

## **SPECIAL FIFTEENTH DIVISION**

**[ CA-G.R. SP NO. 126699, November 19, 2014 ]**

**JESUS B. SALAYAO, ALBERTO GONDRAN, GELO MONDOY,  
ALBERTO MENDOZA, PAQUITO NIANGAR, AURELIO RITAGA,  
SILVESTRE SERGIO ABELADA, HENRY GALLEG0, AND ANTONIO  
ARAGON, PETITIONERS, VS. THE NATIONAL LABOR RELATIONS  
COMMISSION (FIRST DIVISION), UNITED DOCKHANDLERS, INC.  
AND/OR BONIFACIO DOROY, RESPONDENTS,**

**VALENTIN B. MANA-AY, MARINO ACBANGIN, REYNALDO  
ROSALES, SUBSTITUTED BY HIS WIFE, CRISELDA SEFIL  
ROSALES, RODOLFO ROLDAN, AND TOMAS MACASA,  
PETITIONERS, VS. THE NATIONAL LABOR RELATIONS  
COMMISSION (FIRST DIVISION), UNITED DOCKHANDLERS, INC.  
AND/OR CARLITO ABON, RESPONDENTS,**

**EDUARDO C. SANTOS, JR. PETITIONER, VS. THE NATIONAL  
LABOR RELATIONS COMMISSION (FIRST DIVISION), UNITED  
DOCKHANDLERS, INC. AND/OR CARLITO ABON, RESPONDENTS,**

**ROMUALDO M. ILIGAN, PETITIONER, VS. THE NATIONAL LABOR  
RELATIONS COMMISSION (FIRST DIVISION), UNITED  
DOCKHANDLERS, INC. PROMULGATED: AND/OR BONIFACIO  
DOROY AND CARLITO ABON, RESPONDENTS,**

### **D E C I S I O N**

**VILLON, J.:**

This is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, assailing, on grounds of grave abuse of discretion amounting to lack or excess of jurisdiction, the decision<sup>[1]</sup> dated January 20, 2012 and resolution<sup>[2]</sup> dated July 25, 2012 of public respondent National Labor Relations Commission (NLRC), First Division, in NLRC LAC No. 06-001494-11. The assailed issuances modified the February 28, 2011 decision<sup>[3]</sup> of Labor Arbiter (LA) Edgardo M. Madriaga in NLRC NCR Case Nos. 05-07302-10, 06-07713-10, 06-08696-10 and 08-11217-10 which found merit in petitioners' complaint for non-payment of retirement benefits and other money claims.

The factual and procedural antecedents of the case are hardly in dispute.

On various occasions during the period between 1973 and 1979, petitioners were hired by private respondent United Dockhandlers, Inc. (UDI), an arrastre and stevedoring company which operated in Piers 6, 12, 14 and 16 of the Manila North Harbor. On April 15, 2000, petitioners were absorbed by the Philippine Ports Authority (PPA) after it took over the arrastre and stevedoring services in the North

Harbor.

On November 19, 2009, PPA entered into a contract with Manila North Harbor Port, Inc. (MNHPI) "*For the Development, Management, Operation and Maintenance of the Manila North Harbor.*"<sup>[4]</sup> Worth noting is Section 6.01 of the agreement which provides for the absorption by MNHPI of PPA's workers, viz.:

"Section 6.01 – Absorption of Port labor – Subject to the consent of the port of labor/workers at the Manila North Harbor and/or their respective unions, the CONTRACTOR shall absorb the existing port labor as may be determined by the Joint Committee taking into consideration the list of port labor/workers set out in the Contract Documents. The absorbed laborers shall be considered as new hirees and their employment with the CONTRACTOR shall be governed by new employment contracts."

On March 25, 2010, MNHPI, in a letter<sup>[5]</sup> addressed to the company's duly accredited labor union, the Alliance of Port Transport Workers and Porters – North Harbor (APTWP-NH), informed the latter that MNHPI was willing to pay all *bonafide* members of the union their "past services benefits" due from their previous employers which "shall be equivalent to twenty-six (26) days per year of service "without prejudice to the claim of past services benefits against them, which was then "pending before the NLRC." Then, on March 30, 2010, MNHPI entered into a Memorandum of Agreement<sup>[6]</sup> with APTWP-NH which provides, *inter alia*, that MNHPI shall advance payment of past service benefits to all absorbed employees, in partial consideration of their past services to their previous employers.

