

**ARCO METAL PRODUCTS, CO., INC., AND MRS. SALVADOR UY,
PETITIONERS, VS. SAMAHAN NG MGA MANGGAGAWA SA ARCO
METAL-NAFLU (SAMARM-NAFLU), Respondent.**

G.R. No. 170734. May 14, 2008

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TINGA, J.:

This treats of the Petition for Review[1] of the Resolution[2] and Decision[3] of the Court of Appeals dated 9 December 2005 and 29 September 2005, respectively in CA-G.R. SP No. 85089 entitled *Samahan ng mga Manggagawa sa Arco Metal-NAFLU (SAMARM-NAFLU) v. Arco Metal Products Co., Inc. and/or Mr. Salvador Uy*/Accredited Voluntary Arbitrator Apron M. Mangabat,[4] which ruled that the 13[th] month pay, vacation leave and sick leave conversion to cash shall be paid in full to the employees of petitioner regardless of the actual service they rendered within a year.

Petitioner is a company engaged in the manufacture of metal products, whereas respondent is the labor union of petitioner's rank and file employees. Sometime in December 2003, petitioner paid the 13[th] month pay, bonus, and leave encashment of three union members in amounts proportional to the service they actually rendered in a year, which is less than a full twelve (12) months. The employees were:

- Rante Lamadrid Sickness 27 August 2003 to 27 February 2004
- Alberto Gamban Suspension 10 June 2003 to 1 July 2003
- Rodelio Collantes Sickness August 2003 to February 2004

Respondent protested the prorated scheme, claiming that on several occasions petitioner did not prorate the payment of the same benefits to seven (7) employees who had not served for the full 12 months. The payments were made in 1992, 1993, 1994, 1996, 1999, 2003, and 2004. According to respondent, the prorated payment violates the rule against diminution of benefits under Article 100 of the Labor Code. Thus, they filed a complaint before the National Conciliation and Mediation Board (NCMB). The parties submitted the case for voluntary arbitration.

The voluntary arbitrator, Apron M. Mangabat, ruled in favor of petitioner and found that the giving of the contested benefits in full, irrespective of the actual service rendered within one year has not ripened into a practice. He noted the affidavit of Joselito Baingan, manufacturing group head of petitioner, which states that the giving in full of the benefit was a mere error. He also interpreted the phrase "for each year of service" found in the pertinent CBA provisions to mean that an employee must have rendered one year of service in order to be entitled to the full benefits provided in the CBA.[5]

Unsatisfied, respondent filed a Petition for Review[6] under Rule 43 before the Court of Appeals, imputing serious error to Mangabat's conclusion. The Court of Appeals ruled that the CBA did not intend to foreclose the application of prorated payments of leave benefits to covered employees. The appellate court found that petitioner, however, had an existing voluntary practice of paying the aforesaid benefits in full to its employees,

thereby rejecting the claim that petitioner erred in paying full benefits to its seven employees. The appellate court noted that aside from the affidavit of petitioner's officer, it has not presented any evidence in support of its position that it has no voluntary practice of granting the contested benefits in full and without regard to the service actually rendered within the year. It also questioned why it took petitioner eleven (11) years before it was able to discover the alleged error. The dispositive portion of the court's decision reads:

WHEREFORE, premises considered, the instant petition is hereby GRANTED and the Decision of Accredited Voluntary Arbiter Apron M. Mangabat in NCMB-NCR Case No. PM-12-345-03, dated June 18, 2004 is hereby AFFIRMED WITH MODIFICATION in that the 13[th] month pay, bonus, vacation leave and sick leave conversions to cash shall be paid to the employees in full, irrespective of the actual service rendered within a year.[7]

Petitioner moved for the reconsideration of the decision but its motion was denied, hence this petition.

Petitioner submits that the Court of Appeals erred when it ruled that the grant of 13[th] month pay, bonus, and leave encashment in full regardless of actual service rendered constitutes voluntary employer practice and, consequently, the prorated payment of the said benefits does not constitute diminution of benefits under Article 100 of the Labor Code.[8]The petition ultimately fails.

