

## THIRD DIVISION

[ G.R. No. 121948, October 08, 2001 ]

**PERPETUAL HELP CREDIT COOPERATIVE, INC., PETITIONER, VS. BENEDICTO FABURADA, SISINITA VILLAR, IMELDA TAMAYO, HAROLD CATIPAY, AND THE NATIONAL LABOR RELATIONS COMMISSION, FOURTH DIVISION, CEBU CITY, RESPONDENTS.**

### DECISION

**SANDOVAL-GUTIERREZ, J.:**

On January 3, 1990, Benedicto Faburada, Sisinita Vilar, Imelda Tamayo and Harold Catipay, private respondents, filed a complaint against the Perpetual Help Credit Cooperative, Inc. (PHCCI), petitioner, with the Arbitration Branch, Department of Labor and Employment (DOLE), Dumaguete City, for illegal dismissal, premium pay on holidays and rest days, separation pay, wage differential, moral damages, and attorney's fees.

Forthwith, petitioner PHCCI filed a motion to dismiss the complaint on the ground that there is no employer-employee relationship between them as private respondents are all members and co-owners of the cooperative. Furthermore, private respondents have not exhausted the remedies provided in the cooperative *by-laws*.

On September 3, 1990, petitioner filed a supplemental motion to dismiss alleging that Article 121 of R.A. No. 6939, otherwise known as the Cooperative Development Authority Law which took effect on March 26, 1990, requires conciliation or mediation within the cooperative before a resort to judicial proceeding.

On the same date, the Labor Arbiter denied petitioner's motion to dismiss, holding that the case is impressed with employer-employee relationship and that the law on cooperatives is subservient to the Labor Code.

On November 23, 1993, the Labor Arbiter rendered a decision, the dispositive portion of which reads:

**WHEREFORE,** premises considered, judgment is hereby rendered declaring complainants illegally dismissed, thus respondent is directed to pay Complainants backwages computed from the time they were illegally dismissed up to the actual reinstatement but subject to the three year backwages rule, separation pay for one month for every year of service since reinstatement is evidently not feasible anymore, to pay complainants 13th month pay, wage differentials and Ten Percent (10%) attorney's fees from the aggregate monetary award. However, complainant Benedicto Faburada shall only be awarded what are due him in proportion to the nine and a half months that he had served the

respondent, he being a part-time employee.

All other claims are hereby dismissed for lack of merit.

The computation of the foregoing awards is hereto attached and forms an integral part of this decision."

On appeal<sup>[1]</sup>, the NLRC affirmed the Labor Arbiter's decision.

Hence, this petition by the PHCCI.

The issue for our resolution is whether or not respondent judge committed grave abuse of discretion in ruling that there is an employer-employee relationship between the parties and that private respondents were illegally dismissed.

Petitioner PHCCI contends that private respondents are its members and are working for it as volunteers. Not being regular employees, they cannot sue petitioner.

In determining the existence of an employer-employee relationship, the following elements are considered: (1) the selection and engagement of the worker or the power to hire; (2) the power to dismiss; (3) the payment of wages by whatever means; and (4) the power to control the worker's conduct, with the latter assuming primacy in the overall consideration. No particular form of proof is required to prove the existence of an employer-employee relationship. Any competent and relevant evidence may show the relationship.<sup>[2]</sup>

The above elements are present here. Petitioner PHCCI, through Mr. Edilberto Lantaca, Jr., its Manager, hired private respondents to work for it. They worked regularly on regular working hours, were assigned specific duties, were paid regular wages and made to accomplish daily time records just like any other regular employee. They worked under the supervision of the cooperative manager. But unfortunately, they were dismissed.

That an employer-employee exists between the parties is shown by the averments of private respondents in their respective affidavits, carefully considered by respondent NLRC in affirming the Labor Arbiter's decision, thus:

**Benedicto Faburada** -Regular part-time Computer programmer/operator. Worked with the Cooperative since June 1, 1988 up to December 29, 1989. Work schedule: Tuesdays and Thursdays, from 1:00 p.m. to 5:30 p.m. and every Saturday from 8:00 to 11:30 a.m. and 1:00 to 4:00 p.m. and for at least three (3 ) hours during Sundays. Monthly salary: P1,000.00 -from June to December 1988; P1,350.00 - from January to June 1989; and P1,500.00 from July to December 1989. Duties: Among others, Enter data into the computer; compute interests on savings deposits, effect mortuary deductions and dividends on fixed deposits; maintain the masterlist of the cooperative members; perform various forms for mimeographing; and perform such other duties as may be assigned from time to time.

**Sisinita Vilar** -Clerk. Worked with the Cooperative since December 1, 1987 up to December 29, 1989. Work schedule: Regular working hours. Monthly salary: P500.00 - from December 1, 1987 to December 31, 1988; P1,000.00 - from January 1, 1989 to June 30, 1989; and P1,150.00 - from July 1, 1989 to December 31, 1989. Duties: Among others, Prepare summary of salary advances, journal vouchers, daily summary of disbursements to respective classifications; schedule loans; prepare checks and cash vouchers for regular and emergency loans; reconcile bank statements to the daily summary of disbursements; post the monthly balance of fixed and savings deposits in preparation for the computation of interests, dividends, mortuary and patronage funds; disburse checks during regular and emergency loans; and perform such other bookkeeping and accounting duties as may be assigned to her from time to time.

**Imelda C. Tamayo** - Clerk. Worked with the Cooperative since October 19, 1987 up to December 29, 1989. Work schedule: Monday to Friday - 8:00 to 11:30 a.m and 2:00 to 5:30 p.m.; every Saturday - 8:00 to 11:30 a.m and 1:00 to 4:00 p.m; and for one Sunday each month - for at least three (3) hours. Monthly salary: P60.00 - from October to November 1987; P250.00 for December 1987; P500.00 - from January to December 1988; P950 - from January to June 1989; and P1,000.00 from July to December 1989. Duties: Among others, pick up balances for the computation of interests on savings deposit, mortuary, dividends and patronage funds; prepare cash vouchers; check petty cash vouchers; take charge of the preparation of new passbooks and ledgers for new applicants; fill up members logbook of regular depositors, junior depositors and special accounts; take charge of loan releases every Monday morning; assist in the posting and preparation of deposit slips; receive deposits from members; and perform such other bookkeeping and accounting duties as may be assigned her from time to time.

**Harold D. Catipay** - Clerk. Worked with the Cooperative since March 3 to December 29, 1989. Work schedule: - Monday to Friday - 8:00 to 11:30 a.m. and 2:00 to 5:30 p.m.; Saturday - 8:00 to 11:30 a.m. and 1:00 to 4:00 p.m.; and one Sunday each month - for at least three (3) hours. Monthly salary: P900.00 - from March to June 1989; P1,050.00 - from July to December 1989. Duties: Among others, Bookkeeping, accounting and collecting duties, such as, post daily collections from the two (2) collectors in the market; reconcile passbooks and ledgers of members in the market; and assist the other clerks in their duties.

All of them were given a memorandum of termination on January 2, 1990, effective December 29, 1989.

We are not prepared to disregard the findings of both the Labor Arbiter and respondent NLRC, the same being supported by substantial evidence, that quantum of evidence required in quasi-judicial proceedings, like this one..

Necessarily, this leads us to the issue of whether or not private respondents are