

## SECOND DIVISION

**[ G.R. No. 181913, March 05, 2010 ]**

**DANIEL P. JAVELLANA, JR., PETITIONER, VS. ALBINO BELEN,  
RESPONDENT.**

**[G.R. No. 182158]**

**ALBINO BELEN, PETITIONER, VS. DANIEL P. JAVELLANA, JR.  
AND JAVELLANA FARMS, INC., RESPONDENTS.**

### **D E C I S I O N**

**ABAD, J.:**

This case is about the proper computation of the monetary awards of an illegally dismissed employee.

#### **The Facts and the Case**

On May 9, 2000 petitioner Albino Belen (Belen) filed a complaint<sup>[1]</sup> against respondents Javellana Farms, Inc. and Daniel Javellana, Jr. (Javellana) for illegal dismissal and underpayment or non-payment of salaries, overtime pay, holiday pay, service incentive leave pay (SILP), 13<sup>th</sup> month pay, premium pay for holiday, and rest day as well as for moral and exemplary damages and attorney's fees.<sup>[2]</sup>

Petitioner Belen alleged that respondent Javellana hired him as company driver on January 31, 1994<sup>[3]</sup> and assigned him the tasks of picking up and delivering live hogs, feeds, and lime stones used for cleaning the pigpens.<sup>[4]</sup> On August 19, 1999 Javellana gave him instructions to (a) pick up lime stones in Tayabas, Quezon; (b) deliver live hogs at Barrio Quiling, Talisay, Batangas; (c) have the delivery truck repaired; and (d) pick up a boar at Joliza Farms in Norzagaray, Bulacan.<sup>[5]</sup>

Petitioner Belen further alleged that his long and arduous day finally ended at 4:30 a.m. of the following day, August 20, 1999. But after just three hours of sleep, respondent Javellana summoned him to the office. When he arrived at 8:20 a.m., Javellana had left. After being told that the latter would not be back until 4:00 p.m., Belen decided to go home and get some more sleep.<sup>[6]</sup>

Petitioner Belen was promptly at the office at 4:00 p.m. but respondent Javellana suddenly blurted out that he was firing Belen from work. Deeply worried that he might not soon get another job, Belen asked for a separation pay. When Javellana offered him only P5,000.00, he did not accept it.<sup>[7]</sup>

Respondent Javellana claimed, on the other hand, that he hired petitioner Belen in 1995, not as a company driver, but as family driver.<sup>[8]</sup> Belen did not do work for his

farm on a regular basis, but picked up feeds or delivered livestock only on rare occasions when the farm driver and vehicle were unavailable.<sup>[9]</sup>

Regarding petitioner Belen's dismissal from work, respondent Javellana insisted that he did it for a reason. Belen intentionally failed to report for work on August 20, 1999 and this warranted his dismissal.<sup>[10]</sup>

In a decision<sup>[11]</sup> dated November 25, 2002, the Labor Arbiter found petitioner Belen to be a company driver as evidenced by the pay slips<sup>[12]</sup> that the farm issued to him. Since his abrupt dismissal from work violated his right to due process, it was illegal.<sup>[13]</sup> The Labor Arbiter awarded him backwages, separation pay, 13<sup>th</sup> month pay, SILP, holiday pay, salary differential, and attorney's fees.<sup>[14]</sup>

On appeal, the National Labor Relations Commission (NLRC) issued a resolution<sup>[15]</sup> dated October 23, 2003, modifying the decision of the Labor Arbiter. The NLRC was convinced that respondent Javellana hired petitioner Belen as a family driver but required him to make certain errands that were related to the farm business. Like the Labor Arbiter, the NLRC also found Belen to have been illegally dismissed. But since he was but a family driver, the NLRC deleted the award of backwages and separation pay and instead ordered Javellana to pay him 15 days salary by way of indemnity pursuant to Article 149 of the Labor Code. Belen moved for reconsideration, but the NLRC denied his motion.<sup>[16]</sup>

Aggrieved, petitioner Belen elevated the matter to the Court of Appeals (CA),<sup>[17]</sup> which in its Decision<sup>[18]</sup> dated September 12, 2007, reverted back to the decision of the Labor Arbiter. The CA held that Belen was a company driver since, aside from driving respondent Javellana and his family, he also did jobs that were needed in Javellana's business operations, such as hauling and delivering live hogs, feeds, and lime stones for the pig pens.<sup>[19]</sup> The CA also said that Javellana's abrupt dismissal of Belen for an isolated case of neglect of duty was unjustified.<sup>[20]</sup> The appellate court, however, modified the award of backwages and separation pay, as it found the computation to be erroneous.<sup>[21]</sup>

Both respondent Javellana and petitioner Belen moved for reconsideration of the decision but the CA denied them both on March 3, 2008. <sup>[22]</sup> Undaunted, they both took recourse to this Court in G.R. 181913 and G.R. 182158, respectively.

