

UNIBAG POLYSACK CORP. AND CAMINO BENEDICTO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, SECOND DIVISION, IRENE GALOS AND DEMSON DEVERA, RESPONDENTS.

Ponente: DICDICAN, J.

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DICDICAN, J.:

Before us is a Petition for Certiorari[1] filed pursuant to Rule 65 of the Rules of Court seeking to annul and set aside the Decision[2] that was rendered by the Second (2nd) Division of the National Labor Relations Commission (NLRC) on March 27, 2013 in NLRC LAC No. 09-002707-12 (“assailed decision”) which, inter alia, reversed and set aside the Decision[3] promulgated by Labor Arbiter Reynaldo V. Abdon (“Arbiter Abdon”) dated August 30, 2012 in NLRC Case No. RAB III-10-18218-11. Likewise assailed in the instant petition is the subsequent Resolution[4] that was issued by the NLRC on August 7, 2013 which denied the motion for reconsideration of the March 27, 2013 decision that was filed by the petitioners for lack of merit.

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

Petitioner Unibag Polysack Corporation (“petitioner Unibag”) is a domestic corporation that is engaged in the business of bag manufacturing with herein petitioner Camino Benedicto (“petitioner Benedicto”) as its managing director. On the other hand, herein private respondents Irene A. Galos and Demson Devera were deployed to work as weavers/machine operators in the said company by GMJ Manpower Services (“GMJ”) with the salary of Three Hundred Two Pesos (Php302.00) per day.

The instant case stemmed from a complaint for illegal dismissal with a claim for reinstatement, full backwages, underpayment of wages, non-payment of service incentive leave, non-payment of thirteenth (13th) month pay, regularization, moral and exemplary damages and attorney’s fees that was filed by the private respondents in the NLRC against herein petitioners and GMJ. In the said complaint, private respondent Irene A. Galos (“private respondent Galos”) claimed that she worked for petitioner Unibag from June 9, 2004 until the time when she was allegedly dismissed from work on September 15, 2011. On the other hand, private respondent Demson Devera (“private respondent Devera”) averred that he started to work for petitioner Unibag on November 6, 2009 up to the time when he was dismissed thereon on July 15, 2011. According to the private respondents, they were dismissed without just or authorized cause but they, nonetheless, failed to indicate to which between herein petitioners and GMJ their claims were directed against.

In their Position Paper[5], the private respondents maintained that they were entitled to security of tenure, being regular employees of the petitioner company and having worked thereon for a period of more than six (6) months. Moreover, the private respondents averred that their duties were usually necessary and desirable to the business of petitioner Unibag. Further, the private respondents pointed out that there was no just or authorized cause that would warrant their dismissal from work, thereby rendering the aforesaid dismissal as illegal and unlawful.

On the other hand, in their Position Paper[6], herein petitioners denied the existence of an employer-employee relationship between petitioner Unibag and herein private respondents. The petitioners asseverated that it was

GMJ Manpower Services, an independent contractor, which hired and assigned some of its workers, including the private respondents, to perform the contracted service for the company. Thus, the petitioners had no participation in the selection and engagement of the private respondents and they did not have the power to dismiss the latter, being employees of GMJ. In order to support the aforesaid claim, the petitioners presented sample copies of payment vouchers showing their lumpsum payments to GMJ while the latter, in turn, paid the workers who were assigned to petitioner Unibag.

Consequently, there being no employer-employee relationship between petitioner Unibag and the private respondents, the petitioners could not have possibly dismissed them, let alone illegally, for they had no power to effect such dismissal. Moreover, the petitioners submitted that they were not in the position to deny or confirm the cause of action of the private respondents in that the petitioners were not in possession of any record of payment or benefits that were paid by GMJ to its employees.

For its part, GMJ admitted that the private respondents were its regular employees and not the employees of the petitioners. Nonetheless, GMJ stated that the private respondents failed to establish the fact of their dismissal from work. According to GMJ, the private respondents were verbally notified that GMJ would pull out its employees who were deployed at petitioner Unibag because the contract between the latter and GMJ had already ended. In fact, the private respondents were served with written notices which contained an instruction for them to report at the office of the GMJ on the date stated thereon for their next deployment. However, aside from refusing to receive the aforesaid notice, the private respondents did not report at the office of the GMJ on the date that was stated in the said letter.[7]

Lastly, GMJ stressed that there was a clear lack of overt act of dismissal on its part. GMJ insisted that, on the contrary, it was the private respondents who voluntarily refused to work for which GMJ should not be punished. It added that it was not in the position to force the private respondents to work for it in that the same would be tantamount to involuntary servitude on the part of the latter.

Consequently, on August 30, 2012, Arbiter Abdon rendered a Decision in favor of the petitioners the dispositive portion of which reads:

“WHEREFORE, premises considered, it is hereby declared that the case be dismissed for utter lack of merit. However, respondent GMJ Manpower Services is ordered to pay complainants their service incentive leave and 13th month pay for the year 2011 as follows:

SIL

13th Month Pay

IRENE A. GALOS

P1,510.00

P7,852.00

DEMSON DEVERA

1,510.00

7,850.00

“SO ORDERED.”

Aggrieved by the foregoing disposition of Arbiter Abdon, herein private respondents appealed from the same to the NLRC on the ground that Arbiter Abdon erred in failing to rule that GMJ was engaged in labor-only contracting. Consequently, the private respondents argued that their true employer was petitioner Unibag and not GMJ. Thus, since the private respondents were not removed from work for a just or authorized cause, they evinced that petitioner Unibag should be held liable for illegally dismissing them.[8]

In the herein assailed Decision dated March 27, 2013, the NLRC reversed and set aside the decision of Arbiter Abdon and ruled that the private respondents were entitled to reinstatement and backwages. The decretal portion of the said decision states:

“WHEREFORE, the complainants' appeal is GRANTED and the appealed Decision is hereby REVERSED and SET ASIDE. Accordingly, respondents Unibag and GMJ are ordered to reinstate complainants and to pay their full backwages computed from the time compensation was withheld up to the time of actual reinstatement. Respondents are ordered to jointly and severally pay each of the complainants moral damages of P20,000.00 and exemplary damages of P20,000.00. Respondents are adjudged to pay, jointly and severally, the complainants the amount equivalent to ten (10) percent of the total award as attorney's fees.

“All other claims are dismissed for lack of merit.

“SO ORDERED.”

In the said decision, the NLRC ratiocinated:

“Under the law, GMJ is presumed to be a labor-only contractor unless it overcomes the burden of proving that it has the substantial capital, investment, tools and the like. In the present case, neither GMJ nor Unibag was able to discharge the burden, thus, the presumption that GMJ is a labor-only contractor stands (xxx).

“Viewed in its entirety, We declare Unibag as the principal employer and hence, is responsible to the employees of the labor-only contractor as if such employees were directly employed by herein Unibag.”

Herein petitioners and GMJ then filed separate motions for reconsideration of the aforesaid decision of the NLRC but the same were likewise denied for lack of merit in the subsequent assailed resolution of the NLRC dated August 7, 2013.

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

THE PUBLIC RESPONDENT NLRC ACTED WITH GRAVE ABUSE OF DISCRETION IN RULING THAT GMJ WAS A LABOR-ONLY CONTRACTOR AND THAT THE PETITIONERS WERE JOINTLY AND SOLIDARILY LIABLE WITH GMJ FOR ILLEGALLY DISMISSING THE PRIVATE RESPONDENTS.

In sum, the issues to be resolved by us in this case are: first, whether or not the private respondents were illegally dismissed from work and, second, assuming that the private respondents were illegally dismissed from work, whether or not an employer-employee relationship existed between petitioner Unibag and herein private respondents, thereby rendering petitioners liable for illegally dismissing the private respondents. 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 impressed with merit.

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.[9] 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.[10] The one who alleges a fact has the burden of proving it and the proof should be clear, positive and convincing.[11]

In the case at bench, there was no evidence on record that would show that the private respondents were, indeed, dismissed from work. Aside from their unsupported claim that they were illegally dismissed by herein petitioners, they failed to prove, even by substantial evidence, the fact of their dismissal from work. The record is bereft of any indication that the private respondents were prevented from returning to work or otherwise deprived of any work assignment by petitioner Unibag. On the contrary, the record shows that the private respondents were both notified by GMJ, through a Letter[12] dated September 12, 2011, that the contract between petitioner Unibag and GMJ had already ended. In the same letter, the private respondents were directed to report to the office of GMJ for their deployment to another job. While the record states that the private respondents refused to receive the said letter, the latter never denied having knowledge of the existence and contents of the said letter. It bears stressing that, in the proceedings before Arbiter Abdon and the NLRC, the private respondents never refuted the allegation of GMJ that the latter served them a letter notifying them that they would be given a new work assignment. In fact, the private respondents were silent on the fact and circumstances of their dismissal from work. Thus, we are inclined to hold that there was no illegal dismissal in this case as, in fact, there had been no dismissal to speak of in the first place. On this note, of relevance is the Supreme Court's ruling in the case of *Machica v. Roosevelt Services Center, Inc.*,[13] as follows:

“The rule is that one who alleges a fact has the burden of proving it; thus, petitioners were burdened to prove their allegation that respondents dismissed them from their employment. It must be stressed that the evidence to prove this fact must be clear, positive and convincing. The rule that the employer bears the burden of proof in illegal dismissal cases finds no application here because the respondents deny having dismissed the petitioners.”

On the issue of whether or not an employer-employee relationship existed between petitioner Unibag and the private respondents, we agree with the ruling of the Labor Arbiter that no such relationship existed between them. Thus:

“On the issue of employer-employee relationship between complainants and Unibag, we have to examine again the well-settled doctrine of the so-called four-fold test in order to determine the existence of employer-employee relationship.

xxx

“Applying the foregoing tests, it is concluded that complainants are employees of GMJ Manpower Services. The pieces of evidence are undeniable. The power to select/hire, pay wages and discipline/dismiss complainant was lodged with GMJ Manpower Services.

“In the first place, complainants, in their position paper, declared that they were 'placed in the said company (referring to Unibag) by respondent GMJ Manpower Services' which means that they were hired by GMJ but was deployed to Unibag. Respondent GMJ also stated in its position paper that it 'hired the complainants in this case in 2004 (Galos) and 2009 (Devera)'.

“Respondent Unibag was able to show proof that it only paid GMJ as the job contractor a lumpsum for the contract it entered into with the latter.

“The most important test which is the control test, was also proven to be lodged and exercised by GMJ as evidenced by the affidavit executed by Ma. Janice A. Gomez who is the coordinator/supervisor of GMJ assigned at Unibag attesting that they were tasked to give complainants and other employees assigned to Unibag instructions on how work is to be done, monitor and supervise the quality and output of work and also

their conduct xxx.

“This office is left without any doubt that complainants' employer is GMJ. In all the pieces of evidence, there was not a single instance that will indicate that Unibag exercised any of the tests that the jurisprudence laid down, most especially, the power of control. As employees of a legitimate job contractor, both complainants can never be regular employees of its principal.”

Be that as it may, the private respondents harp on the purported lack of sufficient capital or investment in the form of tools, machineries and work premises of GMJ to prove that the latter was engaged in labor-only contracting services. However, this Court notes that GMJ was issued by the Department of Labor and Employment (DOLE) a license to recruit, process and deploy landbased workers which carries with it the presumption that it was issued in the regular performance of a duty, having been issued by a public officer.[14] The bare allegations of the private respondents that GMJ was engaged in labor-only contracting failed to rebut the aforementioned presumption under the law. Further, since the DOLE is the agency primarily responsible for regulating the business of independent job contractors, this Court could presume, in the absence of evidence to the contrary, that it had thoroughly evaluated the requirements that were submitted by GMJ Manpower Services before issuing the aforesaid license to recruit, process and deploy landbased workers.[15]

Consequently, being a legitimate labor contractor, GMJ, and not herein petitioner Unibag, was the employer of the private respondents. On this score, the NLRC committed grave abuse of discretion when it held the petitioners to be jointly and severally liable with GMJ for illegally dismissing the private respondents and for the money claims of the latter on the simple fact that no employer-employee relationship existed between petitioner Unibag, on one hand, and the private respondents, on the other.

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us GRANTING the instant petition. The Decision rendered by the Second (2nd) Division of the National Labor Relations Commission (NLRC) on March 27, 2013 and its subsequent Resolution dated August 7, 2013 in NLRC LAC No. 09-002707-12 are ANNULLED and SET ASIDE. The Decision promulgated by Labor Arbiter Reynaldo V. Abdon dated August 30, 2012 in NLRC Case No. RAB III-10-18218-11 is hereby ordered REINSTATED.

SO ORDERED.

Elbinias and Paredes, JJ., concur.

[1] Rollo, pages 3-36.

[2] Ibid, Annex “A”, pages 38-50.

[3] Ibid, Annex “K”, pages 161-171.

[4] Ibid, Annex “B”, pages 51-56.

[5] Ibid, Annex “E”, pages 80-86.

[6] Ibid, Annex “D”, pages 59-77.

[7] Ibid, pages 109-110.

[8] Ibid, Annex “L”, pages 172-181.

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

[10] Basay, et al. v. Consolacion, et al., G.R. No. 175532, April 19, 2010.

[11] Leopard Integrated Services, Inc. v. Macalinao, G.R. No. 159808, September 30, 2008.

[12] Ibid, pages 109-110.

[13] G.R. No. 168664, May 4, 2006.

[14] Section 3 (m) of Rule 131 of the Revised Rules of Court.

[15] Gallego v. Bayer Philippines, Inc., et al., G.R. No. 179807, July 31, 2009.

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