

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**ROSEWOOD PROCESSING, INC.,
*Petitioner,***

-versus-

**G.R. Nos. 116476-84
May 21, 1998**

**NATIONAL LABOR RELATIONS
COMMISSION, NAPOLEON C. MAMON,
ARSENIO GAZZINGAN, ROMEO C.
VELASCO, ARMANDO L. BALLON,
VICTOR E. ALDEZA, JOSE L.
CABRERA, VETERANS PHILIPPINE
SCOUT SECURITY AGENCY, and/or
ENGR. SERGIO JAMILA IV,
*Respondents.***

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DECISION

PANGANIBAN, J.:

Under the Labor Code, an employer is solidarily liable for legal wages due security guards for the period of time they were assigned to it by its contracted security agency. However, in the absence of proof that the employer itself committed the acts constitutive of illegal dismissal or conspired with the security agency in the performance of such acts, the employer shall not be liable for back wages and/or separation pay arising as a consequence of such unlawful termination.

The Case

These are the legal principles on which this Court bases its resolution of this special civil action for certiorari, seeking the nullification of the April 28, 1994 Resolution and the July 12, 1994 Order of the National Labor Relations Commission, which dismissed petitioner's appeal from the labor arbiter's Decision and denied its Motion for Reconsideration, respectively, in NLRC NCR Case Nos. 00-05-02834-91, 00-08-04630-91, 00-07-03966-91, 00-09-05617-91, 00-07-03967-91, 00-07-04455-91, 00-08-05030-91, 00-11-06389-91, and 00-03-01642-92.

On May 13, 1991, a complaint for illegal dismissal; underpayment of wages; and for nonpayment of overtime pay, legal holiday pay, premium pay for holiday and rest day, thirteenth month pay, cash bond deposit, unpaid wages and damages was filed against Veterans Philippine Scout Security Agency and/or Sergio Jamila IV (collectively referred to as the "security agency," for brevity). Thereafter, petitioner was impleaded as a third-party respondent by the security agency. In due course, Labor Arbiter Ricardo C. Nora rendered a consolidated Decision dated March 26, 1993, which disposed as follows:^[1]

"IN VIEW OF ALL THE FOREGOING, respondents Veterans Philippine Scout Security Agency, Sergio Jamila IV, and third-party respondent Rosewood Processing, Inc. are hereby ordered to pay jointly and severally complainants the following amounts, to wit:

- | | |
|----------------------|-------------|
| 1. Napoleon Mamon | P126,411.10 |
| 2. Arsenio Gazzingan | 128,639.71 |
| 3. Rodolfo Velasco | 147,114.43 |

4. Armando Ballon	116,894.70
5. Jose L. Cabrera	133,047.81
6. Victor Aldeza	137,046,64

TOTAL	P789,154.39
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representing their monetary benefits in the amount of SEVEN HUNDRED EIGHTY NINE THOUSAND ONE HUNDRED FIFTY FOUR PESOS AND 39/100 CENTAVOS (P789,154.39).

Respondents are likewise ordered to pay attorney's fees in the amount of P78,915.43 within ten (10) days from receipt of this Decision.

All other issues are hereby dismissed for failure of the complainants to fully substantiate their claims."

The appeal filed by petitioner was dismissed by the National Labor Relations Commission^[2] in its Resolution promulgated April 28, 1994, for failure of the petitioner to file the required appeal bond within the reglementary period.^[3] Pertinent portions of the challenged Resolution are herewith quoted:

"It appears on record that [petitioner] received their copy of the [labor arbiter's] decision on April 2, 1993 and subsequently filed a 'Notice of Appeal with Memorandum of Appeal' on April 26, 1993, in violation of Rule VI, Section 1, 3, and 6 of the 1990 New Rules of Procedure of the NLRC.

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Clearly, the appeal filed by the [petitioners] on April 12, 1993 was not perfected within the reglementary period, and the decision dated March 26, 1993 became final and executory as of April 23, 1993.

WHEREFORE, the appeal is hereby DISMISSED."

In its motion for reconsideration, petitioner contended that it received a copy of the labor arbiter's Decision only on April 6, 1993, and that it filed on April 16, 1993 within the prescribed time a Notice of Appeal with a Memorandum on Appeal, a Motion to Reduce Appeal Bond and a surety bond issued by Prudential Guarantee and Assurance, Inc. in the amount of P50,000.^[4] Though not opposed by the complainants and the security agency, the arguments stated in the motion were not taken up by Respondent Commission. Reconsideration was nonetheless denied by Respondent Commission in its Order of July 12, 1994, quoted below:^[5]

“Section 14, Rule VII of the NLRC New Rules of Procedure allows [u]s to entertain a motion for reconsideration only on ‘palpable or patent’ errors [w]e may have committed in [o]ur, disputed April 28, 1994 resolution.

There being no such assignment here, [petitioner's] motion for reconsideration dated May 19, 1994 is hereby DENIED for lack of merit.”

Hence, this recourse.^[6]

In a Resolution dated March 20, 1995, this Court issued a temporary restraining order enjoining the respondents and their agents from implementing and enforcing the assailed Resolution and Order until further notice.^[7]

The Facts

Undisputed are the facts of this case, narrated by the labor arbiter as follows:

“All the complainants were employed by the [security agency] as security guards: Napoleon Mamon on October 7, 1989; Arsenio Gazzingan on September 25, 1988; Rodolfo C. Velasco on January 5, 1987; Armando Ballon on June 28, 1990; Victor Aldeza on March 21, 1990; and Jose L. Cabrera [in] January 1988.

Napoleon Mamon started working for the [security agency] on October 7, 1989 and was assigned as office guard for three (3) days without any pay nor allowance as it was allegedly an on[-the-]job training so there [was] no pay[.] On October 10, 1989, he was transferred to the residence of Mr. Benito Ong with 12 hours duty a day receiving a salary very much less than the minimum wage for eight (8) hours work until February 3, 1990 when he received an order transferring him to Rosewood Processing, Inc. effective that date; [a]t Rosewood Processing, Inc., he was required to render also 12 hours duty every day with a salary of P2,600.00/month. He was not given his pay for February 1 and 2 by the paymaster of [the, security agency] allegedly because the payroll could not be located so after 3 to 4 times of going back and forth to [the security agency's] office to get his salary[;] [after] two (2) days he gave up because he was already spending more than what he could get thru transportation alone. On May 16, 1991, Rosewood Processing, Inc. asked for the relief of Mamon and other guards at Rosewood because they came to know that complainants filed a complaint for underpayment on May 13, 1991 with the National Labor Relations Commission[.] On May 18 to 19, 1991, [the security agency] assigned him to their [m]ain [o]ffice. After that, complainant was floated until May 29, 1991 when he was assigned to Mead Johnson Philippines Corporation. [A]t about a week later, [the security agency] received summons on complainant's complaint for underpayment and he was called to [the security agency's] office. When he reported, he was told to sign a 'Quitclaim and Waiver[' by Lt. R. Rodriguez because according to the latter, he [could] only get a measly sum from his complaint with the NLRC and if he (complainant) [signed] the quitclaim and waiver he [would] be retained at his present assignment which [was] giving quite a good salary and other benefits but if he [did] not sign the quitclaim and waiver, he [would] be relieved from his post and [would] no longer be given any assignment. He was given up to the end of July 1991 to think it over. At the end of July 1991, h[e] was approached by the Security in Charge A. Azuela and asked him to sign the quitclaim and waiver and when he refused to sign, he was told that the following day August 1, 1991, he [would have] no more assignment and should report to their office. Thinking that it

was only a joke, he reported the following day to the detachment commander Mr. A. Yadao and he was told that the main office relieved him because he did not sign the quitclaim and waiver. He reported to their office asking for an assignment but he was told by R. Rodriguez that 'I no longer can be given an assignment so I had better resign'. He went back several times to the office of the [security agency] but every time the answer was the same[:] that he better tender his resignation because he cannot be given any assignment although respondent was recruiting new guards and posting them.

Arsenio Gazzingan started to work for the [security agency] on September 29, 1988. [Note: the introductory paragraph stated September 25, 1988.] He was assigned to Purefoods Breeding Farm at Calauan, Laguna and given a salary of P54.00 a day working eight (8) hours. After three (3) months, he was given an examination and passed the same. On December 26, 1988, he was given an increase and was paid P64.00/day working eight (8) hours; [h]e remained at the same post for 8 months and transferred to Purefoods Feed Mill at Sta. Rosa, Laguna, with the same salary and the same tour of duty, 8 hours[.] After four (4) months, he was transferred to Purefoods Grand Perry at Sta. Rosa, Laguna, and after eleven (11) days on June 1989, he was transferred to Rosewood Processing, Inc. at Meycauayan, Bulacan and required to work for 12 hours at a salary of P94.00/day for one year. [In] June 1990, he was assigned at Purefoods DELPAN [to] guard a barge loaded with corn and rendered 12 hours work/day with a salary of only P148.00/day and after 24 days, he was floated for one month. He reported to [the security agency's] office and was assigned to Purefoods Breeder Farm in Canlubang rendering 8 hours work per day receiving only P78.00/day. After 11 days, he asked to be transferred to Manila[.] [B]ecause of the distance from his home the transfer was approved but instead of being transferred to Manila, he was assigned to Purefoods B-F-4 in Batangas rendering 12 hours duty/day and receiving only P148.00 per day until January 28, 1991[;] and again he requested for transfer which was also approved by the [security agency's] office[,] but since then he was told to come back again

and again. [U]p to the present he has not been given any assignment. Because of the fact that his family [was] in danger of going hungry, he sought relief from the NLRC-NCR-Arbitration Branch.

Rodolfo Velasco started working for the [security agency] on January 5, 1987. He was assigned to PCI Bank Elcano, Tondo Branch, as probationary, and [for] working 8 hours a day for 9 days he received only P400.00. On January 16, 1987, he was assigned to [the security agency's] headquarters up to January 31, 1987, working 12 hours a day[; he] received only P650.00 for the 16 days. On September 1, 1988, he was assigned to Imperial Synthetic Rubber Products rendering 12 hours duty per day until December 31, 1988 and was given a salary of P1,600.00/month. He was later transferred to various posts like Polypaper Products working 12 hours a day given a salary of P1,800.00 a month; Paramount Electrical, Inc. working 12 hours a day given P1,100.00 for 15 days; Rosewood Processing, Inc., rendering 12 hours duty per day receiving P2,200.00/month until May 16, 1991[;] Alen Engineering rendering 12 hours duty/day receiving P1,100/month; Purefoods Corporation on Delta II rendering 12 hours duty per day received P4,200.00 a month. He was relieved on August 24 and his salary for the period August 20 to 23 has not been paid by [the security agency.] He was suspended for no cause at all.

Armando Ballon started as security guard with [the security agency] July 1990 [Note: the introductory paragraph stated June 28, 1990] and was assigned to Purefoods Corporation in Marikina for five (5) months and received a salary of P50.00 per day for 8 hours. He was transferred to Rosewood Processing, Inc. on November 6, 1990 rendering 12 hours duty as [d]etachment [c]ommander and a salary of P2,700.00/month including P200.00 officer's allowance until May 15, 1991. On May 16, 1991, he applied for sick leave on orders of his doctor for 15 days but the HRM, Miss M. Andres[,] got angry and crumpled his application for sick leave, that [was] why he was not able to forward it to the SSS. After 15 days, he came back to the office of [the security agency] asking for an assignment and he was told that he [was] already terminated.

Complainant found out that the reason why Miss Andres crumpled his application for sick leave was because of the complaint he previously filed and was dismissed for failure to appear. He then refiled this case to seek redress from this Office.

Jose L. Cabrera started working for the [security agency] as security guard January, 1988 and was assigned to Alencor Residence rendering 12 hours duty per day and received a salary of P2,400.00 a month for 3 months[.] [I]n May, 1988, he was transferred to E & L Restaurant rendering 12 hours duty per day and receiv[ing] a salary of P1,500.00 per month for 6 months[.] [I]n January, 1989, he was transferred to Paramount rendering 12 hours duty per day receiving only P1,800.00 per month for 6 months[.] [I]n July 1989, he was transferred to Benito Ong[‘s] residence rendering 12 hours duty per day and receiving a salary of P1,400.00 per month for 4 months[.] [I]n December, 1989, he was transferred to Sea Trade International rendering 12 hours duty per day and receiving a salary of P1,900 per month for 6 months[.] [I]n July, 1990, he was transferred to Holland Pacific & Paper Mills rendering 8 hours duty per day and receiving a salary of P2,400.00 per month until September 1990[.] [In] October 1990, he was transferred to RMG residence rendering 12 hours duty per day receiving a salary of P2,200.00 per month for 3 months[.] [In] February 1991, he was transferred to Purefoods Corporation at Mabini, Batangas rendering 12 hours duty per day with a salary of P3,600.00 per month for only one month because he was hospitalized due to a stab wound inflicted by his [d]etachment [c]ommander. When he was discharged from the hospital and after he was examined and declared ‘fit to work’ by the doctor, he reported back to [the security agency’s] office but was given the run-around [and was told to] ‘come back tomorrow[.]’ [H]e [could] see that [the agency was] posting new recruits. He then complained to this Honorable Office to seek redress, hiring the services of a counsel.

Victor Aldeza started working for the [security agency] on March 21, 1990 and was assigned to Meridian Condominium, rendering 12 hours work per day and receiving a salary of

P1,500.00 per month. Although he knew that the salary was below minimum yet he persevered because he had spent much to get this job and stayed on until October 15, 1990[.] On October 16, 1990, he was transferred to Rosewood Processing, Inc., rendering 12 hours duty per day and receiving a salary of P2,600.00 per month up to May 15, 1991[.] On the later part of May 1991, he was assigned to UPSSA (Sandoval Shipyard) rendering 12 hours duty per day receiving a salary of P3,200.00 per month. [Aldeza] complained to [the security agency] about the salary but [the agency] did not heed him; thus, he filed his complaint for underpayment[.] [The agency] upon complainant's complaint for underpayment, instead of adjusting his salary to meet the minimum prescribed by law[,] relieved him and left him floating. When he complained of the treatment, he was told to resign because he could no longer be given any assignment. Because of this, complainant was forced to file another complaint for illegal dismissal.”

Labor Arbiter's Ruling

The labor arbiter noted the failure of the security agency to present evidence to refute the complainants' allegation. Instead, it impleaded the petitioner as third-party respondent, contending that its actions were primarily caused by petitioner's noncompliance with its obligations under the contract for security services, and the subsequent cancellation of the said contract.

The labor arbiter held petitioner jointly and severally liable with the security agency as the complainants' indirect employer under Articles 106, 107 and 109 of the Labor Code, citing the case of Spartan Security & Detective Agency, Inc vs. National Labor Relations Commission.^[8]

Although the security agency could lawfully place the complainants on floating status for a period not exceeding six months, the act was “illegal” because the former had issued a newspaper advertisement for new security guards. Since the relation between the complainants and the agency was already strained, the labor arbiter ordered the payment of separation pay in lieu of reinstatement.

The award for wage differential, limited back wages and separation pay contained the following details:

“1. Napoleon Mamon

Wage Differentials	P45,959.02
Backwages	72,764.38
Separation Pay	<u>7,687.70</u>
	P126,411.10

2. Arsenio-Gazzino

Wage Differentials	P24,855.76
Backwages	96,096.25
Separation Pay	<u>7,687.70</u>
	P126,639.71

3. Rodolfo Velasco

Wage Differentials	P66,393.58
Backwages	69,189.30
Separation Pay	<u>11,531.55</u>
	P147,114.43

4. Armando Ballon

Wage Differentials	P31,176.85
Backwages	81,874.00
Separation Pay	<u>3,843.85</u>
	P116,894.70

5. Jose Cabrera

Wage Differentials	P30,032.63
Backwages	91,483.63
Separation Pay	<u>11,531.55</u>
	P133,047.81

6. Victor Aldeza

Wage Differentials	P49,406.86
Backwages	83,795.93
Separation Pay	<u>3,843.85</u>
	P137,046.64

	P789,154.39”
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Ruling of Respondent Commission

As earlier stated, Respondent Commission dismissed petitioner’s appeal, because it was allegedly not perfected within the reglementary ten-day period. Petitioner received a copy of the labor arbiter’s Decision on April 2, 1993, and it filed its Memorandum of Appeal on April 12, 1993. However, it submitted the appeal bond on April 26, 1993, or twelve days after the expiration of the period for appeal per Rule VI, Sections 1, 3 and 6 of the 1990 Rules of Procedure of the National Labor Relations Commission. Thus, it ruled that the labor arbiter’s Decision became final and executory on April 13, 1993.

In the assailed Order, Respondent Commission denied reconsideration, because petitioner allegedly failed to raise any palpable or patent error committed by said commission.

Assignment of Errors

Petitioner imputes the following errors to Respondent Commission:

“Respondent NLRC committed grave abuse of discretion amounting to lack of jurisdiction when it dismissed petitioner’s

appeal despite the fact that the same was perfected within the reglementary period provided by law.

Respondent NLRC committed grave abuse of discretion amounting to lack of jurisdiction when it dismissed petitioner's appeal despite the clearly meritorious grounds relied upon therein."

Otherwise stated, the petition raises these two issues: first, whether the appeal from the labor arbiter to the NLRC was perfected on time; and second, whether petitioner is solidarily liable with the security agency for the payment of back wages, wage differential and separation pay.

The Court's Ruling

The petition is impressed with some merit and deserves partial grant.

First Issue: Substantial Compliance with the

Appeal Bond Requirement

The perfection of an appeal within the reglementary period and in the manner prescribed by law is jurisdictional, and noncompliance with such legal requirement is fatal and effectively renders the judgment final and executory.^[9] The Labor Code provides:

"ART. 223. Appeal. — Decisions, awards or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders.

X X X

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

x x x”

Indisputable is the legal doctrine that the appeal of a decision involving a monetary award in labor cases may be perfected “only upon the posting of a cash or surety bond.”^[10] The lawmakers intended the posting of the bond to be an indispensable requirement to perfect an employer’s appeal.^[11]

However, in a number of cases, this Court has relaxed this requirement in order to bring about the immediate and appropriate resolution of controversies on the merits.^[12] Some of these cases include: “(a) counsel’s reliance on the footnote of the notice of the decision of the labor arbiter that the aggrieved party may appeal within ten (10) working days; (b) fundamental consideration of substantial justice; (c) prevention of miscarriage of justice or of unjust enrichment, as where the tardy appeal is from a decision granting separation pay which was already granted in an earlier final decision; and (d) special circumstances of the case combined with its legal merits or the amount and the issue involved.”^[13]

In *Quiambao vs. National Labor Relations Commission*,^[14] this Court ruled that a relaxation of the appeal bond requirement could be justified by substantial compliance with the rule.

In *Globe General Services and Security Agency vs. National Labor Relations Commission*,^[15] the Court observed that the NLRC, in actual practice, allows the reduction of the appeal bond upon motion of the appellant and on meritorious grounds; hence, petitioners in that case should have filed a motion to reduce the bond within the reglementary period for appeal.

That is the exact situation in the case at bar. Here, petitioner claims to have received the labor arbiter’s Decision on April 6, 1993.^[16] On April 16, 1993, it filed, together with its memorandum on appeal^[17] and notice of appeal, a motion to reduce the appeal bond^[18] accompanied by a surety bond for fifty thousand pesos issued by Prudential Guarantee and Assurance, Inc.^[19] Ignoring petitioner’s motion (to reduce bond), Respondent Commission rendered its

assailed Resolution dismissing the appeal due to the late filing of the appeal bond.

The solicitor general argues for the affirmation of the assailed Resolution for the sole reason that the appeal bond, even if it was filed on time, was defective, as it was not in an amount “equivalent to the monetary award in the judgment appealed from.” The Court disagrees.

We hold that petitioner’s motion to reduce the bond is a substantial compliance with the Labor Code. This holding is consistent with the norm that letter-perfect rules must yield to the broader interest of substantial justice.^[20]

Where a decision may be made to rest on informed judgment rather than rigid rules, the equities of the case must be accorded their due weight because labor determinations should not only be “*secundum rationem* but also *secundum caritatem*.”^[21] A judicious reading of the memorandum of appeal would have made it evident to Respondent Commission that the recourse was meritorious. Respondent Commission acted with grave abuse of discretion in peremptorily dismissing the appeal without passing upon — in fact, ignoring — the motion to reduce the appeal bond.

We repeat: Considering the clear merits which appear, *res ipsa loquitur*, in the appeal from the labor arbiter’s Decision, and the petitioner’s substantial compliance with rules governing appeals, we hold that the NLRC gravely abused its discretion in dismissing said appeal and in failing to pass upon the grounds alleged in the Motion for Reconsideration.

Second Issue: Liability of an Indirect Employer

The overriding premise in the labor arbiter’s Decision holding the security agency and the petitioner liable was that said parties offered no evidence refuting or rebutting the complainants’ computation of their monetary claims. The arbiter ruled that petitioner was liable in *solidum* with the agency for salary differentials based on Articles 106, 107 and 109 of the Labor Code which hold an employer jointly and

severally liable with its contractor or subcontractor, as if it is the direct employer. We quote said provisions below:

“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.

X X X

“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.

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

Upon the other hand, back wages and separation pay were awarded because the complainants were constructively and illegally dismissed by the security agency, which placed them on floating status and at the same time gave assignments to newly hired security guards. Noting that the relationship between the security agency and the complainants was already strained, the labor arbiter granted separation pay in lieu of reinstatement.

In its memorandum of appeal, petitioner controverts its liability for the mentioned monetary awards on the following grounds:^[22]

- “A. Complainant Jose Cabrera never rendered security services to [petitioner] or was [n]ever assigned as security guard [for] the latter’s business establishment;
- B. Complainants Napoleon Mamon, Arsenio Gazzingan, Rodolfo Velasco, Armando Ballon and Victor Aldeza rendered security services to [petitioner] for a fixed period and were thereafter assigned to other entities or establishments or were floated or recalled to the headquarters of Veterans; and
- C. The relationship between [petitioner] and Veterans was governed by a Contract for Guard Services under which [petitioner] dutifully paid a contract price of P3,500.00 a month for 12 hour duty per guard and later increased to P4,250.00 a month for 12 hour duty per guard which are within the prevailing rates in the industry and in accordance with labor standard laws.”

The first two grounds are meritorious. Legally untenable, however, is the contention that petitioner is not liable for any wage differential for the reason that it paid the employees in accordance with the contract for security services which it had entered into with the security agency. Notwithstanding the service contract between the petitioner and the security agency, the former is still solidarily liable to the employees, who were not privy to said contract, pursuant to the aforecited provisions of the Code. Labor standard legislations are enacted to alleviate the plight of workers whose wages barely meet the spiraling costs of their basic needs. They are considered written in every contract, and stipulations in violation thereof are considered not written. Similarly, legislated wage increases are deemed amendments to the contract. Thus, employers cannot hide behind their contracts in order to evade their or their contractors’ or subcontractors’ liability for noncompliance with the statutory minimum wage.

The joint and several liability of the employer or principal was enacted to ensure compliance with the provisions of the Code, principally those on statutory minimum wage. The contractor or subcontractor is made liable by virtue of his or her status as a direct employer, and the principal as the indirect employer of the contractor's employees. This liability facilitates, if not guarantees, payment of the workers' compensation, thus, giving the workers ample protection as mandated by the 1987 Constitution.^[23] This is not unduly burdensome to the employer. Should the indirect employer be constrained to pay the workers, it can recover whatever amount it had paid in accordance with the terms of the service contract between itself and the contractor.^[24]

Withal, fairness likewise dictates that the petitioner should not, however, be held liable for wage differentials incurred while the complainants were assigned to other companies. Under these cited provisions of the Labor Code, should the contractor fail to pay the wages of its employees in accordance with law, the indirect employer (the petitioner in this case), is jointly and severally liable with the contractor, but such responsibility should be understood to be limited to the extent of the work performed under the contract, in the same manner and extent that he is liable to the employees directly employed by him. This liability of petitioner covers the payment of the workers' performance of any work, task, job or project. So long as the work, task, job or project has been performed for petitioner's benefit or on its behalf, the liability accrues for such period even if, later on, the employees are eventually transferred or reassigned elsewhere.

We repeat: The indirect employer's liability to the contractor's employees extends only to the period during which they were working for the petitioner, and the fact that they were reassigned to another principal necessarily ends such responsibility. The principal is made liable to his indirect employees, because it can protect itself from irresponsible contractors by withholding such sums and paying them directly to the employees or by requiring a bond from the contractor or subcontractor for this purpose.

Similarly, the solidary liability for payment of back wages and separation pay is limited, under Article 106, "to the extent of the work

performed under the contract”; under Article 107, to “the performance of any work, task, job or project”; and under Article 109, to “the extent of their civil liability under this Chapter [on payment of wages].”

These provisions cannot apply to petitioner, considering that the complainants were no longer working for or assigned to it when they were illegally dismissed. Furthermore, an order to pay back wages and separation pay is invested with a punitive character, such that an indirect employer should not be made liable without a finding that it had committed or conspired in the illegal dismissal.

The liability arising from an illegal dismissal is unlike an order to pay the statutory minimum wage, because the workers’ right to such wage is derived from law. The proposition that payment of back wages and separation pay should be covered by Article 109, which holds an indirect employer solidarily responsible with his contractor or subcontractor for “any violation of any provision of this Code,” would have been tenable if there were proof — there was none in this case — that the principal/employer had conspired with the contractor in the acts giving rise to the illegal dismissal.

With the foregoing discussion in mind, we now take up in detail the petitioner’s liability to each of the complainants.

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Mamon worked for petitioner for a period of a little more than one year beginning February 3, 1990 until May 16, 1991. Inasmuch as petitioner was his indirect employer during such time, it should thus be severally liable for wage differential from the time of his employment until his relief from duty. He was relieved upon the request of petitioner, after it had learned of the complaint for underpayment of wages filed by Mamon and several other security guards.

However, this was not a dismissal from work because Mamon was still working for the security agency and was immediately assigned, on May 29, 1991, to its other client, Mead Johnson Philippines. His dismissal came about later, when he refused to sign a quitclaim and

waiver in favor of the security agency. Thus, he was illegally dismissed by the agency when he was no longer employed by petitioner, which cannot thus be held liable for back wages and separation pay in his case.

“Napoleon Mamon received an order transferring him to Rosewood Processing, Inc. effective February 3, 1990; On May 16, 1991, Rosewood Processing, Inc. asked for the relief of Mamon and other guards at Rosewood because they came to know that complainants filed a complaint for underpayment on May 13, 1991 with the National Labor Relations Commission[.] After that, complainant was floated until May 29, 1991 when he was assigned to Mead Johnson Philippines Corporation. [A] week later, [the security agency] received summons on complainant’s complaint for underpayment and he was called to [the security agency] office. When he reported, he was told to sign a ‘Quitclaim and Waiver[‘] by Lt. R. Rodriguez and if he [did] not sign the quitclaim and waiver, he [would] be relieved from his post and [would] no longer be given any assignment. At the end of July 1991, he was approached by the Security in Charge, A. Azuela, [for him] to sign the quitclaim and waiver[,] and when he refused to sign, he was told that he ha[d] no more assignment and should report to their office. [H]e reported the following day to the detachment commander, Mr. A. Yadao and he was told that the main office ha[d] relieved him. He reported to their office asking for an assignment but he was told by R. Rodriguez that ‘I no longer can be given an assignment so I had better resign’. He went back several times to the office of the [security agency] but every time the answer was the same although respondent was recruiting new guards and posting them.”^[25]

Case No. NCR-00-07-03966-91

Gazzingan was assigned to petitioner as a security guard for a period of one year. For said period, petitioner is solidarily liable with the agency for underpayment of wages based on Articles 106, 107 and 109 of the Code.

“Arsenio Gazzingan after eleven (11) days on June 1989, was transferred to Rosewood Processing, Inc. [I]n June 1990, he was assigned at Purefoods DELPAN. After 11 days, he asked to be transferred to Manila because of the distance from his home and the transfer was approved but instead of being transferred to Manila, he was assigned to Purefoods B-F-4 in Batangas again he requested for transfer which was also approved by the [security agency] office but since then he was told to come back again and again and up to the present he has not been given any assignment.”^[26]

His dismissal cannot be blamed on the petitioner. Like Mamon, Gazzingan had already been assigned to another client of the agency when he was illegally dismissed. Thus, Rosewood cannot be held liable, jointly and severally with the agency, for back wages and separation pay.

Case No. NCR-00-07-03967-91

Rodolfo Velasco was assigned to petitioner from December 31, 1988 until May 16, 1991. Thus, petitioner is solidarily liable for wage differentials during such period. Petitioner is not, however, liable for back wages and separation pay, because Velasco was no longer working for petitioner at the time of his illegal dismissal.

“Rodolfo Velasco started working for the [security agency] on January 5, 1987. [On] December 31, 1988 he was transferred to various posts like Rosewood Processing, Inc., until May 16, 1991. He was relieved on August 24 and his salary for the period August 20 to 23 has not been paid by [the security agency]; [h]e was suspended for no cause at all.”^[27]

Case No. NCR-00-07-0445-91

Petitioner was the indirect employer of Ballon during the period beginning November 6, 1990 until May 15, 1991; thus, it is liable for wage differentials for said period. However, it is not liable for back wages and separation pay, as there was no evidence presented to show that it participated in Ballon’s illegal dismissal.

“[H]e [Armando Ballon] was transferred to Rosewood Processing, Inc. on November 6, 1990 rendering 12 hours duty as [d]etachment [c]ommander and received a salary of P2,700.00/month including P200.00 officer’s allowance until May 15, 1991. On May 16, 1991, he applied for sick leave on orders of his doctor for 15 days but the HRM, Miss M. Andres[,] got angry and crumpled his application for sick leave that is why he was not able to forward it to the SSS. After 15 days, he came back to the office of [the security agency] asking for an assignment and he was told that he [was] already terminated. Complainant found out that the reason why Miss Andres crumpled his application for sick leave was because of the complaint he previously filed and was dismissed for failure to appear. He then refiled this case to seek redress from this Office.”^[28]

Case No. NCR-00-08-05030-91

Petitioner is liable for wage differentials in favor of Aldeza during the period he worked with petitioner, that is, October 16, 1990 until May 15, 1991:

“On October 16, 1990, he [Aldeza] was transferred to Rosewood Processing, Inc., up to May 15, 1991[.] On the later part of May 1991, he was assigned to UPSSA (Sandoval Shipyard) Complainant [sic] complained to [the security agency] about the salary but [the security agency] did not heed him; thus, he filed his complaint for underpayment[.] [The security agency] upon complainant’s complaint for underpayment reacted, instead of adjusting his salary to meet the minimum prescribed by law[,] relieved him and left him floating[;] and when he complained of the treatment, he was told to resign because he could no longer be given any assignment. Because of this, complainant was forced to file another complaint for illegal dismissal.”^[29]

The cause of Aldeza’s illegal dismissal is imputable, not to petitioner, but solely to the security agency. In Aldeza’s case, the solidary liability for back wages and separation pay arising from Articles 106, 107 and 109 of the Code has no application.

Case No. NCR-00-09-05617-91

Cabrera was an employee of the security agency, but he never rendered security services to petitioner. This fact is evident in the labor arbiter's findings:

“Jose L. Cabrera started working for the [security agency] as [a] security guard on January, 1988 and was assigned to Alencor Residence . . . [I]n May, 1988, he was transferred to E & L Restaurant . . . [.] [I]n January, 1989, he was transferred to Paramount . . . [.] [I]n July 1989, he was transferred to Benito Ong[‘s] residence . . . [.] [I]n December, 1989, he was transferred to Sea Trade International . . . [.] [I]n July, 1990, he was transferred to Holland Pacific & Paper Mills . . . [.] [I]n October 1990, he was transferred to RMG [R]esidence . . . [.] [I]n February 1991, he was transferred to Purefoods Corporation at Mabini, Batangas . . . When he was discharged from the hospital and after he was examined and declared ‘fit to work’ by the doctor, he reported back to [the security agency] office but was given the run-around [and was told to] ‘come back tomorrow[,]’ although he [could] see that [it was] posting new recruits. He then complained to this Honorable Office to seek redress, hiring the services of a counsel.”^[30]

Hence, petitioner is not liable to Cabrera for anything.

In all these cases, however, the liability of the security agency is without question, as it did not appeal from the Decisions of the labor arbiter and Respondent Commission.

WHEREFORE, the petition is partially **GRANTED**. The assailed Decision is hereby **MODIFIED**, such that petitioner, with the security agency, is solidarily liable to **PAY** the complainants only wage differentials during the period that the complainants were actually under its employ, as above detailed. Petitioner is **EXONERATED** from the payment of back wages and separation pay.

The temporary restraining order issued earlier is **LIFTED**, but the petitioner is deemed liable only for the aforementioned wage

differentials, which Respondent Commission is required to **RECOMPUTE** within fifteen days from the finality of this Decision. No costs.

SO ORDERED.

Davide, Jr., Bellosillo, Vitug and Quisumbing, JJ., concur.

- [1] Rollo, pp. 90-91.
- [2] First Division composed of Comms. Alberto R. Quimpo, ponente; Comm. Vicente S.E. Veloso and Pres. Comm. Bartolome S. Carale, concurring.
- [3] Rollo, pp. 40-42.
- [4] Rollo, p. 20.
- [5] Rollo, p. 52.
- [6] The case was submitted for decision after the Court, in its Resolution dated February 26, 1997, noted Atty. Ramon F. Ishiwata's motion adopting the solicitor general's Manifestation as private respondents' memorandum.
- [7] Rollo, pp. 174-176; and Temporary Restraining Order, rollo, pp. 172-173.
- [8] 213 SCRA 528, September 3, 1992.
- [9] Philippine Airlines, Inc. vs. National Labor Relations Commission, 263 SCRA 638, 658, October 28, 1996; Garcia vs. National Labor Relations Commission, 264 SCRA 261, 268, November 18, 1996; and Cabalan Pastulan Negrito Labor Association vs. National Labor Relations Commission, 241 SCRA 643, 656, February 23, 1995.
- [10] Unicane Workers Union-CLUP vs. National Labor Relations Commission, 261 SCRA 573, 584, September 9, 1996; Banawa vs. National Labor Relations Commission, 251 SCRA 515, 521, December 26, 1995; and Garais vs. National Labor Relations Commission, 256 SCRA 560, 566, April 26, 1996.
- [11] Oriental Mindoro Electric Cooperative, Inc. vs. National Labor Relations Commission, 246 SCRA 794, 801, July 31, 1995.
- [12] Cabalan Pastulan Negrito Labor Association vs. NLRC, supra; Oriental Mindoro Electric Cooperative, Inc. vs. NLRC, supra; and El Toro Security Agency, Inc. vs. National Labor Relations Commission, 256 SCRA 363, 366, April 18, 1996.
- [13] PAL vs. NLRC, supra, per Davide, Jr., J.
- [14] 254 SCRA 211, 216-217, March 4, 1996, per Mendoza, J., citing also the cases of Rada vs. NLRC, 205 SCRA 69, 76-77, January 9, 1992, in which the bond was paid belatedly, because the labor arbiter's Decision did not state the amount awarded as back wages and overtime pay; Blancaflor vs. NLRC, 218 SCRA 366, 371, February 2, 1993, in which the failure to give a bond was in part due to the failure of the labor arbiter to state the exact amount of back wages and separation pay due; and Your Bus Line vs. NLRC, 190 SCRA 160,

September 28, 1990, in which the failure to file a bond was excused because petitioner was misled by the notice of the Decision which, while stating the requirements for perfecting an appeal, did not mention that a bond must be filed.

- [15] 249 SCRA 408, 414-415, October 23, 1995, per Bellosillo, J.
- [16] Notice of Judgment/Decision, Rollo, p. 70.
- [17] Rollo, p. 92.
- [18] Rollo, p. 127.
- [19] Rollo, p. 135.
- [20] *Del Mar Domestic Enterprises vs. National Labor Relations Commission*, GR No. 108731, December 10, 1997, pp. 10-11; *Kapisanang Manggagawang Pinagyakap vs. National Labor Relations Commission*, 152 SCRA 96, 101, July 16, 1987; *Lamsan Trading, Inc. vs. Leogardo, Jr.*, 144 SCRA 571, 578, September 30, 1986.
- [21] *Kapisanang Manggagawang Pinagyakap vs. National Labor Relations Commission*, 152 SCRA 96, 101, July 16, 1987, per Teehankee, CJ.
- [22] Rollo, p. 95.
- [23] *Enjay, Inc. vs. National Labor Relations Commission*, 245 SCRA 588, 592, July 4, 1995; *Spartan vs. NLRC*, supra.
- [24] *Leopard Security and Investigation Agency vs. National Labor Relations Commission*, 186 SCRA 756, 761-762, June 25, 1990.
- [25] Labor Arbiter's Decision, pp. 7-8, citing private respondents' position paper; rollo, pp. 78-79.
- [26] *Ibid*, pp. 8-10; rollo, pp. 79-80.
- [27] *Ibid*, p. 10; rollo, p. 81.
- [28] *Ibid.*, pp. 10-11; rollo, pp. 81-82.
- [29] *Ibid.*, pp. 12-13; rollo, pp. 83-84.
- [30] *Ibid*, pp. 11-12; rollo, pp. 82-83.