

**AVENTUS CLINIC, MARIO SILOS AND/OR GERARDO J. JIAO,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION
(THIRD DIVISION) AND MARIE RUTCHELLE S. DARVIN,
RESPONDENTS.**

Ponente: BATO, JR., J.

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BATO, JR., J.:

Assailed in this Petition for Certiorari[1] with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction are the Decision[2] dated 28 September 2012 and the Resolution[3] dated 20 November 2012 of the National Labor Relations Commission in NLRC LAC No. 07-002068-12 (NLRC-NCR-10-16096-11).

The facts of the case, as culled from the records, are as follows:

Aventus Medical Care, Inc. (“Aventus”) is a domestic corporation established on 10 February 2009[4] and engaged in the business of operating and managing medical clinics and laboratory.[5] Mario Silos (“Silos”) and Gerardo J. Jiao (“Jiao”) are the President and Medical Director of Aventus, respectively.[6]

As part of its business, Aventus sought the services of medical professionals such as, but not limited to, medical doctors.[7] As such, Aventus engaged the services of Dr. Marie Rutchelle S. Darvin (“Darvin”) as one of its medical consultants for its clinic in Manila. As she started her services for Aventus, Darvin was asked to sign a Medical Consultancy Agreement.[8] However, she refused to sign the same.[9] The pertinent provisions of said agreement state –

“1. Term of Employment. Subject to the provisions for termination set forth below this Agreement will begin on January 1, 2010 unless sooner terminated for cause pursuant to the provision of this contract and the applicable laws of the Republic of the Philippines;

2. Compensation. The Company shall compensate the Consultant at a rate of 200 per hour, for the services of the Consultant;

3. Services. The Company engages the Consultant in the capacity of Physician to perform the services enumerated under ANNEX 'A' hereof in compliance with existing laws, rules and regulations as contained but not limited to those enumerated under ANNEX 'B' hereof. Provided that the Consultant’s duties may be reasonably modified at the Company’s discretion from time to time at the schedule set forth in ANNEX 'C' hereto attached;

X X X X

6. Termination of Agreement. Without cause, the Company may terminate this agreement at any time upon thirty (30) days written notice to the Consultant. If the Company requests, the Consultant will continue to perform his/her duties and may be paid his/her rate up to the date of termination. Notwithstanding anything to the contrary contained in this agreement, the Company may terminate the Consultant's employment upon fifteen (15) days notice to the Consultant should any of the following events occur:

- a. The sale of substantially all of the Company's assets to a single purchaser or group of associated purchasers; or
- b. The sale, exchange, or other disposition, in one transaction of the majority of the Company's outstanding corporate shares; or
- c. The Company's decision to terminate its business and liquidate its assets;
- d. The merger or consolidation of the Company with another company.
- e. Bankruptcy or insolvency.

7. No Employee-Employer Agreement. This Agreement shall not render the Consultant an employee, partner, agent of, or joint venturer (sic) with the Company for any purpose. The Consultant is and will remain an independent contractor in (his or her) relationship to the Company. The Consultant shall have no claim against the Company hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind;"[10]

The said consultancy agreement likewise laid down the rules for consultants regarding their employment status[11], working hours[12], time keeping[13], compensation[14], overtime pay, schedule adherence[15], tardiness, leaves and absences, workplace attire[16], decorum[17] and patients records.[18]

On 5 September 2011, Jiao sent an electronic mail to Darvin asking for her diagnosis and the procedure she conducted on Raphael Kaizer Ang ("Ang"), viz.:

"Good evening Dra.

May we have your side as to the case of Raphael Kaizer Ang, 6 year old, male from LBC who consulted you last Aug. 30, around 200 pm.

Please give your Diagnosis and the Procedure that you did.

May I get it tomorrow morning?"[19]

On the same day, Darvin replied that Ang was diagnosed with "Bilateral Impacted Cerumen", viz.:

"Good day.

After having the patient's chart pulled out, I recalled that patient Raphael Kaizer was for APE last August 30, 2011. A diagnosis of Bilateral Impacted Cerumen was found after otoscopy, so I asked him to be referred to Dr. Lerma for otoscopy and ear cleaning, because I saw him in the clinic earlier on.

With all due respect, I really don't understand what the issue is, Doctor. Did it affect patient's renewal status? Shouldn't I put down in writing PE findings that I found at the risk of renewal rejection? Shouldn't I refer accordingly in events of abnormal findings during APE? Or should I wait for approval of card before any action is done, and with this, what will I write on the APE form, "Essentially Normal"?

Please enlighten me on this because I know that first and foremost, we hold our patients' well being and welfare as top priority.

