Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

VICMAR DEVELOPMENT CORPORATION and/or ROBERT KUA, Owner, and ENGR. JUANITO C. PAGCALIWAGAN,[1] Manager,
Petitioners,

- versus -

CAMILO ELARCOSA, MARLON BANDA, DANTE L. BALAMAD, RODRIGO COLANSE,[2] CHIQUITO PACALDO, ROBINSON PANAGA, JUNIE ABUGHO, SILVERIO NARISMA, ARMANDO GONZALES, TEOFILO ELBINA, FRANCISCO BAGUIO, GELVEN RHYAN RAMOS, JULITO SIMAN, RECARIDO[4] PANES, JESUS TINSAY, AGAPITO CANAS, JR., OLIVER LOBAYNON, SIMEON BAGUIO, JOSEPH SALCEDO, DONIL INDINO, WILFREDO GULBEN, JESRILE[5] TANIO, RENANTE PAMON, RICHIE[6] GULBEN, DANIEL ELLO,

G.R. No. 202215

Present:

CARPIO, *Chairperson,*
DEL CASTILLO,
PEREZ,[3]
MENDOZA, *and*
LEONEN, *JJ.*

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1 Also spelled as Pagcalinawan in some parts of the records.
2 Also spelled as Colansi in some parts of the records.
3 Per Special Order No. 2301 dated December 1, 2015.
4 Also spelled as Ricarido in some parts of the records.
5 Also spelled as Jesreil in some parts of the records.
6 Also spelled as Rechie in some parts of the records.

REXY DOFELIZ,
RONALD NOVAL,
NORBERTO BELARGA,
ALLAN BAGUIO,
ROBERTO PAGUICAN,
ROMEO[7] PATOY,
ROLANDO TACBOBO,
WILFREDO LADRA,
RUBEN PANES,
RUEL CABANDAY, and
JUNARD[8] ABUGHO,
Respondents.

Promulgated:
DEC 0 9 2015

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DECISION

DEL CASTILLO, *J.*:

Before us is a Petition for Review on *Certiorari* assailing the November 24, 2009 Decision[9] of the Court of Appeals (CA) in CA-G.R. SP No. 01853-MIN. The CA granted the Petition for *Certiorari* filed therewith, and reversed and set aside the February 2, 2007[10] Resolution of the National Labor Relations Commission (NLRC), Fifth Division, Cagayan de Oro, which in turn, affirmed the May 25, 2006[11] and May 29, 2006[12] respective Decisions of Executive Labor Arbiters (LA) Benjamin E. Pelaez (Pelaez) and Noel Augusto S. Magbanua (Magbanua) dismissing the complaints for lack of merit. Also assailed is the May 10, 2012 CA Resolution[13] denying the motion for reconsideration.

Factual Antecedents

This case stemmed from a Complaint for illegal dismissal and money claims filed by Ruben Panes, Ruel Cabanday and Jonard Abugho (respondents) against Vicmar Development Corporation (Vicmar) and/or Robert Kua (Kua), its owner and Juanito Pagcaliwagan (Pagcaliwagan), its manager, docketed as NLRC

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7 Also spelled as Romel in some parts of the records.
8 Also spelled as Jonard in some parts of the records.
9 CA *rollo*, pp. 328-347; penned by Associate Justice Ruben C. Ayson and concurred in by Associate Justices Edgardo A. Camello and Elihu A. Ybañez; Associate Justices Rodrigo F. Lim, Jr. and Edgardo T. Lloren, dissented.
10 Id. at 32-35; penned by Presiding Commissioner Salic B. Dumarpa and concurred in by Commissioners Proculo T. Sarmen and Jovito C. Cagaanan.
11 Id. at 197-208.
12 Id. at 188-195.
13 Id. at 391-395; penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Melchor Q. C. Sadang, Carmelita Salandanan-Manahan and Zenaida T. Galapate-Laguilles; Associate Justice Edgardo T. Lloren, dissented.

