**SUPREME COURT**
**SECOND DIVISION**

**DANDY V. QUIJANO,**
***Petitioner*,**

***-versus-***

**G.R. No. 126561**
**July 8, 1998**

**MERCURY DRUG CORPORATION and NATIONAL LABOR RELATIONS COMMISSION, First Division,**
***Respondents*.**
**x----------x**

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

**PUNO, *J.*:**

Reinstatement is the remedy that most effectively restores the right of an employee to his employment before he was unjustly deprived of his job. In giving an illegally dismissed employee the right to reinstatement, the law[1] recognizes the fact that continued employment gives to a worker, especially to a lowly or menial laborer, an assurance of continuity in his source of income which a grant of separation pay could not provide. In the case at bar, we give primacy to the employee's right to reinstatement rather than the employer's claim that due to "strained relationship," his illegally dismissed employee should just be given separation pay.

Petitioner DANDY V. QUIJANO was a warehouseman at the central warehouse of respondent MERCURY DRUG CORPORATION in Libis, Quezon City, since 1983. During his 8-year stay in the company, he received high performance ratings and a corresponding 15% increase in salary per annum. Through the years, the company has also recognized and commanded him for his dedication to his work.[2] He has actively articulated the employees' concerns and, since 1990, has written to the management about the malpractices committed by some officers of the respondent company. He exposed the existence of a "five-six" loan system in their workplace operated by some of its officers.[3] He incurred the ire of respondent's manager Mr. Antonio Altavano who operated the usurious transactions.

Then followed the harassment of the petitioner. In April 1991, respondent charged petitioner with four (4) violations of company policies, all allegedly committed on March 19, 1991. It started at about 11:00 a.m. when petitioner allegedly left his workplace without permission. He was charged with loafing and abandonment of work. Then, between 11:30 a.m. to 12:30 p.m. of the same day, petitioner allegedly entered the warehouse employees' locker room and angrily uttered in a loud voice: "Nilolоko tayo ng kalbong yan.", referring to the warehouse manager, Mr. Altavano. He was charged with disrespect to his superiors. Thirty minutes later, at about 1:00 p.m., petitioner allegedly grabbed the public address system at the central warehouse without permission and angrily announced: "Wala kay Mrs. Azcona ang incentive natin, na kay Mr. Concepcion. Nilolоko lang tayo (ng superiors natin)." He was charged with disrupting the work of his co-employees. Finally, after an hour and a half, at about 2:30 p.m., petitioner allegedly saw Mr. Simon peeping through a rack divider, and shouted: "Anong tinitingin-tingin mo?" He was charged with using abusive language in company premises.

Consequently, in April 1991, four (4) notices of corrective/disciplinary action were served on petitioner for the above four offenses. These were the very first disciplinary sanctions imposed on petitioner in his eight (8) years of service and all were allegedly committed on the same day, March 19, 1991.

In his written explanation, petitioner gave a different version of the incidents. He alleged that on said date, he had been following-up the

payment of incentives due to his co-employees. The manager, Mr. Altavano, informed him that the incentives were already in the office of Mrs. Vivian Azcona. However, when petitioner inquired from Mrs. Azcona about their incentives, she referred him to the office of Mr. Concepcion and asked him to inform his co-employees that their incentives were in said office. Petitioner did as he was told. He used the microphone for a few minutes and informed his co-employees about the status of their incentives. His co-employees submitted a joint written statement[4] confirming his allegations. They further declared that petitioners brief use of the microphone did not distract them in the performance of their work. Petitioner also denied uttering rude or insulting language in referring to or communicating with his superiors. Again his co-employees submitted statements[5] to corroborate his denial. Finally, petitioner claimed that the charges against him were merely concocted by the warehouse manager and the supervisor in retaliation to his exposure of the latter's usurious loan scheme in the warehouse, thereby taking undue advantage of the plight of his co-employees.

In May 1991, a committee was created by management to investigate petitioner's alleged offenses. On June 19, 1991, petitioner was cleared of the four charges.[6]

Petitioner's employment woes did not end on November 18, 1991. Petitioner was served another notice of corrective action for serious misconduct for allegedly challenging his superior to a fistfight and uttering death threats to the manager, Mr. Altavano, on April 25, 1991, or about seven (7) months earlier. Petitioner's behavior was allegedly the off-shoot of the four (4) memoranda earlier sent to him.

The next day, November 19, 1991, a Special Investigating Committee, found the petitioner guilty not only of challenging his superior to a fistfight and issuing death threats to the manager, but also guilty of the four (4) charges of misbehavior earlier hurled against him. On November 19, 1991, respondent sent petitioner a notice of termination of employment.[7] The dismissal was to take effect the next day, November 20, 1991. Left without further recourse, petitioner filed an illegal dismissal case against respondent before the labor arbiter.

On the basis of the position papers and evidence submitted by the parties, the labor arbiter ruled that petitioner was illegally dismissed from service for lack of just cause. As to the first offense, the labor arbiter ruled that petitioner cannot be considered to have abandoned his work as mere absence in the workplace is not enough. Abandonment means a deliberate and unjustified refusal to resume employment. The arbiter held that petitioner's 30-minute absence in his workplace did not amount to abandonment. As to the other offenses, the arbiter gave more credence to petitioner's version after evaluating the parties' evidence. He noted that petitioner's dedication to his duties were recognized by respondent by commending him therefor and granting him an annual increase in his salary. Petitioner worked with respondent for eight (8) years and charges of misdemeanor were hurled at him for the first time in 1991. Moreover, petitioner's side of the incident was sufficiently corroborated by his less biased co-employees. These circumstances led the arbiter to conclude that respondent's charges against petitioner were "untenable" and that petitioner did not commit serious misconduct to warrant his dismissal from service.

Consequently, in a Decision,[8] dated February 20, 1995, labor arbiter Roberto I. Santos made the following disposition:

> "WHEREFORE, in conformity with the opinion above-expressed, judgment is hereby rendered declaring complainant's dismissal illegal, and ordering the respondent to reinstate him to his former' position or substantially equivalent one, or to payroll, at the election of respondent, and to pay him:
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> "a. the sum of Two Hundred Ninety-Seven Thousand Nine Hundred Thirty and Seventy-Five (P297,930.75) Centavos as backwages as of the date of this judgment, and thereafter a monthly backwage of Seven Thousand Six Hundred Thirty-Nine and Twenty-Five (P7,639.25) Centavos until sooner reinstated;
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> "b. the sum of Fifty Thousand and Twenty-Five Thousand (P50,000.00 & P25,000.00) Pesos, respectively, as moral and exemplary damages; and

"c. the sum equivalent to ten (10%) percent of the total amount due him, as attorney's fees.

"SO ORDERED." (Emphasis supplied)

On May 1, 1995, respondent reinstated petitioner in the payroll. Respondent then appealed the decision of the labor arbiter to the NLRC.

On June 17, 1996, the NLRC issued a Resolution[9] affirming the finding of illegal dismissal by the labor arbiter. However, it modified the labor arbiter's decision by: (1) limiting the award of backwages to three years; (2) deleting the award of moral and exemplary damages; and (3) ordering respondent to pay petitioner separation pay in lieu of reinstatement.[10]

Petitioner moved for reconsideration of the Resolution. Acting on the motion, the NLRC further modified its June 17, 1996 Resolution only as to the period of computation of backwages. It held that the award of backwages should be computed from the date of illegal dismissal until petitioner's reinstatement to the payroll. However, it still denied payment of damages to petitioner as it found that respondent did not act with gross malice and wanton bad faith. It also refused to reinstate petitioner in view of the brewing antagonism between him and his supervisor and awarded him separation pay instead.[11]

Hence, this petition which we find meritorious.

I

Petitioner contends that the NLRC committed grave abuse of discretion when it awarded to him separation pay in lieu of reinstatement. He insists that he is entitled to reinstatement as he was illegally dismissed from service and his reinstatement is feasible under the circumstances.

We agree. Our examination of the records reveals that in the body of its June 17, 1996 Resolution, the NLRC categorically affirmed the

factual findings of the labor arbiter and ordered petitioner's reinstatement, thus:

> "We have examined closely the arguments raised on appeal in relation to the conclusions of law and of facts of the Arbiter a quo and We noted that the same had been drawn from credible evidence submitted below.
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> "x x x
>
> "In the overall, we failed to note any serious error nor (sic) the Labor Arbiter committed grave abuse of discretion in concluding that the complainant's dismissal is wanting in lawful cause. For, We are not (a) trier of facts and we are not at liberty to tamper with the appreciation of the evidence presented below especially so when there is a clear indication that such conclusions rest on solid rational grounds. We thus AFFIRM THE FINDINGS OF ILLEGAL DISMISSAL and ORDER COMPLAINANT'S REINSTATEMENT with the (sic) backwages."[12] (Emphasis supplied)

But, in a surprise twist towards the end[13] of its Resolution, the NLRC noted a brewing antagonism and antipathy between petitioner and his supervisor. It concluded that the alleged brewing antagonism justifies the award of separation pay to petitioner in lieu of reinstatement.

We disagree. Well-entrenched is the rule that an illegally dismissed employee is entitled to reinstatement as a matter of right.[14] Over the years, however, the case law developed that where reinstatement is not feasible, expedient or practical, as where reinstatement would only exacerbate the tension and strained relations between the parties,[15] or where the relationship between the employer and employee has been unduly strained by reason of their irreconcilable differences, particularly where the illegally dismissed employee held a managerial or key position in the company,[16] it would be more prudent to order payment of separation pay instead of reinstatement. Some unscrupulous employers, however, have taken advantage of the overgrowth of this doctrine of "strained relations" by using it as a

cover to get rid of its employees and thus defeat their right to job security.

To protect labor's security of tenure, we emphasize that the doctrine of "strained relations" should be strictly applied so as not to deprive an illegally dismissed employee of his right to reinstatement. Every labor dispute almost always results in "strained relations", and the phrase cannot be given an overarching interpretation, otherwise, an unjustly dismissed employee can never be reinstated.[17]

In the case at bar, the NLRC refused to reinstate the petitioner and relied on the contents of the November 19, 1991 notice of termination of management to petitioner[18] detailing the alleged five (5) charges of misconduct against him and on petitioner's September 14, 1991 written explanation.[19] From then, the NLRC deduced an antagonism between the parties and concluded that there would be no harmonious working relationship between them. The NLRC then ruled that petitioner's reinstatement was impractical and that he should instead be given separation pay.

We reject these ratiocinations.

For one, respondent's charges of misbehavior against petitioner cannot serve as basis to justify petitioner's dismissal, let alone his non-reinstatement. These charges had been found to be baseless and both the labor arbiter and the NLRC agreed that there was no just cause for petitioner's dismissal. It can even be granted in arguendo that a certain antagonism may characterize the relationship of petitioner and the respondents. However, the antagonism was caused substantially if not solely by the misdeeds of respondent's superiors. The arbiter found as a fact that the false charges were filed against petitioner by two of his superiors to punish him for exposing their usurious loan operations. Hence, to deny petitioners reinstatement due to the "strained relations" with his accusers whose charges were found to be false would result in rewarding the accusers and penalizing petitioner, the victim. This would set a bad precedent for no employer should be allowed to profit from his own misdeed. In addition, it is most inequitable to rule that the antagonism engendered by petitioners performance of his legal right to expose the usurious lending operations of some warehouse officers will cause

him to lose the security of his job.[20] The expose is work related and is intended to protect the economic welfare of employees, and hence its exercise cannot be visited by any punishment especially by the supreme penalty of separation from service.[21] Again, it bears emphasis that the State guarantees a worker security of tenure which can well be his most precious economic right. Thus, all efforts must be exerted to protect him from unjust deprivation of his job.

NLRC's reliance on the cases of Galindez vs. Rural Bank of Llanera, Divine Word High School vs. NLRC, City Trust Finance Corp. vs. NLRC, and Commercial Motors Corp. vs. NLRC[22] to justify its refusal to reinstate petitioner[23] is misplaced.

In Galindez vs. Rural Bank of Llanera,[24] reinstatement of the illegally dismissed employee was rendered impossible by the bank's closure. In Divine Word High School,[25] Mrs. Catenza, the illegally dismissed employee, was a high school teacher in the school, while her husband was the school principal. Although it was her husband who committed an immoral act, Mrs. Catenza's act of covering up his misdemeanor, although not sufficient basis for her dismissal as a high school teacher, renders her unsuitable to meet the educational and moral needs of her Catholic studentry.

On the other hand, the cases of Citytrust Finance Corporation vs. NLRC and Commercial Motors Corporation vs. NLRC[26] both involve managerial employees (an officer-in-charge and a supervisor, respectively) who were dismissed for dishonesty in the performance of their duties and loss of confidence.[27] In both cases, although the loss of confidence was not sufficiently established by the employers, we affirmed the denial of reinstatement to the employees concerned, taking into consideration not only the plight of the managerial employee (who cannot work effectively unless he has the full confidence of his employer), but also that of the employer so that it would not have to endure the continued service of its key employee in whom it has lost confidence. In the case at bar, however, petitioner is a mere warehouseman who has no say in the operation of respondents business and the mendacious charges hurled against him by respondent's officers were petty concoctions, designed primarily to oust him in his job. "Strained relations" in this case is clearly not of such serious nature or degree as to preclude reinstatement.

Moreover, the alleged antagonism between the petitioner and the private respondent is a mere conclusion bereft of evidentiary support. To be sure, the private respondent did not raise the defense of strained relationship with the petitioner before the labor arbiter. Consequently, this issue which is factual in nature, was not the subject of evidence on the part of both the petitioner and the respondent. There is thus no competent evidence upon which to base the conclusion that the relationship between the petitioner and the respondent has reached the point where it is now best to sever their employment relationship. We therefore hold that the NLRC's ruling on the alleged brewing antagonism between the petitioner and the respondent is a mere guesswork and cannot justify the non-reinstatement of petitioner to his job.

II

We come now to the award of damages.

Petitioner claims that the NLRC erred in deleting the arbiter's award of moral and exemplary damages. The NLRC ruled that respondent did not act with gross malice and wanton bad faith in illegally dismissing petitioner from service as to justify the award.

Again, we agree with the petitioner. As a rule, moral and exemplary damages cannot be justified solely on the premise that an employee was dismissed without just cause.[28] To warrant an award of moral damages, it must be shown that the dismissal of the employee was attended by bad faith or constituted an act oppressive to labor or was done in a manner contrary to morals, good customs or public policy.[29] Exemplary damages, on the other hand, are recoverable only where the dismissal was effected in a wanton, oppressive manner.[30]

In the case at bar, both the labor arbiter and the NLRC found that petitioner was dismissed from service without just cause. We cite a portion of the labor arbiter's decision which supports his factual finding of unjust dismissal and the oppressive and underhanded manner with which it was effected, thus:

> "If complainant was indeed guilty of the offense covered by the last memorandum, the alleged threatening of Mr. Altavano with death by complainant on 25 April 1991, why was it not included in the investigation in May 1991, and became the subject of a memorandum (only on) 18 November 1991, about five (5) months after its alleged commission and two (2) days before complainant's termination? This scenario is inconsistent with truth. Moreover, this alleged last offense never became the subject of proper investigation.
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> "The first four (4) offenses, covered by four (4) separate memorandums (sic), show not the incorrigible temperament of complainant but the sinister motive of their authors. The (four) offense(s) were allegedly committed in the same day, 19 March 1991 starting at around 11:00 a.m. until about 2:30 p.m. The span of time during which those alleged offenses were allegedly committed militates against their veracity, and the separate four (4) notices therefor, indicate the scheme of harassment against complainant. Moreover, the contention of complainant that the same (charges) were not true but a design of retaliation to his expose even proves the incredibility of the accusation against him. Complainant's position is duly supported by the statement of many of his co-employees. (O)ver and above insufficiency of cause for complainant's termination as alleged by respondent, the latter's allegations are in fact found by this Arbiter to be untenable. This is in addition to the fact that complainant was already cleared of those four (4) offenses by the investigation in May 1991."

On appeal, the NLRC fully concurred with the above factual findings of the labor arbiter in this wise:

> "We have examined closely the arguments raised on appeal in relation to the conclusions of law and of facts of the Arbiter a quo and We noted that the same had been drawn from credible, evidence submitted below.
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> "x x x

> "In the case herein obtaining however, the respondent had miserably failed to show by substantial evidence that the dismissal of the complainant was justified.
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> "x x x
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> "In the overall, with respect to the assigned errors, We failed to note any serious error nor (sic) the Labor Arbiter committed grave abuse of discretion in concluding that the complainants dismissal is wanting in lawful cause. For We are not (a) trier of facts and we are not at liberty to tamper with the appreciation of the evidence presented below especially so when there is a clear indication that such conclusions rest on solid rational grounds. We thus affirm the findings of illegal dismissal and order complainant's reinstatement with the (sic) backwages."

Thus, as is clear from the records and the decisions of the labor arbiter and the NLRC, respondent maliciously adopted a scheme to oust petitioner from the company. Undoubtedly, respondents fabrication of charges against petitioner to facilitate his immediate dismissal from service is contrary to good customs and public policy. The chain of events and proceedings leading to his dismissal show beyond cavil the oppressive manner with which petitioner's separation from service was effected. These circumstances justify an award of moral and exemplary damages to petitioner.

Finally, as petitioner was forced to litigate and incur expenses to protect his rights and interest, he is entitled to attorney's fees equivalent to ten percent (10%) of the total amount due him.[31]

**IN VIEW WHEREOF**, the Petition is **GRANTED**. Private respondent MERCURY DRUG CORPORATION is ordered: (1) to reinstate petitioner DANDY V. QUIJANO to his former or substantially equivalent position; (2) to pay backwages from the time of petitioners illegal dismissal until his reinstatement in the payroll on May 1, 1995, and from the time petitioner's salary based on payroll reinstatement was stopped on June 16, 1996 until his actual reinstatement; (3) to pay moral and exemplary damages in the amount of fifty thousand (P50,000.00) pesos and twenty-five thousand (P25,000.00) pesos, respectively, and; (4) to pay ten

percent (10%) of the total amount due to petitioner, as attorney's fees. Costs against private respondent.

**SO ORDERED.**

**Regalado, Melo, Mendoza and Martinez, *JJ*., concur.**

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[1] Article 279 of the Labor Code.
[2] Letter of commendation to petitioner by respondent's Vice-President, Merchandising Division, dated December 20, 1989; Annex "A", Petition; Rollo, at p. 66.
[3] See petitioners letters to management, dated April 16 and September 27, 1990; Rollo, pp. 69-72 .
[4] Rollo, pp. 96-97.
[5] Id., pp. 83-86.
[6] Report of Mr. Raul Ruloma, Member of the Investigating Committee to Mrs. Alicia Lumanog, AVP-Administrative Division; Rollo, pp. 98-99.
[7] Rollo, pp. 102-103.
[8] Rollo, pp. 121-136.
[9] id., pp. 34-51.
[10] Resolution, dated June 17, 1996; Rollo, pp. 34-51.
[11] Resolution, dated August 22, 1996; Rollo, pp. 52-55.
[12] NLRC Resolution, dated June 17, 1996, pp. 14-16; Rollo, at pp. 47-49.
[13] Rollo, at pp. 49-50.
[14] Article 279, Labor Code.
[15] Dela Cruz vs. NLRC, 268 SCRA 458, 471 [1997].
[16] Hilario vs. NLRC, 252 SCRA 555, 561 [1996], citing Maranaw Hotels and Resorts Corporation 215 SCRA 501 [1992], Asiaworld Publishing House, Inc. vs. Ople 152 SCRA 219 [1987]; Bautista vs. Inciong, 158 SCRA 665 [1988], Esmalin vs. NLRC, 177 SCRA 537 [1989], Maglutac vs. NLRC, 189 SCRA 767 [1990], Globe-Mackay Cable and Radio Corporation vs. NLRC, 206 SCRA 712 [1992].
[17] Capili vs. NLRC, 270 SCRA 488, 495 [1997], citing Maranaw Hotel & Resorts Corporation vs. Court of Appeals, supra.
[18] Rollo, pp. 102-103.
[19] Id., pp. 87-95.
[20] Employee's Association of the Philippine American Life Insurance Company vs. NLRC, 199 SCRA 628 [1991].
[21] Kunting vs. NLRC, 227 SCRA 571, 578 [1993], citing Employees Association of the Philippine American Life Insurance Company vs. NLRC, supra.
[22] 175 SCRA 132 [1989], 143 SCRA 346 [1986], 157 SCRA 87 [1988] and 192 SCRA 191 [1990], respectively.
[23] August 22, 1996 NLRC Resolution; Rollo, at pp. 53-54.
[24] Supra.

[25] Supra.
[26] Supra.
[27] In Citytrust, the officer-in-charge was dismissed for unauthorized release of a mortgage and approval of petty cash expenditure, and failure to reflect in company records payment of attorney's fees and receipt of P50,000.00 downpayment for a car and truck. In Commercial Motors Corporation, the supervisor was dismissed for dishonesty, fraud and loss of trust for missing spare parts worth over P200,000.00.
[28] Philippine School of Business Administration-Manila vs. NLRC, 261 SCRA 189 [1996].
[29] Belaunzaran vs. NLRC, 265 SCRA 800, 809 [1996], citing, inter alia, Garcia vs. NLRC, 234 SCRA 632 [1994]; Lopez vs. Javier, 252 SCRA 68 [1996].
[30] Belaunzaran vs. NLRC, supra.
[31] Rasonable vs. NLRC, 253 SCRA 623 [1996].