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THIRD DIVISION

[G.R. No. 116593, September 24, 1997]

PULP AND PAPER, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND EPIFANIA ANTONIO, RESPONDENTS.
D E C I S I O N

PANGANIBAN, J.:

In the absence of wage rates specially prescribed for piece-rate workers, how should the separation pay and salary differential of such workers be computed?

Statement of the Case

This is the main question raised in the instant petition for certiorari, filed under Rule 65 of the Rules of Court, to set aside and annul National Labor Relations Commission's[1] Decision[2] promulgated on September 24, 1993 and Resolution[3] dated December 16, 1993 in NLRC NCR CA No. 004041-92.[4] Public respondent's assailed Decision affirmed in toto Labor Arbiter Eduardo J. Carpio's decision[5] dated October 6, 1992, which disposed thus:[6]

> IN VIEW OF ALL THE FOREGOING, judgement [sic] is hereby rendered:
>
> 1. dismissing the complaint for illegal dismissal for lack of merit;
>
> 2. ordering respondent Pulp and Papers Distributors Inc. to pay complainant Efipania (sic) Antonio the sum of P49.088.00 representing her separation pay; and
>
> 3. ordering respondent to pay the complainant the sum of P31,149.56 representing the underpayment of wages.
>
> 4. dismissing all other issues for lack of merit."

The assailed Resolution denied petitioner's motion for reconsideration for lack of merit.

The Facts

The facts as found by the labor arbiter are as follows:[7]

> A case of illegal dismissal and underpayment of wages [was] filed by MS. EPIFANIA ANTONIO [private respondent herein] against PULP AND PAPER DISTRIBUTORS INC., [petitioner herein] x x x.

In filing the present complaint, complainant in her position paper alleges that she was a regular employee of the x x x corporation having served thereat as Wrapper sometime in September 1975. On November 29, 1991, for unknown reasons, she was advised verbally of her termination and was given a prepared form of Quitclaim and Release which she refused to sign. Instead she brought the present complaint for illegal dismissal.

In charging the [herein petitioner] of underpayment of wages, complainant in the same position paper alleges that, rarely during her employment with the respondent she received her salary, a salary which was in accordance with the minimum wage law. She was not paid overtime pay, holiday pay and five-day service incentive leave pay, hence she is claiming for payments thereof by instituting the present case.

Respondent on the otherhand [sic] denied having terminated the services of the complainant and alleges inter alia that starting 1989 the orders from customers became fewer and dwindled to the point that it is no longer practical to maintain the present number of packer/wrappers. Maintaining the same number of packers/wrappers would mean less pay because the work allocation is no longer the same as it was. Such being the case, the respondent has to reduce temporarily the number of packers/wrappers. Complainant was among those who were temporarily laid-off from work. Complainant last worked with the company on June 29, 1991.

As regards complainant's allegation that on November 29, 1991, she was forced to sign a quitclaim and release by the respondent, the latter clarified that considering that five months from the time the complainant last worked with the company, the management decided to release the complainant and give her a chance to look for another job in the meantime that no job is available for her with the company. In other words, complainant was given the option and considering that she did not sign the documents referred to as the Quitclaim and Release, the respondent did not insist, and did not terminate the services of the complainant. It was just surprise [sic] to receive the present complaint. In fact, respondent added that the reason why the complainant was called on November 29, 1991 was not to work but to receive her 13th month pay of P636.70 as shown by the voucher she signed (Annex-A, Respondent).

As regards the claim of the complainant for underpayment, respondent did not actually denied (sic) the same but give [sic] the reservation that should the same be determined by this Office it is willing to settle the same considering the fact that complainant herein being paid by results, it is not in a proper position to determine whether the complainant was underpaid or not."

The Issues

Petitioner couched the main issue in this wise:[8]

> Did the Public Respondent NLRC act correctly in affirming in toto the decision rendered by the labor arbitration branch a quo in NLRC NCR Case no. 00-01-00494-92?"

While it expressly admits that private respondent is entitled to separation pay, petitioner raises nonetheless the following queries: "(a) Are the factors in determining the amount of separation pay for a 'piece-rate worker' the same as that of a 'time-worker'? (b) Is a worker, who was terminated for lack of work, entitled to separation pay at the rate of one-month's pay for every year of service?"[9] The petition is based on the following "grounds":

"I

Public Respondent NLRC committed grave abuse of discretion and serious reversible error when it affirmed in toto the award of separation pay in favor of private respondent, without bases in fact and in law.

II

Public Respondent NLRC committed grave abuse of discretion and serious reversible error when it affirmed in toto the award of underpayment in favor of private respondent, without bases in fact and in law."

The Public Respondent's Ruling

In dismissing the appeal of petitioner, public respondent reasoned:[10]

> It is true that all the above circumstances cited by the [herein petitioner] are not present in the case at bar, hence, separation pay based on those circumstances is not owing to the [herein private respondent]. However, it is quite obvious that [petitioner] missed the legal and factual basis why separation pay was awarded by the Labor Arbiter. In the first place, the [petitioner] admits that the complainant-appellee was temporarily laid off on June 29, 1991. This means that there was a temporary suspension of employer-employee relationship between the appellant and the appellee. Lay-off is a temporary termination initiated by the employer, but without prejudice to the reinstatement or recall of the workers who have been temporarily separated. The reasons for laying off employees are varied: lack of work, shutdown for repairs, business reverses, and the like. Always, however, there is the expectation that the employees who have been laid off will be recalled or rehired. This situation is governed by Rule I, Section 12, of Book VI of the Implementing Rules and Regulations of the Labor Code, which provides:

'Sec. 12. *Suspension of Relationship.* -- The employer-employee relationship shall be deemed suspended in case of suspension of operation of the business or

undertaking of the employer for a period not exceeding six (6) months x x x.'

