

SECOND DIVISION

[G.R. No. 155034, May 22, 2008]

**VIRGILIO SAPIO, PETITIONER, VS. UNDALOC CONSTRUCTION
AND/OR ENGR. CIRILO UNDALOC, RESPONDENTS.**

D E C I S I O N

TINGA, J.:

Assailed in this Petition for Review^[1] is the Decision^[2] of the Court of Appeals^[3] in CA-G.R. SP No. 66449 deleting the award of salary differential and attorney's fees to petitioner Virgilio Sapiro, as well as the Resolution^[4] denying his motion for reconsideration.

The controversy started with a complaint filed by petitioner against Undaloc Construction and/or Engineer Cirilo Undaloc for illegal dismissal, underpayment of wages and nonpayment of statutory benefits. Respondent Undaloc Construction, a single proprietorship owned by Cirilo Undaloc, is engaged in road construction business in Cebu City.

Petitioner had been employed as watchman from 1 May 1995 to 30 May 1998 when he was terminated on the ground that the project he was assigned to was already finished, he being allegedly a project employee. Petitioner asserted he was a regular employee having been engaged to perform works which are "usually necessary or desirable" in respondents' business. He claimed that from 1 May to 31 August 1995 and from 1 September to 31 December 1995, his daily wage rate was only P80.00 and P90.00, respectively, instead of P121.87 as mandated by Wage Order No. ROVII-03. From 1 March 1996 to 30 May 1998, his daily rate was P105.00. He further alleged that he was made to sign two payroll sheets, the first bearing the actual amount he received wherein his signature was affixed to the last column opposite his name, and the second containing only his name and signature. To buttress this allegation, petitioner presented the payroll sheet covering the period from 4 to 10 December 1995 in which the entries were written in pencil. He also averred that his salary from 18 to 30 May 1998 was withheld by respondents.^[5]

For its part, respondent Cirilo Undaloc maintained that petitioner was hired as a project employee on 1 May 1995 and was assigned as watchman from one project to another until the termination of the project on 30 May 1998.^[6] Refuting the claim of underpayment, respondent presented the payroll sheets from 2 September to 8 December 1996, 26 May to 15 June 1997, and 12 January to 31 May 1998.^[7]

On 12 July 1999, the Labor Arbiter^[8] rendered a decision the dispositive portion of which reads:

WHEREFORE, in the [sic] light of the foregoing, judgment is rendered finding complainant to be a project employee and his termination was for an authorized cause. However, respondent is found liable to pay complainant's salary of P2,648.45 and 13th month pay of P2,489.00. Respondent is also found liable to pay complainant's salary differential in the amount of P24,902.88. Attorney's fee of P3,000.00 is also awarded.

All other claims are dismissed for lack of merit.^[9]

Respondents appealed the award of salary differential to the National Labor Relations Commission (NLRC). In a Decision^[10] dated 28 August 2000, the NLRC sustained the findings of the Labor Arbiter.

Respondents elevated the case to the Court of Appeals which deleted the award of salary differential and attorney's fees.

Thus, this petition for review.

Petitioner raises two grounds, one procedural and the other substantive. On the procedural aspect, petitioner contends that the appellate court erred in failing to dismiss respondent's petition for certiorari brought before it on the ground that respondents failed to attach certified true copies of the NLRC's decision and resolution denying the motion for reconsideration.^[11]

In his Comment on the Petition for Certiorari with Prayer for Temporary Restraining and/or Preliminary Injunction^[12] filed with the Court of Appeals on 22 November 2001, petitioner did not raise this procedural issue. Neither did he do so when he moved for reconsideration of the 8 May 2002 Decision of the Court of Appeals. It is only now before this Court that petitioner proffered the same. This belated submission spells doom for petitioner. More fundamentally, an examination of the Court of Appeals *rollo* belies petitioner as it confirms that the alleged missing documents were in fact attached to the petition. ^[13]

That petitioner was a project employee became a non-issue beginning with the decision of the Labor Arbiter. Contested still is his entitlement to salary differential, apart from attorney's fees.

Petitioner avers that he was paid a daily salary way below the minimum wage provided for by law.^[14] His claim of salary differential represents the difference between the daily wage he actually received and the statutory minimum wage, which he presented as follows:

	Actual Daily Wage Received (for 8 hours worked)	Minimum Daily Wage Provided by Law (for 8 hours worked)
5-1-95 to 8-31-95 Place of Assignment:	P80.00 plus 3 hrs. OT M.J. Cuenco-Imus Road Link	P121.87
9-1-95 to 12-31-95 Place of Assignment:	P90.00 plus 3 hrs. OT	P121.87

1-1-96 to 2-28-96 Place of Assignment:	P90.00 plus 3 hrs. OT	P131.00
3-1-96 to 6-30-96 Place of Assignment:	P105.00 plus 3 hrs. OT	P131.00
7-1-96 to 9-30-96 Place of Assignment:	P105.00 plus 3 hrs. OT	P136.00
10-1-96 to 3-14-97 Place of Assignment:	P105.00 plus 3 hrs. OT	P141.00
3-15-97 to 6-30-97 Place of Assignment:	P105.00 plus 3 hrs. OT	P141.00
7-1-97 to 9-30-97 Place of Assignment:	P105.00 plus 3 hrs. OT	P150.00
10-1-97 to 3-31-98 Place of Assignment:	P105.00 plus 3 hrs. OT	P150.00
4-1-98 to 5-17-98 Place of Assignment:	P105.00 plus 3 hrs. OT	P155.00
5-18-98 to 5-30-98 Place of Assignment:	P105.00 plus 3 hrs. OT	P160.00

To counter petitioner's assertions, respondents submitted typewritten and signed payroll sheets from 2 September to 8 December 1996, from 26 May to 15 June 1997, and from 12 January to 31 May 1998.^[15] These payroll sheets clearly indicate that petitioner did receive a daily salary of P141.00.

In turn, petitioner presented the December 1995 payroll sheet written in pencil^[16] in tandem with the assertion that he, together with his co-employees, was required to sign two sets of payroll sheets in different colors: white, which bears the actual amount he received with his signature affixed in the last column opposite his name, and yellow, where only his name appears thereon with his signature also affixed in the last column opposite his name.^[17] In the December 1995 payroll sheet, petitioner appears to have received P90.00 only as his daily salary but he did not sign the same.

Banking on the fact that the December 1995 payroll sheet was written in pencil, the Labor Arbiter concluded that the entries were susceptible to change or erasure and that that susceptibility in turn rendered the other payroll sheets though typewritten less credible. Thus:

x x x Complainant's allegation that he was made to sign two (2) payrolls, the first page bears the actual amount he received when he affixed his signature in the last column and the original with entries written in pencil is admitted by the respondent that it did so. When respondent had his payrolls prepared in pencil, the tendency is that the entries therein will be erased and changed them so that it would appear that the salaries of the workers are in conformity with the law.

The explanation given by the respondent through the affidavit of Jessica Labang that the payrolls were first written in pencil because of the numerous employees to be paid each Saturday, is not acceptable. The efforts done in preparing the payroll in pencil is practically the same if it was done in ballpen or through typewriters. Obviously, the purpose is to

circumvent the law. When payrolls are prepared in pencil, it is so easy for the employer to alter the amounts actually paid to the workers and make it appear that the amounts paid to the workers are in accord with law. The probative value of the payrolls submitted by the respondent becomes questionable, thus, cannot be given weight. It is most likely that the entries in the payrolls are no longer the same entries when complainant signed them. Complainant is therefore entitled to salary differential as complainant's salary was only P105.00. x x x^[18]

Thereupon, the Labor Arbiter proceeded to grant petitioner's salary differential to the tune of P24,902.88.

The Court of Appeals did not subscribe to the common findings of the Labor Arbiter and the NLRC. The appellate court pointed out that allegations of fraud in the preparation of payroll sheets must be substantiated by evidence and not by mere suspicions or conjectures, *viz*:

As a general rule, factual findings and conclusions drawn by the National Labor Relations Commission are accorded great weight and respect upon appeal, even finality, as long as they are supported by substantial evidence. Substantial evidence is more than a mere scintilla. It means such relevant evidence that a reasonable mind would accept as sufficient to support a conclusion. A suspicion or belief no matter how sincerely felt cannot be a substitute for factual findings carefully established through an orderly procedure.

The Labor Arbiter merely surmised and presumed that petitioners had the tendency to alter the entries in the payroll. Albeit the petitioner admitted that the payrolls were initially made in pencil, the same does not, and must not be presumed as groundwork for alteration. We find nothing in the proceedings, as well as in the pleadings submitted, to sustain the Labor Arbiter's findings of the alleged "tendency" to alter the entries.

It is elementary in this jurisdiction that whoever alleges fraud or mistake affecting a transaction must substantiate his allegation, since it is presumed that a person takes ordinary care of his concerns and private transactions have been fair and regular. Persons are presumed to have taken care of their business.

Absent any indication sufficient enough to support a conclusion, we cannot uphold the findings of the Labor Arbiter and the NLRC.^[19]

The conclusion of the Labor Arbiter that entries in the December 1995 payroll sheet could have been altered is utterly baseless. The claim that the December 1995 payroll sheet was written in pencil and was thus rendered it prone to alterations or erasures is clearly *non sequitur*. The same is true with respect to the typewritten payroll sheets. In fact, neither the Labor Arbiter nor the NLRC found any alteration or erasure or traces thereat, whether on the pencil-written or typewritten payroll sheets. Indeed, the most minute examination will not reveal any tampering. Furthermore, if there is any adverse conclusion as regards the December 1995 payroll sheet, it must be confined only to it and cannot be applied to the typewritten