Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NIPPON PAINT PHILIPPINES, INC.,
Petitioner,

- *versus* -

NIPPON PAINT PHILIPPINES EMPLOYEES ASSOCIATION [NIPPEA],
Respondent.

G.R. No. 229396

Present:

LEONEN, *J., Chairperson,*
HERNANDO,
INTING,
ROSARIO,* and
LOPEZ, J., *JJ.*

Promulgated:

June 30, 2021

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D E C I S I O N

INTING, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated July 18, 2016 and the Resolution[3] dated November 28, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 138130. The assailed Decision nullified and set aside the Decision[4] dated October 31, 2014 of Voluntary Arbitrator Delia T. Uy (VA) in VA Case No. A890-IVA-LAG-02-004-2014. The assailed Resolution, on the other hand, denied the Motion for Reconsideration[5] filed by Nippon Paint Philippines, Inc. (petitioner).

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* Designated additional Member per Special Order No. 2833.

[1] *Rollo*, pp. 2-28.

[2] *Id.* at 38-44; penned by Associate Justice Sesinando E. Villon with Associate Justices Rodil V. Zalameda (now a member of the Court) and Pedro B. Corales, concurring.

[3] *Id.* at 45.

[4] *Id.* at 180-184.

[5] *Id.* at 237-247.

The Antecedents

In 2007, petitioner and Nippon Paint Philippines Employees Association (respondent) entered into a Collective Bargaining Agreement[6] (CBA) effective January 1, 2007 until December 31, 2011 (2007 CBA). Section 1, Article 13 of the 2007 CBA provided that petitioner agreed to pay all of its employees their holiday remuneration pay every year on regular holidays listed therein. It further granted all union members premium pay in the amount equivalent to 200% of their regular daily rate during a holiday even if no work was rendered; and those, in the meantime, who are required to work on a regular holiday will be paid the amount equivalent to three times of their regular daily rate, or 300% thereof.[7]

In 2009, Republic Act No. (RA) 9849[8] was enacted into law declaring the celebration of *Eidul Adha* as a regular holiday.

Petitioner's employees regularly received their holiday pay for the enumerated regular holidays in 2010 and 2011. Apparently, the employees received an additional holiday pay for the *Eidul Adha*. Still, upon the execution of a new CBA[9] on March 21, 2012 (2012 CBA) which was a renewal of the 2007 CBA, the *Eidul Adha* was not mentioned as one of the regular holidays. Therefore, in 2012, all the employees were not given the holiday pay corresponding to the *Eidul Adha*.[10]

Thus, respondent argued that consistent with the company practice, the employees were entitled to 200% of their regular daily rate for regular holidays, if unworked, and 300%, if worked. It claimed that the additional holiday pay for the *Eidul Adha* has ripened into a company practice which petitioner could no longer recover as it would be arbitrary, illegal, and tantamount to diminution of benefits.[11]

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6 *Id.* at 107-129.

7 *Id.* at 38-39.

8 Entitled, "An Act Declaring the Tenth Day of Zhul Hijja, the Twelfth Month of the Islamic Calendar, a National Holiday for the Observance of Eidul Adha, Further Amending for the Purpose Section 26, Chapter 7, Book I of Executive Order No. 292, otherwise known as the Administrative Code of 1987, As Amended," approved on December 11, 2009.

9 *Rollo*, pp. 137-150.

10 *Id.* at 39.

11 *Id.*

For its part, petitioner averred that starting 2012, its employees were no longer entitled to the additional holiday pay for the *Eidul Adha*. It explained that the overpayments made in 2010 and 2011 were only glitches, or errors in its payroll system that automatically adjusted or increased the employees' salaries even if *Eidul Adha* was not listed in the 2007 CBA as a regular holiday. The error was already corrected in 2012; thus, for that year, no additional holiday remuneration was given for the *Eidul Adha* holiday.[12]

Ruling of the VA

As no settlement was reached between the parties, the dispute was referred to a VA. On October 31, 2014, the VA rendered a Decision,[13] the dispositive portion of which reads:

> WHEREFORE, premises considered, we rule that there has been no established grant that ripen into a benefit by management to include Eidul Adha as one of the regular holidays to be paid an additional 100% daily wage. It was just a system error that was committed. However, no refund is required.
>
> SO ORDERED.[14]

