

ALBERT TENG, DOING BUSINESS UNDER THE FIRM NAME ALBERT TENG FISH TRADING, AND EMILIA TENG-CHUA, PETITIONERS, VS. ALFREDO S. PAHAGAC, EDDIE D. NIPA, ORLANDO P. LAYESE, HERNAN Y. ...

G.R. No. 169704. November 17, 2010

Ponente: BRION, J.

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BRION, J.:

Before this Court is a Petition for Review on Certiorari[1] filed by petitioners Albert Teng Fish Trading, its owner Albert Teng, and its manager Emilia Teng-Chua, to reverse and set aside the September 21, 2004 decision[2] and the September 1, 2005 resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 78783. The CA reversed the decision of the Voluntary Arbitrator (VA), National Conciliation and Mediation Board (NCMB), Region IX, Zamboanga City, and declared that there exists an employer-employee relationship between Teng and respondents Hernan Badilles, Orlando Layese, Eddie Nipa, Alfredo Pahagac, and Roger Pahagac (collectively, respondent workers). It also found that Teng illegally dismissed the respondent workers from their employment.

BACKGROUND FACTS

Albert Teng Fish Trading is engaged in deep sea fishing and, for this purpose, owns boats (basnig), equipment, and other fishing paraphernalia. As owner of the business, Teng claims that he customarily enters into joint venture agreements with master fishermen (maestros) who are skilled and are experts in deep sea fishing; they take charge of the management of each fishing venture, including the hiring of the members of its complement. He avers that the maestros hired the respondent workers as checkers to determine the volume of the fish caught in every fishing voyage.[4]

On February 20, 2003, the respondent workers filed a complaint for illegal dismissal against Albert Teng Fish Trading, Teng, and Chua before the NCMB, Region Branch No. IX, Zamboanga City.

The respondent workers alleged that Teng hired them, without any written employment contract, to serve as his "eyes and ears" aboard the fishing boats; to classify the fish caught by bañera; to report to Teng via radio communication the classes and volume of each catch; to receive instructions from him as to where and when to unload the catch; to prepare the list of the provisions requested by the maestro and the mechanic for his approval; and, to procure the items as approved by him.[5] They also claimed that they received regular monthly salaries, 13th month pay, Christmas bonus, and incentives in the form of shares in the total volume of fish caught.

They asserted that sometime in September 2002, Teng expressed his doubts on the correct volume of fish caught in every fishing voyage.[6] In December 2002, Teng informed them that their services had been terminated.[7]

In his defense, Teng maintained that he did not have any hand in hiring the respondent workers; the maestros, rather than he, invited them to join the venture. According to him, his role was clearly limited to the provision of

the necessary capital, tools and equipment, consisting of basnig, gears, fuel, food, and other supplies.[8]

The VA rendered a decision[9] in Teng's favor and declared that no employer-employee relationship existed between Teng and the respondent workers. The dispositive portion of the VA's May 30, 2003 decision reads:

WHEREFORE, premises considered, judgment is hereby rendered dismissing the instant complaint for lack of merit.

It follows also, that all other claims are likewise dismissed for lack of merit.[10]

The respondent workers received the VA's decision on June 12, 2003.[11] They filed a motion for reconsideration, which was denied in an order dated June 27, 2003 and which they received on July 8, 2003.[12] The VA reasoned out that Section 6, Rule VII of the 1989 Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings (1989 Procedural Guidelines) does not provide the remedy of a motion for reconsideration to the party adversely affected by the VA's order or decision.[13] The order states:

Under Executive Order No. 126, as amended by Executive Order No. 251, and in order to implement Article 260-262 (b) of the Labor Code, as amended by R.A. No. 6715, otherwise known as the Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings, inter alia:

An award or the Decision of the Voluntary Arbitrators becomes final and executory after ten (10) calendar days from receipt of copies of the award or decision by the parties (Sec. 6, Rule VII).

