

SINGER SEWING MACHINE COMPANY, PETITIONER, VS. HON. FRANKLIN M. DRILON, MED-ARBITER FELIX B. CHAGUILE, JR., AND SINGER MACHINE COLLECTORS UNION-BAGUIO (SIMACUB), RESPONDENTS.

G.R. No. 91307. January 24, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for certiorari assailing the order of Med-Arbiter Designate Felix B. Chaguile, Jr., the resolution of then Labor Secretary Franklin M. Drilon affirming said order on appeal and the order denying the motion for reconsideration in the case entitled "In Re: Petition for Direct Certification as the Sole and Exclusive Collective Bargaining Agent of Collectors of Singer Sewing Machine Company-Singer Machine Collectors Union-Baguio (SIMACUB)" docketed as OS-MA-A-7-119-89 (IRD CASE NO. 02-89 MED).

On February 15, 1989, the respondent union filed a petition for direct certification as the sole and exclusive bargaining agent of all collectors of the Singer Sewing Machine Company, Baguio City branch (hereinafter referred to as "the Company").

The Company opposed the petition mainly on the ground that the union members are actually not employees but are independent contractors as evidenced by the collection agency agreement which they signed.

The respondent Med-Arbiter, finding that there exists an employer-employee relationship between the union members and the Company, granted the petition for certification election. On appeal, Secretary of Labor Franklin M. Drilon affirmed it. The motion for reconsideration of the Secretary's resolution was denied. Hence, this petition in which the Company alleges that public respondents acted in excess of jurisdiction and/or committed grave abuse of discretion in that:

- (a) the Department of Labor and Employment (DOLE) has no jurisdiction over the case since the existence of employer-employee relationship is at issue;
- (b) the right of petitioner to due process was denied when the evidence of the union members' being commission agents was disregarded by the Labor Secretary,
- (c) the public respondents patently erred in finding that there exists an employer-employee relationship;
- (d) the public respondents whimsically disregarded the well-settled rule that commission agents are not employees but are independent contractors.

The respondents, on the other hand, insist that the provisions of the Collection Agency Agreement belie the Company's position that the union members are independent contractors. To prove that union members are employees, it is asserted that they "perform the most desirable and necessary activities for the continuous and effective operations of the business of the petitioner Company" (citing Article 280 of the Labor Code). They add

that the termination of the agreement by the petitioner pending the resolution of the case before the DOLE "only shows the weakness of petitioner's stand" and was "for the purpose of frustrating the constitutionally mandated rights of the members of private respondent union to self-organization and collective organization." They also contend that under Section 8, Rule 8, Book No. III of the Omnibus Rules Implementing the Labor Code, which defines job-contracting, they cannot legally qualify as independent contractors who must be free from control of the alleged employer, who carry independent businesses and who have substantial capital or investment in the form of equipment, tools, and the like necessary in the conduct of the business.

The present case mainly calls for the application of the control test, which if not satisfied, would lead us to conclude that no employer-employee relationship exists. Hence, if the union members are not employees, no right to organize for purposes of bargaining, nor to be certified as such bargaining agent can ever be recognized. The following elements are generally considered in the determination of the employer-employee relationship: "(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 - although the latter is the most important element" (*Mafinco Trading Corporation v. Ople*, 70 SCRA 139 [1976]; *Development Bank of the Philippines v. National Labor Relations Commission*, 175 SCRA 537 [1989]; *Rosario Brothers, Inc. v. Ople*, 131 SCRA 72 [1984]; *Broadway Motors Inc. v. NLRC*, 156 SCRA 522 [1987]; *Brotherhood Labor Unity Movement in the Philippines v. Zamora*, 147 SCRA 49 [1986])

The Collection Agency Agreement defines the relationship between the Company and each of the union members who signed a contract. The petitioner relies on the following stipulations in the agreements: (a) a collector is designated as a "collecting agent" who is to be considered at all times as an independent contractor and not employee of the Company; (b) collection of all payments on installment accounts are to be made monthly or oftener; (c) an agent is paid his compensation for service in the form of a commission of 6% of all collections made and turned over plus a bonus on said collections; (d) an agent is required to post a cash bond of three thousand pesos (P3,000.000) to assure the faithful performance and observance of the terms and conditions under the agreement; (e) he is subject to all the terms and conditions in the agreement; (f) the agreement is effective for one year from the date of its execution and renewable on a yearly basis; and (g) his services shall be terminated in case of failure to satisfy the minimum monthly collection performance required, failure to post a cash bond, or cancellation of the agreement at the instance of either party unless the agent has a pending obligation or indebtedness in favor of the Company.

