Department of Labor and Employment
National Labor Relations Commission
RESEARCH, INFORMATION & PUBLICATION DIVISION
Quezon City

No. IV **N L R C L A W R E P O R T** **April 2013**

NON-DIMINUTION OF BENEFITS; COMPANY PRACTICE: COMPUTATION OF RETIREMENT BENEFITS

Vergara, Jr. vs. Coca-Cola Bottlers Philippines, Inc.
G.R. No. 176985, April 1, 2013

Facts:

Petitioner was an employee of respondent from May 1968 until he retired on January 31, 2002 as a District Sales Supervisor (DSS). As stipulated in respondent's existing Retirement Plan Rules and Regulations at the time, the Annual Performance Incentive Pay of RSMs, DSSs, and SSSs shall be considered in the computation of retirement benefits, as follows: Basic Monthly Salary + Monthly Average Performance Incentive (which is the total performance incentive earned during the year immediately preceding ÷ 12 months) × No. of Years in Service. Claiming his entitlement to an additional P474,600.00 as Sales Management Incentives (SMI) and to the amount of P496,016.67 which respondent allegedly deducted illegally, representing the unpaid accounts of two dealers within his jurisdiction, petitioner filed a complaint before the NLRC for the payment of his "Full Retirement Benefits, Merit Increase, Commission/Incentives, Length of Service, Actual, Moral and Exemplary Damages, and Attorney's Fees." The LA rendered a Decision in favor of petitioner, directing respondent to reimburse the amount illegally deducted from petitioner's retirement package and to integrate therein his SMI privilege. On appeal of respondent, the NLRC modified the award and deleted the payment of SMI.

Issue:

Should SMI be included in the computation of petitioner's retirement benefits on the ground of consistent company practice?

Answer:

No. Generally, employees have a vested right over existing benefits voluntarily granted to them by their employer ***(University of the East vs. University of the East Employees' Association, G.R. No. 179593, September 14, 2011)***. Thus, any benefit and supplement being enjoyed by the employees cannot be reduced, diminished, discontinued or eliminated by the employer ***(Eastern Telecommunications Philippines, Inc. vs. Eastern Telecoms Employees Union, G.R. No. 185665, February 8, 2012)***. The principle of non-diminution of benefits is actually founded on the Constitutional mandate to protect the rights of workers, to promote their welfare, and to afford them full protection. In turn, said mandate is the basis of Article 4 of the Labor Code which states that "all doubts in the implementation and interpretation of this Code, including its implementing rules and regulations, shall be rendered in favor of labor." There is diminution of benefits when the following requisites are present: (1) the grant or benefit is founded on a

Compiled and Edited by:

PURDEY P. PEREZ
Acting Chief

policy or has ripened into a practice over a long period of time; (2) the practice is consistent and deliberate; (3) the practice is not due to error in the construction or application of a doubtful or difficult question of law; and (4) the diminution or discontinuance is done unilaterally by the employer ***(Supreme Steel Corporation vs. Nagkakaisang Manggagawa ng Supreme Independent Union [NMS-IND-APL], G.R. No. 185556, March 28, 2011)***. To be considered as a regular company practice, the employee must prove by substantial evidence that the giving of the benefit is done over a long period of time, and that it has been made consistently and deliberately. Jurisprudence has not laid down any hard-and-fast rule as to the length of time that company practice should have been exercised in order to constitute voluntary employer practice. The common denominator in previously decided cases appears to be the regularity and deliberateness of the grant of benefits over a significant period of time ***(Metropolitan Bank and Trust Company vs. NLRC, G.R. No. 152928, June 18, 2009)***. It requires an indubitable showing that the employer agreed to continue giving the benefit knowing fully well that the employees are not covered by any provision of the law or agreement requiring payment thereof. In sum, the benefit must be characterized by regularity, voluntary and deliberate intent of the employer to grant the benefit over a considerable period of time.

