

APEX MINING COMPANY, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND SANDIGAN NG MANGGAGAWANG PILIPINO, REPRESENTED BY RANULFO PEDRERA, PRESIDENT, RESPONDENTS.

G.R. No. 86200. February 25, 1992

Ponente: FELICIANO, J.

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FELICIANO, J.:

Respondent Sandigan ng Manggagawang Pilipino ("Sandigan") filed before the Labor Arbiter a claim for Emergency Cost of Living Allowance ("ECOLA") differential against petitioner Apex Mining Company, Inc. ("Apex") alleging that Apex had paid its employees in its Maco, Davao del Norte operations, between 1 November 1984 until 28 March 1985, an aggregate cumulative daily ECOLA of only P15.00 which was P2.00 below the cumulative minimum ECOLA of P17.00 (for non-agricultural workers) established under Wage Order No. 6; and that petitioner had belatedly granted the additional P2.00 starting on 29 March 1985 only.

Apex denied having failed to comply with Wage Order No. 6, contending that it had, by previous agreement, incorporated the alleged P2.00 deficiency into the basic salary of its employees. In turn, Sandigan denied that such an agreement had been made, but conceded that a P2.00 increase in basic salary had been made by Apex, in compliance with a provision of the Collective Bargaining Agreement ("CBA") then in force between Apex and Sandigan, and not in fulfillment of Apex's obligation under Wage Order No. 6. Sandigan pointed out that Wage Order No. 6 had taken effect on 1 November 1984, several months after the P2.00 had been integrated by Apex into the basic salary of its employees.

In a supplemental memorandum, Apex reiterated that the daily salary increase of P2.00 provided for in the then current CBA, to take effect on 1 February 1984, had been subsequently credited as partial compliance with the P5.00 increment mandated by Wage Order No. 5 (which took effect on 16 June 1984). Thus, Apex, in compliance with Wage Order No. 5, accordingly increased the daily ECOLA of its workers by P3.00 only (from P9.00 to P12.00), or P2.00 less than the legislated ECOLA increase of P5.00 (which would have increased the total daily ECOLA from P9.00 to P14.00). Petitioner Apex added that the integration of P2.00 allowance into the basic salary provided for in the CBA had been conformed to by Vicente Arniego, National President of Sandigan, and that in any event, Wage Order No. 5 had itself authorized such integration. Since petitioner Apex had integrated P2.00 (out of the P5.00) ECOLA provided for in Wage Order No. 5, when Apex complied with the additional ECOLA increase mandated by Wage Order No. 6, the resulting figure for the total or cumulative ECOLA paid by Apex appeared to be only P15.00, until one took into account the P2.00 (out of the P5.00 ECOLA increase mandated by Wage Order No. 5) integrated into the employees' basic salary. Finally, petitioner Apex explained, it had granted members of Sandigan an additional P2.00 effective 29 March 1985 not as an admission that it had previously failed to pay something legally due, but only as a measure to diffuse the tense atmosphere between management and the union created by the misunderstanding over the ostensible (as distinguished from the real) total increase paid by petitioner Apex to its employees.

In a decision dated 19 May 1987, the Labor Arbiter held that the wage increase given in accordance with the CBA could not be credited as compliance with increases mandated in the Wage Orders, and ordered petitioner Apex to pay respondent Sandigan the claimed ECOLA differential of P2.00 for the period from 1 November 1984 until 28 March 1985.

On appeal, the National Labor Relations Commission ("NLRC") affirmed the Labor Arbiter's ruling.

There is no dispute that petitioner Apex, as the Labor Arbiter had found out, had paid a P2.00 wage increase effective on 1 February 1984. There is also no question that Apex raised the ECOLA of its workers by P3.00 starting on the effectivity date of Wage Order No. 6 on 1 November 1984. The question to be resolved is whether or not Apex complied with the increases mandated by Wage Orders Nos. 5 and 6. Resolution of this issue in turn hinges on the question of whether or not the P2.00 per day increase in basic salary effective starting on 1 February 1984 granted by petitioner Apex pursuant to the CBA, was lawfully credited towards compliance with increases in ECOLA required under Wage Orders Nos. 5 and 6.

1. The P2.00 increase integrated in the basic salary of Apex's employees, effective on and after 1 February 1984, was concededly given under the provisions of the CBA. Section 4 of Article VI of the CBA provided as follows:

"It is understood that the grant of these general increases shall be as part of any increase in basic pay and/or allowance that may hereafter be decreed or imposed by law."

Both Wage Order No. 5 and Wage Order No. 6 expressly allowed the crediting of increases in wages or allowances granted under collective bargaining agreements towards compliance with increases in ECOLA requirements prescribed by those Wage Orders. Section 7 of Wage Order No. 5 provided as follows:

"All increases in wages and/or allowances granted by employers between February 1, 1984 and the effectivity of this order [16 June 1984] shall be credited as compliance with the minimum wage and allowance adjustments prescribed herein x x x. Such increases shall not include anniversary wage increases provided in collective bargaining agreements unless the agreements expressly provide otherwise.

x x x x x x x x."

(Underscoring and brackets supplied)

Section 4 of Wage Order No. 6 had very similar language:

"All increases in wages and/or allowances granted by employers between June 17, 1984 and the effectivity of this order [November 1, 1984] shall be credited as compliance with the minimum wage and allowance adjustments prescribed herein, provided that where the increases are less than the applicable amount provided in this order, the employer shall pay the difference. Such increases shall not include anniversary wage increases provided in collective bargaining agreements unless the agreements expressly provide otherwise.

This Section shall not apply to merit wage increases and those resulting from the regularization or promotion of employees." (Underscoring and brackets supplied)

It is important to note that the creditability provisions in Wage Orders Nos. 5 and 6 (as well as the parallel provisions in Wage Orders Nos. 2, 3 and 4) are grounded in an important public policy. That public policy may be seen to be the encouragement of employers to grant wage and allowance increases to their employees higher than the minimum rates of increases prescribed by statute or administrative regulation. To obliterate the creditability provisions in the Wage Orders through interpretation or otherwise, and to compel employers simply to add on legislated increases in salaries or allowances without regard to what is already being paid, would be to penalize employers who grant their workers more than the statutorily prescribed minimum rates of increases. Clearly, this

would be counter-productive so far as securing the interests of labor is concerned. The creditability provisions in the Wage Orders prevent the penalizing of employers who are industry leaders and who do not wait for statutorily prescribed increases in salary or allowances and pay their workers more than what the law or regulations require.

2. Sandigan, however, argues that to consider the P2.00 increase in basic salary effective 1 February 1984 provided by the CBA as compliance with the requirements of Wage Orders Nos. 5 and 6, would be to violate Article 100 of the Labor Code as well as Section 6 of the Rules Implementing Wage Order No. 6. These provisions read respectively:

"Art. 100. Prohibition against elimination or diminution of benefits - Nothing in [Book Three - Conditions of Employment] 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." (Underscoring supplied)

"Section 6. Non-diminution of benefits - The statutory minimum wage rates shall be exclusive of whatever supplements and other benefits the workers are enjoying without cost at the time of the effectivity of this Order." (Underscoring supplied)

Clearly, the prohibition against elimination or diminution of benefits set out in Article 100 of the Labor Code is specifically concerned with benefits already enjoyed at the time of the promulgation of the Labor Code. Article 100 does not, in other words, purport to apply to situations arising after the promulgation date of the Labor Code. Section 6 of the Rules Implementing Wage Order No. 6 relates to "supplements and other benefits" which employees are already "enjoying without cost at the time of the effectivity of [Wage] Order [No. 6]." Such benefits which employees are already enjoying "without cost" could not, under Section 6, suddenly be ascribed monetary value so as to offset or diminish increases in the minimum wage rates prescribed by statute. Clearly, once more, Section 6 does not relate to the problem at hand.

