

**PAL EMPLOYEES SAVINGS AND LOAN ASSOCIATION, INC. (PESALA),
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND
ANGEL V. ESQUEJO, RESPONDENT.**

G.R. No. 105963. August 22, 1996

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Is an employee entitled to overtime pay for work rendered in excess of eight hours a day, given the fact that his employment contract specifies a twelve-hour workday at a fixed monthly salary rate that is above the legal minimum wage? This is the principal question answered by this Court in resolving this petition which challenges the validity and legality of the Decision[1] of public respondent National Labor Relations Commission[2] promulgated on April 23, 1992 in NLRC NCR CA No. 002522-91 entitled "Angel V. Esquejo vs. PAL Employees Savings and Loan Association" which Decision modified (slightly as to amount) the earlier decision[3] dated November 11, 1991 of the labor arbiter granting private respondent's claim for overtime pay.

The Facts and the Case Below

On October 10, 1990, private respondent filed with public respondent a complaint docketed as NLRC NCR Case No. 10-05457-90 for non-payment of overtime pay and non-payment of the P25.00 statutory minimum wage increase mandated by Republic Act No. 6727.

Subsequently, private respondent filed a supplemental complaint for illegal suspension with prayer for reinstatement and payment of backwages. However, before the case was submitted for resolution, private respondent filed a "Motion to Withdraw Supplemental Complaint" on the ground that a separate action for illegal suspension, illegal dismissal, etc. had been filed and was pending before another labor arbiter. Hence, the issue decided by public respondent and which is under review by this Court in this petition involves only his claim for overtime pay.

On November 26, 1990, private respondent filed his position paper[4] with the labor arbiter alleging the following facts constituting his cause of action:

"Complainant (herein private respondent) started working with respondent (PESALA) sometime last March 1, 1986 as a company guard and was receiving a monthly basic salary of P1,990.00 plus an emergency allowance in the amount of P510.00. He was required to work a (sic) twelve (12) hours a day, a (sic) xerox copies of his appointment are hereto attached and marked as Annexes 'C' and 'D' of this position paper;

That on December 10, 1986, respondent Board of Directors in its board meeting held on November 21, 1986 approved a salary adjustment for the complainant increasing his monthly basic salary to P2,310.00 and an emergency allowance of P510.00, a xerox copy of the salary adjustment is hereto attached and marked as Annex 'E' hereof;

That on August 25, 1987, because of his impressive performance on his assigned job, another adjustment was approved by the President of the association increasing his monthly basic salary to P2,880.00, a xerox copy of

the salary adjustment is hereto attached and marked as Annex 'F' hereof;

That from January 4, 1988 up to June 1990, several salary adjustments were made by the respondent on the monthly basic salary of the complainant including a letter of appreciation for being as (sic) one of the outstanding performers during the first half of 1988, the latest salary prior to the filing of the complaint was P3,720.00, a (sic) xerox copies of all the documents relative to the salary adjustments are hereto attached and marked as annexes 'G', 'H', 'I', 'J' and 'K' of this position paper;

That during his entire period of employment with respondent, the former was required to perform overtime work without any additional compensation from the latter. It was also at this point wherein the respondent refused to give the P25.00 increase on the minimum wage rates as provided for by law. On October 12, 1990, complainant was suspended for the period of thirty seven (37) days for an offense allegedly committed by the respondent sometime last August 1989.'

On December 13, 1990, petitioner PESALA filed its position paper[5] alleging among other things:

"On 01 March, 1986, complainant was appointed in a permanent status as the company guard of respondent. In the Appointment Memorandum dated February 24, 1986 which has the conformity of complainant, it is expressly stipulated therein that complainant is to receive a monthly salary of P1,900.00 plus P510.00 emergency allowance for a twelve (12) hours work per day with one (1) day off. A copy of said appointment memorandum is hereto attached as Annex 'A' and made an integral part hereof.

On 01 December, 1986, the monthly salary of complainant was increased to P2,310.00 plus P510.00 emergency allowance. Later, or on 01 January, 1988, the monthly salary of complainant was again increased to P3,420.00. And still later, or on 01 February, 1989, complainant's monthly salary was increased to P3,720.00. Copies of the memoranda evidencing said increase are hereto attached as Annexes 'B', 'B-1' and 'B-2' and are made integral parts hereof.

On 29 November, 1989, the manager of respondent in the person of Sulpicio Jornales wrote to complainant informing the latter that the position of a guard will be abolished effective November 30, 1989, and that complainant will be re-assigned to the position of a ledger custodian effective December 1, 1989.

