



Republic of the Philippines  
 Supreme Court  
 Manila

FIRST DIVISION

**EDWIN ALACON ATIENZA,**  
*Petitioner,*

**G.R. No. 217782**

Present:

- versus -

**GESMUNDO, C.J.,**  
*Chairperson,*  
**CAGUIOA,**  
**CARANDANG,**  
**ZALAMEDA, and**  
**GAERLAN, JJ.**

**TKC HEAVY INDUSTRIES**  
**CORPORATION and LEON TIO,\***  
*Respondents.*

Promulgated:

**JUN 23 2021**

x-----

**DECISION**

**GAERLAN, J.:**

**The Case**

The present petition for review on *certiorari*<sup>1</sup> assails the October 7, 2014 Decision<sup>2</sup> and the March 17, 2015 Resolution<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 135441, which affirmed the dismissal of petitioner Edwin Alacon Atienza's (Atienza) complaint for nonpayment of wages, nonpayment of commissions, allowances and reimbursement, damages and attorney's fees against TKC Heavy Industries Corporation and its president, Leon B. Tio (respondents).

\* Commissioners Dolores M. Peralta-Beley, Grace E. Maniquiz-Tan, and Mercedes R. Posada-Lacap of the National Labor Relations Commission were dropped as party-respondents pursuant to Section 4, Rule 45 of the Rules of Court.

<sup>1</sup> *Rollo* (vol. 1), pp. 12-43.

<sup>2</sup> *Id.* at 50-63; penned by Associate Justice Victoria Isabel A. Paredes, with the concurrence of Associate Justices Isaias P. Dicdican and Agnes Reyes-Carpio.

<sup>3</sup> *Id.* at 65-66.

### Antecedents

Respondent TKC Heavy Industries Corporation (TKC) is a Philippine corporation engaged in the sale and distribution of trucks, heavy equipment, and machineries, while respondent Leon B. Tio (Tio) is TKC's president.<sup>4</sup>

Petitioner Edwin Alacon Atienza (Atienza) is one of TKC's sales agents. He was hired on October 1, 2011 under the following terms: Monthly salary – ₱11,080.00; Cellphone Allowance – ₱1,350.00; Car Maintenance Allowance – ₱3,000.00; Basic Commission – 3%; and Bonus – 13<sup>th</sup> month pay.<sup>5</sup> His salary was increased twice, first to ₱11,600.00, and later to ₱11,856.00 per month.<sup>6</sup> As sales agent, Atienza was tasked to: promote the company's products, interface and negotiate with prospective buyers, and to facilitate the processing of sale transactions.<sup>7</sup> In Atienza's case, most of his sales came from purchases by local government units (LGUs).<sup>8</sup>

According to Atienza, his excellent performance as sales agent allowed TKC to close new sales in Caloocan, Quezon City, and Mindanao. In a sales meeting held on December 28, 2011, TKC even cited him as one of its top-performing sales agents for 2011. In that same meeting, he was assigned to cover the Autonomous Region in Muslim Mindanao, in addition to his original assignment in the Luzon area.<sup>9</sup> He was also asked by Tio to assist another TKC agent, Virgilio Quijada (Quijada), in generating sales in other areas of Mindanao.<sup>10</sup> The next year, Quijada and Atienza were able to close the sale of one lot of construction equipment to an LGU in Surigao del Sur.<sup>11</sup>

Atienza further alleged that his working relationship with TKC started to deteriorate in February 2013, when Tio and the TKC staff stopped answering his calls.<sup>12</sup> Despite the lack of contact with the company, Atienza continued working on his pending deals with LGUs in Caloocan, Quezon City, and Surigao del Sur.<sup>13</sup> Later, Atienza learned that Tio had been sending other sales agents to attend to the former's pending transactions, allegedly because of Atienza's fraudulent dealings with his employer and customers, including an unexplained cash advance of ₱7,000,000.00.<sup>14</sup> Irked by this development, Atienza demanded payment of his salaries, allowances, and commissions, as

---

<sup>4</sup> Id. at 150.

<sup>5</sup> Id. at 17, 51; id. (vol. 2), p. 689.

<sup>6</sup> Id. (vol. 1), p. 150; id. (vol. 2), p. 689.

<sup>7</sup> Id. at 16-18.

<sup>8</sup> Id. at 16, 211.

<sup>9</sup> Id. at 17.

<sup>10</sup> Id. at 18, 105-106.

<sup>11</sup> Id. at 213.

<sup>12</sup> Id. at 18.

<sup>13</sup> Id.

<sup>14</sup> Id. at 18-19.

well as reimbursement of expenses that he incurred in securing the deals with the Caloocan, Quezon City, and Surigao del Sur LGUs.<sup>15</sup> In the meantime, Atienza continued working on the aforementioned deals.<sup>16</sup>

On March 27, 2013, Atienza, through counsel, issued a written demand to respondents for the payment of ₱3,443,221.22, consisting of unpaid salaries and allowances, reimbursements, and unpaid commissions due from the Caloocan City, Quezon City, and Surigao del Sur deals beginning January 15, 2013.<sup>17</sup>

On April 10, 2013, with respondents still not heeding his demands, Atienza sued them for nonpayment of salaries, allowances, reimbursements, commissions due, and payment of moral and exemplary damages plus attorney's fees, before the National Labor Relations Commission (NLRC).<sup>18</sup> On April 15, 2013, TKC sent Atienza a Notice for Investigation, asking him to report to TKC's Cebu office to explain his alleged insubordination and excessive absences.<sup>19</sup>

In their position paper before the NLRC Regional Arbitration Branch, respondents countered that it was Atienza who stopped communicating with them<sup>20</sup> after obtaining a seven million peso-cash advance in December 2011.<sup>21</sup> When asked by Tio to explain the sharp decline in his sales performance after the release of the cash advance, Atienza simply brushed off the matter and told the former that he was resigning from the company.<sup>22</sup> Furthermore, during TKC's December 2012 sales conference, Atienza refused to submit his sales commitment for 2013.<sup>23</sup> Tio further alleged that Atienza stopped reporting to TKC's Manila or Cebu offices in January 2013.<sup>24</sup> This was the reason why TKC had to send other sales agents to follow up on the deals previously handled by Atienza.<sup>25</sup> Having abandoned his employment with TKC since January 2013, Atienza could no longer claim salary and other benefits for that period.

Respondents further argued that Atienza was not entitled to any commission on the Surigao del Sur and Quezon City deals, for the following reasons: 1) Surigao del Sur is not part of his sales area so he is not entitled to any commission from TKC's sales therein; 2) the Quezon City deal has not yet

---

<sup>15</sup> Id at 18.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Complaint, *id.* at 202-203.

<sup>19</sup> Id. at 205.

<sup>20</sup> Id. at 232.

<sup>21</sup> Id. (vol. 2), pp. 604, 669.

<sup>22</sup> Id. (vol. 1), p. 232.

<sup>23</sup> Id. at 233.

<sup>24</sup> Id.

<sup>25</sup> Id.

been consummated. As regards the Caloocan deal, Atienza is only entitled to half of the three per cent commission thereon because he only contributed fifty percent of the total sales and collection effort for said project. Furthermore, Atienza has yet to liquidate his ₱7,000,000.00 cash advance, so any commission he may be entitled to should be deducted therefrom.<sup>26</sup>

### **Ruling of the Labor Arbiter<sup>27</sup>**

On September 30, 2013, the Labor Arbiter rendered its Decision. The Labor Arbiter found merit in Atienza's claim for commissions, citing his "unrelenting efforts" "in pursuing the conclusion and consummation of [the Quezon City, Caloocan, and Surigao del Sur] projects," as reflected in the text<sup>28</sup> message correspondence between Atienza and TKC staff, as well as between Atienza and his LGU contacts,<sup>29</sup> even after the alleged abandonment date of January 15, 2013. The Labor Arbiter gave more credence to Atienza's claim that he worked on the Surigao del Sur deal alongside Quijada, as he was able to show proof that he was present during the actual bidding process.<sup>30</sup>

On the matter of the seven-million-peso cash advance, the Labor Arbiter held that the evidence presented by the respondents does not sufficiently pin down Atienza as the ultimate recipient thereof, since the check representing the cash advance was drawn against the account of one Zenaida Gil and issued to one Ramil Bautista as payee. There is no proof that said check was issued by TKC or Tio, or that it was actually received and encashed by Atienza.<sup>31</sup>

The Labor Arbiter also brushed aside respondents' contention that Atienza had resigned from employment effective January 15, 2013. His liquidation of expenses on said date does not constitute an act of resignation since liquidation of expenses is a normal practice done regularly in the course of business. Furthermore, the text message correspondence between Atienza and TKC, as well as with his LGU contacts, firmly establishes the fact that he was still working for TKC even after January 2013.

