

MERCURY DRUG CO., INC. AND MARIANO QUE, PETITIONERS, VS. COURT OF INDUSTRIAL RELATIONS AND NARDO DAYAO, RESPONDENTS.

G.R. No. L-23357. April 30, 1974

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Petitioners Mercury Drug Co., Inc. and Mariano Que, as manager, seek the reversal of the decision of respondent Court of Industrial Relations dated January 17, 1964 and its order dated February 25, 1964 denying petitioners' motion for reconsideration of the said decision.

Private respondent Nardo Dayao was employed on February 13, 1956 by the petitioners originally as driver, later assigned as delivery man, then as checker and was last promoted to the position of assistant chief checker in the checking department with the salary of P225.00 a month until his separation on April 10, 1961.

Dayao's appointment as checker states that his annual compensation was P2,400.00 "which includes the additional compensation for work on Sundays and legal holidays. Our firm being a Service Enterprise, you will be required to perform work every day in a year as follows: 8 hours work on regular days and all special holidays that may be declared but with 25% additional compensation; 4 hours work on every other Sunday of the month; 4 hours work on all legal holidays. For any work performed in excess of the hours as above mentioned, you shall be paid 25% additional compensation per hour." (Exh. 2, pp. 59-60, rec.).

Days before April 10, 1961, Dayao in vain urged herein petitioners to pay them overtime pay, criticized their employees' association for failing to protect the welfare of the employees by not securing such additional compensation for overtime, and campaigned among his co-employees to organize another labor union. Hearing of Dayao's union activities, petitioner Mariano Que called for Dayao on April 10, 1961, told him to resign and persuaded him to accept the amount of P562.50 as termination pay and to sign a clearance stating to the effect that he has no claims whatsoever of any kind and nature against herein petitioners (Exh. 1).

On April 25, 1963, exactly two years and fifteen days from his separation on April 10, 1961, Dayao filed a complaint for unfair labor practice against herein petitioners for dismissing him because of his having campaigned among his co-employees to become members of a new labor union that he was then organizing (Annex A, pp. 19-20, rec.).

In their answer dated May 10, 1963 to the ULP complaint, herein petitioners interposed as their only defense that Dayao "was separated from the service x x x for cause because of creating trouble with another employee who was also dismissed and that even if the said complainant was separated for cause, he received compensation pay and hereby relieved respondent from whatever claim or claims that he had against respondents." Laches was not invoked by herein petitioners in their answer (Annex B, pp. 21-22, rec.), nor in their memorandum dated October 28, 1963 (Annex C, pp. 23-32, rec.), much less in their arguments dated February 12, 1964 in support of their motion dated and filed on August 3, 1964 for the reconsideration of the decision dated January 23, 1964. It is only

in their instant petition for review filed on August 28, 1964 that they relied on laches, aside from estoppel, to defeat herein private respondent Dayao's ULP charge, taking a cue from the dissent dated July 27, 1964 of Judge Emiliano R. Tabigne of the herein respondent Court of Industrial Relations, from the resolution of February 25, 1964 of the Presiding Judge and three Associate Judges of the respondent Court of Industrial Relations denying herein petitioners' motion for reconsideration of their decision dated January 17, 1964.

I

It is an established principle that the findings of fact of the Court of Industrial Relations, when supported by substantial evidence, are conclusive and binding on this Court (Sec. 6, R. A. No. 875; *Phil. Fiber Processing Co., Inc. vs. CIR*, G.R. No. L-29770, July 19, 1973, 52 SCRA 110, 114; *Bulakena Rest. & Cat. vs. CIR*, G.R. No. L-26796, May 25, 1972, 45 SCRA 87, 100; *Compania Maritima vs. Compania Maritima Labor Union*, G.R. No. L-29504, Feb. 29, 1972, 43 SCRA 464, 468; *Cruz vs. Phil. Assn. of Free Labor Unions*, G.R. No. L--26519, Oct. 29, 1971, 42 SCRA 68; *Phil. Eng. Corp. vs. CIR*, G.R. No. L-27880, Sept. 30, 1971, 41 SCRA 89; *Castillo vs. CIR*, G.R. No. L-26124, May 29, 1971, 39 SCRA 75, 83; *Lakas ng Manggagawang Makabayan vs. CIR*, G.R. No. L-32178, Dec. 28, 1970, 36 SCRA 600).

If the respondent Court ignored the evidence adduced by herein petitioners, it would be guilty of grave abuse of discretion to warrant a review by Us of the findings of fact (*Caltex Filipino, etc. vs. CIR*, G.R. No. L--30632-33, Apr. 11, 1972).

Contrary to the contention of herein petitioners, the finding of fact that herein private respondent Nardo Dayao was dismissed from the service because of his union activities and that consequently herein petitioners were guilty of unfair labor practice is amply substantiated by credible evidence. Thus, the referee hearing officer, whose findings of fact and conclusions of law, were affirmed in toto by the respondent Court to be "supported by the evidence and the law on the matter," stated in his report:

"Dayao testified that on April 10, 1961, respondent Que summoned him in the office and inquired why he was organizing a new union in spite of the fact that there is already a labor organization existing in the company and when he replied: 'I did this thing because the company has not been paying us the minimum wage and the company has not been paying us for four hours work rendered on Sundays and also for four hours work rendered on special holidays' (Tsn. pp. 8-9, July 10, 1963), respondent Que said: 'Ah, ganoon pala. So you are organizing a new union, if that is so, from now on I do not like to see you any more in this office and you can no longer enter the service or work in the company, I don't like unionist' (Tsn. pp. 10-11, *ibid*); that several minutes after he was told to wait, respondent Que brought out an amount of money and a piece of paper which he was asked to sign before delivering to him the money; that he told respondent Que: 'I cannot sign this paper because in fact and in truth I am not resigning from the company' but respondent Que retorted: 'whether you sign it or not, you could no longer work so you better sign it'; and that 'after thinking about the matter that whether or not I sign the paper I would be laid off and if I would be laid off I would have no money, so ultimately, I signed the paper and received the amount of P562.50 stated in the paper.' (Tsn. pp. 11-12, *ibid*). The paper referred to is a cash voucher (Exhibit 'A' and also Exhibit '4' covering complainant's separation pay of 15 days for every year of service.

"Dayao also declared that the proximate or immediate cause why he made efforts to organize a separate union which he actually began in February, 1961, 'was because the management, particularly the manager, in spite of my several approaches to him, and in spite of my several representations made to pay us the additional twenty-five percent and excess of the four hours work on Sundays and legal holidays, did not like to give us such right or such payment' and for the further reason that 'our union, the Mercury Drug Company, Incorporated Employees' Union, was anemic in that it did not do anything towards the welfare and protection of its member-employees, like for example those employees who were dismissed were not investigated and also I approached our president of the union bringing to his attention my request to the manager about the

payment of extra compensation for work on Sundays and special holidays and our union president told me that he could not do anything about that.' (Tsn. pp. 34-35, *ibid*). According to Dayao, among the employees he had convinced beginning February, 1961 and who agreed with him to organize another union were Josias Fideras, Nestor Talampas, Armando de Leon, Aladdin Dimagmaliw and Rogelio Orbeta.

"The testimonies of Josias Fideras and Nestor Talampas, assistant traffic supervisor and driver-deliveryman, respectively, substantially corroborated Dayao's declaration in material points, in that sometime in February, 1961, the latter talked to them to joining a new labor union that he was organizing; that they were convinced of Dayao's explanations and agreed to go along with his activities because of the management's aversion to pay them overtime on Sundays and holidays and in view of the fact that their Association in the company was not good or it was not doing anything for the interest and welfare of its members; and that Dayao was not able to formally organize a separate union, as planned, because he was discharged from the service of the corporation.

