SUPREME COURT
THIRD DIVISION

SERGIO F. NAGUIAT, doing business under the name and style SERGIO F. NAGUIAT ENT., INC., & CLARK FIELD TAXI, INC.,
***Petitioners*,**

-versus-

G.R. No. 116123
March 13, 1997

NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION), NATIONAL ORGANIZATION OF WORKINGMEN and its members, LEONARDO T. GALANG, Et Al.,
***Respondents*.**
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D E C I S I O N

PANGANIBAN, *J.*:

Are private respondent-employees of petitioner Clark Field Taxi, Inc., who were separated from service due to the closure of Clark Air Base, entitled to separation pay and, if so, in what amount? Are officers of corporations ipso facto liable jointly and severally with the companies they represent for the payment of separation pay?

These questions are answered by the Court in resolving this petition for certiorari under Rule 65 of the Rules of Court assailing the Resolutions of the National Labor Relations Commission (Third Division)[1] promulgated on February 28, 1994,[2] and May 31, 1994.[3] The February 28, 1994 Resolution affirmed with modifications the Decision[4] of Labor Arbiter Ariel C. Santos in NLRC Case No. RAB-III-12-2477-91. The second Resolution denied the motion for reconsideration of herein petitioners.

The NLRC modified the decision of the labor arbiter by granting separation pay to herein individual respondents in the increased amount of US$120.00 for every year of service or its peso equivalent, and holding Sergio F. Naguiat Enterprises, Inc., Sergio F. Naguiat and Antolin T. Naguiat, jointly and severally liable with Clark Field Taxi, Inc. ("CFTI").

The Facts

The following facts are derived from the records of the case:

Petitioner CFTI held a concessionaire's contract with the Army Air Force Exchange Services ("AAFES") for the operation of taxi services within Clark Air Base. Sergio F. Naguiat was CFTI's president, while Antolin T. Naguiat was its vice-president. Like Sergio F. Naguiat Enterprises, Incorporated ("Naguiat Enterprises"), a trading firm, it was a family-owned corporation.

Individual respondents were previously employed by CFTI as taxicab drivers. During their employment, they were required to pay a daily "boundary fee" in the amount of US$26.50 for those working from 1:00 a.m. to 12:00 noon, and US$27.00 for those working from 12:00 noon to 12:00 midnight. All incidental expenses for the maintenance of the vehicles they were driving were accounted against them, including gasoline expenses.

The drivers worked at least three to four times a week, depending on the availability of taxicabs. They earned not less than US$15.00 daily. In excess of that amount, however, they were required to make cash

deposits to the company, which they could later withdraw every fifteen days.

Due to the phase-out of the US military bases in the Philippines, from which Clark Air Base was not spared, the AAFES was dissolved, and the services of individual respondents were officially terminated on November 26, 1991.

The AAFES Taxi Drivers Association ("drivers' union"), through its local president, Eduardo Castillo, and CFTI held negotiations as regards separation benefits that should be awarded in favor of the drivers. They arrived at an agreement that the separated drivers will be given P500.00 for every year of service as severance pay. Most of the drivers accepted said amount in December 1991 and January 1992. However, individual respondents herein refused to accept theirs.

Instead, after disaffiliating themselves from the drivers' union, individual respondents, through the National Organization of Workingmen ("NOWM"), a labor organization which they subsequently joined, filed a complaint[5] against "Sergio F. Naguiat doing business under the name and style Sergio F. Naguiat Enterprises, Inc., Army-Air Force Exchange Services (AAFES) with Mark Hooper as Area Service Manager, Pacific Region, and AAFES Taxi Drivers Association with Eduardo Castillo as President," for payment of separation pay due to termination/phase-out. Said complaint was later amended[6] to include additional taxi drivers who were similarly situated as complainants, and CFTI with Antolin T. Naguiat as vice president and general manager, as party respondent.

In their complaint, herein private respondents alleged that they were regular employees of Naguiat Enterprises, although their individual applications for employment were approved by CFTI. They claimed to have been assigned to Naguiat Enterprises after having been hired by CFTI, and that the former thence managed, controlled and supervised their employment. They averred further that they were entitled to separation pay based on their latest daily earnings of US$15.00 for working sixteen (16) days a month.

In their position paper submitted to the labor arbiter, herein petitioners claimed that the cessation of business of CFTI on November 26, 1991, was due to "great financial losses and lost business opportunity" resulting from the phase-out of Clark Air Base brought about by the Mt. Pinatubo eruption and the expiration of the RP-US military bases agreement. They admitted that CFTI had agreed with the drivers' union, through its President Eduardo Castillo who claimed to have had blanket authority to negotiate with CFTI in behalf of union members, to grant its taxi driver-employees separation pay equivalent to P500.00 for every year of service.

The labor arbiter, finding the individual complainants to be regular workers of CFTI, ordered the latter to pay them P1,200.00 for every year of service "for humanitarian consideration," setting aside the earlier agreement between CFTI and the drivers' union of P500.00 for every year of service. The labor arbiter rejected the allegation of CFTI that it was forced to close business due to "great financial losses and lost business opportunity" since, at the time it ceased operations, CFTI was profitably earning and the cessation of its business was due to the untimely closure of Clark Air Base. In not awarding separation pay in accordance with the Labor Code, the labor-arbiter explained:

> "To allow respondents exemption from its (sic) obligation to pay separation pay would be inhuman to complainants but to impose a monetary obligation to an employer whose profitable business was abruptly shot (sic) down by force majeure would be unfair and unjust to say the least."[7]

and thus, simply awarded an amount for "humanitarian consideration."

Herein individual private respondents appealed to the NLRC. In its Resolution, the NLRC modified the decision of the labor arbiter by granting separation pay to the private respondents. The concluding paragraphs of the NLRC Resolution read:

> "The contention of complainant is partly correct. One-half month salary should be US$120.00 but this amount can not be paid to the complainant in U.S. Dollar which is not the legal tender in the Philippines. Paras, in commenting on Art. 1249 of

> the New Civil Code, defines legal tender as 'that which a debtor may compel a creditor to accept in payment of the debt. The complainants who are the creditors in this instance can be compelled to accept the Philippine peso which is the legal tender, in which case, the table of conversion (exchange rate) at the time of payment or satisfaction of the judgment should be used. However, since the choice is left to the debtor, (respondents) they may choose to pay in US dollar.' (Phoenix Assurance Co. vs. Macondray & Co. Inc., L-25048, May 13, 1975)

In discharging the above obligations, Sergio F. Naguiat Enterprises, which is headed by Sergio F. Naguiat and Antolin Naguiat, father and son at the same time the President and Vice-President and General Manager, respectively, should be joined as indispensable party whose liability is joint and several. (Sec. 7, Rule 3, Rules of Court)"[8]

As mentioned earlier, the motion for reconsideration of herein petitioners was denied by the NLRC. Hence, this petition with prayer for issuance of a temporary restraining order. Upon posting by the petitioners of a surety bond, a temporary restraining order[9] was issued by this Court enjoining execution of the assailed Resolutions.

Issues

The petitioners raise the following issues before this Court for resolution:

> "I. Whether or not public respondent NLRC (3rd Div.) committed grave abuse of discretion amounting to lack of jurisdiction in issuing the appealed resolution;
>
> II. Whether or not Messrs. Teofilo Rafols and Romeo N. Lopez could validly represent herein private respondents; and
>
> III. Whether or not the resolution issued by public respondent is contrary to law."[10]

Petitioners also submit two additional issues by way of a supplement[11] to their petition, to Wit: that Petitioners Sergio F.

Naguiat and Antolin Naguiat were denied due process; and that petitioners were not furnished copies of private respondents' appeal to the NLRC. As to the procedural lapse of insufficient copies of the appeal, the proper forum before which petitioners should have raised it is the NLRC. They, however, failed to question this in their motion for reconsideration. As a consequence, they are deemed to have waived the same and voluntarily submitted themselves to the jurisdiction of the appellate body.

Anent the first issue raised in their original petition, petitioners contend that NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in unilaterally increasing the amount of severance pay granted by the labor arbiter. They claim that this was not supported by substantial evidence since it was based simply on the self-serving allegation of respondents that their monthly take-home pay was not lower than $240.00.

On the second issue, petitioners aver that NOWM cannot make legal representations in behalf of individual respondents who should, instead, be bound by the decision of the union (AAFES Taxi Drivers Association) of which they were members.

As to the third issue, petitioners incessantly insist that Sergio F. Naguiat Enterprises, Inc. is a separate and distinct juridical entity which cannot be held jointly and severally liable for the obligations of CFTI. And similarly, Sergio F. Naguiat and Antolin Naguiat were merely officers and stockholders of CFTI and, thus, could not be held personally accountable for corporate debts.

Lastly, Sergio and Antolin Naguiat assail the Resolution of NLRC holding them solidarily liable despite not having been impleaded as parties to the complaint.

Individual respondents filed a comment separate from that of NOWM. In sum, both aver that petitioners had the opportunity but failed to refute, the taxi drivers' claim of having an average monthly earning of $240.00; that individual respondents became members of NOWM after disaffiliating themselves from the AAFES Taxi Drivers Association which, through the manipulations of its President Eduardo Castillo, unconscionably compromised their separation pay;

and that Naguiat Enterprises, being their indirect employer, is solidarily liable under the law for violation of the Labor Code, in this case, for nonpayment of their separation pay.

The Solicitor General unqualifiedly supports the allegations of private respondents. In addition, he submits that the separate personalities of respondent corporations and their officers should be disregarded and considered one and the same as these were used to perpetrate injustice to their employees.

The Court's Ruling

As will be discussed below, the petition is partially meritorious.

First Issue: Amount of Separation Pay

Firmly, we reiterate the rule that in a petition for certiorari filed pursuant to Rule 65 of the Rules of Court, which is the only way a labor case may reach the Supreme Court, the petitioner/s must clearly show that the NLRC acted without or in excess of jurisdiction or with grave abuse of discretion.[12]

Long-standing and well-settled in Philippine jurisprudence is the judicial dictum that findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality; and are binding upon this Court unless there is a showing of grave abuse of discretion, or where it is clearly shown that they were arrived at arbitrarily or in disregard of the evidence on record.[13]

Nevertheless, this Court carefully perused the records of the instant case if only to determine whether public respondent committed grave abuse of discretion, amounting to lack of jurisdiction, in granting the clamor of private respondents that their separation pay should be based on the amount of $240.00, allegedly their minimum monthly earnings as taxi drivers of petitioners.

In their amended complaint before the Regional Arbitration Branch in San Fernando, Pampanga, herein private respondents set forth in

detail the work schedule and financial arrangement they had with their employer. Therefrom they inferred that their monthly take-home pay amounted to not less than $240.00. Herein petitioners did not bother to refute nor offer any evidence to controvert said allegations. Remaining undisputed, the labor arbiter adopted such facts in his decision. Petitioners did not even appeal from the decision of the labor arbiter nor manifest any error in his findings and conclusions. Thus, petitioners are in estoppel for not having questioned such facts when they had all opportunity to do so. Private respondents, like petitioners, are bound by the factual findings of Respondent Commission.

Petitioners also claim that the closure of their taxi business was due to great financial losses brought about by the eruption of Mt. Pinatubo which made the roads practically impassable to their taxicabs. Likewise well-settled is the rule that business losses or financial reverses, in order to sustain retrenchment of personnel or closure of business and warrant exemption from payment of separation pay, must be proved with clear and satisfactory evidence.[14] The records, however, are devoid of such evidence.

The labor arbiter; as affirmed by NLRC, correctly found that petitioners stopped their taxi business within Clark Air Base because of the phase-out of U.S. military presence thereat. It was not due to any great financial loss because petitioners' taxi business was earning profitably at the time of its closure.

With respect to the amount of separation pay that should be granted, Article 283 of the Labor Code provides:

> "In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year."

Considering the above, we find that NLRC did not commit grave abuse of discretion in ruling that individual respondents were entitled

to separation pay[15] in the amount $120.00 (one-half of $240.00 monthly pay) or its peso equivalent for every year of service.

