

CENTRAL AZUCARERA DE TARLAC, PETITIONER, VS. CENTRAL AZUCARERA DE TARLAC LABOR UNION-NLU, RESPONDENT.

G.R. No. 188949. July 26, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court, assailing the Decision[1] dated May 28, 2009, and the Resolution[2] dated July 28, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 106657.

The factual antecedents of the case are as follows:

Petitioner is a domestic corporation engaged in the business of sugar manufacturing, while respondent is a legitimate labor organization which serves as the exclusive bargaining representative of petitioner's rank-and-file employees. The controversy stems from the interpretation of the term "basic pay," essential in the computation of the 13[th]-month pay.

The facts of this case are not in dispute. In compliance with Presidential Decree (P.D.) No. 851, petitioner granted its employees the mandatory thirteenth (13[th]) - month pay since 1975. The formula used by petitioner in computing the 13[th]-month pay was: Total Basic Annual Salary divided by twelve (12). Included in petitioner's computation of the Total Basic Annual Salary were the following: basic monthly salary; first eight (8) hours overtime pay on Sunday and legal/special holiday; night premium pay; and vacation and sick leaves for each year. Throughout the years, petitioner used this computation until 2006.[3]

On November 6, 2004, respondent staged a strike. During the pendency of the strike, petitioner declared a temporary cessation of operations. In December 2005, all the striking union members were allowed to return to work. Subsequently, petitioner declared another temporary cessation of operations for the months of April and May 2006. The suspension of operation was lifted on June 2006, but the rank-and-file employees were allowed to report for work on a fifteen (15) day-per-month rotation basis that lasted until September 2006. In December 2006, petitioner gave the employees their 13[th]-month pay based on the employee's total earnings during the year divided by 12.[4]

Respondent objected to this computation. It averred that petitioner did not adhere to the usual computation of the 13[th]-month pay. It claimed that the divisor should have been eight (8) instead of 12, because the employees worked for only 8 months in 2006. It likewise asserted that petitioner did not observe the company practice of giving its employees the guaranteed amount equivalent to their one month pay, in instances where the computed 13[th]-month pay was less than their basic monthly pay.[5]

Petitioner and respondent tried to thresh out their differences in accordance with the grievance procedure as provided in their collective bargaining agreement. During the grievance meeting, the representative of petitioner explained that the change in the computation of the 13[th]-month pay was intended to rectify an error in the

computation, particularly the concept of basic pay which should have included only the basic monthly pay of the employees.[6]

For failure of the parties to arrive at a settlement, respondent applied for preventive mediation before the National Conciliation and Mediation Board. However, despite four (4) conciliatory meetings, the parties still failed to settle the dispute. On March 29, 2007, respondent filed a complaint against petitioner for money claims based on the alleged diminution of benefits/erroneous computation of 13[th]-month pay before the Regional Arbitration Branch of the National Labor Relations Commission (NLRC).[7]

On October 31, 2007, the Labor Arbiter rendered a Decision[8] dismissing the complaint and declaring that the petitioner had the right to rectify the error in the computation of the 13[th]-month pay of its employees.[9] The fallo of the Decision reads:

WHEREFORE, premises considered, the complaint filed by the complainants against the respondents should be DISMISSED with prejudice for utter lack of merit.

SO ORDERED.[10]

Respondents filed an appeal. On August 14, 2008, the NLRC rendered a Decision[11] reversing the Labor Arbiter. The dispositive portion of the Decision reads:

WHEREFORE, the decision appealed is reversed and set aside and respondent-appellee Central Azucarera de Tarlac is hereby ordered to adhere to its established practice of granting 13[th][-] month pay on the basis of gross annual basic which includes basic pay, premium pay for work in rest days and special holidays, night shift differential and paid vacation and sick leaves for each year.

Additionally, respondent-appellee is ordered to observe the guaranteed one[-]month pay by way of 13[th] month pay.

SO ORDERED. [12]

Petitioner filed a motion for reconsideration. However, the same was denied in a Resolution dated November 27, 2008. Petitioner then filed a petition for certiorari under Rule 65 of the Rules of Court before the CA.[13]

On May 28, 2009, the CA rendered a Decision[14] dismissing the petition, and affirming the decision and resolution of the NLRC, viz.:

WHEREFORE, the foregoing considered, the petition is hereby DISMISSED and the assailed August 14, 2008 Decision and November 27, 2008 Resolution of the NLRC, are hereby AFFIRMED. No costs.

SO ORDERED.[15]

Aggrieved, petitioner filed the instant petition, alleging that the CA committed a reversible error in affirming the Decision of the NLRC, and praying that the Decision of the Labor Arbiter be reinstated.

The petition is denied for lack of merit.

The 13[th]-month pay mandated by Presidential Decree (P.D.) No. 851 represents an additional income based on wage but not part of the wage. It is equivalent to one-twelfth (1/12) of the total basic salary earned by an employee within a calendar year. All rank-and-file employees, regardless of their designation or employment status and irrespective of the method by which their wages are paid, are entitled to this benefit, provided that they have worked for at least one month during the calendar year. If the employee worked for only a portion of the year, the 13[th]-month pay is computed pro rata.[16]

Petitioner argues that there was an error in the computation of the 13[th]-month pay of its employees as a result of its mistake in implementing P.D. No. 851, an error that was discovered by the management only when respondent raised a question concerning the computation of the employees'

13[th]-month pay for 2006. Admittedly, it was an error that was repeatedly committed for almost thirty (30) years. Petitioner insists that the length of time during which an employer has performed a certain act beneficial to the employees, does not prove that such an act was not done in error. It maintains that for the claim of mistake to be negated, there must be a clear showing that the employer had freely, voluntarily, and continuously performed the act, knowing that he is under no obligation to do so. Petitioner asserts that such voluntariness was absent in this case.[17]

The Rules and Regulations Implementing P.D. No. 851, promulgated on December 22, 1975, defines 13[th]-month pay and basic salary as follows:

Sec. 2. Definition of certain terms. - As used in this issuance:

(a) "Thirteenth-month pay" shall mean one twelfth (1/12) of the basic salary of an employee within a calendar year;

(b) "Basic salary" shall include all remunerations or earnings paid by an employer to an employee for services rendered but may not include cost-of-living allowances granted pursuant to Presidential Decree No. 525 or Letter of Instructions No. 174, profit-sharing payments, and all allowances and monetary benefits which are not considered or integrated as part of the regular or basic salary of the employee at the time of the promulgation of the Decree on December 16, 1975.

On January 16, 1976, the Supplementary Rules and Regulations Implementing P.D. No. 851 was issued. The Supplementary Rules clarifies that overtime pay, earnings, and other remuneration that are not part of the basic salary shall not be included in the computation of the 13[th]-month pay.

On November 16, 1987, the Revised Guidelines on the Implementation of the 13[th]-Month Pay Law was issued. Significantly, under this Revised Guidelines, it was specifically stated that the minimum 13[th]-month pay required by law shall not be less than one-twelfth (1/12) of the total basic salary earned by an employee within a calendar year.

Furthermore, the term "basic salary" of an employee for the purpose of computing the 13[th]-month pay was interpreted to include all remuneration or earnings paid by the employer for services rendered, but does not include allowances and monetary benefits which are not integrated as part of the regular or basic salary, such as the cash equivalent of unused vacation and sick leave credits, overtime, premium, night differential and holiday pay, and cost-of-living allowances. However, these salary-related benefits should be included as part of the basic salary in the computation of the 13[th]-month pay if, by individual or collective agreement, company practice or policy, the same are treated as part of the basic salary of the employees.

Based on the foregoing, it is clear that there could have no erroneous interpretation or application of what is included in the term "basic salary" for purposes of computing the 13[th]-month pay of employees. From the inception of P.D. No. 851 on December 16, 1975, clear-cut administrative guidelines have been issued to insure uniformity in the interpretation, application, and enforcement of the provisions of P.D. No. 851 and its implementing regulations.

As correctly ruled by the CA, the practice of petitioner in giving 13[th]-month pay based on the employees' gross annual earnings which included the basic monthly salary, premium pay for work on rest days and special holidays, night shift differential pay and holiday pay continued for almost thirty (30) years and has ripened into a

company policy or practice which cannot be unilaterally withdrawn.

Article 100 of the Labor Code, otherwise known as the Non-Diminution Rule, mandates that benefits given to employees cannot be taken back or reduced unilaterally by the employer because the benefit has become part of the employment contract, written or unwritten. [18] The rule against diminution of benefits applies if it is shown that the grant of the benefit is based on an express policy or has ripened into a practice over a long period of time and that the practice is consistent and deliberate. Nevertheless, the rule will not apply if the practice is due to error in the construction or application of a doubtful or difficult question of law. But even in cases of error, it should be shown that the correction is done soon after discovery of the error.[19]

The argument of petitioner that the grant of the benefit was not voluntary and was due to error in the interpretation of what is included in the basic salary deserves scant consideration. No doubtful or difficult question of law is involved in this case. The guidelines set by the law are not difficult to decipher. The voluntariness of the grant of the benefit was manifested by the number of years the employer had paid the benefit to its employees. Petitioner only changed the formula in the computation of the 13th-month pay after almost 30 years and only after the dispute between the management and employees erupted. This act of petitioner in changing the formula at this time cannot be sanctioned, as it indicates a badge of bad faith.

Furthermore, petitioner cannot use the argument that it is suffering from financial losses to claim exemption from the coverage of the law on 13th-month pay, or to spare it from its erroneous unilateral computation of the 13th-month pay of its employees. Under Section 7 of the Rules and Regulations Implementing P.D. No. 851, distressed employers shall qualify for exemption from the requirement of the Decree only upon prior authorization by the Secretary of Labor.[20] In this case, no such prior authorization has been obtained by petitioner; thus, it is not entitled to claim such exemption.

WHEREFORE, the Decision dated May 28, 2009 and the Resolution dated July 28, 2009 of the Court of Appeals in CA-G.R. SP No. 106657 are hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Carpio, (Chairperson), Nachura, Peralta, Abad, and Mendoza, JJ., concur.

[1] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Arcangelita M. Romilla-Lontok and Romeo F. Barza, concurring; rollo, pp. 32-42.

[2] Id. at 44-47.

[3] Id. at 33.

[4] Id. at 34.

[5] Id. at 34; 74.

[6] Id. at 34.

[7] Id. at 34-35.

[8] Penned by Labor Arbiter Mariano L. Bactin; id. at 51-64.

[9] Id. at 35.

[10] Id. at 64.

[11] Penned by Commissioner Isabel G. Panganiban-Ortiguerra, with Presiding Commissioner Benedicto R. Palacol and Nieves Vivar-de Castro, concurring; *id.* at 72-87.

[12] *Id.* at 86-87.

[13] *Id.* at 35-36.

[14] *Supra* note 1.

[15] Rollo, p. 42.

[16] Azucena, Jr., Cesario Alvero, *Everyone's Labor Code*, 2001 edition, p. 79.

[17] Rollo, pp. 22-24.

[18] *Philippine Airlines, Inc. v. NLRC*, 328 Phil. 826 (1996).

[19] *Supra* note 16, at 78.

[20] See *Dentech Manufacturing Corporation v. NLRC*, 254 Phil. 603 (1989).

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