

MORENO DUMAPIS, FRANCISCO LIAGAO AND ELMO TUNDAGUI, PETITIONERS, VS. LEPANTO CONSOLIDATED MINING COMPANY, RESPONDENT.

G.R. No. 204060. September 15, 2020

Ponente: LAZARO-JAVIER, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-204060/>

LAZARO-JAVIER, J.:

The Case

In NLRC Case No. RAB-CAR-11-0607-00 entitled Thomas Garcia, Moreno Dumapis, Mariolito Cativo, John Kitoyan, Samson Dam i an, Benedict Arocod, Brent Suyam, Daniel Fegsar, Joel Gumatin, Elmo Tundagui, Francisco Liagao and Maximo Madao v. Lepanto Consolidated Mining Company, Labor Arbiter Monroe C. Tabinangan rendered his Decision[1] dated August 21, 2001 dismissing the complaint for illegal dismissal of therein complainants. Its pertinent portion reads:

With all the foregoing, the claim of complainants that they were accused of highgrading based on hearsay is of no moment. Damoslog's declarations, corroborated by Daguio's are first hand [sic] account of the incident.

The fact that they were not immediately apprehended when they were seen doing highgrading activity does not change the fact that there were people doing the activity at that time. Management only had to take time to ascertain the identification of the culprits to make sure that they were pointing at the right people. Hence, the investigation after the incident and before the formal charge was made, Mr. Pablo Daguio positively identified the complainants as those who were directly under his supervision at that particular shift and who were likewise named by Damoslog as the same people who carried out the highgrading activity.

xxx xxx xxx

Complainants as lead miners, muckers and LHD operators are given the proper equipment and tolls including machineries [sic] for use in the mining activity. Hence, they do not need to handle with their bare hands the ores they are mining. Admittedly, their only assigned task is to drill, bardown, rockbolt, blast and haul. Hence, the mere act of complainants in handling highgrading ores - i.e., washing, segregating, and the like, are acts contrary to their normal activity and against the Code of Conduct of respondent which was violated by complainants.

xxx xxx xxx

WHEREFORE, judgment is hereby rendered DISMISSING the instant complaint for lack of merit.

SO ORDERED.[2]

On complainant's appeal, the National Labor Relations Commission (NLRC) reversed[3] insofar as three (3) of the complainants, now petitioners, Moreno Dumapis, Francisco Liagao and Elmo Tundagui were concerned:

WHEREFORE, premises considered, the Decision dated August 21, 2001 is hereby MODIFIED declaring the dismissal of complainants Moreno Dumapis, Elmo Tundagui and Francis [sic] Liagao illegal and ordering

respondent to pay them backwages in the total amount of four hundred eighty thousand one hundred eighty two pesos and 63/100 (P480,182.63) and separation pay in the total amount of four hundred seventeen thousand two hundred thirty pesos and 32/100 (P417,230.32 as computed in the body of the Decision.

The dismissal of the nine (9) complainants, namely:

1. Joel Gumatin
2. Maxima Madao
3. Benedict Arocod
4. Brent Suyam
5. Daniel Fegsar
6. Thomas Garcia
7. Mariolito Cativo
8. John Kitoyan
9. Samson Damian

are hereby AFFIRMED.

SO ORDERED.[4]

Lepanto Consolidated Mining Company elevated the case to the Court of Appeals via CA-G.R. SP No. 75860 entitled, Lepanto Consolidated Mining Company v. The National Labor Relations Commission (Third Division), Moreno Dumapis, Elmo Tundagui and Francisco Liagao.

Under Decision[5] dated November 7, 2003, the Court of Appeals affirmed, viz.:

Apropos, the NLRC aptly made the following conclusion on the culpability of the twelve employees meted preventive suspensions:

"Thus, considering that only the above nine (9) complainants were identified as having committed highgrading then their dismissal from the service is affirmed, x x x"

Bereft of any factual and legal bases as shown in the affidavits of Damoslog, and Dagui, private respondents' participation in highgrading activity was not proven by substantial evidence.

Security of tenure dictates that no worker shall be dismissed except for just cause provided by law and after due process. Although, there was no justifiable ground for private respondents' dismissal, they were afforded due process.

An illegally dismissed employee is entitled to either (1) reinstatement, if viable, or separation pay, if reinstatement is no longer viable and (2) backwages,

Due to the baseless accusation of the petitioner, private respondents cannot be expected to accept with open arms their previous positions. The strained relationship of the parties justified the award of separation pay to private respondents computed to one month pay per year of service.

Full backwages are computed from the time employee's compensation was withheld up to the time of his actual reinstatement. However, since reinstatement is no longer possible due to the strained relationship of the parties, backwages must be computed from the time of private respondents' illegal dismissal up to the decision of the Court, without qualification and deduction.

WHEREFORE premises considered, petition is hereby DISMISSED. Corollarily, the prayer for a writ of temporary restraining order is-likewise DENIED.

SO ORDERED.[6]

On Lepanto's further petition for review on certiorari via G.R. No. 163210, this Court affirmed[7] in the main, and in addition, required Lepanto to pay double costs. The decision became final and executory on November 25, 2008.[8]

Following the finality of the decision, the labor arbiter issued the corresponding writ of execution in the total amount of P897,412.95 covering petitioners' backwages and separation pay.

Petitioners then sought a recomputation of this award which the labor arbiter granted through his Order dated May 27, 2009,[9] increasing the award to P2,602,856.21.

