



**Republic of the Philippines
Supreme Court
Baguio City**

THIRD DIVISION

PHILIPPINE PIZZA, INC.,

G.R. Nos. 245982-83

Petitioner,

Present:

- versus -

CAGUIOA, J., *Chairperson,*
INTING,
GAERLAN,
ROSARIO,** and
SINGH, JJ.

**MICHAEL A. ORAA,
BERNARDITO* R. GARCIA,
JR. AND CONSOLIDATED
BUILDING MAINTENANCE,
INC.,**

Promulgated:

Respondents.

January 11, 2023

MisDcBatt

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DECISION

INTING, J.:

Before the Court is a Petition¹ for Review on *Certiorari* assailing the Decision² dated July 9, 2018 and the Resolution³ dated March 4, 2019 of the Court of Appeals (CA) in CA-G.R. SP Nos. 145514 and 147663. The CA affirmed the Decision⁴ dated December 28, 2015 and the Resolutions dated February 19, 2016⁵ and June 30, 2016⁶ of the National Labor Relations Commission (NLRC) in NLRC LAC No. 10-002780-15

* Spelled as Bernadito in some parts of the *rollo*.

** Designated Additional Member vice Associate Justice Japar B. Dimaampao per Raffle dated January 10, 2022.

¹ *Rollo*, pp. 16-54.

² *Id.* at 70-92. Penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Rosmari D. Carandang (a retired Member of the Court) and Pedro B. Corales.

³ *Id.* at 94-95. Penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Japar B. Dimaampao (now a Member of the Court) and Pedro B. Corales.

⁴ *Id.* at 380-397. Penned by Presiding Commissioner Grace M. Venus and concurred in by Commissioners Numeriano D. Villena and Bernardino B. Julve.

⁵ *Id.* at 448-450. Penned by Presiding Commissioner Grace M. Venus and concurred in by Commissioner Bernardino B. Julve.

⁶ *Id.* at 452-455. Penned by Presiding Commissioner Grace M. Venus and concurred in by Commissioners Bernardino B. Julve and Leonard Vinz O. Ignacio.

(NLRC NCR Case No. 01-00483-15) that affirmed the Decision⁷ dated July 28, 2015 of the Labor Arbiter (LA). The LA found that Michael A. Oraa (Oraa) and Bernardito R. Garcia, Jr. (Garcia) (collectively, respondents) were regular employees of Philippine Pizza, Inc. (petitioner), and that they were illegally dismissed from employment.

The Antecedents

Petitioner is a domestic corporation and the franchisee and operator of the Pizza Hut chain of restaurants.⁸

On the other hand, Consolidated Building Maintenance, Inc. (CBMI) is a corporation engaged in the business of providing janitorial, kitchen, messengerial, elevator maintenance, and allied services to various clients, such as petitioner.⁹

On January 21, 2015, respondents filed a complaint for constructive illegal dismissal with prayer for reinstatement and money claims against petitioner and CBMI.¹⁰ In their *Magkasanib na Sinumpaang Salaysay*, respondents averred the following: (1) petitioner hired Oraa as a team member in April 2005, while it engaged Garcia as a delivery rider in January 2010;¹¹ (2) they were deemed as regular employees of petitioner as their jobs were necessary and desirable to its business;¹² (3) it was petitioner which exercised control and supervision over the manner of their work, and which owned the tools they used in the performance of their duties;¹³ (4) upon the end of their respective contracts, petitioner advised them to apply with CBMI;¹⁴ (5) eventually, CBMI hired them to do the same jobs and deployed them to their former Pizza Hut branches;¹⁵ and (6) on account of the previous complaint for regularization which they filed against petitioner in February 2013 (the earlier regularization case), petitioner constructively dismissed them from employment.¹⁶

According to Oraa, petitioner no longer allowed him to report for work on December 22, 2014 after he went on leave on December 21, 2014

⁷ Id. at 268-302. Penned by Labor Arbiter (LA) Joel S. Lustria.

⁸ Id. at 18.

⁹ Id. at 274-275.

¹⁰ Id. at 74 and 268.

¹¹ Id. at 193, 196.

¹² Id. at 194, 196-197.

¹³ Id. at 194, 197.

¹⁴ Id. at 194, 196.

¹⁵ Id. at 194, 197.

