

JORGE W. JOSE, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, AGUINALDO DEVELOPMENT CORPORATION AND JOSE G. RICAFORT, RESPONDENTS.

G.R. No. 72588, October 15, 1986

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Premised on lack of employer-employee relationship, the National Labor Relations Commission (NLRC), public respondent herein, denied petitioner's claims for separation pay, unpaid salaries up to December 31, 1977, accumulated sick and vacation leaves, and retirement benefits.

Petitioner Jorge W. Jose started working for Daniel R. Aguinaldo Corporation (DRACOR) on October 1, 1956 as comptroller and later as internal auditor.

Sometime in July of 1975, DRACOR, through its Chairman of the Board, Daniel R. Aguinaldo, transferred many of its executives and officers to Aguinaldo Development Corporation (ADECOR), with the latter assuming the obligations of the former with respect to tenure of service and other benefits earned while in the employ of DRACOR.

Petitioner's claim that he was one of those transferred to ADECOR is supported by a Memo (Annex "G") reproduced below:

"July 1, 1975

"MEMO

"TO:

MR. JORGE W. JOSE

Internal Auditor/Division Manager

Systems Organization Division

"SUBJECT: Company Transfer

In view of the fact that your employment by DRACOR was for the purpose of providing services to and for "ADECOR, you are hereby advised that in view of the termination of the Management Contract between DRACOR and ADECOR, your services shall henceforth be rendered directly to ADECOR. Accordingly, effective as of July 1, 1975, your employer will be ADECOR.

"In accordance with the policy on the transfer of seniority or tenure of service for inter-company transfers in the Aguinaldo Enterprises and as agreed to between the two corporations, your seniority status and your original length of service will be assumed by ADECOR in your new position.

"We trust that you will continue rendering your best to ADECOR who is now your new employer.

AGUINALDO DEVELOPMENT CORPORATION

(Sgd.)

D. R. AGUINALDO

President"

In July of 1976, a new group headed by Jose G. Ricafort, herein private respondent, took over the management and properties of ADECOR.

On December 31, 1977, after having rendered 21 years of service starting at DRACOR, petitioner was officially retired from ADECOR as evidenced by the following Memo (Annex "H"), to wit:

"January 31, 1978

"MEMO:

"TO : Mr. J. G. RICAFORT, President
ADECOR

"SUBJECT: Mr. JORGE W. JOSE

Official Retirement - December 31, 1977

"Since the position of the subject executive, as Executive Assistant, Office of the Chairman of the Board of Directors, has become unnecessary, I have, therefore, considered him officially retired as of December 31, 1977, hence this recommended abolition of his position and automatic retirement from ADECOR which both of us committed to him since 1976.

"In accordance with our commitments to him which to date remain unimplemented, he should therefore be paid his retirement gratuity as per my memo to him dated January 27, 1978 duplicate copy attached hereto, including all that is due him up to December 31, 1977, in unpaid salaries, accumulated and accrued vacation and sick leaves.

"He agreed to waive our commitment to automatically name him as one of the high level executives of the Davao Management Corporation upon his retirement from ADECOR.

"This supersedes my letter to you dated March 3, 1977.

(Sgd.)

D. R. AGUINALDO

Chairman"

Due to ADECOR's refusal to pay petitioner's retirement pay and other benefits despite repeated demands, the latter filed a complaint with the Ministry of Labor and Employment on March 2, 1979 against ADECOR and its President Jose G. Ricafort, docketed as R4-STF-3-1487-79, praying for payment of his retirement benefits as well as damages. Private respondents moved to dismiss on the primary ground that petitioner was not an employee of ADECOR but retained by Daniel R. Aguinaldo at DRACOR to service other corporations owned by him.

On September 10, 1979, Labor Arbiter Teodorico Dogelio rendered a Decision reading in part, as follows:

"xxx xxx xxx

"Definitely, respondents are aware of the existence of the aforesaid Memo of the Chairman of the Board wherein there were affirmed complainant's entitlement to retirement gratuity or separation pay, unpaid salaries

up to December 31, 1977, as well as payment of accumulated sick and vacation leaves. But the contents of said Memo, coming from the Chairman of the Board himself, were never denied or disputed.

