

## SECOND DIVISION

[ G.R. No. 196936, July 02, 2014 ]

**MONCHITO R. AMPELOQUIO, PETITIONER, VS. JAKA  
DISTRIBUTION, INC., RESPONDENT.**

### D E C I S I O N

**PEREZ, J.:**

We here have a petition for review on *certiorari* under Rule 45 of the Rules of Court posing a question on the scope of the reinstatement relief afforded an illegally dismissed employee.

Petitioner Monchito R. Ampeloquio (Ampeloquio) is a reinstated employee of respondent Jaka Distribution, Inc. (JAKA), formerly RMI Marketing Corporation (RMI).

Previously, Ampeloquio had filed a complaint for illegal dismissal against RMI before the National Labor Relations Commission (NLRC). Subsequently, the Labor Arbiter found RMI guilty of illegal dismissal:

WHEREFORE, decision is hereby rendered declaring that [Ampeloquio] is a regular employee of respondent RMI Marketing (now known as JAKA DISTRIBUTION, INC.) and that he was illegally dismissed.

The respondents RMI Marketing Corp., (now known as JAKA DISTRIBUTION, INC.) and Teodoro Barzabal, are ordered to reinstate [petitioner] Monchito Ampeloquio in his former position as merchandiser without loss of seniority rights and other benefits and to pay him backwages and attorney's fees in the total amount of THREE HUNDRED THIRTY THREE THOUSAND FOUR PESOS & 42/100 (P333,034.42).<sup>[1]</sup>

On 6 August 2004, Ampeloquio resumed work as merchandiser at JAKA and reported at JAKA's outlets within Metro Manila, Shopwise Makati and Alabang. He received a daily wage of P252.00, without meal and transportation allowance.

On 4 April 2005, Ampeloquio was transferred outside of Metro Manila, to Lucena City and subsequently to San Pablo City. At that time, he was receiving the same daily wage of P252.00, without meal and transportation allowance. Ampeloquio was given a monthly cost of living allowance (COLA) of P720.00.

In a Letter dated 16 March 2005 addressed to JAKA's general manager, Ampeloquio requested for salary adjustment and benefits retroactive to the date of his reinstatement, 6 August 2004, and payment of salary differential in the total amount of P42,196.00.

In another Letter dated 7 July 2006, Ampeloquio wrote JAKA reiterating his request for salary adjustment and payment of benefits retroactive to his reinstatement, and an increase from his previous request of salary differential which amounted to a total of P180,590.00.

Ampeloquio based his request on what other merchandisers of JAKA received:

[The] supposed daily wage [prevailing at the time of his reinstatement] was P394.12, COLA at P1,200.00 per month, meal allowance of P60.00 and transportation allowance from house to outlet [and] vice-versa that his co-employees in the same job received P4,500.00 or P281.25 daily wage actual cost of transportation expenses and meal allowance of P60.00 per day; that a messengerial employee receives P394.21 or P9,641.00 monthly salary plus transportation and meal allowance; x x x.  
[2]

Because of the discrepancy in wages, Ampeloquio filed anew before the NLRC, a complaint for underpayment of wages, COLA, non-payment of meal and transportation allowances docketed as NLRC NCR Case No. 00-06-04702-06.[3]

The NLRC summarized the claims and defenses of the parties, to wit:

x x x [Ampeloquio] seeks entitlement to underpayment or wage differential of P142.00, COLA differential of P500.00 a month, meal allowance of P60.00 per day and average transportation allowance of P100.00 per day; that he called the attention of [JAKA's general manager], Mr. Ariel Villasenor about his concern on 16 March 2005 but to no avail although upon second demand his ECOLA was increased to P1,200.00 per month starting 16 July 2006.