The VA ruled that the overpayment made by reason of payroll system error cannot be considered as a voluntary employer practice. It explained that as attested by the "MIS" Senior Supervisor, a system error occurred when *Eidul Adha* was tagged as a regular holiday in its payroll system. Thus, the payroll system automatically computed 200% of the regular daily wage for the employees who did not report for work and 300% for those who reported at work. The VA noted that the parties enumerated in their 2007 CBA the holidays to be considered as regular holidays in relation to their additional holiday pay; that there was nothing in the 2007 CBA which stated that future regular holidays shall be automatically included in the list of holidays therein; and that being excluded from the list, *Eidul Adha* cannot be deemed subsumed thereto. The VA further noted that in 2012, the parties negotiated for another CBA covering the period 2012 to 2016. In the 2012 CBA, *Eidul Adha*

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[12] *Id.* at 39-40.
[13] *Id.* at 180-184.
[14] *Id.* at 184.

was not included as one of the regular holidays for which an additional holiday pay of 100% basic salary, even if unworked, would be paid to employees. Thus, considering that the CBA was clear and unambiguous, the VA concluded that there was no intention to include *Eidul Adha* in the list of holidays for which the employees are entitled to an additional benefit.[15]

Aggrieved, respondent filed a Petition for Review[16] under Rule 43 of the Rules of Court before the CA.

Ruling of the CA

In its Decision[17] dated July 18, 2016, the CA granted the petition and set aside the VA Decision. The CA considered as company practice petitioner's grant of an additional holiday pay for the *Eidul Adha* to its employees in addition to what was mandated by law. It declared that, as a rule, the employees of petitioner have a vested right over the existing benefit which cannot be reduced, diminished, discontinued, or eliminated by the company.[18] Hence, the CA ruled:

> WHEREFORE, premises considered, the instant Petition for Review is GRANTED. The assailed Decision dated October 31, 2014 of the National Conciliation and Mediation Board, Regional Branch No. IV, Calamba City, Laguna, in VA Case No. A890-IVA-LAG-02-004-2014 is hereby SET ASIDE. The case is REMANDED to the NCMB, Regional Office No. IV, Calamba Laguna for proper computation of the benefits herein claimed by employees of respondent Nippon Paint Phils., Inc.
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> SO ORDERED.[19]

Undaunted, petitioner filed a Motion for Reconsideration[20] of the Decision. The CA denied the motion in its Resolution[21] dated November 28, 2016 for lack of merit.

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15 *Id.* at 183-184.
16 *Id.* at 50-67.
17 *Id.* at 38-44.
18 *Id.* at 42.
19 *Id.* at 43.
20 *Id.* at 237-247.
21 *Id.* at 45.

Hence, the petition.

Issues

I. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT [RESPONDENT] AND ITS MEMBERS ARE ENTITLED TO AN ADDITIONAL 100% PAY IN 2012 AND 2013 FOR THE [*EIDUL ADHA*] HOLIDAY.

II. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT RULING THAT HEREIN PETITIONER IS ENTITLED TO REFUND FOR THE PAYMENTS MADE IN 2010 AND 2011 FOR THE [*EIDUL ADHA*] HOLIDAY WERE ONLY DUE TO SYSTEM ERROR[22]

Petitioner maintains that the payment of additional holiday pay for *Eidul Adha* to respondent and its members in 2010 and 2011 was an error due to the default program in its payroll system;[23] and that, in fact, after it discovered the error in 2012, it discontinued giving the special benefit. Petitioner asserts that *Eidul Adha* was still not included in the list of holidays in the 2012 CBA, and the intention of the parties to exclude it from the other regular holidays was therefore clear and obvious.[24]

On the other hand, respondent asserts in its Comment[25] that the CA correctly ruled that the grant of the additional holiday pay for *Eidul Adha* to covered employees has ripened into a company practice. It argues that despite the absence of a provision in the CBA, the law on regular holidays, which include *Eidul Adha*, was deemed written into the contract.[26]

Ruling of the Court

The Court denies the petition.

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[22] *Id.* at 13.
[23] *Id.* at 16.
[24] *Id.* at 17.
[25] *Id.* at 289-293.
[26] *Id.* at 290.

