

LEE TAY & LEE CHAY, INC., PETITIONER, VS. KAISAHAN NG MGA MANGGAGAWA SA KAHoy SA FILIPINAS, RESPONDENT.*G.R. No. L-7791. April 19, 1955*

Ponente: LABRADOR, J.

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Petitioner herein is a corporation engaged in sawing lumber under the business name "General Sawmill," while respondent is a labor union the members of which were employed in petitioner's sawmill. The business of the petitioner, which had been established since 1946, appears to have encountered financial difficulties, and by the end of 1950 its business had so deteriorated that the working days of the- laborers had been reduced to three days a week. A labor dispute also ensued between the petitioner and the union, docketed in the Court of Industrial Pelations as Case No. 373-V. Fortunately, this was settled by an agreement that the parties entered into with the court's approval on March 31, 1951. The most important terms of the agreement are as follows:

"That, in the remote event that the petitioner sells or leases its lumber business to a third party, the petitioner undertakes and obligates itself to see to it that proper provision is made in the corresponding contract of sale or, lease, as the case may be, that the vendee or lessee shall employ all the laborers involved in this case, under the same terms and conditions of employment existing at the time of the temprrary closing, if the said vendee or lessee shall also engage in the lumber business, otherwise, the petitioner agrees to pay the laborers involved in this case a gratuity equivalent to the following schedule:

- (a) Those who started working during or before the year 1946, shall receive corresponding to 9 weeks pay;
- (b) These who started working in .the year 1947, shall receive corresponding to 8 weeks pay;
- (c) Those who started working in the year 1948, shall receive corresponding to 7 weeks pay."

Sometime after the approval of the above agreement, petitioner leased the sawmill to the Alaska Lumber Company. When the latter began the operation of the sawmill in January, 1952, some 18 of the laborers of the petitioner were taken in. Not all of the former laborers were employed as other new workers were taken in. Of the 18 laborers taken in, all were satisfied with the conditions of their new employment except three, who were found tc have been forced to accept less pay than what they used to receive under petitioner. As not all of the laborers were employed in the Alaska Lumber Company sawmill compliance with the agreement between the petitioner and the union was demanded, and on January 28, 1953 the Court of Industrial Relations issued a decision ordering petitioner to pay the gratuities as per agreement, except as to those who were satisfied with their new employment under the Alaska Lumber Company. In accordance with the agreement, the gratuities were ordered to be computed by the Chief of the Examining Division, the representatives of both parties being authorized to take part in the computation. The three laborers who were forced to the new employment were allowed differential pay, as the court found that they were re-employed under different working conditions. Both parties asked for a reconsideration of the decision but the court refused to alter or modify it. On December 8, 1953, the Chief of the Examining Division submitted his report, Annex A, fixing the annuities at six labor days a week. Petitioner

moved that the gratuities should be computed at the rate of three labor days a week, while the respondent also moved that it should be at the rate of seven labor days a week, but both motions were overruled by order of the Court dated May 4, 1954. It is against this final order that the appeal is directed.

The petitioner claims on this appeal (1) that the gratuities should be computed on the basis of three labor days a week, in accordance with the first part of the agreement, as at the time of the closing of petitioner's sawmills, the laborers were working on a three-day a week basis; and (2) that the salary differentials awarded in the decision to Benigno Senelaso, Ricardo Mallari and Felix Miranda, the three laborers who were not satisfied with their new employment, should be revoked, as they had waived their rights under the agreement when they accepted lower rates of pay in the new sawmill. In answer to the above claims, the respondent union contends (a) that the appeal was made after the resolution of the court a quo had become final and executory, and (b) that as petitioner had agreed to pay a gratuity and not back pay, the computation thereof should be on the basis of six days a week, not three days as claimed.

With respect to the award of salary differentials to the three laborers, the record discloses that the said award was made in the court's order of January 28, 1953. Petitioner filed a motion for reconsideration, though not attacking this award of salary differentials directly, on February 3, 1953, and this motion for reconsideration was denied on August 23, 1953. No appeal was taken against this award until May 24, 1954, when the petition for review in this case was filed. Therefore, the award of the salary differential was already final and executory when the appeal was filed against it, as more than nine months had elapsed from the time the motion to reconsider the award was denied. The appeal with respect thereto is, therefore, dismissed.

As to the award of gratuity on the basis of six days of work a week, it is to be noted that while the granting of the gratuity was made in the court's order of January 28, 1953. Said grant did not fix the basis (number of workdays a week) at which the weekly gratuity was to be paid. The basis was made for the first time in Annex A, the report submitted by the Chief Examiner of the court a quo on December 8, 1953. A motion to reconsider the computation was filed by petitioner and this was denied in a resolution of the court a quo on May 4, 1954 and the petition in this Court was presented before us on May 24, 1954. It does not appear when the order appealed from was served on the petitioner. As no claim is made that the petition for review was filed beyond the period prescribed by the Rules, we must assume that it was filed on time. The appeal on this question must, therefore, be decided on its merits.

We find much merit in the claim of the respondent union that the gratuity provided for in the second part of the agreement should be computed on the basis of six labor days a week, and not on the basis of three days only as claimed by the petitioner, because the agreement provided for gratuity and not for backpay. Backpay might justify a basis fixed on the number of actual labor days a week in force at the time of the closing of the sawmill, but not gratuity. A week of labor is to be understood to embrace the ordinary number of six labor days, in the absence of an express agreement to the contrary. As there is no such express agreement in the contract and an intention to mean three labor days a week cannot otherwise be inferred from the terms of the agreement, we must assume that the parties meant a week of six labor days instead of three only.

There is another reason why petitioner's claim of a three-day a week basis for the gratuity can not be sustained. The provision for three labor days a week is I found in the first part of the contract, which first part is applicable if all the laborers of the sawmill are to be employed by the vendee or lessee of the business. This condition, where all of the employees of the sawmill were to be employed also by the vendee or the lessee, did not take place because only 18 of the old employees were taken in, other new workers having been employed. The portion of the agreement that was applicable, therefore, is the second, which is to apply in all other cases. The second portion of the agreement is preceded by the term "otherwise." As a matter of fact, demand for the payment of gratuities was

made because the lessee of the sawmill did not employ all the original employees or laborers of the petitioner. In this second portion of the agreement, there is absolutely no mention even indirectly, of a week as constituting only three days of labor. We, therefore, find that the basis of the computation of the weekly annuity must be six days, and not three days as contended by the petitioner.

For all the foregoing, the petition should be, as it hereby is, denied, with costs against petitioner.

Pablo, Acting C.J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, and Reyes, J.B.L., JJ., concur.

Petition denied.

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