

CHANROBLES PUBLISHING COMPANY

SUPREME COURT FIRST DIVISION

**JONERI ESCOBIN, RODOLFO ROJAS,
FEDERICO LAGUYO, GASPAR
MONTEJO, ROLANDO CABALLES,
ROMEO BELARMINO, ELISEO
CODILLA, ELEUTERIO BENITEZ,
ELPIDIO CASINILLO, FERNANDO
ABLONG, PRUDENCIO SACRISTAN,
RODOLFO BRIONES, PRIMITIVO
CALIXTO, ANDRES FERNANDO,
ANGEL AVENIDO, FELIX GUIPITACIO,
TARACIO ABILLA, ANTONIO PATINO,
ANTONIO HELEN, NERIO CANOY,
VICENTE FRANCISCO, TEOFILO
TURA, ANTONIO LEDESMA,
MARCELINO HIPOLITO, BENJAMIN
FLORES, PABLO LASCOTA,
WILFREDO CANTAY, GENARO
DELIVERIO, MARCIANO PIOQUINTO,
FEDERICK JIMENEZ, VICENTE SM
LIM, LUIS TUBIL, ANGEL SUMAYO,
SALVADOR SALCEDO, RIGOBERTO
UTOD, FELICIANO SALONA,
GERONIMO CANETE, MAXIMO
AQUILLON, LARRY TURCO, SR.,
PORFERIO GARADO, PERFECTO
CUEVAS, FELICIANO, JUANILLO,
ROBERTO TUCAY, SR., and NICOLAS
AMONES, JR.,**

Petitioners,

-versus-

**G.R. No. 118159
April 15, 1998**

**NATIONAL LABOR RELATIONS
COMMISSION, PEFTOK INTEGRATED
SERVICES, INC., TEODOLFO E.
SANTOS, and/or UP-NDC BASILAN
PLANTATIONS, INC.,**

Respondents.

X-----X

DECISION

PANGANIBAN, J.:

As a just and valid cause for dismissal, willful disobedience involves the violation of a rule, order or instruction which is (1) reasonable and lawful, (2) sufficiently known to the employee, and (3) connected with the duties which the employee has been engaged to discharge. Abandonment, on the other hand, requires a showing that an employee (1) deliberately and unjustly refuses to resume his work and (2) has no intention to return to it.

The Case

The Court reiterates these principles in resolving this petition for *certiorari* under Rule 65 of the Rules of Court assailing the Resolutions dated September 22, 1993 and December 16, 1993, which were promulgated by the National Labor Relations Commission^[1] in NLRC Case No. RAB 09-08-00235-91.

Petitioners filed at the Regional Arbitration Branch No. 09 in Zamboanga City a Complaint against private respondents for illegal termination by way of constructive dismissal. After conciliation proceedings failed to settle the matter, the parties were ordered to submit their respective position papers. On February 17, 1992, Labor

Arbiter Rhett Julius J. Plagata rendered a Decision in favor of petitioners:^[2]

“WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered in the above-entitled case:

- (1) Declaring the [petitioners’] dismissal to be illegal for being without just cause;
- (2) Ordering PEFTOK Integrated Security Services, Inc., through its president or other duly authorized corporate officer, to pay the [petitioners] the following awards in the following sums:

Constancio Silagan

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney’s Fees	1,000.00
& Litigation Expenses	_____
Total	P38,024.00
	=====

Joneri Escobin

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney’s Fees	1,000.00
& Litigation Expenses	_____
Total	P38,024.00
	=====

Rodolfo Rojas

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney’s Fees	1,000.00
& Litigation Expenses	_____
Total	P38,024.00
	=====

Federico Laguyo

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees & Litigation Expenses	1,000.00
Total	<u>P38,024.00</u> =====

Gaspar Montejo

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees & Litigation Expenses	1,000.00
Total	<u>P38,024.00</u> =====

