

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**AMBROCIO VENGCO, RAMON
MOISES, EUGENIA REYES, RAFAEL
WAGAS and 80 others per attached list,
*Petitioners,***

-versus-

**G.R. No. 74453
May 5, 1989**

**HON. CRESENCIO B. TRAJANO, in his
capacity as Director of the Bureau of
Labor Relations and EMMANUEL
TIMBUNGCO,**

Respondents.

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D E C I S I O N

MEDIALDEA, J.:

This is a Petition for *Certiorari* which seeks to annul: (1) the Order of respondent Director of the Bureau of Labor Relations dated May 23, 1983 in BLR Case No. A-0179-82 entitled "Ambrocio Vengco, et al. vs. Emmanuel Timbungco" setting aside the decision dated December 29, 1982; and (2) the Order dated April 2, 1986 denying the motion for reconsideration of the Order dated May 23, 1983.

The antecedent facts are as follows:

Sometime in the latter part of 1981, the Management of the Anglo-American Tobacco Corporation and the Kapisanan ng Manggagawa sa Anglo-American Tobacco Corporation. (FOI-TAF) entered into a compromise agreement whereby the company will pay to the union members the sum of P150,000.00 for their claims arising from the unpaid emergency cost of living allowance (ECOLA) and other benefits which were the subject of their complaint before the Ministry of Labor. Respondent Emmanuel Timbungco (Timbungco, for short) who is the union president received the money which was paid in installments. Thereafter, he distributed the amount among the union members. Petitioners Ambrocio Vengco, Ramon Moises, Rafael Wagas and 80 others (Vengco, et al., for short) who are union members noted that Timbungco was not authorized by the union workers to get the money; and that ten percent (10%) of the P150,000.00 had been deducted to pay for attorney's fees without their written authorization in violation of Article 242(o) of the Labor Code. So, they demanded from Timbungco an accounting of how the P150,000.00 was distributed to the members. Timbungco did not give in to their demand. Thus Vengco, et al. filed a complaint with the Ministry of Labor praying for: "(1) the expulsion of Emmanuel Timbungco as president of the union for violation of (the) union constitution and by-laws and the rights and conditions of union members under the Labor Code; (2) an order to require Timbungco to render an accounting of how the P150,000.00 was distributed; and (3) an order to require private respondent to publish in the bulletin board the list of the members and the corresponding amount they each received from the P150,000.00." (Memorandum for Petitioners, p. 150, Rollo).

In his answer with counterclaim, Timbungco alleged among others, that he was authorized by a resolution signed by the majority of the union members to receive and distribute the P150,000.00 among the workers; that the computation of the benefits was based on the payroll of the company; that the ten percent (10%) attorney's fees was in relation to the claim of the local union for payment of emergency cost of living allowance before the Ministry of Labor which is totally distinct and separate from the negotiation of the CBA; and that the ten percent (10%) deduction was in accordance with Section II, Rule No. VIII, Book No. III of the Rules and Regulations implementing the

Labor Code and therefore, no authorization from the union members is required.

On July 19, 1982, Med-Arbiter Willie B. Rodriguez issued an Order dismissing the complaint for lack of merit. (p. 33, Rollo)

Vengco, et al. appealed the aforesaid order to the Bureau of Labor Relations.

On December 29, 1982, respondent Director of the Bureau of Labor Relations Cresenciano B. Trajano (Trajano, for short) rendered a decision, the dispositive portion of which states:

“Wherefore, premises considered, the instant appeal is hereby granted and the Med-Arbiter’s Order dated 19 July 1982 hereby set aside. Accordingly, respondent Emmanuel Timbungco is hereby ordered to render a full accounting of the One Hundred Fifty Thousand Pesos (P150,000.00) he received from the management of Anglo-American Tobacco Corporation in behalf of the members of the Kapisanan ng mga Manggagawa sa Associated Anglo-American Tobacco Corporation (FOITAF) and to publish in the union’s bulletin board the list of all recipient union members and the respective amounts they have received, within ten (10) days from receipt hereof. Further, respondent is hereby expelled as president of the Kapisanan ng Manggagawa sa Anglo American Tobacco Corporation (FOITAF). Lastly, the counterclaim interposed by the respondent’s counsel, Atty. Benjamin Sebastian is hereby ordered dismissed.