Meanwhile, the respondents rely on other features to strengthen their position that the collectors are employees. They quote paragraph 2 which states that an agent shall utilize only receipt forms authorized and issued by the Company. They also note paragraph 3 which states that an agent has to submit and deliver at least once a week or as often as required a report of all collections made using report forms furnished by the Company. Paragraph 4 on the monthly collection quota required by the Company is deemed by respondents as a control measure over the means by which an agent is to perform his services.

The nature of the relationship between a company and its collecting agents depends on the circumstances of each particular relationship. Not all collecting agents are employees and neither are all collecting agents independent contractors. The collectors could fall under either category depending on the facts of each case.

The Agreement confirms the status of the collecting agent in this case as an independent contractor not only because he is explicitly described as such but also because the provisions permit him to perform collection services for the company without being subject to the control of the latter except only as to the result of his work. After a careful analysis of the contents of the agreement, we rule in favor of the petitioner.

The requirement that collection agents utilize only receipt forms and report forms issued by the Company and that reports shall be submitted at least once a week is not necessarily an indication of control over the means by which the job of collection is to be performed. The agreement itself specifically explains that receipt forms shall be used for the purpose of avoiding a co-mingling of personal funds of the agent with the money collected on behalf of the Company. Likewise, the use of standard report forms as well as the regular time within which to submit a report of collection are intended to facilitate order in office procedures. Even if the report requirements are to be called control measures, any control is only with respect to the end result of the collection since the requirements regulate the things to be done after the performance of the collection job or the rendition of the service.

The monthly collection quota is a normal requirement found in similar contractual agreements and is so stipulated to encourage a collecting agent to report at least the minimum amount of proceeds. In fact, paragraph 5, section b gives a bonus, aside from the regular commission every time the quota is reached. As a requirement for the fulfillment of the contract, it is subject to agreement by both parties. Hence, if the other contracting party does not accede to it, he can choose not to sign it. From the records, it is clear that the Company and each collecting agent intended that the former take control only over the amount of collection, which is a result of the job performed.

The respondents' contention that the union members are employees of the Company is based on selected provisions of the Agreement but ignores the following circumstances which respondents never refuted either in the trial proceedings before the labor officials nor in its pleadings filed before this Court.

"1. The collection agents are not required to observe office hours or report to Singer's office everyday except, naturally and necessarily, for the purpose of remitting their collections.

"2. The collection agents do not have to devote their time exclusively for SINGER. There is no prohibition on the part of the collection agents from working elsewhere. Nor are these agents required to account for their time and submit a record of their activity.

"3. The manner and method of effecting collections are left solely to the discretion of the collection agents without any interference on the part of Singer.

"4. The collection agents shoulder their transportation expenses incurred in the collections of the accounts assigned to them.

"5. The collection agents are paid strictly on commission basis. The amounts paid to them are based solely on the amounts of collection each of them make. They do not receive any commission if they do not effect any collection even if they put a lot of effort in collecting. They are paid commission on the basis of actual collections.

"6. The commissions earned by the collection agents are directly deducted by them from the amount of collections they are able to effect. The net amount is what is then remitted to Singer." (Rollo, pp. 7-8)

If indeed the union members are controlled as to the manner by which they are supposed to perform their collections, they should have explicitly said so in detail by specifically denying each of the facts asserted by the petitioner. As there seems to be no objections on the part of the respondents, the Court finds that they miserably failed to defend their position.

A thorough examination of the facts of the case leads us to the conclusion that the existence of an employer-employee relationship between the Company and the collection agents cannot be sustained.

The plain language of the agreement reveals that the designation as collection agent does not create an employment relationship and that the applicant is to be considered at all times as an independent contractor. This is consistent with the first rule of interpretation that the literal meaning of the stipulations in the contract controls

(Article 1370, Civil Code; *La Suerte Cigar and Cigarette Factory v. Director of Bureau of Labor Relations*, 123 SCRA 679 [1983]). No such words as "to hire and employ" are present. Moreover, the agreement did not fix an amount for wages nor the required working hours. Compensation is earned only on the basis of the tangible results produced, i.e., total collections made (*Sarra v. Agarrado*, 166 SCRA 625 [1988]). In *Investment Planning Corp. of the Philippines v. Social Security System*, 21 SCRA 924 [1967] which involved commission agents, this Court had the occasion to rule, thus:

"We are convinced from the facts that the work of petitioner's agents or registered representatives more nearly approximates that of an independent contractor than that of an employee. The latter is paid for the labor he performs, that is, for the acts of which such labor consists; the former is paid for the result thereof x x x.

xxx xxx xxx

"Even if an agent of petitioner should devote all of his time and effort trying to sell its investment plans he would not necessarily be entitled to compensation therefor. His right to compensation depends upon and is measured by the tangible results he produces."