Rolando Caballes

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees & Litigation Expenses	1,000.00
Total	<u>P38,024.00</u> =====

Romeo Belarmino

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees & Litigation Expenses	1,000.00
Total	<u>P38,024.00</u> =====

Eliseo Codilla

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P38,024.00
	=====

Eleuterio Benitez

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P38,024.00
	=====

Elidio Casinillo

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P38,024.00
	=====

Fernando Ablong

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P38,024.00
	=====

Prudencio Sacristin

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P38,024.00
	=====

Rodolfo Briones

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P38,024.00
	=====

Primitivo Calixto

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P38,024.00
	=====

Andres Fernando

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P38,024.00
	=====

Angel Avenido

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P38,024.00
	=====

Felix Guipitacio

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P38,024.00
	=====

Taracio Abilla

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P38,024.00
	=====

Antonio Patino

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P38,024.00
	=====

Antonio Helen

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P38,024.00
	=====

Nerio Canoy

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P38,024.00
	=====

Vicente Francisco

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P38,024.00
	=====

Teofilo Tura

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P38,024.00
	=====

Antonio Ledesma

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P38,024.00
	=====

Marcelino Hipolito

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P38,024.00
	=====

Benjamin Flores

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P38,024.00
	=====

Pablo Lascota

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P38,024.00
	=====

Wilfredo Cantay

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P38,024.00
	=====

Genaro Deliverio

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P38,024.00
	=====

Marciano Pioquinto

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P38,024.00
	=====

Federico Jimenez

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P38,024.00
	=====

Vicente SM Lim

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees & Litigation Expenses	1,000.00
Total	<u>P38,024.00</u> =====

Luis Tubil

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees & Litigation Expenses	1,000.00
Total	<u>P38,024.00</u> =====

Angel Jumayo

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees & Litigation Expenses	1,000.00
Total	<u>P38,024.00</u> =====

Salvador Salcedo

Backwages	P17,088.00
Separation Pay	19,936.00
Attorney's Fees & Litigation Expenses	1,000.00
Total	<u>P38,024.00</u> =====

Rigiberto Utod

Backwages	P17,088.00
Separation Pay	18,369.60
Attorney's Fees & Litigation Expenses	1,000.00
Total	<u>P36,457.60</u> =====

Feliciano Salona

Backwages	P17,088.00
Separation Pay	18,369.60
Attorney's Fees & Litigation Expenses	1,000.00
Total	<u>P36,457.60</u> =====

Geronimo Canete

Backwages	P17,088.00
Separation Pay	18,369.60
Attorney's Fees & Litigation Expenses	1,000.00
Total	<u>P36,457.60</u> =====

Maximo Aquillon

Backwages	P17,088.00
Separation Pay	18,084.80
Attorney's Fees & Litigation Expenses	1,000.00
Total	<u>P36,001.92</u> =====

Larry Turco, Sr.

Backwages	P17,088.00
Separation Pay	18,084.80
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P36,001.92
	=====

Porferio Garado

Backwages	P17,088.00
Separation Pay	17,088.00
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P35,176.00
	=====

Perfecto Cuevas

Backwages	P17,088.00
Separation Pay	17,088.00
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P35,176.00
	=====

Feliciano Juanillo

Backwages	P17,088.00
Separation Pay	15,037.44
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P33,125.44
	=====

Roberto Tucoy, Sr.

Backwages	P17,088.00
Separation Pay	14,724.16
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P32,812.16
	=====

Nicolas Ramones, Jr.

Backwages	P17,088.00
Separation Pay	14,240.00
Attorney's Fees	1,000.00
& Litigation Expenses	_____
Total	P32,328.00”
	=====

On appeal, Respondent Commission reversed the labor arbiter. The dispositive portion of the assailed Resolution, promulgated September 22, 1993, reads:^[3]

“WHEREFORE, the contested decision is hereby VACATED and SET ASIDE. In its stead, judgment is rendered declaring the dismissal of complainants valid for being with just cause and after due process.”

Respondent Commission further denied reconsideration in its Resolution promulgated December 16, 1993:^[4]

“WHEREFORE, premises considered, the instant motion for consideration is hereby denied for lack of merit.”

Hence, this recourse.^[5]

The Facts

In its Resolution dated September 22, 1993, Respondent NLRC relates the factual background of this case as follows:^[6]

“Respondent PEFTOK Integrated Services, Inc., (PISI for short), is a duly licensed watchman and protective agency while respondent UP-NDC Basilan Plantations, Inc. is a corporation duly organized in accordance with law, and the owner/possessor of lands principally planted to rubber, coconut, citrus, coffee, and other fruit trees in Lamitan, Province of Basilan. Respondent Teodolfo E. Santos is the general manager of PISI.

That complainants are bona fide members of the Basilan Security Force Association hired by PISI in Sta. Clara, Lamitan, Basilan, to work as guards in UP-NDC Basilan Plantations, Inc. premises, for the purpose of guarding and protecting plantation property and installations from theft, pilferage, robbery, trespass and other unlawful acts by strangers or third persons, and plantation employees, pursuant to an agreement between PISI and UP-NDC Basilan Plantations, Inc. dated May 17, 1989[.] The complainants, residents of Sta. Clara, Lamitan, Basilan, are heads of families, hired by PISI as security guards in and for plantation premises of UP-NDC Basilan Plantations, Inc. They were hired on different dates, with the individual dates of their employment being as follows:

‘Constancio Silagan, Joneri Escorbin, Rodolfo Rojas, Federico Laguyo, Gaspar Montejo, Rolando Cabales, Romeo Belarmino, Eliseo Codilla, Eleuterio Benitez, Elidio Casinillo, Fernando Ablong, Prudencio Sacristin, Rodolfo Briones, Primitivo Calixto, Andres Fernando, Angel Avenido, Felix Guipitacio, Teracio Abilla, Antonio Patino, Antonio Helen, Nerio Canoy, Vicente Francisco, Teofilo Tura, Antonio Ledesma, Marcelino Hipolito, Benjamin Flores, Pablo Lascota, Wilfredo Cantay, Genaro Deliverio, Marciano Pioquinto, Federico Jimenez Vicente SM Lim, Luis Tubil, and Angel Jumayo, and Salvador Salcedo, all employed on November 19, 1984; Rigoberto Utod, Feliciano Salona, and Geronino Canete on January 18, 1985; Maximo Aguillon, on February 22, 1985; Larry Turco Sr. on March 16, 1985; Porferio Garado on 15 August 1985; Feliciano Juanillo on March 18, 1986; Roberto Tucoy, Sr. on April 26, 1986 and Nicolas

Ramones, Jr. on July 29, 1986 (Complainants' Position Paper, Annex A).'

In 1988, some of the complainants, namely: Gene Engracia, Andres Fernandez, Rolando C. Caballes, Larry Turco, Fernando E. Ablong, Sr. Constancio Silagan, Winifredo N. Obedencia, Federick Laguyo, Primitivo Calixto, Felix C. Guipitacio and Claudio Calixto were dismissed by PISI for insubordination [sic] and grave misconduct, as a result of their refusal to ring the bell in the evening of May 25, 1988 while on duty in the premises of the plantation, but were later reinstated in an agreement forged between the parties at the initiative of Congressman Alvin Dans of Basilan Province.

On June 1, 1990, respondent UP-NDC Basilan Plantations, Inc. ordered the reduction of the contracted guards assigned in the plantation from seventy (70) to sixty-seven (67), in a letter addressed by Mr. Roman R. Yap to PISI[.]

And again in a letter dated January 22, 1991 sent to Col. Raymundo C. Sobrevega, President of PISI, by Hector A. Quesada, President of UP-NDC Basilan Plantations, Inc., PISI was advised to reduce further the guards from sixty-seven (67) to only ten, (10), a reduction [of] fifty-seven (57) guards.

