

THIRD DIVISION

[G.R. No. 105963, August 22, 1996]

**PAL EMPLOYEES SAVINGS AND LOAN ASSOCIATION, INC.
(PESALA), PETITIONER, VS. NATIONAL LABOR RELATIONS
COMMISSION AND ANGEL V. ESQUEJO, RESPONDENT.**

DECISION

PANGANIBAN, J.:

Is an employee entitled to overtime pay for work rendered in excess of eight hours a day, given the fact that his employment contract specifies a twelve-hour workday at a fixed monthly salary rate that is above the legal minimum wage? This is the principal question answered by this Court in resolving this petition which challenges the validity and legality of the Decision^[1] of public respondent National Labor Relations Commission^[2] promulgated on April 23, 1992 in NLRC NCR CA No. 002522-91 entitled "*Angel V. Esquejo vs. PAL Employees Savings and Loan Association*" which Decision modified (slightly as to amount) the earlier decision^[3] dated November 11, 1991 of the labor arbiter granting private respondent's claim for overtime pay.

The Facts and the Case Below

On October 10, 1990, private respondent filed with public respondent a complaint docketed as NLRC NCR Case No. 10-05457-90 for non-payment of overtime pay and non-payment of the P25.00 statutory minimum wage increase mandated by Republic Act No. 6727.

Subsequently, private respondent filed a supplemental complaint for illegal suspension with prayer for reinstatement and payment of backwages. However, before the case was submitted for resolution, private respondent filed a "Motion to Withdraw Supplemental Complaint" on the ground that a separate action for illegal suspension, illegal dismissal, etc. had been filed and was pending before another labor arbiter. Hence, the issue decided by public respondent and which is under review by this Court in this petition involves only his claim for overtime pay.

On November 26, 1990, private respondent filed his position paper^[4] with the labor arbiter alleging the following facts constituting his cause of action:

"Complainant (herein private respondent) started working with respondent (PESALA) sometime last March 1, 1986 as a company guard and was receiving a monthly basic salary of P1,990.00 plus an emergency allowance in the amount of P510.00. He was required to work a (sic) twelve (12) hours a day, a (sic) xerox copies of his appointment are hereto attached and marked as Annexes 'C' and 'D' of this position paper;

That on December 10, 1986, respondent Board of Directors in its board meeting held on November 21, 1986 approved a salary adjustment for the complainant increasing his monthly basic salary to P2,310.00 and an emergency allowance of P510.00, a xerox copy of the salary adjustment is hereto attached and marked as Annex 'E' hereof;

That on August 25, 1987, because of his impressive performance on his assigned job, another adjustment was approved by the President of the association increasing his monthly basic salary to P2,880.00, a xerox copy of the salary adjustment is hereto attached and marked as Annex 'F' hereof;

That from January 4, 1988 up to June 1990, several salary adjustments were made by the respondent on the monthly basic salary of the complainant including a letter of appreciation for being as (sic) one of the outstanding performers during the first half of 1988, the latest salary prior to the filing of the complaint was P3,720.00, a (sic) xerox copies of all the documents relative to the salary adjustments are hereto attached and marked as annexes 'G', 'H', 'I', 'J' and 'K' of this position paper;

That during his entire period of employment with respondent, the former was required to perform overtime work without any additional compensation from the latter. It was also at this point wherein the respondent refused to give the P25.00 increase on the minimum wage rates as provided for by law. On October 12, 1990, complainant was suspended for the period of thirty seven (37) days for an offense allegedly committed by the respondent sometime last August 1989.'

On December 13, 1990, petitioner PESALA filed its position paper^[5] alleging among other things:

"On 01 March, 1986, complainant was appointed in a permanent status as the company guard of respondent. In the Appointment Memorandum dated February 24, 1986 which has the conformity of complainant, it is expressly stipulated therein that complainant is to receive a monthly salary of P1,900.00 plus P510.00 emergency allowance for a twelve (12) hours work per day with one (1) day off. A copy of said appointment memorandum is hereto attached as Annex 'A' and made an integral part hereof.

On 01 December, 1986, the monthly salary of complainant was increased to P2,310.00 plus P510.00 emergency allowance. Later, or on 01 January, 1988, the monthly salary of complainant was again increased to P3,420.00. And still later, or on 01 February, 1989, complainant's monthly salary was increased to P3,720.00. Copies of the memoranda evidencing said increase are hereto attached as Annexes 'B', 'B-1' and 'B-2' and are made integral parts hereof.

On 29 November, 1989, the manager of respondent in the person of Sulpicio Jornales wrote to complainant informing the latter that the position of a guard will be abolished effective November 30, 1989, and

that complainant will be re-assigned to the position of a ledger custodian effective December 1, 1989.

Pursuant to the above-mentioned letter-agreement of Mr. Jornales, complainant was formally appointed by respondent as its ledger custodian on December 1, 1989. The monthly salary of complainant as ledger custodian starting on December 1, 1989 was P3,720.00 for forty (40) working hours a week or eight (8) working hours a day. A copy of said Appointment memorandum is hereto attached as Annex 'C' and made an integral part hereof.

On 29 August, 1990, complainant was administratively charged with serious misconduct or disobedience of the lawful orders of respondent or its officers, and gross and habitual neglect of his duties, committed as follows:

'1. Sometime in August, 1989, you (referring to complainant Esquejo) forwarded the checks corresponding to the withdrawals of Mr. Jose Jimenez and Mr. Anselmo dela Banda of Davao and Iloilo Station, respectively, without the signature of the Treasurer and the President of PESALA, in violation of your duty and function that you should see to it that the said checks should be properly signed by the two PESALA officials before you send out said checks of their addresses. As a result of which, there was a substantial delay in the transmission of the checks to its owners resulting to an embarrassment on the part of the PESALA officers and damage and injury to the recipients (sic) of the checks since they needed the money badly.

2. Sometime in August, 1989, before you (complainant) went on your vacation, you failed to leave or surrender the keys of the office, especially the keys to the main and back doors which resulted to damage, injury and embarrassment to PESALA. This is a gross violation of your assigned duties and you disobeyed the instruction of your Superior.'

xxx xxx xxx

Herein complainant was informed of the aforequoted charges against him and was given the opportunity to be heard and present evidence in his behalf as shown by the Notice of Hearing (Annex 'D' hereof) sent to him. Complainant did in fact appeared (sic) at the hearing, assisted by his counsel, Atty. Mahinardo G. Mailig, and presented his evidence in the form of a Counter-Affidavit. A copy of said Counter-Affidavit is hereto attached as Annex 'E' and made an integral part hereof.

On 12 October, 1990, after due deliberation on the merits of the administrative charges filed against herein complainant, the Investigating Officer in the person of Capt. Rogelio Enverga resolved the same imposing a penalty of suspension of herein complainant, thus:

'PENALTY: 1. For the first offense, you (referring to complainant Esquejo) are suspended for a period of thirty (30) working days without pay effective October 15, 1990.

2. For the second offense, your (sic) are suspended for a period of seven (7) working days without pay effective from the date the first suspension will expire."

On March 7, 1991, private respondent filed a detailed and itemized computation of his money claims totaling P107,495.90, to which petitioner filed its comment on April 28, 1991. The computation filed on March 7, 1991 was later reduced to P65,302.80. To such revised computation, the petitioner submitted its comment on April 28, 1991.

Thereafter, labor arbiter Cornelio L. Linsangan rendered a decision dated November 11, 1991 granting overtime pay as follows:

"WHEREFORE, judgment is hereby rendered:

1. Granting the claim for overtime pay covering the period October 10, 1987 to November 30, 1989 in the amount of P28,344.55.

2. The claim for non-payment of P25.00 salary increase pursuant to Republic Act No. 6727 is dismissed for lack of merit."

Aggrieved by the aforesaid decision, petitioner appealed to public respondent NLRC only to be rejected on April 23, 1992 via the herein assailed Decision, the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, the award is reduced to an amount of TWENTY EIGHT THOUSAND SIXTY-SIX PESOS AND 45/100 (P28,066.45). In all other respects, the Decision under review is hereby AFFIRMED and the appeal DISMISSED for lack of merit."

No motion for reconsideration of the Decision was filed by the petitioner.

[6]

What transpired afterwards is narrated by the Solicitor General in his memorandum, [7] which we presume to be correct since petitioner did not contradict the same in its memorandum:

"x x x Petitioner did not appeal the Decision of respondent NLRC. When it became final, the parties were called to a conference on June 29, 1992 to determine the possibility of the parties' voluntary compliance with the Decision (Order of Labor Arbiter Linsangan, dated July 23, 1992).

x x x In their second conference, held on July 15, 1992, petitioner proposed to private respondent a package compromise agreement in settlement of all pending claims. Private respondent for his part demanded P150,000.00 as settlement of his complaint which was turned down by petitioner as too excessive. Unfortunately, no positive results were achieved.

As a result, a pleading was filed by petitioner captioned: Motion to Defer

Execution and Motion to Re-Compute alleged overtime pay. Petitioner states that 'quite recently, the Employee Payroll Sheets pertaining to the salaries, overtime pay, vacation and sick leave of Angel Esquejo were located.'

x x x Petitioner's Motion to Defer Execution and Motion to Re-Compute respondent's overtime pay was denied in an Order dated July 23, 1992.

x x x Petitioner moved to reconsider the Denial Order on July 27, 1992. Private respondent opposed."

In the meantime, petitioner filed the instant special civil action for certiorari before this Court on July 10, 1992. Later, on July 17, 1992, citing as reason that "x x x quite recently, the Employee Payroll Sheets which contained the salaries and overtime pay received by respondent Esquejo were located in the bodega of the petitioner and based on said Payroll Sheets, it appears that substantial overtime pay have been paid to respondent Esquejo in the amount of P24,283.22 for the period starting January 1987 up to November 1989," petitioner asked this Court for the issuance of a temporary restraining order or writ of preliminary injunction. On the same date of July 17, 1992, a "Supplemental Petition Based On Newly Discovered Evidence" was filed by petitioner to which was attached photocopies of payroll sheets of the aforestated period.

On July 29, 1992, this Court issued a temporary restraining order enjoining the respondents from enforcing the Decision dated April 23, 1992 issued in NLRC NCR CA No. 002522-91, the case below subject of the instant petition.

The Issues

For issues have been raised by the petitioner in its effort to obtain a reversal of the assailed Decision, to wit:

"I

THE RESPONDENT NLRC COMMITTED A GRAVE ABUSE OF DISCRETION WHEN IT RULED THAT PRIVATE RESPONDENT IS ENTITLED TO OVERTIME PAY WHEN THE SAME IS A GROSS CONTRAVENTION OF THE CONTRACT OF EMPLOYMENT BETWEEN PETITIONER AND RESPONDENT ESQUEJO AND A PATENT VIOLATION OF ARTICLES 1305, 1306 AND 1159 OF THE CIVIL CODE.

II

THE RESPONDENT NLRC COMMITTED A GRAVE ABUSE OF DISCRETION IN AWARDING OVERTIME PAY OF P28,066.45 TO PRIVATE RESPONDENT WHEN THE SAME IS A CLEAR VIOLATION OF ARTICLE 22 OF THE CIVIL CODE ON UNJUST ENRICHMENT.

III

THE RESPONDENT NLRC COMMITTED A GRAVE ABUSED OF DISCRETION