

LABOR LAWS AS SECUNDUM RATIONEM¹
AND SECUNDUM CARITATEM:²
APPLYING SOCIAL JUSTICE WITHOUT CAUSING AN INJUSTICE

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"There may be cases where the circumstances warrant favoring labor over the interests of management but never should the scale be tilted if the result is an injustice to the employer."

-Justice Padilla³

"The Court must take care, however, that in the contest between labor and capital, the results achieved are fair and in conformity with rules."

-Justice Sarmiento⁴

¹ Latin, meaning "according to reason".

² Latin, meaning "according to charitable heart"; Courts have held that labor law determinations are not only *secundum rationem* but *secundum caritatem* in *Philippine Air Lines Inc. v. Philippine Air Lines Employees Association (PALEA)*, G.R. No. 24626, 57 SCRA 489, June 28, 1974; *Almira et al. v. B.F. Goodrich Philippines, Inc. et al.*, G.R. No. 34974, 58 SCRA 120, July 25, 1974; *Progressive Workers' Union etc. v. Aguas et al.*, G.R. Nos. 59711-12, 150 SCRA 429, May 29, 1987.

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³ *Philippine Geothermal Inc. v. National Labor Relations Commission*, G.R. No. 106370, 236 SCRA 371, Sept. 8, 1994.

⁴ *Reliance Surety and Insurance Co. Inc. v. National Labor Relations Commission*, G.R. Nos. 86917-18, 193 SCRA 365, Jan. 25, 1991.

I. INTRODUCTION

As long as men undertook such works only as a single person could finish, and stuck to such arts as did not require the joint endeavors of several hands, they lived freely, healthy, honest, and happy, as much as their nature would admit, and continued to enjoy with each other all pleasures of an independent intercourse; but from the moment one man began to stand in need for another's assistance, from the moment it appeared an advantage for one man to possess the quantity of provisions requisite for two, *all equality vanished*, property started up; *labor became necessary*, and boundless forests became smiling fields, which it was found necessary to water with human sweat, and in which slavery and misery were seen to sprout out and grow with the fruits of the earth...⁵

Such is the bleak picture that Rousseau depicts in explaining how and why the concept of labor emerged. Nonetheless, the concept of labor is one which has continued to subsist since time immemorial.

In its limited concept, the term 'labor' refers to physical or mental exertion necessary to produce goods. In its broad concept it may include the labor force who are employed or those who are able and willing to work but are temporarily or involuntarily unemployed.⁶

It is a truism that because of the economic superiority of capital, labor, as a factor of production, is weak and helpless and finds itself easily in trouble without the necessary succor from the State.⁷ The historical experience of numerous countries over the world has shown the importance of labor to the stability, not only of the economic, but the social and political order as well. Professor Daugherty, in his study of the development of labor in Western Civilization, observed that it is during times of prolonged or severe unemployment that stability of an existing organization is most likely to be threatened by revolutionary movements.⁸ Jobless wage-earners may become easy preys to radical doctrines because of

⁵ Jean Jacques Rousseau, DISCOURSE ON THE ORIGIN AND FOUNDATION OF THE INEQUALITY OF MANKIND at 52 (1754).

⁶ Wilbert Moore, INDUSTRIAL RELATIONS AND THE SOCIAL ORDER at 55-456 (1951).

⁷ Salvador Poquiz, NEW PHILIPPINE CONSTITUTION at 16 (1979).

⁸ I Carroll Daugherty, LABOR PROBLEMS IN AMERICAN INDUSTRY at 42 (1952).

an abusive and unfair existing economic order. Their resentment may ignite social tension which may cause revolution or civil war.⁹

In the Philippines, the role of labor has also been recognized and given primacy. In one case, the Supreme Court emphatically declared:

The Supreme Court reaffirms its concern for the lowly worker who, often at his employer's mercy, must look up to the law for his protection. The law regards him with tenderness and even favor and always *with faith and hope in his capacity to help in shaping the nation's future. How society treats him determines whether the knife in his hands shall be a caring tool for beauty and progress or an angry weapon of defiance and revenge.* If we cherish him as we should, we must resolve to *lighten the weight of centuries of exploitation and disdain that bends his back but does not bow his head.*¹⁰ (emphasis supplied)

Thus, the supreme law of the Philippines "affirms labor as a primary social economic force" and guarantees "to protect the rights of workers and promote their welfare."¹¹ This, says the constitutionalist Fr. Joaquin Bernas, is a recognition of the reality that, in a situation of extreme mass poverty, political rights, no matter how strongly guaranteed by the constitution, become largely rights enjoyed by the upper and middle class and are a myth for the underprivileged. Without the improvement of economic conditions, there can be no real enhancement of the political rights of the people.¹² But it should not be deduced that the basic policy of the State is to favor labor to prejudice capital. The plain reality is that both sectors need each other. They are interdependent—one is inutile without the other. Hence the better understanding is that the basic policy is to balance or to coordinate the rights of both labor and capital.¹³

What follows here is an analysis of how the policy of balancing or coordinating the rights of labor and capital is carried out, if at all.

⁹ Salvador Poquiz, *LABOR LAW AND SOCIAL LEGISLATION* at 4 (1983).

¹⁰ *Cebu Royal Plant v. Minister of Labor*, G.R. No. 58639, Aug. 12, 1987.

¹¹ CONST. art. II, § 18.

¹² Joaquin Bernas, *THE CONSTITUTION OF THE PHILIPPINES: A COMMENTARY* at 470 (1988).

¹³ I Ces Azucena, *THE LABOR CODE WITH COMMENTS AND CASES* at 17 (1999).

SOME BASIC PREMISES AND LIMITATIONS

Analyzing how to balance the rights of labor and capital necessarily entails a discussion of the state policy on labor, its basis and justification. Given the wide spectrum of the field of labor law, the analysis will concentrate on the area of employment termination, particularly on the issue of dismissals and the payment of backwages. A comparative study of the laws on termination of other countries is also included to provide a basis for some recommendations for reform.

For purposes of simplicity, the employees referred to in the discussion are those employed in a regular employment as defined by the Labor Code.¹⁴ As used here, an *employer* includes any person acting in the interest of an employer, directly or indirectly. The term shall not include any labor organization or any of its officers or agents except when acting as employer¹⁵ while *employee* includes any person in the employ of an employer.¹⁶

II. THE STATE POLICY ON LABOR

A. SOCIAL JUSTICE—THE HEART OF THE CONSTITUTION

Under the policy of social justice, the law bends over backward to accommodate the interests of the working class on the humane justification that those with less privileges in life should have more privileges in law.

- Justice Regalado¹⁷

¹⁴ As defined in Article 280 of the LABOR CODE, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

¹⁵ LABOR CODE, art.212 (c).

¹⁶ LABOR CODE, art.212 (f).

¹⁷ *Philippine Air Lines v. Santos*, G.R. No. 77875, 218 SCRA 415, Feb. 4, 1993.

Social Justice has been defined in the landmark case of *Calalang v. Williams* as "neither communism nor despotism, nor atomism, nor anarchy, but the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated."¹⁸

In *Antamok Goldfields Mining Co. v. CIR*, the Supreme Court explained the backdrop against which the policy of social justice was first incorporated in the 1935 Constitution—

Our Constitution was adopted in the midst of surging unrest and dissatisfaction resulting from economic and social distress which was threatening the stability of governments the world over. Alive to the social and economic forces at work, the framers of our Constitution boldly met the problems and difficulties which faced them and endeavored to crystallize, with more or less fidelity, the political, social, and economic propositions of their age. Embodying the spirit of the present epoch, general provisions were inserted in the Constitution which were intended to bring about the needed social and economic equilibrium between component elements of society through the application of what may be termed as *justitia communis* advocated by Grotius and Leibnits many years ago to be secured through the counterbalancing of economic and social forces and opportunities which should be regulated, if not controlled, by the State or placed, as it were, in *custodia societatis*. 'The promotion of social justice to insure the well-being and economic security of all the people' was thus inserted as vital principle in our Constitution. And in order that this declaration of principle may not just be an empty medley of words, the Constitution in various sections thereof has provided the means towards its realization.¹⁹ (emphasis supplied)

Thus, as early as 1935, the Constitution included the guarantee that the State shall afford protection to labor, especially to working women, and

¹⁸ *Calalang v. Williams*, G.R. No. 47800, 70 Phil. 726, Dec. 2, 1940.

¹⁹ *Antamok Goldfields Mining Co. v. Court of Industrial Relations*, 70 Phil 340, June 28, 1940.

minors, and shall regulate the relations between labor and capital in industry and in agriculture.²⁰

The 1987 Constitution gives fundamental significance to social justice.²¹ The Declaration of State Policies provides "the State shall promote social justice in all phases of national development."²² The Constitution devotes an entire article to "Social Justice and Human Rights."²³ In particular reference to labor, Section 3 says that "the State shall afford *full protection* to labor."²⁴ To underscore the obligation of the State to promote social justice the constitution directs that labor be accorded protection.²⁵ The courts and administrative tribunals have time and again invoked this mandate to justify a decision in favor of labor.²⁶ For labor, by reason of its economic dependence on capital, is deemed the weaker of the two and needs the protection of the State.²⁷ Constitutional Commissioner Vicente Foz has characterized the 1987 Constitution as "especially pro-labor," for the rights of workers and employees have acquired new dimensions while some concepts have been constitutionalized.²⁸

Like other laws initiated by Congress, the Labor Code is an instrument to carry out constitutional mandates.²⁹ As announced in its title, the Labor Code was enacted "to afford protection to labor, promote employment and human resources development and insure industrial peace based on social justice."³⁰ According to then Labor Minister Blas Ople, the Labor Code can be summed up in one sentence—"it represents the updating of all our labor laws to make them more responsive to

²⁰ CONST. (1935), art. XIV, § 6.

²¹ Azucena, *supra* note 13, at 9.

²² CONST. art. II, § 10.

²³ CONST. art. XIII.

²⁴ CONST. art. XIII, § 3.

²⁵ Biscara v. Workmen's Compensation Commission, G.R. No. 43425, 95 SCRA 248, Jan. 22, 1980.

²⁶ Samson S. Alcantara, PHILIPPINE LABOR AND SOCIAL LEGISLATION at 11 (1994).

²⁷ Dagupan Bus Co Inc. v. National Labor Relations Commission, G.R. No. 94291, 191 SCRA 328, Nov. 9, 1990.

²⁸ Vicente B. Foz, THE 1987 CONSTITUTION: ITS IMPLICATIONS ON EMPLOYMENT AND LABOR RELATIONS at 158 (1987).

²⁹ Azucena, *supra* note 13, at 10.

³⁰ Pres. Dec. No. 442.

development and employment as well as social justice."³¹ The aim and the reason and, therefore, the justification of labor laws is social justice.³²

B. SOCIAL JUSTICE FOR ALL

"Surely, the social justice policy of the State should not be interpreted to mean the shielding of one and the oppression of the other."

-Justice Tuason³³

In spite of overwhelming support granted by the social justice provisions of the Constitution in favor of labor, the Constitution has not overlooked the rights of capital. It provides that "the State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments."³⁴ The State is mandated to regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprise to reasonable returns on investment and to expansion and growth.³⁵ In a decision penned by Justice Kapunan, the Supreme Court declared:

The fundamental law itself guarantees, even during the process of tilting the scales of justice towards workers and employees, the right of enterprises to reasonable returns of investment and to expansion and growth. To hold otherwise would not only be oppressive and inhuman, but also counterproductive and ultimately subversive of the nation's thrust towards a resurgence

³¹ Blas Ople, in his speech "Freedom of Initiative, Dignity of Labor", delivered before the Manila Rotary Club, May 2, 1974.

³² Azucena, *supra* note 13.

³³ Justice Tuason, quoting the decision of the Court of Industrial Relations in *Dy Pac & Co. Inc. v. Kaisahan ng Manggagawa sa Kahoy sa Pilipinas*, Case No. 73-V(2), Order of Jan. 16, 1948; *Kaisahan ng mga Manggagawa sa Kahoy sa Pilipinas (CLO) v. Court of Industrial Relations*, G.R. Nos. 1970-72, 81 Phil 566, Oct. 2, 1948.

³⁴ CONST. art. II, § 20.

³⁵ Azucena, *supra* note 13, at 12.

in our economy which would ultimately benefit the majority of our people.³⁶

In 1940, Justice Laurel explained the scope of social justice as extending to all the people without discrimination, thus—

Social justice means the promotion of the welfare of *all the people*, the adoption by the Government of measures calculated to insure economic stability of *all the competent elements of society*, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex*. Social justice, therefore, *must be founded on the recognition of the necessity of interdependence among divers and diverse units of a society* and of the protection that should be *equally and evenly extended to all groups* as a combined force in our social and economic life, consistent with the fundamental and paramount objective of the state of promoting the health, comfort, and quiet of all persons, and of bringing about "the greatest good to the greatest number."³⁷ (emphasis supplied)

Forty years after the definition of social justice was laid down in *Calalang v. Williams*, Justice Santos made the observation that:

a cursory study of the long line of decisions on social justice will readily reveal that the concept has been fleshed out—the principle, conceptualized—as Justice Laurel enjoined in the celebrated case of *Calalang v. Williams*—not thru mistaken sympathy for or misplaced antipathy against any group—whether laborer or capital—but even-handedly and fairly, thru the observance of the principle 'equal justice under the law,' for all and each and every element of the body politic.³⁸

The Supreme Court recognizes that management also has its own rights which, as such, are entitled to respect and enforcement in the interest

³⁶ *Balbalec v. National Labor Relations Commission*, G.R. No. 107756, 251 SCRA 398, Dec. 19, 1995.

