

## FIRST DIVISION

[ G.R. No. 83402, October 06, 1997 ]

**ALGON ENGINEERING CONSTRUCTION CORPORATION AND/OR  
ALEX GONZALES, PETITIONERS, VS. THE NATIONAL LABOR  
RELATIONS COMMISSION AND JOSE ESPINOSA, RESPONDENTS.  
D E C I S I O N**

**HERMOSISIMA, JR., J.:**

Petitioners Algon Engineering Construction Corporation (hereafter "Algon") and Alex Gonzales come before us through a petition for certiorari, assailing the twin Resolutions dated April 21, 1987<sup>[1]</sup> and March 24, 1988,<sup>[2]</sup> respectively, rendered by the National Labor Relations Commissions (NLRC)<sup>[3]</sup> dismissing their appeal and denying their appeal and denying their Motion for Consideration. In the herein assailed Resolutions, the NLRC affirmed the Decision of the Labor Arbiter finding private respondent Jose Espinosa to be an employee of petitioner Algon and awarding to him the amount of P21,113.41 in the form of underpaid wages and other moneys due him under the applicable labors standards law.

The pivotal issue raised herein is a factual one concerning the existence or non-existence of an employee-employer relationship between petitioner Algon and private respondent.

Petitioner Algon, in the course of its road construction business, utilizes heavy equipment. Due to its need for a place to park and store the said equipment, it was standard operating procedure for petitioner Algon to enter into a lease contract with the owner of the house nearest to the construction site. The terms of the contract include storage and parking of petitioner Algon's heavy equipment within the boundaries of the leased house in exchange for a storage or parking fee. Through this procedure, petitioner Algon minimizes the expense of bringing back and forth said heavy equipment from the project site to the city or municipality concerned and vice-versa.

The cash vouchers<sup>[4]</sup> of petitioner Algon show that from March 1, 1983 to May 10, 1985, petitioner Algon was in the process of completing the Lucena Talacogon Project in Del Monte, Talacogon, Agusan del Sur. Private respondent's house is located near that project site. Thus, throughout that same period of time, private respondent allowed petitioner Algon to use its house and the grounds adjacent thereto as a parking and storage place for the latter's heavy equipment. The storage or parking fee was pegged at P300.00 on a bi-monthly basis.

Private respondent does not deny having been paid such storage or parking fee as evidenced by the statements of account<sup>[5]</sup> issued by private respondent himself and the cash vouchers bearing private respondent's signature as payee. What he claims in addition thereto, however, is that aside from the lease contract covering the utilization of his house and its grounds as a parking and storage place for a fee,

there existed also an employment contract between himself and petitioner Algon which, private respondent insists, hired him as a watchman with the duty of guarding the heavy equipment parked in other leased house spaces in Libtong, Talacogon, Agusan del Sur from 6:00 o'clock in the evening to 6:00 o'clock in the morning.

For its part, the Labor Arbiter<sup>[6]</sup> made the factual finding that indeed private respondent was employed by petitioner Algon as watchman and was paid P20.00 on a daily basis. The Labor Arbiter thus stated:

Complainant maintain [sic] that he was employed as watchman by Respondent since March 1, 1983 to May 10, 1985 and was paid only a daily compensation of P20.00 for seven (7) days a week worked from 6 P.M. to 6 A.M. shift. Further he was allegedly constrained to resign from the service on May 10, 1985 when he was shifted to day time schedule.

On the other hand, Respondent alleged that their [sic] is no employer-employee relationship with herein Complainant for he was only engaged by Respondent for the purpose of storage or parking of its equipment near his house. To support the argument, Respondent submitted xerox copies of cash vouchers and statement accounts showing that the amount paid to Complainant is for storage fee and that he billed Respondent for such storage.

However in Complainant's Rejoinder to Respondent's Position Paper Evidences was [sic] submitted xxx a Memorandum dated August 13, 1983 addressed to Complainant and signed by Emigdio L. Manlegro, General Construction Foreman, which we quote in full hereunder for clarity:

August 13, 1983

Memorandum To:

Jose Espinosa

Watchman

It has been the company's policy in relation to our promulgated rules and regulations that any of its property lost should be charged to anyone directly liable if it happen through carelessness or gross negligence.

During the time of your duty on August 12, 1983 in Libtong, Talacogon, Agusan del Sur, two (2) batteries of Sakai Road Roller No. 8 with Serial No. 502 and 503 and two (2) pieces [of] batteries of Sakai Vibratory Compactor Roller No. 4 which are YUASA brands were stolen. In your capacity as watchman on said equipment, you are held liable for that lost item through gross negligence.

In this connection, we are charging you the amount of Three Thousand Four

Hundred Ninety Eight Pesos and Sixty Centavos (P3,498.60) for four (4) batteries because one (1) battery cost[s] Eight Hundred Seventy Four Pesos and Sixty Five Centavos (P874.65) [which is] the current price of said item. This amount will be used to purchase new batteries as replacement for the lost item.

For your information.

(sgd.) EMIGDIO L. MANLEGRO

General Construction Foreman'

On the basis of the parties['] allegation above the prejudicial issue to be resolved is whether or not there exist[s] an employer-employee relationship [between] herein Complainant and Respondent. If positive than [sic] the issue of moretary [sic] claim consequently follow[s], but if negative all the other issues must necessarily fail. We find for Complainant that he is an employee, because Respondent failed to prove that Complainant was engaged in the business of warehousing or storage for a fee or for parking of vehicles/equipment for a fee. The above-quoted Memorandum clearly defines the position of Complainant as watchman, and the element of control in the employer-employee relationship is obvious[ly] present by the very wordings of the said memorandum. The statement of account and cash vouchers are not sufficient to overcome the presumption of employer-employee relationship between the parties. Therefore based on the complaint, the money claims are hereby awarded in favor of Complainant, enumerated hereunder:

1.	Underpayment of wages	P 4,691.00
2.	Unpaid ECOLA	9,750.00
3.	Holiday/premium pay	725.00
4.	Overtime/rest day pay	4,205.00
5.	Service incentive leave pay	315.00
6.	13th month pay	1,427.41

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TOTAL	P21,113.41" <sup>[7]</sup>
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From the foregoing decision of the Labor Arbiter, petitioner Algon appealed to the NLRC.

Petitioner Algon ascribed as error the finding made by the Labor Arbiter that an employer-employee relationship existed between petitioner Algon and private respondent warranting, thus, the payment to the latter of the various moneys due him under the applicable wage and labor standards laws. Petitioner Algon persisted to argue that it did not hire private respondent but merely leased storage or parking space for its heavy equipment.

Faced with a factual issue, the NLRC analyzed the evidence. And like the Labor

Arbiter, the NLRC, applying the control test in determining the existence of an employer-employee relationship between the herein parties, affirmed the Labor Arbiter's conclusions. The NLRC ruled, thus:

The complainant, resident of Batucan del Monte, Talacogon, Agusan [del] Sur, who claimed to have been hired on March 1, 1983 as a watchman at P20.00 per day, sought for payment of standard benefits allegedly denied him. The respondent adduced multiple evidence consisting of statements of accounts in printed forms signed by the complainant as he billed the respondent for storage fees and cash vouchers in printed forms with respondent company's letterhead reflecting payment of storage fees. The complainant produced a memorandum dated August 13, 1983 signed by respondents' General Construction Foreman Emigdio L. Manlegro chiding the complainant for the loss of four (4) batteries as he watched company properties in [Li]btong, Talacogon, Agusan del Sur and declaring that the respondents held him accountable for them for gross negligence and that the amount of P3,498.60 would be deducted from his salary.

The respondents contradicted that Emigdio L. Manlegro, one of the sponsors at complainant's wedding, is not one of the officers authorized to issue memorandum and other communication.

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The Commission has weighed the evidence and relied upon the finding and conclusion of the Labor Arbiter who had the opportunity to closely investigate the parties. For one thing, the appellants conveyed the impression that they were assigning to the Labor Arbiter only a simple error and was reluctant to hold him responsible for grave abuse of discretion and their general construction foreman for willful [sic] breach of trust. The latter, through his memorandum, vividly located the complainant in respondent's employ. The respondents themselves helped to make the complaint's posture plausible by their failure to deny that they posted the complainant at Libtong, Talacogon, Agusan del Sur, a distance from his house at Balatucan del Monte, Talacogon Agusan del Sur; and that they deducted the amount of P3,498.60 from his wages. The bills for storage fees and the vouchers for the same can only be a scheme to avoid the full measure of labor laws."<sup>[8]</sup>

Refusing to concede liability for underpaid wages and other monetary benefits, petitioner Algon sought reconsideration of the above Resolution. Its Motion for Reconsideration was however denied in a Minute Resolution dated March 24, 1988. Hence this petition grounded on the following issues:

## **"I**

WHETHER THE PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION ERRED IN AFFIRMING THE DECISION OF THE LABOR ARBITER THAT THERE IS EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE PETITIONER AND PRIVATE