

SAN MIGUEL BREWERY, INC., ETC., PETITIONER, VS. DEMOCRATIC LABOR ORGANIZATION, ET AL., RESPONDENTS.

G.R. No. L-18353. July 31, 1963

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On January 27, 1953, the Democratic Labor Association filed a complaint against the San Miguel Brewery, Inc., embodying 12 demands for the betterment of the conditions of employment of its members. The company filed its answer to the complaint specifically denying its material averments and answering the demands point by point. The company asked for the dismissal of the complaint.

At the hearing held sometime in September, 1955, the union manifested its desire to confine its claim to its demands for overtime, night-shift differential pay, and attorney's fees, although it was allowed to present evidence on service rendered during Sundays and holidays, or on its claim for additional separation pay and sick and vacation leave compensation.

After the case had been submitted for decision, Presiding Judge Jose S. Bautista, who was commissioned to receive the evidence, rendered decision expressing his disposition with regard to the points embodied in the complaint on which evidence was presented. Specifically, the disposition insofar as those points covered by this petition for review are concerned, is as follows:

- With regard to overtime compensation, Judge Bautista held that the provisions of the Eight-Hour Labor Law apply to the employees concerned for those working in the field or engaged in the sale of the company's products outside its premises and consequently they should be paid the extra compensation accorded them by said law in addition to the monthly salary and commission earned by them, regardless of the meal allowance given to employees who work up to late at night.
- As to employees who work at night, Judge Bautista decreed that they be paid their corresponding salary differentials for work done at night prior to January 1, 1949 with the present qualification: 25% on the basis of their salary to those who work from 6:00 to 12:00 p.m., and 75% to those who work from 12:01 to 6:00 in the morning.
- With regard to work done during Sundays and holidays, Judge Bautista also decreed that the employees concerned be paid an additional compensation of 25% as provided for in Commonwealth Act No. 444 even if they had been paid a compensation on monthly salary basis.

The demands for the application of the Minimum Wage I Law to workers paid on "pakiao" basis payment of accumulated vacation and sick leave and attorney's fees, as well as the award of additional separation pay, were either dismissed, denied, or set aside.

Its motion for reconsideration having been denied by the industrial court en banc, which affirmed the decision of the court a quo with few exceptions, the San Miguel Brewery, Inc. interposed the present petition for review.

Anent the finding of the court a quo, as affirmed by the Court of Industrial Relations, to the effect that outside or field sales personnel are entitled to the benefits of the Eight-Hour Labor Law, the pertinent facts are as follows:

After the morning roll call, the employees leave the plant of the company to go on their respective sales routes either at 7:00 a.m. for soft drinks trucks, or 8:00 a.m. for beer trucks. They do not have a daily time record. The company never require them to start their work as outside sales personnel earlier than the above schedule.

The sales routes are so planned that they can be completed within 8 hours at most, or that the employees could make their sales on their routes within such number of hours variable in the sense that sometimes they can be completed in less than 8 hours, sometimes 6 or 7 hours, or more. The moment these outside or field employees leave the plant and while in their sales routes they are on their own; and often times when the sales are completed, or when making short trip deliveries only, they go back to the plant, load again, and make another round of sales. These employees receive monthly salaries and sales commission in variable amounts. The amount of compensation they receive is uncertain depending upon their individual efforts or industry. Besides the monthly salary, they are paid sales commission that range from P30, P40, sometimes P60, P70, to sometimes P90, P100, and P109 a month, at the rate of P.01 to P0.01-1/2 per case.

It is contended that since the employees concerned are paid a commission on the sales they make outside of the required 8 hours besides the fixed salary that is paid to them, the Court of Industrial Relations erred in ordering that they be paid an overtime compensation as required by the Eight-Hour Labor Law for the reason that the commission they are paid already takes the place of such overtime compensation. Indeed, it is claimed, overtime compensation is an additional pay for work or service rendered in excess of 8 hours a day by an employee, and if the employee is already given extra compensation for labor performed in excess of 8 hours a day, he is not covered by the law. His situation, the company contends, can be likened to an employee who is paid on piece of work, "pakiao", or commission basis, which is expressly excluded from the operation of the Eight-Hour Labor Law.[1]

We are in accord with this view, for in our opinion the Eight-Hour Labor Law only has application where an employee or laborer is paid in a monthly or daily basis, or is paid a monthly or daily compensation, in which case, if he is made to work beyond the requisite period of 8 hours, he should be paid the additional compensation prescribed by law. This law has no application when the employee or laborer is paid on a piece-work, "pakiao", or commission basis, regardless of the time employed. The philosophy behind this exemption is that his earnings are in the form of commission based on the gross receipts of the day. His participation depends upon his industry so that the more hours he employs in the work the greater are his gross returns and the higher his commission. This philosophy is better explained in *Jewel Tea Co. vs. Williams*, CCA. Okl., 118 F. 2d 202, as follows:

"The reasons for excluding an outside salesman are fairly apparent. Such salesman, to a great extent, works individually. There are no restrictions respecting the time he shall work and he can earn as much or as little, within the range of his ability, as his ambition dictates. In lieu of overtime he ordinarily receives commissions as extra compensation. He works away from his employer's place of business, is not subject to the personal supervision of his employer, and his employer has no way of knowing the number of hours he works per day."

True it is that the employees concerned are paid a ; fixed salary for their month of service, such as Benjamin Sevilla, a salesman, P215; Mariano Ruedas, a truck driver, P155; Alberto Alpaza and Alejandro Empleo, truck helpers, P125 each, and sometimes they work in excess of the required 8-hour period of work, but for their extra work they are paid a commission which is in lieu of the extra compensation to which they are entitled. The record shows that these employees during the period of their employment were paid sales commission ranging from P30, P40, sometimes P60, P70, to sometimes P90, P100 and P109 a month depending on the volume of their sales and their rate of commission per case. And so, insofar as the extra work they perform, they can be considered as

employees paid on piecework, "pakiao" or commission basis. The Department of Labor, called upon to implement the Eight-Hour Labor Law, is of this opinion when on December 9, 1957 it made the ruling on a query submitted to it, thru the Director of the Bureau of Labor Standards, to the effect that field sales personnel receiving regular monthly salaries, plus commission, are not subject to the Eight-Hour Labor Law. Thus, on this point, said official stated:

"Moreover, when a fieldman receives a regular monthly salary plus commission on percentage basis of his sales, it is also the established policy of the Office to consider his commission as payment for the extra time he renders in excess of eight hours, thereby classifying him as if he were on piecework basis, and therefore, technically speaking, he is not subject to the Eight Hours Labor Law.

We are, therefore, of the opinion that the industrial court erred in holding that the Eight-Hour Labor Law applies to the employees composing the outside service force and ordering that they be paid the corresponding additional compensation.

With regard to the claim for night salary differentials, the industrial court found that claimants Magno Johnson and Jose Sanchez worked with the respondent company during the periods specified by them in their testimony and that watchmen Zoilo Lliga, Inocentes Prescillas and Daniel Cauyca rendered night duties once every three weeks continuously during the period of their employment and that they were never given any additional compensation aside from their monthly regular salaries. The court found that the company started paying night differentials only in January, 1949 but never before that time. And so it ordered that the employees concerned be paid 25% additional compensation for those who worked from 6:00 to 12:00 p.m. and 75% additional compensation for those who worked from 12:01 to 6:00 in the morning. It is now contended that this ruling is erroneous because an award for night shift differentials cannot be given retroactive effect but can only be entertained from the date of demand which was on January 27, 1953, citing in support thereof our ruling in *Earnshaws Docks & Honolulu Iron Work vs. The Court of Industrial Relations, et al.*, 100 Phil., 742.

This ruling, however, has no application here for it appears that before the filing of the petition concerning this claim a similar one had already been filed long ago which had been the subject of negotiations between the union and the company which culminated in a strike in Unfortunately, however, the strike fizzled out and the strikers were ordered to return to work with the understanding that the claim for night salary differentials should be settled in court. It is perhaps for this reason that the court a quo granted this claim in spite of the objection of the company to the contrary

The remaining point to be determined refers to the claim for pay for Sundays and holidays for service performed by some claimants who were watchmen or security guards. It is contended that these employees are not entitled to extra pay for work done during these days because they are paid on a monthly basis and are given one day off which may take the place of the work they may perform either on Sunday or any holiday.

We disagree with this claim because it runs counter to law. Section 4 of Commonwealth Act No. 444 expressly provides that no person, firm or corporation may compel an employee or laborer to work during Sundays and legal holidays unless he is paid an additional sum of 25% of his regular compensation. This proviso is mandatory, regardless of the nature of compensation. The only exception is with regard to public utilities who perform some public service.

Wherefore, the decision of the industrial court is hereby modified as follows; the award with regard to extra work performed by those employed in the outside or field sales force is set aside. The rest of the decision insofar as work performed on Sundays and holidays covering watchmen and security guards, as well as the award for night salary differentials is affirmed. No costs.

Bengzon, C. J. Labrador, Concepcion, Reyes, J. B, L., Barrera, Paredes, Dizon, Regala, and Makalintal, J.J., concur.

[1] Section 21 Commonwealth Act. No. 444; Lara vs. del Rosario L-6339. April 20, 1954.

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