

**OSMALIK S. BUSTAMANTE, PAULINO A. BANTAYAN, FERNANDO L. BUSTAMANTE, MARIO D. SUMONOD, AND SABU J. LAMARAN, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, FIFTH DIVISION ...**

*G.R. No. 111651. November 28, 1996*

Ponente: PADILLA, J.

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**PADILLA, J.:**

On 15 March 1996, the Court (First Division) promulgated a decision in this case, the dispositive part of which states:

"WHEREFORE, the resolution of the National Labor Relations Commission dated 3 May 1993 is modified in that its deletion of the award for backwages in favor of petitioners, is SET ASIDE. The decision of the Labor Arbiter dated 26 April 1991 is AFFIRMED with the modification that backwages shall be paid to petitioners from the time of their illegal dismissal on 25 June 1990 up to the date of their reinstatement. If reinstatement is no longer feasible, a one-month salary shall be paid the petitioners as ordered in the labor arbiter's decision, in addition to the adjudged backwages.

Private respondent now moves to reconsider the decision on grounds that (a) petitioners are not entitled to recover backwages because they were not actually dismissed but their probationary employment was not converted to permanent employment; and (b) assuming that petitioners are entitled to backwages, computation thereof should not start from cessation of work up to actual reinstatement, and that salary earned elsewhere (during the period of illegal dismissal) should be deducted from the award of such backwages.

There is no compelling reason to reconsider the decision of the Court (First Division) dated 15 March 1996. However, we here clarify the computation of backwages due an employee on account of his illegal dismissal from employment.

This court has, over the years, applied different methods in the computation of backwages. The first labor relations law governing the award of backwages was Republic Act No. 875, the Industrial Peace Act, approved on 17 June 1953. Sections 5 and 15 thereof provided thus:

"Sec. 5. Unfair Labor Practice Cases.-

(c) x x x. If, after investigation, the Court shall be of the opinion that any person named in the complaint has engaged in or is engaging in any unfair labor practice, then the Court shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice and take such affirmative action as will effectuate the policies of this Act, including (but not limited to) reinstatement of employees with or without back-pay and including rights of the employees prior to dismissal including seniority. x x x (underscoring supplied)

Sec. 15. Violation of Duty to Bargain Collectively. - x x x. Any employee whose work has stopped as a

consequence of such lockout shall be entitled to back-pay. (underscoring supplied)"

In accordance with these provisions, backpay (the same as backwages) could be awarded where, in the opinion of the Court of Industrial Relations (CIR) such was necessary to effectuate the policies of the Industrial Peace Act.[1] Only in one case was backpay a matter of right, and that was, when an employer had declared a lockout without having first bargained collectively with his employees in accordance with the provisions of the Act.

As the CIR was given wide discretion to grant or disallow payment of backpay (backwages) to an employee, it also had the implied power of mitigating (reducing) the backpay where backpay was allowed.[2] Thus, in the exercise of its jurisdiction, the CIR increased or diminished the award of backpay, depending on several circumstances, among them, the good faith of the employer,[3] the employee's employment in other establishments during the period of illegal dismissal, or the probability that the employee could have realized net earnings from outside employment if he had exercised due diligence to search for outside employment.[4] In labor cases decided during the effectivity of R.A. No. 875, this Court acknowledged and upheld the CIR's authority to deduct any amount from the employee's backwages,[5] including the discretion to reduce such award of backwages by whatever earnings were obtained by the employee elsewhere during the period of his illegal dismissal.[6] In the case of *Itogon-Suyoc Mines, Inc. v. Sañgilo-Itogon Workers' Union*,[7] this Court restated the guidelines for determination of total backwages, thus:

"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. Should the laborer decide that it is preferable not to return to work, the deduction should be made up to the time judgment becomes final. And these, for the reason that employees should not be permitted to enrich themselves at the expense of their employer. Besides, there is the 'law's abhorrence for the double competition'.

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. We are prompted to give out this last reminder because it is really unjust that a discharged employee should, with folded arms, remain inactive in the expectation that a windfall would come to him. A contrary view would breed idleness; it is conducive to lack of initiative on the part of a laborer. Both bear the stamp of underdesirability."

