

ROLANDO E. ESCARIO, NESTOR ANDRES, CESAR AMPER, LORETO BALDEMOR, EDUARDO BOLONIA, ROMEO E. BOLONIA, ANICETO CADESIM, JOEL CATAPANG, NESTOR DELA CRUZ, EDUARDO DUNGO ESCARIO REY, ...*G.R. No. 124055. June 08, 2000*

Ponente: KAPUNAN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-124055/>**KAPUNAN, J.:**

Before this Court is a petition for certiorari under Rule 65, which seeks to annul and set aside the decision, promulgated on 10 May 1995, of the National Labor Relations Commission (NLRC). The assailed decision reversed the decision of the Labor Arbiter, and ruled that the petitioners are employees of Donna Louise Advertising and Marketing Associates, Inc. and ordered the reinstatement of petitioners and the payment of backwages.

Private respondent California Marketing Co. Inc. (CMC) is a domestic corporation principally engaged in the manufacturing of food products and distribution of such products to wholesalers and retailers. Private respondent Donna Louise Advertising and Marketing Associates, Inc. (D.L. Admark) is a duly registered promotional firm.

Petitioners worked as merchandisers for the products of CMC. Their services were terminated on 16 March 1992.

The parties presented conflicting versions of the facts.

Petitioners allege that they were employed by CMC as merchandisers. Among the tasks assigned to them were the withdrawing of stocks from the warehouse, the fixing of prices, price-tagging, displaying of merchandise, and the inventory of stocks. These were done under the control, management and supervision of CMC. The materials and equipment necessary in the performance of their job, such as price markers, gun taggers, toys, pentel pen, streamers and posters were provided by CMC. Their salaries were being paid by CMC. According to petitioners, the hiring, control and supervision of the workers and the payment of salaries, were all coursed by CMC through its agent D.L. Admark in order for CMC to avoid its liability under the law.

On 7 February 1992, petitioners filed a case against CMC before the Labor Arbiter for the regularization of their employment status. During the pendency of the case before the Labor Arbiter, D.L. Admark sent to petitioners notice of termination of their employment effective 16 March 1992. Hence, their complaint was amended so as to include illegal dismissal as cause of action. Thereafter, twenty-seven more persons joined as complainants. CMC filed a motion to implead as party-defendant D. L. Admark and at the same time the latter filed a motion to intervene. Both motions were granted.

CMC, on the other hand, denied the existence of an employer-employee relationship between petitioner and itself. Rather, CMC contended that it is D.L. Admark who is the employer of the petitioners. While CMC is engaged in the manufacturing of food products and distribution of such to wholesalers and retailers, it is not allowed by law to engage in retail or direct sales to end consumers. It, however, hired independent job contractors such as D.L.

Admark, to provide the necessary promotional activities for its product lines.

For its part, D.L. Admark asserted that it is the employer of the petitioners. Its primary purpose is to carry on the business of advertising, promotion and publicity, the sales and merchandising of goods and services and conduct survey and opinion polls. As an independent contractor it serves several clients among which include Purefoods, Corona Supply, Firstbrand, Splash Cosmetics and herein private respondent California Marketing.

On 29 July 1994, the Labor Arbiter rendered a decision finding that petitioners are the employees of CMC as they were engaged in activities that are necessary and desirable in the usual business or trade of CMC.[1] In justifying its ruling, the Labor Arbiter cited the case of *Tabas vs. CMC* which, likewise, involved private respondent CMC. In the *Tabas* case, this Court ruled that therein petitioner merchandisers were employees of CMC, to wit:

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 not withstanding its vehement claims to the contrary and 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 petitioner has 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 agent, or otherwise rendered a piece of work it (California) could not itself have done; Livi as a placement agency, had simply supplied it with manpower necessary to carry out its (California's) merchandising activities, using its (California's) premises and equipment.[2]

On appeal, the NLRC set aside the decision of the Labor Arbiter. It ruled that no employer-employee relationship existed between the petitioners and CMC. It, likewise, held that D.L. Admark is a legitimate independent contractor, hence, the employer of the petitioners. Finding no valid grounds existed for the dismissal of the petitioners by D.L. Admark, it ordered their reinstatement. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the appealed judgment is modified. Intervenor DL ADMARK is ordered to reinstate the eighty one (81) complainants mentioned in the appealed decision to their former positions with backwages from March 16, 1992 until they are actually reinstated. The award of attorney's fees equivalent to ten (10%) of the award is deleted for lack of basis.[3]

Petitioners filed a motion for reconsideration but the same was denied by the NLRC for lack of merit. [4]

Hence, this petition.

