

## THIRD DIVISION

[ G.R. No. 181972, August 25, 2009 ]

**PHILIPPINE HOTELIERS, INC., DUSIT HOTEL NIKKO-MANILA,  
PETITIONER, VS. NATIONAL UNION OF WORKERS IN HOTEL,  
RESTAURANT, AND ALLIED INDUSTRIES (NUWHRAIN-APL-IUF)-  
DUSIT HOTEL NIKKO CHAPTER, RESPONDENTS.**

### DECISION

**CHICO-NAZARIO, J.:**

Before this Court is a Petition for Review on *Certiorari*, under Rule 45 of the Rules of Court, assailing the Decision<sup>[1]</sup> dated 10 September 2007 of the Court of Appeals in CA-G.R. SP No. 92798 granting the P30.00-per-day Emergency Cost of Living Allowance (ECOLA), under Wage Order (WO) No. NCR-09 (WO No. 9), to 144 employees of petitioner Dusit Hotel Nikko (Dusit Hotel)<sup>[2]</sup> and imposing upon the latter the penalty of double indemnity under Republic Act No. 6727, as amended by Republic Act No. 8188. Likewise assailed herein is the Resolution<sup>[3]</sup> dated 4 March 2008 of the appellate court in the same case denying the Motion for Reconsideration of Dusit Hotel.

The antecedent facts of the case are as follows:

WO No. 9, approved by the Regional Tripartite Wages and Productivity Board (RTWPB) of the National Capital Region (NCR), took effect on 5 November 2001. It grants P30.00 ECOLA to particular employees and workers of all private sectors, identified as follows in Section 1 thereof:

Section 1. Upon the effectivity of this Wage Order, all private sector workers and employees in the National Capital Region receiving daily wage rates of TWO HUNDRED FIFTY PESOS (P250.00) up to TWO HUNDRED NINETY PESOS (P290.00) shall receive an emergency cost of living allowance in the amount of THIRTY PESOS (P30.00) per day payable in two tranches as follows:

Amount of ECOLA	Effectivity
P15.00	5 November 2001
P15.00	1 February 2002

On 20 March 2002, respondent National Union of Workers in Hotel, Restaurant and Allied Industries-Dusit Hotel Nikko Chapter (Union), through its President, Reynaldo C. Rasing (Rasing), sent a letter<sup>[4]</sup> to Director Alex Maraan (Dir. Maraan) of the Department of Labor and Employment-National Capital Region (DOLE-NCR), reporting the non-compliance of Dusit Hotel with WO No. 9, while there was an on-

going compulsory arbitration before the National Labor Relations Commission (NLRC) due to a bargaining deadlock between the Union and Dusit Hotel; and requesting immediate assistance on this matter. On 24 May 2002, Rasing sent Dir. Maraan another letter following-up his previous request for assistance.

Acting on Rasing's letters, the DOLE-NCR sent Labor Standards Officer Estrellita Natividad (LSO Natividad) to conduct an inspection of Dusit Hotel premises on 24 April 2002. LSO Natividad's Inspection Results Report<sup>[5]</sup> dated 2 May 2002 stated:

Based on interviews/affidavits of employees, they are receiving more than P290.00 average daily rate which is exempted in the compliance of Wage Order NCR-09;

**Remarks:** There is an ongoing negotiation under Case # NCMB-NCR-NS-12-369-01 & NCMB-NCR-NS-01-019-02 now forwarded to the NLRC office for the compulsory arbitration.

**NOTE:** Payrolls to follow later upon request including position paper of [Dusit Hotel].

By virtue of Rasing's request<sup>[6]</sup> for another inspection, LSO Natividad conducted a second inspection of Dusit Hotel premises on 29 May 2002. In her Inspection Results Report<sup>[7]</sup> dated 29 May 2002, LSO Natividad noted:

\*Non-presentation of records/payrolls

\*Based on submitted payrolls & list of union members by NUWHRAIN-DUSIT HOTEL NIKKO Chapter, there are one hundred forty-four (144) affected in the implementation of Wage Order No. NCR-09-> ECOLA covering the periods from Nov.5/01 to present.

