SUPREME COURT
THIRD DIVISION

MANILA MANDARIN EMPLOYEES UNION,
***Petitioner*,**

-versus-

G.R. No. 108556
November 19, 1996

NATIONAL LABOR RELATIONS COMMISSION, Second Division, and the MANILA MANDARIN HOTEL,
***Respondents*.**
x----------x

D E C I S I O N

NARVASA, *C.J.*:

The Petitioner in this Special Civil Action of Certiorari seeks Nullification of the September 11, 1992 Decision of the Second Division of the National Labor Relations Commission reversing the judgment of the Labor Arbiter in NLRC NCR Case No. 10-4335-86 and dismissing the case for lack of merit, as well as of the Commission's November 24, 1992 Resolution denying reconsideration of said decision.

On October 30, 1986, the Manila Mandarin Employees Union (hereafter UNION)j as exclusive bargaining agent of the rank-and-file employees of the Manila Mandarin Hotel, Inc. (hereafter

MANDARIN), filed with the NLRC Arbitration Branch a complaint in its members' behalf to compel MANDARIN to pay the salary differentials of the individual employees concerned because of wage distortions in their salary structure allegedly created by the upward revisions of the minimum wage pursuant to various Presidential Decrees and Wage Orders, and the failure of MANDARIN to implement the corresponding increases in the basic salary rate of newly-hired employees.

The relevant Presidential Decrees and Wage Orders were specified by the UNION as follows:

a. PD 1389, amending PD 928, mandating an increase in the statutory minimum wage by P3.00 spread out over a period of three years, as follows: P1.00 starting July 1, 1978; P1.00 starting May 1, 1979. and Pl.00 starting May 1, 1980;

b. PD 1614, providing that workers covered by PD 1389, whether agricultural or non-agricultural, should receive an increase of P2.00 in their statutory minimum wage effective April 1. 1979, the same representing an acceleration of the remaining increases under PD 1389; and that all non-agricultural workers in Metro Manila shall receive a minimum wage of P12.00;

c. PD 1713, issued on August 18, 1980, providing an increase in the minimum daily wage rates and for additional allowance; increasing the minimum daily wage rates by P1.00, and providing that all private employers shall pay their employees with wages or salaries not exceeding P1,500.00 a month, an additional mandatory living allowance of P60.00 a month for non-agricultural workers, P45.00 for plantation workers and P30.00 a month for agricultural non-plantation workers;

d. PD 1751, issued on December 14, 1980, increasing the statutory daily minimum wages by integrating the P4.00 mandatory allowance under PD 525 and PD 1123 into the basic pay of all covered workers;

e. Wage Order No. 1, issued on March 26, 1981, increasing the mandatory emergency living allowance of all workers with salaries or wages of P1,500.00 a month by P2.00 a day for non-agricultural plantation workers, P1.00 a day for agricultural non-plantation workers, effective March 22, 1981;

f. Wage Order No. 2 issued on July 6, 1983 increasing the mandatory basic minimum wage and living allowance for non-agricultural and agricultural workers in the following manner:

1) For non-agricultural employees, receiving not more than P1,800.00 monthly, P1.00 a day as minimum wage and P1.50 a day as cost of living allowance;

2) For plantation agricultural employees, P1.00 a day as minimum wage and P0.50 a day as cost of living allowance subject to the same salary ceiling provided in the immediately preceding section; and

3) For non-plantation agricultural employees, P1.00 a day as minimum wage; and

Also, providing that effective October 1, 1983, the living allowance rates as adjusted in the preceding section shall be further increased subject to the same salary ceiling, for non-agricultural employees, by P1.00.

g. Wage Order No. 3 issued November 7, 1983 increasing the statutory minimum wage rates for workers in the private sector by P1.00 per day effective November 1, 1983, and also increasing the statutory wage rates by P1.00 per day, effective December 1, 1983;

h. Wage Order No. 4 issued on May 1, 1984 increasing the statutory daily minimum wages, after integrating the mandatory living allowance under PDs 1614, 1634, 1678 and 1713 into the basic pay of all covered employees, effective May 1, 1984; — after the integration, the minimum

daily wage rate was increased by P11.00 for non-agricultural workers;

i. Wage Order No. 5 issued on June 11, 1984 increasing the statutory daily minimum wage rates and living allowances of workers in the private sector by P3.00 effective June 16, 1984 — the minimum daily wage rates became P35.00 for Metro Manila and P34.00 for outside Metro Manila; and

j. Wage Order No. 6, effective November 1, 1984, increasing the statutory minimum wage rate by P2.00 per day.

On January 15, 1987, the UNION filed its Position Paper amplifying the allegations of its complaint and setting forth the legal bases of its demands against MANDARIN; and on March 25, 1987, it filed an Amended Complaint presenting an additional claim for payment of salary differentials to the union members affected, allegedly resulting from underpayment of wages.

The Labor Arbiter eventually ruled in favor of the UNION, holding that there were in fact wage distortions entitling its members to salary adjustments totalling P26,173,601.25 — for 541 employees — as well as underpayments amounting to Pl,978.296.18 — for 182 employees. The dispositive portion of his decision reads:[1]

WHEREFORE, judgment is hereby rendered ordering the respondent Hotel to pay the individual complainants who are members of the respondent Union whose names appear on the respective computations embodied in this Decision, the aggregate amount of P26,173,601.25 representing their salary adjustments by way of correcting the wage distortions in their respective salary structure, for the period from October 30, 1983 up to October 31, 1990. and continuously thereafter to pay the corresponding amounts due them as such salary adjustments until the same are properly and finally restored in their basic monthly rates; to pay the aggregate amount of P1,978,296.18 representing their salary differentials resulting from underpayment of wages In violation of the minimum wage laws, Presidential Decrees and Wage Orders for the period from

> March 25, 1984 up to October 31, 1990, and continuously thereafter to pay the corresponding amounts due them as such salary differentials until the same are properly and finally restored into their basic monthly rates.
>
> Likewise, the respondent Hotel is ordered to pay an amount equivalent to ten percent (10%) of the total awards granted to individual complainants, by way of and as attorney's fees.

On appeal, the Second Division of respondent Commission (composed of Commissioner Domingo H. Zapanta, ponente, and Presiding Commissioner Edna Bonto-Perez) rendered the dispositions already referred to and now assailed — setting aside the Labor Arbiter's judgment and dismissing the UNION's complaint. and later denying the UNION'S motion for reconsideration.[2]

The principal issues raised in this Court are: (1) Whether or not the NLRC had jurisdiction to take cognizance of MANDARIN'S appeal from the Labor Arbiter's decision; and (2) if so, whether or not it gravely abused its discretion in setting aside the Labor Arbiter's judgment and dismissing the UNION'S complaint.

The issue of jurisdiction is grounded on the posited tardiness of private respondents' appeal from the Labor Arbiter's judgment to the NLRC, and fatal defect in their supersedeas bond.

The UNION contends[3] that the records indubitably show that MANDARIN received on January 22, 1991 its copy of the Labor Arbiter's Decision (of January 15, 1991), but filed its appeal and paid the appeal fee only on February 4, 1991, three (3) days beyond the reglementary ten-day period for doing so. It also condemns as "anomalous" the certification of Deputy Executive Clerk Gaudencio P. Demaisip, Jr., NLRC, to the effect that MANDARIN's lawyer had approached Hon. Domingo H. Zapanta, a member of the Second Division, NLRC, "for assistance to have the appeal including the appeal fee in said case duly received and acknowledged on February 1, 1991, at 4:40 P.M;" and claims that the anomaly was aggravated when it was Commissioner Zapanta who wrote the Decision for the Second Division[4] reversing the Labor Arbiter's judgment as aforesaid — despite the UNION'S motion for his disqualification and/or

inhibition. The UNION finally argues that MANDARIN'S appeal was not only tardy but also fatally flawed in that its supersedeas bond had been issued by a surety company — Plaridel Surety & Insurance Company — which had pending obligations and liabilities at the time, the Insurance Commissioner having in fact issued a Cease-and-Desist Order against said company for issuing bonds of no little magnitude without authority; and that moreover, the replacement bond of the Commonwealth Insurance Company — subsequently filed by order of the NLRC — was just as defective because the latter company had an authorized maximum net retention level in the amount of only P686,582.80, way below the monetary award subject of MANDARIN'S appeal to the Commission.

The Court rules that respondent Commission acted correctly in accepting and acting on MANDARIN's appeal. The circumstances attendant upon the filing of the appeal and supersedeas bond are clearly set forth in the Certification of Deputy Executive Clerk Demaisip, Jr.[5] above mentioned, viz.:

> "This is to certify that when Atty. Godofredo Labay filed the appeal in NLRC NCR Case No. 10-4335-86 entitled Manila Mandarin Employees Union vs. Manila Mandarin on Friday, February 1, 1991, the Cashier and the Docket Section, NCR, were not around, that no one would receive the pleadings and the appeal fee. He therefore approached Commissioner Domingo H: Zapanta for assistance and to have the appeal including the appeal bond in said case duly received on February 1, 1991 at 4:50 p.m.
>
> "With respect to the appeal fee, since no one was authorized to act as substitute for the Cashier of the NCR for purposes of receiving the appeal fee and issuing a temporary receipt and/or official receipt therefor, Commissioner Zapanta requested Atty. Gaudencio P. Demaisip, Jr. to receive said pleadings and allowed Atty. Labay to pay the appeal fee on Monday, February 4, 1991.
>
> "This certification is issued upon request of Atty. Labay for whatever purpose it may serve him.

