673 Phil. 384

SECOND DIVISION

[G.R. No. 192084, September 14, 2011]

JOSE MEL BERNARTE, PETITIONER, VS. PHILIPPINE BASKETBALL ASSOCIATION (PBA), JOSE EMMANUEL M. EALA, AND PERRY MARTINEZ, RESPONDENTS.

D E C I S I O N

CARPIO, J.:

The Case

This is a petition for review[1] of the 17 December 2009 Decision[2] and 5 April 2010 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 105406. The Court of Appeals set aside the decision of the National Labor Relations Commission (NLRC), which affirmed the decision of the Labor Arbiter, and held that petitioner Jose Mel Bernarte is an independent contractor, and not an employee of respondents Philippine Basketball Association (PBA), Jose Emmanuel M. Eala, and Perry Martinez. The Court of Appeals denied the motion for reconsideration.

The Facts

The facts, as summarized by the NLRC and quoted by the Court of Appeals, are as follows:

> Complainants (Jose Mel Bernarte and Renato Guevarra) aver that they were invited to join the PBA as referees. During the leadership of Commissioner Emilio Bernardino, they were made to sign contracts on a year-to-year basis. During the term of Commissioner Eala, however, changes were made on the terms of their employment.
>
> Complainant Bernarte, for instance, was not made to sign a contract during the first conference of the All-Filipino Cup which was from February 23, 2003 to June 2003. It was only during the second conference when he was made to sign a one and a half month contract for the period July 1 to August 5, 2003.
>
> On January 15, 2004, Bernarte received a letter from the Office of the Commissioner advising him that his contract would not be renewed citing his unsatisfactory performance on and off the court. It was a total shock for Bernarte who was awarded Referee of the year in 2003. He felt that the dismissal was caused by his refusal to fix a game upon order of Ernie De Leon.
>
> On the other hand, complainant Guevarra alleges that he was invited to

join the PBA pool of referees in February 2001. On March 1, 2001, he signed a contract as trainee. Beginning 2002, he signed a yearly contract as Regular Class C referee. On May 6, 2003, respondent Martinez issued a memorandum to Guevarra expressing dissatisfaction over his questioning on the assignment of referees officiating out-of-town games. Beginning February 2004, he was no longer made to sign a contract.

Respondents aver, on the other hand, that complainants entered into two contracts of retainer with the PBA in the year 2003. The first contract was for the period January 1, 2003 to July 15, 2003; and the second was for September 1 to December 2003. After the lapse of the latter period, PBA decided not to renew their contracts.

Complainants were not illegally dismissed because they were not employees of the PBA. Their respective contracts of retainer were simply not renewed. PBA had the prerogative of whether or not to renew their contracts, which they knew were fixed.[4]

In her 31 March 2005 Decision,[5] the Labor Arbiter[6] declared petitioner an employee whose dismissal by respondents was illegal. Accordingly, the Labor Arbiter ordered the reinstatement of petitioner and the payment of backwages, moral and exemplary damages and attorney's fees, to wit:

WHEREFORE, premises considered all respondents who are here found to have illegally dismissed complainants are hereby ordered to (a) reinstate complainants within thirty (30) days from the date of receipt of this decision and to solidarily pay complainants:

	JOSE MEL BERNARTE	RENATO GUEVARRA
1. backwages from January 1, 2004 up to the finality of this Decision, which to date is	P536,250.00	P211,250.00
2. moral damages	100,000.00	100,000.00
3. exemplary damages	50,000.00	50,000.00
4. 10% attorney's fees	68,625.00	36,125.00
TOTAL	P754,875.00	P397,375.00

or a total of P1,152,250.00

The rest of the claims are hereby dismissed for lack of merit or basis.

SO ORDERED.[7]

In its 28 January 2008 Decision,[8] the NLRC affirmed the Labor Arbiter's judgment.

The dispositive portion of the NLRC's decision reads:

> WHEREFORE, the appeal is hereby DISMISSED. The Decision of Labor Arbiter Teresita D. Castillon-Lora dated March 31, 2005 is AFFIRMED.
>
> SO ORDERED.[9]

Respondents filed a petition for certiorari with the Court of Appeals, which overturned the decisions of the NLRC and Labor Arbiter. The dispositive portion of the Court of Appeals' decision reads:

> **WHEREFORE**, the petition is hereby **GRANTED**. The assailed *Decision* dated January 28, 2008 and *Resolution* dated August 26, 2008 of the National Labor Relations Commission are **ANNULLED** and **SET ASIDE**. Private respondents' complaint before the Labor Arbiter is **DISMISSED**.
>
> **SO ORDERED**.[10]

The Court of Appeals' Ruling

The Court of Appeals found petitioner an independent contractor since respondents did not exercise any form of control over the means and methods by which petitioner performed his work as a basketball referee. The Court of Appeals held:

> While the NLRC agreed that the PBA has no control over the referees' acts of blowing the whistle and making calls during basketball games, it, nevertheless, theorized that the said acts refer to the means and methods employed by the referees in officiating basketball games for the illogical reason that said acts refer only to the referees' skills. How could a skilled referee perform his job without blowing a whistle and making calls? Worse, how can the PBA control the performance of work of a referee without controlling his acts of blowing the whistle and making calls?
>
> Moreover, this Court disagrees with the Labor Arbiter's finding (as affirmed by the NLRC) that the Contracts of Retainer show that petitioners have control over private respondents.
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> x x x x
>
> Neither do We agree with the NLRC's affirmance of the Labor Arbiter's conclusion that private respondents' repeated hiring made them regular employees by operation of law.[11]

The Issues

The main issue in this case is whether petitioner is an employee of respondents, which in turn determines whether petitioner was illegally dismissed.

Petitioner raises the procedural issue of whether the Labor Arbiter's decision has become final and executory for failure of respondents to appeal with the NLRC within the reglementary period.

The Ruling of the Court

The petition is bereft of merit.

The Court shall first resolve the procedural issue posed by petitioner.

Petitioner contends that the Labor Arbiter's Decision of 31 March 2005 became final and executory for failure of respondents to appeal with the NLRC within the prescribed period. Petitioner claims that the Labor Arbiter's decision was constructively served on respondents as early as August 2005 while respondents appealed the Arbiter's decision only on 31 March 2006, way beyond the reglementary period to appeal. Petitioner points out that service of an unclaimed registered mail is deemed complete five days from the date of first notice of the post master. In this case three notices were issued by the post office, the last being on 1 August 2005. The unclaimed registered mail was consequently returned to sender. Petitioner presents the Postmaster's Certification to prove constructive service of the Labor Arbiter's decision on respondents. The Postmaster certified:

> x x x
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> That upon receipt of said registered mail matter, our registry in charge, Vicente Asis, Jr., immediately issued the first registry notice to claim on July 12, 2005 by the addressee. The second and third notices were issued on July 21 and August 1, 2005, respectively.
>
> That the subject registered letter was returned to the sender (RTS) because the addressee failed to claim it after our one month retention period elapsed. Said registered letter was dispatched from this office to Manila CPO (RTS) under bill #6, line 7, page1, column 1, on September 8, 2005.[12]

Section 10, Rule 13 of the Rules of Court provides:

> SEC. 10. Completeness of service. - Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of ten (10) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever date is earlier.

The rule on service by registered mail contemplates two situations: (1) actual

service the completeness of which is determined upon receipt by the addressee of the registered mail; and (2) constructive service the completeness of which is determined upon expiration of five days from the date the addressee received the first notice of the postmaster.[13]

Insofar as constructive service is concerned, there must be conclusive proof that a first notice was duly sent by the postmaster to the addressee.[14] Not only is it required that notice of the registered mail be issued but that it should also be delivered to and received by the addressee.[15] Notably, the presumption that official duty has been regularly performed is not applicable in this situation. It is incumbent upon a party who relies on constructive service to prove that the notice was sent to, and received by, the addressee.[16]

The best evidence to prove that notice was sent would be a certification from the postmaster, who should certify not only that the notice was issued or sent but also as to how, when and to whom the delivery and receipt was made. The mailman may also testify that the notice was actually delivered.[17]

In this case, petitioner failed to present any concrete proof as to how, when and to whom the delivery and receipt of the three notices issued by the post office was made. There is no conclusive evidence showing that the post office notices were actually received by respondents, negating petitioner's claim of constructive service of the Labor Arbiter's decision on respondents. The Postmaster's Certification does not sufficiently prove that the three notices were delivered to and received by respondents; it only indicates that the post office issued the three notices. Simply put, the issuance of the notices by the post office is not equivalent to delivery to and receipt by the addressee of the registered mail. Thus, there is no proof of completed constructive service of the Labor Arbiter's decision on respondents.

At any rate, the NLRC declared the issue on the finality of the Labor Arbiter's decision moot as respondents' appeal was considered in the interest of substantial justice. We agree with the NLRC. The ends of justice will be better served if we resolve the instant case on the merits rather than allowing the substantial issue of whether petitioner is an independent contractor or an employee linger and remain unsettled due to procedural technicalities.

The existence of an employer-employee relationship is ultimately a question of fact. As a general rule, factual issues are beyond the province of this Court. However, this rule admits of exceptions, one of which is where there are conflicting findings of fact between the Court of Appeals, on one hand, and the NLRC and Labor Arbiter, on the other, such as in the present case.[18]

To determine the existence of an employer-employee relationship, case law has consistently applied the four-fold test, to wit: (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 on the means and methods by which the work is accomplished. The so-called "**control test**" is the most important indicator of the presence or absence of an employer-employee relationship.[19]

In this case, PBA admits repeatedly engaging petitioner's services, as shown in the