In this case, the Court found no substantial evidence to prove that the grant of ***SMI*** to all retired ***DSS***s regardless of whether or not they qualify to the same had ripened into company practice. Despite more than sufficient opportunity given him while his case was pending before the NLRC, the CA, and even to the Court, petitioner utterly failed to adduce proof to establish his allegation that ***SMI*** has been consistently, deliberately and voluntarily granted to all retired ***DSS***s without any qualification or conditions whatsoever. The only two pieces of evidence that he stubbornly presented throughout the entirety of this case are the sworn statements of Hidalgo and Velasquez, former DSSs of respondent who retired in 2000 and 1998, respectively. They claimed that the SMI was included in their retirement package even if they did not meet the sales and collection qualifiers. However, juxtaposing these with the evidence presented by respondent would reveal the frailty of their statements. The declarations of Hidalgo and Velazquez were sufficiently countered by respondent through the affidavits executed by Biola, Escasura, and Balles. Biola pointed out the various stop-gap measures undertaken by respondent beginning 1999 in order to arrest the deterioration of its accounts receivables balance, two of which relate to the policies on the grant of ***SMI*** and to the change in the management structure of respondent upon its reacquisition by SMC. Escasura represented that he has personal knowledge of the circumstances behind the retirement of Hidalgo and Velazquez. He attested that contrary to petitioner's claim, Hidalgo was in fact qualified for the SMI. As for Velazquez, Escasura asserted that even if he (Velazquez) did not qualify for the SMI, respondent's General Manager in its Calamba plant still granted his (Velazquez) request, along with other numerous concessions, to achieve industrial peace in the plant which was then experiencing labor relations problems. Lastly, Balles confirmed that petitioner failed to meet the trade receivable qualifiers of the SMI. She also cited the cases of Ed Valencia (Valencia) and Emmanuel Gutierrez (Gutierrez), both DSSs of respondent who retired on January 31, 2002 and December 30, 2002, respectively. She noted that, unlike Valencia, Gutierrez also did not receive the SMI as part of his retirement pay, since he failed to qualify under the policy guidelines. The verity of all these statements and representations stands and holds true to Us, considering that petitioner did not present any iota of proof to debunk the same. Therefore, respondent's isolated act of including the SMI in the retirement package of Velazquez could hardly be classified as a company practice that may be considered an enforceable obligation. To repeat, the principle against diminution of benefits is applicable only if the grant or benefit is founded on an express policy or has ripened into a practice over a long period of time which is consistent and deliberate; it presupposes that a company practice, policy and tradition favorable to the employees has been clearly established; and that the payments made by the company pursuant to it have ripened into benefits enjoyed by them. Certainly, a *practice* or *custom* is, as a general rule, not a source of a legally demandable or enforceable right ***(Makati Stock Exchange, Inc. vs. Campos, G.R. No. 138814, April 16, 2009)***. Company practice, just like any other fact, habits, customs, usage or patterns of

conduct, must be proven by the offering party who must allege and establish specific, repetitive conduct that might constitute evidence of habit or company practice.

-oOo-

REINSTATEMENT; ABANDONMENT

Banares vs. Tabaco Women's Transport Service Cooperative
G.R. No. 197353, April 1, 2013

Facts:

Petitioner was for some time the general manager of TAWTRASCO until its management, on March 6, 2006, terminated his services. On March 7, 2006, before the LA, petitioner filed a complaint for illegal dismissal and payment of monetary claims. On August 22, 2006, the LA rendered a Decision finding for petitioner, as complainant, with the *fallo* reading: "*WHEREFORE, premises considered, judgment is hereby rendered declaring complainant to have been illegally dismissed from his employment. Consequently, respondent TAWTRASCO is hereby ordered to immediately reinstate complainant to his former position, without loss of seniority right and to pay x x x*" Since TAWTRASCO opted not to appeal, the LA Decision soon became final and executory. In fact, TAWTRASCO in no time paid petitioner the amount of P119, 600 by way of damages and backwages corresponding to the period March 6, 2006 to August 22, 2006. But petitioner was not immediately reinstated. Owing to the strained employer-employee relationship perceived to exist between them, TAWTRASCO offered to pay petitioner separation pay of P172,296, but petitioner rejected the offer. Eventually, the two entered into a Compromise Agreement, in which petitioner waived a portion of his monetary claim, specifically his backwages for the period from August 23, 2006 to February 5, 2007, and agreed that the amount due shall be payable in three (3) installments. In turn, TAWTRASCO undertook to reinstate the petitioner effective February 6, 2007. Accordingly, the LA issued, on February 5, 2007, an Order based on the compromise agreement thus executed, and declared the instant case closed and terminated.

On February 24, 2007, petitioner received a copy of Memorandum Order No. 04, Series of 2007, with a copy of a resolution passed by the Board of Directors (BOD) of TAWTRASCO, requiring him to report at the company's Virac, Catanduanes terminal. The memorandum order contained an enumeration of petitioner's duties and responsibilities. A day after, petitioner went to see Oliva, the BOD Chairman, to decry that the adverted return-to-work memorandum and board resolution contravene the NLRC-approved compromise agreement which called for his reinstatement as general manager without loss of seniority rights. Petitioner would later reiterate his concerns in a letter dated March 12, 2007. On March 20, 2007, TAWTRASCO served petitioner a copy of Memorandum No. 10,11 Series of 2007 which set forth his location assignment, as follows: temporarily assigned at the Virac, Catanduanes terminal/office for two months, after which he is to divide his time between the Virac Terminal and the Araneta Center Bus Terminal (ACBT), three days (Monday to Wednesday) in Virac and two days (Friday and Saturday) in Cubao, utilizing Thursday as his travel day in between offices. As ordered, petitioner reported to the Virac terminal which purportedly needed his attention due to its flagging operations and management problems. Barely a week into his new assignment, petitioner, thru a memorandum report, proposed the construction/rehabilitation of the passenger lounge in the Virac terminal, among other improvements. The proposal came with a request for a monthly lodging accommodation allowance of P1,700 for the duration of his stay in Virac. While the management eventually approved the desired construction projects, it denied petitioner's plea for cash lodging allowance. Instead of a straight cash allowance, the company urged petitioner to use the Virac office for lodging purposes. Subsequent events saw petitioner requesting and receiving an allocation of P3,000 for his travel, accommodation, representation and communication allowance subject to liquidation. No replenishment, however, came after.

