

JON DE YSASI III, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION), CEBU CITY, AND JON DE YSASI, RESPONDENTS.*G.R. No. 104599. March 11, 1994*

Ponente: REGALADO, J.

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The adage that blood is thicker than water obviously stood for naught in this case, notwithstanding the vinculum of paternity and filiation between the parties. It would indeed have been the better part of reason if herein petitioner and private respondent had reconciled their differences in an extrajudicial atmosphere of familial amity and with the grace of reciprocal concessions. Father and son opted instead for judicial intervention despite the inevitable acrimony and negative publicity. Albeit with, distaste, the Court cannot proceed otherwise but to resolve their dispute with the same reasoned detachment accorded any judicial proceeding before it.

The records of this case reveal that petitioner was employed by his father, herein private respondent, as farm administrator of Hacienda Manucao in Hinigaran, Negros Occidental sometime in April, 1980. Prior thereto, he was successively employed as sales manager of Triumph International (Phil.), Inc. and later as operations manager of Top Form Manufacturing (Phil.), Inc. His employment as farm administrator was on a fixed salary, with other allowances covering housing, food, light, power, telephone, gasoline, medical and dental expenses.

As farm administrator, petitioner was responsible for the supervision of daily activities and operations of the sugarcane farm such as land preparation, planting, weeding, fertilizing, harvesting, dealing with third persons in all matters relating to the hacienda and attending to such other tasks as may be assigned to him by private respondent. For this purpose, he lived on the farm, occupying the upper floor of the house there.

Following his marriage on June 6, 1982, petitioner moved to Bacolod City with his wife and commuted to work daily. He suffered various ailments and was hospitalized on two separate occasions in June and August, 1982. In November, 1982, he underwent fistulectomy, or the surgical removal of the fistula, a deep sinuous ulcer. During his recuperation which lasted over four months, he was under the care of Dr. Patricio Tan. In June, 1983, he was confined for acute gastroenteritis and, thereafter, for infectious hepatitis from December, 1983 to January, 1984.

During the entire periods of petitioner's illnesses, private respondent took care of his medical expenses and petitioner continued to receive compensation. However, in April, 1984, without due notice, private respondent ceased to pay the latter's salary. Petitioner made oral and written demands for an explanation for the sudden withholding of his salary from Atty. Apolonio Sumbingco, private respondent's auditor and legal adviser, as well as for the remittance of his salary. Both demands, however, were not acted upon.

Petitioner then filed an action with the National Labor Relations Commission (NLRC, for brevity), Regional Arbitration Branch No. VI, Bacolod City, on October 17, 1984, docketed therein as RAB Case No. 0452-84, against private respondent for illegal dismissal with prayer for reinstatement without loss of seniority rights and payment of full back wages, thirteenth month pay for 1983, consequential, moral and exemplary damages, as well

as attorney's fees.

On July 31, 1991, said complaint for illegal dismissal was dismissed by the NLRC,[1] holding that petitioner abandoned his work and that the termination of his employment was for a valid cause, but ordering private respondent to pay petitioner the amount of P5,000.00 as penalty for his failure to serve notice of said termination of employment to the Department of Labor and Employment as required by Batas Pambansa Blg. 130 and consonant with this Court's ruling in *Wenphil Corporation vs. National Labor Relations Commission, et al.*[2] On appeal to the Fourth Division of the NLRC, Cebu City, said decision was affirmed in toto.[3]

His motion for reconsideration[4] of said decision having been denied for lack of merit,[5] petitioner filed this petition presenting the following issues for resolution: (1) whether or not petitioner was illegally dismissed; (2) whether or not he is entitled to reinstatement, payment of back wages, thirteenth month pay and other benefits; and (3) whether or not he is entitled to payment of moral and exemplary damages and attorney's fees because of illegal dismissal. The discussion of these issues will necessarily subsume the corollary questions presented by private respondent, such as the exact date when petitioner ceased to function as farm administrator, the character of the pecuniary amounts received by petitioner from private respondent, that is, whether the same are in the nature of salaries or pensions, and whether or not there was abandonment by petitioner of his functions as farm administrator.

In his manifestation dated September 14, 1992, the Solicitor General recommended a modification of the decision of herein public respondent sustaining the findings and conclusions of the Executive Labor Arbiter in RAB Case No. 0452-84,[6] for which reason the NLRC was required to submit its own comment on the petition. In compliance with the Court's resolution of November 16, 1992,[7] NLRC filed its comment on February 12, 1992 largely reiterating its earlier position in support of the findings of the Executive Labor Arbiter.[8]

Before proceeding with a discussion of the issues, the observation of the labor arbiter is worth noting:

"This case is truly unique. What makes this case unique is the fact that because of the special relationship of the parties and the nature of the action involved, this case could very well go down (in) the annals of the Commission as perhaps the first of its kind. For this case is an action filed by an only son, his father's namesake, the only child and therefore the only heir against his own father."[9]

Additionally, the Solicitor General remarked:

"x x x. After an exhaustive reading of the records, two (2) observations were noted that may justify why this labor case deserves special considerations. First, most of the complaints that petitioner and private respondent had with each other, were personal matters affecting father and son relationship. And secondly, if any of the complaints pertain to their work, they allow their personal relationship to come in the way."[10]

I. Petitioner maintains that his dismissal from employment was illegal because of want of just cause therefor and non-observance of the requirements of due process. He also charges the NLRC with grave abuse of discretion in relying upon the findings of the executive labor arbiter who decided the case but did not conduct the hearings thereof.