So decided.” (p. 50, Rollo.)

Timbungco filed a motion for reconsideration of the above-quoted decision while Vengco, et al. filed their opposition to the said motion.

On May 23, 1983, Officer-in-Charge Victoriano R. Calaycay issued an Order which held, thus:

“Wherefore, premises considered, our resolution dated 29 December 1982 is hereby set aside. However, an audit examination of the Books of Account of Kapisanan ng

Manggagawa sa Associated Anglo-American Tobacco Corporation (FOITAF) is hereby ordered.

SO RESOLVED.” (p. 62, Rollo)

Vengco, et al, sought reconsideration of the aforementioned order. They contended that the examination of the books of accounts of the union is irrelevant considering that the issue involved in the case does not consist of union funds but back pay received by the union members from the company. Likewise, they pointed out that Timbungco did not give the money to the union treasurer and consequently, the amount was not entered in the records of the union.

On April 2, 1986, Trajano issued an order which affirmed the resolution of May 23, 1983 and denied the motion for reconsideration for lack of merit. (p. 58, Rollo)

Hence, the present recourse by Vengco, et al.

The issues raised in this case are as follows:

- (1) Whether or not Timbungco is guilty of illegally deducting 10% attorneys' fees from petitioners' backwages; and
- (2) Whether or not Trajano gravely abused his discretion amounting to lack of jurisdiction in ordering examination of union books instead of affirming his previous Order expelling Timbungco from the union and ordering him to render an accounting of P150,000.00 received by him. (p. 151, Rollo)

In the resolution of June 4, 1986, We required the respondents to comment on the petition.

In his comment, Timbungco reiterates the defenses he raised in his answer to the complaint filed against him before the Med-Arbiter. In addition, he claims that he already filed an accounting report on the P150,000.00 with the Bureau of Labor Relations which enumerated the names of the workers and the corresponding amounts they received with their respective signatures opposite their names, the

sub-total of the amount of benefits received per department and the grand total of the amount distributed duly certified by the Union Treasurer and Secretary and duly noted by Timbungco as Union President. (p. 73, Rollo)

The Solicitor General, in his comment, agrees with Vengco, et al. and recommends that the petition be given due course. (p. 100, Rollo)

Timbungco filed a reply to the aforesaid comment of the Solicitor General which restates the arguments raised in his comment. (p. 121, Rollo)

The petition is meritorious.

Article 241(o) of the Labor Code provides:

“ART. 241. Rights and conditions of membership in a labor organization. — The following are the rights and conditions of membership in a labor organization.

X X X

“(o) Other than for mandatory activities under the Code, no special assessment, attorney’s fees, negotiation fees or any other extraordinary fees may be checked off from any amount due an employee without an individual written authorization duly signed by an employee. The authorization should specifically state the amount, purpose and beneficiary of the deduction.

X X X

It is very clear from the above-quoted provision that attorney’s fees may not be deducted or checked off from any amount due to an employee without his written consent except for mandatory activities under the Code. A mandatory activity has been defined as a judicial process of settling dispute laid down by the law. (Carlos P. Galvadores, et al. vs. Cresenciano B. Trajano, Director of the Bureau of Labor Relations, et al., G.R. No. L-70067, September 15, 1986, 144 SCRA 138). In the instant case, the amicable settlement entered into by the management and the union can not be considered as a

mandatory activity under the Code. It is true that the union filed a claim for emergency cost of living allowance and other benefits before the Ministry of Labor. But this case never reached its conclusion in view of the parties' agreement. It is not also shown from the records that Atty. Benjamin Sebastian was instrumental in forging the said agreement on behalf of the union members.

