

SECOND DIVISION

[G.R. NO. 145271, August 14, 2005]

MANILA ELECTRIC COMPANY, PETITIONER, VS. 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),

DECISION

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.

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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.

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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

| <u>OVERTIME DIFFERENTIAL</u> <u>NAME AND PREMIUM</u> | | <u>PAY FOR HOLIDAY</u> <u>& REST DAY</u> |
|---|------------|---|
| 1. Rogelio Benamira | P14,615.75 | |
| 2. Ernie De Sagun | 21,164.31 | |
| 3. Diosdado Yogare | 7,108.77 | |
| 4. Francisco | 26,567.11 | |

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|--------------|-----------|
| Maro | |
| 5. Oscar | 18,863.36 |
| Lagonay | |
| 6. Rolando | 21,834.12 |
| Beni | |
| 7. Alex Beni | 21,648.80 |
| 8. Ruel De | 14,200.33 |
| Guia | |

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