497 Phil. 863

SECOND DIVISION

[G.R. NO. 156367, May 16, 2005]

AUTO BUS TRANSPORT SYSTEMS, INC., PETITIONER, VS. ANTONIO BAUTISTA, RESPONDENT.

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari* assailing the Decision[1] and Resolution[2] of the Court of Appeals affirming the Decision[3] of the National Labor Relations Commission (NLRC). The NLRC ruling modified the Decision of the Labor Arbiter (finding respondent entitled to the award of 13th month pay and service incentive leave pay) by deleting the award of 13th month pay to respondent.

THE FACTS

Since 24 May 1995, respondent Antonio Bautista has been employed by petitioner Auto Bus Transport Systems, Inc. (Autobus), as driver-conductor with travel routes Manila-Tuguegarao via Baguio, Baguio- Tuguegarao via Manila and Manila-Tabuk via Baguio. Respondent was paid on commission basis, seven percent (7%) of the total gross income per travel, on a twice a month basis.

On 03 January 2000, while respondent was driving Autobus No. 114 along Sta. Fe, Nueva Vizcaya, the bus he was driving accidentally bumped the rear portion of Autobus No. 124, as the latter vehicle suddenly stopped at a sharp curve without giving any warning.

Respondent averred that the accident happened because he was compelled by the management to go back to Roxas, Isabela, although he had not slept for almost twenty-four (24) hours, as he had just arrived in Manila from Roxas, Isabela. Respondent further alleged that he was not allowed to work until he fully paid the amount of P75,551.50, representing thirty percent (30%) of the cost of repair of the damaged buses and that despite respondent's pleas for reconsideration, the same was ignored by management. After a month, management sent him a letter of termination.

Thus, on 02 February 2000, respondent instituted a Complaint for Illegal Dismissal with Money Claims for nonpayment of 13th month pay and service incentive leave pay against Autobus.

Petitioner, on the other hand, maintained that respondent's employment was replete with offenses involving reckless imprudence, gross negligence, and dishonesty. To support its claim, petitioner presented copies of letters, memos, irregularity reports, and warrants of arrest pertaining to several incidents wherein respondent was involved.

Furthermore, petitioner avers that in the exercise of its management prerogative, respondent's employment was terminated only after the latter was provided with an opportunity to explain his side regarding the accident on 03 January 2000.

On 29 September 2000, based on the pleadings and supporting evidence presented by the parties, Labor Arbiter Monroe C. Tabingan promulgated a Decision,[4] the dispositive portion of which reads:

> WHEREFORE, all premises considered, it is hereby found that the complaint for Illegal Dismissal has no leg to stand on. It is hereby ordered DISMISSED, as it is hereby DISMISSED.
>
> However, still based on the above-discussed premises, the respondent must pay to the complainant the following:
>
> a. his 13th month pay from the date of his hiring to the date of his dismissal, presently computed at P78,117.87;
>
> b. his service incentive leave pay for all the years he had been in service with the respondent, presently computed at P13,788.05.
>
> All other claims of both complainant and respondent are hereby dismissed for lack of merit.[5]

Not satisfied with the decision of the Labor Arbiter, petitioner appealed the decision to the NLRC which rendered its decision on 28 September 2001, the decretal portion of which reads:

> [T]he Rules and Regulations Implementing Presidential Decree No. 851, particularly Sec. 3 provides:
>
> > "Section 3. Employers covered. – The Decree shall apply to all employers except to:
> >
> > xxx xxx xxx
> >
> > e) employers of those who are paid on purely commission, boundary, or task basis, performing a specific work, irrespective of the time consumed in the performance thereof. xxx."
>
> Records show that complainant, in his position paper, admitted that he was paid on a commission basis.
>
> In view of the foregoing, we deem it just and equitable to modify the assailed Decision by deleting the award of 13th month pay to the complainant.
>
> ...
>
> WHEREFORE, the Decision dated 29 September 2000 is MODIFIED by

deleting the award of 13th month pay. The other findings are AFFIRMED. [6]

In other words, the award of service incentive leave pay was maintained. Petitioner thus sought a reconsideration of this aspect, which was subsequently denied in a Resolution by the NLRC dated 31 October 2001.

Displeased with only the partial grant of its appeal to the NLRC, petitioner sought the review of said decision with the Court of Appeals which was subsequently denied by the appellate court in a Decision dated 06 May 2002, the dispositive portion of which reads:

> WHEREFORE, premises considered, the Petition is DISMISSED for lack of merit; and the assailed Decision of respondent Commission in NLRC NCR CA No. 026584-2000 is hereby AFFIRMED *in toto*. No costs.[7]

Hence, the instant petition.

ISSUES

1. Whether or not respondent is entitled to service incentive leave;

2. Whether or not the three (3)-year prescriptive period provided under Article 291 of the Labor Code, as amended, is applicable to respondent's claim of service incentive leave pay.

RULING OF THE COURT

The disposition of the first issue revolves around the proper interpretation of Article 95 of the Labor Code *vis-á-vis* Section 1(D), Rule V, Book III of the Implementing Rules and Regulations of the Labor Code which provides:

> ***Art. 95.*** RIGHT TO SERVICE INCENTIVE LEAVE
>
> (a) Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay.
>
> ***Book III, Rule V: SERVICE INCENTIVE LEAVE***
>
> ***SECTION 1.*** Coverage. – This rule shall apply to all employees except:
>
> ...
>
> (d) Field personnel and other employees whose performance is unsupervised by the employer including those who are engaged on task or contract basis, purely commission basis, or those who are paid in a fixed amount for performing work irrespective of the time consumed in the performance thereof; . . .

A careful perusal of said provisions of law will result in the conclusion that the grant of service incentive leave has been delimited by the Implementing Rules and Regulations of the Labor Code to apply only to those employees not explicitly excluded by Section 1 of Rule V. According to the Implementing Rules, Service

Incentive Leave shall not apply to employees classified as "field personnel." The phrase "other employees whose performance is unsupervised by the employer" must not be understood as a separate classification of employees to which service incentive leave shall not be granted. Rather, it serves as an amplification of the interpretation of the definition of field personnel under the Labor Code as those "whose actual hours of work in the field cannot be determined with reasonable certainty."[8]

The same is true with respect to the phrase "*those who are engaged on task or contract basis, purely commission basis.*" Said phrase should be related with "field personnel," applying the rule on *ejusdem generis* that general and unlimited terms are restrained and limited by the particular terms that they follow.[9] Hence, employees engaged on task or contract basis or paid on purely commission basis are not automatically exempted from the grant of service incentive leave, unless, they fall under the classification of field personnel.

Therefore, petitioner's contention that respondent is not entitled to the grant of service incentive leave just because he was paid on purely commission basis is misplaced. What must be ascertained in order to resolve the issue of propriety of the grant of service incentive leave to respondent is whether or not he is a field personnel.

According to Article 82 of the Labor Code, "field personnel" shall refer to non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty. This definition is further elaborated in the *Bureau of Working Conditions (BWC), Advisory Opinion to Philippine Technical-Clerical Commercial Employees Association*[10] which states that:

> As a general rule, [field personnel] are those whose performance of their job/service is not supervised by the employer or his representative, the workplace being away from the principal office and whose hours and days of work cannot be determined with reasonable certainty; hence, they are paid specific amount for rendering specific service or performing specific work. *If required to be at specific places at specific times, employees including drivers cannot be said to be field personnel despite the fact that they are performing work away from the principal office of the employee.* [Emphasis ours]

To this discussion by the BWC, the petitioner differs and postulates that under said advisory opinion, no employee would ever be considered a field personnel because every employer, in one way or another, exercises control over his employees. Petitioner further argues that the only criterion that should be considered is the nature of work of the employee in that, if the employee's job requires that he works away from the principal office like that of a messenger or a bus driver, then he is inevitably a field personnel.

We are not persuaded. At this point, it is necessary to stress that the definition of a "field personnel" is not merely concerned with the location where the employee regularly performs his duties but also with the fact that the employee's performance is unsupervised by the employer. As discussed above, field personnel are those who