ZALDY G. ABELLA AND THE MEMBERS OF THE PLDT SECURITY PERSONNEL UNION LISTED IN ANNEX “D” OF THIS PETITION, PETITIONERS, VS. PHILIPPINE LONG DISTANCE TELEPHONE COMPANY (PLDT CO.)...

G.R. NO. 159469. June 08, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This case stemmed from a complaint for regularization filed by petitioners[1] against respondents before the Arbitration Branch of the National Labor Relations Commission (NLRC). The petition for review at bar assails the decision[2] of the Court of Appeals, affirming the decision[3] of the NLRC, sustaining the earlier decision[4] of the Labor Arbiter dismissing petitioners' complaint against the Philippine Long Distance Telephone Company (PLDT) and herein respondent People's Security Incorporated (PSI).

The dispute arose from the following factual milieu:

Respondent PSI entered into an agreement with the PLDT to provide the latter with such number of qualified uniformed and properly armed security guards for the purpose of guarding and protecting PLDT's installations and properties from theft, pilferage, intentional damage, trespass or other unlawful acts. Under the agreement, it was expressly provided that there shall be no employer-employee relationship between the PLDT and the security guards, which may be supplied to it by PSI, and that the latter shall have the entire charge, control and supervision over the work and services of the supplied security guards. It was likewise stipulated therein that PSI shall also have the exclusive authority to select, engage, and discharge its security guards, with full control over their wages, salaries or compensation.

Consequently, respondent PSI deployed security guards to the PLDT. PLDT's Security Division interviewed these security guards and asked them to fill out personal data sheets. Those who did not meet the height requirements were sent back by PLDT to PSI.

On 05 June 1995, sixty-five (65) security guards supplied by respondent PSI filed a Complaint[5] for regularization against the PLDT with the Labor Arbiter. The Complaint alleged inter alia that petitioner security guards have been employed by the company through the years commencing from 1982 and that all of them served PLDT directly for more than 1 year. It was further alleged that PSI or other agencies supply security to PLDT, which entity controls and supervises the complainants' work through its Security Department. Petitioners likewise alleged that PSI acted as the middleman in the payment of the minimum pay to the security guards, but no premium for work rendered beyond eight hours was paid to them nor were they paid their 13[th] month pay. In sum, the Complaint states that inasmuch as the complainants are under the direct control and supervision of PLDT, they should be considered as regular employees by the latter with compensation and benefits equivalent to ordinary rank-and-file employees of the same job grade.

Forthwith, after filing the complaint, the security guards formed the PLDT Company Security Personnel Union with petitioner Zaldy Abella as union president. A month later, PLDT allegedly ordered PSI to terminate about 25 members of said union who participated in a protest picket in front of the PLDT Office at the Ramon Cojuangco Building in Makati City.

The Labor Arbiter dismissed the complaint for lack of merit. On appeal, the NLRC affirmed in toto the Labor Arbiter's decision.

The Court of Appeals, in turn, affirmed the NLRC's disquisition.[6] According to the Court of Appeals, evidence demonstrates that it is respondent PSI which is petitioners' employer, not the PLDT inasmuch as the power of selection over the guards lies with the former. The Court of Appeals also took cognizance of the fact that petitioners have collected their wages from PSI.[7]

On 29 September 2003, this Court denied the petition for review filed by petitioners assailing the Court of Appeals' Decision for lack of verified statement of material date of receipt of the assailed judgment. On 16 March 2005, the Court resolved to deny the motion for reconsideration for lack of merit and sufficient showing that the Court of Appeals had committed any reversible error in the questioned judgment to warrant the exercise by this Court of its discretionary appellate jurisdiction.

Undaunted, petitioners moved for reconsideration of our Resolution dated 16 March 2005. Petitioners now urge this Court to ignore technicalities and brush aside the procedural requirements so this case may be decided "on the merits."

