

GLOBE MACKAY CABLE AND RADIO CORPORATION, FREDERICK WHITE AND JESUS SANTIAGO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, FFW-GLOBE MACKAY EMPLOYEES UNION AND EDA CONC...

G.R. No. 74156. June 29, 1988

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

A special civil action for Certiorari with a prayer for a Temporary Restraining Order to enjoin respondents from enforcing the Decision of 10 March 1986 of the National Labor Relations Commission (NLRC), in NCR Case No. 1-168-85 entitled "FFW-Globe Mackay Employees Union, et al., vs. Globe Mackay Cable & Radio Corporation, et al." the dispositive portion of which reads:

"WHEREFORE, premises considered, the appealed Decision is as it is hereby SET ASIDE and another one issued:

1. Declaring respondents-appellees (petitioners herein) guilty of illegal deductions of cost-of-living allowance;
2. Ordering respondents-appellees to pay complainants-appellants their back allowances reckoned from the time of illegal deduction; and
3. Ordering respondents-appellees from further illegally deducting the allowances of complainants-appellants.

SO ORDERED."

Presiding Commissioner of the NLRC, Diego P. Atienza, concurred in the result, while Commissioner Cleto T. Villaltuya dissented and voted to affirm in toto the Labor Arbiter's Decision.

On 19 May 1986, we issued the Temporary Restraining Order enjoining respondents from enforcing the assailed Decision. On 2 September 1987, we gave due course to the petition and required the submittal of memoranda, by the parties, which has been complied with.

The facts follow:

Wage Order No. 6, which took effect on 30 October 1984, increased the cost-of-living allowance of non-agricultural workers in the private sector. Petitioner corporation complied with the said Wage Order by paying its monthly-paid employees the mandated P3.00 per day COLA. However, in computing said COLA, Petitioner Corporation multiplied the P3.00 daily COLA by 22 days, which is the number of working days in the company.

Respondent Union disagreed with the computation of the monthly COLA claiming that the daily COLA rate of P3.00 should be multiplied by 30 days to arrive at the monthly COLA rate. The Union alleged furthermore that prior to the effectivity of Wage Order No. 6, Petitioner Corporation had been computing and paying the monthly

COLA on the basis of thirty (30) days per month and that this constituted an employer practice, which should not be unilaterally withdrawn.

After several grievance proceedings proved futile, the Union filed a complaint against Petitioner Corporation, its President, F. White, and Vice-President, J. Santiago, for illegal deduction, underpayment, unpaid allowances, and violation of Wage Order No. 6. Petitioners White and Santiago were sought to be held personally liable for the money claims thus demanded.

Labor Arbiter Adelaido F. Martinez sustained the position of Petitioner Corporation by holding that since the individual petitioners acted in their corporate capacity they should not have been impleaded; and that the monthly COLA should be computed on the basis of twenty-two (22) days, since the evidence showed that there are only 22 paid days in a month for monthly-paid employees in the company. His reasoning, *inter alia*, was as follows:

"To compel the respondent company to use 30 days in a month to compute the allowance and retain 22 days for vacation and sick leave, overtime pay and other benefits is inconsistent and palpably unjust. If 30 days is used as divisor, then it must be used for the computation of all benefits, not just the allowance. But this is not fair to complainants, not to mention that it will contravene the provision of the parties' CBA."

On appeal, the NLRC reversed the Labor Arbiter, as heretofore stated, and held that Petitioner Corporation was guilty of illegal deductions, upon the following considerations: (1) that the P3.00 daily COLA under Wage Order No. 6 should be paid and computed on the basis of thirty (30) days instead of twenty-two (22) days since workers paid on a monthly basis are entitled to COLA on Saturdays, Sundays and legal holidays "even if unworked;" (2) that the full allowance enjoyed by Petitioner Corporation's monthly-paid employees before the CBA executed between the parties in 1982 constituted voluntary employer practice, which cannot be unilaterally withdrawn; and (3) that petitioners White and Santiago were properly impleaded as respondents in the case below.

Hence, this Petition, anchored on the charge of grave abuse of discretion by the NLRC.

We are constrained to reverse the reversal.

Section 5 of the Rules Implementing Wage Orders Nos. 2, 3, 5 and 6 uniformly read as follows:

"Section 5. Allowance for Unworked Days.

"All covered employees shall be entitled to their daily living allowance during the days that they are paid their basic wage, even if unworked." (Italics supplied)

The primordial consideration, therefore, for entitlement to COLA is that basic wage is being paid. In other words, the payment of COLA is mandated only for the days that the employees are paid their basic wage, even if said days are unworked. So that, on the days that employees are not paid their basic wage, the payment of COLA is not mandated. As held in *University of Pangasinan Faculty Union vs. University of Pangasinan*, 63122, February 20, 1984, 127 SCRA 691):

"x x x it is evident that the intention of the law is to grant ECOLA upon the payment of basic wages. Hence, we have the principle of No Pay, No ECOLA."

Applied to monthly-paid employees if their monthly salary covers all the days in a month, they are deemed paid their basic wages for all those days and they should be entitled to their COLA on those days "even if unworked," as the NLRC had opined. Peculiar to this case, however, is the circumstance that pursuant to the Collective Bargaining Agreement (CBA) between Petitioner Corporation and Respondent Union, the monthly basic pay is computed on the basis of five (5) days a week, or twenty-two (22) days a month. Thus, the pertinent provisions of that Agreement read:

"Art. XV (a) — Eight net working hours shall constitute the regular work day for five days."

"Art. XV (b) — Forty net hours of work, 5 working days, shall constitute the regular work week."

"Art. XVI, Sec. 1 (b) — All overtime worked in excess of eight net hours daily or in excess of 5 days weekly shall be computed on hourly basis at the rate of time and one half."

The Labor Arbiter also found that in determining the hourly rate of monthly paid employees for purposes of computing overtime pay, the monthly wage is divided by the number of actual work days in a month and then, by eight (8) working hours. If a monthly-paid employee renders overtime work, he is paid his basic salary rate plus one-half thereof. For example, after examining the specimen payroll of employee Jesus L. Santos, the Labor Arbiter found:

"the employee Jesus L. Santos, who worked on Saturday and Sunday was paid base pay plus 50% premium. This is over and above his monthly basic pay as supported by the fact that base pay was paid. If the 6th and 7th days of the week are deemed paid even if unworked and included in the monthly salary, Santos should not have been paid his base pay for Saturday and Sunday but should have received only the 50% overtime premium."

Similarly, the specimen payrolls of employees, Dennis Dungon and Rene Sanvictores, showed that in computing the vacation and sick leaves of the employees. Petitioner Corporation consistently used twenty-two (22) days.

Under the peculiar circumstances obtaining, therefore, where the company observes a 5-day work week, it will have to be held that the COLA should be computed on the basis of twenty-two (22) days, which is the period during which the monthly-paid employees of Petitioner Corporation receive their basic wage. The CBA is the law between the parties and, if not acceptable, can be the subject of future re-negotiation.

2) Payment in full by Petitioner Corporation of the COLA before the execution of the CBA in 1982 and in compliance with Wage Orders Nos. 1 (26 March 1981) to 5 (11 June 1984), should not be construed as constitutive of voluntary employer practice, which cannot now be unilaterally withdrawn by petitioner. To be considered as such, it should have been practiced over a long period of time, and must be shown to have been consistent and deliberate. Adequate proof is wanting in this respect. The test of long practice has been enunciated thus:

"x x x Respondent Company agreed to continue giving holiday pay knowing fully well that said employees are not covered by the law requiring payment of holiday pay." (*Oceanic Pharmacal Employees Union [FFW] vs. Inciong*, 50568, November 7, 1979, 94 SCRA 270). (Italics ours)

Moreover, before Wage Order No. 4, there was lack of administrative guidelines for the implementation of the Wage Orders. It was only when the Rules Implementing Wage Order No. 4 were issued on 21 May 1984 that a formula for the conversion of the daily allowance to its monthly equivalent was laid down, thus:

"Section 3. Application of Section 2 —

x x x x x x x x

"(a) Monthly rates for non-agricultural workers covered under PDs 1614, 1634, 1678 and 1713:

x x x x x x x x

"(3) For workers who do not work and are not considered paid on Saturdays and Sundays:

$P60 + P90 + P60 + (P2.00 \times 262) \text{ divided by } 12 = P253.70$ " (Italics ours)

As the Labor Arbiter had analyzed said formula:

"Under the aforecited formula/guideline, issued for the first time, when applied to a company like respondent which observes a 5-day work week (or where 2 days in a week, not necessarily Saturday and Sunday, are not considered paid), the monthly equivalent of a daily allowance is arrived at by multiplying the daily allowance by 262 divided by 12. This formula results in the equivalent of 21.8 days in a month."

Absent clear administrative guidelines, Petitioner Corporation cannot be faulted for erroneous application of the law. Payment may be said to have been made by reason of a mistake in the construction or application of a "doubtful or difficult question of law." (Article 2155,[1] in relation to Article 2154[2] of the Civil Code). Since it is a past error that is being corrected, no vested right may be said to have arisen nor any diminution of benefit under Article 100 of the Labor Code[3] may be said to have resulted by virtue of the correction.

With the conclusions thus reached, there is no further need to discuss the liability of the officers of Petitioner Corporation.

WHEREFORE, Certiorari is granted, the Decision of the National Labor Relations Commission, dated 10 March 1986, is SET ASIDE, and the Decision of the Labor Arbiter, dated 9 May 1985, is hereby REINSTATED. The Temporary Restraining Order heretofore issued is hereby made permanent.

SO ORDERED.

Yap, C. J., Padilla, and Sarmiento, JJ., concur.

Paras, J., took no part in the deliberation.

[1] ART. 2155. Payment by reason of a mistake in the construction or application of a doubtful or difficult question of law may come within the scope of the preceding article.

[2] ART. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

[3] ART. 100. Prohibition against elimination or diminution of benefits. — Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code.

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