

PHILIPPINE AIRLINES INC. (PAL), PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC), HON. LABOR ARBITER NUMERIANO VILLENA, NATIONAL ORGANIZATION OF THE WORKINGMEN (NOWM) ...

G.R. No. 114775. September 25, 1998

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This special civil action for certiorari seeks to annul the Decision promulgated by public respondent National Labor Relations Commission (NLRC) on 31 January 1994 in NLRC-NCR- Case Nos. 00-03-001469-90, 00-04-02132-90 and 00-02-00648-90, and its Resolution dated 16 March 1994 which denied petitioner's motion for reconsideration.

Petitioner Philippine Airlines Inc. (PAL) is a domestic corporation principally engaged in the air transportation industry for both domestic and foreign markets. Private respondent National Organization of the Workingmen (NOWM) is a labor union, while the other private respondents are members of respondent union and complainants in aforementioned cases.

The factual background of this case as summarized by NLRC are as follows[1]:

"Respondent Philippine Airlines, Inc. (PAL) contracted the services of its co-respondent G. C. Services Enterprises, to undertake specific projects. Accordingly, G. C. Services recruited and hired carpenters, painters, and electricians and assigned them to different PAL shops, namely: Carpentry Shop, Electrical Shop, Technical Center Shop and Inflight Center Shop, all under PAL's Construction and Corporate Services Department.

On March 1990, PAL terminated its contract with G. C. Services. As a result, all G.C. employees assigned as PAL project workers were notified by G.C. Services not to report anymore to PAL. Later, PAL decided to give G.C. Services employees the opportunity to apply as regular employees, in accordance with its practice of giving employment priority to qualified persons who had been connected with PAL. Due to lack of vacant positions and also due to alleged unsatisfactory work performance records of some, not all G.C. Services employees were hired. Those who were not hired instituted the instant complaint for illegal dismissal. The complainants were represented in their case by the National Organization of Workingmen (NOWM).

Initially, there were 36 complainants in these three consolidated cases. In the course of the proceedings, PAL agreed to employ 23 qualified complainants. Only 12 complainants were left. They are the following: Oscar Samayao, Rodolfo Millona, Daniel Mancanes, Ernesto Esguerra, Alfredo Pusong, Arnel Ton-ogan, Rolly Bermudez, Nestor Amilano, Edgar Canlas, Carlito Pamilar, Roberto Villacruz and Judith Bayeta.

Except for complainants Roberto Villacruz (electrician) and Judith Bayeta who claimed to have been assigned as clerk at the PAL's Intelligence Unit, the rest of the complainants were carpenters previously assigned to the Carpentry Shop.

Complainant Roberto Villacruz who filed a separate complaint for illegal dismissal, alleged that he worked for PAL through G.C. Services for more than 12 years until his dismissal on February 12, 1990; that the reason (sic) for the dismissal were supposedly for violation of company rules and regulations such as irregular attendance, sleeping while on duty and disrespect to superiors. He prayed for reinstatement with backwages.

Complainant Judith Bayeta, was (sic) according to G.C. Services was employed by them sometime in April 1987 and was assigned to PAL. The services of Bayeta was terminated on December 31, 1989, when the agreement between G.C. Services and PAL expired on the said date and the same was not renewed.

The rest of the complainants alleged that they applied for employment with G.C. Services; that after they were accepted they were made to work at PAL Maintenance Department where each of them worked as carpenters, welders, or electricians; that they were not considered employees of PAL but that of G.C. Services; that their work are necessary and directly related to PAL's principal business. In pointing at PAL as their real employer, they averred that G.C. Services is only an agent of PAL because it does not have substantial capital in the form of cash investments, tools, equipment or work premises; that it merely supplied workers to PAL and these workers were supervised, directed and controlled by PAL regular employees; that PAL actually decided when, where and what to work; that PAL decided how many of them were to be taken in, when they would start, and when they would not. Complainants, thus, argued that G.C. Services being a mere agent, the real employer was PAL pursuant to Art.106 of the Labor Code which prohibits the employment of persons through labor only contracting agencies, like the G.C. Services Enterprise.

In claiming that they were illegally dismissed, complainants alleged that they were dismissed from employment without just cause and without due process and without any prior notice. They, thus prayed for reinstatement with full backwages from the date of their dismissal on March 31, 1990 up to the date of their actual reinstatement.

