CHANROBLES PUBLISHING COMPANY

SUPREME COURT
FIRST DIVISION

RJL MARTINEZ FISHING CORPORATION and/or PENINSULA FISHING CORPORATION,
***Petitioners*,**

-versus-

G.R. Nos. L-63550-51
January 31, 1984

NATIONAL LABOR RELATIONS COMMISSION and ANTONIO BOTICARIO, ISIDRO FARIOLAN, FERNANDO SEVILLA, TOTONG ROLDAN, ROGER ESQUILLA, MARIO MIRANDA, EDUARDO ESPINOSA, ALBERTO NOVERA, ANTONIO PATERNO, MARCIANO PIADORA, MARIO ROMERO, CLINITO ESQUILLA, ALEJO BATOY, BOBBY QUITREZA, ROLANDO DELA TORRE, HERNANI REVATEZ, RODOLFO SEVILLA, ROLANDO ANG, JUANITO PONPON, HOSPINIANO CALINDEZ, JOSE MABULA, DEONG DE LEON, MELENCIO CONEL and ALFREDO BULAONG,
***Respondents*.**
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D E C I S I O N

MELENCIO-HERRERA, *J.*:

Petition for *Certiorari*, Prohibition and Mandamus assailing the Decision of respondent National Labor Relations Commission (NLRC) in Cases Nos. AB-4-11054-81 and AB-8-12354-81 entitled Antonio Boticario, et al. vs. RJL Fishing Corporation and/or Peninsula Fishing Corporation, dated November 26, 1982, as well as the Order, dated February 14, 1983, denying petitioners' Manifestation and Omnibus Motion to dismiss private respondents' appeal. The dispositive portion of the challenged resolution reads:

> "WHEREFORE, in view of the foregoing considerations, the Decision appealed from is hereby set aside and another one entered, directing respondents-appellees: (1) to reinstate complainants-appellants to their former work, without loss of seniority rights and other privileges appertaining thereto; (2) to pay complainants-appellants full backwages computed from the date they were dismissed up to the date they are actually reinstated; (3) to pay complainants-appellants legal holiday pay, emergency living allowance and 13th month pay in accordance with law; and (4) to pay complainants-appellants who are entitled to incentive leave pay, as herein above determined, according to law.
>
> The claims for overtime pay and premium pay for holiday and rest day are dismissed.
>
> SO ORDERED."[1]

This case was originally assigned to the Second Division but because of the pendency of a lower-numbered case, G.R. No. 63474, entitled RJL Martinez Fishing Corporation vs. National Labor Relations Commission, et al. before the First Division, involving the same petitioners and their workers (albeit a different group and not exactly identical issues), this case was transferred to the latter Division for proper action and determination. G.R. No. 63474 was dismissed by the First Division on August 17, 1983 for lack of merit.

Petitioner corporations are principally engaged in the deep-sea fishing business. Since 1978, private respondents were employed by them as stevedores at Navotas Fish Port for the unloading of tuna fish catch from petitioners' vessels and then loading them on refrigerated vans for shipment abroad.

On March 27, 1981, private respondents Antonio Boticario, and thirty (30) others, upon the premise that they are petitioners' regular employees, filed a complaint against petitioners for non-payment of overtime pay, premium pay, legal holiday pay, emergency allowance under P.D. Nos. 525, 1123, 1614, 1634, 1678, 1713, 1751, 13th month pay (P.D. 851), service incentive leave pay and night shift differential.[2]

Claiming that they were dismissed from employment on March 29, 1981 as a retaliatory measure for their having filed the said complaint, private respondents filed on April 21, 1981 another complaint against petitioners for Illegal Dismissal and for Violation of Article 118 of the Labor Code, as amended.[3] Upon petitioners' motion, these two cases were consolidated and tried jointly.

In disputing any employer-employee relationship between them, petitioners contend that private respondents are contract laborers whose work terminated upon completion of each unloading, and that in the absence of any boat arrivals, private respondents did not work for petitioners but were free to work or seek employment with other fishing boat operators.

On February 26, 1982, the Labor Arbiter upheld petitioners' position ruling that the latter are extra workers, who were hired to perform specific tasks on contractual basis; that their work is intermittent depending on the arrival of fishing vessels; that if there are no fish to unload and load, they work for some other fishing boat operators; that private respondent Antonio Boticario had executed an employment contract under which he agreed to act as a labor contractor and that the other private respondents are his men; that even assuming that private respondents are employees of petitioners, their employer-employee relation is co-terminous with each unloading and loading job; that in the same manner, petitioners are

not under any obligation to hire petitioners exclusively, hence, when they were not given any job on March 29, 1981, no dismissal was effected but that they were merely not rehired.[4]

On April 1, 1982, private respondents received the Decision of the Labor Arbiter dismissing their complaints. On April 19, 1982, they filed an appeal before respondent NLRC, which took cognizance thereof.

In its Decision of November 26, 1982, the NLRC reversed the findings of the Labor Arbiter, and resolved, as previously stated, to uphold the existence of employer-employee relationship between the parties.

Petitioners resorted to a "Manifestation and Omnibus Motion to Dismiss Appeal and to Vacate and/or to Declare Null and Void the Decision of this Honorable Commission Promulgated on November 25 (should be 26), 1982" but the same was denied, hence, the instant recourse.

As prayed for, a Temporary Restraining Order to enjoin the enforcement of the questioned decision of respondent NLRC was issued on April 20, 1983, and on August 15, 1983, the Petition was given due course by the Second Division.

