PHILIPPINE GLOBAL COMMUNICATIONS, INC., PETITIONER, VS. RICARDO DE VERA, RESPONDENT.

G.R. NO. 157214. June 07, 2005

Ponente: GARCIA, J.

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GARCIA, J.:

Before us is this appeal by way of a petition for review on certiorari from the 12 September 2002 Decision[1] and the 13 February 2003 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 65178, upholding the finding of illegal dismissal by the National Labor Relations Commission against petitioner.

As culled from the records, the pertinent facts are:

Petitioner Philippine Global Communications, Inc. (PhilCom), is a corporation engaged in the business of communication services and allied activities, while respondent Ricardo De Vera is a physician by profession whom petitioner enlisted to attend to the medical needs of its employees. At the crux of the controversy is Dr. De Vera's status vis a vis petitioner when the latter terminated his engagement.

It appears that on 15 May 1981, De Vera, via a letter dated 15 May 1981,[3] offered his services to the petitioner, therein proposing his plan of works required of a practitioner in industrial medicine, to include the following:

- Application of preventive medicine including periodic check-up of employees;

- Holding of clinic hours in the morning and afternoon for a total of five (5) hours daily for consultation services to employees;

- Management and treatment of employees that may necessitate hospitalization including emergency cases and accidents;

- Conduct pre-employment physical check-up of prospective employees with no additional medical fee;

- Conduct home visits whenever necessary;

- Attend to certain medical administrative function such as accomplishing medical forms, evaluating conditions of employees applying for sick leave of absence and subsequently issuing proper certification, and all matters referred which are medical in nature.

The parties agreed and formalized respondent's proposal in a document denominated as RETAINERSHIP CONTRACT[4] which will be for a period of one year subject to renewal, it being made clear therein that respondent will cover "the retainership the Company previously had with Dr. K. Eulau" and that respondent's "retainer fee" will be at P4,000.00 a month. Said contract was renewed yearly.[5] The retainership arrangement went on from 1981 to 1994 with changes in the retainer's fee. However, for the years 1995 and 1996, renewal of the contract was only made verbally.

The turning point in the parties' relationship surfaced in December 1996 when Philcom, thru a letter[6] bearing on

the subject boldly written as "TERMINATION – RETAINERSHIP CONTRACT", informed De Vera of its decision to discontinue the latter's "retainer's contract with the Company effective at the close of business hours of December 31, 1996" because management has decided that it would be more practical to provide medical services to its employees through accredited hospitals near the company premises.

On 22 January 1997, De Vera filed a complaint for illegal dismissal before the National Labor Relations Commission (NLRC), alleging that that he had been actually employed by Philcom as its company physician since 1981 and was dismissed without due process. He averred that he was designated as a "company physician on retainer basis" for reasons allegedly known only to Philcom. He likewise professed that since he was not conversant with labor laws, he did not give much attention to the designation as anyway he worked on a full-time basis and was paid a basic monthly salary plus fringe benefits, like any other regular employees of Philcom.

On 21 December 1998, Labor Arbiter Ramon Valentin C. Reyes came out with a decision[7] dismissing De Vera's complaint for lack of merit, on the rationale that as a "retained physician" under a valid contract mutually agreed upon by the parties, De Vera was an "independent contractor" and that he "was not dismissed but rather his contract with [PHILCOM] ended when said contract was not renewed after December 31, 1996".

On De Vera's appeal to the NLRC, the latter, in a decision[8] dated 23 October 2000, reversed (the word used is "modified") that of the Labor Arbiter, on a finding that De Vera is Philcom's "regular employee" and accordingly directed the company to reinstate him to his former position without loss of seniority rights and privileges and with full backwages from the date of his dismissal until actual reinstatement. We quote the dispositive portion of the decision:

> WHEREFORE, the assailed decision is modified in that respondent is ordered to reinstate complainant to his former position without loss of seniority rights and privileges with full backwages from the date of his dismissal until his actual reinstatement computed as follows:
>
> Backwages:
>
> a) Basic Salary
>
> From Dec. 31, 1996 to Apr. 10, 2000 = 39.33 mos.
>
> P44,400.00 x 39.33 mos. P1,750,185.00
>
> b) 13[th] Month Pay:
>
> 1/12 of P1,750,185.00 145,848.75
>
> c) Travelling allowance:
>
> P1,000.00 x 39.33 mos. 39,330.00
>
> GRAND TOTAL P1,935,363.75
>
> The decision stands in other aspects.
>
> SO ORDERED.

With its motion for reconsideration having been denied by the NLRC in its order of 27 February 2001,[9] Philcom then went to the Court of Appeals on a petition for certiorari, thereat docketed as CA-G.R. SP No. 65178,

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imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC when it reversed the findings of the labor arbiter and awarded thirteenth month pay and traveling allowance to De Vera even as such award had no basis in fact and in law.

On 12 September 2002, the Court of Appeals rendered a decision,[10] modifying that of the NLRC by deleting the award of traveling allowance, and ordering payment of separation pay to De Vera in lieu of reinstatement, thus:

> WHEREFORE, premises considered, the assailed judgment of public respondent, dated 23 October 2000, is MODIFIED. The award of traveling allowance is deleted as the same is hereby DELETED. Instead of reinstatement, private respondent shall be paid separation pay computed at one (1) month salary for every year of service computed from the time private respondent commenced his employment in 1981 up to the actual payment of the backwages and separation pay. The awards of backwages and 13th month pay STAND.
>
> SO ORDERED.

In time, Philcom filed a motion for reconsideration but was denied by the appellate court in its resolution of 13 February 2003.[11]

Hence, Philcom's present recourse on its main submission that -

> THE COURT OF APPEALS ERRED IN SUSTAINING THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION AND RENDERING THE QUESTIONED DECISION AND RESOLUTION IN A WAY THAT IS NOT IN ACCORD WITH THE FACTS AND APPLICABLE LAWS AND JURISPRUDENCE WHICH DISTINGUISH LEGITIMATE JOB CONTRACTING AGREEMENTS FROM THE EMPLOYER-EMPLOYEE RELATIONSHIP.

We GRANT.

Under Rule 45 of the Rules of Court, only questions of law may be reviewed by this Court in decisions rendered by the Court of Appeals. There are instances, however, where the Court departs from this rule and reviews findings of fact so that substantial justice may be served. The exceptional instances are where:

> "xxx xxx xxx (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellees; (7) the findings of fact of the Court of Appeals are contrary to those of the trial court; (8) said findings of facts are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record."[12]

As we see it, the parties' respective submissions revolve on the primordial issue of whether an employer-employee relationship exists between petitioner and respondent, the existence of which is, in itself, a question of fact[13] well within the province of the NLRC. Nonetheless, given the reality that the NLRC's findings are at odds with those of the labor arbiter, the Court, consistent with its ruling in Jimenez vs. National Labor Relations Commission,[14] is constrained to look deeper into the attendant circumstances obtaining in this case, as appearing on record.

In a long line of decisions,[15] the Court, in determining the existence of an employer-employee relationship, has invariably adhered to the four-fold test, to wit: [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, or the so-called

"control test", considered to be the most important element.

Applying the four-fold test to this case, we initially find that it was respondent himself who sets the parameters of what his duties would be in offering his services to petitioner. This is borne by no less than his 15 May 1981 letter[16] which, in full, reads:

> "May 15, 1981
>
> Mrs. Adela L. Vicente
> Vice President, Industrial Relations
> PhilCom, Paseo de Roxas
> Makati, Metro Manila
>
> M a d a m :
>
> I shall have the time and effort for the position of Company physician with your corporation if you deemed it necessary. I have the necessary qualifications, training and experience required by such position and I am confident that I can serve the best interests of your employees, medically.
>
> My plan of works and targets shall cover the duties and responsibilities required of a practitioner in industrial medicine which includes the following:
>
> - Application of preventive medicine including periodic check-up of employees;
>
> - Holding of clinic hours in the morning and afternoon for a total of five (5) hours daily for consultation services to employees;
>
> - Management and treatment of employees that may necessitate hospitalization including emergency cases and accidents;
>
> - Conduct pre-employment physical check-up of prospective employees with no additional medical fee;
>
> - Conduct home visits whenever necessary;
>
> - Attend to certain medical administrative functions such as accomplishing medical forms, evaluating conditions of employees applying for sick leave of absence and subsequently issuing proper certification, and all matters referred which are medical in nature.

On the subject of compensation for the services that I propose to render to the corporation, you may state an offer based on your belief that I can very well qualify for the job having worked with your organization for sometime now.

I shall be very grateful for whatever kind attention you may extend on this matter and hoping that it will merit acceptance, I remain

Very truly yours,
(signed)
RICARDO V. DE VERA, M.D."

Significantly, the foregoing letter was substantially the basis of the labor arbiter's finding that there existed no employer-employee relationship between petitioner and respondent, in addition to the following factual settings:

> The fact that the complainant was not considered an employee was recognized by the complainant himself in a signed letter to the respondent dated April 21, 1982 attached as Annex G to the respondent's Reply and Rejoinder. Quoting the pertinent portion of said letter:

> 'To carry out your memo effectively and to provide a systematic and workable time schedule which will serve the best interests of both the present and absent employee, may I propose an extended two-hour service (1:00-3:00 P.M.) during which period I can devote ample time to both groups depending upon the urgency of the situation. I shall readjust my private schedule to be available for the herein proposed extended hours, should you consider this proposal.
>
> As regards compensation for the additional time and services that I shall render to the employees, it is dependent on your evaluation of the merit of my proposal and your confidence on my ability to carry out efficiently said proposal.'
>
> The tenor of this letter indicates that the complainant was proposing to extend his time with the respondent and seeking additional compensation for said extension. This shows that the respondent PHILCOM did not have control over the schedule of the complainant as it [is] the complainant who is proposing his own schedule and asking to be paid for the same. This is proof that the complainant understood that his relationship with the respondent PHILCOM was a retained physician and not as an employee. If he were an employee he could not negotiate as to his hours of work.
>
> The complainant is a Doctor of Medicine, and presumably, a well-educated person. Yet, the complainant, in his position paper, is claiming that he is not conversant with the law and did not give much attention to his job title- on a 'retainer basis'. But the same complainant admits in his affidavit that his service for the respondent was covered by a retainership contract [which] was renewed every year from 1982 to 1994. Upon reading the contract dated September 6, 1982, signed by the complainant himself (Annex 'C' of Respondent's Position Paper), it clearly states that is a retainership contract. The retainer fee is indicated thereon and the duration of the contract for one year is also clearly indicated in paragraph 5 of the Retainership Contract. The complainant cannot claim that he was unaware that the 'contract' was good only for one year, as he signed the same without any objections. The complainant also accepted its renewal every year thereafter until 1994. As a literate person and educated person, the complainant cannot claim that he does not know what contract he signed and that it was renewed on a year to year basis.[17]

The labor arbiter added the indicia, not disputed by respondent, that from the time he started to work with petitioner, he never was included in its payroll; was never deducted any contribution for remittance to the Social Security System (SSS); and was in fact subjected by petitioner to the ten (10%) percent withholding tax for his professional fee, in accordance with the National Internal Revenue Code, matters which are simply inconsistent with an employer-employee relationship. In the precise words of the labor arbiter:

> "xxx xxx xxx After more than ten years of services to PHILCOM, the complainant would have noticed that no SSS deductions were made on his remuneration or that the respondent was deducting the 10% tax for his fees and he surely would have complained about them if he had considered himself an employee of PHILCOM. But he never raised those issues. An ordinary employee would consider the SSS payments important and thus make sure they would be paid. The complainant never bothered to ask the respondent to remit his SSS contributions. This clearly shows that the complainant never considered himself an employee of PHILCOM and thus, respondent need not remit anything to the SSS in favor of the complainant."[18]

Clearly, the elements of an employer-employee relationship are wanting in this case. We may add that the records are replete with evidence showing that respondent had to bill petitioner for his monthly professional fees.[19] It simply runs against the grain of common experience to imagine that an ordinary employee has yet to bill his employer to receive his salary.

We note, too, that the power to terminate the parties' relationship was mutually vested on both. Either may terminate the arrangement at will, with or without cause.[20]

Finally, remarkably absent from the parties' arrangement is the element of control, whereby the employer has

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reserved the right to control the employee not only as to the result of the work done but also as to the means and methods by which the same is to be accomplished.[21]

Here, petitioner had no control over the means and methods by which respondent went about performing his work at the company premises. He could even embark in the private practice of his profession, not to mention the fact that respondent's work hours and the additional compensation therefor were negotiated upon by the parties.[22] In fine, the parties themselves practically agreed on every terms and conditions of respondent's engagement, which thereby negates the element of control in their relationship. For sure, respondent has never cited even a single instance when petitioner interfered with his work.

Yet, despite the foregoing, all of which are extant on record, both the NLRC and the Court of Appeals ruled that respondent is petitioner's regular employee at the time of his separation.

Partly says the appellate court in its assailed decision:

> Be that as it may, it is admitted that private respondent's written 'retainer contract' was renewed annually from 1981 to 1994 and the alleged 'renewal' for 1995 and 1996, when it was allegedly terminated, was verbal.
>
> Article 280 of the Labor code (sic) provides:
> 'The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreements of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform 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 preceding paragraph: Provided, That, any employee who has rendered at least one (1) year of service, whether such is continuous or broken, shall be considered a regular with respect to the activity in which he is employed and his employment shall continue while such activity exists.'

Parenthetically, the position of company physician, in the case of petitioner, is usually necessary and desirable because the need for medical attention of employees cannot be foreseen, hence, it is necessary to have a physician at hand. In fact, the importance and desirability of a physician in a company premises is recognized by Art. 157 of the Labor Code, which requires the presence of a physician depending on the number of employees and in the case at bench, in petitioner's case, as found by public respondent, petitioner employs more than 500 employees.

Going back to Art. 280 of the Labor Code, it was made therein clear that the provisions of a written agreement to the contrary notwithstanding or the existence of a mere oral agreement, if the employee is engaged in the usual business or trade of the employer, more so, that he rendered service for at least one year, such employee shall be considered as a regular employee. Private respondent herein has been with petitioner since 1981 and his employment was not for a specific project or undertaking, the period of which was pre-determined and neither the work or service of private respondent seasonal. (Emphasis by the CA itself).

We disagree to the foregoing ratiocination.

The appellate court's premise that regular employees are those who perform activities which are desirable and necessary for the business of the employer is not determinative in this case. For, we take it that any agreement may provide that one party shall render services for and in behalf of another, no matter how necessary for the latter's business, even without being hired as an employee. This set-up is precisely true in the case of an independent contractorship as well as in an agency agreement. Indeed, Article 280 of the Labor Code, quoted by

the appellate court, is not the yardstick for determining the existence of an employment relationship. As it is, the provision merely distinguishes between two (2) kinds of employees, i.e., regular and casual. It does not apply where, as here, the very existence of an employment relationship is in dispute.[23]

Buttressing his contention that he is a regular employee of petitioner, respondent invokes Article 157 of the Labor Code, and argues that he satisfies all the requirements thereunder. The provision relied upon reads:

> ART. 157. Emergency medical and dental services. – It shall be the duty of every employer to furnish his employees in any locality with free medical and dental attendance and facilities consisting of:
>
> (a)
>
> The services of a full-time registered nurse when the number of employees exceeds fifty (50) but not more than two hundred (200) except when the employer does not maintain hazardous workplaces, in which case the services of a graduate first-aider shall be provided for the protection of the workers, where no registered nurse is available. The Secretary of Labor shall provide by appropriate regulations the services that shall be required where the number of employees does not exceed fifty (50) and shall determine by appropriate order hazardous workplaces for purposes of this Article;
>
> (b)
>
> The services of a full-time registered nurse, a part-time physician and dentist, and an emergency clinic, when the number of employees exceeds two hundred (200) but not more than three hundred (300); and
>
> (c)
>
> The services of a full-time physician, dentist and full-time registered nurse as well as a dental clinic, and an infirmary or emergency hospital with one bed capacity for every one hundred (100) employees when the number of employees exceeds three hundred (300).

In cases of hazardous workplaces, no employer shall engage the services of a physician or dentist who cannot stay in the premises of the establishment for at least two (2) hours, in the case of those engaged on part-time basis, and not less than eight (8) hours in the case of those employed on full-time basis. Where the undertaking is nonhazardous in nature, the physician and dentist may be engaged on retained basis, subject to such regulations as the Secretary of Labor may prescribe to insure immediate availability of medical and dental treatment and attendance in case of emergency.

Had only respondent read carefully the very statutory provision invoked by him, he would have noticed that in non-hazardous workplaces, the employer may engage the services of a physician "on retained basis." As correctly observed by the petitioner, while it is true that the provision requires employers to engage the services of medical practitioners in certain establishments depending on the number of their employees, nothing is there in the law which says that medical practitioners so engaged be actually hired as employees,[24] adding that the law, as written, only requires the employer "to retain", not employ, a part-time physician who needed to stay in the premises of the non-hazardous workplace for two (2) hours.[25]

Respondent takes no issue on the fact that petitioner's business of telecommunications is not hazardous in nature. As such, what applies here is the last paragraph of Article 157 which, to stress, provides that the employer may engage the services of a physician and dentist "on retained basis", subject to such regulations as the Secretary of Labor may prescribe. The successive "retainership" agreements of the parties definitely hue to the very statutory

provision relied upon by respondent.

Deeply embedded in our jurisprudence is the rule that courts may not construe a statute that is free from doubt. Where the law is clear and unambiguous, it must be taken to mean exactly what it says, and courts have no choice but to see to it that the mandate is obeyed.[26] As it is, Article 157 of the Labor Code clearly and unequivocally allows employers in non-hazardous establishments to engage "on retained basis" the service of a dentist or physician. Nowhere does the law provide that the physician or dentist so engaged thereby becomes a regular employee. The very phrase that they may be engaged "on retained basis", revolts against the idea that this engagement gives rise to an employer-employee relationship.

With the recognition of the fact that petitioner consistently engaged the services of respondent on a retainer basis, as shown by their various "retainership contracts", so can petitioner put an end, with or without cause, to their retainership agreement as therein provided.[27]

We note, however, that even as the contracts entered into by the parties invariably provide for a 60-day notice requirement prior to termination, the same was not complied with by petitioner when it terminated on 17 December 1996 the verbally-renewed retainership agreement, effective at the close of business hours of 31 December 1996.

Be that as it may, the record shows, and this is admitted by both parties,[28] that execution of the NLRC decision had already been made at the NLRC despite the pendency of the present recourse. For sure, accounts of petitioner had already been garnished and released to respondent despite the previous Status Quo Order[29] issued by this Court. To all intents and purposes, therefore, the 60-day notice requirement has become moot and academic if not waived by the respondent himself.

WHEREFORE, the petition is GRANTED and the challenged decision of the Court of Appeals REVERSED and SET ASIDE. The 21 December 1998 decision of the labor arbiter is REINSTATED.

No pronouncement as to costs.

SO ORDERED.

Panganiban, (Chairman), Corona, and Carpio-Morales, JJ., concur.
Sandoval-Gutierrez, J., on official leave.

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[1] Penned by Associate Justice Edgardo F. Sundiam, and concurred in by Associate Justices Bennie A. Adefuin - De La Cruz (ret.) and Wenceslao I. Agnir, Jr. (ret.)

[2] Rollo at p. 62.

[3] Id. at p.98.

[4] Id. at p. 100.

[5] Id. at pp. 101-112.

[6] Id. at p. 116.

[7] Id. at pp. 276-285.

[8] Id. at pp. 327-333.

[9] Id. at pp. 360-363.

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[10] Id. at pp. 735-743.

[11] Id. at p. 746.

[12] Bautista v. Mangaldan Rural Bank, Inc., 230 SCRA 16 [1994] citing De la Puerta v. Court of Appeals, 181 SCRA 861 [1990].

[13] Mainland Construction Company, Inc. v. Movilla, 250 SCRA 290 [1995].

[14] 256 SCRA 84 [1996].

[15] MAM Realty Development Corporation v. National Labor Relations Commission, 244 SCRA 797 [1995]; Zanotte Shoes v. National Labor Relations Commission, 241 SCRA 261 [1995]; Singer Sewing Machine Company v. Drilon, 193 SCRA 270 [1991]; Development Bank of the Philippines v. National Labor Relations Commission 175 SCRA 537 [1989]; Broadway Motors, Inc. v. National Labor Relations Commission, 156 SCRA 522 [1987]; Brotherhood Labor Unity Movement in the Philippines v. Zamora, 147 SCRA 49 [1986]; Rosario Brothers, Inc. v. Ople, 131 SCRA 72 [1984]; SSS v. Cosmos Aerated Water Factory, Inc., 112 SCRA 47 [1982] and Mafinco Trading Corporation v. Ople, 70 SCRA 139 [1976].

[16] Rollo, p. 98.

[17] Rollo, at pp. 279-280.

[18] Id. at pp. 280-281.

[19] Id. at pp. 181-187.

[20] Item No. 5 of the Retainership Contract which reads: 5. This contract will be for a period of one year subject to renewal between you and the Company. If either you or the Company will terminate this Agreement at anytime before its expiry date, an advance notice of 60 days is required to be served by the concerned party to the other to avoid unnecessary adjustment problems.

[21] Sara v. Agarrado, 166 SCRA 625 [1988] citing LVN Pictures, Inc. v. Phil. Musicians Guild, 1 SCRA 312 [1961]; Investment Planning Corp. v. SSS, 21 SCRA 924 [1967]; SSS v. Court of Appeals, 30 SCRA 210 [1968]; and Philippine Refining Co., Inc. v. Court of Appeals, 117 SCRA 84 [1982].

[22] Rollo, at p. 191.

[23] Singer Sewing Machine Company v. Drilon, 193 SCRA 270 [1991].

[24] Rollo, at p. 774.

[25] Id., at p. 777.

[26] Ramos v. Court of Appeals, 108 SCRA 728 [1981]; Banawa v. Mirano, 97 SCRA 517 [1980]; Espiritu v. Cipriano, 55 SCRA 533 [1974] and Republic Flour Mills, Inc. v. Commissioner of Customs, 39 SCRA 269 [1971].

[27] Supra, See footnote 21.

[28] Philcom's Memorandum, Rollo at p. 779 and De Vera's Memorandum, Rollo at p. 708.

[29] Dated 09 June 2003, Rollo at pp. 576-578.

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