

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
FIRST DIVISION**

**ERNESTO M. APODACA,  
*Petitioner,***

***-versus-***

**G.R. No. 80039  
April 18, 1989**

**NATIONAL LABOR RELATIONS  
COMMISSION, JOSE M. MIRASOL,  
AND INTRANS PHILS., INC.,  
*Respondents.***

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

**GANCAYCO, J.:**

Does the National Labor Relations Commission (NLRC) have jurisdiction to resolve a claim for non-payment of stock subscriptions to a corporation? Assuming that it has, can an obligation arising therefrom be offset against a money claim of an employee against the employer? These are the issues brought to this court through this petition for review of a decision of the NLRC dated September 18, 1987.

The only remedy provided for by law from such a decision is a special civil action for certiorari under Rule 65 of the Rules of Court based on jurisdictional grounds or on alleged grave abuse of discretion

amounting to lack or excess of jurisdiction, not by way of an appeal by certiorari. Nevertheless, in the interest of justice, this petition is treated as a special civil action for certiorari.

Petitioner was employed in respondent corporation. On August 28, 1985, respondent Jose M. Mirasol persuaded petitioner to subscribe to P1,500 shares of respondent corporation at P100.00 per share or a total of P150,000.00. He made an initial payment of P37,500.00. On September 1, 1975, petitioner was appointed President and General Manager of the respondent corporation. However, on January 2, 1986, he resigned.

On December 19, 1986, petitioner instituted with the NLRC a complaint against private respondents for the payment of his unpaid wages, his cost of living allowance, the balance of his gasoline and representation expenses and his bonus compensation for 1986. Petitioner and private respondents submitted their position papers to the labor arbiter. Private respondents admitted that there is due to petitioner the amount of P17,060.07 but this was applied to the unpaid balance of his subscription in the amount of P95,439.93. Petitioner questioned the set-off alleging that there was no call or notice for the payment of unpaid subscription and that, accordingly, the alleged obligation is not enforceable.

In a decision dated April 28, 1987, the labor arbiter sustained the claim of petitioner for P17,060.07 on the ground that the employer has no right to withhold payment of wages already earned under Article 103 of the Labor Code. Upon the appeal of the private respondents to public respondent NLRC, the decision of the labor arbiter was reversed in a decision dated September 18, 1987. The NLRC held that a stockholder who fails to pay his unpaid subscription on call becomes a debtor of the corporation and that the set off of said obligation against the wages and others due to petitioner is not contrary to law, morals and public policy.

Hence, the instant petition.

The petition is impressed with merit.

Firstly, the NLRC has no jurisdiction to determine such intra-corporate dispute between the stockholder and the corporation as in the matter of unpaid subscriptions. This controversy is within the exclusive jurisdiction of the Securities and Exchange Commission.<sup>[1]</sup>

Secondly, assuming *arguendo* that the NLRC may exercise jurisdiction over the said subject matter under the circumstances of this case, the unpaid subscriptions are not due and payable until a call is made by the corporation for payment.<sup>[2]</sup> Private respondents have not presented a resolution of the board of directors of respondent corporation calling for the payment of the unpaid subscriptions. It does not even appear that a notice of such call has been sent to petitioner by the respondent corporation.

What the records show is that the respondent corporation deducted the amount due to petitioner from the amount receivable from him for the unpaid subscriptions.<sup>[3]</sup> No doubt such set-off was without lawful basis, if not premature. As there was no notice or call for the payment of unpaid subscriptions, the same is not yet due and payable.

Lastly, assuming further that there was a call for payment of the unpaid subscription, the NLRC cannot validly set it off against the wages and other benefits due petitioner. Article 113 of the Labor Code allows such a deduction from the wages of the employees by the employer, only in three instances, to wit:

“ART. 113. Wage Deduction. — No employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees, except:

- (a) In cases where the worker is insured with his consent by the employer, and the deduction is to recompense the employer for the amount paid by him as premium on the insurance;
- (b) For union dues, in cases where the right of the worker or his union to checkoff has been recognized by the employer or authorized in writing by the individual worker concerned; and

- (c) In cases where the employer is authorized by law or regulations issued by the Secretary of Labor.”<sup>[4]</sup>

**WHEREFORE**, the petition is **GRANTED** and the questioned decision of the NLRC dated September 18, 1987 is hereby set aside and another judgment is hereby rendered ordering private respondents to pay petitioner the amount P17,060.07 plus legal interest computed from the time of the filing of the complaint on December 19, 1986, with costs against private respondents.

**SO ORDERED.**

**Narvasa, Cruz, Griño-Aquino and Medialdea, JJ., concur.**

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[1] Section 5, Presidential Decree No. 902-A.

[2] Section 67, Corporation Code of the Philippines, B.P. No. 68.

[3] Letter dated 8 February 1986 of private respondents to Untalan, Dula, Bañares, Viernes and Associates, counsels of petitioner, pages 36 and 37, Rollo.

[4] Article 113, Labor Code.