SUPREME COURT
SECOND DIVISION

MANILA ELECTRIC COMPANY,
***Petitioner*,**

-versus-

G.R. No. 145271
July 14, 2005

ROGELIO BENAMIRA, ERNIE DE SAGUN[1], DIOSDADO YOGARE, FRANCISCO MORO[2], OSCAR LAGONOY[3], Rolando Beni, Alex Beni, Raul[4] DE Guia, Armed Security & Detective Agency, Inc., (ASDAI) and Advance FORCES Security & INVESTIGATION Services, Inc., (AFSISI),
***Respondents*.**
x----------x

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Decision,[5] dated September 27, 2000, of the Court of Appeals (CA) in CA-G.R. SP No. 50520 which declared petitioner Manila Electric Company (MERALCO) as the direct employer of individual respondents Rogelio Benamira, Ernie De

Sagun, Diosdado Yogare, Francisco Moro, Oscar Lagonoy, Rolando Beni, Alex Beni and Raul De Guia (individual respondents for brevity).

The factual background of the case is as follows:

The individual respondents are licensed security guards formerly employed by People's Security, Inc. (PSI) and deployed as such at MERALCO's head office in Ortigas Avenue, Pasig, Metro Manila.

On November 30, 1990, the security service agreement between PSI and MERALCO was terminated.

Immediately thereafter, fifty-six of PSI's security guards, including herein eight individual respondents, filed a complaint for unpaid monetary benefits against PSI and MERALCO, docketed as NLRC-NCR Case No. 05-02746-90.

Meanwhile, the security service agreement between respondent Armed Security & Detective Agency, Inc., (ASDAI) and MERALCO took effect on December 1, 1990. In the agreement, ASDAI was designated as the AGENCY while MERALCO was designated as the COMPANY. The pertinent terms and conditions of the agreement are as follows:

1. The AGENCY shall initially provide the COMPANY with TWO HUNDRED TWENTY (220) licensed, uniformed, bonded and armed security guards to be assigned at the COMPANY's "MERALCO CENTER," complete with nightsticks, flashlights, raincoats, and other paraphernalias to work on eight (8) hours duty. The COMPANY shall determine the number of security guards in accordance with its needs and the areas of responsibility assigned to each, and shall have the option to increase or decrease the number of guards at any time provided the AGENCY is notified within twenty four (24) hours of the contemplated reduction or increase of the guards in which case the cost or consideration shall be adjusted accordingly.

2. The COMPANY shall furnish the AGENCY copies of written specific instruction to be followed or implemented by the latter's personnel in the discharge of their duties and responsibilities and the AGENCY shall be responsible for the faithful compliance therewith by its personnel together with such general and specific orders which shall be issued from time to time.

3. For and in consideration of the services to be rendered by the AGENCY to the COMPANY, the COMPANY during the term of this contract shall pay the AGENCY the amount of THREE THOUSAND EIGHT HUNDRED PESOS (P3,800.00) a month per guard, FOUR THOUSAND PESOS (P4,000.00) for the Shift Leader and FOUR THOUSAND TWO HUNDRED PESOS (P4,200.00) for the Detachment Commander for eight (8) hours work/day, Saturdays, Sundays and Holidays included, payable semi-monthly.

x x x

5. The AGENCY shall assume the responsibility for the proper and efficient performance of duties by the security guards employed by it and it shall be solely responsible for any act of said security guards during their watch hours, the COMPANY being specifically released from any and all liability to third parties arising from the acts or omission of the security guards of the AGENCY.

6. The AGENCY also agrees to hold the COMPANY entirely free from any liability, cause or causes of action or claims which may be filed by said security guards by reason of their employment with the AGENCY pursuant to this Agreement or under the provisions of the Labor Code, the Social Security Act, and other laws, decrees or social legislations now enacted or which hereafter may be enacted.

7. Discipline and Administration of the security guards shall conform with the rules and regulations of the AGENCY,

and the COMPANY reserves the right to require without explanation the replacement of any guard whose behavior, conduct or appearance is not satisfactory to the COMPANY and that the AGENCY cannot pull-out any security guard from the COMPANY without the consent of the latter.

