Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

GERARDO C. ROXAS,
Petitioner,

G.R. No. 231859

- versus -

BALIWAG TRANSIT, INC. and/or JOSELITO S. TENGCO (owner),
Respondents.

Present:

PERLAS-BERNABE, *S.A.J.*,
Chairperson,
REYES, A., JR.,
HERNANDO,
INTING, and
DELOS SANTOS, *JJ.*

Promulgated:

19 FEB 2020

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DECISION

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated November 23, 2016 and the Resolution[3] dated April 17, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 145623, which affirmed with modification the Resolutions dated January 8, 2016[4] and February 29, 2016[5] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 01-000013-16, declaring petitioner Gerardo C. Roxas (Roxas) not to have

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1 *Rollo*, pp. 10-30.

2 Id. at 79-92A. Penned by Associate Justice Franchito N. Diamante with Associate Justices Japar B. Dimaampao and Carmelita Salandanan Manahan, concurring.

3 Id. at 40-42.

4 Id. at 134-140. Penned by Commissioner Pablo C. Espiritu, Jr. with Commissioner Cecilio Alejandro C. Villanueva concurring. Presiding Commissioner Alex A. Lopez on leave.

5 Id. at 142-143. Penned by Commissioner Pablo C. Espiritu, Jr. with Commissioner Cecilio Alejandro C. Villanueva concurring. Presiding Commissioner Alex A. Lopez no part.

been illegally dismissed, but ordered respondent Baliwag Transit, Inc. (BTI) to pay Roxas nominal damages in the amount of ₱30,000.00.

The Facts

Roxas was employed as bus driver by BTI since March 24, 1998 and paid on commission basis. In 2012, the bus to which Roxas was assigned was phased out pursuant to Land Transportation Franchising and Regulatory Board (LTFRB) Resolution No. 2013-01.[6] For this reason, he became a reliever for BTI's other remaining buses and his work assignment was reduced from his regular three (3) weeks work duty to only two (2) weeks per month.[7]

Feeling aggrieved by the change in his work duty assignment, Roxas, on June 5, 2014, filed a complaint[8] (*first* complaint) for constructive dismissal, non-payment of holiday pay, holiday premium, service incentive leave (SIL), and 13th month pay, illegal suspension, moral and exemplary damages, and attorney's fees against BTI and its owner Joselito S. Tengco (respondents), before the NLRC National Capital Region (NLRC-NCR), docketed as NLRC RAB NCR Case No. NCR-06-06790-14.

At the scheduled hearing[9] on July 2, 2014, Roxas received a call from one of BTI's conductors informing him of a duty assignment on even date. This prompted him to proceed to BTI's terminal to inform the terminal master, Edwin Ortega, and dispatcher Elmer Cao, of the said hearing and his inability to assume work on said day. However, Roxas was warned of abandonment if he did not ply his route. For this reason, Roxas received on July 15, 2014 a notice[10] to explain his absence, which, in his response letter[11] dated July 21, 2014, pointed out that he did not intend to abandon his work as respondents were well aware of the scheduled hearing at the NLRC. He likewise explained that while he admittedly failed to check the duty assignments and schedule of trips for July 2, 2014, he nonetheless did not also expect to be given an assignment considering that he had just rendered his two (2) weeks duty and there were three (3) other reliever drivers still on reserve and waiting for their assignment.

Meanwhile, upon follow-up of his *first* complaint, Roxas learned that the same was dismissed on October 15, 2014 due to improper venue.[12] Thus,

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6 "RESOLUTION MANDATING THE STRICT OBSERVANCE NATIONWIDE OF THE 15-YEAR AGE LIMIT OF BUSES AND MINI-BUSES EVEN ON UNITS WITH ROAD WORTHINESS AND MVIS CERTIFICATES" approved on January 11, 2013.

