SUPREME COURT
THIRD DIVISION

CALTEX REGULAR EMPLOYEES AT MANILA OFFICE, LEGAZPI BULK DEPOT AND MARINDUQUE BULK DEPOT - (MACLU),
***Petitioners*,**

-versus-

G.R. No. 111359
August 15, 1995

CALTEX (PHILIPPINES), INC. and NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION),
***Respondents*.**
x----------x

D E C I S I O N

FELICIANO, *J.*:

In this Petition for Certiorari, petitioner Caltex Regular Employees Association at the Manila office, Legazpi Bulk Depot and the Marinduque Bulk Depot (hereinafter referred to as "Union"), seeks to annul and set aside the decision of the National Labor Relations Commission ("NLRC"), promulgated on 5 March 1993, which reversed the decision of Labor Arbiter Valentin Guanio.

On 12 December 1985, petitioner Union and private respondent Caltex (Philippines), Inc. ("Caltex") entered into a Collective Bargaining Agreement ("1985 CBA") which was to be in effect until midnight of 31 December 1988. The CBA included, among others, the following provision:

> "**ARTICLE III**
> **HOURS OF WORK**
>
> In conformity with Presidential Decree 442, otherwise known as the Labor Code of the Philippines, as amended, the regular work week shall consist of eight (8) hours per day, seven (7) days, Monday through Sunday, during which regular rates of pay shall be paid in accordance with Annex B and work on the employee's one 'Day of Rest,' shall be considered a special work day, during which 'Day of Rest' rates of pay shall be paid as provided in Annex B. Daily working schedules shall be established by management in accordance with the requirements of efficient operations on the basis of eight (8) hours per day for any five (5) days. Provided, however, employees required to work in excess of forty (40) hours in any week shall be compensated in accordance with Annex B of this Agreement.[1] (Emphasis supplied)

Pertinent portions of Annex "B" of the 1985 CBA are also quoted here as follows:

> "Annex 'B'
>
> Computation of:
> Regular Day Pay
> Overtime Pay
> Night Shift Differential Pay
> Day off Pay
> Excess of 40 hours within a calendar week
> Sunday Premium Pay
> Holiday Premium Pay
> Employee's Basic Hourly Wage Rate:
>
> Monthly Base Pay

$$X = \frac{(21.667)\ (8)}{\text{————————}}$$

A. Regular Pay

1) Hourly rate
   = X
2) OT Hourly Rate 12 MN
   = (X + 50% X)
3) NSD 6 PM — 12 MN
   = (X + 25% X)
4) OT Hourly Rate NSD 6 PM-12 MN
   = (X + 25% X) + 50% (X + 25% X)
5) NSD 12 MN — 6 AM
   = (X + 50% X)
6) OT Hourly Rate NSD 12 MN — 6 AM
   = (X + 50% X) + 50% (X + 50% X)

B. Regular First Day Off

1. Hourly Rate
   = (X + 50% X)
2. OT Hourly Rate
   = (X + 50% X) + 50% (X + 50% X)
3. NSD 6 PM - 12 MN
   = [(X + 50% X) + 25% (X + 50% X)]
4. OT Hourly Rate NSD 6 PM -12 MN
   = [(X + 50% X) + 25% (X + 50% X)] + 50% [(X + 50% X) + 25% (X + 50%)]
5. NSD 12 MN - 6 AM
   = [(X + 50% X) + 50% (X + 50% X)]
6. OT Hourly Rate NSD 12 MN - 6 AM
   = [(X + 50% X) + 50% (X + 50% X)] + 50% [(X + 50%X) + 50% (X + 50%X)]

C. Regular Second Day off

1. Hourly Rate
   = (X + 100% X)
2. OT Hourly Rate

= (X + 100% X) + 50% (X + 100% X)

3. NSD 6 PM — 12 MN
   = [(X + 100% X) + 25% (X + 100%)]
4. OT Hourly Rate NSD 6 PM — 12 MN
   = [(X + 100% X) + 25% (X + 100% X)] + 50% [(X + 100% X) + 25% (X + 100% X)]
5. NSD 12 MN — 6 AM
   = [(X + 100% X) + 50% (X + 100% X)]
6. OT Hourly Rate NSD 12 MN — 6 AM
   = [(X + 100% X) + 50% (X + 100% X)] + 50% [(x + 100% X) + 50% (X + 100% X)]

