SUPREME COURT
FIRST DIVISION

JOSE SONGCO, ROMEO CIPRES, and AMANCIO MANUEL,
***Petitioners*,**

-versus-

G.R. Nos. 50999-51000
March 23, 1990

NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION), LABOR ARBITER FLAVIO AGUAS, and F.E. ZUELLIG (M), INC.,
***Respondents*.**
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D E C I S I O N

MEDIALDEA, *J.*:

This is a Petition for *Certiorari* seeking to modify the Decision of the National Labor Relations Commission in NLRC Case No. RB-IV-20840-78-T entitled, "Jose Songco and Romeo Cipres, Complainants-Appellants, vs. F.E. Zuellig (M), Inc., Respondent-Appellee" and NLRC Case No. RN-IV-20855-78-T entitled, "Amancio Manuel, Complainant-Appellant, vs. F.E. Zuellig (M), Inc., Respondent-Appellee," which dismissed the appeal of petitioners herein and in effect affirmed the decision of the Labor Arbiter ordering private respondent to pay petitioners separation pay equivalent to their one

month salary (exclusive of commissions, allowances, etc.) for every year of service.

The antecedent facts are as follows:

Private respondent F.E. Zuellig (M), Inc., (hereinafter referred to as Zuellig) filed with the Department of Labor (Regional Office No. 4) an application seeking clearance to terminate the services of petitioners Jose Songco, Romeo Cipres, and Amancio Manuel (hereinafter referred to as petitioners) allegedly on the ground of retrenchment due to financial losses. This application was seasonably opposed by petitioners alleging that the company is not suffering from any losses. They alleged further that they are being dismissed because of their membership in the union. At the last hearing of the case, however, petitioners manifested that they are no longer contesting their dismissal. The parties then agreed that the sole issue to be resolved is the basis of the separation pay due to petitioners. Petitioners, who were in the sales force of Zuellig received monthly salaries of at least P400.00. In addition, they received commissions for every sale they made.

The Collective Bargaining Agreement entered into between Zuellig and F.E. Zuellig Employees Association, of which petitioners are members, contains the following provision (p. 71, Rollo):

> "ARTICLE XIV — Retirement Gratuity.
>
> "Section 1(a) — Any employee, who is separated from employment due to old age, sickness, death or permanent lay-off not due to the fault of said employee shall receive from the company a retirement gratuity in an amount equivalent to one (1) month's salary per year of service. One month of salary as used in this paragraph shall be deemed equivalent to the salary at date of retirement; years of service shall be deemed equivalent to total service credits, a fraction of at least six months being considered one year, including probationary employment. (Emphasis supplied).

On the other hand, Article 284 of the Labor Code then prevailing provides:

> "Art. 284. Reduction of personnel. — The termination of employment of any employee due to the installation of labor saving-devices, redundancy, retrenchment to prevent losses, and other similar causes, shall entitle the employee affected thereby to separation pay. In case of termination due to the installation of labor-saving devices or redundancy, the separation pay shall be equivalent to one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and other similar causes, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year." (Emphasis supplied)

In addition, Sections 9(b) and 10, Rule 1, Book VI of the Rules Implementing the Labor Code provide:

x x x

> "Sec. 9(b). Where the termination of employment is due to retrenchment initiated by the employer to prevent losses or other similar causes, or where the employee suffers from a disease and his continued employment is prohibited by law or is prejudicial to his health or to the health of his co-employees, the employee shall be entitled to termination pay equivalent at least to his one month salary, or to one-half month pay for every year of service, whichever is higher, a fraction of at least six (6) months being considered as one whole year.

x x x

> "Sec. 10. Basis of termination pay. — The computation of the termination pay of an employee as provided herein shall be based on his latest salary rate, unless the same was reduced by the employer to defeat the intention of the Code, in which case the basis of computation shall be the rate before its deduction." (Emphasis supplied)

On June 26, 1978, the Labor Arbiter rendered a decision, the dispositive portion of which reads (p. 78, Rollo):

> "RESPONSIVE TO THE FOREGOING, respondent should be as it is hereby, ordered to pay the complainants separation pay equivalent to their one month salary (exclusive of commissions, allowances, etc.) for every year of service that they have worked with the company.
>
> "SO ORDERED."

The appeal by petitioners to the National Labor Relations Commission was dismissed for lack of merit.

Hence, the present petition.

On June 2, 1980, the Court, acting on the verified "Notice of Voluntary Abandonment and Withdrawal of Petition" dated April 7, 1980 filed by petitioner Romeo Cipres, based on the ground that he wants "to abide by the decision appealed from" since he had "received, to his full and complete satisfaction, his separation pay," resolved to dismiss the petition as to him.

