No. 22-

IN THE

Supreme Court of the United States

CENTRO MÉDICO DEL TURABO, INC., D/B/A HOSPITAL HIMA SAN PABLO CAGUAS AND HOSPITAL HIMA SAN PABLO FAJARDO,

Petitioner,

v.

UNIÓN GENERAL DE TRABAJADORES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE PUERTO RICO SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Unión General de Trabajdores ("Unión"), filed two arbitration proceedings before the Conciliation and Arbitration Bureau ("CAB") against Centro Médico del Turabo, Inc. d/b/a Hospital HIMA San Pablo Caguas and Hospital HIMA San Pablo Fajardo ("HIMA") related to the non-payment of the Christmas Bonus. The arbitrator issued two (2) arbitration awards in favor of Unión, and awarded statutory penalties and attorneys" fees. App. 59a & App. 81a. The Court of First Instance, ("CFI") denied Petitioner's request for review of the arbitration awards finding that it lacked jurisdiction. App. 43a.

Petitioner appealed to the Puerto Rico Court of Appeals, ("PRCA") which revoked the CFI. App. 25a. The PRCA remanded the case to the CFI, to allow for one of the two arbitration awards to be reviewed by the CFI. Unión and HIMA filed cross petitions for certiorari before the Puerto Rico Supreme Court challenging the Opinion and judgment entered by the PRCA. The Puerto Rico Supreme Court revoked the judgment entered by the PRCA, and reinstated the judgment of the CFI in its entirety. App. 1a

The questions presented are:

1. Whether the Puerto Rico Supreme Court erred and violated the presumption against retroactivity and procedural due process when it retroactively applied the Rules of the Puerto Rico Appellate Court for the review of administrative determinations to the review procedures for arbitration awards filed before

the CFI's which until HIMA's underlying case before the CFI, had been subject to different procedural rules applicable in said forum, and summarily reinstated the arbitration awards without allowing any recourse for review.

2. Whether the Puerto Rico Supreme Court erred in failing to affirm the PRCA and find that HIMA had timely filed and paid the corresponding filing fees for at least one (1) appeal of the arbitration awards granted by the CAB's Arbitrator.

RULE 29.6 STATEMENT

Centro Médico del Turabo, Inc. is a privately held corporation. No publicly held corporation holds 10% or more of Centro Médico del Turabo, Inc.

PARTIES TO THE PROCEEDING AND RELATED CASES STATEMENT

The parties to this proceeding are listed on the front cover.

Related cases to this proceeding are:

- *Unión General de Trabajdores v. Centro Médico del Turabo, Inc. d/b/a Hospital HIMA San Pablo Caguas and Hospital HIMA San Pablo Fajardo*, Case Number A-17-1774, P.R. Department of Labor and Human Resources Conciliation and Arbitration Bureau. Arbitration Award entered January 16, 2019.

- *Unión General de Trabajdores v. Centro Médico del Turabo, Inc. d/b/a Hospital HIMA San Pablo Caguas and Hospital HIMA San Pablo Fajardo*, Case Number A-19-1193 with Case Numbers A-17-1970 and A-17-1917, P.R. Department of Labor and Human Resources Conciliation and Arbitration Bureau. Arbitration Award entered January 16, 2019.

- *Unión General de Trabajdores v. Centro Médico del Turabo, Inc. d/b/a Hospital HIMA San Pablo Caguas and Hospital HIMA San Pablo Fajardo,* Civil Number SJ2019CV01554 (602), San Juan Superior Court. Judgment entered April 13, 2020.

- *Unión General de Trabajdores v. Centro Médico del Turabo, Inc. d/b/a Hospital HIMA San Pablo Caguas and Hospital HIMA San Pablo Fajardo,*

Appeal Num. KLCE202000522, Commonwealth of Puerto Rico, Court of Appeals, Panel II. Judgment entered October 2, 2020.

- *Unión General de Trabajdores v. Centro Médico del Turabo, Inc. d/b/a Hospital HIMA San Pablo Caguas and Hospital HIMA San Pablo Fajardo,* Commonwealth of Puerto Rico, Supreme Court, Consolidated Certiorari Petitions CC-2020-0449 and CC-2020-0487. Judgment entered March 21, 2021, and notified on March 23, 2022.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Centro Médico del Turabo, Inc., d/b/a Hospital HIMA San Pablo Caguas and Hospital HIMA San Pablo Fajardo respectfully petitions this Court for a writ of certiorari to review the judgment of the Supreme Court of Puerto Rico in this action.

OPINIONS AND ORDERS BELOW

The Arbitration Awards in *Unión General de Trabajdores v. Centro Médico del Turabo, Inc. d/b/a Hospital HIMA San Pablo Caguas and Hospital HIMA San Pablo Fajardo*, Case Number A-17-1774 (App. 81a-94a) and Case Number A-19-1193, with Case Numbers A-17-1970 and A-17-1917 (App. 59a-80a), issued by the Department of Labor and Human Resources Conciliation and Arbitration Bureau, both of which were issued on January 16, 2019, are unreported and reproduced in Petitioner's Appendix. The Judgment (App. 43a-58a) entered in *Unión General de Trabajdores v. Centro Médico del Turabo, Inc. d/b/a Hospital HIMA San Pablo Caguas and Hospital HIMA San Pablo Fajardo,* Civil Number SJ2019CV01554 (602), by the San Juan Superior Court on April 17, 2020, is unreported and reproduced at App. C. The Judgment (App. 25a-42a) in *Unión General de Trabajdores v. Centro Médico del Turabo, Inc. d/b/a Hospital HIMA San Pablo Caguas and Hospital HIMA San Pablo Fajardo,* Appeal Number KLCE202000522, by the Puerto Rico Court of Appeals, Panel II on August 29, 2020, and notified on October 2, 2020, is unreported and reproduced at App. B.

STATEMENT OF JURISDICTION

The Judgment (App. 1a-24a) of the Supreme Court of Puerto Rico in *Unión General de Trabajdores v. Centro Médico del Turabo, Inc. d/b/a Hospital HIMA San Pablo Caguas and Hospital HIMA San Pablo Fajardo,* Consolidated Certiorari Petitions CC-2020-0449 and CC-2020-0487, was entered on March 21, 2021, and notified on March 23, 2022, is unreported and reproduced at App. A. The Supreme Court of Puerto Rico denied Petitioner's first Motion for Reconsideration by Resolution (App. 95a-96a) issued on April 29, 2022, and is reproduced at App. F. The Supreme Court of Puerto Rico denied Petitioner's Second Motion for Reconsideration by Resolution (App. 97a) issued on May 27, 2022, and the same is reproduced at App. G. This Court entered an order on June 15, 2022, extending the time to file this Petition until August 20, 2022. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOKED

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. Fourteenth Amendment, Section 1.

INTRODUCTION

This Petition raises important questions regarding the appealability and review of arbitration awards within the context of collective bargaining agreements; the mechanisms available for consolidation of concurrent arbitration awards handled in a single proceeding for purposes of appellate review; as well as procedural due process considerations and the manner in which said awards are handled at the state Appellate Court and Supreme Court levels. Within the context of a matter before the Puerto Rico Supreme Court, this case deals with whether a novel interpretation as to the procedural rules and mechanism for review of concurrent arbitration awards at the Appellate Court and Supreme Court levels are applicable when a review proceeding is filed before the court of first instance; and whether application of Rules of Appellate Procedure not previously applicable at proceedings before the court of first instance should be limited to prospective, as opposed to retroactive application, which violates the presumption against retroactivity.

Through an Opinion notified on March 23, 2022, hereinafter, the "Opinion", the Supreme Court of Puerto Rico reversed the sentence issued by the Puerto Rico Court of Appeals, hereinafter "CA", on August 26, 2020. App. 24a. In its ruling of August 26, 2020, the CA modified the sentence issued on April 13, 2020 by the Court of First Instance, Superior Court, San Juan part, hereinafter "CFI", which had dismissed the Petition to Challenge the Award on the understanding that it did not have jurisdiction over the revision of two arbitration awards issued by the Puerto Rico Department of Labor. App. 26a; 41a-42a.

Upon a considered analysis of the grounds set forth in the Supreme Court of Puerto Rico's Opinion, we respectfully submit that it should be set aside for reasons which are summarized as follows:

1. The analysis of the Supreme Court of Puerto Rico requiring the payment of two different fees, one for each challenged Arbitration Award, effectively establishes a new procedural rule, since the procedural regulations of the CFI which are applicable to the underlying case, do not in any way require compliance with the regulations as established by the Puerto Rico Supreme Court in its Opinion. Therefore, and pursuant to the customary course of proceeding in these circumstances in the past by the Supreme Court of Puerto Rico, the rule should be applied prospectively, as opposed to retroactively.

2. By modifying the Opinion issued by the Puerto Rico Supreme Court so that the regulations are applied prospectively, the interests of justice are served since Petitioner will be allowed the opportunity to present its case on the merits before the corresponding reviewing CFI. Furthermore, the prospective application of the regulations ensures that an institution, such as Petitioner, which is dedicated to the provision of health services to a large sector of the Puerto Rican population, has the opportunity to avoid the profoundly devastating economic consequences that threaten Petitioner's solvency, to the detriment of the population treated in its facilities.

3. Alternatively, and while we respectfully disagree with the Puerto Rico Supreme Court's Opinion, in the event that the standard set out in the same is deemed inapplicable prospectively, then at the very least one of the two awards should be subjected to a review proceeding, effectively adopting or reinstating the CA's ruling, which remanded the matter back to the CFI for a determination of which of the two awards should be addressed.

STATEMENT OF THE CASE

Puerto Rico Law No. 148 of June 30, 1969, which is known as the Christmas Bonus Act, as amended, requires that employers pay bonuses to all employees who have worked more than seven hundred hours during the 12-month qualifying period starting on October 1 of each year and ending on September 30 of the following year ("qualified employees"). Act No. 148 also provides an exemption for payment (or payment of less than the statutory amount) for employers whose operations in Puerto Rico have no profits, or when such profits are insufficient to cover total payment of the annual bonus owed to employees. In such cases, the employer must notify the Department of Labor to that effect by November 30 of the year in question. The notice must include relevant financial documents, including a profit-and-loss statement certified by a CPA admitted to practice in Puerto Rico. Petitioner complied with the aforementioned filing and reporting requirements, and an exemption from the payment of the annual Christmas bonus was granted by the Puerto Rico Department of Labor on December 6, 2016.

On January 10, 25, and 27, 2017, the Unión General de Trabajadores, hereinafter "Unión" or "Respondent", as the representative of the Petitioner's unionized employees of the HIMA San Pablo Caguas and Fajardo Hospitals, filed three (3) complaints against HIMA requesting arbitration before the Conciliation and Arbitration Bureau of the Department of Labor and Human Resources, hereinafter "Conciliation and Arbitration Bureau". Notwithstanding the exemption, the Unión requested that HIMA be required to pay the corresponding Christmas Bonus for unionized employees from both hospitals for 2016, since it disagreed with the exemption from the payment of said bonus issued by the Puerto Rico Labor Department on December 6, 2016. The Unión's arbitration requests were premised on Article 17[1] of the Collective Bargaining

1. Art. 17 of the Collective Agreement that covers the professional unit of HIMA San Pablo Hospital in Fajardo -- and which came into effect on May 25, 2016, and ended on May 24, 2019 -- provides:

> Section 1 - Christmas Bonus Amount
>
> The Hospital will grant all employees who have worked seven hundred (700) hours or more within the period of twelve (12) months from the first of October of any calendar year until September 30 of the following year, under the terms provided in Law, a Christmas Bonus equivalent to six percent (6%) of the employee's total income, up to a maximum of ten thousand dollars (10,000) or 3% up to a maximum of $30,000.00, whichever is greater.
>
> Section 2 - Christmas Bonus Payment Date
>
> Said payment shall be made on or before December 15 of each year in which this Agreement is in force, providing that any employee who has terminated their

Agreement for Unionized workers. Not surprisingly, the Petitioner opposed the petition based on the exemption issued by the Puerto Rico Labor Department.

The Conciliation and Arbitration Bureau listed the complaints as follows: A-17-1774 (Caguas Professionals Unit of Fajardo); and Case Number A-19-1193 regarding Substantive Arbitration and Case Numbers A-17-1917 (Caguas Non-Professionals Unit), A-17-1970 (Caguas Professionals Units). The aforementioned cases were assigned to the Arbitrator, Mrs. Yolanda Cotto Rivera, who formally consolidated the two complaints related to the Caguas Hospital. Notwithstanding the partial consolidation, the arbitration hearings for all the aforementioned cases were held on April 9 and June 21, 2018 before Arbitrator Cotto Rivera. After several procedures before the agency which are unrelated to the captioned Petition, on January 16, 2019, the Arbitrator issued two separate arbitration awards which were likewise separately notified, that is, one award for the Unit of Professional and Non-Professional Employees of

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> employment before the date on which this bonus is paid shall only be entitled to receive the bonus percent as provided by law. It is understood that all deductions required by law will be made.
>
> With regard to the professional unit and the non-professional unit of the Hospital HIMA San Pablo de Caguas, Article 17 of the Collective Bargaining Agreement that applies to them -- which was in force from May 12, 2016 to May 12, May 2020 -- contains essentially language similar to that described above. However, the aforementioned provision increases the maximum of 3% of the employee's total income from $30,000.00 to $40,000.00.

HIMA Caguas; and a second award which corresponded to the Unit of Professionals of HIMA Fajardo professionals. App. 59a-80a; 81a-94a.

In both awards, the Arbitrator found that Petitioner violated Article 17 of the collective agreements, and as such, ordered the payment of the Christmas bonus for the year 2016 to the Unionized employees as the employer of the professional and non-professional employees of its Caguas and Fajardo Hospitals, was ordered to pay said employees the 2016 Christmas bonus. App. 80a; 94a. In each of the awards, the Arbitrator imposed the penalty contemplated by Law No. 148 of June 30, 1969, 29 LPRA sec. 502 et seq., as well as twenty percent (20%) in attorney fees. App. 80a; 94a. The Arbitrator's decision is inherently inconsistent to the extent that it fails to recognize and enforce the exemption from the payment of the Christmas Bonus, but utilizes the penalty imposed by said law in the event that the Christmas bonus is not paid.

Discontent with the aforementioned determination, on February 15, 2019, Petitioner timely filed a single petition to the CFI of San Juan, which requested review of both arbitration awards. For purposes of the aforementioned, Petitioner paid the fees corresponding to a single appeal for review of arbitration awards, to wit, ninety dollars ($90.00), which were computed and required by the CFI's electronic filing system, which is known as "SUMAC'. In synthesis, Petitioner contended that the Arbitrator erred in her interpretation of the Collective Bargaining Agreement that governed the employee-employer relationship between the parties to the underlying arbitration, and in concluding that said institution was not exempted from the payment of the Christmas bonus

corresponding to the year 2016 given the exemption from payment conferred by the Puerto Rico Labor Department.

The Unión responded to the Petitioner's appeal by filing of a motion to dismiss. The Unión contended that Petitioner had unilaterally consolidated its challenge to the two (2) arbitration awards in a single appeal, and only cancelled fees corresponding to a single cause of action. Given the aforementioned, the Unión requested dismissal of the entire appeal to the CFI for lack of jurisdiction.

Petitioner timely opposed the Unión's request for dismissal, and for its part, argued that there was no established rule prohibiting the filing of a single petition for the review of two arbitration awards, which are virtually identical in terms of the parties, evidence and matters resolved therein. The Petitioner also posited that as it pertains to the awards object of its appeal, there was perfect identity of the parties; the awards were issued by the same arbitrator after receiving the same evidence in hearings that were jointly held; and that the awards as such, were virtually identical. As it relates to the alleged non-payment of fees for a second proceeding, Petitioner argued that, even assuming said allegation to be correct, it constituted an error that did not make the request null, but ***voidable***, because Petitioner had not acted fraudulently. For this reason, and without waiving the affirmative defenses described in their opposition, on the same date, March 19, 2019, Petitioner deposited the $90.00 payment corresponding to the review of the second arbitration award.

On April 17, 2020, the CFI notified a judgment dismissing Petitioner's request for review of the

arbitration awards in their entirety, based on a purported lack of jurisdiction, inasmuch as the appeals were not perfected within the thirty (30) day term. App. 43a-58a. The CFI afforded deference to the Arbitrator's decision to issue two awards, effectively ignoring the fact that the underlying arbitration proceedings were handled jointly. App. 56a-57a. The CFI also considered that the failure to pay the second filing fee was not attributable to the Petitioner's indigency, or to acts, omissions or erroneous instructions from the Clerk's Office, notwithstanding the fact that they accepted and docketed the Petitioner's review request as a preliminary matter, assigning the matter a single case number, to wit, SJ2019cv01554. App. 53a-55a.

Given the aforementioned, Petitioner filed a writ of certiorari before the Puerto Rico CA, essentially reiterating the arguments outlined before the CFI. Petitioner also argued that the CFI erred by using a regulation that was inapplicable to arbitration review procedures filed before said forum. The Unión timely opposed the Petitioner's writ of certiorari. On August 26, 2020, the Puerto Rico CA issued a judgment revoking the CFI's dismissal for lack of jurisdiction. App. 25a-42a. The Puerto Rico CA considered that at least one (1) of the arbitration awards was timely filed and perfected based on the payment of the corresponding fee for a single appeal. App. 40a-41a. Consequently, the Puerto Rico CA remanded the case, and instructed the CFI to allow the Petitioner to specify which award it wanted to have reviewed. App. 42a.

Dissatisfied with the Puerto Rico CA's determination, Petitioner and the Unión both filed separate writs of

certiorari to the Supreme Court of Puerto Rico. In petition CC-2020-0449, the Unión contends that the CA erred in ruling that the single appeal filed by Petitioner requesting the review of two (2) arbitration awards was a jurisdictional defect that was curable. The Unión also challenged the CA's determination that left the decision as to the perfection of a purported defectively filed appeal, and for which the jurisdictional term had allegedly elapsed, to the discretion of a single party. The Unión considered that Petitioner had to file each of the appeals separately within the applicable jurisdictional term, with the corresponding fees, and subsequently request consolidation of both appeals. Based on the aforementioned, the Unión requested that the Puerto Rico Supreme Court revoke the CA's opinion.

In the cross-petition CC-2020-0487, Petitioner argued that the Puerto Rico CA erred in upholding the dismissal of one (1) of the awards challenged before the CFI, which used a rule and regulation inapplicable to arbitration review procedures. Petitioner contended that the case styled *M-Care Compounding v. Dpto. de Salud*, 186 D.P.R. 159 (2012), was inapplicable to the controversy inasmuch as it involved the interpretation and application of the Appellate Court Rules regarding the review of administrative decisions filed before the Puerto Rico Appellate Court, not those filed before a court of first instance. Petitioner contended that its petition to the CFI is governed by the Rules for the Review Procedure of Administrative Decisions before the Court of First Instance; and since the content of the two (2) awards to be reviewed is identical, it requested that the Puerto Rico Supreme Court modify the decision of the court a quo.

