

## THIRD DIVISION

[ G.R. No. 219435, January 17, 2018 ]

**ALLIED BANKING CORPORATION, NOW MERGED WITH  
PHILIPPINE NATIONAL BANK, PETITIONER, VS. REYNOLD  
CALUMPANG, RESPONDENT.**

### D E C I S I O N

**VELASCO JR., J.:**

#### The Case

Before the Court is a Petition for Review on *Certiorari* filed under Rule 45 of the Rules of Court for the reversal and setting aside of the Decision<sup>[1]</sup> dated September 12, 2014 and the Resolution<sup>[2]</sup> dated June 9, 2015 of the Court of Appeals (CA) - Cebu City in CA-G.R. CEB SP No. 02906, which affirmed the findings of the National Labor Relations Commission (NLRC) and of the Labor Arbiter, declaring respondent to have been illegally dismissed by petitioner.

#### The Facts

Petitioner Allied Banking Corporation<sup>[3]</sup> ("Bank") and Race Cleaners, Inc. ("RCI"), a corporation engaged in the business of janitorial and manpower services, had entered into a Service Agreement whereby the latter provided the former with messengerial, janitorial, communication, and maintenance services and the personnel therefor.<sup>[4]</sup>

On September 28, 2003, respondent Reynold Calumpang was hired as a janitor by RCI and was assigned at the Bank's Tanjay City Branch ("the Branch"). He was tasked to perform janitorial work and messengerial/errand services. His job required him to be out of the Branch at times to run errands such as delivering statements and checks for clearing, mailing letters, among others.<sup>[5]</sup>

Petitioner, however, observed that whenever respondent went out on errands, it takes a long time for him to return to the Branch. It was eventually discovered that during these times, respondent was also plying his pedicab and ferrying passengers. Petitioner also found out through several clients of the Branch who informed the Bank Manager, Mr. Oscar Infante, that respondent had been borrowing money from them. Because of these acts, Mr. Infante informed respondent that his services would no longer be required at the Branch.<sup>[6]</sup>

Disgruntled, respondent thereafter filed a complaint for illegal dismissal and underpayment of wages against petitioner before the NLRC,<sup>[7]</sup> which was docketed as RAB VII-07-0094-2005-D.<sup>[8]</sup>

In his position paper, respondent asserted that the four-fold test of employer-employee relationship is present between him and the Bank.<sup>[9]</sup> First, he averred that he was a regular employee of the Bank assigned as a Janitor of the Branch with a salary of P4,200 payable every 15 days each month, and assigned such other tasks essential and necessary for the Bank's business.<sup>[10]</sup>

He alleged that petitioner engaged his services and exercised direct control and supervision over him through the Branch Head, Oscar Infante, not only as to the results of his work but also as to the means and methods by which the same was to be accomplished. According to respondent, Infante gives the direct orders on the work to be done and accomplished during working days, such as "m[o]pping, cleaning the comfort room of the [B]ank, arrang[ing] furniture and fixture, bank documents, throw[ing] garbage/waste disposal, cleaning the windows, tables and teller cage" as well as directing him to "do messengerial/errand services such as mailing of letters, delivery of bank statements and deliver[ing] checks for clearing."<sup>[11]</sup>

As regards the payment of salary, respondent claimed that it was the Branch that directly paid his salaries and wages every "*quincina*."<sup>[12]</sup> As for the power of dismissal, respondent further alleged that it was petitioner Bank, through its Branch Head, who terminated his services.<sup>[13]</sup>

For its part, petitioner alleged that respondent was not its employee, but that of RCI, with which it had entered into a Service Agreement to provide "messengerial, janitorial, communications and maintenance services and the personnel therefor."<sup>[14]</sup> It claimed that while respondent was required to be out of the Branch at times to accomplish his tasks, it was observed that whenever he went out on these errands, he would take a long time to return to the Branch. Petitioner eventually discovered that during these times, respondent was "also plying his pedicab and ferrying passengers." Aside from this, petitioner averred that several clients of the Branch informed Infante that respondent had been borrowing money from them "owing to his familiarity with said clients." Upon discovering these incidents, petitioner "had no choice but to have complainant relieved and replaced." Accordingly, Infante informed respondent that his services would no longer be required by the Branch.<sup>[15]</sup>

Petitioner denied the existence of any employer-employee relationship between itself and respondent. It asserted that respondent was clearly an employee of RCI by virtue of the Service Agreement which clearly indicated in Article XI thereof that there would be no employer-employee relationship between RCI's employees and the Bank.<sup>[16]</sup> It further averred that RCI is a qualified job contractor because of its capitalization and the fact that it exercised control and supervision over its employees deployed at the branches of the petitioner in accordance with Rule VIII-A, Sec. 4, pars. (d) and (e) of the Omnibus Rules Implementing the Labor Code.<sup>[17]</sup>

Furthermore, petitioner argued that it was merely exercising its prerogative under the Service Agreement to seek the replacement or relief of any personnel assigned by RCI when the Branch Head informed respondent that his services would no longer be required at the Branch. According to petitioner, this decision to replace respondent was not equivalent to termination of employment, especially since it was

neither whimsical nor arbitrary.<sup>[18]</sup> Thus, petitioner concludes that, in the absence of any employer-employee relationship between the parties, respondent had no cause of action against petitioner for illegal dismissal, damages and other claims.<sup>[19]</sup>

### **Ruling of the Labor Arbiter**

In its Decision<sup>[20]</sup> dated March 28, 2006, the Labor Arbiter ruled in favor of respondent, the dispositive portion of which reads:

**WHEREFORE**, foregoing considered, complainant is hereby declared to be an employee of respondent Allied Banking Corporation. It is declared further that complainant has been illegally dismissed. Respondent Allied Banking Corporation is hereby ordered to reinstate complainant to his former position without loss of seniority rights or privileges, with full backwages from the time his salary was withheld until his actual reinstatement, which is tentatively computed in the amount of P37,800.00. Should reinstatement be unfeasible for valid reasons, respondent is ordered to pay the complainant separation pay of one month salary per year of service, a fraction of six months is considered as one year which is computed in the amount of P46,200.

**SO ORDERED.**<sup>[21]</sup>

The Labor Arbiter held that there was an employer-employee relationship between petitioner and respondent, based on the following findings: (a) Respondent rendered services to petitioner for eleven (11) unbroken years; (b) There was no evidence of a Service Agreement between petitioner and RCI; (c) There was no evidence of a request for replacement of respondent made by petitioner with RCI; (d) Respondent was directly paid by petitioner and not through RCI; (e) Respondent's work was directly controlled and supervised by petitioner; (f) It was petitioner who terminated the services of respondent with no participation of RCI whatsoever; and (g) RCI disowned any employment relationship with respondent.<sup>[22]</sup>

Considering its finding of the existence of an employer-employee relationship between petitioner and respondent, the Labor Arbiter further ruled that the reason and manner by which respondent was terminated fell short of the requirements of the law since due process was not observed. Accordingly, respondent was declared to have been illegally dismissed and ordered to be reinstated without loss of seniority or privileges, with full backwages.<sup>[23]</sup>

Aggrieved, petitioner immediately filed a Notice of Appeal and Memorandum of Appeal with the NLRC, which was docketed as NLRC Case No. V-000628-2006.<sup>[24]</sup>

### **Ruling of the National Labor Relations Commission**

The NLRC affirmed the decision of the Labor Arbiter in its Decision dated February 16, 2007, to wit:

**WHEREFORE**, premises considered, the appeal of respondent Allied Banking Corporation is hereby DISMISSED for lack of merit and the appealed Decision is AFFIRMED.

**SO ORDERED.**<sup>[25]</sup>

Agreeing with the Labor Arbiter's findings, the NLRC ruled that petitioner exercised all the elements of an employer-employee relationship through the payment of wages, control and supervision over complainant's work and the power of dismissal.