(SGD.) GAUDENCIO P. DEMAISIP, JR.
Deputy Executive Clerk
Second Division"

MANDARIN cannot be faulted for paying the appeal fee only on February 4, 1991. The fact is that on February 1, 1991, its lawyer was in the NLRC premises, ready to pay said fee. but was unable to do so because the NLRC Cashier or any other employee authorized to receive payment in his stead, was no longer around. This is why Commissioner Zapanta allowed payment of the appeal fee to be made on the next business day, as in fact the appeal fee was paid on, February 4. 1991. This, Court has ruled that the failure to pay the appeal docketing fee within the reglementary period confers a directory, not a mandatory, power to dismiss an appeal, to be exercised with circumspection in light of all the relevant facts.[6] In view of these considerations, and the meritoriousness of MANDARIN's appeal — as later pronounced by respondent NLRC — the interest of justice was quite evidently served when MANDARIN 's appeal was given due course despite delayed payment of the docketing fee.

The contention concerning MANDARIN's ostensibly defective appeal bond, issued by Plaridel Surety and Insurance Company, deserves short shrift, too. The issuance of the bond antedated this Court's resolution of January 15, 1992 — to which the attention of respondent NLRC had been invited by the UNION — declaring said surety company to be of doubtful solvency. More important, the issue was mooted when MANDARIN posted a new surety bond, through Commonwealth Insurance Company, in compliance with the Order of the respondent Commission dated December 10, 1991. The UNION's contention that this new bond was equally defective because the bonding company had an authorized maximum net retention level lower than the sum of P30,967,087.17 involved in this dispute, is inconsequential, the new bonding company being duly accredited by this Court and licensed by the Insurance Commission.

At any rate, this Court has invariably ruled that Article 223 of the Labor Code, requiring a bond in appeals involving monetary awards, must be liberally construed, in line with the desired objective of resolving controversies on their merits.[7] The circumstances under

which the bond was filed in this case adequately justify such liberal application of the provision.

As to the alleged partiality of Commissioner Domingo Zapanta, the Court finds that his intervention on February 1, 1991 in the matter of payment of the appeal docketing fee did not, in the circumstances already related, constitute impropriety or pre-judgment of the case and a ground for his disqualification as a member of the Second Division to which the case was thereafter raffled. Significantly, in its motion to inhibit, the UNION mentioned that the case was "assigned particularly to the late Commissioner Rustico Diokno (but) that upon the latter's demise, the case was reassigned to Commissioner Domingo Zapanta as the new ponente."[8] As Commissioner Zapanta had always been a member of the Second Division, the UNION's motion for his inhibition, filed more than a year after the occurrence of the incident on which it was based, becomes suspect as a mere afterthought. In any case, Commissioner Zapanta did inhibit himself from taking part in the resolution of the UNION'S motion for reconsideration of the assailed decision of September 11, 1992, thus dispelling what doubts might linger about his impartiality.

Coming now to the issue of wage distortion, prior to the effectivity on June 9, 1989 of Republic Act No. 6727 which, among others, amended Article 124 (Standards/Criteria for Minimum Wage Fixing) of the Labor Code, the concept of 'wage distortion' was relatively obscure. So it was observed by this Court in National Federation of Labor vs. NLRC,[9] a case involving the same subject Wage Orders:

> We note that neither the Wage Orders noted above, nor the Implementing Rules promulgated by the Department of Labor and Employment, set forth a clear and specific notion of "wage distortion." What the Wage Orders and the Implementing Rules did was simply to recognize that-implementation of the Wage Orders could result in a "distortion of the wage structure " of an employer, and to direct the employer and the union to negotiate with each other to correct the distortion. Thus, Section 6 of Wage Order No. 3, dated 7 November 1983, provided as follows:
>
> > 'Section 6. Where the application of the minimum wage rate prescribed herein results in distortions of the wage

