

GMA NETWORK, INC. PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND RICKY F. VILLARIN, DANILO D. DELA CRUZ, ROLIN L. PILANTE, JOHNNY ANITO, JR. RESPONDENTS.

Ponente: SALANDANAN-MANAHAN, J.

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SALANDANAN-MANAHAN, J.:

Before Us, is a Petition for Certiorari under Rule 65 of the Rules of Court seeking to reverse and set aside the following issuances of public respondent National Labor Relations Commission (NLRC), to wit:

- (1) Resolution[1] dated 28 June 2013; and
- (2) Resolution[2] dated 16 August 2013

which affirmed the Decision[3] dated 15 January 2013 of the Labor Arbiter declaring the status of private respondents Ricky F. Villarin, Rolin L. Pilante, Danilo D. Dela Cruz and Johnny P. Anito, Jr. as regular employees of petitioner GMA Network Inc.

The dispositive portion of the assailed NLRC Resolution[4] dated 28 June 2013 reads:

"WHEREFORE, premises considered, judgment is hereby rendered declaring the status of private respondents Ricky F. Villarin, Rolin L. Pilante, Danilo D. Dela Cruz and Johnny P. Anito, Jr. as regular employees of respondent GMA Network, Inc.

NLRC NCR CASE NO. 06-08861-12 and NLRC NCR CASE NO. 06-08953-12 are DISMISSED in view of the parties' execution of Compromise Agreement on October 4, 2012.

SO ORDERED."

On the other hand, the Resolution[5] dated 16 August 2013 dismissed the Motion for Reconsideration of Petitioner for lack of merit.

The facts stripped of the non-essentials are as follows:

The present controversy stemmed from a Consolidated Complaint for Regularization filed by private respondents against petitioner GMA Network, Inc.[6]

In their Position paper[7], private respondents alleged that they are regular employees of Petitioner, with designations, dates of employment and amount of salaries[8], as follows:

Name

Designation

Date Employed

Salary per month

Danilo Dela Cruz

Cameraman

April 2011

P10,000.00

Ricky Villarin

Cameraman

February 2011

P12,000.00

Rolin Pilante

Asst. Cameraman

August 2012

P7,000.00

Johnny Anitor Jr.

Asst. Cameraman/Lightman

P10,000.00

Private respondents claimed that they were assigned to Channel 11-News TV Channel and several other television programs of Petitioner. Their program assignments were indicated on their individual payslips issued by Petitioner. Similarly, their work schedules were provided by Petitioner.[9]

Moreover, Private respondents averred that if they have an out of town tapings, Petitioner provides for their transportation and meals. All their equipments consisting of cameras, lighting and audio apparatus were likewise provided by Petitioner. They are also required by Petitioner to stay in the work site before, during and after the scheduled tapings or shootings and to strictly abide the rules and regulations of the company.[10]

To further bolster their contention that they are regular employees of Petitioner, private respondent asserted that their work is necessary and desirable in the broadcasting business of Petitioner and they have worked continuously with Petitioner for over a year.[11]

Private respondents also added that their employment with Petitioner passed the "four-fold" test on employer-employee relations, namely: (1) the selection and engagement of employee; (2) the payment of wages; (3) the power to dismiss; and (4) the power of control.[12]

Petitioner, on the other hand, denied that private respondents are its regular employees. Petitioner alleged that private respondents were intermittently engaged as pinch-hitters or relievers to augment the regular crew in some of its specific programs. They were also paid on a per-shoot basis depending on the budget of a particular program on a particular day. Petitioner likewise averred that Private respondents never filed any application for employment and they never had employment contracts or Talent agreements with Petitioner except for a short duration Talent Agreement for private respondent Ricky Villarin covering the period of September 18, 2011 to October 28, 2011 as cameraman for the TV show Survivor Philippines (Season 4).[13]

Furthermore, Petitioner contended that private respondents were engaged depending on their availability and they were not precluded from seeking employment elsewhere. Private respondents are likewise not permanently

assigned to any particular particular program.[14] In fact, Petitioner pointed out that private respondents:

- Villarin worked only for 74 days between March 2011 and June 2012,
- 2. Pilante only worked for 126 days between August 2010 and June 2012,
- Dela Cruz only worked for 48 days between April 2011 and June 2012 and;
- Anito only worked for 108 days between March 2011 and June 2012.[15]

Petitioner also argued that private respondents were not their employees under the four-fold test of employment relationship because they were engaged merely as pinch-hitters/relievers intermittently in different programs of petitioner. Their engagements were for particular instances only such that they were not permanently made part of the crew on any particular program. They were also paid on a per shoot or per day basis and that they were not subject to Petitioner's power to dismiss and power to control.[16]

On 15 January 2013, the Labor Arbiter ruled in favor of private respondents declaring them as regular employees of Petitioner.[17]

Feeling aggrieved, Petitioner elevated the matter to the NLRC. The NLRC in its assailed Resolution[18] dated 28 June 2013 denied the appeal of Petitioner and consequently affirmed the Decision of the Labor Arbiter declaring private respondents regular employees of Petitioner.

Unyielding, Petitioner filed a Motion for Reconsideration[19] but the same was denied in a Resolution[20] dated 16 August 2013 by the NLRC.

Hence, Petitioner instituted this present Petition anchored on the following grounds[21], to wit:

I.

THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN PRIVATE RESPONDENTS AND PETITIONER GMA

II.

THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DECLARING PRIVATE RESPONDENTS AS REGULAR EMPLOYEES OF PETITIONER GMA.

In essence, Petitioner clings to its contention that no employer-employee relationship exists between the parties. Petitioner maintains that it never employed not sought to employ private respondents who were merely engaged as relievers or pinch-hitters intermittently in different programs of the network. Petitioner also continues to harp on its assertion that private respondents were not paid fixed amount of salaries but were paid on a per shoot basis and that private respondents were subject to minimum supervision and not under the control of its supervisors.

On the hand, private respondents stand firm in its claim that they have attained the status of regular employment owing to the fact that they have been engaged to perform activities which are necessary and desirable to the usual trade or business of Petitioner for over a year.

After a careful calibration of the contradicting arguments of the parties vis-a-vis the evidence adduced, the Court finds the petition bereft of merit.

Anent the first issue, jurisprudence is firmly settled that whenever the existence of an employment relationship is in dispute, four elements constitute the reliable yardstick, to wit: (a) the selection and engagement of the

employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee's conduct.[22]

In this case, We have arrived at the same conclusions reached by both the NLRC and the Labor Arbiter that all the foregoing elements are present.

First, it is beyond dispute that Petitioner wielded its power of selection and hiring when it engaged the services of private respondents as its cameramen, assistant cameramen and lightman.

Second, private respondents were undeniably paid wages as evidenced by the payslips[23] issued by Petitioner. The mere fact that they were paid on a "per shoot" or "per day" basis is immaterial as the same does not define the essence of the relation. It is just a method of computing compensation and cannot serve as basis for determining the existence or non-existence of employer-employee relationship.[24]

Moreover, private respondents compensation, albeit paid on a per shoot or per day basis falls within the ambit of the term wage under Article 97(6) of the Labor Code, to wit:

"Wage paid to an employee shall mean remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for service rendered or to be rendered xxx."

Verily, the compensation received by private respondents for the services they have rendered, regardless of the method used for its computation is considered as their wages under the law.

Third, Petitioner has the power to severe or terminate private respondents' employment should it find their work unsatisfactory. Moreover, it appears that private respondents were highly dependent on Petitioner for their continued work. While Petitioner assert that private respondents were not precluded to seek other work,[25] there was no evidence that private respondents sought and obtained employment elsewhere. The NLRC even noted that private respondents were not free to accept other jobs while they were engaged because Petitioner requires them to stay in the worksite before, during and after the scheduled tapings and shooting.[26]

Fourth, the power to control the work of the employee which is considered as the most significant determinant of the existence of an employer-employee relationship[27] is present in this case.

As the NLRC ratiocinated in its assailed Resolution, Petitioner merely downplayed the supervision exercised by its supervisors over private respondents.[28] The Labor Arbiter thoroughly discussed that private respondents as cameramen, assistant cameramen and lightmen can only function upon the direct control, instruction and supervision of Petitioner. Petitioner has production supervisors who monitor the work of private respondents and ensure that they follow the required output to conform with the standards of Petitioner. An executive producer is also assigned to make sure that the end result is acceptable.[29]

It was also uncontroverted that private respondents were required to perform their work in accordance with the work schedules and program assignments provided and solely determined by Petitioner. If there are out of town tapings, Petitioner also provides the transportation and meals of private respondents. Private respondents also do not have equipments of their own. It is Petitioner who provides for all the equipments during tapings or shootings such as cameras, lighting and audio apparatus which are all necessary in the performance of their duties.[30] Indeed, all these taken together are concrete manifestations that Petitioner had power of control and supervision over private respondents.

Relevantly, it is also worth remembering that the employer need not actually supervise the performance of duties

by the employee, for it sufficed that the employer has the right to wield that power.[31]

Given the presence of all the foregoing elements, the inevitable conclusion is that the NLRC and the Labor Arbiter did not err in finding that an employer-employee relationship exists between the parties.

Relative to the second issue concerning regular employment, Article 280 of the Labor Code provides that regular employees are those (1) who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, the provisions of a written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, and (2) who have rendered at least one year of service, whether such service is continuous or broken, with respect to the activity in which he is employed and his employment shall continue while such activity exists.

Conformably to the aforementioned law, jurisprudence dictates that the primary standard for determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the business or trade of his employer.[32] The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. The connection can be determined by considering the nature of work performed and its relation to the scheme of the particular business or trade in its entirety. Also, if the employee has been performing the job for at least a year, even if the performance is not continuous and merely intermittent, the law deems repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of that activity to the business. Hence, the employment is considered regular, but only with respect to such activity and while such activity exists.[33]

Applying the foregoing principles in this case, the Court is convinced that the requirements for regular employment have been satisfied.

First, it cannot be denied that the nature of private respondents' work as cameramen, assistant cameramen and lightman are necessary and desirable in the broadcasting business of Petitioner.

Amidst the assertion of Petitioner that private respondents were mere relievers or pinch-hitters, it will not detract from the fact that the activities performed by them are vital, necessary and indispensable to the operations of Petitioner's business.

Clearly, what determines whether a certain employment is regular or otherwise is not the will or word of the employer, to which the worker oftentimes acquiesces, much less the procedure of hiring the employee or the manner of paying the salary or the actual time spent at work. It is the character of the activities performed in relation to the particular trade or business taking into account all the circumstances, and in some cases the length of time of its performance and its continued existence.[34]

Second, private respondents have been repeatedly engaged to perform the same work for over one year. To stress, even if the performance of their work is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability, of the activity to the business.

Gauged by the foregoing disquisitions, it is beyond cavil that private respondents have attained the status of regular employment not only because of the nature of their work in relation to Petitioner's business but also because of the duration of their employment.

In fine, We find no grave abuse of discretion on the part of the NLRC. Its Assailed Resolutions declaring private respondents regular employees of Petitioner are supported by evidence on record and, in our view, far from arbitrariness that characterizes lack or excess of jurisdiction.

WHEREFORE, premises considered, the Petition is DENIED. The Resolution dated 28 June 2013 and Resolution dated 16 August 2013 of the NLRC are hereby AFFIRMED.

SO ORDERED.

Dimaampao, (Chairperson), and Ybañez, JJ., concur.

[1] Rollo, pp. 36-43

[2] Id., pp. 45-46

[3] Id., pp. 203-212

[4] Supra Note 1

[5] Supra Note 2

[6] Rollo, p. 37

[7] Id., p. 63-70

[8] Id., p. 65

[9] Id., pp. 65-66

[10] Id., p. 66

[11] Id., pp. 66-67

[12] Id., p. 68

[13] Id., pp. 139-140

[14] Id., p. 140

[15] Id., pp. 140-144

[16] Id., pp. 148-154

[17] Id., pp. 203-212

[18] Supra Note 1

[19] Rollo, pp. 213-221

[20] Supra Note 2

[21] Rollo, p. 13

[22] Locsin, et al., v. Philippine Long Distance Telephone Company, G.R. No. 185251, 2 October 2009; Tongko v. The Manufacturers Life Insurance Co. (Phils.) Inc., G.R. No. 167622, 7 November 2008

[23] Rollo, pp. 48-62

[24] Chavez v. NLRC, G.R. No. 146530, 17 January 2005

[25] Rollo, p. 24

[26] Id., p. 41-42

[27] Legend Hotel v. Realuyo, G.R. No. 153511, 18 July 2012

[28] Id., p. 41

[29] Id., pp. 210

[30] Id., pp. 347-348

[31] Legend Hotel v. Realuyo, G.R. No. 153511, 18 July 2012

[32] ABS-CBN Broadcasting v. Marquez, G.R. No. 176638, 22 June 2005

[33] ABS-CBN Broadcasting v. Navareno, et al., G.R. No. 164156, 26 September 2006; Universal Robina Corporation v. Catapang, G.R. No. 164736, 14 October 2005

[34] ABS-CBN Broadcasting v. Navareno, et al., G.R. No. 164156, 26 September 2006

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