

DR. RENATO SARA AND/OR ROMEO ARAÑA, PETITIONERS, VS. CERILA AGARRADO AND THE NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

G.R. No. 73199, October 26, 1988

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

Challenged in this petition for certiorari is the jurisdiction of the Labor Tribunal over Case No. LRD-ROXII-006-82, a claim for unpaid commissions and reimbursement of certain sums of money filed by herein private respondent Cerila Agarrado against herein petitioners Dr. Renato Sara and Romeo Araña.

Private respondent Cerila Agarrado was an attendant in the clinic of petitioner Dr. Renato Sara. She quit her job in 1973.

Four years later, petitioners Dr. Sara and Romeo Araña, being owners of a rice mill and having begun to engage in the buy and sell of palay and rice, entered into a verbal agreement with private respondent Agarrado whereby it was agreed that the latter would be paid P2.00 commission per sack of milled rice sold as well as a commission of 10% per kilo of palay purchased. It was further agreed that private respondent would spend her own money for the undertaking, but to enable her to carry out the agreement more effectively, she was authorized to borrow money from other persons, as in fact she did, subject to reimbursement by petitioners.[1]

In 1982, private respondent filed with the National Labor Relations Commission (NLRC) Regional Arbitration Branch No. XI, Cotabato City, a complaint against petitioners for unpaid commission of P4,598.00 on milled rice sold P2,982.80 on palay sold, reimbursement of P17,500.00 which she had borrowed from various persons and P1,749.00 of her own money which petitioners allegedly had not reimbursed (LRD-ROXII-006-82).

By way of defense, petitioners raised the issue of lack of jurisdiction on the part of the Labor Arbiter to take cognizance of the case, there being no employer-employee relationship between the parties. They averred that the claim for alleged unpaid commission and certain sums of money is governed by the law on agency under the Civil Code and hence a purely civil obligation cognizable by the regular courts.

On January 17, 1973, Labor Arbiter Magno C. Cruz rendered a decision in favor of private respondent ordering petitioners to pay all the claims amounting to P26,397.80).[2]

Petitioner appealed the decision to the NLRC, which in a resolution dated June 25, 1986 affirmed the Labor Arbiter's decision and dismissed the appeal.[3]

Their motion for reconsideration having been denied, petitioners took the present recourse, maintaining lack of jurisdiction on the part of the Labor Tribunal as well as grave abuse of discretion on its part in finding them liable to private respondent.

In his comment, the Solicitor General agreed with petitioners that there was no employer-employee relationship

between the parties and that by reason thereof the Labor Arbiter had no jurisdiction over the case. The Solicitor General's comment was accompanied by a manifestation and motion stating that he was filing the comment on his own behalf and that he public respondent NLRC had been informed about his contrary stand.[4]

The primordial issue in this case is whether an employer-employee relationship exists between petitioners and private respondent as to warrant cognizance by the Labor Arbiter of LRD-ROXII-006-82.

To determine the existence of an employer-employee relationship, this Court in a long line of decisions[5] has invariably applied the following four-fold test: [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.

In the case at bar, we find that although there was a selection and engagement of private respondent in 1977, the verbal agreement between the parties negated the existence of the other requisites.

As to the payment of wages, the verbal agreement entered into by the parties stipulated that private respondent would be paid a commission of P2.00 per sack of milled rice sold as well as a 10% commission on palay purchase. The arrangement thus was explicitly on a commission basis dependent on the volume of sale, or purchase. Private respondent was not guaranteed any minimum compensation nor was she allowed any drawing account or advance of any kind against unearned commissions. Her right to compensation depended upon and was measured by the tangible results she produced -- the quantity of rice sold and the quantity of palay purchased.

The power to terminate the relationship was mutually vested upon the parties. Either may terminate the business arrangement at will, with or without cause.

Finally, noticeably absent from the agreement between the parties is the element of control. Among the four (4) requisites, control is deemed the most important that the other requisites may even be disregarded.[6] Under the control test, an employer-employee relationship exists if the "employer" has reserved the right to control the "employee" not only as to the result of the work done but also as to the means and methods by which the same is to be accomplished.[7] Otherwise, no such relationship exists.

We observe that the means and methods of purchasing and selling rice or palay by private respondent were totally independent of petitioners' control. As established by the NLRC:

xxx sometime in June 1977, respondent re-engaged the services of herein complainant to sell milled rice to the customers of the former, as well as to buy palay for and in behalf of Dr. Renato Sara, with the verbal agreement that to carry out effectively the said task, complainant was duly authorized by respondent, Dr. Sara to spend her own money, if necessary but subject to reimbursement, and if that would not be sufficient, to borrow money from other sources with further understanding that Dr. Sara will repay them thru the complainant; xxx. (*Italics supplied*), p.21 Rollo)

Note that private respondent was never given capital by his supposed employer but relied on her own resources and if insufficient, she borrowed money from others. Petitioners did not supply private respondent with tools and appliances needed to enable her to carry her undertaking, except to authorize her to borrow money from others, subject to reimbursement.

The absence of control is made more evident by the fact that private respondent was not even obliged to sell the palay she purchased to petitioners. She was at liberty to sell the palay to any trader offering higher buying rates. She was thus free to sell it to anybody whom she pleased.

Moreover, private respondent worked for petitioners at her own pleasure and was not subject to definite hours or conditions of work. She could even delegate the task of buying and selling to others if she so desired, or

simultaneously engage in other means of livelihood while selling and purchasing rice or palay.

Under the conditions set forth in their agreement, private respondent was an independent contractor, who exercising independent employment, contracted to do a piece of work according to her own method and without being subject to the control of her employer except as to the result of her work. She was paid for the result of her labor, unlike an employee who is paid for the labor he performs.[8]

The verbal agreement devoid as it was of any stipulations indicative of control leaves no doubt that private respondent was not an employee of petitioners but was rather an independent contractor.

The Labor Tribunal's jurisdiction being primarily predicated upon the existence of an employer-employee relationship between the parties, the absence of such element, as in the case at bar removes the controversy from the scope of its limited jurisdiction.

WHEREFORE, the instant petition for certiorari is granted, Case No LRD-RCXII-006-82 of the National Labor Relations Commission is hereby ordered DISMISSED for lack of jurisdiction.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] pp. 20-21, Rollo

[2] p. 19, Rollo

[3] p. 24, Rollo

[4] p. 61, Rollo

[5] Viana v. AI-Lagadan, 99 Phil. 408, citing 35 Am Jr 445, Investment Planning Corp. v. SSS, G.R. No. L-19124, November 18, 1967, 21 SCRA 924; SSS v. Court of Appeals, G.R. No. 28134, June 30, 1971, 39 SCRA 629; Mafinco Trading Corp. v. Ople, G.R. No. 37790, March 25, 1976, 70 SCRA 139; SSS v. Cosmos Aerated Water Factory, Inc., G.R. No. L-55764, February 16, 1982, 112 SCRA 47

[6] Feati v. Bautista, G.R. No. 21279, December 27, 1966, 13 SCRA 41

[7] LVN Pictures, Inc. v. Phil. Musicians Guild, G.R. No. 12582, January 26, 1961, 1 SCRA 312; Investment Planning Co., Inc., supra; SSS v. Court of Appeals, G.R. No. 25406, December 24, 1968, 30 SCRA 210, Phil. Refining co., Inc. v. C.A., No. L-29590, September 30, 1982, 117 SCRA 84

[8] Investment Planning, supra; Mansal v. Gocheco Lumber, 96 Phil. 941

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