

THIRD DIVISION

[G.R. NO. 160233, August 08, 2007]

ROGELIO REYES, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, FIFTH DIVISION, AND UNIVERSAL ROBINA CORPORATION GROCERY DIVISION, RESPONDENTS.

DECISION

YNARES-SANTIAGO, J.:

This petition for review on *certiorari* under Rule 45 of the Rules of Court seeks to reverse the November 14, 2002 Decision^[1] of the Court of Appeals in CA-G.R. SP No. 64799, affirming the Decision of the National Labor Relations Commission (NLRC) which modified the Decision of the Labor Arbiter as regards the awards of retirement pay and 13th month pay, and deleted the award of attorney's fees; as well as the August 19, 2003 Resolution^[2] denying the motion for reconsideration.

Petitioner was employed as a salesman at private respondent's Grocery Division in Davao City on August 12, 1977. He was eventually appointed as unit manager of Sales Department-South Mindanao District, a position he held until his retirement on November 30, 1997.^[3] Thereafter, he received a letter regarding the computation of his separation pay, to wit:

September 10, 1998

MR. ROGELIO J. REYES
#2 San Nicolas Street
Skyline Village, Catalunan Grande
Davao City 8000

Dear Mr. Reyes,

This is in reply to your letter dated August 10, 1998, a copy of which was received by the undersigned only on September 2, 1998.

We wish to advise you that per our computation, your separation pay amounts to:

Retirement benefit (computed at 50% pay for every year of service, a fraction of at least 6 months considered as 1 year)	Php 109,192.20
VL Cash Conversion (144 hours)	7,511.31
SL Cash Conversion (120 hours)	3,129.72
Financial Assistance (as approved by LY Gokongwei in Memo dated	30,000.00

November 4, 1997)	
Final Accountability/Accounting	
Tax Refund 16,699.35	
13 th Month Pay 10,919.22	
Withheld Commission	
November 1997 30,000.00	
Salary Overpaid (834.59)	
Lost Pager (6,295.00)	50,488.98
TOTAL	Php 200,322.21

This computation is pursuant to Company policy and practice. We are unable to agree with your suggested basis of computation as they are without legal basis. Also, we regret that we cannot pay you the Sales Commission and Tax Refund ahead of the other payments.

Kindly get in touch with us at 671-7098 if you have any questions.

Very truly yours,

(SGD) ATTY. MANUEL R. DEL ROSARIO
Group Human Resources Director

cc: Mr. Lance Gokongwei
Atty. Danny Bolos
Mr. Al Bacleon^[4]

Insisting that his retirement benefits and 13th month pay must be based on the average monthly salary of P42,766.19, which consists of P10,919.22 basic salary and P31,846.97 average monthly commission, petitioner refused to accept the check^[5] issued by private respondent in the amount of P200,322.21.^[6] Instead, he filed a complaint before the arbitration branch of the NLRC for retirement benefits, 13th month pay, tax refund, earned sick and vacation leaves, financial assistance, service incentive leave pay, damages and attorney's fees.^[7]

On March 15, 1999, Labor Arbiter Miriam A. Libron-Barroso rendered a decision holding that sales commission is part of the basic salary of a unit manager, thus:

WHEREFORE, JUDGMENT IS HEREBY RENDERED ordering respondent Universal Robina Corporation-Grocery Division to pay complainant the net amount of PESOS: NINE HUNDRED ELEVEN THOUSAND SIX HUNDRED NINETY NINE AND 92/100 (P911,699.92) representing his retirement benefits, 13th month pay for 1997, 13th month pay differential for 1996 and 1995, VL and SL Cash conversion, withheld commission for 1997, financial assistance and tax refund plus attorney's fees equivalent to 5% of the total award.

All other claims are dismissed for lack of basis.

SO ORDERED.^[8]

On appeal, the NLRC modified the decision of the Labor Arbiter by excluding the overriding commission in the computation of the retirement benefits and 13th month pay and deleted the award of attorney's fees, thus:

WHEREFORE, judgment is rendered:

1. Affirming with modification the decision appealed from insofar as the award of retirement pay and 13th month pay to the effect that same be computed based on the P10,919.22 basic salary to the exclusion of the overriding commissions of complainant.
2. Affirming in toto the award of VL cash conversion, SL cash conversion, tax refund, withheld commission and financial assistance.
3. Deleting the award of attorney's fees for lack of merit.

SO ORDERED.^[9]

Both parties moved for reconsideration of the NLRC decision but were denied by the NLRC for lack of merit. Only petitioner filed a petition for *certiorari* before the Court of Appeals but was dismissed for lack of merit.

Petitioner's motion for reconsideration was denied; hence this petition raising the sole issue:

WHETHER OR NOT THE AVERAGE MONTHLY SALES COMMISSION OF THIRTY ONE THOUSAND EIGHT HUNDRED FORTY SIX AND 97/100 (Php 31,846.97) SHOULD BE INCLUDED IN THE COMPUTATION OF HIS RETIREMENT BENEFITS AND 13TH MONTH PAY.^[10]

Petitioner contends that the commissions form part of the basic salary, citing the case of *Philippine Duplicators, Inc. v. National Labor Relations Commission*,^[11] wherein the Court held that commissions earned by salesmen form part of their basic salary.^[12]

Private respondent counters that petitioner knew that the overriding commission is not included in the basic salary because it had not been considered as such for a long time in the computation of the 13th month pay, leave commissions, absences and tardiness. Petitioner himself stated in the complaint that his basic salary is P10,919.22, thus, he is estopped from claiming otherwise. Moreover, in *Boie-Takeda Chemicals, Inc. v. De la Serna*,^[13] the Supreme Court held that the fixed or guaranteed wage is patently "the basic salary" for this is what the employee receives for a standard work period, and that commissions are given for extra efforts exerted in consummating sales or other transactions. Also, in *Soriano v. National Labor Relations Commission*,^[14] the Court clarified that *overriding commission* is not properly includible in the basic salary as it must be earned by actual market transactions attributable to the claimant. Thus, as a unit manager who supervised the salesmen under his control and did not enter into actual sale transactions, petitioner's overriding commissions must not be considered in the computation of the retirement benefits and 13th month pay.^[15]

The petition lacks merit. Any seeming inconsistencies between *Philippine Duplicators* and *Boie-Takeda* had been clarified by the Court in the Resolution dated February 15, 1995 in the *Philippine Duplicators* case.^[16]

The Court thus clarified that in *Philippine Duplicators*, the salesmen's commissions, comprising a pre-determined percentage of the selling price of the goods sold by each salesman, were properly included in the term *basic salary* for purposes of computing the 13th month pay. The salesmen's commission are not overtime payments, nor profit-sharing payments nor any other fringe benefit,^[17] but a portion of the salary structure which represents an automatic increment to the monetary value initially assigned to each unit of work rendered by a salesman.^[18]

Contrarily, in *Boie-Takeda*, the so-called commissions paid to or received by medical representatives of Boie-Takeda Chemicals or by the rank and file employees of Philippine Fuji Xerox Co., were excluded from the term *basic salary* because these were paid to the medical representatives and rank-and-file employees as *productivity bonuses*, which are generally tied to the productivity, or capacity for revenue production, of a corporation and such bonuses closely resemble profit-sharing payments and have no clear direct or necessary relation to the amount of work actually done by each individual employee.^[19] Further, *commissions* paid by the Boie-Takeda Company to its medical representatives could not have been *sales commissions* in the same sense that Philippine Duplicators paid the salesmen their sales commissions. Medical representatives are not salesmen; they do not effect any sale of any article at all.^[20]

In fine, whether or not a commission forms part of the basic salary depends upon the circumstances or conditions for its payment, which indubitably are factual in nature for they will require a re-examination and calibration of the evidence on record. Thus, our review thereof in the case at bar would violate the settled rule that findings of facts of quasi-judicial bodies like the NLRC, and affirmed by the Court of Appeals in due course, are conclusive on this Court, which is not a trier of facts.^[21] Nevertheless, should petitioner's commissions be considered in the computation of his retirement benefits and 13th month pay?

We rule in the negative.

Article 287 of the Labor Code, as amended by Republic Act No. 7641, otherwise known as *The New Retirement Law*,^[22] provides:

Art. 287. Retirement. - Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

x x x x

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire