SUPREME COURT
THIRD DIVISION

ANTONIO W. IRAN (doing business under the name and style of Tones Iran Enterprises),
***Petitioner*,**

-versus-

G.R. No. 121927
April 22, 1998

NATIONAL LABOR RELATIONS COMMISSION (Fourth Division), GODOFREDO O. PETRALBA, MORENO CADALSO, PEPITO TECSON, APOLINARIO GOTHONG GEMINA, JESUS BANDILAO, EDWIN MARTIN, CELSO LABIAGA, DIOSDADO GONZALGO, FERNANDO M. COLINA,
***Respondent*.**
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D E C I S I O N

ROMERO, *J.*:

Whether or not commissions are included in determining compliance with the minimum wage requirement is the principal issue presented in this petition.

Petitioner Antonio Iran is engaged in softdrinks merchandising and distribution in Mandaue City, Cebu, employing truck drivers who double as salesmen, truck helpers, and non-field personnel in pursuit thereof. Petitioner hired private respondents Godofredo Petralba, Moreno Cadalso, Celso Labiaga and Fernando Colina as drivers/salesmen while private respondents Pepito Tecson, Apolinario Gimena, Jesus Bandilao, Edwin Martin and Diosdado Gonzalgo were hired as truck helpers. Drivers/salesmen drove petitioner's delivery trucks and promoted, sold and delivered softdrinks to various outlets in Mandaue City. The truck helpers assisted in the delivery of softdrinks to the different outlets covered by the driver/salesmen.

As part of their compensation, the driver/salesmen and truck helpers of petitioner received commissions per case of softdrinks sold at the following rates:

SALESMEN:

Ten Centavos (P0.10) per case of Regular softdrinks.

Twelve Centavos (P0.12) per case of Family Size softdrinks.

TRUCK HELPERS:

Eight Centavos (P0.08) per case of Regular softdrinks.

Ten Centavos (P0.10) per case of Family Size softdrinks.

Sometime in June 1991, petitioner, while conducting an audit of his operations, discovered cash shortages and irregularities allegedly committed by private respondents. Pending the investigation of irregularities and settlement of the cash shortages, petitioner required private respondents to report for work everyday. They were not allowed, however, to go on their respective routes. A few days thereafter, despite aforesaid order, private respondents stopped reporting for work, prompting petitioner to conclude that the former had abandoned their employment. Consequently, petitioner terminated their

services. He also filed on November 7, 1991, a complaint for estafa against private respondents.

On the other hand, private respondents, on December 5, 1991, filed complaints against petitioner for illegal dismissal, illegal deduction, underpayment of wages, premium pay for holiday and rest day, holiday pay, service incentive leave pay, 13th month pay, allowances, separation pay, recovery of cash bond, damages and attorney's fees. Said complaints were consolidated and docketed as Rab VII-12-1791-91, RAB VII-12-1825-91 and RAB VII-12-1826-91, and assigned to Labor Arbiter Ernesto F. Carreon.

The labor arbiter found that petitioner had validly terminated private respondents, there being just cause for the latter's dismissal. Nevertheless, he also ruled that petitioner had not complied with minimum wage requirements in compensating private respondents, and had failed to pay private respondents their 13th month pay. The labor arbiter, thus, rendered a Decision on February 18, 1993, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered ordering the respondent Antonio W. Iran to pay the complainants the following:

1. Celso Labiaga	P10,033.10
2. Godofredo Petralba	1,250.00
3. Fernando Colina	11,753.10
4. Moreno Cadalso	11,753.10
5. Diosdado Gonzalgo	7,159.04
6. Apolinario Gimena	8,312.24
7. Jesus Bandilao	14,729.50
8. Pepito Tecson	9,126.55
	74,116.63
Attorney's Fees	(10%)
of the gross award	7,411.66
GRAND TOTAL AWARD	P81,528.29
	========

The other claims are dismissed for lack of merit.