"In addition to the aforementioned Memo, copy of which was attached to the complaint, the following annexes were attached to complainant's position paper:

"Annex 'A' -

Memo to Complainant issued by ADECOR President, authorizing transfer from DRACOR to ADECOR, his original length of service to be assumed by the latter Corporation;

"Annex 'B' -

Complainant's letter of acceptance of his transfer from DRACOR to ADECOR, dated June 30, 1975;

"Annex 'C' -

Certificate of Premium Payments, made in behalf of Mr. Jorge W. Jose, by ADECOR;

"Annex 'D' -

Letter dated October 25, 1975 of complainant to J. G. Ricafort, President, re: computation of Retirement Benefits;

"Annex 'E' -

Letter of D. R. Aguinaldo to ADECOR's President, re: Payment of complainant's Gratuity;

"Annex 'F' -

Letter dated January 27, 1978 of D. R. Aguinaldo to complainant, re: Retirement of J.W. Jose, including payment of all benefits and unpaid salaries; and

"Annex 'G' -

Memo to ADECOR President confirming payment of complainant's benefits.

"All the foregoing documents clearly speak of complainant's 'automatic retirement' from ADECOR and his being entitled to gratuity or severance pay, unpaid salaries and payment of accumulated sick and vacation leave credits. Said documents entertain no other interpretation - the words are clear and simple. A number of them depict the true intent of the Board Chairman, and reiterates a commitment he had with the President, respondent Jose G. Ricafort, concerning complainant's retirement from the service of ADECOR.

"Respondent J. G. Ricafort could have easily executed a sworn statement denying his alleged agreement with the Board Chairman or of the existence of the above-mentioned documents, in support of respondent's general allegations of lack of employer-employee relationship, but no such denial or controversion was submitted. Moreover, the allegation of R. M. Carlos that no Memo was issued to the effect that complainant was being transferred from DRACOR to ADECOR, unlike the others, is belied by Annex 'A' of complainant's position paper which is a Memo directly addressed to Jorge W. Jose concerning the transfer. And, as argued by the complainant, there is no need to include D. R. Aguinaldo as a party respondent in this case.

"In view of all the foregoing, respondent's allegation of lack of employer-employee relationship between them and herein complainant, is deemed unmeritorious and their failure to dispute the legitimacy or legality of the herein claims, make respondents thus liable.

"WHEREFORE, responsive to the foregoing, respondent Aguinaldo Development Corporation (ADECOR) is hereby ordered to pay herein complainant, Jorge W. Jose, as follows:

a.

Separation/retirement pay.....

P214,500.00

b.

Unpaid salaries/wages from December, 1976 to December 31, 1977

84,500.00

c.

Accrued vacation leave of 92 days at a daily rate of P257.43.....

23,683.56

d.

Accrued sick leave of 40 days at the same daily rate

10,297.20

e.

Attorney's fees (10% of all unpaid wages).....

8,450.00

TOTAL

P341,430.76

=====

"The claim for damages, both moral and exemplary, are hereby dismissed, pursuant to P.D. No. 1367.

"SO ORDERED."

Respondents appealed to the NLRC which, on May 21, 1982, disposed of the case as follows:

"xxx xxx xxx

"We noted that the respondents question on appeal the genuineness and validity of several documents submitted by the complainant. An intelligent resolution of this case would not be possible without giving the respondents an opportunity to cross-examine the witnesses adduced by the complainant. For this reason and likewise to cure objections to the alleged irregular procedure in the submission of complainant's position paper, we are inclined to give the parties another opportunity to cross-examine the witnesses and/or adduce further evidence, if necessary.

"WHEREFORE, the appealed decision is hereby set aside and the record of this case is remanded to the Labor Arbiter of origin for further appropriate proceedings."

Thereupon, Labor Arbiter Dogelio set the case for conference/hearing. However, upon ADECOR's motion for his inhibition, the case was reassigned to Labor Arbiter Lomabao. Similarly, the latter inhibited himself upon private respondents' Motion who imputed to him "personal prejudice and bias". The case was this time reassigned to Labor Arbiter Domingo, who likewise inhibited herself from hearing the case. Finally, the case was reassigned a fourth time to Arbiter, Pelagio Carpio, who on October 17, 1984, rendered a Decision reading, in part, as follows:

"xxx xxx xxx

"It is argued that complainant had never been an ADECOR employee for the reason that unlike Carlos, Pamintuan, Jr., Lasquety and Trinidad, all of whom were issued inter-office memos advising them of their transfer from Dracor to Adecor, Jose was never issued such memo and, therefore, never became an Adecor employee. It is pointed out that Jose was not among those transferred because someone had to look after and service the other corporations owned by Daniel R. Aguinaldo. Respondents maintain that documentary evidence exists which show that subsequent to complainant's alleged transfer, he continued to be employed by Dracor and in such capacity represented the interest of Daniel R. Aguinaldo. Thus, in a memo dated August 11, 1976 (after the purported transfer of complainant) addressed to Ricafort and other officers of Adecor (Annex '2'), Daniel Aguinaldo designated and authorized Jose in his absence to attend to all matters pertaining to the other corporations owned by the former. In another memo of even date (Annex '3') Jose was designated and authorized to attend for and in behalf of Aguinaldo 'to all matters pertaining to or relating to (his) accounts receivables from Adecor'. Complainant was again designated in a letter dated August 26, 1976 (Annex '4') to represent and act for and in behalf of Daniel Aguinaldo in the board of directors of respondent firm. These designations are incongruous to the position that Jose had become by virtue of a prior transfer, an employee of Adecor. For if complainant was really transferred from the employ of Dracor to Adecor, he would not have represented a particular interest in Adecor. The said correspondence shows that even more than a year after his alleged transfer, complainant was still discharging functions pertaining to his employment with Dracor which was the umbrella corporation formerly providing management services to all corporations comprising the Aguinaldo Enterprises and which represented the interests of Daniel Aguinaldo.

"Complainant's statement in paragraph 3 of his complaint that in December 1977 and several years prior thereto, he was the Internal Auditor/Division Manager and Executive Assistant to the Chairman of the Board of Adecor runs counter to the allegation of respondents that complainant was originally employed by Dracor on October 1, 1956. The latter averment is evidenced by Annex '1'. Respondents admit that Dracor transferred many of its high ranking officers to the employ of Adecor July 1975 but deny that complainant was one of those transferred. If complainant was not one of those transferred, then there would be no employer-employee relationship between respondent Adecor and complainant Jose. But this assumption is overturned by what is contained in the letter dated January 11, 1978 of the Chairman to the President of respondent Adecor (Annex 'A'). Even granting that complainant has been an employee of respondent firm, still he is not entitled to separation pay because he agreed to waive the commitment of Aguinaldo and Ricafort that he be paid his retirement gratuity including all that is due to him up to December 31, 1977 (Annex 'A').

"The waiver as indicated above includes unpaid salaries, accumulated and accrued vacation and sick leaves. There is, therefore, no cause of action of complainant because he is already estopped from claiming what is maybe due to him because of his waiver. The irony of this case is that the evidence of the complainant turned out to be the best evidence of the respondent.

"IN THE LIGHT OF THE FOREGOING CONSIDERATIONS, the instant complaint of Jorge W. Jose against the Aguinaldo Development Corporation and Jose G. Ricafort should be, as it is hereby, **DISMISSED** for lack of merit.

This time, it was petitioner's turn to appeal to the NLRC which, on June 20, 1985, dismissed the appeal, stating:

"xxx xxx xxx

"Annex 'A' of the complainant's position paper shows that Jorge W. Jose was transferred to Aguinaldo Development Corporation effective July 1, 1975 signed by the President, D. R. Aguinaldo. This was a year before the takeover of the new management group headed by respondent Jose G. Ricafort. Respondents contend that since the author of the memorandum was not presented and efforts to implead were vehemently opposed by the complainant, said document is questionable, branded by the respondents as fabricated evidence and as a scheme to pass liability for complainant's benefits to the new management group. Considering that

complainant has spent more time with DRACOR than the Aguinaldo Development Corporation, complainant's refusal to implead DRACOR, his former employer, is certainly suspicious and lends credence to the theory of the respondents as mentioned earlier above.

"In an affidavit executed on April 19, 1979, Rogelio M. Carlos, Assistant Legal Counsel of ADECOR, positively asserted that the complainant was never an ADECOR employee. He admitted that he is one of those primarily responsible for the preparation of documents on the transfer of employees from DRACOR to Aguinaldo Development Corporation. Unlike Messrs. D. D. Pamintuan, Jr., A. Z. Lasquety and A. C. Trinidad, and R. M. Carlos, the latter asserted that they were issued inter-office memos, advising them of their transfer from DRACOR to Aguinaldo Development Corporation, but not the complainant Jorge W. Jose. Respondents alleged that the reason was that someone had to look after and service other corporations owned by Daniel R. Aguinaldo, namely: x x x x x."

"xxx xxx xxx

"A certification of SSS premiums payments allegedly made in behalf of complainant Jorge W. Jose, which covers the period from July 1975 to November 1976, was presented by the complainant. Aside from the fact that the original copy of the remittance was not presented below, it was shown by respondents that complainant as internal auditor of DRACOR, which was the managing company of the Aguinaldo Enterprises, had a direct and active participation in the preparation of the payroll and SSS reports and remittances as he is one of the authorized signatories in the execution of SSS forms and documents required of the company in compliance with the social security law. In addition, coverage under the Social Security Law, is not the principal factor determinative of employer-employee relationship.

"In his complaint, Jorge W. Jose, alleged that 'in December 1977 and several years prior thereto,' he was the Internal Auditor/Division Manager and Executive Assistant to the Chairman of the Board of ADECOR and as such he received a monthly salary of P6,500.00 (paragraph 3 of complaint). However, the employment card of the complainant with D. R. Aguinaldo Corporation (DRACOR) shows he was appointed on October 1, 1956 as Comptroller and the same record does not indicate that he was transferred to Aguinaldo Development Corporation as he claimed. (Annex '1', position paper of respondents). Incidentally, complainant's claim for unpaid salaries from December 1976 to December 31, 1977, the reason for such nonpayment was not explained by him, coincided with his alleged appointment in December 1977. Moreover, this can not be true because in his own complaint he alleges that he was terminated/retired from the service effective December 31, 1977. (paragraph 5 of the Complaint)

"For the above added reasons, we see no cogent reason to disturb the appealed decision.

"WHEREFORE, let the instant appeal be, as it is hereby, DISMISSED for lack of merit."

A Motion for Reconsideration, filed by petitioner, was denied for lack of merit in a minute resolution of the NLRC on August 30, 1985.

Hence, the instant Petition on the following grounds:

"I

"Respondent NLRC capriciously, whimsically, unjustifiably and with grave abuse of discretion amounting to lack of jurisdiction, denied the petitioner's Motion for Reconsideration for alleged lack of merit;

"II

"Respondent National Labor Relations Commission committed serious errors of law in its questioned decision of June 20, 1985, to wit:

a) for its arbitrary and gross disregard of very material and/or vital facts clearly established by the evidence on

record showing without any doubt at all the existence of employer-employee relationship between Jorge Jose and respondent ADECOR;

b) its gross misappreciation of the evidence adduced by the petitioner made the commission rule wrongly that such employer-employee relationship did not in fact exist; and

c) the questioned decision of June 20, 1985 is not properly substantiated by the evidence on record and is therefore contrary to law.

"III

"In so doing, the Honorable Commission violated petitioner's right to due process."

The basic issue for resolution is whether or not petitioner was an employee of ADECOR.