Respondent PAL denied the existence of employer-employee relationship between it and the complainants. It averred that G.C. Services Enterprises, as a duly licensed independent contractor, contracted on its own account under its own responsibility; that the contractor has substantial capital or investment in the form of tools, equipment and other materials necessary in the conduct of its business; that complainants were being paid their wages by G.C. Services and not PAL; and that they were terminated by G.C. Services.

PAL also averred that complainants claim are barred by laches considering that they had in fact accepted and recognized G.C. Services as their employer for several years and that the claim of complainants for backwages and other benefits are untenable in the absence of any contractual stipulations between PAL and the complainants.

PAL further argued that even granting *arguendo* that complainants are entitled to be regularized, it is not obliged to employ all the complainants; and that there are no more positions or substantially equivalent positions within its organization for which they maybe (sic) qualified.

As regard (sic) the claim of complainant Judith Bayeta, PAL denied having hired and assigned Bayeta to its Intelligence Unit; that the claim of Bayeta that she was occupying the position of clerk is questionable as she was not qualified being a mere high school graduate; and that the PAL ID issued to her was for security purposes only. Besides, according to PAL, its contract with G.C. Services was a Construction Agreement and the assignment of which to any department has nothing to do with the construction projects."

In a Decision[2] dated May 29, 1992, the Labor Arbiter ruled that G.C. Services Enterprises is a labor-only contractor and mere agent of PAL (petitioner herein), thus, the private respondents are deemed employees of petitioner. The Labor Arbiter then declared the termination of private respondents' services illegal,[3] and held petitioner and G.C. Services Enterprises jointly and severally liable to pay private respondents their separation pay, backwages as well as attorney's fees.[4]

Both parties appealed to the NLRC, which, in a Decision[5] dated January 31, 1994, affirmed the Labor Arbiter's decision with modification as to the computation of the monetary award, thus:

"In computing the backwages and separation pay of the complainants, We are guided by the agreement of the parties on May 21, 1993, in the course of the clarificatory hearing by this Commission that the Certification of G.C. Services Enterprises dated July 21, 1992 as regard (sic) the material period of employment of the complainant be used as basis for resolution.

In the case of complainant Roberto Villacruz and Judith Bayeta, they being similarly situated with the other complainants, they are also entitled to the award of separation pay and backwages.

As modified, therefore, the monetary award (sic) are as follows:

1. Amilano, Nestor

Rate: P98.50/day (Record, p. 526)

Length of Service: July 18 '84-Mar. 31 '90 - 6 yrs. + 2 yrs. = 8 yrs.

Backwages:

Period: April 1, 1990-May 31, 1992 - 26 mos.

P98.50 x 26 days x 26 mos. ----- P 66,586.00

13th Month Pay 5,548.83 P72,134.83

Separation Pay:

P118.00 x 26 days x 8 yrs. ----- 24,544.00

TOTAL P96,678.83

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2. Bayeta, Judith

Rate: P92.00/day

Length of Service: April. 13 '88-Dec. 29 '90 - 3 yrs. + 1 yr. = 4 yrs.

Backwages:

Period: Jan. 1 '91-May 31 '92 - 17 mos.

P92.00 x 26 days x 17 mos. ----- P 40,664.00

13th Month Pay 3,388.67 P44,052.67

Separation Pay:

P118.00 x 26 days x 4 ----- 12,272.00

TOTAL P56,324.67

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3. Bermudez, Rolly

Rate: P87.50/P89.00 (minimum wage)

Length of Service: May 10 '82-Mar. 31 '90 - 8 years. + 2 yrs. = 10 yrs.

Backwages:

Period: April 1, '90-May 31, '92 - 28 mos.

P89.00 x 26 days x 26 mos. ----- P 60,164.00

13th Month Pay 5,013.67 P65,177.67

Separation Pay:

P118.00 x 26 days x 10 ----- 30,680.00

TOTAL P95,857.67

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4. Canlas, Edgar

Rate: P89.00

Length of Service: Nov. 23 '85-Mar. 31 '90 - 1 yr. + 2 yrs. = 3 yrs.

Backwages:

Period: April 1, '90-May 31, '92 - 26 mos.