On the postulate that dismissal of appeals based on mere technicalities is frowned upon, we take another look at this petition for review to quell all doubts that the Court is impervious to petitioners' cause. Cautious as we are against rendering a decision that may well be a "blow on the breadbasket of our lowly employees,"[8] we are hence rendering a complete adjudication of this case at bar.

Crucial to the resolution of this case is a determination whether or not an employer-employee relationship exists between petitioners and respondent PLDT.

Philippine Airlines, Inc. v. National Labor Relations Commission[9] provides the legal yardstick in addressing this issue. In that case, Unicorn Security Services, Inc. (USSI) and Philippine Airlines, Inc. (PAL) executed a security service agreement where USSI was designated therein as the contractor. In determining which between PAL and USSI is the employer of the security guards, we considered the following factors in considering the existence of an employer-employee relationship: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power to dismiss; and (4) the power to control the employee's conduct. Considering these elements, we held in the said case that the security guards of PAL were the employees of the security agency, not PAL. We explained why-

> In the instant case, the security service agreement between PAL and USSI provides the key to such consideration. A careful perusal thereof, especially the terms and conditions embodied in paragraphs 4, 6, 7, 8, 9, 10, 13 and 20 quoted earlier in this ponencia, demonstrates beyond doubt that USSI - and not PAL – was the employer of the security guards. It was USSI which (a) selected, engaged or hired and discharged the security guards; (b) assigned them to PAL according to the number agreed upon; (c) provided, at its own expense, the security guards with firearms and ammunitions; (d) disciplined and supervised them or controlled their conduct; (e) determined their wages, salaries, and compensation; and (f) paid them salaries or wages. Even if we disregard the explicit covenant in said agreement that "there exists no employer-employee relationship between CONTRACTOR and/or his guards on the one hand, and PAL on the other" all other considerations confirm the fact that PAL was not the security guards' employer. (Emphasis supplied)

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On the first factor, applying PAL v. NLRC as our guidepost in the case before us, the Labor Arbiter, the NLRC and the Court of Appeals rendered a consistent finding based on the evidence adduced that it was the PSI, the security provider of the PLDT, which selected, engaged or hired and discharged the security guards. The Labor Arbiter was no less emphatic –

> It is not disputed that complainants applied for work with PSI, submitted the necessary employment documentary requirement with PSI and executed employment contracts with PSI. Complainants, however, contend that their referral by the PSI to PLDT for further interview and evaluation falls under the context of "selection and engagement" thereby making them employees of PLDT.
>
> We are not convinced.
>
> Testimonies during the trial reveal that interviews and evaluation were conducted by PLDT to ensure that the standards it set are met by the security guards. In fact, PLDT rarely failed to accept security guards referred to by PSI but on account of height deficiency. The referral is nothing but for possible assignment in a designated client which has the inherent prerogative to accept and reject the assignee for justifiable grounds or even arbitrarily. We are thus convinced that the employer-employee relationship is deemed perfected even before the posting of the complainants with the PLDT, as assignment only comes after employment.[10]

We hasten to add on this score that the Labor Arbiter as well as the NLRC and the Court of Appeals found that PSI is a legitimate job contractor pursuant to Section 8, Rule VII, Book II of the Omnibus Rules Implementing the Labor Code. It is a registered corporation duly licensed by the Philippine National Police to engage in security business. It has substantial capital and investment in the form of guns, ammunitions, communication equipments, vehicles, office equipments like computer, typewriters, photocopying machines, etc., and above all, it is servicing clients other than PLDT like PCIBank, Crown Triumph, and Philippine Cable, among others.[11] Here, the security guards which PSI had assigned to PLDT are already the former's employees prior to assignment and if the assigned guards to PLDT are rejected by PLDT for reasons germane to the security agreement, then the rejected or terminated guard may still be assigned to other clients of PSI as in the case of Jonathan Daguno who was posted at PLDT on 21 February 1996 but was subsequently relieved therefrom and assigned at PCIBank Makati Square effective 10 May 1996.[12] Therefore, the evidence as it stands is at odds with petitioners' assertion that PSI is an "in-house" agency of PLDT so as to call for a piercing of veil of corporate identity as what the Court has done in De leon, et al. vs. NLRC and Fortune Tobacco Corporation, et al.[13]

