

CONRADO A. LIM, PETITIONER, VS. HMR PHILIPPINES, INC., TERESA SANTOS-CASTRO, HENRY BUNAG AND NELSON CAMILLER, RESPONDENTS.

G.R. No. 201483. August 04, 2014

Ponente: MENDOZA, J.

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MENDOZA, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the March 30, 2012[1] Decision of the Court of Appeals (CA), in CA G.R. SP No. 112708, a case involving the computation of the backwages of an illegally dismissed employee.

The Facts

On February 8, 2001, petitioner Conrado A. Lim (Lim) filed a case for illegal dismissal and money claims against respondents, HMR Philippines, Inc. (HMR) and its officers, Teresa G. Santos-Castro, Henry G. Bunag and Nelson S. Camiller. The Labor Arbiter (LA) dismissed the complaint for lack of merit. On April 11, 2003, the National Labor Relations Commission (NLRC) in NLRC NCR No. 02-00926-01, reversed the LA and declared Lim to have been illegally dismissed. The dispositive portion of the NLRC decision reads:

WHEREFORE, premises considered, judgment is hereby rendered declaring the appealed Decision REVERSED and SET ASIDE; that the dismissal of herein complainant-appellant was illegal and the respondent-appellee Company is hereby ordered to reinstate immediately the said employee to his former position without loss of seniority rights and other privileges. Furthermore, the respondent-appellee Company is hereby ordered to pay the complainant-appellant his full backwages, reckoned from his dismissal on February 3, 2001 up to the promulgation of this Decision.

All other claims are hereby DISMISSED for lack of merit.

The Computation and Research Unit (CRU) of this Commission is hereby directed to compute the backwages and the 10% annual increase from 1998 to 2000.

SO ORDERED.[2]

[Emphases supplied]

Both Lim and HMR filed their respective petitions for certiorari before the CA, docketed as CA-G.R. SP No. 80379 and CA-G.R. SP No. 80630, respectively, which were consolidated. Pending resolution of the petitions, the CA issued the Temporary Restraining Order (TRO) enjoining the execution of the NLRC decision.

On November 15, 2005, the CA affirmed the NLRC decision with modification as follows:

WHEREFORE, the Decision of the National Labor Relations Commission is AFFIRMED, with MODIFICATION by awarding moral damages and exemplary damages to Conrado A. Lim in the amount of P50,000.00 and P20,000.00, respectively, as well as attorney's fees equivalent to 10% of the total amount due

him.

SO ORDERED.[3]

On February 7, 2007, this Court, in G.R. No. 175950-51, dismissed the petition for certiorari[4] filed by HMR assailing the November 15, 2005 CA decision. Entry of judgment was ordered on July 27, 2007.[5]

On September 24, 2007, Lim moved for execution.[6] On November 28, 2007, the Computation and Research Unit (CRU) of the NLRC computed the total award to amount to P2,020,053.46,[7] which computed the backwages from February 3, 2001, the date of the illegal dismissal, up to October 31, 2007, the date of actual reinstatement.

HMR opposed the computation arguing that the backwages should be computed until April 11, 2003 only, the date of promulgation of the NLRC decision, as stated in the dispositive portion of the NLRC decision, which provided that backwages shall be “reckoned from his dismissal on February 3, 2001 up to the promulgation of this Decision.” It also noted that the 10% annual increase was computed from 1998 to 2007, instead of only from 1998 to 2000 as decreed.[8]

In his Comment, Lim argued that the body of the NLRC decision explicitly stated that he was entitled to full backwages from the time he was illegally dismissed until his actual reinstatement, which was also in accord with Article 279 of the Labor Code and all prevailing jurisprudence.[9]

Ruling of the LA

On April 21, 2009, the LA issued the order[10] granting the motion for execution filed by Lim. Holding that the backwages should be reckoned until April 11, 2003 only in accordance with the NLRC decision, the LA disposed:

Accordingly, in computing complainant’s backwages, the following conditions must apply: 1) that the backwages cover the period February 3, 2001 up to April 11, 2003; 2) that the base rate applicable is his salary as of February 3, 2001 inclusive of the ten percent adjustment due at the time, or P12,500.00 plus ten percent (10%) or P13,750.00; 3) that the computation should include his 13th month pay; and 4) 15 days vacation pay in accordance with the personnel policy handbook, in lieu of 5 days service incentive leave pay.

While complainant claims that he is entitled to 15 days sick leave pay, a perusal of the personnel policy handbook on the grant of said benefit shows that sick leave pay is availed of only upon notification of illness and conversion thereof to cash is subject to the discretion of management.

Accordingly, complainant’s monetary award, which is the proper subject of enforcement through a writ of execution, in accordance with the Decision of the Commission as modified by the Court of Appeals, is computed as follows:

A.