P89.00 x 26 days x 26 mos. ----- P 60,164.00

13th Month Pay 5,013.67 P65,177.67

Separation Pay:

P118.00 x 26 days x 3 ----- 9,204.00

TOTAL P74,381.67

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5. Esguerra, Ernesto

Rate: P89.00

Length of Service: July '75-Nov. '81 - 6 yrs)

Aug. '87-Mar. 31 '90 - 3 yrs.) 9 yrs. + 2 yrs. = 11 yr

Backwages:

Period: April 1, '90-May 31, '92 - 26 mos.

P89.00 x 26 days x 26 mos. ----- P 60,164.00

13th Month Pay 5,013.67 P65,177.67

Separation Pay:

P118.00 x 26 days x 11 yrs.----- 33,748.00

TOTAL P98,925.67

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6. Mancanes, Daniel

Rate: P89.00 (assumed rate-based on minimum wage rate)

Length of Service: Jan. 8 '78-Nov. '78 - 10 mos.) 6yrs. + 2 y

Oct. '84-Mar. 31'90 - 5 yrs. + 5 mos.) = 8 yrs.

Backwages:

Period: April 1, '90-May 31, '92 - 26 mos.

P89.00 x 26 days x 26 mos. ----- P 60,164.00

13th Month Pay 5,013.67 P65,177.67

Separation Pay:

P118.00 x 26 days x 8 yrs. ----- 24,544.00

TOTAL P89,721.67

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7. Millona, Rodolfo

Rate: P104.00

Length of Service: Oct. '77-Aug. '80 - 3 yrs)

Jan. '81-Apr. '81 - 4 mos.) 10 yrs. + 2 yrs.

Jan. '83-Oct. '87 - 5 yrs.) = 12 yrs.

Feb. '88-Mar. 31'90 - 2 yrs.)

Backwages:

Period: April 1, '90-May 31, '92 - 28 mos.

P104.00 x 26 days x 26 mos. ----- P 70,304.00

13th Month Pay 5,858.67 P76,162.67

Separation Pay:

P118.00 x 26 days x 12 ----- 36,816.00

TOTAL P112,978.67

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8. Pamilar, Carlito

Rate: P89.00

Length of Service: Feb. 22 '88-Mar. 31 '90 - 2 yrs. + 2 yrs. = 4 yrs.

Backwages:

Period: April 1, '90-May 31, '92 - 26 mos.

P89.00 x 26 days x 26 mos.----- P 60,164.00

13th Month Pay 5,013.67 P65,177.67

Separation Pay:

P118.00 x 26 days x 4 ----- 12,272.00

TOTAL P77,449.67

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9. Pusong, Alfredo

Rate: P89.00 (assumed rate - based on minimum wage rate)

Length of Service: May 22 '87-Mar. 31 '90 - 3 yrs. + 2 yrs. = 5 yrs.

Backwages:

Period: April 1, '90-May 31, '92 - 26 mos.

P89.00 x 26 days x 26 mos. ----- P 60,164.00

13th Month Pay 5,013.67 P65,177.67

Separation Pay:

P118.00 x 16 days x 5 yrs. ----- 15,340.00

TOTAL P80,517.67

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10. Sumayco, Oscar

Rate: P103.50

Length of Service: July 6 '79-March 31 '90 - 11 yrs. + 2 yrs. = 13 yrs.

Backwages:

Period: April 1, '90-May 31, '92 - 26 mos.

P103.00 x 26 days x 26 mos. ----- P 69,966.00

13th Month Pay 5,830.50 P75,796.50

Separation Pay:

P118.00 x 26 days x 13 ----- 39,884.00

TOTAL P115,680.50

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11. Ton-ogan, Ariel

Rate: P89.00

Length of Service: July 11 '89-Mar. 31 '90 - 1 yr. + 2 yrs. = 3 yrs.

Backwages:

Period: April 1, '90-May 31, '92 - 26 mos.

P89.00 x 26 days x 26 mos. ----- P 60,164.00

13th Month Pay 5,013.67 P65,177.67

Separation Pay:

P118.00 x 26 days x 3 ----- 9,204.00

TOTAL P74,381.67

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12. Villacruz, Roberto

Rate: P99.50

Length of Service: April 3 '78-Feb. 24 '90 - 12 yr. + 2 yrs. = 14 yrs.

Backwages:

Period: April 1, '90-May 31, '92 - 26 mos.

P99.50 x 26 days x 26 mos. ----- P 67,262.00

13th Month Pay 5,605.17 P72,867.17

Separation Pay:

P118.00 x 26 days x 14 yrs. ----- 42,952.00

TOTAL P115,819.17

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S U M M A R Y:

Backwages

Separation Pay

Total

1.Amilano, Nestor

P 72,134.83

P,24,544.00

96,678.93

2. Bayeta, Judith

44,052.67

12,272.00

56,324.67

3.Bermudez, Rolly

65,177.67

30,680.00

95,857.67

4.Canlas, Edgar

65,177.67

9,204.00

74,381.67

5.Esguerra, Ernesto

65,177.67

33,748.00

98,925.67

6. Mancanes, Daniel

65,177.67

24,541.00

89,721.67

7.Millona, Rodolfo

76,162.67

36,816.00

112,978.67

8. Pamilar, Carlito

65,177.67

12,272.00

77,449.67

9. Pusong, Alfredo

65,177.67

15,340.00

80,517.67

10. Sumayco, Oscar

75,796.50

39,884.00

115,680.50

11. Ton-ogan, Ariel

65,177.67

9,204.00

74,381.67

12. Villacruz, Roberto

72,867.17

42,952.00

115,819.17

P797,257.53

P291,460.00

P1,088,717.53

The award of 10% attorney's fees equivalent to 10% of the total monetary award stands.

WHEREFORE, premises considered, the appealed Decision dated May 29, 1992 is hereby AFFIRMED subject to the modification as above discussed.

SO ORDERED."

Its motion for reconsideration having been denied in a Resolution dated March 16, 1994, petitioner filed the instant petition.

The main issues in this petition are as follows :

1. Whether or not petitioner illegally dismissed private respondents from the service ;
2. Whether or not private respondents are entitled to separation pay as well as backwages ;
3. Whether or not petitioner herein should be held jointly and severally liable with G.C. Services Enterprises.

In the resolution of the first issue, it is necessary to determine the nature of employment of private respondents. It is evident that private respondents were employed by petitioner through G.C. Services Enterprises as painters, carpenters, welders or electricians at its maintenance department. It is not disputed by petitioner that the private respondents were performing work and activities which are directly related to its nature of business. They had been employed for a period ranging from 1 year and 4 months to 11 years and 10 months. This continuous employment indicates that their jobs are directly necessary to the daily operation of petitioner's business. Besides, petitioner failed to rebut by competent evidence that G.C. Services Enterprises does not have substantial capital in the form of cash investment, tools, equipment and work premises as it merely supplied workers to petitioner. Also, the private respondents were supervised, directed and controlled by petitioner's regular employees.

Based on these findings, we sustain the conclusion of public respondents that G.C. Services Enterprises is merely a "labor-only" contractor who acted as mere supplier of manpower for petitioner at its maintenance department. As we held in *Industrial Timber Corporation, et. al. vs. NLRC et. al.*[6]:

"Hence a finding that a contractor is a "labor-only" contractor is equivalent to a finding that there exists as employer-employee relationship between the owner of the project and the employees of the "labor-only" contractor since that relationship is defined and prescribed by law itself."

Accordingly, private respondents, are considered employees of the petitioner. Further, private respondents, having performed activities which are directly related to petitioner's business, are deemed regular employees of petitioner pursuant to Article 280[7] of the Labor Code. And as regular employees, they must be accorded security of tenure in their employment. Verily, their services can be terminated only based on "just" and "authorized" causes under Articles 282,[8] 283[9] and 284[10] of the Labor Code.

Going now to the first issue on hand, petitioner contends that public respondents committed grave abuse of discretion in declaring the dismissal of private respondents illegal despite the finding of redundancy. Petitioner maintains that there being a finding of redundancy which is one of the authorized causes for termination of employment under Article 283 of the Labor Code, private respondents' termination cannot be considered illegal.

This contention is impressed with merit.

As pointed out by the Labor Arbiter, the petitioner "regularized" and/or re-employed twenty three (23) original complainants as there were vacant positions to which they could qualify. However, the remaining 12 complainants (private respondents herein) could no longer be absorbed into petitioner's regular workforce as there were no longer vacant positions as evidenced by the Table of Organization of PAL Construction and Corporate Services Department. Simply put, the services of private respondents were already in excess of what is reasonably demanded by the actual manpower requirement of petitioner. Said the Labor Arbiter in his decision[11]:

" It is the contention of respondent PAL that even assuming that the complainants, in contemplation of Art. 106 of the Labor Code (on Labor Only Contracting), were its employees, they cannot nevertheless be assimilated or absorbed into its workforce because of lack of vacant positions. Respondent PAL concluded that it cannot be compelled to give employment to a greater number of persons than the economic operations of its business requires.

This contention exudes merit.

It is settled that where there is need for reduction of workforce, management has the right to choose whom to layoff, depending on the work still required to be done and the qualities of the workers to be retained. (*Almoite v. Pacific Architects and Engineers, Inc.* 142 SCRA 631, 10 July 1986).

Under Article 203 (must be 283) of the Labor Code, the employer may terminate an employee due to redundancy or retrenchment.

In *Wilshire (sic) File Co., Inc. v. NLRC*, 193 SCRA 672 the Supreme Court aptly ruled:

"Redundancy, for purposes of our Labor code, exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. Succinctly put, a position is redundant where it is superfluous and the superfluity of a position or positions may be the outcome of a number of factors, such as over-hiring of workers xxx. The employer has no legal obligation to keep in its payroll more employees than are necessary for the operation of its business." (underscoring supplied)

Clearly, the Labor Arbiter recognized the existence of redundancy. Despite said findings the Labor Arbiter ruled as follows:[12]

"xxx In consonance therefore under Art. 280 of the Labor Code of the Philippines, herein complainants are regular employees. For being so, they are protected by the Security of Tenure provision of law (Art. 279, Labor Code) the complainant dismissal being not in contemplation with Art. 282 of the Labor Code it is therefore illegal. xxx"

The reference to Article 282 is misplaced. Article 282 enumerates the causes for termination "by reason of some blameworthy act or omission on the part of the employee".[13] In the instant case, the cause of termination is redundancy which is an authorized cause for termination under Article 283. In any event, it is absurd for the Labor Arbiter to declare a finding of redundancy, on one hand, and to conclude, on the other, that the termination of private respondents' services is illegal. There being redundancy, the dismissal of private respondents is valid.

In sum, we hold that the NLRC gravely erred in affirming the decision of the Labor Arbiter holding that private respondents' dismissal was illegal.

Addressing the second issue, the petitioner argues that public respondents erred in awarding to private respondents backwages as well as separation pay notwithstanding the finding of redundancy. Petitioner avers that public respondents misapplied Article 279 of the Labor Code as the same applies only in cases of unjust

dismissals, and submits that Article 283 of the Labor Code should have been applied.

We find petitioner's contention on this point tenable and correct.

Article 279[14] of the Labor Code applies to employees who are unjustly dismissed from work. In contrast, Article 283 governs termination for causes such as installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of establishment or undertaking. The two provisions accord different reliefs. Under Article 279, an employee who is unjustly dismissed from work is "entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld up to the time of his actual reinstatement." On the other hand, an employee whose services is terminated due to any causes under Article 283 is "entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher".

Undoubtedly, the Labor Arbiter should have applied Article 283 inasmuch as the termination of private respondents' services was caused by redundancy. Instead, the Labor Arbiter applied Article 279 and awarded backwages to private respondents citing this rationale[15]:

"However, while this Office recognizes the employer's prerogatives to run its business affair pursuant to the aforementioned pronouncement of Supreme Court,[16] we still could not close our eyes to the unlawful and illegal practice of labor only contracting to perpetuate as in the case at bar.

In the light of the prevailing situations, there could be no other just and fair remedy but to give complainants their full backwages to be computed from the date of dismissal up to the promulgation of this Decision."

The Labor Arbiter errs on this score. As aptly said by the Solicitor General in his comment:[17]

" Public respondents' position is without legal basis. Since private respondents were validly dismissed under Art. 283, they are not entitled to backwages. Apparently, public respondents awarded backwages to private respondents to penalize PAL for engaging in a "labor-only" scheme. However, the law does not give public respondents such authority. The only effect of labor-only contracting is that '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' (Art. 106, Labor Code)"

Thus, private respondents are entitled to separation pay only. The award of backwages to them has no basis in law.

Regarding the third issue, petitioner asserts that public respondents erred in ruling that petitioner is jointly and severally liable with G.C. Services Enterprises. In support of such contention, petitioner invokes its Service Agreement[18] with G.C. Services Enterprises wherein the latter specifically agreed to be solely responsible for any liability under the Labor Code or any other similar or related laws for the protection of persons under its employ.

This contention of petitioner lacks legal basis, hence bereft of merit.

As public respondents correctly concluded, G.C. Services Enterprises is merely a "labor-only" contractor. The legal implications of this contracting arrangement is governed by the following provisions of the Labor Code:

"Art. 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.

x x x x x x x x

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.

Art. 107.--- Indirect Employer. The provisions of the immediately preceding Article shall likewise apply to any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project.

x x x x x x x x

Art. 109.--- Solidary liability. The provisions of existing laws to the contrary notwithstanding, every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code. For purposes of determining the extent of their civil liability under this Chapter, they shall be considered as direct employers." (underscoring supplied)

Moreover, this Court already had occasion to elaborate on the import of the foregoing provisions in the case of *Philippine Bank of Communications v. National Labor Relations*[19] which held that:

" xxx The 'labor-only' contractor " i.e. 'the person or intermediary' - is considered 'merely as an agent of the employer.' The employer is made by the statute responsible to the employees of the 'labor only' contractor as if such employees had been directly employed by the employer. Thus, where 'labor only' contracting exists in a given case, the statute itself implies or establishes an employer-employee relationship between the employer (the owner of the project) and the employees of the 'labor only' contractor, this time for a comprehensive purpose: 'employer for purpose of this Code, to prevent any violation or circumvention of any provision of this Code.' The law in effect holds both the employer and the 'labor only' contractor responsible to the latter's employees for the more effective safeguarding of the employees' rights under the Labor Code."

Applying the aforequoted statutory provisions and principles in the instant case, we hold that the petitioner and G.C. Services Enterprises are jointly and severally liable to the private respondents for the latter's monetary claims. The reason is that G.C. Services Enterprises, being a 'labor only' contractor, is merely an agent of the petitioner (the employer); the resultant "liability must be shouldered by either one or shared by both".[20] Hence, petitioner cannot avoid liability by invoking its Service Agreement with G.C. Services Enterprises considering that here the liability is imposed by law.

WHEREFORE, the petition is partially GRANTED. The assailed Decision and Resolution of public respondent NLRC are hereby modified. The petitioner is hereby ordered to pay private respondents separation pay, computed at the rate of at least one (1) month pay or at least one month pay for every year of service, whichever is higher. The award of backwages is set aside for lack of legal basis, while the award of attorney's fees is modified and limited to only 5% of the amount of separation pay.

NO COSTS.

SO ORDERED.

Davide, Jr. (Chairman), Bellosillo, Vitug, and Panganiban, JJ., concur.

[1] NLRC Decision, pp. 3-7; Rollo, pp. 23-27.

[2] Labor Arbiter Decision, p. 7; Rollo, p. 50.

[3] Labor Arbiter Decision, p. 8; Rollo, p. 51.

[4] Labor Arbiter Decision, p. 14; Rollo, p. 57.

[5] NLRC Decision, pp. 15-20; Rollo, pp. 35-40.

[6] 169 SCRA 341 (1989) at p. 349.

[7] Art. 280. Regular and Casual Employment. -- The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

[8] Art. 282. Termination by employer.--An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

[9] Art. 283. Closure of establishment and reduction of personnel.--The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to

the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half(1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[10] Art. 284. Disease as ground for termination.--An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

[11] Labor Arbiter Decision, pp. 9-10; Rollo, pp. 52-53.

[12] Labor Arbiter Decision, p. 8 ; Rollo, p. 51.

[13] Wiltshire File Co. Inc. v. NLRC, 193 SCRA 665 (1991) at p. 674.

[14] Art. 279. Security of Tenure.--In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[15] Labor Arbiter Decision, pp. 10-11; Rollo, pp. 53-54.

[16] Citing National Labor Union vs. Insular-Yebama Tobacco Corporation, 2 SCRA 924, 931 (1961) and Republic Savings Bank vs. CIR, 21 SCRA 226, 235 (1967).

[17] Solicitor General Comment, p. 13; Rollo, p. 85.

[18] Petition, p.14; Rollo, p. 15.

[19] 146 SCRA 347 (1986) at p. 356.

[20] Tabas v. California Manufacturing Co. Inc., 169 SCRA 497 (1989) at p. 502.

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