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FIRST DIVISION

(G. R. Nos. 60532-33. November 5, 1985)

TUPAS LOCAL CHAPTER NO. 979 (R.S. CARLOS WORKERS UNION) AND 44 REGULAR WORKERS, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION, R.S. CARLOS GENERAL ENTERPRISES, and SONEL L. LABAO,** *respondents*.

SYLLABUS

1. **CONSTITUTIONAL LAW; EQUAL PROTECTION TO LABOR; FORFEITURE OF EMPLOYMENT FOR ONE MORNING SIT-DOWN STRIKE, A VIOLATION THEREOF.**— Neither respondent commission's decision nor the labor arbiter's decision as affirmed with modification by it cites any substantial facts or evidence to warrant the terribly harsh imposition of the capital penalty of dismissal and forfeiture of employment on twenty-two of forty-four workers for having staged the so-called *one-day* (more accurately, a *one morning)* "sitdown strike" on *August 19, 1980* to inform respondent employer of their having formed their own union and to present their just requests for allowances, overtime pay and service incentive leave pay. Prescinding from respondent commission's mis-appreciation of the facts and evidence and accepting for the nonce its factual conclusion that the petitioners staged a one-morning sit-down strike instead of making a mass representation for the employer to recognize their newly formed union and negotiate their demands, respondent commission's decision is not in consonance with the constitutional injunction that the Court has invariably invoked and applied to afford protection and assure the workers' rights to self-organization, collective bargaining, security of tenure and just and humane conditions of work.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; STRIKES; MERE FINDING OF THE ILLEGALITY OF STRIKE NOT AUTOMATICALLY WARRANTS DISMISSAL OF STRIKERS.**— The said decision likewise is not in accordance with settled and authoritative doctrine and legal principles that a mere finding of the illegality of a strike does not automatically warrant a wholesale dismissal of the strikers

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from their employment and that a premature or improvident strike should not be visited with a consequence so severe as dismissal where a penalty less punitive would suffice. Numerous precedents to this effect have been cited and reaffirmed in the recent case of *Bacus vs. Ople,* among them, the Court's pronouncement through the new Chief Justice in *Almira vs. B.F. Goodrich Phil., Inc.*

3. **CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SELF-ORGANIZATION AND COLLECTIVE BARGAINING; BUSTING OF WORKERS' UNION BEFORE IT COULD BE BORN, A GROSS VIOLATION THEREOF.—** The employer's nefarious objective of busting the workers' union before it could even be born and see the light of day and justice would thus be a *fait accompli,* in gross violation of the constitutional guarantee of the workers' right to self-organization and collective bargaining for just and humane conditions of work. The glaring fact is that the employer's preemptive act of calling in the police and filing criminal complaints against the workers as to the results of which the Court has not been informed at all, thereby busted the union even before it could be born and press and bargain collectively for the workers' just demands and achieved its purpose. The workers' demands were completely brushed aside with the summary dismissal of their leaders.

4. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER'S OBSTINATE REFUSAL TO THE REINSTATEMENT OF ILLEGALLY DISMISSED EMPLOYEES DESPITE RETURN-TO-WORK ORDER ENTITLES THE LATTER TO FULL BACKWAGES.—** The thirty-three (33) remaining workers who were not reinstated by respondent employer notwithstanding the return-to-work order of March 16, 1981 shall be entitle to full backwages without deduction or qualification as of this date until their reinstatement. This is by way of departing from the usual equivalent of the three years backwages generally awarded by this Court, in line with the principle enunciated in *Davao Free Workers Front vs. CIR* that an employer like respondent employer, who is guilty "of oppressive unfair labor practices, discriminatory acts and union-busting activities . . . must bear the full consequences of its acts particularly in the light of its obstinacy in persisting in its refusal to reinstate the unlawfully dismissed . . . employees and accept the returning strikers" notwithstanding the return-

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to-work order issued in this case. By way of concession to the general rule, no backwages for the period from August 23, 1980 until March 15, 1981, the day preceding the issuance of the March 16, 1981 return-to-work order obstinately disregarded by respondent employer are herein granted.

