

FIRST DIVISION

[G.R. No. 118892, March 11, 1998]

**FILIPINAS BROADCASTING NETWORK, INC., PETITIONER VS.
NATIONAL LABOR RELATIONS COMMISSION AND SIMEON MAPA
JR., RESPONDENTS.**

D E C I S I O N

PANGANIBAN, J.:

As a rule, factual findings of the NLRC are binding on this Court. However, when the findings of the NLRC and the labor arbiter are contradictory, this Court may review questions of facts. Where the evidence clearly shows the absence of an employer-employee relationship, a claim for unpaid wages, thirteenth month pay, holiday and rest pay and other employment benefits must necessarily fail.

The Case

Before us is a petition for *certiorari* assailing the April 29, 1994 Decision of the National Labor Relations Commission,^[1] in Case No. 05-08-00348-92, entitled "Simeon M. Mapa Jr., v. DZRC Radio Station." The dispositive portion of the challenged Decision reads:

"WHEREFORE, premises considered, the appealed decision is set aside, and a new judgment is entered, declaring that complainant is an employee of the respondent and is entitled to his claims for the payment of his services from March 11, 1990 to January 16, 1992."^[2]

Petitioner also impugns the November 9, 1994 Resolution^[3] of the NLRC denying the motion for reconsideration.

The October 13, 1993 decision of the labor arbiter,^[4] which the NLRC reversed and set aside, disposed as follows:

"This Arbitration Branch, based on the facts and circumstances established by the parties in this case is inclined to believe that complainant Simeon M. Mapa, Jr., had not been an employee of the respondent DZRC Radio Station before February 16, 1992.^[5] He was but a volunteer reporter when accommodated to air his report on the respondent radio station as his application for employment with the respondent radio station as his application for employment with the respondent as field reporter had not been accepted yet or approved before February, 1992. There was no employer-employee relations that existed between the complainant and the respondent since March 11, 1990 until February 16, 1992. The complainant is not entitled to his claim for any salaries, premium pay for holiday and rest day, holiday pay and the 13th month pay against the respondent DZRC Radio Station/Salvo Fortuno.

WHEREFORE, in the light of the foregoing premises, judgment is hereby rendered dismissing the complaint in his case for lack of merit.”^[6]

The Facts

Version of Private Respondent

Petitioner and private respondent submitted different versions of the facts. The facts as viewed by private respondent are as follows:^[7]

“The complainant (herein private respondent) began to work for the respondent as a radio reporter starting March 11, 1990. On May 14, 1990, upon being informed by then respondent’s Station Manager, Mr. Plaridel Brocales, that complainant’s employment with respondent is being blocked by Ms. Brenda Bayona of DZGB, complainant’s previous employer, the said complainant took a leave of absence. In the first week of June, 1990, the respondent thru Mr. Antonio Llarena, then an employee of the respondent, asked the complainant to return to work even as he was assured that his salaries will be paid to him already. Thus, the complainant continued to work for the respondent since then. On September 5, 1991, again the complainant took a leave of absence because of his desperation over the failure of respondent to make good its promise of payment of salaries. He was reinstated on January 16, 1992 and resigned on February 27, 1992 when he decided to run for an elective office in the town of Daraga, albay. Unfortunately, the respondent paid salary to the complainant only for the period from January 16, 1992 up to February 27, 1992. Respondent did not pay the complainant for all the services rendered by the latter from March 11, 1990 up to January 16, 1992.”

As may be gleaned from its memorandum,^[8] petitioner’s version of the facts is as follows:

“1. On or before April 1990, Mapa was dismissed from his employment with PBN-DZGB Legaspi. At the time, Mapa filed a case for illegal dismissal against PBN-DZGB Legaspi docketed as RAV V. Case No. 05-04-00120-90 entitled ‘Simeon Mapa, Jr. v. People’s Broadcasting Network-DZGB Legaspi, Jorge Bayona and Arturo Osia’.