On April 12, 2007, Oliva, while conducting, in the company of another director, an ocular inspection of the Virac terminal, discovered that petitioner had not reported for work since March 31, 2007. Thus, the issuance of a company memorandum asking petitioner to explain his absence. In response, petitioner addressed a letter-reply to management stating the underlying reason for not reporting and continue reporting for work in his new place of assignment and expressing in detail his grievances against management. Some excerpts of petitioner's letter: *"x x x [T]he very reason why I don't go back to Virac Catanduanes x x x is because I realized that in truth my reinstatement effected by your office which is supposed to be in pursuance to the NLRC decision is nothing but an artificial, fake, fictitious and a sham kind of return to work order. I regret to say it so on the following grounds: x x x (4) The place of work x x x was completely devoid of any office materials and equipments needed in the nature of my work. To put in details there was no office table and chairs, no filing cabinets for safekeeping of important documents, no ball-pens, no bond papers etc. x x x [T]here is nothing at all in said place of work for me to say that there was really an office of the General Manager. As a matter of fact, you know that all my reports being submitted x x x are made possible by using my own personal computer, my computer printer, my computer inks and even my own bond papers. x x x"*

Issues:

(a) Was there a proper and genuine reinstatement of petitioner to his former position of General Manager of TAWTRASCO without loss of seniority rights and privileges?

(b) Does petitioner's refusal to report in the Virac terminal in early April 2007 constitutes abandonment?

Answer:

(a) None. Reinstatement, as a labor law concept, means the admission of an employee back to work prevailing prior to his dismissal; restoration to a state or position from which one had been removed or separated, which presupposes that there shall be no demotion in rank and/or diminution of salary, benefits and other privileges; if the position previously occupied no longer exists, the restoration shall be to a substantially equivalent position in terms of salary, benefits and other privileges ***(Pfizer, Inc. vs. Velasco, G.R. No. 177467, March 9, 2011)***. Management's prerogative to transfer an employee from one office or station to another within the business establishment, however, generally remains unaffected by a reinstatement order, as long as there is no resulting demotion or diminution of salary and other benefits and/or the action is not motivated by consideration less than fair or effected as a punishment or to get back at the reinstated employee ***(Norkis Trading Co., Inc. vs. Gnilo, G.R. No. 159730, February 11, 2008)***. Guided by the foregoing reasonable albeit exaction norm, the "reinstatement" of petitioner as general manager of TAWTRASCO, effected by TAWTRASCO pursuant to the February 5, 2007 compromise agreement, was not a real, *bona fide* reinstatement in the context of the Labor Code and pertinent decisional law. Consider: **First**, TAWTRASCO at the outset, i.e., after the compromise agreement signing, directed petitioner to report to the Virac terminal with duties and responsibilities not befitting a general manager of a transport company. In fine, the assignment partook of the nature of a demotion. The aforementioned Memorandum Order No. 04, Series of 2007, in its pertinently part, states and directs: "DUTIES AND RESPONSIBILITIES: x x x (2) To have a record of the in and out of freight loaded on all TAWTRASCO buses, regulate freight charge/s and minimize problems and complaints regarding the freight/cargoes loaded at these buses; (3) As General Manager to sign on the manifesto or trip records of the buses going out daily at Virac Terminal attesting his approval except on day-off schedule." A cursory reading of items (2) and (3) above would readily reveal that petitioner was tasked to discharge menial duties, such as maintaining a record of the "in" and "out" of freight loaded on all TAWTRASCO buses and signing the trip records of the buses going out daily. To be sure, these tasks cannot be classified as pertaining to the office of a general manager, but that of a checker. As may reasonably be expected, petitioner promptly reacted to this assignment. A day after he received the memorandum in question, or on February 25, 2007, he repaired to the office of Oliva to personally voice out his misgivings about the set up and why he believed that the above memorandum contravened their

compromise agreement and the February 5, 2007 Order of the LA specifically providing for his reinstatement as general manager without loss of seniority rights and privileges. Nevertheless, 15 days after the uneventful personal meeting with Oliva, petitioner addressed a letter to top management inquiring about his reinstatement and assignment. The BOD Secretary of TAWTRASCO received this letter on March 13, 2007. TAWTRASCO's action on petitioner's aforementioned letter came, as narrated earlier, in the form of Memorandum No. 10, Series of 2007, which temporarily assigned him to the Virac terminal for two months. And after the two-month period, he shall divide his time between the Virac and the ACBT terminals, with Thursday as his travel day in between offices. Notably, this time, TAWTRASCO explained that its Virac terminal needs petitioner's attention due to its flagging operations and management problems. Thus, petitioner acquiesced and reported to the Virac terminal of TAWTRASCO. In a rather unusual turn of events, however, the assailed CA decision made no mention of the foregoing critical facts despite their being pleaded by petitioner and duly supported by the records, although that court made a perfunctory reference to the adverted Memorandum Order No. 04. And **second**, while Memorandum No. 10 was couched as if TAWTRASCO had in mind the reinstatement of petitioner to his former position, there cannot be any quibble that TAWTRASCO withheld petitioner's customary boarding house privilege. What is more, TAWTRASCO did not provide him with a formal office space.

As evidence on record abundantly shows, TAWTRASCO was made aware of its shortcomings as employer, but it opted not to lift a finger to address petitioner's reasonable requests for office space and free lodging while assigned at the Virac terminal. Thus, the stand-off between employer and employee led to petitioner writing on April 24, 2007 to TAWTRASCO, an explanatory letter explaining his failure to report back to work at the Virac terminal. The letter provides in part: *"4. The place of work x x x was completely devoid of any office materials and equipments needed in the nature of my work. To put in details there was no office table and chairs, no filing cabinets for safekeeping of important documents, no ball-pens, no bond papers etc. x x x [T]here is nothing at all in said place of work for me to say that there was really an office of the General Manager. As a matter of fact, you know that all my reports being submitted x x x are made possible by using my own personal computer, my computer printer, my computer inks and even my own bond papers. x x x x"*

Apropos to what petitioner viewed as a demeaning treatment dealt him by TAWTRASCO, the LA had stated the ensuing observations in his April 14, 2008 Order: *"In this case, however, this Branch finds that respondent [TAWTRASCO] indeed, complied with the reinstatement of the complainant [petitioner Bañares], however, the office where he was assigned in Virac, Catanduanes is not in good and tenantable condition. As shown in complainant's Annex "F" which is the photograph of the place, it is unsafe, dilapidated and in a messy situation. Confronted with this problem, complainant requested fund from respondent for the rehabilitation of the office. However, this was not favorably acted upon. To further rub salt in an open wound, respondent appointed a new General Manager effective November 12, 2007 (Annexes "H" and "I", complainant's Memorandum). This conduct on the part of respondent gave complainant the correct impression that the respondent did not intend to be bound by the compromise agreement, and its non-materialization negated the very purpose for which it was executed."*

Annex "F," the photograph23 adverted to by the LA, tells it all. Indeed, petitioner could not reasonably be expected to work in such a messy condition without any office space, office furniture, equipment and supplies. And much less can petitioner lodge there. TAWTRASCO pointedly told petitioner through the March 26, 2007 letter of Oliva denying his request for a P1,700 lodging allowance that petitioner could instead use the Virac office for his accommodation. It must be borne in mind – and TAWTRASCO has not controverted the fact – that, prior to his illegal dismissal, petitioner was enjoying PhP 5,000-a-month free lodging privilege while stationed in the Cubao terminal. Accordingly, this lodging privilege was supposed to continue under the reinstatement package. But as it turned out, TAWTRASCO discontinued the accommodation when it posted petitioner in Virac.

Under Article 223 of the Labor Code, an employee entitled to reinstatement "shall either be admitted back to work **under the same terms and conditions** prevailing prior to his dismissal or separation x x x." Verily, an illegally dismissed employee is entitled to reinstatement without loss of seniority rights and to other established employment privileges, and to his full backwages ***(Genuino Ice Company, Inc. vs. Lava, G.R. No. 190001, March 23, 2011)***. The boarding house privilege being an established perk accorded to petitioner ought to have been granted him if a real and authentic reinstatement to his former position as general manager is to be posited. It cannot be stressed enough that TAWTRASCO withheld petitioner's salaries for and after his purported refusal to report for work at the Virac terminal. The reality, however, is that TAWTRASCO veritably directed petitioner to work under terms and conditions prejudicial to him, the most hurtful cut being that he was required to work without a decent office partly performing a checker's job. And this embarrassing work arrangement is what doubtless triggered the refusal to work, which under the premises appears very much justified.

Generally, employees have a demandable right over existing benefits voluntarily granted to them by their employers. And if the grant or benefit is founded on an express policy or has, for a considerable period of time, been given regularly and deliberately, then the grant ripens into a vested right ***(Barroga vs. Data Center College of the Philippines, G.R. No. 174158, June 27, 2011)*** which the employer cannot unilaterally diminish, discontinue or eliminate ***(University of the East vs. University of the East Employees' Association, G.R. No. 179593, September 14, 2011)*** without offending the declared constitutional policy on full protection to labor ***(Arco Metal Products Co., Inc. vs. Samahan ng mga Manggagawa sa Arco Metal-NAFLU, G.R. No. 170734, May 14, 2008)***. So it must be here with respect, at the minimum, to the lodging accommodation which TAWTRASCO appears to have regularly extended for free for some time to petitioner.

