

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
SECOND DIVISION**

**ZENAIDA GACO,  
*Petitioner,***

***-versus-***

**G.R. No. 104690  
February 23, 1994**

**THE HONORABLE NATIONAL LABOR  
RELATIONS COMMISSION and  
ORIENT LEAF TOBACCO  
CORPORATION,**

***Respondents.***

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**DECISION**

**NOCON, J.:**

**SEPARATE OPINION:**

***PADILLA, J., concurring.:***

It may appear that the work in private respondent Orient Leaf Tobacco Corporation is seasonal, however, the records reveal that petitioner Zenaida Gaco was repeatedly re-hired, sufficiently evidencing the necessity and indispensability of her services to the former's business or trade.<sup>[1]</sup> Furthermore, she has been employed

since 1974 up to the end of the season in 1989. Owing to her length of service, she became a regular employee, by operation of law, one year after she was employed.<sup>[2]</sup> Being a regular employee, she enjoys security of tenure in the sense that she cannot be dismissed from employment except for just or authorized cause.<sup>[3]</sup>

Briefly stated, the antecedent facts are:

Petitioner was hired by private respondent on April 17, 1974 for the position of Picker. In 1975, after a year of service, she was promoted to the position of Production Recorder. She held this position for a period of fourteen (14) years until the end of private respondent's working season in 1989. In April, 1990, when petitioner reported for work at the start of the working season for that year, she found out that her position was already occupied by another employee and that she was being demoted to the position of Picker.

Petitioner believed that, having been with private respondent for fifteen (15) years without any derogatory record, her demotion was not justified. Considering it as constructive dismissal, petitioner thus refused to report for work and filed a complaint before the Labor Arbiter for payment of separation pay.

Private respondent raised the defense that the demotion of petitioner was effected on a valid ground, that is, gross inefficiency. It described her work, as follows:

“She was assigned as the production recorder. This job assignment is not too difficult nor complicated. All she has to do is to record correctly and accurately weights on tags placed inside tobacco containers as against the Production Reports which she accomplishes. In other words, the weights appearing on the tags must be correctly recorded on her Production Report. This is very important because the said Production Report, among other things, will be the basis in the preparation of the delivery Orders when the Respondent corporation effects the delivery of its tobacco to its buyers, both local and foreign. To illustrate, if the weight appearing on the Delivery Order is less than what appears on the tags inside the container, the difference in the weight represents the loss to the respondent.

Conversely, if the weight appearing on the Delivery Order is more than what appears on the tags inside the container the difference can be the basis for the respondent's customer to demand a refund and a possible damage suit. In both cases, the respondent corporation stands to lose, particularly its own credibility. This is how serious mistakes in the weights may result."<sup>[4]</sup>

It is in this particular job assignment that she manifested said gross inefficiency, committing the same mistakes frequently in spite of her attention being called repeatedly and advised to take the necessary corrective measures.

On July 31, 1991, the Labor Arbiter rendered judgment favorable to petitioner, the dispositive portion of which, reads:

“CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered:

- 1.) Declaring the demotion of complainant to be unjustified;
- 2.) Ordering respondent Orient Leaf Tobacco Corporation to pay complainant her backwages to be computed from April 1990, the time her demotion was effected, up to July 31, 1991, and separation pay in lieu of reinstatement, to be computed from April 1974, the date of hiring, up to July 31, 1991, as follows:

a.) Backwages	P35,490.00
b.) Separation Pay	<u>40,222.00</u>
Total	P75,712.00
	=====

- 3.) Dismissing the charge of unfair labor practice for want of merit.

SO ORDERED."<sup>[5]</sup>

The Labor Arbiter declared that petitioner's demotion was unjustified and she was not accorded due process by private respondent:

“The evidence, consisting of a series of memoranda, are all dated March 20, 1990, before complainant reported for the next working season. This would indicate that these memoranda were prepared as an afterthought. And this observation is bolstered by the fact that the reported inaccurate recording of complainant, which was made (the) basis for the claimed inefficiency, is not substantially supported. The alleged reports made by complainant's supervisor and the Senior Accounting Clerk of the Production Department (Annexes “B” and “C”, Respondent's Position Paper), being both dated March 20, 1990, can very well be merely simulated reports done to justify the otherwise unjustified action they were about to implement. Respondent failed to submit even a single copy of the alleged erroneous (sic), ‘dirty and untidy’ reports of complainant.

We cannot rely on the documentary evidence presented by the respondent as the same were (sic) but communications between the officers of the company.

True, there were reports made by complainant's direct superiors regarding her gross inefficiency from which respondent based its action (Annexes “A” to “C”, Ibid.). Yes, management's decision to approve the recommendation to demote complainant was based on valid grounds (Annex “D”, Ibid.). Indeed, there was union agreement on her demotion (Annex “D”, Ibid.). But the truthfulness of the supposed valid grounds is here being attacked. And all of these transpired — from the initial report to the time the management decided to implement its decision to demote her — without complainant's participation and knowledge at any stage. The records are bereft of any showing that complainant was notified in advance of respondent's impending action and the reason or reasons thereof before it was actually effected. Neither does the record show that complainant was afforded any opportunity to be heard.

While due process required by law is applied on dismissals, the same is also applicable to demotions as demotions likewise affect the employment of a worker whose right to continued employment, under the same terms and conditions, is also protected by law. Moreover, considering that demotion is, like dismissal, also a punitive action, the employee being demoted should as in cases of dismissals, be given a chance to contest the same.

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Gauged against the foregoing well-established factual and settled legal considerations, the demotion of complainant is definitely unjustified and, having been found to be have been done in bad faith, must be declared as constituting constructive dismissal.

This finds further support in the fact that when complainant Gaco refused to report for work as Picker, they immediately promoted somebody to that position and offered her the lower position of Reject Piler and, when complainant again refused to report, they offered a much lower position from the Relief Crew, a very positive indication of constructive dismissal.

Unjustified demotion, in effect, constitutes constructive dismissal, which is illegal, and which would entitle complainant to reinstatement and payment of backwages.”<sup>[6]</sup>

On appeal before public respondent National Labor Relations Commission by private respondent, the aforementioned decision was modified. The dispositive portion of its decision dated January 27, 1992 reads:

“WHEREFORE, the appealed Decision is hereby MODIFIED by computing the separation pay in accordance with the above or in the total amount of P15,015.00 and electing the award of backwages.

SO ORDERED.”<sup>[7]</sup>

While it concurred with the finding of the Labor Arbiter that the demotion of petitioner was unjustified, it expressed the contrary view that there was no constructive dismissal:

“We could not countenance the arbitrary and unilateral declaration of complainant not to report for work for what she perceived to be unjust. Such open defiance against the exercise of management’s prerogative even if it be conceded to be unjust would wreck havoc on the natural and orderly business structure and would encourage anarchism. An employee should recognize the prerogative of management to transfer, demote or even to dismiss to protect its business subject however, to such restraints as the law provides.”<sup>[8]</sup>

Hence the present petition.

Petitioner imputes grave abuse of discretion on the part of respondent NLRC in:

- 1) deleting the award of backwages;
- 2) computing the separation pay on the basis of one-half (1/2) month pay for every twelve (12) months of service; and
- 3) not awarding moral damages and attorney’s fees to petitioner.

Petitioner argues that she should be awarded backwages because she was dismissed illegally. Respondent NLRC had no basis in computing the separation pay at one-half (1/2) month pay for every year of service. In numerous labor cases decided by this Court, the basis for computation thereof is one (1) month pay for every year of service. As a normal consequence of having been dismissed illegally and forced to litigate, she should be awarded moral damages and attorney’s fees.

The Office of the Solicitor General supports entirely the decision of respondent NLRC. It maintains that petitioner is not entitled to backwages since private respondent did not terminate her services. Rather, it was petitioner who terminated her employment by refusing

to report for work despite several demands made upon her by private respondent to do so. Respondent NLRC had sufficient basis in its computation of the separation pay. Inasmuch as petitioner was demoted without due process, appropriate sanction (in the form of separation pay) should be meted out against private respondent. Nevertheless, the sanction must be mitigated by the fact that: a) she refused to return to work without just reason after repeated requests by private respondent; b) her union acquiesced to her demotion; and c) her work is seasonal in nature. There is no justification for her claim for award of moral damages and attorney's fees.

After a judicious review of all the pleadings in this case *vis-a-vis* the questioned decision, this Court finds merit in the petition and holds that respondent NLRC gravely abused its discretion when it modified the decision of the Labor Arbiter.

The case of Philippine Japan Active Carbon Corporation, et al. vs. NLRC, et al.,<sup>[9]</sup> which was cited in the recent case of Lemery Savings and Loan Bank, et al. vs. NLRC, et al.,<sup>[10]</sup> defines constructive dismissal as a quitting because continued employment is rendered impossible, unreasonable or unlikely; as, an offer involving a demotion in rank and a diminution in pay. As we have stated previously, both the Labor Arbiter and respondent NLRC arrived at a factual finding that petitioner was demoted to her former position without any justifiable cause. However, they differed in the conclusions they derived therefrom: the Labor Arbiter considered petitioner's demotion as constructive dismissal whereas respondent NLRC held that constructive dismissal could not be deduced from the circumstances. On the basis of the foregoing jurisprudence defining the term constructive dismissal, we sustain the ruling of the Labor Arbiter and his rationalization thereon. Consequently, petitioner is entitled to her full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time her compensation was withheld from her up to the time of her actual reinstatement.<sup>[11]</sup> In ascertaining the total amount of backwages payable to her, we enunciated in the case of Pines City Educational Center, et al. vs. NLRC, et al.,<sup>[12]</sup> the doctrine that:

“We go back to the rule prior to the Mercury Drug rule that the total amount derived from employment elsewhere by the

employee from the date of dismissal up to the date of reinstatement , if any, should be deducted therefrom.”

However, we shall not follow Article 279 of the Labor Code to the letter regarding the period of backwages in view of the peculiar circumstances of the present case, namely, “there is now a strained relationship between (petitioner) and (private respondent) and (petitioner) prays for payment of separation pay in lieu of reinstatement.”<sup>[13]</sup> Instead, the period thereof shall be reckoned from the time her compensation was withheld from her, or in April, 1990 up to the finality of our decision.

Respondent NLRC reduced the amount of separation pay, as follows:

“Under the foregoing circumstances, complainant should be reinstated without backwages; however, since she already manifested her desire not to work for respondent anymore, she should instead be granted separation pay in lieu of reinstatement, further taking into consideration her long service with respondent. It appearing that the work at the respondent’s company is seasonal in nature, the separation pay should be computed on the basis of one-half (1/2) months pay for every twelve (12) months of service, or a total of eleven (11) constructive years. (Rollo 40)”<sup>[14]</sup>

Again, we sustain the ruling of the Labor Arbiter granting separation pay in the amount of one (1) month to pay for every year of service. This has been our consistent ruling in numerous decisions awarding separation pay to an illegally dismissed employee in lieu of reinstatement.<sup>[15]</sup> It should be emphasized that separation pay is being awarded in this case for this reason, a fact which the Office of the Solicitor General overlooked.

We note that the issue regarding award of moral damages and attorney’s fees to petitioner is being raised only in the proceedings before this Court, thus, she cannot impute grave abuse of discretion on the part of respondent NLRC on this aspect.

**WHEREFORE**, the Petition is hereby **GRANTED**. The Decision of the National Labor Relations Commission dated January 27, 1992 is

**SET ASIDE** and the Decision of the Labor Arbiter dated July 31, 1991 is **REINSTATED** subject to the modification that the period of backwages should be from April, 1990 up to the finality of this decision less earnings elsewhere, if any, during this period whereas the period of separation pay should be from April, 1974 up to the finality of this decision.

**SO ORDERED.**

**Narvasa, C.J., Regalado and Puno, JJ., concur.**

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### **SEPARATE OPINION**

***PADILLA, J., concurring:***

While I concur with the finding that petitioner Zenaida Gaco is entitled to backwages and separation pay, I vote to award full backwages without deduction or qualification from the time of her illegal termination from employment up to the finality of the court's Decision, for the reasons discussed in my separate opinion in G. R. No. 96779 (Pines City Educational Center and Eugenio Baltao vs. NLRC, et al., 10 November 1993).

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- [1] De Leon vs. NLRC, G. R. No. 70705, August 21, 1989, 176 SCRA 615 (620-621).
  - [2] Baguio Country Club Corporation vs. NLRC, G.R. No. 71664, February 28, 1992, 206 SCRA 643.
  - [3] Article 279 of the Labor Code, as amended by Section 34 of R. A. No. 6715.
  - [4] Rollo, pp. 35-36.
  - [5] Rollo, p. 47.
  - [6] Rollo, pp. 39-45.
  - [7] Rollo, p. 33.
  - [8] Rollo, p. 31.
  - [9] G. R. No. 83239, March 8, 1989, 171 SCRA 164 (167).
  - [10] G. R. No. 96439, January 27, 1992, 205 SCRA 492.
  - [11] Article 279 of the Labor Code, as amended by Section 34 of Republic Act No. 6715.
  - [12] G. R. No. 96779, November 10, 1993.
  - [13] Labor Arbiter's decision, p. 12; Rollo, p. 45.

[14] Rollo, p. 32.

[15] Pepsi-Cola Bottling Co., et. al. vs. NLRC, et al., G. R. No. 101900, June 23, 1992, 210 SCRA 277; Quezon Electric Cooperative vs. NLRC, et al., G.R. Nos. 79718-22, April 12, 1989, 172 SCRA 89; Carandang vs. Dulay, et al., G.R. No. 90492, August 20, 1990, 188 SCRA 792; De Vera et al. vs. NLRC, et al., G.R. No. 93212, November 22, 1990, 191 SCRA 632; and other cases.

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