

ALIPIO R. RUGA, JOSE PARMA, ELADIO CALDERON, LAURENTE BAUTU, JAIME BARBIN, NICANOR FRANCISCO, PHILIP CERVANTES AND ELEUTERIO BARBIN, PETITIONERS, VS. NATIONAL LABOR RELATIONS CO...

G.R. Nos. 72654-61. January 22, 1990

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

The issue to be resolved in the instant case is whether or not the fishermen-crew members of the trawl fishing vessel 7/B Sandyman II are employees of its owner-operator, De Guzman Fishing Enterprises, and if so, whether or not they were illegally dismissed from their employment.

Records show that petitioners were the fishermen-crew members of 7/B Sandyman II, one of several fishing vessels owned and operated by private respondent De Guzman Fishing Enterprises which is primarily engaged in the fishing business with port and office at Camaligan, Camarines Sur. Petitioners rendered service aboard said fishing vessel in various capacities, as follows: Alipio Ruga and Jose Parma, patron/pilot; Eladio Calderon, chief engineer; Laurente Bautu, second engineer; Jaime Barbin, master fisherman; Nicanor Francisco, second fisherman; Philip Cervantes and Eluterio Barbin, fishermen.

For services rendered in the conduct of private respondent's regular business of "trawl" fishing, petitioners were paid on percentage commission basis in cash by one Mrs. Pilar de Guzman, cashier of private respondent. As agreed upon, they received thirteen percent (13%) of the proceeds of the sale of the fish-catch if the total proceeds exceeded the cost of crude oil consumed during the fishing trip, otherwise, they received ten percent (10%) of the total proceeds of the sale. The patron/pilot, chief engineer and master fisherman received a minimum income of P350.00 per week while the assistant engineer, second fisherman, and fisherman-winchman received a minimum income of P260.00 per week.[1]

On September 11, 1983, upon arrival at the fishing port, petitioners were told by Jorge de Guzman, president of private respondent, to proceed to the police station at Camaligan, Camarines Sur, for investigation on the report that they sold some of their fish-catch at midsea to the prejudice of private respondent. Petitioners denied the charge claiming that the same was a countermove to their having formed a labor union and becoming members of Defender of Industrial Agricultural Labor Organizations and General Workers Union (DIALOGWU) on September 3, 1983.

During the investigation, no witnesses were presented to prove the charge against petitioners, and no criminal charges were formally filed against them. Notwithstanding, private respondent refused to allow petitioners to return to the fishing vessel to resume their work on the same day, September 11, 1983.

On September 22, 1983, petitioners individually filed their complaints for illegal dismissal and non-payment of 13th month pay, emergency cost of living allowance and service incentive pay, with the then Ministry (now

Department) of Labor and Employment, Regional Arbitration Branch No. V, Legaspi City, Albay, docketed as Cases Nos. 1449-83 to 1456-83.[2] They uniformly contended that they were arbitrarily dismissed without being given ample time to look for a new job.

On October 24, 1983, private respondent, thru its operations manager, Conrado S. de Guzman, submitted its position paper denying the employer-employee relationship between private respondent and petitioners on the theory that private respondent and petitioners were engaged in a joint venture.[3]

After the parties failed to reach an amicable settlement, the Labor Arbiter scheduled the case for joint hearing furnishing the parties with notice and summons. On December 27, 1983, after two (2) previously scheduled joint hearings were postponed due to the absence of private respondent, one of the petitioners herein, Alipio Ruga, the pilot/captain of the 7/B Sandyman II, testified, among others, on the manner the fishing operations were conducted, mode of payment of compensation for services rendered by the fishermen-crew members, and the circumstances leading to their dismissal.[4]

On March 31, 1984, after the case was submitted for resolution, Labor Arbiter Asisclo S. Coralde rendered a joint decision[5] dismissing all the complaints of petitioners on a finding that a "joint fishing venture" and not one of employer-employee relationship existed between private respondent and petitioners.

