



Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

PHILIPPINE SPRING WATER
 RESOURCES INC. /DANILO Y.
 LUA ,

Petitioners,

- versus -

COURT OF APPEALS and
 JUVENSTEIN B. MAHILUM,
 Respondents.

G.R. No. 205278

Present:

VELASCO, JR., *J.* Chairperson,
 PERALTA,
 VILLARAMA, JR.,*
 MENDOZA, and
 LEONEN, *JJ.*

Promulgated:

June 11, 2014

Wifredo Delos Santos

X ----- X

DECISION

MENDOZA, J.:

This petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure assails the July 23, 2010 Amended Decision¹ and the October 31, 2012 Resolution² of the Court of Appeals (CA) in CA-G.R. SP No. 02636, which *reversed* its own September 30, 2008 Decision³ on reconsideration by respondent Juvenstein B. Mahilum (*Mahilum*).

The Facts:

Petitioner Philippine Spring Water Resources, Inc. (*PSWRI*), engaged in the business of manufacturing, selling and distributing bottled mineral water, hired Mahilum as Vice-President for Sales and Marketing for the

* Designated Acting Member in view of the vacancy in the Third Division, per Special Order No. 1691 dated May 22, 2014.

¹ *Rollo*, pp. 31-39. Penned by Associate Justice Edgardo L. Delos Santos and concurred in by Associate Justices Agnes Reyes-Carpio and Eduardo B. Peralta Jr. of the Twentieth Division, Manila.

² *Id.* at 29-30.

³ *Id.* at 40-52.

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Bulacan-South Luzon Area, for a monthly salary of ₱15,000.00 plus 0.25% commission on every cash on delivery and another 0.25% on new accounts from July to August, 2004.

Sometime in November 2004, the inauguration of PSWRI's Bulacan plant would be celebrated at the same time with the company's Christmas party. Mahilum was designated as over-all chairman of the affair to be held on December 19, 2004. A few days after his designation, Mahilum called all committee chairpersons to a meeting for the program of action and budget plan. The meeting, however, was reset to the following day as some visitors arrived without prior appointment. Mahilum and his guests discussed sensitive legal issues relative to PSWRI's water drilling inside the plant over the protest of nearby residents and the local water district.

The next day, Mahilum requested Ms. Vicky Evangelista (*Evangelista*), Vice-President for Administration and Finance, to take charge of the meeting for the inauguration should he fail to come back on time. He attended a prior appointment with major clients in Makati City. Later, Mahilum learned that Evangelista postponed the meetings because she accompanied the daughter of petitioner Danilo Lua (*Lua*), President and Chief Executive Officer (*CEO*), to Bulacan.

Thereafter, meetings on the program of activities for the inauguration and Christmas party were conducted without Mahilum's presence. Evangelista took charge and assumed the lead role until the day of the affair.

On the inaugural day, Mahilum was not seen around to supervise the program proper as he entertained some visitors of the company. According to him, he delegated the task to Evangelista.

Mahilum's attention was, however, called when Lua got furious because he was not recognized during the program. He was not mentioned in the opening remarks or called to deliver his inaugural speech. Upon inquiry from the emcees of the program, Mahilum learned that they were not apprised of Lua's decision to deliver the speech considering that he previously declined to have a part in the program as he would be very busy during the affair. Thus, Lua's speech appeared to be "optional" in the printed program during the affair.

On the following day, Mahilum was required to explain why Lua was not recognized and made to deliver his speech. At the same time, he was placed under preventive suspension for thirty (30) days. Mahilum submitted his written explanation. Subsequently, an investigation was conducted.

When his 30-day suspension ended, Mahilum reported for work but was prevented from entering the workplace. Sometime in the first week of March 2005, he received a copy of the Memorandum, dated January 31, 2005, terminating his services effective the next day or on February 1, 2005. On February 9, 2005, a clearance certificate was issued to Mahilum. He received the amount of ₱43,998.56 and was made to execute the Release, Waiver and Quitclaim in favor of the company and Lua.

Mahilum filed a complaint for illegal dismissal with prayer for reinstatement, payment of back wages and damages. He argued that he was illegally suspended and, thereafter, dismissed constructively from the service. He also claimed that he was forced to sign the waiver.

