

SECOND DIVISION

[G.R. No. 177524, July 23, 2014]

NATIONAL UNION OF WORKERS IN HOTEL RESTAURANT AND ALLIED INDUSTRIES (NUWHRAIN-APL-IUF), PHILIPPINE PLAZA CHAPTER, PETITIONER, VS. PHILIPPINE PLAZA HOLDINGS, INC., RESPONDENT.

DECISION

BRION, J.:

We resolve the petition for review on *certiorari*,^[1] challenging the January 31, 2007 decision^[2] and the April 20, 2007 resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 93698.

This CA decision reversed the July 4, 2005 decision^[4] of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 031977-02 (NLRC NCR-30-05-02011-01) that in turn, reversed and set aside the April 30, 2002 decision^[5] of the Labor Arbiter (LA).

The LA dismissed the complaint for non-payment of service charges filed by petitioner National Union of Workers in Hotel Restaurant and Allied Industries (NUWHRAIN-APL-IUF), Philippine Plaza Chapter (*Union*).

The Factual Antecedents

The Union is the collective bargaining agent of the rank-and-file employees of respondent Philippine Plaza Holdings, Inc. (PPHI).

On November 24, 1998, the PPHI and the Union executed the "Third Rank-and-File Collective Bargaining Agreement as Amended"^[6] (CBA). The CBA provided, among others, for the collection, by the PPHI, of a ten percent (10%) service charge on the sale of food, beverage, transportation, laundry and rooms. The pertinent CBA provisions read:

SECTION 68. COLLECTION. The HOTEL shall continue to collect ten percent (10%) service charge on the sale of food, beverage, transportation, laundry and rooms **except on negotiated contracts and special rates.** [Emphasis supplied]

SECTION 69. DISTRIBUTION. The service charge to be distributed shall consist of the following:

Effective 1998	Food & Beverage 95%	Room, Transportation & valet 100%
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1997

95%

100%

The distributable amount will be shared equally by all HOTEL employees, including managerial employees but excluding expatriates, with three shares to be given to PPHI Staff and three shares to the UNION (one for the national and two for the local funds) that may be utilized by them for purposes for which the UNION may decide.

These provisions merely reiterated similar provisions found in the PPHI-Union's earlier collective bargaining agreement executed on August 29, 1995.^[7]

On February 25, 1999, the Union's Service Charge Committee informed the Union President, through an audit report (*1st audit report*),^[8] of uncollected service charges for the last quarter of 1998 amounting to ₱2,952,467.61. Specifically, the audit report referred to the service charges from the following items: (1) "**Journal Vouchers**;" (2) "**Banquet Other Revenue**;" and (3) "**Staff and Promo**." The Union presented this audit report to the PPHI's management during the February 26, 1999 Labor Management Cooperation Meeting (*LMCM*).^[9] The PPHI's management responded that the Hotel Financial Controller would need to verify the audit report.

Through a letter dated **June 9, 1999**,^[10] the PPHI admitted liability for ₱80,063.88 out of the ₱2,952,467.61 that the Union claimed as uncollected service charges. The PPHI denied the rest of the Union's claims because: (1) they were exempted from the service charge being revenues from "special promotions" (revenue from the Westin Gold Card sales) or "negotiated contracts" (alleged revenue from the Maxi-Media contract); (2) the revenues did not belong to the PPHI but to third-party suppliers; and (3) no revenue was realized from these transactions as they were actually expenses incurred for the benefit of executives or by way of good-will to clients and government officials.

During the July 12, 1999 LMCM,^[11] the Union maintained its position on uncollected service charges so that a deadlock on the issue ensued. The parties agreed to refer the matter to a third party for the solution. They considered two options – voluntary arbitration or court action – and promised to get back to each other on their chosen option.

In its formal reply (to the PPHI's June 9, 1999 letter) dated July 21, 1999 (*2nd audit report*),^[12] the Union modified its claims. It claimed uncollected service charges from: (1) "**Journal Vouchers - Westin Gold Revenue and Maxi-Media**" (F&B and Rooms Barter); (2) "**Banquet and Other Revenue**;" and (3) "**Staff and Promo**."

On August 10, 2000, the Union's Service Charge Committee made another service charge audit report for the years 1997, 1998 and 1999 (*3rd audit report*).^[13] This 3rd audit report reflected total uncollected service charges of ₱5,566,007.62 from the following entries: (1) "**Journal Vouchers**;" (2) "**Guaranteed No Show**;" (3) "**Promotions**;" and (4) "**F & B Revenue**." The Union President presented the 3rd audit report to the PPHI on August 29, 2000.

When the parties failed to reach an agreement, the Union, on **May 3, 2001**, filed before the LA (Regional Arbitration Branch of the NLRC) a complaint^[14] for **non-payment of specified service charges**. The Union additionally charged the PPHI with unfair labor practice (ULP) under Article 248 of the Labor Code, *i.e.*, for violation of their collective bargaining agreement.

In its decision^[15] dated April 30, 2002, the LA dismissed the Union's complaint for lack of merit. The LA declared that the Union failed to show, by law, contract and practice, its entitlement to the payment of service charges from the entries specified in its audit reports (*specified entries/transactions*).

The LA pointed out that Section 68 of the CBA explicitly requires, as a precondition for the distribution of service charges in favor of the covered employees, the collection of the 10% service charge on the "sale of food, beverage, transportation, laundry and rooms;" at the same time, the provision exempts from its coverage "negotiated contracts" and "special rates" that the LA deemed as non-revenue generating transactions involving "food, beverage, transportation, laundry and rooms." The Union failed to prove that the PPHI collected 10% service charges on the specified entries/transactions that could have triggered the PPHI's obligation under this provision.

Particularly, the LA pointed out that, *first*, the only evidence on record that could have formed the basis of the Union's claim for service charges was the PPHI's admission that, as a matter of policy, it has been charging, collecting and distributing to the covered employees 10% service charge on the fifty percent (50%) of the total selling price of the "Maxi-Media F & B" and on the "Average House" rate of the "Maxi-Media Rooms." And it did so, notwithstanding the fact that the "Maxi-Media F & B and Rooms Barter" is a "negotiated contract" and/or "special rate" that Section 68 explicitly excludes from the service charge coverage.

Second, while the PPHI derived revenues from the sale of the Westin Gold Cards (Westin Gold Revenue), the PPHI did not and could not have collected a 10% service charge as these transactions could not be considered as sale of food, beverage, transportation, laundry and rooms that Section 68 contemplates.

Third, the "Staff and Business Promotion and Banquet" entry refers to the expenses incurred by the PPHI's Marketing Department and Department Heads and Hotel executives either as part of their perks or the PPHI's marketing tool/public relations. These are special rates that are essentially non-revenue generating items.

Fourth, the "Backdrop" entry refers to services undertaken by third parties payment for which were made of course to them; hence, this entry/transaction could not likewise be considered as sale of services by PPHI for which collection of the 10% service charge was warranted.

Lastly, the LA equally brushed aside the Union's claim of ULP declaring that the PPHI was well within its legal and contractual right to refuse payment of service charges for entries from which it did not collect any service charge pursuant to the provision of their CBA.

The NLRC's ruling

In its decision^[16] of July 4, 2005, the NLRC reversed the LA's decision and considered the specified entries/transactions as "service chargeable." As the PPHI failed to prove that it paid or remitted the required service charges, the NLRC held the PPHI liable to pay the Union P5,566,007.62 representing the claimed uncollected service charges for the years 1997, 1998 and 1999 per the 3rd audit report.

The PPHI went to the CA on a petition for *certiorari*^[17] after the NLRC denied its motion for reconsideration.^[18]

The CA's ruling

The CA granted the PPHI's petition in its January 31, 2007 decision.^[19] It affirmed the LA's decision but ordered the PPHI to pay the Union the amount of P80,063.88 as service charges that it found was due under the circumstances. The CA declared that no service charges were due from the specified entries/transactions; either these constituted "negotiated contracts" and "special rates" that Section 68 of the CBA explicitly excludes from the coverage of service charges, or they were cited bases that the Union failed to sufficiently prove.

The CA pointed out that: *one*, the "Westin Gold Card Revenues" entry involved the sale, not of food, beverage, transportation, laundry and rooms, but of a "contractual right" to be charged a lesser rate for the products and services that the Hotel and the stores within it provide. At any rate, the PPHI charges, collects and distributes to the covered employees the CBA-agreed service charges whenever any Westin Gold Card member purchases food, beverage, etc. *Two*, the "Maxi-Media F & B and Rooms and Barter" entry did not involve any sale transaction that Section 68 contemplates. The CA pointed out that the arrangement^[20] between the PPHI and Maxi-Media International, Inc. was not one of sale but an innominate contract of *facio ut des*, *i.e.*, in exchange for the professional entertainment services provided by Maxi-Media, the Hotel agreed to give the former P2,800,000.00 worth of products and services. The CA added that this agreement falls under "negotiated contracts" that Section 68 explicitly exempts. *Three*, the sale of "Gift Certificates" does not involve the CBA-contemplated "sale of food, beverage, etc." *Four*, the Union failed to show the source of its computations for its "Guaranteed No Show" and "F & B Revenue" claims. *Five*, the "Business Promotions" entry likewise did not involve any sale; these were part of the PPHI's business expenses in the form of either signing benefits for the PPHI's executives or as marketing tool used by the PPHI's marketing personnel to generate goodwill. And *six*, the Union's claims for service charges that the PPHI allegedly collected prior to May 3, 1998 or three years before the Union filed its complaint on May 3, 2001 had already prescribed per Article 291 of the Labor Code.

The Union filed the present petition after the CA denied its motion for reconsideration^[21] in the CA's April 20, 2007 resolution.^[22]

The Petition

The Union argues that the CA clearly misapprehended and misappreciated, with grave abuse of discretion, the facts and evidence on record. It maintains that the

specified entries/transactions are revenue based transactions which, per Section 68 and 69 of the CBA, clearly called for the collection and distribution of a 10% service charge in favor of the covered employees.

Particularly, the Union argues that: (1) the "Westin Gold Cards" serve not only as a discount card but also as a "pre-paid" card that provide its purchasing members complimentary amenities for which the Hotel employees rendered services and should, therefore, had been subjected to the 10% service charge; (2) the PPHI failed to prove that it had paid and distributed to the covered employees the service charge due on the actual discounted sales of food, beverage, etc., generated by the "Westin Gold Cards;" (3) the Hotel employees likewise rendered services whenever the Maxi-Media International, Inc. consumed or availed part of the P2,800,000.00 worth of goods and services pursuant to its agreement with the PPHI; (4) the "Maxi-Media" discounts should be charged to the PPHI as part of its expenses and not the Union's share in the service charges; (5) the PPHI has a separate budget for promotions, hence the "Business Promotions" entry should likewise had been subjected to the 10% service charge; (6) the sale of "Gift Certificates," recorded in the PPHI's "Journal Vouchers" as "other revenue/income," constituted a revenue transaction for which service charges were due; (7) the PPHI admitted that service charges from "Guaranteed No Show" were due; and (8) it properly identified through reference numbers the uncollected service charges from "Food and Beverage Revenue." The Union contends that in refusing to collect and remit the CBA-mandated service charges that the PPHI insists were non-revenue transactions falling under "Negotiated Contracts" and/or "Special Rates," the PPHI, in effect, contravened the employees' rights to service charges under the law and the CBA.

The Union also contends that the term "Negotiated Contracts" should be applied to "airline contracts" only that they (the Union and the PPHI) intended when they executed the CBA. It points out that at the time the CBA was executed, the PPHI had an existing agreement with Northwest Airlines to which the term "Negotiated Contracts" clearly referred to.

Further, the Union argues that its claim for unpaid services charges for the year 1997 and part of 1998 had not yet prescribed. Applying Article 1155 of the Civil Code in relation to Article 291 of the Labor Code, the Union points out that the running of the prescriptive period for the filing of its claim was interrupted when it presented to the PPHI its 1st audit report during the February 26, 1999 LMCM and when the PPHI admitted the service charges due to the Union in the PPHI's June 9, 1999 letter.

The Union additionally argues that the PPHI failed to conform to the generally accepted accounting standards when it reclassified the revenue items as expense items.

Finally, the Union contends that the PPHI's refusal, despite repeated demands, to distribute the unremitted service charges and recognize its right to service charges on the specified entries; the PPHI's deliberate failure to disclose its financial transactions and audit reports; and the PPHI's reclassification of the revenues into expense items constitute gross violation of the CBA that amounts to what the law considers as ULP.

The Case for the Respondent