

SAN MIGUEL CORPORATION, ANDRES SORIANO III, FRANCISCO C. EIZMENDI, JR., AND FAUSTINO F. GALANG, PETITIONERS, VS. NUMERIANO LAYOC, JR., CARLOS APONESTO, PAULINO BALDUGO, QUEZON B...

G.R. No. 149640. October 19, 2007

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review[1] of the decision[2] promulgated on 29 August 2001 by the Court of Appeals (appellate court) in CA-G.R. SP No. 55838. The appellate court's decision set aside the decision[3] in NLRC NCR Case No. 00-12-08656-94 dated 23 March 1998, the decision[4] dated 27 November 1998, and the resolution[5] dated 31 August 1999 in NLRC CA No. 015710-98. The appellate court ordered San Miguel Corporation (SMC), Andres Soriano III, Francisco C. Eizmendi, Jr., and Faustino F. Galang (collectively, petitioners) to pay respondent Numeriano Layoc, Jr. (Layoc) P125,000, representing overtime pay for services that he could have rendered from January 1993 up to his retirement on 30 June 1997, and respondents Carlos Aponesto, Paulino Baldugo, Quezon Barit, Bonifacio Botor, Herminio Calina, Danilo Camingal, Juan de Mesa, Reynold Desembrana, Bernardito Deus, Eduardo Fillarta, Maximiano Francisco, Mario Marilim, Demetrio Mateo, Filomeno Mendoza, Conrado Nieva, Francisco Palines, Felipe Polintan, Malcolm Satorre, and Alejandro Torres (collectively, respondents) P10,000 each as nominal damages.

The Facts

The appellate court stated the facts as follows:

[Respondents] were among the "Supervisory Security Guards" of the Beer Division of the San Miguel Corporation (p. 10, Rollo), a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with offices at No. 40 San Miguel Avenue, Mandaluyong City. They started working as guards with the petitioner San Miguel Corporation assigned to the Beer Division on different dates until such time that they were promoted as supervising security guards. The dates of their employment commenced as follows (Ibid., pp. 87-89):

As guards As supervising guards

- a. Aponesto, Carlos June 1970 February 1983
- b. Baldugo, Paulino November 1978 May 1984
- c. Barit, Quezon January 1969 May 1984

- d. Botor, Bonifacio April 1980 January 1987
- e. De Mesa, Juan November 1977 May 1984
- f. Calina, Herminio February 1976 May 1984
- g. Desembrana, Reynold November 1976 April 1983
- h. Camingal, Danilo December 1975 December 1985
- i. Deus, Bernardito July 1976 May 1983
- j. Fillarta, Eduardo January 1979 May 1989
- k. Francisco, Maximiano October 1977 May 1984
- l. Layoc, Numeriano June 1974 January 1982
- m. Marilim, Mario December 1977 June 1984
- n. Mateo, Demetrio November 1976 March 1984
- o. Mendoza, Filomena March 1980 May 1983
- p. Palines, Francisco May 1979 May 1985
- q. Nieva, Conrado January 1977 June 1987
- r. Polintan, Felipe June 1972 May 1983
- s. Satorre, Malcolm September 1970 May 1984
- t. Torres, Alejandro January 1974 May 1984

As supervising security guards, the private respondents were performing the following functions (Ibid., pp. 202-204):

- Supervises the facility security force under his shift;
- Inspects all company-owned firearms and ammunition and promptly submits report as regards to discrepancy and/or state of doubtful/suspected serviceability;
- Receives and transfers from outgoing to incoming supervising security guard all company property, all official papers, documents and/or cases investigated including pieces of evidence properly labeled and secured;
- Physically checks and accounts for all company property within his area of responsibility immediately upon assumption of duty;
- Updates compilation of local security rules, policies and regulations and ensures that all his guards are posted thereon;
- Conducts regular and irregular inspection to determine his guards' compliance with all guard force instructions, corporate security standards and procedures;
- Passes on all official communications, requests, applications of leaves, etc. and makes his comments and/or recommendations to his superior;
- Systematically and continuously screens the good performers from the marginal or poor among his guards; concentrates on teaching and guiding the latter; determines further what training and/or skills that should be learned and submits appropriate report to superior;

- Corrects, on the spot, all deficiencies noted and institutes corrective measures within his authority; recommends commendations for those guards who deserves [sic] recognition for good work;
- Conducts an investigation of all cases coming to his attention and promptly submits appropriate report to his superiors;
- Evaluates individual guard performance and renders efficiency reports in accordance with standing instructions;
- Ensures that all his guards are courteous, respectful and accommodating at all times;
- Ensures that even those who have been found violating the facility's policies, rules and procedures are professionally treated with courtesy and understanding to preclude embarrassment and humiliation;
- Ensures the maintenance of [a] logbook of all incidents, communications, personnel and materials' movements;
- Responds to all calls for assistance;
- Conducts continuing physical checks of the facility's critical and vulnerable areas;
- Obtains critical security information and passes it on to his superiors;
- Assesses the need for extra guard service requirements;
- Continuously monitors the personal needs and problems of his men to his superiors;
- Acts as Detachment Commander in the latter's absence;
- Responds to emergencies and activates the Corporate Security Alerting System as appropriate; and
- Performs such other duties as may be required by his Detachment Commander/Plant Security Officer.

From the commencement of their employment, the private respondents were required to punch their time cards for purposes of determining the time they would come in and out of the company's work place. Corollary [sic], the private respondents were availing the benefits for overtime, holiday and night premium duty through time card punching (Rollo, p. 89). However, in the early 1990's, the San Miguel Corporation embarked on a Decentralization Program aimed at enabling the separate divisions of the San Miguel Corporation to pursue a more efficient and effective management of their respective operations (Ibid., p. 99).

As a result of the Decentralization Program, the Beer Division of the San Miguel Corporation implemented on January 1, 1993 a "no time card policy" whereby the Supervisory I and II composing of the supervising security guards of the Beer Division were no longer required to punch their time cards (Ibid., p. 100). Consequently, on January 16, 1993, without prior consultation with the private respondents, the time cards were ordered confiscated and the latter were no longer allowed to render overtime work (Ibid., p. 117).

However, in lieu of the overtime pay and the premium pay, the personnel of the Beer Division of the petitioner San Miguel Corporation affected by the "No Time Card Policy" were given a 10% across-the-board increase on their basic pay while the supervisors who were assigned in the night shift (6:00 p.m. to 6:00 a.m.) were given night shift allowance ranging from P2,000.00 to P2,500.00 a month (Rollo, p. 12).[6]

On 1 December 1994, respondents filed a complaint for unfair labor practice, violation of Article 100 of the Labor Code of the Philippines, and violation of the equal protection clause and due process of law in relation to paragraphs 6 and 8 of Article 32 of the New Civil Code of the Philippines. Respondents prayed for actual damages for two years (1993-1994), moral damages, exemplary damages, and overtime, holiday, and night premium pay.

In their position paper dated 28 February 1995, respondents stated that the Beer Division of SMC maliciously and fraudulently refused payment of their overtime, holiday, and night premium pay from 1 to 15 January 1993 because of the "no time card policy." Moreover, petitioners had no written authority to stop respondents from punching their time cards because the alleged memorandum authorizing such stoppage did not include supervisory security guards. Thus, the respondents suffered a diminution of benefits, making petitioners liable for non-payment of overtime, holiday, and night premium pay.

In their position paper dated 23 February 1995, petitioners maintained that respondents were supervisory security guards who were exempt from the provisions of the Labor Code on hours of work, weekly rest periods, and rest days. The "no time card policy" did not just prevent respondents from punching their time cards, but it also granted respondents an across-the-board increase of 10% of basic salary and either a P2,000 or P2,500 night shift allowance on top of their yearly merit increase. Petitioners further asserted that the "no time card policy" was a valid exercise of management prerogative and that all supervisors in the Beer Division were covered by the "no time card policy," which classification was distinct and separate from the other divisions within SMC.

