

**DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS.
NATIONAL LABOR RELATIONS COMMISSION, GODOFREDO
MORILLO, JR., SUNDAY BACEA, ALFREDO COS AND ROGELIO
VILLANUEVA, RESPONDENTS.**

G.R. Nos. 100376-77. June 17, 1994

Ponente: PADILLA, J.

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PADILLA, J.:

This petition for review on certiorari (here treated as a petition for certiorari under Rule 65, Rules of Court) seeks to reverse and set aside the Resolution dated 11 June 1991 of respondent National Labor Relations Commission ("NLRC") in NLRC NCR Case Nos. 00-09--03383-87 and 00-10-03562-87, denying petitioner's motion for reconsideration, the dispositive part of which reads:

"Accordingly, the Bank's motion for reconsideration is hereby denied. The responsible officers of the Bank and its counsel are hereby warned, under pain of contempt, that we shall not tolerate their further delaying the execution of the subject award."[1]

Private respondents Godofredo Morillo, Sunday Bacea, Alfredo Cos and Rogelio Villanueva were hired as security guards by Confidential Investigation and Security Corporation ("CISCOR") on 19 May 1981, 21 August 1984, 22 January 1985, and 27 November 1985, respectively. In the course of their employment, private respondents were assigned to secure the premises of CISCOR's clients, among them, the herein petitioner, Development Bank of the Philippines ("DBP") which, in turn, assigned private respondents to secure one of its properties or assets, the Riverside Mills Corporation.

On 11 August 1987, private respondent Villanueva resigned from CISCOR. On 15 August 1987, private respondents Morillo, Bacea and Cos followed suit in resigning from CISCOR. Thereafter, private respondents claimed from CISCOR the return of their cash bond and payment of their 13th month pay and service incentive leave pay. For failure of CISCOR to grant their claims, private respondents Villanueva and Cos filed against CISCOR and its President/Manager Ernesto Medina NLRC NCR Case No. 00-10-3562-87 on 13 October 1987, while private respondents Morillo and Bacea filed NLRC NCR Case No. 00-09-3383-87 on 29 September 1987. In said two (2) cases, private respondents sought recovery of their cash bond, payment of 13th month pay, and their five-day service incentive leave pay. The two (2) cases were consolidated and assigned to Labor Arbiter Crescencio Iniego.

In their position paper filed on 23 November 1987, private respondents (as complainants) alleged that they tendered their resignations in August 1987 upon the assurance of CISCOR that they would be paid the cash benefits due them. For failure of CISCOR to comply, private respondents claimed violations committed by CISCOR and Medina, specifically, the non-payment of their 13th month pay, five (5) day service incentive leave pay from the date of employment to the time of their separation, non-refund of their cash bond, non-payment of legal holiday pay and rest day pay. On the other hand, CISCOR and Medina in their position paper filed on 3

March 1988 admitted that private respondents were former security guards of CISCOR. They added, however, that sometime in 1987, petitioner allegedly formed its own security agency and pirated private respondents who tendered their voluntary resignations from CISCOR. Thereafter, when private respondents sought from CISCOR the return of their cash bond deposit, payment of 13th month pay and service incentive leave pay, CISCOR explained to private respondents that in view of the claim of petitioner that it incurred losses when private respondents and their other co-security guards secured the premises of Riverside Mills Corporation, private respondents, prior to the payment of their claims, were asked to first secure an individual/agency clearance from petitioner to show that no losses were incurred while they were guarding Riverside Mills Corporation.

Instead of getting such clearance from the petitioner, private respondents secured their clearance from CISCOR's detachment commander. Hence, for failure to secure the required clearance, private respondents' cash bond deposit, their proportionate 13th month pay and service incentive leave pay were withheld to answer for liabilities incurred while private respondents were guarding Riverside Mills Corporation.

On 10 March 1988, CISCOR filed a motion with leave to implead petitioner bank and averred therein that in view of its contract with the petitioner whereby, for a certain service fee, CISCOR undertook to guard petitioner's premises, both CISCOR and petitioner, under the Labor Code, are jointly and severally liable to pay the salaries and other statutory benefits due the private respondents, petitioner being an indispensable party to the case. On 11 March 1988, Labor Arbiter Iniego issued an order granting the aforesaid motion and including petitioner as one of the respondents therein. To this, private respondents filed their opposition and alleged, among others, that petitioner, not being an employer of the private respondents, was not a proper, necessary or indispensable party to the case.