<sup>[26]</sup> The NLRC discredited petitioner's argument that it merely exercised its prerogative to seek for a replacement or relief of any personnel assigned by RCI absent any evidence that it sought respondent's relief from RCI.<sup>[27]</sup>

Petitioner moved for the reconsideration of the NLRC Decision,<sup>[28]</sup> but the same was denied in a Resolution dated May 17, 2007.<sup>[29]</sup> Thus, petitioner elevated the matter to the CA in a petition which was docketed as CA-G.R. SP No. 02906.<sup>[30]</sup>

### **Ruling of the Court of Appeals**

In the assailed Decision dated September 12, 2014, the CA denied the petition and upheld the rulings of the Labor Arbiter and the NLRC. The dispositive portion of the assailed Decision reads:

**WHEREFORE**, premises considered, the petition is hereby **DENIED**. The NLRC Decision dated 16 February 2007 and the Resolution dated 17 May 2007, in RAB VII Case No. 07-0094-2005-D, is **AFFIRMED**.

The Labor Arbiter is hereby ordered to re-compute the award of backwages and separation pay in accordance with the above disquisitions.

**SO ORDERED.**<sup>[31]</sup>

The CA ruled that RCI is a labor-only contractor. It applied the test of independent contractorship that "whether one claiming to be an independent contractor has contracted to do work according to his own methods and without being subject to the control of the employer, except only as to the results of the work" in determining that RCI merely served as an agent of petitioner bank and that respondent was truly an employee of petitioner.<sup>[32]</sup>

As to the issue of the propriety of respondent's dismissal, the CA affirmed the findings of the Labor Arbiter and the NLRC that petitioner Bank failed to give respondent ample opportunity to contest the legality of his dismissal since no notice of termination was given to him. Consequently, the CA affirmed the award of reinstatement without loss of seniority rights and other privileges, and his full backwages inclusive of allowances and other benefits or their monetary equivalent, computed from the time his compensation was withheld up to the time of his actual reinstatement.

Nevertheless, finding that there were strained relations between petitioner bank and respondent, the CA ordered the award of separation pay in lieu of reinstatement, equivalent to one (1) month salary for every year of service, with a fraction of a year of at least six (6) months to be considered as one (1) whole year, to be computed from the date he was hired until the finality of the decision, earning a

legal interest at the rate of six percent (6%) *per annum* until full satisfaction.

Petitioner filed a *Motion for Reconsideration (of the Decision Dated 12 September 2014) with Entry of Appearance and Motion for Substitution of Party* dated October 16, 2014,<sup>[33]</sup> but it was denied in the assailed Resolution dated June 9, 2015.

Hence, this petition.

### **The Petition**

Petitioner asserts that the CA erred in declaring RCI as a labor-only contractor. It claims that RCI carried an independent business as reflected in the Service Agreement that petitioner bank entered with RCI. Aside from the substantial capitalization of RCI, petitioner bank avers that RCI exercises control and supervision over its personnel deployed at its branches. Petitioner bank further argues that even assuming that respondent's work is related to its business, such work is not necessary in the conduct of the bank's principal business. Finally, petitioner contends that it does not have the power to dismiss respondent and control his work based on the Service Agreement with RCI.

Nevertheless, petitioner bank defends its right to ask for respondent's replacement under Article IV of the Service Agreement. Petitioner reiterates that respondent's acts of borrowing money from the bank's clients and plying/ferrying passengers for a fee during his hour of duty constitute conduct which is prejudicial to the interest of petitioner. Thus, in accordance with the Service Agreement, petitioner bank merely exercised its right to change or have respondent replaced instead of imposing disciplinary measures on him. According to petitioner, this act was erroneously construed by the CA as an exercise of the power of control over or of dismissal of respondent.

In a Resolution<sup>[34]</sup> dated September 28, 2015, We required respondent to comment on the petition within ten (10) days from notice. However, respondent has failed to file any comment thereon to date. Accordingly, respondent is deemed to have waived his right to comment on the petition and the Court shall now proceed to rule on its merits.

### **The Issues**

Petitioner raises the following issues:

1. Whether or not the CA erred in declaring that RCI is a labor only contractor.
2. Whether or not the CA erred in declaring that there exists an employer-employee relationship between the Bank and respondent.
3. Whether or not the CA erred in (i) declaring that respondent had been illegally dismissed, and (ii) granting his monetary claims.

Essentially, the principal issue is whether the CA erred in affirming the NLRC Decision which declared that RCI is a labor-only contractor, and in ordering the Labor Arbiter to re-compute the award of backwages and separation pay.