



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames

Please take notice that the Court, Third Division, issued a Resolution dated April 19, 2023, which reads as follows:

“G.R. No. 254317 (*Vincent Lumigan Andoc, Noe¹ Lagasca, Eugene P. Paciencia, Nickson Hapin and June Aplicador v. Baseline Construction Corporation*). – This is a Petition for Review on *Certiorari*² seeking to reverse and set aside the Decision³ dated March 11, 2019 and the Resolution⁴ dated November 9, 2020 of the Court of Appeals (CA) in CA-G.R. SP No. 155272. The assailed CA rulings reversed the Decision⁵ dated December 29, 2017 and Resolution⁶ dated January 31, 2018 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 12-003793-17, which affirmed the Decision⁷ dated July 31, 2017 of the Labor Arbiter (LA) in NLRC NCR Case No. 02-02679-17.

The Antecedent Facts

Baseline Construction Corporation (BCC) is a general construction company specializing in high and medium sized buildings, condominiums, residential houses, and its repairs and renovations.⁸

On December 7, 2015, BCC entered into a Service Contract Agreement⁹ with a subcontractor, JT Cabrera Jr. Construction Services (JTCCS), to complete all the civil works for its project entitled “PROPOSED COMM’L BLDG. HIGH POINTE CENTER” located at Mandaluyong City.¹⁰

¹ Noel in some parts of the *rollo*.

² *Rollo*, pp. 13-33.

³ *Id.* at 42-53; penned by Associate Justice Sesinando E. Villon, with Associate Justices Edwin D. Sorongon and Maria Filomena D. Singh (now a Member of this Court), concurring.

⁴ *Id.* at 6-11; penned by Associate Justice Maria Filomena D. Singh (now a Member of this Court), with Associate Justices Edwin D. Sorongon and Gabriel T. Robeniol, concurring.

⁵ *Id.* at 145-163; penned by Presiding Commissioner Joseph Gerard E. Mabilog, with Commissioner Isabel G. Panganiban-Ortiguerra, concurring.

⁶ *Id.* at 166.

⁷ *Id.* at 110-119. Penned by Labor Arbiter J. Potenciano F. Napeñas, Jr.

⁸ *Id.* at 147.

⁹ *Id.* at 96-98.

¹⁰ *Id.* at 96.

On February 15, 2016, BCC entered into a Service Contract Agreement¹¹ with another subcontractor, PD Villarante Construction (PDVC), to complete all the civil works for its project entitled “PROPOSED 2-STOREY WAREHOUSE” located at Tondo, Manila. On June 13, 2016, it executed another Service Contract Agreement¹² with Joneth Cabrera Builders (JCB) to provide additional laborers for the completion of this project.

To accomplish the work under the agreements, JTCCS, PDVC, and JCB hired their own laborers. JTCCS hired Eugene Paciencia, Noe J. Lagasca, Rodel O. Duller, and Vincent A. Andoc, among others. PDVC and JCB hired petitioners Nickson Hapin and June Aplicador, respectively, in addition to other workers (collectively, petitioners).¹³

During the construction period for its projects, BCC erected barracks near the work sites where laborers such as petitioners could temporarily reside for free. These barracks, however, remained under the control and supervision of its subcontractors. After the completion of the projects, JTCCS, PDVC, and JCB informed all workers residing at the barracks that they needed to vacate because these would be removed. This allegedly prompted petitioners to file the instant Complaint for illegal dismissal and other monetary claims against BCC.¹⁴

Petitioners in their Position Paper¹⁵ claimed that BCC entered into the Service Contract Agreements with its subcontractors only to hide and circumvent their status as its regular employees. In reality, BCC, through its foremen, paid their wages and supervised their work.¹⁶ It allegedly failed to pay them the correct amount of wages and other benefits under the law. It was also liable for their illegal dismissal when it no longer gave them work after they rejected its demand to leave the barracks where they and their families lived.¹⁷

In response, BCC filed its own Position Paper¹⁸ where it primarily argued that petitioners’ complaint should be dismissed since they failed to prove the fact of their dismissal from employment in the first place. It emphasized that petitioners did not present any proof of the notices of their termination and filed this case merely to gain leverage in pressuring BCC to allow them to continue living in the barracks.¹⁹

¹¹ Id. at 102-104.

¹² Id. at 99-101.

¹³ Id. at 91.

¹⁴ Id. at 43-44.

¹⁵ Id. at 60-65.

¹⁶ Id. at 62-63.

¹⁷ Id. at 63.

¹⁸ Id. at 80-88.

¹⁹ Id. at 86.

wages, and controlled the means and methods of their work. On the other hand, petitioners did not present any evidence to prove their claim that they were employed by BCC.²⁰ Necessarily, due to the lack of employer-employee relationship, BCC cannot be held liable for any of petitioners' claims.

The LA Ruling

The LA rendered its Decision²¹ dated July 31, 2017 finding that the petitioners were illegally dismissed and thus ordering BCC, JTCCS, and JCB solidarily liable for their monetary claims:

WHEREFORE, premises considered, judgment is hereby rendered finding the complainants to have been illegally dismissed. Accordingly, all the respondents are hereby ordered to pay solidarily the complainants, the following:

- a) Full backwages computed from the date of dismissal up to the date of this Decision;
- b) Separation pay equivalent to one month salary for every year of service;
- c) Salary differential;
- d) 13th Month Pay;
- e) Service Incentive Leave Pay; and
- f) Attorney's fee[s] of ten percent (10%) of the total monetary award.

The computation of which is herewith attached and formed an integral part of this Decision.

Further, the complaints of **JESS MARK AGUILAR, EFREN AGUILAR**, and **ARCHIE PUAGANG**, are dismissed as aforestated.

All other claims are dismissed for lack of factual and legal basis.

SO ORDERED.²²

The LA held that petitioners were illegally dismissed because JTCCS and JCB no longer gave petitioners work after their contract with BCC ended.²³ It also did not give credence to the evidence submitted by BCC, JTCCS, and JCB, and found that they had an unlawful labor-only contracting arrangement. BCC, was thus considered petitioners' principal employer and solidarily liable for all the violations of the Labor Code against them.

²⁰ Id. at 84-85.

²¹ Id. at 110-119.

²² Id. at 119.

²³ Id. at 117.

Unsatisfied, BCC appealed to the NLRC.²⁴

The NLRC Ruling

The NLRC rendered its Decision²⁵ dated December 29, 2017 denying BCC's appeal and affirming the LA:

WHEREFORE, premises considered, the assailed Decision is **AFFIRMED**.

SO ORDERED.²⁶

The NLRC concurred that petitioners should be considered regular employees of BCC, JTCCS, and JCB.²⁷ Hence, the failure or refusal of BCC, JTCCS, and JCB to provide them with continuous work amounted to their illegal dismissal.²⁸

BCC filed a Motion for Reconsideration but was denied by the NLRC in its Resolution²⁹ dated January 31, 2018

BCC assailed the Decision and Resolution of the NLRC through a petition for *certiorari* with the CA.

The CA Ruling

The CA rendered its Decision³⁰ dated March 11, 2019 granting BCC's petition for *certiorari* and dismissed petitioners' complaint for illegal dismissal:

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated December 29, 2017 and Resolution dated January 31, 2018 of public respondent National Labor Relations Commission, Sixth Division, in NLRC LAC No. 12-003793-17 are hereby **REVERSED and SET ASIDE**. Resultantly, the complaint filed by private respondents is hereby ordered **DISMISSED**.

SO ORDERED.³¹

The CA held that there can be no ruling of illegal dismissal because petitioners failed to establish the fact of their dismissal to begin with. The employer's burden to prove the legality of a dismissal arises only after the employee proves the fact of his/her dismissal. In this case, petitioners failed

²⁴ Id. at 123-135.

²⁵ Id. at 145-163.

²⁶ Id. at 163.

²⁷ Id. at 154-160.

²⁸ Id. at 159.

²⁹ Id. at 166.

³⁰ Id. at 42-53.

