



Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

**JOHN KRISKA LOGISTICS,
 INC. / JOHN KRISKA
 DISTRIBUTION CENTER INC.,
 and KAREN NERONA
 (Manager),**

Petitioners,

- versus -

G.R. No. 250288

Present:

CAGUIOA, J., *Chairperson,*
 INTING,
 GAERLAN,
 DIMAAMPAO, and
 SINGH, JJ.

Promulgated:

ELIZARDO T. MENDOZA,*

Respondent.

January 30, 2023

Misproced

X ----- X

RESOLUTION

INTING, J.:

Before the Court is the Petition for Review on *Certiorari*¹ under Rule 45 assailing the Decision² dated April 24, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 152573 filed by John Kriska Distribution Center Inc./John Kriska Logistics, Inc. (John Kriska) and Karen Nerona (Nerona) (collectively, petitioners). The CA dismissed petitioners' Petition for *Certiorari*³ and affirmed the Decision⁴ dated May 16, 2017 and Resolution⁵ dated June 27, 2017 of the National Labor

* The National Labor Relations Commission was originally impleaded as a respondent but the Court excluded the labor tribunal pursuant to Section 4, Rule 45 of the Rules of Court.

¹ *Rollo*, pp. 9-31.

² Id. at 34-43. Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Ramon A. Cruz and Ronaldo Roberto B. Martin.

³ Id. at 169-190.

⁴ Id. at 120-135. Penned by Commissioner Erlinda T. Agus and concurred in by Presiding Commissioner Gregorio O. Bilog III and Commissioner Dominador B. Medroso, Jr.

⁵ Id. at 161-168.

Relations Commission (NLRC) in NLRC LAC No. 03-0001096-17 in favor of Elizardo T. Mendoza (respondent).

Likewise assailed is the CA's Resolution⁶ dated October 18, 2019 denying petitioners' motion for reconsideration.

Antecedents

On February 6, 2006, John Kriska hired respondent as its delivery helper.⁷ As a delivery helper, respondent had to manually carry and transport boxes to malls, supermarkets, and other establishments.⁸

Sometime in September 2016, respondent stopped reporting for work after a cataract surgery on his left eye. To respondent's mind, his doctor's advice for him not to carry heavy objects meant that he cannot work anymore.⁹

According to petitioners, John Kriska's Human Resource Head explained to respondent that they needed his medical certificate stating that his illness was incurable within six months pursuant to the requirements of Article 299¹⁰ of the Labor Code;¹¹ however, respondent's medical certificate did not contain any statement to that effect.¹² Nonetheless, he insisted that he be paid his separation pay.¹³

Thereafter, respondent requested for assistance through Single Entry Approach on September 20, 2016, but the parties failed to reach an

⁶ Id. at 46-47.

⁷ Id. at 34-35.

⁸ Id. at 121.

⁹ Id. at 83-84.

¹⁰ Article 299 of the Labor Code provides:

ART. 299. [284] *Disease as Ground for Termination.* — An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

¹¹ Renumbered pursuant to Section 5 of Republic Act No. 10151 entitled "An Act Allowing the Employment of Night Workers, Repealing Articles 130 and 131 of Presidential Decree Number Four Hundred Forty-Two, as amended, otherwise known as Labor Code of the Philippines," approved on June 21, 2011.

¹² CA *rollo*, p. 67. A perusal of respondent's medical certificate dated September 16, 2016 would show that he was advised by his doctor to rest from work for two to three months after surgery.

¹³ *Rollo*, pp. 83-84.

agreement.¹⁴ Thereafter, respondent filed a Complaint¹⁵ against petitioners on October 26, 2016.

In his Position Paper¹⁶ before the Labor Arbiter (LA), respondent alleged that his daily wage rates were below the minimum wage rate. He further alleged that petitioners deducted cash bond in the amount of ₱100.00 from his wages every week; and the underpayment of his wages resulted in the underpayment of his 13th month pay.¹⁷ In sum, he prayed that judgment be rendered awarding his monetary claims of salary differential, 13th month pay differential, cash equivalent of his service incentive leave (SIL), cash bond, attorney's fees, and other just and equitable reliefs.¹⁸

Meanwhile, petitioners argued that it was respondent who decided not to report back for work after his eye operation; thus, he was not entitled to separation pay. They further argued that respondent admitted that he was already paid his 13th month pay and had already used his SIL of five days.¹⁹

Subsequently, the LA held a hearing on November 23, 2016, the minutes of which read as follows:

Respondent appeared with counsel [and] so the complainant.

