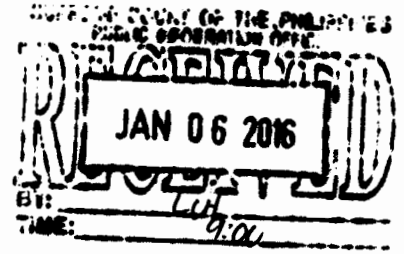




Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION



SOLIDBANK CORPORATION,  
Petitioner,

G.R. No. 166581

- versus -

COURT OF APPEALS, NATIONAL  
LABOR RELATIONS COMMISSION,  
AND DANILO H. LAZARO,  
Respondents.

X ----- X

DANILO H. LAZARO,  
Petitioner,

G.R. No. 167187

Present:

- versus -

SERENO, *CJ*, Chairperson,  
LEONARDO-DE CASTRO,  
BERSAMIN,  
PEREZ, and  
PERLAS-BERNABE, *JJ*.

COURT OF APPEALS, NATIONAL  
LABOR RELATIONS COMMISSION  
AND SOLIDBANK CORPORATION,  
Respondents.

Promulgated:

DEC 07 2015

X ----- X

## DECISION

### SERENO, *CJ*:

We resolve the Petitions for Review filed by Solidbank Corporation (Solidbank) in G.R. No. 166581, and Danilo H. Lazaro (Lazaro) in G.R. No. 167187 from the 19 January 2004 Decision,<sup>1</sup> 01 July 2004 Amended Decision,<sup>2</sup> and 14 January 2005 Resolution<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 73629.

### THE FACTS

As culled from the CA, the antecedent facts are as follows:

Petitioner Danilo H. Lazaro (Lazaro) joined respondent Solidbank Corporation on December 21, 1992. He rose from the ranks until he became Vice President, Head of the Branch Banking Group, Region 6 (Southern Luzon branches).

On August 21, 1995, the Imus branch, one of the bank's branches under Lazaro, was audited for the first time by the bank's internal auditors, known as the Audit and Credit Examination Services (ACES). The audit uncovered certain irregularities committed by the branch manager and the accountant involving loan releases without proper documentation and approval of the Region Head and other appropriate approving bodies. Respondent bank was allegedly defrauded in the amount of P43 million through the fraudulent acts and/or activities allegedly committed by some officers of the said branch office, in connivance with some individual borrowers.

Lazaro immediately tendered his resignation effective February 15, 1996, out of delicadeza, when his name was dragged by the ACES Audit Report into the Imus branch loan anomaly with a sweeping allegation "that he has given blanket authority to all the Branch Managers in his region to commit loans up to P1 Million subject to his confirmation." He was not however included among those criminally charged by the bank.

Lazaro's resignation was not accepted by respondent bank president Vistan who categorically cleared him of any liability on the Imus case with the assurance that he (Vistan) personally, does not believe that petitioner Lazaro has anything to do with the said irregularity. Respondent Vistan persuaded Lazaro to stay and help resolve the Imus case. Thus

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<sup>1</sup> *Rollo*, (G.R. No. 167187); pp. 79-89, penned by CA Associate Justice Eliezer R. De Los Santos, and concurred by Associate Justices B.A. Adefuin-De La Cruz and Jose C. Mendoza (now a Member of this Court).

<sup>2</sup> *Id.* at 73-77.

<sup>3</sup> *Id.* at 67-71.

prevailed upon, petitioner Lazaro continued with his employment. Lazaro was then assigned in a special project attached to the office of the legal counsel.

Pursuant to respondent Vistan's instruction to concentrate on the Imus branch loans, Lazaro worked and coordinated closely with the bank's legal counsel. The bank filed criminal charges against several persons including the Imus Branch Manager, the accountant and four borrowers.

Petitioner's Christmas bonus which was credited to his account on November 13, 1996 was ordered reversed by a debit memo from respondent's bank Human Resource Department (HRD) on November 15, 1996. Aggrieved, Lazaro wrote a letter to respondent Vistan seeking clarification. There was no response from respondent Vistan.

On December 13, 1996, petitioner Lazaro was told by Ed Buenaventura of the Motorpool Section to surrender his service car. Later, Lazaro found out that his payroll for December 1-15, 1996 was not credited to his payroll account. He thus wrote another letter to respondent Vistan reiterating his earlier request for clarification. Again, there was no answer.

