

## FIRST DIVISION

[ G.R. No. 187200, May 05, 2010 ]

**GOLDEN ACE BUILDERS AND ARNOLD U. AZUL, PETITIONERS, VS.  
JOSE A. TALDE, RESPONDENT.**

### D E C I S I O N

**CARPIO MORALES, J.:**

Jose A. Talde (respondent) was hired in 1990 as a carpenter by petitioner Golden Ace Builders of which its co-petitioner Arnold Azul (Azul) is the owner-manager. In February 1999, Azul, alleging the unavailability of construction projects, stopped giving work assignments to respondent, prompting the latter to file a complaint<sup>[1]</sup> for illegal dismissal.

By Decision<sup>[2]</sup> of January 10, 2001, the Labor Arbiter ruled in favor of respondent and ordered his immediate reinstatement without loss of seniority rights and other privileges, and with payment of full backwages, which at that time was computed at P144,382.23, and the amount of P3,236.37 representing premium pay for rest days, service incentive leave pay and 13<sup>th</sup> month pay.

Pending their appeal to the National Labor Relations Commission (NLRC) and in compliance with the Labor Arbiter's Decision, petitioners, through counsel, advised respondent to report for work in the construction site within 10 days from receipt thereof. Respondent submitted, however, on May 16, 2001 a manifestation<sup>[3]</sup> to the Labor Arbiter that actual animosities existed between him and petitioners and there had been threats to his life and his family's safety, hence, he opted for the payment of separation pay. Petitioners denied the existence of any such animosity.

Meanwhile, the NLRC dismissed petitioners' appeal by Resolution<sup>[4]</sup> of April 22, 2002, holding that respondent was a regular employee and not a project employee, and that there was no valid ground for the termination of his services. Petitioners' motion for reconsideration was denied by Resolution<sup>[5]</sup> of August 6, 2002.

Petitioners' appeal to the Court of Appeals was dismissed by Decision<sup>[6]</sup> of August 12, 2004 which attained finality on September 15, 2004.

As an agreement could not be forged by the parties on the satisfaction of the judgment, the matter was referred to the Fiscal Examiner of the NLRC who recomputed at P562,804.69 the amount due respondent, which was approved by the Labor Arbiter by Order<sup>[7]</sup> of July 5, 2005. A writ of execution<sup>[8]</sup> dated July 8, 2005 was thereupon issued.

Finding the amount exorbitant, petitioners filed a motion for reconsideration with the NLRC, contending that since respondent refused to report back to work, he should

be considered to have abandoned the same, hence, the recomputation of the wages and benefits due him should not be beyond May 15, 2001, the date when he manifested his refusal to be reinstated.

By Resolution<sup>[9]</sup> of March 9, 2006, the NLRC granted petitioners' motion and accordingly vacated the computation. It held that since respondent did not appeal the Decision of the Labor Arbiter granting him only reinstatement and backwages, not separation pay in lieu thereof, he may not be afforded affirmative relief; and since he refused to go back to work, he may recover backwages only up to May 20, 2001, the day he was supposed to return to the job site. Respondent's motion for reconsideration was denied by the NLRC by Resolution<sup>[10]</sup> of June 30, 2006, hence, he filed a petition for *certiorari* with the Court of Appeals.

By Decision<sup>[11]</sup> of September 10, 2008, the appellate court set aside the NLRC Resolutions, holding that respondent is entitled to both backwages *and* separation pay, even if separation pay was not granted by the Labor Arbiter, the latter in view of the strained relations between the parties. The appellate court disposed:

**WHEREFORE**, in view of all the foregoing premises, judgment is hereby rendered by us **GRANTING** the petition filed in this case. The assailed **RESOLUTIONS** dated 30, 2006 and March 9, 2006 of the NLRC are hereby **SET ASIDE**.

Thus, the full backwages and separation pay to be awarded to the petitioner shall be computed as follows:

Full Backwages as of June 30, 2005	= P562,804.69
Separation Pay:	
P220.00 x 26 days =	
P5,720.00	
P5,720/month x 8 years	= <u>45,760.00</u>
	<b>P608,564.69</b>

We also award an additional 10% of the total monetary award by way of attorney's fees for the expenses incurred by the petitioner to protect his rights and interests. Furthermore, when the decision of this Court as to the monetary award becomes final and executory, the rate of legal interest shall be imposed at 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

**SO ORDERED.** (emphasis in the original)

Petitioners' motion for reconsideration was denied by Resolution<sup>[12]</sup> of March 12, 2009, hence, the present petition for review on *certiorari*.

Petitioners assail the appellate court's award of separation pay. They assailed too as contrary to prevailing jurisprudence the computation of backwages from the time of

dismissal up to actual reinstatement. They contend that, in effect, the appellate court modified an already final and executory decision.

The petition fails.

The basis for the payment of backwages is different from that for 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 backwages is usually the length of the employee's service while that for separation pay is the actual period when the employee was unlawfully prevented from working.<sup>[13]</sup>

As to how both awards should be computed, *Macasero v. Southern Industrial Gases Philippines*<sup>[14]</sup> instructs:

[T]he award of separation pay is inconsistent with a finding that there was no illegal dismissal, for under Article 279 of the Labor Code and as held in a catena of cases, an employee who is dismissed without just cause and without due process is entitled to backwages and reinstatement or payment of separation pay in lieu thereof:

**Thus, an illegally dismissed employee is entitled to two reliefs: backwages and reinstatement.** The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.

**The normal consequences of respondents' illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages.** (emphasis, italics and underscoring supplied)

*Velasco v. National Labor Relations Commission* emphasizes:

**The accepted doctrine is that separation pay may avail in lieu of reinstatement if reinstatement is no longer practical or in the best interest of the parties.** Separation pay in lieu of reinstatement may likewise be awarded if the employee decides not to be reinstated. (emphasis in the original; italics supplied)