

**SLL INTERNATIONAL CABLES SPECIALIST AND SONNY L. LAGON,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, 4TH
DIVISION, ROLDAN LOPEZ, EDGARDO ZUÑIGA AND DANILO CAÑETE,
RESPO...***G.R. No. 172161. March 02, 2011*

Ponente: MENDOZA, J.

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Assailed in this petition for review on certiorari are the January 11, 2006 Decision[1] and the March 31, 2006 Resolution[2] of the Court of Appeals (CA), in CA-G.R. SP No. 00598 which affirmed with modification the March 31, 2004 Decision[3] and December 15, 2004 Resolution[4] of the National Labor Relations Commission (NLRC). The NLRC Decision found the petitioners, SLL International Cables Specialist (SLL) and its manager, Sonny L. Lagon (petitioners), not liable for the illegal dismissal of Roldan Lopez, Danilo Cañete and Edgardo Zuñiga (private respondents) but held them jointly and severally liable for payment of certain monetary claims to said respondents.

A chronicle of the factual antecedents has been succinctly summarized by the CA as follows:

Sometime in 1996, and January 1997, private respondents Roldan Lopez (Lopez for brevity) and Danilo Cañete (Cañete for brevity), and Edgardo Zuñiga (Zuñiga for brevity) respectively, were hired by petitioner Lagon as apprentice or trainee cable/lineman. The three were paid the full minimum wage and other benefits but since they were only trainees, they did not report for work regularly but came in as substitutes to the regular workers or in undertakings that needed extra workers to expedite completion of work. After their training, Zuñiga, Cañete and Lopez were engaged as project employees by the petitioners in their Islacom project in Bohol. Private respondents started on March 15, 1997 until December 1997. Upon the completion of their project, their employment was also terminated. Private respondents received the amount of P145.00, the minimum prescribed daily wage for Region VII. In July 1997, the amount of P145 was increased to P150.00 by the Regional Wage Board (RWB) and in October of the same year, the latter was increased to P155.00. Sometime in March 1998, Zuñiga and Cañete were engaged again by Lagon as project employees for its PLDT Antipolo, Rizal project, which ended sometime in (sic) the late September 1998. As a consequence, Zuñiga and Cañete's employment was terminated. For this project, Zuñiga and Cañete received only the wage of P145.00 daily. The minimum prescribed wage for Rizal at that time was P160.00.

Sometime in late November 1998, private respondents re-applied in the Racitelcom project of Lagon in Bulacan. Zuñiga and Cañete were re-employed. Lopez was also hired for the said specific project. For this, private respondents received the wage of P145.00. Again, after the completion of their project in March 1999, private respondents went home to Cebu City.

On May 21, 1999, private respondents for the 4th time worked with Lagon's project in Camarin, Caloocan City with Furukawa Corporation as the general contractor. Their contract would expire on February 28, 2000, the period of completion of the project. From May 21, 1997-December 1999, private respondents received the wage of P145.00. At this time, the minimum prescribed rate for Manila was P198.00. In January to February

28, the three received the wage of P165.00. The existing rate at that time was P213.00.

For reasons of delay on the delivery of imported materials from Furukawa Corporation, the Camarin project was not completed on the scheduled date of completion. Face[d] with economic problem[s], Lagon was constrained to cut down the overtime work of its worker[s][.] including private respondents. Thus, when requested by private respondents on February 28, 2000 to work overtime, Lagon refused and told private respondents that if they insist, they would have to go home at their own expense and that they would not be given anymore time nor allowed to stay in the quarters. This prompted private respondents to leave their work and went home to Cebu. On March 3, 2000, private respondents filed a complaint for illegal dismissal, non-payment of wages, holiday pay, 13[th] month pay for 1997 and 1998 and service incentive leave pay as well as damages and attorney's fees.

In their answers, petitioners admit employment of private respondents but claimed that the latter were only project employees[,] for their services were merely engaged for a specific project or undertaking and the same were covered by contracts duly signed by private respondents. Petitioners further alleged that the food allowance of P63.00 per day as well as private respondents allowance for lodging house, transportation, electricity, water and snacks allowance should be added to their basic pay. With these, petitioners claimed that private respondents received higher wage rate than that prescribed in Rizal and Manila.

Lastly, petitioners alleged that since the workplaces of private respondents were all in Manila, the complaint should be filed there. Thus, petitioners prayed for the dismissal of the complaint for lack of jurisdiction and utter lack of merit. (Citations omitted.)

On January 18, 2001, Labor Arbiter Reynoso Belarmino (LA) rendered his decision[5] declaring that his office had jurisdiction to hear and decide the complaint filed by private respondents. Referring to Rule IV, Sec. 1 (a) of the NLRC Rules of Procedure prevailing at that time,[6] the LA ruled that it had jurisdiction because the "workplace," as defined in the said rule, included the place where the employee was supposed to report back after a temporary detail, assignment or travel, which in this case was Cebu.

As to the status of their employment, the LA opined that private respondents were regular employees because they were repeatedly hired by petitioners and they performed activities which were usual, necessary and desirable in the business or trade of the employer.

With regard to the underpayment of wages, the LA found that private respondents were underpaid. It ruled that the free board and lodging, electricity, water, and food enjoyed by them could not be included in the computation of their wages because these were given without their written consent.

The LA, however, found that petitioners were not liable for illegal dismissal. The LA viewed private respondents' act of going home as an act of indifference when petitioners decided to prohibit overtime work.[7]

In its March 31, 2004 Decision, the NLRC affirmed the findings of the LA. In addition, the NLRC noted that not a single report of project completion was filed with the nearest Public Employment Office as required by the Department of Labor and Employment (DOLE) Department Order No. 19, Series of 1993.[8] The NLRC later denied[9] the motion for reconsideration[10] subsequently filed by petitioners.

When the matter was elevated to the CA on a petition for certiorari, it affirmed the findings that the private respondents were regular employees. It considered the fact that they performed functions which were the regular and usual business of petitioners. According to the CA, they were clearly members of a work pool from which petitioners drew their project employees.

The CA also stated that the failure of petitioners to comply with the simple but compulsory requirement to submit a report of termination to the nearest Public Employment Office every time private respondents' employment was

terminated was proof that the latter were not project employees but regular employees.

The CA likewise found that the private respondents were underpaid. It ruled that the board and lodging, electricity, water, and food enjoyed by the private respondents could not be included in the computation of their wages because these were given without their written consent. The CA added that the private respondents were entitled to 13th month pay.

The CA also agreed with the NLRC that there was no illegal dismissal. The CA opined that it was the petitioners' prerogative to grant or deny any request for overtime work and that the private respondents' act of leaving the workplace after their request was denied was an act of abandonment.

In modifying the decision of the labor tribunal, however, the CA noted that respondent Roldan Lopez did not work in the Antipolo project and, thus, was not entitled to wage differentials. Also, in computing the differentials for the period January and February 2000, the CA disagreed in the award of differentials based on the minimum daily wage of P223.00, as the prevailing minimum daily wage then was only P213.00. Petitioners sought reconsideration but the CA denied it in its March 31, 2006 Resolution.^[11]

In this petition for review on certiorari,^[12] petitioners seek the reversal and setting aside of the CA decision anchored on this lone:

GROUND/
ASSIGNMENT OF ERROR

THE PUBLIC RESPONDENT NLRC COMMITTED A SERIOUS ERROR IN LAW IN AWARDING WAGE DIFFERENTIALS TO THE PRIVATE COMPLAINANTS ON THE BASES OF MERE TECHNICALITIES, THAT IS, FOR LACK OF WRITTEN CONFORMITY x x x AND LACK OF NOTICE TO THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE),^[.] AND THUS, THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING WITH MODIFICATION THE NLRC DECISION IN THE LIGHT OF THE RULING IN THE CASE OF JENNY M. AGABON and VIRGILIO AGABON vs, NLRC, ET AL., GR NO. 158963, NOVEMBER 17, 2004, 442 SCRA 573, [AND SUBSEQUENTLY IN THE CASE OF GLAXO WELLCOME PHILIPPINES, INC. VS. NAGAKAKAISANG EMPLEYADO NG WELLCOME-DFA (NEW -DFA), ET AL., GR NO. 149349, 11 MARCH 2005], WHICH FINDS APPLICATION IN THE INSTANT CASE BY ANALOGY.^[13]

Petitioners reiterated their position that the value of the facilities that the private respondents enjoyed should be included in the computation of the "wages" received by them. They argued that the rulings in *Agabon v. NLRC*^[14] and *Glaxo Wellcome Philippines, Inc. v. Nagkakaisang Empleyado Ng Wellcome-DFA*^[15] should be applied by analogy, in the sense that the lack of written acceptance of the employees of the facilities enjoyed by them should not mean that the value of the facilities could not be included in the computation of the private respondents' "wages."

On November 29, 2006, the Court resolved to issue a Temporary Restraining Order (TRO) enjoining the public respondent from enforcing the NLRC and CA decisions until further orders from the Court.

After a thorough review of the records, however, the Court finds no merit in the petition.