Thank you very much.”[20]

On 7 September 2011, Jiao sent to Darwin a Notice of Termination of the Consultancy Agreement, viz.:

“This Notice is in connection with the violation of your consultancy with Aventus Medical Care, Inc., as it has been observed on several occasions that you have been performing procedures, such as cleaning and clearing of ear canals, as a consequence of your examination of patients through otoscopy, which is a direct violation of clinic policy that requires said procedures to be recorded and thereafter a recommendation issued in order that it be performed by ENT specialists.

In connection with the foregoing, we would wish to take this opportunity to remind you that otoscopy is considered an integral part of the Physical Examination in Adults and Pediatric patients, which shall not be separately compensated and does not require a Referral Control Sheet (RCS) or a Clinic Service Form (Job Order). On the other hand, Oto-Endoscopy is a specialized procedure using an Endoscope done by a trained specialist, which is the very reason why Aventus has insisted that patients requiring endoscopic examinations and cleaning or clearing of the ear canals be sent to the following ENT specialists:

x x x x

It has likewise been noted that you have continued do (sic) perform this violation despite the fact that your attention has been called on this matter last year. Moreover, Aventus has also taken cognizance of the fact that after your attention was called, you would channel patients to your ENT spouse, Dr. Joseph Darwin, who holds clinic at Manila Doctors of (sic) Healthway and not to the ENT in the Manila clinic where you practice.

Therefore, as a consequence of your actions, we have no other recourse but to serve this NOTICE OF TERMINATION OF THE CONSULTANCY AGREEMENT effective thirty (30) days from receipt of this letter.”[21]

Aggrieved, Darwin filed a complaint for illegal dismissal with claims for damages and attorney’s fees against Aventus. During preliminary conference, the parties failed to reach an amicable settlement. Thus, the Labor Arbiter directed them to file their respective Position Papers.

In her Position Paper, Darwin averred that she never signed the Medical Consultancy Agreement because she is an employee of Aventus and not an independent contractor. She argued that, despite the alleged Medical Consultancy Agreement and the absence of any signed employment contract, the elements of an employment relationship are still present in her case. Aventus paid her wages. It had the power to select, engage and terminate her services and exercised the same when Aventus sent a Notice of Termination to her on the ground that she performed otoscopy procedures and referred a client to her spouse connected with a competitor clinic. Aventus required her to be present in the clinic during specific hours and had control over her work as a consultant and the sole discretion to terminate her services.

Being a regular employee of Aventus, Darwin argued that she was illegally terminated from employment because her dismissal was without due process and without just or authorized causes.

Aventus countered that the Labor Arbiter does not have jurisdiction over the case because Darwin is not an employee as all doctors engaged by the company were contracted as independent medical consultants. Using as basis the Consultancy Agreement[22] effective 1 January 2011 to 31 December 2011, Aventus argued that paragraph 7 thereof states that there is no employment relationship between the company and Darwin and that Aventus has no control over the means employed by Darwin in rendering her professional services.[23] Aventus alleged that Darwin was free to engage in the private practice of her profession and affiliate with other hospitals

and clinics, as evidenced by the printed copy of Healthway's website.[24] She was also allowed to request for another doctor to substitute for her during her clinic hours in case she is sick or incapacitated to report for work. Absent an employment relationship between them, Aventus maintained that there can be no cause of action for illegal dismissal. Besides, Darwin pre-terminated the Consultancy Agreement with Aventus when she submitted her Letter of Resignation[25] dated 23 September 2011. Thus, Darwin is not entitled to her claims for damages and attorney's fees.[26]

On 30 May 2012, the Labor Arbiter rendered a Decision declaring Darwin as a regular employee of Aventus and granting her monetary claims. The dispositive portion of said decision state –

“WHEREFORE, premises considered, judgment is rendered finding the dismissal of complainant as illegal and ordering the respondents to pay complainant his backwages from the date of dismissal until the (sic) of this decision, and separation pay computed at one month pay per year of service considering the existence of strained relations between the parties plus 10% of the award as Attorney's fees the complainant being compelled to litigate as all hereunder computed as follows:

I. Backwages:

9/20/11 – 9/31/12

P12,000 x 8.36

P100,320.00

II. Separation Pay

7/07-9/11 = 4 yrs.

P12,000 x 4

P 48,000.00

P148,320.00

III. Attorney's fees

P 14,800.00

P 163,120.00

All other claims are dismissed for want of merit/basis.

