



Republic of the Philippines
SUPREME COURT
Baguio City

THIRD DIVISION

ALEXANDER B. BAÑARES,
Petitioner,

G.R. No. 197353

Present:

- versus -

VELASCO, JR., J., Chairperson,
PERALTA,
ABAD,
MENDOZA, and
LEONEN, JJ.

**TABACO WOMEN'S
TRANSPORT SERVICE¹
COOPERATIVE (TAWTRASCO),
represented by DIR. RENOL
BARCEBAL, ET AL.,**
Respondents.

Promulgated:

April 1, 2013

X-----

X

DECISION

VELASCO, JR., J.:

In this Petition for Review on Certiorari under Rule 45, Alexander B. Bañares assails and seeks the reversal of the Decision² dated October 14, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 112542 and its Resolution³ of June 15, 2011 denying petitioner's motion for reconsideration. The CA Decision set aside the July 7, 2009 Decision⁴ and November 18, 2009 Resolution⁵ of the National Labor Relations Commission (NLRC) as well as the April 14, 2008 Order⁶ of the Labor Arbiter.

The facts are undisputed.

Petitioner was for some time the general manager of Tabaco Women's Transport Service Cooperative (TAWTRASCO) until its management, on March 6, 2006, terminated his services. On March 7, 2006, before the Labor

¹ "Services" in some parts of the records.

² *Rollo*, pp. 67-87. Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Josefina Guevara-Salonga and Franchito N. Diamante.

³ *Id.* at 126-127.

⁴ *Id.* at 145-151. Penned by Commissioner Isabel G. Panganiban-Ortiguerra and concurred in by Presiding Commissioner Benedicto R. Palacol and Commissioner Nieves Vivar-De Castro.

⁵ *Id.* at 153-156.

⁶ *Id.* at 140-143. Penned by Executive Labor Arbiter Jose C. Del Valle, Jr.

Arbiter (LA) in RAB V of the NLRC in Legaspi City, petitioner filed a complaint for illegal dismissal and payment of monetary claims which was docketed as NLRC RAB V Case No. 03-00092-06.

On August 22, 2006, the LA rendered a Decision⁷ finding for petitioner, as complainant, with the *fallo* reading:

WHEREFORE, premises considered, judgment is hereby rendered declaring complainant to have been illegally dismissed from his employment. Consequently, respondent Tabaco Women's Transport Service Cooperative (TAWTRASCO) is hereby ordered to immediately reinstate complainant to his former position, without loss of seniority right and to pay complainant the total amount of ONE HUNDRED NINETEEN THOUSAND SIX HUNDRED PESOS (P119,600.00), representing the latter's backwages and damages, as computed above.

All other claims and/or charges are hereby dismissed for lack of factual and legal basis.

SO ORDERED.

Since TAWTRASCO opted not to appeal, the LA Decision soon became final and executory. In fact, TAWTRASCO in no time paid petitioner the amount of PhP 119, 600 by way of damages and backwages corresponding to the period March 6, 2006 to August 22, 2006. But petitioner was not immediately reinstated. Owing to the strained employer-employee relationship perceived to exist between them, TAWTRASCO offered to pay petitioner separation pay of PhP 172, 296, but petitioner rejected the offer. Eventually, the two entered into a Compromise Agreement, in which petitioner waived a portion of his monetary claim, specifically his backwages for the period from August 23, 2006 to February 5, 2007, and agreed that the amount due shall be payable in three (3) installments. In turn, TAWTRASCO undertook to reinstate the petitioner effective February 6, 2007. Accordingly, the LA issued, on February 5, 2007, an Order⁸ based on the compromise agreement thus executed, and declared the instant case closed and terminated.

On February 24, 2007, petitioner received a copy of Memorandum Order No. 04,⁹ Series of 2007, with a copy of a resolution passed by the Board of Directors (BOD) of TAWTRASCO, requiring him to report at the

⁷ Id. at 224-235.

⁸ Id. at 238. The Order reads:

Considering that the decision rendered hereat, including the reinstatement salaries due [petitioner] have already been fully satisfied, wherein complainant shall be reinstated back to his former position effective February 6, 2007 and paid his three (3) months reinstatement salaries in three (3) monthly installments, let this case be, as it is hereby ordered CLOSED, TERMINATED and ARCHIVED.

SO ORDERED.

⁹ Id. at 103-104.

company's Virac, Catanduanes terminal. The memorandum order contained an enumeration of petitioner's duties and responsibilities.

