

**DIOSCORO RABAGO, JOSELITO LAGUNA, MELCHOR ESCOLTURA,  
MORENO MANGABAT, FORTUNATO SARSONAS, ELESEO ASEDELLO,  
ROMAN DELOS ARCOS, GREGORIO RETARDO, PAULINO IGNACIO,  
EMILIANO LAGAHIT...**

*G.R. No. 82868. August 05, 1991*

Ponente: CRUZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-82868/>

---

**CRUZ, J.:**

In 1981, Ace Building Care and the Philippine Tuberculosis Society entered into a contract under which the former would provide the latter with janitorial and allied services for a stipulated consideration, subject to such adjustment as might be subsequently required by law. The contract was renewed yearly until 1985, when the services were placed under public bidding and a new contract was awarded to another company, which then took over from ABC.

On September 9, 1985, the 41 janitors ABC had earlier detailed to PTS filed a complaint with the National Labor Relations Commission against both ABC and PTS for unpaid wage differentials under Wage Order Nos. 5 and 6, holiday premium pay, damages and attorney's fees, reimbursement of cash bond, incentive leave pay and bonus and separation pay. ABC filed a cross-claim against PTS, contending that the latter was liable for the statutory increases, while PTS moved to dismiss on the ground that it belonged to the public sector and was not covered by the Labor Code.

On the basis of the position papers and other evidence submitted by the parties, Labor Arbiter Felipe T. Garduque II held on September 30, 1987, that the complainants were not entitled to legal holiday pay and to reimbursement of cash bond or separation pay except for five of them who were allowed separation pay. The decision also awarded incentive leave with pay except for seven of them, who had worked less than one year.[1]

The Labor Arbiter also held ABC and PTSI jointly and severally liable for payment of the wage differentials under Wage Orders Nos. 5 and 6.

Both ABC and PTSI appealed to the NLRC, which on February 15, 1988, affirmed the decision with respect to the award of separation pay and service incentive leave with pay but held that it was ABC alone that should pay the wage differentials under Wage Orders Nos. 5 and 6.[2]

The complainants and ABC filed their respective motions for reconsideration and, upon denial thereof, filed the separate petitions for certiorari with this Court. Upon motion of ABC, we issued on May 11, 1988, a temporary restraining order enjoining the NLRC from enforcing and/or carrying out its decision dated February 15, 1988. On September 28, 1988, we consolidated the two petitions.

In G.R. No. 82868, the petitioners-complainants argue that the respondent Commission erred in not holding respondents PTS and ABC jointly and solidarily liable for the differential pay required under Wage Orders Nos. 5 and 6.

In G.R. No. 82932, petitioner ABC raises three issues, to wit:

1. Whether or not herein petitioner Ace Building Care is liable for the wages and allowances mandated by Wage Orders Nos. 5 and 6; and whether or not herein respondent Philippine Tuberculosis Society, Inc. should be exempted from the payment of the wages and allowances under the said Wage Orders to the individual respondents.
2. Whether or not herein petitioner is liable to the individual respondents for the payment of the service incentive pay.
3. Whether or not herein petitioner is liable to the five individual respondents for the payment of separation pay.

The first and common issue in these two petitions has already been resolved by this Court in *Eagle Security Agency, Inc. vs. NLRC*,<sup>[3]</sup> where we held:

Petitioners' solidary liability for the amounts due the security guards finds support in Articles 106, 107 and 109 of the Labor Code which state that:

Art. 106. Contractor or subcontractor. - Whenever an employer 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 that he is liable to employees directly employed by him.

x x x

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.

x x x

Art. 109. Solidary liability. - The provisions of existing laws to the contrary notwithstanding, every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of this Code. For purposes of determining the extent of the civil liability under this Chapter, they shall be considered as direct employers.

This joint and several liability of the contractor and the principal is mandated by the Labor Code to assure compliance of the provisions therein including the statutory minimum wage (Article 99, Labor Code). The contractor is made liable by virtue of his status as direct employer. The principal, on the other hand, is made the indirect employer of the contractor's employees for purposes of paying the employees their wages should the contractor be unable to pay them. This joint and several liability facilitates, if not guarantees, payment of the workers' performance of any work, task, job or project, thus giving the workers ample protection as mandated by the 1987 Constitution (See Article II, Sec. 18 and Article XIII, Sec. 3).

In the case at bar, it is beyond dispute that the security guards are the employees of EAGLE (See Article VII, Sec. 2 of the Contract for Security Services; G.R. No. 81447, Rollo, p. 34). That they were assigned to guard the premises of PTSI pursuant to the latter's contract with EAGLE and that neither of these two entities paid their wage and allowance increases under the subject wage orders are also admitted (See Labor Arbiter's Decision, p. 2; G.R. No. 81447, Rollo, p. 75). Thus, the application of the aforecited provisions of the Labor Code on joint and several liability of the principal and contractor is appropriate. (See *Del Rosario & Sons*

Logging Enterprises, Inc. v. NLRC, G.R. No. 64204, May 31, 1985, 136 SCRA 669).

On the disavowal of liability by PTS on the ground that it belongs to the public sector, the Court declared through Justice Cortes:

PTSI also alleges that it is exempt from payment under the subject Wage Orders because it is a public sector employer while the Wage Orders cover only employers and employees in the private sector (G.R. No. 81447, Petition, p. 9; Rollo, p. 10). This is unmeritorious. The definition of a public sector employer relied upon by PTSI is relevant only for purposes of coverage under the Employees' Compensation. Moreover, the Labor Code provides that as used in Book Three, Title II on Wages, the term "employer" includes "the Government and all its branches, subdivisions and instrumentalities, all government-owned or controlled corporations and institutions..." (Article 97(b), Labor Code).

In his manifestation dated November 8, 1989, the Solicitor General declared that his office was "abiding by the aforementioned ruling of the Honorable Court." PTS, on the other hand, urges us to re-examine the said case, insisting that the Philippine Tuberculosis Society is expressly mentioned as belonging to the public sector in Section 3 of the Rules Implementing Title II, Book IV of the Labor Code, thus:

SEC. 3. Employer - (a) The term shall mean any person natural or juridical, domestic or foreign, who carries on in the Philippines any trade, business, industry, undertaking or activity of any kind and uses the services of another person who is under his orders as regards the employment.

(b) an employer shall belong to either:

(1) The public sector covered by the GSIS, comprising the National Government, including government-owned or controlled corporations, the Philippine Tuberculosis Society, the Philippine National Red Cross, and the Philippine Veterans Bank;

(2) The private sector covered by the SSS, comprising all employers other than those defined in the immediately preceding paragraph. (Underscoring supplied)

PTS adds:

While it is true that the term "employer" as used in Title II, Book Three of the Labor Code, includes "the Government and all its branches, subdivisions and instrumentalities, all government-owned or controlled corporations and institutions ...," it does not follow that the government and all its branches, subdivisions, agencies and instrumentalities are covered by Wage Orders Nos. 5 and 6. If it were so, then every employee in the government receiving the minimum wage would be entitled to wage adjustments thereunder. This, however, is not what the wage orders intended so their application had to be limited to "workers in the private sector."

We disagree.

As the Court sees it, the wage orders do not apply to the direct employees of PTS who in fact are members of the Government Service Insurance System. The complainants in G.R. No. 82868 unquestionably belong to the private sector and for this reason are covered by the Social Security System. They are the indirect employees of the PTS and as such are entitled to hold it liable, solidarily with their direct employer, for their unpaid wage differentials. In this sense, the PTS is correctly classified as an employer coming under the private sector. The reference to it as belonging to the public sector relates only to its direct employees "for purposes of coverage under the Employees' Compensation Commission," not to its indirect employees coming from the private sector.

The issues regarding the separation pay and the service incentive leave pay are factual. We have said often enough that the findings of fact of quasi-judicial agencies which have acquired expertise on the specific matters

entrusted to their jurisdiction are accorded by this Court not only respect but even finality if they are supported by substantial evidence.[4]

We are satisfied that the complainants were able to establish by Exhibit "B" their length of service to entitle them to service incentive leave with pay. The argument that the affidavit is hearsay because the affiants were not presented for cross-examination is not persuasive because the rules of evidence are not strictly observed in proceedings before administrative bodies like the NLRC, where decisions may be reached on the basis of position papers only. It is also worth noting that ABC has not presented any evidence of its own to disprove the complainant's claim. As the Solicitor General correctly points out, it would have been so easy to submit the complainants' employment records, which were in the custody of ABC, to show that they had served for less than one year.

A slight modification must be made, though, in the case of Norma Moreno Mangabat, who was denied the service incentive leave with pay, possibly through an oversight. Exhibit "B" shows that her employment was from "7/79 to 12/81 and 3/84 to 7/84." Section 3 of Rule V, Book III of the Omnibus Rules Implementing the Labor Code, provides that the term "at least one year service" shall mean service within 12 months, whether continuous or broken, reckoned from the date the employee started working.

The submission that the five complainants awarded separation pay were not entitled thereto because their terms expired with the contract with PTS is also not acceptable. ABC never offered any evidence that the employment of the claimants was co-terminal with the janitorial contract. We agree that the termination of ABC's contract with PTS resulted in a partial closure or cessation of operations of ABC that called for the application (if only by analogy) of Article 283 of the Labor Code providing in part as follows:

x x x In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

Our conclusion is that Ace Building Care and the Philippine Tuberculosis Society are solidarily liable to the complainants for their differential pay under Wage Orders Nos. 5 and 6, PTS being considered in the circumstances of this case to be the indirect employer of workers in the private sector. ABC is liable for the payment of the separation pay and incentive leave pay of the complainants mentioned in the challenged decisions, with the modification only that Norma Moreno Mangabat shall also be entitled to service incentive leave with pay.

In view of the above findings, it is no longer necessary to resolve the motion of the complainants that the supersedeas bond fixed by the Court for the issuance of the temporary restraining order on May 11, 1988, be increased to P500,000.00.

ACCORDINGLY, judgment is rendered as follows:

- (1) In G.R. No. 82868, the decision of respondent NLRC is SET ASIDE and that of Labor Arbiter Felipe Garduque II is REINSTATED, with the modification that Norma Moreno Mangabat shall also be granted service incentive leave with pay.
- (2) In G.R. No. 82932, the petition is DISMISSED, with costs against the petitioner.
- (3) The temporary restraining order dated May 11, 1988, is LIFTED.

**SO ORDERED.**

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

---

[1] G.R. No. 82932, Rollo, p. 57.

[2] Ibid., p. 18.

**[3] 173 SCRA 479.**

[4] Omar K. Al-Esayi and Company, Ltd. vs. Flores, 183 SCRA 458; Chua vs. NLRC, 182 SCRA 353; Pagkakaisa ng mga Manggagawa vs. Ferrer?Calleja, 181 SCRA 119.

**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.