

**THE CHARTERED BANK EMPLOYEES ASSOCIATION, PETITIONER,
VS. HON. BLAS F. OPLE, IN HIS CAPACITY AS THE INCUMBENT
SECRETARY OF LABOR, AND THE CHARTERED BANK,
RESPONDENTS.**

G.R. No. L-44717. August 28, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for certiorari seeking to annul the decision of the respondent Secretary, now Minister of Labor which denied the petitioner's claim for holiday pay and its claim for premium and overtime pay differentials. The petitioner claims that the respondent Minister of Labor acted contrary to law and jurisprudence and with grave abuse of discretion in promulgating Sec. 2, Rule IV, Book III of the Integrated Rules and in issuing Policy Instruction No. 9, both referring to holidays with pay.

On May 20, 1975, the Chartered Bank Employees Association, in representation of its monthly paid employees/members, instituted a complaint with the Regional Office No. IV, Department of Labor, now Ministry of Labor and Employment (MOLE) against private respondent Chartered Bank, for the payment of ten (10) unworked legal holidays, as well as for premium and overtime differentials for worked legal holidays from November 1, 1974.

The memorandum for the respondents summarizes the admitted and/or undisputed facts as follows:

"1. The work force of respondent bank consists of 149 regular employees, all of whom are paid by the month;

"2. Under their existing collective bargaining agreement, (Art. VII thereof) said monthly paid employees are paid for overtime work as follows:

"Section 1. — The basic work week for all employees excepting security guards who by virtue of the nature of their work are required to be at their posts for 365 days per year, shall be forty (40) hours based on five (5) eight (8) hours days, Monday to Friday.

"Section 2. — Time and a quarter hourly rate shall be paid for authorized work performed in excess of eight (8) hours from Monday through Friday and for any hour of work performed on Saturdays subject to Section 5 hereof.

"Section 3. — Time and a half hourly rate shall be paid for authorized work performed on Sundays, legal and special holidays.

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"Section 5. — The provisions of Section 1 above notwithstanding the BANK may revert to the six (6) days work week, to include Saturday for a four (4) hour day, in the event the Central Bank should require commercial banks to open for business on Saturday.'

"3. In computing overtime pay and premium pay for work done during regular holidays, the divisor used in arriving at the daily rate of pay is 251 days although formerly the divisor used was 303 days and this was when the respondent bank was still operating on a 6-day work week basis. However, for purposes of computing deductions corresponding to absences without pay the divisor used is 365 days.

"4. All regular monthly paid employees of respondent bank are receiving salaries way beyond the statutory or minimum rates and are among the highest paid employees in the banking industry.

"5. The salaries of respondent bank's monthly paid employees suffer no deduction for holidays occurring within the month."

On the bases of the foregoing facts, both the arbitrator and the National Labor Relations Commission (NLRC) ruled in favor of the petitioners ordering the respondent bank to pay its monthly paid employees, holiday pay for the ten (10) legal holidays effective November 1, 1974 and to pay premium or overtime pay differentials to all employees who rendered work during said legal holidays. On appeal, the Minister of Labor set aside the decision of the NLRC and dismissed the petitioner's claim for lack of merit basing its decision on Section 2, Rule IV, Book III of the Integrated Rules and Policy Instruction No. 9, which respectively provide:

"Sec. 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."

POLICY INSTRUCTION NO. 9

TO: All Regional Directors

SUBJECT: PAID LEGAL HOLIDAYS

"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."

The issues are presented in the form of the following assignments of errors:

First Error

Whether or not the Secretary of Labor erred and acted contrary to law in promulgating Sec. 2, Rule IV, Book

III of the Integrated Rules and Policy Instruction No. 9.

Second Error

Whether or not the respondent Secretary of Labor abused his discretion and acted contrary to law in applying Sec. 2, Rule IV of the Integrated Rules and Policy Instruction No. 9 abovestated to private respondent's monthly-paid employees.