<sup>26</sup> Id. at 234.

<sup>27</sup> Decision in NLRC NCR Case No. 04-05373-13, rendered by Labor Arbiter Romelita N. Rioflorido. Id. at 87-93.

<sup>28</sup> "Text messages are short messages [sent] over a cellular phone network, typically by means of a short message service (SMS)." *Butler v. Texas*, 459 S.W.3d 595 (2015), citing Steven Goode, *The Admissibility of Electronic Evidence*, 29 REV. LITIG. 1, 16 n.66 (2009). "Text messages" or "texts" are "brief, electronic messages between two or more mobile devices. *Backhaus et al. v. Apple, Inc.*, 74 F.Supp.3d 1033 (2014). See also *Re: 2003 Bar Examinations*, 466 Phil. 548 (2004); *Nuez v. Cruz-Apao*, 495 Phil. 270 (2005); *Globe Telecom Inc. v. National Telecommunications Commission*, 479 Phil. 1 (2004).

<sup>29</sup> *Rollo* (vol. 1), pp. 93-94.

<sup>30</sup> Id. at 95-96.

<sup>31</sup> Id. at 96.

Finally, the Labor Arbiter adjudged respondents to be in bad faith in evading the payment of Atienza's benefits and ordered them to pay moral and exemplary damages. The Labor Arbiter disposed of the case thus:

WHEREFORE, a decision is hereby rendered finding respondents TKC HEAVY INDUSTRIES CORPORATION and/or LEON B. TIO, jointly and severally liable to pay complainant EDWIN ALACON ATIENZA, the following: (a) Salary, allowance and reimbursement from January 15, 2013 to March 15, 2013 of P196,442.04; (b) 3% commission for the Caloocan, Quezon City and Surigao Projects of P3,345,000.00; (c) Moral damages of P200,000.00; (d) Exemplary Damages of P100,000.00; and (e) 10% of the total monetary awards as attorney's fees.

SO ORDERED.<sup>32</sup>

### **Ruling of the NLRC<sup>33</sup>**

The NLRC granted respondents' appeal<sup>34</sup> and reversed the Labor Arbiter's Decision, *viz.*:

WHEREFORE, premises considered, respondents' appeal is GRANTED. The Decision of Labor Arbiter Romelita N. Rioflorido dated September 30, 2013 is REVERSED and SET ASIDE, and a new one entered DISMISSING the complaint for lack of merit.

SO ORDERED.<sup>35</sup>

The national labor tribunal gave more credence to respondents' claim that Atienza had manifested his intent to resign from TKC during the December 28, 2012 sales meeting.<sup>36</sup> Coupled with the lack of direct evidence showing that Atienza reported for work after January 2013, such declaration of intent ripened into a voluntary termination of employment on Atienza's part.<sup>37</sup> The text message correspondence presented by Atienza does not prove his direct participation in sales activities; on the contrary, the messages confirm the fact that other TKC agents have been handling the accounts and were communicating with Atienza only because he was previously in charge of the same.<sup>38</sup> The NLRC did not give credence to Atienza's narration of the facts, finding it "certainly unusual" that: 1) he opted to file a claim for unpaid wages

---

<sup>32</sup> Id. at 98.

<sup>33</sup> Decision in NLRC NCR Case No. 04-05373-13/ NLRC LAC No. 10-092937-13 dated December 26, 2013; penned by Commissioner Dolores M. Peralta-Beley with the concurrence of Commissioners Grace E. Maniquiz-Tan and Mercedes R. Posada-Lacap. Id. at 149-160.

<sup>34</sup> Memorandum of Appeal, id. at 307-319.

<sup>35</sup> Id. at 159-160.

<sup>36</sup> Id. at 155.

<sup>37</sup> Id.

<sup>38</sup> Id.

instead of one for illegal dismissal; and 2) he continued working for TKC even after the company had stopped communicating with him.<sup>39</sup> The NLRC also found it improbable that TKC would fire Atienza, who is undisputedly one of its top-performing sales agents.<sup>40</sup>

As regards Atienza's specific claims, the NLRC found them to be baseless. The award of salaries and benefits up to March 2013 is contrary to Atienza's own admission that he worked on his pending deals only until February 2013. Likewise, Atienza's claim for commissions was rejected, *viz.*:

As to the Caloocan City project, there is no clear showing that complainant completed the said project because as of the 2012 year-end conference, the minutes therein clearly indicated that the equipment were not yet due to arrive in January 2013. The mere opening of a letter of credit is insufficient to establish consummation of the transaction, much less payment of the contract price. Contrary to the findings of the Labor Arbiter, the text messages on February 4, 2013 do not show that complainant still had direct participation in the transaction. If at all, it only showed that the equipment was yet to be released to TKC as of that date. Too, the fact that the TKC staff had to seek assistance of complainant is a clear indication that complainant had stopped attending to his duties. Verily, without proof of the delivery of the equipment subject of the transaction and payment made to TKC, and a similar proof that the same was achieved through complainant's efforts, We find that complainant was not entitled to commissions for the Caloocan City project.

Further militating against complainant's entitlement to commissions from the Caloocan City project is the Certification issued by Russel Ramirez, City Administrator of Caloocan, that the transaction of TKC with the city was consummated through the efforts of respondent Tio and his Manila staff to the exclusion of the complainant.

As to the Quezon City project, the transactions between TKC and the Quezon City Local Government Unit (LGU) were clearly shown to have extended way beyond the complainant's separation from TKC in January 2013. Certainly, the fact that addendums and amendments to the agreement governing the transaction were made as late as October 2013 is indubitable proof that the sale was not consummated in the duration of the complainant's service with TKC. In fact, records show that TKC had not been paid yet, up to the time the instant case was filed. Since there are vital aspects of the transactions which were left unfinished at the time complainant severed his employment with TKC, by no means therefore can he be deemed to be entitled to commission in such project.

As to the Surigao del Sur project, We find that complainant cannot also claim entitlement to the commissions thereto. To begin with, complainant himself admits that his area of assignment is limited to those specified under his appointment. It is therefore understood that he may only

---

<sup>39</sup> Id. at 155-156.

<sup>40</sup> Id. at 159.

transact, and thereby derive commissions, within his appointed area. That the Surigao area is outside his territorial assignment is also beyond contest. Virgilio (Jing) Quijada is TKC's sales agent assigned in the Surigao area, and therefore the agent entitled to commissions for sales consummated therein. In fact, it is also a matter of record that the 3% commission for the sales transactions in Surigao del Sur have already been paid to Quijada, as attested by Quijada in his Affidavit and voucher of payment.

While TKC allows coordination among its agents with respect to transacting in other areas, arrangements as to the distribution of labor and commissions are matters strictly between the agents. For its part, TKC is only liable to pay a 3% commission on the transaction, and not for every agent involved. Otherwise, the company's liability for commissions would be subject to the mere agreement of its agents, in which case, its liability may multiply by the number of agents who agree to work together. This is certainly an inequitable scenario. Thus, the 3% commission having been paid to Quijada, the agent assigned to the Surigao area, TKC has no further obligation to make payments to anyone else. It would appear therefore that if the complainant has any claim for his part in the commission for said sales, his recourse is to make his claim against Quijada.<sup>41</sup>

Finally, the NLRC gave credence to respondents' claims regarding Atienza's alleged cash advance. Atienza's signature on the voucher, coupled with the affidavits of TKC's president Tio and the officer-in-charge of its Makati office, Zenaida Gil, sufficiently establish that the amount of ₱7,000,000.00 was paid out to Atienza in connection with his pending dealings as TKC sales agent.<sup>42</sup>

His motion for reconsideration<sup>43</sup> having been denied,<sup>44</sup> Atienza elevated the matter to the CA through a petition for *certiorari*.<sup>45</sup>

### **Ruling of the CA**

As earlier mentioned, the CA affirmed the NLRC's dismissal of Atienza's complaint, finding no grave abuse of discretion therein.

On the issue of the exact nature of Atienza's severance from employment, the appellate court echoed the NLRC's reasoning, *viz.*:

Significantly, [Atienza] never questioned his dismissal, whether actual or constructive. In fact, the complaint he filed with the labor arbiter

---

<sup>41</sup> Id. at 156-158.

<sup>42</sup> Id. at 158-159.

<sup>43</sup> Id. at 102.

<sup>44</sup> Resolution dated February 28, 2014, penned by Commissioner Dolores M. Peralta-Beley with the concurrence of Commissioners Grace E. Maniquiz-Tan and Mercedes R. Posada-Lacap. Id. at 80-84.

<sup>45</sup> Id. at 99-144.

Q

was for non-payment of wages, non-payment of commissions, allowances and reimbursement, damages and attorney's fees, NOT for illegal dismissal.

X X X X

TKC has not disputed the fact that [Atienza] was indeed a valuable asset of the company, yet, why would TKC sever its relationship with him, especially at a time when he was most effective and productive, and when TKC had just allowed him a hefty cash advance, except for the fact that it was [Atienza] himself who voluntarily severed his relationship with TKC. Verily, the issue of credibility is determined by the conformity of the conflicting claims and recollections of witnesses to common experience and to the observation of mankind as probable under the circumstances. It has been appropriately emphasized that "[w]e have no test of the truth of human testimony, except its conformity to our knowledge, observation, and experience. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance."<sup>46</sup>

On the issue of entitlement to commissions, the CA adopted and sustained the national labor tribunal's findings. Finally, the CA brushed aside Atienza's contention that his signature on the voucher for the cash advance was forged, ruling that Atienza was unable to present clear and convincing proof that his signature thereon was forged.

### Issues

His motion for reconsideration having been denied, Atienza filed the present petition on June 8, 2015.<sup>47</sup> Respondents filed a comment dated March 21, 2016;<sup>48</sup> and Atienza filed his reply on December 20, 2016.<sup>49</sup> The parties' pleadings raise two core issues:

- 1) Did Atienza resign from TKC, or did TKC terminate his employment;
- 2) Given the circumstances of his severance from TKC, is Atienza entitled to claim salaries, benefits, and commissions from TKC.

### The Court's Ruling

#### I.

In this jurisdiction, the adjudication of labor and employment disputes is essentially summary in nature;<sup>50</sup> and is reliant on the expertise of the tribunals

---

<sup>46</sup> Id. at 56-57.

<sup>47</sup> Id. at 12.

<sup>48</sup> Id. (vol. 2), pp. 667-685.

<sup>49</sup> Id. at 718-725.

<sup>50</sup> See 2011 NLRC RULES OF PROCEDURE, Rule IV, Sections 1-16 and Rule VII.



and arbitration bodies created by law for the purpose.<sup>51</sup> The findings of these bodies are accorded great weight and even finality, especially when supported by substantial evidence.<sup>52</sup> Thus, the scope of judicial review of such adjudications is restricted by law and jurisprudence,<sup>53</sup> such that this Court's task in appeals from labor cases is limited to the determination of "*whether the Court of Appeals erred in determining the presence or absence of grave abuse of discretion and deciding other jurisdictional errors of the NLRC.*"<sup>54</sup> As elucidated in *Montoya v. Transmed Manila Corporation*:<sup>55</sup>

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. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. **In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?**<sup>56</sup> (Citations omitted, emphases in the original)

## II.

As a general rule, this Court is precluded from inquiring into questions of fact such as the circumstances of an employee's severance from employment. However, in this case, the findings of the Labor Arbiter on that issue conflict with those of the national labor tribunal. In such an exceptional circumstance, this Court is allowed to delve into the record to resolve the conflict.<sup>57</sup> Atienza argues that he never severed his employment with TKC; on the contrary, respondents argue that Atienza resigned from TKC in January 2013.

<sup>51</sup> *Tan Brothers Corp. of Basilan City v. Escudero*, 713 Phil. 392, 399-400 (2013).

<sup>52</sup> *Limlingan, et al. v. Asian Institute of Management, Inc.*, 781 Phil. 255, 268-269 (2016); *Career Philippines Shipmanagement, Inc. et al. v. Serna*, 700 Phil. 1, 7 (2012); *Fabela v. San Miguel Corp.*, 544 Phil. 223, 233 (2007).

<sup>53</sup> See *St. Martin Funeral Home v. NLRC*, 356 Phil. 811, 816 (1998).

<sup>54</sup> *Paragele et al. v. GMA Network, Inc.*, G.R. No. 235315, July 13, 2020, citing *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 415 (2014).

<sup>55</sup> 613 Phil. 696 (2009).

<sup>56</sup> *Id.* at 707.

<sup>57</sup> *Santos, Jr. and Salmasan v. King Chef/Marites Ang/Joey Delos Santos*, G.R. No. 211073, November 25, 2020, citing *Paredes v. Feed the Children Phils. Inc.*, 769 Phil. 418, 433 (2015) and *Agabon v. National Labor Relations Commission*, 458 Phil. 248, 277 (2004); *Panasonic Manufacturing Philippines Corp. v. Peckson*, G.R. No. 206316, March 20, 2019; *Jimenez v. NLRC, et al.*, 326 Phil. 89 (1996).

Resignation is the intentional and voluntary act of surrendering or relinquishing an office or position.<sup>58</sup> It has been further defined as “*the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment.*”<sup>59</sup> “*In order to prove that resignation is voluntary, the acts of the employee before and after the alleged resignation must be considered in determining whether he or she, in fact, intended to sever his or her employment.*”<sup>60</sup> To constitute resignation, such acts must be coupled with a clear intent to relinquish the position.<sup>61</sup> The burden of proving the voluntariness of a resignation is lodged with the employer.<sup>62</sup>

Given these parameters, this Court finds that Atienza did resign from TKC; however, his resignation did not take effect in January 2013, as alleged by respondents. There is substantial evidence on record showing that Atienza was still involved in TKC’s sales operations in January and February 2013.

First, the text message exchanges between Atienza and the TKC staff, which were disregarded by the NLRC and the CA for “fall[ing] short of proving [Atienza]’s direct participation in the transactions involved and the performance of sales activities,”<sup>63</sup> actually prove that he was still rendering services for TKC. The text message exchanges between Atienza and the TKC staff for January and February 2013, as cited in the Labor Arbiter’s Decision and reproduced in the records, reveal that TKC staff were still coordinating with Atienza and seeking his assistance for the release of certain requisite documents; and in turn, Atienza was still notifying the TKC staff about his progress with certain accounts, viz.:

For instance, with regard to the Caloocan City project, on February 4, 2013 at 9:25 AM, Charie of respondent TKC sent complainant the following text message:

“Win (referring to complainant) pahingi ako ng 2303 o bir reg. Ng Caloocan pakifax s 4950946 d kami makabayad ng arastre, maglbas kami ng excavator.” (Annex L, Complainant’s Position Paper).”

<sup>58</sup> Black’s Law Dictionary (9<sup>th</sup> ed.) 1424 (2009); Federico B. Moreno, Philippine Law Dictionary (3<sup>rd</sup> ed.) 830 (1988) citing *Magtoto v. NLRC*, 224 Phil. 210, 223 (1985) and *Javier v. Dans*, 80 O.G. 1321; *First National Bank of Danville v. Reynolds*, 491 N.E. 2d 218 (1986).

<sup>59</sup> *Malixi v. Mexicali Phils., et al.*, 786 Phil. 672, 685-686 (2016); *Fonterra Brands Philippines, Inc. v. Largado*, 756 Phil. 386 (2015); *Interrod Maritime, Inc. vs. National Labor Relations Commission*, 275 Phil. 351 (1991); Teehankee, J., dissenting in *Dosch v. National Labor Relations Commission*, 208 Phil. 259 (1983).

<sup>60</sup> *Pascua v. Bank Wise, Inc., et al.*, 824 Phil. 846, 859 (2018).

<sup>61</sup> *Panasonic Manufacturing Philippines Corp. v. Peckson*, supra note 57

<sup>62</sup> *Id.*; *Pascua v. Bank Wise, Inc., et al.*, supra; *Vicente v. Court of Appeals (Former 17<sup>th</sup> Div.)*, 557 Phil. 777, 786 (2007).

<sup>63</sup> *Rollo* (vol. 1), p. 155.

On the same day at 10:03 AM, Charie asked complainant in a text message:

“Win mga wat time ma fax?” (ibid).

Also on February 7, 2013 at 11:03 AM, complainant sent a text message to Charie of TKC, thus:

“Good am. Charie, pls inform sir boy [respondent Tio] ok na qc. Signed na ni Mayor lahat bank charges [sic] and lc amounting to 3.1M ata un. Gawa nadin total voucher 26M plus...” (ibid)

Also on February 7, 2013 at 11:30 AM, Complainant sent a text message to Charie of TKC, thus:

“Good am. Charie, pls inform sir boy ok na g.c. signed na ni Mayor lahat bank charges and lc amounting to 3.1 M ata un. gawa nadin total voucher 26M plus, Kausap ko na assistant Treasurer mrs. pacis. sya na daw bahala and ipoen na lc baka next week na daw. Kaya lang sobra laki charges ng landbank pinakita sa akin na signed naman ni Mayor na. Fyi lang.” [sic]

“Noted win” (Annex L-1, Complainant’s Position Paper).

x x x x

On February 5, 2013, Zenny Gil of TKC also sent a text message to complainant at 8:41 AM in this wise:

“Edwin gud am, tulungan mu naman kami dun sa kelangan na 2303 ni Caloocan para sa delivery na thanks so much for ur prompt help” (Annex E, Complainant’s Reply).

