

TERMINAL FACILITIES AND SERVICES CORPORATION, PETITIONER, VS. THE NATIONAL LABOR RELATIONS COMMISSION AND ASSOCIATED LABOR UNIONS (ALU), RESPONDENTS.

G.R. No. 91787. July 16, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The instant petition seeks to annul the resolutions dated March 20, 1989 and October 31, 1989 of the National Labor Relations Commission (NLRC) which affirmed with modification the earlier decision of Labor Arbiter Jose O. Libron, Labor Arbitration Branch, Regional Office No. XI, Davao City and ordered the petitioner to pay the members of respondent Associated Labor Unions (ALU) monthly living allowance differentials pursuant to the provisions of Wage Order No. 6 and its implementing rules.

Respondent Associated Labor Unions (ALU) is the exclusive bargaining agent of the on-and-off rank and file workers as well as the monthly paid employees of petitioner Terminal Facilities and Services Corporation (TEFASCO), a domestic corporation engaged in the business of wharf services and facilities operating for profit and with business operation located at Davao City.

On the ground that petitioner TEFASCO failed to comply with the law on the payment of the mandated cost of living allowance under existing wage order to its monthly-paid employees who are members of respondent ALU, the latter, in a complaint dated September 5, 1985 filed with the National Labor Relations Commission (NLRC) Labor Arbitration Branch, Regional Office No. XI, Davao City charged the former with underpayment of emergency cost of living allowance.

Respondent ALU alleged that petitioner TEFASCO pays each monthly-paid employee only P455.00 a month as emergency cost of living allowance which is less than the prescribed amount of P517.08 per month as stated in the table of computations released by the Ministry (now Department) of Labor and Employment. ALU filed the complaint after TEFASCO refused to adjust the union members' allowances.

In its position paper, petitioner TEFASCO traversed the allegations in the complaint by stating that the covered employees belong to Group II under the table of computations which includes establishments that consider rest days as unworked and unpaid and not under Group III as alleged in the complaint which includes establishments that consider rest days and holidays as paid days although unworked. The petitioner explained that the basis of the computation of the basic wages allowance is 26 days per month for monthly paid employees, the four (4) rest days excluded. Furthermore, petitioner TEFASCO averred that its stand is in consonance with Section 5 of the Implementing Rules of Wage No. 6, to wit:

"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."

Thus, the petitioner posits that "it is only when an employee is paid his basic wage on an unworked day that he

shall be paid the cost of living allowance for that unworked day." (Rollo, p. 29)

In a decision dated April 29, 1986, Labor Arbiter Jose O. Libron ruled in favor of respondent ALU, to wit:

"The records thus show that complainant's members have been receiving a monthly basic wage of not less than P1,095.00 each. Annexes "B" to "B-7" alone show that each of the complainant's member receives a monthly basic wage of not less than P1,095.00 which amount is prescribed under Group III. It is clear, therefore, that their rest days and holidays, although unworked, are being considered paid upon which their monthly allowance should be based.

"Respondent admits having paid its employees a monthly allowance of P455.00, which amount this Office deems legally insufficient. Since the issues herein are embraced under Group III, each complainant's member, is, therefore, entitled to a monthly living allowance of P517.08 or a monthly difference of P62.08 since the effectivity of Wage Order No. 6 on November 1, 1984." (Rollo, p. 35)

Accordingly, petitioner TEFASCO was ordered "x x x to pay each complainant's member a monthly living allowance differential of P62.08 computed from November 1, 1984 until such time that the monthly living allowance of P517.08 pursuant to Wage Order No. 6 shall have been fully implemented." (Rollo, p. 35)

The decision was affirmed with modification by the NLRC in a decision dated March 20, 1989. The NLRC affirmed the questioned decision in so far as it categorized the union members receiving a basic salary of P1,095.00 as belonging to Group III under the table of computations prepared by the MOLE. The decision was modified only as to who among the complaining members should receive the amount of P517.08 as allowance starting on November 1, 1984 considering that not all of them were receiving a basic salary of P1,095.00 as of November 1, 1984.

A motion for reconsideration filed by petitioner TEFASCO was denied for lack of merit.

Hence, this petition.

The sole issue as to whether or not the NLRC committed any jurisdictional error in its resolutions dated March 20, 1989 and October 31, 1989 is presented in the form of the following assignments of errors:

I

THE RESPONDENT NLRC HAS DECIDED THE ISSUE IN THE PRESENT CASE NOT IN ACCORD WITH THE RULING LAID DOWN BY THE SUPREME COURT IN CHARTERED BANK EMPLOYEE'S ASSOCIATION V. OPLE, 138 SCRA 272.

