

SMART COMMUNICATIONS, INC., PETITIONER, VS. REGINA M. ASTORGA, RESPONDENT.*G.R. NO. 148132. January 23, 2008*

Ponente: NACHURA, J.

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For the resolution of the Court are three consolidated petitions for review on certiorari under Rule 45 of the Rules of Court. G.R. No. 148132 assails the February 28, 2000 Decision[1] and the May 7, 2001 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP. No. 53831. G.R. Nos. 151079 and 151372 question the June 11, 2001 Decision[3] and the December 18, 2001 Resolution[4] in CA-G.R. SP. No. 57065.

Regina M. Astorga (Astorga) was employed by respondent Smart Communications, Incorporated (SMART) on May 8, 1997 as District Sales Manager of the Corporate Sales Marketing Group/ Fixed Services Division (CSMG/FSD). She was receiving a monthly salary of P33,650.00. As District Sales Manager, Astorga enjoyed additional benefits, namely, annual performance incentive equivalent to 30% of her annual gross salary, a group life and hospitalization insurance coverage, and a car plan in the amount of P455,000.00.[5]

In February 1998, SMART launched an organizational realignment to achieve more efficient operations. This was made known to the employees on February 27, 1998.[6] Part of the reorganization was the outsourcing of the marketing and sales force. Thus, SMART entered into a joint venture agreement with NTT of Japan, and formed SMART-NTT Multimedia, Incorporated (SNMI). Since SNMI was formed to do the sales and marketing work, SMART abolished the CSMG/FSD, Astorga's division.

To soften the blow of the realignment, SNMI agreed to absorb the CSMG personnel who would be recommended by SMART. SMART then conducted a performance evaluation of CSMG personnel and those who garnered the highest ratings were favorably recommended to SNMI. Astorga landed last in the performance evaluation, thus, she was not recommended by SMART. SMART, nonetheless, offered her a supervisory position in the Customer Care Department, but she refused the offer because the position carried lower salary rank and rate.

Despite the abolition of the CSMG/FSD, Astorga continued reporting for work. But on March 3, 1998, SMART issued a memorandum advising Astorga of the termination of her employment on ground of redundancy, effective April 3, 1998. Astorga received it on March 16, 1998.[7]

The termination of her employment prompted Astorga to file a Complaint[8] for illegal dismissal, non-payment of salaries and other benefits with prayer for moral and exemplary damages against SMART and Ann Margaret V. Santiago (Santiago). She claimed that abolishing CSMG and, consequently, terminating her employment was illegal for it violated her right to security of tenure. She also posited that it was illegal for an employer, like SMART, to contract out services which will displace the employees, especially if the contractor is an in-house agency.[9]

SMART responded that there was valid termination. It argued that Astorga was dismissed by reason of

redundancy, which is an authorized cause for termination of employment, and the dismissal was effected in accordance with the requirements of the Labor Code. The redundancy of Astorga's position was the result of the abolition of CSMG and the creation of a specialized and more technically equipped SNMI, which is a valid and legitimate exercise of management prerogative.[10]

In the meantime, on May 18, 1998, SMART sent a letter to Astorga demanding that she pay the current market value of the Honda Civic Sedan which was given to her under the company's car plan program, or to surrender the same to the company for proper disposition.[11] Astorga, however, failed and refused to do either, thus prompting SMART to file a suit for replevin with the Regional Trial Court of Makati (RTC) on August 10, 1998. The case was docketed as Civil Case No. 98-1936 and was raffled to Branch 57.[12]

Astorga moved to dismiss the complaint on grounds of (i) lack of jurisdiction; (ii) failure to state a cause of action; (iii) *litis pendentia*; and (iv) forum-shopping. Astorga posited that the regular courts have no jurisdiction over the complaint because the subject thereof pertains to a benefit arising from an employment contract; hence, jurisdiction over the same is vested in the labor tribunal and not in regular courts.[13]

Pending resolution of Astorga's motion to dismiss the replevin case, the Labor Arbiter rendered a Decision[14] dated August 20, 1998, declaring Astorga's dismissal from employment illegal. While recognizing SMART's right to abolish any of its departments, the Labor Arbiter held that such right should be exercised in good faith and for causes beyond its control. The Arbiter found the abolition of CSMG done neither in good faith nor for causes beyond the control of SMART, but a ploy to terminate Astorga's employment. The Arbiter also ruled that contracting out the functions performed by Astorga to an in-house agency like SNMI was illegal, citing Section 7(e), Rule VIII-A of the Rules Implementing the Labor Code.

Accordingly, the Labor Arbiter ordered:

WHEREFORE, judgment is hereby rendered declaring the dismissal of [Astorga] to be illegal and unjust. [SMART and Santiago] are hereby ordered to:

1. Reinstate [Astorga] to [her] former position or to a substantially equivalent position, without loss of seniority rights and other privileges, with full backwages, inclusive of allowances and other benefits from the time of [her] dismissal to the date of reinstatement, which computed as of this date, are as follows:

(a)

Astorga

BACKWAGES; (P33,650.00 x 4 months)

= P

134,600.00

UNPAID SALARIES (February 15, 1998-

April 3, 1998

February 15-28, 1998

= P

16,823.00

March 1-31, [1998]

= P

33,650.00

April 1-3, 1998

= P

3,882.69

CAR MAINTENANCE ALLOWANCE

(P2,000.00 x 4)

= P

8,000.00

FUEL ALLOWANCE (300 liters/mo. x

4 mos. at P12.04/liter)

= P

14,457.83

TOTAL

= P

211,415.52

x x x x

3. Jointly and severally pay moral damages in the amount of P500,000.00 x x x and exemplary damages in the amount of P300,000.00. x x x

4. Jointly and severally pay 10% of the amount due as attorney's fees.

SO ORDERED.[15]

Subsequently, on March 29, 1999, the RTC issued an Order[16] denying Astorga's motion to dismiss the replevin case. In so ruling, the RTC ratiocinated that:

Assessing the [submission] of the parties, the Court finds no merit in the motion to dismiss.

As correctly pointed out, this case is to enforce a right of possession over a company car assigned to the defendant under a car plan privilege arrangement. The car is registered in the name of the plaintiff. Recovery thereof via replevin suit is allowed by Rule 60 of the 1997 Rules of Civil Procedure, which is undoubtedly within the jurisdiction of the Regional Trial Court.

In the Complaint, plaintiff claims to be the owner of the company car and despite demand, defendant refused to return said car. This is clearly sufficient statement of plaintiff's cause of action.

Neither is there forum shopping. The element of *litis penden[t]ia* does not appear to exist because the judgment in the labor dispute will not constitute *res judicata* to bar the filing of this case.

WHEREFORE, the Motion to Dismiss is hereby denied for lack of merit.

SO ORDERED.[17]

Astorga filed a motion for reconsideration, but the RTC denied it on June 18, 1999.[18]

Astorga elevated the denial of her motion via certiorari to the CA, which, in its February 28, 2000 Decision,[19] reversed the RTC ruling. Granting the petition and, consequently, dismissing the replevin case, the CA held that the case is intertwined with Astorga's complaint for illegal dismissal; thus, it is the labor tribunal that has rightful jurisdiction over the complaint. SMART's motion for reconsideration having been denied,[20] it elevated the case to this Court, now docketed as G.R. No. 148132.

Meanwhile, SMART also appealed the unfavorable ruling of the Labor Arbiter in the illegal dismissal case to the National Labor Relations Commission (NLRC). In its September 27, 1999 Decision,[21] the NLRC sustained Astorga's dismissal. Reversing the Labor Arbiter, the NLRC declared the abolition of CSMG and the creation of SNMI to do the sales and marketing services for SMART a valid organizational action. It overruled the Labor Arbiter's ruling that SNMI is an in-house agency, holding that it lacked legal basis. It also declared that contracting, subcontracting and streamlining of operations for the purpose of increasing efficiency are allowed under the law. The NLRC further found erroneous the Labor Arbiter's disquisition that redundancy to be valid must be impelled by economic reasons, and upheld the redundancy measures undertaken by SMART.

