356 Phil. 174

FIRST DIVISION

[G.R. No. 124551, August 28, 1998]

USHIO MARKETING, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND SEVERINO ANTONIO, RESPONDENTS.

D E C I S I O N

DAVIDE, JR., J.:

Petitioner urges us to annul the decision of 31 May 1995 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 008495-95[1] which reversed the Labor Arbiter's 13 January 1995 decision in NLRC NCR Case No. 08-06147-94 and the NLRC's Order[2] of 29 February 1996 which denied petitioner's motion for reconsideration.

The factual and procedural antecedents are summarized by the public respondent NLRC in its Comment as follows:

> Private respondent Severino Antonio was an electrician who worked within the premises of petitioner Ushio's car accessory shop in Banawe, Quezon City. On August 22, 1994, private respondent filed a complaint for illegal dismissal, non-payment of overtime pay, holiday pay, and other benefits against petitioner Ushio Marketing which was docketed as NLRC NCR Case No. 08-06147-94 and assigned to Labor Arbiter Facundo L. Leda.
>
> On October 13, 1994, Labor Arbiter Leda directed the parties to file their respective papers within a non-extendible period of twenty-five (25) days. On November 4, 1994, petitioner filed a motion to dismiss, while private respondent failed to file his position paper.
>
> In Petitioner's Motion to Dismiss, she alleged that it was a single proprietorship engaged in the business of selling automobile spare parts and accessories. Petitioner claimed that private respondent was not among her employees but a free lance operator who wait[ed] on the shop's customers should the latter require his services. Petitioner further alleges in her Motion to Dismiss the following:

"5.0 In pursuit of its trading business, the company employs a handful of regular employees such as sales persons, clerks, account officers and the like. These employees are on the Company payroll and are provided with all the privileges and benefits accorded by law to regular employees. These employees were selected and engaged by the management of the company and are paid their respective salaries regularly. They also have fixed working days and hours and are subject to disciplinary measures (such as reprimand, suspension or dismissal) should they violate company policies on tardiness, absences and general employment conduct.

Simply put, the Company has full control over the manner by which the said employees perform their jobs.

6.0 In stark contrast to the Company's regular employees, there are independent, free lance operators who are permitted by the Company to position themselves proximate to the Company premises. These independent operators are allowed by the Company to wait on Company customers who would be requiring their services. In exchange for the privileges of favorable recommendation by the Company and immediate access to customers in need of their services, these independent operators allow the Company to collect their service fee from the customer and this fee is given back to the independent operator at the end of the week. In effect, they do not earn fixed wages from the Company as their variable fees are earned by them from the customers of the Company. The Company has no control over and does not restrict the methodology or the means and manner by which these operators perform their work. These operators are not supervised by any employee of the Company since the results of their work is controlled by the customers who hire them. Likewise, the Company has no control as an employer over these operators. They are not subject to regular hours and days of work and may come and go as they wish. They are not subject to any disciplinary measures from the Company, save merely for the inherent rules of general behavior and good conduct.

7.0 Complainant was one such independent, free lance operator. He was allowed by the Company to provide his services to the customers of the Company who were in need of such services. He received his fees indirectly from the Company out of the fees paid by the customers during a given week. In doing his job, he was under the direct supervision and control of the customer. He was under no compulsion whatsoever to report to the Company on a regular basis. He was not subject to any disciplinary measures for his work conduct. Furthermore, he was free to position himself near other car accessory shops to offer his services to customers of said shops, as he is [sic] in fact had done on various occasions prior to the filing of this complaint."

> Attached to the motion of the petitioner is an affidavit executed by Ms. Caroline Tan To, Assistant Manager of Share Motor Sales, also engaged in the business of selling car spare parts and accessories along Banawe Street, attesting to the following : that in the pursuit of the said business, it allows independent and free lance operators, such as electricians, to wait on customers who would want them to perform their services; and that she knows one independent operator by the name of Severino Antonio, as the latter had performed jobs [for] its customers.
>
> On January 13, 1995, Labor Arbiter Facundo L. Leda premising on the allegations contained in the Motion to Dismiss submitted by the petitioner Company, issued an order dismissing the complaint of private respondent Severino Antonio against petitioner Ushio Marketing Corp.
>
> On February 28, 1995, private respondent assisted by the Public Attorney's Office, appealed the order of the Honorable Labor Arbiter to the Commission. In his memorandum, private respondent alleged that Ushio Marketing hired his services on 15 November 1981 until July 3, 1994 as an electrician with a daily salary of one hundred thirty two pesos (P132.00) per day. He further alleged that:

"During the employ of herein complainant with the respondents, he performed his job religiously and faithfully, in fact he was the most trusted employee in the company. For instance, Mrs. Tan, the employer, would ask him to go to the bank and withdraw money and deliver the purchased spare parts/accessories to the customer. If there was no driver, or they needed [a] handyman in the office and even in their household, Mrs. Tan would call for the complainant. He could be called, the employer's 'personal assistant.' However, despite his devotion and loyalty to his work as well as to his employer, his services were terminated by the respondents without legal grounds. When he reported for work on 3 July 1994, his employer would not let him inside the office because he was already dismissed from his job. He came [sic] back to the office for a number of times but his efforts proved futile. Hence, he instituted a complaint with this Honorable Office."