(b) No. Petitioner's refusal, during the period material, to report for work at the Virac terminal does not, without more, translate to abandonment. For abandonment to exist, it is essential (1) that the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) that there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts ***(E.G. & I. Construction Corporation vs. Sato, G.R. No. 182070, February 16, 2011)***. These concurring elements of abandonment are not present in the instant case. As reflected above, the reinstatement order has not been faithfully complied with. And varied but justifiable reasons obtain which made petitioner's work at the Virac terminal untenable. To reiterate, there was a lack of a viable office: no proper office space, no office furniture and equipment, no office supplies. Petitioner's request for immediate remediation of the above unfortunate employment conditions fell on deaf ears. This is not to mention petitioner's board and lodging privilege which he was deprived of without so much as an explanation. Thus, it could not be said that petitioner's absence is without valid or justifiable cause. But more to the point, petitioner has not manifested, by overt acts, a clear intention to sever his employment with TAWTRASCO. In fact, after submitting his April 24, 2007 letter-explanation to, but not receiving a reaction one way or another from, TAWTRASCO, petitioner lost no time in filing a complaint against the former for, *inter alia*, nonpayment of salaries and forfeiture of boarding house privilege. Thereafter, via a Manifestation, he sought the early issuance of an alias writ of execution purposely for the full implementation of the final and executory LA August 22, 2006 Decision, i.e., for the payment of his salaries and full reinstatement. These twin actions clearly argue against a finding of abandonment on petitioner's part. It is a settled doctrine that the filing of an illegal dismissal suit is inconsistent with the charge of abandonment, for an employee who takes steps to protest his dismissal cannot by logic be said to have abandoned his work ***(Automotive Engine Rebuilders, Inc. [AER] vs. Progresibong Unyon ng mga Manggagawa sa AER, G.R. No. 160138, July 13, 2011)***.

Given the convergence of events and circumstances above described, the Court can readily declare that TAWTRASCO admitted petitioner back to work under terms and conditions adversely dissimilar to those prevailing before his illegal dismissal. Put a bit differently, petitioner was admitted back, but

required to work under conditions crafted to cause unnecessary hardship to or meant to be rejected by him. And to reiterate, these conditions entailed a demotion in rank and diminution of perks and standard privileges. The shabby and unfair treatment accorded him or her by the management of TAWTRASCO is definitely not genuine reinstatement to his former position. Petitioner was not truly reinstated by TAWTRASCO consistent with the final and executor August 22, 2006 Decision of the LA and the February 5, 2007 Compromise Agreement inked by the parties in the presence of the hearing LA.

Supervening events, however, had transpired which inexorably makes the reinstatement infeasible. For one, on November 12, 2007, TAWTRASCO already appointed a new general manager. Petitioner no less has raised this fact of appointment. As a matter of settled law, reinstatement and payment of backwages, as the normal consequences of illegal dismissal, presuppose that the previous position from which the employee has been removed is still in existence or there is an unfilled position of a nature, more or less, similar to the one previously occupied by said employee ***(San Miguel Properties Philippines, Inc. vs. Gucaban, G.R. No. 153982, July 18, 2011)***. For another, a considerable period of time has elapsed since petitioner last reported to work in early 2007 or practically a six-year period. And this protracted labor suit have likely engendered animosity and exacerbated already strained relations between petitioner and his employer.

Reinstatement is no longer viable where, among other things, the relations between the employer and employee have been so severely strained, that it is not in the best interest of the parties, nor is it advisable or practical to order reinstatement.32 Under the doctrine of strained relations, payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable ***(Uy vs. Centro Ceramica Corporation, G.R. No. 174631, October 19, 2011)***. Indeed, separation pay is made an alternative relief in lieu of reinstatement in certain circumstances, such as: (1) when reinstatement can no longer be effected in view of the passage of a long period of time or because of the realities of the situation; (2) reinstatement is inimical to the employer's interest; (3) reinstatement is no longer feasible; (4) reinstatement does not serve the best interests of the parties involved; (5) the employer is prejudiced by the workers' continued employment; (6) facts that make execution unjust or inequitable have supervened; or (7) strained relations between the employer and the employee ***(Abaria vs. NLRC, G.R. No. 154113, December 7, 2011; Escario vs. NLRC, G.R. No. 160302, September 27, 2010)***. 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. In lieu of reinstatement, petitioner is entitled to separation pay equivalent to one (1) month salary for every year of service reckoned from the time he commenced his employment with TAWTRASCO until finality of this Decision. In addition, petitioner is entitled to backwages and other emoluments due him from the time he did not report for work on March 31, 2007 until the finality of this Decision. Said backwages and emoluments shall earn 12% interest from finality of this Decision until fully paid. The payment of legal interest becomes a necessary consequence of the finality of the Court's Decision, because, reckoned from that time, the said decision becomes a judgment for money which shall earn interest at the rate of 12% per annum ***(Molina vs. Pacific Plans, Inc., G.R. No. 165476, August 15, 2011)***.

-oOo-

CONSTRUCTIVE DISMISSAL; FLOATING STATUS

Reyes, et. al. vs. RP Guardians Security Agency, Inc.
G.R. No. 193756, April 10, 2013

Facts:

Petitioners Reyes, Dabbay, Vigilia, Calanno, Supe, Jr., Trinidad, and Duldulao *(petitioners)* were hired by respondent as security guards. They were deployed to various clients of respondent, the last of

which were the different branches of Banco Filipino. In September 2006, respondent's security contract with Banco Filipino was terminated. In separate letters, petitioners were individually informed of the termination of the security contract. In two (2) memoranda, dated September 21, 2006 and September 29, 2006, petitioners were directed to turnover their duties and responsibilities to the incoming security agency and were advised that they would be placed on floating status while waiting for available post. Petitioners waited for their next assignment, but several months lapsed and they were not given new assignments. Consequently, on April 10, 2007, petitioners filed a complaint for constructive dismissal. Respondent claimed that there was no dismissal, of petitioners, constructive or otherwise, and asserted that their termination was due to the expiration of the service contract which was coterminus with their contract of employment.

Issue:

Were petitioners constructively dismissed?

Answer:

Yes. There is no doubt that petitioners were constructively dismissed. The LA, the NLRC and the CA were one in their conclusion that respondent was guilty of illegal dismissal when it placed petitioners on floating status beyond the reasonable six-month period after the termination of their service contract with BDO. Temporary displacement or temporary off detail of security guard is, generally, allowed in a situation where a security agency's client decided not to renew their service contract with the agency and no post is available for the relieved security guard ***(Salvoza vs. NLRC, G.R. No. 182086, November 24, 2010)***. Such situation does not normally result in a constructive dismissal. Nonetheless, when the floating status lasts for more than six (6) months, the employee may be considered to have been constructively dismissed ***(Sentinel Security Agency, Inc. vs. NLRC, 356 Phil. 434, 443 [1998])***. No less than the Constitution guarantees the right of workers to security of tenure, thus, employees can only be dismissed for just or authorized causes and after they have been afforded the due process of law.

Settled is the rule that that 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 up to the time of actual reinstatement. If reinstatement is not possible, however, the award of separation pay is proper. Backwages and reinstatement are separate and distinct reliefs given to an illegally dismissed employee in order to alleviate the economic damage brought about by the employee's dismissal. "Reinstatement is a restoration to a state from which one has been removed or separated" while "the payment of backwages is a form of relief that restores the income that was lost by reason of the unlawful dismissal." Therefore, the award of one does not bar the other.

In the case of ***Aliling vs. Feliciano, G.R. No. 185829, April 25, 2012*** citing ***Golden Ace Builders vs. Talde, G.R. No. 1872000, May 5, 2010***, the Court explained: "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."

Furthermore, the entitlement of the dismissed employee to separation pay of one month for every year of service should not be confused with Section 6.5 (4) of DOLE D.O. No. 14 which grants a

separation pay of one-half month for every year service, to wit: "6.5 Other Mandatory Benefits. In appropriate cases, security guards/similar personnel are entitled to the mandatory benefits as listed below, although the same may not be included in the monthly cost distribution in the contracts, except the required premiums for their coverage: (a) Maternity benefit as provided under the SSS Law; (b) Separation pay if the termination of employment is for authorized cause as provided by law and as enumerated below: Half-Month Pay Per Year of Service, but in no case less than One Month Pay, if separation is due to: (1) Retrenchment or reduction of personnel effected by management to prevent serious losses; (2) Closure or cessation of operation of an establishment not due to serious losses or financial reverses; (3) Illness or disease not curable within a period of 6 months and continued employment is prohibited by law or prejudicial to the employee's health or that of co-employees; or (4) Lack of service assignment for a continuous period of 6 months.

The said provision contemplates a situation where a security guard is removed for authorized causes such as when the security agency experiences a surplus of security guards brought about by lack of clients. In such a case, the security agency has the option to resort to retrenchment upon compliance with the procedural requirements of "two-notice rule" set forth in the Labor Code and to pay separation pay of one-half month for every year of service. In this case, respondent would have been liable for reinstatement and payment of backwages. Reinstatement, however, was no longer feasible because respondent had already ceased operation of its business. Thus, backwages and separation pay, in the amount of one month for every year of service, should be paid in lieu of reinstatement. As to their claim of attorney's fees, petitioners were compelled to file an action for the recovery of their lawful wages and other benefits and, in the process, incurred expenses. Hence, petitioners are entitled to attorney's fees equivalent to ten percent (10%) of the monetary award.

