

DR. PEDRITO F. REYES, PETITIONER, VS. COURT OF APPEALS, PHIL. MALAY POULTRY BREEDERS, INC. AND LEONG HUP POULTRY FARM SDN, BHD., MR. FRANCIS T.N. LAU, PRESIDENT AND CHAIRMAN OF ...

G.R. No. 154448. August 15, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Assailed in this petition for review under Rule 45 of the Revised Rules of Court are the January 28, 2002[1] and July 22, 2002[2] Resolutions[3] of the Court of Appeals in CA-G.R. SP No. 67431, which dismissed the petition for certiorari filed by petitioner for failure to attach to the petition the duplicate original or certified true copy of the Labor Arbiter's decision as well as the relevant pleadings.

The facts show that on August 24, 1989, respondent Leong Hup Poultry Farms SDN. BHD (Leung Hup) of Malaysia, thru its Managing Director Francis T. Lau, appointed petitioner Pedrito F. Reyes as Technical/Sales Manager with a net salary of US\$4,500.00 a month. His duties consisted of selling parent stock day-old chicks and providing technical assistance to clients of the company in Malaysia and other Asian countries.[4] Sometime in 1992, the company formed Philippine Malay Poultry Breeders, Inc., (Philmalay) in the Philippines. Petitioner was appointed General Manager thereof with a monthly salary of US\$5,500.00.

In 1996-1997, respondents suffered losses which caused them to reduce production and retrench employees in Philmalay. On June 30, 1997, petitioner gave verbal notice to respondent Francis T. Lau that he will serve as General Manager of Philmalay until December 31, 1997 only.[5] In a letter dated January 12, 1998, petitioner confirmed his verbal notice of resignation and requested that he be given the same benefits granted to retrenched and resigned employees of the company, consisting of separation pay equivalent to 1 month salary for every year of service and the monetary equivalent of his sick leave and vacation leave. He likewise requested for the following:

- payment of underpaid salary for the period December 1989 - December 31, 1997 together with the additional one month salary payable in December of every year which was paid at the rate of P26.00 instead of the floating rate;
- brand new car (Galant Super Saloon) or its equivalent;
- life insurance policy in the amount of US\$100,000.00 from December 1, 1989 to December 31, 1997, or the premiums due thereon;
- office rentals at the rate of US\$300.00 or its peso equivalent for the use of his residence as office of Philmalay for the period December 1, 1989 to July 1996; and
- retention of the services of the law firm Quasha Ancheta Pena and Nolasco Law Firm, which was hired by respondents to defend him in the illegal recruitment case filed against him in connection with his employment with respondents.[6]

In a letter dated January 19, 1998, respondent Philmalay retrenched petitioner effective January 20, 1998 and promised to pay him separation benefits pursuant to the provisions of the Labor Code.[7] He was, however, offered a separation pay equivalent to four months only, or the total amount of P578,600.00 (P144,650 x 4). The offer was not accepted by petitioner and efforts to settle the impasse proved futile.

Petitioner filed with the Arbitration Branch of the National Labor Relations Commission a complaint[8] for underpayment of wages and non-payment of separation pay, sick leave, vacation leave and other benefits against respondents.

On December 22, 1999, the Labor Arbiter rendered a decision[9] in favor of petitioner, the dispositive portion of which reads:

PREMISES CONSIDERED, judgment is hereby rendered in favor of the complainant and against the respondents, as follows:

1. To order respondents to pay jointly and severally the complainant, the following:

(a)

Unpaid salary from January 1, 1998 to January 19, 1998, the same to be computed in the following manner:

19 = days % 31 days of January `98

= 0.613 month x US\$5,500.00

= US\$3,370.00

(b)

Underpayment of salary, the same to be computed at net US\$5,500.00 or its peso-equivalent from July 1, 1997 to December 31, 1997, together with the additional one (1) salary payable every year, the same to be paid at the rate of P26.30 instead of the following rate computed as follows:

July 1997 - P27.66 - P1.36 - P7, 480.00

August 1997 - 29.33 - 3.02 - 16, 665.00

September - 32.39 - 6.09 - 33, 495.00

October 1997 - 34.46 - 8.16 - 44, 880.00

November 1997 - 34.51 - 8.21 - 45, 155.00

December 1997 - 37.17 - 10.57- 59, 785.00

P207,460.00

(c)

13[th] month pay for December 1997 computed as follows: December 1997 - P37.17 - P10.57 - P59,785.00.

