

Republic of the Philippines

Supreme Court
Manila

THIRD DIVISION



LESTER S. BARRETTO, RONN G.R. Nos. 254596-97
VINCENT H. AREVALO, RICHARD

IRISH O. TOMINEZ, ANDY L. Present:

VALDEMOR, ROLAND QUEZON,

RYAN RAPH B. VICTORIA, and

JOEY A. HERNANDEZ,

Petitioners,

LEONEN, J.,

Chairperson,

CARANDANG,

ZALAMEDA,

ROSARIO, and

MARQUEZ, JJ.

- versus -

AMBER GOLDEN POT

RESTAURANT, RHODA

FERNANDEZ, and ABLEBODIES

MANPOWER SERVICES, INC.,

Respondents.

Promulgated:

November 24, 2021

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DECISION

CARANDANG, J.:

Before this Court is a Petition for Review on *Certiorari*¹ filed by petitioners Lester S. Barretto (Barretto), Ronn Vincent H. Arevalo (Arevalo), Richard Irish O. Tominez (Tominez), Andy L. Valdemor (Valdemor), Roland Quezon (Quezon), Ryan Raph B. Victoria (Victoria), and Joey A. Hernandez (Hernandez; collectively, petitioners) assailing the Decision² dated February 13, 2020 and the Resolution³ dated November 27, 2020 of the Court of Appeals (CA) in CA-G.R. SP Nos. 158661 and 158908. The CA reversed and

¹ Rollo, pp. 49-95.

² Penned by Associate Justice Mariflor P. Punzalan Castillo, with the concurrence of Associate Justices Victoria Isabel A. Paredes and Walter S. Ong; id. at 16-42.

³ Id. at 45-47.

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set aside the Decision⁴ dated September 10, 2018 and the Resolution⁵ dated October 23, 2018 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 07-002523-18. The NLRC affirmed *in toto* the Decision⁶ dated April 16, 2018 of the Labor Arbiter (LA) in NLRC NRC Case No. 06-08263-17.

Antecedents

Petitioners alleged that they were hired by respondent Amber Golden Pot Restaurant Corporation (Amber) on the following dates: (1) Quezon - October 10, 2010; (2) Victoria - July 2012; (3) Tominez - September 20, 2013; (4) Barretto - November 4, 2013; (5) Hernandez - June 16, 2014; (6) Valdemor - August 11, 2014; and (7) Arevalo - September 16, 2014. They were all riders.⁷

On April 30, 2016, Amber and respondent Ablebodies Manpower Services, Inc. (AMSI) entered into a Project Agreement wherein the latter shall provide the former with necessary workers to perform food and other related staff services at its different branches.⁸

Petitioners claimed that they were all dismissed on May 19, 2017 for no reason and without due process.⁹ Tominez, Valdemor, and Hernandez said that they were forced to sign a resignation letter but they refused to do so.¹⁰ Thus, petitioners filed a complaint for illegal dismissal, non-payment of salaries/wages, overtime pay, 13th month pay, separation pay, illegal deduction, regularization, moral and exemplary damages, and attorney's fees against respondents and Amber's corporate officer Rhoda Fernandez.¹¹ Petitioners alleged in their affidavits that they were made to work without or rarely having any break time. They were not paid their overtime pay, 13th month pay, and other monetary benefits. Respondents also made illegal deductions against them. Petitioners prayed that they be awarded moral damages, exemplary damages, and attorney's fees.¹²

Respondents prayed for the dismissal of the complaint. They alleged that Amber had no employer-employee relationship with petitioners. Amber is a restaurant and delivering food is not one of its core functions. AMSI is a legitimate labor contractor and petitioners are its regular employees. The Project Agreement between Amber and AMSI provides that the workers assigned by AMSI to Amber are its employees. In addition, AMSI shall be solely liable to pay overtime pay, holiday pay, night differentials, service

⁴ Penned by Commissioner Agnes Alexis Lucero-De Grano, with the concurrence of Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Isabel G. Panganiban-Ortiguerra; *CA Rollo* (CA-G.R. SP No. 158661), pp. 55-72.

⁵ *Id.* at 19-53.

⁶ Penned by Labor Arbiter Donna C. Ramos; *id.* at 73-85.

⁷ *Rollo*, p. 17.

⁸ *Id.*

⁹ *Id.* at 18.

¹⁰ *Id.* at 58, 60, 65.

¹¹ *Id.* at 17.

¹² *Id.* at 18.

incentive leave pay, and other benefits to its employees. AMSI conducted a performance evaluation of its employees assigned to Amber on a quarterly basis through its Area Supervisor. Petitioners failed the evaluation conducted by Area Supervisor Allan Gardiola on March 23, 2017. Petitioners also had several timekeeping violations. Amber averred that its Agreement with AMSI expired on April 29, 2017. AMSI offered new assignments to petitioners but they refused to accept it.¹³

Ruling of the Labor Arbiter

On April 16, 2018, the Labor Arbiter rendered a Decision¹⁴ with the following *fallo*:

WHEREFORE. complainants Lester S. Barretto, Ronn Vincent H Arevalo, Richard Irish O. Tominez, Andy L. Voldemor [*sic*], Roland M. Quezon, Ryan Raph B. Victoria, and Joey A. Hernandez, declared as having been **ILLEGALLY DISMISSED**. Accordingly, respondent Amber Golden Pot Restaurant is directed to **REINSTATE** complainants to their former position without loss of seniority rights; and to pay them **BACKWAGES** from the time of their dismissal up to the date of reinstatement, tentatively computed hereunder.