This petition generally involves factual issues, such as, whether or not there is evidence on record to support the findings of the LA, the NLRC and the CA that private respondents were project or regular employees and that their salary differentials had been paid. This calls for a re-examination of the evidence, which the Court cannot entertain. Settled is the rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdiction, are generally accorded not only respect but even finality, and bind the

Court when supported by substantial evidence. It is not the Court's function to assess and evaluate the evidence all over again, particularly where the findings of both the Labor tribunals and the CA concur. [16]

As a general rule, on payment of wages, a party who alleges payment as a defense has the burden of proving it.[17] Specifically with respect to labor cases, the burden of proving payment of monetary claims rests on the employer, the rationale being that the pertinent personnel files, payrolls, records, remittances and other similar documents -- which will show that overtime, differentials, service incentive leave and other claims of workers have been paid -- are not in the possession of the worker but in the custody and absolute control of the employer.[18]

In this case, petitioners, aside from bare allegations that private respondents received wages higher than the prescribed minimum, failed to present any evidence, such as payroll or payslips, to support their defense of payment. Thus, petitioners utterly failed to discharge the onus probandi.

Private respondents, on the other hand, are entitled to be paid the minimum wage, whether they are regular or non-regular employees.

Section 3, Rule VII of the Rules to Implement the Labor Code[19] specifically enumerates those who are not covered by the payment of minimum wage. Project employees are not among them.

On whether the value of the facilities should be included in the computation of the "wages" received by private respondents, Section 1 of DOLE Memorandum Circular No. 2 provides that an employer may provide subsidized meals and snacks to his employees provided that the subsidy shall not be less than 30% of the fair and reasonable value of such facilities. In such cases, the employer may deduct from the wages of the employees not more than 70% of the value of the meals and snacks enjoyed by the latter, provided that such deduction is with the written authorization of the employees concerned.

Moreover, before the value of facilities can be deducted from the employees' wages, the following requisites must all be attendant: first, proof must be shown that such facilities are customarily furnished by the trade; second, the provision of deductible facilities must be voluntarily accepted in writing by the employee; and finally, facilities must be charged at reasonable value.[20] Mere availment is not sufficient to allow deductions from employees' wages.[21]

These requirements, however, have not been met in this case. SLL failed to present any company policy or guideline showing that provisions for meals and lodging were part of the employee's salaries. It also failed to provide proof of the employees' written authorization, much less show how they arrived at their valuations. At any rate, it is not even clear whether private respondents actually enjoyed said facilities.

The Court, at this point, makes a distinction between "facilities" and "supplements." It is of the view that the food and lodging, or the electricity and water allegedly consumed by private respondents in this case were not facilities but supplements. In the case of *Atok-Big Wedge Assn. v. Atok-Big Wedge Co.*,[22] the two terms were distinguished from one another in this wise:

"Supplements," therefore, constitute extra remuneration or special privileges or benefits given to or received by the laborers over and above their ordinary earnings or wages. "Facilities," on the other hand, are items of expense necessary for the laborer's and his family's existence and subsistence so that by express provision of law (Sec. 2[g]), they form part of the wage and when furnished by the employer are deductible therefrom, since if they are not so furnished, the laborer would spend and pay for them just the same.

In short, the benefit or privilege given to the employee which constitutes an extra remuneration above and over his basic or ordinary earning or wage is supplement; and when said benefit or privilege is part of the laborers'

basic wages, it is a facility. The distinction lies not so much in the kind of benefit or item (food, lodging, bonus or sick leave) given, but in the purpose for which it is given.[23] In the case at bench, the items provided were given freely by SLL for the purpose of maintaining the efficiency and health of its workers while they were working at their respective projects.

For said reason, the cases of Agabon and Glaxo are inapplicable in this case. At any rate, these were cases of dismissal with just and authorized causes. The present case involves the matter of the failure of the petitioners to comply with the payment of the prescribed minimum wage.

The Court sustains the deletion of the award of differentials with respect to respondent Roldan Lopez. As correctly pointed out by the CA, he did not work for the project in Antipolo.

WHEREFORE, the petition is DENIED. The temporary restraining order issued by the Court on November 29, 2006 is deemed, as it is hereby ordered, DISSOLVED.

SO ORDERED.

Carpio, (Chairperson), Velasco, Jr.,[*] Del Castillo,**] and Abad, JJ., concur.

[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per Special Order No. 933 dated January 24, 2011.

** Designated as additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 954 dated February 21, 2011.

[1] Rollo, pp. 48-60. Penned by Associate Justice Vicente L. Yap and concurred in by Associate Justice Arsenio J. Magpale and Associate Justice Apolinario D. Bruselas, Jr.

[2] Id. at 62-63.

[3] Id. at 155-164.

[4] Id. at 171-172.

[5] Id. at 123-134.

[6] Section 1. Venue. -- (a) All cases which Labor Arbiters have authority to hear and decide may be filed in the Regional Arbitration Branch having jurisdiction over the workplace of the complaint/petitioner.

