

**ESTATE OF THE LATE EUGENE J. KNEEBONE, REPRESENTED BY
TERENCE H. KNEEBONE AS EXECUTOR OF THE ESTATE AND T.
MICHAEL KNEEBONE PEARSON AS THE ESTATE'S LEGAL
REPRESENTATIVE IN THE P...***G.R. No. 77109. November 08, 1988*

Ponente: CORTES, J.

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These consolidated cases involve the correct computation of retirement benefits. The employer company based its computation solely on the basic salary stated in the pay slips. But the retiree-claimants contend otherwise, arguing that certain amounts received regularly should also be included in the computation because such are actually salary increases. The company's computation was sustained by the Labor Arbiter. However, on appeal, the National Labor Relations Commission (NLRC) ruled that one such amount was indeed a salary increase. Not satisfied, the claimants have come before this Court seeking to have their representation and transportation allowance (RTA) also declared as a salary increase to the end that it shall be included in the computation of their retirement benefits. Adding fuel to the fire is the disagreement on the effectivity date of the claimants' retirement.

The facts of the case may be shorn of unnecessary details and summarized as follows:

Private respondent (hereinafter referred to as "Benguet") is a corporation engaged in mining. It maintains several mine sites in Balatoc, Benguet and administrative offices in Metro Manila.

Eugene Kneebone, an American, joined Benguet on June 16, 1957 and eventually became Vice-President for Administration. His latest employment contract (Exh. "B") provided for a three (3) year contract from June 1, 1973 to May 31, 1976. He served Benguet until August 31, 1975, although the latter claims that he was retired earlier on August 31, 1974.

On the other hand, petitioner Delfin Gonzalez, a Filipino, joined Benguet on April 18, 1960 and eventually became Vice-President and General Counsel. Like Kneebone, he was in Benguet's employ until August 31, 1975, although Benguet claims that he was retired on August 31, 1974.

In September 1972, Ralph Crosby, then President, Chairman and Chief Executive Officer of Benguet, granted a twenty-eight percent (28%) across-the-board salary increase to all rank-and-file employees. Shortly thereafter, a similar increase was given to the junior staff. An increase in varying amounts was given to the senior staff in January 1973. Among the senior staff, substantially bigger increases were given to fifteen (15) officers, including Kneebone and Gonzalez. In order to prevent demoralization among the other senior officers, Crosby directed Kneebone to effect payment of the increases of the fifteen (15) officers confidentially in Benguet's office in Makati and not in Balatoc where all employees receive their salaries.

Thus, Kneebone received a monthly salary of P9,330.00 from the Balatoc payroll and an additional P8,100.00 in Makati for a total of P17,430. Gonzalez was paid P7,410.00 from the Balatoc payroll and P9,600.00 from the

Makati office for a total of P17,070.00.

Starting June 15, 1974, senior officials of Benguet were paid varying amounts reflected in the Balatoc payroll as representation and transportation allowance (RTA), with Kneebone receiving P2,340.00 monthly and Gonzalez P2,410.00.

Some time later, a Senior Staff Retirement Plan (SSRP) was drawn. It provided for a compulsory retirement age of sixty (60), extendible for a maximum period of one (1) year per extension, but the extension period shall not be credited in the computation of retirement benefits. The employees covered by the plan were informed thereof on August 22, 1974.

Twenty-six (26) employees, including Kneebone and Gonzalez, were informed that they had reached the compulsory retirement age, but extensions would be considered on a case-to-case basis as the operations of Benguet may require.

Benguet's Board of Directors approved the deferment of the retirement of several senior officers, including Kneebone and Gonzalez, for a period of one (1) year up to August 31, 1975, provided they shall not be entitled to retirement credits for said period.

However, the SSRP was disapproved by the Bureau of Internal Revenue as a tax-free retirement plan because its coverage was limited only to senior staff members who constitute less than ten percent (10%) of Benguet's employees and because no actuarial study was made on it. Thus, another retirement plan called the Integrated Retirement Plan (IRP) was drawn to cover all of Benguet's employees. It qualified for tax exemption on August 12, 1976 when it was approved by the Bureau of Internal Revenue. The IRP became effective on August 31, 1975.

Kneebone and Gonzalez were in the employ of Benguet until August 31, 1975 when the one-year extension period expired. A few days later, they were informed by Benguet's new Vice-President for Administration of their retirement benefits, which were based solely on the monthly salaries they received from the Balatoc payroll. The monthly amounts they received from the Makati office and their monthly representation and transportation allowances (RTA) were not considered in computing their retirement benefits. Kneebone and Gonzalez sought a reconsideration from Benguet's Board of Directors but this was denied.

Dissatisfied, Kneebone and Gonzalez filed separate complaints against Benguet with Regional Office No. 4 of the Department of Labor and Employment for payment of their retirement benefits based on the basic salary, the monthly amount received from the Makati office and the monthly representation and transportation allowance (RTA), payment of interest and damages. Kneebone also sought to recover his salary and fringe benefits for the unexpired portion of his employment contract. The cases were certified to Labor Arbiter Flavio Aguas for compulsory arbitration after no amicable settlement was effected.

A decision was rendered by Labor Arbiter Aguas on December 27, 1978 dismissing the complaints. Kneebone and Gonzalez jointly appealed to the NLRC on January 17, 1979.

Kneebone died of cancer on January 27, 1984 while the appeal was still pending.

On September 30, 1986, the NLRC rendered judgment holding that the monthly amounts received by Kneebone and Gonzalez from the Makati office were salary increases that should be included in the computation of retirement benefits; that the monthly representation and transportation allowances (RTA) were not part of their salaries and should not be considered in computing retirement benefits; that they were entitled to damages in the amount of fourteen percent (14%) of their retirement benefits; and that Kneebone and Gonzalez were retired as of

August 31, 1974, not August 31, 1975, and were consequently entitled to retirement benefits only up to August 31, 1974.

The parties to the NLRC case filed motions for reconsideration. Benguet moved for the reconsideration of the inclusion of the amounts received from the Makati office in the computation of retirement benefits and the award of fourteen percent (14%) interest as damages. Kneebone and Gonzalez moved for reconsideration of the NLRC ruling, seeking the inclusion of the representation and transportation allowance (RTA) in the computation of retirement benefits. The motions for reconsideration were denied. Hence, the parties filed separate petitions in this Court.

The petitions filed by the estate of Kneebone was docketed as G.R. No. 77109, and that of Gonzalez, G.R. No. 77113. In a resolution dated August 17, 1987 the Court consolidated these two petitions.

Benguet, in its petition docketed as G.R. No. 77941, contended that the NLRC gravely abused its discretion when it modified the decision of the arbiter by ruling that the amounts received by Kneebone and Gonzalez from the Makati office were salary increases and should therefore be included in the computation of their retirement benefits and by awarding fourteen percent (14%) interest as damages. In a resolution dated May 11, 1988, the Court dismissed the petition after finding that no grave abuse of discretion had been committed by the NLRC. Benguet filed a motion for reconsideration, but this was denied by the Court in a resolution dated June 20, 1988.

The inclusion of the amounts received from the Makati office in the computation of their retirement benefits and the award of fourteen percent (14%) interest as damages having become final, such will no longer be dealt with in this case, although lengthily and extensively discussed by Benguet in its pleadings.

The issues before the Court may therefore be summarized as follows:

- Whether or not the representation and transportation allowance (RTA) also formed part of Kneebone and Gonzalez's salaries;
- Whether or not Kneebone's employment contract was illegally terminated;
- Whether or not Kneebone and Gonzalez were retired on August 31, 1974;
- Whether or not Kneebone and Gonzalez are entitled to retirement credits for service rendered from September 1, 1974 to August 31, 1975; and
- Whether or not Benguet is liable to pay additional damages and attorney's fees on top of the fourteen percent (14%) interest already awarded.
- The most important issue to be resolved is undeniably whether or not the representation and transportation allowance (RTA) also formed part of Kneebone and Gonzalez's salaries and, hence, should be considered in computing their retirement benefits.

Petitioners strongly insist that the fixed monthly representation and transportation allowance (RTA) given starting on June 15, 1974 was another salary increase, anchoring their claim on the undisputed fact that Kneebone and Gonzalez were already receiving allowances for representation and transportation expenses previous to said date.

However, the Court is convinced that the representation and transportation allowance (RTA) given to Kneebone and Gonzalez was not part of "salary" as contemplated in the retirement plan, but was merely an allowance, as its name implies. The provision in the IRP defining the term "salary", which adopted the definition in the SSRP, is specific and needs no interpretation:

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(e) "Salary" means the basic monthly salary or wage paid by the Company to an Employee on the date of actual retirement including the amounts of salary of the retiree which he may have elected not to receive pursuant to Section 2 of Article IX hereof but excluding overtime pay, bonuses, representation and transportation allowance, contract cash wage, and any other allowances or emoluments. [Underscoring supplied.]