II

THE FINDINGS AND CONCLUSIONS OF THE NLRC ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE. (Rollo, p. 14)

The petitioner does not dispute the existence and validity of the table of computation released by the Ministry of Labor and Employment (Annex "A" of ALU's Position Paper) relied upon by the Labor Arbiter and the NLRC in ruling in favor of respondent ALU.

Under the table of computations an employee who receives a basic monthly rate of not less than P1,095.00 and whose total number of working days in a year is 365 falls under Group III of the said table of computations and is entitled to a corresponding monthly allowance of P517.08 effective November 1, 1984. It is understood that under Group III, rest days and holidays although unworked are considered paid days upon which the monthly allowance should be based.

On the other hand, employees who fall under Group II of the table of computations are those whose unworked rest days are not considered paid.

The petitioner insists that in the case of the members of the ALU it uses the divisor of 26 days to determine the daily equivalent of the amount to be deducted from the salary of a monthly paid employee when the employee incurs absence or absences from work. The petitioner explains:

"We beg leave to discuss the entries in some of the annexes referred to above. Let us take Annex "2", the pay slip of Andres Aguinaldo for the period 10/1-15'85, as an example. The informations we gather from the same material to this case are:

Monthly basic salary P1,059.00

Compensation:

Basic Pay (1 day) 488.90

Cola 227.50

Since the monthly basic salary is P1,059.00, the salary for one-half month is P529.50. If the salary for one-half month is P529.50, why is it that the basic pay under compensation above is only P488.90? Because the salary equivalent to one (1) day absence was deducted from P529.50. The absence of 1 day is indicated in the pay slip between 'Basic Pay' and the figure 'P488.90' as (1 day). So that, P529.50 less P488.90 equals P40.60. P40.60 is the salary equivalent to 1 day absence. P1,059.00 divided by P40.60 equals 26.083 or rounded off to 26. That means to say that to find the equivalent daily salary of the employee Andres Aguinaldo, the divisor used by TEFASCO is 26 days in one month.

xxx xxx xxx

x x x As already pointed out, the facts show that the divisor used to find the daily equivalent of the salary of ALU's members is 26 working days in one month. That means to say that the monthly salary of ALU's members do not include pay for unworked rest days. Stated in another manner. ALU's members belong to Group II, those whose rest days are unworked and not considered paid. The number of their work days in one year is 314 or approximately 26 days in one month." (Rollo, pp. 15-16 and 18)

The petitioner maintains that its arguments are in accordance with the ruling in *Chartered Bank Employees Association v. Ople* (138 SCRA 273 [1985]).

The *Chartered Bank* case involves claims for holiday pay, premium and overtime pay differentials by the *Chartered Bank Employees Association* in representation of its monthly paid employees/members against the *Chartered Bank*. Specifically, the petitioner association in a complaint filed with the then Ministry of Labor and Employment asked for the payment of ten (10) unworked legal holidays, as well as premium and overtime differentials for worked legal holidays from November 1, 1974.

In ruling in favor of the employees association, this Court, among others, said:

"One strong argument in favor of the petitioner's stand is the fact that the *Chartered Bank*, in computing overtime compensation for its employees, employs a 'divisor' of 251 days. The 251 working days divisor is the result of subtracting all Saturdays, Sundays and the ten (10) legal holidays from the total number of calendar days in a year. If the employees are already paid for all non-working days, the divisor should be 365 and not 251.

The situation is muddled somewhat by the fact that, in computing the employees' absences from work, the respondent bank uses 365 as divisor. Any slight doubts, however, must be resolved in favor of the workers.

This is in keeping with the constitutional mandate of promoting social justice and affording protection to labor (Sections 6 and 9, Article II, Constitution). The Labor Code, as amended, itself provides:

‘ART. 4. Construction in favor of labor. - All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor.’

Any remaining doubts which may arise from the conflicting or different divisors used in the computation of overtime pay and employees' absences are resolved by the manner in which work actually rendered on holidays is paid. Thus, whenever monthly paid employees work on a holiday, they are given an additional 100% base pay on top of a premium pay of 50%. If the employees monthly pay already includes their salaries for holidays, they should be paid only premium pay but not both base pay and premium pay.

