



Republic of the Philippines  
**Supreme Court**  
 Manila

**FIRST DIVISION**

**MEGA MAGAZINE  
 PUBLICATIONS, INC.,  
 JERRY TIU, AND  
 SARITA V. YAP,**

Petitioners,

- versus -

**G.R. No. 162021**

Present:

SERENO, *C.J.*,  
 LEONARDO-DE CASTRO,  
 BERSAMIN,  
 \*PEREZ, and  
 REYES, *JJ.*

Promulgated:

**MARGARET A. DEFENSOR,**  
 Respondent.

**JUN 16 2014**

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**DECISION**

**BERSAMIN, J.:**

In labor cases, the rules on the degree of proof are enforced not as stringently as in other cases in order to better serve the higher ends of justice. This lenity is intended to afford to the employee every opportunity to level the playing field.

**The Case**

Being now assailed is the amended decision promulgated on November 19, 2003,<sup>1</sup> whereby the Court of Appeals (CA) reconsidered its original disposition, and granted the petition for *certiorari* filed by respondent Margaret A. Defensor (respondent) by annulling and setting aside the adverse resolutions dated July 31, 2002 and March 31, 2003 issued by the National Labor Relations Commission (NLRC).

\* Vice Associate Justice Martin S. Villarama, Jr., who penned the decision under review, per the raffle of September 26, 2011.

<sup>1</sup> *Rollo*, pp. 58-74; penned by Associate Justice Martin S. Villarama, Jr. (now a Member of this Court), with the concurrence of Presiding Justice Cancio C. Garcia (retired Member of this Court) and Associate Justice Mario L. Guariña, III (retired).

### **Antecedents**

Petitioner Mega Magazine Publications, Inc. (MMPI) first employed the respondent as an Associate Publisher in 1996, and later promoted her as a Group Publisher with a monthly salary of ₱60,000.00.<sup>2</sup>

In a memorandum dated February 25, 1999, the respondent proposed to MMPI's Executive Vice-President Sarita V. Yap (Yap) year-end commissions for herself and a special incentive plan for the Sales Department.<sup>3</sup> The proposed schedule of the respondent's commissions would be as follows:

- |                                    |                            |
|------------------------------------|----------------------------|
| 1. MMPI Total revenue at ₱28-₱29 M | 0.05% outright commission  |
| 2. MMPI Total revenue at ₱30-₱34 M | 0.075% outright commission |
| 3. MMPI Total revenue at ₱35-₱38 M | 0.1% outright commission   |
| 4. MMPI Total revenue at ₱39-₱41 M | 0.1% outright commission   |
| 5. MMPI Total revenue at ₱41M up   | 0.1% outright commission   |

while the proposed schedule of the special incentive plan would be the following:

- |                                    |  |
|------------------------------------|--|
| 1. MMPI Total revenue at ₱28-₱29 M | ₱5,000 each by year-end                                |
| 2. MMPI Total revenue at ₱30-₱34 M | ₱7,000 each by year-end                                |
| 3. MMPI Total revenue at ₱35-₱38 M | ₱8,500 each by year-end                                |
| 4. MMPI Total revenue at ₱39-₱41 M | ₱10,000 each by year-end                               |
| 5. MMPI Total revenue at ₱41M up   | ₱10,000 each by year-end Plus<br>incentive trip abroad |

Yap made marginal notes of her counter-proposals on her copy of the respondent's memorandum dated February 25, 1999 itself,<sup>4</sup> crossing out proposed items 1 and 2 from the schedule of the respondent's commissions, and proposing instead that outright commissions be at 0.1% of ₱35-₱38 million in accordance with proposed item 3; and crossing out proposed items 1 and 2 from the schedule of the special incentive plan, and writing "*start here*" and "*stet*" in reference to item 3. Yap also wrote on the memorandum: "*Marge, if everything is ok w/ you, draft something for me to sign ...*"; "*You can also announce that at 5 M net for MMPI [acc to my computation, achievable if they only meet their month min. quota] we can declare 14<sup>th</sup> month pay for entire company.*"<sup>5</sup>

The respondent sent another memorandum on April 5, 1999 setting out the 1999 advertisement sales, target and commissions, and proposing

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<sup>2</sup> Id. at 59.

<sup>3</sup> Id. at 121-122.

<sup>4</sup> Id.

