

ABOITIZ HAULERS, INC., PETITIONER, VS. MONAORAI DIMAPATOI, CECILIA AGAWIN, EMMANUEL GUERRERO, RAUL MAMATE, AND GEMENIANO BIGAW, RESPONDENTS.

G.R. NO. 148619. September 19, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition For Review on certiorari under Rule 45 of the 1997 Rules of Court, as amended, seeking to set aside a Decision[1] of the Court of Appeals dated 21 November 2000 finding the petitioner liable for the illegal dismissal of the respondents. The Court of Appeals in its assailed Decision reversed the Decision[2] of the National Labor Relations Commission (NLRC) dated 8 June 1998 affirming the Decision[3] of the Labor Arbiter in Case No. 08-05365-96 dated 11 July 1997.

Petitioner Aboitiz Haulers, Inc. is a domestic corporation principally engaged in the nationwide and overseas forwarding and distribution of cargoes.[4]

Private respondents Monaorai Dimapatoi, Cecilia Agawin, Raul Mamate, Emmanuel Guerrero and Gemeniano Bigaw worked as checkers in the Mega Warehouse, which is owned by the petitioner, located at the Tabacalera Compound, United Nations Avenue, Manila.[5]

The parties rendered conflicting recital of facts.

Petitioner claims that respondents are not its employees, rather they are the employees of Grigio Security Agency and General Services (Grigio), a manpower agency that supplies security guards, checkers and stuffers. It allegedly entered into a Written Contract of Service with Grigio on 1 March 1994. By virtue of the aforementioned Written Contract of Service, Grigio supplied petitioner with security guards, checkers and stuffers for petitioner's Mega Warehouse. The respondents were among the checkers that were assigned to the petitioner's warehouse.[6]

Petitioner emphasizes that Grigio retained control over the respondents by providing their own supervisors to oversee Grigio's personnel, as well as time cards to monitor the attendance of its personnel.[7]

Petitioner also alleges that on 9 May 1996, the respondents left the warehouse and did not report to work thereafter. As a result of the respondents' sudden abandonment of their work, there was no orderly and proper turnover of papers and other company property in connection with the termination of the Written Contract for Services.[8]

Respondents, on the other hand, claim that most of them worked as checkers in petitioner's warehouse even before 1 March 1994. They started to work in the warehouse on the dates hereunder provided[9]:

Name Date of Employment

1.Monaorai Dimapatoi 15 September 1992

2.Ma. Cecilia Agawin August 1994

3.Raul Mamate 15 May 1992

4.Emmanuel Guerrer 15 November 1992

5.Gemeniano Bigaw 15 December 1992

Respondents maintain that during their employment with the petitioner, they were not paid their regular holiday pay, night shift differential, 5-day service incentive leave, and overtime premium. They also averred that illegal deductions were being made on their wages, particularly the contributions for a Mutual Assistance Fund, a Cash Bond, and claims for damaged and misrouted cargoes incurred by petitioner.[10]

Respondents allege that on 15 May 1996, petitioner dismissed them on the pretext that the Written Contract of Service between Grigio and the petitioner had been terminated. To controvert the allegations of the petitioner that respondents did not report for work starting 9 May 1996, the respondents presented a copy of the pertinent pages of the logbook which served as their daily time record. Respondents also presented a Certification issued by petitioner's Warehouse Supervisor in favor of respondent Monaorai Dimapatoi affirming that she worked with the Petitioner as a Warehouse Checker and Document Clerk until 15 May 1996.[11]

On 17 May 1996, respondent Raul Mamate filed a complaint before the Department of Labor and Employment (DOLE) for nonpayment of wages and other benefits, as well as illegal deductions. The other respondents filed their own complaints. Since the claims of the respondents exceeded Five Thousand Pesos (P5,000.00), the case was referred to the NLRC. Thereafter, respondents filed their complaint for illegal dismissal and other money claims before the Arbitration Branch of the NLRC.[12]

