

ARNOLD A. DIOMAMPO, AND EDWIN C. ZOLETA, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC), TOYO INK COMPOUNDS CORPORATION, AND GEORGE AQUINO, RESPONDENTS.

Ponente: ANTONIO-VALENZUELA, J.

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ANTONIO-VALENZUELA, J.:

This is the Petition for Certiorari[1] filed by Arnold A. Diomampo (“petitioner Diomampo”) and Edwin C. Zoleta (“petitioner Zoleta”), imputing grave abuse of discretion on the part of the National Labor Relations Commission (“NLRC”), for issuing: 1) the Order dated 18 August 2011[2] (which dismissed the appeal for having been filed out of time); and 2) the Resolution dated 28 March 2012[3] (which granted the petitioners' Motion for Reconsideration and ruled that the appeal was not filed out of time, but that the Labor Arbiter did not err in dismissing the Complaints, because they were all without merit).

THE FACTS

On 22 September 2010, petitioner Diomampo filed the Complaint[4] for regularization (docketed as NLRC Case No. RAB-IV-09-07785-10-2). On 03 November 2010 he filed the Complaint[5] for illegal dismissal (docketed as NLRC Case No. RAB-IV-11-01976-10-L). Both complaints were filed before the Regional Arbitration Branch IV (“RAB IV”) of the NLRC. Named respondents were the Toyo Ink Compounds Corporation (“respondent Toyo Ink”) and George Aquino (“respondent Aquino”) (collectively, “private respondents”).

Petitioner Diomampo's Position Paper (For Complainants)[6], and Position Paper (For Complainants)[7] filed in the two cases commonly alleged: petitioner Diomampo was employed on 28 June 2008 as warehouse staff of respondent Toyo Ink; he was tasked with issuance/control, delivery preparation, forklift operation, and loading and dispatching for two years and nine months, until the employer terminated his employment on 02 November 2010; petitioner Diomampo was an active member of Toyo Ink Compounds Corporation Employees Association – Federation of Free Workers (“the Union”); despite being employed through ITEL Personnel Services Multipurpose Cooperative (“ITel”), petitioner Diomampo was a regular employee of respondent Toyo Ink (i.e., because his functions were necessary and desirable to the usual business or trade of the company; the employment was for more than one year; respondent Toyo Ink had control over petitioner Diomampo; to not consider him a regular employee of respondent Toyo Ink would be tantamount to labor-only contracting, which is prohibited by law); private respondents Toyo Ink and Aquino acted in bad faith when they compelled petitioner Diomampo to sign a waiver to the agreement for regularization, through ITEL supervisors Boyet Ilagan (“Ilagan”) and Mr. Dennis; petitioner Diomampo was entitled to damages (because he suffered injuries from private respondents' bad faith), to benefits under the Collective Bargaining Agreement, and to attorney's fees.

On 22 September 2010, petitioner Zoleta filed the Complaint[8] for regularization (docketed as NLRC Case No. RAB-IV-09-01787-10-L), before the RAB IV. Named respondents were the Toyo Ink and George Aquino.

Petitioner Zoleta's Position Paper (For Complainants)[9] alleged: petitioner Zoleta was employed on 10 June 2006 as production operator, warehouse staff of respondent Toyo Ink for four years and five months, until the employer

terminated his employment on 02 November 2010; petitioner Zoleta was an active member of the Union; despite being employed through Itel, he was a regular employee of respondent Toyo Ink (i.e., because his functions were necessary and desirable to the usual business or trade of the company; the employment was for more than one year; respondent Toyo Ink had control over petitioner Zoleta; to not consider him as regular employee of respondent Toyo Ink could be tantamount to labor-only contracting, which is prohibited by law); private respondents acted in bad faith when they compelled petitioner Zoleta to sign a waiver to the agreement for regularization, through Itel supervisors Ilagan and Mr. Dennis; petitioner Zoleta was entitled to damages (because he suffered injuries from private respondents' bad faith), to benefits under the Collective Bargaining Agreement, and to attorney's fees.