A day after, petitioner went to see Oliva Barcebal (Oliva), the BOD Chairman, to decry that the adverted return-to-work memorandum and board resolution contravene the NLRC-approved compromise agreement which called for his reinstatement as general manager without loss of seniority rights. Petitioner would later reiterate his concerns in a letter¹⁰ dated March 12, 2007.

On March 20, 2007, TAWTRASCO served petitioner a copy of Memorandum No. 10,¹¹ Series of 2007 which set forth his location assignment, as follows: temporarily assigned at the Virac, Catanduanes terminal/office for two months, after which he is to divide his time between the Virac Terminal and the Araneta Center Bus Terminal (ACBT), three days (Monday to Wednesday) in Virac and two days (Friday and Saturday) in Cubao, utilizing Thursday as his travel day in between offices. As ordered, petitioner reported to the Virac terminal which purportedly needed his attention due to its flagging operations and management problems.

Barely a week into his new assignment, petitioner, thru a memorandum report, proposed the construction/rehabilitation of the passenger lounge in the Virac terminal, among other improvements. The proposal came with a request for a monthly lodging accommodation allowance of PhP 1,700 for the duration of his stay in Virac.

While the management eventually approved the desired construction projects, it denied petitioner's plea for cash lodging allowance. Instead of a straight cash allowance, the company urged petitioner to use the Virac office for lodging purposes.

Subsequent events saw petitioner requesting and receiving an allocation of PhP 3,000 for his travel, accommodation, representation and communication allowance subject to liquidation. No replenishment, however, came after.

On April 12, 2007, Oliva, while conducting, in the company of another director, an ocular inspection of the Virac terminal, discovered that petitioner had not reported for work since March 31, 2007. Thus, the issuance of a company memorandum¹² asking petitioner to explain his absence.

¹⁰ Id. at 105, erroneously dated as March 12, 2006.

¹¹ Id. at 106.

¹² CA *rollo*, p. 92.

In response, petitioner addressed a letter-reply¹³ to management stating the underlying reason for not reporting and continue reporting for work in his new place of assignment and expressing in detail his grievances against management. Some excerpts of petitioner's letter:

*x x x [T]he very reason why I don't go back to Virac Catanduanes x x x is because I realized **that in truth my reinstatement effected by your office which is supposed to be in pursuance to the NLRC decision is nothing but an artificial, fake, fictitious and a sham kind of return to work order.***

I regret to say it so on the following grounds:

- 1. Our garage/terminal in Virac Catanduanes wherein you would want me to stay is in total disarray and dirty as it looks until the time that I stayed there and despite having reported that matter to you and despite having requested by me that the necessary funding for the reconstruction or rebuilding of the necessary facilities we at least used to have before should be immediately allocated and released and yet you were too slow in granting it;*
- 2. Despite x x x my request for the allocation of the indispensable travel, representation and accommodation allowances I need to have while staying in Virac because the garage/terminal facilities remains in a messy condition but still you fail until now to provide it to me x x x;*
- 3. The manner and nature of work you would want me to do while in Virac is utterly a deviation from my original work and in effect a demotion in rank;*
- 4. The place of work x x x was completely devoid of any office materials and equipments needed in the nature of my work. **To put in details there was no office table and chairs, no filing cabinets for safekeeping of important documents, no ball-pens, no bond papers etc.** x x x [T]here is nothing at all in said place of work for me to say that there was really an office of the General Manager. **As a matter of fact, you know that all my reports being submitted x x x are made possible by using my own personal computer, my computer printer, my computer inks and even my own bond papers.***
- 5. Just recently, I found out that there are employees in our company who are under my jurisdiction and x x x that are being instructed not to follow my lawful orders. This matter needs no further explanation because I have already reported it and yet you did nothing to correct it.*
- 6. The free place of accommodation I used to have before when staying in Cubao, Quezon City remains non-existent x x x despite*

¹³ Rollo, pp. 111-112.

the fact that x x x I need to be [back] also in Cubao to facilitate the restoration of our transport operation x x x.

In essence, there is an ongoing mockery of the mandate of the NLRC decision that I should be reinstated to my former position as General Manager without loss of seniority rights. What is truly happening now is the obvious evidence that you don't want me to work the way I was doing it before and the way as mandated by the by-laws of our transport cooperative.

In sum, you cannot charge me for abandonment of work because you are in fact causing me an inhumane and degrading treatment as General Manager and giving an embarrassing kind of work.

