

**WELLINGTON INVESTMENT AND MANUFACTURING CORPORATION,
PETITIONER, VS. CRESENCIANO B. TRAJANO, UNDER-SECRETARY
OF LABOR AND EMPLOYMENT, ELMER ABADILLA, AND 34 OTHERS,
RESPONDENTS.**

G.R. No. 114698. July 03, 1995

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

The basic issue raised by petitioner in this case is, as its counsel puts it, "whether or not a monthly-paid employee, receiving a fixed monthly compensation, is entitled to an additional pay aside from his usual holiday pay, whenever a regular holiday falls on a Sunday."

The case arose from a routine inspection conducted by a Labor Enforcement Officer on August 6, 1991 of the Wellington Flour Mills, an establishment owned and operated by petitioner Wellington Investment and Manufacturing Corporation (hereafter, simply Wellington). The officer thereafter drew up a report, a copy of which was "explained to and received by" Wellington's personnel manager, in which he set forth his finding of "(n)on-payment of regular holidays falling on a Sunday for monthly-paid employees." [1]

Wellington sought reconsideration of the Labor Inspector's report, by letter dated August 10, 1991. It argued that "the monthly salary of the company's monthly-salaried employees already includes holiday pay for all regular holidays ** (and hence) there is no legal basis for the finding of alleged non-payment of regular holidays falling on a Sunday." [2] It expounded on this thesis in a position paper subsequently submitted to the Regional Director, asserting that it pays its monthly-paid employees a fixed monthly compensation "using the 314 factor which undeniably covers and already includes payment for all the working days in a month as well as all the 10 unworked regular holidays within a year." [3]

Wellington's arguments failed to persuade the Regional Director who, in an Order issued on July 28, 1992, ruled that "when a regular holiday falls on a Sunday, an extra or additional working day is created and the employer has the obligation to pay the employees for the extra day except the last Sunday of August since the payment for the said holiday is already included in the 314 factor," and accordingly directed Wellington to pay its employees compensation corresponding to four (4) extra working days. [4]

Wellington timely filed a motion for reconsideration of this Order of August 10, 1992, pointing out that it was in effect being compelled to "shell out an additional pay for an alleged extra working day" despite its complete payment of all compensation lawfully due its workers, using the 314 factor. [5] Its motion was treated as an appeal and was acted on by respondent Undersecretary. By Order dated September 22, the latter affirmed the challenged order of the Regional Director, holding that "the divisor being used by the respondent (Wellington) does not reliably reflect the actual working days in a year," and consequently commanded Wellington to pay its employees the "six additional working days resulting from regular holidays falling on Sundays in 1988, 1989 and 1990." [6] Again, Wellington moved for reconsideration, [7] and again was rebuffed. [8]

Wellington then instituted the special civil action of certiorari at bar in an attempt to nullify the orders above mentioned. By Resolution dated July 4, 1994, this Court authorized the issuance of a temporary restraining order enjoining the respondents from enforcing the questioned orders.[9]

Every worker should, according to the Labor Code,[10] "be paid his regular daily wage during regular holidays, except in retail and service establishments regularly employing less than ten (10) workers;" this, of course, even if the worker does no work on these holidays. The regular holidays include: "New Year's Day, Maundy Thursday, Good Friday, the ninth of April, the first of May, the twelfth of June, the fourth of July, the thirtieth of November, the twenty-fifth of December, and the day designated by law for holding a general election (or national referendum or plebiscite)."[11]

Particularly as regards employees "who are uniformly paid by the month, "the monthly minimum wage shall not be less than the statutory minimum wage multiplied by 365 days divided by twelve." [12] This monthly salary shall serve as compensation "for all days in the month whether worked or not," and "irrespective of the number of working days therein." [13] In other words, whether the month is of thirty (30) or thirty-one (31) days' duration, or twenty-eight (28) or twenty-nine (29) (as in February), the employee is entitled to receive the entire monthly salary. So, too, in the event of the declaration of any special holiday, or any fortuitous cause precluding work on any particular day or days (such as transportation strikes, riots, or typhoons or other natural calamities), the employee is entitled to the salary for the entire month and the employer has no right to deduct the proportionate amount corresponding to the days when no work was done. The monthly compensation is evidently intended precisely to avoid computations and adjustments resulting from the contingencies just mentioned which are routinely made in the case of workers paid on daily basis.