Private respondent, in refutation, avers that there was abandonment by petitioner of his functions as farm administrator, thereby arming private respondent with a ground to terminate his employment at Hacienda Manucao. It is also contended that it is wrong for petitioner to question the factual findings of the executive labor arbiter and the NLRC as only questions of law may be appealed for resolution by this Court. Furthermore, in seeking the dismissal of the instant petition, private respondent faults herein petitioner for failure to refer to the corresponding pages of the transcripts of stenographic notes, erroneously citing Sections 15(d) and 16(d), Rule 44 (should be Section 16[c] and [d], Rule 46 and Section 1[g], Rule 50) of the Rules of Court, which provide that

want of page references to the records is a ground for dismissal of an appeal.

Prefatorily, we take advertence of the provisions of Article 221 of the Labor Code that technical rules of evidence prevailing in courts of law and equity shall not be controlling, and that every and all reasonable means to speedily and objectively ascertain the facts in each case shall be availed of, without regard to technicalities of law or procedure in the interest of due process.

It is settled that it is not procedurally objectionable for the decision in a case to be rendered by a judge, or a labor arbiter for that matter, other than the one who conducted the hearing. The fact that the judge who heard the case was not the judge who penned the decision does not impair the validity of the judgment,[11] provided that he draws up his decision and resolution with due care and makes certain that they truly and accurately reflect conclusions and final dispositions on the bases of the facts of and evidence submitted in the case.[12]

Thus, the mere fact that the case was initially assigned to Labor Arbiter Ricardo T. Octavio, who conducted the hearings therein from December 5, 1984 to July 11, 1985, and was later transferred to Executive Labor Arbiter Oscar S. Uy, who eventually decided the case, presents no procedural infirmity, especially considering that there is a presumption of regularity in the performance of a public officer's functions,[13] which petitioner has not successfully rebutted.

We are constrained to heed the underlying policy in the Labor Code relaxing the application of technical rules of procedure in labor cases in the interest of due process, ever mindful of the long-standing legal precept that rules of procedure must be interpreted to help secure, not defeat, justice. For this reason, we cannot indulge private respondent in his tendency to nitpick on trivial technicalities to boost his arguments. The strength of one's position cannot be hinged on mere procedural niceties but on solid bases in law and jurisprudence.

The fundamental guarantees of security of tenure and due process dictate that no worker shall be dismissed except for just and authorized cause provided by law and after due process.[14] Article 282 of the Labor Code enumerates the causes for which an employer may validly terminate an employment, to wit: (a) serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work; (b) gross and habitual neglect by the employee of his duties; (c) fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative; (d) commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and (e) other causes analogous to the foregoing.

The employer may also terminate the services of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking, unless the closing is for the purpose of circumventing the pertinent provisions of the Labor Code, by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof, with due entitlement to the corresponding separation pay rates provided by law.[15] Suffering from a disease by reason whereof the continued employment of the employee is prohibited by law or is prejudicial to his and his co-employee's health, is also a ground for termination of his services provided he receives the prescribed separation pay.[16] On the other hand, it is well settled that abandonment by an employee of his work authorizes the employer to effect the former's dismissal from employment.[17]

After a careful review of the records of this case, we find that public respondent gravely erred in affirming the decision of the executive labor arbiter holding that petitioner abandoned his employment and was not illegally dismissed from such employment. For want of substantial bases, in fact or in law, we cannot give the stamp of finality and conclusiveness normally accorded to the factual findings of an administrative agency, such as herein public respondent NLRC,[18] as even decisions of administrative agencies which are declared "final" by law are

not exempt from judicial review when so warranted.[19]

The following perceptive disquisitions of the Solicitor General on this point deserve acceptance:

“It is submitted that the absences of petitioner in his work from October 1982 to December 1982, cannot be construed as abandonment of work because he has a justifiable excuse. Petitioner was suffering from perennial abscess in the peri-anal around the anus and fistula under the medical attention of Dr. Patricio Tan of Riverside Medical Center, Inc., Bacolod City (Tsn, Vol. III, Dr. Tan, February 19, 1986 at 20-44).

“This fact (was) duly communicated to private respondent by medical bills sent to Hacienda Manucao (Tsn, Vol. III, Dr. Tan, January 22, 1987 at 49-50).

“During the period of his illness and recovery, petitioner stayed in Bacolod City upon the instruction(s) of private respondent to recuperate thereat and to handle only administrative matters of the hacienda in that city. As a manager, petitioner is not really obliged to live and stay 24 hours a day inside Hacienda Manucao.

x x x

“After evaluating the evidence within the context of the special circumstances involved and basic human experience, petitioner’s illness and strained family relation with respondent Jon de Ysasi II may be considered as justifiable reason for petitioner Jon de Ysasi III’s absence from work during the period of October 1982 to December 1982. In any event, such absence does not warrant outright dismissal without notice and hearing.

x x x

“The elements of abandonment as a ground for dismissal of an employee are as follows:

(1) failure to report for work or absence without valid or justifiable reason; and (2) clear intention to sever the employer-employee tie (Samson Alcantara, Reviewer In Labor and Social Legislation, 1989 edition, p. 133).

“This Honorable Court, in several cases, illustrates what constitute abandonment. In Dagupan Bus Company v. NLRC (191 SCRA 328), the Court rules that for abandonment to arise, there must be a concurrence of the intention to abandon and some overt act from which it may be inferred that the employee has no more interest to work. Similarly, in Nueva Ecija I Electric Cooperative, Inc. v. NLRC (184 SCRA 25), for abandonment to constitute a valid cause for termination of employment, there must be a deliberate, unjustified refusal of the employee to resume his employment..... Mere absence is not sufficient; it must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore.

“There are significant indications in this case, that there is no abandonment. First, petitioner’s absence and his decision to leave his residence inside Hacienda Manucao, is justified by his illness and strained family relations. Second, he has some medical certificates to show his frail health. Third, once able to work, petitioner wrote a letter (Annex ‘J’) informing private respondent of his intention to assume again his employment. Last, but not the least, he at once instituted a complaint for illegal dismissal when he realized he was unjustly dismissed. All these are indications that petitioner had no intention to abandon his employment.”[20]

The records show that the parties herein do not dispute the fact of petitioner’s confinement in the hospital for his various afflictions which required medical treatment. Neither can it be denied that private respondent was well aware of petitioner’s state of health as the former admittedly shouldered part of the medical and hospital bills and even advised the latter to stay in Bacolod City until he was fit to work again. The disagreement as to whether or not petitioner’s ailments were so serious as to necessitate hospitalization and corresponding periods for recuperation is beside the point. The fact remains that on account of said illnesses, the details of which were amply substantiated by the attending physician,[21] and as the records are bereft of any suggestion of malingering on the part of petitioner, there was justifiable cause for petitioner’s absence from work. We repeat, it is clear,

deliberate and unjustified refusal to resume employment and not mere absence that is required to constitute abandonment as a valid ground for termination of employment.[22]

With his position as farm administrator of Hacienda Manucao, petitioner unmistakably may be classified as a managerial employee[23] to whom the law grants an amount of discretion in the discharge of his duties. This is why when petitioner stated that “I assigned myself where I want to go,”[24] he was simply being candid about what he could do within the sphere of his authority. His duties as farm administrator did not strictly require him to keep regular hours or to be at the office premises at all times, or to be subjected to specific control from his employer in every aspect of his work. What is essential only is that he runs the farm as efficiently and effectively as possible and, while petitioner may definitely not qualify as a model employee, in this regard he proved to be quite successful, as there was at least a showing of increased production during the time that petitioner was in charge of farm operations.

If, as private respondent contends, he had no control over petitioner during the years 1983 to 1984, this is because that was the period when petitioner was recuperating from illness and on account of which his attendance and direct involvement in farm operations were irregular and minimal, hence the supervision and control exercisable by private respondent as employer was necessarily limited. It goes without saying that the control contemplated refers only to matters relating to his functions as farm administrator and could not extend to petitioner’s personal affairs and activities.

While it was taken for granted that for purposes of discharging his duties as farm administrator, petitioner would be staying at the house in the farm, there really was no explicit contractual stipulation (as there was no formal employment contract to begin with) requiring him to stay therein for the duration of his employment or that any transfer of residence would justify the termination of his employment. That petitioner changed his residence should not be taken against him, as this is undeniably among his basic rights, nor can such fact of transfer of residence per se be a valid ground to terminate an employer-employee relationship.

Private respondent, in his pleadings, asserted that as he was yet uncertain of his son’s intention of returning to work after his confinement in the hospital, he kept petitioner on the payroll, reported him as an employee of the hacienda for social security purposes, and paid his salaries and benefits with the mandated deductions therefrom until the end of December, 1982. It was only in January, 1983 when he became convinced that petitioner would no longer return to work that he considered the latter to have abandoned his work and, for this reason, no longer listed him as an employee. According to private respondent, whatever amount of money was given to petitioner from that time until April, 1984 was in the nature of a pension or an allowance or mere gratuitous doles from a father to a son, and not salaries as, in fact, none of the usual deductions were made therefrom. It was only in April, 1984 that private respondent completely stopped giving said pension or allowance when he was angered by what he heard petitioner had been saying about sending him to jail.