"On the other hand, testifying on the cause of complainant's separation from the service, the president and general manager of the corporation, respondent Mariano Que, declared: 'I think he (Dayao) quarreled with the president of their union, as a matter of fact he even have his head swollen, and he also threatened, I think, Ranin. He even threatened that he would kill Ranin so I called them to the office to discuss the matter. I tried to pacify them, but they seem to be really very very mad at each other and they wanted to quarrel. So I told them if that is the case, that they want to create scandal in the office, I think it would be better for them to resign. At that time actually they were in a furious mood that they could not be pacified, so I requested that they resign from their job because I did not want to affect the office, and they both agreed that they resign.' (Tsn. pp. 7-8, September 21, 1963). According to respondent Que, the quarrel between Dayao and Ranin happened on Saturday, April 8, 1961, in the Apollo Restaurant. In other words, the alleged incident did not take place in the office or premises of the respondent corporation.

"Jacinto Concepcion, personnel manager and also acting paymaster, stated that on Monday, April 10, 1961, upon instruction of Mariano Que, he prepared the cash voucher covering the separation pay of Dayao of 15 days for every year of service, as well as the corresponding check therefor in the sum of P562.50 and that after Dayao had signed the voucher, the check was delivered to him on that same day; and that Dayao likewise received the amount of P140.58 representing his salary for a certain period not shown in the records (Exhibit '3', and also signed a clearance statement to the effect that he has no claims of whatever kind and nature against the respondents (Exhibit '1'). Concepcion, however, confessed no personal knowledge of the alleged quarrel between Dayao and Ranin in the Apollo Restaurant on the evening of April 8, 1961, except from what respondent Que told him on April 10, 1961.

"Romualdo Reyes, secretary and legal counsel of the corporation, among others, claimed that sometime before the separation of complainant, the latter had consulted him outside of the office about the vale system of the Association and asked his intercession so that said complainant could also get bigger vales like the other officers of the Association but that he refused telling Dayao that the company has nothing to do about the matter for that is the affair of the Association. Atty. Reyes was not present at the conference between respondent Que and complainant Dayao on April 10, 1961, and, just like Concepcion, he was only informed by Que of what transpired therein.

"In the examination in chief and in rebuttal, Dayao denied having had a quarrel with the Association president, Apolinario Ranin, on anydate before his dismissal and also asserted that he is not aware of whether Ranin was also dismissed or not. Fideres and Talampas also professed no knowledge about the alleged quarrel.

"There is no question that complainant herein received from the respondents the two sums of money stated above, as well as having signed Exhibits '1', '3' and '4'. There is also no dispute that he was called by respondent Que in the office on April 10, 1961, and on that date was separated from employment. The only question to be decided is whether Nardo Dayao was discharged due to union activities, as he alleged, or for valid cause because of creating trouble with another employee, as claimed by the respondents.

"After carefully scrutinizing the records and evidence adduced in this case, the Court is not inclined to believe the version given by the respondents. Be it noted that there is no clear and positive proof establishing the fact that there really was a quarrel between Dayao and Ranin which allegedly happened in the Apollo Restaurant on the night of April 8, 1961. Respondent Que's declaration that 'I think' there was such a quarrel and that he again 'think' that Dayao would inflict bodily harm to Ranin could not be given credence as it was only based on surmise and belief. Likewise, the testimonies of Jacinto Concepcion and Romualdo Reyes regarding the said incident could not be given probative weight because the tales they narrated in Court relative thereto were just information they received from respondent Que, who may be said is not a disinterested party if not biased. And while it is incumbent upon Concepcion to make investigation of troubles among the company employees in view of his position as personnel manager, as he admitted, no investigation was made in the case of Dayao and Ranin even after he was so informed of such trouble. (Tsn, 69, J. Concepcion, August 31, 1963). It must be noted that Davao, vehemently and steadfastly denied having had a quarrel with Ranin on any given time and expressed no knowledge of whether Ranin was also discharged or is still in the employ of the corporation. In this connection, it is significant that Ranin, then union president and one of the alleged protagonists, who could very well corroborate respondent Que's testimony on the incident and thus overcome Dayao's denial, was not presented by the respondents as a witness in this case, a circumstance which strongly militates against their cause.

"But granting arguendo that the quarrel did really occur, the Court nevertheless is of the opinion that it could not be a sufficient basis for discharging from employment complainant herein. The quarrel admittedly took place in a restaurant far from the company premises and, therefore, did not and could not have prejudiced and affected in any manner the normal course of business of the corporation nor, to say the least, has it relevant bearing on the complainant's employment as there is no showing that the incident happened during complainant's official working time. The added contention that the complainant resigned when told to do so by respondent Que does not generate belief. It is worthy to mention that the complainant had been continuously in the service of the corporation for more than five years since February 23, 1956, working as a driver, a delivery man, a checker, and then as assistant to the chief checker of the checking department. There is no doubt his promotions in positions were with corresponding increase in pay. He is a family man. His employment in the corporation is his only means of livelihood. This being so and taking into account the prohibitive prices of prime necessities in life nowadays, the tightness of money and scarcity of employment opportunities being felt not only in metropolitan areas but also in rural and urban places, it is hard to believe that Dayao would be so irresponsible and reckless to resign his position. He never intended leaving the service of the corporation but, as the records demonstrate the receipt of the money, execution of Exhibits '1', '3' and '4', and consequent separation from employment were forced upon him. There was no actual physical force employed by respondent Que upon the person of Dayao into making him sign the documents and receive the termination pay. But the act of the president and general manager of the corporation in telling complainant herein that whether or not he signs the documents he would be dismissed just the same could he said a direct threat and a display of force and authority which afforded Dayao no alternative but to obey as he was bided to do. While troubles among the employees, according to personnel manager Concepcion, are investigated by him, no such investigation was conducted by him regarding the alleged trouble between Dayao and Ranin 'because I did not want to prejudice the general manager inasmuch as he was personally handling the case.' (Tsn, p. 69, August 31, 1963). If Concepcion, who belongs to the managerial staff, was fearful of antagonizing the president and general manager of the corporation, how much more of a minor employee like Dayao. Under such a situation, it is believed that no reasonable person would do less than what Dayao did in signing the documents and receiving the amount of his separation pay. But acceptance of termination pay does not divest a laborer the right to prosecute his employer for unfair labor practice acts (PMC vs. National Labor Union, 48 O.G. 2765; Philippine Sugar Institute vs. CIR, et al., G.R. No. L-13475, Sept. 29, 1960), much less for signing the clearance paper, Exhibit '1', considering the attendant circumstances surrounding the execution of the same, (See also Sec. 5[a] R. A. 875).

"The fact is that complainant herein was given the separation pay and told to leave the service of the

corporation because of his union activities. It has been shown that his efforts and representations made to respondent Que for the payment of overtime compensation and for the excess hours of work rendered on Sundays and holidays were of no avail. According to the respondents, such claims are not tenable because they are fully covered by the contracts of employment. But, as the records will indicate, Dayao believed otherwise and his stand was shared by the other employees, like Josias Fideres and Ernesto Talampas. An examination of the employment or appointment paper of Nardo Dayao, dated October 30, 1959 (Exh. 'B', also Exh. '2') would show that the contents thereof may be subject to interpretation, more particularly with respect to whether the employee is entitled to overtime or additional compensation to the '4 hours work on every Sunday of the month' and '4 hours work on all legal holidays,' or that the same is included in the basic pa. But the Court refrains from passing on the matter because that is not the issue in this case. What is important to slate is the fact that the management had received same requests from the employees for clarification on whether they should be given additional compensation for four hours work on Sundays and holidays. Thus, Concepcion declared –

'HEARING OFFICER (To the witness)

On this particular matter of four hours work on every other Sunday of the month and four hours work on legal holidays, have you received a request for clarification of such matter.

'THE WITNESS

Yes, sir,' (Tsn, p. 87, August 31, 1963)

"Moreover, according to Atty. Reyes, in a special meeting of the Mercury Drug Company, Inc. Employees' Association held on August 31, 1969, he took the opportunity to explain to those gathered in the said meeting that the additional compensation for the four hours work on Sundays and holidays is already included in their basic pay, which only demonstrate that there was already a clamor then for such additional pay. The foregoing buttress the complainant's assertion that on several occasions he had requested respondent Que for the payment of such additional compensation, a fact not denied or rebut led by the said respondent.

It has also been established that Dayao brought to the attention of the president of the Association the matter of additional compensation with the view to having their union make a concerted request from management for the payment thereof but Apolinario Ranin, then the Association president, told him that nothing could be done about his request. This piece of evidence remained un rebutted also because Ranin was not called by the respondents to testify in this case. In relation thereto, there is reason to believe that the Association had been less vigorous and potent as an existing labor organization because before and after the present dispute arose, it had and still continues to have as its presidents persons occupying managerial and highly confidential positions, whose interests are evidently allied with that of the management. This conclusion finds further support from the testimony of the present Association president, Jacinto Concepcion, that he was unaware of any meeting held during the incumbency of his predecessor, Apolinario Ranin, and that it was through his personal talks with management and not through the representation of the Association that the employees have been granted each a sack of rice or equivalent value of P25.00 a month and also the benefit of group insurance. What is even worse is that Concepcion could not state the names of the other officers of the Association during his incumbency, as well as during the term of office of Ranin.

"Considering the foregoing facts and circumstances, there is reason to believe complainant's assertion that due to the failure of the management to pay them the additional compensation for services on Sundays and holidays and for the excess of the four hours work on said days and compounded by the refusal of the then Association president to take common cause with his request for the payment of such money claim, he did plan to form a separate union, no doubt, upon the hypothesis that in union there is strength. The records show that beginning February, 1961, he put into effect his plan by campaigning among his co-employees in the respondent

corporation, like Josias Fideres, Nestor Talampas, Armando de Leon, Aladdin Dimagmaliw and Rogelio Orbeta. That he really exerted efforts talking to, and convincing, the employees and laborers of the corporation to join with him in organizing a new union was satisfactorily substantiated and corroborated by two witnesses, Fideres and Talampas, whose presence in Court – it may be worth mentioning – was made possible by the complainant herein only through the coercive processes of the Court. They, however, declared that the new union was formally established, as planned, due to the complainant's separation from the service.

"Be it emphasized that respondent Que never disclaimed knowledge of charging employee's union activity. In his testimony, he did not state or in any way insinuate that he was not aware of Dayao's union activity before April 10, 1961. It was Concepcion who expressed into the records no knowledge of the activity of Dayao, but whose testimony to that effect, nevertheless, is of no moment considering that he had no hand nor was he consulted by respondent Que in the punitive action taken against Dayao. The evidence, therefore, of the complainant that respondent Que came to know of his activity of trying to organize another union before his discharge remained unassailed.

"From all the foregoing discussion, it is clear that the preponderance of evidence sustains a finding in favor of the complainant's version of what occurred between him and respondent Que in the office of the corporation on April 10, 1961, and the Court, therefore, holds that respondents have interfered with complainant's union activity and that his dismissal from employment was discriminatory." (Pp. 35-42, rec.).

The foregoing searching analysis by the hearing officer of the evidence submitted by the parties in the hearing of the unfair labor practice charge, is so impressive and so logical that his findings of facts and conclusions of law were unqualifiedly adhered to by the four members of the respondent Court of Industrial Relations. WE can do no less.

II

The insistence on the part of petitioners that the acceptance by private respondent Dayao of a separation pay and his signing a renunciation of any other claim against herein petitioners, militates against the charge of unfair labor practice gets into the teeth of the principle that such waiver of the rights of labor contravenes public policy and therefore null and void, more so in this case when the root cause of the union activities of Dayao was precisely motivated by his campaign for additional compensation for overtime pay under the Eight-Hour Labor Law, against which claim estoppel or laches is unavailing (see *Manila Terminal Co., Inc. vs. CIR, et al.*, 91 Phil, 625); because acceptance of termination pay does not divest a laborer of the right to prosecute his employer for unfair labor practice acts (*Carino vs. ACCFA*, G.R. No. L-19808, Sept. 29, 1966, 18 SCRA 183, 190; *DMC vs. National Labor Union*, 48 O. G. 2765; Phil. *Sugar Institute vs. CIR, et al.*, G.R. No. L-13475, Sept. 29, 1960). As Mr. Justice Conrado Sanchez, speaking for the Court in the *Carino* case, *supra*, stated: "Acceptance of those benefit s would not amount to estoppel. The reason is plain. Employer and employee, obviously, do not stand on the same footing. The employer drove the employee to the wall. The latter must have to get hold of money. Because, out of job, he had to face the harsh necessities of life. He thus found himself in no position to resist money proffered him. His, then, is a case of adherence, not of choice. One thing sure, however, is that petitioners did not relent on their claim. They pressed it. They are deemed not to have waived any of their rights. *Renuntiatio non praesumitur.*"

As in the case at bar, private respondent has never relented in his claim. His filing was merely delayed and he is pressing it.

From the time he was employed as checker, private respondent was made to waive his right for additional compensation for overtime pay under the appointment extended to him (see pp. 59-60, rec., or pp. 14-15, Annex

F). Said qualified appointment is clearly an exploitation of the employee who would be compelled to work more than eight hours on Sundays and legal holidays without additional compensation, since in his appointment additional compensation for work on Sundays and holidays was deemed or expressly included in his annual salary of P2,400.00. Under such an appointment, he can be required to work for four hours every Sunday and for four hours on every legal holiday without additional pay.

III

It is true that unfair labor practice charge with the prayer for reinstatement with back wages should be filed within a reasonable period of time. But laches, like estoppel, should also be alleged as a defense in the answer, otherwise the same is considered renounced. Petitioners failed to expressly allege the same in their answer to the ULP charge, in their memorandum and in their motion for reconsideration of the CIR decision.

However, the lapse of two years and 15 days from the dismissal from the service to the filing of the ULP charge is not an unreasonable period of time under the circumstances.

In this respect, the statute of limitations prescribed by the Civil Code of the Philippines should apply in the absence of any other specific legal provision. Article 1146 of the Civil Code of the Philippines directs that the action upon an injury to the rights of the plaintiff must be instituted within four years. An action upon a contract should be filed within 10 years (Art. 1144, CCP). All other actions whose periods are not fixed in the Civil Code or in other laws must be brought within five years from the time the right of action accrues (Art. 1149, CCP). Whether the ULP charge is based on an injury to the rights of Dayao or placed under the category of all other actions for which no law prescribes the time limit for their institution, the filing by respondent Dayao of the ULP charge against herein petitioners was well within either the prescriptive period. It should be stressed that the 1935 Constitution has been very solicitous for the welfare of labor and expressly slated that the State shall afford protection to labor (Sec. 6, Art. XIV, 1935 Constitution) and expressly committed itself to the promotion of social justice to insure the well-being and economic security of all the people (Sec. 5, Art. II, 1935 Constitution). The 1973 Constitution expanded such guarantees and imposes upon the State the duty to "assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work," after stipulating that the State "shall promote full employment and equality in employment, insure equal work opportunities regardless of sex, race or creed" (Sec. 9, Art. II, 1973 Constitution). WE would be denying such constitutional guarantees to herein private respondent Dayao, if the position of herein petitioners were sustained.

Finally, if the dismissal of herein private respondent Dayao was for just cause, then there was no reason for petitioners-employers to give him termination pay; because under the Termination Pay Law, otherwise known as Republic Act No. 1052, as amended by Republic Act No. 1787, the employee whose services are terminated for just cause is not entitled to termination pay (Sec. 1, Rep. Act No. 1052, as amended).

Even under the Termination Pay Law, the alleged quarrel between private respondent Dayao and one Ranin, the president of the labor union, in the presence of herein petitioner Mariano Que as manager of petitioner corporation, is not one of the grounds justifying the dismissal of private respondent Dayao. It is not even analogous to "serious misconduct or willful disobedience of the orders of his employer or its representative in connection with his work." Even if it were conceded that private respondent Dayao verbally quarrelled with the former president of their employees' association in the presence of manager Mariano Que and that both ignored the latter's admonition for them to stop quarrelling, at most the same was discourtesy which was not intended considering the origin of their quarrel – the failure of Ranin, former president of the labor union, to fight for overtime pay for services rendered on Sundays and holidays. Such discourtesy, at most, merits merely a reprimand or admonition-but not outright dismissal, since it did not involve the efficiency nor honesty of private respondent Dayao. The fact that Dayao had been in the service for five years and ten months, during which period

of time he was promoted from driver to delivery man, to checker and finally to assistant chief checker in the Checking Department with a salary of P225.00 a month demonstrates his efficiency, competence and trustworthiness.

The remaining question is how much back wages shall be allowed private respondent Dayao.

While this case was submitted for decision on March 29, 1965, the delay in its resolution is not due to the parties. However, it should be noted that private respondent Dayao filed his ULP charge with reinstatement and back wages about two years and fifteen days after his separation on April 10, 1961. As aforesaid, the shortest prescriptive period for the filing of all other actions for which the statute of limitations does not fix a period, is four years. The period of delay in instituting this ULP charge with claim for reinstatement and back wages, although within the prescriptive period, should be deducted from the liability of the employer to him for back wages. In order that the employee however should be relieved from proving his income during the period he was out of the service and the employer from submitting counterproofs, which may delay the execution of the decision, the employer in the case at bar should be directed to pay private respondent Dayao back wages equivalent to one year, eleven months, and fifteen days without further qualifications.

In fairness to the employer, he should not be compelled to reinstate an employee who is no longer physically fit for the job from which he was illegally ousted.

WHEREFORE, the petition is hereby dismissed and petitioners are hereby directed:

(1) TO PAY PRIVATE RESPONDENT NARDO DAYAO BACK WAGES EQUIVALENT TO ONE YEAR, ELEVEN MONTHS, AND FIFTEEN DAYS;

(2) TO REINSTATE HIM AFTER CERTIFICATION OF HIS PHYSICAL FITNESS BY A GOVERNMENT PHYSICIAN; AND

(3) TO PAY THE COSTS.

SO ORDERED.

Makalintal, C.J., Zaldivar, Castro, Fernando, Barredo, Antonio, Esguerra, Fernandez, Muñoz Palma, and Aquino, JJ., concur.

Teehankee, J., see his concurring and dissenting opinion.

CONCURRING AND DISSENTING OPINION

TEEHANKEE, J.:

I concur on the whole with the main opinion for the Court of Mr. Justice Makasiar affirming the judgment of respondent court of industrial relations finding petitioner guilty of unfair labor practice in wrongfully dismissing from its employ private respondent because of the latter's just demands for the payment of extra compensation for work done on Sundays and special holidays by him and his co-employees and ordering the reinstatement of respondent upon certification of his physical fitness by a government physician.

I particularly endorse the new formula reached by the Court in ordering that respondent be paid a fixed amount of back wages (equivalent to 1 year, 11 months and 15 days in the case at bar) "without further qualifications," that is to say, without having to determine and deduct earnings from the general award of back wages from date of unlawful dismissal until actual reinstatement heretofore customarily made in such unfair labor practice and

reinstatement cases. Such general awards, as noted in the main opinion, generally led to long delays in the execution of the decision for back wages and reinstatement, due to protracted hearings and unavoidable delays and difficulties encountered in determining the earnings of the laid-off employees during the pendency of the case.[1]

As observed by the Court in another case[2] such general award for back wages tended to breed idleness on the part of a discharged employee who would "with folded arms, remain inactive in the expectation that a windfall would come to him" and therefore directed that "in mitigation of the damages that the dismissed respondents (employees) are entitled to, account should be taken of whether in the exercise of due diligence respondents might have obtained income from suitable remunerative employment."

On the other hand, it is to be noted that unscrupulous employers have with unrelenting attrition against their unwanted employees who successfully obtained judgments for reinstatement with back wages seized upon the further proceedings in the industrial court (to determine the actual earnings of their wrongfully dismissed employees for purposes of deduction from the back wages award) to hold unduly protracted and extended hearings for each and every employee found entitled to back wages and thereby practically render nugatory such judgments and force the employees to agree to unconscionable settlements of their judgment award.[3]

This new principle formally adopted by the Court now in fixing the amount of back wages at a reasonable level without qualification and deduction so as to relieve the employees from proving their earnings during their lay-offs 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 is thus to be hailed as a realistic, reasonable and mutually beneficial solution.

