Vinoya vs. NLRC
G.R. No. 126586, February 02, 2000

FACTS:
On May 26, 1990, Alexander Vinoya was accepted as sales representative by Regent Food Corporation (RFC), a domestic corporation principally engaged in the manufacture and sale of various food products. He was issued an identification card on the same day. His task was to deliver RFC products to various supermarkets and grocery stores where he booked sales orders and to collect payments for RFC. On 1 July 1991, he was transferred by RFC to Peninsula Manpower Company, Inc. ("PMCI"), an agency which provides RFC with additional contractual workers pursuant to a contract for the supply of manpower services. After his transfer to PMCI, petitioner was reassigned to RFC as sales representative. Subsequently, on 25 November 1991, he was informed by the personnel manager of RFC, that his services were terminated and he was asked to surrender his ID card. He was told that his dismissal was due to the expiration of the Contract of Service between RFC and PMCI.

ISSUES:

Evidence
1. Can the court take judicial notice of the economic situation in the country on a certain period?
2. Is there a particular form of proof required to prove the existence of an employer-employee relationship?
3. Can the court take judicial notice of the practice of employers?

Labor
1. Was petitioner an employee of RFC or PMCI?
2. Was petitioner lawfully dismissed?

RULING

Evidence
1. Yes. The Court took judicial notice of the fact that in 1993 (the year Neri case was decided) the economic situation in the country was not as adverse as when the present case was being decided, as shown by the devaluation of the peso. With the economic atmosphere in the country, the paid-in capitalization of PMCI amounting to P75,000.00 could not be considered as substantial capital and, as such, PMCI cannot qualify as an independent contractor.

2. No, there is no particular form of proof required to prove the existence of an employer-employee relationship. Any competent and relevant evidence may show the relationship. In the present case, petitioner presented the identification card issued to him on 26 May 1990 by RFC as proof that it was the latter who engaged his services. The ID card is enough proof that petitioner was previously hired by RFC prior to his transfer as agency worker to PMCI.

3. Yes. The Court takes judicial notice of the practice of employers who, in order to evade the liabilities under the Labor Code, do not issue payslips directly to

their employees. Under the such practice, a third person, usually the purported contractor (service or manpower placement agency), assumes the act of paying the wage. For this reason, the lowly worker is unable to show proof that it was directly paid by the true employer. Nevertheless, for the workers, it is enough that they actually receive their pay, oblivious of the need for payslips, unaware of its legal implications. Applying this principle to the case at bar, even though the wages were coursed through PMCI, the funds actually came from the pockets of RFC. Thus, in the end, RFC is still the one who paid the wages of petitioner albeit indirectly.

Labor

1. The Court held that, applying the four-fold test, an employer-employee relationship exists between petitioner and RFC and found that PMCI is engaged in labor-only contracting and merely acted as a recruitment agency for RFC. RFC was the employer of petitioner for the following reasons: (a) Petitioner was originally with RFC and was merely transferred to PMCI to be deployed as an agency worker and then subsequently reassigned to RFC as sales representative; (b) RFC had direct control and supervision over petitioner; (c) RFC actually paid for the wages of petitioner although coursed through PMCI; and, (d) Petitioner was terminated per instruction of RFC.

2. No. RFC failed to prove that petitioner was validly dismissed. Due to his length of service, petitioner already attained the status of a regular employee, thus, he is entitled to the security of tenure provided under the labor laws. He may only be validly terminated from service upon compliance with the legal requisites for dismissal. The requirements for the lawful dismissal of an employee are two-fold, the substantive and the procedural aspects. Not only must the dismissal be for a valid or authorized cause, the requirements of due process - notice and hearing – must, likewise, be observed before an employee may be dismissed. The two must concur for the termination to be legal.

381 Phil. 460

FIRST DIVISION

[G.R. No. 126586, February 02, 2000]

ALEXANDER VINOYA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, REGENT FOOD CORPORATION AND/OR RICKY SEE (PRESIDENT), RESPONDENTS.

D E C I S I O N

KAPUNAN, J.:

This petition for *certiorari* under Rule 65 seeks to annul and set aside the decision,[1] promulgated on 21 June 1996, of the National Labor Relations Commission ("NLRC") which reversed the decision[2] of the Labor Arbiter, rendered on 15 June 1994, ordering Regent Food Corporation ("RFC") to reinstate Alexander Vinoya to his former position and pay him backwages.

Private respondent Regent Food Corporation is a domestic corporation principally engaged in the manufacture and sale of various food products. Private respondent Ricky See, on the other hand, is the president of RFC and is being sued in that capacity.

Petitioner Alexander Vinoya, the complainant, worked with RFC as sales representative until his services were terminated on 25 November 1991.

The parties presented conflicting versions of facts.

Petitioner Alexander Vinoya claims that he applied and was accepted by RFC as sales representative on 26 May 1990. On the same date, a company identification card[3] was issued to him by RFC. Petitioner alleges that he reported daily to the office of RFC, in Pasig City, to take the latter's van for the delivery of its products. According to petitioner, during his employ, he was assigned to various supermarkets and grocery stores where he booked sales orders and collected payments for RFC. For this task, he was required by RFC to put up a monthly bond of P200.00 as security deposit to guarantee the performance of his obligation as sales representative. Petitioner contends that he was under the direct control and supervision of Mr. Dante So and Mr. Sadi Lim, plant manager and senior salesman of RFC, respectively. He avers that on 1 July 1991, he was transferred by RFC to Peninsula Manpower Company, Inc.

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[1] Penned by Commissioner Joaquin A. Tanodra and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Ireneo B. Bernardo.

[2] Penned by Labor Arbiter Alex Arcadio Lopez.

[3] Annex "F," *Rollo*, p. 45.

("PMCI"), an agency which provides RFC with additional contractual workers pursuant to a contract for the supply of manpower services (hereinafter referred to as the "Contract of Service").[4] After his transfer to PMCI, petitioner was allegedly reassigned to RFC as sales representative. Subsequently, on 25 November 1991, he was informed by Ms. Susan Chua, personnel manager of RFC, that his services were terminated and he was asked to surrender his ID card. Petitioner was told that his dismissal was due to the expiration of the Contract of Service between RFC and PMCI. Petitioner claims that he was dismissed from employment despite the absence of any notice or investigation. Consequently, on 3 December 1991, petitioner filed a case against RFC before the Labor Arbiter for illegal dismissal and non-payment of 13th month pay.[5]

Private respondent Regent Food Corporation, on the other hand, maintains that no employer-employee relationship existed between petitioner and itself. It insists that petitioner is actually an employee of PMCI, allegedly an independent contractor, which had a Contract of Service[6] with RFC. To prove this fact, RFC presents an Employment Contract[7] signed by petitioner on 1 July 1991, wherein PMCI appears as his employer. RFC denies that petitioner was ever employed by it prior to 1 July 1991. It avers that petitioner was issued an ID card so that its clients and customers would recognize him as a duly authorized representative of RFC. With regard to the ₱200.00 pesos monthly bond posted by petitioner, RFC asserts that it was required in order to guarantee the turnover of his collection since he handled funds of RFC. While RFC admits that it had control and supervision over petitioner, it argues that such was exercised in coordination with PMCI. Finally, RFC contends that the termination of its relationship with petitioner was brought about by the expiration of the Contract of Service between itself and PMCI and not because petitioner was dismissed from employment.

On 3 December 1991, when petitioner filed a complaint for illegal dismissal before the Labor Arbiter, PMCI was initially impleaded as one of the respondents. However, petitioner thereafter withdrew his charge against PMCI and pursued his claim solely against RFC. Subsequently, RFC filed a third party complaint against PMCI. After considering both versions of the parties, the Labor Arbiter rendered a decision,[8] dated 15 June 1994, in favor of petitioner. The Labor Arbiter concluded that RFC was the true employer of petitioner for the following reasons: (1) Petitioner was originally with RFC and was merely transferred to PMCI to be deployed as an agency worker and then subsequently reassigned to RFC as sales representative; (2) RFC had direct control and supervision over petitioner; (3) RFC actually paid for the wages of petitioner although coursed through PMCI; and, (4) Petitioner was terminated per instruction of RFC. Thus, the Labor Arbiter decreed as follows:

> ACCORDINGLY, premises considered respondent RFC is hereby declared guilty of illegal dismissal and ordered to immediately reinstate complainant to his former position without loss of seniority rights and other benefits and pay him backwages in the amount

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[4] Annex "D," Rollo, pp. 41-43.
[5] Comment of the Office of the Solicitor General, Rollo, pp. 147, 148.
[6] Annex "2," Rollo, pp. 79, 82-84.
[7] Id., at 79, 86-87.
[8] Decision of the Labor Arbiter, Rollo, pp. 36-40.

of ₱103,974.00.

The claim for 13th month pay is hereby DENIED for lack of merit.

This case, insofar as respondent PMCI [is concerned] is DISMISSED, for lack of merit.

SO ORDERED.[9]

RFC appealed the adverse decision of the Labor Arbiter to the NLRC. In a decision,[10] dated 21 June 1996, the NLRC reversed the findings of the Labor Arbiter. The NLRC opined that PMCI is an independent contractor because it has substantial capital and, as such, is the true employer of petitioner. The NLRC, thus, held PMCI liable for the dismissal of petitioner. The dispositive portion of the NLRC decision states:

WHEREFORE, premises considered, the appealed decision is modified as follows:

1. Peninsula Manpower Company Inc. is declared as employer of the complainant;

2. Peninsula is ordered to pay complainant his separation pay of ₱3,354.00 and his proportionate 13th month pay for 1991 in the amount of ₱2,795.00 or the total amount of ₱6,149.00.

SO ORDERED.[11]

Separate motions for reconsideration of the NLRC decision were filed by petitioner and PMCI. In a resolution,[12] dated 20 August 1996, the NLRC denied both motions. However, it was only petitioner who elevated the case before this Court.

In his petition for *certiorari*, petitioner submits that respondent NLRC committed grave abuse of discretion in reversing the decision of the Labor Arbiter, and asks for the reinstatement of the latter's decision.

Principally, this petition presents the following issues:

1. Whether petitioner was an employee of RFC or PMCI.

2. Whether petitioner was lawfully dismissed.

The resolution of the first issue initially boils down to a determination of the true status of PMCI, whether it is a labor-only contractor or an independent contractor.

In the case at bar, RFC alleges that PMCI is an independent contractor on the sole ground that the latter is a highly capitalized venture. To buttress this allegation, RFC presents a copy of the Articles of Incorporation and the

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[9] Ibid.
[10] Decision of the NLRC, Rollo, pp. 15-32.
[11] Ibid.
[12] Resolution of the NLRC, Rollo, pp. 33-35.

Treasurer's Affidavit[13] submitted by PMCI to the Securities and Exchange Commission showing that it has an authorized capital stock of One Million Pesos (₱1,000,000.00), of which Three Hundred Thousand Pesos (₱300,000.00) is subscribed and Seventy-Five Thousand Pesos (₱75,000.00) is paid-in. According to RFC, PMCI is a duly organized corporation engaged in the business of creating and hiring a pool of temporary personnel and, thereafter, assigning them to its clients from time to time for such duration as said clients may require. RFC further contends that PMCI has a separate office, permit and license and its own organization.

Labor-only contracting, a prohibited act, is an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal.[14] In labor-only contracting, the following elements are present:

(a) The contractor or subcontractor does not have substantial capital or investment to actually perform the job, work or service under its own account and responsibility;

(b) The employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal.[15]

On the other hand, permissible job contracting or subcontracting refers to an arrangement whereby a principal agrees to put out or farm out with a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal.[16] A person is considered engaged in legitimate job contracting or subcontracting if the following conditions concur:

(a) The contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility according to its own manner and method, and free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof;

(b) The contractor or subcontractor has substantial capital or investment; and

(c) The agreement between the principal and contractor or subcontractor assures the contractual employees entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social and welfare benefits.[17]

Previously, in the case of *Neri vs. NLRC*,[18] we held that in order to be considered as a job contractor it is enough that a contractor has substantial capital. In other words, once substantial capital is established it is no longer

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[13] Annex "5," Rollo, pp. 121, 131-137.
[14] Section 4(f), Rule VIII-A, Book III, of the Omnibus Rules Implementing the Labor Code.
[15] Ibid.
[16] Section 4(d), Rule VIII-A, Book III, of the Omnibus Rules Implementing the Labor Code.
[17] Ibid.
[18] 224 SCRA 717 (1993).

necessary for the contractor to show evidence that it has investment in the form of tools, equipment, machineries, work premises, among others. The rational for this is that Article 106 of the Labor Code does not require that the contractor possess both substantial capital and investment in the form of tools, equipment, machineries, work premises, among others.[19] The decision of the Court in *Neri* thus states:

> Respondent BCC need not prove that it made investment in the form of tools, equipment, machineries, work premises, among others, because it has established that it has sufficient capitalization. The Labor Arbiter and the NLRC both determined that BCC had a capital stock of P1 million fully subscribed and paid for. BCC is therefore a highly capitalized venture and cannot be deemed engaged in "labor-only" contracting.[20]

However, in declaring that Building Care Corporation ("BCC") was an independent contractor, the Court considered not only the fact that it had substantial capitalization. The Court noted that BCC carried on an independent business and undertook the performance of its contract according to its own manner and method, free from the control and supervision of its principal in all matters except as to the results thereof.[21] The Court likewise mentioned that the employees of BCC were engaged to perform specific special services for its principal.[22] Thus, the Court ruled that BCC was an independent contractor.

The Court further clarified the import of the Neri decision in the subsequent case of *Philippine Fuji Xerox Corporation vs. NLRC.*[23] In the said case, petitioner Fuji Xerox implored the Court to apply the Neri doctrine to its alleged job-contractor, Skillpower, Inc., and declare the same as an independent contractor. Fuji Xerox alleged that Skillpower, Inc. was a highly capitalized venture registered with the Securities and Exchange Commission, the Department of Labor and Employment, and the Social Security System with assets exceeding ₱5,000,000.00 possessing at least 29 typewriters, office equipment and service vehicles, and its own pool of employees with 25 clerks assigned to its clients on a temporary basis.[24] Despite the evidence presented by Fuji Xerox the Court refused to apply the *Neri* case and explained:

> Petitioners cite the case of *Neri v. NLRC*, in which it was held that the Building Care Corporation (BCC) was an independent contractor on the basis of finding that it had substantial capital, although there was no evidence that it had investments in the form of tools, equipment, machineries and work premises. But the Court in that case considered not only the capitalization of the BCC but also the fact that BCC was providing specific special services (radio/telex operator and janitor) to the employer; that in another case, the Court had already found that BCC was an independent contractor; that BCC retained control over the employees and the employer was actually just concerned with the end-result; that BCC had the power to reassign the employees and their deployment was not subject to the approval of

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[19] Id., at 721.
[20] Id., at 720.
[21] Id., at 724.
[22] Id.
[23] 254 SCRA 294 (1996).
[24] Id., at 303.

> the employer; and that BCC was paid in lump sum for the services it rendered. These features of that case make it distinguishable from the present one.[25]

Not having shown the above circumstances present in Neri, the Court declared Skillpower, Inc. to be engaged in labor-only contracting and was considered as a mere agent of the employer.

From the two aforementioned decisions, it may be inferred that it is not enough to show substantial capitalization or investment in the form of tools, equipment, machineries and work premises, among others, to be considered as an independent contractor. In fact, jurisprudential holdings are to the effect that in determining the existence of an independent contractor relationship, several factors might be considered such as, but not necessarily confined to, whether the contractor is carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of specified pieces of work; the control and supervision of the workers; the power of the employer with respect to the hiring, firing and payment of the workers of the contractor; the control of the premises; the duty to supply premises, tools, appliances, materials and labor; and the mode, manner and terms of payment.[26]

Given the above standards and the factual milieu of the case, the Court has to agree with the conclusion of the Labor Arbiter that PMCI is engaged in labor-only contracting.

First of all, PMCI does not have substantial capitalization or investment in the form of tools, equipment, machineries, work premises, among others, to qualify as an independent contractor. While it has an authorized capital stock of ₱1,000,000.00, only ₱75,000.00 is actually paid-in, which, to our mind, cannot be considered as substantial capitalization. In the case of *Neri*, which was promulgated in 1993, BCC had a capital stock of ₱1,000,000.00 which was fully subscribed and paid-for. Moreover, when the *Neri* case was decided in 1993, the rate of exchange between the dollar and the peso was only ₱27.30 to $1[27] while presently it is at ₱40.390 to $1.[28] The Court takes judicial notice of the fact that in 1993, the economic situation in the country was not as adverse as the present, as shown by the devaluation of our peso. With the current economic atmosphere in the country, the paid-in capitalization of PMCI amounting to ₱75,000.00 cannot be considered as substantial capital and, as such, PMCI cannot qualify as an independent contractor.

Second, PMCI did not carry on an independent business nor did it undertake the performance of its contract according to its own manner and method, free from the control and supervision of its principal, RFC. The evidence at hand shows that the workers assigned by PMCI to RFC were under the control and supervision of the latter. The Contract of Service itself provides that RFC can require the workers assigned by PMCI to render services even beyond the

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[25] Id.
[26] Ponce, et al. vs. NLRC, et al., 293 SCRA 366 (1998).
[27] Source: The Manila Chronicle, Vol. XXXIII, No. 536, Friday, July 23, 1993.
[28] Source: Today, No. 2,198, Tuesday, 1 February 2000.

regular eight hour working day when deemed necessary.[29] Furthermore, RFC undertook to assist PMCI in making sure that the daily time records of its alleged employees faithfully reflect the actual working hours.[30] With regard to petitioner, RFC admitted that it exercised control and supervision over him.[31] These are telltale indications that PMCI was not left alone to supervise and control its alleged employees. Consequently, it can be concluded that PMCI was not an independent contractor since it did not carry a distinct business free from the control and supervision of RFC.

Third, PMCI was not engaged to perform a specific and special job or service, which is one of the strong indicators that an entity is an independent contractor as explained by the Court in the cases of *Neri* and *Fuji*. As stated in the Contract of Service, the sole undertaking of PMCI was to provide RFC with a temporary workforce able to carry out whatever service may be required by it.[32] Such venture was complied with by PMCI when the required personnel were actually assigned to RFC. Apart from that, no other particular job, work or service was required from PMCI. Obviously, with such an arrangement, PMCI merely acted as a recruitment agency for RFC. Since the undertaking of PMCI did not involve the performance of a specific job, but rather the supply of manpower only, PMCI clearly conducted itself as labor-only contractor.

Lastly, in labor-only contracting, the employees recruited, supplied or placed by the contractor perform activities which are directly related to the main business of its principal. In this case, the work of petitioner as sales representative is directly related to the business of RFC. Being in the business of food manufacturing and sales, it is necessary for RFC to hire a sales representative like petitioner to take charge of booking its sales orders and collecting payments for such. Thus, the work of petitioner as sales representative in RFC can only be categorized as clearly related to, and in the pursuit of the latter's business. Logically, when petitioner was assigned by PMCI to RFC, PMCI acted merely as a labor-only contractor.

Based on the foregoing, PMCI can only be classified as a labor-only contractor and, as such, cannot be considered as the employer of petitioner.

However, even granting that PMCI is an independent contractor, as RFC adamantly suggests, still, a finding of the same will not save the day for RFC. A perusal of the Contract of Service entered into between RFC and PMCI reveals that petitioner is actually not included in the enumeration of the workers to be assigned to RFC. The following are the workers enumerated in the contract:

1. Merchandiser
2. Promo Girl
3. Factory Worker
4. Driver[33]

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[29] Annex "2," Rollo, pp. 79, 82-84.
[30] Ibid.
[31] Memorandum, Rollo, pp. 182, 191.
[32] Annex "2," Rollo, pp. 79, 82-84.
[33] Id., Annex A of the Contract of Service, at 84.

Obviously, the above enumeration does not include the position of petitioner as sales representative. This only shows that petitioner was never intended to be a part of those to be contracted out. However, RFC insists that despite the absence of his position in the enumeration, petitioner is deemed included because this has been agreed upon between itself and PMCI. Such contention deserves scant consideration. Had it really been the intention of both parties to include the position of petitioner they should have clearly indicated the same in the contract. However, the contract is totally silent on this point which can only mean that petitioner was never really intended to be covered by it.

Even if we use the "four-fold test" to ascertain whether RFC is the true employer of petitioner the same result would be achieved. In determining the existence of employer-employee relationship the following elements of the "four-fold test" are generally considered, namely: (1) the selection and engagement of the employee or the power to hire; (2) the payment of wages; (3) the power to dismiss; and (4) the power to control the employee.[34] Of these four, the "control test" is the most important.[35] A careful study of the evidence at hand shows that RFC possesses the earmarks of being the employer of petitioner.

With regard to the first element, the power to hire, RFC denies any involvement in the recruitment and selection of petitioner and asserts that petitioner did not present any proof that he was actually hired and employed by RFC.

It should be pointed out that no particular form of proof is required to prove the existence of an employer-employee relationship.[36] Any competent and relevant evidence may show the relationship.[37] If only documentary evidence would be required to demonstrate that relationship, no scheming employer would ever be brought before the bar of justice.[38] In the case at bar, petitioner presented the identification card issued to him on 26 May 1990 by RFC as proof that it was the latter who engaged his services. To our mind, the ID card is enough proof that petitioner was previously hired by RFC prior to his transfer as agency worker to PMCI. It must be noted that the Employment Contract between petitioner and PMCI was dated 1 July 1991. On the other hand, the ID card issued by RFC to petitioner was dated 26 May 1990, or more than one year before the Employment Contract was signed by petitioner in favor of PMCI. It makes one wonder why, if petitioner was indeed recruited by PMCI as its own employee on 1 July 1991, how come he had already been issued an ID card by RFC a year earlier? While the Employment Contract indicates the word "renewal," presumably an attempt to show that petitioner had previously signed a similar contract with PMCI, no evidence of a prior contract entered into between petitioner and PMCI was ever presented by RFC. In fact, despite the demand made by the counsel of petitioner for the production of the contract which purportedly shows that prior to 1 July 1991 petitioner was already connected with PMCI, RFC never made a move to furnish the counsel of petitioner a copy of the alleged original Employment Contract. The only logical conclusion which may be derived from such inaction is that there was no such contract and that the

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[34] Rhone-Poulenc Agrochemicals Inc., vs. NLRC, et al., 217 SCRA 249,255 (1993).
[35] Ibid.
[36] Caurdanetaan Piece Workers Union vs. Laguesma, et al., 286 SCRA 401, 426 (1998).
[37] Ibid.
[38] Id., citing Opulencia Ice Plant and Storage vs. NLRC, 228 SCRA 473 (1993).

only Employment Contract entered into between PMCI and petitioner was the 1 July 1991 contract and no other. Since, as shown by the ID card, petitioner was already with RFC on 26 May 1990, prior to the time any Employment Contract was agreed upon between PMCI and petitioner, it follows that it was RFC who actually hired and engaged petitioner to be its employee.

With respect to the payment of wages, RFC disputes the argument of petitioner that it paid his wages on the ground that petitioner did not submit any evidence to prove that his salary was paid by it, or that he was issued payslip by the company. On the contrary RFC asserts that the invoices[39] presented by it, show that it was PMCI who paid petitioner his wages through its regular monthly billings charged to RFC.

The Court takes judicial notice of the practice of employers who, in order to evade the liabilities under the Labor Code, do not issue payslips directly to their employees.[40] Under the current practice, a third person, usually the purported contractor (service or manpower placement agency), assumes the act of paying the wage.[41] For this reason, the lowly worker is unable to show proof that it was directly paid by the true employer. Nevertheless, for the workers, it is enough that they actually receive their pay, oblivious of the need for payslips, unaware of its legal implications.[42] Applying this principle to the case at bar, even though the wages were coursed through PMCI, we note that the funds actually came from the pockets of RFC. Thus, in the end, RFC is still the one who paid the wages of petitioner albeit indirectly.

As to the third element, the power to dismiss, RFC avers that it was PMCI who terminated the employment of petitioner. The facts on record, however, disprove the allegation of RFC. First of all, the Contract of Service gave RFC the right to terminate the workers assigned to it by PMCI without the latter's approval. Quoted hereunder is the portion of the contract stating the power of RFC to dismiss, to wit:

7. The First party ("RFC") reserves the right to terminate the services of any worker found to be unsatisfactory without the prior approval of the second party ("PMCI").[43]

In furtherance of the above provision, RFC requested PMCI to terminate petitioner from his employment with the company. In response to the request of RFC, PMCI terminated petitioner from service. As found by the Labor Arbiter, to which we agree, the dismissal of petitioner was indeed made under the instruction of RFC to PMCI.

The fourth and most important requirement in ascertaining the presence of employer-employee relationship is the power of control. The power of control refers to the authority of the employer to control the employee not only with regard to the result of work to be done but also to the means and methods by

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[39] Annex "2," Rollo, pp. 79, 88-89.
[40] Jang Lim, et al. vs. NLRC, et al., G.R. No. 124630, February 19, 1999.
[41] Ibid.
[42] Id.
[43] Annex "2," Rollo, pp. 79, 82-84.

which the work is to be accomplished.[44] It should be borne in mind, that the "control test" calls merely for the existence of the right to control the manner of doing the work, and not necessarily to the actual exercise of the right.[45] In the case at bar, we need not belabor ourselves in discussing whether the power of control exists. RFC already admitted that it exercised control and supervision over petitioner.[46] RFC, however, raises the defense that the power of control was jointly exercised with PMCI. The Labor Arbiter, on the other hand, found that petitioner was under the direct control and supervision of the personnel of RFC and not PMCI. We are inclined to believe the findings of the Labor Arbiter which is supported not only by the admission of RFC but also by the evidence on record. Besides, to our mind, the admission of RFC that it exercised control and supervision over petitioner, the same being a declaration against interest, is sufficient enough to prove that the power of control truly exists.

We, therefore, hold that an employer-employee relationship exists between petitioner and RFC.

Having determined the real employer of petitioner, we now proceed to ascertain the legality of his dismissal from employment.

Since petitioner, due to his length of service, already attained the status of a regular employee,[47] he is entitled to the security of tenure provided under the labor laws. Hence, he may only be validly terminated from service upon compliance with the legal requisites for dismissal. Under the Labor Code, the requirements for the lawful dismissal of an employee are two-fold, the substantive and the procedural aspects. Not only must the dismissal be for a valid or authorized cause,[48] the rudimentary requirements of due process - notice and hearing[49] – must, likewise, be observed before an employee may be dismissed. Without the concurrence of the two, the termination would, in the eyes of the law, be illegal.[50]

As the employer, RFC has the burden of proving that the dismissal of petitioner was for a cause allowed under the law and that petitioner was afforded procedural due process. Sad to say, RFC failed to discharge this burden. Indeed, RFC never pointed to any valid or authorized cause under the Labor Code which allowed it to terminate the services of petitioner. Its lone allegation that the dismissal was due to the expiration or completion of contract is not even one of the grounds for termination allowed by law. Neither did RFC show that petitioner was given ample opportunity to contest the legality of his dismissal. In fact, no notice of such impending termination was ever given him. Petitioner was, thus, surprised that he was already terminated from employment without any inkling as to how and why it came about. Petitioner was definitely denied due process. Having failed to establish compliance with the requirements on termination of employment under the Labor Code, the dismissal of petitioner is tainted with

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[44] Zanotte Shoes vs. NLRC, 241 SCRA 261 (1995); Tiu vs. NLRC, 254 SCRA 1 (1996);
[45] Ibid.
[46] Memorandum, supra note 31.
[47] Article 280, Labor Code.
[48] Articles 279, 281, 282-284, Labor Code.
[49] Salaw vs. NLRC, 202 SCRA 7, 11 (1991).
[50] Id., at 12, citing San Miguel Corporation vs. NLRC, 173 SCRA 314 (1989).

illegality.

An employee who has been illegally dismissed is entitled to reinstatement to his former position without loss of seniority rights and to payment of full backwages corresponding to the period from his illegal dismissal up to actual reinstatement.[51] Petitioner is entitled to no less.

WHEREFORE, the petition is **GRANTED**. The decision of the NLRC, dated 21 June 1996, as well as its resolution, promulgated on 20 August 1996, are **ANNULLED** and **SET ASIDE.** The decision of the Labor Arbiter rendered on 15 June 1994, is hereby **REINSTATED** and **AFFIRMED**.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and *Ynares-Santiago, JJ.,* concur.

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[51] Article 279 of the Labor Code;;; Judy Philippines, Inc. vs. NLRC and Virginia Antiola, 289 SCRA 755, (1998); Paguio Transport Corporation vs. NLRC and Wilfredo Melchor, 294 SCRA 657 (1998).