

SECOND DIVISION

[G.R. No. 155651, July 28, 2005]

**COCA-COLA BOTTLERS PHILIPPINES, INC., SALES FORCE
UNION-PTGWO-BALAIS, PETITIONER, VS. COCA-COLA
BOTTLERS, PHILIPPINES, INC., RESPONDENT.**

D E C I S I O N

CHICO-NAZARIO, J.:

This is a petition for review on *certiorari* seeking the reversal of the Court of Appeals Decision^[1] and Resolution^[2] dated 22 May 2002 and 03 October 2002, respectively, affirming the 21 January 2001 Decision of the panel of voluntary arbitrators (Panel) of the National Conciliation Mediation Board (NCMB) for the reason that the Panel decision had already attained finality.

The following is a narration by the Court of Appeals of the undisputed facts:

The Coca-Cola Bottlers Philippines, Inc. Sales Force Union-PTGWO is a legitimate labor organization duly registered with the Department of Labor and Employment, and is the sole and exclusive bargaining representative of all regular route salesmen, regular relief route salesmen, regular lead helpers, regular relief lead helpers, regular route helpers, regular relief route helpers and order-taker collectors who are assigned in various sales offices specified in the parties' collective bargaining agreement. On the other hand, the respondent company is a domestic corporation duly organized and existing under the laws of the Philippines and is engaged in the manufacture and distribution of its soft drink products.

In January 1989, the UNION filed a Notice of Strike with the National Conciliation and Mediation Board raising certain issues for conciliation. As a result of said dispute, the UNION staged a strike.

Subsequently, the Board succeeded in making the parties agree to a voluntary settlement of the case via a Memorandum of Agreement signed by them on February 9, 1989. Among others, the petitioner and the respondent agreed, as follows:

. . .

1. Christmas Bonus

The Company shall grant to all those covered by the Bargaining Unit represented by the Union an amount equivalent to fifty (50%) percent of their average commission for the last six (6) months.

The union hereby acknowledges that the granting of a Christmas bonus is purely a Management prerogative and as such, in determining the amount thereof the same is solely a discretion of Management. The parties however agree that henceforth whenever Management exercises this prerogative, the same shall include the average commission for the last six (6) months prior to the grant.

Since then, the management granted to each covered employee every December of the year a certain percentage of his basic pay and an amount equivalent to fifty (50%) percent of his average commission for the last six months prior to the grant. However, in December 1999, the respondent granted a fixed amount of P4,000.00 only, eliminating thereby the said 50% employee's average commission for the last six months for members of the union. Thus, claiming the same as violation of the MOA, the union submitted its grievance to the respondent. No settlement was reached, hence, the case was then referred to a Panel of Voluntary Arbitrators.

Petitioner claimed that the MOA establishes the company's obligation to pay additionally 50% of the average commission whenever it decides to grant a bonus and that the fixed amount of P4,000.00 granted in December 1999, although denominated as "ex-gratia" was actually a Christmas bonus. In support of its stand, the Union submitted sample payslips for the prior years wherein the company granted a "performance grant" or "one time grant" computed as a percentage of the employee's basic salary. An illustrative example was that given to Jose Manalusan. His payslip dated December 6, 1996 shows his basic rate at P5,080.00 and an item "SPL GRNT" in the amount of P4,786.41. On top of the payslip (sic) appear the words "80% performance grant". According to the Union, this amount of P4,786. is P722.41 more than 80% of Manalusan's then basic rate (80% of P5,080.00 being PhP4,064.00). Thus, the Union concludes that the difference of P722.41 represents additional 50% of average commission. In sum, the Union asseverates that the grant of the additional 50% of the average commission has become a practice since 1989 and has ripened into a contractual obligation.

On the other hand, the respondent company countered that in 1999 it suffered its worst financial performance in its history; that its sales volume was twenty percent (20%) behind plan and ten percent (10%) below the sales in 1998, as a result, it suffered an abnormal loss of Two Billion Five Hundred Million Pesos (P2,500,000,000.00); that faced with tremendous losses, the management decided not to grant bonuses to its employees in 1999; that through Memorandum 99010 dated December 14, 1999, its President, Mr. Peter Baker explained to the employees the company's financial situation and the decision not to grant bonuses; that in the same memo however, the company granted a special *ex gratia* payment of Four Thousand Pesos (P4,000.00) to all its permanent employees, . . .

During the past year (sic) we have suffered greatly as a result of a number of internal and external issues including the effect of the general economic pressures in the Philippines.

Our sales volume in 1999 is approximately 20% behind the plan and 10% below last year. This together with lower than expected prices and increased costs will result in a financial performance which is undoubtedly the worst in our history.

The Coca-cola Amatil Board has announced that it expects an abnormal loss of PhP2.5 Billion (AUD100 million) before tax at CCBPI in 1999 and that reported "on-going" results will be below everyone's expectations.

In these circumstances the CCBPI Executive Committee has decided that the CCBPI is not able to pay bonuses to any staff in 1999. As your new president, it disappoints me greatly to have to inform you of this situation.

Our situation has been discussed with the CCA Board and they are understanding of the difficulties we face a (sic) present and grateful of the efforts of our associates at all levels. Furthermore, the management of CCA has agreed to make a special *Ex Gratia* payment PhP4,000.00 to all permanent employees of CCBPI. Our hope that [t]his will assist in some way to allow you and your families to enjoy the festive season.

In denying the claim of the Union for the payment of the additional 50% of the average commission for the last six months, the respondent argues that the said MOA is not applicable since the company did not grant Christmas bonus in 1999.

After hearing and the submission of evidence and position papers, the Arbitration Panel composed of Apron Mangabat and Noel Sanchez, as chairman and member, respectively, denied petitioner's claim and declared that the P4,000.00 given as ex gratia is not a bonus, while Arnel Dolendo, another member dissented. The dispositive portion of the decision reads as follows:

WHEREFORE, judgment is hereby rendered declaring that the special Ex Gratia payment of P4,000.00 made pursuant to the Memo of Mr. Peter Baker dated December 14, 1999 was not a Christmas bonus and therefore, the claim of the Union for an additional 50% of average commission on top of said P4,000.00 is hereby denied.^[3]

A copy of this Decision dated 21 January 2001 was received by petitioner's counsel on 20 February 2001. Said Decision was signed only by the Chairman of the Panel, Mr. Apron Mangabat, and one of its members, Atty. Noel Sanchez. As to the third member, Atty. Arnel Dolendo, instead of a signature on top of his printed name, the

following notation appears:

"Dissented during deliberation.
Will file a separate opinion."

No separate opinion, however, was attached to the Decision as received by petitioner, through its counsel. Thus, on 22 February 2001 (two days after receipt of the Decision), petitioner filed an "Urgent Ex-Parte Manifestation with Motion" where it essentially questioned the validity of the decision, opining that "the Panel's decision without such dissenting and separate opinion attached thereto makes the decision incomplete and prematurely issued." It consequently prayed that "the questioned Decision be held in abeyance and for the Panel to immediately issue an order to the effect that the prescriptive period available to any of the parties to seek any legal remedy or relief be suspended in the meantime."

The Panel did not directly act on this motion. Instead, on 02 March 2001, petitioner received a Notice of Transmittal from the NCMB furnishing it a copy of Atty. Dolendo's separate opinion together with the 21 January 2001 Decision. Thus, on 12 March 2001, petitioner filed a motion for reconsideration of the 21 January 2001 Decision.

On 30 May 2001, the Panel denied petitioner's motion for reconsideration. A copy of the Order of denial was received by petitioner on 09 July 2001. By virtue thereof, petitioner filed a Petition for Review before the Court of Appeals on 24 July 2001.

In dealing with the controversy, the Court of Appeals adopted a two-tiered approach. First, it held that contrary to the view of the Panel, the P4,000.00 "*special ex gratia*" payment is a Christmas bonus, hence, petitioner's members are entitled to the additional 50% average commission for the last six months prior to the grant pursuant to the Memorandum of Agreement entered into between petitioner and respondent Coca-Cola Bottlers Philippines, Inc. This notwithstanding, the Court of Appeals dismissed the petition on the ground that petitioner's motion for reconsideration dated 12 March 2001 of the Decision of the Panel that was originally received on 20 February 2001 was filed out of time; hence, the said Decision already became final and executory after ten (10) calendar days from receipt of the copy of the Decision by the parties pursuant to Article 262-A of the Labor Code. The Court of Appeals ratiocinated thus:

On the matter of procedure, Article 262-A of the Labor Code governs. It provides that the award or decision of the Voluntary Arbitrator or panel of Voluntary Arbitrators shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties. Moreover, Section 6, Rule VII of the NCMB Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings, dated July 28, 1989, states categorically, to wit:

"Section 6. Finality of Award or Decisions. — Awards or decisions of voluntary arbitrator become final and executory after ten (10) calendar days from receipt of copies of the award or decision by the parties."

The above-mentioned rule makes the voluntary arbitrator's award final and executory after ten calendar days from receipt of a copy of the