

## **EMELITA NICARIO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, MANCAO SUPERMARKET INC., AND/OR MANAGER, ANTONIO MANCAO, RESPONDENTS.**

*G.R. No. 125340. September 17, 1998*

Ponente: ROMERO, J.

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### **ROMERO, J.:**

For resolution before this Court is a special civil action for certiorari under Ruled 65 of the Rules of Court which seeks to set aside the resolution of the National Labor Relations Commission (Fifth Division, Cagayan de Oro City) dated December 21, 1995 in NLRC CA No. M-002047-94 entitled "Emelita Nicario v. Mancao Supermarket Inc. and/or Manager" which ruled that petitioner, Emelita Nicario, is not entitled to overtime pay. Nor is private respondent, Antonio Mancao jointly and severally liable with the respondent company for thirteenth month pay, service incentive leave pay, and rest day pay.[1]

Petitioner, Emelita Nicario, was employed with respondent company Mancao Supermarket, on June 6, 1986 as a salesgirl and was later on promoted as sales supervisor. However, private respondent terminated her services on February 7, 1989.

A complaint for illegal dismissal with prayer for backwages, wage differential, service incentive leave pay, overtime pay, 13th month pay and unpaid wages was filed by petitioner before the National Labor Relations Commission, Sub-Regional Arbitration Branch X in Butuan City.

On July 25, 1989, Labor Arbiter Amado M. Solamo dismissed the complaint for lack of merit. Petitioner appealed to the National Labor Relations Commission (NLRC), Fifth Division, Cagayan de Oro City. In a resolution dated July 25, 1989, the NLRC set aside the labor arbiter's decision for lack of due process. It ruled that since petitioner assailed her supposed signatures appearing on the payrolls presented by the company as a forgery, the labor arbiter should not have merely depended on the xerox copies of the payrolls, as submitted in evidence by the private respondent but ordered a formal hearing on the issue. Thus, the Commission ordered the case remanded to the arbitration branch for appropriate proceedings. The case was assigned to Labor Arbiter Marissa Macaraig-Guillen.[2]

In a decision dated May 23, 1994, Labor Arbiter Macaraig-Guillen awarded petitioner's claims for unpaid service incentive leave pay, 13th month pay, overtime pay and rest day pay for the entire period of her employment, but dismissed her claims for holiday premium pay and unpaid salaries from February 3 to 5, 1989. The dispositive portion of the decision read as follows:

"WHEREFORE, in view of the foregoing, judgment is rendered directing respondent Mancao Supermarket, Inc., and/or Mr. Antonio Mancao to pay complainant Emelita Nicario the sum of forty thousand three hundred ninety pesos and fifteen centavos (P40,393.15) representing unpaid services incentive leave pay, thirteenth month pay, overtime pay, and rest day for the entire period of employment.

All other claims are dismissed for lack of merit.

SO ORDERED."[3]

Not satisfied with the decision, private respondent appealed to the NLRC, and in a resolution dated August 16, 1995,[4] the Commission affirmed in toto Labor Arbiter Macaraig-Guillen's decision. Private respondent then filed a motion for reconsideration. In a resolution dated December 21, 1995, public respondent NLRC modified its earlier resolution by deleting the award for overtime pay and ruling that private respondent Antonio Mancao is not jointly and severally liable with Mancao Supermarket to pay petitioner the monetary award adjudged.

Petitioner now comes before this Court alleging grave abuse of discretion on the part of the public respondent NLRC in ruling that (a) she is not entitled to overtime pay and (b) private respondent, Antonio Mancao cannot be held jointly and severally liable with respondent supermarket as to the monetary award.

The Solicitor General, in a manifestation and motion in lieu of comment[5] stated that public respondent NLRC acted with grave abuse of discretion in modifying its earlier resolution (dated August 16, 1995) and thus recommends that the December 21, 1995 resolution be set aside, and its August 16, 1995 resolution be reinstated.

Public respondent NLRC, on the other hand, filed its own comment[6] praying for the dismissal of the petition and for the December 21, 1995 resolution to be affirmed with finality.

The petition is partly impressed with merit.

In her claim for payment of overtime pay, petitioner alleged that during her period of employment, she worked twelve (12) hours a day from 7:30 a.m. to 7:30 p.m., thus rendering overtime work for four hours each day. Labor Arbiter Macaraig-Guillen, in her decision dated May 23, 1994, awarded overtime pay to petitioner by taking judicial notice of the fact that all Mancao establishments open at 8:00 a.m. and close at 8:00 p.m.. Upon appeal, this particular finding was affirmed by the Commission. However, when private respondent filed a motion for reconsideration from the resolution dated August 16, 1995, the NLRC modified its earlier ruling and deleted the award for overtime pay. Public respondent NLRC instead gave credence to the daily time records (DTRs) presented by respondent corporation showing that petitioner throughout her employment from June 6, 1986 to February 1989, worked only for eight hours a day from 9:00 a.m. to 12:00 p.m. and 2:00 p.m. to 7:00 p.m., and did not render work on her rest days.

