

DURABUILT RECAPPING PLANT & COMPANY AND EDUARDO LAO, GENERAL MANAGER, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, HON. COMM. RICARDO C. CASTRO, HON. ARBITER AMELIA M. ...

G.R. No. 76746. July 27, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition to review the May 16, 1986 resolution of respondent National Labor Relations Commission (NLRC) affirming the Labor Arbiter's order in NLRC Case No. NCR- 7-3162083. The sole issue raised is the proper basis for the computation of backwages in favor of an illegally dismissed employee.

The facts of the case are simple and uncontroverted.

On July 11, 1983, a complaint for illegal dismissal was filed by respondent Reynaldo Bodegas, against petitioner Durabuilt, a tire recapping company.

In a decision rendered by the Labor Arbiter on February 13, 1984, the private respondent was ordered reinstated to his former position with full backwages, from the time he was terminated up to the time he is actually reinstated, without loss of seniority rights and benefits accruing to him.

The petitioners failed to file a seasonable appeal and entry of final judgment was made on July 8, 1985.

On August 8, 1985, the Acting Chief of Research and Information and the Corporation Auditing Examiner of the then Ministry of Labor and Employment submitted a computation of backwages, ECOLA, 13[th] month pay, sick and vacation leave benefits in favor of Reynaldo Bodegas in the total amount of P24,316.38.

The petitioner filed its opposition to the computation on the ground that it contemplated a straight computation of twenty--six (26) working days in one month when the period covered by the computation was intermittently interrupted due to frequent brownouts and machine trouble and that respondent Bodegas had only a total of 250.75 days of attendance in 1982 due to absences. According to the petitioner, Bodegas is entitled only to the amount of P3,834.05 broken down as follows: salaries — P1,993.00; ECOLA — P1,433.50, and 13[th] month pay — P407.55.

On October 23, 1985, the Labor Arbiter denied the opposition to the computation. The petitioner appealed to the NLRC which, in an order dated May 16, 1986, affirmed the order of the Labor Arbiter and dismissed the appeal.

Claiming grave abuse of discretion on the part of the public respondents, Durabuilt filed the instant petition.

Backwages, in general, are granted on grounds of equity for earnings which a worker or employee has lost due to his dismissal from work (New Manila Candy Workers Union (NACONWA-PAFLU v. CIR, 86 SCRA 37).

The general principle is that an employee is entitled to receive as backwages all the amounts he may have lost starting from the date of his dismissal up to the time of his reinstatement (*Capital Garment Corporation v. Ople*, 117 SCRA 473; *New Manila Candy Workers' Union NACONWA-PAFLU v. CIR*, supra).

In a line of cases, this Court has established a policy fixing the amount of backwages to a just and reasonable level without qualification or deduction (*Insular Life Assurance Co., Ltd. Employees' Association-NATU v. Insular Life Assurance Co., Ltd.*, 76 SCRA 501; *Feati University Club v. Feati University*, 58 SCRA 395; *Mercury Drug Co., Inc. v. CIR*, 56 SCRA 694). The respondents center their attention on the above underlined portion of this policy. Hence, their contention that the deductions cited by the petitioners cannot be made.

In their bid to recover a greater amount of backwages, the rationale of the policy has escaped the respondents' consideration. In *Insular Life Assurance Employees' Association-NATU v. Insular Life Assurance Co., Ltd.* (76 SCRA 50) we held that to fix the amount of backwages without qualification or deduction simply means that the workers are to be paid their backwages fixed as of the time of their dismissal or strike without deduction for their earnings elsewhere during their lay-off and without qualification of their backwages as thus fixed; i.e. unqualified by any wage increases or other benefits that may have been received by their co-workers who were not dismissed or did not go on strike. The principle is justified "as a realistic, reasonable and mutually beneficial solution for it relieves the employees from proving their earnings during their lay-offs and the employer from submitting counterproofs. It was meant to obviate the twin evils of idleness on the part of the employees and attrition and undue delay in satisfying the award on the part of the employer" (*New Manila Candy Workers Union NACONWA-PAFLU v. CIR*, supra). The same was not to establish an inflexible rule of computation of any backwages due an employee.

The age-old rule governing the relation between labor and capital, or management and employee of a "fair day's wage for a fair day's labor" remains as the basic factor in determining employees' wages, and for that matter backwages. If there is no work performed by the employee there can be no wage or pay unless, of course, the laborer was able, willing and ready to work but was illegally locked out, or suspended (*SSS v. SSS Supervisors' Union-CUGCO*, 117 SCRA 746).

The illegal dismissal of the private respondent is conceded by the petitioner. It is willing to pay backwages. However, the petitioner argues that for days where no work was required and could be done by its employees, no wages could have been earned and, thereafter, lost by said employees to justify an award of backwages. We quote with approval the Solicitor General's comment,[*] to wit:

"From the indubitable facts on record, it appears that petitioners have valid reasons to claim that certain days should not be considered days worked for purposes of computing private respondent's backwages since their business was not in actual operation due to brownouts or power interruption and the retrenchment of workers they had during the period of private respondent's dismissal.

