SECOND DIVISION

[G.R. No. 123882. November 16, 1998]

JOE ASHLEY AGGA, VICTORINO MAKIMKIM, EDILBERTO EVANGELISTA, BENHUR SANTOS, RICHMOND CASTILLO, ROMEO AVILA, SEGUNDO GUADEZ, JR., OSCAR MALOLOY-ON, RICARDO BELDA, RUEL TONACAO, ROMULO DILAP-DILAP, JOSE SERGIO FRANCO, REYNALDO VILLAR, ROMULO DELA CRUZ, CAMILO CAIG, NICOLAS URSUA, MARTIN BAEZ, JR., MARIO SOSA and WOODY PADILLA *petitioners, vs.* NATIONAL LABOR RELATIONS COMMISSION, SUPPLY OILFIELD SERVICES, INC. and UNDERSEAS DRILLING, INC., *respondents*.

D E C I S I O N

PUNO, *J.*:

Private respondent Supply Oilfield Services, Inc. (SOS) hired petitioners to work on board SEDCO/BP 471, a drillship owned and operated by private respondent Underseas Drilling, Inc. (UDI).

The employment contracts ran for one year with petitioners enjoying two months' off with pay for every two months' duty. The contracts also provided that for service of 12 hours a day, 7 days a week in a two-shift 24-hour operation, petitioners would receive a fixed monthly compensation covering "basic rate, allowances, privileges, travel allowances and benefits granted by law during and after employment with the company."

In a complaint filed with the Philippine Overseas Employment Administration (POEA), petitioners claimed that private respondents failed to pay them overtime pay, holiday pay, rest day pay, 13th month pay and night shift differential. They likewise alleged that private respondents did not comply with the mandatory insurance requirement of the rules governing overseas employment. They further averred that while private respondents made them use passports for overseas contract workers whenever they departed for, and returned from, overseas employment, they were also instructed to use seaman's books upon reaching port for transfer to, and while aboard, the oilrig. Petitioners opined that this practice entitled them to the benefits granted by law to both land-based workers and seamen.

In their Answer and Position Paper, private respondents denied liability. They said that the benefits referred to in the employment contracts already included overtime pay, holiday pay, termination pay and 13th month pay. They likewise denied that petitioners were entitled to night shift differential since no proof was submitted to show that any of them, at any time, had actually worked from 10:00 p.m. to 6:00 a.m. In addition, private respondents belied petitioners' claim that they did not comply with the mandatory insurance requirement. They alleged that petitioners were insured with Blue Cross (Asia-Pacific) Insurance, Ltd. against death and permanent disability. Lastly, private respondents contended that petitioners, as offshore oilriggers, had nothing to do with manning a vessel or sea navigation. Hence, petitioners were merely land-based workers, not seamen.

On July 2, 1992, the POEA dismissed petitioners' complaint for lack of merit.i[1] Petitioners appealed to the National Labor Relations Commission (First Division). They submitted the following principal issues for resolution: (1) whether or not the lumpsum mode of payment of monthly salary is legal; (2) whether or not there were underpayments of their salary; (3) whether the days-off pay should be considered as part of their salaries or should be regarded as vacation leave pay or bonus separate therefrom; and (4) whether or not respondents substantially complied with the insurance requirement under POEA rules.

Upon the other hand, private respondents informed the NLRC that the POEA had already dismissed the claims for underpayment of labor benefits and lack of insurance coverage in the consolidated cases docketed as POEA Case No. 91-12-1348 and POEA Case No. 92-01-0011 filed by fourteen of the nineteen petitioners, and that the dismissal was affirmed on appeal by its Second Division. The decision has become final.

On November 27, 1995, the respondent NLRC promulgated the Decisionii[2] assailed herein, dismissing petitioners' appeal. It reiterated the decision in POEA Case No. 91-12-1348 and POEA Case No. 92-01-0011, viz.:

"Perusing the unrefuted copy of the POEA decision attached as Annex "1" to respondents' Reply dated August 14, 1995, it appears that in justifying his decision, the Administrator held:

From the foregoing factual backdrop, the issues for resolution in the instant case are:

1. Whether or not complainants had been underpaid of their compensation; and

2. Whether or not complainants are amply covered by insurance.

Anent the first issue, we find in the negative. After comparison of the Summary of Claims of the Complainants and Table 2 of the Respondents (Average Monthly Salary of Complainants vs. Statutorily Mandated Basic Salary and Benefits), we arrived at the conclusion that the alleged underpayments represent the difference between the amounts under Column E (Actual Pay on Board) and the amounts under Column D (total of basic salary + overtime pay & premium pay + 13th month pay & vacation pay). To illustrate, we take the case of complainant Agga who has a basic salary of US$900, overtime/premium pay of US$973.71 and 13th month/vacation pay of US$150 totalling US$2,023.71. The latter amount represents the statutorily mandated basic salary and benefits of complainant Agga. He received his actual pay on board in the sum of US$1,500. Thus, US$2,023.71 minus US$1,500 equals US$523.71. The latter amount is what now complainant Agga claims as underpayment and for a period of two months, his total claim is US$1,047.42.

We note that in arriving at the alleged underpayment, complainant Agga totally disregarded his day-off pay or pay while on leave under Column F in the amount of US$750. Thus, with his pay on board of US$1,500 plus his day-off pay of US$750, complainant Agga received an average monthly salary of US$2,250 which is a bit higher than his statutorily mandated salary and benefit

of US$2,027.71 in the amount of US$222.29. The aforesaid formula applies to all the complainants. Thus, we see no case of underpayment at bar.

The claim for underpayments of the complainants is premised on their wrong interpretation of the salary memoranda issued to them individually wherein they insist that vacation leave pay and days-off pay are additional fringe benefits which should not affect payment of items 1 to 5 therein and to which we disagree.

The vacation leave pay is different from 'days-off pay.' Complainants' vacation pay is accounted under Column C denominated as 13th month pay but also for a vacation pay of one month which is clearly indicated by the prescribed formula, i.e. 'Basic Salary (A) x .167. The product over a period of twelve months results in two months basic pay as (0.167 x 12 = 2.004). The two months therefore corresponds to the 13th month pay and the one month vacation leave pay. It is therefore erroneous for complainants to contend that the vacation leave pay is a distinct benefit when in truth and in fact the same has been duly considered in the computation of their statutorily mandated compensation under the column of 13th month pay.

While the days-off pay constitutes complainants' salary in the same way as their lumpsum pay while on board the oil rig, therefore complainants should not compare the amounts under column D (Total of A + B + C) with the amounts under Column E (Actual Pay while on Board) only but with the amounts under column 'E' and 'F' (pay while on board or days-off pay) which sum is listed under column G (Average Monthly Salary over a 12-Month Period). The days-off pay is paid to the complainants even though they are not working and should therefore be considered in the computation of their total compensation.

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With respect to the second issue, we rule in the affirmative. The evidence on record shows that complainants were provided with insurance coverage superior to that mandated by law. Complainants are insured under two Blue Cross Insurance Policies, i.e. the Disability Income Insurance (Policy No. ID00128, GP-01) and a Worldwide Executive Health Plan (Policy No. W003323 GP7-01). Under the disability income insurance, should the employee get sick or injured, he is entitled to a monthly indemnity of US$200. While under the Worldwide Executive Health Plan, the benefits to which the insured workers are entitled are enumerated in the Table of Insured Benefits. The Personal Accident Plan Benefits to which the complainants are entitled are as follows:

| | BENEFITS PER PERSON |
|---|---|
| 1. Death | US$15,000 |
| 2. Permanent total loss of sight of both eyes | US$15,000 |
| 3. Permanent total loss of sight of one eye | US$ 7,500 |
| 4. Loss of two limbs | US$15,000 |
| 5. Loss of one limb | US$ 7,500 |
| 6. Permanent total loss of sight of one eye and loss of one limb | US$15,000 |
| 7. Permanent total disablement | US$15,000 |

(other than loss of sight of one eye or both eyes or loss of limb)

Verily, the benefits provided therein are far greater than mandated by law which is ₱50,000.00 for death due to accident.

In an appeal dated February 26, 1993, the complainants questioned the aforesaid decision. They, however, limited their appeal to claims for additional vacation pay and insurance coverage.

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(I)t then follows that to the extent that the POEA has concluded that there is "no case of underpayment at bar," the same has to be bindingly observed by us vis-a-vis complainants' submitted issue in their draft decision of "(2) whether or not there had been underpayments as claimed by appellants under the provisions of PD 442."

Moreover, on June 13, 1995, the Second Division of this Commission dismissed complainants' appeal "for lack of merit." At the end of its extended resolution, the Commission concluded that the complainants failed "to show in a satisfactory manner the facts upon which" they based their claims.

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This thus disposes the third and fourth issues advanced by complainants for our resolution in their earlier mentioned draft resolution.

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Even the first issue submitted to us for our resolution (which, in their draft resolution, has been defined by complainants as "whether or not the lumpsum mode of payment of appellants' monthly salary is legal") was, for all legal intents and purposes, already resolved in that other case for inherently submitted for the resolution of the POEA and the Second Division of this Commission in that other case was the question of whether or not the "fixed salary" mode of payment stipulated in the parties' contract was valid. The POEA Administrator could not have concluded that "we see no case of underpayment at bar" if, in his opinion, the parties' "fixed salary" mode of compensation was illegal, aware that such declaration of nullity was precisely the end-goal of complainants' complaint.

Similarly, the NLRC Second Division would not have dismissed complainants' appeal if it were of the view, as argued by complainants, that respondent SOS' lumpsum mode of payment was illegal.

Indeed, our resolving said first issue anew would amount to a duplicitous exercise of appellate jurisdiction."[iii][3]

On January 17, 1996, petitioners filed a motion for reconsideration. In an Order[iv][4] dated January 30, 1996, the respondent NLRC denied petitioners' motion.

Hence, this petition for *certiorari*v[5] raising the following issues:

"I

WHETHER OR NOT RESPONDENT NLRC ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT DECLARING THAT THE LUMPSUM MODE OF PAYMENT OF PETITIONERS' MONTHLY SALARIES BY PRIVATE RESPONDENTS IS ILLEGAL

II

WHETHER OR NOT RESPONDENT NLRC ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT ORDERING PRIVATE RESPONDENTS, JOINTLY AND SEVERALLY, TO PAY THE ADMITTED UNDERPAYMENTS AS SHOWN BY PRIVATE RESPONDENTS' COMPUTATION AND BASED ON PETITIONERS' REGULAR WAGES AND LEGAL FORMULAS FOR COMPUTING OVERTIME PAY, HOLIDAY/REST DAY PAY, 13TH MONTH PAY AND NIGHT SHIFT DIFFERENTIALS

III

WHETHER OR NOT RESPONDENT NLRC ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT DECLARING THE DAYS-OFF PAY AS BONUS AND NOT PART OF PETITIONERS' SALARIES WHICH COULD NOT OFFSET THE ADMITTED UNDERPAYMENTS

IV

WHETHER OR NOT RESPONDENT NLRC ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT ORDERING THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA) TO COMPLY WITH ITS MANDATED DUTY TO SET UP STANDARD EMPLOYMENT CONTRACT AND GUIDING RATES FOR OILRIG WORKERS LIKE PETITIONERS

V

WHETHER OR NOT RESPONDENT NLRC ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT DECLARING THAT PRIVATE RESPONDENTS FAILED TO COMPLY WITH THE LEGAL REQUIREMENT OF MANDATORY PERSONAL INSURANCE PROVIDED IN THE POEA RULES AND REGULATIONS AND IN ALLOWING PRIVATE RESPONDENTS TO INSURE PETITIONERS WITH A FOREIGN INSURANCE COMPANY ILLEGALLY DOING BUSINESS IN THE PHILIPPINES

VI

WHETHER OR NOT RESPONDENT NLRC ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT PENALIZING PRIVATE RESPONDENT SUPPLY OILFIELD SERVICES, INC. BY WAY OF SUSPENSION OR CANCELLATION OF ITS LICENSE AS SERVICE CONTRACTOR DESPITE ITS ADMISSION THAT IT ORDERS PETITIONERS AND OTHER OILRIG WORKERS TO ALTER TRAVEL DOCUMENTS BY USING TWO (2) PASSPORTS (OCW AND SEAMAN'S BOOK) DURING THEIR EMPLOYMENT

VII

WHETHER OR NOT RESPONDENT NLRC ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT AWARDING DAMAGES AND ATTORNEY'S FEES TO PETITIONERS

VIII

WHETHER OR NOT RESPONDENT NLRC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DECLARING HEREIN THAT THE ISSUE OF ILLEGALITY OF THE LUMPSUM MODE OF PAYMENT OF SALARIES HAD BEEN RESOLVED IN NLRC CASE NO. 004779-93 CONSIDERING THAT IN THE LATTER CASE THE ISSUE IS LIMITED TO UNDERPAYMENT OF DAYS-OFF PAY AND THE NLRC DID NOT RESOLVE THE ISSUES POSITED HEREIN."[vi][6]

We affirm.