In answer, petitioner filed its position paper alleging therein that it was not made a respondent by the herein private respondents in their complaint, and that none of the original parties to the case (private respondents and CISCOR/Medina) interposed any claim against the petitioner. It further stated that it cannot be held liable to the claim of private respondents because there was no failure on the part of CISCOR and Medina to pay said claims. If CISCOR had apparently failed to pay private respondents' claims, it was only due to the failure of private respondents to secure their individual clearance of accountability or agency clearance that there were no losses incurred while they were guarding Riverside Mills Corporation.

On 12 July 1988, the Labor Arbiter rendered a decision, the dispositive part of which reads:

"WHEREFORE, judgment is hereby rendered ordering the respondents Confidential Investigation and Security Corporation, Mr. Ernesto Medina and Development Bank of the Philippines to pay the complainants the corresponding salary differential due them to be computed for the last three (3) years from the time they stopped working with the respondents sometime in August 1987. Confidential Investigation and Security Corporation is further ordered to return to the complainants their respective cash bond cited in this decision within a period of ten (10) days from receipt hereof." [2]

From the above decision, CISCOR and Medina appealed to the NLRC. Petitioner likewise filed its Motion for Reconsideration/Appeal and prayed for the Labor Arbiter to modify his decision and make CISCOR and Medina solely liable for the claims of private respondents, and to declare the award for salary differentials as null and void.

In its Resolution of 24 January 1991, the NLRC held the petitioner DBP, CISCOR and Medina, as jointly and severally liable, the pertinent part of which reads:

"WHEREFORE, the decision appealed from is hereby modified. All the respondents (Confidential Investigation and Security Corporation, Ernesto Medina and the Development Bank of the Philippines) are

hereby adjudged jointly and severally liable to the admitted claims for 13th month pay, 5 days incentive leave, and refund of cash bond, and accordingly, immediate execution is hereby directed against any of the aforesaid respondents without prejudice to their having lawful recourse against each other.

Anent the award of wage differential and the claim for rest day and legal holiday pay, the same are hereby remanded to the Arbitration Branch of origin for further hearing with the directive that it be completed in 20 days from the Arbitration Branch's receipt of this Order.”[3]

Hence, this petition for review on certiorari, with petitioner DBP raising the following issues:

1. Whether or not the DBP is really liable for any of the claims of private respondents;
2. Whether or not the NLRC (or the Labor Arbiter) correctly applied Article 106 of the Labor Code; and
3. Whether or not the wage differential, rest day and legal holiday pay could and should be adjudicated in this case.

The threshold and, in the ultimate analysis, the decisive issue raised by the present petition is whether petitioner was correctly held jointly and severally liable, alongside CISCOR and Medina, for the payment of the private respondents' salary differentials, 13th month pay, service incentive leave pay, rest day pay, legal holiday pay, and the refund of their cash deposit.

Petitioner posits that it is not the employer of private respondents and should thus not be held liable for the latter's claims. In addition, it avers that it was not properly impleaded as it was CISCOR and Medina who filed the motion to implead petitioner, and not the private respondents, as complainants therein. Petitioner even goes further by countering that, assuming arguendo, it was the indirect employer of private respondents, Article 106 of the Labor Code[4] cannot be applied to the present case as there was no failure on the part of CISCOR and Medina, as direct employer, to pay the claims of private respondents, but only a failure on the part of the latter to present the proper clearance to pave the way for the payment of the claims. It emphasizes that the term "fails" in Article 106 of the Labor Code implies insolvency or unwillingness of the direct employer to pay, which cannot be said of CISCOR and Medina as they have manifested their willingness to pay private respondents' claims after they have presented proper clearance from accountability.

We are not persuaded by petitioner's arguments.