For their part, [JAKA] avers that it is engaged in the business of distribution of consumer goods; that [Ampeloquio] is their only regular employee as merchandiser; that at the time of the filing of this case, [Ampeloquio] is still working in a supermarket with a monthly salary of P7,985.00; that their other merchandiser[s] are outsourced from manpower agencies or are seasonal employees hired during peak season; that the salary of [Ampeloquio] was based on the minimum wage of P250.00 and ECOLA of P50.00 per day; that it is in the process of computing the wage distortion in the implementation of 2005 wage increase of P25.00; that their exemption in the implementation of wage increase expired last 25 June 2006 prior to the filing of this complaint; that they did not act on [Ampeloquio's] demand for money claims due to the pendency of this case.

In their reply, [JAKA] admits that [Ampeloquio] was reinstated in accordance with the Labor Arbiter's decision in the illegal dismissal case; that he received the same rate as that of his co-employees, hence there is no basis for [Ampeloquio's] money claims. On the other hand,

[Ampeloquio] stressed the discrepancy and discrimination in the payment of wages which he allegedly suffered as he received lower than that of his co-workers and to substantiate his arguments he submitted the payslips of his co-employees.<sup>[4]</sup>

The Court of Appeals would summarize the position of JAKA, thus:

x x x [Ampeloquio] is receiving a basic rate of P6,545.00, ECOLA of P1,200.00, transportation allowance of P240.00, and medicine allowance of P200.00; and that the company had made clear to merchandisers as early as 2004 that transportation reimbursement can only be made in such eventuality and does not include an instance where the employee (merchandiser) leaves his house to go to his assigned outlet or if he leaves his last outlet to go home.<sup>[5]</sup>

On 25 May 2007, Labor Arbiter Renaldo O. Hernandez granted Ampeloquio's complaint for underpayment of wages, basic and COLA and non-payment of allowances, meal and transportation:

WHEREFORE, premises considered[,] judgment is entered finding that [Ampeloquio] was illegally (sic) in bad faith, underpaid his wages, basic, COLA not paid his meal allowance and transportation allowance by [JAKA], ORDERING, hence [JAKA] (sic):

1. to pay him from 04/04/2005 to 06/14/2005 the total underpayment of COLA P3.85/day + unpaid nonstandard benefit of P60.00 meal allowance/day + nonstandard benefit of 36.06 transportation allowance/day, total of P99.85/day or P2,596.00/month x 2.53 months = P6,568.00 unpaid benefits and to pay him from 06/15/2005 – 06/05/2006 the underpayment of P122.96/day or P3,196.96/month x 11.6 months = P37,084.73 total unpaid wage differential, both to earn 12% legal interest from date of suit on 06/05/2006 until finally paid, plus 10% attorney's fees on the total amount in accord with Article 111 of the Labor Code.
2. to pay him moral damage[s] of P50,000.00 and exemplary [damages] of P10,000.00.<sup>[6]</sup>

In ruling for Ampeloquio, the Labor Arbiter used the following guideposts:

1. The claim should be limited to the three (3) year prescriptive period, that is, from date of filing 06/05/2006 and back, to 06/05/2003;
2. The existing statutory minimum wages and COLA during said 3-year period, viz:

1. 06/05/2003 – 07/09/2004 Era of (Basic) W.O. No. NCR-08 effective 11/01/2000 and (COLA) NCR 09 effective 11/05/2001 and 02/01/2002

Basic P250/day x 26 = P6,500/month + COLA P30.00/day x 26 = P780/month

Daily Take Home P250 + P30 = P280

Monthly Take Home P6,500 + P780 = P7,280

2. 07/10/2004 – 06/14/2005 Era of W.O. NCR-10 COLA increase of P20.00/day effective 07/10/2004

Basic same + COLA P50.00 x P26 = P1,300

Daily Take Home P250 + P50 = P300

Monthly Take Home P6,500 + P1,300 = P7,800

3. 06/15/2005 – 06/05/2006 Era of W.O. NCR 11 Basic increase of P25.00/day effective 06/15/2005

Basic P275/day x 26 = P7,150/month + COLA P50.00/day x 26 = P1,300/month

Daily Take Home P275 + P50 = P325

Monthly Take Home P7,150 + P1,300 = P8,450.00<sup>[7]</sup>

On appeal by JAKA, the NLRC proper, in its Resolution dated 29 November 2007 in NLRC LAC NO. 08-002252-07,<sup>[8]</sup> noted the exemption of JAKA from the pertinent Wage Order Nos. 10 & 11, and consequently, modified the amounts ordered by the Labor Arbiter to be paid by JAKA to Ampeloquio:

In this case it is undisputed that [Ampeloquio's] claim for salary differential covers the period from his date of reinstatement on 06 August 2004 to the date of the filing of this case on 05 June 2006. x x x.

