SUPREME COURT
THIRD DIVISION

GOLD CITY INTEGRATED PORT SERVICE, INC. (INPORT),
***Petitioner*,**

-versus-

G.R. No. 103560
July 6, 1995

NATIONAL LABOR RELATIONS COMMISSION (Fifth Division) ADELO EBUNA, EMMANUEL VALMORIDA, RODOLFO PEREZ, ROGER ZAGADO, MARCOS GANZAN, AND REY VALLE, (WILFREDO DAHAN, ROGELIO VILLAFUERTE, WILFREDO AMPER, RICARDO ABA, YOLITO AMBUS, FIDEL CALIO, VICENTE CAHATOL, SOTECO CUENCA, NICOLAS DALAGUAN, BALBINO FAJARDO, ROLANDO JAMILA, RICARDO LAURETO, RUDY LAURETO, QUIRICO LEJANIO, OSCAR LAPINIG, FELIPE LAURENTE, JESUSTUDY OMISOL, ZOSIMO OMISOL, PEDRO SUAREZ, SATURNINO SISIBAN and MANUEL YANEZ),
***Respondents*.**
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ADELO EBUNA, WILFREDO DAHAN, RICARDO LAURETO, REY VALLE,

VICENTE CAHATOL, MARCOS GANZAN, RODOLFO PEREZ, ROEL SAA, ROGELIO VILLAFUERTE, MANUEL YANEZ, WILFREDO AMPER, QUIRECO LEJANO, EMMANUEL VILAMORIA, ROLANDO JAMILLA, NICOLAS DALAGUAN, BALBINO FAJARDO, PEDRO SUAREZ, ELPIDIO ESTROGA, RUBEN PAJO, JESUSTODY OMISOL, RICARDO ABA, FIDEL CALIO, SATURNINO SESYBAN, RUDY LAURETO, OSCAR LAPINIG, FELIPE LAURENTE, ROGER ZAGADO, SOTECO CUENCA, FIDEL ESLIT, ZOSIMO OMISOL, ANGEL BERNIDO, and MICHAEL YAGOTYOT,

***Petitioners*,**

-versus-

G.R. No. 103599
July 6, 1995

NATIONAL LABOR RELATIONS COMMISSION, FIFTH DIVISION and GOLD CITY INTEGRATED PORT SERVICES, INC. (INPORT),

***Respondents*.**

x----------x

D E C I S I O N

ROMERO, *J.*:

Should separation pay and backwages be awarded by public respondent NLRC to participants of an illegal strike? This is the core issue to be decided in these two petitions.

Gold City Integrated Port Service, Inc. (INPORT) filed a petition for *certiorari* against the National Labor Relations Commission (NLRC) assailing the latter's decision in "Gold City Integrated Port Services, Inc. vs. Adelo Ebuna, et al." (NLRC RAB X Case No. 5-0405-85) with twenty-seven private respondents (G.R. No. 103599).[1] This petition has been consolidated with G.R. No. 103599 where the petitioners are the private respondents in instant case and the private respondent in INPORT. For the sake of clarify, INPORT shall be denominated in the case at bench as the petitioner and the employees as private respondents.

Instant case arose from the following facts:

Early in the morning of April 30, 1985, petitioner's employees stopped working and gathered in a mass action to express their grievances regarding wages, thirteenth month pay and hazard pay. Said employees were all members of the Macajalar Labor Union — Federation of Free Workers (MLU-FFW) with whom petitioner had an existing collective bargaining agreement.

Petitioner was engaged in stevedoring and arrastre services at the port of Cagayan de Oro. The strike paralyzed operations at said port. On the same morning, the strikers filed individual notices of strike ("Kaugalingon nga Declarasyon sa Pag-Welga") with the then Ministry of Labor and Employment.

With the failure of conciliation conferences between petitioner and the strikers, INPORT filed a complaint before the Labor Arbiter for Illegal Strike with prayer for a restraining order/preliminary injunction.

On May 7, 1985, the National Labor Relations Commission issued a temporary restraining order. Thereafter, majority of the strikes returned to work, leaving herein private respondents who continued their protest.[2]

Counsel for private respondents filed a manifestation that petitioner required prior screening conducted by the MLU-FFW before the remaining strikers could be accepted back to work.