Respondents filed their reply dated 15 March 1995 to petitioners' position paper. Petitioners, on the other hand, filed their rejoinder dated 27 March 1995 to respondents' reply. Respondents filed a request for admission dated 2 May 1995 to which petitioners filed their reply dated 15 May 1995.

The Ruling of the Labor Arbiter

In his decision dated 23 March 1998, Labor Arbiter Potenciano S. Canizares, Jr. (Arbiter Canizares) stated that the principal issue is whether petitioners can, in their "no time card policy," remove the benefits that respondents have obtained through overtime services. Arbiter Canizares then stated that the facts and the evidence are in respondents' favor. Arbiter Canizares ruled that rendering services beyond the regular eight-hour work day has become company practice. Moreover, petitioners failed to show good faith in the exercise of their management prerogative in altering company practice because petitioners changed the terms and conditions of employment from "hours of work rendered" to "result" only with respect to respondents and not with other supervisors in other departments. The dispositive portion of Arbiter Canizares' decision reads:

WHEREFORE, the [petitioners] are hereby ordered to restore to the [respondents] their right to earn for overtime services rendered as enjoyed by the other employees.

The [petitioners] are further ordered to indemnify the [respondents] for lost earnings after their terms and conditions of employment have been unilaterally altered by the [petitioners], namely in the amount of P500,000.00 each as computed by the [respondents], and the [petitioners] failed to refute.

[Petitioners] are furthermore ordered to pay the [respondents] P100,000.00 each as moral and exemplary damages.

All other claims are hereby dismissed for lack of evidence.

SO ORDERED.[7]

On 26 May 1998, petitioners filed their notice of appeal and memorandum of appeal with the National Labor Relations Commission (NLRC).

The Ruling of the NLRC

On 27 November 1998, the NLRC affirmed with modification the ruling of Arbiter Canizares that respondents suffered a diminution of benefits as a result of the adoption of the "no time card policy." The NLRC cited a well-established rule that employees have a vested right over existing benefits voluntarily granted to them by their

employer, who may not unilaterally withdraw, eliminate, or diminish such benefits. In the present case, there was a company practice which allowed the enjoyment of substantial additional remuneration. Furthermore, there is no rule excluding managerial employees from the coverage of the principle of non-diminution of benefits.

The NLRC ruled thus:

WHEREFORE, the decision appealed from is hereby AFFIRMED, with slight modification deleting the award of moral and exemplary damages.

SO ORDERED.[8]

Both petitioners and respondents filed their respective motions for reconsideration. Petitioners stated that the NLRC erred in sustaining the award of overtime pay despite its finding that respondents were managerial personnel. Furthermore, there was no evidence that respondents rendered overtime work and respondents admitted that they never or seldom rendered overtime work. The award of overtime pay was thus contrary to the principle of no work, no pay. For their part, respondents stated that the NLRC erred in deleting the award of moral and exemplary damages. The implementation of the "no time card policy," the discrimination against them vis-a-vis the supervising security officers in other divisions of SMC, and the execution of quitclaims and releases during the pendency of the case were all attended with bad faith, thus warranting the award of moral and exemplary damages.

On 31 August 1999, the NLRC further modified Arbiter Canizares' decision. The NLRC ruled thus:

WHEREFORE, the November 27, 1998 Decision of this Commission is hereby REITERATED with a slight modification to the effect that the computation of the [respondents]' withdrawn benefits at P125,000.00 yearly from 1993 should terminate in 1996 or the date of each complainant's retirement, whichever came first.

SO ORDERED.[9]

Petitioners then filed their petition for certiorari before the appellate court on 16 November 1999.

