

TELEVISION AND PRODUCTION EXPONENTS, INC. and/or ANTONIO P. TUVIERA, Present: Petitioners, VS. ROBERTO C. SERVAÑA, Respondent.*G.R. No. 167648. January 28, 2008*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-167648/>**TINGA, J.:**

This petition for review under Rule 45 assails the 21 December 2004 Decision[1] and 8 April 2005 Resolution[2] of the Court of Appeals declaring Roberto Servaña (respondent) a regular employee of petitioner Television and Production Exponents, Inc. (TAPE). The appellate court likewise ordered TAPE to pay nominal damages for its failure to observe statutory due process in the termination of respondent's employment for authorized cause.

TAPE is a domestic corporation engaged in the production of television programs, such as the long-running variety program, "Eat Bulaga!". Its president is Antonio P. Tuviera (Tuviera). Respondent Roberto C. Servaña had served as a security guard for TAPE from March 1987 until he was terminated on 3 March 2000.

Respondent filed a complaint for illegal dismissal and nonpayment of benefits against TAPE. He alleged that he was first connected with Agro-Commercial Security Agency but was later on absorbed by TAPE as a regular company guard. He was detailed at Broadway Centrum in Quezon City where "Eat Bulaga!" regularly staged its productions. On 2 March 2000, respondent received a memorandum informing him of his impending dismissal on account of TAPE's decision to contract the services of a professional security agency. At the time of his termination, respondent was receiving a monthly salary of P6,000.00. He claimed that the holiday pay, unpaid vacation and sick leave benefits and other monetary considerations were withheld from him. He further contended that his dismissal was undertaken without due process and violative of existing labor laws, aggravated by nonpayment of separation pay.[3]

In a motion to dismiss which was treated as its position paper, TAPE countered that the labor arbiter had no jurisdiction over the case in the absence of an employer-employee relationship between the parties. TAPE made the following assertions: (1) that respondent was initially employed as a security guard for Radio Philippines Network (RPN-9); (2) that he was tasked to assist TAPE during its live productions, specifically, to control the crowd; (3) that when RPN-9 severed its relationship with the security agency, TAPE engaged respondent's services, as part of the support group and thus a talent, to provide security service to production staff, stars and guests of "Eat Bulaga!" as well as to control the audience during the one-and-a-half hour noontime program; (4) that it was agreed that complainant would render his services until such time that respondent company shall have engaged the services of a professional security agency; (5) that in 1995, when his contract with RPN-9 expired, respondent was retained as a talent and a member of the support group, until such time that TAPE shall have engaged the services of a professional security agency; (6) that respondent was not prevented from seeking other employment, whether or not related to security services, before or after attending to his "Eat Bulaga!" functions; (7) that sometime in late 1999, TAPE started negotiations for the engagement of a professional security agency, the Sun Shield Security Agency; and (8) that on 2 March 2000, TAPE issued memoranda to all talents, whose functions would be rendered redundant by the engagement of the security agency, informing them of the management's decision to terminate their services.[4]

TAPE averred that respondent was an independent contractor falling under the talent group category and was working under a special arrangement which is recognized in the industry.[5]

Respondent for his part insisted that he was a regular employee having been engaged to perform an activity that is necessary and desirable to TAPE's business for thirteen (13) years.[6]

On 29 June 2001, Labor Arbiter Daisy G. Cauton-Barcelona declared respondent to be a regular employee of TAPE. The Labor Arbiter relied on the nature of the work of respondent, which is securing and maintaining order in the studio, as necessary and desirable in the usual business activity of TAPE. The Labor Arbiter also ruled that the termination was valid on the ground of redundancy, and ordered the payment of respondent's separation pay equivalent to one (1)-month pay for every year of service. The dispositive portion of the decision reads:

WHEREFORE, complainant's position is hereby declared redundant. Accordingly, respondents are hereby ordered to pay complainant his separation pay computed at the rate of one (1) month pay for every year of service or in the total amount of P78,000.00.[7]

On appeal, the National Labor Relations Commission (NLRC) in a Decision[8] dated 22 April 2002 reversed the Labor Arbiter and considered respondent a mere program employee, thus:

We have scoured the records of this case and we find nothing to support the Labor Arbiter's conclusion that complainant was a regular employee.

x x x x

The primary standard to determine regularity of employment is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. This connection can be determined by considering the nature and work performed and its relation to the scheme of the particular business or trade in its entirety. x x x Respondent company is engaged in the business of production of television shows. The records of this case also show that complainant was employed by respondent company beginning 1995 after respondent company transferred from RPN-9 to GMA-7, a fact which complainant does not dispute. His last salary was P5,444.44 per month. In such industry, security services may not be deemed necessary and desirable in the usual business of the employer. Even without the performance of such services on a regular basis, respondent's company's business will not grind to a halt.

