RODOLFO J. SERRANO, PETITIONER, VS. SEVERINO SANTOS TRANSIT AND/OR SEVERINO SANTOS, RESPONDENTS.

G.R. No. 187698. August 09, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Petitioner Rodolfo J. Serrano was hired on September 28, 1992 as bus conductor by respondent Severino Santos Transit, a bus company owned and operated by its co-respondent Severino Santos.

After 14 years of service or on July 14, 2006, petitioner applied for optional retirement from the company whose representative advised him that he must first sign the already prepared Quitclaim before his retirement pay could be released. As petitioner's request to first go over the computation of his retirement pay was denied, he signed the Quitclaim on which he wrote "U.P." (under protest) after his signature, indicating his protest to the amount of P75,277.45 which he received, computed by the company at 15 days per year of service.

Petitioner soon after filed a complaint[1] before the Labor Arbiter, alleging that the company erred in its computation since under Republic Act No. 7641, otherwise known as the Retirement Pay Law, his retirement pay should have been computed at 22.5 days per year of service to include the cash equivalent of the 5-day service incentive leave (SIL) and [1]/12 of the 13[th] month pay which the company did not.

The company maintained, however, that the Quitclaim signed by petitioner barred his claim and, in any event, its computation was correct since petitioner was not entitled to the 5-day SIL and pro-rated 13[th] month pay for, as a bus conductor, he was paid on commission basis. Respondents, noting that the retirement differential pay amounted to only P1,431.15, explained that in the computation of petitioner's retirement pay, five months were inadvertently not included because some index cards containing his records had been lost.

By Decision[2] of February 15, 2007, Labor Arbiter Cresencio Ramos, Jr. ruled in favor of petitioner, awarding him P116,135.45 as retirement pay differential, and 10% of the total monetary award as attorney's fees. In arriving at such computation, the Labor Arbiter ratiocinated:

> In the same Labor Advisory on Retirement Pay Law, it was likewise decisively made clear that "the law expanded the concept of "one-half month salary" from the usual one-month salary divided by two", to wit:
>
> B. COMPUTATION OF RETIREMENT PAY
>
> A covered employee who retires pursuant to RA 7641 shall be entitled to retirement pay equivalent to at least one-half ([1]/12) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.
>
> The law is explicit that "one-half month salary shall mean fifteen (15) days plus one-twelfth ([1]/12) of the 13[th] month pay and the cash equivalent of not more than five (5) days service incentive leaves" unless the parties provide for broader inclusions. Evidently, the law expanded the concept of "one-half month salary" from the usual one-month salary divided by two.

The retirement pay is equal to half-month's pay per year of service. But "half-month's pay" is "expanded" because it means not just the salary for 15 days but also one-twelfth of the 13th-month pay and the cash value of five-day service incentive leave. THIS IS THE MINIMUM. The retirement pay package can be improved upon by voluntary company policy, or particular agreement with the employee, or through a collective bargaining agreement." (The Labor Code with Comments and Cases, C.A. Azcunea, Vol. II, page 765, Fifth Edition 2004).

Thus, having established that 22.5 days pay per year of service is the correct formula in arriving at the complete retirement pay of complainant and inasmuch as complainant's daily earning is based on commission earned in a day, which varies each day, the next critical issue that needs discernment is the determination of what is a fair and rational amount of daily earning of complainant to be used in the computation of his retirement pay.

While complainant endeavored to substantiate his claim that he earned average daily commission of P700.00, however, the documents he presented are not complete, simply representative copies, therefore unreliable. On the other haNd, while respondents question complainant's use of P700.00 (daily income) as basis in determining the latter's correct retirement pay, however it does not help their defense that they did not present a single Conductor's Trip Report to contradict the claim of complainant. Instead, respondents adduced a handwritten summary of complainant's monthly income from 1993 until June 2006. It must be noted also that complainant did not contest the amounts stated on the summary of his monthly income as reported by respondents. Given the above considerations, and most importantly that complainant did not dispute the figures stated in that document, we find it logical, just and equitable for both parties to rely on the summary of monthly income provided by respondent, thus, we added complainant's monthly income from June 2005 until June 2006 or the last twelve months and we arrived at P189,591.30) and we divided it by twelve (12) to arrive at complainant's average monthly earning of P15,799.28. Thereafter, the average monthly of P15,799.28 is divided by twenty-six (26) days, the factor commonly used in determining the regular working days in a month, to arrive at his average daily income of P607.66. Finally, P607.66 (average daily income) x 22.5 days = P13,672.35 x 14 (length of service) = P191,412.90 (COMPLETE RETIREMENT PAY). However, inasmuch as complainant already received P75,277.45, the retirement differential pay due him is P116,135.45 (P191,412.90 - P75,277.45). (underscoring partly in the original and partly supplied)

The National Labor Relations Commission (NLRC) to which respondents appealed reversed the Labor Arbiter's ruling and dismissed petitioner's complaint by Decision[3] dated April 23, 2008. It, however, ordered respondents to pay retirement differential in the amount of P2,365.35.

Citing R & E Transport, Inc. v. Latag,[4] the NLRC held that since petitioner was paid on purely commission basis, he was excluded from the coverage of the laws on 13[th] month pay and SIL pay, hence, the [1]/12 of the 13[th] month pay and the 5-day SIL should not be factored in the computation of his retirement pay.

Petitioner's motion for reconsideration having been denied by Resolution[5] of June 27, 2008, he appealed to the Court of Appeals.

By the assailed Decision[6] of February 11, 2009, the appellate court affirmed the NLRC's ruling, it merely holding that it was based on substantial evidence, hence, should be respected.

Petitioner's motion for reconsideration was denied, hence, the present petition for review on certiorari.

The petition is meritorious.

Republic Act No. 7641 which was enacted on December 9, 1992 amended Article 287 of the Labor Code by providing for retirement pay to qualified private sector employees in the absence of any retirement plan in the establishment. The pertinent provision of said law reads:

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> Section 1. Article 287 of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, is hereby amended to read as follows:
>
> 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.
>
> Retail, service and agricultural establishments or operations employing not more than (10) employees or workers are exempted from the coverage of this provision.
>
> x x x x (emphasis and underscoring supplied)

Further, the Implementing Rules of said law provide:

> RULE II
> Retirement Benefits
> SECTION 1.
>
> General Statement on Coverage. -- This Rule shall apply to all employees in the private sector, regardless of their position, designation or status and irrespective of the method by which their wages are paid, except to those specifically exempted under Section 2 hereof. As used herein, the term "Act" shall refer to Republic Act No. 7641 which took effect on January 7, 1993.
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> SECTION 2
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> Exemptions. -- This Rule shall not apply to the following employees:
>
> 2.1 Employees of the National Government and its political subdivisions, including Government-owned and/or controlled corporations, if they are covered by the Civil Service Law and its regulations.
>
> 2.2 Domestic helpers and persons in the personal service of another.
>
> 2.3 Employees of retail, service and agricultural establishment or operations regularly employing not more than ten (10) employees. As used in this sub-section;
>
> 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 (â€-) 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 (â€-) 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 of 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 of 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 allowances, 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 13th 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.
>
> x x x x (emphasis supplied)

Admittedly, petitioner worked for 14 years for the bus company which did not adopt any retirement scheme. Even if petitioner as bus conductor was paid on commission basis then, he falls within the coverage of R.A. 7641 and its implementing rules. As thus correctly ruled by the Labor Arbiter, petitioner's retirement pay should include the cash equivalent of the 5-day SIL and [1]/12 of the 13[th] month pay.

The affirmance by the appellate court of the reliance by the NLRC on R & E Transport, Inc. is erroneous. In said case, the Court held that a taxi driver paid according to the "boundary system" is not entitled to the 13[th] month and the SIL pay, hence, his retirement pay should be computed on the sole basis of his salary.

For purposes, however, of applying the law on SIL, as well as on retirement, the Court notes that there is a difference between drivers paid under the "boundary system" and conductors who are paid on commission basis.

In practice, taxi drivers do not receive fixed wages. They retain only those sums in excess of the "boundary" or fee they pay to the owners or operators of the vehicles.[7] Conductors, on the other hand, are paid a certain percentage of the bus' earnings for the day.

It bears emphasis that under P.D. 851 or the SIL Law, the exclusion from its coverage of workers who are paid on a purely commission basis is only with respect to field personnel. The more recent case of Auto Bus Transport Systems, Inc., v. Bautista[8] clarifies that an employee who is paid on purely commission basis is entitled to SIL:

> A careful perusal of said provisions of law will result in the conclusion that the grant of service incentive leave has been delimited by the Implementing Rules and Regulations of the Labor Code to apply only to those employees not explicitly excluded by Section 1 of Rule V. According to the Implementing Rules, Service Incentive Leave shall not apply to employees classified as "field personnel." The phrase "other employees whose performance is unsupervised by the employer" must not be understood as a separate classification of employees to which service incentive leave shall not be granted. Rather, it serves as an amplification of the interpretation of the definition of field personnel under the Labor Code as those "whose actual hours of work in the field cannot be determined with reasonable certainty."
>
> The same is true with respect to the phrase "those who are engaged on task or contract basis, purely commission basis." Said phrase should be related with "field personnel," applying the rule on ejusdem generis that general and unlimited terms are restrained and limited by the particular terms that they follow. Hence, employees engaged on task or contract basis or paid on purely commission basis are not automatically exempted from the grant of service incentive leave, unless, they fall under the classification of field personnel.
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> x x x x
>
> According to Article 82 of the Labor Code, "field personnel" shall refer to non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and

> whose actual hours of work in the field cannot be determined with reasonable certainty. This definition is further elaborated in the Bureau of Working Conditions (BWC), Advisory Opinion to Philippine Technical-Clerical Commercial Employees Association which states that:
>
> As a general rule, [field personnel] are those whose performance of their job/service is not supervised by the employer or his representative, the workplace being away from the principal office and whose hours and days of work cannot be determined with reasonable certainty; hence, they are paid specific amount for rendering specific service or performing specific work. If required to be at specific places at specific times, employees including drivers cannot be said to be field personnel despite the fact that they are performing work away from the principal office of the employee.
>
> x x x x (emphasis, italics and underscoring supplied)

WHEREFORE, the petition is GRANTED. The Court of Appeals Decision of February 11, 2009 and Resolution of April 28, 2009 are REVERSED and SET ASIDE and the Labor Arbiter's Decision dated February 15, 2007 is REINSTATED.

SO ORDERED.

Brion, Bersamin, Abad,[*]and Villarama, Jr., JJ., concur.

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[*] Designated as Additional Member, per Special Order No. 843 (May 17, 2010), in view of the vacancy occasioned by the retirement of Chief Justice Reynato S. Puno.

[1] CA rollo, p. 38.

[2] Id. at 96-105. Penned by Labor Arbiter Cresencio Ramos, Jr.

[3] Id. at 26-34. Penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan (now Associate Justice of the Court of Appeals)

[4] G.R. No. 155214, February 13, 2004, 698 SCRA 422.

[5] CA rollo, pp. 35-37. Penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan (now Associate Justice of the Court of Appeals)

[6] Id. at 195-202. Penned by Associate Justice Jose C. Reyes, Jr., and concurred in by Associate Justices Andres B. Reyes, Jr. (now Presiding Justice) and Normandie B. Pizarro.

[7] Jardin v. NLRC, G.R. No. 119268, February 23, 2000, 326 SCRA 299, 308.

[8] G.R. No. 156367, May 16, 2005, 458 SCRA 578, 587-588.

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