

THIRD DIVISION

[G.R. No. 209418, December 07, 2015]

**W.M. MANUFACTURING, INC., PETITIONER, VS. RICHARD R.
DALAG AND GOLDEN ROCK MANPOWER SERVICES,
RESPONDENTS.**

D E C I S I O N

VELASCO JR., J.:

Nature of the Case

For consideration is the amended petition for review under Rule 45 of the Rules of Court, assailing the February 21, 2013 Decision^[1] and September 17, 2013 Amended Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 122425,^[3] which declared petitioner W.M. Manufacturing, Inc. (WM MFG) and respondent Golden Rock Manpower Services (Golden Rock) solidarily liable to respondent Richard R. Dalag (Dalag) for the latter's alleged illegal dismissal from employment.

The Facts

On January 3, 2010, petitioner, as client, and respondent Golden Rock, as contractor, executed a contract denominated as "Service Agreement,"^[4] which pertinently reads:

SERVICE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS

x x x x

The CONTRACTOR shall render, undertake, perform and employ the necessary number of workers as the CLIENT may need, at such dates and times as the CLIENT may deem necessary.

The CLIENT shall have the right to request for replacement to relieve such workers as the need arises for any reason whatsoever and the CONTRACTOR undertakes to furnish a replacement immediately as possible.

x x x x

There shall be no employer-employee relationship between the CLIENT, on the one hand, and the persons assigned by the CONTRACTOR to perform the services called for hereunder, on the other hand.

In view of this, CONTRACTOR agrees to hold the CLIENT free from any liability, cause(s) o(f) action and/or claims which may failed (sic) by said workers including but not limited to those arising from injury or death of any kind of nature that may be sustained by them while in the performance of their assigned tasks.

The CONTRACTOR hereby warrants compliance with the provisions of the Labor Code of the Philippines as well as with all other presidential decrees, general orders, letters of instruction, laws rules and regulations pertaining to the employment of a labor now existing or which may hereafter be enacted, including the payment of wages, allowances, bonuses, and other fringe benefits, and the CLIENT shall not in any way be responsible for any claim for personal injury or death, for wages, allowances, bonuses and other fringe benefits, made either by the said personnel or by third parties, whether or not such injury, death or claim by third parties, whether or not such injury, death or claim arises out of, or in any way connected with, the performance of personnel's duties.

The CLIENT shall have the right to report to the CONTRACTOR and protest any untoward act, negligence, misconduct, malfeasance or nonfeasance of the said personnel and the contractor alone shall have the right to discipline the said personnel.

The CONTRACTOR shall fully and faithfully comply with the provisions of the New Labor Code, as well as with other laws, rules and regulations, pertaining to the employment of labor which is now existing or which hereafter be promulgated or enacted.

In relation to the Service Agreement, Golden Rock, on April 26, 2010, engaged the services of respondent Dalag as a factory worker to be assigned at petitioner's factory. For this purpose, respondents inked a five-month Employment Contract For Contractual Employees (Employment Contract)^[5] that reads:

EMPLOYMENT CONTRACT FOR CONTRACTUAL EMPLOYEES Dear Mr./Ms. Richard Dalag,

[Golden Rock] hire(s) you as a contractual worker/employee to work at WM MFG under these conditions:

- 1) You will hold the position as (sic) Factory Worker.
- 2) Your employment as a CONTRACTUAL EMPLOYEE takes effect on April 26, 2010 to Sept. 26, 2010. You will receive a salary of P328.00 per day payable weekly/15'h (sic) day monthly of the calendar month.

x x x x

- 7) Your employment as a CONTRACTUAL EMPLOYEE may be terminated at any time for any cause, which may arise due to inability to learn and undertake duties and responsibilities of the position you are being employed for, inefficiency, violation of company rules, policies and regulations, personnel reduction and recession business. In either event,

you will be given a notice of termination during your working hours/day.

The company undertakes to pay your compensation for the days actually worked and the company shall not be liable for the period of the contract not run for any separation pay.

Notwithstanding the five-month duration stipulated in the contract, respondent Dalag would allege in his complaint for illegal dismissal^[6] that on August 7, 2010, one of WM MFCs security guards prevented him from going to his work station and, instead, escorted him to the locker room and limited his activity to withdrawing his belongings therefrom. Having been denied entry to his work station without so much as an explanation from management, Dalag claimed that he was illegally dismissed, his employment having been terminated without either notice or cause, in violation of his right to due process, both substantive and procedural.

Dalag further claimed that his assignment at WM MFG as side seal machine operator was necessary and desirable for the company's plastic manufacturing business, making him a regular employee entitled to benefits under such classification.^[7] He likewise alleged that WM MFG and Golden Rock engaged in the illegal act of labor-only contracting based on the following circumstances: that all the equipment, machine and tools that he needed to perform his job were furnished by WM MFG; that the jobs are to be performed at WM MFCs workplace; and that he was under the supervision of WM MFCs team leaders and supervisors.

The complaint, docketed as LAC No. 03-000673-11, was lodged against WM MFG, Golden Rock, Jocelyn Hernando (Hernando), Watson Nakague (Nakague) and Pablo Ong (Ong), the latter three individuals as officers of the impleaded companies. In their joint position paper, therein respondents argued that Dalag was not dismissed and that, on the contrary, it was he who abandoned his work. They offered as proof WM MFG's memos^[8] addressed to Dalag, which ordered him to answer within 24-hours the accusations relating to the following alleged infractions: gross negligence, qualified theft, malicious mischief, incompetence, grave misbehaviour, insubordination, dishonesty, and machine sabotage.^[9] Based on the memos and the affidavits submitted by his former co-workers,^[10] Dalag repeatedly failed to immediately report to management the breakdowns of the side-seal machine he was assigned to operate; that he did not report that the machine's thermocouple wire and conveyor belt needed repair, causing the damage on the belt to worsen and for the wire to eventually break; and that he pocketed spare parts of petitioner's machines without company management's consent.

Memo 2010-19 dated August 7, 2010, the final memo WM MFG attempted to serve Dalag, pertinently reads:^[11]

Samakaluwid, matapos ang isinagawang imbestigasyon tungkol sa mga insidenteng kinasangkutan mo. Napagdesisyonan na ng Management na magbaba ng Final Decision na ikaw ay patawan ng suspension at pinagrereport sa Golden Rock Agency, ito ay clahil sa mga alegasyon na nagpapatunay na ikaw ay nagkasala at lumabag sa Patakaran ng kumpanyang ito.

Dalag, however, allegedly refused to receive the memos, and instead turned his back on his superiors, informing them that he will no longer return, and then walked away. And on that very same day, WM MFG, through a letter addressed to Golden Rock, informed the manpower company of its intention to exercise its right to ask for replacement employees under the Service Agreement. As per the letter, WM MFG no longer needed Dalag's services.^[12]

The parties would later file their respective replies in support of the allegations and arguments raised in their position papers.^[13]

Ruling of the Labor Arbiter

On January 24, 2011, Labor Arbiter Eduardo G. Magno rendered a Decision^[14] in LAC No. 03-000673-11 dismissing Dalag's complaint. The dispositive portion of the Decision reads:

WHEREFORE, the Complaint is hereby DISMISSED for lack of merit.

However, respondents are hereby ordered to pay his unpaid wages for three days in the amount of P1,212.00

SO ORDERED.

Citing *Machica v. Roosevelt Center Services, Inc.*,^[15] the Labor Arbiter ratiocinated that the burden of proving actual dismissal is upon the shoulders of the party alleging it; and that WM MFG and Golden Rock can only be burdened to justify a dismissal if it, indeed, took place. Unfortunately for Dalag, the Labor Arbiter did not find substantial evidence to sustain a finding that he was, in the first place, actually dismissed from employment. As observed by the Labor Arbiter:^[16]

Records show that complainant [Dalag] last reported for work on August 6, 2010 and filed his complaint for illegal dismissal on August 9, 2010. However, [Dalag] failed to establish the fact of his alleged dismissal on August 07, 2010.

As established by respondents [WM MFG, Golden Rock, Hernando, Nakague, and Ong], [Dalag] was hired by [Golden Rock] as contractual employee on April 26, 2010 until September 26, 2010 and was assigned at its client [WM MFG].

[Dalag] failed to present any letter of termination of his employment by his employer [Golden Rock].

A party alleging a critical fact must support his allegation with substantial evidence for any decision based on unsubstantiated allegation cannot stand as it will offend due process.

There is no illegal dismissal to speak of where the employee was not notified that he had been dismissed from his employment nor he was prevented from returning to his work. (words in brackets added, citations omitted)

Plainly, between WM MFG and Golden Rock, the Labor Arbiter considered the latter as Dalag's true employer. Thus, Dalag's termination from employment, if any, ought to come not from WM MFG but from Golden Rock. Without such termination, actual or constructive, Dalag's complaint cannot prosper for there was no dismissal to begin with, legal or otherwise.

Obviously aggrieved by the Labor Arbiter's ruling, Dalag interposed an appeal with the National Labor Relations Commission (NLRC).

Rulings of the NLRC

On May 31, 2011, Dalag obtained a favorable ruling from the NLRC through its Decision^[17] in NLRC NCR CASE NO. 08-11002-10, which granted his appeal in the following wise:

WHEREFORE, in view of the foregoing premises, the appeal of the complainant is GRANTED. The assailed Decision dated January 24, 2011 is hereby REVERSED and SET ASIDE. Judgment is now rendered declaring complainant to have been illegally terminated from employment. Respondents W.M Manufacturing, Inc., et. al., are hereby ordered to reinstate immediately complainant to his former position without loss of seniority rights and privileges computed from the time he was actually dismissed or his compensation withheld up to the time of actual reinstatement, which as of the decision, amounted to a total of One Hundred Seven Thousand Seven Hundred Thirty-Nine and 73/100 Pesos (P107,739.73), as computed by the NLRC Computation Unit, exclusive of the complainant's unpaid wages from August 4-6, 2010, in the amount of P1,212.00 as previously awarded.

All other claims are hereby dismissed for lack of merit.

SO ORDERED.

In siding with respondent Dalag, the NLRC determined that Dalag's true employer was WM MFG, who merely engaged respondent Golden Rock as a labor-only contractor. To arrive at this conclusion, the NLRC utilized the control test, thusly:^[18]

x x x [T]he employment contract of the complainant only showed that [Golden Rock] hired [Dalag] as a factory worker to be assigned to [WM MFG] and by all indications, Golden Rock did not provide technical or special services [WM MFG]. Moreover, [WM MFG and Golden Rock] did not deny that the machines or tools used by the complainant, including the work premises, belonged to respondent [WM MFG], and not to the agency.

[WM MFG]'s control and supervision over the work of [Dalag] is indeed explicit, and as stated by [Dalag] he was supervised not by Golden Rock but by the team leaders and supervisors of [WM MFG]. And not only that, based on the evidence submitted by respondent [WM MFG], it was the latter who even took the pains of investigating the alleged infractions of [Dalag]. By [WM MFG and Golden Rock]'s own allegation, it was [WM MFG] who issued memos to [Dalag] directing him to explain several