

SECOND DIVISION

[G.R. No. 117195, February 20, 1996]

DANNY T. RASONABLE, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, JOEY GUEVARRA AND VICTORY LINER, INC., RESPONDENTS.

DECISION

PUNO, J.:

On March 19, 1993, petitioner **DANNY T. RASONABLE** filed a complaint for illegal dismissal with the Regional Arbitration Branch No. III, San Fernando, Pampanga, against private respondents **VICTORY LINER, INC.** and **JOEY GUEVARRA**, praying for reinstatement, payment of backwages and other benefits, damages and attorney's fees.^[1]

In a Decision,^[2] dated November 8, 1993, Labor Arbiter Ariel C. Santos found private respondents guilty of illegal dismissal. They were ordered to pay petitioner the total sum of P84,957.47, representing the latter's **backwages** from March 1, 1993 (when petitioner was illegally dismissed) up to November 8, 1993 (the date of the Labor Arbiter's Decision), **13th month pay, separation pay** equivalent to one-half month salary for every year of service **and** ten percent (10%) of the total award as **attorney's fees**.

Dissatisfied, both parties appealed to the National Labor Relations Commission (NLRC). In his appeal,^[3] petitioner prayed that the Labor Arbiter's Decision be modified by awarding him instead **full backwages, separation pay equivalent to one (1) month pay for every year of service, and other benefits which he would have received had he not been illegally dismissed**.

Upon the other hand, private respondents claimed that the Labor Arbiter decided their case when it was not as yet submitted for decision as the parties were then in the verge of striking an amicable settlement. They prayed that the case be remanded to the Labor Arbiter for settlement and/or reception of further evidence of both parties.^[4]

In a Decision,^[5] dated March 30, 1994, **the NLRC modified the Decision of the Labor Arbiter by increasing the award of separation pay from one-half (1/2) month pay to one (1) month pay for every year of service and by deleting the award of attorney's fees**. Both parties moved for reconsideration. Both motions were denied.^[6]

They filed separate petitions for certiorari to this Court. Private respondents' petition, entitled "Victory Liner, Inc. v. NLRC, et al." (G.R. No. 116848) was filed on September 8, 1994 and they **reiterated their position before the NLRC**. The

Third Division of this Court, in a Minute Resolution, dated September 21, 1994, denied due course to private respondents' petition. Their motion for reconsideration was denied with finality on November 16, 1994.^[7]

Upon the other hand, petitioner filed the petition at bar against private respondents and the NLRC on October 6, 1994. His petition was given due course and the parties were directed to file their respective Memorandum.

In his petition, petitioner charges that public respondent NLRC committed grave abuse of discretion: (a) in deleting the award of attorney's fees, and; (b) in failing to award other benefits, like holiday pay, service incentive leave pay, 13th month pay, backwages and separation pay **accruing from November 8, 1993 (the date of the labor arbiter's Decision) up to the finality thereof.**

At the outset, it bears emphasis that when the Third Division of this Court denied due course to private respondents' petition (G.R. No. 116848), the Court in effect wrote finis to the issue of illegal dismissal. It is thus settled that petitioner was **illegally** dismissed from service. Similarly a non-issue is the labor arbiter's award of separation pay in lieu of reinstatement which was not challenged by petitioner in his appeal to the NLRC. What then remains is the determination of the monetary awards to be adjudged to petitioner and the period covered thereby.

We hold that public respondent NLRC committed grave abuse of discretion when it ruled that there is no basis for the award of attorney's fees in favor of petitioner. It is settled that **in actions for recovery of wages or where an employee was forced to litigate and incur expenses to protect his rights and interests, he is entitled to an award of attorney's fees.**^[8]

We come now to the other monetary benefits being claimed by petitioner. Public respondent denied petitioner's claim for **service incentive pay and holiday pay** on the ground that petitioner failed to present substantial evidence to support his claim. In the absence of a clear showing by petitioner of grave abuse of discretion on the part of the public respondent, its factual finding binds this Court.

Next, petitioner contends that as a result of his illegal dismissal, he is entitled to an award of **separation pay, backwages and 13th month pay** not only from the time the complaint was filed up to the November 8, 1993 Decision of the Labor Arbiter but also **from the time the arbiter's decision was rendered up to the finality of said decision.** He faults the ruling of the public respondent that under Art. 279 of the Labor Code, as amended by Section 34 of R.A. 6715, an illegally dismissed employee shall be entitled to reinstatement and to his full backwages and other benefits computed **from the time his compensation was withheld from him up to the time of his actual reinstatement. In the case at bar, instead of ordering petitioner's reinstatement,** the Labor Arbiter awarded to petitioner separation pay. It computed the separation pay on the basis of petitioner's length of service, i.e. from the time of his employment up to the time of dismissal. Petitioner is thus deemed separated from service as of the date of the arbiter's decision awarding him separation pay. Hence, public respondent held that petitioner is no longer entitled to an award of 13th month pay and backwages after the date of the decision of the labor arbiter granting petitioner separation pay, the employer-employee relationship having ceased.

We find merit in petitioner's contention.

A look back on our law and jurisprudence on illegal dismissal is in order. Originally, an illegally dismissed employee is entitled to the payment of **backwages** from the date of dismissal to the date of reinstatement less the amount he may have earned elsewhere during said period. **Should the laborer decide not to return to work, the deduction should be made up to the time the judgment becomes final.**

[9] Hence, under the old law, payment of backwages is computed from the time of dismissal up to finality of decision in case the laborer is not reinstated. To prevent double compensation, the earnings derived by a dismissed employee in other jobs during the period his case is pending is deducted from the grant of backwages to be awarded to him. Likewise, the award of backwages would carry with it payment of the benefits to which an employee would have been entitled if he were not dismissed.

Thereafter, in the case of **Mercury Drug Co. v. Court of Industrial Relations**,^[10] the Court simplified the computation of backwages which was unduly delaying the speedy termination of illegal dismissal cases by **limiting its payment to three (3) years without qualification or deduction.** Under the Mercury Drug rule, the worker is to be paid his backwages fixed as of the time of his dismissal without deduction for their earnings elsewhere during their lay-off and without qualification of their wages as thus fixed, i.e., unqualified by any increases or other benefits that may have been received by their co-workers who were not dismissed.^[11] Such award is understood to be inclusive of leave benefits: in making the award, the court necessarily takes into consideration holidays, vacation leaves; all working days are paid for regardless of whether or not the same fall on holidays or employee's leave days; the regular allowances that the employee had been receiving should however be included in the salary base. ^[12]

The Mercury Drug rule was changed by Article 279 of the Labor Code, as amended by Section 34 of R.A. 6715.^[13] It provides:

"ART. 279. Security of Tenure. - In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to **reinstatement without loss of seniority rights and other privileges and to his 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.**" (emphasis supplied)

As the law stands now, an employee who has been illegally dismissed after the effectivity of R.A. 6715 shall be entitled to **reinstatement, full backwages and other benefits for the entire period that he was out of work and until actual reinstatement.** However, in lieu of reinstatement, petitioner may instead be awarded separation pay. **Separation pay** is the amount that an employee receives at the time of his severance from the service and is designed to provide the employee with the wherewithal during the period that he is looking for another employment.^[14] **The grant of separation pay does not preclude an award for**