

**COMPANIA MARITIMA AND F. GARAY, PETITIONERS AND APPELLANTS, VS. UNITED SEAMEN'S UNION OF THE PHILIPPINES AND THE COURT OF INDUSTRIAL RELATIONS, RESPONDENTS AND APPELLEES.**

*G.R. No. L-28399. July 25, 1975*

Ponente: ESGUERRA, J.

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**ESGUERRA, J.:**

Before Us are two petitions for review, docketed as (1) G.R. No. L-28399 entitled *Compania Maritima and F. Garay, Petitioners, vs. United Seamen's Union of the Philippines and the Court of Industrial Relations, Respondents*; and (2) G.R. No. L-28420 entitled *United Seamen's Union of the Philippines, Petitioner, vs. Compania Maritima, F. Garay and the Court of Industrial Relations, Respondents*. The parties in both cases being the same and the causes of action interrelated and arising out of the same incident, they are taken up jointly and disposed of in this single decision.

Subject of these petitions is the resolution of the Court of Industrial Relations en banc of June 8, 1966, the dispositive portion of which reads as follows:

"FOREGOING PREMISES CONSIDERED, The Court a quo's order of March 6, 1964, awarding complainants the amount of P168,000.00 backwages as computed by the Court's examiner in its first report, with legal interest of 6% per annum, from May 30, 1960, should be, as it is hereby, set aside. In lieu thereof, a new award of P36,188.99 should be paid to herein complainants, as shown in the detailed and individual computations shown above for each of them. And considering the length of time during which this case is pending, respondent *Compania Maritima* is hereby ordered to deposit with the Cashier of this Court the sum of P36,188.99 representing complainants' backwages, within ten days from receipt of a copy of this resolution.

"As regards the backwages corresponding to the overseas trips, including drydocking in Japan, the Parties are hereby directed to present evidence showing the identities of the individuals entitled to said backwages."

For a better understanding of the origin of these cases and to serve as factual background the following are undisputed.[1]

There were 22 seamen (claimants for backwages herein) who served in the Steward Department of the M/V Cebu, owned by the *Compania Maritima* (herein after referred to as the Company), during its trip from Manila to Jedda, Mecca, Saudi Arabia, and return to this country. The voyage started on July 7 and the vessel returned on October 16, 1953. Instead of dropping anchor at the port of origin, Manila, it proceeded to San Fernando, La Union, where *Compania Maritima* discharged and dismissed without valid cause the 22 seamen. When they reached Manila by land transportation and reported to *Compania Maritima*'s Manila Office, they were given their pay. After the M/V Cebu arrived in Manila from San Fernando, La Union, it was sent to Japan for drydocking.

In February of 1954, when the M/V Cebu returned to Manila from Japan, the personnel of said vessel who were

dismissed at San Fernando, La Union, petitioned the General Manager, Don Jose Fernandez, that they be allowed to return to their former positions on the vessel. They were made to understand, however, that they would only be reemployed if they joined the General Maritime Stevedores Union, which apparently enjoyed the good will of the Company. The group refused to join said Union and so were refused readmission and the Company in turn took in replacements.

The United Seamen's Union of the Philippines to whom the discharged employees belong took up the cudgels for them and brought the case to the Court of Industrial Relations (CIR) on charges of unfair labor practice (132-ULP). Hearings were conducted and on August 20, 1955, the CIR found the Company guilty of unfair labor practice and ordered the reinstatement of the 22 seamen with backwages from February 12, 1954. The CIR order was appealed and this Court in G.R. No. L-9923, decided June 20, 1958, affirmed the order.

After the decision had become final, the United Seamen's Union, which will hereafter be referred to as the Union, filed a motion for Execution and Computation of backwages. The CIR issued an Order dated July 22, 1958, directing the reinstatement of the workers involved within 15 days from receipt of the order including computation of their backwages. Pursuant to this order the Examiner of the CIR on September 11, 1958, submitted his report which will hereafter be referred to as the First Report.

In this First Report, the examiners based their computation on the overseas rate of P109.50, the monthly wage allegedly received by the workers during their trip to Jedda, Mecca, plus P36.00 a month for subsistence. The computation amounted to P168,891.80. The Union next filed a motion to have the said amount deposited, which was objected to by the Company. The objections were based on the following grounds:

(1) That it included the period of time during which the M/V Cebu was not on the interisland passenger service; (2) that it included the periods of time during which the M/V Cebu was [on] drydock; (3) that it included the time during which the M/V Cebu was on cargo service; (4) that it included the time during which the workers involved were employed elsewhere; (5) that it included the workers who were re-embarked on the M/V Cebu as soon as they returned from the provinces and asked for their re-embarkation on the M/V Cebu; (6) that it included the workers who returned to their homes in the provinces and worked there; (7) that it is not based on the regular and ordinary wages that the workers were receiving before they were disembarked; (8) that it included periods of time during which the workers were confined in jail by judgment, or could not have returned to work because of physical incapacity; (9) that it included the workers whose whereabouts are unknown; and (10) that it is otherwise contrary to the proven and/or admitted facts of this case, not in accordance with the decision of this Court and is contrary to law and jurisprudence obtaining in this jurisdiction.

Likewise the Company on September 30, 1958, filed a motion to direct the Examiner of the court to examine the files and records of North Camarines Lumber and other companies to determine the salaries which the employees involved might have received from said entities during the period of their dismissal. This was objected to by the Union and the Court on November 11, 1958, denied said motion but ordered the court examiner to determine in his report covering the period from February 12, 1954, to July 31, 1958, the periods when the M/V Cebu had been on: (a) the overseas service; (b) on interisland service; (c) on cargo service; and (d) on drydock.

The Company moved to reconsider the denial of its motion to examine the books of other companies and the court en banc on February 13, 1959, allowed such examination "based on established precedents."

On the basis of the orders of the court dated November 11, 1958, and February 13, 1959, a Second Report was submitted on September 2, 1959. This Second Report had for its basis the interisland rate of P73.00 a month excluding the P36.00 as monthly subsistence allowance included in the computation under the First Report.

Thus the examiner reported: (1) that the period covered in the report is for the month of February 12, 1954, to the date of the workers' actual reinstatement; (2) that the basis of the second report are the payrolls, schedule of trips, vouchers and other pertinent records of the Company; (3) that the records of the Company show that Ignacio Cordova was previously reinstated as Port Cook of the Compania Maritima effective March 1, 1954; (4) that the records of the Company also show that all overseas trips of the M/V Cebu from February 12, 1954, to July 31, 1958, were cargo trips and the Company employed only a skeleton force aboard the ship; hence the report does not include the backwages of the workers herein concerned corresponding to the overseas trip of the ship. In its Steward Department, only the chief steward, chief cook, second cook, storekeeper and six messmen were on board during overseas trips. There were four hundred and seventy-nine and twenty-eight days, respectively, covered by the overseas trips and local drydocking of the M/V Cebu from February 12, 1954 to July 31, 1958; (5) that the amount due each laborer was arrived at by multiplying the rate per month as actually appearing in the payroll by 12, divided by the number of days during the year, times the number of days covered by the backwages; (6) that the total amount due the laborers involved in this case after deducting their earnings elsewhere during the period of their layoff amounted to P42,127.99.

The Union objected to the Second Report and, subject to such opposition, moved on October 27, 1959, that the Company be ordered to deposit the amount of P42,127.99 as computed. The Company filed a motion objecting to the deposit and a counter motion was filed praying that the case be set for hearing as it would present evidence in support of the Company's contention that there are still amounts of earnings elsewhere which should be deducted from the second report of the examiner. Hearings were conducted in the course of which, upon the Union's request, subpoena duces tecum for the production of payrolls of the M/V Cebu covering the periods from June 1954, to September 1955, inclusive; and March 1957, to August 1958, inclusive, were issued. On April 28, 1960 the Company moved to quash the subpoena duces tecum but the motion was denied. However, upon motion for reconsideration the CIR en banc denied the request of the Union for the issuance of subpoena duces tecum with the advertence that the same was premature as the Union had not as yet presented its evidence.

On December 12, 1961, the Union renewed its request for the issuance of subpoena duces tecum. The Company opposed the same and the trial court as well as the CIR en banc denied the Company's opposition. Appeal was taken to this Court but the same was dismissed in a resolution dated March 27, 1962, in G.R. No. L-19494 (Compania Maritima vs. United Seamen's Union of the Philippines).

On January 15, 1963, the Union filed a supplementary motion for execution, praying that backwages be paid plus interest thereon at the legal rate for the period from September 11, 1958, when the First Report was submitted.

On March 6, 1964, Judge Jose S. Bautista, then Presiding Judge of the CIR, approved the First Report dated September 1958, awarding backwages in the amount of P168,891.80 and ordered the Company to pay legal interest from May 30, 1960, up to the time the said amount was actually deposited with the court.

On March 16, 1964, the Company moved to reconsider the decision and the court en banc on June 8, 1966, set aside the aforesaid decision and approved the Third Report made by the examiner. The Third and last Report (Appendix I p. 248, Record) fixed the amount of backwages at P42,127.99 which was later reduced to P36,188.99. This report embraced not only the various aspects of M/V Cebu's trip during the period in dispute, but also the earnings of some of the claimants elsewhere and the total number of days (1,631) covered by the period of the award when the ship was on interisland trips (1,124 days), when on overseas-cargo trips (479 days), and on drydock (28 days). The court examiner arrived at the following computation which was adopted by the court en banc in its resolution, viz:

Inter-island Trips

Drydock Local

Total Amount

Earnings Elsewhere

Amount Due

P51,994.24 P1,382.08 P53,376.32 P15,669.64 P36,188.99

+ 1,382.08 - 15,669.64

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P53,376.32 P37,706.68

The court likewise ordered the immediate deposit of the amount due with the court's cashier within ten days from receipt of a copy of the resolution. As regards the backwages corresponding to the overseas trip including drydocking in Japan, the parties were directed to present evidence showing the identities of the individuals entitled to said backwages. Judges Amando Bugayong and Joaquin Salvador, however, dissented from the majority resolution and arrived at P10,222.41 as the amount that should be paid to the workers as backwages.

The parties not satisfied with the 3rd report as adopted by the court en banc in its resolution dated June 8, 1966, elevated the case to this Court for review. The Union prayed in its petition (G.R. No. L-28420) that the resolution of June 8, 1966 of the court a quo be set aside, and in lieu thereof the order of the respondent court dated March 6, 1964, be affirmed en toto. On the other hand, the Company in its petition (G.R. No. L-28399) asked that judgment be rendered modifying the dispositive portion of the resolution of the respondent court herein appealed from by reducing the award of backwages to be paid by the Company to P10,222.41 as found by the two judges in their dissenting opinion.

Clearly the issue thus raised for determination revolves around the correct computation of backwages as awarded by the Court of Industrial Relations in its order dated August 20, 1955, in Case No. 132-ULP, as affirmed by this Court in G.R. No. L-9923.

## I.

We will first take up the following errors assigned by the Union, for in discussing them the merits of the Company's appeal will be eventually passed upon and disposed of.

- The respondent court erred in computing the backwages based on the interisland rate of P73.00 instead of P109.50 a month for messmen, which latter amount was the salary which the employees involved were actually earning at the time of their dismissal;
- The respondent court erred in not including the reasonable value of the subsistence or meals customarily furnished by the Company to messmen, in the computation and determination of backwages;
- The respondent court also erred in computing the backwages on the daily instead of the monthly basis;
- The respondent court erred in determining and fixing the monthly salary at P73.00 a month without including the meal allowance of P36.00 a month;
- The respondent court erred in making deductions for alleged earnings outside where no valid and substantial evidence have been submitted in the trial court on this matter;

- The respondent court also erred in making certain deductions from the backwages;
- The respondent court erred in not awarding interest as originally granted by the trial court.

Counsel for the Union relies heavily on *Donato vs. Philippine Marine Officers Association*[2] in pointing out an alleged error of the CIR en banc in basing the computation of the backwages on interisland rate of P73.00 instead of P109.50, the amount received by each messman at the time of their dismissal immediately after the return from pilgrimage to Jedda, Mecca. However, the *Donato* doctrine holds true if there is uniformity and continuity in the conduct of the business and in giving pay to its employees. Conditions and circumstances obtaining in the case at bar, being far different from the usual and ordinary trends observed in normal business operations, there is a convincing and reasonable justification to adhere to the basis utilized in the 3rd report (P73.00) in ascertaining with more accuracy the amount of claimants' backwages. Hence the differences in the rate of pay as to each trip necessitated that the computation be based on those different rates of wages for each kind of trip during the period embraced in the award and not on what the claimants were actually earning at the time of their dismissal.

As to the inclusion of the reasonable value of subsistence allowance, as was done in the court examiners' first report but deleted in the examiner's subsequent reports, the respondent court en banc found the record bereft of any evidence to support the same and ordered its non-inclusion in the subsequent reports. We have time and again held that findings of the trial court should be sustained if supported by substantial evidence.[3] Going over the records, We find that the court a quo did not err when it did not include the cost of subsistence allowance in the computation.

The Union persistently asserts that the computation of backwages should have been made on the basis of the monthly instead of the daily pay. This contention is untenable in the light of the undisputed fact that the M/V Cebu was not, during the period from February 12, 1954, to the date of the workers reinstatement, on the interisland service alone but was at times on overseas cargo trips or on drydock. During these various trips the messmen were paid different rates, the highest of which was P109.50 for the special pilgrimage trip to Jedda, Mecca. Hence the respondent court en banc in its disputed resolution, was right when it said that "needless to stress, this non-uniformity as to the kind of M/V Cebu's trip and its duration thereof, which apparently falls short of one month for each trip, would require that the computation of claimant's backwages be converted into a daily rate instead of the monthly rate preferred by claimants, in order to have a more accurate and realistic approach."

## II.

We now come to the matter of deduction which is the core of the problem and the point of sharp disagreements between the parties in their respective memoranda. The Union has tried tooth and nail to show that the respondent court en banc erred in making deductions for alleged earnings outside and in making certain deductions from the backwages citing specific instances. The Company on the other hand contends that certain workers, as held by Judges Bugayong and Salvador, are not at all entitled to backwages and, therefore, the Company has asked this Court to further reduce the backwages as computed in the examiner's third report from P36,188.99 to only P10,222.41.

A careful perusal of the record reveals that some of the messmen claimants herein, after their dismissal, actually worked with other companies. As held in numerous cases,[4] the earnings obtained from other employment should be deducted from the backwages accruing to each of the laborers to be reinstated. In *G. Liner and/or Jose de Keyser vs. National Labor Union, Emiliano Silva and CIR*, this Court, citing the ruling in *Itogon-Suyoc Mines*,[5] established guidelines to be followed in the computation of backwages viz:

1. To be deducted from the backwages accruing to each of the laborers to be reinstated is the total amount of

earnings obtained by him from other employment(s) from the date of dismissal to the date of reinstatement. Should the laborer decide that it is preferable not to return to work, the deduction should be made up to the time the judgment becomes final . . .

2. Likewise, in mitigation of the damages that the dismissed respondents are entitled to, account should be taken of whether in the exercise of due diligence respondents might have obtained income from suitable remunerative employment.

There is no question then that earnings elsewhere after their dismissal should be considered a deductible item in the computation of backwages.

Regarding the other specific cases alluded to by the Union, such as that of Domingo Villafranca who, from evidence on record, died on October 1, 1958, the Company claims that he should not be entitled to any backwages because of physical incapacity. However, the respondent court en banc ruled that intervening incapacity should be reckoned with only from the time such incapacity occurs; and since the certification of the Hospitals (St. Rita and Leyte Provincial Hospital) shows that he was confined on June 9, 1958, then his backwages should correspondingly be computed only up to that date. We do not agree with respondent court's contention. Compania Maritima having been found guilty of unfair labor practice, it is our view that the Company should be made to shoulder all the consequences of its illegal acts. Villafranca's physical incapacity was brought about by his illness and his subsequent death should not be taken against him. He was illegally dismissed and deprived of his rightful employment; hence backwages should be paid to him for the period he was deprived thereof until his death.

The same holds true with Napoleon Bonifacio who, it appears, was confined at the Aklan Provincial Hospital for appendectomy. We believe that no deduction should be made from his backwages. This must be so if We are to enhance the vitality of, and give meaning to, the constitutional precept of social justice the promotion of which should be the primary concern of the State. Justice must be due to the workers for the wrong done to them. We do not, however, extend the act of liberality to Diego Fabroa who, from evidence on record, was detained in prison for homicide on June 23, 1957. To treat him similarly would be to give a premium for the commission of a serious offense punishable under our penal laws. The ruling of the respondent court en banc with regards to Fabroa shall not be disturbed.

Likewise We have noted the cases of other employees such as those of Mayol, Godino and Colina – messmen who allegedly worked in their own farms and/or engaged in game fishing after their dismissal. As found by the respondent court en banc, no clear evidence as to the exact amount of their earnings was introduced and it appears that whatever earnings were derived by the aforementioned employees were meager or nominal and cannot even be considered as wages in strict legal contemplation.

While it is a rule that amount earned even from one's own business is deductible from the computation of backwages (NLRB vs. Poultrymen's Service 138 F 2d 204), it should not be applied to the case at bar, considering the aforesaid findings of the court a quo as to their meagerness and insignificance. The ruling of the respondent court en banc with respect to the denial of backwages to messmen Villarin and Gallardo is not acceptable to this Court. As stated earlier, the Company has been found guilty of unfair labor practices. The fact that these messmen did not, after their unlawful dismissal, find work is not a valid ground for a denial of their backwages to which they were entitled.

The other cases brought up in the parties' respective briefs were rightly decided by the respondent court en banc. Its rulings thereon are affirmed.

Lastly We come to the question of the company's liability for interest at the legal rate on the amount due as backwages. As interest is not recovered according to a rigid theory of compensation for money withheld but is

given in response to considerations of fairness,[6] in view of the length a time that this case has been pending (1955 to the present), it is Our view that an award of interest at the legal rate from May 30,1960, is justified.

WHEREFORE, the judgment of June 8, 1966, under review is modified insofar as the backwages due to Domingo Villafranca and Napoleon Bonifacio, messmen Villarin and Gallardo are concerned so as to give them their full backwages. As regards messmen Quirico Mayol, Enecito Colina and Luis Godina, their earnings elsewhere, being nominal and negligible, should not be deducted. All backwages shall bear interest at the legal rate from May 30, 1960. In all other respects, the judgment appealed from is affirmed.

No costs.

Makalintal, C.J., Castro, Fernando, Barredo, Makasiar, Antonio, Muñoz Palma, Aquino, Concepcion Jr., and Martin, JJ., concur.

Teehankee, J., took no part.

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[1] *Compania Maritima vs. United Seamen's Union*, 104 Phil. 7, 8.

[2] L-12506, May 18, 1959.

[3] *National Fastener Corp. of the Phil. vs. CIR*, L-15834, Jan. 20, 1961, 1 SCRA 17; *Lakas ng Manggagawang Makabayan vs. CIR*, L-32178, Dec. 28, 1970, 36 SCRA 600; *Gonzales vs. Victory Labor Union*, L-23256, Oct. 31, 1969, 30 SCRA 47.

[4] *G. Liner and/or Jose de Keyser vs. National Labor Union, Emiliano Silva and CIR*, L-24963, Nov. 29, 1968, 26 SCRA p. 282, 285; *Itogon-Suyoc Mines Inc. vs. Sangilo-Itogon Workers Union*, L-24189, Aug. 30, 1968; *National Labor Relations Board vs. Poultrymen's Service Corporation*, 138 F 2d 204, 205.

[5] *Supra*.

[6] *Corpus Juris Secundum* Vol. 47 p. 13.

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