

EFREN P. PAGUIO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, METROMEDIA TIMES CORPORATION, ROBINA Y. GOKONGWEI, LIBERATO GOMEZ, JR., YOLANDA E. ARAGON, FREDERICK D. GO ...

G.R. No. 147816. May 09, 2003

Ponente: VITUG, J.

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VITUG, J.:

On 22 June 1992, respondent Metromedia Times Corporation entered, for the fifth time, into an agreement with petitioner Efren P. Paguio, appointing the latter to be an account executive of the firm.[1] Again, petitioner was to solicit advertisements for "The Manila Times," a newspaper of general circulation, published by respondent company. Petitioner, for his efforts, was to receive compensation consisting of a 15% commission on direct advertisements less withholding tax and a 10% commission on agency advertisements based on gross revenues less agency commission and the corresponding withholding tax. The commissions, released every fifteen days of each month, were to be given to petitioner only after the clients would have paid for the advertisements. Apart from commissions, petitioner was also entitled to a monthly allowance of P2,000.00 as long as he met the P30,000.00-monthly quota. Basically, the contentious points raised by the parties had something to do with the following stipulations of the agreement; viz:

"12. You are not an employee of the Metromedia Times Corporation nor does the company have any obligations towards anyone you may employ, nor any responsibility for your operating expenses or for any liability you may incur. The only rights and obligations between us are those set forth in this agreement. This agreement cannot be amended or modified in any way except with the duly authorized consent in writing of both parties.

"13. Either party may terminate this agreement at any time by giving written notice to the other, thirty (30) days prior to effectivity of termination."[2]

On 15 August 1992, barely two months after the renewal of his contract, petitioner received the following notice from respondent firm —

"Dear Mr. Paguio,

"Please be advised of our decision to terminate your services as Account Executive of Manila Times effective September 30, 1992.

"This is in accordance with our contract signed last July 1, 1992."[3]

Apart from vague allegations of misconduct on which he was not given the opportunity to defend himself, i.e., pirating clients from his co-executives and failing to produce results, no definite cause for petitioner's termination was given. Aggrieved, petitioner filed a case before the labor arbiter, asking that his dismissal be declared unlawful and that his reinstatement, with entitlement to backwages without loss of seniority rights, be ordered.

Petitioner also prayed that respondent company officials be held accountable for acts of unfair labor practice, for P500,000.00 moral damages and for P200,000.00 exemplary damages.

In their defense, respondent Metromedia Times Corporation asserted that it did not enter into any agreement with petitioner outside of the contract of services under Articles 1642 and 1644 of the Civil Code of the Philippines.[4] Asserting their right to terminate the contract with petitioner, respondents pointed to the last provision thereof stating that both parties could opt to end the contract provided that either party would serve, thirty days prior to the intended date of termination, the corresponding notice to the other.

The labor arbiter found for petitioner and declared his dismissal illegal. The arbiter ordered respondent Metromedia Times Corporation and its officers to reinstate petitioner to his former position, without loss of seniority rights, and to pay him his commissions and other remuneration accruing from the date of dismissal on 15 August 1992 up until his reinstatement. He likewise adjudged that Liberato I. Gomez, general manager of respondent corporation, be held liable to petitioner for moral damages in the amount of P20,000.00.

On appeal, the National Labor Relations Commission (NLRC) reversed the ruling of the labor arbiter and declared the contractual relationship between the parties as being for a fixed-term employment. The NLRC declared a fixed-term employment to be lawful as long as "it was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the worker and absent any other circumstances vitiating his consent.[5] The finding of the NLRC was primarily hinged on the assumption that petitioner, on account of his educated stature, having indeed personally prepared his pleadings without the aid of counsel, was an unlikely victim of a lopsided contract. Rejecting the assertion of petitioner that he was a regular employee, the NLRC held: The decisive determinant would not be the activities that the employee (was) called upon to perform but rather, the day certain agreed upon by the parties for the commencement and termination of their employment relationship, a day certain being understood to be that which (would) necessarily come, although it (might) not be known when.[6]

Petitioner appealed the ruling of the NLRC before the Court of Appeals which upheld in toto the findings of the commission. In his petition for review on certiorari, petitioner raised the following issues for resolution:

"WHETHER OR NOT PETITIONER'S CONTRACT WITH PRIVATE RESPONDENT'S COMPANY IS FOR A FIXED PERIOD.

"WHETHER OR NOT PETITIONER'S DISMISSAL IS LEGAL.

"WHETHER OR NOT PETITIONER IS ENTITLED TO BACKWAGES AND MORAL DAMAGES."[7]

The crux of the matter would entail the determination of the nature of contractual relationship between petitioner and respondent company — was it or was it not one of regular employment?

A "regular employment," whether it is one or not, is aptly gauged from the concurrence, or the non-concurrence, of the following factors — a) the manner of selection and engagement of the putative employee, b) the mode of payment of wages, c) the presence or absence of the power of dismissal; and d) the presence or absence of the power to control the conduct of the putative employee or the power to control the employee with respect to the means or methods by which his work is to be accomplished.[8] The "control test" assumes primacy in the overall consideration. Under this test, an employment relation obtains where work is performed or services are rendered under the control and supervision of the party contracting for the service, not only as to the result of the work but also as to the manner and details of the performance desired.[9]

An indicum of regular employment, rightly taken into account by the labor arbiter, was the reservation by respondent Metromedia Times Corporation not only of the right to control the results to be achieved but likewise

the manner and the means used in reaching that end.[10] Metromedia Times Corporation exercised such control by requiring petitioner, among other things, to submit a daily sales activity report and also a monthly sales report as well. Various solicitation letters would indeed show that Robina Gokongwei, company president, Alda Iglesia, the advertising manager, and Frederick Go, the advertising director, directed and monitored the sales activities of petitioner.

The Labor Code, in Article 280 thereof, provides:

"ART. 280. Regular and Casual Employment. — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

"An employment shall be deemed to be casual if it is not covered by the proceeding paragraph: Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists."

Thus defined, a regular employee is one who is engaged to perform activities which are necessary and desirable in the usual business or trade of the employer as against those which are undertaken for a specific project or are seasonal. Even in these latter cases, where such person has rendered at least one year of service, regardless of the nature of the activity performed or of whether it is continuous or intermittent, the employment is considered regular as long as the activity exists, it not being indispensable that he be first issued a regular appointment or be formally declared as such before acquiring a regular status.[11]

That petitioner performed activities which were necessary and desirable to the business of the employer, and that the same went on for more than a year, could hardly be denied. Petitioner was an account executive in soliciting advertisements, clearly necessary and desirable, for the survival and continued operation of the business of respondent corporation. Robina Gokongwei, its President, herself admitted that the income generated from paid advertisements was the lifeblood of the newspaper's existence. Implicitly, respondent corporation recognized petitioner's invaluable contribution to the business when it renewed, not just once but five times, its contract with petitioner.

Respondent company cannot seek refuge under the terms of the agreement it has entered into with petitioner. The law, in defining their contractual relationship, does so, not necessarily or exclusively upon the terms of their written or oral contract, but also on the basis of the nature of the work petitioner has been called upon to perform.[12] The law affords protection to an employee, and it will not countenance any attempt to subvert its spirit and intent. A stipulation in an agreement can be ignored as and when it is utilized to deprive the employee of his security of tenure.[13] The sheer inequality that characterizes employer-employee relations, where the scales generally tip against the employee, often scarcely provides him real and better options.

The real question that should thus be posed is whether or not petitioner has been justly dismissed from service. A lawful dismissal must meet both substantive and procedural requirements; in fine, the dismissal must be for a just or authorized cause and must comply with the rudimentary due process of notice and hearing. It is not shown that respondent company has fully bothered itself with either of these requirements in terminating the services of petitioner. The notice of termination recites no valid or just cause for the dismissal of petitioner nor does it appear that he has been given an opportunity to be heard in his defense.

The evidence, however, found by the appellate court is wanting that would indicate bad faith or malice on the part of respondents, particularly by respondent Liberato I. Gomez, and the award of moral damages must thus be deleted.

WHEREFORE, the instant petition is GRANTED. The decision of the Court of Appeals in C.A. G.R. SP No. 527773 and that of the National Labor Relations Commission are hereby SET ASIDE and that of the Labor Arbiter is REINSTATED except with respect to the P20,000.00 moral damages adjudged against respondent Liberato I. Gomez which award is deleted.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[1] The letter contract dated 22 June 1992 read —

Dear Mr. Paguio:

This letter is to appoint you as Account Executive for The Manila Times for a period of twelve (12) months effective July 1, 1992 to June 30, 1993, and to set forth the terms and conditions of your contract.

1. As account executive, you will use your best efforts to obtain advertisements exclusively for us and for such projects that The Manila Times may decide to do from time to time.
2. You are authorized to solicit advertisements and quote advertising rates in accordance with and subject to all the terms and conditions in our rate cards.
3. All advertisements are subject to acceptance by us and we reserve the right in our absolute discretion to reject or omit any advertisements.
4. You will be paid fifteen (15) percent commission on direct advertisements less corresponding withholding tax.
5. You will be paid ten (10) percent commission on agency advertisements based on gross ad revenues less agency commission and corresponding withholding tax.
6. Walk-in advertisements, not solicited by the Advertising staff, are not commissionable.
7. All payments must be paid direct to Metromedia Times Corporation. In no case, however, will commission be paid until and unless the advertisements, whether agency or direct, have been paid for, subject to the corresponding withholding taxes authorized by law.
8. Commissions earned on paid advertisements covering the period from the first (1st) to the fifteenth (15) of every month shall be payable at the end of the same month; commissions earned on paid advertisements covering the period from the sixteenth (16th) to the end of the month shall be payable on the fifteenth (15) of the succeeding month.
9. You will be entitled to a monthly allowance of P2,000.00 provided that you meet a monthly quota of P30,000.00 in advertising lineage. But should you fail to meet your quota, your allowance shall be charged against your future account.
10. For all ex-deal arrangements, the barter agreement and your commission will be subject to the written approval of the President and Treasurer on a case-to-case basis.
11. You will be paid your approved commission only after the payment for the liquidation (sold and/or consumed) of the goods received from the advertiser has been completed.
12. You are not an employee of Metromedia Times Corporation nor does the Company have any obligations towards anyone you may employ, nor any responsibility for your operating expenses or for any liability you may incur. The only rights and obligations between us are those set forth in this agreement. This agreement cannot be amended or modified in any way except with the duly authorized consent in writing of both parties.
13. Either party may terminate this agreement at any time by giving written notice to the other thirty (30) days prior to the effectivity of termination.

If these terms and conditions are acceptable to you, please indicate your conformity by signing below. (Rollo, pp. 41-4

[2] Rollo, p. 42.

[3] Rollo, p. 43.

[4] Article 1642 of the Civil Code provides: The contract of lease may be of things, or of work and service.

Article 1644 provides: In the lease of work or service, one of the parties binds himself to execute a piece of work or to render to the other some service for a price certain, but the relation of principal and agent does not exist between them.

[5] Rollo, NLRC Decision dated 15 December 1998, p. 82.

[6] Rollo, p. 85.

[7] Rollo, p. 18.

[8] *Hijos de F. Escano, Inc., vs. NLRC* G.R. No. 59229, 22 August 1991, 201 SCRA 63; *Ecal vs. NLRC*, G.R. Nos. 92777-78, 13 March 1991, 195 SCRA 224.

[9] *Iloilo Chinese Commercial School vs. Fabrigar*, L-16600, 27 December 1961, 3 SCRA 712.

[10] *Cosmopolitan Funeral Homes, Inc., vs. Maalat*, G.R. No. 86693, 02 July 1990, 187 SCRA 108.

[11] Article 280, Labor Code.

[12] *A.M. Oreta and Co., Inc., vs. NLRC, et al.*, G.R. No. 74004, 10 August 1989, 176 SCRA 218.

[13] *Cielo vs. NLRC*, G.R. No. 78693, 28 January 1991, 193 SCRA 410.

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