

UNION OF SUPERVISORS (RB) NATU, PETITIONER, VS. THE SECRETARY OF LABOR AND REPUBLIC BANK, RESPONDENTS.

G.R. No. L-39889. March 29, 1984

Ponente: MAKASIAR, Acting C.J.

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MAKASIAR, Acting C.J.:

On November 12, 1981, WE rendered a decision in this case finding that "Luna's discharge was discriminatory and constituted unfair labor practice He is therefore entitled to reinstatement with back wages. . ." (p. 223, rec.) and accordingly ordered respondent Republic Bank (now Republic Planters Bank)

" TO IMMEDIATELY REINSTATE COMPLAINANT NORBERTO LUNA TO HIS FORMER POSITION WITHOUT LOSS OF SENIORITY RIGHTS AND OTHER BENEFITS AND INCREASES RECOGNIZED BY LAW OR GRANTED BY PRIVATE RESPONDENT DURING THE PERIOD OF HIS ILLEGAL DISMISSAL, WITH BACK WAGES EQUIVALENT TO THREE (3) YEARS WITHOUT QUALIFICATION . . ."

WE even ordered that

"THIS DECISION IS HEREBY MADE IMMEDIATELY EXECUTORY."

On November 17, 1981, upon receipt of a copy of the said decision, complainant Luna presented himself to the Republic Planters Bank for reinstatement to his former position as San Juan Branch Manager. The Republic Planters Bank refused to take him back, claiming that the decision was still under study by the counsel of the said bank (pp. 251-252, rec.).

On December 1, 1981, the Republic Planters Bank sought leave to file a motion for reconsideration and/or clarification (pp. 225-228, rec.).

On January 15, 1982, the Republic Planters Bank begged leave to forego the filing of a motion for reconsideration and/or clarification, and in lieu thereof, submit manifestation and motion where the "immediate and primary concern is to bring to the attention of this Honorable Court certain facts and circumstances that occurred and transpired during the pendency of this case the due consideration of which was not properly brought to its attention", summarized as follows:

"a) The complaint for unfair labor practice was filed as early as 1974. The issues and personality involved were former employees and officers of the old management team of the defunct Republic Bank. Some have either resigned, retired and/or terminated when the new management of respondent Bank took over its helm in 1978;

"b) The Court's findings that the management of Republic Bank is guilty of unfair labor practice committed against complainant Norberto Luna refers to the old management of the defunct Republic Bank and admittedly whatever unfair labor practices committed by the old management to complainant Luna, the present management of Republic Planters Bank has nothing to do with them as they are facts and/or circumstances ante bellum;

"c) Likewise, the substantial change in the corporate structure of Republic Bank into Republic Planters Bank is not likewise reflected in the records of the instant case. Undoubtedly, the records will show that the defunct Republic Bank was one time under receivership by the Central Bank of the Philippines and to save the bank from financial collapse, an agreement was entered into between the old stockholders of said bank, of course with the approval of the Central Bank that the Philippine Sugar Commission will buy a substantial portion of the bank's equity and such other government entities will also inject fresh capital therein to bail out the old Republic Bank from financial collapse and ruin. x x x x;

"d) As a necessary consequence of change of corporate personality (i.e. controlling stockholders, corporate name, board membership, etc.) of the old Republic Bank into the present Republic Planters Bank, a restructuring and reorganization of the management team of the Republic Planters Bank was effected to give the latter new image and impetus as a rejuvenated and growing financial institution capable of adequately meeting its banking commitment to the public in general and the sugar industry in particular;

"e) To top it all, the Republic Planters Bank was made and is presently the financing arm of the Philippine Sugar Commission vis-a-vis crop loans granted to sugar planters of the country and its financial exposure thereto, truth to tell, save the sugar industry.

"f) Parenthetically, the take over of the Philippine Sugar Commission and other allied government agency of the ownership, control and management of the defunct Republic Bank saved it from total collapse and financial embarrassment; and

"g) Sad to tell, the instant case came to surface only when the present management of Republic Planters Bank was furnished a copy of the decision of this Honorable Court. The old management did not advise the present management of the pendency of the case. If it were accordingly advised the new management of Republic Planters Bank could have filed the necessary pleadings and manifestations to advise the Honorable Court of the foregoing changes in the corporate and management structure of the defunct Republic Bank" (pp. 239-241, rec.).

The following grounds were also interposed:

"xx xx xx.

"3. While it can be argued that there is continuity of the corporate life of the defunct Republic Bank notwithstanding a change in its corporate name into Republic Planters Bank; nevertheless it can be said that in fairness and in equity to the present management of Republic Planters Bank it should not be made to bear and be made to suffer the consequence of the unfair labor practices committed by the former management as found by this Honorable Court against complainant Norberto Luna;

"xx xx xx.

"5. The decision orders the reinstatement of Norberto Luna to his former position as Branch Manager of San Juan. On this point, Republic Planters would like to manifest that pursuant to the organizational set up of the present management of Republic Planters Bank, they have to inject new personality, talented and professional managers enjoying its trust and confidence and to substitute Norberto Luna to the present incumbent will necessarily cause an undue disturbance in the chain of command under the present management vis-a-vis branch operation, and the incumbent branch manager thereof will himself be dislocated if the decision of this Honorable Court will be pursued without exception. A new form of injustice and violation of security of tenure will thus be committed by Republic Planters Bank;

"6. Respondent Republic Planters Bank respectfully submits that subject order be qualified by allowing respondent Republic Planters Bank to reinstate Norberto Luna if still possible to his old position, and if not, he be given an equivalent position. xxxx.

"7. On the second portion of the decision which requires respondent bank and I quote, "without loss of seniority rights and other benefits or increases required by law or granted by respondent during the period of his illegal dismissal with backwages of three years without qualification." Again, respondent Bank begs leave to manifest that while it will not contest the payment of backwages equivalent to three years without qualification, it will nonetheless appeal to the kind indulgence of this Honorable Court to harmonize its decision with equity and fairness. The new management of Republic Planters Bank sincerely feels that to allow the grant of benefits and increases granted during the period of illegal dismissal will again constitute an undue imposition and punishment to the present management of the Republic Planters Bank for an injustice they have no participation whatsoever.

"xx xx xx.

"Secondly, it will go against accepted management principle that promotions and salary increases shall be based only on merit and fitness of subject employee. Subject employee has to prove during his tenure of office that his qualification for promotion and salary increase is deserved. In other words, promotion and salary increases and other increases cannot be presumed; it is earned by subject employee. To our mind, complainant Norberto Luna does not deserve said benefits. The records do not show" (pp. 241-243, rec.).

Consequently, the respondent Republic Planters Bank prayed that "the resolution of the Honorable Supreme Court dated November 11, 1981 be harmonized with the present circumstances obtaining in the instant case as follows:

"1. That respondent Republic Planters Bank be allowed to reinstate complainant Norberto Luna to an equiv-alent position without loss of seniority from the time of his illegal dismissal up to actual reinstatement;

"2. That respondent Republic Planters Bank be exempted from the payment of salary increases and other benefits granted by it or by law from date of his illegal dismissal up to actual reinstatement;

"3. That if paragraph 2 is not allowable, respondent Bank be allowed to deduct the income derived by complaint from other sources during his illegal dismissal until reinstatement. The deduction will apply to both salary and wages;

"4. And finally, respondent be allowed to pay only the three years salary of complainant from date of dismissal without qualification" (pp. 243-244, rec.).

On May 25, 1982, the Solicitor General, in behalf of the respondent Secretary of Labor filed a manifesta-tion and motion wherein it was prayed that public respondent be excused from filing the corresponding comment referred to in the resolution of this Court dated May 10, 1982 on the ground that "the issues being raised therein only affect the private interest of said bank and hence it may not be proper for public respondent to make a comment" (pp. 302-303, rec.).

On July 8, 1982, the respondent Republic Planters Bank submitted its sur-rejoinder to petitioner's rejoinder to private respondent's reply to petitioner's comment (pp. 319-322, rec.). The Republic Planters Bank in its sur-rejoinder has shown that it has already paid the com-plainant Norberto Luna his backwages equivalent to three (3) years without qualification.

