498 Phil. 301

THIRD DIVISION

[G.R. NO. 157214, June 07, 2005]

PHILIPPINE GLOBAL COMMUNICATIONS, INC., PETITIONER, VS. RICARDO DE VERA, RESPONDENT.

D E C I S I O N

GARCIA, J.:

Before us is this appeal by way of a petition for review on certiorari from the 12 September 2002 Decision[1] and the 13 February 2003 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 65178, upholding the finding of illegal dismissal by the National Labor Relations Commission against petitioner.

As culled from the records, the pertinent facts are:

Petitioner Philippine Global Communications, Inc. (PhilCom), is a corporation engaged in the business of communication services and allied activities, while respondent Ricardo De Vera is a physician by profession whom petitioner enlisted to attend to the medical needs of its employees. At the crux of the controversy is Dr. De Vera's status *vis a vis* petitioner when the latter terminated his engagement.

It appears that on 15 May 1981, De Vera, *via* a letter dated 15 May 1981,[3] offered his services to the petitioner, therein proposing his plan of works required of a practitioner in industrial medicine, to include the following:

1. Application of preventive medicine including periodic check-up of employees;
2. Holding of clinic hours in the morning and afternoon for a total of five (5) hours daily for consultation services to employees;
3. Management and treatment of employees that may necessitate hospitalization including emergency cases and accidents;
4. Conduct pre-employment physical check-up of prospective employees with no additional medical fee;
5. Conduct home visits whenever necessary;
6. Attend to certain medical administrative function such as accomplishing medical forms, evaluating conditions of employees applying for sick leave of absence and subsequently issuing proper certification, and all matters referred which are medical in nature.

The parties agreed and formalized respondent's proposal in a document denominated as **RETAINERSHIP CONTRACT**[4] which will be for a period of one year subject to renewal, it being made clear therein that respondent will cover "the retainership the Company previously had with Dr. K. Eulau" and that respondent's "retainer fee" will be at P4,000.00 a month. Said contract was renewed yearly.[5] The retainership arrangement went on from 1981 to 1994 with changes in the

retainer's fee. However, for the years 1995 and 1996, renewal of the contract was only made verbally.

The turning point in the parties' relationship surfaced in December 1996 when Philcom, thru a letter[6] bearing on the subject boldly written as "TERMINATION – RETAINERSHIP CONTRACT", informed De Vera of its decision to discontinue the latter's "retainer's contract with the Company effective at the close of business hours of December 31, 1996" because management has decided that it would be more practical to provide medical services to its employees through accredited hospitals near the company premises.

On 22 January 1997, De Vera filed a complaint for illegal dismissal before the National Labor Relations Commission (NLRC), alleging that that he had been actually employed by Philcom as its company physician since 1981 and was dismissed without due process. He averred that he was designated as a "company physician on retainer basis" for reasons allegedly known only to Philcom. He likewise professed that since he was not conversant with labor laws, he did not give much attention to the designation as anyway he worked on a full-time basis and was paid a basic monthly salary plus fringe benefits, like any other regular employees of Philcom.

On 21 December 1998, Labor Arbiter Ramon Valentin C. Reyes came out with a decision[7] dismissing De Vera's complaint for lack of merit, on the rationale that as a "retained physician" under a valid contract mutually agreed upon by the parties, De Vera was an "independent contractor" and that he "was not dismissed but rather his contract with [PHILCOM] ended when said contract was not renewed after December 31, 1996".

On De Vera's appeal to the NLRC, the latter, in a decision[8] dated 23 October 2000, reversed (the word used is "modified") that of the Labor Arbiter, on a finding that De Vera is Philcom's "regular employee" and accordingly directed the company to reinstate him to his former position without loss of seniority rights and privileges and with full backwages from the date of his dismissal until actual reinstatement. We quote the dispositive portion of the decision:

> WHEREFORE, the assailed decision is modified in that respondent is ordered to reinstate complainant to his former position without loss of seniority rights and privileges with full backwages from the date of his dismissal until his actual reinstatement computed as follows:
>
> Backwages:
>
> a) Basic Salary
> From Dec. 31, 1996 to Apr. 10, 2000 = 39.33 mos.
> P44,400.00 x 39.33 mos. P1,750,185.00
> b) 13th Month Pay:
> 1/12 of P1,750,185.00 145,848.75
> c) Travelling allowance:
> P1,000.00 x 39.33 mos. 39,330.00
>
> GRAND TOTAL P1,935,363.75

> The decision stands in other aspects.
>
> SO ORDERED.

With its motion for reconsideration having been denied by the NLRC in its order of 27 February 2001,[9] Philcom then went to the Court of Appeals on a petition for certiorari, thereat docketed as **CA-G.R. SP No. 65178**, imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC when it reversed the findings of the labor arbiter and awarded thirteenth month pay and traveling allowance to De Vera even as such award had no basis in fact and in law.