Second Issue: NOWM's Personality to

Represent Individual Respondents-Employees

On the question of NOWM's authority to represent private respondents, we hold petitioners in estoppel for not having seasonably raised this issue before the labor arbiter or the NLRC. NOWM was already a party-litigant as the organization representing the taxi driver-complainants before the labor arbiter. But petitioners who were party-respondents in said complaint did not assail the juridical personality of NOWM and the validity of its representations in behalf of the complaining taxi drivers before the quasi-judicial bodies. Therefore, they are now estopped from raising such question before this Court. In any event, petitioners acknowledged before this Court that the taxi drivers allegedly represented by NOWM, are themselves parties in this case.[16]

Third Issue: Liability of Petitioner-Corporations and Their Respective Officers

The resolution of this issue involves another factual finding that Naguiat Enterprises .actually managed, supervised and controlled employment terms of the taxi drivers, making it their indirect employer. As adverted to earlier, factual findings of quasi-judicial bodies are binding upon the court in the absence of a showing of grave abuse of discretion.

Unfortunately, the NLRC did not discuss or give any explanation for holding Naguiat Enterprises and its officers jointly and severally liable in discharging CFTI's liability for payment of separation pay. We again remind those concerned that decisions, however concisely written, must distinctly and clearly set forth the facts and law upon which they are based.[17] This rule applies as well to dispositions by quasi-judicial and administrative bodies.

Naguiat Enterprises Not Liable

In impleading Naguiat Enterprises as solidarily liable for the obligations of CFTI, respondents rely on Articles 106,[18] 107[19] and 109[20] of the Labor Code.

Based on factual submissions of the parties, the labor arbiter, however, found that individual respondents were regular employees of CFTI who received wages on a boundary or commission basis.

We find no reason to make a contrary finding. Labor-only contracting exists where: (1) the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machinery, and work premises, among others; and (2) the workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer.[21] Independent contractors, meanwhile, are those who exercise independent employment, contracting to do a piece of work according to their own methods without being subject to control of their employer except as to the result of their work.[22]

From the evidence proffered by both parties, there is no substantial basis to hold that Naguiat Enterprises is an indirect employer of individual respondents much less a labor only contractor. On the contrary, petitioners submitted documents such as the drivers' applications for employment with CFTI,[23] and social security remittances[24] and payroll[25] of Naguiat Enterprises showing that none of the individual respondents were its employees. Moreover, in the contract[26] between CFTI and AAFES, the former, as concessionaire, agreed to purchase from AAFES for a certain amount within a specified period a fleet of vehicles to be "ke(pt) on the road" by CFTI, pursuant to their concessionaire's contract. This indicates that CFTI became the owner of the taxicabs which became the principal investment and asset of the company.

Private respondents failed to substantiate their claim that Naguiat Enterprises managed, supervised and controlled their employment. It appears that they were confused on the personalities of Sergio F. Naguiat as an individual who was the president of CFTI, and Sergio F. Naguiat Enterprises, Inc., as a separate corporate entity with a

separate business. They presumed that Sergio F. Naguiat, who was at the same time a stockholder and director[27] of Sergio F. Naguiat Enterprises, Inc., was managing and controlling the taxi business on behalf of the latter. A closer scrutiny and analysis of the records, however, evince the truth of the matter: that Sergio F. Naguiat, in supervising the-taxi drivers and determining their employment terms, was rather carrying out his responsibilities as president of CFTI. Hence, Naguiat Enterprises as a separate corporation does not appear to be involved at all in the taxi business.

To illustrate further, we refer to the testimony of a driver-claimant on cross examination.

> "Atty. Suarez
>
> Is it not true that you applied not with Sergio F. Naguiat but with Clark Field Taxi?
>
> Witness
>
> I applied for (sic) Sergio F. Naguiat
>
> Atty. Suarez
>
> Sergio F. Naguiat as an individual or the corporation?
>
> Witness
>
> 'Sergio F. Naguiat na tao.'
>
> Atty. Suarez
>
> Who is Sergio F. Naguiat?
>
> Witness
>
> He is the one managing the Sergio F. Naguiat Enterprises and he is the one whom we believe as our employer.

Atty. Suarez

What is exactly the position of Sergio F. Naguiat with the Sergio F. Naguiat Enterprises?

Witness

He is the owner, sir.

Atty. Suarez

How about with Clark Field Taxi Incorporated what is the position of Mr. Naguiat?

Witness

What I know is that he is a concessionaire.

x x x

Atty. Suarez

But do you also know that Sergio F. Naguiat is the President of Clark Field Taxi, Incorporated?

Witness

Yes. sir.

Atty. Suarez

How about Mr. Antolin Naguiat what is his role in the taxi services, the operation of the Clark Field Taxi, Incorporated?

Witness

He is the vice president."[28]

And, although the witness insisted that Naguiat Enterprises was his employer, he could not deny that he received his salary from the office of CFTI inside the base.[29]

Another driver-claimant admitted, upon the prodding of counsel for the corporations, that Naguiat Enterprises was in the trading business while CFTI was in taxi services.[30]

In addition, the Constitution[31] of CFTI-AAFES Taxi Drivers Association which, admittedly, was the union of individual respondents while still working at Clark Air Base, states that members thereof are the employees of CFTI and "(f)or collective bargaining purposes, the definite employer is the Clark Field Taxi Inc."

From the foregoing, the ineludible conclusion is that CFTI was the actual and direct employer of individual respondents, and that Naguiat Enterprises was neither their indirect employer nor labor-only contractor. It was not involved at all in the taxi business.

CFTI president solidarily liable

Petitioner-corporations would likewise want to avoid the solidary liability of their officers. To bolster their position, Sergio F. Naguiat and Antolin T. Naguiat specifically aver that they were denied due process since they were not parties to the complaint below.[32] In the broader interest of justice, we, however, hold that Sergio F. Naguiat, in his capacity as president of CFTI, cannot be exonerated from joint and several liability in the payment of separation pay to individual respondents.

A.C. Ransom Labor Union-CCLU vs. NLRC[33] is the case in point. A.C. Ransom Corporation was a family corporation, the stockholders of which were members of the Hernandez family. In 1973, it filed an application for clearance to close or cease operations, which was duly granted by the Ministry of Labor and Employment, without prejudice to the right of employees to seek redress of grievance, if any. Backwages of 22 employees, who engaged in a strike prior to the closure, were subsequently computed at P164,984.00. Up to September 1976, the union filed about ten (10) motions for execution

against the corporation, but none could be implemented, presumably for failure to find leviable assets of said corporation. In its last motion for execution, the union asked that officers and agents of the company be held personally liable for payment of the backwages. This was granted by the labor arbiter. In the corporation's appeal to the NLRC, one of the issues raised was: "Is the judgment against a corporation to reinstate its dismissed employees with backwages, enforceable against its officer and agents, in their individual, private and personal capacities, who were not parties in the case where the judgment was rendered?" The NLRC answered in the negative, on the ground that officers of a corporation are not liable personally for official acts unless they exceeded the scope of their authority.

On certiorari, this Court reversed the NLRC and upheld the labor arbiter. In imposing joint and several liability upon the company president, the Court, speaking through Mme. Justice Ameurfina Melencio-Herrera, ratiocinated this wise:

> "(b) How can the foregoing (Articles 265 and 273 of the Labor Code) provisions be implemented when the employer is a corporation? The answer is found in Article 212(c) of the Labor Code which provides:
>
> > '(c) 'Employer' includes any person acting in the interest of an employer, directly or indirectly. The term shall not include any labor organization or any of its officers or agents except when acting as employer.'

The foregoing was culled from Section 2 of RA 602, the Minimum Wage Law. Since RANSOM is an artificial person, it must have an officer who can be presumed to be the employer, being the 'person acting in the interest of (the) employer' RANSOM. The corporation, only in the technical sense, is the employer.

The responsible officer of an employer corporation can be held personally, not to say even criminally, liable for nonpayment of back wages. That is the policy of the law:

(c) If the policy of the law were otherwise, the corporation employer can have devious ways for evading payment of back wages.

(d) The record does not clearly identify 'the officer or officers' of RANSOM directly responsible for failure to pay the back wages of the 22 strikers. In the absence of definite proof in that regard, we believe it should be presumed that the responsible officer is the President of the corporation who can be deemed the chief operation officer thereof. Thus, in RA 602, criminal responsibility is with the 'Manager or in his default, the person acting as such.' In RANSOM, the President appears to be the Manager." (Emphasis supplied.)

