



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

**No. III**

**N L R C L A W R E P O R T**

**March 2013**

**LOSS OF TRUST AND CONFIDENCE; SEPARATION PAY; INTEREST**  
**MORAL DAMAGES; SOLIDARY LIABILITY; 13<sup>TH</sup> MONTH PAY**

**Torres vs. Rural Bank of San Juan, Inc., et. al.**  
***G.R. No. 184520, March 13, 2013***

***Facts:***

The petitioner was initially hired by RBSJI as Personnel and Marketing Manager in 1991. After a six-month probationary period and finding his performance to be satisfactory, RBSJI renewed his employment for the same post to a permanent/regular status. In June 1996, the petitioner was offered the position of Vice-President for RBSJI's newly created department, Allied Business Ventures. He accepted the offer and concomitantly relinquished his post. The vacancy created was filled by respondent Jobel who temporarily held the position concurrently as a Corporate Planning and Human Resources Development Head. On September 24, 1996, the petitioner was temporarily assigned as the manager of RBSJI's N. Domingo branch in view of the resignation of Jacinto. On September 27, 1996, Jacinto requested the petitioner to sign a standard employment clearance pertaining to his accountabilities with RBSJI. When the petitioner declined his request, Jacinto threw a fit and shouted foul invectives. To pacify him, the petitioner bargained to issue a clearance but only for Jacinto's paid cash advances and salary loan. About seven months later or on April 17, 1997, respondent Jesus issued a memorandum to the petitioner requiring him to explain why no administrative action should be imposed on him for his unauthorized issuance of a clearance to Jacinto whose accountabilities were yet to be audited. Jacinto was later found to have unliquidated cash advances and was responsible for a questionable transaction involving P11 million for which RBSJI is being sued by a certain Actives Builders Manufacturing Corporation. The memorandum stressed that the clearance petitioner issued effectively barred RBSJI from running after Jacinto. The petitioner submitted his explanation on the same day clarifying that the clearance was limited only to Jacinto's paid cash advances and salary loan based on the receipts presented by the branch cashier of N. Domingo branch. He emphasized that he had no foreknowledge nor was he forewarned of Jacinto's unliquidated cash advances and questionable transactions and that the clearance did not extend to those matters. After conducting an investigation, RBSJI's HRD recommended the petitioner's termination from employment for the following reasons, to wit: (1) the issuance of clearance to Jacinto have been prejudicial to the Bank considering that damages found caused by Jacinto during his stay with the bank; (2) the petitioner is not in any authority to issue said clearance which is a violation of the Company Code of Conduct and Discipline under Category B Grave Offense No. 1 (falsifying or misrepresenting persons or other company records, documents or papers) equivalent to termination; and (3) the nature of his participation in the issuance of the said clearance could be a reasonable ground for

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the Management to believe that he is unworthy of the trust and confidence demanded by his position which is also a ground for termination. On May 19, 1997, RBSJI's Board of Directors adopted the above recommendation and issued Resolution No. 97-102 terminating the petitioner from employment, the import of which was communicated to him in a Memorandum dated May 30, 1997. Feeling aggrieved, the petitioner filed a complaint for illegal dismissal, illegal deduction, non-payment of service incentive, leave pay and retirement benefits. The LA ruled in favor of petitioner and awarded separation pay, backwages, 13<sup>th</sup> month pay, moral and exemplary damages, and attorney's fees.

**Issues:**

- (a) Is petitioner's dismissal valid?
- (b) Is petitioner entitled to separation pay in lieu of reinstatement and back wages with legal interest?
- (c) Is the award of moral and exemplary damages proper?
- (d) Is the individual respondent solidarily liable with RBSJI?
- (e) Is the award of 13<sup>th</sup> month pay proper?
- (f) Is the award of attorney's fees proper?