The Position Paper[10] of private respondents countered: there was no employer-employee relationship between respondent Toyo Ink, and petitioners Diomampo and Zoleta; Itel and petitioners Diomampo and Zoleta, entered into the Membership and Subscription Agreement under which Itel exclusively held the power to hire (Itel hired and selected petitioners Diomampo and Zoleta), pay wages, control, and dismiss its members-employees; paragraph 16 of the Membership and Subscription Agreement states, "the Member hereby recognizes that he/she is a MEMBER/EMPLOYEE of Itel and not of the CLIENT;" petitioners Diomampo and Zoleta were in the payroll accounts of Itel, as shown by their pay slips; paragraph 14 of the Membership and Subscription Agreement enumerates the grounds for termination of a member-employee; Itel's members-employees were mandated to undergo trainings, seminars and orientations; respondent Toyo Ink made the guidelines or job descriptions to ensure the end result, but coordination was made through Itel's team leaders for the operations; Itel imposed disciplinary measures upon its members-employees; respondent Toyo Ink did not issue identification cards to petitioners Diomampo and Zoleta; Itel paid the Social Security System ("SSS"), Pag-ibig, and Philhealth contributions of petitioners Diomampo and Zoleta; the Service Agreement between respondent Toyo Ink and Itel prohibited respondent Toyo Ink from directly hiring the Itel's members-employees, and imposed a penalty should Itel entice or solicit members-employees for direct employment; since respondent Toyo Ink was not the employer of petitioners Diomampo and Zoleta, they cannot hold respondent Toyo Ink liable for their termination, money claims, and attorney's fees; respondent Aquino cannot be held personally liable because he and respondent Toyo Ink had distinct and separate personalities, and neither respondent Toyo Ink, nor respondent Aquino, was the employer of petitioners Diomampo and Zoleta.

The three Complaints were consolidated with other cases. On 14 April 2011, Labor Arbiter Enrico Angelo Portillo ("LA Portillo"), issued the Decision[11] dismissing the consolidated Complaints, for lack of merit.

Petitioners Diomampo and Zoleta appealed to the NLRC.

On 18 August 2011, the NLRC issued the Order[12] dismissing the appeal, on the ground that it was filed beyond the 10-day reglementary period to perfect an appeal.

Aggrieved, petitioners Diomampo and Zoleta filed the Motion for Reconsideration (For The Complainant Workers).[13]

On 28 March 2012, the NLRC issued the assailed Resolution[14]. The Resolution granted the Motion for Reconsideration, and set aside the Order dated 18 August 2011 (which dismissed the appeal upon a finding that it was filed beyond the reglementary period), but nevertheless dismissed the appeal ruling that it was without merit (i.e., it upheld the Labor Arbiter's Decision dismissing the Complaints for lack of merit).

Thus, this Petition for Certiorari, with the following assignment of errors:

THAT THE HONORABLE PUBLIC RESPONDENT, IN ARRIVING AT THE ASSAILED 28 MARCH 2012 RESOLUTION, PALPABLY ERRED, GRAVELY ABUSED ITS DISCRETION AND DECIDED THE

CASE NOT IN ACCORDANCE WITH LAW AND JURISPRUDENCE CONSIDERING THAT:

IN ARRIVING AT THE FINDINGS AND CONCLUSION THAT THE INDIVIDUAL PETITIONERS ARE NOT REGULAR EMPLOYEES OF TICC, ERRED AND FAILED TO PROPERLY PERUSE THE CIRCUMSTANCES OF THE CASE AND DISREGARDED THE EVIDENCE ADDUCED ON THE MATTER. [sic]

IN ARRIVING AT THE FINDINGS AND CONCLUSION THAT THE INDIVIDUAL PETITIONERS WERE NOT ILLEGALLY DISMISSED FROM THEIR EMPLOYMENT, ERRED AND FAILED TO METICULOUSLY PERUSE AND APPRECIATE THE CIRCUMSTANCES OF THE CASE, AND DISREGARDED THE EVIDENCE ADDUCED ON THE MATTER. [sic]

IN ARRIVING AT THE FINDINGS AND CONCLUSION THAT THE INDIVIDUAL PETITIONERS ARE NOT REGULAR EMPLOYEES OF TICC AND THAT THERE WAS NO ILLEGAL DISMISSAL WHEN THEIR EMPLOYMENT WAS TERMINATED, ERRED AND FAILED TO APPLY EXISTING LAWS AND JURISPRUDENCE ON THE MATTER.[sic][15]

THE ISSUE

The issue is whether the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed Resolution, and in denying the claims of petitioners Diomampo and Zoleta for regularization, and for illegal dismissal.

The Petition for Certiorari answers in the affirmative. The NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed Resolution, and in denying the claims of petitioners Diomampo and Zoleta for regularization and ruling that there was no illegal dismissal. It thrusts: Itel and respondent Toyo Ink were engaged in prohibited labor-only contracting; Itel did not have substantial investment in tools, machinery and equipment and the members-employees used the tools, machineries, and equipment belonging to respondent Toyo Ink, in the performance of their tasks; respondent Toyo Ink's officers and supervisors oversee and control the work of members-employees; Itel was not engaged to perform a specific or special service, but rather it merely supplied respondent Toyo Ink with personnel; Itel failed to submit reports of termination of its contractual employees to the nearest Public Employment Office; respondent Toyo Ink's failure to file a third party complaint against Itel proved it is the true and actual employer of petitioners Diomampo and Zoleta; petitioners Diomampo and Zoleta performed activities directly related and vital to the principal business of respondent Toyo Ink, and they performed these activities alongside respondent Toyo Ink's regular employees; Itel recruited petitioners Diomampo and Zoleta at the instance of respondent Toyo Ink; petitioners Diomampo and Zoleta were employed for a period of three to four years prior to their termination; the repeated re-hiring of petitioners Diomampo and Zoleta was a scheme to circumvent the legal requirement of according tenurial security to labor; petitioners Diomampo and Zoleta were illegally dismissed when they demanded regularization; petitioners Diomampo and Zoleta were entitled to reinstatement, regularization, payment of CBA benefits, damages, and attorney's fees.

The Comment [16] answers in the negative. The NLRC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed Resolution, and in denying the claims of petitioners Diomampo and Zoleta for regularization. It parries: the arguments raised by petitioners Diomampo and Zoleta in the Petition, were rehashed; the NLRC did not commit grave abuse of discretion because its ruling was supported by factual and legal bases; neither the Department of Labor and Employment ("DOLE") nor any other government agency, concluded that Itel was engaged in prohibited labor-only contracting prior to the filing of the Complaints; there was no finding that the Service Agreement between Itel and respondent Toyo Ink was

prohibited and illegal; respondent Toyo Ink adduced substantial evidence to show Itel is a legitimate job contractor;[17] respondent Toyo Ink was not the employer of petitioners Diomampo and Zoleta; petitioners Diomampo and Zoleta signed the Itel application forms, and the Membership and Subscription Agreement, and Itel hired and selected them; petitioners Diomampo and Zoleta's sample payslips indicate they received salaries and wages from Itel; paragraph 14 of the Membership and Subscription Agreement enumerates the grounds for termination of a member; Itel exercised control over petitioners Diomampo and Zoleta; petitioners Diomampo and Zoleta were not issued identification cards; Itel paid the SSS, Philhealth, and Pag-ibig contributions of petitioners Diomampo and Zoleta; since petitioners Diomampo and Zoleta were not employees of respondent Toyo Ink, their claim for illegal dismissal, money claims, claim for moral and exemplary damages, and attorney's fees, had no basis.

THE COURT'S RULING

We rule in the negative. The NLRC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed Resolution. There was no employer-employee relationship between the petitioners Diomampo and Zoleta and the respondent Toyo Ink. Consequently, there was no illegal dismissal.

The accepted definition of grave abuse of discretion is: a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.[18]

There is here no grave abuse of discretion on the part of the NLRC. A reading of the assailed Resolution shows that the NLRC had factual and legal bases for its ruling.

The NLRC was correct when it ruled that there was no employer-employee relationship between respondent Toyo Ink, and petitioners Diomampo and Zoleta.

