TRANS-ASIA PHILS. EMPLOYEES ASSOCIATION (TAPEA) AND ARNEL GALVEZ, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, TRANS-ASIA (PHILS.) AND ERNESTO S. DE CASTRO, RESPONDENTS.

G.R. No. 118289. December 13, 1999

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This petition for certiorari under Rule 65 of the Rules of Court seeks to reverse and set aside the Resolutions, dated 23 November 1993 and 13 September 1994 of the National Labor Relations Commission ("NLRC") which dismissed petitioners' appeal from the adverse decision of the labor arbiter and denied petitioners' motion for reconsideration, respectively.

The antecedents of this case are as follows:

On 7 July 1988, Trans-Asia Philippines Employees Association (TAPEA), the duly-recognized collective bargaining agent of the monthly-paid rank-and-file employees of Trans-Asia (Phils.), entered into a Collective Bargaining Agreement ("CBA") with their employer. The CBA, which was to be effective from 1 April 1988 up to 31 March 1991, provided for, among others, the payment of holiday pay with a stipulation that if an employee is permitted to work on a legal holiday, the said employee will receive a salary equivalent to 200% of the regular daily wage plus a 60% premium pay.

Despite the conclusion of the CBA, however, an issue was still left unresolved with regard to the claim of TAPEA for payment of holiday pay covering the period from January of 1985 up to December of 1987. Thus, the parties underwent preventive mediation meetings with a representative from the National Mediation and Conciliation Board in order to settle their disagreement on this particular issue. Since the parties were not able to arrive at an amicable settlement despite the conciliation meetings, TAPEA, led by its President, petitioner Arnie Galvez, filed a complaint before the labor arbiter, on 18 August 1988, for the payment of their holiday pay in arrears. On 18 September 1988, petitioners amended their complaint to include the payment of holiday pay for the duration of the recently concluded CBA (from 1988 to 1991), unfair labor practice, damages and attorney's fees.

In their Position Paper, petitioners contended that their claim for holiday pay in arrears is based on the non-inclusion of the same in their monthly pay. In this regard, petitioners cited certain circumstances which, according to them, would support their claim for past due holiday pay. First, petitioners presented Trans-Asia's Employees' Manual which requires, as a pre-condition for the payment of holiday pay, that the employee should have worked or was on authorized leave with pay on the day immediately preceding the legal holiday. Petitioners argued that "if the intention [of Trans-Asia] was not to pay holiday pay in addition to the employee's monthly pay, then there would be no need to impose or specify the pre-condition for the payment."[1] Second, petitioners proffered as evidence their appointment papers which do not contain any stipulation on the inclusion of holiday pay in their monthly salary. According to petitioners, the absence of such stipulation is an indication that the

mandated holiday pay is not incorporated in the monthly salary. Third, petitioners noted the inclusion of a provision in the CBA for the payment of an amount equivalent to 200% of the regular daily wage plus 60% premium pay to employees who are permitted to work on a regular holiday. Petitioners claimed that this very generous provision was the remedy availed of by Trans-Asia to allow its employees to recoup the holiday pay in arrears and, as such, is a tacit admission of the non-payment of the same during the period prior to the current CBA.

Finally, petitioners cited the current CBA provision which obligates Trans-Asia to give holiday pay. Petitioners asserted that this provision is an acknowledgment by Trans-Asia of its failure to pay the same in the past since, if it was already giving holiday pay prior to the CBA, there was no need to stipulate on the said obligation in the current CBA.

With regard to the claim for the payment of holiday pay for the duration of the CBA, the accusation of unfair labor practice and the claim for damages and attorney's fees, petitioners asserted that Trans-Asia is guilty of bad faith in negotiating and executing the current CBA since, after it recognized the right of the employees to receive holiday pay, Trans-Asia allegedly refused to honor the CBA provision on the same.

