

RIZALINA L. VALDEZ, JUANERO Q. TORRES, JR. AND RAMIL C. BAUTISTA, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION- FIRST DIVISION, DAI-ICHI ELECTRONICS MANUFACTURING CORP. ...

Ponente: GARCIA-FERNANDEZ, J.

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GARCIA-FERNANDEZ, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court, seeking to annul and set aside the decision of the National Labor Relations Commission (NLRC) in NLRC LAC No. 08-002913-08(2) (Consolidated NLRC Case Nos. NCR 11-12641-07; 12-13540-07; and 12-13790-07) dated March 17, 2011, which set aside the labor arbiter's decision dated April 30, 2008 and dismissed petitioners' complaint for illegal dismissal and claims for payment of monetary benefits; and resolution dated May 30, 2011, denying petitioners' motion for reconsideration.

Respondent Dai-Ichi Electronics Manufacturing Corporation is engaged in the business of manufacturing hi-fi speakers and electronic devices and is owned and managed by Pablo Tobiano .

Petitioners Rizalina L. Valdez was hired by respondent on March 21, 1992 as visual inspector/gluing/soldering with a daily wage of P362.00/8 hours; Juanero Torres, Jr. was hired on August 11, 2005 as laminator/sander with a daily wage of P350.00; and Ramil C. Bautista was hired on February 2, 1995 as mould designer and dye maker with a daily wage of P350.00 plus P30.00 allowance/day/8 hours, as his latest wage rate.[1] Prior to their employment, petitioners had to undergo several trainings/seminars conducted on various dates by respondents in their training center at the Dai-IChi, Dela Paz, Pasig Plant, i.e., soldering operator certification program on November 7, 2001; gluing operation certification program on January 23, 2002; ISO 9001 awareness from August 6 to 13, 2001; ISO 9001: 2000 version awareness on May 2, 2002; teambuilding workshop on March 30-31, 2001; fire safety and prevention seminar on March 23, 1999.[2] According to petitioners, they reported daily and worked under the sole supervision and within the premises of respondents until their dismissal from employment. Rizalina Valdez was dismissed on October 19, 2007, after her husband Edwin Valdez was also dismissed illegally by respondent company sometime in August 2007 and filed a complaint against respondents. Juanero Torres, Jr. was dismissed on July 16, 2007, while Ramil Bautista was dismissed on October 31, 2007.[3]

Petitioners alleged that their dismissal from employment was without just cause and due process, hence, they filed separate complaints against respondents for illegal dismissal and payment of service incentive leave, 13[th] month pay, moral and exemplary damages and attorney's fees on November 15, 2007, December 6, 2007 and December 13, 2007.[4] Upon their motion, the complaints docketed as NCR 11-12641-07, 12-13540-07 and 12-13790-07 were consolidated.[5]

In their pleadings, petitioners alleged that they are regular employees of respondents because they were hired directly and engaged to perform activities which are usually necessary or desirable in the latter's usual business or trade, thus, they were entitled to all the benefits as such under the law; that they worked continuously for several

years under the sole and full supervision of respondents; that they were required to attend seminars, training and teambuilding workshops conducted by respondents on various dates; that their dismissal from employment was illegal due to lack of just cause and non-compliance with procedural due process under labor laws; and that they were entitled to payment of their monetary benefits under the law. They also alleged that respondents made it appear that they were employees of Arrowhead Manpower Services and SBB Technical Services by making them sign various documents during payday on pain of withholding their salaries, however, these companies belong to respondents' group of companies and are mere agents thereof under a scheme to prevent their regularization despite their long years of service and defeat their right to acquire security of tenure;[6] that Arrowhead and SBB Technical are labor-only contractors of respondents, which is prohibited by law; and that contrary to respondents' claim of lack of employer-employee relations, respondents hired them directly, paid their salaries, dismissed them from employment and actually exercised control and supervision over their work, which was directly related to respondents' business. They prayed that judgment be rendered declaring them regular employees of respondents; and that respondents be ordered to reinstate them with full backwages and pay each of them unpaid 5 days service incentive leave, 13[th] month pay, P100,000.00 as moral and exemplary damages and 10% as attorney's fees.[7]

In their pleadings, respondents alleged that there was absence of employer-employee relationship between them and petitioners; that they were primarily engaged in manufacturing electronic products for domestic and export markets, and employed both contractual and regular employees; that for projects which are not connected with manufacturing electronics, they engaged the services of private contractors relative to repairs, painting, renovation and maintenance of its factory warehouse, office buildings and factory compound; that petitioners were specifically hired, dismissed from employment and paid by contractors Arrowhead Manpower Services and SBB Technical Services as contractual employees for such repair/renovation projects and were under these contractors' direct control and supervision, thus, respondents cannot be held liable for illegal dismissal and payment of petitioners' monetary benefit.[8] In support of the allegation that petitioners were employees of said private contractors, respondents presented the latter's payroll and certification, as well as other documents issued by the Social Security System (SSS), Home Development Mutual Fund or Pag-ibig and Bureau of Internal Revenues (BIR).[9]

On April 30, 2008, the labor arbiter issued a decision holding that there was employer-employee relation between respondents and petitioners, and that respondents were guilty of dismissing the latter from employment illegally. The labor arbiter also held that Arrowhead and SBB Technical are engaged in labor-only contracting, which is prohibited under Department Order No. 18-02 (series of 2002), and that these companies actually belong to respondents' group of companies. The dispositive portion of the decision provides:

“WHEREFORE, the foregoing premises considered, judgment is hereby rendered finding the respondent liable for illegally dismissing the complainants; and the respondents are hereby ordered to pay, jointly and severally, all the complainants the following:

For complainant Rizalina L. Valdez: Separation pay, full backwages, service incentive leave, 13[th] month pay, moral and exemplary damages and attorney's fees.

For complainant Juanero Q. Torres, Jr. and Ramil C. Bautista: Full backwages, service incentive leave, 13th month pay, moral and exemplary damages and attorney's fees.

The respondents are also ORDERED to REINSTATE complainants Torres and Bautista to their former jobs without loss of seniority rights and other privileges. This reinstatement order is immediately executory and the respondents are directed to submit a report of compliance within ten (10) calendar days from receipt of this Decision.

A detailed computation of the monetary awards as of the date of this decision is embodied in Annex “A”

which is hereby made an integral part hereof.

SO ORDERED.[10]

On July 9, 2008, respondents appealed the decision to the NLRC.[11] On March 17, 2011, the NLRC promulgated a decision setting aside the labor arbiter's decision and dismissing petitioners' complaint for lack of merit, however, it ordered respondents to pay petitioners' service incentive leave, 13th month pay and 10% attorney's fees. In its decision, the NLRC held that petitioners failed to establish employer-employee relationship and that evidence presented only proved that petitioners were engaged and paid by Arrowhead and SBB Technical, and assigned to work under its control and supervision within respondents premises. Anent the award of separation pay to petitioner Rizalina Valdez and the order to reinstate petitioners Juanerro Torres, Jr. and Ramil Bautista, the NLRC held that they could not have been dismissed by respondents there being absence of employer-employee relationship. Further, petitioners failed to present evidence to prove that they were dismissed from employment by Arrowhead and SBB Technical. Anent the award of service incentive leave and 13th month pay, the NLRC sustained the same reasoning that respondents and contractors Arrowhead and SBB Technical were liable jointly and solidarily for payment of the same under Art. 16 of the Labor Code, as amended, and there being absence of proof that petitioners were paid these monetary benefits during their employment. Lastly, anent the claim for moral and exemplary damages, the NLRC held that these may only be recovered where dismissal was attended by bad faith, fraud or oppressive acts done in a manner contrary to morals, good customs or public policy, hence, petitioners were not entitled thereto as respondents could not have dismissed persons not in their employ.[12]

Petitioners moved for reconsideration of the NLRC decision, however, on May 30, 2011, the NLRC issued the resolution denying their motion for lack of merit.[13] Hence, in this petition, petitioners allege that public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in reversing the labor arbiter, who held that petitioners were regular employees of respondents and dismissed from employment illegally.[14]

In cases of illegal dismissal, the employer has the burden of proving that the termination was for a valid or authorized cause; however, it is likewise incumbent upon the employees to first establish by competent evidence the fact of their dismissal from employment for as a rule, one who alleges a fact has the burden of proving it and the proof should be clear, positive and convincing.[15] Pivotal to the resolution of the instant case is the determination of the existence of employer-employee relationship and whether there was illegal dismissal.

The issue of whether or not an employer-employee relationship exists in a given case is essentially a question of fact. As a rule, factual findings made by quasi-judicial and administrative tribunals, if supported by substantial evidence, are accorded great respect and even finality by the courts. However, this general rule admits of exceptions, such as when there is a showing that a palpable and demonstrable mistake has been committed, which needs rectification, or when the factual findings were arrived at arbitrarily or in disregard of the evidence on record.[16] The Court may also look into factual issues when the findings of the labor arbiter and the NLRC are conflicting.[17] Here, the findings of the NLRC differed from those of the labor arbiter. Further, certain facts and evidence on record were misapprehended by the NLRC, which would otherwise yield a conclusion favorable to petitioners if given due weight and consideration, thus, the Court is compelled to exercise its authority to review the evidence on record.

To ascertain the existence of an employer-employee relationship jurisprudence has invariably adhered to the four-fold test, 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." In resolving the

issue of whether such relationship exists in a given case, substantial evidence – that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion – is sufficient. Although no particular form of evidence is required to prove the existence of the relationship, a finding that the relationship exists must nonetheless rest on substantial evidence.[18] Further, there is no hard and fast rule designed to establish the aforesaid elements. Any competent and relevant evidence to prove the relationship or employee status may be admitted, such as identification cards, cash vouchers, social security registration, appointment letters or employment contracts, payrolls, organization charts, and personnel lists, to name only a few.[19]

This Court finds the petition meritorious. There is substantial evidence to prove that respondent Dai-Ichi engaged and hired petitioners, paid their salaries/wages, exercised control and supervision over their work and conduct within respondents' premises for more than two (2) years and actually dismissed them from employment. While respondents claims that petitioners were employees of Arrowhead Manpower Services and SBB Technical Services, and that they merely engaged these service contractors for the repair and renovation of their warehouse, the evidence on record proves otherwise. First, respondents failed to present documentary evidence to show that there were existing service contracts with Arrowhead and SBB Technical. Second, the employee identification card issued to petitioner Rizalina Valdez proves that Arrowhead and SBB Technical were actually part of respondents' group of companies. Second, even if respondents claimed that petitioner Valdez was an employee of Arrowhead, checks issued to the latter corresponding to her terminal pay in the amounts P11,292.44 and P655.00 indicated Arrowhead and SBB Technical as account holders and Dai-Ichi's owner Pablo Tobiano and general manager Carlos Go as signatories.[20] Third, Arrowhead, SBB Technical and respondent Dai-Ichi had identical principal place of business at 160 Mariano Avenue, De La Paz, Pasig City.[21] These pieces of evidence are proof that all three companies had identical officers and conducted their business affairs as one corporate entity, thus, as far as petitioners are concerned, they were under the management, operation, control and supervision of one and the same company. Fourth, record shows that it was respondent company that conducted technical training and team building seminars for petitioners within company premises to ensure that their skills were at par with the requirements of their respective jobs in the company. Dai-Ichi's general manager Carlos Go signed the certificates of attendance issued to petitioners. This clearly proved that respondents actually exercised control over the means and method employed in the work to be done by petitioners, for it is highly unlikely that a company would invest time and resources in training personnel who purportedly are not its employees. Fifth, the fact of their continued employment over a span of two (2) years in the case of Juanero Torres, Jr., twelve (12) years in the case of Ramil Bautista and fifteen (15) years in the case of Rizalina Valdez also proved that they were tasked to undertake activities usually necessary or desirable to the business of respondents. Notably, respondents failed to dispute the fact of their ownership of Arrowhead and SBB Technical. Hence, the Court is left with no other conclusion except that respondent employed the whole scheme as a mere subterfuge for violation of petitioners' right to security of tenure and in order to evade their obligations under labor laws.

It has been ruled that a corporation has a personality separate and distinct from the persons composing it, as well as from any other legal entity to which it may be related. The doctrine of piercing the corporate veil applies only in three (3) basic instances, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation. Whether the separate personality of the corporation should be pierced hinges on obtaining facts appropriately pleaded or proved.[22] In this case, only respondent Dai-Ichi Electronics Manufacturing Corporation shall be liable to the petitioners for illegally dismissing them from employment. There is no sufficient

evidence on record showing any of the three aforementioned circumstances justifying the liability of respondent Pablo Tobiano as alleged owner and manager to be solidary with respondent corporation.

Anent the issue of illegal dismissal, it has been ruled that in any controversy between a laborer and his master, doubts reasonably arising from the evidence are resolved in favor of the laborer. As regular employees, petitioners enjoy the right to security of tenure under Article 279 of the Labor Code, as amended and may only be dismissed for a just or authorized cause, otherwise the dismissal becomes illegal.[23]

An illegally dismissed employee is entitled to two reliefs: backwages and reinstatement. The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages. The normal consequences of illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages.[24] Considering therefore that petitioners' employment was terminated without valid cause, they are entitled to reinstatement without loss of seniority rights and other privileges and to full back wages, inclusive of allowances and other benefits or their monetary equivalent, computed from the date their compensation was withheld or the date of illegal termination up to the date of actual reinstatement; or separation pay as the case may be, equivalent to one month salary for every year of service in case reinstatement is not possible.

Further considering that petitioners were all compelled to litigate to protect their interests, the award of attorney's fees equivalent to 10% of the total monetary award is proper. Art. 111 of the Labor Code, as amended,[25] and Sec. 8, Rule VIII, Book III of the Implementing Rules governs the grant of attorney's fees.[26] The instances when these may be awarded are enumerated under Par. 7 of Article 2208 of the Civil Code on actions for recovery of wages, and is payable not to the lawyer but to the client, unless the client and his lawyer have agreed that the award shall accrue to the lawyer as additional or part of compensation. There need only be a showing that the lawful wages were not paid accordingly.[27]

In their complaint, petitioners prayed for payment of moral and exemplary damages, however, this Court finds no sufficient basis on record to award the same. Lastly, in line with current jurisprudence, an interest of 6% per annum shall be applied to the total monetary award computed from date this decision becomes final and executory until full satisfaction.[28]

WHEREFORE, the petition for certiorari is GRANTED. The decision of public respondent National Labor Relations Commission dated March 17, 2011 and its resolution dated May 30, 2011 in NLRC LAC No. 08-002913-08(2) (Consolidated NLRC Case Nos. NCR 11-12641-07; 12-13540-07; and 12-13790-07) are ANNULLED and SET ASIDE.

The decision of the labor arbiter dated April 30, 2008 declaring petitioners Rizalina Valdez, Juanero Torres, Jr. and Ramil Bautista dismissed from employment illegally is REINSTATED with MODIFICATION. Respondent Dai-Ichi Electronics Manufacturing Corporation is ordered to pay petitioners full backwages inclusive of allowances and other monetary benefits computed from date of their dismissal until finality of this decision. The award of moral and exemplary damages is DELETED. Respondent corporation is also directed to pay petitioner Rizalina Valdez separation pay equivalent to one (1) month salary for every year of service; and to reinstate petitioners Juanero Torres, Jr. and Ramil Bautista to their former positions without loss of seniority rights, or pay separation pay in lieu thereof.

Respondent corporation is liable for attorney's fees equivalent to 10% of the total amount of the awards, plus interest of six percent (6%) per annum computed from date of finality of this decision until full satisfaction.

This case is remanded to the labor arbiter for proper computation of the judgment award in favor of petitioners in accordance with this decision. Costs against respondent Dai-Ichi Electronics Manufacturing Corporation.

SO ORDERED.

Tijam, N.G., Chairperson and [*]Cruz, Ramon A., JJ., concur.

[*] Vice Justice Mario V. Lopez per Office Order No. 88-15-RSF dated March 20, 2015.

[1] Rollo, pp.

[2] Rollo, pp. 66-71.

[3] Id. at p. 116.

[4] Id. at pp. 46-47; pp. 49-51; pp. 53-55.

[5] Id. at p. 48 & p. 52.

[6] Id. at pp. 99-100.

[7] Id. at pp. 56-65; pp. 81-86; and pp. 94-98.

[8] Id. at pp. 72-80; pp. 87-93; pp. 101-105.

[9] Id. at pp. 106-120.

[10] Id. at pp. 122-138.

[11] Id. at pp. 139-157.

[12] Id. at pp. 34-45.

[13] Id. at pp. 158-156; pp. 31-33.

[14] Id. at pp. 9-21.

[15] Basay, et al. vs. Hacienda Consolacion, et al., G. R. No. 175532, April 19, 2010.

[16] Philasia Shipping Agency Corp. and/or Intermodal Shipping, Inc. vs. Tomacruz, G.R. No. 181180, August 15, 2012.

[17] South East Rattan International, Inc., et al. vs. Jesus L. Coming, G.R. No. 186621, March 12, 2014.

[18] Note 17.

[19] Tenazas, et al. vs. R Villegas Taxi, G.R. No. 192998, April 2, 2014.

[20] Id. at p. 100.

[21] Id. at pp. 73; p. 111; pp. 119-121.

[22] Timoteo Sarona vs. NLRC, Royale Security Agency (Formerly Sceptre Security Agency) and Cesar S. Tan, G.R. No. 185280, January 18, 2012.

[23] Arts. 282, 283 and 284 of the Labor Code, as amended.

[24] Note 19.

[25] Art. 111. Attorney's fees. – (a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered. (b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the amount of wages recovered.

[26] Sec. 8, Rule VIII, Book III of the Implementing Rules provides: Sec. 8. Attorney's fees. – Attorney's fees in any judicial or administrative proceedings for the recovery of wages shall not exceed 10% of the amount awarded. The fees may be deducted from the total amount due the winning party."

[27] *Tangga-an vs. Phil. Transmarine Carriers, Inc., et al.*, G.R. No. 180636, March 13, 2013.

[28] *Dario Nacar vs. Gallery Frames and/or Felipe Bordey, Jr.*, G.R. No. 189871, August 13, 2013.

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