

CBTC EMPLOYEES UNION, PETITIONER, VS. THE HONORABLE JACOBO C. CLAVE, PRESIDENTIAL EXECUTIVE ASSISTANT, AND COMMERCIAL BANK & TRUST COMPANY OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-49582. January 07, 1986

Ponente: DE LA FUENTE, J.

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DE LA FUENTE, J.:

Petition for certiorari seeking to annul and set aside the decision of the respondent Presidential Executive Assistant[1] affirming that of the Acting Secretary of Labor who reversed the decision of the National Labor Relations Commission which upheld the Voluntary Arbitrator's order directing the private respondent bank to pay its monthly paid employees their "legal holiday pay".

Petitioner Commercial Bank and Trust Company Employees' Union (Union for short) lodged a complaint with the Regional Office No. IV, Department of Labor, against private res-pondent bank (Comtrust) for non-payment of the holiday pay benefits provided for under Article 95 of the Labor Code in relation to Rule X, Book III of the Rules and Regulations Implementing the Labor Code.

Failing to arrive at an amicable settlement at conciliation level, the parties opted to submit their dispute for voluntary arbitration. The issue presented was: "Whether the permanent employees of the Bank within the collective bargaining unit paid on a monthly basis are entitled to holiday pay effective November 1, 1974, pursuant to Article 95 (now Article 94) of the Labor Code, as amended and Rule X (now Rule IV), Book III of the Rules and Regulations Implementing the Labor Code".

In addition, the disputants signed a Submission Agreement stipulating as final, unappealable and executory the decision of the Arbitrator, including subsequent issuances for clarificatory and/or relief purposes, notwithstanding Article 262 of the Labor Code which allow appeal in certain instances.[2]

In the course of the hearing, the Arbitrator apprised the parties of an interpretative bulletin on "holiday pay" about to be issued by the Department of Labor. Whereupon, the Union filed a Manifestation[3] which insofar as relevant stated:

"6. That complainant union ... has manifested its apprehension on the contents of the said Interpretative Bulletin in view of a well-nigh irresistible move on the part of the employers to exclude permanent workers similarly situated as the employees of Comtrust from the coverage of the holiday pay benefit despite the express and self-explanatory provisions of the law, its implementing rules and opinions thereon....

7. That in the event that said Interpretative Bulletin regarding holiday pay would be adverse to the present claim ... in that it would in effect exclude the said employees from enjoyment of said benefit, whether wholly or partially, complainant union respectfully reserves the right to take such action as may be appropriate to protect its interests, a question of law being involved. ... An Interpretative Bulletin which was inexistent at the

time the said commitment was made and which may be contrary to the law itself should not bar the right of the union to claim for its holiday pay benefits."

On April 22, 1976, the Arbitrator handed down an award on the dispute. Relevant portions thereof read as follows:

"The uncontroverted facts of this case are as follows:

(1) That the complainant Union is the recognized sole and exclusive collective bargaining representative of all the permanent rank-and-file employees of the Bank with an existing Collective bargaining Agreement covering the period from July 1, 1974 up to June 30, 1977;

(2) That ... the standard workweek of the Bank generally consists of five (5) days of eight (8) hours each day which, ... said five days are generally from Monday thru Friday; and, as a rule, Saturdays, Sundays and the regular holidays are not considered part of the standard workweek;

(3) That, in computing the equivalent daily rate of its employees covered by the CBA who are paid on a monthly basis, the following computation is used, as per the provisions of Section 4, Article VII, of the CBA (Annex "A"):

Daily Rate = Basic Monthly Salary plus CLA x 12
250

Basic Hourly Rate = Daily Rate
8

(4) That the divisor of '250', ... was arrived at by subtracting the 52 Sundays, 52 Saturdays, the 10 regular holidays and December 31 (secured thru bargaining), or a total of 115 off-days from the 365 days of the year or a difference of 250 days.

"Considering the above uncontroverted facts, the principal question to be resolved is whether or not the monthly pay of the covered employees already includes what Article 94 of the Labor Code requires as regular holiday pay benefit in the amount of his regular daily wage (100% if unworked or 200% if worked) during the regular holidays enumerated therein, i.e., Article 94(c) of the Labor Code.

"In its latest Memorandum, filed on March 26, 1976, the Bank relies heavily on the provisions of Section 2, Rule IV, Book III, of the Rules and Regulations implementing particularly Article 94 (formerly Article 208) of the Labor Code, which Section reads as follows:

'SECTION 2. Status of employees paid by the month. - Employees who are uniformly paid by the month, irrespective of the number of working days therein, with a salary of not less than the statutory or established minimum wage, shall be presumed to be paid for all days in the month whether worked or not.

