

NATIONAL WATERWORKS & SEWERAGE AUTHORITY, PETITIONER, VS. NWSA CONSOLIDATED UNIONS, ET AL., RESPONDENTS.

G. R. No. L-18938. August 31, 1964

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Petitioner National Waterworks & Sewerage Authority is a government-owned and controlled corporation created under Republic Act No. 1383, while respondent NWSA Consolidated Unions are various labor organizations composed of laborers and employees of the NAWASA. The other respondents are intervenors Jesus Centeno, et al., hereinafter referred to as intervenors.

Acting on a certification of the President of the Philippines, the Court of Industrial Relations conducted a hearing on December 5, 1957 on the controversy then existing between petitioner and respondent unions which the latter embodied in a "Manifesto" dated December 5, 1957, namely: implementation of the 40-Hour Week Law (Republic Act No. 1880) ; alleged violations of the collective bargaining agreement dated December 28, 1956 concerning "Mistress pay"; minimum wage of P5.25; promotional appointments and filling of vacancies of newly created positions; additional compensation for night work; wage increases to some laborers and employees; and strike duration pay. In addition, respondent unions raised the issue of whether the 25 % additional compensation for Sunday work should be included in computing the daily wage and whether, in determining the daily wage of a monthly salaried employee, the salary should be divided by 80 days.

On December 13, 1957, petitioner and respondent unions, conformably to a suggestion of the Court of Industrial Relations, submitted a joint stipulation of facts on the issues concerning the 40-Hour Week Law, "distress pay," minimum wage of P5.25, filling of vacancies, night compensation, and salary adjustments, reserving the right to present evidence on matters not covered therein. On December 4, 1957, respondent intervenors filed a petition in intervention on the issue of additional compensation for night work. Later, however, they amended their petition by including a new demand for overtime pay in favor of Jesus Centeno, Cesar Cabrera, Feliciano Duiguan, Cecilio Remotigue, and other employees receiving P4,200.00 per annum or more.

On February 5, 1958, petitioner filed a motion to dismiss the claim for overtime pay alleging that respondent Court of Industrial Relations was without jurisdiction to pass upon the same because, as mere intervenors, the latter cannot raise new issues not litigated in the principal case, the same not being the *lis mota* therein involved. To this motion the intervenors filed an opposition. Thereafter, respondent court issued an order allowing the issue to be litigated. Petitioner's motion to reconsider having been denied, it filed its answer to the petition for intervention. Finally, on January 16, 1961, respondent court rendered its decision stating substantially as follows:

The NAWASA is an agency not performing governmental functions and, therefore, is liable to pay additional compensation for work on Sundays and legal holidays conformably to Commonwealth Act No. 441, known as the Eight-Hour Labor Law, even if said days should be within the staggered five-work days authorized by the

President; the intervenors do not fall within the category of "managerial employees" as contemplated in Republic Act 2377 and so are not exempt from the coverage of the Eight-Hour Labor Law; even those intervenors attached to the General Auditing Office and the Bureau of Public Works come within the purview of Commonwealth Act No. 444; the computation followed by NAWASA in computing overtime compensation is contrary to Commonwealth Act 444; the undertime of a worker should not be set-off against the worker in determining whether the latter has rendered service in excess of eight hours for that day; in computing the daily wages of those employed on daily basis, the additional 25 % compensation for Sunday work should be included; the computation used by the NAWASA for monthly salaried employees, to wit, dividing the monthly basic pay by 30 is erroneous; the minimum wage awarded by respondent court wayback on November 25, 1950 in Case No. 359-V entitled MWD Workers Union vs. Metropolitan Water District, applies even to those who were employed long after the promulgation of the award and even if the workers are hired only as temporary, emergency and casual workers for a definite period and for a particular project; the authority granted to NAWASA by the President to stagger the working days of its workers should be limited exclusively to those specified in the authorization and should not be extended to others who are not therein specified; and under the collective bargaining agreement entered into between the NAWASA and respondent unions on December 28, 1956, as well as under Resolution No. 29, series of 1957 of the Grievance Committee, even those who work outside the sewerage chambers should be paid 25% additional compensation as "distress pay."

Its motion for reconsideration having been denied, NAWASA filed the present petition for review raising merely questions of law. Succinctly, these questions are:

- Whether NAWASA is performing governmental functions and, therefore, essentially a service agency of the government;
- Whether NAWASA is a public utility and therefore, exempted from paying additional compensation for work on Sundays and legal holidays;
- Whether the intervenors are "managerial employees" within the meaning of Republic Act 2377 and, therefore, not entitled to the benefits of Commonwealth Act No. 444, as amended;
- Whether respondent Court of Industrial Relations has jurisdiction to adjudicate overtime pay considering that this issue was not among the demands of respondent union in the principal case but was merely dragged into the case by the intervenors;
- Whether those attached to the General Auditing Office and the Bureau of Public Works come within the purview of Commonwealth Act No. 444, as amended;
- In determining whether one has worked in excess of eight hours, whether the undertime for that day should be set-off;
- In computing the daily wage, whether the additional compensation for Sunday work should be included;
- What is the correct method to determine the equivalent daily wage of a monthly-salaried employee, especially in a firm which is a public utility?;
- Considering that the payment of night compensation is not by virtue of any statutory provision but emanates only from an award of respondent Court of Industrial Relations, whether the same can be made retroactive and cover a period prior to the promulgation of the award;
- Whether the minimum wage fixed and awarded by respondent Court of Industrial Relations in another case (MWD Workers Union vs. CIR Case No. 359-V) applies to those employed long after the promulgation thereof,

whether hired as temporary, emergency and casual workers for a definite period and for a specific project.

