PEPITO VELASCO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, ANTONIO TAYAG, ERNESTO TAYAG AND RODOLFO TAYAG, RESPONDENTS.

G.R. NO. 161694. June 26, 2006

Ponente: TINGA, J.

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TINGA, J.:

There is little difficulty on the part of the Court in upholding the rulings challenged in this Petition for Review and confirming the finding that private respondents in this case were illegally dismissed. Further, it is clear that private respondents should be awarded full backwages, an entitlement denied them even as they were granted separation pay in lieu of reinstatement. We affirm, subject to modification on the matter of backwages.

Petitioner Pepito Velasco (Velasco) is the owner-manager of Modern Furniture Manufacturing (Modern Furniture).[1] Private respondent Ernesto Tayag was hired as a carpenter by Velasco and Modern Furniture in 1968, while his relatives, co-private respondents Antonio Tayag and Rodolfo Tayag, were hired in the same capacity in 1970. All three were paid on a piece-rate basis.[2]

According to the Tayags, in 1998, Velasco and Modern Furniture started laying off workers due to business losses, albeit with the promise to the dismissed workers that they would be rehired should the business again prosper. Purportedly, Antonio and Ernesto Tayag were laid off in December of 1999, while Rodolfo Tayag was dismissed in May of 2000.[3] All three filed complaints for illegal dismissal against Modern Furniture and Velasco with the National Labor Relations Commission, Regional Arbitration Branch No. III, based in San Fernando, Pampanga.[4] The Tayags sought separation pay in lieu of reinstatement, as well as 13th month pay, holiday pay, overtime pay, and exemplary damages.[5]

Velasco and Modern Furniture have a different version. They claimed that while they had indeed suffered business losses in 1998, causing them to lay off some workers, they subsequently agreed with their employees, including the Tayags, to pay wages on a piece-rate basis. In the first part of the year 2000, Ernesto Tayag inexplicably stopped reporting to work. In June of that year, Antonio and Rodolfo Tayag also stopped reporting for work.[6] Velasco claimed that he next heard from the three when he was served summons in the instant case.[7] It was thus argued that the Tayags were not actually terminated, but instead had abandoned their work.

After the complaints of the Tayags were consolidated, Labor Arbiter Eduardo J. Carpio rendered a Decision dated 15 September 2000 dismissing the complaints for illegal dismissal. The Labor Arbiter reasoned that since Velasco and Modern Furniture had denied terminating the employees in the first place, the burden fell upon the Tayags to prove by substantial evidence that they were actually terminated.[8] The Labor Arbiter concluded that the contentions of the Tayags of dismissal were unsubstantiated, and thus he dismissed the complaints.

On appeal, the NLRC set aside the Decision of the Labor Arbiter in its Resolution dated 26 March 2002.[9] The NLRC held that the Labor Arbiter had misappreciated the facts of the case. It was noted that Velasco and Modern Furniture had admitted that since the Tayags were paid on a per piece basis, they were not required to go to the

work place. In fact, the Tayags were only required to report for work when new job orders came in and they were called upon by Velasco and Modern Furniture. The NLRC found that there was no instance from the evidence adduced wherein Velasco or Modern Furniture called upon the Tayags to report for work.[10] From these facts, the NLRC concluded that the Tayags had not reported to the premises of Modern Furniture simply because they were not given any work, as in fact they had actually been dismissed. Thus, the NLRC did not agree with the contention that the Tayags had abandoned work, and concluded instead that they were entitled to separation pay in lieu of reinstatement. Nonetheless, the other monetary claims of the Tayags were dismissed for lack of merit.[11]

Velasco filed a Petition for Certiorari and Prohibition with the Court of Appeals, assailing the Resolution of the NLRC. In a Decision[12] dated 30 September 2003, the Court of Appeals sustained the NLRC and dismissed the petition. The appellate court agreed that it was Velasco, as employer, who had the burden to prove that the termination was for just or authorized causes, and that Velasco had failed to overcome such burden.[13] The Court of Appeals also deemed the award of separation pay as proper, with the finding of illegal dismissal and separation pay being a proper alternative remedy should reinstatement be no longer possible.[14]

