

VICTORY LINER, INC., PETITIONER, VS. PABLO RACE, RESPONDENT.

G.R. No. 164820. December 08, 2008

Ponente: CHICO-NAZARIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-164820/>

CHICO-NAZARIO, J.:

Petitioner Victory Liner, Inc. filed the present Motion for Reconsideration seeking modification of our Decision dated 28 March 2007. In the said Decision, we found that respondent Pablo Race, employed as one of petitioner's bus drivers, was illegally dismissed by petitioner since petitioner failed to comply with both substantive and procedural due process in terminating respondent's employment. However, considering the leg injury sustained by respondent in an accident which already rendered him incapable of driving a bus, we ordered payment of his separation pay instead of his reinstatement. The dispositive portion of our Decision reads:

WHEREFORE, the petition is PARTLY GRANTED insofar as it prays for the non-reinstatement of respondent. The Decision of the Court of Appeals dated 26 April 2004 in CA-G.R. SP No. 74010, is hereby AFFIRMED with the following MODIFICATIONS: Petitioner is ordered to pay the respondent, in lieu of reinstatement, separation pay of ONE (1) MONTH PAY for every year of service, and full backwages inclusive of allowances and other benefits or their monetary equivalent from 1 January 1998 up to the finality of this Decision. No costs.[1]

Petitioner impugns the Decision on two grounds: (1) the award of full backwages inclusive of allowances and other benefits or their monetary equivalent to respondent is not warranted; and (2) the dismissal of respondent is authorized under Article 284 of the Labor Code.

We find petitioner's motion to be partly meritorious, compelling us to modify our Decision accordingly.

Article 279 of the Labor Code, as amended, provides that an illegally dismissed employee shall be entitled to reinstatement, 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. Based on this provision, an illegally dismissed employee shall be entitled to (1) reinstatement and (2) full backwages. In the event that reinstatement is no longer possible, then payment of separation pay may be ordered in its stead, hence, the illegally dismissed employee may claim (1) separation pay, and (2) full backwages.[2]

Nonetheless, this statutory provision is not absolute, and its application has been qualified and/or limited by our jurisprudence.

Foremost is the case of *Agabon v. National Labor Relations Commission*,[3] which definitively settled that where there is valid or authorized cause for the dismissal of the employee, but the employer failed to comply with statutory due process in effecting the same, the dismissal is not illegal. Logically, if there is no illegal dismissal in such a case, then we can deduce that the dismissed employee cannot avail himself of the rights under Article 279 of the Labor Code, i.e., reinstatement and full backwages. What the employee can demand from the employer, according to *Agabon*, is the payment of nominal damages as indemnification for the violation of the former's statutory rights.

In *San Miguel Corporation v. Javate, Jr.*,^[4] we affirmed the consistent findings and conclusions of the Labor Arbiter, National Labor Relations Commission (NLRC), and Court of Appeals that the employee was illegally dismissed since he was still fit to resume his work; but the employer's liability was mitigated by its evident good faith in terminating the employee's services based on the terms of its Health, Welfare and Retirement Plan.^[5] Hence, the employee was ordered reinstated to his former position without loss of seniority and other privileges appertaining to him prior to his dismissal, but the award of backwages was limited to only one year considering the mitigating circumstance of good faith attributed to the employer.

In another case, *Dolores v. National Labor Relations Commission*,^[6] the employee was terminated for her continuous absence without permission. Although we found that the employee was indeed guilty of breach of trust and violation of company rules, we still declared the employee's dismissal illegal as it was too severe a penalty considering that she had served the employer company for 21 years, it was her first offense, and her leave to study the French language would ultimately benefit the employer who no longer had to spend for translation services. Even so, other than ordering the employee's reinstatement, we awarded the said employee backwages limited to a period of two years, given that the employer acted without malice or bad faith in terminating the employee's services.^[7]

While in the aforementioned cases of illegal dismissal, we ordered the employees' reinstatement, but awarded only limited backwages in recognition of the employer's good faith, there were also instances when we only required the employer to reinstate the dismissed employee without any award for backwages at all.

The employee in *Itogon-Suyoc Mines, Inc. v. National Labor Relations Commission*,^[8] was found guilty of breach of trust for stealing high-grade stones from his employer. However, taking into account the employee's 23 years of previously unblemished service to his employer and absent any showing that his continued employment would result in the employer's oppression or self-destruction, we considered the employee's dismissal a drastic punishment. We deemed that the ends of social and compassionate justice would be served by ordering the employee reinstated but without backwages in view of the employer's obvious good faith.

Similarly, in *San Miguel Corporation v. Secretary of Labor*,^[9] the employee was dismissed after he was caught buying from his co-workers medicines that were given gratis to them by the employer company, and re-selling said medicines, in subversion of the employer's efforts to give medical benefits to its workers. We likewise found in this case that the employee's dismissal was too drastic a punishment in light of his voluntary confession that he committed trafficking of company-supplied medicines out of necessity, as well as his promise not to repeat the same mistake. We ordered the employee's reinstatement but without backwages, again, in consideration of the employer's good faith in dismissing him.