"It cannot be denied that during the past years particularly in 1983, there was chronic electrical power interruption resulting to disruption of business operations. To alleviate the situation, the government thru the Ministry of Trade and Industry called on the industrial sector to resort to the so-called Voluntary Loan Curtailment Plan (or VLCP), whereby brownouts or electrical power interruption was scheduled by area. The program while it may have been called "voluntary" was not so as electrical power consumers had no choice then due to the prevailing energy crisis.

"Petitioners heeding the government's call, participated in the VLCP as indicated in their statement of conformity dated November 23, 1982. Thus, beginning March 21, 1983 and every Wednesday thereafter, petitioner's business (which incidentally is recapping rubber tires) was not in actual operation. No less than the former Minister of Trade and Industry expressed his gratitude to petitioners for participating in the VLCP.

Petitioners substantiated claim therefore, that the days during which they were not in operation due to the VLCP should be excluded in the number of days worked for purposes of computing private respondents backwages stands reasonable and should have been considered by the corporation auditing examiner.

"Moreover, as early as May 1978, the Ministry of Labor and Employment, thru Policy Instruction No. 36, has said that —"2. Brownouts running for more than twenty minutes may not be treated as hours worked provided that any of the following conditions are present;

"a) The employees can leave their work place or go elsewhere whether within or without the work premises; or

"b) The employees can use the time effectively for their own interest.

"It is of record that during electrical power interruptions, petitioners business was not in operation. This was never disputed by private respondent.

"Petitioners' claim that the period (December 1983) during which they effected retrenchment of workers owing to economic crisis then prevailing likewise appears plausible. There is substantial evidence consisting of reports to MOLE and Social Security System showing that petitioners had laid off workers due to lack of raw materials. The petitioners payrolls submitted to support their objection to computation indicate that the number of working days was reduced from the normal weekly six working days to four working days for a great number of petitioners' workers. Obviously, private respondent could not have been among those laid off, as at that time he was already dismissed by petitioner." (Rollo, pp. 31-34).

Thus, we have held that where the failure of workers to work was not due to the employer's fault, the burden of economic loss suffered by the employees should not be shifted to the employer. Each party must bear his own loss (SSS vs. SSS Supervisors' Union-CUGCO, supra; Pan--American World Airways, Inc. v. CIR, 17 SCRA 813). As pointed out by the Solicitor General —

'x x x to allow payment of backwages of P24,316.68 as ordered by public respondents instead of P3,834.16 as petitioners claim and which appears to be just and reasonable under the circumstances of this case would not only be unconscionable but would be grossly unfair to other employees who were not paid when petitioners' business was not in operation." (Rollo, p. 35).

Indeed, it would neither be fair nor just to allow respondent to recover something he has not earned and could not have earned and to further penalize the petitioner company over and above the losses it had suffered due to lack of raw materials and the energy-saving programs of the government. The private respondent cannot be allowed to enrich himself at the expense of the petitioner company. The computation of backwages should be based on daily rather than on monthly pay schedules where, as in the case at bar, such basis is more realistic and accurate. (Compania Maritima v. United Seamen's Union of the Philippines, 65 SCRA 393).

In conclusion, we again quote the Solicitor General's comment:

"Finally, what strengthens petitioners claim for mitigated liability is their evident good faith as manifested by their reinstatement of private respondent while the case for illegal dismissal was still pending and their willingness to pay backwages. While it is true that as a general rule order of reinstatement carries with it an award of backwages (Art. 280, Labor Code) this Honorable Court did not only mitigate but absolved employers from liability of backwages where good faith is evident (Findlay Millar Timber Co. v. PLASLU, 6 SCRA 26; Cromwell Com. Employees & Laborers Union v. CIR, 13 SCRA 259, Norton and Harrison Labor Union v. Harrison Co. Inc., 15 SCRA 310; PAL v. PALEA, 57 SCRA 489; Cruz v. MOLE, 120 SCRA 15). There is no indication, to paraphrase this Honorable Court's ruling in Pantranco North Express Inc. v. NLRC (126 SCRA 526) that private respondent was a 'victim of arbitrary and high handed action." (Rollo, pp. 34-35).

WHEREFORE, in view of the foregoing, the petition is hereby GRANTED. The order of the Labor Arbiter, Amelia M. Guloy in NLRC Case No. NCR-7-3162083, dated October 23, 1985, as affirmed by the NLRC is SET ASIDE. The petitioner is ordered to pay private respondent his backwages from the time he was terminated up to the time he was actually reinstated computed on the basis of the number of days when petitioner's business was in actual operation. The number of days where no work was required and could be done by petitioner's employees on account of shutdowns due to electrical power interruptions, machine repair, and lack of raw materials are not considered hours worked for purposes of computing the petitioner's obligation to respondent employee. In no case shall the award exceed three year's backpay as above computed.

SO ORDERED.

Fernan (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

[*] The Solicitor General was assisted by Assistant Solicitor General Zoilo A. Andin and Trial Attorney Alexander G. Gesmundo.

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