

FACILITIES MANAGERS, INC., PETITIONER, VS. ROMEL B. MENDOZA, GLENN L. ALFONSO AND NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

Ponente: CASTILLO, M., J.

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CASTILLO, M., J.:

Before this Court is a Petition for Certiorari under Rule 65 of the Rules of Court assailing the December 28, 2012 Decision[1] and June 25, 2013 Resolution[2] of the public respondent National Labor Relations Commission which affirmed the May 15, 2012 Decision[3] of the Labor Arbiter finding the petitioner guilty of illegal dismissal, with the modification that the latter shall be solidarily liable with its principal, Texas Instruments Philippines, Inc., for the consequent backwages, separation pay and attorney's fees.

The facts of the case are as follows:

On September 19, 2011, private respondents Romel B. Mendoza and Glenn L. Alfonso filed a complaint for illegal dismissal, salary differentials and 13th month[4] pay against petitioner Facilities Manager, Inc. (FMI) before the RAB-CAR arbitration branch of public respondent National Labor Relations Commission. Subsequently, the private respondents amended their complaint[5] to include Texas Instruments Philippines, Inc. (TIPI) as additional respondent.

The NLRC summarized the respective positions of the parties as follows:

Private respondents Mendoza and Alfonso claimed that they were first hired by Jonsons Controls, then the service provider of TIPI, on June 7, 2007 and July 13, 2010, respectively. At the onset of their employment, they were assigned at TIPI and worked at the latter's premises. By June 1, 2011, petitioner FMI replaced Jonsons Controls as the service provider of TIPI. As early as April 26 and 27, 2011, however, Alfonso and Mendoza, respectively, had already signed their employment contracts with FMI, although the same took effect on June 1, 2011.[6] FMI then assigned them to TIPI as manufacturing support.

Subsequently, in a Letter dated July 26, 2011,[7] TIPI informed FMI that it was constrained to reduce the manpower provided by the latter due to decline in the demand for semiconductors in the world market which significantly affected TIPI's business. Pursuant to this letter, FMI issued a Memorandum to its employees dated July 27, 2011,[8] advising them of the manpower reduction request of TIPI. The Memorandum also stated that due to the request of TIPI, FMI would implement work day reduction from 6 to 3-4 day workweek; the manpower complement would be reduced by forty-three (43) workers thirty (30) days after July 27; and performance evaluation and other factors would be the basis for the manpower reduction. Eventually, in letters dated August 15, 2011,[9] FMI informed the private respondents of the termination of their employment due to the cost-cutting measures dictated by its principal, TIPI.

Private respondents argued that they should be deemed regular employees of TIPI, and alleged that Jonsons Control and FMI were merely labor-only contractors and agents of TIPI. To buttress this argument, they pointed

out the fact that they worked at the premises of TIPI, used all the latter's equipment, and received all work instructions from TIPI. They also claimed that their dismissal allegedly due to retrenchment measures was illegal because of non-compliance with the requirements for a valid retrenchment.

On the other hand, petitioner FMI argued that it was an independent contractor engaged in legitimate job contracting. It entered into a Master Service Agreement with TIPI, and pursuant thereto, hired the private respondents as manufacturing support workers. FMI, however, was constrained to retrench the private respondents when TIPI informed it that TIPI would reduce its manpower requirements due to economic reasons. It then sent the private respondents notices advising them of the need for retrenchment and paid them their pro-rated 13[th] month pay, withholding tax refund, service incentive leave, and salary adjustments. FMI also presented the quitclaim, release and waiver dated October 2, 2011 signed by private respondent Mendoza, and the undated but duly signed waiver of private respondent Alfonso, wherein they allegedly released and discharged the former from all causes of actions or money claims arising from their employment.[10]

TIPI, for its part, averred that it was a manufacturing company while FMI was a provider of manufacturing support services. TIPI confirmed that it entered into a Service Agreement with FMI for the latter to provide manufacturing support manpower services as would be needed by TIPI from time to time. TIPI vehemently denied that it was the employer of Mendoza and Alfonso, and argued that using the factors in determining the existence of an employer-employee relationship, the latter could not be deemed their employees. They cited the fact that they never hired nor recruited Mendoza and Alfonso; that it was FMI which directly paid their wages; and that it was FMI which had the power of dismissal over them, which it exercised when its income from TIPI was reduced. Moreover, as to the manner and method of work to be performed by the private respondents, TIPI pointed out that it was only interested in the result of the work accomplished. The means and methods of performing such work still lay with FMI. Finally, TIPI alleged that the work performed by the private respondents was limited to the manual/physical task of carrying trays and crates of materials needed for manufacturing, and that they were never involved in any step of the manufacturing process since they lacked the training or skills for doing the same. TIPI admitted, however, that not only did the private respondents perform their tasks within TIPI premises, they were also subjected to the same control/supervision exercised over other employees while working within the said premises.

On May 15, 2012, the Labor Arbiter rendered a Decision,[11] the dispositive portion of which reads:

WHEREFORE, premises all considered, judgment is hereby rendered ordering respondent Facilities Managers, Inc. to pay complainants their:

- Separation pay in the amount of P14,783.35

a) Mendoza (June 1, 2011-May 15,2012):
 $P296.59 \times 26 \text{ days} \times 1 \text{ year} = 7,711.35$

b) Alfonso (June 1, 2011-May 15, 2012):
 $P272.00 \times 26 \text{ days} \times 1 \text{ year} = 7,072.00$

- Full backwages up to the end of their
current contract, which now amounts to 136,129.95

a) Mendoza (Sept. 1, 2011-May 15, 2012)
 $P296.59 \times 26 \text{ days} \times 8.5 \text{ mos.} = 65,546.40$
 $13[\text{th}] \text{ month pay } P65,546.40/12 = 5,462.20$

b) Alfonso (Sept. 1, 2011-May 15, 2012)
P272.00 x 26 days x 8.5 mos. = 60,112.00
13[th] month pay P60,112.00/12 = 5,009.35

- Attorney's fees in the amount of
(150,913.30 x 10%) 15,091.23

- Grand total of P166,004.63.

All other claims are dismissed for lack of merit.

SO ORDERED.”

Essentially, the Labor Arbiter found the petitioner guilty of illegal termination of the private respondents' employment. The Labor Arbiter, however, absolved TIPI of any liability holding that FMI was an independent contractor. The Labor Arbiter also found that the employment of the private respondents was for a fixed period.

Both parties appealed from the above decision to public respondent NLRC. On December 28, 2012, the public respondent rendered a Decision,¹² the dispositive portion of which reads:

“WHEREFORE, in consideration of the foregoing, the decision under appeal is MODIFIED. Respondent TIPI is found to be the principal and true employer of MENDOZA and ALFONSO and is held solidarily liable with its agent, FMI, for complainants' illegal dismissal and the consequent awards for separation pay, backwages and attorney's fees.”

Its motion for reconsideration having been denied, petitioner now comes to this Court for relief via the instant petition for certiorari with prayer for injunctive relief, raising the following grounds:

I. THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AND SERIOUS ERROR IN FINDING THAT PETITIONER FMI ILLEGALLY DISMISSED PRIVATE RESPONDENTS CONSIDERING THAT UNDER PERTINENT LAWS, INDEPENDENT CONTRACTORS CAN VALIDLY TERMINATE ITS EMPLOYEES EVEN PRIOR TO THE TERMINATION OF THE SERVICE AGREEMENT WITH THE CLIENT.

II. THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AND SERIOUS ERROR IN FINDING THAT PETITIONER FMI IS LIABLE TO PAY PRIVATE RESPONDENTS THEIR MONETARY CLAIMS.

On September 9, 2013, this Court issued a Resolution^[13] requiring the private respondents to file their Comment on the petition and to show cause why petitioner's application for injunctive relief should not be granted. Subsequently, the private respondents filed their comment^[14] on the petition.

Considering that the private respondents had already filed their comment on the petition for certiorari and that the case is now ripe for decision, We deem it expedient to just deny the application for injunctive relief and instead proceed with the resolution of the merit of the case.

We find no merit in the petition.

Preliminarily, it must be pointed out that TIPI did not file a petition for certiorari against the disquisition of the public respondent that the former was the principal and true employer of the private respondents. Neither did the private respondents file a similar petition questioning the disquisition of the public respondent that they were fixed-term/project employees of TIPI. The said respondents only raised the said issue in their comment on the

petition. (Private respondents, in their comment, actually questioned the disposition limiting the award of backwages to the unexpired portion of their contracts, contending that the said award should be reckoned up to the time of their actual reinstatement. This essentially goes to the issue of the nature of their employment.) Well-settled is the rule, however, that a party who does not appeal from the decision may not obtain any affirmative relief from the appellate court other than what he has obtained from the lower [tribunal], if any, whose decision is brought up on appeal. "The rule is clear that no modification of judgment could be granted to a party who did not appeal." [15]

The foregoing findings of the public respondent, therefore, had become final and executory with respect to the parties who did not appeal therefrom. We thus limit Our discussion to the grounds raised in the instant petition for certiorari.

Petitioner maintains that it was an independent contractor and that the private respondents were its project/fixed-term employees. As such, it could validly terminate the latter's employment even prior to the expiration of their employment contracts. We are not persuaded.

In the first place, whether petitioner was an independent contractor or a labor-only contractor is immaterial since ultimately, it would still be liable to the private respondents, either solely (if it were an independent contractor) or solidarily with TIPI (if it were only a labor-only contractor). Apparently, in insisting that it was an independent contractor, petitioner is trying to shield TIPI from any liability and subtly arguing for the latter.

Squarely addressing this issue nonetheless, this Court needs only to quote with favor the following disquisition of the public respondent:

"We agree with the complainants' position that respondent TIPI should have been held solidarily liable with respondent FMI. A thorough perusal of the records in the arbitration branch and on appeal show the paucity of any evidence submitted by FMI to show that it had substantial capitalization, its own work tools and premises, or that it was engaged in an independent business with other undertakings separate from its provision of services with TIPI. Thus, there was clearly no basis for the labor arbiter's conclusion that FMI is engaged in legitimate job contracting except for the service agreement between itself and TIPI. Respondent FMI never submitted its certification and due registration as a legitimate job contractor with the Department of Labor pursuant to D.O. No. 10 or 18-2. There was also no presentation of proof such as SEC documents or audited financial records regarding its capitalization to show that it had substantial investments allowing it to carry on an independent business as a job contractor. Moreover, it could not present a list or certification of any other businesses or clients that it had apart from TIPI. Thus, for all intents and purposes, FMI had not sufficiently shown that it was an independent contractor engaged in legitimate job contracting." [16]

Petitioner failed to show competent and sufficient evidence to overturn the foregoing disposition of the public respondent, much less grave abuse of discretion on the part of the latter. At this juncture, We note the public respondent's observation that TIPI itself admitted that not only did the private respondents perform their tasks within the premises of TIPI, they were also subjected to the same control/supervision by TIPI over other employees. [17]

At any rate, regardless of whether petitioner was an independent contractor or a labor-only contractor, the real issue in this case is whether or not the dismissal of the private respondents prior to the expiration of their employment contracts was valid. We rule in the negative.

Petitioner itself pointed out that the termination of a project/fixed-term employee prior to the expiration of the employment contract is allowed under the authorized causes enumerated in Article 283 of the Labor Code, particularly on the ground of retrenchment. Petitioner (or TIPI), however, failed to meet certain conditions or

requirements before a valid retrenchment may be effected.

Retrenchment is one of the authorized causes for the dismissal of employees resorted to by employers to avoid or minimize business losses.[18] It is a management prerogative subject, however, to faithful compliance with the substantive and procedural requirements laid down by law and jurisprudence.[19] Thus, any claim of actual or potential business losses must satisfy the following established standards, all of which must concur, before any reduction of personnel becomes legal:

- The retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely de minimis, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer;
- The employer serves written notice both to the employees and to the Department of Labor and employment at least one month prior to the intended date of retrenchment;
- The employer pays the retrenched employees separation pay equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher;
- The employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and
- The employer uses fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness and financial hardships for certain workers.[20]

Moreover, the alleged business losses, if already realized, or the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence.[21] Thus, the employer has the burden of proving his allegation of economic or business reverses. The employer's failure to prove such losses necessarily means that the employee's dismissal was not justified.[22]

In this case, petitioner's insistence that it was an independent contractor (so that it was the true employer of the private respondents), by itself alone, would already preclude it from invoking retrenchment as ground for its dismissal of the private respondents. This is because there is no showing that FMI itself, as the alleged employer, suffered business losses. Instead, it pointed to TIPI's alleged business losses as the reason for terminating the services of the private respondents. Petitioner, however, cannot invoke TIPI's alleged business losses since obviously, what the above law and jurisprudence contemplate is business losses by the employer itself as ground for retrenchment.

That petitioner might have lost income by reason of the private respondents' separation from TIPI does not necessarily amount to business losses justifying their retrenchment. Petitioner must still prove by convincing evidence that it suffered such business losses contemplated by the above law and jurisprudence as sufficient justification for a valid retrenchment of the concerned employees, that is, "substantial, serious, actual and real, or if only expected, are reasonably imminent" business losses.

But since it has already been established that TIPI was the true employer of the private respondents, We do have

to still determine whether or not there was a valid retrenchment of the latter. We rule in the negative.

In the first place, petitioner (or TIPI) failed to submit sufficient and convincing evidence to prove the alleged serious losses and/or financial difficulties experienced by it. Petitioner failed to submit TIPI's financial statements audited by independent external auditors showing such financial losses. The Supreme Court has ruled that financial statements audited by independent external auditors constitute the normal method of proof of the profit and loss performance of a company.[23] "The condition of business losses justifying retrenchment is normally shown by audited financial documents like yearly balance sheets and profit and loss statements as well as annual income tax returns. Financial statements must be prepared and signed by independent auditors. Otherwise, they may be assailed as self-serving." [24] What petitioner (or TIPI) only averred was that there was a decline in world market demand for semiconductors. This, however, does not necessarily mean business losses.

Moreover, petitioner failed to show that the retrenchment was "reasonably necessary and likely to prevent business losses which, if already incurred, are not merely , but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer." In other words, petitioner (or TIPI) failed to act in consonance with the rule that retrenchment is a remedy of last resort.[25] Well-established is the rule that retrenchment is only a measure of last resort, justified only when all other less drastic means have been tried and found inadequate.[26] There is likewise no showing that petitioner or TIPI sent a written notice to the Department of Labor and Employment at least one month prior to the intended date of retrenchment.

Also, petitioner failed to show how the private respondents were selected for retrenchment. The rule is that in resorting to retrenchment, the employer must use fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age and financial hardship for certain workers.[27] In the instant case, while petitioner stated in its memorandum to its employees that it would implement cost-cutting measures, there is no showing that they actually implemented the same first, before it decided to reduce manpower. Moreover, petitioner failed to show that it used reasonable criteria in selecting the private respondents for retrenchment.

Finally, petitioner argues that the labor arbiter and the public respondent failed to consider the Quitclaim, Release and Waiver executed by both the private respondents allegedly discharging and releasing it from any money claims by reason of their employment. We are not persuaded.

