ROGELIO REYES, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, FIFTH DIVISION, AND UNIVERSAL ROBINA CORPORATION GROCERY DIVISION, RESPONDENTS.

G.R. NO. 160233. August 08, 2007

Ponente: YNARES-SANTIAGO, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-160233/

YNARES-SANTIAGO, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court seeks to reverse the November 14, 2002 Decision[1] of the Court of Appeals in CA-G.R. SP No. 64799, affirming the Decision of the National Labor Relations Commission (NLRC) which modified the Decision of the Labor Arbiter as regards the awards of retirement pay and 13[th] month pay, and deleted the award of attorney's fees; as well as the August 19, 2003 Resolution[2] denying the motion for reconsideration.

Petitioner was employed as a salesman at private respondent's Grocery Division in Davao City on August 12, 1977. He was eventually appointed as unit manager of Sales Department-South Mindanao District, a position he held until his retirement on November 30, 1997.[3] Thereafter, he received a letter regarding the computation of his separation pay, to wit:

> September 10, 1998
>
> MR. ROGELIO J. REYES
> #2 San Nicolas Street
> Skyline Village, Catalunan Grande
> Davao City 8000
>
> Dear Mr. Reyes,
>
> This is in reply to your letter dated August 10, 1998, a copy of which was received by the undersigned only on September 2, 1998.
>
> We wish to advise you that per our computation, your separation pay amounts to:

Retirement benefit (computed at 50% pay for every year of service, a fraction of at least 6 months considered as 1 year)

Php 109,192.20

VL Cash Conversion (144 hours)

7,511.31

SL Cash Conversion (120 hours)

3,129.72

Financial Assistance (as approved by LY Gokongwei in Memo dated November 4, 1997)

30,000.00

Final Accountability/Accounting

Tax Refund 16,699.35

13[th] Month Pay 10,919.22

Withheld Commission

November 1997 30,000.00

Salary Overpaid (834.59)

Lost Pager (6,295.00)

50,488.98

TOTAL

Php 200,322.21

> This computation is pursuant to Company policy and practice. We are unable to agree with your suggested basis of computation as they are without legal basis. Also, we regret that we cannot pay you the Sales Commission and Tax Refund ahead of the other payments.
>
> Kindly get in touch with us at 671-7098 if you have any questions.
>
> Very truly yours,
>
> (SGD) ATTY. MANUEL R. DEL ROSARIO
> Group Human Resources Director
>
> cc: Mr. Lance Gokongwei
> Atty. Danny Bolos
> Mr. Al Bacleon[4]

Insisting that his retirement benefits and 13[th] month pay must be based on the average monthly salary of P42,766.19, which consists of P10,919.22 basic salary and P31,846.97 average monthly commission, petitioner refused to accept the check[5] issued by private respondent in the amount of P200,322.21.[6] Instead, he filed a complaint before the arbitration branch of the NLRC for retirement benefits, 13[th] month pay, tax refund, earned sick and vacation leaves, financial assistance, service incentive leave pay, damages and attorney's fees.[7]

On March 15, 1999, Labor Arbiter Miriam A. Libron-Barroso rendered a decision holding that sales commission is part of the basic salary of a unit manager, thus:

> WHEREFORE, JUDGMENT IS HEREBY RENDERED ordering respondent Universal Robina Corporation-Grocery Division to pay complainant the net amount of PESOS: NINE HUNDRED ELEVEN THOUSAND SIX HUNDRED NINETY NINE AND 92/100 (P911,699.92) representing his retirement benefits, 13[th] month pay for 1997, 13[th] month pay differential for 1996 and 1995, VL and SL Cash conversion, withheld commission for 1997, financial assistance and tax refund plus attorney's fees equivalent to 5% of the total award.
>
> All other claims are dismissed for lack of basis.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

SO ORDERED.[8]

On appeal, the NLRC modified the decision of the Labor Arbiter by excluding the overriding commission in the computation of the retirement benefits and 13[th] month pay and deleted the award of attorney's fees, thus:

WHEREFORE, judgment is rendered:

- Affirming with modification the decision appealed from insofar as the award of retirement pay and 13[th] month pay to the effect that same be computed based on the P10,919.22 basic salary to the exclusion of the overriding commissions of complainant.