2.

To order respondents to pay jointly and severally the complainant the following:

(a)

Unused vacation and sick leaves from December 01, 1989 to December 31, 1997 based on the same salary, to be computed as follows:

i) Vacation Leave - Fifteen (15) days for every year of services x 9 years = 135 days

135 days % 26 working days a month

= 5.2 months

= US\$28,600.00

ii) Sick Leave - Fifteen (15) Days for every [year] of service x 9 years = 135 days

135 days % 26 working days a month

= 5.2 months x US\$5,500.00 / month

= US\$28,600.00

3)

To order respondents to pay jointly and severally the complainant his separation pay equivalent to one (1) month pay for every year of service at the rate of US \$5,500.00 or its peso equivalent from December 1, 1989 to January 19, 1998, computed as follows:

9 years x US\$5,500.00 = US\$49,500.00

4) To order respondents to pay jointly and severally the complainant's other claims and benefits:

a) A brand new car (Galant super saloon) or its equivalent in the sum of P945,100.00;

b)

Office rentals for the use of his residence situated at No. 38 Don Wilfredo St., Don Enrique Heights Diliman, Quezon City, [from] 01 December 1989 to July 1996 at the rate of US\$300.00 or its peso equivalent to US\$23,700.00;

c)

Life insurance policy for US\$100,000.00 from December 1, 1989 to December 31, 1997, or if the same was not secured the premiums due thereon for the above period, the same to be computed as follows:

US\$2,736.50 x 9 years = US\$24,628.50

d)

The services of the Law firm of Quasha Ancheta Peña and Nolasco be continued to be retained by the two (2) companies to represent complainant in the illegal recruitment case before the Regional Trial Court of Quezon City, Branch 96, docketed as Crim. Case No. Q-93-46421, entitled "People of the Philippines vs. Dr. Antonio B. Mangahas, et al.," filed against ... him in connection with his employment by Leong Hup, or in default thereof to pay the attorney's fees of the new counsel, that may be hired by the complainant to defend him in the said case estimated in the sum of P200,000.00, more or less;

5)

To order the respondents to pay jointly and severally the complainant moral damages in the sum of P2.5 million and exemplary damages of P2.5 million;

6)

To order the respondents to pay jointly and severally the complainant in the sum equivalent to ten percent (10%) of the total claim as and for attorney's fees.

7) Respondents' counterclaims are hereby dismissed for lack of merit.

SO ORDERED.[10]

On appeal by respondents to the National Labor Relations Commission (NLRC), the Decision of the Labor Arbiter was modified by deleting the awards of - (1) US\$3,370.00 representing unpaid salary for the period January 1, 1998 to January 19, 1998; (2) US\$28,600.00 as vacation leave; (3) brand new car or its equivalent in the sum of P945,100.00; (4) US\$23,700.00 as office rentals for the period of December 1, 1989 to July 1996; (5) US\$100,000.00 life insurance policy or the equivalent premium in the amount of US\$24,628.50; (6) P2.5 million as moral damages; and (7) P2.5 million as exemplary damages. The NLRC likewise reduced the amount of petitioner's separation pay to US\$44,400.00 after adjusting its computation based on the length of service of petitioner which it lowered from 9 years to 8 years; and by limiting the basis of the 10% attorneys fees to the total of the awards of underpayment of salary (P207,460.00), 13[th] month pay differential (P59,785.00) and cash equivalent of sick leave (US\$28,600.00) only, and excluding therefrom the award of separation pay in the amount of US\$44,400.00. The decretal portion of the said decision[11] states:

WHEREFORE, premises considered, the Decision dated December 22, 1999 is hereby MODIFIED as follows:

Respondents are hereby ordered to pay jointly and severally the complainant, the following:

- (a) underpayment of salary as computed in the appealed Decision in the amount of P207, 460.00;
- (b) 13[th] month pay differential as computed in the appealed Decision in the amount of P59,785.00;
- (c) monetary equivalent of complainant's sick leave as computed in the appealed Decision in the amount of US\$28,600.00;
- (d) separation pay in the amount of US\$44,000.00 as earlier computed in this Decision;
- (e) attorney's fees equivalent to ten (10%) percent of the total award based on the awards representing underpayment of salary, 13[th] month pay, [and] cash equivalent of sick leave.

