

## TWELFTH DIVISION

[ CA-G.R. SP. No. 123583, January 14, 2014 ]

### REMINGTON INDUSTRIAL SALES CORPORATION, PETITIONER, V. NATIONAL LABOR RELATIONS COMMISSION AND WILFREDO L. OJARE, RESPONDENTS.

#### DECISION

##### ELBINIAS, J.:

Subject of disposition is a Petition for Certiorari<sup>[1]</sup> filed under Rule 65 of the Rules of Court. The Petition assails the Resolution<sup>[2]</sup> dated October 10, 2011 of public respondent National Labor Relations Commission ("NLRC" for brevity) in NLRC LAC NO. 047173-06 (AE-04-11) (NLRC NCR-00-05-06223-04). The Petition also attacks public respondent NLRC's Resolution<sup>[3]</sup> dated November 24, 2011, which denied petitioner's eventual Motion for Reconsideration<sup>[4]</sup>.

Among the salient facts are as follows:

On May 20, 2004, private respondent Wilfredo L. Ojare ("private respondent" for brevity) filed a Complaint<sup>[5]</sup> against petitioner Remington Industrial Sales Corporation ("petitioner" for brevity) for Illegal Dismissal with claims for Full backwages, Separation Pay, Unpaid Wages, Damages and Attorney's Fees.<sup>[6]</sup>

On September 30, 2005, the Labor Arbiter rendered a Decision<sup>[7]</sup> dismissing private respondent's Complaint for lack of merit, and ordering petitioner to pay private respondent his unpaid wages and his 13<sup>th</sup> month pay.<sup>[8]</sup>

Upon private respondent's appeal, public respondent NLRC rendered a Decision<sup>[9]</sup> on January 17, 2008, which set aside the Labor Arbiter's Decision<sup>[10]</sup> dated September 30, 2005, and which declared private respondent to have been illegally dismissed by petitioner. The Decision also ordered petitioner to pay private respondent his backwages and separation pay.<sup>[11]</sup>

After public respondent NLRC issued its Resolution<sup>[12]</sup> of October 20, 2008 denying petitioner's Motion for Reconsideration,<sup>[13]</sup> a Computation of Monetary Award<sup>[14]</sup> dated March 23, 2010 was made by public respondent NLRC's Computation/Examination Unit pursuant to public respondent NLRC's Decision dated January 17, 2008. The Computation of Monetary Award dated March 23, 2010 read:

"RE: COMPUTATION OF MONETARY AWARD AS PER  
DECISION OF THE HONORABLE NLRC, SECOND DIVISION  
DATED JANUARY 17, 2008

DE: 1/80 - 2/26/04

Period		Years/Mos.	Rate	Basic Monthly	13th Mo. Pay	SILP	ECOLA	Back-wages
02/26/04	07/10/06	28.50	288.46	213,748.86	17,812.41	3,425.46		
07/11/06	08/27/07	13.57	300.00	105,846.00	8,820.50	1,696.25		
08/28/07	01/17/08	4.67	362.00	43,954.04	3,662.84	704.39		
		46.74						
02/26/04	07/09/04	4.47	30.00				3,486.80	
07/10/04	08/27/07	37.60	50.00				48,880.00	
				363,548.90	30,295.74	5,828.10	52,388.80	452,037.35

Separation Pay

01/01/80	01/17/80	28.00	362.00					263,536.00
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Computed by:

Noted by:

ELIZABETH C. ADEVOSO  
Labor Arbitration Associate

RACHEL Z. AVERIA  
OIC – Computation/Examination Unit”

On March 8, 2011, the Labor Arbiter issued an Order<sup>[15]</sup> affirming the Computation of Monetary Award<sup>[16]</sup> dated March 23, 2010. The dispositive portion of the Order decreed:

“WHEREFORE, the parties' respective comments are without merit. The computation dated March 23, 2010 stands.

SO ORDERED.”<sup>[17]</sup>

Upon petitioner's appeal<sup>[18]</sup>, public respondent NLRC issued its first assailed Resolution<sup>[19]</sup> of October 10, 2011, which denied petitioner's appeal for lack of merit.<sup>[20]</sup>

After petitioner's Motion for Reconsideration<sup>[21]</sup> was denied by public respondent NLRC in its other assailed Resolution<sup>[22]</sup> of November 24, 2011, petitioner filed the Petition at bench, praying that:

“xxx this Honorable Court render judgment annulling and/or setting aside the Assailed Resolutions dated 10 October 2011 and 24 November 2011, rendered by the Second Division of the National Labor Relations Commission, and instead, render judgment – a) reversing and setting aside Labor Arbiter Lilia S. Savari's Order dated 08 March 2011 insofar as it ruled that the award of backwages to complainant includes, among others, salary differentials and ECOLA, and that the rate thereof was correctly based on prevailing minimum wage; and b) disapproving the subject computation and directing the Labor Arbiter to refrain from issuing a writ of execution insofar as the prepared computation before her.”<sup>[23]</sup>

The Petition raised this sole ground:

**“5.1 THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AFFIRMING THE LABOR ARBITER'S ORDER DATED 08 MARCH 2011 CONSIDERING THAT THE LABOR ARBITER ERRED IN FINDING THAT THE AWARD OF BACKWAGES TO COMPLA[I]NANT INCLUDES, AMONG OTHERS, SALARY DIFFERENTIALS AND ECOLA, AND THAT THE RATE OF BACKWAGES WAS CORRECTLY BASED ON PREVAILING MINIMUM WAGE.”**

<sup>[24]</sup> (*Emphasis was made in the original*)

Contrary to petitioner's arguments in its *sole assigned ground*, the Labor Arbiter properly included the 13<sup>th</sup> month pay, service incentive leave pay, and emergency cost of living allowance (“ECOLA” for brevity) in the computation of private respondent's backwages.

Petitioner had argued as follows:

“x x x **The subject computation is patently erroneous** for the following reasons: **first, the computation included salary differentials by reason of legislation such as minimum wage increases; second, the computation included emergency cost of living allowances; and third, the rates used in the computation are not in accordance with the prevailing minimum wage during the covered period.**

xxx xxx xxx

xxx, **the rates used in the subject computation are not in accordance with the prescribed minimum wage during the period.** Wage Order No. NCR-09 (effective 01 February 2002) and Wage Order No. NCR-10 (effective 10 July 2004) mandated a minimum wage of P250.00 (exclusive of ECOLA), while Wage Order No. NCR-11 (effective 16 June 2005), prescribed a minimum wage of P275.00 (exclusive of ECOLA). However, **the subject computation, particularly for the period from 26 February 2004 to 10 July 2006,**