

## FIRST DIVISION

**[ G.R. No. 114775, September 25, 1998 ]**

**PHILIPPINE AIRLINES INC. (PAL), PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC), HON. LABOR ARBITER NUMERIANO VILLENA, NATIONAL ORGANIZATION OF THE WORKINGMEN (NOWM) AND MEMBERS ROBERTO VILLARUZ, ISAGANI ALDEA, JUDITH BAYETA, ET. AL., RESPONDENTS.**

### DECISION

#### **QUISUMBING, J.:**

This special civil action for certiorari seeks to annul the Decision promulgated by public respondent National Labor Relations Commission (NLRC) on 31 January 1994 in NLRC-NCR- Case Nos. 00-03-001469-90, 00-04-02132-90 and 00-02-00648-90, and its Resolution dated 16 March 1994 which denied petitioner's motion for reconsideration.

Petitioner Philippine Airlines Inc. (PAL) is a domestic corporation principally engaged in the air transportation industry for both domestic and foreign markets. Private respondent National Organization of the Workingmen (NOWM) is a labor union, while the other private respondents are members of respondent union and complainants in aforementioned cases.

The factual background of this case as summarized by NLRC are as follows<sup>[1]</sup>:

"Respondent Philippine Airlines, Inc. (PAL) contracted the services of its co-respondent G. C. Services Enterprises, to undertake specific projects. Accordingly, G. C. Services recruited and hired carpenters, painters, and electricians and assigned them to different PAL shops, namely: Carpentry Shop, Electrical Shop, Technical Center Shop and Inflight Center Shop, all under PAL's Construction and Corporate Services Department.

On March 1990, PAL terminated its contract with G. C. Services. As a result, all G.C. employees assigned as PAL project workers were notified by G.C. Services not to report anymore to PAL. Later, PAL decided to give G.C. Services employees the opportunity to apply as regular employees, in accordance with its practice of giving employment priority to qualified persons who had been connected with PAL. Due to lack of vacant positions and also due to alleged unsatisfactory work performance records of some, not all G.C. Services employees were hired. Those who were not hired instituted the instant complaint for illegal dismissal. The complainants were represented in their case by the National Organization of Workingmen (NOWM).

Initially, there were 36 complainants in these three consolidated cases. In

the course of the proceedings, PAL agreed to employ 23 qualified complainants. Only 12 complainants were left. They are the following: Oscar Samayao, Rodolfo Millona, Daniel Mancanes, Ernesto Esguerra, Alfredo Pusong, Arnel Ton-ogan, Rolly Bermudez, Nestor Amilano, Edgar Canlas, Carlito Pamilar, Roberto Villacruz and Judith Bayeta.

Except for complainants Roberto Villacruz (electrician) and Judith Bayeta who claimed to have been assigned as clerk at the PAL's Intelligence Unit, the rest of the complainants were carpenters previously assigned to the Carpentry Shop.

Complainant Roberto Villacruz who filed a separate complaint for illegal dismissal, alleged that he worked for PAL through G.C. Services for more than 12 years until his dismissal on February 12, 1990; that the reason (sic) for the dismissal were supposedly for violation of company rules and regulations such as irregular attendance, sleeping while on duty and disrespect to superiors. He prayed for reinstatement with backwages.

Complainant Judith Bayeta, was (sic) according to G.C. Services was employed by them sometime in April 1987 and was assigned to PAL. The services of Bayeta was terminated on December 31, 1989, when the agreement between G.C. Services and PAL expired on the said date and the same was not renewed.

The rest of the complainants alleged that they applied for employment with G.C. Services; that after they were accepted they were made to work at PAL Maintenance Department where each of them worked as carpenters, welders, or electricians; that they were not considered employees of PAL but that of G.C. Services; that their work are necessary and directly related to PAL's principal business. In pointing at PAL as their real employer, they averred that G.C. Services is only an agent of PAL because it does not have substantial capital in the form of cash investments, tools, equipment or work premises; that it merely supplied workers to PAL and these workers were supervised, directed and controlled by PAL regular employees; that PAL actually decided when, where and what to work; that PAL decided how many of them were to be taken in, when they would start, and when they would not. Complainants, thus, argued that G.C. Services being a mere agent, the real employer was PAL pursuant to Art.106 of the Labor Code which prohibits the employment of persons through labor only contracting agencies, like the G.C. Services Enterprise.

In claiming that they were illegally dismissed, complainants alleged that they were dismissed from employment without just cause and without due process and without any prior notice. They, thus prayed for reinstatement with full backwages from the date of their dismissal on March 31, 1990 up to the date of their actual reinstatement.

Respondent PAL denied the existence of employer-employee relationship between it and the complainants. It averred that G.C. Services Enterprises, as a duly licensed independent contractor, contracted on its own account under its own responsibility; that the contractor has

substantial capital or investment in the form of tools, equipment and other materials necessary in the conduct of its business; that complainants were being paid their wages by G.C. Services and not PAL; and that they were terminated by G.C. Services.

PAL also averred that complainants claim are barred by laches considering that they had in fact accepted and recognized G.C. Services as their employer for several years and that the claim of complainants for backwages and other benefits are untenable in the absence of any contractual stipulations between PAL and the complainants.

PAL further argued that even granting *arguendo* that complainants are entitled to be regularized, it is not obliged to employ all the complainants; and that there are no more positions or substantially equivalent positions within its organization for which they maybe (sic) qualified.

As regard (sic) the claim of complainant Judith Bayeta, PAL denied having hired and assigned Bayeta to its Intelligence Unit; that the claim of Bayeta that she was occupying the position of clerk is questionable as she was not qualified being a mere high school graduate; and that the PAL ID issued to her was for security purposes only. Besides, according to PAL, its contract with G.C. Services was a Construction Agreement and the assignment of which to any department has nothing to do with the construction projects."

In a Decision<sup>[2]</sup> dated May 29, 1992, the Labor Arbiter ruled that G.C. Services Enterprises is a labor-only contractor and mere agent of PAL (petitioner herein), thus, the private respondents are deemed employees of petitioner. The Labor Arbiter then declared the termination of private respondents' services illegal,<sup>[3]</sup> and held petitioner and G.C. Services Enterprises jointly and severally liable to pay private respondents their separation pay, backwages as well as attorney's fees.<sup>[4]</sup>

Both parties appealed to the NLRC, which, in a Decision<sup>[5]</sup> dated January 31, 1994, affirmed the Labor Arbiter's decision with modification as to the computation of the monetary award, thus:

"In computing the backwages and separation pay of the complainants, We are guided by the agreement of the parties on May 21, 1993, in the course of the clarificatory hearing by this Commission that the Certification of G.C. Services Enterprises dated July 21, 1992 as regard (sic) the material period of employment of the complainant be used as basis for resolution.

In the case of complainant Roberto Villacruz and Judith Bayeta, they being similarly situated with the other complainants, they are also entitled to the award of separation pay and backwages.

As modified, therefore, the monetary award (sic) are as follows:

1. Amilano, Nestor

Rate: P98.50/day (Record, p. 526)

Length of Service: July 18 '84-Mar. 31 '90 - 6 yrs. + 2 yrs. = 8 yrs.

Backwages:

Period: April 1, 1990-May 31, 1992 - 26 mos.

P98.50 x 26 days x 26 mos. -----	P 66,586.00
13th Month Pay	5,548.83      P72,134.83

Separation Pay:

P118.00 x 26 days x 8 yrs. -----	24,544.00
TOTAL	P96,678.83

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2. Bayeta, Judith

Rate: P92.00/day

Length of Service: April. 13 '88-Dec. 29 '90 - 3 yrs. + 1 yr. = 4 yrs.

Backwages:

Period: Jan. 1 '91-May 31 '92 - 17 mos.

P92.00 x 26 days x 17 mos. -----	P 40,664.00
13th Month Pay	3,388.67      P44,052.67

Separation Pay:

P118.00 x 26 days x 4 -----	12,272.00
TOTAL	P56,324.67

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3. Bermudez, Rolly

Rate: P87.50/P89.00 (minimum wage)

Length of Service: May 10 '82-Mar. 31'90 - 8 years. + 2 yrs. = 10 yrs.

Backwages:

Period: April 1, '90-May 31, '92 - 28 mos.

P89.00 x 26 days x 26 mos. -----	P 60,164.00
13th Month Pay	5,013.67      P65,177.67

Separation Pay:

P118.00 x 26 days x 10 -----	30,680.00
TOTAL	P95,857.67

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4. Canlas, Edgar

Rate: P89.00

Length of Service: Nov. 23 '85-Mar. 31 '90 - 1 yr. + 2 yrs. = 3 yrs.

Backwages:

Period: April 1, '90-May 31, '92 - 26 mos.

P89.00 x 26 days x 26 mos. -----	P 60,164.00
13th Month Pay	5,013.67      P65,177.67

Separation Pay:

P118.00 x 26 days x 3 -----	9,204.00
TOTAL	P74.381.67

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5. Esguerra, Ernesto

Rate: P89.00

Length of Service: July '75-Nov. '81 - 6 yrs )

Aug. '87-Mar. 31 '90 - 3 yrs.) 9 yrs. + 2 yrs. = 11 yr

Backwages:

Period: April 1, '90-May 31, '92 - 26 mos.

P89.00 x 26 days x 26 mos. -----	P 60,164.00
13th Month Pay	5,013.67      P65,177.67

Separation Pay:

P118.00 x 26 days x 11 yrs.-----	33,748.00
TOTAL	P98,925.67

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6. Mancanes, Daniel

Rate: P89.00 (assumed rate-based on minimum wage rate)

Length of Service: Jan. 8 '78-Nov. '78 - 10 mos. ) 6yrs. + 2 y