Respondents are likewise directed to provide legal counsel to complainant as defendant in Criminal Case No. Q-93-46421.

The awards of unpaid wages from June 1-19, 1998, vacation leave in the amount of US\$28,600, P945,000 for car, US\$23,700.00, for office rentals, life insurance policy in the amount of US\$100,000.00 and moral and exemplary damages in the amount of 2.5 million pesos are hereby DELETED on grounds above-discussed.

SO ORDERED.[12]

Petitioner filed a motion for reconsideration, however, the same was denied.[13] Undaunted, petitioner filed a petition for certiorari with the Court of Appeals, which was dismissed on January 28, 2002 for failure to attach to the petition the following: "(1) complainant's (petitioner) Position Paper filed before the Labor Arbiter; (2) Decision dated 22 December 1992 penned by Labor Arbiter Ariel Cadiente Santos; and (3) Memorandum of Appeal filed by the petitioner." [14]

On February 21, 2002, petitioner filed a motion for reconsideration, attaching thereto a copy of the Labor Arbiter's decision and the pleadings he failed to attach to the petition. The Court of Appeals, however, denied petitioner's motion for reconsideration. Hence, the instant petition based on the following grounds:

1.

COURT OF APPEALS COMMITTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK

OF OR IN EXCESS OF JURISDICTION, IN ISSUING THE QUESTIONED RESOLUTION DISMISSING THE PETITION FOR CERTIORARI BASED ON TECHNICALITIES, THAT PETITIONER FAILED TO COMPLY WITH SEC. 1, RULE 65, RULES OF CIVIL PROCEDURE FOR FAILURE TO ATTACH THREE (3) DOCUMENTS CONSISTING OF:

Complainant's (petitioner) Position Paper filed before the labor arbiter;

Decision dated 22 December 1999 penned by Labor Arbiter Ariel Cadiente Santos; and

Memorandum of Appeal filed by the petitioner.

WHICH RESPONDENT COURT OF APPEALS CONSIDERED AS MATERIAL PORTIONS OF THE RECORD DESPITE THE FACT THAT THE SUBJECT DOCUMENTS SOUGHT TO BE PRODUCED HAVE ACTUALLY BEEN REPRODUCED OR SUBSTANTIALLY COVERED BY THE QUESTIONED JUDGMENT, ORDER OR RESOLUTION FILED/SUBMITTED BEFORE IT.

2.

COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION IN DISMISSING THE PETITION, AND IN DENYING THE MOTION FOR RECONSIDERATION THEREOF ON THE GROUND THAT THERE IS NO COGENT REASON FOR IT TO OVERTURN ITS DISMISSAL, DESPITE CLEAR AND CONVINCING EVIDENCE, EXTANT ON THE RECORDS SHOWING THAT THE NATIONAL LABOR RELATIONS COMMISSION'S (NLRC) DECISION AND RESOLUTION WERE FLAWED, A PALPABLE OR PATENT ERROR, WHICH MAY BE SUMMARIZED, TO WIT:

(A)

IN DECLARING THAT PETITIONER HAD RESIGNED FROM HIS EMPLOYMENT, AND NOT RETRENCHED OR TERMINATED DESPITE A DOCUMENTARY EVIDENCE EXTANT ON THE RECORD ISSUED BY PRIVATE RESPONDENTS DATED JANUARY 19, 1998 GIVING "FORMAL NOTICE TO YOU (PETITIONER) OF YOUR TERMINATION DUE TO RETRENCHMENT EFFECTIVE JANUARY 20, 1998".

(B) IN HOLDING AGAIN, AND DENYING PETITIONER'S VALID CLAIMS DESPITE DOCUMENTARY EVIDENCE OR THE EXISTENCE OF A CONTRACT OF EMPLOYMENT STATING THAT:

(1)

EMPLOYEES (INCLUDING PETITIONER AS GENERAL MANAGER) AS A MATTER OF COMPANY POLICY AND/OR PRACTICE) WHO ARE RETRENCHED ARE ENTITLED TO INCENTIVES INCLUDING 15-DAYS VACATION LEAVE AND 15-DAYS SICK LEAVE WITH PAY; A FACT ADMITTED NO LESS BY PRIVATE RESPONDENTS' OWN WITNESS, MS. MA. ROWENA LOPEZ (FORMER PERSONNEL MANAGER OR PHILMALAY) WHO EXECUTED AN AFFIDAVIT ADMITTING THE SAME.