In the main, the issue brought to fore is whether petitioners are employees of CMC or D.L. Admark. In resolving this, it is necessary to determine whether D.L. Admark is a labor-only contractor or an independent contractor.

Petitioners are of the position that D.L. Admark is a labor-only contractor and cites this Court's ruling in the case of *Tabas*, which they claim is applicable to the case at bar for the following reasons:

1. The petitioners are merchandisers and the petitioners in the *Tabas* case are also merchandisers who have the same nature of work.
2. The respondent in this case is California Manufacturing Co. Inc. while respondent in the *Tabas* case is the same California Manufacturing Co. Inc.

3. The agency in the Tabas case is Livi Manpower Services. In this case, there are at least, three (3) agencies namely: the same Livi Manpower Services; the Rank Manpower Services and D.L. Admark whose participation is to give and pay the salaries of the petitioners and that the money came from the respondent CMC as in the Tabas case.

4. The supervision, management and/or control rest upon respondent California Manufacturing Co. Inc. as found by the Honorable Labor Arbiter which is also, true in the Tabas Case.[5]

We cannot sustain the petition.

Petitioners' reliance on the Tabas case is misplaced. In said case, we ruled that therein contractor Livi Manpower Services was a mere placement agency and had simply supplied herein petitioner with the manpower necessary to carry out the company's merchandising activity. We, however, further stated that :

It would have been different, we believe, had Livi been discretely a promotions firm, and that California had hired it to perform the latter's merchandising activities. For then, Livi would have been truly the employer of its employees and California, its client. x x x.[6]

In other words, CMC can validly farm out its merchandising activities to a legitimate independent contractor.

There is labor-only contracting when the contractor or sub-contractor merely recruits, supplies or places workers to perform a job, work or service for a principal. In labor-only contracting, the following elements are present:

- (a) 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
- (b) The workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer. [7]

In contrast, there is permissible job contracting when a principal agrees to put out or farm out with a contractor or a subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job or work or service is to be performed or completed within or outside the premises of the principal. In this arrangement, the following conditions must concur:

- (a) The contractor carries on a distinct and independent business and undertakes the contract work on his 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 his work except as to the results thereof; and
- (b) The contractor has substantial capital or investment in the form of tools, equipment, machineries (sic), work premises, and other materials which are necessary in the conduct of his business.[8]

In the recent case of *Alexander Vinoya vs. NLRC et al.*,[9] this Court ruled that in order to be considered an independent contractor it is not enough to show substantial capitalization or investment in the form of tools, equipment, machinery and work premises. In addition, the following factors need be considered: (a) whether the contractor is carrying on an independent business; (b) the nature and extent of the work; (c) the skill required; (d) the term and duration of the relationship; (e) the right to assign the performance of specified pieces of work; (f) the control and supervision of the workers; (g) the power of the employer with respect to the hiring, firing and payment of workers of the contractor; (h) the control of the premises; (i) the duty to supply premises, tools, appliances, materials, and labor; and (j) the mode, manner and terms of payment.[10]

Based on the foregoing criterion, we find that D.L. Admark is a legitimate independent contractor.

Among the circumstances that tend to establish the status of D.L. Admark as a legitimate job contractor are:

- 1) The SEC registration certificate of D.L. Admark states that it is a firm engaged in promotional, advertising, marketing and merchandising activities.
- 2) The service contract between CMC and D.L. Admark clearly provides that the agreement is for the supply of sales promoting merchandising services rather than one of manpower placement.[11]
- 3) D.L. Admark was actually engaged in several activities, such as advertising, publication, promotions, marketing and merchandising. It had several merchandising contracts with companies like Purefoods, Corona Supply, Nabisco Biscuits, and Licron. It was likewise engaged in the publication business as evidenced by its magazine the "Phenomenon." [12]
- 4) It had its own capital assets to carry out its promotion business. It then had current assets amounting to P6 million and is therefore a highly capitalized venture.[13] It had an authorized capital stock of P500,000.00. It owned several motor vehicles and other tools, materials and equipment to service its clients. It paid rentals of P30,020 for the office space it occupied.

Moreover, by applying the four-fold test used in determining employer-employee relationship, the status of D.L. Admark as the true employer of petitioners is further established. The elements of this test are (1) the selection and engagement of employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct.[14]

As regards the first element, petitioners themselves admitted that they were selected and hired by D.L. Admark.[15]

As to the second element, the NLRC noted that D.L. Admark was able to present in evidence the payroll of petitioners, sample SSS contribution forms filed and submitted by D.L. Admark to the SSS, and the application for employment by R. de los Reyes, all tending to show that D.L. Admark was paying for the petitioners' salaries. In contrast, petitioners did not submit an iota of evidence that it was CMC who paid for their salaries. The fact that the agreement between CMC and D.L. Admark contains the billing rate and cost breakdown of payment for core merchandisers and coordinators does not in any way establish that it was CMC who was paying for their salaries. As correctly pointed out by both CMC[16] and the Office of the Solicitor General,[17] such cost breakdown is a standard content of service contracts designed to insure that under the contract, employees of the job contractor will receive benefits mandated by law.

Neither did the petitioners prove the existence of the third element. Again petitioners admitted that it was D.L. Admark who terminated their employment.[18]

To prove the fourth and most important element of control, petitioners presented the memoranda of CMC's sales and promotions manager. The Labor Arbiter found that these memos "indubitably show that the complainants were under the supervision and control of the CMC people." [19] However, as correctly pointed out by the NLRC, a careful scrutiny of the documents adverted to, will reveal that nothing therein would remotely suggest that CMC was supervising and controlling the work of the petitioners:

x x x The memorandums (Exhibit "B") were addressed to the store or grocery owners telling them about the forthcoming sales promotions of CMC products. While in one of the memorandums a statement is made that "our merchandisers and demonstrators will be assigned to pack the premium with your stocks in the shelves x x x, yet it does not necessarily mean to refer to the complainants, as they claim, since CMC has also regular merchandisers and demonstrators. It would be different if in the memorandums were sent or given to the complainants and their duties or roles in the said sales campaign are therein defined. It is also noted that in one of the memorandums it was addressed to: "All regular merchandisers/demonstrators." x x x we are not convinced that the documents sufficiently prove employer-employee relationship between complainants and respondents CMC.[20]

The Office of the Solicitor General, likewise, notes that the documents fail to show anything that would remotely suggest control and supervision exercised by CMC over petitioners on the matter on how they should perform their work. The memoranda were addressed either to the store owners or "regular" merchandisers and demonstrators of CMC. Thus, petitioners, who filed a complaint for regularization against respondent CMC, thereby, conceding that they are not regular employees of the latter, cannot validly claim to be the ones referred to in said memos.[21]

Having proven the existence of an employer-employee relationship between D.L. Admark and petitioners, it is no longer relevant to determine whether the activities performed by the latter are necessary or desirable to the usual business or trade of CMC.

On the issue of illegal dismissal, we agree with the findings of the NLRC that D.L. Admark "admits having dismissed the petitioners for allegedly disowning and rejecting them as their employer." Undoubtedly, the reason given is not just cause to terminate petitioners.[22] D.L. Admark's belated claim that the petitioners were not terminated but simply did not report to work[23] is not supported by the evidence on record. Moreover, there is no showing that due process was afforded the petitioners.

IN VIEW OF THE FOREGOING, finding no grave abuse of discretion on the part of the National Labor Relations Commission, the assailed decision is AFFIRMED in toto.

SO ORDERED.

Puno, Pardo, and Ynares-Santiago, JJ., concur.

Davide, Jr., C.J., (Chairman), on official leave abroad.

[1] Rollo, p. 11.

[2] 169 SCRA 497, 502-503 (1984).

[3] Rollo, p. 51.

[4] Id., at 53-54.

[5] Id., at 17.

[6] See note 2, at 503.

[7] Neri v. NLRC, 224 SCRA 717, 721 (1993)

[8] RULES TO IMPLEMENT THE LABOR CODE, Book III, Rule VIII, Sec. 8.

[9] G. R. No. 126585, February 2, 2000.

[10] Ibid, citing Ponce et. al. vs. NLRC, et al., 293 SCRA 366 (1998).

[11] Rollo, p. 215.

[12] Rollo, p. 49.

[13] Id., at 50.

[14] Maraguinot Jr. v. NLRC (Second Division), 284 SCRA 539, 552 (1998).

[15] Rollo, p. 46.

[16] Id., at 336.

[17] Id., at 252.

[18] Id., at 46

[19] Id., at 108.

[20] Id., at 47.

[21] Id., at 253.

[22] Id., at 57.

[23] Id., at 231.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.