

## REMINGTON INDUSTRIAL SALES CORPORATION, PETITIONER, V. NATIONAL LABOR RELATIONS COMMISSION AND WILFREDO L. OJARE, RESPONDENTS.

Ponente: ELBINIAS, J.

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### ELBINIAS, J.:

Subject of disposition is a Petition for Certiorari[1] filed under Rule 65 of the Rules of Court. The Petition assails the Resolution[2] dated October 10, 2011 of public respondent National Labor Relations Commission (“NLRC” for brevity) in NLRC LAC NO. 047173-06 (AE-04-11) (NLRC NCR-00-05-06223-04). The Petition also attacks public respondent NLRC's Resolution[3] dated November 24, 2011, which denied petitioner's eventual Motion for Reconsideration[4].

Among the salient facts are as follows:

On May 20, 2004, private respondent Wilfredo L. Ojare (“private respondent” for brevity) filed a Complaint[5] against petitioner Remington Industrial Sales Corporation (“petitioner” for brevity) for Illegal Dismissal with claims for Full backwages, Separation Pay, Unpaid Wages, Damages and Attorney's Fees.[6]

On September 30, 2005, the Labor Arbiter rendered a Decision[7] dismissing private respondent's Complaint for lack of merit, and ordering petitioner to pay private respondent his unpaid wages and his 13[th] month pay.[8]

Upon private respondent's appeal, public respondent NLRC rendered a Decision[9] on January 17, 2008, which set aside the Labor Arbiter's Decision[10] dated September 30, 2005, and which declared private respondent to have been illegally dismissed by petitioner. The Decision also ordered petitioner to pay private respondent his backwages and separation pay.[11]

After public respondent NLRC issued its Resolution[12] of October 20, 2008 denying petitioner's Motion for Reconsideration,[13] a Computation of Monetary Award[14] dated March 23, 2010 was made by public respondent NLRC's Computation/Examination Unit pursuant to public respondent NLRC's Decision dated January 17, 2008. The Computation of Monetary Award dated March 23, 2010 read:

“RE: COMPUTATION OF MONETARY AWARD AS PER  
DECISION OF THE HONORABLE NLRC, SECOND DIVISION  
DATED JANUARY 17, 2008

DE: 1/80 - 2/26/04

Period

Years/Mos.

Rate

Basic Monthly

13th Mo. Pay

SILP

ECOLA

Back-wages

02/26/04

07/10/06

28.50

288.46

213,748.86

17,812.41

3,425.46

07/11/06

08/27/07

13.57

300.00

105,846.00

8,820.50

1,696.25

08/28/07

01/17/08

4.67

362.00

43,954.04

3,662.84

704.39

46.74

02/26/04

07/09/04

4.47

30.00

3,486.80

07/10/04

08/27/07

37.60

50.00

48,880.00

363,548.90

30,295.74

5,828.10

52,388.80

452,037.35

Separation Pay

01/01/80

01/17/80

28.00

362.00

263,536.00

TOTAL AWARD

715,573.35

Computed by:

Noted by:

ELIZABETH C. ADEVOSO

RACHEL Z. AVERIA

Labor Arbitration Associate

OIC – Computation/Examination Unit”

On March 8, 2011, the Labor Arbiter issued an Order[15] affirming the Computation of Monetary Award[16] dated March 23, 2010. The dispositive portion of the Order decreed:

“WHEREFORE, the parties' respective comments are without merit. The computation dated March 23, 2010 stands.