Pursuant to the above-mentioned letter-agreement of Mr. Jornales, complainant was formally appointed by respondent as its ledger custodian on December 1, 1989. The monthly salary of complainant as ledger custodian starting on December 1, 1989 was P3,720.00 for forty (40) working hours a week or eight (8) working hours a day. A copy of said Appointment memorandum is hereto attached as Annex 'C' and made an integral part hereof.

On 29 August, 1990, complainant was administratively charged with serious misconduct or disobedience of the lawful orders of respondent or its officers, and gross and habitual neglect of his duties, committed as follows:

'1. Sometime in August, 1989, you (referring to complainant Esquejo) forwarded the checks corresponding to the withdrawals of Mr. Jose Jimenez and Mr. Anselmo dela Banda of Davao and Iloilo Station, respectively, without the signature of the Treasurer and the President of PESALA, in violation of your duty and function that you should see to it that the said checks should be properly signed by the two PESALA officials before you send out said checks of their addresses. As a result of which, there was a substantial delay in the transmission of the checks to its owners resulting to an embarrassment on the part of the PESALA officers and damage and injury to the recipients (sic) of the checks since they needed the money badly.

2. Sometime in August, 1989, before you (complainant) went on your vacation, you failed to leave or surrender the keys of the office, especially the keys to the main and back doors which resulted to damage, injury and embarrassment to PESALA. This is a gross violation of your assigned duties and you disobeyed the instruction of your Superior.'

xxx xxx xxx

Herein complainant was informed of the aforequoted charges against him and was given the opportunity to be heard and present evidence in his behalf as shown by the Notice of Hearing (Annex 'D' hereof) sent to him. Complainant did in fact appeared (sic) at the hearing, assisted by his counsel, Atty. Mahinardo G. Mailig, and presented his evidence in the form of a Counter-Affidavit. A copy of said Counter-Affidavit is hereto attached as Annex 'E' and made an integral part hereof.

On 12 October, 1990, after due deliberation on the merits of the administrative charges filed against herein complainant, the Investigating Officer in the person of Capt. Rogelio Enverga resolved the same imposing a penalty of suspension of herein complainant, thus:

'PENALTY: 1. For the first offense, you (referring to complainant Esquejo) are suspended for a period of thirty (30) working days without pay effective October 15, 1990.

2. For the second offense, your (sic) are suspended for a period of seven (7) working days without pay effective from the date the first suspension will expire.'

On March 7, 1991, private respondent filed a detailed and itemized computation of his money claims totaling P107,495.90, to which petitioner filed its comment on April 28, 1991. The computation filed on March 7, 1991 was later reduced to P65,302.80. To such revised computation, the petitioner submitted its comment on April 28, 1991.

Thereafter, labor arbiter Cornelio L. Linsangan rendered a decision dated November 11, 1991 granting overtime pay as follows:

"WHEREFORE, judgment is hereby rendered:

1. Granting the claim for overtime pay covering the period October 10, 1987 to November 30, 1989 in the amount of P28,344.55.
2. The claim for non-payment of P25.00 salary increase pursuant to Republic Act No. 6727 is dismissed for lack of merit."

Aggrieved by the aforesaid decision, petitioner appealed to public respondent NLRC only to be rejected on April 23, 1992 via the herein assailed Decision, the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, the award is reduced to an amount of TWENTY EIGHT THOUSAND SIXTY-SIX PESOS AND 45/100 (P28,066.45). In all other respects, the Decision under review is hereby AFFIRMED and the appeal DISMISSED for lack of merit."

No motion for reconsideration of the Decision was filed by the petitioner.[6]

What transpired afterwards is narrated by the Solicitor General in his memorandum,[7] which we presume to be correct since petitioner did not contradict the same in its memorandum:

"x x x Petitioner did not appeal the Decision of respondent NLRC. When it became final, the parties were called to a conference on June 29, 1992 to determine the possibility of the parties' voluntary compliance with the Decision (Order of Labor Arbiter Linsangan, dated July 23, 1992).

x x x In their second conference, held on July 15, 1992, petitioner proposed to private respondent a package compromise agreement in settlement of all pending claims. Private respondent for his part demanded P150,000.00 as settlement of his complaint which was turned down by petitioner as too excessive. Unfortunately, no positive results were achieved.

As a result, a pleading was filed by petitioner captioned: Motion to Defer Execution and Motion to Re-Compute alleged overtime pay. Petitioner states that 'quite recently, the Employee Payroll Sheets pertaining to the salaries, overtime pay, vacation and sick leave of Angel Esquejo were located.'

x x x Petitioner's Motion to Defer Execution and Motion to Re-Compute respondent's overtime pay was denied in an Order dated July 23, 1992.

x x x Petitioner moved to reconsider the Denial Order on July 27, 1992. Private respondent opposed."