Third Error

Whether or not the respondent Secretary of Labor, in not giving due credence to the respondent bank's practice of paying its employees base pay of 100% and premium pay of 50% for work done during legal holidays, acted contrary to law and abused his discretion in denying the claim of petitioners for unworked holidays and premium and overtime pay differentials for worked holidays.

The petitioner contends that the respondent Minister of Labor gravely abused his discretion in promulgating Section 2, Rule IV, Book III of the Integrated Rules and Policy Instruction No. 9 as guidelines for the implementation of Articles 82 and 94 of the Labor Code and in applying said guidelines to this case. It maintains that while it is true that the respondent Minister has the authority in the performance of his duty to promulgate rules and regulations to implement, construe and clarify the Labor Code, such power is limited by provisions of the statute sought to be implemented, construed or clarified. According to the petitioner, the so-called "guidelines" promulgated by the respondent Minister totally contravened and violated the Code by excluding the employees/members of the petitioner from the benefits of the holiday pay, when the Code itself did not provide for their exclusion and notwithstanding the Code's clear and concise phraseology defining those employees who are covered and those who are excluded from the benefits of holiday pay.

On the other hand, the private respondent contends that the questioned guidelines did not deprive the petitioners members of the benefits of holiday pay but merely classified those monthly paid employees whose monthly salary already includes holiday pay and those whose do not, and that the guidelines did not deprive the employees of holiday pay. It states that the question to be clarified is whether or not the monthly salaries of the petitioner's members already includes holiday pay. Thus, the guidelines were promulgated to avoid confusion or misconstruction in the application of Articles 82 and 94 of the Labor Code but not to violate them. Respondent explains that the rationale behind the promulgation of the questioned guidelines is to benefit the daily paid workers who, unlike monthly-paid employees, suffer deductions in their salaries for not working on holidays. Hence, the Holiday Pay Law was enacted precisely to countervail the disparity between daily-paid workers and monthly-paid employees.

The decision in *Insular Bank of Asia and America Employees' Union (IBAAEU) v. Inciong* (132 SCRA 663) resolved a similar issue. Significantly, the petitioner in that case was also a union of bank employees. We ruled that Section 2, Rule IV, Book III of the Integrated Rules and Policy Instruction No. 9, are contrary to the provisions of the Labor Code and, therefore, invalid. This Court stated:

"It is elementary in the rules of statutory construction that when the language of the law is clear and unequivocal the law must be taken to mean exactly what it says. In the case at bar, the provisions of the Labor Code on the entitlement to the benefits of holiday pay are clear and explicit — it provides for both the coverage of and exclusion from the benefit. In Policy Instruction No. 9, the then Secretary of Labor went as far as to categorically state that the benefit is principally intended for daily paid employees, when the law clearly states that every worker shall be paid their regular holiday pay. This is flagrant violation of the mandatory directive of Article 4 of the Labor Code, which states that 'All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor.' Moreover, it shall always be presumed that the legislature intended to enact a valid and permanent statute

which would have the most beneficial effect that its language permits (*Orlosky v. Haskell*, 155 A. 112.)

"Obviously, the Secretary (Minister) of Labor had exceeded his statutory authority granted by Article 5 of the Labor Code authorizing him to promulgate the necessary implementing rules and regulations."

We further ruled:

"While it is true that the contemporaneous construction placed upon a statute by executive officers whose duty is to enforce it should be given great weight by the courts, still if such construction is so erroneous, as in the instant case, the same must be declared as null and void. It is the role of the Judiciary to refine and, when necessary, correct constitutional (and/or statutory) interpretation, in the context of the interactions of the three branches of the government, almost always in situations where some agency of the State has engaged in action that stems ultimately from some legitimate area of governmental power (*The Supreme Court in Modern Role*, C.B. Swisher, 1958, p. 36).

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"In view of the foregoing, Section 2, Rule IV, Book III of the Rules to implement the Labor Code and Policy Instruction No. 9 issued by the then Secretary of Labor must be declared null and void. Accordingly, public respondent Deputy Minister of Labor Amado G. Inciong had no basis at all to deny the members of petitioner union their regular holiday pay as directed by the Labor Code."

