

**BRISK NAUTILUS DOCK INTEGRATED SERVICES, INC. (BNDISI),
REPRESENTED BY ITS OPERATIONS MANAGER BENNET G. LLORCA,
PETITIONER, VS. AGUADO, HERMIONE N., ALBA, LARRY F., ALBA,
SOLOMO...**

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

This is a Petition for Certiorari under Rule 65 of the Rules of Court assailing the following issuances of public respondent National Labor Relations Commission (NLRC), Seventh Division, Cebu City, in NLRC Case No. VAC-01-000042-2014, to wit: (1) Decision[1] dated March 31, 2014 which affirmed with modification the decision[2] of the labor arbiter dated December 27, 2013 granting separation and 13[th] month pays, as well as attorney's fees to private respondents; and (2) Resolution[3] dated May 20, 2014 which denied petitioner's motion for reconsideration.

The Antecedents

Petitioner Brisk Nautilus Dock Integrated Services, Inc. (BNDISI) is a corporation rendering stevedoring and arrastre services[4] for the ships of Negros Navigation Company (NENACO) and 2GO Group (2Go). BNDISI engaged private respondents to unload 50-kilo bags of sugar from cargo trucks and place it in container vans that would subsequently be shipped to different parts of the Philippines. For their service, private respondents were paid eighty centavos (P0.80) and later on, one peso (P1.00) per bag of sugar conveyed.

On January 8, 2013, private respondents, represented by Danilo Impit, Jr., wrote a letter[5] to the Department of Labor and Employment (DOLE) regarding BNDISI's alleged failure to provide them with the legally prescribed labor standards and benefits. A DOLE representative went to BNDISI's office to conduct an inspection and the findings thereof were contained in the Notice of Inspection Results[6] dated January 23, 2013. The DOLE then set conciliation proceedings between BNDISI and private respondents, but while the same was pending, BNDISI informed private respondents on May 2, 2013 that their services would no longer be needed effective May 16, 2013. Consequently, private respondents filed with the DOLE a Motion to Withdraw Complaint,[7] and expressed their intention to refile it with the NLRC Regional Arbitration Branch considering that their employments would eventually be terminated.

Private respondents subsequently lodged with the NLRC their complaints against BNDISI, NENACO, 2GO Group, and their respective representatives, for illegal dismissal; claims for non-payment of 13[th] month, service incentive leave, holiday, rest day, and overtime pays; claims for moral and exemplary damages, as well as attorney's fees. The following are the material facts alleged in their Position Paper[8] viz.:

xxx Complainants were former cargo handlers of Regent Multi-Purpose Cooperative (REGENT for short) assigned at Banago Port xxx since in the year 2003, to unload different kinds of cargoes mostly 50 kilos bag of sugar from the cargo trucks and placed them in the container van to be loaded in the different ships own by Negros Navigation Company (NENACO) xxx for shipping to the different places in the Philippines.

xxx xxx xxx

xxx On July 16, 2008, Sherlito Cusio held a meeting among the cooperative-members and cargo handlers of REGENT xxx and told them that - from now on BNDISI will handle all warehousing and cargoes being shipped through NENACO; he told them further that if they want to continue working as cargo handlers, they must submit their bio-data to BNDISI; otherwise, they will not be allowed to continue working as cargo handlers under any other company or establishment at Banago Port.

xxx xxx xxx

xxx Apprehensive and afraid of losing their jobs xxx, they applied as cargo handlers of BNDISI and were required to fill up their respective bio-data with BNDISI logo, they were issued BNDISI ID's and they reported to supervisor Elgie Suganob xxx

xxx When complainants were already working under BNDISI, they were paid Php 1.00 per 50 kilos bag of sugar that they unload from the cargo truck and placed in the container van to be loaded in the ships of NENACO xxx and their total earnings xxx was given to their respective gang leader, who in turn will divide equally among them, and each may earn at least P100.00 per day, if there are few cargoes, to around P400.00 per day as their regular income and a maximum of around P800.00 per day if there are plenty of cargoes, and after working up to around 10:00 o'clock in the evening; but their other benefits when they were still working with REGENT, such as, 13[th] month pay and service incentive leave pay, compulsory coverage with the SSS, Medicare/Philhealth, Pag-Ibig, revolving funds for emergency use, Christmas Party, basketball or bowling tournament at the expense of the cooperative, free medical check-up and hospitalization benefits, were abolished.

