

SECOND DIVISION

[G.R. No. 120592, March 14, 1997]

**TRADERS ROYAL BANK EMPLOYEES UNION-INDEPENDENT,
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION
AND EMMANUEL NOEL A. CRUZ, RESPONDENTS.**

DECISION

REGALADO, J.:

Petitioner Traders Royal Bank Employees Union and private respondent Atty. Emmanuel Noel A. Cruz, head of the E.N.A. Cruz and Associates law firm, entered into a retainer agreement on February 26, 1987 whereby the former obligated itself to pay the latter a monthly retainer fee of P3,000.00 in consideration of the law firm's undertaking to render the services enumerated in their contract.^[1] Parenthetically, said retainer agreement was terminated by the union on April 4, 1990.^[2]

During the existence of that agreement, petitioner union referred to private respondent the claims of its members for holiday, mid-year and year-end bonuses against their employer, Traders Royal Bank (TRB). After the appropriate complaint was filed by private respondent, the case was certified by the Secretary of Labor to the National Labor Relations Commission (NLRC) on March 24, 1987 and docketed as NLRC-NCR Certified Case No. 0466.^[3]

On September 2, 1988, the NLRC rendered a decision in the foregoing case in favor of the employees, awarding them holiday pay differential, mid-year bonus differential, and year-end bonus differential.^[4] The NLRC, acting on a motion for the issuance of a writ of execution filed by private respondent as counsel for petitioner union, raffled the case to Labor Arbiter Oswald Lorenzo.^[5]

However, pending the hearing of the application for the writ of execution, TRB challenged the decision of the NLRC before the Supreme Court. The Court, in its decision promulgated on August 30, 1990,^[6] modified the decision of the NLRC by deleting the award of mid-year and year-end bonus differentials while affirming the award of holiday pay differential.^[7]

The bank voluntarily complied with such final judgment and determined the holiday pay differential to be in the amount of P175,794.32. Petitioner never contested the amount thus found by TRB.^[8] The latter duly paid its concerned employees their respective entitlement in said sum through their payroll.^[9]

After private respondent received the above decision of the Supreme Court on September 18, 1990,^[10] he notified the petitioner union, the TRB management and

the NLRC of his right to exercise and enforce his attorney's lien over the award of holiday pay differential through a letter dated October 8, 1990.^[11]

Thereafter, on July 2, 1991, private respondent filed a motion before Labor Arbiter Lorenzo for the determination of his attorney's fees, praying that ten percent (10%) of the total award for holiday pay differential computed by TRB at P175,794.32, or the amount of P17,579.43, be declared as his attorney's fees, and that petitioner union be ordered to pay and remit said amount to him.^[12]

The TRB management manifested before the labor arbiter that they did not wish to oppose or comment on private respondent's motion as the claim was directed against the union,^[13] while petitioner union filed a comment and opposition to said motion on July 15, 1991.^[14] After considering the position of the parties, the labor arbiter issued an order^[15] on November 26, 1991 granting the motion of private respondent, as follows:

WHEREFORE, premises considered, it is hereby ordered that the TRADERS ROYAL BANK EMPLOYEES UNION with offices at Kanlaon Towers, Roxas Boulevard is hereby ordered (sic) to pay without delay the attorney's fees due the movant law firm, E.N.A. CRUZ and ASSOCIATES the amount of P17,574.43 or ten (10%) per cent of the P175,794.32 awarded by the Supreme Court to the members of the former.

This constrained petitioner to file an appeal with the NLRC on December 27, 1991, seeking a reversal of that order.^[16]

On October 19, 1994, the First Division of the NLRC promulgated a resolution affirming the order of the labor arbiter.^[17] The motion for reconsideration filed by petitioner was denied by the NLRC in a resolution dated May 23, 1995,^[18] hence the petition at bar.

Petitioner maintains that the NLRC committed grave abuse of discretion amounting to lack of jurisdiction in upholding the award of attorney's fees in the amount of P17,574.43, or ten percent (10%) of the P175,794.32 granted as holiday pay differential to its members, in violation of the retainer agreement; and that the challenged resolution of the NLRC is null and void,^[19] for the reasons hereunder stated.

Although petitioner union concedes that the NLRC has jurisdiction to decide claims for attorney's fees, it contends that the award for attorney's fees should have been incorporated in the main case and not after the Supreme Court had already reviewed and passed upon the decision of the NLRC. Since the claim for attorney's fees by private respondent was neither taken up nor approved by the Supreme Court, no attorney's fees should have been allowed by the NLRC.

Thus, petitioner posits that the NLRC acted without jurisdiction in making the award of attorney's fees, as said act constituted a modification of a final and executory judgment of the Supreme Court which did not award attorney's fees. It then cited decisions of the Court declaring that a decision which has become final and executory can no longer be altered or modified even by the court which rendered the same.

On the other hand, private respondent maintains that his motion to determine attorney's fees was just an incident of the main case where petitioner was awarded its money claims. The grant of attorney's fees was the consequence of his exercise of his attorney's lien. Such lien resulted from and corresponds to the services he rendered in the action wherein the favorable judgment was obtained. To include the award of the attorney's fees in the main case presupposes that the fees will be paid by TRB to the adverse party. All that the non-inclusion of attorney's fees in the award means is that the Supreme Court did not order TRB to pay the opposing party attorney's fees in the concept of damages. He is not therefore precluded from filing his motion to have his own professional fees adjudicated.

In view of the substance of the arguments submitted by petitioner and private respondent on this score, it appears necessary to explain and consequently clarify the nature of the attorney's fees subject of this petition, in order to dissipate the apparent confusion between and the conflicting views of the parties.

There are two commonly accepted concepts of attorney's fees, the so-called ordinary and extraordinary.^[20] In its ordinary concept, an attorney's fee is the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter. The basis of this compensation is the fact of his employment by and his agreement with the client.

In its extraordinary concept, an attorney's fee is an indemnity for damages ordered by the court to be paid by the losing party in a litigation. The basis of this is any of the cases provided by law where such award can be made, such as those authorized in Article 2208, Civil Code, and is payable not to the lawyer but to the client, unless they have agreed that the award shall pertain to the lawyer as additional compensation or as part thereof.

It is the first type of attorney's fees which private respondent demanded before the labor arbiter. Also, the present controversy stems from petitioner's apparent misperception that the NLRC has jurisdiction over claims for attorney's fees only before its judgment is reviewed and ruled upon by the Supreme Court, and that thereafter the former may no longer entertain claims for attorney's fees.

It will be noted that no claim for attorney's fees was filed by private respondent before the NLRC when it acted on the money claims of petitioner, nor before the Supreme Court when it reviewed the decision of the NLRC. It was only after the High Tribunal modified the judgment of the NLRC awarding the differentials that private respondent filed his claim before the NLRC for a percentage thereof as attorney's fees.

It would obviously have been impossible, if not improper, for the NLRC in the first instance and for the Supreme Court thereafter to make an award for attorney's fees when no claim therefor was pending before them. Courts generally rule only on issues and claims presented to them for adjudication. Accordingly, when the labor arbiter ordered the payment of attorney's fees, he did not in any way modify the judgment of the Supreme Court.

As an adjunctive episode of the action for the recovery of bonus differentials in NLRC-NCR Certified Case No. 0466, private respondent's present claim for attorney's

fees may be filed before the NLRC even though or, better stated, especially after its earlier decision had been reviewed and partially affirmed. It is well settled that a claim for attorney's fees may be asserted either in the very action in which the services of a lawyer had been rendered or in a separate action.^[21]

With respect to the first situation, the remedy for recovering attorney's fees as an incident of the main action may be availed of only when something is due to the client.^[22] Attorney's fees cannot be determined until after the main litigation has been decided and the subject of the recovery is at the disposition of the court. The issue over attorney's fees only arises when something has been recovered from which the fee is to be paid.^[23]

While a claim for attorney's fees may be filed before the judgment is rendered, the determination as to the propriety of the fees or as to the amount thereof will have to be held in abeyance until the main case from which the lawyer's claim for attorney's fees may arise has become final. Otherwise, the determination to be made by the courts will be premature.^[24] Of course, a petition for attorney's fees may be filed before the judgment in favor of the client is satisfied or the proceeds thereof delivered to the client.^[25]

It is apparent from the foregoing discussion that a lawyer has two options as to when to file his claim for professional fees. Hence, private respondent was well within his rights when he made his claim and waited for the finality of the judgment for holiday pay differential, instead of filing it ahead of the award's complete resolution. To declare that a lawyer may file a claim for fees in the same action only before the judgment is reviewed by a higher tribunal would deprive him of his aforesaid options and render ineffective the foregoing pronouncements of this Court.

Assailing the rulings of the labor arbiter and the NLRC, petitioner union insists that it is not guilty of unjust enrichment because all attorney's fees due to private respondent were covered by the retainer fee of P3,000.00 which it has been regularly paying to private respondent under their retainer agreement. To be entitled to the additional attorney's fees as provided in Part D (Special Billings) of the agreement, it avers that there must be a separate mutual agreement between the union and the law firm prior to the performance of the additional services by the latter. Since there was no agreement as to the payment of the additional attorney's fees, then it is considered waived.

En contra, private respondent contends that a retainer fee is not the attorney's fees contemplated for and commensurate to the services he rendered to petitioner. He asserts that although there was no express agreement as to the amount of his fees for services rendered in the case for recovery of differential pay, Article 111 of the Labor Code supplants this omission by providing for an award of ten percent (10%) of a money judgment in a labor case as attorney's fees.

It is elementary that an attorney is entitled to have and receive a just and reasonable compensation for services performed at the special instance and request of his client. As long as the lawyer was in good faith and honestly trying to represent and serve the interests of the client, he should have a reasonable compensation for such services.^[26] It will thus be appropriate, at this juncture, to

determine if private respondent is entitled to an additional remuneration under the retainer agreement^[27] entered into by him and petitioner.

The parties subscribed therein to the following stipulations:

x

x

x

The Law Firm shall handle cases and extend legal services under the parameters of the following terms and conditions:

A. GENERAL SERVICES

1. Assurance that an Associate of the Law Firm shall be designated and be available on a day-to-day basis depending on the Union's needs;
2. Legal consultation, advice and render opinion on any actual and/or anticipatory situation confronting any matter within the client's normal course of business;
3. Proper documentation and notarization of any or all transactions entered into by the Union in its day-to-day course of business;
4. Review all contracts, deeds, agreements or any other legal document to which the union is a party signatory thereto but prepared or caused to be prepared by any other third party;
5. Represent the Union in any case wherein the Union is a party litigant in any court of law or quasi-judicial body subject to certain fees as qualified hereinafter;
6. Lia(i)se with and/or follow-up any pending application or any papers with any government agency and/or any private institution which is directly related to any legal matter referred to the Law Firm.

B. SPECIAL LEGAL SERVICES

1. Documentation of any contract and other legal instrument/documents arising and/or required by your Union which do not fall under the category of its ordinary course of business activity but requires a special, exhaustive or detailed study and preparation;
2. Conduct or undertake researches and/or studies on special projects of the Union;
3. Render active and actual participation or assistance in conference table negotiations with TRB management or any other third person(s), juridical or natural, wherein the presence of counsel is not for mere consultation except CBA negotiations which shall be subject to a specific agreement (pursuant to PD 1391 and in relation to BP 130 & 227);
4. Preparation of Position Paper(s), Memoranda or any other pleading for and in behalf of the Union;
5. Prosecution or defense of any case instituted by or against the Union; and,