Since the private respondent premises its action on the invalidated rule and policy instruction, it is clear that the employees belonging to the petitioner association are entitled to the payment of ten (10) legal holidays under Articles 82 and 94 of the Labor Code, aside from their monthly salary. They are not among those excluded by law from the benefits of such holiday pay.

Presidential Decree No. 850 states who are excluded from the holiday provisions of that law. It states:

"ART. 82. Coverage. — The provision of this Title shall apply to employees in all establishments and undertakings, whether for profit or not, but not to government employees, managerial employees, field personnel, members of the family of the employer who are dependent on him for support, domestic helpers, persons in the personal service of another, and workers who are paid by results as determined by the Secretary of Labor in appropriate regulations." (Underlining supplied).

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*.

It is argued that even without the presumption found in the rules and in the policy instruction, the company practice indicates that the monthly salaries of the employees are so computed as to include the holiday pay provided by law. The petitioner contends otherwise.

One strong argument in favor of the petitioner's stand is the fact that the Chartered Bank, in computing overtime compensation for its employees, employs a "divisor" of 251 days. The 251 working days divisor is the result of subtracting all Saturdays, Sundays, and the ten (10) legal holidays from the total number of calendar days in a year. If the employees are already paid for all non-working days, the divisor should be 365 and not 251.

The situation is muddled somewhat by the fact that, in computing the employees' absences from work, the respondent bank uses 365 as divisor. Any slight doubts, however, must be resolved in favor of the workers. This

is in keeping with the constitutional mandate of promoting social justice and affording protection to labor (Sections 6 and 9, Article II, Constitution). The Labor Code, as amended, itself provides:

"ART. 4. Construction in favor of labor. — All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor."

Any remaining doubts which may arise from the conflicting or different divisors used in the computation of overtime pay and employees' absences are resolved by the manner in which work actually rendered on holidays is paid. Thus, whenever monthly paid employees work on a holiday, they are given an additional 100% base pay on top of a premium pay of 50%. If the employees' monthly pay already includes their salaries for holidays, they should be paid only premium pay but not both base pay and premium pay.

The contention of the respondent that 100% base pay and 50% premium pay for work actually rendered on holidays is given in addition to monthly salaries only because the collective bargaining agreement so provides is itself an argument in favor of the petitioner's stand. It shows that the Collective Bargaining Agreement already contemplated a divisor of 251 days for holiday pay computations before the questioned presumption in the Integrated Rules and the Policy Instruction was formulated. There is furthermore a similarity between overtime pay, which is computed on the basis of 251 working days a year, and holiday pay, which should be similarly treated notwithstanding the public respondents' issuances. In both cases — overtime work and holiday work — the employee works when he is supposed to be resting. In the absence of an express provision of the CBA or the law to the contrary, the computations should be similarly handled.

We are not unmindful of the fact that the respondent's employees are among the highest paid in the industry. It is not the intent of this Court to impose any undue burdens on an employer which is already doing its best for its personnel. However, we have to resolve the labor dispute in the light of the parties' own collective bargaining agreement and the benefits given by law to all workers. When the law provides benefits for "employees in all establishments and undertakings, whether for profit or not" and lists specifically the employees not entitled to those benefits, the administrative agency implementing that law cannot exclude certain employees from its coverage simply because they are paid by the month or because they are already highly paid. The remedy lies in a clear redrafting of the collective bargaining agreement with a statement that monthly pay already includes holiday pay or an amendment of the law to that effect but not an administrative rule or a policy instruction.

WHEREFORE, the September 7, 1976 order of the public respondent is hereby REVERSED and SET ASIDE. The March 24, 1976 decision of the National Labor Relations Commission which affirmed the October 30, 1975 resolution of the Labor Arbiter but deleted interest payments is REINSTATED.

SO ORDERED.

Makasiar, C.J., Concepcion, Jr., Melencio-Herrera, Plana, Escolin, Relova, De La Fuente, Cuevas, Alampay, and Patajo, JJ., concur.

Teehankee, J., in the result.

Abad Santos, J., on official leave.

Aquino, J., no part.

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