Backwages:

2/3/01 to 4/11/03 = 26.26

P13,750.00 x 26.26

=

P361,075.00

13th month pay (P366,575.00/12)

=

30,089.58

Vacation Leave (P687.50 x 15 x 26.26/12)

=

22,859.37

P414,023.95

B.

Moral Damages

=

50,000.00

C.

Exemplary Damages

=

20,000.00

P484,023.95

D.

Attorney's Fees

=

48,402.39

P532,426.34

WHEREFORE, complainant's Motion for Issuance of Writ of Execution is GRANTED. A Writ of Execution is hereby issued for the satisfaction of the judgment award rendered in this case.

SO ORDERED.[11]

Ruling of the NLRC

Lim filed his "Motion Ad Cautelam for Reconsideration or Recomputation and Partial Execution of Monetary Award," insisting that his backwages should be computed up to his actual reinstatement.[12] On August 28, 2009, the NLRC treated the motion as an appeal and sustained the computation of the LA, explaining that the dispositive portion was clear, and that it could not alter or amend the amount based on the final decision of the NLRC which was affirmed by both the CA and this Court.[13] Aggrieved, petitioner filed a petition for certiorari before the CA.

Ruling of the CA

In its assailed March 30, 2012 Decision,[14] the CA dismissed the petition. It emphasized that the April 11, 2003 NLRC decision had long become final and executory after it was affirmed by the Court and, as such, it may no longer be amended or corrected. While noting that the body of the NLRC decision stated that petitioner was entitled to backwages until his actual reinstatement, the CA ruled that when there was a conflict between the

dispositive portion and the body of the decision, the former must prevail as the dispositive portion was the final order, and that it was the dispositive portion which was the subject of execution. It wrote that the fallo was clear and unequivocal and could, therefore, be given effect without going to the body of the decision or further interpretation or construction.

The CA found that although the NLRC had recognized that petitioner was entitled to backwages until actual reinstatement, nonetheless, it expressly limited the computation of backwages to the promulgation date of its decision. It wrote that the issue of whether such limitation was lawful or improper could no longer be ventilated due to the finality of the judgment.

Hence, the present petition.

ISSUES AND ARGUMENTS

I

Whether or not the Court of Appeals erred in peremptorily applying the doctrine laid down in *PH Credit Corporation v. Court of Appeals* and contrary to law as well as the established jurisprudence mandating the payment of backwages until the illegally dismissed employee is actually reinstated.

II

Whether or not the Court of Appeals erred in not affirming the applicability of *Eastern Shipping Lines v. Court of Appeals* in the computation of interest since the Decision on the illegal termination case had become final and executory on June 6, 2007 inconsistent with existing jurisprudence by its failure to include interest payments.[15]

Petitioner Lim argues that Article 279 of the Labor Code and the prevailing jurisprudence provide that illegally dismissed workers are entitled to an award of backwages from the time of the illegal dismissal until they are actually reinstated. He states that the body of the NLRC decision was explicit in its intent to award backwages until actual reinstatement, especially when read with its fallo, which ordered his immediate reinstatement. He further avers that it has been held that the dispositive part of a decision must find support from the decision's ratio decidendi, because, while the opinion of the court is not part of the judgment, it may, in case of uncertainty or ambiguity, be referred to for the purpose of construing the judgment, where the court may clarify by amendment even after judgment has become final.

Lim also points out that the LA completely failed to include in the computation the unpaid 10% annual increase in his salary from 1998 to 2000, as awarded in the fallo of the NLRC decision. He posits that the LA also failed to include the payment of other benefits, such as a 10% increase in salary per annum, 15 days vacation leave and 15 days sick leave per annum, all as part of employee benefits found in HMR's Personnel Policy.

Petitioner Lim also argues that in accordance with the rules laid down in *Eastern Shipping Lines v. Court of Appeals*,^[16] the monetary awards should be subject to interest. He prays that the respondents be made to pay, jointly and severally, additional moral and exemplary damages on account of their bad faith in delaying the payment and reinstatement of the petitioner, which prompted him to file the present petition.

Respondents' Comment

In their Comment,^[17] the respondents argue that the August 28, 2009 NLRC Resolution had already become final and executory and could no longer be modified as the petitioner belatedly filed his motion for reconsideration. In the same vein, they argue that the April 21, 2009 LA Order had also become final and executory considering that the petitioner's motion ad cautelam/appeal was not seasonably filed.

The respondents insist that the “decretal portion of the NLRC decision, dated April 11, 2003 limited the amount of petitioner’s backwages from February 3, 2001 and up to promulgation of such Decision on April 11, 2003 only.[18] Granting that the body of such decision controls, they aver that the recoverable backwages cannot go beyond December 26, 2007, the date HMR offered to reinstate Lim, who refused to be reinstated and abandoned his job. They add that it was also clear from the dispositive portion that the 10% annual salary increase awarded was only for the years 1998 to 2000.

They also point out that the P12,500.00 base pay of Lim was already inclusive of holiday pay, and that the conversion of sick leave to cash was subject to management discretion in accordance with company policy.

