

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

MACARIO R. LOPEZ,
Petitioner,

-versus-

**G.R. No. 102874
January 22, 1996**

**HON. NLRC COMMISSIONERS
LOURDES C. JAVIER, IRENEO B.
BERNARDO, ROGELIO I. RAYALA, LA
UNION TRANSPORT COOP. and/or
ALBERTO F. DY,**

Respondents.

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DECISION

ROMERO, J.:

Petitioner Macario R. Lopez filed this Petition for *Certiorari* under Rule 65 of the Rules of Court seeking the modification of the Decision and Resolution of respondent National Labor Relation Commission (NLRC) dated May 29, 1991 and September 16, 1991 respectively in NLRC CA No. L-000093.

The challenged Decision^[1] modified the decision of Labor Arbiter Emiliano T. de Asis in the case docketed as NLRC CASE NO. RAB-I-04-1088-90,^[2] the decretal part of the NLRC decision reading thus:

“PREMISES CONSIDERED, the Decision of December 26, 1990 is hereby MODIFIED. Respondent is directed to grant complainant separation pay and backwages of three (3) months in the total sum of nine thousand three hundred fifteen and 32/100 pesos (P9,315.32). The awards of moral damages and attorney’s fees are hereby DELETED.

SO ORDERED.”^[3]

Petitioner Lopez was appointed General Manager, on probationary status, by the Board of Directors of private respondent La Union transport Services Cooperative (LUTRASCO) effective December 1, 1989 with a monthly salary of P2,000.00.

On April 9, 1990, barely four months after his appointment as General Manager, petitioner was informed of the termination of his employment by the Secretary of the Board of Directors of respondent LUTRASCO on the ground of loss of trust and confidence and unsatisfactory performance. Petitioner was specifically charged with the following:

1. Falsification of a board resolution which provides a free uniform for all the members of the Board of Directors by altering the wording of the said resolution and made it to appear that the staff and himself are beneficiaries thereof, without the consent and authority of the board;
2. Neglect of his duty as General Manager to check up regularly the inventory of the Diesel pump;
3. Abandonment of work; Malingering;
4. Unreasonable refusal to receive partial payment from members of their account, thereby denying the cooperative legitimate revenues/income;
5. Negligence in sending notices to members of good standing of the general assembly meeting, resulting to embarrassment of some members;

6. Responsible in introducing partisan politics in the cooperative by deliberately ignoring the advice of the Chairman to post the names of the candidates in only one board and allowed a group of candidates to create their own tickets with his full support;
7. Delegating his duty to make his report to the General Assembly thru the accountant;
8. Wilful and deliberate refusal to comply with terms of his promissory note for the deduction of a certain amount during pay days in favor of the cooperative;
9. Unauthorized cash advances from the sale of diesel.^[4]

On April 18, petitioner filed a complaint for illegal dismissal praying for reinstatement, payment of backwages, damages and attorney's fees. The case was docketed as NLRC CASE NO. RAB-I-04-1088-90 and it was raffled to Labor Arbiter Emiliano T. de Asis.

On December 26, 1990, Labor Arbiter de Asis rendered a decision finding the aforementioned charges against petitioner baseless and his termination illegal and ordering the reinstatement of petitioner to his former position with backwages, wage differentials, moral damages and attorney's fees. The dispositive portion of the decision reads:

“WHEREFORE, CONFORMABLY WITH THE FOREGOING judgment is hereby rendered:

- 1) Declaring the termination of complainant as illegal, thereby entitling him to the reliefs prayed for.
- 2) Ordering respondents La Union Transport Service Cooperative, Inc. and Mr. Alberto F. Dy to reinstate complainant Macario R. Lopez, even pending appeal, to his former position, or include his name in the payroll with the corresponding corrected salary.

3) Ordering the same respondents to pay complainant his monetary award, as follows:

(a) Backwages (from March 1990 up to Nov. 17, 1990 at P2,670/mo., and at P3,030/mo. from Nov. 18, 1990 to date	P29,539.00
(b) Wage Differential (from Dec., 1989 to Feb. 1990, at P670)	2,010.00
(c) Moral Damages	<u>50,000.00</u>
Total	P81,549.00
Add: 10% Attorney's Fees	<u>8,154.90</u>
GRAND TOTAL:	P89,699.90 =====

SO ORDERED.”^[5]

Aggrieved, private respondent appealed to herein respondent NLRC.

