

DM CONSUNJI, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, LEOPOLDO API, DONATO PERTE, JUAN OCLARIT, JOSELITO ODVINA, ESMERALDO BULASA, ROMEO OVALDEZ, ROGER HECHANO...

Ponente: BARRIOS, J.

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BARRIOS, J.:

Alleging that these were issued with grave abuse of discretion, the petitioner DM Consunji, Inc. (or hereafter DMCI) pleads that the Decision dated October 30, 2002 and Resolution dated December 27, 2002 rendered by the respondent National Labor Relations Commission (or NLRC) in suits for illegal dismissal and non-payment of benefits, be set aside.

DMCI is a corporation engaged principally in the construction business. On different dates, DMCI hired the respondents Leopoldo Api, Donato Perte, Juan Oclarit, Joselito Odvina, Esmerraldo Bulasa, Romeo Valdez, Roger Hechanova, Gilberto Nerio, Salvador Entico, Ramon Pinca, Rolando Sermino, Teodoro Rosal, Gorgonio Balderama, Jupiter Cestona, Dominador Soria, Ismael Arquero, Rosendo Suase, Ely Gidayao, Aniceto Costosa, Melvin Dataguit, Conrado Lamban, Wilfredo Rabot, Benito Morales, Mario Diesta, Ernesto Escobido, Ernesto Cruzado, Romeo Coral, Silvestre Calisterio, Edgardo Gutierrez, Tito Panis, Eufrocio Hingpit, Jienes Surio, Dominador Lizondo, Lenardo Esmabe, Apolinario Bon, Ortincio Balbino, Pedro Palma, Bruno Tubalde, Rolando Magalong, Juanito Carurucan, Ricardo Rafols, Jesus Soliva, Ramon Famor, Melvin Dalaguit, Roswell Enario, Richard Celar, Guellas Salvador, Juan Abalajen, Rudy Bering, Victor Sarno, Virgilio Lopez, Santiago Dugenio, Dominador Juan, Renato Taganap, Dionelo Bantayao, Jesus Garcia, Honorio Marquez and Rodolfo Ajero (or the respondents unless individualized by their surnames) to work for and in its various projects.

In 1997, these respondents were directed to report to DMCI-LAING Construction Inc. (DMCI-LAING). They also were made to sign new employment contracts. Claiming that they are regular employees of DMCI and their abrupt transfer to DMCI-LAING violates their security of tenure, eight (8) complaints for illegal dismissal and non-payment of benefits were filed by the respondents against DMCI and/or David Consunji. These cases were consolidated before Labor Arbiter Romeo L. Go.

In its traverse, DMCI alleged that respondents were project employees whose period of employment already ended due to the expiration of the period and/or completion of the projects for which they were employed. The respondents cannot thus claim that DMCI illegally dismissed them.

On November 26, 1999 the Labor Arbiter rendered a Decision decreeing that:

WHEREFORE, judgment is hereby rendered DISMISSING the instant case for lack of merit.

SO ORDERED. (p. 659, rollo)

With the exception of Serminio, Arquero, Costosa, Dataguit, Lamban, Rabot, Diesta, Surio, Lizondo, Bon, Ortincio, Rafols, Soliva, Famor, Dalanguit, Celar, Sarno and Dugenio, the rest appealed to the NLRC which on

October 30, 2002 promulgated its assailed Decision disposing that:

WHEREFORE, premises considered, judgment is hereby rendered MODIFYING the decision appealed from by granting service incentive leave pay and 13th month pay for maximum of three (3) years to the following complainants.

(Please see attached sheet which is part of the Decision)

SO ORDERED. (p. 32, rollo).

A Motion for its partial reconsideration was filed by DMCI but was denied in the Resolution of December 27, 2002.

Hence the filing of this petition for certiorari where DMCI presents this issue for consideration:

WHETHER OR NOT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN AWARDING SERVICE INCENTIVE LEAVE AND 13[TH] MONTH PAY TO PRIVATE RESPONDENTS DESPITE LACK OF ANY LEGAL BASIS. (p. 12, rollo)

Indeed, the respondents were not given their service incentive leave pay and 13[th] month pay while they were under the employ of DMCI. DMCI nonetheless posits that respondents, as project employees, fall under the category of contract employees who are excluded from receiving benefits such as service incentive leave and 13th month pay.

Article 95 of the Labor Code provides that (E)very employee who has rendered at least one (1) year of service shall be entitled to a yearly service incentive leave pay of five (5) days with pay. In turn, Rule V Book III of the Implementing Rules and Regulations provides:

Section 1. Coverage. – This Rule shall apply to all employees except:

x x x x x x x x

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.

x x x x x x x x

A careful perusal of said provision of law will result in the conclusion that the grant of service incentive leave has been delimited by the Implementing Rules and Regulations of the Labor Code as to those employees not explicitly excluded by Section 1 of Rule V. According to the Implementing Rules, Service Incentive Leave shall not apply to employees classified as 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. But the phrase those who are engaged on task or contract basis, purely commission basis must not be understood as a separate classification of employees to which service incentive leave pay shall not be granted. Said phrase should be related with “field personnel”, applying the rule on ejusdem generis that general and unlimited terms are restrained and limited by the particular terms that they follow. Hence, employees engaged on task and contract basis or paid purely on commission basis are not automatically exempted from the grant of service incentive, unless, they fall under the classification of field personnel, who regularly perform their duties away from their principal place of business and whose actual works in the field cannot be determined with reasonable certainty (*Auto Bus Transport System, Inc. vs. Bautista, G. R. No. 156367, May 16, 2005*). There is thus no basis for DMCI to claim that respondents are not entitled to the grant of service incentive leave just because they were engaged on contract basis.

The same is true with respect to 13[th] month pay. The employer of project employees is not one of those exempted from paying 13[th] month pay under the Revised Guidelines on the Implementation of 13[th] month pay. . . This statutory benefit is automatically vested in the employee who has worked for at least one month during the calendar year (Archilles Manufacturing Corporation vs. National Labor Relations Commission, 244 SCRA 750).

DMCI cannot therefore elide the payment of service incentive leave pay and 13[th] month pay to the respondents. Said benefits are mandated by law and should be given to them as a matter of right. The awards made by NLRC in favor of the respondents cannot thus be considered whimsical or capricious.

DMCI's claim that the NLRC abused its discretion in including respondents Entico, Gutierrez, Panis, Lopez, Juan, Garcia, Marquez and Gorgonio Valdez in the NLRC's award has to be rejected too. As found by the Labor Arbiter, Gutierrez, Panis, Lopez, Juan, Garcia and Marquez duly filed their complaints and position papers, hence the awards in their favor was in order (vide: Labor Arbiter's Decision, pp. 652-659, rollo). On the other hand, Gorgonio Valdez is not included in the NLRC's award, contrary to what DMCI wants to portray (vide: p. 34, rollo).

In any event, the technicalities of law and procedure and the rules obtaining in the courts of law are not binding in the proceedings before the NLRC, and so in deciding labor cases the NLRC may use every and reasonable means to serve the demands of substantial justice. Accordingly, the NLRC cannot be considered whimsical in including Entico, Gutierrez, Panis, Lopez, Juan, Garcia and Marquez in the award.

Basic is the rule that findings of fact of administrative and quasi-judicial bodies, which have acquired expertise because of their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality. In this case, the finding and disquisition of the NLRC is not only supported by substantial evidence but is based on decisional law, and therefore entitled to high degree of respect.

WHEREFORE, the instant petition is DENIED DUE COURSE and DISMISSED.

SO ORDERED.

Guariña, III, and Tagle, JJ., concur.

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