D. Excess of 40 Hours within a Calendar Week

1. Hourly Rate
   = (X + 50% X)
2. OT Hourly Rate
   = (X + 50% X) + 50% (X + 50% X)
3. NSD 6 PM — 12 MN
   = [(X + 50% X) + 25% (X + 50% X)]
4. OT Hourly Rate NSD 6 PM — 12 MN
   = [(X + 50% X) + 25% (X + 50% X)] + 50% [(X + 50% X) + 25% (X + 50% X)]
5. NSD 12 MN — 6 AM
   = [(X + 50% X) + 50% (X + 50% X)]
6. OT Hourly Rate NSD 12 MN — 6 AM
   = [(X + 50% X) + 50% (X + 50% X)] + 50% [(X + 50% X) + 50% (X + 50% X)]

E. Sunday as a Normal Work Day

1. Hourly Rate
   = (X + 100% X)
2. OT Hourly Rate
   = (X + 100% X) + 50% (X + 100% X)
3. NSD 6 PM — 12 MN
   = [(X + 100% X) + 25% (X + 100% X)]
4. OT Hourly Rate NSD 6 PM — 12 MN
   = [(X + 100% X) + 25% (X + 100% X)] + 50% [(X + 100% X) + 25% (X + 100% X)]

5. NSD 12 MN — 6 AM
   = [(X + 100% X) + 50% (X + 100% X)]
6. OT Hourly Rate NSD 12 MN — 6 AM
   = [(X + 100% X) + 50% (X + 100% X)] + 50% [(X + 100% X) + 50% (X + 100% X)]

F. Sunday as day off

1. Hourly Rate
   = (X + 100% X)
2. OT Hourly Rate
   = (X + 100% X) + 50% (X + 100% X)
3. NSD 6 PM — 12 MN
   = [(X + 100% X) + 25% (X + 100% X)]
4. OT Hourly Rate NSD 6 PM — 12 MN
   = [(X + 100% X) + 25% (X + 100% X)] + 50% [(X + 100% X) + 25% (X + 100% X)]
5. NSD 12 MN — 6 AM
   = [(X + 100% X) + 50% (X + 100% X)]
6. OT Hourly Rate NSD 12 MN — 6 AM
   = [(X + 100% X) + 50% (X + 100% X) + 50% [(X + 100% X) + 50% (X + 100% x)]

G. Holiday as Normal Work Day

1. Hourly Rate
   = (X + 150% X)
2. OT Hourly Rate
   = (X + 150% X) + 50% (X + 150%X)
3. NSD 6 PM — 12 MN
   = [(X + 150% X) + 25% (X + 150% X)]
4. OT Hourly Rate NSD 6 PM — 12 MN
   = [(X + 150% X) + 25% (X + 150% X)] + 50% [(X + 150% X) + 25% (X+ 150% X)]
5. NSD 12 MN — 6 AM
   = [(X + 150% X) + 50% (X + 150% X)]
6. OT Hourly Rate NSD 12 MN — 6 AM
   = [(X + 150% X) + 50% (X + 150% X)] + 50% [(X + 150% X) + 50% (X + 150% X)]

H. Holiday as Day off

1. Hourly Rate
   = (X + 150% X)
2. OT Hourly Rate
   = (X + 150% X) + 50% (X + 150% X)
3. NSD 6 PM — 12 MN
   = [(X + 150% X) + 25% (X + 150% X)]
4. OT Hourly Rate NSD 6 PM — 12 MN
   = [(X + 150% X) + 25% (X + 150% X)] + 50% [(X + 150% X) + 25% (X + 150% X)]
5. NSD 12 MN — 6 AM
   = [(X + 150% X) + 50% (X + 150% X)]
6. OT Hourly Rate
   = [(X + 150% X) + 50% (X + 150% X)] + 50% [(X + 150% X) + 50% (X + 150% X)]
7. *Hourly Rate for less than 8 hours
   = (150% X)

* For work of less than 8 hours, the employee will receive his basic daily rate —

$$\frac{\text{(Monthly Base Pay)}}{21.667}$$

plus the hourly rate multiplied by the number of hours worked."[2]

Sometime in August 1986, the Union called Caltex's attention to alleged violations by Caltex of Annex "B" of the 1985 CBA, e.g. non-payment of night-shift differential, non-payment of overtime pay and non-payment at "first day-off rates" for work performed on a Saturday.