The Solicitor General took the affirmative view as against the negative position consistently maintained by the NLRC even before this Court.

To prove his cause, petitioner submitted, among others, the following documents attached as Annexes to his Position Paper:

- Memo to petitioner dated July 1, 1975 issued by ADECOR President D. R. Aguinaldo, authorizing transfer from DRACOR to ADECOR, his original length of service to be assumed by the latter corporation (Annex "A").
- Certificate of SSS premiums payments made in behalf of petitioner by ADECOR (Annex "C").
- Letter of D. R. Aguinaldo to ADECOR President, Jose G. Ricafort dated March 3, 1977 urging implementation of petitioner's retirement gratuity on the basis of 6 weeks' salary for every year of service, including his unused vacation and sick leaves. In this letter D. R. Aguinaldo acknowledged petitioner's services directly and thru DRACOR (Annex "E").
- Letter dated January 27, 1978 of D. R. Aguinaldo addressed to petitioner, Executive Assistant, Office of the Chairman, ADECOR, terminating his services as Executive Assistant to the Chairman of the Board of Directors of ADECOR and considering him officially retired as of December 31, 1977, giving the assurance that all amounts due him would be paid by ADECOR (Annex "F").
- Memo dated January 31, 1978 of Chairman D. R. Aguinaldo to J. G. Ricafort, ADECOR President, reminding the latter of their commitment to petitioner to pay him retirement gratuity (Annex "G").
- BIR Withholding tax statements for the years 1975 and 1976 showing income taxes were withheld from petitioner's salaries by his employer--Aguinaldo Development Corporation (ADECOR) (Annex "A" and "B", Reply to Respondent's Position Paper dated June 17, 1984).
- Check stubs showing check payments made by respondent ADECOR of petitioner's salaries, transportation and representation expenses (Annex "C", "D", "E", "F", id.).
- Check stub for check payment made by ADECOR to petitioner for his unused sick leave for the year 1975 and prior years.

As against the foregoing official corporate papers, which were executed ante litem motam, and which prove an employer-employee relationship, private respondents presented the lone and self-serving affidavit of Rogelio M. Carlos, Assistant Legal Counsel for ADECOR, to the effect that petitioner was never an ADECOR employee. The other arguments of respondents entirely miss the point, for, as correctly argued by the Solicitor General:

"On the other hand, no inference of lack of employer-employee relationship is logically or legally permissible

from the facts of: (1) petitioner's refusal to implead DRACOR, his former employee; (2) petitioner's employment card with DRACOR contains no indication that he was transferred to ADECOR; (3) petitioner's designation by D. R. Aguinaldo in memos and letter to attend to all matters pertaining to the sister corporations of ADECOR, and to represent said owner in various capacities during his absence while he was abroad. The fact that sometime in 1976 petitioner was given special assignments by D. R. Aguinaldo, Chairman of the Board of Directors of ADECOR, cannot, in the absence of evidence, be construed as 'in congruous' to his positions as Internal Auditor/Division Manager and Executive Assistant to the Chairman of the Board of ADECOR, as found by public respondent. D. R. Aguinaldo, as owner of ADECOR and its sister corporations, besides being the Chairman of the Board of Directors of ADECOR, had ample power to appoint anyone of his employees to temporarily perform additional duties outside of his regular functions at ADECOR, without the consent of anybody, as what he did with petitioner who apparently deserved his trust and confidence as to be chosen to represent D. R. Aguinaldo in the Board of Directors and to take care of the latter's finances from the ADECOR. Moreover, the fact that petitioner was designated to attend to all matters pertaining to the different corporations owned by D. R. Aguinaldo to the exclusion of ADECOR conclusively proves that petitioner was then an employee of the latter corporation.

"In refuting petitioner's claim of the existence of employer-employee relationship with respondent corporation, private respondents did no more than state petitioner's evidence to this effect - memo dated July 1, 1975 issued by ADECOR president, D. R. Aguinaldo, authorizing petitioner's transfer from DRACOR to ADECOR (Annex A, Complainant's Position Paper) - as fabricated. However, they failed to adduce evidence of the falsified nature of the document. Consequently, said memo furnishes satisfactory proof of petitioner's valid transfer of ADECOR and private respondents are under estoppel to deny such fact which would prejudice petitioner."

