

PHILIPPINE AGRICULTURAL COMMERCIAL AND INDUSTRIAL WORKERS UNION (PACIWU)-TUCP, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND VALLACAR TRANSIT, INC., RESPONDENTS.

G.R. No. 107994. August 14, 1995

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is a petition for certiorari seeking to reverse the decision of the National Labor Relations Commission (NLRC) in NLRC Case No. V-0159-92 which dismissed the appeal of petitioner union and in effect, affirmed the decision of the Labor Arbiter ordering the dismissal of the complaint of petitioner for payment of 13th month pay to the drivers and conductors of respondent company.

Petitioner Philippine Agricultural Commercial and Industrial Workers Union - TUCP is the exclusive bargaining agent of the rank and file employees of respondent Vallacar Transit, Inc. Petitioner union instituted a complaint with NLRC Regional Arbitration Branch No. VI, Bacolod City, for payment of 13th month pay in behalf of the drivers and conductors of respondent company's Visayan operation on the ground that although said drivers and conductors are compensated on a "purely commission" basis as described in their Collective Bargaining Agreement (CBA), they are automatically entitled to the basic minimum pay mandated by law should said commission be less than their basic minimum for eight (8) hours work.[1]

In its position paper, respondent Vallacar Transit, Inc. contended that since said drivers and conductors are compensated on a purely commission basis, they are not entitled to 13th month pay pursuant to the exempting provisions enumerated in paragraph 2 of the Revised Guidelines on the Implementation of the Thirteenth Month Pay Law.[2] It further contended that Section 2 of Article XIV of the Collective Bargaining Agreement (CBA) concluded on October 17, 1988 expressly provided that "drivers and conductors paid on a purely commission are not legally entitled to 13th month pay." Said CBA, being the law between the parties, must be respected, respondent opined.

On May 22, 1992, Labor Arbiter Reynaldo Gulmatico rendered a decision dismissing the complaint.[3]

The appeal of the petitioner to the National Labor Relations Commission was likewise dismissed;[4] so was the motion for reconsideration of the said decision.[5]

Hence, the present petition.

The principal issue posed for consideration is whether or not the bus drivers and conductors of respondent Vallacar Transit, Inc. are entitled to 13th month pay.

We rule in the affirmative.

It may be recalled that on December 16, 1975, P.D. 851, otherwise known as the "13th Month Pay" Law, was

promulgated. The same prescribed payment of 13th month pay in the following terms:

Sec. 1. All employers are hereby required to pay all their employees receiving a basic salary of not more than P1,000.00 a month, regardless of the nature of the employment, a 13th month pay not later than December 24 of every year.

Sec. 2. Employers already paying their employees a 13th month pay or its equivalent are not covered by this Decree.

The Rules and Regulations Implementing P.D. No. 851, issued by the then Secretary of Labor and Employment on December 22, 1975, defined the following basic terms:

x x x x x x x x

(a) 13th month pay shall mean one-twelfth (1/12) of the basic salary of an employee within a calendar year;

(b) basic salary shall include all remunerations or earnings paid by an employer to an employee for services rendered, but may not include cost of living allowances granted pursuant to Presidential Decree No. 525 or Letter of Instructions No. 174, profit-sharing payments, and all allowances and monetary benefits which are not considered or integrated as part of the regular or basic salary of the employee at the time of the promulgation of the Decree on December 16, 1975.

x x x x x x x x

On August 13, 1986, then President Corazon C. Aquino, exercising both executive and legislative authority, issued Memorandum Order No. 28 which provided as follows:

x x x x x x x x

Sec. 1 of Presidential Decree No. 851 is hereby modified to the extent that all employers are hereby required to pay all their rank-and-file employees a 13th month pay not later than December 24 of every year.

x x x x x x x x

In connection with and in implementation of Memorandum Order No. 28, the then Minister of Labor and Employment issued MOLE Explanatory Bulletin No. 86-12 on November 24, 1986. Item No. 5(a) of the said issuance read:

x x x x x x x x

Employees who are paid a fixed or guaranteed wage plus commission are also entitled to the mandated 13th month pay, based on their total earning(s) during the calendar year, i.e., on both their fixed and guaranteed wage and commission.

x x x. (Italics ours)

From the foregoing legal milieu, it is clear that every employee receiving a commission in addition to a fixed or guaranteed wage or salary, is entitled to a 13th month pay. For purposes of entitling rank and file employees a 13th month pay, it is immaterial whether the employees concerned are paid a guaranteed wage plus commission or a commission with guaranteed wage inasmuch as the bottom line is that they receive a guaranteed wage. This is correctly construed in the MOLE Explanatory Bulletin No. 86-12.

In the case at bench, while the bus drivers and conductors of respondent company are considered by the latter as being compensated on a commission basis, they are not paid purely by what they receive as commission. As admitted by respondent company, the said bus drivers and conductors are automatically entitled to the basic

minimum pay mandated by law in case the commissions they earned be less than their basic minimum for eight (8) hours work.[6] Evidently therefore, the commissions form part of the wage or salary of the bus drivers and conductors. A contrary interpretation would allow an employer to skirt the law and would result in an absurd situation where an employee who receives a guaranteed minimum basic pay cannot be entitled to a 13th month pay simply because he is technically referred to by his employer per the CBA as an employee compensated on a purely commission basis. Such would be a narrow interpretation of the law, certainly not in accord with the liberal spirit of our labor laws. Moreover, what is controlling is not the label attached to the remuneration that the employee receives but the nature of the remuneration[7] and the purpose for which the 13th month pay was given to alleviate the plight of the working masses who are receiving low wages. This is extant from the "WHEREASES" of PD 851, to wit:

WHEREAS, it is necessary to further protect the level of real wages from the ravage of world-wide inflation'

WHEREAS, there has been no increase in the legal minimum wage since 1970.

WHEREAS, the Christmas season is an opportune time for society to show its concern for the plight of the working masses so they may properly celebrate Christmas and New Year.

Misplaced legal hermeneutics cannot be countenanced to evade paying the rank and file what is due to them under the law.

Commission is the recompense, compensation, reward of an employee, agent, salesman, executor, trustee, receiver, factor, broker or bailee, when the same is calculated as a percentage on the amount of his transactions or on the profit of the principal.[8] While said commissions may be in the form of incentives or encouragement to inspire said bus drivers and conductors to put a little more zeal and industry on their jobs, still, it is safe to say that the same are direct remunerations for services rendered, given the small remuneration they receive for the services they render,[9] which is precisely the reason why private respondent allowed the drivers and conductors a guaranteed minimum wage. The conclusion is ineluctable that said commissions are part of their salary. In *Philippine Duplicators, Inc. v. National Labor Relations Commission*,[10] we had the occasion to state that:

xxx Article 97 (f) of the Labor Code defines the term 'wage' (which is equivalent to 'salary,' as used in P.D. No. 851 and Memorandum Order No. 28) in the following terms:

(f) '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, or 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. 'Fair and reasonable value' shall not include any profit to the employer or to any person affiliated with the employer.

In the instant case, there is no question that the sales commissions earned by salesmen who make or close a sale of duplicating machines distributed by petitioner corporation, constitute part of the compensation or remuneration paid to salesmen for serving as salesmen, and hence as part of the 'wage' or 'salary' of petitioner's salesmen. Indeed, it appears that petitioner pays its salesmen a small fixed or guaranteed wage; the greater part of the salesmen's wages or salaries being composed of the sales or incentive commissions earned on actual sales closed by them. No doubt this particular salary structure was intended for the benefit of petitioner corporation, on the apparent assumption that thereby its salesmen would be moved to greater enterprise and diligence and close more sales in the expectation of increasing their sales commissions. This, however, does not detract from the character of such commissions as part of the salary or wage paid to each of its salesmen for rendering services to petitioner

corporation.[11]

In sum, the 13th month pay of the bus drivers and conductors who are paid a fixed or guaranteed minimum wage in case their commissions be less than the statutory minimum, and commissions only in case where the same is over and above the statutory minimum, must be equivalent to one-twelfth (1/12) of their total earnings during the calendar year.

WHEREFORE, the petition is hereby GRANTED. The decision of respondent National Labor Relations Commission is hereby REVERSED and SET ASIDE. The case is remanded to the Labor Arbiter for the proper computation of 13th month pay.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Hermosisima, Jr., JJ., concur.

[1] CBA, Article VIII, Section 6.

[2] (2. Exempted Employers.

The following employers are still not covered by P.D. No. 851:

x x x x x x x x

d. Employers of those who are paid on purely commission, boundary or task basis, xxx.

x x x x x x x x

[3] Rollo, p. 123.

[4] Id., at 32.

[5] Id., at 35.

[6] See Note 1, supra.

[7] In *Government Service Insurance System v. Civil Service Commission and Dr. Manuel Baradero and Matilde Belo*, G.R. No. 98395 and 102449, June 19, 1995 where the issue raised was whether or not regular service in government on a per diem basis, without any other form of compensation or emolument, is compensation within the contemplation of the term service with Compensation under the Government Service Insurance Act of 1987, the Court made the pronouncement that what ought to be controlling should be the nature of the remuneration, not the label attached to it.

[8] *Black's Law Dictionary*, 5th Ed., citing *Weiner v. Swales*, 217 Md. 123, 141 A. 2d 749, 750; See also *Songco v. National Labor Relations Commission*, 183 SCRA 610, 618 [1992].

[9] 7% and 5% for the driver and conductor, respectively, of the net fare collection, sometimes even below the minimum wage.

[10] 227 SCRA 747 [1993].

[11] *Id.*, at 752-753.

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