

## **THIRTEENTH DIVISION**

**[ CA-G.R. SP NO. 93354, August 09, 2006 ]**

**PHILIPPINE PIZZA, INC. PETITIONER, VS. NATIONAL LABOR  
RELATIONS COMMISSION AND RONNIE G. TUMAMING,  
RESPONDENTS.**

### **D E C I S I O N**

**SABIO, JR., J.:**

The rule is that factual findings of the Labor Arbiter, when affirmed by the NLRC are accorded great weight and respect when supported by substantial evidence, and devoid of any unfairness and arbitrariness (*Security and Credit Investigation, Inc. vs. NLRC*, 350 SCRA 357).

Challenged in this petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure is the September 7, 2005 resolution of the National Labor Relations Commission (NLRC), 2nd Division, in NLRC-NCR CA No. 041649-04 (NLRC NCR-00-07-08769-03) which affirmed the decision of the Labor Arbiter and its January 24, 2006 resolution denying petitioner's motion for reconsideration on its earlier decision.

Finding the Labor Arbiter's portrayal of antecedent facts graphic and instructive, we quote the same, thus:

"This treats of the complaint of Ronnie tumaming against respondents Pizza Hut Philippines, Inc. (Philippine Pizza, Inc.) and CBM Agency (Consolidated Building Maintenance, Inc.) for alleged illegal dismissal, non-payment of wages, service incentive leave pay, damages and attorney's fees.

He claims that he started working as a driver on August 14, 1997 and worked as such until his alleged termination on July 28, 2003 at which time he was receiving daily wage of P250.00.

He claims that his termination came about on July 28, 2003 when he was advised by his immediate superior, Arthur Kuntze that his services are no longer needed as top management decided to terminate him on account of a complaint against him for reckless driving; that he is a regular employee of respondent Pizza Hut and that his termination is illegal and is therefore entitle to reinstatement with full backwages; that his wage being only P250.00 hence, he is underpaid for P30.00; and, that he is also entitled to his 13th month pay as well as damages and attorney's fees as he was constrained to engage the services of counsel to protect and enforce his rights.

Respondent Pizza Hut contends that complainant is employed by

respondent Consolidated Building Maintenance, Inc. (CBMI) an independent job contractor and was assigned as a delivery van driver at the Pizza Hut Warehouse; that it is the prerogative of his employer CBMI to request the transfer of its employees; that records from co-respondent CBMI shows that complainant was hired only in November 21, 2002; that on July 19, 2003, complainant was involved in a vehicular accident; that on July 28, 2003 complainant and Mr. Kuntze of respondent Pizza Hut met to discuss the incident and as a consequence, respondent CBMI being the employer ordered his reassignment on August 1, 2003; that complainant was validly transferred by CBMI since this is an acknowledged management prerogative; that he was never terminated by respondent Pizza Hut considering that he is not its employee but that of respondent CBMI.

Co-respondent CBMI also filed its separation position paper stating among others, that complainant was hired on November 21, 2002; that pursuant to a service contract between the respondents, complainant was assigned as a driver of respondent Pizza Hut; that on July 19, 2003, complainant figured in a vehicular accident wherein he was found as the negligent party; that he was again involved in a near collision incident on July 26, 2003 and for which he was advised that he would be reassigned by his employer CBMI as warehouse personnel; that on July 29, 2003, complainant no longer reported for work; and despite written notice for him to make arrangement with CBMI for his new position, he failed to comply.

By way of reply, respondent Pizza Hut maintains that complainant was not its employee in the absence of any proof to substantiate his allegation that he was employed since August 14, 1997; that it does not exercise control over him; that respondent CBMI is not a labor-only contractor but is a legitimate independent labor contractor; that not being an employee of respondent, he does not enjoy security of tenure and is therefore not entitled to reinstatement.

Respondent CBMI also filed its reply reiterating its arguments raised in the position paper.

In his consolidated reply complainant maintains that he was initially hired by respondent Pizza Hut as early as December 8, 1995 as clearly shown in respondent Pizza Hut's Annex "A" and thereafter worked for seven (7) years; that respondent Pizza Hut adopted a scheme designed to frustrate his tenurial security by a service contract allegedly entered between the respondent; that he worked under the supervision of Pizza Hut's Warehouse Manager Arthur Kuntze and Pizza Hut Supervisors and that to his recollection, there were no CBMI supervisor assigned to Pizza Hut.

On January 29, 2004, respondent Pizza Hut filed its rejoinder which was adopted by co-respondent CBMI as its rejoinder."