SUPREME COURT
THIRD DIVISION

MAGNOLIA DAIRY PRODUCTS CORPORATION,
***Petitioner*,**

-versus-

G.R. No. 114952
January 29, 1996

NATIONAL LAB OR RELATIONS COMMISSION and JENNY A. CALIBO,
***Respondents*.**
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D E C I S I O N

FRANCISCO, *J.*:

Petitioner, a division of San Miguel Corporation (SMC), entered into a contract of service with Skillpower, Inc., a duly organized corporation engaged in the business of offering and providing manpower services to the public. On June 11, 1983, Skillpower, Inc., assigned private respondent Jenny A. Calibo to petitioner's Tetra Paster Division with these functions: "(i) to remove bulgings (damaged goods) from dilapidated cartons; (ii) to replace damaged goods and re-paste the carton thereof; (iii) to dispose the damaged goods or returned goods from Magnolia's warehouse to avoid bad odors; and (iv) to clean leftovers of leaking tetra pack by mopping or washing the contaminated premises."[1]

In September 1986, Skillpower, Inc., pulled-out private respondent from petitioner's Tetra Paster Division, but assigned her back on May 2, 1987 with the same functions. When petitioner's contract with Skillpower, Inc., expired, private respondent applied with Lippercon Services, Inc., also a corporation engaged in providing manpower services. In July 1987, Lippercon Services, Inc., assigned her to petitioner's Tetra Paster Division as a cleaning aide. In December 1987, she was terminated from service due to petitioner's installation of automated machines. On July 11, 1989, private respondent instituted a complaint for illegal dismissal against petitioner. In answer thereto, petitioner averred that it has no employer-employee relationship with private respondent and that the dismissal was prompted by the installation of labor saving devices — an authorized cause for dismissal under the Labor Code, as amended.

The Labor Arbiter ruled that petitioner is the private respondent's employer because Skillpower, Inc., and Lippercon Services, Inc., were mere "labor-only" contractors falling under Section 9, Rule VIII, Book III of the Omnibus Rules Implementing the Labor Code. The installation of labor saving devices was also ruled a valid ground for the termination of private respondent's employment, but the Labor Arbiter emphasized that this did not exculpate petitioner from the charge of illegal dismissal for its failure to observe the due process of law in terminating from service its employee. Accordingly, petitioner was ordered "to pay [private respondent] her backwages in the amount of P23,296.00 [and] [i]n lieu of reinstatement, to pay [private respondent] separation pay in the amount of P11,648.00."[2] On appeal, the NLRC modified the decision by directing private respondent's reinstatement and payment of backwages not exceeding three (3) years.[3] Thus, this petition.

The forefront question is whether or not an employer-employee relationship exists between petitioner and private respondent.

Petitioner insists that it has no employer-employee relationship with private respondent since Skillpower, Inc., and Lippercon Services, Inc., were solely responsible for private respondent's employment. More than that, petitioner points out that private respondent is assigned to a janitorial work which is neither related to nor connected

with its business of producing or manufacturing fruit juices. Petitioner argues that Skillpower, Inc., and Lippercon Services, Inc., cannot be deemed to be engaged in "labor-only" contracting since both have sufficient investment in the form of tools, equipments, machineries and work materials. Belatedly, in its petition and reply to public respondent's comment, petitioner additionally contends that both manpower corporations have sufficient capitalization with subscribed capital stocks amounting to P600,000.00 and P100,000.00 respectively.[4]

A perusal of petitioner's contracts of service with Skillpower, Inc., and Lippercon Services, Inc. reveals that the workers supplied by the two manpower corporations perform usual, regular and necessary services for petitioner's production of goods.[5] In this connection, the Labor Arbiter observed:

> "The undertaking given by respondents Skillpower and/or Lippercon in favor of respondent Magnolia was not the performance of a specific job. In the instant case, the undertaking of respondents Skillpower and/or Lippercon was to provide respondent Magnolia with a certain number of persons able to carry out the works in the production line. These workers supplied by Skillpower and/or Lippercon in performing their works utilized the premises, tools, equipments and machineries of respondent Magnolia and not those of the former. The work being performed by complainant, such as, to remove "bulgings" (damaged goods) from dilapidated cartoons, (sic) to replace damaged goods and re-paste the cartoon (sic) thereof, to dispose the damaged goods or returned goods from Magnolia's warehouse to avoid bad odors, to clean leftovers of leaking tetra-pack by mopping or washing the contaminated premises, and others, are of course directly related to the day to day operations of respondent Magnolia. Respondent Magnolia failed to negate this evidence that the undertaking assigned to the complainant is not related or necessary to its business operations. Necessarily, if the undertaking assigned to the complainant is not related nor necessary to the business operations, she cannot be considered as employee of respondent Magnolia. But the contrary holds true."[6]

In full agreement with the Labor Arbiter's finding, public respondent NLRC categorically stated the following, which we quote with approval:

> "As borne by the evidence on record, respondents Skillpower and Lippercon were merely agents of the respondent Magnolia and that the latter was the real employer. Consequently, the respondent Magnolia was responsible to the employee of the labor-only contract as if such employee had been directly employed by the employer. Thus, where "labor only" contracting exists, as in the case at bar, the status itself implies or establishes an employer-employee relationship between the employer and the employees of the "labor only" contractor. The law in effect holds both the employer and the "labor only" contractor responsible to the latter's employees for the more effective safeguarding of the employees' rights under the Labor Code. (PBCom vs. NLRC, 146 SCRA 347 [1986])."[7]

We note that petitioner also exercises the power to discipline and suspend private respondent — a factor that further militates against its claim. In fact, the latter was meted a suspension by Mr. Antonio Cinco, a supervisor of SMC.[8] The existence of an employer-employee relationship is factual in nature[9] and we give due deference to the NLRC's findings in the absence of a clear showing of arbitrariness in its appreciation of the evidence. Its findings in this case are fully supported by substantial evidence on record. Findings of fact of administrative agencies and quasi judicial bodies which have acquired expertise because their jurisdiction is confined to specific matters, like the NLRC, are generally accorded not only respect but even finality and are binding upon the Court.[10]

Thus, petitioner's contention that both Skillpower, Inc., and Lippercon Services, Inc., should be considered the employer of private respondent because they have sufficient investments in the form of tools, equipment, and machineries deserves scant consideration in view of the findings of the Labor Arbiter and the NLRC. In addition, petitioner's contention that both corporations have sufficient capitalization merits no significance. This issue was belatedly raised in this appeal. Issues and arguments not adequately and seriously brought below cannot be raised for the first time on

appeal. The resolution of this issue requires the admission and calibration of evidence and the Labor Arbiter and the NLRC did not pass upon it in their assailed decisions. Our review of labor cases are confined to questions of jurisdiction or grave abuse of discretion and the Supreme Court is not a trier of facts. We thus find that the NLRC neither exceeded its jurisdiction, nor abused its discretion, in ascertaining the existence of an employer-employee relationship between petitioner and private respondent.

Petitioner next asseverates that private respondent was not illegally dismissed since the termination of her employment was due to a cause expressly authorized by the Labor Code and the absence of notice therefor did not make it so. Petitioner cites Wenphil Corp. vs. NLRC, et. al. (170 SCRA 69 [1989]) in support of its claim that private respondent is only entitled to an indemnity of P1,000.00, but not backwages or separation pay. The NLRC, on the other hand, insists that termination without the benefit of any investigation or notice makes an employee's dismissal from service illegal.

Article 283 of the Labor Code provides in part:

> "ART. 283. Closure of establishment and reduction of personnel. — The employer may also terminate the employment of any employee due to the installation of labor saving devices, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) 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."

The law authorizes an employer, like the herein petitioner, to terminate the employment of any employee due to the installation of labor saving devices. The installation of these devices is a management prerogative, and the courts will not interfere with its exercise in the absence of abuse of discretion, arbitrariness, or maliciousness on the part of management, as in this case. Nonetheless, this did not excuse petitioner from complying with the

required written notice to the employee and to the Department of Labor and Employment (DOLE) at least one month before the intended date of termination. This procedure enables an employee to contest the reality or good faith character of the asserted ground for the termination of his services before the DOLE.[11]

The failure of petitioner to serve the written notice to private respondent and to the DOLE, however, does not ipso facto make private respondent's termination from service illegal so as to entitle her to reinstatement and payment of backwages.[12] If at all, her termination from service is merely defective because it was not tainted with bad faith or arbitrariness and was due to a valid cause.

The well settled rule is that the employer shall be sanctioned for non-compliance with the requirements of, or for failure to observe due process in terminating from service its employee. In Wenphil Corp. vs. NLRC,[13] we sanctioned the employer for this failure by ordering it to indemnify the employee the amount of P1,000.00. Similarly, we imposed the same amount as indemnification in Rubberworld (Phils.), Inc. vs. NLRC,[14] and, in Aurelio vs. NLRC.[15] The indemnity was raised to P10,000.00 in Reta vs. NLRC[16] and Alhambra Industries, Inc. vs. NLRC.[17] Subsequently, the sum of P5,000.00 was awarded to an employee in Worldwide Papermills, Inc. vs. NLRC,[18] and P2,000.00 in Sebuguero, et. al. vs. NLRC, et. al.[19] Recently, the sum of P5,000.00 was again imposed as indemnity against the employer.[20] We see no valid and cogent reason why petitioner should not be likewise sanctioned for its failure to serve the mandatory written notice. Under the attendant facts, we find the amount of P5,000.00, to be just and reasonable.

Lastly, the NLRC's grant of backwages and order of reinstatement are untenable. These awards are proper for illegally dismissed employees which obviously is not the situation in this case. The appropriate award is separation pay pursuant to the ruling of this Court in Philippine Long Distance Telephone Co., Inc. vs. NLRC:[21]

> "We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where

> the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice."

And Article 283 of the Labor Code which explicitly provides that an employee removed from service due to the installation of labor saving devices is entitled to separation pay.

WHEREFORE, the Decision appealed from is **MODIFIED** by setting aside the award of reinstatement and backwages. In lieu thereof, petitioner is ordered to pay separation pay equivalent to one (1) month pay for every year of service. In addition, petitioner is ordered to pay the sum of P5,000.00 as indemnification for its failure to serve the required notice mandated by law.

SO ORDERED.

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

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[1] Decision of the Labor Arbiter, Nov. 23, 1992, p. 2; Rollo p. 48.
[2] Id., p. 10; Rollo, p. 56.
[3] Decision of the NLRC, Dec. 29, 1993, p. 10; Rollo, p. 44.
[4] Reply To Public Respondent's Comment, March 31, 1995, pp. 2-3; Rollo, pp. 114-115.
[5] Rollo, pp. 41-42.
[6] Note 1, Supra, at p. 7-8; Rollo, p. 53-54
[7] Note 3, Supra, at pp. 8-9; Rollo, pp. 42-43.
[8] Comment, pp. 12-14, ([citing] pp. 293-296, Records).
[9] Aboitiz Shipping Employees Association vs. NLRC, 186 SCRA 825 (1990).
[10] Maya Farms Employees Organization. vs. NLRC, 239 SCRA 508, 512 (1994).
[11] Wiltshire File Co., Inc. vs. NLRC, 193 SCRA 665, 676 (1991).
[12] Sebuguero, et. al., vs. NLRC, et. al., G.R. No. 115394, Sept. 27, 1995.
[13] 170 SCRA 69 (1989).
[14] 183 SCRA 421 (1990).
[15] 221 SCRA 432 (1993).
[16] 232 SCRA 613 (1994).
[17] 238 SCRA 232 (1994).

[18] G.R. No. 113081, May 12, 1995.
[19] Note 12, Supra.
[20] Falguera vs. Labor Arbiter Linsangan, et. al., G.R. No. 114848, Dec. 14, 1995.
[21] 164 SCRA 671 (1988).