

**PHILIPPINE HOTELIERS, INC., DUSIT HOTEL NIKKO-MANILA,
PETITIONER, VS. NATIONAL UNION OF WORKERS IN HOTEL,
RESTAURANT, AND ALLIED INDUSTRIES (NUWHRAIN-APL-IUF)-
DUSIT HOTEL NIKKO...**

G.R. No. 181972. August 25, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before this Court is a Petition for Review on Certiorari, under Rule 45 of the Rules of Court, assailing the Decision[1] dated 10 September 2007 of the Court of Appeals in CA-G.R. SP No. 92798 granting the P30.00-per-day Emergency Cost of Living Allowance (ECOLA), under Wage Order (WO) No. NCR-09 (WO No. 9), to 144 employees of petitioner Dusit Hotel Nikko (Dusit Hotel)[2] and imposing upon the latter the penalty of double indemnity under Republic Act No. 6727, as amended by Republic Act No. 8188. Likewise assailed herein is the Resolution[3] dated 4 March 2008 of the appellate court in the same case denying the Motion for Reconsideration of Dusit Hotel.

The antecedent facts of the case are as follows:

WO No. 9, approved by the Regional Tripartite Wages and Productivity Board (RTWPB) of the National Capital Region (NCR), took effect on 5 November 2001. It grants P30.00 ECOLA to particular employees and workers of all private sectors, identified as follows in Section 1 thereof:

Section 1. Upon the effectivity of this Wage Order, all private sector workers and employees in the National Capital Region receiving daily wage rates of TWO HUNDRED FIFTY PESOS (P250.00) up to TWO HUNDRED NINETY PESOS (P290.00) shall receive an emergency cost of living allowance in the amount of THIRTY PESOS (P30.00) per day payable in two tranches as follows:

Amount of ECOLA Effectivity

P15.00 5 November 2001

P15.00 1 February 2002

On 20 March 2002, respondent National Union of Workers in Hotel, Restaurant and Allied Industries-Dusit Hotel Nikko Chapter (Union), through its President, Reynaldo C. Rasing (Rasing), sent a letter[4] to Director Alex Maraan (Dir. Maraan) of the Department of Labor and Employment-National Capital Region (DOLE-NCR), reporting the non-compliance of Dusit Hotel with WO No. 9, while there was an on-going compulsory arbitration before the National Labor Relations Commission (NLRC) due to a bargaining deadlock between the Union and Dusit Hotel; and requesting immediate assistance on this matter. On 24 May 2002, Rasing sent Dir. Maraan another letter following-up his previous request for assistance.

Acting on Rasing's letters, the DOLE-NCR sent Labor Standards Officer Estrellita Natividad (LSO Natividad) to conduct an inspection of Dusit Hotel premises on 24 April 2002. LSO Natividad's Inspection Results Report[5]

dated 2 May 2002 stated:

Based on interviews/affidavits of employees, they are receiving more than P290.00 average daily rate which is exempted in the compliance of Wage Order NCR-09;

Remarks: There is an ongoing negotiation under Case # NCMB-NCR-NS-12-369-01 & NCMB-NCR-NS-01-019-02 now forwarded to the NLRC office for the compulsory arbitration.

NOTE: Payrolls to follow later upon request including position paper of [Dusit Hotel].

By virtue of Rasing's request[6] for another inspection, LSO Natividad conducted a second inspection of Dusit Hotel premises on 29 May 2002. In her Inspection Results Report[7] dated 29 May 2002, LSO Natividad noted:

*Non-presentation of records/payrolls

*Based on submitted payrolls & list of union members by NUWHRAIN-DUSIT HOTEL NIKKO Chapter, there are one hundred forty-four (144) affected in the implementation of Wage Order No. NCR-09-> ECOLA covering the periods from Nov.5/01 to present.

Accordingly, the DOLE-NCR issued a Notice of Inspection Result directing Dusit Hotel to effect restitution and/or correction of the noted violations within five days from receipt of the Notice, and to submit any question on the findings of the labor inspector within the same period, otherwise, an order of compliance would be issued. The Notice of Inspection Result was duly received by Dusit Hotel Assistant Personnel Manager Rogelio Santos.[8]

In the meantime, the NLRC rendered a Decision[9] dated 9 October 2002 in NLRC-NCR-CC No. 000215-02 - the compulsory arbitration involving the Collective Bargaining Agreement (CBA) deadlock between Dusit Hotel and the Union - granting the hotel employees the following wage increases, in accord with the CBA:

Effective January 1, 2001- P500.00/month

Effective January 1, 2002- P550.00/month

Effective January 1, 2003- P600.00/month

On 22 October 2002, based on the results of the second inspection of Dusit Hotel premises, DOLE-NCR, through Dir. Maraan, issued the Order[10] directing Dusit Hotel to pay 144 of its employees the total amount of P1,218,240.00, corresponding to their unpaid ECOLA under WO No. 9; plus, the penalty of double indemnity, pursuant to Section 12 of Republic Act No. 6727,[11] as amended by Republic Act No. 8188,[12] which provides:

Sec. 12. Any person, corporation, trust, firm, partnership, association or entity which refuses or fails to pay any of the prescribed increases or adjustments in wage rates made in accordance with this Act shall be punished by a fine not less than Twenty-five thousand pesos (P25,000) nor more than One hundred thousand pesos (P100,000) 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 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 ours.)

Dusit Hotel filed a Motion for Reconsideration[13] of the DOLE-NCR Order dated 22 October 2002, arguing that the NLRC Decision dated 9 October 2002, resolving the bargaining deadlock between Dusit Hotel and the Union, and awarding salary increases under the CBA to hotel employees retroactive to 1 January 2001, already rendered the DOLE-NCR Order moot and academic. With the increase in the salaries of the hotel employees ordered by the NLRC Decision of 9 October 2002, along with the hotel employees' share in the service charges, the 144 hotel employees, covered by the DOLE-NCR Order of 22 October 2002, would already be receiving salaries beyond the coverage of WO No. 9.

Acting on the Motion for Reconsideration of Dusit Hotel, DOLE-NCR issued a Resolution[14] on 27 December 2002, setting aside its earlier Order dated 22 October 2002 for being moot and academic, in consideration of the NLRC Decision dated 9 October 2002; and dismissing the complaint of the Union against Dusit Hotel, for non-compliance with WO No. 9, for lack of merit.

The Union appealed[15] the 27 December 2002 Resolution before the DOLE Secretary maintaining that the wage increases granted by the NLRC Decision of 9 October 2002 should not be deemed as compliance by Dusit Hotel with WO No. 9.

The DOLE, through Acting Secretary Manuel G. Imson, issued an Order[16] dated 22 July 2004 granting the appeal of the Union. The DOLE Secretary reasoned that the NLRC Decision dated 9 October 2002 categorically declared that the wage increase under the CBA finalized between Dusit Hotel and the Union shall not be credited as compliance with WOs No. 8 and No. 9. Furthermore, Section 1 of Rule IV of the Rules Implementing WO No. 9, which provides that wage increases granted by an employer in an organized establishment within three months prior to the effectivity of said Wage Order shall be credited as compliance with the ECOLA prescribed therein, applies only when an agreement to this effect has been forged between the parties or a provision in the CBA allowing such crediting exists. Hence, the DOLE Secretary held:

WHEREFORE, premises considered, the appeal is hereby GRANTED. The Resolution dated December 27, 2002 issued by the Regional Director is SET ASIDE and his Order dated October 22, 2002 is hereby REINSTATED. Dusit Hotel Nikko Manila is hereby ordered to pay its One Hundred Forty Four (144) employees the aggregate amount of One Million Two Hundred Eighteen Thousand Two Hundred Forty Pesos (Php1,218,240.00) representing their Emergency Cost Of Living Allowance (ECOLA) under Wage Order No. NCR-09 and the penalty of double indemnity under Republic Act. No. 8188, as amended.[17]

Expectedly, Dusit Hotel sought reconsideration[18] of the 22 July 2004 Order of the DOLE Secretary. In an Order[19] dated 16 December 2004, the DOLE Secretary granted the Motion for Reconsideration of Dusit Hotel and reversed his Order dated 22 July 2004. The DOLE Secretary, in reversing his earlier Order, admitted that he had disregarded therein that the wage increase granted by the NLRC in the latter's Decision dated 9 October 2002 retroacted to 1 January 2001. The said wage increase, taken together with the hotel employees' share in the service charges of Dusit Hotel, already constituted compliance with the WO No. 9. According to the DOLE Secretary:

To stress, the overriding consideration of Wage Order NCR-09 is quite simple, to provide workers with immediate relief through the grant of Emergency Cost of Living Allowance to enable them to cope with the increases in the cost of living. Conformably with the evident intent of the subject Wage Order as expressed in its preamble, this Office finds that the substantial share in the service charge being received by the employees of appellee (Dusit Hotel) more than compensates for the Emergency Cost of Living Allowance of P30.00 given under Wage Order NCR-09.[20]

It was then the turn of the Union to file a Motion for Reconsideration,[21] but it was denied by the DOLE Secretary in an Order[22] dated 13 October 2005. The DOLE Secretary found that it would be unjust on the part of Dusit Hotel if the hotel employees were to enjoy salary increases retroactive to 1 January 2001, pursuant to the

NLRC Decision dated 9 October 2002, and yet said salary increases would be disregarded in determining compliance by the hotel with WO No. 9.

