597 Phil. 276

THIRD DIVISION

[G.R. No. 153192, January 30, 2009]

DEALCO FARMS, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (5TH DIVISION), CHIQUITO BASTIDA, AND ALBERT CABAN, RESPONDENTS.

D E C I S I O N

NACHURA, J.:

Under review are Resolutions[1] of the Court of Appeals (CA) in CA-G.R. SP No. 68972 denying due course to and dismissing petitioner Dealco Farms, Inc.'s petition for *certiorari*.

Petitioner is a corporation engaged in the business of importation, production, fattening and distribution of live cattle for sale to meat dealers, meat traders, meat processors, canned good manufacturers and other dealers in Mindanao and in Metro Manila. Petitioner imports cattle by the boatload from Australia into the ports of General Santos City, Subic, Batangas, or Manila. In turn, these imported cattle are transported to, and housed in, petitioner's farms in Polomolok, South Cotabato, or in Magalang, Pampanga, for fattening until the cattle individually reach the market weight of 430 to 450 kilograms.

Respondents Albert Caban and Chiquito Bastida were hired by petitioner on June 25, 1993 and October 29, 1994, respectively, as escorts or "comboys" for the transit of live cattle from General Santos City to Manila. Respondents' work entailed tending to the cattle during transportation. It included feeding and frequently showering the cattle to prevent dehydration and to develop heat resistance. On the whole, respondents ensured that the cattle would be safe from harm or death caused by a cattle fight or any such similar incident.

Upon arrival in Manila, the cattle are turned over to and received by the duly acknowledged buyers or customers of petitioner, at which point, respondents' work ceases. For every round trip travel which lasted an average of 12 days, respondents were each paid P1,500.00. The 12-day period is occasionally extended when petitioner's customers are delayed in receiving the cattle. In a month, respondents usually made two trips.

On October 15, 1999, respondents Bastida and Caban, together with Ramon Maquinsay and Roland Parrocha, filed a Complaint for illegal dismissal with claims for separation pay with full backwages, salary differentials, service incentive leave pay, 13th month pay, damages, and attorney's fees against petitioner, Delfin Alcoriza[2] and Paciano Danilo Ramis[3] before the National Labor Relations Commission (NLRC), Sub-Regional Arbitration Branch No. XI, General Santos City. Although the four complainants collectively filed a case against petitioner, Maquinsay and Parrocha never appeared in any of the conferences and/or hearings before the

Labor Arbiter. Neither did they sign the verification page of complainants' position paper. Most importantly, Maquinsay and Parrocha executed affidavits in favor of petitioner praying for the dismissal of the complaint insofar as they were concerned.

It appears that, on August 19, 1999, respondents were told by a Jimmy Valenzuela, a *hepe de viaje*, that he had been instructed by Ramis to immediately effect their replacement. Valenzuela proffered no reason for respondents' replacement. Respondents' repeated attempts to see and meet with Ramis, as well as to write Alcoriza, proved futile, compelling them to file an illegal dismissal case against petitioner and its officers.

In all, respondents alleged in their position paper that: (1) they were illegally dismissed, as they never violated any of petitioner's company rules and policies; (2) their dismissal was not due to any just or authorized cause; and (3) petitioner did not observe due process in effecting their dismissal, failing to give them written notice thereof. Thus, respondents prayed for money claims, *i.e.*, salary differentials, service incentive leave pay, cost of living allowance (COLA) and 13th month pay.

Petitioner, however, paints a different picture. Petitioner asserts that the finished cattle are sold to traders and middlemen who undertake transportation thereof to Manila for distribution to the wet markets. In fact, according to petitioner, the buyers and end-users of their finished cattle actually purchase the cattle as soon as they are considered ready for the market. Petitioner claims that once the finished cattle are bought by the buyers, these buyers act separately from, and independently of, petitioner's business. In this regard, the buyers themselves arrange, through local representatives, for the (a) hauling from petitioner's farm to the port area; (b) shipment of the finished cattle to Manila; and (c) escort or "comboy" services to feed and water the cattle during transit.

In its position paper, petitioner relates only one instance when it engaged the services of respondents as "comboys." Petitioner maintains that their arrangement with respondents was only on a "per-trip" or "per-contract" basis to escort cattle to Manila which contemplated the cessation of the engagement upon return of the ship to the port of origin - the General Santos City port.

