SUPREME COURT
SECOND DIVISION

AUTO BUS TRANSPORT SYSTEMS, INC.,
Petitioner,

-versus-

G.R. No. 156367
May 16, 2005

ANTONIO BAUTISTA,
Respondent.
x----------x

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is a Petition for Review on *Certiorari* assailing the Decision[1] and Resolution[2] of the Court of Appeals affirming the Decision[3] of the National Labor Relations Commission (NLRC). The NLRC ruling modified the Decision of the Labor Arbiter (finding respondent entitled to the award of 13th month pay and service incentive leave pay) by deleting the award of 13th month pay to respondent.

THE FACTS

Since 24 May 1995, respondent Antonio Bautista has been employed by petitioner Auto Bus Transport Systems, Inc. (Autobus), as driver-

conductor with travel routes Manila-Tuguegarao via Baguio, Baguio-Tuguegarao via Manila and Manila-Tabuk via Baguio. Respondent was paid on commission basis, seven percent (7%) of the total gross income per travel, on a twice a month basis.

On 03 January 2000, while respondent was driving Autobus No. 114 along Sta. Fe, Nueva Vizcaya, the bus he was driving accidentally bumped the rear portion of Autobus No. 124, as the latter vehicle suddenly stopped at a sharp curve without giving any warning.

Respondent averred that the accident happened because he was compelled by the management to go back to Roxas, Isabela, although he had not slept for almost twenty-four (24) hours, as he had just arrived in Manila from Roxas, Isabela. Respondent further alleged that he was not allowed to work until he fully paid the amount of P75,551.50, representing thirty percent (30%) of the cost of repair of the damaged buses and that despite respondent's pleas for reconsideration, the same was ignored by management. After a month, management sent him a letter of termination.

Thus, on 02 February 2000, respondent instituted a Complaint for Illegal Dismissal with Money Claims for nonpayment of 13th month pay and service incentive leave pay against Autobus.

Petitioner, on the other hand, maintained that respondent's employment was replete with offenses involving reckless imprudence, gross negligence, and dishonesty. To support its claim, petitioner presented copies of letters, memos, irregularity reports, and warrants of arrest pertaining to several incidents wherein respondent was involved.

Furthermore, petitioner avers that in the exercise of its management prerogative, respondent's employment was terminated only after the latter was provided with an opportunity to explain his side regarding the accident on 03 January 2000.

On 29 September 2000, based on the pleadings and supporting evidence presented by the parties, Labor Arbiter Monroe C. Tabingan promulgated a Decision,[4] the dispositive portion of which reads:

> WHEREFORE, all premises considered, it is hereby found that the complaint for Illegal Dismissal has no leg to stand on. It is hereby ordered DISMISSED, as it is hereby DISMISSED.

However, still based on the above-discussed premises, the respondent must pay to the complainant the following:

> a. his 13th month pay from the date of his hiring to the date of his dismissal, presently computed at P78,117.87;
>
> b. his service incentive leave pay for all the years he had been in service with the respondent, presently computed at P13,788.05.
>
> All other claims of both complainant and respondent are hereby dismissed for lack of merit.[5]

Not satisfied with the decision of the Labor Arbiter, petitioner appealed the decision to the NLRC which rendered its decision on 28 September 2001, the decretal portion of which reads:

> The Rules and Regulations Implementing Presidential Decree No. 851, particularly Sec. 3 provides:
>
> > "Section 3. Employers covered. – The Decree shall apply to all employers except to:
> >
> > x x x
> >
> > e) employers of those who are paid on purely commission, boundary, or task basis, performing a specific work, irrespective of the time consumed in the performance thereof."
>
> Records show that complainant, in his position paper, admitted that he was paid on a commission basis.
>
> In view of the foregoing, we deem it just and equitable to modify the assailed Decision by deleting the award of 13th month pay to the complainant.

> WHEREFORE, the Decision dated 29 September 2000 is MODIFIED by deleting the award of 13th month pay. The other findings are AFFIRMED.[6]

In other words, the award of service incentive leave pay was maintained. Petitioner thus sought a reconsideration of this aspect, which was subsequently denied in a Resolution by the NLRC dated 31 October 2001.

Displeased with only the partial grant of its appeal to the NLRC, petitioner sought the review of said decision with the Court of Appeals which was subsequently denied by the appellate court in a Decision dated 06 May 2002, the dispositive portion of which reads:

> WHEREFORE, premises considered, the *Petition* is DISMISSED for lack of merit; and the assailed *Decision* of respondent Commission in NLRC NCR CA No. 026584-2000 is hereby AFFIRMED *in toto*. No costs.[7]

Hence, the instant petition.

ISSUES

1. Whether or not respondent is entitled to service incentive leave;

2. Whether or not the three (3)-year prescriptive period provided under Article 291 of the Labor Code, as amended, is applicable to respondent's claim of service incentive leave pay.

RULING OF THE COURT

The disposition of the first issue revolves around the proper interpretation of Article 95 of the Labor Code *vis-à-vis* Section 1(D), Rule V, Book III of the Implementing Rules and Regulations of the Labor Code which provides:

Art. 95. RIGHT TO SERVICE INCENTIVE LEAVE

> (a) Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay.

Book III, Rule V: SERVICE INCENTIVE LEAVE

SECTION 1. Coverage. – This rule shall apply to all employees except:

> (d) Field personnel and other employees whose performance is unsupervised by the employer including those who are engaged on task or contract basis, purely commission basis, or those who are paid in a fixed amount for performing work irrespective of the time consumed in the performance thereof;
>
> A careful perusal of said provisions of law will result in the conclusion that the grant of service incentive leave has been delimited by the Implementing Rules and Regulations of the Labor Code to apply only to those employees not explicitly excluded by Section 1 of Rule V. According to the Implementing Rules, Service Incentive Leave shall not apply to employees classified as "field personnel." The phrase "other employees whose performance is unsupervised by the employer" must not be understood as a separate classification of employees to which service incentive leave shall not be granted. Rather, it serves as an amplification of the interpretation of the definition of field personnel under the Labor Code as those "whose actual hours of work in the field cannot be determined with reasonable certainty."[8]

The same is true with respect to the phrase "*those who are engaged on task or contract basis, purely commission basis.*" Said phrase should be related with "field personnel," applying the rule on *ejusdem generis* that general and unlimited terms are restrained and limited by the particular terms that they follow.[9] Hence, employees engaged on task or contract basis or paid on purely commission basis are not

automatically exempted from the grant of service incentive leave, unless, they fall under the classification of field personnel.

Therefore, petitioner's contention that respondent is not entitled to the grant of service incentive leave just because he was paid on purely commission basis is misplaced. What must be ascertained in order to resolve the issue of propriety of the grant of service incentive leave to respondent is whether or not he is a field personnel.

According to Article 82 of the Labor Code, "field personnel" shall refer to non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty. This definition is further elaborated in the Bureau of Working Conditions (BWC), Advisory Opinion to Philippine Technical-Clerical Commercial Employees Association[10] which states that:

> As a general rule, [field personnel] are those whose performance of their job/service is not supervised by the employer or his representative, the workplace being away from the principal office and whose hours and days of work cannot be determined with reasonable certainty; hence, they are paid specific amount for rendering specific service or performing specific work. If required to be at specific places at specific times, employees including drivers cannot be said to be field personnel despite the fact that they are performing work away from the principal office of the employee. *(Emphasis ours)*

To this discussion by the BWC, the petitioner differs and postulates that under said advisory opinion, no employee would ever be considered a field personnel because every employer, in one way or another, exercises control over his employees. Petitioner further argues that the only criterion that should be considered is the nature of work of the employee in that, if the employee's job requires that he works away from the principal office like that of a messenger or a bus driver, then he is inevitably a field personnel.

We are not persuaded. At this point, it is necessary to stress that the definition of a "field personnel" is not merely concerned with the

location where the employee regularly performs his duties but also with the fact that the employee's performance is unsupervised by the employer. As discussed above, field personnel are those who regularly perform their duties away from the principal place of business of the employer *and whose actual hours of work in the field cannot be determined with reasonable certainty*. Thus, in order to conclude whether an employee is a field employee, it is also necessary to ascertain if actual hours of work in the field can be determined with reasonable certainty by the employer. In so doing, an inquiry must be made as to whether or not the employee's time and performance are constantly supervised by the employer.

