

BALIWAG TRANSIT, INC., PETITIONER, VS. THE HON. COURT OF APPEALS AND ROMAN MARTINEZ, RESPONDENTS.

G.R. No. 57493. January 07, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari, seeking the reversal of the decision of the Court of Appeals dated June 4, 1981, the dispositive portion of which reads:

"WHEREFORE, the resolution (decision) of the Social Security Commission in SSC Case No. 3272 is hereby set aside and another one entered: ordering respondent Baliwag Transit, Inc. to remit to the Social Security Commission the premium contributions for the petitioner for the years 1958 to May 1963 and from 1967 to March 1971, inclusive, plus penalties thereon at the rate of 3% per month of delinquency."

Two passenger bus lines with similar buses and similar routes were being operated by firm names "Baliwag Transit" and "Baliwag Transit, Inc." (BTI) the herein petitioner. The former was owned by the late Pascual Tuazon who continued to operate it until his death on January 26, 1972, while the latter was owned by petitioner corporation, incorporated in the year 1968 and existing until the present time. Both bus lines operate under different grants of franchises by the Public Service Commission (Brief for Petitioner, p. 11), but were issued only one ID Number 03-22151 by the Social Security System (Rollo, p. 66).

Private respondent claiming to be an employee of both bus lines with one ID Number, filed a petition with the Social Security Commission on August 14, 1975 which was docketed as SSC Case No. 3272 to compel BTI to remit to the Social Security System private respondent's SSS Premium contributions for the years 1958 to March, 1963 and from 1967 to March, 1971. He alleged that he was employed by petitioner from 1947 to 1971 as conductor and later as inspector with corresponding salary increases and that petitioner deducted from his salaries, premium contributions, but what was remitted to the SSS was only for a period covering June, 1963 to 1966, at a much lesser amount.

In its answer, BTI denied having employed private respondent Ramon Martinez, the truth being that he was employed by Pascual Tuazon who since 1948 owned and operated buses under the trade name Baliwag Transit which were separate and distinct from the buses operated by petitioner company owned by Mrs. Victoria Vda. de Tengco. Both bus lines had different offices, different maintenance and repair shops, garages, books of account, and managers. The employment of private respondent lasted until 1971 when his employer Pascual Tuazon became bankrupt. It was the latter which deducted from private respondent the amount corresponding to his SSS contributions for the years in question but allegedly did not remit the same. Finally, herein petitioner BTI claims that private respondent allowed 17 years to elapse and at a time when Pascual Tuazon was already dead before filing the subject petition with the Social Security Commission. (Rollo, p. 18).

After trial on the merits, the Social Security Commission on September 12, 1979, entered a resolution in SSC Case No. 3272, the dispositive portion of which reads:

"PREMISES CONSIDERED, this Commission finds and so holds that there existed no employer-employee relationship between the petitioner and respondent as would warrant further remittance of SSS contributions for and in behalf of petitioner Roman Martinez.

"Consequently, this petition is hereby dismissed for lack of merit."SO ORDERED."

On appeal, the Court of Appeals finding that the late Pascual Tuazon operated his buses under the "Kabit" System, reversed and set aside the foregoing resolution as follows:

"WHEREFORE, the resolution (decision) of the Social Security Commission in SSC Case No. 3272 is hereby set aside and another one entered ordering respondent Baliwag Transit, Inc. to remit to the Social Security Commission the premium contributions for the petitioner for the years 1958 to May 1963 and from 1967 to March 1971, inclusive, plus penalties thereon at the rate of 3% per month of delinquency.

"SO ORDERED."

Herein petitioner filed a Motion for Reconsideration with respondent Court of Appeals, which Motion was later denied.

Hence, this petition.

In the resolution of August 26, 1981 of the Second Division of this Court, respondents were required to comment (Rollo, p. 64) which was complied with on September 21, 1981 (Rollo, pp. 65-71). On October 5, 1981, petitioner filed its Reply (Rollo, pp. 73-75) in compliance with the resolution of September 30, 1981 (Rollo, p. 71). In the resolution of December 7, 1981, the petition was given due course (Rollo, p. 81). The brief for petitioner-appellant was filed on March 27, 1982 (Rollo, p. 89) while private respondent filed a manifestation and motion to be excused for not filing private respondent's brief and to be allowed to adopt as his arguments the comments he filed on September 19, 1981 and his brief with the Court of Appeals (Rollo, p. 92). Said manifestation and motion was noted in the resolution of June 23, 1982 (Rollo, p. 93) and this case was submitted for deliberation in the resolution of February 3, 1984 (Rollo, p. 94).

