SUPREME COURT
SECOND DIVISION

HERNAN R. LOPEZ, JR.,
***Petitioner*,**

-versus-

G.R. No. 109166
July 6, 1995

NATIONAL LABOR RELATIONS COMMISSIONS, FOURTH DIVISION, CEBU CITY, and DOMINADOR AMANTE,
***Respondents*.**
x----------x

D E C I S I O N

PUNO, *J.*:

Petitioner impugns the Decision of the National Labor Relations Commission (NLRC), Fourth Division, Cebu City, granting the appeal of private respondent which prayed for reinstatement, backwages, separation pay, and wage differentials.[1]

The facts in brief.

Starting 1966, private respondent Dominador Amante worked as driver for Hacienda Colisap managed by petitioner Hernan Lopez, Jr. Sometime in 1987, he transferred to Bea Agricultural Corporation managed by Javier Lopez Tanjanco, a nephew of petitioner. Tanjanco dismissed him on April 25, 1990 and paid his separation pay.[2] He worked again with Hacienda Colisap. His work was, however, short-

lived. He was also dismissed by petitioner without a valid reason on July 5, 1990.[3]

On December 27, 1990, private respondent filed a complainant against petitioner before the Regional Arbitration Branch No. VI, Cebu City for illegal dismissal, reinstatement with backwages or separation pay, and wage differentials.

Petitioner resisted the complainant. He alleged that it was Bea Agricultural Corporation that terminated the employment of private respondent. He likewise contended that he was abroad when private respondent was dismissed and could not be responsible for the same.

In a Decision dated June 23, 1992, the labor arbiter dismissed the complainant for lack of cause of action against the petitioner.[4] Private respondent appealed to the NLRC.

On December 10, 1992, the NLRC reversed the appealed decision and granted private respondent's prayer for reinstatement and payment of backwages, separation pay, and wage differentials' all computed at P19,542.50.[5] It found that private respondent was illegally dismissed, thus:

x x x

> "All conspicuously absent from the records is any evidence to show that complainant appellant was dismissed in July 1990 for a just or authorized cause and upon compliance with due process of law. It is thus clear under the above circumstances that complainant-appellant was illegally dismissed. As a matter of fact the Labor Arbiter had previously ordered the complainant to return to work and for the respondent to accept him back to work."[6]

As broken down, the awards consists of the following:

x x x

"I. Backwages — July 5, 1990 to January 4, 1991 (6 mos.)

P89.00/day x 30 days
= 2,670.00/mos. x 6 mos.
= P16,020.00

II. Separation pay

P89.00/day x 30 days
= 2,670.00/mos. x 1 month
= 2,670.00

III. Wage Differential — May 10, 1990 to July 4, 1990 (1 mo. & 25 days)

MW — P89.00/day (2,670.00/mo.)
SR — 73.50

Diff. 15.50/day x 25 days	=	387.50
465/mo. x 1 mo.	=	465.00
		852.50

P19,542.50"[7]
========

Petitioner's motion for reconsideration was denied for lack of merit, hence, this petition.

Petitioner now contends:

FIRST

THERE IS NO SUBSTANTIAL EVIDENCE THAT WOULD SUPPORT THE FINDING OF THE RESPONDENT COMMISSION THAT PETITIONER ALLEGEDLY RE-EMPLOYED RESPONDENT AMANTE CONSIDERING THAT THE PAYROLLS WHERE IT BASED ITS FINDINGS WERE ONLY PRESENTED FOR THE FIRST TIME ON APPEAL AND THEREFORE NOT SUBSTANTIAL EVIDENCE TO SUPPORT SAID FINDING.

SECOND

THE RESPONDENT COMMISSION ABUSED ITS DISCRETION IN FINDING THAT PETITIONER RE-EMPLOYED AND DISMISSED RESPONDENT AMANTE WHEN IT HAS BEEN CLEARLY ADMITTED BY RESPONDENT AMANTE IN ALL HIS PLEADINGS THAT PETITIONER WAS OUT OF THE COUNTRY WHEN HE WAS ALLEGEDLY DISMISSED AND THEREFORE SAID ADMISSION CANNOT BE CONTRADICTED BY THE RESPONDENT COMMISSION.

THIRD

THE RESPONDENT COMMISSION ABUSED ITS DISCRETION IN HOLDING THAT RESPONDENT AMANTE IS ENTITLED TO REINSTATEMENT AND BACKWAGES EQUIVALENT TO SIX (6) MONTHS WHEN IF HAD ALREADY ESTABLISHED A FINDING THAT THE PERIOD OF EMPLOYMENT OF SAID RESPONDENT WAS WITHIN THE PROBATIONARY PERIOD AND THEREFORE ITS HOLDING IS CONTRARY TO ITS ESTABLISHED FACTS AND LAW.

FOURTH

THE RESPONDENT COMMISSION ABUSED ITS DISCRETION IN HOLDING THAT RESPONDENT AMANTE IS ENTITLED TO BACKWAGES AND SEPARATION PAY WHEN UNDER SEVERAL RULING OF THE SECRETARY OF LABOR. THESE AWARDS ARE INCOMPATIBLE WITH EACH OTHER, AND THEREFORE RESPONDENT COMMISSION CANNOT AWARD BOTH.

FIFTH

THE RESPONDENT COMMISSION ABUSED ITS DISCRETION IN AWARDING BACKWAGES TO RESPONDENT AMANTE WHEN HE HAD ALREADY WAIVED

IT FOR HIS REFUSAL TO COMPLY THE ORDER DATED MARCH 31, 1992 (ANNEX "E").

SIXTH

THERE IS NO SUBSTANTIAL EVIDENCE THAT WOULD SUPPORT THE FINDING OF THE RESPONDENT COMMISSION THAT RESPONDENT AMANTE IS ENTITLED TO WAGE DIFFERENTIAL.

There is no merit in the petition.

We sustain the finding that petitioner re-hired but later dismissed private respondent without any just cause and without following due process. There was nothing wrong when public respondent admitted the May 1990 payrolls of Hacienda Colisap proving the re-employment of private respondent although they were presented only on appeal. Article 221 of the Labor Code provides that "in any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling." It further mandates the NLRC to use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law of procedure. Thus, in Bristol Laboratories Employees' Association vs. NLRC,[8] we upheld the NLRC when it considered additional documentary evidence submitted by the parties on appeal to prove their contentions. Too long settled is the rule that technicality should not be permitted to stand in the way of equitably and completely resolving the rights and obligations of the parties.[9]

We now to the rights of private respondent as a probationary employee at the time of his illegal dismissal.

Article 281 of the Labor Code provides:

> "Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. 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 quantity as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee."

It is true that probationary employees do not enjoy permanent status but they can only be removed from their work during their probationary period for a valid reason.[10] In the case at bench, private respondent was re-employed with Hacienda Colisap for barely two (2) months when he was dismissed without a just cause and without due process. The evidence of private respondent proving this fact cannot be overturned by the flimsy contention of petitioner that he did not cause the former's dismissal as he was abroad at that time.

In Pines City Educational Center vs. NLRC,[11] the Court en banc ordered the reinstatement of unlawfully dismissed probationary employees and payment of their full backwages viz:

x x x

> "With respect to private respondent Richard Picart and Lucia Chan, both of whom did not sign employment nor to have knowingly and voluntarily agreed upon fixed periods of employment, petitioners had the burden of proving that the termination of their services was legal. As probationary employees, they are likewise protected by the security of tenure provision of the Constitution. Consequently, they cannot be removed from their positions unless for cause. We concur with these factual findings, there being no showing with that they were resolved arbitrarily. Thus, the order for their reinstatement and payment of full backwages and other benefits and privileges from the time they were, dismissed up to their actual reinstatement is proper, 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. It should be noted that private respondent Roland Picart and Lucia Chan were dismissed illegally on March 31, 1989, or after the effectivity of said amendatory law." (citations omitted)

In accord with Article 281 of the Labor Code and existing case law, the public respondent correctly ordered the reinstatement of private respondent and the payment of his backwages and other benefits and privileges due him from the time of his dismissal up to his actual reinstatement. We take notice that the controversy arose on July 5, 1990 after the effectivity of R.A. No. 6715, amending section 279 of the Labor Code on March 21, 1989.

We will next resolve whether public respondent erred in additionally granting backwages and separation pay to private respondent.

Backwages and separation pay are distinct reliefs given to alleviate the economic damage suffered by an illegally dismissed employee. Payment of backwages is specifically designed to restore an employee's income that was lost because of his unjust dismissal.[12] On the other hand, payment of separation pay is intended to provide the employee money during the period in which he will be looking for another employment.[13] Considering the purpose behind the grant of separation pay, it was grave abuse of discretion on the part of public respondent to order the payment of separation pay as it is inconsistent with its ruling reinstating the private respondent. Their inherent inconsistency is self-evident and needs no further elaboration.

Finally, we reject petitioner's submission that there is no substantial evidence to support the public respondent's award of wage differentials to private respondent. The ruling of the public respondent clearly repudiates petitioner's charge and we quote:

x x x

> "Lastly, on the award of differential pay, We find no merit in the respondent's submission that there is no showing that the complainant-appellant was underpaid, or that the payrolls show that the complainant was receiving P183.75 daily.
>
> The complainant clearly alleged that the complainant was only receiving P73.50 a day upon his termination on July 5, 1989. With respect to the payrolls there is nothing therefrom that can clearly convince Us that the amount of P183.75 was the

complainant's daily wage as the period covered for such payroll is not indicated. It merely states that for the period ended May 10, 1990 and May 17, 1990, it did not reflect the number of days worked by the complainant-appellant."[14]

We are bound by this appraisal of evidence made by the public respondent considering its support by the records of the case.

IN VIEW HEREOF, the assailed Decision is **AFFIRMED** with the **MODIFICATION** that the award for separation pay is deleted. No costs.

SO ORDERED.

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

---

[1] NLRC Decision of December 10, 1992, reversing the Decision dated June 23, 1992 of Labor Arbiter Merlin D. Deloria which dismissed private respondent's complaint.
[2] Id., p.; Rollo, p. 68.
[3] Id., p. 2.
[4] Annex "I."
[5] Annex "L."
[6] Id.
[7] Id.
[8] See G.R. No. 87974, July 2, 1990, 187 SCRA 118.
[9] See Philippine-Singapore Ports Corporation vs. NLRC G. R. No. 67035, January 29, 1993, 218 SCRA 77.
[10] Colegio San Agustin vs. NLRC, G.R. No. 87333, September 6, 1991, 201 SCRA 398.
[11] G.R. No. 96779, November 10, 1993, 227 SCRA 655.
[12] General Textile, Inc., vs. NLRC, G.R. No. 102969, April 4, 1995.
[13] A' Prime Security Services, Inc., vs. NLRC, G.R. No. 93476, March 19, 1993, 220 SCRA 142.
[14] NLRC Resolution of January 25, 1993, Rollo, p. 128.