In response to petitioner's contentions, Trans-Asia refuted the same in seriatim. With regard to the pre-condition for the payment of holiday pay stated in the Employee's Manual and the absence of a stipulation on holiday pay in the employees' appointment papers, Trans-Asia asserted that the above circumstances are not indicative of its non-payment of holiday pay since it has always honored the labor law provisions on holiday pay by incorporating the same in the payment of the monthly salaries of its employees. In support of this claim, Trans-Asia pointed out that it has long been the standing practice of the company to use the divisor of "286" days in computing for its employees' overtime pay and daily rate deductions for absences. Trans-Asia explained that this divisor is arrived at through the following formula:

52 x 44

---------- = 286 days

8

Where:

52

= number of weeks in a year

44

= number of work hours per week

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8

= number of work hours per day

Trans-Asia further clarified that the "286" days divisor already takes into account the ten (10) regular holidays in a year since it only subtracts from the 365 calendar days the unworked and unpaid 52 Sundays and 26 Saturdays (employees are required to work half-day during Saturdays). Trans-Asia claimed that if the ten (10) regular holidays were not included in the computation of their employee's monthly salary, the divisor which they would have used would only be 277 days which is arrived at by subtracting 52 Sundays, 26 Saturdays and the 10 Legal holidays from 365 calendar days. Furthermore, Trans-Asia explained that the "286" days divisor is based on Republic Act No. 6640,[2] wherein the divisor of 262 days (composed of the 252 working days and the 10 legal holidays) is used in computing for the monthly rate of workers who do not work and are not considered paid on Saturdays and Sundays or rest days. According to Trans-Asia, if the additional 26 working Saturdays in a year is factored-in to the divisor provided by Republic Act No. 6640, the resulting divisor would be "286" days.

On petitioners' contention with regard to the CBA provision on the allegedly generous holiday pay rate of 260%, Trans-Asia explained that this holiday pay rate was included in the CBA in order to comply with Section 4, Rule IV, Book III of the Omnibus Rules Implementing the Labor Code. The aforesaid provision reads:

> Sec. 4. Compensation for holiday work. - Any employee who is permitted or suffered to work on any regular holiday, not exceeding eight (8) hours, shall be paid at least two hundred percent (200%) of his regular daily wage. If the holiday 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.

On the contention that Trans-Asia's acquiescence to the inclusion of a holiday pay provision in the CBA is an admission of non-payment of the same in the past, Trans-Asia reiterated that it is simply a recognition of the mandate of the Labor Code that employees are entitled to holiday pay. It clarified that the company's firm belief in the payment of holiday pay to employees led it to agree to the inclusion of the holiday pay provision in the CBA.

With regard to the accusation of unfair labor practice because of Trans-Asia's act of allegedly bargaining in bad faith and refusal to give holiday pay in accordance with the CBA, Trans-Asia explained that what petitioners would like the company to do is to give double holiday pay since, as previously stated, the company has already included the same in its employees monthly salary and, yet, petitioners want it to pay a second set of holiday pay.

On 13 February 1989, the labor arbiter rendered a decision dismissing the complaint, to wit:

> After considering closely the arguments of the parties in support of their respective claims and defenses, this Branch upholds a different view from that espoused by the complainants.
>
> Just like in the Chartered Bank Case (L-44717), August 28, 1985, 138 SCRA 273, which is cited by the complainants in their Position Paper, there appears to be no clear agreement between the parties in the instant case, whether verbal or in writing, that the monthly salary of the employees included the mandated holiday pay. In the absence of such agreement, the Supreme Court in said Chartered Bank Case took into consideration existing practices in the bank in resolving the issue, such as employment by the bank of a divisor of 251 days which is the result of subtracting all Saturdays, Sundays and the ten (10) legal holidays from the total number of calendar days in a year. Further, the Court took note of the fact that the bank used conflicting or different divisors in computing salary-related benefits as well as the employees' absence from work. In the case at bar, not only did the CBA between the complainants and respondents herein provides (sic) that the ten (10) legal holidays are recognized by the Company as full holiday with pay. What is more, there can be no doubt that since 1977 up to the execution of the CBA, the Trans-Asia, unlike that obtaining in the Chartered Bank Case,

