

JACKQUI R. MORENO, Petitioner, vs. SAN SEBASTIAN COLLEGE-RECOLETOS, MANILA, Respondent.

G.R. No. 175283. March 28, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Assailed in this Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court is the Decision[2] of the Court of Appeals dated 7 November 2006 in CA-G.R. SP No. 90083. The appellate court's Decision granted the Special Civil Action for Certiorari filed by respondent San Sebastian College-Recoletos, Manila (SSC-R), and annulled the Decision[3] dated 23 November 2004 and the Resolution[4] dated 31 March 2005 of the National Labor Relations Commission (NLRC) in NLRC-NCR-CA No. 037175-03.

The undisputed facts of the case are as follows:

Respondent SSC-R is a domestic corporation and an educational institution duly registered under the laws of the Philippines, located in C. M. Recto Avenue, Quiapo, Manila.

On 16 January 1999, SSC-R employed petitioner Jackqui R. Moreno (Moreno) as a teaching fellow. On 23 October 2000, Moreno was appointed as a full-time college faculty member.[5] Then, on 22 October 2001, Moreno became a member of the permanent college faculty.[6] She was also offered the chairmanship[7] of the Business Finance and Accountancy Department of her college on 13 September 2002.

Subsequently, reports and rumors of Moreno's unauthorized external teaching engagements allegedly circulated and reached SSC-R. The Human Resource Department of the school thereafter conducted a formal investigation on the said activities. On 24 October 2002, the Department submitted its report, [8] which stated that Moreno indeed had unauthorized teaching assignments at the Centro Escolar University during the first semester of the School Year 2002-2003, and at the College of the Holy Spirit, Manila, during the School Years 2000-2001, 2001-2002 and the first semester of School Year 2002-2003.

On 27 October 2002, Moreno received a memorandum[9] from the Dean of her college, requiring her to explain the reports regarding her unauthorized teaching engagements. The said activities allegedly violated Section 2.2 of Article II of SSC-R's Faculty Manual,[10] which reads:

Administrative permission is required for all full-time faculty members to teach part-time elsewhere. If ever teaching permission is granted, the total teaching load should not exceed the maximum allowed by CHED rules and regulations. Faculty members are required to report all other teaching assignments elsewhere within two (2) weeks from start of the classes every semester.

On 28 October 2002, Moreno sent a written explanation[11] in which she admitted her failure to secure any written permission before she taught in other schools. Moreno explained that the said teaching engagements were merely transitory in nature as the aforesaid schools urgently needed lecturers and that she was no longer connected with them. Moreno further stated that it was never her intention to jeopardize her work in SSC-R and

that she merely wanted to improve her family's poor financial conditions.

A Special Grievance Committee was then formed in order to investigate and make recommendations regarding Moreno's case. The said committee was composed of Dean Abraham Espejo of the College of Law, as chairman, and Messrs. Dindo Bunag and Ramon Montierro, as members.

In a letter[12] dated 11 November 2002, the grievance committee required Moreno to answer the following series of questions concerning her case, to wit:

- Did you teach in other schools without first obtaining the consent of your superiors in SSC-R?
- Did you ever go beyond the maximum limit for an outside load?
- Did you ever truthfully disclose completely to your superiors at SSC-R any outside Load?
- Do you deny teaching in CEU?
- Do you deny teaching at Holy Spirit?

Moreno answered the above queries in a letter[13] dated 12 November 2002. Moreno admitted she did not formally disclose her teaching loads at the College of the Holy Spirit and at the Centro Escolar University for fear that the priest administrators may no longer grant her permission, as prior similar requests had already been declined; that the Dean of her college was aware of her external teaching loads; that she went beyond the maximum limit for an outside load in the School Years 2000 until 2002, because she needed to support her mother and sister, her masteral studies, and her sister's canteen business, all of which coincided with the payment of the emergency loan from the SSC-R administrators that paid for her mother's illness; that she did not deny teaching part-time in the aforementioned schools; and that she did not wish to resign because she felt she deserved a second chance.

On the same day that Moreno sent her letter, the grievance committee issued its resolution,[14] which unanimously found that she violated the prohibition against a full-time faculty having an unauthorized external teaching load. The majority of the grievance committee members recommended Moreno's dismissal from employment in accordance with the school manual, but Dean Espejo dissented and called only for a suspension for one semester.