Case No. RAB-10-08-00593-2005;[14] and consolidated Complaints for illegal dismissal and money claims filed by Camilo Elarcosa, Marlon Banda, Dante Balamad, Rodrigo Colanse, Chiquito Pacaldo, Robinson Panaga, Romel Patoy, Wilfredo Ladra, Junie Abugho, Silverio Narisma, Armando Gonzales, Teofilo Elbina, Francisco Baguio, Gelven Rhyan Ramos, Julito Siman, Recarido Panes, Jesus Tinsay, Agapito Cañas, Jr., Oliver Lobaynon, Rolando Tacbobo, Simeon Baguio, Roberto Paguican, Joseph Salcedo, Donil Indino, Wilfredo Gulben, Jesreil Taneo, Renante Pamon, Richie Gulben, Daniel Ello, Rexy Dofeliz, Ronald Noval, Norberto Belarca, and Allan Baguio (respondents), among others, against Vicmar, Kua, and Pagcaliwagan (petitioners), docketed as NLRC Case Nos. RAB-10-09-00603-2004; RAB-10-09-00609-2004; RAB-10-09-00625-2004; and RAB-10-02-00190-2005.[15]

Respondents alleged that Vicmar, a domestic corporation engaged in manufacturing of plywood for export and for local sale, employed them in various capacities – as boiler tenders, block board receivers, waste feeders, plywood checkers, plywood sander, conveyor operator, ripsaw operator, lumber grader, pallet repair, glue mixer, boiler fireman, steel strap repair, debarker operator, plywood repair and reprocessor, civil workers and plant maintenance. They averred that Vicmar has two branches, Top Forest Developers, Incorporated (TFDI) and Greenwood International Industries, Incorporated (GIII) located in the same compound where Vicmar operated.[16]

According to respondents, Vicmar employed some of them as early as 1990 and since their engagement they had been performing the heaviest and dirtiest tasks in the plant operations. They claimed that they were supposedly employed as "extra" workers; however, their assignments were necessary and desirable in the business of Vicmar. They asserted that many of them were assigned at the boilers for at least 11 hours daily.[17] They emphasized that the boiler section was necessary to Vicmar's business because it was where pieces of plywood were dried and cooked to perfection.[18] They further stated that a number of them were also assigned at the plywood repair and processing section, which required longer working hours.[19]

Respondents declared that Vicmar paid them minimum wage and a small amount for overtime but it did not give them benefits as required by law, such as Philhealth, Social Security System, 13th month pay, holiday pay, rest day and night shift differential.[20] They added that Vicmar employed more than 200 regular

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14 As stated in the ELA Decision dated May 29, 2006; Id. at 188.
15 As stated in ELA Decision dated May 25, 2006; Id. at 197-198.
16 Id. at 52.
17 Id. at 53.
18 Id. at 132.
19 Id. at 58.
20 Id. at 53.

employees and more than 400 "extra" workers.[21]

Sometime in 2004, Vicmar allegedly informed respondents that they would be handled by contractors.[22] Respondents stated that these contractors were former employees of Vicmar and had no equipment and facilities of their own.[23] Respondents averred that as a result thereof, the wages of a number of them who were receiving ₱276.00 as daily wage, were reduced to ₱200.00 or ₱180.00, despite overtime work; and the wages of those who were receiving ₱200.00 and ₱180.00 were reduced to ₱145.00 or ₱131.00. Respondents protested said wage decrease but to no avail. Thus, they filed a Complaint with the DOLE[24] for violations of labor standards for which appropriate compliance orders were issued against Vicmar.[25]

Respondents claimed that on September 13, 2004, 28 of them were no longer scheduled for work and that the remaining respondents, including their sons and brothers, were subsequently not given any work schedule.[26]

Respondents maintained that they were regular employees of Vicmar; that Vicmar employed a number of them as early as 1990 and as late as 2003[27] through Pagcaliwagan, its plant manager; that Vicmar made them perform tasks necessary and desirable to its usual business; and that Vicmar paid their wages and controlled the means and methods of their work to meet the standard of its products. Respondents averred that Vicmar dismissed them from service without cause or due process that prompted the filing of this illegal dismissal case.[28]

Respondents claimed that they were illegally dismissed after Vicmar learned that they instituted the subject Complaint through the simple expedience of not being scheduled for work. Even those persons associated with them were dismissed. They also asserted that Vicmar did not comply with the twin notice requirement in dismissing employees.[29]

