592 Phil. 318

SECOND DIVISION

[G.R. No. 176484, November 25, 2008]

CALAMBA MEDICAL CENTER, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, RONALDO LANZANAS AND MERCEDITHA* LANZANAS, RESPONDENTS.

D E C I S I O N

CARPIO MORALES, J.:

The Calamba Medical Center (petitioner), a privately-owned hospital, engaged the services of medical doctors-spouses Ronaldo Lanzanas (Dr. Lanzanas) and Merceditha Lanzanas (Dr. Merceditha) in March 1992 and August 1995, respectively, as part of its team of resident physicians. Reporting at the hospital twice-a-week on twenty-four-hour shifts, respondents were paid a monthly "retainer" of P4,800.00 each.[1] It appears that resident physicians were also given a percentage share out of fees charged for out-patient treatments, operating room assistance and discharge billings, in addition to their fixed monthly retainer.[2]

The work schedules of the members of the team of resident physicians were fixed by petitioner's medical director Dr. Raul Desipeda (Dr. Desipeda). And they were issued identification cards[3] by petitioner and were enrolled in the Social Security System (SSS).[4] Income taxes were withheld from them.[5]

On March 7, 1998, Dr. Meluz Trinidad (Dr. Trinidad), also a resident physician at the hospital, inadvertently overheard a telephone conversation of respondent Dr. Lanzanas with a fellow employee, Diosdado Miscala, through an extension telephone line. Apparently, Dr. Lanzanas and Miscala were discussing the low "census" or admission of patients to the hospital.[6]

Dr. Desipeda whose attention was called to the above-said telephone conversation issued to Dr. Lanzanas a Memorandum of March 7, 1998 reading:

> **As a Licensed Resident Physician *employed* in Calamba Medical Center since several years ago**, the hospital management has committed upon you utmost confidence in the performance of duties pursuant thereto. This is the reason why you were awarded the privilege to practice in the hospital and were entrusted hospital functions to serve the interest of both the hospital and our patients using your capability for independent judgment.
>
> Very recently though and unfortunately, you have committed acts inimical to the interest of the hospital, the details of which are contained in the hereto attached affidavit of witness.

You are therefore given 24 hours to explain why no disciplinary action should be taken against you.

Pending investigation of your case, you are hereby placed under 30-days [*sic*] preventive suspension effective upon receipt hereof.[7] (Emphasis, italics and underscoring supplied)

Inexplicably, petitioner did not give respondent Dr. Merceditha, who was not involved in the said incident, any work schedule after sending her husband Dr. Lanzanas the memorandum,[8] nor inform her the reason therefor, albeit she was later informed by the Human Resource Department (HRD) officer that that was part of petitioner's cost-cutting measures.[9]

Responding to the memorandum, Dr. Lanzanas, by letter of March 9, 1998,[10] admitted that he spoke with Miscala over the phone but that their conversation was taken out of context by Dr. Trinidad.

On March 14, 1998,[11] the rank-and-file employees union of petitioner went on strike due to unresolved grievances over terms and conditions of employment.[12]

On March 20, 1998, Dr. Lanzanas filed a complaint for illegal suspension[13] before the National Labor Relations Commission (NLRC)-Regional Arbitration Board (RAB) IV. Dr. Merceditha subsequently filed a complaint for illegal dismissal.[14]

In the meantime, then Sec. Cresenciano Trajano of the Department of Labor and Employment (DOLE) certified the labor dispute to the NLRC for compulsory arbitration and issued on April 21, 1998 return-to-work Order to the striking union officers and employees of petitioner pending resolution of the labor dispute.[15]

In a memorandum[16] of April 22, 1998, Dr. Desipeda echoed the April 22, 1998 order of the Secretary of Labor directing all union officers and members to return-to-work "on or April 23, 1998, except those employees that were already terminated or are serving disciplinary actions." Dr. Desipeda thus ordered the officers and members of the union to "report for work as soon as possible" to the hospital's personnel officer and administrator for "work scheduling, assignments and/or re-assignments."

Petitioner later sent Dr. Lanzanas a notice of termination which he received on April 25, 1998, indicating as grounds therefor his failure to report back to work despite the DOLE order and his supposed role in the striking union, thus:

On April 23, 1998, you still did not report for work despite memorandum issued by the CMC Medical Director implementing the Labor Secretary's ORDER. The same is true on April 24, 1998 and April 25, 1998,--you still did not report for work [*sic*].

You are likewise aware that you were observed (re: signatories [*sic*] to the *Saligang Batas* of BMCMC-UWP) to be unlawfully participating as **member** in the rank-and-file union's concerted activities despite knowledge that your position in the hospital is managerial in nature

(*Nurses, Orderlies, and staff of the Emergency Room carry out your orders using your independent judgment*) which participation is expressly prohibited by the New Labor Code and which prohibition was sustained by the Med-Arbiter's **ORDER** dated February 24, 1998. (Emphasis and italics in the original; underscoring partly in the original and partly supplied)

For these reasons as grounds for termination, you are hereby terminated for cause from employment effective today, April 25, 1998, without prejudice to further action for revocation of your license before the Philippine [*sic*] Regulations [*sic*] Commission.[17] (Emphasis and underscoring supplied)

Dr. Lanzanas thus amended his original complaint to include illegal dismissal.[18] His and Dr. Merceditha's complaints were consolidated and docketed as NLRC CASE NO. RAB-IV-3-9879-98-L.

By Decision[19] of March 23, 1999, Labor Arbiter Antonio R. Macam dismissed the spouses' complaints for want of jurisdiction upon a finding that there was no employer-employee relationship between the parties, the fourth requisite or the "control test" in the determination of an employment bond being absent.