8. The AGENCY shall conduct inspections through its duly authorized inspector at least two (2) times a week of guards assigned to all COMPANY installations secured by the AGENCY located in the Metropolitan Manila area and at least once a week of the COMPANY's installations located outside of the Metropolitan Manila area and to further submit its inspection reports to the COMPANY. Likewise, the COMPANY shall have the right at all times to inspect the guards of the AGENCY assigned to the COMPANY.

9. The said security guards shall be hired by the AGENCY and this contract shall not be deemed in any way to constitute a contract of employment between the COMPANY and any of the security guards hired by the AGENCY but merely as a contract specifying the conditions and manner under which the AGENCY shall render services to the COMPANY.

10. Nothing herein contained shall be understood to make the security guards under this Agreement, employees of the COMPANY, it being clearly understood that such security guards shall be considered as they are, employees of the AGENCY alone, so that the AGENCY shall be responsible for compliance with all pertinent labor laws and regulations included but not limited to the Labor Code, Social Security Act, and all other applicable laws and regulations including that providing for a withholding tax on income.

x x x

13. This contract shall take effect on the 1st day of December, 1990 and shall continue from year to year unless sooner terminated by the COMPANY for cause or otherwise terminated by either party without cause upon thirty (30) days written notice by one party to the other.[6]

Subsequently, the individual respondents were absorbed by ASDAI and retained at MERALCO's head office.

On June 29, 1992, Labor Arbiter Manuel P. Asuncion rendered a decision in NLRC-NCR Case No. 05-02746-90 in favor of the former PSI security guards, including the individual respondents.

Less than a month later, or on July 21, 1992, the individual respondents filed another complaint for unpaid monetary benefits, this time against ASDAI and MERALCO, docketed as NLRC-NCR Case No. 00-07-03953-92.

On July 25, 1992, the security service agreement between respondent Advance Forces Security & Investigation Services, Inc. (AFSISI) and MERALCO took effect, terminating the previous security service agreement with ASDAI.[7] Except as to the number of security guards,[8] the amount to be paid the agency,[9] and the effectivity of the agreement,[10] the terms and conditions were substantially identical with the security service agreement with ASDAI.

On July 29, 1992, the individual respondents amended their complaint to implead AFSISI as party respondent. On August 11, 1992 they again amended their complaint to allege that AFSISI terminated their services on August 6, 1992 without notice and just cause and therefore guilty of illegal dismissal.

The individual respondents alleged that: MERALCO and ASDAI never paid their overtime pay, service incentive leave pay, premium pay for Sundays and Holidays, P50.00 monthly uniform allowance and underpaid their 13th month pay; on July 24, 1992, when the security service agreement of ASDAI was terminated and AFSISI took over the security functions of the former on July 25, 1992, respondent security guard Benamira was no longer given any work assignment when AFSISI learned that the former has a pending case against PSI, in effect, dismissing him from the service without just cause; and, the rest of the individual respondents were absorbed by AFSISI but were not given any assignments, thereby dismissing them from the service without just cause.

ASDAI denied in general terms any liability for the claims of the individual respondents, claiming that there is nothing due them in connection with their services.

On the other hand, MERALCO denied liability on the ground of lack of employer-employee relationship with individual respondents. It averred that the individual respondents are the employees of the security agencies it contracted for security services; and that it has no existing liability for the individual respondents' claims since said security agencies have been fully paid for their services per their respective security service agreement.

For its part, AFSISI asserted that: it is not liable for illegal dismissal since it did not absorb or hire the individual respondents, the latter were merely hold-over guards from ASDAI; it is not obliged to employ or absorb the security guards of the agency it replaced since there is no provision in its security service agreement with MERALCO or in law requiring it to absorb and hire the guards of ASDAI as it has its own guards duly trained to service its various clients.

On January 3, 1994, after the submission of their respective evidence and position papers, Labor Arbiter Pablo C. Espiritu, Jr. rendered a Decision holding ASDAI and MERALCO jointly and solidarily liable to the monetary claims of individual respondents and dismissing the complaint against AFSISI. The dispositive portion of the decision reads as follows:

> WHEREFORE, conformably with the above premises, judgment is hereby rendered:
>
> 1. Declaring ASDAI as the employer of the complainants and as such complainants should be reinstated as regular security guards of ASDAI without loss of seniority rights, privileges and benefits and for ASDAI to immediately post the complainants as security guards with their clients. The complaint against AFSISI is Dismissed for lack of merit.
>
> 2. Ordering both respondents, ASDAI and MERALCO to jointly and solidarily pay complainants monetary claims (underpayment of actual regular hours and overtime hours

rendered, and premium pay for holiday and rest day) in the following amounts:

NAME	OVERTIME DIFFERENTIALS AND PREMIUM PAY FOR HOLIDAY & REST DAY
1. Rogelio Benamira	P14,615.75
2. Ernie De Sagun	21,164.31
3. Diosdado Yogare	7,108.77
4. Francisco Maro	26,567.11
5. Oscar Lagonay	18,863.36
6. Rolando Beni	21,834.12
7. Alex Beni	21,648.80
8. Ruel De Guia	14,200.33

3. Ordering Respondents ASDAI and MERALCO to jointly and solidarily pay complainants 10% attorney's fees in the amount of P14,600.25 based on the total monetary award due to the complainants in the amount of P146,002.55.

All other claims of the complainants are hereby DISMISSED for lack of merit.

The counter-claim of respondent AFSISI for damages is hereby dismissed for want of substantial evidence to justify the grant of damages.

SO ORDERED.[11]

All the parties, except AFSISI, appealed to the National Labor Relations Commission (NLRC).

Individual respondents' partial appeal assailed solely the Labor Arbiter's declaration that ASDAI is their employer. They insisted that AFSISI is the party liable for their illegal dismissal and should be the party directed to reinstate them.

For its part, MERALCO attributed grave abuse of discretion on the part of the Labor Arbiter in failing to consider the absence of

employer-employee relationship between MERALCO and individual respondents.

On the other hand, ASDAI took exception from the Labor Arbiter's finding that it is the employer of the individual respondents and therefore liable for the latter's unpaid monetary benefits.

On April 10, 1995, the NLRC affirmed in toto the decision of the Labor Arbiter.[12] On April 19, 1995, the individual respondents filed a motion for partial reconsideration but it was denied by the NLRC in a Resolution dated May 23, 1995.[13]

On August 11, 1995, the individual respondents filed a petition for certiorari before us, docketed as G.R. No. 121232.[14] They insisted that they were absorbed by AFSISI and the latter effected their termination without notice and just cause.

After the submission of the responsive pleadings and memoranda, we referred the petition, in accordance with St. Martin Funeral Homes vs. NLRC,[15] to the CA which, on September 27, 2000, modified the decision of the NLRC by declaring MERALCO as the direct employer of the individual respondents.

The CA held that: MERALCO changed the security agency manning its premises three times while engaging the services of the same people, the individual respondents; MERALCO employed a scheme of hiring guards through an agency and periodically entering into service contract with one agency after another in order to evade the security of tenure of individual respondents; individual respondents are regular employees of MERALCO since their services as security guards are usually necessary or desirable in the usual business or trade of MERALCO and they have been in the service of MERALCO for no less than six years; an employer-employee relationship exists between MERALCO and the individual respondents because: (a) MERALCO had the final say in the selection and hiring of the guards, as when its advice was proved to have carried weight in AFSISI's decision not to absorb the individual respondents into its workforce; (b) MERALCO paid the wages of individual respondents through ASDAI and AFSISI; (c) MERALCO's discretion on matters of dismissal of guards was given great weight and even finality since the

record shows that the individual respondents were replaced upon the advice of MERALCO; and, (d) MERALCO has the right, at any time, to inspect the guards, to require without explanation the replacement of any guard whose behavior, conduct or appearance is not satisfactory and ASDAI and AFSISI cannot pull out any security guard from MERALCO without the latter's consent; and, a labor-only contract existed between ASDAI and AFSISI and MERALCO, such that MERALCO is guilty of illegal dismissal without just cause and liable for reinstatement of individual respondents to its workforce.