- Affirming in toto the award of VL cash conversion, SL cash conversion, tax refund, withheld commission and financial assistance.

- Deleting the award of attorney's fees for lack of merit.

SO ORDERED.[9]

Both parties moved for reconsideration of the NLRC decision but were denied by the NLRC for lack of merit. Only petitioner filed a petition for certiorari before the Court of Appeals but was dismissed for lack of merit.

Petitioner's motion for reconsideration was denied; hence this petition raising the sole issue:

WHETHER OR NOT THE AVERAGE MONTHLY SALES COMMISSION OF THIRTY ONE THOUSAND EIGHT HUNDRED FORTY SIX AND 97/100 (Php 31,846.97) SHOULD BE INCLUDED IN THE COMPUTATION OF HIS RETIREMENT BENEFITS AND 13[TH] MONTH PAY.[10]

Petitioner contends that the commissions form part of the basic salary, citing the case of Philippine Duplicators, Inc. v. National Labor Relations Commission,[11] wherein the Court held that commissions earned by salesmen form part of their basic salary.[12]

Private respondent counters that petitioner knew that the overriding commission is not included in the basic salary because it had not been considered as such for a long time in the computation of the 13[th] month pay, leave commissions, absences and tardiness. Petitioner himself stated in the complaint that his basic salary is P10,919.22, thus, he is estopped from claiming otherwise. Moreover, in Boie-Takeda Chemicals, Inc. v. De la Serna,[13] the Supreme Court held that the fixed or guaranteed wage is patently "the basic salary" for this is what the employee receives for a standard work period, and that commissions are given for extra efforts exerted in consummating sales or other transactions. Also, in Soriano v. National Labor Relations Commission,[14] the Court clarified that overriding commission is not properly includible in the basic salary as it must be earned by actual market transactions attributable to the claimant. Thus, as a unit manager who supervised the salesmen under his control and did not enter into actual sale transactions, petitioner's overriding commissions must not be considered in the computation of the retirement benefits and 13[th] month pay.[15]

The petition lacks merit. Any seeming inconsistencies between Philippine Duplicators and Boie-Takeda had been clarified by the Court in the Resolution dated February 15, 1995 in the Philippine Duplicators case.[16]

The Court thus clarified that in Philippine Duplicators, the salesmen's commissions, comprising a pre-determined percentage of the selling price of the goods sold by each salesman, were properly included in the term basic salary for purposes of computing the 13th month pay. The salesmen's commission are not overtime payments, nor profit-sharing payments nor any other fringe benefit,[17] but a portion of the salary structure which represents an automatic increment to the monetary value initially assigned to each unit of work rendered by a salesman.[18]

Contrarily, in Boie-Takeda, the so-called commissions paid to or received by medical representatives of

Boie-Takeda Chemicals or by the rank and file employees of Philippine Fuji Xerox Co., were excluded from the term basic salary because these were paid to the medical representatives and rank-and-file employees as productivity bonuses, which are generally tied to the productivity, or capacity for revenue production, of a corporation and such bonuses closely resemble profit-sharing payments and have no clear direct or necessary relation to the amount of work actually done by each individual employee.[19] Further, commissions paid by the Boie-Takeda Company to its medical representatives could not have been sales commissions in the same sense that Philippine Duplicators paid the salesmen their sales commissions. Medical representatives are not salesmen; they do not effect any sale of any article at all.[20]

In fine, whether or not a commission forms part of the basic salary depends upon the circumstances or conditions for its payment, which indubitably are factual in nature for they will require a re-examination and calibration of the evidence on record. Thus, our review thereof in the case at bar would violate the settled rule that findings of facts of quasi-judicial bodies like the NLRC, and affirmed by the Court of Appeals in due course, are conclusive on this Court, which is not a trier of facts.[21] Nevertheless, should petitioner's commissions be considered in the computation of his retirement benefits and 13th month pay?

We rule in the negative.

Article 287 of the Labor Code, as amended by Republic Act No. 7641, otherwise known as The New Retirement Law,[22] provides:

> Art. 287. Retirement. - Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.
>
> x x x x
>
> In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.
>
> Unless the parties provide for broader inclusions, the term one half (1/2) month salary shall mean fifteen (15) days plus one twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

And, Section 5 of Rule II of the Rules Implementing the New Retirement Law, provides:

RULE IIRetirement Benefits

> x x x x
>
> Section 5. Retirement Benefits.
>
> 5.1 In the absence of an applicable agreement or retirement plan, an employee who retires pursuant to the Act shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.
>
> 5.2 Components of One-half (1/2) Month Salary. - For the purpose of determining the minimum retirement pay due an employee under this Rule, the term "one-half-month salary" shall include all the following:
>
> (a) Fifteen (15) days salary of the employee based on his latest salary rate. As used herein, the term "salary" includes all remunerations paid by an employer to his employees for services rendered during normal working days and hours, whether such payments are fixed or ascertained on a time, task, piece or commission basis, or

> other method of calculating the same, and includes the fair and reasonable value, as determined by the Secretary of Labor and Employment, of food, lodging, or other facilities customarily furnished by the employer to his employees. The term does not include cost of living allowance, profit-sharing payments and other monetary benefits which are not considered as part of or integrated into the regular salary of the employees.
>
> (b) The cash equivalent of not more than five (5) days of service incentive leave.
>
> (c) One-twelfth of the 13 month pay due the employee.
>
> (d) All other benefits that the employer and employee may agree upon that should be included in the computation of the employee's retirement pay. (Emphasis supplied)

The article provides for two types of retirement: (a) compulsory and (b) optional. The first takes place at age 65, while the second is primarily determined by the collective bargaining agreement or other employment contract or employer's retirement plan. In the absence of any provision on optional retirement in a collective bargaining agreement, other employment contract, or employer's retirement plan, an employee may optionally retire upon reaching the age of 60 years or more, but not beyond 65 years, provided he has served at least five years in the establishment concerned.

For the purpose of computing retirement pay, "one-half month salary" shall include all of the following:

> 1) 15 days salary based on the latest salary rate;
>
> 2) cash equivalent of 5 days of service incentive leave (or vacation leave);
>
> 3) 1/12 of the 13[th] month pay;
>
> 4) other benefits as may be agreed upon by employer and employee for inclusion.

But, it shall not include the following:

> 1) cost of living allowance;
>
> 2) profit-sharing payments; and
>
> 3) other monetary benefits which are not considered as part of or integrated into the regular salary of the employees

Petitioner filed for optional retirement upon reaching the age of 60. However, the basis in computing his retirement benefits is his latest salary rate of P10,919.22 as the commissions he received are in the form of profit-sharing payments specifically excluded by the foregoing rules.

As aptly observed by the Court of Appeals:

> In fine, Boie-Takeda and Philippine Duplicator particularize the types of earnings and remuneration that should or should not properly be included or integrated in the basic salary and which questions are to be resolved or determined on a case-to-case basis, in the light of the specific and detailed facts of each case. In other words, when these earnings and remuneration are closely akin to fringe benefits, overtime pay or profit-sharing statements, they are properly excluded in computing retirement pay. However, sales commissions which are effectively an integral portion of the basic salary structure of an employee, shall be included in determining the retirement pay.
>
> At bar, petitioner Rogelio J. Reyes was receiving a monthly sum of P10,919.22 as salary corresponding to his position as Unit Manager. Thus, as correctly ruled by public respondent NLRC, the "overriding commissions" paid to him by Universal Robina Corp. could not have been "sales commissions" in the same sense that

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

> Philippine Duplicators paid its salesmen sales commissions. Unit Managers are not salesmen; they do not effect any sale of article at all. Therefore, any commission which they receive is certainly not the basic salary which measures the standard or amount of work of complainant as Unit Manager. Accordingly, the additional payments made to petitioner were not in fact sales commissions but rather partook of the nature of profit-sharing business. Certainly, from the foregoing, the doctrine in Boie-Takeda Chemicals and Philippine Fuji Xerox Corporation, which pronounced that commissions are additional pay that does not form part of the basic salary, applies to the present case.[23]

