

MAC-MAR SHELIS TAXI AND/OR TERESITA S. DE VERA, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND ARTEMIO I. BITANIO, RESPONDENTS

SP No. 106024, July 29, 2010

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Court of Appeals

Filed pursuant to Rule 65 of the 1997 Revised Rules of Civil Procedure, the petition for certiorari[1] at bench seeks the modification of the Decision[2] dated 25 April 2008 of public respondent National Labor Relations Commission (NLRC) in NLRC CA No. 050940-06 (5), the decretal portion of which reads:

"WHEREFORE, premises considered, the decision of the labor arbiter is hereby AFFIRMED with MODIFICATION. Respondent is hereby ordered to pay complainant his service incentive leave pay as well his 13th monthly pay based on the average monthly income subject to the three year prescriptive period.

Other claims are hereby DISMISSED for lack of basis.

SO ORDERED."

The Facts

Private respondent Artemio I. Bitanio started driving for MAC-MAR Sheliss Taxi (Mac-Mar) sometime in September 1997. As a taxi-driver, private respondent took out his assigned taxi unit from six o'clock in the morning to six o'clock the next morning, three (3) times a week. Private respondent paid for the fuel expenses of the taxi which he drove and at the end of each time that he drove the unit, he was required to give to the owner/operator P700.00 as "boundary". Whatever private respondent earned in excess of the said boundary were his to keep. Mac-Mar exercised no control or supervision over his routes, passengers or hours of actual work just as long as the "boundary" fee was paid at the end of each trip.

On December 6, 2003, private respondent claims that the taxi unit he was driving experienced mechanical problem necessitating his return to petitioner's garage for service. However, since he arrived at the garage when the mechanic was already preparing to go home, the service for the taxi was rescheduled for the following day. Upon returning to the garage the next day, December 8, 2003, private respondent was allegedly prohibited by Mac-Mar operator, Teresita de Vera, from taking out the taxi until payment of the amount of P1,750.00, representing 1/2 of his shift boundary and damages. Private respondent refused to pay and was unable to take out Mac-Mar's taxi. After sometime, he filed a complaint[3] for illegal dismissal, non-payment of 13th month pay, service incentive leave, illegal deduction as well as moral and exemplary damages against Mac-Mar and Teresita de Vera.

On the basis of the position papers and other pleadings submitted by the parties, Labor Arbiter Cresencio G. Ramos, Jr. rendered his decision[4] dated May 29, 2006 dismissing the complaint for lack of legal and factual merit.

Aggrieved, private respondent appealed the decision before public respondent NLRC which affirmed the labor

arbitrator's dismissal of the complaint for illegal dismissal with the modification ordering Mac-Mar to pay complainant his 13th month pay and service incentive leave pay subject to the three (3) year prescriptive period rule.[5]

Mac-Mar seasonably filed a motion for reconsideration[6] of the NLRC decision relative only to the issue of the payment of the 13th month pay and service incentive leave pay in favor of private respondent. No motion for reconsideration was filed by private respondent.

The Issue

Petitioner is now before this Court, assailing the NLRC's decision on the sole issue of:

WHETHER THE NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING PRIVATE RESPONDENT, ARTEMIO I. BITANIO TO BE ENTITLED TO SERVICE INCENTIVE LEAVE PAY AS WELL AS 13TH MONTH PAY.

The Court's Ruling

We find petition impressed with merit.

There is no dispute regarding the fact that private respondent worked as a taxi driver for herein petitioner, Mac-Mar, on a "boundary system" basis. The boundary system is a scheme by an owner/operator engaged in transporting passengers as a common carrier to primarily govern the compensation of the driver, that is, the latter's daily earning remitted to the owner/ operator less the excess of the boundary which represents the driver's compensation.[7]

Section 2, paragraph (d) of the Revised Guidelines on the Implementation of the 13th Month Pay Law (P.D. No. 851) enumerates the employers who are not covered by said law, viz:

" * * * * *

d. Employers of those who are paid on purely commission, boundary, or task basis, and those who are paid a fixed amount for performing specific work, irrespective of the time consumed, in the performance thereof, except where the workers are paid on piece-rate basis in which case the employer shall grant the required 13th month pay to such workers."

It is a fundamental rule in statutory construction that when the law speaks in clear and categorical language, there is no room for interpretation, vacillation or equivocation-there is only room for application.[8] Applying the aforementioned guidelines, private respondent, being a taxi driver who was paid on a boundary system basis, is not entitled to 13th month pay.

As to the award of service incentive leave pay, it must be stressed that private respondent worked as a taxi driver for petitioner under a boundary system. Accordingly, whenever he takes out his assigned taxi unit from the operator's garage, which was from 6 a.m. to 6 a.m. the next day, he pays the operator the boundary fee of P700.00 at the end of each shift and keeps whatever he earns in excess of the said amount, inclusive of the costs of fuel. For the 24 hour period that private respondent takes out his assigned taxi unit, Mac-Mar exercises no control as to the actual time he spends plying the unit as well as the place/s that he may go to or the passenger/s that he may take. As previously stated, Mac-Mar only requires private respondent to pay the "boundary" at the end of each shift aside from the obvious obligation to return the unit in the same condition that it was taken out.

In this regard, Article 82 of the Labor Code lists the employees or personnel who are not entitled to the benefits under the Title on Working Conditions and Rest Periods. Among the excluded groups are field personnel which refer to non-agricultural employees who regularly perform their duties away from the principal place of business

or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty.

The requirement that "actual hours of work in the field cannot be determined with reasonable certainty" must be read in conjunction with Rule IV, Book III of the Implementing Rules which in part states:

"Rule IV Holidays with Pay

Section 1. Coverage - This rule shall apply to all employees except:

" * * * * *

(e) Field personnel and other employees whose time and performance is unsupervised by the employer****"

In *Far East Agricultural v. Lebatique*,^[9] the Supreme Court emphasized that the definition of a "field personnel" is not merely concerned with the location where the employee regularly performs his duties but also with the fact that the employee's performance is unsupervised by the employer. Said the High Court:

"We held that field personnel are those who regularly perform their duties away from the principal place of business of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty. Thus, in order to determine whether an employee is a field employee, it is also necessary to ascertain if actual hours of work in the field can be determined with reasonable certainty by the employer. In so doing, an inquiry must be made as to whether or not the employee's time and performance are constantly supervised by the employer."

Applying the foregoing ruling to the case at bar, there is no question that a taxi driver falls squarely within the purview of what is considered under the law as a field personnel. As previously stated, private respondent's actual hours of work cannot be ascertained with reasonable certainty. The actual time that private respondent spends plying his taxi and picking up passengers is left entirely to his discretion. If he chooses to drive his taxi for a period of only two (2) hours and thereafter decides to devote the rest of his time to other pursuits and interests, he may do so as long as he pays petitioner the boundary upon return of the taxi unit. He is not required to be at specific places at specific times, except for the time when he is supposed to return the unit to the garage at 6 a.m. of the next day. He is in no way supervised as to the places he may choose to go to pick up passengers as well as the passengers he may choose to ferry. In this regard, Section 1 of Rule V, Book III of the Omnibus Rules Implementing the Labor Code enumerates the employees ineligible to incentive leave pay, viz:

"RULE V

Service Incentive leave

SECTION 1. Coverage. — This rule shall apply to all employees except:

" * * * * *

(d) Field personnel and other employees whose performance is unsupervised by the employer including those who are engaged on task or contract basis, purely commission basis, or those who are paid a fixed amount for performing work irrespective of the time consumed in the performance thereof;"

In the case of *R & E Transport Inc., v. Latag*,^[10] where the respondent is similarly a taxi driver who was paid under the "boundary" system, it was categorically ruled that:

**** Since Pedro was paid according to the "boundary" system, he is not entitled to the 13th month and the service incentive pay; hence, his retirement pay should be computed on the sole basis of his salary.

It is accepted that taxi drivers do not receive fixed wages, but retain only those sums in excess of the

"boundary" or fee they pay to the owners or operators of their vehicles."

In line with the foregoing ruling, taxi drivers are therefore clearly considered ineligible to 13th month pay as well as to received leave pay.

The case of Auto Bus Transport systems, Inc., v. Bautista,[11] which private respondent invokes in support of its claim for entitlement to 13th month pay and service incentive leave pay, is not on all fours with the case at bench. The drivers involved in Auto Bus are bus drivers who are paid on commission basis and not taxi drivers who, like private respondent, are paid on a "boundary" system. Furthermore, it was held therein that"

"It is of judicial notice that along the routes that are plied by these bus companies, there are its inspectors assigned at strategic places who board the bus and inspect the passengers, the punched tickets, and the conductor's reports. There is also the mandatory once-a-week car barn or shop day, where the bus is regularly checked as to its mechanical, electrical, and hydraulic aspects, whether or not there are problems thereon as reported by the driver and/or conductor. They too, must be at specific place as [sic] specified time, as they generally observe prompt departure and arrival from their point of origin to their point of destination. In each and every depot, there is always the Dispatcher whose function is precisely to see to it that the bus and its crew leave the premises at specific times and arrive at the estimated proper time. These, are present in the case at bar. The driver, the complainant herein, was therefore under constant supervision while in the performance of this work. He cannot be considered a field personnel."

Verily, the Auto Bus case which involves bus drivers, who are subject to constant supervision by the bus operators/owners, is not applicable to this case which concerns a taxi driver. Unlike bus drivers, taxi drivers, like private respondent, do not ply regular routes assigned by their employers. Private respondent can go anywhere in Metro Manila dependent on the place/s where a passenger wants to go. Petitioner does not require private respondent to be at a specific place at a specific time except for the purpose of returning the taxi unit the following day, nor does it exercise supervision as to private respondent's approach to picking up passengers or the places he may choose to transport them. While bus drivers are not considered as field personnel, the same cannot be said of taxi drivers whose hours of work cannot actually be determined with certainty and not subject to constant supervision by their employers.

WHEREFORE, premises considered, the petition is granted. The assailed Decision dated 25 April 2008 of the NLRC in NLRC CA No. 050940-06 (5) is modified to delete the award of 13th month pay and service incentive leave pay in favor of private respondent. The rest is affirmed.

SO ORDERED.

Villon and Lazaro-Javier, JJ., concur.

[1] Rollo, pp. 2-11.

[2] Id., pp. 23-29.

[3] id., p. 36.

[4] id., pp. 12-122.

[5] Supra, note 2.

[6] Rollo, pp. 112-122.

[7] Villamaria, Jr. v. Court of Appeals, 487 SCRA 571 (2006).

[8] *Lakas Tulungan Multi-purpose Cooperative v. Pascua*, 141537, April 19 (2006)

[9] 515 SCRA 491 (2007)

[10] 422 SCRA 698 (2004)

[11] 458 SCRA 578 (2005)

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