First, we determine whether the intent of the CBA provisions is to grant full benefits regardless of service actually rendered by an employee to the company. According to petitioner, there is a one-year cutoff in the entitlement to the benefits provided in the CBA which is evident from the wording of its pertinent provisions as well as of the existing law.

We agree with petitioner on the first issue. The applicable CBA provisions read:

ARTICLE XIV-VACATION LEAVE

Section 1. Employees/workers covered by this agreement who have rendered at least one (1) year of service shall be entitled to sixteen (16) days vacation leave with pay for each year of service. Unused leaves shall not be cumulative but shall be converted into its cash equivalent and shall become due and payable every 1[st] Saturday of December of each year.

However, if the 1[st] Saturday of December falls in December 1, November 30 (Friday) being a holiday, the management will give the cash conversion of leaves in November 29.

Section 2. In case of resignation or retirement of an employee, his vacation leave shall be paid proportionately to his days of service rendered during the year.

ARTICLE XV-SICK LEAVE

Section 1. Employees/workers covered by this agreement who have rendered at least one (1) year of service shall be entitled to sixteen (16) days of sick leave with pay for each year of service. Unused sick leave shall not be cumulative but shall be converted into its cash equivalent and shall become due and payable every 1[st] Saturday of December of each year.

Section 2. Sick Leave will only be granted to actual sickness duly certified by the Company physician or by a licensed physician.

Section 3. All commutable earned leaves will be paid proportionately upon retirement or separation.

ARTICLE XVI – EMERGENCY LEAVE, ETC.

Section 1. The Company shall grant six (6) days emergency leave to employees covered by this agreement and if unused shall be converted into cash and become due and payable on the 1[st] Saturday of December each

year.

Section 2. Employees/workers covered by this agreement who have rendered at least one (1) year of service shall be entitled to seven (7) days of Paternity Leave with pay in case the married employee's legitimate spouse gave birth. Said benefit shall be non-cumulative and non-commutative and shall be deemed in compliance with the law on the same.

Section 3. Maternity leaves for married female employees shall be in accordance with the SSS Law plus a cash grant of P1,500.00 per month.

x x x

ARTICLE XVIII- 13[TH] MONTH PAY & BONUS

Section 1. The Company shall grant 13[th] Month Pay to all employees covered by this agreement. The basis of computing such pay shall be the basic salary per day of the employee multiplied by 30 and shall become due and payable every 1[st] Saturday of December.

Section 2. The Company shall grant a bonus to all employees as practiced which shall be distributed on the 2[nd] Saturday of December.

Section 3. That the Company further grants the amount of Two Thousand Five Hundred Pesos (P2,500.00) as signing bonus plus a free CBA Booklet.[9] (Underscoring ours)

There is no doubt that in order to be entitled to the full monetization of sixteen (16) days of vacation and sick leave, one must have rendered at least one year of service. The clear wording of the provisions does not allow any other interpretation. Anent the 13[th] month pay and bonus, we agree with the findings of Mangabat that the CBA provisions did not give any meaning different from that given by the law, thus it should be computed at 1/12 of the total compensation which an employee receives for the whole calendar year. The bonus is also equivalent to the amount of the 13[th] month pay given, or in proportion to the actual service rendered by an employee within the year.

On the second issue, however, petitioner founders.

As a general rule, in petitions for review under Rule 45, the Court, not being a trier of facts, does not normally embark on a re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the Court of Appeals are conclusive and binding on the Court.[10] The rule, however, admits of several exceptions, one of which is when the findings of the Court of Appeals are contrary to that of the lower tribunals. Such is the case here, as the factual conclusions of the Court of Appeals differ from that of the voluntary arbitrator.

Petitioner granted, in several instances, full benefits to employees who have not served a full year, thus:

Name Reason Duration

Name

Reason

Duration

1.

Percival Bernas

Sickness

July 1992 to November 1992

2.

Cezar Montero

Sickness

21 Dec. 1992 to February 1993

3.

Wilson Sayod

Sickness

May 1994 to July 1994

4.

Nomer Becina

Suspension

1 Sept. 1996 to 5 Oct. 1996

5.

Ronnie Licuan

Sickness

8 Nov. 1999 to 9 Dec. 1999

6.

Guilbert Villaruel

Sickness

23 Aug. 2002 to 4 Feb. 2003

7.

Melandro Moque

Sickness

29 Aug. 2003 to 30 Sept. 2003[11]

Petitioner claims that its full payment of benefits regardless of the length of service to the company does not constitute voluntary employer practice. It points out that the payments had been erroneously made and they occurred in isolated cases in the years 1992, 1993, 1994, 1999, 2002 and 2003. According to petitioner, it was only in 2003 that the accounting department discovered the error “when there were already three (3) employees involved with prolonged absences and the error was corrected by implementing the pro-rata payment of benefits pursuant to law and their existing CBA.”[12] It adds that the seven earlier cases of full payment of benefits went unnoticed considering the proportion of one employee concerned (per year) vis à vis the 170 employees of the company. Petitioner describes the situation as a “clear oversight” which should not be taken against it.[13] To further bolster its case, petitioner argues that for a grant of a benefit to be considered a practice, it should have

been practiced over a long period of time and must be shown to be consistent, deliberate and intentional, which is not what happened in this case. Petitioner tries to make a case out of the fact that the CBA has not been modified to incorporate the giving of full benefits regardless of the length of service, proof that the grant has not ripened into company practice.

We disagree.

Any benefit and supplement being enjoyed by employees cannot be reduced, diminished, discontinued or eliminated by the employer.[14] The principle of non-diminution of benefits is founded on the Constitutional mandate to "protect the rights of workers and promote their welfare,"[15] and "to afford labor full protection." [16] Said mandate in turn is the basis of Article 4 of the Labor Code which states that "all doubts in the implementation and interpretation of this Code, including its implementing rules and regulations shall be rendered in favor of labor." Jurisprudence is replete with cases which recognize the right of employees to benefits which were voluntarily given by the employer and which ripened into company practice. Thus in *Davao Fruits Corporation v. Associated Labor Unions, et al.* [17] where an employer had freely and continuously included in the computation of the 13th month pay those items that were expressly excluded by the law, we held that the act which was favorable to the employees though not conforming to law had thus ripened into a practice and could not be withdrawn, reduced, diminished, discontinued or eliminated. In *Sevilla Trading Company v. Semana*, [18] we ruled that the employer's act of including non-basic benefits in the computation of the 13th month pay was a voluntary act and had ripened into a company practice which cannot be peremptorily withdrawn. Meanwhile in *Davao Integrated Port Stevedoring Services v. Abarquez*, [19] the Court ordered the payment of the cash equivalent of the unenjoyed sick leave benefits to its intermittent workers after finding that said workers had received these benefits for almost four years until the grant was stopped due to a different interpretation of the CBA provisions. We held that the employer cannot unilaterally withdraw the existing privilege of commutation or conversion to cash given to said workers, and as also noted that the employer had in fact granted and paid said cash equivalent of the unenjoyed portion of the sick leave benefits to some intermittent workers.

In the years 1992, 1993, 1994, 1999, 2002 and 2003, petitioner had adopted a policy of freely, voluntarily and consistently granting full benefits to its employees regardless of the length of service rendered. True, there were only a total of seven employees who benefited from such a practice, but it was an established practice nonetheless. Jurisprudence has not laid down any rule specifying a minimum number of years within which a company practice must be exercised in order to constitute voluntary company practice.[20] Thus, it can be six (6) years,[21] three (3) years,[22] or even as short as two (2) years.[23] Petitioner cannot shirk away from its responsibility by merely claiming that it was a mistake or an error, supported only by an affidavit of its manufacturing group head portions of which read:

- 13th month pay, bonus, and cash conversion of unused/earned vacation leave, sick leave and emergency leave are computed and paid in full to employees who rendered services to the company for the entire year and proportionately to those employees who rendered service to the company for a period less than one (1) year or twelve (12) months in accordance with the CBA provision relative thereto.

