

## THIRD DIVISION

**[ G.R. NO. 150402, November 28, 2006 ]**

**EPARWA SECURITY AND JANITORIAL SERVICES, INC.,  
PETITIONER, VS. LICEO DE CAGAYAN UNIVERSITY,  
RESPONDENT.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

This is a petition for certiorari<sup>[1]</sup> of the Decision<sup>[2]</sup> dated 20 April 2001 and the Resolution dated 21 September 2001 of the Court of Appeals ("appellate court") in CA-G.R. SP No. 59120, *Liceo de Cagayan University v. The Hon. National Labor Relations Commission, Fifth Division, Eparwa Security and Janitorial Services, Inc., et al.* The appellate court reinstated the 18 August 1999 decision<sup>[3]</sup> of the Labor Arbiter and remanded the case to the Regional Arbitration Board, Branch No. 10 of Cagayan de Oro City to compute what is due to Liceo de Cagayan University (LDCU) from Eparwa Security and Janitorial Services, Inc. ("Eparwa").

#### The Facts

On 1 December 1997, Eparwa and LDCU, through their representatives, entered into a Contract for Security Services. The pertinent portion of the contract provides that:

5. For and in consideration of this security, protective and safety services, [LDCU] agrees to pay [Eparwa] FIVE THOUSAND PESOS ONLY (P5,000.00), Philippine Currency per guard a month payable within fifteen (15) days after [Eparwa] presents its service invoice. [Eparwa] shall furnish [LDCU] a monthly copy of SSS contribution of guards and monthly payroll of each guard assigned at [LDCU's] premises on a monthly basis[.]<sup>[4]</sup>

Eparwa allocated the contracted amount of P5,000 per security guard per month in the following manner:

|  |               |
|--|---------------|
| Basic Pay ( <u>P104.50</u> x 391.5/12)     |               |
| Night Diff. Pay                            | P3,409.31     |
| 13 <sup>th</sup> mo. Pay                   | 113.64        |
| 5 day incentive leave                      | 284.10        |
| Uniform allowance                          | 43.54         |
| Employer's SSS, Medicare, ECC contribution | 50.00         |
| Agency share                               | 224.80        |
| VAT  | 420.53        |
| CONTRACT RATE                              | <u>454.59</u> |

(rounded off to P5,000.00)<sup>[5]</sup>

P5,000.50

On 21 December 1998, 11 security guards ("security guards") whom Eparwa assigned to LDCU from 1 December 1997 to 30 November 1998 filed a complaint before the National Labor Relations Commission's (NLRC) Regional Arbitration Branch No. 10 in Cagayan de Oro City. Docketed as NLRC-RABX Case No. 10-01-00102-99, the complaint was filed against both Eparwa and LDCU for underpayment of salary, legal holiday pay, 13<sup>th</sup> month pay, rest day, service incentive leave, night shift differential, overtime pay, and payment for attorney's fees.

LDCU made a cross-claim and prayed that Eparwa should reimburse LDCU for any payment to the security guards.

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

In its decision dated 18 August 1999, the Labor Arbiter found that the security guards are entitled to wage differentials and premium for holiday and rest day work. The Labor Arbiter held Eparwa and LDCU solidarily liable pursuant to Article 109 of the Labor Code. The dispositive portion of the Labor Arbiter's decision reads:

WHEREFORE, judgment is rendered[:]

1. Ordering respondents [LDCU] and [Eparwa] solidarily liable to pay [the security guards] for underpayment, holiday and rest day, as follows:

| <u>N a m e</u>               | <u>A m o u n t</u>  |
|------------------------------|---------------------|
| 1. Casiñero , Jovencio       | P 46,819.95         |
| 2. Villarino , Leonardo      | 46,819.95           |
| 3. Lumbab , Adriano          | 46,819.95           |
| 4. Caballero , Gregorio, Jr. | 46,819.95           |
| 5. Cajilla , Delfin, Jr.     | 37,918.95           |
| 6. Paduanga , Arnold         | 20,321.10           |
| 7. Dungog , Achimedes        | 46,819.95           |
| 8. Magallanes , Eduardo      | 46,819.95           |
| 9. Dungog , Luigi            | 46,819.95           |
| 10. Dungog , Telford         | 46,819.95           |
| 11. Bahian , Wilfredo        | <u>30,741.30</u>    |
|                              | <u>P 463,540.95</u> |

2. Denying the claim of unpaid 13<sup>th</sup> month pay, service incentive leave and night shift premium pay for lack of merit;
3. Ordering respondent [Eparwa] to reimburse respondent [LDCU] for whatever amount the latter may be required to pay [the security guards];
4. Ordering respondent [Eparwa] to pay respondent [LDCU] P20,000.00 and P5,000.00 each of the [security guards], moral and exemplary damages;

5. Ordering [Eparwa] to pay 10% of attorney's fee[s];]

6. The rest of the claims are denied for lack of merit.

So Ordered.<sup>[6]</sup>

LDCU filed an appeal before the NLRC. LDCU agreed with the Labor Arbiter's decision on the security guards' entitlement to salary differential but challenged the propriety of the amount of the award. LDCU alleged that security guards not similarly situated were granted uniform monetary awards and that the decision did not include the basis of the computation of the amount of the award.

Eparwa also filed an appeal before the NLRC. For its part, Eparwa questioned its liability for the security guards' claims and the awarded cross-claim amounts.

### **The Ruling of the NLRC**

The Fifth Division of the NLRC resolved Eparwa and LDCU's separate appeals in its Resolution<sup>[7]</sup> dated 19 January 2000. The NLRC found that the security guards are entitled to wage differentials and premium for holiday and rest day work. Although the NLRC held Eparwa and LDCU solidarily liable for the wage differentials and premium for holiday and rest day work, the NLRC did not require Eparwa to reimburse LDCU for its payments to the security guards. The NLRC also ordered the recomputation of the monetary awards according to the dates actually worked by each security guard. The dispositive portion of the NLRC Resolution reads thus:

**WHEREFORE**, the appealed decision is **AFFIRMED**, subject to the modification that the portions thereof directing respondent EPARWA Security Agency and Janitorial Services, Inc. to reimburse respondent Liceo de Cagayan University for whatever amount the latter may have paid complainants and to pay respondent Liceo de Cagayan University the sum [sic] [of] P20,000.00 and P5,000.00, representing moral and exemplary damages, respectively, of each complainants [sic], are deleted for lack of legal basis. Further the monetary awards for wage differential and premiums for holiday and rest day works shall be recomputed by the Regional Arbitration Branch of origin at the execution stage of the proceedings.

Co[n]formably, the award of Attorney's fee[s] is equivalent to ten (10%) percent of the aggregate monetary award as finally adjusted.

**SO ORDERED.**<sup>[8]</sup>

Eparwa and LDCU again filed separate motions for partial reconsideration of the 19 January 2000 NLRC Resolution. LDCU questioned the NLRC's deletion of LDCU's entitlement to reimbursement by Eparwa. Eparwa, on the other hand, prayed that LDCU be made to reimburse Eparwa for whatever amount it may pay to the security guards.

In its Resolution dated 14 March 2000, the NLRC declared that although Eparwa and LDCU are solidarily liable to the security guards for the monetary award, LDCU alone is ultimately liable. The NLRC resolved the issue thus:

**WHEREFORE**, the assailed resolution, dated 19 January 2000, is **MODIFIED** in that respondent Liceo de Cagayan University (LICEO) is ordered to reimburse respondent Eparwa Security and Janitorial Services, Inc. (EPARWA) for whatever amount the latter may have paid to complainants arising from this case.

**SO ORDERED.**<sup>[9]</sup>

LDCU filed a petition for certiorari<sup>[10]</sup> before the appellate court assailing the NLRC's decision. LDCU took issue with the NLRC's order that LDCU should reimburse Eparwa. LDCU stated that this would free Eparwa from any liability for payment of the security guards' money claims.

### **The Ruling of the Appellate Court**

In its Decision promulgated on 20 April 2001, the appellate court granted LDCU's petition and reinstated the Labor Arbiter's decision. The appellate court also allowed LDCU to claim reimbursement from Eparwa. The appellate court's decision reads thus:

**WHEREFORE**, foregoing considered, the petition is hereby **GRANTED**. The decision dated August 18, 1999 of Labor Arbiter Celenito N. Daing is **REINSTATED**. The case is hereby **REMANDED** to the Regional Arbitration Board, Branch No. 10 of Cagayan de Oro City to compute what is due to LDCU from EPARWA.

SO ORDERED.<sup>[11]</sup>

Eparwa filed a motion for reconsideration of the appellate court's decision. Eparwa stressed that jurisprudence is consistent in ruling that the ultimate liability for the payment of the monetary award rests with LDCU alone.

The appellate court denied Eparwa's motion for reconsideration for lack of merit.

Hence, this petition.

### **The Issue**

The petition raises this sole legal issue: Is LDCU alone ultimately liable to the security guards for the wage differentials and premium for holiday and rest day pay?

### **The Ruling of the Court**

The petition has merit.

### ***Eparwa and LDCU's Solidary Liability and LDCU's Ultimate Liability***

Articles 106, 107 and 109 of the Labor Code read:

Art. 106. *Contractor or subcontractor.* — Whenever an employer enters into a contract with another person for the performance of the former's