The dispositive portion of the CA's Decision reads as follows:

> WHEREFORE, in view of the foregoing premises, the Resolution subject of this petition is hereby AFFIRMED with MODIFICATION in the sense that MERALCO is declared the employer of the petitioners. Accordingly, private respondent MERALCO is hereby ordered as follows:
>
> 1. To reinstate petitioners into MERALCO's work force as regular security guards without loss of seniority rights and other privileges; and
>
> 2. To pay the petitioners' full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time their compensation was withheld from them up to the time of their actual reinstatement, for which the Labor Arbiter Pablo C. Espiritu, Jr. is hereby directed to undertake the necessary computation and enforcement thereof.
>
> With respect to the rest of the dispositive portion of the assailed Resolution which affirmed the decision of the Labor Arbiter Pablo C. Espiritu, Jr., particularly the joint and solidary liabilities of both ASDAI and MERALCO to the petitioners, the same are hereby AFFIRMED.
>
> SO ORDERED.[16]

Hence, the present petition for review on certiorari, filed by MERALCO, anchored on the following grounds:

> A. THE COURT OF APPEALS COMMITTED SERIOUS REVERSIBLE ERROR AND GRAVE ABUSE OF DISCRETION IN HOLDING THAT AN EMPLOYER-EMPLOYEE RELATIONSHIP EXISTS BETWEEN PETITIONER MERALCO AND INDIVIDUAL RESPONDENTS.
>
> B. THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN HOLDING THAT INDIVIDUAL RESPONDENTS ARE REGULAR EMPLOYEES OF PETITIONER MERALCO.
>
> C. THE COURT OF APPEALS COMMITTED SERIOUS REVERSIBLE ERROR IN ALLOWING INDIVIDUAL RESPONDENTS TO RAISE FOR THE FIRST TIME ON APPEAL, THE ISSUE THAT PETITIONER WAS THEIR DIRECT EMPLOYER.
>
> D. THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN FINDING THAT PETITIONER MERALCO IS GUILTY OF ILLEGAL DISMISSAL.
>
> E. THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT INDIVIDUAL RESPONDENTS ARE ENTITLED TO REINSTATEMENT INTO PETITIONER'S WORKFORCE.
>
> F. THE COURT OF APPEALS SERIOUSLY ERRED IN NOT FINDING THAT PETITIONER MERALCO IS ENTITLED TO REIMBURSEMENT FROM RESPONDENT ASDAI FOR THE MONETARY CLAIMS PETITIONER PAID TO INDIVIDUAL RESPONDENTS PURSUANT TO THE SECURITY SERVICE AGREEMENT.[17]

Anent the first ground, MERALCO submits that the elements of "four-fold" test to determine the existence of an employer-employee relation, namely: (1) the power to hire, (2) the payment of wages, (3)

the power to dismiss, and (4) the power to control, are not present in the instant case.

Regarding the power to hire, MERALCO contends that the records are bereft of any evidence that shows that it participated in or influenced the decision of PSI and ASDAI to hire or absorb the individual respondents.

As to the payment of wages, MERALCO maintains that the individual respondents received their wages from their agency.

With regard to the power to dismiss, MERALCO argues that the security service agreement clearly provided that the discipline and administration of the security guards shall conform to the rules and regulations of the agency.

Concerning the power of control, MERALCO asserts that there is no evidence that individual respondents were subjected to its control as to the manner or method by which they conduct or perform their work of guarding of MERALCO's premises.

Furthermore, MERALCO insists that ASDAI and AFSISI are not labor-only contractors since they have their own equipment, machineries and work premises which are necessary in the conduct of their business and the duties performed by the security guards are not necessary in the conduct of MERALCO's principal business.

With respect to the second ground, MERALCO argues that the individual respondents cannot be considered as regular employees as the duties performed by them as security guards are not necessary in the conduct of MERALCO's principal business which is the distribution of electricity.

As regards the third ground, MERALCO argues that it was denied due process when the individual respondents raised for the first time in the CA the issue that MERALCO is their direct employer since the individual respondents have always considered themselves as employees of AFSISI and nowhere in the Labor Arbiter or the NLRC did they raise the argument that MERALCO is their direct employer.

Regarding the fourth ground, MERALCO asserts that it is not guilty of illegal dismissal because it had no direct hand or participation in the termination of the employment of individual respondents, who even insisted in their petition for certiorari in the CA that it was AFSISI which terminated their employment.

As to the fifth ground, MERALCO maintains that the individual respondents are not entitled to reinstatement into its workforce because no employer-employee relationship exists between it and the individual respondents.

With regard to the sixth ground, MERALCO asserts that since it is not the direct employer of the individual respondents, it has a right of reimbursement from ASDAI for the full amount it may pay to the individual respondents under Articles 106 and 107 of the Labor Code.

