

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
SECOND DIVISION**

**GUATSON INTERNATIONAL TRAVEL  
AND TOURS, INC., PHILIPPINE  
INTEGRATED LABOR ASSISTANCE  
CORPORATION, MERCURY EXPRESS  
INTERNATIONAL COURIER  
SERVICES, INC.,**

*Petitioners,*

*-versus-*

**G. R. No. 100322  
March 9, 1994**

**NATIONAL LABOR RELATIONS  
COMMISSION AND JOLLY  
ALMORADIE,**

*Respondents.*

X-----X

**DECISION**

**NOCON, J.:**

Petitioners Guatson Travel and Tours, Inc. (hereinafter referred to as Guatson Travel), Philippine Integrated Labor Assistance Corp. (Philac) and Mercury Express International Courier Services, Inc. (MEREX) assail the Decision, rendered by the National Labor Relations Commission in Case No. NLRC-NCR-00-11-0451-88 entitled "Jolly M. Almoradie vs. Guatson's Travel Company, Philac

and MEREX,” dated March 21, 1991 and its Resolution, dated May 31, 1991, denying the petitioners’ Motion for Reconsideration.

In the questioned decision, the NLRC found that Mr. Henry Ocier’s (Vice-President and General Manager of petitioner Guatson Travel) actuation of threatening and forcing private respondent, Jolly M. Almoradie, to resign amounted to illegal dismissal and thus ordered petitioners to pay private respondent backwages, computed from the date of his dismissal on November 1988, until the decision was rendered on February 28, 1991 or the amount of P50,328.00; and to pay separation pay equivalent to one-half (1/2) month for every year of service, for seven (7) years or the amount of P6,524.00.

From the records it appears that Jolly M. Almoradie was first employed by Mercury Express International Courier Service, Inc. (MEREX) in October, 1983 as Messenger receiving a monthly salary of P800.00. When it closed its operations, Almoradie was absorbed by MEREX’s sister company Philippine Integrated Labor Assistance Corp. (Philac), likewise as Messenger with an increased salary of P1,200.00.

In September, 1986, Almoradie was transferred to Guatson Travel, allegedly also a sister company of MEREX and Philac, as Liaison Officer with a salary of P1,864.00. Thereafter, he was promoted to the position of Sales Representative sometime in April, 1988. On April 30, 1988, Almoradie was issued three separate memoranda as follows:

“IOM/88-70

“Please explain in writing within 24 hrs. or not later than Monday morning the reason why you don’t want to sell.<sup>[1]</sup>

“IOM/88-71

“Please explain in writing why did you went (sic) to BEMIL and who sent you there.<sup>[2]</sup>

“IOM-88

“Explain in writing not later than Monday the following:

- “1. The reason why you want to be a messenger and no more a sales representative;
- “2. That I’m always confronting (sic) you, as what you’ve told me personally;
- “3. Why you will not answer in writing the memo issued to you by Lou Cantara on 30 April;

X X X

- “5. Why when you were asked last Friday to join the Sales Blitz to Sta. Ana you said yes and you change (sic) your mind when you were asked again last Saturday;

X X X

- “7. Why you have forgotten the situation wherein you refuse (sic) to sell a certain product recommended by Myrna;

- “8. The meaning of “You pirated me from Philac.”<sup>[3]</sup>

Within the time frame specified, Almoradie responded to each of the charges, the essence of which are as follows:

- “1. It is not true that I do not want to sale (sic) the rates & package tour of Our Company as imputed and charge (sic), because since April, 1988 (sic) when I was transferred from Accounting to sales department of our Company I was able to sale (sic) almost 110 dollars to 21 passengers. The truth however is that, I am hampered in my sales promotion and solicitation of customer, due to financial constraint considering that the kind and nature of work entails much expenses for which I shouldered (sic) with my personal money. As a matter of fact I have brought this matter to the Vice President and General Manager if only an

appropriation be set aside for the expenses in going around, meeting people and soliciting prospective clients.