³¹ Id. at 52.

to prove any overt act on the part of JTCCS, PVDC, or JCB, and especially BCC, to terminate them from employment. The removal of the barracks which they occupied after the completion of the project was not tantamount to their dismissal. There was no indication that their employers prevented them from working or deliberately deprived them of work assignments.³²

Moreover, the CA reversed the finding that there was an employer-employee relationship between BCC and petitioners. It concluded that BCC adduced sufficient documentary evidence to establish that JTCCS, PVDC, and JCB were independent contractors engaged in legitimate labor contracting. Petitioners were therefore never the employees of BCC and could not have been illegally dismissed by it.³³

Petitioners filed a Motion for Reconsideration of the Decision but was denied by the CA in its Resolution³⁴ dated November 9, 2020.

Hence, petitioners filed the instant petition for review.

The Parties' Arguments

Petitioners insisted that they were regular employees of BCC and not of its subcontractors. They claimed that BCC failed to discharge its burden to prove that its subcontractors are not labor-only contractors but independent job contractors. For instance, no proof was presented that JTCCS, PDVC, or JBC had substantial capital or its own tools and equipment.³⁵ Further, they should be deemed regular employees because of the length of their employment and the necessity and desirability of their assigned tasks to BCC's principal business.³⁶

On their alleged illegal dismissal, they claimed that they were "forced to quit their job[s] because they were no longer given works after they rejected [BCC's] demand to leave the barracks which they and their families use as houses in Manila."³⁷

BCC filed a Comment/Opposition³⁸ to the petition for review on *certiorari*. It alleged that the CA did not commit any reversible error in rendering its Decision and that there was no definitive ruling that petitioners were regular employees of BCC. Further, there were no questions of law raised that could rightfully be considered by this Court in a petition for review under Rule 45 of the Rules of Court.³⁹

³² Id. at 46-48.

³³ Id. at 48-52.

³⁴ Id. at 6-11.

³⁵ Id. at 19-25.

³⁶ Id. at 33.

³⁷ Id. at 17.

³⁸ Id. at 179-183.

³⁹ Id. at 180-182.

The Issue

The issue in this case is whether or not BCC should be held liable for illegally dismissing petitioners.

The Ruling of this Court

The petition is denied.

At the outset, it is stressed that the primary issue in this case of whether or not petitioners were illegally dismissed involves a question of fact improperly raised in a petition under Rule 45 of the Rules of Court. This Court is not a trier of facts and will generally resolve only questions of law. However, this petition will be reviewed only as an exception to this rule since the factual findings of the CA differ from that of the NLRC and LA.⁴⁰

After a judicious review of this case, We find that the CA did not commit any reversible error in dismissing petitioners' complaint for illegal dismissal.

It is settled that in illegal dismissal cases, the employer has the burden to prove that the employee's dismissal was for a valid cause. However, before the employer's burden of proof arises, the employee must first at least establish *prima facie* the fact of his/her dismissal. This is simply because if there is no dismissal, there can be no question on its legality or illegality to begin with.⁴¹

In this regard, it is fundamental that each party must prove his/her affirmative allegation. An employee's mere allegation is not evidence. It is established that bare allegations of dismissal which are uncorroborated by supporting evidence cannot be given credence by the courts.⁴² The evidence to prove the employee's dismissal must be substantial, clear, positive, and convincing.⁴³

In this case, it is evident that petitioners failed to comply with their burden to prove that they were dismissed from employment. A perusal of the records readily shows that there is not an iota of evidence adduced to support petitioners' claim that they were dismissed by JTCCS, PDVC, or JCB, and most especially BCC.

Petitioners immediately claimed that they were constructively dismissed since they were allegedly no longer given work after they refused to vacate the temporary barracks they were living in. The portion of their

⁴⁰ *Remoticado v. Typical Construction Trading Corp.*, 830 Phil. 508, 514 (2018).

⁴¹ *Atienza v. Saluta*, G.R. No. 233413, June 17, 2019.

⁴² *Rodriguez v. Sinitron Systems, Inc.*, G.R. No. 240254, July 24, 2019.

⁴³ *Esico v. Alphaland Corporation*, G.R. No. 216716, November 17, 2021.

Position Paper through which they sought to prove the fact of their dismissal is quoted in full as follows:

9. On the dates mentioned above, complainants were forced to quit their job because they were no longer given works after they rejected respondent's demand to leave the barracks which they and their families use as houses in Manila.

10. Complainants were constructively dismissed from their job without cause and in violation of their right to due process[.]⁴⁴

Verily, petitioners did not submit any evidence to substantiate their claims. They did not prove that they were served Notices of Termination, or were informed that they were being dismissed or would no longer be given work. They did not even allege that they tried to return to work or ask for additional work and were denied it. Without any corroborating evidence whatsoever, their claim is necessarily bare, self-serving, and unworthy of credence.

The CA in its Decision correctly concluded that by no stretch of imagination can the act of asking petitioners to vacate the barracks be interpreted as an overt act of dismissing them from employment. Petitioners thus, failed to prove the critical fact of their dismissal and to base any decision on such an unsubstantiated allegation would offend due process:

In the case at bar, the records are bereft of any indication that [petitioners] were prevented by [BCC], or any of its subcontractors for that matter, from returning to work or otherwise deprived of their work assignments.

It is an established fact that [BCC] allowed the construction of [the] barracks for the purpose of temporarily housing workers at the locations of its different construction projects. Upon the completion of those projects, the laborers working on [BCC's] projects, including the herein [petitioners], should therefore leave the premises because the said barracks have to be demolished. In [petitioners'] case, they even admitted that they allowed their respective families to stay in said barracks, notwithstanding the fact that the same were merely intended as their temporary dwelling place as laborers. Moreover, [petitioners] did not challenge [BCC's] assertion that since the construction projects that they had been working on have already been completed, there was no longer any reason for [BCC] to allow JTCCS, PVDC[,] and JCB to keep and maintain those barracks as a dwelling place for the latter's employees.

Thus, by no stretch of imagination may [BCC's] act of instructing JTCCS, PVDC, and JCB to inform [petitioners] that they had to vacate and surrender possession of the said barracks be interpreted as an overt act of dismissing [petitioners] who, in the first place, are not employees of [BCC]. Neither could this act constitute an instruction, whether express or implied, from [BCC] to terminate [petitioners] employment with JTCCS, PVDC, or JCB. Absent any showing of an overt or positive act proving that

⁴⁴ *Rollo*, p. 63.

[petitioners] were dismissed upon [BCC's] behest, their claim of legal dismissal cannot be sustained as far as petitioner is concerned. A party alleging a critical fact must support his allegation with substantial evidence, for any decision based on an unsubstantiated allegation cannot stand without offending due process. On this score alone, [petitioners'] complaint filed with the labor tribunal should have been dismissed.⁴⁵

Consequently, since it was not proven that petitioners were actually dismissed from employment, there is nothing further for this Court to review in this case. If there is no established fact of dismissal, there can be no issue on its legality. The dismissal by the CA of petitioners' complaint for illegal dismissal was correct even on this ground alone.

The ruling of the CA denying petitioners' monetary claims for full backwages, separation pay, 13th month pay, and other damages, is also affirmed. These awards are granted pursuant to Article 279 of the Labor Code only when there is a conclusive finding of illegal dismissal.

WHEREFORE, premises considered, the petition for review on *certiorari* is **DENIED**. The Decision dated March 11, 2019 and the Resolution dated November 9, 2020 of the Court of Appeals in CA-G.R. SP No. 155272 are **AFFIRMED**. The Complaint for illegal dismissal and payment of monetary claims against Baseline Construction Corporation is **DISMISSED**.

SO ORDERED." (Singh, J., concurred in the Court of Appeals Decision and Resolution; Leonen, SAJ, designated additional Member per Raffle dated March 21, 2023.)

By authority of the Court:

Misael Domingo C. Battung III
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Division Clerk of Court
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⁴⁵ Id. at 47-48.


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