SO ORDERED.”[27]

Applying the “four-fold test” in determining employment relationship the Labor Arbiter ruled that employer-employee relationship existed between the parties. As shown in the Medical Consultancy Agreement Aventus had control over Darwin. Said agreement provides that: (1) Darwin’s duties may be modified at the company’s discretion from time to time; (2) Darwin is subject to working hours from 7 am to 6 pm, Monday to Sunday; and (3) Darwin is subject to schedule adherence, tardiness, leaves, absences, workplace and decorum. Also, Aventus paid Darwin her wages and exercised its power to hire and fire her. Moreover, the Labor Arbiter ruled that an employment relationship cannot be negated by expressly repudiating it in the employment contract and providing that the employee is an independent contractor when the terms of the agreement clearly show otherwise. Furthermore, the Labor Arbiter declared that the performance of otoscopy procedure and referral of patients to her husband by Darwin could not be considered as just cause for her termination because it is not prohibited by the Medical Consultancy Agreement.[28]

On appeal by Aventus,[29] the NLRC affirmed the Labor Arbiter’s decision that Darwin is an employee of Aventus but modified the monetary award therein. The dispositive portion of the NLRC’s decision states –

“WHEREFORE, the decision dated 30 May 2012 is MODIFIED. The separation pay awarded to complainant is reduced to P24,000.00.

The other findings are AFFIRMED.

SO ORDERED.”[30]

The NLRC sustained the findings of the Labor Arbiter that an employer-employee relationship existed between the parties applying the four-fold test. Aventus controlled the manner by which Darwin performed her duties as a physician. Darwin was required to adhere to specific working hours which can be modified by Aventus. Darwin was also required to abide by the rules set by Aventus and failure to abide would subject her to administrative sanctions. However, the NLRC reduced the award of separation pay in favor of Darwin because she only served for two (2) years and not four (4) years.[31]

Undaunted, Aventus filed its Motion for Partial Reconsideration[32] but the same was denied by the NLRC in its Resolution[33] dated 20 November 2012. Hence, the present recourse of Aventus grounded on the following:

“I. THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION, IN FINDING THAT RESPONDENT WAS ILLEGALLY DISMISSED.

A. THERE IS NO EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN PETITIONERS AND RESPONDENT.

B. RESPONDENT WAS NOT ILLEGALLY DISMISSED.

II. THE NLRC GRAVELY ERRED IN HOLDING PETITIONERS MR. SILOS AND DR. JIAO LIABLE TO RESPONDENT FOR HER BASELESS CLAIMS.

III. THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS

OF JURISDICTION, IN SUSTAINING THE LABOR ARBITER'S AWARD OF ATTORNEY'S FEES TO RESPONDENT.”[34]

The issues for consideration of this Court are: (1) whether an employer-employee relationship exists between Darwin and Aventus; (2) whether Darwin was illegally terminated from employment by Aventus, thus, entitling her to her monetary claims; (3) whether Silos and Jiao are liable to Darwin.

Anent the first issue, Aventus argues that the NLRC's findings are contrary to the evidence on record as it clearly show that Darwin is not an employee of the company. Aventus asserts that it has no control over how Darwin diagnosed, examined and treated her patients. Aventus alleges that it paid Darwin “professional fees and not wages.” The fact that Darwin was required to comply with the workplace decorum and specific working hours does not make her an employee of the company as said terms were freely agreed upon by the parties.[35] Besides, Darwin affirmed the pre-termination of the Consultancy Agreement in her electronic mail and written Resignation Letter both dated 23 September 2011.[36]

Time and again, jurisprudence has applied the “four-fold test” to ascertain the existence of an employer-employee relationship, to wit: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so called “control test”.[37]

In addition, the “two-tiered test” may also be used to ascertain the existence of employer-employee relationship: (1) the putative employer's power to control the employee with respect to the means and methods by which the work is to be accomplished; and (2) the underlying economic realities of the activity or relationship.[38] This two-tiered test provides a framework of analysis which takes into consideration the totality of the circumstances surrounding the true nature of the relationship between the parties.[39] Its application is appropriate in cases where there is no written agreement or terms of reference to base the relationship on and due to the complexity of the relationship based on the various positions and responsibilities given to the worker over the period of the latter's employment.[40]

Based on the above pronouncements and after a careful evaluation of the evidence on record, We sustain the findings of the Labor Arbiter as affirmed by the NLRC that an employer-employee relationship existed between the parties.

First. It is undisputed that Aventus hired Darwin as a physician to perform medical services and attend to its patients in the clinic operated by Aventus. Also, the Medical Consultancy Agreement for the year 2010 explicitly provides:

“[t]he Company engages the Consultant in the capacity of Physician to perform the services enumerated under ANNEX 'A' hereof in compliance with existing laws, rules and regulations as contained but not limited to those enumerated under ANNEX 'B' hereof. Provided that the Consultant's duties may be reasonably modified at the Company's discretion from time to time at the schedule set forth in ANNEX 'C' hereto attached.”[41]

Second. Aventus paid Darwin Php200.00 per hour for her services.

Wages are defined as a remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done or for a service rendered or to be rendered.[42]

Here, contrary to the allegations of Aventus that Darwin was paid “professional fees and not wages”, no evidence was presented by Aventus showing that Darwin was paid professional fees for her services rendered in the clinic operated and owned by Aventus. In fact, the Medical Consultancy Agreement for the year 2010 provides that

“[t]he Company shall compensate the Consultant at a rate of 200 per hour, for the services of the Consultant” regardless of the number of patients she examined at the time she reported at the clinic.[43]

Third. Aventus wielded the power to dismiss Darwin.

The Medical Consultancy Agreement for the year 2010 explicitly states “[w]ithout cause, the Company may terminate this agreement at any time upon thirty (30) days written notice to the Consultant. If the Company requests, the Consultant will continue to perform his/her duties and may be paid his/her rate up to the date of termination. Notwithstanding anything to the contrary contained in this agreement, the Company may terminate the Consultant's employment upon fifteen (15) days notice to the Consultant should any of the following events occur x x x.”[44] Also, the Consultancy Agreement for the year 2011 presented by Aventus likewise provides that “[t]he Company may terminate this Agreement upon thirty (30) days prior written notice to the Consultant. The Company may likewise terminate this Agreement effective ten (10) days from the date of receipt by the Consultant of a Notice of Termination based on the following grounds x x x.”[45]

Notably, there is nothing in the Medical Consultancy Agreement which provides that Darwin can also terminate the said agreement at her own instance. As such, Aventus had the power of dismissal over Darwin since the power to terminate said agreement is solely vested in Aventus. As held in the case of *Philippine Global Communications, Inc. vs. Ricardo de Vera*[46], the power to terminate is absent only if the parties' relationship can be terminated at will, with or without cause, by both parties.

Fourth. Aventus exercised the most important element of all, that is, control over the conduct of Darwin's performance of her duties as a physician for the company.

Under the “control test”, an employment relationship exists between the parties where the person for whom the services are performed reserves a right to control not only the end to be achieved but also to the means to be used in reaching such end.[47]

In the case at bar, Aventus' control over Darwin can be deduced from the following circumstances: a. As the employer, Aventus provided the clinic and the patients to be examined by Darwin;

b. The Medical Consultancy Agreement for the year 2010 presented by Darwin explicitly states that her duties “may be reasonably modified at the Company's discretion from time to time.”[48]

c. The Consultancy Agreement for the year 2011 presented by Aventus states that “[t]he Consultant shall provide medical and other related services in such clinic to be designated by the Company”[49]

d. The so called “AVENTUS GUIDELINES FOR THE CONSULTANT”,[50] attached as Annex “A” to the Medical Consultancy Agreement clearly proves that Darwin is required to follow the prescribed working hours, schedule adherence, tardiness, leaves and absences, workplace attire and decorum. Also, Darwin is required to submit a Patient Data Sheet indicating therein her findings and diagnosis of the patient she examined in the clinic operated by Aventus[51] and

e. Aventus actually monitored and supervised the work of Darwin as clearly shown in the electronic mail Jiao sent to Darwin on 5 September 2011 asking for the latter's diagnosis and procedures conducted on Ang[52] and in the Notice of Termination of the Consultancy Agreement[53] dated 7 September 2011.

In the case of *Professional Services, Inc. vs. The Court of Appeals and Natividad and Enrique Agana*[54], the Supreme Court En Banc expounded on the “control test”, viz.:

“Under the 'control test', an employment relationship exists between a physician and a hospital if the hospital controls both the means and the details of the process by which the physician is to accomplish his task.

x x x x x x x x

As priorly stated, private respondents maintained specific work-schedules, as determined by petitioner through its medical director, which consisted of 24-hour shifts totaling forty-eight hours each week and which were strictly to be observed under pain of administrative sanctions.

That petitioner exercised control over respondents gains light from the undisputed fact that in the emergency room, the operating room, or any department or ward for that matter, respondents' work is monitored through its nursing supervisors, charge nurses and orderlies. Without the approval or consent of petitioner or its medical director, no operations can be undertaken in those areas. For control test to apply, it is not essential to actually supervise the performance of duties of the employee, it being enough that it has the right to wield power." (Emphasis supplied)