2. On or about May 1990, Mapa sought employment from DZRC as a radio reporter. However, DZRC required of private respondent the submission of a clearance from his former employer. Otherwise, his application would not be acted upon;

3. On May 14, 1990, Mapa was informed by DZRC’s then station manager, Mr. Plaridel ‘Larry’ Brocales, that his application for employment was ‘being blocked by Ms. Brenda Bayona of DZGB, Mapa’s former employer.’ This fact is supported by Mapa’s position paper before the Honorable Labor Arbiter xxx;

4. Taking pity on Mapa and pending the issuance of the clearance from PBN-DZGB Legaspi, Mr. Larry Brocales granted the request of Mapa to be accommodated only as a volunteer reporter of DZRC on a part-time basis. As a volunteer reporter, Mapa was not to be paid wages as an employee of DZRC but he was permitted to find sponsors whose business establishments will be advertised every time he goes on the air. Most importantly, Mapa’s only work consisted of occasional newsbits or on-the spot reporting of consisted of occasional newsbits or on-the spot reporting of incidents or newsworthy occurrences, which was very seldom.

5. Mapa's friends who were also in the same situation as he was, declared in an affidavit dated June 10, 1993 that:

"WE, ALLAN ALMARIO and ELMER ANONUEVO, of legal age, single, with postal address at Washington Drive, Legaspi City, under oath, depose and state:

1. We personally know Simeon "Jun" Mapa, a former volunteer reporter at DZRC just like us;
2. As volunteer reporters we know that we will not receive any salary or allowance from DZRC because our work was purely voluntary;
3. As incentive for us, the management of DZRC allowed us to get our own sponsors whose business establishment we mention[ed] every after field report was made by us;
4. The management did not require or oblige us to render a report. We were on our own. We ma[d]e or render[ed] a report as we [saw]fit;
5. During our stint as volunteer reporters we had several sponsors each who paid us P300.00 per month (each)."

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6. Having no radio gadgets to begin with, DZRC loaned Mapa the necessary equipment such as handheld radios and reporting gadgets. Mapa was to do occasional reporting only, i.e., a few minutes each day at an irregular time period at Mapa's own convenience. Mapa advertised his sponsors and pocketed the payment of these sponsors for his advertising services. In addition, DZRC had no control over the manner by [sic] which he was to make his reports. Nor were the said reports subject to editing by DZRC;

7. In an Affidavit dated June 10, 1993 executed by one of Mapa's sponsors, the same reads as follows:

'I, CARLITO V. BAYLON, of legal age, married, resident of Dona Maria Subdivision, Daraga, Albay, under oath, depose and state:

1. I am a lawyer by profession. At the same time, I am owner of 'Kusina ni Manoy' a restaurant situated in Daraga, Albay;

2. I personally know Simeon 'Jun' Mapa. Sometime in May, 1990 he went to make and asked if I could be one of his sponsors because he was accommodated by DZRC as volunteer reporter. He explained to me that, he will not be receiving any salary from DZRC[;] hence, he was soliciting any support;

3. Taking pity on him, I agreed to be one of his sponsors. The condition was, I will have to pay him P300.00/month. In exchange thereto, he will have to mention the name of the name of my restaurant every time he renders a report on the air;

4. My sponsorship lasted for about (5) months after which I discontinued it when I rarely heard Jun Mapa in DZRC program.'

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8. On November 7, 1990, in his testimony against his former employer, Mapa declared under oath. To wit:

"ATTY. LOBRIGO:

'On paragraph 14 of the same affidavit it states and I quote: 13. Having been left with an empty stomach, I was compelled to apply for employment with another radio station. On March 11, 1990, I applied for employment with DZRC. Unfortunately, my application would not yet be acted [upon] favorably because of the malicious and oppressive imputations to me by my former employer.'

My question is what is now the status of your employment with DZRC?

WITNESS:

I am at present on a volunteer status because my former employer at DZGB did not give me clearance and I am required to submit that clearance to DZRC." (Underlining supplied)."

See p. 2 of Position Paper of DZRC before the Labor Arbiter and pp. 4-5 of the Transcript of Stenographer Notes dated November 7, 1990, attached and marked as Annex "F" and Annex "F-1", Petition for *Certiorari*;

9. It cannot be overstressed that Mapa's application for employment could not have been acted upon because of the lack of the pre-requisite clearance.

