

## EN BANC

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

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

### D E C I S I O N

**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<sup>[1]</sup> 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.

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Complainants as lead miners, muckers and LHD operators are given the proper equipment and tools 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.

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

**SO ORDERED.**<sup>[2]</sup>

On complainant's appeal, the National Labor Relations Commission (NLRC) reversed<sup>[3]</sup> 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.**<sup>[4]</sup>

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<sup>[5]</sup> 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.<sup>[6]</sup>

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

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,<sup>[9]</sup> increasing the award to P2,602,856.21.

Lepanto moved to quash the writ of execution,<sup>[10]</sup> 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.<sup>[11]</sup>

In their Partial Motion for Reconsideration/Memorandum of Appeal,<sup>[12]</sup> **petitioners asserted that the cut-off date for the computation of the award was November 23, 2008<sup>[13]</sup> when this Court's Decision in G.R. No. 163210 became final and executory. Petitioners cited *Surima v. NLRC*<sup>[14]</sup> and *Carlos v. CA*.<sup>[15]</sup> 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 Lepantos'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:

1. 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;
2. 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<sup>[16]</sup> 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.<sup>[17]</sup>

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

### **The Court of Appeals' Ruling**

By its assailed Decision<sup>[18]</sup> 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.<sup>[19]</sup>

### **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.<sup>[20]</sup>

In its Comment,<sup>[21]</sup> 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*<sup>[22]</sup> citing *Bani Rural Bank, Inc. v. De Guzman*,<sup>[23]</sup> 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**