³⁷ *Calalang v. Williams*, 70 Phil. 726, Dec. 2, 1940.

³⁸ *Cabatan v. Court of Appeals*, G.R. No. 44375, 95 SCRA 323, Jan. 22, 1980.

of simple fair play. Out of its concern for those who have less in life, the Court has inclined more often than not toward the worker and upheld his cause in his conflicts with the employer. Such favoritism, however, as Justice Regalado said, "has not blinded the Court to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and the applicable law and doctrine."³⁹

Social justice, therefore, does not champion division of property or equality of economic status. What it and the Constitution do guarantee are equality of opportunity, equality of political rights, equality before the law, equality between values given and received, equitable sharing of the social and material goods on the basis of efforts exerted in their production. It is a command to devise social measures, but it cannot be used to trample upon the rights of others.⁴⁰

III. A CONFLICT BETWEEN RIGHTS: SECURITY OF TENURE VS. MANAGEMENT PREROGATIVES

"If the employer can compel the employee to work against the latter's will, this is servitude. If the employee can compel the employer to give him work against the employer's will, this is oppression."

-Justice Guerrero⁴¹

"The law, in protecting the rights of laborers, authorizes neither oppression nor self-destruction of the employer."

-Justice Laurel⁴²

³⁹ National Sugar Refineries Corp. v. National Labor Relations Commission, G.R. No. 101761, 220 SCRA 452, Mar. 24, 1993.

⁴⁰ Guido v. Rural Progress Administration, G.R. No. 2089, 84 Phil 847, Oct. 31, 1949.

⁴¹ Grand Motors Corp. v. Minister of Labor and Employment, G.R. No. 58958, 130 SCRA 436, July 16, 1984.

While social justice is the *raison d'être* of labor laws, their basis or foundation is the police power of the State. It is the power of Government to enact laws, within constitutional limits, to promote the order, safety, health, morals and general welfare of society.⁴³ Thus, the right of every person to pursue a business is subject to the paramount right of the government as a part of its police power to impose such restrictions and regulations as the protection of the public may require. However, the exercise of the police power must violate the constitutional safeguards of individual rights only so far as is necessary to accomplish purposes justified by the public evil to be removed or the public good to be achieved.⁴⁴

The 1987 Constitution has at least nineteen (19) separate clusters of provisions that guarantee the rights of workers, protect their special interest, or promote their general welfare.⁴⁵ One of the basic rights of workers guaranteed by the Constitution is the right to security of tenure.⁴⁶ The guaranty is an act of social justice.⁴⁷ At the other end of the sphere, the right of an employer to regulate all aspects of employment is well settled. This right, aptly called management prerogative, gives employers the freedom to regulate, according to their discretion and best judgment, all aspects and incidents of business, including work assignment, working methods, processes to be followed, working regulations, transfers of employees, work supervision, lay-off of workers and the discipline, *dismissal* and recall of workers.⁴⁸ The spirit of free enterprise that pervades our economy gives to the employer or management of any establishment full control of its internal or administration affairs.⁴⁹ This prerogative flows from the established rule that labor laws do not authorize substitution of judgment of the employer in the conduct of his business.⁵⁰ Verily, underlying the employer-employee relationship is the principle of managerial control of the business, flowing from ownership of property and the rationale of business enterprise, which is maximization of profits.

⁴² Manila Trading & Supply Co. v. Zulueta, G.R. No. 46853, 69 Phil 485, Jan. 30, 1940.

⁴³ People v. Vera Reyes, G.R. No. 45748, 67 Phil 187, Apr. 5, 1939.

⁴⁴ Albion Taylor, LABOR PROBLEMS AND LABOR LAW at 10 (1950).

⁴⁵ Azucena, *supra* note 13, at 10.

⁴⁶ CONST. art. XIII, § 3.

⁴⁷ Rance et al. v. National Labor Relations Commission, G.R. No. 68147, 163 SCRA 279, June 30, 1988.

⁴⁸ Deles v. National Labor Relations Commission, G.R. No. 121348, 327 SCRA 540, Mar. 9, 2000.

⁴⁹ Emiliano Morabe, THE LAW ON Dismissal at 55 (1962).

⁵⁰ Great Pacific Employees Union v. Great Pacific Life Insurance, G.R. No. 126717, 303 SCRA 113, Feb. 11, 1999.

Managerial control of personnel services includes the power of terminating the same either permanently, through dismissals, or temporarily, through lay-offs or suspensions.⁵¹

Traditionally, the managerial prerogative to fire, suspend, or lay-off employees was subject to few, if any, restrictions. Today, however, this is no longer the case. The right of an employer to freely select or discharge his employees is subject to regulation by the State basically in the exercise of its paramount police power.⁵² The Civil Code explicitly provides that "the dismissal of laborers shall be subject to the supervision of the Government under special law."⁵³ The great mass of the population is almost wholly dependent on their employment for their livelihood. The alternative of returning or turning to farming as a secondary occupation is no longer feasible. When a worker loses his job, his family faces deprivation, if not starvation. Hence, the demand for job security. Responding to popular demand, the Constitutional Convention has expressly provided for State recognition of the right of workers to security of tenure.⁵⁴ This is further implemented through the provisions in Book VI of the Labor Code, regulating the employer's right to terminate the services of the worker, as well as the employee's right to quit.⁵⁵

There is therefore an effort to balance what may seem as competing interests between labor and management. Under the due process clause of the Constitution, no person may be deprived of property without due process of law.⁵⁶ The right of a person to his labor is deemed property within the meaning of constitutional guarantees.⁵⁷ However, the business of an employer is also his property, hence equally entitled to protection. The State affords the constitutional blanket of rendering protection to labor, but it must also protect the right of employers to exercise what are

⁵¹ Perfecto V. Fernandez, *THE LAW OF EMPLOYEE DISMISSAL* at 1 (1976).

⁵² *San Miguel Brewery Inc. v. Zulueta*, 69 Phil 485; *Manila Trading & Supply Co. v. PLU*, 71 Phil 124.

⁵³ CIVIL CODE, art. 1710.

⁵⁴ CONST. (1973), art. II, § 9.

⁵⁵ Fernandez, *supra* note 51.

⁵⁶ CONST. art. III, § 1.

⁵⁷ *Offshore Industries Inc. v. National Labor Relations Commission*, G.R. No. 83108, 177 SCRA 50, Aug. 29, 1989.

clearly management prerogatives, so long as the exercise is without abuse of discretion.⁵⁸

IV. THE EVOLUTION OF LABOR LAW AND THE LAW ON DISMISSAL

Understanding the environment⁵⁹ in which particular rules or institutions have developed is seen as the key to understanding their operation and effect.⁶⁰ The evolution of Philippine labor laws, particularly in reference to the law on dismissal is outlined here to gain an understanding of its operation and effect and how it has developed to what it is today.

Prior to 1935, the policy of the State was one of non-intervention in private matters. The field of labor and the employment relationship was considered as being within this realm and was thus not regulated heavily by the State and was left mainly to market forces. The genesis of the law on employment termination in the Philippines dates back to or evolves from the express provision of Article 302 of the Code of Commerce which states: "Where the contract of employment does not have a fixed period, anyone of the parties may terminate it upon giving one month advance notice thereof to the other."⁶¹

Under the above codal provision the courts, including the Court of Industrial Relations awarded a month's pay or *mesada* not only to commercial employees as contemplated by the Code of Commerce, but even to industrial employees or laborers. In the absence of a contract fixing the period of employment, the employee may quit at any time and the employer may dismiss him at any time, in either case even without cause, by

⁵⁸ *Pantranco North Express Inc. v. National Labor Relations Commission*, G.R. No. 106516, 314 SCRA 740, Sept. 21, 1999.

⁵⁹ The 'environmental' context in which laws and institutions develop is the totality of a nation's historical, cultural, political, economic and social setting which profoundly influence its industrial relations and labor law systems, and these factors are inevitably taken into account in major case studies. This is the definition adopted by Stephen Deery and Richard Mitchell in their comparative law study of Labor Industrial Relations in Asia.

⁶⁰ Stephen Deery & Richard Mitchell, *LABOUR AND INDUSTRIAL RELATIONS IN ASIA* at 1 (1992).

⁶¹ COM. CODE, art. 302.

giving one month notice in advance. In the absence of such a notice, the employee laid-off or dismissed is entitled to one month pay.⁶²

The assumption in office of President Manuel Quezon in 1935 illuminated the plight of laborers from economic bondage. He energetically instituted changes and reforms to nourish the young and developing Republic, such as championing the cause of the workingmen with his revolutionary social justice programs.⁶³

The legislature, in enacting the New Civil Code in June 18, 1949, which repealed the Code of Commerce, failed to provide a substitute provision for Article 302.⁶⁴ The Civil Code merely provided that "dismissal of laborers shall be subject to the supervision of the government under special law."⁶⁵ Congress felt that in the absence of a contract of employment for fixed period, employees and laborers dismissed without cause beginning 1950 were no longer entitled to *mesada*, even in the absence of notice of dismissal or lay-off—thus precipitating the enactment of Republic Act No. 1052 in 1954.⁶⁶ In enacting this law, otherwise called the "Employment Termination Law", Congress unequivocally acknowledged and recognized the right of the employer to dismiss his employee without cause. Under Section 1 of Republic Act No. 1052, "in cases of employment without a definite period, in a commercial, industrial or agricultural establishment or enterprise, the employer or the employee may terminate at any time the employee with just cause, or without just cause in the case of an employee by serving written notice on the employer at least one month in advance or one-half month for every year of service of the employee, whichever is longer."

To dissipate any lingering doubt about the recognition by Republic Act No. 1052 of the right of the employer to dismiss an employee without cause, reference can be made to the legislative proceedings in both Houses of Congress when the Act in the form of a bill was discussed. Senator Sumulong made the following remarks:

⁶² *National Labor Union v. Berg Department Store*, 96 Phil 742, Jan. 19, 1959.

⁶³ Poquiz, *supra* note 7.

⁶⁴ Cornelio R. Besing, *PHILIPPINE LAW ON EMPLOYEE DISMISSAL* at 4 (1979); *Lara v. Del Rosario*, G.R. No. 6339, 94 Phil 778, Apr. 20, 1954.

⁶⁵ *CIVIL CODE*, art. 1710.

⁶⁶ Cresenciano B. Trajano, *THE LAW, PROCEDURES AND PROBLEMS IN TERMINATION OF EMPLOYMENT IN THE PHILIPPINES* at 77 (1986).

The general principle is that when a contract of employment is without a fixed period, in the absence of a statute regarding how it can be terminated by either side, *the contract can be terminated at any time without need of showing cause.*⁶⁷ (emphasis supplied)

Republic Act No. 1052 never meant or intended to give the employer a new right, which he never had before—that of dismissing an employee without cause—because the employer all along always had that traditional right.⁶⁸ Republic Act No. 1052 did nothing more than recognize that right and saved to the employee the right of the *mesada* which he lost by repeal of Article 302 of the Code of Commerce.⁶⁹

By its very nature, Republic Act No. 1052 was a regulatory measure, not a substantive law, a measure intended to provide protection to the workingmen, and in a way, the employers as well, specifically in cases of employments with indefinite period of duration, by requiring an employer or the employee as the case may be, before terminating the employment, to give unto the other notice thereof in advance, non-observance of which by the employer, subjects him to payment of a sum equivalent to the employee's compensation for a month.⁷⁰ The period of notice is only thirty (30) days irrespective of the employee's years of service to the employer.

Termination of employment became more specific under the amendment introduced by Republic Act No. 1787 in 1957. This law was known as the "Termination Pay Law" because under it, the maximum benefit an unjustly or whimsically dismissed worker could get was termination pay. In the first place, termination of employment was classified into two: (1) those for just cause and (2) those without, the law in itself providing what constitutes just cause for severance of employment. In determining the period of notice or the corresponding compensation to which a dismissed employee shall be entitled, the length of service to the employer is taken into consideration.⁷¹

⁶⁷ Congressional Record, Senate, Vol. I, No. 24, at 320.

⁶⁸ National Labor Union v. Berg Department Store, G.R. No. 6953, 96 Phil 742, Mar. 31, 1955. (Montemayor, J., *dissenting*).

⁶⁹ Besinga, *supra* note 64, at 9.

⁷⁰ Abe v. Foster Wheeler Corp., G.R. No. 14785, 110 Phil 198, Nov. 29, 1960.

⁷¹ Perez v. Court of Appeals, 13 SCRA 137, Jan. 30, 1965.

The Supreme Court in *Perez v. Court of Appeals*⁷² and in interpreting the provisions of Republic Act 1052, as amended by Republic Act 1787, laid down two doctrines concerning separation pay and moral damages. Firstly, the Court laid down the doctrine that: "An employee for an indefinite period who has rendered service for less than six (6) months and whose employment is terminated without just cause, is entitled to one (1) month's notice, or one (1) month's separation pay in lieu of said notice." The second doctrine laid down is as follows: "In an action by an employee for unpaid salaries, moral damages are not to be awarded where there is no finding that the non-payment of said salaries was malicious, fraudulent, or in bad faith."⁷³

Under Republic Act No. 1052, as amended, it is not the cause for dismissal but the employer's failure to serve notice upon the employee that renders the employer answerable to the employee for termination pay. There is an implied recognition of the right of the employer to dismiss his employees (hired without definite period) whether for just cause, or without it. If there is just cause, the employer is not required to serve any notice of discharge nor to disburse termination pay to the employee. If the dismissal be without just cause, the employer must serve timely notice to the employee. It is only when the employer fails to serve such notice that he becomes obliged to give termination pay.⁷⁴ Just as an employee in a commercial or industrial establishment may quit any time, singly or collectively, with or without just causes, so the employer can dismiss any employee at any time with or without just cause. This right of the employer is commonly referred to as his right to hire and fire his employees in the same way that the employee can stop working by himself or go on strike with his fellow employees.⁷⁵

In case the contract of employment is for a definite period, there is no need of notice because both parties know that upon a certain date the employment will terminate. The employee can prepare to look for another employment before the expiry date.⁷⁶ The employer may also terminate the employee even before the expiration of the stipulated period should there

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Besinga*, *supra* note 64, at 18.