SO ORDERED.”[17]

Upon petitioner's appeal[18], public respondent NLRC issued its first assailed Resolution[19] of October 10, 2011, which denied petitioner's appeal for lack of merit.[20]

After petitioner's Motion for Reconsideration[21] was denied by public respondent NLRC in its other assailed Resolution[22] of November 24, 2011, petitioner filed the Petition at bench, praying that:

“xxx this Honorable Court render judgment annulling and/or setting aside the Assailed Resolutions dated 10 October 2011 and 24 November 2011, rendered by the Second Division of the National Labor Relations Commission, and instead, render judgment – a) reversing and setting aside Labor Arbiter Lilia S. Savari's Order dated 08 March 2011 insofar as it ruled that the award of backwages to complainant includes, among others, salary differentials and ECOLA, and that the rate thereof was correctly based on prevailing minimum wage; and b) disapproving the subject computation and directing the Labor Arbiter to refrain from issuing a writ of execution insofar as the prepared computation before her.”[23]

The Petition raised this sole ground:

“5.1 THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AFFIRMING THE LABOR ARBITER'S ORDER DATED 08 MARCH 2011 CONSIDERING THAT THE LABOR ARBITER ERRED IN FINDING THAT THE AWARD OF BACKWAGES TO COMPLA[I]NANT INCLUDES, AMONG OTHERS, SALARY DIFFERENTIALS AND ECOLA, AND THAT THE RATE OF BACKWAGES WAS CORRECTLY BASED ON PREVAILING MINIMUM WAGE.”[24] (Emphasis was made in the original)

Contrary to petitioner's arguments in its sole assigned ground, the Labor Arbiter properly included the 13[th] month pay, service incentive leave pay, and emergency cost of living allowance (“ECOLA” for brevity) in the computation of private respondent's backwages.

Petitioner had argued as follows:

“x x x The subject computation is patently erroneous for the following reasons: first, the computation included salary differentials by reason of legislation such as minimum wage increases; second, the computation included emergency cost of living allowances; and third, the rates used in the computation are not in accordance with the prevailing minimum wage during the covered period.

xxx xxx xxx

xxx, the rates used in the subject computation are not in accordance with the prescribed minimum wage during the period. Wage Order No. NCR-09 (effective 01 February 2002) and Wage Order No. NCR-10 (effective 10 July 2004) mandated a minimum wage of P250.00 (exclusive of ECOLA), while Wage Order No. NCR-11 (effective 16 June 2005), prescribed a minimum wage of P275.00 (exclusive of ECOLA). However, the subject computation, particularly for the period from 26 February 2004 to 10 July 2006, shows that the minimum wage rate used is erroneous – P288.48, when the minimum wages for the said period were only P250 and P275.

x x x

xxx Section 34 of R.A. 6715 which amended Article 279, had only the effect of granting an illegally dismissed employee full backwages without limitation as to the number of years xxx.

For the same reason, ECOLA should not be included in the computation of backwages. In addition, given the nature and purpose of legislated ECOLA (Emergency Cost of Living Allowance), it is given only to those who

actually rendered service. Thus, the backwages should be computed based on the wage rate of the complainant at the date of dismissal excluding the ECOLA.

xxx, even the ECOLA rates used in the subject computation, albeit erroneously, are also different, i.e., P30.00 and P50.00, as well as, the rate used for computing complainant's separation pay, i.e., P362.00"[25] (Emphasis Supplied)

Defeating petitioner's arguments however, is that the Computation of Monetary Award[26] dated March 23, 2010 properly used the sum of Php 288.48 as its basis in the Computation of private respondent's backwages. This is because at the time of private respondent's illegal dismissal, the amount of Php 288.48 was the wage rate per day of private respondents instead of the prevailing minimum wage rates[27] at that time private respondent was employed with petitioner.[28]

That the basis in the computation of backwages is the wage rate at the time of the employee's dismissal, such as private respondent's Php 288.48 wage rate here, is pursuant to the Supreme Court's declaration in BPI Employees Union - Metro Manila and Zenaída Uy vs. Bank of the Philippine Islands, G.R. No. 178699, September 21, 2011, to wit:

"It is likewise settled that the base figure to be used in the computation of back wages is pegged at the wage rate at the time of the employee's dismissal unqualified by deductions, increases and/or modifications." (Emphasis Supplied)

Moreover, the Labor Arbiter properly included the ECOLA in the computation of private respondent's backwages. This inclusion of the ECOLA is pursuant to Article 279 of the Labor Code which states:

"ARTICLE 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." (Emphasis supplied)

All of these matters were as found by public respondent NLRC as follows:

"The emergency cost of living allowance (ECOLA) was properly included in the computation of complainant's backwages. The Labor Arbiter is correct in her pronouncement that the components of backwages are 13[th] month pay, service incentive leave pay and ECOLA. Article 279 of the labor Code stipulates xxx

xxx xxx xxx

The above provision clearly mandates that an employee's full backwages shall be inclusive of allowances and other benefits or their monetary equivalent. Necessarily, ECOLA being in the nature of an allowance is included in the computation of the backwages.

xxx xxx xxx

Regarding respondent's argument that it is error to use the amount of P288.48 in the calculation of the backwages for the period February 26, 2004 until July 10, 2006, the same is likewise without merit.

The sum of P288,48 instead of the prevailing minimum wage rate was utilized in the computation of monetary award for the simple reason that said figure was the salary rate of complainant at the time of his dismissal. As can be gleaned from his complaint, complainant's last salary rate was P7,500.00 per month. xxx. xxx such amount was used in the determination of his backwages for the period February 26, 2004 until July 10, 2006."[29] (Emphasis Supplied)

Indeed, the base figure to be used in the computation of backwages that are due to an employee like private respondent here, should include the regular allowances that such employee has been receiving, which would include the ECOLA and the 13th-month pay mandated under the law. That this is so is pursuant to the pronouncement of the Supreme Court in *Paramount Vinyl Products Corporation vs National Labor Relations Commission and Paramount Independent Workers Association*, G.R. No. 81200, October 17, 1990, as follows:

“xxx And the Court has declared that the base figure to be used in the computation of backwages due to the employee should include not just the basic salary, but also the regular allowances that he had been receiving, such as the emergency living allowances and the 13th month pay mandated under the law xxx” (Emphasis Supplied)

The rule is settled that the findings of the Labor Arbiter, when affirmed by the NLRC, are accorded due respect and finality, and are binding upon the court[30] especially when supported by substantial evidence, as in this case.

After careful consideration of all the facts, arguments, and issues appearing on the records as well as of the pertinent laws and jurisprudence, and, in accordance with what is best determined to be proper under the circumstances, the following disposition is therefore made on these matters.

IN VIEW OF ALL THESE, the Petition is DENIED.

**SO ORDERED.**

Dicdican (Chairperson) and Paredes, JJ., concur.

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[1] Rollo, pp. 3-11.

[2] Rollo, pp. 16-21.

[3] Rollo, pp. 23-24.

[4] Rollo, pp. 213-217.

[5] Rollo, p. 26.

[6] Rollo, p. 124.

[7] Rollo, pp. 124-134.

[8] Rollo, p. 134.

[9] Rollo, pp. 165-174.

[10] Rollo, pp. 124-134.

[11] Rollo, p. 173.

[12] Rollo, pp. 192-193.

[13] Rollo, pp. 175-191.

[14] Rollo, p. 194.

[15] Rollo, pp. 209-210.

[16] Rollo, p. 194.

[17] Rollo, pp. 209-210.

[18] “MEMORANDUM OF PARTIAL APPEAL (Re: The Honorable Labor Arbiter Lilia S. Savari's Order dated 08 March 2011, copy received 24 March 2011)”, Rollo, pp. 204-208.

[19] Rollo, pp. 16-21.

[20] Rollo, p. 20.

[21] Rollo, pp. 213-217.

[22] Rollo, pp. 23-24.

[23] Rollo, p. 11.

[24] Rollo, p. 8.

[25] Rollo, pp. 9-10.

[26] Rollo, p. 194.

[27] Php 250.00 per Wage Order No. NCR-10 (effective 10 July 2004), Rollo, p. 9. & Php 275.00 per Wage Order No. NCR-11 (effective 16 June 2005), Rollo, p. 9.

[28] Rollo, pp. 17 & 19.

[29] Rollo, pp. 18-19.

[30] Letran Calamba Faculty and Employees Association vs. National Labor Relations Commission and Commission and Colegio De San Juan De Letran Calamba, Inc., G.R. No. 156225, January 29, 2008

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