

EUROASIA PHILIPPINES, INC. AND MARTHA H. RESURRECCION, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND FRANCIS R. JOVEN, RESPONDENTS.

Ponente: ABDULWAHID, J.

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ABDULWAHID, J.:

Before us is a petition for certiorari under Rule 65 of the Revised Rules of Civil Procedure filed by petitioners Euroasia Philippines, Inc. and Martha H. Resurreccion, assailing the Decision[1] dated February 28, 2014 of public respondent National Labor Relations Commission (NLRC) in NLRC LAC No. 01-0000086-14 (NLRC NCR Case No. 08-12130-13), which modified the decision of the Labor Arbiter; and the Resolution[2] dated April 28, 2014, which denied the motion for reconsideration thereof for lack of merit.

Petitioner Euroasia Philippines, Inc. is a domestic corporation engaged in supplying skilled and professional workers to major industries abroad, while petitioner Martha Resurreccion is its president. On June 11, 2010, petitioners entered into a 24-month contract of employment[3] with private respondent Francis Joven, who was assigned as Heating Ventilation and Air Condition Foreman in the project site of its foreign client in Madagascar, with a monthly base salary of US\$1,400.00 for 260 hours (10 hours a day and 6 days a week). Other benefits include vacation leave of 15 days, holiday pay of twice the basic pay and rest day pay of 1.5 times the basic pay, if actual work is rendered. The contract further stipulated that the 260-hour per month pay is guaranteed even if actual hours of work are less.[4] In the year 2012, private respondent's contract was extended[5] for another 12 months and his salary also increased to US\$2,000.00[6].

On August 25, 2013, upon returning to the country after his contract ended, private respondent filed with the Labor Arbiter an amended complaint for underpayment of salary/wages, non-payment of unused vacation leave, retention bonus, refundable trouble fund (RTF), damages and attorney's fees against petitioners. He alleged that by reason of the provision in his contract that "a monthly base salary for 260 hours per month is guaranteed even if the actual work are less", private respondent agreed to work for petitioners. Now, due to errors in the computation deliberately made, underpayments/non-payment of his salary amounting to P106,252.33, retention bonus amounting P144,547.08, unused vacation leave credits amounting to P92,347.64, RTF P10,033.45, and unpaid August salary amounting to P101,878.80, were committed.[7]

Petitioners refuted private respondent's allegations, stating that they never defaulted in paying his wages and benefits. The computation thereof was always in accordance with the employment contract and company standards. Petitioners further denied not paying private respondent's holiday pay falling on Sundays or rest days. Considering that petitioners only excluded one day per week in the computation of their employee's salary as per employment contract, they are not legally bound to give additional payment on holiday falling on Sundays. Petitioners also refuted private respondent's contention that the amount equivalent to 10 hours was deducted from his monthly salary every time he worked on a holiday, stating that the latter was paid holiday pay at 200% of his daily wage.

In a Decision[8] dated December 6, 2013, for petitioner's failure to to refute private respondent's claim for unpaid salaries and other monetary benefits, Labor Arbiter Remedios L.P. Marcos granted the claims prayed for in the complaint. The burden of proving payment of monetary claims rests upon petitioners, being the employers of private respondent. The reason being that pertinent files, payrolls records, remittances and other similar documents that would show the claims have been paid are in the custody and absolute control of the employer. However, the Labor Arbiter denied the claim of unpaid wages for August 2013 since private respondent was already paid thereof. Likewise, the claim for overtime pay was denied for lack of merit. The dispositive portion of the decision reads, as follows:

WHEREFORE, premises considered respondents Euroasia Phil. Inc., Ambatovy Project and Ms. Martha H. Resurreccion are jointly and severally liable to pay complainant Francis R. Joven of the following:

- 1) salary differentials – P106,252.33;
- 2) vacation leave pay – P92,347.64;
- 3) retention bonus – P144,547.08;
- 4) refundable trouble fund (RTF) – P10,033.45.

All other claims are dismissed for lack of merit.

SO ORDERED.