From this ruling came the burden of disposing of an illegal dismissal case on its merits of determining whether or not the computation of the award of backwages is correct. In order not to unduly delay the disposition of illegal dismissal cases, this Court found occasion in the case of *Mercury Drug Co., Inc., et al. v. CIR, et al.*[8] to rule that a fixed amount of backwages without further qualifications should be awarded to an illegally dismissed employee (hereinafter the Mercury Drug rule). This ruling was grounded upon considerations of expediency in the execution of the decision. Former Justice Claudio Teehankee approved of this formula expressing that such method of computation is a "realistic, reasonable and mutually beneficial solution" and "thus obviates 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] However, Justice Teehankee dissented from the majority view that the employee in said case should be awarded backwages only for a period of 1 year, 11 months and 15 days which represented the remainder of the prescriptive period after deducting the period corresponding to the delay incurred by the employee in filing the complaint for unfair labor practice and reinstatement. Justice Teehankee opined that:

"... an award of back wages equivalent to three years (where the case is not terminated sooner) should serve as the base figure for such awards without deduction, subject to deduction where there are mitigating circumstances in favor of the employer but subject to increase by way of exemplary damages where there are aggravating circumstances (e.g. oppression or dilatory appeals) on the employer's part." [10]

The proposal on the three-year backwages was subsequently adopted in later cases, among them, *Feati University Club (PAFLU) v. Feati University* (No. L-31503, 15 August 1974, 58 SCRA 395), *Luzon Stevedoring Corporation v. CIR* (No. L-34300, 22 November 1974, 61 SCRA 154), *Danao Development Corporation v. NLRC* (Nos. L-40706 and L-40707, 16 February 1978, 81 SCRA 487), *Associated Anglo-American Tobacco Corporation v. Lazaro* (No. 63779, 27 October 1983, 125 SCRA (463), *Philippine National Oil Company - Energy Development Corporation v. Leogardo* (G.R. No. 58494, 5 July 1989, 175 SCRA 26).

Then came Presidential Decree No. 442 (the Labor Code of the Philippines) which was signed into law on 1 May 1974 and which took effect on 1 November 1974. Its posture on the award of backwages, as amended, was expressed as follows:

"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 to his back wages computed from the time his compensation was withheld from him up to the time of his reinstatement. (underscoring supplied)."

Under the abovequoted provision, it became mandatory to award backwages to illegally dismissed regular employees. The law specifically declared that the award of backwages was to be computed from the time compensation was withheld from the employee up to the time of his reinstatement. This notwithstanding, the rule generally applied by the Court after the promulgation of the *Mercury Drug* case,[11] and during the effectivity of P.D. No. 442 was still the *Mercury Drug* rule. A survey of cases from 1974 until 1989, when the amendatory law to P.D. No. 442, namely, R.A. No. 6715 took effect, supports this conclusion.

In the case of *New Manila Candy Workers Union (Naconwa-Paflu) v. CIR* (1978),[12] or after the Labor Code (P.D. No. 442) had taken effect, the Court still followed the *Mercury Drug* rule to avoid the necessity of a hearing on earnings obtained elsewhere by the employee during the period of illegal dismissal. In an even later case (1987)[13] the Court declared that the general principle is that an employee is entitled to receive as backwages all the amounts he may have received from the date of his dismissal up to the time of his reinstatement. However, in compliance with the jurisprudential policy of fixing the amount of backwages to a just and reasonable level, the award of backwages equivalent to three (3) years, without qualification or deduction, was nonetheless followed in said case.

In a more direct approach to the rule on the award of backwages, this Court declared in the 1990 case of *Medado v. Court of Appeals*[14] that "any decision or order granting backwages in excess of three (3) years is null and void as to the excess".

In sum, during the effectivity of P.D. 442, the Court enforced the *Mercury Drug* rule and, in effect, qualified the provision under P.D. No. 442 by limiting the award of backwages to three (3) years.

On 21 March 1989, Republic Act No. 6715 took effect, amending the Labor Code. Article 279 thereof states in part:

"ART. 279. Security of Tenure.- . . . An employee who 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 his actual reinstatement." (underscoring supplied)

In accordance with the above provision, an illegally dismissed employee is entitled to his full backwages from the time his compensation was withheld from him (which, as a rule, is from the time of his illegal dismissal) up to the time of his actual reinstatement. It is true that this Court had ruled in the case of *Pines City Educational Center vs.*

NLRC (G.R. No. 96779, 10 November 1993, 227 SCRA 655) that "in ascertaining the total amount of backwages payable to them (employees), we go back to the rule prior to the Mercury Drug rule that the total amount derived from employment elsewhere by the employee from the date of dismissal up to the date of reinstatement, if any, should be deducted therefrom." [15] The rationale for such ruling was that, the earnings derived elsewhere by the dismissed employee while litigating the legality of his dismissal, should be deducted from the full amount of backwages which the law grants him upon reinstatement, so as not to unduly or unjustly enrich the employee at the expense of the employer.