Public respondent's reliance on the daily time records submitted by private respondent is misplaced. As aptly stated by the Solicitor General in lieu of comment, the DTR's presented by respondent company are unreliable based on the following observations:

"a) the originals thereof were not presented in evidence; petitioner's allegation of forgery should have prompted respondent to submit the same for inspection; evidence wilfully suppressed would be adverse if produced (Sec. 3(e), Rule 131, Rules of Court)

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e) they would make it appear that petitioner has a two-hour rest period from 12:00 to 2:00 p.m., this is highly unusual for a store establishment because employees should attend to customers almost every minute as well as contrary to the judicial notice that no noon break is observed.

f) petitioner never reported earlier or later than 9:00 a.m., likewise she never went home earlier or later than 8:00 pm; all entries are suspiciously consistent."[7]

Labor Arbiter Macaraig-Guillen, in taking judicial cognizance of the fact that private respondent company opens twelve (12) hours a day, the same number of hours worked by petitioner everyday, applied Rule 129, Section 2 of

the Rules of Court which provides that "a court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known because of their judicial functions." In awarding overtime pay to petitioner, the labor arbiter ruled:

"However, it is of judicial notice that all Mancao establishments open at eight a.m. and close at eight p.m. with no noon break, so it is believable that employees rendered 4-1/2 hours of overtime everyday, 7 days a week." [8]

Generally, findings of facts of quasi-judicial agencies like the NLRC are accorded great respect and at times even finality if supported by substantial evidence. [9] "Substantial evidence" is such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. However in cases where there is a conflict between the factual findings of the NLRC and the labor arbiter, a review of such factual findings is necessitated. [10]

While private respondent company submitted the daily time records of the petitioner to show that she rendered work for only eight (8) hours a day, it did not refute nor seek to disprove the judicial notice taken by Labor Arbiter Macaraig-Guillen that Mancao establishments, including the establishment where petitioner worked, opens twelve hours a day, opening at 8:00 a.m. and closing at 8:00 p.m.

This Court, in previously evaluating the evidentiary value of daily time records, especially those which show uniform entries with regard to the hours of work rendered by an employee, has ruled that "such unvarying recording of a daily time record is improbable and contrary to human experience. It is impossible for an employee to arrive at the workplace and leave at exactly the same time, day in day out. The uniformity and regularity of the entries are 'badges of untruthfulness and as such indices of dubiety.' [11] The observations made by the Solicitor General regarding the unreliability of the daily time records would therefore seem more convincing. On the other hand, respondent company failed to present substantial evidence, other than the disputed DTRs, to prove that petitioner indeed worked for only eight hours a day.

It is a well-settled doctrine, that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. It is a time-honored rule that in controversies between a laborer and his master, doubts reasonably arising from the evidence, or in the interpretation of agreements and writing should be resolved in the former's favor. [12] The policy is to extend the doctrine to a greater number of employees who can avail of the benefits under the law, which is in consonance with the avowed policy of the State to give maximum aid and protection of labor. [13] This rule should be applied in the case at bar, especially since the evidence presented by the private respondent company is not convincing. Accordingly, we uphold the finding that petitioner rendered overtime work, entitling her to overtime pay.

As to the liability of private respondent Antonio Mancao, petitioner contends that as manager of Mancao establishment, he should be jointly and severally liable with respondent corporation as to the monetary award adjudged.

The general rule is that officers of a corporation are not personally liable for their official acts unless it is shown that they have exceeded their authority. However, the legal fiction that a corporation has a personality separate and distinct from stockholders and members may be disregarded if it is used as a means to perpetuate fraud or an illegal act or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, or to confuse legitimate issues. [14]

In this case, there is no showing that Antonio Mancao, as manager of respondent company, deliberately and maliciously evaded the respondent's company financial obligation to the petitioner. Hence, there appearing to be no evidence on record that Antonio Mancao acted maliciously or deliberately in the non-payment of benefits to

petitioner, he cannot be held jointly and severally liable with Mancao supermarket.

WHEREFORE, in view of the foregoing, the instant petition is hereby PARTIALLY GRANTED. Accordingly, the resolution of the NLRC dated December 21, 1995 in NLRC NCR CA No. M-002047-94 is hereby MODIFIED by awarding petitioner, Emelita Nicario her overtime pay and relieving private respondent, Antonio Mancao, of any liability as manager of Mancao Supermarket and further holding Mancao Supermarket solely liable. No costs.

**SO ORDERED.**

Narvasa, C.J., (Chairman), Kapunan, and Purisima, JJ., concur.

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[1] Rollo, pp. 136-139.

[2] Ibid., pp. 96-97.

[3] Id., p. 95.

[4] Id., p. 123-127.

[5] Id., pp. 189-201.

[6] Id., pp. 230-245.

[7] Rollo, pp. 196-197.

[8] Ibid., p. 107.

[9] *Madlos v. NLRC*, 254 SCRA 248 (1996).

[10] *Pantranco v. NLRC*, 239 SCRA 272 (1994).

[11] *Eduardo Prangan v. NLRC*, G.R. No. 126529, April 15, 1998.

[12] Ibid.

[13] *Sarmiento v. Employees Compensation Commission*, 144 SCRA 422 (1986).

[14] *Pabalan vs. NLRC*, 184 SCRA 495 (1990).

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