In a Decision, dated 11 July 1997, the labor arbiter ruled that the complainants' failure to offer any evidence showing that Grigio had no substantial capital denotes that Grigio was a legitimate independent job contractor. Thus, the employer-employee relationship existed between Grigio and the respondents, not between the petitioner and the respondents. Nevertheless, petitioner and Grigio were held solidarily liable for the unpaid wages of the respondents. The labor arbiter also ruled that the respondents were not illegally dismissed by Grigio. Of the money claims made by the respondents, the labor arbiter granted five-day Service Incentive Leave Pay and the proportionate 13th month pay for the year 1996.[13] The dispositive portion of the said Decision[14] is quoted hereunder:

PREMISES CONSIDERED, respondent GRIGIO SECURITY AGENCY AND GENERAL SERVICES and ABOITIZ HAULERS, INC. are hereby ordered to jointly and severally pay complainants herein the total amount of TWENTY-FIVE THOUSAND EIGHTY-FIVE (P25,085.00) PESOS, as discussed above.

On appeal, the NLRC affirmed the findings of the labor arbiter, modifying the appealed decision only insofar as the award of service leave pay for the year 1996 was made to apply to the entire period from 1993 to 1996. An error in computing respondent Dimapatoi's proportionate 13th month pay was also noted.[15] The dispositive portion of the said Decision[16] dated 8 June 1998 reads:

WHEREFORE, the decision of the Labor Arbiter dated July 11, 1997 is hereby MODIFIED. Respondents Grigio Security Agency and General Services and Aboitiz Haulers, Inc. are ordered jointly and severally to pay each of the complainants the amount of SIX THOUSAND SEVEN HUNDRED TWENTY-SEVEN PESOS (P6,727.00) representing their unpaid wages for the period April 22 to May 6, 1996, proportionate 13th month pay, and fifteen (15) days service incentive leave pay for the period 1993-1996.[17]

A Motion for Reconsideration was filed by the respondents, but the same was denied by the NLRC in an Order dated 29 September 1998.[18]

The respondents filed an appeal by Certiorari under Rule 65 of the 1997 Rules of Court. In a Decision dated 21 November 2000, the Court of Appeals granted their Petition. The dispositive portion of said Decision reads:

WHEREFORE, the petition is GRANTED and the assailed decision of the NLRC dated June 8, 1998 in so far as it affirmed the decision of the Labor Arbiter dated July 11, 1997 finding no illegal dismissal is SET ASIDE. Respondent AHI is ordered to REINSTATE petitioners with full status and rights of regular employees and to PAY, along with respondent Grigio, jointly and severally, unto petitioners: (a) full back wages and other benefits computed from the time their compensations were withheld up to the time of their actual reinstatement, as provided for under Art. 279, Labor Code; (b) separation pay, in case reinstatement is no longer viable; (c) the amount of P6,727.00 representing the individual petitioners' Service Incentive Leave pay for the period 1993-1996, proportionate 13th month pay, and withheld wages; (d) attorney's fees equivalent to ten (10%) percent of all money claims hereby awarded; and (e) the costs of this suit.[19]

In reversing the factual findings of the NLRC and the labor arbiter, the Court of Appeals determined that Grigio was not an independent job contractor, despite its claim that it has sufficient capital. Grigio does not carry on an independent business, since the respondents' work as warehouse checkers is necessary and desirable to the petitioner's business of forwarding and distribution of cargoes. Grigio also does not undertake the performance of its contract free from the control and supervision of its principal since respondents' work is performed in the petitioner's warehouse under the direct supervision and control of the petitioner's officials.

After ruling that petitioner was the employer of the respondents, the Court of Appeals resolved that the respondents were illegally dismissed by the petitioner since the latter failed to comply with the procedural requirements of notice and hearing. Thus, it awarded back wages and separation pay, if reinstatement was no longer possible, in favor of the respondents.

The Court of Appeals, however, affirmed the NLRC and the labor arbiter in deciding that the respondents were not entitled to their claims for payment of holiday pay, night shift differentials, overtime and illegal deductions as these claims were not sufficiently proven. It likewise ruled that respondents were only entitled to the Service Incentive Leave Pay, proportionate 13th month pay, and unpaid wages.

The petitioner filed a Motion for Reconsideration of the Decision dated 21 November 2000 rendered by the Court of Appeals. On 15 June 2001, the Court of Appeals issued a Resolution denying their motion.[20]

Hence this petition, wherein petitioner raised the following assignment of errors:

-A-

THE COURT OF APPEALS ERRED IN HOLDING THAT GRIGIO IS NOT AN INDEPENDENT JOB CONTRACTOR.

-B-

THE COURT OF APPEALS ERRED IN HOLDING THAT THE RESPONDENTS ARE EMPLOYEES OF HEREIN PETITIONER.

-C-

THE COURT OF APPEALS ERRED IN HOLDING THAT RESPONDENTS ARE NOT GUILTY OF ABANDONMENT.[21]

The issues that need to be resolved in this case are factual in nature - (1) whether or not Grigio is a "labor-only" contractor; and (2) whether the respondents were lawfully dismissed due to abandonment. Under Rule 45 of the 1997 Rules of Court, this Court's review of decisions is confined to questions of law. Generally, the findings of

fact made by the labor arbiter and the NLRC, as the specialized agencies presumed to have the expertise on matters within their respective fields, are accorded much respect and even finality, when supported by ample evidence.[22] However, when the findings of the labor arbiter and the NLRC are contrary to the evidence on record, this Court shall lay aside such erroneous findings.[23]

The first issue that needs to be resolved is whether Grigio is a "labor-only" contractor, which is tantamount to a finding that the petitioner is the employer of the respondents.

Article 106 of the Labor Code[24] explains the relations which may arise between an employer, a contractor and the contractor's employees thus:

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.

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 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.

The first two paragraphs of Art. 106 set the general rule that a principal is permitted by law to engage the services of a contractor for the performance of a particular job, but the principal, nevertheless, becomes solidarily liable with the contractor for the wages of the contractor's employees. The third paragraph of Art. 106, however, empowers the Secretary of Labor to make distinctions between permissible job contracting and "labor-only" contracting, which is a prohibited act further defined under the last paragraph. A finding that a contractor is a "labor-only" contractor is equivalent to declaring that there is an employer-employee relationship between the principal and the employees of the supposed contractor, and the "labor-only" contractor is considered as a mere agent of the principal, the real employer.[25] Section 7 of the Rules Implementing Articles 106 to 109 of the Labor Code, as amended,[26] reiterates the rules in determining the existence of employer-employee relationship between employer, contractor or subcontractor, and the contractor's or subcontractor's employee.

Section 7. Existence of an employer-employee relationship. - The contractor or subcontractor shall be considered the employer of the contractual employee for purposes of enforcing the provisions of the Labor Code and other social legislation. The principal, however, shall be solidarily liable with the contractor in the event of any violation of any provision of the Labor Code, including the failure to pay wages.

The principal shall be deemed the employer of the contractual employee in any of the following cases, as declared by a competent authority:

- where there is a labor-only contracting; or
- where the contracting arrangement falls within the prohibitions provided in Section 6 (Prohibitions) hereof.

In determining whether or not a "labor-only" contracting exists, Art. 106 of the Labor Code and Section 5 of the Rules Implementing Articles 106 to 109 of the Labor Code, as amended,[27] provides the following criteria: (1) 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 other things; (2) the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer; and (3) the contractor does not exercise the right to control the performance of the work of the contractual employee. In order that one is considered by law as a "labor-only" contractor, all three aforementioned criteria need not be present. If the contractor enters into an arrangement characterized by any one of the criteria provided, this would be a clear case of "labor-only contracting." The clear phrasing of Section 5 of the Rules Implementing Articles 106 to 109 of the Labor Code, as amended, support this interpretation.

Section 5. Prohibition against labor-only contracting. - Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are [is] present:

- i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or
- ii) the contractor does not exercise the right to control over the performance of the work of the contractual employee.

The forgoing provisions shall be without prejudice to the application of Article 248 (C) of the Labor Code, as amended.

"Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out.

The "right to control" shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.

The allegation of the petitioner that Grigio is an independent job contractor, and, therefore, this case is one of permissible job contracting, is without basis. In this case, the respondents' work, as warehouse checkers, is directly related to the principal business of the petitioner. Petitioner also exercises the right to control and determines not only the end to be achieved, but also the manner and means to be used in reaching that end. Lastly, petitioner failed to sufficiently prove that Grigio had "substantial capital or investment."

The respondents, as checkers, were employed to check and inspect these cargoes,[28] a task which is clearly necessary for the petitioner's business of forwarding and distributing of cargoes. The petitioner did not dispute the fact that the respondents were hired as checkers as early as 1992. The fact that they were employed before the Written Contract of Services took effect on 24 February 1994, and continued with their jobs until 1996, after the said contract had already expired on 24 February 1995,[29] indicates that the respondents' work was indeed necessary for the petitioner's business. In a similar case, *Guarin v. National Labor Relations Commission*,[30] the workers' contracts were repeatedly renewed to perform services necessary for the employer's business. Thus, the Court described the arrangement as "labor-only" contracting:

The jobs assigned to the petitioners as mechanics, janitors, gardeners, firemen and grasscutters were directly related to the business of Novelty as a garment manufacturer. In the case of *Philippine Bank of Communications vs. NLRC*, 146 SCRA 347, we ruled that the work of a messenger is directly related to a bank's operations. In its Comment, Novelty contends that the services which are directly related to manufacturing garments are sewing, textile cutting, designs, dying, quality control, personnel, administration, accounting, finance, customs, delivery and similar other activities; and that allegedly, "it is only by stretching the imagination that one may conclude that the services of janitors, janitresses, firemen, grasscutters, mechanics and helpers are directly related to the business of manufacturing garments" (p. 78, Rollo). Not so, for the work of gardeners in maintaining clean and well-kept grounds around the factory, mechanics to keep the machines functioning properly, and firemen to look out for fires, are directly related to the daily operations of a garment factory. That fact is confirmed by Novelty's rehiring the workers or renewing the contract with Lipercon every year from 1983 to 1986, a period of three (3) years.

As Lipercon was a "labor-only" contractor, the workers it supplied Novelty became regular employees of the latter.

Where the employees are tasked to undertake activities usually desirable or necessary in the usual business of the employer, the contractor is considered as a "labor-only" contractor and such employees are considered as regular employees of the employer.[31]

In addition, Grigio did not undertake the performance of its service contract according to its own manner and method, free from the control and supervision of its principal. The work activities, work shifts, and schedules of the respondents, including the time allowed for "recess" were set under the Written Contract of Services.[32] This clearly indicates that these matters, which consist of the means and methods by which the work is to be accomplished, were not within the absolute control of Grigio. By stipulating these matters in a contract, Grigio is constrained to follow these provisions and would no longer be able to exercise the freedom to alter these work shifts and schedules at its own convenience. Such being the case, Grigio cannot be considered as an independent job contractor.

Petitioner's allegation that Grigio retained control over the respondents by providing supervisors to monitor the performance of the respondents cannot be given much weight. Instead of exercising their own discretion or referring the matter to the officers of Grigio, Grigio's supervisors were obligated to refer to petitioner's supervisors any discrepancy in the performance of the respondents with their specified duties. The Written Contract of Services[33] provided that:

5.c. That the GRIGIO personnel, particularly the supervisors, shall perform the following:

The Supervisor for the warehouse operation shall monitor the performance and productivity of all the checkers, jacklifters, stuffers/strippers, forklift operators, drivers, and helpers. He shall coordinate with AHI's supervisors regarding the operations at the Warehouse to ensure safety at the place of work.

