perceives no cogent cause to revise or ignore this doctrine which, as petitioner stresses, has been consistently applied in a long line of decisions. It is no argument to say that the original judgment omitted to impose the three-year restriction and it is too late to do so now. Indeed, the doctrine is of peculiar application to executory judgments the enforcement of which invariably entails a computation of monetary benefits and, as above pointed out, is designed precisely to assure their unimpeded and speedy execution. If the three-year limitation were to be held as not applicable in this case, because not imposed in the judgment sought to be executed, it would follow, as a matter of logic and justice, that Mariners, the employer herein, should be allowed to prove the amounts earned or which could have been earned by its employee, Tracena, during the period of the latter's separation from employment; and until this is done, execution must be abated. As much is suggested by the Solicitor General. That need not be done. The three-year limit doctrine has been consistently and uniformly applied by this Court and by the Ministry of Labor and Employment over many years. That it was unaccountably disregarded in the

> judgment in question is of no moment. Its disregard must be considered a clerical omission. The Deputy Minister was bound to the observance of the doctrine; it certainly was not within his power or discretion to decline to apply it; and his subsequent refusal, during the process of execution, to avail of the opportunity to uphold his subordinate's application of the doctrine constituted in the premises grave abuse of discretion. To correct the error, and to avoid the mischief against which the doctrine is aimed, the three-year limitation should be considered as written into the judgment.

Finally, there is the question of the reinstatement of the private respondents as also ordered by the decision of the NLRC. As this is obviously no longer feasible in view of their advanced age, we hold that they should instead receive separation pay, computed at the rate of one month salary for every year of service, conformably to existing doctrine. As we said in the case of Sy Chie Junk Shop vs. Federacion Obrero de la Industria Y Otros Trabajadores De Filipinas (FOITAF):[16]

> The public respondent's order for the private respondents' reinstatement to their former positions is no longer possible under the circumstances. An award equivalent to three years back wages plus separation pay to compensate for their illegal separation is thus proper.

WHEREFORE, the challenged Decision is **MODIFIED** in the sense that the award of back wages shall be limited to three years only and the private respondents shall be entitled to separation pay as above computed in lieu of their reinstatement. No costs.

SO ORDERED.

Narvasa, Gancayco, Griño-Aquino and Medialdea, *JJ.*, concur.

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[1] Original Records, p. 14.
[2] Ibid., p. 23.
[3] Id., p. 26.

[4] Id., p. 1.
[5] Id., p. 37.
[6] Id., p. 67.
[7] Id., p. 87.
[8] Id., p. 114.
[9] Rollo, p. 46.
[10] Ibid., p. 7.
[11] East Asiatic Co., Ltd. vs. Court of Industrial Relations, L-29068, August 31, 1971.
[12] Santos vs. NLRC, 154 SCRA 166.
[13] Soriano vs. NLRC, 155 SCRA 124.
[14] Insular Life Assurance Co., Ltd. vs. NLRC, 156 SCRA 740.
[15] G.R. No. 74271, March 31, 1989.
[16] 161 SCRA 143.