

PAN PACIFIC INDUSTRIAL SALES, CO., INC. PETITIONER, VS. THE NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION) AND ESTEBAN C. COMILANG, SR., AS SUBSTITUTED BY ILUMINADA COMILA...

G.R. No. 96191. March 04, 1991

Ponente: CRUZ, J.

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CRUZ, J.:

The main issue raised in the petition is whether or not an employer-employee relationship existed between the petitioner and the private respondent.

Esteban C. Comilang, Sr. (hereinafter referred to as the private respondent) was hired as a "Safety Consultant" by petitioner Pan Pacific Industrial Sales Co., Inc. on September 1, 1975. He worked with the company until November 1981, when his services were terminated by petitioner on the ground of "depressed market condition resulting in low sales yield."

On February 16, 1982, he filed a complaint for illegal dismissal, non-payment of 13th month pay, ECOLA, and one percent sales commission for the period beginning September 1, 1975, to November 30, 1981. The petitioner resisted his claim, alleging he was merely a retained consultant.

During the initial hearing of the case, he suffered a massive heart attack and died after two hours. He was substituted as complainant by his wife, Iluminada Comilang, on June 24, 1982.

On February 23, 1988, Labor Arbiter Amado T. Adquilen rendered a decision ordering the petitioner to pay the complainant 13th month pay, ECOLA, unpaid sales commissions for three years, separation pay and attorney's fees, for a total amount of P210,211.55.[1]

The petitioner appealed to the NLRC, which in its resolution dated August 27, 1970, upheld the Labor Arbiter.[2] Its motion for reconsideration having been denied, the petitioner filed the present recourse.

On December 10, 1990, we issued a temporary restraining order against the enforcement of the assailed resolution.

The petitioner denies that the private respondent was its employee because:

1. He was the safety consultant not only of the petitioner but of several other mining firms as well.
2. He had no work itinerary or fixed office hours.
3. He was not under the control of any officer of the petitioner.

The petitioner's posture is not acceptable.

It is hoist with its own petard. In its letter of September 1, 1975, addressed to the private respondent and signed by

its Vice-President, Ibarra Magpantay, it said:

We are pleased to inform you that your offer to act as Safety Consultant of our company has been accepted effective 1st September 1975 for a trial period of six (6) months subject to renewal by mutual consent.

You will coordinate with the undersigned and/or Mr. Pat Rebuena, Marketing Manager, to assist attaining PANPISCO's objective of the prevention of accidents causing human suffering and needless loss of life in industries, as such prevention may be achieved by recommending the correct safety equipment bearing in mind that we are the exclusive agent of "Protector" safety products; and to lend assistance to and cooperate with the sales representatives in all matters connected with safety.

Your compensation is P400.00 per month plus 1% commission on sales of Protector Safety Products to customers which will be assigned to you. (Emphasis supplied)

This appointment was renewed in a letter dated January 24, 1977, where the petitioner, again through its Vice-President, wrote the private respondent:

I am happy to confirm our desire to revive our past agreement with you to act as Consultant for PANPISCO effective January, 1977 until terminated at the option of either party, giving a 30-day advice of termination.

During the lifetime of this agreement you will -

- Coordinate with the undersigned and/or Mr. Pat Rebuena, Marketing Manager, and work with Mr. Guillermo Guerzon, Sales Representative to assist in achieving PANPISCO's objective of giving service to customers in order to obtain the maximum sales production possible.

- Cover the area from Benguet and Nueva Viscaya to the northernmost part of Luzon.

- In consideration for your efforts to help in the promotion and sales of all PANPISCO's products, you will be compensated Four Hundred and Fifty Pesos (P450.00) monthly. In addition you will receive a commission of 1% of total sales in your area up to P40,000.00 or a commission of 2% of total sales in your area over P40,000.00.

The foregoing stipulations clearly show that the private respondent was employed by the petitioner as part of its sales force. The title "Safety Consultant" was a euphemism because his real work was to recommend and sell the "Protector" safety products under the exclusive distributorship of the petitioner. The circumstance that he had no fixed hours was consistent with his duties as a salesman that required him to go out in the field and meet with prospective customers. In fact, he was assigned to a specific and vast area, "from Benguet and Nueva Vizcaya to the northernmost part of Luzon," that he was supposed to cover in the promotion of the products.

Even so, it should be noted that he was still obliged to coordinate with the petitioner's vice-president and/or marketing manager and work with its sales representative.

As respondent NLRC observed correctly:

x x x, the terms of the Agreement between the parties clearly indicate that complainant was hired not as a consultant, but as a sales representative. Consultants are normally hired by companies to render service to them and not to their clients, as in the instant case. The execution of the Agreement is very incriminating against respondent of its desire to eventually circumvent the laws on compliance with labor standards on security of tenure. It is of public notice that salesmen, complainant also categorized as such, are usually paid on commission basis, with or without a guaranteed monthly salary. This explains why complainant was only paid a minimal monthly salary.

The imputed motive also explains the provision for the termination of the agreement "at the option of either party"

on thirty days' notice. This was intended to convey the impression that the private respondent was not a regular employee of the petitioner and therefore not entitled to the protection of the labor laws.

The petitioner asserts that the private respondent was a safety consultant also for several mining firms but has not shown that this engagement was prohibited by, or inconsistent with, his employment with it as a salesman. Far from being incompatible, his connections with big mining firms requiring safety products could in fact have been the principal reason for his recruitment by the petitioner as a member of its own sales force. The importance of this arrangement could not have been lost on the petitioner when it imposed on the private respondent the responsibility of "recommending the correct safety equipment (especially to the mining firms with which he was connected), bearing in mind that we are the exclusive agent of 'Protector' safety products."

We also agree with the NLRC that the private respondent was illegally dismissed because:

Firstly, he was entitled to his security of tenure guaranteed by the Constitution and statutory laws. The alleged grounds for his discharge was not supported by evidence in record. There was not even an application or notice of retrenchment filed with the Department of Labor and Employment to prove serious business losses or financial reverses. Article 278 mandates that in termination cases, the burden of proof rests on the employer. Consequently, where the employer fails to prove that the dismissal is for a just or valid or authorized cause allowed by law, it means that the discharge is not justified and the employee is entitled to the mandate of Article 280.

There is no justification to disturb the findings of the NLRC that the private respondent had not been paid the 13th month pay, ECOLA, separation pay and sales commissions. Questions of fact are not reviewable by this Court in the absence of a showing that they were arbitrarily resolved by the court or board below. We see no such showing here.

As we said in *Oreta and Co., Inc. v. NLRC*:^[3]

x x x. Well-established is the principle that findings of administrative agencies which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but even finality. Judicial review by this Court on labor cases does not go so far as to evaluate the sufficiency of the evidence upon which the labor officer or office based his or its determination but are limited to issues of jurisdiction and grave abuse of discretion.

It is also worth recalling that in the recent case of *Sajonas v. NLRC*,^[4] this Court reaffirmed the following consistent rule:

Our original and exclusive jurisdiction to review a decision of public respondent, in a petition for certiorari under Rule 65 of the Rules of Court, nonetheless does not normally include the correctness of its evaluation of the evidence but confined to issues of jurisdiction or grave abuse of discretion. It is thus incumbent upon petitioners to satisfactorily establish that respondent commission acted capriciously and whimsically, in total disregard of evidence material to or even decisive of the controversy, in order that the extraordinary writ of certiorari will lie.

The petitioner has failed to show that the public respondent has committed grave abuse of discretion or acted in excess of jurisdiction in granting the relief prayed for by the petitioner. On the contrary, it is clear that the assailed resolution is supported by the evidence of record and is conformable to the applicable law and jurisprudence.

WHEREFORE, the petition is DISMISSED, and the temporary restraining order dated December 10, 1990, is LIFTED, with costs against the petitioner. It is so ordered.

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

[1] Annex K, Petition.

[2] Annex M, Ibid.

[3] 176 SCRA 218.

[4] 183 SCRA 182.

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