

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**VALENTINO TORILLO,
*Petitioner,***

-versus-

**G.R. No. 77205
May 27, 1991**

**VICENTE LEOGARDO, JR., in his
official capacity as Deputy Minister of
Labor; the HONORABLE MINISTER OF
LABOR AND EMPLOYMENT, and
ABERDEEN COURT, INC.,
*Respondents.***

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DECISION

FERNAN, C.J.:

The main issue in this case is whether or not the award of backwages in addition to an award of separation pay to an illegally dismissed employee whose reinstatement is no longer feasible is proper.

Petitioner Valentino Torillo, alias "Lady Valerie," was employed as an organist by private respondent Aberdeen Court, Inc. in October 1977 with a daily compensation of P115.00 for five hour work a day. On July 2, 1978, he invited his co-employees for a night out in his hometown in Rosario, Cavite in celebration of his birthday. Private

respondent objected to such activity, requesting its employees, if possible, to refrain from attending the affair because the following day was a working day. Despite private respondent's objections, petitioner pushed through with his birthday party.

Petitioner reported for work the next day, July 3. On July 4, 1978, private respondent, through its Floor Manager, informed petitioner that he was being dismissed from his employment effective that same day for having defied private respondent's order.

Consequently, on October 8, 1978 petitioner filed with the Ministry of Labor & Employment, Region IV, a complaint against private respondent for illegal dismissal with prayer for reinstatement with backwages, including payment of his unpaid wages from July 1 to July 3, 1978, holiday pay and premium pay from February to July 1, 1978. Private respondent tried to justify petitioner's dismissal by claiming that the latter abandoned his work in failing to report for duty after his birthday celebration.

On November 23, 1978, the Ministry of Labor, thru Director Francisco L. Estrella, ruled that private respondent's theory of abandonment of work was without factual and legal basis as petitioner reported for work on July 3, 1978 immediately following his birthday celebration; and that his dismissal was without the required prior clearance. Finding petitioner's dismissal as illegal, Director Estrella ordered private respondent Aberdeen Court, Inc. to reinstate petitioner to his former position without loss of seniority lights and privileges with full backwages from date of dismissal on July 4, 1978 until date of actual reinstatement and to pay petitioner his holiday pay for seven (7) days plus his unpaid wages from July 1 to 3, 1978. However, petitioner's claim for premium pay was dismissed for lack of merit.^[1]

On December 14, 1978, private respondent Aberdeen Court, Inc. appealed to the Ministry of Labor (Rollo, pp. 20-23) alleging that there was no factual or legal basis to support the subject order and that said Director abused his discretion. Petitioner filed on January 3, 1979 his opposition alleging that the appeal was frivolous and dilatory.

On February 13, 1986, or after seven (7) years, the Ministry of Labor and Employment, thru Deputy Minister Vicente Leogardo, Jr., issued an order affirming that of Director Estrella with the modification that in lieu of reinstatement, petitioner should be paid separation pay equivalent to petitioner's wages for two (2) months.^[2] A Motion for Reconsideration dated March 21, 1986 was filed by private respondent but this was denied in an order dated April 21, 1986.^[3] Undaunted, private respondent filed a motion for leave to file second motion for reconsideration attaching thereto the said second motion.^[4]

Meanwhile, petitioner filed an urgent motion for execution and appointment of special sheriff dated April 7, 1986^[5] which was opposed by private respondent.^[6] Thereafter, the Ministry of Labor, National Capital Region, thru its Officer-in-Charge, Romeo A. Young, issued a writ of execution on May 13, 1986 directing the sheriff to execute the order of Deputy Minister Leogardo, Jr.^[7] requiring private respondent to pay petitioner the total amount of P280,715.00 representing his backwages from July 4, 1978 to February 13, 1986, legal holiday pay for seven days, separation pay of two (2) months and unpaid wages for three (3) days.