In the meantime, petitioner filed the instant special civil action for certiorari before this Court on July 10, 1992. Later, on July 17, 1992, citing as reason that "x x x quite recently, the Employee Payroll Sheets which contained the salaries and overtime pay received by respondent Esquejo were located in the bodega of the petitioner and based on said Payroll Sheets, it appears that substantial overtime pay have been paid to respondent Esquejo in the amount of P24,283.22 for the period starting January 1987 up to November 1989," petitioner asked this Court for the issuance of a temporary restraining order or writ of preliminary injunction. On the same date of July 17, 1992, a "Supplemental Petition Based On Newly Discovered Evidence" was filed by petitioner to which was attached photocopies of payroll sheets of the aforestated period.

On July 29, 1992, this Court issued a temporary restraining order enjoining the respondents from enforcing the Decision dated April 23, 1992 issued in NLRC NCR CA No. 002522-91, the case below subject of the instant petition.

The Issues

For issues have been raised by the petitioner in its effort to obtain a reversal of the assailed Decision, to wit:

"I

THE RESPONDENT NLRC COMMITTED A GRAVE ABUSE OF DISCRETION WHEN IT RULED THAT PRIVATE RESPONDENT IS ENTITLED TO OVERTIME PAY WHEN THE SAME IS A GROSS CONTRAVENTION OF THE CONTRACT OF EMPLOYMENT BETWEEN PETITIONER AND RESPONDENT ESQUEJO AND A PATENT VIOLATION OF ARTICLES 1305, 1306 AND 1159 OF THE CIVIL CODE.

II

THE RESPONDENT NLRC COMMITTED A GRAVE ABUSE OF DISCRETION IN AWARDING OVERTIME PAY OF P28,066.45 TO PRIVATE RESPONDENT WHEN THE SAME IS A CLEAR VIOLATION OF ARTICLE 22 OF THE CIVIL CODE ON UNJUST ENRICHMENT.

III

THE RESPONDENT NLRC COMMITTED A GRAVE ABUSE OF DISCRETION WHEN IT RULED THAT PRIVATE RESPONDENT WAS NOT PAID THE OVERTIME PAY BASED ON THE COMPUTATION OF LABOR ARBITER CORNELIO LINSANGAN WHICH WAS AFFIRMED BY SAID RESPONDENT NLRC WHEN THE SAME IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND IT, THEREFORE, VIOLATED THE CARDINAL PRIMARY RIGHTS OF PETITIONER AS PRESCRIBED IN 'ANG TIBAY VS. CIR' 69 PHIL. 635.

IV

WHETHER OR NOT THE PETITIONER'S SUPPLEMENTAL PETITION BASED ON NEWLY DISCOVERED EVIDENCE MAY BE ADMITTED AS PART OF ITS EVIDENCE IT BEING VERY VITAL TO THE JUDICIOUS DETERMINATION OF THE CASE."(Rollo, p. 367)

In essence the above issues boil down to this query: Is an employee entitled to overtime pay for work rendered in excess of the regular eight hour day given the fact that he entered into a contract of labor specifying a work-day of twelve hours at a fixed monthly rate above the legislative minimum wage?

The Court's Ruling

At the outset, we would like to rectify the statement made by the Solicitor General that the "petitioner did not

appeal from the Decision of (public) respondent NLRC." The elevation of the said case by appeal is not possible. The only remedy available from an order or decision of the NLRC is a petition for certiorari under Rule 65 of the Rules of Court alleging lack or excess of jurisdiction or grave abuse of discretion.[8] The general rule now is that the special civil action of certiorari should be instituted within a period of three months.[9] Hence, when the petition was filed on July 10, 1992, three months had not yet elapsed from petitioner's receipt of the assailed Decision (should really be from receipt of the order denying the motion for reconsideration).

However, aside from failing to show clearly grave abuse of discretion on the part of respondent NLRC, which we shall discuss shortly, the petitioner also failed to comply with the mandatory requirement of filing a motion for reconsideration from the Decision of the Public respondent before resorting to the remedy of certiorari. We have previously held that:

"x x x. The implementing rules of respondent NLRC are unequivocal in requiring that a motion for reconsideration of the order, resolution, or decision of respondent commission should be seasonably filed as a precondition for pursuing any further or subsequent remedy, otherwise the said order, resolution, or decision shall become final and executory after ten calendar days from receipts thereof. Obviously, the rationale therefor is that the law intends to afford the NLRC an opportunity to rectify such errors or mistakes it may have lapsed into before resort to the courts of justice can be had. This merely adopts the rule that the function of a motion for reconsideration is to point to the court the error that it may have committed and to give it a chance to correct itself." [10]

