

## SECOND DIVISION

[ G.R. No. 87098, November 04, 1996 ]

**ENCYCLOPAEDIA BRITANNICA (PHILIPPINES), INC.,  
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION,  
HON. LABOR ARBITER TEODORICO L. DOGELIO AND BENJAMIN  
LIMJOCO, RESPONDENTS.**

### D E C I S I O N

**TORRES, JR., J.:**

Encyclopaedia Britannica (Philippines), Inc. filed this petition for certiorari to annul and set aside the resolution of the National Labor Relations Commission, Third Division, in NLRC Case No. RB IV-5158-76, dated December 28, 1988, the dispositive portion of which reads:

"WHEREFORE, in view of all the foregoing, the decision dated December 7, 1982 of then Labor Arbiter Teodorico L. Dogelio is hereby AFFIRMED, and the instant appeal is hereby DISMISSED for lack of merit.

SO ORDERED."<sup>[1]</sup>

Private respondent Benjamin Limjoco was a Sales Division Manager of petitioner Encyclopaedia Britannica and was in charge of selling petitioner's products through some sales representatives. As compensation, private respondent received commissions from the products sold by his agents. He was also allowed to use petitioner's name, goodwill and logo. It was, however, agreed upon that office expenses would be deducted from private respondent's commissions. Petitioner would also be informed about appointments, promotions, and transfers of employees in private respondent's district.

On June 14, 1974, private respondent Limjoco resigned from office to pursue his private business. Then on October 30, 1975, he filed a complaint against petitioner Encyclopaedia Britannica with the Department of Labor and Employment, claiming for non-payment of separation pay and other benefits, and also illegal deduction from his sales commissions.

Petitioner Encyclopaedia Britannica alleged that complainant Benjamin Limjoco (Limjoco, for brevity) was not its employee but an independent dealer authorized to promote and sell its products and in return, received commissions therefrom. Limjoco did not have any salary and his income from the petitioner company was dependent on the volume of sales accomplished. He also had his own separate office, financed the business expenses, and maintained his own workforce. The salaries of his secretary, utility man, and sales representatives were chargeable to his commissions. Thus, petitioner argued that it had no control and supervision over the complainant as to the manner and means he conducted his business operations. The latter did not even report to the office of the petitioner and did not

observe fixed office hours. Consequently, there was no employer-employee relationship.

Limjoco maintained otherwise. He alleged that he was hired by the petitioner in July 1970, was assigned in the sales department, and was earning an average of P4,000.00 monthly as his sales commission. He was under the supervision of the petitioner's officials who issued to him and his other personnel, memoranda, guidelines on company policies, instructions and other orders. He was, however, dismissed by the petitioner when the Laurel-Langley Agreement expired. As a result thereof, Limjoco asserts that in accordance with the established company practice and the provisions of the collective bargaining agreement, he was entitled to termination pay equivalent to one month salary, the unpaid benefits (Christmas bonus, midyear bonus, clothing allowance, vacation leave, and sick leave), and the amounts illegally deducted from his commissions which were then used for the payments of office supplies, office space, and overhead expenses.

On December 7, 1982, Labor Arbiter Teodorico Dogelio, in a decision ruled that Limjoco was an employee of the petitioner company. Petitioner had control over Limjoco since the latter was required to make periodic reports of his sales activities to the company. All transactions were subject to the final approval of the petitioner, an evidence that petitioner company had active control on the sales activities. There was therefore, an employer-employee relationship and necessarily, Limjoco was entitled to his claims. The decision also ordered petitioner company to pay the following:

- "1. To pay complainant his separation pay in the total amount of P16,000.00;
2. To pay complainant his unpaid Christmas bonus for three years or the amount of P12,000.00;
3. To pay complainant his unpaid mid-year bonus equivalent to one-half month pay or the total amount of P6,000.00;
4. To pay complainant his accrued vacation leave equivalent to 15 days per year of service, or the total amount of P6,000.00;
5. To pay complainant his unpaid clothing allowance in the total amount of P600.00; and
6. To pay complainant his accrued sick leave equivalent to 15 days per year of service or the total amount of P6,000.00."

On appeal, the Third Division of the National Labor Relations Commission affirmed the assailed decision. The Commission opined that there was no evidence supporting the allegation that Limjoco was an independent contractor or dealer. The petitioner still exercised control over Limjoco through its memoranda and guidelines and even prohibitions on the sale of products other than those authorized by it. In short, the petitioner company dictated how and where to sell its products. Aside from that fact, Limjoco passed the costs to the petitioner chargeable against his future commissions. Such practice proved that he was not an independent dealer or contractor for it is required by law that an independent contractor should have substantial capital or investment.

Dissatisfied with the outcome of the case, petitioner Encyclopaedia Britannica now comes to us in this petition for certiorari and injunction with prayer for preliminary

injunction. On April 3, 1989, this Court issued a temporary restraining order enjoining the enforcement of the decision dated December 7, 1982.

The following are the arguments raised by the petitioner:

## I

The respondent NLRC gravely abused its discretion in holding that "appellant's contention that appellee was an independent contractor is not supported by evidence on record."

## II

Respondent NLRC committed grave abuse of discretion in not passing upon the validity of the pronouncement of the respondent Labor Arbiter granting private respondent's claim for payment of Christmas bonus, Mid-year bonus, clothing allowance and the money equivalent of accrued and unused vacation and sick leave.

The NLRC ruled that there existed an employer-employee relationship and petitioner failed to disprove this finding. We do not agree.

In determining the existence of an employer-employee relationship the following elements must be present: 1) selection and engagement of the employee; 2) payment of wages; 3) power of dismissal; and 4) the power to control the employee's conduct. Of the above, control of employee's conduct is commonly regarded as the most crucial and determinative indicator of the presence or absence of an employer-employee relationship.<sup>[3]</sup> Under the control test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end to be achieved, but also the manner and means to be used in reaching that end.<sup>[4]</sup>

The fact that petitioner issued memoranda to private respondents and to other division sales managers did not prove that petitioner had actual control over them. The different memoranda were merely guidelines on company policies which the sales managers follow and impose on their respective agents. It should be noted that in petitioner's business of selling encyclopedias and books, the marketing of these products was done through dealership agreements. The sales operations were primarily conducted by independent authorized agents who did not receive regular compensations but only commissions based on the sales of the products. These independent agents hired their own sales representatives, financed their own office expenses, and maintained their own staff. Thus, there was a need for the petitioner to issue memoranda to private respondent so that the latter would be apprised of the company policies and procedures. Nevertheless, private respondent Limjoco and the other agents were free to conduct and promote their sales operations. The periodic reports to the petitioner by the agents were but necessary to update the company of the latter's performance and business income.

Private respondent was not an employee of the petitioner company. While it was true that the petitioner had fixed the prices of the products for reason of uniformity and private respondent could not alter them, the latter, nevertheless, had free rein in the means and methods for conducting the marketing operations. He selected his