

CEFERINO P. BUHAIN, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, AND SWIFT FOOD, INC., RESPONDENTS.

G.R. No. 143709. July 02, 2002

Ponente: PUNO, J.

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PUNO, J.:

This is a Petition for Review on Certiorari[1] seeking the modification of the Resolution of the Court of Appeals dated June 13, 2000, insofar as the award of backwages is alleged to be not in accord with law and jurisprudence. It raises the issue of the period that should be included in determining the amount of backwages to be awarded to an employee illegally terminated from work.

The controversy stemmed from the dismissal of the petitioner Ceferino P. Buhain from the respondent company, Swift Foods Inc., after almost 18 years of gainful employment. He was initially hired by the respondent as a Chick Serviceman in 1978. He rose from the ranks and was eventually appointed to his current post as a Field Sales Supervisor in its Feeds Operations Group in 1988. His area of operation covered the province of Bulacan, and he had the following duties and responsibilities: the monitoring of account receivables, remittances of salesmen, and stock inventory as well as the opening of new account with customers.

On May 9, 1996, while petitioner was on a 14-day sick leave, an audit was conducted by a three-member team[2] on his area of operation. The audit revealed that there was a failure to account for the unremitted collections and stock shortages amounting to P2,500,000.00 by one of the salesmen under his supervision, Roslin Enfestan. He denied any knowledge of the irregularity, claiming that, when he went on leave, there was no shortage or unaccounted stock.

On May 11, 1996, petitioner went to respondent's office as instructed. He was questioned by a company lawyer in the presence of one of the members of the audit team, and an auditor of the company. He was later made to execute and sign an affidavit under oath. It appears that Roslin Enfestan and a certain warehouseman executed their own sworn statements implicating him in the anomaly, but these were never presented to him.

For alleged gross violation of company rules and regulations and standard operating procedures, petitioner was placed under preventive suspension effective May 13, 1996. A week later, on the basis of the sworn statements of Enfestan and the warehouseman, his services were terminated.

The union, of which the petitioner is a member, requested for a grievance meeting on June 4, 1996 to discuss petitioner's dismissal and his possible reinstatement. No agreement, however, was reached in said meeting. In accordance with the terms of the collective bargaining agreement, both parties gave their consent to undergo preventive mediation. On June 4, 1996, the case was brought before the National Conciliation and Mediation Board of the Department of Labor and Employment. Meanwhile, the respondent caused to be published a paid advertisement in the Philippine Daily Inquirer July 21, 1996 issue notifying the public that petitioner was one of the persons no longer connected with it.

On November 28, 1996, the parties agreed to submit the case for voluntary arbitration before Atty. Ramon T. Jimenez. After a series of preliminary conferences, the parties were required to submit their respective position papers, on the basis of which Atty. Jimenez rendered his decision, thus:

“IN VIEW OF THE FOREGOING, this Arbitrator finds that -

- The dismissal of complainant Ceferino P. Buhain was illegal;
- Complainant Buhain be reinstated to his former position without loss of seniority rights from date of his termination to the final resolution of this case;
- Further, in view of the actual losses suffered by the complainant, that he be paid backwages and all benefits which he ought to have received from the date of preventive suspension until he is reinstated;
- In view likewise of the humiliation, besmirched reputation and mental anguish complainant suffered before his peers and friends due to the wide publication of his separation, Respondent be required to pay damages in the amount of P50,000.00; and
- For having been compelled to litigate this case, Respondent is required to pay attorney’s fees equivalent to ten percent (10%) of the amount awarded by this Arbitrator.

SO ORDERED.”[3]

Respondent’s motion was denied in a Resolution dated September 30, 1997.

On October 27, 1997, respondent sought relief with the Court of Appeals, filing therein a Petition for Review with Prayer for Preliminary Injunction and/or Temporary Restraining Order. The appellate court granted the application for writ of preliminary injunction, enjoining the Arbitrator from enforcing the July 10 Decision. The grant was conditioned on a bond of P80,000.00. On November 12, 1998, it rendered a Decision, affirming with modification the contested ruling, viz:

“WHEREFORE, the Decision appealed from is hereby AFFIRMED with MODIFICATION to the effect that the dispositive portion should read as follows:

‘IN VIEW OF THE FOREGOING, this Arbitrator finds that --

- The dismissal of the complainant Ceferino P. Buhain was illegal;
- Complainant be awarded separation pay instead of reinstatement equivalent to one (1) month pay for every year of service computed from the time he was first employed until the full payment of the separation pay due him.
- In view likewise of the humiliation, besmirched reputation and mental anguish complainant suffered before his peers and friends due to the wide publication of his separation, Respondent be required to pay damages in the amount of P50,000.00; and
- For having been compelled to litigate this case, Respondent is required to pay attorney’s fees equivalent to ten percent (10%) of the amount awarded by this Arbitrator.

SO ORDERED.’

SO ORDERED.”[4]

Both parties moved for reconsideration of the aforequoted Decision. Respondent disputed the conclusion of the appellate court on the illegality of petitioner’s dismissal, as well as the grant of moral damages and attorney’s fees. On the other hand, petitioner assailed the deletion of backwages awarded in the Arbitrator’s decision. On

June 13, 2000, the Court of Appeals promulgated the presently impugned Resolution, the dispositive portion of which states:

“WHEREFORE, the Decision appealed from is hereby AFFIRMED with MODIFICATION to the effect that the dispositive portion should read as follows:

‘IN VIEW OF THE FOREGOING, this Arbitrator finds that --

- The dismissal of the complainant Ceferino P. Buhain was illegal;
- Complainant be awarded separation pay instead of reinstatement equivalent to one (1) month pay for every year of service computed from the time he was first employed until the full payment of the separation pay due him.
- Further, in view of the actual losses suffered by the complainant, that he is paid backwages and all benefits which he ought to have received from date of preventive suspension until the time he is illegally dismissed;
- In view likewise of the humiliation, besmirched reputation and mental anguish complainant suffered before his peers and friends due to the wide publication of his separation, Respondent be required to pay damages in the amount of P50,000.00; and
- For having compelled to litigate this case, Respondent is required to pay attorney’s fees equivalent to ten percent (10%) of the amount awarded by this Arbitrator.

SO ORDERED.’

SO ORDERED.”[5]

Dissatisfied with the above ruling, both parties separately filed their Petitions for Review on Certiorari with this Court. In G.R. No. 143617, respondent prayed for the reversal of the aforementioned Decision and Resolution of the Court of Appeals. We denied this Petition in a Resolution dated September 4, 2000.[6] Similarly, we denied with finality the respondent’s motion for reconsideration in a Resolution dated November 20, 2000.[7]

In the meantime, petitioner filed the instant petition, where he raises a lone assignment of error, viz: “The Honorable Court of Appeals grievously erred in not awarding full backwages and all benefits from the time of preventive suspension up to the time of finality of judgment of the decision.”[8] He claims that it grievously erred in ruling that the petitioner is only entitled to “backwages and all benefits which he ought to have received from the date of preventive suspension until the time he was illegally dismissed.” He adds that this is contrary to Art. 279 of the Labor Code and to our ruling in *Bustamante v. NLRC*. [9]

The petition is impressed with merit.

Backwages is a form of relief that restores the income that was lost by reason of unlawful dismissal.[10] The rationale for the relief is that an employee whose dismissal is found to be illegal is considered not having left his office so that he is entitled to all the rights and privileges that accrue to him by virtue of the office that he held.[11]

Article 279 of the Labor Code of the Philippines provides that a worker terminated without just cause shall be entitled among others to 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. The pertinent portion of the law provides:

“Art. 279. Security of Tenure. - x x x 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 his actual reinstatement.”[12]

The clear mandate of Art. 279 is that the determination of backwages plus other benefits should be computed from the time his compensation was withheld from him up to the time of his actual reinstatement. An illegally dismissed employee who, in contemplation of the law, never left his office, should be granted the compensation which rightfully belongs to him from the moment he was unduly deprived of it up to the time it was restored to him.

We find, and so hold therefore, that the Court of Appeals committed a reversible error in merely fixing the backwages from the time he was placed under preventive suspension up to the time he was illegally dismissed. This period covers only a total of eight days, from May 13, 1996 to May 21, 1996. Such formula runs counter to the letter and spirit of the Labor Code.