Furthermore, respondents contended that while Vicmar, TFDI and GIII were separately registered with the SEC,[30] they were involved in the same business, located in the same compound, owned by one person, had one resident manager, and one and the same administrative department, personnel and finance sections. They claimed that the employees of these companies were identified as

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21 Id. at 59.
22 Id. at 53.
23 Id. at 57.
24 Department of Labor and Employment.
25 CA *rollo*, pp. 53-54.
26 Id. at 54-55.
27 Id. at 58.
28 Id. at 56.
29 Id. at 59-60.
30 Securities and Exchange Commission.

employees of Vicmar even if they were assigned in TFDI or GIII.[31]

On the other hand, petitioners stated that Vicmar is a domestic corporation engaged in wood processing, including the manufacture of plywood since 1970;[32] that Vicmar employed adequate regular rank-and-file employees for its normal operation; and that it engaged the services of additional workers when there were unexpected high demands of plywood products and when several regular employees were unexpectedly absent or on leave.[33]

Petitioners pointed out that the engagement of Vicmar's "extra" workers was not continuous and not more than four of them were engaged per section in every shift. They added that from the time of engagement, respondents were not assigned for more than one year in a section or a specific activity.[34] They explained that some of Vicmar's "extra" workers were engaged under "*pakyaw*" system and were paid based on the items repaired or retrieved.[35] Petitioners also stated that respondents Allan Baguio, Romel Patoy, Rexy Dofeliz, Marlon Banda, Gulben Rhyan Ramos, Julieto Simon and Agapito Cañas, Jr. were "extra" workers of TFDI, not Vicmar.[36] They likewise alleged that a number of respondents were engaged to assist regular employees in the company,[37] and the others were hired to repair used steel straps and retrieve useable veneer materials, or to perform janitorial services.[38]

Moreover, petitioners argued that the engagement of additional workforce was subject to the availability of forest products, as well as veneer materials from Malaysia or Indonesia and the availability of workers.[39]

Petitioners further asseverated that sometime in August 2004, they decided to engage the services of legitimate independent contractors, namely, E.A. Rosales Contracting Services and Candole Contracting Services, to provide additional workforce.[40] Petitioners claimed that they were unaware that respondents were dissatisfied with this decision leading to the DOLE case.[41] They insisted that hiring said contractors was a cost-saving measure, which was part of Vicmar's management prerogative.[42]

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31 CA *rollo*, p. 127.
32 Id. at 101-102.
33 Id. at 104.
34 Id. at 104-105.
35 Id. at 105.
36 Id. at 107.
37 Id. at 108.
38 Id. at 109.
39 Id. at 170.
40 Id. at 105-106.
41 Id. at 106.
42 Id. at 110.

Ruling of the Executive Labor Arbiters

On May 25, 2006, ELA Pelaez dismissed the complaints in NLRC Case Nos. RAB-10-09-00603-2004; RAB-10-09-00609-2004; RAB-10-09-00625-2004; and RAB-10-02-00190-2005.[43] On May 29, 2006, ELA Magbanua dismissed the complaint in NLRC Case No. RAB-10-08-00593-2005.[44]

Both ELAs Pelaez and Magbanua held that respondents were seasonal employees of Vicmar, whose work was "co-terminus or dependent upon the extraordinary demands for plywood products and also on the availability of logs or timber to be processed into plywood."[45] They noted that Vicmar could adopt cost-saving measures as part of its management prerogative, including engagement of legitimate independent contractors.[46]

Ruling of the National Labor Relations Commission

Consequently, respondents filed a Notice of Appeal with Motion to Consolidate Cases[47] alleging that the foregoing cases involved same causes of actions, issues, counsels, and respondents, and complainants therein were similarly situated.

Thereafter, in their Consolidated Memorandum on Appeal,[48] respondents argued that their work in Vicmar was not seasonal. They averred that since their employment in 1990 until their termination in 2004, they continuously worked for Vicmar and were not allowed to work for other companies. They alleged that there was never a decline in the demand and production of plywood. They also claimed that they continuously worked in Vicmar the whole year, except in December during which the machines were shut down for servicing and clean-up. They, nonetheless, stated that some of them were the ones who had been cleaning these machines.