Therefore, in view of the foregoing circumstances, may I hereby demand that my salary should be paid immediately as soon as you receive this letter of mine that explains in full details the logical reasons why I really cannot go back to my new place of assigned but temporary work x x x.

x x x x

Finally, let me just frankly tell you that I can only go back to Virac Catanduanes when everything I need in my work as General Manager is sufficiently given to me and when all employees of TAWTRASCO are duly advised that in effect I'm truly [back] to work and all the employees need to follow my orders. Meantime, as General Manager I will utilize my time to do some other works x x x.

On April 27, 2007, petitioner filed a complaint against TAWTRASCO for nonpayment of salaries and withholding of privileges before the LA. Via a Manifestation with application for the issuance of an alias writ of execution, petitioner prayed that his complaint be deemed withdrawn “for the purpose of not confusing the essence of consolidation and in order to give way to the smooth proceedings and fast adjudication on the merits.”¹⁴

By Order of April 14, 2008, the LA effectively issued the desired alias writ of execution, as follows:

Consequently, there being no compliance of the reinstatement aspect of the Decision, [petitioner] is therefore, entitled to his reinstatement salaries less the amount he already received, reckoned from date of receipt by respondent [TAWTRASCO] of the decision on October 11, 2006 to date of this order, subject to further computation until reinstatement is actually carried out religiously plus monthly allowance of P1,000.00 without prejudice on the part of the respondent to avail of the remedy available to it under the rules. Hence, the same is computed as follows:

¹⁴ CA rollo, p. 152.

October 11, 2006 to April 18, 2008 = 18 mos.

Basic + Allowance – P19,000.00 x 18 mos. = P342,000.00
LESS:

BPI Check: 2/11/07	–	P18,000.00	
BPI Check: 2/12/07	–	18,000.00	
BPI Check: 3/6/07	–	18,000.00	
BPI Check: 4/6/07	–	18,000.00	
CY 2/13/08	–	7,500.00	
2/27/08	–	7,500.00	87,000.00
			<u>P255,000.00</u>

X X X X

Responsive to all the foregoing, respondent [TAWTRASCO] is hereby ordered to reinstate complainant to his former position as General Manager, without loss of seniority right and pay [petitioner] the amount of P255,000.00, representing the latter's reinstatement salaries (after deducting the amount he already received) and monthly allowance, as computed above.

Respondent is also ordered to show proof of compliance of complainant's reinstatement immediately upon receipt hereof.

SO ORDERED.¹⁵

TAWTRASCO appealed to the NLRC which dismissed the appeal per its Decision dated July 7, 2009, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered DISMISSING respondents' appeal for lack of merit. The assailed Order of the Labor Arbiter dated 14 April 2008, is hereby AFFIRMED.

SO ORDERED.

In so ruling, the NLRC held that TAWTRASCO only partially complied with the final and executory August 22, 2006 Decision of the LA, i.e., by paying the PhP 119,000 backwages of petitioner as ordered. The reinstatement aspect of the LA Decision, however, has yet to be wholly complied with. To the NLRC, the LA acted within his sound discretion in ordering the authentic and full reinstatement of petitioner and the payment of PhP 255,000 as reinstatement salaries as computed from October 11, 2006 to April 18, 2008.

The NLRC denied, through its November 18, 2009 Resolution, TAWTRASCO's motion for reconsideration.

¹⁵ *Rollo*, pp. 142-143.

TAWTRASCO went to the CA on certiorari. On October 14, 2010, the appellate court rendered the assailed Decision, the *fallo* of which reads:

WHEREFORE, the instant petition for certiorari is GRANTED. The assailed Decision and Resolution of the public respondent National Labor Relations Commission, in NLRC LAC No. 08-002800-08 [NLRC RAB V Case No. 03-000092-06], as well as the Order dated 14 April 2008 of the Labor Arbiter are SET ASIDE.

SO ORDERED.

Contrary to the LA's holding, as affirmed by the NLRC, the CA found TAWTRASCO to have fully reinstated petitioner to his former post. And without expressly declaring so, the unmistakable thrust of the CA disposition was that petitioner veritably abandoned his work when he stopped reporting to his Virac terminal assignment.

His motion for reconsideration having been denied per the CA's assailed Resolution of June 15, 2011, petitioner went to this Court. His petition is predicated on the following assignment of errors:

(A)

THE [CA] SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN FAILING TO OBSERVE AND UPHOLD THE FORMAL AND PROCEDURAL REQUIREMENTS IN THE FILING OF THE PETITION FOR CERTIORARI UNDER RULE 65.