Hence this petition, brought forth after the Court of Appeals had denied Velasco's Motion for Reconsideration.[15] The crux of Velasco's arguments before this Court rests on one sentence in the Resolution of the NLRC, which states:

> Viewed in this light, the relief available to complainants-appellants is reinstatement without backwages there being no showing also that there was illegal dismissal.[16]

Velasco argues that since the NLRC had concluded that there was no illegal dismissal, the Court of Appeals erred in concluding instead that the Tayags were illegally dismissed.[17] From the same premise, Velasco also claims that the Court of Appeals also erred in granting separation pay, considering the alleged finding of the NLRC that there was no illegal dismissal.[18]

The proper perspective should be asserted. This being an appeal by certiorari under Rule 45 from a decision of the Court of Appeals, the petitioner must be able to establish an error of law imputable to the Court of Appeals, since it is the decision of that court that is primarily reviewed by this Court. In short, the petitioner must stake the petition on the position that in error was the Court of Appeals itself, rather than the agencies below.

In the case at bar, Velasco claims that the Court of Appeals erred in ruling that the Tayags were illegally dismissed because the NLRC had purportedly concluded otherwise. We are not persuaded.

We have examined the entirety of the Resolution of the NLRC, as well as the controversial sentence. The phrase "there being no showing also that there was illegal dismissal" is clearly off-tangent with the rest of the Resolution, as well as the dispositive portion thereof.

The Resolution of the NLRC is eight (8) pages long. It devoted the first four (4) pages to the factual narrative and a summary of the ruling of the Labor Arbiter. The Resolution then proceeded to discuss the position of the Labor Arbiter that with Velasco's counter-allegation of abandonment the burden of proof shifted to the Tayags to establish by substantial evidence that they were terminated by Velasco. On this point, the NLRC concluded that "[the Tayags' opposing] contention has merit."[19] The NLRC then proceeded to cite the legal doctrines on abandonment, including a statement that the burden of proof was on the employer to show an unequivocal intent on the part of the employee to discontinue employment.[20]

We now quote the next three pages of the Resolution, culminating in the paragraph containing the controverted passage:

> In this case, complainants-appellants Antonio and Ernesto Tayag contend that they were laid off in December

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> 1999, while complainant-appellant Rodolfo Tayag was laid-off in May, 2000 and that respondents-appellees promised to recall them as soon as business gets better. On the other hand, respondents-appellants contend that complainant-appellant Ernesto Tayag voluntarily did not come to the work premises for about six (6) months or since February, 2000; that in June, 2000, complainants-appellants Antonio and Rodolfo Tayag likewise for no apparent reason failed to report at respondents-appellees' premises. Moreover, respondents-appellees repeatedly assert that:"Apparently, complainants-appellants are being paid on a per piece basis and not required to go to the work place, they have the liberty to go or not to go to the work place and therefore, they cannot claim to have been illegally dismissed if respondent-appellee does not notify or call them for work. It should also be noted that the complainants-appellants work is based on orders received by the respondent-appellee, thus, if there are no work orders, they have no work. Furthermore, herein complainants-appellants are not the only workers engaged by herein respondent-appellee, thus work orders are usually divided among them and if there are only few orders, other workers would have no work." (p. 55, Records)

From the foregoing, it is clear that complainants-appellants only go to work when there are orders that need to be done and when they are called upon by respondents-appellees. The choice to call complainants-appellants rests on respondents-appellees, so the latter has no basis to complain that complainants-appellants failed to appear at the work premises. From the evidence adduced, there was no instance where respondents-appellees called upon complainants-appellants to report for work because there are orders to be done and the latter refused. What respondents-appellees are merely saying is that complainants-appellants had voluntarily failed to go to the premises. Clearly, the reason why complainants-appellants do not appear at the work premises is the fact that they are not called upon to do work pursuant to their alleged agreement of paying by payment rate basis. It is undisputed that since early 2000, complainant-appellant Ernesto Tayag was not given work while complainants-appellants Antonio and Rodolfo Tayag were not also given work since May, 2000. Hence, complainants-appellants believed and concluded that they were laid off. Having worked for more than thirty (30) years with respondents-appellees, Antonio Tayag and Ernesto Tayag are both fifty-five (55) years of age while Rodolfo Tayag is forty-six (46) years old. We can thus safely conclude that another reason why respondents-appellants do not call upon them to work is because of their having become old. Verily, respondents-appellees' assertion that complainants-appellants abandoned their work have no factual basis. We note that even during the hearing of this case until the Decision was issued, there has been no offer of work made by respondents-appellees to complainants-appellants.

Viewed in this light, the relief available to complainants-appellants is reinstatement without backwages there being no showing also that there was illegal dismissal. However, it is clear that respondents-appellees are no longer interested in calling complainants-appellants back to work because of the financial difficulty of the business and that complainants-appellants on the other hand, are asking for separation pay. Such being the case, separation pay in lieu of reinstatement without backwages is the proper relief in the instant case.[21]

Reading the entire Resolution, it is beyond doubt that the NLRC concluded that Velasco had failed to establish that the Tayags had abandoned their employment. Such conclusion is crucial, Velasco's defense against the charge of illegal dismissal being that the Tayags had actually abandoned their employment, which is recognized in jurisprudence as a form of neglect of duty one of the just causes for dismissal under Article 282 of the Labor Code.[22] The disquisition is also relevant, as it debunks the Labor Arbiter's contention that it fell upon the Tayags to establish that they had been illegally dismissed. Instead, the NLRC correctly held that the burden was upon Velasco to substantiate his claim that the Tayags had abandoned their employment.

Further, the NLRC concluded that the Tayags had stopped reporting to the premises of Modern Furniture because Velasco and Modern Furniture had stopped assigning them work. Considering that the Tayags were paid on a

per-piece basis, it necessarily followed that they stopped receiving income as well. The NLRC even hazarded a theory that Velasco had stopped giving the Tayags work because of their age. Thus, the NLRC stated: "Verily, respondents-appellees' assertion that complainants-appellants abandoned their work have no factual basis."[23]

Given the context of the preceding discussion, which illustrated that the Tayags were not guilty of abandonment, there is no legal basis whatsoever for the conclusion that "there was no showing x x x that there was illegal dismissal." It is not clear why the NLRC stated that there was "no showing also that there was illegal dismissal" when its preceding discussion so obviously pointed to the contrary. Yet when it is clear that the cited passage cannot stand with the rest of the decision, including the dispositive portion, the Court cannot obviously confer binding effect on the conclusion that there was no illegal dismissal, as it runs contrary against the grain of the rest of the Resolution.

Indeed, the dispositive portion of the Resolution clearly supports the premise that the Tayags were illegally dismissed, there being an award of separation pay in lieu of reinstatement.

> WHEREFORE, premises considered, the appeal is partly GRANTED and the Decision dated 15 September 2000 finding that complainants-appellants simply did not report for work or were the ones who abandoned their work is hereby ordered SET ASIDE. A new Decision is hereby issued ordering respondents-appellees to award complainants-appellants separation pay in lieu of reinstatement computed at one-half (1/2) month pay for every year of service computed as follows:

1) Antonio Tayag

Separation Pay:

From 1970 to May 2000 = 30 yrs.

P1,200.00 x 4 wks x 30 yrs. x ½ mo. P72,000.00

2) Ernesto Tayag

Separation Pay:

From 1968 to Dec. 1999 – 31 yrs.

P1,500.00 x 4 wks. X 31 yrs. x ½ mo. P93,000.00

3) Rodolfo Tayag

Separation Pay:

From 1970 to May 2000 = 30 yrs.

P1,500.00 x 4 wks. x 30 yrs. x ½ mo. P90,000.00

GRAND TOTAL P255,000.00

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SO ORDERED.[24]

Under Article 279 of the Labor Code, an employee unjustly dismissed from work is entitled to reinstatement and backwages, among others. However, it has long been recognized that if reinstatement is no longer possible or practicable, the employer may be made instead to pay separation pay to the employee in lieu of reinstatement.[25] The dispositive portion of the Resolution is consistent with the premise that the Tayags were entitled to reinstatement by reason of their illegal dismissal, but they could receive instead separation pay in lieu of reinstatement if reinstatement is no longer practicable. The dispositive portion does not hew to a mindset that the Tayags were not illegally dismissed, the thinking which Velasco wishes to ascribe on the NLRC. It is derived instead from the conclusion that the Tayags were illegally dismissed, a conclusion that may contradict the cited passage of the NLRC Resolution, but not the tenor and findings of the Resolution in its entirety.

Other than the erroneous contention that the NLRC had concluded that there was no illegal dismissal, Velasco's only remaining argument is that the payment of separation pay was "misplaced, since no evidence as to the necessity thereof was presented." Velasco cites the Court's comment in Quijano v. Mercury Drug Corp.[26] that "the doctrine of strained relations should be strictly construed x x x Every labor dispute almost always results in 'strained relations', and the phrase cannot be given an over-arching interpretation x x x x[27]

In Quijano, it was the employer who was seeking that the employee be granted separation pay instead of reinstatement, while in this case Velasco consistently argued against the award of separation pay. Of course, following Velasco's logic, the Tayags should instead be reinstated. Nonetheless, the Court finds no reason to disturb the ruling that the Tayags should be awarded separation pay in lieu of reinstatement. The cited remarks of the Court in Quijano were made in the context of pointing out that "[s]ome unscrupulous employers x x x have taken advantage of the overgrowth of this doctrine of 'strained relations' by using it as a cover to get rid of its employees and thus defeat their right to job security."[28]

The accepted doctrine is that separation pay may avail in lieu of reinstatement if reinstatement is no longer practical or in the best interest of the parties.[29] Separation pay in lieu of reinstatement may likewise be awarded if the employee decides not to be reinstated.[30] It is not controverted that Modern Furniture has undergone financial hardship, and that the Tayags had opted to seek separation pay in lieu of reinstatement. We defer to the findings of the NLRC, as affirmed by the Court of Appeals and authorized under jurisprudence, that separation pay in lieu of reinstatement is warranted in this case.

Finally, the Tayags argue in their Memorandum before this Court that the NLRC and Court of Appeals had erred in not awarding them full backwages.[31] The NLRC, while awarding separation pay to the Tayags, held that they had failed to establish sufficient factual basis for their other monetary claims.[32] The Court of Appeals remained silent on that aspect.

The Tayags are correct in pointing out that they are entitled to full backwages by reason of their illegal dismissal, notwithstanding the award of separation pay. The Court made this point clear in Santos v. NLRC.[33]

> The normal consequences of a finding that an employee has been illegally dismissed are, firstly, that the employee becomes entitled to reinstatement to his former position without loss of seniority rights and, secondly, the payment of backwages corresponding to the period from his illegal dismissal up to actual reinstatement. The statutory intent on this matter is clearly discernible. Reinstatement restores the employee who was unjustly dismissed to the position from which he was removed, that is, to his status quo ante dismissal, while the grant of backwages allows the same employee to recover from the employer that which he had lost by way of wages as a result of his dismissal. These twin remedies—reinstatement and payment of backwages—make the dismissed employee whole who can then look forward to continued employment. Thus do these two remedies give meaning and substance to the constitutional right of labor to security of tenure. The

