

## SECOND DIVISION

[ G.R. No. 121327, December 20, 2001 ]

**CECILIO P. DE LOS SANTOS AND BUKLOD MANGGAGAWA NG CAMARA (BUMACA), PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION), HON. COMMISSIONERS VICTORIANO R. CALAYCAY, RAUL T. AQUINO, AND ROGELIO I. RAYALA, CAMARA STEEL INDUSTRIES INC., JOSELITO JACINTO, ALBERTO F. DEL PILAR, DENNIS ALBANO, MERCEDITA G. PASTRANA, TOP-FLITE AND RAUL RUIZ, RESPONDENTS.**

### D E C I S I O N

**BELLOSILLO, J.:**

This is a petition for *certiorari* under Rule 65 assailing the Decision of public respondent National Labor Relations Commission (NLRC) which remanded this case to the Labor Arbiter who ruled that petitioner Cecilio P. de los Santos was illegally dismissed by private respondent Camara Steel, Inc., and as a consequence, ordered his immediate reinstatement. Specifically, the dispositive portion of the Labor Arbiter's Decision promulgated 23 May 1999 states -

WHEREFORE, presumes considered, respondent Camara Steel Industries, Inc. is hereby ordered to reinstate complainant Cecilio de los Santos to his former position within ten (10) days from receipt of this Resolution without loss of seniority rights and other benefits with full back wages from date of dismissal up to actual date of reinstatement which is hereby computed as of even date as follows:

From 8/23/93 -        =    3.73  
12/15/93                mos.

P118 x 26 days x        =                    P11,443.64  
3.73 mos.

12/16/93 - 3/29/94 =    3.43  
                                 mos.

P135 x 26 days x        =                    12,039.30  
3.43 mos.

Total Backwages as                    P23,482.94  
of 3/29/94

Respondent Camara Steel Industries, Inc. is also ordered to pay complainant 10% for and as attorney's fees.

All other claims are hereby dismissed for lack of merit.

On 3 May 1991 petitioner De los Santos started working at Camara Steel Industries Inc. (CAMARA STEEL), a company engaged in the manufacture of steel products such as LPG cylinders and drums. He was first assigned at the LPG assembly line, then later, as operator of a blasting machine. While performing his task as such operator, he met an accident that forced him to go on leave for one and a half (1-1/2) months. Upon his return, he was designated as a janitor assigned to clean the premises of the company, and occasionally, to transfer scrap and garbage from one site to another.<sup>[1]</sup>

On 11 May 1993 petitioner was doing his usual chores as a janitor of CAMARA STEEL when he momentarily left his pushcart to answer the call of Narciso Honrado, scrap in-charge, who summoned him to the company clinic. There Honrado handed him a box which he placed on top of a drum in his pushcart for transfer to the other lot of the company near gate 2. On his way out of gate 2, however, the security guard on duty found in the box handed to him by Honrado two (2) pieces of electric cable measuring 2.26 inches each and another piece of 1.76 meters with a total estimated value of P50.00 to P100.00. Apprehensive that he might be charged with theft, petitioner De los Santos explained that the electric cord was declared a scrap by Honrado whose instructions he was only following to transfer the same to the adjacent lot of the company as scrap.

Narciso Honrado admitted responsibility for the haul and his error in declaring the electric cables as scrap. The general manager, apparently appeased by Honrado's apology, issued a memorandum acknowledging receipt of his letter of apology and exculpated him of any wrongdoing.

Taking an unexpected *volte face*, however, the company through its counsel filed on 9 July 1993 a criminal complaint for frustrated qualified theft against Honrado and herein petitioner De los Santos. The complaint however was subsequently dismissed by the Provincial Prosecutor of Pasig for lack of evidence.<sup>[2]</sup>

On 23 August 1993, upon request of Top-Flite, alleged manpower agency of De los Santos, CAMARA STEEL terminated his services.

Aggrieved by his illegal termination, De los Santos sought recourse with the Labor Arbiter who on 29 March 1994 rendered a decision ordering respondent CAMARA STEEL to reinstate Delos Santos to his former position within ten (10) days without loss of seniority rights and other benefits with full back wages from date of dismissal up to actual reinstatement as herein before stated.

CAMARA STEEL went to the NLRC for recourse. Top-Flite filed a *Motion for Intervention* praying that it be permitted to intervene in the appeal as co-respondent and, accordingly, be allowed to submit its own memorandum and other pleadings.<sup>[3]</sup>

On 23 May 1995 the NLRC reversed the Labor Arbiter and ordered the return of the entire records of the case to the arbitration branch of origin for further proceedings. In its Decision, NLRC specified the reasons for the remand to the Labor Arbiter -<sup>[4]</sup>

*First*, as respondents have broadly implied, having alleged that he was an employee of Camara Steel, it was complainant's burden to prove this allegation as a fact, not merely through his uncorroborated statements but through independent evidence. As noted by respondents, he has not submitted one piece of evidence to support his premise on this matter except for his sworn statement.

*Secondly*, the Arbiter maintained that the contract of services submitted by respondents was insufficient to prove that complainant was an employee of Top-Flite, but he has obviously omitted consideration of Annexes F, G, H and I which are time sheets of the complainant with Top-Flite and the corresponding time cards which he punches in for Camara Steel.

The NLRC further noted that under the circumstances it became appropriate to conduct a formal hearing on the particular issue of whether an employer-employee relationship existed between the parties, which issue was determinative of the nature of petitioner's dismissal by CAMARA STEEL. That being so, according to the NLRC, it was necessary for the Labor Arbiter to issue the appropriate directive to summon Top-Flite as a necessary party to the case, for the manpower agency to submit its own evidence on the actual status of petitioner.

As pointed out by petitioner, the errors in the disputed decision by the NLRC are: (a) NLRC violated due process of law when it did not consider the evidence on record; (b) CAMARA STEEL, and not Top-Flite, is the real employer of petitioner; (c) Contrary to the finding of NLRC, Top-Flite was made a party respondent in the illegal dismissal case docketed as NLRC-NCR No. 00-08-05302-93 and the NLRC was therefore in error in remanding the case to the Labor Arbiter for further proceedings.

Petitioner De los Santos contends that NLRC was in grave error when it ruled that, with the exception of a bare assertion on his sworn statement, he "has not submitted one piece of evidence to support his premise"<sup>[5]</sup> that he was in fact an employee of CAMARA STEEL.

To underscore NLRC's oversight, petitioner brings to our attention and specifies the pieces of evidence which he presented before the Labor Arbiter on 19 November 1993 - also appended as Annexes to petitioner's *"Traverse to Camara's Position Paper and Reply:"* (a) Annex "E" to "E-1" - Approval signature of Camara's Department head, Reynaldo Narisma, without which petitioner cannot render overtime; (b) Annex "F" - Petitioner's daily time record for 8/3/92 to 8/9/92; (c) Annex "F-1" - Signature of private respondent Mercedita Pastrana, approving in her capacity as Assistant Manager of Camara Steel; (d) Annex "F-2" - Signature of private respondent Dennis Albano, Personnel Manager of Camara Steel Industries Inc. also co-signing for approval; (e) Annex "F-3" - Signature of Narisma, as Department Head of Camara Steel Industries Inc. where petitioner is working; (f) Annex "G" - Daily Time Record of petitioner for 7/6/92 to 7/12/92; (g) Annex "G-1" - Signature of Camara Steel Assistant Manager; (h) Annex "G-2" - Signature of Camara's Personnel Manager, Dennis Albano, approving; (i) Annex "G-3" - Signature of Camara's Department Head where petitioner is working, Mr. Narisma, approving; (j) Annex "H" to "H-1" - Petitioner's Daily Time Card (representative samples) with name and logo of Camara Steel Industries Inc.; and, (k) Annex "J" - Affidavit of

Complainant.

All these pieces of evidence which, according to petitioner De los Santos, were not properly considered by NLRC, plainly and clearly show that the power of control and supervision over him was exercised solely and exclusively by the managers and supervisors of CAMARA STEEL. Even the power to dismiss was also lodged with CAMARA STEEL when it admitted in page 3 of its Reply that upon request by Top-Flite, the steel company terminated his employment after being allegedly caught committing theft.

Petitioner De los Santos also advances the view that Top-Flite, far from being his employer, was in fact a "labor-only" contractor as borne out by a contract whereby Top-Flite undertook to supply CAMARA STEEL workers with "warm bodies" for its factory needs and edifices. He insists that such contract was not a job contract but the supply of labor only. All things considered, he is of the firm belief that for all legal intents and purposes, he was an employee - a regular one at that - of CAMARA STEEL.

In its comment, private respondent CAMARA STEEL avers that far from being its employee, De los Santos was merely a project employee of Top-Flite who was assigned as janitor in private respondent company. This much was acknowledged by Top-Flite in its *Motion for Intervention* filed before the NLRC.<sup>[6]</sup> Such allegation, according to private respondent CAMARA STEEL, supports all along its theory that De los Santos' assignment to the latter as janitor was based on an independent contract executed between Top-Flite and CAMARA STEEL.<sup>[7]</sup>

Respondent CAMARA STEEL further argues that crystal clear in the *Motion for Intervention* of Top-Flite is its allegation that it was in fact petitioner's real employer as his salaries and benefits during the contractual period were paid by Top-Flite; not only that, De los Santos was dismissed by CAMARA STEEL upon the recommendation of Top-Flite. These ineluctably show that Top-Flite was not only a job contractor but was in truth and in fact the employer of petitioner.

In his petition, De los Santos vigorously insists that he was the employee of respondent CAMARA STEEL which in turn was not only denying the allegation but was finger-pointing Top-Flite as petitioner's real employer. De los Santos again objects to this assertion and claims that Top-Flite, far from being an employer, was merely a "labor-only" contractor.

In the maze and flurry of claims and counterclaims, several contentious issues continue to stick out like a sore thumb. Was De los Santos illegally dismissed? If so, by whom? Was his employer respondent CAMARA STEEL, in whose premises he was allegedly caught stealing, or was it Top-Flite, the manpower services which allegedly hired him?

Inextricably intertwined in the resolution of these issues is the determination of whether there existed an employer-employee relationship between CAMARA STEEL and respondent De Los Santos, and whether Top-Flite was an "independent contractor" or a "labor-only" contractor. A finding that Top-Flite was a "labor-only" contractor reduces it to a mere agent of CAMARA STEEL which by statute would be responsible to the employees of the "labor-only" contractor as if such employees