Thereafter, SSC-R sent a letter[15] to Moreno that was signed by the College President, informing her that they had approved and adopted the findings and recommendations of the grievance committee and, in accordance therewith, her employment was to be terminated effective 16 November 2002.

Moreno thus instituted with the NLRC a complaint for illegal termination against SSC-R, docketed as NLRC-NCR Case No. 11-10077-02, seeking reinstatement, money claims, backwages, separation pay if reinstatement is not viable, and attorney's fees.

In the Decision[16] dated 30 April 2003, Labor Arbiter Veneranda C. Guerrero dismissed Moreno's complaint for lack of merit, thus:

WHEREFORE, premises considered, judgment is hereby rendered dismissing the complaint for illegal dismissal for lack of merit. Respondent San Sebastian College-Recoletos is hereby ordered to pay complainant Jackqui R. Moreno the amount of NINE THOUSAND ONE HUNDRED FORTY THREE AND 75/100 PESOS (P9,143.75) representing her unpaid salaries.

All other claims are DISMISSED for lack of merit.

The Labor Arbiter ruled that Moreno's due acceptance of the appointment as a member of the Permanent Faculty meant that she was bound to the condition therein not to accept any outside teaching assignments without permission. Moreno's admission of her violation was likewise said to have rendered her liable for the penalty of dismissal as provided for in the SSC-R Faculty Manual. The Labor Arbiter held that SSC-R had adequately discharged the burden of proof imposed by law in dismissing Moreno. Except for her unpaid salary for fifteen (15) days, which was not controverted, the rest of Moreno's money claims were denied for being unsubstantiated.

On appeal by Moreno, the NLRC reversed the rulings of the Labor Arbiter in a Decision dated 23 November 2004, the relevant portion of which reads:

The four (4) applications for leave of absence adduced in evidence by the respondent [SSC-R] are all undated. If the absences indicated in the said documents were the only absences incurred by the complainant [Moreno] in her four-year tenure, it cannot be said that she had a poor attendance. In fact, the contrary would be true. On the other hand, it is conceded that in the yearly evaluation of the performance of teachers, she consistently landed among the five best teachers. Thus, neither can it be said that her moonlighting activities adversely affected her work performance. Likewise, the undisputed fact that she was asked to be the chairman of Business Finance and Accountancy for SY 2002-2003 should be considered. This last circumstance could only mean that she was very good at her job.

There are other extenuating circumstances that should have been taken into consideration in determining the propriety of the penalty of dismissal meted upon the complainant. These circumstances are the fact that it was her first offense in four years of unblemished employment, and the fact that she candidly admitted her fault. x x

Moreover, it is settled that the existence of some rules agreed upon between the employer and employee on the subject of dismissal cannot preclude the State from inquiring whether its rigid application would work too harshly on the employee. (*Gelmart Industries Phils. Inc. vs. NLRC*, 176 SCRA 295 cited in *Caltex Refinery Employees Association vs. NLRC*, 246 SCRA 271).

Thus, in the instant case, it must be concluded that the penalty of dismissal meted upon the complainant [Moreno] was too harsh and unreasonable under the circumstances. At most, a one-year suspension with a warning against the repetition of the same offense would have been more in keeping with the generally accepted principles of law.

WHEREFORE, the decision appealed from is hereby REVERSED. The respondent [SSC-R] is hereby ordered to REINSTATE the complainant [Moreno] to her former position, and to pay her full backwages counted from November 16, 2003 up to the date of her actual reinstatement.[17]

SSC-R filed a Motion for Reconsideration[18] of the NLRC Decision, which was denied for lack of merit in a Resolution[19] dated 31 March 2005.

Thus, SSC-R instituted with the Court of Appeals a Petition for Certiorari under Rule 65 of the Rules of Court, with a prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction,[20] docketed as CA-G.R. SP No. 90083, alleging grave abuse of discretion on the part of the NLRC.