Thereafter, on several dates in the month of April 2010, thirty-nine (39) port workers, including herein petitioners, filed with UDI, their individual applications for optional retirement.<sup>[7]</sup> UDI denied all of the applications, prompting petitioners to institute before the arbitration branch of the NLRC a complaint<sup>[8]</sup> for non-payment of retirement benefits and other money claims.

In their position paper<sup>[9]</sup> dated October 9, 2010, petitioners asserted, among others, that: (1) when they were temporarily absorbed by PPA on April 15, 2000, their employment with UDI was not interrupted and, as such, their employment should be reckoned from the time that they were originally hired by UDI; and (2) by virtue of the provisions of the Collective Bargaining Agreement (CBA)<sup>[10]</sup> between UDI and their union, the Samahan ng Manggagawa sa Pantalan – National Federation of Workers Union (SMAP-NFWU), they are entitled to separation and/or retirement pay.

In response to petitioners' claims, UDI argued in its position paper<sup>[11]</sup> dated October 13, 2010 that: (1) UDI cannot be compelled to approve petitioners' applications for optional retirement and pay their retirement benefits because of the Memorandum of Agreement between APTWP-NH and MNHPI wherein the latter agreed to absorb the port workers' claim for past service benefits and consider them as new employees; and (2) even if petitioners were entitled to money claims, the said benefits accrued only from October 1, 2001 and not from their original dates of

employment with UDI.

On February 28, 2011, the LA rendered a judgment in favor of petitioners, disposing as follows:

"Fundamental is the rule that in money claims, the only defense available to the employer is payment and the payrolls are the best evidence thereof.

"In the case at bar, while the defense of respondent United Dockhandlers, Inc. is payment they never presented any documentary evidence that complainants were paid their separation pay by UDI, the Manila North Harbor Port, Inc. (MNHDI) or the Philippine Ports Authority.

"The payment of separation or retirement pay to employees is usually supported by payrolls and vouchers, or a Compromise Agreement with individual Quitclaim and Release executed by each employee who received their benefits.

"There is no iota of documentary evidence in the case at bar for UDI's bare allegations that complainants were already paid either by the Manila North Harbor Port, Inc. the successor of UDI in port operations, or the Philippine Ports Authority by virtue of a Memorandum of Agreement.

"In fact, this Office exerted its best efforts for the parties to settle the case amicably but the negotiations for an amount reasonable to both complainants and respondents did not prosper.

"Hence, unless there is documentary proof of payment, this Office rules that complainants are entitled to separation pay or retirement pay, as the case may be, as per their Collective Bargaining Agreement which stipulates for a uniform one month for every year of service for either separation pay and/or retirement pay, plus 10% thereof as attorney's fees computed below as follows:

1. JESUS B. SALAYAO – August 1, 1974-April 11, 2010 = 36 years  
 $P13,365.00 \times 36 \text{ years} = P481,140.00$
2. ALBERTO GONDRAN – January 1, 1974-April 11, 2010 = 36 years  
 $P13,280.00 \times 36 \text{ years} = P478,080.00$
3. GELO MONDOY – July 1, 1978-April 11, 2010 = 32 years  
 $P13,292.09 \times 32 \text{ years} = P425,346.88$
4. ALBERTO MENDOZA – March 17, 1978-April 11, 2010 = 32 years  
 $P444.75 \times 365/12 \times 32 \text{ years} = P432,889.98$
5. PAQUITO NIANGAR – August 1, 1978-April 11, 2010 = 32

