

## SECOND DIVISION

[ G.R. No. 204944-45, December 03, 2014 ]

**FUJI TELEVISION NETWORK, INC., PETITIONER, VS. ARLENE S. ESPIRITU, RESPONDENT.**

### D E C I S I O N

**LEONEN, J.:**

It is the burden of the employer to prove that a person whose services it pays for is an independent contractor rather than a regular employee with or without a fixed term. That a person has a disease does not per se entitle the employer to terminate his or her services. Termination is the last resort. At the very least, a competent public health authority must certify that the disease cannot be cured within six (6) months, even with appropriate treatment.

We decide this petition for review<sup>[1]</sup> on certiorari filed by Fuji Television Network, Inc., seeking the reversal of the Court of Appeals' decision<sup>[2]</sup> dated June 25, 2012, affirming with modification the decision<sup>[3]</sup> of the National Labor Relations Commission.

In 2005, Arlene S. Espiritu ("Arlene") was engaged by Fuji Television Network, Inc. ("Fuji") as a news correspondent/producer<sup>[4]</sup> "tasked to report Philippine news to Fuji through its Manila Bureau field office."<sup>[5]</sup> Arlene's employment contract initially provided for a term of one (1) year but was successively renewed on a yearly basis with salary adjustment upon every renewal.<sup>[6]</sup>

Sometime in January 2009, Arlene was diagnosed with lung cancer.<sup>[7]</sup> She informed Fuji about her condition. In turn, the Chief of News Agency of Fuji, Yoshiki Aoki, informed Arlene "that the company will have a problem renewing her contract"<sup>[8]</sup> since it would be difficult for her to perform her job.<sup>[9]</sup> She "insisted that she was still fit to work as certified by her attending physician."<sup>[10]</sup>

After several verbal and written communications,<sup>[11]</sup> Arlene and Fuji signed a non-renewal contract on May 5, 2009 where it was stipulated that her contract would no longer be renewed after its expiration on May 31, 2009. The contract also provided that the parties release each other from liabilities and responsibilities under the employment contract.<sup>[12]</sup>

In consideration of the non-renewal contract, Arlene "acknowledged receipt of the total amount of US\$18,050.00 representing her monthly salary from March 2009 to May 2009, year-end bonus, mid-year bonus, and separation pay."<sup>[13]</sup> However, Arlene affixed her signature on the non-renewal contract with the initials "U.P." for "under protest."<sup>[14]</sup>

On May 6, 2009, the day after Arlene signed the non-renewal contract, she filed a complaint for illegal dismissal and attorney's fees with the National Capital Region Arbitration Branch of the National Labor Relations Commission. She alleged that she was forced to sign the non-renewal contract when Fuji came to know of her illness and that Fuji withheld her salaries and other benefits for March and April 2009 when she refused to sign.<sup>[15]</sup>

Arlene claimed that she was left with no other recourse but to sign the non-renewal contract, and it was only upon signing that she was given her salaries and bonuses, in addition to separation pay equivalent to four (4) years.<sup>[16]</sup>

In the decision<sup>[17]</sup> dated September 10, 2009, Labor Arbiter Corazon C. Borbolla dismissed Arlene's complaint.<sup>[18]</sup> Citing *Sonza v. ABS-CBN*<sup>[19]</sup> and applying the four-fold test, the Labor Arbiter held that Arlene was not Fuji's employee but an independent contractor.<sup>[20]</sup>

Arlene appealed before the National Labor Relations Commission. In its decision dated March 5, 2010, the National Labor Relations Commission reversed the Labor Arbiter's decision.<sup>[21]</sup> It held that Arlene was a regular employee with respect to the activities for which she was employed since she continuously rendered services that were deemed necessary and desirable to Fuji's business.<sup>[22]</sup> The National Labor Relations Commission ordered Fuji to pay Arlene backwages, computed from the date of her illegal dismissal.<sup>[23]</sup> The dispositive portion of the decision reads:

**WHEREFORE**, premises considered, judgment is hereby rendered GRANTING the instant appeal. The Decision of the Labor Arbiter dated 19 September 2009 is hereby REVERSED and SET ASIDE, and a new one is issued ordering respondents-appellees to pay complainant-appellant backwages computed from the date of her illegal dismissal until finality of this Decision.