In a Decision[21] dated 7 November 2006, the appellate court granted the petition and annulled the Decision dated 23 November 2004, and Resolution dated 31 March 2005 of the NLRC. In reinstating the Decision of the Labor Arbiter dated 30 April 2003, the Court of Appeals ruled in this wise:

In the case at bar, there is clearly grave abuse of discretion on the part of the NLRC when it reversed the Decision of the Labor Arbiter. Its conclusions are highly prejudicial to the interests of herein petitioner [SSC-R], considering the glaring infractions committed by private respondent [Moreno], which she even expressly admitted.

x x x x

"Willful disobedience of the employer's lawful orders, as a just cause for dismissal of an employee, envisages the concurrence of at least two (2) requisites: the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a wrongful or perverse attitude; and the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.

The foregoing requisites are all present in this case. The prohibition against unauthorized outside teaching engagements found in the Faculty Manual and in private respondent's [Moreno] appointment letter are deemed reasonable under the circumstances. In fact, the petitioner's [SSC-R] policy is actually permissive since it allows other teaching engagements so long as its president approves of the same.

Concededly, this policy was made known to private respondent [Moreno] for as mentioned earlier, it is found not only in the Faculty Manual, but more importantly, it is explicitly stated in her appointment letter. By her own admission, it cannot be clearer that, in spite of her knowledge thereof, private respondent [Moreno] willfully disobeyed the said prohibition. When she accepted the teaching opportunities offered to her by other schools and altogether concealed the same from the petitioner [SSC-R], she risked being administratively held liable therefor. Thus, the excuses she raised upon the petitioner's [SSC-R] discovery of such concealment deserve scant consideration.

The policy is obviously in connection with the private respondent's [Moreno] duties as a faculty member. It is designed to ensure that the petitioner's [SSC-R] teaching staff is well fit to function accordingly, not only for its benefit, but chiefly, for the students who are under their care and instruction. Private respondent [Moreno] argues that notwithstanding her violations, her commitments with petitioner [SSC-R] were never compromised. Be that as it may, this fact cannot absolve her. She may be fit at the time when her infractions were revealed, but there is no assurance that her health would not deteriorate in time if she persists in carrying on a heavy workload.

x x x x

WHEREFORE, the instant petition is GRANTED. The 23 November 2004 Decision and the 31 March 2005 Resolution of the National Labor Relations Commission (Second Division) are hereby ANNULLED and SET ASIDE. The National Labor Relations Commission is permanently enjoined from executing its 31 March 2005 Resolution. The Decision of the Labor Arbiter dated 30 April 2003 is hereby REINSTATED and AFFIRMED.

Accordingly, Moreno now impugns before this Court the Court of Appeals Decision dated 07 November 2006 raising the following issues:

I.

WHETHER OR NOT THE DISMISSAL OF PETITIONER WAS PROPER AND LAWFUL.

II.

WHETHER OR NOT PETITIONER IS ENTITLED TO THE RELIEF SHE SEEKS AGAINST RESPONDENT.

Moreno insists that her right to security of tenure is a more significant consideration in this case than the strict application of a school policy. She laments that her dismissal from employment for failing to secure the necessary permission is too harsh and undeserved a penalty.

The most basic of tenets in employee termination cases is that no worker shall be dismissed from employment without the observance of substantive and procedural due process. Substantive due process means that the ground

upon which the dismissal is based is one of the just or authorized causes enumerated in the Labor Code. Procedural due process, on the other hand, requires that an employee be apprised of the charge against him, given reasonable time to answer the same, allowed ample opportunity to be heard and defend himself, and assisted by a representative if the employee so desires.[22] The employee must be furnished two written notices: the first notice apprises the employee of the particular acts or omissions for which his dismissal is sought, and the second is a subsequent notice which informs the employee of the employer's decision to dismiss him.[23]

Article 282 of the Labor Code provides for the just causes for the termination of employment, to wit:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
- (e) Other causes analogous to the foregoing.

In termination cases, the burden of proof rests on the employer to show that the dismissal is for just cause. When there is no showing of a clear, valid and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal and the burden is on the employer to prove that the termination was for a valid or authorized cause.[24]

Respondent SSC-R contends that Moreno's dismissal from employment was valid because she knowingly violated the prohibition embodied in the aforementioned Section 2.2 of Art. II of the SSC-R Faculty Manual, in accordance with Section 45[25] of the Manual of Regulations for Private Schools, and which prohibition was likewise contained in Moreno's employment contract.[26] In so doing, Moreno allegedly committed serious misconduct and willful disobedience against the school, and thereby submitted herself to the corresponding penalty provided for in both the Faculty Manual and the employment contract, which is termination for cause.

On the basis of the evidence on record, the Court finds that Moreno has indeed committed misconduct against respondent SSC-R. Her admitted failure to obtain the required permission from the school before she engaged in external teaching engagements is a clear transgression of SSC-R's policy. However, said misconduct falls below the required level of gravity that would warrant dismissal as a penalty.

Under Art. 282(a) of the Labor Code, willful disobedience of the employer's lawful orders as a just cause for termination of employment envisages the concurrence of at least two requisites: (1) the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a "wrongful and perverse attitude"; and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he has been engaged to discharge.[27]

Similarly, with respect to serious misconduct, the Court has already ruled in *National Labor Relations Commission v. Salgarino*[28] that:

Misconduct is defined as improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character and implies wrongful intent and not mere error of judgment. The misconduct to be serious within the meaning of the act must be of such a grave and aggravated character and not merely trivial or unimportant. Such misconduct, however serious, must

nevertheless be in connection with the work of the employee to constitute just cause from his separation.

In order to constitute serious misconduct which will warrant the dismissal of an employee under paragraph (a) of Article 282 of the Labor Code, it is not sufficient that the act or conduct complained of has violated some established rules or policies. It is equally important and required that the act or conduct must have been performed with wrongful intent. (Emphasis ours.)

After examining the records of the case, the Court finds that SSC-R miserably failed to prove that Moreno's misconduct was induced by a perverse and wrongful intent as required in Art. 282(a) of the Labor Code. SSC-R merely anchored Moreno's alleged bad faith on the fact that she had full knowledge of the policy that was violated and that it was relatively easy for her to secure the required permission before she taught in other schools. This posture is utterly lacking.

It bears repeating that it is the employer that has the burden of proving the lawful cause sustaining the dismissal of the employee. Even equipoise is not enough; the employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause.[29]

In the present case, SSC-R failed to adduce any concrete evidence to prove that Moreno indeed harbored perverse or corrupt motivations in violating the aforesaid school policy. In her letter of explanation to the grievance committee dated 12 November 2002, Moreno explained in detail her role as the breadwinner and the grave financial conditions of her family. As previous requests for permission had already been denied, Moreno was thus prompted to engage in illicit teaching activities in other schools, as she desperately needed them to augment her income. Instead of submitting controverting evidence, SSC-R simply dismissed the above statements as nothing more than a "lame excuse"[30] and are "clearly an afterthought,"[31] considering that no evidence was offered to support them and that Moreno's salary was allegedly one of the highest among the universities in the country.

In addition, even if dismissal for cause is the prescribed penalty for the misconduct herein committed, in accordance with the SSC-R Faculty Manual and Moreno's employment contract, the Court finds the same to be disproportionate to the offense.

Time and again, we have ruled that while an employer enjoys a wide latitude of discretion in the promulgation of policies, rules and regulations on work-related activities of the employees, those directives, however, must always be fair and reasonable, and the corresponding penalties, when prescribed, must be commensurate to the offense involved and to the degree of the infraction.[32]

Special circumstances were present in the case at bar which should have been properly taken into account in the imposition of the appropriate penalty. Moreno, in this case, had readily admitted her misconduct, which was undisputedly the first she has ever committed against the school. Her teaching abilities and administrative skills remained apparently unaffected by her external teaching engagements, as she was found by the grievance committee to be one of the better professors in the Accounting Department[33] and she was even offered the Chairmanship of her college. [34] Also, the fact that Moreno merely wanted to alleviate her family's poor financial conditions is a justification that SSC-R failed to refute. SSC-R likewise failed to prove any resulting material damage or prejudice on its part as a consequence of Moreno's misconduct. The claim by SSC-R that the imposition of a lesser penalty would set a bad precedent[35] for the other faculty members who comply with the school policies is too speculative for this Court to even consider.

Finally, the Court notes that in Moreno's contract of employment,[36] one of the provisions therein categorically stated that should a violation of any of the terms and conditions thereof be committed, the penalty that will be imposed would either be suspension or dismissal from employment. Thus, contrary to its position from the beginning, SSC-R clearly had the discretion to impose a lighter penalty of suspension and was not at all

compelled to dismiss Moreno under the circumstances, just because the Faculty Manual said so.

With regard to the observance of procedural due process, neither of the parties has put the same into issue. Indeed, based on the evidence on record, Moreno was served with the required twin notices and was afforded the opportunity to be heard. The first notice was embodied in the memorandum[37] dated 27 October 2002 sent by her College Dean, which required her to explain her unauthorized teaching assignments. The letter[38] by SSC-R that informed Moreno that her services were being terminated effective 16 November 2002 constituted the second required notice. Moreno was also given the opportunity to explain her side when the special grievance committee asked her a series of questions pertaining to their investigation in a letter[39] dated 11 November 2002 and to which she replied likewise through a letter[40] dated 12 November 2002.

In light of the foregoing, the Court holds that the dismissal of petitioner Moreno failed to comply with the substantive aspect of due process. Despite SSC-R's observance of procedural due process, it nonetheless failed to discharge its burden of proving the legality of Moreno's termination from employment. Thus, the imposed penalty of dismissal is hereby declared as invalid.

In so ruling, this Court does not depreciate the misconduct committed by Moreno. Indeed, SSC-R has adequate reasons to impose sanctions on her. However, this should not be dismissal from employment. Because of the serious implications of this penalty, "our Labor Code decrees that an employee cannot be dismissed, except for the most serious causes." [41]

Considering the presence of extenuating circumstances in the instant case, the Court deems it appropriate to impose the penalty of suspension of one (1) year on Moreno, to be counted from 16 November 2002, the effective date of her illegal dismissal. However, given the period of time in which Moreno was actually prevented from working in the respondent school, the said suspension should already be deemed served.

Furthermore, the Court holds that Moreno should be reinstated to her former position, without loss of seniority rights and other privileges, but without payment of backwages.

As a general rule, the normal consequences of a finding that an employee has been illegally dismissed are, firstly, that the employee becomes entitled to reinstatement without loss of seniority rights; and secondly, the payment of backwages corresponding to the period from his illegal dismissal up to his actual reinstatement. The two forms of relief are, however, distinct and separate from each other. Though the grant of reinstatement commonly carries with it an award of backwages, the appropriateness or non-availability of one does not carry with it the inappropriateness or non-availability of the other. [42]

In accordance with *Durabuilt Recapping Plant & Co. v. National Labor Relations Commission*, [43] the Court may not only mitigate, but also absolve entirely, the liability of the employer to pay backwages where good faith is evident. Likewise, backwages may be withheld from a dismissed employee where exceptional circumstances are availing. [44]

In the present case, the good faith of SSC-R is apparent. The termination of Moreno from her employment cannot be said to have been carried out in a malevolent, arbitrary or oppressive manner. Indeed, the only mistake that the respondent school has committed was to strictly apply the provisions of its Faculty Manual and its contract with Moreno without regard for the aforementioned special circumstances that were attendant in this case. Even then, Moreno's right to procedural due process was fully respected, as she was given the required twin notices and an ample opportunity to be heard. This fact was not even disputed by Moreno herself.

With respect to Moreno's claim for moral and exemplary damages, the same were never satisfactorily pleaded and substantiated. [45] Thus, they are hereby denied. Neither is Moreno entitled to the award of the monetary

claims[46] in her petition, as no basis and proof for the grant thereof were ever adduced.

The Court cannot likewise award attorney's fees to Moreno in view of the above-mentioned finding of good faith on the part of SSC-R[47]. It is a well-settled principle that even if a claimant is compelled to litigate with third persons or to incur expenses to protect the claimant's rights, attorney's fees may still not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.[48]

WHEREFORE, the Petition for Review is GRANTED. The Decision of the Court of Appeals in CA-G.R. SP No 90083 dated 7 November 2006 is hereby REVERSED. Respondent San Sebastian College-Recoletos, Manila, is hereby ordered to reinstate Petitioner Jackqui R. Moreno without loss of seniority rights and other privileges. No pronouncement as to cost.

SO ORDERED.

Austria-Martinez, (Acting Chairperson), Tinga[*], Nachura and Reyes, JJ., concur.

[*]Per Special Order No. 497, dated 14 March 2008, signed by Chief Justice Reynato S. Puno designating Associate Justice Dante O. Tinga to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave under the Court's Wellness Program and assigning Associate Justice Alicia Austria-Martinez as Acting Chairperson.

[1] Rollo, pp. 9-22; dated 28 December 2006.

[2] Penned by Associate Justice Monina Arevalo-Zenarosa with Associate Justices Martin S. Villarama, Jr. and Lucas P. Bersamin, concurring; rollo, pp. 23-38.

[3] Rollo, pp. 55-60.

[4] CA rollo, pp. 37-39.

[5] Id. at 83-84.

[6] Id. at 85.

[7] Id. at 102.

[8] Id. at 113-116.

[9] Id. at 86.

[10] Id. at 86.

[11] Id. at 87-88.

[12] Id. at 90.

[13] Id. at 91-93.

[14] Id. at 94-100.

[15] Id. at 101.

[16] CA rollo, p. 24.

[17] Id. at 29-31.

[18] CA rollo, pp. 32-35.

[19] Id. at 37-39.

[20] Id. at 49-63.

[21] Rollo, pp. 31-38.

[22] Waterous Drug Corp. v. National Labor Relations Commission, 345 Phil. 983, 994 (1997).

[23] Concorde Hotel v. Court of Appeals, 414 Phil. 897, 908 (2001).

[24] Cosep v. National Labor Relations Commission, 353 Phil. 148, 157-158 (1998).

[25] Section 45. Full-time and Part-time Faculty. As a general rule, all private schools shall employ full-time academic personnel consistent with the levels of instruction.

Full-time academic personnel are those meeting all the following requirements:

x x x x

d) Who have no other remunerative occupation elsewhere requiring regular hours of work that will conflict with the working hours in the school; and

e) Who are not teaching full-time in any other educational institution.

All teaching personnel who do not meet the foregoing qualifications are considered part-time. (Emphasis ours.)

[26] The pertinent portion of the employment contract provides:

San Sebastian College-Recoletos, Manila agrees to give due compensation for services satisfactorily rendered in this position subject to the following terms and conditions:

x x x x

5. You shall not accept any teaching assignment or remunerative occupation in other educational institutions or agencies without prior written permission from the President; x x x (CA rollo, p. 85.)

[27] Rosario v. Victory Ricemill, 445 Phil. 830, 839 (2003).

[28] G.R. No. 164376, 31 July 2006, 497 SCRA 361, 375-376.

[29] Dizon v. National Labor Relations Commission, G.R. No. L-79554, 14 December 1989, 180 SCRA 52, 57-58.

[30] Rollo, p. 94.

[31] Id. at 102.

[32] VH Manufacturing Inc. v. National Labor Relations Commission, 379 Phil. 444, 451 (2000).

[33] CA rollo, p. 99.

[34] Id. at 102.

[35] Rollo, p. 102.

[36] CA rollo, p. 85.

[37] Id. at 86.

[38] Id. at 101.

[39] Id. at 90.

[40] Id. at 91-93.

[41] Cebu Filvener Corporation v. National Labor Relations Commission, 350 Phil. 197, 204 (1998).

[42] Velasco v. National Labor Relations Commission, G.R. No. 16194, 26 June 2006, 492 SCRA 686, 700.

[43] G.R. No. L-76746, 27 July 1987, 152 SCRA 328.

[44] Bank of the Philippine Islands Employees Union v. Bank of the Philippine Islands, G.R. No. 137863, 31 March 2005, 454 SCRA 357, 368.

[45] Moral and exemplary damages are recoverable only where the dismissal of an employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or were done in a manner contrary to morals, good customs or public policy. The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence, for the law always presumes good faith. (Acuna v. Court of Appeals, G.R. No. 159832, 5 May 2006, 489 SCRA 658, 668.)

[46] The monetary claims enumerated were: (1) P9,103.50 more or less, by way of her unpaid salary; (2) P1,000.00 more or less by way of her unpaid tutorial fees; (3) P2,5000.00 by way of her unpaid adviser's fees; and (4) P15,750.00 more or less by way of her unpaid 13[th] month pay. (Rollo, p. 125).

[47] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim.

[48] Smith Kline Beckman Corporation v. Court of Appeals, G. R. No. 126627, 14 August 2003, 409 SCRA 33, 42.

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