Anent the first issue, petitioners contend that the lumpsum mode of payment of salaries is illegal, citing Articles 5 and 6 of the New Civil Code, Articles 86, 87, 90, 93 and 94 of PD 442 and Book V, Rule II, Section 2(a) of the 1991 POEA Rules.

We do not agree. As correctly observed by the respondents, none of the aforemetioned laws and rules prohibit the subject payment scheme. The cited articles of the New Civil Code merely provide that agreements in violation of law or public policy cannot be entered into and have legal effect. The cited provisions of PD 442 simply declare that night shift differential and additional remuneration for overtime, rest day, Sunday and holiday work shall be computed on the basis of the employee's regular wage. In like fashion, the 1991 POEA Rules merely require employers to guarantee payment of wages and overtime pay. Thus, petitioners' stance is bereft of any legal support.

Anent the second and third issues, petitioners allege that their fixed monthly salaries represented only their basic salaries and did not include overtime pay, holiday pay, 13th month pay and night shift differential. In POEA Case No. 91-12-1348 and POEA Case No. 92-01-0011, the Administrator found and ruled that petitioners were not underpaid and that their fixed monthly

compensation already comprised their basic salary, night shift differential, overtime pay, holiday pay and 13th month pay. Petitioners did not appeal this ruling. In this light, respondent NLRC correctly held:

"With Section 1, Rule V, Book VII of the POEA Rules dated May 31, 1991 (issued pursuant to E.O. 247) providing that `(D)ecisions and/or awards of the Administration shall be final and executory unless appealed to the National Labor Relations Commission (NLRC) by any or both parties,' it then follows that to the extent that the POEA has concluded that there is 'no case of underpayment at bar,' the same has to be bindingly observed by us vis-a-vis complainants' submitted issue in their draft decision of "(2) whether or not there had been underpayments as claimed by appellants under the provisions of P.D. 442."vii[7]

The fourth issue deserves scant consideration. The matter of ordering the NLRC to compel the POEA to set up standard employment contract and guiding rates for oilrig workers is beyond the jurisdiction of this Court.

With respect to the fifth issue, we find petitioners' charge that private respondents failed to provide them with life and personal accident insurance groundless. The POEA and the NLRC have found that private respondents insured petitioners with Blue Cross (Asia-Pacific) Insurance, Ltd. under two policies which even provide for coverage superior to that mandated by the rules. Before this Court, however, petitioners assail these insurance policies as they were allegedly issued by a foreign insurance company not licensed to do business in the Philippines. The contention is raised for the first time and cannot be considered.viii[8]

In regard to the sixth issue, the evidence shows that petitioners are land-based workers and hence, not entitled to benefits appertaining to sea-based workers. Petitioners have nothing to do with manning vessels or with sea navigation. Their use of a seaman's book does not detract from the fact that they are truly land-based employees. Petitioners' plea that we suspend SOS' license for making them use two (2) passports is off-line. Again, they never prayed for this relief before the POEA and the NLRC. This Court is the improper venue for the belated plea.

Finally, the claims for attorney's fees and damages of the petitioners have no basis as private respondents did not act in bad faith or with malice.

**IN VIEW WHEREOF**, the decision of the NLRC dated November 27, 1995 is AFFIRMED. No costs.

SO ORDERED.

Melo, (Acting Chairman), and Mendoza, JJ., concur.

Martinez, J., on leave.

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i[1] Petition Annex "E."

ii[2] Petition, Annex "A."

iii[3] NLRC Decision, pp. 4-12.

iv[4] Petition, Annex "B."

v[5] *Rollo*, pp. 8-35.

vi[6] Petition, pp.6-8.

vii[7] NLRC Decision, p. 9.

viii[8] People *vs*. Echegaray, 267 SCRA 682.