

PHILEX GOLD PHILIPPINES, INC., GERARDO H. BRIMO, LEONARD P. JOSEF, AND JOSE B. ANIEVAS, PETITIONERS, VS. PHILEX BULAWAN SUPERVISORS UNION, REPRESENTED BY ITS PRESIDENT, JOSE D. ...

G.R. NO. 149758. August 25, 2005

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review on certiorari, with prayer for the issuance of a temporary restraining and/or status quo order, assailing the Decision of the Court of Appeals in CA-G.R. SP No. 57701 promulgated on April 23, 2001 and its Resolution, promulgated on August 29, 2001, denying petitioner's Motion for Reconsideration. The said Decision of the Court of Appeals reversed and set aside the Resolution dated February 29, 2000 of the Voluntary Arbitrator and reinstated the Voluntary Arbitrator's Resolution dated January 14, 2000 with modification.

The antecedents[1] of the case are as follows:

Respondent Philex Bulawan Supervisors Union ("Philex Supervisors Union") is the sole and exclusive bargaining representative of all supervisors of petitioner Philex Gold Philippines, Incorporated ("Philex Gold"), a gold mining company with mine site at Vista Alegre, Nabulao, Sipalay, Negros Occidental. On July 2, 1997, respondent union entered into a Collective Bargaining Agreement (CBA) with petitioner company effective August 1, 1996 up to July 31, 2001.

It appears, however, that after the signing of the CBA, Philex Gold made the employees of Philex Mining Corporation from Padcal, Tuba, Benguet, its regular supervisory employees effective July 1, 1997. Some of the so-called "ex-Padcal" supervisors began to work in the Bulawan mines of Philex Mining Corporation in 1992 as ordinary rank-and-file workers. When Philex Gold was incorporated in 1996 to exclusively handle gold mining, it took over the operations of the Bulawan mines and absorbed some of the ex-Padcal employees.

Philex Gold conveyed to Philex Supervisors Union the status of the ex-Padcal supervisors in November 1997 upon the insistence of the union to be informed of their standing.

It turned out that the ex-Padcal supervisors were maintained under a confidential payroll, receiving a different set of benefits and higher salaries compared to the locally hired supervisors of similar rank and classification doing parallel duties and functions.

Philex Supervisors Union filed a Complaint[2] against Philex Gold with the National Conciliation and Mediation Board (NCMB), Bacolod City, for the payment of wage differential and damages and the rectification of the discriminatory salary structure and benefits between the ex-Padcal supervisors and the local-hires.

After the submission of the parties' respective position papers and rejoinders/supplemental position papers, the Voluntary Arbitrator rendered a decision on January 14, 2000 in favor of respondent Union.

As regards the supervisors' wage rates[3] which was submitted by Philex Gold, the Voluntary Arbitrator held:

...

The Wage rates of the employers as classified and classed by them are not also reasonable and undiscriminatory.

This is shown by the fact that the maximum rate for S-4 at P18,065 per month is higher than the minimum rate for S-5, the highest category at P13,295 a month only. The rate difference between the maximum rate of S-4 and the minimum rate for S-5 is P4,770, the maximum rate of S-4 being higher than the minimum rate of S-5.

Simply stated, an S-4 employee getting the maximum salary of P18,065 a month will merely get a reduced or diminished salary of P13,295 upon his promotion to S-5, the highest class or category of supervisors upon his promotion. This condition is not an ideal labor relation but a situation which will surely ignite labor conflicts and disputes in the work place.

In whatever shade or color that we shall look upon the issue of whether or not the herein employer can be held liable to pay the wage differential pay to the LOCALLY HIRED SUPERVISORS due to its obvious discriminatory wage policy, one thing stands out-supervisors of the same ranks are not paid the same rates of pay.

