

SHELL OIL WORKERS UNION AND SHELL & AFFILIATES SUPERVISORS’ UNION, PETITIONERS, VS. SHELL COMPANY OF THE PHILIPPINES AND THE COURT OF INDUSTRIAL RELATIONS, RESPONDENTS.

G.R. Nos. L-30658-59. March 31, 1976

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

This is a petition for review on certiorari of the Resolution dated July 31, 1968 of the Court of Industrial Relations en banc in its CIR Case Nos. 2410-V and 2411-V, affirming the Decision dated January 29, 1968, of its Trial Court denying the petitions of petitioners for additional overtime pay from their employer, private respondent Shell Company of the Philippines.

The factual background of the case is as follows:

In the trial court, two cases were filed - one is CIR Case No. 2410-V entitled "Shell Oil Workers Union vs. The Shell Company and its Managers", filed on May 12, 1967; and the other is CIR Case No. 2411-V entitled "Shell and Affiliates Supervisors' Union vs. Shell Company of the Philippines, Ltd. and its General Managers", filed on May 13, 1967. The claims interposed and the theory advanced by the two unions against the same employer, the Shell Company of the Philippines, are one and the same, that is, - the members of the petitioners' unions were not and are not being paid their overtime pay due them in accordance with the ruling in *National Waterworks & Sewerage Authority vs. NAWASA Consolidated Unions, et al.*, G.R. No. L-18938, August 31, 1964; 11 SCRA p. 766.

On May 23, 1967, the respondent Shell Company of the Philippines filed a motion to Dismiss but, the same was later on withdrawn on July 19, 1967. An Answer instead was filed by the respondent Shell Company of the Philippines on July 27, 1967, claiming that the employees who rendered or are rendering overtime work have been paid and are being paid in accordance with law and their collective bargaining agreement. It is also averred in the answer of the respondent company that the NAWASA decision insofar as the computation of overtime pay is concerned is not applicable to the factual situation of the case and that claims for overtime pay filed beyond the three-year period allowed by law have already prescribed.

The parties agreed to submit their cases for decision by the trial court on the basis alone of the testimony of Mr. B. Figueroa, Industrial Relations Manager of respondent Shell Company, with the following stipulations of facts:

"1. That Exhibit "A-Petitioner" and " Exhibit 1-Respondent" is the collective bargaining agreement between the parties currently enforced and for a period of three (3) years and five (5) months commencing in August 1966 until 31 December, 1969.

"2. That Exhibit "A-1, Petitioner" and "Exhibit 1-A", Respondent" (Appendix B which covers premium rates and allowances) form part of the agreement.

"3. That the manner of computing the overtime compensation of the employees as provided in Exhibit "A-1, Petitioner" and "Exhibit "1-A, Respondent", in the contracts preceding this, has been the same.

"4. That Shell has been computing the overtime compensation of its employees in the same manner throughout the period of more than ten (10) years without objection on the part of the SOWU and that it is based on the basic hourly rate and basic monthly rate.

"5. That SOWU marked in evidence Exhibit "B", a description of the fringe benefits enjoyed by its members which are not provided in the collective bargaining agreement. As agreed, however, the Tin Factory Incentive pay has ceased in view of the closure of the factory in May 1966; the fringe benefits as described show that they are occasionally not regularly enjoyed and that not all employees are entitled to them. Furthermore, there are conditions precedent to before one can claim the benefits.

"6. That parties agree that the court may take judicial notice of the records of the NAWASA case now with the Supreme Court and they are allowed to adopt or make reference to any part thereof as evidence here if proper." (P. 2, CIR Decision of January 29, 1968).

On January 29, 1968, the trial court rendered its decision denying both petitions for lack of basis.

On February 2, 1968, the petitioners elevated their cases to the Court of Industrial Relations en banc and moved for the reconsideration of the Decision of the trial court under date of January 29, 1968, and reiterated their claim for the recomputation of their overtime pay by taking into account the fringe benefits enjoyed and adding the same to the basic rate before computing the overtime pay.

The Court of Industrial Relations en banc rendered its Resolution on July 31, 1968, denying the petitioners' motion for reconsideration, as follows:

"This refers to petitioners' Motion seeking reconsideration of the Decision of the Trial Court dated January 29, 1968. After a careful perusal of the records as well as the written and oral arguments of the parties, the Court en banc fails to find sufficient justification in altering or modifying the aforesaid Decision.

"MOTION DENIED."

Hence this petition for review on certiorari.

The principal issue thus herein presented is whether the pertinent ruling in the NAWASA case (G.R. No. L-18938, August 31, 1964; 11 SCRA 766) is applicable to the case at bar so as to allow the payment of additional overtime pay to the petitioners by the private respondent Shell Company, notwithstanding their collective bargaining agreement.

The pertinent ruling in the NAWASA case invoked by the petitioners in the proper computation of overtime pay is as follows:

"It has been held that for purposes of computing overtime 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 v. Yangermah-Reynolds Hardwood Co.*, 325 U.S. 419; *Walling v. Harischfeger Corp.*, 325 U.S. 427. The "regular rate" of pay also ordinarily includes incentive 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 daytime 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 v. National Terminals Corp.* C. C. Wise, 50 F. Supp. 26, affirmed C.C.A. *Carbunao v. National Terminals Corp.* 139 F. 2d 853)." (Pp. 1-2, Petition For Certiorari; *National Waterworks & Sewerage Authority v. NWSA Consolidated Unions, Et Al.*, L-18938,

August 31, 1964; 11 SCRA 766, 782-783).

Petitioners, however, overlook the paragraph immediately following, which states:

"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." (11 SCRA 766, 783, *supra*; Italics supplied).

The theory, therefore, of the petitioners is to the effect that, notwithstanding the terms and conditions of their existing collective bargaining agreement with respondent Shell Company, particularly Exhibit "A-1" for the Petitioners and Exhibit "1-A" for the Respondent (which is Appendix "B" of the Collective Bargaining Agreement of the parties), considering the ruling in the NAWASA case, a recomputation should be made of their basic wage by adding the money value of the fringe benefits enjoyed by them from whence the premium rates agreed upon shall be computed in order to arrive at the correct computation of their overtime compensation from the Company. On the other hand, respondent Shell Company maintains that the NAWASA case should not be utilized as the basis for the alteration of their mode of computing overtime rate of pay as set forth in their collective Bargaining Agreement. It insists that their collective bargaining agreement should be the law between them.

After a careful and thorough re-examination of the NAWASA case, *supra*, and a minute examination of the facts and the evidence of the case now before Us, We rule that the NAWASA case is not in point and, therefore, is inapplicable to the case at bar.

The ruling of this Court in the NAWASA case contemplates the regularity and continuity of the benefits enjoyed by the employees or workers (for at least three (3) months) as the condition precedent before such additional payments or benefits are taken into account. This is evident in the aforequoted ruling of this Court in the NAWASA case as well as in the herein-below cited authorities, to wit:

"The 'regular rate' of pay on the basis of which overtime must be computed must reflect all payments which parties have agreed shall be received regularly during the work week, exclusive of overtime payments." *Walling v. Garlock Packing Co., C.C.A.N.Y.*, 159 F. 2d 44, 45. (Page 289, WORDS And PHRASES, Permanent Edition, Vol. 36A; Italics supplied); and

"As a general rule the words 'regular rate' mean the hourly rate actually paid for the normal, non-overtime work week, and an employee's regular compensation is the compensation which regularly and actually reaches him, * * * * ." (56 C.J.S. 704; Italics supplied).

Even in the definition of wage under the Minimum Wage Law, the words "customarily furnished" are used in referring to the additional payments or benefits, thus, -

"'Wage' paid to any employee shall mean the remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done or for services rendered or to be rendered, and includes the fair and reasonable value, as determined by the Secretary of Labor, of board, lodging, or other facilities customarily furnished by the employer to the employee." (Sec. 2(g), R.A. No. 602).

Having been stipulated by the parties that " * * * * the Tin Factory Incentive Pay has ceased in view of the closure of the factory in May 1966 the fringe benefits as described show that they are occasionally not regularly enjoyed and that not all employees are entitled to them", herein petitioners failed to meet the test laid down by this Court in the NAWASA case. Further, the collective bargaining agreement resorted to by the parties being in accordance with R.A. 875, with its provision on overtime pay far way beyond the premium rate provided for in

Sections 4 and 5 of Commonwealth Act 444, the same should govern their relationship. Since this is their contract entered into by them pursuant to bargaining negotiations under existing laws, they are bound to respect it. It is the duty of this Court to see to it that contracts between parties, not tainted with infirmity or irregularity or illegality, be strictly complied with by the parties themselves. This is the only way by which unity and order can be properly attained in our society.

It should be noted in passing that Commonwealth Act 444 prescribes only a minimum of at least 25% in addition to the regular wage or salary of an employee to constitute his overtime rate of pay, whereas, under Appendix "B", (Exhs. "A-1", Petitioners and "1-A", Respondent) of the Collective Bargaining Agreement of the parties, the premium rate of overtime pay is as high as 150% on regular working days up to 250% on Sundays and recognized national holidays.

WHEREFORE, the judgment appealed from is affirmed. Without pronouncement as to costs.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and Martin, JJ., concur.

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