'For this purpose, the monthly minimum wage shall not be less than the statutory minimum wage multiplied by 365 days divided by twelve.' (Under-scoring supplied).

"While admitting that there has virtually been no change effected by Presidential Decree No. 850, which amended the Labor Code, other than the re-numbering of the original Article 208 of said Code to what is now Article 94, the Bank, however, attaches a great deal of significance in the above-quoted Rule as to render the question at issue 'moot and academic'.

"On the other hand, the Union maintains, in its own latest Memorandum, filed also on March 26, 1976, that the legal presumption established in the above-quoted Rule is merely a disputable presumption. This contention of the Union is now supported by a pronouncement categorically to that effect by no less than the National Labor Relations Commission (NLRC) in the case of *The Chartered Bank Employees Association vs. the Chartered*

Bank. NLRC Case No. (s) RB-IV-1739-75 (R04-5-3028-75), which reads, in part, as follows:

'x x x A disputable presumption was set, in that it would be presumed the salary of monthly-paid employees may already include rest days, such as Saturdays, Sundays, special and legal holidays, worked or unworked, in effect connoting that evidence to the contrary may destroy such a supposed legal presumption. Indeed, the Rule merely sets a presumption. It does not conclusively presume that the salary of monthly-paid employees already includes unworked holidays. x x x

'The practice of the Bank of paying its employees a sum equivalent to Base pay plus Premium on Saturdays, Sundays and special and legal holidays, destroys the legal presumption that monthly pay is for all days of the month. For if the monthly pay is payment for all days of the month, then why should the employee be paid again for working on such rest days.' (Underscoring supplied)

"There is no reason at present not to adopt the above ruling of the Honorable Commission, especially considering the fact that this Arbitrator, in asking a query on the nature of the presumption established by the above Rule, from the Director of Labor Standards in the PMAP Conference held at the Makati Hotel on March 13, 1976, was given the categorical answer that said presumption is merely disputable. This answer from the Labor Standards Director is significant inasmuch as it is his office, the Bureau of Labor Standards, that is reportedly instrumental in the preparation of the implementing Rules, particularly on Book III of the Labor Code on Conditions of Employment, to which group the present Rule under discussion belongs.

"So, rather than rendering moot and academic the issue at hand, as suggested by the Bank, the more logical step to take is to determine whether or not there is sufficient evidence to overcome the disputable presumption established by the Rule.

"It is unquestioned, and as provided for in the CBA itself, that the divisor used in determining the daily rate of the monthly-paid employees is '250'.

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"Against this backdrop, certain rele-vant and logical conclusions result, namely:

"(A) The Bank maintains that, since its inception or start of operations in 1954, all monthly-paid employees in the Bank are paid their monthly salaries without any deduction for unworked Saturdays, Sundays, legal and special holidays. On the other hand, it also maintains that, as a matter of fact, 'always conscious of its employee who has to work on respondent's rest days of Saturdays and Sundays or on a legal holiday, an employee who works overtime on any of said days is paid one ad-dition regular pay for the day plus 50% of said regular pay.' (Bank's Memorandum, page 3, filed January 21, 1976).

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"On the other hand, there is more reason to believe that, if the Bank has never made any deduction from its monthly-paid- employees for unworked Saturdays, Sundays, legal and special holidays, it is because there is really nothing to deduct properly since the monthly salary never really included pay for such unworked days - and which give credence to the conclusion that the divisor '250' is the proper one to use in computing the equivalent daily rate of the monthly-paid employees.

(B) The Bank further maintains that the holiday pay is intended only for daily-paid workers. In this regard, the NLRC has this to say in the same above-quoted Chartered Bank case:

'It is contended that holiday pay is primarily for daily wage earners. Let us examine the law, more specifically Article 95 (now Article 94) of the Labor Code to see whether it supports this contention. The words used in the Decree are 'every worker', while the framers of the Implementing Rules preferred the use of the phrase 'all employees'. Both the decree itself and the Rules mentioned enumerated the excepted workers. It is a basic rule of statutory construction that putting an exception limits or modifies the enumeration or meaning made in the law. It is thus easy to see that a mere reading of the Decree and of the Rules would show that the monthly-paid

employees of the Bank are not expressly included in the enumeration of the exception.

