

SAN MIGUEL CORPORATION, PETITIONER, VS. THE NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER PELAGIO, LUISITO DE OCAMPO, DEMETRIO ABANES, ARTURO ABELLA, DANNY ABUY, RODEL ADAT...

G.R. Nos. 74193-94. June 09, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

A complaint dated February 8, 1983, was filed by respondent Luisito de Ocampo, and one hundred and thirty three (133) co-employees against their employer, Reliable Contractor, and the San Miguel Corporation for underpayment of wages, and nonpayment of their 13th month pay for 1980 to 1982. They alleged that they are the regular and permanent employees of Reliable Labor Contractor (Reliable for brevity), which entered into a contract of service to undertake the loading and unloading of various materials and to repair shells and pellets for the petitioner, San Miguel Corporation, on a task (or piece work) basis until December, 1982. During that period, the private respondents were not paid their 13th month pay and were only receiving a daily wage of P17.00 per day.

San Miguel Corporation answered that under P.D. No. 851 and implementing rules and regulations, it is not jointly and severally liable with the contractor (Reliable) for the payment of the 13th month pay of the latter's employees, and that it has regularly and conscientiously paid Reliable the agreed contractor's fees which included the basic daily wage, emergency allowance and the 13th month pay of Reliable's employees.

Reliable, for its part, alleged that as it hired the complainants on a task basis up to December, 1982, it was exempted from the coverage of P.D. No. 851 during that period.

On October 30, 1984 Labor Arbiter Pelagio A. Carpio rendered a decision dismissing the complaint for underpayment of wages but directed San Miguel Corporation and Reliable to pay the private respondents their 13th month pay for 1980 to 1982.

On December 13, 1984, both parties appealed the decision of the Labor Arbiter.

On January 29, 1986, the National Labor Relations Commission (NLRC) affirmed the Labor Arbiter's decision.

Hence, this petition for certiorari raising the issue of whether or not San Miguel may be held jointly and severally liable with the labor contractor for the payment of the workers' 13th month pay.

The petitioner alleges that the NLRC committed a grave abuse of discretion in directing it (petitioner) to pay solidarily with Reliable, the 13th month pay of the latter's employees for 1980 to 1982, despite the fact that P.D. No. 851 does not provide for solidary liability of the principal and the independent contractor to pay the 13th month pay of the latter's employees.

The petition is bereft of merit.

In holding petitioner solidarily liable with Reliable for the payment of the 13th month pay of the private respondents, the NLRC found that:

"x x x we are one with the Arbiter a quo in finding for the solidary liability of both respondents. This is in line with the constitutional mandate of affording protection to labor. Although P.D. No. 851 do (sic) not provide for solidary liability of appellant San Miguel Corporation in the payment of 13th month pay to the workers when the independent contractor fails to do so, there are analogous provisions of the Labor Code as amended which are directly applicable in this case, to wit:

"Art. 106. Contractor or subcontractor. - xxx xxx xxx

"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.

"xxx xxx xxx

"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. 108. Posting of Bond. - An employer or indirect employer may require the contractor or subcontractor to furnish a bond equal to the cost of labor under the contract, on condition that the bond will answer for the wages due the employees should the contractor or subcontractor, as the case may be, fail to pay the same.

"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." (pp. 50-51, Rollo.)

We agree with the NLRC's ruling that San Miguel is solidarily liable with Reliable for the employees' 13th month pay by virtue of the express provision of Art. 107 of the Labor Code that the solidary liability of an employer and his contractor or subcontractor under Art. 106 shall apply to an indirect employer and his contractor.

The petitioner as indirect employer of the private respondents (employees of the labor-only-contractor [Reliable]) is solidarily liable with the latter for the payment of the 13th month pay which the latter's workers are legally entitled to receive in addition to their wages because nonpayment thereof constitutes a violation of the Code for which "every employer or indirect employer shall be held responsible with his contractor or subcontractor." (Art. 109, Labor Code.)

WHEREFORE, finding no grave abuse of discretion in the decision of the NLRC holding the petitioner solidarily liable with its labor contractor for the 13th month pay of the latter's employees, the petition for certiorari is DISMISSED. Costs against the petitioner.

SO ORDERED.

Medialdea and Bellosillo, JJ., concur.

Cruz, J., (Chairman), No part. Related to petitioners counsel.

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