On March 23, 2022, the Puerto Rico Supreme Court notified its Opinion regarding the cross petitions for writ of certiorari filed by Petitioner and the Unión. The Puerto Rico Supreme Court held that the procedural mechanism to challenge the worker – employer arbitration awards is not governed by the common and current procedural procedure of ordinary civil actions, governed by the Rules of Civil Procedure. App. 13a-14a. To the contrary, the Puerto Rico Supreme Court held that the review of arbitration awards is analogous to judicial review of administrative decisions before the Puerto Rico CA's. App. 14a. The Puerto Rico Supreme Court posited that the procedure to be followed before the judicial forum for challenging worker-employer arbitration awards should be similar to that used when the court, acting as an appellate forum, reviews the propriety of the judgment issued by a lower court; or the decision of an agency as per the Rules of Procedure for the Review of Administrative Decisions before the Court of First Instance. App. 14a.

In consequence thereof, the Puerto Rico Supreme Court held that the term for filing appeals for the review of arbitration awards issued by the Conciliation and Arbitration Bureau shall be thirty (30) non-extendable days, counted from the filing of the copy of the notification of the award. The Supreme Court also held that the payment of the fees ($90.00) and affixing of the corresponding internal revenue stamps was required, notwithstanding some exceptions, in contentious claims, of a civil nature that are seen in the upper chambers of the CFI's. App. 14a. As such, the Puerto Rico Supreme Court ruled that a request for review of an arbitration award must be submitted within a certain period of time, and that by law, it must be accompanied by certain internal

revenue stamps or it is deemed not to have been submitted, and said period is not interrupted if the [tariff] stamps are not paid.

The recognized exceptions to the filing fees and internal revenue stamps requirements as bases for dismissal are as follows: 1) an indigent person filing in *forma pauperis*; 2) when the tariff deficiency occurs without intention to defraud, but due to inadvertence of a judicial officer who mistakenly accepts a document without payment or for an amount less than the established tariff; and/or 3) when the purported insufficiency is attributable to the erroneous instructions of the Court Clerk. The Puerto Rico Supreme Court considered that no such exception applied since the error as to the required payment is attributable to the appealing party and/or their attorney; and that the cross petitions for certiorari presented precisely such a case. App. 19a.

In resolving the cross petitions, the Puerto Rico Supreme Court relied on the case of *M-Care Compounding v. Depto. De Salud*, supra, which different from the present case, involved a motion to the Puerto Rico CA seeking review by two (2) parties allegedly affected by different resolutions issued by the Puerto Rico Department of Health, which paid only one (1) filing fee. In the aforementioned context, the Puerto Rico Supreme Court concluded that joint appeals could not be filed to review administrative resolutions of different cases; and held that the parties had to file their petitions separately, and with the cancellation of the fees corresponding to each of the petitions. The Supreme Court also determined that once the review procedures were perfected as per the aforementioned requirements, then the Court of Appeals

could, *motu proprio* or at the request of a party, order the consolidation of the two proceedings.

The *M-Care* case, supra, was applied to Petitioner's case without considering that the review of two (2) arbitration awards involved the same parties; the same arbitrator; the same issues; were the object of joint hearings; considered the same evidentiary record; and involved identical awards. Furthermore, unlike *M-care*, supra, the review procedure was initiated at the superior or CFI level, as opposed to the appellate court level, effectively bypassing the Rules applicable to proceedings before the CFI; and implementing, as a matter of first impression, that such proceedings should follow the Rules of the Puerto Rico Court of Appeals.

The practical effect of the Supreme Court's ruling was to retroactively apply procedural rules which had not previously been applicable in the context of review procedures for arbitration awards initiated at the superior or CFI level. The determination that the superior court acts as the equivalent of an appellate forum, thereby triggering the applicability of the Rules of the Court of Appeals, as the Puerto Rico Supreme Court found, is a matter of first impression, which could not have been anticipated, foreseen, or even cured by the Petitioner. By retroactively applying the Rules of the Court of Appeals for such review proceedings, and/or revoking the Puerto Rico CA, the Puerto Rico Supreme Court effectively deprived Petitioner of any mode of appellate review. It is for this reason that we resort to this Honorable Supreme Court to correct the erroneous ruling of the Puerto Rico Supreme Court, which mechanically and without remedy or recourse, deprived Petitioner of a viable avenue for review of arbitration awards.

REASONS FOR GRANTING THE PETITION

I. THE COURT SHOULD GRANT THIS PETITION TO REVIEW THE RETROACTIVE APPLICABILITY OF THE RULES OF THE PUERTO RICO COURT OF APPEALS TO CASES FOR REVIEW INITIATED AT THE SUPERIOR COURT LEVEL WHICH EFFECTIVELY IMPEDES ANY VIABLE APPELLATE REVIEW

This Honorable Supreme Court has recognized time and again as follows:

> [T]he presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted. For that reason, the "principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal." In a free, dynamic society, creativity in both commercial and artistic endeavors is fostered by a rule of law that gives people confidence about the legal consequences of their actions. *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265–66 (1994) (quoting *Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 855 (1990), (Scalia, J., concurring)

The aforementioned legal precepts have been capriciously violated as it pertains to the Petitioner in its procedural quest to have two (2) identical arbitration awards, involving identical parties and evidence, which were resolved by the same Arbitrator who conducted single hearings for said arbitrations, reviewed by the CFI. Notwithstanding the novelty of the issue presented by Petitioner's case as filed before the CFI, the Puerto Rico Supreme Court equated the CFI's review of the arbitration awards with a proceeding initiated before the Puerto Rico CA, and subjected said proceedings to the Rules of the Puerto Rico Court of Appeals. To make matters worse, the Puerto Rico Supreme Court applied the aforementioned norm retroactively, effectively depriving Petitioner of any appellate recourse whatsoever.

State and federal courts alike have regularly applied intervening statutes or rules conferring or defeating jurisdiction in different contexts and situations. Application of a new jurisdictional or procedural rule should not take away a "… substantive right, but simply changes the tribunal that is to hear the case." *Hallowell v. Commons*, 239 U.S. 506, 508 (1916). Present law normally governs in such situations because jurisdictional statutes "speak to the power of the court, rather than to the rights or obligations of the parties," *Republic Nat. Bank of Miami v. U.S.*, 506 U.S. 80, 100 (1992) (THOMAS, J., concurring).

Although it has been held that changes in procedural rules may often be applied in suits arising before their enactment without triggering concerns about retroactivity, the question for purposes of this case, is whether existing rules applicable to appellate procedures

can be applied for the first time to review proceedings initiated before a court of first instance, where said rules do not customarily apply. Of course, the mere fact that a new rule is procedural does not mean that it applies to every pending case. A new rule concerning the filing of complaints would not govern an action in which the complaint had already been properly filed under the old regime, and the promulgation of a new rule of evidence would not require an appellate remand for a new trial.

The orders of this Supreme Court approving amendments to federal procedural rules reflect the common-sense notion that the applicability of such provisions ordinarily depends on the posture of the particular case. See, *e.g.*, Order Amending Federal Rules of Criminal Procedure, 495 U.S. 969 (1990) (amendments applicable to pending cases "insofar as just and practicable"); Order Amending Federal Rules of Civil Procedure, 456 U.S. 1015 (1982) (same); Order Amending Bankruptcy Rules and Forms, 421 U.S. 1021 (1975) (amendments applicable to pending cases "except to the extent that in the opinion of the court their application in a particular proceeding then pending would not be feasible or would work injustice").

It is generally considered that procedural, as opposed to substantive rules, do not change the substantive obligations of the parties because they are "collateral to the main cause of action." *Landgraf v. USI Film Products*, 511 U.S. 244, 277 (1994). While it may be possible to generalize about types of rules that ordinarily will not raise retroactivity concerns, see, *e.g.*, *Id.*, at 273-275, these generalizations do not end the inquiry. For example, in *Landgraf*, supra, the Supreme Court acknowledged that

procedural rules may often be applied to pending suits with no retroactivity problems. *Id.*, at 275. Notwithstanding the aforementioned, this Supreme Court also cautioned that "the mere fact that a new rule is procedural does not mean that it applies to every pending case." *Id.*, at 275, n. 29. Similarly, the Supreme Court took great pains to dispel the "sugges[tion] that concerns about retroactivity have no application to procedural rules." *Id.* See also *Lindh v. Murphy*, 521 U.S. 320, 327-328 (1997). When determining whether a new rule or statute operates retroactively, it is not enough to attach a label (e.g., "procedural," "collateral") to the statute; it must be asked whether the same operates retroactively.

And that is precisely the problem with the Puerto Rico Supreme Court's ruling, which results in the retroactive application of a procedural rule which was not applicable to the review procedures before the CFI at issue. The Puerto Rico Supreme Court has called for a flexible approach in interpreting the retroactivity provisions of laws or regulations, and guided trial courts to look to the legislative intent of a new law or rule to determine whether it should have retroactive application. *Liquilux Gas Corp. v. Martin Gas Sales, Inc.,* 779 F. Supp. 665, 667 (D.P.R. 1991) (construing *Warner Lambert co. v. Tribunal Superior,* 1 P.R. Offic. Trans 527, (539-540)). Notwithstanding the aforementioned proposition, in the captioned case, the Puerto Rico Supreme Court abandoned this posture, and in so doing, gave retroactive effect to procedural rules which had never before applied to the review of arbitration awards before the Puerto Rico CFI's.

Petitioner's contention that the issue presented by the review of the arbitration awards is a matter of first

impression, is facially apparent from the judgment of the Puerto Rico Supreme Court which confirms that the case "…offers the opportunity to express ourselves regarding the procedure that must be followed…", which effectively allowed the Court to establish a new and previously unused procedural regulation in this context. App. A, 2a. The Supreme Court's Opinion applied the norm established in the case of *M-Care Compounding v. Departamento de Salud*, 186 D.P.R. 159 (2012), to the Petitioner's case notwithstanding the fact that said case is predicated upon and interprets the Rules of the Court of Appeals and the filing of appeals for administrative review before said forum, whereas this case was filed before the CFI, where the Rules of the Court of Appeals have never been applied.

Furthermore, the Supreme Court's opinion erroneously equates the Conciliation and Arbitration Bureau to an administrative agency, a proposition which was expressly rejected by the Puerto Rico Supreme Court in *Hospital del Maestro v. Unión General de Trabajadores de la Salud,* 151 D.P.R. 934 (2000). More specifically, in *Hospital del Maestro*, supra, the Puerto Rico Supreme Court recognized that the Conciliation and Arbitration Bureau should not be treated like an administrative agency for all practical purposes, as this is contrary to the Puerto Rico Uniform Administrative Procedures Act, Law Num. 170 of August 12, 1988, as amended, 3 L.P.R.A. Sec. 201, *et seq*., also cited as "L.P.A.U". *Corp. Cred. Des. Com. Agricola v. U.G.T.*, 138 D.P.R. 490 (1995).

The practical effect of the Supreme Court's ruling is the implementation of a judicial amendment to the Uniform Administrative Procedures Act. See 3 L.P.R.A.

sec. 9603(a). As such, the Puerto Rico Supreme Court effectively nullified the Rules of Procedure for the Review of Administrative Decisions before the CFI's which were applicable at the time that Petitioner requested review of the arbitration awards at the state court level. That is, the Puerto Rico Supreme Court considered that Petitioner erroneously followed the aforementioned regulation, which was in effect at the time, yet failed to explain why the same was now inapplicable; or why Petitioner erred in using said Rules, particularly when the review proceedings were initiated before a CFI. In the *Hospital del Maestro*, case, supra, the Puerto Rico Supreme Court reversed the Court of Appeals' ruling that it lacked jurisdiction when applying a requirement that "did not arise from any existing statutory or regulatory provision."

In Petitioner's case, the Puerto Rico Supreme Court, like the Court of Appeals in the *Hospital del Maestro* case, is engaging in legally proscribed conduct by applying a provision that is not encompassed within the applicable Rules to decide that an appeal for review of an arbitration award should be dismissed for failure to follow a previously inapplicable rule of appellate procedure. In so doing, the Puerto Rico Supreme Court has stripped Petitioner of its right to have the arbitration awards reviewed; and penalized it for relying on established court regulations, well known hermeneutical norms, and on the jurisprudence applicable in this jurisdiction at the time. The practical effect of the Supreme Court's decision is legally precarious as it eliminates a substantive right; nullifies the jurisdictional basis for review; places the fiscal health of Petitioner's hospital facilities at risk; and threatens the job security of thousands of employees, as well as the provision of medical services to thousands of Puerto Ricans.

To the extent that the Puerto Rico Supreme Court's decision establishes a new jurisdictional requirement and establishes new rules applicable to the challenge of arbitration awards before the CFI, justice and due process mandate that this decision be applied prospectively. *See*, *Datiz v. Hosp. Episcopal*, 163 D.P.R. 10 (2004) ("Because the plaintiffs relied on the interpretation ... in force at the time the lawsuit was filed ... we are of the opinion that the retroactive application ... to the present case would constitute an injustice"). The aforementioned proposition is consistent with the judicial presumption, of great antiquity and which is espoused and enforced by this Supreme Court, that legislative enactments or procedural rules that affect substantive rights do not apply retroactively absent *clear statement* to the contrary. *See generally Kaiser Aluminum Chemical Corp. v. Bonjorno*, 494 U.S. 827, 840 (1990) (SCALIA, J., concurring).

The decision to grant a prospective effect to a decision of Puerto Rico's Supreme Court is based on "considerations of public policy and social order, since our goal must be to grant fair and equitable remedies that respond to the best social coexistence." *Rexach Construction Co. v. Municipio de Aguadilla*, 142 D.P.R. 85, 87 (1996). For this reason, the Puerto Rico Supreme Court has issued judicial opinions with prospective effect "in consideration of the factual circumstances of the case, justice, equity, the best social coexistence or to avoid severe dislocations in our economic system." *Rosario Domínguez v. ELA*, 198 D.P.R. 197, 216 (2017); *See also*, *Isla Verde Rental v. García*, 165 D.P.R. 499 (2005).

As it pertains to Petitioner's case, the Puerto Rico Supreme Court decided to apply, as a matter of first

impression and implementation, the Rules of Appellate Procedure to cases challenging awards before the CFI, despite the fact that the latter courts have their own rules and regulations for procedures of this nature, and are also subject to the Puerto Rico Uniform Administrative Procedures Act. In this regard, the Supreme Court has reiterated that the regulations applicable to the challenge of awards before the CFI are governed by the Rules of Procedure for the Puerto Rico Uniform Administrative Procedures Act, yet they abandoned this norm. The Puerto Rico Supreme Court's decision to apply the regulations and jurisprudence related to Appellate proceedings, constitutes a new norm or procedural rule which by all legal accounts, should apply prospectively. Petitioner relied on the rules applicable to review proceedings before the CFI which were in effect at the time that it filed its request for review, as well as the judicial decisions recognizing the same as the applicable regulation. Petitioner also relied on the absence of a prohibition in said regulation to request the review of two identical arbitration awards in a single appeal.

With regard to the filing fees, Petitioner also relied on the computation of fees generated by SUMAC (Unified Case Management and Administration System, by its Spanish acronym) at the time of filing the appeal, which indicated that the amount to be paid was $90.00. It is the Puerto Rico Court's SUMAC system, not Petitioner, which determines the fees to be paid for the filing of a new action or other recourse to the CFI. As a practical matter, the implementation of the electronic filing system at the state court level, has eliminated the personal contact with court personnel at the time of filing which potentially could have resulted in the realization that two (2) filing fees were

required. Petitioner should not be penalized for merely following the instructions and paying the fees established by the Court's electronic filing system. In the event that there is an error in the amount of the filing fee to be paid, notions of fair play and justice mandate that parties such as Petitioner, be allowed a curative term to submit the correct payment.

The early jurisprudence of this Supreme Court espoused the doctrine that '(w)herever one is assailed in his person or his property, there he may defend,' *Windsor v. McVeigh*, 93 U.S. 274, 277 (1876); See *Baldwin v. Hale*, 1 Wall. 223, 17 L.Ed. 531 (1864); *Hovey v. Elliott*, 167 U.S. 409 (1897). The overriding theme being that 'due process of law signifies a right to be heard in one's defense.' *Id.* at 844. Due process does not require that the defendant in every civil case actually have a hearing on the merits; however the Constitution requires at a minimum, 'an opportunity … granted at a meaningful time and in a meaningful manner,' *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965), 'for (a) hearing appropriate to the nature of the case,' *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950).

The formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings. That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing ***before*** he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the

event. *Boddie v. Connecticut*, 401 U.S. 371 (1969). That is the essence of due process, which is guaranteed to all citizens, including corporations by the due process clause of the Fourteenth Amendment, Section 1[2].

The Puerto Rico Supreme Court's Opinion which is challenged herein, effectively deprives Petitioner of any meaningful opportunity to be heard before being summarily deprived of their property interests without justification, by prospectively implementing a previously inapplicable procedural rule. No state, court or state supreme court should be allowed to act so arbitrarily and in contravention of fundamental Constitutional rights.

II. ALTERNATIVELY, THE PUERTO RICO SUPREME COURT SHOULD BE INSTRUCTED TO ALLOW AT LEAST ONE OF THE TWO REQUESTS FOR REVIEW BEFORE THE COURT OF FIRST OF INSTANCE INSMUCH AS ONE APPEAL WAS TIMELY AND THE FEES FOR THE SAME WERE PAID

Assuming for arguments sake only that the *M-Care Compounding* case, and by extension, the Rules of Appellate Procedure, are applicable to the review recourses filed by Petitioner, a proposition which we

2. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Const. 14th Amendment, Section 1.

expressly deny, it is notable that the Puerto Rico Supreme Court applied the rule *prospectively* when it considered the various interpretations for the application of the rules as proffered by the parties in said case. In this regard, the Supreme Court indicated "...after interpreting the regulatory provision regarding joint appeals, *in subsequent cases* the litigants at the appellate level will have to faithfully comply with the requirements set forth herein." *M-Care Compounding v. Departamento de Salud*, supra at pp. 181-182. In the captioned case, the Supreme Court was interpreting an ambiguous regulation regarding the possible review of two identical appeals involving the same parties, evidence, issues and outcome, which are generally filed before the court of first instance. The *M-Care Compounding* case, and the Rules of Appellate Procedure as interpreted therein, are clearly circumscribed to litigants filing appeals or reviews with the Court of Appeals, which is not the case here.

The retroactive application of the Rules of the Court of Appeals to a petition for review filed before the CFI has a devastating impact on Petitioner in both legal and operational terms. As a legal matter, the retroactive application of the Rules of the Court of Appeals affects the Petitioner's substantive rights, is effectively a jurisdictional death knell, and outright deprives it of a procedural vehicle for even nominal review of the arbitration awards. Stated in another manner, in a purely arbitrary exercise, the Puerto Rico Supreme Court annihilated Petitioner's right to review the arbitration awards. In operational terms, the inability to seek review of the arbitration awards threatens the continued viability of Petitioner as a health institution. The Supreme Court's opinion denies the Petitioner from access to justice and

due process, in that the Arbitrator issued awards in violation of the Christmas Bonus Law and negated the exemption conferred by the Puerto Rico Department of Labor, particularly considering that the Interpretative Guidelines of the Department of Labor have validated Petitioner's position as to this matter.

The summary validation of an arbitration award based on previously inapplicable Appellate Procedural Rules and absent any type of review by a superior forum, is tantamount to the imposition of an exorbitant monetary judgment devoid of any considerations as to the merits of said awards, which in all likelihood will result in the Petitioner's bankruptcy. It was precisely for this reason that the Puerto Rico Department of Labor granted Petitioner an exemption from the payment of the Christmas bonus. This is of great importance since the Puerto Rico Department of Labor, as the expert agency in charge of such matters, acknowledged that Petitioner's audited financial statements and other pertinent documentation, confirmed the inability of its Hospital facilities to pay the Christmas bonuses at issue. At a bare minimum, the findings of the Puerto Rico Department of Labor deserve some consideration and deference by the Commonwealth's reviewing courts.