Reference may also be made to the case of *Manila Electric Company v. National Labor Relations Commission*,^[10] wherein the employee was found responsible for the irregularities in the installation of electrical connections to a residence, for which reason, his services were terminated by the employer's company. We, however, affirmed the findings of the NLRC and the Labor Arbiter that the employee should not have been dismissed considering his 20 years of service to the employer without any previous derogatory record and his being awarded in the past two commendations for honesty. We thus ruled that the employee's reinstatement is proper, without backwages, bearing in mind the employer's good faith in terminating his services.

In our Decision in the present Petition, respondent suffered leg injury after figuring in an accident on 24 August 1994 while driving petitioner's bus, for which he was operated on and confined at the hospital. We are unable to sustain petitioner's position that respondent abandoned his job as early as 1994. For the next four years, respondent was reporting to petitioner's office twice a month and still receiving his salary and medical assistance

from petitioner. It was only in January 1998 that respondent was actually dismissed from employment when he was expressly informed that he was considered resigned from his job. We further found that respondent was not afforded procedural due process prior to his dismissal in 1998. We ordered that petitioner pay respondent (1) separation pay of one month for every year of service, in lieu of reinstatement; and (2) full backwages inclusive of allowances and other benefits or their monetary equivalent from 1 January 1998 up to the finality of this Decision.

In its present motion, petitioner is asserting that it should be deemed to have acted in good faith when it considered respondent as resigned from work because the Court itself stated in the Decision that respondent's reinstatement is no longer feasible due to his leg injury, and that to allow the respondent to drive petitioner's bus in his present physical condition would place petitioner in jeopardy of violating its obligation as a common carrier to always exercise extra-ordinary diligence. Thus, invoking good faith, petitioner denies any liability to respondent for the payment of his backwages and allowances from 1 January 1998 to the date of finality of our Decision.

We agree.

While we cannot subscribe to petitioner's argument that respondent had already abandoned his job in 1994, we may concede that petitioner, given the particular circumstances of this case, had sufficient basis to reasonably and in good faith deem respondent resigned by 1998. In attributing good faith to petitioner, we give due regard to the following circumstances:

First, respondent had been working for petitioner for only 15 months, from June 1993 to August 1994, when the accident occurred causing injury to his leg. Hence, he was able to render actual service to petitioner as a bus driver for the mere period of a little over a year, since his injury already kept him from working from 1994 onwards.

Second, respondent's leg injury prevented him from working as a bus driver for petitioner. In January 1998, when he went to petitioner's office and was informed that he was deemed resigned from work, he was still limping heavily. Respondent neither alleged nor proved that despite the injury to his leg, he could still drive a bus. In fact, respondent's letter to petitioner's Vice President, dated 18 March 1996,[11] requesting that he be transferred to the position of dispatcher or conductor, is very revealing of the fact that he could no longer drive a bus because of his leg injury.

Third, despite respondent's inability to render actual service for four years following the accident in 1994, petitioner still continued to pay him his salary and shoulder his medical expenses. When petitioner informed respondent that he was deemed resigned in 1998, petitioner even offered respondent the amount of P50,000.00 as financial assistance; and when respondent refused to receive the said amount, petitioner raised its offer to P100,000.00. Even though we do not have an exact determination of respondent's monthly salary,[12] it is safe to assume that the P100,000.00 would have been sufficient separation pay. In 1998, respondent had been in petitioner's employ for only five years and, should he have agreed to accept the P100,000.00, he would have received a separation pay of P20,000.00 for every year of service (although strictly speaking, he rendered actual service for only a year and three months).

And finally, as we discussed in our Decision,[13] petitioner is a common carrier and, as such, is obliged to exercise extra-ordinary diligence in transporting its passengers safely.[14] Understandably, petitioner feared that it would be exposing to danger the lives of its passengers if it allowed the respondent to drive its bus despite the fact that his leg was injured.

Although we still cannot depart from our original ruling that respondent was illegally dismissed since petitioner

was, at the beginning, unable to identify with certitude its basis for respondent's termination,[15] as well as the date of effectivity thereof,[16] we are now convinced, taking into account the foregoing circumstances, that petitioner acted without malice and in good faith when it formally informed respondent in 1998 that he was deemed resigned from work.

We then proceed to determining what is the effect of petitioner's good faith on its liability for backwages.

Unrebutted and, thus, already established, is the fact that respondent is unable to drive a bus since the accident in August 1994. Yet, petitioner still kept him in its employ, gave him his salary, and paid for his medical expenses for the next four years, despite the fact that respondent did not render actual service for the said period. Respondent wanted to continue working for petitioner as a dispatcher or conductor, but he failed to show that such positions were available and that he would have been qualified and capable for the said jobs.

We have previously recognized that the constitutional policy of providing full protection to labor is not intended to oppress or destroy management.[17] The employer cannot be compelled to continuously pay an employee who can no longer perform the tasks for which he was hired. Seeing as petitioner continued to pay respondent his salaries and medical expenses for four years following the accident which caused his leg injury, despite the fact that respondent was unable to render actual service to petitioner, it would be the height of injustice to still require petitioner to pay respondent full backwages from the time of his termination in 1998 until the finality of this Decision. Reasons of fairness and equity, as well as the particular factual circumstances attendant in this case, dictate us to modify our Decision by ordering petitioner to pay respondent limited backwages (inclusive of allowances and other benefits or their monetary equivalent) for five years,[18] from 1 January 1998 to 31 December 2002, in addition to the separation pay of one month for every year of service awarded in lieu of reinstatement. We must clarify, however, that for purposes of computing respondent's separation pay, he must still be deemed in petitioner's employ until the finality of this Decision since his termination remains illegal, and is only mitigated by petitioner's good faith.

With respect to the second ground, petitioner invokes Article 284 of the Labor Code which provides that "an employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees." According to petitioner, the dismissal of respondent on account of his physical infirmity may be deemed analogous to a termination for health reasons because respondent's physical disability rendered him incapable of performing his job as a bus driver. Moreover, respondent's continued employment under such circumstance is prohibited by law because it would place petitioner in jeopardy of violating its common carrier obligation to observe extra-ordinary diligence.

We note that petitioner cites Article 284 of the Labor Code as an authorized cause in dismissing respondent for the first time in its Motion for Reconsideration before us. Petitioner did not raise Article 284 as an authorized cause in terminating respondent's employment during the proceedings before the Labor Arbiter, NLRC, and Court of Appeals, and even in its Petition for Review before us. To reiterate, petitioner alleged causes for dismissing respondent were abandonment of work, insubordination and gross and habitual neglect of duty. Petitioner's reference to Article 284 of the Labor Code at such a belated stage cannot be allowed.

The rule is well-settled that points of law, theories, issues, and arguments not adequately brought to the attention of the lower court (or in this case, the appropriate quasi-judicial administrative body) need not be considered by the reviewing court as they cannot be raised for the first time on appeal, much more in a motion for reconsideration as in this case, because this would be offensive to the basic rules of fair play, justice and due process.[19] This last ditch effort to shift to a new theory and raise a new matter in the hope of a favorable result

is a pernicious practice that has been consistently rejected.[20] We are not prepared to make a conclusion of law herein that may have far-reaching consequences based on an argument that was belatedly raised and evidently a mere after-thought.

WHEREFORE, in view of the foregoing, the Motion is PARTIALLY GRANTED. The dispositive portion of the Decision dated 28 March 2007 in G.R. No. 164820 is MODIFIED in that petitioner is ordered to pay the respondent, in lieu of reinstatement, SEPARATION PAY of one (1) month pay for every year of service, and LIMITED BACKWAGES, inclusive of allowances and other benefits or their monetary equivalent, for a period of five (5) years, computed from 1 January 1998 to 31 December 2002.

SO ORDERED.

Quisumbing, Ynares-Santiago, Austria-Martinez, and Nachura, JJ., concur.

[1] Rollo , p. 201.

[2] Santos v. National Labor Relations Commission, G.R. No. L-76721, 21 September 1987, 154 SCRA 166, 172-173.

[3] G.R. No. 158693, 17 November 2004, 442 SCRA 573.

[4] G.R. No. 54244, 27 January 1992, 205 SCRA 469.

[5] The employer's Health, Welfare and Retirement Plan provides that it can compulsorily retire an employee who has exhausted all his sick leave with pay benefits and is certified by the company physician to be incapable of discharging his regular assigned duties without impairing his own health or endangering that of his fellow workers.

[6] G.R. No. 87673, 24 January 1992, 205 SCRA 348.

[7] The employer company even gave the employee several telex messages and letters to warn her that her permission for leave had already expired.

[8] 202 Phil. 850 (1982).

[9] 159-A Phil. 346 (1975).

[10] G.R. No. 78763, 12 July 1989, 175 SCRA 277.

[11] Records, p. 116.

[12] Petitioner alleged that respondent's daily salary was P192.00.

[13] Rollo, pp. 200-201.

[14] New Civil Code, Article 1733: ART. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case. (*Italics supplied*).

[15] Petitioner originally alleged that its reasons for dismissing respondent were abandonment of work, insubordination and gross and habitual neglect of duty. Only later, in its petition before us, did petitioner invoke respondent's injury by reasoning that it would be in violation of its duty as a common carrier to exercise extraordinary diligence to still allow respondent to drive a bus.

[16] The year 1994 vis-à-vis 1998.

[17] *Garcia v. National Labor Relations Commission*, G.R. No. 110518, 1 August 1994, 234 SCRA 632, 638.

[18] *Panday vs. NLRC*, G.R. No. 67664, 20 May 1992, 209 SCRA 122, 129; *New Manila Candy Workers Union vs. CIR*, No. L-29728, 30 October 1978, 86 SCRA 36, 46-48; *Davao Free Workers Front vs. CIR*, No. L-29356, 31 October 1974, 60 SCRA 408, 431.

[19] *Delfino v. St. James Hospital, Inc.*, G.R. No. 166735, 23 November 2007, 538 SCRA 489, 496.

[20] *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, G.R. No. 168498, 24 April 2007, 522 SCRA 144, 154.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.