For purposes of venue, workplace shall be understood as the place or locality where the employee is regularly assigned when the cause of action arose. It shall include the place where the employee is supposed to report back after a temporary detail, assignment or travel. In the case of field employees, as well as ambulant or itinerant workers, their workplace is where they are regularly assigned, or where they are supposed to regularly receive their salaries/wages or work instructions from, and report the results of their assignment to, their employers.

[7] Rollo, p. 130.

[8] 2.2 Indicators of project employment. - Either one or more of the following circumstances, among other, may be considered as indicators that an employee is a project employee.

(a) The duration of the specific/identified undertaking for which the worker is engaged is reasonably determinable.

(b) Such duration, as well as the specific work/service to be performed, is defined in an employment agreement and is made clear to the employee at the time of hiring.

(c) The work/service performed by the employee is in connection with the particular project/undertaking for which he is engaged.

(d) The employee, while not employed and awaiting engagement, is free to offer his services to any other employer.

(e) The termination of his employment in the particular project/undertaking is reported to the Department of Labor and Employment (DOLE) Regional Office having jurisdiction over the workplace within 30 days following the date of his separation from work, using the prescribed form on employees' terminations/dismissals/suspensions.

(f) An undertaking in the employment contract by the employer to pay completion bonus to the project employee as practiced by most construction companies.

[9] Rollo, pp. 171-172.

[10] *Id.* at 165-170.

[11] *Id.* at 62-63.

[12] *Id.* at 10-172.

[13] *Id.* at 22.

[14] 485 Phil. 248 (2004).

[15] 493 Phil.410 (2005).

[16] *Stamford Marketing Corp. v. Julian*, 468 Phil 34 (2004).

[17] *Far East Bank and Trust Company v. Querimit*, 424 Phil. 721 (2002); *Sevillana v. I.T. (International) Corp.*, 408 Phil. 570 (2001); *Villar v. National Labor Relations Commission*, 387 Phil. 706 (2000); *Audion Electric Co, Inc. v. NLRC*, 367 Phil. 620 (1999); *Ropali Trading Corporation v. National Labor Relations Commission*, 357 Phil. 314 (1998); *National Semiconductor (HK) Distribution, Ltd. v. National Labor Relations Commission (4[th] Division)*, 353 Phil. 551 (1998); *Pacific Maritime Services, Inc. v. Ranay*, 341 Phil. 716 (1997); *Jimenez v. National Labor Relations Commission*, 326 Phil. 89 (1996); *Philippine National Bank v. Court of Appeals*, 326 Phil. 46 (1996); *Good Earth Emporium, Inc. v. Court of Appeals*, G.R. No. 82797, February 27, 1991, 194 SCRA 544, 552; *Villaflor v. Court of Appeals*, G.R. No. 46210, December 26, 1990, 192 SCRA 680, 690; *Biala v. Court of Appeals*, G.R. No. 43503, October 31, 1990, 191 SCRA 50, 59; *Servicewide Specialists, Inc. v. Intermediate Appellate Court*, 255 Phil. 787 (1989).

[18] *Dansart Security Force & Allied Services Company v. Bagoy*, G.R. No. 168495, July 2, 2010; *G & M Philippines, Inc. v. Cruz*, 496 Phil. 119 (2005); *Villar v. National Labor Relations Commission*, 387 Phil. 706.

[19] Sec. 3. Coverage. - This Rule shall not apply to the following persons:

(a) Household or domestic helpers, including family drivers and persons in the personal service of another;

(b) Homeworkers who are engaged in needlework;

(c) Workers employed in any establishment duly registered with the National Cottage Industries and Development Authority in accordance with R.A. 3470, provided that such workers perform the work in their respective homes;

(d) Workers in any duly registered cooperative when so recommended by the Bureau of Cooperative Development and upon approval of the Secretary of Labor; Provided, however, That such recommendation shall be given only for the purpose of making the cooperative viable and upon finding and certification of said Bureau, supported by adequate proof, that the cooperative cannot resort to other remedial measures without serious loss or prejudice to its operation except through its exemption from the requirements of this Rule. The exemption shall be subject to such terms and conditions and for such period of time as the Secretary of Labor may prescribe.

[20] *Mayon Hotel & Restaurant v. Adana*, G.R. No. 157634,492 Phil. 892 (2005); *Mabeza v. NLRC*, 338 Phil. 386 (1997).

[21] *Mayon Hotel & Restaurant v. Adana*, *supra*.

[22] 97 Phil. 294 (1955).

[23] *States Marine Corporation and Royal Line, Inc. v. Cebu Seamen's Association, Inc.*, 117 Phil. 307 (1963).

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