The NLRC disposed, thus:

WHEREFORE, the Decision of the Labor Arbiter is hereby reversed and set aside. [Astorga] is further ordered to immediately return the company vehicle assigned to her. [Smart and Santiago] are hereby ordered to pay the final wages of [Astorga] after [she] had submitted the required supporting papers therefor.

SO ORDERED.[22]

Astorga filed a motion for reconsideration, but the NLRC denied it on December 21, 1999.[23]

Astorga then went to the CA via certiorari. On June 11, 2001, the CA rendered a Decision[24] affirming with modification the resolutions of the NLRC. In gist, the CA agreed with the NLRC that the reorganization undertaken by SMART resulting in the abolition of CSMG was a legitimate exercise of management prerogative. It rejected Astorga's posturing that her non-absorption into SNMI was tainted with bad faith. However, the CA found that SMART failed to comply with the mandatory one-month notice prior to the intended termination. Accordingly, the CA imposed a penalty equivalent to Astorga's one-month salary for this non-compliance. The CA also set aside the NLRC's order for the return of the company vehicle holding that this issue is not essentially a labor concern, but is civil in nature, and thus, within the competence of the regular court to decide. It added that the matter had not been fully ventilated before the NLRC, but in the regular court.

Astorga filed a motion for reconsideration, while SMART sought partial reconsideration, of the Decision. On December 18, 2001, the CA resolved the motions, viz.:

WHEREFORE, [Astorga's] motion for reconsideration is hereby PARTIALLY GRANTED. [Smart] is hereby ordered to pay [Astorga] her backwages from 15 February 1998 to 06 November 1998. [Smart's] motion for reconsideration is outrightly DENIED.

SO ORDERED.[25]

Astorga and SMART came to us with their respective petitions for review assailing the CA ruling, docketed as G.R. Nos. 151079 and 151372. On February 27, 2002, this Court ordered the consolidation of these petitions with G.R. No. 148132.[26]

In her Memorandum, Astorga argues:

I

THE COURT OF APPEALS ERRED IN UPHOLDING THE VALIDITY OF ASTORGA'S DISMISSAL DESPITE THE FACT THAT HER DISMISSAL WAS EFFECTED IN CLEAR VIOLATION OF THE CONSTITUTIONAL RIGHT TO SECURITY OF TENURE, CONSIDERING THAT THERE WAS NO GENUINE GROUND FOR HER DISMISSAL.

II

SMART'S REFUSAL TO REINSTATE ASTORGA DURING THE PENDENCY OF THE APPEAL AS REQUIRED BY ARTICLE 223 OF THE LABOR CODE, ENTITLES ASTORGA TO HER SALARIES DURING THE PENDENCY OF THE APPEAL.

III

THE COURT OF APPEALS WAS CORRECT IN HOLDING THAT THE REGIONAL TRIAL COURT HAS NO JURISDICTION OVER THE COMPLAINT FOR RECOVERY OF A CAR WHICH ASTORGA ACQUIRED AS PART OF HER EMPLOYEE (sic) BENEFIT.[27]

On the other hand, Smart in its Memoranda raises the following issues:

I

WHETHER THE HONORABLE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR WITH APPLICABLE DECISION OF THE HONORABLE SUPREME COURT AND HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THE POWER OF SUPERVISION WHEN IT RULED THAT SMART DID NOT COMPLY WITH THE NOTICE REQUIREMENTS PRIOR TO TERMINATING ASTORGA ON THE GROUND OF REDUNDANCY.

II

WHETHER THE NOTICES GIVEN BY SMART TO ASTORGA AND THE DEPARTMENT OF LABOR AND EMPLOYMENT ARE SUBSTANTIAL COMPLIANCE WITH THE NOTICE REQUIREMENTS BEFORE TERMINATION.

III

WHETHER THE RULE ENUNCIATED IN SERRANO VS. NATIONAL LABOR RELATIONS COMMISSION FINDS APPLICATION IN THE CASE AT BAR CONSIDERING THAT IN THE SERRANO CASE THERE WAS ABSOLUTELY NO NOTICE AT ALL.[28]

IV

WHETHER THE HONORABLE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR WITH APPLICABLE DECISION[S] OF THE HONORABLE SUPREME COURT AND HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THE POWER OF SUPERVISION WHEN IT RULED THAT THE REGIONAL TRIAL COURT DOES NOT HAVE JURISDICTION OVER THE COMPLAINT FOR REPLEVIN FILED BY SMART TO RECOVER ITS OWN COMPANY VEHICLE FROM A FORMER EMPLOYEE WHO WAS LEGALLY DISMISSED.

V

WHETHER THE HONORABLE COURT OF APPEALS HAS FAILED TO APPRECIATE THAT THE SUBJECT OF THE REPLEVIN CASE IS NOT THE ENFORCEMENT OF A CAR PLAN PRIVILEGE BUT SIMPLY THE RECOVERY OF A COMPANY CAR.

VI

WHETHER THE HONORABLE COURT OF APPEALS HAS FAILED TO APPRECIATE THAT ASTORGA CAN NO LONGER BE CONSIDERED AS AN EMPLOYEE OF SMART UNDER THE LABOR CODE.[29]

The Court shall first deal with the propriety of dismissing the replevin case filed with the RTC of Makati City allegedly for lack of jurisdiction, which is the issue raised in G.R. No. 148132.

Replevin is an action whereby the owner or person entitled to repossession of goods or chattels may recover those goods or chattels from one who has wrongfully distrained or taken, or who wrongfully detains such goods or chattels. It is designed to permit one having right to possession to recover property in specie from one who has wrongfully taken or detained the property.[30] The term may refer either to the action itself, for the recovery of personalty, or to the provisional remedy traditionally associated with it, by which possession of the property may be obtained by the plaintiff and retained during the pendency of the action.[31]

That the action commenced by SMART against Astorga in the RTC of Makati City was one for replevin hardly admits of doubt.

In reversing the RTC ruling and consequently dismissing the case for lack of jurisdiction, the CA made the following disquisition, viz.:

[I]t is plain to see that the vehicle was issued to [Astorga] by [Smart] as part of the employment package. We doubt that [SMART] would extend [to Astorga] the same car plan privilege were it not for her employment as district sales manager of the company. Furthermore, there is no civil contract for a loan between [Astorga] and [Smart]. Consequently, We find that the car plan privilege is a benefit arising out of employer-employee relationship. Thus, the claim for such falls squarely within the original and exclusive jurisdiction of the labor arbiters and the NLRC.[32]

We do not agree. Contrary to the CA's ratiocination, the RTC rightfully assumed jurisdiction over the suit and acted well within its discretion in denying Astorga's motion to dismiss. SMART's demand for payment of the market value of the car or, in the alternative, the surrender of the car, is not a labor, but a civil, dispute. It involves the relationship of debtor and creditor rather than employee-employer relations.[33] As such, the dispute falls within the jurisdiction of the regular courts.

In *Basaya, Jr. v. Militante*,[34] this Court, in upholding the jurisdiction of the RTC over the replevin suit, explained:

Replevin is a possessory action, the gist of which is the right of possession in the plaintiff. The primary relief sought therein is the return of the property in specie wrongfully detained by another person. It is an ordinary statutory proceeding to adjudicate rights to the title or possession of personal property. The question of whether or not a party has the right of possession over the property involved and if so, whether or not the adverse party has wrongfully taken and detained said property as to require its return to plaintiff, is outside the pale of competence of a labor tribunal and beyond the field of specialization of Labor Arbiters.

x x x x

The labor dispute involved is not intertwined with the issue in the Replevin Case. The respective issues raised in each forum can be resolved independently on the other. In fact in 18 November 1986, the NLRC in the case before it had issued an Injunctive Writ enjoining the petitioners from blocking the free ingress and egress to the Vessel and ordering the petitioners to disembark and vacate. That aspect of the controversy is properly settled under the Labor Code. So also with petitioners' right to picket. But the determination of the question of who has the better right to take possession of the Vessel and whether petitioners can deprive the Charterer, as the legal possessor of the Vessel, of that right to possess is addressed to the competence of Civil Courts.

In thus ruling, this Court is not sanctioning split jurisdiction but defining avenues of jurisdiction as laid down by pertinent laws.

The CA, therefore, committed reversible error when it overturned the RTC ruling and ordered the dismissal of the replevin case for lack of jurisdiction.

Having resolved that issue, we proceed to rule on the validity of Astorga's dismissal.

Astorga was terminated due to redundancy, which is one of the authorized causes for the dismissal of an employee. The nature of redundancy as an authorized cause for dismissal is explained in the leading case of *Wiltshire File Co., Inc. v. National Labor Relations Commission*,^[35] viz:

x x x redundancy in an employer's personnel force necessarily or even ordinarily refers to duplication of work. That no other person was holding the same position that private respondent held prior to termination of his services does not show that his position had not become redundant. Indeed, in any well organized business enterprise, it would be surprising to find duplication of work and two (2) or more people doing the work of one person. We believe that redundancy, for purposes of the Labor Code, exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. Succinctly put, a position is redundant where it is superfluous, and superfluity of a position or positions may be the outcome of a number of factors, such as overhiring of workers, decreased volume of business, or dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise.

The characterization of an employee's services as superfluous or no longer necessary and, therefore, properly terminable, is an exercise of business judgment on the part of the employer. The wisdom and soundness of such characterization or decision is not subject to discretionary review provided, of course, that a violation of law or arbitrary or malicious action is not shown.^[36]

Astorga claims that the termination of her employment was illegal and tainted with bad faith. She asserts that the reorganization was done in order to get rid of her. But except for her barefaced allegation, no convincing evidence was offered to prove it. This Court finds it extremely difficult to believe that SMART would enter into a joint venture agreement with NTT, form SNMI and abolish CSMG/FSD simply for the sole purpose of easing out a particular employee, such as Astorga. Moreover, Astorga never denied that SMART offered her a supervisory position in the Customer Care Department, but she refused the offer because the position carried a lower salary rank and rate. If indeed SMART simply wanted to get rid of her, it would not have offered her a position in any department in the enterprise.

Astorga also states that the justification advanced by SMART is not true because there was no compelling economic reason for redundancy. But contrary to her claim, an employer is not precluded from adopting a new policy conducive to a more economical and effective management even if it is not experiencing economic reverses. Neither does the law require that the employer should suffer financial losses before he can terminate the services of the employee on the ground of redundancy. [37]

We agree with the CA that the organizational realignment introduced by SMART, which culminated in the abolition of CSMG/FSD and termination of Astorga's employment was an honest effort to make SMART's sales and marketing departments more efficient and competitive. As the CA had taken pains to elucidate:

x x x a careful and assiduous review of the records will yield no other conclusion than that the reorganization undertaken by SMART is for no purpose other than its declared objective - as a labor and cost savings device. Indeed, this Court finds no fault in SMART's decision to outsource the corporate sales market to SNMI in order to attain greater productivity. [Astorga] belonged to the Sales Marketing Group under the Fixed Services Division (CSMG/FSD), a distinct sales force of SMART in charge of selling SMART's telecommunications services to the corporate market. SMART, to ensure it can respond quickly, efficiently and flexibly to its customer's requirement, abolished CSMG/FSD and shortly thereafter assigned its functions to newly-created SNMI Multimedia Incorporated, a joint venture company of SMART and NTT of Japan, for the reason that CSMG/FSD does not have the necessary technical expertise required for the value added services. By transferring the duties of CSMG/FSD to SNMI, SMART has created a more competent and specialized organization to perform the work required for corporate accounts. It is also relieved SMART of all administrative costs - management, time and money-needed in maintaining the CSMG/FSD. The determination to outsource the duties of the CSMG/FSD to SNMI was, to Our mind, a sound business judgment based on relevant criteria and is therefore a legitimate exercise of management prerogative.

Indeed, out of our concern for those lesser circumstanced in life, this Court has inclined towards the worker and upheld his cause in most of his conflicts with his employer. This favored treatment is consonant with the social justice policy of the Constitution. But while tilting the scales of justice in favor of workers, the fundamental law also guarantees the right of the employer to reasonable returns for his investment.[38] In this light, we must acknowledge the prerogative of the employer to adopt such measures as will promote greater efficiency, reduce overhead costs and enhance prospects of economic gains, albeit always within the framework of existing laws. Accordingly, we sustain the reorganization and redundancy program undertaken by SMART.

However, as aptly found by the CA, SMART failed to comply with the mandated one (1) month notice prior to termination. The record is clear that Astorga received the notice of termination only on March 16, 1998[39] or less than a month prior to its effectivity on April 3, 1998. Likewise, the Department of Labor and Employment was notified of the redundancy program only on March 6, 1998.[40]

Article 283 of the Labor Code clearly provides:

Art. 283. Closure of establishment and reduction of personnel. -- The employer may also terminate the employment 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 provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof x x x.

SMART's assertion that Astorga cannot complain of lack of notice because the organizational realignment was made known to all the employees as early as February 1998 fails to persuade. Astorga's actual knowledge of the reorganization cannot replace the formal and written notice required by the law. In the written notice, the employees are informed of the specific date of the termination, at least a month prior to the effectivity of such

termination, to give them sufficient time to find other suitable employment or to make whatever arrangements are needed to cushion the impact of termination. In this case, notwithstanding Astorga's knowledge of the reorganization, she remained uncertain about the status of her employment until SMART gave her formal notice of termination. But such notice was received by Astorga barely two (2) weeks before the effective date of termination, a period very much shorter than that required by law.

Be that as it may, this procedural infirmity would not render the termination of Astorga's employment illegal. The validity of termination can exist independently of the procedural infirmity of the dismissal.[41] In *DAP Corporation v. CA*,[42] we found the dismissal of the employees therein valid and for authorized cause even if the employer failed to comply with the notice requirement under Article 283 of the Labor Code. This Court upheld the dismissal, but held the employer liable for non-compliance with the procedural requirements.

The CA, therefore, committed no reversible error in sustaining Astorga's dismissal and at the same time, awarding indemnity for violation of Astorga's statutory rights.

However, we find the need to modify, by increasing, the indemnity awarded by the CA to Astorga, as a sanction on SMART for non-compliance with the one-month mandatory notice requirement, in light of our ruling in *Jaka Food Processing Corporation v. Pacot*,[43] viz.:

[I]f the dismissal is based on a just cause under Article 282 but the employer failed to comply with the notice requirement, the sanction to be imposed upon him should be tempered because the dismissal process was, in effect, initiated by an act imputable to the employee, and (2) if the dismissal is based on an authorized cause under Article 283 but the employer failed to comply with the notice requirement, the sanction should be stiffer because the dismissal process was initiated by the employer's exercise of his management prerogative.

We deem it proper to increase the amount of the penalty on SMART to P50,000.00.

As provided in Article 283 of the Labor Code, Astorga is, likewise, entitled to separation pay equivalent to at least one (1) month salary or to at least one (1) month's pay for every year of service, whichever is higher. The records show that Astorga's length of service is less than a year. She is, therefore, also entitled to separation pay equivalent to one (1) month pay.

Finally, we note that Astorga claimed non-payment of wages from February 15, 1998. This assertion was never rebutted by SMART in the proceedings a quo. No proof of payment was presented by SMART to disprove the allegation. It is settled that in labor cases, the burden of proving payment of monetary claims rests on the employer.[44] SMART failed to discharge the onus probandi. Accordingly, it must be held liable for Astorga's salary from February 15, 1998 until the effective date of her termination, on April 3, 1998.

However, the award of backwages to Astorga by the CA should be deleted for lack of basis. Backwages is a relief given to an illegally dismissed employee. Thus, before backwages may be granted, there must be a finding of unjust or illegal dismissal from work.[45] The Labor Arbiter ruled that Astorga was illegally dismissed. But on appeal, the NLRC reversed the Labor Arbiter's ruling and categorically declared Astorga's dismissal valid. This ruling was affirmed by the CA in its assailed Decision. Since Astorga's dismissal is for an authorized cause, she is not entitled to backwages. The CA's award of backwages is totally inconsistent with its finding of valid dismissal.