The contention of the respondent that 100% base pay and 50% premium pay for work actually rendered on holidays is given in addition to monthly salaries only because the collective bargaining agreement so provides is itself an argument in favor of the petitioner's stand. It shows that the Collective Bargaining Agreement already contemplated a divisor of 251 days for holiday pay computations before the questioned presumption in the Integrated Rules and the Policy Instruction was formulated. There is furthermore a similarity between overtime pay, which is computed on the basis of 251 working days a year, and holiday pay, which should be similarly treated notwithstanding the public respondents' issuances. In both cases--overtime work and holiday work--the employee works when he is supposed to be resting. In the absence of an express provision of the CBA or the law to the contrary, the computations should be similarly handled.

We are not unmindful of the fact that the respondent's employees are among the highest paid in the industry. It is not the intent of this Court to impose any undue burdens on an employer which is already doing its best for its personnel. However, we have to resolve the labor dispute in the light of the parties' own collective bargaining agreement and the benefits given by law to all workers. When the law provides benefits for ‘employees in all establishments and undertakings, whether for profit or not’ and lists specifically the employees not entitled to those benefits, the administrative agency implementing that law cannot exclude certain employees from its coverage simply because they are paid by the month or because they are already highly paid. The remedy lies in a clear redrafting of the collective bargaining agreement with a statement that monthly pay already includes holiday pay or an amendment of the law to that effect but not an administrative rule or a policy instruction.” (at pp. 282-283)

As can be gleaned from the disquisition, the decision in favor of the association was arrived at based on the divisor of 251 days which was provided for in the collective bargaining agreement between the bank and the association as well as “x x x the benefits given by law to all workers.”

We, however, do not find any application as regards the divisor of 251 days or less than 365 days in the instant case to determine the monthly cost of living allowance provided for in Wage Order No. 6 “increasing the statutory minimum wage rates and cost of living allowances in the private sector.” The cited case is not similar to the instant case in that, first, the former involves holiday pay premium and overtime pay while the latter involves cost of living allowance; and second, in the former, the divisor was provided for in the collective bargaining agreement of the parties while in the latter, there is no provision regarding divisor, not even in the computation of daily wage for purposes of determining deductions from the monthly salary in cases of absence/absences of the employees provided for in the parties' collective bargaining agreement.

What is clear is that the petitioner in line with company practice uses the divisor of 26 days per month in determining the daily wage of an employee to fix the amount of deduction from the employee's monthly salary when the employee incurs absences during the month.

The petitioner justifies this company practice by stating that in the absence of a collective bargaining agreement

or company policy, resort must be had to the practice of the employer provided it is not contrary to law.

In resolving the issues raised in the instant case, we are once again reminded of the constitutional mandate that:

"The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. (Par. 1, Section 3, Article XIII, Constitution)

In this regard, we said in the case of *Ditan v. Philippine Overseas Employment Administration, et al.* (G.R. No. 79560, Dec. 3, 1990):

"A strict interpretation of the cold facts before us might support the position taken by the respondents. However, we are dealing here not with an ordinary transaction but with a labor contract which deserves special treatment and a liberal interpretation in favor of the worker. As the Solicitor General observes in his Comment supporting the petitioner, the Constitution mandates the protection of labor and the sympathetic concern of the State for the working class conformably to the social justice policy. This is a command we cannot disregard in the resolution of the case before us.

The paramount duty of this Court is to render justice through law. The law in this case allows two opposite interpretations, one strictly in favor of the employers and the other liberally in favor of the worker. The choice is obvious. We find, considering the totality of the circumstances attending this case, that the petitioner is entitled to relief."

We rule that in keeping with the constitutional mandate of social justice, the questioned resolutions of the NLRC should be upheld.

Wage Order No. 6 was issued by then President Ferdinand E. Marcos to increase the statutory minimum wage rates and cost of living allowances of the employee in the private sector. In line with the wage order and its rules implementing the wage order, the Ministry of Labor and Employment released a table of computations to guide the employer on the amount of the cost of living allowance which a group of employees should receive. It is to be noted that the petitioner is not questioning the table of computations. Furthermore, we rule that the company practice to use a divisor of 26 days in determining the deductions from the monthly salary of an employee when he incurs absences during the period does not mean that the same procedure should also be followed in determining the monthly cost of living allowance due the employee. In the absence of any provision in any collective bargaining agreement of the parties, the presumption that a monthly paid employee is considered paid even on rest days must prevail.

WHEREFORE, the instant petition is **DISMISSED** for failure to show a grave abuse of discretion. The questioned resolutions dated March 20, 1989 and October 31, 1989 of the National Labor Relations Commission are **AFFIRMED**. Costs against the petitioner.

SO ORDERED.

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

Feliciano, J. did not take part in the deliberation of the case.

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