(B)

THE [CA] SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN IGNORING THE STRICT RULE ON NON-FORUM SHOPPING AND WHEN DESPITE KNOWLEDGE OF A *PRIOR* FINAL JUDGMENT INVOLVING THE SAME AND IDENTICAL ISSUES AND THE SAME AND IDENTICAL PARTIES, THE COURT A QUO FAILED TO DISMISS OUTRIGHT THE PETITION FOR CERTIORARI IN VIOLATION OF THE DOCTRINE ON "RES JUDICATA" AND THE PRINCIPLE OF "LITIS PENDENCIA".

(C)

THE [CA] SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN THE COURT A QUO HAS DECIDED IT IN A WAY NOT IN ACCORD WITH LAW OR WITH APPLICABLE DECISIONS OF THIS SUPREME COURT WITH RESPECT TO THE FORMAL APPEARANCES OF COUNSEL.

(D)

THE [CA] SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN THE COURT A QUO HAS SO FAR DEPARTED

FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS IN DELVING INTO THE FACTS OF THE CASE.¹⁶

The petition is meritorious.

Essentially, the issues raised boil down to: was there a proper and genuine reinstatement of petitioner to his former position of General Manager of TAWTRASCO without loss of seniority rights and privileges? Subsumed in this core issue is the question of whether petitioner's refusal to report in the Virac terminal in early April 2007 constitutes abandonment, not constructive dismissal.

The parallel finding and conclusion of the LA and the NLRC contradict that of the CA which, as earlier indicated, categorically resolved the first factual poser in the negative. In light of the divergence between the findings of facts of the LA and the NLRC, on one hand, and the appellate court, on the other, a review of the records and the clashing arguments of the parties is in order.¹⁷

Reinstatement, as a labor law concept, means the admission of an employee back to work prevailing prior to his dismissal;¹⁸ restoration to a state or position from which one had been removed or separated, which presupposes that there shall be no demotion in rank and/or diminution of salary, benefits and other privileges; if the position previously occupied no longer exists, the restoration shall be to a substantially equivalent position in terms of salary, benefits and other privileges.¹⁹ Management's prerogative to transfer an employee from one office or station to another within the business establishment, however, generally remains unaffected by a reinstatement order, as long as there is no resulting demotion or diminution of salary and other benefits and/or the action is not motivated by consideration less than fair or effected as a punishment or to get back at the reinstated employee.²⁰

Guided by the foregoing reasonable albeit exaction norm, the "reinstatement" of petitioner as general manager of TAWTRASCO, effected by TAWTRASCO pursuant to the February 5, 2007 compromise agreement, was not a real, *bona fide* reinstatement in the context of the Labor Code and pertinent decisional law. Consider:

First, TAWTRASCO at the outset, i.e., after the compromise agreement signing, directed petitioner to report to the Virac terminal with

¹⁶ Id. at 35-36.

¹⁷ *Union Motor Corporation v. NLRC*, G.R. No. 159738, December 9, 2004, 445 SCRA 683, 689-690.

¹⁸ LABOR CODE, Art. 223.

¹⁹ *Pfizer, Inc. v. Velasco*, G.R. No. 177467, March 9, 2011, 645 SCRA 135, 146-147.

²⁰ *Norkis Trading Co., Inc. v. Gnilo*, G.R. No. 159730, February 11, 2008, 544 SCRA 279, 289.

duties and responsibilities not befitting a general manager of a transport company. In fine, the assignment partook of the nature of a demotion. The aforementioned Memorandum Order No. 04, Series of 2007, in its pertinent part, states and directs:

DUTIES AND RESPONSIBILITIES

- 1) To supervise all TAWTRASCO bus employees, personnels and including authorized callers for the success of the terminal operation;
- 2) To have a record of the in and out of freight loaded on all TAWTRASCO buses, regulate freight charge/s and minimize problems and complaints regarding the freight/cargoes loaded at these buses;
- 3) As General Manager to sign on the manifesto or trip records of the buses going out daily at Virac Terminal attesting his approval except on day-off schedule;
- 4) To unite, settle differences or disputes between TAWTRASCO key personnels at TAWTRASCO Virac terminal affecting its management operation particularly x x x;
- 5) To explore all possibilities and restore the said terminal to its former successful operation;
- 6) To find solution to all other problems relative to its management operation and to report complaints affecting transport operations; and
- 7) To give a written report to the Board of Directors on your accomplishments.

ADDENDUM: On Day-off Schedule

- 1) Authorized Day-Off – Once a week
- 2) To give Notice three (3) days before regarding vacation leave except on emergency cases.

APPROVED: TAWTRASCO BOARD OF DIRECTORS²¹

A cursory reading of items (2) and (3) above would readily reveal that petitioner was tasked to discharge menial duties, such as maintaining a record of the “in” and “out” of freight loaded on all TAWTRASCO buses and signing the trip records of the buses going out daily. To be sure, these tasks cannot be classified as pertaining to the office of a general manager, but that of a checker. As may reasonably be expected, petitioner promptly reacted to this assignment. A day after he received the memorandum in

²¹ *Rollo*, p. 103.

question, or on February 25, 2007, he repaired to the office of Oliva to personally voice out his misgivings about the set up and why he believed that the above memorandum contravened their compromise agreement and the February 5, 2007 Order of the LA specifically providing for his reinstatement as general manager without loss of seniority rights and privileges.

Nevertheless, 15 days after the uneventful personal meeting with Oliva, petitioner addressed a letter to top management inquiring about his reinstatement and assignment. The BOD Secretary of TAWTRASCO received this letter on March 13, 2007.

TAWTRASCO's action on petitioner's aforementioned letter came, as narrated earlier, in the form of Memorandum No. 10, Series of 2007, which temporarily assigned him to the Virac terminal for two months. And after the two-month period, he shall divide his time between the Virac and the ACBT terminals, with Thursday as his travel day in between offices. Notably, this time, TAWTRASCO explained that its Virac terminal needs petitioner's attention due to its flagging operations and management problems. Thus, petitioner acquiesced and reported to the Virac terminal of TAWTRASCO.

In a rather unusual turn of events, however, the assailed CA decision made no mention of the foregoing critical facts despite their being pleaded by petitioner and duly supported by the records, although that court made a perfunctory reference to the adverted Memorandum Order No. 04.

And **second**, while Memorandum No. 10 was couched as if TAWTRASCO had in mind the reinstatement of petitioner to his former position, there cannot be any quibble that TAWTRASCO withheld petitioner's customary boarding house privilege. What is more, TAWTRASCO did not provide him with a formal office space.

As evidence on record abundantly shows, TAWTRASCO was made aware of its shortcomings as employer, but it opted not to lift a finger to address petitioner's reasonable requests for office space and free lodging while assigned at the Virac terminal. Thus, the stand-off between employer and employee led to petitioner writing on April 24, 2007 to TAWTRASCO, an explanatory letter explaining his failure to report back to work at the Virac terminal. We reproduce anew highlights of that letter:

I regret to say it so on the following grounds:

- 1. Our garage/terminal in Virac Catanduanes wherein you would want me to stay is in total disarray and dirty as it looks until the time that I stayed there and despite having reported that matter to you and despite having requested by me that the necessary funding*

for the reconstruction or rebuilding of the necessary facilities we at least used to have before should be immediately allocated and released and yet you were too slow in granting it;

2. *Despite x x x my request for the allocation of the indispensable travel, representation and accommodation allowances I need to have while staying in Virac because the garage/terminal facilities remains in a messy condition but still you fail until now to provide it to me because probably you want me to sleep at night along the sidewalks x x x;*
3. *The manner and nature of work you would want me to do while in Virac is utterly a deviation from my original work and in effect a demotion in rank;*
4. *The place of work x x x was completely devoid of any office materials and equipments needed in the nature of my work. **To put in details there was no office table and chairs, no filing cabinets for safekeeping of important documents, no ball-pens, no bond papers etc.** x x x [T]here is nothing at all in said place of work for me to say that there was really an office of the General Manager. **As a matter of fact, you know that all my reports being submitted x x x are made possible by using my own personal computer, my computer printer, my computer inks and even my own bond papers.***

x x x x

6. *The free place of accommodation I used to have before when staying in Cubao, Quezon City remains non-existent x x x despite the fact that x x x I need to be [back] also in Cubao to facilitate the restoration of our transport operation x x x.*

Apropos to what petitioner viewed as a demeaning treatment dealt him by TAWTRASCO, the LA had stated the ensuing observations in his April 14, 2008 Order:

In this case, however, this Branch finds that respondent [TAWTRASCO] indeed, complied with the reinstatement of the complainant [petitioner Bañares], however, the office where he was assigned in Virac, Catanduanes is not in good and tenable condition. As shown in complainant's Annex "F" which is the photograph of the place, it is unsafe, dilapidated and in a messy situation. Confronted with this problem, complainant requested fund from respondent for the rehabilitation of the office. However, this was not favorably acted upon. To further rub salt in an open wound, respondent appointed a new General Manager effective November 12, 2007 (Annexes "H" and "I", complainant's Memorandum). This conduct on the part of respondent gave complainant the correct impression that the respondent did not intend

to be bound by the compromise agreement, and its non-materialization negated the very purpose for which it was executed.²²

Annex “F,” the photograph²³ adverted to by the LA, tells it all. Indeed, petitioner could not reasonably be expected to work in such a messy condition without any office space, office furniture, equipment and supplies. And much less can petitioner lodge there. TAWTRASCO pointedly told petitioner through the March 26, 2007 letter of Oliva denying his request for a PhP 1,700 lodging allowance that petitioner could instead use the Virac office for his accommodation. It must be borne in mind—and TAWTRASCO has not controverted the fact—that, prior to his illegal dismissal, petitioner was enjoying PhP 5,000-a-month free lodging privilege while stationed in the Cubao terminal. Accordingly, this lodging privilege was supposed to continue under the reinstatement package. But as it turned out, TAWTRASCO discontinued the accommodation when it posted petitioner in Virac.

Under Article 223 of the Labor Code, an employee entitled to reinstatement “shall either be admitted back to work **under the same terms and conditions** prevailing prior to his dismissal or separation x x x.”²⁴ Verily, an illegally dismissed employee is entitled to reinstatement without loss of seniority rights and to other established employment privileges, and to his full backwages.²⁵ The boarding house privilege being an established perk accorded to petitioner ought to have been granted him if a real and authentic reinstatement to his former position as general manager is to be posited.

It cannot be stressed enough that TAWTRASCO withheld petitioner’s salaries for and after his purported refusal to report for work at the Virac terminal. The reality, however, is that TAWTRASCO veritably directed petitioner to work under terms and conditions prejudicial to him, the most hurtful cut being that he was required to work without a decent office partly performing a checker’s job. And this embarrassing work arrangement is what doubtless triggered the refusal to work, which under the premises appears very much justified.

Generally, employees have a demandable right over existing benefits voluntarily granted to them by their employers. And if the grant or benefit is founded on an express policy or has, for a considerable period of time, been given regularly and deliberately, then the grant ripens into a vested right²⁶

²² Id. at 142.

²³ Id. at 110.

²⁴ *Pfizer, Inc. v. Velasco*, supra note 19, at 146.

²⁵ *Genuino Ice Company, Inc. v. Lava*, G.R. No. 190001, March 23, 2011, 646 SCRA 385, 389; citing *FF Marine Corporation v. National Labor Relations Commission*, G.R. No. 152039, April 8, 2005, 455 SCRA 155.

²⁶ *Barroga v. Data Center College of the Philippines*, G.R. No. 174158, June 27, 2011, 652 SCRA 676, 688; citing *TSPIC Corporation v. TSPIC Employees Union (FFW)*, G.R. No. 163419, February 13, 2008, 545 SCRA 215, 232.

which the employer cannot unilaterally diminish, discontinue or eliminate²⁷ without offending the declared constitutional policy on full protection to labor.²⁸ So it must be here with respect, at the minimum, to the lodging accommodation which TAWTRASCO, as found by the NLRC, appears to have regularly extended for free for some time to petitioner.

Contrary to TAWTRASCO's posture and what the CA Decision implied, petitioner's refusal, during the period material, to report for work at the Virac terminal does not, without more, translate to abandonment. For abandonment to exist, it is essential (1) that the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) that there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts.²⁹ These concurring elements of abandonment are not present in the instant case.

As reflected above, the reinstatement order has not been faithfully complied with. And varied but justifiable reasons obtain which made petitioner's work at the Virac terminal untenable. To reiterate, there was a lack of a viable office: no proper office space, no office furniture and equipment, no office supplies. Petitioner's request for immediate remediation of the above unfortunate employment conditions fell on deaf ears. This is not to mention petitioner's board and lodging privilege which he was deprived of without so much as an explanation. Thus, it could not be said that petitioner's absence is without valid or justifiable cause.

But more to the point, petitioner has not manifested, by overt acts, a clear intention to sever his employment with TAWTRASCO. In fact, after submitting his April 24, 2007 letter-explanation to, but not receiving a reaction one way or another from, TAWTRASCO, petitioner lost no time in filing a complaint against the former for, *inter alia*, nonpayment of salaries and forfeiture of boarding house privilege. Thereafter, via a Manifestation, he sought the early issuance of an alias writ of execution purposely for the full implementation of the final and executory LA August 22, 2006 Decision, i.e., for the payment of his salaries and full reinstatement. These twin actions clearly argue against a finding of abandonment on petitioner's part. It is a settled doctrine that the filing of an illegal dismissal suit is inconsistent with the charge of abandonment, for an employee who takes steps to protest his dismissal cannot by logic be said to have abandoned his work.³⁰

²⁷ *University of the East v. University of the East Employees' Association*, G.R. No. 179593, September 14, 2011, 657 SCRA 637, 650; citing LABOR CODE, Art. 100.

²⁸ *Arco Metal Products Co., Inc. v. Samahan ng mga Manggagawa sa Arco Metal-NAFLU (SAMARM-NAFLU)*, G.R. No. 170734, May 14, 2008, 554 SCRA 110, 118.

²⁹ *E.G. & I. Construction Corporation v. Sato*, G.R. No. 182070, February 16, 2011, 643 SCRA 492, 499-500; citing *Padilla Machine Shop v. Javilgas*, G.R. No. 175960, February 19, 2008, 546 SCRA 351, 357.

³⁰ *Automotive Engine Rebuilders, Inc. (AER) v. Progresibong Unyon ng mag Manggagawa sa AER*, G.R. No. 160138, July 13, 2011, 653 SCRA 738, 758.

Given the convergence of events and circumstances above described, the Court can readily declare that TAWTRASCO admitted petitioner back to work under terms and conditions adversely dissimilar to those prevailing before his illegal dismissal. Put a bit differently, petitioner was admitted back, but required to work under conditions crafted to cause unnecessary hardship to or meant to be rejected by him. And to reiterate, these conditions entailed a demotion in rank and diminution of perks and standard privileges. The shabby and unfair treatment accorded him or her by the management of TAWTRASCO is definitely not genuine reinstatement to his former position.

The Court finds, as did the NLRC and the LA, that petitioner was not truly reinstated by TAWTRASCO consistent with the final and executory August 22, 2006 Decision of the LA and the February 5, 2007 Compromise Agreement inked by the parties in the presence of the hearing LA. Perforce, the assailed decision and resolution of the CA must be set aside, and the April 14, 2008 Order of the LA, as effectively affirmed in the July 7, 2009 Decision and November 18, 2009 Resolution of the NLRC, accordingly reinstated.

Supervening events, however, had transpired which inexorably makes the reinstatement infeasible. For one, on November 12, 2007, TAWTRASCO already appointed a new general manager. Petitioner no less has raised this fact of appointment. As a matter of settled law, reinstatement and payment of backwages, as the normal consequences of illegal dismissal, presuppose that the previous position from which the employee has been removed is still in existence or there is an unfilled position of a nature, more or less, similar to the one previously occupied by said employee.³¹

For another, a considerable period of time has elapsed since petitioner last reported to work in early 2007 or practically a six-year period. And this protracted labor suit have likely engendered animosity and exacerbated already strained relations between petitioner and his employer.

Reinstatement is no longer viable where, among other things, the relations between the employer and employee have been so severely strained, that it is not in the best interest of the parties, nor is it advisable or practical to order reinstatement.³² Under the doctrine of strained relations, payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable.³³

³¹ *San Miguel Properties Philippines, Inc. v. Gucaban*, G.R. No. 153982, July 18, 2011, 654 SCRA 18, 34 (citations omitted).

³² *DUP Sound Phils. v. Court of Appeals*, G.R. No. 168317, November 21, 2011, 660 SCRA 461, 473; citing *Golden Ace Builders v. Talde*, G.R. No. 187200, May 5, 2010, 620 SCRA 283, 289; *AFI International Trading Corp. (Zamboanga Buying Station) v. Lorenzo*, G.R. No. 173256, October 9, 2007, 535 SCRA 347, 355; *City Trucking, Inc. v. Balajadia*, G.R. No. 160769, August 9, 2006, 498 SCRA 309, 317; *Cabatulan v. Buat*, G.R. No. 147142, February 14, 2005, 451 SCRA 234, 247.