Meanwhile, counsel for the Macajalar Labor Union (MLU-FFW) filed a "Motion to Drop Most of the Party Respondents From the Above Entitled Case." The 278 employees on whose behalf the motion was filed, claimed that they were duped or tricked into signing the individual notices of strike. After discovering this deception and verifying that the strike was staged by a minority of the union officers and members and without the approval of, or consultation with, majority of the union members, they immediately withdrew their notice of strike and returned to work.

The petitioner INPORT, not having interposed any objection, the Labor Arbiter, in his decision dated July 23, 1985, granted their prayer to be excluded as respondents in the complainant for illegal strike. Moreover, petitioner's complaint was directed against the 31 respondent who did not return to work and continued with the strike.

For not having complied with the formal requirements in Article 264 of the Labor Code,[3] the strike staged by petitioner's workers on April 30, 1985 was found by the Labor Arbiter to be illegal.[4] The workers who participated in the illegal strike did not, however lose their employment, since there was no evidence that they participated in illegal acts. After noting that petitioner accepted the other striking employees back to work, the Labor Arbiter held that the private respondents should similarly be allowed to return to work without having to undergo the required screening to be undertaken by their union (MLU-FFW).

As regards the six private respondents who were union officers, the Labor Arbiter ruled that they could not have possibly been "duped or tricked" into signing the strike notice for they were active participants in the conciliation meetings and were thus fully aware of what was going on. Hence, said union officers should be accepted back to work after seeking reconsideration from herein petitioner.[5]

The dispositive portion of the decision reads:

> "IN VIEW OF THE FOREGOING, it is hereby ordered that the strike undertaken by the officer and majority union members of Macajalar Labor Union-FFW is ILLEGAL contrary to Article

> 264 of the Labor Code, as amended. Our conclusion on the employment status of the illegal strikers is subject to our discussion above."[6]

Both petitioner and private respondents filed motions for reconsideration, which public respondent NLRC treated as appeals.[7]

On January 14, 1991, the NLRC affirmed with modification[8] the Arbiter's decision. It held that the concerted action by the workers was more of a "protest action" than a strike. Private respondents, including the six union officers, should also be allowed to work unconditionally to avoid discrimination. However, in view of the strained relations between the parties, separation pay was awarded in lieu of reinstatement. The decretal portion of the Resolution reads:

> "WHEREFORE, the decision appealed from is Affirmed with modification in accordance with the foregoing resolution. Complainant INPORT is hereby ordered, in lieu of reinstatement to pay respondents the equivalent of twelve (12) months salaries each as separation pay. Complainant is further ordered to pay respondents two (2) years backwages based on their last salaries, without qualification or deduction. The appeal of complainant INPORT is Dismissed for lack of merit."[9]

Upon petitioner's motion for reconsideration, public respondent modified the above resolution on December 12, 1991.[10]

The Commission ruled that since private respondents were not actually terminated from service, there was no basis for reinstatement. However it awarded six months' salary as separation pay or financial assistance in the nature of "equitable relief." The award for backwages was also deleted for lack of actual and legal basis. In lieu of backwages, compensation equivalent to P1,000.00 was given.

The dispositive portion of the assailed Resolution reads:

> "WHEREFORE, the resolution of January 14, 1991 is Modified reducing the award for separation pay to six (6) months each in

> favor of respondents, inclusive of lawful benefits as well as those granted under the CBA, if any based on the latest salary of respondents, as and by way of financial assistance while the award for backwages is Deleted and Set Aside. In lieu thereof, respondent are granted compensation for their sudden loss of employment in the sum of P1,000.00 each. The motion of respondents to implead PPA as third-party respondent is Noted. Except for this modification the rest of the decision sought to be reconsidered shall stand."[11]

In the instant petitions for *certiorari*, petitioner alleges that public respondent Commission committed grave abuse of discretion in awarding private respondents separation pay and backwages despite the declaration that the strike was illegal.

On the other hand, private respondents, in their petition, assail the reduction of separation pay and deletion of backwages by the NLRC as constituting grave abuse of discretion.

They also allege that the Resolution of January 14, 1991 could not be reconsidered after the unreasonable length of time of eleven months.

Before proceeding with the principal issues raised by the parties, it is necessary to clarify public respondent's statements concerning the strike staged by INPORT's employees.

In its resolution dated January 14, 1991, The NLRC held that the facts prevailing in the case at bench require a relaxation of the rule that the formal requisites for a declaration of a strike are mandatory. Furthermore, what the employees engaged in was more of a spontaneous protest action than a strike.[12]

Nevertheless, the Commission affirmed the Labor Arbiter's decision which declared the strike illegal.

A strike, considered as the most effective weapon of labor,[13] is defined as any temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute.[14] A labor dispute includes any controversy or matter concerning terms or conditions of employment or the association or representation of

persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employers and employees.[15]

Private respondents and their co-workers stopped working and held the mass action on April 30, 1985 to press for their wages and other benefits. What transpired then was clearly a strike, for the cessation of work by concerted action resulted from a labor dispute.

The complainant before the Labor Arbiter involved the legality of said strike. The Arbiter correctly ruled that the strike was illegal for failure to comply with the requirements of Article 264 (now Article 263) paragraph (c) and (f) of the Labor Code.[16]

The individual notices of strike filed by the workers did not conform to the notice required by the law to be filed since they were represented by a union (MLU-FFW) which even had an existing collective bargaining agreement with INPORT.

Neither did the striking workers observe the strike vote by secret ballot, cooling-off period and reporting requirements.

As we stated in the case of National Federation of Sugar Workers vs. Ovejera,[17] the language of the law leaves no room for doubt that the cooling-off period and the seven-day strike ban after strike-vote report were intended to be mandatory.[18]

Article 265 of the Labor Code reads, inter alia:

> "It SHALL be unlawful for any labor organization to declare a strike without first having filed the notice required in the preceding Article or without the necessary strike vote first having been obtained and reported to the Ministry." (Emphasis ours)

In explaining the above provisions, we said:

> "In requiring a strike notice and a cooling-off period, the avowed intent of the law it to provide an opportunity for

> mediation and conciliation. It thus directs the Mole to exert all efforts at mediation and conciliation to effect a voluntary settlement' during the cooling-off period.
>
> x x x
>
> The cooling-off period and the 7-day strike ban after the filing of a strike-vote report, as prescribed in Art. 264 of the Labor Code, are reasonable restrictions and their imposition is essential to attain the legitimate policy objectives embodied in the law. We hold that they constitute a valid exercise of the police power of the state."[19]

From the foregoing, it is patent that the strike on April 30, 1985 was illegal for failure to comply with the requirements of the law.

The effects of such illegal strikes, outlined in Article 265 (now Article 264) of the Labor Code, make a distinction between workers and union officers who participate therein.

A union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost their employment status.[20] An ordinary striking worker cannot be terminated for mere participation in an illegal strike. There must be proof that he committed illegal acts during a strike. A union officer, on the other hand, may be terminated from work when he knowingly participates in an illegal strike, and like other workers, when he commits an illegal strike, and like other workers, when he commits an illegal act during a strike.

In the case at bench, INPORT accepted the majority of striking workers, including union officers, back to work. Private respondents were left to continue with the strike after they refused to submit to the "screening" required by the company.[21]

The question to be resolved now is what these remaining strikers, considering the circumstances of the case, are entitled to receive under the law, if any.

Are they entitled, as they claim, to reinstatement or separation pay and backwages?

In his decision, the Labor Arbiter ordered INPORT to reinstate/accept the remaining workers as well as to accept the remaining union officers after the latter sought reconsideration from INPORT.[22]

The NLRC on January 14, 1991, modified the above decision by ordering INPORT to pay private respondents the equivalent of twelve months in salary as separation pay in lieu of reinstatement and two years' backwages.[23]

On reconsideration, public respondent modified its original award and reduced the separation pay to six months, deleted the award for backwages and instead awarded P1,000.00 as compensation for their sudden loss of employment.[24]

Under the law, an employee is entitled to reinstatement and his full backwages when he is unjustly dismissed.[25]

Reinstatement means restoration to a state or condition from which one had been removed or separated. Reinstatement and backwages are separate and distinct reliefs given to an illegally dismissed employee.[26]

Separation pay is awarded when reinstatement is not possible, due, for instance, to strained relations between employer and employee.

It is also given as a from of financial assistance when a worker is dismissed in cases such as the installation of labor saving devices, redundancy, retrenchment to prevent losses, closing or cessation of operation of the establishment, or in case the employee was found to have been suffering from a disease such that his continued employment is prohibited by law.[27]

Separation pay is a statutory right defined as the amount that an employee receives at the time of his severance from the service and is designed to provide the employee with the wherewithal during the period that he is looking for another employment.[28] It is oriented

towards the immediate future, the transitional period the dismissed employee must undergo before locating a replacement job.[29]

Hence, an employee dismissed for causes other than those cited above is not entitled to separation pay.[30] Well-settled is it that separation pay shall be allowed only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character.[31]

Backwages, on the other hand, is a form of relief that restores the income that was lost by reason of unlawful dismissal.[32]

It is clear from the foregoing summary of legal provisions and jurisprudence that there must generally be unjust or illegal dismissal from work, before reinstatement and backwages may be granted. And in cases where reinstatement is not possible or when dismissal is due to valid causes, separation pay may be granted.

Private respondents contend that they were terminated for failure to submit to the controversial "screening" requirement.

Public respondent Commission took the opposite view and held:

> "As the evidence on the record will show, respondents were not actually terminated from the service. They were merely made to submit to a screening committee as a prerequisite for readmission to work. While this condition was found not wholly justified, the fact remains that respondents who are resistant to such procedure are partly responsible for the delay in their readmission back to work. Thus, We find justifiable basis in further modifying our resolution of January 14, 1991 in accordance with the equities of the case.
>
> We shall therefore recall the award for backwages for lack of factual and legal basis. The award for separation pay shall likewise (be) reasonably reduced. Normally, severance benefit is granted as an alternative remedy to reinstatement. And since there is no dismissal to speak of, there is no basis for awarding reinstatement as a legal remedy. In lieu thereof, We shall grant

> herein respondents separation pay as and by way of financial assistance in the nature of an equitable relief.'"[33]

We find that private respondents were indeed dismissed when INPORT refused to accept them back to work after the former refused to submit to the "screening" process.

Applying the law (Article 264 of the Labor Code) which makes a distinction, we differentiate between the union members and the union officers among private respondents in granting the reliefs prayed for.

Under Article 264 of the Labor Code, a worker merely participating in an illegal strike may not be terminated from his employment. It is only when he commits illegal acts during a strike that he may be declared to have lost his employment status. Since there appears no proof that these union members committed illegal acts during the strike, they cannot be dismissed. The striking union members among private respondents are thus entitled to reinstatement, there being no just cause for their dismissal.

However, considering that a decade has already lapsed from the time the disputed strike occurred, we find that to award separation pay in lieu of reinstatement would be more practical and appropriate.

No backwages will be awarded to private respondent-union members as a penalty for their participation in the illegal strike. Their continued participation in said strike, even after most of their co-workers had returned to work, can hardly be rewarded by such an award.

The fate of private respondent-union officers is different. Their insistence on unconditional reinstatement or separation pay and backwages is unwarranted and unjustified. For knowingly participating in an illegal strike, the law mandates that a union officer may be terminated from employment.[34]

Notwithstanding the fact that INPORT previously accepted other union officers and that the screening required by it was uncalled for, still it cannot be gainsaid that it possessed the right and prerogative

to terminate the union officers from service. The law, in using the word may, grants the employer the option of declaring a union officer who participated in an illegal strike as having lost his employment.[35]

Moreover, an illegal strike which, more often than not, brings about unnecessary economic disruption and chaos in the workplace should not be countenance by a relaxation of the sanctions prescribed by law.

The union officers are, therefore, not entitled to any relief.

