



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

LOURDES C. RODRIGUEZ,  
Petitioner,

G.R. No. 222980

Present:

CARPIO, J., Chairperson,  
VELASCO, JR.,\*  
MENDOZA,  
LEONEN, and  
MARTIRES, JJ.

-versus-

PARK N RIDE INC./VICEST  
(PHILS) INC./GRAND LEISURE  
CORP./SPS. VICENTE & ESTELITA  
B. JAVIER,

Promulgated:

20 MAR 2017

Respondents.

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DECISION

LEONEN, J.:

Natural expressions of an employer do not automatically make for a hostile work atmosphere. The totality of circumstances in this case negates petitioner Lourdes C. Rodriguez's claim of constructive dismissal.

This resolves a Petition for Review<sup>1</sup> assailing the Court of Appeals' December 15, 2015 Decision<sup>2</sup> and February 17, 2016 Resolution.<sup>3</sup> The

\* Designated additional member per Raffle dated March 15, 2017.

<sup>1</sup> Rollo, pp. 10-35. The Petition was filed under Rule 45 of the Rules of Court.

<sup>2</sup> Id. at 36-51. The Decision was penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion of the Sixth Division, Court of Appeals, Manila.

<sup>3</sup> Id. at 50-51. The Resolution was penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion of the Sixth Division, Court of Appeals, Manila.

Court of Appeals held that there was no illegal dismissal, but ordered respondents Park N Ride Incorporated (Park N Ride), Vicest Philippines Incorporated (Vicest Phils.), Grand Leisure Corporation (Grand Leisure), and Spouses Vicente and Estelita B. Javier (Javier Spouses) to pay Lourdes C. Rodriguez (Rodriguez) service incentive leave pay and 13<sup>th</sup> month pay for 2006 to 2009, with legal interest of six percent (6%) per annum, from date of finality of the decision until full payment.<sup>4</sup>

On October 7, 2009, Rodriguez filed a Complaint<sup>5</sup> for constructive illegal dismissal, non-payment of service incentive leave pay and 13<sup>th</sup> month pay, including claims for moral and exemplary damages and attorney's fees against Park N Ride, Vicest Phils., Grand Leisure, and the Javier Spouses.

In her Position Paper,<sup>6</sup> Rodriguez alleged that she was employed on January 30, 1984 as Restaurant Supervisor at Vicest Phils.<sup>7</sup> Four (4) years later, the restaurant business closed. Rodriguez was transferred to office work and became an Administrative and Finance Assistant to Estelita Javier (Estelita).<sup>8</sup> One of Rodriguez's duties was to open the office in Makati City at 8:00 a.m. daily.<sup>9</sup>

The Javier Spouses established other companies, namely: Buildmore Development and Construction Corporation, Asset Resources Development Corporation, and Grand Leisure.<sup>10</sup> Rodriguez was also required to handle the personnel and administrative matters of these companies without additional compensation.<sup>11</sup> She likewise took care of the household concerns of the Javier Spouses, such as preparing payrolls of drivers and helpers, shopping for household needs, and looking after the spouses' house whenever they travelled abroad.<sup>12</sup>

Sometime in 2000, the Javier Spouses established Park N Ride, a business that provided terminal parking and leasing.<sup>13</sup> Although the company's main business was in Lawton, Manila, its personnel and administrative department remained in Makati City.<sup>14</sup> Rodriguez handled the administrative, finance, and warehousing departments of Park N Ride.<sup>15</sup> Every Saturday, after opening the Makati office at 8:00 a.m., Rodriguez was

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<sup>4</sup> Id. at 49.

<sup>5</sup> Id. at 65–67.

<sup>6</sup> Id. at 68–84.

<sup>7</sup> Id. at 69.

<sup>8</sup> Id.

<sup>9</sup> Id. at 70.

<sup>10</sup> Id. at 70.

<sup>11</sup> Id.

<sup>12</sup> Id. at 70–71.

<sup>13</sup> Id. at 71.

<sup>14</sup> Id.