As cleared by the complainant[,] he was paid of his 13th month pay for 2015 and he's already used his five (5) days service incentive leave.

Complainant also manifested that he did not report for work after his operation because of the medical certificate issued to him that he was advised not to carry heavy objects.²⁰

For purposes of settlement, petitioners offered the amount of ₱14,037.27 representing respondent's salary differentials, proportionate 13th month pay, and cash bond²¹ but the latter refused.

¹⁴ Id. at 13, 84.

¹⁵ Id. at 115-116.

¹⁶ CA rollo, pp. 54-59.

¹⁷ Id. 54-57.

¹⁸ Id. at 57-58. Notably, respondent did not include separation pay among the reliefs he prayed for in his Position Paper.

¹⁹ Id. at 63-64.

²⁰ Id. at 69.

²¹ Id.

Thereafter, respondent emphasized in his Reply²² dated January 13, 2017 that he never claimed that he was illegally dismissed and that his complaint is anchored on the underpayment of his wages.²³

Ruling of the LA

In his Decision²⁴ dated January 31, 2017, the LA dismissed respondent's complaint with prejudice for lack of merit, the dispositive portion of which read:

WHEREFORE, premises considered, let this case be, as it is hereby ordered DISMISSED with prejudice for lack of merit.

All the money claims, including complainant's claim for attorney's fees are declared dismissed with prejudice for lack of merit.

SO ORDERED.²⁵ (Emphasis omitted)

Limiting himself to the pay slips attached by respondent to his pleadings, the LA ruled that respondent was not underpaid as his daily salary and allowance of ₱365.00 on August 2016 was within the minimum wage of Wage Order No. RB-III-19 which took effect on January 1, 2016. He also noted that respondent admitted that he was already paid his 13th month pay and had used his SIL of five days.²⁶ He further ruled that respondent was not entitled separation pay because he was not illegally terminated from his employment.²⁷

Undeterred, respondent filed his Memorandum of Appeal²⁸ before the NLRC.

Ruling of the NLRC

In the Decision²⁹ dated May 16, 2017, the NLRC partly granted respondent's appeal, to wit:

²² See Reply to [Petitioners'] Position Paper, id. at 70-72.

²³ Id. at 70.

²⁴ *Rollo*, pp. 80-88. Penned by Acting Executive Labor Arbiter Mariano L. Bactin.

²⁵ Id. at 87-88.

²⁶ Id. at 86.

²⁷ Id. at 86-87.

²⁸ *CA rollo*, pp. 96-102.

²⁹ *Rollo*, pp. 120-135.

WHEREFORE, premises considered, the appeal of complainant Eliza[rdo] T. Mendoza is PARTLY GRANTED. The Decision dated January 31, 2017 of the Labor Arbiter is hereby REVERSED and SET ASIDE, and a new one is entered, ORDERING respondent John Kriska Distribution, Inc. to pay complainant the following:

1. SALARY DIFFERENTIAL in the amount of [P]17,377.88;
2. THIRTEENTH MONTH PAY DIFFERENTIAL in the amount of [P]1,448.16;
3. SERVICE INCENTIVE LEAVE PAY in the amount of [P]12,562.92;
4. CASH BOND in the amount of [P]15,600.00[; and]
5. ATTORNEY'S FEES in the amount of [P]4,698.90.

All other claims are DISMISSED for lack of merit.

The computation of complainant's monetary award will form an integral part of this Decision.

SO ORDERED.³⁰ (Emphasis omitted)

The NLRC ordered that respondent be paid his salary differential and 13th month pay differential.³¹ It found that petitioners failed to adduce any evidence to prove that they paid respondent's wages and benefits in compliance with the prescribed minimum wage rate.³² It found that the meal allowance provided to respondent cannot be deemed part of his basic wage considering that petitioners failed to meet the legal requisites for the inclusion thereof.³³

Anent respondent's claim for the cash equivalent of his SIL, the NLRC noted that petitioners presented evidence which showed that respondent consumed his SIL for the years 2015 and 2016 but were silent as to whether his SIL for prior years were utilized, exhausted, or commuted. Thus, it held that respondent was entitled to the monetary equivalent of his five-day SIL for every year of service from February 6, 2006 to September 20, 2016 less his SIL for years 2015 and 2016.³⁴

The NLRC further noted that petitioners did not deny deducting cash bond of P100.00 from respondent's wages on a weekly basis. Citing

³⁰ Id. at 134-135.

³¹ Id. at 131.

³² Id. at 129.

³³ Id. at 130.

³⁴ Id. at 132.

Article 305³⁵ of the Labor Code which states that money claims must be filed within three years from the time the cause of action accrued, it ruled that only the cash bond deducted from October 26, 2013 onwards can be awarded to respondent.³⁶ Lastly, the NLRC awarded attorney's fees to respondent as he was compelled to litigate in order to collect his monetary benefits.³⁷

In sum, the NLRC awarded ₱51,687.86 to respondent computed as follows:

A) Salary Differential

| | | |
|--------------------------------------|-----|------------------|
| 10/26/2013 - 12/31/2013 | | |
| [₱]325 - 291 = ₱34 x 26 x 2.17 | [₱] | 1,918.28 |
| 1/1/2014 - 11/29/2014 | | |
| 325 - 325 = No underpayment of wages | | |
| 11/30/2014 - 12/31/2014 | | |
| [₱]338 - 325 = [₱]13 x 26 x 1.03 | | 348.14 |
| 1/1/2015 - 12/31/2015 | | |
| [₱]338 - 298 = [₱]40 x 26 x 12 | | 12,480.00 |
| 1/1/2016 - 4/30/2016 | | |
| [₱]346 - 338 = [₱]8 x 26 x 3.97 | | 825.76 |
| 5/1/2016 - 9/20/2016 | | |
| [₱]353 - 338 = [₱]15 x 26 x 4.63 | | 1,805.70 |
| | | <u>17,377.88</u> |

B) Thirteenth Month Pay Differential

| | | |
|------------------|--|----------|
| [₱]17377.88 / 12 | | 1,448.16 |
|------------------|--|----------|

C) SILP

| | | |
|--------------------------|-----|----------|
| 2/6/2006 - 8/2/2006 | | |
| [₱]213.50 x 5/12 x 5.90 | [₱] | 524.85 |
| 8/3/2006 - 9/26/2007 | | |
| [₱]228.50 x 5/12 x 13.77 | | 1,311.02 |
| 9/27/2007 - 6/15/2008 | | |
| [₱]267.00 x 5/12 x 8.60 | | 956.75 |

³⁵ The NLRC Decision cited Article 305 of the Labor Code; however, the quoted provision refers to Article 306 of the Labor Code which provides:
 Art. 306. [291] *Money Claims*. – All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be forever barred.

x x x x

³⁶ *Rollo*, pp. 132-133.

³⁷ *Id.* at 134.

| | | | |
|---|--------------------|------------------|-------------------------------|
| 6/16/2008 - 11/21/2010 | | | |
| [P]281.00 x 5/12 x 29.17 | 3,415.32 | | |
| 11/22/2010 - 12/31/2011 | | | |
| [P]291.00 x 5/12 x 13.30 | 1,612.63 | | |
| 1/1/2012 - 11/10/2012 | | | |
| [P]295.00 x 5/12 x 10.30 | 1,266.04 | | |
| 11/11/2012 - 11/29/2014 | | | |
| [P]325 x 5/12 x 24.60 | 3,331.25 | | |
| 11/30/2014 - 12/31/2014 | | | |
| [P]338 x 5/12 x 1.03 | <u>145.06</u> | 12,562.92 | |
| D) Refund of Weekly Cash Bond | | | |
| [P]100 x 52 weeks x 3 years | | <u>15,600.00</u> | 46,988.96 |
| E) Attorney's Fees (10% monetary award) | | | <u>4,698.90</u> |
| | <u>TOTAL AWARD</u> | | <u>51,687.86³⁸</u> |

Thereafter, petitioners filed their motion for reconsideration dated June 2, 2017, but the NLRC denied it in its Resolution³⁹ dated June 27, 2017 for lack of merit.

Aggrieved, petitioners filed a petition for *certiorari* before the CA.

Ruling of the CA

The CA affirmed the findings and conclusions of the NLRC in its Decision⁴⁰ dated April 24, 2019, the dispositive portion of which reads:

WHEREFORE, the instant Petition for *Certiorari* with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction is DENIED. The Decision dated 16 May 2017 and Resolution dated 27 June 2017 of the National Labor Relations Commission in NLRC LAC No. 03-0001096-17 are hereby AFFIRMED.

SO ORDERED.⁴¹ (Emphasis omitted)

³⁸ Id. at 137-138.

³⁹ Id. at 161-168.

⁴⁰ Id. at 34-43.

⁴¹ Id. at 43.

It agreed with the NLRC that the ₱40.00 meal allowance given to respondent should not be included in his daily wage rate.⁴² More, the CA held that petitioners were not able to overcome their burden to prove that respondent had received his SIL pay for the years prior to 2015 and rejected petitioners' contention that respondent admitted that he had used up all his SIL. Anent respondent's cash bond, the CA opined that petitioners cannot be allowed to change their theory on appeal.⁴³

Hence, the present petition.

Petitioners maintain that respondent was not entitled to attorney's fees because he was never illegally dismissed and that they had a valid justification not to give in to his baseless demands for money claims.⁴⁴

Issue

Whether the CA erred in not finding grave abuse of discretion on the part of the NLRC when it granted respondent's monetary claims which consisted of salary differential, 13th month pay differential, SIL, and cash bond.

Ruling of the Court

The petition is bereft of merit.

In a Rule 45 review in labor cases, the Court examines the CA's Decision "from the prism of whether [in a petition for *certiorari*,] the latter had correctly determined the presence or absence of grave abuse of discretion in the NLRC's Decision."⁴⁵ There is grave abuse of discretion on the part of the NLRC when its findings and conclusions are not supported by substantial evidence, *i.e.*, that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.⁴⁶

⁴² Id. at 40-41.

⁴³ Id. at 42-43.

⁴⁴ Id. at 26.

⁴⁵ *Slord Development Corp. v. Noya*, G.R. No. 232687, February 4, 2019.

⁴⁶ Id.

More, a Rule 45 petition shall raise only questions of law as a rule.⁴⁷ In the case, however, there is compelling reason to deviate from this rule and look into the facts of the case as the findings of the LA are in conflict with that of the NLRC as affirmed by the CA.⁴⁸

In his Position Paper⁴⁹ before the LA, respondent alleged that his daily wage rates during his employment with John Kriska were as follows:

| Year | Rate per day | |
|-------------|--------------|-------------------------------------|
| 2009 – 2010 | ₱267.00 | |
| 2011 – 2013 | ₱291.00 | |
| 2014 | ₱325.00 | ₱40.00 meal allowance |
| 2015 | ₱298.00 | ₱40.00 meal allowance ⁵⁰ |

In support of his contention, respondent submitted the weekly pay slips⁵¹ he had in his possession.

Petitioners now argue that the NLRC acted with grave abuse of discretion as its findings of underpayment amounting to almost ₱9,000.00 out of the ₱12,480.00 salary differential for the period of January 1, 2015 to December 31, 2015 was without any documentary or evidentiary basis and contrary to the March 2015 and August 2015 weekly pay slips submitted by respondent. They assert that respondent's salary differential for 2015 amounts to ₱3,770.00 only.⁵²

The Court does not agree.

The CA aptly ruled that the NLRC did not act with grave abuse of discretion when it held that respondent was paid below the prescribed minimum wage.

In labor cases involving the payment of wages, an employer who alleges payment as a defense has the burden of proving the same, the

⁴⁷ See Section 1, Rule 45 of the Rules of Court.

⁴⁸ *Mayon Hotel & Restaurant v. Adana*, 497 Phil. 892, 907 (2005), citing *Asuncion v. NLRC*, 414 Phil. 329 (2001).

⁴⁹ *CA rollo*, pp. 54-59.

⁵⁰ *Id.* at 55.

⁵¹ See *id.* at 147-150.

