

## TWENTY-THIRD DIVISION

[ CA-G.R. SP NO. 05321-MIN, February 06, 2015 ]

**MARITES S. MARTEJA AND MELICIA G. BELEN, PETITIONERS, VS.  
NATIONAL LABOR RELATIONS COMMISSION, EIGHTH DIVISION,  
ADVENTURER'S<sup>[1]</sup> MULTI-PURPOSE COOPERATIVE AND DOLE  
PHILIPPINES, INC.,<sup>[2]</sup> RESPONDENTS.**

### DECISION

**SANTOS, J.:<sup>[3]</sup>**

Before the Court is a Petition for *Certiorari*<sup>[4]</sup> under Rule 65 of the Rules of Court assailing the Resolution<sup>[5]</sup> dated October 31, 2012 of public respondent National Labor Relations Commission, 8<sup>th</sup> Division, Cagayan de Oro City (NLRC), in NLRC No. MAC-07-012137-2011.

#### *The Antecedents*

Petitioners Marites S. Marteja (Marteja) and Melicia G. Belen (Belen) were former members of private respondent Adventures Multi-Purpose Cooperative (AMCOOP), a cooperative duly organized in accordance with Philippine laws and duly registered with the Cooperative Development Authority<sup>[6]</sup> with business address at Muñoz Subdivision, Cannery Road, Cannery Site, Polomok, South Cotabato.<sup>[7]</sup> Private respondent Dole Philippines, Inc. (Dolefil), on the other hand, is a corporation duly organized in accordance with Philippine laws. It is engaged in the business of growing and processing for export pineapple and pineapple products with principal office located at Cannery Site, Polomok, South Cotabato.<sup>[8]</sup>

In their Position Paper, petitioners Marteja and Belen claimed that on May 6, 2003 and August 9, 2003, respectively, private respondent AMCOOP “placed” them with private respondent Dolefil. Petitioner Marteja was assigned as a packer at Station 1, Packing Plant under the Agri Logistic Department, Agriculture Division while petitioner Belen was assigned as a harvester at the Plantation Area under the Harvesting Department, also of Agriculture Division.<sup>[9]</sup>

According to petitioners, they worked alongside regular employees of private respondent Dolefil and the manner by which they performed their work is subject to the supervision and control of private respondent Dolefil’s supervisors and managers. They performed the same tasks as private respondent Dolefil’s employees but they were only paid on a *pakyawan* basis. They added that private respondent AMCOOP is a labor-only contractor not having the necessary equipment, tools and capital to enable petitioners to do their tasks at private respondent Dolefil’s premises. Despite the fact that they have worked with private respondent Dolefil for more than six months then, they were not considered regular employees.

Hence, their complaint prayed for their regularization and payment for money claims such as 13<sup>th</sup> month pay and entry-level salary rates enjoyed by private respondent Dolefil's regular employees.<sup>[10]</sup> In support of petitioners' allegations, they submitted a Sworn Statement<sup>[11]</sup> by former employees of private respondent Dolefil to prove that indeed, their work is subject to the control and supervision of the employees of private respondent Dolefil. Particularly for petitioner Marteja, allegedly her supervisor is one Glen Enonaria and her manager is one Carmelo Alanza. As regards petitioner Belen, allegedly her supervisor is one Jonathan Cagas and her manager is one Rolando Demetillo.<sup>[12]</sup>

Private respondent AMCOOP countered, in its Position Paper,<sup>[13]</sup> that petitioners were its members-employees, hence co-owners thereof as shown in the Capital Buildup Ledgers.<sup>[14]</sup> Petitioner Marteja was assigned in the Packing Department of private respondent Dolefil on November 6, 2003 while petitioner Belen was assigned at the Harvesting Department on August 25, 2003. Petitioners, however, voluntarily severed their membership with private respondent AMCOOP.<sup>[15]</sup>

Private respondent AMCOOP alleged that on July 28, 2009, petitioner Marteja suddenly stopped reporting for work, and after almost one year or on June 15, 2010, she submitted a resignation letter<sup>[16]</sup> to private respondent AMCOOP which stated that she was constrained to resign due to her small business which she must personally handle. On the same day, petitioner Marteja executed an Affidavit of Waiver<sup>[17]</sup> which stated that she was withdrawing her membership with private respondent AMCOOP. As regards petitioner Belen, she simply abandoned her work and failed to report without a word on January 28, 2009. She never mentioned to the management of private respondent AMCOOP her intention to sever her membership with it.<sup>[18]</sup>

Moreover, private respondent AMCOOP denied petitioners' claim that it is a labor-only contractor. According to private respondent AMCOOP, it is a workers cooperative defined under Article 23 (t)<sup>[19]</sup> of Republic Act No. 9520.<sup>[20]</sup> Further, it is a legitimate job contractor as proven by its Certificate of Registration<sup>[21]</sup> issued by the Department of Labor and Employment (DOLE). In addition, per the Order<sup>[22]</sup> dated July 3, 2007 in Case No. R1100-9310-R1-355<sup>[23]</sup> issued by Regional Director Ma. Gloria A. Tango of DOLE, Regional Office XII, Koronadal City which directed the conduct of investigation and/or verification of the different cooperatives/contractors of private respondent Dolefil, it was declared that private respondent AMCOOP is a legitimate job contractor with substantial capitalization of P4,576,170.92 and total assets of P9,932,862.34.<sup>[24]</sup>

Further, private respondent AMCOOP contended that it merely entered into a service contract with private respondent Dolefil but was the one which hires and supervises its own workers, gives daily instructions to them, pays for their wages and benefits including their SSS contributions and imposes disciplinary actions on the basis of its established rules.<sup>[25]</sup>

For its part, private respondent Dolefil corroborated the claims of private respondent AMCOOP with respect to the membership and employment of petitioners with the latter. It also stated that private respondent AMCOOP is a legitimate job contractor

which, like many of its job contracting cooperatives, provides relievers for its absent employees in any given day which is around 20% of its regular workforce due to absenteeism, vacation leave, sick leave, maternity leave, emergency leave, etc. Such arrangement is duly recognized and sanctioned by the existing Collective Bargaining Agreement of private respondent Dolefil. Furthermore, petitioners failed to present any evidence to prove their allegation that private respondent AMCOOP is a labor-only contractor. The Sworn Statement of the former employees of private respondent Dolefil cannot be given credence because these employees were its former employees and were all dismissed for a cause, hence, they have an axe to grind against private respondent Dolefil. Also, these employees have long been separated from private respondent Dolefil and are not connected with private respondent AMCOOP, thus, they have no personal knowledge of the affairs of private respondent Dolefil.<sup>[26]</sup>

Private respondent Dolefil also presented a Joint Affidavit<sup>[27]</sup> of Jonathan Cagas and Glaine Enonaria, the superintendents alluded to as having direct supervision over petitioners. In their Joint Affidavit, they denied supervising petitioners and stated that their tasks only involve supervising regular employees of private respondent Dolefil. They alleged that they do not control the manner by which petitioners perform their work. If at all, according to them, petitioners were only required to adhere to reasonable measures to maintain general peace and order in the workplace.

On May 11, 2011, the Labor Arbiter rendered a Decision<sup>[28]</sup> dismissing petitioners' complaint for lack of merit.

In due time, petitioners appealed<sup>[29]</sup> the adverse Decision to public respondent NLRC.

On June 29, 2012, public respondent NLRC issued a Resolution<sup>[30]</sup> which found in favor of the petitioners and reversed the ruling of the Labor Arbiter. Public respondent NLRC ruled that private respondent AMCOOP is a labor-only contractor because it does not have sufficient tools and equipment necessary in the performance of the contracted jobs with private respondent Dolefil. Furthermore, the works performed by petitioners were directly related to the main line of business of private respondent Dolefil. Public respondent NLRC also ruled that private respondents failed to prove that petitioners had indeed intentionally abandoned their work because mere absence or failure to work is not tantamount to abandonment. It held that in fact, the theory of abandonment is inconsistent with the fact that petitioners filed a complaint for regularization. Thus, according to public respondent NLRC, the Labor Arbiter committed serious error in declaring that petitioners voluntarily severed their employment. Public respondent NLRC concluded that given these, since there is neither dismissal nor abandonment of work to speak of, the employer-employee relationship of petitioners with private respondents should be maintained and petitioners should be reinstated back to their former positions without loss of seniority rights. The dispositive portion of the Resolution reads:

WHEREFORE, the appeal is hereby GRANTED. The assailed decision is hereby REVERSED and SET ASIDE, and a new one is entered declaring that AMCOOP as labor-only contractor and complainants as regular employees of DOLEFIL.

Accordingly, respondent DOLE PHILIPPINES, INC. and/or its authorized representative are hereby ORDERED to reinstate complainants to their previous position without loss of seniority rights but without BACKWAGES.

SO ORDERED.<sup>[31]</sup>

Private respondent Dolefil thereafter filed a Motion for Reconsideration<sup>[32]</sup> to the above Resolution while petitioners filed a Motion for Partial Reconsideration.<sup>[33]</sup>

On October 31, 2012, public respondent NLRC rendered the assailed Resolution<sup>[34]</sup> which granted private respondent Dolefil's Motion for Reconsideration and reversed its previous Resolution, the dispositive portion of which reads:

WHEREFORE, the Motion for Reconsideration is hereby GRANTED and Our Resolution dated 29 June 2012 is RECONSIDERED and SET ASIDE.

Accordingly, the Labor Arbiter's 11 May 2011 Decision is hereby AFFIRMED.

SO ORDERED.<sup>[35]</sup>

Aggrieved, on January 21, 2013, petitioners filed the present Petition.<sup>[36]</sup>

### *The Issues*

#### I.

PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AND SERIOUSLY ERRED IN CHANGING ITS EARLIER RESOLUTION AND ADOPTING THE FINDINGS OF THE LABOR ARBITER THAT THE RESPONDENTS<sup>[37]</sup> WERE NOT ENGAGED IN LABOR-ONLY CONTRACTING AND PETITIONERS' CASE MUST BE DISMISSED FOR LACK OF MERIT (AND)

#### II.

PUBLIC RESPONDENT NLRC ACTED WITH GRAVE ABUSE OF DISCRETION AND SERIOUSLY ERRED IN DISMISSING PETITIONERS' CLAIM FOR 13TH MONTH PAY.<sup>[38]</sup>

On April 23, 2013, private respondent AMCOOP filed its Comment<sup>[39]</sup> to the Petition, while private respondent Dolefil filed its Comment<sup>[40]</sup> on April 29, 2013.

On April 30, 2013 and May 28, 2013, petitioners filed their respective Replies<sup>[41]</sup> to the Comments of private respondents.

Per the Court's Minute Resolution<sup>[42]</sup> dated July 16, 2013, the parties were required to submit their respective Memoranda within fifteen days from notice. All the parties complied<sup>[43]</sup> by filing their respective Memoranda. Consequently, the case was

declared submitted for decision.<sup>[44]</sup>

### *This Court's Ruling*

At the core of the present controversy is which, between private respondent AMCOOP and private respondent Dolefil, is the employer of petitioners.

Based on the arguments raised in the Petition, petitioners posed the following issues for the Court's consideration: 1) whether or not it was private respondent AMCOOP which exercised control over the performance of petitioners' works; 2) whether or not private respondent AMCOOP is a labor-only contractor; and 3) whether or not petitioners are entitled to the payment of 13<sup>th</sup> month pay and other money claims.

The Petition is bereft of merit.

Petitioners claim that public respondent NLRC committed grave abuse of discretion in ruling that it is private respondent AMCOOP, and not private respondent Dolefil, which exercised control over the manner and method by which they performed their work as shown by the Sworn Statement executed by former employees of private respondent Dolefil. They claim that petitioner Marteja was under one Glen Enonaria and Carmelo Alanza, the supervisor and manager, respectively, of private respondent Dolefil, while petitioner Belen was under Jonathan Cagas and Rolando Demetillo, also supervisor and manager of private respondent Dolefil.<sup>[45]</sup>

The Court is not persuaded.

In determining the presence or absence of an employer-employee relationship, the Court has consistently looked for the following incidents, to wit: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee on the means and methods by which the work is accomplished. The last element, the so-called "control test", is the most important element.<sup>[46]</sup> Indeed, the power of the employer to control the work of the employee is considered the most significant determinant of the existence of an employer-employee relationship. It is premised on whether the person for whom the services are performed reserves the right to control both the end achieved and the manner and means used to achieve that end. Although no particular form of evidence is required to prove the existence of an employer-employee relationship, any evidence submitted must nonetheless rest on substantial evidence.<sup>[47]</sup>

In this case, however, petitioners' sole evidence, which is the Sworn Statement of the former employees of private respondent Dolefil, does not prove they are employees of private respondent Dolefil because this was effectively denied by Jonathan Cagas and Glaine Enonaria, their alleged supervisors. In the Joint Affidavit<sup>[48]</sup> they executed, they denied supervising petitioners and stated that their tasks only involve supervising regular employees of private respondent Dolefil. Indeed, while it suffices that the power of control must be shown to exist, there must still be a showing of *some* evidence of such power,<sup>[49]</sup> which was not established here by petitioners.