On the second factor, the Labor Arbiter as well as the NLRC and the Court of Appeals are all in agreement that it is PSI that determined and paid the petitioners' wages, salaries, and compensation. As elucidated by the Labor Arbiter, petitioners' witness testified that his wages were collected and withdrawn at the office of PSI and PLDT pays PSI for the security services on a lump-sum basis and that the wages of complainants are only a portion of the total sum. The signature of the PLDT supervisor in the Daily Time Records does not ipso facto make PLDT the employer of complainants inasmuch as the Labor Arbiter had found that the record is replete with evidence showing that some of the Daily Time Records do not bear the signature of a PLDT supervisor yet no complaint was lodged for nonpayment of the guard's wages evidencing that the signature of the PLDT's supervisor is not a condition precedent for the payment of wages of the guards. Notably, it was not disputed that complainants enjoy the benefits and incentives of employees of PSI and that they are reported as employees of PSI with the SSS.[14]

Anent the third and fourth factors, petitioners capitalize on the delinquency reports prepared by PLDT personnel against some of the security guards as well as certificates of participation in civil disturbance course, certificates of attendance in first aid training, certificate of completion in fire brigade training seminar and certificate of completion on restricted land mobile radio telephone operation to show that the petitioners are under the direct control and supervision of PLDT and that the latter has, in fact, the power to dismiss them.

The Labor Arbiter found from the evidence that the delinquency reports were nothing but reminders of the infractions committed by the petitioners while on duty which serve as basis for PLDT to recommend the termination of the concerned security guard from PLDT. As already adverted to earlier, termination of services from PLDT did not ipso facto mean dismissal from PSI inasmuch as some of those pulled out from PLDT were merely detailed at the other clients of PSI as in the case of Jonathan Daguno, who was merely transferred to PCIBank Makati.

We are likewise in agreement with the Labor Arbiter's reasoning that said delinquency reports merely served as justifiable, not arbitrary, basis for PLDT to demand replacement of guards found to have committed infractions while on their tours of duty at PLDT's premises. In Citytrust Banking Corporation v. NLRC,[15] we upheld the validity of the contract between ADAMS and ESSI to provide security guards to Citytrust and held that the security guards were the employees of the security agencies, not Citytrust. Specifically we held as valid and controlling the stipulation that the bank has the option to ask for replacement of the guards or personnel assigned to the bank who, in its judgment, are unsatisfactory, wanting in the performance of their duties or for any reason at the discretion of the bank. Thus-

> In substantially identical language, the contracts between CITYTRUST, on the one hand, and ADAMS and ESSI, on the other, unequivocally declare that any person that may be assigned by the "CARRIER" (agency) to carry out its obligation under the Agreement should in no sense be considered an employee of the bank and shall always remain an employee of the CARRIER. The contracts moreover require the CARRIER to give the bank a list of personnel assigned to render security services to the bank, and make clear that:
>
> 1) the CARRIER shall maintain efficient and effective discipline, control and supervision over any and all guards or personnel it may utilize in performing its obligations under the Agreement;
>
> 2) the BANK has the option to ask for the replacement of the CARRIER's guards or personnel assigned to the BANK who, in its judgment, are unsatisfactory, wanting in the performance of their duties or for any reason at the discretion of the Bank;. . . .[16] (Emphasis supplied)

