

MODANZA, Borneo G.

Re: Payment of Backwages;
Request for a Ruling

X-----X

RESOLUTION NO. 020822

Borneo G. Modanza, former Warehouseman III, Bureau of Customs (BOC), in his letter dated October 23, 2001 and received by the Commission on October 24, 2001, requests this Commission to cite BOC officials in contempt of the Commission for failure to implement Civil Service Commission (CSC) Resolution No. 01-0182 dated January 18, 2001, which directed BOC to pay him backwages.

The pertinent portions of said letter read, as follows:

"It is most respectfully requested of the Honorable Civil Service Commission to act most urgently on the outright disrespect if not contempt by the Bureau of Customs for delaying the implementation for now almost one (1) year the order of the Honorable Commission, especially, on the payment of backwages as per CSC Resolution No. 010182 dated 18 January 2001. xxx"

In its comment, BOC stated that in a 1st Indorsement dated October 15, 2001, Director Ma. Corazon Aza²¹a, Administration Office of BOC, requests a ruling from the Legal Service, same office, as to whether Modanza is still entitled to backwages, pertinent portions of which are, as follows:

"1. Mr. Modanza was placed under preventive suspension on October 25, 1999 by then Comm. Nelson Tan which was appealed by respondent with the Civil Service Commission;

"2. The Civil Service Commission ruled, on the other hand, in a Resolution No. 01-0182 dated January 18, 2001 that the suspension was not in order and adjudicated payment of backwages and other emoluments. This was indorsed for implementation by the Legal Service in an Indorsement dated May 31, 2001;

"It was only, however, this October 4, 2001 when the disbursement voucher was prepared and indorsed to this office for signature the said payment. Regrettably, this office is already in receipt and has in fact already transmitted the Decision on Administrative Case No. 13-99, subject

of earlier preventive suspension, the dispositive portion of which read (sic) as follows:

"In light of the foregoing, and due to the seriousness of the violation committed by respondent, the charges for Grave Misconduct and Dishonesty having legal basis, warrant the Penalty of DISMISSAL FROM THE SERVICE.

"In view of the above, it is hereby requested that a ruling be issued by the Legal Service as to whether Mr. Modanza is still entitled to these backwages despite the ruling of dismissal as above stated."

Meanwhile, Atty. Gallant D. Soriano, Director III, Legal Service, BOC, Manila, in his letter dated November 16, 2001 and received by the Commission on December 3, 2001, requests a ruling from the Commission on whether a government employee whose suspension was found by the CSC to be unjustified is entitled to backwages which corresponds to the period of his suspension notwithstanding the fact that subsequently a decision was rendered dismissing him from the service.

The pertinent portions of said letter read, as follows:

"On October 25, 1999, Mr. Borneo C. Modanza, an employee of the Bureau of Customs, was placed under preventive suspension for a period of ninety (90) days effective November 13, 1999 to February 12, 2000.

"Mr. Modanza appealed to the Civil Service Commission.

"On January 18, 2001, the Civil Service Commission issued Resolution No. 01-0182, xxx the dispositive portion of which reads:

*'**WHEREFORE**, the order of preventive suspension issued by then BOC Commissioner Nelson A. Tan is hereby declared not in order. Appellant should be reinstated to the service with payment of backwages.'*

"The CSC Resolution was referred to the Administration Office for implementation by the Legal Service in its indorsement dated 31 May 2001.

"On July 2, 2001, a decision was rendered by the Commissioner of Customs dismissing respondent Borneo C. Modanza from the service.

"The issue now confronting us is whether or not a government employee whose suspension was found by the Civil Service Commission to be unjustified is entitled to backwages for the period of his suspension notwithstanding the decision dismissing him from the service.

"xxx may we request your guidance on the issue, thus raised and further, as to whether or not exoneration is a sine qua non for payment of backwages during the period of preventive suspension."

After a careful evaluation, the Commission finds that the two (2) letters of Modanza and Soriano involve the same issues relative to the propriety of Modanza's claim for backwages. Hence, the Commission decided to consolidate the same.

It may be recalled that an administrative complaint was filed against Modanza for alleged violation of Section 46 (b) Subtitle A, Title I of Book V of Executive Order 292, otherwise known as the Administrative Code of 1987. He was placed under preventive suspension for ninety (90) days. Modanza appealed the order of his preventive suspension before this Commission. In CSC Resolution No. 01-0182 dated January 18, 2001, the Commission ruled that the order of preventive suspension issued by then BOC Commissioner Nelson A. Tan was not in order, hence, directed the reinstatement of Modanza with payment of backwages. While the said Resolution is yet to be implemented, a Decision was issued by the BOC finding Modanza guilty of Grave Misconduct and Dishonesty and imposing upon him the penalty of dismissal from the service.

Records show that Modanza appealed from the BOC Decision dated July 2, 2001 to the Commission. In CSC Resolution No. 02-0244 dated February 20, 2002, the Commission dismissed the same for being premature, since there is yet no confirmation from the Department of Finance (DOF) Secretary.

Upon verification from the DOF, Legal Division, the Office for Legal Affairs (OLA) found out that an appeal dated March 4, 2002 has been filed by Modanza and received by the said Office on March 7, 2002. Hence, the same is now pending at DOF.

The issue begging resolution is whether Modanza, whose suspension was found by this Commission to be unjustified, is entitled to back salaries for the period of his preventive suspension notwithstanding the subsequent issuance of the BOC decision dismissing him from the service.

In CSC Resolution No. 020402 dated March 14, 2002, re: Dicang, Fernando R. citing Gloria vs. CA, 306 SCRA 287, the Commission ruled, as follows:

"The case of Bangalisan vs. Court of Appeals itself similarly states that 'payment of salaries corresponding to the period [1] when an employee is not allowed to work may be decreed if he is found innocent of the charges which caused his suspension and [2] when the suspension is unjustified.

"Therefore it is not enough that a preventive suspension is unjustified in order that the employee unjustly suspended may be entitled to back salaries corresponding to the period of suspension. In addition to the unjust character of preventive suspension, the condition of eventual exoneration of the unjustly suspended employee must also be complied with. In the instant case, it is clear that the charges for which Dicang was found guilty are

inseparable and directly related to the fact-finding investigation which caused his preventive suspension. For this reason, Dicang's exoneration from the charges must first be secured before he could be entitled to any back salaries corresponding to the period of unjust suspension. Since as will be discussed later, there is no basis to exonerate Dicang, he is thus not entitled to payment of backwages for the period during which he was illegally preventively suspended. xxx" (Underscoring supplied)

Thus, a government employee who was unjustly suspended but later on found guilty of the charge is not entitled to back salaries during the period of preventive suspension. This is because to be entitled to such, his suspension must not only be unjustified, he must also be found innocent of the charges which caused the suspension. In other words, exoneration is a *sine qua non* condition for the payment of backwages. Applying said pronouncement in the instant case and bearing in mind that Modanza was not yet exonerated from the charges leveled against him, it therefore follows that payment of backwages during his preventive suspension cannot be made.

WHEREFORE, in view of the foregoing, the Commission hereby rules that notwithstanding CSC Resolution No. 01-0182 dated January 18, 2001 ordering the payment of backwages to Modanza, the subsequent finding of guilt by BOC does not entitle him to payment of back salaries during the period of his preventive suspension. Payment of salaries corresponding to the period of preventive suspension may be decreed only if he is found innocent of the charge. Accordingly, the request of Modanza to cite BOC officials in contempt of the Commission for their failure to award him his backwages is hereby **DENIED** for lack of merit.

Quezon City, **JUN 13 2002**

(Signed)
JOSE F. ERESTAIN, JR.
Commissioner

(Signed)
KARINA CONSTANTINO-DAVID
Chairman

(O.B)
J. WALDEMAR V. VALMORES

Commissioner

Attested by:

(Signed)
ARIEL G. RONQUILLO
Director III

FPG/RTM/X1/Y20/jca190 / rad90
D-00-0466
20011024-010 / modanza'r