In contrast, the individual respondents maintain that the CA aptly found that all the elements in employer-employee relationship exist between them and MERALCO and there is no cogent reason to deviate from such factual findings.

For its part, ASDAI contends that the instant petition raises factual matters beyond the jurisdiction of this Court to resolve since only questions of law may be raised in a petition for review on certiorari. It submits that while the rule admits of exceptions, MERALCO failed to establish that the present case falls under any of the exceptions.

On the other hand, AFSISI avers that there is no employer-employee relationship between MERALCO and the security guards of any of the security agencies under contract with MERALCO.

It is a settled rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the CA are conclusive and binding on the Court. However, jurisprudence has recognized several exceptions in which factual issues may be resolved by this Court, to wit:

> (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[18]

In the present case, the existence of an employer-employee relationship is a question of fact which is well within the province of the CA. Nonetheless, given the reality that the CA's findings are at odds to those of the NLRC, the Court is constrained to look deeper into the attendant circumstances obtaining in the present case, as appearing on record.

At the outset, we note that the individual respondents never alleged in their complaint in the Labor Arbiter, in their appeal in the NLRC and even in their petition for certiorari in the CA that MERALCO was their employer. They have always advanced the theory that AFSISI is their employer. A perusal of the records shows it was only in their Memorandum in the CA that this thesis was presented and discussed for the first time. We cannot ignore the fact that this position of individual respondents runs contrary to their earlier submission in their pleadings filed in the Labor Arbiter, NLRC and even in the petition for certiorari in the CA that AFSISI is their employer and liable for their termination. As the object of the pleadings is to draw the lines of battle, so to speak, between the litigants and to indicate fairly the nature of the claims or defenses of both parties, a party

cannot subsequently take a position contrary to, or inconsistent, with his pleadings.[19]

Moreover, it is a fundamental rule of procedure that higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal.[20] The individual respondents are bound by their submissions that AFSISI is their employer and they should not be permitted to change their theory. Such a change of theory cannot be tolerated on appeal, not due to the strict application of procedural rules but as a matter of fairness. A change of theory on appeal is objectionable because it is contrary to the rules of fair play, justice and due process.[21]

Thus, the CA should not have considered the new theory offered by the individual respondents in their memorandum.

The present petition for review on certiorari is far from novel and, in fact, not without precedence. We have ruled in Social Security System vs. Court of Appeals[22] that:

> The guards or watchmen render their services to private respondent by allowing themselves to be assigned by said respondent, which furnishes them arms and ammunition, to guard and protect the properties and interests of private respondent's clients, thus enabling that respondent to fulfill its contractual obligations. Who the clients will be, and under what terms and conditions the services will be rendered, are matters determined not by the guards or watchmen, but by private respondent. On the other hand, the client companies have no hand in selecting who among the guards or watchmen shall be assigned to them. It is private respondent that issues assignment orders and instructions and exercises control and supervision over the guards or watchmen, so much so that if, for one reason or another, the client is dissatisfied with the services of a particular guard, the client cannot himself terminate the services of such guard, but has to notify private respondent, which either substitutes him with another or metes out to him disciplinary measures. That in the course of a watchman's assignment the client conceivably issues instructions to him,

> does not in the least detract from the fact that private respondent is the employer of said watchman, for in legal contemplation such instructions carry no more weight than mere requests, the privity of contract being between the client and private respondent, not between the client and the guard or watchman. Corollarily, such giving out of instructions inevitably spring from the client's right predicated on the contract for services entered into by it with private respondent.
>
> In the matter of compensation, there can be no question at all that the guards or watchmen receive compensation from private respondent and not from the companies or establishments whose premises they are guarding. The fee contracted for to be paid by the client is admittedly not equal to the salary of a guard or watchman; such fee is arrived at independently of the salary to which the guard or watchman is entitled under his arrangements with private respondent.[23]

and reiterated in American President Lines vs. Clave,[24] thus:

> In the light of the foregoing standards, We fail to see how the complaining watchmen of the Marine Security Agency can be considered as employees of the petitioner. It is the agency that recruits, hires, and assigns the work of its watchmen. Hence, a watchman can not perform any security service for the petitioner's vessels unless the agency first accepts him as its watchman. With respect to his wages, the amount to be paid to a security guard is beyond the power of the petitioner to determine. Certainly, the lump sum amount paid by the petitioner to the agency in consideration of the latter's service is much more than the wages of any one watchman. In point of fact, it is the agency that quantifies and pays the wages to which a watchman is entitled.
>
> Neither does the petitioner have any power to dismiss the security guards. In fact, We fail to see any evidence in the record that it wielded such a power. It is true that it may request the agency to change a particular guard. But this, precisely, is proof that the power lies in the hands of the agency.

