

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
SECOND DIVISION**

**LINA B. OCTAVIANO,**  
*Petitioner,*

*-versus-*

**G.R. No. 88636  
October 3, 1991**

**NATIONAL LABOR RELATIONS  
COMMISSION and GENERAL DIESEL  
POWER CORPORATION,**  
*Respondents.*

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**D E C I S I O N**

**SARMIENTO, J.:**

The petitioner, Lina Octaviano, assails the decision of the National Labor Relations Commission (NLRC), Fourth Division, dated March 20, 1989, affirming with modification the decision of the labor arbiter reducing her award of full backwages to only one (1) year.

The facts in brief are:

The private respondent, General Diesel Power Corporation, hired Lina as a component mechanic and issued a temporary employment as such from November 21, 1984 up to May 21, 1985.<sup>[1]</sup> She was however made to work, in fact, as a secretary and parts clerk.<sup>[2]</sup>

On May 22, 1985, the private respondent extended her another contract of employment providing a probationary period of six (6) months.<sup>[3]</sup> On November 21, 1985, she was terminated, as management decided to end her probationary employment.<sup>[4]</sup>

On January 20, 1986, she was rehired as a parts clerk.<sup>[5]</sup> Pursuant to management's prior arrangement, she was issued a six-month probationary employment. On June 5, 1986, she was again dismissed.<sup>[6]</sup>

On July 8, 1986, she lodged a complaint for illegal dismissal and then filed an amended complaint on January 30, 1987.

On May 22, 1988, Labor Arbiter Felipe T. Garduque II ordered her reinstatement without loss of seniority rights and privileges, with full backwages from her dismissal on June 5, 1986 up to her actual reinstatement, including her legal holiday pay for ten regular holidays, and unpaid wages and allowance from June 1-15, 1986 in the amounts of P500.00 and P215.00, respectively, and 13th month pay in the sum of P416.00 less P213.70 for advances and canteen bills, with ten (10)% thereof as attorney's fee.<sup>[7]</sup> All other claims were dismissed. The respondent corporation appealed to the NLRC interposing grave abuse of discretion.

The NLRC affirmed the labor arbiter's ruling but reduced the award of full backwages to only one year. Ironically, the NLRC cited in particular Lina's educational background to justify the reduction. We quote:

It is not disputed that herein complainant is a graduate of chemical engineering and that the periods of her separate employment contracts range from six (6) months to one (1) year. Having technical or engineering background, it would not

be difficult for complainant to find a job during her period of lay-off. As such, she is therefore not expected to remain idle and wait for a windfall for this would be tantamount to rewarding her for her idleness during her lay off. It is therefore more reasonable to limit her backwages to one (1) year effective from her termination from the service on June 15, 1986.<sup>[\*\*]</sup>

The petitioner now complains that the NLRC erred in limiting the award of backwages to one year. She invokes Article 279 of the Labor Code, which guarantees security of tenure to a regular employee, prohibiting his termination, except for a just cause, and entitling an unjustly dismissed worker to reinstatement with full backwages.

We find the petition meritorious and we grant it. We rule that the NLRC gravely abused its discretion in limiting the award of backwages to one year.

The facts of the case as indicated by the arbiter and the NLRC are uncorroborated. Lina was unjustly and unlawfully terminated even after she had already completed successive three six-month probationary periods of employment which should have converted her status to that of a regular employee. Her termination, therefore, violated her right to security of tenure in her employment. But even probationary employees are protected by law. For one, probationary employment should not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period.<sup>[8]</sup> True, 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 the reasonable standards made known by the employer to the employee at the time of his employment.<sup>[9]</sup> But the law is explicit that an employee who is allowed to work after a probationary period shall be considered a regular employee.<sup>[10]</sup>

It is clear from the foregoing that Lina should be considered a regular employee on all counts. First, the nature of her job as a parts clerk required her to perform activities which were deemed necessary and desirable in the usual business of General Diesel Power Corporation, in connection with dealing in parts, sales, and services. (She was

neither contracted for a specified project nor required to perform work that was seasonable in nature.) Under Article 280 of the Labor Code, when one performs such activities, he is deemed a regular employee, “[t]he provisions of written agreement to the contrary notwithstanding.” Second, her employment was not covered by any apprenticeship agreement. Third, she was rehired on May 22, 1985 and on January 20, 1986. This fact of rehiring negates management’s claims that she failed to qualify as a regular employee. On the contrary, management promoted her to parts clerk. Finally, at the risk of being repetitious, Lina had been re-hired to work not only after her first six-month probationary period from November 21, 1984 to May 21, 1985, she had been also re-hired to work immediately after her second six-month probationary period from May 22, 1985 to November 21, 1985; and then again on January 20, 1986, she was rehired on a probationary status — her third — and was again terminated on June 5, 1986. Thus, we can readily see that Lina had been hired and again and again rehired and again and again and again fired. We perceive these successive hirings and firings as a ploy to avoid the obligations imposed by law on employers for the protection and benefit of probationary employees, who, more often than not, are kept in the bondage, so to speak, of unending probationary employment without any complaint due to the serious unemployment problem besetting our country today. The Court can not countenance this overreaching. No member of the country’s work force must be allowed to be taken advantage of by any employer.

An employee who is allowed to work after a probationary period, shall be considered a regular employee.<sup>[11]</sup> The fact that Lina worked on a contract-to-contract basis can not alter the character of her employment, because contracts can not override the mandate of law.<sup>[12]</sup> Hence, by operation of law, she has likewise, become a regular employee.<sup>[13]</sup>

We find self-defeating the private respondent’s arguments that the petitioner, while in her probationary periods, had failed to measure up to the standards of her work and had been found unfit for her job, in the light of the circumstance discussed earlier. Second, the private respondent failed to establish that there had been reasonable standards set forth by the company by which Lina would measure up to as a regular employee. If indeed there were, the respondent should

have attached copies of those standards, as annexes to its pleadings; the records reveal nothing of the sort, hence, we dismiss such trivial justifications.

We agree with the petitioner that she was unceremoniously terminated by the respondent company to prevent her from becoming a regular employee and exclude her from all the benefits thereto. As we previously stated, this is not only a common but a convenient practice of unscrupulous employers to circumvent the law on security of tenure. Security of tenure, which is a right of paramount value guaranteed by the Constitution, should not be denied to the workers by such strategem. We cannot permit such a subterfuge, if we are to be true to the law and social justice. The law and social justice mandate that an employee whose termination was illegal is entitled to reinstatement with full backwages.<sup>[14]</sup>

Under Article 279 of the Code, “[a]n 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 of 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.” Backwages, as we have defined, represent compensation that should have been earned but were not collected because of unjust dismissal.<sup>[15]</sup> Such being the case, the award of backwages computed from the time of Lina’s dismissal up to the time of her reinstatement is not tantamount to rewarding idleness but to enable her to recover her loss of income during her lack of employment caused by her dismissal. Clearly then, the NLRC committed a grave abuse of discretion when it reduced the award of backwages to one year and compounded that abuse by giving the reason that the petitioner could have easily landed a better-paying job if she seriously looked for one, she being a chemical engineering graduate.

Worth noting is the manifestation of the Solicitor General when required to comment by the Court: that “[H]e does not agree with the position of the public respondent, NLRC and cannot represent said public respondent in this case without, in his honest belief and understanding, going against the law, the evidence and jurisprudence.”

The respondent also argues that the petitioner should not be entitled to backwages because she was given separation pay upon termination of her employment. Furthermore, she also signed a quitclaim discharging the company from any liability.

These arguments are devoid of merit. The fact that the petitioner received separation pay should not be taken against her for it is but natural for her to accept whatever amounts the company would give her. Her receipt of separation pay does not relieve the company of its obligations under the law. Backwages and separation pay are reliefs distinct and separate from each other. Payment of backwages in the form of relief that restores the income that was lost by reason of unlawful dismissal is distinguished from separation pay which provides the employee money during the period in which he is locating a new job.<sup>[16]</sup> We have moreover held that a quitclaim will not stop a dismissed employee from complaining to the authorities.<sup>[17]</sup>

We have consistently adopted the policy of awarding backwages to illegally dismissed employees equivalent to three years without qualification or deduction, in order to avoid protracted delay in the execution of the award for backwages due to extended hearings and unavoidable delays and difficulties encountered in determining the earnings of laid-off employees ordered to be reinstated with backwages during the pendency of the case for purposes of deducting the same from the gross backwages awarded.<sup>[18]</sup> In the case at bar, we can not find a good reason why we should depart from this established policy. The company had unlawfully terminated the petitioner from her work. We take this opportunity to reaffirm our concern for the lowly worker who, like the petitioner, is often at the mercy of her employer, by reinstating her to her previous position or its equivalent, with backwages.

**WHEREFORE**, the Petition is **GRANTED**. The private respondent is **ORDERED** to **REINSTATE** the petitioner to her former position without loss of seniority rights and other privileges, with backwages equivalent to three years without deduction or qualification.

Costs against the private respondent.

**SO ORDERED.**

**Melencio-Herrera, Paras, Padilla and Regalado, *JJ.*, concur.**

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- [1] Rollo, Annex, "D", 36.
- [2] Id., 5.
- [3] Id., Annex "E," 37.
- [4] Id., Annex "F," 38.
- [5] Id., Annex "G," 39.
- [6] Id., Annex "H," 40.
- [7] Id., Annex "A," 14-18.
- [\*\*] Emphasis supplied.
- [8] Book Sir, Title I, Article 281, The Labor Code.
- [9] Supra.
- [10] Supra.
- [11] Cebu Royal Plants (SMC) vs. The Honorable Deputy Minister of Labor and Employment, et al., G.R. No. 58639, August 12, 1987, 153 SCRA 38.
- [12] Beta Electric Company vs. National Labor Relations Commission, et al., G.R. No. 86408, February 15, 1990, 182 SCRA 384.
- [13] Supra.
- [14] Ruffy vs. NLRC, G.R. No. 84193, February 15, 1990, 182 SCRA 365.
- [15] Lim vs. NLRC, G.R. No. 79975, March 16, 1989, 171 SCRA 388.
- [16] Santos vs. NLRC, G.R. No. 76721, September 2, 1987, 154 SCRA 166.
- [17] Olacao, et al. vs. NLRC, G.R. No. 81390, August 29, 1989, 177 SCRA 38.
- [18] Feati University Faculty Club vs. Feati University, No. L-31503, August 15, 1974, 58 SCRA 395, cited in Mariners Polytechnic School, et al. vs. Leogardo, Jr., et al., G.R. No. 74271, March 31, 1989, 171 SCRA 597.