He shall see to it that the cargoes are not overlanded, shortlanded, delivered at a wrong destination, or misdelivered to consignee's port of destination. Any discrepancy shall be reported immediately to AHI's Logistic Manager, Mr. Andy Valeroso.

The control exercised by petitioner's supervisors over the performance of respondents was to such extent that petitioner's Warehouse Supervisor, Roger Borromeo, confidently gave an evaluation of the performance of respondent Monaorai Dimapatoi, who likewise felt obliged to obtain such Certification from Borromeo.

Petitioner's control over the respondents is evident. And it is this right to control the employee, not only as to the result of the work to be done, but also as to the means and methods by which the same is to be accomplished, that

constitutes the most important index of the existence of the employer-employee relationship.[34]

Lastly, the law casts the burden on the contractor to prove that it has substantial capital, investment, tools, etc. Employees, on the other hand, need not prove that the contractor does not have substantial capital, investment, and tools to engage in job-contracting.[35] In this case, neither Grigio nor the petitioner was able to present any proof that Grigio had substantial capital. There was no evidence pertaining to its capitalization nor its investment in tools, equipment or implements actually used in the performance or completion of the job, work, or service that it was contracted to render. Grigio was merely expected to supply petitioner with manpower to carry out work necessary for its business, to be carried out in the manner which petitioner provided in the contract.

Thus, Grigio is obviously a "labor-only" contractor since it did not have substantial capital or investment which relates to the service performed; the respondents performed activities which were directly related to the main business of the petitioner; and Grigio did not exercise control over the performance of the work of the respondents. Consequently, the petitioner is considered as the employer of the respondents.

In prohibiting "labor-only" contracting and creating an employer-employee relationship between the principal and the supposed contractor's employees, the law intends to prevent employers from circumventing labor laws intended to protect employees. In the case of *Aurora Land Projects Corp. v. National Labor Relations Commission*, [36] this Court pronounced:

The question as to whether an employer-employee relationship exists in a certain situation continues to bedevil the courts. Some businessmen try to avoid the bringing about of an employer-employee relationship in their enterprises because that judicial relation spawns obligations connected with workmen's compensation, social security, medicare, minimum wage, termination pay, and unionism. In light of this observation, it behooves this Court to be ever vigilant in checking the unscrupulous efforts of some of our entrepreneurs, primarily aimed at maximizing their return on investments at the expense of the lowly workingman.

The second issue raised was whether the respondents have been illegally dismissed. The petitioner alleges that the respondents were lawfully dismissed for abandoning their work on 9 May 1996, six days before the contract between Grigio and the petitioner was terminated on 15 May 1996. This allegation was supported by the complaint by one of the respondents, Mamate, for unpaid salaries from 22 April 1996 to 9 May 1996.

However, respondents submitted copies of the pertinent pages of the logbook showing that they had in fact reported for work on the dates they were supposed to have abandoned their jobs, from 9 May 1996 until 15 May 1996.[37] One of the respondents, Monaorai Dimapatoi, even submitted a Certification issued by petitioner's very own Warehouse Supervisor, Roger R. Borromeo, that Dimapatoi effectively performed her job as warehouse checker and documentation clerk from 16 September 1992 to 15 May 1996.[38]

Petitioner's allegation that respondents abandoned their work is therefore devoid of legal and factual bases. The Court has repeatedly held that abandonment as a just and valid ground for dismissal requires the deliberate and unjustified refusal of the employee to resume his employment. Mere absence of failure to report for work, after notice to return, is not enough to amount to such abandonment. For a valid finding of abandonment, two factors must be present: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever employer-employee relationship, with the second element as the more determinative factor being manifested by some overt acts.[39] In abandonment, there must be a concurrence of the intention to abandon and some overt acts from which an employee may be deduced as having no more intention to work.[40]

The burden of proof to show that there was unjustified refusal to return to work rests on the employer.[41] Petitioner, however, failed to prove this. It not only failed to contradict or challenge the evidence presented by the respondents, it also failed to present daily time records showing that the respondents had been absent since 9 May

1996. The records also fail to show that the petitioner or Grigio sent the respondents any letter or memoranda ordering the respondents to return to work or seeking any explanation for their absences. Absent any contrary proof, the evidence presented by the respondents becomes conclusive.

The Complaint[42] filed by Raul M. Mamate on 17 May 1996 before the DOLE cannot be construed as direct proof of respondents' abandonment. Records show that in the Complaint[43] filed by respondents Monaorai Dimapatoi and Cecilia Agawin before the NLRC on 29 August 1996, they indicated that they were dismissed on 15 May 1996. Nor can it be reasonably concluded that Mamate abandoned his job on 9 May 1996. Although Mamate claimed nonpayment of salaries from "April 22 to May 9 1996", he only alleged that he was not yet paid for that period. This does not mean that he had not worked after 9 May 1996 or that he intended to abandon his job as of 9 May 1996. He clearly considered himself still employed as of 17 May 1996 since on the blank space provided for the period of employment, Mamate wrote "March 15/92 - present." The logbook presented by respondents as evidence, and the validity of which was not negated by petitioner, shows that Mamate had reported for work until 15 May 1996. Moreover, the fact that the respondents subsequently filed a complaint for illegal dismissal is incompatible with the charge of abandonment.[44]

Even assuming there was abandonment, petitioner did not comply with the statutory requirement of notice and hearing. The law requires the employer to furnish the worker sought to be dismissed two written notices. The first notice appraises the employee of the particular acts or omissions for which dismissal is sought, while the second notice informs the employee of the employer's decision to dismiss him.[45] In the present case, the petitioner failed to serve the respondents either of the two notices. Neither did petitioner afford the respondents an opportunity to contest their dismissal. Having failed to establish the requirements of notice and hearing, the dismissal of the respondents is tainted with illegality. Respondents, having been illegally dismissed, are, therefore, entitled to (1) reinstatement, or separation pay, if reinstatement is no longer viable; and (2) full back wages.[46]

There is a need, though, to clarify the dispositive portion of the assailed Decision of the Court of Appeals awarding to the respondents " (a) full back wages and other benefits computed from the time their compensations were withheld up to the time of their actual reinstatement, as provided under Art. 279, Labor Code," as well as "(c) the amount of P6,727.00 representing the individual petitioners' Service Incentive Leave pay for the period 1993-1996, proportionate 13th month pay, and withheld wages." As the amount of P6,727.00 already includes part of the wages that were withheld from the respondents, the back wages separately awarded to the respondents should exclude the wages already covered by the lump sum of P6,727.00 in order to avoid any double payment. Based on the Decision of the labor arbiter, dated 11 July 1977, the total amount of P6,727.00 covers the total wages withheld from 22 April 1996 to 6 May 1996.[47] In order to avoid any confusion, the full back wages should be computed from 7 May 1996 until the reinstatement of the respondents.

WHEREFORE, premises considered, this Court DENIES this petition and AFFIRMS the Decision of the Court of Appeals in CA-G.R. SP No. 52718 dated 21 November 2000, with modifications, ordering petitioner to reinstate respondents with full status and rights of regular employees and to pay, along with Grigio, jointly and severally, to the respondents (1) full back wages and other benefits computed from 7 May 1996 up to the time of their actual reinstatement; (2) separation pay, in case reinstatement is no longer viable; (3) the amount of P6,727.00 representing the individual respondents' Service Incentive Leave pay for the period 1993 to 1996, proportionate 13th month pay, and withheld wages for the period of 22 April 1996 to 6 May 1996; and (4) attorney's fees equivalent to ten (10%) of all money claims awarded. Accordingly, the case is remanded to the labor arbiter for further proceedings solely for the purpose of determining the monetary liabilities of the petitioner. Costs against petitioner.

SO ORDERED.

Panganiban, C. J., (Chairman), Ynares-Santiago, Austria-Martinez, and Callejo, Sr., JJ., concur.

[1] Penned by Associate Justice Rebecca De Guia- Salvador with Associate Justices Ruben T. Reyes and Mariano M. Umali, concurring, rollo, pp. 31-41.

[2] Id. at 91-100.

[3] Id. at 74-90.

[4] Id. at 38.

[5] Id. at 32.

[6] Id. at 12.

[7] Id. at 12

[8] Id. at 13.

[9] Id. at 108.

[10] Id.

[11] Id. at 108 and 125.

[12] Id. at 33 and 188.

[13] Id. at 84-90.

In computing for the liabilities of Grigio Security Agency and General Services and Aboitiz Haulers, Inc., the labor arbiter gave the following computations:

Thus, complainants therefore are entitled to their five (5) days incentive leave pay and proportionate 13th month pay, to wit:

Name

Five (5) days Service Incentive Leave Pay

Proportionate 13th Month Pay

1. Monaorai Dimapatoi

P865.00

P1,557.00

2. Ma. Cecilia Agawin

865.00

1,537.00

3. Raul Mamate

865.00

1,537.00

4. Emmanuel Guerrero

865.00

1,537.00

5. Gemeniano Bigaw

885.00

1,537.00

P4,325.00

P7,785.00

It is not only undisputed but likewise admitted by no less than respondent Grigio Security Agency and General Services that complainants were not paid of their salary for the period of April 22, 1996 to May 6, 1996, thus, the former is likewise ordered to pay complainants' salary for the said period, to wit:

Name Withheld Wages

1. Monaorai Dimapatoi P 2, 595.00

2. Ma. Cecilia Agawin 2, 595.00

3. Raul Mamate 2, 595.00

4. Emmanuel Guerrero 2, 595.00

5. Gemeniano Bigaw 2, 595.00

P12,975.00

This liability however is joint and several pursuant to the provision of Article 106 of the Labor Code, as amended and the aforecited jurisprudence on the matter (PCI Automation Center, Inc. v. National Labor Relations Commission, [322 Phil. 536 (1996)]).

[14] Rollo, p. 90.

[15] Id. at 98.

In the Decision, dated 8 June 1998, the NLRC ruled:

However, We find that the Labor Arbiter erred in awarding complainants' service leave pay only for the year 1996, considering complainants' categorical assertion that they were not paid the mandatory benefit for the period 1993-1996. Contrary to the Labor Arbiter's conclusion, complainants' computation of claims includes unpaid service leave pay for the stated period, and there being no proof of payment on record, service leave pay equivalent to fifteen (15) days should be awarded to the complainants.

Moreover, We deem it necessary to rectify the computation error on the proportionate 13th month pay of complainant Dimapatoi, which should be P1,537 instead of the awarded P1,557.

[16] Rollo, p. 99.

[17] CA rollo, p. 103.

[18] Rollo, p. 167.

[19] Id. at 41.

[20] Id. at 43-44.

[21] Id. at 18-19.

[22] *Jo v. National Labor Relations Commission*, 381 Phil. 428, 435 (2000); and *PNOC Dockyard and Engineering Corporation v. National Labor Relations Commission*, 353 Phil. 431, 441 (1998).

[23] *Acevedo v. Advanstar Company, Inc.*, G.R. No. 157656, 11 November 2005, 474 SCRA 657, 664.

[24] Presidential Decree No. 442 (1974).

[25] *Baguio v. National Labor Relations Commission*, G.R. Nos. 79004-08, 4 October 1991, 202 SCRA 465, 472-473; *Acevedo v. Advanstar Company, Inc.*, supra note 23 at 667.

[26] Department Order No. 18-02 (2002).

[27] Id.

[28] Rollo, p. 47. The Written Contract of Service between Grigio Security Agency and General Services and Aboitiz Haulers Inc. provided that:

5.b That the GRIGIO personnel, particularly the Checkers, shall perform the following:

a) The Stuffing checkers shall have to maximize the cargo volume per TEU but will take into account the inspection and checking the right stuffing of the cargoes, i.e., flammables, breakables, toxic, hardwares, perishables, and the like in transit.

b) All cargoes must be properly mixed with others. Its total weight must be equally distributed inside the container to have a proper balance. If container is not being filled up in full get the attention of AHI's supervisors.

c) The Receiving checkers shall check to cargoes of the Shippers at the Unloading Bay area. They shall check the cargoes if they are properly sealed to avoid spillage of fluids, dried goods, and to restrict odorous substances from floating in the air.

[29] Id. at 50.

[30] G.R. No. 86010, 3 October 1989, 178 SCRA 267, 273.

[31] *Guinnux Interiors, Inc. v. National Labor Relations Commission*, 339 Phil. 75, 78-79 (1997); *Manila Water Company Inc. v. Peña*, G.R. No. 158255, 8 July 2004, 434 SCRA 53, 60-61.

[32] Rollo, p. 46. The Written Contract of Service between Grigio Security Agency and General Services, Inc. and Aboitiz Haulers, Inc. provided that:

4.b. That nine (9) checkers shall be utilized as STUFFING CHECKERS. They shall be divided into four (4) shifts as follows:

First Shift - is from 7 a.m. to 4 p.m., with three (3) checkers;

Second Shift -is from 8 a.m. to 5 p.m., with one (1) checker;

Third Shift - is from 3 p.m. to 11 p.m., with three (3) checkers; and the

Fourth Shift -is from 11 p.m. to 7 a.m.

4.c. That five (5) checkers shall be utilized as RECEIVING CHECKERS. They shall be divided into three (3) shifts as follows:

First Shift - is from 7 a.m. to 4 p.m., with one (1) checker;

Second Shift - is from 3 p.m. to 11 p.m., with two (2) checkers; and the

Third Shift - is from 11 p.m. to 7 a.m., with two (2) checkers.

With regards to the Checkers, each of them shall have a Recess for an hour within their sheduled (sic) workshift. x x x

[33] Rollo, p. 47.

[34] Aurora Land Projects Corp. v. National Labor Relations Commission, 334 Phil. 44, 48 (1997).

[35] Guarin v. National Labor Relations Commission, supra note 30 at 273.

[36] Supra note 34 at 48.

[37] Rollo, pp. 201-202.

[38] Id. at 200.

[39] Masagana Concrete Products v. National Labor Relations Commission, 372 Phil. 459, 477-478 (1999); ACD Investigation Security Agency, Inc. v. Daquera, G.R. No. 147473, 30 March 2004, 426 SCRA 494, 499; Golden Thread Knitting Industries, Inc. v. National Labor Relations Commission, 364 Phil. 215, 231-232 (1999); Premier Development Bank v. National Labor Relations Commission, 354 Phil. 851, 862-863 (1998); and Philippine Advertising Counselors, Inc. v. National Labor Relations Commission, 331 Phil. 694, 702 (1996).

[40] Masagana Concrete Products v. National Labor Relations Commission, id.

[41] ACD Investigation Security Agency, Inc v. Daquera, supra note 39 at 499; Philippine Industrial Security Agency Corp. v. Dapiton, 377 Phil. 952, 960 (1999); Labor v. National Labor Relations Commission, G.R. No. 110388, 14 September 1995, 248 SCRA 183,198.

[42] Rollo, p. 188.

[43] Id. at 52-53.

[44] Golden Thread Knitting Industries, Inc. v. National Labor Relations Commission, supra note 39 at 232; Masagana Concrete Products v. National Labor Relations Commission, supra note 39 at 479.

[45] Masagana Concrete Products v. National Labor Relations Commission, supra note 39 at 479-480; Premier Development Bank v. National Labor Relations Commission, supra note 39.

[46] Vinoya v. National Labor Relations Commission, 381 Phil. 460, 483 (2000); Aurora Land Projects Corp. v. National Labor Relations Commission, 344 Phil. 44, 57-58 (1997); Masagana Concrete Products v. National Labor Relations Commission, supra note 39 at 479-480.

[47] Rollo, p. 89-90.

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