The case of Coca Cola Bottlers (Phil.) Inc. vs. Dr. Climaco[55], cited by petitioner, wherein the Supreme Court sustained the finding of the Labor Arbiter and the NLRC that no employer-employee relationship existed between Dr. Dean N. Climaco and Coca Cola, is not squarely applicable to the case at bar. No employer-employee relationship existed for the simple reason that the parties entered into a "Retainer Agreement" wherein Dr. Climaco's services as a physician of Coca Cola were solicited to provide "(P)rompt and adequate treatment of occupational and non-occupational injuries and diseases" of its employees and dependents in accordance with the Comprehensive Medical Plan of Coca Cola. Stated differently, Dr. Climaco's services were solicited to attend to Coca Cola's employees and dependents' medical needs, unlike Dr. Darwin whose services as a physician were solicited by Aventus to attend to its patients who avail of the medical services provided in the clinic operated by Aventus. Moreover, in the "Retainer Agreement" "either party may terminate the contract upon giving a thirty (30) day written notice to the other", while in the Medical Consultancy Agreement the power to terminate the agreement is solely vested in Aventus who even without cause may terminate the agreement "at any time upon thirty (30) days written notice to the Consultant." Furthermore, aside from a fixed monthly compensation in the sum of Php3,800.00 Dr. Climaco is allowed to "charge professional fee for hospital services rendered in line with his specialization", while Darwin is paid Php200.00 per hour for whatever services she rendered on the patients who availed of the medical services inside the clinic operated by Aventus.

Fifth. The totality of the economic circumstances in the instant case shows that Darwin is an employee of Aventus.

As applied in certain cases, where the control test is not sufficient to give a complete picture of the relationship between the parties, the economic realities help provide a comprehensive analysis of the true classification of the individual, whether as an employee, independent contractor or some other capacity.[56] As such, under the economic reality test, the determination of relationship between the employer and the employee also depends upon the circumstances of the whole economic activity, such as: (1) the extent to which the services performed are an integral part of the employer's business; (2) the extent of the worker's investment in equipment and facilities; (3) the nature and degree of the control exercised by the employer; (4) the worker's opportunity for profit and loss; (5) the amount of initiative, skill, judgment or foresight for the success of the claimed independent enterprise; (6) the permanency and duration of the relationship between the worker and the employer; and (7) the degree of dependency of the worker upon the employer for his continued employment in that line of business.[57]

Here, applying the economic reality test, Darwin is undoubtedly an employee of Aventus because the former's services as a physician are an integral part of the latter's business of establishing and managing medical clinics. Also, Darwin did not invest in any equipment nor any facility operated by Aventus but only her services as a physician.

Now, on Aventus' argument that there is no employer-employee relationship between the parties because it is explicitly provided in paragraph 7 of the Consultancy Agreement that the "[c]onsultant is and will remain an

independent contractor” and that the “[a]greement shall not render the Consultant an employee” of the company,[58] the same deserves scant consideration. The factual circumstances of this case, as thoroughly discussed earlier, clearly establish the existence of an employer-employee relationship between Aventus and Darwin. In *Pedro Chavez vs. National Labor Relations Commission, Supreme Packaging, Inc. and Alvin Lee*[59], the Supreme Court declared that an employer-employee relationship existed between the parties as the factual circumstances therein clearly established said relationship, viz.:

“The contract of service to the contrary notwithstanding, the factual circumstances earlier discussed indubitably establish the existence of an employer-employee relationship between the respondent company and the petitioner. It bears stressing that the existence of an employer-employee relationship cannot be negated by expressly repudiating it in a contract and providing therein that the employee is an independent contractor when, as in this case, the facts clearly show otherwise. Indeed, the employment status of a person is defined and prescribed by law and not by what the parties say it should be.”

At any rate, Darwin cannot be considered an independent contractor. The pertinent sections of Department of Labor and Employment Department Order No. 10, series of 1997 explicitly provide:

“Sec. 8. Job contracting. — There is job contracting permissible under the Code if the following conditions are met:

(1) The contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and

(2) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business.

Sec. 9. Labor-only contracting. — (a) Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting where such person:

(1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and

(2) The workers recruited and placed by such persons are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed.” (Emphasis supplied)

In the case at bar, it is beyond question that Darwin did not have the capital or investment in the form of tools, equipment and machinery in the operation of the clinic. Aventus is the exclusive owner of the clinic where Darwin was required to render her services as a physician. Darwin was recruited by Aventus to perform activities which are directly related to its principal business of operating medical clinics.

Anent the second issue, We likewise agree with the NLRC and the Labor Arbiter that Darwin was illegally terminated from employment by Aventus.

In illegal dismissal cases, the onus of proving that the employee was not dismissed or if dismissed, that the dismissal was not illegal rests on the employer. Failure to discharge the said burden would mean that the dismissal was not justified and therefore, illegal.[60]

Under the Labor Code, the requirements for the lawful dismissal of an employee are two-fold: first, the substantive due process and second, the procedural due process.[61] Substantive due process is the legality of the act of dismissal, i.e., the existence of just or authorized causes of termination of employment under the law.

Procedural due process, on the other hand, is the legality of the manner of dismissal, i.e., the observance of the requirements of due process.[62]

In *King of Kings Transport, Inc., et al. vs. Santiago O. Mamac*[63], applying Article 277 of the Labor Code of the Philippines and its implementing rules, the Supreme Court laid down the procedure to be followed in terminating the services of employees, viz. –

“To clarify, the following should be considered in terminating the services of employees:

(1) The first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. 'Reasonable opportunity' under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.”

In the case at bar, Aventus failed to substantially prove that Darwin was validly terminated from her employment. Firstly, Aventus failed to show that Darwin was terminated for an authorized cause and in compliance with procedural due process. Aventus failed to serve the first written notice containing the specific ground for termination and a directive to submit her written explanation at least five (5) days from receipt thereof. The electronic mail[64] dated 5 September 2011 cannot be considered as the first written notice mandated by law because Jiao merely asked Darwin for her diagnosis and the procedures she conducted on Ang. It did not contain the specific causes or grounds for termination and a directive for her to submit her written explanation within a reasonable period. Secondly, Aventus did not schedule nor conduct a hearing wherein Darwin will be given the opportunity to explain and clarify her defenses to the charge against her, present evidence in support of her defenses and rebut the evidence presented against her, if any, by the company.

Aventus' argument that Darwin pre-terminated her consultancy agreement when she submitted her resignation letter on 23 September 2011 is misplaced. The alleged resignation of Darwin is inconsequential as she was already illegally terminated from her employment on 7 September 2011 when the Notice of Termination of Consultancy Agreement was issued to her by Jiao. Besides, Darwin's filing of the complaint for illegal dismissal is inconsistent with the alleged resignation.[65] Resignation is the voluntary act of employees who are compelled by personal reasons to dissociate themselves from their employment. It must be done with the intention of relinquishing an office, accompanied by the act of abandonment.[66] Thus, it is illogical for respondents to resign and then file a

complaint for illegal dismissal.[67]

Ordinarily, under the Labor Code an illegally dismissed employee is entitled to reinstatement without loss of seniority rights and other privileges and to full backwages, inclusive of other monetary benefits computed from the time her compensation was withheld from her up to the time she is actually reinstated.[68] However, by way of exception, where there is no prayer for reinstatement or reinstatement prayed for is not feasible, expedient or practical, as where reinstatement would only exacerbate the tension and strained relations between the parties, or where the relationship between the employer and the employee has been unduly strained by reason of their irreconcilable differences, particularly where the illegally dismissed employee held a managerial or key position in the company, it would be more prudent to order the payment of separation pay instead of reinstatement.[69] Here, there is no showing that Darvin prayed for reinstatement. Also, Darvin did not appeal from the decision of the labor tribunal in not ordering her reinstatement but questions only the grant of backwages, separation pay and attorney's fees. Hence, Darvin is entitled to backwages and separation pay in lieu of reinstatement plus attorney's fees because Aventus' act has compelled her to incur expenses to protect her interest.[70]

Anent the third issue, We find that the Labor Arbiter and NLRC erred in ruling that Jiao and Silos are jointly liable with Aventus because Darvin failed to prove that Jiao and Silos acted in bad faith. In labor cases, corporate directors and officers may only be liable with the corporation if the termination of employment of the employee is done with malice or bad faith.[71] A corporation, being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, acting as corporate agents, are not theirs but the direct accountability of the corporation they represent.[72]

All told, We find that the NLRC committed grave abuse of discretion only insofar as it affirmed the ruling of the Labor Arbiter that Jiao and Silos are jointly liable to Darvin. However, there is no grave abuse of discretion on the part of the NLRC in affirming the decision of the Labor Arbiter that Darvin is an employee of Aventus and that she was illegally dismissed by the latter from her employment. Aventus failed to clearly demonstrate that the NLRC disregarded evidence before it and that it misapprehended the evidence on record to such an extent that a contrary conclusion should be arrived at had it been properly appreciated according to prevailing jurisprudence.[73]

WHEREFORE, the instant petition is PARTLY GRANTED. The Decision dated 28 September 2012 and Resolution dated 20 November 2012 of the National Labor Relations Commission are hereby AFFIRMED WITH MODIFICATION. Petitioners Mario Silos and Gerardo J. Jiao are absolved from liability. Petitioner Aventus Medical Care, Inc. is ordered to pay respondent Marie Rutchelle Darvin her backwages computed from the time of her illegal dismissal on 7 September 2011 up to the finality of this Decision plus Php24,000.00 separation pay and ten percent (10%) attorney's fees of the total monetary award. Accordingly, the instant case is referred to the Computation Division of the National Labor Relations Commission for the proper computation of said monetary awards.

