

**CANLUBANG SECURITY AGENCY CORPORATION, PETITIONER, VS.
NATIONAL LABOR RELATIONS COMMISSION AND ARSENIO A.
BARTOLAY, REYNALDO ACOSTA, JANUARIO AGUADA, AUGUSTIA E.
AGUILA, LEONCIO...**

G.R. No. 97492. December 08, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

The real issue raised in this illegal dismissal case is whether or not respondent National Labor Relations Commission (NLRC) committed grave abuse of discretion in ruling that the petitioner, Canlubang Security Agency (CSA, for short), and not Canlubang Automotive Resources Corporation (CARCO, for short), was the employer of the private respondents, Arsenio A. Bartolay, et al. (hereinafter referred to as "private respondents").

The facts, as narrated by the Solicitor General, are as follows:

"CARCO had a security service contract with CSA whereby the latter agreed to secure, guard and protect CARCO's properties and interest. This contractual relation continued until February 14, 1985 when CARCO notified CSA that in view of recent developments and performance of the security personnel detailed with CARCO, the latter decided to engage the services of another agency (Annex 'B', Petition).

"Sometime in February, 1985, several security guards, supervisors, and officers headed by private respondent Arsenio A. Bartolay, filed a complaint for illegal termination against CSA and CARCO. On May 14, 1985, however, private respondents filed a Motion to Dismiss said complaint as against CSA (Annex 'H', Petition). Pertinent allegations of said Motion read:

"“2. After a careful and thorough analysis of the circumstances giving rise to this case, we are convinced and of the conviction that we have no cause of action whatsoever against CSA, the latter not being our employer but CARCO.

““3. Hence, we hereby forever release and discharge CSA, its owners, officers, employees, successors and assigns from any and all manner of actions, suits, debts, claims, demands and liabilities whatsoever we now have or may have in law or equity against the said company, its owners, officers, employees, successors and assigns by reason or as a consequence of, or in connection with, or incident to, our employment as security guards, our intention being to release and discharge completely, absolutely and finally said CSA, its owners, officers, employees, successors or assigns;

““4. We further hereby waive, renounce and forego all claims, particularly separation pay, sick leave, vacation leave, and any other claim under any law or contract which we have or might have against CSA by virtue of our employment as security guards.’

"Labor Arbiter Cresencio Ramos, in his Order dated May 5, 1985 (Annex 'J', Petition), granted said Motion. CARCO appealed therefrom and resolving the same, the NLRC, in its Resolution dated January 26, 1986, set

aside the Order of Labor Arbiter Ramos and remanded the case to the Arbitration Branch for further proceedings. The NLRC observed that the Labor Arbiter erred in dismissing the case as against CSA which is an indispensable party to the case and as such should be impleaded as party respondent (Annex 'N', Petition).

"In said hearing, the CSA did not present any evidence and opted to adopt the evidence presented by private respondents.

"In the Decision dated September 15, 1988 (Annex 'B', Petition) Labor Arbiter Alvarez found private respondents' dismissal to be illegal but held only CSA liable therefor and dismissed the complaint as against CARCO for lack of employer-employee relationship.

"In an appeal therefrom, the NLRC, in its Resolution dated October 12, 1989, modified the foregoing Decision by dismissing the complaint as against both CSA and CARCO (Annex 'F', Petition).

"Private respondents moved to reconsider the foregoing Decision and the NLRC, in its Resolution dated December 19, 1990 (Annex 'A', Petition) granted the same and reinstated the appealed Decision of Labor Arbiter Alvarez which found only CSA liable to private respondents for illegal termination.

"CSA's Motion for Reconsideration was denied by the NLRC in its Resolution dated January 31, 1991 (Annex 'C', Petition).

"Hence, this Petition upon the contention that:

"In issuing the Resolution (Annex 'A') complained of Public Respondent National Labor Relations Commission (NLRC) acted with great abuse of discretion making the following findings which are contrary to law and evidence, to wit:

"I. NLRC's finding that the quitclaim clearly x x x was premised on an erroneous belief that respondent CARCO is the real employer (p. 9).

"II. NLRC's finding that to exonerate respondent (sic) CSA is contrary to the declared policy of the law to afford protection to labor and to assure them the right to security of tenure (p. 9).

"III. NLRC's finding that while rights may be waived, the same must not be contrary to law, public order, morals and good customs or prejudicial to a third person with a right recognized by law (p. 9).

"IV. NLRC's finding that the affidavit of Antonio Yulo, as officer of CSA is indeed self-serving and should be held suspect. His declaration cannot overcome the documentary evidence presented by respondent CARCO to controvert the same." (pp. 225-229, Rollo.)

The petition is without merit.

In determining the existence of employer-employee relationship, the following elements are generally considered, namely: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; (4) the power to control the employee's conduct - although the latter is the most important element (*Brotherhood Labor Unity Movement of the Philippines vs. Zamora*, 147 SCRA 49; *Social Security System vs. Court of Appeals*, 156 SCRA 383; *Broadway Motors, Inc. vs. NLRC*, 156 SCRA 522; *Bautista vs. Inciong*, 158 SCRA 665).

In the case at bar, the contract for security service entered into between CSA and CARCO provided, among other terms, as follows:

"1. Firearms and other ammunitions needed by the guards for effectively securing CARCO's premises shall be provided by CSA.

"2. Replacement of security guards shall be reposed on CSA.

"3. Discipline of the guards as well as their dismissal shall be within the regulation of the agency or CSA.

"4. The guards are employees of the agency and not that of the client company.

"5. All wages, benefits, and increments due under existing laws to the guards shall be the sole and exclusive responsibility of CSA.

"6. The agency shall hold CARCO 'free from any liability, cause or causes of action, case, claim, which may be filed by security guards employed by the agency which matters involve the provisions of wage act or laws ... or where such claim involve the question of employment as said guards are in no sense personnel or employees of the client company.'" (pp. 52-53, Rollo.)

The right-of-control test, i.e. "where the person for whom the services are performed reserves a right to control not only the end to be achieved but also the means to be used in reaching such as end" (Sevilla vs. Court of Appeals, 160 SCRA 171) belonging to petitioner CSA by express stipulation of its contract with CARCO, is determinative of the existence of employer-employee relationship between CSA and its guards, the private respondents herein. Where no employer-employee relationship has been proven to exist between the private respondents and CARCO, the labor case filed by the private respondents against CARCO with DOLE's arbitration body should be dismissed for there is no legal basis for the private respondents' claims for separation pay and other benefits against CARCO.

In the similar case of *AMERICAN PRESIDENT LINES vs. CLAVE* (114 SCRA 826, 833), we ruled:

"In the light of the foregoing standards, We fail to see how the complaining watchmen of the Marine Security Agency can be considered as employees of the petitioner. It is the agency that recruits, hires, and assigns the work of its watchmen. Hence, a watchman can not perform any security service for the petitioner's vessels unless the agency first accepts him as its watchman. With respect to his wages, the amount to be paid to a security guard is beyond the power of the petitioner to determine. Certainly, the lump sum amount paid by the petitioner to the agency in consideration of the latter's service is much more than the wages of any one watchman. In point of fact, it is the agency that quantifies and pays the wages to which a watchman is entitled.

"Neither does the petitioner have any power to dismiss the security guards. In fact, We fail to see any evidence in the record that it wielded such a power. It is true that it may request the agency to change a particular guard. But this, precisely, is proof that the power lies in the hands of the agency.

"Since the petitioner has to deal with the agency, and not the individual watchmen, on matters pertaining to the contracted task, it stands to reason that the petitioner does not exercise any power over the watchmen's conduct. Always, the agency stands between the petitioner and the watchmen; and it is the agency that is answerable to the petitioner for the conduct of its guards."

Petitioner CSA disclaims any liability for the termination of private respondents from their employment because of the QUITCLAIM/WAIVER contained in the latter's Motion to Dismiss their complaint against CSA based on their belief that their employer was CARCO and not CSA.

That argument deserves scant consideration for as the Solicitor General aptly observed:

"The alleged Quitclaim/Waiver is patently invalid being premised on a wrong conviction or belief. As pointed out above, the existence of an employer-employee relationship, as a condition for the availment of provisions of the Labor Code, is determined by evidence and jurisprudence and the task of determining the same is judicial in character.

"Consequently, private respondents may not arrogate unto themselves the authority to determine unilaterally,

the existence of an employer-employee relationship, otherwise, the disposition of the case would be made to depend, to a large extent, on the 'belief and conviction' of a party litigant and not on the evidence adduced and jurisprudence applicable thereto." (pp. 230-231, Rollo.)

The issue of whether employer-employee relationship existed between the parties is a question of fact which was resolved by the labor arbiter against CSA and upheld by the NLRC. Review of labor cases are confined to questions of jurisdiction or grave abuse of discretion. (*Aboitiz Shipping Employees Association vs. NLRC*, 186 SCRA 825.) In this case, we find that no grave abuse of discretion was committed by the NLRC. The findings of facts of the labor arbiter and the NLRC are binding on this Court.

WHEREFORE, the petition for certiorari is DISMISSED for lack of merit. No costs.

SO ORDERED.

Cruz, (Chairman), Padilla, and Bellosillo, JJ., concur.

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