A close examination of the Wage Orders material to [Ampeloquio's] claim show that under Wage Order No. 10 [on] ECOLA was granted in the amount of P20.00/day from July 10, 2004 and Wage Order No. 11 granted an increase of P25.00/day in the basic daily wage of workers from 16 June 2005 until 10 July 2006.

It appears however, that [JAKA] applied for an exemption in the implementation of Wage Order Nos. 10 and 11 x x x before the National Capitol Region Regional Tripartite Wage and Productivity Board and the latter in their Orders and dated 11 November 2004 and 28 September 2005 respectively granted the former twelve (12) months exemption from 10 July 2004 up to 09 July 2005 and 16 June 2005 until 15 June 2006. x x x.

In view of the foregoing, [Ampeloquio] is only entitled to a salary differential, as follows:

1. From 06 August 2004 to 15 June 2005 there are 269 days at 26 days per month.

The basic salary under the Wage Order is P250.00 per day plus P50.00 ECOLA. Applying the 12 months exemption or non-implementation of the P20.00 increase in ECOLA, [Ampeloquio] is only entitled to P280.00 per day but since he was paid P252.00 which he admitted, the salary differential for the 269 days period at P28.00 per day is SEVEN THOUSAND FIVE HUNDRED THIRTY-TWO (P7,532.00) PESOS only.

2. From 16 June 2005 up to 05 June 2006 there are 305 working days at 26 days per month.

The basic salary under Wage Order No. 11 was increase by P25.00 or has become P275.00 plus the P50.00 ECOLA making the minimum wage P325.00 per day.

Applying the exemption for 12 months to [Ampeloquio] his basic salary remained at P250.00 but her ECOLA has increased to P50.00 because of the expiration of the period for exemption, hence his salary is P300.00. Considering that he was paid only P252.00 pesos, his salary differential for the period is P48.00 pesos or the total amount of FOURTEEN THOUSAND SIX HUNDRED FORTY (P14,640.00) PESOS only.

[Ampeloquio] is therefore entitled to a total salary differential of only P22,172.00.

[JAKA's] contention that [Ampeloquio] is not entitled to reimbursement of transportation expenses from the latters house to the outlet where he was assigned and back is impressed with merit. [JAKA] submitted a copy of their policies and the pertinent portion, states:

*"7. The only transportation expenses allowed to be reimbursed are those incurred from the first outlet to succeeding outlets. The transportation reimbursement shall not include house to first outlet and last outlet to house."* x x x.

[JAKA's] contention that [Ampeloquio] is not entitled to attorney's fees is untenable. Article III of the Labor Code expressly provides that in cases of unlawful withholding or recovery of wages, attorney's fee may be granted to the worker.

However, we agree with [JAKA] that [Ampeloquio] is not entitled to moral and exemplary damages. [Ampeloquio] failed to prove his entitlement with substantial proof that there was bad faith on the part of [JAKA] by its failure to voluntarily pay his salary differential.

WHEREFORE, premises considered, the appeal is **PARTLY GRANTED** and the Decision dated 25 May 2007 is **MODIFIED** ordering [JAKA] to pay [Ampeloquio] his salary differential in the total amount of P22,172.00 and ten percent (10%) thereof as attorney's fees.<sup>[9]</sup>

Aggrieved by the NLRC's modification of what Ampeloquio obviously perceived as an acceptable monetary award, the latter filed a petition for *certiorari* before the Court