> never used conflicting or different divisors but consistently employed the divisor of 286 days, which as earlier pointed out, was arrived at by subtracting only the unworked 52 Sundays and the 26 half-day-worked Saturdays from the total number of days in a year. The consistency in the established practice of the Trans-Asia, which incidentally is not disputed by complainants, did not give rise to any doubt which could have been resolved in favor of complainants.
>
> Besides, the respondents unlike the respondent bank in the Chartered Bank Employees Association vs. Hon. Blas F. Ople, et al. (supra) citing also the case of IBAAEU vs. Hon,. Amado Inciong (132 SCRA 663) which case have (sic) invalidated Section 2, Rule IV, Book III of the Implementing Rules of the Labor Code and Policy Instruction No. 9, have never relied on the said invalidated rule and Policy Instruction.
>
> The complainants' arguments and juxtapositions in claiming that they were denied payment of their holiday pay paled in the face of the prevailing company practices and circumstances abovestated.
>
> Also, for the reasons adverted to above, the complainants charge of unfair labor practice claiming that respondents in bad faith refused to comply with their contractual obligation under the CBA by not paying the complainants' holiday pay, must fail. Since respondents have nothing more to pay by way of legal holiday pay as it has already been included in their monthly salaries, the provision in the CBA relative to holiday pay is just but a recognition of the complainants right to payment of legal holiday pay as mandated by the Labor Code.
>
> WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered dismissing the complaint for lack of merit.
>
> SO ORDERED.[3]

Petitioners appealed to the National Labor Relations Commission. In its Resolution, dated 23 November 1993, the NLRC dismissed the appeal and affirmed the decision of the labor arbiter, to wit:

> We find no cogent reason to change or disturb the decision appealed from, the same being substantially supported by the facts and evidence on record. "It is a well-settled rule that findings of facts of administrative bodies, if based on substantial evidence are controlling on the reviewing authority." (Planters Products, Inc. vs. NLRC, G. R. No. 78524 & 78739, January 20, 1989; 169 SCRA 328).
>
> We find no abuse of discretion and/or error in the assailed decision.
>
> WHEREFORE, the appeal are (sic) hereby DISMISSED for lack of merit and the decision appealed from is AFFIRMED.
>
> SO ORDERED.[4]

Petitioners' motion for reconsideration was, likewise, denied by the NLRC in its Resolution, dated 13 September 1994.

Petitioners are now before us faulting the NLRC with the following assignment of errors:

> I
> PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION IN UPHOLDING THE LABOR ARBITER'S DECISION DESPITE THE LACK OF SUBSTANTIAL EVIDENCE TO SUPPORT IT
>
> II
> IN UPHOLDING THE LABOR ARBITER'S DECISION DESPITE THE LACK OF SUBSTANTIAL EVIDENCE TO SUPPORT IT, PUBLIC RESPONDENT NLRC VIOLATED THE CONSTITUTIONAL AND LEGAL MANDATE TO RESOLVE ALL DOUBTS IN SOCIAL LEGISLATION IN FAVOR OF LABOR.[5]

Petitioners, in furtherance of their first assignment of error, assert that the NLRC "blatantly an unshamedly disregarded" the numerous evidence in support of their claim and relied merely on the sole evidence presented by Trans-Asia, the "286" days divisor, in dismissing their appeal and, in so doing, is guilty of grave abuse of discretion.[6]

We do not agree.

Trans-Asia's inclusion of holiday pay in petitioners' monthly salary is clearly established by its consistent use of the divisor of "286" days in the computation of its employees' benefits and deductions. The use by Trans-Asia of the "286" days divisor was never disputed by petitioners. A simple application of mathematics would reveal that the ten (10) legal holidays in a year are already accounted for with the use of the said divisor. As explained by Trans-Asia, if one is to deduct the unworked 52 Sundays and 26 Saturdays (derived by dividing 52 Saturdays in half since petitioners are required to work half-day on Saturdays) from the 365 calendar days in a year, the resulting divisor would be 286 days (should actually be 287 days). Since the ten (10) legal holidays were never included in subtracting the unworked and unpaid days in a calendar year, the only logical conclusion would be that the payment for holiday pay is already incorporated into the said divisor. Thus, when viewed against this very convincing piece of evidence, the arguments put forward by petitioners to support their claim of non-payment of holiday pay, i.e., the pre-condition stated in the Employees' Manual for entitlement to holiday pay, the absence of a stipulation in the employees' appointment papers for the inclusion of holiday pay in their monthly salary, the stipulation in the CBA recognizing the entitlement of the petitioners to holiday pay with a concomitant provision for the granting of an "allegedly" very generous holiday pay rate, would appear to be merely inferences and suppositions which, in the apropos words of the labor arbiter, "paled in the face of the prevailing company practices and circumstances abovestated."

