

## THIRD DIVISION

[ G.R. No. 120506, October 28, 1996 ]

**PHILIPPINE AIRLINES, INC. PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, HON. LABOR ARBITER CORNELIO LINSANGAN, UNICORN SECURITY SERVICES, INC., AND FRED BAUTISTA, ET AL., RESPONDENTS.**

### DECISION

**DAVIDE, JR., J.:**

This is a petition for *certiorari* under Rule 65 of the Rules of Court to annul the decision of the Labor Arbiter dated 12 August 1991 in NLRC Case No. 00-11-06008-90 and the resolutions of public respondent National Labor Relations Commission (NLRC) promulgated on 27 October 1994 and 31 May 1995 dismissing the appeal filed by the petitioner and denying the motion for reconsideration, respectively.

The dispute arose from these antecedents:

On 23 December 1987, private respondent Unicorn Security Services, Inc. (USSI) and petitioner Philippine Airlines, Inc. (PAL) executed a security service agreement.

[1] USSI was designated therein as the CONTRACTOR. Among the pertinent terms and conditions of the agreement are as follows:

(4) The CONTRACTOR shall assign to PAL an initial force of EIGHTY ONE (81) bodies - which may be decreased or increased by agreement in writing - . It is, of course, understood that the CONTRACTOR undertakes to pay the wages or salaries and cost of living allowance of the guards in accordance with the provisions of the Labor Code, as amended, the different Presidential Decrees, Orders and with the rules and regulations promulgated by competent authorities implementing said acts, assuming all responsibilities therefor - .

X X X

(6) Without any expense on the part of PAL, CONTRACTOR shall see to it that the guards assigned to PAL - are provided, at the expense of CONTRACTOR, with the necessary firearms, ammunitions and facilities needed for the rendition of the security services as aforesaid;

(7) CONTRACTOR shall select, engage and discharge the guards, employees, or agents, and shall otherwise direct and control their services herein provided or heretofore to be set forth or prescribed. The determination of wages, salaries and compensation of the guards or employees of the CONTRACTOR shall be within its full control but shall in no way contravene existing laws on the matter. It is further understood

that CONTRACTOR as the employer of the security guards agrees to comply with all relevant laws and regulations, including compulsory coverage under the Social Security Act, Labor Code, as amended and the Medical Care Act, in its operations. Although it is understood and agreed between parties hereto that CONTRACTOR in the performance of its obligations under this Agreement, is subject to the control and direction of PAL merely as to the result as to be accomplished by the work or services herein specified, and not as to the means and methods for accomplishing such result, CONTRACTOR hereby warrants that it will perform such work or services in such manner as will achieve the result herein desired by PAL.

(8) Discipline and administration of the security guards shall be the sole responsibility of the CONTRACTOR to the end that CONTRACTOR shall be able to render the desired security service requirements of PAL. CONTRACTOR, therefore, shall conform to such rules and regulations that may be issued by PAL. For this purpose, Annex "A", which forms part of this Agreement, contains such rules and regulations and CONTRACTOR is expected to comply with them. At its discretion, PAL may, however, work out with CONTRACTOR such rules and regulations before their implementation.

(9) Should PAL at any time have any justifiable objection to the presence in its premises of any of CONTRACTOR's officer, guard or agent under this Agreement, it shall send such objection in writing to CONTRACTOR and the latter shall immediately take proper action.

(10) The security guards employed by CONTRACTOR in performing this Agreement shall be paid by the CONTRACTOR and it is distinctly understood that there is no employee-employer relationship between CONTRACTOR and/or his guards on the one hand, and PAL on the other. CONTRACTOR shall have entire charge, control and supervision of the work and services herein agreed upon, and PAL shall in no manner be answerable or accountable for any accident or injury of any kind which may occur to any guard or guards of the CONTRACTOR in the course of, or as a consequence of, their performance of work and services under this Agreement, or for any injury, loss or damage arising from the negligence of or carelessness of the guards of the CONTRACTOR or of anyone of its employ to any person or persons or to its or their property whether in the premises of PAL or elsewhere; and the CONTRACTOR hereby covenants and agrees to assume, as it does hereby assume, any and all liability or on account of any such injury, loss or damage, and shall indemnify PAL for any liability or expense it may incur by reason thereof and to hold PAL free and harmless from any such liability.

x x x

(13) For and in consideration of the services to be rendered by CONTRACTOR under these presents, PAL shall pay CONTRACTOR the amount of PESOS NINE & 40/100 CTVS (P9.40) PER HOUR multiplied by 905 hours equivalent to PESOS TWO HUNDRED SEVENTY FIVE THOUSAND NINE HUNDRED NINE & 58/100 CTVS, Philippine currency, -

(P275,909.58) the basis of eight (8) working hours per office/guard a day, Sundays and Holidays included, the same to be payable on or before the 15th of each month for services on the first half of the month and on or before the end of the month for services for the 2nd half of the month.

Nothing herein contained shall prevent the parties from meeting for a review of the rates should circumstances warrant.

x x x

(20) This Agreement shall take effect on 06 December 1987 and shall be in force for a period of SIX (6) MONTHS - 05 JUNE 1988 thereafter it shall continue indefinitely unless sooner terminated upon thirty (30) days notice served upon by one party to the other, except as provided for in Articles 16, 17 & 18 hereof.

Sometime in August of 1988, PAL requested 16 additional security guards. USSI provided what was requested; however, PAL insisted that what USSI did was merely to pick out 16 guards from the 86 already assigned by it and directed them to render overtime duty.

On 16 February 1990, PAL terminated the security service agreement with USSI without giving the latter the 30-day prior notice required in paragraph 20 thereof. Instead, PAL paid each of the security guards actually assigned at the time of the termination of the agreement an amount equivalent to their one-month salary to compensate for the lack of notice.

In November 1990, USSI, allegedly "in its capacity as Trustee for Sixteen or so Security Guards," filed with the NLRC Arbitration Branch, National Capital Region, a complaint<sup>[2]</sup> against PAL for the recovery of P75,600.00 representing termination pay benefit due the alleged 16 additional security guards, which PAL failed and refused to pay despite demands. It further asked for an award of not less than P15,000.00 for each of the 16 guards as damages for the delay in the performance of PAL's obligation, and also for attorney's fees in an amount equivalent to 10% of whatever might be recovered. Pertinent portions of the complaint read as follows:

3. By virtue of said contract and upon its effectivity, respondent required eighty-six (86) security guards whom complainant USSI supplied; on or sometime in August 1989, respondent asked for sixteen (16) security guards to render twelve (12) hours each.

4. In February 1990 and for reasons of its own, respondent caused to terminate not only the contract but also the services of the security guards; in effecting such termination, said respondent caused to pay the equivalent of one (1) month's notice unto all the security guards, except the 16 who, as aforementioned were rendering 12 hours each from date of assignment up to and until their termination.

5. As computed, the termination pay benefits due the 16 security guards amount to P75,600.00, more or less, which, despite demands, respondent fails, neglects or refuses to pay, as it continue refusing, failing or neglecting to so do up to the present time.

6. Respondent has not only incurred in delay in the performance of its obligation but also contravened the tenor thereof; hence, complainants are, by law, entitled to be indemnified with damages for no less than P15,000.00 each for all complainants though the correct amount is left solely to the sound discretion of the Honorable Labor Arbiter.

7. Complainants are now compelled to litigate their plainly valid, just or demandable claim on account of which services of counsel have been required and thereby obligated themselves to pay, for and as attorney's fees, the sum equivalent to ten percent (10%) of whatever sums or sum may be recovered in the case.

The complaint was docketed as NLRC-NCR Case No. 00-11-06008-90 and assigned to Labor Arbiter Cornelio L. Linsangan.

PAL filed a motion to dismiss the complaint<sup>[3]</sup> on the grounds that the Labor Arbiter had no jurisdiction over the subject matter or nature of the complaint and that USSI had no cause of action against PAL. In amplification thereof, PAL argued that the case involved the interpretation of the security service agreement, which is purely civil in character and falls outside of the Labor Arbiter's jurisdiction. It is clear from Article 217 of the Labor Code that for claims to be within the jurisdiction of Labor Arbiters, they must arise from an employer-employee relationship. PAL claimed that USSI did not allege the existence of an employer-employee relationship between PAL and USSI or its guards, and that in fact, paragraph 10 of the agreement provides that there is no employer-employee relationship between the CONTRACTOR and/or his guards on the one hand and PAL on the other.

In its Opposition,<sup>[4]</sup> USSI pointed out that PAL forgot or overlooked the fact that "insofar as labor standards, benefits, etc. have to be resolved or adjudicated, liability therefor is shifted to, or assumed by respondent [herein petitioners] which, in law, has been constituted as an indirect employer."

PAL filed a supplemental motion to dismiss<sup>[5]</sup> wherein it cites the following reasons for the dismissal of the complaint: (1) the clear stipulations in the agreement (paragraphs 4 and 10) that there exists no employer-employee relationship between PAL on the one hand and USSI and the guards on the other; (2) there were no 16 additional guards, as the 16 guards who were required to render 12-hour shifts were picked out from the original 86 guards already assigned and were already given a one-month salary in lieu of the 30-day notice of termination of the agreement; (3) USSI had no legal personality to file the case as alleged trustee of the 16 security guards; and (4) the real parties in interest -- the 16 security guards -- never showed any interest in the case either by attending any hearing or conference, or by following up the status of the case.

Attached to the supplemental motion dismiss were, among other things, xerox copies of confirmation letter of USSI to PAL to show that no additional guards were in fact provided.<sup>[6]</sup>

Labor Arbiter Linsangan did not resolve the motion to dismiss and the supplemental motion to dismiss. On 12 August 1991, he handed down a decision<sup>[7]</sup> ordering PAL

to pay: (1) the sum of P75,600.00 representing the equivalent of one-month's separation pay due the 16 individual security guards, plus, 10% interest from the date of filing of the case until the whole obligations shall have been fully settled; (2) the sum of P5,000.00 by way of exemplary damages due each of the 16 security guards; and (3) another sum equivalent to 10% of the total award for and as attorney's fees.

It was in that decision that Labor Arbiter Linsangan mentioned for the first time that the resolution of the motion to dismiss and supplemental motion to dismiss "was deferred until [the] case is decided on the merits" considering "the ground not to be indubitable." In holding that he had jurisdiction over the case, he stated:

As heretofore and invariably held in similar cases, the issue of whether or not Labor Arbiters have jurisdiction over money claims affecting security guards assigned by security agencies (like complainant herein) to their client-companies such as PAL is, more or less, settled, especially since, as the law views such as peculiar relationship, such money claims insofar as they have to be paid, are the ultimate responsibility of the client-firms. In effect, the security guards have been constituted as indirect employees of the client just as the client becomes the indirect employer of the guards. Art. 107 and 109 of the Labor Code expressly provide that".

To justify the awards, Labor Arbiter Linsangan opined:

Evidence adduced clearly show that sometime in December 1987, aforementioned security service contract was executed, based on which the required number of security guards were assigned to, or posted at, the various premises of respondent -- PAL. Said number of security guards may, as the contract provides, be increased or reduced at respondent's request, such that the original number of eighty-six (86) guards, an additional sixteen (16) were needed and, accordingly supplied who, pursuant to PAL's instructions, were required to render twelve (12) hours each, per day.

In February 1990, and for reasons of its own, PAL caused to terminate, as it did, the contract of security service. Unequivocably, it caused to pay the separation pay benefits of the 86-security guards for the equivalent amount of one (1) month's pay. As to the additional 16, it failed and refused to grant similar equivalent, without any valid reasons therefor.

As earlier stated, respondent opted to rely solely on the ground set forth in its Motion to Dismiss as well as Supplement thereto. It failed to file, despite directive made thereon, its position paper. Neither did it submit, nor adduce, evidence (documentary or otherwise) to rebut or controvert complainant's claims especially since the money equivalent of the one month separation pay due the 16 guards has been duly quantified as amounting to Seventy Five Thousand Six Hundred (P75,600.00) Pesos. Thus established, it is clear that there was absolutely no legal/justifiable reason why said 16 guards applied and who rendered 12 hours each per day had to be discriminated against.

Following PAL's failure or refusal to pay, demands were made by