> Since the petitioner has to deal with the agency, and not the individual watchmen, on matters pertaining to the contracted task, it stands to reason that the petitioner does not exercise any power over the watchmen's conduct. Always, the agency stands between the petitioner and the watchmen; and it is the agency that is answerable to the petitioner for the conduct of its guards.[25]

In this case, the terms and conditions embodied in the security service agreement between MERALCO and ASDAI expressly recognized ASDAI as the employer of individual respondents.

Under the security service agreement, it was ASDAI which (a) selected, engaged or hired and discharged the security guards; (b) assigned them to MERALCO according to the number agreed upon; (c) provided the uniform, firearms and ammunition, nightsticks, flashlights, raincoats and other paraphernalia of the security guards; (d) paid them salaries or wages; and, (e) disciplined and supervised them or principally controlled their conduct. The agreement even explicitly provided that "[n]othing herein contained shall be understood to make the security guards under this Agreement, employees of the COMPANY, it being clearly understood that such security guards shall be considered as they are, employees of the AGENCY alone." Clearly, the individual respondents are the employees of ASDAI.

As to the provision in the agreement that MERALCO reserved the right to seek replacement of any guard whose behavior, conduct or appearance is not satisfactory, such merely confirms that the power to discipline lies with the agency. It is a standard stipulation in security service agreements that the client may request the replacement of the guards to it. Service-oriented enterprises, such as the business of providing security services, generally adhere to the business adage that "the customer or client is always right" and, thus, must satisfy the interests, conform to the needs, and cater to the reasonable impositions of its clients.

Neither is the stipulation that the agency cannot pull out any security guard from MERALCO without its consent an indication of control. It is simply a security clause designed to prevent the agency from

unilaterally removing its security guards from their assigned posts at MERALCO's premises to the latter's detriment.

The clause that MERALCO has the right at all times to inspect the guards of the agency detailed in its premises is likewise not indicative of control as it is not a unilateral right. The agreement provides that the agency is principally mandated to conduct inspections, without prejudice to MERALCO's right to conduct its own inspections.

Needless to stress, for the power of control to be present, the person for whom the services are rendered must reserve the right to direct not only the end to be achieved but also the means for reaching such end.[26] Not all rules imposed by the hiring party on the hired party indicate that the latter is an employee of the former.[27] Rules which serve as general guidelines towards the achievement of the mutually desired result are not indicative of the power of control.[28]

Verily, the security service agreements in the present case provided that all specific instructions by MERALCO relating to the discharge by the security guards of their duties shall be directed to the agency and not directly to the individual respondents. The individual respondents failed to show that the rules of MERALCO controlled their performance.

Moreover, ASDAI and AFSISI are not "labor-only" contractors. There is "labor only" contract when the person acting as contractor is considered merely as an agent or intermediary of the principal who is responsible to the workers in the same manner and to the same extent as if they had been directly employed by him. On the other hand, "job (independent) contracting" is present if the following conditions are met: (a) 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 to the result thereof; and (b) the contractor has substantial capital or investments in the form of tools, equipment, machineries, work premises and other materials which are necessary in the conduct of his business.[29] Given the above distinction and the provisions of the security service agreements entered into by petitioner with ASDAI

and AFSISI, we are convinced that ASDAI and AFSISI were engaged in job contracting.

The individual respondents can not be considered as regular employees of the MERALCO for, although security services are necessary and desirable to the business of MERALCO, it is not directly related to its principal business and may even be considered unnecessary in the conduct of MERALCO's principal business, which is the distribution of electricity.

Furthermore, the fact that the individual respondents filed their claim for unpaid monetary benefits against ASDAI is a clear indication that the individual respondents acknowledge that ASDAI is their employer.