> structure of an establishment, the employer and the union shall negotiate to correct the distortions. Any dispute arising from wage distortions shall be resolved through the grievance procedure under their collective bargaining agreement or through conciliation.
>
> 'In case where there is no collective bargaining agreement or recognized labor organization, the employer shall endeavor to correct such distortions in consultation with their workers. Any dispute arising from wage distortions shall be resolved through conciliation by the appropriate Regional Office of the Ministry of Labor and Employment or through arbitration by the NLRC Arbitration Branch having jurisdiction over the work-place.'" (Emphasis supplied)

It is therefore opportune to re-state the general principles enunciated in that case, summarized in Metro Transit Organization, Inc. vs. NLRC, et al.,[10] as follows:

(a) The concept of wage distortion assumes an existing grouping or classification of employees which establishes distinctions among such employees on some relevant or legitimate basis. This classification is reflected in a differing wage rate for each of the existing classes of employees.

(b) Wage distortions have often been the result of government-decreed increases in minimum wages. There are, however, other causes of wage distortions, like the merger of two (2) companies (with differing classification of employees and different wage rates) where the surviving company absorbs all the employees of the dissolved corporation. (In the present Metro case, as already noted. the wage distortion arose because the effectivity dates of wage increases given to each of the two (2) classes of employees (rank-and-file and supervisory) had not been synchronized in their respective CBAs.)

(c) Should a wage distortion exist, there is no legal requirement that, in the rectification of that distortion by

re-adjustment of the wage rates of the differing classes of employees, the gap which had previously or historically existed be restored in precisely the same amount. In other words, correction of a wage distortion may be done by re-establishing a substantial or significant gap (as distinguished from the historical gap) between the wage rates of the differing classes of employees.

(d) The re-establishment of a significant difference in wage rates may be the result of resort to grievance procedures or collective bargaining negotiations."

It was only on June 9, 1989, upon the enactment of R.A. No. 6727 (Wage Rationalization Act, amending, among others, Article 124 of the Labor Code),[11] that the term "wage distortion" came to be explicitly defined as:

> "a situation where an increase in prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical bases of differentiation."

The same provision lays down the procedure to be followed where wage distortion arises from the implementation of a wage increase prescribed by law or ordered by a Regional Wage Board, viz.:

> "Where the application of any prescribed wage increase by virtue of a law or Wage order issued by any Regional Board results in distortions of the Wage order issued by any Regional Board results in distortions of the wage structure within an establishment, the employer and the union shall negotiate to correct the distortions. Any dispute arising from the wage distortions shall be resolved through the grievance procedure under their collective bargaining agreement and, if it remains unresolved, through voluntary arbitration. Unless otherwise agreed by the parties in writing, such dispute shall be decided by the voluntary arbitrator or panel of voluntary arbitrators

within ten (10) calendar days from the time said dispute was referred to voluntary arbitration.

"In cases where there are no collective agreements or recognized labor unions, the employers and workers shall endeavor to correct such distortions. Any dispute arising therefrom shall be settled through the National Conciliation and Mediation Board and, if it remains unresolved after ten (10) calendar days of conciliation, shall be referred to the appropriate branch of the National Labor Relations Commission (NLRC). It shall be mandatory for the NLRC to conduct continuous hearings and decide the dispute within twenty (20) calendar days from the time said dispute is submitted for compulsory arbitration.

"The pendency of a dispute arising from a wage distortion shall not in any way delay the applicability of any increase in prescribed wage rates pursuant to the provisions of law or Wage Order."

The issue of whether or not a wage distortion exists as a consequence of the grant of a wage increase to certain employees, is a question of fact;[12] and as a rule, factual findings in labor cases, where grounded on substantial evidence, are not reviewed.[13] However, a disharmony such as exists here, between the factual findings of the Labor Arbiter and those of the NLRC, opens the door to a review thereof by this Court.[14]

The Labor Arbiter ruled that a wage distortion existed. and that "the only and logical way to correct (it) in the salary structure of the employees of respondent Hotel is to apply the corresponding increase made by way of revising upward the minimum wage or integration of the ECOLA into the basic wage as embodied in the various Presidential Decrees and Wage Orders, across-the-board, so that employees whose salaries are above the minimum set by law but who have already been long in the service will not be discriminated against."[15]

On the other hand, respondent Commission declared in its Decision[16] that there was no wage distortion arising from the

implementation of said Presidential Decrees and Wage Orders such as warranted across-the-board increases to all employees:

> "On the issue of wage distortion, we have examined the various presidential decrees and wage orders referred to by the complainant and in the Labor Arbiter's decision and we found nothing therein that would justify the award of across-the-board increases to all employees. The apparent Intention of the law is only to upgrade the salaries or wages of the employees receiving lower than the minimum daily wage set therein. For example, Section 1 of Wage Order No. 6 provides that "effective November 1, 1984, the statutory minimum daily wage rates of workers in the private sector shall be increased by P2.00 " Also, Section 1 of Presidential Decree 1389 provides that 'Presidential Decree 928 is hereby amended by increasing all existing statutory minimum wages in the country by Three Pesos (P3.00) spread equally over a period of three years, as follows: 1) One Peso (P1.00) starting July 1, 1978; 2) One Peso (Pl.00) starting May 1, 1979; and One Peso (Pl.00) starting May 1, 1980.' Thus, it is clear that the presidential decrees and wage orders merely provide for a floor wage to be observed by the employers in the private sector."

