

**VIRGILIO SAPIO, PETITIONER, VS. UNDALOC CONSTRUCTION
AND/OR ENGR. CIRILO UNDALOC, RESPONDENTS.***G.R. No. 155034. May 22, 2008*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-155034/>**TINGA, J.:**

Assailed in this Petition for Review[1] is the Decision[2] of the Court of Appeals[3] in CA-G.R. SP No. 66449 deleting the award of salary differential and attorney's fees to petitioner Virgilio Sapiro, as well as the Resolution[4] denying his motion for reconsideration.

The controversy started with a complaint filed by petitioner against Undaloc Construction and/or Engineer Cirilo Undaloc for illegal dismissal, underpayment of wages and nonpayment of statutory benefits. Respondent Undaloc Construction, a single proprietorship owned by Cirilo Undaloc, is engaged in road construction business in Cebu City.

Petitioner had been employed as watchman from 1 May 1995 to 30 May 1998 when he was terminated on the ground that the project he was assigned to was already finished, he being allegedly a project employee. Petitioner asserted he was a regular employee having been engaged to perform works which are "usually necessary or desirable" in respondents' business. He claimed that from 1 May to 31 August 1995 and from 1 September to 31 December 1995, his daily wage rate was only P80.00 and P90.00, respectively, instead of P121.87 as mandated by Wage Order No. ROVII-03. From 1 March 1996 to 30 May 1998, his daily rate was P105.00. He further alleged that he was made to sign two payroll sheets, the first bearing the actual amount he received wherein his signature was affixed to the last column opposite his name, and the second containing only his name and signature. To buttress this allegation, petitioner presented the payroll sheet covering the period from 4 to 10 December 1995 in which the entries were written in pencil. He also averred that his salary from 18 to 30 May 1998 was withheld by respondents.[5]

For its part, respondent Cirilo Undaloc maintained that petitioner was hired as a project employee on 1 May 1995 and was assigned as watchman from one project to another until the termination of the project on 30 May 1998.[6] Refuting the claim of underpayment, respondent presented the payroll sheets from 2 September to 8 December 1996, 26 May to 15 June 1997, and 12 January to 31 May 1998.[7]

On 12 July 1999, the Labor Arbiter[8] rendered a decision the dispositive portion of which reads:

WHEREFORE, in the [sic] light of the foregoing, judgment is rendered finding complainant to be a project employee and his termination was for an authorized cause. However, respondent is found liable to pay complainant's salary of P2,648.45 and 13[th] month pay of P2,489.00. Respondent is also found liable to pay complainant's salary differential in the amount of P24,902.88. Attorney's fee of P3,000.00 is also awarded.

All other claims are dismissed for lack of merit.[9]

Respondents appealed the award of salary differential to the National Labor Relations Commission (NLRC). In a Decision[10] dated 28 August 2000, the NLRC sustained the findings of the Labor Arbiter.

Respondents elevated the case to the Court of Appeals which deleted the award of salary differential and attorney's fees.

Thus, this petition for review.

Petitioner raises two grounds, one procedural and the other substantive. On the procedural aspect, petitioner contends that the appellate court erred in failing to dismiss respondent's petition for certiorari brought before it on the ground that respondents failed to attach certified true copies of the NLRC's decision and resolution denying the motion for reconsideration.[11]

In his Comment on the Petition for Certiorari with Prayer for Temporary Restraining and/or Preliminary Injunction[12] filed with the Court of Appeals on 22 November 2001, petitioner did not raise this procedural issue. Neither did he do so when he moved for reconsideration of the 8 May 2002 Decision of the Court of Appeals. It is only now before this Court that petitioner proffered the same. This belated submission spells doom for petitioner. More fundamentally, an examination of the Court of Appeals rollo belies petitioner as it confirms that the alleged missing documents were in fact attached to the petition. [13]

That petitioner was a project employee became a non-issue beginning with the decision of the Labor Arbiter. Contested still is his entitlement to salary differential, apart from attorney's fees.

