

INSULAR LUMBER COMPANY, PETITIONER AND APPELLANT, VS. SOCIAL SECURITY SYSTEM, RESPONDENT AND APPELLEE.

G. R. No. 17625. January 31, 1963

Ponente: DIZON, J.

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DIZON, J.:

In August 1957 petitioner became a compulsory member of the Social Security System. Pedro Primavera (now deceased), its employee on a daily wage basis and a member of the System, was on sick leave with pay until September 1957 when, having exhausted all sickness benefits due him, he was on leave without pay.

On October 14, 1957, petitioner informed the Social Security System that Primavera, though covered by the System, did not pay the premium for the month of September 1957 when he was on sick leave without pay and sought its advice on the matter. The System, through its Deputy Administrator, Higinio E. Francisco, informed petitioner that it had acted correctly in not paying the employer's contribution of 3-1/2% for the month aforesaid and that, as soon as Primavera reported back to work, his wages would again be subject to contribution to the System.

In another letter dated November 3, 1958, Deputy Administrator Francisco, clarifying Circular No. 21 of the System, stated, among other things, that for employees paid on daily rate or piecework, the employee's 2-1/2% and the employer's 3-1/2% premiums "are based on salary actually earned by the employee".

Subsequently, however, the System, through its Chief, Adjudication Division, presented to petitioner its Bill No. 293 demanding from the latter the sum of P3.48 representing the 3-1/2% employer's share of the premium due from its employee, Pedro Primavera, for the month of September 1957, said amount being based on Primavera's average monthly salary of P99.583. Petitioner questioned the correctness of the demand on the ground that Primavera had no earnings during the month in question and that Circular No. 21 could not be applied retroactively, but the system replied, through its Chief, Adjudication Division, that the Company's obligation under Resolution No. 139, series of 1958 of the Social Security Commission to remit to the System its 3-1/2 % contribution, exists as long as the employer-employee relationship is not terminated.

A formal petition was filed by petitioner on January 31, 1959 with the Social Security Commission to annul the ruling of the System in connection with its liability for the sum of P3.48 as premium corresponding to its employee, Pedro Primavera, for the month of September 1957, but after due hearing, the Social Security Commission denied the petition. Hence the present appeal.

The issue of whether or not social security premium corresponding to a period when a covered employee is on sick leave without pay should be paid by the employer was already resolved in *Elizalde Rope Factory, Inc., vs. Social Security Commission*, G. R. No. L-15163, prom. Feb. 28, 1962.

It appears that in the *Elizalde* case, the laborers of the *Elizalde Rope Factory, Inc.* went on strike on September 17, 1957. Edilberto Tupas, a laborer, was one of the strikers. The strike ended in the middle of February 1958. From

October 1957 to January 1958, the period of time the strike lasted, the rope factory did not pay to the Social Security Commission any premium for Edilberto Tupas. In February 1958 it resumed and continued to pay the premium until 6 May 1958 when Edilberto Tupas died.

Upon these facts we held:

"Although during a strike the worker renders no work or service and receives no compensation, yet his relationship as employee with his employer is not severed or dissolved." "Section 18 and 19 of Republic Act No. 1161, as amended, do not require that the employer's 3-1/2% and employee's 2-1/2 contributions be based on the latter's monthly compensation actually earned or received by the employee covered by the Social Security System. They only provide that after an employee is compulsorily covered by the System he and his employer will contribute to pay the premium every month during his employment."

In fact, in the earlier case of *The Insular Life Assurance Co., Ltd. et al., vs. Social Security Commission*, G. R. No. L-16350, Dec. 28, 1961, we had already held as follows:

"The first question is whether or not payment of compensation to an employee is a requirement to his employer's liability for social security contributions. Petitioner claims that such payment is a requisite because the compensation is the basis of computation of the premiums and contributions. Petitioner also claims that such payment is a requirement in the United States, citing the case of *Magruder vs. Yellow Cab Co.*, 152 A.L.R. 516."

"The above arguments can not be sustained. We have held in the case of *Roman Archbishop of Manila vs. Social Security System*, 110 Phil., 616, that 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 as a member thereof and is still liable to pay premiums when he returns. Consequently, his employer is still liable to pay his contribution to the Commission on account of its employee who is on leave without pay."

"With respect to the case of *Magruder vs. Yellow Cab Co.*, supra, relied upon by the petitioner-appellant, we agree with the Solicitor General and with the Commission that the decision therein is not applicable to this case. As correctly observed by the Commission we did not adopt the American method of collecting contributions to the System. Our method is different, for while in the United States, contributions are treated as taxes, collectible only when the employee is paid his salary or wage, in our country, we consider such contributions as premiums collectible even when the employee is not actually paid his wage or salary."

In view of all forgoing, the resolutions appealed from are hereby affirmed, with costs.

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

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