

THIRD DIVISION

[G.R. No. 187698, August 09, 2010]

**RODOLFO J. SERRANO, PETITIONER, VS. SEVERINO SANTOS
TRANSIT AND/OR SEVERINO SANTOS, RESPONDENTS.**

DECISION

CARPIO MORALES, J.:

Petitioner Rodolfo J. Serrano was hired on September 28, 1992 as bus conductor by respondent Severino Santos Transit, a bus company owned and operated by its co-respondent Severino Santos.

After 14 years of service or on July 14, 2006, petitioner applied for optional retirement from the company whose representative advised him that he must first sign the already prepared Quitclaim before his retirement pay could be released. As petitioner's request to first go over the computation of his retirement pay was denied, he signed the Quitclaim on which he wrote "U.P." (under protest) after his signature, indicating his protest to the amount of P75,277.45 which he received, computed by the company at 15 days per year of service.

Petitioner soon after filed a complaint^[1] before the Labor Arbiter, alleging that the company erred in its computation since under Republic Act No. 7641, otherwise known as the Retirement Pay Law, his retirement pay should have been computed at 22.5 days per year of service to include the cash equivalent of the 5-day service incentive leave (SIL) and $\frac{1}{12}$ of the 13th month pay which the company did not.

The company maintained, however, that the Quitclaim signed by petitioner barred his claim and, in any event, its computation was correct since petitioner was not entitled to the 5-day SIL and pro-rated 13th month pay for, as a bus conductor, he was paid on commission basis. Respondents, noting that the retirement differential pay amounted to only P1,431.15, explained that in the computation of petitioner's retirement pay, five months were inadvertently not included because some index cards containing his records had been lost.

By Decision^[2] of February 15, 2007, Labor Arbiter Cresencio Ramos, Jr. ruled in favor of petitioner, awarding him P116,135.45 as retirement pay differential, and 10% of the total monetary award as attorney's fees. In arriving at such computation, the Labor Arbiter ratiocinated:

In the same Labor Advisory on Retirement Pay Law, it was likewise decisively made clear that "the law expanded the concept of "one-half month salary" from the usual one-month salary divided by two", to wit:

B. COMPUTATION OF RETIREMENT PAY

A covered employee who retires pursuant to RA 7641 shall be entitled to retirement pay equivalent to at least one-half ($\frac{1}{12}$) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

The law is explicit that "one-half month salary shall mean fifteen (15) days plus one-twelfth ($\frac{1}{12}$) of the 13th month pay and the cash equivalent of not more than five (5) days service incentive leaves" unless the parties provide for broader inclusions. Evidently, the law expanded the concept of "one-half month salary" from the usual one-month salary divided by two.

The retirement pay is equal to half-month's pay per year of service. But "half-month's pay" is "expanded" because it means not just the salary for 15 days but also one-twelfth of the 13th-month pay and the cash value of five-day service incentive leave. THIS IS THE MINIMUM. The retirement pay package can be improved upon by voluntary company policy, or particular agreement with the employee, or through a collective bargaining agreement." (The Labor Code with Comments and Cases, C.A. Azcunea, Vol. II, page 765, Fifth Edition 2004).

Thus, having established that 22.5 days pay per year of service is the correct formula in arriving at the complete retirement pay of complainant and inasmuch as complainant's daily earning is based on commission earned in a day, which varies each day, the next critical issue that needs discernment is the determination of what is a fair and rational amount of daily earning of complainant to be used in the computation of his retirement pay.

While complainant endeavored to substantiate his claim that he earned average daily commission of P700.00, however, the documents he presented are not complete, simply representative copies, therefore unreliable. On the other hand, while respondents question complainant's use of P700.00 (daily income) as basis in determining the latter's correct retirement pay, however it does not help their defense that they did not present a single Conductor's Trip Report to contradict the claim of complainant. Instead, respondents adduced a handwritten summary of complainant's monthly income from 1993 until June 2006. It must be noted also that complainant did not contest the amounts stated on the summary of his monthly income as reported by respondents. Given the above considerations, and most importantly that complainant did not dispute the figures stated in that document, we find it logical, just and equitable for both parties to rely on the summary of monthly income provided by respondent, thus, we added complainant's monthly income from June 2005 until June 2006 or the last twelve months and we arrived at P189,591.30) and we divided it by twelve (12) to arrive at complainant's average monthly earning of P15,799.28. Thereafter, the

average monthly of P15,799.28 is divided by twenty-six (26) days, the factor commonly used in determining the regular working days in a month, to arrive at his average daily income of P607.66. Finally, P607.66 (average daily income) x 22.5 days = P13,672.35 x 14 (length of service) = P191,412.90 (COMPLETE RETIREMENT PAY). However, inasmuch as complainant already received P75,277.45, the retirement differential pay due him is P116,135.45 (P191,412.90 - P75,277.45). (underscoring partly in the original and partly supplied)

The National Labor Relations Commission (NLRC) to which respondents appealed *reversed* the Labor Arbiter's ruling and dismissed petitioner's complaint by Decision^[3] dated April 23, 2008. It, however, ordered respondents to pay retirement differential in the amount of P2,365.35.

Citing *R & E Transport, Inc. v. Latag*,^[4] the NLRC held that since petitioner was paid on purely commission basis, he was excluded from the coverage of the laws on 13th month pay and SIL pay, hence, the $\frac{1}{12}$ of the 13th month pay and the 5-day SIL should not be factored in the computation of his retirement pay.

Petitioner's motion for reconsideration having been denied by Resolution^[5] of June 27, 2008, he appealed to the Court of Appeals.

By the assailed Decision^[6] of February 11, 2009, the appellate court *affirmed* the NLRC's ruling, it merely holding that it was based on substantial evidence, hence, should be respected.

Petitioner's motion for reconsideration was denied, hence, the present petition for review on certiorari.

The petition is meritorious.

Republic Act No. 7641 which was enacted on December 9, 1992 *amended* Article 287 of the Labor Code by providing for retirement pay to qualified private sector employees in the absence of any retirement plan in the establishment. The pertinent provision of said law reads:

Section 1. Article 287 of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, is hereby amended to read as follows:

X X X X

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years

in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half ($\frac{1}{2}$) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term one-half ($\frac{1}{2}$) month salary shall mean fifteen (15) days plus one-twelfth ($\frac{1}{12}$) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

Retail, service and agricultural establishments or operations employing not more than (10) employees or workers are exempted from the coverage of this provision.

x x x x (emphasis and underscoring supplied)

Further, the Implementing Rules of said law provide:

RULE II
Retirement Benefits
SECTION 1.

General Statement on Coverage. -- **This Rule shall apply to all employees in the private sector, regardless of their position, designation or status and irrespective of the method by which their wages are paid, except to those specifically exempted under Section 2** hereof. As used herein, the term "Act" shall refer to Republic Act No. 7641 which took effect on January 7, 1993.

SECTION 2

Exemptions. -- This Rule **shall not apply** to the following employees:

2.1 **Employees of the National Government** and its political subdivisions, including Government-owned and/or controlled corporations, if they are covered by the Civil Service Law and its regulations.

2.2 Domestic helpers and persons in the personal service of another.

2.3 **Employees of retail, service and agricultural establishment or operations regularly employing not more than ten (10) employees.** As used in this sub-section;

x x x x