

**PHILIPPINE NATIONAL CONSTRUCTION CORPORATION (PNCC),
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION
(NLRC) AND FEDERICO DAGASDAS, RESPONDENTS.**

G.R. No. 122440. February 12, 1998

Ponente: PUNO, J.

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PUNO, J.:

The core issue relates to the salary rate that should be applied in computing the backwages of private respondent Federico Dagasdass, who worked for a project of petitioner in the Middle East.

The facts show that private respondent, a carpenter, is a regular work pool employee of the petitioner. He was employed in 1971 and, from then on, worked in various construction projects of the petitioner within the Philippines.

In 1979, private respondent worked in petitioner's project in the Middle East, with a salary of \$2.20 per hour. The project was completed in 1984 and he returned to the Philippines. Petitioner then failed to give him work in its local projects. Consequently, on May 15, 1989, private respondent sued petitioner for illegal dismissal.[1] The labor arbiter dismissed the complaint on the ground of prescription.[2] On appeal, however, the National Labor Relations Commission (NLRC) reversed the labor arbiter.[3] It ordered the reinstatement of private respondent to his former position and the payment of his backwages for three (3) years. Petitioner appealed to this Court but in G.R. No. 101468, we denied the petition and remanded the case to the labor arbiter for the computation of the backwages.

In computing the backwages, the Research and Information Unit of public respondent used private respondent's salary rate in the Middle East. Thus, private respondent's total backwages amounted to four hundred sixty eight thousand and seven hundred pesos (P468,700.00), viz:

"RE: COMPUTATION OF THREE (3) YEARS

BACKWAGES AS PER NLRC RESOLUTION

DATED APRIL 30, 1991

Backwages 3-years

Dollar: 2.20/hour = Dollar 17.60/day

Dollar: 17.60 x 26/days x 36/months = \$16,473.60

13th Month Pay:

1/12 of Dollar 16,473.60 = 1,372.80

\$17,846.40

Dollar conversion:

April 27, 1993 = \$1.00 = P26.263

In Pesos:

\$17,846.40 x P26,263 = P468,700.00

[=====]

Manila, Philippines, May 6, 1993."

Petitioner questioned the correctness of the above computation. It claimed that private respondent's backwages should not be based on his salary abroad since his overseas employment contract was for a definite term and that the project covered by the said contract had been completed in 1984. Petitioner then submitted its own computation of private respondent's backwages[4] based on his local wage rate at the time of his transfer to the overseas project, thus:

"Re: Computation of Three (3) years

Backwages as per NLRC Resolution Dated

April 30, 1991

Backwages 3-year

Hourly Rate: 3.50/hr. = 28.00/day

28.00 x 26 days x 36 months = P26,208.00

13th Month Pay

1/12 of 26,208.00 = 2,184.00

P28,392.00

[=====]

"Note: Rate was based on local rate at the time of his transfer to overseas project."

The labor arbiter ruled in favor of petitioner.[5]

Private respondent appealed to the NLRC. On September 29, 1994, the NLRC set aside the labor arbiter's order,[6] thus:

"WHEREFORE, the Order of Labor Arbiter Ricardo C. Nora dated May 26, 1994, to the extent that it reduced complainant's (private respondent) backwages, is hereby set aside. As prayed for by complainant, "the computation of the Research and Information Unit of the NLRC National Capital Region in the amount of P468,700.00" is hereby reinstated, to serve as basis for the issuance/enforcement of the pertinent writ of execution.

"SO ORDERED."

Petitioner's motion for reconsideration was denied in an Order[7] dated August 22, 1995.

Hence, the petition.

The sole issue is whether the public respondent gravely abused its discretion in using the overseas salary rate of private respondent in computing his backwages.

Petitioner urges that the computation of his backwages should be based on the local salary rate at the time of his separation from employment. It contends that unjust enrichment would result if the overseas salary rate of private respondent is used as the basis in computing his backwages. It points out that private respondent's employment contract for the Middle East project already expired in 1984. All of private respondent's claims under the overseas employment contract had been paid, hence, he could no longer make any other claim under his expired contract.

In its Comment[8] dated March 5, 1996, the Office of Solicitor General (OSG) agreed with petitioner. The OSG further stressed that private respondent was illegally dismissed from the work pool after, and not during his stint abroad. Therefore, considering that upon his return, he reverted to his former status as an ordinary work pool employee of petitioner, he should be paid in accordance with the local wage rate. It also argued that the computation of his backwages could not be based on the US \$2.20 per hour rate because it was meant only for the duration of the foreign project.

For its part, public respondent contends that private respondent's last salary with petitioner at the time of his dismissal was US \$2.20 per hour, hence, his backwages should be based on the said rate.

The petition is meritorious.

An illegally dismissed employee is usually reinstated to his former position without loss of seniority rights and paid backwages from the time he was separated from work up to his actual reinstatement.[9] The purpose of reinstatement is to restore the employee to the state or condition from which he has been removed or separated. Backwages aim to replenish the income that was lost by reason of the unlawful dismissal.[10]

In the case at bar, we hold that the NLRC gravely abused its discretion in computing private respondent's backwages based on his salary abroad. The records show that private respondent was not illegally dismissed while working in the Middle East project of the petitioner. His overseas assignment was a specific project and for a definite period. Upon the completion of the project in 1984, he received all the benefits due him under the overseas contract. He then voluntarily returned to the Philippines to await his deployment in the local projects of the petitioner. Clearly, he was not illegally dismissed while working in the Middle East.

When private respondent prayed for reinstatement, he meant reinstatement to his position as a regular member of petitioner's work pool. If private respondent were given local assignments after his stint abroad, he would have received the local wage. This is the "loss" which backwages aim to restore.[11]

In making this ruling, we take into account the principle that salary scales reflect the standard of living prevailing in the country and the purchasing power of the domestic currency.[12] Private respondent received a higher salary rate for his work in the Middle East because the cost of living and the standard of living in that country are different from those in the Philippines.

WHEREFORE, the decision of public respondent National Labor Relations Commission, dated September 29, 1994 is REVERSED and SET ASIDE and the Order dated May 26, 1994 of the labor arbiter is REINSTATED. No pronouncement as to costs.

SO ORDERED.

Regalado, (Chairman), Melo, Mendoza, and Martinez, JJ., concur.

[1] The illegal dismissal case (docketed as Case No. NCR-00-05-02281-89) was later consolidated with the illegal dismissal case (docketed as Case No. NCR-00-04-01949-89) filed on April 24, 1989 by another PNCC work pool employee, Margarito Dagasdas.

[2] Order, dated June 30, 1989.

[3] Penned by Commissioner Vicente S.E. Veloso and concurred in by Presiding Commissioner Bartolome S. Carale and Commissioner Romeo Putong; See Annex "F" of Petition, Rollo, p. 47-54.

[4] Rollo, p. 35.

[5] Order, dated May 26, 1994, Rollo, pp. 37-40.

[6] Penned by Commissioner Vicente S.E. Veloso and concurred in by Presiding Commissioner Bartolome S. Carale and Commissioner Alberto R. Quimpo; Rollo, pp. 26-31.

[7] Rollo, p. 23.

[8] Rollo, pp. 80-88.

[9] Santos vs. National Labor Relations Commission, No. L-76721, September 21, 1987, 154 SCRA 166.

[10] Santos vs. National Labor Relations Commission, *supra*.

[11] Globe-Mackay Cable and Radio Communications vs. NLRC, G.R. No. 82511, March 3, 1992, 206 SCRA 701.

[12] Grolier International, Inc., vs. Amansec, G.R. No. 83523, August 31, 1989, 177 SCRA 196.

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