In Wellington's case, there seems to be no question that at the time of the inspection conducted by the Labor Enforcement Officer on August 6, 1991, it was and had been paying its employees "a salary of not less than the statutory or established minimum wage," and that the monthly salary thus paid was "not ** less than the statutory minimum wage multiplied by 365 days divided by twelve," supra. There is, in other words, no issue that to this extent, Wellington complied with the minimum norm laid down by law.

Apparently the monthly salary was fixed by Wellington to provide for compensation for every working day of the year including the holidays specified by law — and excluding only Sundays. In fixing the salary, Wellington used what it calls the "314 factor;" that is to say, it simply deducted 51 Sundays from the 365 days normally comprising a year and used the difference, 314, as basis for determining the monthly salary. The monthly salary thus fixed actually covers payment for 314 days of the year, including regular and special holidays, as well as days when no work is done by reason of fortuitous cause, as above specified, or causes not attributable to the employees.

The Labor Officer who conducted the routine inspection of Wellington discovered that in certain years, two or three regular holidays had fallen on Sundays. He reasoned that this had precluded the enjoyment by the employees of a non-working day, and the employees had consequently had to work an additional day for that month. This ratiocination received the approval of his Regional Director who opined[14] that "when a regular holiday falls on a Sunday, an extra or additional working day is created and the employer has the obligation to pay its employees for the extra day except the last Sunday of August since the payment for the said holiday is already included in the 314 factor." [15]

This ingenuous theory was adopted and further explained by respondent Labor Undersecretary, to whom the matter was appealed, as follows:[16]

" * * By using said (314) factor, the respondent (Wellington) assumes that all the regular holidays fell on

ordinary days and never on a Sunday. Thus, the respondent failed to consider the circumstance that whenever a regular holiday coincides with a Sunday, an additional working day is created and left unpaid. In other words, while the said divisor may be utilized as proof evidencing payment of 302 working days, 2 special days and the ten regular holidays in a calendar year, the same does not cover or include payment of additional working days created as a result of some regular holidays falling on Sundays."

He pointed out that in 1988 there was "an increase of three (3) working days resulting from regular holidays falling on Sundays;" hence Wellington "should pay for 317 days, instead of 314 days." By the same process of ratiocination, respondent Undersecretary theorized that there should be additional payment by Wellington to its monthly-paid employees for "an increment of three (3) working days" for 1989 and again, for 1990. What he is saying is that in those years, Wellington should have used the "317 factor," not the "314 factor."

The theory loses sight of the fact that the monthly salary in Wellington -- which is based on the so-called "314 factor" — accounts for all 365 days of a year; i.e., Wellington's "314 factor" leaves no day unaccounted for; it is paying for all the days of a year with the exception only of 51 Sundays.

The respondents' theory would make each of the years in question (1988, 1989, 1990), a year of 368 days. Pursuant to this theory, no employer opting to pay his employees by the month would have any definite basis to determine the number of days in a year for which compensation should be given to his work force. He would have to ascertain the number of times legal holidays would fall on Sundays in all the years of the expected or extrapolated lifetime of his business. Alternatively, he would be compelled to make adjustments in his employees' monthly salaries every year, depending on the number of times that a legal holiday fell on a Sunday.

There is no provision of law requiring any employer to make such adjustments in the monthly salary rate set by him to take account of legal holidays falling on Sundays in a given year, or, contrary to the legal provisions bearing on the point, otherwise to reckon a year at more than 365 days. As earlier mentioned, what the law requires of employers opting to pay by the month is to assure that "the monthly minimum wage shall not be less than the statutory minimum wage multiplied by 365 days divided by twelve,"^[17] and to pay that salary "for all days in the month whether worked or not," and "irrespective of the number of working days therein."^[18] That salary is due and payable regardless of the declaration of any special holiday in the entire country or a particular place therein, or any fortuitous cause precluding work on any particular day or days (such as transportation strikes, riots, or typhoons or other natural calamities), or cause not imputable to the worker. And as also earlier pointed out, the legal provisions governing monthly compensation are evidently intended precisely to avoid re-computations and alterations in salary on account of the contingencies just mentioned, which, by the way, are routinely made between employer and employees when the wages are paid on daily basis.

The public respondents argue that their challenged conclusions and dispositions may be justified by Section 2, Rule X, Book III of the Implementing Rules, giving the Regional Director power - ^[19]

" ** to order and administer (in cases where employer-employee relations still exist), after due notice and hearing, compliance with the labor standards provisions of the Code and the other labor legislations based on the findings of their Regulations Officers or Industrial Safety Engineers (Labor Standard and Welfare Officers) and made in the course of inspection, and to issue writs of execution to the appropriate authority for the enforcement of his order, in line with the provisions of Article 128 in relation to Articles 289 and 290 of the Labor Code, as amended. ** ."

The respondents beg the question. Their argument assumes that there are some "labor standards provisions of the Code and the other labor legislations" imposing on employers the obligation to give additional compensation to their monthly-paid employees in the event that a legal holiday should fall on a Sunday in a particular month — with which compliance may be commanded by the Regional Director — when the existence of said provisions is

precisely the matter to be established.

In promulgating the orders complained of the public respondents have attempted to legislate, or interpret legal provisions in such a manner as to create obligations where none are intended. They have acted without authority, or at the very least, with grave abuse of their discretion. Their acts must be nullified and set aside.

WHEREFORE, the orders complained of, namely: that of the respondent Undersecretary dated September 22, 1993, and that of the Regional Director dated July 30, 1992, are NULLIFIED AND SET ASIDE, and the proceeding against petitioner DISMISSED.

SO ORDERED.

Regalado, Puno, and Mendoza, JJ., concur.

[1] Rollo, pp. 13-24, 119; Annex D, petition.

[2] Id., pp. 14, 119; Annex E, petition. It maintains that "there is no law which orders the payment of an extra working day whenever a regular holiday falls on a Sunday." Rollo, p. 20.

[3] Id., pp. 5, 16, 119-120.

[4] Id., pp. 14-15, 120; Annex A, petition.

[5] Id., pp. 15, Annex F, petition.

[6] Id., pp. 16, 120-121; Annex B, petition.

[7] Id., pp. 16, 121; Annex G, petition.

[8] Id., pp. 16, 121; Annex C, petition (Order dtd. Feb. 24, 1994).

[9] Rollo, pp. 61-79.

[10] Article 94.

[11] "If the employer requires an employee to work on any holiday, he shall pay such employee "a compensation equivalent to twice his regular rate." And, according to the Omnibus Rules Implementing the Labor Code,[11] if "the holiday work falls on the scheduled rest day of the employee, he shall be entitled to an additional premium pay of at least 30% of his regular holiday rate of 200% based on his regular wage rate." The Omnibus Rules further provide (Sec. 9) that "A regular holiday falling on the employee's rest day shall be compensated accordingly ** and where a regular holiday falls on a Sunday, the following day shall be considered a special holiday for purposes of the Labor Code, unless said day is also a regular holiday."

[12] SEC. 1, Omnibus Rules Implementing the Labor Code.

[13] Ibid.

[14] Annex A, petition; SEE footnote 4, supra.

[15] "(T)he last Sunday of August being a regular holiday under Executive Order No. 203."

[16] Annex B, petition; SEE footnote 6, supra, and rollo, pp. 38-39.

[17] SEC. 1, Omnibus Rules Implementing the Labor Code.

[18] Ibid.

[19] Rollo, pp. 121-122.

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