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Petitioners,

-versus-

**G.R. No. 122827
March 29, 1999**

NATIONAL LABOR RELATIONS COMMISSION, (FIFTH DIVISION), and PAPER INDUSTRIES CORPORATION OF THE PHILIPPINES (PICOP),

Respondents.

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DECISION

BELLOSILLO, J.:

Petitioners numbering one hundred sixteen (116)^[1] occupied the positions of Technical Staff, Unit Manager, Section Manager, Department Manager, Division Manager and Vice President in the mill site of respondent Paper Industries Corporation of the Philippines (PICOP) in Bislig, Surigao del Sur. In 1992 PICOP suffered a major financial setback allegedly brought about by the joint impact of restrictive government regulations on logging and the economic crisis. To avert further losses, it undertook a retrenchment program and terminated the services of petitioners. Accordingly, petitioners received separation pay computed at the rate of one (1) month basic pay for every year of service. Believing however that the allowances they allegedly regularly received on a monthly basis during their employment should have been included in the

computation thereof they lodged a complaint for separation pay differentials.

The allowances in question pertained to the following —

1. Staff/Manager's Allowance —

Respondent PICOP provides free housing facilities to supervisory and managerial employees assigned in Bislig. The privilege includes free water and electric consumption. Owing however to shortage of such facilities, it was constrained to grant Staff allowance instead to those who live in rented houses outside but near the vicinity of the mill site. But the allowance ceases whenever a vacancy occurs in the company's housing facilities. The former grantee is then directed to fill the vacancy. For Unit, Section and Department Managers, respondent PICOP gives an additional amount to meet the same kind of expenses called Manager's allowance.

2. Transportation Allowance —

To relieve respondent PICOP's motor pool in Bislig from a barrage of requests for company vehicles and to stabilize company vehicle requirements it grants transportation allowance to key officers and Managers assigned in the mill site who use their own vehicles in the performance of their duties. It is a conditional grant such that when the conditions no longer obtain, the privilege is discontinued. The recipients of this kind of allowance are required to liquidate it by submitting a report with a detailed enumeration of expenses incurred.

3. Bislig Allowance —

The Bislig Allowance is given to Division Managers and corporate officers assigned in Bislig on account of the hostile environment prevailing therein. But once the recipient is transferred elsewhere outside Bislig, the allowance ceases.

Applying Art. 97, par. (f), of the Labor Code which defines “wage,” the Executive Labor Arbiter opined that the subject allowances, being customarily furnished by respondent PICOP and regularly received by petitioners, formed part of the latter’s wages. Resolving the controversy from another angle, on the strength of the ruling in Santos vs. NLRC^[2] and Soriano vs. NLRC^[3] that in the computation of separation pay account should be taken not just of the basic salary but also of the regular allowances that the employee had been receiving, he concluded that the allowances should be included in petitioners’ base pay. Thus respondent PICOP was ordered on 28 April 1994 to pay petitioners Four Million Four Hundred Eighty-One Thousand Pesos (P4,481,000.00) representing separation pay differentials plus ten per cent (10%) thereof as attorney’s fees.^[4]

The National Labor Relations Commission (NLRC) did not share the view of the Executive Labor Arbiter. On 7 October 1994 it set aside the assailed decision by decreeing that the allowances did not form part of the salary base used in computing separation pay.^[5] Its ruling was based on the finding that the cases relied upon the Executive Labor Arbiter were inapplicable since they involved illegal dismissal where separation pay was granted in lieu of reinstatement which was no longer feasible. Instead, what it considered in point was Estate of the late Eugene J . Kneebone vs. NLRC^[6] where the Court held that representation and transportation allowances were deemed not part of salary and should therefore be excluded in the computation of separation benefits. Relating the present case with Art. 97, par. (f), of the Labor Code, the NLRC likewise found that petitioners’ allowances were contingency-based and thus not included in their salaries. On 26 September 1995 reconsideration was denied.^[7]

In this petition for *certiorari*, petitioners submit that their allowances are included in the definition of “facilities” in Art. 97, par. (f), of the Labor Code, being necessary and indispensable for their existence and subsistence. Furthermore they claim that their availment of the monetary equivalent of those “facilities” on a monthly basis was characterized by permanency, regularity and customariness. And to fortify their arguments they insist on the applicability of Santos,^[8] Soriano,^[9] The Insular Life Assurance Company,^[10] Planters

Products, Inc.^[11] and Songco^[12] which are all against the NLRC holding that the salary base in computing separation pay includes not just the basic salary but also the regular allowances.

There is no showing of grave abuse of discretion on the part of the NLRC. In case of retrenchment to prevent losses, Art. 283 of the the Labor Code imposes on the employer an obligation to grant to the affected employees separation pay equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. Since the law speaks of “pay,” the question arises, “What exactly does the term connote?” We correlate Art. 283 with Art. 97 of the same Code on definition of terms. “Pay” is not defined therein but “wage.” In Songco the Court explained that both words (as well as salary) generally refer to one and the same meaning, i.e., a reward or recompense for services performed. Specifically, “wage” is defined in letter (f) as the remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered and includes the fair and reasonable value, as determined by the Secretary of Labor, of board, lodging, or other facilities customarily furnished by the employer to the employee.

We invite attention to the above-underlined clause. Stated differently, when an employer customarily furnishes his employee board, lodging or other facilities, the fair and reasonable value thereof, as determined by the Secretary of Labor and Employment, is included in “wage.” In order to ascertain whether the subject allowances form part of petitioner’s “wages,” we divide the discussion on the following — “customarily furnished;” “board, lodging or other facilities;” and, “fair and reasonable value as determined by the Secretary of Labor.”

“Customary” is founded on long-established and constant practice^[13] connoting regularity.^[14] The receipt of an allowance on a monthly basis does not ipso facto characterize it as regular and forming part of salary^[15] because the nature of the grant is a factor worth considering. We agree with the observation of the Office of the Solicitor General

that the subject allowances were temporarily, not regularly, received by petitioners because —

In the case of the housing allowance, once a vacancy occurs in the company-provided housing accommodations, the employee concerned transfers to the company premises and his housing allowance is discontinued.

On the other hand, the transportation allowance is in the form of advances for actual transportation expenses subject to liquidation given only to employees who have personal cars.

The Bislig allowance is given to Division Managers and corporate officers assigned in Bislig, Surigao del Norte. Once the officer is transferred outside Bislig, the allowance stops.^[16]

We add that in the availment of the transportation allowance, respondent PICOP set another requirement that the personal cars be used by the employees in the performance of their duties. When the conditions for availment ceased to exist, the allowance reached the cutoff point. The finding of the NLRC along the same line likewise merits concurrence, i.e., petitioners' continuous enjoyment of the disputed allowances was based on contingencies the occurrence of which wrote finis to such enjoyment.

Although it is quite easy to comprehend "board" and "lodging," it is not so with "facilities." Thus Sec. 5, Rule VII, Book III, of the Rules Implementing the Labor Code gives meaning to the term as including articles or services for the benefit of the employee or his family but excluding tools of the trade or articles or service primarily for the benefit of the employer or necessary to the conduct of the employer's business. The Staff/Manager's allowance may fall under "lodging" but the transportation and Bislig allowances are not embraced in "facilities" on the main consideration that they are granted as well as the Staff/Manager's allowance for respondent PICOP's benefit and convenience, i.e., to insure that petitioners render quality performance. In determining whether a privilege is a facility, the criterion is not so much its kind but its purpose.^[17] That the assailed allowances were for the benefit and convenience of respondent company was supported by the circumstance that they were not

subjected to withholding tax. Revenue Audit Memo Order No. 1-87 pertinently provides —

3.2. transportation, representation or entertainment expenses shall not constitute taxable compensation if:

- (a) It is for necessary travelling and representation or entertainment expenses paid or incurred by the employee in the pursuit of the trade or business of the employer, and
- (b) The employee is required to, and does, make an accounting/liquidation for such expense in accordance with the specific requirements of substantiation for such category or expense.

