329 Phil. 932

FIRST DIVISION

[G.R. No. 114143, August 28, 1996]

PHILIPPINE SCHOOL OF BUSINESS ADMINISTRATION (PSBA)-MANILA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (1ST DIVISION), FFW-PSBA UNION CHAPTER, RODOLFO RAMOS AND DIOSDADO CUNANAN, RESPONDENTS.

D E C I S I O N

BELLOSILLO, J.:

Job-contracting is permissible if the following conditions are met: (a) the contractor carries on an independent business and undertakes the contract work on his own 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 the work except as to the results thereof; and, (b) the contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials which are necessary in the conduct of his business. In the absence of these requisites, what exists is a "labor-only" contract under which the person acting as contractor is considered merely an agent or intermediary who is responsible to the workers in the same manner and to the same extent as if they had been directly employed by him.[1] This is what obtains in the present case.

On 6 April 1989 private respondents Diosdado Cunanan, Rodolfo Ramos and FFW-PSBA Employees Union Chapter filed a complaint with the Labor Arbiter against petitioner Philippine School of Business Administration (PSBA)-Manila and Gayren Maintenance Specialist (GAYREN).

At the initial hearing Cunanan and Ramos moved and was allowed to include in their complaint an allegation on non-payment of service incentive leave pay, 13th month pay and legal holiday.

GAYREN filed its position paper claiming that Cunanan and Ramos were its employees from 17 April 1988 to 5 April 1989 when the latter voluntarily resigned; that it selected, hired and engaged Cunanan and Ramos to do maintenance and repair work in its premises in accordance with its work contract and that it exercised direct control and supervision over them and paid their salaries during their temporary employment from 1988 to 1989.

Private respondents Cunanan and Ramos filed their position paper alleging among others that they were regular employees of petitioner since 1981 as carpenter and plumber, respectively, to maintain, renovate, remodel and repair the school building and other facilities. Sometime in 1987, FFW-PSBA Employees Union was organized. Cunanan and Ramos joined the union. In 1988, while legal battles were being fought between petitioner and the union, Cunanan and Ramos were forced to join GAYREN

after having been assured of their continued employment with petitioner. While under the employ of GAYREN petitioner continued to supervise Cunanan and Ramos.

Petitioner filed a motion to dismiss the complaint on the ground that there was no employer-employee relationship between it and respondents Cunanan and Ramos alleging that they were laborers of Fernando Galeno from 1983 to 1988, and later, of GAYREN from 1988 to 1989.

On 18 July 1990 the Labor Arbiter rendered a decision dismissing for lack of merit the complaint for unfair labor practice and illegal dismissal as well as the claims for reinstatement with backwages, damages and attorney's fees.

Private respondents appealed to respondent National Labor Relations Commission (NLRC) which on 31 August 1993 reversed the Labor Arbiter.

Petitioner PSBA-Manila is now before us alleging that respondent NLRC gravely abused its discretion in (a) disregarding irrefutable evidence showing that respondents Cunanan and Ramos are not its employees; and, (b) in awarding damages to private respondents despite the absence of clear evidence or circumstances justifying such award.

We cannot sustain the petition. Respondent NLRC was correct in concluding that Cunanan and Ramos have been regular employees of petitioner since 1981 to 1989 when they were dismissed from employment without just cause.

The records show that petitioner failed to refute in their Motion to Dismiss the allegations of private respondents in their position paper filed with the Labor Arbiter, that: (1) In 1981 the services of Cunanan and Ramos were engaged by petitioner PSBA as carpenter and plumber, respectively; (2) During the time that Cunanan and Ramos were made to appear as employees of GAYREN the following circumstances existed: (a) Cunanan and Ramos reported directly to PSBA and not to GAYREN; (b) Private respondents received their wages directly from PSBA and not from GAYREN; (c) Private respondents were made to report for work by PSBA on certain days and hours; (d) PSBA remitted to GAYREN not a lump sum as payment for their services but merely a fixed fee or commission; (e) Private respondents were liable to PSBA for any loss or damage caused with PSBA directly deducting such amounts for loss or damage from their salaries; and, (f) Disciplinary sanctions or measures were imposed directly by PSBA on private respondents.[2]

We note that even before respondents Cunanan and Ramos were allegedly hired by Fernando Galeno in 1983 they were already working with petitioner as early as 1981. Even if they were purportedly hired by one job contractor after another from 1983 to 1989, they had been regularly assigned to perform carpentry and plumbing work in the premises of petitioner and under its supervision and control.

Petitioner, in contending that Cunanan and Ramos are employees of its independent contractors, has the burden to prove the same. But it failed to discharge such burden. The fact that neither of the contractors Fernando Galeno nor GAYREN had substantial investment in the form of tools, equipment and even work premises, and the additional circumstance that the activities undertaken by them were necessary and desirable in the business of petitioner, showed that they were merely engaged