

## **PCI AUTOMATION CENTER, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND HECTOR SANTELICES, RESPONDENTS.**

*G.R. No. 115920. January 29, 1996*

Ponente: PUNO, J.

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### **PUNO, J.:**

This is a special civil action for certiorari under Rule 65 of the Revised Rules of Court for the annulment of the Decision of the National Labor Relations Commission (NLRC) dated December 29, 1993[1] and its Resolution dated April 15, 1994.[2]

In 1985, Philippine Commercial International Bank (PCIB) commenced its 4th GL Environment Conversion Project intended to link all existing computer systems within PCIB and its various branches around the country. It entered into a Computer Services Agreement with petitioner PCI Automation Center, Inc. (PCI-AC), under which petitioner obligated itself to direct, supervise and run the development of the software, computer software applications and computer system of PCIB. On the other hand, PCIB agreed to provide the petitioner with encoders and computer attendants, among others.[3]

To comply with its obligation to procure manpower for the petitioner, PCIB engaged the services of Prime Manpower Resources Development, Inc. (Prime). PCIB and Prime entered into an External Job Contract[4] which provides:

"1. Services - PRIME shall provide qualified and adequate personnel services required by the CLIENT within two (2) working days from time of receipt of the notice of the CLIENT's requisition.

2. Selection - The CLIENT shall have the right to select, refuse, or change any or all of the personnel assigned to deliver these services to the CLIENT upon two (2) working days notice to PRIME.

3. Supervision - The CLIENT shall be responsible in supervising all PRIME personnel contracted and assigned to deliver such services to the CLIENT. However, PRIME shall check the time cards of the assigned personnel for payroll and other related purposes. Any change or discontinuance in the work assignment of the assigned personnel shall be conveyed in writing to PRIME by CLIENT within two (2) days from such change or termination.

4. Liability/Responsibility - It is expressly agreed that the personnel assigned to the client are not employees of the CLIENT, and as such PRIME shall at all times stand solely liable and/or responsible for the enforcement of and compliance with all existing laws, rules and regulations, such as, but not limited to the Labor Code, Social Security Act, Employer's (sic) Compensation Commission Act as amended, Medical Care; provided finally, that PRIME hereby agrees and binds itself to save and hold CLIENT free and harmless from any civil and criminal liability with respect thereof and/or which may arise therefrom.

5. Direct Hiring/Absorption - Since the personnel assigned to the CLIENT are PRIME employees, said employees cannot be absorbed or hired directly by the CLIENT without PRIME's prior written consent. In

which case, CLIENT shall be charged by PRIME a placement fee equivalent to ten percent (10%) of the commencing annual gross compensation of the employee concerned if said employees have worked with CLIENT for less than five (5) months. If said employees have worked with CLIENT as temporary employee for more than five (5) months, CLIENT shall not be charged any fee.

6. Injury/Damage - PRIME shall not be responsible for any loss or damage caused by the assigned personnel to the CLIENT's properties as well as properties of the customers of the CLIENT unless the loss or damage is caused by the fact that the assigned personnel lacks the capacity to work by reason of any mental or physical defect or he was manifestly unfit or unqualified to perform the tasks for which he has been assigned by PRIME to the client.

In the event of injury to assigned PRIME personnel under this contract, due to accidents which are work-related, the CLIENT shall reimburse PRIME for medical expenses incurred which under existing laws are required to be defrayed by the employers. In the case of assigned PRIME personnel under regular status, medical expenses due to accidents or illnesses, whether or not work related, shall be defrayed by PRIME under its Hospitalization Insurance Scheme.

7. Confidentiality - PRIME shall guarantee the confidentiality of CLIENT's nature of job where PRIME personnel are involved.

8. Mode/Term of Payment - For and in consideration of the abovementioned services, the CLIENT shall pay PRIME the corresponding hourly billing rate listed in Annex A which is an integral part of this contract. Annex A consists of letter agreement dated May 20, 1986 duly conformed by PRIME and CLIENT as to the specific hourly rates per job category and status, as well as the composition of the billing rates, basis for computation and the provision of reserves for additional benefits granted to assigned regular PRIME employees whenever those are applicable and/or payable. Such rates apply only to work done by our employees during the first eight (8) hours on any work day.