In conformity with Art. 279, petitioner should be given full backwages and all the benefits accruing to him from the first day of his preventive suspension, May 13, 1996, up to the date of the finality of this judgment, in light of the arbitrator’s conclusion that reinstatement is no longer possible. Incidentally, we reiterate our ruling in *Bustamante* that the backwages to be awarded the petitioner should not be diminished or reduced by earnings derived by him elsewhere during the term of his illegal dismissal.[13]

Respondent, however, argues that the particular circumstance of this case exempts it from the payment of backwages. One of the situations established by jurisprudence where backwages need not be awarded is when the employer acted in good faith in dismissing the employee. Citing the case of *Itogon-Suyoc Mines, Inc. v. NLRC*,[14] respondent contends that “the ends of social and compassionate justice would therefore be served if private respondent is reinstated but without backwages in view of petitioner’s obvious good faith.”

In claiming good faith, respondent asserts that it had lost a huge amount of money (P2.5 million) due to unremitted payments from its sales outlet of which the petitioner is the supervisor, and it had reason to believe that the loss could not have materialized without serious misconduct or gross neglect by the petitioner in the performance of his duties.

These contentions cannot pass judicial muster. An examination of the factual circumstances of the manner by which petitioner was dismissed reveals that respondent can hardly be credited with good faith. In the first place, there exists no just cause in dismissing him. The respondent was not able to prove that petitioner should be blamed for the missing accounts. The imputation of negligence to him is unfounded. Well to point, the shortage happened during the time petitioner was on a leave of absence from his work. Likewise, as found by the voluntary arbitrator, and affirmed both by the appellate and this[15] Court, petitioner was not afforded due process. He was not given a written notice of the charges by the respondent. Nor was he provided adequate opportunity to be heard and defend himself. The only bases for penalizing him were the sworn statements and the audit report, which documents were not even shown to him. To compound the matter, even before the validity of the dismissal can properly be settled in the appropriate forum, respondent immediately caused the publication of the notice to the public which exposed petitioner to the finger of scorn.

Reliance on the cases of *Itogon-Suyoc Mines, Inc. v. NLRC*[16] and *Manila Electric Co. v. NLRC*[17] by the respondent is misplaced. In *Itogon-Suyoc Mines*, there was express finding of just cause in the dismissal of the employee concerned. Reinstatement was ordered only because we deemed that dismissal would be too severe a penalty considering the long years and loyal service he has rendered to the company. The same factual milieu obtains in *Manila Electric Co.*, insofar as the presence of just cause is concerned. In the sense, therefore, that there was a just cause in the dismissal of an employee and that the latter was afforded due process, we held that there

was good faith on the part of the employers. Needless to say, the facts are different in the instant petition.

IN VIEW WHEREOF, the petition is GRANTED. The assailed Resolution of the Court of Appeals dated June 13, 2000 is hereby MODIFIED. Respondent Swift Foods, Inc. is ordered to pay petitioner Ceferino P. Buhain full backwages, inclusive of allowances and other benefits or their monetary equivalent computed from the time he was placed on preventive suspension on May 13, 1996 up to the date of the finality of judgment in this case. The Writ of Preliminary Injunction issued by the Court of Appeals on May 13, 1998, enjoining the Hon. Voluntary Arbitrator Ramon T. Jimenez from executing his July 10, 1997 Decision and September 20, 1997 Resolution, is LIFTED.

SO ORDERED.

Panganiban, Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] Under Rule 45 of the Revised Rules of Civil Procedure.

[2] Composed of the following: Willie Pacres (National Sales Supervisor), Angelito Abad (Feeds Sales Supervisor), and a certain Jasmin (from the Accounting Department).

[3] Decision, Re: Illegal Dismissal, July 10, 1997; Rollo, p. 163.

[4] Decision, CA-G.R. SP NO. 45659, November 12, 1998, p. 14; Rollo, p. 47.

[5] Resolution, CA-G.R. SP NO. 45659, June 13, 2000.

[6] Resolution, G.R. No. 143617, September 4, 2000.

[7] Resolution, G.R. No. 143617, November 4, 2000.

[8] Petition, p. 14; Rollo, p. 16.

[9] 265 SCRA 61 (1996).

[10] Escareal v. NLRC, 213 SCRA 472 (1992).

[11] Cristobal v. Melchor, 101 SCRA 857 (1980).

[12] Art. 279, Labor Code, P.D. 442, as amended by R.A. No. 6715.

[13] Bustamante V. NLRC, supra.

[14] 117 SCRA 528 (1982).

[15] Resolution, G.R. No. 143617, September 4, 2000.

[16] 117 SCRA 528 (1982).

[17] 175 SCRA 277 (1989).

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