WHEREFORE, the petition of SMART docketed as G.R. No. 148132 is GRANTED. The February 28, 2000 Decision and the May 7, 2001 Resolution of the Court of Appeals in CA-G.R. SP. No. 53831 are SET ASIDE. The Regional Trial Court of Makati City, Branch 57 is DIRECTED to proceed with the trial of Civil Case No. 98-1936 and render its Decision with reasonable dispatch.

On the other hand, the petitions of SMART and Astorga docketed as G.R. Nos. 151079 and 151372 are DENIED.

The June 11, 2001 Decision and the December 18, 2001 Resolution in CA-G.R. SP. No. 57065, are AFFIRMED with MODIFICATION. Astorga is declared validly dismissed. However, SMART is ordered to pay Astorga P50,000.00 as indemnity for its non-compliance with procedural due process, her separation pay equivalent to one (1) month pay, and her salary from February 15, 1998 until the effective date of her termination on April 3, 1998. The award of backwages is DELETED for lack of basis.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Corona,[*] and Reyes, JJ., concur.

[*] In lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 484 dated January 11, 2008.

[1] Penned by Associate Justice Elvi John S. Asuncion (dismissed), with Associate Justices Corona Ibay-Somera (retired) and Portia Aliño-Hormachuelos, concurring; rollo (G.R. No. 148132), pp. 146-152.

[2] Rollo, pp. 164-165.

[3] Penned by Associate Justice Romeo Brawner (retired), with Associate Justices Remedios Salazar-Fernando and Josefina Guevara-Salonga, concurring; rollo (G.R. No. 151079), pp. 24-36.

[4] Id. at 42-45.

[5] Rollo (G.R. No. 151372), pp. 58-59.

[6] Rollo (G.R. No. 151079), p. 46.

[7] Rollo (G.R. No. 151372), p. 62.

[8] Id. at 40-42.

[9] Id. at 43-54.

[10] Id. at 68-78.

[11] Rollo (G.R. No. 148132), p. 47.

[12] Id. at 30-34.

[13] Id. at 51-59.

[14] Rollo (G.R. No. 151372), pp. 79-92.

[15] Id. at 90-92.

[16] Rollo (G.R. No. 148132), pp. 79-80.

[17] Id.

[18] Id. at 110.

[19] Id. at 146-152.

[20] Id. at 164-165.

[21] Rollo (G.R. No. 151079), pp. 102-120.

[22] Id. at 120.

- [23] Id. at 122.
- [24] Id. at 24-36.
- [25] Id. at 45.
- [26] Rollo (G.R. No. 151372), p. 175.
- [27] Rollo (G.R. No. 151079), p. 250.
- [28] Id. at 273.
- [29] Rollo (G.R. No. 148132), p. 266.
- [30] Black's Law Dictionary, Fifth Edition, p. 1168.
- [31] Tillson v. Court of Appeals, G.R. No. 89870, May 28, 1991, 197 SCRA 587, 598.
- [32] Id. at 148.
- [33] See Nestle Philippines Inc. v. National Labor Relations Commission, G. R. No. 85197, March 18, 1991, 195 SCRA 340, 343.
- [34] G.R. L-75837, December 11, 1987, 156 SCRA 299, 303-304.
- [35] G.R. No. 82249, February 7, 1991, 193 SCRA 665, 672.
- [36] Dole Philippines, Inc. v. National Labor Relations Commission, 417 Phil. 428, 440 (2001).
- [37] Id.
- [38] Asian Alcohol Corporation v. National Labor Relations Commission, 364 Phil. 912, 924-925 (1999).
- [39] Rollo (G.R. No. 151372), p. 62.
- [40] Id. at 56.
- [41] DAP Corporation v. Court of Appeals, G.R. No. 165811, December 14, 2005, 477 SCRA 792, 798.
- [42] Id.
- [43] G.R. No. 151378, March 28, 2005, 454 SCRA 119, 125-126.
- [44] G & M (Phil.), Inc. v. Batomalaque, G.R. No. 151849, June 23, 2005, 461 SCRA 111, 118.
- [45] Filflex Industrial & Manufacturing Corporation v. National Labor Relations Commission, G.R. No. 115395, February 12, 1998, 286 SCRA 245, 253.

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