



Republic of the Philippines  
**Supreme Court**  
 Manila

FIRST DIVISION

SUPREME COURT OF THE PHILIPPINES  
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**ADVAN MOTOR, INC.,**  
 Petitioner,

**G.R. No. 190944**

Present:

- versus -

SERENO, *CJ.*,  
 Chairperson,  
 LEONARDO-DE CASTRO,  
 DEL CASTILLO,  
 JARDELEZA, and  
 TIJAM, *JJ.*

**VICTORIANO G. VENERACION,**  
 Respondent.

Promulgated:  
**DEC 13 2017**

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**DECISION**

**LEONARDO-DE CASTRO, J.:**

Before the Court is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court seeking to reverse and set aside the September 30, 2009 **Decision**<sup>1</sup> and the January 13, 2010 **Resolution**<sup>2</sup> of the Court of Appeals in CA-G.R. SP No. 103744, which affirmed and modified the April 30, 2007 **Decision**<sup>3</sup> of the National Labor Relations Commission (NLRC) of Quezon City.

The facts as summarized by the NLRC and quoted by the Court of Appeals are quoted below:

Records show that [respondent Victor G. Veneracion] started working sometime in September 1999 in [petitioner Advan Motor, Inc.] company's business of selling and repairing cars manufactured by General Motors Automative Phils., as Sales Consultant. In a letter dated May 21, 2001, he was informed of the termination of his services "effective May 2, 2001 for the reason of repeated AWOL violations for more than six consecutive days and management's loss of trust and confidence in you for your repeated abandonment of your office duties and responsibilities."  
 x x x

<sup>1</sup> *Rollo*. pp. 9-23; penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Andres B. Reyes, Jr. (now a member of this Court) and Vicente S.E. Veloso concurring.  
<sup>2</sup> *Id.* at 25-26.  
<sup>3</sup> *Id.* at 148-155.

*hmt*

Aggrieved, [respondent] filed a complaint for constructive dismissal on July 13, 2001. The complaint was subsequently amended by changing [respondent's] causes of action into actual illegal dismissal and including underpayment of salaries.

[Respondent] alleged that sometime in December 2000, he was suspected of planning to organize a union, that henceforth, he was harassed by management by being forced to resign in exchange for a financial package and treated unfairly when his purchase orders and sub-dealership agreement with an interested party were not acted upon or sabotaged by management; that unlike the others, his salary was not adjusted although he had been regularized and given the run-around with regard to the giving of promo discounts to buyers. [Respondent] also averred that for the month of March 2001, including the succeeding months, [he] was no longer given any duty date, show room, nor phone and was again pressured to resign; that in April 2001 he applied for a leave of absence which was verbally approved but later denied; that his salaries for April 2001 and the months thereafter were withheld; and, that contemplating on filing an action, [petitioner] jumped the gun on him by serving him with the letter terminating his services.

In [its] defense, [petitioner] contended that [respondent] was oftentimes absent or tardy and failed to meet his sales quota of three (3) cars a month; that he went on an unannounced leave from March 28-31, 2001 and, later, by just handing to the security guard his request for vacation leave from April 2-18, 2001; that on April 20, 2001, he informed the Personnel Officer that he would no longer report for work, prompting management to issue a notice of termination on May 21, 2001.

In ruling for the [respondent], the Labor Arbiter observed that:

“Clearly, [respondent's] termination from his employment was based on AWOL amounting to a violation of company rules and regulation[s] and on attendance for repeated abandonment of office duties and responsibilities and management loss of trust and confidence in him. Specifically, as indicated, management claims that [respondent] x x x “[was on] AWOL since April 10, 2001” x x x.