3. Sandigan further contends that the 1 February 1984 P2.00 increase in basic salary was actually an "anniversary wage increase," and therefore not creditable under Section 7 of Wage Order No. 5 and under Section 4 of Wage Order No. 6.

The P2.00 increase was given by petitioner Apex under Section 3, Rule VI of the CBA which reads as follows:

"SECTION 3. The COMPANY agrees to grant general wage increases to all employees within bargaining unit as follows:

- a) Two Pesos (P2.00) general increase per day upon the effectivity of this Agreement (February 1, 1984);
- b) One Peso and Fifty Centavos (P1.50) general increase per day effective on the first anniversary date of this Agreement (February 1, 1985);
- c) One Peso and Fifty Centavos (P1.50) general increase per day effective on the second anniversary date of this Agreement (February 1, 1986)."[1] (Underscoring supplied)

It appears clear to the Court from an inspection of the above-quoted Section 3 that the P2.00 increase effective on 1 February 1984 was distinguishable from the two (2) increases of P1.50 each, the first being effective on the first anniversary date of the CBA (1 February 1985) and the second being effective on the second anniversary dated (1 February 1986). In other words, the two (2) increases of P1.50 each, one being effective on 1 February 1985 and the second effective on 1 February 1986 were precisely the non-creditable "anniversary wage increases." Even if it be assumed, however, that the 1 February 1984 P2.00 increase were regarded (improperly) as an "anniversary wage increase" still that P2.00 increase would be creditable towards the statutorily mandated increases. For Wage Orders Nos. 5 and 6 themselves allowed crediting of "anniversary wage increases" stipulated in a CBA towards statutory increases, if the CBA itself (as here) expressly allowed such crediting. Section 4, Article VI of the CBA,

quoted earlier, authorized the crediting of "general increases" towards statutorily mandated increases in basic pay or allowance. At the same time, Section 3 of Article VI of the CBA, quoted above, described the two (2) anniversary wage increases of P1.50 each, and the one-time P2.00 increase, as each constituting a "general increase."

4. What petitioner Apex did may perhaps be most economically presented in the following tabular form:

ECOLA Increases Statutorily Mandated

by Wage Orders Nos. 4, 5, and 6

(For non-agricultural workers outside

Metro Manila)

Wage

Order

No.

Mandatory

Increase

(P0.00)

Cumulated

Increase

(P0.00)

Apparent

Cumulated

Increase[2]

(P0.00)

Actual

Cumulated

Increase[3]

(P0.00)

Actual

Differential

(P0.00)

4

9

9

9

9

0

5

5

14

12

14

0

6

3

17

15

17

0

The respondent Sandigan did not question the fact that petitioner Apex was in compliance with the requirements of Wage Order No. 4.

In respect of Wage Order No. 5, Apex credited the P2.00 increase in basic salary, effective 1 February 1984, towards compliance with the statutorily prescribed ECOLA increase of P5.00. Thus, the apparent cumulated increase in ECOLA, as shown in Apex's books, was only P12.00. However, the actual increases -- the composite of basic salary and ECOLA -- aggregated P14.00. Since such crediting was expressly allowed under Wage Order No. 5, it follows that petitioner Apex was in compliance with Wage Order No. 5. No differential was therefore due thereunder.

When Wage Order No. 6 was promulgated, it prescribed an increase of P3.00 in ECOLA. Apex paid this mandatory increase and denominated all of it as ECOLA. Thus, the apparent cumulated increase was P15.00. Since, however, Apex had previously increased the basic salary by P2.00 effective 1 February 1984, the aggregate actual increase (in basic salary plus ECOLA) was P17.00, the same total or cumulated increase contemplated by Wage Orders Nos. 5 and 6. Thus, again, Apex was actually in compliance with the requirements of Wage Order No. 6, with the result that no differential was actually due from it.

It remains only to note that Section 7 of Wage Order No. 5 and Section 4 of Wage Order No. 6 expressly authorized the crediting of all the increases "in wages" or "allowances." Thus, the fact that Apex had denominated the P2.00 increase effective 1 February 1984, as an increase in basic salary, rather than in ECOLA, made no legal difference so far as concerns the creditability of such increase. Indeed, integration of the P2.00 into the basic salary of the employees was more beneficial to them than granting the P2.00 as part of their ECOLA: the integration increased the base wage for purposes of computation of such items as overtime and premium pay, fringe benefits and maternity pay. In fact, the Implementing Rules of Wage Order No. 5, and Wage Order No. 6 itself,[4] expressly authorized increases in basic salary in lieu of increases in ECOLA, provided the amounts

thereof were not less than the amounts required by the Wage Orders.

5. Lastly, Sandigan invokes Filipino Pipe Workers Union (NLU) v. Batario, Jr.,^[5] where the Court, through its Third Division, made the broad statement that statutory wage increases are to be considered separate from increases granted through the medium of CBAs.

In Filipino Pipe Workers, the NLRC ordered the inclusion in its award in favor of the union of a wage increase of P3.00 per day mandated by Wage Orders Nos. 2 and 3, which took effect after the finality of the Labor Arbiter's decision but pending its execution. In sustaining the award of the NLRC, the Court, through former Chief Justice Fernan, said:

"In his Comment on the petition, the Solicitor General stated that the said P3.00 a day increase was made pursuant to Wage Orders Nos. 2 and 3, which took effect after the finality of the Labor Arbiter's decision but pending its execution. A common section found in both Wage Orders Nos. 2 and 3, as well as in the subsequent Wage Orders Nos. 5 and 6 uniformly provides that all increases and/or allowances granted by employers within a specified period 'shall be credited as compliance with the minimum wage and allowance adjustments prescribed herein, provided that where the increases are less than the applicable amount provided in this Order, the employer shall pay the difference. Such increases shall not include anniversary wage increases provided in collective bargaining agreements unless the agreement expressly provide otherwise.' (Underscoring in the original)

We interpret the above section to mean that every grant of daily increase in statutory minimum wage rates and living allowance must be considered as independent, separate or apart from the wage increases in the collective bargaining agreement and must be integrated into the salary scale of the employees to the end that the desired rates decreed by the National Wages Council are attained."^[6] (Underscoring supplied)

It is apparent from the foregoing that the issue of creditability of an increase in basic salary or allowance given pursuant to a CBA towards compliance with a statutorily prescribed increase in emergency cost of living allowances (ECOLA) was not at all involved and that the Court was not striking down the creditability provisions in Wage Orders Nos. 2, 3, 5 and 6. All that the NLRC was saying was that a wage increase which had come into effect after the Labor Arbiter's decision could be included in the award and execution for the aggregate amounts due obtained. In fact, the above underscored paragraph was entirely obiter in character.

Petitioner Apex having lawfully credited the P2.00 increase in basic salary towards compliance of the increase in ECOLA prescribed by Wage Orders Nos. 5 and 6, it follows that respondent Sandigan's claim to a differential in ECOLA lacks basis in fact and in law.

ACCORDINGLY, the Court Resolved to GRANT the Petition for Certiorari. The Decision of the NLRC in Case No. 2915-MC-XI-86, dated 9 September 1988, and its Resolution dated 28 October 1988, denying petitioner's motion for reconsideration, are hereby SET ASIDE and ANNULLED. No pronouncement as to costs.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

[1] Rollo, p. 107.

[2] As found by the Senior Labor Arbitration Analyst.

[3] Aggregate [ECOLA plus basic salary] actual increase.

[4] Chapter III, Section 4 (b), Rules Implementing Wage Order No. 5; Section 5, Wage Order No. 6.

[5] 163 SCRA 789 (1988).

[6] 163 SCRA at 796-797.

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