

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**ANTONIO SURIMA,
*Petitioner,***

-versus-

**G.R. No. 121147
June 26, 1998**

**NATIONAL LABOR RELATIONS
COMMISSION and LORETA PEDIAPCO
LIM,**

Respondents.

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D E C I S I O N

BELLOSILLO, J.:

ANTONIO SURIMA filed on 11 September 1990 a complaint against private respondent Loreta PEDIAPCO LIM for overtime pay, 13th month pay, service incentive leave pay, premium pay for holidays and rest days, and underpayment of wages. He alleged that he started working with private respondent in 1983 as cashier of Horace P. Lim Construction Supply, named after her son Horace, located in San Jose, Antique. In the same establishment he was also tasked with selling rice and rice husk. Still another job he held for her was as collector of rentals for her three (3) buildings.

Sometime in 1989, petitioner Surima was transferred to Sibalom, Antique, where he worked again as cashier but this time at private respondent's Caltex gasoline station. In August of the same year he also became a salesman in a drugstore owned by her although during harvest seasons he would be placed in charge of her business of buying and selling palay. He was earning at that time a monthly salary of P1,000.00.

On 1 October 1990, or almost three (3) weeks after he filed his complaint, petitioner was allegedly dismissed without just cause, hence his additional claim for back wages, reinstatement and attorney's fees.

Private respondent contended that petitioner was first employed by her son Horace. In July 1989, when the latter's business floundered and eventually ceased to operate, she hired petitioner as domestic helper receiving an income of P250.00 per week with free board and lodging. He also worked in her drugstore but only occasionally. On 1 October 1990 he left his work.

The Labor Arbiter did not sustain the claim of illegal dismissal for lack of evidence. On the other hand, he upheld the contention of private respondent that she hired petitioner only in July 1989 for which he was adequately compensated. Thus on 26 June 1991 the complaint was dismissed.^[1]

On appeal, the National Labor Relations Commission (NLRC) viewed the case differently. According to public respondent, respondent Loreta Padiapco Lim had the burden of producing the employment records of her business enterprise as proof that petitioner was not in any way connected with any of her businesses since 1983. She failed to discharge this burden. Even granting that petitioner initially worked with her son Horace, the undisputed fact is that her son's business did not have a separate personality of its own. Thus, it is not difficult to conclude that the business enterprises where petitioner worked belonged to one and the same owner, private respondent herself, hence, the finding of the NLRC that petitioner had been her employee since 1983.

Furthermore, the NLRC took into account the fact that only a day after petitioner allegedly left his work his counsel sent private respondent a letter protesting his termination from the service. This prompt recourse to legal assistance was considered inconsistent with the claim of abandonment. Moreover, there was not even a compliance by private respondent with the legal requisite of notice to petitioner at his last known address.

As a consequence, the NLRC concluded that petitioner was illegally dismissed so that he was entitled to reinstatement with back wages. However, due to the strain in the relationship of the parties and the lapse of time, separation pay in lieu of reinstatement was considered by the NLRC to be more feasible under the circumstances. Petitioner was likewise declared entitled to wage differentials, 13th month pay, service incentive leave pay and attorney's fees, but his other claims were denied for lack of basis. Thus on 12 January 1995 private respondent Loreta PEDIAPCO LIM was ordered to pay petitioner the following amounts —

1. Back Wages (1 Oct. 1990 to 30 Sept. 1993)
 - a. Basic Salary
P1,000/mo. x 36 mos. (3 yrs.) P36,000.00
 - b. 13th Month Pay
P92.50/da. x 26 das./mo. x 3 yrs. P7,215.00
 - c. Service Incentive Leave Pay
P92.50/da. x 5 das./mo. x 3 yrs. P1,387.50
P44,602.50

2. Separation Pay (8 yrs./length of service
+ 3 yrs./1 Oct. 1990 to 30 Sept. 1993)
P92.50/da. x 26 das./mo. x 11 yrs P26,455.00

3. Wage Differentials
(1 Oct. to 96 Nov. 1990)
P75.00 — MWR (Minimum Wage Rate)
P38.46 — ASR (Actual Salary Rate)
P36.50 x 52 das./2 mos. P1,900.08
(27 Nov. 1990 to 28 Dec. 1990)
P82.50 — MWR (Minimum Wage Rate)
P38.46 — ASR (Actual Salary Rate)

P44.04 x 27 das./1 mo (29 Dec. 1990 to 30 Sept. 1993) P92.50 — MWR (Minimum Wage Rate) <u>P38.46</u> — ASR (Actual Salary Rate) <u>P54.04</u> x 861 das./33 mos.	P1,189.08 <u>P46,528.44</u> <u>P49,617.60</u>
4. 13 th Month Pay 1990 — P75.00/da. x 26 das 1991 — 92.50/da. x 26 das 1992 — 92.50/da. x 26 das./mo. 1993 — 92.50/da. x 26 das./mo. <u>x 9/12 mos.</u>	P1,950.00 2,405.00 2,405.00 <u>1,803.75</u> <u>P8,563.75</u>
5. Service Incentive Leave Pay <u>P92.50 x 5 das./yr. x 3 yrs</u> Total Money Claims	<u>P1,387.50</u> <u>P130,626.35</u>
6. Attorney's Fees of 10% GRAND TOTAL:	<u>P13,062.63</u> P143,688.98 ^[2] =====

