

PEDRO V. SOLIS, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND PHILEX MINING CORPORATION, RESPONDENTS.

G.R. No. 116175. October 28, 1996

Ponente: FRANCISCO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-116175/>

FRANCISCO, J.:

This case involves illegal dismissal.

Petitioner, Pedro Solis was employed since August of 1972 as an underground miner by private respondent Philex. Due to constant exposure to the elements in the mining area, Solis became ill and was medically diagnosed sometime in 1983 to be afflicted with "Koch's infection, exudative type, minimal (R)".[1] The examining physicians[2] recommended that Solis be assigned to surface work to facilitate his speedy recovery from the illness.[3] This recommendation, including the intercession of petitioner's union on October 1990, that Solis be reassigned temporarily to surface work, were not heeded by Philex.[4] The illness of Solis aggravated.[5] In his medical check-up at the Baguio General Hospital and Medical Center, on March 21, 1991, Solis was diagnosed to be suffering from:

- Koch's pulmonary bronchiectasis (PTB) commonly known as tuberculosis,
- Bronchial, asthma, and
- Arthralgia, right shoulder[6]

and was declared "unfit to continue working for underground mine".[7] Solis was accordingly dismissed by Philex from service on April 5, 1991, and given the amount of P55,121.85 as "separation pay".[8]

After his dismissal from service, Solis submitted himself for medical examination in another hospital, the Baguio Filipino Chinese Hospital, which issued a medical certificate declaring him physically fit.[9] Armed with this new medical certificate, he went back to Philex demanding reinstatement, but to no avail. On May 6, 1991, Solis sued Philex for illegal dismissal. In its position paper, Philex alleged that the dismissal is valid since Solis was suffering from contagious diseases.[10] The Labor Arbiter found that Solis' dismissal was illegal and ordered Philex to reinstate him backwages.[11] Philex appealed to the NLRC which also ruled that Solis was illegally dismissed, albeit it disallowed reinstatement in view of the alleged voluntary acceptance by Solis of his "separation pay".[12]

Petitioner Solis now comes to us on certiorari alleging that the NLRC committed grave abuse of discretion in setting aside the Labor Arbiter's decision ordering his reinstatement. Philex in its comment counters that the instant petition should be dismissed for the failure of Solis to seek reconsideration of the NLRC ruling before filing this petition and reiterated that Solis' dismissal was for a valid cause. The Office of the Solicitor General for its part disputes the NLRC ruling and prays for the reinstatement of Solis.

First, on the procedural lapse. Under Sec. 1 of Rule 65, a petition for certiorari will lie if there is "no plain, speedy and adequate remedy in the ordinary course of law". A motion for reconsideration of an assailed decision is deemed a plain and adequate remedy provided by law.[13] In this case, Solis failed to file any motion for

reconsideration before elevating the case to the court; hence, ordinarily this petition should have been dismissed outright. However, such procedural technicality, if strictly adhered to, may cause injustice to an employee with a valid claim. To prevent this miscarriage of justice, we deemed it necessary to gloss over petitioner's failure to move for reconsideration^[14] and rule, instead, on the more important issue attendant in this case, viz.:^[15] (1) whether or not Solis was dismissed for a valid cause, and (2) whether or not Solis was estopped from demanding reinstatement due to his acceptance of the "separation pay".

Proceeding to the merits of the case.

It is Philex's contention that the dismissal of Solis is in accordance with Article 284 of the Labor Code. Solis was allegedly afflicted with tuberculosis, a contagious disease, which poses danger not only to himself but also to his fellow employees. This argument raises a factual issue contrary to the findings of the Labor Arbiter and the NLRC on appeal. It is a settled rule that this Court gives due deference to the factual findings of the Labor arbiter especially when supported by substantial evidence.^[16] In the case at bench, no cogent reason appears from the records that would justify our departure from the factual findings below.

Be that as it may, Article 284 of the Labor Code provides:

"Disease as ground for termination. -- An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year."

The implementing rule states:

"Disease as a ground for dismissal. -- Where the employee suffers from a disease and his continued employment is prohibited by law or prejudicial to his health or to the health of his co-employees, the employer shall not terminate his employment unless there is a certification by a competent public health authority that the disease is of such nature or at such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment. If the disease or ailment can be cured within the period, the employer shall not terminate the employee but shall ask the employee to take a leave. The employer shall reinstate such employee to his former position immediately upon the restoration of his normal health." (Book VI, Rule 1, Sec. 8 of the Implementing Rules)

The above rule states several requirements before the dismissal of an employee due to disease will be considered valid. Two of which are: (a) the employee is afflicted with a disease that cannot be cured within six (6) months, and (b) a certification to that effect must be issued by a competent public health authority.

We find nothing in the medical certificate issued by the Baguio General Hospital which states that Solis' ailment cannot be cured within six months. The statement that Solis was "unfit to work underground" does not mean that his ailment cannot be cured within six months. In fact, a subsequent medical examination from another hospital^[17] less than six months from the first medical check-up showed that Solis was still physically fit. This negates Philex's assertion that the dismissal is valid. In dismissal cases, the employer has the burden of proving that the termination from service of an employee is for a valid or authorized cause.^[18] Philex failed to discharge that burden in the case at bench.

An illegally dismissed employee, like Solis, is entitled to reinstatement.^[19] Philex, however, contends that Solis was estopped from claiming reinstatement when he accepted his "separation pay." This argument is bereft of merit. Acceptance of separation pay does not necessarily amount to estoppel^[20] nor would it connote waiver of the right to press for reinstatement^[21] considering that the acceptance by Solis of the alleged separation pay was

made due to a dire financial necessity of having to pay for his hospitalization and medical expenses. His receipt of said pay does not relieve the company of its legal obligations.[22] Indeed, a dismissed employee who has accepted his separation pay is not necessarily estopped from assailing the illegality of his dismissal.[23] With more reason should Solis, in the case at bench, cannot be deemed estopped from asserting reinstatement which is just a legal consequence of his illegal dismissal. In fact, he filed the complaint for illegal dismissal with prayer for reinstatement a month after his separation from service -- a fact which strongly indicates that he never waived his right to reinstatement.

Nevertheless, despite the lack of the required certification and the absence of estoppel, it cannot be ignored that Solis was afflicted with tuberculosis, a contagious disease. His continued employment as underground miner would be harmful to his health and his co-workers. Hence, although Solis is legally entitled to reinstatement such reinstatement must be subject not only to his physical fitness, but also to his fitness to work underground, requirements which have to be certified by competent public health authority. We have imposed the same condition on prior cases.[24]

Finally, we note that the Labor Arbiter deducted the P55,121.85 "separation pay" from the backwages to which Solis is entitled. Separation pay is not deductible from backwages because both are "distinct and separate from each other." [25] If Solis will be reinstated, then he should not be entitled to separation pay. Philex, instead, will have to pay him backwages, but less the P55,121.85, which should be credited as part of his backwages. If reinstatement is no longer possible, Philex will pay him backwages and separation pay.[26] However, the amount he received should be deducted from his separation pay instead of from the backwages.

WHEREFORE, the decision of the NLRC promulgated April 29, 1994, is ANNULLED, and the decision of the Labor Arbiter dated March 25, 1993, is REINSTATED subject to the above modification on the proper computation of backwages and separation pay by the Labor Arbiter.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.

[1] Rollo, pp. 27, 130.

[2] Dr. Micu and Dr. Untalan.

[3] Rollo, pp. 130-131.

[4] Rollo, p. 27.

[5] Rollo, p. 20.

[6] Rollo, pp. 28, 131; Annex "1"; Rollo, p. 72.

[7] Medical Certificate, Annex "1", Rollo, p. 72.

[8] Rollo, p. 14.

[9] Rollo, p. 28.

[10] Rollo, p. 15.

[11] Rollo, pp. 41-42.

[12] Rollo, p. 24; Two NLRC commissioners voted to grant the appeal with one commissioner voting to affirm the Labor Arbiter's decision.

- [13] Antonio vs. NLRC, G.R. No. 101755, January 27, 1992.
- [14] Cañete vs. NLRC, 250 SCRA 259.
- [15] Villarama vs. NLRC, 236 SCRA 280.
- [16] Morales vs. NLRC, 311 Phil. 121; Ilocos Sur Electric Coop., Inc. vs. NLRC, 311 Phil. 43; Hydro Resources Contractors Corp. vs. Pagalilawan, 172 SCRA 399; Industrial Timber Corp. vs. NLRC, 169 SCRA 341.
- [17] Baguio Filipino Chinese Hospital.
- [18] See Golden Donuts, Inc. vs. NLRC, 230 SCRA 153; Magnolia Corp. vs. NLRC, 250 SCRA 332.
- [19] Article 279 (formerly Art. 280) of the Labor Code; Carandang vs. Dulay, 188 SCRA 792; Morales vs. NLRC, 188 SCRA 295; Torillo vs. Leogardo, Jr., 197 SCRA 471; Oania vs. NLRC, supra.; Balasbas vs. NLRC, 212 SCRA 803; Spartan Security and Detective Agency vs. NLRC, 213 SCRA 528; Alhambra Industries vs. NLRC, 238 SCRA 232; Manipon, Jr. vs. NLRC, 239 SCRA 451.
- [20] De Leon vs. NLRC, 100 SCRA 691 citing Mercury Drug Co. vs. CIR, 56 SCRA 694.
- [21] See Imperial Vegetable Workers Union vs. Vega, 167 SCRA 599.
- [22] Octaviano vs. NLRC, 202 SCRA 332.
- [23] San Miguel Corporation vs. Javate, Jr., 205 SCRA 469; Blue Bar Coconut Phils., Inc., vs. NLRC, 208 SCRA 371; De Leon Vs. NLRC, 100 SCRA 691.
- [24] General Textile, Inc. vs. NLRC, 313 Phil. 26; Cebu Royal Plant vs. Deputy Minister of Labor, 153 SCRA 38.
- [25] "Backwages and separation pay are reliefs distinct and separate from each other. Payment of backwages in the form of relief that restores the income that was lost by reason of unlawful dismissal is distinguished from separation pay which provides the employee money during the period in which he is locating a new job," Octaviano vs. NLRC, supra.; Santos vs. NLRC, 154 SCRA 166; Lim vs. NLRC, 171 SCRA 388; JAM Transportation Co., Inc. vs. Flores, 220 SCRA 114.
- [26] Kingsize Manufacturing Corp. vs. NLRC, 238 SCRA 349.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.