On May 29, 1991, respondent NLRC rendered a decision modifying the decision of the Labor Arbiter. Although it found that petitioner was illegally dismissed and denied due process, nonetheless, respondent NLRC disagreed with the order of reinstatement, limited the backwages to three (3) months and deleted the award of moral damages and attorney's fees.

Petitioner's motion for reconsideration was denied by respondent NLRC in a resolution dated September 16, 1991.

Hence, this petition.

Petitioner assigns the following as errors committed by respondent NLRC:

I

PUBLIC RESPONDENTS ERRED IN RULING THAT SINCE THE PETITIONER IS ONLY A PROBATIONARY EMPLOYEE, HE IS ENTITLED TO LIMITED BACKWAGES OF THREE (3) MONTHS OR P6,986.49 BASED ON A MONTHLY RATE OF P2,328.83 IN ADDITION TO SEPARATION PAY OF ONE (1) MONTH.

II

THE PUBLIC RESPONDENTS LIKEWISE ERRED IN DELETING THE AWARD OF MORAL DAMAGES AND ATTORNEY'S FEES ON THE BASELESS REASON THAT THERE IS NO SUFFICIENT EVIDENCE ON RECORD TO SHOW THAT PRIVATE RESPONDENTS ACTED IN BAD FAITH.

As stated earlier, both the Labor Arbiter and respondent NLRC arrived at a factual finding that petitioner was illegally dismissed. There being no showing that it was resolved arbitrarily, we concur, with this factual finding.

The remaining issue involves the determination of how much backwages should be awarded to petitioner.

In its challenged decision, public respondent NLRC made the following observations:

“We disagree, however, with the order for complainant's reinstatement. Being a managerial employee, his reinstatement would not be conducive to industrial harmony. Besides, we take note that he was a probationary employee who had served a little more than three months. Under the circumstances, complainant is entitled to limited backwages of three months or P6,986.49 based on a monthly rate of P2,328.83 in addition to separation pay of one (1) month. Had he not been dismissed complainant would have completed his probationary period.

Lastly, we delete the award of moral damages and attorney's fees. There is no sufficient evidence to the effect that respondent acted in bad faith."^[6]

Petitioner argues that public respondent NLRC erred in not awarding him three years of backwages. According to him, an employee who cannot be reinstated after having been illegally dismissed is entitled to three (3) years backwages without qualification and deduction, that is, without regard to the period from dismissal to promulgation of judgment.

The Office of the Solicitor General disagrees with both the NLRC and the petitioner. It submits that public respondent NLRC erred in limiting petitioner's backwages to three (3) months on the ground that he was still a probationary employee at the time of his dismissal. It stresses that Article 279 of the Labor Code used the word "employee" without any distinction. Hence, said law applies to all employees regardless of their status for well-settled is the rule that when the law does not distinguish one should not distinguish.^[7]

With respect to petitioner's argument, the Office of the Solicitor General maintains that backwages should be computed from the time an employee is illegally dismissed to the time he is restored to his former position, and if reinstatement is not possible, up to the time judgment has become final.

We agree with the Solicitor General for to uphold the contention of petitioner that he should be awarded three (3) years' backwages beyond the date of his dismissal, would be, in effect, compensating him for work not done, contrary to the accepted maxim of "no work, no pay," and concomitantly, unjustly enriching himself at the expense of private respondent.

While probationary employees do not enjoy permanent status, they are, nonetheless, accorded the constitutional protection of security of tenure.^[8] Article XIII, Section 3 of the Constitution which provides that the State "shall guarantee the rights of all workers to security of tenure" does not distinguish as to the kind of worker who is entitled to be protected in this right. Moreover, Art. 281 of the Labor Code provides: "The services of an employee who has been engaged on a

probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards, made known by the employer to the employee at the time of his engagement.” This safeguard with respect to the bases for the possible termination of the employment of a probationary employee accords with the above-quoted Constitutional provision on security of tenure and has been applied in some cases.^[9] Furthermore, in *Manila Hotel Corp. vs. NLRC, et al.*,^[10] various limitations on the power of an employer to terminate a probationary employment contract were laid down, thus:

“First, it must be exercised in accordance with the specific requirements of the contract. If a particular time is prescribed, the termination must be done within such time. Should the contract require a written notice, then such form should be used. Secondly, the dissatisfaction of the employer must be real and in good faith, not feigned so as to circumvent the contract or the law; and thirdly, there must be no unlawful discrimination in the dismissal.”

