

# Illegal Dismissal



## Labor Code

ART. 294. [279] Security of Tenure. In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

# Consequences of Illegal Dismissal



## Agabon doctrine (*Agabon v. NLRC*, 2004)

If there is just cause or authorized cause, but procedural due process was not observed, the dismissal is valid – but the employer will be held liable for nominal damages.

This is the current doctrine as it overturned the *Serrano* doctrine (2000), which declared the above situation was a case of illegal dismissal, resulting in the grant of full backwages, separation pay, damages, attorney's fees to employees – despite the existence of a just cause (e.g. employee steals Php1 Million) or an authorized cause (e.g. redundancy is legitimate).

The *Agabon* case corrected the unjust and unfair result in the *Serrano* doctrine.

# Illegal Dismissal



**BEFORE** under the *Serrano* doctrine.

Just Cause	Just Cause Procedure	Illegal Dismissal
X	X	√
√	X	√
X	√	√

Authorized Cause	Authorized Cause Procedure	Illegal Dismissal
X	X	√
√	X	√
X	√	√

***... this is no longer applicable.***

***See, next slide.***

# Illegal Dismissal



**NOW** under the *Agabon* doctrine:

Just Cause	Just Cause Procedure	Illegal Dismissal
X	X	√
√	X	<b>Dismissal is valid – subject to nominal damages.</b>
X	√	√

Authorized Cause	Authorized Cause Procedure	Illegal Dismissal
X	X	√
√	X	<b>Dismissal is valid – subject to nominal damages.</b>
X	√	

**Meaning... there should always be a just cause or an authorized cause for a valid dismissal.  
It is the bare minimum.**

# Consequences of Illegal Dismissal



## Effects/Consequences of illegal dismissal

- 1) Reinstatement (if not possible, separation pay in lieu of reinstatement);
- 2) Full backwages
- 3) Moral damages
- 4) Exemplary damages
- 5) Attorney's fees

... in addition to monetary claims they employee may have.

# 1) Reinstatement



## Labor Code

An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges... (Article 294, P.D. 442, Labor Code)

Reinstatement restores the employee who was unjustly dismissed to the position from which he was removed, that is, to his status quo ante dismissal. (Rodriguez v. Sintron Systems, Inc., G.R. No. 240254, 24 July 2019)

# 1) ... when separation pay



Separation pay is warranted when the cause for termination is not attributable to the employee's fault, such as those in authorized causes, as well as in cases of illegal dismissal where reinstatement is no longer feasible. (Claudia's Kitchen, Inc. v. Tanguin, G.R. No. 221096, 28 June 2017)

The payment of separation pay replaces the legal consequences of reinstatement to an employee who was illegally dismissed. (Ibid.)

***Doctrine of strained relations.*** The doctrine of strained relations only arises when there is an order for reinstatement that is no longer feasible. It cannot be invoked by the employer to prevent the employee's return to work nor by the employee to justify payment of separation pay. (Ibid.)

# 1) ... when separation pay



Strained relationship may be invoked only against employees whose positions demand trust and confidence, or whose differences with their employer are of such nature or degree as to preclude reinstatement. (*Dimabayao v. National Labor Relations Commission*, G.R. No. 122178, 25 February 1999)

Every labor dispute almost always results in “strained relations,” and the phrase cannot be given an overarching interpretation, otherwise, an unjustly dismissed employee can never be reinstated. (*Advan Motor, Inc. v. Veneracion*, G.R. No. 190944, 13 December 2017)

Besides, the doctrine of strained relations cannot be applied indiscriminately since every labor dispute almost invariably results in “strained relations;” otherwise, reinstatement can never be possible simply because some hostility is engendered between the parties as a result of their disagreement. That is human nature. Strained relations must be demonstrated as a fact. The doctrine should not be used recklessly or loosely applied, nor be based on impression alone. (*Rodriguez v. Sintron Systems, Inc.*, *supra*.)



# 2) Full backwages



## Labor Code

An employee who is unjustly dismissed from work shall be entitled... to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. (Article 294, P.D. 442)

The award shall include the benefits and allowances regularly received by the employee as of the time of the illegal dismissal, as well as those granted under the Collective Bargaining Agreement (CBA), if any. (United Coconut Chemicals v. Almores, G.R. No. 201018, 12 July 2017)

# 3) Moral Damages



Moral damages are awarded in illegal termination cases when the employer acted:

- 1) In bad faith or fraud;
- 2) In a manner oppressive to labor; or,
- 3) In a manner contrary to morals, good customs, or public policy. (Daguinod v. Southgate Foods, Inc., G.R. No. 227795, 20 February 2019)

The nature of moral damages is defined under our Civil Code. Article 2220 states that “[w]illful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.” (Montinola v. PAL, G.R. No. 198656, 08 September 2014)

# 3) Moral Damages



Bad faith “implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity.” (Ibid.)

Bad faith must be proven through clear and convincing evidence. This is because “[b]ad faith and fraud... are serious accusations that can be so conveniently and casually invoked, and that is why they are never presumed. They amount to mere slogans or mudslinging unless convincingly substantiated by whoever is alleging them.” (Ibid.)

**NB: No illegal dismissal, no moral damages**

# 4) Exemplary Damages



Under Article 2229 of the Civil Code, “[e]xemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.”

Exemplary damages are designed by our civil law to permit the courts to reshape behaviour that is socially deleterious in its consequence by creating negative incentives or deterrents against such behaviour. (Montinola v. PAL, G.R. No. 198656, 08 September 2014)

If the case involves a contract, Article 2332 of the Civil Code provides that “the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.” (Ibid.)

**NB: No moral damages, no exemplary damages**

# 5) Attorney's Fees



## Labor Code

ART. 111. Attorney's Fees. (a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

(b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the amount of wages recovered.

# 5) Attorney's Fees



## Civil Code

Article 2208 of the Civil Code allows the award of attorney's fees in the following instances:

- 1) When exemplary damages are awarded (Article 2208 [1]);
- 2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest (Article 2208 [2]);
- 3) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim (Article 2208 [3]);
- 4) In actions for the recovery of wages of household helpers, laborers and skilled workers (Article 2208 [7];
- 5) In actions for indemnity under workmen's compensation and employer's liability laws (Article 2208 [8]);
- 6) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered. (Article 2208 [11]).