⁵² *Rollo*, pp. 24-27.

rationale being that the pertinent files of the employee, *i.e.*, payrolls, attendance sheets, pay slips, bank remittances and other similar documents, are in the custody and absolute control of the employer.⁵³

Thus, it is incumbent upon John Kriska to: (1) present respondent's pay slips to support its defense that respondent's wage was equal to or above the prescribed minimum wage; (2) show proof that respondent's meal allowance should be considered as part of respondent's daily wages as it was paid in the form of facilities; (3) present the relevant evidence showing that respondent used, commuted, or exhausted all the SIL he earned during his employment; and (4) prove that the cash bond in question was already released to and received by respondent.

Records reveal, however, that petitioners did not deny the correctness of the daily wage rates in their reply to respondent's Position Paper and instead argued that: (1) respondent should furnish John Kriska his pay slips from 2009 to 2015;⁵⁴ (2) respondent categorically admitted that that he already received his 13th month pay and had already used his five-day SIL;⁵⁵ (3) the amount that can be demanded by respondent was limited to his benefits within three years prior to the filing of the complaint;⁵⁶ and (4) they offered to give him a check representing respondent's cash bond but he refused.⁵⁷ Notably, they failed to raise the inconsistency between respondent's allegations in his Position Paper and his pay slips for March 2015 and August 2015 as an issue before the labor tribunals. More, petitioners neither argued, nor presented any evidence, showing that respondents meal allowance was paid in the form of facilities.

In view of the foregoing, the Court finds that the NLRC did not act with grave abuse of discretion in awarding respondent's monetary claims.

First, the NRLC reasonably assumed the correctness of respondent's allegations. Respondent's statement could easily have been rebutted by petitioners by submitting the former's pay slips but they did not deny, much less present evidence to the contrary. Assuming *arguendo* that the NLRC overlooked the alleged inconsistency between respondent's pay slips for March 2015 and August 2015 and the daily

⁵³ *SLL International Cables Specialist v. NLRC*, (4th Div.), 659 Phil. 472, 481 (2011).

⁵⁴ CA rollo, p. 74.

⁵⁵ Id. at 74-75.

⁵⁶ Id. at 75.

⁵⁷ Id.

wage rate in the latter's Position Paper, the same is at most, a mere error of judgment—not an error of jurisdiction.⁵⁸ It cannot be said that the NLRC capriciously disregarded these pay slips considering that petitioners failed to raise this issue before the labor tribunals.

Second, it is incumbent upon John Kriska to show proof that respondent's meal allowance was paid in the form of facilities and thereafter, prove the existence of these legal requisites: (1) that the meal allowance is customarily furnished by the trade; (2) that respondent voluntarily agreed that such meal allowance shall be deducted from his daily wage rate; and (3) that the meal allowance was charged at fair and reasonable value.⁵⁹ Petitioners, however, did not adduce even an iota of evidence showing that respondent's meal allowance was paid in the form of facilities. Considering that John Kriska's argument and evidence on this issue is nil, both the NLRC and CA were correct in excluding the meal allowance from respondent's daily wage rate.

Third, it is undisputed that respondent is entitled to SIL. Section 2, Rule V, Book III of the Omnibus Implementing Rules Implementing the Labor Code 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." Due to the cumulative nature of SIL benefits, John Kriska must give an accounting of respondent's SIL utilization or commutation from the commencement of his employment up to the time he stopped reporting for work.⁶⁰

Here, the NLRC found that there is sufficient evidence on record which would show that respondent had utilized his SIL for 2015 and 2016. The Court finds no compelling reason to reverse the NLRC's finding on this matter. Thus, the Court is left with the SIL earned by respondent from February 2006 to December 2014.

The Court does not agree with petitioners' contention that respondent already admitted that he already used all of his accumulated SIL from February 6, 2006 to September 20, 2016. A careful review of minutes of the hearing held on November 23, 2016 would show that respondent did not specify which year he was referring to when he said that he already used up his five-day SIL. It is settled rule that in labor

⁵⁸ See *Mansion Printing Center v. Bitara, Jr.*, 680 Phil. 43 (2012).

⁵⁹ See *Mabeza v. NLRC*, 338 Phil. 386 (1997).