Timbungco maintains that the "Kapasiyahan" gave him the authority to make the deduction. This contention is unfounded. Contrary to his claim, the undated "Kapasiyahan" or resolution did not confer upon him the power to deduct 10% of the P150,000.00 despite the alleged approval of the majority of the union workers. A reading of the said resolution (p. 75, Rollo) yields the same conclusion arrived at by Trajano who declared it defective. We quote with approval Trajano's findings on this point:

"Further, a cursory examination of the alleged resolution shows that it is quite defective. Not only that it is not dated but also that, with the exception of the first page, the remaining pages were not captioned and did not state the very purpose for which it was prepared. Thus, the alleged signatories were not properly apprised thereof. There is, therefore, truth in complainant's contention that they never authorized, more so, they had no knowledge of the deduction of 10% attorney's fees until it was actually effected. Consequently, the deduction was not valid."
(p. 45, Rollo)

Moreover, the law is explicit. It requires the individual written authorization of each employee concerned, to make the deduction of attorney's fees valid.

Likewise, We find that the other "Kapasiyahan" dated September 18, 1981 submitted by Timbungco belied his claim that he was authorized by the union workers to receive the sum of P150,000.00 on their behalf. The pertinent portion of the said "Kapasiyahan" provides:

3. Na sa dahilang hindi bigla ang pagbabayad sa nasabing "CLAIM" bukod pa sa marami kaming naghati-hati sa nasabing halaga ipinapasiya naming na kusang-loob na kunin ang aming bahagi sa aming kapisanan sa unang

linggo ng Disyembre, 1981 at ito'y ipinaalam namin sa Pangulo ng Kapisanan na si Ginoong Emmanuel Timbungco." (p. 47, Rollo)

The above-quoted statement merely indicated the intention of the workers to get their claim on the first week of December, 1981 and to inform Timbungco of their intention. Clearly, this statement can not be construed to confer upon Timbungco the authority to receive the fringe benefits for the workers. Absent such authority, Timbungco should not have kept the money to himself but should have turned it over to the Union Treasurer. He, therefore, exceeded his authority as President of the Union.

Moreover, Book III, Rule VIII, Section II of the Implementing Rules cited by Timbungco which dispenses with the required written authorization from the employees concerned does not apply in this case. This provision envisions a situation where there is a judicial or administrative proceedings for recovery of wages. Upon termination of the proceedings, the law allows a deduction for attorney's fees of 10% from the total amount due to a winning party. In the herein case, the fringe benefits received by the union members consist of back payments of their unpaid emergency cost of living allowances which are totally distinct from their wages. Allowances are benefits over and above the basic salaries of the employees (*University of Pangasinan Faculty Union vs. University of Pangasinan*, G.R. No. L-63122, February 20, 1984, 127 SCRA 691). We have held that such allowances are excluded from the concept of salaries or wages (*Cebu Institute of Technology (CIT) vs. Ople*, G.R. No. L-58870, December 18, 1987, 156 SCRA 629). In addition, the payment of the fringe benefits were effected through an amicable settlement and not in an administrative proceeding.

The submission by Timbungco of an accounting report on the distribution of P150,000.00 is of no moment in the face of our findings that the deduction of 10% for attorney's fees is illegal and void for failure to comply with the requirements of the law.

Considering the aforestated violations of Timbungco, there can be no question that he should bear the consequences of his acts. We find

that the penalty of expulsion from the union presidency imposed upon Timbungco is justified.

In view of the foregoing, We hold that the Orders dated May 23, 1983 and April 2, 1986 were issued with grave abuse of discretion. The herein controversy involves the propriety of the 10% deduction from the fringe benefits of the union workers which they received from the management in settlement of their claims. Such issue does not touch on union dues or funds. Besides, the sum of P150,000.00 was not entered into the records of the Union since, as earlier stated, the money was not turned over by Timbungco to the Union Treasurer. Consequently, the said Orders have no basis.

ACCORDINGLY, the petition is granted. The assailed Orders dated May 23, 1983 of Officer-in-Charge Victoriano R. Calaycay of the Bureau of Labor Relations, and April 2, 1986 of respondent Director Cresenciano B. Trajano of the same Bureau are **REVERSED** and **SET ASIDE** and the latter's decision dated December 29, 1982 is hereby reinstated. No costs.

SO ORDERED.

Narvasa, Cruz, and Griño-Aquino, JJ., concur.
Gancayco, J., on leave.