In addition, said respondent is further ordered to refund to the complainants the following illegally deducted amounts from their salaries:

LESTHER S. BARRETTO

BACKWAGES

a. Basic Salary

05/19/17 – 10/04/17 = 4.50 mos. (W.O. #20)
P491 x 26 x 4.50 = P57,447.00

10/05/17 – 04/16/18 = 6.36 mos. (W.O. #21)
P512 X 26 X 6.36 mos. = P84,664.32
P142,111.32

b. 13th Month Pay

P142,111.32/12 mos. = P11,842.61

c. SILP

P491 x 5/12 x 4.50 = P920.62

P512 x 5/12 x 6.36 = P1,356.80

P2,277.42

TOTAL BACKWAGES = P156,231.35

ILLEGAL DEDUCTIONS (3 yrs.)

06/09/14 – 06/09/17 = 36 mos.

50.00 x 26 x 36 mos. = P46,800.00

TOTAL AWARD FOR BARRETTO = P203,031.35

RONN VINCENT H. AREVALO

BACKWAGES

a. Basic Salary

¹³ Id. at 18-19.

¹⁴ CA *rollo* (CA-G.R. SP No. 158661), pp. 73-85.

05/19/17 – 10/04/17 = 4.50 mos. (W.O. #20)	
P491 x 26 x 4.50	= P57,447.00
10/05/17 – 04/16/18 = 6.36 mos. (W.O. #21)	
P512 x 26 x 6.36 mos.	= <u>P84,664.32</u>
	<u>P142,111.32</u>
b. 13 th Month Pay	
P142,111.32/12 mos.	= P11,842.61
c. SILP	
P491 x 5/12 x 4.50	= P920.62
P512 x 5/12 x 6.36	= <u>P1,356.80</u>
	P2,277.42
TOTAL BACKWAGES	= P156,231.42
ILLEGAL DEDUCTIONS (3 yrs.)	
09/16/14 – 06/09/17 = 32.76 mos.	
50.00 x 26 x 32.76 mos.	= <u>P42,588.00</u>
TOTAL AWARD FOR AREVALO	P198,819.35

RICHARD IRISH O. TOMINEZ
BACKWAGES

a. Basic Salary	
05/19/17 – 10/04/17 = 4.50 mos. (W.O. #20)	
P491 x 26 x 4.50	= P57,447.00
10/05/17 – 04/16/18 = 6.36 mos. (W.O. #21)	
P512 x 26 x 6.36 mos.	= <u>P84,664.32</u>
	<u>P142,111.32</u>
b. 13 th Month Pay	
P142,111.32/12 mos.	= P11,842.61
c. SILP	
P491 x 5/12 x 4.50	= P920.62
P512 x 5/12 x 6.36	= <u>P1,356.80</u>
	P2,277.42
TOTAL BACKWAGES	= P156,231.42
ILLEGAL DEDUCTIONS (3 yrs.)	
06/09/14 – 06/09/17 = 36 mos.	
50.00 x 26 x 36 mos. =	<u>P46,800.00</u>
TOTAL AWARD FOR TOMMIEZ	P203,031.35

ANDY L. VOLDEMOR
BACKWAGES

a. Basic Salary	
05/19/17 – 10/04/17 = 4.50 mos. (W.O. #20)	
P491 x 26 x 4.50	= P57,447.00
10/05/17 – 04/16/18 = 6.36 mos. (W.O. #21)	
P512 x 26 x 6.36 mos.	= <u>P84,664.32</u>
	<u>P142,111.32</u>
b. 13 th Month Pay	
P142,111.32/12 mos.	= P11,842.61
c. SILP	
P491 x 5/12 x 4.50	= P920.62
P512 x 5/12 x 6.36	= <u>P1,356.80</u>
	P2,277.42
TOTAL BACKWAGES	= P156,231.42
ILLEGAL DEDUCTIONS (3 yrs.)	
08/11/14 – 06/09/17 = 33.93 mos.	

50.00 x 26 x 33.76 mos. = P43,888.00
TOTAL AWARD FOR VOLDEMOR P200,119.35

ROLAND M. QUEZON
BACKWAGES

a. Basic Salary
 05/19/17 – 10/04/17 = 4.50 mos. (W.O. #20)
 P491 x 26 x 4.50 = P57,447.00
 10/05/17 – 04/16/18 = 6.36 mos. (W.O. #21)
 P512 x 26 x 6.36 mos. = P84,664.32
P142,111.32

b. 13th Month Pay
 P142,111.32/12 mos. = P11,842.61

c. SILP
 P491 x 5/12 x 4.50 = P920.62
 P512 x 5/12 x 6.36 = P1,356.80
P2,277.42

TOTAL BACKWAGES = P156,231.42

ILLEGAL DEDUCTIONS (3 yrs.)
 06/09/14 – 06/09/17 = 36 mos.
 50.00 x 26 x 36 mos. = P46,800.00
TOTAL AWARD FOR QUEZON P203,031.35

RYAN RAPH B. VICTORIA
BACKWAGES

a. Basic Salary
 05/19/17 – 10/04/17 = 4.50 mos. (W.O. #20)
 P491 x 26 x 4.50 = P57,447.00
 10/05/17 – 04/16/18 = 6.36 mos. (W.O. #21)
 P512 x 26 x 6.36 mos. = P84,664.32
P142,111.32

b. 13th Month Pay
 P142,111.32/12 mos. = P11,842.61

c. SILP
 P491 x 5/12 x 4.50 = P920.62
 P512 x 5/12 x 6.36 = P1,356.80
P2,277.42

TOTAL BACKWAGES = P156,231.42

ILLEGAL DEDUCTIONS (3 yrs.)
 06/09/14 – 06/09/17 = 36 mos.
 50.00 x 26 x 36 mos. = P46,800.00
TOTAL AWARD FOR VICTORIA P203,031.35

JOEY A. HERNANDEZ
BACKWAGES

a. Basic Salary
 05/19/17 – 10/04/17 = 4.50 mos. (W.O. #20)
 P491 x 26 x 4.50 = P57,447.00
 10/05/17 – 04/16/18 = 6.36 mos. (W.O. #21)
 P512 x 26 x 6.36 mos. = P84,664.32
P142,111.32

b. 13th Month Pay
 P142,111.32/12 mos. = P11,842.61

c. SILP
 P491 x 5/12 x 4.50 = P920.62

P512 x 5/12 x 6.36	= <u>P1,356.80</u>
	<u>P2,277.42</u>
TOTAL BACKWAGES	= P156,231.42
ILLEGAL DEDUCTIONS (3 yrs.)	
06/09/14 – 06/09/17 = 36 mos.	
50.00 x 26 x 36 mos. =	<u>P46,800.00</u>
TOTAL AWARD FOR HERNANDEZ	<u>P203,031.35</u>
Sub-Total	<u>P1,414,095.45</u>
10% Attorney's Fees	<u>P141,409.54</u>
	<u>P1,555,504.99</u>

The complaint of Richard Lee P. Salazar is hereby
DISMISSED without prejudice.

SO ORDERED.¹⁵ (Emphasis in the original)

The LA held that AMSI was engaged in labor-only contracting. Respondents erred in relying on the Project Agreement because the character of AMSI's business is determined by the criteria set under the law and not by their unilateral declaration in a contract. Though AMSI had a Certificate of Registration, it was unable to prove that it had substantial capital and investment necessary for a legitimate job contractor. In addition, petitioners performed activities that were necessary and desirable to the usual business of Amber. They were hired as far back as 2013 or 2014.¹⁶

The LA further ruled that petitioners were illegally dismissed. Amber admitted that petitioners' services were discontinued because of the expiration of the Project Agreement on April 29, 2017. But Amber did not show that it complied with the requirement for just cause and due process in terminating petitioners. Thus, petitioners were deemed entitled to reinstatement and backwages. However, the Labor Arbiter denied petitioners' prayer for payment of their salaries and 13th month pay because respondents were able to prove that these have already been paid. As for the expenses for their meals, the Labor Arbiter agreed with petitioners that these were illegally deducted from their salaries. The deduction was not justified under Article 113¹⁷ of Presidential Decree No. 442, or the Labor Code of the Philippines.¹⁸ Respondents appealed to the NLRC.

¹⁵ Id. at 81-85.

¹⁶ Id. at 78-80.

¹⁷ Article 113. *Wage Deduction.* – No employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees, except:

(a) In cases where the worker is insured with his consent by the employer, and the deduction is to recompense the employer for the amount paid by him as premium on the insurance;

(b) For union dues, in cases where the right of the worker or his union to check-off has been recognized by the employer or authorized in writing by the individual worker concerned; and

(c) In cases where the employer is authorized by law or regulations issued by the Secretary of Labor and Employment.

¹⁸ CA rollo (CA-G.R. SP No. 158661), pp. 80-81.

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Ruling of the National Labor Relations Commission

On September 10, 2018, the NLRC affirmed the Labor Arbiter's ruling *in toto* in its Decision,¹⁹ to wit:

WHEREFORE, the Appeals of Ablebodies Manpower Services, Inc. and Amber Golden Pot Restaurant Corp. are **DENIED**. The Decision dated April 16, 2018 rendered by Labor Arbiter Donna C. Ramos is hereby **AFFIRMED in toto**.