It appears that [petitioner] predicated as basis of [its] decision to terminate [respondent's] employment when he x x x “just handed to the security guard his request for vacation leave from April 2 to 18, 2001 without informing his immediate superior or even the Personnel Department x x x. This does not persuade. Besides being denied by [respondent], who claimed that he x x x “left it with HRD Manager, who earlier, verbally gave permission to [respondent] to go on leave.” x x x, there is no showing on record of any to substantiate this claim. If indeed, it is true, [petitioner] should have notified the [respondent], in the first place. The Sworn Statement of [the] security guard who received the same request for leave alluded to was not presented to [this] effect. Even his name was not noted. Neither was there any statement to this effect from the Personnel Department concerned presented, at least.

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Simply [petitioner's] claim remains an allegation. It is a rule well settled [in] this jurisdiction that the employer has the burden of proving the lawful cause sustaining the dismissal of employee. Equipoise is not enough. The employer must affirmatively show rationally adequate evidence that the dismissal was for justifiable cause x x x."<sup>4</sup>

Advan Motor, Inc. (petitioner) claimed that on December 10, 1999, Victoriano Veneracion (respondent) received a copy of the manual<sup>5</sup> issued by the former, which provides the company's general personnel policies. Item No. 6 of the said manual provides:

*6. Absenteeism*

You are expected to notify the office if you are unable to report for work for any reason. Failure to notify the office on the day's absence shall be considered unauthorized and is subject to corresponding sanctions. Unauthorized Leave of Absence (LoA) of five (5) working days will be construed as abandonment of work and is subject to possible termination of service.

Unauthorized Absence (Absence Without Official Leave)

An employee may be considered as Absent Without Official Leave (AWOL) if he/she fails to report for work:

- For whatever reason without personally or thru his/her immediate superior or the Personnel Department the reason for such absence, within twenty-four (24) hours from the occurrence of such absence.
- For unacceptable reasons even if he/she has notified his/her immediate superior before such absence occurs, likewise in the case of absenting from work without prior authorization.
- After the expiration of his/her approved leave of absence.

Procedure for Filing Authorized Absences:

For purposes of procedure and to ensure that the absence is considered authorized, employees are required to observe the following guidelines:

- Secure the *Request for Leave of Absence Form* from the Personnel Department.
- Fill-in all necessary information as required by the form. As much as possible, the request must be filed not less than three (3) days before the intended leave so as not to disrupt operations and to enable the immediate superior to monitor the absences properly.

<sup>4</sup> Id. at 150-151.

<sup>5</sup> Id. at 226-243.

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- Inform immediate superior of the intended leave and secure his/her endorsement signature; forward request to the Department Head for approval.
- Send all copies of the form to the Personnel Department for filing and endorsement to the Accounting Department.
- If the reason for such absence is sickness or injury, the medical certificate shall be attached to the request form. Approval of the said leave shall be based on the Administrative/Personnel Department's verification.

Penalties for Unauthorized Absence

<u>FREQUENCY</u>	<u>PENALTY</u>
One (1) day	Written warning & entry in employee's 201 file
Two (2) to four (4) days consecutive days	10 days suspension
Five (5) consecutive days or more	Termination

Habitual Unauthorized Absences

If, within a period of two (2) months, an employee incurs at least three (3) AWOL violations, he/she shall be considered *habitually AWOL* and a consequence thereof, the next higher penalty shall be applicable to the third and succeeding violations within the said two (2) month period.<sup>6</sup>

Petitioner alleged that respondent was fully aware that this rule was designed by the company to ensure its uninterrupted operation, without being disrupted or hampered by the absence of one employee. This policy was adopted by the company to plan ahead and properly redesign its operation in case an employee intends to take a vacation.<sup>7</sup> Petitioner further alleged that respondent failed to reach his sales quotas and committed gross neglect of duty and wanton violation of company policies. Specifically, petitioner claimed that respondent failed to reach the sales quota of at least three units of motor vehicles a month. On several occasions, petitioner issued notices to respondent reminding him of his poor sales performances, frequent tardiness and absences during his floor duty, and prolonged unauthorized absences, which seriously hampered and impaired the sales operations and business plans of the petitioner. Therefore, petitioner concluded that there was a valid and legal ground to dismiss the respondent.

On January 14, 2002, the respondent filed an amended complaint for actual illegal dismissal, underpayment of salaries/wages with damages,

<sup>6</sup> Id. at 230-231.