The Court consolidated the two cases in its Resolution of July 2, 2008.<sup>[23]</sup> But on July 16, 2008, having initially examined the petition in G.R. 181913, the Court denied due course to it for respondent Javellana's failure to sufficiently show reversible error in the assailed decision.<sup>[24]</sup> Javellana moved for reconsideration but the Court denied it with finality on September 22, 2008.<sup>[25]</sup>

### **Questions Presented**

The questions presented in this case are:

1. Whether or not the Labor Arbiter correctly computed petitioner Belen's backwages and separation pay; and

2. Whether or not the monetary award in his favor should run until the finality of the decision in his case.

### **The Court's Rulings**

**One.** Petitioner Belen points out that the Labor Arbiter correctly computed his monetary award although he appeared to have been awarded more than what was right because of a typographical error in the statement of the period that his **backwages** covered. The Labor Arbiter's approved computation gave the period as from August 20, 1999 to November 19, **2000** when the proper period was from August 20, 1999, the date he was dismissed from work, to November 25, **2002**, the date the Labor Arbiter rendered his decision in the case.<sup>[26]</sup>

For the same reason, petitioner Belen claims that his separation pay should be computed from January 31, 1994, when he was hired, up to November 25, **2002**, when the Labor Arbiter rendered his decision. Belen also insists that the 10% attorney's fees awarded to him be based on the total amount arrived at, not by the appellate court, but by the Labor Arbiter.<sup>[27]</sup>

After taking such position initially, petitioner Belen claims that the amount awarded to him by the Labor Arbiter merely represents a portion of what he was entitled to. The award of backwages to which he was entitled should continue to run until the decision in his favor has become final.<sup>[28]</sup>

Respondent Javellana points out, however, that the Labor Arbiter's decision clearly shows that he intended to award backwages and separation pay only until November 19, 2000.<sup>[29]</sup> Javellana also disagreed that the monetary award should be reckoned until the finality of the decision in petitioner Belen's favor. The Labor Arbiter expressly limited the amount of that award since he granted Belen's request to be given separation pay instead of being reinstated.<sup>[30]</sup>

It is obvious from a reading of the Labor Arbiter's decision that the date November **19, 2000** stated in the computation was mere typographical error. Somewhere in the body of the decision is the categorical statement that petitioner Belen "is entitled to backwages from August 20, 1999 **up to the date of this decision.**"<sup>[31]</sup> Since the Labor Arbiter actually rendered his decision on November 25, **2002**,<sup>[32]</sup> it would be safe to assume that he caused the computation of the amount of backwages close to that date or on November 19, **2002**. The same could be said of the computation of petitioner Belen's separation pay.

**Two.** This leads us to the question, does the amount that the Labor Arbiter awarded petitioner Belen represent all that he will get when the decision in his case becomes final or does it represent only the amount that he was entitled to at the time the Labor Arbiter rendered his decision, leaving room for increase up to the date the decision in the case becomes final?

Article 279 of the Labor Code, as amended by Section 34 of Republic Act 6715 instructs:

**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.**

Clearly, the law intends the award of backwages and similar benefits to accumulate past the date of the Labor Arbiter's decision until the dismissed employee is actually reinstated.<sup>[33]</sup> But if, as in this case, reinstatement is no longer possible, this Court has consistently ruled that backwages shall be computed from the time of illegal dismissal until the date the decision becomes final.<sup>[34]</sup>

As it happens, the parties filed separate petitions before this Court. The petition in G.R. 181913, filed by respondent Javellana, questioned the CA's finding of illegality of dismissal while the petition in G.R. 182158, filed by petitioner Belen, challenged the amounts of money claims awarded to him. The Court denied the first with finality in its resolution of September 22, 2008;<sup>[35]</sup> the second is the subject of the present case. Consequently, Belen should be entitled to backwages from August 20, 1999, when he was dismissed, to September 22, 2008, when the judgment for unjust dismissal in G.R. 181913 became final.

Separation pay, on the other hand, is equivalent to one month pay for every year of service, a fraction of six months to be considered as one whole year.<sup>[36]</sup> Here that would begin from January 31, 1994 when petitioner Belen began his service. Technically the computation of his separation pay would end on the day he was dismissed on August 20, 1999 when he supposedly ceased to render service and his wages ended. But, since Belen was entitled to collect backwages until the judgment for illegal dismissal in his favor became final,<sup>[37]</sup> here on September 22, 2008, the computation of his separation pay should also end on that date.

Further, since the monetary awards remained unpaid even after it became final on September 22, 2008 because of issues raised respecting the correct computation of such awards, it is but fair that respondent Javellana be required to pay 12% interest per annum on those awards from September 22, 2008 until they are paid. The 12% interest is proper because the Court treats monetary claims in labor cases the equivalent of a forbearance of credit.<sup>[38]</sup> It matters not that the amounts of the claims were still in question on September 22, 2008. What is decisive is that the issue of illegal dismissal from which the order to pay monetary awards to petitioner Belen stemmed had been long terminated.<sup>[39]</sup>

**WHEREFORE**, the Court **GRANTS** the petition, **SETS ASIDE** the decision of the Court of Appeals dated September 12, 2007 and its resolution dated March 3, 2008 in CA-G.R. SP 83354, **REINSTATES** the decision of the Labor Arbiter dated November 25, 2002 in NLRC-NCR Case 30-09-04294-01 with the modification that the awards of backwages be computed from August 20, 1999 to September 22, 2008 and the separation pay, from January 31, 1994 to September 22, 2008; the