It indeed appears that the clear mandate of those issuances was merely to increase the prevailing minimum wages of particular employee groups. There were no across-the-board increases to all employees; increases were required only as regards those specified therein.[17] It was therefore incorrect for the UNION to claim that all its members became automatically entitled to across-the-board increases upon the effectivity of the Decrees and Wage Orders in question. And even if there were wage distortions, which is not the case here, the appropriate remedy thereunder prescribed is for the employer and the union to "negotiate' to correct them; or, if the dispute be not thereby resolved, to thresh out the controversy through the grievance procedure in the collective bargaining agreement, or through conciliation or arbitration.

A review of the records convinces this Court that respondent NLRC committed no grave abuse of discretion in holding that no wage distortion was demonstrated by the UNION. It was, to be sure,

incumbent on the UNION to prove by substantial evidence its assertion of the existence of a wage distortion. This it failed to do. It presented no such evidence to establish, as required, by the law. what, if any, were the designed quantitative differences in wage or salary rates between employee groups, and if there were any severe contractions or elimination of these quantitative differences.

The UNION's effort to prove wage distortion consisted only of the presentation of an unverified list of thirteen (13) employees denominated a "Sample Comparison of Salary Rates Affected by Wage Distortion,"[18] viz.:

SAMPLE COMPARISON OF SALARY RATES OF COMPLAINANTS AFFECTED BY WAGE DISTORTION

F & B DEPT.

Name	Position	Date Hired	Basic Rate (12/30/85)
1. Pablo Trinidad —	Waiter	9/1/78	P1,300
2. Eduardo Vito —	Waiter	10/16/80	P1,375
3. Camilo Sanchez —	Busboy	8/1/83	P 954
4. Renato Solomon —	Busboy	7/19/84	P1,096
5. Buenconsejo Monico —	Busboy	4/15/85	P 968

HOUSEKEEPING DEPT.

1. Ruben A. Rillo	— Linen Uniform Att.	6/19/76	P 984
2. Hubert Malolot	— Linen Uniform Att.	1/16/80	P1,238
3. Aurella Kilat	— Linen Uniform Att.	5/2/79	P1,272
4. Rogelio Molaco	— Cloakroom Attn.	9/1/80	P 946
5. David Pineda	— Cloakroom Attn.	9/14/81	P1,194
6. Nemesio Matro	— Houseman Attn.	6/10/76	P1,142
7. Domingo Sabando	— Houseman Attn.	3/8/82	P1,194
8. Renato Guina	— Houseman Attn.	8/24/81	P1,194

SUBMITTED
(SGD.) ATTY. R.E. ESPINOSA
9/17/87."

The UNION'S Internal Vice-President, Arnulfo Castro, deposed that the employees named in this list were the "more or less (13) persons found to have suffered wage distortion,"[19] and the UNION pointed out that while these thirteen employees occupied similar positions, they were receiving different rates of salary.

Respondent Commission however found that as explained by private respondents, such disparity was due simply to the fact that the employees mentioned had been hired on different dates and were thus receiving different salaries; or that an employee was hired initially at a position level carrying a hiring rate higher than the others; or that an employee failed to meet the cut-off date in the grant of yearly CBA increase; or that the union did not get the correct data on salaries. The Commission accepted as more accurate the data presented by MANDARIN respecting the same employees, to wit:[20]

"ANNEX '2'

F & B Dept.

Name	Position per Hotel Records	Date Hired as of 12/30/85	Basic Rate
1. Pablo Trinidad	Waiter	09/01/78	P1,302.00*
2. Eduardo Vito	Waiter	10/16/80	1,375.00*
3. Camilo Sanchez	Busboy	08/01/83	1,194.00
4. Renato Solomon	Busboy	07/19/84	1,096.00
5. Buenconsejo Monico	Busboy	04/15/85	968.00

Housekeeping Dept.