<sup>7</sup> Id. at 143.

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attorney's fees, and a prayer for reinstatement and payment of full backwages.<sup>8</sup> On September 30, 2004, Labor Arbiter Daniel J. Cajilig rendered his Decision,<sup>9</sup> stating as follows:

**WHEREFORE**, judgment is hereby rendered declaring complainant's dismissal from his employment as illegal.

Accordingly, respondent-firm [petitioner company] is hereby ordered to pay complainant his backwages amounting to **THREE HUNDRED FORTY-TWO THOUSAND FOUR HUNDRED EIGHTY-NINE PESOS AND SEVENTY-FOUR (Php342,489.74) CENTAVOS** as above stated, and **THIRTY-EIGHT THOUSAND AND TWENTY (Php38,020.00) PESOS**, representing his separation pay in lieu of reinstatement and TEN (10) PERCENT as attorney's fees.

Other claims are DENIED for lack of merit.<sup>10</sup>

Petitioner appealed the Labor Arbiter's decision to the NLRC, while respondent filed his partial appeal. On April 30, 2007, the NLRC affirmed the decision of the Labor Arbiter.

Both parties filed their respective Motions for Reconsideration, but in its Resolution<sup>11</sup> promulgated on February 29, 2008, the NLRC denied both motions for lack of merit.

On May 29, 2008, the respondent, by way of a Petition for *Certiorari*<sup>12</sup> submitted the Resolution of the NLRC to the Court of Appeals for judicial review on the ground that it was tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. The appellate court partially granted the petition of the respondent and ordered the company to reinstate the respondent to his former position and to pay the latter his backwages.

The Court of Appeals affirmed the NLRC decision with modifications, as quoted below:

**WHEREFORE**, premises considered, the instant petition is **PARTIALLY GRANTED** and the assailed decision dated April 30, 2007 is **AFFIRMED** with **MODIFICATIONS**, thus:

a) Private Respondent-Firm is hereby **ORDERED** to **REINSTATE** petitioner to his former position without loss of seniority rights and other privileges;

b) Private Respondent-Firm is hereby **ORDERED** to **PAY** petitioner his **BACKWAGES**, computed on the basis of minimum wage from 02 May 2001, or from the time that his compensation was withheld

<sup>8</sup> Id. at 137.

<sup>9</sup> Id. at 137-147.

<sup>10</sup> Id. at 147.

<sup>11</sup> Id. at 156-157.

<sup>12</sup> Id. at 118-136.

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from him, until actual reinstatement. The instant case is hereby remanded to the Labor Arbiter for the proper computation of the said backwages;

c) The award of separation pay is hereby **DELETED**; and

d) The award of Ten [percent] (10%) Attorney's fees is **AFFIRMED**.<sup>13</sup>

Petitioner filed on October 22, 2009 a Motion for Partial Reconsideration<sup>14</sup> of the September 30, 2009 decision of the Court of Appeals. However, the appellate court was not persuaded and by way of Resolution promulgated on January 13, 2010, denied the said motion.

Aggrieved, petitioner came to this Court seeking the reversal of the questioned decision and resolution of the appellate court. Petitioner raises the following grounds:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED PALPABLE ERROR WHEN IT ORDERED THE REINSTATEMENT OF RESPONDENT VENERACION TO HIS FORMER POSITION.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED PALPABLE ERROR WHEN IT ORDERED THE AWARD OF BACKWAGES.<sup>15</sup>

The two issues for our consideration are the questions of **reinstatement** and **backwages**.

Under the first ground, petitioner argues that the order of reinstatement is not proper when the position occupied is one vested with trust and confidence. Petitioner alleges that it placed a high level of trust and confidence to the respondent as a Sales Consultant. Petitioner points out that respondent disregarded company rules and regulations when he went AWOL for several consecutive days, which is a serious offense. The offense committed, clearly, is "work-related" and to treat it lightly or let it pass will definitely set a bad precedent for the company and will embolden the other sales agents. Petitioner claims that the business of a car dealership largely rests on the sales agents representing the company in selling the products, who are expected to translate these products into sales for the company, and as such should be considered trustworthy. The petitioner argues that it is sufficient that the employer has reasonable ground to believe

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<sup>13</sup> Id. at 22.

<sup>14</sup> Id. at 100-117.

<sup>15</sup> Id. at 507.

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that the employee is responsible for the misconduct, rendering him unworthy of the trust and confidence demanded by his position.<sup>16</sup>

We find that the Court of Appeals correctly ruled in favor of reinstatement, and agree with its reasoning that respondent is a mere car sales agent/sales consultant whose function is precisely to sell cars for the company. Said position is clearly not vested with complete trust and confidence from the employer as compared to, for example, a managerial employee. In *Dimabayao v. National Labor Relations Commission*,<sup>17</sup> this Court had occasion to state that:

**Strained relationship** may be invoked only against employees whose positions demand trust and confidence, or whose differences with their employer are of such nature or degree as to preclude reinstatement. In the instant case, however, the relationship between petitioner, an ordinary employee, and management was clearly on an impersonal level. Petitioner did not occupy such a sensitive position as would require complete trust and confidence, and where personal ill will would foreclose his reinstatement. (Emphasis supplied.)

The Court of Appeals pointed as significant that “strained relationship” is a question of fact. In his pleadings, respondent continually reiterated his plea to be reinstated. Petitioner did not allege in its position paper that it could no longer employ respondent because of “strained relationship.” The factual issue of “strained relationship” was not an issue, hence, was not subject of proof before the Labor Arbiter.

The Court of Appeals correctly held that every labor dispute almost always results in “strained relations,” and the phrase cannot be given an overarching interpretation, otherwise, an unjustly dismissed employee can never be reinstated.<sup>18</sup> As to the finding of the NLRC that the respondent had convinced it that the relations between him and management had become so strained by describing in detail that he was repeatedly being offered a financial package in exchange for his resignation and his being treated unfairly, the Court of Appeals found it absurd that the NLRC would utilize petitioner’s own statements to prop up the existence of “strained relationship” when in fact it was respondent who had been pleading and praying that he be reinstated. On the contrary, this showed that despite the perceived animosity between the parties, respondent was still willing to get back to work.

As to the finding that management had declared that it had lost its trust and confidence on complainant who, as a Sales Consultant, was a front line employee in whom respondents had complete trust, we agree with the Court of Appeals that a sales consultant is not a position of complete trust and confidence where personal ill will could foreclose an employee’s

<sup>16</sup> Id. at 512-513.

<sup>17</sup> 363 Phil. 279, 287 (1999).

<sup>18</sup> *Claudia’s Kitchen, Inc. v. Tanguin*, G.R. No. 221096, June 28, 2017.

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reinstatement. Moreover, as it is one of the just causes for dismissal under the Labor Code, to affirm the allegation of loss of trust and confidence would lead to an illogical conclusion that respondent was validly dismissed from service.<sup>19</sup>

As we have held, “[s]trained relations must be demonstrated as a fact. The doctrine of strained relations should not be used recklessly or applied loosely nor be based on impression alone”<sup>20</sup> so as to deprive an illegally dismissed employee of his means of livelihood and deny him reinstatement. Since the application of this doctrine will result in the deprivation of employment despite the absence of just cause, the implementation of the doctrine of strained relationship must be supplemented by the rule that the existence of a strained relationship is for the employer to clearly establish and prove in the manner it is called upon to prove the existence of a just cause; the degree of hostility attendant to a litigation is not, by itself, sufficient proof of the existence of strained relations that would rule out the possibility of reinstatement.<sup>21</sup>

Thus, reinstatement is proper in this case<sup>22</sup> under Article 294 of the Labor Code, which provides:

ARTICLE 294. *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.**<sup>23</sup>  
(Emphasis ours.)

Since there was a conclusive finding that respondent was unjustly dismissed from work, we thus likewise affirm the award of backwages, which are awarded to allow the employee to recover from the employer that which he had lost by way of wages as a result of his dismissal.<sup>24</sup>

The two reliefs of reinstatement and backwages have been discussed in *Reyes v. RP Guardians Security Agency, Inc.*<sup>25</sup> in the following manner:

<sup>19</sup> Art. 282. *Termination by employer.* - An employer may terminate an employment for any of the following causes:

x x x x

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative[.]

<sup>20</sup> *Claudia's Kitchen, Inc. v. Tanguin*, supra note 18.

<sup>21</sup> *Pentagon Steel Corporation v. Court of Appeals*, 608 Phil. 682, 699 (2009).

<sup>22</sup> *Continental Micronesia, Inc. v. Basso*, 770 Phil. 201, 230 (2015).

<sup>23</sup> Labor Code of the Philippines, Presidential Decree No. 442, Amended and Renumbered, July 21, 2015.

<sup>24</sup> *Torillo v. Leogardo, Jr.*, 274 Phil. 758, 767 (1991).

<sup>25</sup> 708 Phil. 598, 604-605 (2013).

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Backwages and reinstatement are separate and distinct reliefs given to an illegally dismissed employee in order to alleviate the economic damage brought about by the employee's dismissal. "Reinstatement is a restoration to a state from which one has been removed or separated" while "the payment of backwages is a form of relief that restores the income that was lost by reason of the unlawful dismissal." Therefore, the award of one does not bar the other.

In the case of *Aliling v. Feliciano*, citing *Golden Ace Builders v. Talde*, the Court explained:

Thus, an illegally dismissed employee is entitled to two reliefs: backwages and reinstatement. The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.

The normal consequences of respondents' illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages.

Further discussing the normal consequences of illegal dismissal and providing the statutory intent on this matter, in *Tomas Claudio Memorial College, Inc. v. Court of Appeals*,<sup>26</sup> we held as follows:

The statutory intent on this matter is clearly discernible. Reinstatement restores the employee who was unjustly dismissed to the position from which he was removed, that is, to his *status quo ante* dismissal, while the grant of backwages allows the same employee to recover from the employer that which he had lost by way of wages as a result of his dismissal. These twin remedies reinstatement and payment of backwages — make the dismissed employee whole who can then look forward to continued employment. Thus do these two remedies give meaning and substance to the constitutional right of labor to security of tenure. The two forms of relief are distinct and separate, one from the other. Though the grant of reinstatement commonly carries with it an award of backwages, the inappropriateness or non-availability of one does not carry with it the inappropriateness or non availability of the other. . . .

**The payment of backwages is generally granted on the ground of equity. It is a form of relief that restores the income that was lost by reason of the unlawful dismissal; the grant thereof is intended to**

<sup>26</sup>

467 Phil. 541, 554-555 (2004).

restore the earnings that would have accrued to the dismissed employee during the period of dismissal until it is determined that the termination of employment is for a just cause. It is not private compensation or damages but is awarded in furtherance and effectuation of the public objective of the Labor Code. Nor is it a redress of a private right but rather in the nature of a command to the employer to make public reparation for dismissing an employee either due to the former's unlawful act or bad faith.

The award of backwages is not conditioned on the employee's ability or inability to, in the interim, earn any income. x x x. (Emphasis added, citations omitted.)

**WHEREFORE**, the petition for review is **DENIED**. The Decision of the Court of Appeals dated September 30, 2009 and its **Resolution** dated January 13, 2010 in CA-G.R. SP No. 103744 are **AFFIRMED**.

**SO ORDERED.**

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

WE CONCUR:

*Maria Lourdes P. A. Sereno*  
**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson

*Mariano C. Del Castillo*  
**MARIANO C. DEL CASTILLO**  
Associate Justice

*Francis H. Jardeleza*  
**FRANCIS H. JARDELEZA**  
Associate Justice

*Noel Gimenez Tijam*  
**NOEL GIMENEZ TIJAM**  
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