⁷⁵ *Gutierrez v. Bachrach Motor Co. Inc.*, G.R. No. 11298, 105 Phil 9, Jan. 19, 1959.

⁷⁶ *Besinga*, *supra* note 64, at 24.

be a substantial breach of the obligations by the employee,⁷⁷ in which case the latter is not entitled to advance notice or separation pay.⁷⁸

The need to codify all existing labor and social legislations was given impetus with the signing on May 1, 1974 of Presidential Decree 442 (the Labor Code). The application of Republic Act No. 1052, as amended, ended when the Labor Code was enacted. It abolished the almost absolute employer's prerogative to terminate at any time the services of any of his employees. In the words of Dr. Democrito Mendoza, President of the Trade Union Congress of the Philippines, "the code was shaped against the backdrops of national emergency, the government's national development program and the sad history of Philippine organized labor in the fifty's."⁷⁹ The enacting clause provided "a decree instituting a Labor Code thereby revising and consolidating labor and social laws *to afford protection to labor... and insure industrial peace based on social justice.*"⁸⁰ Under the Code, an employer cannot terminate a regular employee or one who has been engaged for an indefinite period, except for just cause. If such a worker is dismissed without just cause, he is entitled to reinstatement to his former position without loss of seniority and to backwages. In addition, the Rules implementing the Labor Code require the employer to apply for clearance to dismiss employees with the Labor Regional Office having jurisdiction over the work place at least ten (10) days before the intended date of dismissal. Any dismissal without prior clearance shall be conclusively presumed to be termination of employment without just cause.

On August 17, 1981, Batas Pambansa 130 was promulgated, amending the Labor Code. Among other things, it abolished the clearance requirement. The Labor Code, as amended, guaranteed workers in regular employment in all establishments or undertakings, whether for profit or not⁸¹, their security of tenure.⁸² It enjoins employers from terminating such employees except for just cause or when authorized by law. An employee

⁷⁷ Pabalan v. Valez, G.R. No. 5953, 22 Phil 29, Feb. 24, 1912; Gonzalez v. Haberer, G.R. No. 22604, 47 Phil 380, Feb. 3, 1925.

⁷⁸ Marcaida v. Philippine Education Company, G.R. No. 9960, 101 Phil 657, May 29, 1957.

⁷⁹ Democrito Mendoza, *Five Years of the Labor Code: An Assessment*, 4 PHIL. LABOR REV. No. 3, at 1 (1980).

⁸⁰ Pres. Dec. No. 442.

⁸¹ LABOR CODE, art. 278.

⁸² LABOR CODE, art. 279.

who is unjustly dismissed from work is assured reinstatement without loss of seniority and with backwages.

V. THE LAW AS IT NOW STANDS

Under the Labor Code, the following are just causes for termination of employment:

-Serious misconduct or willful disobedience of the lawful orders of the employer or his representative in connection with work;

-Gross and habitual neglect of the employee's duties;

-Fraud or willful breach of trust reposed in the employee by his employer or duly authorized representative;

-Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative;

-Other causes analogous to the foregoing;⁸³

The law lists authorized causes of termination, namely:

-installation of labor-saving devices;

-redundancy due to reorganization;

-retrenchment to prevent losses;

-closing or cessation of operation of the establishment or undertaking;⁸⁴

-disease⁸⁵

⁸³ LABOR CODE, art. 282.

⁸⁴ LABOR CODE, art. 283.

⁸⁵ LABOR CODE, art. 284. In this case it must be shown that the continued employment of the sick employee is prohibited by law or is prejudicial to his health as well as the health of his co-employees and

When termination is due to installation of labor saving devices or redundancy, the affected worker is entitled to separation pay equivalent to at least one month's pay or one month's pay for every year of service whichever is higher, based on his latest salary rate.⁸⁶ In all other authorized causes, separation pay shall be equivalent to one month's pay or one-half month's pay for every year of service, whichever is greater.⁸⁷ Separation from work for just cause does not entitle an employee to termination pay but he may not be deprived of the rights, benefits and privileges that have accrued under applicable or collective agreements or from voluntary employer policy or practice.

Any employer who seeks to dismiss a worker is required to serve a written notice stating the particular acts or omissions constituting grounds for dismissal. If the ground is retrenchment or reduction of personnel, notice shall be served at least one month before the intended lay-off date. Within a reasonable period from receipt of such notice, the worker/s may answer the allegations against him or refute the causes for retrenchment. The employer shall also afford the worker ample opportunity to be heard and to defend himself if he so desires.⁸⁸

If after the notice, answer and hearing, the employer still decides to dismiss the worker, notice of the decision shall be served on him giving reasons for it. The decision's legality or validity can however be contested by the worker by filing a complaint with the regional branch of the National Labor Relations Commission. The case shall be decided by the Labor Arbiter within twenty (20) working days from the date of submission for decision. The Labor Arbiter's decision is appealable to the National Labor Relations Commission.

Thus, the requisites of a valid dismissal are (1) the dismissal must be for any of the just or authorized causes of the Labor Code, and (2) the employee must be given an opportunity to be heard and defend himself. The employer must furnish the employees with two written notices before the termination of employment can be effected: (a) the first appraises the

that the disease is of such a nature or at such a stage that it cannot be cured within six months even with proper medical treatment.

⁸⁶ LABOR CODE, art. 279.

⁸⁷ LABOR CODE, art. 279.

⁸⁸ *Metro Port Service Inc. v. National Labor Relations Commission*, G.R. No. 71632, 171 SCRA 190, Mar. 9, 1989.

employee of the employer's intention to dismiss him (b) the second appraises the employee of the employer's decision to dismiss him. The requirement of a hearing, on the other hand, is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.⁸⁹ The Court has stated in some cases that neither of these two requirements can be dispensed with without running afoul of the due process requirement of the Constitution.⁹⁰

VI. CONSEQUENCES OF TERMINATION

The consequences of termination of employment vary as to whether the termination is legal or illegal. The legality depends on whether there is a valid reason and valid procedure in dismissing the employee. Dismissal may give rise to reinstatement, the payment by the employer of separation pay, backwages, damages, indemnity, and attorney's fees.⁹¹

For the purpose of this paper, the discussion will be limited only to the issue of backwages as a consequence of dismissal. However, the distinction between backwages and separation pay will first be clarified.

BACKWAGES DISTINGUISHED FROM SEPARATION PAY

The distinction between separation pay and backwages was exhaustively discussed in *Santos v. National Labor Relations Commission*.⁹² As the term suggests, *separation pay* is the amount that an employee receives at the time of his severance from the service and is designed to provide the employee with "the wherewithal during the period that he is looking for another employment." The grant of separation pay is not intended to be relieved by the remedy of *backwages*, that is, the loss of earnings that would have accrued to the dismissed employee during the period between dismissal and reinstatement.⁹³ Payment of backwages is a form of relief that restores the income that was lost by reason of *unlawful dismissal*. Separation

⁸⁹ *Maneja v. National Labor Relations Commission*, G.R. No. 124013, 290 SCRA 603, June 5, 1998.

⁹⁰ *Century Textile Mills Inc. v. National Labor Relations Commission*, G.R. No. 77859, 161 SCRA 528, May 25, 1988.

⁹¹ II Ces Azucena, *LABOR CODE WITH COMMENTS AND CASES* at 672 (2001).

⁹² G.R. No. 76721, 154 SCRA 166, Sept. 21, 1987.

⁹³ *Id.*

pay, in contrast, is oriented towards the immediate future, the transitional period the dismissed employee must undergo before locating a replacement job.⁹⁴ The basis for computing the two are different, separation pay being usually computed from the length of the employee's service, and backwages from the actual period when the employee was unlawfully prevented from working.⁹⁵

Under the present law and jurisprudence, separation pay may be viewed in four ways or contexts:

a. separation pay as an employer's statutory obligation in cases of legal termination due to authorized causes under Article 283 or 284. Only in these two articles does the Labor Code explicitly mention "separation pay." Termination under these cases is legal but since those causes are not faults of the employee but exigencies of the business (except disease), it is only fair that the employer give separation pay.⁹⁶

b. separation pay as financial assistance, as an act of social justice, even in cases of legal dismissal under Article 282. This kind of separation pay is not a statutory requirement. It is an exception crafted by the court to clothe with compassion a stiff and indiscriminate dismissal action based on just causes.⁹⁷

c. separation pay in lieu of reinstatement. Where there is an illegal dismissal there should ordinarily be an order to reinstate the employee. When reinstatement is neither possible nor advisable, payment of separation pay may be ordered as an alternative relief to reinstatement.

d. separation pay as an employee benefit. Separation pay in this situation is in the form of a perquisite or employment benefit whose demandability depends on the terms of its grant through a collective bargaining agreement or voluntary company policy or established practice.⁹⁸

⁹⁴ *Torillo v. Leogardo*, G.R. No. 77205, 197 SCRA 471, May 27, 1991.

⁹⁵ *Lim v. National Labor Relations Commission*, G.R. No. 79907, 171 SCRA 328, Mar. 16, 1989.

⁹⁶ *Azucena*, *supra* note 91, at 673.

⁹⁷ *Philippine Long Distance Telephone Co. v. National Labor Relations Commission*, G.R. No. 80609, 164 SCRA 671, Aug. 23, 1988.

⁹⁸ *Philippine Overseas-Drilling and Oil Development Corporation v. Ministry of Labor*, G.R. No. 55703, 146 SCRA 79, Nov. 27, 1986.

VII. THE ISSUE OF BACKWAGES—IS THERE ROOM FOR JUDICIAL INTERPRETATION?

A. WHAT IS THE NATURE OF BACKWAGES?

The Supreme Court in several cases has explained the nature of the award of backwages. However, the characterization by the Court as to the nature of backwages has differed from time to time.

1. Backwages as a Command upon the Employer

According to the Supreme Court in one case, the award of backwages is not private compensation or damages but is in furtherance and effectuation of the public objectives of the Labor Code. Even though the practical effect is the enrichment of the individual, the award of backwages is not in redress of a private right, but, rather, is *in the nature of a command upon the employer* to make public reparation for his violation of the Labor Code, such as the dismissal of an employee due to the unlawful act of the employer or the latter's bad faith.⁹⁹

2. Backwages as a form of Damages

Backwages may also be viewed as a form of damages as it is only granted, in general, on grounds of equity for earnings which a worker has lost due to his illegal dismissal.¹⁰⁰ As a general rule, an employee is entitled to backwages only where his dismissal is due to the unlawful act of the employer or to the latter's bad faith.¹⁰¹

3. Backwages as Compensation

In yet another case, the Supreme Court stated that backwages *represent compensation* that should be earned but not collected because of the

⁹⁹ Imperial Textile Mills Inc. v. National Labor Relations Commission, G.R. No. 101527, 217 SCRA 237, Jan. 19, 1993.

¹⁰⁰ Indophil Acrylic Manufacturing Corporation v. National Labor Relations Commission, G.R. No. 96488, 226 SCRA 723, Sept. 27, 1993.

¹⁰¹ Reyes v. Minister of Labor, G.R. No. 48705, 170 SCRA 134, Feb. 9, 1989.

unjust dismissal of the employee.¹⁰² Payment of backwages is a form of relief that restores the income that was lost by reason of unlawful dismissal.¹⁰³ Backwages refer to earnings lost after illegal dismissal.¹⁰⁴

4. Backwages as Penalty

The Supreme Court has enunciated in one case that backwages have to be paid by the employer *as part of the price or penalty* he has to pay for illegally dismissing his employee.¹⁰⁵

B. COMPUTATION OF BACKWAGES

Perhaps more controversial than the differing characterizations of the Supreme Court as to the nature of the award of backwages is the different approaches adopted by the Supreme Court in computing the amount of backwages to be awarded.

1. Under Republic Act No. 1052, before the Labor Code

Under Republic Act No. 1052, an employer may discharge at will an employee, irrespective of whether or not there is a fixed term of employment.¹⁰⁶ There were, however, exceptions¹⁰⁷ to this rule.¹⁰⁸ In cases falling under the exceptions, the employer is required to pay back wages and/or reinstate the employee. However, when employees are entitled to backwages during their enforced separation, the amounts which they have or could have earned during the period should be deducted. The Supreme

¹⁰² Sweet Lines Inc. v. National Labor Relations Commission, G.R. No. 79975, 171 SCRA 328, Mar. 16, 1989.

¹⁰³ Torillo v. Leogardo, G.R. No. 77205, 197 SCRA 471, May 27, 1991.

¹⁰⁴ General Baptist Bible College v. National Labor Relations Commission, G.R. No. 85534, 219 SCRA 549, Mar. 5, 1993.

¹⁰⁵ Bustamante v. National Labor Relations Commission, G. R. No. 111651, 265 SCRA 61, Nov. 28, 1996.

¹⁰⁶ Rep. Act No. 1052 (1954); Rep. Act No. 1787 (1957); Monteverde v. Casino Español, G.R. No. 11365, 103 Phil 377, Apr. 18, 1958.

¹⁰⁷ The exceptions to Rep. Act No. 1052 are: (a) Dismissal of an employee for union activity—this being considered an unfair labor practice (Rep. Act No. 875); (b) Dismissal of an employee for complaints under the Minimum Wage Law (Rep. Act No. 602); (c) Dismissal for the purpose of avoiding obligations under the Maternity Leave Privilege Law (Rep. Act No. 679).

¹⁰⁸ Gutierrez v. Bachrach Motor Co., G.R. No. 11298, 105 Phil 9, Jan. 19, 1959.

Court declared that the law abhors double compensation and the law requires that the employees should mitigate and diminish his loss.¹⁰⁹ The employer can claim the deductions after the legality of the dismissal has been finally decided.¹¹⁰

2. After the Effectivity of the Labor Code

After the enactment of the Labor Code, the rule generally applied was for the payment of backwages corresponding to the entire period of the employee's lay-off minus wages actually earned by the employee from employment during the period of his separation, or the wages which he may have earned elsewhere had he been diligent enough to find a job. The employer was allowed to adduce evidence on these matters.¹¹¹ But such rule, according to the Supreme Court, tended to breed idleness on the part of a discharged employee who would "with folded arms remain inactive in the expectation that a windfall would come to him."¹¹² And on the part of the employer, the principle afforded it further opportunity to delay payment of the award as determination of the actual earnings of the employee during his lay-off requires further proceedings and in some cases induce the latter to agree to an unconscionable settlement of the award.¹¹³

3. The Mercury Drug Rule

It was in the case of *Mercury Drug Co. Inc. v. Court of Industrial Relations*¹¹⁴ decided in 1974, that the Supreme Court formally adopted the formula or principle of fixing the amount of backwages for a maximum period of three (3) years without qualification and deduction.

Then Justice Teehankee in his concurring and dissenting opinion made the following disquisition:

This new principle formally adopted by the Court now in fixing the amount of backwages at a reasonable level without

¹⁰⁹ Republic Savings Bank v. Court of Industrial Relations, G.R. No. 20303, 21 SCRA 226, Sept. 27, 1967.

¹¹⁰ Philippine Air Lines v. PALFEA, 60 OG 8269 (1966).

¹¹¹ Mariners Polytechnic School v. Leogardo Jr., G.R. No. 74271, 171 SCRA 597, Mar. 31, 1989.

¹¹² Itogon-Suyoc Mines Inc. v. Sangilo-Itogon Workers Union, G.R. No. 24189, 133 Phil 919, Aug. 30, 1968.

¹¹³ *Id.*

¹¹⁴ G.R. No. 23357, 56 SCRA 694, Apr. 30, 1974.

qualification and deduction so as to relieve the employees from proving their earnings during their lay-offs and the employer from submitting counter-proofs, and thus obviate the twin evils of idleness on the part of the employees and attrition and undue delay in satisfying the award on the part of the employer is thus to be hailed as a realistic, reasonable and mutually beneficial solution. *Normally, the trial of the case and resolution of the appeal should be given preference and terminated within a period of three years (one year for trial and decision in the industrial court and two years for briefs, etc., and decision in this Court). Hence, an award of back wages equivalent to three years (where the case is not terminated sooner) should serve as the base figure for such awards without deduction, subject to deduction where there are mitigating circumstances in favor of the employer but subject to increase by way of exemplary damages where there are aggravating circumstances (e.g. oppression or dilatory appeals) on the employer's part.*¹¹⁵ (emphasis supplied)

This doctrine enabled the Court to exercise discretion in determining the amount of backwages to be awarded, as can be gleaned from the following pronouncements—

Where the employee was separated and there was delay on his part of two (2) years and fifteen (15) days in the filing of his Unfair Labor Practice charge, backwages equivalent to one (1) year, eleven (11) months and fifteen (15) days should be awarded.¹¹⁶

Considering that a total of eleven (11) years had elapsed from the date of the commencement of the backwages, that injunctions were issued restraining the enforcement of the return-to-work order issued by the industrial court, that complex and novel legal issues had to be resolved, and that the respondent is an educational institution, backwages equivalent to three (3) years is deemed reasonable.¹¹⁷

Where a total of eighteen (18) years had elapsed from the date of the commencement of the backwages, and considering the

¹¹⁵ *Id.*

¹¹⁶ *Mercury Drug Inc. v. Court of Industrial Relations*, G.R. No. 23357, 56 SCRA 694 Apr. 30, 1974.

¹¹⁷ *FEATI University Faculty Club v. FEATI University*, G.R. No. 31563, 58 SCRA 395, Aug. 15, 1974.

lengthy procedural and technical manipulations of the parties, the delay in the resolution of the case in the court below, the complexity of the issues raised by the parties, the fixing and limitation of the backwages to their equivalent of three (3) years is fully justified.¹¹⁸

In a case, however, where the employer was found by final judgment of the industrial court to have committed grave unfair labor practices by pretending to close down its factory to evade its obligation to complainant union and that furthermore the management committed acts of interference, harassment and discrimination culminating in the lockout of the complainants who were deprived of their just dues for a long period of seventeen (17) years, an award of five (5) years of backwages without qualification was held to be fair and reasonable for all concerned, even if this amount exceeded the maximum three (3) year period prescribed by the Mercury drug rule.¹¹⁹

4. After Republic Act No. 6715— Full Backwages with Deductions

Republic Act No. 6715, which took effect on March 21, 1989, amended Article 279 of the Labor Code, in part, to entitle an illegally dismissed employee to "full backwages."¹²⁰ After this amendment, the employee was awarded full backwages computed from the time his compensation was withheld from him up to the time of his actual reinstatement.¹²¹ On the question of whether the amounts earned elsewhere by an illegally dismissed employee during the period of his illegal termination may be deducted from the award of full backwages, the Supreme Court ruled that:

¹¹⁸ *Insular Life Assurance Co. Ltd. Employees Association v. Insular Life Assurance Co. Ltd.*, G.R. No. 25291, 76 SCRA 50, March 10, 1977; Among the cases where backwages for three (3) years were awarded are *Bustillos v. Inciong*, G.R. No. 45396, 120 SCRA 262, Jan. 27, 1983; *Oliva v. National Labor Relations Commission*, G.R. No. 57865, 121 SCRA 827, Apr. 28, 1983; *Dosch v. National Labor Relations Commission*, G.R. No. 51182, 123 SCRA 296, July 5, 1983; *Flexo Manufacturing Corp. v. NLRC*, G.R. No. 55971, 135 SCRA 145, Feb. 28, 1985; *Remerco Garments Manufacturing v. Hon. Minister of Labor*, G.R. No. 5617, 135 SCRA 167, Feb. 28, 1985.

¹¹⁹ *New Manila Candy Workers Union v. Court of Industrial Relations*, G.R. No. 29728, 86 SCRA 37, Oct. 30, 1978.

¹²⁰ *Azucena*, *supra* note 91, at 686.

¹²¹ *Maranaw Hotels and Resorts Corporation v. Court of Appeals*, G.R. No. 103215, 215 SCRA 501, Nov. 6, 1992; *Panday v. National Labor Relations Commission*, G.R. No. 67664, 209 SCRA 122, May 20, 1992; *Medina v. Consolidated Broadcasting System*, G.R. No. 99054, 222 SCRA 707, May 28, 1993.

An illegally dismissed employee may now be paid his back wages, allowances, and other benefits for the entire period he was out of work subject to the rule enunciated before the Mercury Drug Rule, which is that the employer may, however, deduct any amount which the employee may have earned during the period of his illegal termination.¹²² Computation of full back wages and presentation of proof as to income earned elsewhere by the illegally dismissed employee after his termination and before actual reinstatement should be ventilated in the execution proceedings before the Labor Arbiter concordant with Section 3, Rule 8 of the 1990 new Rules of Procedure of the National Labor Relations Commission.¹²³

In the subsequent case of *Pines City Educational Center v. National Labor Relations Commission*,¹²⁴ however, in a dissenting opinion, Justice Padilla expressed the view that the interim earnings should not be deducted from the awarded backwages. He reasoned out that:

The amendment to Article 279 of the Labor Code introduced by Republic Act No. 6715 inserted the qualification 'full' to the word 'backwages.' The intent of the law seems to be clear. The plain words of the statute provide that an employee who is unjustly dismissed is entitled to FULL backwages from the time of his dismissal to actual reinstatement. The law provides no qualification nor does it state that income earned by the employee during the period between his unjust dismissal and reinstatement should be deducted from such backwages. *When the law does not provide, the Court should not improvise.*¹²⁵ (emphasis supplied)

5. The Bustamante Ruling—Full Backwages without Deduction

Justice Padilla's dissent in the Pines City case became the Supreme Court's unanimous view in 1996 in the case of *Osmalik Bustamante v.*

¹²² East Asiatic Company, Ltd. vs. Court of Industrial Relations, G.R. No. 29068, 40 SCRA 521 Aug. 31, 1971.

¹²³ Ferrer v. National Labor Relations Commission, G.R. No. 100898, 224 SCRA 410, July 5, 1993.

¹²⁴ G.R. No. 96779, 227 SCRA 655, Nov. 10, 1993.

¹²⁵ *Id.*

National Labor Relations Commission.¹²⁶ In its *en banc* resolution, penned by Justice Padilla himself, the Court declared:

Conformably with the evident legislative intent, backwages to be awarded to an illegally dismissed employee, should not, as a general rule, be diminished or reduced by the earnings derived by him elsewhere during the period of his illegal dismissal. The underlying reason for this ruling is that the employee, while litigating the legality of his dismissal, must still earn a living to support himself and family, while full backwages have to be paid by the employer as part of the price or penalty he has to pay for illegally dismissing his employee. The clear legislative intent of the amendment in Republic Act No. 6715 is to give more benefits to workers than was previously given them under the Mercury Drug Rule. The provision calling for 'full backwages' to illegally dismissed employees is clear, plain and free from ambiguity and, therefore, must be applied without attempted or strained interpretation.¹²⁷

The Bustamante ruling was reiterated in *Ala Mode Garments, Inc. v. National Labor Relations Commission*¹²⁸ and other cases and continues to be applied to date.

C. WHEN MAY BACKWAGES BE IMPOSED?

Another area which has been the subject of so much controversy is the issue of when the payment of backwages may be imposed upon the employer. Even if the decisions of the Supreme Court differ in defining the nature of the award of backwages, a common thread which these definitions share is the fact that backwages may only be imposed when the dismissal is illegal.¹²⁹

¹²⁶ G.R. No. 111651, 265 SCRA 61, Nov. 28, 1996.

¹²⁷ *Id.*

¹²⁸ G.R. No. 122165, 268 SCRA 497, Feb. 17, 1997.

¹²⁹ *Imperial Textile Mills Inc. v. National Labor Relations Commission, et al*, G.R. No. 101527, 217 SCRA 237, Jan. 19, 1993; *Indophil Acrylic Manufacturing Corporation v. National Labor Relations Commission, et al*, G.R. No. 96488, 226 SCRA 723, Sept. 27, 1993; *Reyes v. Minister of Labor*, G.R. No. 48705, 170 SCRA 134, Feb. 9, 1989; *Sweet Lines Inc. v. National Labor Relations Commission*, G.R. No. 79975, Mar. 16, 1989; *General Baptist Bible College v. National Labor Relations Commission*, G.R. No. 85534, Mar. 5, 1993; *Bustamante v. National Labor Relations Commission*, G. R. No. 111651, Nov. 28, 1996.

The provision of the law which authorizes the payment of backwages states that:

the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is *unjustly dismissed* from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his *full backwages*.¹³⁰

It is when the termination of employment is declared illegal that reinstatement and full backwages are mandated under Article 279.¹³¹ To dismiss an employee, the law requires not only the existence of a just and valid cause but also enjoins the employer to give the employee the opportunity to be heard and to defend himself.¹³² If the dismissal is based on an authorized cause, the employer must give the employee and the Department of Labor and Employment written notice thirty (30) days prior to effectivity of his separation.¹³³ From the foregoing rules, four possible situations may be derived: (1) the dismissal is for a just cause under Article 282 of the Labor Code or for an authorized cause under Article 283, or for health reasons under Article 284, and due process was observed; (2) the dismissal is without just or authorized cause but due process was observed; (3) the dismissal is without just or authorized cause and there was no due process; and (4) the dismissal is for a just or authorized cause but due process was not observed.¹³⁴

According to the Supreme Court, in the first situation, the dismissal is undoubtedly valid and the employer will not suffer any liability while in the second and third situations, the dismissals are illegal and Article 279 mandates that the employee is entitled to reinstatement without loss of seniority rights and other privileges and full backwages.¹³⁵ It is in the fourth situation where the Court has failed to find unanimity in its decisions. If the dismissal is for a just or authorized cause but due process was not observed, i.e., no notice was given or the procedure for dismissal was not

¹³⁰ LABOR CODE, art. 279 (as amended).

¹³¹ *Agabon v. National Labor Relations Commission*, G. R. No. 158693, 442 SCRA 573, Nov. 17, 2004.

¹³² *Santos v. San Miguel Corporation*, G.R. No. 149416, 399 SCRA 172, Mar. 14, 2003.

¹³³ LABOR CODE, art. 283.

¹³⁴ *Agabon v. National Labor Relations Commission*, G. R. No. 158693, 442 SCRA 573, Nov. 17, 2004.

¹³⁵ *Id.*

followed, is the dismissal considered illegal? In such a case will the employer be liable for payment of backwages?

1. The Rule Prior to the Labor Code

Under Republic Act No. 1787, which amended Republic Act No. 1052, the remedy given to an employee, upon whom no proper notice was served in case of termination of his employment without just cause, is the right to compensation from the date of said termination in an amount equivalent to the salaries or wages corresponding to the required period of notice. Republic Act No. 1787 omitted the alternative recourse of the employer to give the employee terminal pay in lieu of notice. Thus the law specifically enjoins the service of written notice on the employee. Failure to serve such notice will make the employer liable to pay the employee compensation from the date of termination of his employment in an amount equivalent to his salaries or wages corresponding to the required period of notice. Under Republic Act No. 1787, the only protection of the employee who has been dismissed without just cause or without the required notice is entitlement to compensation equivalent to his salaries or wages corresponding to the required period of notice—not reinstatement with back pay.¹³⁶

2. After the Labor Code but Prior to 1989

Prior to 1989, the rule was that a dismissal or termination is illegal if the employee was not given any notice. The long standing policy was that even though the dismissal is based on a just cause or the termination of employment is for an authorized cause, the dismissal or termination is illegal if effected without notice to the employee.

3. The Wenphil Doctrine (1989)

The shift in doctrine took place in 1989 in *Wenphil Corporation v. National Labor Relations Commission*.¹³⁷ In announcing the change, the Supreme Court said:

¹³⁶ Morabe, *supra* note 49, at 137.

¹³⁷ G.R. No. 80587, 170 SCRA 69, Feb. 8, 1989.

The policy of ordering the reinstatement to the service of an employee without loss of seniority and the payment of his wages during the period of his separation until his actual reinstatement but not exceeding three (3) years without qualification or deduction, when it appears he was not afforded due process, although his dismissal was found to be for just and authorized cause, should be re-examined. *It will be highly prejudicial to the interests of the employer to impose on him the services of an employee who has been shown to be guilty of the charges that warranted his dismissal from employment. Indeed, it will demoralize the rank and file if the undeserving, if not undesirable, remains in the service.*¹³⁸ (emphasis supplied)

The Court, however, also stated that the employer "must nevertheless be held to account for failure to extend to private respondent (the employee dismissed) his right to an investigation before causing his dismissal. The rule is explicit. The dismissal of an employee must be for just or authorized cause and after due process."¹³⁹ The Court found that the employer committed an infraction of the second requirement. Thus, it imposed a sanction for its failure to give a formal notice and conduct an investigation as required by law before dismissing the employee. Considering the circumstances of the case, the Court required the employer to indemnify the employee in the amount of One Thousand Pesos (P1,000.00). The measure of this award, according to the Court, depends on the facts of each case and the gravity of the omission committed by the employer.

While the Court was unanimous in upholding the dismissal of the employee for cause, there were diverging opinions as to what sanction to impose on the employer for failing to comply with the employee's right to due process and what the nature of this sanction was.

In Justice Padilla's concurring and dissenting opinion, he expressed the belief that the dismissed employee should be given a separation pay. He writes:

I am of the view, however, that for the employer's omission he should be made to pay the separated employee a separation pay (instead of indemnity) in the amount of P1,000.00. 'Indemnity'

¹³⁸ *Id.*

¹³⁹ *Id.*

may connote the obligation of a person to make good any loss or damage another has incurred or may incur by acting at his request or for his benefit. That which is given to a person to prevent his suffering a damage¹⁴⁰ while '*separation pay*' is pay given to an employee on the occasion of his separation from employment in order to assuage even a little the effects of loss of employment.¹⁴¹

On the other hand, Justice Irene Cortes, in her concurring and dissenting opinion, was of the view that:

my reading of the case reveals no denial of due process, hence there is no basis for the award of ONE THOUSAND PESOS (P1,000.00) as indemnity in favor of private respondent. On the other hand, if the P1,000.00 is *imposed as a sanction in the form of administrative penalty* for failure of petitioner to comply strictly with duly promulgated regulations implementing the Labor Code, the amount if authorized, should form part of the public funds of the government.¹⁴² (emphasis supplied)

Justice Melencio-Herrera also concurred and dissented stating that:

Like Justice Cortes it is my view that private respondent-employee has not been denied due process. But even if petitioner-employer had failed to comply with the requirements of investigation and hearing, I believe with Justice Padilla that *it is not an indemnity that petitioner should be made to pay but rather separation pay in such amount as may be justified under the circumstances of the case, not out of right, but to cushion the impact of his loss of employment.* In fact, this is the practice presently being followed by the National Labor Relations Commission.¹⁴³ (emphasis supplied)

These unresolved differences in opinion notwithstanding, the majority opinion became known as the Wenphil Doctrine and was applied by the Supreme Court in subsequent cases.

¹⁴⁰ Mill Supply Co. v. Central Azucarera del Danao, 44037-R, Dec. 19, 1979; cited in Philippine Law Dictionary, 3rd Ed., F.B. Moreno, p. 463.

¹⁴¹ G.R. No. 80587, 170 SCRA 69, Feb. 8, 1989.

¹⁴² *Id.*

¹⁴³ *Id.*

In *Sebuguero v. National Labor Relations Commission*,¹⁴⁴ Justice Davide Jr., made this clear pronouncement:

It is now settled that where the dismissal of an employee is in fact for a just and valid cause and is so proven to be but he is not accorded his right to due process, i.e., he was not furnished the twin requirements of notice and the opportunity to be heard, *the dismissal shall be upheld but the employer must be sanctioned for non-compliance with the requirements of or for failure to observe due process. The sanction, in the nature of indemnification or penalty, depends on the facts of each case and the gravity of the omission committed by the employer.*¹⁴⁵ (emphasis supplied)

This ruling was later reiterated by Justice Puno in *Nath v. National Labor Relations Commission*.¹⁴⁶ Although confusingly, Justice Puno stated that failure to comply with the requirements "taints the dismissal with illegality" and in the same breath upheld the legality of the dismissal by saying that the employee can be dismissed for just cause. He wrote:

The rules require the employer to furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected. *Failure to comply with the requirements taints the dismissal with illegality. Be that as it may, private respondent can dismiss petitioner for just cause.*¹⁴⁷ (emphasis supplied)

Justice Puno's statement notwithstanding, it was ruled that even if the employee was not given due process, the failure did not operate to eradicate the just causes for dismissal. The dismissal being for just cause, *albeit* without due process, did not entitle the employee to reinstatement, backwages, damages and attorney's fees.¹⁴⁸

Also, in *Camua v. National Labor Relations Commission*¹⁴⁹ the Supreme Court, through Justice Mendoza, decreed —

¹⁴⁴ G.R. No. 115394, 248 SCRA 532, Sept. 27, 1995.

¹⁴⁵ *Id.*

¹⁴⁶ G.R. No. 122866, 274 SCRA 379, June 19, 1997.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ G.R. No. 116473, 279 SCRA 45, Sept. 12, 1997.

No written notice of the charges had been given to petitioner by the respondent company. Accordingly, in accordance with the well-settled rule, private respondents should pay petitioner P1,000.00 as indemnity for violation of his right to due process.

Thus, under the law and jurisprudence, non-observance of the procedural requirements caused the employer to be penalized by way of paying damages to the employee the amounts of which fluctuated through the years. For just causes the indemnity ranged from One Thousand Pesos (P1,000.00) to Ten Thousand Pesos (P10,000.00).¹⁵⁰ For authorized causes, the award ranged from Two Thousand Pesos (P2,000.00) to Five Thousand Pesos (P5,000.00).¹⁵¹

4. The Serrano Doctrine (2000)

In a case for illegal dismissal filed by a retrenched employee who was not given the required notice by his employer, the Supreme Court, after eleven years of applying the Wenphil Doctrine, declared that there was a need to re-examine such doctrine.¹⁵² In a decision penned by Justice Mendoza, it was explained that:

Today, we once again consider the question of appropriate sanctions for violations of the notice requirement in light of our experience during the last decade or so with the Wenphil

¹⁵⁰ *Shoemart, Inc. v. National Labor Relations Commission*, G.R. No. 74229, 176 SCRA 385, Aug. 11, 1989— The employee was found to have abandoned his job but for failure to observe the notice requirement, the employer was fined P1,000.00; *Pacific Mills, Inc. v. Alonzo*, G.R. No. 78090, 199 SCRA 617, July 26, 1991— The employee violated company rules and regulations but because of procedural lapse the company was fined P1,000.00; *Aurelio v. National Labor Relations Commission*, G.R. No. 99034, 221 SCRA 432, Apr. 12, 1993— The managerial employee breached the trust and confidence of his employer but for failure to observe the notice requirement the company was fined P1,000.00; *Worldwide Papermills Inc. v. National Labor Relations Commission*, G.R. No. 113081, 244 SCRA 125, May 12, 1995— The employee was found guilty of gross and habitual neglect of his duties and of excessive absences. For failure to comply with the notice requirement the company was fined P5,000.00; *Reta v. National Labor Relations Commission*, G.R. No. 112100, 232 SCRA 613, May 27, 1994— The employee was guilty of inefficiency, negligence and insubordination but the company was fined P10,000.00 for failure to observe the notice requirement.

¹⁵¹ *Sebuguero v. National Labor Relations Commission*, G.R. No. 115394, 248 SCRA 532, Sept. 27, 1995— The employees were retrenched in order to prevent further losses but the company failed to observe the notice requirement, hence was fined P2,000.00 for each employee; *Balbalec et al. v. National Labor Relations Commission*, G.R. No. 107756, 251 SCRA 358, Dec. 19, 1995— The employees were retrenched to prevent business losses but the company was fined P5,000.00 for each employee for failure to observe the notice requirement.

¹⁵² *Serrano v. National Labor Relations Commission*, G.R. No. 117040, 323 SCRA 445, Jan. 27, 2000.

doctrine. The number of cases involving dismissals without the requisite notice to the employee, although effected for just or authorized causes, suggests that the imposition of fine for violation of the notice requirement has not been effective in deterring violations of the notice requirement. We agree with our esteemed colleagues, Justices Puno and Panganiban, that we should rethink the sanction of fine for an employer's disregard of the notice requirement. We do not agree, however, that disregard of this requirement by an employer renders the dismissal or termination of employment null and void. Such rule was abandoned in *Wenphil* because it is really unjust to require an employer to keep in his service one who is guilty, for example, of an attempt on the life of the employer or the latter's family, or when the employer is precisely retrenching in order to prevent losses. *The need is for a rule which, while recognizing the employee's right to notice before he is dismissed or laid off, at the same time acknowledges the right of the employer to dismiss for any of the just causes or to terminate employment for any of the authorized causes.* If the *Wenphil* rule imposing a fine on an employer who is found to have dismissed an employee for cause without prior notice is deemed ineffective in deterring employer violations of the notice requirement, *the remedy is not to declare the dismissal void if there are just or valid grounds for such dismissal or if the termination is for an authorized cause. That would be to uphold the right of the employee but deny the right of the employer to dismiss for cause. Rather, the remedy is to order the payment to the employee of full backwages from the time of his dismissal until the court finds that the dismissal was for a just cause.* But, otherwise, his dismissal must be upheld and he should not be reinstated. *This is because his dismissal is ineffectual.*¹⁵³

Thus, in the process of replacing the *Wenphil* Doctrine, the Supreme Court introduced a new type of dismissal—that which is *ineffectual*. According to the Court, an ineffectual dismissal is not void. Yet, the consequences of such a dismissal is similar to an illegal dismissal to the extent that the employer is required to give the dismissed employee full backwages from the time of dismissal until the court finds that the dismissal is for cause. The only difference between the two types of dismissals is that when the dismissal is ineffectual, the employer is not required to reinstate the dismissed employee. In requiring the employer to pay the dismissed

¹⁵³ *Id.*

employee full backwages, the majority opinion and the separate opinions of Justice Puno and Panganiban proceed from different rationales.

Justice Puno argues that an employer's failure to comply with the notice requirement constitutes a denial of the employee's right to due process. Prescinding from this premise, he quotes the statement of Chief Justice Concepcion in *Vda. de Cuaycong v. Vda. de Sengbengco*¹⁵⁴ that "acts of Congress, as well as of the Executive, can deny due process only under the pain of nullity, and judicial proceedings suffering from the same flaw are subject to the same sanction, any statutory provision to the contrary notwithstanding." Justice Puno concludes that the dismissal of an employee without notice and hearing, even if for a just cause or for an authorized cause, is a nullity. Hence, even if just or authorized causes exist, the employee should be reinstated with full back pay. On the other hand, Justice Panganiban quotes from the statement in *People v. Bocar*¹⁵⁵ that "where the denial of the fundamental right of due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction."

The majority opinion, however, explained that not all notice requirements are requirements of due process. Some are simply part of a procedure to be followed before a right granted to a party can be exercised. Others are simply an application of the Justinian precept, embodied in the Civil Code, to act with justice, give everyone his due, and observe honesty and good faith toward one's fellowmen.¹⁵⁶ The majority said that such is the notice requirement in Articles 282-283.

In declaring that the notice requirement was not a requirement of due process, the majority stated:

We hold, therefore, that, with respect to Art. 283 of the Labor Code, the employer's failure to comply with the notice requirement does not constitute a denial of due process but a mere failure to observe a procedure for the termination of employment which makes the termination of employment merely ineffectual. It is similar to the failure to observe the provisions of Art. 1592, in relation to Art. 1191, of the Civil

¹⁵⁴ G.R. No. 11837, 110 Phil. 113, Nov. 29, 1960.

¹⁵⁵ G.R. No. 27935, 138 SCRA 166, Aug. 16, 1985.

¹⁵⁶ CIVIL CODE, art. 19.

Code in rescinding a contract for the sale of immovable property.¹⁵⁷ (emphasis supplied)

The majority opinion construed Article 279 of the Labor Code, which Article supposedly defines what dismissals are illegal, as not covering situations where the dismissal is for a just or authorized cause without compliance with the procedural requirements. It was explained therefore that:

Indeed, under the Labor Code, only the absence of a just cause for the termination of employment can make the dismissal of an employee illegal. *Thus, only if the termination of employment is not for any of the causes provided by law is it illegal and, therefore, the employee should be reinstated and paid backwages. To contend, as Justices Puno and Panganiban do, that even if the termination is for a just or authorized cause the employee concerned should be reinstated and paid backwages would be to amend Art. 279 by adding another ground for considering a dismissal illegal.* What is more, it would ignore the fact that under Art. 285, if it is the employee who fails to give a written notice to the employer that he is leaving the service of the latter, at least one month in advance, his failure to comply with the legal requirement does not result in making his resignation void but only in making him liable for damages. *This disparity in legal treatment, which would result from the adoption of the theory of the minority cannot simply be explained by invoking President Ramon Magsaysay's motto that 'he who has less in life should have more in law.'*¹⁵⁸ (emphasis supplied)

What seems contradictory in the majority opinion's logic, however, was that while it stated that: "to contend, as Justices Puno and Panganiban do, that even if the termination is for a just or authorized cause the employee concerned should be reinstated and paid backwages would be to amend Art. 279 by adding another ground for considering a dismissal illegal," the majority nevertheless decreed "if it is shown that the employee was dismissed for any of the just causes, then, he should not be reinstated. However, *he must be paid backwages* from the time his employment was terminated until it is determined that the termination of employment is for

¹⁵⁷ Serrano v. National Labor Relations Commission, G.R. No. 117040, 323 SCRA 445, Jan. 27, 2000.

¹⁵⁸ *Id.*

a just cause because the failure to hear him before he is dismissed renders the termination of his employment without legal effect."¹⁵⁹

However, going back to Article 279 of the Labor Code, it seems that the imposition of backwages is limited to situations where the employee is illegally dismissed. Said article provides: "An employee who is *unjustly dismissed* from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his *full backwages*."¹⁶⁰ Therefore, had the majority intended not to "amend", as it were, Article 279 of the Labor Code by adding as another ground for considering a dismissal illegal the lack of notice even if the dismissal is for a just or authorized cause, then the Court should have refrained from imposing the payment of full backwages by the employer.

A justification in imposing full backwages while upholding the legality of the dismissal may perhaps be made out in another part of the decision, wherein the majority stated that the notice requirement in Articles 282-283 is simply an application of the Justinian precept, embodied in the Civil Code, to act with justice, give everyone his due, and observe honesty and good faith toward one's fellowmen. The majority further stated that "the consequence of the failure either of the employer or the employee to live up to this precept is to make him liable in damages, not to render his act (dismissal or resignation, as the case may be) void. *The measure of damages is the amount of wages the employee should have received were it not for the termination of his employment without prior notice.* If warranted, nominal and moral damages may also be awarded."¹⁶¹ However, in another part of the same decision, the majority did not seem to characterize the payment of backwages as damages, but rather as a form of penalty. In the early part of the decision, Justice Mendoza thus wrote: "Today, we once again consider the question of *appropriate sanctions for violations of the notice requirement*... If the Wenphil rule imposing a fine on an employer who is found to have dismissed an employee for cause without prior notice is deemed ineffective in deterring employer violations of the notice requirement, the remedy is not to declare the dismissal void if there are just or valid grounds for such dismissal or if the termination is for an authorized cause. *Rather, the remedy is to order the*

¹⁵⁹ *Id.*

¹⁶⁰ LABOR CODE, art. 279 (as amended).

¹⁶¹ *Serrano v. National Labor Relations Commission*, G.R. No. 117040, 323 SCRA 445, Jan. 27, 2000.

*payment to the employee of full backwages from the time of his dismissal until the court finds that the dismissal was for a just cause.”*¹⁶²

The characterization of the payment of backwages as a form of damages or as a penalty is not merely academic since such characterization has significant consequences. If backwages were characterized as a form of damages, then pursuant to the Civil Code and established jurisprudence, generally there must be a finding of malice or bad faith to justify the award of damages or even if there is no malice or bad faith, the amount of damages may be mitigated or must be considered in light of the peculiar circumstances surrounding each case.¹⁶³ If, on the other hand, backwages is imposed as a penalty, then that penalty may be imposed upon the violation of the notice requirement and such amount may be uniform in all cases.

In any case, the Supreme Court in the case of the employee Serrano, required the employer Isetann Department Store to pay the former separation pay equivalent to one (1) month pay for every year of service, his unpaid salary, and his proportionate 13th month pay and, in addition, full backwages from the time his employment was terminated on October 11, 1991 up to the time the decision became final in January 27, 2000. The employer was thus required to pay the employee backwages (either as damages or as penalty) the employee's wage equivalent to nine (9) years, for failing to comply with the notice requirement.

5. The Agabon Doctrine (2004)

Four years after the Serrano Doctrine was laid down, the Court again found occasion to re-examine its previous ruling in a case for illegal dismissal filed by employees who were dismissed for a just cause without receiving the required notice. The Court, this time in a decision penned by Justice Ynares-Santiago, stated that:

We believe, however, that the ruling in *Serrano* did not consider the full meaning of Article 279 of the Labor Code. The termination is illegal only if it is not for any of the justified or authorized causes provided by law. *Payment of backwages and other*

¹⁶² *Id.*

¹⁶³ *Reyes v. Minister of Labor*, G.R. No. 48705, 170 SCRA 134, Feb. 9, 1989; *Savellano v. Northwest Airlines*, G.R. No. 151783, 405 SCRA 416, July 8, 2003.

benefits, including reinstatement, is justified only if the employee was unjustly dismissed. The fact that the *Serrano* ruling can cause unfairness and injustice which elicited strong dissent has prompted us to revisit the doctrine. After carefully analyzing the consequences of the divergent doctrines in the law on employment termination, we believe that in cases involving dismissals for cause but without observance of the twin requirements of notice and hearing, the better rule is to abandon the *Serrano* doctrine and to follow *Wenphil* by holding that the dismissal was for just cause but imposing sanctions on the employer.¹⁶⁴ (emphasis supplied)

The Court, thus, abolished the concept of an *ineffectual dismissal* previously introduced by the *Serrano* Doctrine and explained the rationale behind this:

The unfairness of declaring illegal or ineffectual dismissals for valid or authorized causes but not complying with statutory due process may have far-reaching consequences. This would encourage frivolous suits, where even the most notorious violators of company policy are rewarded by invoking due process. This also creates absurd situations where there is a just or authorized cause for dismissal but a procedural infirmity invalidates the termination. Invalidating the dismissal would not serve public interest. It could also discourage investments that can generate employment in the local economy.¹⁶⁵ (emphasis supplied)

The Court also found occasion to clarify what the remedy was for situations where the dismissal was for cause but there was failure to comply with the notice requirement:

Where the dismissal is for a just cause, as in the instant case, the lack of statutory due process should not nullify the dismissal, or render it illegal, or ineffectual. However, the employer should indemnify the employee for the violation of his statutory rights, as ruled in *Reta v. National Labor Relations Commission*.¹⁶⁶ The indemnity to be imposed should be stiffer to discourage the abhorrent practice of "dismiss now, pay later," which we sought to deter in the *Serrano* ruling. *The sanction should be in the nature of*

¹⁶⁴ *Agabon v. National Labor Relations Commission*, G. R. No. 158693, 442 SCRA 573, Nov. 17, 2004.

¹⁶⁵ *Id.*

¹⁶⁶ G.R. No. 112100, 232 SCRA 613, May 27, 1994.

indemnification or penalty and should depend on the facts of each case, taking into special consideration the gravity of the due process violation of the employer. The violation of the petitioners' right to statutory due process by the private respondent warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances. Considering the prevailing circumstances in the case at bar, we deem it proper to fix it at P30,000.00. We believe this form of damages would serve to deter employers from future violations of the statutory due process rights of employees. At the very least, it provides a vindication or recognition of this fundamental right granted to the latter under the Labor Code and its Implementing Rules.¹⁶⁷ (emphasis supplied)

The Supreme Court stated that failure to comply with the *due process* requirements of notice and hearing under Articles 282-283 and the Implementing Rules of the Labor Code violate the Labor Code and constitutes failure to comply with *statutory due process*, not *constitutional due process*. *Constitutional due process* protects the individual from the government and assures him of his rights in criminal, civil or administrative proceedings while *statutory due process* found in the Labor Code and Implementing Rules protects employees from being unjustly terminated without just cause after notice and hearing.¹⁶⁸

The Supreme Court, in determining what to impose on the employer for violating the employee's right to statutory due process, used as basis the Civil Code provision on nominal damages.¹⁶⁹ It also cited the decision of the Court in *Viernes v. National Labor Relations Commissions*,¹⁷⁰ where it was enunciated that an employer is liable to pay indemnity in the form of nominal damages to an employee who has been dismissed if, in effecting such dismissal, the employer fails to comply with the requirements of due process. It was held in that case that this indemnity is intended not

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ Under Article 2221 of the CIVIL CODE, nominal damages is adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

¹⁷⁰ G.R. No. 108405, 400 SCRA 557, Apr. 4, 2003 *citing* *Kwikway Engineering Works v. National Labor Relations Commission*, G.R. No. 85014, 195 SCRA 526, Mar. 22, 1991; *Aurelio v. National Labor Relations Commission*, G.R. No. 99034, 221 SCRA 432, Apr. 12, 1993; and *Sampaguita Garments Corporation v. National Labor Relations Commission*, G.R. No. 102406, 233 SCRA 260, June 17, 1994.

to penalize the employer but to vindicate or recognize the employee's right to statutory due process which was violated by the employer.¹⁷¹

In declaring that the sanction should be in the form of nominal damages, the Court included the caveat that: "Such sanctions, however, must be stiffer than that imposed in *Wenphil*."¹⁷²

Adding that "By doing so, this Court would be able to achieve a fair result by dispensing justice not just to employees, but to employers as well"¹⁷³ as if admitting that the previous ruling did not dispense justice to the employers.

VIII. INTERNATIONAL PRACTICE ON TERMINATION: A GLOBAL PERSPECTIVE

The Philippines is not the only country which has prescribed the procedure on termination by legislation. Governments are interested in the development of these termination standards as a means of minimizing the causes for the disturbances in the economic process and of public order in their respective countries.¹⁷⁴

In the recent case of *Agabon v. National Labor Relations Commission*,¹⁷⁵ which overturned a doctrine on dismissal which has been applied for four (4) years, the Supreme Court took into account the public interest and the effect of the ruling on potential investments. It held that: "Invalidating the dismissal would not serve public interest. It could also discourage investments that can generate employment in the local economy."¹⁷⁶ It cannot be denied that the increasing trend towards globalization has become a factor in formulating government policies and legislation and in interpreting and applying such policies and legislation in an attempt to place the Philippines at a globally competitive position. A discussion of the law

¹⁷¹ *Id.* citing *Better Buildings, Inc. v. National Labor Relations Commission*, G.R. No. 109714, 283 SCRA 242, Dec. 15, 1997; *Iran v. National Labor Relations Commission*, G.R. No. 121927, 289 SCRA 433, Apr. 22, 1998.

¹⁷² *Agabon v. National Labor Relations Commission*, G. R. No. 158693, 442 SCRA 573, Nov. 17, 2004.

¹⁷³ *Id.*

¹⁷⁴ Morabe, *supra* note 49, at 242.

¹⁷⁵ *Agabon v. National Labor Relations Commission*, G. R. No. 158693, 442 SCRA 573, Nov. 17, 2004.

¹⁷⁶ *Id.*

and practices on termination of other countries is thus included here but only for the purpose of showing what the other countries are doing, and perhaps provide ideas as to what improvements may be implemented in the Philippine setting.

In his authoritative article on comparative law, Kahn-Freund argued that the comparative study of laws and institutions could serve a number of important purposes, including research and education.¹⁷⁷ But he also expressed one major caveat on the use of comparative study—it could not serve *unconditionally* as a means whereby a nation could bring about legal or institutional change within its own boundaries: no country could expect to solve its legal, institutional or social problems by borrowing the laws, institutions and practices of another.¹⁷⁸ Comparative law is sought to be applied here only for research and education.

A. SPECIAL FEATURES OF FOREIGN TERMINATION LAWS

1. GERMANY: “socially unwarranted dismissals”

In Germany, a dismissal that is socially unwarranted is without effect. This principle is set out in an Act to provide protection against unwarranted dismissal, dated 10 August 1951, which is applicable only to workers aged twenty (20) years or over who have been continuously employed in the same establishment or undertaking for more than six (6) months and only to undertakings or offices normally employing more than five (5) workers, excluding apprentices.¹⁷⁹ A socially unwarranted dismissal is defined by the Act as meaning “any dismissal not based on reasons connected with the person or the conduct of the employee or on pressing operational requirements which preclude his continued employment in the undertaking.”¹⁸⁰ According to the great number of labor court decisions which have interpreted this provision, reasons connected with the person of the employee would be, for instance, insufficient physical or mental ability,

¹⁷⁷ Otto Kahn Freund, *On Uses and Misuses of Comparative Law*, 37 MODERN L. REV. 8-10 (1974).

¹⁷⁸ *Dagupan Bus Co Inc. v. National Labor Relations Commission*, G.R. No. 94291, 191 SCRA 328, Nov. 9, 1990.

¹⁷⁹ Law of August 10, 1951, An act to provide protection against unwarranted dismissals, BGII 499, translated in 1951I.L.O. Legislative Series 1951 Ger. F.R. 4. (1951).

¹⁸⁰ Law of August 10, 1951, An act to provide protection against unwarranted dismissals, BGII 499, translated in 1951I.L.O. Legislative Series 1951 Ger. F.R. 4. (1951).

lack of skill, inability to absorb the training required for the job, and certain cases of sickness. Reasons connected with the conduct of the worker might include unreliability, negligence and misbehavior. Reasons based on pressing operation needs are, for example, lack of orders or raw materials, scarcity of coal or electricity, rationalization measures, change in production methods or closing of departments. Section 66 of the Workers Constitution Act of 1952 stipulates that the employer must also inform the "works council" (a body of elected workers' representatives in the plant) of every intended dismissal and of the reasons for it and must ask for its opinion within a reasonable period of time. The purpose of a consultation of this kind is to bring about a discussion between management and workers' representatives with a view to examining and weighing the various aspects of the case. The employer is, however, not bound by the opinion of the works council.¹⁸¹

2. FRANCE: "abusive dismissals"

Section 28 of Book I of the Labor Code of France states that abusive termination of the employment relationship by one of the parties may give rise to damages. In the absence of a legal definition of what would be an "abusive" dismissal, the courts have established a body of precedents both as regards those reasons which render a dismissal abusive and those which do not. Reasons of the latter type include reduction of personnel as a consequence of reorganization, closing of establishment, serious misconduct, occupational inaptitude, prolonged illness, and other analogous circumstances. An ordinance enacted on 24 May 1945 prescribes that dismissals must be authorized by the manpower service of the area. Although this service may only consider the probable economic effect of the proposed dismissal, its authorization must be requested in all dismissal cases, including those for reasons connected with the person or the conduct of the worker concerned.

3. NETHERLANDS: "Manifestly unreasonable dismissals"

Under the Netherlands Civil Code, a worker may be awarded damages or, under certain conditions, reinstatement if he has been dismissed in a manner which is manifestly unreasonable. According to the provisions of the law a dismissal may be regarded as manifestly

¹⁸¹ Workers Constitution Act of 1952, § 66.

unreasonable, if among other things, no reasons are stated if a pretext or a false reason is given, if the consequences to the worker of the dismissal outweigh the advantage of such dismissal to the employer, or if the worker is dismissed in contravention of a legislative provision or custom relating to staff composition or seniority rules, and if there is no serious reason for not complying with these rules.¹⁸² In practice the intervention of the manpower service, which must authorize dismissals and therefore is empowered to investigate the reasons on which such a proposed measure is based, has a great effect on preventing unjustified dismissals.

4. ITALY: "minimum number of workers requirement"

In Italy, where under the general legislation in force, the employer is not obliged to justify a dismissal, an agreement restricts unjustified individual dismissals. This agreement was concluded on 18 October 1950 between the central organizations of employers and workers and given force of law by a Presidential Decree. It applies only to undertakings with more than thirty five (35) workers, and provides that a worker who is of the opinion that his dismissal is unjustified may request the intervention of his trade union in a conciliation and arbitration procedure. During these proceedings the conciliation and arbitration committees may investigate the justification of the reasons for dismissal advanced by the employer and may make a final award.¹⁸³

5. GREAT BRITAIN: Union brake v. Arbitrary Dismissals

In the United Kingdom, the principle that dismissals must be justified is not set out in legislation. It has neither been established by common law nor has it to any extent been included in collective agreement clauses. But in practice, a very important brake on arbitrary or discretionary dismissal is the very presence of a union. In many industries and undertakings, the employer's power to dismiss is restrained by fear of repercussion in the form of strikes or other economic pressures on the part of the trade unions.

¹⁸² NETHERLANDS CIVIL CODE, § 1639 (as amended in 1953).

¹⁸³ Pres. Dec. of July 14, 1960.

6. UNITED STATES: General Prohibition v. Dismissal without cause

The concept that a dismissal must be based on a reason justifying such action is also widely accepted in the United States. This is largely the case under collective bargaining agreements. Under the provisions of typical collective agreements, proposed dismissals must meet the test of just cause. Dismissals usually implies a termination of employment relationship resulting from reasons attributable to the worker himself and in cases of reduction of personnel for reasons connected with the operation of the undertaking, the typical procedure under collective agreements for dismissal may be simply a general formula prohibiting dismissals if there is no just cause. A worker may challenge the employer's dismissal decision through his union by recourse to the grievance procedure established by the collective agreement which usually provides as a last step for a binding decision by an independent arbitrator. Reasons constituting just cause generally include cases of serious misconduct, incompetence, disability or violation of work rules.

7. SINGAPORE: "Employment as a Contract"

In Singapore, employment is characterized as a contract of service^{184 185} Under their law, there is no requirement that a contract of service must provide for the termination of it. The Employment Act determines the manner and procedure for terminating employment. Section 9 thereof provides that a contract may be terminated at the end of a specified period or after completion of a specified piece of work for which the contract was made. Under Section 10, either party to a contract may terminate it by giving the other party notice in writing of his intention. Length of notice shall be the same for both employee and employer. If no provision for notice occurs in the contract, its period shall be not less than: one (1) day's notice for employees with less than twenty six (26) weeks' service; one (1) week's notice for employees with twenty six (26) weeks to two (2) years' service; two (2) weeks' notice for employees with two (2) to five (5) years' service; and four (4) weeks' notice for employees with five (5)

¹⁸⁴ A contract of service is defined as an agreement, whether written or oral, express or implied, whereby one person agrees to employ another as an employee and that other person agrees to serve his employer as an employee.

¹⁸⁵ Lai tat Yuen, *THE LAW AND PRACTICE IN TERMINATION OF EMPLOYMENT IN Singapore* at 91 (1986).

years' service or more. Section 11 provides that either party may terminate a contract without notice by paying the other party an indemnity in lieu. Contracts may also be terminated without notice if the other party has willfully broken a condition of the contract.¹⁸⁶ If the dismissed employee considers that his termination was not in good faith, the aggrieved employee may, within one month of such dismissal, make by himself or through his union, representations in writing to the Minister of Labor to be reinstated in his former employment.¹⁸⁷ The officers in the Ministry of Labor acting on behalf of the Minister would have to find out the facts. In the process, they may initiate conciliation to settle the dispute. If no settlement is achieved, the matter must be referred to the Minister for a decision. The Minister's decision is final and cannot be challenged in any court of law or the Industrial Arbitration Court.¹⁸⁸

8. THAILAND: "Just or Valid Grounds for Termination"

In Thailand, to terminate or dismiss an employee the employer must see whether he is justified under Section 47 of the Labor Protection Law and Section 583 of the Civil and Commercial Code (Book III Specific Contracts, Title VI Hire of Service). The valid grounds for termination are: performing the duty dishonestly or intentionally committing a criminal offense against the employer; intentionally causing damage to the employer; violating regulations or rules concerning work or lawful orders of the employer after written caution has been given by the employer (in serious cases, the employer is not required to give caution); neglecting duty for three consecutive working days without justifiable reason; being imprisoned by final judgment of imprisonment. Under these conditions, the employer is not required to make severance pay. When the employee has not provided valid grounds for termination, the employer is required to give advance notice and provide severance pay. If the duration of the contract is not fixed, either party can terminate it by giving notice. But no more than three (3) months notice need be given. The employer can, on giving such notice, immediately dismiss the employee by paying him his remuneration up to the expiration of the notice.¹⁸⁹

¹⁸⁶ Employment Act of Singapore.

¹⁸⁷ Employment Act of Singapore, § 14 (2); and Industrial Relations Act of Singapore, § 53 (2).

¹⁸⁸ Lai Tat Yuen, *supra* note 185, at 93.

¹⁸⁹ CIVIL AND COMMERCIAL CODE of Thailand, § 582.

In addition to advance notice or remuneration in lieu, the employer must pay severance pay to a regular employee according to his length of service. The severance pay rates are as follows:¹⁹⁰

Length of service:	Severance Pay Equivalent to:
120 days – 1 year	30 days
1 – 3 years	90 days
More than 3 years	180 days

9. MALAYSIA: "Mandatory Contract Clauses"

In Malaysia, it is required that in every written contract of service, a clause shall be included setting out the manner in which it may be terminated by either party. All contracts for specified periods of more than a month shall be in writing. Either party to a contract may at any time give to the other party notice of his intention to terminate it. The length of notice period shall be the same for both employer and employee. It is normally determined by the parties and made in writing.¹⁹¹ However, where there is no such contract or when it is not written down, the notice period shall not be less than:

-four (4) weeks' notice if the employee has been so employed for less than two (2) years on the date on which the notice is given;

-six (6) weeks' notice if he has been so employed for between two (2) and five (5) years on such date;

-eight (8) weeks' notice if he has been so employed for more than five (5) years.

Both parties are free to waive their respective right to notice. Either party can terminate it without notice on payment of wages in lieu of notice, the amount payable being the wages for the appropriate term of

¹⁹⁰ Labor Protection Law of Thailand, § 46.

¹⁹¹ B. Nithiananthan, *THE LAW AND PRACTICE IN TERMINATION OF EMPLOYMENT IN MALAYSIA* at 51 (1986).

notice. Either party can also terminate the contract due to willful breach by the other party of a contracted condition.¹⁹²

Labor Courts have been established to permit employees to seek redress quickly and cheaply without incurring the court fees or legal impediments normally associated with judicial courts. They are also designed for quick disposal of cases and to relieve the civil courts of the burden of hearing such disputes.

Section 69 of the Employment Act empowers a gazetted Labor Officer to hear a labor case and to decide any dispute between any employee and his employer relating to wages due arising out of any term in the contract of service. He is also empowered to order payment of money as he deems just, with no limitation on the amount. Among the complaints that the Labor Officer may entertain are wrongful dismissals (claiming indemnity in lieu of notice). A worker can also seek the assistance of his own union in cases where his services have been terminated. Unions can raise "trade disputes" on behalf of any of their members.¹⁹³ Once a dispute on termination is raised with the Industrial Relations Department, the matter will be conciliated by Industrial Relations Officers. The goal is an amicable settlement. If conciliation proves unsuccessful, the matter can be referred by the Minister to the Industrial Court for adjudication.¹⁹⁴

B. RECOURSE AND REMEDIES IN FOREIGN COUNTRIES

In the majority of countries the institutions set up to hear dismissal cases do not differ from the general procedures followed in settling individual disputes arising out of the employment relationship because dismissal regulations are considered as one aspect of the conditions of employment. A few countries have established special channels for solving dismissal disputes either entirely independent of or in some way or other connected with the worker's ordinary redress procedures. The following are examples of institutions set up by different countries to address labor related problems, particularly those related to termination of employment.

¹⁹² Employment Act of Malaysia (ACT 265).

¹⁹³ Industrial Relations Act (1967) of Malaysia.

¹⁹⁴ Nithiananthan, *supra* note 191, at 54.

1. Ordinary Law Courts

In a number of countries the body which is competent to decide ultimately on cases of unjustified dismissal is the ordinary law court. That is, for instance the case in Cuba, Libya, Netherlands, Norway, Turkey, United Arab Republic and Russia. In other countries, the ordinary court may intervene only when the settlement efforts of joint conciliation committees at the level of the undertaking are unsuccessful.

2. Special Labor Courts

Some countries have set up by legislation a special branch of the judiciary such as labor courts (e.g. Argentina, Bolivia, Brazil, Colombia, Costa Rica, Dominican Republic, Germany, Guatemala, Honduras, Spain, Venezuela), or conciliation authorities (Austria), or conciliation and arbitration boards (Mexico), or "conseils de prud' homes" as a first instance of the general judiciary (e.g. Belgium, Cameroun, Central African Republic, Chad, Congo, Dahomey, France, Gabon, Ivory Coast, Malagasy Republic, Niger, Senegal, Togo).

3. Grievance Machinery

In other countries, cases of allegedly unjustified dismissals are decided outside the statutory courts system by special bodies or through special proceedings established by agreement between the parties. Mention may be made in this connection of the grievance and arbitration process embodied in most of the collective agreements in Canada, in the United States, of the Swedish Labor Market Board and of the special joint conciliation and arbitration committees created by the Italian agreement on individual dismissals.¹⁹⁵

IX. RECOMMENDATIONS

A. SHARED RESPONSIBILITY

Because termination affects security of tenure it is a very sensitive area. In a country where there is high unemployment and under-employment, workers and unions react strongly to actual and potential

¹⁹⁵ Report VII (1) Termination of Employment, International Labor Conference 4th Sessions, 7th Item on the Agenda, International Labor Organization, 1961.

dismissals, especially when these are coupled with unfair labor practices. There is a strong need therefore for the parties, specially the workers, to understand the financial and other problems of industry. Workers have to be taken into management's confidence as to what is going on and for plans for recovery if their cooperation and understanding are to be expected. Unilateral decisions by management affecting the jobs of union members can easily be misunderstood and can often lead to work stoppages.¹⁹⁶

B. EXPEDITING RESOLUTION OF CASES

Slow resolution of cases is another significant concern. It is often pointed out that, since termination cases involve the very source of workers' livelihood, they should be resolved expeditiously. Delays merely promote grave injustice. And while the major cause of delay is the clogged dockets at the Courts and the Department of Labor, it cannot be denied that excessive legalism and unscrupulous misuse of elaborate rules and procedures are also important causes.¹⁹⁷ Earlier in this paper, examples of institutions established in different countries which handle cases of employment termination have been enumerated. Perhaps the Philippines should explore the possibility and viability of establishing new agencies or bodies to resolve labor cases, particularly cases on employment termination which undoubtedly constitute majority of the labor cases filed each year. Opening new avenues, especially those involving conciliation and grievance and arbitration processes, may ultimately relieve the clogged dockets of the Department of Labor and the Supreme Court, with respect to the labor cases filed.

C. UNIFORM RULES TO ACHIEVE PREDICTABLE AND FAIR RESULTS

As illustrated earlier in the varying and inconsistent pronouncements by the Supreme Court concerning the issue of dismissal and the consequences of failing to comply with the requirements of effecting such dismissal, there is a need to provide for specific rules in cases when the dismissal is for a just and valid cause and the procedural requirements are not complied with in order to avoid judicial interpretation.

¹⁹⁶ Trajano, *supra* note 66, at 79.

¹⁹⁷ Trajano, *supra* note 66, at 81.

The dangers of leaving such matters to judicial interpretation cannot be underestimated. In overturning the doctrine laid down in *Serrano v. NLRC*,¹⁹⁸ the Court stated that in implementing the new doctrine, "the Court would be able to achieve a fair result by dispensing justice not just to employees, but to employers as well"¹⁹⁹ implying that the previous doctrine resulted in unfair results to the employer.

In other countries the regulations in force have established more or less specific rules for the calculation of the compensation or award to be paid a dismissed employee. Elsewhere, the regulations have fixed a minimum and a maximum, leaving it to the discretion of the court or arbitrator to determine the exact number amount. This is, for instance, the case in Italy, where the agreement provides that the compensation upon dismissal must amount to at least five (5) and at most eight (8) months' remuneration. The regulations simply set a maximum in some countries, e.g. twelve (12) months' wages in Germany and in Spain, and from six (6) months to three (3) years' wages, according to the length of service, in Norway. Under the Danish agreement, the indemnity for unreasonable dismissal may not exceed the amount of thirteen (13) weeks' wages, calculated on the basis of the average earnings of the worker during the previous years. Regulations sometimes specify the factors which have to be taken into account when assessing the compensation in cases of dismissal. In Norway, for example, the law prescribes that the worker's loss of earnings, length of service, remuneration, prospects of obtaining new employment in the same or in another occupation, his personal situation and all other relevant circumstances should be taken into account. Similar provisions are also included in German, Moroccan, and Spanish legislation. There are also countries where the exact amount of the compensation is fixed by legislation. In Turkey, the compensation to be paid to a worker whose dismissal is a manifest abuse of the employer's right to terminate the contract of employment must be equal to three (3) times the remuneration in respect of the term of notice.²⁰⁰

¹⁹⁸ *Serrano v. National Labor Relations Commission*, G.R. No. 117040, 323 SCRA 445, Jan. 27, 2000.

¹⁹⁹ *Id.*

²⁰⁰ *supra* note 195.

D. THE CONCEPT OF "DISTURBANCE COMPENSATION"

Some of the recommendations made by Justice Bellosillo in his separate opinion in the case of *Serrano v. NLRC*²⁰¹ may prove to be helpful. First, Justice Bellosillo proposed a change in the terminology used to refer to the sanction imposed. He explains that since *Wenphil Corporation v. NLRC*²⁰² the Court has already recognized the necessity of imposing a sanction in the form of indemnity or even damages, when proper, not specifically provided by any law, upon employers who failed to comply with the twin-notice requirement. At the very least, he proposed merely a change in the terminology used, i.e., from "sanction," "indemnity," "damages" or "penalty," to "disturbance compensation" as he believed to be the more appropriate term to accurately describe the lamentable situation of the displaced employees.²⁰³ Regardless of whether this term really accurately describes the situation of the employees or not, it is submitted that the proposal of Justice Bellosillo to change the terminology would be helpful if only to remove the legal connotations of the different terms so loosely employed by the Supreme Court. The nature of damages, for example, is different from penalty and the conditions upon which either of them may be applied differ at certain points.

Second, Justice Bellosillo observed that with regard to the indemnity or penalty, the Court has awarded varying amounts depending on the circumstances of each case and the gravity of the commission. He then proposed that the amount of the award be uniform and rational and not arbitrary. The reason, according to him, for the proposal or modification is that in their non-compliance with the notice requirement the erring employers, regardless of the peculiar circumstances of each case, commit the infraction only by the single act of not giving any notice to their workers. It cannot be gainfully said that the infraction in one case is heavier than in the other as the non-observance constitutes one single act.

Justice Bellosillo thus, formulated the following guidelines:

²⁰¹ *Serrano v. National Labor Relations Commission*, G.R. No. 117040, 323 SCRA 445, Jan. 27, 2000.

²⁰² G.R. No. 80587, 170 SCRA 69, Feb. 8, 1989.

²⁰³ *Serrano v. National Labor Relations Commission*, G.R. No. 117040, 323 SCRA 445, Jan. 27, 2000.

-If the dismissal is illegal, i.e., there is no just or authorized cause, a disturbance compensation in the amount of P10,000.00 may be considered reasonable.

-If the dismissal is for a just cause but without notice, a disturbance compensation in the amount P5,000.00 may be given.

-In termination for an authorized cause and the notice requirement was not complied with, we distinguish further:

-If it is to save the employer from imminent bankruptcy or business losses, the disturbance compensation to be given is P5,000.00.

-If the authorized cause was intended for the employer to earn more profits, the amount of disturbance compensation is P10,000.00.

He strongly recommended that this disturbance compensation should be given to the dismissed employee at the first instance, the moment it is shown that his employer has committed the infraction — of not complying with the notice requirement — to tide him over during his economic dislocation.²⁰⁴

X. CONCLUSION: JUSTITIA NEMINI NEGANDA EST²⁰⁵

"Labor laws, like human resource management, have human and economic ends. They must support, if not propel, productive performance of the enterprise while protecting, if not providing, human dignity and necessities. In relation to capital, labor laws must respect the logic, the fairness and the need for realizing reasonable return on investment. In relation to labor, labor laws must safeguard the logic, fairness and the need for rewarding one's contribution to the harvest of the investment. Indeed, labor laws should support two

²⁰⁴ *Id.*

²⁰⁵ Latin phrase meaning: "Justice is to be denied to none."

masters."

-Ces Azucena, Jr.²⁰⁶

Such Supreme Court pronouncements like— "We do not lose sight of the fact that under our laws and the policies of our government, the labor laws should be construed liberally in favor of the laborer, but on the other hand the fundamental principle of due process of law should be sternly applied alike on both the poor and the rich in order to attain proper justice"²⁰⁷ is reflective of the effort of the government to strike a balance between the interests of the worker and the employer. It presents a guaranty against the feared abolition of free enterprise and democratic capitalism in this country, while at the same time it gives assurance to the onward march of the liberal policy of the government toward the economically weaker segment of the country's population.²⁰⁸

The effort to strike a balance is a duty which the Supreme Court has especially taken upon itself to carry out. The Court has held that if it is clearly shown that in the exercise of management prerogatives by the employer there has been an abuse to the prejudice of the laborers and that such act is patently inimical to the interest of the State, the Court will not hesitate to interfere.²⁰⁹ However, there has been a little confusion and haphazardness in the application or interpretation of labor laws, which have resulted at times in unfair or unjust results either for the employees or for the employers. Based on the constitutional mandate on protection to labor, the courts and labor tribunals have dispensed with what they call "compassionate justice", disregarding rigid rules and giving due weight to all the equities of the case.²¹⁰ However, in dispensing compassionate justice in favor of labor, no injustice should be caused to the employer nor should the clear provisions of the labor law be disregarded. In one case, the Supreme Court, in assailing a decision of the labor tribunal stated: "there is another reason to strike down the NLRC's 'new judgment' and that is, that in

²⁰⁶ AZUCENA, *supra* note 13, at 6.

²⁰⁷ *Magalona & Co. v. Workmen's Compensation Commission and Pedro Genonca*, G.R. No. 10338, Apr. 30, 1957.

²⁰⁸ *Morabe*, *supra* note 49, at 268.

²⁰⁹ *La Union Labor Union v. Church & Co.*, Case No. 247-V, Decision, Apr. 3, 1950.

²¹⁰ *Philippine National Construction Corporation v. National Labor Relations Commission*, G.R. No. 83320, 170 SCRA 207, Feb. 9, 1989; *De Vera v. National Labor Relations Commission*, G.R. No. 93221, Nov. 22, 1990; *Chua v. National Labor Relations Commission*, G.R. No. 105775, 218 SCRA 545, Feb. 8, 1993.

disregard of the relevant provisions of the law, it is made to rest on 'considerations of equity and social justice.' This is impermissible... Equity has been defined as justice outside law. It is grounded on the precepts of conscience and not on any sanction of positive law. Hence, it cannot prevail against the expressed provision of the labor laws."²¹¹

The role of the judiciary in attaining the proper balance between labor and management cannot be overemphasized. As illustrated in the cases of *Wenphil*, *Serrano* and *Agabon*, the Court wields enough power to interpret what may seem as a clear provision of law, such as Article 279 of the Labor Code, and impose sanctions as severe as full backwages equivalent to as much as a decade from the time of the dismissal up to the finality of the decision of the Court. In overturning the doctrine laid down in the case of *Serrano*, however, the Court did not admit any mistake on its part but instead looked to the nature of social justice to justify a change in its ruling. The Court held thus—"This is not to say that the Court was wrong when it ruled the way it did in *Wenphil*, *Serrano* and related cases. Social justice is not based on rigid formulas set in stone. It has to allow for changing times and circumstances."²¹²

The Court should take care, however, that in dispensing social justice they do not engage in judicial legislation. As Justice Holmes once said, it is never the job of the judge to render justice, but to apply the law. Justice in a larger sense, justice according to morality, is for Congress and the President to administer, if they see fit, through the creation of new law.²¹³ The Constitution's Social Justice provisions were meant to be realized through majoritarian legislation and not through judicial fiat.²¹⁴ Thus, sympathy for labor should not be the criterion in deciding a case involving employers and workers.²¹⁵ That the Court has a tendency to apply social preconceptions in what purport to be interpretations of the law and the Constitution²¹⁶ cannot be denied. In one case where the Court

²¹¹ *Manning International Corp. v. National Labor Relations Commission*, G.R. No. 116629. Jan. 16, 1991.

²¹² *Agabon v. National Labor Relations Commission*, G. R. No. 158693, 442 SCRA 573, Nov. 17, 2004.

²¹³ *Hohri v. United States*, 793 F.2d 304, D.C. Cir. (1986).

²¹⁴ Alberto Muyor, *Social Justice and the 1987 Constitution: Aiming for Utopia?*, 70 PHIL. L. J. 310 (1996).

²¹⁵ *Magalona & Co. v. Workmen's Compensation Commission and Pedro Genonca*, G.R. No. 10338, Apr. 30, 1957.

²¹⁶ Thomas Grey, *The Constitution as Scripture*, 37 STAN. L. REV. 1, 24 (1984).

seemed to over extend the application of a Constitutional provision, Justice Panganiban, in his dissenting opinion made the following critique:

The majority contends the Constitution should be interpreted to mean that, after a bidding process is concluded, the losing Filipino bidder should be given the right to equal the highest foreign bid, and thus win. However, the Constitution (Sec. 10(2), Article XII) simply states that 'in the grant of rights...covering national economy and patrimony, the State shall give preference to qualified Filipinos.' The majority concedes that there is no law defining the extent or degree of such preference. Specifically, no statute empowers a losing Filipino bidder to increase his bid and equal that of the winning foreigner. *In the absence of such empowering law, the majority's strained interpretation, I respectfully submit, constitutes unadulterated judicial legislation.*²¹⁷ (emphasis supplied)

Applying social justice to attain the proper balance between labor and capital gains all the more importance with the impact of globalization. As one author writes—

It is abundantly clear that there are many socio-economic issues that the social sectors should raise in relation to the continuing globalization and liberalization of the economy. These should include how to protect labor rights in the face of the natural search of capital to have labor market flexibility, which is widely defined to mean casualization and sacrifice of job and wage security of workers. The reality is that industry can only survive global competition if it upgrades and comes up with a lean operation. Hence, the popularity of reengineering and downsizing exercises, which, on the other hand, threaten hard-won labor rights and benefits. What should be the appropriate development approach to such issues and what should be the right balance between worker's demand for job and wage security and capital's search for flexibility and competitiveness?²¹⁸

²¹⁷ *Manila Prince Hotel v. Government Service Insurance System*, G.R. No. 122156, 267 SCRA 408, Feb. 3, 1997.

²¹⁸ Rene Ofreneo, *NOTES ON GLOBALIZATION* at 53 (1996).

Justice Isagani Cruz strongly asserts the need to apply a balanced approach to labor-management relations and dispense justice with an even hand in every case:

We have repeatedly stressed that social justice – or any justice for that matter – is for the deserving, whether he be a millionaire in his mansion or a pauper in his hovel. It is true that, in case of reasonable doubt, we are to tilt the balance in favor of the poor to whom the Constitution fittingly extends its sympathy and compassion. But never is it justified to give preference to the poor simply because they are poor, or reject the rich simply because they are rich, for justice must always be served for the poor and the rich alike, according to the mandate of the law.²¹⁹

As interdependent and indispensable partners in nation-building, labor and management need each other to foster productivity and economic growth, hence, the need to weigh and balance the rights and welfare of both the employee and employer.²²⁰

In view of the present administration's effort to provide a healthier climate for industrialization and the creation of more employment opportunities, it would do well for the legislators to develop labor standards in light of the country's general economic background or for the judiciary to apply labor laws practically and rationally. The development of such labor standards and the application of labor laws should not be on the basis that we need to keep up with the modern or prevailing trend in the United States and other highly advanced countries. Rather, it should be more on the basis of what our people basically need and what our country can afford. Of course, there is always the beacon of light of human justice to guide and direct us, and the lessons and mistakes of other nations to forewarn us. After all, the field of human relations is so wide and open to accommodate the good and the bad, the proper and improper, the failures and the successes. The field of selection for the intelligent humanity is indeed great and vast. The margin of error can be minimized as time marches on and as experience accumulates.²²¹

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²¹⁹ *Gelos v. Court of Appeals*, G.R. No. 86186, 208 SCRA 608, May 8, 1992.

²²⁰ *Agabon v. National Labor Relations Commission*, G. R. No. 158693, 442 SCRA 573, Nov. 17, 2004.

²²¹ *Morabe*, *supra* note 49, at 269.