From the adverse decision against them, petitioners appealed to the National Labor Relations Commission.

On May 30, 1985, the National Labor Relations Commission promulgated its resolution[6] affirming the decision of the labor arbiter that a "joint fishing venture" relationship existed between private respondent and petitioners.

Hence, the instant petition.

Petitioners assail the ruling of the public respondent NLRC that what exists between private respondent and petitioners is a joint venture arrangement and not an employer-employee relationship. To stress that there is an employer-employee relationship between them and private respondent, petitioners invite attention to the following: that they were directly hired by private respondent through its general manager, Arsenio de Guzman, and its operations manager, Conrado de Guzman; that, except for Laurente Bautu, they had been employed by private respondent from 8 to 15 years in various capacities; that private respondent, through its operations manager, supervised and controlled the conduct of their fishing operations as to the fixing of the schedule of the fishing trips, the direction of the fishing vessel, the volume or number of tubes of the fish-catch, the time to return to the fishing port, which were communicated to the patron/pilot by radio (single side band); that they were not allowed to join other outfits even the other vessels owned by private respondent without the permission of the operations manager; that they were compensated on percentage commission basis of the gross sales of the fish-catch which were delivered to them in cash by private respondent's cashier, Mrs. Pilar de Guzman; and that they have to follow company policies, rules and regulations imposed on them by private respondent.

Disputing the finding of public respondent that a "joint fishing venture" exists between private respondent and petitioners, petitioners claim that public respondent exceeded its jurisdiction and/or abused its discretion when it added facts not contained in the records when it stated that the pilot-crew members do not receive compensation from the boat-owners except their share in the catch produced by their own efforts; that public respondent ignored the evidence of petitioners that private respondent controlled the fishing operations; that public respondent did not take into account established jurisprudence that the relationship between the fishing boat operators and their crew is one of direct employer and employee.

Aside from seeking the dismissal of the petition on the ground that the decision of the labor arbiter is now final and executory for failure of petitioners to file their appeal with the NLRC within 10 calendar days from receipt of

said decision pursuant to the doctrine laid down in *Vir-Jen Shipping and Marine Services, Inc. vs. NLRC*, 115 SCRA 347 (1982), the Solicitor General claims that the ruling of public respondent that a "joint fishing venture" exists between private respondent and petitioners rests on the resolution of the Social Security System (SSS) in a 1968 case, Case No. 708 (*De Guzman Fishing Enterprises vs. SSS*), exempting *De Guzman Fishing Enterprises*, private respondent herein, from compulsory coverage of the SSS on the ground that there is no employer-employee relations between the boat-owner and the fishermen-crew members following the doctrine laid down in *Pajarillo vs. SSS*, 17 SCRA 1014 (1966). In applying to the case at bar the doctrine in *Pajarillo vs. SSS*, supra, that there is no employer-employee relationship between the boat-owner and the pilot and crew members when the boat-owner supplies the boat and equipment while the pilot and crew members contribute the corresponding labor and the parties get specific shares in the catch for their respective contribution to the venture, the Solicitor General pointed out that the boat-owners in the *Pajarillo* case, as in the case at bar, did not control the conduct of the fishing operations and the pilot and crew members shared in the catch.

We rule in favor of petitioners.

Fundamental considerations of substantial justice persuade Us to decide the instant case on the merits rather than to dismiss it on a mere technicality. In so doing, we exercise the prerogative accorded to this Court enunciated in *Firestone Filipinas Employees Association, et al. vs. Firestone Tire and Rubber Co., of the Philippines, Inc.*, 61 SCRA 340 (1974), thus "the well-settled doctrine is that in labor cases before this Tribunal, no undue sympathy is to be accorded to any claim of a procedural misstep, the idea being that its power be exercised according to justice and equity and substantial merits of the controversy."

Circumstances peculiar to some extent to fishermen-crew members of a fishing vessel regularly engaged in trawl fishing, as in the case of petitioners herein, who spend one (1) whole week or more^[7] in the open sea performing their job to earn a living to support their families, convince Us to adopt a more liberal attitude in applying to petitioners the 10-calendar day rule in the filing of appeals with the NLRC from the decision of the labor arbiter.

Records reveal that petitioners were informed of the labor arbiter's decision of March 31, 1984 only on July 3, 1984 by their non-lawyer representative during the arbitration proceedings, Jose Dialogo, who received the decision eight (8) days earlier, or on June 25, 1984. As adverted to earlier, the circumstances peculiar to petitioners' occupation as fishermen-crew members, who during the pendency of the case understandably have to earn a living by seeking employment elsewhere, impress upon Us that in the ordinary course of events, the information as to the adverse decision against them would not reach them within such time frame as would allow them to faithfully abide by the 10-calendar day appeal period. This peculiar circumstance and the fact that their representative is a non-lawyer provide equitable justification to conclude that there is substantial compliance with the ten-calendar day rule of filing of appeals with the NLRC when petitioners filed on July 10, 1984, or seven (7) days after receipt of the decision, their appeal with the NLRC through registered mail.

We have consistently ruled that in determining the existence of an employer-employee relationship, the elements that are generally considered are the following (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished.^[8] The employment relation arises from contract of hire, express or implied.^[9] In the absence of hiring, no actual employer-employee relation could exist.

From the four (4) elements mentioned, We have generally relied on the so-called right-of-control test^[10] where the person for whom the services are performed reserves a right to control not only the end to be achieved but also the means to be used in reaching such end. The test calls merely for the existence of the right to control the manner of doing the work, not the actual exercise of the right.^[11]

The case of Pajarillo vs. SSS, supra, invoked by the public respondent as authority for the ruling that a "joint fishing venture" existed between private respondent and petitioners is not applicable in the instant case. There is neither right of control nor actual exercise of such right on the part of the boat-owners in the Pajarillo case, where the Court found that the pilots therein are not under the orders of the boat-owners as regards their employment; that they go out to sea not upon directions of the boat-owners, but upon their own volition as to when, how long and where to go fishing; that the boat-owners do not in any way control the crew-members with whom the former have no relationship whatsoever; that they simply join every trip for which the pilots allow them, without any reference to the owners of the vessel; and that they only share in their own catch produced by their own efforts.

The aforementioned circumstances obtaining in Pajarillo case do not exist in the instant case. The conduct of the fishing operations was undisputably shown by the testimony of Alipio Ruga, the patron/pilot of 7/B Sandyman II, to be under the control and supervision of private respondent's operations manager. Matters dealing on the fixing of the schedule of the fishing trip and the time to return to the fishing port were shown to be the prerogative of private respondent.[12] While performing the fishing operations, petitioners received instructions via a single-side band radio from private respondent's operations manager who called the patron/pilot in the morning. They are told to report their activities, their position, and the number of tubes of fish-catch in one day.[13] Clearly thus, the conduct of the fishing operations was monitored by private respondent thru the patron/pilot of 7/B Sandyman II who is responsible for disseminating the instructions to the crew members.

The conclusion of public respondent that there had been no change in the situation of the parties since 1968 when De Guzman Fishing Enterprises, private respondent herein, obtained a favorable judgment in Case No. 708 exempting it from compulsory coverage of the SSS law is not supported by evidence on record. It was erroneous for public respondent to apply the factual situation of the parties in the 1968 case to the instant case in the light of the changes in the conditions of employment agreed upon by the private respondent and petitioners as discussed earlier.

Records show that in the instant case, as distinguished from the Pajarillo case where the crew members are under no obligation to remain in the outfit for any definite period as one can be the crew member of an outfit for one day and be the member of the crew of another vessel the next day, the herein petitioners, on the other hand, were directly hired by private respondent, through its general manager, Arsenio de Guzman, and its operations manager, Conrado de Guzman and have been under the employ of private respondent for a period of 8-15 years in various capacities, except for Laurente Bautu who was hired on August 3, 1983 as assistant engineer. Petitioner Alipio Ruga was hired on September 29, 1974 as patron/captain of the fishing vessel; Eladio Calderon started as a mechanic on April 16, 1968 until he was promoted as chief engineer of the fishing vessel; Jose Parma was employed on September 29, 1974 as assistant engineer; Jaime Barbin started as a pilot of the motor boat until he was transferred as a master fisherman to the fishing vessel 7/B Sandyman II; Philip Cervantes was hired as winchman on August 1, 1972 while Eleuterio Barbin was hired as winchman on April 15, 1976.

While tenure or length of employment is not considered as the test of employment, nevertheless the hiring of petitioners to perform work which is necessary or desirable in the usual business or trade of private respondent for a period of 8-15 years since 1968 qualify them as regular employees within the meaning of Article 281 of the Labor Code as they were indeed engaged to perform activities usually necessary or desirable in the usual fishing business or occupation of private respondent.[14]

Aside from performing activities usually necessary and desirable in the business of private respondent, it must be noted that petitioners received compensation on a percentage commission based on the gross sale of the fish-catch, i.e. 13% of the proceeds of the sale if the total proceeds exceeded the cost of the crude oil consumed during the fishing trip, otherwise only 10% of the proceeds of the sale. Such compensation falls within the scope

and meaning of the term "wage" as defined under Article 97(f) of the Labor Code, thus:

“(f) 'Wage' paid to any employee shall mean the remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered, and included the fair and reasonable value, as determined by the Secretary of Labor, of board, lodging, or other facilities customarily furnished by the employer to the employee. x x x”

The claim of private respondent, which was given credence by public respondent, that petitioners get paid in the form of share in the fish-catch which the patron/pilot as head of the team distributes to his crew members in accordance with their own understanding^[15] is not supported by recorded evidence. Except that such claim appears as an allegation in private respondent's position paper, there is nothing in the records showing such a sharing scheme as preferred by private respondent.

Furthermore, the fact that on mere suspicion based on the reports that petitioners allegedly sold their fish-catch at mid-sea without the knowledge and consent of private respondent, petitioners were unjustifiably not allowed to board the fishing vessel on September 11, 1983 to resume their activities without giving them the opportunity to air their side on the accusation against them unmistakably reveals the disciplinary power exercised by private respondent over them and the corresponding sanction imposed in case of violation of any of its rules and regulations. The virtual dismissal of petitioners from their employment was characterized by undue haste when less extreme measures consistent with the requirements of due process should have been first exhausted. In that sense, the dismissal of petitioners was tainted with illegality.

Even on the assumption that petitioners indeed sold the fish-catch at mid-sea, the act of private respondent virtually resulting in their dismissal evidently contradicts private respondent's theory of "joint fishing venture" between the parties herein. A joint venture, including partnership, presupposes generally a parity of standing between the joint co-venturers or partners, in which each party has an equal proprietary interest in the capital or property contributed^[16] and where each party exercises equal rights in the conduct of the business.^[17] It would be inconsistent with the principle of parity of standing between the joint co-venturers as regards the conduct of business, if private respondent would outrightly exclude petitioners from the conduct of business without first resorting to other measures consistent with the nature of a joint venture undertaking. Instead of arbitrary unilateral action, private respondent should have discussed with an open mind the advantages and disadvantages of petitioners' action with its joint co-venturers if indeed there is a "joint fishing venture" between the parties. But this was not done in the instant case. Petitioners were arbitrarily dismissed notwithstanding that no criminal complaints were filed against them. The lame excuse of private respondent that the non-filing of the criminal complaints against petitioners was for humanitarian reasons will not help its cause either.

