

## SECOND DIVISION

**[ G.R. No. 172241, November 20, 2008 ]**

**PUREFOODS CORPORATION (NOW SAN MIGUEL PUREFOODS COMPANY, INC.), PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (2ND DIVISION) AND LOLITA NERI, RESPONDENTS.**

### **D E C I S I O N**

**TINGA, J.:**

This is a Petition for Review of the Decision<sup>[1]</sup> and Resolution<sup>[2]</sup> of the Court of Appeals dated 2 November 2005 and 7 April 2006, respectively, in C.A. G.R. SP No. 65180, which upheld the National Labor Relations Commission's (NLRC) 22 November 2000 decision.<sup>[3]</sup>

The antecedents follow.

On 8 June 1992, Lolita Neri (Neri) originally filed a claim<sup>[4]</sup> for nonpayment of additional wage increase, regularization, nonpayment of service incentive leave, underpayment of 13<sup>th</sup> month pay, and nonpayment of premium pay for holiday and holiday pay against Purefoods Corporation (Purefoods). By 4 July 1992, however, Neri was dismissed from her work as a Deli-Attendant.<sup>[5]</sup> Subsequently, or on 13 July 1992, eleven (11) other complainants<sup>[6]</sup> joined forces with Neri and together they filed an amended complaint, with Neri charging Purefoods with illegal dismissal.<sup>[7]</sup> All the other complainants, save for Neri, were still working for Purefoods at the time of the filing of the amended complaint. On 31 August 1993, Labor Arbiter Arthur L. Amansec declared Neri and the complainants as Purefoods' regular employees; and Neri as having been illegally dismissed and entitled to reinstatement with payment of backwages.<sup>[8]</sup> Purefoods filed a partial appeal, praying that the claims of complainants be dismissed for lack of merit, or in the alternative, the case be remanded for formal hearing on the merits and to implead D.L. Admark as a party-respondent.<sup>[9]</sup> The NLRC granted the appeal and remanded the case for further hearings on the factual issues.<sup>[10]</sup>

The case was remanded to Labor Arbiter Felipe P. Pati, who, after finding that Neri is not an employee of petitioner, but rather of D.L. Admark, an independent labor contractor, dismissed the complaint on 14 December 1998.<sup>[11]</sup> On 15 March 1999, a memorandum on appeal was nominally filed by all the complainants; however, it was only Neri who verified the same.<sup>[12]</sup> On 22 November 2000, the NLRC ruled in complainants' favor and reversed and set aside the labor arbiter's decision. According to the NLRC, the pieces of evidence on record established the employer-employee relationship between Purefoods and Neri and the other complainants. It thus ordered Neri's reinstatement and the payment of backwages or of separation

pay if reinstatement is not possible.<sup>[13]</sup> Purefoods moved for the reconsideration of the decision but its motion was denied for lack of merit.<sup>[14]</sup> Hence, its recourse to the Court of Appeals via a petition for certiorari.<sup>[15]</sup>

The Court of Appeals, relying on the case of *Escario v. NLRC*,<sup>[16]</sup> held that D.L. Admark is a legitimate independent contractor. However, it ruled that complainants are regular employees of Purefoods.<sup>[17]</sup> Citing Art. 280 of the Labor Code, the appellate court found that complainants were engaged to perform activities which are usually necessary or desirable in the usual business or trade of Purefoods, and that they were under the control and supervision of Purefoods' supervisors, and not of D.L. Admark's. It noted that in the Promotions Agreements between D.L. Admark and Purefoods, there was no mention of the list of D.L. Admark employees who will handle particular promotions for petitioner, and that complainants' periods of employment are not fully covered by the Promotions Agreements.<sup>[18]</sup>

The Court of Appeals pointed out that Purefoods did not present any evidence to support its claim that complainants were employees of D.L. Admark. It likewise failed to implead D.L. Admark, or even present a representative of D.L. Admark who could testify in its favor.<sup>[19]</sup> Finally, the Court of Appeals ruled that Neri was illegally dismissed, as there was no valid and just cause for terminating her employment and she was not given the requisite notice and hearing.<sup>[20]</sup>

Purefoods sought reconsideration<sup>[21]</sup> of the decision but its motion was denied on 7 April 2006, with the Court of Appeals making special note of the fact that it was only after it had issued the assailed decision that Purefoods introduced several affidavits in support of its case, particularly on the alleged spuriousness of the documents presented by respondent Neri.<sup>[22]</sup>

In the present petition for review,<sup>[23]</sup> Purefoods argues that the affidavits it attached to its motion for reconsideration before the Court of Appeals are not evidence presented for the first time, but rather just corroboration, clarification, and/or explanation of what it had advanced in the proceedings below. It likewise claims that the other complainants in this case are not entitled to the avails of the suit because they failed to verify the position paper and the memorandum on appeal. Purefoods maintains that Neri and the complainants are not employees of Purefoods, but of D.L. Admark, an independent job contractor. Thus, it cannot be held liable for illegal dismissal. Finally, it claims that Article 280 of the Labor Code is not applicable in a trilateral relationship involving a principal, an independent job contractor, and the latter's employees.<sup>[24]</sup>

This simple issue of determining employer-employee relationship between Purefoods and the complainants has been given differing answers by the lower tribunals, so much so that the Court

will have to look into the factual matters involved. Deeply embedded in our jurisprudence is the rule that the findings of facts of quasi-judicial bodies like the NLRC are accorded great respect and, at times, even finality. There are, however, exceptions, among which is when there is a conflict between the factual findings of the NLRC and the Labor Arbiter.<sup>[25]</sup> Accordingly, this Court must of necessity review

the records to determine which findings should be preferred as more conformable to the evidentiary facts.<sup>[26]</sup>

There is merit in the petition.

The Court agrees with Purefoods' argument that Art. 280 of the Labor Code<sup>[27]</sup> finds no application in a trilateral relationship involving a principal, an independent job contractor, and the latter's employees. Indeed, the Court has ruled that said provision is not the yardstick for determining the existence of an employment relationship because it merely distinguishes between two kinds of employees, *i.e.*, regular employees and casual employees, for purposes of determining the right of an employee to certain benefits, to join or form a union, or to security of tenure; it does not apply where the existence of an employment relationship is in dispute.<sup>[28]</sup> It is therefore erroneous on the part of the Court of Appeals to rely on Art. 280 in determining whether an employer-employee relationship exists between respondent Neri and Purefoods.

Permissible job contracting or subcontracting refers to an arrangement whereby a principal agrees to put out or farm out with the contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal.<sup>[29]</sup> In this arrangement, the following conditions must be met: (a) the contractor carries on a distinct and independent business and undertakes the contract work on his account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of his work except as to the results thereof; (b) the contractor has substantial capital or investment; and (c) the agreement between the principal and contractor or subcontractor assures the contractual employees' entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social welfare benefits.<sup>[30]</sup>

To support its position that respondent is not its employee, Purefoods relies on the following: (i) the Promotions Agreements<sup>[31]</sup> it entered into with D.L. Admark; (ii) Department Order No. 10 (Series of 1997)<sup>[32]</sup> which defines legitimate contracting or subcontracting; and (iii) *Escario v. NLRC*<sup>[33]</sup> wherein the Court declared D.L. Admark as a legitimate labor contractor.

On the other hand, early on, Neri and the rest of the complainants admitted that they worked for petitioner through D.L. Admark.<sup>[34]</sup> However, they also averred that they were under the control and supervision of petitioner's employees--salesmen, poultry sales managers, deli supervisors--who give them work orders and to whom they submit weekly inventory reports and monthly competitive sales report. In support of these statements, Neri appended several documents (various Identification Cards, Certification from Rustan's Supermarkets stating that respondent Neri is from Purefoods, Memoranda to respondent Neri written by a supervisor from

Purefoods, letters from Purefoods area sales managers introducing complainants as Purefoods Merchandisers).<sup>[35]</sup> Purefoods, meanwhile, claims that these documents

must be taken in the context of the performance of the service contracted out-- promotion of its products.<sup>[36]</sup>

In the first place, D.L. Admark's status as a legitimate independent contractor has already been established in *Escario v. NLRC*.<sup>[37]</sup> In the said case, complainants, through D.L. Admark, worked as merchandisers for California Manufacturing Corporation (CMC). They filed a case before the labor arbiter for the regularization of their employment status with CMC, and while the case was pending, D.L. Admark sent termination letters to complainants. The complainants thereafter amended their complaint to include illegal dismissal. The Court considered the following circumstances as tending to establish D.L. Admark's status as a legitimate job contractor:

- 1) The SEC registration certificate of D.L. Admark states that it is a firm engaged in promotional, advertising, marketing and merchandising activities.
- 2) The service contract between CMC and D.L. Admark clearly provides that the agreement is for the supply of sales promoting merchandising services rather than one of manpower placement.
- 3) D.L. Admark was actually engaged in several activities, such as advertising, publication, promotions, marketing and merchandising. It had several merchandising contracts with companies like Purefoods, Corona Supply, Nabisco Biscuits, and Licron. It was likewise engaged in the publication business as evidenced by its magazine the "Phenomenon."
- 4) It had its own capital assets to carry out its promotion business. It then had current assets amounting to P6 million and is therefore a highly capitalized venture. It had an authorized capital stock of P500,000.00. It owned several motor vehicles and other tools, materials and equipment to service its clients. It paid rentals of P30,020 for the office space it occupied.<sup>[38]</sup>

Moreover, applying the four-fold test used in determining employer-employee relationship, the Court found that: the employees therein were selected and hired by D.L. Admark; D.L. Admark paid their salaries, as evidenced by the payroll prepared by D.L. Admark and sample contribution forms; D.L. Admark had the power of dismissal as it admitted that it was the one who terminated the employment of the employees; and finally, it was D.L. Admark who exercised control and supervision over the employees.<sup>[39]</sup>

Furthermore, it is evident from the Promotions Agreements entered into by Purefoods that D.L. Admark is a legitimate labor contractor. A sample agreement reads in part:

WHEREAS, The FIRST PARTY is engaged in the general promotion business;

WHEREAS, The SECOND PARTY will launch its "Handog sa Graduates" promotion project;

WHEREAS, The FIRST PARTY has offered its services to the SECOND PARTY, in connection with the said promotion project, and the latter has accepted the said offer;

NOW, THEREFORE, for and in consideration of the foregoing premises, and of the mutual convenience between them, the parties have agreed as follows:

1. The FIRST PARTY shall handle and implement the "Handog sa Graduates" promotion project of the SECOND PARTY, said project to last from February 1, 1992 to July 31, 1992.
2. The FIRST PARTY shall indemnify the SECOND PARTY for any loss or damage to the latter's properties, if such loss or damage is due to the fault or negligence of the FIRST PARTY or its agents or employees.
3. There shall be no employer-employee relationship between the FIRST PARTY or its agents or employees and the SECOND PARTY.
4. In consideration for the services to be rendered by the FIRST PARTY to the SECOND PARTY, the latter shall pay the former the amount of Two Million Six Hundred Fifty Two Thousand pesos only (P2,652,000.00) payable as follows:

x x x<sup>[40]</sup>

The agreements confirm that D.L. Admark is an independent contractor which Purefoods had engaged to supply general promotion services, and not mere manpower services, to it. The provisions expressly permit D.L. Admark to handle and implement Purefoods' project, and categorically state that there shall be no employer-employee relationship between D.L. Admark's employees and Purefoods. While it may be true that complainants were required to submit regular reports and were introduced as Purefoods merchandisers, these are not enough to establish Purefoods' control over them. Even if the report requirements are somehow considered as control measures, they were imposed only to ensure the effectiveness of the promotion services rendered by D.L. Admark. It would be a rare contract of service that gives untrammelled freedom to the party hired and eschews any intervention whatsoever in his performance of the engagement.<sup>[41]</sup> Indeed, it would be foolhardy for any company to completely give the reins and totally ignore the operations it has contracted out.

Significantly, the pieces of evidence submitted by Neri do not support her claim of having been a regular employee of Purefoods. We note that two "Statement of Earnings and Deductions"<sup>[42]</sup> were issued for the same period, December 1989, and in one "Statement," someone deliberately erased the notation "January 1997," thereby casting doubt on the authenticity of the said documents. Even the identification cards<sup>[43]</sup> presented by Neri are neither binding on Purefoods nor even indicative of her claimed employee status of Purefoods, issued as they were by the supermarkets concerned and not by Purefoods itself. Moreover, the check voucher issued by Purefoods marked "IN PAYMENT OF DL ADMARK DELI ATTENDANTS 12.00