Petitioners submit the following issues for Resolution:

"I. Whether or not the appeal from the Decision of Labor Arbiter filed by private respondents is within the 10-day reglementary period;

"II. Whether or not respondent NLRC erred in reversing the decision of the Labor Arbiter despite the failure to furnish petitioners with a copy of the appeal;

"III. Whether or not there is an employer-employee relationship between the parties;

"IV. Whether or not private respondents are entitled to legal holiday pay, emergency living allowance, thirteenth month pay and incentive leave pay."

1. Petitioners, joined by the Solicitor General, contend that the appeal filed by private respondents from the Decision of the Labor Arbiter was filed out of time considering that they received copy of the same on April 1, 1982 but that they filed their appeal only on April 19, 1982, or 18 days later. If we were to reckon the 10-day reglementary period to appeal as calendar days, as held in the case of Vir-Jen Shipping and Marine Services, Inc. vs. NLRC, et al.,[5] private respondents' appeal was, indeed, out of time. However, it was clear from Vir-jen that the calendar day basis of computation would apply only "henceforth" or to future cases. That ruling was not affected by this Court's Resolution of November 18, 1983 reconsidering its Decision of July 20, 1982. When the appeal herein was filed on April 19, 1982, the governing proviso was found in Section 7, Rule XIII of the Rules and Regulations Implementing the Labor Code along with NLRC Resolution No. 1, Series of 1977, which based the computation on "working days". The very face of the Notice of Decision itself[6] indicated that the aggrieved party could appeal within 10 "working days" from receipt of copy of the resolution appealed from. From April 1 to April 19, 1982 is exactly ten (10) working days considering the Holy Week and the two Saturdays and Sundays that supervened in between that period. In other words, private respondents' appeal, having been filed during the time that the prevailing period of appeal was ten (10) working days and prior to the Vir-Jen case promulgated on July 20, 1982, it must be held to have been timely filed.

2. Anent the failure of private respondents to furnish petitioners with a copy of their memorandum on appeal, suffice it to state that the same is not fatal to the appeal.[7]

3. The issue of the existence of an employer-employee relationship between the parties is actually a question of fact, and the finding of the NLRC on this point is binding upon us, the exceptions to the general rule being absent in this case. Besides, the continuity of employment is not the

determining factor, but rather whether the work of the laborer is part of the regular business or occupation of the employer.[8] We are thus in accord with the findings of respondent NLRC in this regard.

Although it may be that private respondents alternated their employment on different vessels when they were not assigned to petitioners' boats, that did not affect their employee status. The evidence also establishes that petitioners had a fleet of fishing vessels with about 65 ship captains, and as private respondents contended, when they finished with one vessel, they were instructed to wait for the next. As respondent NLRC had found:

We further find that the employer-employee relationship between the parties herein is not co-terminous with each loading and unloading job. As earlier shown, respondents are engaged in the business of fishing. For this purpose, they have a fleet of fishing vessels. Under this situation, respondents' activity of catching fish is a continuous process and could hardly be considered as seasonal in nature. So that the activities performed by herein complainants, i.e. unloading the catch of tuna fish from respondents' vessels and then loading the same to refrigerated vans, are necessary or desirable in the business of respondents. This circumstance makes the employment of complainants a regular one, in the sense that it does not depend on any specific project or seasonal activity.[9]

The employment contract signed by Antonio Boticario,[10] which described him as "labor contractor", is not really so inasmuch as wages continued to be paid by petitioners and he and the other workers were uniformly paid. He was merely asked by petitioners to recruit other workers. Besides, labor-contracting is prohibited under Sec. 9(b), Rule VIII, Book III — Rules and Regulations Implementing the Labor Code as amended.[11] Directly in point and controlling is the ruling in an analogous case, Philippine Fishing Boat Officers and Engineers Union vs. CIR,[12] reading:

> "The Court holds, therefore, that the employer-employee relationship existed between the parties notwithstanding evidence to the fact that petitioners Visayas and Bergado, even during the time that they worked with respondent company alternated their employment on different vessels when they were not assigned on the company's vessels. For, as was stressed in the above-quoted case of Industrial-Commercial-Agricultural Workers Organization vs. CIR, (16 SCRA 562 [1966], 'that during the temporary layoff the laborers are considered free to seek other employment is natural, since the laborers are not being paid, yet must find means of support' and such temporary cessation of operations 'should not mean starvation for employees and their families.'"

4. Indeed, considering the length of time that private respondents have worked for petitioner — since 1978 — there is justification to conclude that they were engaged to perform activities usually necessary or desirable in the usual business or trade of petitioners and are, therefore, regular employees.[13] As such, they are entitled to the benefits awarded them by respondent NLRC.

WHEREFORE, the instant Petition for *Certiorari*, Prohibition and Mandamus is hereby dismissed and the Temporary Restraining Order heretofore issued is hereby dissolved.

Costs against petitioners.

SO ORDERED.

Teehankee, *C.J., (Chairman)*, Plana, Relova and Gutierrez, Jr., *JJ.*, concur.

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[1] p. 96, Rollo.
[2] p. 32, ibid.
[3] p. 33, ibid.

[4] Labor Arbiter Decision, pp. 66-67, ibid.
[5] 115 SCRA 347, July 20, 1982.
[6] p. 70, Rollo.
[7] JD Magpayo Customs Brokerage Corp. vs. NLRC, et al., 118 SCRA 645 (1982).
[8] Art. 281, Labor Code, as amended; Philippine Fishing Boat Officers and Engineer Union vs. Court of Industrial Relations, 112 SCRA 159 (1982).
[9] NLRC Decision, p. 94, Rollo.
[10] Annex "I-3", Petition.
[11] "Sec. 9. Labor-only contracting. —

x x x

(b) Labor-only contracting as defined herein is hereby prohibited and the person acting as contractor shall be considered merely as an agent or intermediary 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."

x x x

[12] 112 SCRA 159 (1982).
[13] Article 281, Labor Code, as amended.

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