

ILIGAN CEMENT CORPORATION, PETITIONER, VS. ILIASCOR EMPLOYEES AND WORKERS UNION – SOUTHERN PHILIPPINES FEDERATION OF LABOR (IEWU-SPFL), AND ITS OFFICERS AND MEMBERS, HEADED BY C...

G.R. No. 158956. April 24, 2009

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

Before us is a petition for review on certiorari under Rule 45 of the 1997 Rules of Court assailing the twin Resolutions of the Court of Appeals in CA-G.R. SP No. 72267 dated October 17, 2002[1], and July 3, 2003[2] which dismissed the petition for certiorari and denied petitioner's motion for reconsideration respectively.

Petitioner Iligan Cement Corporation, is a corporation duly organized and existing under the laws of the Philippines with plant offices at Kiwalan, Iligan City.

Iligan Industrial and Agency Services Corporation (ILIASCOR), is the accredited job contractor of petitioner which provided stevedoring and arrastre services to the latter since its operations in the 1970s at its private pier in Kiwalan, Iligan City.

Respondent ILIASCOR Employees and Workers Union- Southern Philippines Federation of Labor (IEWU-SPFL) is the certified bargaining representative of ILIASCOR's arrastre and stevedoring workers, including herein individual respondents, from August 1, 1995 to August 1, 2000.[3]

Vedali General Services (Vedali) is an accredited service agency which provided general services to petitioner's various departments.

On November 11, 1999, Blue Circle Philippines, Inc. took over the management of petitioner's business,[4] and decided to bid[5] out the services at petitioner's private pier. Before the actual bidding, respondent requested that the employment of ILIASCOR's workers be continued.[6] In a letter dated November 26, 1999, Peter Brinkley, petitioner's Vice-President for Operations denied respondent's request as the contract with ILIASCOR had already expired.[7]

ILIASCOR lost the bidding to Luzon Visayas Mindanao Arrastre and Stevedoring, Inc. (LVMASI). Consequently, ILIASCOR paid the individual respondents their separation pay of half-month (1/2) pay for every year of service[8], contrary to the stipulation in the Collective Bargaining Agreement (CBA), which is one-month pay for every year of service.[9]

The contract between petitioner and LVMASI was not perfected when it was discovered that LVMASI was a dormant corporation which was neither a stevedoring company nor possessed with sufficient capital to engage in the stevedoring and arrastre works.[10]

To ensure that its operations would not be hampered, petitioner issued a service order to Vedali.[11] On August 2,

2000 Vedali fielded stevedores, including herein respondents. Petitioner's Packhouse Manager Alex Sagario readily engaged stevedores.[12] On October 12, 2000, Vedali issued Charge Invoice No. 0275 to petitioner in the amount of 534,404.93 for the stevedores assigned at Packhouse from September 16-30, 2000[13]

On October 23, 2000, individual respondents filed a complaint[14] with the National Labor Relations Commission (NLRC) Sub-Regional Arbitration Branch XII against petitioner. Pursuant to Article 109 of the Labor Code respondents demanded for the declaration of their status as regular employees and for the payment of the half of their separation pay which ILIASCOR previously withheld.

On October 25, 2000, Vedali sent a Bill/ Demand Letter[15] to petitioner, demanding payment in the amount of P533,666.11 for the services of its stevedores assigned at Packhouse from October 1-15, 2000.

On November 15, 2000, petitioner entered into a stevedoring and arrastre contract with Northern Mindanao Industrial and Port Services Corporation (NMIPSC). Thereafter, NMIPSC took over the stevedoring duties of individual respondents.[16]

Hence, on December 14, 2000, individual respondents filed a Supplemental Complaint[17] with the NLRC Sub-Regional Arbitration Branch XII for violation of Article 246 of the Labor Code, illegal dismissal, with prayer for preliminary injunction, damages and attorney's fees.

On March 30, 2001, Labor Arbiter Guardson A. Siao rendered a Decision[18] dismissing the complaint for lack of merit, thus:

x x x, this office believes that respondent ICC is not liable to pay the unpaid portion of complainant's separation pay representing differentials since respondent is not the employer of the former. Besides, in the case of PCI Automation Center, Inc. v. NLRC, G.R. No. 145920, 29 January 1996, citing Phil. Bank of Commerce v. NLRC, 146 SCRA 347 (1986), the Hon. Supreme Court opines, viz:
Other than the payment of wages, the principal employer is not responsible for any claim made by the employee.

