

**FELIX CAAYA, NORLITO ABIAN, DIONISIO MIRANDA, CRISTINO ILUSTRE, VIRGELITO SOMERA, LORETO NAMORO, EFREN ANCHETA, ALFREDO MABITAZAN, MARCELO ORTIZ, JUANITO BILOG, RUFINO BAYO, LET...**

Ponente: BERSAMIN, L.P., J.

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**BERSAMIN, L.P., J.:**

The petitioners, all regular employees of respondent Philex Mining Corporation (Philex), commenced this special civil action for certiorari to nullify the resolutions dated August 2, 2002 (dismissing the petitioners' claims) and August 20, 2002 (denying the petitioners' motion for reconsideration) issued by respondent Voluntary Arbitrator Jorge M. Manalo,[1]alleging that he thereby acted with grave abuse of discretion amounting to lack of or excess of jurisdiction.

The background follows.

The petitioners were mostly assigned as carpenters, masons, utility men and maintenance crew to work at the tailings pond in the mill area of Philex. They worked in 3 shifts, the first from 7:00 a.m. to 3:00 p.m, the second from 3:00 p.m. to 11:00 p.m., and the third from 11:00 p.m. to 7 a.m. They are all members of the National Mines And Allied Workers Union (NMAWU) Local 101, which had an existing collective bargaining agreement (CBA) with Philex.

Under the CBA, the petitioners were entitled to free living quarters and bus facilities. Thus, they were assigned to their respective bunk-houses located in areas inside the company compound designated as "Eastern Saddle", "Central Saddle", "Capitol" and "Main Camp," areas adjoining each other but located about 17 kilometers away from their working areas. They were ferried from their bunk-houses to and from their assigned working areas in company service vehicles, which went around to the various areas to pick them up and to conduct them to the timekeeping office at Eastern Saddle.

At the timekeeping office, the timekeeper listed the names of the workers and gave them their personnel control cards (PCCs). The arrangement provided that the employee was considered not to have reported to work should he not get his PCC and that the employee who reported to his working area without his PCC card was considered absent. After work, the petitioners were again transported to the timekeeping office to return their PCCs.

The petitioners were required to be at the designated terminal several hours before their working times. They arrived at the timekeeping office several hours after their quitting time. Yet, the additional hours were not considered as working time by Philex, even if they spent almost from 10 to 10 ½ hours for Philex but were being paid for work of eight hours only. This arrangement had been going on for several years already.

Summarized, the working times of the petitioners were as follows:

Required Departure Arrival Time

Time FROM WORK FOR WORK (At URT OFFICE)

- A) 1st shift 7:00 a.m. to 3:00 p.m. additional 2 hours 6:00 a.m. 4:00 p.m.
- B) 2nd shift 3:00 p.m. to 11:00 p.m. additional 2 hours 1:30 p.m. 11:30 p.m.
- C) 3rd shift 11:00 p.m. to 7:00 a.m. additional 2 ½ hours 9:30 p.m. 8:00 a.m.

They frequently demanded that Philex should pay them overtime but Philex refused. After the matter remained unsettled despite going through the grievance machinery under the CBA, they filed a complaint in the National Conciliation and Mediation Board-CAR Region, which referred the complaint to respondent Manalo for voluntary arbitration.

The parties submitted and exchanged position papers.[2] Philex mainly argued against the petitioners' claim for overtime pay because Sec. 1, Art. XV, of the CBA provided thus:

Sec. 1. The COMPANY will continue to give free bus facilities in accordance with its present practice provided, however, that the time spent for transportation and waiting period, therefore shall not be counted as time worked, it being contemplated that only actual time work shall be the basis of computing compensation of wages.

On August 2, 2002, respondent Manalo thereafter issued the first assailed resolution, viz:

Findings

From the foregoing facts and arguments as well as the documents adduced and presented by both parties, it is clear that this labor dispute has to be resolved in the light of the Collective Bargaining Agreement between the NAMAWU Local 101, of which the Complainants are all regular members, and the Respondent company. More particularly, the provision of the CBA that is in question is section 1, Article XV which provides as follows to wit:

Section 1. The company will continue to give free bus facilities, provided, however, that the time spent for transportation and waiting period, therefore shall not be counted as time worked, it being contemplated that only actual time work shall be the basis of computing compensation of wages.

As pointed out by Respondent, this provision is a carry-over from the January 1, 1995-December 31, 1995 CBA between NAMAWU Local 101 and Respondent. This particular provision has long been implemented and the Union had accepted the meaning given to it. This provision has acquired a meaning accepted by both parties.

