



Republic of the Philippines  
**Supreme Court**  
 Manila

**SECOND DIVISION**

**PETRON CORPORATION,**  
*Petitioner,*

**G.R. No. 182255**

- versus -

Present:

**ARMZ CABERTE,**  
**ANTONIO CABERTE, JR.,**  
**MICHAEL SERVICIO,\***  
**ARIEL DEVELOS,**  
**ADOLFO GESTUPA,**  
**ARCHIE PONTERAS,**  
**ARNOLD BLANCO,**  
**DANTE MARIANO,\***  
**VIRGILIO GALOROSA,**  
**and CAMILO TE,\***  
*Respondents.*

CARPIO, *Chairperson,*  
 BRION,  
 DEL CASTILLO,  
 MENDOZA, *and*  
 LEONEN, *JJ.*

Promulgated:

15 JUN 2015 *Harcabulo y Brzfecto*

X -----

**DECISION**

**DEL CASTILLO, J.:**

This Petition for Review on *Certiorari*<sup>1</sup> assails the November 14, 2007 Decision<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 82356 which reversed the May 14, 2003 Decision<sup>3</sup> and November 27, 2003 Resolution<sup>4</sup> of the National Labor Relations Commission (NLRC) in NLRC Case No. V-000329-2002. The NLRC affirmed the March 7, 2002 Decision<sup>5</sup> of the Labor Arbiter dismissing the Complaints for illegal dismissal and payment of monetary claims filed by respondents Armz Caberte (Caberte), Antonio Caberte, Jr. (Caberte Jr.), Michael

*Me all*

\* Also referred to as Michael Sevico in some parts of the records.

\* Also referred to as Dante Mirano in some parts of the records.

\* Also referred to as Camillo Te in some parts of the records.

<sup>1</sup> *Rollo*, pp. 12-40.

<sup>2</sup> CA *rollo*, pp. 264-283; penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Pampio A. Abarintos and Amy C. Lazaro-Javier.

<sup>3</sup> Records, pp. 580-598; penned by Commissioner Oscar S. Uy and concurred in by Commissioner Edgardo M. Enerlan.

<sup>4</sup> Id. at 652-655; penned by Commissioner Oscar S. Uy and concurred in by Commissioner Edgardo M. Enerlan and Presiding Commissioner Gerardo C. Nograles.

<sup>5</sup> Id. at 514-521; penned by Executive Labor Arbiter Danilo C. Acosta.

Servicio (Servicio), Ariel Develos (Develos), Adolfo Gestupa (Gestupa), Archie Ponteras (Ponteras), Arnold Blanco (Blanco), Dante Mariano (Mariano), Virgilio Galorosa (Galorosa) and Camilo Te (Te) against petitioner Petron Corporation (Petron), ABC Contracting Services (ABC), and its owner Antonio B. Caberte, Sr. (Caberte Sr.). Likewise assailed is the CA Resolution<sup>6</sup> dated March 4, 2008 which denied Petron's Motion for Reconsideration.

### ***Factual Antecedents***

Petron is a domestic corporation engaged in the manufacture and distribution to the general public of various petroleum products. In pursuance of its business, Petron owns and operates several bulk plants in the country for receiving, storing and distributing its products.

On various dates from 1979 to 1998, respondents were hired to work at Petron's Bacolod Bulk Plant in San Patricio, Bacolod City, Negros Occidental as LPG/Gasul fillers, maintenance crew, warehousemen, utility workers and tanker receiving crew.

For the periods from March 1, 1996 to February 28, 1999 and November 1, 1996 to June 30, 1999, Petron and ABC, a labor contracting business owned and operated by Caberte Sr., entered into a Contract for Services<sup>7</sup> and a Contract for LPG Assistance Services.<sup>8</sup> Under both service contracts, ABC undertook to provide utility and maintenance services to Petron in its Bacolod Bulk Plant.

### ***Proceedings before the Labor Arbiter***

On July 2, 1999, respondents Caberte, Caberte Jr., Servicio, Develos, Gestupa, Ponteras, Blanco and Mariano filed before the Labor Arbiter a Complaint<sup>9</sup> for illegal dismissal, underpayment of wages and non-payment of allowances, 13<sup>th</sup> month pay, overtime pay, holiday pay, service incentive leave pay, moral and exemplary damages and attorney's fees against Petron, ABC and Caberte Sr., docketed as NLRC RAB VI Case No. 06-07-10588-99. Subsequently, respondents Galorosa and Te separately filed similar Complaints<sup>10</sup> docketed as NLRC RAB VI Case No. 06-07-10675-99 and RAB Case No. 06-09-10785-99, respectively. The three Complaints were consolidated in an Order<sup>11</sup> dated October 25, 1999 of the Labor Arbiter.

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<sup>6</sup> CA *rollo*, pp. 308-310; penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Pampio A. Abarintos and Amy Lazaro-Javier.

<sup>7</sup> Records, pp. 144-157.

<sup>8</sup> Id. at 158-168.

<sup>9</sup> Id. at 1-16.

<sup>10</sup> Id. at 27-28 and 47-48.

<sup>11</sup> Id. at 57.

Respondents averred that even before Petron engaged ABC as contractor in 1996, most of them had already been working for Petron for years. However, every time Petron engages a new contractor, it would designate such new contractor as their employer. Despite such arrangement, Petron exercised control and supervision over their work, the performance of which is necessary and desirable in its usual trade and business. Respondents added that ABC is a mere labor-only contractor which had no substantial capital and investment, and had no control over the manner and method on how they accomplished their work. Thus, Petron is their true employer. On July 1, 1999, however, Petron no longer allowed them to enter and work in the premises of its Bacolod Bulk Plant. Hence, the complaints for illegal dismissal.

On the other hand, Petron asserted that ABC is an independent contractor which supplied the needed manpower for the maintenance of its bulk handling premises and offices, as well as for tanker assistance in the receiving and re-filling of its LPG products; that among the workers supplied by ABC were respondents, except Caberte Jr., who does not appear to be one of those assigned by ABC to work for it; that it has no direct control and supervision over respondents who were tasked to perform work required by the service contracts it entered into with ABC; and, that it cannot allow the continuous employment of respondents beyond the expiration of the contracts with ABC. To prove the legitimacy and capacity of ABC as an independent contractor, Petron submitted the following documents: (1) Contractor's Pre-Qualification Statement;<sup>12</sup> (2) Petron's Conflict of Interest Policy signed by Caberte Sr., as proprietor of ABC;<sup>13</sup> (3) ABC's Certificate of Registration issued by the Bureau of Internal Revenue (BIR);<sup>14</sup> (4) Value-Added Tax Return for the year 1995;<sup>15</sup> (5) BIR Confirmation Receipt;<sup>16</sup> (6) Caberte Sr.'s Tax Identification Number (TIN) issued by the BIR;<sup>17</sup> (7) Caberte Sr.'s Individual Income Tax Return for the years 1993<sup>18</sup> and 1994;<sup>19</sup> (8) ABC's Audited Financial Statements for the years 1992,<sup>20</sup> 1993<sup>21</sup> and 1994;<sup>22</sup> (9) ABC's Mayor's Permit for the year 1995;<sup>23</sup> and, (10) ABC's Certificate of Registration of Business Name issued by the Department of Trade and Industry (DTI).<sup>24</sup> In addition, it averred that ABC, as a contractor, had duly posted a performance bond<sup>25</sup> and took out insurance policies<sup>26</sup> against liabilities. Petron likewise presented affidavits<sup>27</sup> of

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<sup>12</sup> Id. at 185-186.

<sup>13</sup> Id. at 187-192.

<sup>14</sup> Id. at 193.

<sup>15</sup> Id. at 194.

<sup>16</sup> Id. at 195.

<sup>17</sup> Id. at 196.

<sup>18</sup> Id. at 210.

<sup>19</sup> Id. at 202.

<sup>20</sup> Id. at 212-213.

<sup>21</sup> Id. at 208.

<sup>22</sup> Id. at 204.

<sup>23</sup> Id. at 197-198.

<sup>24</sup> Id. at 199-201.

<sup>25</sup> Id. at 217.

<sup>26</sup> Id. at 214-216.

<sup>27</sup> See Affidavits of Roger Molina and Rollie Calvo, id. at 175-177.

two Petron employees stating that respondents do not perform activities related to Petron's business operation but only tasks which are intermittent and which can be contracted out. Also submitted were affidavits<sup>28</sup> of three former employees of ABC attesting to the fact that during their stint in Petron, they used materials such as floor polisher, floor wax, broom, dustpan, cleaning rags and other equipment owned by ABC to accomplish their tasks and that they worked under the supervision of Caberte Sr., through the latter's designated overall supervisor, respondent Caberte. Petron further revealed that ABC/Caberte Sr. has the power to hire and fire respondents and was the one paying their wages.

In a Decision<sup>29</sup> dated March 7, 2002, Executive Labor Arbiter Danilo C. Acosta (LA Acosta) held that ABC is an independent contractor that has substantial capital and that respondents were its employees. He likewise ruled that ABC's cessation of operation is a force majeure that justifies respondents' dismissal. Nonetheless, LA Acosta awarded respondents separation pay based on the applicable minimum wage rate at the time of expiration of the contracts of service. He, however, denied the claims for overtime pay and night shift differential pay for lack of merit. The dispositive portion of the Decision reads:

Conformably with the foregoing, respondent ABC is hereby ORDERED TO PAY EACH COMPLAINANT, namely, complainants Antonio Caberte, Jr., Armz M. Caberte, Michael Servicio, Ariel Develos, Adolfo Gestupa, Archie Ponteras, Arnold Blanco, Dante Mirano, Virgilio Galorosa and Camilo Te, separation pay of one month for every year of service.

All other claims and the claims against respondent PETRON are hereby ORDERED DISMISSED for lack of merit.

SO ORDERED.<sup>30</sup>

### ***Proceedings before the National Labor Relations Commission***

Respondents appealed to the NLRC where they insisted that they are regular employees of Petron since ABC is a labor-only contractor.

In a Decision<sup>31</sup> dated May 14, 2003, the NLRC affirmed the ruling of the Labor Arbiter after it found that ABC is not a mere labor contractor but a legitimate independent contractor. In so ruling, the NLRC took into account the following: (1) ABC/Caberte Sr. has the power of control over respondents as Caberte Sr. was the one controlling and supervising respondents in their work. While Petron intervened at times, the same was limited to safety precautions due

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<sup>28</sup> See Affidavit of Paulo Palma and Joint Affidavit of Arlan Ondoy and Emmanuel Mahilum, id. at 178-180.

<sup>29</sup> Id. at 514-521.

<sup>30</sup> Id. at 521.

<sup>31</sup> Id. at 580-598.

to the hazardous nature of the products the workers were dealing with; (2) ABC possessed sufficient capital and equipment per the various documents that Petron submitted showing the former's financial capability to maintain its status as an accredited contractor of the latter. In fact, Caberte Sr. was even able to establish ABC's Bacolod City Office; and, (3) ABC/Caberte Sr. has the power to hire and dismiss respondents. Hence, the dispositive portion of the Decision, *viz*:

WHEREFORE, premises considered, this appeal is DISMISSED and the decision of the Executive Labor Arbiter is AFFIRMED.

SO ORDERED.<sup>32</sup>

Respondents filed a Motion for Reconsideration which was, however, denied in the NLRC Resolution<sup>33</sup> dated November 27, 2003.

### ***Proceedings before the Court of Appeals***

Aggrieved, respondents filed a Petition for *Certiorari*<sup>34</sup> before the CA ascribing upon the NLRC grave abuse of discretion amounting to lack or in excess of jurisdiction in holding that they are not employees of Petron.

The CA, in a Decision<sup>35</sup> dated November 14, 2007, found merit in respondents' Petition. It ruled that ABC is engaged in labor-only contracting because: first, it did not have substantial capital or investment in the form of tools, equipment, implements, machineries and work premises, actually and directly used in the performance or completion of the job it contracted out from Petron; second, the work assigned to respondents were directly related to Petron's business; and, third, the nature of Petron's business requires it to exercise control over the performance of respondents' work. Consequently, the CA declared respondents as Petron's regular employees. And since Petron did not comply with the requirements under the Labor Code when it terminated their employment, respondents were illegally dismissed and therefore entitled to reinstatement without loss of seniority rights and other privileges, with the alternative relief of separation pay in lieu of reinstatement, and to full backwages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time compensation was withheld up to the time of actual reinstatement. The CA, however, denied respondents' claims for moral and exemplary damages in the absence of bad faith in Petron's act of dismissing them but awarded respondents 10% attorney's fees for having to litigate to protect their interests. The dispositive portion of the Decision reads:

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<sup>32</sup> Id. at 598.

<sup>33</sup> Id. at 652-655.

<sup>34</sup> CA *rollo*, pp. 2-28.

<sup>35</sup> Id. at 264-283.

WHEREFORE, in view of the foregoing, the decision of the National Labor Relations Commission dated May 14, 2003, in NLRC Case No. V-000329-2002, affirming the March 7, 2002 Decision of Executive Labor Arbiter Danilo C. Acosta of the Sub-Regional Arbitration Branch VI, Bacolod City, is hereby REVERSED.

Respondent Petron Corporation is ordered to reinstate Armz Caberte, Antonio Caberte, Jr., Michael Servicio, Ariel Develos, Adolfo Gestupa, Archie Ponteras, Arnold Blanco, Dante Mirano, Virgilio Galorosa and Camilo Te to their former positions with the same rights and benefits and the same salary rates as its regular employees.

Respondent Petron Corporation is likewise ordered to pay petitioner's attorney's fees equivalent to ten percent (10%) of the monetary award.

All other claims are dismissed for lack of merit.

Costs against private respondent Petron.

SO ORDERED.<sup>36</sup>

Petron's Motion for Reconsideration<sup>37</sup> was denied by the CA in its Resolution<sup>38</sup> dated March 4, 2008. Hence, this present recourse.

### **Issues**

Petron presents the following grounds for review:

X X X THE COURT OF APPEALS SERIOUSLY ERRED AND DECIDED A QUESTION OF SUBSTANCE IN A MANNER NOT IN ACCORD WITH LAW AND WITH APPLICABLE JURISPRUDENCE IN FINDING THAT ABC CONTRACTING SERVICES IS A MERE LABOR-ONLY CONTRACTOR AND IN HOLDING THAT RESPONDENTS ARE THUS REGULAR EMPLOYEES OF THE COMPANY CONSIDERING THAT:

- A. THERE IS A LEGITIMATE SERVICE CONTRACTING AGREEMENT BETWEEN THE COMPANY AND ABC CONTRACTING SERVICES;
- B. THE CONTRACTED SERVICES THAT RESPONDENTS PERFORMED ARE NOT DIRECTLY RELATED AND NECESSARY OR DESIRABLE TO THE COMPANY'S PRINCIPAL BUSINESS;
- C. ABC CONTRACTING SERVICES CARRIES ON AN INDEPENDENT BUSINESS AND POSSESSES SUBSTANTIAL CAPITAL AND INVESTMENT; AND

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<sup>36</sup> Id. at 282-283.

<sup>37</sup> Id. at 284-302.

<sup>38</sup> Id. at 308-310.

D. RESPONDENTS ARE EMPLOYEES OF ABC CONTRACTING SERVICES.<sup>39</sup>

Petron asserts that ABC, as an independent contractor, rendered janitorial, utility and LPG assistance services by virtue of legitimate contracts entered into by and between them. As such, the services rendered by respondents were purely maintenance and utility works which are not directly related, necessary and desirable to Petron's main business.

Petron likewise insists that ABC is not a labor-only contractor as it carries on an independent business and uses its own equipment, tools, materials and supplies in the performance of its contracted services. Further, it asserts that ABC wielded and exercised the power of selection or engagement, payment of wages, discipline or dismissal, and of control over respondents.

### **Our Ruling**

The Petition has no merit.

*Labor-only contracting and permissible job contracting, defined; a contractor is presumed by law to be a labor-only contractor; anyone claiming the supposed status of an independent contractor bears the burden of proving the same.*

As defined under Article 106 of the Labor Code, labor-only contracting, a prohibited act, is an arrangement where the contractor, who does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, supplies workers to an employer and the workers recruited are performing activities which are directly related to the principal business of such employer.

Permissible or legitimate job contracting or subcontracting, on the other hand, "refers to an arrangement whereby a principal agrees to put out or farm out with the 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. A person is considered engaged in legitimate job contracting or subcontracting if the following conditions concur: (a)

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<sup>39</sup> *Rollo*, pp. 23-24.

the contractor carries on a distinct and independent business and partakes the contract work on his account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of his work except as to the results thereof; (b) the contractor has substantial capital or investment; and (c) the agreement between the principal and the 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 welfare benefits.<sup>40</sup>

To determine whether a contractor is engaged in labor-only contracting or permissible job contracting, "the totality of the facts and the surrounding circumstances of the case are to be considered."<sup>41</sup>

Petron contends that the CA erred in ruling that ABC is a labor-only contractor since respondents failed to prove that ABC is not an independent contractor. The contention, however, is incorrect. The law presumes a contractor to be a labor-only contractor and the employees are not expected to prove the negative fact that the contractor is a labor-only contractor.<sup>42</sup> Thus, it is not respondents but Petron which bears the burden of establishing that ABC is not a labor-only contractor but a legitimate independent contractor. As held in *Alilin v. Petron Corporation*,<sup>43</sup> "where the principal is the one claiming that the contractor is a legitimate contractor, the burden of proving the supposed status of the contractor rests on the principal."

*Petron failed to overcome the presumption that ABC is a labor-only contractor.*

Foremost, Petron banks on the contracts of services it entered into with ABC. It contends that the said contracts were legitimate business transactions and were not only for the purpose of ABC providing manpower or labor-only to Petron, but rather for specific services pertaining to janitorial, utility and LPG assistance.

Suffice it to state, however, that Petron cannot place reliance on the contracts it entered into with ABC since these are not determinative of the true nature of the parties' relationship. As held in *Babas v. Lorenzo Shipping*

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<sup>40</sup> *Norkis Trading Corporation v. Buenavista*, G.R. No. 182018, October 10, 2012, 683 SCRA 406, 424.

<sup>41</sup> *Polyfoam-RGC International Corporation v. Concepcion*, G.R. No. 172349, June 13, 2012, 672 SCRA 148, 160.

<sup>42</sup> *7K Corporation v. National Labor Relations Commission*, 537 Phil. 664, 678-679 (2006).

<sup>43</sup> G.R. No. 177592, June 9, 2014.

*Corporation*,<sup>44</sup> the character of the business, whether as labor-only contractor or as a job contractor, should be determined by the criteria set by statute and the parties cannot dictate by the mere expedience of a unilateral declaration in a contract the character of their business.

Next, Petron endeavours to prove that ABC is a legitimate independent contractor.

To restate, a contractor is deemed to be a labor-only contractor if the following elements are present: (i) the contractor does not have substantial capital or investment to actually perform the job, work or service under its own account and responsibility; and (ii) the employees recruited, supplied or placed by such contractor are performing activities which are directly related to the main business of the principal.<sup>45</sup> Conversely, in proving that ABC is not a labor-only contractor, it is incumbent upon Petron to show that ABC has substantial capital or investment and that respondents were performing activities which were not directly related to Petron's principal business.

To show that ABC has substantial capital or investment, Petron submitted, among others, ABC's BIR Certificate of Registration, VAT Return, BIR Confirmation Receipt, TIN, Individual Income Tax Return, Mayor's Permit and DTI Certificate of Registration. However, the Court observes that these documents are not conclusive evidence of ABC's financial capability. At most, they merely show that ABC is engaged in business and licensed by the appropriate government agencies.

As for the financial statements presented, it appears that only the audited financial statements of ABC for the years 1992, 1993 and 1994 were submitted. As aptly observed by the CA, these documents cannot be given much credence considering that the service contracts between Petron and ABC commenced in 1996 and ended in 1999. However, no audited financial statements for the years material to this case (1996, 1997, 1998 and 1999) were submitted. Also, as per record, ABC was obligated to submit to Petron at least once every two years its latest audited financial statements, among others, as a requirement for the retention of its status as an accredited contractor of Petron.<sup>46</sup> If it is true that ABC continued to possess its financial qualification after 1994, Petron should have presented ABC's financial statements for the said years which are presumed to be in Petron's possession considering that they are part of the requirements that it itself set for its accredited contractors.

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<sup>44</sup> 653 Phil. 421, 431 (2010), citing *De Los Santos v. National Labor Relations Commission* 423 Phil. 1020, 1032 (2001).

<sup>45</sup> *Alilin v. Petron Corporation*, supra note 43.

<sup>46</sup> See Petron's letter to ABC dated March 5, 1996, records, pp. 218-219.

Neither does the performance bond taken out by ABC serve as significant evidence of its substantial capital. As aptly explained by the CA:

The performance bond posted by ABC Contracting Services likewise fails to convince us that the former has substantial capital or investment inasmuch as it was not shown that the performance bond in the amount of ₱596,799.51 was enough to cover not only payrolls, rentals and equipment but also possible damages to the equipment and to third parties and other contingent liabilities. Moreover, this Court takes judicial notice that bonds of this nature are issued upon payment of a small percentage as premium without necessarily requiring any guarantee.

If at all, the bond was a convenient smoke screen to disguise the real nature of ABC's employment as an agent of Petron.<sup>47</sup>

Anent substantial investment in the form of equipment, tools, implements, machineries and work premises, Petron likewise failed to show that ABC possessed the same. Instead, what is evident in the records was that ABC had been renting a forklift from Petron in order to carry out the job of respondents.<sup>48</sup> This only shows that ABC does not own basic equipment needed in the performance of respondents' job. Similarly and again as correctly held by the CA, the fact that ABC leased a property for the establishment of its Bacolod office is immaterial since it was not shown that it was used in the performance or completion of the job contracted out. "Substantial capital or investment," under Section 5, Rule VIII-A, Book III of the Omnibus Rules Implementing the Labor Code (Implementing Rules), as amended by Department Order No. 18-02,<sup>49</sup> does not include those which are not actually and directly used in the performance of the job contracted out.

Going now to the activities performed by respondents, Petron avers that the same were not necessary or desirable to its principal business. In fact, the service contracts it entered into with ABC clearly referred to respondents' functions as maintenance and utility works only which are remote to its principal business of manufacturing and distributing petroleum products.

The Court finds otherwise. Gestupa, Ponteras, Develos, Blanco and Mariano were LPG fillers and maintenance crew; Caberte was an LPG operator supervisor; Te was a warehouseman and utility worker; and Servicio and Galorosa were tanker receiving crew and utility workers. Undoubtedly, the work they rendered were directly related to Petron's main business, vital as they are in the manufacture and distribution of petroleum products. Besides, some of the

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<sup>47</sup> CA *rollo*, pp. 276-277.

<sup>48</sup> See Antonio B. Caberte, Sr.'s letters to Petron's Supervisor both dated July 22, 1998, records, pp. 182-183.

<sup>49</sup> "Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out.

respondents were already working for Petron even before it engaged ABC as a contractor in 1996. Albeit it was made to appear that they were under the different contractors that Petron engaged over the years, respondents have been regularly performing the same tasks within the premises of Petron. This “the repeated and continuing need for the performance of the job is sufficient evidence of the necessity, if not indispensability of the activity to the business.”<sup>50</sup>

What further militates against Petron’s claim that ABC, as an alleged independent contractor, is the true employer of respondents, is the fact that Petron has the power of control over respondents in the performance of their work. It bears stressing that the power of control merely calls for the existence of the right to control and not necessarily the exercise thereof.<sup>51</sup> Here, Petron admitted in its Position Paper that the supervision of a Petron employee is required over LPG and tanker assistance jobs for inventory control and safety checking purposes. It explained that due to the hazardous nature of its products, constant checking of the procedures in their handling is essential considering the high possibility of fatal accidents. It also admitted that it was the one supplying the needed materials and equipment in discharging these functions to better insure the integrity, quality and safety of its products.

From the foregoing, it is clear that Petron failed to discharge its burden of proving that ABC is not a labor-only contractor. Consequently, and as warranted by the facts, the Court declares ABC as a mere labor-only contractor. “A finding that a contractor is a ‘labor-only’ contractor is equivalent to declaring that there is an employer-employee relationship between the principal and the employees of the supposed contractor, and the ‘labor-only’ contractor is considered as a mere agent of the principal, the real employer.”<sup>52</sup> Accordingly in this case, Petron is declared to be the true employer of respondents who are considered regular employees in view of the fact that they have been regularly performing activities which are necessary and desirable to the usual business of Petron for a number of years.

*Respondents, except Antonio Caberte, Jr., were illegally dismissed.*

With respect to respondents’ dismissal, Petron claimed that the same sprang from the termination or conclusion of the service contracts it entered into with ABC. As earlier held, respondents are considered regular employees. In cases of regular employment, an employer may only terminate the services of an employee for just or authorized causes under the law.<sup>53</sup> As the reason given by Petron for

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<sup>50</sup> *Manila Water Company, Inc. v. Dalumpines*, G.R. No. 175501, October 4, 2010, 632 SCRA 76, 95.

<sup>51</sup> *Almeda v. Asahi Glass Philippines, Inc.*, 586 Phil. 103, 113 (2008).

<sup>52</sup> *Aboitiz Haulers, Inc. v. Dimapato*, 533 Phil. 566, 579-580 (2006).

<sup>53</sup> LABOR CODE, Article 279.

dismissing respondents does not constitute a just or authorized cause for termination,<sup>54</sup> the latter are declared to have been illegally dismissed. Respondents are thus entitled to all the remedies of an illegally dismissed employee, *i.e.*, backwages and reinstatement, or if no longer feasible, separation pay. The CA is thus correct in ruling that respondents are entitled to reinstatement without loss of seniority rights and other privileges. However, if reinstatement is no longer feasible, respondents are entitled to receive separation pay equivalent to one month salary for every year of service. In addition, respondents are entitled to full backwages from the time they were not allowed to work on July 1, 1999 up to actual reinstatement or finality of this Decision as the case may be.

An exception must be taken, however, with respect to Caberte Jr. From the beginning, Petron disputes the fact he ever worked for Petron. Therefore, before his case against Petron can prosper, Caberte Jr. must first establish that an employer-employee relationship existed between them since it is basic that the issue of illegal dismissal is premised on the existence of such relationship between the parties.<sup>55</sup> Unfortunately, nowhere in the records does it show that he indeed worked for Petron. Consequently, his complaint should be dismissed.

**WHEREFORE**, the petition is **DENIED**. The November 14, 2007 Decision and the March 4, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 82356 are **MODIFIED** in that: (1) the Complaint of respondent Antonio Caberte, Jr. against petitioner Petron Corporation is dismissed; and (2) petitioner Petron Corporation is ordered to reinstate all of the respondents, except for Antonio Caberte, Jr., to their former positions with the same rights and benefits and the same salary rates as its regular employees, or if reinstatement is no longer feasible, to separation pay equivalent to one month salary for every year of service and to pay them their full backwages from July 1, 1999 until actual reinstatement or upon finality of this Decision as the case may be, as well as attorney's fees equivalent to 10% of the monetary award, with costs against Petron Corporation.

**SO ORDERED.**

  
MARIANO C. DEL CASTILLO  
*Associate Justice*

<sup>54</sup> *Babas v. Lorenzo Shipping Corporation*, supra note 44 at 434, citing *Almeda v. Asahi Glass Philippines, Inc.*, supra note 51 at 118-119.

<sup>55</sup> *The New Philippine Skylanders, Inc. v. Dakila*, G.R. No. 199547, September 24, 2012, 681 SCRA 658, 663.

WE CONCUR:



**ANTONIO T. CARPIO**  
*Associate Justice*  
*Chairperson*



**ARTURO D. BRION**  
*Associate Justice*



**JOSE CATRAL MENDOZA**  
*Associate Justice*



**MARVIC M.V.F. LEONEN**  
*Associate Justice*

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**  
*Associate Justice*  
*Chairperson*



**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**  
*Chief Justice*