- “2. Bemil is a customer of our company. With respect to the ticketing and booking of Bemil passengers, undertaking (sic) by the sales department of our company, I used to go Bemil (sic) to inquire whether they have passengers for booking and ticketing. As a matter of fact, I went to Bemil to pick-up their ticketing and booking for their passengers last Monday, April 29, 1988 (sic) and then returned the following day, Saturday April 30, 1988, to deliver the ticket.

X X X

- “3.1. Considering that the job of sales representative entails so much expense in the performance thereof (sic), as I have stated in my number one (1) explanation and I have to use my own personal money to promote and solicit customer without any funding of our company (sic), I have taught (sic) it better that I like my position as messenger, that (sic) as sales representative, although the later (sic) position is more dignified, hence I prefer to be returned to my messenger position.

- “3.2. That I admit of the often confrontation conducted (sic) by Vice President/General Manager, even in the absence of my error or fault (sic).

- “3.3. It is not true that I did not or fail to answer the memo issued by Lou Cantara, since I was given until May 2, 1988 to answer the same.

X X X

- “3.5. As scheduled, I said yes to the sales blitz to Sta. Ana, because in truth I am very interested in such sales business attack since it is in connection with my function as a sales representative that will surely enhance and sharpen my sales acumen, but if I was not able to join it is not the reason my change of mind (sic), but because the Vice-

President/General Manager of Our Company, Henry Ocier summoned me to his office and had a very lengthy confrontation of me (sic), and when I go out (sic) after the confrontation to join the sales blitz-krieg to Sta. Ana last Saturday, April 30, 1988, Mr. Oscar Vanderlipe who heads the sales Group (sic) were (sic) already gone.

X X X

“3.7. I deny vehemently that I refuse to sale (sic) a certain product recommended by Myrna de Vera because the same is totally false. Since April 1, 1988 when I was transferred to the sales department of our company where from the very beginning I was briefed and taught and learned about the nature of my job and the product to sale (sic) by Myrna (sic) de Vera herself, I have ever since until now ventured and performed the selling of rates and package tour which are every products (sic) for sales department of our company. If sometimes I make no sales, which all sales representative suffer and are beset such (sic), however, cannot be considered as refusal to sale (sic). The only product of our Company that Myrna briefed, taught and required as to (sic) our rates and Package Tours which I’ve been selling since April 1, 1988 up to present. (sic)

X X X”[4]

On May 4, 1988, Almoradie was reverted to the position of Messenger, yet sometime in September, 1988, he was again given the position of Account Executive, the nature of work of which is similar to that of a sales representative. Almoradie accepted the transfer with the understanding that he will solely discharge the duties of an account executive and will no longer be required to do messengerial work.

In the morning of October 1, 1988, Almoradie was allegedly summoned by Henry Ocier to his office and was there and then forced by the latter to resign. Ocier taunted Almoradie with threats that if he will not resign, he will file charges against him which would adversely affect his chances of getting employed in the future. Ocier allegedly

even provided the pen and paper on which Almoradie wrote and signed the resignation letter dictated by Ocier himself.<sup>[5]</sup>

On that same day, Almoradie sought the help of a friend, Isagani Mallari, who advised him to report the matter to the Barangay Captain.<sup>[6]</sup> Subsequently, Almoradie filed a complaint for Illegal Dismissal on November 14, 1988. The Labor Arbiter, however dismissed his case based on the following conclusions:

“In examining the facts and the arguments, it is difficult to abide by the impression that complainant was forced to resign. Apart from the averment of respondent Guatson that Mr. Ocier was out of town when the resignation letter was executed that he just saw the resignation letter when he arrived.<sup>[7]</sup> There is reason to believe that complainant apparently defied the order for his transfer or designation as account executive earlier before he executed his resignation letter.