Sergio F. Naguiat, admittedly, was the president of CFTI who actively managed the business. Thus, applying the ruling in A. C. Ransom, he falls within the meaning of an "employer" as contemplated by the Labor Code, who may be held jointly and severally liable for the obligations of the corporation to its dismissed employees.

Moreover, petitioners also conceded that both CFTI and Naguiat Enterprises were "close family corporations"[34] owned by the Naguiat family. Section 100, paragraph 5, (under Title XII on Close Corporations) of the Corporation Code, states:

"(5) To the extent that the stockholders are actively engage(d) in the management or operation of the business and affairs of a close corporation, the stockholders shall be held to strict fiduciary duties to each other and among themselves. Said stockholders shall be personally liable for corporate torts unless the corporation has obtained reasonably adequate liability insurance." (Emphasis supplied)

Nothing in the records show whether CFTI obtained "reasonably adequate liability insurance;" thus, what remains is to determine whether there was corporate tort.

Our jurisprudence is wanting as to the definite scope of "corporate tort." Essentially, "tort" consists in the violation of a right given or the omission of a duty imposed by law.[35] Simply stated, tort is a breach

of a legal duty.[36] Article 283 of the Labor Code mandates the employer to grant separation pay to employees in case of closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, which is the condition obtaining at bar. CFTI failed to comply with this law-imposed duty or obligation. Consequently, its stockholder who was actively engaged in the management or operation of the business should be held personally liable.

Furthermore, in MAM Realty Development vs. NLRC,[37] the Court recognized that a director or officer may still be held solidarily liable with a corporation by specific provision of law. Thus:

> "A corporation, being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, acting as such corporate agents, are not theirs but the direct accountabilities of the corporation they represent. True, solidary liabilities may at times be incurred but only when exceptional circumstances warrant such as, generally, in the following cases:
>
> x x x
>
> 4. When a director, trustee or officer is made. by specific provision of law, personally liable for his corporate action." (Footnotes omitted)

As pointed out earlier, the fifth paragraph of Section 100 of the Corporation Code specifically imposes personal liability upon the stockholder actively managing or operating the business and affairs of the close corporation.

In fact, in posting the surety bond required by this Court for the issuance of a temporary restraining order enjoining the execution of the assailed NLRC Resolutions, only Sergio F. Naguiat, in his individual and personal capacity, principally bound himself to comply with the obligation thereunder, i.e., "to guarantee the payment to private respondents of any damages which they may incur by reason of the issuance of a temporary restraining order sought, if it should be finally adjudged that said principals were not entitled thereto."[38]

The Court here finds no application to the rule that a corporate officer cannot be held solidarily liable with a corporation in the absence of evidence that he had acted in bad faith or with malice.[39] In the present case, Sergio Naguiat is held solidarily liable for corporate tort because he had actively engaged in the management and operation of CFTI, a close corporation.

Antolin Naguiat not personally liable

Antolin T. Naguiat was the vice president of the CFTI. Although he carried the title of "general manager" as well, it had not been shown that he had acted in such capacity. Furthermore, no evidence on the extent of his participation in the management or operation of the business was proffered. In this light, he cannot be held solidarily liable for the obligations of CFTI and Sergio Naguiat to the private respondents.

Fourth Issue: No Denial of Due Process

Lastly, in petitioners' Supplement to their original petition, they assail the NLRC Resolution holding Sergio F. Naguiat and Antolin T. Naguiat jointly and severally liable with petitioner-corporations in the payment of separation pay, averring denial of due process since the individual Naguiats were not impleaded as parties to the complaint.

We advert to the case of A.C. Ransom once more. The officers of the corporation were not parties to the case when the judgment in favor of the employees was rendered. The corporate officers raised this issue when the labor arbiter granted the motion of the employees to enforce the judgment against them. In spite of this, the Court held the corporation president solidarily liable with the corporation.

Furthermore, Sergio and Antolin Naguiat voluntarily submitted themselves to the jurisdiction of the labor arbiter when they, in their individual capacities, filed a position paper[40] together with CFTI, before the arbiter. They cannot now claim to have been denied due process since they availed of the opportunity to present their positions.