The Union appealed the Orders dated 16 December 2004 and 13 October 2005 of the DOLE Secretary with the Court of Appeals via a Petition for Review[23] under Rule 43 of the Rules of Court. On 10 September 2007, the Court of Appeals promulgated its Decision[24] ruling in favor of the Union. Referring to Section 13 of WO No. 9, the Court of Appeals declared that wage increases/allowances granted by the employer shall not be credited as compliance with the prescribed increase in the same Wage Order, unless so provided in the law or the CBA itself; and there was no such provision in the case at bar. The appellate court also found that Dusit Hotel failed to substantiate its position that receipt by its employees of shares in the service charges collected by the hotel was to be deemed substantial compliance by said hotel with the payment of ECOLA required by WO No. 9. The Court of Appeals adjudged that Dusit Hotel should be liable for double indemnity for its failure to comply with WO No. 9 within five days from receipt of notice. The appellate court stressed that ECOLA is among the laborers' financial gratifications under the law, and is distinct and separate from benefits derived from negotiation or agreement with their employer. In the end, the Court of Appeals disposed:

WHEREFORE, finding the existence of grave abuse of discretion in the issuance of the assailed Orders dated December 16, 2004 and October 13, 2005, the same are hereby REVERSED AND SET ASIDE and the Order dated July 22, 2004 of the respondent DOLE Acting Secretary in OS-LS-0630-2003-0105 is REINSTATED.[25]

The Motion for Reconsideration[26] of Dusit Hotel was denied for lack of merit by the Court of Appeals in its Resolution[27] dated 4 March 2008.

Hence, Dusit Hotel sought recourse from this Court by filing the instant Petition,[28] at the crux of which is the sole issue of whether the 144 hotel employees were still entitled to ECOLA granted by WO No. 9 despite the increases in their salaries, retroactive to 1 January 2001, ordered by NLRC in the latter's Decision dated 9 October 2002.

Section 1 of WO No. 9 very plainly stated that only private sector workers and employees in the NCR receiving daily wage rates of P250.00 to P290.00 shall be entitled to ECOLA. Necessarily, private sector workers and employees receiving daily wages of more than P290.00 were no longer entitled to ECOLA. The ECOLA was to be implemented in two tranches: P15.00/day beginning 5 November 2001; and the full amount of P30.00/day beginning 1 February 2002.

WO No. 9 took effect on 5 November 2001. The Decision rendered by the NLRC on 9 October 2002 ordered Dusit Hotel to grant its employees salary increases retroactive to 1 January 2001 and 1 January 2002. In determining which of its employees were entitled to ECOLA, Dusit Hotel used as bases the daily salaries of its employees, inclusive of the retroactive salary increases. The Union protested and insisted that the bases for the determination of entitlement to ECOLA should be the hotel employees' daily salaries, exclusive of the retroactive salary increases. According to the Union, Dusit Hotel cannot credit the salary increases as compliance with WO No. 9.

Much of the confusion in this case arises from the insistence of the Union to apply Section 13 of WO No. 9, which states:

Section 13. Wage increases/allowances granted by an employer in an organized establishment with three (3) months prior to the effectivity of this Order shall be credited as compliance with the prescribed increase set forth herein, provided the corresponding bargaining agreement provision allowing creditability exists. In the absence of such an agreement or provision in the CBA, any increase granted by the employer shall not be

credited as compliance with the increase prescribed in this Order.

In unorganized establishments, wage increases/allowances granted by the employer within three (3) months prior to the effectivity of this Order shall be credited as compliance therewith.

In case the increases given are less than the prescribed adjustment, the employer shall pay the difference. Such increases shall not include anniversary increases, merit wage increases and those resulting from the regularization or promotion of employees. (Emphasis ours.)

The Union harps on the fact that its CBA with Dusit Hotel does not contain any provision on creditability, thus, Dusit Hotel cannot credit the salary increases as compliance with the ECOLA required to be paid under WO No. 9.

The reliance of the Union on Section 13 of WO No. 9 in this case is misplaced. Dusit Hotel is not contending creditability of the hotel employees' salary increases as compliance with the ECOLA mandated by WO No. 9. Creditability means that Dusit Hotel would have been allowed to pay its employees the salary increases in place of the ECOLA required by WO No. 9. This, however, is not what Dusit Hotel is after. The position of Dusit Hotel is merely that the salary increases should be taken into account in determining the employees' entitlement to ECOLA. The retroactive increases could raise the hotel employees' daily salary rates above P290.00, consequently, placing said employees beyond the coverage of WO No. 9. Evidently, Section 13 of WO No. 9 on creditability is irrelevant and inapplicable herein.

The Court agrees with Dusit Hotel that the increased salaries of the employees should be used as bases for determining whether they were entitled to ECOLA under WO No. 9. The very fact that the NLRC decreed that the salary increases of the Dusit Hotel employees shall be retroactive to 1 January 2001 and 1 January 2002, means that said employees were already supposed to receive the said salary increases beginning on these dates. The increased salaries were the rightful salaries of the hotel employees by 1 January 2001, then again by 1 January 2002. Although belatedly paid, the hotel employees still received their salary increases.

It is only fair and just, therefore, that in determining entitlement of the hotel employees to ECOLA, their increased salaries by 1 January 2001 and 1 January 2002 shall be made the bases. There is no logic in recognizing the salary increases for one purpose (i.e., to recover the unpaid amounts thereof) but not for the other (i.e., to determine entitlement to ECOLA). For the Court to rule otherwise would be to sanction unjust enrichment on the part of the hotel employees, who would be receiving increases in their salaries, which would place them beyond the coverage of Section 1 of WO No. 9, yet still be paid ECOLA under the very same provision.

The NLRC, in its Decision dated 9 October 2002, directed Dusit Hotel to increase the salaries of its employees by P500.00 per month, retroactive to 1 January 2001. After applying the said salary increase, only 82 hotel employees^[29] would have had daily salary rates falling within the range of P250.00 to P290.00. Thus, upon the effectivity of WO No. 9 on 5 November 2001, only the said 82 employees were entitled to receive the first tranche of ECOLA, equivalent to P15.00 per day.

The NLRC Decision dated 9 October 2002 also ordered Dusit Hotel to effect a second round of increase in its employees' salaries, equivalent to P550.00 per month, retroactive to 1 January 2002. As a result of this increase, the daily salary rates of all hotel employees were already above P290.00. Consequently, by 1 January 2002, no more hotel employee was qualified to receive ECOLA.

Given that 82 hotel employees were entitled to receive the first tranche of ECOLA from 5 November 2001 to 31 December 2001, the Court must address the assertion of Dusit Hotel that the receipt by said hotel employees of their shares in the service charges already constituted substantial compliance with the prescribed payment of

ECOLA under WO No. 9.

The Court rules in the negative.

It must be noted that the hotel employees have a right to their share in the service charges collected by Dusit Hotel, pursuant to Article 96 of the Labor Code of 1991, to wit:

Article 96. Service charges. - All service charges collected by hotels, restaurants and similar establishments shall be distributed at the rate of eighty-five percent (85%) for all covered employees and fifteen percent (15%) for management. The share of employees shall be equally distributed among them. In case the service charge is abolished, the share of the covered employees shall be considered integrated in their wages.

Since Dusit Hotel is explicitly mandated by the afore-quoted statutory provision to pay its employees and management their respective shares in the service charges collected, the hotel cannot claim that payment thereof to its 82 employees constitute substantial compliance with the payment of ECOLA under WO No. 9. Undoubtedly, the hotel employees' right to their shares in the service charges collected by Dusit Hotel is distinct and separate from their right to ECOLA; gratification by the hotel of one does not result in the satisfaction of the other.

The Court, however, finds no basis to hold Dusit Hotel liable for double indemnity. Under Section 2(m) of DOLE Department Order No. 10, Series of 1998,[30] the Notice of Inspection Result "shall specify the violations discovered, if any, together with the officer's recommendation and computation of the unpaid benefits due each worker with an advice that the employer shall be liable for double indemnity in case of refusal or failure to correct the violation within five calendar days from receipt of notice." A careful review of the Notice of Inspection Result dated 29 May 2002, issued herein by the DOLE-NCR to Dusit Hotel, reveals that the said Notice did not contain such an advice. Although the Notice directed Dusit Hotel to correct its noted violations within five days from receipt thereof, it was not sufficiently apprised that failure to do so within the given period would already result in its liability for double indemnity. The lack of advice deprived Dusit Hotel of the opportunity to decide and act accordingly within the five-day period, as to avoid the penalty of double indemnity. By 22 October 2002, the DOLE-NCR, through Dir. Maraan, already issued its Order directing Dusit Hotel to pay 144 of its employees the total amount of P1,218,240.00, corresponding to their unpaid ECOLA under WO No. 9; plus the penalty of double indemnity, pursuant to Section 12 of Republic Act No. 6727, as amended by Republic Act No. 8188.[31]