The Court deems it appropriate, however, to reconsider such earlier ruling on the computation of backwages as enunciated in said Pines City Educational Center case, by now holding that conformably with the evident legislative intent as expressed in Rep. Act No. 6715, above-quoted, backwages to be awarded to an illegally dismissed employee, should not, as a general rule, be diminished or reduced by the earnings derived by him elsewhere during the period of his illegal dismissal. The underlying reason for this ruling is that the employee, while litigating the legality (illegality) of his dismissal, must still earn a living to support himself and family, while full backwages have to be paid by the employer as part of the price or penalty he has to pay for illegally dismissing his employee. The clear legislative intent of the amendment in Rep. Act No. 6715 is to give more benefits to workers than was previously given them under the Mercury Drug rule or the "deduction of earnings elsewhere" rule. Thus, a closer adherence to the legislative policy behind Rep. Act No. 6715 points to "full backwages" as meaning exactly that, i.e., without deducting from backwages the earnings derived elsewhere by the concerned employee during the period of his illegal dismissal. [16] In other words, the provision calling for "full backwages" to illegally dismissed employees is clear, plain and free from ambiguity and, therefore, must be applied without attempted or strained interpretation. *Index animi sermo est.* [17]

Therefore, in accordance with R.A. No. 6715, petitioners are entitled to their full backwages, inclusive of allowances and other benefits or their monetary equivalent, from the time their actual compensation was withheld from them up to the time of their actual reinstatement.

As to reinstatement of petitioners, this Court has already ruled that since reinstatement is no longer feasible, because the company would be unjustly prejudiced by the continued employment of petitioners who at present are overage, a separation pay equal to one-month salary granted to them in the Labor Arbiter's decision was in order and, therefore, affirmed in the Court's decision of 15 March 1996. Furthermore, since reinstatement in this case is no longer feasible, the amount of backwages shall be computed from the time of their illegal termination on 25 June 1990 up to the time of finality of this decision. [18]

ACCORDINGLY, private respondent's Motion for Reconsideration, dated 10 April 1996, is DENIED.

### **SO ORDERED.**

Narvasa, C.J., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, Hermosisima, Jr., Panganiban, and Torres, Jr. JJ., concur.

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[1] Perfecto V. Fernandez and Camilo D. Quiason, *The law of Labor Relations* 477 (1963).

[2] *United Employees Welfare Association v. Isaac Peral Bowling Alleys*, G.R. No. L-16327, 30 September 1958, 104 Phil.640.

[3] *Findlay Millar Timber Co., v. PLASLU*, L-18217 and L-18222, 29 September 1962, 6 SCRA 227.

[4] *Republic Savings Bank v. CIR*, L-20303, 31 October 1967, 21 SCRA 661.

[5] *Cromwell Commercial Employees and Laborer Union (PTUC) v. CIR*, L-19778, 26 February 1965, 13 SCRA 258; *Industrial Commercial-Agricultural Workers' Organization v. CIR, et al*, L-21645, 31 March 1966, 16 SCRA 562, 569; *East Asiatic Company Ltd v. CIR*, L-29068, 31 August 1971, 40 SCRA 521.

[6] *Mindanao Motor line, Inc. v. CIR*, L-18418, 29 November 1962, 65 SCRA 710; *Rizal Labor Union, et al.*, L-14779, 30 July 1966, 17 SCRA 858.

[7] No. L-21489, 30 August 1968, 24 SCRA 873.

[8] No. L-23357, 30 April 1974, 56 SCRA 694, 709.

[9] *Id* at 711.

[10] *Id.* at 712. Justice Teehankee's formula for the award of backwages equivalent to the three (3) years is based on the period for the trial of the case and resolution of the appeal - one (1) year for trial and resolution in the industrial court and two (2) years for briefs and decisions in this Court.

[11] It is noteworthy that the *Mercury Drug* case was promulgated on 30 April 1974, a day before P.D. No. 442 was signed into law. Hence, at the time it was rendered, the law then effective was R.A. No. 875.

[12] No L-29728, 30 October 1978, 86 SCRA 36.

[13] *Durabuilt Recapping Plant & Co. vs. NLRC*, No.-76746, 27 July 1987, 152 SCRA 328.

[14] G.R. No. 84664, 7 May 1990, 185 SCRA 80.

[15] The *Pines City Educational Center* case merely reiterated the doctrine laid in *Ferrer v. National Labor Relations Commission* (G.R. No. 100898, 5 July 1993, 224 SCRA 410, 423) which adopted the rule applied prior to the *Mercury Drug* Rule, "which is that the employer may, however, deduct any amount which the employee may have earned during the period of his illegal termination."

[16] There is furthermore the practical consideration that a determination of the earnings derived by an employee during the period of his illegal dismissal, could unduly delay and complicate the proceedings for reinstatement with full backwages.

[17] *Agpalo, Ruben*, *Statutory Construction*, p. 94.

[18] *Itoyon-Suyoc Mines, Inc. v. Sañgilo-Itoyon Workers' Union* (No. L-24189, 30 August 1968, 24 SCRA 873, 887); *Labor v. NLRC*, (G.R. No. 110388, 14 September 1995, 248 SCRA 183); *Gaco v. NLRC*, , (G.R. No. 104690, 23 February 1994, 230 SCRA 260); *Oscar Ledesma and Company v. NLRC*, (G.R. No. 110930, 13 July 1995, 246 SCRA 47); *Rasonable v. NLRC, et al.*, (G.R. No. 117195, 20 February 1996).

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