The issue of whether an employer-employee relationship exists between the parties, is essentially a question of fact. The factors that determine the issue include who has the power to select the employee, who pays the employee's wages, who has the power to dismiss the employee, and who exercise control of the methods and results by which the work of the employee is accomplished. Although no particular form of evidence is required to prove the existence of the relationship, and any competent and relevant evidence to prove the relationship may be admitted, a finding that the relationship exists must nonetheless rest on substantial evidence, which is that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion.[19]

In this case, petitioners Diomampo and Zoleta failed to establish by substantial evidence the existence of an employer-employee relationship between them and respondent Toyo Ink. Other than their bare assertions, petitioners Diomampo and Zoleta did not adduce evidence to show that respondent Toyo Ink exercised the powers to hire and select, to pay compensation, and to dismiss them. On the other hand, respondent Toyo Ink adduced evidence that: Itel selected and hired petitioners Diomampo and Zoleta (Applications for Employment[20], and Membership and Subscription Agreements[21]); Itel paid petitioners Diomampo's and Zoleta's wages (employees' payslips[22]); and Itel terminated the employments of petitioners Diomampo and Zoleta (notices of termination[23]).

Most importantly, petitioners Diomampo and Zoleta failed to adduce evidence of respondent Toyo Ink's power of control over them.

Despite a showing of the elements of the powers to hire and select, to pay compensation, and to dismiss, an employer-employee relationship will not be deemed existent if the power of control is not proved. It is the so-called "control test" which constitutes the most important index of the existence of the employer-employee

relationship that is, whether the employer controls or has reserved the right to control the employee not only as to the result of the work to be done but also as the means and methods by which the same is to be accomplished.[24]

In this case, petitioners Diomampo and Zoleta alleged that the respondent Toyo Ink exercised control over them. However, it was not clear from the evidence whether it was ITEL, or respondent Toyo Ink, that exercised control.

Paragraph 3 of petitioner Diomampo's Sinumpaang Salaysay reads:

- Bilang isang Warehouse Staff sa Warehouse Department. [sic] Ginagampanan ko ang aking tungkulin kahit alam kung [sic] hindi na ito saklaw doon sa aking pinirmahan na kontrata dahil gusto ko pang manatili pa sa aking trabaho dito sa Toyo Ink. Nag simula po ako sa posisyon bilang helper. Ginagawa ko lang trabaho kung ano ang iutos sa akin. Makalipas ang ilang buwan[,] ilang regular ang nagresign sa aming Department. Inilipat ako bilang isang Issuance Personnel (Raw material) na kung saan ang trabaho kop o [sic] aygawain [sic] ng isang regular tulad ng receiving, issuance at encoding. Tumagal po ako sa trabahong issuance personnel ng halos dalawang taon. Napalipat ako sa Finished Goods bilang isang delivery preparation personnel, delivery loading, encoding at delivery dispatching. Ito pong lahat ay gawain po ng isang regular na Warehouse Staff at ito na rin ang ginagawa ko hanggang ngayon sa aming Department.[25]

(Emphases supplied.)

Paragraph 3 of petitioner Zoleta's Sinumpaang Salaysay reads:

- Bilang isang Production Operator sa Production Department. [sic] Ginagampanan ko ang aking tungkulin kahit alam kung [sic] hindi ito saklaw doon sa aking pinirmahan na kontrata dahil gusto ko pang manatili pa sa aking trabaho dito sa Toyo Ink. Nag simula po ako sa posisyon bilang isang Production Helper. Ang ginagawa ko po ay mag – 5S (Japanese term of cleaning) at gawin ang mga inuutos ng aking mga superior at katrabahong mga regular sa aming Department. Pero habang tumatagal ay nalalaman ko na po ang ibat-ibang klase ng trabaho dito sa aming Department. Nandito na nga po yung ako na ang nagooperate ng mga extruder machine na kung saan ako nakaassign [sic]. Ako na rin po yung gumagawa ng lahat ng mga document nito. Ito pong lahat ay gawain po ng isang regular na Production Operator at ito na rin po ang ginagawa ko hanggang ngayon sa aming Department.[26]

(Emphasis supplied.)

From the above-quoted portions of the sworn statements of petitioner Diomampo and petitioner Zoleta, it is clear that they worked within the premises of respondent Toyo Ink, and that superiors ordered and specified their duties. However, it is not clear as to who had the power of control over them, because petitioners Diomampo and Zoleta did not identify in their averments who the superiors were (i.e., if the “superiors” were from ITEL or from respondent Toyo Ink). The evidence are thus insufficient to support a conclusion that respondent Toyo Ink had the power to control the means, methods, and results of petitioners Diomampo's and Zoleta's respective functions.

