Supreme Court E-Library

Respondents have not filed any manifestation. However, they seek no relief other than the dismissal of the present petition.

WHEREFORE, the petition is hereby dismissed for having become moot and academic. No costs.

SO ORDERED.

Antonio (Actg. Chairman), Aquino, Concepcion Jr., and *Santos JJ.,* concur.

Barredo, J., on official leave.

FIRST DIVISION

[G.R. No. L-32245. May 25, 1979]

DY KEH BENG, *petitioner, vs.* **INTERNATIONAL LABOR and MARINE UNION OF THE PHILIPPINES, *ET AL.*,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; EMPLOYER-EMPLOYEE RELATIONSHIP; CONTROL TEST; APPLICATION. — Under the control test, an employer-employee relationship exist "where the person for whom the services are performed reserves a right to control not only the end to be achieved but also the means to be used un reaching such end." The control test calls merely for the existence of the right to control the manner of doing the work, not the actual exercise of the right where the proprietor of an establishment is "engaged in the manufacture of baskets known as "*kaing*," it is natural to except that those working therein would have to observe, among others, the proprietor's requirements of size and quality of the *kaing*. Some control would necessarily be exercised by the proprietor as the making of the kaing would be subject to his specifications. And where

Supreme Court E-Library

the work on the baskets in done at his establishment, it can be inferred that the proprietor could easily exercise control on the men he employed.

2. ID.; ID.; "*PAKYAW* SYSTEM," A LABOR CONTRACT BETWEEN EMPLOYER AND EMPLOYEE. — Judicial notice may be taken of the fact that the so-called "*pakyaw*" system as generally practiced in the Philippines is, in fact, a labor contract between the employers and employees, between capitalists and laborers.

3. REMEDIAL LAW; COURT OF INDUSTRIAL RELATIONS; FINDINGS OF FACT BINDING ON THE SUPREME COURT. — Section 6, Republic Act 875 provides that in unfair labor practice cases, the factual findings of the Court of Industrial Relations are conclusive on the Supreme Court, if supported by substantial evidence.

4. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; BACKWAGES; FORMULA FOR FIXING AWARD OF BACKWAGES. — The formula for backwages in cases not terminated sooner calls for fixing the award of backwages without qualification and deduction to three years, subject to deduction where there are mitigating circumstance in favor of the employer but subject to increase by way of exemplary damages where there are aggravating circumstance. In the absence of such circumstance, the dismissed employees may be awarded backwages for three years without qualification and deduction at the respective rates of compensation the employees concerned were receiving at the time of dismissal.

APPEARANCES OF COUNSEL

A. M. Sikat for petitioner.
D. A. Hernandez for respondents.

D E C I S I O N

DE CASTRO, *J.*:

Petitioner Dy Keh Beng seeks a review by *certiorari* of the decision of the Court of Industrial Relations dated March 23, 1970 in Case No. 3019-ULP and the Court's Resolution *en*

Supreme Court E-Library

banc of June 10, 1970 affirming said decision. The Court of Industrial Relations in that case found Dy Keh Beng guilty of the unfair labor practice acts alleged and order him to.

"reinstate Carlos Solano and Ricardo Tudla to their former jobs with backwages from their respective dates of dismissal until fully reinstated without loss to their right of seniority and of such other rights already acquired by them and/or allowed by law."[1]

Now, Dy Keh Beng assigns the following errors[2] as having been committed by the Court of Industrial Relations:

I

RESPONDENT COURT ERRED IN FINDING THAT RESPONDENTS SOLANO AND TUDLA WERE EMPLOYEES OF PETITIONERS.

II

RESPONDENT COURT ERRED IN FINDING THAT RESPONDENTS SOLANO AND TUDLA WERE DISMISSED FROM THEIR EMPLOYMENT BY PETITIONER.

III

RESPONDENT COURT ERRED IN FINDING THAT THE TESTIMONIES ADDUCED BY COMPLAINANT ARE CONVINCING *AND DISCLOSES (SIC) A PATTERN OF DISCRIMINATION* BY THE PETITIONER HEREIN.

IV

RESPONDENT COURT ERRED IN DECLARING PETITIONER GUILTY OF UNFAIR LABOR PRACTICE ACTS AS ALLEGED AND DESCRIBED IN THE COMPLAINT.

V

RESPONDENT COURT ERRED IN ORDERING PETITIONER TO REINSTATE RESPONDENTS TO THEIR FORMER JOBS WITH BACKWAGES FROM THEIR RESPECTIVE DATES OF DISMISSALS UNTIL FINALLY REINSTATED WITHOUT LOSS TO THEIR RIGHT

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[1] *Rollo*, p. 48.

[2] Petitioner's Brief, pp. 1-2.

Supreme Court E-Library

OF SENIORITY AND OF SUCH OTHER RIGHTS ALREADY ACQUIRED BY THEM AND/OR ALLOWED BY LAW.

The facts as found by the Hearing Examiner are as follows:

A charge of unfair labor practice was filed against Dy Keh Beng, proprietor of a basket factory, for discriminatory acts within the meaning of Section 4(a), sub-paragraph (1) and (4), Republic Act No. 875,[3] by dismissing on September 28 and 29, 1960, respectively, Carlos N. Solano and Ricardo Tudla for their union activities. After preliminary investigation was conducted, a case was filed in the Court of Industrial Relations for in behalf of the International Labor and Marine Union of the Philippines and two of its members, Solano and Tudla. In his answer, Dy Keh Beng contended that he did not know Tudla and that Solano was not his employee because the latter came to the establishment only when there was work which he did on *pakiaw* basis, each piece of work being done under a separate contract. Moreover, Dy Keh Beng countered with a special defense of simple extortion committed by the head of the labor union, Bienvenido Onayan.

After trial, the Hearing Examiner prepared a report which was subsequently adopted *in toto* by the Court of Industrial Relations. An employee-employer relationship was found to have existed between Dy Keh Beng and complainants Tudla and Solano, although Solano was admitted to have worked on piece basis.[4] The issue therefore centered on whether there existed an employee employer relation between petitioner Dy Keh Beng and the respondents Solano and Tudla.

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[3] Republic Act 875, as amended, Section 4. Unfair Labor Practices. —

a) It shall be unfair labor practice for an employer:

1) To interfere with, restrain or coerce employees in the exercise of their rights guaranteed in section three;

x x x x x x x x x

(4) To discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: x x x

[4] *Rollo*, p. 32.

Supreme Court E-Library

According to the Hearing Examiner, the evidence for the complainant Union tended to show that Solano and Tudla became employees of Dy Keh Beng from May 2, 1953 and July 15, 1955,[5] respectively, and that except in the event of illness, their work with the establishment was continuous although their services were compensated on piece basis. Evidence likewise showed that at times the establishment had eight (8) workers and never less than five(5); including the complainants, and that complainants used to receive ₱5.00 a day, sometimes less.[6]

According to Dy Keh Beng, however, Solano was not his employee for the following reasons:

"(1) Solano never stayed long enough at Dy's establishment;

(2) Solano had to leave as soon as he was through with the order given him by Dy;

(3) When there were no orders needing his services there was nothing for him to do;

(4) When orders came to the shop that his regular workers could not fill, it was then that Dy went to his address in Caloocan and fetched him for these orders; and

(5) Solano's work with Dy's establishment was not continuous."[7]

According to petitioner, these facts show that respondents Solano and Tudla are only piece workers, not employees under Republic Act 875, where an employee[8] is referred to as

"shall include any employee and shall not be limited to the employee of a particular employer unless the Act explicitly states otherwise and shall include any individual whose work has ceased as a consequence of, or in connection with any current labor dispute

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[5] *Id.*, p. 23.

[6] *Id.*

[7] *Rollo*, Annex A, p. 22.

[8] Section 2(d), Republic Act 875, As Amended, otherwise known as the Industrial Peace Act.

Supreme Court E-Library

or because of any unfair labor practice and who has not obtained any other substantially equivalent and regular employment."

while an employer[9]

"includes any person acting in the interest of an employer, directly or indirectly but shall not include any labor organization (otherwise than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization."

Petitioner really anchors his contention of the non-existence of employee-employer relationship on the control test. He points to the case of *Madrigal Shipping Co., Inc. v. Nieves Baens del Rosario, et al.*, L-13130, October 31, 1959, where the Court ruled that:

"The test . . . of the existence of employee and employer relationship is whether there is an understanding between the parties that one is to render personal services to or for the benefit of the other and recognition by them of the right of one to order and control the other in the performance of the work and to direct the manner and method of its performance."

Petitioner contends that the private respondents "did not meet the control test in the light of the . . . definition of the terms employer and employee, because there was no evidence to show that petitioner had the right to direct the manner and method of respondent's work."[10] Moreover, it is argued that petitioner's evidence showed that "Solano worked on a *pakiaw* basis" and that he stayed in the establishment only when there was work.

While this Court upholds the control test[11] under which an employer-employee relationship exists "where the person for whom the services are performed reserves a right to control not only the end to be achieved but also the means to be used

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[9] *Id.*, Section 2(c).

[10] Petitioner's Brief, pp. 5-7.

[11] *LVN Pictures v. Philippine Musicians Guild, et al.*, 110 Phil. 725.