In addition, respondents averred that even assuming that they were seasonal employees, they were still regular employees whose employment was never severed during off-season. Thus, they asserted that the decision to farm them out to contractors was in violation of their right to security of tenure and was an evidence of bad faith on the part of Vicmar.

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43 Id. at 197-208.
44 Id. at 188-195.
45 Id. at 193, 205.
46 Id. at 194-195, 206-207.
47 Id. at 209-211.
48 Id. at 213-235.

On February 2, 2007, the NLRC affirmed the Decisions of ELAs Pelaez and Magbanua.[49] On April 30, 2007, it denied respondents' motion for reconsideration.[50]

Ruling of the Court of Appeals

Undaunted, respondents filed with the CA a Petition[51] for *Certiorari* maintaining that they were regular employees of Vicmar and that the latter illegally dismissed them. They insisted that the labor contractors engaged by Vicmar were "labor-only" contractors, as they have no equipment and facilities of their own.

Petitioners, for their part, reiterated that Vicmar employed respondents as additional workforce when there was high demand for plywood thus, they were merely seasonal employees of Vicmar. They argued that Vicmar engaged independent contractors as a cost-saving measure; and these contractors exercised direct control and supervision over respondents. In conclusion, petitioners declared that respondents were not illegally dismissed but lost their employment because of refusal to coordinate with Vicmar's independent contractors.

On November 24, 2009, the CA rendered the assailed Decision granting the Petition for *Certiorari*, the dispositive portion of which reads:

> WHEREFORE, premises considered, the Petition is GRANTED. The Resolution dated February 2, 2007 of the National Labor Relations Commission (NLRC), Fifth Division, Cagayan de Oro City is REVERSED and SET ASIDE. Private respondents are ORDERED to reinstate petitioners to their former positions, without loss of seniority rights, and to pay full backwages from the time they were illegally dismissed until actual reinstatement.
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> SO ORDERED.[52]

The CA held that a number of respondents were assigned to the boiler section where plywood was dried and cooked to perfection; and while the other respondents were said to have been assigned at the general service section, they were "cleaners on an industrial level handling industrial refuse."[53] As such, according to the CA, respondents performed activities necessary and desirable in the usual business of Vicmar, as they were assigned to departments vital to its operations. It also noted that the repeated hiring of respondents proved the importance of their work to Vicmar's business. It maintained that the contractors

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49 Id. at 32-35.
50 Id. at 42-43.
51 Id. at 2-25.
52 Id. at 346.
53 Id. at 339.

were engaged by Vicmar only for the convenience of Vicmar. In sum, the CA declared that respondents were illegally dismissed since there was no showing of just cause for their termination and of compliance by Vicmar to due process of law.

On May 10, 2012, the CA denied petitioners' motion for reconsideration.[54]

Petitioners thus filed this Petition raising the sole ground as follows:

> THE HONORABLE COURT OF APPEALS, WITH ALL DUE RESPECT AND DEFERENCE, ERRED IN REVERSING AND SETTING ASIDE THE FINDINGS OF FACTS AND CONCLUSIONS OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC). THE DECISION AS WELL AS THE RESOLUTION ARE NOT IN ACCORDANCE WITH LAW AND APPLICABLE JURISPRUDENCE AND IF NOT CORRECTED, WILL CAUSE GRAVE INJUSTICE AND IRREPERABLE [SIC] DAMAGE TO THE PETITIONERS WHO WILL BE CONSTRAINED TO ABSORB UNCESSARY [SIC] WORKFORCE, WHICH WILL LEAD TO THE FURTHER DETERIORATION OF ITS FINANCIAL INSTABILITY [SIC] AND POSSIBLY TO ITS CLOSURE.[55]

Petitioners contend that it is irregular for the CA to reverse the findings of facts of the NLRC and the ELAs based on two work schedules of different companies and identification cards of five respondents. They maintain that said evidence cannot conclusively prove that respondents were regular employees of Vicmar.[56]