APPEARANCES OF COUNSEL

Tupas & Associates for petitioners.

D E C I S I O N

TEEHANKEE, *J.*:

This is an action of *certiorari* filed by petitioner union and its forty-four (44) petitioners-workers from the decision of public respondent National Labor Relations Commission. Respondent commission in its questioned decision of April 23, 1982 affirmed the decision of Labor Arbiter Ricarte T. Soriano dated March 31, 1981 that the said workers staged a one-day "illegal strike" on August 19, 1980, and ordered the dismissal of all 44 workers, except eleven who were ordered reinstated without backwages but without loss of seniority rights.[1] On appeal, respondent commission, however, modified the arbiter's decision, ruling that only the "militant and active leaders" should be terminated. "Based on the warrants of arrest issued by the municipal court of Taguig, Metro Manila" it identified *twenty-two* (*22*) "out of the forty-five (45) supposed strikers (*sic*)"[2] as "leaders/instigators of the illegal strike" whom it ordered terminated[3] and ordered the rest, *i.e.* the remaining twenty-two (including the eleven

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[1] The eleven workers ordered reinstated were: Pio Santos, Elpidio Bello, Rogelio Gigante, Benjamin Tamo, Pio Lacson, Jonathan Ferrer, Renato Paloma, Danilo Pineda, Rodolfo Santos, Jaime de Vera and Dominador Gregorio. (*Rollo*, p. 32).

[2] NLRC decision, Record, pp. 41-42. The NLRC mentions 45 supposed strikers while both the petitioners and the arbiter mention one less, *i.e.* 44 workers.

[3] The twenty-two workers ordered terminated were as listed in the commission's decision: Eleuterio Paloma, Rolly Adorna, Rodolfo Aguinaldo,

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originally ordered reinstated by the arbiter's decision) workers to be reinstated without back wages.

Petitioners are regular workers of private respondent R.S. Carlos General Enterprises, owned and managed by Roberto S. Carlos, with co-respondent Sonel L. Labao in charge of personnel. Said company is engaged in the business of poultry and hog feeds manufacturing and production. It is duly registered with the Bureau of Commerce, Bureau of Animal Industry and the National Grains Authority.

On *August 17, 1980*, petitioners organized themselves into a union and held an organization meeting in the house of one of its members. They affiliated their union with Trade Unions of the Philippines and Allied Services (TUPAS) as Local Chapter No. 979. They named Eleuterio Paloma, Jr. as their temporary president. The following day, after office hours, petitioners met again and planned to talk to the management about their newly organized union and certain benefits like allowances, overtime pay and service incentive leave pay.

According to the petitioners, they decided to talk these matters peacefully with respondent employer Roberto S. Carlos before the working hours of *August 19, 1980*. About 6:00 in the morning of said date, they requested Mrs. Teresita Carpio, the secretary of their employer, to notify the latter about their plan to talk to him relative to their requests for allowances, overtime pay and service incentive leave pay. An hour later, Mr. Carlos arrived and was furious at petitioners' projected plan to plead for these benefits. They were required, one by one, to return to their work and they regretfully obeyed.

On *August 23, 1980*, before they could receive their wages for the week, petitioners were asked to sign a paper captioned "Notice to All Employees" which was a notice of their preventive suspension. Petitioners refused to sign and the paymaster, Mrs.

Gerry Rebadolla, Agaton Binggoy, Leonardo Tayaban, Rogelio Katang-Katang, Nicanor Agarin, Federico Agarin, Jose Cascano, Danilo Tena, Teodoro Hulguin, Cesar Sayson, Manuel Inano, Domingo de la Rama, Renato Agarin, Armando Adorable, Concordio Beo, Antonio Blase, Rogelio Agarin, Quinciano Castillo and Guillermo Tena.

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Trinidad Carlos, warned them that "*Pag hindi kayo pumirma dito, hindi kayo makakapasok sa Lunes, August 25, 1980.*" On August 25, 1980, petitioners reported for work but were not admitted.

On the other hand, it is the position of respondent employer that about 9:00 in the morning of August 19, 1980, petitioners staged a sit-down strike in the premises of respondent company to dramatize their demands for allowances, service incentive leave pay and overtime pay. Caught by surprise, he sought police assistance from the Taguig Police Station to maintain and secure peace and order in the premises. Police Corporal Maximo C. Estacio responded by dispatching Patrolmen Rolando Cipriano and Agapito Cuenca. Respondent employer also reported the matter to the Ususan Barangay Council. The *barangay* captain went to the premises of the company and saw for himself the petitioners "at strike." He even talked to some of them.

On *August 23, 1980*, four (4) days after the so-called strike, respondent employer placed petitioners under preventive suspension pending clearance from the Ministry of Labor and Employment to terminate their services. On *August 25, 1980*, he filed an application with the Ministry of Labor for clearance to terminate the employment of petitioners.

In opposition, petitioners charged private respondent for illegal lockout and unfair labor practice. They further alleged that their summary suspension followed by the shutdown and dismissal without prior clearance two days after the notice of their suspension was in gross violation of Rule XIV, Book V of the Implementing Rules on Dismissals in force at that time which required that "Any application for clearance to shutdown or to dismiss employees shall be filed with the Regional Office having jurisdiction over the place of employment at least ten (10) days before the intended shutdown or dismissal" (Section 3) and "Shutdown or dismissal without prior clearance shall be conclusively presumed to be termination of employment without a just cause. The Regional Director shall, in such case, order the immediate reinstatement of the employee and the payment of his wages from the time of the shutdown or dismissal until the time of reinstatement" (Section 2).

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The arbiter's decision makes no statement or finding of the basic antecedent facts as above narrated. He merely found "substantial evidence indicating that a sit-down strike was indeed staged by the members of the complainant union on August 19, 1980 and that the said strike is in violation of P.D. No. 823, as amended, and therefore illegal. The law, as amended, is clear and unequivocal in banning all forms of strikes, picketing and lockouts, subject to certain exceptions. By way of such exceptions, a strike may be allowed when: a) the employer against whom it is declared is not engaged in any vital industry; b) the ground is unresolved economic issues in collective bargaining; and c) notice of strike is filed with the Bureau of Labor Relations at least 30 days prior to the contemplated strike." He held that not one of the exceptions was met by petitioners, *viz*, that respondent employer's business of poultry and hog feeds manufacturing is a vital industry and petitioners' notice of strike was "filed seven (7) days after the staging of the strike on August 19, 1980 contrary to the rules on notice of strike." But the arbiter totally sidestepped and made no mention whatever of the clear-as-day exception that the petitioners had just unionized and wanted to negotiate on the all-important economic issues of their allowances, overtime pay and service incentive leave pay.

Respondent commission in its sparse three-and-a-half-page double-space decision did not deal with nor make any findings on the issues of fact and of law submitted by petitioners. It simply ruled that

> "We find that a concerted action was staged in the premises of the company on August 19, 1980. Otherwise stated, a sitdown strike was staged resulting as it did in paralyzing the operations of the respondent company on *that day*. Complainants' denial that they staged a strike on August 19, 1980 because they were paid just the same their wages, although the evidence shows that some only were paid, is belied by the notice of strike filed with the Bureau of Labor Relations seven (7) days dated or specifically on August 26, 1980."

Citing the statements of certain employees and the *barangay* captain's report, and the Taguig police chief's blotter entry that respondent employer Carlos "seeks police assistance in the

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aforecited company to secure peace and security in that place in connection with the Sitdown Strike of his workers *last 19 August '80*, " it simply concluded that "evidently with the foregoing a sitdown strike was staged by respondent company's workers on August 19, 1980." The foregoing is practically the whole text of respondent commission's decision which is more to be noted for its lack of content and discussion of the fundamental issues raised by petitioners.

Hence, the petition at bar. Petitioners insist that "(W)hat happened on August 19, 1980 was not a strike but a peaceful delegation of workers to talk to the employer in order to inform the latter formally that the workers already have their own union and in order to talk to the employer on their just grievances. The union members and leaders requested the secretary of the owner/manager that the latter be fetched for this purpose. This happened in the morning of August 19, 1980 at 6:00 or one (1) hour before the start of the working day. The Owner/Manager, instead of acceding to the request of his workers, overreacted and called the police. So, the workers, could do nothing except start their work at 7:00 a.m. that same morning. This is the reason why they were paid for that day."[4]

The Court finds merit in the petition and sets aside the questioned decision of respondent commission.

Neither respondent commission's decision nor the labor arbiter's decision as affirmed with modification by it cites any substantial facts or evidence to warrant the terribly harsh imposition of the capital penalty of dismissal and forfeiture of employment on twenty-two of forty-four workers for having staged the so-called *one-day* (more accurately, a *one-morning*) "sitdown strike" on *August 19, 1980* to inform respondent employer of their having formed their own union and to present their just requests for allowances, overtime pay and service incentive leave pay. Prescinding from respondent commission's misappreciation of the facts and evidence and accepting for the nonce its factual conclusion that the petitioners staged a one-morning sit-down strike instead of making a mass representation for the employer

[4] *Rollo*, pp. 117-118.

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to recognize their newly formed union and negotiate their demands, respondent commission's decision is not in consonance with the constitutional injunction that the Court has invariably invoked and applied to afford protection to labor and assure the workers' rights to self-organization, collective bargaining, security of tenure and just and humane conditions of work. The said decision likewise is not in accordance with settled and authoritative doctrine and legal principles that a mere finding of the illegality of a strike does not automatically warrant a wholesale dismissal of the strikers from their employment and that a premature or improvident strike should not be visited with a consequence so severe as dismissal where a penalty less punitive would suffice. Numerous precedents to this effect have been cited and reaffirmed in the recent case of *Bacus vs. Ople*,[5] among them, the Court's pronouncement through the now Chief Justice in *Almira vs. B.F. Goodrich Phil., Inc.*[6] that the Constitution's security of tenure provision.

"xxx would imply at the very least that where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. It is not only because of the law's concern for the workingman. There is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent on the wage-earner. The misery and pain attendant on the loss of jobs then could be avoided if there is acceptance of the view that under all the circumstances of this case, petitioners should not be deprived of their means of livelihood. Nor is this to condone what had been done by them. For all this while, since private respondent considered them separated from the service, they had not been paid. From the strictly juridical standpoint, it cannot be too strongly stressed, to follow Davis in his masterly work, Discretionary Justice, that where a decision may be made to rest on informed judgment rather than rigid rules, all the equities of the case must be accorded their due weight. Finally, labor law determination, to quote from Bultmann, should be not only *secundum rationem* but also *secundum caritatem*."

Respondent commission merely relied on the arbiter's conclusion that "a sitdown strike was staged resulting as it did

[5] G.R. No. 56856, Oct. 23, 1984 (2nd Div.) per Cuevas, *J.*

[6] 58 SCRA 120, 131 (1974).

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in paralyzing the operations of the respondent company *on that day* [August 19, 1980]" and "complainants' denial that they staged a strike on August 19, 1980 because they were paid just the same their wages, although the evidence shows that some only were paid, is belied by the notice of strike filed with the Bureau of Labor Relations seven (7) days dated or specifically on August 26, 1980." But as may be gleaned from the labor arbiter's decision itself, there is no dispute that R.S. Carlos of respondent employer was furious at the workers' concerted action and called the police, and thereafter secured warrants of arrest for the "illegal strike" against 22 workers led by their just-elected president Eleuterio Paloma, although there is no complaint of the workers having in any way resorted to force or violence. It is likewise unrefuted that the workers were ordered by Carlos to go back to work which they obeyed and they *were paid their wages for that very same day* that they were supposed to be on a "sitdown strike." (As quoted above, the arbiter would qualify that "only some were paid," but gives no particulars.) Four days later, on August 23, 1980 before the workers could receive their wages for the week, respondent employer fully exploiting the situation and obviously to abort the incipient union, suspended all the workers and two days thereafter filed the application for clearance to dismiss them. It should likewise be noted that the commission's ratiocination that the workers' notice of strike seven (7) days *after* the staging of the "sitdown strike" belies their denial that they had gone on strike on August 19, 1980 is quite forced — for the workers had *gone back to work right on that day and following days* until their preventive suspension effective August 25, 1980. The said notice of strike rather corroborates the workers' contention that they did *not* strike and had *no* intention of striking on August 19, 1980 — and decided to strike and accordingly gave notice thereof *afterwards* upon realizing their employer's intractable and anti-union attitude.