Caltex's Industrial Relations manager immediately evaluated petitioner's claims and accordingly informed petitioner Union that differential payments would be timely implemented. In the implementation of the re-computed claims, however, no differential payment was made with respect to work performed on the first 2 1/2 hours on a Saturday.

On 7 July 1987, the Union instituted a complaint for unfair labor practice against Caltex alleging violation of the provisions of the 1985 CBA. Petitioner Union charged Caltex with shortchanging its employees when Caltex compensated work performed on the first 2 1/2 hours of Saturday, an employees' day of rest, at regular rates, when it should be paying at "day of rest" or "day off" rates.

Caltex denied the accusations of the Union. It averred that Saturday was never designated as a day of rest, much less a "day-off". It maintained that the 1985 CBA provided only 1 day of rest for employees at the Manila Office, as well as employees similarly situated at the Legazpi and Marinduque Bulk Depots. This day of rest, according to Caltex was Sunday.

In due time, the Labor Arbiter ruled in favor of petitioner Union, while finding at the same time that private respondent Caltex was not guilty of any unfair labor practice. Labor Arbiter Valentin C. Guanio, interpreting Article III and Annex "B" of the 1985 CBA, concluded that Caltex's employees had been given two (2) days (instead of one [1] day) of rest, with the result that work performed on the employee's first day of rest, viz. Saturday, should be compensated at "First day-off" rates.

On appeal by Caltex, public respondent NLRC set aside the decision of Labor Arbiter Guanio. The NLRC found that the conclusions of the Labor Arbiter were not supported by the evidence on record. The NLRC, interpreting the provisions of the 1985 CBA, concluded that CBA granted only one (1) day of rest, e.g., Sunday. The Union's motion for reconsideration was denied on 9 June 1993.

The controversy we must address in this Petition for Certiorari relates to the appropriate interpretation of Article III in relation to Annex "B" of the parties' 1985 CBA.

After carefully examining the language of Article III, in relation to Annex "B" of the 1985 CBA, quoted in limine, as well as relevant portions of earlier CBAs between the parties, we agree with the NLRC that the intention of the parties to the 1985 CBA was to provide the employees with only one (1) day of rest. The plain and ordinary

meaning of the language of Article III is that Caltex and the Union had agreed to pay "day of rest" rates for work performed on "an employee's one day of rest". To the Court's mind, the use of the word "one" describing the phrase "day of rest [of an employee]" emphasizes the fact that the parties had agreed that only a single day of rest shall be scheduled and shall be provided to the employee.

It is useful to note that the contract clauses governing hours of work in previous CBAs executed between private respondent Caltex and petitioner Union in 1973, 1976, 1979 and 1982 contained provisions parallel if not identical to those set out in Article III of the 1985 CBA here before us.

Article III of the 1973 Collective Bargaining Agreement[3] provided as follows:

> "**Article III**
> **Hours of Work**
>
> Section 1. In conformity with Presidential Decree No. 143, the regular work week shall consist of eight (8) hours per day, seven (7) days, Monday through Sunday, during which regular rates of pay shall be paid in accordance with Article IV, Section 1 and work on the employee's one 'Day of Rest' shall be paid as provided in Article IV Section 8. Daily working schedules shall be established by management in accordance with the requirements of efficient operations on the basis of eight (8) hours Per day for any five (5) days; provided, however, employees required to work in excess of forty (40) hours in any week shall be compensated in accordance with Article IV, Section 7 of this Agreement." (Emphasis supplied)

Article III of the 1976 Collective Bargaining Agreement[4] read:

> "**Article III**
> **Hours of Work**
>
> Section 1. In conformity with Presidential Decree No. 143, the regular work week shall consist of eight (8) hours per day, seven (7) days, Monday through Sunday, during which regular rates of

pay shall be paid in accordance with Article IV, Section 1 and work on the employee's one 'Day of Rest' shall be paid as provided in Article IV Section 8. Daily working schedules shall be established by management in accordance with the requirements of efficient operations on the basis of eight (8) hours per day for any five (5) days; provided, however, employees required to work in excess of forty (40) hours in any week shall be compensated in accordance with Article IV, Section 7 of this Agreement." (Emphasis supplied)

Article III of the 1979 Collective Bargaining Agreement[5] said:

"**Article III**
Hours of Work

Section 1. In conformity with Presidential Decree 442, otherwise known as the Labor Code of the Philippines, as amended, the regular work week shall consist of eight (8) hours per day, seven (7) days, Monday thru Sunday during which regular rates of pay shall be paid in accordance with Article IV, Section 1 and work on the employee's one 'Day of Rest' shall be paid as provided in Article IV, Section 7. Daily working schedules shall be established by management in accordance with the requirements of efficient operations on the basis of eight hours per day for any five (5) days; provided, however, employees required to work in excess of forty (40) hours in any week shall be compensated in accordance with Article IV, Section 6 of this Agreement." (Emphasis supplied)

Article III of the 1982 Collective Bargaining Agreement[6] also provided as follows:

"**Article III**
Hours of Work

Section 1. In conformity with Presidential Decree 442, otherwise known as the Labor Code of the Philippines, as amended, the regular work week shall consist of eight (8) hours per day, seven (7) days, Monday thru Sunday, during which regular rates of pay shall be paid in accordance with Article IV,

> Section 1 and work on the employees one 'Day of Rest' shall be paid as provided in Article IV, Section 7. Daily working schedules shall be established by management in accordance with the requirements of efficient operations on the basis of eight hours per day for any five (5) days; provided, however employees required to work in excess of forty (40) hours in any week shall be compensated in accordance with Article IV, Section 6 of this Agreement." (Emphasis supplied)

In all these CBAs (1973, 1976, 1979, 1982), Article III provide that only "work on an employee's one day of rest" shall be paid on the basis of "day of rest rates". The relevant point here is that petitioner Union had never suggested that more than 1 day of rest had been agreed upon, and certainly Caltex had never treated Article III or any other portion of the CBAs as providing two (2) days of rest. It is well settled that the contemporaneous and subsequent conduct of the parties may be taken into account by a court called upon to interpret and apply a contract entered into by them.[7]

We note that Labor Arbiter Guanio surmised that the intention he implied from the contents of Annex "B" was in conflict with the intention expressed in Article III (which, the Labor Arbiter admitted, stipulated only one day of rest). According to the Labor Arbiter, when Annex "B" referred to "First Day-off Rates" and "Second Day-off Rates, these were meant to express an agreement that the parties intended to provide employees two (2) days of rest. He then declared that Annex "B" should prevail over Article III because the former was a more specific provision than the latter.

An annex expresses the idea of joining a smaller or subordinate thing with another, larger or of higher importance.[9] An annex has a subordinate role, without any independent significance separate from that to which it is tacked on. Annex "B," in the case at bar, is one such document. It is not a memorandum of amendments or a codicil containing additional or new terms or stipulations. Annex "B" cannot be construed as modifying or altering the terms expressed in the body of the agreement contained in the 1985 CBA. It did not confer any rights upon employees represented by petitioner Union; neither did it impose any obligations upon private respondent Caltex. In fact, the

contents of Annex "B" have no intelligible significance in and of themselves when considered separately from the 1985 CBA.

Moreover, we are persuaded by private respondent's argument that Annex "B" was intended to serve as a company-wide guide in computing compensation for work performed by all its employees, including but not limited to the Manila Office employees represented by petitioner Union. Private respondent also points out that the mathematical formulae contained in Annex "B" are not all applicable to all classes of employees, there being some formulae applicable only to particular groups or classes of employees. Thus, "First Day-off rates" and "Second Day-off rates" are applicable only to employees stationed at the refinery and associated facilities like depots and terminals which must be in constant twenty-four (24) hours a day, seven (7) days a week, operation, hence necessitating the continuous presence of operations personnel. The work of such operations personnel required them to be on duty for six (6) consecutive days. Upon the other hand, "First Day-off rates" and "Second Day-off rates" are not applicable to personnel of the Manila Office which consisted of other groups or categories of employees (e.g., office clerks, librarians, computer operators, secretaries, collectors, etc.),[9] since the nature of their work did not require them to be on duty for six (6) consecutive days.

We find, under the foregoing circumstances, that the purported intention inferred from Annex "B" by the Labor Arbiter was based merely on conjecture and speculation.

We also note that the Labor Arbiter merely suspected that the parties agreed to provide two (2) days of rest on the ground that they had so stipulated in their 1970 CBA.[10] A principal difficulty with this view is that it disregards the fact that Article III of the 1985 CBA no longer contained a particular proviso found in the 1970 CBA. In fact, all the CBAs subsequent to 1970 (1973, 1976, 1979, 1982) had similarly deleted the proviso in the 1970 CBA providing for two (2) days-off. To the Court's mind, such deletion means only one thing — that is — the parties had agreed to remove such stipulation. Accordingly, the proviso found in Article III of the 1970 CBA ceased to be a demandable obligation. Petitioner Union cannot now unilaterally re-insert such a stipulation by strained inference from Annex "B." Upon

the foregoing circumstances, we must hold that the Labor Arbiter' s suspicion is without basis in the facts of record.

Petitioner Union also contended that private respondent Caltex in the instant petition was violating the statutory prohibition against off-setting undertime for overtime work on another day.[11] Union counsel attempted to establish this charge by asserting that the employees had been required to render "overtime work" on a Saturday but compensated only at regular rates of pay, because they had not completed the eight (8)-hour work period daily from Monday thru Friday.

The Court finds petitioner's contention bereft of merit. Overtime work consists of hours worked on a given day in excess of the applicable work period, which here is eight (8) hours.[12] It is not enough that the hours worked fall on disagreeable or inconvenient hours. In order that work may be considered as overtime work, the hours worked must be in excess of and in addition to the eight (8) hours worked during the prescribed daily work period, or the forty (40) hours worked during the regular work week Monday thru Friday. In the present case, under the 1985 CBA, hours worked on a Saturday do not, by that fact alone, necessarily constitute overtime work compensable at premium rates of pay, contrary to petitioner's assertion. These are normal or regular work hours, compensable at regular rates of pay, as provided in the 1985 CBA; under that CBA, Saturday is not a rest day or a "day off". It is only when an employee has been required on a Saturday to render work in excess of the forty (40) hours which constitute the regular work week that such employee may be considered as performing overtime work on that Saturday. We consider that the statutory prohibition against offsetting undertime one day with overtime another day has no application in the case at bar.[13]

Petitioner's counsel, in his final attempt to lay a basis for compelling private respondent to pay premium rates of pay for all hours worked on a Saturday, regardless of the number of hours actually worked earlier during the week, i.e., on Monday to Friday, insists that private respondent cannot require its employees to complete the 40-hour regular work week on a Saturday, after it has allowed its employees to render only 37-1/2 hours of work.

The company practice of allowing employees to leave thirty (30) minutes earlier than the scheduled off-time had been established primarily for the convenience of the employees most of whom have had to commute from work place to home and in order that they may avoid the heavy rush hour vehicular traffic. There is no allegation here by petitioner Union that such practice was resorted to by Caltex in order to escape its contractual obligations. This practice, while it effectively reduced to 37-1/2 the number of hours actually worked by employees who had opted to leave ahead of off-time, is not be construed as modifying the other terms of the 1985 CBA. As correctly pointed out by private respondent, the shortened work period did not result in likewise shortening the work required for purposes of determining overtime pay, as well as for purposes of determining premium pay for work beyond forty (40) hours within the calendar week. It follows that an employee is entitled to be paid premium rates, whether for work in excess of (8) hours on any given day, or for work beyond the forty (40)-hour requirement for the calendar week, only when the employee had, in fact, already rendered the requisite number of hours — 8 or 40 — prescribed in the 1985 CBA.