Hence, it is on account of the convincing and legally sound arguments and evidence of Trans-Asia that the labor arbiter rendered a decision adverse to petitioners. Acknowledging that the decision of the labor arbiter was based on substantial evidence, the NLRC affirmed the former's disposition. It is also with this acknowledgment that the Court affirms the questioned resolutions of the NLRC. As aptly put by the Solicitor General, citing Sunset View Condominium Corporation vs. NLRC,[7] "findings of fact of administrative bodies should not be disturbed in the absence of grave abuse of discretion or unless the findings are not supported by substantial evidence."[8] In this regard, the Solicitor General observed: "As said above, public respondent acted on the basis of substantial evidence, hence, grave abuse of discretion is ruled out."[9]

However, petitioners insist that the agreement of Trans-Asia in the CBA to give a generous 260% holiday pay rate to employees who work on a holiday is conclusive proof that the monthly pay of petitioners does not include holiday pay.[10] Petitioners cite as basis the case of Chartered Bank Employees Association vs. Ople,[11] which reads:

> Any remaining doubts which may arise from the conflicting or different divisors used in the computation of overtime pay and employees' absences are resolved by the manner in which work actually rendered on holidays is paid. Thus, whenever monthly paid employees work on a holiday, they are given an additional 100% base pay on top of a premium pay of 50%. If the employees' monthly pay already includes their salaries for holidays, they should be paid only premium pay but not both base pay and premium pay.[12]

We are not convinced. The cited case cannot be relied upon by petitioners since the facts obtaining in the Chartered Bank case are very different from those in the present case. In the Chartered Bank case, the bank used different divisors in computing for its employees benefits and deductions. For computing overtime compensation, the bank used 251 days as its divisor. On the other hand, for computing deductions due to absences, the bank used 365 days as divisor. Due to this confusing situation, the Court declared that there existed a doubt as to whether

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holiday pay is already incorporated in the employees' monthly salary. Since doubts should be resolved in favor of labor, the Court in the Chartered Bank case ruled in favor of the employees and further stated that its conclusion is fortified by the manner in which the employees are remunerated for work rendered on holidays. In the present case, however, there is no confusion with regard to the divisor used by Trans-Asia in computing for petitioners' benefits and deductions. Trans-Asia consistently used a "286" days divisor for all its computations.

Nevertheless, petitioners' cause is not entirely lost. The Court notes that there is a need to adjust the divisor used by Trans-Asia to 287 days, instead of only 286 days, in order to properly account for the entirety of regular holidays and special days in a year as prescribed by Executive Order No. 203[13] in relation to Section 6 of the Rules Implementing Republic Act 6727.[14]

> Section 1 of Executive Order No. 203 provides:
>
> SECTION 1. Unless otherwise modified by law, order or proclamation, the following regular holidays and special days shall be observed in the country:
>
> A. Regular Holidays
>
> New Year's Day
>
> -
>
> January 1
>
> Maundy Thursday
>
> -
>
> Movable Date
>
> Good Friday
>
> -
>
> Movable Date
>
> Araw ng Kagitingan
>
> -
>
> April 9
>
> (Bataan and Corregidor Day)
>
> Labor Day
>
> -
>
> May 1
>
> Independence Day
>
> -
>
> June

National Heroes Day

-

Last Sunday of August

Bonifacio Day 30

-

November

Christmas Day 25

-

December

Rizal Day

December 30

B. Nationwide Special Days

All Saints Day

-

November 1

Last Day of the Year

-

December 31

On the other hand, Section 6 of the Implementing Rules and Regulations of Republic Act No. 6727 provides:

> Section 6. Suggested Formula in Determining the Equivalent Monthly Statutory Minimum Wage Rates.- Without prejudice from existing company practices, agreements or policies, the following formulas may be used as guides in determining the equivalent monthly statutory minimum wage rates:
>
> x x x x x x x x x
> d) For those who do not work and are not considered paid on Saturdays and Sundays or rest days:
>
> Equivalent Monthly Rate (EMR)
>
> = Average Daily Wage Rate x 262 days
>
> 12
>
> Where 262 days =

250 days

-

Ordinary working days

10 days

-

Regular holidays

2 days

-

Special days (If considered paid; if actually worked, this is equivalent to 2.6 days)

---

262 days

-

Total equivalent number of days

Based on the above, the proper divisor that should be used for a situation wherein the employees do not work and are not considered paid on Saturdays and Sundays or rest days is 262 days. In the present case, since the employees of Trans-Asia are required to work half-day on Saturdays, 26 days should be added to the divisor of 262 days, thus, resulting to 288 days. However, due to the fact that the rest days of petitioners fall on a Sunday, the number of unworked but paid legal holidays should be reduced to nine (9), instead of ten (10), since one legal holiday under E.O. No. 203 always falls on the last Sunday of August, National Heroes Day. Thus, the divisor that should be used in the present case should be 287 days.

However, the Court notes that if the divisor is increased to 287 days, the resulting daily rate for purposes of overtime pay, holiday pay and conversions of accumulated leaves would be diminished. To illustrate, if an employee receives P8,000.00 as his monthly salary, his daily rate would be P334.49, computed as follows:

P8,000.00 x 12 months

---------- = P334.49/day

287 days

Whereas if the divisor used is only 286 days, the employee's daily rate would be P335.66, computed as follows:

P8,000.00 x 12 months

---------- = P335.66/day

286 days

Clearly, this muddled situation would be violative of the proscription on the non-diminution of benefits under Section 100 of the Labor Code. On the other hand, the use of the divisor of 287 days would be to the advantage of petitioners if it is used for purposes of computing for deductions due to the employee's absences. In view of this situation, the Court rules that the adjusted divisor of 287 days should only be used by Trans-Asia for

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computations which would be advantageous to petitioners, i.e., deductions for absences, and not for computations which would diminish the existing benefits of the employees, i.e., overtime pay, holiday and leave conversions.

For their second assignment of error, petitioners argue that, since they provided the NLRC with "overwhelming proof" of their claim against Trans-Asia, the least that the NLRC could have done was to declare that there existed an ambiguity with regard to Trans-Asia's payment of holiday pay. Petitioners then posits that if the NLRC had only done so, this ambiguity would have been resolved in their favor because of the constitutional mandate to resolve doubts in favor of labor.

We are not persuaded. As previously stated, the decision of the labor arbiter and the resolutions of the NLRC were based on substantial evidence and, as such, no ambiguity or doubt exists which could be resolved in petitioners' favor.

WHEREFORE, premises considered, the Resolutions of the NLRC, dated 23 November 1993 and 13 September 1994, are hereby AFFIRMED with the MODIFICATION that Trans-Asia is hereby ordered to adjust its divisor to 287 days and pay the resulting holiday pay in arrears brought about by this adjustment starting from 30 June 1987, the date of effectivity of E.O. No. 203.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

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[1] Position Paper of Complainants, Records, p. 22.

[2] An Act Providing For An Increase In the Wage Of Public Or Government Sector On A Daily Wage Basis And In The Statutory Minimum Wage And Salary Rates of Employees And Workers In The Private Sector And For Other Purposes.

[3] Decision, Rollo, pp. 35-37.

[4] Resolution, Id., at 29-30.

[5] Petition, Id., at 12-13.

[6] Id., at 17.

[7] 228 SCRA 466 (1993).

[8] Comment of Solicitor General, Rollo, p. 79.

[9] Ibid.

[10] Supra, note 5 at 15.

[11] 138 SCRA 273 (1985).

[12] Id., at 283.

[13] Providing A List Of Regular Holidays And Special Days To Be Observed Throughout the Philippines And For Other Purposes.

[14] Wage Rationalization Act.

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