

THIRD DIVISION

[G.R. No. 107234, August 24, 1998]

**ALFREDO BONGAR, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION AND AMA COMPUTER COLLEGE,
RESPONDENTS.**

D E C I S I O N

ROMERO, J.:

Petitioners Alfredo R. Bongar was employed as instructor by respondent AMA Computer College (AMA) in its Social Science and Languages Department. His employment contract, which was renewed several times,^[1] commenced on November 28, 1986 and ended on May 31, 1990 when AMA decided not to renew his contract which was due to expire on June 2, 1990.

After having served for more than three years, which is the probationary period for teachers as provided for by the Manual of Regulations for Private Schools, petitioner claimed that he had acquired the status of a permanent employee; hence he is entitled to his tenurial security. AMA, however, maintained otherwise. It argued that petitioner's severance from employment was due to the expiration of his contract. Another version proffered for the latter's dismissal was that students lodged numerous complaints before the school's administration regarding petitioner's unsatisfactory performance, e.g. "merely reads the text for the subject he was teaching and shows no innovative conduct in the presentation thereof."^[2] AMA asserted that petitioner was hired on a contractual basis and upon the termination of said contract without the same being renewed, the employer-employee relations between them has, perforce, ceased. Hence, petitioner could not be considered to have been dismissed.

Furthermore, AMA contended that petitioner could not be classified as a regular employee as the employment record would show that he has served as full-time instructor only for two years and nine and a half months, short of the three-year full-time service required by law.

In a complaint for illegal dismissal filed by petitioner against AMA, Labor Arbiter Ricardo C. Nora rendered a decision dated April 2, 1991, the decretal portion of which reads:

"IN VIEW OF THE FOREGOING, respondents AMA Computer College and/or Amable R. Aguiluz V are hereby ordered to pay complainant Bongar the aggregate sum of FIFTY THOUSAND FOUR HUNDRED (P50,400.00) PESOS representing complainant's separation pay and backwages within ten (10) days from receipt of this decision.

All other issues are dismissed for lack of merit

SO ORDERED.”^[3]

AMA appealed the same with regard to the finding of illegal dismissal. Petitioner, on the other hand, argued that the labor arbiter erred, not only when he denied the prayer for reinstatement but also when he failed to award moral and exemplary damages.

In a resolution dated September 8, 1992, the National Labor Relations Commission (NLRC) affirmed the said decision, dismissing the appeals of both parties for lack of merit. Hence this petition.

We resolve to grant the petition.

In denying the issuance of the reinstatement order, the Labor Arbiter and the NLRC erred in finding that there existed a strained relationship between the parties, thus, justifying the award of separation pay to the exclusion of the order of reinstatement.

It must be noted that the principal cause of petitioner’s dismissal was the alleged expiration of his teaching contract. This contention, however, is negated by the fact that petitioner, as the record shows, had rendered service for nearly four (4) years. AMA’s contention that petitioner could not qualify as a regular employee for failure to comply with the three-year full-time service rule is likewise unavailing. On this point, we concur with the opinion laid down by the NLRC, to wit:

"If this line of reasoning (which We perceive to be too technical to serve the ends of justice) is adopted in the process of determining the regularity of a teacher’s employment, the possibility of a teacher becoming infinitely non-regular is not too far-fetched to expect. For all that an unscrupulous school has to do to negate or render meaningless the rule on probationary employment, is to inflexibly confine the recruitment or employment of its teachers to part-time basis, or to revert, as what happened to the complainant herein, an originally full-time status to mere part-time basis to prevent in any way the incumbent teacher from becoming regular, a subtle way of circumventing the Labor Code provisions on probationary employment.”^[4] (Underscoring supplied)

On the premise that the dismissal was brought about by the expiration of the contract, no basis exists to justify a finding of strained relations between the parties. Moreover, AMA’s allegation that petitioner’s employment was terminated due to the complaints it received from the students is likewise untenable for lack of factual basis, the same being unsubstantiated. What is patent is that petitioner was not afforded the twin requirements of notice and hearing which constitute the essential elements of due process, thus making his dismissal illegal.

In view thereof, “an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and to his backwages computed from the time his compensation was withheld from him up to the time of his reinstatement.”^[5] This apparently unqualified rule, however, admits of an exception. Thus, an illegally dismissed employee is entitled to: (1) either reinstatement if viable or separation pay if reinstatement is no longer viable, and (2) backwages. Jurisprudence^[6] abound to the effect that the grant of separation pay can substitute if reinstatement is not feasible, such as in the case of a strained employer-employee