FIFTEENTH DIVISION

[CA-G.R. SP No. 131568, March 19, 2014]

FACILITIES MANAGERS, INC., PETITIONER, VS. ROMEL B. MENDOZA, GLENN L. ALFONSO AND NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

D E C I S I O N

CASTILLO, M., J.:

Before this Court is a Petition for Certiorari under Rule 65 of the Rules of Court assailing the December 28, 2012 Decision[1]and June 25, 2013 Resolution[2] of the public respondent National Labor Relations Commission which affirmed the May 15, 2012 Decision[3] of the Labor Arbiter finding the petitioner guilty of illegal dismissal, with the modification that the latter shall be solidarily liable with its principal, Texas Instruments Philippines, Inc., for the consequent backwages, separation pay and attorney's fees.

The facts of the case are as follows:

On September 19, 2011, private respondents Romel B. Mendoza and Glenn L. Alfonso filed a complaint for illegal dismissal, salary differentials and 13th month[4] pay against petitioner Facilities Manager, Inc. (FMI) before the RAB-CAR arbitration branch of public respondent National Labor Relations Commission. Subsequently, the private respondents amended their complaint[5] to include Texas Instruments Philippines, Inc. (TIPI) as additional respondent.

The NLRC summarized the respective positions of the parties as follows:

Private respondents Mendoza and Alfonso claimed that they were first hired by Jonsons Controls, then the service provider of TIPI, on June 7, 2007 and July 13, 2010, respectively. At the onset of their employment, they were assigned at TIPI and worked at the latter's premises. By June 1, 2011, petitioner FMI replaced Jonsons Controls as the service provider of TIPI. As early as April 26 and 27, 2011, however, Alfonso and Mendoza, respectively, had already signed their employment contracts with FMI, although the same took effect on June 1, 2011.[6] FMI then assigned them to TIPI as manufacturing support.

Subsequently, in a Letter dated July 26, 2011,[7] TIPI informed FMI that it was constrained to reduce the manpower provided by the latter due to decline in the demand for semiconductors in the world market which significantly affected TIPI's business. Pursuant to this letter, FMI issued a Memorandum to its employees dated July 27, 2011,[8] advising them of the manpower reduction request of TIPI. The Memorandum also stated that due to the request of TIPI, FMI would implement work day reduction from 6 to 3-4 day workweek; the manpower complement would be reduced by forty-three (43) workers thirty (30) days after July 27; and performance

evaluation and other factors would be the basis for the manpower reduction. Eventually, in letters dated August 15, 2011,[9] FMI informed the private respondents of the termination of their employment due to the cost-cutting measures dictated by its principal, TIPI.

Private respondents argued that they should be deemed regular employees of TIPI, and alleged that Jonsons Control and FMI were merely labor-only contractors and agents of TIPI. To buttress this argument, they pointed out the fact that they worked at the premises of TIPI, used all the latter's equipment, and received all work instructions from TIPI. They also claimed that their dismissal allegedly due to retrenchment measures was illegal because of non-compliance with the requirements for a valid retrenchment.

On the other hand, petitioner FMI argued that it was an independent contractor engaged in legitimate job contracting. It entered into a Master Service Agreement with TIPI, and pursuant thereto, hired the private respondents as manufacturing support workers. FMI, however, was constrained to retrench the private respondents when TIPI informed it that TIPI would reduce its manpower requirements due to economic reasons. It then sent the private respondents notices advising them of the need for retrenchment and paid them their pro-rated 13th month pay, withholding tax refund, service incentive leave, and salary adjustments. FMI also presented the quitclaim, release and waiver dated October 2, 2011 signed by private respondent Mendoza, and the undated but duly signed waiver of private respondent Alfonso, wherein they allegedly released and discharged the former from all causes of actions or money claims arising from their employment.[10]