7 See *rollo*, pp. 85 and 117.

8 See id. at 226-228.

9 See id. at 290.

10 Dated July 11, 2014; see id. at 205.

11 Letter dated July 21, 2014; see id. at 206-207.

12 See id. at 166.

on February 16, 2015, Roxas, together with a co-worker, filed anew their complaint[13] (*second* complaint) against respondents for illegal constructive dismissal, including non-payment of, among others, 13th month pay and medical benefits, as well as attorney's fees, this time before the Regional Arbitration Board (RAB) III in San Fernando, Pampanga, docketed as NLRC CASE NO. RAB III-02-22498-15. The *second* complaint was subsequently amended by Roxas claiming constructive dismissal on June 4, 2014.[14]

Roxas claimed that after the *second* complaint was filed, he received a notice[15] from respondents charging him for indiscreet filing of labor cases against the company without basis ("*pagsasampa ng kaso laban sa kompanya sa Labor ng walang dahilan*"). Notwithstanding his clarification that the *second* complaint was the same as the *first* complaint that had been dismissed and that he merely re-filed the same before the appropriate venue at the RAB III,[16] respondents no longer gave him any work assignment.[17] Thus, Roxas averred that the foregoing circumstances showed that he was constructively dismissed.

On the other hand, respondents alleged that Roxas was a disgruntled employee and that his baseless complaints tarnished the reputation and good will of the company. They denied that Roxas was dismissed on June 4, 2014, pointing out that he was still given work assignment after the filing of the *first* complaint as evidenced by his Assignment Card[18] and that he remained in the roster or list of employees. They argued that Roxas's refusal to submit an explanation for his unfounded complaints, and further calling their investigating officer a liar amounted not only to insubordination but also tantamount to serious misconduct, as well as abandonment.[19] Further, they denied the claim for 13th month pay, pointing out that Roxas was paid purely on commission basis, while his other money claims were without factual and legal bases.[20]

In reply, Roxas countered that while he was given a work assignment, the same was reduced to only two (2) weeks each month contrary to the existing Collective Bargaining Agreement (CBA)[21] that prescribed a three (3)-week work duty for the employees. Roxas added that respondents treated him with disdain as evidenced by the following events, namely: (*a*) he was given a trip duty on the day his *first* complaint was set for hearing on July 2, 2014; (*b*) he was suspended from work beginning July 3, 2014 up to August

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13 See NLRC records, p. 1.
14 *Rollo*, p. 158.
15 Dated February 20, 2015. See id. at 208, 337, and 338.
16 See letter dated February 25, 2015; id. at 209.
17 See id. at 197-198.
18 Id. at 229 and 234-235.
19 See id. at 218 and 300.
20 See id. at 221-222.
21 See id. at 276-289.

1, 2014 before the notice to explain his absence was issued to him; and (*c*) he was charged for insubordination[22] due to his refusal to submit additional explanation for his alleged indiscriminate filing of labor case against BTI.[23] He likewise denied having abandoned his work, claiming that his repeated absences were due to respondents' oppressive treatment and that he was in fact no longer given any trip duty after filing the *second* complaint.[24] Lastly, Roxas pointed out that the two-week duty per month violated the provisions of BTI's own "*Alituntunin at Patakaran*," particularly, Section 33, Article XII thereof, that required employees to work for not less than 200 days in a span of one year,[25] since the reduced work schedule translated only to 168 to 182 days of work a year.[26]

For their part, respondents argued, among others, that the scheduled hearing at the NLRC did not require Roxas's presence,[27] and that the reduction in work assignment was in compliance with a government imposed regulation and that the same applied to all drivers and conductors.[28]

On July 21, 2015, Roxas was issued a notice of termination[29] from employment effective the same date grounded on violation of the company's policies, rules and regulations amounting to gross misconduct/gross neglect of duties, as well as indiscriminate filing of cases, insubordination, and absence without official leave (AWOL).