Complainant responded at 9:15 AM on same day:

“OK na un zen. sinabi ko na kay rochelle and ramil un kahapon. sabi ko lang kay charie text nya lang ramil. para pa pick up.” (ibid).<sup>64</sup>

Although these exchanges do not strictly pertain to the actual “performance of sales activities,” they clearly show that the TKC staff remained in contact with Atienza three weeks after his purported resignation, and that Atienza continued working with them to ensure consummation of his pending deals. At about the same time, *i.e.*, in mid-January to early February 2013, Atienza was still corresponding with officials of Cantilan, Surigao del Sur, regarding the sale of equipment to the Cantilan LGU.<sup>65</sup> In these text messages, Atienza was

<sup>64</sup> Labor Arbiter’s Decision, *id.* at 93-94. Screenshots of Gil’s last cited text message to Atienza are in *Id.* at 501.

<sup>65</sup> Screenshots of Atienza’s text message correspondence with a councilor and the mayor of Cantilan are in *rollo* (vol. 1), pp. 369-372, 395-402. The last text message found on the records was sent by Atienza on February 6, 2013. *Id.* at 369. The exchanges between Quijada and Atienza regarding the Surigao del Sur accounts are in *Id.* at 477-483.

coordinating with a councilor of Cantilan with regard to a planned trip to Manila by Cantilan LGU officials in connection with certain requirements for the purchase of heavy equipment. Contrary to the NLRC's stance, these text messages constitute direct evidence of Atienza's continued rendering of services for TKC even after his alleged date of resignation.

Second, Atienza was still part of the e-mail correspondence chain among Quijada, the TKC staff, and LGU officials regarding the Surigao del Sur accounts. On record are copies of e-mails dated January 22, 23, and 24, 2013 sent between Quijada and a certain Marjorie Pagaran. Included in the e-mail chain as recipients of carbon copies (cc's)<sup>66</sup> of the e-mails are respondent Tio and Atienza himself; and Atienza was even mentioned in one of the e-mails.<sup>67</sup> Atienza's continued inclusion in this e-mail correspondence among members of the TKC staff on matters related to the procurement requirements of the Surigao del Sur accounts reasonably indicates that he was still working on TKC's dealings in Surigao del Sur and needed to be notified thereof. If, as respondents claim, Atienza had resigned as of January 15, 2013, it would be illogical and improper to provide him with carbon copies of TKC internal correspondence after said date, when he was supposedly no longer connected with the company.

Third, the timing and content of the Notice for Investigation, which TKC sent to Atienza on April 15, 2013, clearly shows that Atienza was still considered an employee of TKC beyond January 2013. The full text of the notice reads:

April 15, 2013

MR EDWIN ATIENZA  
Sales Consultant  
Unit 5B-Luntala  
Valle Verde VI-A  
Ortegas [sic] Avenue  
Barangay Ugong  
Pasig City

Subject: Notice for Investigation on Infractions of Excessive AWOL and Insubordination

Dear Mr. Edwin Atienza,

During our December 2012 Sales Conference in Cebu, all the sales consultants gave their sales commitment for the year 2013. However, it is only you who did not give your sales commitment for the year 2013.

<sup>66</sup> Cc, which is short for "carbon copy", is also used as a verb which means "to send someone a copy of an email, letter, or memo." <https://www.merriam-webster.com/dictionary/cc>. Accessed April 15, 2021. See also *In re Avantel, SA*, 343 F. 3d 311 (2003).

<sup>67</sup> *Rollo* (vol. 1), pp. 353-354, 356-359.

Since January 2013, up to the present, you failed to report to our Manila office, neither to our Cebu office without any justifiable reason, and totally neglected your responsibility as sales consultant. Your act is tantamount to abandonment and excessive absence without leave (awol) which is prejudicial to the interest of the company.

On March 23, 2013, you were instructed by the Vice President, by phone for you to report immediately to Cebu office, but you failed and refused and continuously refuses and fails to report without any justifiable reason. Your failure to comply and refusal to heed the said instruction to report to our Cebu office will [sic] tantamount to insubordination.

Therefore, we would like to require you to report to our Cebu office on April 24, 2013 at 10:00 o' clock in the morning, for a formal investigation to give you the opportunity to explain your side, or you may explain in writing why you should not be subjected for disciplinary action within Five (5) days from receipt of tills letter. Your failure to attend in this scheduled investigation or your failure to submit your written explanation within the given period, shall be deemed a waiver on your part and the case shall be resolved according to whatever evidence available and the company will be constrained to make a decision of what is deemed just and reasonable.

Very truly yours,

(signed)  
CECILE R. CORTES  
OIC-Human Resource<sup>68</sup>

The text of the Notice clearly shows that TKC still considered Atienza as its employee despite his alleged unauthorized absences. TKC's assertion that Atienza had resigned as of January 15, 2013, flies in the face of its own internal communication which shows that it continued to exercise disciplinary jurisdiction over Atienza almost four months after said date. Moreover, TKC even gave Atienza two chances to explain his alleged unauthorized absences, months after his supposed resignation.

Finally, Atienza's counsel admitted, in response to the April 15, 2013 Notice for Investigation, that Atienza had intended to resign from TKC after the completion of his pending deals, viz.:

On 28 December 2012, at the Sales Conference in Cebu, Mr. Atienza did not give [his] sales commitment for 2013 because at the time, he had already informed Mr. Leon B. Tio ("Mr. Tio") and Atty. Chiu, President and Vice-President, respectively, of TKC, that he had no intention of staying at the company for the duration of 2013. **Mr. Atienza had [told] Mr. Tio and Atty. Chiu that he intended to file his resignation after he delivers and accomplishes all of his awarded sales deals for 2012, as per his commitment to Mr. Tio when he was hired. Since Mr. Atienza was nearing**

---

<sup>68</sup> Id. at 205.

**the completion of his duties to Mr. Tio, there was no longer any reason for Mr. Atienza to remain with TKC and submit his sales commitment.**<sup>69</sup>

Given the foregoing evidence on record, there can be no other conclusion: Atienza manifested his intention to resign as TKC sales agent upon the completion of his pending deals. Thus, he continued working for TKC even after January 2013, since he was still working on the Quezon City, Caloocan, and Surigao del Sur deals, which were still pending at that time. This conclusion is further bolstered by the NLRC's observation that Atienza did not file an illegal dismissal case but limited his claims to salary, benefits, and commissions for the time he spent working for TKC to finish his pending deals. Clearly, he was no longer interested in remaining with TKC but wanted to close the deals he had already worked on per his agreement with respondent Tio.

### III.

Having established that Atienza continued rendering services for TKC beyond January 15, 2013 and should therefore be considered an employee thereof even after said date, we now determine the validity of his monetary claims against his employer, starting with his claim for salary and benefits. In this jurisdiction, the overarching rule on the payment of salary is encapsulated in the adage “*a fair day's wage for a fair day's labor*”; or, more bluntly, “*no work, no pay*.” In *Coca-Cola Bottlers Philippines, Inc. v. Iloilo Coca-Cola Plant Employees Labor Union*, We held:

The age-old rule governing the relation between labor and capital, or management and employee, of a “fair day's wage for a fair day's labor” remains the basic factor in determining employees' wages. If there is no work performed by the employee, there can be no wage. In cases where the employee's failure to work was occasioned neither by his abandonment nor by termination, the burden of economic loss is not rightfully shifted to the employer; each party must bear his own loss. In other words, where the employee is willing and able to work and is not illegally prevented from doing so, no wage is due to him. To hold otherwise would be to grant to the employee that which he did not earn at the prejudice of the employer.<sup>70</sup>

This Court concurs with the NLRC's conclusion that “*the Labor Arbiter's award of salar[y] and benefits up to March 2013 lack[s] factual and legal basis*.” Atienza did not present any proof that he continued working on his pending deals until March 2013. The evidence on record, including Atienza's own admission, only provides proof of services rendered until February 2013. Tellingly, in his response to the Notice of Investigation, Atienza, through his lawyers, admitted as much:

<sup>69</sup> Memorandum to Cecile R. Cortes Re: Letter dated 15 April 2013, signed by Attys. Lino Chris P. Kapunan and Herbert B. Hernane. Id. at 694. Emphasis and underlining in the original. See also Reply, Id. (vol. 2), p. 721.

<sup>70</sup> G.R. No. 195297, December 5, 2018. Citations omitted.

**From January 2013 to the third week of February 2013, Mr. Atienza had actively pursued the projects at Quezon City, Caloocan City and the Province of Surigao del Sur for TKC, which fact was known to the company.** Mr. Atienza has been persistently receiving communications from Cantillan [sic] Councilors regarding the unconcluded processing of their papers specifically from Land Bank of the Philippines, the Bangko Sentral ng Pilipinas and the Department of Finance, and that Mr. Virgilio Quijada (“Mr. Quijada”) has failed to keep them posted for any development. x x x<sup>71</sup>

Likewise, the voluminous text message e-mail transcripts submitted by Atienza are all dated from 2011 to February 2013. If he were still working for TKC as of March 2013, he could have easily submitted evidence to that effect, as he did for the previous two months; but he was unable to do so. There being no substantial evidence to support his claim for salary and benefits for March 2013, Atienza is only entitled to salary and benefits for the months of January and February 2013, the time period for which he was able to present substantial evidence of services rendered in favor of respondents. Records show that prior to his severance, Atienza was being paid a salary of ₱11,856.00 per month, plus ₱1,350.00 cellphone allowance and ₱3,000.00 car maintenance allowance.<sup>72</sup> Thus, he is entitled to a total compensation of ₱32,412.00 for the months of January and February 2013, when he remained an employee of TKC.

#### IV.A.

As regards Atienza’s claim for sales commissions, law and jurisprudence provide the basic framework for the evaluation thereof.

Commission, in its general sense, is defined as “*the recompense, compensation, reward of an employee, agent, salesman, executor, trustee, receiver, factor, broker or bailee, when the same is calculated as a percentage on the amount of his transactions or on the profit of the principal.*”<sup>73</sup> As applied to employees, it has been defined as “*a sum of money given to compensate employees for the special nature of their work.*”<sup>74</sup> The jurisprudential rule is that “*[t]here is no law which requires employers to pay commissions; thus, it is incumbent upon [the employee] to prove that there is indeed an agreement between him and his employer for payment of the same.*”<sup>75</sup> In *Lagatic v. National Labor Relations Commission*,<sup>76</sup> this Court ruled:

<sup>71</sup> Memorandum to Cecile R. Cortes Re: Letter dated 15 April 2013, signed by Attys. Lino Chris P. Kapunan and Herbert B. Hernane, Id. (vol. 2), p. 694.

<sup>72</sup> Id. (vol. 1), pp. 17, 51, 193; Id. at 689.

<sup>73</sup> *PACIWU v. NLRC*, 317 Phil. 305, 311-312 (1995), citing *Songco v. National Labor Relations Commission (First Division)*, 262 Phil. 667, 675-676 (1990).

<sup>74</sup> Federico B. Moreno, *Philippine Law Dictionary* 171 (1988), citing *NAWASA v. NWSA Consolidated Labor Unions, et al.*, 128 Phil. 225, 228 (1967).

<sup>75</sup> *Solas v. Power & Telephone Supply Phils., Inc., et al.*, 585 Phil. 513, 524 (2008).

<sup>76</sup> *Lagatic v. NLRC*, 349 Phil. 172 (1998).

[T]here is no law which requires employers to pay commissions, and when they do so, as stated in the letter-opinion of the Department of Labor and Employment dated February 19, 1993, “there is no law which prescribes a method for computing commissions. The determination of the amount of commissions is the result of collective bargaining negotiations, individual employment contracts or established employer practice.”<sup>77</sup> (Emphasis and underlining supplied)

If the claimant-employee is able to establish entitlement to commissions, the burden of proving that such commissions have been paid shifts the employer who must offer a defense to the claim of the claimant-employee. Where the employer introduces some evidence of payment, the burden of going forward with the evidence — as distinct from the general burden of proof — shifts to the claimant-employee, who is then under a duty of producing some evidence to show non payment.<sup>78</sup> As is standard in labor cases, entitlement to commissions must be proven by substantial evidence.<sup>79</sup> To be entitled to commissions, the claimant-employees must prove not only the agreement, practice, or policy establishing or regulating the payment of commissions, but also the fact that they rendered services that generated actual market transactions which are attributable to them.<sup>80</sup>

In the case at bar, there is no dispute that Atienza is entitled to a three percent (3%) commission on every consummated sale transaction, as reflected in his personnel records with TKC.<sup>81</sup> However, the record contains neither any employment agreement between Atienza and TKC which regulates the grant of such commissions, nor any internal TKC document or practice pertaining to a commission policy. In the absence of such internal regulations; and in view of Atienza’s functions as a TKC employee, we apply the law on agency to determine the parameters for adjudicating Atienza’s claim for commissions.

In doing so, this Court is neither abandoning long-standing doctrines on the need to prove terms of employee commissions, nor blurring the distinction between employees and agents. Atienza’s entitlement to commission in his capacity as TKC sales agent is not disputed. He has likewise presented substantial evidence of services rendered beyond his alleged resignation in January 2013. Given these circumstances, this Court cannot simply set aside his claim for commissions just because the terms governing his entitlement thereto do not appear in the case records. The lofty principles of justice and equity, combined with the constitutional policy on the protection of labor,

<sup>77</sup> Id. at 184.

<sup>78</sup> *Ropali Trading Corporation v. NLRC*, 357 Phil. 314, 318 (1998). See also *Asentista v. JUPP & Company, Inc., et al.*, 824 Phil 639, 647 (2018).

<sup>79</sup> *Grandteq Industrial Steel Products, Inc., et al. v. Margallo*, 611 Phil. 612, 629 (2009); *Harpoon Marine Services, Inc., et al. v. Francisco*, 659 Phil. 453, 468-469 (2011).

<sup>80</sup> *Songco v. National Labor Relations Commission*, supra note 73, citing *Soriano v. NLRC*, 239 Phil. 119, 126 (1987).

<sup>81</sup> *Rollo* (vol. 1), pp. 190, 192-193.



compel this Court to consider Atienza's claim on the basis of the evidence on record and the law on agency.

Our application of the law on agency to the claims of an employee in the context of a labor proceeding is grounded in the particular facts of this case, specifically, in the nature of Atienza's employment as a sales agent. It is clear from the record that TKC sales agents, Atienza included, conduct sales activities, promote TKC's products to prospective clients, communicate prospective and closed sales to the head office, and assist LGUs with the processing of government procurement documents in connection with such sales. TKC sales agents discharge these functions in representation of, and with the consent of, TKC. Undoubtedly, there exists a principal-agent relationship between TKC and its sales agents.<sup>82</sup> Sales agents, by the very nature of their functions, are both employees and agents of their employers.<sup>83</sup> This fact has long been recognized in the American law on agency, from which Philippine law on agency is derived, *viz.*:

In many respects unlike either the broker or the factor is the traveling salesman commonly called "drummer." "A traveling salesman," said the court in Pennsylvania, "who exhibits samples of, and takes orders from purchasers for, his employer's goods is not, in a technical or popular sense, a broker, or factor, although he may be compensated for services by commissions on the sales so effected by him." **He differs from the broker in that he is a traveling agent rather than one having a fixed place of business; he does not undertake to serve anyone who may desire his services but is usually in the regular employment of a particular principal; and he has not usually, as the broker often has, the power to make a binding contract, but merely to solicit orders for his principal's approval or disapproval.** He differs from the factor in the same particulars, and also in the fact that he is not usually entrusted with the possession of the goods but is merely provided with samples of them which he is to exhibit for the purpose of securing orders.<sup>84</sup>

Clearly, Atienza fits this definition of a *traveling salesman*; as such, the law on agency governs his right to commissions, in the absence of contractual stipulations on record. It must be remembered that the principles of civil law remain applicable to the employer-employee relationship,<sup>85</sup> although such contract be primarily regulated by the Labor Code and its allied laws and

<sup>82</sup> CIVIL CODE, Article 1868.

<sup>83</sup> Floyd R. Mechem, A Treatise on the Law of Agency Including not only a Discussion of the General Subject but also Special Chapters on Attorneys, Auctioneers, Brokers, and Factors §§70, 75 (1914).

<sup>84</sup> Mechem, *supra* at §75, citing *Hamberger v. Marcus*, 157 Pa. 133, 37 Am. St. R. 719. (1893). Emphasis and underlining supplied.

<sup>85</sup> See primarily CIVIL CODE, Arts. 1689-1712; Inasmuch as the employer-employee relationship remains rooted in contract, the provisions of the Civil Code on Obligations and Contracts remain applicable thereto.

regulations,<sup>86</sup> in view of the vital role that labor plays in society, as recognized in our Constitution.<sup>87</sup>

#### IV.B.

Well settled is the rule that an agent is not entitled to commissions for unsuccessful or unconsummated transactions.<sup>88</sup> As a general rule, an agent is entitled to a commission only upon the successful conclusion of a sale.<sup>89</sup> However, in certain cases where the factual circumstances are contested, as in the case at bar, the determination of an agent's right to commissions depends on a number of considerations, such as: 1) the extent of completion of the undertaking, which may be full, partial, or non-existent; 2) the value of the agent's efforts to the principal; 3) the termination of the agency before full completion of the undertaking; and 4) the nature and circumstances of such termination.<sup>90</sup> As pointed out by an eminent commentator on the subject:

As a general proposition, it must be true that the agent is entitled to his compensation when and only when he has fully completed his undertaking according to its terms. In many cases, there is no difficulty in determining when this time arrives, but in others it is not easy to decide upon the full measure of the agent's undertaking or upon the fact of its performance. Each case rests upon its own peculiar facts and circumstances, and the inquiry in every instance must be: 1. What did the agent undertake to do? 2. Has he done it, and if not, then, 3. To whose act or to what occurrence is the failure to be attributed?<sup>91</sup>

Applying the foregoing principles to the case at bar, we first consider the status of the deals for which Atienza claims commissions, as borne out by the record. The parties do not dispute that the Surigao del Sur transaction has already been consummated, as Quijada had already received a commission for said deal;<sup>92</sup> meanwhile, the Caloocan deal was finalized only in March 2013, upon delivery of the construction equipment to the Caloocan LGU.<sup>93</sup> However, the Supply and Delivery Agreement for the Quezon City transaction was signed only on July 2013. Said agreement was further amended in October 2013; and by February 2014 no delivery has been made.<sup>94</sup>

We have previously established that Atienza, as early as December 2012, had already manifested his intent to resign from TKC upon the conclusion of

---

<sup>86</sup> CIVIL CODE, Art. 1700.

<sup>87</sup> CONSTITUTION, Art. II, Sec. 18; Art. XIII, Sec. 3

<sup>88</sup> *Sanchez v. Medicard Philippines, Inc.*, 504 Phil. 332, 336-337 (2005); *Manotok Brothers, Inc., v. Court of Appeals*, 293 Phil. 230, 236 (1993); *Danon v. Antonio A. Brimo, & Co.*, 42 Phil. 139-141 (1921).

<sup>89</sup> *Sanchez v. Medicard Philippines, Inc.*, supra.

<sup>90</sup> Mechem, supra note 83 at 1531.

<sup>91</sup> Mechem, id. at 1532.

<sup>92</sup> A copy of the check voucher received by Quijada for his commission is in Rollo (vol. 1), pp. 263-264.

<sup>93</sup> *Rollo* (vol. 2), pp. 511-519, 671.

<sup>94</sup> Id. at 672.

his then-pending deals. It was likewise proven, through the evidence on record and Atienza's own admission, that he continued rendering services for TKC until the third week of February 2013 *only*. Again, there is no evidence whatsoever in the record to show that Atienza continued rendering services for TKC after the third week of February 2013. Taking together these factual findings of intent to resign and actual relinquishment of duties, it becomes clear that Atienza had effectively resigned from TKC after the third week of February, and at the same time, ceased being an agent of TKC. Consequently, he can no longer claim commissions for the Quezon City project, because that deal remained pending long after his severance from TKC.

As regards the Caloocan deal, records show that TKC made deliveries of heavy equipment to the Caloocan LGU on March 5, 7, and 11, 2013, or a mere one week after Atienza ceased becoming an agent of the company.<sup>95</sup> Under our law on agency, agents may still be entitled to commissions for transactions consummated within a reasonable time after the expiration or termination of their authority if it can be shown that the agent's efforts were "somehow instrumental" to the consummation thereof.<sup>96</sup> In view of the evidence on record, We find it most just and appropriate to award ₱100,000.00 in equity to Atienza for his efforts in securing the Caloocan transaction, in line with the foregoing "equitable commission doctrine" enunciated by this Court in *Prats v. Court of Appeals*<sup>97</sup> and *Manotok Brothers, Inc. v. Court of Appeals*.<sup>98</sup> While we sustain respondents' contention that Atienza was not the efficient procuring cause of the transaction,<sup>99</sup> his efforts in securing the documentation and approvals necessary for the consummation thereof<sup>100</sup> entitle him to an equitable remuneration therefor.

As regards the claim for Surigao del Sur deal commissions, the records disclose that Atienza and Quijada worked together on certain deals in Surigao del Sur, *viz.*: 1) purchase of one lot construction equipment for the Province of Surigao del Sur; 2) procurement of road maintenance and solid waste management equipment (two units 6-wheeler dump truck and one unit articulated backhoe loader) for the Municipality of Lianga, Surigao del Sur; and 3) supply and delivery of one unit motor grader and one unit backhoe loader for the Municipality of Cantilan, Surigao del Sur.<sup>101</sup> While it is true that TKC policy prohibits its sales agents from "*cover[ing] an area assigned to [another]*

<sup>95</sup> Id. at 511-515, 517-519.

<sup>96</sup> *Prats v. Court of Appeals*, 171 Phil. 322, 347 (1978); *Sanchez v. Medicard Philippines, Inc.*; *Manotok Brothers, Inc., v. Court of Appeals*, *supra* note 88.

<sup>97</sup> Id.

<sup>98</sup> Id.

<sup>99</sup> As attested to by the Chair of Caloocan's Bids and Awards Committee, the Caloocan transaction "was principally made through the official presentation and business capability of Leon Tio of TKC Heavy Industries." Affidavit of Russel C. Ramirez, *Rollo* (vol. 2), p. 697.

<sup>100</sup> *Rollo* (vol. 1), p. 28; *id.* (vol. 2), p. 697.

<sup>101</sup> Id. at 195.

*sales [agent] without proper coordination and permission*<sup>102</sup> of the agent concerned, We find that there is substantial evidence on record to show that Atienza worked on the aforementioned deals with the knowledge and consent of TKC and Quijada. Atienza's extended correspondence, not only with the officials of said LGUs, but also with Quijada himself,<sup>103</sup> shows that that all parties to the transaction were made aware of, and did not object to, Atienza's participation therein. Atienza even sent an e-mail to respondent Tio informing the latter about the sales efforts he made during an April 2012 trip to Surigao del Sur. The e-mail, which is four pages long, contains a detailed account of Atienza's discussions with Surigao del Sur officials (specifically, dinner meetings in which *both* Atienza and Quijada were present) and an assessment of TKC's chances of closing the pending deal with the province.<sup>104</sup> Furthermore, TKC's own internal documents categorically attribute the Surigao del Sur LGU deal to Quijada and Atienza.<sup>105</sup> The foregoing pieces of evidence clearly show that Atienza's participation in the Surigao del Sur deal was made with not only the coordination and permission of Quijada, but also the knowledge and consent of TKC management. Had TKC not consented to the arrangement, it could have easily ordered Atienza to stop meeting with Surigao del Sur officials and to refrain from working on said deals, but no such order, directive, or reprimand appears on the record.

We have already mentioned that there is no definitive and comprehensive policy statement, contract, or agreement on record regulating the commission of TKC's sales agents. The only pertinent documents are the personnel record file of Atienza which states, without any further elaboration, that he is entitled to a three percent commission; and the December 28, 2011 meeting minutes which state that "*no sales consultant shall cover an area assigned to a particular sales consultant without proper coordination and permission of the latter.*"<sup>106</sup> Given the gaps in the evidence on TKC company policy, on one hand; and the substantial evidence showing that Atienza's participation in the Surigao del Sur deal was authorized by his employer-principal and by his co-agent, on the other hand, this Court must again remedy the deficiency by applying the law on agency.

*"One person may appoint a great many agents not only as of course where their duties relate to different subjects, but also frequently where, though severally appointed and authorized, their powers and duties may relate to the same subject."*<sup>107</sup> The agency provisions of our Civil Code recognize such a

---

<sup>102</sup> Id. at 191.

<sup>103</sup> Atienza's correspondence with Quijada and TKC staff regarding the Surigao del Sur deals is in Rollo (vol. 1), pp. 476-483; while his correspondence with Surigao del Sur officials is in Rollo (vol. 1), pp. 361-475.

<sup>104</sup> Id. at 487-491.

<sup>105</sup> Id. at 195.

<sup>106</sup> Id. at 195.

<sup>107</sup> Mechem, *supra* note 83 at 195.

situation but limit the regulation thereof to the responsibility of the co-agents as against other parties.<sup>108</sup> Nevertheless, our Civil Code operates under the presumption that obligations are joint in nature unless solidarity is stipulated.<sup>109</sup> This presumption extends to co-agents under Article 1894 of the Civil Code with respect to their responsibility.<sup>110</sup> Conversely, such presumption of jointness must likewise extend to the principal's obligation to compensate the co-agents, unless otherwise stipulated or proven. Here, the presumption of joint agency is bolstered by the aforesaid evidence showing that Atienza and Quijada worked together on the Surigao del Sur deals as co-agents. Acting separately but in concert, Atienza and Quijada represented TKC in the negotiations, coordinated with the concerned LGU officials, and handled the processing of the procurement documents. Since there is no indication from the record of any agreement, stipulation, or policy governing the sharing of commission among TKC's agents, the 3% commission on the aforementioned deals must be shared equally between Quijada and Atienza, still following the principles of the law on agency.<sup>111</sup>

Respondents cannot escape liability by claiming that they had already paid the full 3% commission to Quijada. Since TKC deployed Atienza and Quijada together as co-agents to secure the Surigao del Sur deals, its obligation to pay their commissions should also be considered joint and divisible; and payment should be made to *both* of them, not to Quijada alone. In *Cembrano v. City of Butuan*,<sup>112</sup> this Court held:

Payment made by the debtor to the person of the creditor or to one authorized by him or by the law to receive it extinguishes the obligation. **When payment is made to the wrong party, however, the obligation is not extinguished as to the creditor who is without fault or negligence even if the debtor acted in utmost good faith and by mistake as to the person of the creditor or through error induced by fraud of a third person.**

In general, **a payment in order to be effective to discharge an obligation, must be made to the proper person.** Thus, payment must be made to the obligee himself or to an agent having authority, express or implied, to receive the particular payment. Payment made to one having apparent authority to receive the money will, as a rule, be treated as though actual authority had been given for its receipt. Likewise, if payment is made to one who by law is authorized to act for the creditor, it will work a discharge. The receipt of money due on a judgment by an officer authorized by law to accept it will, therefore, satisfy the debt.

<sup>108</sup> CIVIL CODE, Articles 1894 & 1895.

<sup>109</sup> CIVIL CODE, Article 1207.

<sup>110</sup> Under Article 1894, "[t]he responsibility of two or more agents, even though they may have been appointed simultaneously, is not solidary, [and therefore, joint] if solidarity has not been expressly stipulated."

<sup>111</sup> Unless otherwise stipulated, commissions are to be shared equally regardless of the proportion of actual work done by each co-agent. See *De Benedictis v. Gerechoff*, 339 A.2d 225, 134 N.J. Super. 238 (1975).

<sup>112</sup> 533 Phil. 773 (2006).

**When there is a concurrence of several creditors or of several debtors or of several creditors and debtors in one and the same obligation, it is presumed that the obligation is joint and not solidary. The most fundamental effect of joint divisible obligations is that each creditor can demand only for the payment of his proportionate share of the credit, while each debtor can be held liable only for the payment of his proportionate share of the debt. As a corollary to this rule, the credit or debt shall be presumed, in the absence of any law or stipulation to the contrary, to be divided into as many shares as there are creditors and debtors, the credits or debts being considered distinct from one another. It necessarily follows that a joint creditor cannot act in representation of the others. Neither can a joint debtor be compelled to answer for the liability of the others.** The pertinent rules are provided in Articles 1207 and 1208 of the Civil Code.<sup>113</sup> (Emphasis and underlining supplied)

The records show that TKC had received a payment of ₱67,098,894.27 from the LGU of the province of Surigao del Sur,<sup>114</sup> for which it was liable to pay 3% thereof, or ₱2,012,966.83, as commission to Atienza and Quijada. It was likewise proven that TKC had already paid Quijada's commission in the amount of ₱923,322.00,<sup>115</sup> which corresponds to almost one-half of the total commission. Thus, Atienza is entitled to the other half of the total commission, amounting to ₱1,006,483.42.

#### V.

As a final defense against liability, respondents argue that Atienza's claims must be set off against his unliquidated cash advance of ₱7,000,000.00. Atienza denies receiving the cash advance, which is evidenced by two vouchers<sup>116</sup> and a check for ₱7,000,000.00.<sup>117</sup>

It must be noted that the check was drawn not from TKC's own account but from the personal account of a certain Zenaida Antopina Gil, who is apparently an employee of TKC.<sup>118</sup> Furthermore, the payee indicated in the check is a certain Ramil Bautista. The first check voucher was made out to Zenaida A. Gil and the particulars thereof read: "*Fund Transfer: Fund Transfer to account of ZAG at Eastwest Bank. Budget Request of Mr. Edwin A. Atienza Cash Advance for Liquidation;*"<sup>119</sup> while the second check voucher was made out to "*Ramil Bautista or Cash,*" with the following particulars: "*Cash Advance for Liquidation: Requested by: Mr. Edwin Atienza Transferred from Cebu.*"<sup>120</sup>

<sup>113</sup> Id. at 790-791.

<sup>114</sup> *Rollo* (vol. 1), p. 225.

<sup>115</sup> Id. at 263-264.

<sup>116</sup> Id. at 265; id. (vol. 2), p. 604, 690.

<sup>117</sup> Id. at 691.

<sup>118</sup> Both parties admit in their pleadings that Zenaida A. Gil is a TKC employee. Atienza refers to her as TKC's Operations Manager (Petition, id. at 27), while respondents refer to her as the Officer-In-Charge of TKC's Manila office (Comment, id. [vol. 2], p. 669; Rejoinder, id. [vol. 1], p. 284).

<sup>119</sup> Id. (vol. 2), p. 690.

<sup>120</sup> Id. (vol. 1), p. 265.

The first voucher bears the signatures of a certain "*Cecile*" and a certain "*lbt*," which is claimed to be respondent Tio; while the second voucher bears two signatures which are respectively initialed as "*gma*" under the field "*PREPARED BY;*" and "*zag*" under the field "*CHECKED BY.*" A third signature appears on the second voucher under the field "*RECEIVED THE FULL PAYMENT AMOUNT DESCRIBED ABOVE BY;*" which the NLRC and the CA took to be Atienza's. According to the NLRC, as affirmed by the CA, this signature, which does not bear a corresponding printed name, "clearly indicates that the release of the cash advance was made upon [Atienza's] request."<sup>121</sup>

As regards the Ramil Bautista named as the payee in the check and the second check voucher, respondents essentially allege that he is Atienza's surrogate, *viz.* :

That early part in 2011, Mr. Edwin Atienza came to our principal office in Cebu City, and introduced a certain Mr. Ramil Bautista, as his assistant and partner to market our equipments from different LGU's in Metro Manila, more particularly Caloocan City, since he and his wife are connected with the city government and close to Mayor Echiverri;

That sometime in November, 2011, Mr. Edwin Atienza, requested from me a cash advance of SEVEN MILLION PESOS (P7M) deductible from their future commission with a strong assurance that the ongoing transactions with Caloocan City, Quezon City, and other part of Metro Manila and Luzon will be materialized;

That due to Mr. Atienza's strong assurance and insistence, I heeded to his request for Cash Advance deductible from his commission.

That on December 2, 2011, we sent the total amount of SEVEN MILLION PESOS (P7M) to the bank account of Zenaida A. Gil the company's Edsa Makati Office- in-charge with instructions for her to issue a check in favour of Edwin Atienza for the said amount; That when Ms. Gil informed me by phone that Mr. Atienza requested that the check be issued payable to Mr. Ramil Bautista, I gave her clearance to do so.<sup>122</sup>

X X X X

That sometime on December 3, 2011, our president Mr. Leon B. Tio, coiled me up and Informed me that Mr. Edwin Atienza, our sales consultant for Luzon requested for cash advance amounting to SEVEN MILLION (P7M) PESOS, and that they were sending the said amount to my bank account,

That when the money entered into my bank account, I called up Mr. Edwin Atienza and informed him that the cash advance he requested from

<sup>121</sup> Id. at 158

<sup>122</sup> Affidavit of Leon B. Tio as reproduced in respondents' rejoinder before the NLRC Regional Arbitration Branch, id. at 283-284.

our main office in Cebu, already arrived and it was already in my bank account;

That Mr. Edwin Atienza immediately went to our office in Edsa Makati, and I asked him under who's name the check will be issued, and he instructed me to put the name of certain Ramil Bautista, as payee of the check;

That first I was hesitant to comply with his instruction since I do not know personally Mr. Ramil Bautista, and this involved a very substantial amount, but Mr. Edwin Atienza insisted and told me to trust Mr. Ramil Bautista, since he knew him personally and that he is his assistant and partner in all his transactions with different LGU's in Metro Manila, and besides this will be deducted from their commission;

That I heeded to his instruction and put the name of Ramil Bautista as the payee of the check, and Mr. Edwin Atienza personally signed the voucher and got the check. x x x<sup>123</sup>

Atienza disputes this narrative and ripostes that he never received the cash advance. He likewise denies introducing Bautista to Tio as his assistant; rather, he introduced Bautista as one of his contact persons in the Caloocan City LGU, as Bautista is a long-time employee in the Office of the City Mayor of Caloocan.<sup>124</sup> Consequently, Atienza could not have employed Bautista as his assistant, since the latter was already working for the Caloocan LGU.<sup>125</sup> Atienza further claims that: 1) the advance was not processed in accordance with TKC standard procedure;<sup>126</sup> 2) the amount thereof is abnormally larger than his previous advances;<sup>127</sup> and 3) there are defects in the authorizations and signatures in the check and the vouchers evidencing the cash advance which cast doubt on the veracity thereof.<sup>128</sup>

This Court sustains Atienza's position. Respondents failed to prove, by substantial evidence, that Atienza obtained a seven-million-peso cash advance through a person named Ramil Bautista. The alleged check and vouchers contain numerous discrepancies and irregularities which cast doubts on their veracity and regularity:

1) The check voucher for the seven-million-peso cash advance is an official voucher of TKC, while the actual check represented by the voucher was drawn from Zenaida Gil's personal account. As correctly pointed out by Atienza, if the cash advance was indeed authorized by TKC, the corresponding check

<sup>123</sup> Affidavit of Zenaida A. Gil as reproduced in respondents' rejoinder before the NLRC Regional Arbitration Branch, *id.* at 285.