TIPI, for its part, averred that it was a manufacturing company while FMI was a provider of manufacturing support services. TIPI confirmed that it entered into a Service Agreement with FMI for the latter to provide manufacturing support manpower services as would be needed by TIPI from time to time. TIPI vehemently denied that it was the employer of Mendoza and Alfonso, and argued that using the factors in determining the existence of an employer-employee relationship, the latter could not be deemed their employees. They cited the fact that they never hired nor recruited Mendoza and Alfonso; that it was FMI which directly paid their wages; and that it was FMI which had the power of dismissal over them, which it exercised when its income from TIPI was reduced. Moreover, as to the manner and method of work to be performed by the private respondents, TIPI pointed out that it was only interested in the result of the work accomplished. The means and methods of performing such work still lay with FMI. Finally, TIPI alleged that the work performed by the private respondents was limited to the manual/physical task of carrying trays and crates of materials needed for manufacturing, and that they were never involved in any step of the manufacturing process since they lacked the training or skills for doing the same. TIPI admitted, however, that not only did the private respondents perform their tasks within TIPI premises, they were also subjected to the same control/supervision exercised over other employees while working within the said premises.

On May 15, 2012, the Labor Arbiter rendered a Decision,[11] the dispositive portion of which reads:

> **WHEREFORE**, premises all considered, judgment is hereby rendered ordering respondent Facilities Managers, Inc. to pay complainants their:

1. Separation pay in the amount of P14,783.35

   a) Mendoza (June 1, 2011-May 15,2012):
   P296.59 x 26 days x 1 year = 7,711.35

   b) Alfonso (June 1, 2011-May 15, 2012):
   P272.00 x 26 days x 1 year = 7,072.00

2. Full backwages up to the end of their
   current contract, which now amounts to 136,129.95

   a) Mendoza (Sept. 1, 2011-May 15, 2012)
   P296.59 x 26 days x 8.5 mos. = 65,546.40
   13^{th} month pay P65,546.40/12 = 5,462.20

   b) Alfonso (Sept. 1, 2011-May 15, 2012)
   P272.00 x 26 days x 8.5 mos. = 60,112.00
   13^{th} month pay P60,112.00/12 = 5,009.35

3. Attorney's fees in the amount of
   (150,913.30 x 10%) 15,091.23

4. Grand total of ..... P166,004.63.

   All other claims are dismissed for lack of merit.

   SO ORDERED."

Essentially, the Labor Arbiter found the petitioner guilty of illegal termination of the private respondents' employment. The Labor Arbiter, however, absolved TIPI of any liability holding that FMI was an independent contractor. The Labor Arbiter also found that the employment of the private respondents was for a fixed period.

Both parties appealed from the above decision to public respondent NLRC. On December 28, 2012, the public respondent rendered a Decision,12 the dispositive portion of which reads:

> "**WHEREFORE**, in consideration of the foregoing, the decision under appeal is **MODIFIED**. Respondent TIPI is found to be the principal and true employer of MENDOZA and ALFONSO and is held solidarily liable with its agent, FMI, for complainants' illegal dismissal and the consequent awards for separation pay, backwages and attorney's fees."

Its motion for reconsideration having been denied, petitioner now comes to this Court for relief via the instant petition for certiorari with prayer for injunctive relief, raising the following grounds:

> I. THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AND SERIOUS ERROR IN FINDING THAT PETITIONER FMI ILLEGALLY DISMISSED PRIVATE RESPONDENTS CONSIDERING THAT UNDER PERTINENT LAWS, INDEPENDENT CONTRACTORS CAN VALIDLY TERMINATE ITS EMPLOYEES EVEN PRIOR TO THE TERMINATION OF THE SERVICE AGREEMENT WITH THE CLIENT.

> II. THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AND SERIOUS ERROR IN FINDING THAT PETITIONER FMI IS LIABLE TO PAY PRIVATE RESPONDENTS THEIR MONETARY CLAIMS.

On September 9, 2013, this Court issued a Resolution[13] requiring the private respondents to file their Comment on the petition and to show cause why petitioner's application for injunctive relief should not be granted. Subsequently, the private respondents filed their comment[14] on the petition.

Considering that the private respondents had already filed their comment on the petition for certiorari and that the case is now ripe for decision, We deem it expedient to just deny the application for injunctive relief and instead proceed with the resolution of the merit of the case.

We find no merit in the petition.

Preliminarily, it must be pointed out that TIPI did not file a petition for certiorari against the disquisition of the public respondent that the former was the principal and true employer of the private respondents. Neither did the private respondents file a similar petition questioning the disquisition of the public respondent that they were fixed-term/project employees of TIPI. The said respondents only raised the said issue in their comment on the petition. (Private respondents, in their comment, actually questioned the disposition limiting the award of backwages to the unexpired portion of their contracts, contending that the said award should be reckoned up to the time of their actual reinstatement. This essentially goes to the issue of the nature of their employment.) Well-settled is the rule, however, that a party who does not appeal from the decision may not obtain any affirmative relief from the appellate court other than what he has obtained from the lower [tribunal], if any, whose decision is brought up on appeal. "The rule is clear that no modification of judgment could be granted to a party who did not appeal."[15]

The foregoing findings of the public respondent, therefore, had become final and executory with respect to the parties who did not appeal therefrom. We thus limit Our discussion to the grounds raised in the instant petition for certiorari.

Petitioner maintains that it was an independent contractor and that the private respondents were its project/fixed-term employees. As such, it could validly terminate the latter's employment even prior to the expiration of their employment contracts. We are not persuaded.

In the first place, whether petitioner was an independent contractor or a labor-only contractor is immaterial since ultimately, it would still be liable to the private respondents, either solely (if it were an independent contractor) or solidarily with TIPI (if it were only a labor-only contractor). Apparently, in insisting that it was an independent contractor, petitioner is trying to shield TIPI from any liability and subtly arguing for the latter.

Squarely addressing this issue nonetheless, this Court needs only to quote with favor the following disquisition of the public respondent:

> "We agree with the complainants' position that respondent TIPI should have been held solidarily liable with respondent FMI. A thorough perusal of the records in the arbitration branch and on appeal show the paucity of any evidence submitted by FMI to show that it had substantial

> capitalization, its own work tools and premises, or that it was engaged in an independent business with other undertakings separate from its provision of services with TIPI. Thus, there was clearly no basis for the labor arbiter's conclusion that FMI is engaged in legitimate job contracting except for the service agreement between itself and TIPI. Respondent FMI never submitted its certification and due registration as a legitimate job contractor with the Department of Labor pursuant to D.O. No. 10 or 18-2. There was also no presentation of proof such as SEC documents or audited financial records regarding its capitalization to show that it had substantial investments allowing it to carry on an independent business as a job contractor. Moreover, it could not present a list or certification of any other businesses or clients that it had apart from TIPI. Thus, for all intents and purposes, FMI had not sufficiently shown that it was an independent contractor engaged in legitimate job contracting."[16]

Petitioner failed to show competent and sufficient evidence to overturn the foregoing disposition of the public respondent, much less grave abuse of discretion on the part of the latter. At this juncture, We note the public respondent's observation that TIPI itself admitted that not only did the private respondents perform their tasks within the premises of TIPI, they were also subjected to the same control/supervision by TIPI over other employees.[17]

At any rate, regardless of whether petitioner was an independent contractor or a labor-only contractor, the real issue in this case is whether or not the dismissal of the private respondents prior to the expiration of their employment contracts was valid. We rule in the negative.

Petitioner itself pointed out that the termination of a project/fixed-term employee prior to the expiration of the employment contract is allowed under the authorized causes enumerated in Article 283 of the Labor Code, particularly on the ground of retrenchment. Petitioner (or TIPI), however, failed to meet certain conditions or requirements before a valid retrenchment may be effected.

Retrenchment is one of the authorized causes for the dismissal of employees resorted to by employers to avoid or minimize business losses.[18] It is a management prerogative subject, however, to faithful compliance with the substantive and procedural requirements laid down by law and jurisprudence.[19] Thus, any claim of actual or potential business losses must satisfy the following established standards, all of which must concur, before any reduction of personnel becomes legal:

1. The retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer;

2. The employer serves written notice both to the employees and to the Department of Labor and employment at least one month prior to the intended date of retrenchment;