

PHILIPPINE DUPLICATORS, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND PHILIPPINE DUPLICATORS EMPLOYEES UNION-TUPAS, RESPONDENTS.

G.R. No. 110068. February 15, 1995

Ponente: FELICIANO, J.

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FELICIANO, J.:

On 11 November 1993, this Court, through its Third Division, rendered a decision dismissing the Petition for Certiorari filed by petitioner Philippine Duplicators, Inc. (Duplicators) in G.R. No. 110068. The Court upheld the decision of public respondent National Labor Relations Commission (NLRC), which affirmed the order of Labor Arbiter Felipe T. Garduque II directing petitioner to pay 13th month pay to private respondent employees computed on the basis of their fixed wages plus sales commissions. The Third Division also denied with finality on 15 December 1993 the Motion for Reconsideration filed (on 12 December 1993) by petitioner.

On 17 January 1994, petitioner Duplicators filed (a) a Motion for Leave to Admit Second Motion for Reconsideration and (b) a Second Motion for Reconsideration. This time, petitioner invoked the decision handed down by this Court, through its Second Division, on 10 December 1993 in the two (2) consolidated cases of Boie-Takeda Chemicals, Inc. vs. Hon. Dionisio de la Serna and Philippine Fuji Xerox Corp. vs. Hon. Cresenciano B. Trajano, in G.R. Nos. 92174 and 102552, respectively. In its decision, the Second Division inter alia declared null and void the second paragraph of Section 5(a) [1] of the Revised Guidelines issued by then Secretary of Labor Drilon. Petitioner submits that the decision in the Duplicators case should now be considered as having been abandoned or reversed by the Boie-Takeda decision, considering that the latter went "directly opposite and contrary to" the conclusion reached in the former. Petitioner prays that the decision rendered in Duplicators be set aside and another be entered directing the dismissal of the money claims of private respondent Philippine Duplicators' Employees' Union.

In view of the nature of the issues raised, the Third Division of this Court referred the petitioner's Second Motion for Reconsideration, and its Motion for Leave to Admit the Second Motion for Reconsideration, to the Court en banc en consulta. The Court en banc, after preliminary deliberation, and in order to settle the condition of the relevant case law, accepted G.R. No. 110068 as a banc case.

Deliberating upon the arguments contained in petitioner's Second Motion for Reconsideration, as well as its Motion for Leave to Admit the Second Motion for Reconsideration, and after review of the doctrines embodied, respectively, in Duplicators and Boie-Takeda, we consider that these Motions must fail.

The decision rendered in Boie-Takeda cannot serve as a precedent under the doctrine of stare decisis. The Boie--Takeda decision was promulgated a month after this Court, (through its Third Division), had rendered the decision in the instant case. Also, the petitioner's (first) Motion for Reconsideration of the decision dated 10 November 1993 had already been denied, with finality, on 15 December 1993, i.e.; before the Boie-Takeda decision became final on 5 January 1994.

Preliminarily, we note that petitioner Duplicators did not put in issue the validity of the Revised Guidelines on the Implementation of the 13th Month Pay Law, issued on November 16, 1987, by then Labor Secretary Franklin M. Drilon, either in its Petition for Certiorari or in its (First) Motion for Reconsideration. In fact, petitioner's counsel relied upon these Guidelines and asserted their validity in opposing the decision rendered by public respondent NLRC. Any attempted change in petitioner's theory, at this late stage of the proceedings, cannot be allowed.

More importantly, we do not agree with petitioner that the decision in *Boie-Takeda* is "directly opposite or contrary to" the decision in the present (*Philippine Duplicators*). To the contrary, the doctrines enunciated in these two (2) cases in fact co-exist one with the other. The two (2) cases present quite different factual situations (although the same word "commissions" was used or invoked) the legal characterizations of which must accordingly differ.

The Third Division in *Duplicators* found that:

"In the instant case, there is no question that the sales commission earned by the 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 the 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."

In other words, the sales commissions received for every duplicating machine sold constituted part of the basic compensation or remuneration of the salesmen of *Philippine Duplicators* for doing their job. The portion of the salary structure representing commissions simply comprised an automatic increment to the monetary value initially assigned to each unit of work rendered by a salesman. Especially significant here also is the fact that the fixed or guaranteed portion of the wages paid to the *Philippine Duplicators*' salesmen represented only 15%-30% of an employee's total earnings in a year. We note the following facts on record:

Salesmen's Total Earnings and 13th Month Pay For the Year 1986 [2]

Name of
Salesman

Total
Earnings

Amount Paid
as 13th Month Pay

Monthly Fixed
Wages x 12 [3]

Baylon,
Benedicto

P76,610.30

P 1,350.00

P16,200.00

Bautista,
Salvador

90,780.85

1,182.00

14,184.00

Brito,
Tomas

64,382.75

1,238.00

14,856.00

Bunagan,
Jorge

89,287.75

1,266.00

15,192.00

Canilan,
Rogelio

74,678.17

1,350.00

16,200.00

Dasig,
Jeordan

54,625.16

1,378.00

16,536.00

Centeno,
Melecio, Jr.

51,854.15

1,266.00

15,192.00

De los Santos,
Ricardo

73,551.30

1,322.00

15,864.00

Del Mundo,
Wilfredo

108,230.35

1,406.00

16,872.00

Garcia,
Delfin

93,753.75

1,294.00

15,528.00

Navarro,
Ma. Teresa

98,618.71

1,266.00

15,192.00

Ochosa,
Rolano

66,275.65

1,406.00

16,872.00

Quisumbing,
Teofilo

101,065.75

1,406.00

16,872.00

Rubina,
Emma

42,209.73

1,266.00

15,192.00

Salazar,
Celso

64,643.65

1,238.00

14,856.00

Sopelario,
Ludivico

52,622.27

1,350.00

16,200.00

Tan,
Leynard

30,127.50

1,238.00

14,856.00

Talampas,
Pedro

146,510.25

1,434.00

17,208.00

Villarin,
Constancio

41,888.10

1,434.00

17,208.00

Carrasco,
Cicero

50,201.20

403.75*

Punzalan,
Reynaldo

24,351.89

1,266.00

15,192.00

Poblador,
Alberto

25,516.75

323.00*

Cruz,
Danilo

32,950.45

323.00*

Baltazar,
Carlito

15,681.35

323.00*

Considering the above circumstances, the Third Division held, correctly, that the sales commissions were an integral part of the basic salary structure of Philippine Duplicators' employees-salesmen. These commissions are not overtime payments, nor profit-sharing payments nor any other fringe benefit. Thus, the salesmen's commissions, comprising a pre-determined percent of the selling price of the goods sold by each salesman, were properly included in the term "basic salary" for purposes of computing their 13[th] month pay.

In *Boie-Takeda*, the so-called commissions "paid to or received by medical representatives of Boie Takeda Chemicals or by the rank and file employees of Philippine Fuji Xerox Co.," were excluded from the term "basic salary" because these were paid to the medical representatives and rank-and--file employees as "productivity bonuses." [4] The Second Division characterized these payments as additional monetary benefits not properly included in the term "basic salary" in computing their 13th month pay. We note that productivity bonuses are generally tied to the productivity, or capacity for revenue production, of a corporation; such bonuses closely resemble profit-sharing payments and have no clear direct or necessary relation to the amount of work actually done by each individual employee. More generally, a bonus is an amount granted and paid *ex gratia* to the employee; its payment constitutes an act of enlightened generosity and self-interest on the part of the employer, rather than as a demandable or enforceable obligation. In *Philippine Education Co., Inc. (PECO) v. Court of Industrial Relations*, [5] the Court explained the nature of a bonus in the following general terms:

"As a rule, a bonus is an amount granted and paid to an employee for his industry and loyalty which contributed to the success of the employer's business and made possible the realization of profits. It is an act of generosity of the employer for which the employee ought to be thankful and grateful. It is also granted by an enlightened employer to spur the employee to greater efforts for the success of the business and realization of bigger profits. x x x. From the legal point of view, a bonus is not a demandable and enforceable obligation. It is so when it is made part of the wage or salary or compensation. In such a case the latter would be a fixed amount and the former would be a contingent one dependent upon the realization of profits. x x x." [6] (Underscoring supplied)

In *Atok-Big Wedge Mining Co., Inc. v. Atok-Big Wedge Mutual Benefit Association*, [7] the Court amplified:

"x x x. Whether or not [a] bonus forms part of wages depends upon the circumstances or conditions for its payment. If it is an additional compensation which the employer promised and agreed to give without any conditions imposed for its payment, such as success of business or greater production or output, then it is part of the wage. But if it is paid only if profits are realized or a certain amount of productivity achieved, it cannot be considered part of wages. x x x. It is also paid on the basis of actual or actual work accomplished. If the desired goal of production is not obtained, or the amount of actual work accomplished, the bonus does not

accrue. x x x." [8] (Underscoring supplied)

More recently, the non-demandable character of a bonus was stressed by the Court in *Traders Royal Bank v. National Labor Relations Commission*: [9]

"A bonus is a 'gratuity or act of liberality of the giver which the recipient has no right to demand as a matter of right' (*Aragon v. Cebu Portland Cement Co.*, 61 O.G. 4567). 'It is something given in addition to what is ordinarily received by or strictly due the recipient.' The granting of a bonus is basically a management prerogative which cannot be forced upon the employer 'who may not be obliged to assume the onerous burden of granting bonuses or other benefits aside from the employee's basic salaries or wages x x x' (*Kamaya Point Hotel v. NLRC*, 177 SCRA 160 [1989])." [10] (Underscoring supplied)

If an employer cannot be compelled to pay a productivity bonus to his employees, it should follow that such productivity bonus, when given, should not be deemed to fall within the "basic salary" of employees when the time comes to compute their 13th month pay.

It is also important to note that the purported "commissions" paid by the Boie-Takeda Company to its medical representatives could not have been "sales commissions" in the same sense that Philippine Duplicators paid its salesmen sales commissions. Medical representatives are not salesmen; they do not effect any sale of any article at all. In common commercial practice, in the Philippines and elsewhere, of which we take judicial notice, medical representatives are employees engaged in the promotion of pharmaceutical products or medical devices manufactured by their employer. They promote such products by visiting identified physicians and inform such physicians, orally and with the aid of printed brochures, of the existence and chemical composition and virtues of particular products of their company. They commonly leave medical samples with each physician visited; but those samples are not "sold" to the physician and the physician is, as a matter of professional ethics, prohibited from selling such samples to their patients. Thus, the additional payments made to Boie-Takeda's medical representatives were not in fact sales commissions but rather partook of the nature of profit-sharing bonuses.

The doctrine set out in the decision of the Second Division is, accordingly, that additional payments made to employees, to the extent they partake of the nature of profit-sharing payments, are properly excluded from the ambit of the term "basic salary" for purposes of computing the 13th month pay due to employees. Such additional payments are not "commissions" within the meaning of the second paragraph of Section 5 (a) of the Revised Guidelines Implementing 13th Month Pay.

The Supplementary Rules and Regulations Implementing P.D. No. 851 subsequently issued by former Labor Minister Ople sought to clarify the scope of items excluded in the computation of the 13th month pay; viz.

"Sec. 4. Overtime pay, earnings and other remunerations which are not part of the basic salary shall not be included in the computation of the 13th month pay."

We observe that the third item excluded from the term "basic salary" is cast in open ended and apparently circular terms: "other remunerations which are not part of the basic salary." However, what particular types of earnings and remuneration are or are not properly included or integrated in the basic salary are questions to be resolved on a case to case basis, in the light of the specific and detailed facts of each case. In principle, where these earnings and remuneration are closely akin to fringe benefits, overtime pay or profit-sharing payments, they are properly excluded in computing the 13th month pay. However, sales commissions which are effectively an integral portion of the basic salary structure of an employee, shall be included in determining his 13th month pay.

We recognize that both productivity bonuses and sales commissions may have an incentive effect. But there is reason to distinguish one from the other here. Productivity bonuses are generally tied to the productivity or profit generation of the employer corporation. Productivity bonuses are not directly dependent on the extent an

individual employee exerts himself. A productivity bonus is something extra for which no specific additional services are rendered by any particular employee and hence not legally demandable, absent a contractual undertaking to pay it. Sales commissions, on the other hand, such as those paid in *Duplicators*, are intimately related to or directly proportional to the extent or energy of an employee's endeavors. Commissions are paid upon the specific results achieved by a salesman-employee. It is a percentage of the sales closed by a salesman and operates as an integral part of such salesman's basic pay.

Finally, the statement of the Second Division in *Boie-Takeda* declaring null and void the second paragraph of Section 5(a) of the Revised Guidelines Implementing the 13th Month Pay issued by former Labor Secretary Drilon, is properly understood as holding that that second paragraph provides no legal basis for including within the term "commission" there used additional payments to employees which are, as a matter of fact, in the nature of profit-sharing payments or bonuses. If and to the extent that such second paragraph is so interpreted and applied, it must be regarded as invalid as having been issued in excess of the statutory authority of the Secretary of Labor. That same second paragraph, however, correctly recognizes that commissions, like those paid in *Duplicators*, may constitute part of the basic salary structure of salesmen and hence should be included in determining the 13th month pay; to this extent, the second paragraph is and remains valid.

ACCORDINGLY, the Motions for (a) Leave to File a Second Motion for Reconsideration and the (b) aforesaid Second Reconsideration are DENIED for lack of merit. No further pleadings will be entertained.

Narvasa, C.J., Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Vitug, Kapunan, Mendoza, and Francisco, JJ., concur.

[1] The second paragraph of Section 5 (a) of the Revised Guidelines Implementing the 13th Month Pay reads as follows:

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

[2] See Annex "A", Records of G.R. No. 110068, *Philippine Duplicators, Inc. v. National Labor Relations Commission*.

[3] This column is added by the Court. We have assumed that the amount paid as 13th month pay, as shown in the preceding column, represented a full month's fixed wage, without any deductions for, e.g., absences, undertime, etc. In the items below marked with an asterisk, the amount of the 13th month pay is so tiny as to give rise to the impression that some deduction therefrom was probably made; the nature of such deduction is not here pertinent.

The 15%-30% range in the proportion of fixed wages to total earnings is obtained by the following fraction:

Monthly Fixed Wage x 12

Total Earnings

[4] See *Rollo of Boie-Takeda v. Trajano*, p. 126; *Rollo of Fuji Xerox v. Trajano*, p. 27.

[5] 92 Phil. 381 (1952).

[6] 92 Phil. at 385; see also *Luzon Stevedoring Corporation v. Court of Industrial Relations*, 15 SCRA 660 (1965).

[7] 92 Phil. 754 (1953).

[8] 92 Phil. at 757; see also *Claparols v. Court of Industrial Relations*, 65 SCRA 613 (1975).

[9] 189 SCRA 274 (1990).

[10] 189 SCRA at 277.

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