

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**EAST ASIATIC COMPANY, LTD., E.
JAKOBSEN, P. SORENSEN and K. R.
NIELSEN,**

Petitioners,

-versus-

**G.R. No. L-29068
August 31, 1971**

**THE COURT OF INDUSTRIAL
RELATIONS, THE EAST ASIATIC CO.
EMPLOYEES UNION (PTUC) and
SOLEDAD A. DIZON,**

Respondents.

X-----X

D E C I S I O N

BARREDO, J.:

Appeal by way of a Petition for *Certiorari*, from the May 12, 1967 Order of Associate Judge Emiliano C. Tabigne and the En Banc Resolution on the Motion for Reconsideration of the said Order, issued by the respondent Court of Industrial Relations in connection with the proceeding on execution had therein relative to the reinstatement of and payment of back wages to respondent Soledad A. Dizon, as ordained in the final and executory judgment rendered by it against petitioners in its Case No. 1796-ULP, dated February 10,

1960, which was affirmed on appeal by this Court on April 30, 1966 in G. R. No. L-17037.^[1]

Respondent Soledad A. Dizon was, from February 8, 1951 to August 31, 1958, continuously employed by the petitioner East Asiatic Co., Ltd., a corporation licensed to engage in the import, export and shipping business in the Philippines. Having been dismissed on September 1, 1958 from the service of the said company, through its managers E. Jakobsen and K. R. Nielsen and its assistant-manager P. H. Sorensen, respondent Dizon filed with the respondent Court of Industrial Relations the aforementioned Case No. 1796-ULP — a charge of unfair labor practice against said petitioner company and its above-named officials; and the court a quo, after appropriate proceedings, rendered judgment against petitioners (respondents below) with the following dispositive portion:

“WHEREFORE, the Court, finding the respondents guilty of the unfair labor practices complained of, hereby orders them to cease and desist from further committing the same and to reinstate Soledad A. Dizon immediately to her former position with back wages from September 1, 1958 until actually reinstated, with all the rights and privileges acquired and due her, including seniority and such other terms and conditions of employment existing at the time of her lay-off.”

This Decision, was affirmed by Us in G.R. No. L-17037, supra, on April 30, 1966 in the following terms:

“WHEREFORE, her reinstatement with back pay was correctly ordered. Judgment affirmed, with costs.”

It appears further that before this Court could return the records of the case to the lower court for execution, the petitioner company filed a manifestation dated June 14, 1966, making known its willingness to reinstate respondent Soledad A. Dizon to her former position with the same salary she was receiving at the time of her dismissal from its service. To that manifestation respondent Dizon filed a counter-manifestation wherein she averred that she was willing to be reinstated to her former position, but her monthly salary should be the amount she was receiving on the date of her dismissal plus the

yearly general wage increases petitioners have given to their employees from 1958 to 1965. Petitioners made a reply to the said counter-manifestation, reiterating their previous offer to reinstate respondent Dizon to her former position as stated in their previous manifestation, and pointing out that by the terms of the decision ordering her reinstatement the same is to be made on the basis of what said respondent was receiving at the time of her layoff. Acting thereon, on June 30, 1966 this Court issued a resolution worded as follows:

“In G.R. No. L-17037 (The East Asiatic Co., Ltd., et al. vs. Court of Industrial Relations, et al.;) the Court resolved: Petitioners’ reply to respondents’ counter-manifestation of June 16, 1966 is hereby noted, with the observation that the matter treated of therein, as well as in the previous manifestations of the parties, may be taken up on the lower court in connection with the implementation of its decision, which has been affirmed by this Court.”

Meanwhile, a motion to compute the backwages due her under the decision in her favor appears to have been filed by respondent Dizon on June 8, 1966, which motion became the subject of an opposition submitted by the petitioners before the Court of Industrial Relations, and where upon, the trial court issued the following order:

“Acting on the motion to compute filed by the complainants, through counsel, alleging among others that the decision of this Court in the above-entitled case dated February 10, 1960, affirmed by the Supreme Court in a final entry of judgment dated April 30, 1966, is now final and executory and, therefore, the computation of her backwages is now in order and finding the motion well-taken.

“WHEREFORE, as prayed for, the Chief of the Examining Division of this Court or his authorized representative, is hereby directed to proceed to the offices of the respondent East Asiatic Co., Ltd. at Hongkong & Shanghai Building, Juan Luna, Manila, which is requested to make its record pertinent in this case available to said Examiner — and verify and compute from such records the backwages of the individual complainant in

accordance with the final decision of this Court dated February 10, 1960 and immediately upon termination to submit a report thereof for further disposition of this Court.”

Pursuant to the order above-quoted, the Chief Examiner of the examining division of the court a quo made the required computation and, thereafter, submitted the corresponding report thereon, dated March 2, 1967 informing the trial court that the backwages to which respondent Dizon should be entitled for the period from September 28, 1958 (date of her dismissal) to February 28, 1967 (apparently, this was the date the examination was concluded, up to which, respondent was still not reinstated) would amount to P30,000.00, while her earnings from other employers during the same period that she was separated from the service of petitioners amount to P42,881.44 (P6,691.44 — earned in the Philippines; and P36,190.00 — the peso value of respondent’s alleged dollar earnings in the United States, computed at the exchange rate of P3.90 to \$1.00). And on the basis of these figures, the said examiner concluded in his report that “If the total amount of P42,881.44 representing the earnings elsewhere of Mrs. Soledad Dizon were allowed by the Honorable Court as proper deductions from her computed total backwages of P30,090.00, she will no longer receive any back wages.” After a hearing was had on the said report, and after considering the various pleadings commenting thereon (Annexes P, Q, R and S, Petition) filed by the parties, Judge Emiliano C. Tabigne of the respondent Court issued an order, dated May 12, 1967, approving the P30,090.00 — backwages computed by the examiner, but disallowing the P42,881.44 alleged outside earnings of respondent Soledad A. Dizon mentioned in his report. His Honor reasoned thus:

“The matter now before this Court is whether to approve or disapprove the report of the Examiner dated March 2, 1967, especially that portion thereof which computed alleged outside earnings of complainant Dizon using as basis thereof alleged affidavits of persons living in the United States of America, copies of which are attached to the various manifestations filed by the respondents in this case.