> Attached to the private respondent's Memorandum of Appeal were affidavits of his co-electricians who worked with Ushio Marketing namely: Roberto Lopez and Narcing Pascua, corroborating the allegation that Mr. Severino Antonio worked with the petitioner Company as an electrician for the past four years when they have been working with the same Company; they were receiving One Hundred Thirty Two (P132.00) per day from Mrs. Tan, that they cannot be absent from work without the permission of Mrs. Tan; and that it was Mrs. Tan who gave them work when a client comes in. To quote:
>
> "4. Na ang suweldo ko at ni Severino na P132.00 isang araw ay kay Gng. Tan nanggagaling at hindi direktang ibinibigay ng kliyente;
>
> 5. Na hindi kami maaring lumiban sa aming trabaho nang hindi nagpapa[a]lam kay Gng. Tan;
>
> 6. Na si Gng. Tan ang nagbibigay sa amin ng trabaho kung mayroong dumarating na kliyente."

On May 31, 1995, the National Labor Relations Commission issued its decision holding that complainant is respondent's employee and that he was illegally dismissed. The dispositive portion of the decision reads as follows:

"WHEREFORE, the appealed Order dated January 13, 1995 is hereby set aside. The respondent is directed to reinstate complainant with full backwages computed from August 3, 1994 until he is actually reinstated. Complainant's monetary claims presented as third issue on appeal is however remanded for further arbitration there being no substantial basis to grant or deny the same." (p. 6 NLRC's Decision)[3]

The NLRC reversed the Labor Arbiter. It adopted private respondent's allegations in his complaint that he had "worked for respondent since '1981' as [an] 'electrician' [and] paid 'weekly every Sunday' at the rate of '132' pesos per day;" and concluded that petitioner's arrangement as regards the mode of payment of private respondent's wages was "nothing but an evasive attempt to hide the real employment status of [private respondent]," considering that it could not understand why private respondent could not directly collect his earnings from a customer, immediately after private respondent accomplished a job for which he was hired; and why private respondent's proceeds from jobs rendered on a daily basis could only be paid to him on a weekly basis.

Petitioner's motion for reconsideration having been denied by the NLRC in its resolution of 29 February 1996 for "lack of palpable and patent errors," petitioner filed the instant petition, ascribing to the NLRC the commission of grave abuse of discretion in: (1) declaring private respondent as a regular employee; and (2) ignoring the accepted industry practices of car spare parts shop owners which are not contrary to law, public order and public policy.

Petitioner maintains that as it was private respondent who alleged the existence of an employer-employee relationship, the burden to prove the same by credible and relevant evidence thus lay with private respondent, especially since petitioner staunchly and consistently denied the same. Petitioner insists that the nature of its operations, as collaborated by the sworn statement of the assistant manager of a rival establishment, sufficiently established the real status of private respondent as a free lance operator performing assorted services like electrical jobs, installation of accessories and spare parts, and some minor repairs for petitioner's customers. Petitioner then concludes that the basic issue of whether private respondent was an employee should be resolved in the negative, considering that: (1) petitioner had no part in the selection and engagement of private respondent, its role merely limited to recommending private respondent's services to the former's customers; (2) private respondent was not paid a fixed regular wage, but only a service fee collected by petitioner from its customers and paid to private respondent at the end of the week; (3) private respondent was not included in petitioner's payroll and neither was the former reported as petitioner's employee to the Social Security System or the Bureau of Internal Revenue, citing Continental Marble Corporation v. NLRC (161 SCRA 151, 157 [1988]); (4) petitioner had no occasion to exercise its power to dismiss since petitioner never hired private respondent; and (5) petitioner did not exercise control and supervision over the means and methods by which private respondent performed his job, as private respondent practiced independent judgment as to the time and place of work and was not required to report on a regular basis and even allowed to service the customers of other auto supply shops. Additionally, petitioner had no liability, on account of private respondent's poor workmanship, to customers who chose to avail of private respondent's services and regulated his performance.

Petitioner further argues that it was a recognized and accepted trade practice peculiar to the auto spare parts shop industry operating along the stretch of Banawe Street, Quezon City, that shop owners would collect the service fees from its customers and disburse the same to the independent contractor at the end of a week. In fine, the shop owner and the independent contractor were partners in trade, "both benefiting from the proceeds of their joint efforts." This mutual cooperation between petitioner and private respondent could then be likened to that of a shoe shiner and a shoe shop owner in Besa v. Trajano,[4] or that of a caddy and the golf club in Manila Golf Club, Inc. v. Intermediate Appellate Court.[5]

In his comment, private respondent reiterates his arguments that he was an employee of petitioner, having worked for petitioner as an electrician from 15 November 1991 until 3 July 1994 with the following salary, to wit: 1981- P20.00/day; 1983- P21.00/day; 1989- P75.00/day; 1990- P100.00/day; 1991-1994- P132/day. Likewise, during private respondent's employ, he carried out various tasks as a driver, handyman, and "personal assistant" of petitioner. Private respondent could not be regarded an independent contractor since there was no written proof to support such a conclusion; his services as a handyman and an