Private respondent capitalizes on the testimony of one Manolo Gomez taken on oral deposition regarding petitioner’s alleged statement to him, “(h)e quemado los (p)ue(n)tes de Manucao” (“I have burned my bridges with Manucao”) as expressive of petitioner’s intention to abandon his job. In addition to insinuations of sinister motives on the part of petitioner in working at the farm and thereafter abandoning the job upon accomplishment of his objectives, private respondent takes the novel position that the agreement to support his son after the latter abandoned the administration of the farm legally converts the initial abandonment to implied voluntary resignation.[25]

As earlier mentioned, petitioner ripostes that private respondent undoubtedly knew about petitioner’s illness and even paid for his hospital and other medical bills. The assertion regarding abandonment of work, petitioner

argues, is further belied by his continued performance of various services related to the operations of the farm from May to the last quarter of 1983, his persistent inquiries from his father's accountant and legal adviser about the reason why his pension or allowance was discontinued since April, 1984, and his indication of having recovered and his willingness and capability to resume his work at the farm as expressed in a letter dated September 14, 1984.[26] With these, petitioner contends that it is immaterial how the monthly pecuniary amounts are designated, whether as salary, pension or allowance, with or without deductions, as he was entitled thereto in view of his continued service as farm administrator.[27]

To stress what was earlier mentioned, in order that a finding of abandonment may justly be made there must be a concurrence of two elements, viz.: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts. Such intent we find dismally wanting in this case.

It will be recalled that private respondent himself admitted being unsure of his son's plans of returning to work. The absence of petitioner from work since mid-1982, prolonged though it may have been, was not without valid causes of which private respondent had full knowledge. As to what convinced or led him to believe that petitioner was no longer returning to work, private respondent neither explains nor substantiates by any reasonable basis how he arrived at such a conclusion.

Moreover, private respondent's claim of abandonment cannot be given credence as even after January, 1983, when private respondent supposedly "became convinced" that petitioner would no longer work at the farm, the latter continued to perform services directly required by his position as farm administrator. These are duly and correspondingly evidenced by such acts as picking up some farm machinery/equipment from G.A. Machineries, Inc.,[28] claiming and paying for additional farm equipment and machinery shipped by said firm from Manila to Bacolod through Zip Forwarders,[29] getting the payment of the additional cash advances for molasses for crop year 1983-1984 from Agrotex Commodities, Inc.,[30] and remitting to private respondent through Atty. Sumbingco the sums collected along with receipts for medicine and oil.[31]

It will be observed that all of these chores, which petitioner took care of, relate to the normal activities and operations of the farm. True, it is a father's prerogative to request or even command his child to run errands for him. In the present case, however, considering the nature of these transactions, as well as the property values and monetary sums involved, it is unlikely that private respondent would leave the matter to just anyone. Prudence dictates that these matters be handled by someone who can be trusted or at least be held accountable therefor, and who is familiar with the terms, specifications and other details relative thereto, such as an employee. If indeed petitioner had abandoned his job or was considered to have done so by private respondent, it would be awkward, or even out of place, to expect or to oblige petitioner to concern himself with matters relating to or expected of him with respect to what would then be his past and terminated employment. It is hard to imagine what further authority an employer can have over a dismissed employee so as to compel him to continue to perform work-related tasks.

It is also significant that the special power of attorney[32] executed by private respondent on June 26, 1980 in favor of petitioner, specifically stating -

x x x

"That I, JON de YSASI, Filipino, of legal age, married, and a resident of Hda. Manucaao, hereinafter called and referred to as PRINCIPAL, am a sugarcane planter, BISCO Mill District, and a duly accredited planter-member of the BINALBAGAN-ISABELA PLANTERS' ASSOCIATION, INC.;

That as such planter-member of BIPA, I have check/checks with BIPA representing payment for all checks and

papers to which I am entitled to (sic) as such planter-member;

That I have named, appointed and constituted as by these presents I HEREBY NAME, APPOINT AND CONSTITUTE as my true and lawful ATTORNEY-IN-FACT

JON de YSASI III

whose specimen signature is hereunder affixed, TO GET FOR ME and in my name, place and stead, my check/checks aforementioned, said ATTORNEY-IN-FACT being herein given the power and authority to sign for me and in my name, place and stead, the receipt or receipts or payroll for the said check/checks. PROVIDED HOWEVER, that my said ATTORNEY-IN-FACT cannot cash the said check/checks, but to turn the same over to me for my proper disposition.

That I HEREBY RATIFY AND CONFIRM the acts of my Attorney-in-Fact in getting the said check/checks and signing the receipts therefor.

That I further request that my said check/checks be made a 'CROSSED CHECK'."

X X X

remained in force even after petitioner's employment was supposed to have been terminated by reason of abandonment. Furthermore, petitioner's numerous requests for an explanation regarding the stoppage of his salaries and benefits,[33] the issuance of withholding tax reports,[34] as well as correspondence reporting his full recovery and readiness to go back to work,[35] and, specifically, his filing of the complaint for illegal dismissal are hardly the acts of one who has abandoned his work.