Moreover, the collection agent does his work "more or less at his own pleasure" without a regular daily time frame imposed on him (*Investment Planning Corporation of the Philippines v. Social Security System*, supra; See also *Social Security System v. Court of Appeals*, 30 SCRA 210 [1969]).

The grounds specified in the contract for termination of the relationship do not support the view that control exists "for the causes of termination thus specified have no relation to the means and methods of work that are ordinarily required of or imposed upon employees." (*Investment Planning Corp. of the Phil. v. Social Security System*, supra)

The last and most important element of the control test is not satisfied by the terms and conditions of the contracts. There is nothing in the agreement which implies control by the Company not only over the end to be achieved but also over the means and methods in achieving the end (*LVN Pictures, Inc. v. Philippine Musicians Guild*, 1 SCRA 132 [1961]).

The Court finds the contention of the respondents that the union members are employees under Article 280 of the Labor Code to have no basis. The definition that regular employees are those who perform activities which are desirable and necessary for the business of the employer is not determinative in this case. Any agreement may provide that one party shall render services for and in behalf of another for a consideration (no matter how necessary for the latter's business) even without being hired as an employee. This is precisely true in the case of an independent contractorship as well as in an agency agreement. The Court agrees with the petitioner's argument that Article 280 is not the yardstick for determining the existence of an employment relationship because it merely distinguishes between two kinds of employees, i.e., regular employees and casual employees, for purposes of determining the right of an employee to certain benefits, to join or form a union, or to security of tenure. Article 280 does not apply where the existence of an employment relationship is in dispute.

Even Section 8, Rule 8, Book III of the Omnibus Rules Implementing the Labor Code does not apply to this case. Respondents assert that the said provision on job contracting requires that for one to be considered an independent contractor, he must have "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." There is no showing that a collection agent needs tools and machineries. Moreover, the provision must be viewed in relation to Article 106 of the Labor Code which provides:

"Art. 106. Contractor or subcontractor. -- Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any,

shall be paid in accordance with the provisions of this Code.

"In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

xxx xxx xxx

"There is 'labor-only' contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent 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." (p. 20)

It can readily be seen that Section 8, Rule 8, Book III and Article 106 are relevant in determining whether the employer is solidarily liable to the employees of an alleged contractor and/or sub-contractor for unpaid wages in case it is proven that there is a job-contracting situation.

The assumption of jurisdiction by the DOLE over the case is justified as the case was brought on appeal by the petitioner itself which prayed for the reversal of the Order of the Med-Arbiter on the ground that the union members are not its employees. Hence, the petitioner submitted itself as well as the issue of existence of an employment relationship to the jurisdiction of the DOLE which was faced with a dispute on an application for certification election.

The Court finds that since private respondents are not employees of the Company, they are not entitled to the constitutional right to join or form a labor organization for purposes of collective bargaining. Accordingly, there is no constitutional and legal basis for their "union" to be granted their petition for direct certification. This Court made this pronouncement in *La Suerte Cigar and Cigarette Factory v. Director of Bureau of Labor Relations*, *supra*:

"x x x The question of whether employer-employee relationship exists is a primordial consideration before extending labor benefits under the workmen's compensation, social security, medicare, termination pay and labor relations law. It is important in the determination of who shall be included in a proposed bargaining unit because it is the sine qua non, the fundamental and essential condition that a bargaining unit be composed of employees. Failure to establish this juridical relationship between the union members and the employer affects the legality of the union itself. It means the ineligibility of the union members to present a petition for certification election as well as to vote therein x x x." (At p. 689)

WHEREFORE, the Order dated June 14, 1989 of Med--Arbiter Designate Felix B. Chaguile, Jr., the Resolution and Order of Secretary Franklin M. Drilon dated November 2, 1989 and December 14, 1989, respectively are hereby REVERSED and SET ASIDE. The petition for certification election is ordered dismissed and the temporary restraining order issued by the Court on December 21, 1989 is made permanent.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, and Bidin, JJ., concur.

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