The Ruling of the Appellate Court

On 29 August 2001, the appellate court set aside the ruling of the NLRC and entered a new judgment in favor of respondents. The appellate court stated that there is no legal issue that respondents, being the supervisory security guards of the Beer Division of SMC, were performing duties and responsibilities being performed by those who were considered as officers or members of the managerial staff as defined under Section 2, paragraph (c), Rule 1, Book III of the Implementing Rules of the Labor Code.[10] The appellate court ruled that while the implementation of the "no time card policy" was a valid exercise of management prerogative, the rendering of overtime work by respondents was a long-accepted practice in SMC which could not be peremptorily withdrawn without running afoul with the principles of justice and equity. The appellate court affirmed the deletion of the award of actual, moral, and exemplary damages. With the exception of Layoc, respondents did not present proof of previous earnings from overtime work and were not awarded with actual damages. Moreover, the appellate court did not find that the implementation of the "no time card policy" caused any physical suffering, moral shock, social humiliation, besmirched reputation, and similar injury to respondents to justify the award of moral and exemplary damages. Nonetheless, in the absence of competent proof on the specific amounts of actual damages suffered by respondents, the appellate court awarded them nominal damages.

The dispositive portion of the appellate court's decision reads thus:

WHEREFORE, foregoing considered, the instant petition is hereby GIVEN DUE COURSE and is GRANTED. The Decision issued in NLRC NCR CASE No. 00-12-08656-94 dated March 23, 1998, the

Decision issued in NLRC CA No. 015710-98 dated November 27, 1998 and the Resolution dated August 31, 1999, are hereby ANNULLED and SET ASIDE, and a new judgment is hereby entered ordering the petitioners to pay as follows:

- 1) the private respondent Numeriano Layoc, Jr., the amount of One Hundred Twenty-Five Thousand (P125,000.00) Pesos per year, representing overtime pay for overtime services that he could have rendered computed from the date of the implementation of the "no time card policy" or on January 1993 and up to the date of his retirement on June 30, 1997; and
- 2) the other private respondents, the amount of Ten Thousand (P10,000.00) Pesos each as nominal damages.

SO ORDERED.[11]

Dissatisfied with the appellate court's ruling, petitioners filed a petition before this Court.

The Issues

Petitioners ask whether the circumstances in the present case constitute an exception to the rule that supervisory employees are not entitled to overtime pay.

Respondents, on the other hand, question petitioners' procedure. Respondents submit that the Court should dismiss the present petition because petitioners did not file a motion for reconsideration before the appellate court.

The Ruling of the Court

The petition has merit.

Requirement of Prior Filing of a Motion for Reconsideration

It appears that respondents confuse certiorari as a mode of appeal under Rule 45 of the 1997 Rules of Civil Procedure with certiorari as an original special civil action under Rule 65 of the same Rules. In *Paa v. Court of Appeals*,^[12] we stated that:

There are, of course, settled distinctions between a petition for review as a mode of appeal and a special civil action for certiorari, thus:

- In appeal by certiorari, the petition is based on questions of law which the appellant desires the appellate court to resolve. In certiorari as an original action, the petition raises the issue as to whether the lower court acted without or in excess of jurisdiction or with grave abuse of discretion.
- Certiorari, as a mode of appeal, involves the review of the judgment, award or final order on the merits. The original action for certiorari may be directed against an interlocutory order of the court prior to appeal from the judgment or where there is no appeal or any other plain, speedy or adequate remedy.
- Appeal by certiorari must be made within the reglementary period for appeal. An original action for certiorari may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed.
- Appeal by certiorari stays the judgment, award or order appealed from. An original action for certiorari, unless a writ of preliminary injunction or a temporary restraining order shall have been issued, does not stay the challenged proceeding.
- In appeal by certiorari, the petitioner and respondent are the original parties to the action, and the lower court or quasi-judicial agency is not to be impleaded. In certiorari as an original action, the parties are the aggrieved party against the lower court or quasi-judicial agency and the prevailing parties, who thereby respectively

become the petitioner and respondents.

- In certiorari for purposes of appeal, the prior filing of a motion for reconsideration is not required (Sec. 1, Rule 45); while in certiorari as an original action, a motion for reconsideration is a condition precedent (Villa-Rey Transit vs. Bello, L-18957, April 23, 1963), subject to certain exceptions.

- In appeal by certiorari, the appellate court is in the exercise of its appellate jurisdiction and power of review for, while in certiorari as an original action, the higher court exercises original jurisdiction under its power of control and supervision over the proceedings of lower courts. (Emphasis added)

Respondents' contention that the present petition should be denied for failure to file a motion for reconsideration before the appellate court is, therefore, incorrect.

Overtime Work and Overtime Pay for Supervisory Employees

Both petitioners and respondents agree that respondents are supervising security guards and, thus, managerial employees. The dispute lies on whether respondents are entitled to render overtime work and receive overtime pay despite the institution of the "no time card policy" because (1) SMC previously allowed them to render overtime work and paid them accordingly, and (2) supervising security guards in other SMC divisions are allowed to render overtime work and receive the corresponding overtime pay.

Article 82[13] of the Labor Code states that the provisions of the Labor Code on working conditions and rest periods shall not apply to managerial employees. The other provisions in the Title include normal hours of work (Article 83), hours worked (Article 84), meal periods (Article 85), night shift differential (Article 86), overtime work (Article 87), undertime not offset by overtime (Article 88), emergency overtime work (Article 89), and computation of additional compensation (Article 90). It is thus clear that, generally, managerial employees such as respondents are not entitled to overtime pay for services rendered in excess of eight hours a day. Respondents failed to show that the circumstances of the present case constitute an exception to this general rule.

First, respondents assert that Article 100[14] of the Labor Code prohibits the elimination or diminution of benefits. However, contrary to the nature of benefits, petitioners did not freely give the payment for overtime work to respondents. Petitioners paid respondents overtime pay as compensation for services rendered in addition to the regular work hours. Respondents rendered overtime work only when their services were needed after their regular working hours and only upon the instructions of their superiors. Respondents even differ as to the amount of overtime pay received on account of the difference in the additional hours of services rendered. To illustrate, Layoc's records[15] show the varying number of hours of overtime work he rendered and the varying amounts of overtime pay he received from the years 1978 to 1981 and from 1983 to 1994:

Number of Hours
Worked Overtime

Overtime Pay
Received (in Pesos)

1974 - Appointment as guard

No record

No record

1975

No record

No record

1976

No record

No record

1977

No record

No record

1978

1,424.00

5,214.88

1979

1,312.56

5,189.30

1980

1,357.50

5,155.71

1981

474.00

1,781.81

1982 - Appointment as supervising security guard

No record

No record

1983

947.50

6,304.33

1984

889.00

8,937.00

1985

898.00

12,337.47

1986

1,086.60

18,085.34

1987

1,039.50

32,109.85

1988

633.00

29,126.10

1989

723.50

39,594.55

1990

376.50

21,873.33

1991

149.50

12,694.97

1992

144.00

17,403.38

1993

0.50

47.69

1994

0.00

0.00

1995

0.00

0.00

Aside from their allegations, respondents were not able to present anything to prove that petitioners were obliged to permit respondents to render overtime work and give them the corresponding overtime pay. Even if petitioners did not institute a "no time card policy," respondents could not demand overtime pay from petitioners if respondents did not render overtime work. The requirement of rendering additional service differentiates overtime pay from benefits such as thirteenth month pay or yearly merit increase. These benefits do not require any additional service from their beneficiaries. Thus, overtime pay does not fall within the definition of benefits under Article 100 of the Labor Code.[16]

Second, respondents allege that petitioners discriminated against them vis-a-vis supervising security guards in other SMC divisions. Respondents state that they should be treated in the same manner as supervising security guards in the Packaging Products Division, who are allowed to render overtime work and thus receive overtime pay. Petitioners counter by saying that the "no time card policy" was applied to all supervisory personnel in the Beer Division. Petitioners further assert that there would be discrimination if respondents were treated differently from other supervising security guards within the Beer Division or if other supervisors in the Beer Division are allowed to render overtime work and receive overtime pay. The Beer Division merely exercised its management prerogative of treating its supervisors differently from its rank-and-file employees, both as to responsibilities and compensation, as they are not similarly situated.