1. Ruben A. Rillo	Linen Uniform Att.	06/ 19/76	1,417.00
2. Hubert Malolot	Linen Uniform Att.	01/16/80	1,238.00
3. Aurelia Kilat	Linen Uniform Att.	05/02/79	1,272.00
4. Rogelio Molaco	Cloakroom Att.	09/01/80	1,272.00
5. David Pineda	Cloakroom Attn.	09/14/81	1,213.00
6. Nemesio Matro	Houseman Attn.	06/10/77	1,342.00
7. Domingo Sabando	Houseman Attn.	03/08/82	1,194.00
8. Renato Guina	Houseman Attn.	08/24/81	1,194.00

> * *Vito was hired at a higher position with a higher hiring rate than that given to Trinidad, i.e. Vito was hired at P366/mo. while Trinidad at P301/mo. Prior to hiring, Vito already worked as a waiter at the Metropolitan Club.*"

The Court agrees that the claimed wage distortion was actually a result of the UNIONS failure to appreciate various circumstances relating to the employment of the thirteenth employees. For instance, while some of these employees mentioned by UNION Vice-President Arnulfo Castro occupied the same or similar positions, they were hired by the Hotel on different dates and at different salaries. As explained in part by MANDARIN:

> "With respect to the of Pablo Trinidad and Eduardo Vito, while they were both occupying the position of waiter in 1987, with monthly salaries of P2,044.00 and P2,217.00, respectively, a comparative study of the records of these employees shows one of them was initially hired at a higher position level which naturally carried a higher hiring rate. Trinidad was originally hired in 1978 as a mere Houseman at the Banquet Department with a basic starting rate of P301.00 a month. On the other hand, Vito was originally hired in 1980 already a Busboy at the Food and Beverage Department with a starting salary of P366.00 a month. Before he vas hired at the Mandarin Hotel, Vito had already been working as Waiter at the Metropolitan Club. Records also show that it was only after some time that Trinidad was promoted to Busboy but still with the smaller Banquet Department. The headway in rate was carried by Vito although at some point in their careers, these two employees achieved the same position as Waiter. Not long after, Vito was promoted to Captain Waiter while Trinidad remained Waiter. There is therefore no reason to compare the remuneration of these two employees as the circumstances attendant to their employment are different."[21]

Respondent Commission correctly concluded that these did not represent cases of wage distortion contemplated by the law (Article 124, Labor Code, as amended), i.e., a "situation where an increase in prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates between

and among employees groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical basis of differentiation."

Moreover, even assuming arguendo that there was really a wage distortion, it was wrong for the Labor Arbiter, after first acknowledging that some of the money claims had prescribed under Article 291 of the Labor Code,[22] to nevertheless order the computation of salary differentials retroactive to the effective dates of PDs 1389, 1614, 1713, 1751 and Wage Orders Nos. 2, 3, 4, 5, and 6: in 1978, 1979, 1980, 1980, July 1983, November 1983, May 1984, June 1981 and November 1984, respectively. Clearly, five of these Decrees and Wage Orders took effect after the lapse of the three-year prescriptive period for litigating claims for wage distortion differentials, the original complaint for wage distortion having been filed on October 30, 1986 and the amended complaint for underpayment of wages, on March 25, 1987. Consequently, the applicable cut-off dates, for purposes of prescription, were October 30, 1983 and March 25, 1984, respectively.

Finally, the records show that the matter of wage distortion, actual or imputed under the various issuances up to Wage Order No. 6, had been settled by the parties as early as July 30, 1985. On that day they executed a Compromise Agreement with the assistance of the then Regional Director of the National Capital Region, Severo M. Pucan in which they affirmed that, with the implementation by MANDARIN of Wage Order Nos. 4 and 6 as well as P.D. 1634, the latter was "deemed for all legal and purposes to have fully satisfied all its legal and contractual obligations to its employees under all presidential issuances on wages."[23]

The Compromise Agreement pertinently states:

> "1. That the respondent shall Implement Wage Order No. 6 effective July 1, 1985, without prejudice to the outcome of the application for exemption as distressed employer filed by said respondent with the National Wage Council as regards benefits that might be due between November 1, 1985 and June 30, inclusive;

2. That the respondent shall also implement effective August 1, 1985 the integration of the P90.00 a month cost of living allowance under P.D. 1634 into the basic wages of its employees as called for under Wage Order No. 4 in accordance with the Guidelines contained in the Explanatory Bulletin issued by the Bureau of Working Conditions on August 8, 1985; and

3. That as soon as the respondent shall have complied with the above terms of this Compromise Agreement, said respondent shall be deemed for all Legal intents and purposes to have fully satisfied all the Legal and contractual obligations to its employees under all presidential issuances on wages, including Wage Orders No. 4 and 6, and Article XI of the collective bargaining agreement."

The Labor Code recognizes the conclusiveness of compromises as a means to settle and end labor disputes. Article 227 provides that "any compromise settlement, including those involving labor standard laws, voluntarily agreed upon by the parties with the assistance of the Bureau or the regional office of the Department of Labor, shall be final and binding upon the parties. The National Labor Relations Commission or any court shall not assume, jurisdiction over issues involved therein except in case of non-compliance thereof or if there is prima facie evidence that the settlement was obtained through fraud, misrepresentation or coercion." In Olaybar vs. NLRC,[24] this Court had occasion, in a labor dispute to apply the rule that compromises and settlements have the effect and conclusiveness of *res judicata* upon the parties.

Thus, and again assuming arguendo the existence of a wage distortion, this was corrected under the "fully implemented" Compromise Agreement;[25] and such correction having been explicitly acknowledged by the UNION, it is now estopped from claiming that a distortion still subsists. In the same manner, when the UNION entered into a new collective bargaining agreement with MANDARIN, providing for wage increases in 1987, it is deemed to have thereby settled any remaining question of wage distortion, since the subject of wages and wage distortions were plainly and

unavoidably an economic issue and the proper subject of collective bargaining.[26]

Neither did respondent Commission gravely abuse its discretion in ruling against the UNION on the issue of underpayment of wages.

The UNION's theory was that since the employees of MANDARIN are paid on a monthly basis under the Group III category, the applicable increase in daily wage must be multiplied by 365 and then divided by 12 to determine the equivalent monthly rate. MANDARIN's position, on the other hand, was that it had consistently been using the multiplier 313, and not 365, for the purpose of deriving salary related benefits of its employees who are paid by the month, excluding from 365, the 52 unpaid rest days in a year. This appears to have been the consistent practice of MANDARIN, following the formula for daily paid employees under Group II category as prepared by the Bureau of Labor Standards:[27]

$$\text{"AR} \times \frac{313 \text{ days}}{12} = \text{EMR}$$

Where: 313 days = 303 actual working days a year
plus the paid 10 unworked regular holidays.

Actual working days	303
10 legal holidays	10
Total No. of Days	313."

MANDARIN presented evidence of its practice regarding the use of the factor 313 in computing the monthly equivalent of the minimum daily wages and other related benefits of its employees; i.e., Annexes 3 and 4 of its Supplemental Appeal dated November 12, 1991. This was corroborated by the UNION's Internal Vice President, Arnulfo Castro, who admitted during cross-examination that in his research and study, he found that the divisor used in arriving at the daily rate of the hotel employees was 313 days, which meant that the days-off or rest days are not paid.[28] The admission confirms that the hotel employees pertain to Group II category under the Bureau of Labor

Standards Guidelines for computing the equivalent monthly minimum wage rates.[29] Thus, instead of multiplying the applicable minimum daily wage by 365 and dividing the result by 12 to derive the applicable minimum monthly salary, the factor used is 313, composed of 303 actual working days and the 10 unworked but paid regular holidays in a year.

In his explanatory Bulletin on the payment of Holiday Pay — Ref. No. 85-08 dated 6 November 1985 — then Secretary Augusto Sanchez of the Department of Labor and Employment, expatiating on the implications of the Chartered Bank case,[30] stated:

> "6. Monthly Paid Employees
>
> Oftentime confusion arises from the different interpretations as to who is a monthly-paid employee. A 'monthly-paid employee' is one whose monthly salary includes payments for everyday of the month although he does not regularly work on his rest days or Sundays and on regular and special holidays. Group III in the above illustration covers monthly paid employees. Employees falling under Group I, II, and IV are in reality daily paid employees but whose daily rate is translated into its monthly equivalent. The fact, therefore, that an employee is regularly paid a fixed monthly rate does not necessarily mean that he is a monthly-paid employee as defined above. [Emphasis supplied]

As applied to the UNION, the monthly equivalent of the minimum wage under the various Presidential Decrees and Wage Orders based on the above formula should be as follows:

PD/WO NO.	Effectivity	Minimum Daily Wage Rate	Equivalent Monthly Rate
PD 1389	01 July 1978	P11.0	P286.96
PD 1614	1 March 1979	13.00	339.00
PD 1813	18 Aug. 1980	14.00	365.17
WO # 2	06 July 1983	19.00	495.58
WO # 3	01 Nov. 1983	20.00	521.67
WO # 4	01 May 1984	32.00	834.67
WO # 5	01 Nov. 1984	35.00	912.92

WO # 6	01 Nov. 1984	37.00	965.08

On the other hand, the monthly pay of the Hotel employees and their hiring rate may be illustrated as follows:

PD/WO NO.	Effectivity Monthly Rate	Equivalent	Lowest Salary in the Hotel
PD 1389	01 July 1978	P286.92	P350.00
PD 1614	1 March 1979	339.08	411.00
PD 1813	18 Aug. 1980	365.17	562.00
WO # 2	06 July 1983	495.58	960.00
WO # 3	01 Nov. 1983	521.67	960.00
WO # 4	01 May 1984	834.67	960.00
WO # 5	16 May 1984	912.92	960.00
WO # 6	01 Nov. 1984	965.08	1,015.00

A comparative analysis of the wages of the Hotel's employees from 1978 to 1984 *vis-a-vis* the minimum wages fixed by law for the same period reveals that at no time during the said period was there any underpayment of wages by the respondent Hotel. On the contrary, the prevailing monthly salaries of the subject hotel employees appear to be over and above the minimum amounts required under the applicable Presidential Decrees and Wage Orders.

WHEREFORE, the assailed Decision of respondent Commission promulgated on September 11, 1992 reversing the judgment of the Labor Arbiter and dismissing the UNION'S complaint — being based. on substantial evidence and in accord with applicable laws and jurisprudence, as well as said Commission's Resolution dated November 24, 1992 — denying reconsideration — are hereby **AFFIRMED** in toto.

SO ORDERED.

Davide, Jr., Melo, Francisco and Panganiban, JJ., concur.

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[1] Rollo, p. 65.
[2] Rollo, pp. 102-131; 142.

[3] Rollo, pp. 7-17.
[4] SEE opening paragraph of this opinion.
[5] Private Respondent's Memorandum, p. 13-14; Rollo, pp. 282-283.
[6] C.W. Tan Manufacturing vs. NLRC, 170 SCRA 240 [1989], citing Del Rosario & Sons Logging Enterprises, Inc. vs. NLRC, 136 SCRA 669 [1985].
[7] Star Angel Handicraft vs. NLRC, 236 SCRA 580 [1994];: Blancaflor vs. NLRC 218 SCRA 366 [1993]; Erectors, Inc. vs. NLRC, 202 SCRA 597 [1991] citing YBL (Your Bus Line) vs. NLRC, 190 SCRA 160 [1990].
[8] p. 1 of the petitioner's Amended Manifestation and Motion to Inhibit Commissioner Domingo Zapanta from Resolving the Appeal filed by MANDARIN.
[9] Supra, 234 SCRA 311 [1991].
[10] 245 SCRA 767 [1995].
[11] Art. 124 on "Standards/Criteria for Minimum Wage Fixing".
[12] Associated Labor Unions-TUCP vs. NLRC, 235 SCRA [1994]; Metropolitan Bank & Trust Company Employees Union-ALU-TUCP vs. NLRC, 226 SCRA 268 [1993]; Cardona vs. NLRC, 195 SCRA 92 [1991].
[13] Philippine Overseas Drilling and Oil Development Corporation vs. Ministry of Labor, 146 SCRA 79 [1986].
[14] Pantranco North Express, Inc. vs. NLRC, 239 SCRA 272 [1994].
[15] Rollo, pp. 27-28.
[16] Petition, Annex "D"; Rollo, pp. 102-131.
[17] See Capitol Wireless, Inc. vs. Bate, 246 SCRA 289 [1995].
[18] Comment, Annex "1", Rollo, p. 224.
[19] Rollo, pp. 68-69; TSN, June 5, 1989, p. 3-5.
[20] Annex "2," MANDARIN's Comment dated 15 July 1993 on the Manifestation and Motion of the Solicitor General dated 16 June 1993.
[21] Rollo. pp. 189-190.
[22] Labor Arbiter's Decision dated 15 January 1991, pp. 21-65.
[23] citing Annex "1" of the Hotel's Reply/Comment dated 23 November 1987 and/or p. 4 and Annex "B" of the Hotel's Supplemental Appeal [with Reply to the Petitioner's Answer And/Or Motion to Dismiss Appeal] dated 12 November 1971.
[24] 237 SCRA 819 [1994].
[25] Rollo, p. 76.
[26] Article 252 of the Labor Code.
[27] Rollo, p. 226.
[28] pp. 8-10, 22-23, TSN, November 16, 1988.
[29] Rollo, p. 226.
[30] Chartered Bank Employees Association vs. Hon. Blas F. Ople, et al, 138 SCRA 273 [1985].