**SO ORDERED.**<sup>[24]</sup>

Arlene and Fuji filed separate motions for reconsideration.<sup>[25]</sup> Both motions were denied by the National Labor Relations Commission for lack of merit in the resolution dated April 26, 2010.<sup>[26]</sup>

From the decision of the National Labor Relations Commission, both parties filed separate petitions for certiorari<sup>[27]</sup> before the Court of Appeals. The Court of Appeals consolidated the petitions and considered the following issues for resolution:

- 1) Whether or not Espiritu is a regular employee or a fixed-term contractual employee;
- 2) Whether or not Espiritu was illegally dismissed; and

3) Whether or not Espiritu is entitled to damages and attorney's fees.<sup>[28]</sup>

In the assailed decision, the Court of Appeals affirmed the National Labor Relations Commission with the modification that Fuji immediately reinstate Arlene to her position as News Producer without loss of seniority rights, and pay her backwages, 13th-month pay, mid-year and year-end bonuses, sick leave and vacation leave with pay until reinstated, moral damages, exemplary damages, attorney's fees, and legal interest of 12% per annum of the total monetary awards.<sup>[29]</sup>

The Court of Appeals ruled that:

**WHEREFORE**, for lack of merit, the petition of Fuji Television Network, Inc. and Yoshiki Aoki is **DENIED** and the petition of Arlene S. Espiritu is **GRANTED**. Accordingly, the Decision dated March 5, 2010 of the National Labor Relations Commission, 6th Division in NLRC NCR Case No. 05-06811-09 and its subsequent Resolution dated April 26, 2010 are hereby **AFFIRMED** with **MODIFICATIONS**, as follows:

Fuji Television, Inc. is hereby **ORDERED** to immediately **REINSTATE** Arlene S. Espiritu to her position as News Producer without loss of seniority rights and privileges and to pay her the following:

1. Backwages at the rate of \$1,900.00 per month computed from May 5, 2009 (the date of dismissal), until reinstated;
2. 13<sup>th</sup> Month Pay at the rate of \$1,900.00 per annum from the date of dismissal, until reinstated;
3. One and a half (1½) months pay or \$2,850.00 as midyear bonus per year from the date of dismissal, until reinstated;
4. One and a half (1½) months pay or \$2,850.00 as year-end bonus per year from the date of dismissal, until reinstated;
5. Sick leave of 30 days with pay or \$1,900.00 per year from the date of dismissal, until reinstated; and
6. Vacation leave with pay equivalent to 14 days or \$1,425.00 per annum from date of dismissal, until reinstated.
7. The amount of P100,000.00 as moral damages;
8. The amount of P50,000.00 as exemplary damages;
9. Attorney's fees equivalent to 10% of the total monetary awards herein stated; and
10. Legal interest of twelve percent (12%) per annum of the

total monetary awards computed from May 5, 2009, until their full satisfaction.

The Labor Arbiter is hereby ***DIRECTED*** to make another re-computation of the above monetary awards consistent with the above directives.

**SO ORDERED.**<sup>[30]</sup>

In arriving at the decision, the Court of Appeals held that Arlene was a regular employee because she was engaged to perform work that was necessary or desirable in the business of Fuji,<sup>[31]</sup> and the successive renewals of her fixed-term contract resulted in regular employment.<sup>[32]</sup>

According to the Court of Appeals, *Sonza* does not apply in order to establish that Arlene was an independent contractor because she was not contracted on account of any peculiar ability, special talent, or skill.<sup>[33]</sup> The fact that everything used by Arlene in her work was owned by Fuji negated the idea of job contracting.<sup>[34]</sup>

The Court of Appeals also held that Arlene was illegally dismissed because Fuji failed to comply with the requirements of substantive and procedural due process necessary for her dismissal since she was a regular employee.<sup>[35]</sup>

The Court of Appeals found that Arlene did not sign the non-renewal contract voluntarily and that the contract was a mere subterfuge by Fuji to secure its position that it was her choice not to renew her contract. She was left with no choice since Fuji was decided on severing her employment.<sup>[36]</sup>

Fuji filed a motion for reconsideration that was denied in the resolution<sup>[37]</sup> dated December 7, 2012 for failure to raise new matters.<sup>[38]</sup>

Aggrieved, Fuji filed this petition for review and argued that the Court of Appeals erred in affirming with modification the National Labor Relations Commission's decision, holding that Arlene was a regular employee and that she was illegally dismissed. Fuji also questioned the award of monetary claims, benefits, and damages.<sup>[39]</sup>

Fuji points out that Arlene was hired as a stringer, and it informed her that she would remain one.<sup>[40]</sup> She was hired as an independent contractor as defined in *Sonza*.<sup>[41]</sup> Fuji had no control over her work.<sup>[42]</sup> The employment contracts were executed and renewed annually upon Arlene's insistence to which Fuji relented because she had skills that distinguished her from ordinary employees.<sup>[43]</sup> Arlene and Fuji dealt on equal terms when they negotiated and entered into the employment contracts.<sup>[44]</sup> There was no illegal dismissal because she freely agreed not to renew her fixed-term contract as evidenced by her e-mail correspondences with Yoshiki Aoki.<sup>[45]</sup> In fact, the signing of the non-renewal contract was not necessary to terminate her employment since "such employment terminated upon expiration of her contract."<sup>[46]</sup> Finally, Fuji had dealt with Arlene in good faith, thus,

she should not have been awarded damages.<sup>[47]</sup>

Fuji alleges that it did not need a permanent reporter since the news reported by Arlene could easily be secured from other entities or from the internet.<sup>[48]</sup> Fuji "never controlled the manner by which she performed her functions."<sup>[49]</sup> It was Arlene who insisted that Fuji execute yearly fixed-term contracts so that she could negotiate for annual increases in her pay.<sup>[50]</sup>

Fuji points out that Arlene reported for work for only five (5) days in February 2009, three (3) days in March 2009, and one (1) day in April 2009.<sup>[51]</sup> Despite the provision in her employment contract that sick leaves in excess of 30 days shall not be paid, Fuji paid Arlene her entire salary for the months of March, April, and May; four (4) months of separation pay; and a bonus for two and a half months for a total of US\$18,050.00.<sup>[52]</sup> Despite having received the amount of US\$18,050.00, Arlene still filed a case for illegal dismissal.<sup>[53]</sup>

Fuji further argues that the circumstances would show that Arlene was not illegally dismissed. The decision to not renew her contract was mutually agreed upon by the parties as indicated in Arlene's e-mail<sup>[54]</sup> dated March 11, 2009 where she consented to the non-renewal of her contract but refused to sign anything.<sup>[55]</sup> Aoki informed Arlene in an e-mail<sup>[56]</sup> dated March 12, 2009 that she did not need to sign a resignation letter and that Fuji would pay Arlene's salary and bonus until May 2009 as well as separation pay.<sup>[57]</sup>

Arlene sent an e-mail dated March 18, 2009 with her version of the non-renewal agreement that she agreed to sign this time.<sup>[58]</sup> This attached version contained a provision that Fuji shall re-hire her if she was still interested to work for Fuji.<sup>[59]</sup> For Fuji, Arlene's e-mail showed that she had the power to bargain.<sup>[60]</sup>

Fuji then posits that the Court of Appeals erred when it held that the elements of an employer-employee relationship are present, particularly that of control;<sup>[61]</sup> that Arlene's separation from employment upon the expiration of her contract constitutes illegal dismissal;<sup>[62]</sup> that Arlene is entitled to reinstatement;<sup>[63]</sup> and that Fuji is liable to Arlene for damages and attorney's fees.<sup>[64]</sup>

This petition for review on certiorari under Rule 45 was filed on February 8, 2013.<sup>[65]</sup> On February 27, 2013, Arlene filed a manifestation<sup>[66]</sup> stating that this court may not take jurisdiction over the case since Fuji failed to authorize Corazon E. Acerden to sign the verification.<sup>[67]</sup> Fuji filed a comment on the manifestation<sup>[68]</sup> on March 9, 2013.

Based on the arguments of the parties, there are procedural and substantive issues for resolution:

- I. Whether the petition for review should be dismissed as Corazon E. Acerden, the signatory of the verification and certification of non-forum shopping of the petition, had no authority to sign the verification and certification on behalf of