Aside from the fact that as unit manager petitioner did not enter into actual sale transactions, but merely supervised the salesmen under his control, the disputed commissions were not regularly received by him. Only when the salesmen were able to collect from the sale transactions can petitioner receive the commissions. Conversely, if no collections were made by the salesmen, then petitioner would receive no commissions at all.[24] In fine, the commissions which petitioner received were not part of his salary structure but were profit-sharing payments and had no clear, direct or necessary relation to the amount of work he actually performed. The collection made by the salesmen from the sale transactions was the profit of private respondent from which petitioner had a share in the form of a commission.

It may be argued that petitioner may have exerted efforts in pushing the salesmen to close more sale transactions; however, it is not the criterion which would entitle him to a commission, but the actual sale transactions brought about by the individual efforts of the salesmen.

Insofar as what constitutes "basic salary," the foregoing discussions equally apply to the computation of petitioner's 13th month pay. As held in San Miguel Corporation v. Inciong:[25]

> Under Presidential Decree 851 and its implementing rules, the basic salary of an employee is used as the basis in the determination of his 13th-month pay. Any compensations or remunerations which are deemed not part of the basic pay is excluded as basis in the computation of the mandatory bonus.
>
> Under the Rules and Regulations Implementing Presidential Decree 851, the following compensations are deemed not part of the basic salary:
>
> a) Cost-of-living allowances granted pursuant to Presidential Decree 525 and Letter of Instruction No. 174;
> b) Profit sharing payments;
> c) All allowances and monetary benefits which are not considered or integrated as part of the regular basic salary of the employee at the time of the promulgation of the Decree on December 16, 1975. (Emphasis supplied)

Finally, considering that the computations, as well as the propriety of the awards, are unquestionably factual issues that have been discussed and ruled upon by NLRC and affirmed by the Court of Appeals, we cannot depart from such findings. Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the Court of Appeals. Such findings deserve full respect and, without justifiable reason, ought not to be altered, modified or reversed.[26]

WHEREFORE, the petition is DENIED. The November 14, 2002 Decision of the Court of Appeals in CA-G.R. SP No. 64799, affirming the Decision of the National Labor Relations Commission, which modified the Decision of the Labor Arbiter with respect to the awards of retirement pay and 13[th] month pay, and deleted the award of attorney's fees is AFFIRMED in toto.

SO ORDERED.

Austria-Martinez, Chico-Nazario, and Nachura, JJ., concur.

---

[1]Rollo, p. 29. Penned by Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Elvi John S. Asuncion and Sergio L. Pestaño.

[2] Id. at 40. Penned by Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Edgardo P. Cruz and Sergio L. Pestaño.

[3]Id. at 65.

[4] Id. at 172.

[5] Id. at 215.

[6]Id. at 162.

[7]Id. at 161.

[8] Id. at 53.

[9] Id. at 72.

[10]Id. at 14.

[11] G.R. No. 110068, November 11, 1993, 227 SCRA 747.

[12] Rollo, p. 19.

[13]G.R. Nos. 92174 and 102552, December 10, 1993, 228 SCRA 329.

[14]G.R. No. L-75510, October 27, 1987, 155 SCRA 124, 131.

[15] Rollo, pp. 227-228.

[16] 311 Phil. 407 (1995).

[17] Id. at 418.

[18]Id. at 415.

[19] Id. at 418.

[20] Id. at 420.

[21] Acevedo v. Advanstar Company Inc., G.R. No. 157656, November 11, 2005, 474 SCRA 656, 664.

[22]Took effect on January 7, 1993.

[23] Rollo, p. 36.

[24]Id. at 223.

[25] G.R. No. L-49774, February 24, 1981, 103 SCRA 139, 143.

[26] Ramos Vda. de Brigino v. Ramos, G.R. No. 130260, February 6, 2006, 481 SCRA 546, 555.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.