In their Memorandum of Appeal,[9] petitioners maintained that private respondent is not entitled to money claims as they have no basis in law or his existing contract. While his employment contract guaranteed a payment for the 260 hours per month, the same could not be the basis of private respondent's claim as it merely guaranteed that he would receive his contractually agreed salary, regardless of the number of hours actually worked for a particular month. Considering that petitioners only excludes one day per week in the computation of their employees' salary, the company is not legally obliged to give additional payments on holidays falling on Sundays. Petitioners likewise stressed that there was no deduction in the monthly salary of private respondent every time he worked on a holiday. The holiday pay was credited at 200% of the daily wage.

In the assailed Decision[10] dated February 28, 2014, public respondent NLRC affirmed with modification the Labor Arbiter's decision. It granted private respondent's salary differential in the amount of P106,252.33, consistent with the Labor Arbiter's determination that petitioner failed to present evidence of payment of wages in accordance with the employment contract. Public respondent NLRC further declared that private respondent is entitled to holiday premium pay in addition to the 260 hours pay every month guaranteed by his employment contract. With regard to private respondent's claim for unused vacation leave pay and retention bonus, public respondent NLRC admitted petitioners' own computation based on the applicable salary rates at the time the benefits accrued and on actual hours worked. Public respondent NLRC also granted the August 2013 salary in the amount of P81,772.21. Accordingly, public respondent NLRC modified the award, as follows:

Salary differential

- P106,252.33

Vacation Leave Pay

- P 64,590.59

Retention Bonus

- P113,571.37

Refundable Trouble Fund

- P 10,033.45

Unpaid Aug. 2013 Salary

-P 81,722.00

P376,219.74

Attorney's Fees (10%) -

P 37,621.97

TOTAL

P413,841.71

WHEREFORE, the respondents' appeal is hereby **PARTIALLY GRANTED** and that of Complainant declared with merit; the appealed decision is hereby **MODIFIED**, ordering Respondents to pay complainant FRANCIS R. JOVEN the amount of Four Hundred Thirteen Thousand Eight Hundred Forty One and 71/100 Pesos (P413,841.71).

SO ORDERED.

After their motion for reconsideration was denied in the assailed Resolution[11] dated April 28, 2014, petitioners filed with this Court the instant petition for certiorari, raising the following issues[12], to wit:

I

WHETHER OR NOT PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED DECISION, AWARDING SALARY DIFFERENTIAL TO RESPONDENT JOVEN, BASED ON SURMISES, CONJECTURES AND CONTRARY TO THE EVIDENCE ON RECORD; and

II

WHETHER OR NOT PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ORDERED THE PETITIONER TO PAY ATTORNEY'S FEES.

Petitioners maintain that private respondent is not entitled to a salary differential for the holiday pay as this was already included in the 260 hours provided in the contract as basis of his monthly base salary. Private respondent will not receive any additional pay if he does not report for work on a holiday because his premium pay is deemed paid for that particular holiday. On private respondent's claim for non-payment of retention bonus and vacation leave for his last contract, petitioners are willing to release the same in accordance with the computation adopted in the assailed decision. Lastly, petitioners contend that private respondent is not entitled to attorney's fees as there was no bad faith on their part in the interpretation of the employment contract, and that private respondent has no one to blame but himself for insisting on his baseless demands.[13]

The basic issue for resolution of this Court is whether or not private respondent is entitled to a salary differential for the hours worked on holidays.

The petition is partly granted.

A Filipino worker who contracts employment overseas is primarily governed by the Philippine Overseas Employment Administration (POEA) Rules and Regulations, and more importantly, Republic Act No. 8042,

otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995. While the overseas Filipino workers on board ocean-going vessels (seamen) are primarily governed by the POEA Standard Employment Contract governing the Employment of All Filipino Seamen on Board Ocean-Going Vessels, the land-based overseas workers are governed by the POEA Rules and Regulations Governing the Recruitment and Employment of the Land-Based Overseas Workers.

In this regard, Part V, Rule 1 of the 2002 POEA Rules and Regulations Governing the Recruitment and Employment of the Land-Based Overseas Workers provides for the formulation of the employment standards, thus:

PART V

Employment Standards

RULE I

Formulation of Employment Standards

SECTION 1. Employment Standards. — The Administration shall determine, formulate and review employment standards in accordance with the market development thrusts and welfare objectives of the overseas employment program and the prevailing market conditions. (Section 1, Rule I, Part V, Ibid.).

SECTION 2. Minimum Provisions of Employment Contract. — Consistent with its welfare and employment facilitation objectives, the following shall be considered the minimum requirements for contracts of employment of land-based workers:

- a. Guaranteed wages for regular work hours and overtime pay, as appropriate, which shall not be lower than the prescribed minimum wage in the host country, not lower than the appropriate minimum wage standard set forth in a bilateral agreement or international convention duly ratified by the host country and the Philippines or not lower than the minimum wage in the Philippines, whichever is highest;
- b. Free transportation to and from the worksite, or offsetting benefit;
- c. Free food and accommodation, or offsetting benefit;
- d. Just/authorized causes for termination of the contract or of the services of the workers taking into consideration the customs, traditions, norms, mores, practices, company policies and the labor laws and social legislations of the host country;
- e. The Administration may also consider the following as basis for other provisions of the contract:
 1. Existing labor and social laws of the host country;
 2. Relevant agreements, conventions, delegations or resolutions;
 3. Relevant bilateral and multilateral agreements or arrangements with the host country; and
 4. Prevailing condition/realities in the market.

SECTION 3. Freedom to Stipulate. — Parties to overseas employment contracts are allowed to stipulate other terms and conditions and other benefits not provided under these minimum requirements; provided the whole employment package should be more beneficial to the worker than the minimum; provided that the same shall not be contrary to law, public policy and morals, and provided further, that Philippine agencies shall make foreign employers aware of the standards of employment adopted by the Administration. (emphasis ours)

Following the foregoing rule, we shall resolve the issue on payment of holiday pay in accordance with the employment contract signed by the parties.

Under paragraphs 3.1 and 4.1 of the Overseas Employment Contract[14], private respondent should be

compensated on a monthly base salary of US\$1,400 for the 260-hour work, consisting of 10 hours work per day for 6 days a week; provided that the monthly base salary for 260 hours per month is guaranteed even if actual hours of work are less.[15] It is on this stipulation that private respondent hinged his complaint for underpayment of salary and other monetary benefits. He argued that he was not paid for the hours worked on holidays amounting to P106,252.33.

Petitioners, on the other hand, maintain that the terms and conditions of the employment contract were followed in payment of the salary, and insist that private respondent was paid on a monthly basis following the rulings in *Chartered Bank Employees Association vs. Ople*[16] and *Wellington Investment and Manufacturing Corporation vs. Trajano*[17], wherein the Supreme Court held that an employee uniformly paid by the month, where the company uses the 313/314 divisor, is considered to be have been paid his regular holiday pay for the year. The rationale of the rule on monthly paid employees is to avoid re-computations and alterations on salary of account if contingencies, i.e., legal holidays, fortuitous cause precluding work (strikes, riots, calamities, etc.), which are routinely made between employer and employees when the wages are paid on daily basis.

The foregoing ruling, however, is inapplicable in this case since the payment of private respondent's salary is governed, not by the Labor Code, but by the terms and conditions of the employment contract. Nevertheless, we have perused the evidence on record and contrary to the findings of both labor tribunals, there is substantial evidence to prove that petitioners have paid the holiday premium pay of private respondent. The statement of earnings and deductions[18] would show that while the regular number of hours varies every month, the same is not inconsistent with the paid number of hours (260 hours/month) agreed upon. The deficiency in the regular number of hours is just carried over to the holiday pay multiplied by 2 or to the rest day multiplied by 1.5, as the case may be. To illustrate, in the May 2012 payslip[19], the following entries were made, thus:

Earnings Rate Hours USD Amount

Regular Time 7.69 240 1,845.60 USD

Vacation Leave 7.69 0 0 USD

Travel Time 7.69 0 0 USD

Paid Absence 7.69 Null 0 USD

OT1 11.54 10 115.40 USD

OT2 – Rest Day 15.38 0 0 USD

OT2 – Holiday 15.38 20 307.60 USD

USD Adjustments(+/-) 0 USD

GROSS ALLOTMENT 2,268.80 USD

As can be gleaned from the foregoing entries, instead of the 260 hours for the regular time for that month, petitioners put only 240 hours, but the remaining 20 hours were credited to the holiday portion at the rate of double the regular time. In other words, petitioners simply broke down the 260 hours into 240 regular hours and 20 hours for the holiday, as the latter rates were multiplied by 2[20], in accordance with the employment contract. Every time private respondent worked on a holiday or his rest day, this computation was adopted by petitioner throughout their contract of employment with private respondent. Hence, public respondent NLRC committed grave abuse of discretion in declaring without any basis the claim of that private respondent's salary was diminished every time he works on a holiday.

As regards the claim for nonpayment of other benefits accrued, we sustain the findings of public respondent NLRC since petitioner already admitted that they are willing to release the same to private respondent.[21]

Withal, the award of attorney's fees is sustained in line with the ruling in Consolidated Rural Bank (Cagayan Valley), Inc. vs. National Labor Relations Commission[22], where it was held that "in actions for recovery of wages or where an employee was forced to litigate and thus incur expenses to protect her rights and interests, even if not so claimed, an award of attorney's fees equivalent to ten percent (10%) of the total award is legally and morally justifiable". There is no doubt that in the present case, private respondent incurred expenses for the protection and enforcement of his right to accrued benefits as provided in his employment contract.

In this jurisdiction, courts generally accord great respect and finality to factual findings of administrative agencies, i.e., labor tribunals, in the exercise of their quasi-judicial function. These findings, however, are not infallible. This doctrine espousing comity to administrative findings of facts cannot preclude the courts from reviewing and, when proper, disregarding these findings of facts when shown that the administrative body committed grave abuse of discretion by capriciously, whimsically or arbitrarily disregarding evidence or circumstances of considerable importance that are crucial or decisive of the controversy.[23]

In this case, both the NLRC and the Labor Arbiter arbitrarily disregarded the evidence presented by petitioners which proved that they have fully paid private respondent of his holiday pay. Accordingly, the assailed conclusion of the public respondent NLRC must be set aside.

WHEREFORE, the petition is PARTIALLY GRANTED. The assailed NLRC Decision dated February 28, 2014 and Resolution dated April 28, 2014 are AFFIRMED with MODIFICATION, excluding and deleting the award of salary differential in the amount of P106,252.33, for lack of factual and legal basis, and recomputing the attorney's fees equivalent to 10% of the total award.

SO ORDERED.

[x]Inting, S.B, and [**]Sadang, M.Q. C., JJ., concur.

[x]Vice J. Priscilla J. Baltazar-Padilla, who is on Wellness Leave, as Acting Senior Member, per Office Order No. 135-15-ABR dated April 17, 2015.

[**]Vice J. Socorro B. Inting as Acting Junior Member, per Office Order No. 135-15-ABR dated April 20, 2015.

[1] Rollo, pp. 30-46.

[2] Id. at 47-49.

[3] Id. at 50-53.

[4] Id. at 57.

[5] Id. at 54.

[6] Id. at 55.

[7] Id. at 60-63, 32-33.

[8] Id. at 85-90.

[9] Id. at 97-114.

[10] See Note 1.

[11] See Note 2.

[12] Rollo, p. 10.

[13] Id. at 10-25.

[14] See Note 3.

[15] See Note 4.

[16] 138 SCRA 273 (1985).

[17] 245 SCRA 561 (1995).

[18] Rollo, pp. 129-161.

[19] Id. at 151.

[20] See paragraph 4.4 of the Addendum, rollo, p. 57. The regular rate of 7.69 multiplied by 2 is 15.38.

[21] Rollo, p. 23.

[22] 301 SCRA 223, 235 (1999).

[23] G.R. No. 190724, *Diamond Taxi vs. Llamas, Jr.*, March 12, 2014.

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