We are likewise not impressed by the deposition of Manolo Gomez, as witness for private respondent, ascribing statements to petitioner supposedly indicative of the latter's intention to abandon his work. We perceive the irregularity in the taking of such deposition without the presence of petitioner's counsel, and the failure of private respondent to serve reasonably advance notice of its taking to said counsel, thereby foreclosing his opportunity to cross-examine the deponent. Private respondent also failed to serve notice thereof on the Regional Arbitration Branch No. VI of the NLRC, as certified to by Administrative Assistant Celestina G. Ovejera of said office.[36] Fair play dictates that at such an important stage of the proceedings, which involves the taking of testimony, both parties must be afforded equal opportunity to examine and cross-examine a witness.

As to the monthly monetary amounts given to petitioner, whether denominated as salary, pension, allowance or ex' gratia handout, there is no question as to petitioner's entitlement thereto inasmuch as he continued to perform services in his capacity as farm administrator. The change in description of said amounts contained in the pay slips or in the receipts prepared by private respondent cannot be deemed to be determinative of petitioner's employment status in view of the peculiar circumstances above set out. Besides, if such amounts were truly in the nature of allowances given by a parent out of concern for his child's welfare, it is rather unusual that receipts therefor[37] should be necessary and required as if they were ordinary business expenditures.

Neither can we subscribe to private respondent's theory that petitioner's alleged abandonment was converted into an implied voluntary resignation on account of the father's agreement to support his son after the latter abandoned his work. As we have determined that no abandonment took place in this case, the monthly sums received by petitioner, regardless of designation, were in consideration for services rendered emanating from an employer-employee relationship and were not of a character that can qualify them as mere civil support given out of parental duty and solicitude. We are also hard put to imagine how abandonment can be impliedly converted into a voluntary resignation without any positive act on the part of the employee conveying a desire to terminate his employment. The very concept of resignation as a ground for termination by the employee of his

employment[38] does not square with the elements constitutive of abandonment.

On procedural considerations, petitioner posits that there was a violation by private respondent of the due process requirements under the Labor Code for want of notice and hearing.[39] Private respondent, in opposition, argues that Section 2, Rule XIV, Book V of the Omnibus Rules Implementing the Labor Code applies only to cases where the employer seeks to terminate the services of an employee on any of the grounds enumerated under Article 282 of the Labor Code, but not to the situation obtaining in this case where private respondent did not dismiss petitioner on any ground since it was petitioner who allegedly abandoned his employment.[40]

The due process requirements of notice and hearing applicable to labor cases are set out in Rule XIV, Book V of the Omnibus Rules Implementing the Labor Code in this wise:

“SEC. 2. Notice of Dismissal. - Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omission(s) constituting the grounds for his dismissal. In cases of abandonment of work, notice shall be served at the worker’s last known address.

x x x

“SEC. 5. Answer and hearing. - The worker may answer the allegations as stated against him in the notice of dismissal within a reasonable period from receipt of such notice. The employer shall afford the worker ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires.

“SEC. 6. Decision to dismiss. - The employer shall immediately notify a worker in writing of a decision to dismiss him stating clearly the reasons therefor.

“SEC. 7. Right to contest dismissal. – Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the Regional Branch of the Commission.

x x x

“SEC. 11. Report of dismissal. – The employer shall submit a monthly report to the Regional Office having jurisdiction over the place of work of all dismissals effected by him during the month, specifying therein the names of the dismissed workers, the reasons for their dismissal, the dates of commencement and termination of employment, the positions last held by them and such other information as may be required by the Ministry for policy guidance and statistical purposes.”

Private respondent’s argument is without merit as there can be no question that petitioner was denied his right to due process since he was never given any notice about his impending dismissal and the grounds therefor, much less a chance to be heard. Even as private respondent controverts the applicability of the mandatory twin requirements of procedural due process in this particular case, he in effect admits that no notice was served by him on petitioner. This fact is corroborated by the certification issued on September 5, 1984 by the Regional Director for Region VI of the Department of Labor that no notice of termination of the employment of petitioner was submitted thereto.[41]

Granting arguendo that there was abandonment in this case, it nonetheless cannot be denied that notice still had to be served upon the employee sought to be dismissed, as the second sentence of Section 2 of the pertinent implementing rules explicitly requires service thereof at the employee’s last known address, by way of substantial compliance. While it is conceded that it is the employer’s prerogative to terminate an employee, especially when there is just cause therefor, the requirements of due process cannot be lightly taken. The law does not countenance the arbitrary exercise of such a power or prerogative when it has the effect of undermining the fundamental guarantee of security of tenure in favor of the employee.[42]

On the executive labor arbiter's misplaced reliance on the Wenphil case, the Solicitor General rejoins as follows:

"The Labor Arbiter held thus:

'While we are in full agreement with the respondent as to his defense of implied resignation and/or abandonment, records somehow showed that he failed to notify the Department of Labor and Employment for his sons' (sic)/complainants' (sic) abandonment as required by BP 130. And for this failure, the other requisite for a valid termination by an employer was not complied with. This however, would not work to invalidate the otherwise (sic) existence of a valid cause for dismissal. The validity of the cause of dismissal must be upheld at all times provided however that sanctions must be imposed on the respondent for his failure to observe the notice on due process requirement. (Wenphil Corp. v. NLRC, G.R. No. 80587). (Decision Labor Arbiter, at 11-12, Annex 'C' Petition), x x x.'

"This is thus a very different case from Wenphil Corporation v. NLRC, 170 SCRA 69. In Wenphil, the rule applied to the facts is: once an employee is dismissed for just cause, he must not be rewarded re-employment and backwages for failure of his employer to observe procedural due process. The public policy behind this is that, it may encourage the employee to do even worse and render a mockery of the rules of discipline required to be observed. However, the employer must be penalized for his infraction of due process. In the present case, however, not only was petitioner dismissed without due process, but his dismissal is without just cause. Petitioner did not abandon his employment because he has a justifiable excuse." [43]

II. Petitioner avers that the executive labor arbiter erred in disregarding the mandatory provisions of Article 279 of the Labor Code which entitles an illegally dismissed employee to reinstatement and back wages and, instead, affirmed the imposition of the penalty of P5,000.00 on private respondent for violation of the due process requirements. Private respondent, for his part, maintains that there was error in imposing the fine because that penalty contemplates the failure to submit the employer's report on dismissed employees to the DOLE regional office, as required under Section 5 (now, Section 11), Rule XIV of the implementing rules, and not the failure to serve notice upon the employee sought to be dismissed by the employer.

Both the Constitution and the Labor Code enunciate in no uncertain terms the right of every worker to security of tenure.[44] To give teeth to these constitutional and statutory mandates, the Labor Code spells out the relief available to an employee in case of its denial:

"Art. 279. Security of Tenure. - In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of actual reinstatement."

Clearly, therefore, an employee is entitled to reinstatement with full back wages in the absence of just cause for dismissal.[45] The Court, however, on numerous occasions has tempered the rigid application of said provision of the Labor Code, recognizing that in some cases certain events may have transpired as would militate against the practicability of granting the relief thereunder provided, and declares that where there are strained relations between the employer and the employee, payment of back wages and severance pay may be awarded instead of reinstatement,[46] and more particularly when managerial employees are concerned.[47] Thus, where reinstatement is no longer possible, it is therefore appropriate that the dismissed employee be given his fair and just share of what the law accords him.[48]

We note with favor and give our imprimatur to the Solicitor General's ratiocination, to wit:

"As a general rule, 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 up to the time of his reinstatement. (Morales vs. NLRC, 188 SCRA 295). But in Pacific Cement Company, Inc. vs. NLRC, 173 SCRA 192, this Honorable Court held that when, it comes to reinstatement, differences should be made between managers and the ordinary workingmen. The Court concluded that a company which no longer trusts its managers cannot operate freely in a competitive and profitable manner. The NLRC should know the difference between managers and ordinary workingmen. It cannot imprudently order the reinstatement of managers with the same ease and liberality as that of rank and file workers who had been terminated. Similarly, a reinstatement may not be appropriate or feasible in case of antipathy or antagonism between the parties (Morales. v. NLRC, 188 SCRA 295).

“In the present case, it is submitted that petitioner should not be reinstated as farm administrator of Hacienda Manucao. The present relationship of petitioner and private respondent (is) so strained that a harmonious and peaceful employee-employer relationship is hardly possible.”[49]

III. Finally, petitioner insists on an award of moral damages, arguing that his dismissal from employment was attended by bad faith or fraud, or constituted oppression, or was contrary to morals, good customs or public policy. He further prays for exemplary damages to serve as a deterrent against similar acts of unjust dismissal by other employers.

Moral damages, under Article 2217 of the Civil Code, may be awarded to compensate one for diverse injuries such as mental anguish, besmirched reputation, wounded feelings, and social humiliation, provided that such injuries spring from a wrongful act or omission of the defendant which was the proximate cause thereof.[50] Exemplary damages, under Article 2229, are imposed by way of example or correction for the public good, in addition to moral, temperate, liquidated or compensatory damages. They are not recoverable as a matter of right, it being left to the court to decide whether or not they should be adjudicated.[51]

We are well aware of the Court’s rulings in a number of cases in the past allowing recovery of moral damages where the dismissal of the employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy,[52] and of exemplary damages if the dismissal was effected in a wanton, oppressive or malevolent manner.[53] We do not feel, however, that an award of the damages prayed for in this petition would be proper even if, seemingly, the facts of the case justify their allowance. In the aforesaid cases of illegal dismissal where moral and exemplary damages were awarded, the dismissed employees were genuinely without fault and were undoubtedly victims of the erring employers’ capricious exercise of power.

In the present case, we find that both petitioner and private respondent can equally be faulted for fanning the flames which gave rise to and ultimately aggravated this controversy, instead of sincerely negotiating a peaceful settlement of their disparate claims. The records reveal how their actuations seethed with mutual antagonism and the undeniable enmity between them negates the likelihood that either of them acted in good faith. It is apparent that each one has a cause for damages against the other. For this reason, we hold that no moral or exemplary damages can rightfully be awarded to petitioner.