(2)

PETITIONER'S ENTITLEMENT AS PER CONTRACT TO A BRAND NEW CAR (OR AT LEAST TO THE CASH EQUIVALENT THEREOF); \$100,000.00 LIFE INSURANCE POLICY (OR IN DEFAULT THEREOF AT LEAST TO THE PREMIUMS THEREIN), AND OFFICE RENTALS FOR THE USE OF THE PETITIONER'S PRIVATE RESIDENCE AS OFFICE OF RESPONDENTS.

(3)

PETITIONER IS ENTITLED, TO MORAL AND EXEMPLARY DAMAGES DUE TO PRIVATE

RESPONDENTS ACTS OF BAD FAITH IN REQUIRING PETITIONER TO EXECUTE A LETTER OF RESIGNATION, WHEN IN FACT HE WAS ADMITTEDLY TERMINATED THRU RETRENCHMENT, AND ITS REFUSAL TO PAY HIM HIS VALID CLAIMS, DESPITE HIS CONTRACT OF EMPLOYMENT, COMPANY POLICY, AND LETTER OF TERMINATION ISSUED BY PRIVATE RESPONDENTS.

(4)

PETITIONER'S ENTITLEMENT TO 10% OF THE TOTAL AMOUNT OF THE AWARD OF ATTORNEY'S FEES AS PROVIDED FOR BY LAW AND AS PER PETITIONER'S CONTRACT WITH COUNSEL, AND NOT ONLY 10% OF THE TOTAL AWARD REPRESENTING UNDER PAYMENT OF SALARY, 13TH MONTH PAY, AND CASH EQUIVALENT OF SICK LEAVE AND IN ORDERING PRIVATE RESPONDENT TO PROVIDE LEGAL COUNSEL TO PETITIONER IN CRIM. CASE NO. Q-93-46421, WHEN THE SUBJECT CASE HAD ALREADY BEEN DISMISSED AT THE EXPENSE OF PETITIONER WHO HAD PREVIOUSLY HIRED HIS OWN COUNSEL OF CHOICE FOR THE PURPOSE.

The issues for resolution are: (1) whether or not the Court of Appeals erred in dismissing the petition; and (2) whether or not the decision of the Labor Arbiter should be reinstated.

The allowance of the petition on the ground of substantial compliance with the Rules is not a novel occurrence in our jurisdiction. As consistently held by the Court, rules of procedure should not be applied in a very technical sense, for they are adopted to help secure, not override, substantial justice.[15] In *Ramos v. Court of Appeals*,[16] the Court of Appeals dismissed a petition for review of the decision of the Regional Trial Court because the petitioner failed to attach to the petition a certified true copy of the Metropolitan Trial Court's decision in addition to the certified true copy of the assailed decision of the RTC. Holding that the Court of Appeals should have given due course to the petition considering that petitioner subsequently submitted a certified true copy of the decision of the MeTC, we held:

Petitioner is right that the MeTC's decision cannot be considered a "disputed decision." The phrase is the equivalent of "ruling, order or decision appealed from" in Rule 32, §2 of the 1964 Rules made applicable to appeals from decisions of the then Courts of First Instance to the Court of Appeals by R.A. No. 296, as amended by R.A. No. 5433. Since petitioner was not appealing from the decision of the MeTC in her favor, she was not required to attach a certified true copy - but only a true or plain copy - of the aforesaid decision of the MeTC. The reason is that inclusion of the decision is part of the requirement to attach to the petition for review "other material portion of the record as would support the allegations of the petition." Indeed, petitioner referred to the MeTC decision in many parts of her petition for review in the Court of Appeals for support of her theory.

Nonetheless, the Court of Appeals should have reconsidered its dismissal of petitioner's appeal after petitioner submitted a certified true copy of the MeTC's decision. It was clear from the petition for review that the RTC incurred serious errors in awarding damages to private respondents which were made without evidence to support the award and without any explanation...[17]

In *Jaro v. Court of Appeals*,[18] we applied the rule on substantial compliance because the petitioner amended his defective petition and attached thereto the relevant annexes certified according to the rules. Thus -

There is ample jurisprudence holding that the subsequent and substantial compliance of an appellant may call for the relaxation of the rules of procedure. In *Cusi-Hernandez vs. Diaz* and *Piglas-Kamao vs. National Labor Relations Commission*, we ruled that the subsequent submission of the missing documents with the motion for reconsideration amounts to substantial compliance. The reasons behind the failure of the petitioners in these two cases to comply with the required attachments were no longer scrutinized. What we found noteworthy in

each case was the fact that the petitioners therein substantially complied with the formal requirements...[19]