xxx As sugar handlers of BNDISI, they were divided into five (5) groups headed by a gang leader xxx

xxx xxx xxx

xxx Since the time complainants were absorbed by BNDISI xxx, they were treated as freelance workers or independent contractors, and not considered employees of BNDISI, to escape any liability due to them under the Labor Code and other applicable labor laws; but later on they learned that NENACO, BNDISI and SUPERFERRY were merged to 2GO Group, Inc., and they likewise handle the cargoes of Superferry dock at Bredco Port xxx

xxx xxx xxx

xxx In view of the abolition of their benefits and privileges xxx, they filed a letter-complaint in the office of the Regional Director, Department of Labor and Employment Region VI, Bacolod City xxx

xxx xxx xxx

xxx While the said letter-complaint xxx was still being heard by Senior Labor Employment Officer (SLEO), xxx Mr. Bennet Llorca terminated the services of complainants as cargo handlers of BNDISI through their Gang Leader Mr. Solomon F. Alba, Jr. by informing them in a letter dated April 30, 2013, on the pretext that BNDISI will no longer need their services because 2GO Group Inc. will not renew its contract for warehousing and cargo handling services effective May 16, 2013 xxx.

xxx True to the said letter of Mr. Bennet Llorca, effective May 16, 2013, complainants were no longer allowed to handle the warehousing and cargo services of BNDISI, even still up to the present; xxx complainants were prohibited to [e]nter the premises of Banago port xxx on instruction of Elgie Suganob and Bennet Llorca to the security guards; but to the best of complainant's knowledge, BNDISI is still handling some of the warehousing and cargo services of NENACO and SUPERFERRY, thru their newly hired cargo handlers which they considered as independent contractor, especially the complainants who back-out from their said letter-complaint in the DOLE xxx.

Meanwhile, in its Position Paper[9] BNDISI denied that private respondents were its employees. It averred that the latter were independent contractors whose piece-rate compensation already included all their benefits under the Labor Code. According to BNDISI, private respondents' work was done only on pakyaw basis. It was also irregular in nature as the work was entirely dependent on the arrival of the vessels; and even if work was available, private respondents had to show up and present themselves to their gang leader to be allowed to work. BNDISI claimed that it had no control and supervision on private respondents as anybody could be taken by the gang leader if there were bags of sugar to be stuffed in the container van. Private respondents were also free to present themselves to others who would need their services. BNDISI denied having dismissed private respondents and disclaimed liability for their monetary claims.

After considering the parties' respective positions, the labor arbiter ruled that private respondents were employees of BNDISI and indirect employees of NENACO and 2GO. However, the labor arbiter declared that BNDISI did not illegally dismiss them right away on May 16, 2013. Instead, private respondents were under floating status effective that date until November 16, 2013. Considering that private respondents were no longer given any new assignments, BNDISI had to pay them separation pay in lieu of such possible new assignments. The labor arbiter also granted 13[th] month pay to private respondents for the last three (3) years of their employment; but dismissed the claims for overtime, service incentive leave, holiday and rest day premium pays, as the Labor Code exempts private respondents from such benefits, being workers paid by results. The claims for moral and exemplary damages were likewise denied, but attorney's fees were granted since private respondents were forced to litigate and hire the services of counsel to enforce their rights.