- How should the collective bargaining agreement of December 28, 1956 and Resolution No. 29, series of 1057 of the Grievance Committee be interpreted and construed insofar as the stipulations therein contained relative to "distress pay" is concerned?; and

- Whether, under the first indorsement of the President of the Philippines dated August 12, 1957, which authorizes herein petitioner to stagger the working- days of its employees and laborers, those whose services are indispensably continuous throughout the year may be staggered in the same manner as the pump, valve, filter and chlorine operators, guards, watchman, medical services, and those attached to the recreational facilities.

DISCUSSION OF THE ISSUES

- Is NAWASA an agency that performs governmental functions and, therefore, essentially a service agency of the government? Petitioner sustains the affirmative because, under Republic Act No. 1383, it is a public corporation, and as such it exists as an agency independent of the Department of Public Works of our government. It also contends that under the same Act the Public Service Commission does not have control, supervision or jurisdiction over it in the fixing of rates concerning the operation of the service. It can also incur indebtedness or issue bonds that are exempt from taxation which circumstance implies that it is, essentially a government-function corporation because it enjoys that attribute of sovereignty. Petitioner likewise invokes the opinion of the Secretary of Justice which holds that the NAWASA being essentially a service agency of the government can be classified as a corporation performing governmental function.

With this contention, we disagree. While under Republic Act No. 1383 the NAWASA is considered as a public corporation it does not show that it was so created for the government of a portion of the State. It should be borne in mind that there are two kinds of public corporations, namely, municipal and non-municipal. A municipal corporation in its strict sense is the body politic constituted by the inhabitants of a city or town for the purpose of local government thereof. It is the body politic established by law particularly as an agency of the State to assist in the civil government of the country chiefly to regulate the local and internal affairs of the city or town that is incorporated (62 C.J.S., p. 61). Non-municipal corporations, on the otherhand, are public corporations created as agencies of the State for limited purposes to take charge merely of some public or state work other than community government (Elliot, Municipal Corporations, 3rd ed., p. 7; McQuillin, Mun. Corp. 3rd ed., Vol. 1, p. 476).

The National Waterworks & Sewerage Authority was not created for purposes of local government. It is not a municipal corporation. It was created "for the purpose of consolidating and centralizing all waterworks, sewerage and drainage systems in the Philippines under one control and direction and general supervision." The NAWASA, therefore, though a public corporation, is not a municipal corporation, because it is not an agency of the State to regulate or administer the local affairs of the town, city, or district which is incorporated.

Moreover, the NAWASA, by its charter, has personality and power separate and distinct from the government. It is an independent agency of the government although it is placed, for administrative purposes, under the Department of Public Works and Communications. It has continuous succession under its corporate name and may sue and be sued in court. It has corporate powers to be exercised by its board of directors; it has its own assets and liabilities; and it may charge rates for its services.

In *Bacani vs. National Coconut Corporation*, 100 Phil., 468; 53 Off. Gaz., 2798, we stated: "To recapitulate, we may mention that the term 'Government of the Republic of the Philippines' * * * refers only to that government entity through which the functions of the government are exercised as an attribute of sovereignty, and in this are

included those arms through which political authority is made effective whether they be provincial, municipal or other form of local government. These are what we call municipal corporations. They do not include government entities which are given a corporate personality separate and distinct from the government and which are governed by the Corporation Law. Their powers, duties and liabilities have to be determined in the light of that law and of their corporate charter." The NAWASA comes within the purview of this definition.

The same conclusion may be reached by considering the powers, functions and activities of the NAWASA which are enumerated in Section 2, Republic Act No. 1383, among others, as follows:

"(e) To construct, maintain and operate mains, pipes, water reservoirs, machinery, and other waterworks for the purpose of supplying water to the inhabitants of its zone, both domestic and other purposes; to purify the source of supply, regulate the control and use, and prevent the waste of water; and to fix water rates and provide for the collection of rents therefor;

"(f) To construct, maintain and operate such system of sanitary sewers as may be needed for the proper sanitation of the cities and towns comprising the Authority and to charge and collect such sums for construction and rates for this service as may be determined by the Board to be equitable and just;

"(g) To acquire, purchase, hold, transfer, sell, lease, rent, mortgage, encumber, and otherwise dispose of real and personal property, including rights and franchise, within the Philippines, as authorized by the purposes for which the Authority was created and reasonably and necessarily required for the transaction of the lawful business of the same, unless otherwise provided in this Act;"

The business of providing water supply and sewerage service, as this Court held, "may for all practical purposes be likened to an industry engaged in by coal companies, gas companies, power plants, ice plants, and the like" (Metropolitan Water District, vs. Court of Industrial Relations, et al., 91 Phil., 840.) These are but mere ministerial functions of government which are aimed at advancing the general interest of society. As such they are optional (Bacani vs. National Coconut Corporation, supra). And it has been held that "although the state may regulate the service and rates of water plants owned and operated by municipalities, such property is not employed for governmental purposes and in the ownership operation thereof the municipality acts in its proprietary capacity, free from legislative interference" (1 McQuillin, p. 683). In Mendoza vs. De Leon, 33 Phil., 508, 509, this Court also held:

"Municipalities of the Philippine Islands organized under the Municipal Code have both governmental and corporate or business functions. Of the first class are the adoption of regulations against fire and disease, preservation of the public peace, maintenance of municipal prisons, establishment of primary schools and post-offices, etc. Of the latter class are the establishment of municipal water-works for the use of the inhabitants, the construction and maintenance of municipal slaughterhouses, market, stables, halling establishments, wharves, ferries, and fisheries. * * * "

On the strength of the foregoing considerations, our conclusion is that the NAWASA is not an agency performing governmental functions. Rather, it performs proprietary functions, and as such comes within the coverage of Commonwealth Act No. 444.

- We agree with petitioner that the NAWASA is a public utility because its primary function is to construct, maintain and operate water reservoirs and waterworks for the purpose of supplying water to the inhabitants, as well as to consolidate and centralize all water supplies and drainage systems in the Philippines. We likewise agree with petitioner that a public utility is exempt from paying additional compensation for work on Sundays and legal holidays conformably to Section 4 of Commonwealth Act No. 444 which provides that the prohibition regarding employment on Sundays and holidays unless an additional sum of 25% of the employee's regular remuneration is paid shall not apply to public utilities such as those supplying gas, electricity, power, water or providing means of

transportation or communication. In other words, the employees and laborers of NAWASA can be made to work on Sundays and legal holidays without being required to pay them an additional compensation of 25%.

It is to be noted, however, that in the case at bar it has been stipulated that prior to the enactment of Republic Act No. 1880, providing for the implementation of the 40-Hour Week Law, the Metropolitan Water District had been paying 25% additional compensation for work on Sunrbyas and legal holidays to its employees and laborers by virtue of Resolution No. 47, series of 1918, of its Board of Directors, which practice was continued by the NAWASA when the latter took over the service. And in the collective bargaining agreement entered into between the NAWASA and respondent unions it was agreed that all existing benefits enjoyed by the employees and laborers prior to its effectivity shall remain in force and shall form part of the agreement, among which certainly is the 25% additional compensation for work on Sundays and legal holidays therefore enjoyed by said laborers and employees. It may, therefore, be said that while under Commonwealth Act No. 444 a public utility is not required to pay additional compensation to its employees and workers for work done on Sundays and legal holidays, there is, however, no prohibition for it to pay such additional compensation if it voluntarily agrees to do so. The NAWASA committed itself to pay this additional compensation. It must pay not because of compulsion of law but because of contractual obligation.

3. This issue raises the question whether the intervenors are "managerial employees" within the meaning of Republic Act 2377 and as such are not' entitled to the benefits of Commonwealth Act No. 414, as amended. Section 2 of Republic Act 2377 provides:

Sec. 2. This Act shall apply to all persons employed in any industry or occupation, whether public or private, with the exception of farm laborers, laborers who prefer to be paid on piece work basis, managerial employees outside sales personnel, domestic servants—persons in the personal service of another and members of the family of the employer working for him.

"The term 'managerial employee' in this Act shall mean either (a) any person whose primary duty consists of the management of the establishment in which he is employed or of a customarily recognized department or subdivision thereof, or (b) any officer or member of the managerial staff."

One of the distinguishing characteristics by which a managerial employee may be known as expressed in the explanatory note of Republic Act No. 2377 is that he is not subject to the rigid observance of regular office hours. The true worth of his service does not depend so much on the time he spends in office but more on the results he accomplishes. In fact, he is free to go out of office anytime.

On the other hand, in the Fair Labor Standards Act of the United States, which was taken into account by the sponsors of the present Act in defining the degree of work of a managerial employee, we find interesting the following dissertation of the nature of work of a managerial employee.

