

PHILIPPINE FUJI XEROX CORPORATION, JENNIFER A. BERNARDO, AND ATTY. VICTORINO LUIS, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION), PAMBANSANG KILUSAN NG P...

G.R. No. 111501. March 05, 1996

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MENDOZA, J:

This is a petition for certiorari to set aside the decision of the NLRC, finding petitioner Philippine Fuji Xerox Corporation (Fuji Xerox) guilty of illegally dismissing private respondent Pedro Garado and ordering him reinstated. The NLRC decision reverses on appeal a decision of the Labor Arbiter finding private respondent to be an employee of another firm, the Skillpower, Inc., and not of petitioner Fuji Xerox.

The question raised in this case is whether private respondent is an employee of ,Fuji Xerox (as the NLRC found) or of Skillpower, Inc. (as the Labor Arbiter found). For reasons to be hereafter explained, we hold that private respondent is an employee of Fuji Xerox and accordingly dismiss the petition for certiorari of Fuji Xerox.

The following are the facts.

On May 6, 1977, petitioner Fuji Xerox entered into an agreement under which Skillpower, Inc. supplied workers to operate copier machines of Fuji Xerox as part of the latter's "Xerox Copier Project" in its sales offices. Private respondent Pedro Garado was assigned as key operator at Fuji Xerox's branch at Buendia, Makati, Metro Manila, in February of 1980.

In February of 1983, Garado went on leave and his place was taken over by a substitute. Upon his return in March, he discovered that there was a spoilage of over 600 copies. Afraid that he might be blamed for the spoilage, he tried to talk to a service technician of Fuji Xerox into stopping the meter of the machine.

The technician refused Garado's request, but this incident came to the knowledge of Fuji Xerox which, on May 31, 1983, reported the matter to Skillpower, Inc. The next day, Skillpower, Inc. wrote Garado, ordering him to explain. In the meantime, it suspended him from work. Garado filed a complaint for illegal dismissal.

The Labor Arbiter found that Garado applied for work to Skillpower, Inc.; that in 1980 he was employed and made to sign a contract; that although he received his salaries regularly from Fuji Xerox, it was Skillpower, Inc. which exercised control and supervision over his work; that Skillpower, Inc. had substantial capital and investments in machinery, equipment, and service vehicles, and assets totalling P5,008,812.43. On the basis of these findings the Labor Arbiter held in a decision rendered on October 30, 1986 that Garado was an employee of Skillpower, Inc., and that he had merely been assigned by Skillpower, Inc. to Fuji Xerox. Hence, the Labor Arbiter dismissed Garado's complaint.

On the other hand, the NLRC found Garado to be in fact an employee of petitioner Fuji Xerox and by it to have been illegally dismissed. The NLRC found that although Garado's request was wrongful, dismissal would be a disproportionate penalty. The NLRC held that although Skillpower, Inc. had substantial capital assets, the fact

was that the copier machines, which Garado operated, belonged to petitioner Fuji Xerox, and that although it was Skillpower, Inc. which had suspended Garado, the latter merely acted at the behest of Fuji Xerox. The NLRC found that Garado worked under the control and supervision of Fuji Xerox, which paid his salaries, and that Skillpower, Inc. merely acted as paymaster-agent of Fuji Xerox. The NLRC held that Skillpower, Inc. was a labor-only contractor and Garado should be deemed to have been directly employed by Fuji Xerox, regardless of the agreement between it and Skillpower, Inc. Accordingly, the NLRC ordered:

WHEREFORE, premises considered, the respondents are hereby ordered to immediately reinstate complainant Pedro Garado to his former position as key operator with three (3) years backwages, without qualification or reduction whatsoever x x x. Except as herein above MODIFIED, the appealed decision is hereby Affirmed.

Hence the present petition. Fuji Xerox argues that Skillpower, Inc. is an independent contractor and that Garado is its employee for the following reasons:

- (1) Garado was recruited by Skillpower, Inc.;
- (2) The work done by Garado was not necessary to the conduct of the business of Fuji Xerox;
- (3) Garado's salaries and benefits were paid directly by Skillpower, Inc.;
- (4) Garado worked under the control of Skillpower, Inc.; and
- (5) Skillpower, Inc. is a highly-capitalized business venture.