This inequitable rates of pay being implemented by respondents result naturally into the herein employers' discriminatory wage policy which Article 248 (e) of the LABOR CODE prohibits and defines as UNFAIR LABOR PRACTICE OF EMPLOYERS.[4]

The dispositive portion of the Decision reads:

WHEREFORE, in view of all the FOREGOING, judgment is hereby decreed ORDERING the respondent PHILEX GOLD PHILIPPINES, INC./GERARD H. BRIMO/LEONARD P. JOSEF/JOSE B. ANIEVAS, JOINTLY and SEVERALLY to:

- Readjust the MONTHLY RATES OF PAY of locally hired SUPERVISORS in the categories of S-1 to S-5 RANKS in the same level/or amount with that of PADCAL SUPERVISORS of the same RANKS namely:

S-1

P13,081.60

S-2

P13,893.60

S-3

P15,209.60

S-4

P17,472.00

S-5

P20,300.00

effective November 1, 1998 and to pay Wage differential pay from November 1, 1998 up to the date of the Decision to all affected locally hired supervisors.

- To revise or modify its existing wage rates per supervisory ranking, making the maximum rate of a lower category lower than the minimum rate of the next higher category; and,
- Pay to the UNION ATTORNEY'S FEES at 5% of the total sum of the Wage differential pay awarded within ten (10) days from receipt of this Decision.

The respondent is further ordered to deposit with the cashier of the NCMB the sum which is equivalent to the wage differential pay computed at a differential of P5,501.24 per person/supervisor per month from November 1, 1998 up to the date of this decision, for S-1; P5,663.24 per month per supervisor, for S-2; P5,979.24 per supervisor per month, for S-3; P7,065.75 per supervisor per month for S-4 and P8,428.46 per supervisor per month for S-5, and the ATTORNEY'S FEE which is 5% of the total wage differential pay also within ten (10) days from receipt of this decision.

SO ORDERED.[5]

Philex Supervisors Union filed a Motion for Partial Reconsideration dated January 20, 2000, seeking, among others, the modification of the effectivity of the readjustment of the monthly rates of pay of the locally hired supervisors and of the computation of their wage differential from November 1, 1998 to August 1, 1997 although the discrimination in wages started upon the regularization of the ex-Padcal supervisors on July 1, 1997.

On January 25, 2000, Philex Gold also filed a motion for reconsideration, which was allegedly filed a day late, contending that it was denied due process as the Voluntary Arbitrator decided the

case without its supplemental position paper, that the decision undermined the collective bargaining process between the parties relative to wage differentials, and that there was neither unlawful discrimination nor wage distortion between the ex-Padcal supervisors and the locally hired supervisors.

On February 29, 2000, the Voluntary Arbitrator issued the assailed Resolution modifying his earlier Decision dated January 14, 2000, this time finding that there was no discrimination in the determination of the rates of pay of the supervisors. The Voluntary Arbitrator, however, readjusted the amount of wages of local supervisors by adding or increasing their wages in the uniform sum of P800.00 a month effective October 1, 1999 "to erase the shadows of inequities among the various grades of supervisors." The dispositive portion of the Decision reads:

WHEREFORE, IN VIEW of the foregoing, the Decision dated January 14, 2000 is hereby modified in the following manner, to wit:

- The respondent employer is hereby ordered to re-adjust the wage rates of S-1 to S-5 supervisors by adding or increasing their wages in the uniform sum of P800.00 a month each effective October 1, 1999; and to compute and pay their differential pay from October 1, 1999 up to the time it is paid and implemented;
- The respondent is further ordered to pay Attorney's Fee to the Union's lawyer at 5% of the total amount of WAGE DIFFERENTIAL PAY;
- Finally, the respondent employer is ordered to deposit to the cashier of the NCMB the WAGE DIFFERENTIAL PAY and the Attorney's Fee adjudged within 10 days from receipt of this Resolution.

SO ORDERED. [6]

On March 13, 2000, respondent Union filed a petition for review before the Court of Appeals raising the following issues: (1) whether or not the Voluntary Arbitrator erred in admitting petitioner's motion for reconsideration which was filed beyond the reglementary period; (2) whether or not the Voluntary Arbitrator erred in modifying his decision by finding petitioner to be liable to its locally hired members in the sum of P800 per month as wage adjustment effective October 1999; and (3) whether or not the Voluntary Arbitrator erred in failing to grant 10 percent attorney's fees on the total awards.