"Decisions have construed and applied a regulation in substance providing that the term 'professional' employee shall mean any employee * * * who is engaged in work predominantly intellectual and varied in character, and requires the consistent exercise of discretion and judgment in its performance, and is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, and whose hours of work of the same nature as that performed by nonexempt employees do not exceed twenty percent of the hours worked in the work week by the nonexempt employees, except where such work is necessarily incident to work of a professional nature; and which requires, first, knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course or specialized intellectual instruction and study; or, second, pre-dominantly original and creative in character in a recognized field of artistic endeavor. *Stranger vs. Vocafilm Corp.*, C.C.A.N.Y., 151 F. 2d 894, 162 A.L.R. 216; *Hofer vs. Federal Cartridge Corp.*, D.C. Minn. 71 F. Supp. 243; *Aulen vs. Triumph Explosive*, D.C. Md., 58 F. Supp. 4."

(56 C.J.S., p. 666)

"Under the provisions of the Fair Labor Standards Acts, 29 U.S.C.A. Section 23 (a) (1), executive employees are exempted from the statutory requirements as to minimum wages and over-time pay. * * *

"Thus the exemption attaches only where it appears that the employee's primary duty consists of the management of the establishment or of a customarily recognized department or subdivision thereof, that he customarily and regularly directs the work of other employees therein, that he has the authority to hire or discharge other employees or that his suggestions and recommendations as to the hiring or discharging and as to the advancement and promotion or any other change of status of other employees are given particular weight, that he customarily and regularly exercises discretionary powers, * * *." (56 C.J.S., pp. 666-668)

"The term 'administrative employee' ordinarily applies only to an employee who is compensated for his services at a salary or fee of not less than a prescribed sum per month, and who regularly and directly assists an employee employed in a bona fide executive or administrative capacity, where such assistance is nonmanual in nature and requires the exercise of discretion and independent judgment; or who performs under only general supervision, responsible nonmanual office or held work, directly related to management policies or general business corporations, along specialized or technical lines requiring special training experience, or knowledge, and the exert of discretion and independent judgment; * * *."

"The reason underlying each exemption is in reality apparent. Executive, administrative and professional workers are not usually employed at hourly wages nor is it feasible in the case of such employees to provide a fixed hourly rate of pay nor maximum hours of labor. *Helena Glendale Ferry Co. vs. Walling CCA.* Ark. 132 F. 2d 616, 619." (56 C.J.S., p. 664)

The philosophy behind the exemption of managerial employees from the 8-Hour Labor Law is that such workers are not usually employed for every hour of work but their compensation is determined considering their special training, experience or knowledge which requires the exercise of discretion and independent judgment, or perform work related to management policies or general business operations along specialized or technical lines. For these workers it is not feasible to provide a fixed hourly rate of pay or maximum hours of labor.

The intervenors herein are holding; positions of responsibility. One of them is the Secretary of the Board of Directors. Another is the private secretary of the general manager. Another is a public relations officer, and many are chiefs of divisions or sections and others are supervisors and overseers. Respondent court, however, after examining carefully their respective functions, duties and responsibilities found that their primary duties do not bear any direct relation with the management of the NAWASA, nor do they participate in the formulation of its policies nor in the hiring and firing of its employees. The chiefs of divisions and sections are given ready policies to execute and standard practices to observe for their execution. Hence, it concludes, they have little freedom of action, as their main function is merely to carry out the company's orders, plans and policies.

To the foregoing comment, we agree. As a matter of fact, they are required to observe working hours and record their time work and are not free to come and go to their offices, nor move about at their own discretion. They do not, therefore, come within the category of "managerial employees" within the meaning of the law.

- Petitioner's claim is that the issue of overtime compensation not having been raised in the original case but merely dragged into it by intervenors, respondent court cannot take cognizance thereof under Section 1, Rule 13, of the Rules of Court.

Intervenors filed a petition for intervention alleging that being employees of petitioner who have worked at night since 1954 without having been fully compensated they desire to intervene insofar as the payment of their night is concerned. Petitioner opposed the petition on the ground that this matter was not in the original case since it

was not included in the dispute certified by the President of the Philippines to the Court of Industrial Relations. The opposition was overruled. This is now assigned as error.

There is no dispute that the intervenors were in the employ of petitioner when they intervened and that their claim refers to the 8-Hour Labor Law and since this Court has held time and again that disputes that call for the application of the 8-Hour Labor Law are within the jurisdiction of the Court of Industrial Relations if they arise while the employer-employee relationship still exists, it is clear that the matter subject of intervention comes within the jurisdiction of respondent court.[1] The fact that the question of overtime payment is not included in the principal case in the sense that it is not one of the items of dispute certified to by the President is of no moment, for it comes within the sound discretion of the Court of Industrial Relations. Moreover, in labor disputes technicalities of procedure should as much as possible be avoided not only in the interest of labor but to avoid multiplicity of action. This claim has no merit.

- It is claimed that some intervenors are occupying positions in the General Auditing Office and in the Bureau of Public Works for they are appointed either by the Auditor General or by the Secretary of Public Works and, consequently, they are not officers of the NAWASA but of the insular government, and as such are not covered by the Eight-Hour Labor Law.

The status of the GAO employees assigned to, and working in, government-controlled corporations has already been decided by this Court in *National Marketing Corporation, et al. vs. Court of Industrial Relations, et al.*, L-17804, January 31, 1963. In said case, this Court said:

"We agree with appellant that members «f the amlitinir force can not be regarded as employees of PRISCO in matters relating to their compensation. They are appointed ami supervised by the Auditor General, have in independent tenure, and work subject to his orders and instructions, and not to those of the management appellants. Above all, the nature of their functions and duties, the purpose of the fiscal control of appellants operations, imperatively, demands, as a matter of policy, thnt their positions be completely independent from interference or inducement on tlic part of the supervised management, in order to assure a maximum of impartiality in the auditing functions. Both independence and impartiality require that the employees in question be utterly free from apprehension as to their tenure and from expectancy of lienefits resulting from any action of the management, since in cither case there would be an influence at work that could possibly lead, if not to malfeasance, to laxity and indifference that would gradually erode and endanger the critical supervision entrusted to these auditing employees.

"The inclusion of their items in the PRISCO budget should be viewed as no more than a designation by the national government of the fund or source from which their emoluments are to be drawn, and does not signify that they are thereby made PRISCO employees."

The GAO employees assigned to the NAWASA are exactly in the same position regarding their status, compensation and right to overtime pay as the rest of the GAO employees assigned to the defunct PRISCO, and following our ruling in the PRISCO case, we hold that the GAO employees herein tire not covered by the 8-Hour Labor Law, but by other pertinent laws on the matter.

The same thing may be said with regard to the employees of the Bureau of Public Works assigned to, and working in, the NAWASA. Their position is the same as that of the GAO employees. Therefore, they are not also covered the 8-Hour Labor Law.

The respondent court, therefore, erred in considering them as employees of the NAWASA for the mere reason that they are paid out of its funds and are subject to its administration and supervision.

- A worker is entitled to overtime pay only for work in actual service beyond eight hours. If a worker should incur

an overtime during his regular daily work, should said undertime be deducted in computing his overtime work? Petitioner sustains the affirmative, while respondent unions the negative, and respondent court decided the dispute in favor of the latter. Hence this error.

There is merit in the decision of respondent court that the method used by petitioner in offsetting the over-time with the undertime and at the same time charging said undertime to the accrued leave of the employee is unfair, for under such method the employee is made to pay twice for his undertime because his leave is reduced to that extent while he was made to pay for it with work beyond the regular working hours. The proper method should be to deduct the undertime from the accrued leave but pay the employee the overtime to which he is entitled. This method also obviates the irregular schedule that would result if the overtime should be set off against the undertime for that would place the schedule for working hours dependent on the employee.

- and 8. How is a daily wage of a weekly employee computed in the light of Republic Act 1880?

According to petitioner, the daily wage should be computed exclusively on the basic wage without including the automatic increase of 25% corresponding to the Sunday differential. To include said Sunday differential would be to increase the basic pay which is not contemplated by said Act. Respondent court disagrees with this manner of computation. It holds that Republic Act 1880 requires that the basic weekly wage and the basic monthly salary should not be diminished notwithstanding the reduction in the number of working days a week. If the automatic increase corresponding to the salary differential should not be included there would be a diminution of the weekly wage of the laborer concerned. Of course, this should only benefit those who have been working seven days a week and had been regularly receiving 25% additional compensation for Sunday work before the effectivity of the Act.

It is evident that Republic Act 1880 does not intend to raise the wages of the employees over what they are actually receiving. Rather, its purpose is to limit the working days in a week to five days, or to 40 hours without however permitting any reduction in the weekly or daily wage of the compensation which was previously received. The question then to be determined is: What is meant by weekly or daily wage? Does the regular wage include differential payments for work on Sundays or at nights, or is it the total amount received by the laborer for whatever nature or concept?

It has been held that for purposes of computing over- time compensation a regular wage includes all payments which the parties have agreed shall be received during the work week, including piece-work wages, differential payments for working at undesirable times, such as at night or on Sundays and holidays, and the cost of board and lodging customarily furnished the employee (*Walling vs. Yangerman-Reynolds Hardwood Co.*, 325 U. S. 419; *Walling vs. Harischfeger Corp.*, 325 U.S. 427). The "regular rate" of pay also ordinarily includes incentives bonus or profit-sharing payments made in addition to the normal basic pay (56 C.J.S., pp. 704-705), and it was also held that the higher rate for night; Sunday and holiday work is just as much a regular rate as the lower rate for day time work. The higher rate is merely an inducement to accept employment at times which are not as desirable from a workman's standpoint (*International L. Ass'n. vs. National Terminals Corp.* C. C. Wise. 50 F. Supp. 26, affirmed C.C.A. *Carbunao vs. National Terminals Corp.* 139 F. 2d. 853).

Respondent court, therefore, correctly included such differential pay in computing the weekly wages of those employees and laborers who worked seven days a week and were continuously receiving 25% Sunday differential for a period of three months immediately preceding the implementation of Republic Act 1880.

The next issue refers to the method of computing the daily rate of a monthly salaried employee. Petitioner in computing this daily rate divides the monthly basic pay of the employee by 30 in accordance with Section 254 of the Revised Administrative Code which in part provides that "In making payment for part of a month, the amount

to be paid for each day shall be determined by dividing the monthly pay into as many parts as there are days in the particular month." The respondent court disagrees with this method and holds that the way to determine the daily rate of a monthly employee is to divide the monthly salary by the actual number of working hours in the month. Thus, according to respondent court, Section 8(g) of Republic Act No. 1161, as amended by Republic Act 1792, provides that the daily rate of compensation is the total regular compensation for the customary number of hours worked each day. In other words, according to respondent court, the correct computation shall be (a) the monthly salary divided by the actual number of working hours in a month or (b) the regular monthly compensation divided by the number of working days in a month.

This finding of respondent court should be modified insofar as the employees of the General Auditing Office and of the Bureau of Public Works assigned to work in the NAWASA are concerned for, as already stated, they are government employees and should be governed by Section 254 of the Revised Administrative Code. This section provides that in making payment for part of a month, the amount to be paid for each day shall be determined by dividing the monthly pay into as many parts as there are days in the particular month. With this modification we find correct the finding of the respondent court on this issue.

- The Court of Industrial Relations awarded an additional 25% night compensation to some workers with retroactive effect, that is, effective even before the presentation of the claim, provided that they had been given authorization by the general manager to perform night work. It is petitioner's theory that since there is no statute requiring payment of additional compensation for night work but it can only be granted either by the voluntary act of the employer or by an award of the industrial court under its compulsory arbitration power, such grant should only be prospective in operation, and not retroactive, as authorized by the court.

It is of common occurrence that a working man who has already rendered night time service takes him a long time before he can muster enough courage to confront his employer with the demand for payment for it for fear of possible reprisal. It happens that many months or years are allowed to pass by before he could be made to present such claim against his employer, and so it is neither fair nor just that he be deprived of what is due him simply because of his silence for fear of losing the means of his livelihood. Hence, it is not erroneous for the Court of Industrial Relations to make the payment of such night compensation retroactive to the date when the work was actually performed.

The power of the Court of Industrial Relations to order the payment of compensation for overtime service prior to the date of the filing of the claim has been recognized by this Court (*Luzon Stevedoring Co., Inc. vs. Luzon Marine Department Union, et al.*, 101 Phil., 257). The same reasons given therein for the retroactivity of overtime compensation may also be given for the retroactivity of payment of night compensation, as such reasoning runs along the line already abovementioned.

10. The Court of Industrial Relations in its resolution dated November 25, 1950 issued in Case No. 359-V entitled *MWD Workers Union, et al. vs. Metropolitan Water District*, fixed the following rates of minimum daily wage: P5.25 for those working in Manila and suburbs; P4.50 for those working in Quezon City; and P4.00 for those working in Ipo, Montalban and Balara. It appears that in spite of the notice to terminate said award filed with the court on December 29, 1953, the Metropolitan Water District continued paying the above wages and the NAWASA which succeeded it adopted the same rates for sometime. In September, 1955, the NAWASA hired the claimants as temporary workers and it is now contended that said rates cannot apply to these workers.

The Court of Industrial Relations, however, held that the discontinuance of this minimum wage rates was improper and ordered the payment of the difference to said workers from the date the payment of said rates was discontinued, advancing, among others, the following reasons: that the resolution of November 25, 1950 is

applicable not only to those laborers already in the service but also to those who may be employed thereafter; the notice of termination of said award given on December 29, 1953 is not legally effective because the same was given without hearing and the employer continued paying the minimum wages even after the notice of termination; and there is no showing that the minimum wages violate Civil Service Law or the principles underlying the WAPCO.

We find no valid reason to disagree with the foregoing finding of the Court of Industrial Relations considering that the award continued to be valid and effective in spite of the notice of termination given by the employer.

No good reason is seen why such award should not apply to those who may be employed after its approval by the court there being nothing therein that may prevent its extension to them. Moreover, the industrial court can at any time during the effectiveness of an award alter and modify in whole or in part said award or reopen any question involved therein under Section 17 of Commonwealth Act No. 103, and such is what said court has done when it made the award extensive to the new employees, more so when they are similarly situated. To do otherwise would be to foster discrimination

- This issue has to do with the meaning of "distress pay." Paragraph 3, Article VIII, of the collective bargaining agreement entered into between the employer and respondent unions, provides:

"Because of the peculiar nature of the function of those employees and laborers of the Sewerage Division who actually work in the sewerage chambers, causing 'Unusual distress' to them, they shall receive extra compensation equivalent to twenty-five percent (25%) of their basic wage."

Pursuant to said agreement, a grievance committee was executed composed of representatives of management and labor which adopted the following resolution;

"Resolution No. 9
Series of 1957

BE IT RESOLVED, That the employers and laborers of the Sewerage Division who actually work in the sewerage chambers causing unusual distress to them, lie paid extra compensation equivalent to 25% of their basic wage, as embodied in Article VIII, Paragraph 3 of the Collective Bargaining Agreement; PROVIDED, however, that any employee who may be required to work actually in the sewerage chambers shall also be paid 25% extra compensation and. PROVIDED FURTHER, that the term 'sewerage chamber' shall include pits, trendies, and other excavations that are necessary to tap the sewer line, and PROVIDED FINALLY that this will not prejudice any laborer or employee who may be included in one way or another in the term 'unusual distress' within the purview of Paragraph 3 of Article VIII, of the Collective Bargaining Agreement."

And in a conference held between management and labor on November 25, 1957, the following was agreed upon "Distress-Management agreed to pay effective October 1, 1956 25% additional compensation for those who actually work in and outside sewerage chamber in accordance with Resolution No. 9 of the Grievance Committee."

The question that arose in connection with this distress pay is with regard to the meaning of the phrase "who actually work in and outside sewerage chambers." Petitioner contends that the distress pay should be given only to those who actually work inside the sewerage chambers while the union maintains that such pay should be given to all those whose work have to do with the sewerage chambers, whether inside or outside. The Court of Industrial Relations sustained the latter view holding that the distress pay should be given to those who actually work in and outside the sewerage chambers effective October 1, 1956. This view is now deputed by petitioner.

The solution of the present issue hinges upon the interpretation of paragraph 3, Article VIII of the collective

bargaining: agreement, copied above, as explained by Resolution No. 9, and the agreement of November 25, 1975, also copied above, which stipulation has to be interpreted as a whole pursuant to Article 1374 of the Civil Code. As thus interpreted, we find that those who are entitled to the distress pay are those employees and laborers who work in the sewerage chambers whether they belong to the sewerage division or not, and by sewerage chambers should be understood to mean as the surroundings where the work is actually done, not necessarily "inside the sewerage chambers." This is clearly inferred from the conference held in the Department of Labor on November 25, 1957 where it was agreed that the compensation should be paid to those who work "in and outside" the sewerage chambers in accordance with the terms of Resolution No. 9 of the Grievance Committee. It should be noted that, according to said resolution, sewerage chambers include "pits, trenches, and other excavations that are necessary to tap the sewer lines." And the reason given for this extra compensation is the "unusual distress" that is caused to the laborers by working in the sewerage chambers in the form and extent abovementioned.

It is clear then that all the laborers whether of the sewerage division or not assigned to work in and outside the sewerage chambers and suffering unusual distress because of the nature of their work are entitled to the extra compensation. And this conclusion is further bolstered by the findings of the industrial court regarding the main activities of the sewerage division.

Thus, the Court of Industrial Relations found that the sewerage division has three main activities, to wit: (a) cooperation of the sewerage pumping stations; (b) cleaning and maintenance of sewer mains; and (c) installation and repairs of house sewer connections.

The pump operators and the sewer attendants in the seven pumping stations in Manila, according to the industrial court, suffer unusual distress. The pump operators have to go to the wet pit to see how the cleaning of the screen protecting the pump is being performed, and go also to the dry pit abutting the wet pit to make repairs in the breakdown of the pumps. Although the operators used to stay near the motor which is but a few meters from the pump, they unavoidably smell the foul odor emitting from the pit. The sewerage attendants go down and work in the wet pit containing sewerage materials in order to clean the screen.

A group assigned to the cleaning and maintenance of the sewer mains which are located in the middle of the streets of Manila is usually composed of a capataz and four sewerage attendants. These attendants are rotated in going inside the manholes, operation of the window glass, bailing out from the main to the manhole and in supplying the water service as necessity demands. These attendants come into contact with dirt, stink and smell, darkness and heat inside and near the sewage pipes. The capataz goes from one manhole to another seeing to it that the work is properly performed and as such also suffers unusual distress although to a lesser degree.

The group assigned to the third kind of activity is also usually composed of a capataz and four attendants. Their work is to connect sewer pipes from houses to the sewer mains and to do this they excavate the trench across the street from the proper line to the sewer main and then they install the pipe after tapping the sewer main. In the tapping, the sewer pipe is opened and so the sewerage gets out and fills up the trench and the men have to wade in and work with the sewerage water. The capataz has to go near the filthy excavations or trenches full of filthy sewerage matter to aid the attendants in making pipe connections, especially when these are complicated.

It cannot therefore be gainsaid that all these laborers suffer unusual distress. The wet pits, trenches, manholes, which are full of sewage matters, are filthy sources of germs and different diseases. They emit foul and filthy odor dangerous to health. Those working in such places are exposed directly to the distress of contamination.

Premises considered, the decision of the Court of Industrial Relations in this respect should be modified in the sense that all employees and laborers, whether or not they belong to the sewerage division, who actually work in and outside the sewerage chambers, should be paid the distress pay or the extra compensation equivalent to 25%

of their basic wage effective October 1, 1956.

- On August 6, 1957, the NAWASA requested the President of the Philippines for exemption from Executive Order No. 251 which prescribes the office hours to be observed in government and government-owned or controlled corporations in order that it could stagger the working hours of its employees and laborers. The request is based on the fact that there are essential and indispensable phases in the operation of the NAWASA that are required to be attended to continuously for twenty-four hours for the entire seven days of the week without interruption some of which being the work performed by pump operators, valve operators, filter operators, chlorine operators, watchmen and guards, and medical personnel. This request was granted and, accordingly, the NAWASA staggered the work schedule of the employees and laborers performing the activities abovementioned. Respondent unions protested against this staggering schedule of work and this protest having been unheeded, they brought the matter to the Court of Industrial Relations.

In resolving this issue, the industrial court justified the staggering of the work days of those holding positions as pump operators, valve operators, filter operators, chlorine operators, watchmen and guards, and those in the medical service for the reason that the same was made pursuant to the authority granted by the President who in the valid exercise of the powers conferred upon him by Republic Act No. 1880 could prescribe the working days of employees and laborers in government-owned and controlled corporations depending upon the exigencies of the service. The court, however, stated that the staggering should not apply to the personnel in the construction, sewerage, maintenance, machineries and shops because they work below 365 days a year and their services are not continuous to require staggering. From this portion of the decision, the petitioner appeals.

Considering that respondent court found that the workers in question work less than 365 days a year and their service are not continuous to require staggering, we see no reason to disturb this finding. This is contrary to the very essence of the request that the staggering should be made only with regard to those phases of the operation of the NAWASA that have to be attended to continuously for twenty-four hours without interruption which certainly cannot apply to the workers mentioned in the last part of the decision of the respondent court on the matter.

RECAPITULATION

In resume, this Court holds:

- (1) The NAWASA, though a public corporation, does not perform governmental functions. It performs proprietary functions, and hence, it is covered by Commonwealth Act No. 444;
- (2) The NAWASA is a public utility. Although pursuant to Section 4 of Commonwealth Act 444 it is not obliged to pay an additional sum of 25% to its laborers for work done on Sundays and legal holidays, yet it must pay said additional compensation by virtue of the contractual obligation it assumed under the collective bargaining agreement;
- (3) The intervenors are not "managerial employees" as defined in Republic Act No. 2377, hence they are covered by Commonwealth Act No. 441, as amended;
- (4) The Court of Industrial Relations has jurisdiction to adjudicate overtime pay in the case at bar there being an employer-employee relationship existing between intervenors and petitioner;
- (5) The GAO employees assigned to work in the NAWASA cannot be regarded as employees of the NAWASA on matters relating to compensation. They are employees of the national government and are not covered by the Eight-Hour Labor Law. The same may be said of the employees of the Bureau of Public Works assigned to work in the NAWASA;
- (6) The method used by the NAWASA in offsetting the overtime with the undertime and at the same time

charging said undertime to the accrued leave is unfair;

(7) The differential pay of Sundays is a part of the legal wage. Hence, it was correctly included in computing the weekly wages of those employees and laborers who worked seven days a week and were regularly receiving the 25% salary differential for a period of three months prior to the implementation of Republic Act 1880. This is so even if petitioner is a public utility in view of the contractual obligation it has assumed on the matter;

(8) In the computation of the daily wages of employees paid by the month distinction should be made between government employees like the GAO employees and those who are not. The computation for government employees is governed by Section 254 of the Revised Administrative Code while for others the correct computation is the monthly salary divided by the actual number of working hours in the month or the regular monthly compensation divided by the number of working days in the month;

(9) The Court of Industrial Relations did not err in ordering the payment of night compensation from the time such services were rendered. The laborer must be compensated for nighttime work as of the date the same was rendered;

(10) The rates of minimum pay fixed in a CIR Case No. 359-V are applicable not only to those who were already in the service as of the date of the decision but also to those who were employed subsequent to said date;

(11) All the laborers, whether assigned to the sewerage division or not who are actually working inside or outside the sewerage chambers, are entitled to distress pay; and

(12) There is no valid reason to disturb the finding of the Court of Industrial Relations that the work of the personnel in the construction, sewerage, maintenance, machineries and shops of petitioner is not continuous as to require staggering.

CONCLUSION

With the modification indicated in the above resume as elaborated in this decision, we hereby affirm the decision of respondent court in all other respects, without pronouncement as to costs.

Bengzon, C. J., Concepcion, Reyes, J. B. L., Paredes, Regala and Makalintal, JJ., concur.

[1]Gracella vs. Hospicio de San Jose, L-15152. Jan. 31, 1963; Ajax International Corporation vs. Sapnritan, et al., 109 Phil., 183; San Miguel Brewery Inc., et al., vs. Blia, et al., L-16403, Oct. 30, 1961.

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