JOSE H. RUTAQUIO AND ERLINDA F. VILLAREAL, PETITIONERS VS. THE HON. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION), THE HON. LABOR ARBITER, AMBROCIO B. SISON, RURAL BANK O...

G.R. Nos. 97652-53. October 19, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

At bar is a Petition for Certiorari under Rule 65 of the Revised Rules of Court assailing the Resolution of the National Labor Relations Commission in NLRC Case Nos. RAB-IV-10-2874-89 and RAB-IV-10-2878-89, dated July 11, 1990, and the Resolution, dated February 15, 1991, denying Petitioners' Motion for Reconsideration.

The facts that matter are as follows:

Petitioners Jose H. Rutaquio and Erlinda F. Villareal are Savings Bookkeeper and Cashier, respectively, of the respondent Rural Bank of Baler, Inc., the respondent herein.

On September 15, 1989, M.Y. Mateo & Company, Certified Public Accountants of respondent bank, recommended the reprimand of the employees, Jose Rutaquio and Erlinda Villareal, who were found guilty of negligence in the performance of their duties and responsibilities, to wit:

> "1. After a reconciliation of the cash account, cash in the custody of the Cashier exceeded her accountability per books by P7,730.65.
>
> 2. At the time of the examination, recording in the books of account was behind by about a week as the last posting was August 31, 1989. The daily proofsheets covering the period from September 1 to 8, 1989 were prepared and up-dated during the examination to determine the exact accountability of the Cashier.
>
> 3. It should be pointed out at this juncture that a week's delay in the recording of transactions in the books of account and a shortage or overage in cash accountability regardless of amount constituted negligence on the part of the employees concerned."[1]

Acting thereupon, on September 29, 1989, Flordeliza Carpio, President and Manager of the Bank, issued Board Resolution No. 89-35 recommending disciplinary action against Erlinda Villareal and Jose Rutaquio. They were required to submit their formal resignation effective immediately upon receipt of the letter.[2]

On October 1, 1989, the employees sent a letter to the Manager questioning their illegal dismissal, stating that they would resign only after vindicating their names before the proper dispenser of justice, theorizing that the imputation of negligence was malicious.[3]

On October 3, 1989, the President replied thus:

> "In the case of Mr. Rutaquio: the Bank was fined by the Central Bank in an amount of approximately P35,000.00 for late financial reports; books of account of the bank remain unbalanced, and lately, even after

being aware that the new management intends to dismiss him, entries in the books of account were late.

In the case of Mrs. Villareal: she could not account for a P10,000.00 check and the fact that she paid them the sum when the new management took over is no mitigation. In the cash count made last month, there was an average of over P7,000.00.

When a small bank with a paid-up capital of only P500,000.00 has only one bookkeeper and only one cashier with such unreliability, the viability thereof is in imminent danger. Moreover, you have always been acting in an insolent manner towards the new management which is anathema to the smooth operation of the bank.

You are dismissed from the Bank as of the of last month."[4]

On October 5, 1989, the employees presented an Answer to the Notice of Dismissal and Request for Hearing, contending:

xxx xxx xxx

"As to the statement of Capital Required and Capital Accounts-CBP Form -7-19-07 from June to December 1987 mentioned by the Central Bank, in its letter of July 25, 1987, it is worth mentioning that the Rural Bank of Baler, Inc., had never prepared and submitted the same until a form was furnished by the Central Bank, thru (sic) Director Jesse Domingo in 1988, hence the incumbent bookkeeper could not be held liable for failure to prepare and submit said statement of Capital Required and Capital Accounts, for there is no available record in the Bank to show that said report had been prepared and submitted before I (Jose H. Rutaquio) assumed office as General Bookkeeper in May 1987.

With respect to the Ten Thousand Pesos (P10,000.00) check, which was lost, the incident happened during that time when there was panic withdrawal from the depositors. And after discovering that the check was in fact lost, all necessary actions were made to safeguard the interest of the Bank. But after sometime the amount was charged to my (Erlinda F. Villareal) account. The full amount, however, was recovered after Mr. Alberto Ong issued Solidbank Check No. CA 496704, dated February 14, 1989 in favor of the Rural Bank of Baler, Inc.