Although the Court is mindful of the fact that labor embraces individuals with a weaker and unlettered position as against capital, it is equally mindful of the protection that the law accords to capital. While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. Management also has its own rights which, as such, are entitled to respect and enforcement in the interest of simple fair play.[32]

In sum, the Court holds that the retroactive salary increases should be taken into account in the determination of which hotel employees were entitled to ECOLA under WO No. 9. After applying the salary increases retroactive to 1 January 2001, 82 hotel employees still had daily salary rates between P250.00 and P290.00, thus, entitling them to receive the first tranche of ECOLA, equivalent to P15.00 per day, beginning 5 November 2001, the date of effectivity of WO No. 9, until 31 December 2001. Following the second round of salary increases retroactive to 1 January 2002, all the hotel employees were already receiving daily salary rates above P290.00, hence, leaving no one qualified to receive ECOLA. Receipt by the 82 hotel employees of their shares from the service charges collected by Dusit Hotel shall not be deemed payment of their ECOLA from 5 November 2001 to 31 December 2001.

WHEREFORE, premises considered, the Decision dated 10 September 2007 and the Resolution dated 4 March

2008 of the Court of Appeals in CA-G.R. SP No. 92798 are hereby AFFIRMED WITH THE FOLLOWING MODIFICATIONS: (1) Dusit Hotel Nikko is ORDERED to pay its 82 employees - who, after applying the salary increases for 1 January 2001, had daily salaries of P250.00 to P290.00 - the first tranche of Emergency Cost of Living Allowance, equivalent to P15.00 per day, from 5 November 2001 to 31 December 2001, within ten (10) days from finality of this Decision; and (2) the penalty for double indemnity is DELETED. No costs.

SO ORDERED.

Carpio Morales,[*] Velasco, Jr., Nachura, and Peralta, JJ., concur.
Chico-Nazario,**] J., Acting Chairperson,

[*] Per Special Order No. 679, dated 3 August 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Conchita Carpio Morales to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

[**] Per Special Order No. 681, dated 3 August 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Minita V. Chico-Nazario as Acting Chairperson to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

[1] Penned by Associate Justice Sesinando E. Villon with Associate Justices Martin S. Villarama, Jr. and Noel G. Tijam., concurring. Rollo, pp. 72-82.

[2] Owned by petitioner Philippine Hoteliers, Inc. (PHI). Any reference in the Decision to Dusit Hotel, must also be deemed applicable to PHI.

[3] Rollo, pp. 84-90.

[4] Id. at 92.

[5] Rollo, p. 94.

[6] CA rollo, p. 53.

[7] Rollo, p. 181.

[8] Id. at 94.

[9] Id. at 103-149.

[10] Id. at 97-102.

[11] Wage Rationalization Act.

[12] Double Indemnity Act.

[13] Id. at 150-167.

[14] Id. at 183-185.

[15] Id. at 186-199.

[16] Id. at 202-206.

[17] Id. at 205-206.

[18] Id. at 207-227.

[19] Id. at 412-421.

[20] Id. at 415.

[21] Id. at 422-439.

[22] Id. at 442-443.

[23] Id. at 444-474.

[24] Id. at 72-82.

[25] Id. at 81.

[26] CA rollo, pp. 487-516.

[27] Id. at 578-584.

[28] Rollo, pp. 26-67.

[29] Id. at 923-925.

[30] Guidelines on the Imposition of Double Indemnity for Non-Compliance with the Prescribed Increases or Adjustments in Wage Rates.

[31] Constitutes the compliance order, defined under Section 2(n) of DOLE Department Order No. 10 as "the order issued by the regional director, after due notice and hearing conducted by himself or a duly authorized hearing officer finding that a violation has been committed and directing the employer to pay the amount due each worker within ten (10) calendar days from receipt thereof."

[32] *Sosito v. Aguinaldo Development Corporation*, 240 Phil. 373, 377 (1987); *Rapid Manpower Consultants, Inc. v. National Labor Relations Commission*, G.R. No. 88683, 18 October 1990, 190 SCRA 747, 752.

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