



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

BIGG'S INC.,

G.R. No. 200487

Petitioner,

- versus -

**JAY BONCACAS, THELMA
 DIVINA, ALLAN DY, CHARVIE
 NEO, RICHARD SABATER,
 ARACELI ENRIQUEZ, MA.
 REBECCA SAN JOSE, ALFREDO
 ODIAMAR, JR., MICHAEL
 MAPA, DANTE BAYTA, GLEN
 REBUSI, RACHELLE MEA,
 ALBERT TINASAS, WILHELMN
 JARDINERO,* JUN LADABAN,
 ARLENE COMIA, AND PURA
 SABATER,**

Respondents.

X- ----- X

JUNNIE ARINES, MARY JEAN
 SAN JUAN-REPUESTO,
 REYNALDO LIRIA, EMMANUEL
 STA. ROSA, MENANDRO***
 RAMOS, ARNOLD SARTE,
 SHEILA RAYMUNDO-PONTE,
 MARILYN JANA, MARIANO
 AYCARDO, ROSENDO CHICA,
 JOCELYN AYCARDO, JAY
 ARINES, ANTONIO MONSALVE,
 JOSELITO ENRIQUEZ,
 SEGUNDINO CHICA,
 WINCESLAO LIRAG, LINA
 BARTOLOME-ODIAMAR, ANA
 MARIE FRANCISCO-SATUR,**

G.R. No. 200636

Present:

**CARPIO, J., Chairperson,
 PERLAS-BERNABE,*
 CAGUIOA, and
 J. REYES, JR.,
 HERNANDO.,** JJ.**

Promulgated:

06 MAR 2019

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* Also referred to as "Wilhelm Jardinerio" in some parts of the records.
 ** Also referred to as "Junie Arines," and "Junnie Arenas" in some parts of the records.
 *** Also referred to as "Meynandro" in some parts of the records.
 * On wellness leave.
 ** Additional Member per S.O. No. 2630 dated December 18, 2018.

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**CARMEN TEJERO-BAYTA,
NORBERTO PASANO, and
HEIRS OF EDWIN AYCARDO,
represented by MARIA JOSEFA P.
AYCARDO,**

Petitioners,

- versus -

**BIGG'S INCORPORATED,
ARLENE ACABADO, TERESITA
AREJOLA, TERESA
BUENAFLOR, CONSUELO
BICHARA, and MARICAR
MANJON,**

Respondents.

X-----X

DECISION

CAGUIOA, J.:

Before the Court are consolidated petitions for review on certiorari¹ under Rule 45 of the Rules of Court assailing the Decision² dated June 10, 2011 and Amended Decision³ dated January 20, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 78149.

The Facts

The facts, as summarized from the records, are narrated below.

Bigg's, Inc. (Bigg's) was the employer of Jay Boncacas (Boncacas), Junnie Arines, Mary Jean San Juan-Repuesto, Meynardo Ramos, Sheila Raymundo-Ponte, Mariano Aycardo, Jay Arines, Segundino Chica, Ana Marie Francisco-Satur, and Maria Josefa R. Aycardo (collectively, union members). They are represented by their union president Boncacas. Bigg's is represented by Arlene Acabado (Acabado) and Teresita Arejola (Arejola) who were the personnel officer and general manager, respectively, of Bigg's at the time of filing of the petitions.

Bigg's operates a chain of restaurants with principal place of business in Naga City, Camarines Sur. Its employees formed a labor union named

¹ *Rollo* (G.R. No. 200487), pp. 8-27; *rollo*, (G.R. No. 200636), pp. 13-54.

² *Rollo* (G.R. No. 200487), pp. 29-47; penned by Associate Justice Stephen C. Cruz with the concurrence of Associate Justices Isaias P. Dicedican and Edwin D. Sorongon.

³ *Id.* at 50-55.

Bigg's Employees Union (union) which was issued a Certificate of Registration by the Department of Employment (DOLE) on January 30, 1996.

Both parties have contrasting versions of the incidents leading to the conflict between the Bigg's management and the union members.

Bigg's alleges that on February 16, 1996, around 50 union members staged an illegal "sit-down strike" in Bigg's restaurant. The union did not comply with the requirements of sending Notice of Strike to the National Conciliation and Mediation Board (NCMB). Neither did the union obtain the "strike vote" from its members. According to Bigg's, the union belatedly filed a Notice of Strike with the NCMB on the same day to conceal the illegality of the sit-down strike. Bigg's issued a memorandum to the striking union members placing them under preventive suspension and requiring them to explain their actions within 24 hours from notice. The union members did not comply with the company's order. Thus, they were sent employment termination letters on February 19, 1996.⁴

On the other hand, the union members accuse Bigg's of interfering with union activities. Allegedly, in February 1996, union members were asked to withdraw their membership under threat of losing their employment. In the same month, employees Mariano Aycardo and Marilyn Jana were dismissed from service purportedly due to their union membership. On February 16, 1996, the day of the alleged sit-down strike, union president Boncacas and other union members were prevented from entering the premises of Bigg's. On the same day, they filed a Notice of Strike with the NCMB. They attempted to return to work on February 17, 1996, but they were informed to obtain their respective memoranda from the main office in Naga City. The memoranda informed them of their suspension from work for participating in a sit-down strike. Some union members tried to talk with the Bigg's management, but they were told not to report for work the next day.⁵

The union members filed a complaint before the NCMB for unfair labor practices, illegal dismissal, and damages, docketed as Sub RAB Case No. 05-03-00037-96. Bigg's also filed a complaint before the NCMB for illegal strike against the union members docketed as Sub RAB Case No. 05-03-00034-96. The two complaints were consolidated and the NCMB conducted mediation proceedings. When mediation reached an impasse, the union conducted another strike on March 5, 1996.⁶

Bigg's further alleges that during the strike on March 5, 1996, the union members were disruptive and violent. They prevented ingress and egress of employees and customers to and from the company's premises. They also stopped Bigg's vans from making deliveries by throwing stones at the vans which caused injury to the driver as well as damage to vehicles and to the

⁴ Id. at 33.

⁵ Id. at 31-32.

⁶ Id.

guardhouse. They shouted at customers using megaphones to prevent them from going to Bigg's Diner. The strike was later stopped when both parties agreed to compulsory arbitration.⁷

Findings of the labor tribunals

After several conferences and hearings, and upon the filing of the parties' respective position papers and memoranda, Labor Arbiter Rolando L. Bobis (LA) issued a Joint Decision⁸ dated January 31, 2000.

The LA first noted that some union members manifested that they entered into a settlement with Bigg's and executed Quitclaims and Releases.⁹ The LA also found that there were union members who were contractual employees whose contracts with Bigg's had ended prior to the controversy.¹⁰ Thus, said employees were removed as parties.

On the issue of the illegality of the strikes, the LA ruled in favor of Bigg's. Under the provisions of Articles 263 of the Labor Code and its implementing rules, for a strike to enjoy the protection of law, the union must observe the following procedural requirements:

1. A notice of strike with the required contents should be filed with the [DOLE], specifically the regional branch of the [NCMB], copy furnished the employer;
2. A cooling-off period must be observed, *i.e.*, a time gap is required to cool off tempers between the filing of the notice and the actual execution of the strike;
3. During the cooling-off period, the NCMB mediates and conciliates the parties. They are not allowed to do any act that may disrupt or impede the early settlement of the dispute;
4. Before a strike may actually be started, a strike vote should be taken by secret balloting, with 24-hour prior notice to NCMB;
5. The result of the strike vote should be reported to the NCMB at least seven (7) days before the intended strike or lockout, subject to the cooling off period.¹¹

⁷ Supra note 4.

⁸ Id. at 72-93.

⁹ Namely, Andy Abellano, Juan Alvaro, Jr., Jay Arines, Glennen Artuz, Edwin Aycardo, Jocelyn Aycardo, Mariano Aycardo, Romeo Batalla, Dante Capistrano, Rosendo Chica, Segundino Chica, Gregorio Come, Joselito Enriquez, Ana Marie Francisco, Johnvy Huelgas, Marilyn Jana, Wenceslao Lirag, Antonio Monsalve, Rogelio Murillo, Eddie Nacario, Daily F. Nobleza, Norberto Pasano, Edgar Regalario, Arnold Sarte, Emmanuel Sta. Rosa, Jose Sonny Sio, Elmer Solsona, Agosto Valenzuela, and Randy Valenzuela.

¹⁰ Namely, Maruja De Vera, Thelma Divina, Allan Dy, Charvie Neo, Willy Oyarde, and Marlon Romero.

¹¹ *Rollo* (G.R. No. 200487), pp. 83-84. See *Grand Boulevard Hotel v. Genuine Labor Organization of Workers in Hotel, Restaurant and Allied Industries*, 454 Phil. 463, 487-488 (2003).



Thus, the LA ruled that the first strike conducted by the union members on February 16, 1996 was illegal for failure to comply with the above requirements. The union did not furnish Bigg's a Notice of Strike and did not observe the cooling-off period.¹²

The second strike conducted on March 5, 1996, was likewise held illegal by the LA. Although the union complied with the procedural requirements to conduct a valid strike, the union members performed prohibited acts which rendered the strike illegal, such as acts of violence, aggression, and obstruction of the free ingress and egress from company premises. The LA found that union members prevented the ingress and egress of Bigg's delivery vans by forming human barricades and throwing stones at the vans, as well as putting big rocks along the road. It was also established that union members were using megaphones to discourage customers from going to Bigg's, causing fear and fright to its customers.¹³

As to the issue of illegal dismissal, the LA ruled that the dismissal from employment of the union officers, Boncacas (president), Rey Liria (Liria) (vice president), Jean San Juan (San Juan) (treasurer), and Junnie Arines (Arines) (secretary)¹⁴ was valid as it was proven that they instigated and participated in the illegal strikes based on Article 279 (formerly Article 264) (a)¹⁵ of the Labor Code.¹⁶

While the dismissal of the union officers Boncacas, Liria, San Juan, and Arines was held valid, as to the union members, the LA held that there was no evidence that they knowingly participated in the illegal sit-down strike on February 16, 1996 or that they committed illegal acts during the March 5, 1996 strike. Thus, Bigg's was ordered to reinstate the following employees to their former positions:

- | | |
|-------------------------|--------------------------|
| 1. Alfredo Odiamar, Jr. | 9. Jun Ladaban |
| 2. Albert Tinasas | 10. Ma. Rebecca San Jose |
| 3. Araceli Enriquez | 11. Michael Mapa |
| 4. Arlene Comia | 12. Michael Valenzuela |
| 5. Dante Bayta | 13. Pura Sabater |
| 6. Eginio Palmera | 14. Rachelle Mea |
| 7. Glen Rebusi | 15. Richard Sabater |
| 8. Joseph A. Rull | 16. Wilhelm Jardenario. |

¹² *Rollo* (G.R. No. 200487), p. 84.

¹³ *Id.*

¹⁴ The union members clarified in the petition they submitted to the Court of Appeals that Liria was the union auditor (not vice president); Arines was the treasurer (not secretary); and that San Juan had never been an officer in the union. *Rollo*, [G.R. No. 200636], p. 98.

¹⁵ Art. 279 [264] (a). x x x Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status: Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike.

¹⁶ Presidential Decree No. 442 (Amended and Renumbered), July 21, 2015.

On the allegation of unfair labor practice and union busting, the LA held that the union members were unable to prove the same with substantial evidence. The union members' prayer for moral and exemplary damages was consequently denied.¹⁷

On appeal, the NLRC reversed the LA Decision. In its Decision¹⁸ dated April 30, 2002 (NLRC's First Decision), the NLRC ruled that the strike on February 16, 1996 was valid because it was grounded on unfair labor practices committed by Bigg's. As such, the union members were not bound to wait for 15 days from the filing of the Notice of Strike before staging the same. The NLRC also ruled that there was no evidence to establish that the union members displayed violence, coercion, or prevented the free ingress to and egress from Bigg's premises during the March 5, 1996 strike. The dispositive portion of the NLRC's First Decision reads:

WHEREFORE, the assailed Decision of January 31, 2000 is REVERSED AND SET ASIDE. Accordingly, respondent-appellee BIGG's is hereby directed to immediately reinstate complainants-appellants to their former positions without loss of seniority rights and to pay them full backwages up to actual reinstatement, damages, of P 100,000.00 each and attorney's fee of 10%.¹⁹

However, on motion for reconsideration (MR), the NLRC reversed its own ruling and reinstated the LA Decision in its Decision dated October 22, 2002 (NLRC's Amended Decision). The NLRC declared that there were material points which it had unintentionally missed in its First Decision.²⁰

The NLRC held that the two strikes staged by the union were illegal. As to the February 16, 1996 strike, there was no notice of strike filed with the NCMB. More significantly, the union had not yet been qualified as the certified bargaining agent of Bigg's employees. Thus, it could not, as a matter of right, stage a strike. The NLRC also held that there was no conclusive proof of union busting or unfair labor practice.²¹

Regarding the March 5, 1996 strike, the NLRC held that audio-video footage was presented showing the acts of violence, aggression, and prevention of ingress to and egress from the premises of Bigg's. As well, during the hearings before the LA, counsel for the union members stated that he was not contesting the allegation that some of the union members had attempted to block the passage of Bigg's delivery vans.²²

The dispositive portion of the NLRC's Amended Decision reads:

¹⁷ *Rollo* (G.R. No. 200487), pp. 90-91.

¹⁸ *Id.* at 94-116; penned by Presiding Commissioner Raul T. Aquino, and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan.

¹⁹ *Id.* at 115.

²⁰ *Id.* at 117-134.

²¹ *Id.* at 132.

²² *Id.* at 124.



WHEREFORE, prescinding from the foregoing considerations, Our assailed decision of April 30, 2011 is hereby SET ASIDE and the Decision of the Labor Arbiter is hereby REINSTATED. This is, however, without prejudice to those employees/complainants who have already opted to be separated by receiving their respective separation benefits.²³

Ruling of the Court of Appeals

Both parties elevated the case to the CA. In its Decision²⁴ dated June 10, 2011, the CA partially granted the union's appeal.

The CA overturned the findings of the NLRC as to the finding of a sit-down strike on February 16, 1996. The CA held that Bigg's failed to adduce substantial evidence showing that the union conducted a sit-down strike on February 16, 1996. Only one representative of Bigg's, Carmen Manjon (corporate officer of Bigg's), attested that the union members conducted a sit-down strike. Bigg's did not even bother to present corroborative evidence to substantiate the allegation.²⁵

On the other hand, the union clearly established that some of its members were barred from entering the premises or threatened with dismissal by reason of their union membership. This, said the CA, was a clear manifestation of unfair labor practice.²⁶

With respect to the March 5, 1996 strike, the Court ruled that it was illegal for having been conducted with violence and aggression. However, the CA clarified that a strike need not always be declared by the duly certified bargaining representative. The implementing rules of the Labor Code recognize the power of a legitimate labor organization to conduct a strike in the absence of a certified or duly recognized bargaining representative, provided that the reason therefor is unfair labor practice. The CA held that a legitimate labor organization may take direct action and forego the usual procedural requirements if the *raison d'etre* is unfair labor practice or dismissal of its members which constitutes union busting.²⁷

The CA further found that Bigg's was guilty of anti-unionism by preventing Boncacas and other union members from entering the premises and firing other union members on the same day when they opted to retain union membership. As of February 16, 1996, the union had been effectively busted. Thus, the CA held that it was no longer necessary to file the requisite notice of strike.²⁸

²³ Id. at 134.

²⁴ Id. at 29-47.

²⁵ Id. at 37-38.

²⁶ Id.

²⁷ Id. at 41-42.

²⁸ Id. at 42.

Nonetheless, the CA held that indeed, the strike held on March 5, 1996 was illegal as it was marred by violence and restraint on the free passage and use of property of Biggs. It was not disputed that the union members formed a human barricade and prevented delivery vehicles from passing through Bigg's gates. They also placed three big stones along the gate entrance to keep the vehicles from exiting the premises and flung stones at another van while it was on its way out of the area.²⁹

The dismissal of union officers Liria, San Juan, and Arines was upheld by the CA for their illegal acts during the strike. However, the CA exonerated union president Boncacas as it was not shown that he initiated or participated in any of the illegal acts that characterized the strike as shown in the video evidence of the strike.³⁰

The CA also held that Bigg's failed to prove that union members Maruja De Vera, Thelma Divina, Allan Dy, Charvie Neo, Willy Oyarde, and Marlon Romero were contractual employees.

Thus, the CA ordered the reinstatement of the following union members with payment of backwages:

- | | |
|-------------------------|--------------------------|
| 1. Alfredo Odiamar, Jr. | 13. Ma. Rebecca San Jose |
| 2. Albert Tinasas | 14. Marlon Romero |
| 3. Allan Dy | 15. Maruja De Vera |
| 4. Araceli Enriquez | 16. Michael Mapa |
| 5. Arlene Comia | 17. Michael Valenzuela |
| 6. Charvie Neo | 18. Pura Sabater |
| 7. Dante Bayta | 19. Rachelle Mea |
| 8. Egin Palmera | 20. Richard Sabater |
| 9. Glen Rebusi | 21. Thelma Divina |
| 10. Jay Boncacas | 22. Wilhelm Jardenario |
| 11. Joseph A. Rull | 23. Willy Oyarde |
| 12. Jun Ladaban | |

Both parties filed their respective MRs.³¹

The union argued that union members Menandro Ramos, Lina Bartolome, Carmen Tejero, Sheila Raymundo, and Gregorio Come³² should also be reinstated and their names were just inadvertently omitted from the LA Decision.³³

For its part, Bigg's alleged that Michael Mapa, Rachelle Mea, Richard Sabater, Albert Tinasas, Alfredo Odiamar, Jr., Dante Bayta, and Glen Rebusi

²⁹ Id. at 43.

³⁰ Id. at 44.

³¹ CA *rollo*, pp. 850-857; 881-892.

³² In the LA Decision, Gregorio Come is also listed as among those who had executed Quitclaims and voluntarily accepted their separation pay. See LA Decision, *rollo* (G.R. No. 200487), pp. 81.

³³ See CA Amended Decision, id. at 51.

should be excluded in the award as they had already entered into a settlement with Bigg's and signed Quitclaims and Releases. Meanwhile, Maruja De Vera, Willie Oyarde, Marlon Romero, Michael Valenzuela, Eginio Palmar, and Joseph Rull should be excluded as well because they were no longer listed as petitioners in the union's petition before the CA.³⁴

The CA promulgated an Amended Decision³⁵ on January 20, 2012. On the matter of the union's assertion that some union members' names had been omitted, the CA held that the exclusion of said names from the LA Decision was not unintentional as they were found to have participated in the illegal strike and as such, ineligible for reinstatement.

On the issue of the Compromise Agreement³⁶ executed by Michael Mapa, Rachele Mea, Joseph Rull, Richard Sabater, Araceli Enriquez, Albert Tinasas, Alfredo Odiamar, Jr., Dante Bayta, and Glen Rebusi, the CA held that the same was vague as it merely indicated the payment received by the employees without any indication of whether it constituted backwages or separation pay. Neither did it state that the said employees waived their right to reinstatement if so decided by the court. The document also stated that "this agreement shall be without prejudice to the case [titled *Biggs, Incorporated v. Bigg's Employees Union*], Sub RAB Case No. 05-03-00034-96 and [the case titled, *Jay Boncacas et al. v. Biggs, Inc. et al.*], Sub RAB Case No. 05-00037-96 now pending before the [NLRC]." Thus, there was no relinquishment of the employees' rights to pursue their case in spite of the agreement.

However, the CA held that it had not acquired jurisdiction over Maruja De Vera, Willie Oyarde, Marlon Romero, Michael Valenzuela, Eginio Palmar, and Joseph Rull as they were not named as petitioners in the CA. Thus, they could not lawfully claim any benefit from the decision rendered by the CA. Only the following union members/employees remained entitled to the award:

- | | |
|-------------------------|--------------------------|
| 1. Alfredo Odiamar, Jr. | 10. Jun Ladaban |
| 2. Albert Tinasas | 11. Ma. Rebecca San Jose |
| 3. Allan Dy | 12. Michael Mapa |
| 4. Araceli Enriquez | 13. Pura Sabater |
| 5. Arlene Comia | 14. Rachele Mea |
| 6. Charvie Neo | 15. Richard Sabater |
| 7. Dante Bayta | 16. Thelma Divina |
| 8. Glen Rebusi | 17. Wilhelm Jardenario |
| 9. Jay Boncacas | |

The Petitions

Both parties filed their respective petitions for review on certiorari before the Court.³⁷

³⁴ Id. at 52.

³⁵ Id. at 50-55.

³⁶ CA rollo, pp. 813-814.

³⁷ Rollo (G.R. No. 200487), pp. 8-27; rollo (G.R. No. 200636), pp. 13-54.

At the outset, the Court notes that only the following persons joined in the petition for the union in G.R. No. 200636 and signed the verification and certification of non-forum shopping: Jay Boncacas, Junnie Arines, Menandro Ramos, Mariano Aycardo, Segundina Chica, Maria Josefa Aycardo, Mary Jean San Juan, Sheila Raymundo, Jay Arines, and Ana Marie Francisco-Satur. Reynaldo Liria, Lina Bartolome, and Rosendo Chica executed Special Powers of Attorney authorizing Jay Boncacas to represent them in the case.³⁸

The union members maintain that the strike held on March 5, 1996 was not illegal. They did not commit violence, coercion, or any other prohibited act during the said strike.³⁹

Granting *arguendo* that the March 5, 1996 strike was illegal, the union members contend that their dismissal was still illegal because their employment had already been illegally terminated prior thereto. Bigg's had sent them notices of termination on February 19, 1996. Thus, the commission of any alleged prohibited acts during the March 5, 1996 strike cannot be used as a justification for their illegal dismissal on February 19, 1996. The union members thus prayed that its union officers Liria, San Juan, and Junie Arines should also be reinstated, with payment of backwages.⁴⁰

The union members pray for reinstatement of all petitioners without loss of seniority rights and backwages. The union members also reiterate that union members Menandro Ramos, Lina Bartolome, Carmen Tejero, Sheila Raymundo, and Gregorio Come should also be reinstated. They were listed in the body of the LA Decision as entitled to reinstatement, but their names were omitted from the dispositive portion without any explanation. There was also no mention in the LA Decision of their purported participation in any illegal acts, contrary to the ruling of the CA. Additionally, the union members pray for moral and exemplary damages each, and attorney's fees.⁴¹

On the other hand, Bigg's, in its petition in G.R. No. 200487, alleges that the CA committed reversible error in overturning the findings of the NLRC which had affirmed the findings of fact and law of the LA, who had conducted hearings on the case. Bigg's argues that in a petition for certiorari under Rule 65, it is not for the CA to review again the evidence of the parties. The CA's purview is merely to determine if the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in reaching its decision.⁴²

Bigg's also alleges that in reassessing the evidence of the parties, the CA misappreciated the facts when it ruled that no strike was held on February 16, 1996 and gave credence to the union members' testimonies that they were

³⁸ *Rollo* (G.R. No. 200363), pp. 615, 619 and 622.

³⁹ *Id.* at 39.

⁴⁰ *Id.* at 40-41.

⁴¹ *Id.* at 47-48.

⁴² *Rollo* (G.R. No. 200487), p. 12.

not allowed to enter Bigg's premises. Contrary to their allegations, Bigg's claims that it was the employees who refused to perform their respective jobs during the first shift of the day, such that the Bigg's management had to close its store at 10:00 a.m. and request the second shift employees to come to work earlier.⁴³

Bigg's also maintains that union members Marilyn Jana, Jay Arines, Edwin Aycardo, Jocelyn Aycardo, Mariano Aycardo, Rosendo Chica, Segundino Chica, Joselito Enriquez, Ana Marie Francsico, Wenceslao Lirag, Antonio Monsalve, Eddie Nacario, Norberto Antonio Pasano, and Arnold Sarte had already filed a manifestation with the LA that they had voluntarily accepted their separation pay.⁴⁴

Granting for the sake of argument, that the union members are entitled to reimbursement, Bigg's argues that they are not entitled to backwages because the strike that they conducted was illegal. Bigg's avers that assuming without admitting that there was illegal dismissal, separation pay should be awarded instead of reinstatement considering the long period of time that has already elapsed from the time of dismissal.⁴⁵

Issues

The issues for the Court's consideration are the following:

1. Whether the strikes held on February 16, 1996 and March 5, 1996 were illegal;
2. Whether the union officers and employees were validly dismissed; and,
3. The proper award and parties to the case.

Ruling

Petitions for review under Rule 45 are generally limited to questions of law as the Court is not a trier of facts. However, in exceptional cases, such as when there are conflicting findings of facts of the courts or tribunals below, the Courts may reevaluate and review the facts of a case.⁴⁶ In this case, the Court deems a review of the facts necessary in view of the inconsistent and contrary findings of the CA and the labor tribunals.

⁴³ Id. at 227, 231.

⁴⁴ Id. at 19.

⁴⁵ Id. at 23.

⁴⁶ *Pascual v. Burgos*, 776 Phil. 167, 182 (2016).



Requirements of a valid strike

As defined under Article 219 (formerly Article 212) (o) of the Labor Code, a *strike* means any temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute.

Under Article 278 (formerly Article 263) of the Labor Code, there are different procedural requirements depending on the ground of the strike:

(c) In cases of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike or the employer may file a notice of lockout with the Ministry at least 30 days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be 15 days and in the absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately.

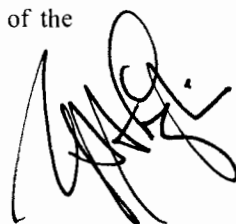
(d) The notice must be in accordance with such implementing rules and regulations as the Minister of Labor and Employment may promulgate.

(e) During the cooling-off period, it shall be the duty of the Ministry to exert all efforts at mediation and conciliation to effect a voluntary settlement. Should the dispute remain unsettled until the lapse of the requisite number of days from the mandatory filing of the notice, the labor union may strike or the employer may declare a lockout.

(f) A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. A decision to declare a lockout must be approved by a majority of the board of directors of the corporation or association or of the partners in a partnership, obtained by secret ballot in a meeting called for that purpose. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. The Ministry may, at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the Ministry the results of the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided.

This provision was further implemented by Department Order (DO) Order No. 40-03, Amending the Implementing Rules of Book V of the Labor Code of the Philippines (IRR) and DO 40-A-03⁴⁷ which amended Section 5, Rule XXII of the IRR.

⁴⁷ Amending Section 5, Rule XXII of the Implementing Rules of Book V of the Labor Code of the Philippines (March 12, 2003).



The Labor Code and the IRR limit the grounds for a valid strike to: (1) a bargaining deadlock in the course of collective bargaining, or (2) the conduct of unfair labor practices by the employer.⁴⁸

Only a certified or duly recognized bargaining representative may declare a strike in case of a bargaining deadlock. However, in cases of unfair labor practices, the strike may be declared by any legitimate labor organization.⁴⁹

In both instances, the union must conduct a “strike vote” which requires that the actual strike is approved by majority of the total union membership in the bargaining unit concerned. The union is required to notify the regional branch of the NCMB of the conduct of the strike vote at least 24 hours before the conduct of the voting. Thereafter, the union must furnish the NCMB with the results of the voting at least seven days before the intended strike or lockout.⁵⁰ This seven-day period has been referred to as the “seven-day strike ban”⁵¹ or “seven-day waiting period.”⁵²

In *Lapanday Workers Union v. National Labor Relations Commission*,⁵³ the Court reasoned that the period is intended to give the NCMB an opportunity to verify whether the projected strike really carries the imprimatur of the majority of the union members.⁵⁴

In a strike due to bargaining deadlocks, the union must file a notice of strike or lockout with the regional branch of the NCMB at least 30 days before

⁴⁸ Section 5. *Grounds for strike or lockout.* — A strike or lockout may be declared in cases of bargaining deadlocks and unfair labor practices. Violations of collective bargaining agreements, except flagrant and/or malicious refusal to comply with its economic provisions, shall not be considered unfair labor practice and shall not be strikeable. No strike or lockout may be declared on grounds involving inter-union and intra-union disputes or without first having filed a notice of strike or lockout or without the necessary strike or lockout vote having been obtained and reported to the Board. Neither will a strike be declared after assumption of jurisdiction by the Secretary or after certification of submission of the dispute to compulsory or voluntary arbitration or during the pendency of cases involving the same grounds or the strike or lockout.

⁴⁹ Section 6. *Who May Declare a Strike or Lockout.* — Any certified or duly recognized bargaining representative may declare a strike in cases of bargaining deadlocks and unfair labor practices. The employer may declare a lockout in the same cases. In the absence of a certified or duly recognized bargaining representative, any legitimate labor organization in the establishment may declare a strike but only on grounds of unfair labor practices. (DO 40-03: Amending the Implementing Rules of Book V of the Labor Code of the Philippines [February 17, 2003])

⁵⁰ Section 10. *Strike or Lockout Vote.* — A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned obtained by secret ballot in meetings or referenda called for the purpose. A decision to declare a lockout must be approved by a majority of the Board of Directors of the employer, corporation or association or the partners in a partnership obtained by a secret ballot in a meeting called for the purpose.

The regional branch of the Board may, at its own initiative or upon request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the regional branch of the Board and the notice of meetings referred to in the preceding paragraph at least twenty-four (24) hours before such meetings as well as the results of the voting at least seven (7) days before the intended strike or lockout, subject to the cooling-off period provided in this Rule. (DO 40-03) (Emphasis supplied)

⁵¹ *CCBPI Postmix Workers Union v. NLRC*, 359 Phil. 741, 757-758 (1998).

⁵² *Lapanday Workers Union v. NLRC*, 318 Phil. 114, 126-127 (1995).

⁵³ 318 Phil. 114 (1995).

⁵⁴ *Id.* at 125.

the intended date of the strike and serve a copy of the notice on the employer. This is the so-called “cooling-off period” when the parties may enter into compromise agreements to prevent the strike. In case of unfair labor practice, the period of notice is shortened to 15 days; in case of union busting, the “cooling-off period” does not apply and the union may immediately conduct the strike after the strike vote and after submitting the results thereof to the regional arbitration branch of the NCMB at least seven days before the intended strike.⁵⁵

Thus, in a strike grounded on unfair labor practice, the following are the requirements: (1) the strike may be declared by the duly certified bargaining agent or legitimate labor organization; (2) the conduct of the strike vote in accordance with the notice and reportorial requirements to the NCMB and subject to the seven-day waiting period; (3) notice of strike filed with the NCMB and copy furnished to the employer, subject to the 15-day cooling-off period. In cases of union busting, the 15-day cooling-off period shall not apply.

The union conducted an illegal sit-down strike on February 16, 1996

With regard to the first strike conducted by the union members on February 16, 1996 (first strike), the Court holds that the CA committed reversible error in overturning the findings of the NLRC and LA. The CA held that no substantial evidence was presented to prove that the union staged a “sit-down strike” as only one representative from Bigg’s attested to the fact. However, a review of the records proves otherwise.

Several employees of Bigg’s executed affidavits deposing that the union members conducted a sit-down strike on February, 16, 1996. Ireneo Sumpay, Jr. (Sumpay), security guard, attested that when he arrived at Bigg’s restaurant on said date at 6:00 a.m., the union members who were assigned on the first shift refused to do their jobs and declared that they were on strike.⁵⁶

⁵⁵ Section 7. *Notice of Strike or Lockout.* — In bargaining deadlocks, a notice of strike or lockout shall be filed with the regional branch of the Board at least thirty (30) days before the intended date thereof, a copy of said notice having been served on the other party concerned. In cases of unfair labor practice, the period of notice shall be fifteen (15) days. However, in case of unfair labor practice involving the dismissal from employment of any union officer duly elected in accordance with the union constitution and by-laws which may constitute union-busting where the existence of the union is threatened, the fifteen-day cooling-off period shall not apply and the union may take action immediately after the strike vote is conducted and the results thereof submitted to the appropriate regional branch of the Board.

x x x x

Section 10. *Strike or Lockout Vote.* — A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned obtained by secret ballot in meetings or referenda called for the purpose. A decision to declare a lockout must be approved by a majority of the Board of Directors of the employer, corporation or association or the partners in a partnership obtained by a secret ballot in a meeting called for the purpose.

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⁵⁶ *Rollo* (G.R. No. 200487), pp. 239-240.

Bigg's supervisor, Evelyn Rectin (Rectin) affirmed Sumpay's statement. Rectin averred that on February 16, 1996, she arrived for work at 6:30 a.m. and Sumpay immediately reported to her that some employees had refused to work. Indeed, she saw that employees Jay Boncacas, Willy Oyarde, Jose Sonny Sio, Rosendo Chico, Greg Come, Alfred Odiamar, Eddie Nacario, Marlon Romero, Glen Artuz, and Mano Aycardo were just sitting. She mentioned that other employees were also just sitting on the second floor of the restaurant. Rectin reported the matter to Bigg's Operations Officer, Teresita Arejola (Arejola).⁵⁷ The latter also corroborated the affidavits of Sumpay and Rectin. In her affidavit, Arejola confirmed that she received a call from Rectin at around 6:00 a.m. informing her that the employees of Bigg's were staging a sit-down strike. Arejola then reported the matter to corporate officers Teresita Puenafior and Carmen Manjon (Manjon). Arejola proceeded to Bigg's restaurant and saw that the employees were not working. She ordered them to start their work but they still refused. At around 10:00 a.m. of the same day, the striking employees left and did not return to work.⁵⁸ During the conference before the LA on November 11, 1999, Manjon testified that she went to Bigg's restaurant after receiving reports that there was a sit-down strike and upon arriving thereat, she saw that employees were not performing their work.⁵⁹

The consistent and corroborative sworn declarations of Bigg's witnesses constitute substantial evidence to prove that the union members committed a sit-down strike on February 16, 1996. The quantum of proof necessary in labor cases is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.⁶⁰ Thus, the CA committed reversible error in overturning the findings of the NLRC and LA based on the CA's incorrect finding that only one representative of Bigg's attested that there was a sit-down strike.

On this score, the Court reinstates and affirms the ruling of the NLRC, which had, for its part, affirmed the findings of the LA that the union conducted an illegal sit-down strike on February 16, 1996, for failure of the union to comply with the pre-requisites for a valid strike.

The union did not file the requisite Notice of Strike and failed to observe the cooling-off period. In an effort to legitimize the strike on February 16, 1996, the union filed a Notice of Strike on the same day. This cannot be considered as compliance with the requirement, as the cooling-off period is mandatory. The cooling-off period is not merely a period during which the union and the employer must simply wait. The purpose of the cooling-off period is to allow the parties to negotiate and seek a peaceful settlement of their dispute to prevent the actual conduct of the strike. In other words, there must be genuine efforts to amicably resolve the dispute.

⁵⁷ Id. at 241-242.

⁵⁸ Id. at 245-247.

⁵⁹ Id. at 294-304.

⁶⁰ *Valencia v. Classique Vinyl Products Corporation*, 804 Phil. 492, 504 (2017).



Moreover, the Court affirms the findings of the labor tribunals that the union failed to prove with substantial evidence that Bigg's was guilty of unfair labor practice as defined under Article 259⁶¹ of the Labor Code to allow the union, a non-certified bargaining agent to initiate the strike. Likewise, the union failed to prove that there was union busting⁶² to exempt compliance with the cooling-off period. The union did not present any substantial evidence to prove its allegations that union members were actually dismissed or threatened with dismissal for their union membership.

In fine, the union's failure to comply with the mandatory requirements rendered the strike on February 16, 1996 illegal.

The strike on March 5, 1996 was illegal; dismissal of union president valid

The Court upholds the consistent and uniform findings of the CA, NLRC, and LA on the illegality of the strike on March 5, 1996, despite the compliance with the procedural requirements of a valid strike. It was established that the striking union members committed acts of violence, aggression, vandalism, and blockage of the free passage to and from Bigg's premises.

⁶¹ Art. 259. [248] *Unfair Labor Practices of Employers*. — It shall be unlawful for an employer to commit any of the following unfair labor practices:

- (a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization;
- (b) To require as a condition of employment that a person or an employee shall not join a labor organization or shall withdraw from one to which he belongs;
- (c) To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their right to self-organization;
- (d) To initiate, dominate, assist or otherwise interfere with the formation or administration of any labor organization, including the giving of financial or other support to it or its organizers or supporters;
- (e) To discriminate in regard to wages, hours of work and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement. Employees of an appropriate bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective bargaining agreement: *Provided*, That the individual authorization required under Article 242, paragraph (o) of this Code shall not apply to the non-members of the recognized collective bargaining agent;
- (f) To dismiss, discharge or otherwise prejudice or discriminate against an employee for having given or being about to give testimony under this Code;
- (g) To violate the duty to bargain collectively as prescribed by this Code;
- (h) To pay negotiation or attorney's fees to the union or its officers or agents as part of the settlement of any issue in collective bargaining or any other dispute; or
- (i) To violate a collective bargaining agreement.

The provisions of the preceding paragraph notwithstanding, only the officers and agents of corporations, associations or partnerships who have actually participated in, authorized or ratified unfair labor practices shall be held criminally liable.

⁶² To constitute union busting under Article 263 of the Labor Code, there must be: 1) a dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws; and 2) the existence of the union must be threatened by such dismissal. (*Pilipino Telephone Corp. v. Pilipino Telephone Employees Association*, 552 Phil. 432, 445 [2007]).

While the law protects the right of workers to engage in concerted activities for the purpose of collective bargaining or to seek redress for unfair labor practices, this right must be exercised in accordance with the law. Article 279 (formerly 264) (e) of the Labor Code provides:

No person engaged in picketing shall commit any act of violence, coercion or intimidation or obstruct the free ingress to or egress from the employer's premises for lawful purposes, or obstruct public thoroughfares.

Thus, in this matter, the CA correctly upheld the findings of the labor tribunals.

The Court, however, reverses the CA's findings that the union president Boncacas' dismissal was invalid as he did not commit illegal acts during the March 5, 1996 strike. The Labor Code provides for a stricter standard on union officers. Article 279 (formerly Article 264) (a) provides:

x x x Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status: *Provided*, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike.

In *Magdala Multipurpose & Livelihood Cooperative v. Kilusang Manggagawa ng LGS*,⁶³ the Court summarized the above rule accordingly:

We now come to the proper sanctions for the conduct of union officers in an illegal strike and for union members who committed illegal acts during a strike. The above-cited Art. 264 of the Code presents a substantial distinction of the consequences of an illegal strike between union officers and mere members of the union. For union officers, knowingly participating in an illegal strike is a valid ground for termination of their employment. But for union members who participated in a strike, their employment may be terminated only if they committed prohibited and illegal acts during the strike and there is substantial evidence or proof of their participation, *i.e.*, that they are clearly identified to have committed such prohibited and illegal acts.⁶⁴

Thus, for union members, what is required is that they knowingly participated in the commission of illegal acts during the strike for there to be sufficient ground for termination of employment. **For union officers, however, it suffices that they knowingly participated in an illegal strike.**

It must be noted that Boncacas not only knowingly participated but was the one who principally organized two illegal strikes on February 16, 1996 and March 5, 1996. Thus, the dismissal of Boncacas and the other union officers after the illegal strike on February 16, 1996 as well as the March 5,

⁶³ 675 Phil. 861 (2011).

⁶⁴ *Id.* at 872.

1996 strike was valid. However, as to the union members who did not participate in any prohibited act during the strikes, their dismissal was invalid.

The proper parties and applicability of the Decision

In their petition, the union members maintain that Menandro Ramos, Lina Bartolome, Carmen Tejero, Sheila Raymundo, and Gregorio Come should also be reinstated as their names were merely inadvertently omitted from the dispositive portion of the LA Decision. There was also no finding in the LA Decision of their purported participation in any illegal act, contrary to the ruling of the CA.

On this point, the Court finds for the union. Indeed, the LA Decision names the following union officers as those who participated in the illegal strike on February 16, 1996 and March 5, 1996: Jay Boncacas, Rey Liria, Jean San Juan, and Junnie Arines.⁶⁵ The LA Decision also lists union member Gregorio Come as a participant in the March 5, 1996 but did not state whether he knowingly participated in the commission of prohibited acts during the strike. Neither did the LA declare that Menandro Ramos, Lina Bartolome, Carmen Tejero, and Sheila Raymundo as having knowingly participated in any illegal act during the March 5, 1996 strike. However, as pointed out by the union, their names were omitted in the dispositive portion of the LA Decision without any explanation. Absent any definite finding that said members willingly participated in any illegal act, they should have been included in the award of reinstatement with backwages by the LA.

With regard to the Compromise Agreement⁶⁶ executed by Michael Mapa, Rachele Mea, Joseph Rull, Richard Sabater, Araceli Enriquez, Albert Tinasas, Alfredo Odiamar, Jr., Dante Bayta, and Glen Rebusi, the Court affirms the CA's Amended Decision. As held by the CA, the agreement is vague as it was merely an acknowledgment of the receipt of funds. It did not indicate whether the same constituted backwages or separation pay. More significantly, the Compromise Agreement explicitly stated that "this agreement shall be without prejudice to the case [titled *Biggs, Incorporated v. Bigg's Employees Union*], Sub RAB Case No. 05-03-00034-96 and [the case titled, *Jay Boncacas et al. v. Biggs, Inc. et al.*], Sub RAB Case No. 05-03-00037-96 now pending before the [NLRC]." Thus, the signatories thereto clearly reserved their right to pursue the instant cases.

The CA also correctly ruled that Bigg's failed to prove that union members Maruja De Vera, Thelma Divina, Allan Dy, Charvie Neo, Willy Oyarde, and Marlon Romero were contractual employees. To substantiate its claim, Bigg's merely submitted the memorandum⁶⁷ addressed to said employees informing them of the termination of their service contracts. Bigg's

⁶⁵ *Rollo* (G.R. No. 200487), p. 87.

⁶⁶ *CA rollo*, pp. 813-814.

⁶⁷ *Rollo* (G.R. No. 200487), pp. 269-270.

failed to submit the contracts themselves, which would have supported its claim that said employees were contractual.

However, the Court also agrees with the CA's removal of the following names in its Amended Decision: Maruja De Vera, Willie Oyarde, Marlon Romero, Michael Valenzuela, Eginio Palmar, and Joseph Rull. Their names were not included in the list of petitioners in the union's petition for certiorari⁶⁸ before the CA and neither were they signatories to the Verification and Certification of Non-Forum Shopping.⁶⁹

Thus, as it stands, the following persons should have been included in the Amended CA Decision as regards its order of reinstatement:

- | | |
|--------------------------|----------------------------|
| 1. Alfredo Odiamar, Jr. | 12. Pura Sabater |
| 2. Albert Tinasas | 13. Rachelle Mea |
| 3. Allan Dy | 14. Richard Sabater |
| 4. Araceli Enriquez | 15. Thelma Divina |
| 5. Arlene Comia | 16. Wilhelm Jardenario |
| 6. Charvie Neo | 17. Menandro Ramos |
| 7. Dante Bayta | 18. Lina Bartolome |
| 8. Glen Rebusi | 19. Carmen Tejero |
| 9. Jun Ladaban | 20. Sheila Raymundo |
| 10. Ma. Rebecca San Jose | 21. Gregorio Come |
| 11. Michael Mapa | |

However, the Court notes that of the five union members omitted from the LA Decision, only Sheila Raymundo and Menandro Ramos joined in the instant petition. Thus, the Decision of the Court shall only apply as to them. In *Municipality of Orion v. Pereyra*⁷⁰ the Court held:

x x x [A] reversal as to parties appealing does not necessitate a reversal as to parties not appealing, but that the judgment may be affirmed or left undisturbed as to them. An exception to the rule exists, however, where a judgment cannot be reversed as to the party appealing without affecting the rights of his co-debtor.⁷¹

Thus, as Lina Bartolome, Carmen Tejero, and Gregorio Come no longer participated in the instant petition, they are no longer parties and the Court cannot issue a judgment as to them.

Lastly, the Court deletes the award of backwages in conformity with jurisprudence that backwages are not granted to dismissed employees who participated in an illegal strike even if they are later reinstated. In *Escario v. NLRC*⁷² (*Escario*), the Court held:

⁶⁸ Id. at 52.

⁶⁹ Id. at 402.

⁷⁰ *Municipality of Orion v. Pereyra*, 50 Phil. 679 (1927).

⁷¹ Id. at 684.

⁷² 645 Phil. 503 (2010).

Conformably with the long honored principle of a *fair day's wage for a fair day's labor*, employees dismissed for joining an illegal strike are not entitled to backwages for the period of the strike even if they are reinstated by virtue of their being merely members of the striking union who did not commit any illegal act during the strike.⁷³

In *Philippine Diamond Hotel & Resort, Inc. v. Manila Diamond Hotel Employees Union*⁷⁴ (*Philippine Diamond Hotel & Resort, Inc.*), the Court laid down the exceptions to this rule:

Jurisprudential law, however, recognizes several exceptions to the "no backwages rule," to wit: when the employees were illegally locked to thus compel them to stage a strike; when the employer is guilty of the grossest form of ULP; when the employer committed discrimination in the rehiring of strikers refusing to readmit those against whom there were pending criminal cases while admitting non-strikers who were also criminally charged in court; or when the workers who staged a voluntary ULP strike offered to return to work unconditionally but the employer refused to reinstate them. Not any of these or analogous instances is, however, present in the instant case.

Respondent urges this Court to apply the exceptional rule enunciated in *Philippine Marine Officers' Guild v. Compañia Maritima* and similar cases where the employees unconditionally offered to return to work, it arguing that there was such an offer on its part to return to work but the Hotel screened the returning strikers and refused to readmit those whom it found to have perpetrated prohibited acts during the strike.

It must be stressed, however, that for the exception in *Philippine Marine Officers' Guild* to apply, it is required that the strike must be **legal**.⁷⁵

None of the exceptions mentioned above is existing in these cases and, as found by the Court, both strikes conducted by the union were illegal. Thus, the listed employees are not entitled to backwages despite the CA's order of reinstatement.

Separation pay in lieu of reinstatement

In certain cases, separation pay is awarded in lieu of reinstatement. The circumstances were enumerated in *Escario*:

x x x (a) 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; (b) reinstatement is inimical to the employer's interest; (c) reinstatement is no longer feasible; (d) reinstatement does not serve the best interests of the parties involved; (e) the employer is prejudiced by the workers' continued employment; (f) facts that make

⁷³ Id. at 507.

⁷⁴ 526 Phil. 679 (2006).

⁷⁵ Id. at 697-699.



execution unjust or inequitable have supervened; or (g) strained relations between the employer and employee.⁷⁶

As prayed for by Bigg's, considering that 23 years have passed since the dismissal of the union members on February 19, 1996,⁷⁷ and bearing in mind Bigg's manifestation that they could no longer trust the striking employees especially as the company is in the food service industry,⁷⁸ separation pay may be more appropriate in lieu of reinstatement.

In *Philippine Diamond Hotel & Resort, Inc.*, the Court made the following discussion:

Reinstatement without backwages of striking members of respondent who did not commit illegal acts would thus suffice under the circumstances of the case. If reinstatement is no longer possible, given the lapse of considerable time from the occurrence of the strike, the award of separation pay of one (1) month salary for each year of service, in lieu of reinstatement, is in order.⁷⁹

Thus, the Court adopts the above disquisition in this case. Finally, the monetary award herein granted shall earn legal interest of 12% per annum from February 19, 1996, the date of termination, until June 30, 2013 in line with the Court's ruling in *Nacar v. Gallery Frames*⁸⁰ and from July 1, 2013 until full satisfaction of the award, the interest rate shall be at 6%.⁸¹

WHEREFORE, premises considered, the petitions in G.R. Nos. 200487 & 200636 are **PARTIALLY GRANTED**. The Court further **RESOLVES** to **MODIFY** the assailed Decision dated June 10, 2011 and Amended Decision dated January 20, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 78149, accordingly:

1. **DECLARE** the strike of February 16, 1996 illegal;
2. **DELETE** the award of backwages;
3. **GRANT** separation pay in lieu of reinstatement at the rate of one (1) month pay for every year of service from the time of dismissal on February 19, 1996 until the finality of this Decision;
4. **INCLUDE** MENANDRO RAMOS and SHEILA RAYMUNDO in the award. The complete list of employees **ENTITLED** to the award follows:

a. Alfredo Odiamar, Jr.
b. Albert Tinasas
c. Allan Dy

k. Michael Mapa
l. Pura Sabater
m. Rachelle Mea

⁷⁶ Supra note 72 at 516.

⁷⁷ *Rollo* (G.R. No. 200487), p. 23.

⁷⁸ Testimony of Carmen Manjon, *CA rollo*, pp. 130-131.

⁷⁹ Supra note 74 at 699.

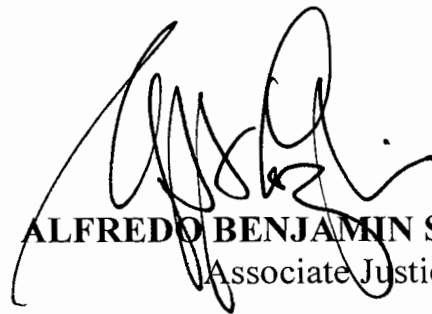
⁸⁰ x x x Consequently, the twelve percent (12%) *per annum* legal interest shall apply only until June 30, 2013. Come July 1, 2013 the new rate of six percent (6%) *per annum* shall be the prevailing rate of interest *when applicable*. (716 Phil. 267, 280-281 [2013])

⁸¹ *Id.*

- d. Araceli Enriquez
- e. Arlene Comia
- f. Charvie Neo
- g. Dante Bayta
- h. Glen Rebusi
- i. Jun Ladaban
- j. Ma. Rebecca San Jose
- n. Richard Sabater
- o. Thelma Divina
- p. Wilhelm Jardenario
- q. Menandro Ramos
- r. Sheila Raymundo

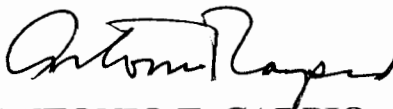
- 5. The monetary award shall earn legal interest of 12% per annum from February 19, 1996 until June 30, 2013. From July 1, 2013 until full satisfaction of the award, the interest rate shall be at 6%.
- 6. **REMAND THE CASE TO THE LABOR ARBITER FOR EXECUTION OF THE AWARD AND COMPUTATION OF SEPARATION PAY.**

SO ORDERED.



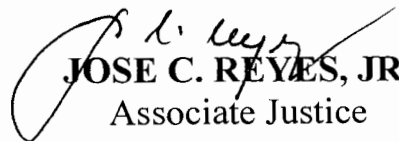
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

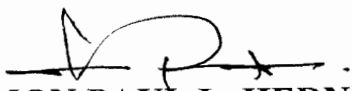


ANTONIO T. CARPIO
Associate Justice
Chairperson

(On wellness leave)
ESTELA M. PERLAS-BERNABE
Associate Justice



JOSE C. REYES, JR.
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice

ATTESTATION

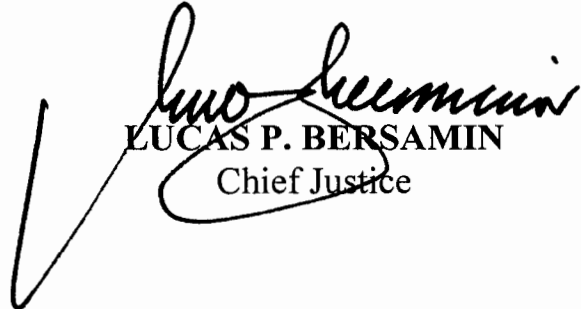
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second 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.



LUCAS P. BERSAMIN
Chief Justice