I dissent, however, from the specific result in the judgment at bar of awarding respondent back wages only in an amount equivalent to 1 year, 11 months and 15 days – which is apparently premised arbitrarily on granting respondent back wages only for the remainder of the four-year prescriptive period after deducting the 2 years and 15 days delay incurred by respondent after his discharge in filing his complaint for unfair labor practice and reinstatement. The very same opinion found that such delay "is not an unreasonable period of time under the circumstances" and it should follow that such delay should in no manner prejudice the amount of the back wages award justly due respondent – particularly, when it is considered that he pursued with vigor his complaint after its filing on April 25, 1963 and obtained favorable judgment in the industrial court within a year as per said court's decision of January 17, 1964 and its en banc resolution of February 25, 1964 denying petitioner's motion for reconsideration.

I believe that some ground rules should be laid down in implementing the new formula now adopted of granting a fixed back wages award without further qualification and deduction of earnings during the lay-off so as to expedite the immediate execution of judgment in satisfaction of the award and for reinstatement of the wrongfully dismissed employee(s) (whose reinstatement, as stressed in *East Asiatic Co.*, supra,[4] should be immediately effected upon finality of the judgment without waiting for the computation and determination of the back wages.) Normally, the trial of the case and resolution of the appeal should be given preference and terminated within a period of three years (one year for trial and decision in the industrial court and two years for briefs, etc., and decision in this Court).

Hence, an award of back wages equivalent to three years (where the case is not terminated sooner) should serve as the base figure for such awards without deduction, subject to deduction where there are mitigating circumstances in favor of the employer but subject to increase by way of exemplary damages where there are aggravating circumstances (e.g. oppression or dilatory appeals) on the employer's part. Here, where resolution of the case on

appeal was delayed without fault of the parties but the facts and circumstances clearly show the lack of merit in the appeal taken by the employer-petitioner and its stubborn insistence on depriving respondent and his co-employees of the extra compensation for Sunday and holiday work justly due them, I submit that the minimum award to which respondent is entitled should be at the very least the equivalent of the proposed base figure of three years pay. Employers should be put on notice as a deterrent that if they pursue manifestly dilatory and unmeritorious appeals and thus delay satisfaction of the judgment justly due their employee(s), they run the risk of exemplary and punitive damages being assessed against them by way of an increased award of back wages to the wrongfully discharged employee(s) commensurate to the delay caused by the appeal process.

I further submit that since the Court's judgment dismisses the petition, the reinstatement of respondent upon a finding of his physical fitness shall be "without loss of seniority rights and other privileges appertaining thereto" to which he should have been entitled during the long period that he was wrongfully dismissed from petitioner's employ, as provided in the industrial court's judgment as affirmed in the case at bar.

[1] Ct. Phil. Fiber Processing Co. Inc. vs. CIR, 52 SCRA 110, 112 and 1111, per Castro, J and Diwa ng Pagkakaisa-PAFLU vs. Filtex International Corp., 43 SCRA 217 (1972), per Makatintal, now C.J., both citing East Asiatic Co. Ltd. vs. CIR, 40 SCRA 521 (1971) per Barredo, J. See also Dy Pak Pakiao Workers Union vs. Dy Pak & Co. Inc., 38 SCRA 263 (1971).

[2] Itogon Suyoc Mines, Inc. vs. Sangilo-Itogon Workers Union, 24 SCRA 873 (1968), cited in Diwa ng Pagkakaisa, supra, fn. 1.

[3] See La Campana Food Products, Inc. vs. CIR, 28 SCRA 314 (1969) and Kaisahan ng mga Manggagawa sa La Campana vs. La Campana Food Products, Inc., 36 SCRA 142 (1970).

[4] See fn. 1.

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