³³ *Uy v. Centro Ceramica Corporation*, G.R. No. 174631, October 19, 2011, 659 SCRA 604, 618; citing *Century Canning Corporation v. Ramil*, G.R. No. 171630, August 9, 2010, 627 SCRA 192, 206.

Indeed, separation pay is made an alternative relief in lieu of reinstatement in certain circumstances, such as: (1) when reinstatement can no longer be effected in view of the passage of a long period of time or because of the realities of the situation; (2) reinstatement is inimical to the employer's interest; (3) reinstatement is no longer feasible; (4) reinstatement does not serve the best interests of the parties involved; (5) the employer is prejudiced by the workers' continued employment; (6) facts that make execution unjust or inequitable have supervened; or (7) strained relations between the employer and the employee.³⁴

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.³⁵ In lieu of reinstatement, petitioner is entitled to separation pay equivalent to one (1) month salary for every year of service reckoned from the time he commenced his employment with TAWTRASCO until finality of this Decision.

In addition, petitioner is entitled to backwages and other emoluments due him from the time he did not report for work on March 31, 2007 until the finality of this Decision. Said backwages and emoluments shall earn 12% interest from finality of this Decision until fully paid. The payment of legal interest becomes a necessary consequence of the finality of the Court's Decision, because, reckoned from that time, the said decision becomes a judgment for money which shall earn interest at the rate of 12% per annum.³⁶

In accordance with Art. 111³⁷ of the Labor Code and in line with current jurisprudence,³⁸ petitioner shall be paid attorney's fees in the amount equivalent to 10% of the monetary award.

WHEREFORE, the instant petition is **GRANTED**. Accordingly, the assailed Decision and Resolution dated October 14, 2010 and June 15, 2011, respectively, of the CA in CA-G.R. SP No. 112542 are **SET ASIDE**. The NLRC July 7, 2009 Decision and November 18, 2009 Resolution as well as the April 14, 2008 Order of the Labor Arbiter are hereby **REINSTATED** with **MODIFICATION** in that the Tabaco Women's Transport Service

³⁴ *Abaria v. NLRC*, G.R. No. 154113, December 7, 2011, 661 SCRA 686, 715; citing *Escario v. NLRC (Third Division)*, G.R. No. 160302, September 27, 2010, 631 SCRA 261, 275.

³⁵ *DUP Sound Phils. v. Court of Appeals*, supra note 32, at 474; citing *Diversified Security, Inc. v. Bautista*, G.R. No. 152234, April 15, 2010, 618 SCRA 289, 296 and *Macasero v. Southern Industrial Gases Philippines, Inc.*, G.R. No. 178524, January 30, 2009, 577 SCRA 500, 507.

³⁶ *Molina v. Pacific Plans, Inc.*, G.R. No. 165476, August 15, 2011, 655 SCRA 356, 362.

³⁷ ART. 111. *Attorney's Fees*. — (a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

³⁸ *Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa MWC-East Zone Union v. Manila Water Company, Inc.*, G.R. No. 174179, November 16, 2011, 660 SCRA 263, 273-274; *RTG Construction, Inc. v. Facto*, G.R. No. 163872, December 21, 2009, 608 SCRA 615; *Ortiz v. San Miguel Corporation*, G.R. Nos. 151983-84, July 31, 2008, 560 SCRA 654.

Cooperative is **ORDERED** to pay petitioner Alexander B. Bañares the following:

(1) Backwages and other emoluments due to petitioner from March 31, 2007 when petitioner did not report for work until finality of this Decision with interest thereon at 12% per annum from finality of this Decision until paid;


(2) Separation pay equivalent to one (1) month salary for every year of service reckoned from the time he started his employment with TAWTRASCO until the finality of this Decision; and

(3) 10% attorney's fees computed from the total monetary benefits.

The case is **REMANDED** to the RAB V of the NLRC in Legaspi City for the computation, as expeditiously as possible, of the monetary awards.

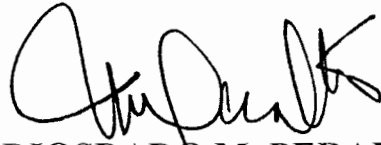
No pronouncement as to costs.

SO ORDERED.

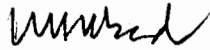


PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:



DIOSDADO M. PERALTA
Associate Justice



ROBERTO A. ABAD
Associate Justice



JOSE CANTRAL MENDOZA
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

I attest 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.



PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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