I

In its generally accepted sense, reinstatement is a restoration to a state from which one has been removed or separated. It is the return to the position from which he was removed (*San Miguel Brewery, Inc. v. Santos* and *CIR*, 112 Phil. 986) and assuming again the functions of the office already held (*Abeto v. Rodas*, 82 Phil. 67).

Reinstatement pre-supposes that the previous position from which one had been removed still exists, or that there is an unfilled position more or less of a similar nature as the one previously occupied by the employee (*Philippine*

Engineering Corporation v. CIR, L-27880, September 30, 1971, 41 SCRA 102). In this case, reinstatement was erroneously ordered for the petitioner's shop was already closed, the machineries were dismantled and transferred to a bodega and some of the machineries were sold. The Court held that "there being no more positions in the machine shop to which the dismissed employee, mostly welders, drill press operators, lathemen, tinsmith and carpenters, could be returned, reinstatement is not possible . . ."

Here in the case before US, there was no closure of shop notwithstanding that the respondent Republic Bank was almost at the brink of financial ruin. Despite the widespread restructuring and reorganization following the substantial change in the corporate structure of the former Republic Bank into the present Republic Planters Bank, to offset the impending financial collapse, the position previously held by the complainant Norberto Luna was not abolished, but is now held by the incumbent manager who replaced Luna. Although the position formerly held by the herein complainant is now held by another, there is every reason for the Republic Planters Bank to reinstate him because there is an "unfilled position more or less of a similar nature as the one previously occupied by the employee" (Philippine Engineering Corporation v. CIR, *supra*). And, Section 4, Rule 1, Book VI of the implementing Rules and Regulations of the Labor Code states, to wit:

"An employee who is separated from work without just cause should be re-instated to his former position, unless such position no longer exists, at the time of reinstatement, in which case he shall be given a substantially equivalent position in the same establishment without loss of seniority rights" (*Italics supplied*).

In *Diwa ng Pagkakaisa-PAFLU v. Filtex International Corporation* (L-23960 and L-23961, February 26, 1968, 22 SCRA 739), the Court held:

"Dismissal of strikers' replacements, due to court's reinstatement order of strikers, is not only legal but their hiring was subject to the outcome of the present suit or subject to the herein order. Said workers must be deemed to have accepted their employment as replacements with the knowledge that the same is subject to the consequences of the labor dispute between the strikers and the company" (*Norton and Harrison Co. and Jackbilt Concrete Blocks Co., etc., et al.*, L-18461, February 10, 1967, 19 SCRA 310).

The respondent Republic Planters Bank contends that inasmuch as the herein case involves managerial level, the ruling in the case of *Diwa ng Pagkakaisa - PAFLU v. Filtex International Corporation*, *supra*, which involves rank and file employees is not in point. The Bank argues that such a distinction is significant in that "the position of a Branch Manager relates to one of trust and confidence and therefore the incumbent manager of San Juan Branch who has won the trust and confidence of the management by reason of his capability and probity should not be dismissed in favor of one whose competence and integrity the management has not tested."

WE find merit in said contention. Although there is no denying the fact that the complainant Norberto Luna has served the respondent Republic Bank for 22 years, as pointed out in the decision: "Forgotten were his almost 22 years of service to the respondent Bank without any showing of any irregularity in the performance of his duties", the fact that he served "without any showing of any irregularity in the performance of his duties" does not prove that he has the trust and confidence of the Republic Planters Bank which are requisites for the position of a manager. And lack of irregularities in the service does not necessarily prove superior competence, efficiency and integrity.

It must be remembered that the respondent Bank reached the point of almost complete financial ruin were it not for the rehabilitation progress initiated by the government necessitating widespread restructuring and reorganization of the Bank. At that time of economic crisis of the respondent Bank, the herein petitioner was the manager of the San Juan Branch. It cannot be said that he did not contribute, directly or indirectly, to the downhill economy of the respondent Bank.

Clearly, the respondent Bank, after surviving said crisis, and emerging therefrom as Republic Planters Bank, should be given the best managers. Managers who can contribute to its struggle to survive. Managers who have not only the capacity and efficiency but likewise they must also have the "proven" skill that is essential for the respondent Republic Planters Bank to go on and weather these times of economic difficulties.