As can be gleaned from the above-discussion, herein respondent ICC is merely the principal in the contract with ILIASCOR, an independent contractor, the employer of individual complainants.

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Another point worth discussing is that, the separation pay is based on the collective bargaining agreement entered into between the individual complainants and the complaining union, ILIASCOR IEWU-SPFL. Respondent ICC is not a privy to that CBA, thus the former cannot be held liable or be demanded upon to pay the same to the complainants.

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WHEREFORE, premises considered, the instant case is hereby ordered DISMISSED for lack of merit.

All other issues not discussed above and inconsistent with the above discussions are likewise ordered dismissed for lack of merit.

SO ORDERED.

On appeal, the National Labor Relations Commission (NLRC), Fifth Division, issued a Resolution[19] dated April 19, 2002, reversing the Decision of the Labor Arbiter and declaring, among others, that respondents are regular employees of petitioner, thus:

The contention of complainants that they were directly employed with respondent ICC during the period August 2 to November 15, 2000, stressing that they were in fact hired by its Packhouse Manager, Alex Sagario, is found credible. Not only has respondent failed to deny having the said Alex Sagario under its ranks, it has not given us any plausible reason why complainants would wrongfully drag the name of Sagario in this case. Complainants could not be faulted for failing to adduce evidence about their hiring by respondent. The workers' employment papers, their payrolls and other vouchers are naturally in the possession of the employers given the mandate of the law for them to keep the same. Thus, having claimed that complainants were otherwise employed with Vedali General Services, respondent ICC is burdened to produce the employment papers of the former with the latter, but none is offered so far.

Besides, we note that respondent has avowed Vedali was a legitimate contractor which it could and in fact contracted with to provide stevedoring services, though it was only on temporary basis. However, the status of Vedali has been challenged by complainants declaring that it was actually a labor-only contractor. With "labor-only" contracting being strictly prohibited in this jurisdiction, necessity dictates for respondent to confront the charge and lay bare the records of Vedali for our scrutiny. This, it should do. After all, we have already been aptly convinced by complainants on the matter of respondent having earlier contracted the services of an unqualified contractor, Luzon Visayas Mindanao Arrastre and Stevedoring, Inc. The documentary evidence (Vol. I pp. 35-40) submitted by complainants clearly suggest that LVMASI was incorporated for the primary purpose of engaging, operating, conducting and maintaining the business of manufacturing, exporting, importing, buying or selling white cement, its by-products and other cement products, despite its corporate name; that it only had a paid-up capital of only Php 625,000.00 while the arrastre and stevedoring works up for bidding required the use of two (2) cranes and eight (8) forklifts; and, that, amazingly it was not engaged in any singular business as of October, 1999. Truly, the replacement of LVMASI with Vedali validated complainants' submission in this regard.

For us to gloss over the aforecited matters will be tantamount to our abandonment of the constitutional mandate affording protection to labor.

Hired by respondent's representative and working at its premises as stevedores and piers, services which were undoubtedly necessary in its business, complainants are thereby declared regular employees of respondent ICC during the period claimed. That, by the take-over of their jobs by the workforce of the Northern Mindanao Industrial and Port Services Corporation (NMIPSC) on November 15, 2000, complainants were evidently dismissed as a result. Bereft of any cause nor notice other than the actual take-over by another corporation of their jobs, the dismissal of complainants is clearly illegal.

This being the case, complainants are entitled to the reliefs of reinstatement with full backwages pursuant to Art. 279 of the Labor Code. However, the reinstatement of complainants to their previous positions is rendered impossible by the takeover of NMIPSC manpower. Thus, in lieu of thereof, the payment of separation pay proportionate to their length of service with respondent ICC is warranted.

Going to their claim for separation pay differential, the submission of complainants that respondent ICC should be held liable therefore is misplaced. Respondent ICC, as indirect employer of complainants, may only be held liable, "(I)n the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code" (Art. 106 Labor Code). Wage and salary, as differentiated from separation pay, refer to one and the same meaning, that is, a reward or recompense for services performed. Meanwhile, separation pay is that what is paid by the employer to an employee on account of the severance of their employment relations for any of the causes authorized by law.

Thus, as this case involved the severance of the employment of complainants, only their undisputed employer, ILIASCOR, may be held answerable for the benefit sought. More so that the differential being asked is essentially a contractual obligation of ILIASCOR arising out of a specific stipulation in the collective bargaining agreement between them. Correspondingly, since respondent ICC was not privy to the CBA, it has

no responsibility to comply therewith.