They further argue that the claims for legal interest and additional moral and exemplary damages are without merit because these were not awarded in the decision and they simply acted in good faith in pursuing the legal remedies available to them.

Petitioner’s Reply

In his Reply,[19] Lim counters that his pleadings before the NLRC and the LA were timely filed as the notices of their respective orders had not been received by an authorized representative. As to HMR’s offer of reinstatement, the petitioner explains that the respondent company never responded to his reply-letter asking for a meeting to discuss the matter of his compensation upon reinstatement. Lim also argued that holiday pay was not shown by HMR to be included in his salary, and that it is unjust to leave the sick leave conversion to management discretion.

Specifically, the Court has to address the following

ISSUES:

- Whether the petitioner’s motion for reconsideration and motion ad cautelam/appeal were belatedly filed?
- Whether the computation of backwages should be reckoned until the promulgation of the NLRC Decision on April 11, 2003 or until actual reinstatement?
- Whether the petitioner is entitled to the unpaid 10% annual salary increase from 1998-2000?
- Whether the petitioner is entitled to the 10% annual salary increase after the year 2000?
- Whether the petitioner is entitled to holiday pay?
- Whether the petitioner is entitled to sick leave pay?
- Whether the respondents should be held jointly and severally liable for additional moral and exemplary damages?
- Whether the interest in accordance with Eastern Shipping should be awarded?

Ruling of The Court

The petition is partly meritorious.

Preliminarily, the Court shall first dispose of the lone procedural issue. The respondents argue that the August 28, 2009 NLRC Resolution was already final and executory and could no longer be modified as the petitioner belatedly filed his motion for reconsideration thereto. In the same vein, they aver that the April 21, 2009 LA Order was also final and executory considering that petitioner’s motion ad cautelam/appeal was not seasonably filed. The petitioner counters that his pleadings were timely filed because the aforementioned NLRC Resolution

and LA Order were not duly received by an authorized representative.

It appears that the respondents raised this issue before the NLRC and the CA. The lower courts, nonetheless, ruled on the merits of the assailed pleadings of the petitioner. The lower courts, thus, gave credence to the petitioner's argument that the notices were not received by an authorized representative. The Court sees no reason to deviate from their findings. In any case, this issue is a question of fact which is beyond the Court's ambit of review under Rule 45 of the Rules of Court, considering that a resolution of the issue would require a review of the evidence presented in connection therewith.

The Court now moves on to the substantive issues.

Backwages

It is beyond question that Lim was illegally dismissed by HMR. All that remains to be settled is the exact amount owing to petitioner as an illegally dismissed employee.

Article 279 of the Labor Code is clear in providing that an illegally dismissed employee is entitled to his full backwages computed from the time his compensation was withheld up to the time of his actual reinstatement, to wit:

Art. 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.

[Emphases and underscoring supplied]

In accordance with this provision, the body of the April 11, 2003 NLRC decision expressly recognizes that Lim is entitled to his full backwages until his actual reinstatement, as follows:

In fine, the act of complainant-appellant herein, do not constitute a serious misconduct as to justify his dismissal. As such, he is, thus, entitled to reinstatement to his former position as Assistant Technical Manager, unless such position no longer exists, in which case, he shall be given a substantially equivalent position without loss of seniority rights. He is, likewise, entitled to his full backwages from the time he was illegally dismissed until his actual reinstatement.[20]

[Emphasis and underscoring supplied]

Nowhere in the body of the NLRC decision was there a discussion restricting the award of backwages. Nonetheless, the fallo of the said decision limited the computation of the backwages up to its promulgation on April 11, 2003, in this wise:

WHEREFORE, premises considered, judgment is hereby rendered declaring the appealed Decision REVERSED and SET ASIDE; that the dismissal of herein complainant-appellant was illegal and the respondent-appellee Company is hereby ordered to reinstate immediately the said employee to his former position without loss of seniority rights and other privileges. Furthermore, the respondent-appellee Company is hereby ordered to pay the complainant-appellant his full backwages, reckoned from his dismissal on February 3, 2001 up to the promulgation of this Decision.

All other claims are hereby DISMISSED for lack of merit.

The Computation and Research Unit (CRU) of this Commission is hereby directed to compute the backwages and the 10% annual increase from 1998 to 2000.

SO ORDERED.[21]

[Emphasis and underscoring supplied]

Considering that the judgment decreeing the computation of backwages up to the promulgation of the NLRC decision has long become final and executory, the key question is whether a recomputation of backwages up to the date of the actual reinstatement of Lim would violate the principle of immutability of judgments.