The Labor Code provision on reinstatement, to wit:

"Art. 280. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and to his backwages computed from the time his compensation was withheld from him up to the time of his reinstatement."

is aimed to restore the situation as nearly as possible to status quo ante the unfair labor practice. This requires that those deprived of a recognized and protected interest by violations of the law should be made whole so as to prevent the violator from profiting from his misdeeds (*N.L.R.B. v. Coats and Clark, Inc.* 241 F2d 556; *N.L.R.B. v. J. H. Rutter-Rex Manufacturing Co.*, 245 F2d 594). Yet the reinstatement remedy must always be adapted to economic-business conditions (*N.L.R.B. v. R.C. Can Co.*, 328 F2d 974, 980; *N.L.R.B. v. American Aggregate Co.*, 305 F2d 599, 563-565).

There is no question that the Republic Planters Bank is the successor of the Republic Bank. This is not disputed by the respondent Republic Planters Bank as can be shown in its reply to petitioner's comment, as follows:

"While respondent does not dispute the fact that the corporate personality of the old Republic Bank is continued by the present Republic Planters Bank, yet, as a matter of equity, it feels that it should not be made to bear the consequences of an unfair labor practice committed by the old management against complainant Luna."

But, in order to keep the respondent Republic Planters Bank on its feet once again, it had to undergo innovations to ensure recovery. The respondent Republic Planters Bank actually changed its methods of operation and this change was motivated by economic factors.

Considering these "economic-business conditions" together with the economic crisis WE are in now, it is inevitable that these be reflected in the desire for efficient and productive management. This honest intention can only be effectuated if the complainant Norberto Luna is reinstated to a substantially equivalent position without loss of seniority rights and the incumbent manager who is now holding the position formerly held by herein complainant be allowed to continue with his "tested" competence and integrity in the management of the San Juan Branch of the Republic Planters Bank.

II

Furthermore, the complainant Norberto Luna who is known to be "active and militant in the defense of union rights" should have informed the management of the Republic Planters Bank of the pendency of the herein case. Aware as he is of the distressed condition of the then Republic Bank being at that time a manager of the said Bank, it is most unlikely that the complainant closed his eyes to whatever developments there might be regarding the Republic Planters Bank. It cannot be said that he was ignorant of the take-over by the government of the defunct Republic Bank to "save it from total collapse and financial embarrassment" in 1978.

From 1978 to November 17, 1981, the herein complainant remained passive and silent. He did not go to the Republic Planters Bank and inform them of the herein case. Neither did he, through his counsel, inform this Court of the take-over and change in the management of the Republic Planters Bank. The complainant herein remained complacent and just waited for this Court's decision. It was only on November 17, 1981 that the complainant Norberto Luna acted, upon receipt of this Court's decision. He must then face the consequences of his inactivity.

III

WE find meritorious the contention of the Republic Planters Bank that "increases and benefits are to be earned; they do not attach automatically to the length of service of subject employee."

Although backwages are compensation to which an employee is entitled, by reason of his continued status as an employee (*N.L.R.B. v. Killoren* [CA8 Mo] 122 F2d 613, 137 ALR 510) since an illegally dismissed employee is considered as not having left his office (*Cristobal v. Melchor*, L-43203, December 29, 1980, 101 SCRA 857), mere continuance as an employee does not qualify him for benefits and increases. Benefits and increases are allowed because of outstanding performance of duties and not solely because of length of service.

The rule that an employer cannot be heard to assert that wages are ordered to be paid for services which were not performed, for it was the employer's own unlawful conduct which deprived the employee of his opportunity to render service (*Mitchell v. Robert De Mario Jewelry, Inc.* 361 US 288, L ed. 2d 323, 80 SCt 332), does not apply in the herein case for it was the management of the old Republic Bank which caused the unlawful discharge of Norberto Luna and not the new management of the successor and rehabilitated Republic Planters Bank. It would be inequitable for this Court to order the Republic Planters Bank to grant increases to herein complainant Norberto Luna for the Republic Planters Bank had no hand in the illegal discharge of Norberto Luna. And, to do so would unduly burden the newly rehabilitated Republic Planters Bank which, were it not for the take-over by the government, there would be no bank, Republic Bank or Republic Planters Bank to speak of. And there would be no job for Norberto Luna to go back to.

However, WE cannot allow the Republic Planters Bank to make deductions from the three (3) year back-wages it has already paid to the complainant Norberto Luna. Equity must operate in favor of the employee equally as it favors the employer.

The Court may set fixed amounts of backwages without any reference to deduction (*Radio Communications of the Philippines v. Philippine Communications Electronics and Electricity Workers Federation [FCWF]*, L-37662, July 15, 1975, 65 SCRA 82). The rationale behind this has been enunciated in a long line of cases, to reiterate:

"This formula of awarding reasonable net backwages without deduction or qualification relieves the employee from proving or disproving their earnings during their lay-off and the employers from submitting counterproofs, and obviates the twin evils of idleness on the part of the employee who would 'with folded arms remain inactive to the expectation that a windfall would come to him' (*Itogon Suyoc Mines, Inc. v. Sangilo--Itogon Workers Union*, 24 SCRA 873 [1968], cited in *Diwa ng Pagkakaisa v. Filtex International*, 43 SCRA 287 [1972] per Makalintal, now C.J.) 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 compel the employee to agree to unconscionable settlements of their backwages award in order to satisfy their dire need" (*Feati University Faculty Club [PAFLU] v. Feati University*, L-31503, August 15, 1974, 53 SCRA 395, 418 cited in *Air Manila, Inc. v. CIR*, L-39742, June 9, 1978, 83 SCRA 588; see also *Bachrach Motor Co., Inc. v. CIR*, 86 SCRA 27, *Visayan Stevedore Transportation Co. v. CIR*, 7 SCRA 271).

An employer is entitled to deduct from what the Court orders to be paid as backwages, privileges, etc., whatever an employee has earned elsewhere during the period for which backwages are supposed to be paid. Such qualification must be considered implied in all judgments ordering reinstatement, unless otherwise expressly ordered for reasons the Court may deem justified (*Cruz v. Philippine Association of Free Labor Unions, [PAFLU]*, 42 SCRA 68; *Philippine Fiber Processing Co., Inc. v. CIR*, 52 SCRA 110) as in the decision herein dated November 12, 1981, where WE ordered:

"He is therefore entitled to reinstatement with back wages pursuant to the policy to decree back wages not exceeding three (3) years without requiring the parties to submit proof of compensation received from other sources at the time of illegal dismissal until actual reinstatement, in order that judgment in favor of an employee or laborer can be executed without delay (*Luzon Stevedoring Corp. v. CIR*, 61 SCRA 162)" [*Italics supplied*, p. 223, rec.].

This policy must be decreed to ensure that the employee would be protected, not merely in the exercise of their right of self-organization, collective bargaining, security of tenure and just and humane conditions of work, but likewise against the economic consequences of a legitimate assertion of these rights.

WHEREFORE, INASMUCH AS THE REPUBLIC PLANTERS BANK HAS ALREADY PAID THE COMPLAINANT NORBERTO LUNA HIS BACKWAGES EQUIVALENT TO THREE (3) YEARS WITHOUT QUALIFICATION, RESPONDENT REPUBLIC PLANTERS BANK IS HEREBY ORDERED:

1. TO IMMEDIATELY REINSTATE THE COMPLAINANT NORBERTO LUNA TO AN EQUIVALENT POSITION WITHOUT LOSS OF SENIORITY RIGHTS FROM THE TIME OF HIS ILLEGAL DISMISSAL UP TO ACTUAL REINSTATEMENT; AND
2. NOT TO MAKE ANY DEDUCTIONS FROM THE THREE YEARS BACKWAGES ALREADY PAID TO NORBERTO LUNA.

THIS RESOLUTION IS HEREBY MADE IMMEDIATELY EXECUTORY.

SO ORDERED.

Concepcion, Jr., Guerrero, Abad Santos, De Castro and Escolin, JJ., concur.

Aquino, J., in the result.

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