“It must be concluded that his designation as account executive is a management prerogative which under the circumstance is untainted with any unfair labor practice. Apparently, complainant resented his resignation without any plausible or cogent reason as he had earlier resented to be a sales representative for which he was made to explain the reasons why. The only graceful exit to the complainant was to execute his letter of resignation. As his letter of resignation shows, it was executed in his own handwriting spontaneously out of his own free will.”<sup>[8]</sup>

Upon Almoradie’s appeal, the NLRC reversed the decision of the Labor Arbiter on his finding that complainant was not forced to resign, anchoring its conclusion to the fact that Almoradie was a permanent employee who has been working for the Ocier’s for five long years; that he was receiving a fairly good salary considering that he is single; that he had no potential employer at the time of his resignation; that there was no evidence to show that Mr. Henry Ocier was indeed not in town on October 1, 1988, when he allegedly forced Almoradie to resign; and his reaction immediately after his forced resignation by seeking the assistance of a friend who was placed in a similar situation before and in reporting the incident to the Barangay

Chairman to seek redress.

The issue therefore, boils down to the question of whether Jolly Almoradie was indeed illegally dismissed by being forced to resign in the manner narrated by him.

From a synthesis of the evidence on record, we fully agree with the finding of the NLRC that Jolly Almoradie's resignation was NOT voluntary. The NLRC did not err in disregarding the conclusions reached by the Labor Arbiter because the latter's findings are not supported by substantial evidence.

It appears that as early as April, 1988, when Almoradie was promoted as Sales Representative he had caught the ire of management, so much so that he was issued no less than three memoranda in one day ordering him to answer certain charges. Why he was again promoted to the position of Account Executive after he was reverted back to the rank of a messenger from being a Sales Representative is rather intriguing, unless it was a scheme of management to really rid him from the company. Apparently, Almoradie is not cut out for a sales job, and hence could be dismissed or forced to resign for failing to make good on his job in sales. On the other hand, it would be difficult to dismiss him while being a messenger since he is a permanent employee and there would not be enough basis to make him resign.

We do not agree with petitioners' proposition that Mr. Ocier's mere utterances of the words "I will file charges against you," and "I have a very good lawyer," do not constitute force or coercion as to vitiate the free will of Almoradie in writing his resignation letter.

Intimidation may vitiate consent when the following requisites are present: (1) that the intimidation caused the consent to be given; 2) that the threatened act be unjust or unlawful; 3) that the threat be real or serious, there being evident disproportion between the evil and the resistance which all man can offer, leading to the choice of doing that act which is forced on the person to do as the lesser evil; and 4) that it produces a well-grounded fear from the fact that the person from whom it comes has the necessary means or ability to inflict the threatened injury to his person or property.<sup>[9]</sup>

The moment that a person by whom respect and reverence are due should wrongly exert pressure upon his subordinates, amounting to intimidation in the manner stated in the Lichauco de Leon case, supra, in order to exact from said subordinates an act against their will, the same is enough to vitiate consent.

Henry Ocier did not only say that he will file charges against Almoradie and that he has a good lawyer but he even threatened to block his future employment should the latter not file his resignation. This threat is not farfetched. Almoradie is not even a college graduate.<sup>[10]</sup> With his limited skills and the scarcity of employment opportunities it would really be difficult for him to find a job. Considering further the influence of Mr. Henry Ocier and his capacity to make good his threat by refusing to give a favorable recommendation on Almoradie's performance, the latter is helpless in not complying with the former's demand for his resignation.

Anent NLRC's grant of separation pay and backwages to private respondent Jolly M. Almoradie, petitioners argues that the companies, Guatson Travel Company, Philac and Merex have separate and distinct legal personalities such that the latter companies should not be held liable, assuming, for the sake of argument that private respondent was illegally dismissed.

We uphold the NLRC. The three companies are owned by one family, such that majority of the officers of these companies are the same. The companies are located in one building and use the same messengerial service. Moreover, there was no showing that private respondent was paid separation pay when he was absorbed by Philac upon closure of Merex; nor was there evidence that he resigned from Philac when he transferred to Guatson Travel. Under the doctrine of piercing the veil of corporate fiction, when valid ground exists, the legal fiction that a corporation is an entity with a juridical personality separate and distinct from its members or stockholders may be disregarded. We have applied this doctrine in the case of "Philippine Scout Veterans Security and Investigation Agency (PSVSIA), et al. vs. The Hon. Secretary of Labor," G.R. No. 92357, July 21, 1993.

Where there is a finding of illegal dismissal, the employee is entitled to both reinstatement and award of backwages from the time the

compensation was withheld, in this case in 1988, up to a maximum of three years, applying the Mercury Drug Rule.<sup>[11]</sup>

Reinstatement, however, will not be required not only for the reason that it was not prayed for by the respondent, but also because the relationship between Almoradie and Ocier had become strained as to preclude a harmonious working relationship. In lieu of reinstatement, separation pay is awarded.<sup>[12]</sup> As the term suggests, separation pay is 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.<sup>[13]</sup>

However the award of separation pay should be, as we have consistently ruled, equivalent to one (1) month for every year of service,<sup>[14]</sup> instead of one-half (1/2) month as awarded by the NLRC. In the computation of separation pay, the three (3) year period wherein backwages are awarded, must be included.<sup>[15]</sup>

**WHEREFORE**, the Decision of the NLRC is hereby **MODIFIED** to the extent that the award of backwages should be computed based on a three-year period, while the separation pay of one month for every year of service should be computed from the time petitioner was employed by Merex and should include the three-year period as backwages. The petition is hereby **DISMISSED** for lack of merit.

**SO ORDERED.**

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

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[1] Original Record, p. 75.

[2] Original Record, p. 76.

[3] Original Record, p. 77.

[4] Annex "B", Original Record, pp. 78-79.

[5] Annex "4," Original Record, p. 81.

[6] TSN of April 10, 1989, p. 18.

[7] This finding was based on the position paper of petitioners submitted to the Labor Arbiter. Mr. Ocier himself was put on the witness stand and crossed examined.

[8] Rollo, pp. 128-129; Labor Arbiter's Decision, pp. 3-4.

- [9] Lichauco de Leon vs. Court of Appeals, G.R. No. 80965, 186 SCRA 345 (1990).
- [10] TSN of April 24, 1989, p. 17.
- [11] It should be noted that private respondent was illegally dismissed on October 1, 1988, such that the applicable rule in computing the amount of backwages is that enunciate in the case of Mercury Drug Co., Inc., et al. vs. Court of Industrial Relations, et al., G.R. No. L-23357, 56 SCRA 694 (1974) and instituted in the case of Feati University Faculty Club (PAFLU) vs. Feati University, et al., G.R. No. L-31503, 58 SCRA 395 (1974).
- [12] Quezon Electric Cooperative vs. NLRC, et al., G.R. Nos. 79718-22, 172 SCRA 89 (1989); De Vera, et al. vs. NLRC, et al., G.R. No. 93212, 191 SCRA 632 (1990).
- [13] Torillo vs. Leogardo, Jr. , G.R. No. 77205, 197 SCRA 471 (1991); Sealand Services, Inc. vs. NLRC, G.R. No. 90500, 190 SCRA 347.
- [14] Hernandez vs. NLRC, G.R. No. 84302, 176 SCRA 269 (1989); Asphalt & Cement Pavers, Inc. vs. Vicente Leogardo, Jr., G.R. No. 74563, 162 SCRA 312 (1988); Pepsi-Cola Bottling Co. vs. NLRC, G.R. No. 101900, 210 SCRA 277 (1992).
- [15] Groiler International, Inc. vs. Amansec, G.R. No. 83523, 177 SCRA 196 (1989); Torillo, supra.