The same leniency should be applied to the instant case considering that petitioner subsequently submitted with his motion for reconsideration the certified true copy of the Labor Arbiter's decision, the complainant's position paper and the respondent's memorandum of appeal. Clearly, petitioner had demonstrated willingness to comply with the requirements set by the rules. If we are to apply the rules of procedure in a very rigid and technical sense, as the Court of Appeals did in this case, the ends of justice would be defeated.

The pleadings and documents filed extensively discussed the issues raised by the parties. Such being the case, there is sufficient basis to resolve the instant controversy.[20] Labor laws mandate the speedy disposition of cases, with the least attention to technicalities but without sacrificing the fundamental requisites of due process.[21] Remanding the case to the Court of Appeals will only frustrate speedy justice and, in any event, would be a futile exercise, as in all probability the case would end up with this Court.[22] We shall thus rule on the substantial claims of the parties.

Was the termination of petitioner's employment caused by retrenchment or by voluntary resignation?

The Court finds that petitioner's dismissal from service was due to retrenchment. This is evident from the termination letter sent by Philmalay to petitioner, to wit -

We regret to inform you that in view of the prevailing market conditions and the continuous losses being incurred by the company, the management has decided to cut down on expenses and prevent further losses through retrenchment of some of our personnel effective January 19, 1998.

In compliance with the requirement of the law, this will serve as a formal notice to you of your termination due to retrenchment effective January 20, 1998. To provide you with sufficient time to seek alternative employment, you need not report for work (unless otherwise requested) starting January 20, 1998. Notwithstanding the above mentioned affectivity date, you may come down to the office and receive your separation benefits pursuant to the Labor Code...[23]

While it is true that petitioner tendered his resignation letter to respondents requesting that he be given the same benefits granted by the company to resigned/retrenched employees, there is no showing that respondents accepted his resignation. Acceptance of a resignation tendered by an employee is necessary to make the resignation effective.[24] No such acceptance, however, was shown in the instant case. What appears in the record is a letter terminating the services of petitioner due to retrenchment effective January 20, 1998. Verily, said letter should be interpreted as a non-acceptance of petitioner's resignation effective December 31, 1997. As correctly pointed out by the Labor Arbiter, if respondents considered petitioner resigned as of December 31, 1997, then there would be no need to retrench him.

The length of service of petitioner, which the NLRC correctly reduced to 8 years, as well as the solidary liability of respondent corporations are no longer assailed here. Whether petitioner is considered resigned on December 31, 1997 or retrenched on January 20, 1998, his length of employment reckoned from August 24, 1989 would still be 8 years. Moreover, respondents did not appeal from the decision of the NLRC and in fact sought its affirmance in their Opposition to the motion for reconsideration[25] and Comment to the motion for reconsideration[26] filed before the NLRC and the Court of Appeals, respectively. So also, petitioner is estopped from claiming that he was illegally dismissed and that his retrenchment was without basis. His request for benefits granted to retrenched employees during such time when respondent was in the process of retrenching its employees is tantamount to a recognition of the existence of a valid cause for retrenchment. What remains to be resolved by the Court is the validity of the NLRC's deletion/modification of the awards of - (1) unpaid salary; (2) vacation leave; (3) car and insurance policy/premiums; (4) moral and exemplary damages; (5) reimbursement for expenses for legal services;

(6) rental payment; and (7) attorney's fees.

As regards the award of unpaid salary, the NLRC was correct in holding that petitioner is not entitled to compensation from January 1, 1998 to January 19, 1998, because he was not able to prove that he rendered services during said period. In the same vein, there is no basis in awarding moral and exemplary damages, inasmuch as respondents were not shown to have acted in bad faith in initially refusing to award separation pay equivalent to 1 month salary for every year of service. Respondents even offered to pay petitioner separation pay, albeit in an amount not acceptable to petitioner. Moral damages are recoverable only where the act complained of is tainted by bad faith or fraud, or where it is oppressive to labor, and done in a manner contrary to morals, good customs, or public policy. Exemplary damages may be awarded only if the act was done in a wanton, oppressive, or malevolent manner.[27] None of these circumstances exist in the present case.

The NLRC also correctly ruled that the car and insurance benefits are granted only during the course of employment; hence, they should not be part of petitioner's separation package. Likewise, petitioner's claim for payment of rental for the use of his house as office of Philmalay should be denied for having been ventilated in the wrong forum. Not all money claims that may be asserted by an employee against his employer are within the jurisdiction of the NLRC. Money claims of workers which fall within the jurisdiction of Labor Arbiters are those which arise out of employer-employee relationship. Obviously, the demand for rental payment is not a labor dispute; rather, it is based on contractual relations independent of employer-employee relationship. Hence, the jurisdiction thereon is with the regular courts.[28]

Since respondents did not appeal from the decision of the NLRC, it is presumed that they are satisfied with the adjudications therein, including the order of NLRC directing them to provide legal services to petitioner in the illegal recruitment case filed against the latter while he was still employed by respondents. This is in accord with the doctrine that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision.[29] Nonetheless, respondents cannot be ordered to reimburse the amount of P200,000.00 for the legal services of the law firm allegedly hired by petitioner because he failed to establish that he indeed hired the services of a law firm and that he spent P200,000.00 as a consequence thereof.

Petitioner is, however, entitled to the award of vacation leave as part of respondents' retrenchment incentives. In granting sick leave but deleting vacation leave benefits, the NLRC based its ruling on the affidavit of one Ms. Rowena Lopez, a former personnel of Philmalay, viz:

- That based on company policy and/or practice the rank-and-file employees are entitled to 15-days vacation leave and 15-days sick leaves. However, the vacation leave must be availed of within the year or applied to the remaining period of employment for those who resigned or go on terminal leave. In case of sick leaves all unused sick leaves are also commutable to cash;
- That employees who were retrenched are entitled to the following incentives:
 - (a) One (1) month additional leave with pay effective after their last day of employment to enable them to look for a new job;
 - (b) Plus one (1) month separation pay for every year of service; and
 - (c) 15-days vacation leave and 15-days sick leave with pay as stated in paragraph 3 hereof.[30]

The foregoing expressly states that a retrenched employee is entitled to 15-day vacation leave. Paragraph 4 is the retrenchment package granted to retrenched employees, whereas paragraph 3 refers to the feasibility of commutation of unused sick and vacation leaves. Except for the sentence entitling employees to vacation and sick leaves, the last 2 sentences in paragraph 3 have nothing to do with the retrenchment benefits in paragraph 4. Note

that the 15-day vacation and sick leave with pay in paragraph 4(c) are not qualified by the word "unused". The 15-day vacation and sick leaves are granted to retrenched employees as part of the retrenchment benefits regardless of whether or not they have unused sick and vacation leaves at the time of the retrenchment. Moreover, the applicability of the said provisions to petitioner was not disputed by respondents. They even invoked the same in manifesting conformity to the deletion by the NLRC of the award of 15-day vacation leave for every year of service. At any rate, any ambiguity therein must be resolved strictly against the respondents, who drafted these provisions.[31] Hence, petitioner is entitled not only to 15 days sick leave but also to 15 days vacation leave with pay

The Labor Arbiter's computation of petitioner's 15-day sick leave pay must be modified. The NLRC, which affirmed the Labor Arbiter's decision, reduced petitioner's number of years of service from 9 to 8 years but it did not make the corresponding adjustment in the determination of petitioner's sick leave pay which used 9 years as the basis in the computation thereof. Accordingly, the awards of 15-day sick leave and 15-day vacation leave for every year of service must be computed using 8 years as its basis.

Finally, the award of attorney's fees must also be modified. In *Traders Royal Bank Employees Union-Independent v. National Labor Relations Commission*,[32] it was held that there are two commonly accepted concepts of attorney's fees, the so-called ordinary and extraordinary. In its ordinary concept, an attorney's fee is the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter. The basis of this compensation is the fact of his employment by and his agreement with the client. In its extraordinary concept, attorney's fees are deemed indemnity for damages ordered by the court to be paid by the losing party in a litigation. The instances where these may be awarded are those enumerated in Article 2208 of the Civil Code, specifically par. 7 thereof which pertains to actions for recovery of wages, and is payable not to the lawyer but to the client, unless they have agreed that the award shall pertain to the lawyer as additional compensation or as part thereof. The extraordinary concept of attorney's fees is the one contemplated in Article 111 of the Labor Code, which provides:

Art. 111. Attorney's fees. - (a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered...