On March 2, 2000, petitioners filed a Manifestation of Compliance with the Voluntary Arbitrator alleging that on account of its payment to respondent union members of monetary benefits (in the amount of P1,000) provided by the Amendments and Supplement to the CBA, it has complied with the Resolution dated February 29, 2000.

In a Resolution dated April 4, 2000, the Voluntary Arbitrator denied[7] said Manifestation of Compliance for lack of merit.

While CA-G.R. SP No. 57701 was pending, respondent Union filed on April 8, 2000 a Motion for Issuance of Writ of Execution of the Resolution dated February 29, 2000.

In an Order dated June 27, 2000, the Voluntary Arbitrator issued a Writ of Execution enforcing the Resolution dated February 29, 2000.

On June 29, 2000, Philex Gold filed a Motion to Lift Writ of Execution, which was not acted upon by the Voluntary Arbitrator.

On July 10, 2000, Philex Gold filed a petition for review before the Court of Appeals, docketed as CA-G.R. SP No. 60065, questioning the propriety and validity of the Voluntary Arbitrator's Order granting execution pending appeal. Said petition was denied for lack of merit.

On April 23, 2001, the Court of Appeals rendered the assailed Decision, in CA-G.R. SP No. 57701, finding that petitioners failed to prove that they did not discriminate against the locally hired supervisors in paying them lower salaries than the ex-Padcal supervisors. It held, thus:

Philex Gold's attempt to explain the disparity in the salary rates between "ex-Padcal" supervisors and the local-hires failed to convince Us. It presented a salary structure for supervisors classified into five categories, namely: "S-1, S-2, S-3, S-4, and S-5" with different rates of pay. Each classification is further divided in terms of wage rates into minimum, medium, and maximum. While the "ex-Padcal" supervisors received the maximum for each category, presumably because of seniority in employment, longer work experience in gold mining, specialized skills, and the "dislocation factor", the local-hires received the minimum.

This explanation is fraught with inconsistencies. First, the CBA between the parties did not disclose this multi-tiered classification of supervisors (Rollo, pp. 36-37, 46-74). Second, as found by the voluntary arbitrator in his original decision, the local-hires actually received salaries less than those they were supposed to be entitled (Rollo, p. 41). Third, the minimum wage rate for a higher category happened to be lesser than the maximum rate of a lower category such that a supervisor with a rank of "S-1" maximum would get less upon his promotion to "S-2" minimum (Rollo, pp. 38-39, 90). And finally, this pay structure was kept from the knowledge of the union and was only revealed in the course of the proceedings before the voluntary arbitrator. These factors only accentuate the fact which Philex Gold tried to hide, that is, it unduly favored the "ex-Padcal" supervisors over the local-hires through a system of confidential salary structure.

The long honored legal truism of "equal pay for equal work," meaning, "persons who work with substantially equal qualification, skill, effort and responsibility, under similar conditions, should be paid similar salaries," has been institutionalized in our jurisdiction. Such that "if an employer accords employees the same position and rank, the presumption is that these employees perform equal work" as "borne by logic and human

experience." The ramification is that "(i)f the employer pays one employee less than the rest, it is not for that employee to explain why he receives less or why the others receive more. That would be adding insult to injury. The employer has discriminated against that employee; it is for the employer to explain why the employee is treated unfairly." (International School Alliance of Educators v. Quisumbing, et al., G.R. No. 128845, June 1, 2000).

Philex Gold having failed to discharge this burden, We opt therefore to reinstate, albeit with modification, the original decision dated 14 January 2000 of the voluntary arbitrator as the same is duly supported by the pleadings filed before Us.[8]

The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the assailed resolution of 29 February 2000 is REVERSED and SET ASIDE and a new one entered REINSTATING the 14 January 2000 decision subject to the MODIFICATION that the readjustment of the monthly rates of pay of locally hired supervisors as well as their wage differential pay be made effective 1 August 1997 up to the finality of this decision. This case is REMANDED to the voluntary arbitrator for the proper computation of wage differential and attorney's fees. No costs.