Lepanto moved to quash the writ of execution,[10] insisting that the computation should be reckoned from the date of dismissal up until the NLRC rendered its Decision dated August 30, 2002. Lepanto further claimed that the parties had already agreed to satisfy the original monetary award of P897,412.95, for which, an initial amount of P100,000.00 was already deposited into the account of petitioners' counsel.

Meantime, petitioners moved for another recomputation of the monetary award to include the salary increases allegedly granted them per the Collective Bargaining Agreement (CBA) between Lepanto and the employees. Too, petitioners denied that they accepted the original monetary award although they acknowledged Lepanto's deposit of P100,000.00 into their counsel's account.

Under Order dated September 2, 2009, the labor arbiter recalled his Order dated May 27, 2009 and further recomputed the award of backwages and separation pay to include the incremental salary increase pursuant to the CBA but only until November 7, 2003, the date when the Court of Appeals issued its Decision in CA-G.R. SP No. 75860. The amount of P100,00.00 was likewise ordered deducted from the monetary award. The total recomputed backwages and separation pay was reduced to P1,300,336.69.[11]

In their Partial Motion for Reconsideration/Memorandum of Appeal,[12] petitioners asserted that the cut-off date for the computation of the award was November 23, 2008[13] when this Court's Decision in G.R. No. 163210 became final and executory. Petitioners cited *Surima v. NLRC*[14] and *Carlos v. CA*. [15] They also argued that the monetary award should include salary increases granted under the CBA as the same should have accrued to them had they not been illegally terminated. Lastly, petitioners reported that out of Lepanto's P100,000.00 deposit, only P75,000.00 went to them as the P25,000.00 went to another complainant who was also their counsel's client.

Lepanto likewise appealed to the NLRC against the labor arbiter's computation. Lepanto averred, in the main:

- The Order granting the recomputation until November 7, 2003 sought to change a final and executory decision of the Supreme Court, which already affirmed the Court of Appeals' Decision in CA-G.R. SP No. 75860 upholding the original award of the NLRC in its Decision dated August 30, 2002. The "Court" being referred to by the Court of Appeals is no one else but the NLRC from whose ruling the cut-off date of the award shall be reckoned;
- Wage increases should not be included in the computation. The base figure for the award should be the wage rate at the time the employees got illegally dismissed.

The NLRC's Ruling

Under Decision[16] dated October 30, 2009, the NLRC directed the labor arbiter to compute petitioners' backwages and separation pay from the date they were illegally dismissed up to the finality of this Court's Decision dated August 13, 2008, including therein the mandated CBA salary increases less the P75,000.00

already paid to petitioners.

Lepanto's subsequent motion for reconsideration was denied per NLRC Resolution dated December 29, 2009.[17]

Aggrieved, Lepanto once again went to the Court of Appeals, this time, via Rule 65.

The Court of Appeals' Ruling

By its assailed Decision[18] dated September 28, 2011, the Court of Appeals nullified the NLRC Decision dated October 30, 2009 and ordered the reinstatement of the NLRC's earlier Decision dated August 30, 2002 and Writ of Execution dated March 16, 2009. The Court of Appeals ruled that the NLRC's computation became final and executory after the lapse of ten (10) days from the parties' receipt thereof. The finality of this computation was not affected by the subsequent proceedings before the Court of Appeals and this Court. The delayed enforcement of the NLRC Decision dated August 30, 2002 was not only attributable to Lepanto but also to the employees who themselves appealed the case every step of the way up to the Supreme Court.

Petitioners' motion for reconsideration was denied through Resolution dated October 8, 2012.[19]

The Present Petition

Petitioners now seek affirmative relief, praying that the computation of their backwages and separation pay be reckoned from the date they got illegally terminated until the finality of this Court's Decision in G.R. No. 163210; include the wage increases granted under the CBA which took effect after they got illegally terminated; and impose twelve percent (12%) interest per annum on the total amount due until full payment.[20]

In its Comment,[21] Lepanto argues that the computation should be reckoned from the date of termination of employment until August 20, 2002 when the NLRC rendered its decision finding petitioners to have been illegally dismissed. Notably, the parties already agreed to settle the NLRC's original monetary judgment. In fact, petitioners had acknowledged receipt of P75,000.00 as advance payment of said monetary judgment. Lepanto also opposes the inclusion of the CBA wage increases in the computation as these increases took effect prior to petitioners' termination: and this relief was only sought for the first time during the execution stage.

Issue

What is the correct formula for computing the award of separation pay and backwages to petitioners?

Ruling

In *CICM Mission Seminaries, et al. v. Perez*[22] citing *Bani Rural Bank, Inc. v. De Guzman*,[23] the Court through the Second Division laid down the rule that the award of separation pay and backwages for illegally dismissed employees should be computed from the time they got illegally dismissed until the finality of the decision ordering payment of their separation pay, in lieu of reinstatement, thus:

The reason for this was explained in *Bani Rural Bank, Inc. v. De Guzman*. When there is an order of separation pay (in lieu of reinstatement or when the reinstatement aspect is waived or subsequently ordered in light of a supervening event making the award of reinstatement no longer possible), the employment relationship is terminated only upon the finality of the decision ordering the separation pay. The finality of the decision cuts-off the employment relationship and represents the final settlement of the rights and obligations of the parties against each other. Hence, backwages no longer accumulate upon the finality of the decision ordering the payment of separation pay because the employee is no longer entitled to any compensation from the employer by reason of the severance of his employment. One cannot, therefore, attribute patent error on the part of the CA when it merely affirmed the NLRC's conclusion, which was clearly based on jurisprudence.