The dispositive portion[10] of the labor arbiter's decision is hereby quoted, viz.:

WHEREFORE, premises considered, judgment is hereby rendered -

(1) DIRECTING respondent BRISK NAUTILUS DOCK INTEGRATED SERVICES, INC. through FRED S. PAJO, President, TEDDY L. ETCHON, Operations Officer, or BENNET G. LLORCA, Manager, to pay complainants, namely:

1. SOLOMON E. ALBA, JR. -P36,010.00
2. ELVIS REYES -P36,010.00
3. JESSIE MACAIRAN -P36,010.00
4. GREG GAIN -P36,010.00
5. ERIC P. SEQUILLO -P36,010.00
6. FELIX ESGANA -P36,010.00
7. JOSE NElfREDO A. AREQUE -P36,010.00
8. LARRY F. ALBA -P36,010.00
9. HERMIONE N. AGUADO -P36,010.00
10. JUVY ARDY F. LANTORIA -P36,010.00
11. JIMMY C. DE LOS REYES -P36,010.00
12. JOJIT A. BITAR -P36,010.00
13. EDUARDO V. BAYOT -P36,010.00

14. RUTCHEL M. ALIGUIN -P36,010.00
15. ART SON DEL PRADO -P36,010.00
16. JERONE M. TANOY
-P36,010.00
17. GABRIEL S. SARABIA -P36,010.00
18. RAMON E. MACAIRAN -P36,010.00
19. JUNARI S. MATTA -P36,010.00
20. NELSON E. BALLENTES -P36,010.00
21. ELISEO S. DEQUILLA, JR. -P36,010.00
22. JOHN VILLARENTE -P36,010.00
23. JOELITO ANDRAQUE -P36,010.00
24. SALVADOR G. LANTORIA -P36,010.00
25. MARIO M. MAHILUM -P36,010.00
26. RONIE L. SAMSON -P36,010.00
27. ALFONSO C. REMEGIO -P36,010.00
28. WENIE L. SAMSON -P36,010.00
29. LESTER P. TACIO -P36,010.00
30. ARNEL SUGANOB -P36,010.00
31. ISAGANI P. SUGANOB -P36,010.00
32. MARVIN SUGANOB -P36,010.00
33. ELPEDIO P. ENDRINA, JR. -P36,010.00
34. EFREN P. EDRENA -P36,010.00
35. RENE BOY REYES -P36,010.00
36. RUDY DELA CRUZ, JR. -P36,010.00
37. NOLI Z. ILON -P36,010.00
38. DANILO T. IMPIT, JR. -P36,010.00
39. ARLAN DESUCATAN -P36,010.00
40. ARMANDO DEL PRADO -P36,010.00
41. MARK BALQUIN -P36,010.00
42. HILBERT BETUA -P36,010.00
43. ELJIN B. ENDRINA -P36,010.00
44. ROGEL JUN S. PLACER -P36,010.00

45. ROGEL E. BESIATA -P36,010.00
46. DARIEL D. FLORA -P36,010.00
47. ALDREN N. AREQUE -P36,010.00
48. NOEL J. REBADA -P36,010.00
49. JUDEJANE PAUL F. LANTORIA -P36,010.00
50. AUDIE ESTAMBA -P36,010.00

as separation pay, and the amount of P180,050.00 as attorney's fees, or the total amount of ONE MILLION NINE HUNDRED EIGHTY THOUSAND FIVE HUNDRED FIFTY PESOS (P1,980,550.00);

(2) DIRECTING respondents BRISK NAUTILUS DOCK INTEGRATED SERVICES, INC., the direct employer, through FRED S. PAJO, President, TEDDY L. ETCHON, Operations Officer, or BENNET G. LLORCA, Manager, and NEGROS NAVIGATION COMPANY and 2GO GROUP, INC., the indirect employers, to jointly and severally pay complainants, namely:

1. SOLOMON E. ALBA, JR. -P21,606.00
2. ELVIS REYES -P21,606.00
3. JESSIE MACAIRAN -P21,606.00
4. GREG GAIN -P21,606.00
5. ERIC P. SEQUILLO -P21,606.00
6. FELIX ESGANA -P21,606.00
7. JOSE NElfREDO A. AREQUE -P21,606.00
8. LARRY F. ALBA -P21,606.00
9. HERMIONE N. AGUADO -P21,606.00
10. JUVY ARDY F. LANTORIA -P21,606.00
11. JIMMY C. DE LOS REYES -P21,606.00
12. JOJIT A. BITAR -P21,606.00
13. EDUARDO V. BAYOT -P21,606.00
14. RUTCHEL M. ALIGUIN -P21,606.00
15. ART SON DEL PRADO -P21,606.00
16. JERONE M. TANOY -P21,606.00
17. GABRIEL S. SARABIA -P21,606.00
18. RAMON E. MACAIRAN -P21,606.00
19. JUNARI S. MATTA -P21,606.00
20. NELSON E. BALLENTES -P21,606.00

21. ELISEO S. DEQUILLA, JR. -P21,606.00
22. JOHN VILLARENTE -P21,606.00
23. JOELITO ANDRAQUE -P21,606.00
24. SALVADOR G. LANTORIA -P21,606.00
25. MARIO M. MAHILUM -P21,606.00
26. RONIE L. SAMSON -P21,606.00
27. ALFONSO C. REMEGIO -P21,606.00
28. WENIE L. SAMSON -P21,606.00
29. LESTER P. TACIO -P21,606.00
30. ARNEL SUGANOB -P21,606.00
31. ISAGANI P. SUGANOB -P21,606.00
32. MARVIN SUGANOB -P21,606.00
33. ELPEDIO P. ENDRINA, JR. -P21,606.00
34. EFREN P. EDRENA -P21,606.00
35. RENE BOY REYES -P21,606.00
36. RUDY DELA CRUZ, JR. -P21,606.00
37. NOLI Z. ILON -P21,606.00
38. DANILO T. IMPIT, JR. -P21,606.00
39. ARLAN DESUCATAN -P21,606.00
40. ARMANDO DEL PRADO -P21,606.00
41. MARK BALQUIN -P21,606.00
42. HILBERT BETUA -P21,606.00
43. ELJIN B. ENDRINA -P21,606.00
44. ROGEL JUN S. PLACER -P21,606.00
45. ROGEL E. BESIATA -P21,606.00
46. DARIEL D. FLORA -P21,606.00
47. ALDREN N. AREQUE -P21,606.00
48. NOEL J. REBADA -P21,606.00
49. JUDEJANE PAUL F. LANTORIA -P21,606.00
50. AUDIE ESTAMBA -P21,606.00

as 13th month pay, and the amount of P108, 030.00 as attorney's fees, or the total sum of ONE MILLION ONE

HUNDRED EIGHTY-EIGHT THOUSAND THREE HUNDRED THIRTY PESOS (P1,188,330.00).

The other claims are DISMISSED for lack of merit.

SO ORDERED.[11]

BNDISI filed a notice of partial appeal[12] to the NLRC whereby it reiterated the stance that it had no employer relationship with private respondents. BNDISI also questioned the labor arbiter's grant of uniform amounts for separation and 13th month pays since the evidence showed that private respondents had varying lengths of service.

In resolving the appeal, the NLRC excluded from the awards some employees whose names were part of the complaint but who did not sign the verification. On the main issues regarding employment relations and the grant of separation and 13[th] month pays, the NLRC, however, affirmed the ruling of the labor arbiter. The dispositive portion of the NLRC's decision reads, viz.:

WHEREFORE, premises considered, the Labor Arbiter's 27 December 2013 Decision is hereby AFFIRMED but with the following modifications:

1. the separation pay, 13[th] month pay and attorney's fees awarded to complainants- Audie Estamba, Jessie Y. Macairan, Jojit A. Bitar, Alfonso C. Remegio and Rogel Jun S. Placer are CANCELLED, given the dismissal of their case without prejudice;
2. the total of the ten percent (10%) attorney's fees being awarded, is ADJUSTED commensurate to the remaining monetary awards;

SO ORDERED.[13]

BNDISI moved for reconsideration[14] but the NLRC denied the motion. Left with no other recourse, it brought this petition and advanced the following grounds, viz.:

THAT BOTH THE LABOR ARBITER AND THE NLRC COMMISSION [SIC] HAD ERRED AND GRAVELY ABUSE[D] ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN INSISTING THAT PRIVATE RESPONDENTS ARE EMPLOYEES OF PETITIONER, AND

GRANTING FOR THE SAKE OF ARGUMENT BUT WITHOUT ADMITTING THAT PRIVATE RESPONDENTS ARE THE EMPLOYEES OF PETITIONER, THE LABOR ARBITER AND THE NLRC COMMISSION [SIC], CEBU CITY HAD COMMITTED ERROR AND GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN INSISTING THAT 45 PRIVATE RESPONDENTS ARE ENTITLED TO SEPARATION PAY FOR 5 YEARS AND 13TH MONTHS [SIC] PAY FOR 3 YEARS, WHEN PRIVATE RESPONDENTS HAVE NOT SUBMITTED SUBSTANTIAL EVIDENCE AS TO THEIR LENGTH OF SERVICE AND ON THE CONTRARY PETITIONER HAD SUBMITTED SUBSTANTIAL EVIDENCE TO REDUCE THE CLAIM FOR SEPARATION PAY AND 13TH MONTHS [SIC] PAY.[15]

This Court's Ruling

The petition is without merit.

On the first ground, BNDISI contended that private respondents were not its employees as they were piece-rate workers. Their employments were akin to those of independent contractors in that they were given a fixed payment of P1.00/bag of sugar hauled but they had a free hand in securing the help of other people to help them unload the bags of sugar from the trucks. They were also free to contract services with other companies at Bredco port. Private respondents' services were seasonal in nature since the milling of sugarcane was only for a period of

6 to 8 months. Hence, the hauling of sugar was also co-terminous with this period.

We are not persuaded.

BNDISI had been repeatedly arguing the foregoing contentions before the labor arbiter and the NLRC. Yet, both labor tribunals found no merit in BNDISI's assertions. On the contrary, the said labor tribunals were one in declaring that employment relations existed between BNDISI and private respondents. In dismissing BNDISI's arguments, the NLRC ruled:

xxx that payment by the piece is merely a method of computing compensation and not a basis for determining the existence of employment relationship.

Besides, the remaining complainants do not have substantial capital or investment, otherwise, they would not be content in working as manual laborers, hauling sacks of sugar from the warehouse to the vessels of respondent-BNDISI's clients.[16]

The labor tribunals had already substantially discussed[17] in their decisions the satisfaction of the four factors determining the presence of employer-employee relationship, specifically: 1) the power to hire, (2) the payment of wages, (3) the power to dismiss, and (4) the power to control — the last being the most important element.

We do not find sufficient justification to deviate from the findings of the labor tribunals. The existence of an employer-employee relationship is ultimately a question of fact and that the findings thereon by the labor authorities shall be accorded not only respect but even finality when supported by substantial evidence.¹⁸ In this case, such required evidence had been satisfied, thus, no grave abuse of discretion could be ascribed to the NLRC.

Besides, the factual milieu of this case and the arguments herein put forth by BNDISI regarding the character of its relationship with private respondents were not much different from those resolved by the Supreme Court in the case of *Caurdanetaan Piece Workers Union v. Laguesma*,[19] whereby therein private respondent Corfarm denied the existence of employment relations by arguing that: the members of therein petitioner union were 'street-hired' workers engaged from time to time to do loading and unloading work; the union members rendered service to several other rice mills; the union members contracted loading and unloading services with Corfarm when such work was available and when they felt like it; and the union members were independent contractors. In adjudging that there was employment relations despite the circumstances pointed out by Corfarm, the Supreme Court declared, thus:

It is undeniable that petitioner's members worked as cargadores for private respondent. They loaded, unloaded and piled sacks of palay from the warehouses to the cargo trucks and from the cargo trucks to the buyers. This work is directly related, necessary and vital to the operations of Corfarm. Moreover, Corfarm did not even allege, much less prove, that petitioner's members have "substantial capital or investment in the form of tools, equipment, machineries, [and] work premises, among others." xxx Clearly, the workers are not independent contractors.

Anent BNDISI's claim that private respondents' work was seasonal, this Court finds the same to be off-tangent. There is no dispute that BNDISI was engaged, not in the milling of sugar which is seasonal, but in arrastre and stevedoring business. BNDISI's engagement of private respondents was for the hauling of bags of sugar and such activity was practically BNDISI's regular business or occupation. The unloading of sugar bags from the trucks and loading these into the container vans were necessary or desirable in BNDISI's business as a stevedoring company. This circumstance makes the employment of private respondents a regular one, in the sense that it does not depend on any specific project or seasonal activity. Applying Article 280 of the Labor Code, private respondents were BNDISI's regular employees as their tasks were essential in the usual business of BNDISI.

On the second ground, BNDISI questioned the grant of uniform amounts of separation and 13[th] month pays which were computed based on 5 and 3 years, respectively; as according to it, private respondents had not submitted substantial evidence as to their length of service. BNDISI pointed out that in the documents considered by the labor arbiter, the names of some of private respondents who were listed in some documents could not be found in the others. BNDISI contended that:

Examination of the Position Paper of the Private Respondents Annex “B” hereof on page 6 it shows that there are 5 Gangs with at l[ea]st 14 Private Respondents under I Gang[.] Petitioner had submitted that base[d] on the number of Private Respondents who received cash gift it is possible that there are only 24 Private Respondents who should be paid 5 years separation pay and only 19 Private Respondents who should be paid 1 year Separation pay.[20]

We have no reason to disregard the computation of the labor tribunals. In a certiorari proceeding such as this case, this Court does not assess and weigh each piece of evidence introduced in the case and which were used by the labor arbiter and the NLRC to justify their decisions. Instead, Our query is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision.[21] No such circumstance obtain in this case.

Book III, Rule X, specifically Sections 6, 7, 8, and 10 of the Omnibus Rules Implementing the Labor Code require all employers to keep employment records of all their employees, specifically payrolls and time records. The law, thus, adequately forewarns the employer of the need for accurate record keeping. In this case, BNDISI was unfortunately remiss in its duty to keep such employment records, which could have been its best evidence to dispute the computations. By its own folly, BNDISI must therefore suffer and cannot whine of the consequences of such failure.

Besides, it does not escape the Court that BNDISI was not even certain in its position on the incorrectness of the monetary awards granted to private respondents. In the above-quoted argument from its Petition, BNDISI just posited that “it is possible” that there are only 24 private respondents who should be paid 5 years separation pay and only 19 private respondents who should be paid 1 year separation pay. This likelihood cannot be the basis to discredit the labor tribunal's computation. In the absence of substantial evidence to support its desired computation, the supposed doubts aroused by the documents mentioned by BNDISI will merely remain as such. And as is well-settled, if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the employee, since it is a time-honored rule that in controversies between a laborer and his master, doubts reasonably arising from the evidence, or in the interpretation of agreements and writings should be resolved in the former's favor.[22]

WHEREFORE, the Petition is DENIED. The Decision dated March 31, 2014 and Resolution dated May 20, 2014 of the National Labor Relations Commission, Seventh Division, Cebu City in NLRC Case No. VAC-01-000042-2014 are hereby AFFIRMED.

SO ORDERED.

Delos Santos, Chairperson and Azcarraga-Jacob, JJ., concur.

[1] Rollo, pp. 328-340..

[2] Rollo, pp. 279-301,

[3] Rollo, pp. 357-359.

- [4] See Preliminary Statement/Facts of the Case in BNDISI's Position Paper, rollo, p. 155.
- [5] Rollo, pp. 164-170.
- [6] Rollo, p. 171.
- [7] Rollo, pp. 203-204.
- [8] Rollo, pp. 48-53.
- [9] Rollo, pp. 155-163.
- [10] Rollo, pp. 298-301.
- [11] Rollo, pp. 298-301.
- [12] Rollo, pp. 302-304; see also Appeal Memorandum, rollo, pp. 307-321.
- [13] Rollo, p. 340.
- [14] Rollo, pp. 341-346.
- [15] Rollo, pp. 9-10.
- [16] Rollo, p. 336.
- [17] See pp. 12-15 of the labor arbiter's decision, rollo, pp. 290-293.
- [18] *Caurdanetaan Piece Workers Union v. Laguesma*, G.R. No. 113542 and G.R. No. 114911. February 24, 1998.
- [19] G.R. No. 113542 and G.R. No. 114911. February 24, 1998.
- [20] Rollo, p. 21.
- [21] See *Aklan Electric Cooperative, Incorporated v. NLRC*, G.R. No. 121439. January 25, 2000.
- [22] See *Prangan v. NLRC*, G.R. No. 126529. April 15, 1998.

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