Board and lodging allowances furnished to an employee not in excess of the latter's needs and given free of charge, constitute income to the latter except if such allowances or benefits are furnished to the employee for the convenience of the employer and as necessary incident to proper performance of his duties in which case such benefits or allowances do not constitute taxable income.^[18]

The Secretary of Labor and Employment under Sec. 6, Rule VII, Book III, of the Rules Implementing the Labor Code may from time to time fix in appropriate issuances the "fair and reasonable value of board, lodging and other facilities customarily furnished by an employer to his employees." Petitioners' allowances do not represent such fair and reasonable value as determined by the proper authority simply because the Staff/Manager's allowance and transportation allowance were amounts given by respondent company in lieu of actual provisions for housing and transportation needs whereas the Bislig allowance was given in consideration of being assigned to the hostile environment then prevailing in Bislig.

The inevitable conclusion is that, as reached by the NLRC, subject allowances did not form part of petitioners' wages.

In Santos^[19] the Court decreed that in the computation of separation pay awarded in lieu of reinstatement, account must be taken not only

of the basic salary but also of transportation and emergency living allowances. Later, the Court in Soriano, citing Santos, was general in its holding that the salary base properly used in computing separation pay where reinstatement was no longer feasible should include not just the basic salary but also the regular allowances that the employee had been receiving. Insular merely reiterated the aforementioned rulings. The rationale is not difficult to discern. It is the obligation of the employer to pay an illegally dismissed employee the whole amount of his salaries plus all other benefits, bonuses and general increases to which he would have been normally entitled had he not been dismissed and had not stopped working.^[20] The same holds true in case of retrenched employees. And thus we applied Insular and Soriano in *Planters* in the computation of separation pay of retrenched employees. *Songco* likewise involved retrenchment and was relied upon in *Planters*, *Soriano* and *Santos* in determining the proper amount of separation pay. As culled from the foregoing jurisprudence, separation pay when awarded to an illegally dismissed employee in lieu of reinstatement or to a retrenched employee should be computed based not only on the basic salary but also on the regular allowances that the employee had been receiving. But in view of the previous discussion that the disputed allowances were not regularly received by petitioners herein, there was no reason at all for petitioners to resort to the above cases.

Neither is *Kneebone* applicable, contrary to the finding of the NLRC, because of the difference in factual circumstances. In *Kneebone*, the Court was tasked to resolve the issue whether the representation and transportation allowances formed part of salary as to be considered in the computation of retirement benefits. The ruling was in the negative on the main ground that the retirement plan of the company expressly excluded such allowances from salary.

WHEREFORE, the Petition is **DISMISSED**. The Resolution of public respondent National Labor Relations Commission dated 7 October 1994 holding that the Staff/Manager's, transportation and Bislig allowances did not form part of the salary base used in computing the separation pay of petitioners, as well as its Resolution dated 26 September 1995 denying reconsideration, is **AFFIRMED**. No costs.

SO ORDERED.

Puno, Mendoza, Quisumbing and Buena, JJ., concur.