¹⁶ Id. at 195, 197.

to attend his cousin's wedding.¹⁷

On the other hand, Garcia narrated that on December 20, 2014, he rendered work from 1:00 p.m. until 1:00 a.m. Consequently, he failed to report for his regular shift on December 21, 2014. Garcia alleged that petitioner no longer allowed him to report for work on December 22, 2014.¹⁸

In defense, CBMI alleged the following in its Position Paper:¹⁹ (1) it is a legitimate job contractor and respondents were its employees;²⁰ (2) respondents incurred unauthorized absences from December 21 to December 27, 2014;²¹ (3) it exercised its management prerogative when it dismissed respondents from work for their unauthorized absences;²² (4) it served a Notice to Explain upon Oraa *via* registered mail, but he failed to respond despite notice;²³ (5) for Oraa's failure to reply, it found him liable for abandonment of work and dismissed him from employment;²⁴ and (6) Garcia's complaint before the LA was premature as he filed it during the pendency of the administrative investigation of his case.²⁵

For its part, petitioner averred in its Position Paper²⁶ that respondents were the employees of CBMI, and that the latter is a legitimate job contractor.²⁷ To prove its allegation, petitioner adduced the following pieces of evidence: (1) a copy of its Contract of Services²⁸ with CBMI executed on February 8, 2002; (2) CBMI's Articles of Incorporation;²⁹ (3) CBMI's Company Profile;³⁰ (4) Independent Auditor's Report as of December 2012 and 2013; (5) CBMI's Certificate of Registration³¹ issued by the DOLE valid until March 1, 2018; and (6) Certifications³² showing CBMI's remittance of respondents' premium contributions to the Social Security System, the Pag-IBIG Fund, and the Philippine Health Insurance Corporation covering the periods of April 2006 to December 2014 for Oraa, and December 2010 to December

¹⁷ Id. at 73.

¹⁸ Id.

¹⁹ Id. at 161-191.

²⁰ Id. at 74.

²¹ Id. at 74-75.

²² Id. at 75.

²³ Id.

²⁴ Id. at 279.

²⁵ Id.

²⁶ Id. at 141-160.

²⁷ Id. at 75-76.

²⁸ Id. at 115-120.

²⁹ Id. at 96.

³⁰ Id. at 108-114.

³¹ Id. at 97. Signed by Regional Director Alex V. Avila.

³² Id. at 124-140.

2014 for Garcia.³³

Ruling of the LA

In the Decision³⁴ dated July 28, 2015, the LA ruled in favor of respondents and held that they were regular employees of petitioner because: (1) it controlled and supervised the manner of respondents' work;³⁵ and (2) it owned the tools and machines which respondents used in the performance of their duties.³⁶ According to the LA, the transfer of respondents from petitioner to CBMI was merely a scheme to prevent respondents from attaining regular employment status.³⁷

Further, the LA held that respondents were deprived of their constitutional right to due process as petitioner summarily dismissed them from employment,³⁸ and it failed to establish that they abandoned their work.³⁹

Petitioner and CBMI separately appealed the LA Decision.⁴⁰

Ruling of the NLRC

In the Decision⁴¹ dated December 28, 2015, the NLRC affirmed the finding of the LA that respondents were regular employees of petitioner and not of CBMI.⁴² In so ruling, the NLRC adopted its Decision dated November 29, 2013 in the earlier regularization case; it held that such decision could no longer be modified as it already attained finality, *viz.*:⁴³

Records indisputably reveal that Oraa and Garcia's status as regular employees of PPI has already been declared by Labor Arbiter Adela Damasco in her decision dated 30 September 2013 and affirmed by the Third Division of this Commission on 29 November 2013. An Entry of Judgment was issued on 26 May 2014 certifying that the

³³ Id. at 76.

³⁴ Id. at 268-302.

³⁵ Id. at 296.

³⁶ Id.

³⁷ Id. at 296-297.

³⁸ Id. at 299-300.

³⁹ Id. at 300-301.

⁴⁰ Id. at 303-343 and 344-378.

⁴¹ Id. at 380-397.

⁴² Id. at 78 and 390-391.

⁴³ In her Decision dated September 30, 2013, LA Adela Damasco ruled in respondents' favor in the Regularization Case. The NLRC Third Division rendered a Decision dated November 29, 2013, which affirmed the LA Decision. The NLRC Third Division issued an Entry of Judgment dated May 26, 2014, saying that its Decision had become final and executory on April 16, 2014. Id. at 389.

aforesaid Decision and Resolution to be final and executory on 16 April 2014.⁴⁴

Likewise, the NLRC agreed with the LA that petitioner illegally dismissed respondents from employment.⁴⁵

CBMI⁴⁶ and petitioner⁴⁷ filed their respective motions for reconsideration, but the NLRC denied them in the Resolutions dated February 19, 2016⁴⁸ and June 30, 2016.⁴⁹