The rule is that it is the dispositive portion that categorically states the rights and obligations of the parties to the dispute as against each other. Thus, it is the dispositive portion that must be enforced to ensure the validity of the execution. That a judgment should be implemented according to the terms of its dispositive portion is a long and well-established rule. A companion to this rule is the principle of immutability of final judgments. Save for recognized exceptions, a final judgment may no longer be altered, amended or modified, even if the alteration, amendment or modification is meant to correct what is perceived to be an erroneous conclusion of fact or law and regardless of what court renders it. Any attempt to insert, change or add matters not clearly contemplated in the dispositive portion violates the rule on immutability of judgments.[22]

The cases of *Session Delights Ice Cream and Fast Foods v. Court of Appeals (Session Delights)*[23] and *Nacar v. Gallery Frames (Nacar)*[24] shed much light on the apparent discrepancy in the case at hand. As in the present case, both involve labor cases finding that the employees therein were illegally dismissed. At the LA level, in awarding backwages, a precise computation was provided from the time of illegal dismissal up to the promulgation of the LA decision.[25] Additionally, the dispositive portion of the LA decision in *Nacar* also made a declaration that separation pay in lieu of reinstatement be “computed only up to promulgation of this decision.”[26] The LA decisions in these cases were affirmed by the NLRC and the CA and subsequently became final and executory. At the execution stage, the computation of backwages came into issue.

Session Delights made clear that a case for illegal dismissal is one that relates to status, where the decision or ruling is essentially declaratory of the status and of the rights, obligations and monetary consequences that flow from the declared status, such as, the payment of separation pay and backwages. In execution, what is primarily implemented is the declaratory finding on the status and the rights and obligations of the parties therein; the arising monetary consequences from the declaration only follow as component of the parties’ rights and obligations.[27] The precise amount of backwages should ideally be stated in the final decision; otherwise, the matter is for handling and computation by the LA of origin as the labor official charged with the implementation of decisions before the NLRC.[28]

The Court’s disquisition in *Session Delights*, also referenced with approval in *Nacar*, is enlightening:

A source of misunderstanding in implementing the final decision in this case proceeds from the way the original labor arbiter framed his decision. The decision consists essentially of two parts.

The first is that part of the decision that cannot now be disputed because it has been confirmed with finality. This is the finding of the illegality of the dismissal and the awards of separation pay in lieu of reinstatement, backwages, attorney’s fees, and legal interests.

The second part is the computation of the awards made. On its face, the computation the labor arbiter made shows that it was time-bound as can be seen from the figures used in the computation. This part, being merely a computation of what the first part of the decision established and declared, can, by its nature, be re-computed. This is the part, too, that the petitioner now posits should no longer be re-computed because the computation is already in the labor arbiter’s decision that the CA had affirmed. The public and private respondents, on the other hand, posit that a re-computation is necessary because the relief in an illegal dismissal decision goes all the way up to reinstatement if reinstatement is to be made, or up to the finality of the decision, if separation

pay is to be given in lieu of reinstatement.

x x x

Clearly implied from this original computation is its currency up to the finality of the labor arbiter's decision. As we noted above, this implication is apparent from the terms of the computation itself, and no question would have arisen had the parties terminated the case and implemented the decision at that point.

However, the petitioner disagreed with the labor arbiter's findings on all counts – i.e., on the finding of illegality as well as on all the consequent awards made. Hence, the petitioner appealed the case to the NLRC which, in turn, affirmed the labor arbiter's decision. By law, the NLRC decision is final, reviewable only by the CA on jurisdictional grounds.

The petitioner appropriately sought to nullify the NLRC decision on jurisdictional grounds through a timely filed Rule 65 petition for certiorari. The CA decision, finding that NLRC exceeded its authority in affirming the payment of 13th month pay and indemnity, lapsed to finality and was subsequently returned to the labor arbiter of origin for execution.

It was at this point that the present case arose. Focusing on the core illegal dismissal portion of the original labor arbiter's decision, the implementing labor arbiter ordered the award re-computed; he apparently read the figures originally ordered to be paid to be the computation due had the case been terminated and implemented at the labor arbiter's level. Thus, the labor arbiter re-computed the award to include the separation pay and the backwages due up to the finality of the CA decision that fully terminated the case on the merits. Unfortunately, the labor arbiter's approved computation went beyond the finality of the CA decision (July 29, 2003) and included as well the payment for awards the final CA decision had deleted – specifically, the proportionate 13th month pay and the indemnity awards. Hence, the CA issued the decision now questioned in the present petition.

We see no error in the CA decision confirming that a re-computation is necessary as it essentially considered the labor arbiter's original decision in accordance with its basic component parts as we discussed above. To reiterate, the first part contains the finding of illegality and its monetary consequences; the second part is the computation of the awards or monetary consequences of the illegal dismissal, computed as of the time of the labor arbiter's original decision.

To illustrate these points, had the case involved a pure money claim for a specific sum (e.g. salary for a specific period) or a specific benefit (e.g. 13th month pay for a specific year) made by a former employee, the labor arbiter's computation would admittedly have continuing currency because the sum is specific and any variation may only be on the interests that may run from the finality of the decision ordering the payment of the specific sum.