Subsequently, thereafter, PISI issued Office Memorandum No. 4 dated February 6, 1991 placing the fifty-nine (59) affected guards under reserved or floating status effective February 1, 1991, subject to be posted or assigned upon notice.

On February 12, 1991, PISI issued Office Order No. 5 amending Office Order No. 4 by deleting therefrom the names of S/G Calixto Florentino Paddit and Sergio Quimpo.

Subsequently, on April 8, 1991, the guards placed on reserved or floating status were instructed by registered letter to report to PISI Head Office at Rm. 405, Sunrise Condominium, Ortigas Avenue, Greenhills, San Juan, Metro-Manila, for posting to PISI clients within the Metro-Manila area not later than April 30, 1991.

That complainants did not reply nor answer the letter sent them, prompting PISI to reinstate by way of another letter dated May 2, 1991, its order to complainants to report to PISI Head Office for posting, and to explain their failure to report as previously instructed.

Still failing to receive a reply nor answer from the complainants despite receipt of said letters, PISI once more sent individual letters to complainants on May 29, 1991 ordering them to explain why no disciplinary action shall be taken against them for failing to comply with PISI's Order, at the same time, reiterating its previous Order for complainants to report to PISI Head Office for posting.

Despite all these, complainants, for reasons known only to them, did not bother even sending a courtesy reply nor answer to PISI. Neither did they comply with the reiterated Order to report to their Head Office for posting. They did not also explain why they were unable to so comply with the Order.

Thus, on June 28, 1991, PISI wrote complainants individual letters that by reason of their failure to respond to or to comply with PISI's letters dated April 8, May 2, and May 29, 1991, and by their failure to report to PISI Head Office for posting, as ordered, they were dismissed on ground of insubordination or willful disobedience to lawful orders of their employer.

Late in the day however, on July 1, 1991, complainants wrote PISI General Manager, Teodolfo Santos, saying they had no intention to abandon their employment, nor to defy fair, reasonable and lawful orders. In the same letter, they acknowledged receipt of all PISI's letters to them dated April 8 and May 2, 1991.

After having been terminated, and during the arbitral proceedings below, complainants belatedly justified their inability to comply with PISI's Order to report to Head Office in Metro-Manila for posting, saying: they are residents of Basilan, have families of their own in Basilan, have never traveled

beyond Visayas and Mindanao, not provided by PISI with fare money as they cannot, on their own, finance their travel from Basilan to Manila; that to comply with PISI's Order to report to Head Office for posting under said circumstances was absurd, to say the least. Complainants therefore, charged PISI with bad faith in issuing said Order. That in truth, complainants said they were constructively dismissed by PISI. For which reason, complainants prayed that the Labor Arbiter declare their dismissal as illegal and consequently they should be paid separation pay (in lieu of reinstatement), backwages, moral and exemplary damages, attorney's fees and litigation costs.

The Labor Arbiter in deciding this case posed the following issues, namely:

- a) Whether or not complainants were indeed illegally dismissed, and corollarily, whether or not they are entitled to backwages and separation pay; and
- b) Whether or not complainants are entitled to moral and exemplary damages, attorney's fees and cost of litigation.

The Labor Arbiter noted that S/G Winifredo Obedencia and Ignacio Antonio did not sign the complaint. They should therefore be deemed not to have filed their complaints and their names should be deleted as party-complainants in the instant case.

With respect to PISI's Order for complainants to report to their head office in Manila, the Arbiter held that this is not a reasonable order considering that complainants are residents of Basilan, have families in Basilan, have never been assigned beyond Mindanao or Visayas, were not provided with fare money. Neither were they assured of compensation similar to what they used to receive in Basilan, nor of continued posting while in Manila. That their transfer would surely entail great inconvenience to complainants and their families. Hence, the validity of their transfer could not be sustained. Therefore,

complainants charged that their refusal to report to the head office was justified. Consequently, their dismissal was illegal.

The Arbiter, however, found that the procedure for termination of employment had been complied with by respondent PISI. But finding complainants illegally dismissed, the Arbiter held that they are entitled to backwages set at six (6) months pay corresponding to the maximum period a security guard may be placed on floating status, computed on the basis of their latest salary of P2,848.00. That since complainants opted for separation pay instead of reinstatement considering that their positions in Basilan are probably no longer existing, complainants instead [were] awarded by the Arbiter separation pay at one (1) month pay for every year of service based on their latest salary at the time they were illegally dismissed.

Complainants['] claims for moral and exemplary damages were denied for lack of factual and legal basis. However, the sum of P1,000 for each complainant was awarded as attorney's fees and litigation costs.

And finally, the Labor Arbiter absolved respondent UP-NDC Basilan Plantations, Inc. from joint and several liability on the monetary awards, noting that joint and several liability of an indirect employer is limited only to non-payment of labor standards benefits mandated by the Labor Code. The monetary awards in the instant case, being in the nature of labor relations benefits, the same was, thus, ordered as sole liability of respondent PISI.”

Ruling of Respondent NLRC

As earlier stated, Respondent NLRC reversed the labor arbiter's Decision, holding that private respondent had no choice but to place petitioners and other security guards on floating status for lack of clients to which they could be immediately reassigned. The directive to report to Manila for posting was issued, because private respondent knew that it could place petitioners on reserve status for only six months. Petitioners' refusal to comply with said Order and their “wanton disregard of the order to explain their inability to

comply and obey lawful orders from their employer” constituted the “proximate cause for their dismissal.” The fact that petitioners had some reasonable objections to the directive to report to Manila did not mitigate their insubordination, because petitioners raised them only during the arbitral proceedings.

Under these circumstances, according to Respondent Commission, private respondent had “no option left but to charge them with insubordination and willful disobedience to lawful orders of their employer.” In according due process to petitioners, private respondent gave them ample time to explain why no disciplinary measures should be taken against them, but petitioners still refused to comply. Hence, private respondent was justified in dismissing petitioners.

Not only did petitioners’ insubordination constitute willful disobedience; it also partook of abandonment. Thus, petitioners are not entitled to the payment of back wages and separation pay or reinstatement.

Assignment of Errors

In their Memorandum before us, petitioners impute the following errors to Respondent Commission:^[7]

“— I —

The NLRC acted with grave abuse of discretion in ruling that petitioners committed willful disobedience of lawful orders of their employer.

— II —

The NLRC acted with grave abuse of discretion in ruling that petitioners abandoned their work.

— III—

The NLRC acted with grave abuse of discretion in reversing the finding of the labor arbiter that petitioners were illegally dismissed by way of constructive dismissal.

— IV —

The NLRC acted with grave abuse of discretion in denying recovery of back wages, separation pay, damages, and attorney's fees in favor of petitioners.

— V —

The NLRC acted with grave abuse of discretion in denying petitioners' motion for reconsideration."

It is undisputed that due process was observed in the dismissal of petitioners. Hence, the only remaining issues are: (1) whether petitioners' dismissal was for a valid and just cause; and (2) whether they are entitled to separation pay, back wages and damages.

The Court's Ruling

The petition is meritorious.

First Issue: No Just Cause

The solicitor general maintains that petitioners' conduct amounted to clear insubordination and constituted willful disobedience to lawful orders given in connection with their work. PISI reduced its work force in UP-NDC premises as a result of the inclusion of the latter's plantation in the government's agrarian reform program. He argues that PISI diligently notified petitioners for three consecutive times to report to its head office for posting, but petitioners "wantonly refused receipt of the letters and abjectly failed to comply with [the] directive under letters dated April 8, May 2 and May 29, 1991."

We disagree. While it is true that petitioners failed to report to Manila and to respond to private respondent's letters, this is not the end-all and be-all of the matter.