10. Lacking in sponsors, Mapa soon failed to provide petitioner with newsbits, finding it unprofitable to continue since he had no available sources of funding. Sometime in September 1991, Mapa quit his part-time endeavor with DZRC, as attested to by the Office of Supervisor/Traffic Manager Ignacio Casi in an Affidavit dated June 10, 1992, to wit:

'1. I am the Office Supervisor/Traffic Manager of DZRC-AM;

2. Sometime in May, 1990 Simeon "Jun" Mapa went to my office inside our radio station. He asked me if he could be accomodated as Radio Reporter of DZRC, as he was dismissed from DZGB. I referred him to Larry Brocales, our Station Manager then;

3. Larry Brocales told Jun Mapa that he cannot be accomodated because he has no clearance from DZGB. Jun Mapa, almost teary eyed, pleaded to Larry Brocales that he be accomodated as volunteer reporter, that is, he will not receive any salary but that he intimated that he be allowed to look for sponsors whose business establishment, for a fee, will have to be mentioned after every report is made. Larry Brocales took pity on Jun Mapa and accomodated him;

4. Jun Mapa, just like the other volunteer reporters, was not obliged to render field reports, at a particular time and in a particular program. They render report as they wish or see fit;

5. The management (DZRC) does not collect anything from the sponsors of Jun Mapa. They (sponsors) pay directly to him;

6. Being the Office Supervisor, I know for a fact that Jun Mapa seldom renders report on the air. He has no assigned program either. He was on and off the air, so to speak;

7. Finally, some time in September, 1991, Jun Mapa told me that he is quitting already because his sponsors were no longer paying him of his monthly contract with them." (Underscoring supplied)(See Annex "G", Petition for *Certiorari*);

11. Subsequently, Mapa sent a letter dated October 7, 1991 to Ms. Diana C. Gozum, General Manager of petitioner FBN. In the said letter, Mapa wrote and admitted that:

'I am [sic] Mr. Simeon Mapa, Jr. respectfully request your good office to reconsider my previous application submitted last March 1990 as a reporter of DZRC AM.

May I inform you that since the submission of such application I worked until September 6, 1991 for free services [sic]. Hoping that I'll be given the chance to be recognized as a regular reporter.

With this, I respectfully wish to follow up my application for recognition.

May I also inform you that the case I have with my previous job with the other company has commenced.

Attached herewith is my resume.

I am once again submitting myself for an interview with your office at a time convenient to you.

Thank you.'

(See Annex "H", Petition for *Certiorari*);

12. Reacting to the letter mentioned in the immediately preceding paragraph, DZRC favorably acted upon the application of Mapa and accepted him as a radio reporter on January 16, 1992;

13. On February 27, 1992, Mapa resigned as a radio reporter in order to run for an elective office in the May 1992 elections and was paid all his salaries and benefits for the period of his employment commencing from January 16, 1992 until February 27, 1992;

14. Having no work to do and no employment in sight, Mapa filed a complaint against FBN-DZRC on August 1992, claiming the payment of salaries, premium pay, holiday pay as well as 13th month pay for the period 28 February 1990 until January 16, 1992;"

On October 13, 1993, Labor Arbiter Emeterio Ranola dismissed the complaint for lack of merit, finding that no employer-employee relationship existed between Mapa and DZRC during the period March 11, 1990 to February 16, 1992. ^[9]

Findings of the NLRC

In holding that there was an employer-employee relationship, the NLRC set aside the labor arbiter's findings:

"In his appeal, complainant insists that there was an employer-employee relationship between him and the respondent. In support of his contention, he cites the payroll for February 16 to 29, 1992, the ID card issued to him as employee and regular reporter by the respondent: [sic] the program schedules of DZRC showing the regular program of the station indicating his name: [sic] the affidavit of Antonio Llarena, program supervisor of DZRCM, stating that he [was] a regular reporter under his supervision and the list of reporting gadgets issued to regular reporter.

The existence of employer employee relationship is determined by the following elements, namely: 1) selection and engagement of the employee; 2) the payment of wages; 3) the power of dismissal; and 4) the power to control employee's conduct although the latter is the most important element. (*Rosario Brothers, Inc. vs. Ople*, 131 SCRA 72)