SO ORDERED."[1]

Both parties seasonably appealed to the NLRC, with petitioner contesting the labor arbiter's refusal to include the commissions he paid to private respondents in determining compliance with the minimum wage requirement. He also presented, for the first time on appeal, vouchers denominated as 13th month pay signed by private respondents, as proof that petitioner had already paid the latter their 13th month pay. Private respondents, on the other hand, contested the findings of the labor arbiter holding that they had not been illegally dismissed, as well as mathematical errors in computing Jesus Bandilao's wage differentials. The NLRC, in its decision of December 21, 1994, affirmed the validity of private respondent's dismissal, but found that said dismissal did not comply with the procedural requirements for dismissing employees. Furthermore, it corrected the labor arbiter's award of wage differentials to Jesus Bandilao. The dispositive portion of said decision reads:

> "WHEREFORE, premises considered, the decision is hereby MODIFIED in that complainant Jesus Bandilao's computation for wage differential is corrected from P154.00 to P4,550.00. In addition to all the monetary claim (sic) originally awarded by the Labor Arbiter a quo, P1,000.00 is hereby granted to each complainants (sic) as indemnity fee for failure of respondents to observe procedural due process.
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> SO ORDERED."[2]

Petitioner's motion for reconsideration of said decision was denied on July 31, 1995, prompting him to elevate this case to this Court, raising the following issues:

1. THE HONORABLE COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION AND CONTRARY TO LAW AND JURISPRUDENCE IN AFFIRMING THE DECISION OF THE LABOR ARBITER A QUO EXCLUDING THE COMMISSIONS RECEIVED BY THE PRIVATE RESPONDENTS IN COMPUTING THEIR WAGES;

2. THE HONORABLE COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION IN FINDING PETITIONER GUILTY OF PROCEDURAL LAPSES IN TERMINATING PRIVATE RESPONDENTS AND IN AWARDING EACH OF THE LATTER P1,000.00 AS INDEMNITY FEE;

3. THE HONORABLE COMMISSION GRAVELY ERRED IN NOT CREDITING THE ADVANCE AMOUNT RECEIVED BY THE PRIVATE RESPONDENTS AS PART OF THEIR 13TH MONTH PAY.

The petition is impressed with merit.

The NLRC, in denying petitioner's claim that commissions be included in determining compliance with the minimum wage ratiocinated thus:

> "Respondent (petitioner herein) insist assiduously that the commission should be included in the computation of actual wages per agreement. We will not fall prey to this fallacious argument. An employee should receive the minimum wage as mandated by law and that the attainment of the minimum wage should not be dependent on the commission earned by an employee. A commission is an incentive for an employee to work harder for a better production that will benefit both the employer and the employee. To include the commission in the computation of wage in order to comply with labor standard laws is to negate the practice that a commission is granted after an employee has already earned the minimum wage or even beyond it."[3]

This holding is unsupported by law and jurisprudence. Article 97(f) of the Labor Code defines wage as follows:

> Art. 97(f) — "Wage" paid to any employee shall mean the remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment

> for work done or to be done, or for services rendered or to be rendered and includes the fair and reasonable value, as determined by the Secretary of Labor, of board, lodging, or other facilities customarily furnished by the employer to the employee. (Emphasis supplied)
>
> x x x."

This definition explicitly includes commissions as part of wages. While commissions are, indeed, incentives or forms of encouragement to inspire employees to put a little more industry on the jobs particularly assigned to them, still these commissions are direct remunerations for services rendered. In fact, commissions have been defined as the recompense, compensation or reward of an agent, salesman, executor, trustee, receiver, factor, broker or bailee, when the same is calculated as a percentage on the amount of his transactions or on the profit to the principal. The nature of the work of a salesman and the reason for such type of remuneration for services rendered demonstrate clearly that commissions are part of a salesman's wage or salary.[4]

Thus, the commissions earned by private respondents in selling softdrinks constitute part of the compensation or remuneration paid to drivers/salesmen and truck helpers for serving as such, and hence, must be considered part of the wages paid them.

The NLRC asserts that the inclusion of commissions in the computation of wages would negate the practice of granting commissions only after an employee has earned the minimum wage or over. While such a practice does exist, the universality and prevalence of such a practice is questionable at best. In truth, this Court has taken judicial notice of the fact that some salesmen do not receive any basic salary but depend entirely on commissions and allowances or commissions alone, although an employer-employee relationship exists.[5] Undoubtedly, this salary structure is intended for the benefit of the corporation establishing such, on the apparent assumption that thereby its salesmen would be moved to greater enterprise and diligence and close more sales in the expectation of increasing their sales commissions. This, however, does not detract from the character of such commissions as part of the salary or wage

paid to each of its salesmen for rendering services to the corporation.[6]

Likewise, there is no law mandating that commissions be paid only after the minimum wage has been paid to the employee. Verily, the establishment of a minimum wage only sets a floor below which an employee's remuneration cannot fall, not that commissions are excluded from wages in determining compliance with the minimum wage law. This conclusion is bolstered by Philippine Agricultural Commercial and Industrial Workers Union vs. NLRC,[7] where this Court acknowledged that drivers and conductors who are compensated purely on a commission basis are automatically entitled to the basic minimum pay mandated by law should said commissions be less than their basic minimum for eight hours work. It can, thus, be inferred that were said commissions equal to or even exceed the minimum wage, the employer need not pay, in addition, the basic minimum pay prescribed by law. It follows then that commissions are included in determining compliance with minimum wage requirements.

With regard to the second issue, it is settled that in terminating employees, the employer must furnish the worker with two written notices before the latter can be legally terminated: (a) a notice which apprises the employee of the particular acts or omissions for which his dismissal is sought, and (b) the subsequent notice which informs the employee of the employer's decision to dismiss him.[8] (Emphasis ours) Petitioner asseverates that no procedural lapses were committed by him in terminating private respondents. In his own words:

> "When irregularities were discovered, that is, when the misappropriation of several thousands of pesos was found out, the petitioner instructed private respondents to report back for work and settle their accountabilities but the latter never reported for work. This instruction by the petitioner to report back for work and settle their accountabilities served as notices to private respondents for the latter to explain or account for the missing funds held in trust by them before they disappeared."[9]

Petitioner considers this return-to-work order as equivalent to the first notice apprising the employee of the particular acts or omissions for which his dismissal is sought. But by petitioner's own admission, private respondents were never told in said notice that their dismissal was being sought, only that they should settle their accountabilities. In petitioner's incriminating words:

> "It should be emphasized here that at the time the misappropriation was discovered and subsequently thereafter, the petitioner's first concern was not effecting the dismissal of private respondents but the recovery of the misappropriated funds thus the latter were advised to report back to work."[10]

As above-stated, the first notice should inform the employee that his dismissal is being sought. Its absence in the present case makes the termination of private respondents defective, for which petitioner must be sanctioned for his non-compliance with the requirements of or for failure to observe due process.[11] The twin requirements of notice and hearing constitute the essential elements of due process, and neither of these elements can be disregarded without running afoul of the constitutional guarantee. Not being mere technicalities but the very essence of due process, to which every employee is entitled so as to ensure that the employer's prerogative to dismiss is not exercised arbitrarily,[12] these requisites must be complied with strictly.

Petitioner makes much capital of private respondents' failure to report to work, construing the same as abandonment which thus authorized the latter's dismissal. As correctly pointed out by the NLRC, to which the Solicitor General agreed, Section 2 of Book V, Rule XIV of the Omnibus Rules Implementing the Labor Code requires that in cases of abandonment of work, notice should be sent to the worker's last known address. If indeed private respondents had abandoned their jobs, it was incumbent upon petitioner to comply with this requirement. This, petitioner failed to do, entitling respondents to nominal damages in the amount of P5,000.00 each, in accordance with recent jurisprudence,[13] to vindicate or recognize their right to procedural due process which was violated by petitioner.

Lastly, petitioner argues that the NLRC gravely erred when it disregarded the vouchers presented by the former as proof of his payment of 13th month pay to private respondents. While admitting that said vouchers covered only a ten-day period, petitioner argues that the same should be credited as amounts received by private respondents as part of their 13th month pay, Section 3(e) of the Rules and Regulations Implementing P.D. No. 851 providing that the employer shall pay the difference when he pays less than 1/12th of the employee's basic salary.[14]

While it is true that the vouchers evidencing payments of 13th month pay were submitted only on appeal, it would have been more in keeping with the directive of Article 221[15] of the Labor Code for the NLRC to have taken the same into account.[16] Time and again, we have allowed evidence to be submitted on appeal, emphasizing that, in labor cases, technical rules of evidence are not binding.[17] Labor officials should use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure.[18]

It must also be borne in mind that the intent of P.D. No. 851 is the granting of additional income in the form of 13th month pay to employees not as yet receiving the same and not that a double burden should be imposed on the employer who is already paying his employees a 13th month pay or its equivalent.[19] An employer who pays less than 1/12th of the employees basic salary as their 13th month pay is only required to pay the difference.[20]

The foregoing notwithstanding, the vouchers presented by petitioner covers only a particular year. It does not cover amounts for other years claimed by private respondents. It cannot be presumed that the same amounts were given on said years. Hence, petitioner is entitled to credit only the amounts paid for the particular year covered by said vouchers.

WHEREFORE, in view of the foregoing, the Decision of the NLRC dated July 31, 1995, insofar as it excludes the commissions received by private respondents in the determination of petitioner's compliance with the minimum wage law, as well as its exclusion of the particular amounts received by private respondents as part of

their 13th month pay is **REVERSED** and **SET ASIDE**. This case is **REMANDED** to the Labor Arbiter for a recomputation of the alleged deficiencies. For non-observance of procedural due process in effecting the dismissal of private respondents, said Decision is **MODIFIED** by increasing the award of nominal damages to private respondents from P1,000.00 to P5,000.00 each. No costs.

SO ORDERED.

Narvasa, *C.J.*, Kapunan and Purisima, *JJ.*, concur.

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[1] Rollo, p. 40-41.
[2] Ibid., p. 45.
[3] Id., p. 32.
[4] Philippine Duplicator's, Inc. vs. NLRC, 227 SCRA 747 (1993).
[5] Songco vs. NLRC, 183 SCRA 610 (1990).
[6] Supra, Note 4.
[7] 247 SCRA 256 (1995).
[8] Malaya Shipping vs. NLRC, G.R. No. 121698, March 26, 1998.
[9] Rollo, p. 18-19.
[10] Ibid., p. 19.
[11] Sebuguero vs. NLRC, 248 SCRA 532 (1995).
[12] Supra, Note 8.
[13] Better Buildings, Inc. vs. NLRC, G.R. No. 109714, December 15, 1997; see also Note 8.
[14] "Section 3(e) —

x x x

The term 'its equivalent' as used in paragraph (c) hereof shall include Christmas bonus, mid-year bonus, profit-sharing payments and other cash bonuses amounting to not less than 1/12th of the basic salary but shall not include cash and stock dividends, cost of living allowances and all other allowances regularly enjoyed by the employee, as well as non-monetary benefits. Where an employer pays less than 1/12th of the employees basic salary, the employer shall pay the difference."

[15] Art. 221. Technical rules not binding and prior resort to amicable development. — In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law and procedure, all in the interest of due process.

x x x."

[16] Columbia Development Corporation vs. Minister of Labor and Employment, 146 SCRA 421 (1986).
[17] Bristol Laboratories Employees Association vs. NLRC, 187 SCRA 118 (1990); PT&T vs. NLRC, 183 SCRA 451 (1990); Haverton Shipping Ltd. vs. NLRC, 135 SCRA 685 (1985).
[18] De Ocampo vs. NLRC, 213 SCRA 653 (1992).
[19] NFSW vs. Ovejera, 114 SCRA 354 (1982).
[20] Dole Philippines vs. Leogardo, Jr., 117 SCRA 938 (1982).