

AGAPITA PAJARILLO, ET AL., PETITIONERS AND APPELLANTS, VS. SOCIAL SECURITY SYSTEM, RESPONDENT AND APPELLEE.

G.R. No. L-21930. August 31, 1966

Ponente: BARRERA, J.

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BARRERA, J.:

This is an appeal by Agapita Pajarillo, et al., from the resolution of the Social Security Commission, denying their petition to be exempted from coverage of the Social Security System.

There is no controversy as to the facts of this case. Appellants are owners of fishing boats being used for fishing at sea, namely:

Owner Name of Vessel

Agapita Pajarillo Bagong Kalayaan

Basilio Medina Stella Maris

Rosario Relloso Villa Florida

Teofila Campana Salenian

Melicia Totanes Nazareno

Melicia Totanes San Pedro

Ireneo Racelis Ricardo

Salvador Boral Villa Rosario

Cesar King Felipa

Ramon King Tacia

Jaime King Aday

Amelia Reyes

Queen Mary

Amelia Reyes Nancy

Teofilo Nasis Teresita

Rosario Reyes Charing Uno

Rosario Reyes

Charing Dos

Aurora Sales

Aurora

As such property-owners, they enter into agreements [1] with the so-called patrons or pilots, whereby the latter take charge of appellants' fishing vessels, equipment, and gear used for fishing. Once entrusted with the equipment, the pilot "hires" the crew to man the boat and secures their provisions. This is usually financed from loans obtained in the form of advances from fish dealers, and payable in kind when the boat returns with catch from the fishing trip. (pp. 23-24, t.s.n.).

These fishing trips are not regular. The fishermen go out to the sea only when there is no moon or it is not yet very bright. For this reason, even in months of fine weather, the most that a boat can make are 18 fishing days every month. These men have no regular income. If the trip yields a catch, the proceeds thereof are divided into three parts: one part goes to the owner of the boat and equipment; one part is set aside to cover expenses like crude oil and for maintenance of the boat, and the other one-third is divided among the men, with the pilot getting 3 times the share of a crew-member, and the "machinist", who tends or operates the engine of the motorized boat, receiving twice the share of a crew-member. (pp.9, 23, t.s.n.).

The men (usually 12 for every vessel, including the pilot) are under no obligation to stay in one outfit. Sometimes, they join as members of the crew for one night only; sometimes two, or three days. Then, they leave and join other outfits. (pp. 18-19, t.s.n.). Even the pilot himself is not bound to retain his charge for any definite duration. He can return the boat to its owner anytime, if he does not want to manage it anymore. (p. 11, t.s.n.). The vessel-owners, appellants in the present case, required to register as employers with the Social Security System, filed a joint petition with the Social Security Commission, claiming that there exists no employer-employee relationship between them and the crew of their fishing vessels, and praying that they be exempted from the compulsory coverage of the law. After hearing, their petition was denied, the Commission holding that while the services of the crew-members are engaged by the pilots, the latter are mere employees or agents of the boat-owners. Thus, it is contended, a boat-owner can abolish the employment of the crew-members by withdrawing from the pilot the authority to take charge of the vessel. Appellants, consequently, were directed to report their coverage and that of their respective pilots and crew-members to the Commission and to pay the prescribed premiums pursuant to Sections 18, 19, and 20 of the Republic Act 1161, as amended. The boat-owners filed the present appeal.

The only issue raised before the Commission and presented in this appeal is, as stated by the Commission itself, "whether under the facts set forth above, there exists an employer-employee relationship between the petitioners and the crew-members of their respective fishing boats within the meaning of Republic Act 1161, as amended."

Under the law, an employer is a "person, natural or juridical, domestic or foreign, who carries on in the Philippines any trade, business, industry, undertaking, or activity of any kind and uses the services of another person who is under his orders as regards the employment." [2] In the case at bar, the pilots are not under the orders of the boat-owners as regards their employment. They go out to sea not upon direction of the boat-owners, but upon their own volition as to when, how long and where to go fishing. Much less do the boat-owners in any way control the crew-members with whom the former have no relation whatsoever. These crew-members simply join every trip for which the pilots allow them, without any reference to the owners of the vessel.

On the other hand, an employee is defined as a "person who performs services for an 'employer' 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." [3] In the present case, neither the pilots nor the crew-members receive compensation from the boat-owners. They only share in their own catch produced by their own efforts. There is

no showing that outside of their one-third share, the boat-owners have anything to do with the distribution of the rest of the catch among the pilots and the crew-members. The latter perform no service for the boat-owners, but mainly for their own benefit.

In the undertaking in question, the boat-owners obviously are not responsible for the wage, salary, or fee of the pilot and crew-members. Their sole participation in the venture is the furnishing or delivery of the equipment used for fishing, after which, they merely wait for the boat's return and receive their share in the catch, if there is any. For his part, a person who joins the outfit is entitled to a share or participation in the fruit of the fishing trip. If it gives no return, the men get nothing. It appears to us, therefore, that the undertaking is in the nature of a joint venture, with the boat-owner supplying the boat and its equipments, and the pilot and crew-members contributing the necessary labor, and the parties getting specific shares for their respective contributions.

But, even assuming *arguendo* that the pilot and crew-members may be treated as employees of the boat-owner, they cannot also be made subject to compulsory coverage under the Social Security Act. As previously stated, the men are under no obligation to remain in the outfit for any definite period. Thus, one can be the crew-member of an outfit for one day and be the member of the crew of another vessel the next day. Also, a fishing boat has no regular schedule of fishing trips. It all depends on the weather and other natural conditions, and the volition of the pilots and crew-men themselves. And, even when a fishing trip is completed, it is no assurance of income for the fishermen and the boat-owner as well. Clearly, the services rendered by the fishermen are no different from the agricultural labor performed by a share or leasehold tenant or worker, which is specifically excluded from the definition of "employment", [4] and exempted from the coverage of the Social Security Act.

Add to this the extreme difficulty, if not impossibility, of determining the monthly wage or earning of these fishermen for the purpose of fixing the amount of their and the supposed employer's contributions,[5] and there is every reason to exempt the parties to this kind of undertaking from compulsory registration with the Social Security System.

In view of the foregoing considerations, the resolution of the Social Security Commission appealed from is hereby set aside, and petitioners-appellants are declared exempted from compulsory coverage of the Social Security law. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

Regala, J., on leave, no part.

[1] All agreements entered into in connection with this occupation are not in writing.

[2] Sec. 8(c), Rep. Act 1161.

[3] Sec. 8(d), *Ibid.*, as amended by Rep. Act 2658.

[4]"SEC. 8. Terms defined.— * * *."

* * * * *

"(j) Employment. - Any service performed by an employee for his employer except —

"(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; * * *." (Rep.

Act 1161, as amended by Rep. Act 2658).

[5] See Secs. 18 and 19, Ibid.

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