Moreover, the above-mentioned guidelines do not provide the remedy of a motion for reconsideration to the party adversely affected by the order or decision of voluntary arbitrators.[14]

On July 21, 2003, the respondent-workers elevated the case to the CA. In its decision of September 21, 2004, the CA reversed the VA's decision after finding sufficient evidence showing the existence of employer-employee relationship:

WHEREFORE, premises considered, the petition is granted. The questioned decision of the Voluntary Arbitrator dated May 30, 2003 is hereby REVERSED and SET ASIDE by ordering private respondent to pay separation pay with backwages and other monetary benefits. For this purpose, the case is REMANDED to the Voluntary Arbitrator for the computation of petitioner's backwages and other monetary benefits. No pronouncement as to costs.

SO ORDERED.[15]

Teng moved to reconsider the CA's decision, but the CA denied the motion in its resolution of September 1, 2005.[16] He, thereafter, filed the present Petition for Review on Certiorari under Rule 45 of the Rules of Court, claiming that:

- a. the VA's decision is not subject to a motion for reconsideration; and
- b. no employer-employee relationship existed between Teng and the respondent workers.

Teng contends that the VA's decision is not subject to a motion for reconsideration in the absence of any specific provision allowing this recourse under Article 262-A of the Labor Code.[17] He cites the 1989 Procedural Guidelines, which, as the VA declared, does not provide the remedy of a motion for reconsideration.[18] He claims that after the lapse of 10 days from its receipt, the VA's decision becomes final and executory unless an appeal is taken.[19] He argues that when the respondent workers received the VA's decision on June 12, 2003,[20] they had 10 days, or until June 22, 2003, to file an appeal. As the respondent workers opted instead to move for reconsideration, the 10-day period to appeal continued to run; thus, the VA's decision had already become final

and executory by the time they assailed it before the CA on July 21, 2003.[21]

Teng further insists that the VA was correct in ruling that there was no employer-employee relationship between him and the respondent workers. What he entered into was a joint venture agreement with the maestros, where Teng's role was only to provide basnig, gears, nets, and other tools and equipment for every fishing voyage.[22]

THE COURT'S RULING

We resolve to deny the petition for lack of merit.

Article 262-A of the Labor Code does not prohibit the filing of a motion for reconsideration.

On March 21, 1989, Republic Act No. 6715[23] took effect, amending, among others, Article 263 of the Labor Code which was originally worded as:

Art. 263 x x x Voluntary arbitration awards or decisions shall be final, unappealable, and executory.

As amended, Article 263 is now Article 262-A, which states:

Art. 262-A. x x x [T]he award or decision x x x shall contain the facts and the law on which it is based. It shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties.

Notably, Article 262-A deleted the word "unappealable" from Article 263. The deliberate selection of the language in the amendatory act differing from that of the original act indicates that the legislature intended a change in the law, and the court should endeavor to give effect to such intent.[24] We recognized the intent of the change of phraseology in *Imperial Textile Mills, Inc. v. Sampang*,[25] where we ruled that:

It is true that the present rule [Art. 262-A] makes the voluntary arbitration award final and executory after ten calendar days from receipt of the copy of the award or decision by the parties. Presumably, the decision may still be reconsidered by the Voluntary Arbitrator on the basis of a motion for reconsideration duly filed during that period.[26]

In *Coca-Cola Bottlers Phil., Inc., Sales Force Union-PTGWO-Balais v. Coca-Cola Bottlers Philippines, Inc.*,[27] we likewise ruled that the VA's decision may still be reconsidered on the basis of a motion for reconsideration seasonably filed within 10 days from receipt thereof.[28] The seasonable filing of a motion for reconsideration is a mandatory requirement to forestall the finality of such decision.[29] We further cited the 1989 Procedural Guidelines which implemented Article 262-A, viz:[30]

[U]nder Section 6, Rule VII of the same guidelines implementing Article 262-A of the Labor Code, this Decision, as a matter of course, would become final and executory after ten (10) calendar days from receipt of copies of the decision by the parties x x x unless, in the meantime, a motion for reconsideration or a petition for review to the Court of Appeals under Rule 43 of the Rules of Court is filed within the same 10-day period. [31]

These rulings fully establish that the absence of a categorical language in Article 262-A does not preclude the filing of a motion for reconsideration of the VA's decision within the 10-day period. Teng's allegation that the VA's decision had become final and executory by the time the respondent workers filed an appeal with the CA thus fails. We consequently rule that the respondent workers seasonably filed a motion for reconsideration of the

VA's judgment, and the VA erred in denying the motion because no motion for reconsideration is allowed.