'Special notice is made of the fact that the criteria at once readable from the exception referred to is the nature of the job and the number of employees involved, and not whether the employee is a daily-wage earner or a regular monthly-paid employee.'

"There is no reason at all to digress from the above-quoted observation of the Honorable Commission for purposes of the present case.

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"Finally, inasmuch as Article 94 of the Labor Code is one of its so-called self-executing provisions, conjointly with its corresponding implementing Rules, it is to be taken to have taken effect as of November 1, 1974, as per Section 1(1), Rule IV, Book III, of the Implementing Rules.

"WHEREFORE, all the above premises considered, this Arbitrator rules that:

(1) All the monthly-paid employees of the Bank herein represented by the Union and as governed by their Collective Bargaining Agreement, are entitled to the holiday pay benefits as provided for in Article 94 of the Labor Code and as implemented by Rule IV, Book III, of the corresponding implementing Rules, except for any day or any longer period designated by law for holding a general election or referendum;

(2) Paragraph (1) hereof means that any covered employee who does not work on any of the regular holidays enumerated in Article 94(c) of the Labor Code, except that which is designated for election or referendum purposes, is still entitled to receive an amount equivalent to his regular daily wage in addition to his monthly salary. If he works on any of the regular holidays, other than that which is designated for election or referendum purposes, he is entitled to twice his regular daily wage in addition to his monthly salary. The 50% premium pay provided for in the CBA for working on a rest day (which has been interpreted by the parties to include the holidays) shall be deemed already included in the 200% he receives for working on a regular holiday. With respect to the day or any longer period designated by law for holding a general election or referendum, if the employee does not work on such day or period he shall no longer be entitled to receive any additional amount other than his monthly salary which is deemed to include already his regular daily wage for such day or period. If he works on such day or period, he shall be entitled to an amount equivalent to his regular daily wage (100%) for that day or period in addition to his monthly salary. The 50% premium pay provided for in the CBA for working on that day or period shall be deemed already included in the additional 100% he receives for working on such day or period; and

(3) The Bank is hereby ordered to pay all the above employees in accordance with the above paragraphs (1) and (2), retroactive from November 1, 1974.

SO ORDERED.

April 22, 1976, Manila, Philippines."[4]

The next day, on April 23, 1976, the Department of Labor released Policy Instructions No. 9, herein below quoted:

"The rules implementing PD 850 have clarified the policy in the implementation of the ten (10) paid legal holidays. Before PD 850, the number of working days a year in a firm was considered important in determining entitlement to the benefit. Thus, where an employee was working for at least 313 days, he was considered definitely already paid. If he was working for less than 313, there was no certainty whether the ten (10) paid legal holidays were already paid to him or not.

"The ten (10) paid legal holidays law, to start with, is intended to benefit principally daily employees. In the case of monthly, only those whose monthly salary did not yet include payment for the ten (10) paid legal holidays are entitled to the benefit.

"Under the rules implementing PD 850, this policy has been fully clarified to eliminate controversies on the entitlement of monthly paid employees. The new determining rule is this; If the monthly paid employee is receiving not less than P240, the maximum monthly minimum wage, and his monthly pay is uniform from January to December, he is presumed to be already paid the ten (10) paid legal holidays. However, if deductions are made from his monthly salary on account of holidays in months where they occur, then he is still entitled to the ten (10) paid legal holidays.

"These new interpretations must be uniformly and consistently upheld.

"This issuance shall take effect immediately."

After receipt of a copy of the award, private respondent filed a motion for reconsideration, followed by a supplement thereto. Said motion for reconsideration was denied. A copy of the order of denial was received by private respondent on July 8, 1976.

Said private respondent interposed an appeal to the National Labor Relations Commission (NLRC), contending that the Arbitrator demonstrated gross incompetence and/or grave abuse of discretion when he entirely premised the award on the Chartered Bank case and failed to apply Policy Instructions No. 9. This appeal was dismissed on August 16, 1976, by the NLRC because it was filed way beyond the ten-day period for perfecting an appeal and because it contravened the agreement that the award shall be final and unappealable.

Private respondent then appealed to the Secretary of Labor. On June 30, 1977, the Acting Secretary of Labor reversed the NLRC decision and ruled that the appeal was filed on time and that a review of the case was inevitable as the money claim exceeded P100,000.00.[5] Regarding the timeliness of the appeal, it was pointed out that the Labor Department had on several occasions treated a motion for reconsideration (here, filed before the Arbitrator) as an appeal to the proper appellate body in consonance with the spirit of the Labor Code to afford the parties a just, expeditious and inexpensive disposition of their claims, liberated from the strict technical rules obtaining in the ordinary courts.

Anent the issue whether or not the agreement barred the appeal, it was noted that the Manifestation, supra, "is not of slight significance because it has in fact abrogated complain-ant's commitment to abide with the decision of the Voluntary Arbitrator without any reservation" and amounted to a "virtual repudiation of the agreement vesting finality"[6] on the arbitrator's disposition.

And on the principal issue of holiday pay, the Acting Secretary, guided by Policy Instructions No. 9, applied the same retrospectively, among other things.

In due time, the Union appealed to the Office of the President. In affirming the assailed decision, Presidential Executive Assistant Jacobo C. Clave relied heavily on the Manifestation and Policy Instructions No. 9.

Hence, this petition.

On January 10, 1981, petitioner filed a motion to substitute the Bank of the Philippine Islands as private respondent, as a consequence of the Articles of Merger executed by said bank and Commercial Bank & Trust Co. which inter alia designated the former as the surviving corporate entity. Said motion was granted by the Court.

We find the petition impressed with merit.

In excluding the union members of herein petitioner from the benefits of the holiday pay law, public respondent

predicated his ruling on Section 2, Rule IV, Book III of the Rules to implement Article 94 of the Labor Code promulgated by the then Secretary of Labor and Policy Instructions No. 9.

In *Insular Bank of Asia and America Employees' Union (IBAAEU) vs. Inciong*,^[7] this Court's Second Division, speaking through former Justice Makasiar, expressed the view and declared that the aforementioned section and interpretative bulletin are null and void, having been promulgated by the then Secretary of Labor in excess of his rule-making authority. It was pointed out, *inter alia*, that in the guise of clarifying the provisions on holiday pay, said rule and policy instructions in effect amended the law by enlarging the scope of the exclusions. We further stated that the then Secretary of Labor went as far as to categorically state that the benefit is principally intended for daily paid employees whereas the law clearly states that every worker shall be paid their regular holiday pay -- which is incompatible with the mandatory directive, in Article 4 of the Labor Code, that "all doubts in the implementation and interpretation of the provisions of Labor Code, including its implementing rules and regulations, shall be resolved in favor of labor." Thus, there was no basis at all to deprive the union members of their right to holiday pay.

In the more recent case of *The Chartered Bank Employees Association vs. Hon. Ople*,^[8] this Court in an *en banc* decision had the occasion to reiterate the above-stated pronouncement. We added:

"The questioned Section 2, Rule IV, Book III of the Integrated Rules and the Secretary's Policy Instruction No. 9 add another excluded group, namely, 'employees who are uniformly paid by the month'. While the additional exclusion is only in the form of a presumption that all monthly paid employees have already been paid holiday pay, it constitutes a taking away or a deprivation which must be in the law if it is to be valid. An administrative interpretation which diminishes the benefits of labor more than what the statute delimits or withholds is obviously *ultra vires*."

In view of the foregoing, the challenged decision of public respondent has no leg to stand on as it was premised principally on the same Section 2, Rule IV, Book III of the Implementing Rules and Policy Instructions No. 9. This being the decisive issue to be resolved, We find no necessity to pass upon the other issues raised, such as the effects of the Union's Manifestation and the propriety of applying Policy Instructions No. 9 retroactively to the instant case.

WHEREFORE, the questioned decisions of the respondent Presidential Executive Assistant and the Acting Secretary of Labor are hereby set aside, and the award of the Arbitrator reinstated. Costs against the private respondent.

IT IS SO ORDERED.

Teehankee, (Chairman), Plana, Relova, Gutierrez, Jr., and Patajo, JJ., concur.
Melencio-Herrera, J., took no part.

[1] dated Dec. 8, 1978, Annex "J", pp. 73-78, Rollo.

[2] "However, voluntary arbitration awards or decisions on money claims involving an amount exceeding P100,000 or forty percent (40%) of the paid-up capital of the respondent employer, whichever is lower, may be appealed to the National Labor Relations Commission on any of the following grounds: (a) Abuse of discretion; and (b) Gross incompetence."

[3] pp. 50-51, Rollo.

[4] pp. 53-61, Rollo.

[5] the Socio-Economic Analyst of the Department having reported that the money value of the holiday pay amounted to P432,122.88.

[6] p. 69, Rollo.

[7] G.R. No. 52415, 132 SCRA 663.

[8] G.R. No. L-44717, August 28, 1985.

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