Plainly, it does not matter if the delay caused by an appeal was brought about by the employer or by the employee. The rule is, if the LA's decision, which granted separation pay in lieu of reinstatement, is appealed

by any party, the employer-employee relationship subsists and until such time when decision becomes final and executory, the employee is entitled to all the monetary awards awarded by the LA.

In this case, respondent remained an employee of the petitioners pending her partial appeal. Her employment was only severed when this Court, in G.R. No. 200490, affirmed with finality the rulings of the CA and the labor tribunals declaring her right to separation pay instead of actual reinstatement. Accordingly, she is entitled to have her backwages and separation pay computed until October 4, 2012, the date when the judgment of this Court became final and executory, as certified by the Clerk of Court, per the Entry of Judgment in G.R. No. 200490.

The Court would not have expected the CA and the NLRC to rule contrary to the above pronouncements. If it were otherwise, all employees who are similarly situated will be forced to relinquish early on their fight for reinstatement, a remedy, which the law prefers over severance of employment relation. Furthermore, to favor the petitioners' position is nothing short of a derogation of the State's policy to protect the rights of workers and their welfare under Article II, Section 8 of the 1987 Constitution. (Emphasis supplied)

In accordance with CICM Mission Seminaries, petitioners' backwages and separation pay here should, therefore, be computed from September 22, 2000 when they got illegally dismissed until November 25, 2008, when this Court's Decision dated August 13, 2008 became final and executory.

On what exactly these backwages ought to include, the Court's relevant rulings may be categorized into two (2):

The first category delves on the inclusion or non-inclusion in the award of salary increases and benefits which are contingent on the fulfillment of certain conditions such as merit increase based on performance, company's fiscal position, or management's benevolent initiative. *Paguio v. PLDT*[24] and *Equitable Banking Corporation v. Sadac*,[25] fall within this category.

In both cases, the Court denied the inclusion of contingent salary increases in the computation of backwages. In *Paguio*, the inclusion of 16% salary increase which the employee claimed to have been consistently receiving on account of his above average or outstanding performance was disallowed for being speculative. Too, *Equitable*, citing *Paguio*, rejected the inclusion of the claimed annual general increases, the same being mere expectancies, thus:

A demarcation line between salary increases and backwages was drawn by the Court in *Paguio v. Philippine Long Distance Telephone Co., Inc.*, where therein petitioner *Paguio*, on account of his illegal transfer sought backwages, including an amount equal to 16 percent (16%) of his monthly salary representing his salary increases during the period of his demotion, contending that he had been consistently granted salary increases because of his above average or outstanding performance, x x x

xxx xxx xxx

Applying *Paguio* to the case at bar, we are not prepared to accept that this degree of assuredness applies to respondent *Sadac*'s salary increases. There was no lawful decree or order supporting his claim, such that his salary increases can be made a component in the computation of backwages. What is evident is that salary increases are a mere expectancy. They are, by its nature volatile and are dependent on numerous variables, including the company's fiscal situation and even the employee's future performance on the job, or the employee's continued stay in a position subject to management prerogative to transfer him to another position where his services are needed. In short, there is no vested right to salary increases. That respondent *Sadac* may have received salary increases in the past only proves fact of receipt but does not establish a degree of assuredness that is inherent in backwages. From the foregoing, the plain conclusion is that respondent *Sadac*'s computation of his full backwages which includes his prospective salary increases cannot be permitted.[26] (Emphasis supplied)

On the other hand, the second category delves on guaranteed salary increases and benefits. Their grant is either mandated by law, standard company policy, or Collective Bargaining Agreement (CBA). To this category belong BPI Employees Union - Metro Manila and Zenaida Uy v. Bank of the Philippine Islands,[27] Lim v. HMR Philippines, Inc.,[28] United Coconut Chemicals, Inc. v. Valmores,[29] Tangga-an v. Philippine Transmarine Carriers, Inc.[30] and Ocean East Agency, Corporation v. Lopez[31] In these cases though, the Court had opposing dispositions.

In BPI Employees Union - Metro Manila and Zenaida Uy v. Bank of the Philippine Islands,[32] the Court's First Division excluded the salary increases granted under the Collective Bargaining Agreement (CBA) which took effect after the employees got illegally dismissed and before the finality of the Court's finding of illegal dismissal. In these cases, the Court applied Equitable and Paguio.

But just a few months later, through the Court's Second Division came out with a contrary ruling through Sarona v. NLRC.[33] This time, the

Court ordered the inclusion of salary increases and all other benefits and bonuses given to the employees who were not dismissed and which would have also normally accrued to Sarona had he not been illegally dismissed. Sarona, however, did not contain any qualification whether the grant of these salary increases, benefits, and bonuses was guaranteed or contingent, thus:

xxx But if, as in this case, reinstatement is no longer possible, this Court has consistently ruled that backwages shall be computed from the time of illegal dismissal until the date the decision becomes final.