As observed by the Labor Arbiter and concurred in by the Court of Appeals:

> It is of judicial notice that along the routes that are plied by these bus companies, there are its inspectors assigned at strategic places who board the bus and inspect the passengers, the punched tickets, and the conductor's reports. There is also the mandatory once-a-week car barn or shop day, where the bus is regularly checked as to its mechanical, electrical, and hydraulic aspects, whether or not there are problems thereon as reported by the driver and/or conductor. They too, must be at specific place as [sic] specified time, as they generally observe prompt departure and arrival from their point of origin to their point of destination. In each and every depot, there is always the Dispatcher whose function is precisely to see to it that the bus and its crew leave the premises at specific times and arrive at the estimated proper time. These, are present in the case at bar. The driver, the complainant herein, was therefore under constant supervision while in the performance of this work. He cannot be considered a field personnel.[11]

We agree in the above disquisition. Therefore, as correctly concluded by the appellate court, respondent is not a field personnel but a regular employee who performs tasks usually necessary and desirable to the usual trade of petitioner's business. Accordingly, respondent is entitled to the grant of service incentive leave.

The question now that must be addressed is up to what amount of service incentive leave pay respondent is entitled to.

The response to this query inevitably leads us to the correlative issue of whether or not the three (3)-year prescriptive period under Article 291 of the Labor Code is applicable to respondent's claim of service incentive leave pay.

Article 291 of the Labor Code states that all money claims arising from employer-employee relationship shall be filed within three (3) years from the time the cause of action accrued; otherwise, they shall be forever barred.

In the application of this section of the Labor Code, the pivotal question to be answered is when does the cause of action for money claims accrue in order to determine the reckoning date of the three-year prescriptive period.

It is settled jurisprudence that a cause of action has three elements, to wit, (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff.[12]

To properly construe Article 291 of the Labor Code, it is essential to ascertain the time when the third element of a cause of action transpired. Stated differently, in the computation of the three-year prescriptive period, a determination must be made as to the period when the act constituting a violation of the workers' right to the benefits being claimed was committed. For if the cause of action accrued more than three (3) years before the filing of the money claim, said cause of action has already prescribed in accordance with Article 291.[13]

Consequently, in cases of nonpayment of allowances and other monetary benefits, if it is established that the benefits being claimed have been withheld from the employee for a period longer than three (3) years, the amount pertaining to the period beyond the three-year

prescriptive period is therefore barred by prescription. The amount that can only be demanded by the aggrieved employee shall be limited to the amount of the benefits withheld within three (3) years before the filing of the complaint.[14]

It is essential at this point, however, to recognize that the service incentive leave is a curious animal in relation to other benefits granted by the law to every employee. In the case of service incentive leave, the employee may choose to either use his leave credits or commute it to its monetary equivalent if not exhausted at the end of the year.[15] Furthermore, if the employee entitled to service incentive leave does not use or commute the same, he is entitled upon his resignation or separation from work to the commutation of his accrued service incentive leave. As enunciated by the Court in *Fernandez vs. NLRC*:[16]

> The clear policy of the Labor Code is to grant service incentive leave pay to workers in all establishments, subject to a few exceptions. Section 2, Rule V, Book III of the Implementing Rules and Regulations provides that "[e]very employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay." Service incentive leave is a right which accrues to every employee who has served "within 12 months, whether continuous or broken reckoned from the date the employee started working, including authorized absences and paid regular holidays unless the working days in the establishment as a matter of practice or policy, or that provided in the employment contracts, is less than 12 months, in which case said period shall be considered as one year." It is also *"commutable to its money equivalent if not used or exhausted at the end of the year." In other words, an employee who has served for one year is entitled to it. He may use it as leave days or he may collect its monetary value.* To limit the award to three years, as the solicitor general recommends, is to unduly restrict such right.[17] *(Italics supplied)*

Correspondingly, it can be conscientiously deduced that the cause of action of an entitled employee to claim his service incentive leave pay accrues from the moment the employer refuses to remunerate its

monetary equivalent if the employee did not make use of said leave credits but instead chose to avail of its commutation. Accordingly, if the employee wishes to accumulate his leave credits and opts for its commutation upon his resignation or separation from employment, his cause of action to claim the whole amount of his accumulated service incentive leave shall arise when the employer fails to pay such amount at the time of his resignation or separation from employment.

Applying Article 291 of the Labor Code in light of this peculiarity of the service incentive leave, we can conclude that the three (3)-year prescriptive period commences, not at the end of the year when the employee becomes entitled to the commutation of his service incentive leave, but from the time when the employer refuses to pay its monetary equivalent after demand of commutation or upon termination of the employee's services, as the case may be.

The above construal of Art. 291, *vis-à-vis* the rules on service incentive leave, is in keeping with the rudimentary principle that in the implementation and interpretation of the provisions of the Labor Code and its implementing regulations, the workingman's welfare should be the primordial and paramount consideration.[18] The policy is to extend the applicability of the decree to a greater number of employees who can avail of the benefits under the law, which is in consonance with the avowed policy of the State to give maximum aid and protection to labor.[19]

In the case at bar, respondent had not made use of his service incentive leave nor demanded for its commutation until his employment was terminated by petitioner. Neither did petitioner compensate his accumulated service incentive leave pay at the time of his dismissal. It was only upon his filing of a complaint for illegal dismissal, one month from the time of his dismissal, that respondent demanded from his former employer commutation of his accumulated leave credits. His cause of action to claim the payment of his accumulated service incentive leave thus accrued from the time when his employer dismissed him and failed to pay his accumulated leave credits.

Therefore, the prescriptive period with respect to his claim for service incentive leave pay only commenced from the time the employer failed to compensate his accumulated service incentive leave pay at the time of his dismissal. Since respondent had filed his money claim after only one month from the time of his dismissal, necessarily, his money claim was filed within the prescriptive period provided for by Article 291 of the Labor Code.

WHEREFORE, premises considered, the instant petition is hereby **DENIED**. The assailed Decision of the Court of Appeals in CA-G.R. SP. No. 68395 is hereby **AFFIRMED**. No Costs.

SO ORDERED.

PUNO, *J.*, *(Chairman)*, AUSTRIA-MARTINEZ, CALLEJO, SR., TINGA, *JJ.*, concur.

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[1] CA-G.R. SP No. 68395, dated 06 May 2002, penned by Associate Justice Andres B. Reyes, Jr. with Associate Justices Conrado M. Vasquez, Jr. and Mario L. Guariña, III, concurring.
[2] Dated 12 December 2002.
[3] NLRC NCR CA No. 026584-2000 (NLRC Case No. RAB CAR 02-0088-00), dated 28 September 2001.
[4] NLRC Case No. RAB-CAR-02-0088-00.
[5] Rollo, pp. 46-47.
[6] Rollo, pp. 52-53.
[7] CA Decision, p. 10; Rollo, p. 24.
[8] See Mercidar Fishing Corporation vs. NLRC, G.R. No. 112574, 08 October 1998, 297 SCRA440.
[9] Cebu Institute of Technology vs. Ople, G.R. No. L- 58870, 18 December 1987, 156 SCRA 629, 672, citing Vera vs. Cuevas, G.R. No. L-33693, 31 May 1979, 90 SCRA 379.
[10] 06 April 1989; Rollo. p. 20.
[11] Rollo, pp. 45-46.
[12] Baliwag Transit, Inc. vs. Ople, G.R. No. 57642, 16 March 1989, 171 SCRA 250, citing Agric. Credit & Cooperative Financing Administration vs. Alpha Ins. & Surety Co., Inc., G.R. No. L-24566, 29 July 1968, 24 SCRA 151; Summit Guaranty and Insurance Co., Inc. vs. De Guzman, G.R. No. L-50997, 30 June 1987, 151 SCRA 389; Tormon vs. Cutanda, G.R. No. L-18785, 23 December 1963, 9 SCRA 698.
[13] See De Guzman, et al. vs. CA and Nasipit Lumber Co., G.R. No.132257, 12 October 1998, 297 SCRA 743.

[14] See E. Ganzon, Inc. vs. NLRC, G.R. No. 123769, 22 December 1999, 321 SCRA 434.
[15] Fernandez vs. NLRC, G.R. No. 105892, 28 January 1998, 349 Phil 65.
[16] Ibid.
[17] Ibid., pp. 94-95.
[18] Abella vs. NLRC, G.R. No. L-71813, 20 July 1987, 152 SCRA 140, citing Volkschel Labor Union vs. Bureau of Labor Relations, G.R. No. L-45824, 19 June 1985, 137 SCRA 43.
[19] Sarmiento vs. Employees' Compensation Commission, G.R. No. L-68648, 24 September 1986, 144 SCRA 421, citing Cristobal vs. Employees' Compensation Commission, G.R. No. L-49280, 26 February 1981, 103 SCRA 329; Acosta vs. Employees' Compensation Commission, G.R. No. L-55464, 12 November 1981, 109 SCRA 209.