SUPREME COURT
SECOND DIVISION

CECILIO P. DE LOS SANTOS and BUKLOD MANGGAGAWA NG CAMARA (BUMACA),
***Petitioners*,**

-versus-

G.R. No. 121327
December 20, 2001

NATIONAL LABOR RELATIONS COMMISSION *(SECOND DIVISION)*, HON. COMMISSIONERS VICTORIANO R. CALAYCAY, RAUL T. AQUINO, and ROGELIO I. RAYALA, CAMARA STEEL INDUSTRIES INC., JOSELITO JACINTO, ALBERTO F. DEL PILAR, DENNIS ALBANO, MERCEDITA G. PASTRANA, TOP-FLITE and RAUL RUIZ,
***Respondents*.**
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D E C I S I O N

BELLOSILLO, *J.*:

This is a Petition for Certiorari under Rule 65 assailing the Decision of public respondent National Labor Relations Commission (NLRC)

which remanded this case to the Labor Arbiter who ruled that petitioner Cecilio P. de los Santos was illegally dismissed by private respondent Camara Steel, Inc., and as a consequence, ordered his immediate reinstatement. Specifically, the dispositive portion of the Labor Arbiter's Decision promulgated 23 May 1999 states —

> WHEREFORE, premises considered, respondent Camara Steel Industries, Inc. is hereby ordered to reinstate complainant Cecilio de los Santos to his former position within ten (10) days from receipt of this Resolution without loss of seniority rights and other benefits with full back wages from date of dismissal up to actual date of reinstatement which is hereby computed as of even date as follows:
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> | | | |
> |---|---|---|
> | From 8/23/93-12/15/93 | = | 3.73 mos. |
> | P118 x 26 days x 3.73 mos. | = | P11,443.64 |
> | 12/16/93 - 3/29/94 | = | 3.43 mos. |
> | 135 x 26 days x 3.43 mos. | = | 12,039.30 |
> | | | ---------- |
> | Total Backwages as of 3/29/94 | | P23,482.94 |
> | | | ========= |
>
> Respondent Camara Steel Industries, Inc. is also ordered to pay complainant 10% for and as attorney's fees.
>
> All other claims are hereby dismissed for lack of merit.

On 3 May 1991 petitioner De los Santos started working at Camara Steel Industries Inc. (CAMARA STEEL), a company engaged in the manufacture of steel products such as LPG cylinders and drums. He was first assigned at the LPG assembly line, then later, as operator of a blasting machine. While performing his task as such operator, he met an accident that forced him to go on leave for one and a half (1-1/2) months. Upon his return, he was designated as a janitor assigned to clean the premises of the company, and occasionally, to transfer scrap and garbage from one site to another.[1]

On 11 May 1993 petitioner was doing his usual chores as a janitor of CAMARA STEEL when he momentarily left his pushcart to answer the call of Narciso Honrado, scrap in-charge, who summoned him to

the company clinic. There Honrado handed him a box which he placed on top of a drum in his pushcart for transfer to the other lot of the company near gate 2. On his way out of gate 2, however, the security guard on duty found in the box handed to him by Honrado two (2) pieces of electric cable measuring 2.26 inches each and another piece of 1.76 meters with a total estimated value of P50.00 to P100.00. Apprehensive that he might be charged with theft, petitioner De los Santos explained that the electric cord was declared a scrap by Honrado whose instructions he was only following to transfer the same to the adjacent lot of the company as scrap.

Narciso Honrado admitted responsibility for the haul and his error in declaring the electric cables as scrap. The general manager, apparently appeased by Honrado's apology, issued a memorandum acknowledging receipt of his letter of apology and exculpated him of any wrongdoing.

Taking an unexpected volte face, however, the company through its counsel filed on 9 July 1993 a criminal complaint for frustrated qualified theft against Honrado and herein petitioner De los Santos. The complaint however was subsequently dismissed by the Provincial Prosecutor of Pasig for lack of evidence.[2]

On 23 August 1993, upon request of Top-Flite, alleged manpower agency of De los Santos, CAMARA STEEL terminated his services.

Aggrieved by his illegal termination, De los Santos sought recourse with the Labor Arbiter who on 29 March 1994 rendered a decision ordering respondent CAMARA STEEL to reinstate Delos Santos to his former position within ten (10) days without loss of seniority rights and other benefits with full back wages from date of dismissal up to actual reinstatement as herein before stated.

CAMARA STEEL went to the NLRC for recourse. Top-Flite filed a Motion for Intervention praying that it be permitted to intervene in the appeal as co-respondent and, accordingly, be allowed to submit its own memorandum and other pleadings.[3]

On 23 May 1995 the NLRC reversed the Labor Arbiter and ordered the return of the entire records of the case to the arbitration branch of

origin for further proceedings. In its Decision, NLRC specified the reasons for the remand to the Labor Arbiter —[4]

First, as respondents have broadly implied, having alleged that he was an employee of Camara Steel, it was complainant's burden to prove this allegation as a fact, not merely through his uncorroborated statements but through independent evidence. As noted by respondents, he has not submitted one piece of evidence to support his premise on this matter except for his sworn statement.

Secondly, the Arbiter maintained that the contract of services submitted by respondents was insufficient to prove that complainant was an employee of Top-Flite, but he has obviously omitted consideration of Annexes F, G, H and I which are time sheets of the complainant with Top-Flite and the corresponding time cards which he punches in for Camara Steel.

The NLRC further noted that under the circumstances it became appropriate to conduct a formal hearing on the particular issue of whether an employer-employee relationship existed between the parties, which issue was determinative of the nature of petitioner's dismissal by CAMARA STEEL. That being so, according to the NLRC, it was necessary for the Labor Arbiter to issue the appropriate directive to summon Top-Flite as a necessary party to the case, for the manpower agency to submit its own evidence on the actual status of petitioner.

As pointed out by petitioner, the errors in the disputed decision by the NLRC are: (a) NLRC violated due process of law when it did not consider the evidence on record; (b) CAMARA STEEL, and not Top-Flite, is the real employer of petitioner; (c) Contrary to the finding of NLRC, Top-Flite was made a party respondent in the illegal dismissal case docketed as NLRC-NCR No. 00-08-05302-93 and the NLRC was therefore in error in remanding the case to the Labor Arbiter for further proceedings.

Petitioner De los Santos contends that NLRC was in grave error when it ruled that, with the exception of a bare assertion on his sworn statement, he "has not submitted one piece of evidence to support his premise"[5] that he was in fact an employee of CAMARA STEEL.

To underscore NLRC's oversight, petitioner brings to our attention and specifies the pieces of evidence which he presented before the Labor Arbiter on 19 November 1993 — also appended as Annexes to petitioner's "Traverse to Camara's Position Paper and Reply:" (a) Annex "E" to "E-1" — Approval signature of Camara's Department head, Reynaldo Narisma, without which petitioner cannot render overtime; (b) Annex "F" — Petitioner's daily time record for 8/3/92 to 8/9/92; (c) Annex "F-1" — Signature of private respondent Mercedita Pastrana, approving in her capacity as Assistant Manager of Camara Steel; (d) Annex "F-2" — Signature of private respondent Dennis Albano, Personnel Manager of Camara Steel Industries Inc. also co-signing for approval; (e) Annex "F-3" — Signature of Narisma, as Department Head of Camara Steel Industries Inc. where petitioner is working; (f) Annex "G" — Daily Time Record of petitioner for 7/6/92 to 7/12/92; (g) Annex "G-1" — Signature of Camara Steel Assistant Manager; (h) Annex "G-2" — Signature of Camara's Personnel Manager, Dennis Albano, approving; (i) Annex "G-3" — Signature of Camara's Department Head where petitioner is working, Mr. Narisma, approving; (j) Annex "H" to "H-1" — Petitioner's Daily Time Card (representative samples) with name and logo of Camara Steel Industries Inc.; and, (k) Annex "J" — Affidavit of Complainant.

All these pieces of evidence which, according to petitioner De los Santos, were not properly considered by NLRC, plainly and clearly show that the power of control and supervision over him was exercised solely and exclusively by the managers and supervisors of CAMARA STEEL. Even the power to dismiss was also lodged with CAMARA STEEL when it admitted in page 3 of its Reply that upon request by Top-Flite, the steel company terminated his employment after being allegedly caught committing theft.

Petitioner De los Santos also advances the view that Top-Flite, far from being his employer, was in fact a "labor-only" contractor as borne out by a contract whereby Top-Flite undertook to supply CAMARA STEEL workers with "warm bodies" for its factory needs and edifices. He insists that such contract was not a job contract but the supply of labor only. All things considered, he is of the firm belief that for all legal intents and purposes, he was an employee — a regular one at that — of CAMARA STEEL.

> In its comment, private respondent CAMARA STEEL avers that far from being its employee, De los Santos was merely a project employee of Top-Flite who was assigned as janitor in private respondent company. This much was acknowledged by Top-Flite in its Motion for Intervention filed before the NLRC.[6] Such allegation, according to private respondent CAMARA STEEL, supports all along its theory that De los Santos' assignment to the latter as janitor was based on an independent contract executed between Top-Flite and CAMARA STEEL.[7]

Respondent CAMARA STEEL further argues that crystal clear in the Motion for Intervention of Top-Flite is its allegation that it was in fact petitioner's real employer as his salaries and benefits during the contractual period were paid by Top-Flite; not only that, De los Santos was dismissed by CAMARA STEEL upon the recommendation of Top-Flite. These ineluctably show that Top-Flite was not only a job contractor but was in truth and in fact the employer of petitioner.

In his petition, De los Santos vigorously insists that he was the employee of respondent CAMARA STEEL which in turn was not only denying the allegation but was finger-pointing Top-Flite as petitioner's real employer. De los Santos again objects to this assertion and claims that Top-Flite, far from being an employer, was merely a "labor-only" contractor.

In the maze and flurry of claims and counterclaims, several contentious issues continue to stick out like a sore thumb. Was De los Santos illegally dismissed? If so, by whom? Was his employer respondent CAMARA STEEL, in whose premises he was allegedly caught stealing, or was it Top-Flite, the manpower services which allegedly hired him?

Inextricably intertwined in the resolution of these issues is the determination of whether there existed an employer-employee relationship between CAMARA STEEL and respondent De Los Santos, and whether Top-Flite was an "independent contractor" or a "labor-only" contractor. A finding that Top-Flite was a "labor-only" contractor reduces it to a mere agent of CAMARA STEEL which by statute would be responsible to the employees of the "labor-only"

contractor as if such employees had been directly employed by the employer.

Etched in an unending stream of cases are the four (4) standards in determining the existence of an employer-employee relationship, namely: (a) the manner of selection and engagement of the putative employee; (b) the mode of payment of wages; (c) the presence or absence of power of dismissal; and, (d) the presence or absence of control of the putative employee's conduct. Most determinative among these factors is the so-called "control test."

As shown by the evidence on record, De los Santos was hired by CAMARA STEEL after undergoing an interview with one Carlos Suizo, its timekeeper who worked under the direct supervision of one Renato Pacion, a supervisor of CAMARA STEEL. These allegations are contained in the affidavit[8] executed by De los Santos and were never disputed by CAMARA STEEL. Also remaining uncontroverted are the pieces of documentary evidence adduced by De los Santos consisting of daily time records marked Annexes "F" and "G" which, although bearing the heading and logo of Top-Flite, were signed by officers of respondent CAMARA STEEL, and Annexes "H" and "I" with the heading and logo of CAMARA STEEL.

Incidentally, we do not agree with NLRC's submission that the daily time records serve no other purpose than to establish merely the presence of De los Santos within the premises of CAMARA STEEL. Contrarily, these records, which were signed by the company's officers, prove that the company exercised the power of control and supervision over its employees, particularly De los Santos. There is dearth of proof to show that Top-Flite was the real employer of De los Santos other than a naked and unsubstantiated denial by CAMARA STEEL that it has no power of control over De los Santos. Records would attest that even the power to dismiss was vested with CAMARA STEEL which admitted in its Reply that "Top-Flite requested CAMARA STEEL to terminate his employment after he was caught by the security guard committing theft."

A cursory reading of the above declaration will confirm the fact that the dismissal of De los Santos could only be effected by CAMARA STEEL and not by Top-Flite as the latter could only "request" for De

los Santos' dismissal. If Top-Flite was truly the employer of De los Santos, it would not be asking permission from or "requesting" respondent CAMARA STEEL to dismiss De los Santos considering that it could very well dismiss him without CAMARA STEEL's assent.

All the foregoing considerations affirm by more than substantial evidence the existence of an employer-employee relationship between De los Santos and CAMARA STEEL.

As to whether petitioner De los Santos was illegally terminated from his employment, we are in full agreement with the Labor Arbiter's finding that he was illegally dismissed. As correctly observed by the Labor Arbiter, it was Narciso Honrado, scrap in-charge, who handed the box containing the electrical cables to De los Santos. No shred of evidence can show that De los Santos was aware of its contents, or if ever, that he conspired with Honrado in bilking the company of its property. What is certain however is that while Honrado admitted, in a letter of apology, his culpability for the unfortunate incident and was unconditionally forgiven by the company, De los Santos was not only unceremoniously dismissed from service but was charged before the court for qualified theft (later dismissed by the public prosecutor for lack of evidence). For sure, De los Santos cannot be held more guilty than Honrado who, being the scrap in-charge, had the power to classify the cables concerned as scrap.

Neither can we gratify CAMARA STEEL's contention that petitioner was validly dismissed for loss of trust and confidence. As provided for in the Labor Code:

> Art. 282. Termination by employment — An employer may terminate an employment for any of the following causes: (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.

Of course, it must be stressed that loss of confidence as a just cause for the termination of employment is based on the premise that the employee holds a position of trust and confidence, as when he is entrusted with responsibility involving delicate matters, and the task of a janitor does not fall squarely under this category.

Petitioner De los Santos argues that Top-Flite was merely a "labor-only" contractor. To fortify his stance, De los Santos brings to our attention the contract of service[9] dated 8 February 1991 between CAMARA STEEL and Top-Flite which provides:

> 1) The contractor (Top-Flite) shall provide workers (non-skilled) six (6) days a week for the Client's (Camara) factory and edifices.
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> However, both respondent CAMARA STEEL and Top-Flite[10] are adamant in their belief that the latter was not a "labor-only" contractor as they rely on another provision of the contract which states —
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> 2) The Contractor warrants the honesty, reliability, industry and cooperative disposition of the person it employs to perform the job subject to this contract, and shall employ such persons only as are in possession of health certificates and police clearances.

The preceding provisions do not give a clear and categorical answer as regards the real character of Top-Flite's business. For whatever its worth, the invocation of the contract of service is a tacit admission by both parties that the employment of De los Santos was by virtue of such contract. Be that as it may, Top-Flite, much less CAMARA STEEL, cannot dictate, by the mere expedient of a unilateral declaration in a contract, the character of its business, i.e., whether as "labor-only" contractor, or job contractor, it being crucial that its character be measured in terms of and determined by the criteria set by statute. The case of Tiu vs. NLRC[11] succinctly enunciates this statutory criteria —

> Job contracting is permissible only if the following conditions are met: 1) 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 2) 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 the business.

"Labor-only contracting" as defined in Sec. 4, par. (f), Rule VIII-A, Book III, of the Omnibus Rules Implementing the Labor Code states that a "labor-only" contractor, prohibited under this Rule, is an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal and the following elements are present: (a) The contractor or subcontractor does not have substantial capital or investment to actually perform the job, work or service under its own account or responsibility; and, (b) The employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal.

Applying the foregoing provisions, the Court finds Top-Flite to be a "labor-only" contractor, a mere supplier of labor to CAMARA STEEL, the real employer. Other than its open declaration that it is an independent contractor, no substantial evidence was adduced by Top-Flite to back up its claim. Its revelation that it provided a sweeper to petitioner would not suffice to convince this Court that it possesses adequate capitalization to undertake an independent business.[12] Neither will the submission prosper that De los Santos did not perform a task directly related to the principal business of respondent CAMARA STELL. As early as in Guarin vs. NLRC[13] we ruled that "the jobs assigned to the petitioners as mechanics, janitors, gardeners, firemen and grasscutters were directly related to the business of Novelty as a garment manufacturer," reasoning that "for the work of gardeners in maintaining clean and well-kept grounds around the factory, mechanics to keep the machines functioning properly, and firemen to look out for fires, are directly related to the daily operations of a garment factory."

In its comment respondent CAMARA STEEL emphatically argues that Top-Flite, although impleaded as respondent in NLRC-NCR Cases Nos. 00-0704761-93 and 00-0805061-93, subject of the present appeal, was never summoned for which reason it was deprived of procedural due process; basically the same line of

argument adopted by the NLRC in its decision to remand the case to the arbitration branch of origin. CAMARA STEEL obviously wants to impress upon us that Top-flite, being a necessary party, should have been summoned and the failure to do so would justify the remand of the case to the Labor Arbiter.

We are not persuaded. The records show that Top-Flite was not only impleaded in the aforementioned case but was in fact afforded an opportunity to be heard when it submitted a position paper. This much was admitted by Top-Flite in par. 5 of its Motion for Intervention where it stated that "movant submitted its position paper in the cases mentioned in the preceding paragraph but the Presiding Arbiter ignored the clear and legal basis of the position of the movant."[14] In other words, the failure of Top-Flite to receive summons was not a fatal procedural flaw because it was never deprived of the opportunity to ventilate its side and challenge petitioner in its position paper, not to mention the comment which it submitted through counsel before this Court.[15] It moved to intervene not because it had no notice of the proceedings but because its position paper allegedly was not considered by the Labor Arbiter. While jurisdiction over the person of the defendant can be acquired by service of summons, it can also be acquired by voluntary appearance before the court which includes submission of pleadings in compliance with the order of the court or tribunal. A fortiori, administrative tribunals exercising quasi-judicial powers are unfettered by the rigidity of certain procedural requirements subject to the observance of fundamental and essential requirements of due process in justiciable cases presented before them. In labor cases, a punctilious adherence to stringent technical rules may be relaxed in the interest of the workingman. A remand of the case, as the NLRC envisions, would compel petitioner, a lowly worker, to tread once again the calvary of a protracted litigation and flagellate him into submission with the lash of technicality.

WHEREFORE, the petition is **GRANTED** and the appealed Decision of the NLRC is **REVERSED** and **SET ASIDE** and the Decision of the Labor Arbiter promulgated 23 May 1999 is **REINSTATED** and **ADOPTED** as the Decision in this case.

SO ORDERED.

Mendoza, Quisumbing and De Leon, Jr., *JJ.*, concur.
Buena, *J.*, on official business.

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[1] Annex "J;" Records.
[2] Id., p. 87.
[3] Id., p. 57.
[4] Id., p. 40-41.
[5] See Note 2.
[6] Annex "C;" Rollo.
[7] Id., Annex "1" of respondent's Position Paper.
[8] Id., Annex "J."
[9] Annex "G;" Rollo.
[10] As shown in the Comment dated 30 October 1995; see Rollo, p. 172.
[11] G.R. No. 95845, 21 February 1996,1 SCRA 254.
[12] Rollo, Top-Flite's Comment, p. 168.
[13] G.R. No. 86010, 3 October 1989, 178 SCRA 267, 273.
[14] Annex "C;" Rollo.
[15] As of 26 June 2000, Top-Flite has failed to comply with the Court resolution dated 28 April 1997 requiring it through the president Miguel Paraiso to submit its Memorandum.