**Ruling:**

(a) No. As provided in Article 282 of the Labor Code and as firmly entrenched in jurisprudence, an employer has the right to dismiss an employee by reason of willful breach of the trust and confidence reposed in him. To temper the exercise of such prerogative and to reconcile the same with the employee's Constitutional guarantee of security of tenure, the law imposes the burden of proof upon the employer to show that the dismissal of the employee is for just cause failing which would mean that the dismissal is not justified. Proof beyond reasonable doubt is not necessary but the factual basis for the dismissal must be clearly and convincingly established (*Jerusalem vs. Keppel Monte Bank, G.R. No. 169564, August 6, 2011*). Further, the law mandates that before validity can be accorded to a dismissal premised on loss of trust and confidence, two requisites must concur, *viz*: (1) the employee concerned must be holding a position of trust; and (2) the loss of trust must be based on willful breach of trust founded on clearly established facts (*Bristol Myers Squibb, Inc. vs. Baban, G.R. No. 167449, December 17, 2008*). There is no arguing that the petitioner was part of the upper echelons of RBSJI's management from whom greater fidelity to trust is expected. At the time when he committed the act which allegedly led to the loss of RBSJI's trust and confidence in him, he was the Acting Manager of N. Domingo branch. It was part of the petitioner's responsibilities to effect a smooth turn-over of pending transactions and to sign and approve instructions within the limits assigned to the position under existing regulations. Prior thereto and ever since he was employed, he has occupied positions that entail the power or prerogative to dictate management policies – as Personnel and Marketing Manager and thereafter as Vice-President.

The presence of the first requisite is thus certain. Anent the second requisite, the Court finds that the respondents failed to meet their burden of proving that the petitioner's dismissal was for a just cause. The act alleged to have caused the loss of trust and confidence of the respondents in the petitioner was his issuance, without prior authority and audit, of a clearance to Jacinto who turned out to be still liable for unpaid cash advances and for an P11-million fraudulent transaction that exposed RBSJI to suit. The clearance barred RBSJI from running after Jacinto. The records are, however, barren of any evidence in support of these claims. The *onus* of submitting a copy of the clearance allegedly exonerating Jacinto from all his accountabilities fell on the respondents. It was the single and absolute evidence of the petitioner's act that purportedly kindled the respondents' loss of trust. Without it, the respondents' allegation of loss of trust and confidence has no leg to stand on and must thus be rejected. Moreover, one can reasonably expect that a copy of the clearance, an essential personnel document, is with the respondents. Their failure to present it and the lack of explanation for such failure or the document's unavailability props up the presumption that its contents are unfavorable to the respondents' assertions. At any rate, the absence of the clearance upon which the contradicting claims of the parties could ideally be resolved, should work against the respondents. With only sworn pleadings as proof of their opposite

claims on the true contents of the clearance, the Court is bound to apply the principle that the scales of justice should be tilted in favor of labor in case of doubt in the evidence presented.

RBSJI also failed to substantiate its claim that the petitioner's act estopped them from pursuing Jacinto for his standing obligations. There is no proof that RBSJI attempted or at least considered to demand from Jacinto the payment of his unpaid cash advances. Neither was RBSJI able to show that it filed a civil or criminal suit against Jacinto to make him responsible for the alleged fraud. There is thus no factual basis for RBSJI's allegation that it incurred damages or was financially prejudiced by the clearance issued by the petitioner. More importantly, the complained act of the petitioner did not evince intentional breach of the respondents' trust and confidence. Neither was the petitioner grossly negligent or unjustified in pursuing the course of action he took. It must be pointed out that the petitioner was caught in the quandary of signing on the spot a standard employment clearance for the furious Jacinto sans any information on his outstanding accountabilities, and refusing to so sign but risk alarming or scandalizing RBSJI, its employees and clients. Contrary to the respondents' allegation, the petitioner did not concede to Jacinto's demands. He was, in fact, able to equalize two equally undesirable options by bargaining to instead clear Jacinto only of his settled financial obligations after proper verification with branch cashier. It was only after the branch cashier confirmed Jacinto's recorded payments that the petitioner signed the clearance. The absence of an audit was precisely what impelled the petitioner to decline signing a standard employment clearance to Jacinto and instead issue a different one pertaining only to his paid accountabilities. Under these circumstances, it cannot be concluded that the petitioner was in any way prompted by malicious motive in issuing the clearance. He was also able to ensure that RBSJI's interests are protected and that Jacinto is pacified. He did what any person placed in a similar situation can prudently do. He was able to competently evaluate and control Jacinto's demands and thus prevent compromising respondent's image, employees and clients to an alarming scene.

