

HIJOS DE F. ESCAÑO, INC., AND PIER 8 ARRASTRE AND STEVEDORING SERVICES, INC., PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, NATIONAL ORGANIZATION OF WORKINGMEN (NOWM) PS...

G.R. No. 59229. August 22, 1991

Ponente: FELICIANO, J.

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FELICIANO, J.:

Petitioners seek to set aside the Decision of the National Labor Relations Commission ("NLRC") dated 11 November 1981, which affirmed the Decision of the Labor Arbiter dated 28 February 1980.

Private respondent National Organization of Workingmen ("NOWM") PSSLU-TUCP is a labor organization that counts among its members a majority of the laborers of petitioner Pier 8 Arrastre & Stevedoring Services, Inc. ("PIER 8 A&S") consisting, among others, of stevedores, dockworkers, sweepers and forklift operators (hereinafter collectively referred to as "the stevedores"). On 31 July 1978, NOWM PSSLU-TUCP and about 300 stevedores filed with the then Ministry of Labor and Employment ("MOLE") a complaint[1] for unfair labor practice ("ULP") and illegal dismissal against PIER 8 A&S.

On 8 September 1978, NOWM PSSLU-TUCP amended its complaint to include the monetary claims of the stevedores for overtime compensation, legal holiday pay, emergency cost of living allowance, 13th month pay, night shift differential pay, and the difference between the salaries they received and that prescribed under the minimum wage law. The complaint was also amended to implead petitioner Hijos de F. Escañó, Inc. ("Escanó") as respondent before the MOLE.[2]

The MOLE Director in the National Capital Region certified for compulsory arbitration only the claims for illegal dismissal and ULP. Considering that NOWM PSSLU-TUCP wanted to include as well the other issues it had raised in the amended complaint, it filed a motion for reconsideration. The motion was denied because money claims, according to the MOLE Director, should be brought against Escañó and PIER 8 A&S in a separate complaint.

On the basis of the position papers submitted by the parties and the annexes attached thereto, the case was considered submitted for resolution. On 28 February 1980, the Labor Arbiter rendered a Decision[3] with the following dispositive portion:

"WHEREFORE, consonant with the foregoing premises, the respondents Hijos de F. Escañó and Pier 8 Arrastre and Stevedoring Services, Inc. are hereby found guilty of committing acts of unfair labor practice and are ordered to jointly and severally reinstate all of the petitioners named in the amended complaint, with payment of full backwages counted from the time they were illegally dismissed which was on August 10, 1978 up to March 27, 1979, inclusive, when the petitioners admitted having received return to work notice from the respondent but refused to comply in view of the pendency of the present case, based on their individual rate at the time of their dismissal or on the minimum wage then prevailing whichever is more beneficial to them.

For purposes of this decision, the Socio--Economic Analyst of this branch is hereby directed to compute the backwages of the individual petitioners as mandated herein, and to submit his report within ten (10) days from receipt hereof which shall form part of this award.

SO ORDERED."

Petitioners appealed to the NLRC which, however, affirmed the Decision of the Labor Arbiter.

The instant Petition for Certiorari imputes grave abuse of discretion to the NLRC in upholding the finding of the Labor Arbiter that the stevedores are employees not only of PIER 8 A&S but also of Escaño. Petitioners also assail that portion of the Decision which directed them to reinstate the dismissed stevedores with the obligation to pay backwages from 10 August 1978 to 27 March 1979.

In his Decision, the Labor Arbiter took the view that PIER 8 A&S was a labor-only contractor and held that Escaño was the principal employer of the stevedores. For that reason, the Labor Arbiter adjudged the petitioners solidarily liable for payment of backwages to the stevedores as well as for reinstatement.

While petitioner PIER 8 A&S does not dispute that the stevedores were its employees, petitioner Escaño denies the existence of an employer-employee relationship between it and the stevedores. Escaño therefore contends that liability, if any, should attach only to PIER 8 A&S.

PIER 8 A&S is a corporation providing arrastre and stevedoring services to vessels docked at Pier 8 of the Manila North Harbor. Prior to the incorporation of PIER 8 A&S, two (2) stevedoring companies had been servicing vessels docking at Pier 8. One of these was the Manila Integrated Services, Inc. ("MISI") which was servicing Escaño vessels, then berthing at Pier 8. The other was the San Nicolas Stevedoring and Arrastre Services, Inc. ("SNSASI") which was servicing Compañia Maritima vessels. Aside, of course, from MISI and SNSASI, there were individual contractors known as the "cabos" who were operating in Pier 8.

On 11 July 1974, the Philippine Port Authority ("PPA") was created pursuant to the policy of the State to implement an integrated program of port development for the entire country.[4] Towards this end, the PPA issued Administrative Order No. 13-77 specifically adopting the policy of "one pier, one arrastre and/or stevedoring company." MISI and SNSASI merged to form the Pier 8 Arrastre and Stevedoring Services, Inc.

Sometime in June 1978, Escaño had transferred berth to Pier 16 with the approval of the PPA. PIER 8 A&S then started to encounter problems; it found its business severely reduced with only Compañia Maritima vessels to service. Even if it had wanted to continue servicing the vessels of Escaño at Pier 16, that was simply not possible as there was another company exclusively authorized to handle and render arrastre and stevedoring services at Pier 16.

Because of its resulting manpower surplus, PIER 8 A&S altered the work schedule of its stevedores by rotating them. The rotation scheme was resisted by the stevedores, especially those formerly assigned to service Escaño vessels. It appears that the employees formerly belonging to MISI continued to service Escaño vessels in like manner that those employees formerly belonging to SNSASI continued to service Compañia Maritima vessels, although MISI and SNSASI had already merged to form PIER 8 A&S. The affected stevedores boycotted Pier 8 leading to their severance from employment by PIER 8 A&S on 10 August 1978. Their refusal to work continued even after they were served with a return-to-work order.

The stevedores claim that since they had long been servicing Escaño vessels, i.e. from the time Escaño was exclusively serviced by MISI until the time MISI was merged with SNSASI to form PIER 8 A&S, they should also be considered as employees of Escaño. Escaño disclaimed any employment relationship with the stevedores. In its Position Paper, Escaño alleged that the stevedores are included in the payroll of PIER 8 A&S and that the

SSS and Medicare contributions of the stevedores are paid by PIER 8 A&S as well.

It is firmly settled that the existence or non-existence of the employer-employee relationship is commonly to be determined by examination of certain factors or aspects of that relationship. These include: (a) the manner of selection and engagement of the putative employee; (b) the mode of payment of wages; (c) the presence or absence of the power of dismissal; and (d) the presence or absence of a power to control the putative employee's conduct.[5]

The Court notes that in finding against PIER 8 A&S and Escaño, the Labor Arbiter relied solely on the position paper of the parties. The record of the case is bare of evidence tending to support such allegations; what is found in the record instead are the self-serving statements from both parties. It is not clear to the Court from examination of the record which entity paid the salaries of the stevedores. While the stevedores attached to their amended complaint a list of their daily wages set forth opposite their individual names under the heading "Hijos de F. Escaño, Inc. and/or Pier 8 Arrastre and Stevedoring Services, Inc." [6] apparently to show that they are paid for their services by either or both of petitioners, they did not submit direct evidence, e.g., copies of payrolls and remittances to the SSS and Medicare, establishing this fact. Further, the stevedores failed to substantiate their allegation that the supervisors of Escaño had control over them while discharging their (stevedores') duties. On the contrary, their Position Paper submitted to the Labor Arbiter disclosed that the supervisors of Escaño "merely supervised" them.

The record includes letters written by the National President of NOWM PSSLU-TUCP — to which the stevedores belong — relating to collective bargaining and other operating matters, were all addressed to the management of PIER 8 A&S, indicating that they recognized PIER 8 A&S as their employer. Specifically, in the letter dated 21 May 1977, the stevedores proposed that PIER 8 A&S recognize their union as the sole and exclusive representative of the stevedores for the purpose of collective bargaining. They also sought to submit for collective bargaining with PIER 8 A&S such other labor standard issues as wage increases, 13[th] month pay and vacation and sick leave pay.[7]

The stevedores, however, now contend that PIER 8 A&S is not an independent contract but a labor-only contractor. In their Amended Complaint and Position Paper, the stevedores alleged that:

(1)

They perform their duties or work assignments under the close supervision of supervisors of respondent Hijos de F. Escaño, Inc.;

(2)

The machineries, equipment, tools and other facilities complainants used, while in the performance of their jobs, are owned by respondent Hijos de F. Escaño, Inc.;

(3)

The jobs they were performing from the time they were first employed, until their dismissals, are principal phases of respondent's operations; and

(4)

The so-called Pier 8 Arrastre & Stevedoring Services, Inc. is a mere middleman; its vital role is purely one of supplying workers to respondent Hijos de F. Escaño, Inc. in short, a mere recruiting agent. Plainly, said contractor can be categorized as an agent of respondent Hijos de F. Escaño, Inc. as it performs activities directly related to the principal business of said Hijos de F. Escaño, Inc.

Although the record does not show that the stevedores had submitted any evidence to fortify their claim that PIER 8 A&S is a labor-only contractor, the Labor Arbiter simply conceded that claim to be factual. The Labor Arbiter added that the business of PIER 8 A&S is "desirable and indispensable in the business of Hijos F. de Escaño and without [the stevedores], its vessels could not be operated."

The Court is unable to agree with the conclusion reached by the Labor Arbiter, particularly that portion where the Labor Arbiter supposed stevedoring to be an indispensable part of the business of Escaño. Escaño is a corporation engaged in interisland shipping business, being the operator of the Escaño Shipping Lines. It was not alleged, nor has it been shown, that Escano or any other shipping company is also engaged in arrastre and stevedoring services. Steve-doring is not ordinarily included in the business of transporting goods, it (stevedoring) being a special kind of service which involves the loading or unloading of cargo on or from a vessel on port. It consists of the handling of cargo from the hold of the ship to the dock, in case of pier-side unloading, or to a barge, in case of unloading at sea. The loading on a ship of outgoing cargo is also part of stevedoring work.[8] Arrastre, upon the other hand, involves the handling of cargo deposited on the wharf or between the establishment of the consignee or shipper and the ship's tackle.[9] Considering that a shipping company is not normally or customarily engaged in stevedoring and arrastre activities either for itself or other vessels, it contracts with other companies offering those services. The employees, however, of the stevedoring and/or arrastre company should not be deemed the employees of the shipping company, in the absence of any showing, that the arrastre and/or stevedoring company in fact acted as an agent only of the shipping company. No such showing was made in this case.

We turn next to the stevedores' contention that PIER 8 A&S is guilty of ULP. In this respect, the Labor Arbiter had found that:

"Now comes the issue of unfair labor practice. This Labor Arbiter believes that respondents are guilty as charged. The unfair labor practice acts of the respondents started when they came to know that the petitioners have organized themselves and affiliated with the NOWM. Subsequent acts of the respondents like requiring the petitioners to disaffiliate with the NOWM and affiliate with the General Maritime Stevedores Union and later on to Independent Workers Union, requiring them to sign applications for membership therein, they were threatened and coerced, are all acts of unfair labor practices. Thereafter, the petitioners' working schedules were rotated when the respondent Hijos de F. Escaño transferred to Pier 16 through the alleged approval of the Philippine Port Authority and later on the said petitioners were left without work, were all in furtherance of such unfair labor practice acts. x x x"[10]

Both the Constitution and the Labor Code guarantee to the stevedores a right to self-organization. It was unlawful for PIER 8 A&S to deprive them of that right by its undue interference. The Constitution (Article III, Section 7) expressly recognizes the right of employees, whether of the public or the private sector, to form unions. Article 248 of the Labor Code provides:

"Art. 248. Unfair labor practices of employers. -- It shall be unlawful for an employer to commit any of the following unfair labor practice:

- (a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization;
- (b) To require as a condition of employment that a person or an employee shall not join a labor organization or shall withdraw from one to which he belongs;

(c) To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization;

(d) To initiate, dominate, assist or otherwise interfere with the formation or administration of any labor organization, including the giving of financial or other support to it or its organizations or supporters;

(e) To discriminate in regard to wages, hours of work, and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. x x x.

x x x x x x x x "

(Italics supplied.)

Not only was PIER 8 A&S guilty of ULP; it was also liable for illegal dismissal. PIER 8 A&S did not obtain prior clearance from the MOLE before it dismissed the stevedores, as required by the law then in force which read:

"Section 1. Requirement for shutdown or dismissal. — No employer may shut down his establishment or dismiss any of his employees with at least one year of service during the last two years, whether the service is broken or continuous, without prior clearance issued therefor in accordance with this Rule. Any provision in a collective bargaining agreement dispensing with the clearance requirement shall be null and void.

Section 2. Shutdown or dismissal without clearance. — Any shutdown or dismissal without prior clearance shall be conclusively presumed to be a termination of employment without a just cause. The Regional Director shall, in such case, order the immediate reinstatement of the employee and the payment of his wages from the time of the shutdown or dismissal until the time of reinstatement." [11]

B.P. Blg. 130 amended the Labor Code on 4 September 1981 by abolishing the requirement of prior clearance from the MOLE but since the dismissal of the stevedores was effected prior to the promulgation of B.P. Blg. 130, PIER 8 A&S was then bound to comply with the old law. The Court, interpreting Sections 1 and 2 above quoted, has consistently held that a dismissal without said clearance shall be conclusively presumed a termination without just cause.[12] The record is bare of any evidence that could compel the Court to overturn the factual findings of the Labor Arbiter on this point.

WHEREFORE, considering the absence of an employer-employee relationship between Hijos de F. Escano, Inc. and private respondents, the Decision of the Labor Arbiter dated 28 February 1980 in NLRC Case No. RB-IV-2326-79, and the Decision of the NLRC dated 11 November 1981 are hereby MODIFIED so that only Pier 8 Arrastre & Stevedoring Services, Inc. shall be liable for reinstatement and payment of backwages. As so modified, both Decisions are hereby AFFIRMED. No costs.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Davide, Jr., JJ., concur.

[1] Rollo, pp. 22-23.

[2] Id., pp. 24-35.

[3] Id., pp. 51-67.

[4] See P.D. No. 505 issued on 11 July 1974.

[5] Hydro Resources Contractors Corp. vs. Pagalilauan, 172 SCRA 399 (1989); Tabas vs. California Manufacturing Co., 169 SCRA 497 (1989); Philippine Bank of Communications vs. NLRC, 146 SCRA 347

(1986).

[6] Rollo, pp. 36-40.

[7] Id., pp. 41-44.

[8] Anglo-Fil Trading Corporation vs. Lazaro, 124 SCRA 495 (1983).

[9] Compania Maritima vs. Allied Free Workers Union, 77 SCRA 26 (1977).

[10] Decision of the Labor Arbiter, p. 7.

[11] Rule XIV, Rules and Regulations Implementing the Labor Code of the Philippines.

[12] Esmalin vs. NLRC, 177 SCRA 537 (1989); Bachiller vs. NLRC, 98 SCRA 393 (1980)

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