On this score, we are once again persuaded by the validity of the following recommendation of the Solicitor General:

“The Labor Arbiter’s decision in RAB Case No. 0452-84 should be modified. There was no voluntary abandonment in this case because petitioner has a justifiable excuse for his absence, or such absence does not warrant outright dismissal without notice and hearing. Private respondent, therefore, is guilty of illegal dismissal. He should be ordered to pay backwages for a period not exceeding three years from date of dismissal. And in lieu of reinstatement, petitioner may be paid separation pay equivalent to one (1) month(s)

salary for every year of service, a fraction of six months being considered as one (1) year in accordance with recent jurisprudence (Tan, Jr. vs. NLRC, 183 SCRA 651). But all claims for damages should be dismissed, for both parties are equally at fault.”[54]

The conduct of the respective counsel of the parties, as revealed by the records, sorely disappoints the Court and invites reproof. Both counsel may well be reminded that their ethical duty as lawyers to represent their clients with zeal[55] goes beyond merely presenting their clients’ respective causes in court. It is just as much their responsibility, if not more importantly, to exert all reasonable efforts to smooth over legal conflicts, preferably out of court and especially in consideration of the direct and immediate consanguineous ties between their clients. Once again, we reiterate that the useful function of a lawyer is not only to conduct litigation but to avoid it whenever possible by advising settlement or withholding suit. He is often called upon less for dramatic forensic exploits than for wise counsel in every phase of life. He should be a mediator for concord and a conciliator for compromise, rather than a virtuoso of technicality in the conduct of litigation.”[56]

Rule 1.04 of the Code of Professional Responsibility explicitly provides that “(a) lawyer shall encourage his client to avoid, end or settle the controversy if it will admit of a fair settlement.” On this point, we find that both counsel herein fell short of what was expected of them, despite their avowed duties as officers of the court. The records do not show that they took pains to initiate steps geared toward effecting a rapprochement between their clients. On the contrary, their acerbic and protracted exchanges could not but have exacerbated the situation even as they may have found favor in the equally hostile eyes of their respective clients.

In the same manner, we find that the labor arbiter who handled this regrettable case has been less than faithful to the letter and spirit of the Labor Code mandating that a labor arbiter “shall exert all efforts towards the amicable settlement of a labor dispute within his jurisdiction.”[57] If he ever did so, or at least entertained the thought, the copious records of the proceedings in this controversy are barren of any reflection of the same.

One final word. This is one decision we do not particularly relish having been obliged to make. The task of resolving cases involving disputes among members of a family leaves a bad taste in the mouth and an aversion in the mind, for no truly meaningful and enduring resolution is really achieved in such situations. While we are convinced that we have adjudicated the legal issues herein squarely on the bases of law and jurisprudence, sans sentimentality, we are saddened by the thought that we may have failed to bring about the reconciliation of the father and son who figured as parties to this dispute, and that our adherence here to law and duty may unwittingly contribute to the breaking, instead of the strengthening, of familial bonds. In fine, neither of the parties herein actually emerges victorious. It is the Court’s earnest hope, therefore, that with the impartial exposition and extended explanation of their respective rights in this decision, the parties may eventually see their way clear to an ultimate resolution of their differences on more convivial terms.

WHEREFORE, the decision of respondent National Labor Relations Commission is hereby SET ASIDE. Private respondent is ORDERED to pay petitioner back wages for a period not exceeding three (3) years, without qualification or deduction,[58] and, in lieu of reinstatement, separation pay equivalent to one (1) month for every year of service, a fraction of six (6) months being considered as one (1) whole year.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Nocon, and Puno, JJ., concur.

[1] Annex C, Petition; Rollo, 57-68; Original Record, Vol. II, 248-259; per Executive Labor Arbiter Oscar S. Uy.

[2] G.R. No. 80587, February 8, 1989, 170 SCRA 69.

- [3] Annex B, Petition; Rollo, 45-56; Original Record, 400-411; Comm. Irene E. Ceniza, ponente, Pres. Comm. Ernesto G. Ladrido III and Comm. Bernabe S. Batuhan, concurring.
- [4] Original Record, Vol. II, 412-421.
- [5] Annex A, Petition, Rollo, 42-44; Original Record, Vol. II, 466-468
- [6] Rollo, 136-149.
- [7] Ibid., 151.
- [8] Ibid., 175-180.
- [9] Original Record, Vol. I, 248.
- [10] Rollo, 140.
- [11] Abaya vs. People, et al., G.R. No. 96389, December 11, 1992, 216 SCRA 455.
- [12] LBC Aircargo, Inc. vs. NLRC, et al., G.R. No. 81815, October 3, 1990, 190 SCRA 274.
- [13] Sec. 3(m), Rule 131, Rules of Court.
- [14] Sec. 1, Rule XIV, Book V, Omnibus Rules Implementing the Labor Code.
- [15] Art. 283, Labor Code.
- [16] Art. 284, id.
- [17] A' Prime Security Services, Inc. vs. NLRC, et al., G.R. No. 93476, March 19, 1993, 220 SCRA 142.
- [18] Cf. Foodmine 'Inc. vs. NLRC, et al., G.R. No. 84688, August 20, 1990, 188 SCRA 748; Artex Development Co., Inc. vs. NLRC, et al., G.R. No. 65045, July 19, 1990, 187 SCRA 611; Tiu vs. NLRC, et al., G.R. No. 83433, November 12, 1992, 215 SCRA 469
- [19] Chung Fu Industries (Phils.), Inc. vs. Court of Appeals, et al., G.R. No. 96283, February 25, 1992, 206 SCRA 545.
- [20] Rollo, 141, 143-144.
- [21] TSN, Vol. III, February 19, 1986, 20-43, 60.
- [22] Batangas Laguna Tayabas Bus Co. vs. NLRC, et al., G.R. No. 101858, August 21, 1992, 212 SCRA 792.
- [23] Sec. 2(b), Rule I, Book III, Omnibus Rules Implementing the Labor Code provides that employees, are considered managerial employees if they meet all of the following conditions, namely: (1) Their primary duty consists of the management of the establishment in which they are employed or of a department or sub-division thereof; (2) They customarily and regularly direct the work of two or more employees therein; (3) They have the authority to hire or fire other employees of lower rank; or their suggestions and recommendations as to the hiring and firing and as to the promotion or any other change of status of other employees are given particular weight.
- [24] TSN, Vol. II, July 11, 1985, 74-75.
- [25] Rollo, 108-112.
- [26] Annex I, Petition; Rollo, 45.
- [27] Rollo, 16-19.