We have examined the jurisprudence on the matter and find the same to be supportive of petitioners' stand. In *Negre vs. WCC*, 135 SCRA 653 (1985), we held that fishermen crew members who were recruited by one master fisherman locally known as "maestro" in charge of recruiting others to complete the crew members are considered employees, not industrial partners, of the boat-owners. In an earlier case of *Abong vs. WCC*, 54 SCRA 379 (1973) where petitioner therein, Dr. Agustin Abong, owner of the fishing boat, claimed that he was not the employer of the fishermen crew members because of an alleged partnership agreement between him, as financier, and Simplicio Panganiban, as his teamleader in charge of recruiting said fishermen to work for him, we affirmed the finding of the WCC that there existed an employer-employee relationship between the boat-owner and the fishermen crew members not only because they worked for and in the interest of the business of the boat-owner but also because they were subject to the control, supervision and dismissal of the boat-owner, thru its agent,

Simplicio Panganiban, the alleged "partner" of Dr. Abong; that while these fishermen crew members were paid in kind, or by "pakiao basis" still that fact did not alter the character of their relationship with Dr. Abong as employees of the latter.

In Philippine Fishing Boat Officers and Engineers Union vs. Court of Industrial Relations, 112 SCRA 159 (1982), we held that the employer-employee relationship between the crew members and the owners of the fishing vessels engaged in deep-sea fishing is merely suspended during the time the vessels are drydocked or undergoing repairs or being loaded with the necessary provisions for the next fishing trip. The said ruling is premised on the principle that all these activities, i.e., drydock, repairs, loading of necessary provisions, form part of the regular operation of the company's fishing business.

WHEREFORE, in view of the foregoing, the petition is GRANTED. The questioned resolution of the National Labor Relations Commission dated May 30, 1985 is hereby REVERSED and SET ASIDE. Private respondent is ordered to reinstate petitioners to their former positions or any equivalent positions with 3-year backwages and other monetary benefits under the law. No pronouncement as to costs.

SO ORDERED.

Gutierrez, Jr., Bidin, and Cortes, JJ., concur.
Feliciano, J., in the result.

[1] p. 3, Joint Decision, Labor Arbiter, p. 40, Rollo.

[2] pp. 1-8, Records.

[3] pp. 28-30, Ibid.

[4] pp. 54-101, Ibid.

[5] Annex "D" Petition, pp. 40-46, Rollo.

[6] pp. 61-65, Rollo.

[7] p. 23, T.S.N., p. 78, Records.

[8] Hydro-Resources Contractor Corporation vs. Labor Arbiter Pagalilauan, G.R. No. 62909, April 18, 1989; Tabas, et al. vs. California Mfg. Co. et. al., G.R. No. 80680, January 26, 1989; Continental Marble Corporation vs. NLRC, 161 SCRA 151; Bautista vs. Inciong, 158 SCRA 665; Broadway Motors, Inc. vs. NLRC, 156 SCRA 522; Besa vs. Trajano, 146 SCRA 501; Rosario Brothers, Inc. vs. Ople, 131 SCRA 72; Shipside, Inc. vs. NLRC, 118 SCRA 99; Mafinco Trading Corporation vs. Ople, 70 SCRA 139.

[9] Yu Chuck vs. Kong Li Po, 46 Phil. 608 (1924).

[10] LVN Pictures, Inc. vs. Philippine Musicians Guild, 1 SCRA 132, 173 (1961), citing Alabama Highway Express, Co. vs. Local 612, 108 S. 2d. 350.

[11] Dy Keh Beng vs. International Labor and Marine Union of the Philippines, 90 SCRA 161 (1979).

[12] pp. 7-8, T.S.N., pp. 61-62, Records.

[13] p. 7, T.S.N., p. 61, Records.

[14] Ochoco vs. NLRC., 120 SCRA 774 (1983); Mansol vs. P.P. Gocheco Lumber Co., 96 Phil. 941 (1955).

[15] p. 2, Private Respondent's Position Paper, p. 22, Records; p. 2, Memorandum for Private Respondent, p. 131, Rollo.

[16] Sevilla vs. Court of Appeals, 160 SCRA 171 (1988), citing Bautista, Treatise on Philippine Partnership Law, p. 34.

[17] Ibid., p. 37

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