-oOo-

APPEAL; TERMINATION: SUBSTANTIVE & PROCEDURAL DUE PROCESS

Mendoza vs. HMS Credit Corporation, et. al.
G.R. No. 187232, April 17, 2013

Facts:

Petitioner was the Chief Accountant of respondent beginning August 1, 1999. During her employment, she simultaneously serviced three other respondent companies, all part of the Honda Motor Sports Group (HMS Group)/ namely, Honda Motor Sports Corporation (Honda Motors), Beta Motor Trading Incorporated (Beta Motor) and Jianshe Cycle World (Jianshe). Respondent Luisa was the Managing Director of HMS Credit, while respondent Felipe was the company officer to whom petitioner directly reported. Petitioner avers that on April 11, 2002, after she submitted to Luisa the audited financial statements of Honda Motors, Beta Motor, and Jianshe, Felipe summoned petitioner to advise her of her termination from service. She claims that she was even told to leave the premises without being given the opportunity to collect her personal belongings. Petitioner contends also that when she went back to the office building on April 13, 2012, the stationed security guard stopped her and notified her of the instruction of Felipe and Luisa to prohibit her from entering the premises. Later that month, she returned to the office to pick up her personal mail and to settle her food bills at the canteen, but the guard on duty told her that respondents had issued a memorandum barring her from entering the building. On the other hand, respondents maintain that petitioner was hired on the basis of her qualification as a CPA, which turned out to be a misrepresentation. They likewise contend that not only did she fail to disclose knowledge of the resignations of two HMS Group officers, Labasan and de la Cruz, and their subsequent transfer to a competitor company, but she also had a hand in pirating them. Thus, on April 12, 2002, they supposedly confronted her about these matters. In turn, she allegedly told them that if they had lost their trust in her, it would be best for them to part ways. Accordingly, they purportedly asked her to propose an

amount representing her entitlement to separation benefits. Before she left that night, they allegedly handed her P30,000 as payment for the external auditor she had contracted to examine the books of the HMS Group. On April 30, 2002, petitioner filed a Complaint for Illegal Dismissal and Non-payment of Salaries/Wages, 13th Month Pay and Mid-Year Bonus. On January 28, 2003, the LA rendered a Decision ruling that petitioner had been illegally dismissed, and that the dismissal had been effected in violation of due process requirements. Respondents filed an Appeal dated March 14, 2003 and a Motion to Reduce Appeal Bond dated March 21, 2003 with the NLRC, tendering the amount of only P650,000 on the ground of purported business losses. In its Order dated May 30,2003, the NLRC denied the request for the reduction of the appeal bond, and directed respondents to put up the additional amount of P122,801, representing the differential between the judgment award – not including the moral and exemplary damages and attorney's fees – and the sum previously tendered by them. Respondents complied with the Order. On September 30, 2008, the NLRC rendered a Decision reversing the ruling of the LA.

Issues:

(a) Was the appeal of respondents to the NLRC timely filed?
(b) Was the dismissal of petitioner valid?

Answer:

(a) Yes. The relevant portion of Article 223 of the Labor Code on appeals of decisions, awards or orders of the Labor Arbiter as follows: "Art. 223. x x x In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from." In ***Pasig Cylinder vs. Rollo, G.R. No. 173631, September 8, 2010***, the Court explained that the required posting of a bond equivalent to the monetary award in the appealed judgment may be liberally interpreted as follows: "x x x. True, Article 223 of the Labor Code requires the filing of appeal bond "in the amount equivalent to the monetary award in the judgment appealed from. However, both the Labor Code and this Court's jurisprudence abhor rigid application of procedural rules at the expense of delivering just settlement of labor cases. Petitioners' reasons for their filing of the reduced appeal bond – the downscaling of their operations coupled with the amount of the monetary award appealed – are not unreasonable. Thus, the recourse petitioners adopted constitutes substantial compliance with Article 223 consistent with our ruling in *Rosewood Processing, Inc. v. NLRC*, where we allowed the appellant to file a reduced bond of P50,000 (accompanied by the corresponding motion) in its appeal of an arbiter's ruling in an illegal termination case awarding P789,154.39 to the private respondents."

In the case at bar, respondents filed a Motion to Reduce Appeal Bond, tendering the sum of P650,000 – instead of the P1,025,081.82 award stated in the Decision of the Labor Arbiter – because it was allegedly what respondents could afford, given the business lossesthey had suffered at that time. Upon the denial by the NLRC of this Motion, respondents promptly complied with its directive to post the differential in the amount of P122,801.66, which had been computed without including the award of moral and exemplary damages and attorney's fees. Following the pronouncement in *Pasig Cylinder*, the CA was correct in holding that the appeal was timely filed on account of respondents' substantial compliance with the requirement under Article 223.