"Additionally, the allegations in the petition clearly show that petitioner failed to file a motion for reconsideration of the assailed Resolution before filing the instant petition. As correctly argued by private respondent Rolando Tan, such failure constitutes a fatal infirmity x x x. The unquestioned rule in his jurisdiction is that certiorari will lie only if there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law against the acts of public respondent. In the instant case, the plain and adequate remedy expressly provided by law was a motion for reconsideration of the assailed decision, based on palpable or patent errors, to be made under oath and filed within ten (10) calendar days from receipt of the questioned decision. And for failure to avail of the correct remedy expressly provided by law, petitioner has permitted the subject Resolution to become final and executory after the lapse of the ten day period within which to file such motion for reconsideration." [11]

In brief, the filing of the instant petition was premature and did not toll the running of the 3 month period. Thus, the assailed Decision became final and executory. On this ground alone, this petition must therefore be dismissed.

However, in view of the importance of the substantial query raised in the petition, we have resolved to decide the case on the merits also.

The First Issue: Was Overtime Pay Included?

The main disagreement between the parties centers on how the contract of employment of the private respondent should be interpreted. The terms and conditions thereof read as follows:

"Date: February 24, 1986

NAME :ESQUEJO, ANGEL

NATURE OF ACTION :APPOINTMENT

FROM :

POSITION TITLE :COMPANY GUARD

TO :

STATUS :PERMANENT

EFFECTIVE DATE :MARCH 1, 1986

FROM :P1,990.00 per month
plus P510.00 emergency
allowance
SALARY :
TO :

REMARKS :To confirm permanent
appointment as company
guard who will render 12
hours a day with one (1)
day off

RECOMMENDED BY: APPROVED BY:
(Signed) (Signed)
SULPICIO B. JORNALES CATALINO F. BANEZ

(Signed)
ANGEL V. ESQUEJO"[12]

Petitioner faults the public respondent when it said that there was "no meeting of minds between the parties," since the employment contract "explicitly states without any equivocation" that the overtime pay for work rendered for four (4) hours in excess of the eight (8) hour regular working period is already included in the P1,990.00 basic salary. "This is very clear from the fact that the appointment states 12 hours a day work." [13] By its computations, [14] petitioner tried to illustrate that private respondent was paid more than the legally required minimum salary then prevailing.

To prove its contention, petitioner argues that:

"The legal minimum wage prescribed by our statutes, the legally computed overtime pay and the monthly salaries being paid by petitioner to respondent Esquejo would show that indeed, the overtime pay has always been absorbed and included in the said agreed monthly salaries.

In 1986, the legal minimum salary of Esquejo is computed as follows (per Appointment Memoranda dated February 4, 1986 and June 6, 1986 [Annex 'C' and 'D' of Annex 'B' of this Petition]):

54 x 314 days
12 months = P1,413.00 monthly salary

The hourly overtime pay is computed as follows:

54/8 hours = P6.75 x 4 hrs. = P27.00
P27.00 x 1.25 = P33.75 x 20 (should be 26) days = P887.50
(should be P877.50)

P1,413.00 - legal minimum wage
+ 887.50(877.50) - legal overtime pay
P2,290.50 - amount due to respondent

Esquejo under the law

P2,500.00 - gross salary of Esquejo per contract
-2,290.50
P 209.50 - Difference" (Rollo, p. 371).

On the other hand, private respondent in his position paper claims that overtime pay is not so incorporated and should be considered apart from the P1,990.00 basic salary.[15]

We find for the private respondent and uphold the respondent NLRC's ruling that he is entitled to overtime pay.

Based on petitioner's own computations, it appears that the basic salary plus emergency allowance given to private respondent did not actually include the overtime pay claimed by private respondent. Following the computations it would appear that by adding the legal minimum monthly salary which at the time was P1,413.00 and the legal overtime pay P877.50, the total amount due the private respondent as basic salary should have been P2,290.50. By adding the emergency cost of living allowance (ECOLA) of P510.00 as provided by the employment contract, the total basic salary plus emergency allowance should have amounted to P2,800.50. However, petitioner admitted that it actually paid private respondent P1,990.00 as basic salary plus P510.00 emergency allowance or a total of only P2,500.00. Undoubtedly, private respondent was shortchanged in the amount of P300.50. Petitioner's own computations thus clearly establish that private respondent's claim for overtime pay is valid.

Side Issue: Meeting of the Minds?

The petitioner contends that the employment contract between itself and the private respondent "perfectly satisfies" the requirements of Article 1305 of the Civil Code as to the "meeting of the minds" such that there was a "legal and valid contract" entered into by the parties. Thus, private respondent "cannot be allowed to question the said salary arrangements for the extra 4 hours overtime pay after the lapse of 4 years and claim only now that the same is not included in the terms of the employment contract." [16]

We disagree. Public respondent correctly found no such agreement as to overtime pay. In fact, the contract was definite only as to the number of hours of work to be rendered but vague as to what is covered by the salary stipulated. Such ambiguity was resolved by the public respondent, thus:

"In resolving the issue of whether or not complainant's overtime pay for the four (4) hours of work rendered in excess of the normal eight hour work period is incorporated in the computation of his monthly salary, respondent invokes its contract of employment with the complainant. Said contract appears to be in the nature of a document identifiable as an appointment memorandum which took effect on March 1, 1986 (Records, p. 56) by virtue of which complainant expressed conformity to his appointment as company guard with a work period of twelve (12) hours a day with one (1) day off. Attached to this post is a basic salary of P1,990.00 plus P510.00 emergency allowance. It is (a) cardinal rule in the interpretation of a contract that if the terms thereof are clear and leave no doubt upon the intention of the contracting parties, then the literal meaning of its stipulations shall control. (Art. 1370, Civil Code of the Philippines). To this, respondent seeks refuge. Circumstances, however, do not allow us to consider this rule in the light of complainant's claim for overtime pay which is an evident indication that as to this matter, it cannot be said that there was a meeting of the minds between the parties, it appearing that respondent considered the four (4) hours work in excess of the eight hours as overtime work and compensated by way of complainant's monthly salary while on the latter's part, said work rendered is likewise claimed as overtime work but yet unpaid in view of complainant's being given only his basic salary. Complainant claims that the basic salary could not possibly include therein the overtime pay for his work rendered in excess of eight hours. Hence, respondent's Appointment Memorandum cannot be taken and accorded credit as it is so worded in view of this ambiguity. We therefore proceed to determine the issue in the light of existing law related thereto. While it is true that the complainant received a salary rate which is higher than the minimum provided by law, it does not however follow that any additional compensation due the complainant can be offset by his salary in excess of the minimum, especially in the absence of an express agreement to that effect. To consider otherwise would be in disregard of the rule of nondiminution of benefits which are above the minimum being extended to the employees. Furthermore, such arrangement is likewise in disregard of the manner required by the law on how overtime compensation must be

determined. There is further the possibility that in view of subsequent increases in the minimum wage, the existing salary for twelve (12) hours could no longer account for the increased wage level together with the overtime rate for work rendered in excess of eight hours. This fertile ground for a violation of a labor standards provision can be effectively thwarted if there is a clear and definite delineation between an employee's regular and overtime compensation. It is, further noted that a reading of respondent's Appointment Memoranda issued to the complainant on different dates (Records, pp. 56-60) shows that the salary being referred to by the respondent which allegedly included complainant's overtime pay, partakes of the nature of a basic salary and as such, does not contemplate any other compensation above thereof including complainant's overtime pay. We therefore affirm complainant's entitlement to the latter benefit."^[17]

Petitioner also insists that private respondent's delay in asserting his right/claim demonstrates his agreement to the inclusion of overtime pay in his monthly salary rate. This argument is specious. First of all, delay cannot be attributed to the private respondent. He was hired on March 1, 1986. His twelve-hour work periods continued until November 30, 1989. On October 10, 1990 (just before he was suspended) he filed his money claims with the labor arbiter. Thus, the public respondent in upholding the decision of the arbiter computed the money claims for the three year period from the date the claims were filed, with the computation starting as of October 10, 1987 onwards.

In connection with the foregoing, we should add that even if there had been a meeting of the minds in the instant case, the employment contract could not have effectively shielded petitioner from the just and valid claims of private respondent. Generally speaking, contracts are respected as the law between the contracting parties, and they may establish such stipulations, clauses, terms and conditions as they may see fit; and for as long as such agreements are not contrary to law, morals, good customs, public policy or public order, they shall have the force of law between them.^[18] However, "x x x, while it is the inherent and inalienable right of every man to have the utmost liberty of contracting, and agreements voluntarily and fairly made will be held valid and enforced in the courts, the general right to contract is subject to the limitation that the agreement must not be in violation of the Constitution, the statute or some rule of law (12 Am. Jur. pp. 641-642)."^[19] And under the Civil Code, contracts of labor are explicitly subject to the police power of the State because they are not ordinary contracts but are impressed with public interest.^[20] Inasmuch as in this particular instance the contract is question would have been deemed in violation of pertinent labor laws, the provisions of said laws would prevail over the terms of the contract, and private respondent would still be entitled to overtime pay.