In case separation pay is awarded and reinstatement is no longer feasible, backwages shall be computed from the time of illegal dismissal up to the finality of the decision should separation pay not be paid in the meantime. It is the employee's actual receipt of the full amount of his separation pay that will effectively terminate the employment of an illegally dismissed employee. Otherwise, the employer-employee relationship subsists and the illegally dismissed employee is entitled to backwages, taking into account the increases and other benefits, including the 13th month pay, that were received by his co-employees who are not dismissed. It is the obligation of the employer to pay an illegally dismissed employee or worker the whole amount of the salaries or wages, plus all other benefits and bonuses and general increases, to which he would have been normally entitled had he not been dismissed and had not stopped working. (Emphasis supplied)

It turned out, however, that Sarona too was short lived. As in the case of BPI Employees Union - Metro Manila which Sarona overturned, the latter itself was also overturned just a few months after it got promulgated. The Court En Banc, no less, abandoned Sarona via Gonzales v. Solid Cement Corporation[34] reverting to Equitable and BPI.

As it was, Gonzales removed from the award salary increases and benefits that were not granted yet at the time of the employee's dismissal. Notably, Gonzales, again, like Sarona was silent on whether the grant of these salary increases or benefits was guaranteed or contingent, thus:

In the case of BPI Employees Union - Metro Manila and Zenaida Uy v. Bank of the Philippine Islands and Bank of the Philippine Islands v. BPI Employees Union - Metro Manila and Zenaida Uy, the Court ruled that in computing backwages, salary increases from the time of dismissal until actual reinstatement, and benefits not yet granted at the time of dismissal are excluded. Hence, we cannot fault the CA for finding that the NLRC committed grave abuse of discretion in awarding the salary differential amounting to P617,517.48 and the 13th month pay differentials amounting to P51,459.48 that accrued subsequent to Gonzales' dismissal.[35] (Emphasis supplied)

Then five (5) months later, Tangga-an v. Philippine Transmarine Carriers Inc.[36] came about. There, the Court's

Second Division, revived the rule that the award ought to include benefits which under the employment contract, were guaranteed and not contingent, viz.:

At this juncture, the courts, especially the CA, should be reminded to read and apply this Court's labor pronouncements with utmost care and caution, taking to mind that in the very heart of the judicial system, labor cases occupy a special place. More than the State guarantees of protection of labor and security of tenure, labor disputes involve the fundamental survival of the employees and their families, who depend upon the former for all the basic necessities in life.

Thus, petitioner must be awarded his salaries corresponding to the unexpired portion of his six-months employment contract, or equivalent to four months. This includes all his corresponding monthly vacation leave pay and tonnage bonuses which are expressly provided and guaranteed in his employment contract as part of his monthly salary and benefit package. These benefits were guaranteed to be paid on a monthly basis, and were not made contingent. In fact, their monetary equivalent was fixed under the contract: US\$2,500.00 for vacation leave pay and US\$700.00 for tonnage bonus each month. Thus, petitioner is entitled to back salaries of US\$32,800 (or US\$5,000 + US\$2,500 + US\$700 = US\$8,200 x 4 months). "Article 279 of the Labor Code mandates that an employee's full backwages shall be inclusive of allowances and other benefits or their monetary equivalent." As we have time and again held, "[i]t is the obligation of the employer to pay an illegally dismissed employee or worker the whole amount of the salaries or wages, plus all other benefits and bonuses and general increases, to which he would have been normally entitled had he not been dismissed and had not stopped working." This well-defined principle has likewise been lost on the CA in the consideration of the case. (Emphasis supplied)

Still, in *Lim v. HMR Philippines, Inc.*[37] the Court's Third Division recognized that the company policy of granting a guaranteed 10% annual salary increase was already in place even before the employee got illegally dismissed. In fact, prior to his illegal dismissal, Lim had already been regularly receiving these guaranteed 10% annual salary increases. The Court, nonetheless, decreed that the award of backwages to the employee should not include those guaranteed 10% annual salary increases which took effect only after he was already illegally dismissed. In the main, the Court followed Equitable.

In *Ocean East Agency, Corporation v. Lopez*,[38] the Court's Third Division reverted to *Tangga-an v. Philippine Transmarine Carriers Inc.*, upholding the award of backwages to an illegally dismissed employee, inclusive of benefits, bonuses, and general increases which he would have normally received if he were not illegally terminated, viz.:

Settled is the rule that an employee who was illegally dismissed from work is entitled to reinstatement without loss of seniority rights, and other privileges, as well as to full backwages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. Since reinstatement is no longer feasible as Lopez' former position no longer exists, his backwages shall be computed from the time of illegal dismissal up to the finality of the decision. Backwages include the whole amount of salaries plus all other benefits and bonuses and general increases to which he would have been normally entitled had he not been illegally dismissed, such as the legally mandated Emergency Cost of Living Allowance (ECOLA) and thirteenth (13th) month pay, and the meal and transportation allowances prayed for by Lopez. (Emphasis supplied)

But then again, in *United Coconut Chemicals, Inc. v. Valmores*,[39] the same Third Division decreed that the award of backwages to an illegally dismissed employee should only correspond to the basic salary, inclusive of allowances and benefits actually received at the time of illegal dismissal, viz.:

The base figure to be used in reckoning full backwages is the salary rate of the employee at the time of his dismissal. The amount does not include the increases or benefits granted during the period of his dismissal

because time stood still for him at the precise moment of his termination, and move forward only upon his reinstatement. Hence, the respondent should only receive backwages that included the amounts being received by him at the time of his illegal dismissal but not the benefits granted to his coemployees after his dismissal.

xxx xxx xxx

CBA allowances and benefits that the respondent was regularly receiving before his illegal dismissal on February 22, 1996 should be added to the base figure of P11,194.00. This is because Article 279 of the Labor Code decrees that the backwages shall be "inclusive of allowances, and to his other benefits or their monetary equivalent." Considering that the law does not distinguish between the benefits granted by the employer and those granted under the CBA, he should not be denied the latter benefits. (Emphasis supplied)

In the same case, the Court explained that this salary rate ought to exclude CBA allowances and benefits that were received by the workforce only after employee Valmores was already illegally dismissed. For these allowances and benefits, according to the Court, were not automatically given to a worker as the grant thereof was subject to certain conditions.

In the later case of *Fernandez v. Meralco*,^[40] the Court's Second Division one more time ruled differently. There, the Court ordained that the award "shall include the whole amount of salaries, plus all other benefits and bonuses, and general increases pertaining to CBA salary increase, to which Fernandez would have been normally entitled had he not been illegally dismissed."

But the swing has not stopped moving back and forth. Through the Court's Second Division, in *Coca Cola Bottlers Philippines v. Magno Jr.*,^[41] applied anew the doctrine in *United Coconut Chemicals*, thus:

Components of Magno's and Ocampo's
Accrued Backwages

The third paragraph of Article 229 of the Labor Code provides: "In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein."

Article 294 of the Labor Code further provides: "x x x 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."

Our jurisprudence has been consistent as to what should constitute accrued backwages. In *Paramount Vinyl Products Corp. v. NLRC*, we ruled that "the base figure to be used in the computation of backwages due to the employee should include not just the basic salary, but also the regular allowances that he had been receiving, such as the emergency living allowances and the 13th month pay mandated under the law." In *United Coconut Chemicals, Inc. v. Valmores*, we ruled that "[t]he base figure to be used in reckoning full backwages is the salary rate of the employee at the time of his dismissal. The amount does not include the increases or benefits granted during the period of his dismissal because time stood still for him at the precise moment of his termination, and move forward only upon his reinstatement." Entitlement to such benefits must be proved by submission of proof of having received the same at the time of the illegal dismissal. Increases are thus excluded from backwages.

Subject to submission of proof of receipt of benefits at the time of their dismissal, Magno's and Ocampo's accrued backwages should include their basic salary as well as the allowances and benefits that they have been receiving at the time of their dismissal. In accordance with the claims previously put forward by Magno and

Ocampo, accrued backwages may include, but are not limited to, allowances and benefits such as transportation benefits, cellphone allowance, 13th month pay, sick leave, and vacation leave in the amounts at the time of their dismissal. Magno and Ocampo should also prove that they have been receiving the amounts that correspond to merit or salary increases, incentive pay, and medicine at the time of their dismissal so that they may validly qualify for receipt of such as part of their accrued backwages. (Emphasis supplied)

Given the Court's repetitive self-contradictions in the award of backwages or separation pay owing to illegally dismissed employees and the consequent instability they have caused to our labor law jurisprudence, the time has come to settle these contradictions, once and for all.

We keenly note that there is no provision in the Labor Code which mandates the exclusion of salary increases and benefits accruing to the dismissed employee. Article 279 (now Art. 292) in fact grants illegally dismissed employees the right to full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time their compensation was withheld up to the time of their actual reinstatement, thus:

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.

When the law does not distinguish, we should not distinguish.

As in *Tangga-an v. Philippine Transmarine Carriers, Inc.*, *Ocean East Agency, Corporation v. Lopez and Fernandez v. Meralco*, salary increases and benefits here are either fixed or granted under the collective bargaining agreement. These increases are guaranteed to be given to the employees concerned had they not been illegally dismissed.

They should be distinguished from those whose grant depends on contingency or variables, such as an employee's merit increase based on performance or longevity or the company's financial status.

As aptly pointed out in the Concurring Opinion of Justice Caguioa, merit increases which are dependent on one's performance or management prerogative are excluded for they necessarily require the actual performance to gauge whether the employee accomplished the standard required prior to grant of such increases. Thus, the Court in *Paguio* denied the claim of 16% salary increase which the employee claimed to have been consistently receiving on account of his above average or outstanding performance to be speculative. The same conclusion was reached in *Equitable*. When the basis of salary increase is past excellent performance, the same cannot be an assured benefit since the grant of merit increase is dependent on the level and quality of performance which may differ in the next evaluation period.

Still in *Paguio*, the Court's Second Division explained the ratio for the award of backwages:

In several cases, the Court had the opportunity to elucidate on the reason for the grant of backwages. Backwages are granted on grounds of equity to workers for earnings lost due to their illegal dismissal from work. They are a reparation for the illegal dismissal of an employee based on earnings which the employee would have obtained, either by virtue of a lawful decree or order, as in the case of a wage increase under a wage order, or by rightful expectation, as in the case of one's salary or wage. The outstanding feature of backwages is thus the degree of assuredness to an employee that he would have had them as earnings had he not been illegally terminated from his employment.[42] (Emphasis supplied)

But in *Equitable*, the Court's First Division categorically declared that salary increases were not allowances or benefits within the definition of Article 279 of the Labor Code, as amended by Republic Act No. 6715 (RA 6715),

thus:

Attention must be called to Article 279 of the Labor Code of the Philippines, as amended by Section 34 of Rep. Act No. 6715. The law provides as follows:

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.

Article 279 mandates that an employee's full backwages shall be inclusive of allowances and other benefits or their monetary equivalent. Contrary to the ruling of the Court of Appeals, we do not see that a salary increase can be interpreted as either an allowance or a benefit. Salary increases are not akin to allowances or benefits, and cannot be confused with either. The term "allowances" is sometimes used synonymously with "emoluments," as indirect or contingent remuneration, which may or may not be earned, but which is sometimes in the nature of compensation, and sometimes in the nature of reimbursement. Allowances and benefits are granted to the employee apart or separate from, and in addition to the wage or salary. In contrast, salary increases are amounts which are added to the employee's salary as an increment thereto for varied reasons deemed appropriate by the employer. Salary increases are not separate grants by themselves but once granted, they are deemed part of the employee's salary. To extend the coverage of an allowance or a benefit to include salary increases would be to strain both the imagination of the Court and the language of law. As aptly observed by the NLRC, "to otherwise give the meaning other than what the law speaks for by itself, will open the floodgates to various interpretations." Indeed, if the intent were to include salary increases as basis in the computation of backwages, the same should have been explicitly stated in the same manner that the law used clear and unambiguous terms in expressly providing for the inclusion of allowances and other benefits.[43]

The constricted interpretation of the Court in *Equitable* that a salary increase cannot be interpreted as either an allowance or a benefit because it is a mere increment to salary is devoid of any legal basis. Amounts given over and above the base pay are either allowances or benefits, which necessarily include salary increases the grant of which may be fixed or conditional. We are not saying though that all salary increases should be included in the award of backwages; but only those guaranteed or assured which the employees would have been entitled to had they not been illegally dismissed.

We recall that the overarching purpose of the relief granted by law to illegally dismissed employees is to make the latter whole again. Surely, the Court is united in ensuring that illegally dismissed employees are whole again by awarding them the benefits of a collective bargaining agreement to which they would have been entitled if not for the illegal termination of their employment. The ruling that the employees' illegal dismissal literally allowed time to stand still for them because of their loss of employment and the resulting uncertainties from such an unfortunate event, does not sanction additionally punishing them for an act they have not been responsible for. They in fact must be accorded justice and relief.

It is simply unjust and contrary to the overarching purpose of making illegally dismissed employees whole again to deduct from their accrued backwages the increases in the compensation that they would have received if not for their illegal dismissal.

Verily, the Court now ordains the uniform rule that the award of backwages and/or separation pay due to illegally dismissed employees shall include all salary increases and benefits granted under the law and other government issuances, Collective Bargaining Agreements, employment contracts, established company policies and practices, and analogous sources which the employees would have been entitled to had they not been illegally dismissed. On the other hand, salary increases and other benefits which are contingent or dependent on variables such as an

employee's merit increase based on performance or longevity or the company's financial status shall not be included in the award.

This ruling is consistent with the Constitutional command that the State shall afford full protection to labor, viz.:

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. (Article XII)

and the edict under Article 3, Chapter I of the New Labor Code, thus:

Art. 3. Declaration of Basic Policy. The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.

Most important, it conforms with the purpose to restore an illegally dismissed employees to the same status as if their employment was not illegally severed by allowing them to continuously enjoy the salary, benefits, and allowances they were assured to receive during the term of their employment.

As a point of clarification, we are not disturbing the final and executory decisions here as we are dealing only with their execution. We are concerned merely with the mathematical computation of what petitioners are entitled to as a result of the final and executory decisions in question.

In accordance with *Nacar v. Gallery Frames*,^[44] the legal rate of interest of twelve percent (12%) per annum shall be computed on the total monetary award from November 25, 2008 to June 30, 2013 and six percent (6%) per annum from July 1, 2013 until their full satisfaction.

Finally, on Lepanto's claim that the parties had already agreed on the sum of P897,412.95 as the total obligation of Lepanto, the NLRC actually rejected this so-called settlement because the same was not even submitted to the NLRC for approval.

ACCORDINGLY, the petition is GRANTED. The Decision dated September 28, 2011 and Resolution dated October 8, 2012 of the Court of Appeals in CA-G.R. SP No. 113423 are REVERSED and SET ASIDE.

Respondent Lepanto Consolidated Mining Company is ORDERED to PAY petitioners Moreno Dumapis, Francisco Liagao and Elmo Tundagui backwages and separation pay based on petitioners' salary rates at the time of their termination, inclusive of guaranteed salary increases and other benefits and bonuses which petitioners were entitled to receive under the law and other government issuances, collective bargaining agreements, employment contracts, established company policies and practices, and analogous sources had they not been illegally dismissed.

The award shall be computed from September 22, 2000, when they were illegally dismissed up to November 25, 2008, when this Court's Decision dated August 13, 2008 in G.R. No. 163210 became final and executory. The amount of P75,000.00 which petitioners had already received shall be deducted from the total amount due them.

It is understood that the award shall exclude salary increases and other benefits or bonuses which are contingent or dependent on variables such as an employee's merit increase based on performance or longevity or the company's financial status.

Further, respondent Lepanto Consolidated Mining Company is ORDERED to PAY petitioners Moreno Dumapis, Francisco Liagao and Elmo Tundagui legal interest of twelve percent (12%) per annum from November 25, 2008 to June 30, 2013 and six percent (6%) per annum from July 1, 2013 on the total monetary award until fully paid.

The labor arbiter is directed to issue and cause the implementation of the writ of execution in accordance with this decision, with utmost dispatch.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Reyes, Jr., Hernando, Carandang, Inting, Zalameda, Lopez, Delos Santos, and Gaerlan, JJ., concur.
Baltazar-Padilla, J., On leave.

[*] On leave.

[1]Rollo, pp. 42-49.

[2]Id. at 48-49.

[3]Penned by Presiding Commissioner Lourdes C. Javier and concurred in by Commissioner Ireneo B. Bernardo and Commissioner Tito F. Genilo, NLRC Decision dated August 30, 2002, id. at 50-63.

[4]Id. at 61-62.

[5]Penned by Associate Justice Buenaventura J. Guerrero and concurred in by Retired Supreme Court Justice Andres B. Reyes, Jr. and Associate Justice Regalado E. Maambong, id. at 64-74.

[6]Id. at 72-74.

[7]Penned by Associate Justice Ma. Alicia Austria-Martinez and concurred in by Associate Justices Consuelo Ynares-Santiago, Minita V. Chico-Nazario, Antonio Eduardo B. Nachura and Ruben T. Reyes, id. at 76-90.

[8]Id. at 92.

[9]Id. at 98-100.

[10]Id. at 104-105.

[11]Id. at 109.

[12]Id. at 110-125.

[13]Should be November 25, 2008 per Entry of Judgment dated January 8, 2009.

[14]353 Phil. 461 (1998).

[15]558 Phil. 2009 (2007).

[16]Penned by Presiding Commissioner Alex A. Lopez and concurred in by Commissioners Gregorio O. Bilog, III and Pablo C. Espiritu, Jr., id. at 154-168.

[17]Id at 187-188.

[18]Penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Francisco P. Acosta and Michael P. Elbinias, id. at 279-302.

[19]Id. at 341.

[20]Id. at 8-41.

- [21]Id. at 348-360.
- [22]803 Phil. 596,606-607(2017).
- [23]721 Phil 84, 103(2013).
- [24]441 Phil. 679 (2002).
- [25]523 Phil. 781 (2006).
- [26]Id at 818-819.
- [27]673 Phil. 599(2011).
- [28]740 Phil. 353(2014).
- [29]813 Phil. 685(2017).
- [30]706 Phil. 339(2013).
- [31]771 Phil. 179(2015).
- [32]Supra note 27.
- [33]679 Phil. 394, 422-423(2012)
- [34]697 Phil. 619(2012).
- [35]Id. at 638.
- [36]Supra note 30, at 351 -352.
- [37]Supra note 28.
- [38]Supra note 31, at 197.
- [39]Supra note 29, at 698-699.
- [40]G.R. No. 226002, June 25,2018.
- [41]G.R. No. 212520, July 3, 2019.
- [42]Supra note 24, at 690-691.
- [43]Supra note 25, at 810-811.
- [44]716 Phil. 267(2013).

September 15, 2020

CONCURRING OPINION

CAGUIOA,J.:

I concur with the ponencia to grant the Petition. The amount of backwages and separation pay awarded in cases of illegal dismissal should include the salary increases which the employee would have received had he not been illegally dismissed. However, the increases should be limited only to mandatory and unconditional increases such as those mandated under a collective bargaining agreement (CBA), established company policy and practice, and

government mandated wage increases. Increases based on merit or contingency should not be included.

Article 294 of the Labor Code^[1] provides that 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.

Backwages are awarded as remuneration for the employee's lost income from the erring employer due to illegal dismissal. Applying the established doctrine enunciated in Article 4 of the Labor Code, that labor laws shall be constructed in favor of labor, I believe that the phrase "full backwages" in Article 294 should be interpreted to include guaranteed salary increases.

The inclusion of increases in backwages has jurisprudential basis. In *Fernandez, Jr. v. Manila Electric Company (MERALCO)*,^[2] the Supreme Court upheld the decision of the Court of Appeals (CA) that Lino A. Fernandez, Jr. (Fernandez) was illegally dismissed. In the execution proceedings before the Labor Arbiter (LA), one of the issues was whether Fernandez was entitled to additional backwages consisting of CBA salary increases implemented after his dismissal. The LA ruled in favor of Fernandez and granted him the CBA salary increases. Both parties filed petitions questioning the writ of execution which were dismissed on procedural grounds. The case eventually reached the Supreme Court.

The Court held that the National Labor Relations Commission Rules of Procedure must be liberally applied to prevent injustice and grave irreparable injury to an illegally dismissed employee and remanded the case to the LA. Without prejudice to the findings of the labor tribunals, the Court discussed the relevant laws and jurisprudence applicable to the case for the guidance of the labor tribunals, the Court noted:

Backwages shall include the whole amount of salaries, plus all other benefits and bonuses, and general increases, to which Fernandez would have been normally entitled had he not been illegally dismissed.^[3] (Emphasis supplied)

In *Paguio v. Philippine Long Distance Telephone Co., Inc.*,^[4] (Paguio) the Court explained the ratio for the award of backwages:

In several cases, the Court had the opportunity to elucidate on the reason for the grant of backwages. Backwages are granted on grounds of equity to workers for earnings lost due to their illegal dismissal from work. They are a reparation for the illegal dismissal of an employee based on earnings which the employee would have obtained, either by virtue of a lawful decree or order, as in the case of a wage increase under a wage order, or by rightful expectation, as in the case of one's salary or wage. The outstanding feature of backwages is thus the degree of assuredness to an employee that he would have had them as earnings had he not been illegally terminated from his employment.^[5] (Emphasis supplied)

However, in *Paguio*, the employee's claim for inclusion of salary increases was denied. The Court ruled that he was not able to prove entitlement to them as he anchored his claim on previous grants of increases based on consistent evaluations of good performance. In contrast to the present case, the employees' entitlement to salary increases has clear and concrete basis under the CBA and is not merely an expectation based on merit or contingency.