The Court notes that despite our interpretation that Article 262-A does not preclude the filing of a motion for reconsideration of the VA's decision, a contrary provision can be found in Section 7, Rule XIX of the Department of Labor's Department Order (DO) No. 40, series of 2003:[32]

Rule XIX

Section 7. Finality of Award/Decision. - The decision, order, resolution or award of the voluntary arbitrator or panel of voluntary arbitrators shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties and it shall not be subject of a motion for reconsideration.

Presumably on the basis of DO 40-03, the 1989 Procedural Guidelines was revised in 2005 (2005 Procedural Guidelines),[33] whose pertinent provisions provide that:

Rule VII -

DECISIONS

Section 6. Finality of Decisions. - The decision of the Voluntary Arbitrator shall be final and executory after ten (10) calendar days from receipt of the copy of the decision by the parties.

Section 7. Motions for Reconsideration. - The decision of the Voluntary Arbitrator is not subject of a Motion for Reconsideration.

We are surprised that neither the VA nor Teng cited DO 40-03 and the 2005 Procedural Guidelines as authorities for their cause, considering that these were the governing rules while the case was pending and these directly and fully supported their theory. Had they done so, their reliance on the provisions would have nevertheless been unavailing for reasons we shall now discuss.

In the exercise of its power to promulgate implementing rules and regulations, an implementing agency, such as the Department of Labor,[34] is restricted from going beyond the terms of the law it seeks to implement; it should neither modify nor improve the law. The agency formulating the rules and guidelines cannot exceed the statutory authority granted to it by the legislature.[35]

By allowing a 10-day period, the obvious intent of Congress in amending Article 263 to Article 262-A is to provide an opportunity for the party adversely affected by the VA's decision to seek recourse via a motion for reconsideration or a petition for review under Rule 43 of the Rules of Court filed with the CA. Indeed, a motion for reconsideration is the more appropriate remedy in line with the doctrine of exhaustion of administrative remedies. For this reason, an appeal from administrative agencies to the CA via Rule 43 of the Rules of Court requires exhaustion of available remedies[36] as a condition precedent to a petition under that Rule.

The requirement that administrative remedies be exhausted is based on the doctrine that in providing for a remedy before an administrative agency, every opportunity must be given to the agency to resolve the matter and to exhaust all opportunities for a resolution under the given remedy before bringing an action in, or resorting to, the courts of justice.[37] Where Congress has not clearly required exhaustion, sound judicial discretion governs,[38] guided by congressional intent.[39]

By disallowing reconsideration of the VA's decision, Section 7, Rule XIX of DO 40-03 and Section 7 of the 2005 Procedural Guidelines went directly against the legislative intent behind Article 262-A of the Labor Code. These rules deny the VA the chance to correct himself[40] and compel the courts of justice to prematurely intervene with the action of an administrative agency entrusted with the adjudication of controversies coming under its special knowledge, training and specific field of expertise. In this era of clogged court dockets, the need for

specialized administrative agencies with the special knowledge, experience and capability to hear and determine promptly disputes on technical matters or intricate questions of facts, subject to judicial review, is indispensable.[41] In *Industrial Enterprises, Inc. v. Court of Appeals*,[42] we ruled that relief must first be obtained in an administrative proceeding before a remedy will be supplied by the courts even though the matter is within the proper jurisdiction of a court.[43]

There exists an employer-employee relationship between Teng and the respondent workers.

We agree with the CA's finding that sufficient evidence exists indicating the existence of an employer-employee relationship between Teng and the respondent workers.

While Teng alleged that it was the maestros who hired the respondent workers, it was his company that issued to the respondent workers identification cards (IDs) bearing their names as employees and Teng's signature as the employer. Generally, in a business establishment, IDs are issued to identify the holder as a bona fide employee of the issuing entity.

For the 13 years that the respondent workers worked for Teng, they received wages on a regular basis, in addition to their shares in the fish caught.[44] The worksheet showed that the respondent workers received uniform amounts within a given year, which amounts annually increased until the termination of their employment in 2002.[45] Teng's claim that the amounts received by the respondent workers are mere commissions is incredulous, as it would mean that the fish caught throughout the year is uniform and increases in number each year.

More importantly, the element of control - which we have ruled in a number of cases to be a strong indicator of the existence of an employer-employee relationship - is present in this case. Teng not only owned the tools and equipment, he directed how the respondent workers were to perform their job as checkers; they, in fact, acted as Teng's eyes and ears in every fishing expedition.

Teng cannot hide behind his argument that the respondent workers were hired by the maestros. To consider the respondent workers as employees of the maestros would mean that Teng committed impermissible labor-only contracting. As a policy, the Labor Code prohibits labor-only contracting:

ART. 106. Contractor or Subcontractor - x x x The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting-out of labor.

x x x x

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

Section 5 of the DO No. 18-02,[46] which implements Article 106 of the Labor Code, provides:

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 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.

In the present case, the maestros did not have any substantial capital or investment. Teng admitted that he solely provided the capital and equipment, while the maestros supplied the workers. The power of control over the respondent workers was lodged not with the maestros but with Teng. As checkers, the respondent workers' main tasks were to count and classify the fish caught and report them to Teng. They performed tasks that were necessary and desirable in Teng's fishing business. Taken together, these incidents confirm the existence of a labor-only contracting which is prohibited in our jurisdiction, as it is considered to be the employer's attempt to evade obligations afforded by law to employees.

Accordingly, we hold that employer-employee ties exist between Teng and the respondent workers. A finding that the maestros are labor-only contractors is equivalent to a finding that an employer-employee relationship exists between Teng and the respondent workers. As regular employees, the respondent workers are entitled to all the benefits and rights appurtenant to regular employment.

The dismissal of an employee, which the employer must validate, has a twofold requirement: one is substantive, the other is procedural.[47] Not only must the dismissal be for a just or an authorized cause, as provided by law; the rudimentary requirements of due process - the opportunity to be heard and to defend oneself - must be observed as well.[48] The employer has the burden of proving that the dismissal was for a just cause; failure to show this, as in the present case, would necessarily mean that the dismissal was unjustified and, therefore, illegal.[49]

The respondent worker's allegation that Teng summarily dismissed them on suspicion that they were not reporting to him the correct volume of the fish caught in each fishing voyage was never denied by Teng. Unsubstantiated suspicion is not a just cause to terminate one's employment under Article 282[50] of the Labor Code. To allow an employer to dismiss an employee based on mere allegations and generalities would place the employee at the mercy of his employer, and would emasculate the right to security of tenure.[51] For his failure to comply with the Labor Code's substantive requirement on termination of employment, we declare that Teng illegally dismissed the respondent workers.

WHEREFORE, we DENY the petition and AFFIRM the September 21, 2004 decision and the September 1, 2005 resolution of the Court of Appeals in CA-G.R. SP No. 78783. Costs against the petitioners.

SO ORDERED.

Carpio Morales, (Chairperson), Bersamin, Villarama, Jr., and Sereno, JJ., concur.

[1] Under Rule 45 of the Rules of Court; rollo, pp. 9-37.

[2] Penned by Associate Justice Arturo G. Tayag, and concurred in by Associate Justice Estela M. Perlas-Bernabe and Associate Justice Edgardo A. Camello; *id.* at 41-51.

[3] *Id.* at 52-53.

[4] *Id.* at 14.

[5] Id. at 188.

[6] Id. at 43.

[7] Ibid.

[8] Id. at 14.

[9] Id. at 60-69.

[10] Id. at 69.

[11] Id. at 72.

[12] Ibid.

[13] Id. at 70.

[14] Ibid.

[15] Id. at 50.

[16] Id. at 52-53.

[17] Id. at 17-18.

[18] Id. at 70-71.

[19] Id. at 18.

[20] Id. at 72.

[21] Id. at 19.

[22] Id. at 21.

[23] An Act To Extend Protection To Labor, Strengthen The Constitutional Rights Of Workers To Self-Organization, Collective Bargaining And Peaceful Concerted Activities, Foster Industrial Peace And Harmony, Promote The Preferential Use Of Voluntary Modes Of Settling Labor Disputes And Reorganize The National Labor Relations Commission, Amending For These Purposes Certain Provisions Of Presidential Decree No. 442, As Amended, Otherwise Known As The Labor Code Of The Philippines, Appropriating Funds Therefor and For Other Purposes.

[24] Agpalo, *Statutory Construction* (2006 ed.), p. 390, citing *Sarcos v. Castillo*, 26 SCRA 853 (1969); *Portillo v. Salvani*, 54 Phil. 543 (1930).

[25] G.R. No. 94960, March 8, 1993, 219 SCRA 651.

[26] Id. at 654.

[27] G.R. No. 155651, July 28, 2005, 464 SCRA 507, 516.

[28] Ibid.

[29] Ibid.

[30] Id. at 513.

[31] Id. at 515-516.

[32] Took effect on March 15, 2003.

[33] Signed by the Secretary of Labor on March 15, 2005.

[34] Labor Code, Article 5. Rules and regulations. - The Department of Labor and other government agencies charged with the administration and enforcement of this Code or any of its parts shall promulgate the necessary implementing rules and regulations. Such rules and regulations shall become effective fifteen (15) days after announcement of their adoption in newspapers of general circulation.

[35] Philippine Apparel Workers Union v. NLRC, No. L-50320, July 31, 1981, 106 SCRA 444.

[36] De Leon, De Leon, Jr., Administrative Law: Text and Cases (2005 ed.), p. 360.

[37] Id. at 357.

[38] 2 Am Jur 2d, § 506, 492.

[39] Ibid.

[40] Agpalo, Administrative Law (2005 ed.), p. 178.

[41] Padua, et al. v. Ranada, et al., G.R. Nos. 141949 and 151108, October 14, 2002, 390 SCRA 663.

[42] G.R. No. 88550, April 18, 1990, 184 SCRA 426.

[43] Ibid.

[44] At the ratio of one bañera for every 30 bañera of fish caught, id. at 42-43.

[45] Id. at 42-43, the monthly salaries of the respondent workers from 1989-1998:

1. Alfredo S. Pahagac and Eddie D. Nipa

YEAR MONTHLY

WAGE RATE

1989

P 300.00

1989

500.00

1992

700.00

1994

1,000.00

1996

1,400.00

1998 until dismissed

1,700.00

2. Hernan Y. Badilles and Roger S. Pahagac

YEAR MONTHLY

WAGE RATE

1990

P 500.00

1992

700.00

1994

1,000.00

1996

1,400.00

1998 until dismissed

1,700.00

3. Orlando P. Layese, who was originally hired as second patron in 1989-1995 with share in [the] catch, was subsequently appointed as checker sometime in February 1996 with a fixed monthly wage rate as follows:

YEAR MONTHLY

WAGE RATE

1989-1995

[on commission basis]

1996

P 1,500.00

1998 until dismissed

P 1,700.00

[46] Effective March 16, 2002.

[47] Pascua, et al. v. NLRC, et al., G.R. No. 123518, March 13, 1998, 287 SCRA 554.

[48] Ibid., citing Jamer, et al. v. NLRC, et al., 278 SCRA 632 (1997).

[49] Ibid., citing, Metro Transit Organization, Inc. v. NLRC, et al., 263 SCRA 313 (1996); Mapalo v. NLRC, et al., 233 SCRA 266 (1994); Philippine Manpower Services, Inc., et al. v. NLRC, et al., 224 SCRA 691 (1993).

[50] Art. 282. Termination by Employer. An employer may terminate an employment for any of the following

causes:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
- (e) Other causes analogous to the foregoing.

[51] Supra note 47, citing, *Sanyo Travel Corp., et al. v. NLRC*, 280 SCRA 129 (1997); and *JGB and Associates, Inc. v. NLRC, et al.*, 254 SCRA 457 (1996).

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