<sup>124</sup> *Id.* at 240-241.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 241-242.

<sup>127</sup> *Id.* at 242-243.

<sup>128</sup> *Id.* at 271-273.



therefor should have been drawn on TKC's own account. There is no explanation on record, other than the aforementioned statements of Tio and Zenaida Gil, which adequately explains the coursing of the funds through Zenaida Gil's personal account rather than through the official corporate account of TKC.

2) Said check voucher does not bear the signature of TKC's president, respondent Tio, in contrast with the first voucher which authorized the transfer of the seven million pesos to Zenaida Gil's personal account. There is likewise no explanation on record as to why Tio did not sign the voucher.

3) Said check voucher, as earlier mentioned, indicates Ramil Bautista as the payee. However, the third signature therein, which is purportedly that of the person who received the funds disbursed through said voucher, does not have a corresponding printed name. In contrast, when Quijada signed the voucher for his commission check, he also wrote his name on the voucher.<sup>129</sup> Moreover, the signature in the said check voucher is substantially dissimilar to Atienza's signature as it appears in the records.<sup>130</sup> Coupled with Atienza's disavowals, such dissimilarity creates a reasonable doubt as to whether the signature was actually Atienza's.

4) The check representing the alleged cash advance indicates Ramil Bautista *alone* as the payee. Assuming *arguendo* that the check was issued at Atienza's behest and for his benefit, there is nothing in the records, other than the *unnamed and unattributed* signature in the second check voucher, which would prove that Atienza actually received the check or the funds pertaining thereto. There is nothing in the records, other than the vouchers themselves and the narrations of Tio and Zenaida Gil, that reasonably indicates Atienza's receipt of the amounts stated therein.

## VI.

As regards Atienza's claims for moral and exemplary damages, we rule that he is not entitled thereto, there being no proof of bad faith on the part of respondents or any damage wrought upon him by their alleged *mala fide* actuations. Bad faith is a state of mind which can only be determined through a person's actions. Bad faith cannot be presumed; it must be proven by clear and convincing evidence.<sup>131</sup> In the absence of proof that they were motivated by a "*dishonest purpose, moral deviation, [or] the conscious commission of a*

<sup>129</sup> *Id.* at 263-264.

<sup>130</sup> Atienza's signature appears in the following documents: his application letter addressed to Tio (*id.* (vol. 2), p. 688), Personnel Record Notices (*id.* (vol. 1), pp. 190, 192-193; *id.* (vol. 2), p. 689), Complaint before the NLRC (*id.* at 203), April 9, 2012 and January 14, 2013 cover letters of Atienza's liquidation reports (*id.* at 605, 609, 618), and the liquidation reports themselves (*id.* at 608, 611, 612, 615, 619, 620, 623).

<sup>131</sup> *Tocom's Philippines, Inc. v. Philips Electronics and Lighting, Inc.*, G.R. No. 214046. February 5, 2020.

wrong”<sup>132</sup> against Atienza, respondents’ persistent but unjustified refusal to pay the former’s salary and commissions cannot be considered bad faith. While the documents evidencing Atienza’s alleged cash advance are indeed of doubtful veracity, the CA nevertheless correctly pointed out<sup>133</sup> that Atienza failed to prove his allegation<sup>134</sup> that respondents devised the cash advance and forged the documentary proof therefor as a *mala fide* scheme to evade liability.

Likewise, moral damages are not automatically awarded upon a showing of bad faith on the part of the adverse party. Well settled is the rule that in order to claim moral damages, the claimant must prove the factual basis for the award, *i.e.*, the actual suffering, anguish, or other social, reputational, or emotional injury, as well the causal connection of such damage to respondent’s acts.<sup>135</sup> Here, Atienza was unable to provide proof of any compensable moral damage as contemplated under Article 2217 of the Civil Code which is causally connected to respondents’ acts.

Nevertheless, given the circumstances of his severance and TKC’s unjustified refusal to pay his salary and commissions, which gave rise to the present litigation, Atienza is still entitled to attorney’s fees. Article 111 of the Labor Code expressly allows the recovery of attorney’s fees in litigations involving the withholding of wages. This provision was applied and clarified in *Alva v. High Capacity Security Force, Inc., et al.*,<sup>136</sup> where this Court held:

To recapitulate, both the Labor Code and the Civil Code provide that attorney’s fees may be recovered in the following instances, namely, (i) in cases involving the unlawful withholding of wages; (ii) where the defendant’s act or omission has compelled the plaintiff to litigate with third persons or the plaintiff incurred expenses to protect his interest; (iii) in actions for the recovery of wages of household helpers, laborers and skilled workers; (iv) in actions for indemnity under workmen’s compensation and employer’s liability laws; and (v) in cases where the court deems it just and equitable that attorney’s fees and expenses of litigation should be recovered.

In a catena of cases, the Court awarded attorney’s fees in favor of illegally dismissed employees who were compelled to file an action for the recovery of their lawful wages, which were withheld by the employer without any valid and legal basis. A plain showing that the lawful wages were not paid without justification was sufficient to warrant an award of attorney’s fees.

Moreover, “Article 111 is an exception to the declared policy of strict construction in the award of attorney’s fees.” In fact, the general rule that attorney’s fees may only be awarded upon proof of bad faith takes a different

<sup>132</sup> Id.

<sup>133</sup> CA Decision, *rollo* (vol. 1), pp. 61-62.

<sup>134</sup> Petition for Review on *Certiorari*, *id.* at 40.

<sup>135</sup> *Guy v. Tulfo*, G.R. No. 213023, April 10, 2019, citing *Kierulf v. CA*, 336 Phil. 414, 427 (1997).

<sup>136</sup> 820 Phil. 677 (2017).

turn when it comes to labor cases. The established rule in labor law is that the withholding of wages need not be coupled with malice or bad faith to warrant the grant of attorney's fees under Article 111 of the Labor Code. All that is required is that the lawful wages were not paid without justification, thereby compelling the employee to litigate.<sup>137</sup> Citations omitted, Emphasis and underlining supplied)


In line with this pronouncement, this Court reinstates the award of attorney's fees by the Labor Arbiter.

**WHEREFORE**, the present petition is **PARTIALLY GRANTED**. The October 7, 2014 Decision and the March 17, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 135441 are hereby **REVERSED and SET ASIDE**. Respondents TKC Heavy Industries Corporation and Leon Tio are hereby **ORDERED to PAY** petitioner Edwin Alacon Atienza the following amounts:

1. ₱32,412.00 as salary and benefits for the months of January and February 2013;
2. ₱100,000.00 as equitable commission for the Caloocan project;
3. ₱1,006,483.42 as commission for the Surigao del Sur project; and
4. Ten percent (10%) of the total monetary award as attorney's fees.

The foregoing amounts shall earn interest at the legal rate of six percent (6%) annually, from the date of finality of this Decision, until full payment.

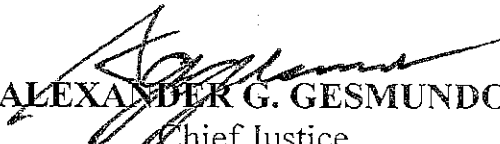
**SO ORDERED.**


  
**SAMUEL H. GAERLAN**  
Associate Justice

---

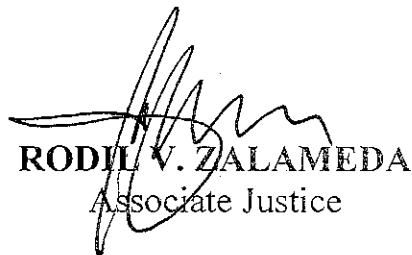
<sup>137</sup> Id. at 688-689.

WE CONCUR:

  
**ALEXANDER G. GESMUNDO**  
Chief Justice


  
**ALFREDO BENJAMIN S. CAQUIOA**  
Associate Justice

  
**ROSMARI B. CARANDANG**  
Associate Justice

  
**RODIL V. ZALAMEDA**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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.

  
**ALEXANDER G. GESMUNDO**  
Chief Justice