

ISAGANI ECAL, CRISOLOGO ECAL, NELSON BUENAOBRA, NARDING BANDOGLIO, WILMER ECHAGUE, ROGELIO CASTILLO, ALFREDO FERNANDO, OLIGARIO BIGATA, ROBERTO FERRER AND HONESTO TANAEL, REPRE...

G.R. Nos. 92777-78. March 13, 1991

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Is there an employer-employee relationship between petitioners and private respondent Hi-Line Timber, Inc. or merely an employer-independent contractor relationship between said private respondent and petitioner Isagani Ecal with the other petitioners being mere contract workers of Ecal? In the case of the latter, is Ecal engaged in "job" contracting or "labor-only" contracting? What then is the extent of the liability of private respondent? These are the questions raised in this petition.

This case traces its origin from two consolidated complaints for illegal dismissal and money claims filed by petitioners Isagani Ecal, Crisologo Ecal, Nelson Buenaobra, Narding Bandogelio, Wilmer Echague, Rogelio Castillo, Alfredo Fernando, Oligario Bigata, Roberto Ferrer and Honesto Tanael against private respondents Hi-Line Timber, Inc. (hereinafter referred to as Hi-Line) and Jimmy Matchuka, the company foreman, with the Department of Labor and Employment docketed as NLRC Case No. RAB-03-09-0107-87 and No. RAB III-09-0116-87.

In their complaints/position papers, petitioners alleged, among others, that they have been employed by Hi-Line as follows: Isagani Ecal, from February, 1986; Crisologo Ecal, Buenaobra, Bandogelio, Fernando, Bigata, Ferrer and Tanael, from March 3, 1986; and Castillo and Echague, from May 1, 1986; that except for Isagani Ecal, they were all receiving a salary of P35.00 a day; that they were required to report for work 7 days a week including rest days, legal holidays, except Christmas and Good Friday from 7:00 A.M. to 7:00 P.M.; that they were not given living allowance, overtime pay, premium pay for rest days and legal holidays, 13th month pay and service incentive leave pay; and, that on June 6, 1987, they were not allowed to work and instead were informed that their services were no longer needed.

Private respondents, on the other hand, denied the existence of an employer-employee relationship between the company and the petitioners claiming that the latter are under the employ of an independent contractor, petitioner Isagani Ecal, an employee of the company until his resignation on February 4, 1987.

After submission of the supplemental position papers and other evidence by the parties, the labor arbiter rendered his decision dated June 10, 1988 finding no employer-employee relationship between the parties. Thus, he dismissed the two cases for lack of merit.[1]

On appeal, public respondent National Labor Relations Commission (NLRC) affirmed the aforesaid decision of the labor arbiter in a resolution dated October 2, 1989.[2]

The motion for reconsideration of petitioners was denied in a resolution dated March 12, 1990.[3]

In this petition for certiorari, petitioners primarily question the finding of the public respondent NLRC that no employer-employee relationship existed between them and Hi-Line Timber, Inc. They contend that petitioner Isagani Ecal is not an independent contractor but a mere employee of Hi-Line.

In response, the Solicitor General points out that the issue of whether or not an employer-employee relationship exists between the parties is a question of fact and the findings of the labor arbiter and the NLRC on this issue are conclusive upon this Court if they are supported by substantial evidence[4] as in this case.

The NLRC ruled -

"We have carefully examined and evaluated the basis of the decision of the Labor Arbiter and to Our mind his factual findings are indeed supported by substantial evidence. Thus, we cite a few of the clear and convincing evidence and record which compelled the Labor Arbiter to disregard the claim of the complainants that there was (an) employer-employee relationship between the contending parties. Firstly, the affidavit of respondents' personnel officer, Elizabeth Natividad, dated 22 April 1988, clearly attesting to the fact that complainants, except Isagani Ecal, who worked at their plant at Bocaue, Bulacan, from 24 April 1986 up to 4 February 1987 and who tendered his resignation on the latter date, were not at all employees of respondents; secondly, the payrolls of the respondents do not indicate that said complainants were employees of the respondents; thirdly, the Sinumpaang Salaysay of Jose Mendoza, the Secretary-Treasurer Of the Hi-Line Workers Union-Confederation of Free Laborers (CFL), a registered labor Union under Reg. Cert. No. (FED-425)-6756-11, issued March, 1987, to the effect that none of the complainants, except Isagani Ecal, were listed as members of the union and/or employees of respondents; and lastly, two (2) Sinumpaang Salaysay dated 22 April 1988 executed by respondents' company guard Honorio T. Battung and Foreman Clemente S. Sales, respectively, attesting that it was only Isagani Ecal who worked with respondents but resigned on 4 February 1987 to work as(an) independent contractor."[5]

Petitioners claim that the NLRC based its decision solely on the evidence aforesaid and completely ignored the evidence they presented thus denying them due process. The Court carefully examined the records of the case and finds that the NLRC limited itself to a superficial evaluation of the relationship of the parties based mainly on the aforesaid documents with emphasis on the company payrolls without regard to the particular circumstances of the case.

The finding of the NLRC that Isagani Ecal is no longer an employee of Hi-Line is amply supported by the evidence on record. His resignation letter dated of February 4, 1987 stating "ako po ay magreresign na sa aking trabaho bilang 'laborer' sapagka't nakita ko na mas malaki ang kikitain kung mangontrata na lamang"[6] speaks for itself. This was unsuccessfully rebutted by petitioners.

To determine whether there exists an employer-employee relationship, the four-way test should be applied, namely: (1) 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 - the last being the most important element.[7] Neither the NLRC nor the labor arbiter utilized these guides in their disposition of the complaint.

The records show that Hi-Line does not choose the workers but merely accepts whoever may be selected by petitioner Isagani Ecal. Petitioners are not included in the payroll. Instead a lump sum of P1,400.00 is given to Isagani Ecal or his representative Solomon de los Santos, every four days, to cover their wages for the period which the petitioners divide among themselves.

Private respondents allege that Isagani Ecal customarily removes some of his laborers at the Hi-Line sawmill and assigns them to other sawmills; however, there was no evidence adduced to show that indeed Ecal regularly or

even once transferred some of his workers to other sawmills. Petitioners worked at the company compound at Wakas, Bocaue, Bulacan, at least eight hours a day, for seven days a week so that it would be impossible for them to find time to work in some other sawmill. On June 6, 1987, the company unilaterally terminated the services of petitioners without notice allegedly on the ground that its contract with Isagani Ecal had already expired.

As to the matter of control, it would seem that petitioners were mostly left on their own to devise the most expeditious way of segregating lumber materials as to sizes and of loading and unloading the same in the chamber for drying. However, their task is performed within the work premises of Hi-Line, specifically at its Kiln Drying Section, so it cannot be said that no amount of control and supervision is exerted upon them by the company through their foremen, private respondent Matchuka and Clemente S. Sales. Moreover, the very nature of the task performed by petitioners requires very limited supervision as there are only so many ways of segregating lumber according to their sizes and of loading and unloading them in the dryer so that all that the company has to do is to check on the results of their work.

The foregoing observation suggests that there is a certain relationship existing between the parties although a clear-cut characterization of such relationship - whether it is an employer-employee relationship or an employer-independent contractor relationship - is unavailing. Hence, a closer scrutiny of said relationship is in order.

Petitioners urge that even assuming *arguendo* that Isagani Ecal is an independent contractor, he should be considered only a labor supplier who is deemed an agent of the company so that petitioners should enjoy the status of being its employees; therefore, Hi-Line should be held liable for illegally dismissing petitioners and for the non-payment of benefits due them. Private respondents, however, maintain that Isagani Ecal is an independent contractor or a job contractor.

The Solicitor General adopts the theory that Ecal is an independent contractor. However, he faults the labor arbiter for his failure to determine the benefits due petitioners, an issue raised by the latter, on the ground that Hi-Line, being an indirect employer, is jointly and severally liable with Isagani Ecal to the extent of the work performed by the employees as if they were directly employed by it. He, therefore, seeks the remand of the case to the labor arbiter for determination of the unpaid benefits of petitioners.

The pertinent provisions of the Labor Code, as amended, are:

"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.

"The Secretary of Labor may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

"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 person 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.

"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."

Under the provisions of Article 106, paragraphs 1 and 2, an employer who enters into a contract with a contractor for the performance of work for the employer does not thereby establish an employer-employee relationship between himself and the employees of the contractor. The law itself, however, creates such a relationship when a contractor fails to pay the wages of his employees in accordance with the Labor Code, and only for this limited purpose, i.e., to ensure that the latter will be paid the wages due them.[8]

On the other hand, the legal effect of a finding that a contractor is merely a "labor-only" contractor was explained in *Philippine Bank of Communications v. National Labor Relations Commission, et al.*[9] --

"x x x 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 employee 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."

Sections 8 and 9, Rule VIII, Book III of the Omnibus Rules implementing the Labor Code set forth the distinctions between "job" contracting and "labor-only" contracting --

"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 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, equipments, 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, equipments, 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.

"xxx xxx xxx."

Applying the foregoing provisions, the Court finds petitioner Isagani Ecal to be a "labor-only" contractor, a mere supplier of manpower to Hi-Line. Isagani Ecal was only a poor laborer at the time of his resignation on February 4, 1987 who cannot even afford to have his daughter treated for malnutrition. He resigned and became a supplier of laborers for Hi-Line, because he saw an opportunity for him to earn more than what he was earning while still in the payroll of the company. At the same time, he continued working for the company as a laborer at the kiln drying section. He definitely does not have sufficient capital to invest in tools and machineries. Private respondents, however, claim that the business contracted by Ecal did not require the use of tools, equipment and machineries and the contracted task had to be executed in the premises of Hi-Line. Precisely, the job assigned to petitioners has to be executed within the work premises of Hi-Line where they use the machineries and equipment of the company for the drying of lumber materials. Even the company's personnel officer Elizabeth Natividad admitted that Ecal resigned in order to supply manpower to the company on a task basis.[10] By the very allegations of private respondents, it is quite clear that Isagani Ecal only supplies manpower to Hi-Line within the context of "labor-only" contracting as defined by law.

There is also no question that the task performed by petitioners is directly related to the business of Hi-Line: Petitioners were assigned to sort out the lumber materials whether wet or fresh kiln as to sizes and to carry them from the stockpile to the dryer where they are loaded for drying after which they are unloaded. The work of petitioners is an integral part of the operation of the sawmill of Hi-Line without which production and company sales will suffer.

A finding that Isagani Ecal is a 'labor-only' contractor is equivalent to a finding that an employer-employee relationship exists between the company and Ecal including the latter's "contract workers" herein petitioners, the relationship being such as provided by the law itself.[11]

Indeed, the law prohibits "labor-only" contracting and creates an employer-employee relationship for the protection of the laborers. The Court had in fact observed that businessmen, with the aid of lawyers, have tried to avoid the bringing about of an employer-employee relationship in some of their enterprises because that juridical relation spawns obligations connected with workmen's compensation, social security, medicare, minimum wage, termination pay and unionism.[12]

This unscrupulous practice is quite evident in the case at bar. It is company policy that once an employee is assigned to the kiln drying section, he is no longer included in the payroll and is then paid on a task basis, even if he had long been employed with the company. Since the employee will no longer be included in the payroll, it becomes easy for the company to deny the regular employment of such a worker and is able to avoid whatever obligations it may have under an employer-employee relationship. Moreover, Hi-Line limits the period of undertaking to only four days presumably to make termination of the services of petitioners easier and to prevent them from attaining regular status. The company had no doubt taken advantage of these laborers in order to escape liability for benefits and privileges accruing to one holding a regular employment. Without a law prohibiting "labor-only" contracting to protect the rights of labor, these poor workers will always be at the mercy of the employer.

Since petitioners perform tasks which are usually necessary or desirable in the main business of Hi-Line, they should be deemed regular employees of the latter[13] and as such are entitled to all the benefits and rights appurtenant to regular employment.

Being regular employees, they should have been afforded due process prior to their dismissal.[14] Instead, they were unceremoniously dismissed on June 6, 1987 when they were not allowed to enter the company's premises by the security guards. The argument of private respondents that the contract of Ecal with the company expired

cannot be sustained. Petitioners may only be dismissed for an authorized or just cause and after due process.

At this juncture, We note that petitioners and private respondents allege conflicting dates of employment of the former. Petitioners claim that as early as March or May, 1986, they have already been working with Hi-Line, while private respondents contend that it was only in April, 1987 that they had been engaged by the company. This Court is not a trier of facts and there is not enough basis in the records to enable Us to come up with definite dates of employment. However, whatever be the date of their employment; petitioners will still be considered employees of the company. If petitioners had started their employment in 1986, they would have rendered more than 1 year of service at the time of their dismissal and, therefore, should be considered regular employees. Even if they have been engaged only in April of 1987, they will still be deemed regular employees for as earlier indicated, Isagani Ecal is a "labor-only" contractor and petitioners perform activities directly related to the principal business of Hi-Line.

Petitioners, having been illegally dismissed on June 6, 1987, are entitled to backwages equivalent to three years without qualifications and deductions in line with prevailing jurisprudence.

WHEREFORE, the decision of public respondent NLRC is hereby REVERSED and SET ASIDE. Private respondent Hi-Line Timber, Inc. is hereby ordered to reinstate petitioners to their former positions with backwages equivalent to three (3) years without deductions and qualifications. The records of the case are remanded to the labor arbiter for determination of the unpaid benefits due petitioners. No costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Pages 56-67, Rollo.

[2] Pages 102-104, Rollo.

[3] Pages 127-127-A, Rollo.

[4] Asim v. Castro, 163 SCRA 344 (1988); RJL Martinez Trading Corp. v. NLRC, 127 SCRA 455 (1984).

[5] Page 2, NLRC decision; Page 103, Rollo.

[6] Annex A of Sworn Affidavit of Elizabeth Natividad dated 22 April 1988.

[7] Brotherhood Labor Unity Movement of the Phils. v. Zamora, 147 SCRA 49 (1987); Asim v. Castro, supra.

[8] Philippine Bank of Communications v. NLRC, 146 SCRA 347 (1986).

[9] Supra; cited in Broadway Motors, Inc. v. NLRC, 156 SCRA 522 (1987) and Industrial Timber Corporation v. NLRC, 169 SCRA 341 (1989).

[10] Annex "A" to the Petition, page 128, Rollo.

[11] Broadway Motors, Inc. v. NLRC, supra; Industrial Timber Corporation v. NLRC, supra.

[12] Mafinco Trading Corp. v. Ople, 70 SCRA 139 (1976).

[13] Article 280, Labor Code, as amended; A.M. Oreta & Co., Inc. v. NLRC, 176 SCRA 218 (1989).

[14] Rule XIV, Section 1, Book V, Omnibus Rules Implementing the Labor Code; Wenphil Corporation v. NLRC, 170 SCRA 69 (1989).

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