The contentions are without merit.

Fuji Xerox contends that Garado was actually recruited by Skillpower, Inc. as part of its personnel pool and later merely assigned to it (petitioner). It is undisputed, however, that since 1980,[1] when Garado was first assigned to work at Fuji Xerox, he had never been assigned to any other company so much so that by 1984, he was already a member of the union which petitioned the company for his regularization.[2] From 1980 to 1984 he worked exclusively for petitioner. Indeed, he was recruited by Skillpower, Inc. solely for assignment to Fuji Xerox to work in the latter's Xerox Copier Project.[3]

Petitioners claim that Skillpower, Inc. has other clients to whom it provided "temporary" services. That, however, is irrelevant. What is important is that once employed, Garado was never assigned to any other client of Skillpower, Inc. In fact, although under the agreement Skillpower, Inc. was supposed to provide only "temporary" services, Skillpower, Inc. actually supplied Fuji Xerox the labor which the latter needed for its Xerox Copier Project for seven (7) years, from 1977 to 1984.

On January 1, 1983, private respondent signed a contract entitled "Appointment as Contract Worker," in which it was stated that private respondent's status was that of a contract worker for a definite period from January 1, 1983 to June 30, 1983. As such, private respondent's employment was considered temporary, to terminate automatically six (6) months afterwards, without necessity of any notice and without entitling private respondent to separation or termination pay. Private respondent was made to understand that he was an employee of Skillpower, Inc., and not of the client to which he was assigned. Therefore, the termination of the contract or any renewal or extension thereof did not entitle him to become an employee of the client and the latter was not under any obligation to appoint him as such, "notwithstanding the total duration of the contract or any extension or renewal thereof."

This is nothing but a crude attempt to circumvent the law and undermine the security of tenure of private respondent by employing workers under six-month contracts which are later extended indefinitely through renewals. As this Court held in the *Philippine Bank of Communications v. NLRC*:^[4]

It is not difficult to see that to uphold the contractual arrangement between the bank and CESI would in effect be to permit employers to avoid the necessity of hiring regular or permanent employees and to enable them to keep their employees indefinitely on a temporary or casual status, thus to deny them security of tenure in their jobs. Article 106 of the Labor Code is precisely designed to prevent such a result.

Second. Petitioner contends that the service provided by Skillpower, Inc., namely, operating petitioners' xerox machine, is not directly related nor necessary to the business of selling and leasing copier machines of petitioner. Petitioners claim that their Xerox Copier Project is just for public service and is purely incidental to its business. What petitioners earn from the project is not even sufficient to defray their expenses, let alone bring profits to them. As such, the project is no different from other services which can legally be contracted out, such as security and janitorial services. Petitioners contend that the copier service can be considered as part of their "housekeeping" tasks which can be let to independent contractors.[5]

We disagree. As correctly held by the NLRC, at the very least, the Xerox Copier Project of petitioners promotes goodwill for the company. It may not generate income for the company but there are activities which a company may find necessary to engage in because they ultimately redound to its benefit. Operating the company's copiers at its branches advertises the quality of their products and promotes the company's reputation and public image. It also advertises the utility and convenience of having a copier machine. It is noteworthy that while not operated for profit the copying service is not intended either to be "promotional," as, indeed, petitioner charged a fee for the copies made.

It is wrong to say that if a task is not directly related to the employer's business, or it falls under what may be considered "housekeeping activities," the one performing the task is a job contractor. The determination of the existence of an employer-employee relationship is defined by law according to the facts of each case, regardless of the nature of the activities involved.

Third. Petitioners contend that it never exercised control over the conduct of private respondent. Petitioners allege that the salaries paid to Garado, as well as his employment records, vouchers and loan checks from the SSS were coursed through Skillpower, Inc. In addition private respondent applied for vacation leaves to Skillpower, Inc.

It is also contended that it was Skillpower, Inc. which twice required private respondent to explain why he should not be dismissed for the spoilage in Fuji Xerox's Buendia branch and suspended him pending the result of the investigation. According to petitioners, although they conducted an administrative investigation, the purpose was only to determine the complicity of their own employees in the incident, if any, and any criminal liability of private respondent.

This claim is belied by two letters written by Atty. Victorino H. Luis, Legal and Industrial Relations Officer of the company, to the union president, Nick Macaraig. The first letter, dated July 6, 1983, stated:

This has reference to your various letters dated today on administrative case concerning Messrs. Crisostomo Cruz, Pedro Garado and Ms. Evelyn Abenes. In connection with the above and in the case likewise of Mr. Dionisio Guyala, please be advised that the proceedings against them are being carried out under the terms, and in accordance with the provisions of our Policy and Procedure on Employment Termination as well as Policy on Disciplinary Actions dated October 1, 1982, and not under the Grievance Machinery under our CBA.

Your action apparently is premised on the assumption that we are now in the Grievance Stage, which is premature. If we have allowed the Union to participate in our Investigation and Administrative panels, it is only a concession on management's part in accordance with No. IV, Section B, Paragraph 3 of the abovesited policy on the investigation, the Personnel/Administrative Department may consult the Union whenever necessary.

We shall entertain grievances under our CBA Machinery only after decisions have been made on the foregoing cases and should you find the penalties imposed, if any, as unjust, unduly harsh, discriminating otherwise fit subject for grievance by the Union itself under the terms of our CBA.

Accordingly, we are proceeding with our investigations on the administrative charges with or without your presence or that of the respondents if it is the latter's preference, as in the case of Crisostomo Cruz, to ignore the same. (Italics ours)

The second letter, dated July 13, 1983,[6] read:

You obviously persist in pursuing the misconception that our allowing your presence in the administrative proceedings against Messrs. Guyala, Cruz, et al. has set the Grievance Machinery under our CBA into play. We can only reiterate our statement in our letter of July 6 that we were implementing Policy and Procedures on Termination dated October 1, 1982 and that your presence in helping bolster the defense for the respondents was only with our forbearance in the spirit of cooperation in order to better ferret out the truth.

The power or authority to impose discipline and disciplinary measures upon employees is a basic prerogative of Management, something that cannot be abdicated, much less ceded to a CBA Grievance Committee which is limited to settling disputes and misunderstanding as to interpretation, application, or violation of any provisions of the CBA agreement x x x. As likewise pointed out in our letter of July 6 recourse to Grievance may possibly be resorted to if in the Union's opinion a penalty imposed upon a respondent Union member is discriminating to the member or otherwise illegal, unduly harsh, and the like. Ultimately, the remedy lies in appeal to the NLRC, as in similar cases in the past. (Italics ours)

These letters reveal the role which Fuji Xerox played in the dismissal of the private respondent. They dispel any doubt that Fuji Xerox exercised disciplinary authority over Garado and that Skillpower, Inc. issued the order of dismissal merely in obedience to the decision of petitioner.

Fourth. Petitioner avers that Skillpower, Inc. is a highly-capitalized business venture, registered as an "independent employer" with the Securities and Exchange Commission as well as the Department of Labor and Employment. Skillpower, Inc. is a member of the Social Security System. In 1984 it had assets exceeding P5 million pesos and at least 20 typewriters, office equipment and service vehicles. It had employees of its own and a pool of 25 clerks assigned to clients on a temporary basis.

Petitioners cite the case of *Neri v. NLRC*,[7] in which it was held that the Building Care Corporation (BCC) was an independent contractor on the basis of finding that it had substantial capital, although there was no evidence that it had investments in the form of tools, equipment, machineries and work premises. But the Court in that case considered not only the capitalization of the BCC but also the fact that BCC was providing specific special services (radio/telex operator and janitor) to the employer; that in another case[8] the Court had already found that the BCC was an independent contractor; that BCC retained control over the employees and the employer was actually just concerned with the end-result; that BCC had the power to reassign the employees and their deployment was not subject to the approval of the employer; and that BCC was paid in lump sum for the services it rendered. These features of that case make it distinguishable from the present one.

Here, the service being rendered by private respondent was not a specific or special skill that Skillpower, Inc. was in the business of providing. Although in the *Neri* case the telex machine operated by the employee belonged to the employer, the service was deemed permissible because it was specific and technical. This cannot be said of the service rendered by private respondent Garado.

The Rules to Implement of the Labor Code, Book III, Rule VIII, §8, provide that there is job contracting when the

following conditions are fulfilled:

- (1) The contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and
- (2) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business.

Otherwise, according to Art. 106 of the Labor Code,

There is "labor-only" contracting where the person supplying workers to an employer 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.

Petitioner Fuji Xerox argues that Skillpower, Inc. had typewriters and service vehicles for the conduct of its business independently of the petitioner. But typewriters and vehicles bear no direct relationship to the job for which Skillpower, Inc. contracted its service of operating copier machines and offering copying services to the public. The fact is that Skillpower, Inc. did not have copying machines of its own. What it did was simply to supply manpower to Fuji Xerox. The phrase "substantial capital and investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business," in the Implementing Rules clearly contemplates tools, equipment, etc., which are directly related to the service it is being contracted to render. One who does not have an independent business for undertaking the job contracted for is just an agent of the employer.

Fifth. The Agreement between petitioner Fuji Xerox and Skillpower, Inc. provides that Skillpower, Inc. is an independent contractor and that the workers hired by it "shall not, in any manner and under any circumstances, be considered employees of [the] Company, and that the Company has no control or supervision whatsoever over the conduct of the Contractor or any of its workers in respect to how they accomplish their work or perform the Contractor's obligations under this AGREEMENT."

In *Tabas v. California Manufacturing Company, Inc.*,^[9] this Court held on facts similar to those in the case at bar:

There is no doubt that in the case at bar, Livi performs "manpower services," meaning to say, it contracts out labor in favor of clients. We hold that it is one notwithstanding its vehement claims to the contrary, and notwithstanding the provision of the contract that it is "an independent contractor." The nature of one's business is not determined by self-serving appellations one attaches thereto but by the tests provided by statute and prevailing case law. The bare fact that Livi maintains a separate line of business does not extinguish the equal fact that it has provided California with workers to pursue the latter's own business. In this connection, we do not agree that the petitioners had been made to perform activities "which are not directly related to the general business of manufacturing," California's purported "principal operation activity." The petitioners had been charged with "merchandising [sic] promotion or sale of the products of [California] in the different sales outlets in Metro Manila including task and occasional [sic] price tagging," an activity that is doubtless, an integral part of the manufacturing business. It is not, then, as if Livi had served as its (California's) promotions or sales arm or agents, or otherwise, rendered a piece of work it (California) could not have itself done; Livi as a placement agency, had simply supplied it with the manpower necessary to carry out its (California's) merchandising activities, using its (California's) premises and equipment.

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The fact that the petitioners have allegedly admitted being Livi's "direct employees" in their complaints is nothing conclusive. For one thing, the fact that the petitioners were (are), will not absolve California since liability has been imposed by legal operation. For another, and as we indicated, the relations of parties must be judged from case to case and the decree of law, and not by declaration of parties.

Skilipower, Inc. is, therefore, a "labor-only" contractor and Garado is not its employee. No grave abuse of discretion can thus be imputed to the NLRC for declaring petitioner Fuji Xerox guilty of illegal dismissal of private respondent.

ACCORDINGLY, the petition for certiorari is DISMISSED for lack of merit.

SO ORDERED.

Regalado, J. (Chairman), Romero, and Puno, JJ., concur.

[1] Comment, p. 1, Rollo, p. 124.

[2] Reply, p. 9, Rollo, p. 150.

[3] Comment, p. 5; Rollo, p. 128.

[4] 146 SCRA 347 (1986).

[5] Fernandez, Perfecto, Labor Relations Law, p. 32 (1982).

[6] Rollo, p. 132.

[7] 224 SCRA 7171 (1993).

[8] Associated Labor Union-TUCP v. NLRC, res, G.R. No. 101784, Oct. 21, 1991.

[9] 169 SCRA 497 (1989).

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