SO ORDERED.

Barrios, and Diy, JJ., concur.

[*] Should be properly designated in the petition as Aventus Medical Care, Inc. based on the Articles of Incorporation; Rollo, p. 92.

[1] Rollo, pp. 3-35.

- [2] Rollo, pp. 37-50.
- [3] Rollo, pp. 52-53.
- [4] Position Paper, Rollo, p. 71; Certificate of Incorporation, Rollo, p. 90.
- [5] Petition for Certiorari, Rollo, p. 4.
- [6] Petition for Certiorari, Rollo, p. 5.
- [7] Petition for Certiorari, Rollo, p. 7.
- [8] Rollo, pp. 245-256, 413-424.
- [9] Position Paper, Rollo, p. 219.
- [10] Medical Consultancy Agreement, Rollo, pp. 245-246.
- [11] Aventus Guidelines for the Consultants, Rollo, p. 247.

1. EMPLOYMENT STATUS

- Consultant shall be on a project basis
 - Contract period of one (1) year, renewable upon the recommendation of the Medical Director.
- [12] Aventus Guidelines for the Consultants, Rollo, p. 247.

2. WORKING HOURS

- Specific schedule as specified in ANNEX C
 - Clinic hours from 7AM to 6PM, Monday till Saturday and Sunday for all mall-based clinics as maybe and/or required by the lessor or building operating hours.
- [13] Aventus Guidelines for the Consultants, Rollo, p. 247.

3. TIME KEEPING

- Finger scanning / Proximity / Magnetic Strip Swipe card (whichever may be issued) for the time in and time out
 - In the malfunction of the scanning machine all are expected to keep a Daily Time Record (DTR)
 - Failure to time in is tantamount to being absent
 - Inform the Clinic Head if unable to log in so that your DTR will be signed as correct
 - For Reliever Doctors without ids the guard on duty will log the time in and time out
- [14] Aventus Guidelines for the Consultants, Rollo, p. 247.

4. COMPENSATION

- Individual compensation packages as per specialization
 - Subject to 10% withholding tax”
- [15] Aventus Guidelines for the Consultants, Rollo, p. 247.

6. SCHEDULE ADHERENCE

- STRICT adherence to schedule is paramount
- If unable to report, inform the Clinic Head at least 24 hours before the start of the duty
- Responsible to recommend and provide reliever physicians of equal specialty, fully competent and to duly orient and prepare them for their reliever functions
- Attendance of Reliever Doctors shall be recognized as the Consultants attendance therefore all due compensation shall be given to the Consultant. Any and all transactions between the Consultant and Reliever Doctor shall be deemed personal and private between them.

[16] Aventus Guidelines for the Consultants, Rollo, p. 248.

8. WORKPLACE ATTIRE

- Clinic Attire is smart casual
- White blazers and/or Smock gowns
- Maong pants, miniskirts, shorts, sleeveless blouses, spaghetti strap, haltered, bareback tops and plunging necklines are NOT ALLOWED
- Slippers, sandals and rubber shoes are NOT ALLOWED

[17] Aventus Guidelines for the Consultants, Rollo, p. 248.

9. DECORUM

- Consultant is expected to be professional at all times, must act in accordance with proper decorum, high morals and good behavior or working ethics. As such:
- Should not engage in close, personal contacts with the clinic staff/ clients/ agents/ employees
- Should maintain a good working atmosphere inside the clinic or workplace
- Sleeping is NOT ALLOWED
- Loitering outside the consultation rooms is prohibited
- Eating may be allowed only inside the pantry and should be done with adherence to good sanitary standards and practices
- Personal calls may be made at designated personal phone areas only

[18] Aventus Guidelines for the Consultants, Rollo, p. 248.

10. PATIENT'S RECORD

- All patients should have a Patient Data Sheet. It should be fully prepared, complete with:
- Personal data
- Vital signs
- Chief complaint

- Subjective and Objective findings
- Pertinent Physical Examination findings
- Diagnosis

[19] Electronic mail dated 5 September 2011, Rollo, p. 263.

[20] Electronic mail dated 5 September 2011, Rollo, p. 264.

[21] Notice of Termination of Consultancy Agreement, Rollo, pp. 180-181.

[22] Rollo, pp.163-165.

[23] Position Paper, Rollo, p. 75.

[24] Rollo, p. 169.

[25] Rollo, p. 183.

[26] Position Paper, Rollo, pp. 75-84.

[27] Decision dated 30 May 2012, Rollo pp. 318-319.

[28] Decision dated 30 May 2012, Rollo, pp. 317-319.

[29] Decision dated 28 September 2012, Rollo, p. 37-50.

[30] Rollo, p. 49.

[31] Decision dated 28 September 2012, Rollo, pp. 46-49.

[32] Rollo, pp. 54-68.

[33] Rollo, pp. 52-53.

[34] Petition for Certiorari, Rollo, pp. 14-15

[35] Petition for Certiorari, Rollo, p. 19.

[36] Petition for Certiorari, Rollo, p. 16.

[37] South East International Rattan, Inc. and/or Estanislao Agbay vs. Jesus J. Coming, G.R. No. 186621, 12 March 2014; Coca Cola Bottlers (Phils.), Inc./Eric Montinola vs. Dr. Dean N. Climaco, G.R. No. 146881, 5 February 2007.

[38] Angelina Francisco vs. National Labor Relations Commission, et al., G.R. No. 170087, 31 August 2006.

[39] Angelina Francisco vs. National Labor Relations Commission, et al., G.R. No. 170087, 31 August 2006.

[40] Angelina Francisco vs. National Labor Relations Commission, et al., G.R. No. 170087, 31 August 2006.

[41] Rollo, p. 245.

[42] Pedro Chavez vs. National Labor Relations Commission, et al., G.R. No. 146530, 17 January 2005.

[43] Rollo, p. 245.

[44] Rollo, p. 246.

- [45] Consultancy Agreement, Rollo, p. 164.
- [46] G.R. No. 157214, 7 June 2005.
- [47] Angelina Francisco vs. National Labor Relations Commission, et al., G.R. No. 170087, 31 August 2006.
- [48] Medical Consultancy Agreement, Rollo, p. 245; Emphasis supplied.
- [49] Consultancy Agreement, Rollo, p. 163; Emphasis supplied.
- [50] Aventus Guidelines for the Consultants, Rollo, pp. 247-248.
- [51] Aventus Guidelines for the Consultants, Rollo, p. 248.
- [52] Electronic Mail dated 5 September 2011, Rollo ,p. 263.
- [53] Notice of Termination, Rollo, pp. 180-181.
- [54] G.R. No. 126297, 2 February 2010, citing Calamba Medical Center, Inc. vs. National Labor Relations Commission, [571 SCRA 585 (2008)].
- [55] G.R. No. 1468881, 5 February 2007.
- [56] Angelina Francisco vs. National Labor Relations Commission, et al., G.R. No. 170087, 31 August 2006.
- [57] Angelina Francisco vs. National Labor Relations Commission, et al., G.R. No. 170087, 31 August 2006.
- [58] Medical Consultancy Agreement, Rollo, p. 246.
- [59] G.R. No. 146530, 17 January 2005.
- [60] Limketkai Sons Milling, Inc. vs. Llamera, G.R. No. 152514, 12 July 2005; Great Southern Maritime Services Corporation vs. Acuña, G.R. No. 140189, 28 February 2005.
- [61] Bughaw, Jr. vs. Treasure Island Industrial Corporation, G.R. No. 173151, 28 March 2008.
- [62] Id.
- [63] G.R. No. 166208, 29 June 2007.
- [64] Rollo, p. 263.
- [65] Great Southern Maritime Services Corporation, et al. vs. Jennifer Anne B. Acuña, et al., G.R. No. 140189, 28 February 2005.
- [66] Great Southern Maritime Services Corporation, et al. vs. Jennifer Anne B. Acuña, et al., G.R. No. 140189, 28 February 2005.
- [67] Great Southern Maritime Services Corporation, et al. vs. Jennifer Anne B. Acuña, et al., G.R. No. 140189, 28 February 2005.
- [68] Article 279 of the Labor Code of the Philippines, as amended; Section 3, Rule I, Book VI, Rules Implementing the Labor Code of the Philippines, Condo Suite Club Travel, Inc. vs. NLRC, G.R. No. 125671, 28 January 2000.
- [69] Marilyn T. Sagum vs. Court of Appeals, et al., G.R. No. 158759, 26 May 2005.
- [70] Magsaysay Maritime Corporation and/or Wastfel-Larsen Management A/S vs. Lobusta, G.R. No. 177578, 25

January 2012.

[71] Agabon vs. National Labor Relations Commission, G.R. No. 158693, 17 November 2004.

[72] Agabon vs. National Labor Relations Commission, G.R. No. 158693, 17 November 2004.

[73] Digitel Telecommunications Phil. vs. Soriano, G.R. No. 166039, 26 June 2006; Philippine Airlines vs. Tongson, G.R. No. 153157, 14 October 2003.

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