

**JULIO N. CAGAMPAN, SILVINO O. VICERA, JORGE C. DE CASTRO,
JUANITO R. DE JESUS, ARNOLD J. MIRANDA, MAXIMO O. ROSELLO
& ANICETO L. BETANA, PETITIONERS, VS. NATIONAL LABOR
RELATION...**

G.R. Nos. 85122-24. March 22, 1991

Ponente: PARAS, J.

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PARAS, J.:

Presented before Us for review is the decision of public respondent National Labor Relations Commission handed down on March 16, 1988 reversing the decision of the Philippine Overseas Employment Administration and correspondingly dismissing the cases for lack of merit. The POEA decision granted overtime pay to petitioners equivalent to 30% of their basic pay.

We do not dispute the facts as found by the Solicitor General. Thus:

"On April 17 and 18, 1985, petitioners, all seamen, entered into separate contracts of employment with the Golden Light Ocean Transport, Ltd., through its local agency, private respondent ACE MARITIME AGENCIES, INC. Petitioners, with their respective ratings and monthly salary rates, are as follows:

Petitioners

Rating

Salary
per month

Julio Cagampan 2nd Engineer

US\$500.00

Silvino Vicera 2nd Engineer

US\$800.00

Juanito de Jesus Ordinary Seaman

US\$120.00

Jorge C. de Castro Ordinary Seaman

US\$160.00

Arnold Miranda 3rd Officer

US\$310.00

Maximo Rosello Cook

US\$230.00

Aniceto Betana 3rd Engineer

US\$400.00

"Petitioners were deployed on May 7, 1985, and discharged on July 12, 1986.

"Thereafter, petitioners collectively and/or individually filed complaints for non-payment of overtime pay, vacation pay and terminal pay against private respondent. In addition, they claimed that they were made to sign their contracts in blank. Likewise, petitioners averred that although they agreed to render services on board the vessel Rio Colorado managed by Golden Light Ocean Transport, Ltd., the vessel they actually boarded was MV 'SOIC I' managed by Columbus Navigation. Two (2) petitioners, Jorge de Castro and Juanito de Jesus, charged that although they were employed as ordinary seamen (OS), they actually performed the work and duties of Able Seamen (AB).

"Private respondent was furnished with copies of petitioners' complaints and summons, but it failed to file its answer within the reglementary period. Thus, on January 12, 1987, an Order was issued declaring that private respondent has waived its right to present evidence in its behalf and that the cases are submitted for decision (Page 68, Records).

"On August 5, 1987, the Philippine Overseas Employment Administration (POEA) rendered a Decision dismissing petitioners' claim for terminal pay but granted their prayer for leave pay and overtime pay. The dispositive portion of the Decision reads:

'IN VIEW OF THE FOREGOING, judgment is hereby rendered ordering respondent (private respondent) Ace Maritime Agencies, Inc. to pay the following complainants (petitioners) in the amounts opposite their names:

1. Julio Cagampan – US\$583.33 plus US\$2,125.00 representing the 30% guaranteed overtime pay;
2. Silvino Vicera - US\$933.33 plus US\$3,400.00 representing the 30% guaranteed overtime pay;
3. Jorge de Castro - US\$233.33 plus US\$850.00 representing the 30% guaranteed overtime pay;
4. Juanito de Jesus - US\$233.33 plus US\$850.00 representing the 30% guaranteed overtime pay;
5. Lauro Diongzon - US\$233.33 plus US\$850.00 representing the 30% guaranteed overtime pay;
6. Arnold Miranda - US\$455.00 plus US\$1,659.50 representing the 30% guaranteed overtime pay;
7. Maximo Rosello - US\$303.33 plus US\$1,105.00 representing the 30% guaranteed overtime pay; and
8. Aniceto Betana - US\$583.33 plus US\$2,125.00 representing the 30% guaranteed overtime pay.

'The payments represent their leave pay equivalent to their respective salary (sic) of 35 days and should be paid in Philippine currency at the current rate of exchange at the time of actual payment.' (pp. 81-82, Records)

"Private respondent appealed from the POEA's Decision to the NLRC on August 24, 1987. On March 16, 1988, the NLRC promulgated a Decision, the dispositive portion of which reads:

'WHEREFORE, premises considered, the appealed decision is hereby REVERSED and SET ASIDE and another one entered dismissing these cases for lack of merit.' (p. 144, Records)

"On May 8, 1988, petitioners filed an Urgent Motion for Reconsideration of the NLRC's Decision (p. 210, Records), but the same was denied by the NLRC for lack of merit in its Resolution dated September 12, 1988 (p. 212, Records)."

Hence, this appeal from the decision and resolution of the respondent NLRC.

Petitioners allege that respondent Commission gravely abused its discretion or erred in deciding in favor of private respondent company by reason of the following:

1. Respondent NLRC overlooked the fact that private respondent company had repeatedly failed and refused to file its answer to petitioners' complaints with their supporting documents.
2. Respondent Commission erred in reversing and setting aside the POEA decision and correspondingly dismissing the appeal of petitioners, allegedly in contravention of law and jurisprudence.

Private respondent maritime company disclaims the aforesaid allegations of petitioners through these arguments:

1. As borne out by the records, its former counsel attended all the hearings before the POEA wherein he raised the basic objection that the complaint of petitioners was so generally couched that a more detailed pleading with supporting documents was repeatedly requested for the latter to submit.
2. The NLRC never abused its discretion in arriving at assailed decision considering that the same was based on the Memorandum on Appeal dated August 14, 1987 filed by private respondent.
3. In the hearings conducted by respondent Commission, all the arguments of both parties were properly ventilated and considered by said Commission in rendering its decision.
4. The Labor Code basically provides that the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of the Code that the Commission and its members and Labor Arbiters should use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law and procedure, all in the interest of due process.
5. Petitioners' motion for reconsideration of the NLRC decision did not invoke the merits of the case but merely raised purely technical and procedural matters. Even assuming that private respondent, technically speaking, waived the presentation of evidence, its appeal to the NLRC was valid since it involved merely a correct interpretation and clarification of certain provisions of the contract the validity of which has never been questioned.

The Solicitor General, arguing for public respondent NLRC, contends:

1. Petitioners' assumption that a party who is declared to have waived his right to present evidence also loses his right to appeal from an adverse judgment made against him is a falsity for, although the technical rules of evidence prevailing in the courts of law or equity do not bind labor tribunals, even the Rules of Court allows a party declared in default to appeal from said judgment by attacking the propriety of the relief awarded therein.
2. The NLRC did not abuse its discretion in the rendition of subject decision because the evidence presented by petitioners in support of their complaint is by itself sufficient to back up the decision. The issue of the disallowance of overtime pay stems from an interpretation of particular provisions of the employment contract.

We cannot sustain petitioners' position.

The failure of respondent to submit its responsive pleading was not fatal as to invalidate its case before the Phil. Overseas Employment Authority. Evidently, such formal or technical defect was rectified by the fact that the POEA proceeded with the hearings on the case where both parties were given sufficient leeway to ventilate their cases.

Petitioners' manifest pursuit of their claims before the POEA in the absence of the answer produced the effect of

condoning the failure of private respondent to submit the said answer. Their submission to the POEA's authority without questioning its jurisdiction to continue the hearings further strengthens the fact that the alleged technical defect had already been cured. After all, what is there to complain of when the POEA handed down a decision favorable to petitioners with the allowance of the latter's leave pay and overtime pay.

Notably, it was only when private respondent appealed the NLRC decision to this Court that petitioners suddenly unearth the issue of private respondent's default in the POEA case. Had the decision favoring them not been reversed by the NLRC, petitioners could have just clammed up. They resorted to bringing up a technical, not a substantial, defect in their desperate attempt to sway the Court's decision in their favor.

Private respondent has pointedly argued that the NLRC anchored its decision primarily upon the Memorandum on Appeal. In the case of *Manila Doctors Hospital v. NLRC* (135 SCRA 262) this Court ruled that the National Labor Relations Commission and the Labor Arbiter have authority under the Labor Code to decide a case based on the position papers and documents submitted without resorting to the technical rules of evidence.

On the issue of whether or not petitioners should be entitled to terminal pay, We sustain the finding of respondent NLRC that petitioners were actually paid more than the amounts fixed in their employment contracts. The pertinent portion of the NLRC decision reads as follows:

"On this award for leave pay to the complainants (petitioners), the (private) respondent maintains that actually they were paid much more than what they were legally entitled to under their contract. This fact has not been disputed by the complainants (petitioners). Thus, as mentioned in (private) respondent's Memorandum on Appeal dated 14 August 1987, their overpayment is more than enough and sufficient to offset whatever claims for leave pay they filed in this case and for which the POEA favorably considered in their favor. For complainant (petitioner) Aniceto Betana, it appears that under the crew contract his monthly salary was US\$400 while he was overpaid by US\$100 as he actually received US\$500. In fine, Betana had received at least US\$1,400 excess salary for a period of fourteen (14) months which was the period of his employment. In the case of complainant (petitioner) Jorge C. de Castro his stipulated monthly pay was US\$160 but he actually received a monthly pay of US\$200 or an overpayment of US\$560 for the same period of service. For complainant (petitioner) Juanito R. de Jesus, his overpayment is US\$1120. Complainant (petitioner) Arnold J. Miranda has also the same amount of excess payment as de Jesus. Indeed, We cannot simply ignore this material fact. It is our duty to prevent a miscarriage of justice for if We sustain the award for leave pay in the face of undisputed facts that the complainants (petitioners) were even paid much more than what they should receive by way of leave pay, then they would be enriching themselves at the expense of others. Accordingly, justice and equity compel Us to deny this award."

Even as the denial of petitioners' terminal pay by the NLRC has been justified, such denial should not have been applied to petitioners Julio Cagampan and Silvino Vicera. For, a deeper scrutiny of the records by the Solicitor General has revealed that the fact of overpayment does not cover the aforementioned petitioners since the amounts awarded them were equal only to the amounts stipulated in the crew contracts. Since petitioners Cagampan and Vicera were not overpaid by the company, they should be paid the amounts of US\$583.33 and US\$933.33, respectively. Further examination by the Solicitor General shows that petitioner Maximo Rosello was also over paid in the amount of US\$420.00.

Hence, with respect to petitioners Cagampan and Vicera, the NLRC decision must be modified correspondingly.

As regards the question of overtime pay, the NLRC cannot be faulted for disallowing the payment of said pay because it merely straightened out the distorted interpretation asserted by petitioners and defined the correct interpretation of the provision on overtime pay embodied in the contract conformably with settled doctrines on the matter. Notably, the NLRC ruling on the disallowance of overtime pay is ably supported by the fact that

petitioners never produced any proof of actual performance of overtime work.

Petitioners have conveniently adopted the view that the "guaranteed or fixed overtime pay of 30% of the basic salary per month" embodied in their employment contract should be awarded to them as part of a "package benefit." They have theorized that even without sufficient evidence of actual rendition of overtime work, they would automatically be entitled to overtime pay. Their theory is erroneous for being illogical and unrealistic. Their thinking even runs counter to the intention behind the provision. The contract provision means that the fixed overtime pay of 30% would be the basis for computing the overtime pay if and when overtime work would be rendered. Simply stated, the rendition of overtime work and the submission of sufficient proof that said work was actually performed are conditions to be satisfied before a seaman could be entitled to overtime pay which should be computed on the basis of 30% of the basic monthly salary. In short, the contract provision guarantees the right to overtime pay but the entitlement to such benefit must first be established. Realistically speaking, a seaman, by the very nature of his job, stays on board a ship or vessel beyond the regular eight-hour work schedule. For the employer to give him overtime pay for the extra hours when he might be sleeping or attending to his personal chores or even just lulling away his time would be extremely unfair and unreasonable.

We already resolved the question of overtime pay of a worker aboard a vessel in the case of *National Shipyards and Steel Corporation v. CIR* (3 SCRA 890). We ruled:

"We can not agree with the Court below that respondent Malondras should be paid overtime compensation for every hour in excess of the regular working hours that he was on board his vessel or barge each day, irrespective of whether or not he actually put in work during those hours. Seamen are required to stay on board their vessels by the very nature of their duties, and it is for this reason that, in addition to their regular compensation, they are given free living quarters and subsistence allowances when required to be on board. It could not have been the purpose of our law to require their employers to pay them overtime even when they are not actually working; otherwise, every sailor on board a vessel would be entitled to overtime for sixteen hours each day, even if he spent all those hours resting or sleeping in his bunk, after his regular tour of duty. The correct criterion in determining whether or not sailors are entitled to overtime pay is not, therefore, whether they were on board and can not leave ship beyond the regular eight working hours a day, but whether they actually rendered service in excess of said number of hours. (Underscoring supplied)

The aforequoted ruling is a reiteration of Our resolution in *Luzon Stevedoring Co., Inc. v. Luzon Marine Department Union, et al.* (G.R. No. 9265, April 29, 1957).

WHEREFORE, the decision of the NLRC is hereby AFFIRMED with the modification that petitioners Cagampan and Vicera are awarded their leave pay according to the terms of the contract.

SO ORDERED.

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

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