However, the above disquisition is now considered moot and academic and cannot be effected in view of a manifestation filed by INPORT dated May 15, 1987.[36] In said Manifestation, it attached a Certification by the President of the Macajalar Labor Union (MLU-FFW) to the effect that the private respondents/remaining strikers have ceased to be members of said union. The MLU-FFW had an existing collective bargaining agreement with INPORT containing a union security clause. Article 1 Section 2 (b) of the CBA provides:

> "The corporation shall discharge, dismiss or terminate any employee who may be a member of the Union but losses his good standing with the Union and or corporation, upon proper notice of such fact made by latter; provided, however, after they shall have received the regular appointment as a condition for his continued employment with the corporation."[37]

Since private respondents (union members) are no longer members of the MLU, they cannot be reinstated. In lieu of reinstatement, which was a proper remedy before May 1987 when they were dismissed from the union, we award them separation pay. We find that to award one month salary for every year of service until 1985, after April of which year they no longer formed part of INPORT's productive work force partly through their own fault, is a fair settlement.

Finally, there is no merit in INPORT's statement that a Resolution of the NLRC cannot be modified upon reconsideration after the lapse of an unreasonable period of time. Under the present circumstance, a period of eleven months is not an unreasonable length of time. The Resolution of the public respondent dated January 14, 1991 did not acquire finality in view of the timely filing of a motion for

reconsideration. Hence, the Commission's modified Resolution issued on December 12, 1991 is valid and in accordance with law.

In sum, reinstatement and backwages or, if no longer feasible, separation pay, can only be granted if sufficient bases exist under the law, particularly after a showing of illegal dismissal. However, while the union members may thus be entitled under the law to be reinstated or to receive separation pay, their expulsion from the union in accordance with the collective bargaining agreement renders the same impossible.

The NLRC's award of separation pay as "equitable relief" and P1,000.00 as compensation should be deleted, these being incompatible with our findings detailed above.

WHEREFORE, from the foregoing premises, the Petition in G.R. No. 103560 ("Gold City Integrated Port Service, Inc. vs. National Labor Relations Commission, et al.") is **GRANTED** One month salary for each year of service until 1985 is awarded to private respondents who were not union officer as separation pay. The petition in G.R. No. 103599 ("Adelo Ebuna, et al. vs. National Labor Relations Commission, et al.") is **DISMISSED** for lack of merit. No costs.

SO ORDERED.

Feliciano, Melo, Vitug and Francisco, *JJ.*, concur.

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[1] Namely: Adelo Ebuna, Wilfredo Dahan, Ricardo Laureto, Rey Valle, Vicente Cahatol, Marcos Ganzan, Rodolfo Perez, Roel Saa, Rogelio Villafuerte, Manuel Yanez, Wilfredo Amper, Quirico Lejano, Emmanuel Valmoria, Rolando Jamilla, Nicolas Dalaguan, Balbino Fajardo, Pedro Suarez, Elpidio Estroga, Ruben Pajo, Jesustody Omisol, Ricardo Aba, Fidel Calio, Saturnino Sesyban, Rudy Laureto, Oscar Lapinig, Felipe Laurente, Roger Zagado, Soteco Cuenca, Fidel Eslit, Zosimo Omisol, Angel Bernido and Michael Yagotyot.

[2] Of the thirty-one remaining strikers, four have already died, leaving the twenty-seven respondents herein.

[3] Now Article 263.

[4] Decision of Executive Labor Arbiter Ildefonso O. Agbuya, dated July 23, 1985, NLRC RABX Case No. 5-0405-85, Rollo, p. 57.
[5] Decision of the Labor Arbiter, p. 11; Rollo, p. 66.
[6] Ibid ., p. 66.
[7] On May 20, 1987, petitioner filed a Manifestation to the effect that the 32 remaining striking employees have ceased to be members of the Macajalar Labor Union — FFW, per Certification dated May 15, 1987 by the President of MLU-FFW. Rollo, p. 84.
[8] Resolution penned by Presiding Commissioner Musib M. Buat and concurred in by Commissioner Leon G. Gonzaga, Jr., Commissioner Oscar N. Abella, on leave. Rollo, p. 85.
[9] Rollo, p. 105.
[10] Penned by Presiding Commissioner Musib M. Buat, with Commissioner Oscar N. Abella and Leon G. Gonzaga, Jr., concurring. Rollo, p. 119.
[11] Rollo, p. 124.
[12] Rollo, pp. 96-98.
[13] Bisig ng Manggagawa sa Concrete Aggregates Inc. vs. NLRC, G.R. No. 105090, September 16, 1993, 226 SCRA 499; Ilaw at Buklod ng Manggagawa vs. NLRC, G.R. No. 91980, June 27, 1991, 198 SCRA 586.
[14] Labor Code, Article 212 (0).
[15] Labor Code, Article 212 (1).
[16] Article 264. Strikes, picketing, and lockouts. —

(c) In cases of bargaining deadlocks, the certified or duly recognized bargaining representative may file a notice of strike . . . with the Ministry at least thirty (30) days before the intended date thereof. In cases of unfair labor practices, the period of strike shall be shortened to fifteen (15) days; and in the absence of a duly certified or recognized bargaining representative, the notice of strike may be filed by any legitimate labor organization in behalf of its members.

x x x

(f) A decision to declare a strike must be approved by at least two-thirds (2/3) of the total union membership in the bargaining unit concerned obtained by secret ballot in meeting or referenda. In every case, the union shall furnish the Ministry the results of the voting at least seven (7) days before the intended strike, subject to the cooling-off period herein provided. (Emphasis provided)

[17] G.R. No. L-59743, May 31, 1982, 114 SCRA 354.
[18] Ibid., p. 365.
[19] Ibid., at p. 367.
[20] Labor Code, Article 265 (now Article 264).
[21] The screening was allegedly requested by the Macajalar Labor Union of petitioner INPORT upon the belief that a competing union, the National Federation of Labor, influenced its members into staging the strike. IMPORT points out that it agreed to the screening requirements because it merely wanted to avoid further friction with the union (MLU-FFW). Rollo, pp. 120-121.
[22] Rollo, p. 66.

[23] Rollo, p. 105.
[24] Rollo, p. 124.
[25] Labor Code, Article 279.
[26] Torillo vs. Leogardo, G.R. No. 77205, May 27, 1991, 197 SCRA 471; Indophil Acrylic Mfg. Corp. vs. NLRC, G.R. No. 96488, September 27, 1993, 226 SCRA 723.
[27] Labor Code, Articles 283 and 284; Lemery Savings and Loan Bank vs. NLRC, G.R. No. 96439, January 27, 1992, 205 SCRA 492; Banco Filipino Savings and Mortgage Bank vs. NLRC, G.R. No. 82135, August 20, 1990 188 SCRA 700.
[28] A Prime Security Services Inc. vs. NLRC, G.R. No. 93476, March 19, 1993, 220 SCRA 142 citing PLDT vs. NLRC 164 SCRA 671, Del Castillo vs. NLRC, 176 SCRA 229 and Cosmopolitan Funeral Homes vs. Maalat, 187 SCRA 108; Aquino vs. NLRC, G.R. No. 87653, February 11, 1992, 206 SCRA 118.
[29] Escareal vs. NLRC, G.R. No. 99359, September 2, 1992, 213 SCRA 472.
[30] Article 279 and 282; Rule 1, Section 7, Book VI, Omnibus Implementing Rules of the Labor Code.
[31] PLDT vs. NLRC, G.R. No. L-80609, Aug 23, 1988, 164 SCRA 671; Sampaguita Garments Corp. vs. NLRC, G.R. No. 102406, June 17, 1994, 223 SCRA 260; Cathedral School of Technology, G.R. No. 101483, October 13, 19912, 214 SCRA 551; Baguio Country Club vs. NLRC, G.R. No. 102397, September 4, 1992, 213 SCRA 664.
[32] Escareal vs. NLRC, 213 SCRA 472.
[33] Rollo, p. 123.
[34] Labor Code, Article 264.
[35] Article 264.

(a) Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike May be declared to have lost his employment status: Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike.

[36] Rollo, p. 84.
[37] Petition, p. 15; Rollo, p. 15.