

BROKENSIRE MEMORIAL HOSPITAL, INC., PETITIONER, VS. THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION AND THE BROKENSIRE MEMORIAL HOSPITAL EMPLOYEES AND WORKERS UNION-FFW, RES...

G.R. No. 69741. August 19, 1986

Ponente: NARVASA, J.

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NARVASA, J.:

Are employees in a private enterprise entitled to the so-called "13th month pay" prescribed by PD 851 "on top of bonuses" already being given by the employer prior to decree's effectivity on December 16, 1975?

To this question, a negative answer has twice been given by this Court.

In *National Federation of Sugar Workers (NFSW) vs. Ovejera*, promulgated on May 31, 1982[1] -- where a collective bargaining agreement required the employer among others "to maintain the present practice on the grant of Christmas bonus, milling bonus and amelioration bonus" ("amounting to more than a month's pay") -- this Court made the following pronouncements on the issue:[2]

"Keenly sensitive to the needs of the workingmen, yet mindful of the mounting production cost that are the woe of capital which provides employment to labor, President Ferdinand E. Marcos issued Presidential Decree No. 851 on 16 December 1975. Thereunder, 'all employers are hereby required to pay all their employees receiving a basic salary of not more than P1,000 a month, regardless of the nature of their employment, a 13th month pay not later than December 24 of every year.' Exempted from the obligation however are:

'Employers already paying their employees a 13th month pay or its equivalent' (Section 2)

"The evident intention of the law, as revealed by the law itself, was to grant an additional income in the form of a 13th month pay to employees not already receiving the same. Otherwise put, the intention was to grant some relief - not to all workers ? but only to the unfortunate ones not actually paid a 13th month salary or what amounts to it, by whatever name called; but it was not envisioned that a double burden would be imposed on the employer already paying his employees a 13th month pay or its equivalent - whether out of pure generosity or on the basis of a binding agreement and, in the latter case, regardless of the conditional character of the grant (such as making the payment dependent on profit), so long as there is actual payment. Otherwise, what was conceived to be a 13th month salary would in effect become a 14th or possibly 15th month pay.

"This view is justified by the law itself which makes no distinction in the grant of exemption: 'Employers already paying their employees a 13th month pay or its equivalent are not covered by this Decree.' (P.D. 851)

"The Rules Implementing P.D. 851 issued by MOLE immediately after the adoption of said law reinforce this stand. Under Section 3(e) thereof -

"The term "its equivalent"...shall include Christmas bonus, mid-year bonus, profit-sharing payments and other cash bonuses amounting to not less than 1/12th of the basic salary but shall not include cash and stock

dividends, cost of living allowances and all other allowances regularly enjoyed by the employee, as well as non-monetary benefits. Where an employer pays less than 1/12 of the employee's basic salary, the employer shall pay the difference.'

"Having been issued by the agency charged with the implementation of PD 851 as its con-temporaneous interpretation of the law, the quoted rule should be accorded great weight.

"Pragmatic considerations also weigh heavily in favor of crediting both voluntary and contractual bonuses for the purpose of determining liability for the 13th month pay. To require employers (already giving their employees a 13th month salary or its equivalent) to give a second 13th month pay would be unfair and productive of undesirable results. To the employer who had acceded and is already bound to give bonuses to his employees, the additional burden of a 13th month pay would amount to a penalty for his munificence or liberality. The probable reaction of one so circumstanced would be to withdraw the bonuses or resist further voluntary grants for fear that if and when a law is passed giving the same benefits, his prior concessions might not be given due credit; and this negative attitude would have an adverse impact on the employees."

In *Dole Philippines, Inc. vs. Leogardo, Jr.*, decided on October 23, 1982[3] -- where a collective bargaining agreement imposed on the employer the obligation to pay "a year-end productivity bonus equivalent to ten (10) days of x x x (the employee's) basic daily wage" if a stipulated level of production were attained, and the first bonus was in fact given on December 11, 1975 -- this Court[4] adverted to the NFSW decision as binding norm and went on to say:

"Tested against this norm, it becomes clear that the year-end productivity bonus granted by petitioner to private respondents pursuant to their CBA is, in legal contemplation, an integral part of their 13th month pay, notwithstanding its conditional nature. When, therefore, petitioner, in order to comply with the mandate of PD 851, credited the year-end productivity bonus as part of the 13th month pay and adopted the procedure of paying only the difference between said bonus and 1/12 of the worker's yearly basic salary, it acted well within the letter and spirit of the law and its implementing rules. For in the event that "an employer pays less than one twelfth of the employees' basic salary, all that said employer is required to do under the law is to pay the difference.

"To hold otherwise would be to impose an unreasonable and undue burden upon those employers who had demonstrated their sensitivity and concern for the welfare of their employees. A contrary stance would indeed create an absurd situation whereby an employer who started giving his employees the 13th month pay only because of the unmistakable force of the law would be in a far better position than another who, by his own magnanimity or by mutual agreement, had long been extending to his employees the benefits contemplated under PD 851, by whatever nomenclature these benefits have come to be known. Indeed, PD No. 851, a legislation benevolent in its purpose, never intended to bring about such oppressive situation."

This Court is now called upon to answer the same question again, this time at the instance of petitioner Brokenshire Memorial Hospital, which initiated the special civil action of certiorari at bar to annul the resolution of the National Labor Relations Commission (Second Division) affirming the decision of a Labor Arbiter of Regional Arbitration Branch XI of the Ministry of Labor and Employment in NLRC Case No. 64--LS-XI-82 entitled "*Brokenshire Memorial Hospital Employees and Workers Union FFW v. Brokenshire Memorial Hospital*." The affirmed decision required the hospital to pay its employees a yearly Christmas bonus in addition to the 13th month pay under PD 851.[5] The answer to the question will be the same. The hospital can not be obliged to bear the "double burden" of giving its employees not only the 13th month pay required by PD 851 but also the Christmas bonus it had theretofore been granting. The decisions in question will have to be reversed.

At the time that PD 851 became effective on December 16, 1975, the hospital had for many years been giving its

employees an annual Christmas bonus. It continued to do so afterwards. But after 1979 the hospital stopped giving the bonus because avowedly its poor financial condition no longer made this possible.

Protesting the discontinuance, respondent union filed a complaint[6] against the hospital for unlawful diminution of benefits, alleging a violation of Article 100 of the Labor Code and Section 10 of PD 851.[7] In response,[8] the hospital asserted that the giving of the bonus was not an established and continuing obligation on its part but was contingent and entirely dependent on its financial condition in any given year. This is why the matter of the bonus was not dealt with at all in the Collective Bargaining Agreement between it and the union. At any rate, it further claimed, it should not be made to bear the double burden of giving both 13th month pay and bonus, in the light of the decision in *National Federation of Sugar Workers (NFSW) vs. Ethelweldo R. Ovejera, et al.*, G.R. No. 59743, rendered in the context of Section 2, PD 851, and Section 3(c) of the Rules and Regulations Implementing PD 851, declaring said decree inapplicable to "employers already paying their employees a 13th month pay or its equivalent."

On March 23, 1983, the Labor Arbiter promulgated judgment requiring the hospital "to pay all its employees, as it had done in 1979, an extra Christmas bonus of P100.00 per year, for 1980, 1981 and 1982." [9] The hospital appealed. On December 14, 1984, the National Labor Relations Commission affirmed the Labor Arbiter's decision.[10]

It is difficult to understand why the Labor Arbiter took no account whatever of this Court's decision in *NFSW vs. Ovejera* despite its having been explicitly brought to his attention. He never mentioned the case in his decision at all. Instead, he occupied himself with a discussion of the financial condition of the hospital, declaring that his reading of the hospital's financial statement for 1980 revealed a "surplus available for expenditure" from which the employees' bonuses could be drawn.

Equally difficult to understand is the refusal of the National Labor Relations Commission to apply the *NFSW vs. Ovejera* ruling. According to the Commission -

"Respondent's (the hospital's) reliance on the *La Carlota* case, GR No. 59743, is unavailing. We are not persuaded to view the matter that way. For in the *La Carlota* case, the NFSW union is claiming entitlement to a 13th month pay, on top of Christmas bonuses already given, whereas, in the instant case, respondent discontinued and eliminated a favorable practice being enjoyed by the employee at the time of promulgation of the rules implementing PD No. 851 on December 22, 1975 which, as fixed below, amounts to P100 Christmas bonus, on top of the 13th month pay."

The distinction sought to be drawn by the Commission between the case at bar and *NFSW vs. Ovejera* is insubstantial and unjustifiable. The message of *NFSW vs. Ovejera* is clear and unequivocal: An employer may not be obliged to assume a "double burden" of paying the 13th month pay in addition to bonuses or other pecuniary benefits given by way of fringe benefits aside from the employees' basic salaries or wages; PD 851 accorded to him the option either to exempt himself from the obligation to give 13th month pay or discontinue the payment of the bonuses or fringe benefits deemed to be the equivalent of said 13th month pay. In any event, whatever doubt might have existed regarding this option on the employer's part should have been dispelled by this Court's decision in *Dole Phils., Inc. vs. Leogardo, Jr.* promulgated on October 23, 1982,[11] more than two (2) years before the rendition of the resolution of the National Labor Relations Commission on December 14, 1984. In *Dole*, this Court declared that when an employer, in order to comply with the mandate of PD 851, credits the bonus being paid by him as part of his employees' 13th month pay and adopts the procedure of paying only the difference between said bonus and 1/12 of the employees' yearly basic salary, said employer acts well within the letter and spirit of the law and its implementing rules; for in the event that "an employer pays less than one twelfth of the employees' basic salary, all that said employer is required to do under the law is to pay the difference."

Prescinding from these legal considerations, it would appear that the ratiocinations of the Labor Arbiter based on his own interpretation of the financial statements of petitioner hospital for 1980 were quite erroneous. Where those financial statements, to an accountant, or one familiar with accountancy, should have shown a deficit, to the Labor Arbiter they showed a surplus.

Be this as it may, the fact is that as early as November 5, 1984, the hospital sent to the Minister of Labor and Employment a notice of closure^[12] because of its "critically grave" financial condition.^[13] And on March 2, 1985 the hospital finally ceased to operate for lack of operating capital^[14] resulting from the garnishment of its bank deposits amounting to P163,047.50.^[15]

Whether or not this unhappy eventuality would have come to pass had the decision of the Labor Arbiter or that of the National Labor Relations Commission correctly applied the doctrine enunciated by this Court in *NFSW vs. Ovejera and Dole Phils., Inc. vs. Leogardo, Jr.*, is a question that perhaps is incapable of a fair and realistic answer. But the mere possibility that closure, with the consequent loss of work for so many, was caused or hastened by the questioned decisions should be enough to give pause and provide an object lesson to address such matters more studiously and with greater circum-spection in the future.

WHEREFORE, the Decision of the Labor Arbiter dated March 23, 1983 and the Resolution of the National Labor Relations Commission in affirmance thereof, dated December 14, 1984, are hereby reversed and set aside, and the complaint filed by respondent union is hereby dismissed, with costs against said private respondent.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Cruz, and Paras, JJ., concur.

[1] 114 SCRA 354.

[2] Per Justice Plana, with Fernando, C. J., and Makasiar, J., dissenting; cf *Marcopper Mining Corp. vs. Ople*, June 11, 1981, 105 SCRA 75.

[3] 117 SCRA 938.

[4] Per Justice Escolin, with Makasiar, J. and Fernando, C.J., again dissenting.

[5] Petition, Rollo, p. 4.

[6] Rollo, pp. 16-18.

[7] Should be Section 10, Rules and Regulations Implementing PD 851.

[8] Answer, Rollo, pp. 19-22; Position Paper, Rollo, pp. 26-29.

[9] Rollo, p. 35.

[10] Rollo, p. 64.

[11] 117 SCRA 938; see Footnote 3, *supra*.

[12] Rollo, p. 70.

[13] Rollo, p. 71.

[14] Rollo, pp. 115-116.

[15] Rollo, p. 86.

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