

AMERICAN WIRE AND CABLE DAILY RATED EMPLOYEES UNION, PETITIONER, VS. AMERICAN WIRE AND CABLE CO., INC. AND THE COURT OF APPEALS, RESPONDENTS.

G.R. NO. 155059. April 29, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a special civil action for certiorari, assailing the Decision[1] of the Special Eighth Division of the Court of Appeals dated 06 March 2002. Said Decision upheld the Decision[2] and Order[3] of Voluntary Arbitrator Angel A. Ancheta of the National Conciliation and Mediation Board (NCMB) dated 25 September 2001 and 05 November 2001, respectively, which declared the private respondent herein not guilty of violating Article 100 of the Labor Code, as amended. Assailed likewise, is the Resolution[4] of the Court of Appeals dated 12 July 2002, which denied the motion for reconsideration of the petitioner, for lack of merit.

THE FACTS

The facts of this case are quite simple and not in dispute.

American Wire and Cable Co., Inc., is a corporation engaged in the manufacture of wires and cables. There are two unions in this company, the American Wire and Cable Monthly-Rated Employees Union (Monthly-Rated Union) and the American Wire and Cable Daily-Rated Employees Union (Daily-Rated Union).

On 16 February 2001, an original action was filed before the NCMB of the Department of Labor and Employment (DOLE) by the two unions for voluntary arbitration. They alleged that the private respondent, without valid cause, suddenly and unilaterally withdrew and denied certain benefits and entitlements which they have long enjoyed. These are the following:

- Service Award;
- 35% premium pay of an employee's basic pay for the work rendered during Holy Monday, Holy Tuesday, Holy Wednesday, December 23, 26, 27, 28 and 29;
- Christmas Party; and
- Promotional Increase.

A promotional increase was asked by the petitioner for fifteen (15) of its members who were given or assigned new job classifications. According to petitioner, the new job classifications were in the nature of a promotion, necessitating the grant of an increase in the salaries of the said 15 members.

On 21 June 2001, a Submission Agreement was filed by the parties before the Office for Voluntary Arbitration. Assigned as Voluntary Arbitrator was Angel A. Ancheta.

On 04 July 2001, the parties simultaneously filed their respective position papers with the Office of the Voluntary Arbitrator, NCMB, and DOLE.

On 25 September 2001, a Decision[5] was rendered by Voluntary Arbitrator Angel A. Ancheta in favor of the private respondent. The dispositive portion of the said Decision is quoted hereunder:

WHEREFORE, with all the foregoing considerations, it is hereby declared that the Company is not guilty of violating Article 100 of the Labor Code, as amended, or specifically for withdrawing the service award, Christmas party and 35% premium for work rendered during Holy Week and Christmas season and for not granting any promotional increase to the alleged fifteen (15) Daily-Rated Union Members in the absence of a promotion. The Company however, is directed to grant the service award to deserving employees in amounts and extent at its discretion, in consultation with the Unions on grounds of equity and fairness.[6]

A motion for reconsideration was filed by both unions[7] where they alleged that the Voluntary Arbitrator manifestly erred in finding that the company did not violate Article 100 of the Labor Code, as amended, when it unilaterally withdrew the subject benefits, and when no promotional increase was granted to the affected employees.

On 05 November 2001, an Order[8] was issued by Voluntary Arbitrator Angel A. Ancheta. Part of the Order is quoted hereunder:

Considering that the issues raised in the instant case were meticulously evaluated and length[i]ly discussed and explained based on the pleadings and documentary evidenc[e] adduced by the contending parties, we find no cogent reason to change, modify, or disturb said decision.

WHEREFORE, let the instant MOTION[S] FOR RECONSIDERATION be, as they are hereby, denied for lack of merit. Our decision dated 25 September 2001 is affirmed “en toto.”[9]

An appeal under Rule 43 of the 1997 Rules on Civil Procedure was made by the Daily-Rated Union before the Court of Appeals[10] and docketed as CA-G.R. SP No. 68182. The petitioner averred that Voluntary Arbitrator Angel A. Ancheta erred in finding that the company did not violate Article 100 of the Labor Code, as amended, when the subject benefits were unilaterally withdrawn. Further, they assert, the Voluntary Arbitrator erred in adopting the company’s unaudited Revenues and Profitability Analysis for the years 1996-2000 in justifying the latter’s withdrawal of the questioned benefits.[11]

On 06 March 2002, a Decision in favor of herein respondent company was promulgated by the Special Eighth Division of the Court of Appeals in CA-G.R. SP No. 68182. The decretal portion of the decision reads:

WHEREFORE, premises considered, the present petition is hereby DENIED DUE COURSE and accordingly DISMISSED, for lack of merit. The Decision of Voluntary Arbitrator Angel A. Ancheta dated September 25, 2001 and his Order dated November 5, 2001 in VA Case No. AAA-10-6-4-2001 are hereby AFFIRMED and UPHELD.[12]

A motion for reconsideration[13] was filed by the petitioner, contending that the Court of Appeals misappreciated the facts of the case, and that it committed serious error when it ruled that the unaudited financial statement bears no importance in the instant case.

The Court of Appeals denied the motion in its Resolution dated 12 July 2002[14] because it did not present any new matter which had not been considered in arriving at the decision. The dispositive portion of the Resolution states:

WHEREFORE, the motion for reconsideration is hereby DENIED for lack of merit.[15]

Dissatisfied with the court a quo's ruling, petitioner instituted the instant special civil action for certiorari,[16] citing grave abuse of discretion amounting to lack of jurisdiction.

ASSIGNMENT OF ERRORS

The petitioner assigns as errors the following:

I

THE COURT OF APPEALS ERRED IN HOLDING THAT THE COMPANY DID NOT VIOLATE ARTICLE 100 OF THE LABOR CODE, AS AMENDED, WHEN IT UNILATERALLY WITHDREW THE BENEFITS OF THE MEMBERS OF PETITIONER UNION, TO WIT: 1) 35% PREMIUM PAY; 2) CHRISTMAS PARTY AND ITS INCIDENTAL BENEFITS; AND 3) SERVICE AWARD, WHICH IN TRUTH AND IN FACT SAID BENEFITS/ENTITLEMENTS HAVE BEEN GIVEN THEM SINCE TIME IMMEMORIAL, AS A MATTER OF LONG ESTABLISHED COMPANY PRACTICE, WITH THE FURTHER FACT THAT THE SAME NOT BEING DEPENDENT ON PROFITS.

II

THE COURT OF APPEALS ERRED WHEN IT JUST ACCEPTED HOOK, LINE AND SINKER, THE RESPONDENT COMPANY'S SELF SERVING AND UNAUDITED REVENUES AND PROFITABILITY ANALYSIS FOR THE YEARS 1996-2000 WHICH THEY SUBMITTED TO FALSELY JUSTIFY THEIR UNLAWFUL ACT OF UNILATERALLY AND SUDDENLY WITHDRAWING OR DENYING FROM THE PETITIONER THE SUBJECT BENEFITS/ENTITLEMENTS.

III

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE YEARLY SERVICE AWARD IS NOT DEPENDENT ON PROFIT BUT ON SERVICE AND THUS, CANNOT BE UNILATERALLY WITHDRAWN BY RESPONDENT COMPANY.

ISSUE

Synthesized, the solitary issue that must be addressed by this Court is whether or not private respondent is guilty of violating Article 100 of the Labor Code, as amended, when the benefits/entitlements given to the members of petitioner union were withdrawn.

THE COURT'S RULING

Before we address the sole issue presented in the instant case, it is best to first discuss a matter which was raised by the private respondent in its Comment. The private respondent contends that this case should have been dismissed outright because of petitioner's error in the mode of appeal. According to it, the petitioner should have elevated the instant case to this Court through a petition for review on certiorari under Rule 45, and not through a special civil action for certiorari under Rule 65, of the 1997 Rules on Civil Procedure.[17]

Assuming arguendo that the mode of appeal taken by the petitioner is improper, there is no question that the Supreme Court has the discretion to dismiss it if it is defective. However, sound policy dictates that it is far better to dispose the case on the merits, rather than on technicality.[18]

The Supreme Court may brush aside the procedural barrier and take cognizance of the petition as it raises an issue of paramount importance. The Court shall resolve the solitary issue on the merits for future guidance of the bench and bar.[19]

With that out of the way, we shall now resolve whether or not the respondent company is guilty of violating

Article 100 of the Labor Code, as amended.

Article 100 of the Labor Code provides:

ART. 100. PROHIBITION AGAINST ELIMINATION OR DIMINUTION OF BENEFITS. – Nothing in this Book 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.

The petitioner submits that the withdrawal of the private respondent of the 35% premium pay for selected days during the Holy Week and Christmas season, the holding of the Christmas Party and its incidental benefits, and the giving of service awards violated Article 100 of the Labor Code. The grant of these benefits was a customary practice that can no longer be unilaterally withdrawn by private respondent without the tacit consent of the petitioner. The benefits in question were given by the respondent to the petitioner consistently, deliberately, and unconditionally since time immemorial. The benefits/entitlements were not given to petitioner due to an error in interpretation, or a construction of a difficult question of law, but simply, the grant has been a practice over a long period of time. As such, it cannot be withdrawn from the petitioner at respondent's whim and caprice, and without the consent of the former. The benefits given by the respondent cannot be considered as a "bonus" as they are not founded on profit. Even assuming that it can be treated as a "bonus," the grant of the same, by reason of its long and regular concession, may be regarded as part of regular compensation.[20]

With respect to the fifteen (15) employees who are members of petitioner union that were given new job classifications, it asserts that a promotional increase in their salaries was in order. Salary adjustment is a must due to their promotion.[21]

On respondent company's Revenues and Profitability Analysis for the years 1996-2000, the petitioner insists that since the former was unaudited, it should not have justified the company's sudden withdrawal of the benefits/entitlements. The normal and/or legal method for establishing profit and loss of a company is through a financial statement audited by an independent auditor.[22]

The petitioner cites our ruling in the case of *Saballa v. NLRC*,[23] where we held that financial statements audited by independent auditors constitute the normal method of proof of the profit and loss performance of the company. Our ruling in the case of *Bogo-Medellin Sugarcane Planters Association, Inc., et al. v. NLRC, et al.*[24] was likewise invoked. In this case, we held:

... The Court has previously ruled that financial statements audited by independent external auditors constitute the normal method of proof of the profit and loss performance of a company.

On the matter of the withdrawal of the service award, the petitioner argues that it is the employee's length of service which is taken as a factor in the grant of this benefit, and not whether the company acquired profit or not.[25]

In answer to all these, the respondent corporation avers that the grant of all subject benefits has not ripened into practice that the employees concerned can claim a demandable right over them. The grant of these benefits was conditional based upon the financial performance of the company and that conditions/circumstances that existed before have indeed substantially changed thereby justifying the discontinuance of said grants. The company's financial performance was affected by the recent political turmoil and instability that led the entire nation to a bleeding economy. Hence, it only necessarily follows that the company's financial situation at present is already very much different from where it was three or four years ago.[26]

On the subject of the unaudited financial statement presented by the private respondent, the latter contends that the cases cited by the petitioner indeed uniformly ruled that financial statements audited by independent external

auditors constitute the normal method of proof of the profit and loss performance of a company. However, these cases do not require that the only legal method to ascertain profit and loss is through an audited financial statement. The cases only provide that an audited financial statement is the normal method.[27]

The respondent company likewise asseverates that the 15 members of petitioner union were not actually promoted. There was only a realignment of positions.[28]

From the foregoing contentions, it appears that for the Court to resolve the issue presented, it is critical that a determination must be first made on whether the benefits/entitlements are in the nature of a bonus or not, and assuming they are so, whether they are demandable and enforceable obligations.

In the case of *Producers Bank of the Philippines v. NLRC*[29] we have characterized what a bonus is, viz:

A bonus is an amount granted and paid to an employee for his industry and loyalty which contributed to the success of the employer's business and made possible the realization of profits. It is an act of generosity granted by an enlightened employer to spur the employee to greater efforts for the success of the business and realization of bigger profits. The granting of a bonus is a management prerogative, something given in addition to what is ordinarily received by or strictly due the recipient. Thus, a bonus is not a demandable and enforceable obligation, except when it is made part of the wage, salary or compensation of the employee.

Based on the foregoing pronouncement, it is obvious that the benefits/entitlements subjects of the instant case are all bonuses which were given by the private respondent out of its generosity and munificence. The additional 35% premium pay for work done during selected days of the Holy Week and Christmas season, the holding of Christmas parties with raffle, and the cash incentives given together with the service awards are all in excess of what the law requires each employer to give its employees. Since they are above what is strictly due to the members of petitioner-union, the granting of the same was a management prerogative, which, whenever management sees necessary, may be withdrawn, unless they have been made a part of the wage or salary or compensation of the employees.

The consequential question therefore that needs to be settled is if the subject benefits/entitlements, which are bonuses, are demandable or not. Stated another way, can these bonuses be considered part of the wage or salary or compensation making them enforceable obligations?

The Court does not believe so.

For a bonus to be enforceable, it must have been promised by the employer and expressly agreed upon by the parties,[30] or it must have had a fixed amount[31] and had been a long and regular practice on the part of the employer.[32]

The benefits/entitlements in question were never subjects of any express agreement between the parties. They were never incorporated in the Collective Bargaining Agreement (CBA). As observed by the Voluntary Arbitrator, the records reveal that these benefits/entitlements have not been subjects of any express agreement between the union and the company, and have not yet been incorporated in the CBA. In fact, the petitioner has not denied having made proposals with the private respondent for the service award and the additional 35% premium pay to be made part of the CBA.[33]

The Christmas parties and its incidental benefits, and the giving of cash incentive together with the service award cannot be said to have fixed amounts. What is clear from the records is that over the years, there had been a downtrend in the amount given as service award.[34] There was also a downtrend with respect to the holding of the Christmas parties in the sense that its location changed from paid venues to one which was free of charge,[35] evidently to cut costs. Also, the grant of these two aforementioned bonuses cannot be considered to have been the

private respondent's long and regular practice. To be considered a "regular practice," the giving of the bonus should have been done over a long period of time, and must be shown to have been consistent and deliberate.[36] The downtrend in the grant of these two bonuses over the years demonstrates that there is nothing consistent about it. Further, as held by the Court of Appeals:

Anent the Christmas party and raffle of prizes, We agree with the Voluntary Arbitrator that the same was merely sponsored by the respondent corporation out of generosity and that the same is dependent on the financial performance of the company for a particular year...[37]

The additional 35% premium pay for work rendered during selected days of the Holy Week and Christmas season cannot be held to have ripened into a company practice that the petitioner herein have a right to demand. Aside from the general averment of the petitioner that this benefit had been granted by the private respondent since time immemorial, there had been no evidence adduced that it had been a regular practice. As propitiously observed by the Court of Appeals:

. . . [N]otwithstanding that the subject 35% premium pay was deliberately given and the same was in excess of that provided by the law, the same however did not ripen into a company practice on account of the fact that it was only granted for two (2) years and with the express reservation from respondent corporation's owner that it cannot continue to grant the same in view of the company's current financial situation.[38]

To hold that an employer should be forced to distribute bonuses which it granted out of kindness is to penalize him for his past generosity.[39]

Having thus ruled that the additional 35% premium pay for work rendered during selected days of the Holy Week and Christmas season, the holding of Christmas parties with its incidental benefits, and the grant of cash incentive together with the service award are all bonuses which are neither demandable nor enforceable obligations of the private respondent, it is not necessary anymore to delve into the Revenues and Profitability Analysis for the years 1996-2000 submitted by the private respondent.

On the alleged promotion of 15 members of the petitioner union that should warrant an increase in their salaries, the factual finding of the Voluntary Arbitrator is revealing, viz:

... Considering that the Union was unable to adduce proof that a promotion indeed occur[ed] with respect to the 15 employees, the Daily Rated Union's claim for promotional increase likewise fall[s] there being no promotion established under the records at hand.[40]

WHEREFORE, in view of all the foregoing, the assailed Decision and Resolution of the Court of Appeals dated 06 March 2002 and 12 July 2002, respectively, which affirmed and upheld the decision of the Voluntary Arbitrator, are hereby AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Rollo, pp. 216-222; Penned by Associate Justice Martin S. Villarama, Jr. with Associate Justices Conchita Carpio-Morales and Mariano L. Del Castillo concurring.

[2] Rollo, pp. 191-200.

[3] Rollo, p. 214.

[4] Rollo, p. 241.

[5] Rollo, pp. 191-200.

[6] Rollo, pp. 199-200.

[7] Rollo, pp. 201-213.

[8] Rollo, p. 214.

[9] Id.

[10] CA Rollo, pp. 2-30.

[11] Ibid., pp. 10-11.

[12] Rollo, p. 222.

[13] Rollo, pp. 223-239.

[14] Rollo, p. 241.

[15] Id.

[16] Rollo, pp. 3-37.

[17] Rollo, pp. 247-248.

[18] Asia Traders Insurance Corporation v. Court of Appeals, G.R. No. 152537, 16 February 2004, 423 SCRA 114, citing AFP Mutual Benefits Association v. Court of Appeals, G.R. No. 126745, 26 July 1999, 311 SCRA 143.

[19] Del Rosario v. Montaña, G.R. No. 134433, 28 May 2004, 430 SCRA 109.

[20] Rollo, pp. 20-24.

[21] Rollo, pp. 25-27.

[22] Rollo, p. 28.

[23] G.R. Nos. 102472-84, 22 August 1996, 260 SCRA 697.

[24] G.R. No. 97846, 25 September 1998, 296 SCRA 108.

[25] Rollo, pp. 30-31.

[26] Rollo, pp. 252-254.

[27] Rollo, p. 265.

[28] Rollo, p. 266.

[29] G.R. No. 100701, 28 March 2001, 355 SCRA 489, citing Luzon Stevedoring Corp. v. Court of Industrial Relations, G.R. No. L-17411, 31 December 1965, 15 SCRA 660; CTraders Royal Bank v. NLR, G.R. No. 88168, 30 August 1990, 189 SCRA 274; Philippine National Construction Corp. v. NLRC, G.R. No. 128345, 18 May 1999, 307 SCRA 218; and Atok-Big Wedge Mutual Benefit Association v. Atok-Big Wedge Mining Co., 92 Phil. 754 (1953).

[30] cf. Marcos v. NLRC, G.R. No. 111744, 08 September 1995, 248 SCRA 146.

[31] Manila Banking Corp. v. NLRC, G.R. No. 107487, 29 September 1997, 279 SCRA 602.

[32] Philippine Appliance Corp. v. Court of Appeals, G.R. No. 149434, 03 June 2004, 430 SCRA 525.

[33] Rollo, p. 196; see Annexes “15” and “17” of the Company’s Position Paper at Rollo, pp. 84-187.

[34] Rollo, pp. 255-257.

[35] Rollo, p. 258.

[36] Philippine Appliance Corporation v. Court of Appeals, *supra*, Note 32.

[37] Rollo, p. 221; emphasis supplied.

[38] Rollo, p. 220.

[39] cf. Producers Bank of the Philippines v. NLRC, *supra*, Note 29.

[40] Rollo, p. 199.

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