

SITJAR, Necita A.

Re: Leave Credits; Waiver

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RESOLUTION NO. 02-0925

Necita A. Sitjar, retired employee of the National Irrigation Administration (NIA), Region VI, Iloilo City, requests a definite ruling to enable her to collect and receive the commutation or money value of her accrued and unused leave credits which she apparently earned while employed with the Bureau of Plant Industry, Iloilo City.

The request of Sitjar reads, in part, as follows:

"I am . . . seeking confirmation by that office of the opinion rendered by the Civil Service Commission, Regional Office No. 6, Iloilo City, on its letter dated May 29, 2001, . . . opining that the money value of my 'forfeited' leave credits of 163.416 days earned at my former office, Bureau of Plant Industry, Iloilo City and restored as part of my leave credits at the National Irrigation Administration be paid at the highest monthly salary rate received pursuant to Section 39 of the Omnibus Rules on Leave circulated by the Commission under its MC No. 41, series of 1998, and not on the actual Bureau of Plant Industry rate at the time it was earned, as insinuated by the NIA Administrator-designate in his letter dated April 3, 2001, . . . This course of action is being taken in consonance with the last paragraph of the attached letter dated July 19, 2001 of the NIA Administrator.

"Please be informed that I have already compulsorily retired effective March 24, 2001 but has not yet received the money value of my terminal leave both regular (sic) earned at the NIA and this forfeited leave. Kindly therefore issue the requested ruling at your earliest convenience."

Sitjar represents that from September 11, 1962 to February 15, 1978 she was employed with the Bureau of Plant Industry (BPI), Iloilo City. During her stint with the BPI, she earned a total vacation leave of 104.458 days and sick leave of 88.958 days, or a total of 193.416 days.

Effective February 16, 1978, Sitjar transferred to the National Irrigation Administration (NIA), Region 6, Iloilo City. It appears, however, that as a matter of policy, NIA allowed Sitjar to transfer to it only 15 days each of her vacation and sick leave credits which she earned during her employment with BPI. Because her transfer to NIA was in effect a promotion as she was offered a higher salary, Sitjar acceded. Hence, on December 12, 1977, she executed an affidavit waiving all her accrued leave credits totalling 163.416 days which are in excess of 15 days vacation and 15 days sick leave which she earned at BPI. She

also caused the BPI to issue a certification dated December 13, 1977 which reads, as follows:

"This is to certify that according to the records of this office and upon submission of duly notarized affidavit, Mrs. Necita A. Sitjar has the following leave credits as of November 30, 1977:

"Vacation Leave - - - - - 15 days

"Sick Leave - - - - - 15 days

"This certification is issued upon the request of Mrs. Sitjar in connection with her proposed transfer to the National Irrigation Administration per her letter dated November 15, 1977 and affidavit of forfeiture of leave credits dated December 12, 1977."

As she was then to reach her compulsory retirement age on March 23, 2001, Sitjar sought the opinion of the Civil Service Commission Regional Office No. VI, Iloilo City, as to whether she can still claim the commutation of her accrued leave credits earned at the BPI totaling 163.416 days but which she supposedly "waived." In response thereto, CSCRO No. VI Director III Rodolfo B. Encajonado rendered an opinion through a letter dated January 26, 2001 which partly reads, as follows:

"Your attention is invited to Section 40, Rule VIII of the Civil Service Law and Rules (Republic Act No. 2260) (then the applicable rule) which states:

'SEC. 40. Waiver of Rights. - No public officer or employee acting for a public officer shall be permitted to require an applicant for employment or any employee to sign any paper or document whereby such applicant for employment waives any right or rights accruing to him under the law.'

"On the basis of the foregoing, the leave credits you earned while you were still employed in the Bureau of Plant Industry is neither lost nor forfeited notwithstanding the waiver you executed relinquishing your right thereto. Accordingly, said leave credits may be carried over to your present employment."

However, in a memorandum dated April 3, 2001, NIA Administrator-designate Orlando C. Hondrade rendered an opinion which partly reads, as follows:

"As appearing in the above Certification, Mrs. Sitjar voluntarily executed an affidavit of forfeiture of her leave credits which were beyond the allowable transferable maximum limits of thirty (30) days set by NIA for transferees along with her decision to join NIA-Region 6. It was a purely voluntary action/decision on her part in compliance with an internal office policy as she herself stated in her letter dated January 09, 2001, to quote: 'Since my position in the NIA was a promotion, I was very interested to be appointed thereto and to comply with the requirement, I executed a waiver forfeiting my earned leave with the BPI xxx.' Thus, there was no violation to

the then applicable above-quoted CSC rule on 'Waiver of Rights' that was committed by NIA.

"As a Corporation, NIA then enjoyed financial autonomy which paved the way for the adoption and implementation of a higher and more progressive Pay Scheme than other government offices particularly the National Government Agencies. It was primarily a prudent office policy to avert possible depletion of its financial resources caused by the overvaluation of unlimited transferable leave credits of transferees.

"Based on Mrs. Sitjar's letter of February 15, 2001 there was acquiescence on her part when she signed a waiver forfeiting her remaining credit balance of 163.416 vacation and sick leave credits. There was, however, a noted act of omission on her part for not claiming the cash equivalent of her 'forfeited' leaves in (sic) her former BPI office.

"To set the record correct and for the sake of equity, fairness and justice, your request for accreditation of Mrs. Sitjar's 'forfeited' leaves is hereby granted. She may be allowed to claim the cash value of the 163.416 leave credits she earned in (sic) her former office based on her actual BPI rate at that time."

Then CSCRO No. VI Director IV Cesar D. Buenaflor, for his part, rendered another opinion, contained in a letter dated May 29, 2001, which reads, in part, as follows:

"The provisions of Section 39 is very clear that payment of terminal leave for purposes of retirement or voluntary resignation shall be based on the highest monthly salary received at any time during his period of employment in the government service and not on his latest salary, unless the latter is the highest received by the retiree. . .

"Thus, for purposes of retirement or voluntary resignation, payment of your terminal leave shall be based on the highest monthly salary you received at any time during the period of your employment in the government service."

However, incumbent NIA Administrator Jesus Emmanuel M. Paras, in a letter dated July 19, 2001 addressed to the CSCRO No. VI Director IV Buenaflor, suggested that the issue be referred to the Commission for resolution. Said letter reads, in part, as follows:

"We have always honored and respected the mandate of the Civil Service Commission as the central personnel agency of government. . .

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"In view therefore of the very sensitive and unprecedented nature of the matter, Management has deemed it appropriate and prudent for Mrs. Sitjar to elevate her case to the Office of the CSC Chairman, for resolution,

without prejudice to allowing the former to receive her Terminal Leave Pay based on the highest salary she received during her employment with government, exclusive of the 'forfeited' 163.416 days leave credits."

Hence, the instant request where the following issues have to be resolved:

1. Whether Sitjar's act of executing an instrument waiving and forfeiting her accrued and unused leave credits totalling 163.416 days which she earned during her employment at BPI is valid;
2. Whether Sitjar is entitled to the commutation or payment of the money value of her accrued and unused leave credits totaling 163.416 days which she earned during her employment at BPI; and
3. If the answer to the second issue is in the affirmative, which agency is liable to pay the value of said leave credits.

There is no dispute that during her employment with BPI, Sitjar was able to earn and accumulate 104.458 days of vacation and 88.958 days sick leave credits or a total of 193.416 days. When she moved to NIA on February 16, 1978, however, she was allowed to transfer or "*bring*" with her only 15 days sick leave and 15 days vacation leave with said agency. And to ensure that this is so, Sitjar executed on December 12, 1977 an affidavit supposedly waiving and forfeiting the balance of 163.416 days of her accrued leave credits. She also caused the issuance of a certification by BPI that she indeed has only 15 days of vacation and 15 days sick leave credits.

In resolving the issues presented, reference must be made to **Sections 1, 2, and 3, Rule XVI of the Civil Service Rules (RA 2260)**, the law then applicable at the time Sitjar executed said affidavit. Said sections provides, as follows:

"SECTION 1. In general, officers, employees and laborers of all Departments and agencies, whether permanent, provisional or temporary, shall, after six months of continuous, faithful and satisfactory service, be entitled to 15 days vacation and 15 days sick leave for each calendar year of service with full pay, exclusive of Saturdays, Sundays and public holidays. The total vacation and sick leave that can accumulate to the credit of any officer or employee shall, in no case, exceed ten months.

"SEC. 2. (a) Vacation and sick leave shall be cumulative and any part thereof which may not be taken within the calendar year in which earned may be carried over to the succeeding years, but whenever any officer, employee, or laborer shall voluntarily resign or is allowed to resign or is separated from the service through no fault of his own, he shall be entitled to the commutation of all accumulated vacation and/or sick leave to his credit.

"(b) The proper head of Department may, in his discretion authorize the commutation of the salary that would be received during the period of vacation and sick leave of any appointed officer, employee, teacher or laborer and direct its payment on or before the beginning of such leave from the fund out of which the salary would have been paid.

"(c) No person whose leave has been commuted following his separation from the service shall be

reappointed or reemployed in the Government before the expiration of the leave commuted, unless he first refunds the money value of the unexpired portion of the leave commuted.

"SEC. 3. When an officer or employee transfers from one government agency to another, his unused vacation and/or sick leave credit shall be likewise transferred but not its corresponding money value."

As provided for in Section 2 (a), a government official or employee is entitled to the commutation of his/her accrued and unused leave credits upon his/her voluntary resignation or separation from the service without fault on his/her part. Said official or employee, however, is barred from being reappointed or reemployed in the government before the expiration of the leave commuted, unless said official or employee refunds the money value of the unexpired portion of the leave commuted. This is categorically provided for in Section 2 (c) of the same rules. On the other hand, Section 3 mandates that the leave credits of an officer or employee who transfers to another agency are also transferred to the same agency but not the corresponding money value thereof. In other words, when an officer or employee transfers to another agency, his/her unused and accrued leave credits which he/she earned from his/her former agency-employer, are automatically transferred, by operation of law, to his/her new agency. The only restriction being that said official or employee is barred from commuting the same with his/her new agency.

On the strength of the above, it is evident that the internal policy of NIA limiting the transfer of only 15 days vacation and 15 days sick leave credits by a transferee employee is void, it being contrary to law. It is to be stressed that Section 3 of the abovementioned rules categorically mandates that when an officer or employee transfers from one government agency to another, all his/her accrued and unused leave credits "*shall*" likewise be transferred to his/her new agency. Thus, when Sitjar transferred to NIA, all her accrued and unused leave credits which she earned from her previous employer, the BPI, were also transferred to NIA by operation of law. This being the case, it necessarily follows that the instrument executed by Sitjar on December 12, 1977 supposedly waiving and forfeiting her accrued and unused leave credits is similarly void *ab initio*, it being in contravention of Section 3 of the said Rules.

True, rights may be waived. But such waiver is void and inefficacious if it is contrary to law, public order, public policy, morals, or good customs (Article 6, New Civil Code). It must be noted that as a matter of policy, the state promulgates leave laws so that an employee who has been subjected to long and tedious work could rest and recuperate that he/she may return to work with renewed efficiency and vigor. Hence, an employee's statutory right to vacation and sick leave cannot simply be waived or lost through a mere affidavit especially so if such act is contrary to law and public policy.

The policy of NIA and the instrument executed by Sitjar as abovementioned being both void and, therefore, inefficacious, the crucial question now that needs to be answered is: Which agency shall be liable for the payment of the money value (terminal leave pay) of Sitjar's accrued and unused leave credits?

It is of record that Sitjar compulsorily retired on March 23, 2001. Hence, the **Omnibus Rules on Leave (CSC**

Memorandum Circular No. 41, s. 1998), the law then in force at that time must be applied. **Sections 35, 36, 37, and 39** thereof provides:

"Sec. 35. Terminal leave. - Terminal leave is applied for by an official or an employee who intends to sever his connection with his employer. Accordingly, the filing of application for terminal leave requires as a condition sine qua non, the employee's resignation, retirement or separation from the service without any fault on his part. It must be shown first that public employment ceases by any of the said modes of severances.

"Sec. 36. Approval of terminal leave. - Application for commutation of vacation and sick leave in connection with separation through no fault of an official or employee shall be sent to the head of department concerned for approval. In this connection, clearance from the Ombudsman is no longer required for processing and payment of terminal leave as such clearance is needed only for payment of retirement benefits.

"Sec. 37. Payment of terminal leave. - Any official/employee of the government who retires, voluntarily resigns, or is separated from the service through no fault of his own, and who is not otherwise covered by special law, shall be entitled to the commutation of his leave credits exclusive of Saturdays, Sundays and Holidays without limitation and regardless of the period when the credits were earned.

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"Sec. 39. Basis of computation of terminal leave. - Payment of terminal leave for purposes of retirement or voluntary resignation shall be based on the highest monthly salary received at any time during his period of employment in the government service and not on his latest salary, unless the latter is the highest received by the retiree."

As already discussed, when Sitjar transferred to NIA all her accumulated and unused leave credits which she earned at BPI were all automatically transferred to NIA pursuant to Section 3, Rule XVI of the old Civil Service Rules. Thus, applying the foregoing rules then in force at the time of her retirement, it is inevitable that NIA shall be responsible for the payment of the money value (terminal leave pay) of the accrued and unused leave credits of Sitjar which she earned at BPI. True, under the old rules, Sitjar was barred from claiming from NIA the corresponding money value of her unused leave credits which she earned from BPI. But these rules were amended by a subsequent set of rules at the time of her retirement. Perforce, NIA must now pay the unused leave credits of Sitjar which she earned at BPI to be based on her highest monthly salary during her employment thereat.

WHEREFORE, the Commission hereby rules that the National Irrigation Administration is liable to pay the accrued and unused leave credits totalling 163.416 days of Necita A. Sitjar which she earned when she was employed at the Bureau of Plant Industry.

Quezon City, **July 4, 2002**

(Signed)
JOSE F. ERESTAIN, JR.
Commissioner

(Signed)
KARINA CONSTANTINO-DAVID
Chairman

(Signed)
J. WALDEMAR V. VALMORES
Commissioner

Attested by:

(Signed)
ARIEL G. RONQUILLO
Director III

CPS/FPG/KPZ/Y9/w27
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