SO ORDERED.²⁰ (Emphasis in the original)

The NLRC ruled that even though AMSI had substantial capital and had a service agreement compliant with the law, it did not carry a distinct and independent business and did not undertake to perform the job on its own responsibility, according to its own manner and method and free from the control and direction of Amber. The NLRC did not give credence to the documents submitted by AMSI because they were only given on appeal. AMSI did not explain its belated submission. According to the NLRC, the evidence showed that it was Amber who exercised control over petitioners. The Project Agreement provides the requirements for the employees that may be deployed to Amber. Amber even provided petitioners' uniform and required identification patches sewn on them. AMSI did not have a supervisor in Amber. Petitioners' low performance evaluations were based on what Amber reported. More important, petitioners were hired before Amber and AMSI entered into an Agreement.²¹

The NLRC also agreed with the LA that petitioners were illegally dismissed. Notices to Explain were given to petitioners before the expiration of the Project Agreement. Petitioners were also subjected to an evaluation before the Memoranda was given. This showed that petitioners were identified for termination by Amber and the dismissal was done through AMSI. The Memoranda on New Work Assignment that AMSI issued operated as a Notice of Dismissal. The Memoranda did not indicate petitioners' new assignment and were only sent after the complaints were filed. Moreover, the expiration of Amber and AMSI's Agreement cannot justify the removal of petitioners because they were dismissed more than a month after it expired. As for the finding of illegal deductions for the meals, the NLRC upheld the same because there was no proof of compliance with the requirement that the deductions for facilities must be customarily furnished, charged at a fair and reasonable value, and accepted by the employee in writing, in accordance with Article 121(b)²² of the Labor Code and DO 126-13, or the Revised Guidelines on the

¹⁹ Id. at 55-72.

²⁰ Id. at 70.

²¹ Id. at 66-68.

²² Article 121. *Powers and Functions of the Commission*. – The Commission shall have the following powers and functions:

x x x x

(b) To formulate policies and guidelines on wages, incomes and productivity improvement at the enterprise, industry and national levels; x x x

Conduct of Facility Evaluation.²³ Amber filed a motion for reconsideration. When the NLRC denied it, Amber and AMSI respectively filed their petitions for *certiorari* before the CA. The two petitions were consolidated.

Ruling of the Court of Appeals

The CA rendered its Decision²⁴ on February 13, 2020, the dispositive portion of which provides:

WHEREFORE, premises considered, the petition for certiorari filed by Amber Golden Pot Restaurant and Rhoda Fernandez docketed as SP No. 158661 is **PARTIALLY GRANTED**. Similarly, the petition filed by Ablebodies Manpower Services, Inc. docketed as SP No. 158908 is **PARTIALLY GRANTED**. The Decision dated 10 September 2018, and Resolution dated 23 October 2018, both rendered by the Sixth Division of the National Labor Relations Commission ("NLRC") in NLRC LAC No. 07-002523-18 (NLRC NCR No. 06-08263-17) are **REVERSED and SET ASIDE** with the exception of the order for the refund of deductions for meals. AMSI is herein **DIRECTED** to refund to the complainants the amounts corresponding to the illegal deductions. Such monetary award shall be subject to the payment of interest at the rate of six per cent (6%) *per annum* from the finality of this Decision until full satisfaction thereof.

SO ORDERED.²⁵ (Emphasis in the original)

The CA held that AMSI was a legitimate labor contractor and was petitioners' employer. AMSI is a duly-licensed contractor that has a Certificate of Registration from the Department of Labor and Employment (DOLE). According to AMSI's General Information Sheet, it has a paid-up capital of ₱10,000,000.00, which was more than the minimum requirement of ₱5,000,000.00. It had its own recruitment process, part of which was conducted by its Area Supervisors. AMSI's Area Supervisors were also in charge of the completion and computation of the employees' time sheets, implementation of the rules of conduct, issuance of memoranda and disciplinary sanctions, and the processing of its employees' remittances and benefits. Application for leaves and overtime are filed with AMSI, not Amber. AMSI conducts the performance evaluation of its employees and issues a performance advisory. It also issues notices to explain for any violation of policies or infractions of its employees. AMSI pays its employees' wages and makes remittances to SSS, PhilHealth, and Pag-IBIG. Therefore, AMSI exercised control over its employees. The fact that Amber provided uniforms and identification patches is immaterial. As for the work rendered by petitioners, the Court has upheld the contracting of a rider for a restaurant in *Consolidated Building Maintenance, Inc. v. Asprec, Jr.*²⁶ Petitioners also

²³ CA rollo (CA-G.R. SP No. 158661), pp. 69-70.

²⁴ Supra note 2.

²⁵ Rollo, p. 42.

²⁶ 832 Phil. 630 (2018).

failed to prove that they had been working for Amber for more than a year. Though AMSI submitted its documentary evidence only on appeal, its volume was so overwhelming that “to refuse them would be to frustrate the ends of substantial justice,” especially because petitioners did not submit any documentary evidence to support their claims.²⁷

The CA ruled that petitioners were not illegally dismissed. Petitioners failed to prove the fact of their dismissal. They did not state the circumstances surrounding their supposed dismissal. AMSI offered them new work assignments but they refused to receive them. Since petitioners were not illegally dismissed, they were not entitled to backwages. Nonetheless, the CA concurred with the NLRC that the deductions for the meals were illegal. Petitioners’ alleged agreement to the deductions for the meals was not put into writing. Hence, there was no evidence that petitioners voluntarily accepted the deduction.²⁸

Petitioners filed a motion for reconsideration. When the CA denied it, they filed a petition for review on *certiorari* before this Court. Respondents filed their respective comments.²⁹

Petitioners argued that *first*, the totality of the circumstances shows that AMSI was a labor-only contractor and that Amber was petitioners’ employer. AMSI did not present evidence that it had substantial capital. Any evidence it presented before the NLRC should not be given any probative value because they were not presented at the earliest opportunity. Petitioners were employed at Amber before it entered into an Agreement with AMSI. This shows that the Agreement was entered into so that Amber could evade liability to its workers. Amber also exercised control over petitioners as to the means and method by which they shall accomplish their work. The work performed by petitioners was necessary to Amber’s business. They had worked for Amber for more than one year.³⁰

Second, petitioners were illegally dismissed. They were dismissed more than a month before the expiration of the Agreement. There was no proof that the Memoranda on New Work Assignment were served to them because they were only served by courier on July 11, 2017. Consequently, petitioners are entitled to reinstatement and backwages. Petitioners prayed for the reinstatement of the Decision of the Labor Arbiter, as affirmed by the NLRC.³¹

AMSI argued in its Comment that *first*, it is a legitimate labor contractor. It is duly registered with the Securities and Exchange Commission and the DOLE. It is also a member of the SSS, PhilHealth, and Pag-IBIG, and has regularly paid its employees’ monthly contribution to these agencies.

²⁷ *Rollo*, pp. 36-39.

²⁸ *Id.* at 40-41.

²⁹ *Id.* at 156-166, 171-191.

³⁰ *Id.* at 71-82.

³¹ *Id.* at 82-88.

AMSI has substantial capital, with a revenue of ₱302,401,703.00 for 2017, ₱299,065,910.00 for 2018, and ₱278,854,608.00 for 2019. It has other clients apart from Amber.³²

Second, AMSI averred that it exercised control over petitioners. AMSI hired petitioners and deployed them to Amber. It has its own recruitment process, company policies and guidelines, and forms. AMSI has a recruitment officer and team management officers who exercise control and supervision over its employees assigned to Amber. It has five (5) Area Supervisors in charge of Amber's account. AMSI issues a Memorandum to its erring employees. AMSI paid the salaries and benefits of petitioners.³³

Third, AMSI denied that petitioners were illegally dismissed. AMSI gave them a new work assignment notice because they failed to improve their work performance. AMSI has the prerogative to transfer petitioners to its other clients. Petitioners did not prove by substantial evidence that they were dismissed. Since there was no illegal dismissal, petitioners are only entitled to reinstatement without payment of backwages.³⁴

Amber *first* argued in its Comment that petitioners failed to prove that they were its employees. Petitioners did not submit any evidence together with their Position Paper in support of their contention that Amber is their employer. In fact, petitioners did not clearly state in the Position Paper who their employer is between Amber and AMSI. In contrast, AMSI and Amber have proven by substantial evidence that AMSI is the employer of petitioners. AMSI is a legitimate independent contractor. Petitioners signed their respective employment contracts with AMSI and not Amber. The contract clearly provides that there is no employer-employee relationship between petitioners and Amber. Amber did not exercise the power to discipline petitioners. Any violation will be reported by Amber to AMSI. AMSI exercised control and supervision over petitioners.³⁵

Petitioners' services were naturally discontinued when the Project Agreement expired on April 29, 2017. Amber pointed out that according to AMSI, petitioners had low performance evaluations and several timekeeping violations.³⁶

Second, Amber denied that petitioners were dismissed. As found by the CA, petitioners' allegation that they were illegally dismissed is not supported by the records of the case.³⁷

³² Id. at 174-179.

³³ Id. at 180-182.

³⁴ Id. at 182-190.

³⁵ Id. at 156-165.

³⁶ Id. at 159-161.

³⁷ Id. at 165-166.

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Issues

The issues in these cases are the following:

- I. Whether the CA erred in ruling that AMSI is a legitimate labor contractor.
- II. Whether the CA erred in ruling that petitioners were not illegally dismissed.
- III. Whether the CA erred in ruling that petitioners are entitled to a refund for the deductions for the meals.

Ruling of the Court

The petition is meritorious.

The Court is not a trier of facts and will not, as a general rule, entertain questions of fact. However, when the Labor Arbiter, the NLRC, and the CA differ in their factual findings, then the Court can review these issues and settle it once and for all.³⁸ Such is the case here.

Petitioners argued that their real employer was Amber and that AMSI was engaged in labor-only contracting. Labor-only contracting is defined in Article 106 of the Labor Code, as follows:

Article 106. *Contractor or Subcontractor.* – x x x

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.

Section 6 of Department Order (DO) No. 18-A-11³⁹ of the DOLE further clarifies what constitutes labor-only contracting:

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:

³⁸ *Societe Internationale De Telecommunications Aeronautiques v. Huliganga*, G.R. No. 215504, August 20, 2018.

³⁹ Rules Implementing Articles 106 to 109 of the Labor Code, as amended, DOLE Department Order No. 18-A-11, November 14, 2011.