In an analogous case, *Diwa ng Pagkakaisa-PAFLU vs. Filtex International Corp.*,[7] the Court, speaking through Chief Justice

[7] 43 SCRA 217, 223 (1972).

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Querube C. Makalintal, held that a stoppage of work of one night (which would otherwise be a violation of the no-strike clause of the governing collective bargaining agreement) *should not be considered as an illegal strike* and that "good labor-management relations as well as the broader imperatives of industrial peace dictated that the spontaneous recalcitrance of some employees, which after all had been settled without unnecessary delay, should not be made an excuse to punish the union officers."

Respondent commission's decision does not deal with the petitioners' submittal that their dismissal was in violation of the Implementing Rules on Dismissals[8] that there be a prior clearance filed ten (10) days before the intended dismissal. Neither does it deal with the fact that the suspended/dismissed workers were ordered provisionally reinstated in the Return-to-work Order issued by then Director Carmelo Noriel on March 16, 1981. The main issue at bar was and is the factual issue of whether or not the workers staged a "sitdown strike" on *one day*, August 19, 1980. Even accepting the factual finding of public respondents that such a strike was staged, which was undisputedly *aborted on the same day*, such action does not merit the capital penalty of dismissal of the would-be leaders of the union or organization that they were organizing to press the workers' just demands. The employer's nefarious objective of busting the workers' union before it could even be born and see the light of day and justice would thus be a *fait accompli*, in gross violation of the constitutional guarantee of the workers' right to self-organization and collective bargaining for just and humane conditions of work. The glaring fact is that the employer's preemptive act of calling in the police and filing criminal complaints against the workers as to the results of which the Court has not been informed at all, thereby busted the union even before it could be born and press and bargain collectively for the workers' just demands and achieved its purpose. The workers' demands were completely brushed aside with the summary dismissal of their leaders. Who would dare lead them under such repressive tactics?

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[8] Rule XIV, Book V of the Implementing Rules, *supra*, p. 3.

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The petitioners' questions in their petition were likewise left unanswered by respondent commission: "if there was really a sit-down strike on *August 19, 1980* why were employees who are now ordered dismissed paid their wages from August 18-23, 1980? Secondly, why did not the employer Enterprise in its Application for Clearance filed on *August 25, 1980* to dismiss the workers on the same day mention the sitdown strike or *specify* the alleged misconduct or manifest threat? Thirdly, the dismissal came after the employees were asking for living allowance, overtime and service incentive leave pay which the employer refused. The accusation on alleged economic sabotage was, therefore, a concoction to do away with the workers' right."[9]

In the analogous case of *PBM Employees Organization vs. PBM Co., Inc.*,[10] the Court, in setting aside the questioned industrial court's orders held that "the dismissal or termination of the employment of the petitioning eight (8) leaders of the union is harsh for a one-day absence from work." They had been ordered dismissed for having carried out a mass demonstration at Malacañang on March 4, 1969 in protest against alleged abuses of the Pasig police department, upon two days' prior notice to respondent employer company, as against the latter's insistence that the first shift should not participate but instead report for work, under pain of dismissal. The Court held that they were merely exercising their basic human rights and fighting for their very survival "in seeking sanctuary behind their freedom of expression as well as their right of assembly and of petition against alleged persecution of local officialdom." We ruled that "(T)he appropriate penalty — if it deserves any penalty at all — should have been simply to charge said one-day absence against their vacation or sick leave. But to dismiss the eight (8) leaders of the petitioner Union is a most cruel penalty, since as aforestated the Union leaders depend on their wages for their daily sustenance as well as that of their respective families aside from the fact that it is a lethal blow to unionism, while at the same time strengthening the oppressive hand of the petty tyrants in the localities."

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[9] *Rollo*, at page 14.

[10] 51 SCRA 189, 219 (1973).

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Petitioners' prayer for reversal of the questioned decisions and for reinstatement of all the workers with full backwages should, therefore, be granted. In this connection, the record discloses that after the workers did strike on March 16, 1981, Carmelo C. Noriel as then officer-in-charge of the Bureau of Labor Relations, issued a return-to-work order as of the same date, ordering all striking workers "to return to work immediately and to desist from continuing with the concerted action" and "directing the management to allow all workers to return to work under the same terms and conditions prevailing previous to the work stoppage." The eleven (11) workers ordered reinstated in the arbiter's decision of March 31, 1981 had apparently been reinstated at the time of this return-to-work order, as affirmed by respondent employer himself in his comment of August 2, 1982.[11] Hence, the return-to-work order concerned the thirty-three (33) remaining unreinstated workers and ordered their provisional reinstatement, as follows:

"The thirty-four (34) workers (sic)[12] who were alleged to have been dismissed illegally by the company and who are now subject of Case No. AB-10-8251-80 are hereby provisionally reinstated pending the final disposition of said case by the Arbitration Branch of the National Capital Region."

The petitioners' averment that "pursuant to this Order the strikers lifted the picket but the employer refused to admit the workers to work. Hence, they remain locked out until now — since August 1980"[13] stands unrefuted and is in effect confirmed in respondent employer's comment.[14]

The thirty-three (33) remaining workers who were not reinstated by respondent employer notwithstanding the return-to-work order of March 16, 1981 shall be entitled to full backwages without deduction or qualification as of this date until their reinstatement. This is by way of departing from the usual equivalent of the

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[11] *Rollo*, p. 69.

[12] This should be 33 remaining workers, deducting the 11 reinstated workers from the original 44 workers. Annex M, Petition, *Rollo*, p. 53.

[13] *Rollo*, p. 117.

[14] *Rollo*, pp. 68-69.

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three years backwages generally awarded by this Court, in line with the principle enunciated in *Davao Free Workers Front vs. CIR*[15] that an employer like respondent employer, who is guilty "of oppressive and unfair labor practices, discriminatory acts and union-busting activities . . . must bear the full consequences of its acts particularly in the light of its obstinacy in persisting in its refusal to reinstate the unlawfully dismissed . . . employees and accept the returning strikers" notwithstanding the return-to-work order issued in this case. By way of concession to the general rule, no backwages for the period from August 23, 1980 until March 15, 1981, the day preceding the issuance of the March 16, 1981 return-to-work order obstinately disregarded by respondent employer are herein granted. It may be noted that in the aforecited case of *Davao Free Workers Front*, a record full backwages without deduction or qualification equivalent to 17 years was awarded the workers "surpassing the almost sixteen years of such backwages paid in the recent case of *NASSCO vs. CIR*[16] owing also to the employer's obstinacy and aversion to reinstating the employee in said case notwithstanding the finality of the judgment for reinstatement."[17]

ACCORDINGLY, the petition is granted and respondent commission's questioned decision and that of the labor arbiter are hereby set aside. Judgment is hereby further rendered ordering respondent employer to reinstate the thirty-three (33) dismissed workers (including the eleven [11] workers ordered reinstated in respondent commission's decision of April 23, 1982) with full backwages from March 16, 1981, without qualification or deduction and without loss of seniority rights and benefits, until they are actually reinstated.

SO ORDERED.

Melencio-Herrera, Plana, Gutierrez, Jr., De la Fuente, and *Patajo, JJ.*, concur.

Relova, J., on leave.

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[15] 60 SCRA 408, 424.

[16] 57 SCRA 642.

[17] Idem, p. 428.