Although it is Petitioner's position that it should be allowed to seek review of both arbitration awards, alternatively we submit that the Puerto Rico Supreme Court should allow at least one of the two awards to be reviewed, inasmuch as the timely filing and payment of the corresponding filing fees clearly perfected the petition to review one of the arbitration awards. It follows that the Puerto Rico Supreme Court should be instructed

to apply the new rule prospectively or, at the very least, uphold the judgment entered by the Puerto Rico CA which remanded the case to the court of first instance and allow the review proceedings as to one of the contested awards. It should be noted that the Puerto Rico Supreme Court acknowledged that the corresponding fees were presented for the presentation of one appeal within the corresponding term. To hold otherwise is to effectively deprive Petitioner of any recourse for review.

The case of *In re Aprob. Derechos Arancelarios RJ*, 192 D.P.R. 397 (2015), held that there is no clear-cut requirement that fees must be paid at the time of presenting an appeal for review of an administrative decision, or an arbitration award, before the CFI. In fact, when a notice to appeal for administrative review is filed, in the absence of an express provision on what fees apply, SUMAC demands the payment of the fees required for the filing of a lawsuit. In this case, Petitioner paid, through SUMAC, the $90.00 filing fee. At a bare minimum, and consistent with the ruling by the Court of Appeals, it should be determined that Petitioner complied with the filing and fee requirements for at least one appeal.

Similar to other state Supreme and Circuit Appellate courts, the Supreme Court of Puerto Rico has previously relaxed rigid requirements for the perfection of review briefs. The aforementioned is a corollary to the fundamental precept that claims should be resolved on the merits, a precept which was clearly articulated by the Hon. Associate Judge Mr. Fuster Berlingeri in *M & R Developers v. Bco. Gubernamental de Fomento*, 153 D.P.R. 596, 599-600 (2001) as follows: "...

> [T]he guiding principle that judicial controversies, as far as possible, be addressed on the merits, is applicable in appellate law in relation to the dismissal of appeals for non-compliance with regulatory requirements for their perfection. In effect, flexibility in the interpretation of procedural rules is especially relevant when it comes to a determination of jurisdiction, since said determinations are the ones that open or close the doors of entry to the appellate courts. On occasions, in our eagerness to enforce the rules, we apply them literally and lose sight of the fact that ***procedural rules have no life of their own. They only exist to make viable the determination of the substantive rights of the parties and the peaceful resolution of disputes***. (Our emphasis).

Allowing Petitioner to review at least one arbitration award, provides a more just resolution of the matter and ameliorates the due process violations to which Petitioner has been subjected given the retroactive as opposed to prospective application of that, both under the Constitution of Puerto Rico and the Constitution of the United States.

The Court should grant this Petition to determine whether the Puerto Rico Supreme Court's novel interpretation as to the procedural rules and mechanism for review of concurrent arbitration awards at the Appellate Court and Supreme Court levels should be limited to prospective, as opposed to retroactive application, which violates the presumption against retroactivity recognized and consistently applied by this Honorable Supreme Court.

CONCLUSION

For the reasons stated above and based on the entire record in this action, Petitioner, Centro Médico del Turabo, Inc., d/b/a Hospital HIMA San Pablo Caguas and Hospital HIMA San Pablo Fajardo, respectfully requests that this Court grant this Petition for a Writ of Certiorari.

Respectfully submitted,

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Dated: August 20, 2022

APPENDIX

APPENDIX A — OPINION OF THE PUERTO RICO SUPREME COURT, DATED MARCH 15, 2021 & NOTIFIED MARCH 23, 2022

IN THE PUERTO RICO SUPREME COURT

CC-2020-0449
consolidated with CC-2020-0487

UNIÓN GENERAL DE TRABAJADORES,

Petitioner,

v.

CENTRO MÉDICO DEL TURABO, INC. D/B/A HOSPITAL HIMA SAN PABLO CAGUAS AND HOSPITAL HIMA SAN PABLO FAJARDO,

Appealed

UNIÓN GENERAL DE TRABAJADORES,

Appealed

v.

CENTRO MÉDICO DEL TURABO, INC. D/B/A HOSPITAL HIMA SAN PABLO CAGUAS AND HOSPITAL HIMA SAN PABLO FAJARDO,

Petitioner.

Appendix A

Opinion of the Court issued by the Associate Judge Mr. COLÓN PÉREZ

In San Juan, Puerto Rico on March 15, 2021 & notified on March 23, 2022.

This case gives us the opportunity to express ourselves regarding the procedure to be followed by those parties interested in challenging two (2) or more arbitration awards before the judicial forums -- issued separately that deal with matters of a similar nature and where, in essence, they deal with the same parties. In specific, we must answer yes -- in those scenarios our legal system allows the presentation of a sole recourse for the revision of the arbitration awards of those in question or if, on the contrary, current regulations require that appeals be filed separately.

After a careful and detailed analysis of the facts before our consideration, as well as of the applicable law, we anticipate that, when a party is interested in having the primary forum review two (2) or more arbitral awards such as those in controversy here, it has to present an appeal for review for each of the awards thus issued and, consequently, adhere to each of these the corresponding tariffs, as provided in In re Approval of Customs Duties, infra. Let's see.

I.

The Unión General de Trabajadores (hereinafter, "UGT") is the union organization that represents the employees of the Centro Médico del Turabo, Inc. in

the HIMA San Pablo de Caguas and HIMA San Pablo de Fajardo hospitals (collectively, "Centro Médico del Turabo, Inc."). Regarding the Hospital HIMA San Pablo de Caguas, the aforementioned union represents the unit of professional employees and the unit of non-professional employees. Meanwhile, at HIMA San Pablo Hospital in Fajardo, the aforementioned union represents only those employees classified as professionals. The relations between the aforementioned hospitals and the unionized employees belonging to the aforementioned units are governed by different collective agreements.

Thus, on January 10, 25 and 27, 2017, the UGT presented three (3) separate complaints against the aforementioned hospital institutions (understood, the HIMA San Pablo Hospital in Caguas and the HIMA San Pablo Hospital in Fajardo). Therein, the aforementioned union organization demanded, for the benefit of its representatives, the payment of the Christmas bonus corresponding to the year 2016, which -- at the time of filing the aforementioned complaints -- had not yet been disbursed. Specifically, the aforementioned Union maintained that, pursuant to Article 17 of the different collective agreements that covered the three (3) units described above, it was up to the aforementioned hospitals to remit the amount owed for the Christmas bonuses, as well as an equal amount as a penalty, and an additional percentage amount for attorney fees.[1]

1. Specifically, Art. 17 of the Collective Agreement that covers the professional unit of HIMA San Pablo Hospital in Fajardo -- and which came into effect on May 25, 2016 and ended on May 24, 2019 -- provides:

Appendix A

Once the aforementioned complaints were filed, the Conciliation and Arbitration Bureau assigned them the following alphanumeric numbers: 1) Fajardo Professional Unit A-17-1174; 2) Non-Professional Unit of Caguas A-17-1917; and 3) Professional Unit of Caguas A-17 (that is, the A-17-1917 with the A-17-1970. Subsequently, said

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Section 1 - Christmas Bonus Amount

> The Hospital will grant all employees who have worked seven hundred (700) hours or more within the period of twelve (12) months from the first of October of any calendar year until September 30 of the following year, under the terms provided in Law, a Christmas Bonus equivalent to six percent (6%) of the employee's total income, up to a maximum of ten thousand dollars (10,000) or 3% up to a maximum of $30,000.00, whichever is greater.

Section 2 - Christmas Bonus Payment Date

> Said payment shall be made on or before December 15 of each year in which this Agreement is in force, providing that any employee who has terminated their employment before the date on which this bonus is paid shall only be entitled to receive the bonus percent as provided by law. It is understood that all deductions required by law will be made.

Regarding the professional unit and the non-professional unit of the Hospital HIM.A San Pablo de Caguas, Article 17 of the Collective Bargaining Agreement that applies to them -- which was in force from May 12, 2016 to May 12, May 2020 -- contains essentially language similar to that described above. However, the aforementioned provision increases the maximum of 3% of the employee's total income from $30,000.00 to $40,000.00. See, Appendix of certiorari CC-2020-0449, pgs. 53-346.

complaints were assigned to the arbitrator, Mrs. Yolanda Cotto Rivera (hereinafter, "Mrs. Cotto Rivera"), who -- as part of the processing of the same -- consolidated the causes of action related to HIMA San Pablo Hospital de Caguas; that is, A-17-1917 with A-17-1970. As such, the one corresponding to the non-professional unit of the HIMA San Pablo Hospital in Fajardo (A-17-1174) was treated separately.

Cognizant of the complaints filed against it, the Centro Médico del Turabo, Inc., objected. Regarding complaint A-17-1917 consolidated with A-17-1970, related to the HIMA San Pablo de Caguas Hospital, it argued that they were not arbitrable because, in their opinion, the doctrine of res judicata due to collateral impediment applied., such that the same should be dismissed with prejudice.[2] On the other hand, and substantively, it argued that it was not obliged to pay the Christmas bonus corresponding to the year 2016 since it had been exonerated by the Department of Labor and Human Resources. This last contention, in turn, was the only defense that was presented for complaint A-17-1174, which referred to HIMA San Pablo Hospital in Fajardo.

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2. Broadly speaking, the Turabo Medical Center, Inc. maintained that, previously, the UGT had filed two other complaints related to the Christmas bonus (A-10-1995 and A-10-1618) for which the Union requested the closure with detriment. Thus, the aforementioned hospital institution argued that said closings with prejudice constituted an adjudication on the merits with respect to the claim for the Christmas bonus -- becoming res judicata -- which is why, to its Judgment, the union organization of reference was prevented from litigating similar facts again. See, Appendix of certiorari CC-2020-0487, p. 28

It is apparent from the file before our consideration, that Mrs. Cotto Rivera held joint hearings corresponding to the three (3) complaints. However, the attachments reflect that the parties submitted stipulations of facts, submission projects and independent arguments for each of the two (2) cases.[3] In other words, both the UGT and the Centro Médico del Turabo, Inc., kept the processing of the two (2) cases separately, though they were consolidated by the arbitrator.

As such, after evaluating the briefs and the arguments of the parties, and after reasoning that the claims before them were arbitrable, on January 16, 2019, Mrs. Cotto Rivera issued two (2) independent awards, namely: an arbitration award resolving the controversy related to the professional unit and the non-professional unit of HIMA San Pablo de Caguas (*Unión General de Trabajadores v. Hospital HIMA San Pablo Caguas*, A-17-1917 consolidated with A-17-1970) and another award resolving the complaint regarding the professional unit of HIMA San Pablo de Fajardo (*Unión General de Trabajadores v. Hospital HIMA San Pablo Fajardo*, A-17-1774). In both scenarios, the latter ruled that Centro Médico del Turabo, Inc. violated Article 17 of the collective agreements that are the object of this litigation, for which she ordered the payment of the Christmas bonus for the year 2016 to the unionized employees. Likewise, in each of the awards issued, she imposed on the aforementioned hospital institution the penalty contemplated by Law No. 148 of June 30, 1969,

3. See, *Appendix of Certiorari* CC-2020-487, pgs. 362-433; Judgment of the Court of First Instance, Appendix of *Certiorari* CC-2020-0487, pgs. 670-671.

known as the Christmas Bonus Law, 29 LPRA sec. 502 *et seq.*, as well as twenty percent (20%) in attorney fees. These determinations were notified on the same date, although separately.

Dissatisfied with the foregoing, on February 15, 2019, the Centro Médico del Turabo, Inc. went before the Court of First Instance with one (1) *Petition for review of the arbitration awards* in which it requested the review of both awards that, as mentioned, were issued separately. For these purposes, it paid the fees corresponding to a single appeal for review of arbitration awards; that is, ninety dollars ($90.00). In short, in its appeal, the Centro Médico del Turabo, Inc. argued that Mrs. Cotto Rivera, the arbitrator, erred in her interpretation of the Collective Bargaining Agreement that governed the employee-employer relationship between the parties to this litigation, and in concluding that said institution was not exempted from the payment of the Christmas bonus corresponding to the year 2016.

In response to the petition filed by the Centro Médico del Turabo, Inc., the UGT filed a motion to dismiss. In its brief, it argued that the Centro Médico del Turabo, Inc. consolidated *motu proprio* -- in a single recourse -- the challenge to the two (2) arbitration awards issued independently before the Conciliation and Arbitration Bureau and, in addition, canceled fees corresponding to one (1) single cause of action. Consequently, it requested the dismissal of said appeal, based on the reasoning outlined by this Curia in *M-Care Compounding v. Department of Health, infra.*

For its part, on March 19, 2019, the Centro Médico del Turabo, Inc. filed its opposition to the aforementioned dismissal request. Therein, it argued that in the present litigation, there was no rule that prohibited the filing of a single petition to review more than one arbitration award. This is because, in its opinion, what was resolved by this Court in *M-Care Compounding v. Department of Health, infra* -- precedent on which the UGT based its request for dismissal -- was distinguishable from this case because, on that occasion, the Rules of the Court of Appeals, *infra*, were interpreted, which were not applicable to this case of record.

Similarly, the Centro Médico del Turabo, Inc. emphasized that in the awards that are the object of this case, there was perfect identity of the parties, and that these were issued by the same arbitrator after receiving identical evidence and said results were extremely similar. Regarding the alleged non-payment of fees, it argued that, even if said allegation was correct, it constituted an error that did not make the request null, but voidable, because it did not act fraudulently. For this reason, and without waiving the affirmative defenses described above, on the same date -- that is, March 19, 2019 -- the Centro Médico del Turabo, Inc. consigned the fee payment corresponding to the review of the second arbitration award.

Having considered the positions of both parties, and pursuant to the regulations established by this Curia in *M-Care Compounding et al. v. Dpto. de Salud, infra* --, on April 17, 2020, the Court of First Instance notified a *Judgment* whereby it dismissed the request for review

filed by the Centro Médico del Turabo, Inc. for lack of jurisdiction to entertain the same, since this was not perfected within the requisite thirty (30) day term of to do so. In doing so, the court of first instance reasoned that the arbitrator's decision to handle the cases separately deserved deference and, furthermore, emphasized that both the UGT and the Centro Médico del Turabo, Inc., carried out different submission projects, used different documentary evidence, and presented separate arguments for each case, for which they should have gone to the Court of First Instance through separate appeals and paid the corresponding fees.

Likewise, said forum pointed out that the fee deficiency was not due to the fact that the aforementioned hospital institution was indigent, nor was it due to the actions, omissions or erroneous instructions of the Secretary of the Court. Rather, according to the primary court, it was an error exclusively attributable to the Centro Médico del Turabo, Inc., which in one (1) single request consolidated two (2) reviews of awards issued separately -- and paying the fees corresponding to one (1) single request -- so none of the exceptions recognized by our legal system for the payment of tariffs applied.[4]

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4. From said opinion, the Centro Médico del Turabo, Inc. requested reconsideration, which was declared invalid by Resolution of June 10, 2020. In it, the primary lighthouse maintained the following:

> [T]he *Rules for the Review Procedure of Administrative Decisions before the Court of First Instance* do not give the parties the power to automatically consolidate cases without the authorization of the Court. Nor do

In disagreement, Centro Médico del Turabo, Inc. filed a writ of *certiorari* before the Court of Appeals, which in essence, reiterated the arguments outlined before the Court of First Instance. Thus, it pointed out that the primary forum erred by using a regulation inapplicable to administrative review procedures in said forum. Opportunely, the UGT presented its brief in opposition.

Having evaluated the briefs of both parties, on August 26, 2020, the intermediate appellate court issued a *Judgment* whereby it revoked the ruling of the Court of First Instance, on the understanding that, at least one (1) of the two (2) causes of action challenging the arbitral awards to which we have made reference, remained viable. By doing so, it recognized that the Centro Médico del Turabo, Inc. could not, on its own initiative, consolidate the two (2) arbitration awards and present a single appeal for review before the primary forum. Therefore, it held that said hospital institution had to pay fees for each recourse individually.

However, the Court of Appeals reasoned that, since the latter correctly canceled the fees corresponding to a single appeal, the Court of First Instance could allow the revision of one (1) of the awards, but not both.

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they invalidate the duty to cancel tariffs or their effect on writings. Finally, while the facts of the *M-Care Compounding Pharmacy et als. v. Dpto. de Salud*, turn on procedural incidents in the Court of Appeals, their ratio decidendi if it is applicable to the case at hand. (Italics ours) (Quotes omitted). See, Appendix of *certiorari* CC-2020-0487, p. 705.

Consequently, it ordered that the primary court should grant Centro Médico del Turabo, Inc. the opportunity to state which award it intended or wanted to review, for which it returned the case to said court.

Dissatisfied, both the UGT and the Centro Médico del Turabo, Inc, appear before this Court through separate writs of *certiorari*. In recource CC-2020-0449, the UGT argues that the intermediate appellate court erred in its application of the rule established in *M-Care Compounding v. Dpto. de Salud*, *infra*, by ruling that the only appeal filed by the Centro Médico del Turabo requesting the joint review of two (2) different determinations is jurisdictionally curable. In this regard, it argues that the Court of Appeals left to the discretion of one of the parties to the litigation the perfection of an appeal filed defectively, and for which the jurisdictional term had elapsed. Therefore, it maintains that the aforementioned hospital institution had to file each of the appeals separately within the applicable jurisdictional term, with the corresponding fees, and then request that the court consolidate both appeals. Consequently, it requests that we revoke said opinion.

For its part, in the petition for *certiorari* CC-2020-0487, the Centro Médico del Turabo, Inc. alleges that the intermediate appellate court erred in upholding the dismissal of one (1) of the awards challenged in the primary court, since the latter, in its opinion, used a rule and regulation inapplicable to administrative review procedures before the Court of First Instance. Thus, it argues that *M-Care Compounding v. Dpto. de Salud*,

infra, cannot be applied to the controversy before our consideration, because in said case it was an interpretation of the Rules of the Court of Appeals regarding the review of administrative decisions. It stated that cases like the one at issue, are governed by the *Rules for the Review Procedure of Administrative Decisions before the Court of First Instance, infra*. Thus, and because it understands that the opposing petition that it filed intends to review two (2) awards whose content is identical, it asks us to modify the decision of the court *a quo*.

With the controversy locked in this manner, we issue both writs and, after consolidating them, with the benefit of the appearance of both parties, we proceed to resolve.

II.

As is known, in Puerto Rico there is a vigorous public policy that favors labor-management arbitration. *AAA v. UIA*, 200 DPR 903, 922 (2018); *H.R. Inc. v. Vissepó & Diez Construction Corp. et al.*, 190 DPR 597, 605 (2014); *C.F.S.E. v. Unión de Médicos*, 170 DPR 443, 448 (2007). This is due to the fact that this mechanism is the least technical and onerous means and, as such, the most appropriate for the resolution of the controversies that emanate from the labor relationship. *UGT v. Hima San Pablo Caguas*, 202 DPR 917, 928 (2019); *AAA v. UIA*, *supra*; *Aut. Puertos v. HEO*, 186 DPR 417, 425 (2012); *C.F.S.E. v. Union de Médicos*, *supra*, p. 449. Therefore, when pursuant tothe Collective Bargaining Agreement that governs employee-employer relations, the parties agree to use the arbitration mechanism as an alternative

method, a substitute forum for the courts of justice is created, which "in effect, [...] represents a substitution of the judge for the arbitrator". *Aut. de Puertos v. HEO, supra*, p. 424; *Hietel v. PRTC*, 182 DPR 451, 456 (2011); *J.R.T. v. Junta Adm. Muelle Mun. de Ponce*, 122 DPR 318 (1988).

Accordingly, "[t]he arbitration procedures and [the] awards issued in the labor field enjoy special deference before the courts of justice." *Hietel v. PRTC, supra*, p. 455; *Pagán v. Fund. Hospital Dr. Pila*, 114 DPR 224, 231 (1983); *S.I.U. de P.R. v. Otis Elevator Co.*, 105 DPR 832, 836 (1977). Consequently, the review of these is limited to determining the existence of fraud, improper conduct, lack of due process of law, violation of public policy, lack of jurisdiction or that the award does not resolve all the contentious issues. *C.F.S.E. v. Unión de Médicos, supra*; *Condado Plaza v. Assoc. Emp. Casinos PR*, 149 DPR 347, 353 (1999). Now, if the parties agree that the award be issued in accordance with the law, the courts of justice may correct legal errors in a manner consistent with the applicable law. *C.F.S.E. v. Unión de Médicos, supra*; *Condado Plaza v. Assoc. Emp. Casinos P.R., supra*; *J.R.T. v. Junta Adm. Muelle Mun. de Ponce*, *supra*, p. 326.

With regard to the nature of the procedural recourse to be used to challenge the worker-employer arbitration awards, it is necessary to highlight that "[t]he recourse to challenge [these] is not governed by the common and current procedural procedure of ordinary civil actions, governed by the Rules of Civil Procedure." (Emphasis supplied). R. Hernández Colón, *Práctica Jurídica de*

Puerto Rico: Derecho Procesal Civil, 5th ed., San Juan, LexisNexis, 2010, p. 512. See, *U.I.L. de Ponce v. Serralles Distillery, Inc.*, 116 DPR 348 (1985). **In such cases, review of arbitration awards is analogous to judicial review of administrative decisions**. *Dept. de Educación v. Díaz Maldonado*, 183 DPR 315, 326 (2011); *Aut. de Puertos v. HEO, supra*, p. 445; *Corp. PR Dif. Pub v. UGT*, 156 DPR 631, 640 (2002) (Rivera Pérez, opinion of conformity).

In other words, the procedure to be followed before the judicial forum for challenging worker-employer arbitration awards "[s]ould be similar to that used when the court, acting as an appellate forum, reviews the correctness or incorrectness of the judgment issued by a lower court or the decision of an agency in accordance with the *Rules for the Review Procedure of Administrative Decisions before the Court of First Instance*."[5] *Corp. de Crédito y Desarrollo Agrícola v. UGT*, 138 DPR 490, 494 (1995). See, also, *Rivera v. Dir. Adm. de los Tribunales*, 144 DPR 808, 821-822 (1998). Consequently, the term for filing the appeals for review of arbitration awards issued by the Conciliation and Arbitration Bureau shall be thirty (30) non-extendable days, counted as of filing in the records of the copy of the notification of the award. See, *U.I.L. de Ponce v. Destilería, Inc., supra*. See also Hernández Colón, *op. cit.*, p. 512.

5. Section 4 of the aforementioned Rules provides that "[t]he appeal of the review must be filed and received at the Office of the Court Clerk of the Court of First Instance within the jurisdictional term provided by law." 4 LPRA Ap. VIII-B, Sec. 4.

III.

On the other hand, and because it is extremely pertinent for the correct disposition of the controversies before our consideration, it should be noted that the right of the parties to have a higher court review the determinations issued by the lower courts -- or in this case, we add, the awards issued in worker-employer arbitration processes --is not automatic, but presuppose that the recources be perfected within the terms provided for the same. *Gran Vista I v. Gutiérrez y otros*, 170 DPR 174, 185 (2007). Therefore, in scenarios such as these, the rules that govern the perfection of all appeals must be strictly observed. *Isleta LLC v. Isleta Marina Inc*., 203 DPR 585, 590 (2019); *Soto Pino v. Uno Radio Group*, 189 DPR 84, 90 (2013); *DACO v. Servidores Públicos Unidos*, 187 DPR 704, 707 (2013).

In this sense, among some of the conditions to perfect any judicial recource -- including certiorari, appeals or review resources -- is the payment of filing fees. *M-Care Compounding v. Dpto. de Salud*, 186 DPR 159, 175 (2012); *Gran Vista I v. Gutiérrez y otros*, *supra*, p. 188. The requirement to pay these fees and to affix the internal revenue stamps seeks to cover the expenses associated with the judicial procedures. *M-Care Compounding v. Dpto. de Salud*, *supra*. See, *Gran Vista I v. Gutierrez et al., supra*.

In this regard, we must remember that Law No. 47-2009 -- which amended the provisions of the Code of Civil Procedure, 32 LPRA sec. 1477 *et seq*., regarding

the payment of fees --, in its Article 3, recognized the power of this Forum to establish by resolution the fees that the parties must pay for their appearances in civil cases filed before the Court of First Instance, the Court of Appeals, and the Supreme Court. Pursuant to this, this Court issued *In re Aprobación de los Derechos Civiles*, 192 DPR 397 (2015).

Regarding the review of arbitration awards, and as provided in *In re Aprobación de los Derechos Civiles*, *supra*, the payment of ninety dollars ($90.00) in internal revenue stamps is imposed -- with some exceptions -- in those contentious claims, of a civil nature that are seen in the upper chambers of the Court of First Instance. That is still the norm today.

IV.

Having established the foregoing, and regarding the validity of a judicial document to which the aforementioned internal revenue stamps are not adhered, it is necessary to refer to the provisions of Law No. 17 of March 11, 1915, known as the *Ley Regulando el Arancel de los Derechos que se van a Pagar en Causas Civiles* (hereinafter, "*Ley Regulando el Arancel*"), as amended, 32 LPRA sec. 1476. In its section 5, the aforementioned law provides that "[e]ach and every one of the documents or writings that require the payment of fees for their filing before the court, will be null and void and will not be admitted as evidence for trial unless said payment is duly evidenced." 32 LPRA sec. 1481. See Hernández Colón, *op. cit.*, p. 211. That is, the omission of attaching the corresponding

internal revenue stamps to a court document makes it null and ineffective, such that it is considered as not filed. *Id*. See also *Silva Barreto v. Tejada Martell*, 199 DPR 311, 316 (2017); *M-Care Compounding v. Dpto. de Salud*, *supra*, p. 176.

Thus, "[a] writ that must be submitted within a certain period and that by law must be accompanied by certain internal revenue stamps is deemed not to have been submitted and said period is not interrupted if the [tariff] stamps are omitted." *Maldonado v. Pichardo*, 104 DPR 778 (1976). Therefore, as a threshold requirement to invoke the jurisdiction of any reviewing forum, the party interested in reviewing any determination of a lower forum must pay the fees to which we have referred and adhere stamps to their appeal within the terms provided by law.[6] *M-Care Compounding v. Dpto. De Salud*, *supra*; *Gran Vista I v. Gutiérrez et al., supra*. However, the above rule is not absolute and admits exceptions.

For these purposes, and as a first exception, an indigent person -- who so proves it -- is exempt from paying tariffs. Sec. 6, *Ley Regulando el Arancel*, 32 LPRA sec. 1482. Regarding this exception, it is important to clarify that if a person requests litigation *in forma pauperis* without fraud or collusion, and the court subsequently rejects their request for those purposes, their appeal will

6. Regardless of the above, and as discussed, it is necessary to point out that nothing prevents a fee deficiency from being corrected if it is done within the jurisdictional term contemplated by the different procedural rules for the improvement of the resources in question.

not be dismissed even if the fees are paid after the term to appeal has lapsed. *M-Care Compounding v. Dpto. de Salud, supra*. See, *Gran Vista I v. Gutiérrez et al*., supra.

As a second exception, the dismissal would not proceed when the tariff deficiency occurs without the intervention of the party or the intention to defraud, but due to the inadvertence of a judicial official, who mistakenly accepts a document without payment or for a lesser amount of the corresponding tariffs. *M-Care Compounding v. Department of Health, supra*. See, *Salas v. Baquero*, 47 DPR 108 (1934). Nor is a judicial writ null and void if the insufficiency was due to the erroneous instructions of the Clerk of a Court. *M-Care Compounding v. Department of Health, supra*.[7]

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7. Thus, to avoid the dismissal of appeals, the parties to a dispute must comply with the terms imposed by the different civil procedural rules -- as well as with the requirements for its improvement, which includes the payment of the corresponding fees -- because an appeal filed prematurely or belatedly deprives the forum to which it is sent of jurisdiction. See *Torres Alvarado v. Madera Atiles*, 202 DPR 495, 501 (2019); *Yumac Home v. Empresas Massó*, 194 DPR 96, 107 (2015).

As a consequence, an appeal that fails to comply with the foregoing would suffer from the serious and irremediable defect of lack of jurisdiction, the consequence of which is that its filing would not produce any legal effect because -- at the time of filing -- there was no judicial authority to accept it. *Ruiz Camilo v. Trafon Group, Inc*., 200 DPR 254, 269 (2018); *Torres Martínez v. Torres Ghigliotty*, 175 DPR 83, 98 (2008). In this scenario – that is, if the court determines that it does not have jurisdiction to address the matter presented for its consideration -- the immediate dismissal of the appeal proceeds. *Allied Management t Inc.* v. *Oriental*

However, no exception is recognized when the error in the payment of fees is attributable to the appealing party or his legal representative. *M-Care Compounding v. Dpto. de Salud, supra*, p. 177. Such is the captioned case

V.

That said, it is necessary to review the resolution by this Curia in *M-Care Compounding v. Dpto. de Salud, supra*. In essence, in the aforementioned case, it called upon us to determine whether two parties allegedly affected by different resolutions that were issued by the Department of Health could jointly file a motion for review with the Court of Appeals, for the purpose of reviewing the aforementioned administrative resolutions, but paying only one (1) fee.

There, after a comprehensive analysis of the Rules of the Court of Appeals, *supra*, the Rules of Civil Procedure, *supra*, as well as the regulations regarding the payment of fees, we concluded that joint appeals could not be filed to review administrative resolutions of different cases, but that the parties had to file THEIR RECOURSES separately and with the cancellation of the respective fees. We stated that, once the resources were perfected in accordance with the aforementioned requirements, then the Court of Appeals could, *motu proprio* or at the request of a party, order the consolidation of these when they met the requirements for those purposes. The latter,

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Bank, 204 DPR 374, 386 (2020); *Torres Alvarado v. Madera Atiles*, 202 DPR 495, 501 (2019).

since the parties did not have the authority to consolidate cases, but this constituted an exclusive power of the court, in accordance with Rule 80.1 of the Rules of the Court of Appeals, 4 LPRA Ap. XXII-B, R 80.1.

It is, therefore, in light of the aforementioned regulations, that we proceed to resolve the controversy that concerns us.

VI.

As previously mentioned, in the present case, the UGT maintains that the Centro Médico del Turabo, Inc. did not perfect its appeals for the review of two (2) labor-management arbitration awards since, in its opinion, it had to present an appeal for each arbitration award that it intended to have reviewed, with the corresponding payment of fees and within the jurisdictional term of thirty (30) days. Consequently, it argues that the request for dismissal of the review of arbitration awards is appropriate, as concluded by the primary forum.

Meanwhile, the Centro Médico del Turabo, Inc. argues that the case of *M-Care Compounding v. Dpto. de Salud, supra*, cannot be applied to the dispute at hand, because in said case interprets the *Rules of the Court of Appeals*, *supra*. It reasons that said Regulation is inapplicable to the case in question, since the latter is governed by the *Rules of Procedure for the Review of Administrative Decisions before the Court of First Instance, supra*, which -- in its view -- do not prohibit the joint filings of appeals for review of arbitral awards. Centro Médico del Turabo,

Inc. is incorrect.

And it is that, pursuant to the regulations previously outlined, if Centro Médico del Turabo, Inc. was interested in challenging the two (2) worker-employer arbitration awards here in controversy, it had to file two (2) appeals for review, both within the jurisdictional term of thirty (30) days from the filing a copy of the notification of the aforementioned awards in the records. Similarly, and considering that in the case of caption none of the previously mentioned exceptions to the payment of fees were configures, the Centro Médico del Turabo, Inc. had to include in both appeals for review the payment of fees corresponding to each award; that is, ninety dollars ($90.00) for each recourse. However, it did not do so, so the Court of First Instance --correctly ruled --that it lacked jurisdiction to resolve the same.

Even when the Centro Médico del Turabo, Inc. remitted the payment of the remaining ninety dollars ($90.00) for fees -- which, it is worth noting, occurred after the thirty (30) jurisdictional term to which we have made reference – it was unable to perfect in a timely manner, any appeal for review corresponding to any of the arbitral awards. Contrary to the resolution by the Court of Appeals, said error could not be rectified *a posteriori*, much less at the discretion of one of the parties. Thus, the aforementioned errors were committed.

VII.

For the aforementioned reasons, we revoke the Judgment issued by the Court of Appeals and reinstate, in its entirety, that issued by the Court of First Instance.

Judgment pursuant hereto will be issued.

/s/_____
Ángel Colón Pérez
Associate Judge

Appendix A

IN THE PUERTO RICO SUPREME COURT

CC-2020-0449
consolidated with CC-2020-0487

UNIÓN GENERAL DE TRABAJADORES,

Petitioner,

v.

CENTRO MÉDICO DEL TURABO, INC. D/B/A HOSPITAL HIMA SAN PABLO CAGUAS AND HOSPITAL HIMA SAN PABLO FAJARDO,

Appealed

UNIÓN GENERAL DE TRABAJADORES,

Appealed,

v.

CENTRO MÉDICO DEL TURABO, INC. D/B/A HOSPITAL HIMA SAN PABLO CAGUAS AND HOSPITAL HIMA SAN PABLO FAJARDO,

Petitioner.

JUDGMENT

In San Juan, Puerto Rico on March 15, 2021.

For the reasons stated in the foregoing Opinion, which is made part of this Judgment, we revoke the Judgment issued by the Court of Appeals and reinstate, in its entirety, that issued by the Court of First Instance.

I pronounce it, the Court so orders and the Acting Clerk of the Supreme Court so certifies. Associate Judge Mrs. Pabon Charneco and Associate Judge Mr. Rivera García concur without written opinion. The Presiding Judge Oronoz Rodríguez did not intervene.

/s/_____
Bettina Zeno González
Acting Clerk of the Supreme Court

APPENDIX B — OPINION OF THE COURT OF APPEALS FOR THE COMMONWEALTH OF PUERTO RICO, FILED OCTOBER 2, 2020

UNITED STATES COURT OF APPEALS FOR THE
COMMONWEALTH OF PUERTO RICO
PANEL VII

UNIÓN GENERAL DE TRABAJADORES,

Respondent,

v.

CENTRO MEDICO DEL TURABO, INC., d/b/a
HOSPITAL HIMA SAN PABLO CAGUAS AND
HOSPITAL HIMA SAN PABLO FAJARDO,

Petitioners.

KLCE202000522

CERTIORARI

From the Court of First Instance,
San Juan Part

Civil No.: SJ2019CV01554
(602)

Re: Challenge of Award

Appendix B

Panel comprised of its president, Judge Cintrón Cintrón, Judge Rodríguez Casillas and Judge Rivera Torres.

Rivera Torres, Judge Rapporteur

JUDGMENT

In San Juan, Puerto Rico, on August 26, 2020.

Comes now before this Court of Appeals Centro Medico del Turabo, Inc. d/b/a as Hospital HIMA San Pablo Caguas and Hospital San Pablo Fajardo (hereinafter the petitioner or HIMA) through the writ of certiorari of caption requesting that we revoke the Judgment issued by the Court of First Instance (the CFI), San Juan Superior Part on April 13, 2020, notified on the following 17th. Through the aforementioned determination, the primary court dismissed the request to challenge two arbitration awards for lack of jurisdiction.

For the reasons set forth below, we issue the writ of ***certiorari*** and revoke the judgment appealed from.

I.

On January 10, 25 and 27, 2017, the Unión General de Trabajadores (hereinafter the UGT or the respondent), as representative of the unionized employees of the HIMA San Pablo Caguas and Fajardo Hospitals, filed three complaints against HIMA requesting arbitration before the Conciliation and Arbitration Bureau of the Department of Labor and Human Resources (Conciliation

and Arbitration Bureau). It requested that HIMA proceed to pay his clients - from both hospitals - the Christmas bonus corresponding to 2016 because it was dissatisfied with the exoneration that the Department granted it in this regard on December 6, 2016. The petitioner opposed the petition based on the aforementioned exemption.

The Conciliation and Arbitration Bureau listed the complaints as follows: A-17-1917 (Caguas Non-Professionals Unit), A-17-1970 (Caguas Professionals Units) and A-17-1774 (Caguas Professionals Unit of Fajardo). They were assigned to the Arbitrator, Mrs. Yolanda Cotto Rivera, who consolidated only the two related to the Caguas Hospital. After several procedures before the agency, on January 16, 2019, it issued two different arbitration awards notified independently, that is, one for the Unit of Professional and Non-Professional Employees of HIMA Caguas and another for the Unit of Professionals of HIMA Fajardo professionals. In both, HIMA, as employer, was ordered to pay unionized employees the 2016 Christmas bonus plus the penalty imposed by Law No. 148 of June 30, 1969, known as the Christmas Bonus Law, 29 LPRA sec. 501 *et seq.*, and 20 percent for attorney fees.[1]

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1. It is important to indicate that Arbitrator Cotto Rivera, even though she held hearings on April 9 and June 21, 2018, where she attended to matters of both awards jointly, did not consolidate the appeals presented by the UGT. It appears from the briefs that the parties submitted separate stipulations of facts, as well as submission projects, stipulated evidence and independent arguments **for each of the cases**.

Appendix B

On February 15, 2019, HIMA filed a *Petition for Review of Arbitration Awards* before the Court of First Instance. It requested that *the two awards* be revoked because it was not obliged to pay the Christmas bonus. In turn, the UGT filed a *Motion for Dismissal* requesting the denial of the application in accordance with the ruling of the Supreme Court in *M-Care Compounding et al. v. Dept. of Health*, infra. This is because more than one award was challenged in the appeal and HIMA only canceled fees for one. It also pointed out that in the Conciliation and Arbitration Bureau, the Arbitrator issued the awards separately, so that since they had not been consolidated, HIMA was obliged to present *two independent appeals for review before the TPI and not a single one that included both opinions*. This by constituting separate administrative resolutions.

On March 19, 2019, HIMA filed the corresponding opposition and that same day, consigned $90 in additional fees without recognizing any fee deficiency.[2] It stated that the jurisprudence indicated by the UGT was not applicable because in this case the controversy of law was identical in the two awards. HIMA also requested that an oral hearing be held, which was denied by the lower court on July 17, 2019.

Thus, on April 13, 2020, notified on the following 17, the CFI issued the contested Judgment **rejecting the petition for lack of jurisdiction**. This based on

2. See, Appendix to the Appeal, *Moción de Consignación de Aranceles*, at page 577.

M-Care Compounding et al. v. Dept. of Health, *infra*. In this regard, it stated that "... two different workers-management arbitration awards were effectively challenged, but paying fees for only one. Thus, the employer did not complete the appeals within the 30-day period that it had to do so, depriving us of jurisdiction to enter into the merits of its request."[3] The petitioner filed a Motion for Reconsideration, which was opposed by the respondent. The primary forum declared it Denied by the Ruling of June 10, 2020. In it, the lower forum stated:

> HAVING ADDRESSED AND REVIEWED AGAIN THE POSITIONS OF THE PARTIES, OUR JUDGMENT IS DECLARED DENIED TO THE MOTION FOR RECONSIDERATION. THE RULES FOR THE ADMINISTRATIVE REVIEW PROCEDURE BEFORE THE COURT OF FIRST INSTANCE **DOES NOT PROVIDE THE PARTIES POWER TO CONSOLIDATE CASES AUTOMATICALLY WITHOUT THE AUTHORIZATION OF THE COURT**. NOR DO THEY LEAVE WITHOUT EFFECT THE DUTY TO CANCEL FEES OR THEIR EFFECT ABOUT THE WRITS. LASTLY, ALTHOUGH THE FACTS OF THE M-CARE COMPOUNDING PHARMACY ET ALS. V. DEPARTMENT OF HEALTH, 186 DPR 159 (2012) CASE REGARDING PROCEDURAL INCIDENTS IN THE COURT OF APPEALS, ITS *RATIO DECIDENDI* IS APPLICABLE TO THE CASE OF RECORD.

3. See, Appendix to the Appeal, at page 676.

Appendix B

AN ISSUE THAT THE SUPREME COURT WILL ADDRESS.

[Emphasis Ours]

On July 28, 2020, we issued a *Resolution* granting the term of ten (10) days for the respondent to express himself. By means of a document titled *Argument of the Respondent*, on August 14, 2020, the order was fulfilled. Thus, we decree the recourse perfected.

After analyzing the briefs and the appeals file, as well as studied the applicable law, we proceed to rule.

II.

The Law of the Judiciary (Law No. 201-2003) provides in its Art. 4.006 (b) that our competence as Court of Appeals extends to discretionally reviewing orders and post-judgment resolutions issued by the Court of First Instance. 4 LPRA sec. 24y (b). In what is pertinent here, we point out that the review of the orders and judgments issued by the primary court, confirming, modifying, correcting or revoking an arbitration award, *are reviewable through the writ of certiorari before the Court of Appeals*.[4] The request will be formalized within the term of strict compliance of thirty (30) days following the date of the filing of a copy of the notification of the

4. We point out that an arbitration award, in general, has or enjoys a nature similar to that of a judgment or judicial decree. *U.G. T.v. Challenger Caribbean Corp.*, 126 DPR 22, 29 (1990).

resolution or appealed order. Rule 32(D) of the Rules of the Court of Appeals, 4 LPRA Ap. XXII-B R. 32(D); *Constructora Estelar v. Aut Edif. Púb.*, 183 DPR 1, 23 (2011).

The issuance of a writ of certiorari must be evaluated in light of the following criteria listed in Rule 40 of our Regulations (4 LPRA Ap. XXII-B):

> (A) If the remedy and the provision of the appealed decision, unlike its grounds, are contrary to law.
>
> (B) If the stated factual situation is the most appropriate for the analysis of the problem.
>
> (C) If there has been prejudice, partiality or gross and manifest error in the assessment of the evidence by the Court of First Instance.
>
> (D) If the matter raised requires more detailed consideration in light of the original records, which must be filed, or of more elaborate arguments.
>
> (E) If the stage of the procedure in which the case is filed is the most propitious for its consideration.
>
> (F) If the issuance of the order or the order to show cause does not cause an undue division of the lawsuit and an undesirable delay in the final solution of the litigation.

> (G) If the issuance of the order or the order to show cause avoids a failure of justice.

In short, the aforementioned rule requires that, as an appellate court, we assess whether any of the circumstances listed above is present in the petition for *certiorari*. If any are present, we can exercise our discretion and intervene with the appealed opinion. Otherwise, we will be prevented from issuing the order, and therefore the determination of the court appealed must prevail. In addition, the current rule is that an appellate court will only intervene with the procedural discretionary interlocutory determinations of the court of first instance, when the latter has incurred in arbitrariness or in a gross abuse of discretion or in an erroneous interpretation or application of the law. *People vs. Rivera Santiago*, 176 DPR 559, 580-581 (2009).

On the other hand, on repeated occasions our Highest Judicial Curia has reaffirmed that the courts must be zealous guardians of our jurisdiction. *Cordero v. Oficina de Gerencia de Permisos y otros*, 187 DPR 445 (2012); *Vázquez v. ARPe*, 128 DPR 531, 537 (1991); *Martínez v. Junta de Planificación*, 109 DPR 839, 842 (1980). Issues relating to jurisdiction, being privileged, must be resolved in preference to any others. *S.L.G. Szendrey-Ramos v. F. Castillo* 169 DPR 873, 882 (2007); *Morán v. Martí*, 165 DPR 356, 364 (2005); *Vega et al. v. Telefónica*, 156 DPR 584, 595 (2002). Once a court understands that it does not have jurisdiction, it only has the authority to declare it so, and therefore dismiss the appeal. *Carattini v. Collazo Syst. Analysis, Inc.*, 158 DPR 345, 355 (2003).

On the other hand, the Puerto Rico Supreme Court has been emphatic that the parties have the obligation to strictly observe the regulatory requirements to perfect the recourses that are brought before the courts. *Hernández Maldonado v. Taco Maker*, 181 DPR 281, 290 (2011); *García-Ramis v. Serrallés*, 171 DPR 250, 253 (2007). Said obligation extends to the payment of the fees corresponding to the filing of the appeal; especially when it is clearly established in our legal system that any judicial document that is filed without canceling the corresponding internal revenue stamps that the law requires is null and ineffective. *Gran Vista I, Inc. v. Gutiérrez Santiago*, 170 DPR 174, 189 (2007).

Regarding the importance of paying the fees, the Supreme Court has stated the following: "the requirement to pay these fees and to affix the internal revenue stamps to all judicial documents seeks to cover the expenses associated with judicial procedures." *M-Care Compounding et al. v. Dept. Health*, 186 DPR 159, 174 (2012). If the adhesion of said seals to a judicial document is omitted, the document is null and void. *Id*. This is established in the Civil Procedure Code, whose provisions were amended by Law No. 47-2009 to review the new fees that citizens must pay to process civil actions in court and a single payment system at the appearance of the first party in civil cases brought before the Court of First Instance, the Court of Appeals and the Supreme Court. *Id*.

Therefore, failure to pay filing fees **deprives the court to which an appeal is made of jurisdiction to address the recourse** imposed. *González v. Jiménez*, 70 DPR 165 (1949). The general rule on the nullity of writings that are filed without payment of a fee admits few exceptions. The Supreme Court listed in *M-Care Compounding et al. v. Dept. Health*, supra, those instances in which the payment of fees can be exempted. To these effects, the highest Curia stated:

> "The law itself recognizes as an exception that an indigent person is exempt from paying fees. Our jurisprudence has recognized this exception. In turn, as a corollary of the foregoing, we have also provided as an exception that if a person applies for the first time in the appellate stage that they be allowed to litigate as indigent, without fraud or collusion on their part, and the court rejects their request, their appeal will not be dismissed if they file the corresponding fees after the appeal period has expired, once the request is denied to litigate in forma pauperis." Id., at pp. 176-177 (citations omitted).

On the other hand, the Supreme Court has also recognized that the dismissal does not proceed when, due to inadvertence of a judicial officer, **a writ is accepted by mistake without any payment or less than the corresponding amount to pay**. "Nor is the judicial writ null and void if the insufficiency is due to the erroneous instructions of the Clerk of the Court, without intervention of the party, collusion or intent to defraud." Id.

Appendix B

Supreme Court Resolution ER-2015-01 of March 9, 2016, established a new fee structure, which entered into force on August 30, 2015. *In re Approval of Customs Duties Payable to the Secretary(ies), Bailiff(s) and other Personnel of the Judicial Branch who Perform Collection Functions*, 192 DPR 397 (2015). In it, it imposes the payment of $90 in internal revenue stamps, with some exceptions, in those contentious claims of a civil nature that are seen in the superior chambers of the Court of First Instance. Id., p. 398.

On the other hand, regarding the filing of joint appeals to review administrative resolutions of different cases, the Supreme Court has established that "[e]ach resolution must be reviewed by filing a separate appeal for review and with the cancellation of the respective fees. *M-Care Compounding et al. v. Dept. Health*, supra, on p. 182. Once the appeals have been filed separately, the Court of Appeals *motu proprio*, or at the request of a party, may order consolidation. *Id*. Furthermore, non-compliance with the requirements on the filing of appeals may deprive the Court of Appeals of jurisdiction. *Id.* By ruling thus, the Supreme Court reasoned as follows:

> **The filing of each recourse individually is a necessary measure to promote a good administration of justice.** Otherwise, this concession would cause multiple negative repercussions that would affect said guiding principle. Allowing the filing of appeals on different decisions would lend itself to the parties beginning to file appeals and joint

> appeals on different resolutions or judgments based on their own criteria. This would have the effect that joint appeals are filed on resolutions or judgments with different controversies of fact or law, without the judgment of the appellate court.
>
> **The parties have no authority to consolidate cases; that is an exclusive power of the court.** Allowing an action like this would delay the procedures in court, since the judges could find themselves with cases that, although the parties consider that they can be consolidated, in reality they are not. Furthermore, if the appeals filed together are unrelated, what action would the Court of Appeals have to take? Would it have to return them and ask the parties to file each one separately? Obviously, this would cause serious administrative and jurisdictional effects. (Emphasis ours) *M-Care Compounding et al. v. Dept. Health*, supra, p. 179.

In *Silva Barreto v. Tejada Martell*, 199 DPR 311 (2017) our Supreme Court reaffirmed the doctrine established in *M-Care Compounding et al. v. Dept. of Health*, supra, stating that Rule 17 of the Regulations of the Court of Appeals, 4 LPRA Ap. XXII-B (2012), only contemplates the joint filing when more than one person intends to appeal from the same opinion.[5] It was indicated that this

5. The Supreme Court clarified that several interlocutory determinations of the primary forum can be combined in the same appeal, **provided that they are issued in the same case** and that the appeal is filed in a timely manner.

procedural regulation **does not allow a party to group determinations of several cases in the same recourse**. So, when dealing with rulings in different cases, **the affected party must submit the appeals separately and pay the corresponding fees for each of them**. More importantly, in said case, the highest Judicial Forum resolved that, after interpreting the aforementioned Rule 17 and carrying out a comprehensive examination of the relevant regulations, by analogy, its provisions c**ould be extended to other kinds of recourses**, apart from appeals of judgments as strictly provided for in this regulatory precept.

III.

As we mentioned, the petitioner alleges that the Court of First Instance erred in dismissing the motion to challenge the awards using legal grounds not applicable to the administrative review procedures before it. To this effect, it adds that in the petition it **requests the examination of two awards** that present a single controversy of law, between the same parties, by the same Arbitrator, interpreting identical provisions of similar collective agreements, and evaluating the same evidence that was presented at a single hearing.[6] Therefore, it understands that there is no regulatory provision or interpretative jurisprudence that prohibits the filing of a single petition in these circumstances.

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6. See, *Petición de Certiorari,* at page 19.

Firstly, we reiterate that the parties have the obligation to strictly observe the regulatory requirements to perfect the recourses that are filed before the courts, which includes the payment of the fees corresponding to the filing of the recourse. Supreme Court Resolution ER-2015-01, supra, imposes the payment of $90 in internal revenue stamps on contentious civil claims. Likewise, Law No. 47-2009 clearly provides that the filing of a lawsuit in a contentious civil lawsuit in the Superior Chamber of the Court of First Instance cancels $90 of fees. As we indicated, in our legal system, **any judicial writ that is filed without canceling the corresponding internal revenue stamps that the law requires is null and void**.[7] Likewise, the aforementioned rule admits few exceptions.

In the present case, two awards were issued on January 16, 2019, which were notified that same day. Thus, HIMA had until *February 15, 2019* to file an *individual challenge request before the CFI*. Said challenge was made in a timely manner, but jointly and only fees of $90 were paid. This by understanding that it could consolidate the petitions. However, the additional $90 fee that was filed to the Secretary of the primary forum on March 19, 2019, *was made outside the aforementioned term.*

It is important to note that the petitioner could not, on its own initiative, consolidate the two awards and file a single appeal before the CFI. Consolidation proceeds in cases that are pending before the court and that present

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7. See, *Gran Vista I, Inc. v. Gutiérrez Santiago,* supra.

common issues of fact or law.[8] As we mentioned, **the parties do not have the authority to consolidate cases since it is an exclusive power of the court**. Therefore, the petitioner was prevented from consolidating both awards even though it understood that there were particular conditions to do so. Moreover, when Arbitrator Yolanda Cotto of the Conciliation and Arbitration Bureau issued different awards for each group of employees of the HIMA Caguas and Fajardo Hospitals. In this regard, it does not appear that the Arbitrator had ordered the consolidation as provided in Article XVIII of the *Regulation for the Internal Order of the Services of the Conciliation and Arbitration Bureau of the Department of Labor and Human Resources*, of September 7, 2016.[9]

Although the Arbitrator was authorized - by means of the regulatory precept - to hold a hearing to address several complaints, such proceeding did not imply an automatic consolidation. For this, a clear and unequivocal expression from the Arbitrator was necessary, which did not occur in the present case. According to what emerges from the aforementioned procedural process, it only consolidated the complaints related to the Caguas hospital.

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8. See, Rule 38.1 of the Civil Procedures, 32 LPRA Ap. V, R. 38.1; *Domínguez Castro et al. v. E.L.A. II,* 178 DPR 375, 416 (2010); *Vives Vázquez v. E.L.A.,* 142 DPR 113, 126 (1996).

9. The aforementioned articles empower the arbitrator, at his discretion or at the request of the parties, to group or consolidate all types of cases **for conciliation hearing purposes or to guarantee the procedural economy of the services** offered by the Bureau.

In conclusion, we reiterate that **the petitioner could not, on his own initiative, consolidate the two awards and submit a single appeal to the CFI**. By virtue of this, it is necessary to infer that HIMA was obliged to present two separate and independent appeals to the TPI to review each award.[10] Once pending in court, then it was appropriate to request the primary forum to consolidate these unless it, *motu proprio*, so determines.[11]

Therefore, it was essential to consign in time, before the Secretary, the amount of fees for each recourse individually. Therefore, HIMA had until February 15, 2019 to present both appeals for review. Once again, we emphasize that the parties must strictly observe the regulatory requirements to perfect an appeal filed in court. This includes the cancellation of the corresponding fees.

For its part, the appeal file does not show that HIMA was incorrectly instructed by personnel of the CFI Clerk's Office regarding the payment of the fees for each appeal, therefore the exception is not applicable. Nor do we

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10. In addition, if an application is submitted that does not substantially conform to the requirements of the Rules for the Procedure for the Review of Administrative Decisions before the Superior Court [today the Court of First Instance], 123 DPR 304 (1989), the Court may dismiss the appeal. Judicial review by the Court of First Instance in relation to awards would be governed by these Rules. *UGT v. Challenger Caribbean Corp.*, 126 DPR 22 (1990); *U.I.L. de Ponce v. Destilería Serrallés, Inc.*, 116 DPR 348 (1985).

11. See, Rule 38.1 of the Civil Procedure, *supra*.

understand that HIMA had the intention to defraud. In this sense, it is necessary to conclude that the challenge of one of the awards is null due to the timely failure to pay the fee. Therefore, the additional $90 in fees cannot cure the nullity of the application. In this regard, even when in the Motion for Consignment of Tariffs, HIMA presented the complementary tariffs, it was presented in excess of the 30-day term that had to perfect the appeal before the primary court.

Consequently, it is mandatory to infer that any appeal is only duly finalized if the payment of fees is made within the jurisdictional term or of strict compliance for its filing and completion pursuant to the applicable laws and regulations. By virtue of this, one of the appeals was not validly perfected, therefore the petition challenge turned out to be judicially null and ineffective.

Thus, we find that the petitioner correctly paid the fees for $90 corresponding to a single recourse. In other words, the full payment of the filing fee was paid for one of the requests for revision of the award. In this sense, the inevitable consequence is that the CFI may allow the continuation of the challenge procedure for one of the awards and declare the dismissal of the other. For these purposes, the primary forum must grant the petitioner the opportunity to state which award it intends or wishes to have reviewed. This will allow the CFI to issue a Partial Judgment, dismissing the rest as resolved here.

Finally, the criteria of Rule 40, cited above, being present, we issue the appeal and revoke the Judgment appealed for having committed the indicated error.

Appendix B

V.

For the aforementioned reasons, the appealed Judgment is revoked and we return the case for the continuation of the proceedings, in accordance with what is resolved here. We warn the CFI that it must await the remission of the corresponding mandate from this Curia, before acting and complying with what is ordered.

So notify.

It was agreed and ordered by the Court and certified by the Clerk of the Court of Appeals.

[Signature]
ATTY LILIA M. OQUENDO SOLIS
Secretary of the Court of Appeals

APPENDIX C — JUDGMENT OF THE COMMONWEALTH OF PUERTO RICO, GENERAL COURT OF JUSTICE, COURT OF FIRST INSTANCE SUPERIOR COURT, SAN JUAN PART, DATED APRIL 17, 2020

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
COURT OF FIRST INSTANCE
SUPERIOR COURT, SAN JUAN PART

CIVIL SJ2019CV01554 (602)

UNIÓN GENERAL DE TRABAJADORES

Respondent,

v.

CENTRO MÉDICO DEL TURABO, INC. d/b/a HOSPITAL HIMA SAN PABLO CAGUAS AND HOSPITAL HIMA SAN PABLO FAJARDO

Petitioner.

RE: ARBITRATION AWARDS ISSUED BY THE CONCILIATION AND ARBITRATION BUREAU IN CASES A-17-1774, A-19-1193, A-171774, A-19-1193, A-17-1970 and A-17 BY ARBITRATOR YOLANDA COTTO RIVERA

Appendix C

JUDGMENT

On February 15, 2019, Centro Médico del Turabo Inc. d/b/a Hospital HIMA San Pablo Caguas and Hospital HIMA San Pablo Fajardo (TMC), filed a *Petition for Revision of Arbitration Awards*, requesting the review of two awards issued in the cases *Unión General de Trabajadores v. Hospital HIMA San Pablo Caguas*, No. A-17-1917 and A-17-1970; and, *Unión General de Trabajadores v. Hospital HIMA San Pablo Fajardo*, No. A-17-1774.[1] In essence, it requested that both awards be annulled on the understanding that they were not issued in accordance with the law.

In response to the foregoing, on February 25, 2010, the Unión General de Trabajadores (UGT) filed a *Motion to Dismiss for Lack of Jurisdiction*. As its name indicates, it requests that the appeal be dismissed, alleging that it was not perfected. As grounds, it alleges that the employer consolidated in a single case the challenge of two (2) independent awards, but paid the fees corresponding to a single action; As far as it understands, they were not perfected as resolved in *M-Care Compounding v. Departamento de Salud*, 186 DPR 159 (2012).

On March 19, 2019, the TMC filed an *Opposition to the Motion to Dismiss*. In its brief, it argues that there is no rule that prohibits the filing of a single petition that

1. The petitioning party *motu proprio* consolidated its request to include, in a single court case, the two (2) arbitration awards that were brought in tandem before the Conciliation and Arbitration Bureau.

includes the review of more than one award.[2] It maintains that, in this case, the review of awards resolved by the same Arbitrator is requested, after receiving the same evidence, from the same parties and with identical results. Regarding the alleged lack of fees, it states that, if it had been committed, it is an error that does not make the petition null and void, but can be annulled, since it did not act fraudulently.

Considering the positions of the parties, the Court understands that there are no substantial disputes regarding essential and pertinent facts; so it is appropriate to dictate judgment in favor of the Unión without the need for a hearing.

From the documents and arguments of the parties, it appears that the UGT is the trade union organization that represents the employees of the TMC in the HIMA hospitals in Caguas and Fajardo. As for the Caguas hospital, the UGT represents two appropriate units. Namely, the "professional" employee unit and the "non-professional" employee unit. In Fajardo, the respondent represents the appropriate unit of "professional" employees.

The employee-employer relations for each of the three appropriate units are governed by three different collective agreements.

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2. On that same date, the TCM filed a *Motion for Payment of Fees*, which, without giving up its proposals, was accompanied by the payment of fees for the second award.

Appendix C

It appears from the records that the UGT filed three (3) complaints against the TMC on separate dates entitled *Request for Designation or Selection of Arbitrator* (January 10, 25, and 27, 2017), before the Bureau of Conciliation and Arbitration of the Department of Labor (NCA, by its acronym in Spanish). This corresponds to the three appropriate units that it represents in the hospitals in controversy. Different complaint numbers were assigned to the three cases: a) A-17-1774 Fajardo Professionals Unit; b) A-17-1917 Caguas Non-Professionals Unit; and, c) A-17-1970 Caguas Professionals Unit.

In each and every one of the cases, the violation of the respective Collective Bargaining Agreements was claimed, for allegedly not having paid the Christmas bonus corresponding to 2016.

Following the relevant procedure, they were assigned to Arbitrator Yolanda Cotto Rivera. However, she only consolidated complaints A-17-1917 (Caguas Non-Professionals Unit) and A-17-1970 (Caguas Professionals Unit). Case A-17-1774 (Fajardo Professionals Unit) was not consolidated with the previous ones.

Despite the foregoing, the Arbitrator held the hearings jointly on April 9, 2018 and June 21, 2018.

However, the attachments of the parties reflect that separate stipulations of facts were submitted for both cases A-17-1917 and 1970; as for A-17-1774. They also prepared submission projects, packages of stipulated documentary evidence and independent arguments for each of the two cases that subsisted.

Finally, although it is true that the hearings were held jointly, the parties continued to process the separate cases in accordance with how they had been handled by the CAB Arbitrator.

Thus, after the cases were submitted, on January 16, 2019, the CAB issued **two (2) independent awards**: one resolving the controversy of A-17-1917 and 1970 (HIMA Caguas Professionals and Non-Professionals); and another for A-17-1774 (HIMA Fajardo Professionals).

It is pertinent to point out at this stage that, although in both cases the parties are the same, the controversies of the right to be resolved were not; so in the case corresponding to the Caguas hospital, there was a matter of substantive arbitrability that was resolved, unlike the one in Fajardo. This was recognized by the parties, when submitting different submission projects and it arises from the submission adopted by the Arbitrator in the absence of a stipulation. The documentary evidence collected in the awards is not the same in both cases.

Thus, the matters having been submitted, on January 16, 2019, the Arbitrator issued two independent Awards. In the case of the appropriate units of Professionals and Non-Professionals of the HIMA Caguas Hospital, she determined that the controversy was substantively arbitrable and that the payment of the Christmas bonus was appropriate in accordance with Art. 17 of the Collective Bargaining Agreement. Regarding the appropriate unit of Professionals of the HIMA Fajardo Hospital, it was also determined that the employer violated

the other Collective Bargaining Agreement and ordered the payment of the bonus.

Both Awards were issued separately and notified independently, although on the same date.

In this case there is no dispute that on February 15, 2019, the employer filed its *Petition for Review of Arbitration Awards*, in which it requested the revocation of "... two awards of arbitration issued that impose the payment of the Christmas bonus for 2016 to its unionized employees of its Hospitals in Caguas and Fajardo…". Nor, that in its appearance it only paid the fees corresponding to one (1) single appeal which generated the request for dismissal.

There is no doubt that in our jurisdiction there is a vigorous public policy in favor of arbitration. It is understood that arbitration is the least technical, most flexible, least expensive and, therefore, most appropriate means for resolving disputes arising from the employment relationship. *C.F.S.E. v. Unión de Médicos*, 170 D.P.R. 443 (2007); *Martínez Rodríguez v. A.E.E.,* 133 DPR 986 (1993); J.*R.T. v. Hato Rey Psychiatric Hospital*, 119 DPR 62 (1987). For this reason, "[t]he arbitration procedures and awards issued in the labor field enjoy a special deference before the courts of justice for constituting the ideal procedure to resolve worker-management disputes quickly, comfortably, less costly and technically." *H.I.E.T.E.L. v. P.R.T.C.,* 182 D.P.R. 451 (2011). Before an arbitration agreement, the most prudent thing is judicial abstention, although the intervention is not prohibited.

C.F.S.E. v. *Unión de Médicos*, *supra*; *U.C.P.R. v. Triangle Engineering, Corp.*, 136 D.P.R. 133 (1994).

As far as the arbitrator's authority to hear a dispute is concerned, it is defined by the agreed arbitration clause, as well as by the submission agreement. Thus, said agreement is constituted, in defining the issues to be decided, and it is what controls, together with the applicable provisions of the collective agreement, the scope of authority of the arbitrator selected by the parties. *J.R.T. v. Corp. Crédito Agrícola*, 124 D.P.R. 846 (1989). In response to this deference and the respect that arbitration awards deserve, this has resulted in the development of a doctrine of clear self-restraint or abstention by the courts. *U.C.P.R. v. Triangle Engineering Corp.,* 136 D.P.R. 133 (1994).

The rules established around the judicial review of arbitration awards have been characterized by a marked deference to them. "In fact, when the use of the arbitration as a mechanism to adjust disputes is agreed upon, a substitute forum is created to the courts of justice, whose interpretation deserves great deference." *C.F.S.E. v. Unión de Médicos*, supra, at p. 448; *López v. Destilería Serrallés*, 90 D.P.R. 245 (1964); *J.R.T. v. Junta Adm. Muelle Mun. de Ponce*, 122 D.P.R. 318 (1988).

The review of arbitration awards is limited to determining: (1) the existence of fraud, (2) improper conduct, (3) lack of due process of law, (4) violation of public policy, (5) lack of jurisdiction, or (6) that the award does not resolve all the issues in dispute. *C.F.S.E. v. Unión de*

Médicos, *supra*, 448. However, when the parties agree that the arbitration award is in accordance with the law, the courts may correct legal errors in accordance with the applicable law. *Id*; *U.I.L. v. Destilería Serrallés*, 116 D.P.R. 348 (1985). In such a case, judicial review of arbitration awards is analogous to judicial review of administrative decisions. *C.F.S.E. v. Unión de Médicos*, *Id*; *Rivera v. Dir. Adm. Trib.*, 144 D.P.R. 808 (1998); *Condado Plaza v. Asoc. Emp. Casinos P.R.*, 149 D.P.R. 347 (1999). In tune with the previously stated, given the analogy of the award with administrative decisions, it has been established that the judicial review is to be limited to determining whether the agency acted arbitrarily or illegally or so unreasonably that its action constituted an abuse of discretion. *Camacho Torres v. A.A.F.E.T.,* 168 D.P.R. 66 (2006); *Rivera Concepción v. A.R.P.E.*, 152 D.P.R. 116 (2000); *Facultad para las Ciencias Sociales* v. *C.E.S.,* 133 D.P.R. 521 (1993).

It is a clear norm that even in those situations in which a court does have the power to review the merits of an award, the reviewing forum should not be easily inclined to decree the nullity unless the arbitrator has not resolved the dispute in accordance with law. The Supreme Court has warned that a discrepancy of criteria does not justify judicial intervention, since it destroys the fundamental purpose of arbitration to resolve the controversy quickly, without the costs and delay of the judicial process. *J.R.T. v. National Packing Co.*, 112 DPR 162, 165 (1982). In keeping with the foregoing, the arbitrator's appreciation of the facts is not reviewable, nor is the indications of errors entailed in considering, on their merits, questions

of fact about the evidence received by the arbitrators. *Cruz v. Hampton*, 112, D.P.R. 59, 64 (1982); *Autoridad Sobre Hogares v. Tribunal Superior*, 82 D.P.R. 344, 358-359 (1961).

In *U.I.L. de Ponce v. Destilería Serrallés*, *Inc., supra* page 355, the Supreme Court ruled that the procedure to be followed before the judicial forum for challenging an arbitration **award will be similar to that used when the court, acting as an appellate forum, reviews a judgment issued by a lower court or the decision of an administrative body**. The term to present the appeals for review of arbitration awards is thirty (30) days, from the date on which the BCA certifies having filed a copy of the notification thereof. *Ibid*; *Corporación de Crédito y Desarrollo Agrícola,* 138 D.P.R. 490 (1995). The nature of this term is jurisdictional. *Ibid*. An arbitration award occupies a very similar position to that of a court judgment. *Ríos vs. Puerto Rican Cement Corp*., 66 D.P.R. 470, 477 (1946).

As far as the dispute is concerned, Section 5 of Act No. 17 - 1915 (Act 17), as amended by Act No. 47 - 2009 (Act 47), provides that "each and every one of the documents or writings that require the payment of fees for their presentation before the court will be null and void and will not be admitted as evidence in court unless said payment is duly evidenced, in accordance with the regulations established for such purposes by the Chief Justice of the Supreme Court or the person in whom he/she delegates." 32 L.P.R.A. sec. 1481. In other words, an appeal that is filed without the corresponding stamps must be taken as not filed and does not have legal effects to interrupt

any term. "The failure to attach the corresponding internal revenue stamps to a document makes it null and ineffective, and a claim filed without the corresponding stamps must be considered as not filed." *Meléndez v. Levitt & Sons of P.R.*, Inc., 106 D.P.R. 437, 438 (1977).

In accordance with said regulation, the case of *M-Care Compounding Pharmacy et al. v. Departamento de Salud,* 186 D.P.R. 159 (2012) was resolved. In said case, the Supreme Court of Puerto Rico faced the controversy as to whether it should validate the filing of various appeals for review together, in order to review different administrative resolutions and, in addition, pay a single fee.

In that case, the Department of Health had issued two resolutions in different administrative procedures in favor of six pharmacies that requested a Certificate of Public Convenience and Necessity (CPCN), to establish health programs in the northeastern area of Puerto Rico. Two entities affected by the granting of the certificates filed a joint appeal of the two administrative resolutions, by filing a single appeal for judicial review.[3] Several of the pharmacies affected by the request for review requested the dismissal, stating that it constituted a *motu proprio* consolidation of two appeals of different administrative resolutions; paying fees for a single filing.

3. Subsequently, the situation was repeated with other determinations that were also challenged and consolidated in that case.

Appendix C

The Court of Appeals refused to dismiss as it understood that the appeal for review intrinsically proposed a consolidation of the two administrative determinations. In addition, it pointed out that both resolutions dealt with the same controversy.

Thus, the Supreme Court, regarding the fee payment controversy that concerns us, underlined that when the deficiency in the payment of fees is due to the party or its lawyer, the document by provision of law is voidable and, therefore, invalid.

The exception to the nullity rule, and therefore to dismissal, is when the fee deficiency occurs without the intervention of the party or the intention to defraud, but:

> ... due to the inadvertence of a judicial officer, who mistakenly accepts a document without payment or for an amount less than the corresponding fees. Neither is the judicial document null if the insufficiency was due to the erroneous instructions of the Clerk of the court, without the intervention of the party, collusion or intent to defraud.
>
> Therefore, we have pointed out that "[i]f the purpose of the law is to protect the fees of the state and prevent fraud against the treasury, it does not seem logical that once the rights of the state are covered, a party that is harmed in no way can take advantage of the error alleging that the judicial action is null from its origin."

> Thus, in these cases, the error can be corrected by the party that owes the payment of the fee.
>
> On the other hand, when the error in the payment of fees is due to the party or his attorney, no exception is recognized, but rather we are faced with the situation that the law contemplates: a document that lacks the corresponding fees. By law, the document is null and therefore invalid. Even if a court official accepts the insufficiency "deliberately" he commits a misdemeanor. (Quotes in the original omitted). *M-Care Compounding Pharmacy et al. v. Departamento de Salud*, 186 D.P.R. 159, 177 (2012).

Certainly, the parties do not have the authority to automatically consolidate cases without the authorization of the court. This is an exclusive power of the court. But even so, that is not the main deficiency of the above-captioned case.

CMT states that the standard of *M-Care Compounding Pharmacy et al. v. Departamento de Salud, supra*, is distinguishable from the case, since what it interprets is framed in the Rules of the Court of Appeals. However, we are not convinced by its position. Although it is true in the above captioned case, it is about the review of CAB decisions, there is no difference in terms of the importance of the payment of fees and its effect on deficient writings. Nor in that their attention is similar to that which must be given to the reviews of administrative agencies by

the Court of Appeals. On the other hand, in this case the parties were willing to pay additional fees as of the first day, and in this case they were submitted when the term to perfect the recourses had elapsed and the court did not have jurisdiction.

The fee deficiency in this case was not because TMC was an indigent litigant. Nor did it occur as a result of actions, omissions or erroneous instructions from the Secretariat. Rather, it was due to an error on the part of the party that consolidated two revisions of independently issued awards; but paid fees for only one.

In this case, from the beginning the UGT presented three (3) different requests for arbitration against TMC in the CAB. These were divided among three (3) appropriate units of two different hospitals and with three (3) separate Collective Bargaining Agreements. Each of them was assigned a different number. The Arbitrator consolidated the two (2) cases of the Hospital HIMA de Caguas; and independently addressed the Fajardo case, which included a different substantive arbitration dispute. However, we do not find in the records any CAB provision where cases A-17-1917 (Caguas Unit of Non-Professionals) and A-17-1970 (Caguas Professionals Unit); were consolidated with A-17-1774 (Fajardo Professionals Unit) regarding the merits.

Article XVIII of the Regulation for the Internal Order of the Services of the Conciliation and Arbitration Bureau of the Department of Labor and Human Resources, states that:

> The Bureau's management, at its discretion or at the request of the parties, may, at any time, consider separating, grouping or consolidating all types of cases for purposes of hearing, conciliation or to guarantee the procedural economy of the services offered by the Bureau. For these purposes, all requests must be addressed to the Director of the Bureau.[4]

On the contrary, from the beginning the attachments reflect that different submission projects were made, different documentary evidence was used and arguments that addressed particular controversies. Although it is true that a joint hearing was held, the Awards were issued separately and include different legal matters; although similar in terms of the interpretation of Article XVII of the Collective Bargaining Agreements.

It is not for us to judge the wisdom of the Arbitrator in having kept the cases separate and not formally consolidating them before the CAB. That determination deserves special deference from this court.

As a consequence, this leads us to conclude that there were indeed two challenges to different employer-employee arbitration awards; but payment of fees for only one. Thus, the employer did not perfect the appeals within the term of 30 days that it had to do so, depriving us of jurisdiction to enter into the merits of its request.

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4. https://www.trabajo.pr.gov/docs/Negociado%20de%20Conciliacion%20y%20Arbitraje/Reglamento%20para%20el%20Orden%20Interino%20de%20los%20Servicios%20del%20Negociado%20de%20Concilia cion%20y%20Arbitraje.pdf [*Sic*]

Appendix C

Jurisdiction is the power or authority that a court or administrative forum has to consider and decide cases or disputes. In order for a dispute to be properly addressed and adjudicated, the judge must have both jurisdiction over the matter and jurisdiction over the parties. Subject matter jurisdiction refers to the court's ability to address and resolve a dispute over a legal aspect. When there is no jurisdiction over the matter, there is a lack of authority and power to see the matter. *Shell v. Santos Rosado*, 187 DPR 109 (2012).

The lack of jurisdiction over the matter is characterized, entails and causes that: a) it is not likely to be corrected; b) the parties cannot voluntarily grant it to the court nor can the judge repeal it; c) the opinions are null (absolute nullity); d) the courts have the inescapable duty to examine their own jurisdiction; and, e) the appellate courts must examine the jurisdiction of the forum from which the appeal originates. Due to its nature and consequences, a statement of lack of jurisdiction over the matter may be made at any stage of the procedure, by any of the parties or by the court *motu proprio*; since said defect is insurmountable. *Aguadilla Paint v. Esso*, 183 D.P.R. 901 (2011).

At the time the CMT canceled the fee deficiency, the court no longer had jurisdiction to review the Awards of records, so the original action is null and void. The omission, although we do not doubt that it was involuntary and without any intention of fraud, was tried to be corrected belatedly, so the *Petition for Revision of Arbitration Awards* was not perfected in time.

Wherefore, since the court does not have jurisdiction to enter into the merits, the filing of the *Petition for Review of Arbitration Awards* is ordered.

REGISTER AND NOTIFY.

In San Juan, Puerto Rico, on April 13, 2020.

s/ **ARNALDO CASTRO CALLEJO**
SUPERIOR COURT JUDGE

APPENDIX D — OPINION OF THE GOVERNMENT OF PUERTO RICO, DEPARTMENT OF LABOR AND HUMAN RESOURCES, CONCILIATION AND ARBITRATION BUREAU, DATED JANUARY 16, 2019

GOVERNMENT OF PUERTO RICO
DEPARTMENT OF LABOR AND
HUMAN RESOURCES
CONCILIATION AND ARBITRATION BUREAU
P.O. Box 195540
San Juan, P.R. 00919-5540

CASE NO.: A-19-1193[1]

RE: SUBSTANTIVE ARBITRATION

CASE NOs.: A-17-1970 and A-17-1917

UNIÓN GENERAL DE TRABAJADORES

(Plaintiff),

v.

HOSPITAL HIMA SAN PABLO CAGUAS

(Defendants).

RE: CLAIM FOR 2016 CHRISTMAS BONUS
PROFESSIONAL AND NON-PROFESSIONAL
EMPLOYEES

1. Administrative number assigned to the arbitration request

Appendix D

ARBITRATOR YOLANDA COTTO RIVERA

I. INTRODUCTION

The arbitration hearings for the cases of heading were held on April 9 and June 21, 2018, at the Hima San Pablo Hospital facilities in Caguas, Puerto Rico.

Atty. Edwin Rivera Cintrón, legal advisor and spokesperson, appeared on behalf of the plaintiff, the Unión General de Trabajadores, hereinafter the "Unión". On behalf of the defendant, Hima San Pablo Caguas Hospital, hereinafter "the Employer", appeared attorneys Gianna Robles Vega and Yazmet Pérez Giusti.

The parties, thus represented, had the opportunity to present all the pertinent evidence in support of their allegations. The cases were submitted, for adjudication purposes, on August 31, 2018; date on which the term granted to file written arguments expired. Both arguments were received as established, so we are in a position to resolve.

Case A-17-1970 corresponds to the Professional Employees Unit and case A-17-1917 corresponds to the Non-Professional Employees Unit.

Appendix D

II. SUBMISSION

The parties did not reach an agreement regarding the submission, instead, they presented separate projects, namely:

FOR THE UNION

> Determine, in accordance with the law and the collective agreement, if the employer violated Article 17 of the Collective Agreement by not paying the Christmas bonus there provided for the year 2016. If ruled in the affirmative, order the payment of the Christmas bonus in the amount owed, as established in the Collective Bargaining Agreement, plus a percentage amount for penalty and an additional percentage sum for attorney fees. [sic]

FOR THE EMPLOYER

> Determine if this complaint is substantively arbitrable, after considering the legal arguments and the evidence submitted by the employer. If it is resolved that the present complaint is not substantively arbitrable, order the closure with prejudice of the same.
>
> If ruled that the complaint is arbitrable that the Honorable arbitrator determine, based on the evidence presented of the Collective Agreement and the applicable law, if payment of the

Appendix D

> Christmas bonus 2016 to unionized employees proceeds, despite the exoneration granted to the employer by the Department of Labor and Human Resources. [sic]

After evaluating both submission projects in light of the facts and the evidence admitted, in accordance with the power conferred on us by Article XIII, paragraph b, of the Regulation for the Internal Order of the Services of Bureau of Conciliation and Arbitration of the Department of Labor and Human Resources[2], we determine that the submission is as follows:

> Determine whether the complaints in cases A-17-1970 (Professional Employees Unit) and A-17-1917 (Non-Professional Employees Unit) are substantively admissible or not. If it is resolved that they are arbitrable, determine if the Employer violated Article 17 of the Collective Bargaining Agreements applicable to the Professional and Non-Professional Employee Units by not paying the Christmas bonus for the 2016 year by virtue of the exemption granted by the Bureau of Standards of the Department

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2. Article XIII

b) In the event that the parties do not reach a submission agreement on the date of the hearing, the arbitrator will require a draft submission from each party prior to the start of the same. The arbitrator will determine the precise issue(s) to be resolved taking into consideration the collective agreement, the contentions of the parties and the evidence admitted.

of Labor and Human Resources (DTRH [by its Spanish acronym]).

III. RELEVANT CONTRACTUAL PROVISIONS[3]

ARTICLE 17

CHRISTMAS BONUS

Section 1- Amount of Christmas Bonus

The Hospital will award all employees who have worked seven hundred (700) hours or more within period of twelve (12) months from the first of October of any calendar year to the 30th of September of the following year, under the terms provided by Law, a Christmas Bonus equivalent to six percent (6%) of the total income of employee, up to a maximum of ten thousand dollars ($10,000) or three percent (3%) of earnings up to a maximum of forty thousand dollars ($40,000.00), whichever is greater.

Section 2 - Date of payment of Christmas Bonus

Said payment will be made on or before December 15 of each year in which this Agreement is in force, providing that every employee who has ceased employment before

3. The applicable Collective Agreements are those in force from May 12, 2016 to May 11, 2020. Exhibits 2 and 4 Joint.

the date on which this bonus is paid, will only be entitled to receive the percentage of the bonus as provided by law. It is understood that all deductions required by law will be made.

Section 3 - Employees covered by this collective bargaining agreement who did not receive the adjusted bonus awarded by the Hospital in December 2015 will be paid an adjusted bonus of $300.00. The union filed a complaint in arbitration questioning the Hospital's interpretation of this article. If the union obtains a favorable final and firm award in this case, the hospital will be able to take a credit for the $300.00 paid to all employees of the unit. If the arbitration award is adverse to the Unión, the employees will retain and benefit from the $300.00.

IV. ADMITTED EVIDENCE

A. JOINT

Exhibit 1 - Professional Unit Collective Agreement, valid from April 1, 2011 to April 28, 2015.

Exhibit 2 - Professional Unit Collective Agreement, valid from May 12, 2016 to May 11, 2020.

Exhibit 3 - Non-Professionals Unit Collective Agreement, valid from April 1, 2011 to April 28, 2015.

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Exhibit 4 - Non-Professional Unit Collective Agreement, valid from May 12, 2016 to May 11, 2020.

Exhibit 5 - Letter dated December 6, 2016, signed by Atty. Lucila M. Vázquez, Director of Standards Bureau.

Exhibit 6 - Letter dated December 15, 2016, signed by Atty. Lucila M. Vázquez, Director of Standards Bureau.

A. EMPLOYER

Exhibit 1 - Closing Resolution of November 15, 2011.

Exhibit 2 - Motion to Close with Prejudice dated September 6, 2010.

Exhibit 3 - Non-Professionals Unit Collective Agreement, valid from January 1, 1995 to December 31, 1997.

Exhibit 4 - Non-Professional Unit Collective Bargaining Agreement, valid from July 1, 1998 to June 30, 2001.

Exhibit 5 - Non-Professional Unit Collective Bargaining Agreement, valid from January 1, 2002 to December 31, 2005.

Exhibit 6 - Non-Professional Unit Collective Bargaining Agreement, valid from January 1, 2006 to December 31, 2009.

Exhibit 7 - Professional Unit Collective Agreement, valid from January 1, 1995 to December 31, 1997.

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Exhibit 8 - Professional Unit Collective Agreement, valid from July 1, 1998 to June 30, 2001.

Exhibit 9 - Professional Unit Collective Agreement, valid from January 1, 2002 to December 31, 2005.

Exhibit 10- Professional Unit Collective Agreement, valid from January 1, 2006 to December 31, 2009.

Exhibit 11 - Arbitration Award for cases A-16-1962, A-16-1963 and A-16-2022, issued by arbitrator Jorge L. Torres Plaza.

Exhibit lla - Allegation by Employer for cases A-16-1962 and A-16-1963.

B. UNION

Exhibit 1 - Judgment of Court of First Instance in Civil Case No. E AC2017- 138 of February 20, 2018.

Exhibit 2 - Judgment of Court of Appeals in the KLCE case 201800673 of June 26, 2018.

V. STIPULATIONS OF FACTS[4]

1 - The employer-employee relations between the parties are governed by the Collective Agreements applicable to the units of professional

4. Quoted from the "Joint Motion on Stipulations of Facts", filed on June 21, 2018.

and non-professional employees, in force from May 12, 2016, until May 12, 2020. Exhibits 2 and 4 joint.

2 - In the requests for arbitration of record, the Unión claims payment of the Christmas bonus for the year 2016 under the Collective Agreements between the parties.

3 - The Employer claims not to owe the payment of Christmas bonus of 2016 claimed by the Unión in this case.

4 - On November 30, 2016, the Employer requested the Department of Labor and Human Resources (DTRH) the exemption from payment of Christmas bonus to its employees for the year 2016.

5 - Subsequently, the DTRH answered the request made by the Employer for exemption from the Christmas bonus payment for the year 2016.

VI. ANALYSIS AND CONCLUSIONS

The complaints before our consideration require us to determine if the Hima San Pablo Caguas Hospital violated Article 17 of the Collective Bargaining Agreements applicable to the Units of Professional and Non-Professional Employees, or not; this by not issuing the payment of the Christmas bonus for the year 2016 to the employees covered by said Collective Bargaining

Agreements. However, at the beginning of the appropriate procedures for holding the hearing, the Employer raised the defense of substantive arbitrability, so we must first resolve this approach.

A. ON SUBSTANTIVE ARBITRABILITY

The Employer argued that the claims were not substantively arbitrable under the defenses of collateral impediment and past practices. It maintained that the Unión filed two Christmas bonus complaints in the arbitration forum under cases A-10-1995 and A-10-1618. It maintained that in both cases the Unión requested the closure with prejudice. It argued that said closings with prejudice constituted an adjudication on the merits with respect to the claim of the Christmas bonus, coming as *res judicata*; therefore, the Unión was impeded from litigating these facts again.

In addition, it alleged as past practice the fact that the Unión had accepted the exemption granted to the Employer by the Department of Labor and Human Resources regarding the payment of the Christmas bonus through the withdrawal of cases A-10-1995 and A-10-1618. It argued that since 1995, the language of Article 17 of the Collective Agreements had been the same until the present, for which the Unión's claim did not proceed.

The Unión, for its part, argued that the employees covered by the aforementioned Collective Bargaining Agreements were entitled to the payment of the Christmas bonus for the year 2016, as provided in Article 17 thereof,

since the partial exemption granted to the Employer by the Department of Labor and Human Resources under Article 6 of Law 148 of June 30, 1969, as amended, known as the Christmas Bonus Law, only applied to employees who were not covered by a collective agreement.

Regarding the arbitrability of the complaints, it held that in these cases the doctrine of *res judicata* was not established, nor was the approach to past practices appropriate, since they were independent claims. Finally, it alleged that the lawsuits were subject to arbitration, since the award issued by Arbitrator Jorge L. Torres Plaza in cases A-16-1962, A-16-1963 and A-16-2022, between the same parties and for the same controversy, was revoked by the Court of First Instance and by the Court of Appeals, declaring the claims arbitrable for constituting independent claims.

Thus confirming the allegations of both parties, we are ready to rule.

In short, substantive arbitrability is a defense brought to challenge the jurisdiction and authority of the arbitrator to adjudicate a dispute and grant remedies. Said defense is presented with the purpose of preventing the arbitrator from passing judgment on the merits of the controversy. In the cases that concern us, after evaluating the evidence admitted in light of the arguments of the parties, we determined that the complaints are substantively arbitrable, since the collateral impediment doctrines are not set by judgment or past practices. Let's see.

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The defense of collateral impediment by judgment is a modality of the doctrine of res judicata, whose statutory basis is contained in Article 1204 of the Puerto Rico Civil Code, which establishes the following: "In order for the presumption of res judicata to take effect in another trial, it is necessary that between the case resolved by the judgment and the one in which it is invoked, there must concur the most perfect identity between the things, the causes, the people of the litigants and the quality with which they were."

Legally, the figure of collateral impediment by judgment has been recognized as a modality of the doctrine of *res judicata*. This takes effect when an essential fact for the pronouncement of a judgment is elucidated and determined by means of a firm and final judgment. Such a determination is conclusive in a second lawsuit between the same parties, even though different causes of action are involved. In other words, the defense of collateral impediment by judgment prevents litigation, in a later lawsuit, of an essential fact that was adjudicated by means of a final and firm judgment in a previous case. The figure of collateral impediment does not require the identity of causes, but the identity of the parties must be present.

As a general rule, the adjudication of an essential fact in a previous lawsuit constitutes a collateral impediment by judgment in a subsequent lawsuit. In the cases that concern us, the claim of the Christmas bonus for the year 2016 does not constitute the same core of facts or issues discussed in cases A-10-1995 and A-10-1618, as

the Employer alleged. The right that employers have to request exemption from payment of the Christmas bonus for each calendar year, categorically identifies the right recognized by law for a specific period. Each request for exemption and each claim for breach of the Christmas bonus payment constitutes a unique and independent claim. Therefore, the Unión is right in maintaining that the claims are not binding, since they contemplate different periods.

Regarding the approach to past practices, we must consider the following factors: clarity and consistency in the pattern of conduct; repetition of the activity; acceptability of the behavior pattern; and mutual recognition of the pattern of conduct between the parties. The Employer based his allegation on past practices in that the intention of the parties when consigning the phrase "under the terms provided by law", consistent in all collective agreements, referred to the application of the exemption from the payment of the Christmas bonus It maintained that this was demonstrated by the Unión through the withdrawal with prejudice of cases A-10-1995 and A-10-1618. Reason does not assist it. In our opinion, in these cases the doctrine of past practices is not configured, since the aforementioned criteria are not present for the Unión's alleged conduct to be interpreted as past practice.

Finally, our decision is supported by the determination of the Court of First Instance in case E AC2017-0138 on Judicial Review of the Arbitration Award of the cases

A-16-1962 and A-16-1963[5], by means of which the decision of the Arbitrator Jorge L. Torres Plaza was revoked by declaring the complaints non-arbitrable.

We concur with the statements of this Honorable Court when establishing that "*...the claim for compliance with an economic clause that had been agreed for the year 2009, under a previous collective agreement has nothing to do with, and therefore, is not binding to a similar payment claim agreed upon as the one made in this case under a subsequent Collective Agreement. There is no identity of causes between the claim for the Christmas bonus of May 2015, negotiated under a collective agreement, and another claim for the same concept for the year 2009, under another contractual relationship.*"

Although it is true that in the cases that concern us, the bonus claimed corresponding to the year 2016, is covered under the same Collective Agreement as the bonus of the year 2015, the truth is that each claim for payment of the annual bonus includes different periods for the which the Employer filed separate requests for exemption. There is no identity of causes between the claim of the Christmas bonus for the year 2015 and the Christmas bonus for the year 2016. The determination of the Court of First Instance, cited above, was ratified by the Court of Appeals in case KLCE 201800673 whereby, in pertinent its part, it was established that the Court of First Instance correctly determined that the disputes submitted were substantively arbitrable.

5.

Therefore, we reaffirm that the complaints are substantively arbitrable, and we are in a position to adjudicate the merits of the complaints.

B. ABOUT THE MERITS

It is up to us to determine if the Employer violated Article 17 of the Collective Agreements applicable to the Professional and Non-Professional Employee Units, by not paying the Christmas bonus corresponding to the year 2016.

The Unión argued that the payment of the bonus provided for in Article 17 of the Collective Bargaining Agreements was in order, since the exemption granted to the Employer by the DTRH under Law No. 148 of June 30, 1969, as amended, did not apply to employees covered by said Collective Bargaining Agreements.

The Employer, for his part, argued that he does not owe the payment of the Christmas bonus claimed by the Unión, since Article 17 of the Agreements provides that the payment of said bonus will be made "under the terms provided by law", including that related to the exemption. It argued that with respect to the bonus for the year 2016, the DTRH granted the requested exemption, which, in accordance with the language of Article 17 of the Collective Bargaining Agreement, applies to the unionized employees of both appropriate units. Thus confirming the position of both parties, we are ready to rule.

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In Puerto Rico there is a vigorous public policy in favor of collective bargaining and the resolution of disputes through the arbitration process, this being the means to maintain a "reasonably peaceful and fruitful industrial peace and because it is the way in which the labor movement and its unions exercise and develop, something that is considered desirable because it is useful and fair". *Nazario v. Tribunal Superior*, 98 D.P.R. 846 (1970). Collective agreements constitute the law between the parties as long as their provisions are in accordance with the law, morality and public order. *Article 1207 of the Puerto Rico Civil Code, 31 L.P.R.A., section 3372; J.R.T. v. Vigilantes, 125 D.P.R. 581 (1990); Industrial Licorera de Ponce v. Destilería Serrallés, Inc.*, 116 D.P.R. 348 (1985).

Since collective agreements are contracts and are governed by the provisions of the Civil Code, the obligations arising from them have the force of law between the parties, so what is expressly agreed upon must be complied with. Thus, the parties that are subject to a collective agreement are obliged to faithfully follow its provisions and are prevented from ignoring its terms and acting as if it did not exist. *San Juan Mercantile Corp. v. J.R.T.*, 104 D.P.R. 86 (1975).

If the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of its clauses will apply. The terms of a contract are clear when they are sufficient in content to be understood in a single sense, without giving rise to doubts or controversies, without diversity of interpretations and without the need for reasoning or demonstrations

susceptible of interpretation for their understanding. *Sucesión Ramírez v. Tribunal Superior*, 81 D.P.R. 357 (1959).

In the cases at hand, the Collective Agreements between the parties contain in Article 17, the provisions regarding payment of the Christmas bonus. As pertinent, the Article mentioned above shows that the payment of said bonus will be granted to all employees who have worked seven hundred (700) hours or more within the period of twelve (12) months, from the first of October of any calendar year to the 30th of September of the following year, "*under the terms provided by law*"; referring to Law No. 148 of June 30, 1969, as amended. The amount of the Christmas bonus negotiated by the parties establishes a bonus equivalent to six percent (6%) of the employee's total income, up to a maximum of ten thousand dollars ($10,000), or three percent (3%) up to a maximum of forty thousand dollars ($40,000.00), whichever is greater.

On the other hand, Law No. 148 of June 30, 1969, as amended, created to establish the payment of a bonus to certain employees of the private sector and provide the form and term of payment, establishes in its Article 1, in synthesis, the period and the number of hours an employee must work to be credited with the bonus. It also establishes the sum or the amount to which workers who comply with the number of hours worked within the established period are entitled.

Article 5 of Law No. 148, supra, speaks about the employees excluded from its provisions, namely: employees

in agricultural activities, in domestic service or in family residence, in charitable institutions and employees of the Commonwealth, its public corporations and municipalities. Article 6 of said Law contains the exceptions, establishing that its provisions will not apply in those cases where the workers receive annual bonuses through collective agreements; except in cases where the amount of the bonus to which they were entitled through such collective agreements turns out to be less than that provided by law; in which case they will receive the amount necessary to complete the bonus provided by law.

If we turn to the legislative history of Law No. 148, supra, in H. B. 364, 6th legislative assembly, 1st regular session, under the authorship of Messrs. Viera Martínez, Otero Bosco, Padilla and others, of May 12, 1969, as is pertinent, it arises that the intention of the legislators regarding the bonus was not to impose an additional economic burden on the employers, but rather to share equitably the profits generated with the efforts of the workers through the payment of an annual bonus. It was their intention, furthermore, that the payment of said bonus be made during the Christmas period, as they understood that on that date is when the worker most needs it to enjoy those days with his family with greater enthusiasm.

It arises from said piece of legislation that the employers referred to in the law include natural or legal persons who, for profit or not, employ two or more workers simultaneously and pay them compensation for their services. From the text of the piece of legislation cited above, the following can be found on page 5:

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> "Persons employed in agricultural activities, in domestic service and in charitable entities are excluded from the provisions of the law. In none of these cases are there profits to consider. Also excluded, for obvious reasons, are those civil servants and employees of the Commonwealth who hold positions or jobs of a continuous or irregular nature.
>
> ***As there are already some cases in which workers or employees receive an annual bonus as part of a collective agreement, the law provides that in these cases its provisions will not apply, except to increase said bonus to the amount provided in the law when the bonus is less than the statutory one.*** *" (Emphasis Ours).*

Note that the intention of the legislators was to exclude from the provisions of the law:

(1) those workers whose employers do not generate profits, since, as we mentioned before, the purpose of the bonus is not to impose an additional economic burden on the employers, but to share the profits generated with the efforts of the workers; (2) workers who receive an annual bonus as part of an agreement, with the exception of raising the amount of said bonus when it is less than that established by law.

In the aforementioned H. B. 364, supra, the legislators recognized that prior to the creation of the law, there were already some workers or employees who received an annual bonus as part of a collective agreement, therefore,

by way of exception, despite the fact that these employers who have a collective agreement can generate profits, **they were excluded from the provisions of the law to respect the agreements made in the collective agreements**; except when the amount of the annual bonus provided by the collective agreement is less than that provided by law.

Thus, the Unión's interpretation is correct regarding Law No. 148 of June 30, 1969, as amended, through its Article 6, excludes from its provisions, by way of exception, employees who receive annual bonuses by collective agreement, except in cases in which the amount of the bonus to which they were entitled by means of such collective agreements is lower than that provided by law; in which case they will receive the amount necessary to complete the bonus provided by law.

In the present cases, regardless of the fact that Article 17 of the Collective Bargaining Agreement provides that the bonus will be granted "*under the terms provided by law*"; it arises from the provisions of Law No. 148, supra, that this is **not applicable to employees who receive annual bonuses through collective agreements, *except* in cases in which the amount of the bonus to which they are entitled through such collective agreements is less than that provides the law**. In addition to the aforementioned exception, no other provision of Law No. 148, supra, is applicable to employees who receive annual bonuses by provision of a collective agreement; since, in such cases, the language negotiated by the parties in the Collective Agreement is the one that will prevail, establishing the specific terms that govern the granting of said bonus.

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After analyzing the provisions of Article 17 of the Collective Bargaining Agreements, it arises that the amount of the bonus negotiated by the parties is not less than that provided by Law No. 148, supra, for which its provisions do not apply. Any agreement to the contrary would be null.

Finally, from the wording of the aforementioned Article 17, no language arises regarding how to proceed with the payment of the bonus in case the Employer has not obtained profits in his business; therefore, we consider that the intention of the parties was to grant the bonus regardless of the profits obtained by the Employer. If the intention of the Employer was that the concession of the bonus was subject to the profits generated, according to the spirit of the law, the parties had to negotiate it and establish it textually in Article 17 of the Collective agreement; since the phrase "*under the terms provided by law*" does not have the effect of extending all the provisions of Law No. 148, supra, to the employees covered by it. In our opinion, the phrase "*under the terms provided by law*", contained in Article 17 of the Collective Bargaining Agreements, only refers to the number of hours worked and the period to be considered to be creditor of the bonus; language that was adopted by the parties of the provisions of Law No. 148, supra.

Thus, in accordance with the foregoing analysis, we determine that the payment claimed by the Unión proceeds, since the exemption from the payment of the Christmas bonus granted to the Employer for the year 2016 is not applicable to the employees covered by the Collective Bargaining Agreements.

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VII. DECISION

We determine that the complaints in cases A-17-1970 (Professional Employees Unit) and A-17-1917 (Non-Professional Employees Unit) are substantively arbitrable. Regarding the merits, we determined that the Employer violated Article 17 of the Collective Bargaining Agreements applicable to the Professional and Non-Professional Employee Units. The payment of the Christmas bonus corresponding to the year 2016 is ordered, plus the penalty provided by law, and twenty percent (20%) is granted for attorney fees.

REGISTER AND NOTIFY.

In San Juan, Puerto Rico, on January 16, 2019.

/s/_____
Yolanda Cotto Rivera
Arbitrator

APPENDIX E — OPINION OF THE GOVERNMENT OF PUERTO RICO, DEPARTMENT OF LABOR AND HUMAN RESOURCES, CONCILIATION AND ARBITRATION BUREAU, DATED JANUARY 16, 2019

GOVERNMENT OF PUERTO RICO
DEPARTMENT OF LABOR
AND HUMAN RESOURCES
CONCILIATION AND ARBITRATION BUREAU
P.O. Box 195540
San Juan, P.R. 00919-5540

CASE NO.: A-17-1774

UNIÓN GENERAL DE TRABAJADORES

(Plaintiff)

v.

HOSPITAL HIMA SAN PABLO FAJARDO

(Defendants).

RE: CLAIM FOR 2016 CHRISTMAS BONUS

ARBITRATOR YOLANDA COTTO RIVERA

I. INTRODUCTION

The arbitration hearing of this case was held on April 9 and June 21, 2018, at the facilities of Hima San

Pablo Hospital in Caguas, Puerto Rico. The recorded appearance was as follows:

Atty. Edwin Rivera Cintrón, legal advisor and spokesperson, appeared on behalf of the plaintiff, the Unión General de Trabajadores, hereinafter the "Unión". On behalf of the defendant, Hima San Pablo Fajardo Hospital, hereinafter "the Employer", appeared attorneys Gianna Robles Vega and Yazmet Pérez Giusti.

The parties, thus represented, had the opportunity to present all the pertinent evidence in support of their allegations. The cases were submitted, for adjudication purposes, on August 31, 2018; date on which the term granted to file written arguments expired. Both arguments were received as established, so we are in a position to resolve.

II. SUBMISSION

The parties did not reach an agreement regarding the submission, instead, they presented separate projects, namely:

The parties did not reach an agreement regarding the submission, instead, they presented separate projects, namely:

FOR THE UNION

> Determine, in accordance with the law and the collective agreement, if the employer violated

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> Article 17 of the Collective Agreement by not paying the Christmas bonus there provided for the year 2016. If ruled in the affirmative, order the payment of the Christmas bonus in the amount owed, as established in the Collective Bargaining Agreement, plus a percentage amount for penalty and an additional percentage sum for attorney fees. [sic]
>
> FOR THE EMPLOYER
>
> Determine if this complaint is substantively arbitrable, after considering the legal arguments and the evidence submitted by the employer. If it is resolved that the present complaint is not substantively arbitrable, order the closure with prejudice of the same.
>
> If ruled that the complaint is arbitrable that the Honorable arbitrator determine, based on the evidence presented of the Collective Agreement and the applicable law, if payment of the Christmas bonus 2016 to unionized employees proceeds, despite the exoneration granted to the employer by the Department of Labor and Human Resources. [sic]

After evaluating both submission projects in light of the facts and the evidence admitted, in accordance with the power conferred on us by Article XIII, paragraph b, of the Regulation for the Internal Order of the Services of the Conciliation and Arbitration Bureau of the Department

of Labor and Human Resources, we determine that the submission is as follows:

> Determine whether the complaints in cases A-17-1970 (Professional Employees Unit) and A-17-1917 (Non-Professional Employees Unit) are substantively admissible or not. If it is resolved that they are arbitrable, determine if the Employer violated Article 17 of the Collective Bargaining Agreements applicable to the Professional and Non-Professional Employee Units by not paying the Christmas bonus for the 2016 year by virtue of the exemption granted by the Bureau of Standards of the Department of Labor and Human Resources (DTRH [by its Spanish acronym]).

II. RELEVANT CONTRACTUAL PROVISIONS[1]

ARTICLE 17

CHRISTMAS BONUS

Section 1- Amount of Christmas Bonus

> The Hospital will award all employees who have worked seven hundred (700) hours or more within period of twelve (12) months from the first of October of any calendar year to

1. The applicable Collective Agreements are those in force from May 12, 2016 to May 11, 2019. Joint Exhibit 1.

the 30th of September of the following year, under the terms provided by Law, a Christmas Bonus equivalent to six percent (6%) of the total income of employee, up to a maximum of ten thousand dollars ($10,000) or three percent (3%) of earnings up to a maximum of forty thousand dollars ($40,000.00), whichever is greater.

Section 2 - Date of payment of Christmas Bonus

Said payment will be made on or before December 15 of each year in which this Agreement is in force, providing that every employee who has ceased employment before the date on which this bonus is paid, will only be entitled to receive the percentage of the bonus as provided by law. It is understood that all deductions required by law will be made.

IV. JOINT EVIDENCE

Exhibit 1 - Professional Unit Collective Agreement in force from May 25, 2016 to May 24, 2019.

Exhibit 2 - Letter dated December 6, 2016, signed by Atty. Lucila M. Vázquez, Director of the Standards Bureau of the Department of Labor and Human Resources - DTRH.

Exhibit 3 - Letter dated December 15, 2016, signed by Atty. Lucila M. Vázquez, Director of the Standards Bureau of the Department of Labor and Human Resources - DTRH.

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V. STIPULATIONS OF FACT[2]

1 - The employer-employee relations between the parties are governed by a Collective Agreement in force from May 25, 2016 to May 24, 2019. Joint Exhibit 1.

2 - In the requests for arbitration of record, the Unión claims payment of the Christmas bonus for the year 2016 under the Collective Agreements between the parties.

3 - The Employer claims not to owe the payment of Christmas bonus of 2016 claimed by the Unión in this case.

4 - On November 30, 2016, the Employer requested the Department of Labor and Human Resources (DTRH) the exemption from payment of Christmas bonus to its employees for the year 2016.

5 - Subsequently, the DTRH answered the request made by the Employer for exemption from the Christmas bonus payment for the year 2016. Joint Exhibit 2.

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2. Quoted from the "Joint Motion on Stipulations of Facts", filed on June 21, 2018.

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VI. ANALYSIS AND CONCLUSIONS

The controversy before our consideration requires us to determine if the Hima San Pablo Fajardo Hospital violated Article 17 of the Collective Agreement or not, by not paying the Christmas bonus for the year 2016 to the employees covered by said Collective Agreement.

The Union argued that the payment of the bonus provided in Article 17 of the Collective Agreement proceeded, since the exemption granted to the Employer by the DTRH under Law No. 148 of June 30, 1969, as amended, does not apply to employees covered by a collective agreement.

The Employer, for its part, argued that it does not owe the payment of the Christmas bonus claimed by the Union, since Article 17 of the Collective Bargaining Agreement provides that the payment of said bonus will be made "under the terms provided by law", including that related to the exemption. It argued that regarding the 2016 bonus, the DTRH granted the requested exemption, which, in accordance with the language of Article 17 of the Collective Bargaining Agreement, applies to unionized employees. Thus confirming the position of both parties, we are ready to resolve.

In Puerto Rico there is a vigorous public policy in favor of collective bargaining and the resolution of disputes through the arbitration process, this being the means to maintain a "reasonably peaceful and fruitful industrial peace and because it is the way in which the

labor movement and its unions exercise and develop, something that is considered desirable because it is useful and fair". *Nazario v. Tribunal Superior*, 98 *D.P.R. 846 (1970)*. Collective agreements constitute the law between the parties as long as their provisions are in accordance with the law, morality and public order. *Article 1207 of the Puerto Rico Civil Code, 31 L.P.R.A., section 3372; J.R.T. v. Vigilantes, 125 D.P.R. 581 (1990); Industrial Licorera de Ponce v. Destilería Serrallés, Inc., 116 D.P.R. 348 (1985)*.

Since collective agreements are contracts and are governed by the provisions of the Civil Code, the obligations arising from them have the force of law between the parties, so what is expressly agreed upon must be complied with. Thus, the parties that are subject to a collective agreement are obliged to faithfully follow its provisions and are prevented from ignoring its terms and acting as if it did not exist. *San Juan Mercantile Corp. v. J.R.T., 104 D.P.R. 86 (1975)*.

If the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of its clauses will apply. The terms of a contract are clear when they are sufficient in content to be understood in a single sense, without giving rise to doubts or controversies, without diversity of interpretations and without the need for reasoning or demonstrations susceptible of interpretation for their understanding. *Sucesión Ramírez v. Tribunal Superior, 81 D.P.R. 357 (1959)*.

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In the case at hand, the Collective Agreement between the parties contains in Article 17, the provisions regarding payment of the Christmas bonus. In what is pertinent, the Article mentioned above shows that the payment of said bonus will be granted to all employees who have worked seven hundred (700) hours or more within the period of twelve (12) months, from the first of October of any calendar year to the 30th of September of the following year, "*under the terms provided by law*"; referring to Law No. 148 of June 30, 1969, as amended. The amount of the Christmas bonus negotiated by the parties establishes a bonus equivalent to six percent (6%) of the employee's total income, up to a maximum of ten thousand dollars ($10,000), or three percent (3%) up to a maximum of thirty thousand dollars ($30,000.00), whichever is greater.

On the other hand, Law No. 148 of June 30, 1969, as amended, created to establish the payment of a bonus to certain employees of the private sector and provide the form and term of payment, establishes in its Article 1, in synthesis, the period and the number of hours an employee must work to be credited with the bonus. It also establishes the sum or the amount to which workers who comply with the number of hours worked within the established period are entitled.

Article 5 of Law No. 148, supra, speaks about the employees excluded from its provisions, namely: employees in agricultural activities, in domestic service or in family residence, in charitable institutions and employees of the Commonwealth, its public corporations and municipalities. Article 6 of said Law contains the exceptions, establishing

that its provisions will not apply in those cases where the workers receive annual bonuses through collective agreements; except in cases where the amount of the bonus to which they were entitled through such collective agreements turns out to be less than that provided by law; in which case they will receive the amount necessary to complete the bonus provided by law.

If we turn to the legislative history of Law No. 148, supra, in H. B. 364, 6th legislative assembly, 1st regular session, under the authorship of Messrs. Viera Martínez, Otero Bosco, Padilla and others, of May 12, 1969, as is pertinent, it arises that the intention of the legislators regarding the bonus was not to impose an additional economic burden on the employers, but rather to share equitably the profits generated with the efforts of the workers through the payment of an annual bonus. It was their intention, furthermore, that the payment of said bonus be made during the Christmas period, as they understood that on that date is when the worker most needs it to enjoy those days with his family with greater enthusiasm.

It arises from said piece of legislation that the employers referred to in the law include natural or legal persons who, for profit or not, employ two or more workers simultaneously and pay them compensation for their services. From the text of the piece of legislation cited above, the following can be found on page 5:

> "*Persons employed in agricultural activities, in domestic service and in charitable entities*

> *are excluded from the provisions of the law. In none of these cases are there profits to consider. Also excluded, for obvious reasons, are those civil servants and employees of the Commonwealth who hold positions or jobs of a continuous or irregular nature.*
>
> ***As there are already some cases in which workers or employees receive an annual bonus as part of a collective agreement, the law provides that in these cases its provisions will not apply, except to increase said bonus to the amount provided in the law when the bonus is less than the statutory one**." (Emphasis Ours).*

Note that the intention of the legislators was to exclude from the provisions of the law:

(1) those workers whose employers do not generate profits, since, as we mentioned before, the purpose of the bonus is not to impose an additional economic burden on the employers, but to share the profits generated with the efforts of the workers; (2) workers who receive an annual bonus as part of an agreement, with the exception of raising the amount of said bonus when it is less than that established by law.

In the aforementioned H. B. 364, supra, the legislators recognized that prior to the creation of the law, there were already some workers or employees who received an annual bonus as part of a collective agreement, therefore, **by way of exception**, despite the fact that these employers

who have a collective agreement can generate profits, **they were excluded from the provisions of the law to respect the agreements made in the collective agreements**; except when the amount of the annual bonus provided by the collective agreement is less than that provided by law.

Thus, the Unión's interpretation is correct regarding Law No. 148 of June 30, 1969, as amended, through its Article 6, excludes from its provisions, by way of exception, employees who receive annual bonuses by collective agreement, except in cases in which the amount of the bonus to which they were entitled by means of such collective agreements is lower than that provided by law; in which case they will receive the amount necessary to complete the bonus provided by law.

In the present cases, regardless of the fact that Article 17 of the Collective Bargaining Agreement provides that the bonus will be granted "*under the terms provided by law*"; it arises from the provisions of Law No. 148, supra, that this is **not applicable to employees who receive annual bonuses through collective agreements, <u>except</u> in cases in which the amount of the bonus to which they are entitled through such collective agreements is less than that provides the law**. In addition to the aforementioned exception, no other provision of Law No. 148, supra, is applicable to employees who receive annual bonuses by provision of a collective agreement; since, in such cases, the language negotiated by the parties in the Collective Agreement is the one that will prevail, establishing the specific terms that govern the granting of said bonus.

Appendix E

After analyzing the provisions of Article 17 of the Collective Bargaining Agreements, it arises that the amount of the bonus negotiated by the parties is not less than that provided by Law No. 148, supra, for which its provisions do not apply. Any agreement to the contrary would be null.

Finally, from the wording of the aforementioned Article 17, no language arises regarding how to proceed with the payment of the bonus in case the Employer has not obtained profits in his business; therefore, we consider that the intention of the parties was to grant the bonus regardless of the profits obtained by the Employer. If the intention of the Employer was that the concession of the bonus was subject to the profits generated, according to the spirit of the law, the parties had to negotiate it and establish it textually in Article 17 of the Collective agreement; since the phrase "*under the terms provided by law*" does not have the effect of extending all the provisions of Law No. 148, supra, to the employees covered by it. In our opinion, the phrase "*under the terms provided by law*", contained in Article 17 of the Collective Bargaining Agreements, only refers to the number of hours worked and the period to be considered to be creditor of the bonus; language that was adopted by the parties of the provisions of Law No. 148, supra.

Thus, in accordance with the foregoing analysis, we determine that the payment claimed by the Unión proceeds, since the exemption from the payment of the Christmas bonus granted to the Employer for the year 2016 is not applicable to the employees covered by the Collective Bargaining Agreements.

Appendix E

VII. DECISION

We determine that the Employer violated Article 17 of the Collective Agreement in force between the parties by not issuing the payment of the Christmas bonus for the year 2016, to the employees covered by said Collective Agreement. The payment of the Christmas bonus corresponding to the year 2016 is ordered, plus the penalty provided by law, and twenty percent (20%) is granted for attorney fees.

REGISTER AND NOTIFY.

In San Juan, Puerto Rico, on January 16, 2019.

[Signature]
Yolanda Cotto Rivera
Arbitrator

APPENDIX F — DENIAL OF RECONSIDERATION OF THE PUERTO RICO SUPREME COURT, DATED APRIL 29, 2022

IN THE PUERTO RICO SUPREME COURT

UNIÓN GENERAL DE TRABAJADORES,

Petitioner,

v.

CENTRO MÉDICO DEL TURABO, INC., D/B/A HOSPITAL HIMA SAN PABLO CAGUAS AND HOSPITAL HIMA SAN PABLO FAJARDO,

Respondents.

UNIÓN GENERAL DE TRABAJADORES,

Respondent,

v.

CENTRO MÉDICO DEL TURABO, INC., D/B/A HOSPITAL HIMA SAN PABLO CAGUAS AND HOSPITAL HIMA SAN PABLO FAJARDO,

Petitioners.

Appendix F

CC-2020-0449
cons. with
CC-2020-0487

RULING

In San Juan, Puerto Rico, on April 29, 2022.

Having considered the Motion for Reconsideration filed by Centro Médico del Turabo, Inc., d/b/a Hospital HIMA San Pablo Caguas and Hospital HIMA San Pablo Fajardo, the same is denied.

It was agreed by the Court and certified by the Clerk of the Supreme Court. Chief Justice Oronoz Rodríguez did not intervene.

[Signature]
Javier O. Sepulveda
Rodríguez
Supreme Court Clerk

[Commonwealth of Puerto Rico
General Court of Justice
Supreme Court]

APPENDIX G — DENIAL OF RECONSIDERATION OF THE PUERTO RICO SUPREME COURT, DATED MAY 27, 2022

IN THE PUERTO RICO SUPREME COURT

CC-2020-0449 cons. with CC-2020-0487

UNIÓN GENERAL DE TRABAJADORES,

Petitioner,

v.

CENTRO MÉDICO DEL TURABO, INC., D/B/A HOSPITAL HIMA SAN PABLO CAGUAS AND HOSPITAL HIMA SAN PABLO FAJARDO,

Respondents.

UNIÓN GENERAL DE TRABAJADORES,

Respondent,

v.

CENTRO MÉDICO DEL TURABO, INC., D/B/A HOSPITAL HIMA SAN PABLO CAGUAS AND HOSPITAL HIMA SAN PABLO FAJARDO,

Petitioners.

Appendix G

RULING

In San Juan, Puerto Rico, on May 27, 2022.

Having evaluated the motion for reconsideration filed by Centro Médico del Turabo, Inc., d/b/a Hospital HIMA San Pablo Caguas and Hospital HIMA San Pablo Fajardo, the same is Denied. Abide by that which was resolved.

It was agreed by the Court and certified by the Clerk of the Supreme Court. Chief Justice Oronoz Rodríguez did not intervene.

/s/_____
Javier O. Sepulveda Rodríguez
Supreme Court Clerk