

LEXAL LABORATORIES AND/OR JOSE ANGELES, MANAGER, PETITIONERS, VS. NATIONAL CHEMICAL INDUSTRIES WORKERS UNION-PAFLU (LEXAL LABORATORIES CHAPTER) AND THE COURT OF INDUSTRIAL RELAT...

G.R. No. L-24632. October 26, 1968

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Condensed, the question before us is this: Are per diems included in backpay? This problem came about because of the implementation of the decision of the Court of Industrial Relations (CIR) of June 29, 1963[1] directing petitioner Lexal Laboratories (Lexal) to reinstate Guillermo Ponseca, a dismissed employee, to his former position "with full back wages from the day of his dismissal up to the time he is actually reinstated without loss of his seniority rights and of such other rights and privileges enjoyed by him prior to his lay-off".

CIR, confirming the report of its Chief Examiner and Economist, ruled in its order of February 16, 1965 that Ponseca was entitled to back wages from November 5, 1958 when he ceased reporting for work, to November 24, 1963 a day prior to his reinstatement on November 25, 1963; and that for the number of days that he was supposed to be in Manila, he was to earn P4.50 a day, and during the periods when he should have been in the provinces, P4.50 a day plus a per diem of P4.00 or a total of P8.50 daily. This order was subsequently modified by CIR's resolution of May 22, 1965 which directed the deduction of P5,000.00 previously paid Ponseca under the judgment and P610.00 which Ponseca earned from other sources during his layoff.

Petitioners vigorously objected to the inclusion of the P4.00 per diem in the computation of Ponseca's back wages because the latter "did not actually spend for his meals and lodgings for he was all the time in Manila, his station". CIR brushed this contention aside. Whereupon, petitioners appealed to this Court from the order of February 16, 1965 and the resolution of May 22, 1965.[2]

1. Our attention has not been drawn to a rule of law or jurisprudence which holds that per diems are integral parts of regular wages or salaries. Neither is it suggested in the record that per diems formed part of the terms of employment between petitioners and respondent union (of which Ponseca is a member), or with Ponseca himself for that matter. Nor was pronouncement made either in the original decision or in the questioned order and resolution of CIR that per diems are part of back wages. CIR simply hit upon the idea that per diems should be paid as part of the back wages because they were "paid to him regularly".

Per diem, the dictionary definition tells us, is "a daily allowance" given "for each day he [an officer or employee] was away from his home base".[3] It would seem to us that per diem is intended to cover the cost of lodging and subsistence of officers and employees when the latter are on duty outside of their permanent station.[4] Lexal concedes that whenever its employee, Guillermo Ponseca, was out of Manila, he was allowed a per diem of P4.00 broken down as follows: P1.00 for breakfast; P1.00 for lunch; P1.00 for dinner; and P1.00 for lodging. Ponseca - during the period involved - did not leave Manila. Therefore, he spent nothing for meals and lodging outside of

Manila. Because he spent nothing, there is nothing to be reimbursed. Since per diems are in the nature of reimbursement, Ponseca should not be entitled to per diems.

Besides, back wages are what an employee has lost "in the way of wages" due to his dismissal. So that, because Ponseca earned P4.50 a day, "then that is the amount which he lost daily by reason of his dismissal, nothing more nothing less".[5]

We, accordingly, rule that CIR erred in including per diems in the back wages due and payable to Guillermo Ponseca.

2. The rest is a matter of mathematical computation. But first to the facts. The union's evidence is that since the last part of October, 1958 Ponseca had been reporting everyday to the bodega of respondents.[6] Anyway, prior to Ponseca's dismissal, he worked daily either in Manila or in the provinces.[7]

But the order of February 15, 1965 credits Ponseca with 1,856 days for the period from November 5, 1958 to November 24, 1963. We checked the accuracy of this figure. We found that there should only be 1,846 days from November 5, 1958 to November 24, 1963, viz:

November 5, 1958 to December 31, 1958

57 days

January 1, 1959 to December 31, 1959 ---

365 days

January 1, 1960 to December 31, 1960 ---

366 days

January 1, 1961 to December 31, 1961 ---

365 days

January 1, 1962 to December 31, 1962 ---

365 days

January 1, 1963 to November 24, 1963 ---

328 days

T O T A L ---- 1,846 days

This brings us to the total amount due from Lexal to Guillermo Ponseca, as follows:

1,846 days x P4.50 - - - - -

P8,307.00

Less: Advance payment - -P5,000.00

Earnings from other

Sources - - - - - P 610.00

P5,610.00[8]

NET BACKPAY - - - - -

P2,697.00

For the foregoing reasons, the order of February 16, 1965 and the resolution of May 22, 1965, both of the Court of Industrial Relations, in its Case No. 2002-ULP, entitled "National Chemical Industries Workers Union-PAFLU (Lexal Laboratories Chapter), Complainant, versus Lexal Laboratories and Jose Angeles, its Manager, Respondents", are hereby modified; and

Judgment is hereby rendered ordering petitioner Lexal Laboratories to pay Guillermo Ponseca, by way of net backpay, the sum of P2,697.00.

No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Castro, Angeles, Fernando, and Capistrano, JJ., concur.
Zaldivar, J., on leave.

[1] CIR Case No. 2002-ULP, entitled "National Chemical Industries Workers Union-PAFLU (Lexal Laboratories Chapter), Complainant, versus Lexal Laboratories and Jose Angeles, its Manager, Respondents".

[2] CIR Record, p. 257.

[3] Webster's Third New International Dictionary [1964], p. 1676.

[4] Cf. Republic Act 3847; General Order Circulars Nos. 88 and 88-A; Executive Order No. 38, series of 1917, XV Gaceta Oficial, p. 811.

[5] Donato vs. Philippine Marine Officers Association, L-12506, May 18, 1959, citing United Employees Welfare Association vs. Isaac Peral Bowling Alleys, L-10327, September 30, 1958, and C.E. Church vs. La Union Labor Union, L-4393, April 28, 1952; underscoring ours.

[6] Printed Decision, Appendix A of petitioners' brief, p. 10-A.

[7] Examiner's Report, CIR Record, pp. 171-172.

[8] The amounts of P5,000.00 and P610.00 were ordered deducted from the backpay pursuant to the CIR's resolution of May 22, 1965.

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