By virtue of said writ, personal properties of private respondent were levied upon. These personal properties were to have been sold in a public auction scheduled on May 30, 1986^[8] were it not for the motion to quash the writ of execution filed by private respondent on the grounds that: first, its second motion for reconsideration has not yet been acted upon, second, backwages should not be awarded to petitioner since the order of Deputy Minister Leogardo, Jr. on February 13, 1986 stated that in lieu of reinstatement, petitioner should only be paid separation pay equivalent to his wages for two (2) months, third, assuming that petitioner is entitled to backwages, the law allows the employer to deduct from his backwages his income earned elsewhere during the time he was out of work; and fourth, private respondent should be present during the computation of the monetary award.^[9]

Petitioner filed an opposition to this motion as well as a supplemental motion for execution citing Section 2, Rule XV of the Implementing Rules & Regulations of the New Labor Code, which states that the

decision of the Secretary of Labor shall be immediately executory, pending appeal, unless stayed by the order of the President of the Philippines.^[10]

On May 30, 1986, Officer-in-charge Romeo A. Young of the Ministry of Labor, National Capital Region, issued a restraining order enjoining the assigned sheriff from proceeding with the auction sale of the levied properties of private respondent until further orders.^[11] However, on July 23, 1986, he recalled the restraining order issued and directed the sheriff to proceed with the execution.^[12]

Thereafter, private respondent appealed to the Office of the Minister of Labor praying that the, July 23, 1986 Order be set aside and should private respondent be liable to pay backwages to complainant, the same be computed following the guidelines set forth by this Court.^[13]

On September 8, 1986, Deputy Minister Vicente Leogardo, Jr. issued an order setting aside the order dated July 23, 1986, stating therein that the February 13, 1986 Order stands with the clarification that the affirmative relief granted to complainant does not include the payment of backwages. In addition, the writ of execution dated May 13, 1986 to enforce payment of backwages in the amount of P280,715.00 was quashed.^[14]

On September 11, 1986, petitioner filed a motion for reconsideration of said order but the same was denied on November 12, 1986 by Minister of Labor Augusto Sanchez.^[15]

Hence, this recourse by petitioner.

Preliminarily, it must be stressed that the illegality of petitioner's dismissal is a matter long settled in the Order dated November 23, 1978 issued by Director Estrella, which on appeal, was affirmed by then Deputy Minister Vicente Leogardo, Jr. on February 13, 1986. The finding of illegality of dismissal having thus attained finality, petitioner now questions the scope and extent of the reliefs granted to him by public respondent.

The dispute in the instant case arose when Deputy Minister Leogardo, Jr. issued an Order on September 8, 1986^[16] clarifying his previous

Order of February 13, 1986^[17] by declaring in the clarificatory order that the dispositive portion of the Order of February 13, 1986 should not be accorded the interpretation that backwages are likewise included as due the complainant (petitioner) for the affirmative relief of backwages is available only where reinstatement is ordered.

We find the clarificatory order erroneous in so far as it declared that the affirmative relief of backwages is available only where reinstatement is ordered.^[18]

A number of cases have already been decided by this Court whereby an illegally dismissed employee is awarded both backwages and separation pay.

Article 280 (now Article 279) of the Labor Code provides that “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.” Backwages in general are granted on grounds of equity for earnings which a worker or employee has lost due to his illegal dismissal.^[19] Reinstatement, on the other hand, means restoration to a state of condition from which one had been removed or separated.^[20]

Backwages and reinstatement are two reliefs given to an illegally dismissed employee. They are separate and distinct from each other. However, in the event that reinstatement is no longer possible, separation pay is awarded to the employee. Thus, the award of separation pay is in lieu of reinstatement and not of backwages. In other words, an illegally dismissed employee is entitled to (1) either reinstatement, if viable, or separation pay if reinstatement is no longer viable and (2) backwages.

