

**ASSOCIATED ANGLO-AMERICAN TOBACCO CORPORATION,
PETITIONER, VS. HON. JACOBO C. CLAVE, IN HIS CAPACITY AS
PRESIDENTIAL EXECUTIVE ASSISTANT, ASSOCIATED FEDERATION
OF LABOR (AFL) AN...**

G.R. No. 50915. August 30, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition for certiorari under Rule 65 of the Rules of Court seeks the annulment of the decision of the Presidential Executive Assistant of the Office of the President affirming the ruling of the Secretary of Labor which ordered the payment of backwages to private respondents.

The factual background is as follows:

During the period from 1972 to 1974, petitioner corporation entered into separate but identical contracts of promotional dealership with Epifanio Cabillan, Sofronio Perdigon and Walfrido Alvarez for the purpose of selling the cigarettes manufactured by petitioner.

These dealers hired private respondents as drivers or helpers but subsequently dismissed them. Respondent Guarino was employed for four (4) months by dealer Epifanio Cabillan; respondent Vicente Marquez was employed for three (3) months by dealer Sofronio Perdigon; respondent Alfredo Enriquez was employed for five (5) months and respondent Nicasio San Juan for one and a half (1 1/2) months by dealer Walfrido Alvarez.

On October 15, 1973, the National President of respondent Associated Federation of Labor (AFL), for and in behalf of respondents filed a complaint with the Labor Arbiter against petitioner corporation and its promotional dealers, for unfair labor practice in dismissing respondent employees and for violation of P.D. No. 21, the Minimum Wage Law and the Eight Hour Labor Law.

Petitioner corporation, in its answer, denied the existence of employer-employee relationship between the former and respondent employees.

After the hearing, the Labor Arbiter rendered a decision which held the petitioner liable for all claims and charges in the complaint except for the unfair labor practice charge, and ordered petitioner corporation to reinstate respondent employees with full backwages.

Petitioner appealed to the National Labor Relations Commission but the same was dismissed. On appeal to the Secretary of Labor, the latter on July 8, 1976 affirmed the decision of the NLRC.

Still not satisfied, petitioner elevated the case to the Office of the President. In its decision, the Office of the President affirmed the appealed decision of the Secretary of Labor with the modification that the award of backwages to be paid to private respondents be limited to six (6) months.

Hence, this petition, alleging grave abuse of discretion of the Office of the President.

The issue to be resolved in this case is whether or not private respondents, who were hired by the promotional dealers of the corporation, should be considered as employees of the corporation itself.

Petitioner contends that the contracts of dealership contain a stipulation that should the dealers employ drivers and helpers, the latter would be employees/workers of said dealers, who shall be responsible for the wages, social security contributions, workmen's compensation claims and compliance with applicable labor laws. It submits therefore that private respondents herein are the employees of the promotional dealers, not of the corporation.

The Labor Arbiter made a thorough and exhaustive study of the case in arriving at the following conclusions, which were affirmed by the NLRC, the Secretary of Labor and Office of the President, as follows:

"The Complainants, as established in the testimonies of the witnesses, were hired by their respective contractors, separately on different dates, except Complainant Alfredo Enriquez who was hired by and drove for seven (7) contractors from January 1969. They reported for work at the Corporation's Compound in Pasay City at 6:00 o'clock in the morning, began their workday by getting the key of the vehicle they were assigned to drive from the Corporation's Security Guard, cleaned the vehicle, got boxes of cigarettes from the stockroom (Bodega) of the Corporation to load in the vehicle and upon arrival of Contractor between 6:30 and 7:00 o'clock in the morning, they would leave the Corporation Compound for their respective destinations to sell cigarettes. While selling cigarettes, the complainants worked as driver and helper of the contractor. At lunch time, the contractor and the driver helper (Complainant) would rest for about thirty minutes and eat their meal. The meal was paid for by the contractor. The earliest time the contractor and complainant returned to the Corporation's Compound was 4:00 o'clock in the afternoon; afterwards, if the Contractor did not replenish his cigarette stocks inside the vehicle, the complainant deposited the key of the vehicle with the Corporation's Security Guard and completed the workday. This routine was from Monday to Saturday or six days a week. On Saturday afternoon the Contractor paid the driver-helper his weekly wage of Forty Two (P42.00) pesos or at Seven (P7.00) per day.

"x x x.

"On the Control Test

"A - The Respondent Corporation failed to prove that Respondent Contractors (Promotional Dealers) are independent contractors. On record the following were established: 1.- The Contracts (Exhibits 5, 6 and 7) are identical and are pre-requisites before Respondent Contractors are employed by Respondent Corporation; 2.- The Respondent Contractors have no capital or investment of own; 3.- The Vehicles used by Respondent Contractors were provided by the Respondent Corporation; 4.- The vehicles used are exclusively for selling the products of the Respondent Corporation; 5.- Respondent Contractor's time, attention, efforts and energies to the performance of his duties are subject to the control of Respondent Corporation (Exhibits 5, 6 and 7, paragraph 1, page 2); 6.- The Respondent Corporation pays the cost of gasoline, oil, maintenance and repairs, used or incurred by Respondent Contractor in the use of the vehicle; 7.- The Respondent Corporation pays the permit and licenses of the Respondent Contractors, needed in selling its products; 8.- The Respondent Contractors are prohibited from selling Respondent Corporation's products at prices Higher than the price fixed by the Corporation; and 9.- The Respondent Contractors are receiving salaries from Respondent Corporation in the form of Commission and allowances;

"B - The complainants were indirectly engaged or hired by Respondent Corporation, through the Respondent Contractors, by making it a condition for employment of the Respondent Contractors to sign a contract that virtually compels them to hire chauffers and helper/helpers (complainants) as the corporation's responsibilities and obligations under the labor laws. The fact is that the Respondent Contractor has no freedom to elect to drive the vehicle himself which is provided him by the Respondent Corporation.

“x x x.

“C - The Respondent Corporation had a part in the power of control the employees’ (complainants) conduct. The complainants are required by the Respondent Corporation to park the vehicles in the Compound of the Respondent Corporation and the keys of the vehicles are taken and kept in the possession of the Security Guard of the Respondent Corporation until the Complainants report back to work in the following morning.

“On the Nature of Work Test

“x x x.

“B - The Complainants and the contractors, in relation to this business are not engaged in a business of their own. The fact remains that Respondent Contractors are employed and paid wages on commission basis by Respondent Corporation. The complainants are paid daily wages by whoever is the Contractor assigned to the truck that Complainants are driving, and all the profits from the sale of cigarettes goes to the Respondent Corporation.” (pp. 84-92, Rollo)

We find the petition devoid of merit.

It is a fundamental rule that relations of parties must be judged from case to case and the decree of law and not by declaration of parties (Tabas, et al. v. California Manufacturing Co., Inc., G.R. No. 80680, January 26, 1989). Although the contracts of dealership subject of this case refer to Cabillan, Perdigon and Alvarez as promotional dealers who shall be solely responsible for respondents’ wages and claims, the main issue of whether these dealers and the latter’s drivers are employees of the corporation can only be resolved by applying the four-fold test to determine the existence of an employer-employee relationship. In a long line of decisions, this Court, has invariably applied the four factors: 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 (Sara, et al. v. Agarrado and NLRC, No. 73199, October 26, 1988, 166 SCRA 625). It is the latter factor, which is called the “control test” that is the most important.

It appears that public respondent and our labor officers had applied the foregoing criteria in the facts of this case and correctly arrived at the conclusion that the dealers and the drivers/helpers of the latter were employees of petitioner corporation. We find no compelling reasons to reverse these findings.

Records amply show that the dealers and private respondents were required not only to keep regular working hours but to abide by petitioner’s regulations and policies as well. In other words, these dealers and the latter’s workers were under the direct control and supervision of petitioner corporation from the very moment they entered the work premises at the beginning of the working day until closing time. This was even expressly stated in the contracts of dealership (pp. 20-43, Rollo).

Petitioner also submits that the dealers were not its employees but independent contractors.

Section 8 of Rule VIII, Book II of the Omnibus Rules Implementing the Labor Code provides:

“Section 8. Job contracting. - There is job contracting permissible under the Code if the following conditions are met:

“1) The contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with performance of the work except as to the results thereof; and

“2) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work

premises and other materials which are necessary in the conduct of his business.”

“Job contracting” must be distinguished from “labor-only contracting” which is defined in Section 9 of Rule VIII, Book III of the Omnibus Rules Implementing the Labor Code, as follows:

“Sec. 9. Labor-only contracting - a) Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting where such person:

“1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and

“2) The workers recruited and placed by such person are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed.

“b) Labor-only contracting as defined herein is hereby prohibited and the person acting as contractor shall be considered merely as an agent or intermediary of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

“x x x.”

Records show that the contracts of dealership expressly directed the dealers to hire chauffers and/or helpers. Petitioner supplied the necessary vehicles for the selling of cigarettes and defrayed all expenses for repairs thereof, fuel and toll payments. There was, furthermore, no evidence adduced by petitioner corporation to show that the dealers had substantial capital investment in selling petitioner’s cigarettes or that they carried on their own business operations separate and distinct from that engaged in by petitioner corporation. The work carried out by the dealers and the latter’s drivers was performed during regular working hours six (6) days a week, which circumstance made it impossible for them to carry on any additional and independent business outside the premises of petitioner. Clearly, the promotional dealer’s were only engaged in “labor-only contracting.”

As a consequence thereof, a finding that a contractor was a “labor-only” contractor is equivalent to a finding that an employer-employee relationship existed between the owner and the “labor-only” contractor including the latter’s workers, that relationship being attributed by the law itself. The rationale behind this is to prevent any violation or circumvention of any provision of our labor laws. The law in effect holds both the employer and labor-only contractor responsible to the latter’s employees for the more effective safeguarding of the employees’ rights under the Labor Code (*Broadway Motors, Inc. v. NLRC*, No. 78382, December 14, 1987, 156 SCRA 522; *Philippine Bank of Communications v. NLRC*, No. 66598, December 19, 1986, 146 SCRA 347).

Therefore, the ruling of respondent Office of the President that petitioner corporation and private respondents were employer and employees, respectively, cannot be regarded as constituting grave abuse of discretion or as rendered without or in excess of jurisdiction.

ACCORDINGLY, the petition is DISMISSED and the decision of the Office of the President in O.P. Case No. 1096 is AFFIRMED.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

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