We cannot give credence to individual respondents' insistence that they were absorbed by AFSISI when MERALCO's security service agreement with ASDAI was terminated. The individual respondents failed to present any evidence to confirm that AFSISI absorbed them into its workforce. Thus, respondent Benamira was not retained in his post at MERALCO since July 25, 1992 due to the termination of the security service agreement of MERALCO with ASDAI. As for the rest of the individual respondents, they retained their post only as "hold-over" guards until the security guards of AFSISI took over their post on August 6, 1992.[30]

In the present case, respondent Benamira has been "off-detail" for seventeen days while the rest of the individual respondents have only been "off- detail" for five days when they amended their complaint on August 11, 1992 to include the charge of illegal dismissal. The inclusion of the charge of illegal dismissal then was premature. Nonetheless, bearing in mind that ASDAI simply stopped giving the individual respondents any assignment and their inactivity clearly persisted beyond the six-month period allowed by Article 286[31] of the Labor Code, the individual respondents were, in effect, constructively dismissed by ASDAI from employment, hence, they should be reinstated.

The fact that there is no actual and direct employer-employee relationship between MERALCO and the individual respondents does

not exonerate MERALCO from liability as to the monetary claims of the individual respondents. When MERALCO contracted for security services with ASDAI as the security agency that hired individual respondents to work as guards for it, MERALCO became an indirect employer of individual respondents pursuant to Article 107 of the Labor Code, which reads:

> 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.

When ASDAI as contractor failed to pay the individual respondents, MERALCO as principal becomes jointly and severally liable for the individual respondents' wages, under Articles 106 and 109 of the Labor Code, which provide:

> 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:

> 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 purpose of determining the extent of their civil liability under this Chapter, they shall be considered as direct employers.

ASDAI is held liable by virtue of its status as direct employer, while MERALCO is deemed the indirect employer of the individual respondents for the purpose of paying their wages in the event of failure of ASDAI to pay them. This statutory scheme gives the workers the ample protection consonant with labor and social justice provisions of the 1987 Constitution.[32]

However, as held in Mariveles Shipyard Corp. vs. Court of Appeals,[33] the solidary liability of MERALCO with that of ASDAI does not preclude the application of Article 1217 of the Civil Code on the right of reimbursement from his co-debtor by the one who paid,[34] which provides:

> ART. 1217. Payment made by one of the solidary debtors extinguishes the obligation. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept.

He who made the payment may claim from his co-debtors only the share which corresponds to each, with the interest for the payment already made. If the payment is made before the debt is due, no interest for the intervening period may be demanded.

When one of the solidary debtors cannot, because of his insolvency, reimburse his share to the debtor paying the obligation, such share shall be borne by all his co-debtors, in proportion to the debt of each.

ASDAI may not seek exculpation by claiming that MERALCO's payments to it were inadequate for the individual respondents' lawful compensation. As an employer, ASDAI is charged with knowledge of labor laws and the adequacy of the compensation that it demands for contractual services is its principal concern and not any other's.[35]

WHEREFORE, the present petition is **GRANTED**. The assailed Decision, dated September 27, 2000, of the CA is **REVERSED** and **SET ASIDE**. The Decision of the Labor Arbiter dated January 3, 1994 and the Resolution of the NLRC dated April 10, 1995 are **AFFIRMED** with the **MODIFICATION** that the joint and solidary liability of ASDAI and MERALCO to pay individual respondents' monetary claims for underpayment of actual regular hours and overtime hours rendered, and premium pay for holiday and rest day,

as well as attorney's fees, shall be without prejudice to MERALCO's right of reimbursement from ASDAI.

SO ORDERED.

PUNO, *J.*, *(Chairman)*, CALLEJO, SR., TINGA, and CHICO-NAZARIO, *JJ.*, concur.

---

[1] Also spelled as Sagum in some parts of the Rollo.
[2] Sometimes spelled as Maro.
[3] Sometimes spelled as Lagonay.
[4] Sometimes spelled as Ruel.
[5] Penned by Justice Bennie A. Adefuin-Dela Cruz (now retired) and concurred in by Justices Salome A. Montoya (now retired) and Renato C. Dacudao.
[6] Rollo, pp. 83-85.
[7] Id., p. 89.
[8] 235 security guards.
[9] P4,837.00 a month per guard, P5,037.00 for the Shift In-Charge/Asst. Detachment Commander and P5,237.00 for the Detachment Commander.
[10] July 25, 1992.
[11] CA Rollo, pp. 24-26.
[12] Id., p. 44.
[13] Id., p. 46.
[14] Id., p. 3.
[15] G.R. No. 130866, September 16, 1998, 295 SCRA 494.
[16] Rollo, pp. 71-72.
[17] Id., pp. 22-23.
[18] The Insular Life Assurance Company, Ltd. vs. Court of Appeals, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 86; Aguirre vs. Court of Appeals, G.R. No. 122249, January 29, 2004, 421 SCRA 310, 319; C & S Fishfarm Corporation vs. Court of Appeals, G.R. No. 122720, December 16, 2002, 394 SCRA 82, 88.
[19] Philippine Ports Authority vs. City of Iloilo, G.R. No. 109791, July 14, 2003, 406 SCRA 88, 95.
[20] Development Bank of the Philippines vs. West Negros College, Inc., G.R. No. 152359, May 21, 2004, 429 SCRA 50, 60; Solid Homes, Inc., vs. Court of Appeals, G.R. No. 117501, July 8, 1997, 275 SCRA 267, 282; People vs. Echegaray, G.R. No. 117472, February 7, 1997, 267 SCRA 682, 689.
[21] Bank of the Philippine Islands vs. Leobrera, G.R. Nos. 137147-48, November 18, 2003, 416 SCRA 15, 19; Balitaosan vs. Secretary of Education, Culture and Sports, G.R. No. 138238, September 2, 2003, 410 SCRA 233, 235-236.
[22] No. L-28134, June 30, 1971, 39 SCRA 629.
[23] Id., pp. 635-636.
[24] No. L-51641, June 29, 1982, 114 SCRA 826.

[25] Id., pp. 832-833. See also Citytrust Banking Corporation vs. NLRC, G.R. No. 123318, August 20, 1998, 294 SCRA 496; Canlubang Security Agency Corp. vs. NLRC, G.R. No. 97492, December 8, 1992, 216 SCRA 280; and Philippine Airlines, Inc. vs. NLRC, G.R. No. 120506, October 28, 1996, 263 SCRA 638.

[26] Tiu vs. NLRC, G.R. No. 95845, February 21, 1996, 254 SCRA 1, 7.

[27] Sonza vs. ABS-CBN Broadcasting Corporation, G.R. No. 138051, June 10, 2004, 431 SCRA 583, 603; AFP Mutual Benefit Association, Inc. vs. NLRC, G.R. No. 102199, January 28, 1997, 267 SCRA 47, 59.

[28] See Insular Life Assurance Co., Ltd. vs. NLRC, G.R. No. 84484, November 15, 1989, 179 SCRA 459, 465. Reiterated recently in Consulta vs. Court of Appeals, G.R. No. 145443, March 18, 2005.

[29] National Power Corporation vs. Court of Appeals, G.R. No. 119121, August 14, 1998, 294 SCRA 209, 214.

[30] CA Rollo, pp. 20, 38, 51-58.

[31] Art. 286. When employment not deemed terminated.—The bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

[32] Mariveles Shipyard Corp. vs. Court of Appeals, G.R. No. 144134, November 11, 2003, 415 SCRA 573; 587; Alpha Investigation and Security Agency, Inc. vs. NLRC, G.R. No. 111722, May 27, 1997, 272 SCRA 653, 658; Eagle Security Agency, Inc. vs. NLRC, G.R. No. 81314, and Philippine Tubercolosis Society, Inc. vs. NLRC, G.R. No. 81447, jointly decided on May 18, 1989, 173 SCRA 479, 486.

[33] Supra.

[34] Ibid. See also Lapanday Agricultural Development Corporation vs. Court of Appeals, G.R. No. 112139, January 31, 2000, 324 SCRA 39; Alpha Investigation and Security Agency, Inc. vs. NLRC, supra; Deferia vs. NLRC, G.R. No. 78713, and Norico vs. NLRC, G.R. No. 82718, jointly decided on February 27, 1991, 194 SCRA 531; Eagle Security Agency, Inc. vs. NLRC, supra.

[35] Mariveles Shipyard Corp. vs. Court of Appeals, supra; Philippine Fisheries Development Authority vs. NLRC, G.R. No. 94825, September 4, 1992, 213 SCRA 621, 629; Del Rosario & Sons Logging Enterprises, Inc. vs. NLRC, No. L-64204, May 31, 1985, 136 SCRA 669, 673.