Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

A. NATE CASKET MAKER AND/OR ARMANDO and ANELY NATE, Petitioners, - *versus* - **ELIAS V. ARANGO, EDWIN M. MAPUSAO, JORGE C. CARIÑO, JERMIE MAPUSAO, WILSON A. NATE, EDGAR A. NATE, MICHAEL A. MONTALES, CELSO A. NATE, BENIES A. LLONA and ALLAN A. MONTALES,** Respondents.	**G.R. No. 192282** **Present**: VELASCO, JR., *J.*, *Chairperson*, PERALTA, PEREZ, REYES, and JARDELEZA, *JJ.* **Promulgated**: October 5, 2016

x----------x

D E C I S I O N

PERALTA, *J.*:

Before us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court which seeks the reversal of the Decision[2] dated January 6, 2010, and Resolution[3] dated May 13, 2010 of the Court of Appeals (*CA*) in CA-G.R. SP No. 106965. The CA reversed and set aside the Decision[4] of the National Labor Relations Commission (*NLRC*), Sixth Division, in NLRC NCR Case No. 00-02-01233-07 which affirmed the Decision[5] of the Labor Arbiter dismissing the complaint for illegal dismissal, underpayment of wages, and non-payment of overtime pay, holiday pay, service incentive leave pay and 13th month pay filed by respondents.

---

1 *Rollo,* pp. 3-15.

2 Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Ramon M. Bato, Jr. and Amy C. Lazaro-Javier, concurring; *rollo*, pp. 217-226.

3 *Id.* at 239-240.

4 *Id.* at 153-159.

5 *Id.* at 123-129.

The factual antecedents are as follows:

Petitioners Armando and Anely Nate are the owners/proprietors of A. Nate Casket Maker. They employed respondents on various dates as carpenters, *mascilladors* and painters in their casket-making business from 1998 until their alleged termination in March 2007. Petitioners alleged in their Position Paper[6] that respondents are *pakyaw* workers who are paid per job order.[7] Respondents are "stay-in" workers with free board and lodging, but they would "always" drink, quarrel with each other on petty things such that they could not accomplish the job orders on time. Hence, petitioners would then be compelled to "contract out" to other workers for the job to be finished. On February 3, 2007, they met with respondents in order to present a proposed employment agreement which would change the existing *pakyaw* system to "contractual basis" and would provide for vacation leave and sick leave pay and other benefits given to regular employees. Petitioners alleged that the proposed employment agreement would be more beneficial to respondents.[8]

On the other hand, respondents alleged in their Position Paper,[9] that they worked from Monday to Saturday, from 7:00 a.m. to 10:00 p.m., with no overtime pay and any monetary benefits despite having claimed for such. On March 15, 2007, they were called by petitioners and were made to sign a Contract of Employment[10] with the following terms and conditions: (1) they shall be working on contractual basis for a period of five months; (2) renewal of employment contract after such period shall be on a case-to-case basis or subject to respondents' efficiency and performance; (3) petitioners shall reserve the right to terminate their employment should their performance fall below expectations or if the conditions under which they were employed no longer exist; (4) their wages shall be on a piece-rate basis; (5) in the performance of their tasks, they shall be obliged to strictly follow their work schedules; (6) they shall not be eligible to avail of sick leave or vacation leave, nor receive 13th month pay and/or bonuses, or any other benefits given to a regular employee. Respondents then alleged that when they were adamant and eventually refused to sign the contract, petitioners told them to go home because their employment has been terminated.

On February 8, 2007, respondents filed a Complaint for illegal dismissal and non-payment of separation pay against petitioners. On March

---

6 *Id.* at 18-24.

7 Petitioners presented as evidence several job orders for caskets dating from February 1, 2007 to February 8, 2007 which were attached as Annexes "A" to "E" in their Position Paper; *id.* at 25-30.

8 *Rollo*, p. 20.

9 *Id.* at 31-36.

10 Annex "A" of the Position Paper of Respondents; *id.* at 37.

15, 2007, they amended the complaint to include claims for underpayment of wages, non-payment of overtime pay, holiday pay, 5-day service incentive leave pay and 13th month pay.

On August 15, 2007, Labor Arbiter (*LA*) Eduardo J. Carpio, issued a Decision dismissing the complaint for lack of merit. While the LA acknowledged that respondents being *pakyaw* workers are considered regular employees, he ruled that petitioners did not terminate the services of respondents and believed in the denial of petitioners that respondents were called to their office on March 15, 2007 since respondents already initiated the present case on February 8, 2007. On the issue of underpayment, the LA held that respondents were earning more than the minimum wage per day; and as *pakyaw* workers, though they are deemed regular workers, they are not entitled to overtime pay, holiday pay, service incentive leave pay and 13th month pay citing the case of field personnel and those paid on purely commission basis.

Thereafter, respondents elevated the case before the NLRC, Sixth Division. On July 29, 2008, the NLRC affirmed the Decision of the LA and held that no substantial evidence was presented to show that petitioners terminated the employment of respondents. It stated that *pakyaw* workers are not entitled to money claims because their work depends on the availability of job orders from petitioners' clients. Also, there was no proof that overtime work was rendered by respondents. A motion for reconsideration was filed by respondents but the same was denied.

Aggrieved, respondents filed a petition for *certiorari* before the CA. In a Decision dated January 6, 2010, the CA reversed and set aside the decision of the NLRC. The *fallo* states:

> WHEREFORE, the petition for *certiorari* is GRANTED. Public Respondent's Decision dated July 29, 2008 and Resolution dated November 7, 2008 in NLRC LAC No. 12-003252-07 (NCR Case No. 00-02-01233-07) are REVERSED AND SET ASIDE, and in lieu thereof, a new one is ENTERED, declaring petitioners to have been illegally dismissed and ordering private respondents to pay them backwages, separation pay and other monetary benefits as required by law. Upon the finality of this decision and for the enforcement of the same, the Labor Arbiter of origin is directed to conduct further proceedings for the purpose of determining the amount of backwages and separation pay due petitioners.
>
> SO ORDERED.[11]

[11] *Rollo*, pp. 225-226.

A motion for reconsideration was filed by petitioners but the same was denied by the Court of Appeals on May 13, 2010.

Hence, this petition, raising the following issues for resolution:

> 1. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DECLARING THAT COMPLAINANTS WERE ILLEGALLY DISMISSED; [and]
>
> 2. THERE ARE SERIOUS ERRORS IN THE FINDINGS OF FACTS WHICH, IF NOT CORRECTED, WOULD CAUSE GRAVE AND IRREPARABLE DAMAGE TO THE PRIVATE RESPONDENTS.[12]

Petitioners emphasized in their petition that they had always agreed and admitted[13] from the beginning of the case the regular employment status of respondents. According to petitioners, what they are insisting, contrary to the findings of the CA, is the alleged fact that they never dismissed the respondents from their employment. They argued that since petitioners' business depended on the availability of job orders, necessarily the duration of respondents' employment is not permanent but coterminous with the completion of such job orders. They further argued that since respondents are *"pakyaw"* workers or "paid by result," they are not entitled to their money claims.

In their Comment to the Petition, respondents countered that only questions of law may be raised in a petition for review on *certiorari* and that the errors being raised by petitioners are questions of fact.

A petition for review on *certiorari* under Rule 45 is a mode of appeal where the issue is limited to questions of law. In labor cases, a Rule 45 petition is limited to reviewing whether the Court of Appeals correctly determined the presence or absence of grave abuse of discretion and deciding other jurisdictional errors of the National Labor Relations Commission.[14]

The case of *Career Philippines Shipmanagement, Inc., et al. v. Serna,*[15] citing *Montoya v. Transmed Manila Corp./Mr. Ellena, et al.,*[16] is instructive on the parameters of judicial review under Rule 45:

---

12 *Id.* at 8.

13 *Id.*

14 *Fuji Television Network, Inc. v. Espiritu,* G.R. Nos. 204944-45, December 3, 2014, 744 SCRA, 31, 63.

15 700 Phil. 1, 9 (2012).

16 613 Phil. 696, 707 (2009).

> As a rule, only questions of law may be raised in a Rule 45 petition. In one case, we discussed the particular parameters of a Rule 45 appeal from the CA's Rule 65 decision on a labor case, as follows:
>
> > In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct**. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.[17]

Therefore, in this kind of petition, the proper question to be raised is, "Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?" In other words, did the CA correctly determine whether the NLRC ruling had basis in fact and in law? In Our Rule 45 review, this Court must deny the petition if it finds that the CA correctly acted. These parameters shall be used in resolving the substantive issues in this petition.[18]

To resolve the issue of whether petitioners are guilty of illegal dismissal, We necessarily have to determine the veracity of the parties' allegations, a function we are ordinarily barred from performing when deciding a Rule 45 petition. However, due to the conflicting factual findings of the NLRC and the CA, we find the review of the evidence on record compelling and proper.[19]

The crux of the dispute boils down to two issues, namely, (a) whether respondents' employment was terminated, and (b) whether respondents who are *pakyaw* workers and considered regular workers are entitled to overtime pay, holiday pay, service incentive leave pay and 13th month pay. Both issues are clearly factual in nature as they involved appreciation of evidence presented before the NLRC.

There is no doubt that respondents have been under the employ of petitioners for some years. The conflict arose when petitioners presented to respondents an employment contract hereunder reproduced:

---

17 *Career Philippines v. Serna, supra* note 15. (Emphasis in the original)

18 *Fuji Television Network, Inc. v. Espiritu, supra* note 14, at 65-66.

19 *Philippine Rural Reconstruction Movement (PRRM) v. Pulgar,* 637 Phil. 244, 252 (2010).

A. NATE CASKET MAKER
30 Espirito St. Pangulo
Malabon, Metro Manila

CONTRACT OF EMPLOYMENT

DATE: February 3, 2007

You are hereby assigned as worker/laborer at A. NATE CASKET MAKER. The following constitute the terms and conditions under which the management of NATE CASKET MAKER governs.

You will be working a 5-month contract basis. Your contract will be renewed on a case-to-case basis or based upon the efficiency of your performance. The company also reserves the right to discontinue or terminate your employment anytime if your performance does not come to expectations or if the conditions under which you have been employed no longer exist.

You will be receiving remuneration on a per item/piece basis [i.e., per casket made]. You are obliged to follow strictly your schedules to work or perform your duty. During the period of your employment, you will not [be] eligible to earn or receive any sick leave pay, [vacation] leave pay, or any other benefits given to regular employees such as 13th month pay and bonuses.

This contract and other conditions of your employment are governed further by existing company policies and regulations, of which you have already been oriented into, and by future company policies which may be issued from time to time.

Mr. and Mrs. Armando and Anely NATE
Proprietor Proprietress

I hereby accept this employment contract knowing and understanding fully well the terms and conditions under which it shall be governed. I hereby acknowledge that I have been thoroughly oriented and I fully understand the whole company policies, rules and regulations and thereby agree to abide by them when employed.

DATE: February 3, 2007 EMPLOYEE/WORKER[20]

The said contract with a short term of five (5) months, renewable upon the terms set by petitioners, was presented to respondents on February 3, 2007[21] (not February 8, 2007). Naturally, respondents who had been continuously reporting to the petitioners since 1998 without any interruption

---

20 *Rollo*, p. 37.

21 Respondents' (petitioners, herein) Reply to Complainants' (respondents, herein) Position Paper, *id.* at 41; Petition for *Certiorari* filed by herein respondents with the CA, *id.* at 213; Petitioners' Comment to the Petition for Review (filed by herein respondents with the CA), *id.* at 245.

would have second thoughts on signing the said contract. Feeling disgruntled, they filed a Complaint with the NLRC on February 8, 2016 for money claims. To their minds, it was a way to protect their status of employment. It was explained in the Rejoinder they presented to the LA that it was purely money claims but, not being learned nor assisted by a lawyer, they also checked the box for "illegal dismissal."[22]

When the petitioners received the summons on March 15, 2007 in connection with the complaint, respondents were ordered by petitioners to go to the latter's office.[23] Because there was no dismissal yet, and thinking perhaps that it was for an amicable settlement of their claims, respondents went to the office of petitioners. However, respondents were presented with the same contract. According to respondents, their refusal to sign the contract irated petitioners who then told them to go home and not to report for work anymore. [24] This prompted respondents to file an amended complaint for illegal dismissal and money claims.

The meeting on March 15, 2007 was denied by petitioners as well as the dismissal of respondents. It is worth noting, however, that in the Position Paper of petitioners, they alleged that their offer of the said employment contract to respondents was caused by the alleged refusal/failure of the latter to report for work as a result of the alleged drinking and petty quarrels:

> *8. Considering that the complainants refuse to do their work, a meeting was held on February 8, 2007, to have a proposal for a change of [pakyaw] system to that of contractual basis, giving them the sample employment agreement for them to study. The herein respondents explained to them that the change of work system to that of a contract basis which is beneficial to the complainants, the employees will receive a vacation and sick leave, or any other benefits given to a regular [employee]* x x x.[25]

Clearly, the aforequoted allegation in the Position Paper of petitioners is contrary to the terms and conditions stated in the employment contract. It is specifically stated in the employment agreement that during the period of employment, respondents would not be eligible to earn or receive any sick leave pay, vacation leave pay, or any other benefits given to regular employees such as 13th month pay and bonuses. Hence, the key to understanding petitioners' motive in severing respondents' employment lies

---

22 The Revised Rules of the NLRC provide under Sec. 3, Rule V, that parties should not be allowed to allege facts not referred to or included in the complaint, *or* position paper, affidavits and other documents. This would mean that although not contained in the complaint, any claim can still be averred in the position paper, as was done by the petitioners, or in an affidavit or other documents. *(Garcia v. NLRC*, G.R. No. 110518, August 1, 1994, 234 SCRA 632, 638).

23 *Rollo*, p. 213.

24 Respondent's (Complainant) Memorandum of Appeal with the NLRC, *id.* at 133.

25 *Rollo*, p. 20. (Underlining supplied)

in the tenor of the contract itself which is the opposite to what is alleged by petitioners in their position paper. Moreover, as correctly observed by the CA, there was the absence of proof to show that petitioners conducted an investigation on the alleged drinking and petty quarrelling of respondents nor did the petitioners provide respondents with an opportunity to explain their side with respect to charges against them. The validity of the charge must be established in a manner consistent with due process. These circumstances, taken together, lead Us to conclude that petitioners indeed terminated respondents' employment. The positive assertion of respondents that they were dismissed by petitioners is more convincing than the mere denial of petitioners.

In termination cases, the burden of proving just and valid cause for dismissing an employee from his employment rests upon the employer, and the latter's failure to do so would result in a finding that the dismissal is unjustified. Petitioners failed to discharge this burden.[26]

It must be emphasized that employers cannot seek refuge under whatever terms of the agreement they had entered into with their employees. The law, in defining their contractual relationship, does so, not necessarily or exclusively upon the terms of their written or oral contract, but also on the basis of the nature of the work of employees who had been called upon to perform. The law affords protection to an employee, and it will not countenance any attempt to subvert its spirit and intent. A stipulation in an agreement can be ignored as and when it is utilized to deprive the employee of his security of tenure. The sheer inequality that characterizes employer-employee relations, where the scales generally tip against the employee, often scarcely provides him real and better options.[27]

Furthermore, petitioners agreed that respondents are regular employees. Article 280 of the Labor Code provides:

> Art. 280. *Regular and Casual Employment.* The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

---

26 *Reno Foods, Inc. v. NLRC,* 319 Phil. 500, 507-508 (1995).

27 *Paguio v. NLRC,* 451 Phil. 243, 252-253 (2003).

> An employment shall be deemed to be casual if it is not covered by the preceding paragraph; Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exist.

This provision classifies employees into regular, project, seasonal, and casual. It further classifies regular employees into two kinds: (1) those "engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer"; and (2) casual employees who have "rendered at least one year of service, whether such service is continuous or broken."

A regular employment, whether it is one or not, is aptly gauged from the concurrence, or the non-concurrence, of the following factors – (a) the manner of selection and engagement of the putative employee; (b) the mode of payment of wages; (c) the presence or absence of the power of dismissal; and (d) the presence or absence of the power to control the conduct of the putative employee or the power to control the employee with respect to the means or methods by which his work is to be accomplished. The "control test" assumes primacy in the overall consideration. Under this test, an employment relation obtains where work is performed or services are rendered under the control and supervision of the party contracting for the service, not only as to the result of the work but also as to the manner and details of the performance desired.[28]

There is no dispute that the tasks performed by respondents as carpenters, painters, and *mascilladors* were necessary and desirable in the usual business of petitioners who are engaged in the manufacture and selling of caskets. We have to also consider the length of time that respondents worked for petitioners, commencing on various dates from 1998 to 2007. In addition, the power of control of petitioners over respondents is clearly present in this case. Respondents follow the steps in making a casket, as instructed by the petitioners, like carpentry, *mascilla*, rubbing and painting. They had their own notebooks where they listed the work completed with their signature and the date finished. The same would be checked by petitioners as basis for the compensation for the day. Thus, petitioners wielded control over the respondents in the discharge of their work.

It should be remembered that the control test merely calls for the existence of the right to control, and not necessarily the exercise thereof. It is not essential that the employer actually supervises the performance of duties by the employee. It is enough that the former has a right to wield the

---

[28] *Id.* at 250-251.

power.[29] Hence, *pakyaw* workers are considered regular employees for as long as their employers exercise control over them. Thus, while respondents' mode of compensation was on a per-piece basis, the status and nature of their employment was that of regular employees.[30]

As regular employees, respondents were entitled to security of tenure and could be dismissed only for just or authorized causes and after the observance of due process. The right to security of tenure is guaranteed under Article XIII, Section 3 of the 1987 Constitution:

> Article XIII. Social Justice and Human Rights
> Labor
>
> It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.[31]

Likewise, Article 279 of the Labor Code also provides for the right to security of tenure, thus:

> Art. 279. *Security of tenure*. In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.[32]

Therefore, on the right to security of tenure, no employee shall be dismissed, unless there are just or authorized causes and only after compliance with procedural and substantive due process. Section 2, Rule XIV, Book V of the Omnibus Rules Implementing the Labor Code provides:

> SEC. 2. *Notice of Dismissal.* – Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omission constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the workers' last known address.

---

29 *Gapayao v. Fulo, et al.*, 711 Phil. 179, 196 (2013).
30 *Labor Congress of the Philippines v. NLRC*, 352 Phil. 1118, 1139 (1998).
31 Emphasis supplied.
32 Emphasis supplied.

Petitioners violated respondents' rights to security of tenure and constitutional right to due process in not even serving them with a written notice of termination which would recite any valid or just cause for their dismissal. Respondents were merely told that their services are terminated. Thus, the Court of Appeals correctly ruled that private respondents were illegally dismissed.

Under Article 279 of the Labor Code as aforestated, an employee unjustly dismissed from work is entitled to reinstatement and backwages, among others. Reinstatement restores the employee who was unjustly dismissed to the position from which he was removed, that is, to his *status quo ante* dismissal, while the grant of backwages allows the same employee to recover from the employer that which he had lost by way of wages as a result of his dismissal. These twin remedies - reinstatement and payment of backwages - make the dismissed employee whole who can then look forward to continued employment. Thus, do these two remedies give meaning and substance to the constitutional right of labor to security of tenure.[33] Respondents are, therefore, entitled to reinstatement with full backwages pursuant to Article 279 of the Labor Code, as amended by R.A. No. 6715.

On reinstatement, the CA ordered payment of separation pay in lieu of reinstatement. The accepted doctrine is that separation pay may avail in lieu of reinstatement if reinstatement is no longer practical or in the best interest of the parties. Separation pay in lieu of reinstatement may likewise be awarded if the employee decides not to be reinstated. We defer to the findings of the Court of Appeals and authorized under jurisprudence, that separation pay in lieu of reinstatement is warranted in this case.[34] Respondents filed their complaint in 2007. Nine (9) years are a substantial period[35] to bar reinstatement. The dispositive portion of the CA Decision is consistent with the premise that the respondents were entitled to reinstatement by reason of their illegal dismissal, but they could receive instead separation pay in lieu of reinstatement if reinstatement is no longer practicable.

That being said, the amount of backwages to which each respondent is entitled, however, cannot be fully settled at this time. As respondents are

---

[33] *Verdadero v. Barney Autolines Group of Companies Transport, Inc., et al.*, 693 Phil. 646, 659 (2012).

[34] *Velasco v. NLRC*, 525 Phil. 749, 761 (2006).

[35] In *Association of Independent Unions in the Philippines v. National Labor Relations Commission* (364 Phil. 697, 713 (1999) [Per J. Purisima, Third Division]), this court considered "more than eight (8) years" as substantial. In *San Miguel Properties Philippines, Inc. v. Gucaban* (669 Phil. 288, 302 (2011) [Per J. Peralta, Third Division]), more than 10 years had lapsed. In *G & S Transport Corporation v. Infante* (559 Phil. 701, 716 (2007) [Per J. Tinga, Second Division]), 17 years had lapsed from the time of illegal dismissal. In these cases, this court deemed it proper to award separation pay in lieu of reinstatement. (*Fuji Television Network, Inc. v. Espiritu, supra* note 14, at 98.

piece-rate workers being paid by the piece, there is need to determine the varying degrees of production and days worked by each worker. Clearly, this issue is best left to the NLRC. In *Labor Congress of the Philippines v. NLRC,*[36] the Court was confronted with a situation wherein several workers paid on a piece-rate basis were entitled to backwages by reason of illegal dismissal. The Court noted that as the piece-rate workers had been paid by the piece, "there [was] a need to determine the varying degrees of production and days worked by each worker," and that "this issue is best left to the [NLRC]." We believe the same result should obtain in this case, and the NLRC be tasked to conduct the proper determination of the appropriate amount of backwages due to each of the respondents.[37]

Nonetheless, even as the case should be remanded to the NLRC for the proper determination of backwages, nothing in this decision should be construed in a manner that would impede the award of separation pay to the respondents as previously rendered by the CA. In lieu of reinstatement then, separation pay at the rate of one month for every year of service, with a fraction of at least six (6) months of service considered as one (1) year, is in order.[38]

As to the other benefits, namely, holiday pay, 13th month pay, service incentive leave pay and overtime pay which respondents prayed for in their complaint, We affirm the ruling of the CA that respondents are so entitled to these benefits.

In the case of *David v. Macasio,*[39] We held that workers engaged on *pakyaw* or "task basis" are entitled to holiday and service incentive leave pay (SIL) provided they are not field personnel:

> In short, in determining whether workers engaged on "pakyaw" or task basis" is entitled to holiday and SIL pay, the presence (or absence) of employer supervision as regards the worker's time and performance is the key: if the worker is simply engaged on "pakyaw" or task basis, then the general rule is that he is entitled to a holiday pay and SIL pay unless exempted from the exceptions specifically provided under Article 94 (holiday pay)[40] and Article 95 (SIL pay)[41] of the Labor Code. However, if

---

36 *Supra* note 30, at 1138.

37 *Velasco v. NLRC, supra* note 34, at 763.

38 *Labor Congress of the Philippines, supra* note 30, at 1138.

39 G.R. No. 195466, July 2, 2014, 729 SCRA 67.

40 The pertinent portion of Article 94 of the Labor Code and its corresponding provision in the IRR reads:

> Art. 94. *Right to holiday pay.* (a) Every worker shall be paid his regular daily wage during regular holidays, except in retail and service establishments regularly employing less than (10) workers.
>
> x x x x
>
> SECTION 1. *Coverage.* – This Rule shall apply to all employees except:
>
> x x x x

> the worker engaged on pakyaw or task basis also falls within the meaning of "field personnel" under the law, then he is not entitled to these monetary benefits.[42]

Based on the definition of field personnel under Article 82,[43] respondents do not fall under the definition of "field personnel." *First*, respondents regularly performed their duties at petitioners' place of business; *second*, their actual hours of work could be determined with reasonable certainty; and, *third*, petitioners supervised their time and performance of their duties. Since respondents cannot be considered as "field personnel," then they are not exempted from the grant of holiday and SIL pay even as they were engaged on *pakyaw* or task basis.

With respect to the payment of 13th month pay, however, We find that respondents are not entitled to such benefit. Again, as We ruled in the case of *David v. Macasio*:[44]

> The governing law on 13th month pay is Presidential Decree No. 851.[45] As with holiday and SIL pay, 13th month pay benefits generally cover all employees; an employee must be one of those expressly enumerated to be exempted. Section 3 of the Rules and Regulations Implementing P.D. No. 851 enumerates the exemptions from the coverage of 13th month pay benefits. Under Section 3(e), "employers of those who are paid on xxx task basis, and those who are paid a fixed amount for performing a specific work, irrespective of the time consumed in the performance thereof" are exempted.

(e) **Field personnel** and other employees whose time and performance is unsupervised by the employer including those **who are engaged on task or contract basis,** purely commission basis, or those who are paid a fixed amount for performing work irrespective of the time consumed in the performance thereof.

41 Art. 95. *Right to service incentive.*

(a) Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay.

(b) This provision shall not apply to those who are already enjoying the benefit herein provided, those enjoying vacation leave with pay of at least five days and those employed in establishments regularly employing less than ten employees or in establishments exempted from granting this benefit by the Secretary of Labor and Employment after considering the viability or financial condition of such establishment.

x x x x

Section 1. *Coverage.* – This rule shall apply to all employees except:

x x x x

(e) **Field personnel** and other employees whose performance is unsupervised by the employer including those **who are engaged on task or contract basis**, purely commission basis, or those who are paid a fixed amount for performing work irrespective of the time consumed in the performance thereof. (Emphasis ours)

42 *David v. Macasio, supra* note 39, at 92-93. (Underscoring supplied.)

43 "Field personnel" shall refer to non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty.

44 *Supra* note 39.

45 Enacted on December 16, 1975.

> Note that unlike the IRR of the Labor Code on holiday and SIL pay, Section 3(e) of the Rules and Regulations Implementing PD No. 851 exempts employees "paid on task basis" without any reference to "field personnel." This could only mean that insofar as payment of the 13th month pay is concerned, the law did not intend to qualify the exemption from its coverage with the requirement that the task worker be a "field personnel" at the same time.[46]

All told, We need to stress that the Constitution affords full protection to labor, and that in light of this Constitutional mandate, We must be vigilant in striking down any attempt of the management to exploit or oppress the working class. The law, in protecting the rights of the employees, authorizes neither oppression nor self-destruction of the employer. It should be made clear that when the law tilts the scales of justice in favor of labor, it is in recognition of the inherent economic inequality between labor and management. The intent is to balance the scales of justice; to put the two parties on relatively equal positions.[47]

WHEREFORE, the Petition is **PARTIALLY GRANTED** in so far as the payment of 13th month pay to respondents is concerned. In all other aspects, the Court **AFFIRMS** the Decision dated January 6, 2010 and the Resolution dated May 13, 2010 of the Court of Appeals in CA-G.R. SP No. 106965.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

---

46 *David v. Macasio, supra* note 39, at 93-94.

47 *Ledesma, Jr. v. NLRC, Second Division,* 562 Phil. 939, 952 (2007).

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Acting Chief Justice