SO ORDERED.[9]

Petitioners' motion for reconsideration was denied by the appellate court in its Resolution dated August 29, 2001.

Petitioners thus filed this petition with a prayer for the issuance of a temporary restraining order. The Court issued a temporary restraining order enjoining the execution of the Decision of the Court of Appeals dated April 23, 2001 and its Resolution dated August 29, 2001 after petitioners posted a cash bond.

Petitioners raise the following issues:

- Section 4, Rule 43 and Luzon Development Bank [v. Association of Luzon Development Bank Employees, 249 SCRA 162 (1995)] provide that the decision of a voluntary arbitrator becomes final after 15 days from notice of the award. Assuming the validity of service on Philex Gold's liaison office, instead of its counsel's address on record, did the Court of Appeals commit an error in law by stating that the Decision dated 14 January 2000 of VA Sitjar became "final and executory" after eleven days from notice?
- Granting arguendo that Philex Gold had only a period of 10 days within which to seek reconsideration of the Sitjar Decision, did the period begin to run upon service of said Decision at an address which is not the address on record or upon the actual receipt thereof by Philex Gold's counsel?
- VA Sitjar found petitioners Brimo, Josef and Jose B. Anievas, in their capacity as corporate officers, jointly and severally liable for the alleged obligation of Philex Gold to pay wage differentials to PBSU. Did the Court of Appeals commit an error in law in affirming VA Sitjar when the latter disposed of an issue not submitted to him for arbitration and in directing solidary liability between Philex Gold and its top officers despite the absence of any finding of malice, bad faith, or gross negligence?
- In leveling the wages of the Padcal Supervisors and the Locally-Hired Supervisors, the Court of Appeals applied the egalitarian doctrine of "equal pay for equal work" in International School Alliance of Educators v. Quisumbing. Does "equal pay for equal work" unqualifiedly remove management prerogative to institute qualitative difference in pay and benefits on the basis of seniority, skill, experience and other valid factors in the same class of workers doing the same kind of work?[10]

The relevant issues in this case are as follows:

(1)

Whether the notice sent through petitioner company's Liaison Office can be considered as notice to counsel;

(2)

Whether the petitioners-corporate officers are solidarily liable with Philex Gold in any liability to respondent Union;

(3)

Whether the doctrine of "equal pay for equal work" should not remove management prerogative to institute difference in salary on the basis of seniority, skill, experience and the dislocation factor in the same class of supervisory workers doing the same kind of work.

First Issue : Whether the notice sent through petitioner
company's Liaison Office
can be considered as notice to counsel

Petitioners contend that the Court of Appeals erred in holding that their motion for reconsideration of the Decision of the Voluntary Arbitrator dated January 14, 2000 was filed out of time.

Indeed, the Court of Appeals found that "[b]ased on the certification issued by the voluntary arbitrator himself, the decision was received by the respondents (petitioners herein) on 14 January 2000 (Rollo, p. 123), and they filed their motion for reconsideration on 25 January 2000, or on the eleventh day from receipt of the decision." The appellate court ruled that the late filing rendered the decision final and executory as regards the petitioners, and that the Voluntary Arbitrator erred in admitting petitioners' motion for reconsideration.

Petitioners argue that the service of the Voluntary Arbitrator's Decision on Philex Gold's Liaison Office at Libertad St., Bacolod City on January 14, 2000 was improper since their counsel's address of record was at Vista Alegre, Nabulao, Sipalay, Negros Occidental 6113. Petitioners state that Philex Gold's Liaison Office forwarded said Decision to their counsel only the next day or on January 15, 2000, which should be the date of notice to counsel and the basis for computation of the period to file a motion for reconsideration of said Decision.

The contention is meritorious.

Section 4, Rule III of the NCMB Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings states:

Section 4. Service of Pleadings, Notices and Awards. - Copies of pleadings, notices or copies of [an] award may be served through personal service or by registered mails on the parties to the dispute: Provided, that where a party is represented by counsel or authorized representative, service shall be made on the latter. Service by registered mail is complete upon receipt by the addressee or his agents.[11]

In this case, petitioners were represented before the Voluntary Arbitrator by Attys. Deogracias G. Contreras Jr. and Weldy U. Manlong. Hence, under the NCMB Guidelines, service of pleadings, notices and awards should be made on petitioners' counsel.

The Court noted that in petitioners' Position Paper and Supplemental Position Paper filed with the Voluntary Arbitrator, the address of petitioners' counsel was indicated as Vista Alegre, Nabulao, Sipalay, Negros Occidental, 6113. However, the Decision of the Voluntary Arbitrator dated January 14, 2000 was sent through the Liaison Office of Philex Gold, thus:

ATTY. WENDY U. MANLONG
Counsel for the Respondents

PHILEX GOLD PHILIPPINES, INC.
GERARDO BRIMO, LEONARD P. JOSEF,
JOSE B. ANIEVAS
C/O Liaison Office, Libertad St.
Bacolod City

Even the Court of Appeals stated that "based on the certification issued by the voluntary arbitrator himself, the decision was received by the respondents on 14 January 2000. . . ." Said service on Philex Gold's Liaison Office or on the petitioners themselves cannot be considered as notice in law to petitioners' counsel.

Under the circumstances, reliance may be placed on the assertion of petitioners that a copy of the Decision of the Voluntary Arbitrator dated January 14, 2000 was delivered to their counsel the next day or on January 15, 2000, which must be deemed as the date of notice to counsel of said Decision.[12]

Hence, when petitioners' motion for reconsideration was filed on January 25, 2000, it was filed within the 10-day reglementary period under Article 262-A of the Labor Code. The Court of Appeals, therefore, erred in holding that said motion for reconsideration was filed out of time.

Second Issue : Whether the petitioners-corporate officers
are solidarily liable with Philex Gold in
any liability to respondent Union

Petitioners officers contend that they should not be adjudged solidarily liable with Philex Gold.

The contention is meritorious.

A corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it.[13] The rule is that obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities.[14] However, it is possible for a corporate director, trustee or officer to be held solidarily liable with the corporation in the following instances:

- When directors and trustees or, in appropriate cases, the officers of a corporation--

(a)

vote for or assent to patently unlawful acts of the corporation;

(b)

act in bad faith or with gross negligence in directing the corporate affairs;

(c)

are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons.

- When a director or officer has consented to the issuance of watered stocks or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto.

- When a director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the Corporation.

- When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action.[15]

The corporate officers in this case have not been proven to fall under any of the aforecited instances; hence, they cannot be held solidarily liable with the company in the payment of any liability.

Third Issue : Whether the doctrine of "equal pay for

equal work" should not remove
management prerogative to institute
difference in salary within the same
supervisory level

Petitioners submit that the "equal pay for equal work" doctrine in *International School Alliance of Educators v. Quisumbing*,^[16] which the Court of Appeals cited to support its Decision should be narrowly construed to apply to a situation where invidious discrimination exists by reason of race or ethnicity, but not where valid factors exist to justify distinctive treatment of employees even if they do the same work.

Petitioners explained that the ex-Padcal supervisors were paid higher because of their longer years of service, experience, their training and skill in the underground mining method wanting in the local supervisors, and their relocation to Bulawan, Negros Occidental. They assert that the differential treatment of the ex-Padcal supervisors is not arbitrary, malicious or discriminatory but justified by the circumstances of their relocation and integration in the new mining operation in Bulawan.

The Court is not persuaded by petitioners' contention.

Petitioners admit that the "same class of workers [are] doing the same kind of work." This means that an ex-Padcal supervisor and a locally hired supervisor of equal rank do the same kind of work. If an employer accords employees the same position and rank, the presumption is that these employees perform equal work.^[17] Hence, the doctrine of "equal pay for equal work" in *International School Alliance of Educators* was correctly applied by the Court of Appeals.

Petitioners now contend that the doctrine of "equal pay for equal work" should not remove management prerogative to institute difference in salary on the basis of seniority, skill, experience and the dislocation factor in the same class of supervisory workers doing the same kind of work.^[18]

In this case, the Court cannot agree because petitioners failed to adduce evidence to show that an ex-Padcal supervisor and a locally hired supervisor of the same rank are initially paid the same basic salary for doing the same kind of work. They failed to differentiate this basic salary from any kind of salary increase or additional benefit which may have been given to the ex-Padcal supervisors due to their seniority, experience and other factors.

The records only show that an ex-Padcal supervisor is paid a higher salary than a locally hired supervisor of the same rank. Therefore, petitioner failed to prove with satisfactory evidence that it has not discriminated against the locally hired supervisor in view of the unequal salary.

To reiterate the ruling of *Philippine-Singapore Transport Services, Inc. v. NLRC*,^[19] which was cited by the Court of Appeals in its Decision:

...

It is noteworthy to state that an employer is free to manage and regulate, according to his own discretion and judgment, all phases of employment, which includes hiring, work assignments, working methods, time, place and manner of work, supervision of workers, working regulations, transfer of employees, lay-off of workers, and the discipline, dismissal and recall of work. While the law recognizes and safeguards this right of an

employer to exercise what are clearly management prerogatives, such right should not be abused and used as a tool of oppression against labor. The company's prerogative must be exercised in good faith and with due regard to the rights of labor. A priori, they are not absolute prerogatives but are subject to legal limits, collective bargaining agreements and the general principles of fair play and justice.[20] (Emphasis supplied.)

WHEREFORE, the petition is hereby DENIED. No reversible error was committed by the Court of Appeals in its Decision in CA-G.R. SP No. 57701 and in its Resolution promulgated on August 29, 2001. The Temporary Restraining Order issued by the Court is LIFTED.

No costs.

SO ORDERED.

Davide, Jr., CJ., Quisumbing, Ynares-Santiago, and Carpio, JJ., concur.

[1] CA Decision, Rollo, pp. 36-37.

[2] Docketed as V.A. Case No. RB6-160-11-01-99.

[3] WAGE RATES EFFECTIVE AUGUST 1, 1998 TO JULY 31, 1999 WITH 12% INCREASE

MINIMUM

MAXIMUM

S-1

P 8,490

P12,735

S-2

P 9,220

P13,830

S-3

P10,340

P16,030

S-4

P11,655

P18,065

S-5

P13,295

P20,610

[4] Rollo, pp. 97-98.

[5] Id. at 104-105.

[6] Id. at 136-137.

[7] The reasons for the denial are: (1) The employer failed to submit evidence, like payrolls and vouchers, showing that the wage adjustment for the local supervisors had been effected and based on the decretal portion of the February 29, 2000 Resolution; (2) If it is true that the employer had made substantial adjustments to the pay scales of local supervisors, the adjustments only reduced the existing wage gaps between local and PADCAL supervisors requiring the implementation of the wage adjustments ordered by the February 29, 2000 Resolution; (3) There is no cogent reason presented by the MANIFESTATION to disturb the February 29, 2000 RESOLUTION. (Annex "C," Rollo, pp. 183-184.)

[8] Rollo, pp. 47-48.

[9] Id. at 49.

[10] Id. at 453-454.

[11] Emphasis supplied.

[12] *Alimpoos v. Court of Appeals*, No. L-27331, July 30, 1981, 106 SCRA 159.

[13] *Santos v. National Labor Relations Commission*, G.R. No. 101699, March 13, 1996, 254 SCRA 673, 681.

[14] *Ibid.*

[15] *MAM Realty Development Corporation v. National Labor Relations Commission*, G.R. No. 114787, June 2, 1995, 244 SCRA 797, 802-803.

[16] G.R. No. 128845, June 1, 2000, 333 SCRA 13.

[17] Id. at 23.

[18] Emphasis supplied.

[19] G.R. No. 95449, August 18, 1997, 277 SCRA 506.

[20] Id. at 511-512.

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