The foregoing discussion confirms that probationary employees are probationary only in the sense that they are on trial for a designated period during which time the employer determines whether or not they are qualified for permanent employment.^[11] This probationary period of employment is generally limited to six (6) months from the date the employee started working, unless the same is established by company policy or when the same is required by the nature of work to be performed by the employee, after which said employee shall be considered a regular employee.^[12] Thus, probationary employees who are unjustly dismissed from work during the probationary period shall be entitled to reinstatement and payment of full backwages and other benefits and privileges from the time they were dismissed up to their actual reinstatement, conformably with Article 279 of the Labor Code, as amended by Section 34 of Republic Act No. 6715, which took effect on March 21, 1989:

“An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive or allowances, and to his other benefits or their monetary

equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.”

We note that petitioner, a managerial employee on probationary status, was dismissed illegally on April 9, 1990, or after the effectivity of said amendatory law. In this regard, we sustain public respondent NLRC’s finding that petitioner’s reinstatement would not be conducive to industrial harmony, he being a managerial employee. Consequently, the period for the computation of backwages shall be reckoned from the time his compensation was withheld from him, or in April 1990 up to the finality of our decision.^[13] In lieu of reinstatement, however, a one-month separation pay, as awarded by public respondent NLRC, is deemed proper.

With respect to the total amount of backwages payable to petitioner, the case of *Pines City Educational Center, et al. vs. NLRC, et al.*,^[14] which was cited in the recent case of *Zenaida Gaco vs. NLRC, et al.*,^[15] enunciated the prevailing jurisprudence on the matter:

“In ascertaining the total amount of backwages payable to them, we go back to the rule prior to *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. We restate the underlying reason that employees should not be permitted to enrich themselves at the expense of their employer. In addition, the law abhors double compensation.”

The aforementioned doctrine finds application in this case since it is undisputed that petitioner was employed as editor-in-chief and columnist of the “*Regional Balita*” immediately after his dismissal.^[16]

With respect to petitioner’s claim for moral damages and attorney’s fees, we agree with public respondent NLRC that the same must be rejected. Moral damages are recoverable only where the dismissal of the employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy.^[17] In the case at bench, the records failed to yield any evidence showing that petitioner’s dismissal was done in bad faith or oppressively or that petitioner was subjected to

unnecessary embarrassment or humiliation. Neither was there any showing that petitioner suffered any loss or injury, independent of his dismissal which would entitle him to moral damages. Suffice it to say that the circumstances leading to petitioner's dismissal, although done illegally, do not warrant the award of moral damages. Neither is petitioner entitled to attorney's fees since his case does not fall under any of the exceptions stated in Art. 2208 of the Civil Code.

WHEREFORE, the Decision of public respondent National Relations Commission dated May 29, 1991 is hereby **AFFIRMED** subject, however, to the modification that private respondents be ordered to pay petitioner's full backwages pursuant to Article 279 of the Labor Code, as amended by Section 34 of Republic Act No. 6715, subject to deduction of income earned elsewhere during the period of dismissal to be computed from April 1990, the time he was dismissed, up to the finality of this decision.

SO ORDERED.

Regalado, Puno and Mendoza, JJ., concur.

- [1] Penned by Presiding Commissioner Lourdes C. Javier, with the concurrence of Commissioners Ireneo B. Bernardo and Rogelio I. Rayala.
- [2] Macario Lopez vs. La Union Transport Service Cooperative, Inc. and/or Alberto F. Dy.
- [3] Rollo, pp. 55-56.
- [4] Rollo, pp. 26-27.
- [5] Rollo, pp. 45-46.
- [6] Rollo, p. 55.
- [7] Citing Philippine British assurance Co., Inc. vs. IAC, 150 SCRA 520 (1987).
- [8] Manlimos, et al. vs. NLRC, et al., G.R. No. 113337, March 2, 1995.
- [9] Colegio San Agustin vs. NLRC, et al., 201 SCRA 398 (1991); A.M. Oreta and Co., Inc. NLRC, et al., 176 SCRA 218 (1989).
- [10] 141 SCRA 169 (1986).
- [11] Art. 281, Labor Code.
- [12] Ibid.
- [13] Zenaida Gaco vs. NLRC, et al. 230 SCRA (1994).
- [14] 227 SCRA 655 (1993).
- [15] Supra.
- [16] Rollo, p. 77.

[17] Spartan Security and Detective Agency, Inc. vs. NLRC, et al., 213 SCRA 528 (1992).

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