Holiday pay is a legislated benefit enacted as part of the constitutional imperative that the State shall afford protection to labor. It is not just meant to prevent diminution of the monthly income of the workers on account of work interruptions, but is also intended to enable the worker to participate in national celebrations held during days with great historical and cultural significance. While the worker is forced to take a rest, he/she still earns what he/she should earn, that is, his/her holiday pay.[27]

Under Article 94[28] of the Labor Code of the Philippines (Labor Code), every worker shall be paid his/her regular daily wage during regular holidays. As correctly explained by the CA, employees covered by the holiday pay shall be paid their regular daily wages during the regular holiday even if no work is rendered. Thus, an employee must receive 100% of his/her daily wage even if he/she does not work on a regular holiday.[29] This rule is subject to the qualification that the employee must be present, or on leave of absence with pay on the working day immediately preceding the regular holiday to be entitled to the holiday pay. Thus, an employee who is on leave of absence without pay on the day immediately preceding a regular holiday may not be paid the required holiday pay if he/she has not worked on such regular holiday.[30]

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[27] *Asian Transmission Corp. v. CA*, 469 Phil. 496, 505 (2004), citing *Jose Rizal College v. NLRC*, 240 Phil. 27, 31-32 (1987).

[28] Article 94 of the Labor Code of the Philippines provides:

> Article 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 ten (10) workers;
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> (b) The employer may require an employee to work on any holiday but such employee shall be paid a compensation equivalent to twice his regular rate; and
>
> (c) As used in this Article, "holiday" includes: New Year's Day, Maundy Thursday, Good Friday, the ninth of April, the first of May, the twelfth of June, the fourth of July, the thirtieth of November, the twenty-fifth and thirtieth of December and the day designated by law for holding a general election.

[29] *Id.*

[30] Section 6, Rule IV, Book III of the Omnibus Rules Implementing the Labor Code provides:

> SECTION 6. *Absences.* — (a) All covered employees shall be entitled to the benefit provided herein when they are on leave of absence with pay. Employees who are on leave of absence without pay on the day immediately preceding a regular holiday may not be paid the required holiday pay if he has not worked on such regular holiday.
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> (b) Employees shall grant the same percentage of the holiday pay as the benefit granted by competent authority in the form of employee's compensation or social security payment, whichever is higher, if they are not reporting for work while on such benefits.
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> (c) Where the day immediately preceding the holiday is a non-working day in the establishment or the scheduled rest day of the employee, he shall not be deemed to be on leave of absence on that day, in which case he shall be entitled to the holiday pay if

On the other hand, an employee who is required to work on a regular holiday shall be paid at least 200% of his/her regular daily wage with the qualification that if the holiday work falls on the scheduled rest day of the employee, he/she shall be entitled to an additional premium of at least 30% of his/her regular holiday rate of 200% based on his/her regular wage rate.[31] The employee is also entitled to additional pay for work performed in excess of eight hours on a regular holiday.[32]

In the present case, for a considerable period of time, petitioner has been granting its employees holiday pay which is more than what is provided by law. Specifically, petitioner has been paying its employees an amount equivalent to either 200% of their regular daily rate as premium on unworked regular holidays, or 300% of their regular daily rate on worked regular holidays.[33]

As a rule, employees have a vested right over existing benefits voluntarily granted to them by their employer.[34] Any benefit and supplement being enjoyed by the employees cannot be reduced, diminished, discontinued, or eliminated by the employer.[35] The principle of non-diminution of benefits under Article 100[36] of the Labor Code is actually founded on the constitutional mandate to protect the rights of workers, promote their welfare, and afford them full protection. In turn,

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he worked on the day immediately preceding the non-working day or rest day.

[31] Section 4, Rule IV, Book III of the Omnibus Rules Implementing the Labor Code provides:

SECTION 4. *Compensation for holiday work.* — Any employee who is permitted or suffered to work on any regular holiday, not exceeding eight (8) hours, shall be paid at least two hundred percent (200%) of his regular daily wage. If the holiday work falls on the scheduled rest day of the employee, he shall be entitled to an additional premium pay of at least 30% of his regular holiday rate of 200% based on his regular wage rate.

[32] Section 5, Rule IV, Book III of the Omnibus Rules Implementing the Labor Code provides:

SECTION 5. *Overtime pay for holiday work.* — For work performed in excess of eight hours on a regular holiday, an employee shall be paid an additional compensation for the overtime work equivalent to his rate for the first eight hours on such holiday work plus at least 30% thereof.

Where the regular holiday work exceeding eight hours falls on the scheduled rest day of the employee, he shall be paid an additional compensation for the overtime work equivalent to his regular holiday-rest day for the first 8 hours plus 30% thereof. The regular holiday rest day rate of an employee shall consist of 200% of his regular daily wage rate plus 30% thereof.

