

MIROF RESOURCES, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION) AND CARLOS C. HERNANDO III, RESPONDENTS.

Ponente: DICDICAN, J.

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DICDICAN, J.:

Before us is a Petition for Certiorari[1] filed by petitioner Mirof Resources, Inc. (“petitioner”) pursuant to Rule 65 of the 1997 Revised Rules of Court seeking to annul and set aside the Decision[2] promulgated by the Fourth Division of the National Labor Relations Commission (“NLRC”) dated June 11, 2013 in NLRC NCR Case No. 12-18110-11 (NLRC-LAC Case No. 03-000884-13) which set aside the Decision[3] rendered by Labor Arbitrer Joel S. Lustria (“labor arbiter”) on December 27, 2012. Likewise assailed in the instant petition is the subsequent Resolution[4] that was issued by the NLRC on August 12, 2013 which denied the motion for reconsideration of the June 11, 2013 resolution that was filed by herein petitioner for lack of merit.

The material and relevant facts of the case, as culled from the record, are as follows:

Petitioner is a domestic corporation organized and existing under the Philippine laws with principal office address at 7th Floor Philcox Building, Salcedo Street, Legaspi Village, Makati City. On the other hand, private respondent Carlos C. Hernando III (“private respondent”) was a former project employee of the petitioner who was assigned at EPSON Philippines Corporation (EPSON) as showroom promoter from the years 2005 up to 2011.

The instant case stemmed sometime in the year 2009 when the private respondent went to the office of the Social Security System (SSS) to inquire on how he could obtain a loan therefrom. Much to his disappointment, however, the private respondent discovered that his SSS contributions were not updated despite the fact that the petitioner had been making monthly deductions from his salary for the said SSS contributions. The private respondent then called the attention of the petitioner on this matter and the latter only acted upon it after a year and after several follow-ups from the private respondent.

Subsequently, in the year 2010, the private respondent asked the management of the petitioner why a withholding tax was still being deducted from his monthly salary when the private respondent should be exempted therefrom, being a minimum wage earner. The aforementioned issue, as well as the other deductions that were being made from the salary of the employees, were then raised by the private respondent and his co-employees during the weekly meetings that were held by the petitioner company. Finally, during one of the weekly meetings in October 2011, the product manager of the petitioner told the private respondent that the latter would be terminated from work in view of the complaints that the private respondent had been making regarding the deductions from his salary.

Despite the aforesaid notice by the petitioner for him not to report for work anymore, the private respondent still continued to go to work from the months of October up to November 2011. On the day when he was supposed to receive his salary or on November 20, 2011, however, the private respondent did not receive any salary despite the fact that he was still working for the company. Nonetheless, the private respondent still continued to report for

work after the said period and he tried to ask the petitioner why he was not paid his salary on November 20, 2011. Unfortunately, the private respondent did not get any response from the management.

Again, on the next two (2) paydays or on December 5 and 20, 2011, the private respondent did not receive his salary despite reporting for work which prompted him to file a complaint against the petitioner in the NLRC for: (1) illegal dismissal with prayer for reinstatement and payment of backwages; (2) non-payment of wages, thirteenth (13th) month pay and ECOLA; and (3) moral and exemplary damages and attorney's fees.

The conduct of the mandated preliminary conference notwithstanding, the parties herein failed to amicably settle their dispute. Accordingly, the labor arbiter directed them to submit their respective position papers.

In his Position Paper[5], the private respondent averred that he was constructively dismissed by the petitioner in that the statements that were made by his manager that he was already terminated from work, coupled with the fact that the petitioner refused to give him his salary for at least two (2) consecutive paydays, rendered as impossible his continued employment with the petitioner. Moreover, the private respondent insisted that he had a good working relationship with the petitioner until he and some of his co-workers started to ask the management regarding the employee benefits which they were supposed to receive under the law.