WHEREFORE, the foregoing premises considered, the petition is **PARTLY GRANTED**. The assailed February 28, 1994 Resolution of the NLRC is hereby **MODIFIED** as follows:

(1) Petitioner Clark Field Taxi, Incorporated, and Sergio F. Naguiat, president and co-owner thereof, are ORDERED to pay, jointly and severally, the individual respondents their separation pay computed at US$120.00 for every year of service, or its peso equivalent at the time of payment or satisfaction of the judgment;

(2) Petitioner Sergio F. Naguiat Enterprises, Incorporated, and Antolin T. Naguiat are ABSOLVED from liability in the payment of separation pay to individual respondents.

SO ORDERED.

Narvasa, *C.J.*, Davide, Jr., Melo and Francisco, *JJ.*, concur.

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[1] Composed of Comm. Ireneo B. Bernardo, ponente, with Comms. Lourdes C. Javier (presiding commissioner) and Joaquin A. Tanodra, concurring.
[2] Rollo, pp. 69-73.
[3] Ibid., p. 82.
[4] Promulgated on June 4, 1993; rollo, pp. 48-56.
[5] Ibid., pp. 14-18.
[6] Ibid., pp. 20-29.
[7] Rollo, p. 56.
[8] Rollo, pp. 72-73.
[9] Rollo, pp. 131-132.
[10] Ibid., p. 6.
[11] Ibid., pp. 97-102.
[12] Bordeos, et al. vs. NLRC, et al., G.R. Nos. 115314-23, September 26, 1996.
[13] Maya Farms Employees Organization vs. NLRC, 239 SCRA 508, December 28, 1994.
[14] See Revidad vs. NLRC, 245 SCRA 356, June 27, 1995; St. Gothard Disco Pub vs. NLRC, 218 SCRA 321, 334, February 1, 1993.
[15] Mobil Employees Association vs. NLRC, 183 SCRA 737, March 28, 1990; See Catatista vs. NLRC, 247 SCRA 46, 1995; Shoppers Gain Supermart vs. NLRC G.R. No. 110731, July 26, 1996.
[16] Petition for Certiorari, p. 2; rollo, p. 3.
[17] Del Mundo vs. Court of Appeals, 240 SCRA 348, January 20, 1995; Estoya vs. Abraham-Singson, 237 SCRA 1, September 26, 1994.

[18] "Art. 106. Contractor or subcontractor. — Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

The Secretary of Labor may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under this Code. In so prohibiting. or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered as the employer for the purposes of this Code, to prevent any violation or circumvention of any. provision of this Code.

There is 'labor-only' contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered as merely an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him."

[19] "Art. 107. Indirect employer. — The provisions of the immediately preceding Article shall likewise apply to any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project."

[20] "Art. 109. Solidary liability. — The provisions of existing laws to the contrary notwithstanding, every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code. For purposes of determining the extent of their civil liability under this Chapter, they shall be considered as direct employers."

[21] Neri vs. NLRC, 224 SCRA 717, July 23, 1993.

[22] Villuga vs. NLRC, 225 SCRA 537, August 23, 1993.

[23] Records, pp. 33-46.

[24] Ibid., pp. 142-205.

[25] Ibid., 206-230.

[26] Annex "C" to Respondent CFTI's (petitioner herein) Appearance and Omnibus Motion; records, pp. 47-48.

[27] Motion for Reconsideration, p. 6; rollo, p. 79.

[28] TSN, May 18, 1992, pp. 3-6.

[29] Ibid., pp. 9-10.

[30] TSN, May 29, 1992, pp. 8-9.

[31] Records, pp. 235-246.

[32] Rollo, p. 231.
[33] 142 SCRA 269, June 10, 1986.
[34] Motion for Reconsideration, p. 4; records, p. 436.
[35] Words and Phrases, Permanent Edition, v. 41A, p. 503.
[36] Ibid.; Bouvier's Law Dictionary, Third Revision, v. 2.
[37] 244 SCRA 797, 802-803, June 2, 1995.
[38] Surety bond; rollo, p. 105.
[39] See, Sunio vs. NLRC, 127 SCRA 390, January 31, 1984; and General Bank and Trust Co. vs. Court of Appeals, 135 SCRA 569, April 9, 1985.
[40] Annex "C" to Petition; rollo, pp. 31-36.