



Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**NETLINK COMPUTER  
INCORPORATED,**

Petitioner,

**G.R. No. 160827**

Present:

SERENO, C.J.  
LEONARDO-DE CASTRO,  
BERSAMIN,  
VILLARAMA, JR., and  
REYES, JJ.:

- versus -

**ERIC DELMO,**

Respondent.

Promulgated:

**JUN 18 2014**

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**DECISION**

**BERSAMIN, J.:**

In the absence of a written agreement between the employer and the employee that sales commissions shall be paid in a foreign currency, the latter has the right to be paid in such foreign currency once the same has become an established practice of the former. The rate of exchange at the time of payment, not the rate of exchange at the time of the sales, controls.

**Antecedents**

On November 3, 1991, Netlink Computer, Inc. Products and Services (Netlink) hired Eric S. Delmo (Delmo) as account manager tasked to canvass and source clients and convince them to purchase the products and services of Netlink. Delmo worked in the field most of the time. He and his fellow account managers were not required to accomplish time cards to record their personal presence in the office of Netlink.<sup>1</sup> He was able to generate sales worth ₱35,000,000.00, more or less, from which he earned

<sup>1</sup> Rollo, p. 49.

commissions amounting to ₱993,558.89 and US\$7,588.30. He then requested payment of his commissions, but Netlink refused and only gave him partial cash advances chargeable to his commissions. Later on, Netlink began to nitpick and fault find, like stressing his supposed absences and tardiness. In order to force him to resign, Netlink issued several memoranda detailing his supposed infractions of the company's attendance policy. Despite the memoranda, Delmo continued to generate huge sales for Netlink.<sup>2</sup>

On November 28, 1996, Delmo was shocked when he was refused entry into the company premises by the security guard pursuant to a memorandum to that effect. His personal belongings were still inside the company premises and he sought their return to him. This incident prompted Delmo to file a complaint for illegal dismissal.<sup>3</sup>

In its answer to Delmo's complaint, Netlink countered that there were guidelines regarding company working time and its utilization and how the employees' time would be recorded. Allegedly, all personnel were required to use the bundy clock to punch in and out in the morning, and in and out in the afternoon. Excepted from the rules were the company officers, and the authorized personnel in the field project assignments. Netlink claimed that it would be losing on the business transactions closed by Delmo due to the high costs of equipment, and in fact his biggest client had not yet paid. Netlink pointed out that Delmo had become very lax in his obligations, with the other account managers eventually having outperformed him. Netlink asserted that warning, reprimand, and suspension memoranda were given to employees who violated company rules and regulations, but such actions were considered as a necessary management tool to instill discipline.<sup>4</sup>

### **Ruling of the Labor Arbiter**

On September 23, 1998, the Labor Arbiter ruled against Netlink and in favor of Delmo, to wit:

WHEREFORE, judgment is hereby rendered declaring complainant as illegally and unjustly dismissed and respondents are ordered to reinstate complainant to his former position without loss of seniority rights with full backwages and other benefits and respondents are hereby ordered to pay complainant as follows:

₱161,000.00 – Backwages, basic pay and allowances from Nov. 1996 to Sept. 1998

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<sup>2</sup> Id.

<sup>3</sup> Id. at 49-50.

<sup>4</sup> Id. at 50.

15,000.00 – 13<sup>th</sup> month pay for 1996 to 1998

993,558.89 – unpaid commissions

₱1,169,558.89 – Total

plus US\$7,588.30 – unpaid commissions

plus 10% attorney's fees

The reinstatement aspect is immediately executory even pending appeal. In case reinstatement is no longer feasible, complainant shall be paid separation pay of one-month pay for every year of service. All other claims are hereby dismissed.

SO ORDERED.<sup>5</sup>

### Decision of the NLRC

On appeal, the National Labor Relations Commission (NLRC) modified the decision of the Labor Arbiter by setting aside the backwages and reinstatement decreed by the Labor Arbiter due to the existence of valid and just causes for the termination of Delmo's employment, to wit:

WHEREFORE, premises considered, the decision of the Labor Arbiter a quo is hereby **SET ASIDE** and a new one **ENTERED**, ordering the respondents-appellants to pay the following:

1. TWO THOUSAND PESOS (₱2,000.00) as indemnity for failure to observe procedural due process;
2. Unpaid commission in the amount of ₱993,558.89;
3. US\$7,588.30 as unpaid commission;
4. ₱15,000.00 representing the 13<sup>th</sup> month pay for 1996, 1997, and 1998;
5. 10% attorney's fees of the total amount awarded.

SO ORDERED.<sup>6</sup>

The NLRC denied the motion for reconsideration, after which Netlink filed a petition for *certiorari* in the CA.

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<sup>5</sup> Id. at 354.

<sup>6</sup> Id. at 66.

### Judgment of the CA

On May 9, 2003, the CA promulgated its assailed decision upholding the NLRC's ruling subject to modifications,<sup>7</sup> viz:

In the present case, since the payment of the commission is made to depend on the future and uncertain event – which is the payment of the accounts by the persons who have transacted business with the petitioner, without payment by the former to the latter, the obligation to pay the commission has not yet arisen.

The evidence on record shows that the ALCATEL, private respondent's biggest client has not paid fully the amount it owes to the petitioner as of March 10, 1998. (*Rollo*, pp. 101, 397, 398) The obligation therefore, on the part of the petitioner to pay the private respondent for his commission for the said unpaid account has not yet arisen. Thus it is a grave abuse of discretion on the part of the public respondent to make petitioner liable to the private respondent for the payment of the said commission, when it is clear on the record, as We have discussed above, that the obligation therefor has not yet arisen.

Perusal of the records, likewise, show that petitioner failed to refute by evidence that the private respondent is not entitled to the ₱993, 558.89 commission. Petitioner however claimed that since the amounts out of which the commission will be taken has not yet been paid fully, petitioner must, likewise, not be made liable for the said commission. However, public respondent committed grave abuse of discretion when it disregard the evidence on record which is not disputed by the private respondent that out of the total commissions of the private respondent, petitioner has paid the petitioner in the amount of ₱216,799.45 in the form of advance payment. (*Rollo*, p. 12)

In view of the foregoing discussions, therefore, the advance payment made by the petitioner in favor of the private respondent in the amount of ₱216, 799.45 must be deducted to the ₱993, 558.89 unpaid commission of the private respondent. The difference amounting to ₱776, 779.44 must likewise be deducted to the amount of ₱4, 066.19 which represents the amount which the petitioner had admitted as the net commission payable to private respondent. The difference thereof amounting to ₱772, 713.25 shall represent the unpaid commission which shall be payable to the private respondent by the petitioner upon payment of the accounts out of which such commission shall be taken.

We, likewise, agree with the petitioner that the private respondent is not entitled to 13<sup>th</sup> month pay in the years 1997 and 1998. The order of the public respondent making the petitioner liable to the private respondent for the 13<sup>th</sup> month pay of the latter in the years 1997 and 1998 is contrary to its findings that there are valid and just cause for the termination of the private respondent from employment, although private respondent was not given his right to due process. (*Rollo*, pp. 32-33) The rule applicable in the present case is the decision of the Supreme Court in

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<sup>7</sup> Id. at 48-58; penned by Associate Justice Bennie A Adefuin-De law Cruz (retired), with the concurrence of Associate Justice Jose L. Sabio, Jr. (retired/deceased) and Associate Justice Hakim S. Abdulwahid.

the case of Sebuguero vs National Labor Relations Commission [248 SCRA 532, 547 (1995)] where it was ruled that “where the dismissal of an employee is in fact for a just and valid cause and is so proven to be but he is not accorded his right to due process, i.e., he was not furnished the twin requirements of notice and the opportunity to be heard, the dismissal shall be upheld but the employer must be sanctioned for non-compliance with the requirements of or for failure to observe due process.” Hence, petitioner should not be made to pay the 13<sup>th</sup> month pay to private respondent whose employment was terminated for cause but without due process in 1996.

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Thus, private respondent is entitled only to a 13<sup>th</sup> month pay computed pro-rata from January 1996 to November 1996 which as properly computed by the petitioner amounts to ₱4,584.00. (*Rollo*, p. 11)

With respect to the other arguments of the petitioner, this Court is not persuaded.

Petitioner failed to refute by evidence that private respondent is not entitled to the commissions payable in US dollars. Neither is there any reason for us to agree with the petitioner that the computation of these commissions must be based on the value of [the] Peso in relation to a Dollar at the time of sale. As properly observed by the Labor Arbiter a quo, viz: “Likewise the devaluation of the peso cannot be used as a shield against the complainant because that should have been the lookout of the respondent company in providing for such a clause that in case of devaluation, the price agreed upon should be at the exchange rate when the contract of sale had been consummated. For the lack of foresight and inefficiency of the respondent company and as regards its contracts or agreements with its clientele, the complainant should not be made to suffer.” (Labor Arbiter Ricardo Olarez’ Decision, September 23, 1998, pp. 11-12, *Rollo*, pp. 328-329) In this regard therefore, We uphold the well settled rule that “the findings of facts of the NLRC, particularly where the NLRC and the Labor Arbiter are in agreement, are deemed binding and conclusive upon the Court.” (*Permex, Inc. vs National Labor Relations Commission*, 323 SCRA 121, 126).

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WHEREFORE, premises considered, the *assailed Resolutions are hereby AFFIRMED with MODIFICATION*, ordering the petitioner to pay the private respondent the following:

1. TWO-THOUSAND PESOS (₱2,000.00) as indemnity for failure to observe procedural due process;
2. ₱4,066.19 representing the unpaid commissions that have accrued in favor of the private respondent;
3. ₱776,779.44 payable to the private respondent upon payment of the accounts out of which the said amount will be taken;
4. ₱4,584.00 representing the unpaid 13<sup>th</sup> month pay of the private respondent;

5. US\$7,588.30 as unpaid commission;

6. 10% attorney's fees of the total amount awarded excluding the amount contained in the No.3 of this Order.

SO ORDERED.

### **Issues**

Hence, this appeal.

Netlink submits that the CA committed a palpable and reversible error of law in not holding that the applicable exchange rate for computing the US dollar commissions of Delmo should be the rates prevailing at the time when the sales were actually generated, not the rates prevailing at the time of the payment; and in awarding attorney's fees.

In his comment,<sup>8</sup> Delmo counters that because he had earned in US dollars it was only fair that his commissions be paid in US dollars; that Netlink should not be allowed to flip-flop after it had paid commissions in US dollar on the sales generated by its sales agents on US-dollar denominated transactions; and that attorney's fees were warranted because of the unanimous finding that there was violation of procedural due process.

In its reply,<sup>9</sup> Netlink maintains that the commissions of Delmo should be based on sales generated, actually paid by and collected from the customers; that commissions must be paid on the basis of the conversion of the US dollar to the Philippine peso at the time of sale; and that no cogent and justifiable reason existed for the award of attorney's fees.

To be considered for resolution are, therefore, the following, namely: (1) whether or not the payment of the commissions should be in US dollars; and (2) whether or not the award of attorney's fees was warranted.

### **Ruling of the Court**

The appeal lacks merit.

As a general rule, all obligations shall be paid in Philippine currency. However, the contracting parties may stipulate that foreign currencies may

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<sup>8</sup> Id. at 490-492.

<sup>9</sup> Id. at 495-499.

be used for settling obligations. This is pursuant to Republic Act No. 8183,<sup>10</sup> which provides as follows:

Section 1. All monetary obligations shall be settled in the Philippine currency which is legal tender in the Philippines. However, the parties may agree that the obligation or transaction shall be settled in any other currency at the time of payment.

We remarked in *C.F. Sharp & Co. v. Northwest Airlines, Inc.*<sup>11</sup> that the repeal of Republic Act No. 529 had the effect of removing the prohibition on the stipulation of currency other than Philippine currency, such that obligations or transactions could already be paid in the currency agreed upon by the parties. However, both Republic Act No. 529 and Republic Act No. 8183 did not stipulate the applicable rate of exchange for the conversion of foreign currency-incurred obligations to their peso equivalent. It follows, therefore, that the jurisprudence established under Republic Act No. 529 with regard to the rate of conversion remains applicable. In *C.F. Sharp*, the Court cited *Asia World Recruitment, Inc. v. NLRC*,<sup>12</sup> to the effect that the real value of the foreign exchange-incurred obligation up to the date of its payment should be preserved.

There was no written contract between Netlink and Delmo stipulating that the latter's commissions would be paid in US dollars. The absence of the contractual stipulation notwithstanding, Netlink was still liable to pay Delmo in US dollars because the practice of paying its sales agents in US dollars for their US dollar-denominated sales had become a company policy. This was impliedly admitted by Netlink when it did not refute the allegation that the commissions earned by Delmo and its other sales agents had been paid in US dollars. Instead of denying the allegation, Netlink only sought a declaration that the US dollar commissions be paid using the exchange rate at the time of sale. The principle of non-diminution of benefits, which has been incorporated in Article 100<sup>13</sup> of the *Labor Code*, forbade Netlink from unilaterally reducing, diminishing, discontinuing or eliminating the practice. Verily, the phrase "*supplements, or other employee benefits*" in Article 100 is construed to mean the compensation and privileges received by an employee aside from regular salaries or wages.

With regard to the length of time the company practice should have been observed to constitute a voluntary employer practice that cannot be unilaterally reduced, diminished, discontinued or eliminated by the employer, we find that jurisprudence has not laid down any rule requiring a

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<sup>10</sup> *An Act Repealing Republic Act Numbered Five Hundred Twenty-Nine, As Amended, Entitled "An Act To Assure the Uniform Value of Philippine Coin and Currency."*

<sup>11</sup> G.R. No. 133498, April 18, 2002, 381 SCRA 314, 319-320.

<sup>12</sup> G.R. No. 113363, August 24, 1999, 313 SCRA 1, 17.

<sup>13</sup> Article 100. *Prohibition against elimination or diminution of benefits.* - Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code.

specific minimum number of years. In *Davao Fruits Corporation v. Associated Labor Unions*,<sup>14</sup> the company practice lasted for six years. In *Davao Integrated Port Stevedoring Services v. Abarquez*,<sup>15</sup> the employer, for three years and nine months, approved the commutation to cash of the un-enjoyed portion of the sick leave with pay benefits of its intermittent workers. In *Tiangco v. Leogardo, Jr.*,<sup>16</sup> the employer carried on the practice of giving a fixed monthly emergency allowance from November 1976 to February 1980, or three years and four months. In *Sevilla Trading Company v. Semana*,<sup>17</sup> the employer kept the practice of including non-basic benefits such as paid leaves for unused sick leave and vacation in the computation of their 13th-month pay for at least two years.

With the payment of US dollar commissions having ripened into a company practice, there is no way that the commissions due to Delmo were to be paid in US dollars or their equivalent in Philippine currency determined at the time of the sales. To rule otherwise would be to cause an unjust diminution of the commissions due and owing to Delmo.

Finally, we affirm the following justification of the CA in granting attorney's fees to Delmo, *viz*:

The award of attorney's fees must, likewise, be upheld in line of (sic) the decision of the Supreme Court in the case of Consolidated Rural Bank (Cagayan Valley), Inc. vs. National Labor Relations Commission, 301 SCRA 223, 235, where it was held that "in actions for recovery of wages or where an employee was forced to litigate and thus incur expenses to protect her rights and interests, even if not so claimed, an award of attorney's fees equivalent to ten percent (10%) of the total award is legally and morally justifiable. There is no doubt that in the present case, the private respondent has incurred expenses for the protection and enforcement of his right to his commissions."<sup>18</sup>

**WHEREFORE**, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on May 9, 2003; and **ORDERS** the petitioner to pay the costs of suit.

**SO ORDERED**

  
LUCAS P. BERSAMIN  
Associate Justice

<sup>14</sup> G.R. No. 85073, August 24, 1993, 225 SCRA 562, 567.

<sup>15</sup> G.R. No. 102132, March 19, 1993, 220 SCRA 197, 205.

<sup>16</sup> No. L-57636, May 16, 1983, 122 SCRA 267, 275-277.

<sup>17</sup> G.R. No. 152456, April 28, 2004, 428 SCRA 239, 249.

<sup>18</sup> *Rollo*, p. 57.



**WE CONCUR:**



**MARIA LOURDES P. A. SERENO**  
Chief Justice



**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice



**MARTIN S. VILLARAMA, JR.**  
Associate Justice



**BIENVENIDO L. REYES**  
Associate Justice

**CERTIFICATION**

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



**MARIA LOURDES P. A. SERENO**  
Chief Justice