“On this question and from the records of this case, the Court finds that the report of the Examiner in so far as it computed

the backwages of complainant Dizon in the amount of P30,090.00 is correct. On the point, however, of whether or not to deduct the amount of P42,881.44 from the backwages due complainant Dizon, the Court is of the considered opinion that the same may not be deducted therefrom. This is so because respondents failed to adduce any evidence in support of their claim that complainant Dizon earned that much from other employers. The Examining Division of this Court, in arriving at such figure, made use of alleged affidavits of persons in the United States copies of which are attached to the manifestation filed by respondent in this case. The Examiner of the Court in so doing, exceed his authority, as stated in the Court order dated December 13, 1966. Said Examiner was not directed to compute any other wages against said claim. Furthermore, when the respondents were given the opportunity to present competent evidence in support of their allegation that complainant Dizon earned that amount during the time of her dismissal, they failed to do so. The alleged affidavits attached to the various manifestations filed with this Court were not even identified by witnesses. So that such alleged affidavits are merely pieces of paper and do not have any value as evidence. In passing the Court also is of the considered opinion that claims for wages earned outside the jurisdiction of this country and necessarily this Court, are not those wages that may properly be considered to offset any computed claims for backwages. The law envisions that these claims should be within the jurisdiction of this Court and not otherwise. The claims of respondents for Dizon's earnings elsewhere find no merit.

“WHEREFORE, this Court finds that the computed backwages of Soledad A. Dizon in the amount of P30,090.00 is hereby approved; and respondents are ordered to pay said sum to complainant Dizon's backwages. Further, the alleged outside earnings of complainant Dizon are hereby denied for lack of merit. The Examining Division of this Court is further directed to compute the backwages due complainant Dizon from March 1, 1967 up to the date she is actually reinstated.

“In view of the fact, however, that complainant Dizon did not present any evidence in support of her claim that she is entitled

to fringe benefits, etc., cited in her motion to compute dated June 8, 1966, the same is hereby denied.”

Petitioners filed a motion for reconsideration of this order with the Court of Industrial Relations en banc which resolved the said motion with a divided vote of three to two. In a resolution dated June 27, 1967, Associate Judge Emiliano C. Tabigne, with the concurrence of Presiding Judge Arsenio I. Martinez, voted to deny the motion; while Associate Judge Amando C. Bugayong, in a separate concurring and dissenting opinion which was concurred in (in the result) by Associate Judges Ansberto P. Paredes and Joaquin M. Salvador, voted to modify the order sought to be reconsidered in the sense that respondent Dizon was held to be no longer entitled to reinstatement, nor to backwages from the time she left the Philippines for the United States. Pertinent portions of this majority opinion, read as follows:

“In a ‘Summary of Arguments’ filed with this Court dated July 10, 1967, it is submitted and not denied that certain undisputable developments took place in that Dizon went to the United States. In a pleading filed with the Supreme Court while this case was on appeal therein, a copy of which was furnished counsel for Dizon then in the United States, she was formally asked to report for work the next day, June 15, 1966. She came back to the country. One day, counsel for respondents met her at the office of her lawyers and there she was told to report to respondents for work, which she never did. Again, she went to the United States.

“Forthwith, the issue is whether Soledad A. Dizon is still entitled to reinstatement with backwages and how much. Her refusal to report for work and her continued stay in the United States, it is believed, is a waiver of her right to be reinstated. Respondent employer, or for that matter any employer, could not be made to wait for her to report at her pleasure. She could not dilly-dally with her presentation to management to work in order to make her backwages run until she chooses to report for work.

“On the matter of backwages, regardless of whether she worked in the United States or not and regardless of whether this Court

has jurisdiction over her earnings abroad, it is undisputable that while she was in the United States, she could not have worked in the Philippines. Consequently, although Soledad A. Dizon is entitled to backwages, the same should commence from the time she was dismissed until she left the country for the first time. Hence, this modification of the Order sought to be reconsidered because of the above-mentioned developments that took place in the premises.”

In brief, in the lower court’s resolution en banc, while the trial judge, with the concurrence of the presiding judge, ruled that respondent Dizon is entitled to full payment of her backwages without any deduction of any kind, but at the same time without any right to fringe benefits and general increases which the petitioners might have given to their employees, from the date of her dismissal to the date of her actual reinstatement, on the other hand, the three other judges, constituting the majority, were in agreement that respondent’s backwages should be limited only to the period from her dismissal to the date she first left for the United States, regardless of whether or not she secured gainful employment there. Premise of the minority’s conclusion is that no competent evidence was presented by petitioners to prove respondent’s other alleged employments whether here or in the United States, while the majority considered the fact of respondent’s having left for America as undisputed and the proof of her earnings there as irrelevant and immaterial, for “while she was in the United States, she could not have worked in the Philippines.”

