

Republic of the Philippines  
Department of Labor and Employment  
**NATIONAL LABOR RELATIONS COMMISSION**  
Quezon City

**FIRST DIVISION**

CARIDAD ALITA  
Complainant

NLRC NCR CA NO. 009555-95  
(NLRC NCR CASE NO. 00-10-07401.94)

-versus-

DOMINICAN SCHOOL / SISTER  
LORENZA SA JUL O.P.,  
Respondents

x-----x

AUG 29, 1996

PROMULGATED:

**R E S O L U T I O N**

Acting on the complaint for non-payment of retirement benefits and accrued incentive leave credits, filed by Caridad Alita against the above-named respondents, Labor Arbiter Ernesto S. Dinopol rendered a decision<sup>1</sup> dated June 30, 1995 ordering Dominican School to pay the said complainant the sum of Sixteen Thousand Three Hundred Forty-Three & 72/100 Pesos (P16,343.72) by way of retirement pay differentials.

On appeal by the respondent school, this Commission (First Division) promulgated a Decision<sup>2</sup> upholding anew complainant's entitlement to retirement pay differentials on consideration that Republic Act No. 7641 can be made to apply retroactively insofar as it concerns the determination of complainant's period of actual service prior to the effectivity date of the law for the purpose of computing the amount of retirement benefits.

While conceding that complainant's retirement pay is to cover the period of her employment prior to the effectivity of R.A. No. 7641,

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<sup>1</sup> Records, pp 48-53

<sup>2</sup> Records, pp 103-108

respondents however maintain, by way of a Motion for Reconsideration, that there was an erroneous interpretation of paragraph 4 of Article 287 in that, the addition to the "one-half month pay" for every year of an employee's service which pertains to one-twelfth (1/12) of the 13<sup>th</sup> month pay and cash equivalent of not more than five (5) days service incentive leaves actually meant one-twelfth (1/12) not only of the 13<sup>th</sup> month pay but also that of the five days incentive leave as the "one-twelfth" term qualifies both benefits.

Significant considerations hereafter set forth strongly militate against the full inclusion of the five-days incentive leave benefit in the determination of the retirement pay of the complainant. While not being unmindful of the mandate of the law to construe, in favor of labor, all doubts in the implementation and interpretation of the provisions of the Labor Code<sup>3</sup>, where the legislative intent to the contrary is patent from the text thereof, an absurdity may arise if insistence is had on that favorable construction.

The text of the provision under dispute reads as:

"Unless the parties provide for broader inclusions, the term one-half (1/2) month salary shall mean fifteen (15) days plus one twelfth (1/12) of the 13<sup>th</sup> month pay and the cash equivalent of not more than five (5) days of service incentive leaves"<sup>4</sup>

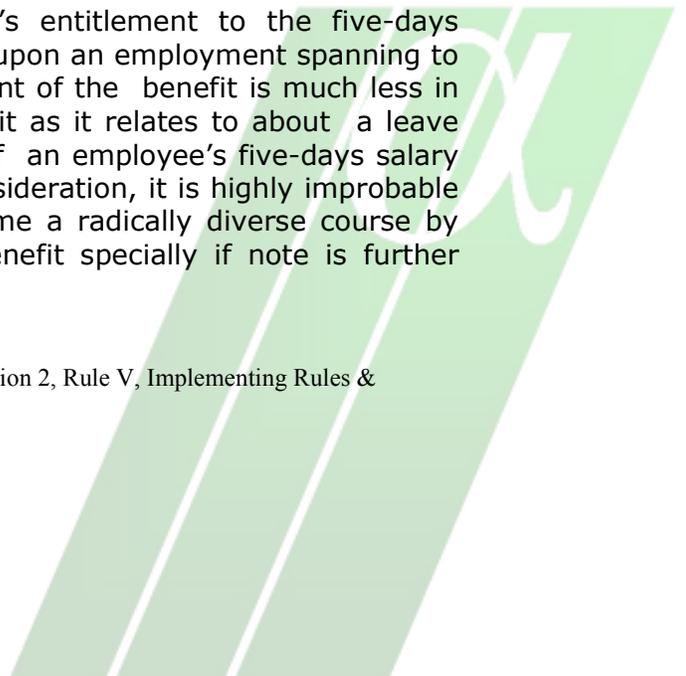
From the aforequoted, it can be noted that the legislature intended to obtain a fraction of the 13<sup>th</sup> month pay which in turn is based on that which was actually earned for one month as an addition to the one-half month retirement pay, there being no dispute that the entire amount of an employee's thirteenth-month pay takes into consideration his total earnings for the immediately preceding twelve-month period, the average therefrom being obtained by getting the quotient from a divisor of twelve (12) which represents the period January to December in one calendar year. The benefit is, therefore one which accrued over all the months in a calendar year but made payable only at the end thereof.

In the same vein, an employee's entitlement to the five-days service incentive leave pay is predicated upon an employment spanning to a period of at least one year<sup>5</sup>. The amount of the benefit is much less in comparison to the 13<sup>th</sup> month pay benefit as it relates to about a leave pay accruing at the rate of one-twelfth of an employee's five-days salary per month. Taking these factors into consideration, it is highly improbable that the framers of the law would assume a radically diverse course by according greater weight to a lesser benefit specially if note is further

<sup>3</sup> Article 4, Labor Code, as amended

<sup>4</sup> Paragraph 4, Article 287, Labor Code, as amended

<sup>5</sup> Paragraph (a), Article 95, Labor Code, as amended, Section 2, Rule V, Implementing Rules & Regulations



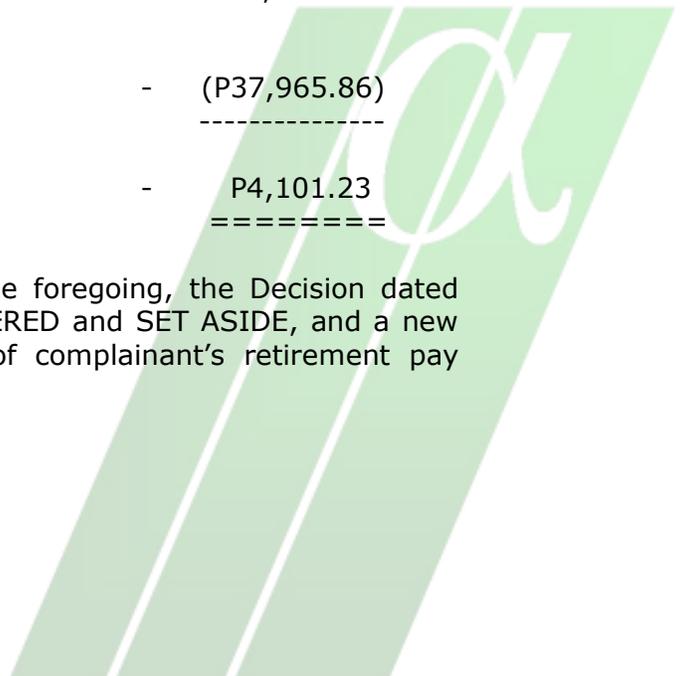
taken of the fact that the one-twelfth of the thirteenth month pay benefit and five days service incentive leave pay were intended to augment the main component of the retirement pay benefit which pertains to an employee's one-half (1/ 2) month salary.

Finally, an examination of the subject provision notably bears a conjunctive term "and" reading as "one-twelfth (1/12) of the 13<sup>th</sup> month pay and the cash equivalent of not more than five (5) days of service incentive leaves". Pursuant to the rules of statutory construction if the conjunctive "and" is used, the various members of a sentence one to be taken jointly. Accordingly, where a qualification attends the first enumeration, the logical conclusion that proceeds therefrom is the inclusion of the subsequent enumeration within the coverage of the qualifying term. This consideration further buttresses the legislative intent in favor of the coverage of the one-twelfth (1/12) proportion limit not only to the 13<sup>th</sup> month pay benefit but to the five-days service incentive leave pay, as well.

In view of the foregoing, reduction of the amount of service incentive leave pay benefit as a component of complainant's retirement pay to one-twelfth (1/12) thereof is decreed. Hence, the amount of retirement benefits due to complainant shall be computed as follows:

½ month pay of P5,399.00	-	P2,699.50
1/12 of P 5,399.00 (13 <sup>th</sup> month pay)	-	449.91
1/12 of P1,038.25 (five days) service incentive leave pay	-	86.52
TOTAL RETIREMENT COMPONENT	-	P3,235.93
Multiplied by Number Of Years of Service	x	13
TOTAL GROSS RETIREMENT PAY	-	P42,067.09
Less: Advances received By the complainant	-	(P37,965.86)
NET RETIREMENT PAY DUE THE COMPLAINANT	-	P4,101.23 =====

**WHEREFORE**, concordant with the foregoing, the Decision dated February 14, 1996 is hereby RECONSIDERED and SET ASIDE, and a new one entered decreeing, the reduction of complainant's retirement pay



differentials to the sum of FOUR THOUSAND ONE HUNDRED ONE & 23/100 PESOS (P4,101.23).

SO ORDERED.  
Quezon City, Philippines.

**BARTOLOME S. CARALE**  
Presiding Commissioner

WE CONCUR:

VICENTE S. E. VELOS  
Commissioner  
Commissioner

ALBERTO R. QUIMPO

### **C E R T I F I C A T I O N**

Pursuant to Article 213 of the Labor Code, as amended, it is hereby certified that the conclusions in the above resolution were reached in consultation before the case was assigned to the writer of the opinion of the Commission.

**BARTOLOME S. CARALE**  
Presiding Commissioner

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