As regards the seminars, we defer to the findings of the Labor Arbiter as affirmed by the NLRC and the Court of Appeals that while said seminars were conducted at the premises of PLDT, it also remains uncontroverted that complainants' participation was done with the approval and at the expense of PSI.[17] To be sure, it is not uncommon, specially for big aggressive corporations like PLDT, to align or integrate their corporate visions and policies externally or with that of other entities they deal with such as their suppliers, consultants, or contractors, for that matter. As a case in point, manufacturing companies usually hold suppliers' conferences to integrate their suppliers' corporate goals and visions with their own so that the manufacturing companies are ensured of the quality and timing of their supplies of materials or services, as the case may be. It is therefore not surprising that PLDT would demand that security guards assigned to its premises undergo seminars and trainings on certain areas of concern which are unique to PLDT.

In the same way, it is in the ordinary course of things for big companies such as PLDT to assign their own security personnel and supervisors to monitor the performance of the security guards as part of the company's internal check, monitoring and control system in order to rate whether the security agency it hired is performing at par with PLDT's set standards.

Furthermore, petitioners' logic that the certificates of appreciation and/or commendations for good performance issued by PLDT to select security guards are proof that the latter are under the control and supervision of PLDT is indeed non sequitur. As the Labor Arbiter has found, similar certificates are also issued as a matter of practice to non-PLDT personnel like members of the Philippine National Police (PNP) and military officers who have rendered exemplary support and assistance to PLDT.[18]

The Labor Arbiter likewise rendered the distinct finding as regards petitioner Zaldy Abella that documentary evidence belies his claim that PLDT directs and supervises him. These documents include his application for employment with PSI, employment contract with PSI, Special Orders of assignment at the different detachments of PLDT issued by a certain Joreim Aguilar of PSI, his request to PSI for sick leaves and/or vacation leaves, authority to deduct from his salary death contributions pursuant to the policy of PSI and Order of Relief from PLDT Marikina for AWOL issued by said Joreim Aguilar of PSI per Special Order dated 12 June 1995.[19] Similarly, as found by the Labor Arbiter in the case of petitioner Roberto Basilides, his 201 file reflects PSI Orders on his assignment to PLDT installations and subsequent reassignment to another PCIB client.[20]

All told, there being no showing that neither the Labor Arbiter nor the NLRC nor the Court of Appeals gravely abused its discretion or otherwise acted without jurisdiction or in excess of the same,[21] this Court is bound by their findings of facts. Indeed, the records reveal that the questioned decision is duly supported by evidence.[22]

In fine, while the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. The partiality for labor has not in any way diminished our belief that justice is in every case for the deserving, to be dispensed in the light of the established facts and the applicable law and doctrine.[23]

WHEREFORE, petitioners' motion for reconsideration of our Resolution dated 16 March 2005 is hereby DENIED with FINALITY no compelling reason having been adduced by petitioners to warrant the reversal thereof. Accordingly, the Decision dated 31 January 2003 and the Resolution dated 06 August 2003 of the Court of Appeals are hereby AFFIRMED. Costs against petitioners.

SO ORDERED.

Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.
Puno, (Chairman), J., on official leave.

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[1] Annex D consists of the following: Rogelio Abbariao, Zaldy G. Abella, Leodegario Aborde, Wilson A. Abuyabor, Edralin Acacio, Federico Acelo, Restituto Acelo, Rolando S. Acosta, Enrico Adalla, Abdul Khair Adapun, Candidato Adapun, Ricardo L. Adarayan, Franklin Adelante, Danilo Adrao, Macario B. Afable, Alipio Aguila, Rogelio A. Agustin, Leonardo Ajero, Jose Alafriz, Dioscoro O. Alcanzado, Mario O. Alcanzado, Wheno Alcanzado, Federico Alcrates, James Alejandro, Baltazar Allayban, Ronnie Almanza, William S. Alicante, Wilfredo Alicio, Justo J. Albay, Ricardo Altarejos, Clodualdo Altea, Wilfredo Alzona, James Amar, Sarsenito Amarillo, Glicerio Ambas, Nasser S. Amil, Reynaldo Ancheta, Alfredo Andrade, Diomedes Andrade, Noel Andrade, Sabiniano Andrade, Carlos C. Angeles, Joven Antang, Severino Antonio, Alfredo Aquino, Andres Aquino, Jr., Raneo B. Aquino, Rodolfo C. Aquino, Mario V. Arel, Alexander A. Armas, Jose Arly L. Artus, Vicente V. Atining, Canuto Ausa, Rolando P. Avecilla, Pedro C. Aviles, Edgar Ayento, Diosdado B. Azeta, Ronnie L. Baccay, Martin Bacea, Alden C. Bactat, Julio D. Badahos, Antonio Badal, Maxwell Bagsican, Manito Baguno, Eduardo Bailon, Cesar Bairoy, Noel M. Bianes, Dante D. Bajaro, Danilo L. Baladhay, Joseph L. Balahadia, Cesar Balano, Ulmar Baldevieso, Dominador M. Balicha, Ferdinand C. Balingit, Pio Balladares, Felino M. Baluan, Orlineo A. Balunes, Simeon Baraero, Marion R. Barbero, Ronnie Barbero, Felix U. Barsana, Jr., Renato P. Basa, Magno P. Battung, Armin A. Bausa, Gumercindo S. Bayonla, Urbanito M. Bayonla, Herbert N. Bazon, Rodrigo B. Belleza, Jr., Loreto M. Benavidez, Edmundo B. Berces, Henry A. Bernas, Julardo G. Bernal, Noel M. Bianes, Arnel Billones, Vicente Blanquera, Darlo B. Bitara, Fernando Bobijes, Augusto N. Bolo, Lemuel M. Bongcales, Wilfredo M. Boquiren, Rogelio A. Borbon, Antonio Borden, Herman Borras, Geronimo B. Bosque, Gregorio T. Buenaflor, Emmanuel A. Bueta, Lope S. Bugawan, Oscar Bulatao, Elmer C. Bunag, Mario

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[2] Dated 31 January 2003; Penned by then Court of Appeals now Supreme Court Associate Justice Cancio C. Garcia, with Associate Justices Eloy R. Bello, Jr. and Sergio L. Pestaño concurring. Rollo, pp. 121-133.

[3] Dated 31 July 2001; Penned by Presiding Commissioner Lourdes C. Javier, with Commissioner Tito F. Genilo, concurring, and Commissioner Ireneo B. Bernardo, on leave. Rollo, pp. 73-85.

[4] Dated 27 July 1999; Penned by Labor Arbiter Geobel A. Bartolabac. Rollo, pp. 38-50.

[5] Rollo, pp. 34-35.

[6] Rollo, pp. 121-133.

[7] Rollo, pp. 132-133.

[8] J. Puno, Dissenting Opinion, Asia Brewery, Inc. v. NLRC, G.R. No. 110241, 24 July 1996, 259 SCRA 185.

[9] G.R. No. 120506, 28 October 1996, 263 SCRA 638.

[10] Rollo, pp. 39-40.

[11] Rollo, pp. 48-49.

[12] Rollo, p. 45, citing 201 file of Jonathan Daguno.

[13] G.R. No. 112661, 30 May 2001.

[14] Rollo, pp. 40-41.

[15] G.R. No. 123318, 20 August 1998, 294 SCRA 496.

[16] Id., p. 502.

[17] Rollo, p. 46.

[18] Rollo, p. 47.

[19] Rollo, p. 46.

[20] Rollo, p. 47.

[21] Wyeth-Suaco Laboratories, Inc. v. NLRC, G.R. No. 100658, 02 March 1993, 219 SCRA 356.

[22] Asia Brewery, Inc. v. NLRC, supra, note 8.

[23] Lawin Security Services, Inc. v. NLRC, G.R. No. 118536, 09 June 1997, 273 SCRA 132.

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