



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

REGGIE ORBISTA ZONIO,
 Petitioner,

G.R. No. 224944

Present:

PERLAS-BERNABE, S.A.J.,
Chairperson
 LAZARO-JAVIER,
 LOPEZ, M.,
 ROSARIO, and
 LOPEZ, J.Y.*, JJ.

- versus -

**1st QUANTUM LEAP
 SECURITY AGENCY, INC. and
 ROMULO Q. PAR,**
 Respondents.

Promulgated:

MAY 05 2021

x-----x

RESOLUTION

M. LOPEZ, J.:

Assailed in this Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court is the Decision² of the Court of Appeals (CA) in CA-G.R. SP No. 141856 dated May 31, 2016, which deleted the award of overtime pay, holiday premium pay, rest day premium pay, and night shift differentials in favor of petitioner Reggie Orbista Zonio (Zonio).

ANTECEDENTS

In his Position Paper³ filed before the Labor Arbiter, Department of Labor and Employment, Zonio alleged that on March 13, 2011, he was hired as a security guard by 1st Quantum Leap Security Agency, Inc., owned and managed by respondent Romulo Q. Par (collectively, respondents). Zonio

* Designated additional Member *per* Special Order No. 2822 dated April 7, 2021.

¹ *Rollo*, pp. 11-27.

² *Id.* at 32-43; penned by Associate Justice Elibu A. Ybañez, with the concurrence of Associate Justices Magdangal M. De Leon and Henri Jean Paul B. Inting (now a Member of this Court).

³ *Id.* at 84-95.

worked seven days a week from 7:00 a.m. to 7:00 p.m., or from 7:00 p.m. to 7:00 a.m., alternately every two weeks, for a monthly wage of ₱8,500.00. From his wage, a cash bond of ₱50.00 and ₱10.00 miscellaneous fee, or a total of ₱60.00 were deducted every 15 days, or a total of ₱120.00 every month. Respondents did not pay him for overtime work, work rendered on holidays and rest days, as well as 13th month pay, service incentive leave, and night shift differential.

On April 21, 2014, Zonio, along with some of his colleagues, received a memorandum suspending them from April 21, 2014 to May 20, 2014, for sleeping while on duty. There was no formal investigation conducted. Nonetheless, Zonio served the suspension and reported back to work on May 21, 2014. Respondents, however, refused to accept him.

Thus, Zonio filed a complaint⁴ against respondents for illegal suspension; underpayment of salary and 13th month pay; non-payment of overtime and holiday pay; holiday and rest day premiums pay; service incentive leave pay; night shift differential pay; reimbursement of cash bond and miscellaneous fees; moral and exemplary damages; and attorney's fees.⁵

For its part, respondents justified Zonio's suspension when its inspection team caught Zonio sleeping in his post on April 20, 2014, and took photographs⁶ of him as proof. Respondents directed Zonio to report to the head office to explain, but Zonio disregarded the directive. Thus, in a memorandum dated April 21, 2014,⁷ respondents suspended him for 30 days, effective April 21, 2014, until May 20, 2014. As to Zonio's money claims, he was oriented as to the salary and benefits to which he is entitled, and he agreed to it. Moreover, Wage Order No. IVA-14, provides that the minimum wage rate does not apply to persons employed in the personal service of another, such as a private security guard like Zonio. Lastly, respondents claimed attorney's fees, and moral and exemplary damages for the besmirched goodwill and reputation that the company suffered by reason of the filing of the complaint.⁸

In a Decision⁹ dated February 26, 2015, Labor Arbiter Joel A. Allones ruled that Zonio was validly suspended for sleeping in his post as proved by photographs, which Zonio did not dispute. Moreover, Zonio failed to substantiate his claim for payment of overtime and holiday pay; holiday and rest day premiums pay, and night shift differentials pay. Even so, Zonio is entitled to salary differentials for a period of three years counted backwards from the date of his suspension on April 21, 2014; as well as to 13th month pay; the monetization of his service incentive leave, and the refund of the cash bond and miscellaneous fees that were deducted from his salary.

⁴ *Rollo*, pp. 81-83.

⁵ *Id.* at 84-95. Zonio's Position Paper.

⁶ *Id.* at 202.

⁷ *Id.* at 203.

⁸ *Id.* at 184-192. Respondents' Position Paper.

⁹ *Id.* at 209-215.

Zonio appealed to the National Labor Relations Commission (NLRC) on the ground that the Labor Arbiter erred in ruling that he is not entitled to the payment of overtime and holiday pay; holiday and rest day premiums pay; night shift differentials pay; and in adopting the computation of Ms. Rachel Z. Averia who failed to include the refund of the cash bond and miscellaneous fees.¹⁰

In a Decision dated May 29, 2015,¹¹ the NLRC modified the Decision of the Labor Arbiter and ruled that Zonio is entitled to overtime and holiday pay; holiday and rest day premiums pay; and night shift differentials pay.

Respondents filed a petition for *certiorari* with the CA to question the award of overtime and holiday pay, holiday and rest day premiums, and night shift differentials pay in favor of Zonio, and the NLRC's failure to award damages and attorney's fees in their favor.

In the assailed Decision¹² dated May 31, 2016, the CA partly granted the petition by deleting the award of overtime pay, holiday and rest day premiums pay, and night shift differentials pay.¹³ The CA ratiocinated as follows:

Entitlement to overtime pay must first be established by proof that said overtime work was actually performed, before an employee may avail of said benefit. The same is likewise true for premium pay for holidays and rest days because these benefits are not incurred in the normal course of business. To support his allegations, [Zonio] submitted in evidence photocopies of the entries in the logbook dated 02 June 2012 until 21 August 2012 and semi-monthly payroll report for the period 01 June to 15 June 2013.

However, the photocopies of entries in the logbook do not prove that, indeed, [Zonio] rendered overtime work beyond the normal work hours from 02 June 2012 until 21 August 2012. Rather, the entries were made by [Zonio] and other security guards themselves. Although these entries were signed by incoming and outgoing security guards, the same were not countersigned by their supervisor or any authorized representative from the place where they were designated. As such, it raises serious doubt as to whether [Zonio] actually rendered work on a given date and time.

Moreover, the semi-monthly payroll report presented by [Zonio] indicated that it only covered the period of 01 June to 15 June 2013 as

¹⁰ *Id.* at 218-227. Notice of Appeal with Memorandum of Partial Appeal.

¹¹ *Id.* at 64-69.

¹² *Supra* note 2.

¹³ *Supra* at 40. The dispositive portion of the Decision, reads:

FOR THESE REASONS, the instant petition is hereby **PARTLY GRANTED**. The assailed Decision and Resolution dated 29 May 2015 and 22 June 2015, respectively, by the Third Division of the National Labor Relations Commission (NLRC) in NLRC LAC No. 04-001127115 (NLRC NCR Case No. 05-05898-14) are hereby **AFFIRMED WITH THE MODIFICATION** that the award of overtime pay, holiday premium pay, rest day premium pay, and night shift differentials are hereby **DELETED**.

X X X X

SO ORDERED.



opposed to the entries in the logbook which were all dated 2012. In other words, the payroll report submitted by [Zonio] does not clearly reflect that he performed overtime work during the period of 02 June 2012 until 21 August 2012 as indicated in the photocopies of the entries in the logbook.

[Zonio] likewise failed to adduce concrete proof showing that he had rendered service during regular holidays or that he had rendered service between 10:00 p.m and 6:00 a.m., so as to entitle him to premium pays and night shift differential. Thus, We find that the NLRC gravely erred in awarding him said benefits.¹⁴ (Citation omitted.)

In this petition, Zonio contends that the CA erred in deleting the award of overtime pay, holiday and rest day premiums pay, and night shift differentials pay. The entries in the logbook, which are the bases of Zonio's claim, contained the details of Zonio's shifts from June 2, 2012 to August 21, 2012. Respondents did not assail the entries in the logbook when Zonio first presented it before the Labor Arbiter. It is only in respondents' motion for reconsideration of the NLRC Decision that they questioned it. However, respondents did not present their own records, such as Zonio's daily time records, to contradict Zonio's claims.

In their comment,¹⁵ respondents countered that the petition is premature and must be denied because Zonio did not file a motion for reconsideration of the CA Decision before filing the present petition. In any case, Zonio has the burden to prove entitlement to his money claims, but he failed to discharge this burden. The entries in the logbook are not credible since these were not countersigned by any representative of the respondents. Though respondents questioned the authenticity of the logbook only before the NLRC, the NLRC is not precluded from resolving the issue, considering that labor proceedings are not bound by technicalities of law or procedure.

RULING

The petition is partly meritorious.

A motion for reconsideration is not required for the filing of a petition for review on certiorari under Rule 45.

Rule 45 of the Rules of Court does not require the filing of a motion for reconsideration for this Court to take cognizance of appeals through petitions for review on *certiorari*.¹⁶ Sections 1 and 2 of this Rule pertinently provide:

SEC. 1. Filing of petition with Supreme Court. – A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified

¹⁴ *Rollo*, pp. 39-40.

¹⁵ *Id.* at 280-293.

¹⁶ *The Bases Conversion and Development Authority v. Uy*, 537 Phil. 18, 27 (2006).

petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

SEC. 2. Time for filing; extension. – The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, **or of the denial of the petitioner’s motion for new trial or reconsideration** filed in due time after notice of the judgment. On motion duly filed and served, with full payment x x x. (Emphases supplied.)

These provisions clearly do not require the filing of a motion for reconsideration as a condition precedent. Section 2 states that “*the petition shall be filed x x x from notice of judgment xxx appealed from, or of the denial of the petitioner’s motion for new trial or reconsideration x x x.*” The use of the word “or” indicates an alternative or choice, as opposed to being mandatory. Verily, the petitioner has an option to file a motion for reconsideration of the judgment or final order or resolution appealed from, or directly file an appeal or a petition for review to the appellate court without filing a motion for reconsideration, as what Zonio did.

Meanwhile, the cases¹⁷ cited by respondents that emphasize the necessity of a motion for reconsideration involve a petition for *certiorari* under Rule 65, and not a petition for review under Rule 45. Corollarily, one of the distinctions between Rule 45 and Rule 65 lies on the necessity of a motion for reconsideration. *Madrigal Transport, Inc. v. Lapanday Holdings Corp.*¹⁸ distinguished the two actions on this regard:

As to the Need for a Motion for Reconsideration. A motion for reconsideration is generally required prior to the filing of a petition for *certiorari*, in order to afford the tribunal an opportunity to correct the alleged errors. Note also that this motion is a plain and adequate remedy expressly available under the law. Such motion is not required before appealing a judgment or final order.¹⁹ (Citation omitted.)

Thus, Zonio's petition was properly filed.

The factual findings of administrative bodies are accorded great weight and respect and even finality by this Court, except when their findings conflict with that of the appellate court.

Judicial review of labor cases does not go beyond the evaluation of the sufficiency of the evidence upon which its labor officials' findings rest. As such, the findings of facts and conclusion of the NLRC are generally accorded

¹⁷ *Castro v. Sps. Guevarra*, 686 Phil. 1125 (2012); *PNOC v. NLRC*, 342 Phil. 769 (1997); *Sps. Bergonia v. Court of Appeals*, 680 Phil. 334 (2012).

¹⁸ 479 Phil. 768 (2004).

¹⁹ *Id.* at 782.

not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence. However, if the factual findings of the Labor Arbiter and the NLRC are conflicting, the reviewing court may delve into the records and examine for itself the questioned findings.²⁰ In this case, the findings of the NLRC as to Zonio's money claims are in conflict with the Labor Arbiter and the CA. While the NLRC found that Zonio is entitled to the payment of overtime pay; holiday and rest day premiums pay, and night shift differentials pay, the Labor Arbiter and the CA ruled otherwise. Accordingly, the conflicting findings of the Labor Arbiter, the NLRC, and the CA, justify this Court to review the factual issues raised by Zonio.

Zonio proved his entitlement to monetary claims.

In determining the employee's entitlement to monetary claims, the burden of proof is shifted from the employer or the employee, depending on the monetary claim sought.²¹ In claims for payment of salary differential, service incentive leave, holiday pay, and 13th month pay, the burden rests on the **employer** to prove payment. This standard follows the basic rule that in all illegal dismissal cases the burden rests on the defendant-employer to prove payment rather than on the plaintiff-employee to prove non-payment. This likewise stems from the fact that all pertinent personnel files, payrolls, records, remittances and other similar documents – which show that the differentials, service incentive leave and other claims of workers have been paid – are not in the possession of the worker but are in the custody and control of the employer.²² On the other hand, for overtime pay, premium pays for holidays and rest days, the burden is shifted on the **employee**, as these monetary claims are not incurred in the normal course of business. It is thus incumbent upon the employee to first prove that he actually rendered service in excess of the regular eight working hours a day, and that he in fact worked on holidays and rest days.²³

Here, to prove his entitlement to the payment of overtime pay; holiday and rest day premiums pay; and night shift differentials pay, Zonio submitted a photocopy of the logbook entries which showed the dates and shift when he reported for work, as well as the specific tasks he performed on that particular work shift. The logbook also contains the same information with regard to other security guards. Before and after each particular work shift, the incoming and outgoing security guard will sign the corresponding entry in the logbook. However, the logbook does not contain whether Zonio worked on holidays or during his rest days. Thus, Zonio's claim for holiday and rest day premiums is denied for lack of factual basis. Meanwhile, the entries in the logbook showed that Zonio worked 12-hour shifts, which ran from 7:00 a.m./p.m. to 7:00 p.m./a.m. Thus, he is entitled to overtime pay for work

²⁰ *Paredes v. Feed the Children Philippines, Inc.*, 769 Phil. 418 (2015).

²¹ *Minsola v. New City Builders, Inc.*, 824 Phil. 864, 879 (2018).

²² *Id.*

²³ *Id.* at 880, emphasis supplied and citation omitted.

performed beyond eight hours a day,²⁴ or four hours for every shift. Likewise, Zonio is entitled to night-shift differential for each hour of work performed between 10:00 p.m. to 6:00 a.m. Based on the logbook, Zonio rendered services on the following dates:

June 2, 2012 (1900H-0700H)²⁵

July 4, 2012 (1900H-0700H) - July 13, 2012 (1900H-0700H)²⁶

July 18, 2012 (0700H-1900H)²⁷

July 20, 2012 (0700H-1900H) – July 21, 2012 (0700H-1900H)²⁸

July 23, 2012 (0700H-1900H)²⁹

July 25, 2012 (0700H-1900H) – July 28, 2012 (0700H-1900H)³⁰

July 30, 2012 (0700H-1900H)³¹

August 18, 2012 (0700H-1900H)³²

August 20, 2012 (0700H-1900H) – August 22, 2012 (0700H-1900H)³³

Admittedly, the logbook is only a personal record of Zonio and other security guards. It is not verified or countersigned by respondents. Anyway, the fact that the entries are not verified or countersigned will not militate against Zonio. The entries in the logbook are *prima facie* evidence of Zonio's claim. *Prima facie* evidence is such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group, or chain of facts constituting the party's claim or defense, and which if not rebutted or contradicted, will remain sufficient. Evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue it supports, but which may be contradicted by other evidence.³⁴ Respondents dispute the veracity of the entries in the logbook, yet, they did not proffer evidence to rebut them, or show that they paid Zonio for the services he rendered on the dates and the hours indicated in the logbook. The best evidence for respondents would have been the payrolls, vouchers, payslips, daily time records, and the like, which are in their custody and absolute control. However, respondents did not present any of these. This failure gives rise to the presumption that either they do not have them, or if they do, their presentation is prejudicial to their cause.³⁵ Moreover, respondents never denied that Zonio's normal work hours is 7:00 a.m. to 7:00 p.m., or 7:00 p.m. to 7:00 a.m., which is in excess of the regular eight working hours a day. Neither did respondents claim that they did not authorize Zonio to render overtime work. In this regard, we have already ruled that the burden of showing with legal certainty that the obligation has been discharged with payment falls on the debtor, in accordance with the rule that one who pleads payment has the burden of proving it.³⁶ Any doubt arising

²⁴ LABOR CODE, Art. 87.

²⁵ *Rollo*, p. 99.

²⁶ *Id.* at 102-115.

²⁷ *Id.* at 121.

²⁸ *Id.* at 123-124.

²⁹ *Id.* at 127.

³⁰ *Id.* at 129-133.

³¹ *Id.* at 135.

³² *Id.* at 169.

³³ *Id.* at 172-174.

³⁴ *Wa-acon v. People*, 539 Phil. 485-494 (2006).

³⁵ *Lepanto Consolidated Mining Company v. Mamaril*, G.R. No. 225725, January 16, 2019.

³⁶ *Id.*

from the evaluation of evidence as between the employer and the employee must be resolved in favor of the latter.³⁷

Accordingly, Zonio should be paid for overtime work rendered beyond eight hours on the following dates:

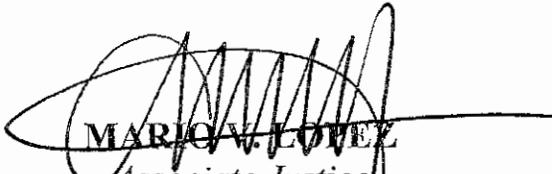
Inclusive Dates	Hours Worked	Number of Days	Hours of Overtime per Day
June 2, 2012	7:00 p.m. – 7:00 a.m.	1	4
July 4 -13, 2012	7:00 p.m. – 7:00 a.m.	10	4
July 18, 2012	7:00 a.m. – 7:00 p.m	1	4
July 20 - 21, 2012	7:00 a.m. – 7:00 p.m	2	4
July 23, 2012	7:00 a.m. – 7:00 p.m	1	4
July 25 - 28, 2012	7:00 a.m. – 7:00 p.m	4	4
July 30, 2012	7:00 a.m. – 7:00 p.m	1	4
August 18, 2012	7:00 a.m. – 7:00 p.m	1	4
August 20 - 22, 2012	7:00 a.m. – 7:00 p.m	3	4

Anent night shift differentials, Zonio is entitled to not less than 10% of his regular wage for each hour of work performed between 10:00 p.m. and 6:00 a.m.³⁸ for the following hours and dates:

Inclusive Dates	Hours Worked	Number of Days	Hours Covered by Night-Shift Differential per Day
June 2, 2012	7:00 p.m. – 7:00 a.m.	1	8
July 4 -13, 2012	7:00 p.m. – 7:00 a.m.	10	8

FOR THESE REASONS, the petition is **PARTLY GRANTED**. The Decision of the Court Appeals in CA-G.R. SP No. 141856 dated May 31, 2016 is **MODIFIED** in that petitioner Reggie Orbista Zonio is entitled to the payment of overtime pay, and night shift differentials pay. The case is **REMANDED** to the Labor Arbiter for the computation of Zonio's monetary award in accordance with this Court's ruling. The total monetary award computed shall earn legal interest of six percent (6%) *per annum* from the finality of this Resolution until full payment.

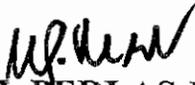
SO ORDERED.

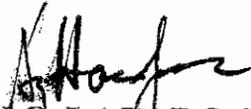

MARIA V. LOPEZ
 Associate Justice

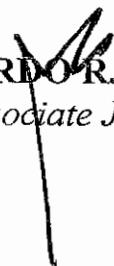
³⁷ *Id.*; *Dansart Security Force & Allied Services Co. v. Bagoy*, 636 Phil. 705, 710-711 (2010).

³⁸ LABOR CODE, Art. 86.

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Associate Justice
Chairperson


AMY C. LAZARO-JAVIER
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice

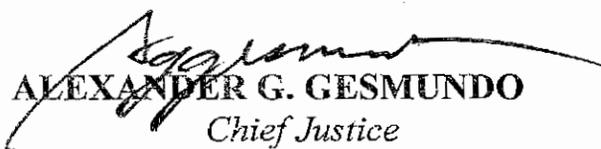
ATTESTATION

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.


ESTELA M. PERLAS-BERNABE
Associate Justice
Chairperson

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

