SOCIAL SECURITY SYSTEM, PETITIONER, VS. THE COURT OF APPEALS AND THE PHILIPPINE GUARDS PROTECTION UNIT, RESPONDENTS.

G.R. No. L-28134. June 30, 1971

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

This is an appeal by the Social Security System from the judgment of the Court of Appeals declaring null and void the membership of private respondent Philippine Guards Protection Unit in the Social Security System from August 1, 1958 to June 17, 1960, pursuant to Rep-ublic Act No. 1161 (The Social Security Act of 1954), as amended by Republic Act No. 1792, and accordingly excluding it from compulsory coverage during that period; declaring the said private respondent a member of the Social Security System only as of June 18, 1960, pursuant to Republic Act No. 2658, which further amended the said Section 9; and ordering the Social Security System to refund to the said respondent the contributions remitted by the latter to the System corresponding to the first period mentioned.

The following proceedings gave rise to the present appeal:

On February 18, 1960, as a result of a letter sent by the Social Security System to the Philippine Guards Protection Unit threatening it with court action if it did not continue to remit its contributions to the System, the said protection unit, owned and operated by Clemente V. Eslao, filed with the Social Security Commission a petition for exclusion from coverage under the System and for a refund of its remittances for September and October 1958. The reason given by the unit is that it is not subject to compulsory coverage under the Social Security Act of 1954, as amended by Republic Act No. 1792, because it is not the employer, but merely the agent, of the thirty-nine security guards or watchmen whose names appear in its membership list, for, actually, it has only one employee, namely, the clerk-secretary of the office. Under Section 9 of the Social Security Act of 1954, as amended by Republic Act No. 1792, which took effect on June 21, 1957, "the Commission may not compel any employer to become a member of the System unless he shall have been in operation for at least two years and has, at the time of admission, if admitted for membership during the first year of the System's operation, at least fifty employees and if admitted for membership, in the following year of operation and thereafter, at least six employees x x x." After the issues had been joined and the case heard, the Social Security Commission, on April 12, 1961, handed down a resolution finding the Philippine Guards Protection Unit the employer of the security guards or watchmen, and accordingly declaring the latter subject to compulsory coverage. A motion to reconsider was filed, but the same was denied in an order of May 8, 1961. Hence, an appeal was interposed by the Philippine Guards Protection Unit with the Court of Appeals, which reversed the resolution and order of the Commission in a decision promulgated on July 24, 1967, the dispositive portion whereof is summarized in the open-ing sentence of this Opinion.

We have noticed that although under the judgment of the Court of Appeals private respondent's membership in

the System as of June 18, 1960, has been expressly declared and recognized pursuant to Section 9 of the Social Security Act of 1954, as amended by Republic Act No. 2658, which eliminated, among others, the requirement under Republic Act No. 1792 that the employer should have at least six employees for purposes of compulsory coverage, it is not clear from the appealed decision if it is also the sense and intent of that court that the security guards or watchmen in the roster of private respondent should, under Republic Act No. 2658, likewise not be considered employees of the said respondent. As it now stands, the decision under review can be interpret-ed to mean that private respondent became a member of the System as of June 18, 1960, when Republic Act No. 2658 took effect, because it had at least one employee, but that the security guards or watchmen in its roster should not - as under Republic Act No. 1792 - be considered private respondent's employees. To dispel any doubt and obviate further suits on the matter, we hereby make it clear that the issue for resolution is whether or not for purposes of social security coverage, the security guards or watchmen in question should be considered private respondent's employees not only under Republic Act No. 1792, but also under Republic Act No. 2658.

The pertinent facts concerning the mechanics of tripartite relationship among the Philippine Guards Protection Unit, its clients and the security guards or watchmen, which were substantially adopted by the Court of Appeals, are succinctly stated in the basic resolution of the Social Security Commission, to wit:

> "x x x [W]henever a person approaches the owner of the agency for employment, the owner tells him to secure a license as a special watchman and in the meantime, the owner would look for persons or establishments that need the service of a guard or guards. If no such persons or establishments are found after the applicant has secured a license, he remains with the agency as an 'extra guard' and he is utilized by the agency as a substitute for those guards going on vacation or for those who are sick or otherwise absent (t.s.n., April 4, 1960, pp. 11-12). The owner may refuse to accommodate an applicant if he so desires (t.s.n., April 28, 1960, pp. 6-7). When a person or establishment requiring the services of a guard is found by the owner, a contract is entered into between the owner of the agency and the client, either orally or in writing (t.s.n., April 4, 1960, p. 17). The owner collects from the client the fee for the service and from the amount received, the owner pays the salary of the guard, retaining a part thereof for himself as his 'commission' (t.s.n., April 4, 1960, p. 18). The owner continues to receive this 'commission' as long as the watchman is assigned to guard the premises of a client (t.s.n., April 4, 1960, p. 18).
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> "The owner of the agency furnishes the firearms and ammunitions, but the watchmen buy their own uniforms (t.s.n., April 4, 1960, pp. 20, 21).
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> "If a client is dissatisfied with the service of a guard, as when a guard is always late, the agency may change the guard if the client so requests, or it may impose a fine on the guard as a disciplinary measure (t.s.n., April 4, 1960, pp. 17-18).

The reasons of the Court of Appeals for concluding that there is no employer-employee relationship between private respondent and the security guards and watchmen may be summarized as follows: (a) it is to the employ-ing units or companies that the watchmen render their services, hence, it is the former that are the employers of the watchmen, pursuant to Section 8(c) of the Act, which defines an employer as one who "uses the services of another person who is under his orders as regards the employment," and to Section 8(d), which defines an employee as one "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 relation." While the companies or units hand over the watchmen's compensation to private respondent, which in turn pays the salaries of the watchmen after deducting a commission, whatever right or interest private respondent has in the said salaries is limited to receiving the same for, in behalf of and in trust for the watchmen, subject to its right to deduct its commission for securing work for them; (b) Since no service is rendered by the watchmen to private respondent, it follows that in relation to their duties of guarding, watching and protecting the interests of the

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companies or units, the watchmen receive no orders from private respondent but from the said companies or units; (c) It is the companies or units that hire or en-gage the watchmen, because without their asking for the latter's services, the watchmen concerned cannot be employed in the said companies or units; (d) The employing company or unit has the right to ask for a change or replacement or even to terminate its agreement with private respondent; (e) The Supreme Court has, in a number of cases, recognized special watchmen as employees of the companies to which they are assigned; and while those cases involve the interpretation of the Workmen's Compensation Act and not the Social Security Act, the two laws being kindred legislations aimed at providing protection to the employees against the hazards of disability, sickness and death, it would not be improper to adopt a uniform interpretation.

Several considerations constrain us to differ with the views expressed above, and the conclusion arrived at, by respondent Court of Appeals.

The Social Security Act of 1954, in its Section 8, contains, for purposes of social security coverage, definition of terms, among which are the following:

> "(c) Employer. - Any 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, except the Government and any of its political subdivisions, branches or instrumentalities, including corporations owned or controlled by the Government.
>
> "(d) Employee. - Any 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."

Tested against the criteria in Section 8(c) and (d) of the Act, respondent Philippine Guards Protection Unit must be considered an employer of the thirty-nine security guards or watchmen, and the latter employees of said respondent. Private respondent carries on a business - a watchmen's service - from which it derives its income in the form of what it terms "commission". It uses the services of other persons - the guards or watchmen - to carry on its business. Without them, respondent would not be in business, which consists solely in the letting out of watchmen's services for a fee. The guards or watchmen render their services to private respondent by allowing themselves to be assigned by said respondent, which furnishes them arms and ammunition, to guard and protect the properties and interests of private respondent's clients, thus enabling that respondent to fulfill its contractual obligations. Who the clients will be, and under what terms and conditions the services will be rendered, are matters determined not by the guards or watchmen, but by private respondent. On the other hand, the client companies have no hand in selecting who among the guards or watchmen shall be assigned to them. It is private respondent that issues assignment orders and instructions and exercises control and supervision over the guards or watchmen, so much so that if, for one reason or another, the client is dissatisfied with the services of a particular guard, the client cannot himself terminate the services of such guard, but has to notify private respondent, which either substitutes him with another or metes out to him disciplinary measures. That in the course of a watchman's assignment the client conceivably issues instructions to him, does not in the least detract from the fact that private respondent is the employer of said watchman, for in legal contemplation such instructions carry no more weight than mere requests, the privity of contract being between the client and private respondent, not between the client and the guard or watchman. Corollarily, such giving out of instructions inevitably spring from the client's right predicated on the contract for services entered into by it with private respondent.

In the matter of compensation, there can be no question at all that the guards or watchmen receive compensation from private respondent and not from the companies or establishments whose premises they are guarding. The fee contracted for to be paid by the client is admittedly not equal to the salary of a guard or watchman; such fee is

arrived at independently of the salary to which the guard or watchman is entitled under his arrangements with private respondent. All the fees received by private respondent from its clients constitute its gross income; and the salaries it pays to the guards or watchmen and to its clerk-secretary, its expenses for, say, office rent, light, water and telephone services, licenses, firearms and ammunition, are expenses incurred in the operation of the business. The net income or profit is arrived at after deducting all these expenses from the gross income. Consequently, the term "commission" as applied to the difference between the fee received from a client and the salary paid to a guard or watchman is a misnomer, and its use by private respondent cannot alter the relationship of employer and employee between it and the guards or watchmen.

In defining an employee, Section 8(d) employs the phrase "who receives compensation for such services, where there is an employer-employee relationship." Considering our view that the guards or watchmen included in its roster are private respondent's employees, and considering, further, that private respondent is a bona fide independent contractor, the client companies may not be deemed employers of said guards or watchmen, pursuant to Section 8(j) (10), which reads:

> "Employees of bona fide independent contractors shall not be deemed employees of the employer engaging the services of said contractors."

In Viaña v. Al-Lagadan and Piga, 99 Phil., 408, 411-412, we said:

> "In determining the existence of employer-employee relationship, the following elements are generally considered, namely: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct - although the latter is the most important element (35 Am. Jur. 445). x x x."

From our earlier discussion it can be seen that all the four elements enumerated above are present to make out a relationship of employer and employee between private respondent and its thirty-nine security guards or watchmen.

The cases cited by respondent Court of Appeals, none of which, by the way, involves an interpretation of the Social Security Act of 1954, are not applicable. Associated Watchmen And Security Union (PTWO), et al. v. United States Lines, et al., 101 Phil., 896, involved a determination of whether a labor dispute existed between the watchmen and the companies to which they were assigned by the watch-men's agencies, and applied Section 2 of Republic Act No. 875 (The Industrial Peace Act), which defined a labor dispute as "any controversy concerning terms, tenure x x x regardless of whether the disputants stand in the proximate relation of employer and employee." Maligaya Ship Watchmen Agency, et al. v. Associated Watchmen Aid Security Union (PTWO), 103 Phil., 920, involved the determination of who among the members of watchmen's agencies should be allowed to take part in certification elections; and we there held that the watchmen who were actually guarding the ships and their cargo should be considered laborers or employees of the shipping lines for purposes of the elections, in view, among others, of the following considerations:

> "x x x [T]here never were contracts between the shipping lines and their agencies, on the one hand, and the watchmen agencies-petitioners, on the other. The guarding of each ship and its cargo was never the subject of a contract between one and the other. The watchmen agencies never undertook for a specified sum the guarding of the vessels and their cargo, were never paid therefor a lump sum without reference to the number of watchmen performing the duties of guarding and the wages that each should receive for his work. x x x."

The fact situation in the said case is quite different from that in the present, for here there is admittedly a contract entered into, either orally or in writing, between private respondent and its client companies, and, precisely, the guarding of the companies' premises and properties is the subject of each of the contracts. In the payment by the

client to private respondent of compensation, there is reference to the number of watchmen, but none to the wages each shall receive for his work.

In Nicolas, et al. v. Dacara, et al., 106 Phil., 934, the issue was whether a sum of money in the hands of protective agency representing "salaries of guards employed by the different companies affiliated with the de-tective and protective agency" could be garnished for the payment of back wages judicially adjudicated in favor of other guards affiliated with the same protective agency. We there held, citing Maligaya Ship Watchmen Agency, that since the money in question secured by the sheriff represented wages due the guards "from companies that have employed their services, that the said amount really and actually represents such wages," the same could not be attached or garnished for the debts of the protective agency to the other guards. Again, there is no similarity between that case and the present, for here the security guards or watchmen receive their salaries not from the companies whose premises and properties they guard, but from private respondent itself. In Compañia Maritima v. Cabagnot Vda. de Hio, et al., 107 Phil., 873, we held that for purposes of workmen's compensation benefits, a watchman recruited by a protective agency to guard the premises of a company should be considered an employee of said company; but there "it was found by the (Workmen's Compensation) Commission that the salary of the deceased was paid directly from the funds of petitioner," the Compañia Maritima. It will be borne in mind, moreover, that in contradistinction with Section 8(j) (10) of the Social Security Act of 1954 (quoted above), under Section 39 of the Workmen's Compensation Act the term "employer" includes "the owner or lessee of a factory or establishment or place of work or any other person who is virtually the owner or manager of the business carried on in the establishment or place of work but who, for the reason that there is an independent contractor in the same, or for any other reason, is not the direct employer of laborers employed there."

There are practical considerations why private respondent Philippine Guards Protection Unit, and not its clients, should be considered, for purposes of social security coverage, the employer of the 39 guards or watchmen listed in its roster. (a) A watchman is not permanently assigned to a client; for one reason or another he may be pulled out of a particular assignment and detailed to another client. Consequently, different clients will have to deduct premiums from different watchmen at different times and remit them to the System together with the clients' own share of the premiums. (b) Under the arrangements between private respondent and its clients, the latter do not determine how much salary is to be paid to the watchmen. The clients merely pay to private respondent the fee stipulated in their contracts. How, then, can a client deduct the premiums due from a watchman? And how can it determine the amount of the watchman's premium as well as its own? (c) Service performed by one person for ano-ther is not considered an employment if the same is "purely casual and not for the purposes of occupation or business of the employer" (Section 8[j][3], Social Security Act of 1954). Under private respondent's hypothesis, a watchmen may at times be considered an employee and at other times not, depending on whether or not he happens to be assigned to a client which carries on a trade, business, industry, undertaking or activity of any kind (Section 8[c], supra). A fortiori, of private respondent's 39 watchmen, some may be covered by the System's plan, while others not. To pursue the matter further, all the 39 watchmen may be covered sometimes, and not at other times. (d) If private respondent's clients are considered the watchmen's employers, it may happen that the 39 different watchmen will have 39 different employers, which seems absurd, considering that all the watchmen are on the payroll and under the supervision of only one entity.

PREMISES CONSIDERED, the judgment appealed from is reversed and set aside. Private respondent's membership in the Social Security System from August 1, 1958 up to the present is declared valid and effective. Coverage in the System upon all its employees falling within the required age level, including its security guards or watchmen, is hereby declared compulsory; and private respondent is directed to pay or remit to petitioner all back premiums due. Costs against private respondent.

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Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, and Makasiar, JJ., concur.
Ruiz Castro, J., took no part.

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