Lazaro requested for a meeting with respondent Vistan. On January 7, 1997, they met together with respondent SVP Jazmines at the latter's office. Ten (10) months and twenty two (22) days after Lazaro was assigned to special projects, respondent bank president Vistan verbally dismissed petitioner Lazaro upon the recommendation of and after consultation with respondent Senior Vice President Jazmines because his (Lazaro's) continued presence "might be used as a basis to accuse the bank of 'abetting a senior officer who has been implicated by a "customer" in a case of public inquiry.'" The dismissal was made retroactive November 30, 1996, more that [sic] a month before he was informed of his dismissal.

On April 24, 1997, petitioner Lazaro filed a complaint for illegal dismissal, non-payment of earned wages and bonus, reinstatement, backwages including moral and exemplary damages and attorney's fees.<sup>4</sup>

### **THE LABOR ARBITER RULING**

On 8 November 2001, Labor Arbiter (LA) Geobel Bartolabac issued a Decision<sup>5</sup> dismissing the Complaint filed by Lazaro. The LA pointed out that absent any evidence that Lazaro was still performing the functions of a banker is tantamount to the bank's implied acceptance of his voluntary and irrevocable resignation. However, considering that he was "reasonably made to believe that his job would be given back to him by virtue of his earnest effort to recover whatever losses that respondent bank may have incurred as a result of the alleged scam,"<sup>6</sup> and in view of the cessation of the bank's operation, Lazaro was awarded the following amounts:

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<sup>4</sup> Id. at 81-82.

<sup>5</sup> Id. at 184-196.

<sup>6</sup> Id. at 193.

WHEREFORE, premises considered, judgment is hereby rendered dismissing the complaint for illegal dismissal.

Respondent Solid Bank Corporation is, however, ordered to pay complainant Danilo H. Lazaro the following:

1. Separation pay From 12/21/92-6/30/2000 (sic): (including the imputed service) ₱53,962.64 x 8 years	=	<b>₱431,701.12</b>
2. Compensatory benefit: From 11/30/96-6/30/2000 (temporary date) ₱53,962.64 x 42 months/2 (But not less than P1 million nor more than P1.5 Million)	=	<b>1,133,215.40</b>
3. 1996 Christmas bonus:		<b>53,962.64</b>
4. Moral and exemplary damages for arbitrary reversal of 1996 Christmas bonus.		<b><u>200,000.00</u></b>
<b>TOTAL</b>		<b>₱1,818,879.12</b>

All other claims are also dismissed for lack of merit.

**SO ORDERED.** (Emphasis in the original)

Both parties appealed to the National Labor Relations Commission (NLRC), for which a Decision<sup>7</sup> promulgated on 17 April 2002 was issued. The NLRC affirmed with modifications the Decision rendered by LA Bartolabac, by deleting the award of moral and exemplary damages, as follows:

WHEREFORE, in the light of the foregoing, the two (2) appeals assailing the Decision in this case are hereby, **DISMISSED** for lack of merit.

The appealed Decision is hereby, **AFFIRMED** with **MODIFICATION** by deleting the award of moral and exemplary damages.

**SO ORDERED.**

Both parties moved for the reconsideration of the April 2002 Decision, but the motions were denied by the NLRC in a Resolution<sup>8</sup> promulgated on 22 August 2002, as follows:

<sup>7</sup> *Rollo* (G.R. No. 166581), pp. 87-98.

<sup>8</sup> *Id.* at 99-103.

Accordingly, the motion for reconsideration filed by complainant-appellant and partial motion for reconsideration filed by respondents-appellants are denied for lack of merit.

No further motion for reconsideration shall be entertained.

SO ORDERED.

### THE CA RULING

Upon appeal of Lazaro, the CA, in its 19 January 2004 Decision,<sup>9</sup> ruled that reassignment does not sever the tie between the employer and the employee. The fact that Solidbank still exercised control over Lazaro and assigned him to tasks that was deemed necessary for the bank indicates that there was no severance of the employer-employee relationship. Nonetheless, considering the cessation of the bank's operation, the appellate court was constrained to award Lazaro separation pay, backwages and other amounts due him, to wit:

WHEREFORE, the petition is **GRANTED**. The NLRC resolution and decision dated August 22, 2002 and April 17, 2002, respectively, are hereby **SET ASIDE**. Finding petitioner Danilo Lazaro illegally dismissed, the November 8, 2001 decision of the Labor Arbiter is hereby **MODIFIED**. Respondent Solidbank Corporation is hereby ordered to pay petitioner Lazaro the following:

- |   |   |              |
|---|---|--------------|
| 1. Separation pay for every year of service starting December 21, 1992 up to the promulgation of this decision to be computed based on 150% of the gross monthly pay for every year of service per Category 2 of the Solidbank-Metrobank Merger<br>(11 years) P80,943.96 x 11 | = | ₱890,383.56  |
| 2. Backwages computed from the time of illegal dismissal P53,962.64 x 6 years   | = | 323,775.84   |
| 3. Compensatory benefit computed from November 1996 up to June 2000 at the rate of P53,962.64 x 42 months/2   | = | 1,133,215.40 |
| 4. Payment of 1996 Christmas bonus  | = | 53,962.64    |
| 5. Payment of unpaid salary for December 1996   | = | 53,962.64    |

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<sup>9</sup> Supra note 1.

6. Moral and exemplary damages	=	200,000.00
TOTAL	=	2,655,300.08
7. Attorneys fees equivalent to ten percent (10%) of the sum of all the above	=	<u>265,530.00</u>
<b>GRAND TOTAL</b>	=	<b><u><u>₱2,920,830.08</u></u></b>

SO ORDERED. (Emphasis in the original)

On 3 February 2004 and 5 May 2004, Solidbank filed its Motion for Reconsideration<sup>10</sup> and Supplemental Motion for Reconsideration<sup>11</sup> respectively. Lazaro also filed his Motion for Clarification and/or Partial Motion for Reconsideration<sup>12</sup> on 27 January 2004.

On 1 July 2004, the appellate court issued an Amended Decision,<sup>13</sup> correcting the amount of separation pay, backwages and unpaid salary for December 1996, as follows:

[On separation pay]

However, We agree with Solidbank's assertion that petitioner is no longer entitled to an increase in the original award for separation pay given by the NLRC considering that petitioner did not question the same in his petition. Hence, the amount of P890,383.56 shown in **Item No. 1 (decretal portion of our January 19, 2004 Decision)** representing petitioner's separation pay starting December 21, 1992 up to the promulgation of this decision is hereby **corrected and reverted** to the sum awarded by the NLRC in the total amount of **₱431,701.12**.

x x x x

[On backwages]

We hold that petitioner was illegally dismissed and is therefore entitled to backwages. However, We admit error in the computation of the same (**Item No. 2, decretal portion, January 19, 2004 Decision**) **due to inadvertence**. This Court multiplied his monthly salary of **₱53,962.64** by **6 years instead of 43 months**, thus awarding only **₱323,775.84**. To arrive at the correct amount of petitioner's backwages, we have to **multiply his monthly salary by 43 months, viz: ₱53,962.64 x 43 = ₱2,320,993.52 less ₱40,375.10 = ₱2,280,018.42**. This answers petitioner's motion for clarification and/or partial motion for reconsideration.

<sup>10</sup> *Rollo* (G.R. No. 167187), pp. 456-465.

<sup>11</sup> *Id.* at 473-483.

<sup>12</sup> *Id.* at 439-448.

<sup>13</sup> *Supra* note 2.

[On the unpaid salary for December 1996]

This Court also noticed a typographical error in encoding the amount of petitioner's unpaid salary for December 1996 as **₱53,962.64** when it should only be **₱40,375.10** representing his basic salary, as prayed for in the petitioner before Us. (Emphasis in the original)

Lazaro filed another Motion for Reconsideration/Clarification<sup>14</sup> on 26 July 2004, which the CA partially granted in a Resolution<sup>15</sup> promulgated on 14 January 2005. The appellate court again corrected the amount of separation pay, backwages and unpaid salary for December 1996 by reviewing Lazaro's gross monthly pay, including all allowances and benefits due to him:

We are taking cognizance of the oversight committed in the computation of the separation pay and backwages. However, considering that the Court cannot determine the other benefits allegedly enjoyed regularly by the petitioner to come up with his gross monthly salary, We based the gross monthly salary of petitioner in the amount of **₱53,962.64** according to the submitted evidence which were not contested by the private respondent. It is also noted that petitioner never questioned the computation of his monthly salary at P53,962.64 as contained in the decisions and resolutions of the Labor Arbiter, NLRC and this Court. Hence, in Our Amended Decision dated July 1, 2004, a re-computation of the separation pay and backwages due petitioner was made.

X X X X

Petitioner correctly argues that in the computation of the separation pay and backwages, the whole amount of his salaries plus benefits, bonuses and general increases to which he would have been entitled shall be included. However, the record is bereft of any evidence showing the other monthly benefits, bonuses, etc., aside from his monthly salary of P53,962.64 which is not contested by both parties.

With respect to the 150% gross monthly salary pay for every year of service as separation pay based on the Solidbank-MetroBank Merger Agreement, We believe that the petitioner is not entitled to such benefit. He did not apply for the same and he was not offered said separation benefits by the respondent bank.

The computation of the **separation pay should be based on the petitioner's proven monthly salary (₱53,962.64) from December 21, 1992 up to the promulgation of this resolution** or for such additional years upon final execution. Likewise, petitioner's **backwages should be computed based on petitioner's proven monthly salary (₱53,962.64) from the time of his illegal dismissal on November 30, 1996 up to the promulgation of this resolution.** (Emphasis in the original)

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<sup>14</sup> *Rollo* (G.R. No. 167187), pp. 512-526.

<sup>15</sup> *Supra* note 3.

Below is a summary of the *fallo* of the Decision, Amended Decision and Resolution issued by the appellate court:

	<b>19 January 2004 Decision</b>	<b>1 July 2004 Amended Decision</b>	<b>14 January 2005 Resolution</b>
Separation pay	For every year of service starting December 21, 1992 up to the promulgation of this Decision to be computed based on 150% of the gross monthly pay for every year of service per Category 2 of the Solidbank-Metrobank Merger at the rate of ₱80,943.96 x 11 years  <b>₱890,383.56</b>	From December 21, 1992 up to June 30, 2000 (including the imputed service) ₱53,962.64 x 8 years =  <b>₱431,701.12</b>	From December 21, 1992 up to the promulgation of this Decision (January 2005) to be computed by multiplying the monthly salary (₱53,962.64) by 12 years ₱53,962.64 x 12 =  <b>₱647,551.68</b>
Backwages	Computed from the time of illegal dismissal at the rate of ₱53,962.64 x 6 years  <b>₱323,755.84</b>	Computed from the time of illegal dismissal on November 30, 1996 up to June 30, 2000 ₱53,962.64 x 43 mos. – ₱40,375.10 (representing December 1996 basic salary as prayed and awarded)  <b>₱2,280,018.42</b>	Computed by multiplying the monthly salary (₱53,962.64) by the number of months from his illegal dismissal on November 30, 1996 up to the promulgation of this decision ₱53,962.64 x 98 months  <b>₱5,288,338.70</b>
Compensatory benefit	Computed from November 1996 up to June 2000 at the rate of ₱53,962.64 x 42 months/2  <b>₱1,133,215.40</b>	Computed from November 1996 up to June 2000 at the rate of ₱53,962.64 x 42 months/2  <b>₱1,133,215.40</b>	Computed from November 1996 up to June 2000 at the rate of ₱53,962.64 x 42 months/2  <b>₱1,133,215.40</b>
Payment of 1996 Christmas bonus	<b>₱53,962.64</b>	<b>₱53,962.64</b>	<b>₱53,962.64</b>



Payment of unpaid salary for December 1996	<b>₱53,962.64</b>	<b>₱40,375.10</b>	<b>None</b>
Moral and exemplary damages	<b>₱200,000.00</b>	<b>₱200,000.00</b>	<b>₱200,000.00</b>
<b>TOTAL</b>	<b>₱2,655,300.08</b>	<b>₱4,139,272.68</b>	<b>₱7,323,068.42</b>
Attorney's fees equivalent to ten percent (10%) of the sum of all the above	<b>₱265,530.00</b>	<b>₱413,927.26</b>	<b>₱732,306.84</b>
<b>GRAND TOTAL</b>	<b>₱2,920,830.08</b>	<b>₱4,553,199.94</b>	<b>₱8,055,375.26</b>

Hence, these petitions.

Lazaro filed his Comment<sup>16</sup> to Solidbank's petition (G.R. No. 166581) on 15 June 2005, while the latter filed its Reply<sup>17</sup> on 20 July 2005. On the other hand, Solidbank filed its Comment<sup>18</sup> to Lazaro's petition (G.R. No. 167187) on 12 August 2005, while the latter filed his Reply<sup>19</sup> on 24 March 2006.

In **G.R. No. 166581**, Solidbank argues that the CA gravely abused its discretion in not denying Lazaro's "second" Motion for Reconsideration/Clarification because it was filed without leave of court and in clear violation of the prohibition on filing a second motion for reconsideration. Moreover, Solidbank insists that the CA erred in awarding damages and attorney's fees despite the lack of legal, factual or equitable basis for these awards.

In **G.R. No. 167187**, Lazaro argues that there is sufficient evidence on record to prove that all the allowances and benefits (e.g. accruing vacation leave, profit sharing, car benefits) he prays for have been consistently given to him, and thus forms part of his salary. Thus, he asserts that the monetary awards must be based on his gross monthly pay of ₱75,912.00 (basic salary

<sup>16</sup> *Rollo* (G.R. No. 166581), pp. 228-255.

<sup>17</sup> *Id.* at 365-374.

<sup>18</sup> *Rollo* (G.R. No. 167187), pp. 675-684.

<sup>19</sup> *Id.* at 731-739.

with cost of living allowance, inclusive of all benefits and allowances)<sup>20</sup> instead of only ₱53,962.64 (basic salary with cost of living allowance). He further insists that his separation pay must include other benefits<sup>21</sup> in the total amount of ₱3,270,491.00.

We now rule on the final review of the case.

### THE ISSUES

From the foregoing, we reduce the issues to the following:

1. Whether or not the appellate court erred in not denying the “second” Motion for Reconsideration/Clarification filed by Lazaro;
2. Whether or not the appellate court erred in computing Lazaro’s gross monthly pay; and
3. Whether or not the CA rightly awarded damages and attorney’s fees to respondent.

### OUR RULING

Before we proceed, this Court laments the convoluted procedural mishaps attending these consolidated cases. However, it may not be amiss to point out that in the instant petitions, both parties did not question the appellate court’s finding of illegal dismissal. What is before us – the monetary awards – are but a consequence of the finding of illegal dismissal. We shall therefore dispose of the procedural issues first, then proceed to the discussion of the awards.

<sup>20</sup> Id. at 56-57. Lazaro arrived at the amount of P75,912.00 using the following computation:

Basic Salary	₱28,330.00
Representation/Cost of Living Allowance	25,633.00
Other Benefits:	
Gasoline	2,000.00
Car Maintenance (P8,000.00/12 mos.)	670.00
Medicine Allowance (P2,000.00/12 mos.)	167.00
Mid Year Bonus (P53,953.00 x 2 mos./12)	8,994.00
Christmas Bonus (P53,963.00 x 2.25 mos./12)	<u>10,118.00</u>
Total Gross Monthly Pay	₱75,912.00

<sup>21</sup> Id. at 57. Total Gross Monthly Pay

	₱75,912.00
	<u>x 12 years</u>
	₱910,944.00

Add Other Benefits:	
Accrued Sick/Vacation Leave	₱431,704.00
Car Benefits at P600,000.00 every five (5) years from 1996 and 2005	₱1,800,000.00
Profit Sharing (guaranteed 2 months)	971,334.00
Unpaid 1996 Christmas Bonus	<u>67,453.30</u>
Grand Total Separation Pay (1.25 mos. differential)	₱3,270,491.00 (as of January 2005, the promulgation date)

***The Amended Decision is an entirely new decision which supersedes the original decision, for which a new motion for reconsideration may be filed again.***

Anent the issue of Lazaro's "second" motion for reconsideration, we disagree with the bank's contention that it is disallowed by the Rules of Court. Upon thorough examination of the procedural history of this case, the "second" motion does not partake the nature of a prohibited pleading because the Amended Decision is an entirely new decision which supersedes the original, for which a new motion for reconsideration may be filed again.

We pointed out in *Planters Development Bank v. Sps. Lopez*<sup>22</sup> that "[t]here is also no merit to the respondents' argument that Planters Bank's motion for reconsideration is disallowed under Section 2, Rule 52 of the Rules of Court. x x x [T]here is a difference between an amended judgment and a supplemental judgment. In an amended judgment, the lower court makes a thorough study of the original judgment and renders the amended and clarified judgment only after considering all the factual and legal issues. The amended and clarified decision is an entirely new decision which supersedes or takes the place of the original decision. On the other hand, a supplemental decision does not take the place of the original; it only serves to add to the original decision."

We thus rule that the appellate court did not err in not denying Lazaro's Motion for Reconsideration/Clarification on the Amended Decision because its filing is allowed under the rules.

***Separation pay and backwages must include the gross monthly salary of the dismissed employee, inclusive of all the allowances and benefits or their monetary equivalent, subject to evidentiary proof.***

As regards the alleged erroneous computation of Lazaro's monthly pay, it has been settled that if reinstatement is not possible, an illegally dismissed employee is entitled to separation pay and backwages, computed using his gross monthly pay, inclusive of allowances and other benefits or

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<sup>22</sup> G.R. No. 186332, 23 October 2013, 708 SCRA 481, 492-493, citing *Magdalena Estate, Inc. v. Caluag*, 120 Phil. 338, 342 (1964); See *Lee v. Trocino*, 607 Phil. 690, 696 (2009).

their monetary equivalent.<sup>23</sup> Such amounts however must be duly proved before it may be granted by the Court.

We are, however, compelled to deny Lazaro's prayer to include in his gross monthly salary the allowances and benefits outlined in his petition. The records are bereft of evidence to serve as a backbone for the allowances and benefits he desires. We therefore retain the amount of P53,962.64 as his gross monthly pay, which remains uncontested by both parties.<sup>24</sup>

#### **a. Separation pay**

Consequently, separation pay must be duly awarded to Lazaro because reinstatement is no longer feasible. However, the Court has consistently ruled that the same must be computed only up to the time the employer ceased operations.<sup>25</sup> It cannot be held liable to pay separation pay beyond such closure of business because even if the illegally dismissed employees would be reinstated, they could not possibly work beyond the time of the cessation of its operation.<sup>26</sup> This is especially true when the closure was "due to legitimate business reasons and not merely an attempt to defeat the order of reinstatement."<sup>27</sup>

Considering that Solidbank ceased operations in 2000, Lazaro may then rightfully be considered as covered by the Solidbank-Metrobank Merger-Integration Agreement.<sup>28</sup> The agreement dictates that separation pay will be given to Solidbank employees not absorbed by Metrobank, with the gross monthly pay increased by 150%.

We disagree with the CA that Lazaro is not covered by the Merger-Integration Agreement because he did not apply for the same and was not offered separation pay.<sup>29</sup> The argument behooves logic, for how can Metrobank offer him the agreement when he was illegally dismissed as early as November 1996 and the merger only took place in June 2000. Following the premise that an illegal dismissal is a void dismissal, then Lazaro is still considered to have been employed until the merger took place. He may therefore be considered as not having received any offer from Metrobank to join the new company.

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<sup>23</sup> *Manila Jockey Club, Inc. v. Trajano*, G.R. No. 160982, 26 June 2013.

<sup>24</sup> *Rollo* (G.R. No. 167187), p. 69.

<sup>25</sup> *Industrial Timber Corporation Stanply Operations v. NLRC*, 323 Phil. 753 (1996).

<sup>26</sup> *Polymer Rubber Corporation v. Salamuding*, G.R. No. 185160, 24 July 2013, 702 SCRA 153, citing *J.A.T. General Services v. NLRC*, 465 Phil. 785, 798-799 (2004).

<sup>27</sup> *Id.*, citing *Chronicle Securities Corp. v. NLRC*, 486 Phil. 560 (2004).

<sup>28</sup> *Rollo* (G.R. No. 167187), pp. 315-318.

<sup>29</sup> *Id.* at 70.

We thus compute Lazaro's separation pay from the time of his employment in 21 December 1992 up to the cessation of Solidbank's business in 31 July 2000 or 7.64 years, multiplied by his gross monthly pay increased by 150%.

### **b. Backwages**

On the other hand, backwages are computed from the time of dismissal until the finality of the decision ordering separation pay, and not merely until promulgation of the Court's decision.<sup>30</sup> However, considering that Solidbank ceased operations in 31 July 2000, we must compute backwages only up to the time of such cessation. To compute "backwages beyond the date of the cessation of business would not only be unjust, but confiscatory, as well as violative of the Constitution depriving the employer of his property rights."<sup>31</sup>

Using this yardstick, we therefore compute Lazaro's backwages from the time of his illegal dismissal on 21 December 1992 up to the time when Solidbank ceased operations on 31 July 2000, or 91.67 months, multiplied by his gross monthly pay earlier determined.

***Damages and attorney's fees may only be awarded when the employee is illegally dismissed in bad faith and compelled to litigate to protect his rights by reason of the unjustified acts of the employer.***

We have said that while "dismissal may be contrary to law but by itself alone, it does not establish bad faith to entitle the dismissed employee to moral damages."<sup>32</sup> We must note that "bad faith does not simply connote bad judgment or negligence – it imports a dishonest purpose or some moral obliquity and conscious doing of wrong. It means a breach of a known duty through some motive or interest or ill-will that partakes of the nature of fraud."<sup>33</sup> The award of moral and exemplary damages thus cannot be justified solely upon the premise that the employer dismissed his employee without authorized cause and due process."<sup>34</sup>

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<sup>30</sup> *Bani Rural Bank, Inc. v. De Guzman*, G.R. No.170904, 13 November 2013, 709 SCRA 330.

<sup>31</sup> *Retuya v. Dumarpa*, G.R. No. 148848, 5 August 2003, citing *Pizza Inn/Consolidated Foods Corporation v. NLRC*, 162 SCRA 779, 28 June 1988.

<sup>32</sup> *Lambert Pawnbrokers and Jewelry Corporation v. Binamira,*, G.R. No. 170464, 12 July 2010, 624 SCRA 705, citing *Manila Water Company, Inc. v. Peña*, 478 Phil. 68, 84 (2004).

<sup>33</sup> *Solidbank Corporation v. Gamier*, G.R. No. 159460-61, 15 November 2010, 634 SCRA 554, citing *Ford Philippines, Inc. v. CA*, 335 Phil. 1, 9 (1997).

<sup>34</sup> *Supra* note 28.

On the matter of attorney's fees, we have established that "attorney's fees may be awarded only when the employee is illegally dismissed in bad faith and is compelled to litigate or incur expenses to protect his rights by reason of the unjustified acts of his employer."<sup>35</sup> However, "[t]here must always be a factual basis for the award of attorney's fees. This is consistent with the policy that no premium should be placed on the right to litigate."<sup>36</sup>

After reviewing the records, we see no evidence that Lazaro's dismissal was tainted with bad faith nor is there any basis for the award of attorney's fees. We therefore delete the award of damages and attorney's fees.

We will no longer touch upon the award of 1996 Christmas bonus and compensatory benefit as these were not appealed by both parties.

**WHEREFORE**, the 19 January 2004 Decision, 1 July 2004 Amended Decision and 14 January 2005 Resolution of the CA in CA-G.R. SP No. 73629 are hereby **MODIFIED** in that Lazaro is awarded the following:

- (1) separation pay computed from the time of his employment in 21 December 1992 up to the cessation of Solidbank's business in 31 July 2000 or 7.64 years, multiplied by his gross monthly pay of ₱53,962.64 increased by 150%, or a total of ₱618,411.85;
- (2) backwages computed from the time of his illegal dismissal in 30 November 1996 up to 31 July 2000 (the date Solidbank ceased operations) or 91.67 months, multiplied by his gross monthly pay of ₱53,962.64, or a total of ₱4,946,755.21;
- (3) payment of 1996 Christmas bonus in the amount of ₱53,962.64; and
- (4) compensatory benefit computed from November 1996 up to June 2000 or 42 months/2, multiplied by his gross monthly pay of ₱53,962.64, or a total of ₱1,133,215.40.

The award of moral and exemplary damages and attorney's fees are deleted for lack of basis.

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<sup>35</sup> *Pepsi Cola Products Philippines, Inc. v. Santos*, 574 Phil. 400 (2008), citing *Pascua v. NLRC*, 351 Phil. 48, 74 (1998).

<sup>36</sup> *Id.*, citing *German Marine Agencies, Inc. v. NLRC*, 403 Phil. 572, 597 (2001).

**SO ORDERED.**



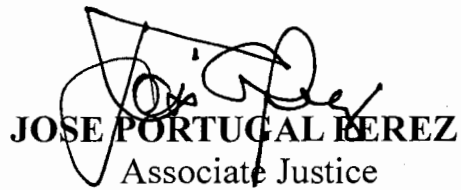
**MARIA LOURDES P. A. SERENO**  
Chief Justice, Chairperson

WE CONCUR:



*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice


  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice