

**THE INSULAR LIFE ASSURANCE COMPANY, LTD., AS EMPLOYER OF
AGUSTIN O. BENITEZ (SSS No. 03-095312), PETITIONER AND
APPELLANT, VS. SOCIAL SECURITY COMMISSION, RESPONDENT AND
APPELLEE.**

G.R. No. L-16359. December 28, 1961

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from Resolution No. 890 of the Social Security Commission, adopted on August 27, 1959, denying the request of petitioners-appellant herein The Insular Life Assurance Co., Ltd. for refund of the total amount of P36.14, representing the premiums paid by the petitioner for the account of its employee, Agustin O. Benitez, for the period from May 15, 1959 to August 30, 1959, when said employee was on leave of absence without pay.

The petitioner, in two separate letters to the Social Security Commission dated May 13, 1959 and June 16, 1959, objected to the enforcement of Circular No. 21 of the Commission, promulgated on October 15, 1959, which Circular requires employers to remit to the Commission their contributions for employees who are on leave of absence without pay. The petitioner also asked for the refund of the contributions already remitted by it. Notwithstanding its objections and pursuant to said Circular, the petitioner continued to remit its contributions to the Commission for its employee, Agustin O. Benitez, from May 15, 1959 to August 30, 1959.

On June 25, 1959, the Social Security Commission denied the objections, holding that Circular No. 21 is a valid interpretation of the provisions of the Social Security Act. On July 6, 1959, petitioner asked for a reconsideration of the stand of the Commission and it reiterated the same in its subsequent letters of June 7, 1959 and September 7, 1959.

Acting upon these requests of the petitioner, the Commission on August 27, 1959 adopted Resolution No. 890, which is appealed from and which was transmitted to the petitioner in the Commission's letter to it dated September 1, 1959. The pertinent provisions of the resolution are as follows:

"To be sure, a person who does not render any service to someone, and consequently does not receive any compensation, is not an employee for Social Security coverage purposes; likewise, a person, whether natural or juridical, is not to be considered as an employer if he or it does not use the services of another in his employment and pays compensation therefor. But nowhere in the Act is it required, or necessary, that the employee must render actual service to the employer and receive actual compensation for such service, and that the employer must enjoy the employee's service at all times during the employment relationship, the existence of which is the basis for the obligation to pay the prescribed contributions. As provided for in Sections 18 and 19, the obligation to pay the monthly contribution commences 'as of the last day of the calendar month preceding the month when an employee's compulsory coverage takes effect and every month thereafter during his employment. * * *'.

* * *

"Indeed a careful reading of the Act shows that the Act itself foresees the circumstances when an employee may temporarily be deprived of his compensation and the employer may be deprived of the enjoyment of the employee's services without the employment of relation being terminated. This can readily be seen by a reading of Section 14. Under this provision, an employee is entitled to sickness allowances only when he does not receive his compensation. It is provided, however, that during the period of his sickness, the premiums becoming due and payable by the covered employee shall be deducted in installments from the sickness allowances payable to the employee, thereby clearly demonstrating that even if the employee is temporarily deprived of his compensation, his obligation to pay his monthly social security contributions exists because even during the period of his sickness he remains a member thereof. And although the law mentions only the deduction of the employee's contributions from the daily allowance payable to him, the assessment pertaining to the employer, namely the 3½% monthly contribution, should also be paid to the System to make up the full six per cent monthly premium contribution assessed by the Act for the membership of the employee therein.

* * *

"The next contention of the Company, namely, that under the Act, the liability of the employer for contributions is contingent upon receipt of compensation by the employee, citing Sections 18 and 19 of the Act as well as Sections 8(f) and (j) with respect to the definition, respectively, of the terms 'compensation' and 'employment', is likewise erroneous. According to the Company, these provisions indicate the necessity of the employee receiving compensation as a pre-requisite to the obligation to pay premiums.' But as we have already demonstrated above, non-receipt of compensation is not determinative of the continued obligation to pay the prescribed contribution, so long as the employment relationship continuous to exist and until the same is terminated, as clearly provided for in Section 11 and as may farther be gleaned from Section 22. (Italics supplied.)

"It is true that Section 8(f) and (j) define, respectively, 'compensation' as 'All remuneration for employment, including the cash value of any remuneration paid in any medium other than cash except that part of the remuneration in excess of five hundred pesos received during the month' (Rep. Act No. 1161, as amended by Rep. Act No. 1792) and 'employment' as 'Any services performed by an employee for his employer, except * * *.' (Ibid) But by their very nature, however, paragraphs (f) and (j) of Section 8 merely declare, respectively, what shall be considered as 'compensation' and what shall be considered as 'employment'; as has been stated and demonstrated above, said definitions do not determine the basis of the obligation to pay the required premiums and that non-receipt of compensation is not material for the payment of contributions. (Resolution No. 41, current series.)

"The Commission, therefore, does not agree with your claim that while the employer's and the employee's obligation to remit their respective contributions exists, there is no basis on which to compute the respective contributions prescribed in the Act. An employee's compensation is not lost simply because said employee is on leave without pay, although he may not, of course, be entitled to said compensation inasmuch as he does not perform any service entitling him to the same." (Record on Appeal, pp: 26-30)

Before this Court, the petitioner has presented two questions of law for resolution.

The first question is whether or not payment of compensation to an employee is a requirement to his employer's liability for social security contributions. Petitioner claims that such payment is a requisite because the compensation is the basis of computation of the premiums and contributions. Petitioner also claims that such payment is a requirement in the United States, citing the case of *Magruder vs. Yellow Cab Co.*, 152 A. L. R. 516.

The above arguments can not be sustained. We have held in the case of *Roman Archbishop of Manila vs. Social Security System*, (110 Phil., 616; 59 Off. Gaz. [33]5277), that payment of contributions by an employer is compulsory during its coverage, and in accordance with the provisions of Section 9 of the Social Security Act, coverage is determined solely by the existence of an employer-employee relationship. While an employee is on

leave, even without pay, he is still an employee of his employer, their contract of employment has not yet terminated. So much so that the employee may still return to work and the employer is still bound to accept him. His responsibility as an employee still exists. He is still entitled to the benefits of the System as a member thereof and is still liable to pay premiums when he returns. Consequently, his employer is still liable to pay his contribution to the Commission on account of its employee who is on leave without pay.

With respect to the case of *Magruder vs. Yellow Cab, Co.*, supra, relied upon by the petitioner-appellant, We agree with the Solicitor General and with the Commission that the decision therein is not applicable to this case. As correctly observed by the Commission, we did not adopt the American method of collecting contributions to the System. Our method is different, for while in the United States, contributions are treated as taxes, collectible only when the employee is paid his salary or wage, in our country, we consider such contributions as premiums collectible even when the employee is not actually paid his wage or salary.

The other question is whether or not said Circular No. 21 is an administrative rule or regulation, or only an administrative interpretation or implementation of the provisions of the law. Petitioner impugns the validity of said circular, claiming that the Commission has thereby exercised legislative powers because it imposes a liability which is not imposed by the Social Security Act.

We can not agree to this contention. We are more inclined to accept as correct the argument of the Solicitor General that said Circular only interprets or implements the clear and express provisions of the law. As already adverted to above, the Social Security Act in its Sections 9, 11, 22 and 28(e) clearly imposes an obligation to contribute upon the employer as long as the relationship of employer and employee exists. Said Circular only lays down the amount and basis of, and the manner of collecting said contributions when the employee is on leave without pay. Said circular is not, therefore, an administrative rule or regulation, the effectivity of which is subject to the President's approval and to its publication in the Official Gazette, but is merely an interpretation and implementation by the Commission of the express and clear mandate of the law.

Wherefore, the Resolutions of the Social Security Commission sought herein to be annulled are hereby declared legal and valid. With costs against petitioner-appellant.

Bengzon, C.J., Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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