Private respondent moved for reconsideration while petitioner moved for recomputation of the awards. However, both motions were denied on 19 May 1995.^[3] The NLRC found private respondent's motion without merit while that of petitioner was filed beyond the 10-day reglementary period. The records showed that petitioner received copy of the decision on 23 January 1995 but moved for recomputation only on 13 February 1995 after the decision became final and executory on 2 February 1995.

Private respondent then resorted to this Court in G.R. No. 120404 but her petition was dismissed for failure to show grave abuse of discretion on the part of the NLRC.^[4] The dismissal became final and executory on 28 August 1995.^[5]

For his part, petitioner filed the instant petition assailing the NLRC for its grave abuse of discretion in the computation of his monetary awards and prayed that it be required to make the necessary

recomputation. Petitioner alleges that the NLRC has contravened settled jurisprudence when it limited the period of his entitlement to back wages, separation pay, wage differentials, 13th month pay and service incentive leave pay to only three (3) years reckoned from the time of his illegal dismissal. He also asserts that additional awards of wage differentials, 13th month pay and service incentive leave pay should be granted to him covering the three-year period prior to the filing of the complaint since money claims prescribe in three (3) years.

Respondent counters that inasmuch as petitioner failed to timely move for reconsideration he could no longer seek other reliefs, and that it is perfectly within the discretion of the NLRC to limit the award of back wages to three (3) years since it is not her fault that it took approximately four (4) years for the appeal to be resolved. However, in the event a recomputation of the back wages be granted private respondent asks for an opportunity to prove petitioner's earnings elsewhere pursuant to *Pines City Educational Center vs. NLRC*.^[6]

But, first, the procedural error committed by petitioner.

Petitioner received copy of the assailed decision on 23 January 1995. Not having filed a motion for reconsideration within the ten (10)-day reglementary period, the decision became final and executory as to him on 2 February 1995. Petitioner moved for recomputation only on 13 February 1995. Along the same line did we rule in *Labudahon vs. NLRC*^[7] and *Orient Express Placement Philippines vs. NLRC*^[8] that on the strength of Art. 223 of the Labor Code and Sec. 14, Rule VII, New Rules of Procedure of the NLRC, in the absence of a motion for reconsideration timely filed within the ten (10)-day reglementary period, the assailed order, resolution or decision of the NLRC becomes final and executory after ten (10) calendar days from receipt thereof.

However, fundamental consideration of substantial justice persuades us to decide the present case on the merits rather than to dismiss it on a technicality. In so doing, we exercise our prerogative in labor cases that no undue sympathy is to be accorded to any claim of procedural misstep, the idea being that our power must be exercised

according to justice and equity and substantial merits of the controversy. As we shall discuss in the succeeding paragraphs, the assailed ruling of the NLRC in the instant case is contrary to law and jurisprudence, thus making *certiorari* still an available remedy in the premises.

We had allowed in the past appeals from the decisions of the Labor Arbiter to the NLRC even if filed beyond the reglementary period in the interest of substantial justice. Among these were *Ruga vs. NLRC*^[9] where our decision relied upon by respondent NLRC was not applicable; *City Fair Corporation vs. NLRC*^[10] where there was insufficient evidence to justify the enormous amount of damages awarded; *Valderrama vs. NLRC*^[11] where we preferred to give life to the constitutional mandate for the protection of labor; and, *Philippine Airlines, Inc. vs. NLRC*^[12] where we considered as enough reasons the Labor Arbiter's lack of jurisdiction and perpetuation of unjust enrichment. By the same token, the present case deserves liberal treatment.

Article 979 of the Labor Code as amended by Sec. 34 of RA No. 6715^[13] provides: "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 back wages, 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." The amendment took effect on 21 March 1989 and was thus applicable at the time of petitioner's dismissal on 1 October 1990. Two vital aspects of the provision have been the subject of interpretation by this Court. First, as to the total amount of back wages, although the law speaks of "full back wages," Pines City enunciated the rule that in the ascertainment of the total amount of back wages the entire amount derived from employment elsewhere by the employee from the date of dismissal up to the date of reinstatement, if any, should be deducted therefrom. We have however reconsidered Pines City in *Bustamante vs. NLRC*^[14] by holding that conformably with the evident legislative intent as expressed in RA No. 6715 the back wages to be awarded to an illegally dismissed employee should not be diminished or reduced by the earnings derived by him elsewhere during the period of his illegal dismissal.