⁶⁰ See *Mansion Printing Center v. Bitara, Jr.*, *supra*

cases, doubts are resolved in favor of an employee in line with the policy of the State to afford greater protection to labor.⁶¹ Hence, any ambiguity in the minutes regarding respondent's admission cannot be interpreted to his prejudice.

Indeed, petitioners presented the leave forms accomplished by respondent to the NLRC showing that respondent absented himself from work for 11 days in 2014. They now argue that these documents were proof that respondent enjoyed leave benefits of more than five days a year. However, petitioners' *non sequitur* reasoning is not sufficient to overcome an employer's burden to prove payment. The Court observed that the leave forms adduced by petitioners do not show that respondent received compensation despite being absent from work during the days that he asked for a leave. Further, as aptly held by the NLRC and affirmed by the CA, the attendance sheets and payroll prepared by John Kriska's accountant cannot be given credence as these documents do not bear respondent's acknowledgment.⁶²

Fourth, the CA correctly upheld the NLRC's judgment ordering John Kriska to refund respondent's cash bond computed as ₱100.00 for three years pursuant to Article 306 of the Labor Code.

As found by the NLRC, respondent steadfastly alleged that petitioners had deducted cash bond in the amount of ₱100.00 from his wages on a weekly basis. Respondent's contention is bolstered by the weekly pay slips he proffered showing cash bond of ₱100.00 on the column for deductions. Thus, the Court is perplexed by the LA's cavalier disregard of the foregoing when he held that respondent failed to inform him of the actual amount of cash bond deducted from the latter's salary.

Meanwhile, although petitioners offered a check for the cash bond, they did not present any evidence which would have helped the LA in determining the balance of respondent's cash bond. After the NLRC ordered petitioners to refund respondent's cash bond in the amount of ₱15,600.00, only then did they present the cash bond slips⁶³ in their motion for reconsideration before the NLRC showing that they released some of respondent's cash bond in 2013, 2014, and 2015. Thereafter, in

⁶¹ *GDI Lightning Solutions v. Unating*, G.R. No. 243414, May 3, 2021. See also *Mayon Hotel & Restaurant v. Adana*, supra note 48, at 922-923.

⁶² *Rollo*, pp. 165-166.

⁶³ *CA rollo*, pp. 157-159.

their petition for *certiorari* before the CA, they argued that the NLRC should not have admitted respondent's cash bond computation for the first time on appeal.⁶⁴

Petitioners are gravely mistaken.

As an employee, respondent is not required under the NLRC Rules of Procedure to compute his total monetary claims and present such computation before the LA; thus, the fact that his computation was submitted for the first time before the NLRC is of no moment. It is sufficient that respondent submitted his weekly pay slips showing that cash bond amounting to ₱100.00 was regularly deducted from his wages. Using elementary mathematics, the labor tribunals can easily compute the total cash bond withheld from respondent during the course of his employment.

Consequently, the burden of proving payment of respondent's cash bond is now with petitioners. Here, petitioners submitted cash bond slips showing that they released certain portion of respondent's cash bond in 2013, 2014, and 2015 for the first time in their motion for reconsideration before the NLRC.

Although rules of evidence are not controlling in labor cases and the NLRC may consider evidence submitted by the parties for the first time on appeal in the interest of substantial justice, this is subject to the rule that the submission of such evidence does not prejudice the other party.⁶⁵ Doing so, in the case, would be tantamount to denial of respondent's right to due process as he was not given an opportunity to present counter-evidence before the LA and the NLRC.

The Court finds it suspicious that petitioners did not present respondent's cash bond slip for 2016 showing the balance of the latter's cash bond at the time his employment was severed. Hence, the Court's ruling in *Metropolitan Bank & Trust Company v. Court of Appeals*⁶⁶ applies in the case. In said case, the Court held that when a party refuses to produce evidence to prove a material fact which imposes liability on himself or herself although he has it in his or her power to produce such

⁶⁴ Id. at 244.

⁶⁵ *Sasan, Sr. v. NLRC*, 590 Phil 685, 701-702 (2008); *Clarion Printing House, Inc. v. NLRC*, 500 Phil. 61, 76-77 (2005); *Cathay Pacific Airways, Ltd. v. NLRC*, 414 Phil. 603 (2001).

⁶⁶ 388 Phil. 880 (2008).

evidence, the presumption arises that the evidence, if produced, would operate to his or her prejudice and would support the case of his or her adversary.⁶⁷

Verily, the choice not to present these cash bond slips at the earliest opportunity was made by petitioners themselves. By choosing not to fully and completely disclose all the relevant documents pertaining to respondent's cash bond, petitioners failed to discharge the burden of proving payment.

In fine, the Court finds no compelling reason to reverse the CA's ruling that the NLRC did not act with grave abuse of discretion in granting respondent's monetary claims which consisted of salary differential, 13th month pay differential, SIL and cash bond.

Respondent is entitled to proportionate 13th month pay for 2016.

The Court notes that respondent included non-payment of his 13th month pay among the causes of action in his complaint⁶⁸ but it was not included in the amount of ₱51,687.86 awarded by the NLRC.

Records reveal that respondent admitted that he already received his 13th month pay for 2015.⁶⁹ There is no evidence on record, however, showing that John Kriska paid respondent's proportionate 13th month pay for 2016 after he refused the settlement which the former offered during the hearing held on November 23, 2016.

No. 6 of the Revised Guidelines on the implementation of the 13th Month Pay Law (Presidential Decree No. 851) dated November 18, 1987, provided that an employee who has resigned or whose services were terminated at any time before the time for payment of the 13th month pay is likewise entitled to 13th month pay in proportion to the length of time he worked during the year. Thus, respondent is entitled to receive his proportionate 13th month pay from January 1, 2016 to September 20, 2016.

⁶⁷ Id. at 888, citing *Manila Bay Club Corp. v. CA*, 319 Phil. 413 (1995).

⁶⁸ *CA rollo*, p. 120-121.

⁶⁹ Id. at 69.

Although respondent prayed for “other reliefs as may be deemed just and equitable” in his pleadings,⁷⁰ he failed to specifically pray for his proportionate 13th month pay. Nonetheless, in *General Baptist Bible College v. NLRC*,⁷¹ the Court held that “[w]e are for the granting of the relief [an employee] is entitled to under the law, although he [or she] failed to specifically pray for the same.”⁷² Similarly, in the interest of justice, the Court deems it proper to order John Kriska to pay respondent his proportionate 13th month pay for 2016.

Lastly, the Court scrutinized petitioners’ pleadings but found no explanation as to why they failed to disclose respondent’s cash bond slips during the hearing. Instead, they belatedly presented respondent’s cash bond slips for 2013, 2014, and 2015 only when a decision adverse to them was issued by the NLRC. More, they did not present respondent’s cash bond slip for 2016 which would have shown the balance of respondent’s cash bond at the time his employment was severed.

In *Orbit Transportation Co. v. Workmen’s Compensation Commission*,⁷³ the Court, through former Chief Justice Claudio Teehankee, reprimanded the counsel of the petitioner therein for suppressing facts and materials necessary in determining the merits of a petition:

While the Court is disposed under the circumstances to be lenient and to dispose of the grave transgressions of counsel with a reprimand and warning, the Court deems this a timely occasion to remind counsel in particular and practitioners in general that time-pressure provides no justification for the suppression of material and vital facts which bear on the merit or lack of merit of a petition.

The Court has time and again stressed that members of the bar owe fidelity to the courts as well as to their clients and that they must show faithful adherence to the provisions of Rule 7, Section 5 that “the signature of an attorney constitutes a certificate by him that he has read the pleading and that to the best of his knowledge, information and belief, there is good ground to support it; and that it is not interposed for delay” with the admonition therein that “for a willful violation of this rule an attorney may be subjected to disciplinary action.”

⁷⁰ *Rollo*, p. 235. See also *id.* at 52, 65, 72.

⁷¹ 292 Phil. 547 (1993).

⁷² *Id.* at 556. See also *St. Michael Academy v. NLRC*, 354 Phil. 491, 503 (1998).

⁷³ 157 Phil. 81 (1974).

The cooperation of litigants and their attorneys is required so that needless clogging of the court dockets with unmeritorious cases may be avoided leaving the courts free to devote their time and attention to meritorious and truly contentious cases. In this, the attorney plays a major role of advising his client to refrain from seeking further appellate review and action in plainly untenable cases.⁷⁴ (Emphasis and citations omitted; underscoring supplied)

Accordingly, counsels are reminded that they are first and foremost, officers of the court. As such, they owe “candor, fairness and good faith to the court.”⁷⁵

WHEREFORE, the petition is **DENIED**. The Decision dated April 24, 2019 and Resolution dated October 18, 2019 of the Court of Appeals in CA-G.R. SP No. 152573 are hereby **AFFIRMED with MODIFICATION**.

Petitioner John Kriska Distribution Center, Inc. is ordered to pay respondent Elizardo T. Mendoza the following:

1. Salary differential in the amount of ₱17,377.88;
2. 13th month pay differential in the amount of ₱1,448.16;
3. Service incentive leave pay in the amount of ₱12,562.92;
4. Cash bond in the amount of ₱15,600.00; and
5. Attorney’s fees in the amount of ₱4,696.90.

The foregoing monetary claims awarded by the National Labor Relations Commission shall earn six percent (6%) interest *per annum*, if still unpaid, from finality of its Decision and the Resolution until full payment.

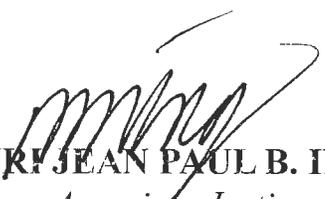
Further, John Kriska Distribution Center Inc. is likewise ordered to pay respondent Elizardo T. Mendoza his proportionate 13th month pay from January 1, 2016 to September 20, 2016 subject to six percent (6%) interest *per annum* from finality of this Resolution until full payment.

⁷⁴ Id. at 84-85.

⁷⁵ Canon 10 of the Code of Professional Responsibility.

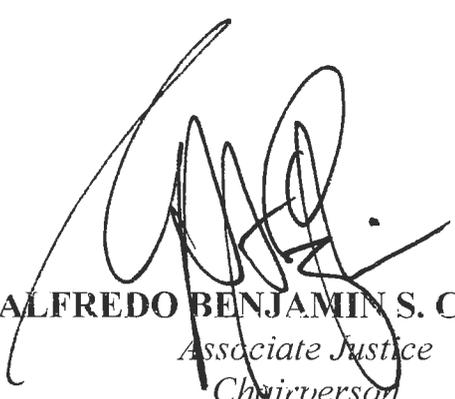
Let the records of the case be remanded to the Labor Arbiter for proper computation of the total monetary award.

SO ORDERED.



HENRY JEAN PAUL B. INTING
Associate Justice

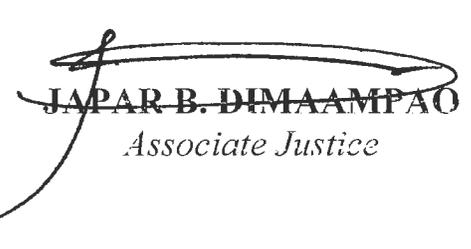
WE CONCUR:



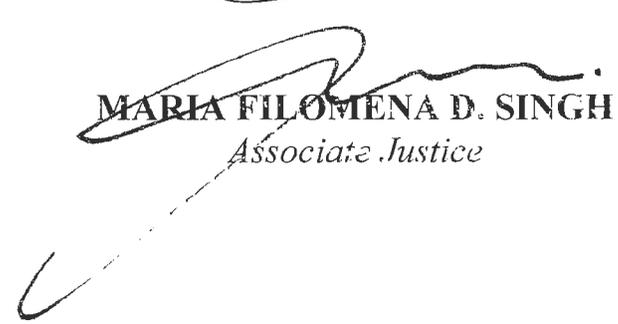
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson



SAMUEL H. GAERLAN
Associate Justice



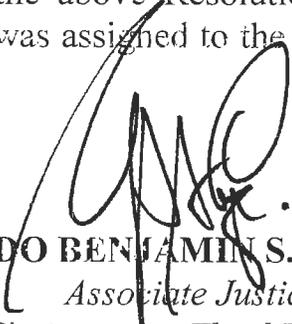
JAPAR B. DIMAAMPAO
Associate Justice



MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALEXANDER G. GESMUNDO
Chief Justice