

Labor standard and social legislation

[Law](#), [Security](#)



1. a) Yes. The four-fold test of determining the existence of employer-employee relationship is applicable to PH and the security guards, to wit: * The manner of selection and employment of the security guards – It was PH who chose the guards to be deployed at its hotel premises from the list of 30 names submitted by MSA. * The mode of payment of wages – It was PH who paid the wages of the guards as evidenced by the payslips bearing its logo. It was PH that deducted SSS premiums, PhilHealth, and PAGIBIG contributions as well as corresponding withholding taxes on their wages. This is also known as economic test (*Sevilla vs. CA*, GR NO. 41182-3, April 16, 1988).

* The presence or absence of the power of dismissal – The guards' termination when PH did not renew its contract with MSA is proof of the guards' dismissal from employment. * The presence or absence of a power to control the employee's conduct- The deployment, assignment, as well as the promotion of the guards were all undertaken by the security department of PH (*Hijos De F. Escano, Inc vs. NLRC*, GR NO. 59229, August 22 1991). * The MSA's contract with PH is a labor-only contracting which is prohibited by law (Art. 106). The guards are the employees of PH, the principal and MSA is only an agent of PH in the recruitment of the security guards.

b) Yes as this is considered merely as a suspension of employer-employee relationship (Art. 286, Labor Code). Strictly speaking, the security guards are merely considered as on leave of absence without pay until they are re-employed (*Manila Hotel Co. vs. CIR*, 9 scra 184; *ICAWO vs. CIR*, 16 scra 562). Moreover, regular employees of the workpools, as in their care, the security guards, while waiting for their assignment, are not considered terminated from their services.

c) Not more than 30 days as a longer period that they are on a floating status would have a severe economic effect on them and their families that they feed. (Sections 8 and 9, Rule XXIII, Book V, Omnibus Rules Implementing the Labor Code; Pido vs. NLRC, GR NO. 169812).

2. a) No. The criterion in determining whether or not seamen are entitled to overtime pay is not whether they were on board and cannot leave the ship beyond the regular eight working hours a day, but whether they actually rendered service in excess of said number of hours (Cagampan vs. NLRC 195 scra 533). The hours worked by seamen are those for actual service rendered on board. b) It's already the Labor Arbiters of the NLRC that have original and exclusive jurisdiction to hear and decide all claims arising out of employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas employment, seafarers included, including claims for actual, moral, exemplary and other forms of damages. All unresolved money claims pending at POEA as of July 15, 1995 shall be referred to NLRC for disposition (Sections 65, 66 Omnibus Implementing Rules and Regulations Implementing the Migrant Workers and Overseas Filipino Act of 1995).

3. If I am the Labor Arbiter to decide on the case, I would rule in favor of truck driver Carlo Manejo. Manejo's complaint for illegal dismissal against BATS has sufficient basis. BATS' contention that Manejo has no right of action as his employment was for a definite and specific period is untenable. Manejo's employment is regular notwithstanding the contract for a specific period executed by and between Manejo and BATS. A regular employment is one where the employee has been engaged to perform activities which are

usually necessary or desirable in the usual business or trade of the employer (Section 5, Rule I, Book VI of the Implementing Rules).

The business of BATS is in trucking and therefore Manejo's hiring as a truck driver thereof is necessary and desirable in the usual business or trade of BATS. Moreover, Manejo has already rendered at least one year of service to make him regular (Sec. 5 (b), Rule I, Book VI) when BATS decided to renew his contract for another six months. What determines regularity or casualness is not the employment contract, written or otherwise, but the nature of the job. If the job is usually necessary or desirable to the main business of the employer, then the employment is regular (A. M. Oreta, August 10, 1989).

4. a) Melchor, Gaspar and Baltazar will no longer be considered contractual workers, notwithstanding the contract for specific project they entered into with TCC. Although initially, their employment is for a fixed period, they continued working beyond Dec. 31, 2011. Their status will now be considered regular as their work as programmers was usually necessary or desirable in the usual business or trade of TCC, a computer company at that (Section 5 (a), Rule I, Book VI, Implementing Rules).

Fixed- period employment contracts have been considered in some cases by the Supreme Court as valid so long as the fixed period stipulations was shown to have been knowingly and voluntarily agreed upon by the parties (Brent School, Feb. 5, 1990) notwithstanding that the jobs to be performed by the fixed-period hiree/employee are necessary or desirable to the employer's business. But in this case, after the expiration of the one-year

period, Melchor, Gaspar and Baltazar continued to work as programmers for TCC company to accomplish the objective of setting up a branch office.

b) The nature of the three's employment may also be viewed as a project employment apart from its fixed-period nature. As such, then, the three (Melchor, Gaspar, and Baltazar) are obliged to work beyond Dec. 31, 2011 to finally complete the undertaking assigned to them under the contract, that is, to put up a branch office of the company in Cagayan de Oro city which was derailed by the strong typhoon that struck the city under threat of a suit for damages if they unjustifiably refuse to continue working (Art. 280, Labor Code).

5. a) Dr. Rayden Co's right to security of tenure has been violated notwithstanding the fact that he has a fixed-period contract of employment with VMC. Art. 282, Labor Code on termination of an employee for a "just" cause applies with equal force to contractual employment (Art. 6, Labor Code). The employer in terminating the employment of an employee before the expiration of the fixed period can only do so for a "just" cause and upon observance of due process. In the case at bar, it appears that VMC did not abide by the law on the termination of the employment of Dr. Co for a "just" cause.

b) No, VMC is not justified in terminating the services of Dr. Co before the expiration of the contract. Assuming VMC has "just" cause to terminate Dr. Co's contract prior to its expiration, VMC still has to observe due process. It is not enough for an employer who wishes to dismiss an employee to charge him with some wrongdoings. The validity of the charge must be established in a manner consistent with due process. Accusation cannot take the place of

proof. This is the procedure to be observed and followed (Implementing Rules of Book VI and in Rule XXIII of D. O. No. 9, series of 1997). The implementing rules provide that no worker shall be dismissed except for a just or authorized cause and after due process. The two facets of this legal provision are: a) legality of the act of dismissed under the grounds of Art. 282, Labor Code; and b) legality in the manner of dismissal (Shoemart, August 11, 1989).