

NATIONAL SUGAR REFINERIES CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND NBSR SUPERVISORY UNION (PACIWU) TUCP, RESPONDENTS.

G.R. No. 101761. March 24, 1993

Ponente: REGALADO, J.

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REGALADO, J.:

The main issue presented for resolution in this original petition for certiorari is whether supervisory employees, as defined in Article 212(m), Book V of the Labor Code, should be considered as officers or members of the managerial staff under Article 82, Book III of the same Code, and hence are not entitled to overtime, rest day and holiday pay.

Petitioner National Sugar Refineries Corporation (NASUREFCO), a corporation which is fully owned and controlled by the Government, operates three (3) sugar refineries located at Bukidnon, Iloilo and Batangas. The Batangas refinery was privatized on April 11, 1992 pursuant to Proclamation No. 50.[1] Private respondent union represents the former supervisors of the NASUREFCO Batangas Sugar Refinery, namely, the Technical Assistant to the Refinery Operations Manager, Shift Sugar Warehouse Supervisor, Senior Financial/Budget Analyst, General Accountant, Cost Accountant, Sugar Accountant, Junior Financial/Budget Analyst, Shift Boiler Supervisor, Shift Operations Chemist, Shift Electrical Supervisor, General Services Supervisor, Instrumentation Supervisor, Community Development Officer, Employment and Training Supervisor, Assistant Safety and Security Officer, Head of Personnel Services, Head Nurse, Property Warehouse Supervisor, Head of Inventory Control Section, Shift Process Supervisor, Assistant Shift Process Supervisor, Shift R/M Supervisor, Day Maintenance Supervisor and Motorpool Supervisor.

On June 1, 1988, petitioner implemented a Job Evaluation (JE) Program affecting all employees, from rank-and-file to department heads. The JE Program was designed to rationalize the duties and functions of all positions, reestablish levels of responsibility, and reorganize both wage and operational structures. Jobs were ranked according to effort, responsibility, training and working conditions and relative worth of the job. As a result, all positions were re-evaluated, and all employees including the members of respondent union were granted salary adjustments and increases in benefits commensurate to their actual duties and functions.

We glean from the records that for about ten years prior to the JE Program, the members of respondent union were treated in the same manner as rank-and-file employees. As such, they used to be paid overtime, rest day and holiday pay pursuant to the provisions of Articles 87, 93 and 94 of the Labor Code, as amended. With the implementation of the JE Program, the following adjustments were made: (1) the members of respondent union were re-classified under levels S-5 to S-8 which are considered managerial staff for purposes of compensation and benefits; (2) there was an increase in basic pay on the average of 50% of their basic pay prior to the JE Program, with the union members now enjoying a wide gap (P1,269.00 per month) in basic pay compared to the highest paid rank-and-file employee; (3) longevity pay was increased on top of alignment adjustments; (4) they were

entitled to increased company COLA of P225.00 per month; and (5) there was a grant of P100.00 allowance for rest day/holiday work.

On May 11, 1990, petitioner NASUREFCO recognized herein respondent union, which was organized pursuant to Republic Act No. 6715 allowing supervisory employees to form their own unions, as the bargaining representative of all the supervisory employees at the NASUREFCO Batangas Sugar Refinery.

Two years after the implementation of the JE Program, specifically on June 20, 1990, the members of herein respondent union filed a complaint with the executive labor arbiter for non-payment of overtime, rest day and holiday pay allegedly in violation of Article 100 of the Labor Code.

On January 7, 1991, Executive Labor Arbiter Antonio C. Pido rendered a decision[2] disposing as follows:

“WHEREFORE, premises considered, respondent National Sugar Refineries Corporation is hereby directed to
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1. pay the individual members of complainant union the usual overtime pay, restday pay and holiday pay enjoyed by them instead of the P100.00 special allowance which was implemented on June 1, 1988; and
2. pay the individual members of complainant union the difference in money value between the P100.00 special allowance and the overtime pay, restday pay and holiday pay that they ought to have received from June 1, 1988.

All other claims are hereby dismissed for lack of merit.

SO ORDERED.”

In finding for the members of herein respondent union, the labor arbiter ruled that the long span of time during which the benefits were being paid to the supervisors has caused the payment thereof to ripen into a contractual obligation; that the complainants cannot be estopped from questioning the validity of the new compensation package despite the fact that they have been receiving the benefits therefrom, considering that respondent union was formed only a year after the implementation of the Job Evaluation Program, hence there was no way for the individual supervisors to express their collective response thereto prior to the formation of the union; and the comparative computations presented by the private respondent union showed that the P100.00 special allowance given by NASUREFCO fell short of what the supervisors ought to receive had the overtime pay, rest day pay and holiday pay not been discontinued, which arrangement, therefore, amounted to a diminution of benefits.

On appeal, in a decision promulgated on July 19, 1991 by its Third Division, respondent National Labor Relations Commission (NLRC) affirmed the decision of the labor arbiter on the ground that the members of respondent union are not managerial employees, as defined under Article 212(m) of the Labor Code and, therefore, they are entitled to overtime, rest day and holiday pay. Respondent NLRC declared that these supervisory employees are merely exercising recommendatory powers subject to the evaluation, review and final action by their department heads; their responsibilities do not require the exercise of discretion and independent judgment; they do not participate in the formulation of management policies nor in the hiring or firing of employees; and their main function is to carry out the ready policies and plans of the corporation.[3] Reconsideration of said decision was denied in a resolution of public respondent dated August 30, 1991.[4]

Hence this petition for certiorari, with petitioner NASUREFCO asseverating that public respondent commission committed a grave abuse of discretion in refusing to recognize the fact that the members of respondent union are members of the managerial staff who are not entitled to overtime, rest day and holiday pay; and in making petitioner assume the “double burden” of giving the benefits due to rank-and-file employees together with those

due to supervisors under the JE Program.

We find creditable merit in the petition and the extraordinary writ of certiorari shall accordingly issue.

The primordial issue to be resolved herein is whether the members of respondent union are entitled to overtime, rest day and holiday pay. Before this can be resolved, however, it must of necessity be ascertained first whether or not the union members, as supervisory employees, are to be considered as officers or members of the managerial Staff who are exempt from the coverage of Article 82 of the Labor Code.

It is not disputed that the members of respondent union are supervisory employees, as defined under Article 212(m), Book V of the Labor Code on Labor Relations, which reads:

“(m) ‘Managerial employee’ is one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees. Supervisory employees are those who, in the interest of the employer, effectively recommend such managerial actions if the exercise of such authority is not merely routine or clerical in nature but requires the use of independent judgment. All employees not falling within any of the above definitions are considered rank-and-file employees for purposes of this Book.”

Respondent NLRC, in holding that the union members are entitled to overtime, rest day and holiday pay, and in ruling that the latter are not managerial employees, adopted the definition stated in the aforementioned statutory provision.

Petitioner, however, avers that for purposes of determining whether or not the members of respondent union are entitled to overtime, rest day and holiday pay, said employees should be considered as “officers or members of the managerial staff” as defined under Article 82, Book III of the Labor Code on “Working Conditions and Rest Periods” and amplified in Section 2, Rule I, Book III of the Rules to Implement the Labor Code, to wit:

“Art. 82. Coverage. - The provisions of this title shall apply to employees in all establishments and undertakings whether for profit or not, but not to government employees, managerial employees, field personnel, members of the family of the employer who are dependent on him for support, domestic helpers, persons in the personal service of another, and workers who are paid by results as determined by the Secretary of Labor in appropriate regulations.

“As used herein, ‘managerial employees’ refer to those whose primary duty consists of the management of the establishment in which they are employed or of a department or subdivision thereof, and to other officers or members of the managerial staff.” (Emphasis supplied.)

x x x

“Sec. 2. Exemption. - The provisions of this rule shall not apply to the following persons if they qualify for exemption under the condition set forth herein:

x x x

(b) Managerial employees, if they meet all of the following conditions, namely:

(1) Their primary duty consists of the management of the establishment in which they are employed or of a department or subdivision thereof;

(2) They customarily and regularly direct the work of two or more employees therein;

(3) they have the authority to hire or fire other employees of lower rank; or their suggestions and recommendations as to the hiring and firing and as to the promotion or any other change of status of other employees are given particular weight.

(c) Officers or members of a managerial staff if they perform the following duties and responsibilities:

(1) The primary duty consists of the performance of work directly related to management policies of their employer;

(2) Customarily and regularly exercise discretion and independent judgment;

(3) (i) Regularly and directly assist a proprietor or a managerial employee whose primary duty consists of the management of the establishment in which he is employed or subdivision thereof; or (ii) execute under general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or (iii) execute under general supervision special assignments and tasks; and

(4) Who do not devote more than 20 percent of their hours worked in a work -week to activities which are not directly and closely related to the performance of the work described in paragraphs (1), (2), and (3) above.”

It is the submission of petitioner that while the members of respondent union, as supervisors, may not be occupying managerial positions, they are clearly officers or members of the managerial staff because they meet all the conditions prescribed by law and, hence, they are not entitled to overtime, rest day and holiday pay. It contends that the definition of managerial and supervisory employees under Article 212(m) should be made to apply only to the provisions on Labor Relations, while the right of said employees to the questioned benefits should be considered in the light of the meaning of a managerial employee and of the officers or members of the managerial staff, as contemplated under Article 82 of the Code and Section 2, Rule I, Book III of the implementing rules. In other words, for purposes of forming and joining unions, certification elections, collective bargaining, and so forth, the union members are supervisory employees. In terms of working conditions and rest periods and entitlement to the questioned benefits, however, they are officers or members of the managerial staff, hence they are not entitled thereto.

While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. Management also has its own rights which, as such, are entitled to respect and enforcement in the interest of simple fair play. Out of its concern for those with less privileges in life, this Court has inclined more often than not toward the worker and upheld his cause in his conflicts with the employer. Such favoritism, however, has not blinded us to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and the applicable law and doctrine.[5]

This is one such case where we are inclined to tip the scales of justice in favor of the employer.

I. The question whether a given employee is exempt from the benefits of the law is a factual one dependent on the circumstances of the particular case. In determining whether an employee is within the terms of the statutes, the criterion is the character of the work performed, rather than the title of the employee’s position.[6]

Consequently, while generally this Court is not supposed to review the factual findings of respondent commission, substantial justice and the peculiar circumstances obtaining herein mandate a deviation from the rule.

A cursory perusal of the Job Value Contribution Statements[7] of the union members will readily show that these supervisory employees are under the direct supervision of their respective department superintendents and that generally they assist the latter in planning, organizing, staffing, directing, controlling, communicating and in making decisions in attaining the company’s set goals and objectives. These supervisory employees are likewise responsible for the effective and efficient operation of their respective departments. More specifically, their duties and functions include, among others, the following operations whereby the employee:

1) assists the department superintendent in the following:

- a) planning of systems and procedures relative to department activities;
 - b) organizing and scheduling of work activities of the department, which includes employee shifting schedule and manning complement;
 - c) decision making by providing relevant information data and other inputs;
 - d) attaining the company's set goals and objectives by giving his full support;
 - e) selecting the appropriate man to handle the job in the department; and
 - f) preparing annual departmental budget;
- 2) observes, follows and implements company policies at all times and recommends disciplinary action on erring subordinates;
 - 3) trains and guides subordinates on how to assume responsibilities and become more productive;
 - 4) conducts semi-annual performance evaluation of his subordinates and recommends necessary action for their development/advancement;
 - 5) represents the superintendent or the department when appointed and authorized by the former;
 - 6) coordinates and communicates with other inter and intra department supervisors when necessary;
 - 7) recommends disciplinary actions/ promotions;
 - 8) recommends measures to improve work methods, equipment performance, quality of service and working conditions;
 - 9) sees to it that safety rules and regulations and procedure are implemented and followed by all NASUREFCO employees, recommends revisions or modifications to said rules when deemed necessary, and initiates and prepares reports for any observed abnormality within the refinery;
 - 10) supervises the activities of all personnel under him and sees to it that instructions to subordinates are properly implemented; and
 - 11) performs other related tasks as may be assigned by his immediate superior.

From the foregoing, it is apparent that the members of respondent union discharge duties and responsibilities which ineluctably qualify them as officers or members of the managerial staff, as defined in Section 2, Rule I, Book III of the aforestated Rules to Implement the Labor Code, viz.: (1) their primary duty consists of the performance of work directly related to management policies of their employer; (2) they customarily and regularly exercise discretion and independent judgment; (3) they regularly and directly assist the managerial employee whose primary duty consists of the management of a department of the establishment in which they are employed; (4) they execute, under general supervision, work along specialized or technical lines requiring special training, experience, or knowledge; (5) they execute, under general supervision, special assignments and tasks; and (6) they do not devote more than 20% of their hours worked in a work-week to activities which are not directly and clearly related to the performance of their work hereinbefore described.

Under the facts obtaining in this case, we are constrained to agree with petitioner that the union members should be considered as officers or members of the managerial staff and are, therefore, exempt from the coverage of Article 82. Perforce, they are not entitled to overtime, rest day and holiday pay.

The distinction made by respondent NLRC on the basis of whether or not the union members are managerial employees, to determine the latter's entitlement to the questioned benefits, is misplaced and inappropriate. It is

admitted that these union members are supervisory employees and this is one instance where the nomenclatures or titles of their jobs conform with the nature of their functions. Hence, to distinguish them from a managerial employee, as defined either under Articles 82 or 212(m) of the Labor Code, is puerile and inefficacious. The controversy actually involved here seeks a determination of whether or not these supervisory employees ought to be considered as officers or members of the managerial staff. The distinction, therefore, should have been made along that line and its corresponding conceptual criteria.

II. We likewise do not subscribe to the finding of the labor arbiter that the payment of the questioned benefits to the union members has ripened into a contractual obligation.

A. Prior to the JE Program, the union members, while being supervisors, received benefits similar to the rank-and-file employees such as overtime, rest day and holiday pay, simply because they were treated in the same manner as rank-and-file employees, and their basic pay was nearly on the same level as those of the latter, aside from the fact that their specific functions and duties then as supervisors had not been properly defined and delineated from those of the rank-and-file. Such fact is apparent from the clarification made by petitioner in its motion for reconsideration[8] filed with respondent commission in NLRC Case No. CA No. I-000058, dated August 16, 1991, wherein it lucidly explained:

“But, complainants no longer occupy the same positions they held before the JE Program. Those positions formerly classified as ‘supervisory’ and found after the JE Program to be rank-and-file were classified correctly and continue to receive overtime, holiday and restday pay. As to them, the practice subsists.

“However, those whose duties confirmed them to be supervisory, were re-evaluated, their duties re-defined and in most cases their organizational positions re-designated to confirm their superior rank and duties. Thus, after the JE program, complainants cannot be said to occupy the same positions.”[9]

It bears mention that this positional submission was never refuted nor controverted by respondent union in any of its pleadings filed before herein public respondent or with this Court. Hence, it can be safely concluded therefrom that the members of respondent union were paid the questioned benefits for the reason that, at that time, they were rightfully entitled thereto. Prior to the JE Program, they could not be categorically classified as members or officers of the managerial staff considering that they were then treated merely on the same level as rank-and-file. Consequently, the payment thereof could not be construed as constitutive of voluntary employer practice, which cannot now be unilaterally withdrawn by petitioner. To be considered as such, it should have been practiced over a long period of time, and must be shown to have been consistent and deliberate.[10]

The test or rationale of this rule on long practice requires an indubitable showing that the employer agreed to continue giving the benefits knowing fully well that said employees are not covered by the law requiring payment thereof.[11] In the case at bar, respondent union failed to sufficiently establish that petitioner has been motivated or is wont to give these benefits out of pure generosity.

B. It remains undisputed that with the implementation of the JE Program, the members of private respondent union were re-classified under levels S-5 to S-8 which were considered under the program as managerial staff for purposes of compensation and benefits, that they occupied re-evaluated positions, and that their basic pay was increased by an average of 50% of their basic salary prior to the JE Program. In other words, after the JE Program there was an ascent in position, rank and salary. This in essence is a promotion which is defined as the advancement from one position to another with an increase in duties and responsibilities as authorized by law, and usually accompanied by an increase in salary.[12]

Quintessentially, with the promotion of the union members, they are no longer entitled to the benefits which attach and pertain exclusively to their former positions. Entitlement to the benefits provided for by law requires

prior compliance with the conditions set forth therein. With the promotion of the members of respondent union, they occupied positions which no longer meet the requirements imposed by law. Their assumption of these positions removed them from the coverage of the law, ergo, their exemption therefrom.

As correctly pointed out by petitioner, if the union members really wanted to continue receiving the benefits which attach to their former positions, there was nothing to prevent them from refusing to accept their promotions and their corresponding benefits. As the saying goes, they cannot have their cake and eat it too or, as petitioner suggests, they should not, as a simple matter of law and fairness, get the best of both worlds at the expense of NASUREFCO.

Promotion of its employees is one of the jurisprudentially-recognized exclusive prerogatives of management, provided it is done in good faith. In the case at bar, private respondent union has miserably failed to convince this Court that the petitioner acted in bad faith in implementing the JE Program. There is no showing that the JE Program was intended to circumvent the law and deprive the members of respondent union of the benefits they used to receive.

Not so long ago, on this particular score, we had the occasion to hold that:

“x x x it is the prerogative of management to regulate, according to its discretion and judgment, all aspects of employment. This flows from the established rule that labor law does not authorize the substitution of the judgment of the employer in the conduct of its business. Such management prerogative may be availed of without fear of any liability so long as it is exercised in good faith for the advancement of the employers’ interest and not for the purpose of defeating or circumventing the rights of employees under special laws or valid agreement and are not exercised in a malicious, harsh, oppressive, vindictive or wanton manner or out of malice or spite.”[13]

WHEREFORE, the impugned decision and resolution of respondent National Labor Relations Commission promulgated on July 19, 1991 and August 30, 1991, respectively, are hereby ANNULLED and SET ASIDE for having been rendered and adopted with grave abuse of discretion, and the basic complaint of private respondent union is DISMISSED.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Nocon, and Campos, Jr., JJ., concur.

[1] Rollo, 209.

[2] Annex E, Petition; Rollo, 51, 56-57.

[3] Annex A, id.; ibid., 20-27; NLRC Case CA No. L-000058; penned by Pres. Comm. Lourdes C. Javier, with the concurrence of Comm. Ireneo B. Bernardo and Rogelio I. Rayala.

[4] Rollo, 28-29.

[5] *Sosito vs. Aguinaldo Development Corporation*, 156 SCRA 392 (1987).

[6] 56 C.J.S., Master and Servant, Sec. 151(11).

[7] Annexes I to I-23, Petition; Rollo, 84-149.

[8] Annex G, Petition; Rollo, 72.

[9] Rollo, 79.

- [10] *Globe Mackay Cable and Radio Corporation, et al. vs. NLRC, et al.*, 163 SCRA 71 (1988).
- [11] *Oceanic Pharmacal Employees Union (FFW) vs. Inciong, et al.*, 94 SCRA 270 (1979).
- [12] *Millares vs. Subido, et al.*, 20 SCRA 954 (1967); *Dosch vs. NLRC, et al.*, 123 SCRA 296 (1983).
- [13] *Wise and Co., Inc. vs. Wise and Co., Inc. Employees Union-NATU, et al.*, 178 SCRA 536 (1989).

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