DANILO ESCARIO, PANFILO AGAO, ARSENIO AMADOR, ELMER COLICO, ROMANO DELUMEN, DOMINADOR AGUILO, OLYMPIO GOLOSINO, RICARDO LABAN, LORETO MORATA, ROBERTO TIGUE, GILBERT VIBAR, THOMA...

G.R. No. 160302. September 27, 2010

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

Conformably with the long honored principle of a fair day's wage for a fair day's labor, employees dismissed for joining an illegal strike are not entitled to backwages for the period of the strike even if they are reinstated by virtue of their being merely members of the striking union who did not commit any illegal act during the strike.

We apply this principle in resolving this appeal via a petition for review on certiorari of the decision dated August 18, 2003 of the Court of Appeals (CA),[1] affirming the decision dated November 29, 2001 rendered by the National Labor Relations Commission (NLRC) directing their reinstatement of the petitioners to their former positions without backwages, or, in lieu of reinstatement, the payment of separation pay equivalent to one-half month per year of service.[2]

Antecedents

The petitioners were among the regular employees of respondent Pinakamasarap Corporation (PINA), a corporation engaged in manufacturing and selling food seasoning. They were members of petitioner Malayang Samahan ng mga Manggagawa sa Balanced Foods (Union).

At 8:30 in the morning of March 13, 1993, all the officers and some 200 members of the Union walked out of PINA's premises and proceeded to the barangay office to show support for Juanito Cañete, an officer of the Union charged with oral defamation by Aurora Manor, PINA's personnel manager, and Yolanda Fabella, Manor's secretary.[3] It appears that the proceedings in the barangay resulted in a settlement, and the officers and members of the Union all returned to work thereafter.

As a result of the walkout, PINA preventively suspended all officers of the Union because of the March 13, 1993 incident. PINA terminated the officers of the Union after a month.

On April 14, 1993, PINA filed a complaint for unfair labor practice (ULP) and damages. The complaint was assigned to then Labor Arbiter Raul Aquino, who ruled in his decision dated July 13, 1994 that the March 13, 1993 incident was an illegal walkout constituting ULP; and that all the Union's officers, except Cañete, had thereby lost their employment.[4]

On April 28, 1993, the Union filed a notice of strike, claiming that PINA was guilty of union busting through the constructive dismissal of its officers.[5] On May 9, 1993, the Union held a strike vote, at which a majority of 190 members of the Union voted to strike.[6] The strike was held in the afternoon of June 15, 1993.[7]

PINA retaliated by charging the petitioners with ULP and abandonment of work, stating that they had violated provisions on strike of the collective bargaining agreement (CBA), such as: (a) sabotage by the insertion of foreign matter in the bottling of company products; (b) decreased production output by slowdown; (c) serious misconduct, and willful disobedience and insubordination to the orders of the Management and its representatives; (d) disruption of the work place by invading the premises and perpetrating commotion and disorder, and by causing fear and apprehension; (e) abandonment of work since June 28, 1993 despite notices to return to work individually sent to them; and (f) picketing within the company premises on June 15, 1993 that effectively barred with the use of threat and intimidation the ingress and egress of PINA's officials, employees, suppliers, and customers. [8]

On September 30, 1994, the Third Division of the National Labor Relations Commission (NLRC) issued a temporary restraining order (TRO), enjoining the Union's officers and members to cease and desist from barricading and obstructing the entrance to and exit from PINA's premises, to refrain from committing any and all forms of violence, and to remove all forms of obstructions such as streamers, placards, or human barricade.[9]

On November 29, 1994, the NLRC granted the writ of preliminary injunction.[10]

On August 18, 1998, Labor Arbiter Jose G. de Vera (LA) rendered a decision, to wit:

> WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered declaring the subject strike to be illegal.
>
> The complainant's prayer for decertification of the respondent union being outside of the jurisdiction of this Arbitration Branch may not be given due course.
>
> And finally, the claims for moral and exemplary damages for want of factual basis are dismissed.
>
> SO ORDERED.[11]

On appeal, the NLRC sustained the finding that the strike was illegal, but reversed the LA's ruling that there was abandonment, viz:

> However, we disagree with the conclusion that respondents' union members should be considered to have abandoned their employment.
>
> Under Article 264 of the Labor Code, as amended, the union officers who knowingly participate in the illegal strike may be declared to have lost their employment status. However, mere participation of a union member in the illegal strike does not mean loss of employment status unless he participates in the commission of illegal acts during the strike. While it is true that complainant thru individual memorandum directed the respondents to return to work (pp. 1031-1112, Records) there is no showing that respondents deliberately refused to return to work. A worker who joins a strike does so precisely to assert or improve the terms and conditions of his work. If his purpose is to abandon his work, he would not go to the trouble of joining a strike (BLTB v. NLRC, 212 SCRA 794).
>
> WHEREFORE, premises considered, the Decision appealed from is hereby MODIFIED in that complainant company is directed to reinstate respondents named in the complaint to their former positions but without backwages. In the event that reinstatement is not feasible complainant company is directed to pay respondents separation pay at one (1/2) half month per year of service.
>
> SO ORDERED.[12]

Following the denial of their motion for reconsideration, the petitioners assailed the NLRC's decision through a petition for certiorari in the Court of Appeals (CA), claiming that the NLRC gravely abused its discretion in not

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awarding backwages pursuant to Article 279 of the Labor Code, and in not declaring their strike as a good faith strike.

On August 18, 2003, the CA affirmed the NLRC.[13] In denying the petitioners' claim for full backwages, the CA applied the third paragraph of Article 264(a) instead of Article 279 of the Labor Code, explaining that the only instance under Article 264 when a dismissed employee would be reinstated with full backwages was when he was dismissed by reason of an illegal lockout; that Article 264 was silent on the award of backwages to employees participating in a lawful strike; and that a reinstatement with full backwages would be granted only when the dismissal of the petitioners was not done in accordance with Article 282 (dismissals with just causes) and Article 283 (dismissals with authorized causes) of the Labor Code.

The CA disposed thus:[14]

> WHEREFORE, premises considered, the Petition is DISMISSED for lack of merit and the assailed 29 November 2001 Decision of respondent Commission in NLRC NRC CA No. 009701-95 is hereby AFFIRMED in toto. No costs.
>
> SO ORDERED.[15]

On October 13, 2003, the CA denied the petitioners' motion for reconsideration.[16]

Hence, this appeal via petition for review on certiorari.

Issue

The petitioners posit that they are entitled to full backwages from the date of dismissal until the date of actual reinstatement due to their not being found to have abandoned their jobs. They insist that the CA decided the question in a manner contrary to law and jurisprudence.

Ruling

We sustain the CA, but modify the decision on the amount of the backwages in order to accord with equity and jurisprudence.

I

Third Paragraph of Article 264 (a),
Labor Code, is Applicable

The petitioners contend that they are entitled to full backwages by virtue of their reinstatement, and submit that applicable to their situation is Article 279, not the third paragraph of Article 264(a), both of the Labor Code.

We do not agree with the petitioners.

Article 279 provides:

> Article 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 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.

By its use of the phrase unjustly dismissed, Article 279 refers to a dismissal that is unjustly done, that is, the employer dismisses the employee without observing due process, either substantive or procedural.Substantive due

process requires the attendance of any of the just or authorized causes for terminating an employee as provided under Article 278 (termination by employer), or Article 283 (closure of establishment and reduction of personnel), or Article 284 (disease as ground for termination), all of the Labor Code; while procedural due process demands compliance with the twin-notice requirement.[17]

In contrast, the third paragraph of Article 264(a) states:

> Art. 264. Prohibited activities. - (a) xxx
>
> Any worker whose employment has been terminated as a consequence of an unlawful lockout shall be entitled to reinstatement with full backwages. Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status; Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike.
>
> xxx

Contemplating two causes for the dismissal of an employee, that is: (a) unlawful lockout; and (b) participation in an illegal strike, the third paragraph of Article 264(a) authorizes the award of full backwages only when the termination of employment is a consequence of an unlawful lockout. On the consequences of an illegal strike, the provision distinguishes between a union officer and a union member participating in an illegal strike. A union officer who knowingly participates in an illegal strike is deemed to have lost his employment status, but a union member who is merely instigated or induced to participate in the illegal strike is more benignly treated. Part of the explanation for the benign consideration for the union member is the policy of reinstating rank-and-file workers who are misled into supporting illegal strikes, absent any finding that such workers committed illegal acts during the period of the illegal strikes.[18]

The petitioners were terminated for joining a strike that was later declared to be illegal. The NLRC ordered their reinstatement or, in lieu of reinstatement, the payment of their separation pay, because they were mere rank-and-file workers whom the Union's officers had misled into joining the illegal strike. They were not unjustly dismissed from work. Based on the text and intent of the two aforequoted provisions of the Labor Code, therefore, it is plain that Article 264(a) is the applicable one.

II
Petitioners not entitled to backwages
despite their reinstatement:
A fair day's wage for a fair day's labor

The petitioners argue that the finding of no abandonment equated to a finding of illegal dismissal in their favor. Hence, they were entitled to full backwages.

The petitioners' argument cannot be sustained.

The petitioners' participation in the illegal strike was precisely what prompted PINA to file a complaint to declare them, as striking employees, to have lost their employment status. However, the NLRC ultimately ordered their reinstatement after finding that they had not abandoned their work by joining the illegal strike. They were thus entitled only to reinstatement, regardless of whether or not the strike was the consequence of the employer's ULP,[19] considering that a strike was not a renunciation of the employment relation.[20]

As a general rule, backwages are granted to indemnify a dismissed employee for his loss of earnings during the whole period that he is out of his job. Considering that an illegally dismissed employee is not deemed to have left

his employment, he is entitled to all the rights and privileges that accrue to him from the employment.[21] The grant of backwages to him is in furtherance and effectuation of the public objectives of the Labor Code, and is in the nature of a command to the employer to make a public reparation for his illegal dismissal of the employee in violation of the Labor Code.[22]

That backwages are not granted to employees participating in an illegal strike simply accords with the reality that they do not render work for the employer during the period of the illegal strike.[23] According to G&S Transport Corporation v. Infante:[24]

> With respect to backwages, the principle of a "fair day's wage for a fair day's labor" remains as the basic factor in determining the award thereof. If there is no work performed by the employee there can be no wage or pay unless, of course, the laborer was able, willing and ready to work but was illegally locked out, suspended or dismissed or otherwise illegally prevented from working. xxx In Philippine Marine Officers' Guild v. Compañia Maritima, as affirmed in Philippine Diamond Hotel and Resort v. Manila Diamond Hotel Employees Union, the Court stressed that for this exception to apply, it is required that the strike be legal, a situation that does not obtain in the case at bar. (emphasis supplied)

The petitioners herein do not deny their participation in the June 15, 1993 strike. As such, they did not suffer any loss of earnings during their absence from work. Their reinstatement sans backwages is in order, to conform to the policy of a fair day's wage for a fair day's labor.

Under the principle of a fair day's wage for a fair day's labor, the petitioners were not entitled to the wages during the period of the strike (even if the strike might be legal), because they performed no work during the strike. Verily, it was neither fair nor just that the dismissed employees should litigate against their employer on the latter's time.[25] Thus, the Court deleted the award of backwages and held that the striking workers were entitled only to reinstatement in Philippine Diamond Hotel and Resort, Inc. (Manila Diamond Hotel) v. Manila Diamond Hotel Employees Union,[26] considering that the striking employees did not render work for the employer during the strike.

> III
> Appropriate Amount for Separation Pay
> Is One Month per Year of Service

The petitioners were ordered reinstated because they were union members merely instigated or induced to participate in the illegal strike. By joining the strike, they did not renounce their employment relation with PINA but remained as its employees.

The absence from an order of reinstatement of an alternative relief should the employer or a supervening event not within the control of the employee prevent reinstatement negates the very purpose of the order. The judgment favorable to the employee is thereby reduced to a mere paper victory, for it is all too easy for the employer to simply refuse to have the employee back. To safeguard the spirit of social justice that the Court has advocated in favor of the working man, therefore, the right to reinstatement is to be considered renounced or waived only when the employee unjustifiably or unreasonably refuses to return to work upon being so ordered or after the employer has offered to reinstate him.[27]

However, separation pay is made an alternative relief in lieu of reinstatement in certain circumstances, like: (a) when reinstatement can no longer be effected in view of the passage of a long period of time or because of the realities of the situation; (b) reinstatement is inimical to the employer's interest; (c) reinstatement is no longer feasible; (d) reinstatement does not serve the best interests of the parties involved; (e) the employer is prejudiced by the workers' continued employment; (f) facts that make execution unjust or inequitable have supervened; or (g)

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strained relations between the employer and employee.[28]

Here, PINA manifested that the reinstatement of the petitioners would not be feasible because: (a) it would "inflict disruption and oppression upon the employer"; (b) "petitioners [had] stayed away" for more than 15 years; (c) its machines had depreciated and had been replaced with newer, better ones; and (d) it now sold goods through independent distributors, thereby abolishing the positions related to sales and distribution.[29]

Under the circumstances, the grant of separation pay in lieu of reinstatement of the petitioners was proper. It is not disputable that the grant of separation pay or some other financial assistance to an employee is based on equity, which has been defined as justice outside law, or as being ethical rather than jural and as belonging to the sphere of morals than of law.[30] This Court has granted separation pay as a measure of social justice even when an employee has been validly dismissed, as long as the dismissal has not been due to serious misconduct or reflective of personal integrity or morality.[31]

What is the appropriate amount for separation pay?

In G & S Transport,[32] the Court awarded separation pay equivalent to one month salary per year of service considering that 17 years had passed from the time when the striking employees were refused reinstatement. In Association of Independent Unions in the Philippines v. NLRC,[33] the Court allowed separation pay equivalent to one month salary per year of service considering that eight years had elapsed since the employees had staged their illegal strike.

Here, we note that this case has dragged for almost 17 years from the time of the illegal strike. Bearing in mind PINA's manifestation that the positions that the petitioners used to hold had ceased to exist for various reasons, we hold that separation pay equivalent to one month per year of service in lieu of reinstatement fully aligns with the aforecited rulings of the Court on the matter.

WHEREFORE, we affirm the decision dated August 18, 2003 of the Court of Appeals, subject to the modification to the effect that in lieu of reinstatement the petitioners are granted backwages equivalent of one month for every year of service.

SO ORDERED.

Carpio Morales, (Chairperson), Peralta,[*] Villarama, Jr., and Sereno, JJ., concur.

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[*] Additional member per Special Order No. 885 dated September 1, 2010.

[1] Rollo, pp. 26-37; penned by Associate Justice Andres B. Reyes, Jr. (now Presiding Justice of the Court of Appeals), with Associate Justices Eubolo G. Verzola (deceased) and Regalado E. Maambong (retired), concurring.

[2] Id., pp. 42-51.

[3] Id., p. 46.

[4] Id., p. 47.

[5] Id.

[6] Id.

[7] Id.; the date appears as June 23, 1993 in page 4 of the petition for review on certiorari.

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[8] Id., p. 45.

[9] Id., p. 47.

[10] Id.

[11] Id., p. 32.

[12] Id., pp. 50-51.

[13] Id., pp. 26-37; penned by Associate Justice Andres B. Reyes, Jr. (now Presiding Justice), and concurred in by Associate Justice Eubolo G. Verzola (now deceased) and Associate Justice Regalado E. Maambong (now retired).

[14] Id.

[15] Id., p. 37.

[16] Id., pp. 39-40.

[17] Chan, Law on Labor Relations and Termination of Employment Annotated, 1996, pp. 604-614.

[18] Stamford Marketing Corporation v. Julian, G.R. No. 145496, February 24, 2004, 423 SCRA 633, 648; Gold City Integrated Port Service v. National Labor Relations Commission, G.R. Nos. 103560 and 103599, July 6, 1995, 245 SCRA 628.

[19] Cromwell Commercial Employees and Laborers Union (PTUC) v. Court of Industrial Relations, G.R. No. L-19778, September 30, 1964, 12 SCRA 124; Phil. Steam Navigation Co. v. Phil. Marine Officers Guild, G.R. Nos. L-20667 and L-20669, October 29, 1965, 15 SCRA 174.

[20] Feati University v. Bautista, G.R. No. L-21278, December 27, 1966, 18 SCRA 1191, 1224; Rex Taxicab v. Court of Industrial Relations, 70 Phil 621, 631; Radio Operators v. PHILMAROA, 102 Phil 530.

[21] Gold City Integrated Port Services, Inc. v. National Labor Relations Commission, 245 SCRA 628 and Cristobal v. Melchor, 101 SCRA 857.

[22] Imperial Textile Mills, Inc. v. National Labor Relations Commission, G.R. No. 101527, January 19, 1993, 217 SCRA 237, 247.

[23] Lapanday Workers Union v. National Labor Relations Commission, G.R. Nos. 95494-97, September 7, 1995, 248 SCRA 95, 107.

[24] G.R. No. 160303, September 13, 2007, 533 SCRA 288, 301-302.

[25] Sugue v. Triumph International (Phils.) Inc., G.R. Nos. 164804 and 164784, January 30, 2009, 577 SCRA 323; Social Security System v. SSS Supervisors' Union, G.R. No. L-31832, October 23, 1982, 117 SCRA 746; J. P. Heilbronn Co. v. Nat'l Labor Union, 92 Phil. 575 (1953).

[26] G.R. No. 158075, June 30, 2006, 494 SCRA 195.

[27] Salvador v. Court of Appeals (Special Sixth Division), G.R. No. 127501, May 5, 2000, 331 SCRA 438, 445; East Asiatic Company, Ltd. v. Court of Industrial Relations, G.R. No. L-29068, 40 SCRA 521, 537-538.

[28] Poquiz, Labor Relations Law with Notes and Cases Volume II (2006), p. 319, citing Manipon, Jr. v. National Labor Relations Commission, G.R. No. 105338, December 24, 1994, 239 SCRA 451.

[29] Private Respondent's Manifestation dated January 19, 2009 (pp. 3-4). Rollo, pp. 121-122.

[30] Salavarria v. Letran College, G.R. No. 110396, September 25, 1998, 296 SCRA 184, 191; Phil. Long Distance Telephone Co. v. National Labor Relations Commission, G.R. No.L-80609, August 23, 1988, 164 SCRA 671, 682.

[31] Philippine Commercial International Bank v. Abad, G.R. No. 158045, February 28, 2005, 452 SCRA 579, 587; Gustilo v. Wyeth Philippines Inc., G.R. No. 149629, October 4, 2004, 440 SCRA 67, 76; Gabuay v. Oversea Paper Supply, Inc., G.R. No. 148837, August 13, 2004, 436 SCRA 514.

[32] Supra at note 24, p. 304; See also Philippine Diamond Hotel and Resort, Inc. (Manila Diamond Hotel) v. Manila Diamond Hotel Employees Union, supra at note 26, p. 217.

[33] G.R. No. 120505, March 25, 1999, 305 SCRA 219,235.

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