In conclusion, we find no substantial evidence of the existence of an employer-employee relationship between respondent Toyo Ink and petitioners Diomampo and Zoleta. Thus, the NLRC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed Resolution.

We DISMISS the Petition for Certiorari, and AFFIRM the Resolution dated 28 March 2012 of the National Labor Relations Commission, affirming the dismissal of the Complaints for regularization and illegal dismissal.

IT IS SO ORDERED.

Veloso (Chairperson) and Lantion, JJ., concur.

[1] CA Rollo, p. 03.

[2] CA Rollo, p. 86.

[3] Annex “A,” CA Rollo, p. 33.

[4] CA Rollo, p. 97.

[5] CA Rollo, p. 101.

[6] Annex “G,” CA Rollo, p. 105; filed in NLRC Case No. RAB-IV-11-01976-10-b.

[7] Annex “H,” CA Rollo, p. 132; filed in NLRC Case No. RAB-IV-09-01785-10-b.

[8] CA Rollo, p. 100.

[9] Annex “I,” CA Rollo, p. 154.

[10] Annex “K,” CA Rollo, p. 200.

[11] CA Rollo, p. 51.

[12] CA Rollo, p. 86.

[13] Annex “E,” CA Rollo, p. 88.

[14] Supra, at note 3.

[15] Supra, at note 01.

[16] CA Rollo, p. 508.

[17] DOLE Certificate of Registration No. IV-02-08162 (Annex “CCC” to Respondents-Appellees Opposition dated 03 July 2011); Service Agreement dated 22 January 2010 (Annex “DDD” to Respondents-Appellees Opposition dated 03 July 2011); Bureau of Internal Revenue Certification of Registration with Taxpayer's Identification Number 224-719-940-00 (Annex “EEE” to Respondents- Appellees Opposition dated 03 July 2011); Department of Trade and Industry Certificate dated 25 June 2008 (Annex “FFF” to Respondents-Appellees Opposition dated 03 July 2011); Cooperative Development Authority Certificate of Registration CIN-0103040133 (Annex “GGG” to Respondents- Appellees Opposition dated 03 July 2011); Calamba City Business Permit (Annex “HHH” to Respondents-Appellees Opposition dated 03 July 2011); and independent Auditor's Report dated 07 August 2010 (Annex “III” to Respondents-Appellees Opposition dated 03 July 2011).

[18] Reyes v. COMELEC and Tan, G.R. No. 207264, 22 October 2013.

[19] Legend Hotel v. Realuyo, G.R. No. 153511, 18 July 2012, citing Lopez v. Bodega City, G.R. No. 155731, 03 September 2007, Manila Water Company Inc. v. Peña, G.R. No. 158255, 08 July 2004; Leonardo v. Court of Appeals, G.R. No. 152459, 15 June 2006; Opulencia Ice Plant and Storage v. NLRC, G.R. No. 98368, 15 December 1993; Rule 133, Section 5, Rules of Court, People Broadcasting (Bombo Radyo Phils., Inc.) v. Secretary of the Department of Labor and Employment, G.R. No. 179652, 08 May 2009.

- [20] Annexes “C” and “H” to the Position Paper dated 15 November 2010, CA Rollo, pp. 228, 233.
- [21] Annexes “N” and “O” to the Position Paper dated 15 November 2010, CA Rollo, pp. 247, 250.
- [22] Annexes “X” to the Position Paper dated 15 November 2010, CA Rollo, p. 274.
- [23] Annexes “Z” and “BB” to the Position Paper dated 15 November 2010, CA Rollo, pp. 276, 278.
- [24] *Locsin v. Philippine Long Distance Telephone Company*, G.R. No. 185251, 02 October 2009, citing *Tongko v. The Manufacturers Life Insurance Co. (Phils.) Inc.*, G.R. No. 167622, 07 November 2008.
- [25] Annex “A-1” to the Position Paper (for Complainants) dated 12 January 2011, CA Rollo, p. 120.
- [26] Annex “A-3” to the Position Paper (for Complainants) dated 18 December 2010, CA Rollo, p. 192.

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