However, Complainants assail this particular provision of the CBA. While complainants agree that the CBA is a contract which constitutes the law between the parties, they nevertheless point out that this principle presupposes that the provision of the said CBA are valid and are not contrary to law.

According to complainants, such provision of the CBA is contrary to law and jurisprudence. They aver that a collective bargaining agreement should observe the basic precepts of a valid contract. They claim that a contract is inexistent and void from the beginning when its cause, object or purpose is contrary to law, morals, good customs, public order or public policy. In effect, Complainants maintain that this particular provision of the CBA is void and should be considered as inexistent. They argue further that the fact that the said provision has been carried over from the old CBA does not make it valid and binding to them because such provision is void from the beginning.

In their prayer, what complainants want is for this Voluntary Arbitrator not to annul the said CBA provision but to merely consider it void and inexistent and should not be considered.

But to grant this prayer of Complainants would amount to the same thing, that is, to declare the questioned

provision of the CBA Null and Void which this Voluntary Arbitrator cannot do because it is outside of his jurisdiction which is confined to interpretation and application of the collective bargaining agreement. The function of an arbitrator is basically that of adjudication. He does not have the power to add to, subtract from or modify any provision of the agreement.

In this case, the remedy is not for this arbitrator to rule on the validity or nullity of the questioned provision of the CBA, but for the parties to go back to the drawing board, so to speak, and try to redraft their Collective Bargaining Agreement where they can ventilate their respective arguments for or against the granting or denial of such overtime pay for the extra hours spent in transportation to and from work place. In the alternative, Complainants can file an action for the declaration of the questioned provision as null and void from the very beginning.

But, even granting, arguendo, that the said CBA provision is indeed null and void, the Complainants cannot now be heard to complain. The present CBA, has been duly signed and ratified by them through their bargaining unit, the NAMAWU Local 101, of which complainants are all members. This puts them in *pare delicto* with the respondents, should such a defect exist. And according to law, when the fault is mutual on the part of both contracting parties, the law leaves them as they where it find them. They have no action against each other (*Planas v. Gawhok* (C.A.) 50 O.G. 3124 July 1954).

WHEREFORE, premises considered, this Voluntary Arbitrator hereby rule that this labor dispute be as it is hereby, DISMISSED for lack of merit.

### **SO ORDERED.[3]**

The petitioners presented their motion for reconsideration,[4] but the motion was denied through the second assailed resolution.[1]

Hence, this recourse, wherein the petitioners contend that respondent Manalo committed grave abuse of discretion amounting to lack or excess of jurisdiction, namely:

I. xxx IN RULING THAT HE HAS NO JURISDICTION TO DECLARE THE QUESTIONED PROVISION OF THE COLLECTIVE BARGAINING AGREEMENT AS NULL AND VOID

II. xxx IN DECLARING THAT EVEN GRANTING ARGUENDO, THAT THE SAID CBA PROVISION IS INDEED NULL AND VOID, THE PETITIONERS CANNOT BE HEARD TO COMPLAIN BECAUSE THE PRESENT CBA HAS BEEN DULY SIGNED AND RATIFIED BY THEM THROUGH THEIR UNION.

III. xxx IN NOT GRANTING PETITIONERS' CLAIM FOR OVERTIME PAY FOR THEIR UNPAID ADDITIONAL WORKING HOURS.

The challenged provision of the CBA is Sec. 1, Art. XV, to wit:

Sec. 1. The company will continue to give free bus facilities, provided, however, that the time spent for transportation and waiting period, therefore shall not be counted as time worked, it being contemplated that only actual time work shall be the basis of computing compensation of wages.

The petitioners argued before Voluntary Arbitrator Manalo that the provision was contrary to law and jurisprudence, which provided that all hours that the employee was required to give to his employer were hours worked, regardless of whether or not such hours were spent in productive labor or involved physical or mental exertion; and that the circumstances when waiting and travel times were to be considered as worked hours existed in their case.

Voluntary Arbitrator Manalo ruled, however, that it was outside his jurisdiction to declare the questioned provision of the CBA null and void because his jurisdiction was confined to the interpretation and application of the CBA.

The petitioners disagree.

They cite Sec. I of Rule XI of the Implementing Rules of the Labor Code, which states:

Sec. 1. Jurisdiction of voluntary arbitrator or panel of arbitrators. - The voluntary arbitrator or panel of arbitrators named in the collective bargaining agreement shall have the exclusive and original jurisdiction to hear and decide all grievances arising the implementation or interpretation of the collective bargaining agreement and those arising from the interpretation or enforcement of company personnel policies which remain unresolved after exhaustion of the grievance procedure.

They insist that based on the rule, Voluntary Arbitrator Manalo had the jurisdiction to declare that a provision of the CBA should not be implemented because it was null and void for being contrary to law and public policy; that a voluntary arbitrator, by the nature of his functions, acted in a quasi-judicial capacity;<sup>[6]</sup> that he thus should take cognizance where denial of substantial justice, violation of due process or illegal implementation of the law was brought to his attention; and that his power included the duty to settle controversies involving rights legally demandable and enforceable.

On the other hand, Philex avers that Voluntary Arbitrator Manalo correctly ruled on the issue of his jurisdiction because his authority as voluntary arbitrator in a labor dispute was derived from and limited by the terms of the parties' agreement, confining him to the interpretation and application of the CBA without him dispensing at all his own brand of industrial justice; and that, as such, his authority was contractual rather than judicial in nature due to his authority being conferred by the CBA, under which his duty was to settle disputes arising under the CBA and applying and interpreting the agreement.<sup>[7]</sup>

Philex argues that the proper remedy of the petitioners was to return to the negotiation table to have a second look at the CBA provision; and reminds that the re-negotiations of the economic provisions of the CBA of the parties already started in December 2002, and it should be there where the petitioners should ventilate their contention on the overtime pay.

The jurisdiction of the voluntary arbitrator and the manner of the exercise of his jurisdiction are set forth in the Labor Code as follows:

Art. 261. Jurisdiction of Voluntary Arbitrators or panel of Voluntary Arbitrators. - The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding article. Accordingly, violations of a Collective Bargaining Agreement, except those which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the Collective Bargaining Agreement. For purposes of this article, gross violations of Collective Bargaining Agreement shall mean flagrant and/or malicious refusal to comply with the economic provisions of such agreement.

The Commission, its Regional Offices and the Regional Directors of the Department of Labor and Employment shall not entertain disputes, grievances or matters under the exclusive and original jurisdiction of the Voluntary Arbitrator or panel of Voluntary Arbitrators and shall immediately dispose and refer the same to the Grievance Machinery or Voluntary Arbitration provided in the Collective Bargaining Agreement.

Art. 262. Jurisdiction over other labor disputes. - The Voluntary Arbitrator or panel of Voluntary Arbitrators,

upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks.

ART. 262-A. Procedures. - The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have the power to hold hearings, receive evidences and take whatever action is necessary to resolve the issue or issues subject of the dispute, including efforts to effect a voluntary settlement between parties.

All parties to the dispute shall be entitled to attend the arbitration proceedings. The attendance of any third party or the exclusion of any witness from the proceedings shall be determined by the Voluntary Arbitrator or panel of Voluntary Arbitrators. Hearing may be adjourned for cause or upon agreement by the parties.

Unless the parties agree otherwise, it shall be mandatory for the Voluntary Arbitrator or panel of Voluntary Arbitrators to render an award or decision within twenty (20) calendar days from the date of submission of the dispute to voluntary arbitration.

The award or decision of the Voluntary Arbitrator or panel of Voluntary Arbitrators shall contain the facts and the law on which it is based. It shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties.

Upon motion of any interested party, the Voluntary Arbitrator or panel of Voluntary Arbitrators or the Labor Arbiter in the region where the movant resides, in case of the absence or incapacity of the Voluntary Arbitrator or panel of Voluntary Arbitrators, for any reason, may issue a writ of execution requiring either the sheriff of the Commission or regular courts or any public official whom the parties may designate in the submission agreement to execute the final decision, order or award.

These provisions nowhere provide, indeed, that the voluntary arbitrator like respondent Manalo had the authority to resolve the issue presented to him vis-à-vis the assailed provision. Although he could interpret the CBA, he had no power to set any of its provisions aside. Verily, he could not rule on the validity of the provision on the ground of its being contrary to existing law and jurisprudence because his authority was limited to settling disputes that arise out of the provisions of the CBA.

Yet, the petitioners posit that the CBA, albeit constituting the law between the parties, should observe the basic precepts of a valid contract; that the provision in question was void and inexistent as being against public law and public policy because it denied them the statutory benefits due them; and that Art. 1409, Civil Code, states that a contract is inexistent and void from the beginning when its cause, object or purpose is contrary to law, morals, good customs, public order or public policy.

We cannot sustain the position of the petitioners.

It is true that the Labor Code defines hours worked thuswise:

Art. 84. Hours worked. – Hours worked shall include (a) all time during which an employee is required to be on duty or to be at a prescribed workplace, and (b) all time during which an employee is suffered or permitted to work.

Rest periods of short duration during working hours shall be counted as hours worked.

The Omnibus Rules Implementing the Labor Code supplements the foregoing definition in its Book III, Rule I, as follows:

#### HOURS OF WORK

Section 1. General Statement on Coverage. - The provisions of this Rule shall apply to all employees in all establishments and undertakings, whether operated for profit or not, except to those specifically exempted

under Section 2 hereof.

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Sec. 3. Hours worked. – The following shall be considered as compensable hours worked:

(a) All time during which an employee is required to be on duty or to be at the employer's premises or to be at a prescribed workplace; and

(b) All time during which an employee is suffered or permitted to work.

Sec. 4. Principles in Determining Hours Worked. – The following general principles shall govern in determining whether the time spent by an employee is considered hours worked for purposes of this Rule:

(a) All hours are hours worked which the employee is required to give to his employer, regardless of whether or not such hours are spent in productive labor or involve physical or mental exertion;

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Sec. 5. Waiting Time. – (a) Waiting time spent by an employee shall be considered as working time if waiting is an integral part of his work or the employee is required or engaged by the employer to wait.

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Nonetheless, we can see that the parties were absolutely aware of the law and its implementing rules when they negotiated and signed the CBA. Such awareness was precisely their reason for agreeing through the challenged provision on a definition of what would not be included within hours worked by expressly stipulating that “the time spent for transportation and waiting period xxx shall not be counted as time worked, it being contemplated that only actual time work shall be the basis of computing compensation of wages.” Under the circumstances, therefore, the provision was not inconsistent with the law and its implementing rules.

The petitioners contend that they should be compensated for their travel time; that it was Philex's choice to locate their quarters 17 kilometers away from the tailing pond where they worked, thereby forcing on them the 1-hour travel time to and from work; that they had no choice of their living quarters and the manner of their transportation; that their being required to report to the timekeeping office before starting their shifts to their PCCs and to return their PCCs to said office after their shifts should be integrated in their hours worked; and that they have long been on the road to their worksite despite the rest of the workforce being still sleeping and resting, without getting paid for the time.

We understand the difficult and seemingly unfair situation of the petitioners, but we cannot go to their succor. The CBA has interpreted for them the law and its implementing rules on what would be excluded from hours worked. They were thereby concluded by the contractual interpretation. Thus, their plaint cannot deserve our judicial correction. As Voluntary Arbitrator Manalo suggested, the plaint of the petitioners is correctible only through the negotiation table. The reformation of the situation should be mutual.

In fine, Voluntary Arbitrator Manalo, having acted correctly, did not commit any abuse of discretion, least of all grave. We point out that the term grave abuse of discretion connotes capricious and whimsical exercise of judgment as is equivalent to excess, or a lack of jurisdiction.[8] The abuse must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[9] Hence, certiorari does not lie because it is to be availed of only upon a showing, in the minimum, that the respondent tribunal or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion.[10] No such showing was made herein.

WHEREFORE, the PETITION FOR CERTIORARI is DENIED DUE COURSE and this case is DISMISSED.

**SO ORDERED.**

Villarama, Jr., and Arevalo-Zenarosa, JJ., concur.

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[1] Annexes A and B, respectively, petition.

[2] Annex C (petitioners' position paper); Annex D (Philex's position paper); Annex E (petitioners' reply to respondent's position paper); Annex F (Philex's reply and rejoinder to complainants' position paper); Annex G (petitioners' comment).

[3] Annex A, petition; rollo, pp. 25-26.

[4] Annex H, petition.

[5] Annex B, petition; rollo, p. 27.

[6] Citing *Mantrade/FMMC Division Employees and Workers Union v. Bacungan*, 144 SCRA 510.

[7] Comment; rollo, p. 119.

[8] *Republic v. Sandiganbayan*, G.R. No. 129406, March 6, 2006; 484 SCRA 119; citing *Litton Mills, Inc. v. Galleon Trader, Inc.*, 163 SCRA 489 (1988).

[9] *Duero v. Court of Appeals*, 373 SCRA 11 (2002).

[10] *Camacho v. Coresis, Jr.*, 387 SCRA 628 (2002).

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