[33] *Rollo*, pp. 38-39.

[34] *Vergara, Jr. v. Coca-Cola Bottlers Philippines, Inc.*, 707 Phil. 255, 261 (2013), citing *University of the East v. University of the East Employees' Association*, 673 Phil. 273, 286 (2011).

[35] *Id.*, citing *Eastern Telecommunications Philippines, Inc. v. Eastern Telecoms Employees Union*, 681 Phil. 519, 535 (2012).

[36] Article 100 of the Labor Code of the Philippines provides:

ARTICLE 100. *Prohibition against Elimination or Diminution of Benefits.* — Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code.

Article 4 of the Labor Code states that "[*a*]*ll doubts in the implementation and interpretation of this Code*, including its implementing rules and regulations, shall be rendered in favor of labor."[37]

There is diminution of benefits "when the following requisites are present: (1) the grant or benefit is founded on a policy or has ripened into a practice over a long period of time; (2) the practice is consistent and deliberate; (3) the practice is not due to error in the construction or application of a doubtful or difficult question of law; and (4) the diminution or discontinuance is done unilaterally by the employer."[38]

In *Vergara, Jr. v. Coca-Cola Bottlers Philippines, Inc.*,[39] the Court ruled that to establish the existence of a regular company practice, the employee must prove by substantial evidence that the giving of the benefit is done over a long period of time and that it has been made consistently and deliberately, *i.e.*, despite the employer's knowledge that the payment of a benefit is not required by any law or agreement. The Court ruled:

> To be considered as a regular company practice **the employee must prove by substantial evidence that the giving of the benefit is done over a long period of time, and that it has been made consistently and deliberately.** Jurisprudence has not laid down any hard-and-fast rule as to the length of time that company practice should have been exercised in order to constitute voluntary employer practice. The common denominator in previously decided cases appears to be the regularity and deliberateness of the grant of benefits over a significant period of time. **It requires an indubitable showing that the employer agreed to continue giving the benefit knowing fully well that the employees are not covered by any provision of the law or agreement requiring payment thereof.** In sum, the benefit must be characterized by regularity, voluntary and deliberate intent of the employer to grant the benefit over a considerable period of time.[40] (Emphasis supplied; citations omitted.)

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[37] *Vergara, Jr. v. Coca-Cola Bottlers Philippines, Inc.*, *supra* note 34 at 262, citing *Arco Metal Products, Co., Inc., et al. v. Samahan ng mga Manggagawa sa Arco Metal-NAFLU (SAMARM-NAFLU)*, 577 Phil. 1, 9 (2008).

[38] *Id.*, citing *Supreme Steel Corp. v. Nagkakaisang Manggagawa ng Supreme Independent Union (NMS-IND-APL)*, 662 Phil. 66, 92 (2011).

[39] *Vergara, Jr. v. Coca-Cola Bottlers Philippines, Inc.*, *supra* note 34.

[40] *Id.* at 262-263.

As to the absence of a hard-and-fast rule on the length of time by which a benefit is considered to have ripened into a company practice, the Court, on different occasions, found the existence of a company practice as to the benefits that have been given for six years,[41] three years and nine months,[42] three years and four months,[43] and as will be discussed below, at least two years.[44]

Here, the Court finds that peitioner's grant of additional holiday pay for *Eidul Adha* to its employees for a period of two years ripened into a company practice. Thus, petitioner can no longer withdraw the grant of such additional holiday pay without violating the principle of non-diminution of benefits.

As pointed out by my esteemed colleague, Associate Justice Marvic M.V.F. Leonen, the Court's ruling in *Sevilla Trading Co. v. Semana*[45] (*Sevilla Trading*) which involved a company practice is instructive in resolving the case.

Thus, in *Sevilla Trading*:

Petitioner company, for two to three years prior to 1999, added to the base figure in its computation of the 13th month pay of its employees, the amount of other benefits received by the employees which are beyond the basic pay. However, in 1999, petitioner company excluded from the computation of the 13th month pay the other benefits which were beyond the basic pay, thereby reducing the 13th month pay of its employees.

Petitioner company explained that it entrusted the preparation of the payroll to its office staff, including the computation and payment of the 13th month pay and other benefits. Thereafter, when it changed the person in charge of the payroll in the process of computerizing its payroll, and after an audit was conducted, it allegedly discovered the error of including non-basic pay or other benefits in the base figure used in the computation of the 13th month pay of its employees.[46] Thus,

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[41] *Sevilla Trading Co. v. Semana*, 472 Phil. 220, 235-236 (2004), citing *Davao Fruits Corp. v. Associated Labor Unions (ALU)*, 296-A Phil. 587 (1993).

[42] *Id.* at 236, citing *Davao Integrated Port Stevedoring Services v. Abarquez*, 292-A Phil. 302 (1993).

[43] *Id.*, citing *Tiangco, et al. v. Hon. Leogardo, Jr., etc., et al.*, 207 Phil. 235 (1983).

[44] *Id.*

[45] *Id.*

[46] *Id.* at 226-227.

petitioner maintained that in adjusting its computation of the 13th month pay, it merely rectified the mistake its personnel committed in the previous years.[47]

However, the Court did not give merit to petitioner company's contention and ruled that a company practice favorable to its employees had been established. The Court explained that it was impossible for petitioner company to discover the error in the payroll only in 1999 or after at least two years considering that petitioner's submission of financial statements every year requires the services of a public accountant. Further, petitioner company failed to adduce evidence to prove its claim of mistake or error.[48] The Court ruled:

> On the contrary, we find the decision of A.V.A. Semana to be sound, valid, and in accord with law and jurisprudence. A.V.A. Semana is correct in holding that petitioner's stance of mistake or error in the computation of the thirteenth month pay is unmeritorious. Petitioner's submission of financial statements every year requires the services of a certified public accountant to audit its finances. It is quite impossible to suggest that they have discovered the alleged error in the payroll only in 1999. This implies that in previous years it does not know its cost of labor and operations. This is merely basic cost accounting. Also, petitioner failed to adduce any other relevant evidence to support its contention. Aside from its bare claim of mistake or error in the computation of the thirteenth month pay, petitioner merely appended to its petition a copy of the 1997-2002 Collective Bargaining Agreement and an alleged "corrected" computation of the thirteenth month pay. There was no explanation whatsoever why its inclusion of non-basic benefits in the base figure in the computation of their 13th-month pay in the prior years was made by mistake, despite the clarity of statute and jurisprudence at that time.[49]

Similar to the Court's ratiocination in *Sevilla Trading*, the Court is not convinced that petitioner merely erred in granting the additional holiday pay for *Eidul Adha* considering that companies such as petitioner have a meticulous financial audit every year. Thus, a yearly audit of petitioner's finances particularly in the years 2010 and 2011 as reflected in its financial statements should have made the purported error evident to petitioner. And yet, petitioner did not immediately rectify the purported error as it took two years for petitioner to stop the grant of the

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[47] *Id.* at 228.
[48] *Id.* at 231-232.
[49] *Id.*

additional holiday pay for *Eidul Adha*. Further, petitioner's allegation that it only discovered the error in the payment of additional holiday pay for *Eidul Adha* is unsubstantiated by any evidence.

The Court finds as immaterial to the case the fact that *Eidul Adha* was not included in the 2012 CBA's list of regular holidays for which petitioner's employees would receive additional holiday pay. The source of the entitlement of petitioner's employees to the subject additional benefit is not the CBA but company practice.

All told, the Court finds that petitioner's payment of additional holiday pay for *Eidul Adha* in favor of its employees has ripened into a company practice which can no longer be withdrawn by petitioner. Thus, petitioner has the obligation to pay its employees additional holiday pay for *Eidul Adha*.

WHEREFORE, the petition is **DENIED**. The Decision dated July 18, 2016 and the Resolution dated November 28, 2016 of the Court of Appeals in CA-G.R. SP No. 138130 are **AFFIRMED**.

SO ORDERED.

HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:

See concurring opinion

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

RAMON PAUL L. HERNANDO
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
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.

MARVIC M.V. F. LEONEN
Associate Justice
Chairperson

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.

ALEXANDER G. GESMUNDO
Chief Justice

THIRD DIVISION

G.R. No. 229396 – NIPPON PAINT PHILIPPINES, INC., *Petitioner*, **v. NIPPON PAINT PHILIPPINES EMPLOYEES ASSOCIATION [NIPPEA],** *Respondent.*

Promulgated:
June 30, 2021
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CONCURRING OPINION

LEONEN, *J.*:

No definite period is prescribed for when the payment of benefits is deemed a company practice. Indeed, it can be as short as two years, so long as this practice is consistent, deliberate, and customary. Once benefits have ripened into company practice, the employer cannot unilaterally withdraw it, consistent with the policy of non-diminution of benefits.

Thus, I concur in the *ponencia*.

The controversy here centers on whether the premium for Eid'l Adha, a regular holiday, should continue to be granted to employees of Nippon Paint Philippines, Inc. (Nippon). The Nippon Paint Philippines Employees Association (NIPPEA) maintains that the employees are so entitled, but Nippon insists that they are not.

The 2007 Collective Bargaining Agreement between Nippon and NIPPEA contained a provision for an additional premium for holidays.[1] Per the agreement, Nippon will pay its employees an additional 100% premium on regular holidays. Employees will receive 200% of their regular daily rate on unworked regular holidays and 300% of their regular daily rate on worked regular holidays.[2] The provision states:

> Article 13. HOLIDAYS, OVERTIME AND NIGHT WORK
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> Section 1. The Company agrees to pay all employees without actually working their respective daily rates on regular holidays every year which is hereunder enumerated as the legal holidays:
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> New Year — January 1
> Maundy Thursday

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1 *Rollo*, pp. 38–39.
2 Id. at 124.

Good Friday	
Araw ng Kagitingan	April 9
Labor Day	May 1
Independence Day	June 12
National Heroes Day	Last Sunday of August
Ramadan Day	
All Saints Days	November 1
Bonifacio Day	November 30
Christmas Day	December 25
Rizal Day	December 30[3]

This has been the company policy for the past 10 years.[4]

In 2009, Republic Act No. 9849 was signed into law, declaring Eid'l Adha as a regular holiday.[5] In 2010 and 2011, Nippon paid its employees the premium of 100% during Eid'l Adha.[6]

In 2012, the Collective Bargaining Agreement was renewed. The provision on additional holiday pay was retained, enumerating the same regular holidays,[7] without including Eid'l Adha. That same year, Nippon stopped paying the premium for Eid'l Adha, claiming that it did not intend to include this holiday in the coverage of the agreement. Its inclusion was allegedly a result of a glitch in the payroll system.[8]

On the other hand, NIPPEA claimed that the employees already had a vested right over the holiday premium for Eid'l Adha because it has ripened into a company practice. Thus, Nippon could no longer unilaterally withdraw its payment.[9]

The Voluntary Arbitrator ruled in favor of Nippon and held that the employees have no vested right over the premium for Eid'l Adha because it had merely been given due to a system error.[10]

The Court of Appeals reversed this ruling, holding that the grant of holiday premium for Eid'l Adha was a voluntary practice on the part of Nippon, which had known that this supplement is not covered by law or by the Collective Bargaining Agreement.[11] It also ruled that Eid'l Adha was deemed incorporated in the agreement by force of law, and since there is doubt as to its terms and application, it should be resolved in favor of labor.[12]

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3 Id.
4 Id. at 39.
5 Id.
6 Id.
7 Id. at 146.
8 Id. at 39–40.
9 Id. at 40.
10 Id.
11 Id. at 42.
12 Id. at 42–43.

Before this Court, petitioner Nippon reiterates that the payments of additional premium for Eid'l Adha in 2010 and 2011 resulted from a glitch in the payroll system.[13] It points out that Eid'l Adha's exclusion from the subsequent 2012 Collective Bargaining Agreement shows the parties' lack of intent to apply the additional premium to Eid'l Adha.[14] Thus, it says that the payments made in 2010 and 2011 "were never voluntary and intentional."[15] Petitioner adds that two years cannot be deemed a long period of time for the practice to be considered as company practice.[16]

Petitioner adds that the Collective Bargaining Agreement is clear that the holiday premium will only be paid for the holidays listed in it, leaving no room for interpretation.[17]

I reject petitioner's submissions.

The characterization of the payment for holiday premiums must primarily rest on basic constitutional and labor principles. The resolution of any labor case must always be consistent with our constitutional policy of promoting the laborers' welfare.

The 1987 Constitution mandates the protection of workers' rights and the promotion of their welfare, having recognized "labor as a primary social economic force."[18] The Labor Code echoes this basic policy and details the rights of workers and the conditions of employment.[19] Moreover, Article 4 of the Labor Code provides that "all doubts in [its] implementation and interpretation . . . shall be rendered in favor of labor."

The Labor Code regulates the employee's wage. It mandates the additional compensation for night-shift differential,[20] overtime work,[21] rest day, Sunday, or holiday work[22] of an employee, among others. These are forms of compensation expressly granted by law and must be provided by the employers.

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13 Id. at 16–17.
14 Id. at 17.
15 Id. at 21.
16 Id. at 20.
17 Id. at 23.
18 CONST., art. II, sec. 18 provides:
Section 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.
19 LABOR CODE, art. 3 provides:
Article 3. Declaration of Basic Policy. — The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.
20 LABOR CODE, art. 86.
21 LABOR CODE, art. 87 and 89.
22 LABOR CODE, art. 93 and 94.

Aside from these basic wages, employees have a vested right over benefits and supplements voluntarily and customarily given by their employers.[23] While these benefits and supplements are not provided by law, they "cannot be reduced, diminished, discontinued or eliminated by the employer."[24] Article 100 of the Labor Code provides:

> ARTICLE 100. Prohibition against Elimination or Diminution of Benefits. — Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code.

The principle of non-diminution of benefits under this provision is anchored on the constitutional policy of protecting workers' rights, promoting their welfare, and affording full protection to labor.[25]

There is a diminution of benefits when: "(1) the grant or benefit is founded on a policy or has ripened into a practice over a long period of time; (2) the practice is consistent and deliberate; (3) the practice is not due to error in the construction or application of a doubtful or difficult question of law; and (4) the diminution or discontinuance is done unilaterally by the employer."[26]

To be regarded as company practice, the benefits and supplements must have been consistently, deliberately, and customarily given to the employees; that is, over a considerable period of time.[27] There must be an "indubitable showing that the employer agreed to continue giving the benefit knowing fully well that the employees are not covered by any provision of the law or agreement requiring payment thereof."[28] In *University of the East v. University of the East Employees Association*,[29] this Court expounded:

> Generally, employees have a vested right over existing benefits voluntarily granted to them by their employer, thus, said benefits cannot be reduced, diminished, discontinued or eliminated by the latter. This principle against diminution of benefits, however, is applicable only if the grant or benefit is founded on an express policy or has ripened into a practice over a long period of time which is consistent and deliberate. It does not contemplate the continuous grant of unauthorized or irregular compensation but it presupposes that a company practice, policy and tradition favourable to the employees has been clearly established; and that the payments made

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23 *See Netlink Computer Inc., v. Delmo*, 736 Phil. 487 (2014) [Per J. Bersamin, First Division].

24 *Arco Metal Products, Co., Inc. v. Samahan ng mga Manggagawa sa Arco Metal-NAFLU*, 577 Phil. 1 (2008) [Per J. Tinga, Second Division].

25 Id. at 8.

26 *Vergara, Jr. v. Coca-Cola Bottlers Philippines, Inc.*, 707 Phil. 255, 262 (2013) [Per J. Peralta, Third Division].

27 Id.

28 Id. at 263.

29 673 Phil. 273 (2011) [Per J. Mendoza, Third Division].

> by the company pursuant to it have ripened into benefits enjoyed by them.[30] (Citations omitted)

Jurisprudence has not laid down a definite length of time for a benefit to be deemed customary. In *Vergara, Jr. v. Coca-Cola Bottlers Philippines, Inc.*:[31]

> Jurisprudence has not laid down any hard-and-fast rule as to the length of time that company practice should have been exercised in order to constitute voluntary employer practice. The common denominator in previously decided cases appears to be the regularity and deliberateness of the grant of benefits over a significant period of time. It requires an indubitable showing that the employer agreed to continue giving the benefit knowing fully well that the employees are not covered by any provision of the law or agreement requiring payment thereof. In sum, the benefit must be characterized by regularity, voluntary and deliberate intent of the employer to grant the benefit over a considerable period of time.[32] (Citations omitted)

Jurisprudence illustrates what is deemed a considerable period of time for the benefit to be customary.

In *Davao Fruits Corporation v. Associated Labor Unions*,[33] the employer's inclusion of monetized sick, vacation, and maternity leave pay, and holiday work premiums in the computation of the 13th month pay which lasted for six years was deemed a company practice. This Court held that the considerable length of time signified a unilateral and voluntary act on the employer's part.

Similarly, in *Tiangco v. Leogardo, Jr.*,[34] this Court ruled that the employees' fixed monthly emergency allowance which had been granted for three years and three months could no longer be withdrawn. While the grant of allowance was only a matter of practice and based on a verbal agreement between the employer and the employees, it has ripened into a company practice which cannot be unilaterally discontinued.

Sevilla Trading Company v. Semana[35] involves a company practice which spanned a shorter period of time. There, Sevilla Trading included non-basic benefits such as unused sick and vacation leaves in the computation of its employees' 13th month pay. However, after two years, Sevilla Trading excluded the non-basic benefits in the computation, claiming that the inclusion of these benefits was an error of the person in charge of the payroll.

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30 Id. at 286.
31 707 Phil. 255 (2013) [Per J. Peralta, Third Division].
32 Id. at 262–263.
33 296-A Phil. 587 (1993) [Per J. Quiason, First Division].
34 207 Phil. 235 (1983) [Per J. Concepcion, Jr., Second Division].
35 472 Phil. 220 (2004) [Per J. Puno, Second Division].

It reasoned that the adjustment in the computation of the 13th month pay was only a correction of the mistake of its personnel.[36]

In ruling for the employees, this Court found that the inclusion of non-basic pay in its computation has ripened into a customary benefit which the employer cannot unilaterally withdraw without violating the principle of non-diminution of benefits. Rejecting Sevilla Trading's argument, this Court held that it is impossible that a company will only discover the error after two years when they audit their finance and submit financial statements yearly. Moreover, Sevilla Trading's claim is not supported by any other relevant evidence. This Court remarked that placing the blame on the personnel is simply inexcusable.[37]

Terse and clear, jurisprudence holds that as long as there is a recurrence of the giving of benefit, the payment is deemed customary. The period can be six years, three years, or as short as two years.

Here, petitioner mainly contends that the grant of the additional holiday pay for Eid'l Adha was not consistent, deliberate, and customary. It insists that the period within which the holiday premium was granted was too short to be deemed customary.

Petitioner's contention is untenable. The grant of holiday premium for Eid'l Adha is a company practice that could no longer be unilaterally withdrawn by petitioner.

The holiday premium is founded on the Collective Bargaining Agreement, which mandates the payment of 200% of their regular daily rate as premium on unworked regular holidays and 300% of their regular daily rate on worked regular holidays.[38] This has been the company policy for the past 10 years.[39] Thus, there is reason to believe that the grant of holiday premium for Eid'l Adha is consistent, deliberate, and customary.

Petitioner says that the inclusion of Eid'l Adha in the payment of holiday premium was inadvertent, a mere error in the payroll system. However, without substantial evidence to support its claim, this bare excuse should not be given credence.

As in *Sevilla Trading Company*, mere claims of payroll system errors are not convincing especially when companies such as petitioner conduct a meticulous financial audit every year. If there really were no intent to grant

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36 Id. at 226–227.
37 Id. at 235–236.
38 *Rollo*, p. 124.
39 Id. at 39.

the holiday premium for Eid'l Adha, it is uncertain why petitioner did not immediately withdraw the payment when this amount was readily reflected in its 2010 and 2011 financial statements. Petitioner failed to explain with substantial proof how the alleged error slipped past it for two years.

In the meantime, the employees enjoyed two years of holiday premium for Eid'l Adha. As found in jurisprudence, the period of two years suffices for a grant of benefits to be deemed company practice.[40] The length of time is highly subjective and the decisive factor is whether the employer agreed to continue giving benefits despite knowing that it is not bound by law to grant it. For two years, petitioner granted the holiday premium for Eid'l Adha even if it is not explicitly included in the Collective Bargaining Agreement's list of holidays. Thus, a company practice favorable to the employees had been established, and petitioner could not unilaterally withdraw it.

Petitioner heavily relies on the 2012 Collective Bargaining Agreement which does not include Eid'l Adha in its list of holidays. However, the exclusion of Eid'l Adha from this agreement is immaterial because the employees' vested right over the premium is anchored on company practice, not the agreement. Even without the 2012 Collective Bargaining Agreement, the practice of paying premium for Eid'l Adha has already become customary.

Petitioner cannot shirk its obligation to pay the holiday premium for Eid'l Adha. As a company practice, the employees must receive it. I concur in the *ponencia*.

ACCORDINGLY, I vote to **DENY** the Petition.

MARVIC M.V.F. LEONEN
Associate Justice

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[40] *Sevilla Trading Co. v. Semana*, 472 Phil. 220 (2004) [Per J. Puno, Second Division].