

SECOND DIVISION

[G.R. No. 117936-37, May 20, 1998]

**FRANCISCO U. NAGUSARA, MARQUITO L. PAMILARA, AND
DIOSCORO D. CRUZ, PETITIONERS, VS. THE NATIONAL LABOR
RELATIONS COMMISSION, LORENZO DY AND OTHERS, AND
ISAYAS AMURAO, RESPONDENTS.**

D E C I S I O N

PUNO, J.:

Petitioners Francisco U. Nagusara,^[1] Marquito L. Pamilara and Dioscoro D. Cruz seek to annul the resolution of the National Labor Relations Commission (NLRC) dated December 27, 1991 and its order dated September 29, 1994 in NLRC NCR Case No, 12-7287-82 & 12-7481-82.

On December 31, 1982, petitioners filed a complaint against respondent Lorenzo Dy for illegal dismissal, unfair labor practice and non-payment of overtime pay, legal holiday pay and premium pay for holiday and rest day.^[2] The case was set for hearing on January 12, January 21 and February 2, 1983. As respondent Dy failed to appear on said dates, the evidence for petitioners was received ex parte. On February 28, 1983, Labor Arbiter Bienvenido V. Hermogenes rendered a decision finding that petitioners were illegally dismissed and ordered respondent Dy to reinstate them. The decision also awarded to petitioners backwages and other money claims.^[3]

Respondent Dy failed with the NLRC a "Motion for Reconsideration, Set Aside Decision and/or Memorandum of Appeal" arguing that: (1) there was no proper service of summons, (2) there was no employer-employee relationship between him and petitioners, and (3) petitioners were not entitled to the relief prayed for in the complaint.^[4] On December 27, 1984 , the NLRC set aside the decision and remanded the case to the Labor Arbiter.^[5]

On September 14, 1987, respondent Dy impleaded respondent Isayas Amurao as co-respondent in accordance with Articles 106, 107 and 109 of the Labor Code. Respondent Dy alleged that respondent Amurao was the real employer of petitioners because he was the one who hired them in fulfillment of his obligation to provide manpower for respondent Dy's construction project.^[6]

On June 29, 1988, Labor Arbiter Felipe T. Garduque II issued a decision holding that the termination of petitioners' services was illegal. It, however, found petitioners' claim for overtime pay, legal holiday pay and premium pay for holiday and rest day to be unfounded.^[7] The dispositive portion of the decision states:

ACCORDINGLY, respondents Dynasty Steel Works and/or Lorenzo Dy are hereby

ordered to reinstate within ten (10) days from receipt hereof, herein complainants Francisco Nagasora, Marquito Pamilara and Dioscoro D. Cruz to their former positions without loss of seniority right and privileges but with one (1) year backwages at (P45.00, P38.00, P36.00 x 26 days), considering the nature of the business of respondent (construction business) which may not be continuous, with at least an additional one (1) month pay as separation pay in case respondent's business ceased operation.

All other money claims are hereby dismissed for lack of merit.^[8]

On appeal, the NLRC set aside the decision of the Labor Arbiter. It dismissed the complaint on the ground that there was no employer-employee relationship between petitioners and respondent Dy. It held that respondent Dy was only an indirect employer of petitioners as they were actually employed by respondent Amurao whom respondent Dy sub-contracted to provide labor for his construction project. It also declared that petitioners were not illegally dismissed.^[9] The dispositive portion of the resolution reads:

WHEREFORE, let the decision appealed from be, as it is hereby, SET ASIDE and another one ENTERED dismissing the instant cases for lack of merit.^[10]

Petitioners filed a motion for reconsideration but it was denied by the NLRC for lack of merit.^[11]

Hence, this petition.

Petitioners and private respondents presented conflicting versions of the circumstances which led to the severance of petitioners' employment.

Petitioners alleged that in 1981, they were hired as carpenters by Dynasty Steel Works owned by respondent Dy. Dynasty was engaged in the business of making steel frames, windows, doors and other construction works. It was contracted by Solmac Marketing to construct its building in Balintawak, Caloocan City.

On November 25, 1982, petitioners went to the Social Security System (SSS) office to inquire about their benefits under the system. They were informed that they were not reported as employees either by Dynasty or by respondent Dy. Petitioners filed a complaint against Dynasty and respondent Dy for violation of SSS laws and regulations.

On December 20, 1982, petitioners were prohibited from entering the work site at the Solmac compound. The security guard showed them an order/notice dated December 18, 1982 issued by respondent Dy instructing him not to allow petitioners to enter the premises as they were already dismissed from work. Petitioners sought the help of P/Cpl. Alexander Licuan of the Caloocan Police Department. P/Cpl. Licuan accompanied petitioners to the work site and inquired about the reason for the prohibition. Respondent Amurao who introduced himself as supervisor told P/Cpl. Licuan that petitioners' services were terminated upon the order of respondent Dy.

Traversing petitioners' allegations, respondent Dy claimed in his comment that petitioners were not his employees but that of respondent Amurao whom he sub-

contracted to provide manpower for his construction project at the Solmac building.

Respondent Dy also denied that he terminated the services of petitioners. He alleged that sometime in December 1982, the owner of Solmac building caught petitioners drinking inside the company premises. Because of this, the owner sought the dismissal or transfer of petitioners. Heeding the owner's demand, respondent Amurao transferred petitioners to another project. Petitioners refused and instead filed a complaint for illegal dismissal against respondent Dy.

Respondent Amurao also filed his own comment stating that he and respondent Dy entered into a sub-contracting agreement whereby he undertook to supply the manpower for respondent Dy's construction project at Solmac building. To comply with his obligation, respondent Amurao engaged the services of about thirty men which include petitioners. Respondent Amurao stated that he had complete discretion in the selection, hiring and dismissal of said workers; that he had direct controls and supervision over the performance of their work; and that any complaint against them were coursed through him.

Respondent Amurao, however, submitted that petitioners were project employees. Hence, they were no longer entitled to reinstatement because the project for which they were hired as long been completed.

Before we resolve the issue of illegal dismissal, it is first necessary to determine whether petitioners were employees of respondent Dy.

The records reveal that there existed an employer-employee relationship between petitioners and respondent Dy. The individual Premium Certifications issued by the SSS on April 11, 1983 show that Dynasty Steel Works declared petitioners as its employees for the purpose of paying their premium. Dynasty paid petitioners' premium from August 1981 to November 1982.^[12] Also, the payroll of Dynasty included petitioners.^[13] These pieces of evidence sufficiently prove that petitioners were employees of respondent Dy. It would be preposterous for respondent Dy to report petitioners as employees of Dynasty, pay their SSS premium as well as their wages if it were not true that they were his employees.

Private respondents would like to make it appear that petitioners were employees of respondent Amurao who was supposedly sub-contracted by respondent Dy to provide labor for his construction project at Solmac. Such assertion, however, does not deserve credence because as observed by the Labor Arbiter:

x x x (T)his Office is inclined to believe the claim of complainants that they were employees of respondent and not Isayas Amurao.

Firstly, the alleged subcontract between respondent (Dy) and Isayas Amurao is questionable since the same was dated June 8, 1982, and was conformed by (sic) respondent Lorenzo Dy on June 11, 1982, around eight (8) months after complainants had started working in September or October, 1981.

Secondly, the sworn statements and testimonies of respondent Lorenzo Dy and his witness, Isayas Amurao submitted and declared during the hearing of this case contain full of (sic) inconsistencies affecting their stand. The affidavits of the other