<sup>15</sup> Id.

required to report at the Lawton office at 11:00 a.m. to substitute the Head Cashier, who would be on day-off.<sup>16</sup>

She allegedly worked from 8:00 a.m. to 7:00 p.m., Mondays to Saturdays; was on call on Sundays; and worked during Christmas and other holidays.<sup>17</sup> She was deducted an equivalent of two (2) days' wage for every day of absence and was not paid any service incentive leave pay.<sup>18</sup> On one occasion, Rodriguez asked the Javier Spouses if she could go home by 10:00 a.m. to attend a family reunion, but her request was denied.<sup>19</sup>

The Javier Spouses' treatment of Rodriguez became unbearable; thus, on March 25, 2009, she filed her resignation letter effective April 25, 2009.<sup>20</sup> The Javier Spouses allegedly did not accept her resignation and convinced her to reconsider and stay on.<sup>21</sup> However, her experience became worse.<sup>22</sup> Rodriguez claimed that toward the end of her employment, Estelita was always unreasonable and hot-headed, and would belittle and embarrass her in the presence of co-workers.<sup>23</sup>

On September 22, 2009, Rodriguez went on her usual "*pamalengke*" for the Spouses.<sup>24</sup> Later, she proceeded to open the Makati office.<sup>25</sup> Estelita was mad at her when they finally talked over the phone, berating her for opening the office late.<sup>26</sup> She allegedly told her that if she did not want to continue with her work, the company could manage without her.<sup>27</sup>

Thus, Rodriguez did not report for work the next day, and on September 26, 2009, she wrote the Javier Spouses a letter<sup>28</sup> expressing her gripes at them. She intimated that they were always finding fault with her to push her to resign.<sup>29</sup>

On October 6, 2009, the Javier Spouses replied to her letter, allegedly accepting her resignation.<sup>30</sup>

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<sup>16</sup> Id.  
<sup>17</sup> Id. at 70–71.  
<sup>18</sup> Id. at 70.  
<sup>19</sup> Id. at 73.  
<sup>20</sup> Id. at 85.  
<sup>21</sup> Id. at 74.  
<sup>22</sup> Id.  
<sup>23</sup> Id.  
<sup>24</sup> Id.  
<sup>25</sup> Id. at 74–75.  
<sup>26</sup> Id. at 75.  
<sup>27</sup> Id.  
<sup>28</sup> Id. at 87.  
<sup>29</sup> Id.  
<sup>30</sup> Id. at 76.

Rodriguez prayed for separation pay in lieu of reinstatement; full back wages; service incentive leave pay; proportional 13<sup>th</sup> month pay; moral damages of ₱100,000.00; exemplary damages of ₱100,000.00; and attorney's fees.<sup>31</sup>

In their Position Paper,<sup>32</sup> Javier Spouses stated that they were the directors and officers of Park N Ride, Vicest Phils., and Grand Leisure.<sup>33</sup> In 1984, they hired Rodriguez as a nutritionist in their fast food business.<sup>34</sup> Vicest (Phils) Inc., the spouses' construction business, hired Rodriguez as an employee when the fast food business closed.<sup>35</sup> When the construction business became slow, Park N Ride hired Rodriguez as Administrative Officer.<sup>36</sup>

Javier Spouses trusted Rodriguez with both their businesses and personal affairs, and this made her more senior than any of her colleagues at work.<sup>37</sup> She was the custodian of 201 employee files, representative to courts and agencies, and had access and information on the Javier Spouses' finances. She was given authority to transact with business and banking institutions and became a signatory to their bank accounts.<sup>38</sup> She was also given custody over the deeds and titles of ownership over properties of the Javier Spouses.<sup>39</sup>

However, Rodriguez was allegedly emotionally sensitive and prone to occasional "*tampo*" when she would be reprimanded or cited for tasks unaccomplished.<sup>40</sup> She would then be absent after such reprimands and would eventually return after a few days.<sup>41</sup> For instance, in the second quarter of 2008, Rodriguez tendered her resignation letter.<sup>42</sup> Three (3) days later, however, she returned to work.<sup>43</sup> In the first quarter of 2009, she resigned again but did not push through with it.<sup>44</sup>

On September 22, 2009, the Javier Spouses inquired from Rodriguez about an overdue contract with a vendor.<sup>45</sup> Rodriguez offered no

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<sup>31</sup> Id. at 82–83.

<sup>32</sup> Id. at 88–96.

<sup>33</sup> Id. at 88.

<sup>34</sup> Id. at 88–89.

<sup>35</sup> Id. at 89.

<sup>36</sup> Id.

<sup>37</sup> Id.

<sup>38</sup> Id.

<sup>39</sup> Id.

<sup>40</sup> Id.

<sup>41</sup> Id. at 90.

<sup>42</sup> Id. at 97.

<sup>43</sup> Id.

<sup>44</sup> Id.

<sup>45</sup> Id.

explanation for the delay, and other employees heard her say that she was going to resign.<sup>46</sup>

On September 23, 2009, Rodriguez did not report for work.<sup>47</sup> On September 26, 2009, when she still has not reported for work after three days, a letter<sup>48</sup> was sent to her citing her continued and unauthorized absence. "She was told that her resignation could not be processed because she had not completed her employment clearance and she was unable to properly turnover her tasks to her assistant."<sup>49</sup> She was asked to report on September 30, 2009 or, at the very least, to reply in writing on or before October 7, 2009.<sup>50</sup> Rodriguez neither reported for work on September 30, 2009 nor submitted any reply to the letter sent to her.<sup>51</sup>

Rodriguez allegedly continued to ignore the requests for her to complete the turnover of her tasks and responsibilities and refused to cooperate in tracing the documents in her custody. Corollary to this, it was discovered that the company check books were missing; that Rodriguez had unliquidated cash advances of not less than ₱500,000.00; and that two (2) checks were deposited in her personal account amounting to ₱936,000.00.<sup>52</sup>

The Javier Spouses claimed that Rodriguez was not entitled to service incentive leave pay, moral and exemplary damages, attorney's fees and director's fee.<sup>53</sup> They averred that they were willing to pay Rodriguez the 13<sup>th</sup> month pay differentials, as soon as Rodriguez completed her clearance.<sup>54</sup>

On May 26, 2010, Labor Arbiter Antonio R. Macam (Labor Arbiter Macam) rendered a Decision<sup>55</sup> dismissing Rodriguez's Complaint for lack of merit. According to the Decision, the summary of evidence pointed to the voluntariness of Rodriguez's resignation rather than the existence of a hostile and frustrating working environment.<sup>56</sup> The Javier Spouses were ordered to pay Rodriguez her proportionate 13<sup>th</sup> month pay for 2009 in the amount of ₱19,892.55.<sup>57</sup>

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<sup>46</sup> Id.

<sup>47</sup> Id.

<sup>48</sup> Id. at 98.

<sup>49</sup> Id.

<sup>50</sup> Id.

<sup>51</sup> Id. at 91.

<sup>52</sup> Id. at 94.

<sup>53</sup> Id. at 94.

<sup>54</sup> Id.

<sup>55</sup> Id. at 150-159.

<sup>56</sup> Id. at 157.

<sup>57</sup> Id. at 159.

Rodriguez appealed to the National Labor Relations Commission. The Commission, in its Decision<sup>58</sup> dated May 30, 2011, granted Rodriguez's appeal and modified Labor Arbiter Macam's Decision. The Commission ruled that Rodriguez was illegally dismissed and awarded her back wages, separation pay, 13<sup>th</sup> month pay differentials, moral and exemplary damages, and attorney's fees.

However, on the Javier Spouses' Motion for Reconsideration,<sup>59</sup> the Commission set aside its May 30, 2011 Decision and reinstated Labor Arbiter Macam's May 26, 2010 Decision.

Rodriguez filed a Motion for Reconsideration, which was denied by the Commission in its Resolution<sup>60</sup> dated April 20, 2012.

Rodriguez filed a Rule 65 Petition<sup>61</sup> before the Court of Appeals imputing grave abuse of discretion on the National Labor Relations Commission.

In the Decision dated December 15, 2015, the Court of Appeals held that there was no constructive dismissal, but rather Rodriguez voluntarily resigned from her employment. The Decision disposed as follows:

We **SET ASIDE** the Resolution dated 15 December 2011 of the National Labor Relations Commission, and instead we rule that there was no illegal dismissal, and we **ORDER** private respondents to pay petitioner Rodriguez the following: 1) service incentive leave pay and 13<sup>th</sup> month pay for the years 2006 to 2009; and 2) attorney's fees equivalent to ten percent of the wages awarded. All amounts awarded shall be subject to interest of 6% per annum, from the date of finality of this Decision, until fully paid.<sup>62</sup> (Emphasis in the original).

Rodriguez sought reconsideration.<sup>63</sup> The Court of Appeals denied the motion in its Resolution dated February 17, 2016.<sup>64</sup>

Hence, this Petition<sup>65</sup> was filed, revolving around the following issues:

First, whether petitioner was constructively dismissed;

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<sup>58</sup> Id. at 213–227. The Decision was penned by Commissioner Perlita B. Velasco and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go of the First Division, National Labor Relations Commission, Quezon City.

<sup>59</sup> Id. at 230–249.

<sup>60</sup> Id. at 284–285; The Resolution was penned by Commissioner Perlita B. Velasco and concurred in by Presiding Commissioner Gerardo C. Nograles.

<sup>61</sup> Id. at 286–315.

<sup>62</sup> Id. at 49.

<sup>63</sup> Id. at 52–64.

<sup>64</sup> Id. at 50–51.

<sup>65</sup> Id. at 10–33.

And lastly, whether petitioner was entitled to full service incentive leave pay and damages.

Petitioner maintains that she has been constructively dismissed. She points to the Affidavits<sup>66</sup> of six (6) of her former co-workers allegedly supporting her claim of unbearable working conditions; and Estelita's statement on September 22, 2009, "*Kung ayaw mo na ng ginagawa mo, we can manage!*"<sup>67</sup> Petitioner further claims that she is entitled to service incentive leave pay for her entire 25 years of service, and not only up to three (3) years.<sup>68</sup> Finally, she adds that she should be awarded moral and exemplary damages because of the inhumane treatment of her employers.

We partly grant the Petition.

## I

At the onset, we stress that only questions of law may be raised in a petition for review on certiorari under Rule 45 of the Rules of Court.<sup>69</sup> Factual findings of the Labor Arbiter and the National Labor Relations Commission, if supported by substantial evidence and when upheld by the Court of Appeals, are binding and conclusive upon this Court when there is no cogent reason to disturb the same.<sup>70</sup> In the present case, due to lack of any palpable error, mistake, or misappreciation of facts, this Court discerns no compelling reason to reverse the consistent findings of the appellate court and the labor tribunals.

There is constructive dismissal when an employer's act of clear discrimination, insensibility or disdain becomes so unbearable on the part of the employee so as to foreclose any choice on his part except to resign from such employment.<sup>71</sup> It exists where there is involuntary resignation because of the harsh, hostile and unfavorable conditions set by the employer. We have held that the standard for constructive dismissal is "whether a

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<sup>66</sup> Id. at 116–118 (Affidavits of Benedicta dela Pacion, Jessie D. Mamorno, Julie M. Barcena); *rollo*, pp. 134–135 (Affidavits of Glenda R. Carreon and Heidi C. Lamoste); *rollo*, pp. 189–190 (Affidavit of Rhea Sienna L. Padrid).

<sup>67</sup> *Rollo*, p. 23.

<sup>68</sup> Id. at 29.

<sup>69</sup> *Uniwide Sales Warehouse Club v. National Labor Relations Commission*, 570 Phil. 535, 548 (2008) [Per J. Austria-Martinez, Third Division].

<sup>70</sup> *Duldulao v. Court of Appeals*, 546 Phil. 22, 30 (2007) [Per J. Tinga, Second Division]; *Dangan v. National Labor Relations Commission*, 212 Phil. 653, 658 (1984) [Per J. Gutierrez, Jr., First Division].

<sup>71</sup> *Gan v. Galderma Philippines, Inc.*, 701 Phil. 612, 638–639 (2013) [Per J. Peralta, Third Division]; *Portuguez v. GSIS Family Bank (Comsavings Bank)*, 546 Phil. 140, 153 (2007) [Per J. Chico-Nazario, Third Division].

reasonable person in the employee's position would have felt compelled to give up his employment under the circumstances."<sup>72</sup>

The unreasonably harsh conditions that compel resignation on the part of an employee must be way beyond the occasional discomforts brought about by the misunderstandings between the employer and employee. Strong words may sometimes be exchanged as the employer describes her expectations or as the employee narrates the conditions of her work environment and the obstacles she encounters as she accomplishes her assigned tasks. As in every human relationship, there are bound to be disagreements.

However, when these strong words from the employer happen without palpable reason or are expressed only for the purpose of degrading the dignity of the employee, then a hostile work environment will be created. In a sense, the doctrine of constructive dismissal has been a consistent vehicle by this Court to assert the dignity of labor.

However, this is not the situation in this case.

The National Labor Relations Commission did not commit a grave abuse of discretion in finding that petitioner was not constructively dismissed but that she voluntarily resigned from employment.

The affidavits of petitioner's former co-workers were mere narrations of petitioner's various duties. Far from showing the alleged harsh treatment that petitioner suffered, the affidavits rather reveal the full trust and confidence reposed by respondents on petitioner. Petitioner was entrusted with respondents' assets, the care and safeguarding of their house during their trips abroad, custody of company files and papers, and delicate matters such as the release, deposit, and withdrawals of checks from their personal accounts as well as accounts of their companies. Indeed, it was alleged that petitioner was treated by the respondents as part of the family.

Petitioner's unequivocal intent to relinquish her position was manifest when she submitted her letters of resignation. The resignation letters dated May 1, 2008<sup>73</sup> and March 25, 2009<sup>74</sup> contained words of gratitude, which

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<sup>72</sup> *Gan v. Galderma Philippines, Inc.*, 701 Phil. 612, 639 (2013) [Per J. Peralta, Third Division]; *Uniwide Sales Warehouse Club v. National Labor Relations Commission*, 570 Phil. 535, 548 (2008) [Per J. Austria-Martinez, Third Division].

<sup>73</sup> *Rollo*, p. 249. The letter states:  
"With regret, I am tendering my resignation effective 25 May 2008.  
Thank you for the privilege of working with you and your companies for twenty four (24) years."

<sup>74</sup> *Id.* at 85. The letter states:  
"With regret, I am tendering my resignation effective 25 April 2009.  
Thank you for the privilege of working with you and your companies for twenty five (25) years.  
GOD BLESS and more power to the management and the company."



could hardly come from an employee forced to resign. These letters were reinforced by petitioner's very own act of not reporting for work despite respondents' directive.

As correctly appreciated by Labor Arbiter Macam:

Complainant was not pressured into resigning. It seems that the complainant was not comfortable anymore with the fact that she was always at the beck and call of the respondent Javier spouses. Her supervisory and managerial functions appear to be impeding her time with her family to such extent that she was always complaining of her extended hours with the company. It is of no moment that respondent spouses in many occasions reprimanded complainant as long as it was reasonably connected and an offshoot of the work or business of respondents. . . Keeping in mind that she enjoyed the privilege of working closely with respondents and had their full trust and confidence, the summary of evidence points to the existence of voluntariness in complainant's resignation, more for personal reasons rather than the existence of a hostile and frustrating working environment.<sup>75</sup>

From the representation of petitioner, what triggered her resignation was the incident on September 22, 2009 when Estelita told her "*Kung ayaw mo na ng ginagawa mo, we can manage!*"<sup>76</sup> These words, however, are not sufficient to make the continued employment of petitioner impossible, unreasonable, or unlikely.

The Court of Appeals correctly observed that the utterance of Estelita was more a consequence of her spontaneous outburst of feelings resulting from petitioner's failure to perform a task that was long overdue, rather than an act to force petitioner to resign from work.<sup>77</sup> It appears that petitioner was asked to finish assigned tasks and liquidate cash advances. The affidavit of Estelita was un rebutted, and further corroborated by Rhea Sienna L. Padrid, Accounting Assistant II of Park N Ride, in her Affidavit with Cash Advances Report.<sup>78</sup> Estelita's affidavit read in part:

- (2) During the middle part of December 2008, when the Accounting Division (Mrs. Rhea Padrin) audited the company books, report showed that the unliquidated Cash Advances of Lourdes Rodriguez had already ballooned to less than P7,000,000.00 some dating as early as year 2004. I repeatedly requested her to liquidate them even removing some of her daily duties so she could focus on her Cash Advances. In spite of my repeated requests for her to focus on the liquidation of these Cash Advances, Lourdes Rodriguez failed to liquidate them before Christmas. Due to this, I requested her to go with us to Pansol after Christmas so I could help her in her liquidation.

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<sup>75</sup> Id. at 156-157.

<sup>76</sup> Id. at 23.

<sup>77</sup> Id. at 45.

<sup>78</sup> Id. at 254-255.

. . . I also wanted to get all the cash left and unused that I left with her when the family left for the United States. I also wanted to get my salary from her which I entrusted for her to claim. I could not find any reason why Lourdes Rodriguez could not liquidate her Cash Advances.

- (3) Lourdes Rodriguez also had two checks in the amount of P936,000.00 which she deposited to her personal account contrary to company policy.
- (4) Because of said actions of Lourdes Rodriguez, I had lost trust and confidence in her ability to perform her job faithfully, especially in her duties which would involve money matters, and had thus initiated an investigation in relation thereto.
- (5) When year 2009 started and Lourdes Rodriguez could not liquidate her Cash Advances, I started getting the company passbooks and personal passbooks from her. I also started getting the certificates of time deposits and titles with her. I started having other staff do the deposits and withdrawals for the company and for me. I started handling the treasury functions of the company. I started talking to the officers of our banks.
- (6) It was after I had commenced queries into her activities and stopped entrusting her with money, deposits and cash withdrawals that she had tendered her resignation last March 25, 2009.
- (7) After Lourdes Rodriguez submitted her resignation, I talked to her and accepted her resignation and instructed her to transfer all the Admin files of the company under her custody to my house. Lourdes Rodriguez had all the important files of the company with her.
- (8) In spite of the acceptance of resignation which was to take effect 25 April 2009, Lourdes Rodriguez stayed on, slowly and reluctantly liquidating her Cash Advances. I allowed her to stay on because I wanted her to liquidate all her Cash Advances. Up to this date, Lourdes Rodriguez has failed to liquidate her Cash Advances amounting to Php6,314,641.24.<sup>79</sup>

Petitioner was neither terminated on September 22, 2009 nor was she constructively dismissed. There was no showing of bad faith or malicious design by the respondents that would make her work conditions unbearable.<sup>80</sup> On the other hand, it is a fact that petitioner enjoyed the privilege of working closely with the Javier Spouses and having their full trust and confidence. Spontaneous expressions of an employer do not automatically render a hostile work atmosphere. The circumstances in this case negate its presence.

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<sup>79</sup> Id. at 261-263.

<sup>80</sup> Id. at 45.

## II

On the monetary claims, petitioner is not entitled to moral and exemplary damages considering that she was not illegally dismissed.<sup>81</sup>

On the other hand, with respect to service incentive leave pay, the Court of Appeals limited the award thereof to three (3) years (2006 to 2009) only due to the prescriptive period under Article 291 of the Labor Code. It held:

Article 95 of the Labor Code provides that every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave pay of five days with pay, subject to exceptions (i.e.: when the employee is already enjoying vacation leave with pay of at least five days; and when the employee is employed in an establishment regularly employing less than ten employees).

It was not shown here that petitioner Rodriguez was enjoying vacation leave with pay of at least five days while being employed by private respondents Spouses Javier; it was not shown that private respondents Spouses Javier were merely employing less than 10 employees (on the contrary, private respondent spouses Javier stated that they were employing less than 15 employees). Hence, the award of service incentive leave pay to petitioner Rodriguez was proper.

Private respondents Spouses Javier employed petitioner Rodriguez for 25 years. Applying the prescriptive period for money claims under Article 291 of the Labor Code however, petitioner Rodriguez should only be entitled to the three years' worth of service incentive pay for the years 2006 to 2009.


However, *Auto Bus Transport System, Inc. v. Bautista*<sup>82</sup> clarified the correct reckoning of the prescriptive period for service incentive leave pay:

It is essential at this point, however, to recognize that the service incentive leave is a curious animal in relation to other benefits granted by the law to every employee. In the case of service incentive leave, the employee may choose to either use his leave credits or commute it to its monetary equivalent if not exhausted at the end of the year. Furthermore, if the employee entitled to service incentive leave does not use or commute the same, he is entitled upon his resignation or separation from work to the commutation of his accrued service incentive leave. As enunciated by the Court in *Fernandez v. NLRC*:

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<sup>81</sup> *Canadian Opportunities Unlimited, Inc. v. Dalangin, Jr.*, 681 Phil. 21, 38 (2012) [Per J. Brion, Second Division]; *Bilbao v. Saudi Arabian Airlines*, 678 Phil. 793, 805 [Per J. De Castro, First Division]; *Lopez v. National Labor Relations Commission*, 358 Phil. 141, 153 (1998) [Per J. Martinez, Second Division].

<sup>82</sup> 497 Phil. 863 (2005) [Per J. Chico-Nazario, Second Division].



The clear policy of the Labor Code is to grant service incentive leave pay to workers in all establishments, subject to a few exceptions. Section 2, Rule V, Book III of the Implementing Rules and Regulations provides that "[e]very employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay." Service incentive leave is a right which accrues to every employee who has served "within 12 months, whether continuous or broken reckoned from the date the employee started working, including authorized absences and paid regular holidays unless the working days in the establishment as a matter of practice or policy, or that provided in the employment contracts, is less than 12 months, in which case said period shall be considered as one year." It is also "*commutable to its money equivalent if not used or exhausted at the end of the year.*" In other words, an employee who has served for one year is entitled to it. He may use it as leave days or he may collect its monetary value. To limit the award to three years, as the solicitor general recommends, is to unduly restrict such right.

Correspondingly, it can be conscientiously deduced that the cause of action of an entitled employee to claim his service incentive leave pay accrues from the moment the employer refuses to remunerate its monetary equivalent if the employee did not make use of said leave credits but instead chose to avail of its commutation. Accordingly, if the employee wishes to accumulate his leave credits and opts for its commutation upon his resignation or separation from employment, his cause of action to claim the whole amount of his accumulated service incentive leave shall arise when the employer fails to pay such amount at the time of his resignation or separation from employment.

Applying Article 291 of the Labor Code in light of this peculiarity of the service incentive leave, we can conclude that **the three (3)-year prescriptive period commences**, not at the end of the year when the employee becomes entitled to the commutation of his service incentive leave, but **from the time when the employer refuses to pay its monetary equivalent after demand of commutation or upon termination of the employee's services**, as the case may be.

The above construal of Art. 291, *vis-à-vis* the rules on service incentive leave, is in keeping with the rudimentary principle that in the implementation and interpretation of the provisions of the Labor Code and its implementing regulations, the workingman's welfare should be the primordial and paramount consideration. The policy is to extend the applicability of the decree to a greater number of employees who can avail of the benefits under the law, which is in consonance with the avowed policy of the State to give maximum aid and protection to labor.<sup>83</sup> (Emphasis supplied).

<sup>83</sup> Id. at 876-878, citing *Fernandez v. NLRC*, 349 Phil. 65, 94-95 (1998) [Per J. Panganiban, Third Division].

Thus, the prescriptive period with respect to petitioner's claim for her entire service incentive leave pay commenced only from the time of her resignation or separation from employment. Since petitioner had filed her complaint on October 7, 2009, or a few days after her resignation in September 2009, her claim for service incentive leave pay has not prescribed. Accordingly, petitioner must be awarded service incentive leave pay for her entire 25 years of service—from 1984 to 2009—and not only three (3) years' worth (2006 to 2009) as determined by the Court of Appeals.

Finally, we modify the portion of the *fallo* pertaining to the award of the 13<sup>th</sup> month pay to conform to the body of the Court of Appeals' Decision.

**WHEREFORE**, the Petition is **PARTIALLY GRANTED**. The Court of Appeals Decision dated December 15, 2015 in CA-G.R. SP No. 125440 is **AFFIRMED with MODIFICATION** as to the amounts awarded. Respondents are **ORDERED** to pay Lourdes C. Rodriguez the following:


- 1) Service incentive leave pay for the years 1984 to 2009;
- 2) 13<sup>th</sup> month pay differential for the years 2006 to 2008;
- 3) Proportionate 13<sup>th</sup> month pay for the year 2009; and
- 4) Attorney's fees equivalent to ten percent (10%) of the wages awarded.


All amounts awarded shall be subject to interest of six percent (6%) per annum, from the date of finality of this Decision, until fully paid.

**SO ORDERED.**

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

WE CONCUR:


  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



**PRESBITERO J. VELASCO, JR.**  
Associate Justice




**JOSE CATRAL MENDOZA**  
Associate Justice



**SAMUEL R. MARTIRES**  
Associate Justice

**ATTESTATION**


I attest 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.



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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