Additionally, petitioners argue that the CA erred in finding that they (petitioners) have the burden to prove that respondents were hired for only one season to establish that they were mere seasonal employees. Petitioners emphasize that since the inception of this case, they have been denying respondents' claim that they were working under regular working hours and working days.[57]

Petitioners maintain that respondents were Vicmar's "extra" workers;[58] that the engagement of independent contractors was a management prerogative exercised in good faith;[59] that some of the respondents were engaged by TFDI and thus, they have no standing in this case.[60]

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54 Id. at 391-395.
55 *Rollo*, p. 21.
56 Id. at 26.
57 Id. at 26-27.
58 Id. at 28.
59 Id. at 33-34.
60 Id. at 34.

Respondents, on their part, assert that petitioners have the burden to prove that they (respondents) were seasonal employees because such allegation is a critical fact that must be substantiated.[61] They likewise restate that they were regular employees of Vicmar because they had been performing tasks necessary and desirable for the production of plywood; they continuously worked in Vicmar for more than 11 hours daily until they were terminated in September 2004; and they were not allowed to work for companies other than Vicmar.[62]

Respondents claim that assuming that they were "extra" workers, still, their continued and repeated hiring for more than 10 years made their functions necessary or desirable in the usual business of Vicmar.[63]

Issue

Did the CA err in finding that the NLRC gravely abused its discretion in affirming the ELAs' Decisions dismissing the complaint?

Our Ruling

In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence or such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[64] The CA may grant a Petition for *Certiorari* if it finds that the NLRC committed grave abuse of discretion by capriciously, whimsically or arbitrarily disregarding the material evidence decisive of a case. It cannot "make this determination without looking into the evidence presented by the parties. Necessarily, the appellate court can only evaluate the materiality or significance of the evidence, which is alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC, in relation to all other evidence on record."[65]

In this case, we find that the CA correctly granted respondents' Petition for *Certiorari* because the NLRC gravely abused its discretion when it affirmed the dismissal of respondents' Complaints.

Section 280 of the Labor Code defines a regular employee as one who is 1) engaged to perform tasks usually necessary or desirable in the usual business or trade of the employer, unless the employment is one for a specific project or undertaking or where the work is seasonal and for the duration of a season; or 2)

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61 Id. at 119.
62 Id. at 121-123.
63 Id. at 124.
64 *Omni Hauling Services, Inc. v. Bon*, G.R. No. 199388, September 3, 2014, 743 SCRA 270, 277.
65 *DOLE Philippines, Inc. v. Esteva*, 538 Phil. 817, 854 (2006).

has rendered at least 1 year of service, whether such service is continuous or broken, with respect to the activity for which he is employed and his employment continues as long as such activity exists.[66]

Here, there is substantial evidence to prove that respondents were regular employees such that their separation from work without valid cause amounted to illegal dismissal.

To support their illegal dismissal case, respondents listed the date of their hiring, the date they were terminated and the sections where they were assigned prior to dismissal, to wit:[67]

NAMES	DATE HIRED	SECTION	DATE FIRED
Panes, Ruben	June 1990	Boiler	Oct. 2004
Panes, Recarido	August 1990	Boiler	Sept. 2004
Tinsay, Jesus	1991	Boiler	Sept. 2004
Gonzales, Armando	June 1991	Assy./Fin.	Feb. 2004
Patoy, Romel	Nov. 1991	Boiler	Sept. 2004
Ladra, Wilfredo	1992	Plant Maint.	Sept. 2004
Balamad, Dante	July 1994	Boiler	Sept. 2004
Baguio, Simeon	1995	Boiler	Sept. 2004
Baguio, Francisco	1995	Block Board	June 2004
Tacbobo, Rolando	Jan. 1995	Plant Maint.	Sept. 2004
Belarga, Norberto	1995	Boiler	July 2004
Elarcosa, Camilo	1995	Boiler	Sept. 2004
Abugho, Junie	June 1996	Boiler	Sept. 2004
Pamon, Renante	June 1996	Assy./Fin.	Sept. 2004
Abugho, Jonard	June 1996	Boiler	Oct. 2004
Noval, Ronald	1997	Boiler	Aug. 2004
Siman, Julito	1997	Boiler	Sept. 2004
Baguio, Allan	1997	Boiler	Sept. 2004
Cabanday, Ruel	1998	Assy./Fin.	Oct. 2004
Salcedo, Joseph	1998	Assy./Fin.	Sept. 2004
Lobaynon, Oliver	1998	Boiler	Sept. 2004
Panaga, Robinson	1999	Assy./Fin.	March 2004
Paguican, Roberto	1999	Boiler	Sept. 2004
Ello, Daniel	1999	Boiler	Sept. 2004
Taneo, Jesrile	1999	Plywood Rep.	Sept. 2004

