

WILHELMINA S. OROZCO, PETITIONER, VS. THE FIFTH DIVISION OF THE HONORABLE COURT OF APPEALS, PHILIPPINE DAILY INQUIRER, AND LETICIA JIMENEZ MAGSANOC, RESPONDENTS.

G.R. No. 155207. August 13, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

The case before this Court raises a novel question never before decided in our jurisdiction - whether a newspaper columnist is an employee of the newspaper which publishes the column.

In this Petition for Review under Rule 45 of the Revised Rules on Civil Procedure, petitioner Wilhelmina S. Orozco assails the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 50970 dated June 11, 2002 and its Resolution[2] dated September 11, 2002 denying her Motion for Reconsideration. The CA reversed and set aside the Decision[3] of the National Labor Relations Commission (NLRC), which in turn had affirmed the Decision[4] of the Labor Arbiter finding that Orozco was an employee of private respondent Philippine Daily Inquirer (PDI) and was illegally dismissed as columnist of said newspaper.

In March 1990, PDI engaged the services of petitioner to write a weekly column for its Lifestyle section. She religiously submitted her articles every week, except for a six-month stint in New York City when she, nonetheless, sent several articles through mail. She received compensation of P250.00 - later increased to P300.00 - for every column published.[5]

On November 7, 1992, petitioner's column appeared in the PDI for the last time. Petitioner claims that her then editor, Ms. Lita T. Logarta,[6] told her that respondent Leticia Jimenez Magsanoc, PDI Editor in Chief, wanted to stop publishing her column for no reason at all and advised petitioner to talk to Magsanoc herself. Petitioner narrates that when she talked to Magsanoc, the latter informed her that it was PDI Chairperson Eugenia Apostol who had asked to stop publication of her column, but that in a telephone conversation with Apostol, the latter said that Magsanoc informed her (Apostol) that the Lifestyle section already had many columnists.[7]

On the other hand, PDI claims that in June 1991, Magsanoc met with the Lifestyle section editor to discuss how to improve said section. They agreed to cut down the number of columnists by keeping only those whose columns were well-written, with regular feedback and following. In their judgment, petitioner's column failed to improve, continued to be superficially and poorly written, and failed to meet the high standards of the newspaper. Hence, they decided to terminate petitioner's column.[8]

Aggrieved by the newspaper's action, petitioner filed a complaint for illegal dismissal, backwages, moral and exemplary damages, and other money claims before the NLRC.

On October 29, 1993, Labor Arbiter Arthur Amansec rendered a Decision in favor of petitioner, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered, finding complainant to be an employee of respondent company;

ordering respondent company to reinstate her to her former or equivalent position, with backwages.

Respondent company is also ordered to pay her 13th month pay and service incentive leave pay.

Other claims are hereby dismissed for lack of merit.

SO ORDERED.[9]

The Labor Arbiter found that:

[R]espondent company exercised full and complete control over the means and method by which complainant's work - that of a regular columnist - had to be accomplished. This control might not be found in an instruction, verbal or oral, given to complainant defining the means and method she should write her column. Rather, this control is manifested and certain (sic) in respondents' admitted prerogative to reject any article submitted by complainant for publication.

By virtue of this power, complainant was helplessly constrained to adopt her subjects and style of writing to suit the editorial taste of her editor. Otherwise, off to the trash can went her articles.

Moreover, this control is already manifested in column title, "Feminist Reflection" allotted complainant. Under this title, complainant's writing was controlled and limited to a woman's perspective on matters of feminine interests. That respondent had no control over the subject matter written by complainant is strongly belied by this observation. Even the length of complainant's articles were set by respondents.

Inevitably, respondents would have no control over when or where complainant wrote her articles as she was a columnist who could produce an article in thirty (3) (sic) months or three (3) days, depending on her mood or the amount of research required for an article but her actions were controlled by her obligation to produce an article a week. If complainant did not have to report for work eight (8) hours a day, six (6) days a week, it is because her task was mainly mental. Lastly, the fact that her articles were (sic) published weekly for three (3) years show that she was respondents' regular employee, not a once-in-a-blue-moon contributor who was not under any pressure or obligation to produce regular articles and who wrote at his own whim and leisure.[10]