> From June 29, 1991 up to the time the complainant-appellee filed her complaint on January 21, 1992, there was more than six (6) months that already elapse (sic) and yet, the appellant failed to recall the appellee to let her resume working. If the appellant was not yet in a possession to recall or reinstate the appellee after six (6) months, up to when shall appellant let her keep in waiting. Of course, she cannot be allowed to wait interminably. That is the reason why the law imposes a period of six (6) months within which the resumption of employer-employee relationship must be resumed in temporary lay-offs. Otherwise, any employer can, in the guise of a temporary lay-off, close its doors to an employee for more than six months and their claim that the lay-off has ripened into termination and try to get away from any liability. The award of separation pay is hereby declared in order.
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> On the second issue raised by the (petitioner) on appeal, We are also for the Labor Arbiter's ruling upholding the appellee's right to salary differential in the amount computed.
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> The argument interposed by the [petitioner] based on Art. 101 of the Labor Code, in relation to Rule VII, Section (8), Book III of the Omnibus Implementing Rule and Regulations, will not lie in the case at bar. In the first place, pursuant to the provision of law cited by the [petitioner], all time and motion studies, or any other schemes or devices to determine whether the employees paid by results are being compensated in accordance with the minimum wage requirements, shall only be approved on petition of the interested employer. Thus, it is the fault of the [petitioner] on whose initiative, a time and motion study or any other similar scheme is not yet available in its establishment."

The Court's Ruling

The appeal is not meritorious.

First Issue: Computation of Minimum Wage

Petitioner argues that private respondent was a piece-rate worker and not a time-worker. Since private respondent's employment as "(p)acker/(w)rapper" in 1975 until her separation on June 29, 1991, "(h)er salary depended upon the number of 'reams of bond paper' she packed per day." Petitioner contends that private respondent's work "depended upon the number and availability of purchase orders from customers." Petitioner adds that, oftentimes, "packers/wrappers only work three to four hours a day." Thus, her separation pay "must be based on her latest actual compensation per piece or on the minimum wage per piece as determined by Article 101 of the Labor Code, whichever is higher, and not on the daily minimum wage applicable to time-workers."[11]

Compensation of Pieceworkers

In the absence of wage rates based on time and motion studies determined by the

labor secretary or submitted by the employer to the labor secretary for his approval, wage rates of piece-rate workers must be based on the applicable daily minimum wage determined by the Regional Tripartite Wages and Productivity Commission. To ensure the payment of fair and reasonable wage rates, Article 101[12] of the Labor Code provides that "the Secretary of Labor shall regulate the payment of wages by results, including pakyao, piecework and other nontime work." The same statutory provision also states that the wage rates should be based, preferably, on time and motion studies, or those arrived at in consultation with representatives of workers' and employers' organizations. In the absence of such prescribed wage rates for piece-rate workers, the ordinary minimum wage rates prescribed by the Regional Tripartite Wages and Productivity Boards should apply. This is in compliance with Section 8 of the Rules Implementing Wage Order Nos. NCR-02 and NCR-02-A -- the prevailing wage order at the time of dismissal of private respondent, viz.:[13]

> SEC. 8. *Workers Paid by Results.* -- a) All workers paid by results including those who are paid on piece work, takay, pakyaw, or task basis, shall receive not less than the applicable minimum wage rates prescribed under the Order for the normal working hours which shall not exceed eight (8) hours work a day, or a proportion thereof for work of less than the normal working hours.
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> The adjusted minimum wage rates for workers paid by results shall be computed in accordance with the following steps:
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> 1) Amount of increase in AMW x 100 = % increase
>
> Previous AMW
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> 2) Existing rate/piece x % increase = increase in rate/piece;
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> 3) Existing rate/piece + increase in rate/piece = adjusted rate/piece.
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> b) The wage rates of workers who are paid by results shall continue to be established in accordance with Art. 101 of the Labor Code, as amended and its implementing regulations." (Underscoring supplied.)

On November 29, 1991, private respondent was orally informed of the termination of her employment. Wage Order No. NCR-02, in effect at the time, set the minimum daily wage for non-agricultural workers like private respondent at P118.00.[14] This was the rate used by the labor arbiter in computing the separation pay of private respondent. We cannot find any abuse of discretion, let alone grave abuse, in the order of the labor arbiter which was later affirmed by the NLRC.

Moreover, since petitioner employed piece-rate workers, it should have inquired from the secretary of labor about their prescribed specific wage rates. In any event, there being no such prescribed rates, petitioner, after consultation with its workers, should have submitted for the labor secretary's approval time and motion studies as basis for the wage rates of its employees. This responsibility of the employer is clear under Section 8, Rule VII, Book III of the Omnibus Rules Implementing the Labor Code: