

**OUR HAUS REALTY DEVELOPMENT CORPORATION, PETITIONER,
VS. ALEXANDER PARIAN, JAY C. ERINCO, ALEXANDER CANLAS,
BERNARD TENEDERO AND JERRY SABULAO, RESPONDENTS.**

G.R. No. 204651. August 06, 2014

Ponente: BRION, J.

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BRION, J.:

We resolve in this petition for review on certiorari[1] the challenge to the May 7, 2012 decision[2] and the November 27, 2012 resolution[3] (assailed CA rulings) of the Court of Appeals (CA) in CA-G.R. SP No. 123273. These assailed CA rulings affirmed the July 20, 2011 decision[4] and the December 2, 2011 resolution[5] (NLRC rulings) of the National Labor Relations Commission (NLRC) in NLRC LAC No. 02-000489-11 (NLRC NCR Case No. 06-08544-10). The NLRC rulings in turn reversed and set aside the December 10, 2010 decision[6] of the labor arbiter (LA).

Factual Antecedents

Respondents Alexander Parian, Jay Erinco, Alexander Canlas, Jerry Sabulao and Bernardo Tenedero were all laborers working for petitioner Our Haus Realty Development Corporation (Our Haus), a company engaged in the construction business. The respondents' respective employment records and daily wage rates from 2007 to 2010 are summarized in the table[7] below:

Name

Date

Hired

Years of

Service

Year and Place of

Assignment

Daily Rate

Alexander M. Parian

October 1999

10 years

2007-2010- Quezon City

P353.50

Jay C. Erinco

January 2000

10 years

2008- Quezon City

2009- Antipolo

2010- Quezon City

P342.00

Alexander R. Canlas

2005

5 years

2007-2010- Quezon City

P312.00

Jerry Q. Sabulao

August 1999

10 years

2008- Quezon City

2009- Antipolo

2010- Quezon City

P342.00

Bernardo N. Tenedero

1994

16 years

2007-2010- Quezon City

P383.50

Sometime in May 2010, Our Haus experienced financial distress. To alleviate its condition, Our Haus suspended some of its construction projects and asked the affected workers, including the respondents, to take vacation leaves.[8]

Eventually, the respondents were asked to report back to work but instead of doing so, they filed with the LA a complaint for underpayment of their daily wages. They claimed that except for respondent Bernardo N. Tenedero, their wages were below the minimum rates prescribed in the following wage orders from 2007 to 2010:

- Wage Order No. NCR-13, which provides for a daily minimum wage rate of P362.00 for the non-agriculture sector (effective from August 28, 2007 until June 13, 2008); and

- Wage Order No. NCR-14, which provides for a daily minimum wage rate of P382.00 for the non-agriculture sector (effective from June 14, 2008 until June 30, 2010).

The respondents also alleged that Our Haus failed to pay them their holiday, service incentive leave (SIL), 13th month and overtime pays.[9]

The Labor Arbitration Rulings

Before the LA, Our Haus primarily argued that the respondents' wages complied with the law's minimum requirement. Aside from paying the monetary amount of the respondents' wages, Our Haus also subsidized their meals (3 times a day), and gave them free lodging near the construction project they were assigned to.[10] In determining the total amount of the respondents' daily wages, the value of these benefits should be considered, in line with Article 97(f)[11] of the Labor Code.

Our Haus also rejected the respondents' other monetary claims for lack of proof that they were entitled to it.[12]

On the other hand, the respondents argued that the value of their meals should not be considered in determining their wages' total amount since the requirements set under Section 4[13] of DOLE[14] Memorandum Circular No. 2[15] were not complied with.

The respondents pointed out that Our Haus never presented any proof that they agreed in writing to the inclusion of their meals' value in their wages.[16] Also, Our Haus failed to prove that the value of the facilities it furnished was fair and reasonable.[17] Finally, instead of deducting the maximum amount of 70% of the value of the meals, Our Haus actually withheld its full value (which was Php290.00 per week for each employee).[18]

The LA ruled in favor of Our Haus. He held that if the reasonable values of the board and lodging would be taken into account, the respondents' daily wages would meet the minimum wage rate.[19] As to the other benefits, the LA found that the respondents were not able to substantiate their claims for it.[20]

The respondents appealed the LA's decision to the NLRC, which in turn, reversed it. Citing the case of *Mayon Hotel & Restaurant v. Adana*,[21] the NLRC noted that the respondents did not authorize Our Haus in writing to charge the values of their board and lodging to their wages. Thus, the same cannot be credited.

The NLRC also ruled that the respondents are entitled to their respective proportionate 13th month payments for the year 2010 and SIL payments for at least three years, immediately preceding May 31, 2010, the date when the respondents left Our Haus. However, the NLRC sustained the LA's ruling that the respondents were not entitled to overtime pay since the exact dates and times when they rendered overtime work had not been proven.[22]

Our Haus moved for the reconsideration[23] of the NLRC's decision and submitted new evidence (the five kasunduans) to show that the respondents authorized Our Haus in writing to charge the values of their meals and lodging to their wages.

The NLRC denied Our Haus' motion, thus it filed a Rule 65 petition[24] with the CA. In its petition, Our Haus propounded a new theory. It made a distinction between deduction and charging. A written authorization is only necessary if the facility's value will be deducted and will not be needed if it will merely be charged or included in the computation of wages.[25] Our Haus claimed that it did not actually deduct the values of the meals and housing benefits. It only considered these in computing the total amount of wages paid to the respondents for purposes of compliance with the minimum wage law. Hence, the written authorization requirement should not apply.

Our Haus also asserted that the respondents' claim for SIL pay should be denied as this was not included in their pro forma complaint. Lastly, it questioned the respondents' entitlement to attorney's fees because they were not

represented by a private lawyer but by the Public Attorney's Office (PAO).

The CA's Ruling

The CA dismissed Our Haus' certiorari petition and affirmed the NLRC rulings in toto. It found no real distinction between deduction and charging,[26] and ruled that the legal requirements before any deduction or charging can be made, apply to both. Our Haus, however, failed to prove that it complied with any of the requirements laid down in *Mabeza v. National Labor Relations Commission*. [27] Accordingly, it cannot consider the values of its meal and housing facilities in the computation of the respondents' total wages.

Also, the CA ruled that since the respondents were able to allege non-payment of SIL in their position paper, and Our Haus, in fact, opposed it in its various pleadings,[28] then the NLRC properly considered it as part of the respondents' causes of action. Lastly, the CA affirmed the respondent's entitlement to attorney's fees.[29]

Our Haus filed a motion for reconsideration but the CA denied its motion, prompting it to file the present petition for review on certiorari under Rule 45.

The Petition

Our Haus submits that the CA erred in ruling that the legal requirements apply without distinction — whether the facility's value will be deducted or merely included in the computation of the wages. At any rate, it complied with the requirements for deductibility of the value of the facilities. First, the five kasunduans executed by the respondents constitute the written authorization for the inclusion of the board and lodging's values to their wages. Second, Our Haus only withheld the amount of P290.00 which represents the food's raw value; the weekly cooking cost (cook's wage, LPG, water) at P239.40 per person is a separate expense that Our Haus did not withhold from the respondents' wages.[30] This disproves the respondents' claim that it deducted the full amount of the meals' value.

Lastly, the CA erred in ruling that the claim for SIL pay may still be granted though not raised in the complaint; and that the respondents are entitled to an award of attorney's fees.[31]

The Case for the Respondents

The respondents prayed for the denial of the petition.[32] They maintained that the CA did not err in ruling that the values of the board and lodging cannot be deducted from their wages for failure to comply with the requirements set by law.[33] And though the claim for SIL pay was not included in their pro forma complaint, they raised their claims in their position paper and Our Haus had the opportunity to contradict it in its pleadings.[34]

Finally, under the PAO law, the availment of the PAO's legal services does not exempt its clients from an award of attorney's fees.[35]

The Court's Ruling

We resolve to DENY the petition.

The nature of a Rule 45 petition — only questions of law

Basic is the rule that only questions of law may be raised in a Rule 45 petition.[36] However, in this case, we are confronted with mixed questions of fact and law that are subsumed under the issue of whether Our Haus complied with the legal requirements on the deductibility of the value of facilities. Strictly, factual issues cannot be considered under Rule 45 except in the course of resolving if the CA correctly determined whether or not the NLRC committed grave abuse of discretion in considering and appreciating the factual issues before it.[37]

In ruling for legal correctness, we have to view the CA decision in the same context that the petition for certiorari it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision, on the merits of the case, was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. In question form, the question to ask in the present case is: did the CA correctly determine that the NLRC did not commit grave abuse of discretion in ruling on the case?[38] We rule that the CA correctly did.

No substantial distinction between deducting and charging a facility's value from the employee's wage; the legal requirements for creditability apply to both

To justify its non-compliance with the requirements for the deductibility of a facility, Our Haus asks us to believe that there is a substantial distinction between the deduction and the charging of a facility's value to the wages. Our Haus explains that in deduction, the amount of the wage (which may already be below the minimum) would still be lessened by the facility's value, thus needing the employee's consent. On the other hand, in charging, there is no reduction of the employee's wage since the facility's value will just be theoretically added to the wage for purposes of complying with the minimum wage requirement.[39]

Our Haus' argument is a vain attempt to circumvent the minimum wage law by trying to create a distinction where none exists.

In reality, deduction and charging both operate to lessen the actual take-home pay of an employee; they are two sides of the same coin. In both, the employee receives a lessened amount because supposedly, the facility's value, which is part of his wage, had already been paid to him in kind. As there is no substantial distinction between the two, the requirements set by law must apply to both.

As the CA correctly ruled, these requirements, as summarized in Mabeza, are the following:

- proof must be shown that such facilities are customarily furnished by the trade;
- the provision of deductible facilities must be voluntarily accepted in writing by the employee; and
- The facilities must be charged at fair and reasonable value.[40]

We examine Our Haus' compliance with each of these requirements in seriatim.

- The facility must be customarily furnished by the trade

In a string of cases, we have concluded that one of the badges to show that a facility is customarily furnished by the trade is the existence of a company policy or guideline showing that provisions for a facility were designated as part of the employees' salaries.[41] To comply with this, Our Haus presented in its motion for reconsideration with the NLRC the joint sinumpaang salaysay of four of its alleged employees. These employees averred that they were recipients of free lodging, electricity and water, as well as subsidized meals from Our Haus.[42]

We agree with the NLRC's finding that the sinumpaang salaysay statements submitted by Our Haus are self-serving. For one, Our Haus only produced the documents when the NLRC had already earlier determined that Our Haus failed to prove that it was traditionally giving the respondents their board and lodging. This document

did not state whether these benefits had been consistently enjoyed by the rest of Our Haus' employees. Moreover, the records reveal that the board and lodging were given on a per project basis. Our Haus did not show if these benefits were also provided in its other construction projects, thus negating its claimed customary nature.

Even assuming the *sinumpaang salaysay* to be true, this document would still work against Our Haus' case. If Our Haus really had the practice of freely giving lodging, electricity and water provisions to its employees, then Our Haus should not deduct its values from the respondents' wages. Otherwise, this will run contrary to the affiants' claim that these benefits were traditionally given free of charge.

Apart from company policy, the employer may also prove compliance with the first requirement by showing the existence of an industry-wide practice of furnishing the benefits in question among enterprises engaged in the same line of business. If it were customary among construction companies to provide board and lodging to their workers and treat their values as part of their wages, we would have more reason to conclude that these benefits were really facilities.

However, Our Haus could not really be expected to prove compliance with the first requirement since the living accommodation of workers in the construction industry is not simply a matter of business practice. Peculiar to the construction business are the occupational safety and health (OSH) services which the law itself mandates employers to provide to their workers. This is to ensure the humane working conditions of construction employees despite their constant exposure to hazardous working environments. Under Section 16 of DOLE Department Order (DO) No. 13, series of 1998,[43] employers engaged in the construction business are required to provide the following welfare amenities:

16.1 Adequate supply of safe drinking water

16.2 Adequate sanitary and washing facilities

16.3 Suitable living accommodation for workers, and as may be applicable, for their families

16.4 Separate sanitary, washing and sleeping facilities for men and women workers. [emphasis ours]

Moreover, DOLE DO No. 56, series of 2005, which sets out the guidelines for the implementation of DOLE DO No. 13, mandates that the cost of the implementation of the requirements for the construction safety and health of workers, shall be integrated to the overall project cost.[44] The rationale behind this is to ensure that the living accommodation of the workers is not substandard and is strictly compliant with the DOLE's OSH criteria.

As part of the project cost that construction companies already charge to their clients, the value of the housing of their workers cannot be charged again to their employees' salaries. Our Haus cannot pass the burden of the OSH costs of its construction projects to its employees by deducting it as facilities. This is Our Haus' obligation under the law.

Lastly, even if a benefit is customarily provided by the trade, it must still pass the purpose test set by jurisprudence. Under this test, if a benefit or privilege granted to the employee is clearly for the employer's convenience, it will not be considered as a facility but a supplement.[45] Here, careful consideration is given to the nature of the employer's business in relation to the work performed by the employee. This test is used to address inequitable situations wherein employers consider a benefit deductible from the wages even if the factual circumstances show that it clearly redounds to the employers' greater advantage.

While the rules serve as the initial test in characterizing a benefit as a facility, the purpose test additionally recognizes that the employer and the employee do not stand at the same bargaining positions on benefits that must or must not form part of an employee's wage. In the ultimate analysis, the purpose test seeks to prevent a

circumvention of the minimum wage law.

a1. The purpose test in jurisprudence

Under the law,[46] only the value of the facilities may be deducted from the employees' wages but not the value of supplements. Facilities include articles or services for the benefit of the employee or his family but exclude tools of the trade or articles or services primarily for the benefit of the employer or necessary to the conduct of the employer's business.[47]

The law also prescribes that the computation of wages shall exclude whatever benefits, supplements or allowances given to employees. Supplements are paid to employees on top of their basic pay and are free of charge.[48] Since it does not form part of the wage, a supplement's value may not be included in the determination of whether an employer complied with the prescribed minimum wage rates.

In the present case, the board and lodging provided by Our Haus cannot be categorized as facilities but as supplements. In *SLL International Cables Specialist v. National Labor Relations Commission*,[49] this Court was confronted with the issue on the proper characterization of the free board and lodging provided by the employer. We explained:

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.*, 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. 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.[50]

Ultimately, the real difference lies not on the kind of the benefit but on the purpose why it was given by the employer. If it is primarily for the employee's gain, then the benefit is a facility; if its provision is mainly for the employer's advantage, then it is a supplement. Again, this is to ensure that employees are protected in circumstances where the employer designates a benefit as deductible from the wages even though it clearly works to the employer's greater convenience or advantage.

Under the purpose test, substantial consideration must be given to the nature of the employer's business in relation to the character or type of work performed by the employees involved.

Our Haus is engaged in the construction business, a labor-intensive enterprise. The success of its projects is largely a function of the physical strength, vitality and efficiency of its laborers. Its business will be jeopardized if its workers are weak, sickly, and lack the required energy to perform strenuous physical activities. Thus, by ensuring that the workers are adequately and well fed, the employer is actually investing on its business.

Unlike in office enterprises where the work is focused on desk jobs, the construction industry relies heavily and

directly on the physical capacity and endurance of its workers. This is not to say that desk jobs do not require muscle strength; we simply emphasize that in the construction business, bulk of the work performed are strenuous physical activities.

Moreover, in the construction business, contractors are usually faced with the problem of meeting target deadlines. More often than not, work is performed continuously, day and night, in order to finish the project on the designated turn-over date. Thus, it will be more convenient to the employer if its workers are housed near the construction site to ensure their ready availability during urgent or emergency circumstances. Also, productivity issues like tardiness and unexpected absences would be minimized. This observation strongly bears in the present case since three of the respondents are not residents of the National Capital Region. The board and lodging provision might have been a substantial consideration in their acceptance of employment in a place distant from their provincial residences.

Based on these considerations, we conclude that even under the purpose test, the subsidized meals and free lodging provided by Our Haus are actually supplements. Although they also work to benefit the respondents, an analysis of the nature of these benefits in relation to Our Haus' business shows that they were given primarily for Our Haus' greater convenience and advantage. If weighed on a scale, the balance tilts more towards Our Haus' side. Accordingly, their values cannot be considered in computing the total amount of the respondents' wages.

Under the circumstances, the daily wages paid to the respondents are clearly below the prescribed minimum wage rates in the years 2007-2010.

- The provision of deductible facilities
must be voluntarily accepted in writing
by the employee

In Mayon Hotel, we reiterated that a facility may only be deducted from the wage if the employer was authorized in writing by the concerned employee.[51] As it diminishes the take-home pay of an employee, the deduction must be with his express consent.

Again, in the motion for reconsideration with the NLRC, Our Haus belatedly submitted five kasunduans, supposedly executed by the respondents, containing their conformity to the inclusion of the values of the meals and housing to their total wages. Oddly, Our Haus only offered these documents when the NLRC had already ruled that respondents did not accomplish any written authorization, to allow deduction from their wages. These five kasunduans were also undated, making us wonder if they had really been executed when respondents first assumed their jobs.

Moreover, in the earlier sinumpaang salaysay by Our Haus' four employees, it was not mentioned that they also executed a kasunduan for their board and lodging benefits. Because of these surrounding circumstances and the suspicious timing when the five kasunduans were submitted as evidence, we agree with the CA that the NLRC committed no grave abuse of discretion in disregarding these documents for being self serving.

- The facility must be charged at
a fair and reasonable value

Our Haus admitted that it deducted the amount of P290.00 per week from each of the respondents for their meals. But it now submits that it did not actually withhold the entire amount as it did not figure in the computation the money it expended for the salary of the cook, the water, and the LPG used for cooking, which amounts to P249.40 per week per person. From these, it appears that the total meal expense per week for each person is P529.40, making Our Haus' P290.00 deduction within the 70% ceiling prescribed by the rules.

However, Our Haus' valuation cannot be plucked out of thin air. The valuation of a facility must be supported by relevant documents such as receipts and company records for it to be considered as fair and reasonable. In Mabeza, we noted:

Curiously, in the case at bench, the only valuations relied upon by the labor arbiter in his decision were figures furnished by the private respondent's own accountant, without corroborative evidence. On the pretext that records prior to the July 16, 1990 earthquake were lost or destroyed, respondent failed to produce payroll records, receipts and other relevant documents, where he could have, as has been pointed out in the Solicitor General's manifestation, "secured certified copies thereof from the nearest regional office of the Department of Labor, the SSS or the BIR".[52] [emphasis ours]

In the present case, Our Haus never explained how it came up with the values it assigned for the benefits it provided; it merely listed its supposed expenses without any supporting document. Since Our Haus is using these additional expenses (cook's salary, water and LPG) to support its claim that it did not withhold the full amount of the meals' value, Our Haus is burdened to present evidence to corroborate its claim. The records however, are bereft of any evidence to support Our Haus' meal expense computation. Even the value it assigned for the respondents' living accommodations was not supported by any documentary evidence. Without any corroborative evidence, it cannot be said that Our Haus complied with this third requisite.

A claim not raised in the pro forma complaint may still be raised in the position paper.

Our Haus questions the respondents' entitlement to SIL pay by pointing out that this claim was not included in the pro forma complaint filed with the NLRC. However, we agree with the CA that such omission does not bar the labor tribunals from touching upon this cause of action since this was raised and discussed in the respondents' position paper. In *Samar-Med Distribution v. National Labor Relations Commission*,[53] we held:

Firstly, petitioner's contention that the validity of Gutang's dismissal should not be determined because it had not been included in his complaint before the NLRC is bereft of merit. The complaint of Gutang was a mere checklist of possible causes of action that he might have against Roleda. Such manner of preparing the complaint was obviously designed to facilitate the filing of complaints by employees and laborers who are thereby enabled to expediently set forth their grievances in a general manner. But the non-inclusion in the complaint of the issue on the dismissal did not necessarily mean that the validity of the dismissal could not be an issue. The rules of the NLRC require the submission of verified position papers by the parties should they fail to agree upon an amicable settlement, and bar the inclusion of any cause of action not mentioned in the complaint or position paper from the time of their submission by the parties. In view of this, Gutang's cause of action should be ascertained not from a reading of his complaint alone but also from a consideration and evaluation of both his complaint and position paper.[54]

The respondents' entitlement to the other monetary benefits

Generally a party who alleges payment as a defense has the burden of proving it. Particularly in labor cases, the burden of proving payment of monetary claims rests on the employer on the reasoning 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.[55]

Unfortunately, records will disclose the absence of any credible document which will show that respondents had been paid their 13th month pay, holiday and SIL pays. Our Haus merely presented a hand-written certification

from its administrative officer that its employees automatically become entitled to five days of service incentive leave as soon as they pass probation. This certification was not even subscribed under oath. Our Haus could have at least submitted its payroll or copies of the pay slips of respondents to show payment of these benefits. However, it failed to do so.

Respondents are entitled to attorney's fees.

Finally, we affirm that respondents are entitled to attorney's fees. Our Haus' asserts that respondents' availment of free legal services from the PAO disqualifies them from such award. We find this untenable.

It is settled that in actions for recovery of wages or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable.[56] Moreover, under the PAO Law or Republic Act No. 9406, the costs of the suit, attorney's fees and contingent fees imposed upon the adversary of the PAO clients after a successful litigation shall be deposited in the National Treasury as trust fund and shall be disbursed for special allowances of authorized officials and lawyers of the PAO.[57]

Thus, the respondents are still entitled to attorney's fees. The attorney's fees awarded to them shall be paid to the PAO. It serves as a token recompense to the PAO for its provision of free legal services to litigants who have no means of hiring a private lawyer.

WHEREFORE, in light of these considerations, we conclude that the Court of Appeals correctly found that the National Labor Relations Commission did not abuse its discretion in its decision of July 20, 2011 and Resolution of December 2, 2011. Consequently we DENY the petition and AFFIRM the Court of Appeals' decision dated May 7, 2012 and resolution dated November 27, 2012 in CA-G.R. SP No. 123273. No costs.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, Perez, and Perlas-Bernabe, JJ., concur.

[1] Rollo, pp. 7-26.

[2] Penned by Associate Justice Rodil V. Zalameda, and concurred in by Associate Justices Rebecca De Guia-Salvador and Normandie B. Pizarro; Id. at 28-42.

[3] Id. at 43-44.

[4] Penned by Commissioner Dolores M. Peralta-Beley, and concurred in by Commissioners Leonardo L. Leonida and Mercedes R. Posada-Lacap; Id. at 62-69.

[5] Id. at 70-76.

[6] Penned by Labor Arbiter Antonio R. Macam; Id. at 129-137.

[7] Id. at 81.

[8] Id. at 100.

[9] Id. at 81-82.

[10] Id. at 103.

[11] “Wage” paid to any employee shall mean the remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered and includes the fair and reasonable value, as determined by the Secretary of Labor, of board, lodging , or other facilities customarily furnished by the employer to the employee. “Fair and reasonable value” shall not include any profit to the employer or to any person affiliated with the employer. [*italics and underscoring ours*]

[12] Rollo, p. 104.

[13] Cash Wage. – The minimum wage rates prescribed in Section 1 hereof shall be basic, cash wages. 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 case, 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 employees, provided that such deduction is with the written authorization of the employees concerned. [*emphasis ours*]

[14] Department of Labor and Employment.

[15] Book III, Rule VII-A of the Implementing Rules and Regulations of the Labor Code, November 4, 1992.

[16] Rollo, p. 126.

[17] *Id.*

[18] *Id.*

[19] *Id.* at 136.

[20] *Id.* at 136-137.

[21] 497 Phil. 892, 928 (2005).

[22] Rollo, pp. 67-68.

[23] *Id.* at 161-167.

[24] *Id.* at 45-61.

[25] *Id.* at 35.

[26] *Id.*

[27] 338 Phil. 386 (1997).

[28] Rollo, p. 38.

[29] *Id.* at 40.

[30] *Id.* at 20.

[31] *Id.* at 24.

[32] *Id.* at 215-238.

[33] *Id.* at 227.

[34] *Id.* at 230.

[35] *Id.* at 232-233.

[36] *Career Philippines Shipmanagement, Inc. v. Serna*, G.R. No. 172086, December 3, 2012, 686 SCRA 676, 683.

[37] *Montoya v. Transmed Manila Corp./Ellena, et al.*, 613 Phil. 696, 707 (2009).

[38] *Id.*

[39] *Rollo*, p. 16.

[40] *Mabeza v. National Labor Relations Commission*, *supra* note 27, at 399; *emphasis ours*.

[41] *SLL International Cables Specialist v. National Labor Relations Commission*, G.R. No. 172161, March 2, 2011, 644 SCRA 411, 422-423; citing *Atok-Big Wedge Assn. v. Atok-Big Wedge Co.*, 97 Phil. 294 (1955).

[42] *Rollo*, p. 173.

[43] *Guidelines Governing Occupational Safety and Health in the Construction Industry*.

[44] III. General Guidelines

A. In compliance with Section 17 of DOLE D. O. No. 13, the implementation of construction safety shall be considered in all stages of project procurement (design, estimate, and construction) and its cost shall be integrated to the overall project cost under Pay Item "SPL- Construction Safety and Health" as a lump sum amount, to be quantified in the detailed estimate. Likewise, all requirements, provisions, and instructions pertaining to the implementation of Construction Safety and Health in every project shall be included in the project bidding documents specifically under the Instructions to Bidders.

[45] *Mabeza v. National Labor Relations Commission*, *supra* note 27, at 400.

[46] Section 4 of DOLE Memorandum Circular No. 2 provides that the minimum wage rates shall be the basic, cash wages without deducting therefrom whatever benefits, supplements or allowances which the employees enjoy free of charge aside from the basic pay.

[47] Section 2, DOLE Memorandum Circular No. 2.

[48] Section 4, DOLE Memorandum Circular No. 2.

[49] *Supra* note 41.

[50] *Id.* at 422-423; citations omitted; italics supplied; *emphasis and underscoring ours*.

[51] *Mayon Hotel & Restaurant v. Adana*, *supra* note 21, at 928.

[52] *Mabeza v. National Labor Relations Commission*, *supra* note 27, at 400.

[53] G.R. No. 162385, July 15, 2013, 701 SCRA 148.

[54] *Id.* at 159; citation omitted; *emphasis and underscoring ours*.

[55] *SLL International Cables Specialist v. National Labor Relations Commission*, *supra* note 41, at 420.

[56] *Aliling v. Feliciano*, G.R. No. 185829, April 25, 2012, 671 SCRA 186, 220.

[57] Section 6 of Republic Act No. 9406, inserting Section 16-D in Chapter 5, Title III, Book IV of Executive Order No. 292.

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