Petitioners raised the following assignment of errors:

I. THAT THE FINDINGS OF THE RESPONDENT HONORABLE COURT OF APPEALS TO THE EFFECT THAT THE VEHICLES OF THE LATE PASCUAL TUAZON WERE "ATTACHED" OR "KABIT" WITH PETITIONER, BALIWAG TRANSIT, INC. MAY NOT HAVE BEEN SUPPORTED BY SUBSTANTIAL EVIDENCE.

II. GRANTING THAT THE VEHICLES OF THE LATE PASCUAL TUAZON WERE INDEED "ATTACHED" OR "KABIT" WITH PETITIONER BALIWAG TRANSIT, INC. EMPLOYER-EMPLOYEE RELATIONS MAY NOT EXTEND TO COVER OR INCLUDE THE EMPLOYEES OF THE ACTUAL OWNER OF THE VEHICLES AS EMPLOYEES ALSO OF THE HOLDER OF THE CERTIFICATE OF PUBLIC CONVENIENCE WHICH IS IN THIS CASE, PETITIONER BALIWAG TRANSIT, INC.

However, the main issue in this case is whether or not the issuance by the Social Security System of one SSS-ID-Number to two bus lines necessarily indicates that one of them, operates his buses under the "Kabit System".

The answer is in the negative.

The "Kabit System" has been defined by the Supreme Court as an arrangement "whereby a person who has been granted a certificate of convenience allows another person who owns motor vehicles to operate under such franchise for a fee." (Lita Enterprises, Inc. v. Second Civil Cases Division, IAC, et al., G.R. No. 64693, April 27,

1984).

The determining factor, therefore, is the possession of a franchise to operate which negates the existence of the "Kabit System" and not the issuance of one SSS ID Number for both bus lines from which the existence of said system was inferred.

In the instant case, the findings of the Court of Appeals are as follows:

"x x x It is very obvious from the foregoing narration of facts that the late Pascual Tuazon, during the time material to this case, operated his buses under the "kabit" system; that is, while actually he was the owner and operator of public utility buses, maintaining his own drivers, conductors, inspectors and other employees, his buses were not registered with the Public Service Commission (now the Bureau of Land Transportation) in his own name. Instead, his buses were absorbed and registered as owned and operated by the "Baliwag Transit", which was the firm name owned and used by his niece, Victoria Vda. de Tengco."

"It is well settled that the findings of facts of the Court of Appeals x x x are conclusive on the parties and on this Court, unless: x x x (2) the inference made is manifestly mistaken; x x x (4) the judgment is based on misapprehension of facts; x x x (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 facts of the Court of Appeals are contrary to those of the trial court; x x x." (Sacay v. Sandiganbayan, G.R. No. 66497-98, July 10, 1986).

In the case at bar, it is undisputed that as testified to, not only by seven (7) witnesses presented by the petitioner but also by the Social Security System witness Mangowan Macalaba, Clerk I, of the R & A Division of the Board of Transportation, who had access to the records of said office with respect to applications and grant of franchises of public utility vehicles, that Victoria Vda. de Tengco and Pascual Tuazon were granted separate franchises to operate public utility buses, under Cases Nos. 15904, 114913, 11564, 103366, 64157 and 65894 for the former and Case No. 69-4592 and Case No. 697775 for the latter, both operating between Manila and Baliuag routes. However, the franchises of Pascual Tuazon were cancelled on December 16, 1971 and May 14, 1972 respectively (Rollo, p. 22), when the latter terminated his operation.

It is thus evident that both bus lines operated under their own franchises but opted to retain the firm name "Baliwag Transit" with slight modification, by the inclusion of the word "Inc." in the case of herein petitioner, obviously to take advantage of the goodwill such firm name enjoys with the riding public. Conversely, the conclusion of the Court of Appeals that the late Pascual Tuazon, during the time material to this case operated his buses under the "Kabit System" on the ground that while he was actually the owner and operator, his buses were not registered with the Public Service Commission (now the Bureau of Land Transportation) in his own name, is not supported by the records. Much less can it be said that there is an analogy between the case at bar and the cited case of Doligosa, et al. v. Decolongon, et al. (3 CA Nos. 1135, 1142-43) to the extent that Baliwag Transit, Inc. being the ostensible operator of the buses actually owned by Pascual Tuazon, should be held liable for the contributions collected or ought to be collected from private respondent (Rollo, pp. 53-54), presumably to discourage the proliferating "Kabit System" in public utility vehicles.

While it is admitted that petitioner was the one who remitted the SSS premiums of private respondent, it has also been established by testimonies of witnesses that such arrangement was done purposely to accommodate the request of the late Pascual Tuazon, the uncle of Victoria Vda. de Tengco and the money came from him. On the other hand, there is no reason why such testimonies should not be given credence as the records fail to show that said witnesses have any motive or reason to falsify or perjure their testimonies (Rollo, pp. 23-24).

Moreover, the Social Security Commission after several hearings had been conducted, arrived at the following conclusion:

"It was established during the hearings that petitioner Roman Martinez was employed by, worked for and took orders from Pascual Tuazon and was authorized to get 'vales' from the conductors of the trucks of Mr. Tuazon. This was admitted got 'vales' from the buses of Pascual Tuazon (TSN pp. 24-25, May 7, 1976 and Exhibits "3" to "49").

"On the other hand, there is no evidence introduced to show that petitioner ever received salaries from respondent or from Mrs. Victoria Vda. de Tengco and neither had he been under the orders of the latter. The only basis upon which petitioner anchors his claim despite his actual employment by Pascual Tuazon was the use by the latter of the trade name, Baliwag Transit, in the operation of his (Mr. Tuazon's) own buses which the latter had every reason to do since he laboriously helped and organized said firm until it gained cognizance by the public.

"It is, therefore, clear that even long before the incorporation of the Baliwag Transit in 1968 petitioner was already an employee of the late Pascual Tuazon who despite having separate office, employees and buses which were operated under the line of the Baliwag Transit did not report him for coverage to the SSS. Sadly enough, petitioner who claims to be an employee of the respondent did not refute, by way of submitting rebuttal evidence, the testimonies given by respondent's witnesses that he was an employee of the late Pascual Tuazon and not of said respondent or of Mrs. Victoria Tuazon and not of said respondent or of Mrs. Victoria Vda. de Tengco. Indeed, there is a reasonable basis to believe that he would not attempt to do so if only to be consistent with his stand when he filed a case before the National Labor Relations Commission, a claim against both the late Pascual Tuazon and the respondent. He is now concentrating his action against the respondent in view of the death of Pascual Tuazon who during his lifetime sold his trucks and became bankrupt Exhibit "2") — Resolution, September 14, 1979, pp. 29-31)." (Rollo, pp. 28-30)

It has been uniformly held by this Court that it is sufficient that administrative findings of fact are supported by evidence on the record, or stated negatively, it is sufficient that findings of fact are not shown to be unsupported by evidence.

The Court has also held further that "in reviewing administrative decisions, the reviewing court cannot re-examine the sufficiency of the evidence as if originally instituted therein, and receive additional evidence that was not submitted to the administrative agency concerned. The findings of fact must be respected, so long as they are supported by substantial evidence, even if not overwhelming or preponderant." (*Police Commission v. Lood*, 127 SCRA 758 [1984].

Thus, the employer-employee relationship between the late Pascual Tuazon and herein private respondent, having been established, the remittance of SSS contributions of the latter, is the responsibility of his employer Tuazon, regardless of the existence or non-existence of the "Kabit System".

Moreover, private respondent having allowed seventeen (17) years to elapse before filing his petition with the Social Security System, has undoubtedly slept on his rights and his cause of action has already prescribed under Article 1144(2) of the Civil Code (*Central Azucarrera del Davao v. Court of Appeals*, 137 SCRA 296 [1985]; applied by analogy).

PREMISES CONSIDERED, the decision of respondent Court of Appeals dated June 4, 1981 is hereby REVERSED and SET ASIDE, and the Resolution of the Social Security Commission dated September 12, 1979 is hereby REINSTATED.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

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