x x x x

Complainant was indubitably a program employee of respondent company. Unlike [a] regular employee, he did not observe working hours x x x. He worked for other companies, such as M-Zet TV Production, Inc. at the same time that he was working for respondent company. The foregoing indubitably shows that complainant-appellee was a program employee. Otherwise, he would have two (2) employers at the same time.[9]

Respondent filed a motion for reconsideration but it was denied in a Resolution[10] dated 28 June 2002.

Respondent filed a petition for certiorari with the Court of Appeals contending that the NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it reversed the decision of the Labor Arbiter. Respondent asserted that he was a regular employee considering the nature and length of service rendered.[11]

Reversing the decision of the NLRC, the Court of Appeals found respondent to be a regular employee. We quote the dispositive portion of the decision:

IN LIGHT OF THE FOREGOING, the petition is hereby GRANTED. The Decision dated 22 April 2002 of the public respondent NLRC reversing the Decision of the Labor Arbiter and its Resolution dated 28 June 2002 denying petitioner's motion for reconsideration are REVERSED and SET ASIDE. The Decision dated 29 June

2001 of the Labor Arbiter is REINSTATED with MODIFICATION in that private respondents are ordered to pay jointly and severally petitioner the amount of P10,000.00 as nominal damages for non-compliance with the statutory due process.

SO ORDERED.[12]

Finding TAPE's motion for reconsideration without merit, the Court of Appeals issued a Resolution[13] dated 8 April 2005 denying said motion.

TAPE filed the instant petition for review raising substantially the same grounds as those in its petition for certiorari before the Court of Appeals. These matters may be summed up into one main issue: whether an employer-employee relationship exists between TAPE and respondent.

On 27 September 2006, the Court gave due course to the petition and considered the case submitted for decision.[14]

At the outset, it bears emphasis that the existence of employer-employee relationship is ultimately a question of fact. Generally, only questions of law are entertained in appeals by certiorari to the Supreme Court. This rule, however, is not absolute. Among the several recognized exceptions is when the findings of the Court of Appeals and Labor Arbiters, on one hand, and that of the NLRC, on the other, are conflicting,[15] as obtaining in the case at bar.

Jurisprudence is abound with cases that recite the factors to be considered in determining the existence of employer-employee relationship, namely: (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 with respect to the means and method by which the work is to be accomplished.[16] The most important factor involves the control test. Under the control test, there is an employer-employee relationship when the person for whom the services are performed reserves the right to control not only the end achieved but also the manner and means used to achieve that end.[17]

In concluding that respondent was an employee of TAPE, the Court of Appeals applied the "four-fold test" in this wise:

First. The selection and hiring of petitioner was done by private respondents. In fact, private respondents themselves admitted having engaged the services of petitioner only in 1995 after TAPE severed its relations with RPN Channel 9.

By informing petitioner through the Memorandum dated 2 March 2000, that his services will be terminated as soon as the services of the newly hired security agency begins, private respondents in effect acknowledged petitioner to be their employee. For the right to hire and fire is another important element of the employer-employee relationship.

Second. Payment of wages is one of the four factors to be considered in determining the existence of employer-employee relation. . . Payment as admitted by private respondents was given by them on a monthly basis at a rate of P5,444.44.

Third. Of the four elements of the employer-employee relationship, the "control test" is the most important. x x x

The Bundy cards representing the time petitioner had reported for work are evident proofs of private respondents' control over petitioner more particularly with the time he is required to report for work during the noontime program of "Eat Bulaga!" If it were not so, petitioner would be free to report for work anytime even not during the noontime program of "Eat Bulaga!" from 11:30 a.m. to 1:00 p.m. and still gets his

compensation for being a “talent.” Precisely, he is being paid for being the security of “Eat Bulaga!” during the above-mentioned period. The daily time cards of petitioner are not just for mere record purposes as claimed by private respondents. It is a form of control by the management of private respondent TAPE.[18]

TAPE asseverates that the Court of Appeals erred in applying the “four-fold test” in determining the existence of employer-employee relationship between it and respondent. With respect to the elements of selection, wages and dismissal, TAPE proffers the following arguments: that it never hired respondent, instead it was the latter who offered his services as a talent to TAPE; that the Memorandum dated 2 March 2000 served on respondent was for the discontinuance of the contract for security services and not a termination letter; and that the talent fees given to respondent were the pre-agreed consideration for the services rendered and should not be construed as wages. Anent the element of control, TAPE insists that it had no control over respondent in that he was free to employ means and methods by which he is to control and manage the live audiences, as well as the safety of TAPE’s stars and guests.[19]

The position of TAPE is untenable. Respondent was first connected with Agro-Commercial Security Agency, which assigned him to assist TAPE in its live productions. When the security agency’s contract with RPN-9 expired in 1995, respondent was absorbed by TAPE or, in the latter’s language, “retained as talent.”[20] Clearly, respondent was hired by TAPE. Respondent presented his identification card[21] to prove that he is indeed an employee of TAPE. It has been held that in a business establishment, an identification card is usually provided not just as a security measure but to mainly identify the holder thereof as a bona fide employee of the firm who issues it.[22]

Respondent claims to have been receiving P5,444.44 as his monthly salary while TAPE prefers to designate such amount as talent fees. Wages, as defined in the Labor Code, are remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for service rendered or to be rendered. It is beyond dispute that respondent received a fixed amount as monthly compensation for the services he rendered to TAPE.

The Memorandum informing respondent of the discontinuance of his service proves that TAPE had the power to dismiss respondent.

Control is manifested in the bundy cards submitted by respondent in evidence. He was required to report daily and observe definite work hours. To negate the element of control, TAPE presented a certification from M-Zet Productions to prove that respondent also worked as a studio security guard for said company. Notably, the said certificate categorically stated that respondent reported for work on Thursdays from 1992 to 1995. It can be recalled that during said period, respondent was still working for RPN-9. As admitted by TAPE, it absorbed respondent in late 1995.[23]

TAPE further denies exercising control over respondent and maintains that the latter is an independent contractor.[24] Aside from possessing substantial capital or investment, a legitimate job contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility according to its own manner and method, and 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.[25] TAPE failed to establish that respondent is an independent contractor. As found by the Court of Appeals:

We find the annexes submitted by the private respondents insufficient to prove that herein petitioner is indeed

an independent contractor. None of the above conditions exist in the case at bar. Private respondents failed to show that petitioner has substantial capital or investment to be qualified as an independent contractor. They likewise failed to present a written contract which specifies the performance of a specified piece of work, the nature and extent of the work and the term and duration of the relationship between herein petitioner and private respondent TAPE.[26]

TAPE relies on Policy Instruction No. 40, issued by the Department of Labor, in classifying respondent as a program employee and equating him to be an independent contractor.

Policy Instruction No. 40 defines program employees as—

x x x those whose skills, talents or services are engaged by the station for a particular or specific program or undertaking and who are not required to observe normal working hours such that on some days they work for less than eight (8) hours and on other days beyond the normal work hours observed by station employees and are allowed to enter into employment contracts with other persons, stations, advertising agencies or sponsoring companies. The engagement of program employees, including those hired by advertising or sponsoring companies, shall be under a written contract specifying, among other things, the nature of the work to be performed, rates of pay and the programs in which they will work. The contract shall be duly registered by the station with the Broadcast Media Council within three (3) days from its consummation.[27]

TAPE failed to adduce any evidence to prove that it complied with the requirements laid down in the policy instruction. It did not even present its contract with respondent. Neither did it comply with the contract-registration requirement.

Even granting arguendo that respondent is a program employee, stills, classifying him as an independent contractor is misplaced. The Court of Appeals had this to say:

We cannot subscribe to private respondents' conflicting theories. The theory of private respondents that petitioner is an independent contractor runs counter to their very own allegation that petitioner is a talent or a program employee. An independent contractor is not an employee of the employer, while a talent or program employee is an employee. The only difference between a talent or program employee and a regular employee is the fact that a regular employee is entitled to all the benefits that are being prayed for. This is the reason why private respondents try to seek refuge under the concept of an independent contractor theory. For if petitioner were indeed an independent contractor, private respondents will not be liable to pay the benefits prayed for in petitioner's complaint.[28]

More importantly, respondent had been continuously under the employ of TAPE from 1995 until his termination in March 2000, or for a span of 5 years. Regardless of whether or not respondent had been performing work that is necessary or desirable to the usual business of TAPE, respondent is still considered a regular employee under Article 280 of the Labor Code which 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 engagement of the employee or where the work or service to be performed is seasonal in nature and 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 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.

As a regular employee, respondent cannot be terminated except for just cause or when authorized by law.[29] It is clear from the tenor of the 2 March 2000 Memorandum that respondent's termination was due to redundancy. Thus, the Court of Appeals correctly disposed of this issue, viz:

Article 283 of the Labor Code provides that the employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year or service, whichever is higher.

x x x x

We uphold the finding of the Labor Arbiter that "complainant [herein petitioner] was terminated upon [the] management's option to professionalize the security services in its operations. x x x" However, [we] find that although petitioner's services [sic] was for an authorized cause, i.e., redundancy, private respondents failed to prove that it complied with service of written notice to the Department of Labor and Employment at least one month prior to the intended date of retrenchment. It bears stressing that although notice was served upon petitioner through a Memorandum dated 2 March 2000, the effectivity of his dismissal is fifteen days from the start of the agency's take over which was on 3 March 2000. Petitioner's services with private respondents were severed less than the month requirement by the law.

Under prevailing jurisprudence the termination for an authorized cause requires payment of separation pay. Procedurally, if the dismissal is based on authorized causes under Articles 283 and 284, the employer must give the employee and the Department of Labor and Employment written notice 30 days prior to the effectivity of his separation. Where the dismissal is for an authorized cause but due process was not observed, the dismissal should be upheld. While the procedural infirmity cannot be cured, it should not invalidate the dismissal. However, the employer should be liable for non-compliance with procedural requirements of due process.

x x x x

Under recent jurisprudence, the Supreme Court fixed the amount of P30,000.00 as nominal damages. The basis of the violation of petitioners' right to statutory due process by the private respondents warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances. We believe this form of damages would serve to deter employer from future violations of the statutory due process rights of the employees. At the very least, it provides a vindication or recognition of this fundamental right granted to the latter under the Labor Code and its Implementing Rules. Considering the circumstances in the case at bench, we deem it proper to fix it at P10,000.00.[30]

In sum, we find no reversible error committed by the Court of Appeals in its assailed decision.

However, with respect to the liability of petitioner Tuviera, president of TAPE, absent any showing that he acted with malice or bad faith in terminating respondent, he cannot be held solidarily liable with TAPE.[31] Thus, the Court of Appeals ruling on this point has to be modified.

WHEREFORE, the assailed Decision and Resolution of the Court of Appeals are **AFFIRMED** with **MODIFICATION** in that only petitioner Television and Production Exponents, Inc. is liable to pay respondent the amount of P10,000.00 as nominal damages for non-compliance with the statutory due process and petitioner

Antonio P. Tuviera is accordingly absolved from liability.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 47-64. Penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Renato C. Dacudao and Edgardo F. Sundiam.

[2] Id. at 66-67.

[3] Id. at 98.

[4] Id. at 100-102.

[5] Id. at 98, 103.

[6] Id. at 103.

[7] Id. at 106.

[8] Id. at 107-118.

[9] Id. at 115-117.

[10] Id. at 119-120.

[11] Id. at 130.

[12] Id. at 63.

[13] Id. at 66-67.

[14] Id. at 284.

[15] *Molina v. Pacific Plans, Inc.*, G.R. No. 165476, 10 March 2006, 484 SCRA 498.

[16] *Dumpit-Murillo v. Court of Appeals*, G.R. No. 164652, 8 June 2007, 524 SCRA 290, 302 citing *Manila Water Company, Inc. v. Pena*, G.R. No. 158255, 8 July 2004, 434 SCRA 53; *Coca-Cola Bottlers v. Climaco*, G.R. No. 146881, 5 February 2007, 514 SCRA 164, 177; *Lakas sa Industriya ng Kapatirang Haligi ng Alyansa-Pinagbuklod ng Manggagawang Promo ng Burlingame v. Burlingame Corporation*, G.R. No. 162833, 15 June 2007, 524 SCRA 690, 695.

[17] *Leonardo v. Court of Appeals*, G.R. No. 152459, 15 June 2006.

[18] Rollo, pp. 56-57.

[19] Id. at 30-34.

[20] Id. at 101.

[21] CA rollo, p. 37.

[22] *Villamaria v. Court of Appeals*, G.R. No. 165881, 19 April 2006.

[23] Id. at 16-17.

[24] Id. at 28.

[25] Department of Labor and Employment, Department Order No. 10 (1997).

[26] Rollo, p. 55.

[27] Department of Labor and Employment Policy Instruction No. 40 (1979).

[28] Id. at 57-58.

[29] LABOR CODE, Art. 279.

[30] Rollo, pp. 60-63.

[31] *Kay Products, Inc. v. Court of Appeals*, G.R. No. 162472, 28 July 2005, 464 SCRA 544.

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