(b) The Labor Code provides for instances when employment may be legally terminated by either the employer or the employee, to wit: "Art. 282. Termination by employer. An employer may terminate an employment for any of the following causes: (a) serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work; (b) gross and habitual neglect by the employee of his duties; (c) fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative; (d) commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly

authorized representatives; and (e) other causes analogous to the foregoing." "Art. 285. Termination by employee: (a) an employee may terminate without just cause the employee-employer relationship by serving a written notice on the employer at least one (1) month in advance. The employer upon whom no such notice was served may hold the employee liable for damages; (b) An employee may put an end to the relationship without serving any notice on the employer for any of the following just causes: (1) serious insult by the employer or his representative on the honor and person of the employee; (2) inhuman and unbearable treatment accorded the employee by the employer or his representative; (3) commission of a crime or offense by the employer or his representative against the person of the employee or any of the immediate members of his family; and (4) other causes analogous to any of the foregoing."

In instances in which the termination of employment by the employer is based on breach of trust, a distinction must be made between rank-and-file employees and managerial employees, thus:

"The degree of proof required in labor cases is not as stringent as in other types of cases. It must be noted, however, that recent decisions of this Court have distinguished the treatment of managerial employees from that of rank-and-file personnel, insofar as the application of the doctrine of loss of trust and confidence is concerned. Thus, with respect to rank-and-file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position."

Further, in the case of termination by the employer, it is not enough that there exists a just cause therefor, as procedural due process dictates compliance with the two-notice rule in effecting a dismissal: (a) the employer must inform the employee of the specific acts or omissions for which the dismissal is sought, and (b) the employer must inform the employee of the decision to terminate employment after affording the latter the opportunity to be heard ***(Mansion Printing Center vs. Bitara, G.R. No. 168120, January 25, 2012)***. On the other hand, if the termination of employment is by the employee, the resignation must show the concurrence of the intent to relinquish and the overt act of relinquishment, as held in ***San Miguel Properties vs. Gucaban, G.R. No. 153982, July 18, 2011***: "Resignation — the formal pronouncement or relinquishment of a position or office — is the voluntary act of an employee who is in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and he has then no other choice but to disassociate himself from employment. The intent to relinquish must concur with the overt act of relinquishment; hence, the acts of the employee before and after the alleged resignation must be considered in determining whether he in fact intended to terminate his employment. In illegal dismissal cases, fundamental is the rule that when an employer interposes the defense of resignation, on him necessarily rests the burden to prove that the employee indeed voluntarily resigned."

In this case, although petitioner committed acts that amounted to breach of trust, the termination of her employment was not on that basis. Instead, both tribunals held that the parties parted amicably, with petitioner evincing her voluntary intention to resign and respondents' proposed settlement to pay her separation benefits. This Court does not agree with these findings in their entirety. Whether Mendoza was a Chief Accountant of HMS Credit, as stated in her appointment letter, or a Finance Officer of all the corporations under the HMS Group, as claimed by respondents, what is certain is that she was a managerial employee. In securing this position, she fraudulently misrepresented her professional qualifications by stating in her Personal Information Sheet that she was a CPA. Based on the records, she

never controverted this imputation of dishonesty or, at the very least, provided any explanation therefor. Thus, this deceitful action alone was sufficient basis for respondents' loss of confidence in her as a managerial employee.

However, despite the existence of a just cause for termination, petitioner was nevertheless dismissed from service in violation of procedural due process, as respondents failed to observe the two notice requirement. Instead, respondents insisted that she voluntarily resigned, which argument the NLRC and the CA sustained. This Court is not persuaded. Respondents were unable to discharge their burden to prove the contemporaneous existence of an intention on the part of petitioner to resign and an overt act of resignation. Aside from their self-serving allegation that she had offered to resign after they had expressed their loss of trust in her, there is nothing in the records to show that she voluntarily resigned from her position in their company. In this regard, it is worthy to underscore the established rule that the filing of a complaint for illegal dismissal is inconsistent with resignation or abandonment. Moreover, the conclusion of the NLRC and the CA that petitioner voluntarily resigned in consideration of respondents' supposed payment of a settlement is bereft of any basis. The lower tribunals merely surmised that the parties forged a compromise agreement despite respondents' own admission that they never decided thereon. In fact, the records are clear that none of the parties claimed the existence of any settlement in exchange for her resignation. From the foregoing discussion, it is evident that although there was a just cause for terminating the services of petitioner, respondents were amiss in complying with the two-notice requirement. Following the prevailing jurisprudence on the matter, if the dismissal is based on a just cause, then the non-compliance with procedural due process should not render the termination from employment illegal or ineffectual. Instead, the employer must indemnify the employee in the form of nominal damages. Therefore, the dismissal of petitioner should be upheld, and respondents cannot be held liable for the payment of either backwages or separation pay. Considering all the circumstances surrounding this case, this Courts finds the award of nominal damages in the amount of P30,000 to be in order.

-end-