

RUMBAOA, Chlorinda R.

Re: Leave without pay; CSC MC No. 14 s. 1999

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RESOLUTION NO. 030234

Chlorinda R. Rumbaoa, Principal Engineer C, Cost Estimation and Contract Specification Department, National Power Corporation (NAPOCOR), Quezon City, requests the retroactive application of Section 33 of Memorandum Circular (MC) No. 14, s. 1999 with respect to the absences she incurred from February 8 to March 18, 1999.

Relevant portions of her letter dated March 22, 2002 read, as follows:

"x x x I am writing you this letter to appeal for a consideration of my case regarding the Civil Service Commission MC No. 14, s. 1999 (amended Omnibus Rules on Leave), particularly Section 33: leave of absence without pay on a day preceding or succeeding Saturday, Sunday or Holiday.

" In March 1998, I was diagnosed with a Trophoblastic Disease. This is a pre-cancerous disease that required me to undergo chemotherapy.

X X X

" I was subjected to series of oral chemotherapy then to muscular injection of chemo-medicines.

X X X

" On January 28, 1999, I was already on leave without pay. Since I was on leave without pay, Section 33 of the Omnibus Rule on Leave, CSC MC No. 41, s. 1998 had been applied.

" On February 8 to March 18, 1999, I was on continuous leave of absence without pay. This was the period wherein I had the two clean up sessions. Since leave of absence is continuous, all Saturdays and five Sundays resulting to my thirty-nine (39)-calendar day leave without pay as indicated in the certificate attached herewith.

" CSC MC No. 41, s. 1998, otherwise known as the Omnibus Rules on Leave, was amended (CSC MC No. 14 s. 1999). Effective 23 August 1999, all Saturdays, Sundays and Holidays are not counted as leave without pay whether leave of absence without pay incurred is continuous or not (Section 33 of CSC MC No. 14 s.1999)

" In view of the above, I would like to request for a consideration that I may be included in the implementation of the amended Omnibus Rules on Leave, CSC MC No. 14, s. 1999, removing all Saturdays and Sundays in the counting of my leave of absences without pay which were actually incurred due to illness.

" The (39)-calendar day leave without pay that I have incurred will just become twenty-nine (29)-working day leave without pay if I will be considered in CSC MC No. 14, s. 1999 (amended CSC MC No. 41 s. 1998)."

As culled from the records, Rumbaoa was diagnosed with Trophoblastic Disease in March 1998. As a result thereof, she had to undergo several sessions of chemotherapy treatment by reason of which she incurred absences from January 2 to March 18, 1999. All her earned leave credits were exhausted because of said absences as herein illustrated in the Certification dated March 21, 2002 issued by the HR-PMES of NAPOCOR:

Leave Balance as of 12-31-98 : VL = 16.655 SL=1.417					
<i>Inclusive Period of Approved Leave Application</i>	<i>Calendar Days</i>	<i>Working Days</i>	<i>Enjoyed LWP</i>	<i>LWOP</i>	<i>Remarks</i>
<i>Jan. 1-17, 1999</i>	<i>17</i>	<i>10</i>	<i>10</i>	<i>0</i>	<i>SL</i>
<i>Jan. 19-31, 1999</i>	<i>13</i>	<i>9</i>	<i>7</i>	<i>2</i>	<i>SL</i>
Leave Balance as of 1-31-99 : VL = 1.905 SL=1.667					
<i>Inclusive Period of Approved Leave Application</i>	<i>Calendar Days</i>	<i>Working Days</i>	<i>Enjoyed LWP</i>	<i>LWOP</i>	<i>Remarks</i>

Feb. 1-2, 1999	2	2	2	0	SL
Feb 8-28, 1999	21	15	0	21	SL
Leave Balance as of 2-28-99 : VL = 1.655 SL=1.917					
<i>Inclusive Period of Approved Leave Application</i>	<i>Calendar Days</i>	<i>Working Days</i>	<i>Enjoyed LWP</i>	<i>LWOP</i>	<i>Remarks</i>
Mar. 1-2, 1999	2	2	2	0	SL
Mar. 3-18, 1999	16	12	0	16	SL

Legend:

- SL** - Sick Leave
- LWP** - Leave With Pay
- LWOP** - Leave Without Pay

As indicated in the above table, Rumbaoa's absences for the entire month of January exhausted all her earned leave credits as of December 31, 1998. By January 28, 1999, she was already on leave without pay. With her chemotherapy sessions still incomplete, she incurred continuous absences from February 8 to March 18, 1999.

During that time, the rule in force is **Section 33 of CSC Memorandum Circular (MC) No. 41 s. 1998**, which provides:

"Sec. 33. Leave of absence without pay on a day immediately preceding or succeeding Saturday, Sunday or Holiday. When an employee, regardless of whether he has leave credits or not is absent on a day immediately preceding or succeeding a Saturday, Sunday or holiday, he shall not be considered absent on said days. However, the same provision is applicable only to intermittent or broken absences incurred by the employee but not to continuous or interrupted absences without pay exceeding a period of seven (7) calendar days." (Emphasis supplied)

Considering that from February 8 to March 18, 1999, Rumbaoa was continuously on leave without pay for a total of twenty-nine (29) days, the above-quoted provision was applied. Thus, she was considered absent for all Saturdays and Sundays during the said period. Consequently, the days she was on leave without pay increased to a total of thirty-nine (39)

days with the inclusion of five (5) Saturdays and five (5) Sundays.

Meanwhile, **Section 33 of CSC MC No. 41 s. 1998** was amended by **CSC MC No. 14 s. 1999 dated August 23, 1999** which took effect on September 11, 1999. Under the amendment, the provision on continuous or uninterrupted leave without pay was revoked. As amended, the provision reads, to wit:

*"Sec. 33. **Leave of absence without pay on a day immediately preceding or succeeding Saturday, Sunday or Holiday.** When an employee, regardless of whether he has leave credits or not is absent on a day immediately preceding or succeeding a Saturday, Sunday or holiday, he shall not be considered absent on said Saturdays, Sundays, and Holidays and shall not be deducted leave credits. He shall neither receive salary for those days."* (Emphasis supplied)

In the instant request, Rumbaoa prays that the above-quoted provision be applied to her case considering that her absences were incurred due to illness.

A scrutiny of the previous policies of the Commission with respect to leave without pay on a day immediately preceding or succeeding a Saturday, Sunday or holiday shows that as early as 1991, the Commission adopted as policy in **CSC MC No. 16 s. 1991, (CSC Resolution No. 91-540 dated 23 April 1991)**, that *"when an employee, regardless of whether he has leave credits or not, is absent without pay on day immediately preceding or succeeding Saturday, Sunday or holiday, he shall not be considered absent on those days."* Said MC revoked an earlier policy of the Commission which provided mandatory salary deductions corresponding to intervening Saturdays, Sundays and holidays where an employee is already on leave without pay.

It is interesting to note that the issue on intervening Saturdays, Sundays and holidays was also the subject of the *en banc* decision of the Supreme Court in **Peralta vs. CSC, G.R. No. 95832, August 10, 1992**, relevant portions of which read, as follows:

"What is primarily questioned by the petitioner is the validity of the respondent Commission's policy mandating salary deductions corresponding to the intervening Saturdays, Sundays or Holidays where an employee without leave credits was absent on the immediately preceding working day.

X X X

"x x x, the construction by the respondent Commission of R.A. 2625 is not in accordance with the legislative intent. R.A. 2625 specifically provides that government employees are entitled to fifteen (15) days vacation leave of absence with full pay and fifteen (15) days sick leave with full pay, exclusive of Saturdays, Sundays and Holidays in both cases. Thus, the law speaks of the granting of a right and the law does not

provide for a distinction between those who have accumulated leave credits and those who have exhausted their leave credits in order to enjoy such right. Ubi lex non distinguit nec nos distinguere debemus. The fact remains that government employees, whether they have accumulated leave credits, are not required by law to work on Saturdays, Sundays and Holidays and thus they cannot be declared absent on such working days. They cannot be or are not considered absent on non-working days; they cannot and should not be deprived of their salary corresponding to said non-working days just because they were absent without pay on the day immediately prior to, or after said non-working days. A different rule would constitute a deprivation of property without due process.

X X X

"As the questioned CSC Policy is here declared invalid, we are next confronted with the question of what effect such invalidity will have. Will all government employees on a monthly salary basis, deprived of their salaries corresponding to Saturdays, Sundays or legal holidays (as herein petitioner was so deprived) since 12 February 1965, be entitled to recover the amounts corresponding to such non-working days?"

X X X

"To allow all the affected government employees, similarly situated as petitioner herein, to claim their deducted salaries resulting from the past enforcement of the herein invalidated policy, would cause quite a heavy financial burden on the national and local governments considering the length of time that such policy has been effective. Also, administrative and practical considerations must be taken into account if this ruling will have a strict retrospective application. The Court, in this connection, calls upon the respondent Commission and the Congress of the Philippines, if necessary to handle this problem with justice and equity to all affected government employees.

"It must be pointed out, however, that after CSC Memorandum Circular No. 16 Series of 1991--amending herein invalidated policy --- was promulgated on 26 April 1991, deductions from salaries, made after said date in contravention of the new CSC policy must be restored to the government employees concerned."
(Emphasis supplied)

By reason of the ruling of the Supreme Court in the Peralta case, it is also noteworthy to mention that the Commission in **CSC Resolution No. 95-3110 dated May 16, 1995** promulgated guidelines on the refund of deductions from salaries made prior to the issuance of **CSC Resolution No. 91-540 and MC No. 16, s. 1991**. The same was implemented by **CSC MC No. 11, s. 1995 dated June 5, 1995**. Relevant portions of said guidelines read, as follows:

"1. All government whose salaries were deducted an amount corresponding to the Saturday, Sunday and

Holiday immediately preceding or succeeding his absence without pay for four (4) days or less, may claim refund for said days of salary deduction.

"2. The refund that may be claimed shall be limited to deductions made during the five (5) year period prior to the promulgation of the aforesaid Supreme Court decision from August 10, 1987 to August 10, 1992."
(Emphasis supplied)

Be it noted that the policy adopted in **CSC MC No. 16, s. 1991** was later modified by **MC No. 41, s.1998** which provided that the provision is applicable only to intermittent or broken absences incurred by the employee but not to continuous or interrupted absences without pay exceeding a period of seven (7) calendar days.

Then, in **CSC MC No. 14 s. 1999**, the Commission revoked this policy on continuous or uninterrupted absences, thereby returning to the policy earlier adopted in **CSC MC No. 16, s. 1991** and which now brings us to the question whether **Section 33 of CSC MC No. 41, s. 1998** as amended by **CSC MC No. 14, s. 1999** may be applied retroactively.

We rule in the affirmative.

Although, strictly speaking, Section 33 of CSC MC No. 41, s. 1998 was applicable during the time Rumbaoa incurred absences, it is important to note that the intent of the Commission in adding the provision on continuous absences is to discourage employees who have exhausted their leave credits from further incurring absences. However, the Commission is of the position that Rumbaoa's case is totally different from those erring employees who absent themselves on a Friday or Monday for the mere purpose of prolonging their weekend. Reason dictates that she should not be deprived of her salary equivalent to ten (10) days when she was forced to be continuously absent because of a serious pre-cancerous disease. In the first place, she was not even required to render service on said days.

Finally, to apply Section 33 of CSC MC No. 14, s. 1999 to her case is more in consonance with the ruling of the Supreme Court in **Peralta vs. CSC**. After all, judicial decisions applying or interpreting the laws have the force and effect of law and they form part of the legal system of the Philippines. Thus, between an administrative agency's statement of policy and the interpretation of the Supreme Court, the latter shall prevail. This was reiterated in the Peralta case where the Supreme Court had the occasion to declare:

"When an administrative or executive agency renders an opinion or issues a statement of policy, it merely interprets a pre-existing law; and the administrative interpretation of the law is at best advisory, for it is the courts that finally determine what the law means."

WHEREFORE, premises considered, the request of Chlorinda R. Rumbaoa is hereby **GRANTED**. Accordingly, the National Power Corporation is hereby directed to apply Section 33 of CSC Memorandum Circular No. 41, s. 1998 as

amended by CSC Memorandum Circular No. 14, s. 1999 in the computation of the total number of leave of absence without pay which Rumbaoa incurred from February 8, 1999 to March 18, 1999 and to refund the corresponding amount of salary, if the same has already been deducted.

Quezon City, FEB 21 2003

(Original Signed)
JOSE F. ERESTAIN, JR.
Commissioner

(Original Signed)
KARINA CONSTANTINO-DAVID
Chairman

(Original Signed)
J. WALDEMAR V. VALMORES
Commissioner

Attested by:

(Original Signed)
ARIEL G. RONQUILLO
Director III

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Rumbaoa/NDC 02-0332