One of the fundamental duties of an employee is to obey all reasonable rules, orders and instructions of the employer. Disobedience, to be a just cause for termination, must be willful or intentional, willfulness being characterized by a wrongful and perverse mental attitude rendering the employee's act inconsistent with proper subordination. A willful or intentional disobedience of such rule, order or instruction justifies dismissal only where such rule, order or instruction is (1) reasonable and lawful, (2) sufficiently known to the employee, and (3) connected with the duties which the employee has been engaged to discharge.^[8] The assailed Resolution of Respondent Commission and the arguments of the solicitor general failed to prove these requisites.

On the other hand, petitioners negated the solicitor general's stance, contending that the instruction to report to the Manila office was "inconvenient, unreasonable and prejudicial," as they were not given transportation money or, more important, any assurance that work would be available to them once they reached Manila. They were not even furnished a copy of the so-called Office Memorandum No. 4 dated February 6, 1991, which placed them under "floating status." Thus, they aver that their failure to report to the Manila office was not characterized by a "wrongful and perverse [mental] attitude." They also assert that they have families which they could not just leave behind.

The reasonableness and lawfulness of a rule, order or instruction depend on the circumstances availing in each case. Reasonableness pertains to the kind or character of directives and commands and to the manner in which they are made.^[9] In this case, the order to report to the Manila office fails to meet this standard.

First, it was grossly inconvenient for petitioners, who were residents and heads of families residing in Basilan, to commute to Manila. In *Yuco Chemical Industries, Inc. vs. Ministry of Labor and Employment*,^[10] the transfer to Manila of two workers, who were also studying in Tarlac, was held to be grossly inconvenient. The distance to Manila from Basilan is considerably greater than that from Tarlac. Such transfer would have necessarily entailed separation of the petitioners from their families.

Second, petitioners were not provided with funds to defray their transportation and living expenses. Petitioners, not unknown to their employer, earned only P1,500 to P2,500 a month before they were placed on reserve status, after which they remained jobless. Furthermore, being residents of Basilan, petitioners would have required living arrangements in Manila which, in turn, would have entailed additional expenses on their part.

Third, private respondent argues that it sent transportation money to petitioners. However, the recipients of such funds are not parties in this case. Moreover, the alleged transportation allowance was given only after petitioners had already been terminated from service. The letter^[11] purportedly granting transportation allowance to other security guards was dated August 12, 1991, which was after petitioners had been dismissed June 28, 1991.^[12]

Fourth, no reason was given by private respondent company explaining why it had failed to inform petitioners of their specific security assignments prior to their departure from Basilan. If indeed the postings were to be made in Basilan, there would have been no necessity for petitioners to report to Manila and no justification for respondent's insistence on their compliance with its directive. Since private respondent did not provide transportation and living allowances, and since, in the first place, petitioners could have been easily informed of their new assignments right there in Basilan, there was no reason for petitioners to travel all the way to Manila.

Traversing these contentions, Respondent Commission gave this statement in its challenged Resolution:^[13]

“Unfortunately, however, for the [petitioners], they kept all these reasons only to themselves. They did not bother communicating these objections to their employer, respondent PISI. They chose to remain silent, went to the extent of even refusing to acknowledge receipt of the letters and directives sent to them dated April 8, May 2, and May 29, 1991, although they admit having received the same. It was already late in the day when complainants raised said objections after they had been dismissed, and only during the arbitral proceedings below.

Under the circumstances, it was indeed difficult for respondent PISI to know [petitioners'] predicament considering that they did not even bother replying to all the directives sent them."

In contrast, private respondent granted to other similarly situated security guards a second chance to explain their failure to respond, an opportunity it denied petitioners. This fact demonstrates that petitioners' dismissal was not commensurate to their insubordination which, we reiterate, was neither willful nor intentional. Respondent Commission also held in its assailed Resolution: "[H]ad their objections been seasonably raised to respondent PISI, they would have been just and reasonable. Their only fault lies in not raising said objections on time before their dismissal." Even private respondent agency said in its memorandum: "If such order appears to be unreasonable or inconvenient to the petitioners at least management should have been informed why the guards cannot comply with such orders, so some remedial means could have been worked out." These ratiocinations are pointless. Private respondent very well knew that petitioners were not receiving any salary while they were on floating status and, thus, also knew that they would hardly be able to comply with the directive to report to Manila. In any event, dismissal was too harsh a penalty for an infraction which appears, under the circumstances, to be excusable.^[14]

The right to transfer employees from one office to another — provided there is no demotion in rank or diminution of salary, benefits and other privileges — is judicially recognized as a prerogative inherent in the employer's right to effectively control and manage the enterprise. But this principle is not at issue here. The issue is whether petitioners' alleged disobedience constituted a just and valid cause to dismiss them.

It is obvious to us that the dismissal was effected with mala fides, as it was intended to punish petitioners for their refusal to heed their employer's unreasonable directive. Respondent Commission therefore committed grave abuse of discretion in holding that petitioners were dismissed for a just cause.

Abandonment of Work

Respondent Commission avers in its impugned Resolution: “[Petitioners] are likewise guilty of ‘quitting’ without just cause under Article 285 of the Labor Code, as amended. Hence, they are clearly not entitled to any affirmative reliefs under the law. They are ‘estopped’ from asserting claims against their employer, PISI.” Agreeing with Respondent Commission, the solicitor general posits that petitioners “clearly abandoned their work without valid cause.”

This contention is untenable. Abandonment, as a just and valid cause for dismissal, requires a deliberate, unjustified refusal of an employee to resume his work, coupled with a clear absence of any intention of returning to his work.^[15] No evidence was presented to establish that petitioners relinquished their jobs. Denying they abandoned their work, petitioners contend that it was private respondent agency which deserted them by failing to communicate with them for over two months, from February 1, 1991 to April 8, 1991, and that the directive to make them report to Manila was only a ruse to terminate their services. Although a letter^[16] dated September 13, 1991 and signed by a certain Jose E. Fernandez declined the offer to work outside Basilan despite the receipt of transportation allowance, such letter cannot be attributed to petitioners because Fernandez did not represent any of them. That petitioners did not pray for reinstatement in their pleadings is not proof of abandonment. In fact, petitioners’ contention is that private respondent effected constructive dismissal, which is incompatible with abandonment.^[17]

No Constructive Dismissal

For presuming that they were constructively dismissed, petitioners are likewise in error. Constructive discharge is an involuntary resignation resorted to when continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank and/or a diminution in pay; or when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee.^[18] In this particular case, petitioners were not constructively dismissed; they were actually dismissed without just and valid cause.

Second Issue: Separation Pay and Back Wages

The normal consequences of illegal dismissal are reinstatement and payment of back wages.^[19] These remedies give life to the workers' constitutional right to security of tenure.^[20]

Separation pay is generally not awarded except in instances where reinstatement is no longer feasible or appropriate, as in this case. As a substitute for immediate and continued reemployment, separation pay is meant to provide the employee the "wherewithal during the period that he is looking for another employment."^[21]

In this particular case, private respondent alleges that there is no assignment in Basilan or Zamboanga available to petitioners. Transfer to another post outside said areas would have only given rise to the same problems as those entailed by the original directive. Reinstatement presupposes that the previous position from which the employee had been removed still exists, or there is an unfilled position of a similar nature, more or less, as the one previously occupied by the employee.^[22] If no such position is available, reinstatement becomes a legal impossibility. The law cannot exact compliance with what is impossible.

The award of attorney's fees in the sum of one thousand pesos is reasonable and in accord with Art. 2208 of the Civil Code.^[23] However, no moral and exemplary damages can be granted for lack of factual basis.^[24]

In sum, we hold that the labor arbiter was correct in awarding separation pay, back wages and attorney's fees.

WHEREFORE, the Petition is hereby **GRANTED**. The assailed Decision is **REVERSED** and **SET ASIDE**. The labor arbiter's Decision, dated February 17, 1992, is **REINSTATED**. No costs.

SO ORDERED.

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

[1] Fifth Division composed of Commissioners. Oscar N. Abella as ponente, Leon G. Gonzaga, Jr., and Musib M. Buat.

- [2] Labor Arbiter's Decision, pp. 15-22; rollo, pp. 141-148.
- [3] NLRC Resolution, p. 23; rollo, p. 60.
- [4] Rollo, p. 61.
- [5] This case was deemed submitted for decision after this Court's receipt of private respondents' Memorandum on January 28, 1997.
- [6] NLRC Resolution, pp. 11-16; rollo, pp. 48-52.
- [7] Rollo, p. 241.
- [8] *Mañebo vs. National Labor Relations Commission*, 229 SCRA 240, 249-250, January 10, 1994; *AHS/Philippines, Inc. vs. Court of Appeals*, 257 SCRA 319, 330, June 14, 1996; *Stolt-Neilsen Marine Services (Phils.), Inc. vs. National Labor Relations Commission*, 258 SCRA 643, 648, July 11, 1996.
- [9] *Azucena, The Labor Code with Comments and Cases, Vol. II*, 1993 rev. ed., p. 557.
- [10] 185 SCRA 727, 730-731, May 28, 1990, per Fernan, C.J.
- [11] Labor Arbiter's Records, p. 236.
- [12] *Ibid*, p. 98.
- [13] Rollo, pp. 57-58.
- [14] *Pepsi Cola Distributors of the Philippines, Inc. vs. National Labor Relations Commission*, 247 SCRA 386, 394, August 15, 1995; and *Caltex Refinery Employees Association vs. National Labor Relations Commission*, 246 SCRA 271, 279, July 14, 1995.
- [15] *Jackson Building Condominium Corporation vs. National Labor Relations Commission*, 246 SCRA 329, 332, July 14, 1995; *Reno Foods, Inc. vs. National Labor Relations Commission*, 249 SCRA 379, 386, October 18, 1995; *Balayan Colleges vs. National Labor Relations Commission*, 255 SCRA 1, 9-10, March 14, 1996; and *Philippine Advertising Counselors, Inc. vs. National Labor Relations Commission*, 263 SCRA 395, 402, October 21, 1996.
- [16] Labor Arbiter's Records, p. 246.
- [17] *Philippine Japan Active Carbon Corporation vs. National Labor Relations Commission*, 171 SCRA 164, 168, March 8, 1989; and *Philippine Advertising Counselors, Inc. vs. National Labor Relations Commission*, *supra*.
- [18] *Philippine Advertising Counselors, Inc. vs. NLRC*, *supra*; *Philippine Japan Active Carbon Corporation vs. National Labor Relations Commission*, *supra*, p. 167; and *Ledesma vs. National Labor Relations Commission*, 246 SCRA 47, 51, July 13, 1995.
- [19] *Samillano vs. National Labor Relations Commission*, 265 SCRA 788
- [20] *Palmeria, Sr. vs. National Labor Relations Commission*, 247 SCRA 57, 61, August 3, 1995, per Puno, J.
- [21] *Torillo vs. Leogardo, Jr.*, 197 SCRA 471, 478, May 27, 1991, per Fernan, C.J.; and *Gold City Integrated Port Service, Inc. vs. National Labor Relations Commission*, 245 SCRA 627, 638-639, July 6, 1995.
- [22] *Citytrust Banking Corporation vs. National Labor Relations Commission*, 258 SCRA 621, 631-632, July 11, 1996; *Gold City Integrated Port Service, Inc. vs. National Labor Relations Commission*, *supra*.
- [23] "ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

X X X

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable."

[24] Cocoland Development Corporation vs. National Labor Relations Commission, 259 SCRA 51, 63-64, July 17, 1996.

Philippine Copyright © 2005
ChanRobles Publishing Company
www.chanrobles.com