

SOCIAL SECURITY SYSTEM, PETITIONER, VS. HON. COURT OF APPEALS, AND SHRIRO (PHILIPPINES) INC., RESPONDENTS.

G.R. No. L-23483. February 24, 1971

Ponente: CASTRO, J.

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CASTRO, J.:

The respondent Shriro (Philippines), Inc., which has contracted the services of a great number of commission sales agents, was informed on July 21, 1961 by the examiners of the petitioner Social Security System that these agents were regarded by the System as falling in the category of "employees," and, therefore, premium contributions, both employer's and employees', were due on them. Before actual assessment of premiums due could be made, however, the respondent Shriro took up in a letter addressed to the System the matter of coverability of these agents. The petitioner's reply of November 17, 1961 contained an opinion-memorandum which in sum treated Shriro's commission sales agents as employees, not independent contractors, within the purview of the Social Security Act.[1]

The System's opinion was subsequently put to test by the respondent Shriro in a petition filed with the Social Security Commission. After hearing duly had, the latter, in its resolution of October 23, 1962, ruled that, except for independent dealers or merchants with their own stores and establishments, Shriro's commission sales agents were employees subject to compulsory coverage under the Act.

On appeal by Shriro, the respondent Court of Appeals reversed the Commission's ruling and adjudged Shriro's sales agents free of the pervading effect of the Social Security Act.

This case is with us on appeal by certiorari filed by the Social Security System.

The respondent Shriro concedes the correctness of the findings of fact made by the Commission, which are quoted in toto by the respondent Court of Appeals, as follows:

"The following facts are undisputed. Petitioner, a domestic corporation, is the exclusive distributor of 'Regal' sewing machines. It displays and sells at retail the machines at its store located at 410 Rosario Street, Manila, under the business name of 'Regal Sewing Machine Center.' These sewing machines are sold on cash or installment basis directly in its store or through the help of sales agents.

"At the head of the Regal Sewing Machine Center is a sales manager who has under his supervision 45 employees composed of assistants, accountants, bookkeepers, clerks, sales supervisors, demonstrators, cashiers, credit investigators, collectors, mechanics, drivers, warehouse men, janitors, and messengers, who are admittedly subject to compulsory coverage. They are all members of the Social Security System and are included in the store's report and payrolls submitted to the Bureau of Internal Revenue.

"In order to increase and expand its sales of sewing machines, petitioner authorizes certain persons other than those named above to act as sales agents whose authority is for a fixed period, under certain terms and conditions.

"In the Authorization (Exh. 'C'), it is stated that the sales agent is authorized to sell the sewing machines and other merchandise of the Regal Sew-ing Machine Center, although he is not authorized to receive any payment on behalf of the Company.

"In the Contract (Exh. 'B'), it is stated that the agent shall undertake personally or through his own employees, and independently of the Company, the distribution and sale of such merchandise (par. 2). The expenses for handling and delivery of the goods to the customers are for the account of the Regal Sewing Machine Center, unless such handling and delivery are undertaken by or from the agent's own store or establishment, in which case the ex-penses shall be for the account of the sales agent (par. 3, Exh. 'B').

"It is also provided in said Contract that the sales and distribution of the goods shall be undertaken in such manner as the sales agent may deem proper or convenient (par. 4, Ibid). It is, how-ever, required that deliveries and all installment sales must be approved by petitioner's Credit Department and that commissions of the sales agents are to be paid only on such approval and consum-mation of the sale (par. 4, Ibid).

"Other terms of the Contract are set forth as follows:

'(a) This is not an employment contract;

'(b) You are free to enter into similar agreements with other companies;

'(c) You can handle similar or other kinds of merchandise and goods of other companies;

'(d) You do not have to report to the Company regarding your working hours; you do not have to time in or out for your working hours are your own responsibility.' (Par. 5, Exh. 'B')

"Further, these sales agents are not allowed to accompany deliveries of sewing machines sold to the customers, nor are they permitted to stay in the showroom of the store except when accompanying prospective customers who want to see the machines. The sales agents do not receive cash advances nor receive any allowances of any kind. The only amount they receive is a commission of P26.00 or P36.00 for every sewing machine sold, depending upon the type of machine, whether De Luxe or Imperial type.

"These sales agents are hired after a brief interview and are accepted without undergoing any probationary period.

"Since the establishment of petitioner's store in October, 1958, petitioner has hired approximately 2,000 sales agents, only 820 of whom were able to transact sales for the petitioner. The remaining 1,180 agents made no sales; some failed to show up after receiving their letters of authority. Others had been merely requested to apply by pros-pective customers in order to get a rebate in the form of the commission paid to the sales agents and never appeared for the second time.

"It is provided that the relationship between petitioner and the sales agents are revocable by the Company at any time (par. 6, Exh. 'B').

"The sales agents have the same Authorization and sign the same Contract abovementioned. But, depending on the time that they spend in pursuance of petitioner's business, they are classed as follows:

"1. Regular employees of other business firms or establishments;

"2. Traveling multi-line salesmen selling sewing machines of competing firms;

"3. Independent merchants or dealers having their own stores or establishments."

The sole issue presented for resolution is whether, under the facts recited above, the sales agents contracted by the res-pondent Shriro to sell its sewing machines on commission basis are "employees" within the compulsory coverage of the Social Security Act.

The petitioner System has fielded three arguments to advance the affirmative side.

1. The petitioner cites the statutory definition of the terms, "employee" and "employment," as used in the Social Security Act. Paragraph (d) of section 8 of the Act defines an employee as "Any person who performs services for an 'emplo-yer' in which either or both mental and physical efforts are used and who receives compensation for such services, where there is an employer-employee relationship." Paragraph (j) of the same section, upon the other hand, defines employment as "Any service performed by an employee for his employer, except -- -x x x," followed by a list^[2] of the services excluded by the Act from the coverage of the System. The services of commission agents do not appear on this exempt list.

The petitioner argues that to properly appreciate the extent of the coverage of the System, one must construe the definitions of "employee" and "employment" together. And since the exempt services are enumerated with specificity in the Act, all other services not so mentioned, including those of a commission agent, should be treated as falling within the scope of the System. This proposition overlooks one essential point: inasmuch as the elusive term "employee" is used in the definition of the term "employment," when reading the latter, one must first assume, bearing in mind the definition marked out in par. (d) of sec. 8, the existence of an employer-employee relationship. Only after this is done does the list of exemptions acquire practical application. It follows that where there is no employer-employee relationship to speak of in the first place, the non-inclusion of an entity or person in the list of enumerated exempt services has no materiality or pertinence in determining coverability.

We fully agree with the respondent Court of Appeals that when a hired person is an "employee" under the terms of the statute on account of the existence of an employer-employee relationship between him and the person hiring him, a further check has to be made to determine whether he is nonetheless outside the compulsory coverage of the SSS, for the reason that the services he renders are among the exempt services enumerated in sec. 8(j) of the Act.

2. The petitioner System points out that although the respondent Shiro does not exercise actual control over the means and methods employed by their commission sales agents in the solicitation of sales orders, these agents are nevertheless employees under the "control test" widely adhered to in this jurisdiction.^[3] The power of the respondent Shiro to terminate its contract with its commission agents and its reserved right to approve or reject a sales order are, according to the petitioner, manifestations of control over the conduct of these agents. While this form of control, the petitioner argues, does not go directly into the details of the methods utilized by each agent in pursuance of his work, the same is nevertheless potentially present and can be exercised in every instance where the respondent Shiro is not satisfied with the performance of its commission agents.

The petitioner apparently misses or ignores the distinction between control over the means and methods used by a person in his work, on the one hand, and control over the result of that work, on the other. The commission agents contracted by the respondent Shiro are admittedly at full liberty to devise means and ways of persuading people to make out sales orders for Shiro's products. A signed sales order is the result of an agent's sales efforts. When the respondent Shiro approves or rejects this sales order, what is approved or rejected is the result of the agent's work, not the means and methods employed by him. And because the respondent Shiro does not supervise the details of how a sale should be made, it cannot be said that when it terminates the contract of an agent it is on account of discipline imposed to check the means and methods employed by that agent in his work.

3. Because our present Social Security Act was patterned after the Federal Social Security Act of the United States, the cases decided under the latter regarding the existence of an employer-employee relationship should, according to the petitioner, be of great persuasive value to this Court. The petitioner cites a number of cases^[4]

where it is ventured that "in the application of social legislation, employees are those who as a matter of economic reality are dependent upon the business to which they render service."

The preponderant facts in the case of *Investment Planning Corp. of the Phil. vs. Social Security Systems*[5] approxi-mate those of the case before us. There, the commission agents contracted to sell FMF shares "are not required to report (for work) at any time; they do not have to devote their time exclusively to or work solely for petitioner; the time and the effort they spend in their work depend entirely upon their will and initiative; they are not required to account for their time nor submit a record of their activities; they shoulder their own selling expenses as well as transportation; and they are paid their commission based on certain percentages of their sales. ... The majority of the agents are regularly employed elsewhere -- either in the government or in private enterprises." The agree-ment between Investment Planning and its commission agents includes the following features: "(a) an agent is paid compensation for services in the form of commission; (b) in the event of death or resignation he or his legal representative shall be paid the balance of the commission corresponding to him; (c) he is subject to a set of rules and regulations governing the performance of his duties under the agreement; (d) he is required to put up a performance bond; and (e) his services may be terminated for certain causes." We forthwith found that the "economic reality" test, here urged upon us, has in the United States already been "abandoned as not reflective of the intention of Congress in the enactment of the original Social Security Act of 1935." [6] Ins-tead, we there held that the common law rule of determining the existence of employer-employee relationship, principally the "control test," applies in this jurisdiction. It is well to repeat what we there said: "x x x where the element of control is ab-sent; where a person who works for another does so more or less at his own pleasure and is not subject to definite hours or conditions of work, and in turn is compensated according to the result of his efforts and not the amount thereof, we should not find that the relationship of employer and employee exists."

We are therefore of the considered view, and we so hold, that on the basis of the factual milieu obtaining in the case at bar, the commission sales agents of the respondent Shriro are not subject to compulsory coverage under Rep. Act 1161, as amended, otherwise known as the Social Security Act.

ACCORDINGLY, the judgment of the Court of Appeals is affirmed. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] Republic Act 1161, as amended.

[2] (1) Agricultural labor when performed by a share or leasehold tenant or worker who is not paid any regular daily wage or base pay and who does not work for an uninterrupted period of at least six months in a year;

(2) Domestic service in a private home;

(3) Employment purely casual and not for the purposes of occupation or business of the employer;

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one years in the employ of his parents;

(5) Service performed on or in connection with an alien vessel by an employee if he is employed when such vessel is outside of the Philippines;

(6) Service performed in the employ of the Philippine Government or an instrumentality or agency thereof;

(7) Service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes therein;

(8) Services performed in the employ of a foreign government or international organization, or their wholly-owned instrumentality: Provided, however, That this exemption notwithstanding, any foreign government, international organization, or their wholly-owned instrumentality employing workers in the Philippines or employing Filipinos outside of the Philippines may enter into an agreement with the Philippine Government for the inclusion of such employees in the Social Security System except those already covered by the United States civil service retirement system; Provided, further, That the terms of such agreement shall conform with the provisions of this Act on coverage and amount of payment of contributions and benefits: Provided, finally, That the provisions of this Act shall be supplementary to any such agreement;

(9) Service performed as a student nurse in the employ of a hospital or nurses' training school, and service performed as a medical intern in the employ of a hospital; and

(10) Such other services performed by temporary employees which may be excluded by regulation of the Commission. Employees of bona fide independent contractors shall not be deemed employees of the employer engaging the services of said contractors.

[3] Philippine Manufacturing Company vs. Geronimo and Garcia, 96 Phil. 276; Mansal vs. P. P. Gocheco Lumber Co., 96 Phil. 941; Viaña vs. Al-Lagadan and Piga, 99 Phil. 408; Vda. de Cruz, et al. vs. The Manila Hotel Co., 101 Phil. 358; LVN Pictures, Inc. vs. Phil. Musicians Guild, et al., L-12582, January 28, 1961, 1 SCRA 132.

[4] United States vs. Silk, 91 L. Ed. 1757; Bartels vs. Birmingham, Ibid, 1947; Tapager vs. Birmingham, 75 F. Supp. 375.

[5] L-19124, November 18, 1967, 21 SCRA 924 (per Makalintal, J.).

[6] Benson vs. Social Security Board, 172 F. 2d. 682, cited in Investment Planning Corp. of the Phil. vs. Social Security System, supra.

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