Petitioner's interpretation of Article 106 of the Labor Code is quite misplaced. Nothing in said Article 106 indicates that insolvency or unwillingness to pay by the contractor or direct employer is a prerequisite for the joint and several liability of the principal or indirect employer. In fact, the rule is that in job contracting, the principal is jointly and severally liable with the contractor. The statutory basis for this joint and several liability is set forth in Articles 107[5] and 109[6] in relation to Article 106 of the Labor Code.[7] There is no doubt that private respondents are entitled to the cash benefits due them. The petitioner is also, no doubt, liable to pay such benefits because the law mandates the joint and several liability of the principal and the contractor for the protection of labor. In *Eagle Security Agency, Inc. vs. NLRC*, this Court, explaining the aforesaid liability, held:

"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]."[8]

Neither may petitioner argue that it was not properly impleaded and hence, should not be made liable to the claims of private respondents. On this matter, petitioner cannot be absolved from responsibility. We sustain respondent Commission's holding that:

"Anent the Bank's first issue, what we actually have here is a "Third-Party Complaint", defined by Section 12, Rule 6 of the Rules of Court as "a claim that a defending party may, with leave of court, file against a person not a party to the action, called the the third-party defendant, for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim" (emphasis ours). Since Rule I, Section 3 of our 1986 Revised NLRC Rules adopts suppletorily the Rules of Court "in the interest of expeditious labor justice and whenever practicable and convenient" with the Security Agency's impleading the Bank for indemnity and subrogation considering that the complainants worked with the Bank "to safeguard their premises, properties and their person" (Record, p. 76), such a third-party complaint would therefore be proper. That the bank has not disputed liability on the admitted claims, but professes merely subsidiary, instead of solidary liability, we find its position here all the more, untenable."[9]

Finally, petitioner submits that wage differential, rest day and legal holiday pay should not be adjudicated in this case. The respondent Commission, however, observed:

"Regarding the question of wage differential, we note that the complaint (Record, p. 1), as well as the complainants' Position Paper (Record, pp. 5-10) do not mention about any wage differential claim. We do not therefore see any basis with which we may, on sight, affirm the said award. We note though that complainants' position paper save technical arguments (that after all are not binding to us in this jurisdiction), sufficiently claims rest day and legal holiday pay, claims that were not strongly refuted by respondents. Impressed, although not convincingly, that the award on wage differential could have referred to the complainants' claim for rest day and legal holiday pay, we therefore see the need to have the said claims subjected to further hearing but for a limited period of 20 days."[10]

We note that in the present case, there is no claim for wage differentials either in the complaints or in the position paper filed by private respondents before the labor arbiter. Accordingly, no relief may be granted on such matter. We, however, agree with the respondent Commission in its stand that private respondents are entitled to rest day and holiday pay (aside from the refund of their cash bond and the payment of their 13th month pay and service incentive leave pay for 1989). Private respondents' position paper submitted before the labor arbiter properly raised the two (2) issues (rest and holiday pay) and included the same in their prayer for relief. The computation of the amount due each individual security guard can be made during the additional hearings ordered by the Commission.

WHEREFORE, premises considered, the questioned resolution of the respondent NLRC is hereby **AFFIRMED** with the modification that the additional hearing ordered by the NLRC shall not include wage differentials but shall be confined to legal holiday and rest day pay. Execution shall forthwith proceed as to the NLRC awards of 13th month pay, service incentive leave pay and return of private respondents' cash bond. Petitioner and CISCOR/Medina are **ORDERED** to pay jointly and severally the claims of private respondents, as finally awarded by the NLRC, without prejudice to the right of reimbursement which petitioner or CISCOR/Medina may have against each other.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Puno, and Mendoza, JJ., concur.

[1] Rollo, p. 61

[2] Rollo, p. 30.

[3] Rollo, p. 44.

[4] Article 106 reads in part: "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 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."

[5] Art. 107. Indirect employer. - The provisions of the immediate 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.

[6] 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 their civil liability under this Chapter, they shall be considered as direct employer.

[7] Philippine Fisheries Development Authority vs. National Labor Relations Commission, 213 SCRA 621, 627 (1992) citing Del Rosario and Sons Logging Enterprises, Inc. vs. NLRC, 136 SCRA 669 (1985); Baguio vs. NLRC, 202 SCRA 465 (1991); ECAL vs. NLRC, 195 SCRA 224 (1991).

[8] 173 SCRA, 479, 485 (1989).

[9] Rollo, p. 48.

[10] Id. p. 47.

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