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66 Art. 280. Regular and casual employment. – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

67 CA *rollo*, pp. 133-134.

Indino, Donil	1999	Plywood Rep.	Sept. 2004
Narisma, Silverio	July 1999	Assy./Fin.	Sept. 2004
Canas, Agapito Jr.	Jan. 2000	Plant Maint.	Sept. 2004
Gulben, Wilfredo	Dec. 2000	Plywood Rep.	Sept. 2004
Gulben, Rechie	Mar. 2000	Plywood Rep.	Sept. 2004
Pacaldo, Chiquito	Mar. 2000	Green End	May 2002
Dofeliz, Rexy	June 2001	Boiler	Aug. 2004
x x x x			
Ramos, Gelven Rhyan	July 2002	Boiler	Sept. 2004
Colansi, Rodrigo	Oct. 2002	Assy./Fin.	Sept. 2004
x x x x	Jan. 2002	Boiler	Sept. 2004
Banda, Marlon	June 2003	Boiler	Sept. 2004
Elbina, Teofilo	Nov. 2003	Boiler	July 2004

The foregoing allegations were uncontroverted as no relevant employment files, payrolls and records were submitted by petitioners to refute the information. Being the employer, petitioners have custody and control of important employment documents. As such, failure to submit them gives rise to the presumption that their presentation would be prejudicial to petitioners' cause and leads the Court to conclude that the assertions of respondents are truthful declarations.[68]

Interestingly, in the DOLE case filed by respondents against Vicmar and TFDI, the latter did not also submit documents to disprove respondents' claim for wage differentials, 13th month pay and holiday pay. Because of this, the DOLE Secretary denied their appeal. In her February 17, 2006 Order,[69] the DOLE Secretary made the following pronouncements:

> In this case, the appellants *(Vicmar and TFDI)* were given seven x x x days to comply with the Notice of Inspection Results or to contest the findings therein, but they chose to ignore the directive. Summary hearings were conducted x x x to give the appellants ample time to submit payrolls, but they merely promised to do so x x x [A]t the extra hearing on 18 November, they still failed to do so. x x x There being none, the Director could not but sustain the inspection report.
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> Neither can the Director be faulted for not referring the case to the NLRC on the ground that material evidence, namely, the payrolls and the daily time records, were not duly considered during inspection. The appellants cannot raise this argument because it was they who failed to produce the records for the consideration of the inspector and the Regional Director[.][70]

Similarly, we cannot fault the CA in the instant case for giving credence to the assertions and documentary evidence adduced by respondents. Petitioners had the opportunity to discredit them had they presented material evidence, including

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68 *Poseidon Fishing v. National Labor Relations Commission*, 518 Phil. 146, 161-162 (2006).

69 CA *rollo*, pp. 45-50; penned by DOLE Secretary Patricia A. Sto. Tomas.

70 Id. at 48-49.

payrolls and daily time records, which are within their custody, to prove that respondents were mere additional workforce engaged when there are extraordinary situations, such as high demands for plywood products or unexpected absences of regular employees; and that respondents were not assigned for more than one year to the same section or activity.

