

**DANILO B. TABAS, EDUARDO A. BONDOC, RAMON M. BRIONES,
EDUARDO R. ERISPE, JOEL MADRIAGA, ARTHUR M. ESPINO, AMARO
BONA, FERDINAND CRUZ, FEDERICO A. BELITA, ROBERTO P. ISLES,
ELMER...**

G.R. No. 80680. January 26, 1989

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

On July 21, 1986, July 23, 1986, and July 28, 1986, the petitioners petitioned the National Labor Relations Commission for reinstatement and payment of various benefits, including minimum wage, overtime pay, holiday pay, thirteen-month pay, and emergency cost of living allowance pay, against the respondent, the California Manufacturing Company.[1]

On October 7, 1986, after the cases had been consolidated, the California Manufacturing Company (California) filed a motion to dismiss as well as a position paper denying the existence of an employer-employee relation between the petitioners and the company and, consequently, any liability for payment of money claims.[2] On motion of the petitioners, Livi Manpower Services, Inc. was impleaded as a party-respondent.

It appears that the petitioners were, prior to their stint with California, employees of Livi Manpower Services, Inc. (Livi), which subsequently assigned them to work as "promotional merchandisers"[3] for the former firm pursuant to a manpower supply agreement. Among other things, the agreement provided that California "has no control or supervision whatsoever over [Livi's] workers with respect to how they accomplish their work or perform [California's] obligation";[4] that Livi "is an independent contractor and nothing herein contained shall be construed as creating between [California] and [Livi] ... the relationship of principal[-]agent or employer[-]employee"[5]; that "it is hereby agreed that it is the sole responsibility of [Livi] to comply with all existing as well as future laws, rules and regulations pertinent to employment of labor"[6]; and that "[California] is free and harmless from any liability arising from such labor laws or from any accident that may befall workers and employees of [Livi] while in the performance of their duties for [California]."[7]

It was further expressly stipulated that the assignment of workers to California shall be on a "seasonal and contractual basis"; that "[c]ost of living allowance and the 10 legal holidays will be charged directly to [California] at cost"; and that "[p]ayroll for the preceeding [sic] week [shall] be delivered by [Livi] at [California's] premises." [8]

The petitioners were then made to sign employment contracts with durations of six months, upon the expiration of which they signed new agreements with the same period, and so on. Unlike regular California employees, who received not less than P2,823.00 a month in addition to a host of fringe benefits and bonuses, they received P38.56 plus P15.00 in allowance daily.

The petitioners now allege that they had become regular California employees and demand, as a consequence

whereof, similar benefits. They likewise claim that pending further proceedings below, they were notified by California that they would not be rehired. As a result, they filed an amended complaint charging California with illegal dismissal.

California admits having refused to accept the petitioners back to work but deny liability therefor for the reason that it is not, to begin with, the petitioners' employer and that the "retrenchment" had been forced by business losses as well as expiration of contracts.[9] It appears that thereafter, Livi reabsorbed them into its labor pool on a "wait-in or standby" status.[10]

Amid these factual antecedents, the Court finds the single most important issue to be: Whether the petitioners are California's or Livi's employees.

The labor arbiter's decision,[11] a decision affirmed on appeal,[12] ruled against the existence of any employer-employee relation between the petitioners and California ostensibly in the light of the manpower supply contract, *supra*, and consequently, against the latter's liability as and for the money claims demanded. In the same breath, however, the labor arbiter absolved Livi from any obligation because the "retrenchment" in question was allegedly "beyond its control." [13] He assessed against the firm, nevertheless, separation pay and attorney's fees.

We reverse.

The existence of an employer-employee relation is a question of law and being such, it cannot be made the subject of agreement. Hence, the fact that the manpower supply agreement between Livi and California had specifically designated the former as the petitioners' employer and had absolved the latter from any liability as an employer, will not erase either party's obligations as an employer, if an employer-employee relation otherwise exists between the workers and either firm. At any rate, since the agreement was between Livi and California, they alone are bound by it, and the petitioners cannot be made to suffer from its adverse consequences.

This Court has consistently ruled that the determination of whether or not there is an employer-employee relation depends upon four standards: (1) the manner of selection and engagement of the putative employee; (2) the mode of payment of wages; (3) the presence or absence of a power of dismissal; and (4) the presence or absence of a power to control the putative employee's conduct.[14] Of the four, the right-of-control test has been held to be the decisive factor.[15]

On the other hand, we have likewise held, based on Article 106 of the Labor Code, hereinbelow reproduced:

ART. 106. Contractor or sub-contractor. - Whenever an employee enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

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.

The Secretary of Labor may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provisions of this Code.

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 person 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.

that notwithstanding the absence of a direct employer-employee relationship between the employer in whose favor work had been contracted out by a "labor-only" contractor, and the employees, the former has the responsibility, together with the "labor-only" contractor, for any valid labor claims,[16] by operation of law. The reason, so we held, is that the "labor-only" contractor is considered "merely an agent of the employer,"[17] and liability must be shouldered by either one or shared by both.[18]

There is no doubt that in the case at bar, Livi performs "manpower services",[19] meaning to say, it contracts out labor in favor of clients. We hold that it is one, notwithstanding its vehement claims to the contrary, and notwithstanding the provision of the contract that it is "an independent contractor"[20]. The nature of one's business is not determined by self-serving appellations one attaches thereto but by the tests provided by statute and prevailing case law.[21] The bare fact that Livi maintains a separate line of business does not extinguish the equal fact that it has provided California with workers to pursue the latter's own business. In this connection, we do not agree that the petitioners had been made to perform activities "which are not directly related to the general business of manufacturing,"[22] California's purported "principal operational activity".[23] The petitioner's had been charged with "merchandising [sic] promotion or sale of the products of [California] in the different sales outlets in Metro Manila including task and occasional [sic] price tagging,"[24] an activity that is doubtless, an integral part of the manufacturing business. It is not, then, as if Livi had served as its (California's) promotions or sales arm or agent, or otherwise, rendered a piece of work it (California) could not have itself done; Livi, as a placement agency, had simply supplied it with the manpower necessary to carry out its (California's) merchandising activities, using its (California's) premises and equipment.[25]

Neither Livi nor California can therefore escape liability, that is, assuming one exists.

The fact that the petitioners have allegedly admitted being Livi's "direct employees"[26] in their complaints is nothing conclusive. For one thing, the fact that the petitioners were (are), will not absolve California since liability has been imposed by legal operation. For another, and as we indicated, the relations of parties must be judged from case to case and the decree of law, and not by declarations of parties.

The fact that the petitioners have been hired on a "temporary or seasonal" basis merely is no argument either. As we held in *Philippine Bank of Communications v. NLRC*,[27] a temporary or casual employee, under Article 281 of the Labor Code, becomes regular after service of one year, unless he has been contracted for a specific project. And we cannot say that merchandising is a specific project for the obvious reason that it is an activity related to the day-to-day operations of California.

It would have been different, we believe, had Livi been discretely a promotions firm, and that California had hired it to perform the latter's merchandising activities. For then, Livi would have been truly the employer of its employees, and California, its client. The client, in that case, would have been a mere patron, and not an employer. The employees would not in that event be unlike waiters, who, although at the service of customers, are not the latter's employees, but of the restaurant. As we pointed out in the *Philippine Bank of Communications* case:

xxx xxx xxx

x x x The undertaking given by CESI in favor of the bank was not the performance of a specific job -- for

instance, the carriage and delivery of documents and parcels to the addresses thereof. There appear to be many companies today which perform this discrete service, companies with their own personnel who pick up documents and packages from the offices of a client or customer, and who deliver such materials utilizing their own delivery vans or motorcycles to the addressees. In the present case, the undertaking of CESI was to provide its client-the bank-with a certain number of persons able to carry out the work of messengers. Such undertaking of CESI was complied with when the requisite number of persons were assigned or seconded to the petitioner bank. Orpiada utilized the premises and office equipment of the bank and not those of CESI. Messengerial work -- the delivery of documents to designated persons whether within or without the bank premises--is of course directly related to the day-to-day operations of the bank. Section 9(2) quoted above does not require for its applicability that the petitioner must be engaged in the delivery of items as a distinct and separate line of business.

Succinctly put, CESI is not a parcel delivery company: as its name indicates, it is a recruitment and placement corporation placing bodies, as it were, in different client companies for longer or shorter periods of time. x x x[28]

In the case at bar, Livi is admittedly an "independent contractor providing temporary services of manpower to its clients." [29] When it thus provided California with manpower, it supplied California with personnel, as if such personnel had been directly hired by California. Hence, Article 106 of the Code applies

The Court need not therefore consider whether it is Livi or California which exercises control over the petitioners vis-a-vis the four barometers referred to earlier, since by fiction of law, either or both shoulder responsibility.

It is not that by dismissing the terms and conditions of the manpower supply agreement, we have, hence, considered it illegal. Under the Labor Code, genuine job contracts are permissible, provided they are genuine job contracts. But, as we held in *Philippine Bank of Communications*, supra, when such arrangements are resorted to "in anticipation of, and for the very purpose of making possible, the secondment" [30] of the employees from the true employer, the Court will be justified in expressing its concern. For then that would compromise the rights of the workers, especially their right to security of tenure.

This brings us to the question: What is the liability of either Livi or California?

The records show that the petitioners had been given an initial six-month contract, renewed for another six months. Accordingly, under Article 281 of the Code, they had become regular employees -- of California -- and had acquired a secure tenure. Hence, they cannot be separated without due process of law.

California resists reinstatement on the ground, first, and as we said, that the petitioners are not its employees, and second, by reason of financial distress brought about by "unfavorable political and economic atmosphere" [31] "coupled by the February Revolution." [32] As to the first objection, we reiterate that the petitioners are its employees and who, by virtue of the required one-year length-of-service, have acquired a regular status. As to the second, we are not convinced that California has shown enough evidence, other than its bare say-so, that it had in fact suffered serious business reverses as a result alone of the prevailing political and economic climate. We further find the attribution to the February Revolution as a cause for its alleged losses to be gratuitous and without basis in fact.

California should be warned that retrenchment of workers, unless clearly warranted, has serious consequences not only on the State's initiatives to maintain a stable employment record for the country, but more so, on the workingman himself, amid an environment that is desperately scarce in jobs. And, the National Labor Relations Commission should have known better than to fall for such unwarranted excuses and nebulous claims.

WHEREFORE, the petition is GRANTED. Judgment is hereby RENDERED: (1) SETTING ASIDE the decision, dated March 20, 1987: and the resolution, dated August 19, 1987, (2) ORDERING the respondent, the California

Manufacturing Company, to REINSTATE the petitioners with full status and rights of regular employees; and (3) ORDERING the respondent, the California Manufacturing Company, and the respondents, Livi Manpower Services, Inc. and/or Lily-Victoria A. Azarcon, to PAY, jointly and severally, unto the petitioners: (a) backwages and differential pays effective as and from the time they had acquired a regular status under the second paragraph, of Section 281, of the Labor Code, but not to exceed three (3) years, and (b) all such other and further benefits as may be provided by existing collective bargaining agreement(s) or other relations, or by law, beginning such time; and (4) ORDERING the private respondents to PAY unto the petitioners attorney's fees equivalent to ten (10%) percent of all money claims hereby awarded, in addition to those money claims.

The private respondents are likewise ORDERED to PAY the costs of this suit.

IT IS SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Rollo, 112-114.

[2] Id., 114.

[3] Id., 117.

[4] Id., 117-A.

[5] Id.

[6] Id., 118.

[7] Id.

[8] Id., 120-121.

[9] Id., 123.

[10] Id.

[11] Emerson Tumanon, Labor Arbiter.

[12] Zapanta, Domingo, Comm.; Lucas, Daniel and Abella, Oscar, Comms.; Concurring.

[13] Id., 131.

[14] Broadway Motors, Inc. v. NLRC, No. L-78382, December 14, 1987, 156 SCRA 522, 525.

[15] Supra, 525.

[16] Philippine Bank of Communications v. NLRC, No. L-66598, December 19, 1986, 146 SCRA 347, 356.

[17] Supra, 356.

[18] Supra.

[19] Rollo, Id., 119.

[20] Id., 120.

[21] Sevilla v. Court of Appeals, G.R. Nos. 41182-3, April 15, 1988.

[22] Rollo, Id., 130.

[23] Id.

[24] Id.

[25] See Philippine Bank of Communications v. NLRC, Supra, 358.

[26] Rollo, Id., 119.

[27] Supra, 359.

[28] Supra, 358; emphasis in original.

[29] Rollo, Id., 182.

[30] Supra, 355.

[31] Rollo, Id., 130.

[32] Id., 123.

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