Moreover, we cannot agree with petitioner's assertion that by judging the intention of the parties from their contemporaneous acts it would appear that the "failure of respondent Esquejo to claim such alleged overtime pay since 1986 clearly demonstrate(s) that the agreement on his gross salary as contained in his appointment paper is conclusive on the matter of the inclusion of overtime pay." (Rollo, pp. 13-15; also, Rollo, pp. 378-380). This is simply not the case here. "The interpretation of the provision in question having been put in issue, the Court is constrained to determine which interpretation is more in accord with the intent of the parties.^[21] To ascertain the intent of the parties, the Court is bound to look at their contemporaneous and subsequent acts.^[22] Private respondent's silence and failure to claim his overtime pay since 1986 cannot be considered as proving the understanding on his part that the rate provided in his employment contract covers overtime pay. Precisely, that is the very question raised by private respondent with the arbiter, because contrary to the claim of petitioner, private respondent believed that he was not paid his overtime pay and that such pay is not covered by the rate agreed upon and stated in his Appointment Memorandum. The subsequent act of private respondent in filing money claims negates the theory that there was clear agreement as to the inclusion of his overtime pay in the contracted salary rate. When an employee fails to assert his right immediately upon violation thereof, such failure cannot ipso facto be deemed as a waiver of the oppression. We must recognize that the worker and his employer are not equally situated. When a worker keeps silent inspite of flagrant violations of his rights, it may be because he is

seriously fearful of losing his job. And the dire consequences thereof on his family and his dependents prevent him from complaining. In short, his thoughts of sheer survival weigh heavily against launching an attack upon his more powerful employer.

The petitioner contends that the agreed salary rate in the employment contract should be deemed to cover overtime pay, otherwise serious distortions in wages would result "since a mere company guard will be receiving a salary much more than the salaries of other employees who are much higher in rank and position than him in the company." (Rollo, p. 16) We find this argument flimsy and undeserving of consideration. How can paying an employee the overtime pay due him cause serious distortions in salary rates or scales? And how can "other employees" be aggrieved when they did not render any overtime service?

Petitioner's allegation that private respondent is guilty of laches is likewise devoid of merit. Laches is defined as failure or neglect for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier. It is negligence or omission to assert a right within an unreasonable time, warranting the presumption that the party entitled to assert it has either abandoned or declined to assert it.[23] The question of laches is addressed to the sound discretion of the court, and since it is an equitable doctrine, its application is controlled by equitable considerations. It cannot work to defeat justice or to perpetrate fraud and injustice.[24] Laches cannot be charged against any worker when he has not incurred undue delay in the assertion of his rights. Private respondent filed his complaint within the three-year reglementary period. He did not sleep on his rights for an unreasonable length of time.[25]

Second Issue: Unjust Enrichment?

Petitioner contends that the award of overtime pay is "plain and simple unjust and illegal enrichment." Such award "in effect sanctioned and approved the grant of payment to respondent Esquejo which will result in double payment for the overtime work rendered by paid employee." [26] Also, per petitioner, "(n)othing in the Labor Code nor in the Rules and Regulations issued in the implementation thereof prohibits the manner of paying the overtime pay (by) including the same in the salary." [27]

This is begging the issue. To reiterate, the main question raised before the labor tribunals is whether the provision on wages in the contract of employment already included the overtime pay for four (4) working hours rendered six days a week in excess of the regular eight-hour work. And we hold that the tribunals below were correct in ruling that the stipulated pay did not include overtime. Hence, there can be no undue enrichment in claiming what legally belongs to private respondent.

Third Issue: Basis of NLRC's Decision?

Petitioner assails respondent NLRC for adopting that portion of the decision of the labor arbiter, which reads as follows:

"x x x Our conclusion is quite clear considering the fact that at the time of his employment in March 1986, during which the minimum wage was P37.00 a day for 8 hours work, complainant's total take-home-pay working 12 hours a day including ECOLA, was only P2,500.00 a month. And immediately prior to his appointment as Ledger Custodian effective December 1, 1989, with the working hours reduced to 8 hours or 40 hours a week, complainant's monthly salary was P3,420.00 (instead of P5,161.01 minimum monthly with 4 hours overtime work everyday, or a difference of P1,741.01 a month).

"Accordingly, the claim for overtime pay reckoned from October 10, 1987 up to November 30, 1989 should be, as it is hereby, granted." [28] (Rollo, p. 201).

Petitioner believes that by adopting the above-quoted portion of the arbiter's decision, respondent NLRC violated the cardinal rule that its decisions must be supported by substantial evidence. In doing so, petitioner claims that

the NLRC violated its primary rights as enunciated in the case of *Ang Tibay vs. CIR*.^[29] In other words, petitioner holds the view that the arbiter's decision failed to explain how the amount of P5,161.01 was arrived at.^[30]

Petitioner is in error. The public respondent did not adopt in toto the aforequoted portion of the arbiter's decision. It made its own computations and arrived at a slightly different amount, with a difference of P278.10 from the award granted by the labor arbiter. To refute petitioner's claim, public respondent attached (as Annexes "1", "1-A" "1-B" and "1-C") to its Comment, the computations made by the labor arbiter in arriving at the sum of P5,161.00. On the other hand, public respondent made its own computation in its assailed Decision and arrived at a slightly different figure from that computed by the labor arbiter:

"Respondent claims that the award of P28,344.55 is bereft of any factual basis. Records show that as per computation of the office of the Fiscal Examiner, (Records, p. 116) the said amount was arrived at. The computation was however based on the assumption that the complainant regularly reported for work. Records however show that the complainant absented himself from work for one day in August 1989. (Records, p. 63) For this unworked day, no overtime pay must be due. As to the rest of his period of employment subject to the three year limitation rule which dates from October 10, 1987 up to his appointment as Ledger Custodian on December 1, 1989 after which is regular work period was already reduced to eight hours, there being no showing that the complainant absented himself from work, and he being then required to work for a period of twelve hours daily, We therefore rule on complainant's entitlement to overtime compensation for the duration of the aforesaid period in excess of one working day. Consequently, complainant's overtime pay shall be computed as follows:

OVERTIME PAY: (4 HRS/DAY)

October 10, 1987 - December 13, 1987 = 2.10 mos.

P54/8 hrs. = P6.75 x 4 hrs. = P27.00

P27 x 1.25 = P33.75 x 26 x 2.10 mos. = P1,842.75

December 14, 1987 - June 30, 1989 = 18.53 mos.

P64/8 hrs. = P8 x 4 hrs. = P32.00

P32 x 1.25 = P40 x 26 x 18.53 = P19,271.20

July 1, 1989 - November 30, 1989 = 5 mos.

P89/8 hrs. = P11.12 x 4 hrs. = P44.50

P44.50 x 1.25 = P55.62 x 25 x 5 mos. = P6,952.50(P6,953.125)

TOTAL OVERTIME PAY

P28,066.45(P28,067.075)" (Rollo, pp. 210-212).

Prescinding therefrom, it is evident that petitioner had no basis to argue that respondent NLRC committed any grave abuse of discretion in quoting the questioned portion of the labor arbiter's holding.

Fourth Issue: Newly Discovered Evidence?

In its Supplemental Petition filed on July 17, 1996, petitioner alleges in part:

"2. That only recently, the petitioner was able to locate the Employees Payroll Sheets which contained the salaries, overtime pay, vacation and sick leaves of respondent Esquejo which pertains to the period starting from January 1, 1987 up to November 1989. Therefore, said total amount of overtime pay paid to and received by respondent Esquejo should be deducted from the computed amount of P28,066.45 based on the questioned decision." (Rollo, p. 220).

Contrary to petitioner's claim however, said documents consisting of payroll sheets, cannot be considered as

"newly-discovered evidence" since said papers were in its custody and possession all along, petitioner being the employer of private respondent.

Furthermore, petitioner offers no satisfactory explanation why these documents were unavailable at the time the case was being heard by the labor arbiter. In its Memorandum, petitioner excused itself for its failure to present such evidence before the labor arbiter and respondent NLRC by saying that "petitioner('s office) appeared to be in disorder or in a state of confusion since the then officers (of petitioner) were disqualified by the Monetary Board on grounds of misappropriation of funds of the association and other serious irregularities. There was no formal turn-over of the documents from the disqualified set of officers to the new officers of petitioner." [31] We find such excuse weak and unacceptable, the same not being substantiated by any evidence on record. Moreover, payroll records are normally not in the direct custody and possession of corporate officers but of their subordinates, i.e., payroll clerks and the like. In the normal course of business, such payroll sheets are not the subject of formal turnovers by outgoing officers to their successors in office. And if indeed it is true that petitioner had been looking for such records or documents during the pendency of the case with the labor arbiter and with public respondent, petitioner never alleged such search before the said labor tribunals a quo. Hence, such bare allegations of facts cannot now be fairly appreciated in this petition for certiorari, which is concerned only with grave abuse of discretion or lack (or excess) of jurisdiction.

The Solicitor General quotes with approval a portion of private respondent's Opposition to petitioner's motion for reconsideration thus:

"It is clear from the payroll, although the substantial pages thereof do not show that the net amount indicated therein have been received or duly acknowledged to have been received by the complainant, THAT OVERTIME PAYMENTS THAT WERE MADE REFER TO WORK RENDERED DURING COMPLAINANT'S OFF DAYS. What has been rightfully claimed by the complainant and awarded by this Honorable Office is the overtime works (sic) rendered by the complainant daily for six (6) days a week computed at four (4) hours per day. This computation is based on the evidence thus submitted by the parties. All appointments issued by the respondent carries (sic) with it (sic) that the basic salary of the complainant is equivalent to 12 hours work everyday for six (6) days a week, hence, the four (4) hours overtime daily was not considered and therefore not paid by the respondent." (Rollo, p. 327).

It has been consistently held that factual issues are not proper subjects of a petition for certiorari, as the power of the Supreme Court to review labor cases is limited to questions of jurisdiction and grave abuse of discretion. [32] The introduction in this petition of so-called newly discovered evidence is unwarranted. This Court is not a trier of facts and it is not its function to examine and evaluate the evidence the evidence presented (or which ought to have been presented) in the tribunals below. [33]

WHEREFORE, in view of the foregoing considerations, the Petition is DISMISSED, the temporary restraining order issued on July 30, 1992 LIFTED, and the assailed decision of the public respondent AFFIRMED. Costs against petitioner.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo and Francisco, JJ., concur.

[1] Rollo, pp. 202-212.

[2] First Division, composed of Presiding Commissioner Bartolome S. Carale, ponente, and Commissioners Vicente S.E. Veloso and Romeo B. Putong, concurring.

[3] Rollo, pp. 198-201.

- [4] Rollo, pp. 38-43.
- [5] Rollo, pp. 65-76.
- [6] See Rollo, p. 5.
- [7] Rollo, pp. 317-318.
- [8] People's Security, Inc. vs. National Labor Relations Commission, 226 SCRA 146, September 8, 1993, citing Pearl S. Buck Foundation, Inc. vs. NLRC, 182 SCRA 446, February 21, 1990.
- [9] Paderanga vs. Court of Appeals, 247 SCRA 741, August 28, 1995.
- [10] Zapata vs. National Labor Relations Commission, 175 SCRA 56, 60, July 5, 1989.
- [11] Palomado vs. NLRC, et al., G.R. No. 96520, June 28, 1996, pp. 7-8, citing Purefoods Corporation vs. NLRC, 171 SCRA 425, March 21, 1989 and Villarama vs. NLRC, 236 SCRA 280, September 2, 1994.
- [12] Rollo, p. 165.
- [13] Rollo, pp. 11 & 370.
- [14] Rollo, pp. 371-374.
- [15] Rollo, p. 371.
- [16] Rollo, 375.
- [17] Rollo, pp 208-210.
- [18] Manila Bay Club Corporation vs. Court of Appeals, 245 SCRA 715, July 11, 1995.
- [19] Ongsiako vs. Gamboa, 86 Phil. 50, 56 (1950).
- [20] The Conference of Maritime Manning Agencies, Inc. vs. Philippine Overseas Employment Administration, 243 SCRA 666, 678-679, April 21, 1995.
- [21] Cf. Capital Insurance & Surety Co., Inc. vs. Central Azucarera del Danao, 221 SCRA 98, April 7, 1993.
- [22] Civil Code of the Philippines, Art. 1371. See also Rapanut vs. Court of Appeals, 246 SCRA 323, July 14, 1995.
- [23] Cormero vs. Court of Appeals, 247 SCRA 291, August 14, 1995.
- [24] Jimenez vs. Fernandez, 184 SCRA 190, April 6, 1990; Palmera vs. Civil Service Commission, 235 SCRA 87, August 4, 1994.
- [25] Fuentes vs. NLRC, 167 SCRA 767, November 24, 1988.
- [26] Rollo, p. 28.
- [27] Rollo, p. 24.
- [28] Rollo, p. 201.
- [29] 69 Phil. 635 (1940).
- [30] Rollo, pp. 30-33.

[31] Rollo, p. 396.

[32] Oscar Ledesma and Company vs. National Labor Relations Commission, 246 SCRA 247, July 13, 1995, citing Loadstar Shipping Co., vs. Gallo, 229 SCRA 654, February 4, 1994.

[33] Trade Unions Of the Philippines vs. Laguesma, 236 SCRA 586, September 21, 1994.

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