On 12 September 2002, the Court of Appeals rendered a decision,[10] modifying that of the NLRC by deleting the award of traveling allowance, and ordering payment of separation pay to De Vera in lieu of reinstatement, thus:

> **WHEREFORE**, premises considered, the assailed judgment of public respondent, dated 23 October 2000, is **MODIFIED**. The award of traveling allowance is deleted as the same is hereby DELETED. Instead of reinstatement, private respondent shall be paid separation pay computed at one (1) month salary for every year of service computed from the time private respondent commenced his employment in 1981 up to the actual payment of the backwages and separation pay. The awards of backwages and 13th month pay STAND.
>
> SO ORDERED.

In time, Philcom filed a motion for reconsideration but was denied by the appellate court in its resolution of 13 February 2003.[11]

Hence, Philcom's present recourse on its main submission that -

> THE COURT OF APPEALS ERRED IN SUSTAINING THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION AND RENDERING THE QUESTIONED DECISION AND RESOLUTION IN A WAY THAT IS NOT IN ACCORD WITH THE FACTS AND APPLICABLE LAWS AND JURISPRUDENCE WHICH DISTINGUISH LEGITIMATE JOB CONTRACTING AGREEMENTS FROM THE EMPLOYER-EMPLOYEE RELATIONSHIP.

We **GRANT**.

Under Rule 45 of the Rules of Court, only questions of law may be reviewed by this Court in decisions rendered by the Court of Appeals. There are instances, however, where the Court departs from this rule and reviews findings of fact so that substantial justice may be served. The exceptional instances are where:

> "xxx xxx xxx (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellees; (7) the findings of fact of the Court of Appeals are contrary to

those of the trial court; (8) said findings of facts are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record."[12]

As we see it, the parties' respective submissions revolve on the primordial issue of whether an employer-employee relationship exists between petitioner and respondent, the existence of which is, in itself, a question of fact[13] well within the province of the NLRC. Nonetheless, given the reality that the NLRC's findings are at odds with those of the labor arbiter, the Court, consistent with its ruling in *Jimenez vs. National Labor Relations Commission,*[14] is constrained to look deeper into the attendant circumstances obtaining in this case, as appearing on record.

In a long line of decisions,[15] the Court, in determining the existence of an employer-employee relationship, has invariably adhered to the four-fold test, to wit: [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, or the so-called "control test", considered to be the most important element.

Applying the four-fold test to this case, we initially find that it was respondent himself who sets the parameters of what his duties would be in offering his services to petitioner. This is borne by no less than his 15 May 1981 letter[16] which, in full, reads:

"May 15, 1981

Mrs. Adela L. Vicente
Vice President, Industrial Relations
PhilCom, Paseo de Roxas
Makati, Metro Manila

M a d a m :

I shall have the time and effort for the position of Company physician with your corporation if you deemed it necessary. I have the necessary qualifications, training and experience required by such position and I am confident that I can serve the best interests of your employees, medically.

My plan of works and targets shall cover the duties and responsibilities required of a practitioner in industrial medicine which includes the following:

1. Application of preventive medicine including periodic check-up of employees;
2. Holding of clinic hours in the morning and afternoon for a total of five (5) hours daily for consultation services to employees;
3. Management and treatment of employees that may necessitate hospitalization including emergency cases

and accidents;

4. Conduct pre-employment physical check-up of prospective employees with no additional medical fee;
5. Conduct home visits whenever necessary;
6. Attend to certain medical administrative functions such as accomplishing medical forms, evaluating conditions of employees applying for sick leave of absence and subsequently issuing proper certification, and all matters referred which are medical in nature.

On the subject of compensation for the services that I propose to render to the corporation, you may state an offer based on your belief that I can very well qualify for the job having worked with your organization for sometime now.

I shall be very grateful for whatever kind attention you may extend on this matter and hoping that it will merit acceptance, I remain

Very truly yours,
(signed)
RICARDO V. DE VERA, M.D."

Significantly, the foregoing letter was substantially the basis of the labor arbiter's finding that there existed no employer-employee relationship between petitioner and respondent, in addition to the following factual settings:

The fact that the complainant was not considered an employee was recognized by the complainant himself in a signed letter to the respondent dated April 21, 1982 attached as Annex G to the respondent's Reply and Rejoinder. Quoting the pertinent portion of said letter:

'To carry out your memo effectively and to provide a systematic and workable time schedule which will serve the best interests of both the present and absent employee, may I propose an extended two-hour service (1:00-3:00 P.M.) during which period I can devote ample time to both groups depending upon the urgency of the situation. I shall readjust my private schedule to be available for the herein proposed extended hours, should you consider this proposal.

As regards compensation for the additional time and services that I shall render to the employees, it is dependent on your evaluation of the merit of my proposal and your confidence on my ability to carry out efficiently said proposal.'

The tenor of this letter indicates that the complainant was proposing to extend his time with the respondent and seeking additional compensation for said extension. This shows that the respondent PHILCOM did not have control over the schedule of the complainant as it [is] the complainant who is proposing his own schedule and asking to be paid for the same. This is proof that the complainant understood that his relationship with the respondent PHILCOM was a retained physician and not as an employee. If he were an employee he could not negotiate as