

BROADWAY MOTORS, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND VICENTE APOLINARIO, RESPONDENTS.

G.R. No. 78382, December 14, 1987

Ponente: FELICIANO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-78382/>

FELICIANO, J.:

By virtue of a written undated "Work Contract",[1] private respondent Vicente Apolinario, sometime in March 1967, began work as an auto painter in the premises of petitioner Broadway Motors, Inc. located at 1232 United Nations Avenue, Metro Manila. The contract was signed by Vicente Apolinario as "Contractor" and Mr. Johnny L. Chieng, Parts and Service Operations Manager of petitioner Corporation. Apolinario worked as an auto painter for a period of eighteen (18) years, until 23 January 1985 when he was barred from entering the premises of petitioner Corporation, and his relationship with it effectively terminated, because of his alleged involvement in a fist-fight with the shop superintendent of Broadway Motors the day before.

On 21 February 1985, Apolinario commenced an action for illegal dismissal with the National Capital Region Arbitration Branch of the National Labor Relations Commission (NLRC). In his Complaint, which was docketed as NLRC Case No. 2-587-85, Apolinario sought recovery from petitioner Corporation of (1) separation pay in the amount of P66,676.95, on the basis of an alleged monthly income of P7,408.55, (2) moral damages of P50,000.00, and (3) attorney's fees of P10,000.00.

In a Decision[2] dated 7 January 1986, the Labor Arbiter dismissed the complaint upon the ground that under the Work Contract and an "Addendum to Work Contract" dated 28 April 1984,[3] Apolinario, having supplied the workers -- himself included -- who performed the auto painting jobs for petitioner Corporation, was a mere contractor and could not, therefore, be considered as the latter's employee. From this decision, Apolinario interposed an appeal to the NLRC.

On 4 February 1987, public respondent NLRC rendered a Decision,[4] the dispositive portion of which reads:

"WHEREFORE, the Decision appealed from is reversed and a new judgment entered ordering the respondent to pay complainant separation pay in the sum of FORTY FIVE THOUSAND (P45,000.00) PESOS plus 10% thereof as and for attorney's fees.

SO ORDERED."

In reversing the decision of the Labor Arbiter, public respondent NLRC found that a valid and binding employer-employee relationship had existed between petitioner Corporation and Apolinario. Since Apolinario was dismissed without any investigation having been previously conducted by petitioner Corporation to ascertain his participation in the fist-fight within company premises, his dismissal was, accordingly, declared illegal by public respondent NLRC for non-compliance with the requirements of procedural due process.

After a careful scrutiny of the records of this case, the Court considers that petitioner Corporation has not

sufficiently shown that respondent NLRC had acted with grave abuse of discretion, or without or in excess of jurisdiction in rendering its decision dated 4 February 1987.

Four factors are generally considered in determining the existence of an employer-employee relationship, namely: (a) the manner of selection and engagement of the putative employee; (b) the mode of payment of wages; (c) the presence or absence of a power of dismissal; and (d) the presence or absence of a power to control the putative employee's conduct. It is this latter factor, the so-called "control test", which is the most important criterion in such determination.[5] The record shows that Apolinario was hired directly by petitioner Corporation to work in the latter's auto repair shop as an auto painter, which fact is evidenced by the undated Work Contract executed between Apolinario and petitioner Corporation through its authorized representative. That petitioner corporation reserved unto itself the power of dismissal is evident from the fact that petitioner Corporation unilaterally undertook to terminate Apolinario's relationships with itself.

Upon the other hand, it appears that Apolinario and his men (designated in the Work Contract as "Contract Workers") were compensated for the jobs they performed in lump sum payments described as "payment for subcontract painting" or other repair job, from which amounts an unexplained "three percent (3%) of fifteen percent (15%) withholding tax" was deducted. It further appears that Apolinario invoiced, under the designation of "VM Automotive Repair Service", to petitioner Corporation the salaries of his "Contract Workers" on which amounts, a three percent (3%) "sales tax" was added. The "Work Contract" also provided that Broadway Motors would negotiate only with Apolinario on any work order, and would refrain from dealing with any member of Apolinario's group of "Contract Workers." [6]

Turning to the power to control Apolinario's conduct, it appears from the stipulations of the Work Contract that Apolinario and his "Contract Workers" were required not only to keep regular working hours, but to render overtime service as well, when such was necessitated either by the volume or immediacy of the work.[7] They were not allowed to negotiate with customers regarding the performance of any additional work beyond that which had been authorized by petitioner Corporation.[8] Any defect in the workmanship of their jobs was subject to correction by petitioner Corporation's designated supervisors and inspectors even as the work was still in progress, and not just after the same had already been completed.[9] Furthermore, Apolinario and his men were expressly required to abide by petitioner Corporation's regulations and policies, "particularly on the wearing of uniforms and identification cards", which ID cards had to be worn at all times while within the work premises. Apolinario's "casual workers" were additionally required to deposit their ID cards with petitioner Corporation's security guard at the end of the working day.[10] In other words, Apolinario and his "Contract Workers" were under the direct control and supervision of the supervisors and managers of petitioner Corporation from the very moment they entered the work premises at the beginning of the working day, all throughout the performance of their duties for the day, until shop closing time.

Petitioner Corporation urges that Apolinario was not its own employee but, rather, an independent contractor who conducted his own separate business under the trade name of "VM Automotive Repair Service" and had his own "Contract Workers".

The indices of an owner-independent contractor relationship are set out in Section 8 of Rule VIII, Book III of the Omnibus Rules Implementing the Labor Code. Section 8 provides:

"Job contracting. -- There is job contracting permissible under the Code if the following conditions are met:

- (1) The contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results

thereof; and

(2) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business." (Underscoring supplied.)

"Job contracting" must be distinguished from "labor-only" contracting. "Labor-only" contracting is defined in Section 9 of Rule VIII, Book III of the Omnibus Rules Implementing the Labor Code, in the following terms:

"Sec. 9. Labor-only contracting. -- (a) Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting where such person:

(1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and

(2) The workers recruited and placed by such person are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed.

(b) Labor-only contracting as defined herein is hereby prohibited and the person acting as contractor shall be considered merely as an agent or intermediary 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.

x x x x x x x x."

(Underscoring supplied.)

The legal effect of a finding that a contractor was not a true independent contractor or "job contractor" but, rather, merely a "labor-only" contractor was explained in *Philippine Bank of Communications v. National Labor Relations Commission, et al.*:^[11]

"x x x The 'labor-only' contractor - i.e. 'the person or intermediary' - is considered 'merely as an agent of the employer.' The employer is made by the statute responsible to the employees of the 'labor only' contractor as if such employee had been directly employed by the employer. Thus, where 'labor only' contracting exists in a given case, the statute itself implies or establishes an employer-employee relationship between the employer (the owner of the project) and the employees of the 'labor only' contractor, this time for a comprehensive purpose: 'employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.' The law in effect holds both the employer and the 'labor-only' contractor responsible to the latter's employees for the more effective safeguarding of the employees' rights under the Labor Code." (Underscoring supplied.)

Thus, a finding that a contractor was a "labor-only" contractor is equivalent to a finding that an employer-employee relationship existed between the owner and the "labor-only" contractor including the latter's "Contract Workers", that relationship being attributed by the law itself. Petitioner Corporation's defense thus compels us to examine still further the relationship between itself and private respondent Apolinario in terms of the above indices of contracting -- "job" or "labor-only".

We note firstly that, under the Work Contract, Apolinario supplied only "labor and supervision (over his "Contract Workers") in the performance of automotive body painting work which the company (i.e., Broadway Motors) may from time to time, award to him under (the) contract".^[12] Apolinario also undertook to "hire and bring in additional workers as may be required by the company, to handle additional work load or to accelerate or facilitate completion of work in process."^[13] Petitioner Corporation supplied all the tools, equipment, machinery and materials necessary for Apolinario to carry out his assigned painting jobs, which painting jobs were executed by Apolinario and his men within the premises owned and maintained by petitioner Corporation. The control and direction exercised by petitioner Corporation over the work done by Apolinario and his "Contract Workers" was

well-nigh complete, as indicated earlier. There was, furthermore, no evidence adduced by petitioner Corporation to show that Apolinario had substantial capital investment in "VM Automotive Repair Service" or that "VM Automotive Repair Service" carried on, in its own premises, a car repair business operation separate and distinct from that engaged in by petitioner Corporation, an operation the tools or equipment of which were owned by Apolinario and the customers of which were not customers of Broadway Motors. What the evidence of record reveals is that the alleged "Contract Work" carried out by Apolinario and his "Contract Workers", excepting overtime work, was performed during regular working hours six (6) days in a week, which circumstance must have made it virtually impossible for them to carry on any additional and independent auto painting business outside the premises of Broadway Motors. Finally, Apolinario and his men were engaged in the performance of a line of work -- automobile painting -- which was directly related to, if not an integral part altogether of the regular business operations of petitioner Corporation -- i.e., that of an automotive repair shop.

We conclude that while there is present in the relationship between petitioner Corporation and private respondent some factors suggestive of an owner-independent contractor relationship (e.g., the manner of payment of compensation to Apolinario and his "Contract Workers"), many other factors are present which demonstrate that that relationship is properly characterized as one of employer-employee. We conclude, further, that the same factors indicate the existence of a "labor-only" contracting arrangement between petitioner Corporation on the one hand as owner, and upon the other hand, Apolinario as "labor-only" contractor and his "Contract Workers". Thus, an employer-employee relationship must be held to have existed between petitioner Corporation and private respondent, whether considered as a result of the contractual arrangements between them or as a result of the operation of the Labor Code (at least from 1974 onwards) and its Implementing Rules. It follows, finally, that the ruling of public respondent NLRC that petitioner Corporation and private respondent were employer and employee, respectively, cannot be regarded as constituting a grave abuse of discretion or as rendered without or in excess of jurisdiction.

In respect of public respondent NLRC's finding that Apolinario was dismissed without any opportunity to present his side on the charge against him of participating in the fist-fight with petitioner Corporation's shop superintendent, no compelling reason has been shown by the petitioner Corporation why we should overturn such finding of fact.

WHEREFORE, the Petition for Certiorari is DISMISSED. The decision of the public respondent National Labor Relations Commission dated 4 February 1987 is hereby AFFIRMED. Costs against the petitioner.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] Rollo, pp. 18-19.

[2] Id., pp. 43-50.

[3] Id., p. 69.

[4] Id., pp. 57-64.

[5] *Philippine Bank of Communications vs. National Labor Relations Commission*, 146 SCRA 347 [1986].

[6] *Work Contract*, par. 3.

[7] Id., par. 5-c.

[8] Id., par. 5-e.

[9] Id., par. 5-a.

[10] Id., par. 5-h.

[11] 146 SCRA 347, 356 (1986).

[12] Id., par. 1.

[13] Id., par. 5-g.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.