SUPREME COURT
THIRD DIVISION

INDUSTRIAL TIMBER CORPORATION — STANPLY OPERATIONS,
***Petitioners*,**

-versus-

G.R. No. 112069
February 14, 1996

NATIONAL LABOR RELATIONS COMMISSION, JUANITO PABATANG, EDGARDO BANIAS and ALLAN WACAN,
***Respondents*.**
x----------x

D E C I S I O N

PANGANIBAN, *J.*:

In the absence of a finding of illegal dismissal, are employees entitled to both back wages and separation pay when reinstatement is no longer feasible due to the cessation of business operation? This is the

central issue in this Petition for *Certiorari* under Rule 65 of the Revised Rules of Court asking this Court to set aside and reverse the Decision[1] of the National Labor Relations Commission (NLRC) in NLRC CA No. M-000929-92, promulgated on May 31, 1993, affirming with modifications the Orders[2] of the Labor Arbiter dated May 25, 1992 and June 19, 1992 in NLRC RAB X Cases Nos. 6-0389-87 and 6-0390-87, and the subsequent Resolution denying the motion for reconsideration.

The orders of the Labor Arbiter in NLRC RAB X Case No. 6-0389-87 (as affirmed with modification) found the reinstatement of private respondents impossible due to business cessation. In lieu thereof, petitioner was required to pay private respondents back wages from April 26, 1986 to April 26, 1989, and separation pay equivalent to one-half month pay for every year of service or one month pay which ever is higher, taking into consideration their entire duration of employment up to the shutdown of petitioner's operations on August 17, 1990.

The private respondents filed their comment to the petition on January 21, 1991 and the public respondent NLRC, through the Solicitor General, filed its comment on May 22, 1994. Noting that the question submitted to the Court is simple and responding to the repeated requests for early resolution filed by private respondents, the court considered the matter submitted for decision without requiring the parties to submit formal memoranda. Thereafter, the case — by the Court's resolution on October 25, 1995 — was transferred from the First Division to the Third Division and, after due deliberation, was assigned to the undersigned ponente for the writing of the Court's decision.

The Facts

Private respondents were employees of ADD Technical and Labor Services consultancy, labor contractor of petitioner. On April 16, 1986. private respondents, together with petitioner's employees at the (petitioner's) Butuan logs and stanply operations, staged a strike to protest the practice of contracting out the work there. On April 26, 1996, the strike was settled and the parties executed a Memorandum of Agreement providing, inter alia, that the contractual workers were

to be absorbed as employees of the petitioner. Petitioner, however, did not absorb private respondents, because they were not included in the list of those who should be given priority in hiring, in accordance with the memorandum of agreement; moreover, respondents had previously executed a quitclaim wherein "they forever discharge(d) and release(d) ADD Technical and Labor (S)ervices (C)onsultancy and/or Industrial Timber Corporation from any and all causes of action, suits, debts, sums of money, accounts, in law or in equity, especially and more particularly arising out of or in connection with (their) employment with ADD (T)echnical and (L)abor (S)ervices (C)onsultancy/Industrial Timber Corporation, which has as of April 19, 1986 been terminated."[3] Thus, private respondents filed two separate cases for "illegal dismissal, reinstatement with back wages, 13th month pay, moral, actual, exemplary damages" against petitioner.

In a decision dated September 30, 1987, Labor Arbiter Amado M. Solano dismissed the cases on account of the quit-claims executed by the respondents, and because "(i)t is vividly shown that as of 19 April 1986 (or prior to the settlement of the strike on April 26, 1986, the services of herein complainants with respondent was terminated."[4] Upon appeal, the NLRC Fifth Division, sitting in Cagayan de Oro City, set aside the decision of the Labor Arbiter and ordered petitioner to absorb private respondents as its employees pursuant to the Memorandum of Agreement.[5] A subsequent Motion for Reconsideration filed by petitioner was denied. Petitioner then filed two petitions for *certiorari* with this Court against private respondents. Both were dismissed for failure of the petitions to show that public respondent NLRC' committed grave abuse of discretion.[6]

On July 29, 1991, private respondents filed a motion for a writ of execution. Execution of said judgment to reinstate private respondents, however, proved futile since ITC-STANPLY was forced to stop operations as of March 1990, after its wood processing plant permit was not renewed by the Department of Environment and Natural Resources. The Labor Arbiter then required the parties to submit their position papers on the matter, after which an Order dated May 25, 1992 was issued finding reinstatement impossible and ordering petitioner to pay back wages for a period of three (3) years and separation pay equivalent to one-half month pay for every year of

service or one month pay, whichever is higher. It also directed the parties to submit their individual computations for the back wages and separation pay.[7] While private respondents complied with this directive, petitioner sought reconsideration of said order, and asked that the three years' back wages be excluded from the award, allegedly because it went beyond the affirmed decision of the NLRC Fifth Division ordering respondents' reinstatement. Thereafter, Labor Arbiter Marissa Macaraig-Guillen issued her now assailed Order dated June 19, 1992 affirming the May 25, 1992 Order. An appeal from the June 19, 1992 Order was interposed by petitioner. In its Decision dated May 31, 1993, public respondent NLRC affirmed the decision of Labor Arbiter Macaraig-Guillen with modifications, the dispositive portion[8] of which reads:

> "WHEREFORE, the Decision appealed from is hereby Affirmed subject to the modification that the portion thereof which awarded complainants holiday pay, service incentive leave pay and 13th month pay is hereby Deleted for lack of factual and legal basis."

A motion for reconsideration was later denied.

