



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **14 September 2020** which reads as follows:*

“**G.R. No. 251891 (Andy D. Alejandro v. Delsann Builders & General Services, Inc. and Shirley T. Dela Cruz)**. – After a judicious study of the case, the Court resolves to **DENY** the instant petition and **AFFIRM** the Decision¹ dated 29 August 2019 and the Resolution² dated 3 February 2020 of the Court of Appeals (CA) in CA-G.R. SP No. 153492 for failure of Andy D. Alejandro (petitioner) to show that the CA committed any reversible error in finding no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the National Labor Relations Commission (NLRC) in ruling that petitioner is a field personnel paid on purely commission basis and accordingly, dismissing petitioner’s claim for holiday pay, 13th month pay, and attorney’s fees.

At the outset, while the issue as to whether petitioner is entitled to holiday and 13th month pay involves a question of law, nonetheless, the determination of this question of law is necessarily intertwined with the factual issue of whether petitioner is considered a field personnel. It bears to emphasize once again that the jurisdiction of the Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited only to reviewing errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts.³ In this case, the Court finds none of the mentioned circumstances is present to warrant a review of the factual findings of the case. The Court finds no error on the part of the CA in affirming the finding of the NLRC that petitioner is a field personnel.

¹ Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Ramon M. Bato, Jr. and Walter S. Ong, concurring; *rollo*, pp. 29-34.

² *Id.* at 36-37.

³ *Mamaril v. The Red System Company, Inc.*, G.R. No. 229920, July 4, 2018.

Article 82 of the Labor Code is decisive on the question of who are referred to by the term "field personnel." It provides, as follows –

ART. 82. Coverage. – The provisions of this title [Working Conditions and Rest Periods] shall apply to employees in all establishments and undertakings whether for profit or not, but not to government employees, managerial employees, field personnel, members of the family of the employer who are dependent on him for support, domestic helpers, persons in the personal service of another, and workers who are paid by results as determined by the Secretary of Labor in appropriate regulations.

x x x x

"Field personnel" shall refer to non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty.⁴

In *Auto Bus Transport Systems, Inc. v. Bautista*,⁵ the Court elucidated on who can be considered field worker/personnel, thus –

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

x x x x

x x x. At this point, it is necessary to stress that the definition of a "field personnel" is not merely concerned with the location where the employee regularly performs is unsupervised by the employer. As discussed above, field personnel are those who regularly perform their duties away from the principal place of business of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty. Thus, **in order to conclude whether an employee is a field employec, it is also necessary to ascertain if actual hours of work in the field can be determined with reasonable certainty by the employer. In so doing, an inquiry must be made as to whether or not the employee's time and performanee are constantly supervised by the employer.⁶**

In this case, the CA aptly pointed out that petitioner did not observe the usual working hours as he was not required to report for work on a

⁴ Emphasis supplied.

⁵ 497 Phil. 863, 873-874 (2005), citing *Bureau of Working Conditions (BWC), Advisory Opinion to Philippine Technical-Clerical Commercial Employees Association*, April 6, 1989.

⁶ Emphasis supplied.

regular basis and that he was tasked to report for work only whenever there were available orders for delivery. There was also no concrete indication that petitioner's delivery trips were supervised by Delsann Builders & General Services, Inc. (respondent). What is shown in the Liquidation Reports is a list of the delivery trips undertaken by petitioner with the corresponding amount due by way of commission, cost of repair, and advances obtained by petitioner, if any. Nothing in the evidence on record would show that petitioner was required to be at a specific place at a specified time, or that he was obliged to report his arrival and departure at a specified time. Neither is there any evidence that petitioner was imposed a specific time to effect delivery or that he was subjected to periodic inspections while he was in transit to and from his designated delivery sites. Moreover, the CA rightly affirmed that, as revealed in the Liquidation Reports, petitioner was paid on purely commission basis as he was paid a specific amount for every specific delivery trip he made. Petitioner's claim that he also received a salary on top of his commissions is completely unsupported by the evidence on record.

Verily, the CA correctly upheld the finding of the NLRC that petitioner is a field personnel who is paid on purely commission basis. Hence, he is not entitled to either holiday or 13th month pay.

Article 82 of the Labor Code provides the exclusions from the coverage of Title I, Book III of the Labor Code – provisions governing working conditions and rest periods.⁷ To re-emphasize, Article 82 clearly states that the provisions of Title I shall apply to employees in all establishments and undertakings whether for profit or not, **but not to** government employees, managerial employees, **field personnel**, members of the family of the employer who are dependent on him for support, domestic helpers, persons in the personal service of another, and workers who are paid by results as determined by the Secretary of Labor in appropriate regulations.

Among the Title I provisions is the provision on the right to holiday pay under Article 94 of the Labor Code. The Omnibus Rules Implementing the Labor Code on Holidays with Pay under Section 1, Rule IV of Book III provides –

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

x x x x

(e) **Field personnel and other employees whose time and performance is unsupervised by the employer including those who are engaged on** task or contract basis, purely commission basis, or those who are paid a fixed amount for performing work irrespective of the time consumed in the performance thereof.

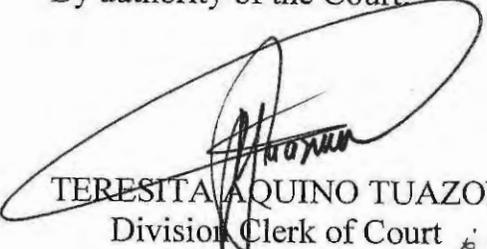
⁷ *David v. Macasio*, 738 Phil. 293, 311 (2014).

Anent the proper determination of the award of 13th month pay, the governing law is Presidential Decree No. (PD) 851. Under Section 3 (e) of PD 851, “employers of those who are paid on **purely commission**, boundary, or task basis, and those who are paid a fixed amount for performing a specific work, irrespective of the time consumed in the performance thereof, except where the workers are paid on piece-rate basis in which case the employer shall be covered by this issuance insofar as such workers are concerned” **are exempted**. To simply state, since petitioner is paid on purely commission basis, he is not entitled to 13th month pay.

In fine, the CA correctly ruled that the NLRC did not commit grave abuse of discretion in reversing the Decision of the Labor Arbiter granting holiday and 13th month pay to petitioner.

SO ORDERED.” (*Baltazar-Padilla, J., on leave.*)

By authority of the Court:


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 24 NOV 2020

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