- (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.

DO No. 18-A-11 also defines what is legitimate contracting or subcontracting, to wit:

SECTION 4. *Legitimate Contracting or Subcontracting.* — Contracting or subcontracting shall be legitimate if all the following circumstances concur:

- (a) The contractor must be registered in accordance with these Rules and carries a distinct and independent business and undertakes to perform the job, work or service on its own responsibility, according to its own manner and method, and free from control and direction of the principal in all matters connected with the performance of the work except as to the results thereof;
- (b) The contractor has substantial capital and/or investment; and
- (c) The Service Agreement ensures compliance with all the rights and benefits under Labor Laws.

Based on the foregoing, the following must be considered in determining whether AMSI is a legitimate contractor or is engaged in labor-only contracting: (1) whether it is registered; (2) whether it has substantial capital or investment; (3) whether the service agreement ensures compliance with all the rights and benefits under labor laws; (4) whether the activities being performed by the employees 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; and (5) whether the contractor exercises the right to control the performance of the work of the employees.

First, AMSI submitted its Certificate of Registration⁴⁰ issued by the DOLE which is valid until December 6, 2018. It also submitted together with its Comment its Certificates of Registration⁴¹ that are valid until November 7, 2020 and December 28, 2022. AMSI's registration with the DOLE gives rise to a disputable presumption that its operations are legitimate.⁴²

⁴⁰ CA *rollo* (CA-G.R. SP No. 158908), p. 123.

⁴¹ *Rollo*, pp. 195-196.

⁴² *Philippine Pizza, Inc. v. Cayetano*, G.R. No. 230030, August 29, 2018.

Second, AMSI's General Information Sheet for the year 2017⁴³ shows that it has a paid-up capital of ₱10,000,000.00.⁴⁴ Under DO No. 18-A-11, substantial capital refers to paid-up capital stocks/shares of at least ₱3,000,000.00 in the case of corporations, partnerships and cooperatives. AMSI met this requirement. AMSI is compliant even under DO No. 174-17,⁴⁵ which was issued on March 16, 2017 or after AMSI and Amber entered into a Project Agreement. The amount of paid-up capital stocks under DO No. 174-17 must be ₱5,000,000.00 in order to be considered as substantial capital.

Third, Section 9 (B) of DO No. 18-A-11 provides what must be included in the service agreement between the contractor and the principal:

Section 9. *Required Contracts under these Rules.* – x x x

x x x x

(b) Service Agreement between the principal and the contractor. The Service Agreement shall include the following:

- i. The specific description of the job, work or service being subcontracted.
- ii. The place of work and terms and conditions governing the contracting arrangement, to include the agreed amount of the services to be rendered, the standard administrative fee of not less than ten percent (10%) of the total contract cost.
- iii. Provisions ensuring compliance with all the rights and benefits of the employees under the Labor Code and these Rules on: provision for safe and healthful working conditions; labor standards such as, service incentive leave, rest days, overtime pay, 13th month pay and separation pay; retirement benefits; contributions and remittance of SSS, PhilHealth, PagIbig Fund, and other welfare benefits; the right to self-organization, collective bargaining and peaceful concerted action; and the right to security of tenure.
- iv. A provision on the Net Financial Contracting Capacity of the contractor, which must be equal to the total contract cost.
- v. A provision on the issuance of the bond/s as defined in Section 3 (m) renewable every year.
- vi. The contractor or subcontractor shall directly remit monthly the employers' share and employees' contribution to the SSS, ECC, Philhealth and Pag-ibig.
- vii. The term or duration of engagement.

The Service Agreement must conform to the DOLE Standard Computation and Standard Service Agreement, which form part of these Rules as *Annexes "A" and "B"*.

⁴³ CA *rollo* (CA-G.R. SP No. 158661), pp. 297-304.

⁴⁴ *Id.* at 301.

⁴⁵ Rules Implementing Articles 106 to 109 of the Labor Code, as amended, DOLE Department Order No. 174-17, March 16, 2017.

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The Project Agreement between Amber and AMSI provides that the latter shall provide the former “necessary workers to perform food and other related [staff] services.”⁴⁶ The annex to the Agreement specifies these workers as “Rider/Cashier/Telephone/Operator/Kitchen Staff/Restaurant Staff/Cook/Dispatcher.”⁴⁷ The Project Agreement also specifies the branches of Amber where AMSI’s employees will be working as well as the administrative fee of ₱57.79, which is ten (10%) of the gross total of the amounts payable to the employee and the government dues.⁴⁸ AMSI is required to submit a surety bond under the Project Agreement.⁴⁹ Further, AMSI is responsible for the contribution to the SSS, PhilHealth, Pag-IBIG, BIR, and living allowances under the law. It is likewise liable for paying overtime, holiday pay, night differentials, service incentive leave pay, and other benefits.⁵⁰ The duration of the agreement is one year from April 30, 2016 to April 29, 2017.⁵¹ Thus, the Project Agreement contains the stipulations required under Section 9(B) (i), (ii), (iii), (v), (vi), and (vii). However, it does not contain any provision regarding the net financial contracting capacity of AMSI required under Section 9 (B) (iv). Consequently, it cannot be said that the Project Agreement is fully compliant with the law.

Fourth, petitioners performed activities that are usually necessary or desirable to the operation of Amber. Amber is engaged in the food and restaurant business.⁵² Petitioners were motorcycle riders who delivered Amber’s food items to its customers. Amber claimed in its Comment that “it doesn’t take rocket science to do what these riders do.” They utilized any of the available riders to deliver the food orders.⁵³ Amber also averred in its Memorandum of Appeal before the NLRC that the work performed by petitioners was not a core function of its company.⁵⁴ In determining whether petitioners performed activities that are usually necessary or desirable to the operation of Amber, the Court is guided by its ruling in *Magsalin v. National Organization of Working Men*.⁵⁵

The argument of petitioner that its usual business or trade is softdrink manufacturing and that the work assigned to respondent workers as sales route helpers so involves merely “postproduction activities,” one which is not indispensable in the manufacture of its products, scarcely can be persuasive. If, as so argued by petitioner company, only those whose work are directly involved in the production of softdrinks may be held performing functions necessary and desirable in its usual business or trade, there would have then been no need for it to even maintain regular

⁴⁶ CA rollo (CA-G.R. SP No. 158661), p. 104.

⁴⁷ Id. at 110.

⁴⁸ Id. at 104-105, 100.

⁴⁹ Id. at 107.

⁵⁰ Id. at 105.

⁵¹ Id. at 107.

⁵² Id. at 7.

⁵³ Rollo, p. 164.

⁵⁴ CA rollo (CA-G.R. SP No. 158661), p. 182.

⁵⁵ 451 Phil. 254 (2003).

truck sales route helpers. The nature of the work performed must be viewed from a perspective of the business or trade in its entirety and not on a confined scope.⁵⁶

Hence, Amber cannot undermine the work performed by petitioners as riders simply because they are not directly involved in the preparation of the food. The Court held in *Daguinod v. Southgate Foods, Inc.*⁵⁷ that “[t]he service of food to customers is the main line of business of any restaurant.” It is not merely a non-core or peripheral activity.⁵⁸ Similarly, petitioners’ delivery of the food to Amber’s customers is important to its business of generating sales. Petitioners’ work as riders is imperative in ensuring that Amber’s customers receive their orders. And to clarify, the Court did not make any pronouncement in the case of *Consolidated Building Maintenance, Inc.*⁵⁹ that the work of a rider is not necessary and desirable to the business of a restaurant.

Moreover, petitioners were hired by Amber even before it entered into a Project Agreement with AMSI. Amber and AMSI entered into the Project Agreement on April 20, 2016 while petitioners were employed on the following dates: (1) Quezon - October 10, 2010; (2) Victoria – July 2012; (3) Tominez – September 20, 2013; (4) Barretto – November 4, 2013; (5) Hernandez – June 16, 2014; (6) Valdemor – August 11, 2014; and (7) Arevalo – September 16, 2014. Petitioners’ employment even prior to the Project Agreement shows that their work is necessary and desirable to Amber.⁶⁰

Fifth, Amber had the right to control the performance of petitioners. DO No. 18-A-11 defines the right to control as “right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.” Paragraph 3 of the Project Agreement states that Amber “may at its own option deny the service and/or presence of any worker who may not be acceptable with the standards” that it has set. Paragraph 9 of the Project Agreement also provides that Amber has the authority “to deduct proportionate amounts from the compensation price in cases of tardiness or absence of the former’s employees.” This provision shows that Amber has the power to control petitioners’ performance of their services and the compensation that they are entitled to. Moreover, none of the Affidavits of the AMSI’s Area Supervisors mention that they oversaw the employees assigned at Amber.

The totality of the facts and circumstances surrounding the case shall be considered in determining whether there is legitimate labor contracting or labor-only contracting.⁶¹ While AMSI is registered with the DOLE and has

⁵⁶ Id. at 261

⁵⁷ G.R. No. 227795, February 20, 2019.

⁵⁸ Id.

⁵⁹ Supra note 26.

⁶⁰ See *Aboitiz Haulers, Inc. v. Dimapatoj*, 533 Phil. 566 (2006).

⁶¹ *San Miguel Foods, Inc. v. Rivera*, 824 Phil. 961 (2018).

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sufficient capital, the Court cannot ignore that the services rendered by petitioners were necessary and desirable to Amber's business. In addition, Amber had the power of control over petitioners. Consequently, AMSI is not a legitimate labor contractor insofar as petitioners are concerned. It is Amber who is the real employer of petitioners.

The question now is whether petitioners were illegally dismissed from their employment. Petitioners all claimed that they were dismissed on May 19, 2017 for no reason and without due process. Tominez, Valdemor, and Hernandez said that they were forced to sign a resignation letter but they refused to do so. AMSI disputed petitioners' claim of dismissal and explained that they were still its employees but were given a new work assignment. Amber argued that petitioners discontinued their work as a consequence of the expiration of the Project Agreement on April 29, 2017.