On April 25, 2006, the Labor Arbiter (*LA*) dismissed Mahilum's complaint for lack of merit on the ground that the quitclaim he had executed barred his right to question his dismissal under the principle of *estoppel*. Being a person of sufficient aptitude and intellect Mahilum could not have been forced to sign the document.⁴ The LA reasoned out:

We are not impressed by the submission of the complainant that he was merely forced to sign the said Release, Waiver and Quitclaim because of sheer necessity in trying to justify that the execution of the said document was involuntary on his part...It is our view that the said document was voluntarily signed by the complainant and the same was also based on a reasonable consideration hence binding between the parties.

Aggrieved, Mahilum appealed the decision to the National Labor Relations Commission (*NLRC*). In its October 11, 2006 Decision,⁵ the NLRC ruled in his favor on the ground that the subject quitclaim did not bar the institution of the case for illegal dismissal. It held that while not all waivers and quitclaims were invalid as against public policy, the LA's consideration of the waiver did not constitute a reasonable settlement of his cause of action. The amount he received from the company consisted of his 13th month pay, salaries for the period subsequent to his preventive suspension and earned commissions. These were benefits which Mahilum had earned by virtue of his employment and not in consideration of his separation from service.

⁴ Id. at 63-67.

⁵ Id. at 54-59. Penned by Presiding Commissioner Gerardo C. Nograles, and concurred in by Commissioners Oscar S. Uy and Aurelio D. Menzola, of the Fourth Division, Cebu City.

Moreover, although Mahilum voluntarily signed the quitclaim, it was highly possible that he might have been constrained to assent to its execution considering that he had not received any salary for more than one (1) month due to his preventive suspension.

Anent the issue of illegal termination, the NLRC held that Mahilum was illegally dismissed by PSWRI. While he may have failed to discharge his duties as chairman of the inauguration of the Bulacan plant, the same was not sufficient to deprive him of his employment on the ground of loss of confidence. Although he shared a substantial part of it, Mahilum could not be entirely blamed for the fiasco. Loss of trust and confidence could not be indiscriminately used by employers to justify almost every instance of termination of a managerial employee and as a defense against claim of arbitrary dismissal. The dispositive portion of the NLRC decision reads:

WHEREFORE, premises considered, the appeal of complainant is hereby GRANTED. The Decision dated 25 April 2006 of Executive Labor Arbiter Violeta Bantug is REVERSED and SET ASIDE. Another one is entered declaring that the dismissal of complainant was illegal.

Respondent Philippine Spring Water Resources, Inc. is then directed to pay complainant's separation pay of Fifteen Thousand (₱15,000.00) plus backwages, inclusive of salary and 0,25% commission on cash on delivery from February 1, 2005 up to the finality of the Decision. In addition, respondent should pay complainant of moral and exemplary damages in the amount of ₱100,000.00.

SO ORDERED.⁶

With their motion for reconsideration denied,⁷ PSWRI and Lua filed a petition for *certiorari* with the CA.

On September 30, 2008, the CA *reversed* the NLRC decision. It ruled that Mahilum's conduct during the inauguration did not constitute wilful disobedience or breach of trust, hence, rendering his termination as illegal and without cause. However, it upheld the validity of the executed quitclaim. As a top executive of the company, Mahilum could not have been an unsuspecting or gullible person who misunderstood the import of the document. There was no showing either that the execution of the quitclaim was tainted with deceit or coercion. Further, the amount represented therein was the total amount of benefits owing to Mahilum at the time of his termination and for his six-month stint with the company, which he received

⁶ Id. at 59.

⁷ Id. at 60-62. Resolution dated February 16, 2007.

and contested as he made a general allegation that he was not given remuneration arising from his illegal discharge from service.

The rule is that only when termination is declared to be illegal that an employee is entitled to claim separation pay in lieu of reinstatement. In this case, Mahilum, in effect, demanded for such pay prior to a declaration of the illegality of dismissal. Had he refused to execute the assailed document, he would have been entitled to receive what he bemoaned. Regrettably, he unwittingly discharged the company from its liability as well as waived any recompense when he signed the quitclaim.

In a motion for reconsideration, Mahilum argued that the ruling ran counter to the underlying policy for the grant of the reliefs outlined in Article 279 of the Labor Code.⁸ Following the logic espoused therein, no employee could ever expect any benefit from his complaint for illegal dismissal because at the time of its filing, there was, as of yet, no declaration of the termination's illegality.

On July 23, 2010, the CA *reconsidered* and issued the assailed Amended Decision after finding merit in Mahilum's arguments. Finding Mahilum to have been indeed illegally dismissed from employment, the CA ruled that he was entitled to full backwages and separation pay in lieu of reinstatement, in view of the strained relations between Mahilum and Lua. With respect to the quitclaim, the CA declared it to be void for having no consideration at all. All that Mahilum received by virtue of the said document amounted to what he was legally entitled like salaries and wages, 13th month pay and commissions. These could not be considered as reasonable and credible consideration for a quitclaim. By receiving only what he was lawfully entitled to, there was, in effect, no consideration at all for the quitclaim, rendering it void and ineffective to bar an action for illegal dismissal.

PSWRI and Lua moved for reconsideration, but the motion was subsequently denied.⁹

Hence, this petition for *certiorari* under Rule 65.

⁸ Article 279. *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.

⁹ *Rollo*, pp. 29-30. Resolution dated October 31, 2012.

ARGUMENTS:

1] The CA gravely abused its discretion when it applied Article 279 of the Labor Code in determining the legality of Mahilum's dismissal. Mahilum is a contractual employee and the period of probation depended on the stipulation of the Memorandum of Agreement entered into by the parties.

2] Both substantive and procedural due process was observed in Mahilum's termination from employment with PSWRI.

3] It was error to award the 0.25% commission on the cash sales of the company from February 1, 2005 up to the finality of the decision. A commission is an incentive and must be earned. It is not a benefit that is mandated. The commission is given to salesmen and other officials as incentive, out of the liberality and generosity of the employer.

4] The award of moral and exemplary damages has no basis.

The Court resolves the issues *in seriatim*.

The petitioners resorted to a wrong mode of appeal; Rule and Exceptions

There is a patent error in the mode of appeal selected by the petitioners. It is well-settled that in assailing a decision of the CA, the available remedy is to file a petition for review under Rule 45 and not the extraordinary writ of certiorari under Rule 65. The proper remedy is to file a petition for review on *certiorari* under the Rules of Court which should be instituted within fifteen (15) days from receipt of the assailed decision or resolution. In a long line of cases, the Court has consistently emphasized that after the lapse of the 15-day period to file a petition for review on certiorari, the special civil action of certiorari under Rule 65 is not, and cannot be, a substitute for a lost remedy of appeal.¹⁰

In the case at bench, the petitioners received the assailed Resolution of the CA on December 17, 2012. The subject petition for *certiorari* was filed on February 5, 2013, evidently beyond the 15-day period to file an appeal

¹⁰ *VMC Rural Electric Service Cooperative, Inc. v. Court of Appeals*, 535 Phil. 345 (2006).

under Rule 45. In fact, even if a 30-day extension would be considered, the petition for certiorari was still filed out of time.

Although the petitioners' cause is purportedly grounded on grave abuse of discretion, they still cannot avail of the Rule 65 remedy because an appeal is available under Rule 45. One of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, certiorari will not prosper, even if the ground therefor is grave abuse of discretion.

At any rate, in accordance with the liberal spirit pervading the Rules of Court and in the interest of substantial justice, this Court has before treated a petition for *certiorari* as a petition for review on *certiorari*, particularly (1) if the petition for *certiorari* was filed within the reglementary period within which to file a petition for review on *certiorari*; (2) when errors of judgment are averred; and (3) when there is sufficient reason to justify the relaxation of the rules.¹¹ In this case, considering the monetary awards to Mahilum, the Court opts to resolve said issue.

Mahilum was a regular employee

In insisting that Mahilum was a contractual employee and that the period of probation depended on the agreement of the parties, the petitioners proffer the Memorandum of Agreement¹² entered into by the parties which provides:

6. THAT SECOND PARTY upon appointment shall be in a Probationary status for the next six (6) months and may be extended a permanent appointment only if he can satisfactorily perform his duties and functions as defined in the Personnel's Manual/Company House Rules on Discipline.

It is the petitioners' theory that Mahilum, who was hired in June 2004, was not a regular employee at the time of his dismissal because his probationary status would end only if he could satisfactorily perform his duties and functions as defined in the Personnel's Manual/Company House Rules of Discipline. This suspensive condition failed to arise.

For his part, Mahilum insists that he was a regular employee entitled to security of tenure. Having been hired in June 2004, he must be considered to have already served the company for eight (8) months at the time of his dismissal on February 1, 2005. This fact calls for the application of Article 281 of the Labor Code:

¹¹ *Tagle v. Equitable PCIBank*, 575 Phil. 384 (2008).

¹² *Rollo*, pp. 68-71.

Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. **An employee who is allowed to work after a probationary period shall be considered a regular employee.** [Emphasis supplied]

Contrary to the claims of the petitioners, Mahilum was correctly considered by the NLRC and CA as a regular employee. No grave abuse of discretion may be attributed for the application of Article 279 of the Labor Code¹³ in determining the legality of Mahilum's dismissal.

A probationary employee, like a regular employee, enjoys security of tenure. In cases of probationary employment, however, aside from just or authorized causes of termination, an additional ground is provided under Article 281 of the Labor Code, that is, the probationary employee may also be terminated for failure to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of the engagement. Thus, the services of an employee who has been engaged on probationary basis may be terminated for any of the following: (1) a just or (2) an authorized cause and (3) when he fails to qualify as a regular employee in accordance with reasonable standards prescribed by the employer.¹⁴

As applied to the petitioner's arguments, it would seem that PSWRI and Lua now invoke the first and third ground for Mahilum's termination. The Court, however, cannot subscribe to the premise that Mahilum failed to qualify as a regular employee when he failed to perform at par with the standards made known by the company to him. In this case, it is clear that the primary cause of Mahilum's dismissal from his employment was borne out of his alleged lapses as chairman for the inauguration of the Bulacan plant company's Christmas party. In fact, the termination letter to him cited "loss of trust and confidence" as a ground for his dismissal. Under the circumstances, the petitioners may not be permitted to belatedly harp on its choice not to extend his alleged probationary status to regular employment as a ground for his dismissal. Besides, having been allowed to work after the

¹³ Art. 279. 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 other monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

¹⁴ *Mylene Carvajal v. Luzon Development Bank and/or Oscar Z. Ramirez*, G.R. No. 186169, August 1, 2012, citing *Robinsons Galleria/Robinsons Supermarket Corporation v. Ranchez*, G.R. No. 177937, January 19, 2011, 640 SCRA 135, 142.

lapse of the probationary period, Mahilum became a regular employee. He was hired in June 2004 and was dismissed on February 5, 2005. Thus, he served the company for eight (8) months. This is in consonance with *CALS Poultry Supply Corporation v. Roco*,¹⁵ where the Court ruled that the computation of the 6-month probationary period was reckoned from the date of appointment *up to the same calendar date of the 6th month following*.

Mahilum was illegally dismissed

According to the petitioners, Mahilum's behavior during the inauguration/party was allegedly tantamount to: 1] serious misconduct, as displayed by a drinking binge with his own visitors causing the shame and humiliation of Lua; and 2] willful disobedience, as shown by his refusal to carry out legitimate orders.

As previously explained, Mahilum was a regular employee who was entitled to security of tenure. Thus, he could only be dismissed from service for causes provided in Article 282 of the Labor Code.¹⁶ At this point, it bears stressing that the NLRC and the CA, in their decisions, both found Mahilum to have been illegally dismissed.

The well-entrenched rule, especially in labor cases, is that findings of fact of quasi-judicial bodies, like the NLRC, are accorded with respect, even finality, if supported by substantial evidence. Particularly when passed upon and upheld by the CA, they are binding and conclusive upon the Court and will not normally be disturbed. Although this doctrine is not without exceptions, the Court finds that none is applicable to the present case. Here, the CA affirmed the ruling of the NLRC and adopted as its own the latter's factual findings as to Mahilum's illegal dismissal. Consequently, the Court finds no reason to depart from the finding that Mahilum's failure to effectively discharge his assignment as the over-all chairman of the festivities was due to mere inadvertence and the mistaken belief that he had properly delegated the details of the program to another officer.

¹⁵ 434 Phil. 720 (2002).

¹⁶ ART. 282. Termination by employer. - An employer may terminate an employment for any of the following causes:

- a. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- b. Gross and habitual neglect by the employee of his duties;
- c. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- d. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
- e. Other causes analogous to the foregoing.

Further, his designation as the chairman of the whole affair did not form part of his duty as a supervisor. Mahilum was engaged to supervise the sales and marketing aspects of PSWRI's Bulacan Plant. Verily, the charge of loss of trust and confidence had no leg to stand on, as the act complained of was not work-related. Simply put, the petitioners were not able to prove that Mahilum was unfit to continue working for the company. In the words of the CA:

Even as jurisprudence has distinguished the treatment of managerial employees or employees occupying positions of trust and confidence from that of rank-and-file personnel, insofar as the application of the doctrine of trust and confidence is concerned, such is inapplicable to the instant case since as above-stated, private respondent's lapse was justified, unintentional, without deliberate intent and unrelated to the duty for which he was engaged.

Likewise, warranting the agreement of the Court is the finding of the CA in its Amended Decision that the quitclaim executed by Mahilum did not operate to bar a cause of action for illegal dismissal. That the amounts received by Mahilum were only those owing to him under the law indeed bolstered the fact that the quitclaim was executed without consideration. Suffice it to say, the subject quitclaim may not be considered as a valid and binding undertaking.

Entitlement to monetary claims

Article 279 of the Labor Code provides that an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges, to full backwages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. Due to the strained relations of the parties, however, the payment of separation pay has been considered an acceptable alternative, when reinstatement is no longer desirable or viable. On the one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other, the payment releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.¹⁷ Thus, as an illegally or constructively dismissed employee, the respondent is entitled to: (1) either reinstatement, if viable, or separation pay, if reinstatement is no longer viable; and (2) backwages. These two

¹⁷*Robinsons Galleria v. Ranchez*, G.R. No. 177937, January 19, 2011, citing *Coca-Cola Bottlers Phils., Inc. v. Daniel*, 499 Phil. 491, 511 (2005).

reliefs are separate and distinct from each other and are awarded conjunctively.¹⁸

Mahilum, as a regular employee at the time of his illegal dismissal, is entitled to separation pay and backwages, computed from the time of his dismissal up to the finality of the decision. As correctly ruled by the NLRC,¹⁹ reinstatement is no longer viable considering the circumstances of animosity between Mahilum and Lua.

Propriety of awarding commissions and damages

Be that as it may, the Court resolves to delete the inclusion of 0.25% commission on cash and delivery sales as part of Mahilum's backwages.

Back wages are granted on grounds of equity to workers for earnings lost due to their illegal dismissal from work. They are a reparation for the illegal dismissal of an employee based on earnings which the employee would have obtained, either by virtue of a lawful decree or order, as in the case of a wage increase under a wage order, or by rightful expectation, as in the case of one's salary or wage. The outstanding feature of backwages is thus the degree of assuredness to an employee that he would have had them as earnings had he not been illegally terminated from his employment. [Emphasis supplied]

Backwages are granted on grounds of equity to workers for earnings lost due to their illegal dismissal from work. They represent reparation for the illegal dismissal of an employee based on earnings which the employee would have obtained, either by virtue of a lawful decree or order, as in the case of a wage increase under a wage order, or by rightful expectation, as in the case of one's salary or wage. The outstanding feature of backwages is the degree of assuredness to an employee that he would have had them as earnings had he not been illegally terminated from his employment.²⁰

It is well-established in jurisprudence that the determination of whether or not a commission forms part of the basic salary depends upon the circumstances or conditions for its payment. In *Phil Duplicators, Inc. v. NLRC*,²¹ the Court held that commissions earned by salesmen form part of their basic salary. The salesmen's commissions, comprising a pre-determined percentage of the selling price of the goods sold by each salesman, were properly included in the term basic salary for purposes of computing the 13th month pay. The salesmen's commissions are not

¹⁸ *Siemens v. Domingo*, 582 Phil. 86 (2008).

¹⁹ *Rollo*, p. 58.

²⁰ *Equitable Banking Corporation v. Sadac*, 523 Phil. 781 (2006).

²¹ G.R. No. 110068, November 11, 1993, 227 SCRA 747.

overtime payments, nor profit-sharing payments nor any other fringe benefit, but a portion of the salary structure which represents an automatic increment to the monetary value initially assigned to each unit of work rendered by a salesman. On the other hand, in *Boie-Takeda Chemicals, Inc. v. De la Serna*,²² the so-called commissions paid to or received by medical representatives were excluded from the term basic salary because these were paid to the medical representatives and rank-and-file employees as productivity bonuses, which were generally tied to the productivity, or capacity for revenue production, of a corporation and such bonuses closely resemble profit-sharing payments and had no clear direct or necessary relation to the amount of work actually done by each individual employee.

In Mahilum's case, *Phil. Duplicator* cannot be automatically applied without considering his position as Vice-President for sales and marketing of the PSWRI's Bulacan-South Luzon Area. This factor constrains the Court to hold that Mahilum's 0.25% commission based on the monthly sales and 0.25% commission for cash payments must be taken to come in the nature of overriding commission, not sales commission. The latter is not properly includable in the basic salary as it must be earned by actual market transactions attributable to the claimant. Curiously, Mahilum did not comment on the petitioners' objection to the award. Not being a salesman who directly effected any sale of a product, the commission embodied in the agreement partook of the nature of profit-sharing business based on quota. In fine, the alleged commissions were profit-sharing payments and had no clear, direct or necessary relation to the amount of work he actually performed.

For said reason, Mahilum's backwages must be pegged at his basic salary, excluding the commissions mentioned by the NLRC, to be computed from the time of his dismissal up to the finality of this decision. Nonetheless, the award of backwages shall earn legal interest at the rate of six percent (6%) per annum in accordance with prevailing jurisprudence.²³

Finally, the Court resolves to delete the award for moral and exemplary damages in favor of Mahilum. Worth reiterating is the rule that moral damages are recoverable where the dismissal of the employee was attended by bad faith or fraud or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs, or public policy. Likewise, exemplary damages may be awarded if the dismissal was effected in a wanton, oppressive or malevolent manner.²⁴ No evidence thereof was presented in this case.

²² G.R. Nos. 92174 and 102552, December 10, 1993, 228 SCRA 329.

²³ *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439.

²⁴ *Triple Eight Integrated Services, Inc. v. NLRC*, 359 Phil. 955, 970-971 (1998).

Mahilum, however, is entitled to attorney's fees in the amount of ten percent (10%) of his total monetary award, having been forced to litigate in order to seek redress of his grievances, as provided in Article 111 of the Labor Code,²⁵ as amended, and existing jurisprudence.²⁶

WHEREFORE, the petition is **PARTIALLY GRANTED**. The July 23, 2010 Amended Decision and the October 31, 2012 Resolution of the Twentieth Division of the Court of Appeals in CA G.R. SP No. 02636 are **AFFIRMED** with **MODIFICATION**.

Accordingly, Philippine Spring Water Resources Inc. is hereby ordered to pay Juvenstein B. Mahilum, his separation pay, full backwages inclusive of his basic salary, proportionate 13th month pay, and unused leave credits, to be computed based on his salary at the time of his illegal termination and attorney's fees.

These payments shall earn legal interest at the rate of six (6%) percent per annum reckoned from their due date.

SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

²⁵ 1. 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.

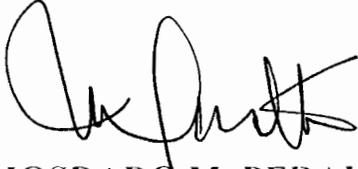
2. It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the amount of wages recovered.

²⁶ *Exodus International Construction Corp. v. Biscocho*, G.R. No. 166109, February 23, 2011, 644 SCRA 76, 91.

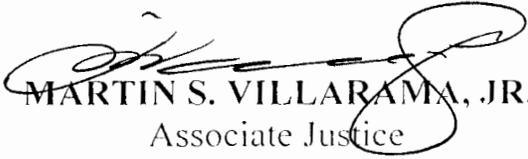
WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

A T T E S T A T I O N

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, Third Division

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