In recapitulation, the parties' 1985 CBA stipulated that employees at the Manila Office, as well as those similarly situated at the Legazpi and Marinduque Bulk Depots, shall be provided only one (1) day of rest; Sunday, and not Saturday, was designated as this day of rest. Work performed on a Saturday is accordingly to be paid at regular rates of pay, as a rule, unless the employee shall have been required to render work in excess of forty (40) hours in a calendar week. The employee must, however, have in fact rendered work in excess of forty (40) hours before hours subsequently worked become payable at premium rates. We conclude that the NLRC correctly set aside the palpable error committed by Labor Arbiter Guanio, when the latter imposed upon one of the parties to the 1985 CBA, an obligation which it had never assumed.

WHEREFORE, petitioner Union having failed to show grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent National Labor Relations Commission in rendering its decision dated 5 March 1993, the Court Resolved to DISMISS the Petition for lack of merit.

SO ORDERED.

Romero, Melo and Vitug, *JJ.*, concur.

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[1] Collective Bargaining Agreement, Rollo, p. 239.
[2] Rollo, pp. 254-258.
[3] Id., pp. 160-162.
[4] Id., pp. 163-164.
[5] Id., pp. 165-167.
[6] Id., p. 168.
[7] See, e.g., Universal Textile Mills vs. National Labor Relations Commission, 184 SCRA 273 (1990).
[8] See Black's Law Dictionary, 6th ed. (1990), p. 88.
[9] See Annex "A" of the CBA, Rollo, pp. 253-254.
[10] Article III of the 1970 CBA provided as follows:

"Article III
Hours of Work

Section 1. The regular work week shall consist of eight (8) hours per day, six (6) days, Monday through Saturday, during which regular rates of pay shall be paid in accordance with Article IV, Section 1, except for work on holidays as provided in Article IV, Section 7, and Sunday shall be considered a special work day during which Sunday rates of pay shall be paid as provided in Article IV, Section 6. Daily working schedules shall be established by management in accordance with the requirements of efficient operations on the basis of eight (8) hours per day for any five (5) days; Provided however, employees required to work in excess of forty (40) hours in any week shall be compensated in accordance with Article IV, Section 5 of this Agreement, and provided further, employees shall be scheduled two consecutive days off ." (Emphasis Supplied)

[11] Article 88, Labor Code, as amended, provides:

"Art. 88. Undertime not offset by overtime. — Undertime work on any particular day shall not be offset by overtime work on any other day. Permission given to the employee go on leave on some other day of the week shall not exempt the employer from paying the additional compensation required in this Chapter." (Emphasis supplied)

[12] Article 87 of the Labor Code, as amended, provided in relevant part:

"Art. 87. Overtime Work. - Work may be performed beyond eight (8) hours a day provided that the employee is paid for the overtime work and additional compensation equivalent to his regular wage plus at least twenty-five percent (25%) thereof."

See also Bay Ridge Operating Co. vs. Aaron, 334 US 446, 92 L. ed. 1502 (1948).

[13] It seems worthy of mention in the margin that the Labor Arbiter here was aware of the practice of private respondent company that persisted for almost twenty-two (22) years. Nevertheless, the Labor Arbiter chose to disregard that twenty-two (22) year practice and insisted on what appeared to him as the correct interpretation of the CBA. The Labor Arbiter said:

"Finally, it is of no moment that it has been the respondent's practice for almost 22 years now not to pay its employees the premium rate on Saturday unless they have completed the 40 hour requirement. This is violative of the CBA and it is the duty of this office to rectify the wrong application of its terms. In fine no additional burden is being imposed upon the respondent which is not embodied in the CBA. The respondent is merely enjoined to comply with its obligations under the CBA." (Rollo, p. 325; emphasis supplied)

The Labor Arbiter here was, of course, out on a very long legal limb, as it were. For long continued practice of the parties cannot reasonably be disregarded by one who must construe the contractual provision before him. Long continued practice constitutes contemporaneous and practical construction which inevitably throws light upon the parties' own understanding of their mutual intent, which would seem a more reliable guide to the parties' intention, especially when such practice is wholly consistent with the actual language of the provision, as in the present case.