

**RHONE-POULENC AGROCHEMICALS PHILIPPINES, INC.,
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION,
URCISIO A. ORAIN, AND PAULINO G. ROMAN, RESPONDENTS.**

G.R. Nos. 102633-35. January 19, 1993

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Petitioner Rhone-Poulenc Agrochemicals Philippines, Inc. (Rhone-Poulenc for brevity) assails the finding by the National Labor Relations Commission (NLRC) that Contemporary Services, Inc. (CSI), a supplier of janitorial services, is a labor-only contractor.

The petitioner is a domestic corporation engaged in the manufacture of agro-chemicals. Its business operations involve the formulation, production, distribution and sale in the local market of its agro-chemical products.

On January 1, 1988, as a consequence of the sale by Union Carbide, Inc. of all its agricultural-chemical divisions worldwide in favor of Rhone-Poulenc Agrochemie, France, the petitioner's mother corporation, the petitioner acquired from Union Carbide Philippines Far East, Inc. (Union Carbide for short) the latter's agro-chemical formulation plant in Namayan, Mandaluyong, Metro Manila.

Rhone-Poulenc and Union Carbide agreed on a three-month transition period for the turnover of the Namayan plant to the former. Hence, from January 1 to March 31, 1988, both Union Carbide and Rhone-Poulenc shared and operated the same facilities.

In 1987, prior to the sale, Union Carbide had entered into a contract with CSI for the latter's supply of janitorial services. During the transition period, Union Carbide continued to avail itself of CSI's janitorial services. Thus, petitioner Rhone-Poulenc found itself sharing the Namayan plant with Union Carbide while the factory was being serviced and maintained by janitors supplied by CSI.

Midway through the transition period, Union Carbide instructed CSI to reduce the number of janitors working at the plant from eight (8) to seven (7). Private respondent Paulino Roman, one of the janitors, was recalled by CSI on February 15, 1988 for reassignment. However, Roman refused to acknowledge receipt of the recall memorandum.

On March 9, 1988, Union Carbide formally notified CSI of the termination of their janitorial service agreement, effective April 1, 1988, citing as reason the global buy-out by Rhone-Poulenc, Agrochemie, France of Union Carbide, Inc.'s agro-chemical business. CSI thereafter issued a memorandum dated March 20, 1988 to the seven remaining janitors assigned to the Namayan plant, including respondent Urcisio Orain, recalling and advising them to report to the CSI office for reassignment. Like Roman, the janitors refused to acknowledge receipt of the recall memorandum.

Meanwhile, in anticipation of the March 31, 1988 pull-out by Union Carbide, the petitioner started screening proposals by prospective service contractors. Rhone-Poulenc likewise invited CSI to submit to its Bidding

Committee a cost quotation of its janitorial services. However, another contractor, the Marilag Business and Industrial Services, Inc., passed the bidding committee's standards and obtained the janitorial services contract.

On April 1, 1988, the eight janitors reported for work at the Namayan plant but were refused admission and were told that another group of janitors had replaced them. These janitors then filed separate complaints for illegal dismissal, payment of 13th month salary, service leave and overtime pay against Union Carbide, Rhone-Poulenc and CSI. These cases were consolidated by order of Labor Arbiter Manuel Asuncion dated May 23, 1988.

Trial on the merits ensued wherein the labor arbiter conducted full-blown hearings on factual issues. After the cases were submitted for decision, six of the original complainants tendered their resignations to CSI in consideration of the latter's settlement of all their claims. Hence, only the claims of respondents Roman and Orain remained unsettled.

On November 8, 1989, Labor Arbiter Asuncion ruled that CSI is a legitimate service contractor and that Roman and Orain were employees of CSI. The dispositive portion of the labor arbiter's decision is quoted below:

"WHEREFORE, the respondent CSI is ordered to pay the complainants Orain and Roman their separation pays computed at one-half of their salaries for every year of service. The rest of the claims are dismissed for lack of merit.

The respondents UCFEI and RPAPI were (sic) absolved from any liability it being shown that they were not the employers of the complainants. (Rollo, p. 52)

Respondents Roman and Orain appealed the decision to the NLRC. In a resolution dated March 13, 1991, the NLRC reversed the labor arbiter's ruling, found that CSI was a mere agent of Union Carbide and Rhone-Poulenc and held that Rhone-Poulenc was guilty of illegal dismissal. Respondent NLRC cited the case of *Guarin, v. NLRC*, 178 SCRA 267 (1987), which according to it "involves circumstances similar, if not identical, to the circumstances obtaining in the case at bar."