The Court has repeatedly emphasized that the act that breached the trust must be willful such that it was done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently (*The Coca-Cola Export Corporation vs. Gacayan, G.R. No. 149433, June 22, 2011*). The conditions under which the clearance was issued exclude any finding of deliberate or conscious effort on the part of the petitioner to prejudice his employer. Also, the petitioner did not commit an irregular or prohibited act. He did not falsify or misrepresent any company record as it was officially confirmed by the branch cashier that the items covered by the clearance were truly settled by Jacinto. Hence, the respondents had no factual basis in declaring that the petitioner violated Category B Grave Offense No. 1 of the Company Code of Conduct and Discipline. The respondents cannot capitalize on the petitioner's lack of authority to issue a clearance to resigned employees. *First*, it remains but an unsubstantiated allegation despite the several opportunities for them in the proceedings below to show, through bank documents, that the petitioner is not among those officers so authorized. *Second*, it is the Court's considered view that by virtue of the petitioner's stature in respondent bank, it was well within his discretion to sign or certify the truthfulness of facts as they appear in RBSJI's records. Here, the records of RBSJI's cashier clearly showed that Jacinto paid the cash advances and salary loan covered by the clearance issued by the petitioner. Lastly, the seven-month gap between the clearance incident and the April 17, 1997 memorandum asking the petitioner to explain his action is too lengthy to be ignored. It likewise remains uncontroverted that during such period, respondent Jesus verbally terminated the petitioner only to recall the same and instead ask the latter to tender a resignation letter. When the petitioner refused, he was sent the memorandum questioning his issuance of a clearance to Jacinto seven months earlier. The confluence of these undisputed circumstances supports the inference that the clearance incident was a mere afterthought used to gain ground for the petitioner's dismissal. Loss of trust and confidence as a ground for dismissal has never been intended to afford an occasion for abuse because of its subjective nature. It should not be used as a subterfuge for causes which are illegal, improper and unjustified. It must be genuine, not a mere afterthought intended to justify an earlier action taken in bad faith (*Lima Land, Inc. vs. Cuevas, G.R. No. 169523, June 16,*

**2010**). All told, the unsubstantiated claims of the respondent fall short of the standard proof required for valid termination of employment. They failed to clearly and convincingly establish that the petitioner's act of issuing a clearance to Jacinto rendered him unfit to continue working for RBSJI. The petitioner was illegally dismissed from employment and is entitled to back wages, to be computed from the date he was illegally dismissed until the finality of this decision.

(b) Yes. In accordance with current jurisprudence, the award of back wages shall earn legal interest at the rate of six percent (6%) *per annum* from the date of the petitioner's illegal dismissal until the finality of this decision (*Aliling vs. Feliciano, G.R. No. 18529, April 25, 2012*). Thereafter, it shall earn 12% legal interest until fully paid (*Sessions Delights Ice Cream and fast Foods vs. Court of Appeals, G.R. No. 172149, February 8, 2010*) in accordance with the guidelines in *Eastern Shipping Lines, Inc., v. Court of Appeals (1994)*. In addition to his back wages, the petitioner is also entitled to separation pay. It cannot be gainsaid that animosity and antagonism have been brewing between the parties since the petitioner was gradually eased out of key positions in respondent and to reinstate him will only intensify their hostile working atmosphere (*Bank of Lubao, Inc. vs. Manabat, G.R. No. 188722, February 1, 2012*). Thus, based on strained relations, separation pay equivalent to one (1) month salary for every year of service, with a fraction of a year of at least six (6) months to be considered as one (1) whole year, should be awarded in lieu of reinstatement, to be computed from date of his engagement by respondent up to the finality of this decision. The award of separation pay in case of strained relations is more beneficial to both parties in that it liberates the employee from what could be a highly oppressive work environment in as much as it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.

(c) Yes. In *M+W Zander Philippines, Inc. vs. Enriquez, G.R. No. 169173, June 5, 2009*, the Court decreed that illegal dismissal, by itself alone, does not entitle the dismissed employee to moral damages; additional facts must be pleaded and proven to warrant the grant of moral damages, thus: “[M]oral damages are recoverable only where the dismissal of the employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy. Such an award cannot be justified solely upon the premise that the employer fired his employee without just cause or due process. Additional facts must be pleaded and proven to warrant the grant of moral damages under the Civil Code, *i.e.*, that the act of dismissal was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy; and, of course, that social humiliation, wounded feelings, grave anxiety, and similar injury resulted therefrom.” Bad faith does not connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty through some motive or interest or ill will; it partakes of the nature of fraud (*Wensha Spa Center, Inc. vs. Yung, G.R. No. 185122, August 16, 2010*). Here, the petitioner failed to prove that his dismissal was attended by explicit oppressive, humiliating or demeaning acts. The following events merely sketch the struggle for power within the upper management of RBSJI between the “old guys” and the “new guys”; they do not convincingly prove that the respondents schemed to gradually ease the petitioner out, *viz*: (1) his promotion as Vice-President; (2) his replacement by Jobel as Personnel and Marketing Manager; (2) his designation as Acting Manager of N. Domingo branch and the recall thereof on the very next day; (3) the presence of Andres, Jose and Ofelia at the N. Domingo branch in the morning of September 27, 1996; and (4) George's inaction on the petitioner's request to be transferred to the operations or marketing department. As disagreeable as they may seem, these acts cannot be equated with bad faith that can justify an award of damages. Since no moral damages can be granted under the facts of the case, exemplary damages cannot also be awarded (*Pacqing vs. Coca-Cola Philippines, Inc., G.R. No. 157966, January 31, 2008*).

(d) No. In the same vein, the individual respondents cannot be made solidarily liable with RBSJI for the illegal dismissal. Time and again, the Court has held that a corporation has its own legal personality

separate and distinct from those of its stockholders, directors or officers. Hence, absent any evidence that they have exceeded their authority, corporate officers are not personally liable for their official acts. Corporate directors and officers may be held solidarily liable with the corporation for the termination of employment only if done with malice or in bad faith (*Londonio vs. Bio Research, Inc., G.R. No. 191459, January 17, 2011*). As discussed above, the acts imputed to the respondents do not support a finding of bad faith. In addition, the lack of a valid cause for the dismissal of an employee does not *ipso facto* mean that the corporate officers acted with malice or bad faith. There must be an independent proof of malice or bad faith (*Lambert Pawnbrokers and Jewelry Corporation vs. Binamira, G.R. No. 170464, July 12, 2010*), which is absent in the case at bar.

(e) No. Being a managerial employee, the petitioner is not entitled to 13<sup>th</sup> month pay. Pursuant to Memorandum Order No. 28, as implemented by the Revised Guidelines on the Implementation of the 13<sup>th</sup> Month Pay Law dated November 16, 1987, managerial employees are exempt from receiving such benefit without prejudice to the granting of other bonuses, in lieu of the 13<sup>th</sup> month pay, to managerial employees upon the employer's discretion (*House of Sara Lee vs. Rey, 532 Phil 121 [2006]*).

(f) Yes. It is settled that where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable (*Lambert Pawnbrokers and Jewelry Corporation vs. Binamira, G.R. No. 170464, July 12, 2010*). Pursuant to Article 111 of the Labor Code, ten percent (10%) of the total award is the reasonable amount of attorney's fees that can be awarded.

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**COMPUTATION OF BACK SALARIES: VACATION LEAVE PAY/  
TONNAGE BONUS; ATTORNEY'S FEES**

**Tangga-an vs. Philippine Transmarine Carriers, Inc., et. al.  
G.R. No. 180636, March 13, 2013**

***Facts:***

Petitioner filed a Complaint for illegal dismissal with prayer for payment of salaries for the unexpired portion of his contract, leave pay, exemplary and moral damages, attorney's fees and interest. The Labor Arbiter rendered a Decision finding petitioner to have been illegally dismissed. As regards petitioner's claim for back salaries, the Labor Arbiter found petitioner entitled not to four months which is equivalent to the unexpired portion of his contract, but only to three months, inclusive of vacation leave pay and tonnage bonus (or US\$8,200 x 3 months = US\$24,600) pursuant to Section 10 of Republic Act (RA) No. 8042. Regarding petitioner's claim for damages, the same was denied for failure to prove bad faith on the part of the respondents. However, attorney's fees equivalent to 10% of the total back salaries was awarded because petitioner was constrained to litigate. The NLRC affirmed the Labor Arbiter. On appeal, the Court of Appeals ruled that petitioner is entitled to three (3) months salary representing the unexpired portion of his contract in the total amount of US\$15,000.00 or its peso equivalent at the exchange rate prevailing at the time of payment, and placement fee should be reimbursed with 12% interest per annum. The CA adhered to the finding of illegal dismissal. But on the subject of monetary awards, the CA considered only petitioner's monthly US\$5,000.00 basic salary and disregarded his monthly US\$2,500.00 vacation leave pay and US\$700.00 tonnage bonus. It likewise held that petitioner's "unexpired portion of contract" for which he is entitled to back salaries should only be three months pursuant to Section 10 of RA 8042. In addition, petitioner should be paid back his placement fee with interest at the rate of 12% *per annum*. As to attorney's fees, the CA did not agree with the NLRC's finding that bad faith on the part of respondents was present to justify the award of attorney's fees. It held

that there is nothing from the facts and proceedings to suggest that respondents acted with dishonesty, moral obliquity or conscious doing of wrong in terminating petitioner's services.

**Issues:**

- (a) Did the Court of Appeals err in excluding the petitioner's vacation leave pay and tonnage bonus in the computation of his back salaries?
- (b) Did the Court Appeals err in deleting the award of attorney's fees?

**Ruling:**

(a) Yes. In the very heart of the judicial system, labor cases occupy a special place. More than the State guarantees of protection of labor and security of tenure, labor disputes involve the fundamental survival of the employees and their families, who depend upon the former for all the basic necessities in life. Thus, petitioner must be awarded his salaries corresponding to the unexpired portion of his six-months employment contract, or equivalent to four months. This includes all his corresponding monthly vacation leave pay and tonnage bonuses which are expressly provided and guaranteed in his employment contract as part of his monthly salary and benefit package. These benefits were guaranteed to be paid on a monthly basis, and were not made contingent. In fact, their monetary equivalent was fixed under the contract: US\$2,500.00 for vacation leave pay and US\$700.00 for tonnage bonus each month. Thus, petitioner is entitled to back salaries of US\$32,800 (or US\$5,000 + US\$2,500 + US\$700 = US\$8,200 x 4 months). "Article 279 of the Labor Code mandates that an employee's full backwages shall be inclusive of allowances and other benefits or their monetary equivalent." It is the obligation of the employer to pay an illegally dismissed employee or worker the whole amount of the salaries or wages, plus all other benefits and bonuses and general increases, to which he would have been normally entitled had he not been dismissed and had not stopped working." This well defined principle has likewise been lost on the CA in the consideration of the case.

(b) Yes. The Court's discussion on the award of attorney's fees in *Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa MWC-East Zone Union vs. Manila Water Company, Inc., G.R. No. 174179, November 16, 2011*, speaking through Justice Brion, is instructive, viz: Article 111 of the Labor Code, as amended, governs the grant of attorney's fees in labor cases:

"Art. 111. Attorney's fees. – (a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered; (b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the amount of wages recovered." Section 8, Rule VIII, Book III of its Implementing Rules also provides, viz.: "Section 8. Attorney's fees. – Attorney's fees in any judicial or administrative proceedings for the recovery of wages shall not exceed 10% of the amount awarded. The fees may be deducted from the total amount due the winning party."

The Court explained in *PCL Shipping Philippines, Inc. v. National Labor Relations Commission* that there are two commonly accepted concepts of attorney's fees – the ordinary and extraordinary. In its ordinary concept, an attorney's fee is the reasonable compensation paid to a lawyer by his client for the legal services the former renders; compensation is paid for the cost and/or results of legal services per agreement or as may be assessed. In its extraordinary concept, attorney's fees are deemed indemnity for damages ordered by the court to be paid by the losing party to the winning party. The instances when these may be awarded are enumerated in Article 2208 of the Civil Code, specifically in its paragraph 7 on actions for recovery of wages, and is payable not to the lawyer but to the client, unless the client and his lawyer have agreed that the award shall accrue to the lawyer as additional or part of compensation. Article 111 of the Labor Code, as amended, contemplates the extraordinary concept of attorney's fees and that Article 111 is an exception to the declared policy of strict construction in the award of attorney's fees.

Although an express finding of facts and law is still necessary to prove the merit of the award, there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages.

The Court similarly so ruled in *RTG Construction, Inc. vs. Facto* and in *Ortiz vs. San Miguel Corporation*. In *RTG Construction*, it specifically stated: “Settled is the rule that in actions for recovery of wages, or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interests, a monetary award by way of attorney's fees is justifiable under Article 111 of the Labor Code; Section 8, Rule VIII, Book III of its Implementing Rules; and paragraph 7, Article 2208 of the Civil Code. The award of attorney's fees is proper, and there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. There need only be a showing that the lawful wages were not paid accordingly.” In *PCL Shipping*, the Court found the award of attorney's fees due and appropriate since the respondent therein incurred legal expenses after he was forced to file an action for recovery of his lawful wages and other benefits to protect his rights. From this perspective and the above precedents, the Court conclude that the CA erred in ruling that a finding of the employer's malice or bad faith in withholding wages must precede an award of attorney's fees under Article 111 of the Labor Code.

To reiterate, a plain showing that the lawful wages were not paid without justification is sufficient. In this case, it is already settled that petitioner's employment was illegally terminated. As a result, his wages as well as allowances were withheld without valid and legal basis. Otherwise stated, he was not paid his lawful wages without any valid justification. Consequently, he was impelled to litigate to protect his interests. Thus, pursuant to the above ruling, he is entitled to receive attorney's fees. An award of attorney's fees in petitioner's favor is in order in the amount of US\$3,280 (or US\$32,800 x 10%).

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