The distinction between separation pay and backwages has been exhaustively discussed by this Court in Santos vs. NLRC, et. al.,^[21] wherein we held:

The normal consequences of a finding that an employee has been illegally dismissed are, firstly, that the employee becomes entitled to reinstatement to his former position without loss of seniority rights and, secondly, the payment of backwages

corresponding to the period from his illegal dismissal up to actual reinstatement. The statutory intent on this matter is clearly discernible. Reinstatement restored the employee who was unjustly dismissed to the position from which he was removed, that is, to his status quo ante dismissal, while the grant of backwages allows the same employee to recover from the employer that which he had lost by way of wages as a result of his dismissal. These twin remedies—reinstatement and payment of backwages—make the dismissed employee whole who can then look forward to continued employment. Thus do these two remedies give meaning and substance to the constitutional right of labor to security of tenure. The two forms of relief are distinct and separate, one from the other. Though the grant of reinstatement commonly carries with it an award of backwages, the inappropriateness or non-availability of one does not carry with it the inappropriateness or non-availability of the other. Separation pay was awarded in favor of petitioner Lydia Santos because the NLRC found that her reinstatement was no longer feasible or appropriate. As the term suggest, separation pay is the amount that an employee receives at the time of his severance from the service and, as correctly noted by the Solicitor General in his Comment, is designed to provide the employee with “the wherewithal during the period that he is looking for another employment.” In the instant case, the grant of separation pay was a substitute for immediate and continued re-employment with the private respondent Bank. The grant of separation pay did not redress the injury that is intended to be relieved by the second remedy of backwages, that is, the loss of earnings that would have accrued to the dismissed employee during the period between dismissal and reinstatement. Put a little differently, payment of backwages is a form of relief that restores the income that was lost by reason of unlawful dismissal; separation pay, in contrast, is oriented towards the immediate future, the transitional period the dismissed employee must undergo before locating a replacement job.”

In *Hernandez vs. NLRC*,^[22] involving an illegally dismissed employee, this Court held that “petitioner should be paid backwages not exceeding three years without deduction and separation pay in the amount of one month for every year of service.” In another case, this

Court stated “the public respondent’s order for the private respondents’ reinstatement to their former position is no longer possible under the circumstances. An award equivalent to three years backwages plus separation pay to compensate for their illegal separation is thus proper.”^[23] Also in *Asphalt & Cement Pavers, Inc. vs. Vicente Leogardo, Jr.*,^[24] we held that “an illegally dismissed employee is entitled to reinstatement to his previous position without loss of seniority rights with backwages for a period of three (3) years without qualification or deduction. If reinstatement is no longer feasible, the employer may be ordered to pay, in addition to backwages, separation pay as provided by law.”

In the light of the above rulings of this Court, petitioner, by reason of his illegal dismissal is entitled to both separation pay and backwages. However, the amount of backwages shall be based on the Mercury Drug Rule which limits backwages of illegally dismissed employees to an amount equivalent to their wages for three (3) years, without qualification and deduction. The Court has adopted the practice of fixing the amount of backwages at a reasonable level without qualification and deduction so as to relieve the employees from proving their earnings during their layoffs and the employer from submitting counter proofs and thus obviate the twin evils of idleness on the part of the employees and attrition and undue delay in satisfying the award on the part of the employer. This practice has been hailed as a realistic, reasonable and mutually beneficial solution. An award of backwages equivalent to three years (where the case is not terminated sooner) serves as the base figure for such award without deduction.^[25]

Again, as we stated in *Lepanto Consolidated Mining Company vs. Olegario*:^[26] “The Court serves notice on the National Labor Relations Commission (NLRC), labor arbiters and other responsible officials of the Department of Labor and Employment to take their bearings from this rule that illegally dismissed employees or laborers shall be entitled to reinstatement without loss of seniority (rights) and payment of backwages of not more than three (3) years without any qualification or deduction. Although this policy had been consistently adhered to by the Court even after the passage of the present Labor Code, there are still many instances, as in this case and other cases decided by the Court, where the labor arbiters and/or the NLRC still

awarded backwages beyond the 3-year limit set by the Court. The governing principle, which has given consistency and stability to the law, is stare decisis et no movere (follow past precedent and do not disturb what has been settled).^[27]

With regards to petitioner's separation pay which was awarded to him in lieu of reinstatement, he shall receive the amount equivalent to one month wage/salary for every year of service, including the three-year period in which backwages are awarded. This finds support in the case of Grolier International, Inc. vs. Amansec,^[28] wherein we held:

“Thus, when the Court stated that private respondent was entitled to ‘separation pay based on the applicable law or company practice, whichever is higher, effective as of the end of the above three (3) year period,’ it meant only that in the computation of separation pay, the three (3) year period in respect of which backwages are awarded, must be included (although private respondent had not actually served during the last three (3) years).”^[29]

Furthermore, his actual service with private respondent for approximately nine (9) months, counted from October 1977 to July 1978 shall be considered as one (1) year, in accordance with Article 283 of the Labor Code, which provides that a fraction of at least six (6) months is considered one (1) whole year.

Petitioner Valentino Torillo was illegally dismissed in 1978. This case has been pending for almost thirteen (13) years. In the interest of justice and equity as well as to avoid any further ambiguities, this Court shall fix the exact amount due petitioner. Thus, based on the records of the case,^[30] we hold that the total amount due to petitioner is P146,255.37, computed as follows:

A. Backwages

$P330,050.00^{[*]} / 2,779 \text{ days} \times 365 \text{ days}$
x 3 years P130,048.48

B. Holiday Pay

1,610.00

C. Separation Pay	
P330,050.00/2,779 x 30 days x 4 years	14,251.89
D. Unpaid Wages from July 1 to 3, 1978	<u>345.00</u>
TOTAL	P146,255.37
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WHEREFORE, the Petition is granted. The Decision in Labor Case No. R-4-STF-7-4525-78 is hereby modified. Private respondent Aberdeen Court, Inc. is hereby ordered to pay petitioner Valentino Torillo, the amount of P146,255.37 representing his backwages, separation pay, holiday pay and unpaid wages by reason of his illegal dismissal. This decision is immediately executory. Costs against private respondent.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin and Davide, Jr., JJ., concur.

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- [1] Rollo, pp. 18-19.
 - [2] Rollo, pp. 26-27.
 - [3] Rollo, pp. 28-31; p. 35.
 - [4] Rollo, pp. 36-39.
 - [5] Rollo, pp. 41-43.
 - [6] Rollo, pp. 45-46.
 - [7] Rollo, pp. 51-52.
 - [8] Rollo, p. 53.
 - [9] Rollo, pp. 54-55.
 - [10] Rollo, pp. 56-58.
 - [11] Rollo, p. 64.
 - [12] Rollo, pp. 65-66.
 - [13] Rollo, pp. 75-79.
 - [14] Rollo, pp. 88-91.
 - [15] Rollo, pp. 94-96.
 - [16] Rollo, p. 85.
 - [17] Rollo, pp. 26-27.
 - [18] Rollo, p. 91.
 - [19] PAL vs. NLRC, G.R. 55159, December 22, 1989, 180 SCRA 555.
 - [20] Grolier International, Inc. vs. Amansec, et al., G.R. 83523, August 31, 1989, 177 SCRA 196.
 - [21] G.R. No. L-76721, September 21, 1987, 154 SCRA 166.
 - [22] G.R. No. 84302, August 10, 1989, 176 SCRA 269.

- [23] Sy Chie Junk Shop vs. Federacion Obrera de la Industria y Otro Trabajadores de Filipinas (FOITAF), G.R. No. L-30964, May 9, 1988, 161 SCRA 143 cited in St. Louis College of Tuguegarao vs. NLRC, G.R. No. 74214, August 31, 1989, 177 SCRA 151.
- [24] G.R. No. 74563, June 20, 1988, 162 SCRA 312.
- [25] Lepanto Consolidated Mining Company vs. Executive Labor Arbiter, G.R. 77437, June 23, 1988, 162 SCRA 512.
- [26] Ibid.
- [27] J.M. Tuazon & Co. vs. Mariano, 85 SCRA 644 (1978).
- [28] G.R. No. 83523, August 31, 1989, 177 SCRA 196.
- [29] Emphasis supplied.
- [30] p. 44, Rollo.
- [**] Representing petitioner's full basic pay from July 4, 1978 to February 13, 1986 (2,779 days).