The rationale for the new ruling is that the employee, while litigating the legality (illegality) of his dismissal, must still earn a living to support himself and his family, while the employer has to pay full back wages as part of his penalty for illegally dismissing his employee. The clear legislative intent of RA No. 6715 as conveyed in Bustamante is to give more benefits to workers than what were previously given them under the Mercury Drug rule or the “deductions of earnings elsewhere” rule. Second, as to the time frame for the computation of back wages, the provision mentions the period from withholding of compensation up to actual reinstatement, which period can be established with facility. However, there may be an instance when reinstatement is considered no longer feasible, necessitating award of separation pay instead. The question now arises: When is the period for computation of back wages and separation pay supposed to end? *Gaco vs. NLRC*^[15] addressed the question squarely by holding that in such circumstance, the computation shall be up to the time of finality of this Court’s Decision.^[16] Apparently, the justification is that along with the finality of this Court’s decision the issue on illegal dismissal is finally laid to rest.

We agree with petitioner that the NLRC gravely abused its discretion in the computation of his monetary awards. It shortened the period thereof to three (3) years^[17] without any basis at all and in the process ignored current law and jurisprudence. Taking into account that the NLRC awarded separation pay in lieu of reinstatement, the period should be up to the finality of this Court’s decision. We must clarify however that what we are referring to is the decision in G.R. No. 120404 which finally settled the dispute on illegal dismissal and other claims of petitioner on 28 August 1995.

Under Art. 291 of the Labor Code, money claims arising from an employer-employee relationship must be filed within three (3) years from the time the cause of action accrued. Again we agree with petitioner that his claims consisting of wage differentials, 13th month pay and service incentive leave pay may be recovered from 11 September 1987, or three years before the date of the filing of the complaint, up to 11 September 1990.^[18] The amounts that may be awarded shall be in addition to those already awarded and which form part of the total monetary awards. It is beyond our competence

to determine whether the actual salary rate of petitioner was below the minimum wage rate from 11 September 1987 up to 11 September 1990. The NLRC is better equipped to perform this task. Within the same period, petitioner has established that he did not receive payments for his 13th month and service incentive leave and such amounts should be included in the computation.

WHEREFORE, the Petition is **GRANTED**. The Decision of public respondent NLRC dated 12 January 1995 granting monetary awards to petitioner Antonio Surima is **MODIFIED**. The NLRC is directed to recompute the following: (a) back wages from 1 October 1990 to 28 August 1995; (b) separation pay from 1983 to 28 August 1995; (c) wage differentials, from 11 September 1987 to 11 September 1990 if entitled thereto, 13th month pay and service incentive leave pay covering the same period; (d) wage differentials, 13th month pay and service incentive leave pay from 1 October 1990 to 28 August 1995; and, (e) attorney's fees of ten percent (10%) of the total monetary awards.

SO ORDERED.

Davide, Jr., Vitug, Panganiban and Quisumbing, JJ., concur.

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- [1] Decision penned by Labor Arbiter Dennis D. Juanon; Rollo, p. 23.
 - [2] Decision penned by Presiding Commissioner Irene E. Ceniza with the concurrence of Commissioners Bernabe S. Batuhan and Amorito V. Cañete; Rollo, p. 39.
 - [3] Records, p. 224.
 - [4] Rollo of G.R. No. 120404, p, 65.
 - [5] Id., p. 70.
 - [6] G.R. No. 96779, 10 November 1993, 227 SCRA 655.
 - [7] G.R. No. 112206, 11 December 1995, 251 SCRA 129.
 - [8] G.R. No. 124766, 30 January 1997, 267 SCRA 287.
 - [9] G.R. Nos. 72654-61, 22 January 1990, 181 SCRA 266.
 - [10] G.R. No. 95711, 21 April 1995, 243 SCRA 572 citing Firestone Tire and Rubber Co. vs. Larosa, 148 SCRA 191 and Chong Guan Trading vs. NLRC, 172 SCRA 832.
 - [11] G.R. No. 98239, 25 April 1996, 256 SCRA 466.
 - [12] G.R. No. 120506, 28 October 1996, 263 SCRA 638.
 - [13] The New Labor Relations Law.

- [14] G.R. No. 111651, 28 November 1996, 265 SCRA 61.
- [15] G.R. No. 104690, 23 February 1994, 230 SCRA 260.
- [16] Reiterated in Oscar Ledesma and Company vs. NLRC, G.R. No. 110930, 13 July 1995, 246 SCRA 47; Labor vs. NLRC, G.R. No. 110388, 14 September 1995, 248 SCRA 183; Rasonable vs. NLRC, G.R. No. 117195, 20 February 1996, 253 SCRA 815; Bustamante vs. NLRC, see Note 14.
- [17] Where the illegal dismissal transpired before the effectivity of R.A. No. 6715, the award of back wages in favor of the dismissed employee is limited to three (3) years without deduction or qualification.
- [18] Uy vs. NLRC, G.R. No. 117983, 6 September 1996, 261 SCRA 505.