Supreme Court E-Library

in reaching such end," it finds no merit with petitioner's arguments as stated above. It should be borne in mind that the control test calls merely for the existence of the right to control the manner of doing the work, not the actual exercise of the right.[12] Considering the finding by the Hearing Examiner that the establishment of Dy Keh Beng is "engaged in the manufacture of baskets known as *kaing*,[13] it is natural to expect that those working under Dy would have to observe, among others, Dy's requirements of size and quality of the *kaing*. Some control would necessarily be exercised by Dy as the making of the *kaing* would be subject to Dy's specifications. Parenthetically, since the work on the baskets is done at Dy's establishments, it can be inferred that the proprietor Dy could easily exercise control on the men he employed.

As to the contention that Solano was not an employee because he worked on piece basis, this Court agrees with the Hearing Examiner that

"circumstances must be construed to determine indeed if payment by the piece is just a method of compensation and does not define the essence of the relation. Units of time . . . and units of work are in establishments like respondent (sic) just yardsticks whereby to determine rate of compensation, to be applied whenever agreed upon. We cannot construe payment by the piece where work is done in such an establishment so as to put the worker completely at liberty to turn him out and take in another at pleasure."

At this juncture, it is worthy to note that Justice Perfecto, concurring with Chief Justice Ricardo Paras who penned the decision in "*Sunripe Coconut Products Co. v. Court of Industrial Relations*" (83 Phil. 518, 523), opined that

"judicial notice of the fact that the so-called '*pakyaw*' system mentioned in this case as generally practiced in our country, is, in fact, a labor contract between employers and employees, between capitalists and laborers."

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[12] *Feati University v. Bautista, et al.*, L-21500, December 27, 1966, 18 SCRA 1191.

[13] *Rollo*, p. 46.

Supreme Court E-Library

Insofar as the other assignments of errors are concerned, there is no showing that the Court of Industrial Relations abused its discretion when it concluded that the findings of fact made by the Hearing Examiner were supported by evidence on the record. Section 6, Republic Act 875 provides that in unfair labor practice cases, the factual findings of the Court of Industrial Relations are conclusive on the Supreme Court, if supported by substantial evidence. This provision has been put into effect in a long line of decisions where the Supreme Court did not reverse the findings of fact of the Court of Industrial Relations when they were supported by substantial evidence.[14]

Nevertheless, considering that about eighteen (18) years have already elapsed from the time the complainants were dismissed,[15] and that the decision being appealed ordered the payment of backwages to the employees from their respective dates of dismissal until finally reinstated, it is fitting to apply in this connection the formula for backwages worked out by Justice Claudio Teehankee in "cases not terminated sooner."[16] The formula calls for fixing the award of backwages without qualification and deduction to three years, "subject to deduction where there are mitigating circumstances in favor of the employer but subject to increase by way of exemplary damages where there are aggravating circumstances."[17] Considering there are no such circumstances in this case, there is no reason why the Court should not apply the above-mentioned formula in this instance.

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[14] Among them are: *Philippine Newspapers' Guild v. Evening News, Inc.*, 86 Phil. 303; *G.P.T.C. Employees Union v. Court of Industrial Relations, et al.*, 102 Phil. 538; *Community Sawmill Company v. Court of Industrial Relations and Community Effort Labor Union*, L-24347, March 27, 1979; *Gonzalo Puyat & Sons, Inc. v. Labayo*, 62 SCRA 488; *De Leon, et al. v. Pampanga Development Co., Inc.*, L-26844, September 30, 1969, 29 SCRA 628; *Castillo, et al. v. Court of Industrial Relations*, L-26124, May 29, 1971, 39 SCRA 75.

[15] *Rollo*, p. 36.

[16] *Mercury Drug Co., et al. v. Court of Industrial Relations*, L-23357, April 30, 1974, 56 SCRA 694, 712.

[17] *Id.*

Supreme Court E-Library

WHEREFORE, the award of backwages granted by the Court of Industrial Relations is herein modified to an award of backwages for three years without qualification and deduction at the respective rates of compensation the employees concerned were receiving at the time of dismissal. The execution of this award is entrusted to the National Labor Relations Commission. Costs against petitioner.

SO ORDERED.

Teehankee (Chairman), Makasiar, Guerrero, and *Melencio Herrera, JJ.,* concur.

Fernandez, J., took no part.

FIRST DIVISION

[G.R. No. L-32779. May 25, 1979]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **HON. FLORENDO P. AQUINO, Judge of the Court of First Instance of Nueva Ecija and JOHN LI KAN WA,** *respondents.*

SYLLABUS

REMEDIAL LAW; SPECIAL PROCEEDINGS; CHANGE OF NAME; OMISSION IN THE TITLE OF THE PETITION OF THE NAME ASKED FOR, A SUBSTANTIAL JURISDICTIONAL INFIRMITY. — The petition for change of name shall set forth *inter alia*, the name asked for. The requirement is mandatory and compliance therewith is essential, for it is by such means that the court acquires jurisdiction. The failure to include the name sought to be adopted in the title of the petition, and consequently in the notices published in the newspaper is a substantial jurisdictional infirmity. For publication to be effective,