Accordingly, the DOLE-NCR issued a Notice of Inspection Result directing Dusit Hotel to effect restitution and/or correction of the noted violations within five days from receipt of the Notice, and to submit any question on the findings of the labor inspector within the same period, otherwise, an order of compliance would be issued. The Notice of Inspection Result was duly received by Dusit Hotel Assistant Personnel Manager Rogelio Santos.<sup>[8]</sup>

In the meantime, the NLRC rendered a Decision<sup>[9]</sup> dated 9 October 2002 in NLRC-NCR-CC No. 000215-02 - the compulsory arbitration involving the Collective Bargaining Agreement (CBA) deadlock between Dusit Hotel and the Union - granting the hotel employees the following wage increases, in accord with the CBA:

Effective January 1, 2001- P500.00/month

Effective January 1, 2002- P550.00/month

Effective January 1, 2003- P600.00/month

On 22 October 2002, based on the results of the second inspection of Dusit Hotel premises, DOLE-NCR, through Dir. Maraan, issued the Order<sup>[10]</sup> directing Dusit Hotel to pay 144 of its employees the total amount of P1,218,240.00, corresponding to their unpaid ECOLA under WO No. 9; plus, the penalty of double indemnity, pursuant to Section 12 of Republic Act No. 6727,<sup>[11]</sup> as amended by Republic Act No. 8188,<sup>[12]</sup> which provides:

Sec. 12. Any person, corporation, trust, firm, partnership, association or entity which refuses or fails to pay any of the prescribed increases or adjustments in wage rates made in accordance with this Act shall be punished by a fine not less than Twenty-five thousand pesos (P25,000) nor more than One hundred thousand pesos (P100,000) or imprisonment of not less than two (2) years nor more than four (4) years or both such find and imprisonment at the discretion of the court: Provided, That any person convicted under this Act shall not be entitled to the benefits provided for under the Probation Law.

**The employer concerned shall be ordered to pay an amount equivalent to double the unpaid benefits owing to the employees: Provided, That payment of indemnity shall not absolve the employer from the criminal liability under this Act.**

If the violation is committed by a corporation, trust or firm, partnership, association or any other entity, the penalty of imprisonment shall be imposed upon the entity's responsible officers including but not limited to the president, vice president, chief executive officer, general manager, managing director or partner. (Emphasis ours.)

Dusit Hotel filed a Motion for Reconsideration<sup>[13]</sup> of the DOLE-NCR Order dated 22 October 2002, arguing that the NLRC Decision dated 9 October 2002, resolving the bargaining deadlock between Dusit Hotel and the Union, and awarding salary increases under the CBA to hotel employees retroactive to 1 January 2001, already rendered the DOLE-NCR Order moot and academic. With the increase in the salaries of the hotel employees ordered by the NLRC Decision of 9 October 2002, along with the hotel employees' share in the service charges, the 144 hotel employees, covered by the DOLE-NCR Order of 22 October 2002, would already be receiving salaries beyond the coverage of WO No. 9.

Acting on the Motion for Reconsideration of Dusit Hotel, DOLE-NCR issued a Resolution<sup>[14]</sup> on 27 December 2002, setting aside its earlier Order dated 22 October 2002 for being moot and academic, in consideration of the NLRC Decision dated 9 October 2002; and dismissing the complaint of the Union against Dusit Hotel, for non-compliance with WO No. 9, for lack of merit.

The Union appealed<sup>[15]</sup> the 27 December 2002 Resolution before the DOLE

Secretary maintaining that the wage increases granted by the NLRC Decision of 9 October 2002 should not be deemed as compliance by Dusit Hotel with WO No. 9.

The DOLE, through Acting Secretary Manuel G. Imson, issued an Order<sup>[16]</sup> dated 22 July 2004 granting the appeal of the Union. The DOLE Secretary reasoned that the NLRC Decision dated 9 October 2002 categorically declared that the wage increase under the CBA finalized between Dusit Hotel and the Union shall not be credited as compliance with WOs No. 8 and No. 9. Furthermore, Section 1 of Rule IV of the Rules Implementing WO No. 9, which provides that wage increases granted by an employer in an organized establishment within three months prior to the effectivity of said Wage Order shall be credited as compliance with the ECOLA prescribed therein, applies only when an agreement to this effect has been forged between the parties or a provision in the CBA allowing such crediting exists. Hence, the DOLE Secretary held:

WHEREFORE, premises considered, the appeal is hereby GRANTED. The Resolution dated December 27, 2002 issued by the Regional Director is SET ASIDE and his Order dated October 22, 2002 is hereby REINSTATED. Dusit Hotel Nikko Manila is hereby ordered to pay its One Hundred Forty Four (144) employees the aggregate amount of One Million Two Hundred Eighteen Thousand Two Hundred Forty Pesos (Php1,218,240.00) representing their Emergency Cost Of Living Allowance (ECOLA) under Wage Order No. NCR-09 and the penalty of double indemnity under Republic Act. No. 8188, as amended.<sup>[17]</sup>

Expectedly, Dusit Hotel sought reconsideration<sup>[18]</sup> of the 22 July 2004 Order of the DOLE Secretary. In an Order<sup>[19]</sup> dated 16 December 2004, the DOLE Secretary granted the Motion for Reconsideration of Dusit Hotel and reversed his Order dated 22 July 2004. The DOLE Secretary, in reversing his earlier Order, admitted that he had disregarded therein that the wage increase granted by the NLRC in the latter's Decision dated 9 October 2002 retroacted to 1 January 2001. The said wage increase, taken together with the hotel employees' share in the service charges of Dusit Hotel, already constituted compliance with the WO No. 9. According to the DOLE Secretary:

To stress, the overriding consideration of Wage Order NCR-09 is quite simple, to provide workers with immediate relief through the grant of Emergency Cost of Living Allowance to enable them to cope with the increases in the cost of living. Conformably with the evident intent of the subject Wage Order as expressed in its preamble, this Office finds that the substantial share in the service charge being received by the employees of appellee (Dusit Hotel) more than compensates for the Emergency Cost of Living Allowance of P30.00 given under Wage Order NCR-09.<sup>[20]</sup>

It was then the turn of the Union to file a Motion for Reconsideration,<sup>[21]</sup> but it was denied by the DOLE Secretary in an Order<sup>[22]</sup> dated 13 October 2005. The DOLE Secretary found that it would be unjust on the part of Dusit Hotel if the hotel

employees were to enjoy salary increases retroactive to 1 January 2001, pursuant to the NLRC Decision dated 9 October 2002, and yet said salary increases would be disregarded in determining compliance by the hotel with WO No. 9.

The Union appealed the Orders dated 16 December 2004 and 13 October 2005 of the DOLE Secretary with the Court of Appeals *via* a Petition for Review<sup>[23]</sup> under Rule 43 of the Rules of Court. On 10 September 2007, the Court of Appeals promulgated its Decision<sup>[24]</sup> ruling in favor of the Union. Referring to Section 13 of WO No. 9, the Court of Appeals declared that wage increases/allowances granted by the employer shall not be credited as compliance with the prescribed increase in the same Wage Order, unless so provided in the law or the CBA itself; and there was no such provision in the case at bar. The appellate court also found that Dusit Hotel failed to substantiate its position that receipt by its employees of shares in the service charges collected by the hotel was to be deemed substantial compliance by said hotel with the payment of ECOLA required by WO No. 9. The Court of Appeals adjudged that Dusit Hotel should be liable for double indemnity for its failure to comply with WO No. 9 within five days from receipt of notice. The appellate court stressed that ECOLA is among the laborers' financial gratifications under the law, and is distinct and separate from benefits derived from negotiation or agreement with their employer. In the end, the Court of Appeals disposed:

WHEREFORE, finding the existence of grave abuse of discretion in the issuance of the assailed Orders dated December 16, 2004 and October 13, 2005, the same are hereby REVERSED AND SET ASIDE and the Order dated July 22, 2004 of the respondent DOLE Acting Secretary in OS-LS-0630-2003-0105 is REINSTATED.<sup>[25]</sup>

The Motion for Reconsideration<sup>[26]</sup> of Dusit Hotel was denied for lack of merit by the Court of Appeals in its Resolution<sup>[27]</sup> dated 4 March 2008.

Hence, Dusit Hotel sought recourse from this Court by filing the instant Petition,<sup>[28]</sup> at the crux of which is the sole issue of whether the 144 hotel employees were still entitled to ECOLA granted by WO No. 9 despite the increases in their salaries, retroactive to 1 January 2001, ordered by NLRC in the latter's Decision dated 9 October 2002.

Section 1 of WO No. 9 very plainly stated that only private sector workers and employees in the NCR receiving **daily wage rates of P250.00 to P290.00** shall be entitled to ECOLA. Necessarily, private sector workers and employees receiving daily wages of more than P290.00 were no longer entitled to ECOLA. The ECOLA was to be implemented in two tranches: P15.00/day beginning 5 November 2001; and the full amount of P30.00/day beginning 1 February 2002.

WO No. 9 took effect on **5 November 2001**. The Decision rendered by the NLRC on **9 October 2002** ordered Dusit Hotel to grant its employees salary increases **retroactive to 1 January 2001 and 1 January 2002**. In determining which of its employees were entitled to ECOLA, Dusit Hotel used as bases the daily salaries of its employees, **inclusive** of the retroactive salary increases. The Union protested and insisted that the bases for the determination of entitlement to ECOLA should be the