After a review of the record, the Court holds that neither of these two views is entirely correct.

The specific basis of the minority in ruling against petitioners’ claim for deduction of alleged earnings elsewhere of respondent after her lay-off is that the affidavits submitted by them were nothing but mere copies of originals, the existence of which has not been shown, and, in any event, the said affidavits and even the testimony of the lone witness a certain G. Francisco, from Standard Vacuum Oil Company, are either hearsay or inconclusive or vague. It is obvious that such ruling is over technical and does not conform with the provisions of the law, much less the spirit informing them. Not only does Section 20 of Commonwealth Act 103 creating the Court of Industrial

Relations precisely endow the said court with such plenitude of authority “(T)hat in the hearing, investigation and determination of any question or controversy and in exercising any duties and power under this Act, the Court shall act according to justice and equity and substantial merits of the case, without regard to technicalities or legal forms and shall not be bound by any technical rules of legal evidence but may inform its mind in such manner as it may deem just and equitable”, but Section 5(b) of the Industrial Peace Act pointedly provides that in unfair labor proceedings.

“The rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Act that the Court and its members and Hearing Examiners shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure. In rendering its decision, the Court shall not be bound solely by the evidence presented during the hearing but may avail itself of all other means such as (but not limited to) ocular inspections and questioning of well-informed persons which results must be made a part of the record. In the proceeding before the Court or a Hearing Examiner thereof, the parties shall not be required to be represented by legal counsel and it shall be the duty and obligation of the Court or Hearing Examiner to examine and cross-examine witnesses on behalf of the parties and to assist in the orderly presentation of evidence.”

The determination of how much should be paid as backwages when payment thereof is ordered in an unfair labor practice case constitutes either an inevitable sequel or a part and parcel of the whole proceeding. Consequently, there is no reason why the same simple, liberal and non-technical procedure indicated in Section 5(b) just quoted should not be observed in such determination, particularly if it is considered that under Section 5 (c), the discretion granted to the court in the imposition of the appropriate sanction against any party guilty of unfair labor practice is so broad that it is not, confined merely to the issuance of an “order requiring such person to cease and desist from such unfair labor practice” but includes also the authority to “take such affirmative action as will effectuate the policies of (the) Act, including (but not limited to) reinstatement of

employees with or without backpay and including rights of the employees prior to dismissal including seniority”, and having in view, further, the limited time of thirty (30) days within which the matters “relative to such disputes” is mandatorily required to be decided by the Court, (Section 5 [d], which considerations unmistakably indicate the policy of the law to make all unfair labor practice proceedings and the incidents thereof as simple, speedy and expeditious as possible, to the end that they may be undertaken without regard to procedural technicalities save as may be indispensable for due process and decided strictly according to the substantial merits of the respective claims of the parties. (Ang Tibay vs. CIR, G.R. No. 46496, February 27, 1940, 69 Phil. 685; Kapisanan Ng Mga Manggagawa sa MRR vs. Hernandez, G.R. No. L-19791, August 14, 1968, 24 SCRA 591.)

Thus, much of the delay in the disposition of this case could have been avoided had the Industrial Court adopted a more practical and less technical approach to the problem before it, as envisioned by the law. In principle, respondent’s right to backwages was not being seriously denied by petitioners. The only question raised by them was as to the amount thereof; in other words, how much, on the one hand, should be added to the basic pay by way of restoration of “all rights and privileges acquired and due her, including seniority and such other terms and conditions of employment existing at the time of her lay-off” as ordained in the judgment and as contemplated in the abovequoted provisions of the law and, on the other, how much should be deducted therefrom by way of earnings elsewhere pursuant to the guidelines set down in Itogon-Suyoc, *infra*, and the long line of decisions, to be more appropriately cited later, on the same point.

In connection with such position of petitioners, it appears that they had manifested to the court below their willingness to immediately reinstate respondent “in her former position with the salary she was receiving at the date of her separation from its service.” Of course, such manifestation was hardly of any legal significance, since the judgment to be implemented was already final and executory and could not be subjected to conditions inconsistent therewith, and neither was the subsequent counter-manifestation of respondent imposing her own conditions for her return to work of any legal consequence, as she had no right to ask for more than what the decision granted her. The point is that in such a situation, it is

implicit in the law that what the court should have done as the initial step was to order immediate implementation of the ordered reinstatement, without prejudice to resolving the question of backwages afterwards. In that manner, all of these questions vexing the parties and the court could have been avoided or at least minimized. After all, it is the long lay-off that creates problems not only for the employer, with regard to how much has to be paid in backwages, but also, and this is worse, for the discharged employee or worker, as to whom naturally the damage is always bound to be beyond complete repair since during the uncertain period of lay-off, he and his family have to undergo the difficulties, hardships and vicissitudes of unemployment until he can have some kind of earning elsewhere. On the other hand, with immediate reinstatement upon the court's finding of just and legal ground therefor no injury is caused to either employer or employee, for the former gets the benefit of the latter's work and the latter receives due compensation therefor. The obvious advantages of this arrangement in terms of industrial peace and economic and social progress, and the larger interest of the nation as a whole, are incalculable.

As to the exact amount of her backwages, it is unquestionable that under the decision being executed, respondent, as already stated, is entitled to "all the rights and privileges acquired and due her, including seniority, and such other terms and conditions of employment existing at the time of her lay-off." In *Philippine Air Lines, Inc. vs. PALEA, et al.*, G. R. No. L-21120, Feb. 28, 1967, involving an almost identically worded judgment as in this case, We held such judgment to mean "backwages for the lay-off period, coupled with the 'seniority or other rights and privileges' attached to the status of the employees when they were dismissed, (or) (T) o put it differently, said employees (should be treated) as if they had not been absent from work and had been uninterruptedly working during the lay-off period." Having in view the spirit of the law, the court should not have expected respondent to assume the whole burden of proving the factual bases of the relief to which she is entitled. From their very nature, such matters are more or less within the peculiar knowledge of her employer, since they are necessarily found in the books and records of the latter. In any event, it was incumbent upon both parties to disclose to the court all the material facts, within their respective particular knowledge instead of expecting the other to follow the

ordinary procedure of presenting evidence to prove them. As may be noted in the procedure for unfair labor practice proceedings outlined in Section 5 (b), supra, in cases of this nature, the court, unlike in ordinary cases, does not act merely as a referee but is supposed to take active part in drawing out the true facts from the parties concerned, exercising thus more of the administrative than the judicial aspect of its authority. Accordingly, in the face of seeming inadequacy of respondent's evidence relative to the "rights and privileges" which the basic decision recognized she is entitled to and/or the apparent, if natural, hesitancy of petitioners to disclose facts connected therewith within their peculiar knowledge, it was incumbent upon the court to take the needed steps to compel the petitioners to cooperate with it by being candid and frank about such facts and not to hide behind the usual cloak of the technicality that it is respondent's exclusive responsibility to establish her claim. Under the law, such responsibility for the discovery of the material facts is not of the worker or employee alone, but of the employer and, in a sense, of the court as well. Hence, it is the duty of the Examiner charged by the court to compute backwages, as in this case, to look into the books and records of the employer and report to the court the relevant facts appearing therein connected with the claim of the discharged employee or worker and it is the correlative obligation of the employer to allow such examination.

Now, turning to the deductions claimed by petitioners, although the basic decision in this case did not say so expressly, it is well settled that an employer is entitled to deduct from what the court orders to be paid as backwages, privileges, etc., whatever an employee has earned elsewhere during the period for which backwages are supposed to be paid, hence such qualification must be considered implied in all judgments ordering reinstatement, unless otherwise expressly ordered for reasons the court may deem justified. In a rather long line of decisions involving payment of backwages to employees who have been illegally dismissed in consequence of unfair labor practices on the part of their employers, We have uniformly held that whatever the dismissed laborer had actually earned during the period of his illegal dismissal should be deducted from his computed backwages for the same period,^[2] on the principle that no one should be allowed to enrich himself at the expense of another.^[3] And in this connection, We stated in precise terms the guidelines to

be observed in the ascertainment of total backwages payable in Itogon-Suyoc Mines, Inc., supra, thus:

“Since the dismissal of respondents in 1958, more than ten years had elapsed. It would not seem but of place to restate the guidelines to be observed in the ascertainment of the total back wages payable under the judgment below. These are:

“First. To be deducted from the back wages accruing to each of the laborers to be reinstated is the total amount of earnings obtained by him from other employment(s) from the date of dismissal to the date of reinstatement. Should the laborer decide that it is preferable not to return to work, the deduction should be made up to the time judgment becomes final. And these, for the reason that employees should not be permitted to enrich themselves at the expense of their employer. (Philippine Air Lines, Inc. vs. Philippine Air Lines Employees Association, L-15544, July 26, 1960 and cases cited therein.) Besides, there is the ‘law’s abhorrence for double compensation.’ (Republic Savings Bank vs. Court of Industrial Relations, 1967D Phil. 198, 202 [Resolution]).

“Second. Likewise, in mitigation of the damages that the dismissed respondents are entitled to, account should be taken of whether in the exercise of due diligence respondents might have obtained income from suitable remunerative employment. (Sotelo vs. Behn, Meyer & Co., H. Mij., 57 Phil. 775, 778-779, citing Garcia Palomar vs. Hotel de France Co., 42 Phil. 660. See: Sta. Cecilia Sawmills, Inc. vs. Court of Industrial Relations, L-19273 & L-19274, February 29, 1964; Mindanao Motor Line, Inc. vs. Court of Industrial Relations (L-18418) and Aboitiz and Company, Inc. vs. Court of Industrial Relations (L-18419), November 29, 1962; Durable Shoe Factory vs. Court of Industrial Relations, 99 Phil. 1043; Aldaz vs. Gay, 7 Phil. 268, 271.) We are prompted to give out this last reminder because it is really unjust that a discharged employee should, with folded arms, remain inactive in the expectation that a windfall would come to him. A contrary view would breed idleness; it is conducive to lack of initiative on the part of a laborer. Both bear the stamp of undesirability.”

Again, it must be emphasized that it is inconsistent with the intent of the law to permit the parties to play hide-and-seek in connection with the determination of the bases and the amounts of the deductions to be made. In the same manner that the employer must disclose the material facts within his peculiar knowledge affecting the rights and privileges of the discharged employee or worker during the period of lay-off so that the corresponding amounts to be added to the basic backwages may be speedily and justly determined, so also, it is the corresponding duty of the employee or worker to be honest and fully comprehensive in informing the court, with the least possible delay, the circumstances of any gainful employment or work he or she has had during the lay-off period, particularly the true income derived therefrom, thereby to enable the court to make the corresponding deductions to which the employer is entitled pursuant to the jurisprudence abovesited. Indeed, this duty of the employee or worker to assist the court by frank and candid disclosure of his earnings elsewhere during the period of lay-off is but a corollary of his obligation to minimize his own damages consequent to the action, if unwarranted and illegal, of the employer. There is no sense in construing the law in such a way as to permit or oblige the parties to engage in protracted and complicated proceedings which can only result in probable flaring up of emotions and the multiplication of reasons for discord, and more importantly, the waste of man hours otherwise needed in the productive enterprise or industry to which the employer is dedicated, when, after all, what is sought cannot be anything more than what is fair and equitable.

Accordingly, both views in the court below must be rectified and the decision appealed from accordingly modified. We hold that the ruling of the majority in the court below to the effect that the respondent Dizon is entitled to backwages only from the time of her dismissal to the date she left for the United States on July 15, 1964 is not good law, in the sense that it fails to consider that in this particular case it is undisputed that respondent's departure for the United States was to look for employment in fulfillment precisely of her obligation to minimize her damages resulting from her unjustified dismissal. As long as the reinstatement of an illegally dismissed worker or employee has not been carried out he can seek employment or work anywhere, including in a foreign country. Surely, his departure from

the Philippines for such purpose should not constitute a waiver of his right to reinstatement; it is only if he unjustifiably or unreasonably refuses to report for work with his former employer after his reinstatement has been ordered or after his employer has offered to reinstate him pursuant to the judgment of the court that he could be considered as having renounced such right. The bare fact of his being actually employed elsewhere in any capacity cannot affect his right to reinstatement, for the option is his to return or not to return to his former work upon knowing of the order or offer of reinstatement; if he opts to return, he has to be reinstated, subject to the conditions as to his backwages already elucidated above: if he refuses to return or imposes uncalled for conditions therefore, then and only then would his right to reinstatement cease, although he would nonetheless be entitled to the same backwages already discussed up to the time of such refusal. In the light of these criteria, the important question is, when should respondent be considered as having waived her right to reinstatement, independently of when she left for the United States and when she secured employment there, or, in other words, when did she manifest her option to waive reinstatement either expressly or by conduct unmistakably implying her option to forego the same?

In this respect, according to the lower court, it is “not denied that certain undisputable developments took place in that (respondent) Dizon went to the United States. In a pleading filed with the Supreme Court while this case was on appeal therein, a copy of which was furnished counsel for Dizon then in the United States, she was formally asked to report for work the next day, June 15, 1966. She came back to the country. One day, counsel for respondents met her at the office of her lawyers and there she was told to report to respondents for work, which she never did. Again, she went to the United States.”

Ordinarily, these findings of fact should bind this Court, particularly because in unfair labor practice case, the rule to this effect in regard to cases appealed from the Court of Industrial Relations which has long been established in the law and jurisprudence is specifically reiterated in Section 6 of the Industrial Peace Act thus:

“The findings of the (Industrial) Court with respect to questions of fact if supported by substantial evidence on the record shall

be conclusive. The appeal to the Supreme Court shall be limited to questions of law only.”

In this case, however, the record reveals that it is equally undisputed that upon receipt of the offer of reinstatement, which, by the way, was actually made on July 14, 1966 or already after this Court had rendered its judgment of April 30, 1966, respondent’s counsel lost no time in manifesting that she was “willing to be reinstated to her former position but not with the monthly salary she was receiving on the date of her dismissal (as stipulated in the offer). Respondent Dizon should receive a monthly salary of P295.00 plus the yearly general wage increases from 1958 to 1965 given by the petitioners to all its employees. To serve as gauge of what respondent Dizon should receive as monthly salary effective on the date of her reinstatement, the respondents respectfully inform the Honorable Tribunal that the employee who replaced respondent Dizon in her position is presently receiving the monthly salary of P425.00, whereas at the time she assumed said position she was receiving the monthly salary of P250.00.”

and that, in turn, counsel for petitioners counter-manifested that pursuant to the decision of this Court affirming that of the lower court all that was ordered was that respondent be reinstated “to her former position with backwages from September 1, 1958 until actually reinstated, with all the rights and privileges acquired and due her, including seniority and such other terms and conditions of employment existing at the time of her lay-off.”

Otherwise stated, it was not exactly true that respondent disregarded petitioners’ offer for reinstatement, as the lower court’s finding would seem to imply. On the contrary, she indicated readiness to accept the same but, rather over-cautiously, she wanted to be sure first that she was not going to lose any of the other rights she was accorded by the standing judgment in her favor. For their part, petitioners must have been motivated by the same feeling when they filed their counter-manifestation. While their respective positions are somehow understandable, it cannot be said that either of them acted in accordance with the spirit of the law; and much less the court below. As already explained above, under the circumstances, what the court should have immediately done was to forthwith implement the order

of reinstatement, and the parties should have known better than not to trust that the court would resolve all matters relative to the other parts of the judgment in accordance with the law and jurisprudence discussed above. We reiterate that the implementation of an order of reinstatement should not be delayed, much less subjected to conditions proposed by the parties but not consistent with the judgment and manifestly violative of their substantial rights, since long periods of unjustified and illegal lay-offs are economically and socially unwise and prejudicial to everyone concerned, most importantly to the laboring or working classes.

Thus, in the circumstances of this particular case, We hold that the court a quo should have seen to it that respondent returned to the Philippines by the earliest reasonable means as soon as she was notified of the judgment of this Court and the offer of petitioners to reinstate her and reported for work as soon as possible. She should not have been allowed to quibble about the terms of her reinstatement, nor the petitioners to qualify the same, since the judgment and the law and jurisprudence regarding them had necessarily to be followed. Hence, to avoid further delay as regards this particular point, all relevant things extant in the record considered, We hold that respondent Dizon is entitled to backwages, computed together with her other rights and privileges as above indicated, from the date of her dismissal to the date she left the Philippines to return to the United States to resume her teaching job thereat, which date she should reveal to the court a quo with competent proof, subject to verification by petitioners and the court. By failing to report for work with petitioners when she had an opportunity to do so and leaving instead for the United States with intent to resume her teaching job, she must be deemed to have effectively waived reinstatement by petitioners from said date.

Anent her earnings here and/or abroad during the period of her lay-off, the motion to compute the backwages due the respondent was filed as early as June 8, 1966 and it was only after almost a year, or on May 12, 1967, that the trial judge resolved the matter and only shortly before May 23, 1968^[4] that the court en banc rendered the decision now on appeal. Such delay is, to say the least, deplorable, if only because the reason therefor is that in dealing with the issues before it, the court a quo failed to adhere to the spirit and intent of the legal

provisions aforementioned prescribing the procedure for the purpose. The record evinces an unexplainable indifference on the part of the trial judge in the face of the technical maneuvers of the parties not in keeping with the nature of the proceedings. Each kept urging the other to prove facts which each one knew very well was within its own peculiar knowledge, and the court did nothing to compel both of them to be more honest and candid to it by disclosing the real facts within their respective peculiar knowledge. Thus, instead of requiring petitioners to reveal on the basis of their records what general increases, benefits and bonuses were granted to their employees which respondent would have been entitled to share had she not been laid-off, the Court merely waited for evidence to be presented by the respondent, only to later on disregard them, rightly or wrongly, as incompetent, by applying the strict rules of evidence for ordinary courts. Consequently, the ruling of the lower court denying respondent's claim for fringe benefits, etc. on the ground that she "did not present evidence in support" thereof cannot stand.

Likewise, when it came to the turn of the petitioners to prove respondent's earnings during the lay-off period, the court made no more to compel respondent to disclose the facts pertinent thereto which were within her peculiar knowledge. In the situation in which petitioners were found, it was only natural that they had to depend on affidavits and certifications from knowledgeable people in the United States, the taking of depositions thereat or the bringing here to competent witnesses and records for the purpose being obviously impractical, but the court below ruled out said affidavits and certifications, holding in utter non-chalance, surely unjustified, that:

"When the respondents (herein petitioners) were given the opportunity to present competent evidence in support of their allegations that complainant Dizon earned (that amount) during the time of her dismissal, they failed to do so. The alleged affidavits attached to the various manifestations filed with this Court were not even identified by witnesses. So that such alleged affidavits are merely pieces of paper and do not have any value as evidence."

which holding is not even correct, considering that in *Luzon Brokerage Co. vs. Luzon Labor Union*, G.R. No. L-17085, July 31,

1963, 8 SCRA 509, 510, a case involving also backwages, We ruled that: “an affidavit is admissible as evidence before the Court of Industrial Relations for the reason that the same is an administrative body.”

Worse, when petitioners availed a request for admissions, the trial judge failed to observe the procedure governing this means of discovery existing under the Rules of Court. It appears that in their effort to prove the earnings of respondent during the lay-off, petitioners made a request to respondent for admission of pertinent facts such as:

- “1. On January 3, 1962, you were employed by Warnes, Barnes & Co., at a monthly salary of P215.00.
- “2. On June 1, 1962, your above monthly salary in the said firm was increased to P250.00.
- “3. On July 15, 1964, you voluntarily resigned your said position in Warnes, Barnes & Co.
- “4. During the entire period of your employment by Warner Barnes & Co., you have received during the periods mentioned hereinabove the salary referred to hereinabove.
- “5. Furthermore, during the period of your employment by Warner, Barnes & Co., you were granted Christmas bonuses, vacation leave and all other privileges incidental to your employment by said company.
- “6. After resigning from your position on July 15, 1964, you left for the United States with your children.
- “7. As a matter of fact, you are now a permanent resident of the United States.
- “8. While in the United States, you have been employed by a teaching institution and/or by travel agency, receiving from these two sources a total income in dollars which when translated to pesos exceeds the amount that you would

have received during the entire period of your separation from service of the East Asiatic.

- “9. You returned to the Philippines this year during the school summer vacation of the United States and left again some time ago for the United States to resume your various employments.”

Instead of complying with said request, respondent filed a reply excusing herself from compliance by contending that:

- “1. That the matters treated in the request are improper and irrelevant at this stage of the proceeding in this case;
- “2. That request for admission is proper only after issues have been joined and before any decision is issued in the case and not after the decision has been promulgated and has become final and executory.”

To be sure, there was some deviation by both parties from the procedure prescribed by Rule 26, since such a request need not have been filed with the court and should have been addressed directly to the respondent instead of her being merely furnished with copy thereof, and, on the other hand, instead of the “reply” of respondent excusing herself on the above-quoted grounds, the said grounds should have been submitted formally for the resolution of the court as objections to the request, pursuant to Section 2 of said rule, but such departure was no excuse for the court not to play the part designed for it by Commonwealth Act 103 and the Industrial Peace Act. Instead of ignoring the formal departure by the parties from Rule 26 and considering the reply of respondent as her objection to the request for admission and correspondingly ruling thereon so that the parties may be guided accordingly, the trial judge appears to have completely disregarded both the request and the reply and did not even make any mention thereof in his final order. Said attitude is clearly erroneous. The discovery procedures authorized by the Rules of Court are by their very nature precisely suitable to proceedings of the kind now before Us, since the main objective of discovery is to enable one party to acquire knowledge of relevant facts which otherwise would be in the peculiar knowledge of the adverse party alone and for that party

to afterwards make use of such acquired knowledge either as evidence itself or as a means of preparing evidence in its favor, and it is in proceedings for the determination of backwages in cases of reinstatement illegally discharged employees that the parties usually indulge in the practice of unnecessarily trying to conceal evidentiary facts from each other. As a matter of fact, under the broad control that the Industrial Court has over procedural matters and in order to expedite proceedings and go directly to the substantial merits of the claims of the parties, it can even adjust and modify the application of the modes of discovery in cases before it accordingly as the demands of the particular situation before it may require.

Now, respondent's above-quoted grounds of objection to petitioners' request are obviously untenable. While it is true that as a rule, discovery is best used before or during the trial and before judgment, there can be no valid objection to allow, recourse thereto in proceedings in aid of execution of a judgment when the need therefor arises because of the material issues of fact more or less numerous or complicated, as in the case at bar, and specially in cases before the Court of Industrial Relations wherein the court is free to adopt the procedure it deems most conducive to attain its objective under the law. Accordingly, respondent's objections should have been overruled and she should have been promptly ordered to properly reply to the petitioners' request for admissions.

Considering all the foregoing, We have no recourse but to return this case to the court a quo for further proceedings. This may entail further delay, but We have no alternative because even the facts which petitioners requested to be admitted are not as sufficiently detailed as to accurately and comprehensively include all the circumstances of respondent's employment and earnings during the lay-off period in question; hence, even if We were to hold, as was prayed for by petitioners in the court below, that the said facts be deemed admitted pursuant to Section 2 of Rule 26, in view of respondent's failure to properly comply with petitioners' request and considering that anyway, her objections to the request are completely untenable, there would still be no basis for a complete judgment in this case.

Before closing, however, We consider it necessary to advert to the attempt of the Court Examiner assigned to compute the income of respondent from her employment in the United States to determine the peso value of said income by multiplying her dollar earnings by the rate of exchange of the American dollar to the Philippine peso. Such a method of computation is uncalled for. While viewed in terms of the rate of exchange of our peso to the U. S. dollar, one's income in the United States may appear to be lucrative compared to one's income in the Philippines, not to be overlooked is the fact that, in more or less similar proportion, the living expenses and the standard of living in said country are also relatively high. As a result, dollar earnings should not be computed on any exchange rate basis at all.

Furthermore, as a result of the erroneous basis thus used by the Court Examiner, he also concluded that what respondent earned in the United States is equivalent to P30,190.00, and since this is more than P30,190.00, the total, according to his computation, of what respondent would have earned from petitioners from the date of her dismissal to the date of computation, respondent is no longer entitled to any payment from petitioners. Again, this method of computation is erroneous.

On this point, *Northwest Airlines Employees Association vs. Northwest Airlines, Inc.*, supra, while not exactly identical in circumstances with this case, indicates the governing principle. In that case, petitioner was a permanent employee — as a flight stewardess with a salary of P445.07 a month — of therein respondent Northwest Airlines, Inc. The company dismissed her from its service on September 23, 1960, in consequence of which, petitioner filed an unfair labor practice charge with the Court of Industrial Relations against said respondent. On June 28, 1962, while the case was pending in the CIR, petitioner applied to and was reemployed by the same company on a temporary basis as passenger sales agent with the same monthly salary of P445.07. This, notwithstanding, petitioner pursued her case further; and on September 30, 1963, the CIR decided the same, finding the respondent company guilty of the unfair labor practice charge and ordering it to reinstate her to her former job as flight stewardess “with full backwages and without loss to (sic) her seniority and other acquired rights therein.” When the company moved to reconsider, the CIR En Banc resolved that

petitioner should be paid backwages from September 24, 1960, the day after her dismissal, to June, 1962, when she was reemployed on temporary basis, and, as it was shown that petitioner received a number of salary increases as passenger sales agent, ordered that “the excess over P445.07 that she received from the company under the new designation should also be deducted” from said backwages. Thus, on August 9, 1965, when pursuant to a motion for execution pending appeal, petitioner was reinstated to her former position of flight stewardess, she was paid her back salaries for the period of her lay-off (from September 23, 1960 to June 27, 1962) at the rate of P445.07 a month, minus all that she had received in excess of that rate during the period of her employment as passenger sales agent from June 28, 1962 to August 8, 1965. The validity of this deduction was put in issue in the petition with this Court and We held:

“The first issue raised in this petition is the validity of such deduction as ordered in the respondent Court’s resolution of July 21, 1964. To justify the said order the respondent company cites several decisions of this Court (Philippine Airlines vs. PALEA, L-15544, July 26, 1960, 60 O.G. 8269; MacLeod & Co. vs. Progressive Federation of Labor, L-7881, May 31, 1955; Western Mindanao Lumber Co., Inc. vs. Western Mindanao Federation of Labor, L-10170, April 25, 1957), wherein it was held that whatever the dismissed laborers had actually earned during the period of their illegal dismissal should be deducted, on the principle that no one should be allowed to enrich himself at the expense of another.

“Several reasons militate against the application of those decisions in the case now before us. First, whatever Louise Mateu earned during the time she was working as passenger sales agent was for services rendered to the respondent company; she did not unduly enrich herself at its expense in being paid for them; on the contrary, it is the company that would be unduly enriched if, after having received the benefit of such services, it should be allowed to pay less than what they were worth. Secondly, since the parties are agreed that the period of the petitioner’s dismissal was only from September 23, 1960 to June 1962, and since she was adjudged entitled to back salaries only during such period, there is neither logic nor

equity in taking into account, for purposes of deduction the income she received thereafter.”

Similarly, We cannot see any justification for Us to uphold here the Examiner’s theory and virtually allow petitioners to escape the sanction intended by the law for the unfair labor practice they were found guilty of by final judgment of this Court, specially because to adopt such view would enable petitioners in effect to enrich themselves from what the very victim of their unjust and illegal act of dismissing her without sufficient cause earned thru her on work and effort. It is indeed the height of inequity and injustice for any employer to take advantage of a favorable turn of fortune of his worker, laborer or employee he has dismissed in violation of law and use such lucky break to elude the penalty provided by the law for such violation. It would be a travesty of the Constitutional injunction that “the State shall afford protection to labor (Section 6, Art. XIV, Constitution of the Philippines) if the principle that a party damaged by another has the obligation to try to minimize his damages were to be extended in the sense that what a laborer or employee, after being oppressed and illegally treated by his employer, has earned by his own efforts, over and above the wages or salaries such employer would have paid him had he not been laid off should be used in reducing the award of damages to the worker.

In other words, the just and equitable rule regarding the point under discussion is this: 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, but it is the right, on the other hand, of the employer to deduct from the total of these, the amount equivalent to the salaries or wages the employee or worker would have earned in his old employment on the corresponding days that he was actually gainfully employed elsewhere with an equal or higher salary or wage, such that if his salary or wage in his other employment was less, the employer may deduct only what has been actually earned. For instance, if the lay-off period is one year and the monthly salary of the employee or worker is P300.00, which is equivalent to P10.00 a day, he would be entitled to backwages of P3,600.00, plus benefits, bonuses and general increases, but if during

the year of lay-off, he was employed off and on, and at one time earned P12.00 a day but at another time only P8.00 a day, what should be deducted would be P10.00 for everyday that he was earning P12.00 and only P8.00 for everyday that he was earning such amount. Otherwise stated, all earnings of the dismissed employee or worker elsewhere over and above what he would have earned with his old employer during the corresponding period belong to the employee or worker to the exclusion of any right on the part of the employer to use the same to minimize the damages he has to pay.

IN VIEW OF ALL THE FOREGOING, the En Banc resolution appealed from is hereby modified and the judgment of this Court is that:

- (a) Respondent Dizon is entitled to backwages only up to her return to the United States to resume her teaching job there, the exact date of which she must forthwith inform the court a quo;
- (b) Respondent Dizon is further entitled to all general increases and bonuses she would have received during the period of her lay-off specified in the next preceding paragraph of this judgment, as if she had never been discharged, the amount of such benefits to be disclosed forthwith to the court a quo by petitioners on the basis of what appears in their books and records which may be examined by the Court Examiner together with respondent or her duly authorized representative, if she so desires; and
- (c) Petitioners may deduct from the total amounts of (a) and (b) of this judgment, all the earnings of respondent during her lay-off as above-defined, whether here or abroad, the exact details of which the respondent must forthwith furnish the court a quo, provided that all her earnings in dollar in the United States shall be computed on a 1 to 1 basis, and provided also that the amount to be deducted shall not exceed what she would have been entitled to have received from the petitioners during the corresponding period of her actual gainful employment elsewhere.

It is further ordered that the records of this case be remanded to the Court of Industrial Relations for further proceedings consistent with this judgment and the above opinion. Both parties shall pay the costs, share and share alike.

Concepcion, C.J., Reyes, Makalintal, Zaldivar, Fernando, Villamor and Makasiar, JJ., concur.
Castro and Teehankee, JJ., concur in the result.
Dizon, J., did not take part.

- [1] The East Asiatic Co., Ltd., E. Jakobsen, P.H. Sorensen and K.R. Nielsen vs. Court of Industrial Relations, The East Asiatic Co. Employees' Union (PTUC) and Soledad A. Dizon, decided April 30, 1966 (16 SCRA 820).
- [2] MacLeod & Co. vs. Progressive Federation of Labor, 97 Phil. 205, 211; Durable Shoe Factory vs. CIR and NLU, 99 Phil. 1043; Phil. Air Lines vs. PALEA, 108 Phil. 1129, 1133, and cases cited therein. See also: Mindanao Motor Line, Inc. vs. CIR, L-18418, Nov. 29, 1962, 6 SCRA 710, 715-716; Rizal Labor Union vs. Rizal Cement Co., Inc., L-19779, July 30, 1966, 17 SCRA 858, 863; Republic Savings Bank vs. CIR, L-20303, Oct. 31, 1967, 21 SCRA 661, 665; Itogon-Suyoc Mines, Inc. vs. Sangilo-Itogon Workers' Union, L-24189, Aug. 30, 1968, 24 SCRA 873; 888; G. Liner vs. National Labor Union, L-24963, Nov. 29, 1968, 26 SCRA 282; Northwest Airlines Employees Asso. vs. Northwest Airlines, Inc., L-24592, May 29, 1970, 33 SCRA 143, 146; Dy Pac Pakiao Workers Union vs. Dy Pac & Co., Inc., L-27377, March 31, 1971; Elegance, Inc. vs. CIR, et al., L-24096, April 30, 1971; Castillo, et al. vs. CIR, et al., L-26124, & L-32725, May 29, 1971.
- [3] Northwest Airlines Employees Association versus Northwest Airlines, Incorporated, supra, and cases therein cited.
- [4] The record does not show when the en banc resolution was promulgated.