The fact of dismissal must be proven by the employee.⁶² In this case, petitioners provided scant details regarding their dismissal. They did not say if they were prohibited from entering the work premises or if any of their supervisors told them they are no longer employed. Nonetheless, Amber itself admitted that petitioners have ceased working for it because of the expiration of its Project Agreement with AMSI. The Court has previously ruled that when there is no legitimate labor contracting, the expiration of the contract providing for the services is not a valid ground for dismissing the employees because they are not employees of the contractor but of the client.⁶³ As such, the expiration of the Project Agreement between AMSI and Amber is not a valid cause for the dismissal of petitioners from Amber.

Likewise, the Court is not convinced that AMSI wished to transfer petitioners to a new work assignment. The notice of new work assignment allegedly sent by AMSI to petitioners all provide that "We will re-assign you to another company were in [sic] we see you are qualified to work as Rider."⁶⁴ Thus, there is no guarantee that petitioners were going to be given a new work assignment. AMSI did not even mention which of its clients would petitioners likely be transferred to.

Since petitioners were illegally dismissed, they are entitled to backwages from the time of their dismissal, which is on May 19, 2017, pursuant to Article 294 of the Labor Code. They are also entitled to reinstatement to their former position without loss of seniority rights and other privileges. With respect to the deductions made on petitioners' salaries for their meals, the CA is correct that the same cannot be upheld because respondents did not present evidence that petitioners consented to it. Even assuming that petitioners did avail of the meals, the Court cannot permit deductions for the meals on this ground alone.⁶⁵ As for the award of attorney's fees, the same is warranted because petitioners were compelled to litigate to

⁶² *Mago v. Sun Power Manufacturing Limited*, 824 Phil. 464 (2018).

⁶³ *Lingat v. Coca-Cola Bottlers Philippines, Inc.*, 835 Phil. 617 (2018).

⁶⁴ *CA rollo* (CA-G.R. SP No. 158908), pp. 94-95, 97, 99, & 101-103.

⁶⁵ *See Mayon Hotel & Restaurant v. Adana*, 497 Phil. 892 (2005).

protect their rights. It is likewise in accordance with Article 2208 of the Civil Code.⁶⁶

The Labor Arbiter, as affirmed by the NLRC, held Amber liable to petitioners for their monetary awards. Pursuant to Article 109 of the Labor Code,⁶⁷ Amber and AMSI should both be held jointly and severally liable to petitioners for the monetary awards granted to the latter.

WHEREFORE, the petition is **GRANTED**. The Decision dated February 13, 2020 and the Resolution dated November 27, 2020 of the Court of Appeals in CA-G.R. SP Nos. 158661 and 158908 are **REVERSED** and **SET ASIDE**. The Decision dated September 10, 2018 and the Resolution dated October 23, 2018 of the National Labor Relations Commission in NLRC LAC No. 07-002523-18, which affirmed *in toto* the Decision dated April 16, 2018 of the Labor Arbiter in NLRC NRC Case No. 06-08263-17, are **REINSTATED** with the **MODIFICATION** that respondents Amber Golden Pot Restaurant Corporation and Ablebodies Manpower Services, Inc. are held jointly and severally liable to petitioners Lester S. Barretto, Ronn Vincent H. Arevalo, Richard Irish O. Tominez, Andy L. Valdemor, Roland Quezon, Ryan Raph B. Victoria, and Joey A. Hernandez for their backwages, refund for illegal deductions, and attorney's fees.

SO ORDERED.


ROSMARI D. CARANDANG
Associate Justice

⁶⁶ Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

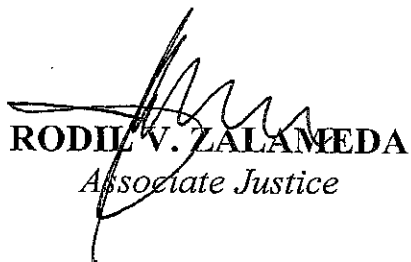
x x x x

⁶⁷ (8) In actions for indemnity under workmen's compensation and employer's liability laws; x x x
 Article 109. *Solidary Liability*. – The provisions of existing laws to the contrary notwithstanding, every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code. For purposes of determining the extent of their civil liability under this Chapter, they shall be considered as direct employers.

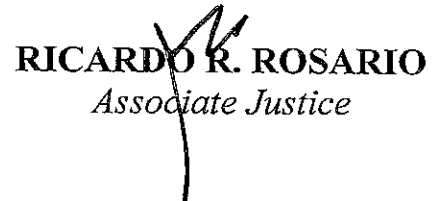
WE CONCUR:



MARVIC MARIO VICTOR F. LEONEN
Associate Justice



RODIL V. ZALAMEDA
Associate Justice



RICARDO R. ROSARIO
Associate Justice



JOSE MIDAS P. MARQUEZ
Associate Justice

ATTESTATION

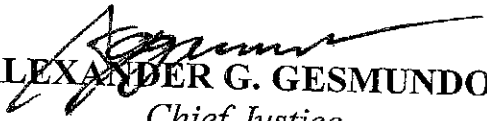
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

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.


ALEXANDER G. GESMUNDO
Chief Justice