

**NEW MANILA CANDY WORKERS UNION (NACONWA-PAFLU) AND
MAGDALENA PINGOL, CARMEN BELTRAN, JOVITA BUSTAMANTE,
CECILIA YUMOL, ROSALINA TRIAS, MAGDALENA PABUSTAN,
FLORENCIA ATANACIO, AU...**

G.R. No. L-29728. October 30, 1978

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

This is a petition for review on certiorari seeking a partial reconsideration of the decision of the Court of Industrial Relations dated July 18, 1968, granting full backwages to petitioners herein from September 1, 1967. The only issue to be resolved in this case is the date from which the backwages of petitioners will start. Petitioners contend that the starting date is March 10, 1961, when they were dismissed illegally by respondents.

The factual background of this case is recited in the decision under review from which We quote in part the following:

"On April 14, 1961, the Prosecutor of the Court filed a complaint for unfair labor practice against the New Manila Candy Factory, Salem Confectionary, Ignacio Medesa, Chang Chu and Puring Techico. The complaint charged respondents of bargaining in bad faith, interference with union activities, mass dismissal and lockout of the individual complainants. Complainants also alleged that the Salem Confectionary and the New Manila Candy Factory are one and the same company and that the former was organized in preparation for the closure of the latter for the ultimate purpose of evading the respondent companies' duties and obligations towards the members of the union, contrary to the provisions of Republic Act No. 875.

"Respondents filed their answer on April 22, 1961, denying the material allegations of the complaint. The New Manila Candy Factory alleged that it did not lockout the individual complainants but had to close business operations because of lack of operating capital and raw materials. The contention is buttressed by the company's presentation of a writ of execution issued by the Sheriff of Manila against the New Manila Candy Factory in favor of the China Banking Corporation. Respondents also claimed that the New Manila Candy Factory and the Salem Confectionary are entirely separate and different business enterprises owned by different persons.

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"The issues raised are:

"1. Did the respondents commit the acts of unfair labor practice imputed against them?

"2. Are the New Manila Candy Factory and the Salem Confectionary one and the same establishment, the latter being the successor of the former, or are the two distinct and separate establishments?

"It is a fact that of the three proposal letters sent to the New Manila Candy Factory, the first two were not received and only the third was. Even with respect to this letter alone, however, the management did not bother to reply and no witness for respondent seriously refuted this claim of the complainants. The same disinterested attitude was showing by respondents at the conciliation conference called by the Department of Labor on February 9, February 14, February 27, March 10 and March 14. The first four conferences were postponed on request of the management of the New Manila Candy Factory. It is true that at the third conference on February 27, the management extended recognition to the union but at the same time it said its recognition would be of no force and effect if the factory would close later. At the conference on March 14, 1961, the management lawyer finally announced the New Manila Candy Factory had ceased operations and then asked for suspension of the negotiation.

"It is clear from the foregoing attitude of respondents with respect to the union proposals and at the conference that they took their own good time acting on the union proposals. From January 1961, when the proposals were sent, to March 14, 1961, the date the closure was announced, respondents tarried action on the union proposals. In the meantime, preparations were obviously being made to effect closure of the factory so that when everything was set, the management of the New Manila Candy Factory extended recognition to the union on February 27, 1961 and finally on March 6, 1961 ceased operations rendering the recognition futile and useless. The bad faith of respondent is evident and their claim of good faith is unavailing particularly in view of the testimonies of the witnesses for complainants that as early as January 25, 1961, people connected with the management had already told them to stop their union membership or activities or else the factory would close down and reopen under a new name without rehiring them.

"Moreover, if the factory was indeed facing foreclosure on action of the China Banking Corporation then the remedy was not to close it but rather to continue its operation, so that more profits could be realized to pay off the mortgage debt. In fact, the factory had already stood off the auction sale of its candy-making machines by arriving at some form of settlement with the Bank. That it nevertheless proceeded to close and shut down could only mean it wanted to evade its obligation to complainant union, when it could have very well continued operations.

"That the management of the New Manila Candy Factory committed the acts of interferences, harassment and discrimination imputed against them culminating in the mass lockout of the complainants is also beyond question. xxx

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"We now come to the question whether the New Manila Candy Factory is one and the same establishment or

entirely different business enterprise as the Salem Confectionary managed by different persons.

"The New Manila Candy Factory was located at 575 P. Sevilla, Caloocan, Rizal (now Caloocan City) and the Salem Confectionary at 577 P. Sevilla, Caloocan, Rizal, or just adjacent to the old factory. Chang Chu, the owner of the old factory, leased the candy-making machines to the new factory after he stopped operating for P200 monthly. He also leased a portion of the building and premises at 577 Sevilla containing an area of about 640 square meters which became the site of the Salem Factory, for P300 a month. If the lease contracts are legitimate, both sums are too measly and would hardly constitute sufficient consideration to a man who has lost in a business venture and who, it is to be expected, would wish to minimize his losses by taking advantage of the situation as much as possible, and thereby even accumulate enough money to start business anew.

"Moreover, the Salem Confectionary had applied for and was granted a license to operate as early as January 10, 1961. This was clearly before there was talk of any financial troubles of the New Manila Candy Factory but definitely after the formation of complainant union in the establishment. The coincidence is not merely accidental for it is hard to believe that a new factory would start business right beside an existing establishment engaged in the same business which at that time was of course in no financial straits. On the other hand, if the intention was to put up a new establishment just adjacent to the existing one so that it would easily lease the facilities and premises of the existing factory should it conveniently close shop, and still make it appear that the two establishments are not one and the same but are entirely different and owned and managed by different persons, then it would indeed be practical to do as respondents did in this case. Besides, there was no need for the New Manila Candy Factory to close shop as it did. The 'Notice of the Sheriff's Sale' was dated February 6, 1961 but subsequent thereto, or on February 20, 1961, the China Banking Corporation had asked the Sheriff to withhold indefinitely the sale at public auction of the factory's properties in view of the settlement arrived at between the New Manila Candy Factory and the Bank. So that, when despite the discontinuation of the sale at public auction, the factory management continued claiming the factory could not operate by virtue of the foreclosure, the intention to deceive by the management became very apparent, for even if it were true that Chang Chu lacked capital and raw materials, the remedy, as earlier said, was not for him to stop operations but rather to continue the same so as to generate income or profits to buy raw materials."

xxx xxx xxx (pp. 16-25, rollo)

On the basis of its findings that respondents committed acts of unfair labor practices as charged in the complaint and that the New Manila Candy Factory and/or Salem Confectionary are one and the same establishments, the Court of Industrial Relations rendered judgment, with the following dispositive portion:

"WHEREFORE, in view of all the foregoing premises, the Court finds and so holds respondents guilty of unfair labor practices by dismissing en masse all the complainants on March 10, 1961 for their union membership and activities with the exception of Marcelino Guinto who was dismissed on January 25, 1961. Consequently, respondents, their transferees or successors-in-interest, including the Salem Confectionary, are hereby ordered to reinstate all the individual complainants to their former jobs or the substantial equivalents thereof, with full backwages from September 1, 1967 and without loss of seniority. There being no substantial evidence presented against respondent Puring Techico, the case against her is dismissed." (p. 27, rollo; italics Ours)

Upon receipt of the foregoing decision, petitioners herein moved for a partial reconsideration of the same

claiming that inasmuch as the decision found the respondent employers guilty of unfair labor practices for having dismissed en masse all the complainants on March 10, 1961, the payment of their backwages should start from March 10, 1961 and not from September 1, 1967, as declared in the judgment.[1]

This motion for reconsideration was however denied on October 14, 1968.[2]

Hence, this petition for review.

All that We are called upon to determine is the starting point from which the payment of full backwages to petitioners is to commence.

The date "September 1, 1967" appearing in the decision under review is explained therein as follows:

"In conclusion, this Court wishes to take note of the claim of the complainants that has reached the ears of the Department of Justice that this case has been delayed. To set the record straight, this Court wishes to state that this case was originally assigned to Sala IV and was transferred only to Sala V shortly upon the assumption of office of the Presiding Judge thereof. This Court also wants to make clear that twice during the proceedings on the merits the Court had to issue Orders warning the respondent to show more diligence in presenting their evidence on pain of having the case submitted for decision should they fail to do so. The Court did this precisely taking into consideration the complainants' interest. We wish to put it of record also that the case was deemed submitted for decision only on September 1, 1967 when complainants filed their memorandum. Since then, a preliminary report has been submitted by the Commissioner assigned to study the case but because of unavailability of the transcript of the testimony of Ignacio Medesa, the principal witness for respondents, for the hearing of September 17, 1963 the Court could not finally decide the case. It was only on July 1, 1968 that the said transcript was handed to the Court by Abraham Salva, a former stenographic reporter of the Court who has earlier resigned." (pp. 26-27, rollo italics Ours)

Petitioners argue in the brief filed in their behalf by Cipriano Cid & Associates that there is no legal basis for pegging the reckoning date of backwages to September 1, 1967, for to do so would be to violate existing jurisprudence on the matter and deprive petitioners of what is rightly due them simply because there was a delay in the disposition of the case which after all was not of their own making considering that the records show that long before the filing of petitioners' memorandum the case was already considered submitted for decision.[3]

Petitioners' submittal is justified.

Simply stated, backwages are earnings which an employee or worker lost due to his dismissal from work.[4]

In case of dismissal arising from an unfair labor practice committed by the employer, the general principle is that the employee is entitled to receive as backwages all the amounts he may have lost starting from the date of his dismissal.[5] Verily, a protracted delay in the disposition of a case should not redound to the prejudice of the employee who seeks redress from the courts. In other words, the period during which the case is pending decision should not be deducted or excluded from the total period from dismissal to reinstatement for purposes of computing the backwages to which the employee is entitled. – That is the ruling in *Davao Free Workers Front, et al. vs. Court of Industrial Relations, et al.*, 1974, penned for the Court by Justice Claudio Teehankee.[6]

Upholding the principle that no one should be allowed to enrich himself at the expense of another, the Court, however, in determining the amount of backwages, has invariably made deductions corresponding to earnings which the employee may have received in the meantime from other sources.[7] Thus, in *Itogon-Suyoc Mines, Inc. vs. Sañgilo Itogon Workers Union*, 1968, certain guidelines were set down for the computation of backwages, viz:[8]

"First. 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.
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"Second. 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." xxx xxx xxx

The difficulties and resulting delay attendant to hearings which had to be held for purposes of determining the earnings of the dismissed workers and/or employees from other sources, led this Court to adopt a new formula in the computation of backwages by arriving at a fixed amount without qualification and deduction. This new formula was pronounced in *Mercury Drug Company, Inc. vs. Court of Industrial Relations, et al.*, where the main opinion was written by Justice Felix Makasiar. The principle is justified, in the words of Justice Claudio Teehankee who wrote a separate opinion, "as a realistic, reasonable, and mutually beneficial solution" for it "relieve(s) the employees from proving their earnings during their lay-offs and the employer from submitting counter-proofs, and thus obviate(s) 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." [9]

The Mercury formula was followed in subsequent cases. [10]

Thus, although We agree with petitioners in the case now before Us that their right to receive backwages should commence from the date of their dismissal, that is, March 10, 1961, and not from September 1, 1967, We resolve however to apply here the aforementioned Mercury case principle to avoid the necessity of a hearing on earnings obtained elsewhere by the petitioners during the intervening period. Under the circumstances of the case, We find that a period of five years for purposes of fixing the backwages of petitioners is fair and reasonable.

We fix the equivalent of five (5) years backwages without deduction and qualification (as compared to other cases where a lesser period of years was fixed as the base) in the light of analogous facts and circumstances in this case as in other cases where We fixed similarly the same equivalent of five (5) years backwages award to the unlawfully dismissed workers, viz, *Davao Free Workers Front and Visayan Stevedore Transportation Co.*, supra. Among the factors taken into account are the gravity of the employers' unfair labor practices and the long number of years during which the workers have been deprived of their work and their wages.

The rationale for the formula as expounded in *Feati*, supra, is that "this formula of awarding reasonable net wages without deduction or qualification relieves the employees from proving or disproving their earnings during their lay-off and the employers from submitting counter-proofs, and obviates the twin evils of idleness on the part of the employee who would 'with folded arms remain inactive in the expectation that a windfall would come to him' and attrition and protracted delay in satisfying such award on the part of unscrupulous employers who have seized upon the further proceedings to determine the actual earnings of the wrongfully dismissed or laid-off employees to hold unduly extended hearings for each and every employee awarded backwages and thereby render practically nugatory such award and compel the employees to agree to unconscionable settlements of their backwages award in order to satisfy their dire need."

Where there have been serious unfair labor practices committed by the employer in laying off or shutting out the workers, obstinacy or deceit in trying to defeat the judgment for reinstatement by unilateral closure without just cause of the plant or factory or by other similar evasive or deceitful means, and consequent prolonged non-satisfaction of the judgment for reinstatement and backwages, the Court will impose, as stated in *Davao Free Workers Front* "an element of punitive damages against respondent employer by way of example and for the

public good" and award the equivalent of five (5) years backwages without deduction or qualification or even more.[11]

Here, respondents employers New Manila Candy Factory and its surrogate Salem Confectionary were found by final judgment of the industrial court in 1967 of grave unfair labor practices with New Manila Candy Factory pretending to close down its factory "to evade its obligation to complainant union" and to lease its candy-making machines and a portion of its building and premises to Salem for the "measly" monthly amounts of P200.00 and P300.00, respectively, such that as found by the industrial court, "the intention to deceive by the management became very apparent." It likewise found categorically that "(T)hat the management of the New Manila Candy Factory committed the acts of interferences, harassment and discrimination imputed against them culminating in the mass lockout of the complainants is also beyond question. x x x." Finally, the workers have been deprived of their just dues since 1961 to the present, or a long period of seventeen (17) years. Considering all these factors, We hold that an award of five (5) years backwages without deduction and qualification is fair and reasonable for all concerned.

PREMISES CONSIDERED, We hereby modify the decision of respondent Court insofar as the payment of backwages is concerned, and We order private respondents to pay the individual claimants the corresponding backwages for a period of five years to be computed on the basis of their respective rate of earnings as of March 10, 1961, without qualification and deduction. In all other respects the decision of respondent Court stands. With costs against private respondents.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, and Guerrero, JJ., concur.

[1] pp. 28-30, rollo

[2] p. 31, rollo

[3] p. 68, rollo

[4] Lexal Laboratories vs. National Chemical Industries Workers Union (PAFLU), 25 SCRA 668, 670, citing Donato vs. Philippine Marine Officers Ass., L-12506, May 18, 1959, which in turn cites United Employees Welfare Association vs. Isaac Peral Bowling Alleys, L-10327, September 30, 1958, and C.E. Church vs. La-Union Labor Union L-4393, April 28, 1952.

[5] Mindanao Motor Line, Inc. vs. Court of Industrial Relations, 1962, 6 SCRA 710; Rizal Labor Union, et al. vs. Rizal Cement Co., Inc., et al., 1966, 17 SCRA 858; Itogon-Suyoc Mines, Inc. vs. Sañgilo Itogon Workers Union, 1968, 24 SCRA 873; G. Liner, et al. vs. National Labor Union, et al., 1968, 26 SCRA 282; Castillo vs. CIR, et al., 1971, 39 SCRA 75.

[6] 60 SCRA 408, 424, citing Art. XIV, Sec. 6, 1935 Constitution; Art. II, Sec. 9, 1973 Constitution; Art. 1701, Civil Code.

[7] Philippine Air Lines, Inc. vs. Philippine Air Lines Employees Association, 1960, 108 Phil. 1129, 1133 citing MacLeod and Company Progressive Federation of Labor, 97 Phil. 205 and others.

[8] 24 SCRA 873, 887 See also G. Liner, et al. vs. National Labor Union, et al., supra Castillo vs. CIR, et al., supra

[9] 56 SCRA 694, 711

[10] People's Bank and Trust Company, et al. vs. People's Bank and Trust Company Employees Union, et al., 69 SCRA 10 (3 years backwages) citing NASSCO vs. CIR, 57 SCRA 642; Almira vs. B.F. Goodrich Phil., Inc., 58 SCRA 120; Feati University Faculty Club vs. Feati University, 58 SCRA 395 and others. Insular Life Assurance Co., Ltd. Employees Association-Natu vs. Insular Life Assurance Co., Ltd., 76 SCRA 50 (3 years backwages); Manila Cordage Company vs. CIR, 78 SCRA 398 (2 years backwages) Monteverde vs. Court of Industrial Relations, 79 SCRA 259 (3 years backwages); Visayan Stevedore Transportation Company (Hinigaran Branch), et al. vs. Court of Industrial Relations, et al., 79 SCRA 271 (5 years backwages) Danao Development Corporation vs. NLRC, 81 SCRA 489 (3 years backwages) Cristobal vs. Melchor, 78 SCRA 175 (5 years backwages).

[11] See Davao Free Workers Front, 60 SCRA at p. 428, where the employer was ordered "to pay a record full backwages without qualification surpassing the almost sixteen years of such backwages paid in the recent case of NASSCO vs. CIR" (57 CRA 642).

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