We agree with petitioners' position that given the discretion granted to the various divisions of SMC in the management and operation of their respective businesses and in the formulation and implementation of policies affecting their operations and their personnel, the "no time card policy" affecting all of the supervisory employees of the Beer Division is a valid exercise of management prerogative. The "no time card policy" undoubtedly caused pecuniary loss to respondents.[17] However, petitioners granted to respondents and other supervisory employees a 10% across-the-board increase in pay and night shift allowance, in addition to their yearly merit increase in basic salary, to cushion the impact of the loss. So long as a company's management prerogatives are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements, this Court will uphold them.[18]

WHEREFORE, the petition is GRANTED. The Decision dated 29 August 2001 of the Court of Appeals in CA-G.R. SP No. 55838 ordering petitioners San Miguel Corporation, Andres Soriano III, Francisco C. Eizmendi, Jr., and Faustino F. Galang to pay Numeriano Layoc, Jr. overtime pay and the other respondents nominal damages is SET ASIDE. The complaint of respondents is DISMISSED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Rollo, pp. 370-383. Penned by Associate Justice Bennie A. Adeguin-De La Cruz with Associate Justices Andres B. Reyes, Jr. and Mercedes Gozo-Dadole, concurring.

[3]Id. at 128-135.

[4]Id. at 137-146.

[5]Records, pp. 789-795.

[6] Rollo, pp. 371-373.

[7]Id. at 135.

[8] Id. at 145.

[9] Records, p. 795.

[10] Sec. 2. Exemption. -- The provisions of this rule shall not apply to the following persons if they qualify for exemption under the conditions set forth herein:

x x x

(b)

Managerial employees, x x x

(c)

Officers or members of a managerial staff if they perform the following duties and responsibilities:

(1)

The primary duty consists of the performance of work directly related to management policies of their employer;

(2)

Customarily and regularly exercise discretion and independent judgment;

(3)

(i) Regularly and directly assist a proprietor or a managerial employee whose primary duty consists of the management of the establishment in which he is employed or subdivision thereof; or (ii) execute under general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or (iii) execute under general supervision special assignments and tasks; and

(4)

Who do not devote more than 20% of their hours worked in a work-week to activities which are not directly and closely related to the performance of the work described in paragraphs (1), (2) and (3) above.

[11]Rollo, p. 383.

[12]347 Phil. 122, 136-137 (1997) citing FLORENZ D. REGALADO, REMEDIAL LAW COMPENDIUM 543-544 (6thed. 1997).

[13] Art. 82. Coverage. -- The provisions of this Title [Working Conditions and Rest Periods] shall apply to employees in all establishments and undertakings whether for profit or not, but not to government employees, managerial employees, field personnel, members of the family of the employer who are dependent on him for support, domestic helpers, persons in the personal service of another, and workers who are paid by results as determined by the Secretary of Labor in appropriate regulations.

As used herein, "managerial employees" refer to those whose primary duty consists of the management of the establishment in which they are employed or of a department or subdivision thereof, and to other officers or members of the managerial staff.

x x x x

[14] Article 100. Prohibition Against Elimination or Diminution of Benefits. -- Nothing in this Book [Conditions

of Employment] shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code.

[15] Records, pp. 131-138.

[16] See Manila Jockey Club Employees Labor Union - PTGWO v. Manila Jockey Club, Inc., G.R. No. 167760, 7 March 2007, 517 SCRA 707.

[17] See Records, pp. 49-86.

[18] San Miguel Brewery Sales Force Union (PTGWO) v. Ople, G.R. No. 53515, 8 February 1989, 170 SCRA 25.

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