<sup>5</sup> Id.

that the schedule of her outright commissions should start at .05% of ₱34.5 million total revenue, or ₱175,000.00;<sup>6</sup> and further proposing that the special incentives be given when total revenues reached ₱35-₱38 million.

On August 31, 1999, the respondent sent Yap a report on sales and sales targets.<sup>7</sup>

On October 1999, the respondent tendered her letter of resignation effective at the end of December 1999. Yap accepted the resignation.<sup>8</sup> Before leaving MMPI, the respondent sent Yap another report on the sales and advertising targets for 1999.<sup>9</sup>

On December 8, 1999, Yap responded with a “formalization” of her approval of the 1999 special incentive scheme proposed by the respondent through her memorandum dated February 25, 1999,<sup>10</sup> revising anew the schedule by starting commissions at .05% of ₱35-₱38 million gross advertising revenue (including barter), and the proposed special incentives at ₱35-₱38 million with ₱8,500.00 bonus.<sup>11</sup>

The respondent replied to Yap, pointing out that her memorandum dated April 5, 1999 had been the result of Yap’s own comments on the special incentive scheme she had proposed, and that she had assumed that Yap had been amenable to the proposal when she did not receive any further reaction from the latter.<sup>12</sup>

On May 2000, after the respondent had left the company, she filed a complaint for payment of bonus and incentive compensation with damages,<sup>13</sup> specifically demanding the payment of ₱271,264.68 as sales commissions, ₱60,000.00 as 14<sup>th</sup> month pay, and ₱8,500.00 as her share in the incentive scheme for the advertising and sales staff.<sup>14</sup>

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

In a decision dated February 5, 2001,<sup>15</sup> the Labor Arbiter (LA) dismissed the respondent’s complaint, ruling that the respondent had not presented any evidence showing that MMPI had agreed or committed to the

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<sup>6</sup> Id. at 124-125.

<sup>7</sup> Id. at 126-127.

<sup>8</sup> Id. at 132.

<sup>9</sup> Id. at 129.

<sup>10</sup> Id. at 108.

<sup>11</sup> Id.

<sup>12</sup> Id. at 109,131.

<sup>13</sup> Id. at 110-116.

<sup>14</sup> Id. at 115.

<sup>15</sup> Id. at 211-225.

terms proposed in her memorandum of April 5, 1999; that even assuming that the petitioners had agreed to her terms, the table she had submitted justifying a gross revenue of ₱36,216,624.07 was not an official account by MMPI;<sup>16</sup> and that the petitioners had presented a 1999 statement of income and deficit prepared by the auditing firm of Punongbayan & Araullo showing MMPI's gross revenue for 1999 being only ₱31,947,677.00.<sup>17</sup>

### **Decision of the NLRC**

The respondent appealed, but the NLRC denied the appeal for its lack of merit,<sup>18</sup> with the NLRC concurring with the LA's ruling that there had been no agreement between the petitioners and the respondent on the terms and conditions of the incentives reached.

The respondent filed a motion for reconsideration and a supplement to the motion for reconsideration. In the supplement, she included a motion to admit additional evidence (*i.e.*, the affidavit of Lie Tabingo who had worked as a traffic clerk in the Advertising Department of MMPI and had been in charge of keeping track of the advertisements placed with MMPI) on the ground that such evidence had been "unavailable during the hearing as newly discovered evidence in a motion for new trial".<sup>19</sup>

The NLRC denied the respondent's motions for reconsideration.<sup>20</sup>

### **Judgment of the CA**

The respondent brought a special civil action for *certiorari* in the CA.

In its decision promulgated on August 28, 2003,<sup>21</sup> the CA dismissed the respondent's petition for *certiorari* and upheld the resolutions of the NLRC.

On motion for reconsideration by the respondent, however, the CA promulgated on November 19, 2003 its assailed amended decision granting the motion for reconsideration and giving due course to the respondent's petition for *certiorari*; annulling the challenged resolutions of the NLRC; and remanding the case to the NLRC for the reception of additional evidence. The CA opined that the NLRC had committed a grave abuse of discretion in finding that there had been no special incentive scheme

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<sup>16</sup> Id. at 130.

<sup>17</sup> Id. at 275.

<sup>18</sup> Id. at 287-305.

<sup>19</sup> Id. at 341-342.

<sup>20</sup> Id. at 367-376.