Petitioner avers that he was paid a daily salary way below the minimum wage provided for by law.[14] His claim of salary differential represents the difference between the daily wage he actually received and the statutory minimum wage, which he presented as follows:

Actual Daily Wage Received
(for 8 hours worked)

Minimum Daily Wage Provided by Law (for 8 hours worked)

5-1-95 to 8-31-95

Place of Assignment:

P80.00 plus 3 hrs. OT

M.J. Cuenco-Imus Road Link

P121.87

9-1-95 to 12-31-95

Place of Assignment:

P90.00 plus 3 hrs. OT

P121.87

1-1-96 to 2-28-96

Place of Assignment:

P90.00 plus 3 hrs. OT

P131.00

3-1-96 to 6-30-96

Place of Assignment:

P105.00 plus 3 hrs. OT

P131.00

7-1-96 to 9-30-96

Place of Assignment:

P105.00 plus 3 hrs. OT

P136.00

10-1-96 to 3-14-97

Place of Assignment:

P105.00 plus 3 hrs. OT

P141.00

3-15-97 to 6-30-97

Place of Assignment:

P105.00 plus 3 hrs. OT

P141.00

7-1-97 to 9-30-97

Place of Assignment:

P105.00 plus 3 hrs. OT

P150.00

10-1-97 to 3-31-98

Place of Assignment:

P105.00 plus 3 hrs. OT

P150.00

4-1-98 to 5-17-98

Place of Assignment:

P105.00 plus 3 hrs. OT

P155.00

5-18-98 to 5-30-98

Place of Assignment:

P105.00 plus 3 hrs. OT

P160.00

To counter petitioner's assertions, respondents submitted typewritten and signed payroll sheets from 2 September to 8 December 1996, from 26 May to 15 June 1997, and from 12 January to 31 May 1998.[15] These payroll sheets clearly indicate that petitioner did receive a daily salary of P141.00.

In turn, petitioner presented the December 1995 payroll sheet written in pencil[16] in tandem with the assertion that he, together with his co-employees, was required to sign two sets of payroll sheets in different colors: white, which bears the actual amount he received with his signature affixed in the last column opposite his name, and

yellow, where only his name appears thereon with his signature also affixed in the last column opposite his name.[17] In the December 1995 payroll sheet, petitioner appears to have received P90.00 only as his daily salary but he did not sign the same.

Banking on the fact that the December 1995 payroll sheet was written in pencil, the Labor Arbiter concluded that the entries were susceptible to change or erasure and that that susceptibility in turn rendered the other payroll sheets though typewritten less credible. Thus:

x x x Complainant's allegation that he was made to sign two (2) payrolls, the first page bears the actual amount he received when he affixed his signature in the last column and the original with entries written in pencil is admitted by the respondent that it did so. When respondent had his payrolls prepared in pencil, the tendency is that the entries therein will be erased and changed them so that it would appear that the salaries of the workers are in conformity with the law.

The explanation given by the respondent through the affidavit of Jessica Labang that the payrolls were first written in pencil because of the numerous employees to be paid each Saturday, is not acceptable. The efforts done in preparing the payroll in pencil is practically the same if it was done in ballpen or through typewriters. Obviously, the purpose is to circumvent the law. When payrolls are prepared in pencil, it is so easy for the employer to alter the amounts actually paid to the workers and make it appear that the amounts paid to the workers are in accord with law. The probative value of the payrolls submitted by the respondent becomes questionable, thus, cannot be given weight. It is most likely that the entries in the payrolls are no longer the same entries when complainant signed them. Complainant is therefore entitled to salary differential as complainant's salary was only P105.00. x x x[18]

Thereupon, the Labor Arbiter proceeded to grant petitioner's salary differential to the tune of P24,902.88.

The Court of Appeals did not subscribe to the common findings of the Labor Arbiter and the NLRC. The appellate court pointed out that allegations of fraud in the preparation of payroll sheets must be substantiated by evidence and not by mere suspicions or conjectures, viz:

As a general rule, factual findings and conclusions drawn by the National Labor Relations Commission are accorded great weight and respect upon appeal, even finality, as long as they are supported by substantial evidence. Substantial evidence is more than a mere scintilla. It means such relevant evidence that a reasonable mind would accept as sufficient to support a conclusion. A suspicion or belief no matter how sincerely felt cannot be a substitute for factual findings carefully established through an orderly procedure.

The Labor Arbiter merely surmised and presumed that petitioners had the tendency to alter the entries in the payroll. Albeit the petitioner admitted that the payrolls were initially made in pencil, the same does not, and must not be presumed as groundwork for alteration. We find nothing in the proceedings, as well as in the pleadings submitted, to sustain the Labor Arbiter's findings of the alleged "tendency" to alter the entries.

It is elementary in this jurisdiction that whoever alleges fraud or mistake affecting a transaction must substantiate his allegation, since it is presumed that a person takes ordinary care of his concerns and private transactions have been fair and regular. Persons are presumed to have taken care of their business.

Absent any indication sufficient enough to support a conclusion, we cannot uphold the findings of the Labor Arbiter and the NLRC.[19]

The conclusion of the Labor Arbiter that entries in the December 1995 payroll sheet could have been altered is utterly baseless. The claim that the December 1995 payroll sheet was written in pencil and was thus rendered it prone to alterations or erasures is clearly non sequitur. The same is true with respect to the typewritten payroll sheets. In fact, neither the Labor Arbiter nor the NLRC found any alteration or erasure or traces thereof, whether on the pencil-written or typewritten payroll sheets. Indeed, the most minute examination will not reveal any

tampering. Furthermore, if there is any adverse conclusion as regards the December 1995 payroll sheet, it must be confined only to it and cannot be applied to the typewritten payroll sheets.

Moreover, absent any evidence to the contrary, good faith must be presumed in this case. Entries in the payroll, being entries in the course of business, enjoy the presumption of regularity under Rule 130, Section 43 of the Rules of Court. Hence, while as a general rule, the burden of proving payment of monetary claims rests on the employer,[20] when fraud is alleged in the preparation of the payroll, the burden of evidence shifts to the employee and it is incumbent upon him to adduce clear and convincing evidence in support of his claim.[21] Unfortunately, petitioner's bare assertions of fraud do not suffice to overcome the disputable presumption of regularity.

While we adhere to the position of the appellate court that the "tendency" to alter the entries in the payrolls was not substantiated, we cannot however subscribe to the total deletion of the award of salary differential and attorney's fees, as it so ruled.

The Labor Arbiter granted a salary differential of P24,902.88.[22]

The Labor Arbiter erred in his computation. He fixed the daily wage rate actually received by petitioner at P105.00[23] without taking into consideration the P141.00 rate indicated in the typewritten payroll sheets submitted by respondents. Moreover, the Labor Arbiter misapplied the wage orders[24] when he wrongly categorized respondent as falling within the first category. Based on the stipulated number of employees and audited financial statements,[25] respondents should have been covered by the second category.

To avoid further delay in the disposition of this case which is not in consonance with the objective of speedy justice, we have to adjudge the rightful computation of the salary differential based on the applicable wage orders. After all, the supporting records are complete.

This Court finds that from 1 January to 30 August 1996 and 1 July 1997 to 31 May 1998, petitioner had received a wage less than the minimum mandated by law. Therefore, he is entitled to a salary differential. For the periods from 30 May to 31 December 1995 and 2 September 1996 to 30 June 1997, petitioner had received the correct wages. To illustrate:

Wage actually received Statutory Minimum wage Differential

30 May - 31 December, 1995 P105.00 P99.00[26] 0

1 January - 30 June 1996 (156 days)

P105.00

P125.00[27]

P20.00/day or P3120.00

1 July - 30 August 1996 (52 days)

P105.00

P130.00[28]

P25.00/day or P1300.00

2 - 30 September 1996

P141.00[29]

P130.00[30]

0

1 October 1996- 15 March 1997

P141.00

P135.00[31]

0

16 March - 30 June 1997

P141.00

P139.00[32]

0

1 July - 30 September 1997 (78 days)

P141.00

P144.00[33]

P3.00/day or P234.00

1 October 1997- 31 March 1998 (156 days)

P141.00

P149.00[34]

P8.00/day or P1248.00

1 April - 31 May 1998 (52 days)

P141.00

P154.00[35]

P13.00/day or P676.00

The total salary differential that petitioner is lawfully entitled to amounts to P6,578.00. However, pursuant to Section 12 of Republic Act (R.A.) No. 6727, as amended by R.A. No. 8188, Respondents are required to pay double the amount owed to petitioner, bringing their total liability to P13,156.00.

Section 12. Any person, corporation, trust, firm, partnership, association or entity which refuses or fails to pay any of the prescribed increases or adjustments in the wage rates made in accordance with this Act shall be punished by a fine not less than Twenty-five thousand pesos (P25,000.00) nor more than One hundred thousand pesos (P100,000.00) or imprisonment of not less than two (2) years nor more than four (4) years, or both such fine and imprisonment at the discretion of the court: Provided, That any person convicted under this Act shall not be entitled to the benefits provided for under the Probation Law.

The employer concerned shall be ordered to pay an amount equivalent to double the unpaid benefits owing to the employees: Provided, That payment of indemnity shall not absolve the employer from the criminal liability imposable under this Act.

If the violation is committed by a corporation, trust or firm, partnership, association or any other entity, the penalty of imprisonment shall be imposed upon the entity's responsible officers, including, but not limited to, the president, vice president, chief executive officer, general manager, managing director or partner. (Emphasis supplied)

The award of attorney's fees is warranted under the circumstances of this case. Under Article 2208 of the New Civil Code, attorney's fees can be recovered in actions for the recovery of wages of laborers and actions for indemnity under employer's liability laws[36] but shall not exceed 10% of the amount awarded.[37] The fees may be deducted from the total amount due the winning party.

WHEREFORE, the petition is **PARTIALLY GRANTED**. Petitioner is awarded the salary differential in the reduced amount of P13,156.00 and respondents are directed to pay the same, as well as ten percent (10%) of the award as attorney's fees.

SO ORDERED.

Quisumbing, (Chairperson), Velasco, Jr., Leonardo-De Castro, and Brion, JJ., concur.

[1] Rollo, pp. 9-21.

[2] Id. at 90-94; penned by Associate Justice Bernardo P. Abesamis and concurred in by Associate Justices Josefina Guevara-Salonga and Regalado E. Maambong.

[3] Special Third Division.

[4] Issued by the 7[th] Division; CA rollo, pp. 206-207.

[5] Rollo, pp. 23-26.

[6]Id. at 38.

[7] Id. at 40.

[8] Nicasio C. Aniñon.

[9] Rollo, p. 49.

[10] Id. at 67-70.

[11]Id. at 15.

[12] Id. at 124-125.

[13]Supra note 9.

[14] CA rollo, p. 95.

[15]Id. at 121-175.

[16] Rollo, pp. 59-63.

[17]Id. at 56.

[18]Id. at 47-48.

[19] Id. at 93.

[20] G&M (Phils), Inc. v. Cruz, G.R. No. 140495, 15 April 2005, 456 SCRA 215, 221.

[21] Kar Asia, Inc. v. Corona, G.R. No. 154985, 24 August 2004, 437 SCRA 184.

[22] Rollo, p. 49.

[23] Said amount is the rate indicated by petitioner in the Complaint form submitted before the Regional Arbitration Branch of the NLRC.

[24] For purposes of determining the minimum wage rates, non-agricultural enterprises are classified into three categories, namely: (1) those employing more than 20 workers with a total asset of more than P5M; (2) employing not more than 20 workers with an asset of not more than P5M; and (3) employing not more than 20 workers with a capitalization of not more than P500,000.00.

[25] Respondents presented an audited financial statement bearing their assets amounting only to P1,573,106.84 in 1996 and P3,396,340.61 in 1997. Rollo, p. 24.

[26] As mandated by Wage Order No. ROVII-01.

[27] Wage Order No. ROVII-04 prescribed the minimum wage rate of P125.00 effective 1 January 1996 to 30 June 1996.

[28] Wage Order No. ROVII-04 also provided for an increase of P5.00 effective 1 July 1996.

[29] Note that starting September 1996, petitioner received P141.00 as evidenced by the typewritten payrolls, the entries of which we sustained earlier. Prior thereto, petitioner only received P105.00 as found by the Labor Arbiter and uncontroverted by respondents.

[30] Id.

[31] Under Wage Order No. ROVII-04, effective 1 October 1996, the minimum wage was increased to P135.00.

[32] Wage Order No. ROVII-05 was issued increasing the minimum wage to P139.00 effective 16 March 1997 to 30 June 1997.

[33] A P5.00 increase effective 1 July 1997 as ordered by Wage Order No. ROVII-05.

[34] Wage Order No. ROVII-05 ordered another P5.00 increase effective October 1997.

[35] Wage Order ROVII-06 was issued mandating a wage increase of five (P5.00) pesos per day beginning April 1, 1998, thereby raising the daily minimum wage to P154.00.

[36] Remigio v. National Labor Relations Commission, G.R. No. 159887, 12 April 2006, 487 SCRA 190, 215.

[37] Omnibus Rules Implementing the Labor Code, Rule VIII, Sec. 8, Book III, provides:

Sec. 8. Attorney's fees.--Attorney's fees in any judicial or administrative proceedings for the recovery of wages shall not exceed 10% of the amount awarded. The fees may be deducted from the total amount due the winning party.

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