The issue is whether or not earned sales commissions and allowances should be included in the monthly salary of petitioners for the purpose of computation of their separation pay.

The petition is impressed with merit.

Petitioners' position was that in arriving at the correct and legal amount of separation pay due them, whether under the Labor Code or the CBA, their basic salary, earned sales commissions and allowances should be added together. They cited Article 97(f) of the Labor Code which includes commission as part of one's salary, to wit:

> "(f) 'Wage' paid to any employee shall mean 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. 'Fair and reasonable value' shall not include any profit to the employer or to any person affiliated with the employer."

Zuellig argues that if it were really the intention of the Labor Code as well as its implementing rules to include commission in the computation of separation pay, it could have explicitly said so in clear and unequivocal terms. Furthermore, in the definition of the term "wage", "commission" is used only as one of the features or designations attached to the word remuneration or earnings.

Insofar as the issue of whether or not allowances should be included in the monthly salary of petitioners for the purpose of computation of their separation pay is concerned, this has been settled in the case of Santos vs. NLRC, et al., G.R. No. 76721, September 21, 1987, 154 SCRA 166, where We ruled that "in the computation of backwages and separation pay, account must be taken not only of the basic salary of petitioner but also of her transportation and emergency living allowances." This ruling was reiterated in Soriano vs. NLRC, et al., G.R. No. 75510, October 27, 1987, 155 SCRA 124 and recently, in Planters Products, Inc. vs. NLRC, et al., G.R. No. 78524, January 20, 1989.

We shall concern ourselves now with the issue of whether or not earned sales commissions should be included in the monthly salary of petitioners for the purpose of computation of their separation pay.

Article 97(f) by itself is explicit that commission is included in the definition of the term "wage". It has been repeatedly declared by the courts that where the law speaks in clear and categorical language, there is no room for interpretation or construction; there is only room for application (Cebu Portland Cement Co. vs. Municipality of Naga, G.R. Nos. 24116-17, August 22, 1968, 24 SCRA 708; Gonzaga vs. Court of Appeals, G.R. No. L-27455, June 28, 1973, 51 SCRA 381). A plain and unambiguous statute speaks for itself, and any attempt to

make it clearer is vain labor and tends only to obscurity. However, it may be argued that if We correlate Article 97(f) with Article XIV of the Collective Bargaining Agreement, Article 284 of the Labor Code and Sections 9(b) and 10 of the Implementing Rules, there appears to be an ambiguity. In this regard, the Labor Arbiter rationalized his decision in this manner (pp. 74-76, Rollo):

> "The definition of 'wage' provided in Article 96 (sic) of the Code can be correctly be (sic) stated as a general definition. It is 'wage' in its generic sense. A careful perusal of the same does not show any indication that commission is part of salary. We can say that commission by itself may be considered a wage. This is not something novel for it cannot be gain said that certain types of employees like agents, field personnel and salesmen do not earn any regular daily, weekly or monthly salaries, but rely mainly on commission earned.
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> "Upon the other hand, the provisions of Section 10, Rule I, Book VI of the implementing rules in conjunction with Articles 273 and 274 (sic) of the Code specifically states that the basis of the termination pay due to one who is sought to be legally separated from the service is 'his latest salary rates.'
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> x x x
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> "Even Articles 273 and 274 (sic) invariably use 'monthly pay or monthly salary.'
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> "The above terms found in those Articles and the particular Rules were intentionally used to express the intent of the framers of the law that for purposes of separation pay they mean to be specifically referring to salary only.
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> "Each particular benefit provided in the Code and other Decrees on Labor has its own peculiarities and nuances and should be interpreted in that light. Thus, for a specific provision, a specific meaning is attached to simplify matters that may arise therefrom. The general guidelines in (sic) the formation of specific rules for particular purpose. Thus, that what should be controlling in matters concerning termination pay should be the

> specific provisions of both Book VI of the Code and the Rules. At any rate, settled is the rule that in matters of conflict between the general provision of law and that of a particular or specific provision, the latter should prevail."

On its part, the NLRC ruled (p. 110, Rollo):

> "From the aforequoted provisions of the law and the implementing rules, it could be deduced that wage is used in its generic sense and obviously refers to the basic wage rate to be ascertained on a time, task, piece or commission basis or other method of calculating the same. It does not, however, mean that commission, allowances or analogous income necessarily forms part of the employee's salary because to do so would lead to anomalies (sic), if not absurd, construction of the word "salary." For what will prevent the employee from insisting that emergency living allowance, 13th month pay, overtime and premium pay, and other fringe benefits should be added to the computation of their separation pay. This situation, to our mind, is not the real intent of the Code and its rules."

