

SECOND DIVISION

[G.R. No. 120677, December 21, 1998]

**FOOD TRADERS HOUSE, INC., PETITIONER, VS. NATIONAL
LABOR RELATIONS COMMISSION AND BARBARA A. CAMACHO-
ESPINO, RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

FOOD TRADERS HOUSE, INC. hired Barbara Camacho-Espino as its Marketing Manager. Eventually however discord set in between her and its President and General Manager Orlando Alinas. On 30 January 1992 Espino was summoned to the office of Alinas and summarily notified of her dismissal effective the following day. Petitioner withheld Espino's salary for the period 15-30 January 1992 and applied it to her personal loan with Alinas.

In a Complaint for Illegal Dismissal and Illegal Deduction filed by Espino against petitioner and Alinas, the Labor Arbiter found that Espino's dismissal was illegal as it was without valid cause and due process, at the same time ruling that petitioner was correct in garnishing the salary of Espino and applying the same to her personal loan. Consequently, the Labor Arbiter ordered Espino's immediate reinstatement, payment of full back wages and attorney's fees.

After the National Labor Relations Commission affirmed the decision of the Labor Arbiter, Espino filed a Motion for Execution. On 14 April 1994 a writ of execution was issued^[1] and Deputy Sheriff Ricardo B. Perona was ordered to proceed to the premises of petitioner to reinstate Espino and to collect the sum of P428,340.00 representing Espino's full back wages plus attorney's fees.

Petitioner moved to quash the writ of execution alleging that reinstatement was no longer feasible considering Espino's employment with Higure International Corporation. Nevertheless, during subsequent conferences, Espino made known her desire to be reinstated. Consequently, she was reemployed on 4 July 1994.

Conceding to the argument that income earned elsewhere by Espino during the pendency of the case should be deducted from her back wages, the Labor Arbiter, in an Order dated 22 July 1994, deducted P36,000.00 from Espino's previously computed back wages. Four (4) days after receipt of the 22 July 1994 Order Espino filed an Urgent Omnibus Motion^[2] with the NLRC arguing that the back wages accruing for the period 1 April 1994 up to 2 July 1994 plus 13th month pay should be included in the computation since she was only reinstated on 4 July 1994.

From the same order, petitioner filed a Partial Appeal^[3] alleging grave abuse of discretion on the part of the Labor Arbiter in deducting P36,000.00 only instead of P80,000.00. Petitioner contended that P80,000.00 should be deducted from the

back wages as it was the amount which Espino admitted to have earned during the pendency of the case. It likewise asserted that Espino's P15,000.00 personal loan from Alinas should also be deducted from the total award of back wages.

On appeal, the NLRC sustained petitioner and ruled that P80,000.00, which Espino admitted to have earned elsewhere, was the amount properly deductible from the computation of back wages. The NLRC further ordered that Espino's personal loan, now amounting only to P7,500.00, should also be deducted from the computation of back wages. Lastly, the NLRC held that Espino was entitled to back wages and 13th month pay from the time she was illegally dismissed up to the date of her actual reinstatement.

Petitioner filed a Partial Motion for Reconsideration with the NLRC insofar as it awarded additional back wages and payment of 13th month pay. It was denied. Hence, this Petition for Certiorari under Rule 65 of the Rules of Court.

Article 279 of the Labor Code, as amended by R.A. 6715 which took effect 21 March 1989, now provides -

x x x 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.

As the law now stands, an illegally dismissed employee is entitled to his full back wages, without deduction of earnings earned elsewhere, from the time his compensation was withheld until his actual reinstatement. As such, earnings earned elsewhere during the pendency of the case should not be deducted from the computation of his back wages. The rationale is that -

"the employee, while litigating the legality (illegality) of his dismissal, must still earn a living to support himself and family, while full backwages have to be paid by the employer as part of the price or penalty he has to pay for illegally dismissing his employee. The clear legislative intent of the amendment in Rep. Act No. 6715 is to give more benefits to workers than was previously given them under the Mercury Drug rule or the 'deduction of earnings elsewhere' rule. Thus, a closer adherence to the legislative policy behind Rep. Act No. 6715 points to 'full backwages' as meaning exactly that, i.e., without deducting from backwages the earnings derived elsewhere by the concerned employee during the period of his illegal dismissal. In other words, the provision calling for 'full backwages' to illegally dismissed employees is clear, plain and free from ambiguity and, therefore, must be applied without attempted or strained interpretation. *Index animi sermo est.*^[4]

It was error therefore on the part of the NLRC to deduct earnings earned elsewhere by Espino during the pendency of the case in the computation of her back wages.

But the NLRC was correct in holding that Espino was entitled to additional back wages. In the instant case, Espino was illegally dismissed on 31 January 1992 and was only actually reinstated on 4 July 1994. Conformably with Art. 279 of the Labor Code, which provides that an illegally dismissed employee is entitled to full back