

**SPARTAN SECURITY & DETECTIVE AGENCY, INC., PETITIONER,
VS. HON. NATIONAL LABOR RELATIONS COMMISSION, AQUILINO
BARONA, JR., RESPONDENTS.**

G.R. No. 90693. September 03, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

The main issue for resolution is who shall be responsible for the payment to security guards of the salary differentials resulting from the increases in minimum wages mandated by Wage Orders Nos. 5 and 6. The security agency and the principal-client point to each other, but the security guards point to both of them.

Private respondents Aquilino Barona, Jr. and Noe Semillano were employed as security guards by Spartan Security & Detective Agency, Inc. They were detailed to Home Savings Bank & Trust Company,* with Barona posted at its Balintawak branch and Semillano at its Sta. Cruz branch.

Barona and Semillano took official leaves of absence on April, 1987, and August 13, 1987, respectively. Upon reporting back for work, they were not returned to their original posts or given any assignment. They then filed separate complaints against Spartan and the Bank for illegal dismissal with claims for illegal deductions, underpayment, overtime pay, legal and holiday pay and rest day pay.

On July 29, 1988, Labor Arbiter Felipe T. Garduque II disposed of Barona's complaint thus:

ACCORDINGLY, Respondent Spartan Security Detective Agency is hereby ordered to reinstate herein complainant Aquilino Barona, Jr. within ten (10) days from receipt hereof to his former position or any substantially equivalent assignment without loss of seniority right and privileges with three (3) months back wages.

Further, both Respondents agency and Home Savings Bank (Balintawak Branch, Q.C.) are hereby held solidarily liable to pay herein complainant within the same period the sum of P30,749.00 with ten percent (10%) attorney's fees representing under-payment of salary/living allowance and other benefits, as computed by the latter and based on the adjusted Padpao rates for security guards under Wage Order No. 6, primer No. 2, Workers' Rights Series, Institute of Manpower Studies, 1985.

As regards the cash bond, the same should remain with the respondent agency until complainant resigns or is separated from the service.

All other claims are hereby denied for lack of merit and by reason of prescription.

Both Spartan and the Bank appealed to the NLRC, which on December 29, 1988, affirmed the aforesaid decision.[1] However, it ordered Spartan to assign Barona to other available posts because reinstatement to his former position was no longer feasible owing to the termination of the contract of service between Spartan and the Bank.

Upon denial of its motion for reconsideration, Spartan came to this Court on November 9, 1989, in a petition for review on certiorari. This was docketed as G.R. No. 90693.

The Bank, on the other hand, settled half of the award by paying P20,000.00 to Barona on February 6, 1990.

Meanwhile, Labor Arbiter Benigno C. Villarente, Jr. had rendered a decision dated August 22, 1988, disposing of Semillano's case as follows:

WHEREFORE, all the foregoing premises considered, judgment is hereby rendered declaring that complainant Noe Semillano was illegally dismissed and ordering respondent Spartan Security and Detective Agency, Inc. to:

- (a) Reinstate complainant as security guard without loss of seniority rights at the adjusted rate under the law;
 - (b) Refund to him the amount of P880.00 as shown by the evidence as having been illegally deducted P820 only as admitted by respondent; and
- jointly and severally with co-respondent Home Savings Bank and Trust Co., to:
- (c) Pay complainant his full back wages and other benefits under existing laws effective his dismissal on September 1, 1987 until actual reinstatement, or the tentative amount of P26,217.91 as of August 20, 1988 and determined by the Computation and Examination Unit of this Office;
 - (d) Pay him the salary differential and overtime pay for the four-hour excess of eight hours daily duties as security guard from August 1985 (four days - Exhs. "C" and "D") until April 30, 1987 (Exh. "C") in the amount P11,433.18 and for the two hour excess from May 1, 1987 to August 15, 1987 (Exh. "C") in the amount of P4,467.84 or a total differential of P15,901; and
 - (e) Pay the attorney's fees equivalent to 10% of all the above monetary awards.

The claim for moral damages is hereby dismissed for lack of merit.

On appeal, this decision was affirmed by the respondent Commission on September 29, 1989.[2] However, it required payment of Semillano's back wages from the date of his license renewal up to his actual reinstatement and held Spartan solely liable therefor inasmuch as the Bank had no participation in Semillano's dismissal.

On February 6, 1990, the Bank paid P7,950.50 or half of the awarded claim of P15,901.00, to Semillano. He in turn signed a Waiver, Quitclaim and Release in its favor without prejudice to his right to pursue the balance against Spartan. This waiver was approved by the NLRC in its resolution of May 29, 1990, denying Spartan's motion for reconsideration.

On July 6, 1990, Spartan filed a petition for review on certiorari, docketed as G.R. No. 93961. Upon its motion, this petition was consolidated with G.R. No. 90693.

On August 27, 1990, Labor Arbiter Villarente ordered the execution of the judgment subject of case G.R. No. 93961. Upon Spartan's motion, we issued a temporary restraining order on October 1, 1990, enjoining the enforcement of the writ of execution.

In these two consolidated petitions, Spartan asks us to hold the Bank solely liable for the differential pay of the two employees. It invokes Section 9 of Wage Order No. 6, which provides:

In case of contracts for construction projects and for security, janitorial and similar services, the increase in the minimum wage and allowance rates of the workers shall be borne by the principal or client of the construction/service contractor and the contract shall be deemed amended accordingly. x x x

In point is the case of *Eagle Security Agency, Inc. vs. NLRC*,^[3] where this Court held:

The Wage Orders are explicit that payment of the increases are "to be borne" by the principal or client. "To be borne", however, does not mean that the principal, PTSI in this case, would directly pay the security guards the wage and allowance increases because there is no privity of contract between them. The security guards' contractual relationship is with their immediate employer, EAGLE. As an employer, EAGLE is tasked, among others, with the payment of their wages [See Article VII Sec. 3 of the Contract for Security Services, *Supra* and *Bautista v. Inciong*, G.R. No. 52824, March 16, 1988, 158 SCRA 665].

On the other hand, there existed a contractual agreement between PTSI and EAGLE wherein the former availed of the security services provided by the latter. In return, the security agency collects from its client payment for its security services. This payment covers the wages for the security guards and also expenses for their supervision and training, the guards' bonds, firearms with ammunitions, uniforms and other equipments, accessories, tools, materials and supplies necessary for the maintenance of a security force.

Premises considered, the security guards' immediate recourse for the payment of the increases is with their direct employer, EAGLE. However, in order for the security agency to comply with the new wage and allowance rates it has to pay the security guards, the Wage Orders made specific provision to amend existing contracts for security services by allowing the adjustment of the consideration paid by the principal to the security agency concerned. What the Wage Orders require, therefore, is the amendment of the contract as to the consideration to cover the service contractor's payment of the increases mandated. In the end, therefore, ultimate liability for the payment of the increases rests with the principal.

The above ruling was affirmed in the case of *Rabago v. NLRC*,^[4] decided only last year.

In the instant cases, it is not disputed that Barona and Semillano were employees of Spartan. As such, they were entitled to the wage increases required under Wage Orders Nos. 5 and 6 from their employer, Spartan. In turn, Spartan could ask the Bank, where they were posted, to make the necessary adjustment in their security contract to cover the said increases.

The two employees were not privy to the contract of service between Spartan and the Bank. Nevertheless, they could go after Spartan and/or the Bank for their wage differentials under the rule on solidary liability established by Articles 106, 107 and 109 of the Labor Code providing as follows:

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 of the work performed under the contract, in the same manner and 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 any provision of this Code. For purposes of determining the extent of their civil liability under this Chapter, they

shall be considered as direct employers.

As we explained in *Eagle*, this joint and several liability of the contractor and the principal is mandated by the Labor Code to ensure observance of its provisions, including Article 99 on the minimum wage. 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 to secure payment of their wages should the contractor be unable to pay them. This arrangement in conformity with the constitutional mandate for the protection of the working class pursuant to the social justice policy.

It is worth stressing that while Spartan and the Bank are jointly and severally answerable for the underpayment, Spartan has the right of reimbursement from the Bank under Article 1217 of the Civil Code, reading as follows:

Payment made by one of the solidary debtors extinguishes the obligation. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept.

He who made the payment may claim from his co-debtors only the share which corresponds to each, with the interest for the payment already made. If the payment is made before the debt is due, no interest for the intervening period may be demanded. x x x.

As already stated, the Bank had already paid half of the differential wages of Barona and Semillano. Under the above-discussed law and jurisprudence, it is still liable to them for the other half.

We come now to the counter-petition of private respondent Barona.

Barona prays that the award of three months back wages be modified and increased to three years because he was dismissed on April 25, 1987, and payment of his claims has been unduly delayed by Spartan. He is also asking for moral and exemplary damages and other available relief.

The finding of illegal dismissal warrants not only reinstatement of the dismissed employee but also the payment to him of three years back wages, conformably to existing policy. The award in his favor must therefore be accordingly adjusted.

Barona's claim for moral and exemplary damages must be rejected. Moral damages are recoverable only where the dismissal of the employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy.[5] Exemplary damages may be awarded only if the dismissal was effected in a wanton, oppressive or malevolent manner.[6] Those circumstances have not been established in this case.

WHEREFORE, the petitions are DISMISSED and the challenged resolutions of the NLRC are AFFIRMED as above modified. The temporary restraining order issued on October 1, 1990 is hereby LIFTED. Costs against the petitioner.

SO ORDERED.

Griño-Aquino, Medialdea, and Bellosillo, JJ., concur.

* Now known as Home Bankers Savings & Trust Company.

[1] Penned by Commissioner Roberto P. Tolentino, with Commissioners Dulay and Corleto, concurring.

[2] Penned by Commissioner Daniel M. Lucas, Jr., with Commissioners Zapanta and Abella, concurring.

[3] 173 SCRA 479.

[4] 200 SCRA 158.

[5] Article 1701 of the Civil Code of the Philippines and Article 2219 (10) in relation to Article 21 of the same Code; *Primero v. IAC*, 156 SCRA 435; *Maglutac v. NLRC*; 189 SCRA 767.

[6] Article 2232 of the Civil Code of the Philippines; *National Service Corp., et al. v. NLRC*, 168 SCRA 122, *Maglutac v. NLRC*, *Supra*.

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