- [1] Liduvino M. Millares, J. Capistrano Cordita, Shirley P. Uy, Dionisio J. Requina, Gabriel A. Dejero, Nelson T. Gomomit, Imelda Impeynado, Sulpicio B. Sumile, Ma. Consuelo Aviel, Silvino S. Guevarra, Fidel Dumanhog, Nelfa T. Polotan, Lemuel C. Risma, Juanito M. Gonzales, Rogelio B. Cabatuan, Epifancio E. Ganancial, Dominador D. Atok, Conrado U. Serrano, Isidro J. Barnaja, Romeo Virtudazo, Avelino Nable, Edgar Tamos, Ernesto Orias, Dalmacio Legaray, Romeo R. Bula, Roberto G. Garcia, Rudolfo Suzon, Jerry S. Dano, August G. Escudero, Oscar B. Catbagan, Teofilo C. Sison, Narciso Bulasa, Alberto Cortez, Lilia C. Cabrera, Nestor A. Acaso, Bienvenido Mozo, Isidoro A. Almendarez, Vicente M. Pilongo, Roberto N. Lumpot, Patricio Bandola, Manuel S. Espina, Isidro K. Balcita, Jr., Emmanuel O. Abraham, Olegario A. Epis, Nestor D. Peregrino, Ramon A. Usanaga, Presto Bartolome, Brady Empeynado, Porferio N. Condado, Aquillo V. Cordova, Leonardo Estosi, Pacifico B. Dacorina, Pablito B. Llubit, Antonio Doza, Leonito Labadia, Edgardo Belliza, Fedencio P. Gebertas, Virgilio D. Gulbe, Manuel A. Lerio, Jr., Rogelio B. Ocamia, Rodolfo A. Castillo, Edmundo L. Plaza, Roberto D. Yagonia, Jr., Petronio Estela, Jr., Crisologo A. Logronio, Ernesto T. Morio, Rogelio M. David, Benjamin U. Arligue, Apolonio Mundo, Jr., Nene M. Espinosa, Nilo B. Balaoro, Geronimo S. Convi, Vicente R. Taragoza, Yolando A. Salazar, Manuel A. Neri, Rogelio C. Ticar, Roberto A. Macalam, Miguel Macariola, Walterio Dapadap, Silverio Cuamag, Euparquio Planos, Gilberto M. Mira, Reynaldo Bacsarsa, Diosdado B. Abing, Aristarco V. Salon, Tomas N. Catacte, Rodolfo Memoria, Papieniano Curias, Jose S. Candia, Desiderio C. Navarro, Emmanuel O. Abraham, Joselito D. Arlan, Francisco S. Sanchez, Mansueto B. Linggo, Isidro Barnaja, Romeo S. Cabrera, Leodegario Caintic, Nestor G. Blando, Florencio B. Delizo, Milan M. Etes, Gonzalo C. Padillo, Leonardo Cagakit, Josefino E. Dulguime, Pepito G. Arreza, Amador G. Cagalawan, Gaudencio C. Sarmiento, Florentino J. Bracamonte, Dominador H. Ty, Leopoldo T. Supil, Jose A. Dohinog, Aniano T. Reyes, Carlito G. Uy, Placido D. Padillo, Teresita C. Adriano, Candido S. Adriano, and Avelino G. Veneracion.
- [2] G.R. No. 76721, 21 September 1987, 154 SCRA 166.
- [3] G.R. No. 75510, 27 October 1987, 155 SCRA 124.
- [4] Decision penned by Executive Labor Arbiter Conchita J. Martinez; Rollo, p. 68.
- [5] Resolution penned by Commissioner Leon G. Gonzaga Jr. with the concurrence of Acting Presiding Commissioner Oscar N. Abella; Rollo, p. 48.
- [6] G.R. No. 77109, 8 November 1988, 167 SCRA 99.
- [7] Rollo, p. 50.

- [8] See Note 2.
- [9] See Note 3.
- [10] G.R. No. 74191, 21 December 1987, 156 SCRA 740.
- [11] G.R. No. 78524, 20 January 1989, 169 SCRA 328.
- [12] G.R. Nos. 50999-51000, 23 March 1990, 183 SCRA 610.
- [13] Webster's Third New International Dictionary, 1993 Ed., p. 559.
- [14] Black's Law Dictionary, Sixth Ed., p. 385.
- [15] See Note 5.
- [16] Rollo, p. 234.
- [17] States Marine Corporation vs. Cebu Seamen's Association, Inc., No. L-12444, 28 February 1963, 7 SCRA 294.
- [18] Rollo, pp. 239-240.
- [19] Citing Pan-Philippine Life Insurance Corporation vs. NLRC, G. R. No. 53721, 29 June 1982, 114 SCRA 866 where transportation allowance was included in the computation of back wages and General Bank and Trust Company vs. Court of Appeals G. R. No. 42724, 9 April 1985, 135 SCRA 569 where housing allowance was included in the computation of separation pay that was granted in lieu of reinstatement.
- [20] East Asiatic Co., Ltd. vs. Court of Industrial Relations, No. L-29068, 31 August 1971, 40 SCRA 521.