

**DEL ROSARIO & SONS LOGGING ENTERPRISES, INC.,
PETITIONER, VS. THE NATIONAL LABOR RELATIONS COMMISSION,
PAULINO MABUTI, NAPOLEO BORATA, SILVINO TUDIO AND CALMAR
SECURITY AGENCY, ...**

G.R. No. 64204. May 31, 1985

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

A petition for Certiorari seeking the annulment of the National Labor Relations Commission (NLRC) Resolution in ROX Arbitration Case No. 445-79 entitled Paulino Mabuti, et al. versus Calmar Security Agency, et al., and the affirmance instead, of the Decision of the Labor Arbiter.

On February 1, 1978, petitioner Del Rosario & Sons Logging Enterprises, Inc. entered into a "Contract of Services" with private respondent Calmar Security Agency (Security Agency, for short) whereby the latter undertook to supply the former with security guards at the rate of P300.00 per month for each guard.

On October 4, 1979, Paulino Mabuti, Napoleon Borata and Silvino Tudio filed a Complaint against the Security Agency and petitioner, for underpayment of salary, non-payment of living allowance, and 13th month pay. Thereafter, five other guards filed their complaint for the same causes of action.

In its Answer, petitioner contended that complainants have no cause of action against it due to absence of employer-employee relationship between them. The Security Agency also denied liability alleging that due to the inadequacy of the amounts paid to it under the Contract of Services, it could not possibly comply with the payments required by labor laws.

Assigned for compulsory arbitration, on December 21, 1979, the Labor Arbiter rendered a Decision dismissing the complaint against petitioner for want of employer-employee relationship but ordering the Security Agency to pay complainants the amounts sought by them totalling P2,923.17.

The Security Agency appealed to the NLRC, which modified the Decision of the Labor Arbiter by holding that petitioner is liable to pay complainants, jointly and severally, with the Security Agency on the ground that petitioner is an indirect employer pursuant to Articles 106 and 107 of the Labor Code, as amended.

Reconsideration sought by petitioner having been denied, this Certiorari petition was instituted contending that the NLRC erred in giving due course to the appeal despite the fact that it was not under oath and the required appeal fee was not paid; in holding it jointly and severally liable with the Security Agency; and in refusing to give due course to its Motion for Reconsideration.

The formal defects in the appeal of the Security Agency were not fatal defects. The lack of verification could have been easily corrected by requiring an oath.[1] The appeal fee had been paid although it was delayed.[2] In the case of *Panes vs. Court of Appeals*, et al.[3], we held:

"Clearly, failure to pay the docketing fees does not automatically result in the dismissal of the appeal. Dismissal is discretionary with the Appellate Court (*Nawasa vs. Secretary of Public Works and Communications*, 16 SCRA 536, 539 [1966]), and discretion must be exercised wisely and prudently, never capriciously, with a view to substantial justice (*Cucio vs. Court of Appeals*, 57 SCRA 401 [1974]). Failure to pay the appeal docketing fee confers a directory and not a mandatory power to dismiss an appeal and such power must be exercised with sound discretion and with a great deal of circumspection, considering all attendant circumstances".[4]

It may be that, as held in *Acda vs. MOLE*, 119 SCRA 306 [1982], payment of the appeal fee is "by no means a mere technicality but is an essential requirement in the perfection of an appeal." However, where as in this case, the fee had been paid, unlike in the *Acda* case, although payment was delayed, the broader interests of justice and the desired objective of resolving controversies on the merits demanded that the appeal be given course as, in fact, it was so given by the NLRC. Besides, it was within the inherent power of the NLRC to have allowed the late payment of the appeal fee.

Moreover, as provided for by Article 221 of the Labor Code "in any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in Courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speed-ily and objectively and without regard to technicalities of law or procedure, all in the interest of due process."

Petitioner's joint and several liability with the Security Agency was correctly adjudged. When petitioner entered into a Contract of Services with the Security Agency and the latter hired complainants to work as guards for the former, petitioner became an indirect employer of respondents-complainants pursuant to the unequivocal terms of Articles 106 and 107 of the Labor Code, as amended:

"Art. 106. Contractor or subcontractor. — x x x

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.

Art. 107. Indirect employer. — The provisions of the immediately preceding Article shall likewise apply to any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project."

The joint and several liability imposed on petitioner and affirmed herein, however, is without prejudice to a claim for reimbursement by petitioner against the Security Agency for such amounts as petitioner may have to pay to complainants. The Security Agency may not seek exculpation by claiming that petitioner's payments to it were inadequate. As an employer, it is charged with knowledge of labor laws and the adequacy of the compensation that it demands for contractual services is its principal concern and not any other's.

WHEREFORE, the judgment under review is hereby affirmed, without prejudice to petitioner's right to seek reimbursement from Calmar Security Agency for such amounts as petitioner may have to pay to complainants. Costs against the private respondent.

SO ORDERED.

Teehankee, (Chairman), Relova, Gutierrez, Jr., De la Fuente, and Alampay, JJ., concur.

Plana, J., on official leave.

[1] Gaerlan, Sr., vs. National Labor Relations Commission, 132 SCRA 402 [1984].

[2] p. 6, NLRC Memorandum and p. 9, NLRC Brief.

[3] 120 SCRA 509 [1983].

[4] Lopez vs. Court of Appeals, 75 SCRA 401 [1977].

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