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> two forms of relief are distinct and separate, one from the other. Though the grant of reinstatement commonly carries with it an award of backwages, the inappropriateness or non-availability of one does not carry with it the inappropriateness or non-availability of the other. Separation pay was awarded in favor of petitioner Lydia Santos because the NLRC found that her reinstatement was no longer feasible or appropriate. As the term suggests, separation pay is the amount that an employee receives at the time of his severance from the service and, as correctly noted by the Solicitor General in his Comment, is designed to provide the employee with "the wherewithal during the period that he is looking for another employment." In the instant case, the grant of separation pay was a substitute for immediate and continued re-employment with the private respondent Bank. The grant of separation pay did not redress the injury that is intended to be relieved by the second remedy of backwages, that is, the loss of earnings that would have accrued to the dismissed employee during the period between dismissal and reinstatement. Put a little differently, payment of backwages is a form of relief that restores the income that was lost by reason of unlawful dismissal; separation pay, in contrast, is oriented towards the immediate future, the transitional period the dismissed employee must undergo before locating a replacement job. It was grievous error amounting to grave abuse of discretion on the part of the NLRC to have considered an award of separation pay as equivalent to the aggregate relief constituted by reinstatement plus payment of backwages under Article 280 of the Labor Code. The grant of separation pay was a proper substitute only for reinstatement; it could not be an adequate substitute both for reinstatement and for backwages. In effect, the NLRC in its assailed decision failed to give to petitioner the full relief to which she was entitled under the statute.[34] (Emphasis supplied)

The Santos rule has been repeatedly affirmed by this Court, and must be applied to this case.[35] Even assuming that the Tayags had not adduced any evidence to establish the amount of backwages to be paid, it cannot be denied that under the law, particularly Article 279 of the Labor Code, they are entitled to backwages as a matter of right, owing to their illegal dismissal. Hence, the NLRC and the Court of Appeals erred in not awarding backwages as well.

However, the Court recognizes that there may be some difficulty in ascertaining the proper amount of backwages, considering that the Tayags were apparently paid on a piece-rate basis. In Labor Congress of the Philippines v. NLRC,[36] the Court was confronted with a situation wherein several workers paid on a piece-rate basis were entitled to back wages by reason of illegal dismissal. However, the Court noted that as the piece-rate workers had been paid by the piece, "there [was] a need to determine the varying degrees of production and days worked by each worker," and that "this issue is best left to the [NLRC]."[37] We believe the same result should obtain in this case, and the NLRC be tasked to conduct the proper determination of the appropriate amount of backwages due to each of the Tayags.[38]

Nonetheless, even as the case should be remanded to the NLRC for the proper determination of backwages, nothing in this decision should be construed in a manner that would impede the award of separation pay to the Tayags as previously rendered by the NLRC, and affirmed by the Court of Appeals.

WHEREFORE, the Petition is DENIED. The Resolution of the National Labor Relations Commission dated 26 March 2002 and the Decision of the Court of Appeals dated 30 September 2003 are AFFIRMED, with the MODIFICATION that backwages shall be awarded to respondents in such amounts as shall be determined by the National Labor Relations Commission. In this regard, the case is hereby REMANDED to the National Labor Relations Commission for the determination of the back wages due respondents, conformably with this Decision. Said Commission is further DIRECTED TO RESOLVE the issue of backwages within sixty (60) days from its receipt of a copy of this Decision and of the records of the case and to submit to this Court a report of its compliance herewith within ten (10) days from the rendition of its resolution. Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairman), Carpio, Carpio Morales, and Velasco, Jr., JJ., concur.

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[1]Rollo, p. 84.

[2]Id. at 85.

[3]Id. at 20.

[4]Antonio and Ernesto Tayag first filed their complaint, docketed as NLRC Case No. RAB-III-06-1314-000; which was later consolidated with the complaint of Rodolfo Tayag, had been docketed as NLRC Case No. RAB-III-06-1390-00.

[5]Rollo, p. 21.

[6]Id.

[7]Id. at 86.

[8]Id. at 87.

[9]Penned by Commissioner T. Genilo, concurred in by Presiding Commissioner L. Javier and Commisioner I. Bernardo. Id. at 53-61.

[10]Id. at 58.

[11]Id. at 59.

[12]Penned by Justice E. Bello, Jr., concurred in by Justices A. Tolentino and A. Brion. Id. at 20-26.