Consequently, the private respondent claimed that, having been illegally dismissed from work by the petitioner, he was entitled to reinstatement and full backwages pursuant to Article 279 of the Labor Code of the Philippines. Further, the private respondent insisted that the amounts of Seven Hundred Fifty Pesos (Php750.00) and Five Hundred Pesos (Php500.00) that were deducted from his monthly salary for withholding tax and cash bond, respectively, should be refunded to him since the aforesaid deductions were illegally made by the petitioner company. Moreover, the private respondent maintained that he was entitled to moral and exemplary damages since his dismissal from work was tainted with bad faith and effected oppressively by the petitioner.

For its part, the petitioner countered that, herein private respondent, for reasons only known to the latter, failed to attend all the company meetings and trainings without any justifiable explanation. Moreover, the petitioner pointed out that the last meeting which the private respondent attended was in September 2011.

Further, the petitioner argued that the private respondent was paid his salary until in November 2011 but then he stopped submitting his daily time records and reports in December 2011. According to the petitioner, it exerted all possible means to contact the private respondent and to inquire why he suddenly stopped reporting from work without any justifiable reason. However, the petitioner did not receive any response from the private respondent. Consequently, the petitioner evinced that it should be the private respondent and, not the company, who should bear the loss, stressing that it would be unfair and unjust to require the company to pay him his benefits during the days when he was absent from work without any justifiable reason. In addition, the petitioner postulated that, since the private respondent was not constructively or illegally dismissed, he is not entitled to backwages, as well as moral and exemplary damages, under the law.

Furthermore, the petitioner submitted that, contrary to the assertions of the private respondent, it is an independent contractor which supplies manpower to various business establishments, one of which was EPSON Philippines, Inc. Moreover, the petitioner stated that it was registered with the Department of Labor and Employment as an independent contractor with paid-up capital in the amount of One Million Pesos (Php1,000,000.00) and authorized capital stock at Sixteen Million Pesos (Php16,000,000.00).

Consequently, on December 27, 2012, Arbiter Lustria rendered a Decision which, inter alia, dismissed the complaint for illegal dismissal against the petitioner but directed the latter to give a separation pay to the private respondent in view of the strained relationship between the parties. The dispositive portion of the said decision

reads in part as follows:

“WHEREFORE, all foregoing premises considered, judgment is hereby rendered DISMISSING the instant complaint for lack of merit. However, for reasons above-discussed, complainant CARLOS C. HERNANDO III is hereby ordered to immediately report back to work within ten (10) working days from receipt hereof but without the payment of backwages. However, in the alternative, if reinstatement is not feasible due to strained relationship occasioned by this protracted litigations, to pay complainant the amount of P26,260.00 representing his separation pay.

“Likewise, respondents are hereby ordered jointly and severally liable to pay complainant the amount of P32,540.00, representing his 13th month pay and refund of his cash bond deposits.

“Other claims are dismissed for lack of merit.

“SO ORDERED.”

Aggrieved by the foregoing disposition of Arbiter Lustria, herein private respondent appealed from the same to the NLRC[6] on the ground that the findings of fact and conclusions of the Labor Arbiter were patently erroneous and without basis. In the aforementioned appeal, the private respondent pointed out that Arbiter Lustria relied on the self-serving allegations of the petitioner that the latter exerted all efforts to contact him but to no avail. According to the private respondent, the record of the case would show no evidence that the petitioner made any communication with him to report back to work, adding that it would be illogical for him to voluntarily leave his employment and, thereafter, file a complaint for illegal dismissal against the petitioner and ask for a reinstatement. Thus, the NLRC, in the herein assailed decision dated June 11, 2013, granted the appeal that was filed by the private respondent and ruled that the latter was constructively dismissed by the petitioner. The decretal portion of the said assailed decision states:

“WHEREFORE, premises considered, complainant's Appeal is GRANTED. Assailed Decision is hereby SET ASIDE. Complainant was constructively dismissed. Respondents are hereby ordered, jointly and severally, to reinstate complainant or, if not feasible, to pay him separation pay plus full backwages. Likewise, respondents are hereby ordered to pay complainant his 13th month pay and refund of his cash bond deposits.

“The attached computation shall form part of this Decision.

“SO ORDERED.”

In the said decision, the NLRC ratiocinated:

“Under the law, an employee shall be paid for work done. Thus, lack of assurance that complainant would be paid his salaries on time and the unexplained delay in payment are circumstances which can be reasonably concluded to constitute insensible or disdainful acts of the employer that justified complainant's act of seeking relief elsewhere instead of returning to the workplace.

“As the continued refusal of respondents to give the salaries due to complainant unbearable to him as to foreclose any choice on his part except to forego continued employment, same amounts to constructive dismissal for which reinstatement without loss of seniority rights, full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time their compensation was withheld up to the time of their actual reinstatement, should be granted.”

Herein petitioner filed a Motion for Reconsideration[7] of the aforesaid decision of the NLRC but the same was likewise denied for lack of merit in a subsequent Resolution dated August 12, 2013. The dispositive portion of the said resolution reads:

“WHEREFORE, premises considered, the Decision sought to be reconsidered remains UNDISTURBED.

“No further motion of similar tenor shall be entertained.

“SO ORDERED.”

Undaunted by the foregoing disquisition of the NLRC, the petitioner filed the instant petition with this Court assigning the lone act of grave abuse of discretion that was purportedly committed by the NLRC, to wit:

THE PUBLIC RESPONDENT NLRC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DECLARED THAT THE PRIVATE RESPONDENT WAS CONSTRUCTIVELY DISMISSED AND THAT HE WAS ENTITLED TO REINSTATEMENT OR SEPARATION PAY PLUS FULL BACKWAGES.

In sum, the sole issue to be resolved by us in this case is whether or not the private respondent was constructively dismissed by the petitioner, thereby rendering the latter liable to him for backwages and other money claims. After a careful and judicious scrutiny of the whole matter, together with the applicable laws and jurisprudence in the premises, we find the instant petition to be bereft of merit.

In the instant petition, the petitioner vehemently contended that the private respondent was not constructively dismissed but, instead, the latter failed to attend all company meetings and trainings for unknown reasons and that the last meeting which private respondent attended was in September 2011. Moreover, the petitioner reiterated that it exerted all possible efforts to contact the private respondent and to ask the latter why he suddenly stopped reporting for work without any justifiable reason. The aforesaid efforts by the petitioner, however, proved to be futile.

Likewise, the petitioner stressed that it was engaged in legitimate job contracting in that it had a paid-up capital in the amount of Nine Million Pesos (Php9,000,000.00) based on an updated record of the Securities and Exchange Commission and it was also duly registered with the DOLE as a legitimate labor contractor.

For his part, the private respondent countered that the allegations that were stated by the petitioner in the instant petition were mere rehash and repetitions of its previous arguments in the proceedings in the NLRC. At any rate, the private respondent asseverated that there was no evidence that would support the allegations of the petitioner that he suddenly stopped reporting for work especially that the record of the case shows that he submitted his daily time record for December 1-15, 2011 as attached in his Sinumpaang Salaysay which he submitted in the NLRC.

As we weigh the pieces of evidence before us, we are confronted with two (2) conflicting sets of fact. According to the petitioner, the private respondent suddenly refused to report for work without any justifiable reason and that efforts to communicate with the private respondent proved to be futile. Thus, the petitioner considered him to have abandoned his job which is one of the just causes in dismissing an employee. Consequently, the private respondent could not, in any way, claim that he was illegally dismissed from work by petitioner. On the other hand, the private respondent refutes this story and insists that he was told not to report for work anymore by his product manager after he started to question the deductions that were being made by the petitioner from his salary. The private respondent maintains that he was constructively dismissed by the petitioner which makes the latter liable to him for backwages and other money claims.

Now, the question arises: Was the private respondent constructively dismissed from work or did he simply abandon the same? Jurisprudence holds that, in illegal dismissal cases, it is incumbent upon the employee to first establish the fact of his or her dismissal before the burden is shifted to the employer to prove that the dismissal was legal.[8] Fair evidentiary rule dictates that, before employers are burdened to prove that they did not commit illegal dismissal, it is incumbent upon the employee to first establish the fact of his or her dismissal.[9] The one

who alleges a fact has the burden of proving it and the proof should be clear, positive and convincing.[10]

Corollary thereto, jurisprudence holds that, to constitute abandonment of work, two elements must concur: (1) the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act. The employer bears the burden of proof to show the deliberate and unjustified refusal of the employee to resume his employment without any intention of returning.[11] In the instant case, however, petitioner failed in this respect and we are in conformity with the NLRC when it ruled that there was no evidence to prove the alleged abandonment of work by the private respondent.

It is noteworthy that, petitioner, in suggesting its theory of abandonment, simply stated that it exerted all efforts to communicate with the private respondent and to inquire from the latter why he suddenly stopped reporting for work. However, no other evidence was offered by the petitioner to prove this claim apart from its self-serving allegations. Consequently, the petitioner could not, in categorical terms, state that there was a clear intent on the part of the private respondent to sever his employment with petitioner. Settled is the rule that mere absence or failure to report for work is not tantamount to abandonment of work.[12]

Elucidating on the concept of abandonment in labor disputes, the Supreme Court, in the case of *E.G & I Construction Corporation, et al. v. Sato, et al.*[13], opined that:

“It is a settled rule that failure to report for work after a notice to return to work has been served does not necessarily constitute abandonment. The intent to discontinue the employment must be shown by clear proof that it was deliberate and unjustified.”

Corollary thereto, the Supreme Court in the case of *Samarca v. Arc-Men Industries, et al.*[14] declared, to wit:

“Absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. And the burden of proof to show that there was unjustified refusal to go back to work rests on the employer.

x x x

“Abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts. To constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship. Clearly, the operative act is still the employee’s ultimate act of putting an end to his employment.”

Anent the issue of whether or not the petitioner is a legitimate job contractor, we likewise agree with the ruling of the NLRC that herein petitioner was a labor-only contractor and that the private respondent was a regular employee of EPSON. In the case of *Coca-Cola Bottlers Phils, Inc. v. Agito, et al.*,[15] the Supreme Court declared that the relations which may arise in a situation where there is an employer, a contractor, and employees of the contractor, are identified and distinguished under Article 106 of the Labor Code, as follows:

“Article 106. Contractor or subcontractor. - Whenever an employer enters into a contract with another person for the performance of the former’s work, the employees of the contractor and of the latter’s subcontractor, if any, shall be paid in accordance with the provisions of this Code.

“In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

“The Secretary of Labor may, by appropriate regulations, restrict or prohibit the contracting out of labor to

protect the rights of workers established under this Code. In so prohibiting or restriction, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

“There is “labor-only” contracting where the person supplying workers to an employee does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.”

The afore-quoted provision recognizes two possible relations among the parties: (1) the permitted legitimate job contract, or (2) the prohibited labor-only contracting. A legitimate job contract, wherein an employer enters into a contract with a job contractor for the performance of the former’s work, is permitted by law. Thus, the employer-employee relationship between the job contractor and his employees is maintained. In legitimate job contracting, the law creates an employer-employee relationship between the employer and the contractor’s employees only for a limited purpose, i.e., to ensure that the employees are paid their wages. The employer becomes jointly and severally liable with the job contractor only for the payment of the employees’ wages whenever the contractor fails to pay the same. Other than that, the employer is not responsible for any claim made by the contractor’s employees.

On the other hand, labor-only contracting is an arrangement wherein the contractor merely acts as an agent in recruiting and supplying the principal employer with workers for the purpose of circumventing labor law provisions setting down the rights of employees. It is not condoned by law. A finding by the appropriate authorities that a contractor is a “labor-only” contractor establishes an employer-employee relationship between the principal employer and the contractor’s employees and the former becomes solidarily liable for all the rightful claims of the employees.[16]

In this regard, the law clearly establishes an employer-employee relationship between the principal employer and the contractor’s employee upon a finding that the contractor is engaged in “labor-only” contracting. Article 106 of the Labor Code categorically states that: “There is ‘labor-only’ contracting where the person supplying workers to an employee does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer.” Thus, performing activities directly related to the principal business of the employer is only one of the two indicators that “labor-only” contracting exists; the other is lack of substantial capital or investment.[17]

In the case at bench, the work and duties of the private respondent as a showroom promoter from the years 2005 up to 2007 and as a store front sales employee from 2007 up to the time when he was dismissed from work by the petitioner, were clearly related to, and in the pursuit of, the business of EPSON. Moreover, it has been established that the private respondent had started working for EPSON as early as in the year 2005. At that time, he was working for EPSON under an employment agency doing business in the name of AD Force Agency. Subsequently, in July 2007, the employment agency of the private respondent was transferred from AD Force Agency to herein petitioner. Nonetheless, it is never disputed that, during the whole time of his employment with EPSON, the private respondent was subject to its rules and regulations as regards to the method and manner of performing his tasks. Noteworthy is the finding of the NLRC that the form of control and supervision of EPSON towards the private respondent never changed although the latter was under the “seeming employ” of agencies like AD Force Agency and herein petitioner.

Thus, we agree with the NLRC when it ratiocinated in this wise:

“First, respondent MIROF failed to prove they (sic) have substantial capitalization or investment in the form of tools, equipment, machineries, work premises, and other materials, to qualify as an independent contractor. While it has an authorized capital stock of P16,000,000.00, only P1,000,000.00 is actually paid-in which cannot be considered substantial capitalization.

“Second, the work of complainant was directly related to the principal business or operation of the respondent EPSON. Being in the business of selling products i.e. printers, etc., respondents assigned complainant as a Showroom Promoter in 2005 and then in 2007 as Store Front Sales employee with the task of assisting customers by demonstrating the actual use/operation of EPSON products and answering all customers' questions related thereto. This can only be categorized as clearly related to, and in the pursuit of the latter's business. Clearly, complainant was trained and remained under the supervision of respondent EPSON in the performance of his assigned job.

“Lastly, respondent MIROF did not carry on an independent business or undertake the performance of its service contract according to its own manner and method, free from the control and supervision of its principal, respondent EPSON. When complainant started his employment with respondent EPSON in 2005, he was under AD Force Agency. Thus, it is clear that prior to complainant's alleged employment with respondent MIROF, he was already working for respondent EPSON, subject to its rules and regulations in regard to the manner and method of performing their tasks. This form of control and supervision never changed although they were already under the seeming employ of agencies like AD Force or respondent MIROF. There is no doubt that respondent MIROF was engaged in labor-only contracting, and as such, is considered merely an agent of respondent EPSON. In labor-only contracting, 'the statute creates an employer-employee relationship for a comprehensive purpose: to prevent a circumvention of labor laws. The contractor is considered merely an agent of the principal employer and the latter is responsible to the employees of the labor-only contractor as if such employees had been directly employed by the principal employer.' (xxx)”

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DENYING the instant petition. The Decision promulgated by the Fourth Division of the National Labor Relations Commission dated June 11, 2013 in NLRC NCR Case No. 12-18110-11 (NLRC-LAC Case No. 03-000884-13) and its subsequent Resolution dated August 12, 2013 in the said case are AFFIRMED in toto.

SO ORDERED.

Elbinias and Paredes, JJ., concur.

[1] Rollo, pages 3-20.

[2] Ibid, Annex “L”, pages 131-144.

[3] Ibid, Annex “H”, pages 82-104.

[4] Ibid, Annex “O”, pages 172-176.

[5] Ibid, Annex “C”, pages 47-53.

[6] Ibid, Annex “I”, pages 105-113.

[7] Ibid, Annex “M”, pages 145-153.

[8] Exodus International Construction Corporation, et al. v. Biscocho, et al, G.R. No. 166109, February 23, 2011.

- [9] Basay, et al. v. Consolacion, et al., G.R. No. 175532, April 19, 2010.
- [10] Leopard Integrated Services, Inc. v. Macalinao, G.R. No. 159808, September 30, 2008.
- [11] Dimagan v. Darcworks United, Inc., et al., G.R. No. 191053, November 28, 2011.
- [12] Hodieng Concrete Products, Inc. v. Emilia, G.R. No. 149180, February 14, 2005.
- [13] G.R. No. 182070, February 16, 2011.
- [14] G.R. No. 146118, October 8, 2003.
- [15] G.R. No. 179546, February 13, 2009.
- [16] Ibid.
- [17] Ibid.

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