Moreover, respondents were shown to have performed activities necessary in the usual business of Vicmar. Most of them were assigned to activities essential for plywood production, the central business of Vicmar. In the list above, more than half of the respondents were assigned to the boiler, where pieces of plywood were cooked to perfection. While the other respondents appeared to have been assigned to other sections in the company, the presumption of regular employment should be granted in their favor pursuant to Article 280 of the Labor Code since they had been performing the same activity for at least one year, as they were assigned to the same sections, and there is no indication that their respective activities ceased.[71]

> The test to determine whether an employee is regular is the reasonable connection between the activity he performs and its relation to the employer's business or trade, as in the case of respondents assigned to the boiler section. Nonetheless, the continuous re-engagement of all respondents to perform the same kind of tasks proved the necessity and desirability of their services in the business of Vicmar.[72] Likewise, considering that respondents appeared to have been performing their duties for at least one year is sufficient proof of the necessity, if not the indispensability of their activities in Vicmar's business.[73]

The Court also holds that Vicmar failed to prove that the contractors it engaged were legitimate labor contractors.

To determine the existence of independent contractorship, it is necessary to establish that the contractor carries a distinct and independent business, and undertakes to perform work on its own account and under its responsibility and pursuant to its own manner and method, without the control of the principal, except as to the result; that the contractor has substantial capital or investment; and, that the agreement between the principal and the contractor assures the contractual employees to all labor and occupational safety and health standards, to right to self-organization, security of tenure and other benefits.[74]

Other than their respective Certificates[75] of Registration issued by the DOLE on August 12, 2004, E.A Rosales Contracting Services and Candole Labor

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71 *Omni Hauling Services, Inc. v. Bon*, supra note 64 at 278-281.
72 *Basan v. Coca-Cola Bottlers Philippines,* G.R. Nos. 174365-66, February 4, 2015.
73 *Begino v. ABS-CBN Corporation,* G.R No. 199166, April 20, 2015.
74 *Polyfoam-RGC International Corp. v. Concepcion*, G.R. No. 172349, June 13, 2012, 672 SCRA 148, 159 citing *Sasan, Sr. v. National Labor Relations Commission, 4th Division*, 590 Phil. 685, 704-705 (2008).
75 CA *rollo,* pp. 122-123.

Contracting Services were not shown to have substantial capital or investment, tools and the like. Neither was it established that they owned equipment and machineries for the purported contracted job. Also, the allegation that they had clients other than Vicmar remained to be bare assertion without corresponding proof. More importantly, there was no evidence presented that these contractors undertook the performance of their service contracts with Vicmar pursuant to their own manner and method, without the control and supervision of Vicmar.[76]

Petitioners cannot rely on the registration of their contractors to prove that the latter are legitimate independent contractors. Such registration is not conclusive of the status of a legitimate contractor; rather, it merely prevents the presumption of being a labor-only contractor from arising. Indeed, to determine whether labor-only contracting exists, the totality of the facts and circumstances of the case must be considered.[77]

The Court also gives merit to the finding of the CA that Vicmar is the employer of respondents despite the allegations that a number of them were assigned to the branches of Vicmar. Petitioners failed to refute the contention that Vicmar and its branches have the same owner and management – which included one resident manager, one administrative department, one and the same personnel and finance sections. Notably, all respondents were employed by the same plant manager, who signed their identification cards some of whom were under Vicmar, and the others under TFDI.

Where it appears that business enterprises are owned, conducted and controlled by the same parties, law and equity will disregard the legal fiction that these corporations are distinct entities and shall treat them as one. This is in order to protect the rights of third persons, as in this case, to safeguard the rights of respondents.[78]

Considering that respondents were regular employees and their termination without valid cause amounts to illegal dismissal, then for its contrary ruling unsupported by substantial evidence, the NLRC gravely abused its discretion in dismissing the complaints for illegal dismissal. Therefore, the CA Decision setting aside that of the NLRC is in order and must be sustained.[79]

WHEREFORE, the Petition is **DENIED**. The Decision dated November 24, 2009 and Resolution dated May 10, 2012 of the Court of Appeals in CA-G.R. SP No. 01853-MIN are **AFFIRMED**.

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76 *Polyfoam-RGC International Corporation v. Concepcion*, supra note 74 at 161-162.
77 *San Miguel Corporation v. Semillano*, 637 Phil. 115, 129-130 (2010).
78 *Tomas Lao Construction v. National Labor Relations Commission,* 344 Phil. 268, 286-287 (1997).
79 *Omni Hauling Services, Inc, v. Bon,* supra note 64 at 282.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice