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Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **April 19, 2022** *which reads as follows:*

"G.R. No. 250485 (Paperóne, Inc., *Petitioner*, vs. Rey R. Nacion and Jefrie A. Orocio, *Respondents*). – Before the Court is a Petition for Review[1] on *certiorari* assailing the Decision[2] dated December 12, 2018 and the Resolution[3] dated November 15, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 146319 which affirmed with modification the Decision[4] dated February 29, 2016 and the Resolution dated April 20, 2016 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. 04-04670-15/NLRC LAC No. 11-003139-15. The NLRC found respondents Rey R. Nacion (Nacion) and Jefrie A. Orocio (Orocio) (collectively, respondents) to have been illegally dismissed by petitioner Paperóne, Inc. (Paperóne) and ordered their reinstatement with full backwages and ten percent (10%) attorney's fees.[5]

The Antecedents

The instant case stemmed from a complaint for illegal dismissal with prayer for reinstatement, backwages, regularization, moral and exemplary damages, and attorney's fees which respondents filed on

- over – eleven (11) pages ...

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1 See Petition for Review with Motion for Issuance of Preliminary Injunction and/or Temporary Restraining Order; *rollo*, pp. 11-47.

2 Id. at 51-70. Penned by Associate Justice Maria Filomena D. Singh and concurred in by Associate Justices Japar B. Dimaampao (now a Member of the Court) and Manuel M. Barrios.

3 Id. at 71-73.

4 Id. at 97-107. Penned by Commissioner Dolores M. Peralta-Beley and concurred in by Presiding Commissioner Grace E. Maniquiz-Tan, Commissioner Mercedes R. Posada-Lacap took no part.

5 Id. at 107.

April 21, 2015 against the following: Paperóne; Patrick Wee (Wee), owner of Paperóne; RBML Manpower Services, Inc. (RBML); and Evangeline G. Lacay, owner of RBML.[6]

Paperóne is an entity engaged in the business of paper conversion, principally, in the production of student notebooks. It hired Nacion in September 2014 and Orocio in February 2015 as operators of its ruling/flexo machines. Specifically, Paperóne assigned respondents at its production line to imprint lines in papers to produce ruled notebooks and other paper products.[7]

According to respondents, they initially received their salaries from HEED Management and Manpower Services (HEED). Thereafter, Paperóne instructed them to collect their salaries from RBML starting March 2015.[8]

Respondents alleged that on March 18, 2015, at around 6:00 p.m., Allan Jimenez (Jimenez), a supervisor of Paperóne, informed them and several other ruling/flexo machine operators that they were no longer required to report to work the next day and to look for another job. Paperóne called back respondents' co-workers to report for work the following day but did not do the same with respondents.[9] Supposedly, Connie Haw, the owner of Advance Paper Corporation (Advance), had requested Wee to dismiss respondents because they previously filed a case against Advance for underpayment of wages.[10]

To support their claim for illegal dismissal, respondents argued that Paperóne was their employer and that RBML and HEED were mere recruitment agencies and payroll clerks of Paperóne.[11]

For its part, Paperóne contended that RBML was the employer of respondents; hence, it was under no obligation to regularize them.[12] Paperóne explained that the demand for their production of notebooks is seasonal, which peaks every opening of the school year in June and November.[13] In anticipation of the upcoming demand in the production, Paperóne requested RBML in February 2015 to deploy extra workers, including respondents, at its plant.[14]

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6 Id. at 52.
7 Id. at 51-52.
8 Id. at 52.
9 Id.
10 Id.
11 Id.
12 Id. at 53.
13 Id. at 17-18.
14 Id. at 18.

Paperóne further alleged that during that period, their production of notebooks ceased due to the unforeseen non-delivery of materials caused by the following: (1) the port congestion in 2014 when the City Government of Manila banned container vans and cargo trucks; and (2) the organizational changes in the Bureau of Customs (BOC) and the Bureau of Internal Revenue (BIR) which caused importers and customs brokers to go through the tedious process of re-accreditation.[15] As such, Paperóne was left with no alternative but to request RBML to temporarily pull out its deployed workers including respondents.[16]

As for RBML, it averred that it never dismissed respondents from employment as there was only a temporary stoppage of work in Paperóne due to unforeseen circumstances.[17]

Ruling of the Labor Arbiter

In the Decision[18] dated August 27, 2015, the Labor Arbiter dismissed the Complaint for lack of merit. The Labor Arbiter noted that respondents were not terminated from employment but were merely temporarily laid off due to the unavailability of raw materials needed for the production of notebooks. Hence, the Labor Arbiter ruled that there was no dismissal of employment in the case of respondents to speak of as there was a *bona fide* suspension of Paperóne's business operations.[19]

Respondents thereafter appealed before the NLRC.

Ruling of the NLRC

In the Resolution dated November 25, 2015, the NLRC dismissed the appeal for having been filed out of time.[20]

Respondents then moved for reconsideration of the NLRC Resolution.[21] In the Decision[22] dated February 29, 2016, the NLRC reinstated and granted respondents' appeal. It held that Paperóne was

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15 Id. at 19.
16 Id. at 20.
17 Id. at 19.
18 Id. at 90-95. Penned by Labor Arbiter Jose Antonio C. Ferrer.
19 Id. at 95.
20 Id. at 53.
21 Id.
22 Id. at 97-107.

the true employer of respondents and that Paperóne illegally dismissed them from employment.[23] The dispositive portion of the NLRC Decision reads:

> WHEREFORE, complainant's Motion for Reconsideration is GRANTED. Accordingly, the Appeal is REINSTATED.
>
> Complainants' Appeal is hereby GRANTED. The Decision of Labor Arbiter Jose Antonio C. Ferrer dated August 27, 2015 is REVERSED and SET ASIDE. Complainants Rey R. Nacion and Jefrie A. Orocio are found to have been illegally dismissed. Respondents are ordered to reinstate complainants with full backwages. Complainants are also entitled to attorney's fees equivalent to ten percent (10%) of the total monetary award, the computation of which is attached as Annex "A" forming part of this Decision.
>
> SO ORDERED.[24]

Paperóne and RBML separately moved for reconsideration of the NLRC Decision, but the NLRC denied the motions on April 20, 2016.[25] Consequently, Paperóne elevated the case *via* a *certiorari* petition with the CA.[26]

Ruling of the CA

In the assailed Decision[27] dated December 12, 2018, the CA affirmed the NLRC ruling with the following modification:

> x x x (a) [I]n the event that actual reinstatement of the private respondents Rey Revilla Nacion and Jefrie A. Orocio is impossible, the petitioner Paperóne, Inc. is ordered to pay their separation pay equivalent to one (1) month pay, or one-half (½) month pay for every year of service, whichever is higher; and, (b) the monetary awards to the private respondents Rey Revilla Nacion and Jefrie A. Orocio shall earn interest at the rate of 6% *per annum* from the finality of this Decision, until full satisfaction.[28]

The CA agreed with the NLRC that Paperóne was the true employer of respondents. It ratiocinated that *"[b]y the very nature of RBML's business as a recruitment and placement agency, it is not*

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[23] Id. at 103.
[24] Id. at 106-107.
[25] Id. at 54.
[26] Id. at 51.
[27] Id. at 51-70.
[28] Id. at 69.

meant to retain the workers it places or recruits as its own employees. Rather, once it deploys these individuals to their designated employers, they cease to be under the recruitment and placement agency and become employees of the entities where they are deployed."[29]

The Issues

1. Whether RBML is a legitimate job contractor or a labor-only contractor.

2. Whether respondents were illegally dismissed from employment.

Ruling of the Court

The issues of whether RBML is a labor-only contractor and whether respondents were validly dismissed from employment are *factual matters* which the Court generally does *not* dwell upon in a petition for review on *certiorari* under Rule 45 of the Rules of Court. However, considering that the findings of facts of the NLRC and the CA are in conflict with those of the Labor Arbiter, the Court may deviate from the general rule and review the records to determine which findings conform to the applicable laws and the evidentiary facts in the case.[30]

Equally important is the rule that "in a Rule 45 review in labor cases, the Court examines the CA's Decision from the prism of whether [in a petition for *certiorari,*] the latter had correctly determined the presence or absence of grave abuse of discretion in the NLRC's Decision."[31]

It must be stressed that in labor cases, there is grave abuse of discretion on the part of the NLRC when its findings and conclusions are not supported by substantial evidence, *i.e.,* that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[32] Such grave abuse of discretion on the part of the NLRC warrants the grant of the extraordinary remedy of *certiorari.*[33]

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[29] Id. at 57.
[30] See *Samson v. National Labor Relations Commission*, 386 Phil. 669 (2000).
[31] *Slord Development Corp. v. Noya*, G.R. No. 232687, February 4, 2019.
[32] *Ace Navigation Company v. Garcia*, 760 Phil. 924, 932 (2015); *Mercado v. AMA Computer College-Parañaque City, Inc.*, 632 Phil. 228, 248 (2010).
[33] Id.

The CA did not err in finding no grave abuse of discretion on the part of the NLRC. Indeed, RBML is engaged in labor-only contracting.

In *W.M. Manufacturing, Inc. v. Dalag*,[34] the Court explained the concept of "labor-only" contracting and the consequences of such illegal practice, *viz.*:

> 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 by him.*[35] (Italics supplied)

Section 6 of Department Order No. 18-A, series of 2011,[36] lays down the criteria in determining whether labor-only contracting exists between two parties as follows:

> Section 6. Prohibition against labor-only contracting. — Labor-only contracting is hereby declared prohibited. For this purpose, labor only contracting shall refer to an arrangement where:
>
> > (a) The contractor does not have substantial capital or investments in the form of tools, equipment, machineries, work premises, among others, and the employees recruited and placed are performing activities which are usually necessary or desirable to the operation of the company, or directly related to the main business of the principal within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal; or
> >
> > (b) The contractor does not exercise the right to control over the performance of the work of the employee.

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[34] 774 Phil. 353 (2015).
[35] Id. at 375-376.
[36] Rules Implementing Articles 106 to 109 of the Labor Code, as amended.

As can be gleaned from the foregoing, "the *essential element* in labor-only contracting is that the contractor merely recruits, supplies or places workers to perform a job, work or service for a principal."[37] It bears stressing, however, that a contractor will only be deemed engaged in labor-only contracting within the contemplation of the law *if* the presence of this essential element is *accompanied* by either of the two confirmatory elements mentioned above.[38]

Here, the record shows that RBML is a licensed private recruitment and placement agency which recruits, supplies, or places workers to perform jobs at Paperóne.[39] In particular, RBML placed respondents at Paperóne to work as ruling/flexo machine operators. Respondents' work is obviously necessary and desirable to the business of the company for it involves imprinting lines in the notebooks and other paper products that the company produces and sells.[40]

However, it does *not* appear that RBML presented any evidence on record, or, at the very least, even alleged in its pleadings, that it had substantial capital or investment, whether in the form of capital stocks and subscribed capitalization or in tools, equipment, implements, machineries, and work premises,[41] in relation to the job, work, or service it provides.

Moreover, it is clear that RBML did *not* exercise control over the means and methods of respondents' work at Paperóne. In fact, it was Jimenez, an employee of Paperóne, who supervised and monitored respondents' work performance in the company.[42]

The Court, therefore, agrees with the NLRC and the CA that *RBML is a labor-only contractor* considering that (1) it merely supplied workers to perform jobs at Paperóne; (2) it does not have substantial capital or investment in relation to its services, and respondents, whom it placed at Paperóne, performed activities which were directly related to the latter's main business; and (3) it did not exercise control over the means and methods of respondents' work at Paperóne.

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37 Id. at 377. Italics supplied.
38 Id.
39 *Rollo*, p. 57.
40 Id. at 61-62.
41 See DOLE Order No. 18-02, Section 5.
42 *Rollo*, p. 63.

Paperóne is the true employer of respondents

"In labor-only contracting, an employer-employee relationship between the principal employer and the employees of the "labor-only" contractor is created."[43] Since RBML is a labor-only contractor, the workers it supplied to Paperóne, including respondents, are considered as employees of Paperóne.[44]

At any rate, the following circumstances further indicate the presence of an employer-employee relationship between Paperóne and respondents:

1. It was Jimenez, supervisor of Paperóne, who interviewed respondents when they applied for work;[45]

2. It was not RBML who initially paid the salaries of respondents. RBML only entered the picture when Paperóne instructed respondents to collect their salaries from RBML starting March 2015;[46] and

3. It was also Jimenez who supervised the means and methods of respondents' work in Paperóne.[47]

Set against the overwhelming evidence that Paperóne is the true employer of respondents, the Court finds no merit in Paperóne's contention that respondents are estopped from denying that they were former employees of RBML in view of their supposed previous admission. Contrary to such assertion, respondents, in all their pleadings, actually referred to Paperóne, not RBML, as their employer.[48]

In the same vein, RBML's alleged admission that respondents were its employees is *inconsequential* for being self-serving and, more importantly, unsubstantiated. Besides, as the CA aptly noted, RBML itself stated in its Reply to respondents' Position Paper that it had "no power much less authority [over respondents] because of the absence of employer-employee relations."[49]

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43 *NAPOCOR v. Court of Appeals*, 355 Phil 642, 648 (1998).
44 Id.
45 *Rollo*, p. 63.
46 Id. at 52, and 97-98.
47 See *Sinumpaang Salaysay* of respondents, as culled from the CA Decision; id. at 63.
48 Id. at 59.
49 Id.

Respondents were illegally dismissed from employment

Respondents, being employees of Paperóne, are entitled to security of tenure, which means that they can be removed from employment only for just and authorized causes.[50].

As discussed earlier, Paperóne justifies the removal of respondents by alleging that there was a temporary stoppage of work due to the unforeseen non-delivery of materials caused by the following: (1) the port congestion in 2014 when the City Government of Manila banned container vans and cargo trucks; and (2) the organizational changes in the BOC and the BIR which caused importers and customs brokers to go through the tedious process of re-accreditation.[51]

Jurisprudence holds that in cases of temporary stoppage of work, the employer should notify the Department of Labor and Employment (DOLE) and the employees concerned at least one month prior to the intended date of suspension of business operations.[52] The employer must likewise establish the existence of *a clear and compelling economic reason* for the temporary shutdown of its business as well as *the absence of available posts* to which its affected employees could be assigned.[53]

In the case, Paperóne failed to show compliance with the requirement of notice to both the DOLE and respondents. Moreover, it failed to prove the following: *first*, that the alleged port congestion and the organizational changes in the BOC and the BIR resulted in a *bona fide* suspension of its business operations; and *second*, that there were no available job posts to which respondents could be assigned. Interestingly, Paperóne also did not proffer any sufficient justification as to why respondents were the only ones among all of its employees who were disallowed from reporting to work starting March 19, 2015.[54]

All told, the CA did not err in finding no grave abuse of discretion on the part of the NLRC. The findings of the NLRC that Paperóne is the true employer of respondents and that Paperóne

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[50] See *PSBA v. NLRC*, 329 Phil. 932 (1996).
[51] *Rollo*, p. 19.
[52] *Airborne Maintenance and Allied Services, Inc. v. Egos*, G.R. No. 222748, April 3, 2019.
[53] Id.
[54] *Rollo*, pp. 64-65.

illegally dismissed them from employment were supported by substantial evidence. As such, their dismissal is considered *illegal* for being violative of their right to security of tenure.

WHEREFORE, the petition is **DENIED**. The Decision dated December 12, 2018 and the Resolution dated November 15, 2019 of the Court of Appeals in CA-G.R. SP No. 146319 are **AFFIRMED**. Accordingly, respondents Rey R. Nacion and Jefrie A. Orocio are ordered **REINSTATED** with full backwages. Further, petitioner Paperóne, Inc. is **ORDERED** to pay respondents Rey R. Nacion and Jefrie A. Orocio attorney's fees equivalent to ten percent (10%) of the total monetary award as set forth in the Decision dated February 29, 2016 of the National Labor Relations Commission.

In the event that actual reinstatement is impossible, petitioner Paperóne, Inc. is **ORDERED** to pay respondents Rey R. Nacion and Jefrie A. Orocio their separation pay equivalent to one (1) month pay, or one-half (½) month pay for every year of service, whichever is higher.

The total monetary award shall earn interest at the rate of six percent (6%) *per annum* from the date of the finality of this Resolution until full satisfaction.

SO ORDERED." ***Dimaampao, J.,*** *no part;* ***Lazaro-Javier, J.,*** *designated additional Member per Raffle dated April 12, 2022;* ***Gaerlan, J.,*** *on official leave.*

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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