

**TEOFILO ARICA, DANILO BERNABE, MELQUIADES DOHINO,
ABONDIO OMERTA, GIL TANGIHAN, SAMUEL LABAJO, NESTOR
NORBE, RODOLFO CONCEPCION, RICARDO RICHA, RODOLFO NENO,
ALBERTO BALATRO, BE...**

G.R. No. 78210. February 28, 1989

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of the decision of the National Labor Relations Commission dated December 12, 1986 in NLRC Case No. 2327 MC-XI-84 entitled Teofilo Arica et al. vs. Standard (Phil.) Fruits Corporation (STANFILCO) which affirmed the decision of Labor Arbiter Pedro C. Ramos, NLRC, Special Task Force, Regional Arbitration Branch No. XI, Davao City dismissing the claim of petitioners.

This case stemmed from a complaint filed on April 9, 1984 against private respondent Stanfilco for assembly time, moral damages and attorney's fees, with the aforementioned Regional Arbitration Branch No. XI, Davao City.

After the submission by the parties of their respective petition papers (Annex "C", pp. 30-40; Annex "D", Rollo, pp. 41-50), Labor Arbiter Pedro C. Ramos rendered a decision dated October 9, 1985 (Annex "E", Rollo, pp. 51-58) in favor of private respondent STANFILLO, holding that:

"Given these facts and circumstances, we cannot but agree with respondent that the pronouncement in that earlier case, i.e. the thirty-minute assembly time long practiced cannot be considered waiting time or work time end, therefore, not compensable, has become the law of the case which can no longer be disturbed without doing violence to the time-honored principle of res-judicata.

"WHEREFORE, in view of the foregoing considerations, the instant complaint should therefore be, as it is hereby, DISMISSED.

SO ORDERED." (Rollo, p. 58)

On December 12, 1986, after considering the appeal memorandum complaint and the opposition of respondents, the First Division of public respondent NLRC composed of Acting Presiding Commissioner Franklin Drilon, Commissioner Conrado Maglaya, Commissioner Rosario D. Encarnacion as Members, promulgated its Resolution, upholding the Labor Arbiters' decision. The Resolution's dispositive portion reads:

"Surely, the customary functions referred to in the above-quoted provision of the agreement includes the long-standing practice and institutionalized non-compensable assembly time. This, in effect, estopped complainants from pursuing this case.

"The Commission cannot ignore these hard facts, and we are constrained to uphold the dismissal and closure of the case.

"WHEREFORE, let the appeal be, as it is hereby dismissed, for lack of merit.

"SO ORDERED." (Annex "H", Rollo, pp. 86-89).

On January 15, 1987, petitioners filed a Motion for Reconsideration which was opposed by private respondent (Annex "I", Rollo, pp. 90-91; Annex "J", Rollo, pp. 92-96).

Public respondent NLRC, on January 30, 1987, issued a resolution denying for lack of merit petitioners' motion for reconsideration (Annex "K" Rollo, p. 97).

Hence this petition for review on certiorari filed on May 7, 1987.

The Court in the resolution of May 4, 1988 gave due course to this petition.

Petitioners assign the following issues:

- 1) Whether or not the 30-minute activity of the petitioners before the scheduled working time is compensable under the Labor Code.
- 2) Whether or not res judicata applies when the facts obtaining in the prior case and in the case at bar are significantly different from each other in that there is merit in the case at bar.
- 3) Whether or not there is finality in the decision of Secretary Ople in view of the compromise agreement novating it and the withdrawal of the appeal.
- 4) Whether or not estoppel and laches lie in decisions for the enforcement of labor standards (Rollo, p. 10).

Petitioners contend that the preliminary activities as workers of respondents STANFILCO in the assembly area is compensable as working time (from 5:30 to 6:00 o'clock in the morning) since these preliminary activities, are necessarily and primarily for private respondent's benefit.

These preliminary activities of the workers are as follows:

- (a) First, there is the roll call. This is followed by getting their individual work assignments from the foreman.
- (b) Thereafter, they are individually required to accomplish the Laborer's Daily Accomplishment Report during which they are often made to explain about their reported accomplishment the following day.
- (c) Then they go to the stockroom to get the working materials, tools and equipment.
- (d) Lastly, they travel to the field bringing with them, their tools, equipment and materials.

All these activities take 30 minutes to accomplish (Rollo, Petition, p. 11).

Contrary to this contention, respondent avers that the instant complaint is not new, the very same claim having been brought against herein respondent by the same group of rank and file employees in the case of Associated Labor Union and Standard Fruit Corporation, NLRC Case No. 26-LS-XI-76 which was filed way back April 27, 1976 when ALU was the bargaining agent of respondent's rank and file workers. The said case involved a claim for "waiting time", as the complainants purportedly were required to assemble at a designated area at least 30 minutes prior to the start of their scheduled working hours "to ascertain the work force available for the day by means of a roll call, for the purpose of assignment or reassignment of employees to such areas in the plantation where they are most needed." (Rollo, pp. 64-65)

Noteworthy is the decision of the Minister of Labor, on May 12, 1978 in the aforecited case (Associated Labor Union vs. Standard (Phil.) Fruit Corporation, NLRC Case No. 26-LS-XI-76) where significant findings of facts and conclusions had already been made on the matter.

The Minister of Labor held:

"The thirty (30) minute assembly time long practiced and institutionalized by mutual consent of the parties under Article IV, Section 3, of the Collective Bargaining Agreement cannot be considered as 'waiting time' within the purview of Section 5, Rule I, Book III of the Rules and Regulations Implementing the Labor Code.
xxx

"Further, the thirty (30)-minute assembly is a deeply-rooted, routinary practice of the employees, and the proceedings attendant thereto are not infected with complexities as to deprive the workers the time to attend to other personal pursuits. They are not new employees as to require the company to deliver long briefings regarding their respective work assignments. Their houses are situated right on the area where the farms are located, such that after the roll call, which does not necessarily require the personal presence, they can go back to their houses to attend to some chores. In short, they are not subject to the absolute control of the company during this period, otherwise, their failure to report in the assembly time would justify the company to impose disciplinary measures. The CBA does not contain any provision to this effect; the record is also bare of any proof on this point. This, therefore, demonstrates the indubitable fact that the thirty (30) minute assembly time was not primarily intended for the interests of the employer, but ultimately for the employees to indicate their availability or non-availability for work during every working day." (Annex "E", Rollo, p. 57).

Accordingly, the issues are reduced to the sole question as to whether public respondent National Labor Relations Commission committed a grave abuse of discretion in its resolution of December 17, 1986.

The facts on which this decision was predicated continue to be the facts of the case in this questioned resolution of the National Labor Relations Commission.

It is clear that herein petitioners are merely reiterating the very same claim which they filed through the ALU and which records show had already long been considered terminated and closed by this Court in G.R. No. L-48510. Therefore, the NLRC can not be faulted for ruling that petitioners' claim is already barred by res judicata.

Be that as it may, petitioners' claim that there was a change in the factual scenario which are "substantial changes in the facts" makes respondent firm now liable for the same claim they earlier filed against respondent which was dismissed. It is thus axiomatic that the non-compensability of the claim having been earlier established, constitute the controlling legal rule or decision between the parties and remains to be the law of the case making this petition without merit.

As aptly observed by the Solicitor General that this petition is "clearly violative of the familiar principle of res judicata. There will be no end to this controversy if the light of the Minister of Labor's decision dated May 12, 1979 that had long acquired the character of finality - and which already resolved that petitioners' thirty (30) minute assembly time is not compensable, the same issue can be re-litigated again." (Rollo, p. 183)

This Court has held:

"In this connection account should be taken of the cognate principle that res judicata operates to bar not only the re litigation in a subsequent action of the issues squarely raised, passed upon and adjudicated in the first suit, but also the ventilation in said subsequent suit of any other issue which could have been raised in the first but was not. The law provides that 'the judgment or order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action x x x litigating for the same thing and in the same capacity.' So, even if new causes of action are asserted in the second action (e.g. fraud, deceit, undue machinations in connection with their execution of the convenio de transaccion), this would not preclude the operation of the doctrine of res judicata. Those issues are also barred, even if not passed upon in the first. They could have been, but were not, there raised." (Vda. de Buncio v. Estate of the late Anita de

Leon, 156 SCRA 352 [1987]).

Moreover, as a rule, the findings of facts of quasi-judicial agencies which have acquired expertise because their jurisdiction is confined to specific matters are accorded not only respect but at times even finality if such findings are supported by substantial evidence (*Special Events & Central Shipping Office Workers Union v. San Miguel Corporation*, 122 SCRA 557 [1983]; *Dangan v. NLRC*, 127 SCRA 706 [1984]; *Phil. Labor Alliance Council v. Bureau of Labor Relations*, 75 SCRA 162 [1977]; *Mamerto v. Inciong*, 118 SCRA 265 [1982]; *National Federation of Labor Union (MAFLU) V. Ople*, 143 SCRA 124 [1986]; *Edi-Staff Builders International, Inc. v. Leogardo, Jr.*, 152 SCRA 453 [1987]; *Asiaworld Publishing House, Inc. v. Ople*, 152 SCRA 219 [1987]).

The records show that the Labor Arbiters' decision dated October 9, 1985 (Annex "E", Petition) pointed out in detail the basis of his findings and conclusions, and no cogent reason can be found to disturb these findings nor of those of the National Labor Relations Commission Which affirmed the same.

PREMISES CONSIDERED, the petition is DISMISSED for lack of merit and the decision of the National Labor Relations Commission is AFFIRMED.

SO ORDERED.

Melencio-Herrera (Chairman), Padilla and Regalado, JJ., concur.

Sarmiento, J., dissents in a separate opinion.

DISSENTING OPINION

SARMIENTO, J.:

It is my opinion that *res judicata* is not a bar.

The decision penned by then Minister Blas Ople in *ALU v. STANFILCO* (NLRC Case No. 26-LS-XI-76) relied upon by the respondents as basis for claims of *res judicata*, is not, to my mind, a controlling precedent. In that case, it was held that the thirty-minute "waiting time" complained of was a mere "assembly time" and not a waiting time as the term is known in law, and hence, a compensable hour of work. Thus:

The thirty (30) minute assembly time long practiced and institutionalized by mutual consent of the parties under Article IV, Section 3, of the Collective Bargaining Agreement cannot be considered as 'waiting time' within the purview of Section 5, Rule I, Book III of the Rules and Regulations Implementing the Labor Code.

x x x

Furthermore, the thirty (30)-minute assembly is a deeply-rooted, routinary practice of the employees, and the proceedings attendant thereto are not infected with complexities as to deprive the workers the time to attend to other personal pursuits. They are not new employees as to require the company to deliver long briefings regarding their respective work assignments. Their houses are situated right on the area where the farms are located, such that after the roll call, which does not necessarily require the personal presence, they can go back to their houses to attend to some chores.

In short, they are not subject to the absolute control of the company during this period, otherwise, their failure to report in the assembly time would justify the company to impose disciplinary measures. The CBA does not contain any provision to this effect; the record is also bare of any proof on this point. This, therefore, demonstrates the indubitable fact that the thirty (30) minute assembly time was not primarily intended for the interests of the employer, but ultimately for the employees to indicate their availability or non-availability for

work during every working day. (Decision, 6.)

Precisely, it is the petitioners' contention that the assembly time in question had since undergone dramatic changes, thus:

- (a) First there is the roll call. This is followed by getting their individual work assignments from the foreman.
- (b) Thereafter, they are individually required to accomplish the Laborer's Daily Accomplishment Report during which they are often made to explain about their reported accomplishment the following day.
- (c) Then they go to the stockroom to get the working materials, tools and equipment.
- (d) Lastly, they travel to the field bringing with them their tools, equipment and materials.

(Supra, 4-5.)

The petitioners have vehemently maintained that in view thereof, the instant case should be distinguished from the first case. And I do not believe that the respondents have successfully rebutted these allegations. The Solicitor General relies solely on the decision of then Minister Ople, the decision the petitioners precisely reject in view of the changes in the conditions of the parties. The private respondent on the other hand insists that these practices were the same practices taken into account in *ALU v. STANFILCO*. If this were so, the Ople decision was silent thereon.

It is evident that the Ople decision was predicated on the absence of any insinuation of obligatoriness in the course or after the assembly activities on the part of the employees. (" . . . [T]hey are not subject to the absolute control of the company during this period, otherwise, their failure to report in the assembly time would justify the company to impose disciplinary measures;" supra, 6.) As indicated, however, by the petitioners, things had since changed, and remarkably so, and the latter had since been placed under a number of restrictions. My considered opinion is that the thirty-minute assembly time had become, in truth and fact, a "waiting time" as contemplated by the Labor Code.

I vote, then, to grant the petition.

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