The LA Ruling

In a Decision[30] dated October 30, 2015, the Labor Arbiter (LA) dismissed the complaint with prejudice.[31] The LA ruled that Roxas was not dismissed on June 4, 2014 given his admission that he still received a work assignment even up to the time he filed the *second* complaint. In the same vein, the LA did not also give merit to Roxas's claim of constructive dismissal, holding that there was no proof to show that he was the only one given the two (2)-week work assignment scheme, and that the limitation in the duration of assignment was dictated by a government imposed regulation that effectively superseded the CBA. On the other hand, the LA found sufficient justification to impose the penalty of dismissal against Roxas in view of his repeated and unjustified failure to submit his explanation, and report for work. With respect to his money claims, the LA ruled that Roxas

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22 See letters dated March 13 and 31, 2015; id. at 339 and 340, respectively.
23 See Reply (To Respondents' Position Paper dated 06 April 2015) dated June 8, 2015; id. at 257-271.
24 See id. at 267.
25 See id. at 325-326.
26 See Rejoinder dated June 22, 2015; id. at 307-322.
27 See Reply to Complainants' Position Paper dated May 26, 2015; id. at 296-306.
28 See Rejoinder dated July 23, 2015; id. at 327-336.
29 Id. at 343.
30 Id. at 144-157. Penned by Acting Executive Labor Arbiter Mariano L. Bactin.
31 Id. at 157.

was not entitled to 13th month pay since he was paid on commission basis, while the other money claims were denied for lack of factual and legal bases.[32]

Aggrieved, Roxas filed an appeal[33] to the NLRC.

The NLRC Ruling

In a Resolution[34] dated January 8, 2016, the NLRC affirmed *in toto*[35] the LA's decision, finding Roxas not to have been constructively dismissed and that his subsequent dismissal was justified. It held that Roxas was not discriminated against since the reduced work scheme undisputedly applied to all drivers and conductors of BTI, and that the same did not violate the CBA as it was due to a phase out of buses imposed by the government, thus, superseding the provisions of the CBA. In the same vein, it held that Roxas's eventual dismissal was justified for his failure to heed the management's directives, which constituted insubordination, and his refusal to work or abandonment, all of which are just causes for termination under Article 297 (formerly Article 282) of the Labor Code.[36]

Roxas's motion for reconsideration[37] was denied in a Resolution[38] dated February 29, 2016, prompting him to file a petition for *certiorari*[39] before the CA, docketed as CA-G.R. SP No. 145623.

The CA Ruling

In a Decision[40] dated November 23, 2016, the CA denied the petition and found no grave abuse of discretion on the part of the NLRC in holding that there was no constructive dismissal. It ruled that BTI's decision to reduce the work week was a reasonable and valid exercise of management prerogative having been done in compliance with a government issued regulation that applied to all its affected drivers and conductors. It explicated that the CBA provisions relied upon by Roxas mainly referred to rest periods of drivers and conductors, and held that since there was a government imposed restriction on the usage of old buses, it was understandable for BTI to not comply with the existing practice of providing all its drivers and conductors a three (3)-week work assignment. With respect to Roxas's

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32 See id. at 153-157.
33 See Memorandum of Appeal dated November 19, 2015; id. at 345-369.
34 Id. at 134-140.
35 See id. at 153-157.
36 See id. at 138-139.
37 Dated January 28, 2016. Id. at 379-386.
38 Id. at 142-143.
39 Dated May 8, 2016. Id. at 99-132.
40 Id. at 79-92A.

eventual termination on July 21, 2015, the CA ruled that the same was justified, holding that his refusal to submit an explanation despite BTI's repeated directives and calling the legal staff/investigator a liar constitute disobedience and disrespect to his superior. However, while it found substantial ground for dismissal, it observed that the notices issued to Roxas were insufficient as they gave the latter only two (2) days to explain the charges levelled against him with no detailed narration of the facts and circumstances that brought about the charges as well as the specific company rules that were violated, and that no hearings were scheduled to clarify his defenses. For these reasons, the CA awarded Roxas nominal damages in the amount of ₱30,000.00.[41]

Both parties moved for reconsideration[42] which the CA denied in a Resolution[43] dated April 17, 2017; hence, the instant petition.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA erred in sustaining the finding that there was no constructive dismissal committed by respondents and that Roxas's subsequent termination from work was valid.

The Court's Ruling

The petition is impressed with merit.

At the outset, Roxas claims that the CA gravely abused its discretion when it affirmed the finding of the labor tribunals that he was not constructively dismissed due to his reduced work assignment which consequently affected his pay and other benefits. Case law defines "constructive dismissal" as follows:

> **[C]onstructive dismissal** is defined as quitting or cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution of pay and other benefits. **It exists if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment**. There is involuntary resignation due to the harsh, hostile, and unfavorable conditions set by the employer. The test of constructive dismissal is whether a reasonable person in the employee's

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41 See id. at 83-92.
42 See id. at 57-59 and 60-76.
43 Id. at 40-42.

> position would have felt compelled to give up his employment/position under the circumstances.[44] (Emphases and underscoring supplied)

In this case, while Roxas's reduced work assignment did effectively result in the diminution of his pay and other benefits, the same did not amount to a clear act of discrimination, insensibility or disdain on the part of BTI so as to force him out of employment. This is because the reason for the said work reduction was due to the phase out of BTI's old buses as imposed by a government regulation, leading BTI to, in the exercise of its management prerogative, adjust the previous work assignments of its employees assigned to the affected buses. As pointed out by the CA, "[t]he reduced [work week] which BTI implemented in 2012 was in relation to the government's directive to remove from the roads, public utility vehicles which are 15 years old and above, for the safety of the riding public. The decision to phase out BTI's old buses was [therefore] not done out of the company's whims and caprices only x x x [but instead,] a means on the part of BTI to cope with the downsizing of their business operation as a consequence of the strict implementation of LTFRB Resolution No. 2013-01."[45] As such, this exercise of BTI's management prerogative appears to have been done in good faith, and hence, should be upheld. In *Moya v. First Solid Rubber Industries, Inc.*:[46]

> [The Court has] recognized the right of the employer to regulate all aspects of employment, such as the freedom to prescribe work assignments, working methods, processes to be followed, regulation regarding transfer of employees, supervision of their work, lay-off and discipline, and dismissal and recall of workers. It is a general principle of labor law to discourage interference with an employer's judgment in the conduct of his business. As already noted, even as the law is solicitous of the welfare of the employees, it also recognizes employer's exercise of management prerogatives. **As long as the company's exercise of judgment is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements, such exercise will be upheld.**[47] (Emphasis supplied)

In this relation, it must be pointed out that the records fail to show that Roxas was the only employee affected by the reduced work assignment scheme. In fact, as the LA observed, "[t]he assignment was made to apply to all other employees."[48]

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44 *Gan v. Galderma Philippines, Inc.*, 701 Phil. 612, 638-639 (2013).
45 *Rollo*, p. 85.
46 718 Phil. 77 (2013).
47 Id. at 87.
48 *Rollo*, p. 86.

Thus, in view of the foregoing, the Court holds that the CA did not gravely abuse its discretion in upholding the labor tribunals' findings that Roxas was not constructively dismissed.

This notwithstanding, records show that during the pendency of the proceedings, Roxas was eventually terminated by respondents premised on the alleged just causes[49] as will be discussed below. This constitutes a separate incident of dismissal, the legality of which the Court is further tasked to resolve.

Article 294 of the Labor Code, as renumbered,[50] provides that an employer may terminate the services of an employee only upon just or authorized causes. The burden of proving that the dismissal was for a just or authorized cause lies with the employer. If the employer fails to meet this burden, the conclusion would be that the dismissal was unjustified, and, therefore, illegal. In order to discharge this burden, the employer must present substantial evidence, which is defined as that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion, and not based on mere surmises and conjectures.[51]

In this regard, Article 297 of the Labor Code enumerates the just causes for which an employer may terminate an employment, to wit:

> ART. 297. [282] *Termination by Employer*. – An employer may terminate an employment for any of the following causes:
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> (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 representatives; and
> (e) Other causes analogous to the foregoing.

In this case, records reveal that Roxas was terminated by respondents for ***(a)*** indiscriminate filing of complaints against the company tantamount to gross misconduct, ***(b)*** insubordination for his failure to comply with the company's directive to submit additional explanation why he filed the complaints, and ***(c)*** absence without leave or abandonment.[52] Thus, it was

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49 See id. at 343.

50 Pursuant to Department Advisory No. 01, Series of 2015, dated July 21, 2015, entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED."

51 *Maersk- Filipinas Crewing, Inc. v. Avestruz*, 754 Phil. 307, 318 (2015).

52 See *rollo*, p. 343.

incumbent upon respondents to prove by substantial evidence the validity of the foregoing grounds for dismissal, which they failed to discharge.

Misconduct involves the transgression of some established and definite rule or action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. For misconduct to be serious and therefore a valid ground for dismissal, it must be (*a*) of grave and aggravated character and not merely trivial or unimportant, (*b*) connected with the work of the employee such that the latter has become unfit to continue working for the employer, and (*c*) performed with wrongful intent.[53]

Here, respondents failed to show that Roxas's filing of the complaints for constructive dismissal against the company was impelled by any ill-motive amounting to gross misconduct. As the Court sees it, Roxas had ample reason to file the complaints for illegal dismissal because the reduced work week scheme resulted in him receiving lesser pay and diminished company benefits. In this relation, it must be noted that the two (2)-week work duty per month, or a total of 168 days per year, apparently contravenes BTI's own "*Alituntunin at Patakaran*" that required a minimum work duty of 200 days for its employees. Worse, the failure to meet such requirement constitutes a possible ground for termination under Sections 33 and 34 of Article XII thereof, which read:

> Sek. 33. Ang mga kawani ay kailangang pumasok ng **hindi bababa sa dalawandaang (200) araw sa loob ng isang taon**. Ang kawaning lalabag sa takdang bilang ng araw ng pagpasok na binabanggit dito ay **aalisan ng benepisyo** gaya ng Maxicare o katulad na benepisyong pang-kalusugan, emergency/assistance loan, grocery at rice loans at iba pang benepisyo.
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> Sek. 34. Ang kawaning lumabag sa patakarang binabanggit sa unahan nito ay maaari ring **itiwalag sa tungkulin** kung ang kanyang paglabag ay inulit ng dalawang taong (2x) magkasunod o kaya'y tatlong beses (3x) sa panahon ng kanyang panunungkulan.[54] (Emphasis supplied)

Neither can the Court subscribe to respondents' assertion that there was insubordination on the part of Roxas when he repeatedly refused to heed the company's directive to submit additional explanation as to why he filed his complaints. To be sure, "[w]illful disobedience or insubordination, as a just cause for the dismissal of an employee, necessitates the concurrence of at least two (2) requisites, namely: (*a*) the employee's assailed conduct must have been willful, that is, characterized by a **wrongful and perverse attitude**; and (*b*) the order violated must have been reasonable, lawful, made known to the employee, and must **pertain to the duties which he had been**

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53 See *Ting Trucking v. Makilan*, 787 Phil. 651, 661-662 (2016).
54 *Rollo*, pp. 325-326.

engaged to discharge."[55] None of the foregoing requisites were present in the case at bar.

In this case, records show that Roxas had, in fact, initially complied and submitted his letter of explanation why he filed the *first* and *second* complaints against BTI. In this accord, Roxas further explicated that he believed that the same was already sufficient to dispel the charge of indiscriminate filing of baseless complaints. Thus, his refusal to submit additional "proper explanation/s" should not be taken against him. At most, Roxas's refusal to comply with the subsequent directives to explain should only be deemed as a waiver of his right to procedural due process in connection with the subject incident and was not tantamount to willful disobedience or insubordination.[56] Besides, the subsequent orders to explain given to Roxas were mere reiterations of the charge[57] levelled against him, to which he had already given an initial explanation. Notably, although it appears that Roxas had called the investigating officer a liar during the time when the latter forced him to sign an acknowledgment receipt which he refused to heed,[58] the same is but a natural reaction to the investigating officer's unwarranted assertion that he purportedly failed to provide any explanation at all as to why he filed the complaints against BTI. In any case, the same does not rise to the level of seriousness so as to warrant his dismissal from service.

Finally, respondents' charge of abandonment cannot likewise stand. Settled is the rule that mere absence or failure to report for work is not tantamount to abandonment.[59] The absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore, and the burden of proof to show that there was unjustified refusal to go back to work rests on the employer,[60] which unfortunately, respondents likewise failed to show.

Accordingly, having failed to establish by substantial evidence the just causes for Roxas's termination, it was error for the CA to not find grave abuse of discretion on the part of the NLRC in holding that the dismissal was valid.

In this regard, Article 294[61] of the Labor Code provides that an employee who is unjustly dismissed from work is entitled to reinstatement

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55 *Sta. Isabel v. Perla Compañia De Seguros, Inc.*, 798 Phil. 165, 175 (2016); emphases supplied.
56 See id. at 175-176.
57 See *rollo*, pp. 339-342.
58 See id. at 167-168 and 300.
59 *Doctor v. NII Enterprises*, G.R. No. 194001, November 22, 2017, 846 SCRA 53, 70.
60 See *Symex Security Services, Inc. v. Rivera, Jr.*, G.R. No. 202613, November 8, 2017, 844 SCRA 416, 434-435, citing *Tan Brothers Corporation of Basilan City v. Escudero*, 713 Phil. 392, 400-401 (2013).
61 Art. 294. [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

without loss of seniority rights and other privileges, and to his full backwages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time his compensation was withheld from him, which in this case is reckoned from the time of his illegal dismissal on July 21, 2015, up to the time of his actual reinstatement. However, if reinstatement is no longer possible, the employer has the option of paying the employee his separation pay *in lieu* of reinstatement. Considering the length of time that had passed since the controversy started and the existing regulation on the use of buses that has affected respondents' operations, there is a need to remand the case to the NLRC to determine if Roxas's reinstatement, as consistently prayed for, is still viable under the circumstances.

On the other hand, with respect to Roxas's claim for 13th month pay, the same is not warranted since Section 3 (e) of the Rules and Regulations Implementing Presidential Decree No. 851 expressly exempted from payment of 13th month pay "[*e*]*mployers of those who are paid on* ***purely commission****, boundary, or task basis, and those who are paid a fixed amount for performing a specific work, irrespective of the time consumed in the performance thereof, except where the workers are paid on piece-rate basis in which case the employer shall be covered by this issuance insofar as such workers are concerned.*"

Likewise, the Court finds no basis to award Roxas's claim for illegal deductions as the same was not substantiated. The same holds true for the claim of moral and exemplary damages. It is worthy to point out 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; while exemplary damages may be awarded if the dismissal was effected in a wanton, oppressive or malevolent manner.[62] The person claiming damages must prove the existence of bad faith by clear and convincing evidence, for the law always presumes good faith. Here, Roxas failed to establish that respondents were motivated by ill will or that his dismissal was done in a wanton, oppressive or malevolent manner.

Nevertheless, since Roxas was compelled to litigate to enforce his rights and protect his interests, he is entitled to attorney's fees equivalent to ten percent (10%) of the total monetary award due him in accordance with Article 111 of the Labor Code and Article 2208 of the Civil Code.[63]

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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.

62 See *Freyssinet Filipinas Corporation v. Lapuz*, G.R. No. 226722, March 18, 2019.

63 See *Reyes v. RP Guardians Security Agency, Inc.*, 708 Phil. 598, 606 (2013) and *Aguilar v. Burger Machine Holdings Corporation*, 536 Phil. 985, 997 (2006).

WHEREFORE, the petition is **GRANTED.** The Decision dated November 23, 2016 and the Resolution dated April 17, 2017 of the Court of Appeals in CA-G.R. SP No. 145623 are hereby **REVERSED** and **SET ASIDE**. A new one is rendered declaring petitioner Gerardo C. Roxas (petitioner) to have been illegally dismissed. Accordingly, respondents Baliwag Transit, Inc. and/or Joselito S. Tengco (respondents) are **ORDERED** to either reinstate petitioner to his former position and to pay his full backwages, inclusive of allowances, and his other benefits in accordance with Article 294 of the Labor Code, as renumbered, or to pay separation pay. In addition, respondents should pay ten percent (10%) of the monetary awards as attorney's fees.

The case is **REMANDED** to the Labor Arbiter to determine if reinstatement of petitioner is still viable or separation pay should be paid instead, and to make a detailed computation of the exact amount of monetary benefits due him. The denial of his other money claims is sustained for lack of basis.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

ANDRES B. REYES, JR.
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

EDGARDO L. DELOS SANTOS
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.

ESTELA M. PERLAS-BERNABE
Senior 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.

DIOSDADO M. PERALTA
Chief Justice