We rule otherwise. The ambiguity between Article 97(f), which defines the term 'wage' and Article XIV of the Collective Bargaining Agreement, Article 284 of the Labor Code and Sections 9(b) and 10 of the Implementing Rules, which mention the terms "pay" and "salary", is more apparent than real. Broadly, the word "salary" means a recompense or consideration made to a person for his pains or industry in another man's business. Whether it be derived from "salarium," or more fancifully from "sal," the pay of the Roman soldier, it carries with it the fundamental idea of compensation for services rendered. Indeed, there is eminent authority for holding that the words "wages" and "salary" are in essence synonymous (Words and Phrases, Vol. 38 Permanent Edition, p. 44 citing Hopkins vs. Cromwell, 85 N.Y.S. 839, 841, 89 App. Div. 481; 38 Am. Jur. 496). "Salary," the etymology of which is the Latin word "salarium," is often used interchangeably with "wage", the etymology of which is the Middle English word "wagen". Both words generally refer to one and the same meaning, that is, a reward or recompense for services performed. Likewise, "pay" is the synonym of "wages" and "salary" (Black's Law Dictionary, 5th Ed.). Inasmuch as the words "wages",

"pay" and "salary" have the same meaning, and commission is included in the definition of "wage", the logical conclusion, therefore, is, in the computation of the separation pay of petitioners, their salary base should include also their earned sales commissions.

The aforequoted provisions are not the only consideration for deciding the petition in favor of the petitioners.

We agree with the Solicitor General that granting, in gratia argumenti, that the commissions were in the form of incentives or encouragement, so that the petitioners would be inspired to put a little more industry on the jobs particularly assigned to them, still these commissions are direct remunerations for services rendered which contributed to the increase of income of Zuellig. Commission is the recompense, compensation or reward of an agent, salesman, executor, trustees, receiver, factor, broker or bailee, when the same is calculated as a percentage on the amount of his transactions or on the profit to the principal (Black's Law Dictionary, 5th Ed., citing Weiner vs. Swales, 217 Md. 123, 141 A.2d 749, 750). The nature of the work of a salesman and the reason for such type of remuneration for services rendered demonstrate clearly that commissions are part of petitioners' wage or salary. We take judicial notice of the fact that some salesmen do not receive any basic salary but depend on commissions and allowances or commissions alone, although an employer-employee relationship exists. Bearing in mind the preceding discussions, if We adopt the opposite view that commissions do not form part of wage or salary, then, in effect, We will be saying that this kind of salesmen do not receive any salary and therefore, not entitled to separation pay in the event of discharge from employment. Will this not be absurd? This narrow interpretation is not in accord with the liberal spirit of our labor laws and considering the purpose of separation pay which is, to alleviate the difficulties which confront a dismissed employee thrown to the streets to face the harsh necessities of life.

Additionally, in Soriano vs. NLRC, et al., supra, in resolving the issue of the salary base that should be used in computing the separation pay, We held that:

> "The commissions also claimed by petitioner ('override commission' plus 'net deposit incentive') are not properly includible in such base figure since such commissions must be earned by actual market transactions attributable to petitioner."

Applying this by analogy, since the commissions in the present case were earned by actual market transactions attributable to petitioners, these should be included in their separation pay. In the computation thereof, what should be taken into account is the average commissions earned during their last year of employment.

The final consideration is, in carrying out and interpreting the Labor Code's provisions and its implementing regulations, the workingman's welfare should be the primordial and paramount consideration. This kind of interpretation gives meaning and substance to the liberal and compassionate spirit of the law as provided for in Article 4 of the Labor Code which states that "all doubts in the implementation and interpretation of the provisions of the Labor Code including its implementing rules and regulations shall be resolved in favor of labor" (Abella vs. NLRC, G.R. No. 71812, July 30, 1987, 152 SCRA 140; Manila Electric Company vs. NLRC, et al., G.R. No. 78763, July 12, 1989), and Article 1702 of the Civil Code which provides that "in case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer.

ACCORDINGLY, the Petition is hereby **GRANTED**. The Decision of the respondent National Labor Relations Commission is **MODIFIED** by including allowances and commissions in the separation pay of petitioners Jose Songco and Amancio Manuel. The case is remanded to the Labor Arbiter for the proper computation of said separation pay.

SO ORDERED.

Narvasa, *C.J.*, *(Chairman)*, Cruz, Gancayco and Griño-Aquino, *JJ.*, concur.