[28] Exh. E; Formal Offer of Exhibits for Complainant, 42.

[29] Exhs. F, G and H; *ibid.*, 43-45.

[30] Exh. I; *ibid.*, 46.

[31] Exh. J; *ibid.*, 47.

[32] Exh. D; *ibid.*, 41.

[33] Exh. BL; *ibid.*, 167.

[34] Exhs. BH, BI and BJ; *ibid.*, 153-159.

[35] Exh. BK, 160.

[36] Original Record, Vol. I, 276.

[37] Exhs. AM, AO, AQ, AS, AU, AW, AY; Formal Offer of Exhibits for the Complainant, 110-128.

[38] Sec. 285, Labor Code, provides that employment may be terminated by the employee without just cause by serving a written notice on the employer at least one (1) month in advance. An employee may also put an end to the relationship without serving notice on the employer for any of the following just causes: serious insult by the employer or his representative on the honor and person of the employee, inhuman and unbearable treatment accorded the employee by the employer or his representative, commission of a crime or offense by the employer or his representative against the person of the employee or any of the immediate members of his family, and other causes similar to the foregoing.

[39] Rollo, 27-29.

[40] *Ibid.*, 111-115.

[41] Exh. BO; Formal Offer of Exhibits for the Complainant, 175.

[42] Tan, Jr. vs. NLRC, et al., G.R. No. 85919, March 23, 1990, 183 SCRA 651; Kwikway Engineering Works vs. NLRC, et al., G.R. No. 85014, March 22, 1991, 195 SCRA 526; Ranara vs. NLRC, et al., G.R. No. 100969, August 14, 1992, 212 SCRA 631.

[43] Rollo, 146-147; See also Hua Bee Shirt Factory vs. NLRC, et al., G.R. No. 80389, June 18, 1990, 186 SCRA 586; Cathedral School of Technology, et al. vs. NLRC, et al., G.R. No. 101438, October 13, 1992, 214 SCRA 551.

[44] Escareal vs. NLRC, et al., G.R. No. 99357, October 2, 1992, 213 SCRA 472.

[45] Balasbas vs. NLRC, et al., G.R. No. 85286, August 24, 1992, 212 SCRA 803.

[46] Radio Communications of the Philippines, Inc., vs. NLRC, et al., G.R. Nos. 101181-84, June 22, 1992, 210 SCRA 222; China City Restaurant vs. NLRC, et al., G.R. No. 97196, January 22, 1993, 218 SCRA 443.

[47] GT Printers, et al. vs. NLRC, et al., G.R. No. 100749, April 24, 1992, 208 SCRA 321.

[48] Sunday Machine Workers, Inc. vs. NLRC, et al., G.R. No. 95692, March 16, 1992, 207 SCRA 271.

[49] Rollo, 147-148.

[50] Guita vs. Court of Appeals, et al., G.R. No. 60409, November 11, 1985, 139 SCRA 576.

[51] Art. 2233, Civil Code.

[52] *Primero vs. Intermediate Appellate Court, et al.*, G.R. No. 72644, December 14, 1987, 156 SCRA 435.

[53] *Spartan Security and Detective Agency, Inc. vs. NLRC, et al.*, G.R. No. 90693, September 3, 1992, 213 SCRA 528.

[54] *Rollo*, 148.

[55] Canon 19, Code of Professional Responsibility.

[56] Agpalo, *Legal Ethics*, 1989 ed., 66.

[57] See Art. 221, Labor Code.

[58] *Maranaw Resorts Corporation vs. Court of Appeals, et al.*, G.R. No. 103215, November 6, 1992, 215 SCRA 501; *JAM Transportation Co., Inc. vs. Flores, et al.*, G.R. No. 82829, March 19, 1993, 218 SCRA 114.

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