On appeal, the NLRC, by Decision[20] of May 3, 2002, reversed the Labor Arbiter's findings, disposing as follows:

WHEREFORE, the assailed decision is set aside. The respondents are ordered to pay the complainants their full backwages; separation pay of one month salary for every year of service in lieu of reinstatement; moral damages of P500,000.00 each; exemplary damages of P250,000.00 each plus ten percent (10%) of the total award as attorney's fees.

SO ORDERED.[21]

Petitioner's motion for reconsideration having been denied, it brought the case to the Court of Appeals on *certiorari.*

The appellate court, by June 30, 2004 Decision,[22] initially granted petitioner's petition and set aside the NLRC ruling. However, upon a subsequent motion for reconsideration filed by respondents, it reinstated the NLRC decision in an Amended Decision[23] dated September 26, 2006 but tempered the award to each of the spouses of moral and exemplary damages to P100,000.00 and P50,000.00, respectively and omitted the award of attorney's fees.

In finding the existence of an employer-employee relationship between the parties, the appellate court held:

x x x. While it may be true that the respondents are given the discretion to decide on how to treat the petitioner's patients, the petitioner has not denied nor explained why its Medical Director still has **the direct supervision and control over the respondents**. The fact is the petitioner's Medical Director still has to **approve the schedule of duties of the respondents**. The respondents stressed that the petitioner's

> Medical Director also issues **instructions or orders to the respondents relating to the means and methods of performing their duties**, *i.e.* admission of patients, manner of characterizing cases, treatment of cases, etc., and **may even overrule, review or revise the decisions of the resident physicians.** This was not controverted by the petitioner. The foregoing factors taken together are sufficient to constitute the fourth element, i.e. control test, hence, the existence of the employer-employee relationship. In denying that it had control over the respondents, the petitioner alleged that the respondents were free to put up their own clinics or to accept other retainership agreement with the other hospitals. But, the petitioner failed to substantiate the allegation with substantial evidence. (Emphasis and underscoring supplied)[24]

The appellate court thus declared that respondents were illegally dismissed.

> x x x. The petitioner's ground for dismissing respondent Ronaldo Lanzanas was based on his alleged participation in union activities, specifically in joining the strike and failing to observe the return-to-work order issued by the Secretary of Labor. Yet, the petitioner did not adduce any piece of evidence to show that respondent Ronaldo indeed participated in the strike. x x x.
>
> In the case of respondent Merceditha Lanzanas, the petitioner's explanation that "her marriage to complainant Ronaldo has given rise to the presumption that her sympat[hies] are likewise with her husband" as a ground for her dismissal is unacceptable. Such is not one of the grounds to justify the termination of her employment.[25] (Underscoring supplied)

The *fallo* of the appellate court's decision reads:

> WHEREFORE, the instant *Motion for Reconsideration* is **GRANTED**, and the Court's decision dated June 30, 2004, is SET ASIDE. In lieu thereof, a new judgment is entered, as follows:
>
> > WHEREFORE, the petition is DISMISSED. The assailed decision dated May 3, 2002 and order dated September 24, 2002 of the NLRC in NLRC NCR CA No. 019823-99 are AFFIRMED with the MODIFICATION that the moral and exemplary damages are reduced to P100,000.00 each and P50,000.00 each, respectively.
>
> SO ORDERED.[26] (Emphasis and italics in the original; underscoring supplied)

Preliminarily, the present petition calls for a determination of whether there exists an employer-employee relationship[27] between petitioner and the spouses-respondents.

Denying the existence of such relationship, petitioner argues that the appellate court, as well as the NLRC, overlooked its twice-a-week reporting arrangement with respondents who are free to practice their profession elsewhere the rest of the

week. And it invites attention to the uncontroverted allegation that respondents, aside from their monthly retainers, were entitled to one-half of all suturing, admitting, consultation, medico-legal and operating room assistance fees.[28] These circumstances, it stresses, are clear badges of the absence of any employment relationship between them.

This Court is unimpressed.

Under the "control test," an employment relationship exists between a physician and a hospital if the hospital controls both the means and the details of the process by which the physician is to accomplish his task.[29]

Where a person who works for another does so more or less at his own pleasure and is not subject to definite hours or conditions of work, and is compensated according to the result of his efforts and not the amount thereof, the element of control is absent.[30]

As priorly stated, private respondents maintained specific work-schedules, as determined by petitioner through its medical director, which consisted of 24-hour shifts totaling forty-eight hours each week and which were strictly to be observed under pain of administrative sanctions.

That petitioner exercised control over respondents gains light from the undisputed fact that in the emergency room, the operating room, or any department or ward for that matter, respondents' work is monitored through its nursing supervisors, charge nurses and orderlies. Without the approval or consent of petitioner or its medical director, no operations can be undertaken in those areas. For control test to apply, it is not essential for the employer to actually supervise the performance of duties of the employee, it being enough that it has the right to wield the power.[31]

With respect to respondents' sharing in some hospital fees, this scheme does not sever the employment tie between them and petitioner as this merely mirrors additional form or another form of compensation or incentive similar to what commission-based employees receive as contemplated in Article 97 (f) of the Labor Code, thus:

> "Wage" paid to any employee shall mean the remuneration or earning, however designated, capable of being expressed in terms of money, **whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same**, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered and includes the fair and reasonable value, as determined by the Secretary of Labor, of board, lodging, or other facilities customarily furnished by the employer to the employee. x x x (Emphasis and underscoring supplied),

Respondents were in fact made subject to petitioner-hospital's Code of Ethics,[32] the provisions of which cover administrative and disciplinary measures on negligence of duties, personnel conduct and behavior, and offenses against persons, property and the hospital's interest.