

## **SPECIAL THIRD DIVISION**

**[ G.R. No. 164820, December 08, 2008 ]**

**VICTORY LINER, INC., PETITIONER, VS. PABLO RACE,  
RESPONDENT.**

### **R E S O L U T I O N**

**CHICO-NAZARIO, J.:**

Petitioner Victory Liner, Inc. filed the present Motion for Reconsideration seeking modification of our Decision dated 28 March 2007. In the said Decision, we found that respondent Pablo Race, employed as one of petitioner's bus drivers, was illegally dismissed by petitioner since petitioner failed to comply with both substantive and procedural due process in terminating respondent's employment. However, considering the leg injury sustained by respondent in an accident which already rendered him incapable of driving a bus, we ordered payment of his separation pay instead of his reinstatement. The dispositive portion of our Decision reads:

WHEREFORE, the petition is PARTLY GRANTED insofar as it prays for the non-reinstatement of respondent. The Decision of the Court of Appeals dated 26 April 2004 in CA-G.R. SP No. 74010, is hereby AFFIRMED with the following MODIFICATIONS: Petitioner is ordered to pay the respondent, in lieu of reinstatement, separation pay of ONE (1) MONTH PAY for every year of service, and full backwages inclusive of allowances and other benefits or their monetary equivalent from 1 January 1998 up to the finality of this Decision. No costs.<sup>[1]</sup>

Petitioner impugns the Decision on two grounds: (1) the award of full backwages inclusive of allowances and other benefits or their monetary equivalent to respondent is not warranted; and (2) the dismissal of respondent is authorized under Article 284 of the Labor Code.

We find petitioner's motion to be partly meritorious, compelling us to modify our Decision accordingly.

Article 279 of the Labor Code, as amended, provides that an illegally dismissed employee shall be entitled to reinstatement, 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. Based on this provision, an illegally dismissed employee shall be entitled to (1) reinstatement and (2) full backwages. In the event that reinstatement is no longer possible, then payment of separation pay may be ordered in its stead, hence, the illegally dismissed employee may claim (1) separation pay, and (2) full backwages.

<sup>[2]</sup>

Nonetheless, this statutory provision is not absolute, and its application has been

qualified and/or limited by our jurisprudence.

Foremost is the case of *Agabon v. National Labor Relations Commission*,<sup>[3]</sup> which definitively settled that where there is valid or authorized cause for the dismissal of the employee, but the employer failed to comply with statutory due process in effecting the same, the dismissal is not illegal. Logically, if there is no illegal dismissal in such a case, then we can deduce that the dismissed employee cannot avail himself of the rights under Article 279 of the Labor Code, *i.e.*, reinstatement and full backwages. What the employee can demand from the employer, according to *Agabon*, is the payment of nominal damages as indemnification for the violation of the former's statutory rights.

In *San Miguel Corporation v. Javate, Jr.*,<sup>[4]</sup> we affirmed the consistent findings and conclusions of the Labor Arbiter, National Labor Relations Commission (NLRC), and Court of Appeals that the employee was illegally dismissed since he was still fit to resume his work; but the employer's liability was mitigated by its evident good faith in terminating the employee's services based on the terms of its Health, Welfare and Retirement Plan.<sup>[5]</sup> Hence, the employee was ordered reinstated to his former position without loss of seniority and other privileges appertaining to him prior to his dismissal, but the award of backwages was limited to only one year considering the mitigating circumstance of good faith attributed to the employer.

In another case, *Dolores v. National Labor Relations Commission*,<sup>[6]</sup> the employee was terminated for her continuous absence without permission. Although we found that the employee was indeed guilty of breach of trust and violation of company rules, we still declared the employee's dismissal illegal as it was too severe a penalty considering that she had served the employer company for 21 years, it was her first offense, and her leave to study the French language would ultimately benefit the employer who no longer had to spend for translation services. Even so, other than ordering the employee's reinstatement, we awarded the said employee backwages limited to a period of two years, given that the employer acted without malice or bad faith in terminating the employee's services.<sup>[7]</sup>

While in the aforementioned cases of illegal dismissal, we ordered the employees' reinstatement, but awarded only limited backwages in recognition of the employer's good faith, there were also instances when we only required the employer to reinstate the dismissed employee without any award for backwages at all.

The employee in *Itogon-Suyoc Mines, Inc. v. National Labor Relations Commission*,<sup>[8]</sup> was found guilty of breach of trust for stealing high-grade stones from his employer. However, taking into account the employee's 23 years of previously unblemished service to his employer and absent any showing that his continued employment would result in the employer's oppression or self-destruction, we considered the employee's dismissal a drastic punishment. We deemed that the ends of social and compassionate justice would be served by ordering the employee reinstated but without backwages in view of the employer's obvious good faith.

Similarly, in *San Miguel Corporation v. Secretary of Labor*,<sup>[9]</sup> the employee was dismissed after he was caught buying from his co-workers medicines that were given *gratis* to them by the employer company, and re-selling said medicines, in

subversion of the employer's efforts to give medical benefits to its workers. We likewise found in this case that the employee's dismissal was too drastic a punishment in light of his voluntary confession that he committed trafficking of company-supplied medicines out of necessity, as well as his promise not to repeat the same mistake. We ordered the employee's reinstatement but without backwages, again, in consideration of the employer's good faith in dismissing him.

Reference may also be made to the case of *Manila Electric Company v. National Labor Relations Commission*,<sup>[10]</sup> wherein the employee was found responsible for the irregularities in the installation of electrical connections to a residence, for which reason, his services were terminated by the employer's company. We, however, affirmed the findings of the NLRC and the Labor Arbiter that the employee should not have been dismissed considering his 20 years of service to the employer without any previous derogatory record and his being awarded in the past two commendations for honesty. We thus ruled that the employee's reinstatement is proper, without backwages, bearing in mind the employer's good faith in terminating his services.

In our Decision in the present Petition, respondent suffered leg injury after figuring in an accident on 24 August 1994 while driving petitioner's bus, for which he was operated on and confined at the hospital. We are unable to sustain petitioner's position that respondent abandoned his job as early as 1994. For the next four years, respondent was reporting to petitioner's office twice a month and still receiving his salary and medical assistance from petitioner. It was only in January 1998 that respondent was actually dismissed from employment when he was expressly informed that he was considered resigned from his job. We further found that respondent was not afforded procedural due process prior to his dismissal in 1998. We ordered that petitioner pay respondent (1) separation pay of one month for every year of service, in lieu of reinstatement; and (2) full backwages inclusive of allowances and other benefits or their monetary equivalent from 1 January 1998 up to the finality of this Decision.

In its present motion, petitioner is asserting that it should be deemed to have acted in good faith when it considered respondent as resigned from work because the Court itself stated in the Decision that respondent's reinstatement is no longer feasible due to his leg injury, and that to allow the respondent to drive petitioner's bus in his present physical condition would place petitioner in jeopardy of violating its obligation as a common carrier to always exercise extra-ordinary diligence. Thus, invoking good faith, petitioner denies any liability to respondent for the payment of his backwages and allowances from 1 January 1998 to the date of finality of our Decision.

We agree.

While we cannot subscribe to petitioner's argument that respondent had already abandoned his job in 1994, we may concede that petitioner, given the particular circumstances of this case, had sufficient basis to reasonably and in good faith deem respondent resigned by 1998. In attributing good faith to petitioner, we give due regard to the following circumstances:

*First*, respondent had been working for petitioner for only 15 months, from June 1993 to August 1994, when the accident occurred causing injury to his leg. Hence,