Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NESTOR ILUSTRISIMO, EDU A. OLIVAR, JOEL M. OFTANA, ROLANDO A. OLIVAR, ANTONIO MAHIPOS, DANILO M. MARTIN, JR., PORFERIO I. ILUSTRISIMO, REYNALDO LAYLAY, JERRY O. APITA, RUEL E. OLIVAR, JOEY L. PAMILLARAN, JOSEPH M. ALBARICO, MARK ANTHONY APITA, AND DANIEL J. ILLUT, Petitioners, -versus- **ST. JOSEPH FISH BROKERAGE, INC. AND CHRISTIAN MANLAPAZ,** Respondents.	**G.R. No. 235761** Present: LEONEN, *J.*, *Chairperson*, CARANDANG, ZALAMEDA, ROSARIO, and DIMAAMPAO*, *JJ.*, **Promulgated:** October 6, 2021 MisRDCBatt

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DECISION

LEONEN, *J.*:

A worker's continuing engagement by their employer demonstrates the desirability of their labor to their employer's usual business, especially when the engagement has successively been for the same kind of work.

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* Designated additional Member per Special Order No. 2834 dated September 16, 2021.

This Court resolves a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court, assailing the Decision[2] and the Resolution[3] of the Court of Appeals, which, in turn, reversed the Resolutions of the Secretary of Labor and Employment[4] and the Order[5] of the Department of Labor and Employment. The Court of Appeals found that the Secretary of Labor and Employment had no jurisdiction over complaint for underpayment of wages and 13th month pay filed by Nestor Ilustrisimo, Edu A. Olivar, Joel M. Oftana, Joel M. Oftana, Rolando A. Olivar, Antonio Mahipos, Danilo M. Martin, Jr., Porferio I. Ilustrisimo, Reynaldo Laylay, Jerry O. Apita, Ruel E. Olivar, Joey L. Pamillaran, Joseph M. Albarico, Mark Anthony Apita, and Daniel J. Illut (Ilustrisimo, et al.,) against St. Joseph Fish Brokerage, Inc. (St. Joseph) as there was no employer-employee relationship between them.

Ilustrisimo, et al., were *batillos* or fish tub haulers for St. Joseph. They filed a complaint for underpayment of wages and 13th month pay before the Department of Labor and Employment Caloocan, Malabon, Navotas and Valenzuela. In its defense, St. Joseph claimed that Ilustrisimo, et al. were not its employees.[6]

Following an inspection of company premises, on September 2, 2013, the Department of Labor and Employment issued its Order ordering St. Joseph to pay Ilustrisimo, et al. the total amount of ₱4,616,812.00. The dispositive portion of the Order reads:

> WHEREFORE, premises considered, ST. JOSEPH FISH BROKERAGE, INC. and/or CHRISTIAN MANLAPAZ is/are hereby ordered to pay EDU A. OLIVAR and thirteen (13) other similarly situated employees, the aggregate amount of FOUR MILLION SIX HUNDRED SIXTEEN THOUSAND EIGHT HUNDRED TWELVE PESOS (₱4,616,812.00) within ten (10) days from receipt hereof. Failure to comply with this Order within the period prescribed shall cause the imposition of double indemnity pursuant to Republic Act No. 8188, otherwise known as "An Act Increasing the Penalty and Imposing Double Indemnity for violation of the Prescribed Increase or Adjustment in the Wage Rates.
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1 *Rollo*, pp. 9–33.

2 Id. at 40–53. The Decision in CA-G.R. SP No. 145967 dated June 30, 2017 was penned by Associate Justice Normandie B. Pizarro, and concurred in by Associate Justices Samuel H. Gaerlan (now a member of this Court) and Jhosep Y. Lopez (now a member of this Court) of the Twelfth Division of the Court of Appeals, Manila.