- years  
 $P13,248.00 \times 32 \text{ years} = P432,936.00$
6. AURELIO RITAGA – August 1, 1978-April 11, 2010 = 32 years  
 $P11,538.05 \times 32 \text{ years} = P369,217.60$
7. SILVESTRE SERGIO ABELADA – February 22, 1979-April 11, 2010 = 32 years  
 $P13,444.17 \times 31 \text{ years} = P416,769.27$
8. HENRY GALLEG0 – August 1, 1978-April 11, 2010 = 32 years  
 $P447.75 \times 365/12 \times 32 \text{ years} = P435,809.98$
9. ANTONIO ARAGON – August 16, 1973-April 11, 2010 = 37 years  
 $P446.00 \times 365/12 \times 37 \text{ years} = P501,935.82$
10. VALENTIN MANA-AY – August 1, 1978-April 11, 2010 = 32 years  
 $P13,300.00 \times 32 \text{ years} = P425,600.00$
11. MARINO ACBANGIN – August 1, 1978-April 11, 2010 = 32 years  
 $P13,178.02 \times 32 \text{ years} = P421,696.64$
12. REYNALDO ROSALES – August 1, 1978-April 11, 2010 = 32 years  
 $P13,178.02 \times 32 \text{ years} = P421,696.64$
13. RODOLFO ROLDAN – July 1, 1978-April 11, 2010 = 32 years  
 $P13,200.00 \times 32 \text{ years} = P422,400.00$
14. TOMAS MACASA – January 3, 1978-April 11, 2010 = 32 years  
 $P13,269.28 \times 32 \text{ years} = P424,616.96$
15. EDUARDO SANTOS, JR. – November 1, 1978-April 11, 2010 = 31 years  
 $P13,177.00 \times 31 \text{ years} = P408,487.00$
16. ROMUALDO ILIGAN – August 1, 1978-April 11, 2010 = 32 years  
 $P13,229.00 \times 32 \text{ years} = P423,328.00$
17. MARIO RAMIL – August 1, 1978-April 11, 2010 = 32 years  
 $P13,444.75 \times 32 \text{ years} = P430,232.00$   
 $P7,343.182.77$   
10% Attorney's Fees  $P734,318.28$   
Total Monetary Awards **P8,077.501.05**

WHEREFORE, premises considered, respondent United Dockhandlers, Inc. is directed to pay complainants' monetary awards as computed above.

SO ORDERED.”<sup>[12]</sup>

Aggrieved, UDI interposed an appeal<sup>[13]</sup> before the NLRC. Petitioners filed a motion to dismiss<sup>[14]</sup> the appeal on the ground that it was filed beyond the reglementary period allowed by law. Based on the registry return card<sup>[15]</sup>, along with the certifications issued by the Quezon City Central Post Office<sup>[16]</sup> and the Office of the Postmaster, Central Post Office,<sup>[17]</sup> the LA decision was received by UDI's counsel on April 29, 2011. UDI only had ten (10) days from receipt thereof, or until May 9, 2011, within which to perfect an appeal. Thus, petitioners contended that when UDI filed its appeal on May 12, 2011, the judgment of the LA had already become final and executory.

In its opposition<sup>[18]</sup> to petitioners' motion to dismiss, UDI reasoned out that the registry return cards did not indicate the actual date of its counsel's receipt of the decision of the LA; that a certification<sup>[19]</sup> issued by the Office of the Postmaster, Central Post Office, showed that UDI received copy of the said decision only on May 3, 2011; and that its appeal to the NLRC was therefore filed within the prescribed period.

UDI likewise filed before the NLRC an Urgent Motion for Issuance of Subpoena Duces Tecum,<sup>[20]</sup> which was duly opposed<sup>[21]</sup> by petitioners, asking that MNHPI be ordered to submit evidence to prove that petitioners' money claims had already been paid.

On January 20, 2012, the NLRC rendered the assailed decision affirming with modification the judgment of the LA. Relying on its previous decision<sup>[22]</sup> dated July 31, 2008 in NLRC-NCR CA No. 040219-04, the NLRC decreed as follows:

**“WHEREFORE,** the assailed Decision is AFFIRMED, subject to the modification on the date of complainants' employment which shall be reckoned at October 1, 2001, for purposes of computing the award granted. The respondents' Urgent Motion for Issuance of Subpoena Duces Tecum is denied for lack of merit.

**SO ORDERED.”**<sup>[23]</sup>

Petitioners' motion for reconsideration<sup>[24]</sup> was denied in the assailed NLRC resolution dated July 25, 2012.

Hence the present recourse, petitioners raising the following issues for Our consideration:

## I.