The claim of complainants for damage is likewise dismissed for lack of merit, but they are awarded attorney's fees equivalent to 10% of the total money award as they were compelled to litigate this case for reliefs.

WHEREFORE, premises considered, the decision on appeal is hereby VACATED and a new one entered:

- Declaring complainants regular employees of respondent ICC for the period August 2, 2000 to November 15, 2000;
- Declaring their dismissal from employment illegal; and
- Awarding complainants full backwages, separation pay and attorney's fees in the amounts to be computed by the branch of origin.

SO ORDERED.[20]

Petitioner elevated the case to the Court of Appeals (CA) through a petition for certiorari[21] under Rule 65.

On October 17, 2002, the CA issued the assailed Resolution[22] dismissing the petition, thus:

The Court resolves to DISMISS the petition based on the following legal infirmities:

- The verification and certification of non-forum-shopping was signed by Renato C. Sunico, however, petitioner failed to attach a copy of the board resolution authorizing him to sign the same in behalf of the corporation as required in *Digital Microwave Corp. v. Court of Appeals* (328 SCRA 286 [2001]); and
- Petitioner failed to explain why service was done through mail as required by Section 3, Rule 13 of the 1997 Rules of Civil Procedure.

SO ORDERED.

Petitioner's subsequent Motion for Reconsideration was denied in the other assailed Resolution[23] dated July 3, 2003:

The Court has gone over the said Motion for Reconsideration and the grounds raised therein but finds no cogent reason to reverse the aforesaid Resolution particularly because the SPA granted to Renato C. Sunico on August 9, 2002 (See: Secretary's Certificate, Records, p. 317) referred to a case filed before the NLRC.

Hence, the present petition seeking resolution as to whether the CA erred in denying the petition based merely on procedural infirmities.

We note that petitioner subsequently made up for its earlier lapse when it submitted a Secretary's Certificate[24] attesting that on August 9, 2002, the Board of Directors of the Corporation authorized Mr. Sunico "to sign the verification and/or certification of non-forum shopping of pleadings that may be filed by the corporation in the above mentioned case and in subsequent proceedings." While the authorization was submitted to the CA only after the issuance of the Resolution dismissing the petition, in view of the peculiar circumstances of the case and in the interest of substantial justice, the initial procedural lapse may be excused.[25] It is well settled that the application of technical rules of procedure may be relaxed in labor cases to serve the demand of substantial justice.[26]

The CA's second ground for dismissal of the petition, that petitioner failed to explain why service was done through mail, was not passed upon by the CA in its second Resolution.[27] The CA must have found the explanation of petitioner in its motion for reconsideration acceptable. Counsel for petitioner admitted that the non-inclusion of an explanation on non-personal service was due to an oversight, but he explained that personal

service was not feasible considering the geographical distance between counsel's office in Makati City and the address of the other parties in Iligan City. He added that there was never any intention not to comply with the rules as shown by his subsequent compliance with all the other technical requirements.[28] The Court also finds this explanation satisfactory.

Moreover, petitioner's argument that the failure to file an explanation on non-personal service of the petition should not automatically result to the outright dismissal of the petition, is meritorious. Section 11, Rule 13 reads:

Section 11. Priorities in modes of service and filing. Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed. (emphasis ours)

The use of "may," in the above quoted section signifies permissiveness and gives the court discretion whether or not to consider a pleading as not filed. While it is true that procedural rules are necessary to secure an orderly and speedy administration of justice, in this case, the rigid application of Section 11, Rule 13 may be relaxed in the interest of substantial justice.[29]

The procedural lapses having been cured, the CA should have reconsidered its Resolution dated October 17, 2002 and Order dated July 3, 2003 and gave due course to the petition for certiorari.

Pertinently, Section 9 of Batas Pambansa 129 (B.P. 129), known as the Judiciary Reorganization Act provides:

SEC. 9. Jurisdiction.- The Court of Appeals shall exercise:

(1) Original jurisdiction to issue writs of mandamus, prohibition, certiorari, habeas corpus, and quo warranto, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction;

x x x

The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. Trials or hearings in the Court of Appeals must be continuous and must be completed within three (3) months, unless extend[ed] by the Chief Justice.

Clearly, the CA can resolve factual issues in special civil actions for certiorari from decisions and resolutions of the NLRC. However, the remand of the case to the CA would only result in further delay. Pursuant to established precedents, we deem it expedient in the interest of speedy justice, to rule on the merits of petitioner's claims based on the records of the case including the pleadings and the evidence submitted by the parties.[30]

We now go to the merits of the case by re-examining the contradicting findings of the Labor Arbiter and the NLRC in order to resolve the following substantial issues: (1) whether petitioner is the employer of individual respondents, and; (2) whether individual respondents were illegally dismissed.

Petitioner maintains that it never employed the individual respondents and that it contracted Vedali to render services at its pier as a stop-gap measure so as not to hamper its activities while it was negotiating with another contractor. Petitioner claims that the elements of employer-employee relationship were not present as it did not hire, fire, pay nor exercise control over the work of individual respondents. Petitioner further argues that the allegation that it was petitioner's Packhouse Manager Alex Sagario who hired individual respondents should not be given credence for lack of evidence.

Individual respondents, on the other hand, counter that there is no proof that petitioner and Vedali entered into a

service contract to provide stevedoring services at petitioner's pier from August 2, 2000 to November 15, 2000. In the absence of such contract, Vedali was merely utilized by petitioner as a purported contractor. With regard to their hiring by Alex Sagario, individual respondents contend that they cannot be faulted for failing to adduce evidence. Their employment papers, payrolls and other vouchers are naturally in the possession of petitioner. Thus, petitioner is burdened to produce the same. Since petitioner offered nothing to prove their contrary claim, the NLRC Decision should be upheld.

We rule for the individual respondents.

In determining the true status of Vedali viz-a-viz the petitioner, it is important to ascertain first whether Vedali is a labor-only contractor or an independent contractor.

Labor-only contracting,[31] which is prohibited, is an arrangement where the contractor or subcontractor 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 contractor or subcontractor does not have substantial capital or investment to actually perform the job, work or service under its own account and responsibility; and
- (b) 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.

On the other hand, permissible job contracting or subcontracting[32] refers to an arrangement whereby a principal agrees to put out or farm out with a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal. A person is considered engaged in legitimate job contracting or subcontracting if the following conditions concur:

- (a) The contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility according to its own manner and method, and free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof;
- (b) The contractor or subcontractor has substantial capital or investment; and
- (c) The agreement between the principal and contractor or subcontractor assures the contractual employees entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social and welfare benefits.[33]

Taking into account the above mentioned elements and the facts obtaining in the present case, we are not convinced that Vedali is an independent contractor. Petitioner failed to present any service contract with Vedali in the proceedings with the Labor Arbiter. There is nothing on record that Vedali has a substantial capital or investment to actually perform the service under its own account and responsibility. Petitioner only attached to its petition with the CA Vedali's Certificate of Registration and Business permit, which merely pertain to the registration of Vedali with the SEC as engaged in Construction and General Services.[34] The Charge Invoices, billing statements and certificate of payment and inspection,[35] instead of strengthening petitioner's argument, weakened its defense and bolstered the claims of individual respondents. The Charge Invoices, billing statements and certificates of payments only show that the wages of individual respondents were paid by petitioner.

The evidence not having adequately shown that Vedali is an independent contractor, can it be considered as a labor-only contractor? We answer in the affirmative. Petitioner is a mere labor-only contractor because it only supplied workers to petitioner to work at its pier.

In a labor-only contract, there are three parties involved: (1) the "labor-only" contractor; (2) the employee who is ostensibly under the employ of the "labor-only" contractor; and (3) the principal who is deemed the real employer. Under this scheme, the "labor-only" contractor is the agent of the principal. Here, Vedali is the "labor-only" contractor; individual respondents are the employees and petitioner is the principal. The law makes the principal responsible to the employees of the "labor-only contractor" as if the principal itself directly hired or employed the employees.[36]

Taking into consideration the factual milieu of this case, the Court agrees with the conclusion of the NLRC that petitioner and not Vedali, is the employer of individual respondents and the latter are employees of petitioner. Individual respondent's work as stock-pilers, arrastre and stevedores were undoubtedly directly related to and in pursuit of the cement manufacturing and sales business of petitioner. Petitioner's packing plant operations would have been hampered were it not for the work rendered by individual respondents.

Having determined the real employer of respondents, we now proceed to ascertain the legality of their dismissal from employment.

Under the Labor Code, as amended, the requirements for the lawful dismissal of an employee are two-fold, the substantive and the procedural.[37] Not only must the dismissal be for a valid or authorized cause,[38] the rudimentary requirements of due process - notice and hearing - must, likewise, be observed before an employee may be dismissed.[39] One does not suffice; without their concurrence, the termination would, in the eyes of the law, be illegal.[40]

As the employer, petitioner has the burden of proving that the dismissal of petitioner was for a cause allowed under the law and that petitioner was afforded procedural due process. Petitioner failed to discharge this burden. Indeed, it failed to show any valid or authorized cause under the Labor Code which allowed it to terminate the services of individual respondents. Neither did petitioner show that individual respondents were given ample opportunity to contest the legality of their dismissal. No notice of such impending termination was ever given to them. Individual respondents were definitely denied due process. Having failed to establish compliance with the requirements on termination of employment under the Labor Code, the dismissal of individual respondents was tainted with illegality.

Even if the assailed resolutions of the CA were set aside, the petition must still fail considering that we find no reversible error was committed by the NLRC in rendering its April 19, 2002 Resolution.

WHEREFORE, the petition is hereby DENIED. The Resolution of the National Labor Relations Commission dated April 19, 2002 is AFFIRMED.

Costs against petitioner.

SO ORDERED.

Carpio, Austria-Martinez, Corona, and Velasco, Jr., JJ., concur.

* Acting Chairperson as per Special Order No. 623.

** Additional Member in lieu of Associate Justice Lucas P. Bersamin as per Special Order No. 626.

*** Additional Member in lieu of Chief Justice Reynato S. Puno as per Special Order No. 624.

[1] Penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Ruben T. Reyes (now a retired Associate Justice of this Court) and Danilo B. Pine (ret.), rollo, p. 59.

- [2] Id. at 61.
- [3] Rollo, p. 80. Annex "A", Collective Bargaining Agreement.
- [4] Annex "D", CA rollo.
- [5] Id. at 103, Annex "B", Invitation to Bid.
- [6] Id. at 113, Annex "D".
- [7] Id. at 115, Annex "D-2".
- [8] Id. at 116-118, Annexes "E" - E-2", Employees Separation Pay - Stockpilers.
- [9] Id. at 92.
- [10] Rollo, p. 289; Annex "C" - "C-6", Complaint.
- [11] Id. at 339.
- [12] Id. at 289.
- [13] Annex "Y", CA rollo.
- [14] Rollo, pp. 73-79, Annex "D".
- [15] Annex "DD", CA rollo; Annex "V", CA rollo.
- [16] Rollo, p. 289.
- [17] Id. at 119-120, Annex "E", see also rollo, pp. 223-225.
- [18] Rollo, pp. 282-287.
- [19] Id. at 316- 322.
- [20] Rollo, pp. 319-322.
- [21] Id. at 335-359.
- [22] Id. at 59.
- [23] Id. at 61.
- [24] Annex "U", CA rollo.
- [25] Paul Lee Tan, Andrew Tanchi, Jr. et al v. Paul Sycip and Merritto Lim, G.R. No. 153468, August 17, 2006, 499 SCRA 225, citing the case of Estares v. Court of Appeals, 459 SCRA 604.
- [26] Havtor Management Phils., Inc. v. NLRC, G.R. No. 146336, December 13, 2001, 372 SCRA 274.
- [27] Rollo, p. 39.
- [28] Id. at 25.
- [29] Deogracias Musa, Romeo and Andro Musa v. Sylvia Amor, G.R. No. 141396, April 9, 2002, 430 Phil. 128.
- [30] Armando M. Lascano, v. Universal Steel Smelting Co., Inc., Reynaldo U. Lim and Hon. Regional Trial Court of Quezon City, G.R. No. 146019, June 8, 2004, 431 SCRA 248.

[31] Section 4(f), Rule VIII-A, Book III, of the Omnibus Rules Implementing the Labor Code.

[32] Section 4(d), *id.*

[33] *Ibid.*

[34] Rollo, pp. 625-629; Annexes "E" - "E-2"; rollo, pp. 116-118.

[35] *Id.* at 629-635.

[36] *Sonza v. ABS-CBN Broadcasting Corporation*, G.R. No. 138051, June 10, 2004, 431 SCRA 605, citing Article 106(2) of the Labor Code.

[37] *Salaw v. NLRC*, G.R. No. 90786, September 27, 1991, 202 SCRA 11.

[38] Articles 279, 281, 282-284, Labor Code.

[39] *Salaw v. NLRC*, *supra*.

[40] *Id.*, p. 12, citing *San Miguel Corporation v. NLRC*, G.R. No. 87277, May 12, 1989, 173 SCRA 314.

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