PDI appealed the Decision to the NLRC. In a Decision dated August 23, 1994, the NLRC Second Division dismissed the appeal thereby affirming the Labor Arbiter's Decision. The NLRC initially noted that PDI failed to perfect its appeal, under Article 223 of the Labor Code, due to non-filing of a cash or surety bond. The NLRC said that the reason proffered by PDI for not filing the bond - that it was difficult or impossible to determine the amount of the bond since the Labor Arbiter did not specify the amount of the judgment award - was not persuasive. It said that all PDI had to do was compute based on the amount it was paying petitioner, counting the number of weeks from November 7, 1992 up to promulgation of the Labor Arbiter's decision.[11]

The NLRC also resolved the appeal on its merits. It found no error in the Labor Arbiter's findings of fact and law. It sustained the Labor Arbiter's reasoning that respondent PDI exercised control over petitioner's work.

PDI then filed a Petition for Review[12] before this Court seeking the reversal of the NLRC Decision. However, in a Resolution[13] dated December 2, 1998, this Court referred the case to the Court of Appeals, pursuant to our ruling in *St. Martin Funeral Homes v. National Labor Relations Commission*. [14]

The CA rendered its assailed Decision on June 11, 2002. It set aside the NLRC Decision and dismissed petitioner's Complaint. It held that the NLRC misappreciated the facts and rendered a ruling wanting in substantial evidence. The CA said:

The Court does not agree with public respondent NLRC's conclusion. First, private respondent admitted that she was and [had] never been considered by petitioner PDI as its employee. Second, it is not disputed that private respondent had no employment contract with petitioner PDI. In fact, her engagement to contribute

articles for publication was based on a verbal agreement between her and the petitioner's Lifestyle Section Editor. Moreover, it was evident that private respondent was not required to report to the office eight (8) hours a day. Further, it is not disputed that she stayed in New York for six (6) months without petitioner's permission as to her leave of absence nor was she given any disciplinary action for the same. These undisputed facts negate private respondent's claim that she is an employee of petitioner.

Moreover, with regards (sic) to the control test, the public respondent NLRC's ruling that the guidelines given by petitioner PDI for private respondent to follow, e.g. in terms of space allocation and length of article, is not the form of control envisioned by the guidelines set by the Supreme Court. The length of the article is obviously limited so that all the articles to be featured in the paper can be accommodated. As to the topic of the article to be published, it is but logical that private respondent should not write morbid topics such as death because she is contributing to the lifestyle section. Other than said given limitations, if the same could be considered limitations, the topics of the articles submitted by private respondent were all her choices. Thus, the petitioner PDI in deciding to publish private respondent's articles only controls the result of the work and not the means by which said articles were written.

As such, the above facts failed to measure up to the control test necessary for an employer-employee relationship to exist.[15]

Petitioner's Motion for Reconsideration was denied in a Resolution dated September 11, 2002. She then filed the present Petition for Review.

In a Resolution dated April 29, 2005, the Court, without giving due course to the petition, ordered the Labor Arbiter to clarify the amount of the award due petitioner and, thereafter, ordered PDI to post the requisite bond. Upon compliance therewith, the petition would be given due course. Labor Arbiter Amansec clarified that the award under the Decision amounted to P15,350.00. Thus, PDI posted the requisite bond on January 25, 2007.[16]

We shall initially dispose of the procedural issue raised in the Petition.

Petitioner argues that the CA erred in not dismissing outright PDI's Petition for Certiorari for PDI's failure to post a cash or surety bond in violation of Article 223 of the Labor Code.

This issue was settled by this Court in its Resolution dated April 29, 2005.[17] There, the Court held:

But while the posting of a cash or surety bond is jurisdictional and is a condition sine qua non to the perfection of an appeal, there is a plethora of jurisprudence recognizing exceptional instances wherein the Court relaxed the bond requirement as a condition for posting the appeal.

x x x x

In the case of *Taberrah v. NLRC*, the Court made note of the fact that the assailed decision of the Labor Arbiter concerned did not contain a computation of the monetary award due the employees, a circumstance which is likewise present in this case. In said case, the Court stated,

As a rule, compliance with the requirements for the perfection of an appeal within the reglamentary (sic) period is mandatory and jurisdictional. However, in *National Federation of Labor Unions v. Ladrado* as well as in several other cases, this Court relaxed the requirement of the posting of an appeal bond within the reglementary period as a condition for perfecting the appeal. This is in line with the principle that substantial justice is better served by allowing the appeal to be resolved on the merits rather than dismissing it based on a technicality.

The judgment of the Labor Arbiter in this case merely stated that petitioner was entitled to backwages, 13[th] month pay and service incentive leave pay without however including a computation of the alleged amounts.

x x x x

In the case of *NFLU v. Ladrado III*, this Court postulated that "private respondents cannot be expected to post such appeal bond equivalent to the amount of the monetary award when the amount thereof was not included in the decision of the labor arbiter." The computation of the amount awarded to petitioner not having been clearly stated in the decision of the labor arbiter, private respondents had no basis for determining the amount of the bond to be posted.

Thus, while the requirements for perfecting an appeal must be strictly followed as they are considered indispensable interdictions against needless delays and for orderly discharge of judicial business, the law does admit of exceptions when warranted by the circumstances. Technicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties. But while this Court may relax the observance of reglementary periods and technical rules to achieve substantial justice, it is not prepared to give due course to this petition and make a pronouncement on the weighty issue obtaining in this case until the law has been duly complied with and the requisite appeal bond duly paid by private respondents.[18]

Records show that PDI has complied with the Court's directive for the posting of the bond;[19] thus, that issue has been laid to rest.

We now proceed to rule on the merits of this case.

The main issue we must resolve is whether petitioner is an employee of PDI, and if the answer be in the affirmative, whether she was illegally dismissed.

We rule for the respondents.

The existence of an employer-employee relationship is essentially a question of fact.[20] Factual findings of quasi-judicial agencies like the NLRC are generally accorded respect and finality if supported by substantial evidence.[21]

Considering, however, that the CA's findings are in direct conflict with those of the Labor Arbiter and NLRC, this Court must now make its own examination and evaluation of the facts of this case.

It is true that petitioner herself admitted that she "was not, and [had] never been considered respondent's employee because the terms of works were arbitrarily decided upon by the respondent." [22] However, the employment status of a person is defined and prescribed by law and not by what the parties say it should be.[23]

This Court has constantly adhered to the "four-fold test" to determine whether there exists an employer-employee relationship between parties.[24] The four elements of an employment relationship are: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee's conduct.[25]

Of these four elements, it is the power of control which is the most crucial[26] and most determinative factor,[27] so important, in fact, that the other elements may even be disregarded.[28] As this Court has previously held:

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.[29]

In other words, the test is whether the employer controls or has reserved the right to control the employee, not only as to the work done, but also as to the means and methods by which the same is accomplished.[30]

Petitioner argues that several factors exist to prove that respondents exercised control over her and her work,

namely:

- As to the Contents of her Column - The PETITIONER had to insure that the contents of her column hewed closely to the objectives of its Lifestyle Section and the over-all principles that the newspaper projects itself to stand for. As admitted, she wanted to write about death in relation to All Souls Day but was advised not to.

- As to Time Control - The PETITIONER, as a columnist, had to observe the deadlines of the newspaper for her articles to be published. These deadlines were usually that time period when the Section Editor has to "close the pages" of the Lifestyle Section where the column is located. "To close the pages" means to prepare them for printing and publication.

As a columnist, the PETITIONER's writings had a definite day on which it was going to appear. So she submitted her articles two days before the designated day on which the column would come out.

This is the usual routine of newspaper work. Deadlines are set to fulfill the newspapers' obligations to the readers with regard to timeliness and freshness of ideas.

- As to Control of Space - The PETITIONER was told to submit only two or three pages of article for the column, (sic) "Feminist Reflections" per week. To go beyond that, the Lifestyle editor would already chop off the article and publish the rest for the next week. This shows that PRIVATE RESPONDENTS had control over the space that the PETITIONER was assigned to fill.

- As to Discipline - Over time, the newspaper readers' eyes are trained or habituated to look for and read the works of their favorite regular writers and columnists. They are conditioned, based on their daily purchase of the newspaper, to look for specific spaces in the newspapers for their favorite write-ups/or opinions on matters relevant and significant issues aside from not being late or amiss in the responsibility of timely submission of their articles.

The PETITIONER was disciplined to submit her articles on highly relevant and significant issues on time by the PRIVATE RESPONDENTS who have a say on whether the topics belong to those considered as highly relevant and significant, through the Lifestyle Section Editor. The PETITIONER had to discuss the topics first and submit the articles two days before publication date to keep her column in the newspaper space regularly as expected or without miss by its readers.[31]

Given this discussion by petitioner, we then ask the question: Is this the form of control that our labor laws contemplate such as to establish an employer-employee relationship between petitioner and respondent PDI?

It is not.

Petitioner has misconstrued the "control test," as did the Labor Arbiter and the NLRC.

Not all rules imposed by the hiring party on the hired party indicate that the latter is an employee of the former. Rules which serve as general guidelines towards the achievement of the mutually desired result are not indicative of the power of control.[32] Thus, this Court has explained:

It should, however, be obvious that not every form of control that the hiring party reserves to himself over the conduct of the party hired in relation to the services rendered may be accorded the effect of establishing an employer-employee relationship between them in the legal or technical sense of the term. A line must be drawn somewhere, if the recognized distinction between an employee and an individual contractor is not to vanish altogether. Realistically, it would be a rare contract of service that gives untrammelled freedom to the party hired and eschews any intervention whatsoever in his performance of the engagement.

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. x x x.[33]

The main determinant therefore is whether the rules set by the employer are meant to control not just the results of the work but also the means and method to be used by the hired party in order to achieve such results. Thus, in this case, we are to examine the factors enumerated by petitioner to see if these are merely guidelines or if they indeed fulfill the requirements of the control test.

Petitioner believes that respondents' acts are meant to control how she executes her work. We do not agree. A careful examination reveals that the factors enumerated by the petitioner are inherent conditions in running a newspaper. In other words, the so-called control as to time, space, and discipline are dictated by the very nature of the newspaper business itself.

We agree with the observations of the Office of the Solicitor General that:

The Inquirer is the publisher of a newspaper of general circulation which is widely read throughout the country. As such, public interest dictates that every article appearing in the newspaper should subscribe to the standards set by the Inquirer, with its thousands of readers in mind. It is not, therefore, unusual for the Inquirer to control what would be published in the newspaper. What is important is the fact that such control pertains only to the end result, i.e., the submitted articles. The Inquirer has no control over [petitioner] as to the means or method used by her in the preparation of her articles. The articles are done by [petitioner] herself without any intervention from the Inquirer.[34]

Petitioner has not shown that PDI, acting through its editors, dictated how she was to write or produce her articles each week. Aside from the constraints presented by the space allocation of her column, there were no restraints on her creativity; petitioner was free to write her column in the manner and style she was accustomed to and to use whatever research method she deemed suitable for her purpose. The apparent limitation that she had to write only on subjects that befitted the Lifestyle section did not translate to control, but was simply a logical consequence of the fact that her column appeared in that section and therefore had to cater to the preference of the readers of that section.

The perceived constraint on petitioner's column was dictated by her own choice of her column's perspective. The column title "Feminist Reflections" was of her own choosing, as she herself admitted, since she had been known as a feminist writer.[35] Thus, respondent PDI, as well as her readers, could reasonably expect her columns to speak from such perspective.

Contrary to petitioner's protestations, it does not appear that there was any actual restraint or limitation on the subject matter - within the Lifestyle section - that she could write about. Respondent PDI did not dictate how she wrote or what she wrote in her column. Neither did PDI's guidelines dictate the kind of research, time, and effort she put into each column. In fact, petitioner herself said that she received "no comments on her articles...except for her to shorten them to fit into the box allotted to her column." Therefore, the control that PDI exercised over petitioner was only as to the finished product of her efforts, i.e., the column itself, by way of either shortening or outright rejection of the column.

The newspaper's power to approve or reject publication of any specific article she wrote for her column cannot be the control contemplated in the "control test," as it is but logical that one who commissions another to do a piece of work should have the right to accept or reject the product. The important factor to consider in the "control test" is still the element of control over how the work itself is done, not just the end result thereof.

In contrast, a regular reporter is not as independent in doing his or her work for the newspaper. We note the common practice in the newspaper business of assigning its regular reporters to cover specific subjects,

geographical locations, government agencies, or areas of concern, more commonly referred to as "beats." A reporter must produce stories within his or her particular beat and cannot switch to another beat without permission from the editor. In most newspapers also, a reporter must inform the editor about the story that he or she is working on for the day. The story or article must also be submitted to the editor at a specified time. Moreover, the editor can easily pull out a reporter from one beat and ask him or her to cover another beat, if the need arises.

This is not the case for petitioner. Although petitioner had a weekly deadline to meet, she was not precluded from submitting her column ahead of time or from submitting columns to be published at a later time. More importantly, respondents did not dictate upon petitioner the subject matter of her columns, but only imposed the general guideline that the article should conform to the standards of the newspaper and the general tone of the particular section.

Where a person who works for another performs his job more or less at his own pleasure, in the manner he sees fit, not subject to definite hours or conditions of work, and is compensated according to the result of his efforts and not the amount thereof, no employer-employee relationship exists.[36]

Aside from the control test, this Court has also used the economic reality test. The economic realities prevailing within the activity or between the parties are examined, taking into consideration the totality of circumstances surrounding the true nature of the relationship between the parties.[37] This is especially appropriate when, as in this case, there is no written agreement or contract on which to base the relationship. In our jurisdiction, the benchmark of economic reality in analyzing possible employment relationships for purposes of applying the Labor Code ought to be the economic dependence of the worker on his employer.[38]

Petitioner's main occupation is not as a columnist for respondent but as a women's rights advocate working in various women's organizations.[39] Likewise, she herself admits that she also contributes articles to other publications.[40] Thus, it cannot be said that petitioner was dependent on respondent PDI for her continued employment in respondent's line of business.[41]

The inevitable conclusion is that petitioner was not respondent PDI's employee but an independent contractor, engaged to do independent work.

There is no inflexible rule to determine if a person is an employee or an independent contractor; thus, the characterization of the relationship must be made based on the particular circumstances of each case.[42] There are several factors[43] that may be considered by the courts, but as we already said, the right to control is the dominant factor in determining whether one is an employee or an independent contractor.[44]

In our jurisdiction, the Court has held that an independent contractor is one who carries on a distinct and independent business and undertakes to perform the job, work, or service on one's own account and under one's own responsibility according to one's own manner and method, free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof.[45]

On this point, *Sonza v. ABS-CBN Broadcasting Corporation*[46] is enlightening. In that case, the Court found, using the four-fold test, that petitioner, Jose Y. Sonza, was not an employee of ABS-CBN, but an independent contractor. Sonza was hired by ABS-CBN due to his "unique skills, talent and celebrity status not possessed by ordinary employees," a circumstance that, the Court said, was indicative, though not conclusive, of an independent contractual relationship. Independent contractors often present themselves to possess unique skills, expertise or talent to distinguish them from ordinary employees.[47] The Court also found that, as to payment of wages, Sonza's talent fees were the result of negotiations between him and ABS-CBN.[48] As to the power of

dismissal, the Court found that the terms of Sonza's engagement were dictated by the contract he entered into with ABS-CBN, and the same contract provided that either party may terminate the contract in case of breach by the other of the terms thereof.[49] However, the Court held that the foregoing are not determinative of an employer-employee relationship. Instead, it is still the power of control that is most important.

On the power of control, the Court found that in performing his work, Sonza only needed his skills and talent - how he delivered his lines, appeared on television, and sounded on radio were outside ABS-CBN's control.[50] Thus:

We find that ABS-CBN was not involved in the actual performance that produced the finished product of SONZA's work. ABS-CBN did not instruct SONZA how to perform his job. ABS-CBN merely reserved the right to modify the program format and airtime schedule "for more effective programming." ABS-CBN's sole concern was the quality of the shows and their standing in the ratings. Clearly, ABS-CBN did not exercise control over the means and methods of performance of SONZA's work.

SONZA claims that ABS-CBN's power not to broadcast his shows proves ABS-CBN's power over the means and methods of the performance of his work. Although ABS-CBN did have the option not to broadcast SONZA's show, ABS-CBN was still obligated to pay SONZA's talent fees... Thus, even if ABS-CBN was completely dissatisfied with the means and methods of SONZA's performance of his work, or even with the quality or product of his work, ABS-CBN could not dismiss or even discipline SONZA. All that ABS-CBN could do is not to broadcast SONZA's show but ABS-CBN must still pay his talent fees in full.

Clearly, ABS-CBN's right not to broadcast SONZA's show, burdened as it was by the obligation to continue paying in full SONZA's talent fees, did not amount to control over the means and methods of the performance of SONZA's work. ABS-CBN could not terminate or discipline SONZA even if the means and methods of performance of his work - how he delivered his lines and appeared on television - did not meet ABS-CBN's approval. This proves that ABS-CBN's control was limited only to the result of SONZA's work, whether to broadcast the final product or not. In either case, ABS-CBN must still pay SONZA's talent fees in full until the expiry of the Agreement.

In *Vaughan, et al. v. Warner, et al.*, the United States Circuit Court of Appeals ruled that vaudeville performers were independent contractors although the management reserved the right to delete objectionable features in their shows. Since the management did not have control over the manner of performance of the skills of the artists, it could only control the result of the work by deleting objectionable features.

SONZA further contends that ABS-CBN exercised control over his work by supplying all equipment and crew. No doubt, ABS-CBN supplied the equipment, crew and airtime needed to broadcast the "Mel & Jay" programs. However, the equipment, crew and airtime are not the "tools and instrumentalities" SONZA needed to perform his job. What SONZA principally needed were his talent or skills and the costumes necessary for his appearance. Even though ABS-CBN provided SONZA with the place of work and the necessary equipment, SONZA was still an independent contractor since ABS-CBN did not supervise and control his work. ABS-CBN's sole concern was for SONZA to display his talent during the airing of the programs.

A radio broadcast specialist who works under minimal supervision is an independent contractor. SONZA's work as television and radio program host required special skills and talent, which SONZA admittedly possesses. The records do not show that ABS-CBN exercised any supervision and control over how SONZA utilized his skills and talent in his shows.[51]

The instant case presents a parallel to Sonza. Petitioner was engaged as a columnist for her talent, skill, experience, and her unique viewpoint as a feminist advocate. How she utilized all these in writing her column was not subject to dictation by respondent. As in Sonza, respondent PDI was not involved in the actual performance that produced the finished product. It only reserved the right to shorten petitioner's articles based on the

newspaper's capacity to accommodate the same. This fact, we note, was not unique to petitioner's column. It is a reality in the newspaper business that space constraints often dictate the length of articles and columns, even those that regularly appear therein.

Furthermore, respondent PDI did not supply petitioner with the tools and instrumentalities she needed to perform her work. Petitioner only needed her talent and skill to come up with a column every week. As such, she had all the tools she needed to perform her work.

Considering that respondent PDI was not petitioner's employer, it cannot be held guilty of illegal dismissal.

WHEREFORE, the foregoing premises considered, the Petition is DISMISSED. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 50970 are hereby AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

[1] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Eugenio S. Labitoria and Teodoro P. Regino, concurring; rollo, pp. 101-106.

[2] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Teodoro P. Regino and Remedios Salazar-Fernando, concurring; id. at 107.

[3] Id. at 89-98.

[4] Id. at 83-88.

[5] Position Paper for Complainant, CA rollo, p. 39.

[6] Also named in parts of the records as "Lolita" or "Lita."

[7] Reply to Respondent's Position Paper, CA rollo, p. 40.

[8] Petition for Certiorari, G.R. No. 117605, CA rollo, p. 4.

[9] Rollo, p. 88.

[10] Id. at 86-87.

[11] Id. at 96.

[12] Docketed as G.R. No. 117605, CA rollo, pp. 2-18.

[13] CA rollo, p. 209.

[14] 356 Phil. 811 (1998).

[15] Supra note 1.

[16] Manifestation and Compliance, rollo, pp. 410-416.

[17] Penned by Associate Justice Dante O. Tinga, with Associate Justices Reynato S. Puno (now Chief Justice), Ma. Alicia Austria-Martinez, Romeo J. Callejo, Sr. (now retired), and Minita V. Chico-Nazario, concurring; id. at 380-393.

[18] Id. at 387-392. (Citations omitted.)

[19] *Supra* note 16.

[20] *Lopez v. Bodega City*, G.R. No. 155731, September 3, 2007, 532 SCRA 56, 64, citing *Manila Water Company, Inc. v. Peña*, 434 SCRA 53, 58 (2004).

[21] *The Peninsula Manila, et al. v. Alipio*, G.R. No. 167310, June 17, 2008, citing *Trendline Employees Association-Southern Philippines Federation of Labor v. NLRC*, 272 SCRA 172, 179 (1997).

[22] Reply to Respondent's Position Paper, CA rollo, p. 40.

[23] *Insular Life Assurance, Inc. v. National Labor Relations Commission*, G.R. No. 119930, March 12, 1993, 287 SCRA 476, 483, citing *Industrial Timber Corporation v. NLRC*, 169 SCRA 341 (1989).

[24] *Lopez v. Metropolitan Waterworks and Sewage System*, G.R. No. 154472, June 30, 2005, 462 SCRA 428, 442.

[25] *Lakas sa Industriya ng Kapatirang Haligi ng Alyansa-Pinagbuklod ng Manggagawang Promo ng Burlingame v. Burlingame Corporation*, G.R. No. 162833, June 15, 2007 524 SCRA 690, 695, citing *Sy v. Court of Appeals*, 398 SCRA 301, 307-308 (2003); *Pacific Consultants International Asia, Inc. v. Schonfeld*, G.R. No. 166920, February 19, 2007, 516 SCRA 209, 228.

[26] *Abante, Jr. v. Lamadrid Bearing and Parts Corporation*, G.R. No. 159890, May 28, 2004, 430 SCRA 368, 379.

[27] *Sandigan Savings and Loan Bank, Inc v. National Labor Relations Commission*, 324 Phil. 358 (1996), citing *Ruga v. NLRC*, 181 SCRA 266, 273 (1990). See also *Coca Cola Bottlers (Phils.), Inc. v. Climaco*, G.R. No. 146881, February 5, 2007, 514 SCRA 164, 177.

[28] *Sandigan Savings and Loan Bank, Inc., v. National Labor Relations Commission*, *supra*, citing *Sara v. Agarrado*, 166 SCRA 625, 630 (1988).

[29] *AFP Mutual Benefit Association, Inc. v. National Labor Relations Commission*, 334 Phil. 712, 721-722 (1997).

[30] *Lazaro v. Social Security Commission*, 479 Phil. 385, 389-390 (2004), citing *Investment Planning Corporation v. Social Security System*, 21 SCRA 924, 928-929 (1967). See also *Abante, Jr. v. Lamadrid Bearing and Parts Corporation*, *supra* note 26.

[31] Rollo, pp. 75-76.

[32] *Manila Electric Company v. Benamira*, G.R. No. 145271, July 14, 2005, 463 SCRA 331, 352-353. (Citations omitted.)

[33] *Insular Life Assurance Co., Ltd. v. National Labor Relations Commission*, G.R. No. 84484, November 15, 1989, 179 SCRA 459, 464-465; *Consulta v. Court of Appeals*, G.R. No. 145443, March 18, 2005, 453 SCRA 732, 740-741; *Manila Electric Company v. Benamira*, *supra*.

[34] Manifestation and Motion of the Office of the Solicitor General, rollo, p. 192.

[35] Reply to Position Paper of Respondents, CA rollo, p. 43.

[36] *Abante, Jr. v. Lamadrid Bearing and Parts Corporation*, *supra* note 26, citing *Encyclopedia Britannica (Philippines), Inc. v. NLRC*, 264 SCRA 1, 7 (1996).

[37] *Francisco v. National Labor Relations Commission*, G.R. No. 170087, August 31, 2006, 500 SCRA 690, 697.

[38] Id. at 699.

[39] CA rollo, p. 200.

[40] Reply to Respondent's Position Paper, CA rollo, p. 43.

[41] See *Francisco v. National Labor Relations Commission*, supra note 37.

[42] *Arkansas Transit Homes, Inc. v. Aetna Life & Casualty*, 341 Ark. 317, 16 S.W.3d 545 (2000).

[43] The court in *Arkansas* lists the following factors to be considered in determining whether one is an employee or independent contractor:

- (a) the extent of control which, by the agreement, the master may exercise over the details of the work;
- (b) whether or not the one employed is engaged in a distinct occupation or business;
- (c) the kind of occupation, with reference to whether in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
- (d) the skill required in the particular occupation;
- (e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;
- (f) the length of time for which the person is employed;
- (g) the method of payment, whether by the time or by the job;
- (h) whether or not the work is a part of the regular business of the employer;
- (i) whether or not the parties believe they are creating the relation of master and servant; and
- (j) whether the principal is or is not in business.

[44] *Arkansas Transit Homes, Inc. v. Aetna Life & Casualty*, supra note 42.

[45] *Chavez v. National Labor Relations Commission*, G.R. No. 146530, January 17, 2005, 448 SCRA 478, 491, citing *Tan v. Lagrama*, 387 SCRA 393 (2002).

[46] G.R. No. 138051, June 10, 2004, 431 SCRA 583.

[47] *Sonza v. ABS-CBN Broadcasting Corporation*, id. at 595.

[48] Id. at 595-596.

[49] Id. at 597.

[50] Id. at 600.

[51] Id. at 600-603. (Citations omitted.)

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