<sup>21</sup> Id. at 479-487.

approved and implemented for 1999,<sup>22</sup> and in disallowing the respondent from presenting additional evidence that was crucial in establishing her claim about MMPI's gross revenue.<sup>23</sup> The amended decision disposed as follows:

WHEREFORE, premises considered, the motion for reconsideration is hereby GRANTED. Our Decision of August 28, 2003 is hereby RECONSIDERED AND SET ASIDE. A new judgment is hereby entered GIVING DUE COURSE to the petition and GRANTING the writ prayed for. Accordingly, the challenged Resolutions of the NLRC in NLRC NCR 00-03-61361-00 (CA No. 028358-01) dated July 31, 2002 and March 31, 2003 are hereby ANNULLED and SET ASIDE. The case is hereby remanded to the NLRC for reception of additional evidence on appeal as prayed for by petitioner and for proper proceedings in accordance with Our disquisitions herein.

The denial of the claim for 14<sup>th</sup> month pay is sustained for lack of evidentiary basis.

No pronouncement as to costs.

SO ORDERED.<sup>24</sup>

The petitioners and the respondent sought reconsideration of the CA's amended decision, but the CA denied their motions through the resolution promulgated on February 4, 2004.<sup>25</sup>

### Issues

Hence, this appeal by petition for review on *certiorari*, with the petitioners urging that the CA erred in ruling that –

- I. RESPONDENT CAN INTRODUCE EVIDENCE THAT IS NOT NEWLY-DISCOVERED FOR THE FIRST TIME ON APPEAL.
- II. A [REMAND] OF THE CASE TO THE NLRC FOR FURTHER RECEPTION OF EVIDENCE IS JUSTIFIED BY REASON OF DEARTH OF EVIDENCE TO PROVE THAT TARGET GROSS SALES OR REVENUES WERE ACTUALLY MET AS TO ENTITLE RESPONDENT TO THE INCENTIVE BONUS FOR THE SUBJECT PERIOD/YEAR.<sup>26</sup>

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<sup>22</sup> Id. at 71.

<sup>23</sup> Id. at 73.

<sup>24</sup> Id. at 74.

<sup>25</sup> Id. at 54-56.

<sup>26</sup> Id. at 25.

The petitioners argue that the circumstances of the case did not warrant the relaxation of the rules of procedure in order to allow the submission of the memorandum and the affidavit of Tabingo to the LA and the NLRC. They contend that the respondent had sought to introduce in the proceedings before the LA Tabingo's memorandum dated December 10, 1999 addressed to the Accounting Department stating that the "gross revenue from all publications was ₱36,022,624.07, while net revenue was ₱32,551,890.58";<sup>27</sup> that Tabingo's affidavit was meant to validate her memorandum; that such pieces of evidence sought to prove that MMPI's target gross sales had been met, and would then entitle the respondent to her claims of commissions and special incentives; that the LA actually considered but did not give any weight or value to Tabingo's memorandum in resolving the respondent's claims; that any affidavit from Tabingo that the respondent intended to introduce would be merely corroborative of the evidence already presented, like the table purportedly showing MMPI's gross revenue for 1999; and that such evidence was already considered by the NLRC in resolving the appeal.<sup>28</sup>

The important issue is whether or not the respondent was entitled to the commissions and the incentive bonus being claimed.

### **Ruling**

The appeal is partly meritorious.

The grant of a bonus or special incentive, being a management prerogative, is not a demandable and enforceable obligation, except when the bonus or special incentive is made part of the wage, salary or compensation of the employee,<sup>29</sup> or is promised by the employer and expressly agreed upon by the parties.<sup>30</sup> By its very definition, *bonus* is a gratuity or act of liberality of the giver,<sup>31</sup> and cannot be considered part of an employee's wages if it is paid only when profits are realized or a certain amount of productivity is achieved. If the desired goal of production or actual work is not accomplished, the bonus does not accrue.

Due to the nature of the bonus or special incentive being a gratuity or act of liberality on the part of the giver, the respondent could not validly insist on the schedule proposed in her memorandum of April 5, 1999 considering that the grant of the bonus or special incentive remained a management prerogative. However, the Court agrees with the CA's ruling

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<sup>27</sup> Id. at 65.

<sup>28</sup> Id. at 31.

<sup>29</sup> See *Protacio v. Laya Mananghaya & Co.*, G.R. No. 168654, March 25, 2009, 582 SCRA 417, 429.

