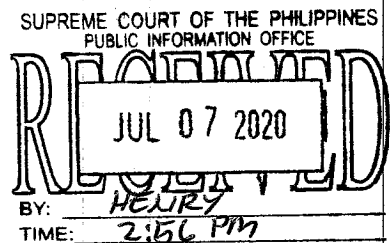




Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION



NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **February 24, 2020**, which reads as follows:*

“G.R. No. 247864 (Service Year Plastic Products, Virgilio Alterado and Beverly Alterado v. Diogenes Lita Diaz). – Before this Court is a Petition for Review on *Certiorari*¹ assailing the Decision² dated September 19, 2018 and Resolution³ dated June 17, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 140042, which awarded, in favor of Diogenes Lita Diaz (respondent), separation pay equivalent to one month salary for every year of service, in lieu of reinstatement.

The Facts of the Case

This case arose from a complaint for illegal dismissal with money claims and damages filed by respondent against Service Year Plastic Products (SYPP), and its owners, Virgilio Alterado (Virgilio) and Beverly Alterado (collectively, petitioners).

The record showed that sometime in August 2001, respondent was employed by SYPP as a helper. After three months, he was promoted as a machine operator. In 2010, he was relegated to be an all-around helper. During respondent’s employment, SYPP allowed respondent and his family to live in its warehouse.⁴

On April 29, 2013, Virgilio was in a bad mood. He uttered bad words to respondent and criticized the latter’s work, which led to a verbal altercation between the two of them. Out of respect, respondent left the scene and went home early, but with Virgilio’s permission and prior notice to the office.⁵

¹ *Rollo*, pp. 8-25.

² Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Franhito N. Diamante and Rafael Antonio M. Santos, concurring; *id.* at 27-36.

³ *Id.* at 37-38.

⁴ *Id.* at 44-45.

⁵ *Id.* at 45.

On May 2, 2013, respondent received a text message from petitioners instructing his wife to report to the office for a meeting regarding the April 29, 2013 incident.⁶

Respondent's wife complied and informed petitioners that respondent would take a leave of absence, but the latter told her that such leave was no longer needed because respondent was already terminated from service. Respondent's wife asked if respondent would receive any benefits considering his 12 years of service, but petitioners did not comment further.⁷

When respondent found out about his termination, he decided to move out of the warehouse where they were allowed to stay.⁸

As soon as his request for the payment of his separation pay went unheeded, he decided to file a case for illegal dismissal with money claims against the petitioners.⁹

For their part, the petitioners claim that the respondent was not illegally dismissed and claimed that the latter abandoned his work.

Ruling of the Labor Arbiter

On October 31, 2013, the Labor Arbiter (LA) rendered its Decision¹⁰ finding petitioners guilty of Illegal Dismissal and ordered them pay respondent the total amount of ₱264,123.38, representing: (1) backwages computed from the time of his dismissal up to the date hereof; (2) separation pay equivalent to one month pay for every year of service; and (3) holiday pay, service incentive leave pay and 13th month pay.¹¹

The LA held that since petitioners did not file their position paper despite due notice, respondent has established the fact of his dismissal, since his allegations remained uncontroverted. The LA said that respondent's dismissal was not based on any just or authorized cause, and he was not given any prior notice of any charge nor given any opportunity to explain.¹²

Petitioners filed an appeal with the National Labor Relations Commission (NLRC).¹³

⁶ Id.

⁷ Id.

⁸ Id. at 28.

⁹ Id. at 51-52.

¹⁰ Penned by Labor Arbiter Raymund M. Celino; id. at 53-59.

¹¹ Id. at 58.

¹² Id. at 56.

¹³ Id. at 60-66.

Ruling of the National Labor Relations Commission

In a Resolution¹⁴ dated October 31, 2014, the NLRC reversed the ruling of the LA and ordered petitioners to immediately reinstate respondent to his former position but without backwages. The NLRC deleted the awards for separation pay, holiday pay, service incentive leave pay, and 13th month pay for lack of merit.

The NLRC held that respondent failed to establish the fact of his dismissal from service, since he merely relied on the information given by his wife that he was already terminated from work. The NLRC said that respondent could have easily validated such information considering that they lived in petitioners' warehouse.¹⁵ On the other hand, the NLRC held that petitioners failed to prove that respondent abandoned his work. Accordingly, each party must bear his own loss, thus, respondent must return to work and petitioners must accept him back to his former position without payment of backwages under the principle of "no work, no pay."¹⁶

Respondent moved for reconsideration¹⁷ arguing that the NLRC should have directed the payment of separation pay instead of reinstatement, but it was denied.¹⁸ Thereafter, a Notice to Return/Report to Work¹⁹ order dated June 5, 2015 was issued by the NLRC.

Undeterred, respondent filed a petition for certiorari²⁰ with the CA.

On September 19, 2018, the CA affirmed the NLRC's ruling with modification that petitioners were ordered to pay respondent separation pay equivalent to one month salary for every year of service, in lieu of reinstatement in the amount of P132,912.00.²¹

The CA held that there being no dismissal and abandonment, the appropriate course of action is to reinstate the employee without the payment of backwages. However, when a considerable length of time had passed, rendering it impossible for the employee to return to work, the award of separation pay is proper, as in this case where more than five years had passed since the controversy started on May 2, 2013.

Both parties filed their respective motions for reconsideration but they were both denied, hence, this petition.

¹⁴ Penned by Commissioner Alan A. Ventura, with Commissioners Gregorio O. Bilog, III and Erlinda T. Agus, concurring; id. at 44-50.

¹⁵ Id. at 46-47.

¹⁶ Id. at 48.

¹⁷ Id. at 71-76.

¹⁸ Id. at 77-79.

¹⁹ Id. at 227.

²⁰ Id. at 80-99.

²¹ Monthly salary P11,076 x 12 years (2001 to 2013) = P132,912.00

Petitioners argued that separation pay in lieu of reinstatement is not proper, as in this case, since there was no finding of illegal dismissal.

In their Comment,²² respondent maintains that he is entitled to separation pay, not only as a substitute for reinstatement, but because he was illegally dismissed. He insists that the circumstances of this case established his dismissal from employment. In addition, he was not furnished with the required notices under the law which bolsters his claim of illegal dismissal.

Issue

The issue in this case is whether the CA erred in granting separation pay in lieu of reinstatement to the respondent.

The Court's Ruling

The Court finds merit in the petition.

In rationalizing its grant of separation pay in lieu of reinstatement, the CA followed the Court's ruling in the case of *Dee Jay's Inn v. Raneses*,²³ which cited the case of *Nightowl Watchman & Security Agency, Inc. v. Lumahan*,²⁴ where the Court held that when a considerable length of time had passed rendering it impossible for the employee to return to work, the award of separation pay is proper.²⁵

Nonetheless, in the case of *Claudia's Kitchen, Inc. and Squillantini, v. Tanguin*,²⁶ the Court enumerated the instances when separation pay is warranted and its exception:

In sum, separation pay is only awarded to a dismissed employee in the following instances: 1) in case of closure of establishment under Article 298 [formerly Article 283] of the Labor Code; 2) in case of termination due to disease or sickness under Article 299 [formerly Article 284] of the Labor Code; 3) as a measure of social justice in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character; 4) where the dismissed employee's position is no longer available; 5) when the continued relationship between the employer and the employee is no longer viable due to the strained relations between them; or 6) when the dismissed employee opted not to be reinstated, or the payment of separation benefits would be for the best interest of the parties involved. In all of these cases, the grant of separation pay presupposes that the employee to whom it was given was dismissed from

²² Id. at 266-270.

²³ 796 Phil. 574 (2016).

²⁴ 771 Phil. 391 (2015).

²⁵ Supra note 23 at 596.

²⁶ 811 Phil. 784 (2017).

employment, whether legally or illegally. In fine, as a general rule, separation pay in lieu of reinstatement could not be awarded to an employee whose employment was not terminated by his employer.

In *Dee Jay's Inn and Cafe v. Raneses*, the Court wrote that in **“a case where the employee was neither found to have been dismissed nor to have abandoned his/her work, the general course of action is for the Court to dismiss the complaint, direct the employee to return to work, and order the employer to accept the employee.”**

There were cases, however, wherein the Court awarded separation pay in lieu of reinstatement to the employee even after a finding that there was neither dismissal nor abandonment. In *Nightowl Watchman & Security Agency, Inc. v. Lumahan (Nightowl)* the Court awarded separation pay in view of the findings of the NLRC that respondent stopped reporting for work for more than ten (10) years and never returned, based on the documentary evidence of petitioner.²⁷ (Emphasis in the original; citations omitted.)

Evidently, the case cited by the CA is merely an exception on the grant of the award of separation pay. In this case, the circumstances do not warrant an application of the exception. Notably, it was barely five years when the altercation between respondent and Virgilio took place. It cannot be said that a significant length of time had already lapsed especially in this case when the records showed that a Notice to Return/Report to Work²⁸ order dated June 5, 2015 was issued by petitioners, which respondent ignored.

What is evident in this case is the fact that the respondent has no intention of returning to work, and merely wanted to claim whatever monetary benefits he could avail. The records also show that respondent did not appeal the Decision of the CA finding that he was not illegally dismissed.

Consequently, there is no justification for the award of separation pay in lieu of reinstatement. Still, the general rule that where the employee was neither found to have been dismissed nor to have abandoned his/her work, the general course of action is for the Court to dismiss the complaint, direct the employee to return to work, and order the employer to accept the employee. The NLRC was correct in ruling against the payment of backwages, separation pay and other monetary benefits following the “no work, no pay” principle. Thus, where the employee’s failure to work was occasioned neither by his abandonment nor by a termination, the burden of economic loss is not rightfully shifted to the employer, and each party must bear his or her own loss.²⁹

²⁷ Id. at 799-800.

²⁸ Id. at 227.

²⁹ *Tri-C General Services v. Matuto*, 770 Phil. 251, 264 (2015).

WHEREFORE, the Decision dated September 19, 2018 and Resolution dated June 17, 2019 of the Court of Appeals in CA-G.R. SP No. 140042 are hereby **AFFIRMED with MODIFICATION** in that petitioners Service Year Plastic Products, Virgilio Alterado, and Beverly Alterado are hereby **ORDERED** to accept respondent Diogenes Lita Diaz to his former position but without payment, within ten (10) days from notice of this Resolution. On the other hand, respondent is hereby **DIRECTED** to report for work within ten (10) days from notice from petitioners; otherwise, he shall be deemed to have abandoned his employment with petitioners.

SO ORDERED.”

Very truly yours,

Misael Domingo C. Battung III
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court *7/19/2020*

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