

FRANKLIN BAKER COMPANY OP THE PHILIPPINES, PETITIONER AND APPELLANT, VS. SOCIAL SECURITY SYSTEM, RESPONDENT AND APPELLEE.

G. R. No. 17361. April 29, 1963

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Appeal from the ruling of the Social Security Commission dismissing petition for reconsideration of an order of respondent Social Security System.

Petitioner-appellant Franklin Baker Company of the Philippines is engaged in the manufacture of dessicater coconut in San Pablo City. The deceased, Tomas Zamora was one of its employees. Both were compulsory members of the Social Security System.

Due to the annual overhauling of its machinery and also to lack of production orders from its mother company in the United States petitioner temporarily ceased its operations from December 22, 1957 to February 18, 1958. Zamora rendered no actual services during that period. He then went on sick leave without pay from March 9, 1958, up to the day of his death, June 13, 1958.

On July 10, 1958 the System received a death claim application from petitioner for and in behalf of the designated beneficiaries of the deceased employee. After processing the. claim the System found that no premium remittances had been made for him for the months of February, March, and June, 1958. Of the unpaid premiums, P5.85 was chargeable to the employee while P8.18 was due from the employer-petitioner. The employee's share of the unpaid premiums was subsequently deducted from the death benefits awarded to his beneficiaries and the System billed petitioner for, its share.

Under Resolution No. 139, Series of 1958, the Social Security Commission adopted the rule that "employers are liable to the 3 1/2% company's share during the months when there are no premiums remitted, if there is existing employer-employee relationship between them during those months." Petitioner excepted to the System's demand for payment by filing a petition for reconsideration with the Commission. On April 28, 1960 the Commission resolved to dismiss said petition, and the case is now before us on appeal from the resolution of dismissal.

Petitioner raises two issues: (1) that the employer is not liable for its share of the premiums during the period when the employee is on leave without pay since he receives no compensation; and (2) that the adoption of a "theoretical salary" basis upon which the employer's liability of 3 1/2% is computed during the time that the employee receives no compensation is erroneous.

The first issue has already been resolved by us in several cases. *Insular Lumber Co. vs: SSS*, G. R. No. L-17623 Jan. 31, 1963; *Roman Archbishop of Manila vs. SSS*, 110 Phil., 616; *Insular Life Assurance Co. Ltd., et al., vs. SSS*, G. R. No. L-16359, Dec. 28, 1961. In those cases we held:

"... payment of contributions by an employer Is compulsory during its coverage, and in accordance with the

provisions of . Section 9 of the Social Security Act, coverage is determined solely by the existence of an employer-employee, relationship. While an employee is on leave, even without pay, he is still an employee of his employer, their contract of employment has not yet terminated. So much so that the employee may still return to work and the employer is still bound to accept him. His responsibility as an employee still exists. He is still entitled to the benefits of the System when he returns. Consequently, his employer is still liable to pay his contributions to the Commission on account of its employee, who is on leave without pay."

The ruling of the Commission adopting the "theoretical salary" basis assailed by petitioner under the second issue raised by it in this appeal reads as follows,:

" 'Neither does the absence of compensation for the employee for a particular month militate against the adoption of a theoretical salary upon which the premium contributions are to be based. In such cases, this Commission has adopted the policy that where an employee does not earn any compensation for a particular month, the basis for his premium contributions shall be the salary for the month immediately preceding the wageless month, or in case of a variable wage earner, then, it shall be his daily rate of compensation multiplied by the number of days in which he would have worked for that wageless month (Circular Nos. 21 and 24). The adoption of such a theoretical salary is justified on the ground that during the period when the employer-employee relationship subsists, there is a legal obligation to remit premium contributions to the System for the benefit of the employee;"

Petitioner contends that the adoption of the so-called "theoretical salary" basis is beyond the authority and competence of the Social Security Commission, as it is not justified by the Social Security Act (R. A. 1161, as amended by Act 1792), particularly section 19 thereof which defines the employer's obligation. to contribute to the System. This section provides:

"SECTION 19. Employer's contribution.—Beginning as of the last day of the month immediately preceding the month when an employee's compulsory coverage takes effect and every month thereafter during his employment, his employer shall pay, with respect to such covered employee in his employ, a monthly contribution-equal to three and a half per centum of the monthly compensation of said covered employees. Notwithstanding any contract to the contrary, an employer shall not deduct, directly or indirectly, from the compensation of his employees covered by the System or otherwise recover from them the employer's contribution with respect to such employees. (As amended by Section 11, R.A. 1792)"

Since the deceased employee, Tomas Zamora, received no compensation for the period in question, petitioner maintains that the imposition of a 3-1/2% monthly contribution upon the employer on the basis of the,monthly "theoretical" compensation is in effect a deviation from or an amendment of the statute, which only Congress can make. We do not think this view is correct. The obligation of the employer to contribute its share to the System is effective during the existence of the employer-employee relationship. This is already settled in several cases (supra), and implicit in the provision aforequoted which says that the employer shall pay the 3-1/2% contribution "beginning as of the last day of the month immediately preceding the month when an employee's compulsory coverage takes effect and every month thereafter during his employment. * * *" The time when an employee may not be actually receiving compensation, as when he is on sick leave without pay, is not excepted. Obviously, inasmuch as the obligation to contribute does not cease during that period, a reasonable basis for computing the amount of the contribution must be adopted; and the one prescribed by the Commission in its circular Nos. 21 and 24 and applied in the case at bar is reasonable, both on legal and actuarial considerations. It does not amount to legislation, but merely implementation of the existing statute. The provisions of the Social Security Act should be liberally construed in favor of those seeking its benefits. "Any interpretation which would defeat rather than promote the ends for which the Social Security Act was enacted should be eschewed." [1]

The resolution appealed from, passed by the Social Security Commission on April 28, 1960, is affirmed, with

costs against petitioner-appellant.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and Regala, JJ., concur.

[1]Laguna Transportation Co. Inc., vs. SSS 107 Phil., 883. April 28, 1960.

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