Clearly, the NLRC gravely abused its discretion in closing its eyes to the strong documentary proof presented by petitioner in setting aside the Decision of Labor Arbiter Dogelio in petitioner's favor, and in remanding the case back to the Labor Arbiter for further reception of evidence. The finding of Labor Arbiter Carpio that petitioner had waived his benefits was sheer misinformation. What petitioner waived was ADECOR's commitment to automatically name him as an executive of the Davao Management Corporation upon his retirement from ADECOR.

We adopt with approval the following conclusion of the Solicitor General that petitioner was a "victim of injustice".

"A perusal of the record will easily convince one 'and sundry that the petitioner has been a victim of injustice. He has already won a judgment against his employer, herein respondent corporation (Annex F, Petition), but lost it due to the unfair tactics of private respondents. There, Labor Arbiter Teodorico Dogelio upheld the petitioner's claims and found unmeritorious the private respondents' defense of lack of employer-employee relationship between petitioner and the latter, and consequently, ordered payment to petitioner his separation/retirement pay, unpaid salaries, accrued vacation and sick leaves, and attorney's fees.

"xxx xxx xxx

"On May 21, 1982, the respondent NLRC issued a resolution setting aside the appealed decision and ordering the case remanded to the labor arbiter of origin (Teodorico Dogelio) to give private respondents opportunity to cross-examine the petitioner or produce further evidence. The parties were duly notified of the conference on July 27, 1982 before Labor Arbiter Dogelio. But upon oral manifestation of private respondents to inhibit Arbiter Dogelio from hearing the case, the same was reassigned to Labor Arbiter Apolinario Lomabao, Jr. Similarly, Lomabao inhibited himself upon motion of private respondents imputing 'personal prejudice and bias' against the former who strongly denied the same. The case was again reassigned to Arbiter Teresita R. Domingo who, in time, also inhibited herself from hearing the case. The repeated motions of private respondents to inhibit the different labor arbiters to whom the case was assigned and reassigned is certainly

irregular and highly suspicious and leads to the conclusion that they were shopping for suitable arbiter, and in the process, succeeded in delaying the wheel of justice to the prejudice of petitioner. This is obvious from the fact that instead of cross-examining petitioner and adducing additional proofs as they had previously committed themselves to do, they had simply indulged in seeking the inhibition of one labor arbiter after another, and one postponement after another. When they finally presented their additional evidence incorporated in their position paper (filed June 22, 1983), it was over a year from the time they were first notified of the rehearing of the case before labor arbiter of origin Teodorico Dogelio.

"Finally, on October 17, 1984, Labor Arbiter Pelagio A. Carpio, the 4th arbiter reassigned to the case (three others before him having inhibited themselves at private respondents' behest), rendered judgment (Annex C, Petition) dismissing petitioner's complaint against the respondent corporation for lack of merit, a sheer reversal of the decision of Arbiter Dogelio (Annex A, Id).

"xxx xxx xxx

"CONCLUSION

"In refusing to give weight to petitioner's claim that he is an ADECOR employee, in glossing over the fact that it is fully corroborated by indubitable documents, the public respondent committed grave abuse of discretion amounting to lack of jurisdiction." (Emphasis supplied)

WHEREFORE, respondent Commission's Decision and Resolution dated June 20, 1985 and August 30, 1985, respectively, as well as the Decision of Labor Arbiter Pelagio Carpio, dated October 17, 1984, are hereby ANNULLED and SET ASIDE for having been rendered in grave abuse of discretion amounting to lack of jurisdiction, and the original Decision of Labor Arbiter Teodorico Dogelio, dated September 10, 1979, is hereby reinstated. Costs against private respondents.

SO ORDERED.

Yap (Chairman), Narvasa, Cruz, and Paras, JJ., concur.
Feliciano, J., on leave.

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