The afore-quoted Article 111 is an exception to the declared policy of strict construction in the awarding of attorney's fees. Although an express finding of facts and law is still necessary to prove the merit of the award, there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. There need only be a showing that the lawful wages were not paid accordingly, as in this case.[33]

In carrying out and interpreting the Labor Code's provisions and its implementing regulations, the employee's welfare should be the primordial and paramount consideration. This kind of interpretation gives meaning and substance to the liberal and compassionate spirit of the law as provided in Article 4 of the Labor Code which states that "[a]ll doubts in the implementation and interpretation of the provisions of [the Labor] Code including its implementing rules and regulations, shall be resolved in favor of labor", and Article 1702 of the Civil Code which provides that "[i]n case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer." [34]

In the case at bar, what was withheld from petitioner was not only his salary, vacation and sick leave pay, and 13[th] month pay differential, but also his separation pay. Hence, pursuant to current jurisprudence, separation pay must be included in the basis for the computation of attorney's fees. Petitioner is entitled to attorney's fees equivalent to 10% of his total monetary award.[35]

WHEREFORE, in view of all the foregoing, the instant petition is GRANTED. The assailed Resolutions dated

January 28, 2002 and July 22, 2002 of the Court of Appeals in CA-G.R. SP No. 67431, are REVERSED and SET ASIDE. The Decision of the National Labor Relations Commission in NLRC NCR CA 023679-2000, is MODIFIED. In addition to the awards of underpayment of salary, 13[th] month pay differential, sick leave pay and separation pay, respondents are ordered to pay petitioner vacation leave pay and 10% attorney's fees, the basis of which shall be the total monetary award. Petitioner's vacation leave and sick leave pay shall be computed on the basis of his 8 years of service with respondents. For this purpose, the case is ordered REMANDED to the Labor Arbiter for the computation of the amounts due petitioner.

SO ORDERED.

Davide, Jr., C.J., Vitug, Carpio, and Azcuna, JJ., concur.

[1] Rollo, p. 42.

[2] Rollo, p. 124.

[3] Penned by Associate Justice Andres B. Reyes and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Amelita G. Tolentino.

[4] Employment Contract, Rollo, p. 73.

[5] Letter of petitioner to Philmalay and Leong Hup, Rollo, p. 76.

[6] Id.

[7] Rollo, p. 72.

[8] Docketed as NLRC NCR Case No. 00-06-04519-98.

[9] Penned by Labor Arbiter Ariel Cadiente Santos.

[10] Rollo, pp. 141-145.

[11] Penned by Presiding Commissioner Lourdes C. Javier and concurred in by Commissioners Ireneo B. Bernardo and Tito F. Genilo.

[12] Rollo, pp. 211-213.

[13] Resolution dated September 28, 2001, Rollo, p. 221.

[14] See Rollo, p. 42. Under Article 223 of the Labor Code, on appeal of the decision of the Labor Arbiter to the NLRC, the appellant shall furnish a copy of the memorandum of appeal to the other party who shall file an answer not later than 10 calendar days from receipt thereof. The Court of Appeals must be referring to the Respondents' Memorandum of Appeal, as it was the latter who appealed to the NLRC questioning the decision of the Labor Arbiter. At any rate, said Memorandum of Appeal filed by respondents was already submitted by petitioner together with his motion for reconsideration.

[15] *Piglas-Kamao v. National Labor Relations Commission*, G.R. No. 138556, 9 May 2001, 357 SCRA 640, 648-649, citing *Pacific Life Assurance Corp. v. Sison*, 359 Phil. 333 (1998); *Parañaque Kings Enterprises v. Court of Appeals*, 335 Phil. 1184 (1997); *Empire Insurance Company v. National Labor Relations Commission*, 355 Phil. 694 (1998); *People's Security v. National Labor Relations Commission*, G.R. No. 96451, 8 September 1993, 226 SCRA 146; *Soriano v. Court of Appeals*, G.R. No. 100525, 25 May 1993, 222 SCRA 545.

[16] 341 Phil. 157 (1997).

[17] *Id.*, p. 163.

[18] G.R. No. 127536, 19 February 2002, citing *Cusi-Hernandez v. Diaz*, G.R. No. 140436, 18 July 2000, 336 SCRA 113; *Piglas-Kamao v. National Labor Relations Commission*, *supra*.

[19] *Id.*

[20] *Baylon v. Fact-Finding Intelligence Bureau*, G.R. No. 150870, 11 December 2002.

[21] *Caurdanetaan Piece Workers Union v. Undersecretary Laguesma*, G.R. No. 113542, 24 February 1998, 286 SCRA 401, 432, citing *Domasig v. National Labor Relations Commission*, 330 Phil. 518 (1996); *Sigma Personnel Services v. National Labor Relations Commission*, G.R. No. 108284, 30 June 1993, 224 SCRA 181; *Cagampan, et al. v. National Labor Relations Commission*, G.R. Nos. 85122-24, 22 March 1991, 195 SCRA 533 (1991).

[22] *Fernandez v. National Labor Relations Commission*, G.R. No. 105892, 28 January 1998, 285 SCRA 149, 170.

[23] *Rollo*, p. 72.

[24] *Indophil Acrylic MFG Corporation v. National Labor Relations Commission*, G.R. No. 96488, 27 September 1993, 226 SCRA 723.

[25] *Rollo*, p. 117.

[26] *Rollo*, p. 102.

[27] *Permex, Inc. v. National Labor Relations Commission*, 380 Phil. 79, 88 (2000), citing *Consolidated Rural Bank (Cagayan Valley), Inc. v. National Labor Relations Commission*, 301 SCRA 223, 235 (1999); *Garcia v. National Labor Relations Commission*, G.R. No. 110518, 1 August 1994, 234 SCRA 632.

[28] *San Miguel Corporation v. National Labor Relations Commission*, G.R. No. L-80774, 3 May 1988, 161 SCRA 719, 724 and 727.

[29] *Filflex Industrial Manufacturing Corporation v. National Labor Relations Commission*, G.R. No. 115395, 12 February 1998, 286 SCRA 245, 256, citing *SMI Fish Industries v. National Labor Relations Commission*, G.R. Nos. 96952-56, 2 September 1992, 213 SCRA 444; *Caliguia v. National Labor Relations Commission*, 332 Phil. 128 (1996); *Teodoro v. Court of Appeals*, 328 Phil. 116 (1996); *Spouses Carrion v. Court of Appeals*, 329 Phil. 698 (1996).

[30] *Petition*, *Rollo*, p. 31.

[31] *Villanueva v. NLRC*, G.R. No. 127448, 10 September 1998, 295 SCRA 326, 333, citing *BPI Credit Corporation v. Court of Appeals*, G.R. No. 96755, 4 December 1991, 204 SCRA 601; *Philippine Integrated Labor Assistance Corp. v. National Labor Relations Commission*, 332 Phil. 458 (1996).

[32] 336 Phil. 705, 712 (1997), citing *Pineda E.L., Legal and Judicial Ethics*, 1994 ed., 220.

[33] *CMP Federal Security Agency, Inc. v. National Labor Relations Commission*, 367 Phil. 304, 310 (1999), citing *Valiant Machinery and Metal Corp. v. National Labor Relations Commission*, 322 Phil. 407 (1996).

[34] *Songco v. National Labor Relations Commission*, G.R. Nos. 50999-51000, 23 March 1990, 183 SCRA 611, 619, citing *Abella v. National Labor Relations Commission*, G.R. No. 71812, 30 July 1987, 152 SCRA 140; *Manila Electric Company v. National Labor Relations Commission*, G.R. No. 78763, 12 July 1989, 175 SCRA

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[35] *Permex, Inc. v. National Labor Relations Commission*, 380 Phil. 79, 88 (2000); *Abasolo v. National Labor Relations Commission*, G.R. No. 118475, 29 November 2000, 346 SCRA 293, 307; *KAMS, International, Inc. v. National Labor Relations Commission*, 373 Phil. 950, 961 (1999); *Gonzales v. National Labor Relations Commission*, 372 Phil. 39, 46 (1999); *Consolidated Rural Bank (Cagayan Valley) v. National Labor Relations Commission*, G.R. No. 123810, 20 January 1999, 361 SCRA 172, 185; *Surima v. National Labor Relations Commission*, 353 Phil. 461, 472 (1998); *Damasco v. National Labor Relations Commission*, G.R. No. 115755, 4 December 2000, 346 SCRA 714 (2000); *Yu v. National Labor Relations Commission*, G.R. No. 97212, 30 June 1993, 224 SCRA 75.

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