

ENJAY, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, HON. VALENTIN C. GUANIO, RODOLFO CASTAÑEDA, RENATO CONQUISTA, VICENTE DELGRA, SILVESTRE GARCIA, HONORATO GONZAL...

G.R. No. 110240. July 04, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

In their complaint filed with the Labor Arbiter, private respondents, who are security guards previously employed by the Paladin Protective and Security Services, Inc. (Paladin), claimed from petitioner and Paladin wage differentials resulting from increases mandated under Wage Order No. 6, which took effect on November 1, 1984 and under R.A. No. 6640, which took effect on December 14, 1987.

In a Decision dated April 23, 1990, the Labor Arbiter granted wage differentials under Wage Order No. 6 from November 18, 1985 until December 13, 1987, and under R.A. No. 6640 from December 14, 1987 until April 30, 1988. The Labor Arbiter thus disposed as follows:

"xxx xxx xxx

1. Respondent Enjay, Inc. shall pay each of the complainants the sums due them under Wage Order No. 6;
2. Respondent Paladin Protective and Security Service, Inc. shall pay the complainants the amount due each of them under R.A. No. 6640 with the proviso that respondent Enjay, Inc. shall be subsidiarily liable therefor."

xxx xxx xxx

(Rollo, p. 26; Underscoring supplied).

In a Resolution dated January 6, 1992, the National Labor Relations Commission (NLRC) modified the Arbiter's award by granting wage differentials under Wage Order No. 6 from October 31, 1985 until December 13, 1987 and under R.A. No. 6640 from December 14, 1987 until April 30, 1988. The NLRC also modified the Labor Arbiter's decision by disposing thus:

"WHEREFORE, in view of the foregoing, the appealed decision is hereby set aside, and a new judgment rendered declaring respondents Paladin Protective and Security Services, Inc. and Enjay Incorporated to be solidarily liable for complainants' monetary award x x x" (Rollo, p. 34; Underscoring supplied).

The motion for reconsideration filed by petitioner and Paladin was denied by NLRC in a Resolution dated February 26, 1993.

Petitioner went to us on certiorari asserting that NLRC acted with grave abuse of discretion when it ruled that:

- (1) petitioner was liable for Paladin's failure to pay the minimum wage under Wage Order No. 6 and R.A. No. 6640 despite the absence of an employer-employee relationship between petitioner and private respondents;

(2) petitioner was solidarily liable with Paladin despite the latter's express assumption under their service contract of the liability for wages, as well as the provisions of R.A. No. 6640; and

(3) petitioner was liable for the unpaid wages despite the private respondents' sworn admission that they received the minimum wage (Rollo, pp. 8-9).

In our Resolution of June 21, 1993, we dismissed the petition considering petitioner's failure to show grave abuse of discretion on the part of NLRC.

In its motion for reconsideration, petitioner reiterates its argument that private respondents were paid the minimum wage. We find that petitioner failed to raise any substantial argument to warrant a reversal of our ruling that petitioner was not able to overcome the burden of proving payment of the minimum wage.

Petitioner also argues that, granting it is liable for the payment of wage differentials, it is only subsidiarily liable for the amounts due under R.A. No. 6440, within the period of December 14, 1987 to April 30, 1988. Section 6 of R.A. No. 6640 provides as follows:

"In the case of contracts for construction projects and for security, janitorial and similar services, the increase in the minimum wage of the workers shall be borne by the employers of the construction workers, security guards, janitors, and others similarly situated: Provided, however, That the principal or client of the construction and service contractor shall be subsidiarily liable: Provided further, That the subsidiary liability shall not apply to construction of family homes worth not more than two hundred thousand pesos (P200,000.00)" (Underscoring supplied).

The law on minimum wage immediately preceding R.A. No. 6640 was Wage Order No. 6. Section 9 of said Wage Order provided:

"In the case of contracts for construction projects and for security, janitorial and similar services, the increases in the minimum wage and allowance rates of the workers shall be borne by the principal or client of the construction/service contractor and the contracts shall be deemed amended accordingly, subject to the provisions of Section 3 (c) of this Order."

The Court construed said provision in conjunction with the Labor Code of the Philippines in *Eagle Security Agency, Inc. v. National Labor Relations Commission*, 173 SCRA 479 (1989), ruling that the liability of the principal and the contractor was solidary, thus:

"Petitioner's solidary liability for the amounts due the security guards finds support in Articles 106, 107 and 109 of the Labor Code which state that:

x x x x x x x x

"This joint and several liability of the contractor and the principal is mandated by the Labor Code to assure compliance of the provisions therein including the statutory minimum wage [Article 99, Labor Code]. The contractor is made liable by virtue of his status as direct employer. The principal, on the other hand, is made the indirect employer of the contractor's employees for purposes of paying the employees their wages should the contractor be unable to pay them. This joint and several liability facilitates, if not guarantees, payment of the workers' performance of any work, task, job or project, thus giving the workers ample protection as mandated by the 1987 Constitution [See Article II Sec. 18 and Article XIII Sec. 3]" (at p. 485).

After R.A. No. 6640 came R.A. No. 6727 enacted on June 9, 1989. Liability of the principal and the contractor for the payment of wages under R.A. No. 6727 is joint and several. Section 6 provides as follows:

"In the case of contracts for construction projects and for security, janitorial and similar services, the prescribed increases in the wage rates of the workers shall be borne by the principals or clients of the construction/service

contractors and the contract shall be deemed amended accordingly. In the event, however, that the principal or client fails to pay the prescribed wage rates, the construction/service contractor shall be jointly and severally liable with his principal or client" (*Italics supplied*).

While Wage Order No. 6 in relation to the Labor Code as well as Section 6 of R.A. No. 6727 provided for the principal's solidary liability for unpaid wages, R.A. No. 6640 categorically provides for the subsidiary liability of the principal.

It is a rule of statutory construction that if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without interpretation. In *Globe-Mackay Cable and Radio Corporation v. National Labor Relations Commission*, 206 SCRA 701 (1992), we expounded on the rule, thus:

"xxx This plain-meaning rule or *verba legis* derived from the maxim *index animi sermo est* (speech is the index of intention) rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent or will and preclude the court from construing it differently. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute. *Verba legis non est recedendum*, or from the words of a statute there should be no departure. xxx" (at p. 711).

The term "subsidiarily liable" as used in R.A. No. 6640 means "secondarily liable." Secondary liability is a personal liability which attaches when the remedy against one primarily liable has been exhausted, and which may be satisfied from all assets of one secondarily liable (38A, Words and Phrases 76 [1967]).

The doctrine in *Lopez & Sons, Inc. v. Court of Tax Appeals*, 100 Phil. 850 (1957) cannot be applied in the instant case. In *Lopez*, we stated that if the literal meaning and wording of Section 11 of R.A. No. 1125, that persons affected by a decision of the Collector of Customs may appeal directly to the Court of Tax Appeals, then the supervision and control of the Commissioner of Customs over Collectors of Customs, and his right to review their decisions upon appeal to him by the persons affected by said decision, would be destroyed. Thus, we ruled that the phrase "Collector of Customs" in Section 11 should be read "Commissioner of Customs."

In said case, the Court corrected what was clearly a clerical error in the wording of the statute, in order to carry out the evident legislative intent. We find no such clerical error in the case at bench.

The effect then of Section 6 of R.A. No. 6640 is to provide for the subsidiary liability of the principal, in case the contractor, the party primarily liable as the direct employer, fails to pay the wages of the employees. While R.A. No. 6640 would create a lacuna, in that for the period said law was in effect, the principal was subsidiarily liable instead of solidarily liable, the Court has no choice but to apply the law as it finds it.

ACCORDINGLY, the Court Resolved to GRANT in part the motion for reconsideration. Petitioner is solidarily liable for the sums due to private respondents under Wage Order No. 6 and subsidiarily liable for the sums due under R.A. No. 6640.

SO ORDERED.

Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

Padilla, J., (Chairman), no part.

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