TRADERS ROYAL BANK, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND ROGELIO ESPAÑOLA, RESPONDENT.

G.R. No. 127864. December 22, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Whether an employer-employee relationship exists between petitioner Traders Royal Bank and private respondent Rogelio Española - this is the issue on which hinges the fate of private respondent who after twenty (20) years of service found himself "jobless" and deprived of his only means of livelihood.

On 27 June 1974 Agro-Commercial Security Services Agency Inc. (AGRO) assigned Rogelio Española to work as a janitor at the Iloilo Branch of petitioner Traders Royal Bank (TRB). This assignment was covered by Mission Order No. 29 dated 26 June 1974 which was duly issued by the Administrative Officer of AGRO, Alberto G. Espinosa.[1] Sometime in 1982 Española was informed that he would be absorbed by a new agency, Royal Protective and Janitorial Services Inc. (ROYAL), and that he would perform the same functions.[2] However, since ROYAL was also managed and owned by the same people who previously handled AGRO, it did not give him separation pay or any other benefits. ROYAL also appointed Alberto G. Espinosa, AGRO's former Administrative Officer, as its General Manager.[3]

On 15 July 1988 TRB and ROYAL executed a new service agreement whereby ROYAL would continue supplying janitorial services TRB for one year, beginning 23 March 1988.[4] The contract also stated that if there was no notice to terminate at the end of the one (1) year period it would remain in force on a monthly basis.

When the service agreement expired on 23 March 1989 TRB did not issue a termination notice. Instead, it continued to avail of ROYAL's services on a monthly basis as stated in the contract. It was only on 4 February 1994 that TRB sent a letter to ROYAL apprising the latter of its desire to terminate the service agreement effective 16 March 1994.[5] In turn, ROYAL sent a notice to private respondent Española informing him that due to TRB's decision to end their contract his services were no longer needed.[6] After being dismissed ROYAL declined to give him any further assignment since his job was allegedly coterminus with its contract with TRB.

On 24 March 1994 Española filed a case against ROYAL, TRB and Alberto Espinosa for illegal dismissal, illegal deduction, underpayment of wages, non-payment of overtime pay, premium pay for rest day, service incentive leave pay, 13th month pay and night shift differentials with a prayer for reinstatement and back wages. He also claimed moral and exemplary damages as well as attorney's fees.[7]

On 20 December 1995 the Labor Arbiter ruled in favor of TRB holding that Española had no cause of action against it as there was no employer-employee relationship between them. The Labor Arbiter further ruled that Española was ROYAL's employee but he was not entitled to any monetary award since he did not prove his claims of underpayment and illegal deductions against ROYAL.[8]

On appeal public respondent National Labor Relations Commission (NLRC) reversed the decision of the Labor

Arbiter and ruled that Española was not an employee of ROYAL but of TRB. NLRC then ordered TRB to reinstate him and to pay him the total amount of P110,829.78 broken down as follows: P81,265.90 for back wages, P736.92 for ERA, P15,698.08 for salary differentials, P3,143.45 for 13th month pay and P10,075.00 for attorney's fees.[9]

After its motion for reconsideration was denied TRB filed this special civil action for certiorari contending that the NLRC gravely abused its discretion in reversing the Labor Arbiter's decision and declaring Española to be its employee.[10]

Who was Española's real employer? If Española was ROYAL's employee then he would have no recourse against TRB since his dismissal was caused by the legitimate termination of a service contract. But if he was really TRB's employee then he would be entitled to reinstatement and full back wages as he was illegally dismissed.

To prove that Española was not its employee TRB cites Mission Order No. 29 signed by AGRO Administrative Officer Alberto G. Espinosa. The order stated that Rogelio Española would be assigned as janitor to TRB's Iloilo Branch. It also provided that his employment would be from 26 January 1974 until revoked.[11] TRB argues that this proves that AGRO was Española's employer from 1974 to 1982. And when he agreed to be absorbed by ROYAL he became its employee from 1982 to 1994. Hence, he was never employed by TRB. To bolster its contention TRB refers to the provisions of its service agreement with ROYAL, dated 15 July 1988, which state that:

> 2. That the janitor and/or janitress assigned to the PARTY OF THE FIRST PART (petitioner) shall in no way be considered as employees of the PARTY OF THE FIRST PART and the PARTY OF THE SECOND PART (ROYAL) shall be responsible for the conduct and performance of its duties;
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> 6. For and in consideration of the services to be rendered by he PARTY OF THE SECOND PART to the PARTY OF THE FIRST PART, the latter shall pay to the PARTY OF THE SECOND PART (under this agreement) the amount of TWO THOUSAND TWO HUNDRED FIFTY SEVEN & 32/100 ONLY (2,257.32), Philippine Currency, per month per janitress, the same payable in two (2) installments on the 15th and last day of every month.

TRB asserts that aside from the agreement itself which reveals that it was ROYAL which provided the janitors' salary, par. 2 thereof also states that the janitors were its own employees. Thus, Española's dismissal was the result of a valid termination of its service agreement with ROYAL.

We are not convinced. This Court has ruled that the existence of employer-employee relationship cannot be proved by merely showing the agreement of the parties.[12] It is a question of fact which should be supported by substantial evidence.[13] And in determining the existence of such relationship the elements usually considered are: (a) the selection of the employee; (b) the payment of wages; (c) the power of dismissal; and, (d) the power to control the employee's conduct, with the "control test" generally assuming primacy in the overall consideration.[14]

Who then had control over Española's conduct? Was it ROYAL or TRB? Between the two, we believe it was TRB. Española claimed in his position paper that -

> Complainant, as previously stated, was required to work as a janitor and as a driver. Moreover, he was required to do his cleaning chores at night in order not to disturb the transaction of business at the bank during office hours. Thus, every night from Sunday to Thursday he was required to clean the bank premises of respondent TRB. From Monday to Friday he was required to drive TRB's armored car and pick up the children of respondent TRB's manager, Mrs. Erlinda Ocampo, then drive them to Angelicum School in Jaro, Iloilo City.

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> Thereafter, he was required to stay in the bank premises until 5:00 P.M., except for lunch break, run errands and discharge other tasks and chores assigned to him by respondent TRB's employees. After 5:00 P.M. complainant was required to drive the above named officers of respondent TRB home. He usually got back to the bank between 6:00 P.M. to 7:00 P.M. Upon his arrival he would start cleaning the bank and, since the premises was big, it usually took about 2 hours or up to 9:00 P.M. to finish his cleaning. Because he had to work late and start working early and since his residence was in Sta. Barbara, Iloilo, where there was no public transportation at night, he had to sleep in the bank. His day-to-day work was monitored and supervised by respondent TRB.[15]

The above allegations contained in the position paper of Española were never refuted. TRB could have easily presented affidavits, written explanations or any other pleadings to defend itself and disprove Española's claims.[16] However, the only evidence it ever presented was its service agreement with ROYAL. From the time TRB submitted its position paper to the Labor Arbiter up to the time it submitted its memorandum to the Supreme Court, not once did it deny that it designated Española as its driver. On the other hand, Española constantly reiterated in his pleadings that TRB supervised and controlled his work as its janitor-driver. The fact that Española's allegations were never controverted at any stage of the proceedings affirms that such averments were true.[17] Furthermore, Rule 9, Sec. 11, of the Rules of Court, which supplements the NLRC rules, also provides that an allegation which is not specifically denied is deemed admitted.[18]

Besides, even if this Court relied on the service agreement, as espoused by TRB, it can still be seen that TRB was the one which controlled and supervised Española. Paragraph 3 of the contract states -

> 3. That the PARTY OF THE FIRST PART shall have the direct control and supervision over their janitor's and janitress' conduct and performance in consonance with the preceding paragraph, with minimum interference by the PARTY OF THE SECOND PART, provided however, that discipline and administration of these janitors and janitresses shall conform with the standards and policies of the PARTY OF THE FIRST PART x x x x

TRB should, under the foregoing, be obviously deemed as Española's employer.

Petitioner cites Filipino Synthetic Fiber Corp. (FILSYN) v. NLRC[19] in an effort to persuade this Court that the doctrine therein should be applied in the instant case. We do not agree. In FILSYN, the employees worked exclusively as janitors and were never required by FILSYN to perform any other task. Furthermore, there was no proof that FILSYN controlled the manner they worked. Hence, in that case, the Court ruled that the employer of the janitors was the De Lima Corporation, the janitorial agency, and not FILSYN. In the present case, however, Española not only worked as a janitor but he was also TRB's driver. Since 1974 he was required to drive TRB's armored car, bring and fetch the children of the bank's manager to and from school, drive for its officers, and perform various errands assigned to him by TRB employees.

Furthermore, FILSYN presented substantial evidence that the janitorial agency was an independent contractor. It presented De Lima's Articles of Incorporation and proof of its capitalization amounting to almost P2,000,000. This was not done by TRB. Instead, it relied heavily on the aforementioned service agreement covering the period from 1988 to 1994. TRB did not even prove sufficiently that it was not Española's employer from 1974 to 1987.

As a matter of fact, it was ROYAL which submitted documents to establish that it was an independent contractor. However, it alleged that it never knew that TRB utilized Española as its driver and compelled him to do other chores.[20] ROYAL further claimed that it was TRB which had control and supervision over Española.[21] Again, TRB never refuted this statement. Neither did it prove that ROYAL was the one which effectively controlled and supervised the manner Española worked.

The NLRC therefore did not abuse its discretion in ruling that Española was not the employee of ROYAL. On the contrary, it was the Labor Arbiter who came up with the erroneous conclusion. He disregarded the uncontroverted allegations of Española and hastily concluded that since ROYAL was an independent contractor, it was Española's direct employer. While it may be that ROYAL could very well be an independent contractor - although it did not establish this fact with competent evidence to qualify it as such - and that Española's name appeared in its payroll,[22] nevertheless, whatever role ROYAL had in this case, it was certainly not as the employer of Española. For the fact remains that it was TRB which had control and supervision over Española's work. Consequently, it should be considered as his employer.

Since Española was illegally dismissed he is entitled to reinstatement with full back wages.[23] The NLRC erred in ruling that he was only entitled to back wages from 16 March 1994 to 30 September 1996. An illegally dismissed employee is entitled to back wages from the time he was dismissed to the time of his actual reinstatement.[24] However, the NLRC's ruling with regard to the salary differentials and 13th month pay differentials must be sustained.

WHEREFORE, the petition is DISMISSED. The assailed Decision of public respondent National Labor Relations Commission reversing that of the Labor Arbiter and ordering petitioner Traders Royal Bank to reinstate private respondent Rogelio Espanola and to pay him salary differentials of P15,698.00, 13th month pay differentials of P3,143.45 and attorney's fees of P10,075.43 is AFFIRMED, but with the modification that petitioner should pay private respondent full back wages from 16 March 1994 up to his actual reinstatement. Costs against petitioner.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Records, p. 27.

[2] Id, p. 22.

[3] Ibid.

[4] Id, p. 46.

[5] Id, p. 83.

[6] Id, p. 90.

[7] Id, p. 21.

[8] Id, p. 147.

[9] Decision dated 9 October 1996; Rollo, pp. 38-48.

[10] Id., pp. 24-25.

[11] Records, p. 27.

[12] Tabas v. California Manufacturing Co. Inc., G.R. No. 80680, 26 January 1989, 169 SCRA 497.

[13] Mutual Benefit Association v. NLRC, G.R. No. 102199, 28 January 1997, 267 SCRA 47.

[14] Equitable Banking Corporation v. NLRC, G.R. No. 102467, 13 June 1997, 273 SCRA 352.

[15] Records, p. 23.

[16] Megascope General Services v. NLRC, G.R. No. 109224, 19 June 1997, 274 SCRA 147.

[17] Solid Engineering & Machine Works v. NLRC, G.R. No. 79496, 19 November 1991, 203 SCRA 699.

[18] Sec. 3, New Rules of Procedure of the NLRC, 1990.

[19] G.R. No. 113347, 14 June 1996, 357 SCRA 334.

[20] Records, p. 34.

[21] Id, p. 29.

[22] Id, pp. 92-128.

[23] Philippine Airlines v. NLRC, G.R. No. 11968, 28 July 1997, 276 SCRA 391.

[24] Bustamante v. NLRC, G.R. No. 111651, 28 November 1996, 265 SCRA 61.

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