CHANROBLES PUBLISHING COMPANY

SUPREME COURT
THIRD DIVISION

CITYTRUST BANKING CORPORATION,
***Petitioner*,**

-versus-

G.R. No. 123318
August 20, 1998

NATIONAL LABOR RELATIONS COMMISSION, RAMON RAAGAS, CHARLITO LAGDA AND RENATO MEMITA,
***Respondents*.**
x----------x

D E C I S I O N

NARVASA, *C.J.*:

The Special Civil Action of *Certiorari* at bar originated from a case of illegal dismissal instituted in the Office of the Labor Arbiter by Ramon Raagas, Charlito Lagda and Renato Memita against the CITYTRUST Banking Corporation (hereafter, simply CITYTRUST). The complainants claimed that CITYTRUST had engaged their services on various dates in 1989, that they had since worked as its "bank representatives" although they were never regularized,[1] and that their employment had been illegally terminated.

The claim was disputed by CITYTRUST which contended that complainants were security guards employed by security agencies, first, the Armored Deliveries and Manpower Services (ADAMS) and later, the Enriquez Security Services, Inc. (ESSI); that pursuant to Armored Car Service Agreements between said agencies and CITYTRUST, the former had assigned the complainants to the latter to provide it with security and armored car services; that CITYTRUST had never employed the three complainants who, at all times were employees, first, of ADAMS and later, of ESSI;[2] that on September 9, 1992 the three (3) respondents, Raagas, Lagda and Memita, were served by ESSI with "Relief Orders" Nos. 094-92, 093-92 and 092-92, respectively, all dated 09 September 1992, and all reading as follows: "You are relieved of your duties effective tomorrow, 09 September 1992 and directed to report to ESSI-HQ in complete uniform for re-assignment;"[3] and that for failing to comply with this instruction or otherwise report for work, "ESSI dismissed them from work on ground of abandonment of work and AWOL, a fact not disputed by private respondents."[4]

The case ended in a judgment handed down on September 14, 1992 by the Labor Arbiter declaring the complainants, Raagas, et al., to be employees of CITYTRUST, and ordering them to be reinstated and paid back wages. The judgment was affirmed on appeal by the National Labor Relations Commission in a Decision promulgated on July 13, 1995.

The Commission overruled CITYTRUST's argument that, complainants Raagas, et al. respondents were not its employees and that the functions they had performed for it were merely part of or incidental to the security and armored car services which their own employers (the security agencies) had bound themselves to furnish to the bank. According to the NLRC, the complainants had performed, not only security services such as manning armored vehicles, but significant functions in representation of CITYTRUST as a bank; that in representation of the latter, they had been authorized to withdraw from the Central Bank huge amounts of money running into millions of pesos and dollars; that indeed, their vital functions had been noted in certain of CITYTRUST's letters to the Central Bank, in relation to its ordinary and usual business; that Banks, such as CITYTRUST, cannot just designate or appoint anybody to discharge such "delicate"

functions as those performed by complainants; that while it is true that they had no formal appointments, the responsibility attached to the functions they discharged was more than sufficient to justify the conclusion that they were employees of CITYTRUST; that they had been named and designated in writing as among the authorized representatives of CITYTRUST in its transactions with the Central Bank; that such writings, in the absence of any formal appointment, are better proof of employment; that if CITYTRUST did not consider complainants its employees, it should have designated only persons from its ranks and not these alleged security guards/escorts to perform functions involving withdrawal of large amounts of money as well as the purchase of big volumes of foreign currency; that CITYTRUST had deliberately disregarded a ruling of the Department of Labor and Employment — in a certification election case filed by a union of its employees — that security guards, among others, should be absorbed in the existing bargaining unit, which ruling had subsequently been affirmed by this Court.

CITYTRUST is now before this Court, as petitioner in the instant special civil action of *certiorari* seeking invalidation of said Decision of the NLRC of July 13, 1995 as well as the latter's Resolution, dated October 25, 1995, which denied its motion for reconsideration for lack of merit.[5]

We find merit in the petition, and rule that respondent Commission's challenged dispositions are indeed tainted by grave abuse of discretion.

We agree with petitioner that private respondents Raagas, Lagda and Memita were at all times material to this controversy, employees of the security agencies which had supplied and assigned them to CITYTRUST and no employer-employee relationship had ever come exist between them. It is indeed difficult to understand by what juridical alchemy security guards or escorts — admittedly employees of armored car and security agencies — are transformed into employees of the bank to which they are assigned by their agencies, simply because they perform the very functions precisely expected of and assigned to them in connection with or in furtherance of their designated roles as such security guards or armed escorts.

When a bank such as CITYTRUST engages a security agency to furnish it with armored car services and armed escorts, certain assumptions may legitimately be made, without fear of contradiction, as obviously and unavoidably resulting from the nature of the engagement. These are:

> First — that the agency would provide the correspondent bank not only with armored cars but also trained personnel, suitably armed, precisely to escort, protect and safeguard money, securities or chattels of value being transferred to the bank or from it — these being functions which, normally, the latter's regular staff would be in no position to effectively discharge.
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> Second — that the money, securities or chattels to be received, transported, and protected by the security guards in their armored vehicles would be in "huge" or significantly substantial amounts, "running into millions of pesos and dollars," as respondent Commission puts it; there would otherwise be little sense for the bank like CITYTRUST to enter into a "CONTRACT TO FURNISH ARMORED CAR SERVICES."
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> Third — that in the very nature of things, the agency's security guards and/or their armored cars would have to be identified — by suitable writings — to the Central Bank or other offices from which money, securities or chattels would be transported to "assignee bank" (or vice versa), as duly authorized precisely to withdraw and receive such money, securities or chattels for conveyance to the latter.

These assumptions, to repeat, naturally and necessarily flow from the agreement between the security agency and the correspondent bank, the unavoidable result of their contractual commitments, and essential to the satisfactory attainment of their objectives. Particularly as regards the guards assigned to the bank, they do no more than discharge the regular functions and fulfill the normal obligations inherent in their employment in the security agency and in relation to their employer's contractual undertakings. And their handling of large amounts of money or valuable securities and chattels, as well as their identification, in writing or otherwise, as acting for their agency's correspondent bank, and safeguarding the money, securities

and chattels to be transported and delivered to it — are simply part and parcel of their role as security guards furnished by their agency to the correspondent bank.

It may be that the guards' functions are, as respondent Commission says, "delicate functions," or functions "attached with responsibility." But they are naught but their usual, expected and ordinary functions; and since, on the part of the bank, nothing out of the ordinary or the expected was done in relation to the discharge of those functions by the guards, there is no basis whatever for the conclusion that the relation of employer-employee had thereby been created.

That the security guards are employees of the agencies assigning them to the client-bank, and are not and were not by rendering services to that agencies' client-bank intended to become, the latter's employees, is a proposition pointedly stressed by the relevant written agreements.

In substantially identical language, the contracts between CITYTRUST, on the one hand, and ADAMS and ESSI, on the other, unequivocally declare that any person that may be assigned by the "CARRIER" (agency) to carry out its obligation under the Agreement should in no sense be considered an employee of the bank and shall always remain an employee of the CARRIER.[6] The contracts moreover require the CARRIER to give the bank a list of personnel assigned by to render security services to the bank, and make clear that:

1) the CARRIER shall maintain efficient and effective discipline, control and supervision over any and all guards or personnel it may utilize in performing its obligations under the Agreement;

2) the BANK has the option to ask for the replacement of the CARRIER's guards or personnel assigned to the BANK who, in its judgment, are unsatisfactory, wanting in the performance of their duties or for any reason at the discretion of the Bank;" and

3) "(t)he CARRIER shall not be subject to the control and supervision of the BANK insofar as the means and the devices to be employed by the CARRIER are concerned and the BANK is interested only in the results of the CARRIER's work under this Agreement."[7]

Germane to the stipulation last mentioned is the fact that there is no evidence that CITYTRUST had instructed respondent guards as regards the specific manner and means by which they were to perform their duty of safeguarding and protecting the money and valuables entrusted to them for safe transport and delivery. Also germane, and undisputed, is that the guards were originally hired by the agencies which subsequently selected them for assignment in CITYTRUST; that their salaries were paid by the agencies; and that their removal from their assignment could be effected, not by the bank itself but by the agencies themselves on the latter's recommendation. Hence, none of the recognized factors in the determination of the existence of employment relations — namely: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employees' conduct — exists in relation to CITYTRUST. There is simply no basis on which to rest a finding of employer-employee relationship between CITYTRUST and private respondents, in this case.

Also undisputed is that the security agencies ADAMS and ESSI are legitimate independent labor contractors. They cannot in any sense be deemed engaged in what is known as "labor-only contracting" only, whose employees could properly be considered employees of the firms, like CITYTRUST, to which they are assigned and in which they do their work.[8] Indeed, in the "CONTRACT TO FURNISH ARMORED CAR SERVICE," executed between petitioner and the security agencies in this case, each of the latter warranted that it is "an independent contractor with sufficient capital and equipment engaged in the business of furnishing armored car service to persons and/or entities desiring to avail its services."[9]

Respondent Commission theorized, finally, that the issue on the status of employment of herein private respondents had been settled in an earlier case, wherein the Department of Labor and Employment

(DOLE) ruled that security guards, together with messengers and drivers of CITYTRUST, were its employees and should be absorbed in the existing bargaining unit.[10] That ruling was allegedly affirmed by this Court through an unsigned minute resolution dated June 3, 1991, issued in G.R. No. 95143 entitled "CITYTRUST Banking Corp. vs. Hon. Torres, etc., et al." That case was a certification election proceeding filed by the CITYTRUST Employees Union-NATU with the DOLE, initially docketed as Case No. NCR-OD-M-8-629-89, and later, upon appeal to the Secretary of Labor, as OS-A-3-63-90. And the final Resolution therein, dated July 31, 1990, was handed down by then Secretary Ruben D. Torres.[11] That Resolution, however, referred to three (3) security guards pertaining, not to either of the agencies here involved, but to another agency with a different contract, the Philippine Scout Veterans Security and Investigation Agency (PSVSIA) — said guards "being utilized by the bank as drivers of its armored cars and not as security personnel." The relation between CITYTRUST and private respondents herein — who at all times material have discharged duties and functions essentially pertaining to security personnel of an armored car service — was never involved and could not have been passed upon, much less settled in the case adverted to.

WHEREFORE, the assailed Decision of the NLRC dated July 13, 1995 is **NULLIFIED AND SET ASIDE**, and the complaint for illegal dismissal filed by private respondents against petitioner CITYTRUST is **DISMISSED**.

SO ORDERED.

Romero, Kapunan and Purisima, *JJ*., concur.

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[1] Rollo, p. 80: Arbiter's Decision, dated September 14, 1993.
[2] Ibid, pp. 80, 25-26.
[3] Annexes E, F, G, petition; Rollo, pp. 58. 59. 60.
[4] Rollo, p. 8.
[5] In a "Manifestation and Motion" dated May 30, 1996, the Solicitor General alleging that despite his numerous requests, respondent NLRC had failed to transmit the records of the case to him, prayed that he be relieved from filing a comment in behalf of the NLRC, and that the latter file its own comment. So, respondent NLRC itself filed its comment under date of

November 16, 1996. Petitioner CITYTRUST presented a "Consolidated Reply" on February 28, 1997 and an explanatory "Manifestation" on March 19, 1997.

[6] Annexes C and D, pp. 40, 2nd par. and 51, 2nd par., respectively, rollo.

[7] Annexes C and D, pp. 39, 2nd and 3rd par. and pp. 49, last par. and 50, 2nd par., respectively.

[8] SEE, e.g., Rhone-Poulenc Agrochemicals Philippines. Inc. vs. NLRC, 217 SCRA 249, 255-258 (1993).

[9] Annexes C AND D, pp. 37 and 48 rollo.

[10] Rollo, p. 30, citing "Records, pp. 65-79.

[11] p. 198, rollo.

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