I hasten to add that the computation of the backwages based on the increased salary should be reckoned only from the time the increase was implemented, i.e., from the time the employee would have been entitled thereto. Thus, the employee must not only prove his entitlement to the salary increases but also the applicable periods therefor. I agree however, that the computation should be reckoned only until the finality of the Court's Decision in G.R. No. 163210,^[6] in which the Court affirmed the CA Decision finding that herein petitioners were illegally dismissed.

I also agree that the separation pay awarded in lieu of reinstatement should include salary increases. Separation pay is generally granted when the cause for termination is not due to the employee's fault or wrongdoing, such as when the employment relationship is terminated due to authorized causes including installation of labor-saving devices, redundancy, retrenchment, and disease under Articles 298[7] and 299[8] of the Labor Code.

There is no provision in the Labor Code which specifically grants separation pay to an illegally dismissed employee; Article 294 only mentions reinstatement and backwages. However, jurisprudence has settled that when reinstatement is no longer practicable or feasible, separation pay may be exceptionally awarded as an alternative. Separation pay is different from backwages although the two can be awarded together.

In *Wenphil Corporation v. Abing*[9] the Court distinguished between backwages and separation pay:

We emphasize that the basis for the payment of backwages is different from that of the award of separation pay. Separation pay is granted where reinstatement is no longer advisable because of strained relations between the employee and the employer. Backwages represent compensation that should have been earned but were not collected because of the unjust dismissal. The basis for computing separation pay is usually the length of the employee's past service, while that for backwages is the actual period when the employee was unlawfully prevented from working.[10] (Emphasis in the original)

The computation of separation pay in case of illegal dismissal is patterned after the computation in Article 298 for separation pay due to redundancy which is computed at one-month salary for every year of service.

In payment of separation pay due to redundancy, the basis for the amount is the salary of the employee, including regular allowances, that he had been receiving at the time of dismissal. Salary increases are not considered because the employer-employee relationship is severed upon the implementation of a valid redundancy.

However, in the grant of separation pay due to a finding of illegal dismissal where reinstatement is no longer feasible, the employer-employee relationship is severed only upon the finality of the Court's decision holding that the employee was illegally dismissed.[11] Thus, the basis for the separation pay should be the employee's salary at the end of the imputed service. In *Masagana Concrete Products v. NLRC*,[12] the Court held:

xxx Separation pay, equivalent to one month's salary for every year of service, is awarded as an alternative to reinstatement when the latter is no longer an option. Separation pay is computed from the commencement of employment up to the time of termination, including the imputed service for which the employee is entitled to backwages, with the salary rate prevailing at the end of the period of putative service being the basis for computation.[13] (Emphasis supplied)

Hence, herein petitioners-employees are entitled to their backwages and separation pay including the mandatory salary increases guaranteed and established under the CBA. I join in the ponencia that the Court abandon the rulings which exclude increases from the computation of backwages and separation and adopt a more pro-labor stance, provided that the employees are able to sufficiently prove their entitlement to the increases under a CBA, established company policy, or government wage order.

(Sgd.) ALFREDO BENJAMIN S. CAGUIOA

Associate Justice

[1]Department of Labor and Employment, Department Advisory No. 01, Series of 2015, entitled "RENUMBERING OF LABOR CODE OF THE PHILIPPINES, AS AMENDED" dated July 21, 2015.

[2]G.R. No. 226002, June 25, 2018, 868 SCRA 156.

[3]Id. at 171.

[4]G.R. No. 154072, December 3, 2002, 393 SCRA 379.

[5]Id. at 386-387.

[6]Lepanto Consolidated Mining Company v. Dumapis, August 13, 2008, 562 SCRA 103.

[7]ART. 298. [283]Closure of Establishment and Reduction of Personnel. - The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[8]ART. 299. [284]Disease as Ground for Termination. - 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: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

[9]G.R. No. 207983, April 7, 2014, 721 SCRA 126.

[10]Id. at 141.

[11]When there is an order of separation pay (in lieu of reinstatement or when the reinstatement aspect is waived or subsequently ordered in light of a supervening event making the award of reinstatement no longer possible), the employment relationship is terminated only upon the finality of the decision ordering the separation pay. The finality of the decision cuts-off the employment relationship and represents the final settlement of the rights and obligations of the parties against each other. Hence, backwages no longer accumulate upon the finality of the decision ordering the payment of separation pay since the employee is no longer entitled to any compensation from the employer by reason of the severance of his employment. *Bani Rural Bank, Inc. v. De Guzman*, G.R. No. 170904, November 13 2013, 709 SCRA 330, 351-352.

[12]G.R. No. 106916, September 15, 1999, 313 SCRA 576.

[13]Id. at 596.

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.