Aggrieved, CBMI and petitioner elevated the case to the CA.⁵⁰

Ruling of the CA

In the assailed Decision⁵¹ dated July 9, 2018, the CA did not agree with the NLRC that the latter's Decision dated November 29, 2013 in the earlier regularization case already became final.⁵² The CA clarified that CBMI was able to file a timely petition for *certiorari* to annul the NLRC Decision dated November 29, 2013, which held that CBMI was a labor-only contractor.⁵³ As such, the CA held that "*the appellate court can still grant the petition and modify, nullify[,] and reverse [the] decision or resolution of the NLRC.*"⁵⁴

However, the CA found no grave abuse of discretion on the part of the NLRC when it held that CBMI was a labor-only contractor. The CA applied "*the doctrine of non-interference*" of judicial stability and adopted its prior Decision dated September 16, 2015 in the earlier regularization case that respondents were regular employees of petitioner.⁵⁵

Lastly, the CA held that petitioner illegally dismissed respondents from employment as petitioner failed to prove that respondents abandoned their work, when they committed the alleged unauthorized absences.⁵⁶

⁴⁴ Id.

⁴⁵ Id. at 391-395.

⁴⁶ Id. at 426-447.

⁴⁷ Id. at 399-424.

⁴⁸ Id. at 448-450.

⁴⁹ Id. at 452-455.

⁵⁰ See petitioner's Petition for *Certiorari* under Rule 65 of the Rules of Court with Urgent Prayer for Temporary Restraining Order and/or Preliminary Injunction; id. at 457-488.

⁵¹ Id. at 70-92.

⁵² Id. at 80.

⁵³ Id. at 84-85.

⁵⁴ Id. at 81.

⁵⁵ Id. at 85.

⁵⁶ Id. at 87.

Petitioner moved for reconsideration, but the CA dismissed the motion⁵⁷ in the Resolution⁵⁸ dated March 4, 2019.

The Issues

The issues in the case are (1) whether CBMI is a legitimate job contractor and (2) whether respondents were illegally dismissed from employment.

Ruling of the Court

The issues of whether CBMI is a legitimate job contractor and whether respondents were illegally dismissed from employment are *factual matters* which the Court generally does not dwell upon in a petition for review on *certiorari* under Rule 45 of the Rules of Court. The Court's jurisdiction in a Rule 45 Petition is "limited to reviewing errors of law in the absence of any showing that the factual findings complained of are devoid of support in the records or are glaringly erroneous."⁵⁹ In the case, the Court opts to review the factual finding of the CA that CBMI is a labor-only contractor as such inference is manifestly mistaken and based on misapprehension of facts.⁶⁰

Equally important is the rule that "in a Rule 45 review in labor cases, the Court examines the CA's Decision from the prism of whether [in a petition for *certiorari*,] the latter had correctly determined the presence or absence of grave abuse of discretion in the NLRC's Decision."⁶¹

In labor cases, there is grave abuse of discretion on the part of the NLRC when its findings and conclusions are not supported by substantial evidence, *i.e.*, "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." Such grave abuse of discretion on the part of the NLRC warrants the grant of the extraordinary remedy of *certiorari*.⁶²

⁵⁷ Id. at 490-508.

⁵⁸ Id. at 94-95.

⁵⁹ *Bank of the Phil. Islands v. Bank of the Phil. Islands Employees Union–Metro Manila*, 693 Phil. 82, 90 (2012), citing *Retuya v. Hon. Dumarpa*, 455 Phil. 734, 747 (2003).

⁶⁰ See *Republic v. Martinez*, G.R. Nos. 224438-40, September 3, 2020.

⁶¹ See *Slord Development Corp. v. Noya*, G.R. No. 232687, February 4, 2019.

⁶² *Ace Navigation Company v. Garcia*, 760 Phil. 924, 932 (2015); *Mercado, et al. v. AMA Computer College–Parañaque City, Inc.*, 632 Phil. 228, 248 (2010).

The status of CBMI as a legitimate job contractor is supported by substantial evidence and, in fact, settled by case laws.

That CBMI is a legitimate job contractor had long been settled in the case laws of *Consolidated Building Maintenance, Inc. v. Asprec*⁶³ (*Asprec*), *Philippine Pizza, Inc. v. Cayetano*⁶⁴ (*Cayetano*), and *Borce v. PPI Holdings, Inc.*⁶⁵ (*Borce*).

The facts in *Asprec*, *Cayetano*, and *Borce* are substantially similar to the instant case. Like herein respondents who aver that petitioner hired them as a team member and delivery rider in 2005 and 2010, respectively, the employees in *Asprec*, *Cayetano*, and *Borce*, also alleged the following: (1) petitioner initially hired them as team members/delivery riders sometime between 2000 to 2010; (2) to prevent the employees in *Asprec*, *Cayetano*, and *Borce*, from becoming regular employees, petitioner transferred them as well to CBMI; (3) subsequently, CBMI deployed them to various branches of petitioner to perform their former duties as team members/delivery riders; and (4) for having been suspended or terminated from employment, they filed actions for regularization and/or illegal dismissal against petitioner.⁶⁶

In *Asprec*, the Court explained why CBMI is considered as a legitimate job contractor, *viz.*:

Clearly, CBMI has substantial capital to maintain its manpower business. From the evidence adduced by CBMI, it is also clear that it runs a business independent from the PPI. Based on its registration with the Securities and Exchange Commission (SEC), CBMI has been in existence since 1967; and has since provided a variety of services to entities in various fields, such as banking, hospitals, and even government institutions. CBMI counts among its clients, De La Salle University (DLSU), Philippine National Bank (PNB), Smart Communications, Inc., SM Supermalls, and the United States (US) Embassy. In the case of the US Embassy for instance, CBMI has been a service contractor for seven years.

Above all, CBMI maintains the “right of control” over the respondents. x x x⁶⁷

⁶³ 832 Phil. 630 (2018).

⁶⁴ 839 Phil. 381 (2018).

⁶⁵ G.R. No. 252718 (Notice), December 2, 2020.

⁶⁶ Id.

⁶⁷ Supra at 646-647.

Similarly, in *Cayetano* and *Borce*, the Court concluded that CBMI is a legitimate job contractor, and thus, the employer of therein respondents.

“The doctrine of *stare decisis* commands that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different.”⁶⁸ Adhering to the principle of *stare decisis*, the Court adopts the conclusions reached in the above stated case laws that CBMI is a legitimate job contractor, and thus, the employer of respondents.

Respondents were illegally dismissed from employment.

CBMI argues that respondents’ unauthorized absences from December 21 to December 27, 2014 were tantamount to abandonment of work which is a just cause to terminate their employment.⁶⁹

The Court disagrees.

“Abandonment, as just cause for dismissal from work, is analogous to gross and habitual neglect of duty.”⁷⁰ It is a “deliberate and unjustified refusal of an employee to resume his employment.”⁷¹ Thus, for a valid finding of abandonment, it is incumbent upon CBMI to prove these two elements: (1) respondents’ failure to report for work or the absence was without valid or justifiable reason; and (2) respondents’ clear intention to sever the employer-employee relationship with CBMI.⁷² The second element, as the more determinative factor, must be manifested by overt acts showing that respondents have no more intention to continue their employment.⁷³

Notably, “[i]n an illegal dismissal case, the *onus probandi* rests on the employer to prove that the employee’s dismissal was for a valid cause.”⁷⁴ Therefore, the burden of proof that there was abandonment lies with the employer. In the case, CBMI failed to prove that respondents clearly, voluntarily, and intentionally abandoned their work with no

⁶⁸ *Borce v. PPI Holdings, Inc.*, supra note 65, citing *Republic v. Rosario*, 779 Phil. 418, 433 (2016).

⁶⁹ *Rollo*, pp. 74-75.

⁷⁰ *Robustan, Inc. v. Court of Appeals*, G.R. No. 223854, March 15, 2021.

⁷¹ *Id.*, citing *Protective Maximum Security Agency, Inc. v. Fuentes*, 753 Phil. 482, 507-508 (2015), further citing *Agabon v. NLR*, 485 Phil. 248, 278 (2004).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Villanueva v. Ganco Resort and Recreation, Inc.*, G.R. No. 227175, January 8, 2020, citing *Reyes v. Glaucoma Research Foundation, Inc.*, 760 Phil. 779, 789 (2015).

intention of returning. Other than respondents' alleged absence from work for a few days, CBMI failed to prove any overt act on the part of respondents to show their deliberate and actual intent to abandon their employment. To stress, "*mere absence or failure to report for work does not, ipso facto, amount to abandonment of work.*"⁷⁵

Moreover, it is well settled that when an employee takes steps to protest his dismissal, it cannot be said that he has abandoned his work because a complaint for illegal dismissal is inconsistent with the charge of abandonment.⁷⁶

In the case, respondents' filing of a complaint for illegal dismissal on January 21, 2015, after they were prevented from returning to work on December 22, 2014,⁷⁷ is inconsistent with CBMI's allegation that they indeed abandoned their work.

Also, the Court finds that CBMI failed to rebut respondents' allegation that they were prevented to return to work on December 22, 2014.⁷⁸ In fact, on appeal before the NLRC, petitioner itself introduced evidence which showed that Oraa indeed excused himself on December 21, 2014 to attend his cousin's wedding; and that Garcia was absent on December 21, 2014 because he rendered straight duty on December 20, 2014 from 1:00 p.m. until 1:00 a.m..⁷⁹

Even assuming that respondents voluntarily abandoned their work, CBMI failed to comply with the two-notice rule under the law, resulting in the violation of respondents' right to procedural due process.⁸⁰

To stress, respondents were both prevented from returning to work on December 22, 2014. That respondents' right to procedural due process was violated is demonstrated by the fact that CBMI sent *via* registered mail the Notice to Explain to Oraa only on January 30, 2015, while the Notice of Charge/Notice to Explain against Garcia was dated March 13, 2015. Significantly, CBMI sent these notices long after respondents were already dismissed from work and after the complaint for illegal dismissal was already lodged with the LA on January 21, 2015.⁸¹

⁷⁵ *JOSAN v. Aduna*, 682 Phil. 641, 648 (2012), citing *Samarca v. Arc-Men Industries, Inc.*, 459 Phil. 506 (2003).

⁷⁶ *Id.* at 648-649. Citations omitted.

⁷⁷ *Rollo*, pp. 73-74.

⁷⁸ *Id.* at 88.

⁷⁹ *Id.*

⁸⁰ *Id.* at 89.

⁸¹ *Id.*

For having been illegally dismissed from employment, respondents are entitled to reinstatement without loss of seniority rights and other privileges, as well as full backwages, inclusive of allowances and other benefits, or their monetary equivalent computed from the time the compensation was not paid up to the time of their actual reinstatement.⁸²

Finally, pursuant to the Court's pronouncement in *Nacar v. Gallery Frames*,⁸³ interest at the rate of 6% *per annum* is imposed on the total monetary awards in favor of respondents from the date of finality of this Decision until full satisfaction.⁸⁴

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated July 9, 2018 and the Resolution dated March 4, 2019 of the Court of Appeals in CA-G.R. SP Nos. 145514 and 147663 are **AFFIRMED WITH MODIFICATION** in that Consolidated Building Maintenance, Inc. is declared a legitimate job contractor, and thus, the employer of respondents Michael A. Oraa and Bernardito R. Garcia, Jr.

Accordingly, Consolidated Building Maintenance, Inc. is **ORDERED** as follows:

1. to **REINSTATE** respondents Michael A. Oraa and Bernardito R. Garcia, Jr. to their former and/or substantially equivalent positions without loss of seniority rights, privileges, and other benefits;
2. to **PAY** respondents Michael A. Oraa and Bernardito R. Garcia, Jr., their backwages computed from the time they were illegally dismissed up to their actual reinstatement; and
3. to **PAY** respondents Michael A. Oraa and Bernardito R. Garcia, Jr. an amount equivalent to 10% of the total judgment awards, as and for attorney's fees.

The total monetary award shall earn interest at the rate of 6% *per annum* from the date of the finality of this Decision until full satisfaction.

Further, the case is **REFERRED** to the Labor Arbiter for the computation and execution of the foregoing monetary awards due to respondents.

⁸² *Brown Madonna Press, Inc., et al. v. Casas*, 759 Phil. 479, 497 (2015).

⁸³ 716 Phil. 267 (2013).

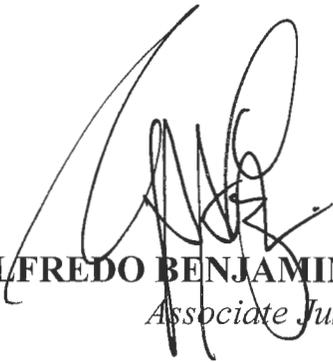
⁸⁴ *Id.* at 283.

SO ORDERED.

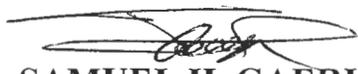


HENRI JEAN PAUL B. INTING
Associate Justice

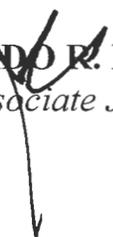
WE CONCUR:



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



SAMUEL H. GAERLAN
Associate Justice



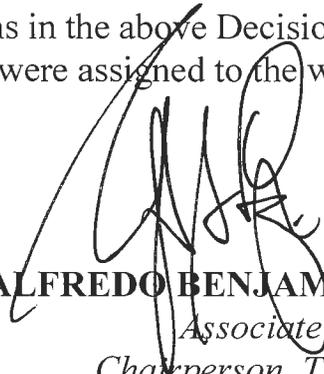
RICARDO R. ROSARIO
Associate Justice



MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.



ALEXANDER G. GESMUNDO
Chief Justice