

AFP MUTUAL BENEFIT ASSOCIATION, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND EUTQUIO BUSTAMANTE, RESPONDENTS.

G.R. No. 102199. January 28, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The determination of the proper forum is crucial because the filing of the petition or complaint in the wrong court or tribunal is fatal, even for a patently meritorious claim. More specifically, labor arbiters and the National Labor Relations Commission have no jurisdiction to entertain and rule on money claims where no employer-employee relations is involved. Thus, any such award rendered without jurisdiction is a nullity.

This petition for certiorari under Rule 65, Rules of Court seeks to annul the Resolution[1] of the National Labor Relations Commission, promulgated September 27, 1991, in NLRC-NCR Case No. 00-02-01196-90, entitled "Eutiquio Bustamante vs. AFP Mutual Benefit Association, Inc.," affirming the decision of the labor arbiter which ordered payment of the amount of P319,796.00 as insurance commissions to private respondent.

The Antecedent Facts

The facts are simple. Private respondent Eutiquio Bustamante had been an insurance underwriter of petitioner AFP Mutual Benefit Association, Inc. since 1975. The Sales Agent's Agreement between them provided:[2]

"B. Duties and Obligations:

1. During the lifetime of this Agreement, the SALES AGENT (private respondent) shall solicit exclusively for AFPMBAI (petitioner), and shall be bound by the latter's policies, memo circulars, rules and regulations which it may from time to time, revise, modify or cancel to serve its business interests.
2. The SALES AGENT shall confine his business activities for AFPMBAI while inside any military camp, installation or residence of military personnel. He is free to solicit in the area for which he/she is licensed and as authorized, provided however, that AFPMBAI may from time to time, assign him a specific area of responsibility and a production quota on a case to case basis.lex

x x x x x x x x

C. Commission

1. The SALES AGENT shall be entitled to the commission due for all premiums actually due and received by AFPMBAI out of life insurance policies solicited and obtained by the SALES AGENT at the rates set forth in the applicant's commission schedules hereto attached.

x x x x x x x x

D. General Provisions

1. There shall be no employer-employee relationship between the parties, the SALES AGENT being hereby deemed an independent contractor."

As compensation, he received commissions based on the following percentages of the premiums paid:[3]

"30% of premium paid within the first year;

10% of premium paid with the second year;

5% of the premium paid during the third year;

3% of the premium paid during the fourth year; and

1% of the premium paid during the fifth year up-to the tenth year."

On July 5, 1989, petitioner dismissed private respondent for misrepresentation and for simultaneously selling insurance for another life insurance company in violation of said agreement.

At the time of his dismissal, private respondent was entitled to accrued commissions equivalent to twenty four (24) months per the Sales Agent Agreement and as stated in the account summary dated July 5, 1989, approved by Retired Brig. Gen. Rosalino Alquiza, president of petitioner-company. Said summary showed that private respondent had a total commission receivable of P438,835.00, of which only P78,039.89 had been paid to him.

Private respondent wrote petitioner seeking the release of his commissions for said 24 months. Petitioner, through Marketing Manager Juan Concepcion, replied that he was entitled to only P75,000.00 to P100,000.00. Hence, believing Concepcion's computations, private respondent signed a quitclaim in favor of petitioner.

Sometime in October 1989, private respondent was informed that his check was ready for release. In collecting his check, he discovered from a document (account summary) attached to said check that his total commissions for the 24 months actually amounted to P354,796.09. Said document stated:[4]

"6. The total receivable for Mr. Bustamante out of the renewals and old business generated since 1983 grosses P438,835.00 less his outstanding obligation in the amount of P78,039.89 as of June 30, 1989, total expected commission would amount to P354,796.09. From that figure at a 15% compromise settlement this would mean P53,219.41 due him to settle his claim."

Private respondent, however, was paid only the amount of P35,000.00.

On November 23, 1989, private respondent filed a complaint with the Office of the Insurance Commissioner praying for the payment of the correct amount of his commission. Atty. German C. Alejandria, Chief of the Public Assistance and Information Division, Office of the Insurance Commissioner, advised private respondent that it was the Department of Labor and Employment that had jurisdiction over his complaint.

On February 26, 1990, private respondent filed his complaint with the Department of Labor claiming: (1) commission for 2 years from termination of employment equivalent to 30% of premiums remitted during employment; (2) P354,796.00 as commission earned from renewals and old business generated since 1983; (3) P100,000.00 as moral damages; and (4) P100,000.00 as exemplary damages.

After submission of position papers, Labor Arbiter Jose G. de Vera rendered his decision, dated August 24, 1990, the dispositive portion of which reads:[5]

"WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered declaring the dismissal of the complainant as just and valid, and consequently, his claim for separation pay is denied. On his money claim, the respondent company is hereby ordered to pay complainant the sum of P319,796.00 plus

attorney's fees in the amount of P31,976.60.

All other claims of the complainant are dismissed for want of merit."

The labor arbiter relied on the Sales Agent's Agreement proviso that petitioner could assign private respondent a specific area of responsibility and a production quota, and read it as signaling the existence of employer-employee relationship between petitioner and private respondent.

On appeal, the Second Division[6] of the respondent Commission affirmed the decision of the Labor Arbiter. In the assailed Resolution, respondent Commission found no reason to disturb said ruling of the labor arbiter and ruled:[7]

"WHEREFORE, in view of the foregoing considerations, the subject appeal should be as it is hereby, denied and the decision appealed from affirmed.

SO ORDERED."

Hence, this petition.

The Issue

Petitioner contends that respondent Commission committed grave abuse of discretion in ruling that the labor arbiter had jurisdiction over this case. At the heart of the controversy is the issue of whether there existed an employer-employee relationship between petitioner and private respondent.

Petitioner argues that, despite provisions B(1) and (2) of the Sales Agent's Agreement, there is no employer-employee relationship between private respondent and itself. Hence, respondent commission gravely abused its discretion when it held that the labor arbiter had jurisdiction over the case.

The Court's Ruling

The petition is meritorious.

First Issue: Not All That Glitters Is Control

Well-settled is the doctrine that the existence of an employer-employee relationship is ultimately a question of fact and that the findings thereon by the labor arbiter and the National Labor Relations Commission shall be accorded not only respect but even finality when supported by substantial evidence.[8] The determinative factor in such finality is the presence of substantial evidence to support said finding, otherwise, such factual findings cannot bind this Court.

Respondent Commission concurred with the labor arbiter's findings that:[9]

"x x x The complainant's job as sales insurance agent is usually necessary and desirable in the usual business of the respondent company. Under the Sales Agents Agreement, the complainant was required to solicit exclusively for the respondent company, 'and he was bound by the company policies, memo circulars, rules and regulations which were issued from time to time. By such requirement to follow strictly management policies, orders, circulars, rules and regulations, it only shows that the respondent had control or reserved the right to control the complainant's work as solicitor. Complainant was not an independent contractor as he did not carry on an independent business other than that of the company's x x x."

To this, respondent Commission added that the Sales Agent's Agreement specifically provided that petitioner may assign private respondent a specific area of responsibility and a production quota. From there, it concluded that apparently there is that exercise of control by the employer which is the most important element in determining

employer-employee relationship.[10]

We hold, however, that respondent Commission misappreciated the facts of the case. Time and again, the Court has applied the "four-fold" test in determining the existence of employer-employee relationship. This test considers the following elements: (1) the power to hire; (2) the payment of wages; (3) the power to dismiss; and (4) the power to control, the last being the most important element.[11]

The difficulty lies in correctly assessing if certain factors or elements properly indicate the presence of control. Anent the issue of exclusivity in the case at bar, the fact that private respondent was required to solicit business exclusively for petitioner could hardly be considered as control in labor jurisprudence. Under Memo Circulars No. 2-81[12] and 2-85, dated December 17, 1981 and August 7, 1985, respectively, issued by the Insurance Commissioner, insurance agents are barred from serving more than one insurance company, in order to protect the public and to enable insurance companies to exercise exclusive supervision over their agents in their solicitation work. Thus, the exclusivity restriction clearly springs from a regulation issued by the Insurance Commission, and not from an intention by petitioner to establish control over the method and manner by which private respondent shall accomplish his work. This feature is not meant to change the nature of the relationship between the parties, nor does it necessarily imbue such relationship with the quality of control envisioned by the law.

So too, the fact that private respondent was bound by company policies, memo/circulars, rules and regulations issued from time to time is also not indicative of control. In its Reply to Complainant's Position Paper,[13] petitioner alleges that the policies, memo/circulars, and rules and regulations referred to in provision B(1) of the Sales Agent's Agreement are only those pertaining to payment of agents' accountabilities, availment by sales agents of cash advances for sorties, circulars on incentives and awards to be given based on production, and other matters concerning the selling of insurance, in accordance with the rules promulgated by the Insurance Commission. According to the petitioner, insurance solicitors are never affected or covered by the rules and regulations concerning employee conduct and penalties for violations thereof, work standards, performance appraisals, merit increases, promotions, absenteeism/attendance, leaves of absence, management-union matters, employee benefits and the like. Since private respondent failed to rebut these allegations, the same are deemed admitted, or at least proven, thereby leaving nothing to support the respondent Commission's conclusion that the foregoing elements signified an employment relationship between the parties.

In regard to the territorial assignments given to sales agents, this too cannot be held as indicative of the exercise of control over an employee. First of all, the place of work in the business of soliciting insurance does not figure prominently in the equation. And more significantly, private respondent failed to rebut petitioner's allegation that it had never issued him any territorial assignment at all. Obviously, this Court cannot draw the same inference from this feature as did the respondent Commission.

To restate, the significant factor in determining the relationship of the parties is the presence or absence of supervisory authority to control the method and the details of performance of the service being rendered, and the degree to which the principal may intervene to exercise such control. The presence of such power of control is indicative of an employment relationship, while absence thereof is indicative of independent contractorship. In other words, the test to determine the existence of independent contractorship is whether one claiming to be an independent contractor has contracted to do the work according to his own methods and without being subject to the control of the employer except only as to the result of the work[14]. Such is exactly the nature of the relationship between petitioner and private respondent.

Further, not every form of control that a party reserves to himself over the conduct of the other party in relation to the services being rendered may be accorded the effect of establishing an employer-employee relationship. The

facts of this case fall squarely with the case of *Insular Life Assurance Co., Ltd. vs. NLRC*. In said case, we held that:

"Logically, the line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and those that control or fix the methodology and bind or restrict the party hired to the use of such means. The first, which aim only to promote the result, create no employer-employee relationship unlike the second, which address both the result and the means used to achieve it. The distinction acquires particular relevance in the case of an enterprise affected with public interest, as is the business of insurance, and is on that account subject to regulation by the State with respect, not only to the relations between insurer and insured but also to the internal affairs of the insurance company. Rules and regulations governing the conduct of the business are provided for in the Insurance Code and enforced by the Insurance Commissioner. It is, therefore, usual and expected for an insurance company to promulgate a set of rules to guide its commission agents in selling its policies that they may not run afoul of the law and what it requires or prohibits. xxxx None of these really invades the agent's contractual prerogative to adopt his own selling methods or to sell insurance at his own time and convenience, hence cannot justifiably be said to establish an employer-employee relationship between him and the company." [15]

Private respondent's contention that he was petitioner's employee is belied by the fact that he was free to sell insurance at any time as he was not subject to definite hours or conditions of work and in turn was compensated according to the result of his efforts. By the nature of the business of soliciting insurance, agents are normally left free to devise ways and means of persuading people to take out insurance. There is no prohibition, as contended by petitioner, for private respondent to work for as long as he does not violate the Insurance Code. As petitioner explains:

"(Private respondent) was free to solicit life insurance anywhere he wanted and he had free and unfettered time to pursue his business. He did not have to punch in and punch out the bundy clock as he was not required to report to the (petitioner's) office regularly. He was not covered by any employee policies or regulations and not subject to the disciplinary action of management on the basis of the Employee Code of Conduct. He could go out and sell insurance at his own chosen time. He was entirely left to his own choices of areas or territories, with no definite, much less supervised, time schedule.

(Private respondent) had complete control over his occupation and (petitioner) did not exercise any right of Control and Supervision over his performance except as to the payment of commission the amount of which entirely depends on the sole efforts of (private respondent). He was free to engage in other occupation or practice other profession for as long as he did not commit any violation of the ethical standards prescribed in the Sales Agent's Agreement." [16]

Although petitioner could have, theoretically, disapproved any of private respondent's transactions, what could be disapproved was only the result of the work, and not the means by which it was accomplished.

The "control" which the above factors indicate did not sum up to the power to control private respondent's conduct in and mode of soliciting insurance. On the contrary, they clearly indicate that the juridical element of control had been absent in this situation. Thus, the Court is constrained to rule that no employment relationship had ever existed between the parties.

Second Issue: Jurisdiction of Respondent Commission & Labor Arbiter

Under the contract invoked, private respondent had never been petitioner's employee, but only its commission agent. As an independent contractor, his claim for unpaid commission should have been litigated in an ordinary civil action. [17]

The jurisdiction of labor arbiters and respondent Commission is set forth in Article 217 of the Labor Code.[18] The unifying element running through paragraphs (1) - (6) of said provision is the consistent reference to cases or disputes arising out of or in connection with an employer-employee relationship. Prior to its amendment by Batas Pambansa Blg. 227 on June 1, 1982, this point was clear as the article included "all other cases arising from employer-employee relation unless expressly excluded by this Code." [19] Without this critical element of employment relationship, the labor arbiter and respondent Commission can never acquire jurisdiction over a dispute. As in the case at bar. It was serious error on the part of the labor arbiter to have assumed jurisdiction and adjudicated the claim. Likewise, the respondent Commission's affirmance thereof.

Such lack of jurisdiction of a court or tribunal may be raised at any stage of the proceedings, even on appeal. The doctrine of estoppel cannot be properly invoked by respondent Commission to cure this fatal defect as it cannot confer jurisdiction upon a tribunal that to begin with, was bereft of jurisdiction over a cause of action.[20] Moreover, in the proceedings below, petitioner consistently challenged the jurisdiction of the labor arbiter [21] and respondent Commission.[22]

It remains a basic fact in law that the choice of the proper forum is crucial as the decision of a court or tribunal without jurisdiction is a total nullity.[23] A void judgment for want of jurisdiction is no judgment at all. It cannot be the source of any right nor the creator of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect. Hence, it can never become final. "x x x (I)t may be said to be a lawless thing which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head." [24]

The way things stand, it becomes unnecessary to consider the merits of private respondent's claim for unpaid commission. Be that as it may, this ruling is without prejudice to private respondent's right to file a suit for collection of unpaid commissions against petitioner with the proper forum and within the proper period.

WHEREFORE, the petition is hereby GRANTED, and the assailed Resolution is hereby SET ASIDE.
SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Rollo, pp. 48-54.

[2] Rollo, p. 176.

[3] Rollo, p. 98.

[4] Rollo, p. 111.

[5] Rollo, pp. 48-49.

[6] Commissioners Rustico L. Diokno, ponente, with Presiding Commissioners Edna Bonto-Perez and Commissioner Domingo H. Zapanta.

[7] Rollo, p. 53.

[8] North Davao Mining Corporation vs. National Labor Relations Commission, 254 SCRA 721, 731, March 13, 1996; Great Pacific Life Assurance Corporation vs. National Labor Relations Commission, 187 SCRA 694, 699, July 23, 1990; Loadstar Shipping Co., Inc. vs. Gallo, 229 SCRA 654, 660, February 4, 1994; Inter-Orient Maritime Enterprises, Inc. vs. National Labor Relations Commission, 235 SCRA 268, 277, August 11, 1994.

[9] Rollo, pp. 49-50.

[10] Rollo, p. 51.

[11] *Insular Life Assurance Co., Ltd. vs. NLRC*, 179 SCRA 459, 464, November 15, 1989; *Rhone-Poulenc Agrochemicals Philippines, Inc. vs. NLRC*, 217 SCRA 249, 255, January 19, 1993; and *Villuga vs. NLRC*, 225 SCRA 537, 546, August 23, 1993.

[12] Memorandum Circular No. 2-81 on Licensing Of Insurance Agents, Variable Contract Agents, Insurance Brokers and Reinsurance Brokers provides:

"x x x x x x x x x

2. LICENSING REQUIREMENTS, LIMITATIONS

x x x x x x x x x

2.5. No person shall be licensed to act as an insurance agent or general agent of more than one life insurance company, and/ or as a general agent of more than one non-life insurance company, and/or as insurance agent of more than three other non-life insurance companies. x x x."

[13] Rollo, p. 36.

[14] *Investment Planning Corp. of the Phil. vs. Social Security System*, 21 SCRA 924, 931, November 18, 1967.

[15] *Supra.*, p. 465

[16] Petitioner's Position Paper, Rollo, p. 32.

[17] *Insular Life Assurance Co., Ltd. vs. NLRC*, *supra.*, p. 467; *Manliguez vs. Court of Appeals*, 232 SCRA 427, 431, May 20, 1994; and *Hawaiian-Philippine Company vs. Gulmatico*, 238 SCRA 181, 187, November 16, 1994.

[18] ART. 217. Jurisdiction of Labor Arbiters and the Commission. -(a) Except as otherwise provided under this Code the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, x x x, the following cases involving all workers, whether agricultural or non-agricultural:

1.Unfair labor practice cases;

2.Termination disputes;

3.If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;

4.Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;

5.Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and

6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (P5,000.00) regardless of whether accompanied with a claim for reinstatement.

x x x x x x x x x

[19] *San Miguel Corporation vs. National Labor Relations Commission*, 161 SCRA 719, 724-725, May 31, 1988.

[20] Southeast Asian Fisheries Development Center-Agriculture Department vs. National Labor Relations Commission, 206 SCRA 283, 288, February 14, 1992; and Calimlim vs. Ramirez, 118 SCRA 399, 406, November 19, 1982.

[21] Petitioner's Position Paper, Rollo, pp. 29-33.

[22] Petitioner's Appeal Memorandum, Rollo, pp. 40-46.

[23] Philippine-Singapore Ports Corporation vs. National Labor Relations Commission, 218 SCRA 77, 83, January 29, 1993.

[24] Leonor vs. Court of Appeals, et al., G.R. No. 112597, April 2, 1996, pp. 17-18.

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