



Republic of the Philippines
Department of Labor and Employment
NATIONAL LABOR RELATIONS COMMISSION
Quezon City

2506 MAY 30

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Bimbo

MEMORANDUM CIRCULAR NO. 5-01

TO : ALL PRESIDING COMMISSIONERS, COMMISSIONERS,
EXECUTIVE LABOR ARBITERS AND LABOR ARBITERS

SUBJECT: POLICY GUIDELINES ON AWARDS OF SEPARATION PAY IN LIEU
OF REINSTATEMENT

DATE: 26 MAY 2006

Article 279 of the Labor Code, as amended by Republic Act No. 6715, provides:

"x x x. 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 back wages 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."

In connection with the foregoing, Rule V, Section 14 of the 2005 Revised Rules of Procedure of the NLRC, which took effect on January 7, 2006, states:

"CONTENTS OF DECISIONS- The decisions and orders of the Labor Arbiter shall be clear and concise and shall include a brief statement of the: a) facts of the case; b) issues involved; c) applicable laws or rules; d) conclusions and reasons therefore; and e) specific remedy or relief granted. In cases involving monetary awards, the decisions or orders of the labor arbiter shall contain the amount of award.

"x x x."

Jurisprudence has evolved the doctrine that where there is a finding of illegal dismissal and only in exceptional cases, an award of separation pay in lieu of reinstatement may be ordered by the Labor Arbiter or by the Commission. In *Pheschem Industrial Corporation v. Pablito Molez*, G.R. No. 161158, May 9, 2005, the Supreme Court clarified the exceptional nature of such award of separation pay, as follows:

"x x x. Clearly, the law intended reinstatement to be the general rule. It is only when reinstatement is no longer feasible that payment of separation pay is awarded to an illegally dismissed employee. x x x

"x x x. Payment of separation pay as a substitute for reinstatement is allowed only in exceptional circumstances, viz: [1] when reasons exist which are not attributable to the fault or beyond the control of the employer, such as, when the employer, who is in severe financial strait and has suffered serious business losses, has ceased operations, implemented retrenchment, or abolished the position due to the installation of labor saving devices; [2] when the illegally dismissed employee has contracted a disease and his reinstatement will endanger the safety of his co-employees; or [3] when strained relationship exists between the employer and the dismissed employee."

In order to ensure consistency in the application of the law and jurisprudence at both original and appellate levels of the NLRC, the following guidelines shall be observed:

1. In all cases where there is a finding of illegal dismissal, the complainant shall be entitled to reinstatement without loss of seniority rights and other privileges and to his or her full back wages inclusive of allowances, and to his or her other benefits or their monetary equivalent computed from the time his or her compensation was withheld up to the time of actual reinstatement.
2. By way of exception to the foregoing, an award of separation pay may be ordered in lieu of reinstatement.
3. The Labor Arbiter or the Commission shall not issue a decision providing for alternative reliefs of reinstatement or separation pay. Instead, the decision must specifically order either reinstatement or separation pay in lieu of reinstatement.
4. In case of an award of separation pay in lieu of reinstatement, the Labor Arbiter or the Commission must state the factual basis why separation pay is justified. Such factual basis must include findings, supported by substantial evidence, that relate to the specific circumstances constituting 1) the economic reasons beyond the control of the employer or not attributable to its fault; 2) the disease from which the dismissed employee is suffering and that such disease endangers the safety of his or her co-employees; and 3) why there exist strained relations, provided that the mere filing of the complaint shall not suffice as a basis for a finding of strained relations.



5. In case of an award of separation pay in lieu of reinstatement, the award shall be computed from the commencement of employment up to the time of termination, including the imputed service for which the employee is entitled to back wages with the salary prevailing at the end of the period of putative service being the basis for computation (*Masagana Concrete Products v. NLRC*, 313 SCRA 576 citing *Reformist UNION of R.B. Liner Inc. v. NLRC*, 266 SCRA 713). The separation pay shall be equivalent to one month's salary for every year of service (*P.J. Lhuillier Inc. et.al. v. NLRC*, April 29, 2005).

This circular takes effect immediately.

For strict compliance.



BENEDICTO ERNESTO R. BITONIO JR.
Chairman