[13]Id. at 24.

[14]Id. at 25.

[15]In a Resolution dated 12 January 2004. rollo, p. 33.

[16]Emphasis supplied by Velasco. See rollo, p. 15. See also rollo, p. 59.

[17]Rollo, p. 14-15.

[18]Id. at 15-16.

[19]Rollo, p. 57.

[20]See rollo, p. 57.

[21]Id. at 57-59.

[22]See e.g., Agabon v. NLRC, G.R. No. 158693, 17 November 2004, 442 SCRA 573, 605.

[23]Supra note 21.

[24]Rollo, pp. 59-60.

[25]See e.g., Tajonera v. Lamaroza, et al., 196 Phil. 553, 565 (1981); Samillano v. NLRC, 353 Phil. 658, 668-669; Tan v. Lagrama, 436 Phil. 190, 207 (2002). See also Section 4(b), Rule 1, Book VI, Omnibus Rules Implementing the Labor Code.

[26]354 Phil. 112 (1998). Mistakenly cited by Velasco as "Mercury Drug Corp. v. NLRC and Quijano. See rollo, p. 17.

[27]See rollo, p. 17.

[28]Quijano v. Mercury Drug Corp., supra note 26, at 122.

[29]Supra note 25.

[30]See Starlite Plastic Industrial Corp. v. NLRC, G.R. No. 78491, 16 March 1989, 171 SCRA 315, 326; Kingsize Manufacturing Corp. v. NLRC, G.R. Nos. 110452-54, 24 November 1994, 238 SCRA 349, 357; Nagusara v. NLRC, 352 Phil. 854, 865 (1998); Solidbank Corp. v. Court of Appeals, 456 Phil. 879, 888 (2003); Labor v. NLRC, G.R. No. 110388, 14 September 1995, 248 SCRA 183, 204.

[31]Rollo, pp. 141-143.

[32]Id. at 59.

[33]G.R. No. L-76721, 21 September 1987, 154 SCRA 166.

[34]Id. at 171-173.

[35]See also Torillo v. Leogardo, Jr., et al., 274 Phil. 758, 765 (1991); Medina v. Consolidated Broadcasting System-DZWK, G.R. Nos. 99054-56, 28 May 1993, 222 SCRA 707, 712; F.R.F. Enterprises,Inc. v. NLRC, 313 Phil. 493, 501-502 (1995); Rasonable v. NLRC, 324 Phil. 191, 199 (1996); Aurora Land Projects Corp. v. NLRC, 334 Phil. 44, 58 (1997); Reformist Union of R.B. Liner, Inc. v. NLRC, 334 Phil. 636, 650-651 (1997); Tan v. Lagrama, supra note 25, at 207.

[36]352 Phil. 1118 (1998).

[37]Id. at 1138.

[38]The NLRC, in determining the appropriate amount of backwages, may very well consider the following discussion by the Court in Pulp and Paper, Inc. v. NLRC, 344 Phil. 821 (1997), on the computation of compensation of pieceworkers: "In the absence of wage rates based on time and motion studies determined by the labor secretary or submitted by the employer to the labor secretary for his approval, wage rates of piece-rate workers must be based on the applicable daily minimum wage determined by the Regional Tripartite Wages and Productivity Commission. To ensure the payment of fair and reasonable wage rates, Article 101 of the Labor Code provides that "the Secretary of Labor shall regulate the payment of wages by results, including pakyao, piecework and other noontime work.'" The same statutory provision also states that the wage rates should be based, preferably, on time and motion studies, or those arrived at in consultation with representatives of workers' and employers' organizations. In the absence of such prescribed wage rates for piece-rate workers, the ordinary minimum wage rates prescribed by the Regional Tripartite Wages and Productivity Boards should apply. This is in compliance with Section 8 of the Rules Implementing Wage Order Nos. NCR-02 and NCR-02-A—the prevailing wage order at the time of dismissal of private respondent." Id., at 830-831.

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