Petitioner further narrates that sometime in 1998, and well into 1999, its import of cattle from Australia substantially decreased due to the devalued dollar. Consequently, petitioner was forced to downsize, and the sale and shipments to Manila were drastically reduced. Thus, petitioner and/or its buyers no longer retained escort or "comboy" services.

Ultimately, petitioner denies the existence of an employer-employee relationship with respondents. Petitioner posits that: (a) respondents are independent contractors who offer "comboy" services to various shippers and traders of cattle, not only to petitioner; (b) in the performance of work on board the ship, respondents are free from the control and supervision of the cattle owner since the latter is interested only in the result thereof; (c) in the alternative, respondents can only be considered as casual employees performing work not necessary and desirable to the usual business or trade of petitioner, *i.e.,* cattle fattening to market weight and production; and (d) respondents likewise failed to complete the one-year service period, whether continuous or broken, set forth in Article 280[4] of the Labor

Code, as petitioner's shipments were substantially reduced in 1998-1999, thereby limiting the escort or "comboy" activity for which respondents were employed.

On June 30, 2000, the Labor Arbiter found that respondents were employees of petitioner, thus:

> [Petitioner] admits having engaged the services of [respondents] as caretakers or "comboys" (convoys) though it qualifies that it was on a "per trip" or "per contract" basis. It also admits paying their remuneration of P1,500.00 per trip. It tacitly admits having terminated [respondents'] services when it said that [respondents] were among the group of escorts who were no longer accommodated due to the decrease in volume of imports and shipments. [Petitioner] also undoubtedly exercised control and supervision over [respondents'] work as caretakers considering that the value of the cattle shipped runs into hundreds of thousands of pesos. The preparation of the cattle for shipment, manning and feeding them prior to and during transit, and making a report upon return to General Santos City to tally the records of the cattle shipped out versus cattle that actually reached Manila are certainly all in accordance with [petitioner's] instructions.
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> Thus, all the four elements in the determination of an employer-employee relationship being present, [x x x] [respondents] were, therefore, employees of [petitioner].
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> x x x [Respondents] also performed activities which are usually necessary or desirable in the usual business or trade of [petitioner] (Art. 280, Labor Code). [Petitioner's] contention, to the contrary, is erroneous. Transporting the cattle to its main market in Manila is an essential and component aspect of [petitioner's] operation. As held by [the NLRC's] Fifth Division in one case:
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> > Complainant's task of escorting the livestock shipped to Manila, taking care of the livestock in transit, is an activity which is necessary and desirable in the usual business or trade of respondent. It is of judicial notice that the bulk of the market for livestock of big livestock raisers such as respondent is in Manila. Hogs do not swim, they are shipped. When in transit (usually two-and-one-half days) they do not queue to the mess hall, they are fed. x x x The caretaker is a component of the business, a part of the scheme of the operation. (NFL and Ricardo Garcia v. Bibiana Farms, Inc., NLRC CA No. XI-065089-99 (rab-xi-01-50026-98); prom. April 28, 2000).
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> More, it also appears that [respondents] had rendered service for more than one year doing the same task repeatedly, thus, even assuming they were casual employees they may be considered regular employees with respect to the activity in which they were employed and their employment shall continue while such activity exists (last par. of Art. 280). [Respondents], in fact, were hired on October 29, 1994 (Bastida) and June 25, 1993 (Caban), a fact which [petitioner] dismally failed to refute.

> Given the foregoing, [petitioner's] contention that [respondents] were independent contractors and free lancers deserves little consideration. Its argument that its usual trade or business (importation/production and fattening) ends in General Santos City, and does not include transporting the cattle, does not persuade us.
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> [Petitioner's] witnesses tried to corroborate [its] contention that [respondents] also offered their services to various shippers and traders of cattle, not only to [petitioner]. Former complainants Maquinsay and Parrocha mentioned the names of these traders/buyers or shippers as Lozano Farms, Bibiana Farms and other big cattle feedlot farms in SOCSARGEN (Annexes "A" and "E," [petitioner's] position paper.) But not a modicum of evidence was adduced to prove payment of [respondent's] services by any of these supposed traders or that [respondents] received instructions from them. There is also no record that shows that the trader/s actually shipped livestock and engaged the services of caretakers.[5]

Accordingly, the Labor Arbiter granted respondents' claim for separation pay, COLA and union service fees. The Labor Arbiter awarded respondents: (a) separation pay of one month for every year of service; (b) COLA, as petitioner failed to prove payment thereof or its exemption therefrom; and (c) union service fees fixed at 10% of the total monetary award. The Labor Arbiter computed respondents' total monetary awards as follows:

NAME	SEPARATION PAY	COLA	SUB-TOTAL
Chiquito Bastida	P15,000.00	P2,400.00	P17,400.00
Albert Caban	18,000.00	2,400.00	20,400.00
			P37,800.00
	Plus 10% Union Service Fees		3,780.00
		TOTAL ------	P41,580.00[6]

However, the Labor Arbiter denied respondents' claim for backwages, 13th month pay, salary differential, service incentive leave pay and damages, to wit:

> But we deny the "claim" for backwages which was merely inserted in the prayer portion of [respondents'] position paper. Reasons are abundant why we decline to grant the same. In their complaint, [respondents] prayed for separation pay (not reinstatement with consequent backwages) thereby indicating right from the start that they do not want to work with [petitioner] again. More importantly[,] during the conference held on January 6, 2000, [petitioner] manifested its willingness to reinstate [respondents] to their former work as [comboys] under the same terms and conditions but [respondents] answered that they do not want to return to work and instead are asking for payment of their separation pay. Finally[,] [respondents] do not dispute that [petitioner's] downsizing of its escorts in 1999 was due to a legitimate

cause, *i.e.*, dollar devaluation.

Also to go are [respondents'] labor standard claims for 13th month pay and service incentive leave pay as well as the claim for damages. We also deny the "claim" for salary differentials.

[Respondents] are not entitled to their claims for 13th month pay and service incentive leave pay because they were paid on task basis. The claim for damages is denied for lack of factual and legal basis as there is no showing that respondent acted in bad faith in downsizing the number of its caretakers. It even appears that the same is due to a legitimate cause. The "claim" for salary differentials is denied on two grounds: (1) [these are] not prayed for in their complaint; and (2) for lack of merit. It takes not more than 3 days for the Gen. Santos-Manila trip. Even if we include counting the return trip that would be total of six (6) days to the maximum. [Respondents] were paid P1,500.00 per trip. Or, since they made an average of 2 trips/month they were paid P3,000.00 for a twelve (12) days' work (or the equivalent of P250.00/day).[7]

On appeal to the NLRC, the Fifth Division affirmed the Labor Arbiter's ruling on the existence of an employer-employee relationship between the parties and the total monetary award of P41,580.00 representing respondents' separation pay, COLA and union service fees. The NLRC declared:

After a judicious review of the records of this case, we found no cogent reason to disturb the findings of the branch.

The presence of the four (4) elements in the determination of an employer-employee relationship has been clearly established by the facts and evidence on record, starting with the admissions of [petitioner] who acknowledged the engagement of [respondents] as escorts of their cattles shipped from General Santos to Manila, and the compensation of the latter at a fee of P1,500.00 per trip. The dates claimed by [respondents] that they were engaged remain not disputed by [petitioner] as observed by the branch.

The element of control, jurisprudentially considered the most essential element of the four, has not been demolished by any evidence to the contrary. The branch has noticed that the preparation of the shipment of cattle, manning and feeding them while in transit, and making a report upon their return to General Santos that the cattle shipped and which reached Manila actually tallied were all indicators of instructions, supervision and control by [petitioner] on [respondents'] performance of work as escorts for which they were hired. This we agree on all four[s]. The livestock shipment would cost thousands of pesos and the certainty of it reaching its destination would be the only thing any operator would consider at all [time] and under all circumstances. Nothing more, nothing less. It is illogical for [petitioner] to argue that the shipment was not necessary [or] desirable to their business, as their business was mainly livestock production, because they were undeniably the owners of the cattle escorted by [respondents]. Should losses of a shipment occur due to [respondents'] neglect these would still be [petitioners'] loss, and