In the first place, the said documents were executed after the private respondents filed their complaint before the labor tribunal. The said quitclaims were never signed nor approved by the labor arbiter. Rule V, Section 8 of the 2011 NLRC Rules of Procedure[28] provides:

"SECTION 8. Mandatory Conciliation and Mediation Conference. —

XXX

XXX

XXX

c) In any case, the compromise agreement shall be approved by the Labor Arbiter, if after explaining to the parties, particularly to the complainants, the terms, conditions and consequences thereof, he/she is satisfied that they understand the agreement, that the same was entered into freely and voluntarily by them, and that it is not contrary to law, morals, and public policy."

At this juncture, We note private respondents' assertion that the amounts they received under the alleged quitclaims merely represented their unpaid 13[th] month pay, and that they were deceived into signing the said documents without the petitioner having explained the nature thereof. Indeed, the private respondents, under the said documents, merely received the measly sums of P2,898.86 (for respondent Mendoza) and P1,749.14 (for respondent Alfonso). At any rate, there, is no showing that petitioner sufficiently explained to the private respondents the nature of the said documents, particularly the terms, conditions and consequences thereof.

In sum, We rule that petitioner failed to show grave abuse of discretion on the part of the public respondent in issuing the assailed decision and resolution. We stress the rule that certiorari under Rule 65 will lie only where a grave abuse of discretion or an act without or in excess of jurisdiction is clearly shown.[29] For the remedy of petition for certiorari to prosper, therefore, the burden is on the party filing the petition to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent.[30]

WHEREFORE, premises considered, the instant petition for certiorari is DISMISSED and the December 28, 2012 Decision and June 25, 2013 Resolution of the public respondent are AFFIRMED.

SO ORDERED.

MARIFLOR P. PUNZALAN CASTILLO

Associate Justice

WE CONCUR:

AMY C. LAZARO-JAVIER
Associate Justice

PEDRO B. CORALES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIFLOR P. PUNZALAN CASTILLO

Associate Justice

Chairperson, Fifteenth Division

[1]Rollo, pp. 24-38.

[2]Id., pp. 47-49.

[3]Id., pp. 145-154.

[4]Id., pp. 50-51.

[5]Id., pp. 52-53.

[6]Id., pp. 116-121.

[7]Id., p. 93.

[8]Id., p. 94.

[9]Id., pp. 98-99.

[10]Id., pp. 101-104.

[11]Id., pp. 145-154.

[12]Id., pp. 24-38.

[13]Id., p. 314.

[14]Id., pp. 315-321.

[15]Loy, Jr., et al., v. SMCEU-PTGWO, et al., G.R. No. 164886 (November 24, 2009).

[16]Pages 11-12 of the December 28, 2012 NLRC Decision.

[17]Id., p. 8.

[18]CO Plywood Corporation v. Abelgas, 427 SCRA 496, 507 (April 14, 2004).

[19]F.F. Marine Corporation v. National Labor Relations Commission, 455 SCRA 154, 165 (April 8, 2005).

[20]Flight Attendants and Stewards Association of the Philippines v. Philippine Airlines, Inc., 559 SCRA 252, 273-274 (July 22, 2008).

[21]Ibid., p. 277.

[22]F.F. Marine Corporation v. National Labor Relations Commission, *supra*, pp. 166-167.

[23]Ibid., p. 168.

[24]Danzas Intercontinental, Inc. v. Daguman, 456 SCRA 382, 393 (April 15, 2005).

[25]F.F. Marine Corporation v. National Labor Relations Commission, supra, p. 171.

[26]Ibid.

[27]Flight Attendants and Stewards Association of the Philippines v. Philippine Airlines, Inc., supra, p. 289.

[28]Approved on May 31, 2011,

[29]Punongbayan v. Punongbayan, 446 SCRA 100 (December 10, 2004); Sections 1 & 2, Rule 65 of the Rules of Court.

[30]Heirs of Lourdes Potenciano Padilla v. Court of Appeals, 425 SCRA 236 (March 10, 2004).

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