Hence, this petition.

The Issue

Petitioner claims that respondent NLRC gravely abused its discretion amounting to lack of Jurisdiction [when it affirmed the Labor Arbiter's Order] specifically requiring petitioner to pay both (a) back wages and (b) separation pay to private respondents in lieu of reinstatement, even in the absence of a finding of illegal dismissal.

Petitioner contends that the case of St. Louis College of Tuguegarao vs. NLRC[9] cited by NLRC to support its award of back wages is not applicable to this case inasmuch as the former contemplates an illegal dismissal while the case at bench does not involve a finding of illegal dismissal.

The Court's Ruling

On the issue of back wages, we find petitioner's contention to be supported by law and jurisprudence.

Article 283 of the Labor Code, as amended, provides:

> "Closure of establishment and reduction of personnel. — In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher." (Emphasis supplied).

The above-cited provision clearly does not mandate the award of back wages, but only separation pay.

Moreover, the decisions are one in declaring that back wages may be granted only when there is a finding of illegal dismissal. In Sigma Personnel Services vs. National Labor Relations Commission[10] this Court explained thus:

> "Back wages are, granted for earnings a worker has lost due to his illegal dismissal. We have held that an employer is obliged to pay an illegally dismissed employee the whole amount of salaries plus all other benefits and bonuses and general increases to which the latter would have been normally entitled had he not been dismissed." (at p. 188; emphasis supplied).

In the instant case, neither the Labor Arbiter nor NLRC made a finding of illegal dismissal. The Solicitor General admitted as much in his Comment (p. 15). And it is a well-settled ruled that:

> "The NLRC's factual findings, if supported by substantial evidence, are entitled to great respect and even finality, unless petitioner is able to show that it simply and arbitrarily disregarded evidence before it or had misapprehended evidence to such an extent as to compel a contrary conclusion if such evidence had been properly appreciated."[11]

Thus, inasmuch as no finding of illegal dismissal had been made, and considering that the absence of such finding is supported by the records of the case, we are bound by such conclusion and cannot allow an award of back wages.

However, insofar as the award of separation pay is concerned, we find the same to be proper. In Galindez vs. Rural Bank of Llanera, Inc.,[12] this Court ruled thus:

> "Another reason which militates strongly against Galindez's reinstatement is the fact that the position of cashier has been abolished as a result of liquidation. In point is the ruling in Pizza Inn vs. NLRC. G.R. No. 74531, June 28, 1988, reading:
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> > 'Reinstatement presupposes that the previous position from which one had been removed still exists or there is an unfilled position more or less of similar nature as the one previously occupied by the employee. Admittedly, no such position is available. Reinstatement therefore becomes a legal impossibility. The law cannot exact compliance with what is impossible."

This Court continued:

> "Reinstatement having been rendered non-available, the modification of the Labor Arbiter's Decision by the NLRC (Second Division) by the deletion of the same, was thus in order. A circumstance had transpired which rendered execution of the said Decision legally impossible. The separation pay, which was awarded in lieu of reinstatement, was likewise proper."

Petitioner cited its argument raised in its appeal to the NLRC Fifth Division, to the effect that "the resolution of the Supreme Court affirming the decision of the NLRC' Fifth Division has long become final and executory hence may no longer be modified, amended, and/or set aside."[13]

Applying the case of Galindez vs. Rural Bank of Llanera, Inc., supra, to the case at bench, it is clear that Labor Arbiter Macaraig-Guillen had no other choice but to order the payment of (back wages and) separation pay, thus in effect superseding the Resolution of the Supreme Court sustaining the initial order of the Labor Arbiter to absorb private respondents, upon finding that reinstatement was no longer possible due to cessation of petitioner's operations. In view of that circumstances the proper award for private respondents could be none other than separation pay.

Anent the issue of the amount of separation pay to be given private respondents, the same must be computed from the time they commenced employment with petitioner until the time when the latter ceased operations. This is because petitioner had already been ordered to absorb private respondents pursuant to the Memorandum of Agreement executed by them, but it did not comply therewith. It follows that from the time they executed the Memorandum of Agreement up to the time the company ceased operations, private respondents were, in truth and in fact, entitled to the positions they would have occupied by virtue of said Memorandum of Agreement.[14]

WHEREFORE, the Petition for *Certiorari* is partially **GRANTED**; the assailed Decision is hereby **MODIFIED** by deleting the award for back wages; and petitioner is **ORDERED** to pay private respondents separation pay equivalent to one-half (½) month pay for every year of service, or one (1) month pay, whichever is higher, computed from the commencement of their employment with petitioner until petitioner's cessation of operations on August 17, 1990. No costs.

SO ORDERED.

Narvasa, *C.J.*, Davide, Jr., Melo and Francisco., *JJ.*, concur.

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[1] Rollo, pp. 18-24.
[2] Rollo, pp. 39-43 and 49-52, respectively.
[3] Rollo, p. 30.
[4] Rollo. pp. 27-30; at p. 30.
[5] Rollo, pp. 31-35.
[6] Rollo, p. 36.

[7] Rollo, pp. 39-43.
[8] Rollo, p. 24.
[9] 177 SCRA 151 (August 31, 1989).
[10] 224 SCRA 181 (June 30, 1993).
[11] Loadstar Shipping Co., Inc. vs. Gallo, 229 SCRA 654, 660 (February 4, 1994).
[12] 175 SCRA 132, 139 (July 5, 1989).
[13] Rollo, p. 6.
[14] Grolier International, Inc. vs. Amansec, 177 SCRA 196 (August 31, 1989).