In contrast with a ruling on a specific pure money claim, is a claim that relates to status (as in this case, where the claim is the legality of the termination of the employment relationship). In this type of cases, the decision or ruling is essentially declaratory of the status and of the rights, obligations and monetary consequences that flow from the declared status (in this case, the payment of separation pay and backwages and attorney's fees when illegal dismissal is found). When this type of decision is executed, what is primarily implemented is the declaratory finding on the status and the rights and obligations of the parties therein; the arising monetary consequences from the declaration only follow as component of the parties' rights and obligations.

In the present case, the CA confirmed that indeed an illegal dismissal had taken place, so that separation pay in lieu of reinstatement and backwages should be paid. How much that separation pay would be, would ideally be stated in the final CA decision; if not, the matter is for handling and computation by the labor arbiter of origin as the labor official charged with the implementation of decisions before the NLRC.

x x x

Consistent with what we discussed above, we hold that under the terms of the decision under execution, no essential change is made by a re-computation as this step is a necessary consequence that flows from the nature of the illegality of dismissal declared in that decision. A re-computation (or an original computation, if no previous computation has been made) is a part of the law – specifically, Article 279 of the Labor Code and the established jurisprudence on this provision – that is read into the decision. By the nature of an illegal dismissal case, the reliefs continue to add on until full satisfaction, as expressed under Article 279 of the Labor Code. The re-computation of the consequences of illegal dismissal upon execution of the decision does not constitute an alteration or amendment of the final decision being implemented. The illegal dismissal ruling stands; only the computation of monetary consequences of this dismissal is affected and this is not a violation of the principle of immutability of final judgments.

x x x

That the amount the petitioner shall now pay has greatly increased is a consequence that it cannot avoid as it is the risk that it ran when it continued to seek recourses against the labor arbiter's decision. Article 279 provides for the consequences of illegal dismissal in no uncertain terms, qualified only by jurisprudence in its interpretation of when separation pay in lieu of reinstatement is allowed. When that happens, the finality of the illegal dismissal decision becomes the reckoning point instead of the reinstatement that the law decrees. In allowing separation pay, the final decision effectively declares that the employment relationship ended so that separation pay and backwages are to be computed up to that point. x x x[29]

[Emphases and underscoring supplied]

Although the NLRC decision in the present case did not provide a precise computation, the principles enunciated in *Session Delights* still equally apply. In *Session Delights*, the computation of the LA was found to be time-bound, which implied the currency of the computation up to the finality of the LA decision. In the present case, the NLRC declared backwages to be reckoned “up to the promulgation” of its decision, which was an express declaration of the currency of the computation up to the finality of the NLRC decision, especially considering that HMR was “ordered to reinstate immediately” petitioner Lim. The decisions in both cases are premised on their immediate execution, in that no question would have arisen had the parties terminated the case and the decision implemented at that point.[30]

As discussed above, no essential change is being made by a recomputation because such is a necessary consequence which flows from the nature of the illegality of the dismissal. To reiterate, a recomputation, or an original computation, if no previous computation was made, as in the present case, is a part of the law that is read into the decision, namely, Article 279 of the Labor Code and established jurisprudence.[31] Article 279 provides for the consequences of illegal dismissal, one of which is the payment of full backwages until actual reinstatement, qualified only by jurisprudence when separation pay in lieu of reinstatement is allowed, where the finality of the illegal dismissal decision instead becomes the reckoning point.[32]

The nature of an illegal dismissal case requires that backwages continue to add on until full satisfaction. The computation required to reflect full satisfaction does not constitute an alteration or amendment of the final decision being implemented as the illegal dismissal ruling stands. Thus, in the present case, a computation of backwages until actual reinstatement is not a violation of the principle of immutability of final judgments.[33]

The respondents aver that the recoverable backwages cannot go beyond December 26, 2007, the date HMR offered to reinstate Lim, who allegedly refused to be reinstated and abandoned his job.

HMR sent the petitioner a letter,[34] dated December 22, 2007, directing him to report for work on December 26, 2007, with an offer of separation pay in the amount of P150,000.00 in lieu of reinstatement which he could avail of not later than December 26, 2007. Lim replied in a letter,[35] dated December 24, 2007, requesting for a

meeting in January 2008, considering that his counsel was out of the country; that the NLRC was still in the process of computing the amount of the award which was necessary to consider the offer of separation pay; and that a writ of execution had not yet been issued. HMR never responded to the petitioner's request, and up to the present, the latter has yet to be reinstated.

From the above, it is apparent that the petitioner cannot be deemed to have refused reinstatement or to have abandoned his job. HMR's offer of reinstatement appeared superficial and insincere considering that it never replied to the petitioner's letter. It did not make any further attempt to reinstate the petitioner either. The recoverable backwages, thus, continue to run, and must be reckoned up until the petitioner's actual reinstatement.

10% annual salary increase

Petitioner Lim argues that the LA completely failed to include in its computation the unpaid 10% annual increase in his salary from 1998 to 2000, as stated in the fallo of the NLRC decision, and the 10% salary increase per annum in backwages until actual reinstatement.

The pertinent portion of the fallo of the NLRC decision reads:

The Computation and Research Unit (CRU) of this Commission is hereby directed to compute the backwages and the 10% annual increase from 1998 to 2000.[36]

In awarding the 10% annual salary increase from 1998 to 2000, the body of the NLRC decision explained:

We see no reason, therefore, why complainant-appellant herein, being a regular employee, should be deprived of what he is entitled to under Company policy. As such, he should be paid his unpaid 10% annual increase for the years 1998, 1999 and 2000.[37]

[Emphasis and underscoring supplied]

Lim is, thus, entitled to be paid his unpaid 10% annual salary increase for the years 1998-2000.

A reading of the assailed order of the LA would reveal that it made the following adjustment in connection to the 10% annual salary increase:

2) that the base rate applicable is his salary as of February 3, 2003 inclusive of the ten percent adjustment due at the time, or P12,500.00 plus ten percent (10%) or P13,750.00;[38]

This is incorrect on two counts. First, the LA failed to include the actual unpaid 10% annual increase from 1998-2000. The first computation of the LA,[39] as well as the suggested computation of respondent HMR itself,[40] gave the correct computation of the unpaid salary increase from 1998-2000, as follows:

Year

Rate (P)

Increase

Monthly

Increase (P)

Annual

Increase (P)

1998

12,500.00

10%
1,250.00
15,000.00
1999
13,750.00
10%
1,375.00
16,500.00
2000
15,125.00
10%
1,512.50
18,150.00
Total
49,650.00

Second, based on the above, the applicable base rate for the computation of the petitioner's backwages from the time he was illegally dismissed on February 3, 2001 should be P15,125.00.

Lim cannot, however, insist that the 10% annual salary increase be applied to his backwages past the year 2000 up to his actual reinstatement. In *Equitable Banking Corporation v. Sadac*, [41] the Court held that although Article 279 of the Labor Code mandates that an employee's full backwages be inclusive of allowances and other benefits, salary increases cannot be interpreted as either an allowance or a benefit, as allowances and benefits are separate from salary, while a salary increase is added to salary as an increment thereto.[42] It was further held therein that the base figure to be used in the computation of backwages was pegged at the wage rate at the time of the employee's dismissal, inclusive of regular allowances that the employee had been receiving such as the emergency living allowances and the 13th month pay mandated by law. The award of salary differentials was not allowed, the rule being that upon reinstatement, illegally dismissed employees were to be paid their backwages without deduction and qualification as to any wage increases or other benefits that might have been received by their co-workers who were not dismissed.[43]

It must be noted that the NLRC did not err in awarding the unpaid salary increase for the years 1998-2000 as such did not constitute backwages as a consequence of the petitioner's illegal dismissal, but was earned and owing to the petitioner before he was illegally terminated.

Holiday pay

The respondents insist that the base pay of Lim is already inclusive of holiday pay. The records, however, are insufficient to determine whether holiday pay is indeed included in the petitioner's base pay.

Under Article 94 of the Labor Code, every worker shall be paid his regular daily wage during regular holidays. Thus, an employee must receive his daily wage even if he does not work on a regular holiday. The purpose of

holiday pay is to prevent diminution of the monthly income of workers on account of work interruptions declared by the State.[44]

Whether or not holiday pay is included in the monthly salary of an employee, may be gleaned from the divisors used by the company in the computation of overtime pay and employees' absences. To illustrate, if all nonworking days are paid, the divisor of the monthly salary to obtain daily rate should be 365. If nonworking days are not paid, the divisor is 251, which is a result of subtracting all Saturdays, Sundays, and the ten legal holidays.[45] Hence, if the petitioner's base pay does not yet include holiday pay, it must be added to his monetary award.

This matter is clearly for the LA to determine being the labor official charged with the implementation of decision[46] and concomitant computations.

Sick leave pay

The LA found that that the petitioner was not entitled to have his sick leaves converted to cash because such was subject to the discretion of management in accordance with company policy.

The pertinent provision on sick leave conversion in the Personnel Policy handbook of HMR reads:

d) Accumulated days of unused sick leave may be converted into cash, time-off or vacation allowance at the end of the calendar year, any of these upon the discretion of the General Manager.[47]

It is clear from the above that the provision does not give HMR the absolute discretion to decide whether or not to grant sick leave conversion. The discretion of the general manager only pertains to what form the sick leave conversion may take, and not to whether or not sick leave conversion will be granted at all. An HMR employee is, therefore, entitled to conversion of unused sick leave, subject only to the general manager's discretion as to the form it will take, namely – cash, time-off, or vacation allowance. Considering that the conversion options of time-off and vacation allowance are no longer feasible because the petitioner was illegally dismissed, he is now entitled to have his unused sick leaves converted to cash.

Additional moral and exemplary damages

Petitioner Lim prays that the respondents be made to pay, jointly and severally, additional moral and exemplary damages on account of their bad faith in delaying the payment and his reinstatement.

There appears, however, no basis to award additional damages considering that the respondents simply availed of the remedies available to them under the law in good faith.

Legal interest

The petitioner argues that legal interest in accordance with the case of Eastern Shipping must also be awarded, as follows:

- the unpaid 10% annual increase from 1998 to 2000 shall earn a 6% interest annually starting 1998 until October 23, 2003 (Entry of Judgment of the April 11, 2003 NLRC decision); and 12% legal interest per annum thereafter until the same is fully paid; and
- the backwages, 13[th] month pay as well as unpaid vacation and sick leaves shall earn a 6% per annum interest starting at the time of petitioner's illegal dismissal on February 3, 2001 until October 23, 2003; and 12% legal interest per annum thereafter until the same is fully paid.[48]

The respondents counter that interest may no longer be added considering that such was not included in the any of the courts' decisions before the judgment became final and executory.

In both *Session Delights* and *Nacar*, no interest was expressly awarded before the judgments became final and executory, yet in both cases, the Court, nonetheless, awarded legal interest. *Session Delights* explained that the decision had become a judgment for money from which another consequence flowed, namely, the payment of interest in case of delay in accordance with *Eastern Shipping Lines v. Court of Appeals*. It was held therein that when the judgment of the court awarding a sum of money became final and executory, the rate of legal interest, should be 12% per annum from finality until satisfaction.[49]

The rules on legal interest in *Eastern Shipping* have, however, been recently modified by *Nacar* in accordance with Bangko Sentral ng Pilipinas Monetary Board (BSP-MB) Circular No. 799, which became effective on July 1, 2013. Pertinently, it amended the rate of legal interest in judgments from 12% to 6% per annum, with the qualification that the new rate be applied prospectively. Thus, the 12% per annum legal interest in judgments under *Eastern Shipping* shall apply only until June 30, 2013, and the new rate of 6% per annum shall be applied from July 1, 2013 onwards.[50]

Petitioner also prays that he be awarded interest at a rate of 6% per annum on the amounts awarded from the time they became legally due him until entry of judgment, presumably under the second paragraph in *Eastern Shipping* (which was not modified by *Nacar*), which states:

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.[51]

[Emphasis supplied]

It is plain from the above that the interest of 6% per annum for obligations not constituting a loan or forbearance of money is one that may be imposed at the discretion of the court. This form of interest is not mandatory but discretionary in nature and therefore, not necessarily owing to the petitioner in the present case.

WHEREFORE, the petition is PARTLY GRANTED, the March 30, 2012 Decision of the Court of Appeals, in CA-G.R. SP No. 112708 is REVERSED and SET ASIDE. Respondent HMR Philippines, Inc. is ORDERED to PAY petitioner Conrado A. Lim:

(1)

backwages computed from the time the petitioner was illegally dismissed on February 3, 2001 up to his actual reinstatement, with a monthly base pay in the amount of P15,125.00;

(2)

the unpaid 10% annual salary increase from 1998-2000 in the amount of P49,650.00;

(3)

13[th] month pay;

(4)

vacation pay in accordance with the personnel policy handbook;

(5)

the cash value of his unused sick leaves;

(6)

holiday pay, provided that the Labor Arbiter finds that such is not yet included in the base pay;

(7)

moral damages in the amount of P50,000.00;

(8)

exemplary damages in the amount of P20,000.00;

(9)

attorney's fees equivalent to 10% of the total amount due to the petitioner; and

(10)

legal interest of 12% per annum of the total monetary awards computed from July 27, 2007 to June 30, 2013, and 6% per annum from July 1, 2013 until their full satisfaction.

The Labor Arbiter is ORDERED to compute the total monetary benefits awarded and due the petitioner in accordance with this decision.

SO ORDERED.

Carpio,[*] Velasco, Jr., (Chairperson), Villarama, Jr.,[**] Mendoza, and Leonen, JJ., concur.

August 22, 2014

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on ___August 4, 2014___ a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on August 22, 2014 at 10:25 a.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[*] Designated Member per Raffle, dated June 11, 2012, in lieu of Associate Justice Diosdado M. Peralta, no part, as his spouse Court of Appeals Justice Fernanda Lampas-Peralta concurred in the assailed Court of Appeals decision.

[**] Designated Acting Member in view of the vacancy in the Third Division, per Special Order No. 1691 dated May 22, 2014.

[1] Rollo, pp. 194-202; penned by Associate Justice Mario V. Lopez, and concurred in by Associate Justice Fernanda Lampas-Peralta and Associate Justice Socorro B. Inting.

[2] Id. at 81-82.

[3] Id. at 91-114.

[4] Id. at 119.

[5] Id. at 122.

[6] Id. at 124-125.

[7] Id. at 126-127.

[8] Id. at 128-132.

[9] Id. at 136-141.

[10] Id. at 147-154.

[11] Id. at 153-154.

[12] Id. at 155-159.

[13] Id. at 162-167.

[14] Id. at 194-202.

[15] Id. at 19.

[16] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

[17] Rollo, pp. 210-222.

[18] Id. at 216.

[19] Rollo, pp. 336-373.

[20] Id. at 78-79.

[21] Id. at 81-82.

[22] *Session Delights v. Court of Appeals*, G.R. No. 172149, February 8, 2010, 612 SCRA 10, 19-20.

[23] Id.

[24] G.R. No. 189871, August 13, 2013, 703 SCRA 439.

[25] *Session Delights v. Court of Appeals*, *supra* note 22, at 14:

WHEREFORE, judgment is hereby rendered declaring private respondent guilty of illegal dismissal. Accordingly, private respondent SESSION DELIGHTS is ordered to pay complainant the following:

a)

Backwages:

P170.00 x 154 days

P 26,180.00

Proportional 13th month pay

P 26,180/12

2,181.65

28,361.65

b)

Separation Pay:

P 170.00 x 314/12 x 1

4,448.35

c)

Indemnity of P5,000.00 for failure to observe due process

d)

Attorney's fees which is 10% of the total award in the amount of P3,781.00.

SO ORDERED.

Nacar v. Gallery Frames, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 443-444:

With the foregoing, we find and so rule that respondents failed to discharge the burden of showing that complainant was dismissed from employment for a just or valid cause. All the more, it is clear from the records that complainant was never afforded due process before he was terminated. As such, we are perforce constrained to grant complainant's prayer for the payments of separation pay in lieu of reinstatement to his former position, considering the strained relationship between the parties, and his apparent reluctance to be reinstated, computed only up to promulgation of this decision as follows:

SEPARATION PAY

Date Hired

=

August 1990

Rate

=

P198/day

Date of Decision

=

Aug. 18, 1998

Length of Service

=

8 yrs. & 1 month

$P198.00 \times 26 \text{ days} \times 8 \text{ months} = P41,184.00$

BACKWAGES

Date Dismissed

=

January 24, 1997

Rate per day

=

P196.00

Date of Decisions

=

Aug. 18, 1998

a) $1/24/97 \text{ to } 2/5/98 = 12.36 \text{ mos.}$

$P196.00/\text{day} \times 12.36 \text{ mos.} =$

P62,986.56

b) $2/6/98 \text{ to } 8/18/98 =$

6.4 months

Prevailing Rate per day =

P62,986.00

$P198.00 \times 26 \text{ days} \times 6.4 \text{ mos.} =$

P32,947.20

T O T A L

P95,933.76

x x x x

WHEREFORE, premises considered, judgment is hereby rendered finding respondents guilty of constructive dismissal and are therefore, ordered:

- To pay jointly and severally the complainant the amount of sixty-two thousand nine hundred eighty-six pesos and 56/100 (P62,986.56) Pesos representing his separation pay;
- To pay jointly and severally the complainant the amount of nine (sic) five thousand nine hundred thirty-three and 36/100 (P95,933.36) representing his backwages; and
- All other claims are hereby dismissed for lack of merit.

SO ORDERED.[4]

[26] *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 443.

- [27] Session Delights v. Court of Appeals, *supra* note 22, at 24.
- [28] Sections 2 and 4, Rule XI of the 2005 NLRC Rules of Procedure.
- [29] Session Delights v. Court of Appeals, *supra* note 22, at 21-26.
- [30] Session Delights v. Court of Appeals, *supra* note 22, at 22.
- [31] Session Delights v. Court of Appeals, *supra* note 22, at 25.
- [32] Session Delights v. Court of Appeals, *supra* note 22, at 26.
- [33] Session Delights v. Court of Appeals, *supra* note 22, at 25-26.
- [34] Rollo, p. 245.
- [35] *Id.* at 247.
- [36] *Id.* at 81.
- [37] *Id.* at 80.
- [38] *Id.* at 153.
- [39] *Id.* at 127.
- [40] *Id.* at 133.
- [41] 523 Phil. 781, 811 (2006).
- [42] *Id.*
- [43] Equitable Banking Corporation v. Sadac, *supra* note 41, at 817 (2006); citing Evangelista v. NLRC, 319 Phil. 299 (1995).
- [44] Jose Rizal College v. NLRC, 240 Phil. 27, 33 (1987).
- [45] The Chartered Bank Employees Association v. Ople, 222 Phil. 570, 577-578 (1985).
- [46] Sections 2 and 4, Rule XI of the 2005 NLRC Rules of Procedure.
- [47] Rollo, p. 186.
- [48] Rollo, p. 33.
- [49] *Supra* note 16, at 97.
- [50] Nacar v. Gallery Frames, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 456-459.
- [51] Eastern Shipping Lines v. Court of Appeals, *supra* note 16, at 96-97.

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