3 Id. at 63–65. The Resolution in CA-G.R. SP No. 145967 dated November 24, 2017 was penned by Associate Justice Normandie B. Pizarro, and concurred in by Associate Justices Samuel H. Gaerlan (now a member of this Court) and Jhosep Y. Lopez (now a member of this Court) of the Twelfth Division of the Court of Appeals, Manila.

4 Id. at 162–167. The Resolutions in OS-LS-0379-1029-2013 NCR-CFO-1306-IS-029 dated January 29, 2016 and May 5, 2016 were penned by Undersecretary Rebecca C. Chato of the Department of Labor and Employment, Manila.

5 Id. at 85–86. The Order in Case No. NCR-CFO-1306-IS-029 dated September 2, 2013 was penned by Regional Director Alex V. Avila of the Department of Labor and Employment, Manila.

6 Id. at 41–42.

SO ORDERED.[7]

St. Joseph then appealed to the Secretary of Labor and Employment, which issued a January 29, 2016 Resolution finding that it had jurisdiction over the case since there was an employer-employee relationship between St. Joseph and Ilustrisimo, et al.[8] The Secretary of Labor and Employment found that: (1) St. Joseph hired Ilustrisimo, et al. as *batillos* and paid their services as shown by their identification cards, payrolls, and loan receipts; (2) St. Joseph exercised the power of dismissal when Ilustrisimo, et al. were not allowed to report for work; and (3) St. Joseph fixed their hours of work at 7:00 p.m. to 4:00 a.m., and supervised Ilustrisimo, et al.'s work through a certain Police Major Eddie Regalado (Regalado).[9]

On March 18, 2016, St. Joseph manifested that Ilustrisimo, et al. had filed a complaint for illegal dismissal before the National Labor Relations Commission against St. Joseph in October 2013. On March 18, 2014 the Labor Arbiter found that Ilustrisimo, et al. had been illegally dismissed. However, the National Labor Relations Commission reversed and set aside the Labor Arbiter's ruling, finding that there was no employer-employee relationship between the parties.[10]

St. Joseph's moved for reconsideration, but it was denied by the Secretary of Labor and Employment in its May 5, 2016 Resolution.[11]

Assailing the January 29, 2016 and May 5, 2016 Resolutions of the Secretary of Labor and Employment, St. Joseph filed a Petition for Certiorari before the Court of Appeals.[12]

In its June 30, 2017 Decision,[13] the Court of Appeals found that Ilustrisimo, et al. were not St. Joseph employees, thus ousting the Secretary of Labor and Employment of jurisdiction over their complaint. It found that the elements to determine the existence of an employer-employee relationship were not present in this case: (1) selection and engagement of the employee; (2) payment of wages; (3) power of dismissal; and (4) power of control over the employee's conduct.[14]

First, only three of the petitioners, namely, Nestor Ilustrisimo, Edu Olivar, and Antonio Mahipos, were able to present identification cards, and only Mahipos' identification card was issued by St. Joseph, while the others'

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7 Id. at 43.
8 Id. at 44.
9 Id. at 166.
10 Id. at 44.
11 Id. at 185–186.
12 Id. at 187–209.
13 Id. at 40–53.
14 Id. at 50.

were issued by the Navotas Fish Ports. It further appeared that these cards were only gate passes.[15]

Second, the payroll slips Ilustrisimo, et al. presented were inadequate to prove the existence of an employer-employee relationship. The payroll slips were handwritten, while those submitted by St. Joseph were computerized. The payroll slips also did not indicate the employer's name or that they were payroll slips.[16]

Third, there was no dismissal of Ilustrisimo, et al., since it appeared that they were occasionally hired as extra *batillos*, and not as regular employees.[17]

Fourth, Ilustrisimo, et al. alleged that, as regular *batillos*, they were under the control and supervision of Regalado. However, they did not have evidence to prove the manner of control Regalado had over them or that Regalado was an employee of St. Joseph.[18]

Thus, Ilustrisimo, et al. failed to discharge their burden to prove that they were employees of St. Joseph. Since they did not have an employer-employee relationship with St. Joseph, the Secretary of Labor and Employment did not have jurisdiction over their complaint, and the Resolutions and Order were issued with grave abuse of discretion.[19]

In its November 24, 2017 Resolution, the Court of Appeals denied Ilustrisimo, et al.'s Motion for Reconsideration.[20]

Dissatisfied with the decision, Ilustrisimo, et al. filed their Petition for Review before this Court. In their Petition for Review, they claim that the Court of Appeals erred in finding that there was no employer-employee relationship between them and respondent St. Joseph.[21]

First, they argue that Mahipos' identification card was not a mere gate pass. Further, they claim that the Navotas Fish Ports issued the identification cards so that respondent would evade its responsibility as their employer.[22]

Second, petitioners argue that the payroll slips were proof that respondent paid their wages. They claim that the computerized payroll was only for office staff, while there was a separate handwritten payroll for the

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15 Id.
16 Id. at 50–51
17 Id. at 51.
18 Id. at 51–51-A.
19 Id. at 52.
20 Id. at 63–65.
21 Id. at 9–33.
22 Id. at 19–20.

batillos.[23]

Third, they claim that respondent had constructively dismissed them as retaliation for filing their claim for underpayment of wages and 13th month pay before the Department of Labor and Employment.[24]

Fourth, they concede that while they did not have personal contact with Regalado, their co-workers informed them of his presence at their workplace. Further, they claim that Regalado is the husband of the aunt of respondent's owner and president . Thus, they were under respondent's control and supervision.[25]

In its Comment,[26] respondent argues that there were no conflicting findings of fact to be resolved. Respondent claims that: (1) the Court of Appeals did not err in finding that there was no employer-employee relationship between petitioners and respondent; and (2) petitioners did not present sufficient evidence that respondent was their employer and that the pieces of evidence that were presented, such as the identification cards and payroll slips, only proved that petitioners were another entity's employees.[27]

In its Reply, petitioners point out that the Department of Labor and Employment and the Court of Appeals had conflicting findings of fact, and as such, this Court may review those findings.[28]

The issue to be resolved by this Court is whether or not there is an employer-employee relationship between respondent St. Joseph Fish Brokerage Inc. and petitioners Ilustrisimo, et al.

Ordinarily, this Court does not resolve questions of fact raised in petitions for review on certiorari under Rule 45 of the Rules of Court. However, as squarely put in issue by petitioners, the Department of Labor and Employment and the Court of Appeals made conflicting findings on whether there was an employer-employee relationship between respondent and petitioners. On the one hand, the Department of Labor and Employment found that the petitioners were employees of respondent, not merely helping hands:

> In this case, contrary to Appellants' claim that Complainants are "extra" *batillos* who are hired only when the volume of the fish catch is high, a perusal of the records showed otherwise. Appellants hired Complainants as *batillos* and paid their services as evidenced by their

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23 Id. at 20–21.
24 Id. at 21.
25 Id. at 21–22.
26 Id. at 464–477.
27 Id.
28 Id. at 481–488.

> identification cards, payrolls, and loan receipts or vales; Appellants exercised power of dismissal when Complainants were not allowed to report for work; Appellants control over Complainants' work as can be gleaned by their fixed work hours from 7:00 p.m. to 4:00 a.m.; and Appellants supervised Complainants' performance through Regalado. Absent evidence to the contrary, this Office sustains the findings of DOLE-NCR.[29]

On the other hand, the Court of Appeals found that the evidence presented by petitioners is insufficient to establish their claim that respondent was their employer. In doing so, the Court of Appeals applied the "four-fold test"[30] to determine whether there was an employer-employee relationship.[31]

It must be noted the documentary evidence that the Court of Appeals found unconvincing to prove respondent's payment of wages—namely, identification cards, sample payroll slips, and receipts—actually originate from respondent. To the Court of Appeals, the petitioners' exclusion from the respondent's computerized payrolls is proof that they were not regular employees.[32] However, as noted by the Department of Labor and Employment, these documents are akin to personnel files that originate from and are in a form under the control of the employer.[33] As admitted by respondent itself, the payrolls that did not show petitioners' names were the ones it submitted.[34]

Moreover, the Court of Appeals held that respondent had no power of control over petitioners because petitioners allegedly failed to establish a link between their supposed supervisor Regalado and respondent. Nonetheless, in the same discussion, the Court of Appeals observed that it would be an unsound business practice if respondent would not have had anybody supervising petitioners' work:

> ... It would be unsound business practice if the [respondent] would leave the extra *batillos* they hire without supervision or direction, otherwise chaos would ensure. Without the slightest supervision, the extra *batillos* would be hauling and loading tubs of fish intended for the [respondent] to the other fish producers or brokers.[35]

It must be emphasized that petitioners' failure to prove that Regalado was linked to respondent does not immediately and absolutely show respondent's lack of control over petitioners' work. As the Court of Appeals noted, if petitioners were not being supervised by some agent of respondent,

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29 *Rollo*, p. 166.
30 *Sara v. Agarrado*, 248 Phil. 847–853 (1988) [Per C.J. Fernan, Third Division].
31 *Zanotte Shoes v. National Labor Relations Commission*, 311 Phil. 272, 279 (1995) [Per J. Vitug, Third Division].
32 *Rollo*, p. 51.
33 Id. at 166.
34 Id. at 469.
35 Id. at 51–A.

they would have been performing work without regard for whose company's fish hauls they were hauling or loading. Indeed, respondent admitted that petitioners performed work for them, on an intermittent basis:

> Similarly, no dismissal was ever effected against the petitioners because they are only extra-batillos whose services were discontinued due to non-availability of work. As extra-batillos, it is expected that the requirement for their services is always intermittent and not on a regular or daily basis. The company simply engaged the services of petitioners to provide extra hands only. Thus, petitioners' services were not terminated as a retaliatory measure against them for having filed their Complaint with the DOLE.[36]

Article 280, now 295, of the Labor Code states:

> ART. 295. [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 services to be performed is seasonal in nature and the employment is for the duration of the season.
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> An employment shall be deemed to be casual if it is not covered by the proceeding 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.

What is considered "activities which are usually necessary or desirable in the usual business or trade of the employer" depends on the industry. In *Magsalin v. National Organization of Working Men*:[37]

> Even while the language of law might have been more definitive, the clarity of its spirit and intent, i.e., to ensure a "regular" worker's security of tenure, however, can hardly be doubted. In determining whether an employment should be considered regular or non-regular, the applicable test is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. The standard, supplied by the law itself, is whether the work undertaken is necessary or desirable in the usual business or trade of the employer, a fact that can be assessed by looking into the nature of the services rendered and its relation to the general scheme under which the business or trade is pursued in the usual course. It is distinguished from a specific undertaking that is divorced from the normal activities required in carrying on the

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36 Id. at 470.

37 451 Phil. 254, 261 (2003) [Per J. Vitug, First Division].

> particular business or trade. But, although the work to be performed is only for a specific project or seasonal, where a person thus engaged has been performing the job for at least one year, even if the performance is not continuous or is merely intermittent, the law deems the repeated and continuing need for its performance as being sufficient to indicate the necessity or desirability of that activity to the business or trade of the employer. The employment of such person is also then deemed to be regular with respect to such activity and while such activity exists. (Citations omitted)

Thus, salespersons were found to be doing necessary and desirable work for a soft drinks manufacturer, despite the employer's claim that these were "post-production activities."[38] A substitute teaching aide and book sale clerk did necessary and desirable work for an educational institution.[39] Tuna fish packagers were considered by this Court to be doing necessary and desirable activities for a food manufacturer and exporter.[40]

Here, neither party contests that a *batillo*—or a person who hauls and unloads fish *banyeras*[41]—does work that is necessary, desirable, and indispensable to a fish brokerage business,[42] which is engaged in the business of "selling fish and other seafood products delivered by fish producers.[43] In contrast to the Court of Appeals describing petitioners as being "occasionally" hired as extra *batillos*, the Department of Labor and Employment found that petitioners have been working for respondent as *batillos* for 10 to 30 years.[44] This demonstrates that their labor has been necessary and desirable to respondent's usual business for at least a decade. The continuing engagement of petitioners to do work for respondent demonstrates their labor's desirability to their employer's usual business, especially when the engagement has successively been for the same kind of work.[45] Even respondent's admission that its hiring of petitioners as *batillos* is "intermittent" only serves to emphasize the necessity and desirability of petitioners' work to its business.

The purpose of Article 295 of the Labor Code is to defeat employers circumventing their employees' security of tenure by intermittent engagement of their labor. In *Philips Semiconductors (Phils.), Inc. v. Fadriquela*:[46]

> Article [295] of the Labor Code of the Philippines was emplaced in

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38 Id.

39 *Claret School of Quezon City v. Sinday*, G.R. No. 226358, October 9, 2019 < https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65825 > [Per J. Leonen, Third Division].

40 *Pure Foods Corp. v. National Labor Relations Commission*, 347 Phil. 434, 442 (1997) [Per J. Davide, Jr., First Division].

41 *Rollo*, p. 166

42 Id.

43 Id. at 42.

44 Id. at 166.

45 *D.M. Consunji Corp. v. Bello*, 715 Phil. 335, 346 (2013) [Per J. Bersamin, First Division]; *Claret School of Quezon City v. Sinday*, G.R. No. 226358, October 9, 2019 < https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65825 > [Per J. Leonen, Third Division].

46 471 Phil. 355, 369–370 (2004) [Per J. Callejo, Sr., Second Division].

> our statute books to prevent the circumvention by unscrupulous employers of the employee's right to be secure in his tenure by indiscriminately and completely ruling out all written and oral agreements inconsistent with the concept of regular employment defined therein. The language of the law manifests the intent to protect the tenurial interest of the worker who may be denied the rights and benefits due a regular employee because of lopsided agreements with the economically powerful employer who can maneuver to keep an employee on a casual or temporary status for as long as it is convenient to it. In tandem with Article 281 of the Labor Code, Article 280 was designed to put an end to the pernicious practice of making permanent casuals of our lowly employees by the simple expedient of extending to them temporary or probationary appointments, ad infinitum.
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> The two kinds of regular employees under the law are (1) those engaged to perform activities which are necessary or desirable in the usual business or trade of the employer; and (2) those casual employees who have rendered at least one year of service, whether continuous or broken, with respect to the activities in which they are employed. The primary standard to determine a regular employment is the reasonable connection between the particular activity performed by the employee in relation to the business or trade of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. If the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability of that activity to the business of the employer. Hence, the employment is also considered regular, but only with respect to such activity and while such activity exists. The law does not provide the qualification that the employee must first be issued a regular appointment or must be declared as such before he can acquire a regular employee status. (Citations omitted)

Thus, the Court of Appeals erred when it found that there was no employer-employee relationship between petitioners and respondents. The Department of Labor and Employment was correct when it found that it had jurisdiction over petitioners' money claims.

WHEREFORE, the Petition for Review on Certiorari is **GRANTED**. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 145967 are **REVERSED AND SET ASIDE**. The January 29, 2016 and May 5, 2016 Resolutions of the Secretary of Labor and Employment in Case No. OS-LS-0379-1029-2013, and the September 2, 2013 Order of the Department of Labor and Employment, National Capital Region, in Case No. NCR-CFO-1306-IS-029 are **REINSTATED**.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

ROSMARI D. CARANDANG
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JAPAR B. DIMAAMPAO
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 M.V.F. LEONEN
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.

ALEXANDER G. GESMUNDO
Chief Justice