As to the overage amounting to Seven Thousand Seven Hundred Thirty Pesos and 65/100 (P7,730.65) during the Cash Audit made by Mr. Bartolome I. Conde in the presence of Ms. Flordeliza S. Carpio, President/Manager of the Bank on September 8, 1989, at about 2:30 P.M. without any written authority from the Central Bank to audit the Rural Bank of Baler, Inc., the cash audit was undertaken even if the bank transaction was still going on. Hence, the overage of Seven Thousand Seven Hundred Thirty Pesos and 65/100 (P7,730.65) has been recorded, which may be explained as follows:

a) Under Savings Deposit Number 3760, the amount of Eight Thousand Pesos (P8,000.00) for deposit was received, however the said deposit was accounted the following banking day dated September 11, 1989 and therefore the cash on hand exceeded the recorded cash on hand.

b) On the same day, Savings Deposit Number 2181, withdrew the amount of Two Hundred Seventy Pesos (P270.00). The said withdrawal had been paid-up but accounted and recorded on September 15, 1989.

Finally, Section 5 of Rule XIV of the Omnibus Rules Implementing the Labor Code on termination of employment, requires the employer to give the worker ample opportunity to be heard and defend himself with the assistance of his counsel or representative.

In view of all the foregoing, we respectfully request for a hearing and be given the opportunity to prove that the Bank has no just cause to dismiss us and granting arguendo that the Bank believes there is any, the dismissal should be made only after due process, is afforded us, as provided under Section 1, Rule XIV of the Omnibus Rules Implementing the Labor Code on termination of employment."[5]

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On October 13, 1989, Jose Rutaquio brought a Complaint, docketed as NLRC Case No. RB-IV-10-2878-89 before the Arbitration Branch, Region No. IV, for illegal Dismissal and Damages in the amount of One Hundred Thousand (P100,000.00) Pesos.

On November 7, 1989, Erlinda F. Villareal and Jose Rutaquio filed their Position Papers with Rutaquio's Position paper praying:

> "Wherefore, premises considered it is most respectfully prayed unto this Honorable Commission, that after hearing, judgment be rendered in favor of the complainant against respondent, declaring illegal and unlawful the dismissal of herein complainant by respondent, granting and awarding to said complainant, the following:
>
> a) His salary from October 1, 1989 until the case is finally terminated;
>
> b) His monthly allowance from October 1, 1989 until the case is finally terminated;
>
> c) The money value of his earned leave;
>
> d) His separation pay;
>
> e) Payment for damages in the amount of P100,000.00
>
> f) Attorney's fee in the amount of P30,000.00; and
>
> g) Other reliefs which are just and equitable under the premises."[6]

So, also, on November 14, 1989, a Certification was issued by P/Sgt. Miguel R. Barribal, Jr., INP relating to the Police Blotter, alleging that:

> "xxx he was threatened by Manuel Suaverdez and Gregorio Suaverdez on or about 072030 January 89 during a conference held at Rural Bank of Baler Incorporated at Recto Street this municipality. This incident happened after said Jose Rutaquio has explained in the said conference the present financial statement of the said Rural Bank. Likewise Gregorio Suaverdez uttered defamatory words and expressions against Jose Rutaquio, to wit: "PUTANG-INA MO. PARA KANG MAY-ARI NG BANGKO KUNG MAGSALITA". Gregorio Suaverdez asked Danilo Natividad to get his gun from his wife (Vilma Suaverdez), and he also said "KUNG GUSTO MO TAPUSIN KA NA NAMIN". More so, Manuel Suaverdez and Gregorio Suaverdez also uttered the following: "PAG PINATAY KA NAMIN, ANG WITNESS MO LAMANG AY SI EX-MAYOR PIMENTEL" xxx[7]

On December 21, 1989, Flordeliza S. Carpio, with the assistance of her counsel, filed a Revised Position Paper stating:

> "The respondents are engaged in banking business. Confidence and trust are the principal consideration in the selection and hiring of employees. In the same manner, loss of confidence and breach of trust should also be the principal consideration in the removal or dismissal of the employees.
>
> Respondents have enumerated the irregularities, incompetence, disobedience, negligence, misbehavior and misconduct of complainant. All these facts are inimical to the employer's interest. In consonance with the ruling of the Supreme Court in San Miguel Corporation vs. NLRC, 142, (sic) SCRA 376, an employer has the right to dismiss an employee whose continuance in office is inimical to the employer's interests.
>
> The respondents have lost confidence in complainant when he continuously neglected his duties on account of which the respondent bank was penalized twice in the total amount of P32,890.00. The right of the employer to dismiss the bookkeeper based on loss of confidence due to incompetence, serious irregularities grave misconduct cannot be precluded. Such is the ruling of the Supreme Court in Metro Drug Corp. vs. NLRC, 143

SCRA 132.

xxx It was only after his refusal to take advantage of the magnanimity of the bank that he was finally considered resigned at the end of business hour on September 29, 1989. xxx"[8]

On February 8, 1990, Jose Rutaquio filed his Comment to the Respondent's Revised Position Paper.

On July 1, 1990, Labor Arbiter Ambrocio B. Sison found that subject employees were illegally dismissed and ordered thus:

"In the light of the foregoing facts and jurisprudence, it is crystal clear that the dismissals of the complainants are illegal, hence they must be reinstated to their former positions, considering however, the strained relationship which culminated between the parties, it is believed more appropriate under the premises not to reinstate complainants to prevent further the already acrimonious relationship between the contending parties. Payment therefore of a separation pay (one-half month pay for every year of service) is in order in the interest of justice with damages for their social humiliation, sleepless nights, mental anguish occasioned by their unwarranted dismissals which has dawned upon them without the benefit of due process.

Premises considered, judgment is hereby rendered declaring the dismissals of the complainants as illegal and therefore respondents are hereby ordered:

1. To pay complainant Erlinda F. Villareal backwages from the date when she was illegally dismissed on September 30, 1989 up to July 1, 1990 the date of the rendition of this decision, in the amount of P25,012.80, the amount of P28,139.40 as separation pay and the amount of P15,000.00 as moral damages;

2. To pay complainant Jose H. Rutaquio his backwages from the time he was illegally dismissed on September 30, 1989 to July 1, 1990 the amount of P23,968.80, the amount of P9,321.20 as separation pay and the amount of P15,000.00 as moral damages;

3. To pay complainant's counsel ten percent (10%) of the total award as Attorney's fees."[9]

On August 3, 1990, the Bank filed its Memorandum on Appeal while the employees filed theirs on August 9, 1990.

On December 13, 1990, the Third Division of the National Labor Relations Commission modified the Decision of the Labor Arbiter, to wit:

"Although the case of City Service Corp. Workers Union vs. City Service Corp., 135 SCRA 565, the Supreme Court held that an employee unjustly dismissed shall be entitled under the Labor Code to reinstatement and backwages from the time his compensation was withheld to the time of his reinstatement. Such fact is not obtainable in this case considering that the Labor Arbiter awarded separation pay to the complainants in lieu of reinstatement. However, to obviate protracted litigations that may arise in the computation of complainant's backwages, We deemed it proper to fix the award of backwages to one (1) year without qualification and deduction.

Likewise, We delete the award of moral damages and attorney's fees for lack of factual and legal basis. In the case of Gutierrez vs. Villegas, 8 SCRA 527, the Supreme Court held that no award for moral damages can be made where the record shows no proof of mental anguish. The other issues and arguments raised by the complainants in their appeal are dismissed for want of merit.

Anent the appeal of the respondents, records show that the questioned decision was received by the respondents, thru (sic) counsel on July 24, 1990 and the appeal was filed on October 30, 1990 which is way beyond the ten (10) calendar days reglementary period for the filing of appeals as required by the Revised NLRC Rules. Well rooted is the principle that perfection of an appeal within the statutory or reglementary period is not only mandatory but jurisdictional and failure to do so renders the questioned decision final and

> executory that deprives the appellate or body of jurisdiction to alter the final judgment much less entertain the appeal (Acda vs. Minister of Labor, 306-307, (sic) SCRA 119, Dec. 15, 1982). Likewise, the records indicate that no appeal fee was paid by the respondents. It has been held that the non-payment of appeal fee is an essential requirement in the perfection of an appeal. Appellant must conform to the requisites of law (Art. 221) considering that the right to appeal is not a natural right but merely statutory right (Acda vs. MOLE, 119 SCRA, 507). For these reasons, We dismiss respondents' appeal.
>
> WHEREFORE, premises considered, the appealed decision is hereby modified to delete the award of moral damages and attorney's fees. Accordingly, respondents are hereby ordered to pay complainants Jose F. Rutaquio and Erlinda F. Villareal their backwages fixed at one (1) year without qualification and deduction. All other dispositions stand.[10]

On February 1, 1991, the employees interposed a Motion for Reconsideration of the aforesaid Decision but the same was denied in the Resolution of February 15, 1991.

Undaunted, the petitioners found their way to this Court through the present Petition for Certiorari; assigning as errors, that:

I

"PUBLIC RESPONDENTS ERRED IN FIXING THE BACKWAGES OF HEREIN PETITIONERS AT ONLY ONE YEAR WITHOUT QUALIFICATION.

II

PUBLIC RESPONDENTS ERRED IN AWARDING TO HEREIN PETITIONERS SEPARATION PAY EQUIVALENT TO ONLY ONE-HALF (1/2) MONTH FOR EVERY YEAR OF SERVICE.

III

PUBLIC RESPONDENT COMMISSION ERRED IN NOT AWARDING MORAL DAMAGES AND ATTORNEY'S FEES FOR "LACK OF FACTUAL AND LEGAL BASIS."[11]

The pivot of inquiry here is the correctness of the award of backwages, separation pay, moral damages and attorney's fees.

On the issue of backwages, the award of a fixed amount of one (1) year backwages without qualification and deduction is not proper under the circumstances. The illegal dismissal of the herein employees-complainants was effective September 30, 1989, or after Republic Act 6715 (Herrera-Veloso Law) took effect on March 15, 1989. Absent any exceptional circumstance, it is now settled that an employee who is unjustly dismissed from work shall be entitled to full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him to the time of his actual reinstatement.[12] In the landmark case of Osmalik Bustamante, et al. v. National Labor Relations Commission, G.R. No. 111651, November 28, 1996, 265 SCRA 61, the Court ruled:

> "xxx conformably with the evident legislative intent as expressed in Rep. Act No. 6715, above-quoted, backwages to be awarded to an illegally dismissed employee, should not, as a general rule, be diminished or reduced by the earnings derived by him elsewhere during the period of his illegal dismissal. The underlying reason for this ruling is that the employee, while litigating the legality (illegality) of his dismissal, must still earn a living to support himself and his family, while full backwages have to be paid by the employer as part of the price or penalty he has to pay for illegally dismissing his employee. The clear legislative intent of the amendment in Rep. Act No. 6715 is to give more benefits to workers than was previously given them under the

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> Mercury Drug Rule or the deduction of earnings elsewhere rule. Thus, a closer adherence to the legislative policy behind Rep. Act No. 6715 points to full backwages as meaning exactly that, i.e., without deducting from backwages the earnings derived elsewhere by the concerned employee during the period of his illegal dismissal. In other words, the provision calling for full backwages to illegally dismissed employees is clear, pain and free from ambiguity and, therefore, must be applied without attempted or strained interpretation. Index animi sermo est."

With respect to separation pay, the dismissal of petitioners being illegal, the Court holds that the award below of one-half month pay for every year of service cannot be upheld. Respondent commission erred in adopting the Labor Arbiter's award of one-half month pay for every year of service. Following the prevailing doctrine enunciated in the case of Reformist Union of R.B. Liner, Inc. v. National Labor Relations Commission, 266 SCRA 728, citing Sealand Service, Inc. v. National Labor Relations Commission, 206 SCRA 701,710, petitioners are entitled to a separation pay equivalent to one month pay for every year of service, as an alternative to reinstatement.

Illegally dismissed, as they are, petitioners who were awarded separation pay in lieu of reinstatement, are granted full backwages from the time of their illegal dismissal up to the date of this decision of the Court, without qualification or deduction.

As regards the award of moral damages, employer contends that mere allegation of entitlement to moral damages would not suffice to justify the award, absent any concrete proof. The Court is of the sense that moral damages must have a factual basis. In the case under consideration, petitioners were unable to substantiate their claim for moral damages. In the absence of fraud or bad faith on the part of the employer in dismissing petitioners, an award of moral damages is not proper.

> "Moral damages are recoverable only where the dismissal was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy." (Lopez v. Javier, 252 SCRA 68)

With respect to attorney's fees, the Court believes, and so rules, that an award of attorney's fees is warranted since it has been established that legal services have been rendered by the lawyer of the petitioners. Taking into account the attendant facts and circumstances, ten (10%) percent of the total award is a reasonable amount of attorney's fees. In the case of Philippine National Construction Corporation v. National Labor Relations Commission, 277 SCRA 91, the Court held.

> "It is settled that in actions for recovesry of wages or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable."

WHEREFORE, the Decision of the National Labor Relations Commission in NLRC Case Nos. RB-IV-102874-89 and NLRC Case No. RB-IV-10-2878 is AFFIRMED with MODIFICATION and petitioners are hereby adjudged entitled to full backwages from the time of their illegal dismissal to the finality of this Decision, without qualification and deduction, one month separation pay for every year of service and attorney's fees equivalent to ten (10%) percent of the total award. No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

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[1] Rollo, p. 54.

[2] Annex “B”, Petition, Rollo, p. 53.

[3] Rollo, p. 55.

[4] Rollo, p. 56.

[5] Rollo, pp. 58-59.

[6] Jose H. Rutaquio’s Position Paper, p. 1,3, Rollo, pp. 48,50.

[7] Annex “A”, Petition, Rollo, p. 52.

[8] Respondent’s Revised Position Paper, pp. 1, 5, Rollo, pp. 69,73.

[9] Decision, pp. 1, 12-13, Rollo, pp. 32, 43-44

[10] Decision, pp. 6-8, Rollo, pp. 28-30.

[11] Petition, p. 9, Rollo, p. 10.

[12] Article 279 of the Labor Code, as amended,

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