

INTERNATIONAL HARVESTER MACLEOD, INC., PETITIONER, VS. THE NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER ALEX LOPEZ: WATERFRONT EMPLOYEES UNION, ZACARIAS SILVA, JOSE ARIZA...

G.R. Nos. 86523-24. August 19, 1991

Ponente: FELICIANO, J.

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FELICIANO, J.:

This is a Petition for Certiorari with prayer for a writ of preliminary injunction seeking to annul the Resolutions of the National Labor Relations Commission (NLRC) in NLRC Case No. 12-4388-84 dated 24 August 1988 and 12 December 1988.

Petitioner International Harvester Macleod Inc. (IHM) is a ship agent for foreign vessels which come to the port of Manila. Respondent Waterfront Employees Union (WEU) is a union of checkers who are contracted by ship agents to attend to the needs of incoming vessels. For several years, respondent WEU and petitioner had been parties to a number of contracts denominated as "Collective Bargaining Agreements"; the last of said agreements was signed on 1 April 1977 and effective until 31 December 1979.

On 20 December 1984, herein private respondents WEU and about eighty-nine (89) of its members, led by its President, filed a complaint for illegal dismissal, separation pay and 13th month pay for 1977, 1978, and 1979, against petitioner IHM. Individual respondents essentially alleged therein that from 1950 to 1978, IHM had hired them as checkers at various rates; that in 1979, they were illegally terminated by IHM and that the Ben Santos Checkers Agency took over their functions; that their causes of action accrued only on 2 April 1982 after the Resolution of the Supreme Court in G.R. No. 57880 entitled "International Harvester Macleod Inc. vs. Hon. Director of the Bureau of Labor Relations" denying IHM's petition for certiorari to annul the Order of said Bureau Director dated 4 June 1981, became final and executory; that respondents could not have sued for separation pay and other claims then as the issue of employer-employee relationship between IHM and WEU had yet to be resolved with definiteness; that the running of the prescriptive period was interrupted by a demand; and doubts in the application of labor cases should be construed in favor of labor.

In a decision dated 21 December 1987, Labor Arbiter Alex Lopez held that private respondents were employees of petitioner IHM and that the latter was liable for illegal dismissal.

An appeal filed by petitioner IHM was dismissed by the NLRC in a resolution dated 24 August 1988.

In this Petition for Certiorari, petitioner argues, among other things, that the ruling of the Bureau of Labor Relations (BLR) had no direct application to the issue in the instant case, since that BLR ruling pertained to an entirely different fact situation arising after petitioner had terminated its contract with private respondent WEU on 31 December 1979 and also after some of the individual private respondents were already employed by the Ben Santos Checkers Agency beginning 1 January 1980. Petitioner also contends that the claims of private

respondents have in any case already prescribed, having been filed 4 years after the alleged illegal dismissal.

To resolve the question before us, we must examine two (2) previous rulings of this Court. These two (2) rulings, which are referred to in the pleadings of the parties herein, both touched on the issue of existence of an employer-employee relationship between them.

The first case is G.R. No. 51311. This case arose when private respondent Zacarias Silva, president of WEU, along with several members of said union filed on 11 July 1978, before the Office of the Regional Director of the then Ministry of Labor and Employment, a case against petitioner IHM for the alleged non-payment of 13th month pay as mandated by P.D. No. 851.

On 26 January 1979, the Regional Director issued an order directing petitioner IHM to pay private respondents their 13th month pay. Said Order, however, was reversed on appeal by then Deputy Minister of Labor Amado Inciong in his Decision dated 2 August 1979. In that decision, Deputy Minister Inciong held that private respondent WEU was an independent contractor and the employer of individual complaining checkers. In his Order Deputy Minister Inciong stated:

"In determining the existence of employer-employee relationship, the following basic factors should be considered: the selection and engagement of the employee; the payment of wages; the power of dismissal; and the power to control the employee's conduct.

Records reveal that on April 1, 1977, the International Harvester Shipping Co., Inc., hereinafter referred to as 'respondent company' for brevity, as shipping agents of various foreign ship-owners or shipping companies and the Waterfront Employees Union, which for expediency is hereto designated as 'complainant union,' entered into a collective bargaining agreement effective until December 31, 1979. The agreement stipulates that respondent company could hire union members who are assigned to it by the complainant union from the union's Hiring Hall and without the intervention of respondent. In Section 1 of Article III of the aforementioned agreement, it was likewise agreed that respondent company may reject any checker carpenter or laborer who is incompetent and unreliable to discharge his duties.

Individual complainants are members of complainant union who are designated and assigned by the said union to work as checkers on various clients' vessel of respondent company although the latter does not own and operate any vessel. Respondent company [IHM] does not employ the services of the checkers individually, neither do these checkers apply for work with respondent. Respondent company has nothing to do with the pre-employment requirements, like the filing of application forms, mental and physical examination, to determine their aptitude and competence for employment.

Moreover, respondent company has no control over their assignments. The company only submits to the complainant union through a 'request slip' the number of checkers it requires for an incoming vessel and the latter selects them and places their names in the 'assignment slips.'

Under the arrangement the shipowner clients do not determine the salary paid to the checkers. The complainant union's treasurer prepares the checkers payroll for signature of the incoming vessel's Master and First Officer. Thereafter, the signed payrolls are presented to respondent company who upon receipt of the funds from the client shipowner signs in the disbursement voucher covering the amount of the payrolls. Finally, the checkers are paid by the union treasurer. The only participation of respondent company in the payment of wages is to deliver the money of its client shipowner to the union treasurer for the payment of the checkers.

Respondent company has no power of control and supervision over the checkers relative to their work. They are supervised by an Assistant Head Checker employed by complainant union. Although there is a Head Checker who is respondent company's employee, nonetheless, he does not interfere in the supervision over the details of the checker's work which properly belongs to the Assistant Head Checker. The Head Checker only

deals with the Assistant Head Checker giving him general instruction where or what hatch to check. Thereafter the Assistant Head Checker supervises the whole operations. Actions involving checker's reprimand, suspension or dismissal are referred to complainant union for final decision.

Viewed in the light of the foregoing, the complainant union is an independent contractor and the employer of the individual complaining checkers and not the respondents. What is more, there is no separate individual contract of employment between said complaining checkers and respondent company.

Moreover, the existing collective bargaining agreement between the parties herein is not in the real meaning or true sense the CBA as contemplated by law, but a trade agreement delineating the terms and conditions governing the relationship between the independent contractor and the company and therefore not one which could be made a basis for concluding the existence of any employer-employee relationship ties between the members of the complainant union. Thus, as aptly pointed out by respondent in its position paper:

'Collective bargaining contracts, it has been held, are not contracts of employment. Such contracts while binding the signatories and those whom they represent, are not, as to individual employees or applicants for work, agreement of hire; such contracts are merely "trade agreement" which inure to the benefit of individual consequentially and only after they are employed and during tenure. They do not create jobs. Jobs subject to "trade agreement" are created and terminated by the individual contract between the parties: *Case & Co. vs. N.L.R.B.*, 321, U.S. 332; accord *United Office & Professional Workers Union vs. Monumental Life, Inc.* Co. 88 F. Suppl. 602. In *Amalgamated Assn. of Street etc. Railway Employees vs. Pa. Grehound Lines - (F(2nd) - Collective bargaining agreements held not to be "employment agreements" for purpose of actual employment or hiring, but were "employment agreements" within the meaning of the Federal Arbitration Act's exemption of such agreement.'*

To hold respondent company as the employer of individual complaining checkers will result to an ambiguous situation where there will be multiple employers as there are ship agents for whom they have rendered services. To aggravate the situation the checkers will have the same number of monetary claims for 13th month pay as there are as many employers." (Rollo, pp. 37-40; Order of the Deputy Minister of Labor, pp. 1-4; underscoring supplied)

Private respondents subsequently filed a Petition for Certiorari with this Court docketed as G.R. No. 51311 and entitled "Waterfront Employees Union, et al, v. Minister of Labor, et al."

On 3 September 1979, this Court issued a Resolution which dismissed private respondents' Petition for Review. The Motion for Reconsideration was denied in a Resolution dated 14 November 1979.

Several cases which also raised the issue of employer-employee relationship between the parties herein were later filed by private respondents against petitioner but which were eventually dismissed^[1] on the ground that G.R. No. 51311 had already held that no employer-employee relationship existed between private respondents and petitioner.

The second case is G.R. No. 57880. On 31 December 1979, the so-called "Collective Bargaining Agreement" between petitioner and private respondent WEU expired. The petitioner then engaged the services of a checker agency, the Ben Santos, Jr.'s Checkers Agency effective 1 January 1980.

On 28 April 1980, WEU filed before the Department of Labor and Employment a petition for direct certification as the sole and exclusive bargaining agent of the employees of petitioner IHM or Ben Santos, Jr.'s Checkers Agency.

On 2 July 1980, Med-Arbiter Eusebio M. Jimenez issued an Order ordering the holding of a certification election but at the same time ruling that the private respondents herein were employees of the Ben Santos, Jr.'s Checkers

Agency and not of petitioner herein. The Med-Arbiter in denying the existence of employer-employee relationship between private respondents and petitioner relied upon the resolution of this Court dated 13 September 1979 upholding the decision of then Deputy Minister Inciong which had declared that private respondents herein were not employees of petitioner IHM.

On 21 July 1980, private respondent WEU appealed the Order of Med-Arbiter Jimenez to the BLR. On 4 June 1981, the BLR issued an Order holding that the private respondents are employees of petitioner. The BLR decision held:

"We find for the appellant. The records show that the subject workers/checkers are employees of International Harvester, Ben Santos Jr. Checkers Agency merely acts as supplier of the checking requirements of I.H. as embodied in the CBA. I.H. exercises over these workers the prerogative to hire, fire or discipline them and supervise their assigned task. The payment of wages, allowances and other benefits is an obligation of I.H. as can be gleaned from their agreements.

Finally, this Bureau in a similar case *Waterfront Employees Union (ESC-Local), v. Everett Steamship Corporation*, BLR No. A-0198-80, has ruled that these checkers who are provided to the company through the intervention of the checkers agency are considered employees of the company. In the case at bar, the herein workers are being supplied to the I.H. by Ben Santos Checker's Agency. Hence, the employer-employee relationship exists between the checkers and I.H. and not with Ben Santos Checker's Agency.

WHEREFORE, premises considered, the instant appeal is hereby granted and the Order, appealed from modified such that a certification election is ordered conducted among the checkers/employees of International Harvester Mcleod Co., Inc. within 20 days from receipt hereof."(Underscoring supplied)

A Petition for Certiorari was later filed by petitioner in this Court and docketed as G.R. No. 57880 entitled "*International Harvester Macleod Co., Inc. v. Waterfront Employees Union, et al.*" which was, however, dismissed in a resolution dated 21 July 1981.

It is plain to see that the Supreme Court upheld two (2) seemingly conflicting rulings on the same issue involving the same parties. In the case at bar, private respondents insist that in resolving the issue of existence of an employer-employee relationship, the Court's Resolution dated 21 July 1981 in G.R. No. 57880 should control. Upon the other hand, petitioner IHM argues that in the case at bar, it is the Resolution of the Court in G.R. No. 51311 dated 3 September 1979 which is the applicable decision.

The Court considers, however, that the conflict here is merely ostensible. In G.R. No. 51311, the Court had before it the set of facts which was highlighted by the existence of the so-called "Collective Bargaining Agreements" between petitioner IHM and private respondent WEU, existing at least from 1977 and up to 31 December 1979. The factual relationships between the parties during that period were characterized by Deputy Minister Inciong as a relationship between owner (IHM) and independent contractor (WEU) after a careful analysis of that relationship and notwithstanding the erroneous nomenclature employed in designating the agreement between the two (2) parties as a "Collective Bargaining Agreement." As already noted, the Court affirmed the decision of Deputy Minister Inciong in its Resolution dated 3 September 1979.

Upon the other hand, in G.R. No. 57880, the factual relationships between the two (2) parties were quite different. The factual relationships there involved were established after the Resolution of the Court in G.R. No. 51311 and after expiration of the so-called "Collective Bargaining Agreement" between IHM and WEU and the establishment of the Ben Santos, Jr.'s Checkers Agency. Those new and revised relationships began 1 January 1980. It is those relationships which the BLR characterized as involving an employer-employee relationship between IHM and the individual checkers. In effect, the BLR held that the Ben Santos, Jr.'s Checkers Agency had

merely acted as a recruitment agency for the benefit of IHM and that an employer-employee relationship sprang into being between IHM and the individual checkers recruited through the Ben Santos, Jr.'s Checkers Agency.

It is thus clear to us that the Resolution dated 3 September 1979 in G.R. No. 51311 still stands, since it was not overruled or set aside by the Resolution of this Court dated 21 July 1981 in G.R. No. 57880. There was, most briefly put, no conflict between the two (2) Resolutions of this Court.

In the case at bar, it is the set of facts which existed before the expiration of the so-called "Collective Bargaining Agreement" between IHM and WEU on 31 December 1979, that is relevant. Private respondents herein, in effect, assert that they were illegally dismissed upon expiration of that agreement and are claiming separation pay and 13th month pay for 1977, 1978 and 1979. During that period, as already held in G.R. No. 51311 -- which ruling is, of course, *res adjudicata* in respect of the case at bar -- there was no employer-employee relationship between the parties herein, that relationship constituting instead one between an owner and an independent contractor. Accordingly, we must conclude that the decision of 21 December 1987 of Labor Arbiter Alex Lopez, which decision was affirmed by public respondent NLRC, must be set aside as having been rendered in disregard of the Resolution of this Court in G.R. No. 51311.

By way of post scriptum, the Court notes that, in any event, the case at bar for alleged illegal dismissal was filed almost exactly five (5) years after it allegedly took place on year end 1979. This indicates, not only that private respondents' claims are barred by prescription^[2], but also that the case at bar was commenced as a mere afterthought on the part of private respondents who were apparently encouraged (however mistakenly) by the Resolution of the Court in G.R. No. 57880. But private respondents are in fact trying to re-litigate the issues already settled by the Court on 3 September 1979, in G.R. No. 51311, something which cannot be allowed by this Court.

WHEREFORE, the Court Resolved to GRANT DUE COURSE to the Petition for Certiorari and to SET ASIDE and ANNUL the Resolutions of public respondent NLRC in NLRC Case No. 12-4388-84 dated 24 August 1988 and 12 December 1988. Costs against private respondents.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Davide, Jr., JJ., concur.

[1] Private respondents filed with the Ministry of Labor a complaint for unfair labor practice alleging that petitioner had failed to honor their Collective Bargaining Agreement. In an order dated 4 February 1980 private respondents' complaint was dismissed on the ground that the Supreme Court in G.R. 51311 had already declared that there was no employer-employee relationship between private respondents and petitioner.

On 8 February 1980, private respondents filed another complaint against petitioner before the Regional Trial Court of Manila for breach of contract. This case was decided by the RTC only on 16 January 1990, eleven years later. In the decision penned by Judge Fructuoso Velicaria, Jr., private respondents' complaint was dismissed for lack of merit. The Decision reads in part, as follows:

"x x x x x x x x

x x x that on appeal to the Ministry of Labor, the Ministry, through the Deputy Minister, issued an Order reversing the Decision of the Regional Director dated August 2, 1979, declaring the Collective Bargaining Agreement as a mere trade agreement and that there exist no employee-employer relationship between the parties (Exh. D., D-1 to D-4); that upon receipt of the Order of the Deputy Minister of Labor, plaintiff appealed by way of certiorari to the Honorable Supreme Court, which appeal was denied for lack of merit, thus the Supreme Court upheld the Decision of the Ministry of Labor that the Collective Bargaining Agreement is a mere trade agreement

and that there exist no employee-employer relationship (Exh. E and F); and that the action by the plaintiffs before the Ministry of Labor, subsequent to the ruling of the Supreme Court, for unfair labor practice against defendant, was dismissed by the Labor Arbiter for lack of jurisdiction.

x x x x x x x x

WHEREFORE, judgment is hereby rendered denying the prayer for preliminary mandatory injunction of plaintiffs and dismissing plaintiffs' complaint for lack of merit with costs against plaintiffs."

[2] Art. 291, Labor Code established a 3-year prescriptive period for money claims arising from employer-employee relations.

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