

## KAMAYA POINT HOTEL, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, FEDERATION OF FREE WORKERS AND MEMIA QUIAMBAO, RESPONDENTS.

*G.R. No. 75289, August 31, 1989*

Ponente: FERNAN, C.J.

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### FERNAN, C.J.:

This petition for review on certiorari filed by herein petitioner Kamaya Point Hotel seeks to set aside the decision[1] of the National Labor Relations Commission dated June 25, 1986 in NLRC Case No. RAB III-4-1191-83 which affirmed with modification the decision of the Labor Arbiter dated May 31, 1984.

Respondent Memia Quiambao with thirty others who are members of private respondent Federation of Free Workers (FFW) were employed by petitioner as hotel crew. On the basis of the profitability of the company's business operations, management granted a 14th month pay to its employees starting in 1979. In January 1982, operations ceased to give way to the hotel's conversion into a training center for Libyan scholars. However, due to technical and financing problems, the Libyans pre-terminated the program on July 7, 1982, leaving petitioner without any business, aside from the fact that it was not paid for the use of the hotel premises and in addition had to undertake repairs of the premises damaged by the Libyan students. All in all petitioner allegedly suffered losses amounting to P2-million.

Although petitioner reopened the hotel premises to the public, it was not able to pick-up its lost patronage. In a couple of months it effected a retrenchment program until finally on January 7, 1984, it totally closed its business.[2]

On April 18, 1983, private respondent Federation of Free Workers (FFW), a legitimate labor organization, filed with the Ministry of Labor and Employment, Bataan Provincial Office, Bataan Export Processing Zone, Mariveles, Bataan, a complaint against petitioner for illegal suspension, violation of the CBA and non-payment of the 14th month pay.[3] Records however show that the case was submitted for decision on the sole issue of alleged non-payment of the 14th month pay for the year 1982.[4]

After the hearing, Executive Labor Arbiter Francisco M. Jose, Jr. rendered a decision dated May 31, 1984, the dispositive portion of which reads:

"WHEREFORE, IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered:

"1. Ordering the respondent Kamaya Point Hotel to pay the 14th month pay for 1982 of all its rank and file employees;

"2. Ordering the same respondent to pay the monetary equivalent of the benefits mentioned in Section 6 of Article XII and Sections 1 and 2 of Article XII of the then existing Collective Bargaining Agreement which will expire on 1 July 1984."[5]

On appeal, the National Labor Relations Commission (NLRC) in its decision dated June 25, 1986 set aside the award of monetary benefits under the CBA but affirmed the grant of the 14th month pay adopting the Labor Arbiter's reasoning, thus:

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"We agree with respondent that there is no law granting a 14th month pay. We likewise agree with respondent that there is no provision in the Collective Bargaining Agreement granting a 14th month pay. Despite all these, however, we believe that individual complainants herein are still entitled to the 14th month pay for 1982 because to our mind, the granting of this 14th month pay has already ripened into a company practice which respondent company cannot withdraw unilaterally. This 14th month pay is now an existing benefit which cannot be withdrawn without violating Article 100 of the Labor Code. To allow its withdrawal now would certainly amount to a diminution of existing benefits which complainants are presently enjoying. Premised on the above, the individual complainants are entitled to the 14th month pay for 1982 and respondent should pay the same." (Underscoring supplied)[6]

Before this Court, petitioner now seeks to reverse the decision of the NLRC arguing that the latter tribunal committed grave abuse of discretion when it adopted the Labor Arbiter's decision saying that the 14th month pay cannot be withdrawn without violating Article 100 of the Labor Code which states:

"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."

We find it difficult to comprehend why the NLRC and the Labor Arbiter, despite their admission that the 14th month pay has no contractual or legal basis, still chose to rule in favor of private respondents. It is patently obvious that Article 100 is clearly without applicability. The date of effectivity of the Labor Code is May 1, 1974. In the case at bar, petitioner extended its 14th month pay beginning 1979 until 1981. What is demanded is payment of the 14th month pay for 1982. Indubitably from these facts alone, Article 100 of the Labor Code cannot apply.

Moreover, there is no law that mandates the payment of the 14th month pay. This is emphasized in the grant of exemption under Presidential Decree 851 (13th Month Pay Law) which states: "Employers already paying their employees a 13th month pay or its equivalent are not covered by this Decree." Necessarily then, only the 13th month pay is mandated. Having enjoyed the additional income in the form of the 13th month pay, private respondents' insistence on the 14th month pay for 1982 is already an unwarranted expansion of the liberality of the law.

Also contractually, as gleaned from the collective bargaining agreement between management and the union, there is no stipulation as to such extra remuneration. Evidently, this omission is an acknowledgement that such benefit is entirely contingent or dependent on the profitability of the company's operations.

Verily, a 14th month pay is a misnomer because it is basically a bonus and, therefore, gratuitous in nature. The granting of the 14th month pay is a management prerogative which cannot be forced upon the employer. It is something given in addition to what is ordinarily received by or strictly due the recipient. It is a gratuity to which the recipient has no right to make a demand.[7]

This Court is not prepared to compel petitioner to grant the 14th month pay solely because it has allegedly ripened into a "company practice" as the labor arbiter has put it. Having lost its catering business derived from Libyan students, Kamaya Hotel should not be penalized for its previous liberality.

An employer may not be obliged to assume a "double burden" of paying the 13th month pay in addition to bonuses or other benefits aside from the employee's basic salaries or wages.[8] Restated differently, we rule that an employer may not be obliged to assume the onerous burden of granting bonuses or other benefits aside from the employee's basic salaries or wages in addition to the required 13th month pay.

WHEREFORE, the petition is hereby GRANTED. The portion of the decision of the National Labor Relations Commission dated June 25, 1986 ordering the payment of 14th month pay to private respondents is set aside.

**SO ORDERED.**

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

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[1] Penned by Presiding Commissioner Guillermo Medina; Gabriel Gatchalian and Miguel Valera, Commissioners, concurring.

[2] Rollo, p. 6.

[3] Rollo, p. 32.

[4] Rollo, p. 45.

[5] Rollo, p. 12.

[6] Rollo, p. 34.

[7] Words and Phrases, "Bonus", Vol. 5-A, pp. 158 & 161.

[8] National Federation of Sugar Workers (NFSW) v. Ovejera, G.R. No. 59743, May 31, 1982, 114 SCRA 354; Brokenshire Memorial Hospital, Inc. v. NLRC, G.R. No. 69741, August 19, 1986, 143 SCRA 564.

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