The definition is unambiguous. "Salary" as basis for the computation of retirement benefits excludes representation and transportation allowances, without any qualification. The exclusion of representation and transportation allowances, without distinguishing between the fixed allowances (i.e. RTA) and the reimbursements or advances given for representation and transportation expenses betrays a clear intent to exclude all representation and transportation allowances, regardless of their purpose (i.e. whether they be added benefits or payments for actual expenses incurred) or the manner of their payment.

The fact that the disputed allowance is paid monthly, simultaneously with the basic salary, does not necessarily mean that it is part of the basic salary, more so when "basic salary" and "RTA" are entered as two distinct items in the pay slips. Neither do the facts that said allowance need not be liquidated and that it is subject to withholding tax detract from its being an allowance. Further, that the representation and transportation allowance was not considered as part of basic salary may be deduced from the fact that such was not included in the computation of vacation and sick leave pay.

- As to the claim of Kneebone's estate that he was illegally terminated because his three (3) year - contract had not yet expired when he was retired, the Court finds that such is negated by Kneebone's implied agreement to the termination of his employment contract, as evidenced by his failure to protest or even complain about the decision to retire him effective August 31, 1974. In fact, he even requested that his employment be extended. This clearly shows that Kneebone acceded to the early termination of his employment contract.

- Petitioners contend that Kneebone and Gonzalez were retired on August 31, 1975, and not on August 31, 1974, inasmuch as the SSRP, which was supposed to take effect on the latter date, failed to get the approval of the Bureau of Internal Revenue thus necessitating the formulation of the IRP which became effective on August 31, 1975.

The Court finds this contention unmeritorious. It must be emphasized that the approval of the Bureau of Internal Revenue was only sought in order to qualify the SSRP as a tax-free retirement plan. Non-approval of the SSRP did not necessarily mean its non-effectivity, as it merely meant that the beneficiaries of the plan will have to pay taxes on their retirement benefits. It is not even required by law that a retirement plan be tax-free to be effective. There was therefore no bar to Benguet's retirement of Kneebone and Gonzalez effective August 31, 1974 under the SSRP.

- Since the SSRP was not rendered ineffective by its non-approval by the Bureau of Internal Revenue and, consequently, Kneebone and Gonzalez were validly retired on August 31, 1974, they were therefore not entitled to retirement credits for their services rendered from September 1, 1974 to August 31, 1975, as provided in the SSRP.

- Petitioners contend that Kneebone and Gonzalez are entitled to additional damages and attorney's fees on top of the fourteen percent (14%) of the recomputed retirement benefits awarded by the NLRC as damages. Petitioners are of the conviction that by refusing to pay, Kneebone and Gonzalez their full retirement benefits in 1975, Benguet deprived them of the income that they could have realized had they been able to invest their retirement pay. Petitioners also point to the devaluation of the peso as another reason why the amount awarded as damages should be increased. Gonzalez further argues that he is entitled to additional damages because of the worry, anxiety and social humiliation caused by the failure to receive his retirement pay.

It cannot be denied that Kneebone and Gonzalez were prejudiced by the non-payment of the retirement benefits

due them, since aside from not being able to benefit immediately from the fruits of their long years of service to Benguet they were also prevented from investing their retirement benefits as they had planned, thus defeating the avowed purpose of the retirement plan to "provide employees with a reasonable level of income or capital upon retirement in order to supplement their personal resources and ease the transition from active employment." [NLRC Decision, p. 31; Rollo, G.R. No. 77109, p. 71.] Thus, they should be compensated pursuant to the rule that "[i]ndemnification for damages shall comprehend not only the value of the loss suffered, but also that of the profits which the obligee failed to obtain" [Art. 2200, Civil Code.] However, it cannot also be seriously disputed that the amounts demanded by Kneebone and Gonzalez to compensate for the profits they allegedly lost when they were not able to invest their retirement pay, being purely speculative, were excessive and, thus, a more realistic approximation was necessary. Weighing these considerations, the Court finds the NLRC's award of damages in the amount of fourteen percent (14%) of their retirement benefits, as computed after including the amounts received from the Makati office, fair and reasonable and adequate to cover both actual and moral damages.

WHEREFORE, finding no grave abuse of discretion committed by respondent NLRC, the consolidated petitions are DISMISSED and the Decision of the NLRC is AFFIRMED.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., and Bidin, JJ., concur.

Feliciano, J., no part, his former law office is counsel for private respondent.

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