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[G.R. No. L-6339. April 20, 1954]

MANUEL LARA ET AL., PLAINTIFFS AND APPELLANTS, VS. PETRONILO DEL ROSARIO, JR., DEFENDANT AND APPELLEE.

D E C I S I O N

MONTEMAYOR, J.:

In 1950 defendant Petronilo del Rosario, Jr., owner of twenty-five taxi cabs or cars, operated a taxi business under the name of "Waval Taxi." He employed among others three mechanics and 49 chauffeurs or drivers, the latter having worked for periods ranging from 2 to 37 months. On September 4, 1950, without giving said mechanics and chauffeurs 30 days advance notice, Del Rosario sold his 25 units or cabs to La Mallorca, a transportation company, as a result of which, according to the mechanics arid chauffeurs above-mentioned they lost their jobs because the La Mallorca failed to continue them in their employment. They brought this action against Del Rosario to recover compensation for overtime work rendered beyond eight hours and on Sundays and legal holidays, and one month salary (mesada) provided for in article 302 of the Code of Commerce because of the failure of their former employer to give them one month notice. Subsequently, the three mechanics unconditionally withdrew their claims. So only the 49 drivers remained as plaintiffs. The defendant filed a motion for the dismissal of the complaint on the ground that it stated no cause of action and the trial court for the time being denied the motion saying that it will be considered when the case was heard on the merits. After trial the complaint was dismissed. Plaintiffs appealed from the order of dismissal to the Court of Appeals which Tribunal after finding that only questions of law are involved, certified the case to us.

The parties are agreed that the plaintiffs as chauffeurs received no fixed compensation based on the hours or the period or time that they worked. Rather, they were paid on the commission basis, that is to say, each driver received 20 per cent of the gross returns or earnings from the operation of his taxi cab. Plaintiffs claim that as a rule, each driver operated a taxi 12 hours a day with gross earnings ranging from P20 to P25, receiving therefrom the corresponding 20 per cent share ranging from P4 to P5, and that in some cases, especially during Saturdays, Sundays and holidays when a driver worked 24 hours a day he grossed from P40 to P50, thereby receiving a share of from P8 to P10 for the period of twenty-four hours.

The reasons given by the trial court in dismissing the complaint is that the defendant being engaged in the taxi or transportation business which is a public utility, came under the exception provided by the Eight-Hour Labor Law (Commonwealth Act No. 444); and because plaintiffs did not work on a salary basis, that is to say, they had no fixed or regular salary or remuneration other than the 20 per cent of their gross earnings "their situation was therefore practically similar to piece workers and hence, outside the ambit of article 302 of the Code of Commerce."

For purposes of reference we are reproducing the pertinent provisions of the Eight-Hour Labor Law, namely, sections 1 to 4.

> "SECTION 1. The legal working day for any person employed by another shall not be more than eight hours daily. When the work is not continuous, the time during which the laborer is not working and can leave his working place and can rest completely shall not be counted.
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> "SEC. 2. This Act shall apply to all persons employed in any industry or occupation, whether public or private, with the exception of farm laborers, laborers who prefer to be paid on piece work basis, domestic servants and persons in the personal service of another and members of the family of the employer working for him.

> "SEC
> 3. Work may be performed beyond eight hours a day in case of actual or impending emergencies, caused by serious accidents, fire, flood, typhoon, earthquakes, epidemic, or other disaster or calamity in order to prevent loss of life and property or imminent danger to public safety; or in case of urgent work to be performed on the machines, equipment, or installations in order to avoid a serious loss which the employer would otherwise suffer, or some other just cause of a similar nature; but in all cases the laborers and employees shall be entitled to receive compensation for the overtime work performed at the same rate as their regular wages or salary, plus at least twenty-five per centum additional.
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> "In case of national emergency the Government is empowered to establish rules and regulations for the operation of the plants and factories and to determine the wages to be paid the laborers.
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> "SEC. 4. No person, firm, or corporation, business establishment or place or center of work shall compel an employee or laborer to work during Sundays and legal holidays, unless he is paid an additional sum of at least twenty-five per centum of his regular remuneration: *Provided however*, That this prohibition shall not apply to public utilities performing some public service such as supplying gas, electricity, power, water, or providing means of transportation or communication."

Under section 4, as a public utility, the defendant could have his chauffeurs work on Sundays and legal holidays without paying them an additional sum of at least 25 per cent of their regular remuneration: but that, with reference only to work performed on Sundays and holidays. If the work done on such days exceeds 8 hours a day, then the Eight-Hour Labor Law would operate, provided of course that plaintiffs came under section 2 of the said law. So that the question to be decided here is whether or not plaintiffs are entitled to extra compensation for work performed in excess of 8 hours a day, Sundays and

holidays included.

It will be noticed that the last part of section 3 of Commonwealth Act 444 provides for extra compensation for over-time work "at the same rate as their *regular wages or salary*, plus at least twenty-five per centum additional," and that section 2 of the same act excludes from the application thereof laborers who preferred to be on piece work basis. This connotes that a laborer or employee with no fixed salary, wages or remuneration but receiving as compensation from his employer an uncertain and variable amount depending upon the work done or the result of said work (piece work) irrespective of the amount of time employed, is not covered by the Eight-Hour Labor Law and is not entitled to extra compensation should he works in excess of 8 hours a day. And this seems to be the condition of employment of the plaintiffs. A driver in the taxi business of the defendant, like the plaintiffs, in one day could operate his taxi cab eight hours, or less than eight hours or in excess of 8 hours, or even for 24 hours on Saturdays, Sundays and holidays, with no limit or restriction other than his desire, inclination and state of health and physical endurance. He could drive continuously or intermittently, systematically or haphazardly, fast or slow, etc. depending upon his exclusive wish or inclination.. One day when he feels strong, active and enthusiastic he works long, continuously, with diligence and industry and makes considerable gross returns and receives as much as his 20 per cent commission. Another day when he feels despondent, run down, weak or lazy and wants to rest between trips and works for a less number of hours, his gross returns are less and so is his commission. In other words, his compensation for the day depends upon the result of his work, which in turn depends on the amount of industry, intelligence and experience applied to it, rather than the period of time employed. In short, he has no fixed salary or wages. In this we agree with the learned trial court presided by Judge Felicisimo Ocampo which makes the following findings and observations on this point.

> "* * * As already stated, their earnings were in the form of commission based on the gross receipts of the day. Their

> participation in most cases depended upon their own industry. So much so that the more hours they stay on the road, the greater the gross returns and the higher their commissions. They have no fixed hours of labor. They can retire at pleasure, they not being paid a fixed salary on the hourly, daily, weekly or monthly basis.
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> "It results that the working hours of the plaintiffs as taxi drivers were entirely characterized by its irregularity, as distinguished from the specific regular remuneration predicated on specific and regular hours of work of factors and commercial employees.
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> "In the case of the plaintiffs, it is the result of their labor, not the labor itself, which determines their commissions. They worked under no compulsion of turning a fixed income for each given day. * * *."

In an. opinion dated June 1, 1939 (Opinion No. 115) modified by Opinion No. 22, series 1940, dated January 11, 1940, the Secretary of Justice held that chauffeurs of the Manila Yellow Taxicab Co. who "observed in a loose way certain working hours daily," and "the time they report for work as well as the time they leave work was left to their discretion," receiving no fixed salary but only 20 per cent of their gross earnings, may be considered as piece workers and therefore not covered by the provisions of the Eight- Hour Labor Law.

The Wage Administration Service of the Department of Labor in its Interpretative Bulletin No. 2 dated May 28, 1952, under "Overtime Compensation," in section 3 thereof entitled Coverage, says:

> "The provisions of this bulletin on *overtime compensation* shall apply to all persons employed in any industry or occupation, whether public or private, with the exception of farm laborers, non-agricultural laborers or employees who are paid on piece work, contract, pakiao, task or *commission basis*, domestic servants and persons in the personal service of another and members of the family of the employer working

for him.

From all this, to us it is clear that the claim of plaintiffs-appellants for overtime compensation under the Eight-Hour Labor Law has no valid support.

As to the month pay (mesada) under article 302 of the Code of Commerce, article 2270 of the new Civil Code (Republic Act 386) appears to have repealed said Article 302 when it repealed the provisions of the Code of Commerce governing Agency. This repeal took place on August 30, 1950, when the new Civil Code went into effect, that is, one year after its publication in the Official Gazette, The alleged termination of services of the plaintiffs by the defendant took place according to the complaint on September 4, 1950, that is to say, after the repeal of Article 302 which they invoke. Moreover, said Article 302 of the Code of Commerce, assuming that it were still in force, speaks of "salary corresponding to said month," commonly known as "mesada." If the plaintiffs herein had no fixed salary either by the day, week or the month, then computation of the month's salary payable would be impossible. Article 302 refers to employees receiving a fixed salary. Dr. Arturo M. Tolentino in his book entitled "Commentaries and Jurisprudence on the Commercial Laws of the Philippines," Vol. 1, 4th edition, p. 160, says that article 302 is not applicable to employees without fixed salary. We quote—

> "*Employees not entitled to indemnity.*—This article refers only to those who are engaged under salary basis, and not to those who only receive compensation equivalent to whatever service they may render. (1 Malagarriga 314, citing decision of Argentina Court of Appeals on Commercial Matters.)"

In view of the foregoing, the order appealed from is hereby affirmed, with costs against appellants.

Pablo, Bengzon, Padilla, Reyes, Jugo, Bautista Angelo, Labrador, Concepcion, and *Diokno,*

JJ., concur.

Paras, C. J., concurs in the result.

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