In that case, Novelty Philippines, Inc., a domestic corporation engaged in garment manufacturing, entered into a contract with Lipercon Services, Inc., a service contractor. The agreement provided, among others, that there was no employer-employee relationship between Novelty and the workers assigned by Lipercon to the former, and that Lipercon shall have exclusive discretion in the selection, engagement and discharge of its employees and shall have full control over said employees. The one hundred twenty (120) petitioners in *Guarin* were hired by Lipercon and assigned to Novelty as helpers, janitors firemen and mechanics until the termination by Novelty of the service agreement resulting in their dismissal. They sued both Novelty and Lipercon for illegal dismissal.

The labor arbiter adjudged that the petitioners were regular employees of Novelty and declared their dismissal illegal. The NLRC reversed this decision and declared that Lipercon was an independent contractor and that the petitioners were its employees.

The Court, in a petition for certiorari, upheld the labor arbiter's decision and ruled:

"The jobs assigned to the petitioners as mechanics, janitors, gardeners, firemen and grasscutters were directly related to the business of Novelty as a garment manufacturer. In the case of *Philippine Bank of Communications v. NLRC*, 146 SCRA 347, we ruled that the work of a messenger is directly related to a bank's operations. In its Comment, Novelty contends that the service which are directly related to manufacturing garments are sewing, textile cutting, designs, dyeing, quality control, personnel, administration, accounting, finance, customs, delivery and similar activities; and that allegedly, '[i]t is only by stretching the imagination that one may conclude that the services of janitors, janitresses, firemen, grasscutters, mechanics and helpers are directly related to the business of manufacturing garments' (p. 78, Rollo). Not so, for the work of gardeners in maintaining clean and well-kept grounds around the factory, mechanics to keep the machines

functioning properly, and firemen to look out for fires, are directly related to the daily operations of a garment factory. That fact is confirmed by Novelty's rehiring the workers or renewing the contract with Lipercon every year from 1983 to 1986, a period of three (3) years." (Guarin v. National Labor Relations Commission, 178 SCRA 267, at p. 273)

Applying the Guarin ruling to the case at bar, the NLRC pronounced:

"It is in the light of the foregoing that we are constrained to rule, and so hold, that respondent CSI is a mere agent of respondent UCFEI and RPAPI who, in the context of the aforecited pronouncement of the Supreme Court, were the real employers of the complainants. Consequently, respondent RPAPI's (the successor-in-interest by sale of respondent UCFEI) refusal to take in the complainants (after admittedly absorbing or utilizing their services during the transition period from 04 January to 31 March 1988) on the ground that it already had engaged the services of another service contractor, constitutes an illegal dismissal plain and simple.

"For while it is true that there is no law requiring that a purchaser should absorb the employees of the selling company (Central Azucarera del Davao v. CA, 137 SCRA 295); and unless expressly assumed, labor contracts are not enforceable against a transferee of an enterprise (Fernando v. Angat Labor Union, 5 SCRA 249; and Visayan Trans. Co. v. Java, 93 Phil. 962), it is equally true that employees absorbed by the successor-employers enjoy continuity of employment status (Cruz v. PAFLU, 42 SCRA 68; PAFLU v. CIR, 4 SCRA 457; Guerrero's Transport Services v. Blaylock, 30 June 1976, 71 SCRA 621; and Sumandi v. Leogardo, et al., G.R. No. 67635, 17 Jan. 1985).

"As we have stated earlier, respondent, RPAPI admits in its opposition to the appeal (p. 4) that it made use of the services of the complainants during its transition period from 04 January to 31 March 1988. Said act of utilizing, temporarily though, the services of the complainants (which, in away, attests to the necessity or desirability of the complainants' service to the operation of the respondent's business) constitutes an absorption that gave them the right to be retained. Its refusal to readmit the complainants constitutes an illegal dismissal.

"Under these conditions, the mandate to reinstate the complainants should, therefore, be addressed to the respondent RPAPI and not to the respondent CSI, a 'labor only' contractor, nor to the UCFEI which had ceased to be the employer of the complainants because of the sale of its business. (Rollo, pp. 39-40)

The NLRC then ordered the petitioner to reinstate respondents Roman and Orain and to pay one year backwages, or to grant them separation pay if reinstatement was not feasible. As to the respondents' claim for 13th month pay, incentive leave and overtime pay, these were dismissed by the NLRC for lack of sufficient factual basis.

Rhone-Poulenc filed a motion for reconsideration which was denied by the public respondent in its resolution of September 11, 1991. Hence, this petition for certiorari.

On December 2, 1991, the Court resolved to issue a temporary restraining order enjoining the NLRC from enforcing and/or carrying out its resolutions dated March 13, 1991 and September 11, 1991. (Rollo, pp. 54-56)

Petitioner Rhone-Poulenc maintains that it is CSI, and not Union Carbide and Rhone-Poulenc, as successor, which is the actual employer of the respondent janitors. Rhone-Poulenc insists that, contrary to the NLRC's findings, CSI is a legitimate independent contractor providing janitorial services to a wide range of clientele including Union Carbide. Moreover, the petitioner avers that it was grave abuse of discretion on the part of the public respondent to conclude that Rhone-Poulenc absorbed Roman and Orain into its workforce.

The issues to be resolved in this petition are:

(1) Whether or not the janitors were employees of Union Carbide;

(2) Whether or not CSI is a labor-only contractor; and

(3) Whether or not petitioner Rhone-Poulenc absorbed the janitors into its workforce.

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; and (4) the power to control the employee's conduct - although the latter is the most important element. (See *Ecal V. NLRC*, 195 SCRA 224 [1991]; *Singer Sewing Machine Company v. Drilon*, 193 SCRA 270 [1991]; *Brotherhood Labor Unity Movement in the Philippines v. Zamora*, 147 SCRA 49 [1986]; *Social Security System v. Court of Appeals*, 39 SCRA 629 [1971]; *Viaña v. Al-Lagadan and Piga*, 99 Phil. 408 [1956].

Where the employer-employee relationship has been ascertained, the employer becomes bound by the statutory requirements pertaining, though not limited, to terms and conditions of employment, labor relations and post-employment. But the law has likewise provided for situations where, although the application of the aforementioned four-fold test will not establish an employer-employee relationship, a person or employer who contracts with another for the performance of the former's work or of any work nevertheless becomes liable to the employees of the contractor. Articles 106, 107, and 109 of the Labor Code provide:

"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.

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"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 persons 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.

"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.

"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.

The import of the foregoing provisions was enunciated in the case of *Philippine Bank of Communications v. National Labor Relations Commission*, 146 SCRA 347 (1986):

"Under the general rule set out in the first and second paragraphs of Article 106, an employer who enters into a contract with a contractor for the performance of work for the employer, does not thereby create an employer-employee relationship between himself and the employees of the contractor. Thus, the employees of the contractor remain the contractor's employees and his alone. Nonetheless, when a contractor fails to pay the wages of his employees in accordance with the Labor Code, the employer who contracted out the job to the

contractor becomes jointly and severally liable with his contractor to the employees of the latter 'to the extent of the work performed under the contract' as if such employer were the employer of the contractor's employees. The law itself, in other words, establishes an employer-employee relationship between the employer and the job contractor's employees for a limited purpose, i.e., in order to ensure that the latter get paid the wages due to them.

"A similar situation obtains where there is 'labor only' contracting. The 'labor-only' contractor - i.e. 'the person or intermediary' - is considered 'merely as an agent of the employer.' The employer is made by the statute responsible to the employees of the 'labor only' contractor as if such employees had been directly employed by the employer. Thus, where 'labor only' contracting exists in a given case, the statute itself implies or establishes an employer-employee relationship between the employer (the owner of the project) and the employees of the 'labor only' contractor, this time for a comprehensive purpose: 'employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.' The law in effect holds both the employer and the 'labor only' contractor responsible to the latter's employees for the more effective safeguarding of the employees' rights under the Labor Code" (at p. 356; emphasis supplied)

And in determining whether a contractor is engaged in labor-only contracting or in job contracting, reference may be made to Sections 8 and 9 of the Implementing Rules, which provide:

"Sec. 8. Job contracting - There is job contracting permissible under the Code if the following conditions are met:

(1) The contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and

(2) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business.

"Sec. 9. Labor-only contracting. - (a) Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting where such person:

(1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and

(2) The workers recruited and placed by such person are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed.

(b) Labor-only contracting as defined herein is hereby prohibited and the person acting as contractor shall be considered merely as an agent or intermediary 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.

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Applying the foregoing principles to the case at bar, the Court is constrained to rule for the petitioner.

There is no employer-employee relationship between Union Carbide and the respondent janitors. The respondents themselves admitted that they were selected and hired by CSI and were assigned to Union Carbide. CSI likewise acknowledged that the two janitors were its employees. The janitors drew their salaries from CSI and not from Union Carbide. CSI exercised control over these janitors through Richard Barroga, also a CSI employee, who gave orders and instructions to CSI janitors assigned to the Namayan plant. Moreover, CSI had the power to assign its janitors to various clients and to pull out as it had done in a number of occasions, any of its janitors working at Union Carbide.

As to whether CSI is engaged in labor-only contracting or in job contracting, applying the test prescribed by the Labor Code and the implementing rules, we find sufficient basis from the records to conclude that CSI is engaged in job contracting. As correctly declared by the labor arbiter:

"Moreover, CSI is a legitimate service contractor. It is registered as one and doing business as such with a number of known companies in the country. It has a contract with UCFEI to assign janitorial and ground services to the latter for a fee. The complainants' work were basically janitorial and gardening chores. The tools of their trade were supplied by CSI. Of course, we are aware of the complainants' claim that they were made to do chores which are production jobs. Yet, there is no showing of regularity or permanence of such assignment. Those occasional errands cannot be considered as genuine control by UCFEI over the complainants." (Rollo, pp. 51-52)

Moreover, in *Kimberly Independent Labor Union v. Drilon*, 185 SCRA 190 [1990], the Court took judicial notice of the general practice adopted in several government and private institutions and industries of hiring a janitorial service on an independent contractor basis.

It must be stressed that the janitorial service agreement between Union Carbide and CSI binds only the two, and not petitioner Rhone-Poulenc. As new owner, Rhone-Poulenc had every right to choose its own service Contractor.

Respondent NLRC relied heavily on the ruling in *Guarin*, supra, in deducing that CSI was a labor-only contractor. The facts in *Guarin*, however, are different from those obtaining in the present case. In *Guarin*, the contractor failed to prove that it had substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials. In the case at bar, it has been established that CSI, the contractor, owns and maintains its own office; that it owns office equipment such as, but not limited to, typewriters, calculators, xerox machines, mimeographing machines, airconditioning units and transportation vehicles; and that it furnishes its janitors the cleaning equipment such as carpet vacuums and polishing machines. Moreover, the petitioners in *Guarin*, who were assigned as helpers, janitors, firemen and mechanics, numbered one hundred twenty (120) in all which, by itself, amounts to a considerable workforce and gives rise to the suspicion that the service agreement between Novelty and Lipercon was designed to evade the obligations inherent in an employer-employee relationship. In contrast, there were only eight (8) janitors supplied by CSI to Union Carbide.

These two substantial differences, taken together, are sufficient to remove the present case from the ambit of the *Guarin* ruling.

Even on the supposition that the janitors were, indeed, employees of Union Carbide or that CSI is a labor-only contractor, thus making Union Carbide a direct employer of these janitors, petitioner Rhone-Poulenc, as purchaser of Union Carbide's business, is not compelled to absorb these janitors into its workforce. An innocent transferee of a business establishment has no liability to the employees of the transferor to continue employing them. (*Central Azucarera del Davao v. Court of Appeals*; 137 SCRA 295 [1985]).

The NLRC, however, concluded that since Rhone-Poulenc made use of the services of the janitors during the three-month transition period, then said act of utilizing their services constitutes absorption of these janitors into the petitioner's workforce which gives them the right to be retained. This ratiocination is not correct. The public respondent failed to consider the fact that during the three-month transition period prior to Union Carbide's turnover of the facilities, the service contract between Union Carbide and CSI was still in force. Whatever benefit the petitioner derived from the continuous availment by Union Carbide of the services of CSI's janitors was merely incidental. The NLRC also overlooked the fact that it was still Union Carbide who paid CSI for the services of these janitors. Also, even prior to the expiration of the transition period, the petitioner, in anticipation

of the pullout of Union Carbide and its hired service agencies, started screening its own service contractors. Under these circumstances, the petitioner may not be deemed to have absorbed the respondent janitors as its own employees.

WHEREFORE, the resolutions of the respondent National Labor Relations Commission dated March 13, 1991 and September 11, 1991 are SET ASIDE. The decision of the labor arbiter dated November 8, 1989 is hereby REINSTATED.

The temporary restraining order issued by this Court on December 2, 1991 is made PERMANENT.
SO ORDERED.

Bidin, Davide, Jr., Romero, and Melo, JJ., concur.

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