

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
FIRST DIVISION**

**EDUARDO M. ESPEJO,**  
*Petitioner,*

*-versus-*

**G.R. No. 112678  
March 29, 1996**

**NATIONAL LABOR RELATIONS  
COMMISSION AND COOPERATIVE  
INSURANCE SYSTEM OF THE  
PHILIPPINES,**

*Respondents.*

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**DECISION**

**BELLOSILLO, J.:**

This is a Petition for Certiorari seeking to set aside the Decision of the National Labor Relations Commission (NLRC) which affirmed in part the decision of the Labor Arbiter holding as illegal the dismissal of petitioner and modifying it in all other respects by setting aside the directive for his reinstatement and limiting the award of back wages to eighteen (18) months with ten percent (10%) thereof as attorney's fees.

On 1 August 1987 Cooperative Insurance System of the Philippines (CISP) hired petitioner as General Manager with a monthly salary of

P9,000.00 plus privileges one of which was the use of a company car with driver. On 11 September 1989 the Board of Directors of CISP held a special meeting to discuss the “cease and desist order” issued by the Office of the Insurance Commission against CISP on grounds of “capital impairment and margin of solvency deficiency.” In order to put up the needed capital requirements set by the Insurance Commission the Board passed Resolution No. 04 (S-1989) authorizing the sale of some CISP properties, including the company car assigned to petitioner for his personal use. Petitioner objected to such sale as he agreed with the Treasurer’s view that the contributed surplus should come from the member-cooperatives and that such action would deprive management of the means of solving the problem. However, the Board overruled petitioner’s opposition prompting the latter to tender his resignation addressed to the Chairman of CISP worded thus —

I regret to tender my resignation as General Manager of CISP effective October 11, 1989.

I thank the board for giving me the opportunity to serve CISP.<sup>[1]</sup>

On 22 September 1989 the Board held another special meeting. Once more petitioner sought to have Resolution No. 04 reconsidered otherwise his resignation would be irrevocable. But his plea was not heeded; instead, the Board approved the following resolutions: (1) Resolution No. 06 (S-1989) affirming the sale of CISP’s properties including the car assigned to petitioner; (2 ) Resolution No. 07 (S-1989) authorizing the Chairman to inform petitioner of the Board’s decision and to act on the resignation of petitioner at the proper time; and, (3) Resolution No. 08 (S-1989) creating an Ad-Hoc Management Committee to assist and coordinate the acts of the Board with those of the Acting General Manager and Officer-in-Charge to be appointed later.

Pursuant to Resolution No. 07 (S-1989) the Chairman met on 26 September 1989 with petitioner who manifested that he had changed his mind about resigning and that he would continue as General Manager despite the sale of the company car. This prompted the Chairman to write a Memorandum to the Board on 3 October 1989

informing the latter of petitioner's oral revocation of his resignation and seeking advice on the matter.

On 9 October 1989 petitioner received a letter from the Chairman relaying the acceptance by the Board of his resignation effective 11 October 1989. Forthwith, petitioner wrote the Chairman stating that he was surprised about the action of the Board as he had verbally withdrawn his resignation. He asked that he be given an opportunity to speak before the members of the Board to explain and clarify matters. However on 14 November 1989 CISP paid petitioner a total of P14,839.00 representing the cash value of his unused vacation leave and transportation expenses. On 28 February 1990 petitioner filed a case against CISP for illegal dismissal and damages.

On 17 September 1993 the Labor Arbiter rendered a decision ordering CISP to (1) reinstate petitioner to his former position as General Manager without loss of seniority rights; and, (2) pay him full back wages from 12 October 1990 until finally reinstated but limited to three (3) years or the amount of P108,000.00 plus P5,000.00 as attorney's fees provided that the back wages shall be subject to further computation until actual reinstatement of petitioner, again limited to only three (3) years.<sup>[2]</sup>

Both petitioner and CISP appealed to NLRC. On 12 October 1990 NLRC promulgated its decision affirming the finding of illegal dismissal by the Labor Arbiter but modifying the rest thereof by deleting the reinstatement of petitioner for having become moot and academic considering that he (petitioner) was already 60 years old, and limiting the award of back wages to eighteen (18) months.<sup>[3]</sup> Hence, this petition by Espejo ascribing to NLRC grave abuse of discretion in modifying the decision of the Labor Arbiter and praying for reinstatement and full back wages up to three (3) years, and if reinstatement be not feasible, that he be granted separation or retirement pay. Additionally, he repleads his argument before NLRC that he should be awarded damages for the bad faith shown by CISP in terminating his employment notwithstanding the oral revocation of his resignation.

We sustain the challenged decision insofar as it disallowed reinstatement. The law recognizes as valid any retirement plan,

agreement or management policy regarding retirement at an earlier or older age. In the case of petitioner, CISP did not have any retirement plan for its employees. In such situation, Sec. 13, Book IV, of the Omnibus Rules Implementing the Labor Code provides that in the absence of a retirement plan, agreement or policy an employee may be retired upon reaching the age of sixty (60) years. Construing this provision, we held that an employee may retire, or may be retired by his employer, upon reaching sixty (60).<sup>[4]</sup> Thus, an employee held to be illegally dismissed cannot be reinstated if he had already reached the age of sixty (60) years at the time of his second complaint (pressing for reinstatement) before the Labor Arbiter's Office.<sup>[5]</sup> NLRC therefore did not err in denying the reinstatement of petitioner.

Generally, an illegally dismissed employee who cannot be reinstated is granted separation pay and back wages. However considering that petitioner has already reached the statutory retirement age of sixty (60), we agree with NLRC that petitioner is entitled only to back wages. The payment of back wages is a form of relief that restores the income lost by reason of the unlawful dismissal; separation pay, in contrast, is oriented towards the immediate future, the transitional period the dismissed employee must undergo before locating a replacement job.<sup>[6]</sup>

However, we take exception to the period covered by NLRC in the payment of back wages. Such period should only cover the time when petitioner was illegally dismissed up to the time when he reached sixty (60) years. For back wages are granted on grounds of equity for earnings which a worker or employee has lost due to his illegal dismissal.<sup>[7]</sup> Thus, petitioner should be paid his back salaries from 11 October 1989 (when he was illegally dismissed) to 31 January 1990 (when he reached sixty [60] years), which is definitely less than the eighteen (18) months awarded by NLRC, inclusive of allowances and the monetary equivalent of other benefits owing to him for that period. The computation of petitioner's back wages should be based on the basic salary at the time of his dismissal plus the regular allowances that he had been receiving.<sup>[8]</sup>

As to the plea for payment of moral and exemplary damages, we find no cogent reason to disturb the ruling of NLRC thus —

An award of damages would be improper. The decision to sell certain company properties, including the complainant's car, was not that of Director Benjamin Cruz (the complainant's ostensible enemy) alone, but that of at least a majority of the respondent's board of directors. Moreover, it is clear that it was resorted to in order to raise funds to meet certain mandatory requirements of the Office of the Insurance Commission since the complainant himself had insisted on going with his car, so to speak, it cannot be said that the respondent's board of directors acted with bad faith, or fraud, or malice, in taking his word for it.

Apparently, CISP relied on the term "irrevocable" in accepting the resignation of petitioner and did not take into account the latter's change of heart. This misapprehension, absent any strong and convincing evidence to the contrary, cannot be deemed as bad faith on the part of CISP.

**WHEREFORE**, the Decision of the First Division, National Labor Relations Commission dated 17 September 1993 insofar as it declared the reinstatement of petitioner moot and academic and granted him ten percent (10%) of the award of back wages as attorney's fees is **AFFIRMED**. However, the portion relating to the period covered by the award of back wages is **SET ASIDE**; instead, the Court **ORDERS** private respondent Cooperative Insurance System of the Philippines to pay petitioner his back wages from 11 October 1989 to 31 January 1990, inclusive of allowances and the monetary equivalent of other benefits owing to him for that period, less the amount of P14,839.00 paid to him representing the cash value of his unused vacation leave and transportation expenses.

Respondent Labor Arbiter, or whoever may now be acting in his behalf, is **DIRECTED** to make the proper computation of this award within twenty (20) days from receipt of this Decision which respondent Cooperative Insurance System of the Philippines must pay to petitioner within ten (10) days from receipt of such computation.

**SO ORDERED.**

**Padilla, J., (Chairman), Bellosillo, Vitug, Kapunan and Hermosisima, JJ., concur.**

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[1] Rollo, p. 21.

[2] Rollo, pp. 30-38

[3] Id., pp. 19-28.

[4] See Lora Motors, Inc. vs. Drilon, G.R. No. 82895, 7 November 1989, 179 SCRA 175, 182.

[5] MAI Philippines, Inc. vs. NLRC, G . R. No . 73662, 18 June 1987, 151 SCRA 196, 207.

[6] Escareal vs. NLRC, G.R. No. 99359, 219 SCRA 472, 492.

[7] Torillo vs. Leogardo, Jr., G.R. No. 77205, 27 May 1991, 197 SCRA 471,477.

[8] Paramount Yinyl Products Corp. vs. NLRC, G.R. No. 81200, 17 October 1990, 190 SCRA 525, 537.