- It was never the intention much less the policy of the management to grant the aforesaid benefits to the employees in full regardless of whether or not the employee has rendered services to the company for the entire year, otherwise, it would be unjust and inequitable not only to the company but to other employees as well.[24]

In cases involving money claims of employees, the employer has the burden of proving that the employees did receive the wages and benefits and that the same were paid in accordance with law.[25]

Indeed, if petitioner wants to prove that it merely erred in giving full benefits, it could have easily presented other

proofs, such as the names of other employees who did not fully serve for one year and thus were given prorated benefits. Experientially, a perfect attendance in the workplace is always the goal but it is seldom achieved. There must have been other employees who had reported for work less than a full year and who, as a consequence received only prorated benefits. This could have easily bolstered petitioner's theory of mistake/error, but sadly, no evidence to that effect was presented.

IN VIEW HEREOF, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 85089 dated 29 September 2005 is and its Resolution dated 9 December 2005 are hereby AFFIRMED.

SO ORDERED.

Quisumbing, (Chairperon), Carpio Morales and Velasco, Jr., JJ., concur.
Brion, J., with separate concurring opinion,

[1] Rollo, pp. 3-31.

[2] Id. at 36.

[3] Id. at 38-56.

[4] Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Eugenio S. Labitoria and Eliezer R. De Los Santos, concurring.

[5] Id. at 175.

[6] Id. at 57-77.

[7] Id. at 55.

[8] Id. at 17.

[9] Id. at 110-111. These provisions were carried over from four (4) previous CBAs covering the following dates: 28 August 1990 to 27 August 1991, 1 August 1993 to 31 July 1996, 1 August 1996 to 31 July 1999, and 1 August 1999 to 31 July 2002.

[10] *New City Builders, Inc. v. National Labor Relations Commission*, G.R. No. 149281, 15 June 2005, 460 SCRA 220, 227.

[11] Rollo, p. 22.

[12] Id.

[13] Id. at 23.

[14] *Tiangco, et al. v. Hon. Leogardo, Jr., etc., et al.*, 207 Phil. 2235 (1983) .

[15] Constitution, Article II, Section 18.

[16] Constitution, Article XIII, Section 3.

[17] G.R. No. 85073, 24 August 1993, 225 SCRA 562.

[18] G.R. No. 152456, 28 April 2004, 428 SCRA 239, 249.

[19] G.R. No. 102132, 19 March 1993, 220 SCRA 197.

- [20] Sevilla Trading Company v. Semana, supra note 12.
- [21] Davao Fruits Corporation v. Associated Labor Unions, supra note 11.
- [22] Tianco v. Leogardo, Jr., supra note 10
- [23] Sevilla Trading Company v. Semana, supra.
- [24] Rollo, pp. 120-121.
- [25] Mark Roche International v. NLRC, 372 Phil. 238, 247 (1999).

SEPARATE CONCURRING OPINION

BRION, J.

I fully agree with the ponencia that the enhanced 13th month pay and bonus computations made by the company have ripened into an established benefit that can no longer be unilaterally withdrawn. The company claim - supported solely by the affidavit of a company officer that the computations were “clear oversights” that should not be taken against it – must fail as against the undisputed evidence of the number of times and years the enhanced computations have been in place. At most, the company claim raises a doubt about the real character of these computations but any such doubt we have to resolve in favor of labor (Article 4, Labor Code).

I concur separately to clarify that the basis for the prohibition against diminution of established benefits is not really Article 100 of the Labor Code as the respondents claimed and as the cases cited in the ponencia mentioned. Article 100 refers solely to the non-diminution of benefits enjoyed at the time of the promulgation of the Labor Code. Employer-employee relationship is contractual and is based on the express terms of the employment contract as well as on its implied terms, among them, those not expressly agreed upon but which the employer has freely, voluntarily and consistently extended to its employees. Under the principle of mutuality of contracts embodied in Article 1308 of the Civil Code, the terms of a contract – both express and implied – cannot be withdrawn except by mutual consent or agreement of the contracting parties. In the present case, the lack of consent or agreement was precisely the basis for the employees’ complaint.

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