<sup>30</sup> *Lepanto Ceramics, Inc. v. Lepanto Ceramics Employees Association*, G.R. No. 180866, March 2, 2010, 614 SCRA 63, 71.

<sup>31</sup> Id.

that the petitioners had already exercised the management prerogative to grant the bonus or special incentive. At no instance did Yap flatly refuse or reject the respondent's request for commissions and the bonus or incentive. This is plain from the fact that Yap even "bargained" with the respondent on the schedule of the rates and the revenues on which the bonus or incentive would be pegged. What remained contested was only the schedule of the rates and the revenues. In her initial memorandum of February 25, 1999, the respondent had suggested the following schedule, namely: (a) 0.05% outright commission on total revenue of ₱28-~~₱29~~ million; (b) 0.075% on ₱30-~~₱34~~ million; (c) 0.1% on ₱35-~~₱38~~ million; (d) 0.1% on ₱39-~~₱41~~ million pesos; and (f) 0.1% on ₱41 million or higher, but Yap had countered by revising the schedule to start at 0.1% as outright commissions on a total revenue of ₱35-~~₱38~~ million, and the special incentive bonus to start at revenues of ₱35-~~₱38~~ million. Moreover, on December 8, 1999, Yap sent to the respondent a memorandum entitled *Re: Formalization of my handwritten approval of 1999 Incentive scheme dated 25 February 1999*. Such actuations and actions by Yap indicated that, firstly, the petitioners had already acceded to the grant of the special incentive bonus; and, secondly, the only issue still to be threshed out was at which point and at what rate the respondent's outright commissions and the special incentive bonus for the sales staff should be given.

For sure, Yap's memorandum dated December 8, 1999, aside from being the petitioners' categorical admission of the grant of the commissions and the bonus or incentives, laid down the petitioners' own schedule of the commissions and the bonus or incentives,<sup>32</sup> to wit:

Re: Formalization of my handwritten approval of 1999 incentive scheme dated 25 February 1999

**1999 Incentive Scheme for Group Publisher**

❖ MMPI Gross Advertising Revenue	P35-38 M	.05%
(includes barter)	P39-41 M	.075%
	P41 M up	1%

**Commissionable ad revenue is net of advertising agency commission and absorbed production costs. Commission will be paid in bartered goods and cash in direct proportion to percentage of cash and bartered goods revenue for the year. This amount will be paid by January 30, 2000 if the documents (contracts, P.O.s) to support the gross revenue claim are in order and submitted to Finance.**

<sup>32</sup> *Rollo*, p. 108; emphasis supplied.

**Group Incentive for Sale and Traffic Team**

❖ Gross Advertising Revenue	P35-38 M	P8,500.00 each
	P39-41 M	P10,000.00 each
	P41 M up	P10,000.00 each
		+ incentive trip abroad

Concerning the remand of the case to the NLRC for reception of additional evidence at the instance of the respondent, we hold that the CA committed a reversible error. Although, as a rule, the submission to the NLRC of additional evidence like documents and affidavits is not prohibited, so that the NLRC may properly consider such evidence for the first time on appeal,<sup>33</sup> the circumstances of the case did not justify the application of the rule herein.

The additional evidence the respondent has sought to be admitted (*i.e.*, Tabingo's affidavit executed on October 14, 2002) was already attached to the pleadings filed in the NLRC, and was part of the records thereat. Its introduction was apparently aimed to rebut the petitioners' claim that its gross revenue was only ₱31,947,677.00 and did not reach the minimum ₱35 million necessary for the grant of the respondent's outright commissions and the special incentive bonus for the sales staff (inclusive of the respondent). Tabingo's affidavit corroborated her memorandum to the Accounting Department dated December 10, 1999 stating that MMPI's revenue for 1999 was ₱36,216,624.07.<sup>34</sup>

Confronted with the conflicting claims on MMPI's gross revenue realized in 1999, the question is which evidence must be given more weight?

The resolution of the question requires the re-examination and calibration of evidence.<sup>35</sup> Such re-examination and calibration, being of a factual nature, ordinarily lies beyond the purview of the Court's authority in this appeal. Yet, because the documents are already before the Court, we hereby treat the situation as an exception in order to resolve the question promptly and finally instead of still remanding the case to the CA for the re-evaluation and calibration.

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<sup>33</sup> *Sasan, Sr. v. National Labor Relations Commission, 4<sup>th</sup> Division*, G.R. No. 176240, October 17, 2008, 569 SCRA 670, 686-687.

<sup>34</sup> *Rollo*, pp. 343-347.

<sup>35</sup> *Reyes v. National Labor Relations Commission*, G.R. No. 160233, August 8, 2007, 529 SCRA 487, 494.

We start by observing that the degree of proof required in labor cases is not as stringent as in other types of cases.<sup>36</sup> This liberal approach affords to the employee every opportunity to level the playing field in which her employer is pitted against her. Here, on the one hand, were Tabingo's memorandum and affidavit indicating that MMPI's revenues in 1999 totaled ₱36,216,624.07, and, on the other, the audit report showing MMPI's gross revenues amounting to only ₱31,947,677.00 in the same year. That the audit report was rendered by the auditing firm of Punongbayan & Araullo did not make it weightier than Tabingo's memorandum and affidavit, for only substantial evidence – that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion<sup>37</sup> – was required in labor adjudication. Moreover, whenever the evidence presented by the employer and that by the employee are in equipoise, the scales of justice must tilt in favor of the latter.<sup>38</sup> For purposes of determining whether or not the petitioners' gross revenue reached the minimum target of ₱35 million, therefore, Tabingo's memorandum and affidavit sufficed to positively establish that it did, particularly considering that Tabingo's memorandum was made in the course of the performance of her official tasks as a traffic clerk of MMPI. In her affidavit, too, Tabingo asserted that her issuance of the memorandum was pursuant to MMPI's year-end procedures, an assertion that the petitioners did not refute. In any event, Tabingo's categorical declaration in her affidavit that “[because] of that achievement, as part of the Sales and Traffic Team of MMPI, in addition to my other bonuses that year, I received ₱8,500.00 in gift certificates as my share in the Group Incentive for the Sales and Traffic Team for gross advertising revenue of ₱35 to ₱38 million xxx,”<sup>39</sup> aside from the petitioners not refuting it, was corroborated by the 1999 Advertising Target sent by the respondent to Yap on December 2, 1999, in which the respondent reported a gross revenue of ₱36,216,624.07 as of December 1, 1999.<sup>40</sup>

Accordingly, the Court concludes that the respondent was entitled to her 0.05% outright commissions and to the special incentive bonus of ₱8,500.00 based on MMPI having reached the minimum target of ₱35 million in gross revenues paid in “bartered goods and cash in direct proportion to percentage of cash and bartered goods revenue for the year,” as provided in Yap's memorandum of December 8, 1999.<sup>41</sup>

**WHEREFORE**, the Court **REVERSES AND SETS ASIDE** the amended decision promulgated on November 19, 2003; **ENTERS** a new decision granting respondent Margaret A. Defensor's claim for outright

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<sup>36</sup> *House of Sara Lee v. Rey*, G.R. No. 149013, August 31, 2006, 500 SCRA 419, 435.

<sup>37</sup> *Javier v. Fly Ace Corporation*, G.R. No. 192558, February 15, 2012, 666 SCRA 382, 395.

<sup>38</sup> *Uy v. Centro Ceramica Corporation*, G.R. No. 174631, October 19, 2011, 659 SCRA 604, 618; *Mobile Protective & Detective Agency v. Ompad*, G.R. No. 159195, May 9, 2005, 458 SCRA 308, 323.

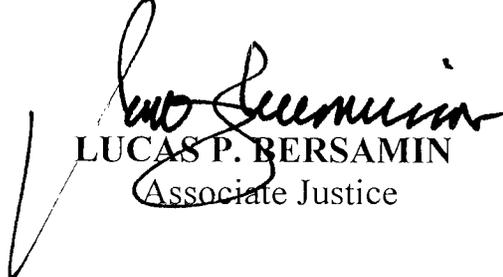
<sup>39</sup> *Rollo*, p. 341.

<sup>40</sup> *Id.* at 129.

<sup>41</sup> *Id.* at 108.

commissions in the amount of ₱181,083.12 and special incentive bonus of ₱8,500.00, or a total of ₱189,583.12; and **DIRECTS** petitioner Mega Magazine Publications, Inc. to pay the costs of suit.

**SO ORDERED.**



**LUCAS P. BERSAMIN**  
Associate Justice

**WE CONCUR:**



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



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



**JOSE PORTUGAL PEREZ**  
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