For work rendered by the assigned personnel in excess of the regular work period agreed upon, the CLIENT shall be billed by PRIME the rates on overtime pay set by the New Labor Code. The schedule of hourly billing rates per job category for work rendered on overtime, whether done on a regular work day; legal holiday, special holiday or rest day is herein attached as Annex B and shall become an integral part of this contract.

PRIME shall bill the CLIENT for actual services rendered by sending CLIENT its statement of account on the 16th and on the last day of each month. CLIENT shall make payment within seven (7) working days from receipt of said statement of account, unless the CLIENT, within the same period, communicates to PRIME its refusal to pay on some valid grounds, e.g. errors in computation, etc. In the latter case, CLIENT shall make payment within seven (7) working days after the cause for non-payment is settled.

9. Provision for Rate Adjustment - In the event that wages are increased and increased (sic) and additional fringe benefits in favor of the employees are promulgated by law, decrees or regulation, or granted by mutual agreements between PRIME and CLIENT, the above mentioned billing rates shall be automatically adjusted to conform with the new levels set by law or by both parties."

On September 20, 1985, private respondent Hector Santelices was hired by Prime and assigned to petitioner as a data encoder to work on the 4th GL Environment Conversion Project of PCIB.[5] However, on March 18, 1991, Prime decided to terminate private respondent's services after it was informed by the petitioner that his services were no longer needed in the project.[6]

Private respondent filed before the NLRC a complaint for illegal dismissal against Prime and PCI-AC.[7] In his position paper, private respondent prayed for the payment of his 14th month pay, 13th month pay, separation pay, unpaid service incentive leave, unpaid vacation leave, termination pay, as well as moral and exemplary damages and attorney's fees.[8]

On April 30, 1993, Labor Arbiter Melquiades Sol Del Rosario rendered a Decision[9] finding that private respondent's dismissal was illegal. The dispositive portion of the Decision states:

"CONFORMABLY with the foregoing, judgment is hereby rendered finding complainant's dismissal to be illegal and without legal basis. Consequently, complainant should be immediately reinstated to his former or equivalent position as data encoder at PCI-AC. Should reinstatement be impossible or impractical due to a strained relation, then in lieu thereof, payment of separation pay by Prime at one month's pay (P3,060.00) per year of service reckoned from September 20, 1985, a fraction of six (6) months service being considered as one (1) whole year.

Respondents (sic) companies are further ordered to pay in solidum the complainant the following amounts:

1. P78,030.00 as backwages (March 16, 1991 to April 30, 1993) not exceeding 3 years without qualification or deduction at P3,060.00 a month;
2. P30,000.00 as moral damages;
3. P10,000.00 as exemplary damages; and
4. P5,000.00 as attorney's fees.

All other claims are hereby denied for lack of merit."[10]

Prime and PCI-AC appealed to the NLRC.

On June 18, 1993, during the pendency of the appeal, Prime paid private respondent the amount of P24,480.00 as separation pay in lieu of reinstatement. This was in partial satisfaction of the judgment rendered by the Labor Arbiter. Private respondent, for his part, waived his right to be reinstated to his former position in Prime and/or PCI-AC. Accordingly, Prime and private respondent executed and filed before the office of the Labor Arbiter a document entitled "Partial Satisfaction of Judgment and Waiver of Right." [11]

On December 29, 1993, public respondent NLRC affirmed the Decision of the Labor Arbiter, but deleted the award of moral and exemplary damages and attorney's fees.[12]

PCI-AC filed the present petition on the following ground:

". . . the public respondent acted with grave abuse of discretion amounting to lack of jurisdiction when it disregarded the substantial evidence in this case clearly showing that private respondent was not illegally dismissed by petitioner." [13]

The petition must fail.

Petitioner contends that private respondent, being a project employee, was validly dismissed when the project for which he was hired was completed on March 15, 1991. Petitioner avers that the 4th GL Environment Conversion Project involved a phase-by-phase conversion of PCIB's computer system. Private respondent was assigned to work as data encoder in the Consolidated Financing System/Budget Monitoring phase of the said computer conversion project. Allegedly, this phase was completed on March 15, 1991. Petitioner makes the submission that the completion of the work therein terminated further need for private respondent's services.[14]

The public respondent, however, held otherwise after assessing the evidence on record. It affirmed the findings of the Labor Arbiter, thus:

"Going now to the second point of inquiry, which is the completion or non-completion of the 4GL conversion system project, the testimony of Danilo Calauag, the assistant vice-president and manager of International Operations of Prime Manpower is most explicit. He testified on July 22, 1992 as follows:

‘Mr. Santelices was assigned initially to Tower 2; (p. 33 TSN.) then he was assigned to Tower I (Ibid) because there was work to be done in Tower I that necessitated his (complainant’s) transfer there (p. 35 Ibid) although the work he (complainant) was performing in Tower II was still existing (supra) and Tower II is still in progress (supra) meaning his original assignment is still on-going up to the present (p. 36 Ibid).’

The foregoing testimony expressly and clearly admitted that 4th conversion project, more particularly Tower II to which complainant was originally assigned is still an on-going project, and not yet completed as posited by respondents. There was therefore no reason for complainant’s dismissal on March 15, 1991 on the pretended ground which is completion of the project. xxx”[15]

We find no valid reason to disturb public respondent’s findings. No less than the assistant vice-president and manager for International Operations of Prime testified that the project for which private respondent was hired was still existing at the time of his dismissal. It is settled that factual findings of quasi-judicial agencies like the Labor Arbiter and the NLRC are generally accorded not only respect but even finality if such findings are supported by substantial evidence.[16]

The petitioner also faults the public respondent in affirming the disposition of the Labor Arbiter holding it solidarily liable with Prime for all the monetary claims of private respondent. It insists that it is not an employer of private respondent. It contends that private respondent is an employee of Prime and he was merely assigned by Prime to the petitioner to work on the 4th GL Environment Conversion Project of PCIB.

We are not persuaded.

The petitioner, through PCIB, contracted Prime to provide it with qualified personnel to work on the computer conversion project of PCIB.[17] The External Job Contract between Prime and PCIB must be read in conjunction with the Computer Services Agreement between PCIB and the petitioner. Under the Computer Services Agreement, the petitioner shall direct and supervise the computer conversion project of PCIB while PCIB shall provide the petitioner with data encoders and computer attendants to work on the project. Pursuant to said Agreement, PCIB called on Prime to furnish the petitioner with the needed personnel, one of whom was private respondent. Hence, although the parties in the External Job Contract are only Prime and PCIB, the legal consequences of such contract must also be made to apply to the petitioner. Under the circumstances, PCIB merely acted as a conduit between the petitioner and Prime. The project was under the management and supervision of the petitioner and it was the petitioner which exercised control over the persons working on the project.

Under the law, any person (hereinafter referred to as the "principal employer") who enters into an agreement with a job contractor, either for the performance of a specified work or for the supply of manpower, assumes responsibility over the employees of the latter.[18] However, for the purpose of determining the extent of the principal employer’s liability, the law makes a distinction between legitimate job contracting and labor-only contracting. Article 106 of the Labor Code states:

"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 restricting, 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 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."

In legitimate job contracting, no employer-employee relationship exists between the employees of the job contractor and the principal employer. Even then, the principal employer becomes jointly and severally liable with the job contractor for the payment of the employees' wages whenever the contractor fails to pay the same. In such case, the law creates an employer-employee relationship between the principal employer and the job contractor's employees for a limited purpose, that is, to ensure that the employees are paid their wages. Other than the payment of wages, the principal employer is not responsible for any claim made by the employees.[19]

On the other hand, in labor-only contracting, an employer-employee relationship is created by law between the principal employer and the employees of the labor-only contractor. In this case, the labor-only contractor is considered merely an agent of the principal employer. The principal employer is responsible to the employees of the labor-only contractor as if such employees had been directly employed by the principal employer. The principal employer therefore becomes solidarily liable with the labor-only contractor for all the rightful claims of the employees.[20]

Thus, in legitimate job contracting, the principal employer is considered only an indirect employer,[21] while in labor-only contracting, the principal employer is considered the direct employer of the employees.[22]

Considering the terms of the External Job Contract executed by Prime and PCIB, it cannot be doubted that Prime is a labor-only contractor. Under the contract, Prime merely acted as a placement agency providing manpower to the petitioner through PCIB. The service rendered by Prime in favor of the petitioner was not the performance of a specific job, but the supply of qualified personnel to work as data encoders and computer attendants in connection with the petitioner's project.

Rule VIII Book III of the Omnibus Implementing Rules and Regulations of the Labor Code defines job contracting and labor-only contracting:

"Sec. 8. Job contracting. - There is job contracting permissible under the Code if the following conditions are met:

(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.

Sec. 9. Labor-only contracting. - (a) Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting when such person:

(1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and

(2) The workers recruited and placed by such person are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed.

(b) Labor-only contracting as defined herein is hereby prohibited and the person acting as contractor shall be considered merely as an agent or intermediary 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.

xxx"

In short, the legitimate job contractor provides services while the labor-only contractor provides only manpower. The legitimate job contractor undertakes to perform a specific job for the principal employer while the labor-only contractor merely provides the personnel to work for the principal employer.

As Prime is a labor-only contractor, the workers it supplied to the petitioner, including private respondent, should be considered employees of the petitioner.[23] The admissions made by private respondent in his affidavits and position paper that he is a regular employee of Prime are not conclusive on this Court as the existence of an employer-employee relationship is a question of law which may not be made the subject of stipulation.[24]

We hold that public respondent did not commit grave abuse of discretion in affirming the ruling of the Labor Arbiter adjudging the petitioner solidarily liable with Prime for the payment of all the monetary claims of private respondent. This is in accord with Article 106 of the Labor Code, as amended.

IN VIEW WHEREOF, the petition is DISMISSED. The assailed Decision and Resolution are hereby AFFIRMED. No costs.

**SO ORDERED.**

Regalado (Chairman), Romero, and Mendoza, JJ., concur.

[1] It dismissed the appeal filed by petitioner PCI Automation Center, Inc. from the Decision of Labor Arbiter Melquiades Sot D. Del Rosario in NLRC NCR Case No. 00-04-02161-91.

[2] It denied the Motion for Reconsideration filed by petitioner PCI Automation Center of the Decision of the NLRC dated December 29, 1993.

[3] Rollo, pp. 56-57.

[4] Rollo, pp. 53-55.

[5] Rollo, p. 78.

[6] Rollo, p. 82.

[7] Rollo, p. 37.

[8] Rollo, pp. 72-73.

[9] Rollo, pp. 85-96.

[10] Rollo, pp. 95-96.

[11] Rollo, pp. 160-161.

[12] Rollo, pp. 27-34.

[13] Rollo, p. 11.

[14] Petitioner's Memorandum, pp. 12-13.

[15] Rollo, pp. 9 1-92.

[16] Morales vs. NLRC, 241 SCRA 103 (1995); Capitol Industrial Construction Group vs. NLRC, 221 SCRA 469 (1993); A.M. Oreta & Co. vs. NLRC, 176 SCRA 218 (1990); Hydro Resources Contractors Corp. vs. Labor Arbiter Adrian Pagalilauan, 172 SCRA 399 (1989).

[17] See External Job Contract between Prime Manpower Resources Development, Inc. and PCIBank for Manpower Services (Rollo, pp. 53-55) and Computer Services Agreement between PCI Automation Center, Inc. and PCIBank (Rollo, pp. 56-57).

[18] Article 106, Labor Code, as amended.

[19] Philippine Bank of Communications vs. NLRC, 146 SCRA 347 (1986).

[20] Philippine Bank of Communications vs. NLRC, 146 SCRA 347(1986).

[21] Article 107, Labor Code, as amended.

[22] Last paragraph of Article 106, Labor Code, as amended.

[23] Guarin vs. NLRC, 178 SCRA 267(1989).

[24] Tabas vs. California Manufacturing Co., Inc., 169 SCRA 497 (1989).

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