543 Phil. 151

FIRST DIVISION

[G.R. No. 146881, February 05, 2007]

COCA COLA BOTTLERS (PHILS.), INC./ERIC MONTINOLA, MANAGER, PETITIONERS, VS. DR. DEAN N. CLIMACO, RESPONDENT.

DECISION

AZCUNA, J.:

This is a petition for review on *certiorari* of the Decision of the Court of Appeals[1] promulgated on July 7, 2000, and its Resolution promulgated on January 30, 2001, denying petitioner's motion for reconsideration. The Court of Appeals ruled that an employer-employee relationship exists between respondent Dr. Dean N. Climaco and petitioner Coca-Cola Bottlers Phils., Inc. (Coca-Cola), and that respondent was illegally dismissed.

Respondent Dr. Dean N. Climaco is a medical doctor who was hired by petitioner Coca-Cola Bottlers Phils., Inc. by virtue of a Retainer Agreement that stated:

> WHEREAS, the COMPANY desires to engage on a retainer basis the services of a physician and the said DOCTOR is accepting such engagement upon terms and conditions hereinafter set forth;
>
> NOW, THEREFORE, in consideration of the premises and the mutual agreement hereinafter contained, the parties agree as follows:
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> 1. This Agreement shall only be for a period of one (1) year beginning January 1, 1988 up to December 31, 1988. The said term notwithstanding, either party may terminate the contract upon giving a thirty (30)-day written notice to the other.
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> 2. The compensation to be paid by the company for the services of the DOCTOR is hereby fixed at PESOS: Three Thousand Eight Hundred (P3,800.00) per month. The DOCTOR may charge professional fee for hospital services rendered in line with his specialization. All payments in connection with the Retainer Agreement shall be subject to a withholding tax of ten percent (10%) to be withheld by the COMPANY under the Expanded Withholding Tax System. In the event the withholding tax rate shall be increased or decreased by appropriate laws, then the rate herein stipulated shall accordingly be increased or decreased pursuant to such laws.
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> 3. That in consideration of the above mentioned retainer's fee, the DOCTOR agrees to perform the duties and obligations enumerated in the COMPREHENSIVE MEDICAL PLAN, hereto attached as Annex

"A" and made an integral part of this Retainer Agreement.

4. That the applicable provisions in the Occupational Safety and Health Standards, Ministry of Labor and Employment shall be followed.

5. That the DOCTOR shall be directly responsible to the employee concerned and their dependents for any injury inflicted on, harm done against or damage caused upon the employee of the COMPANY or their dependents during the course of his examination, treatment or consultation, if such injury, harm or damage was committed through professional negligence or incompetence or due to the other valid causes for action.

6. That the DOCTOR shall observe clinic hours at the COMPANY'S premises from Monday to Saturday of a minimum of two (2) hours each day or a maximum of TWO (2) hours each day or treatment from 7:30 a.m. to 8:30 a.m. and 3:00 p.m. to 4:00 p.m., respectively unless such schedule is otherwise changed by the COMPANY as [the] situation so warrants, subject to the Labor Code provisions on Occupational Safety and Health Standards as the COMPANY may determine. It is understood that the DOCTOR shall stay at least two (2) hours a day in the COMPANY clinic and that such two (2) hours be devoted to the workshift with the most number of employees. It is further understood that the DOCTOR shall be on call at all times during the other workshifts to attend to emergency case[s];

7. That no employee-employer relationship shall exist between the COMPANY and the DOCTOR whilst this contract is in effect, and in case of its termination, the DOCTOR shall be entitled only to such retainer fee as may be due him at the time of termination.[2]

The Comprehensive Medical Plan,[3] which contains the duties and responsibilities of respondent, adverted to in the Retainer Agreement, provided:

A. OBJECTIVE

These objectives have been set to give full consideration to [the] employees' and dependents' health:

1. Prompt and adequate treatment of occupational and non-occupational injuries and diseases.

2. To protect employees from any occupational health hazard by evaluating health factors related to working conditions.

3. To encourage employees [to] maintain good personal health by setting up employee orientation and education on health, hygiene and sanitation, nutrition, physical fitness, first aid training, accident prevention and personnel safety.

4. To evaluate other matters relating to health such as absenteeism, leaves and termination.

5. To give family planning motivations.

B. COVERAGE

1. All employees and their dependents are embraced by this program.

2. The health program shall cover pre-employment and annual p.e., hygiene and sanitation, immunizations, family planning, physical fitness and athletic programs and other activities such as group health education program, safety and first aid classes, organization of health and safety committees.

3. Periodically, this program will be reviewed and adjusted based on employees' needs.

C. ACTIVITIES

1. Annual Physical Examination.

2. Consultations, diagnosis and treatment of occupational and non-occupational illnesses and injuries.

3. Immunizations necessary for job conditions.

4. Periodic inspections for food services and rest rooms.

5. Conduct health education programs and present education materials.

6. Coordinate with Safety Committee in developing specific studies and program to minimize environmental health hazards.

7. Give family planning motivations.

8. Coordinate with Personnel Department regarding physical fitness and athletic programs.

9. Visiting and follow-up treatment of Company employees and their dependents confined in the hospital.

The Retainer Agreement, which began on January 1, 1988, was renewed annually. The last one expired on December 31, 1993. Despite the non-renewal of the Retainer Agreement, respondent continued to perform his functions as company doctor to Coca-Cola until he received a letter[4] dated March 9, 1995 from petitioner company concluding their retainership agreement effective 30 days from receipt thereof.

It is noted that as early as September 1992, petitioner was already making inquiries regarding his status with petitioner company. First, he wrote a letter addressed to Dr. Willie Sy, the Acting President and Chairperson of the Committee on

Membership, Philippine College of Occupational Medicine. In response, Dr. Sy wrote a letter[5] to the Personnel Officer of Coca-Cola Bottlers Phils., Bacolod City, stating that respondent should be considered as a regular part-time physician, having served the company continuously for four (4) years. He likewise stated that respondent must receive all the benefits and privileges of an employee under Article 157 (b)[6] of the Labor Code.

Petitioner company, however, did not take any action. Hence, respondent made another inquiry directed to the Assistant Regional Director, Bacolod City District Office of the Department of Labor and Employment (DOLE), who referred the inquiry to the Legal Service of the DOLE, Manila. In his letter[7] dated May 18, 1993, Director Dennis P. Ancheta, Legal Service, DOLE, stated that he believed that an employer-employee relationship existed between petitioner and respondent based on the Retainer Agreement and the Comprehensive Medical Plan, and the application of the "four-fold" test. However, Director Ancheta emphasized that the existence of employer-employee relationship is a question of fact. Hence, termination disputes or money claims arising from employer-employee relations exceeding P5,000 may be filed with the National Labor Relations Commission (NLRC). He stated that their opinion is strictly advisory.

An inquiry was likewise addressed to the Social Security System (SSS). Thereafter, Mr. Romeo R. Tupas, OIC-FID of SSS-Bacolod City, wrote a letter[8] to the Personnel Officer of Coca-Cola Bottlers Phils., Inc. informing the latter that the legal staff of his office was of the opinion that the services of respondent partake of the nature of work of a regular company doctor and that he was, therefore, subject to social security coverage.

Respondent inquired from the management of petitioner company whether it was agreeable to recognizing him as a regular employee. The management refused to do so.

On February 24, 1994, respondent filed a Complaint[9] before the NLRC, Bacolod City, seeking recognition as a regular employee of petitioner company and prayed for the payment of all benefits of a regular employee, including 13th Month Pay, Cost of Living Allowance, Holiday Pay, Service Incentive Leave Pay, and Christmas Bonus. The case was docketed as RAB Case No. 06-02-10138-94.

While the complaint was pending before the Labor Arbiter, respondent received a letter dated March 9, 1995 from petitioner company concluding their retainership agreement effective thirty (30) days from receipt thereof. This prompted respondent to file a complaint for illegal dismissal against petitioner company with the NLRC, Bacolod City. The case was docketed as RAB Case No. 06-04-10177-95.

In a Decision[10] dated November 28, 1996, Labor Arbiter Jesus N. Rodriguez, Jr. found that petitioner company lacked the power of control over respondent's performance of his duties, and recognized as valid the Retainer Agreement between the parties. Thus, the Labor Arbiter dismissed respondent's complaint in the first case, RAB Case No. 06-02-10138-94. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered dismissing the instant complaint seeking recognition as a regular

employee.

SO ORDERED.[11]

In a Decision[12] dated February 24, 1997, Labor Arbiter Benjamin Pelaez dismissed the case for illegal dismissal (RAB Case No. 06-04-10177-95) in view of the previous finding of Labor Arbiter Jesus N. Rodriguez, Jr. in RAB Case No. 06-02-10138-94 that complainant therein, Dr. Dean Climaco, is not an employee of Coca-Cola Bottlers Phils., Inc.

Respondent appealed both decisions to the NLRC, Fourth Division, Cebu City.

In a Decision[13] promulgated on November 28, 1997, the NLRC dismissed the appeal in both cases for lack of merit. It declared that no employer-employee relationship existed between petitioner company and respondent based on the provisions of the Retainer Agreement which contract governed respondent's employment.

Respondent's motion for reconsideration was denied by the NLRC in a Resolution[14] promulgated on August 7, 1998.

Respondent filed a petition for review with the Court of Appeals.

In a Decision promulgated on July 7, 2000, the Court of Appeals ruled that an employer-employee relationship existed between petitioner company and respondent after applying the four-fold test: (1) the power to hire the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished.

The Court of Appeals held:

> The Retainer Agreement executed by and between the parties, when read together with the Comprehensive Medical Plan which was made an integral part of the retainer agreements, coupled with the actual services rendered by the petitioner, would show that all the elements of the above test are present.
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> First, the agreements provide that "the COMPANY desires to engage on a retainer basis the services of a physician and the said DOCTOR is accepting such engagement x x x" **(Rollo, page 25)**. This clearly shows that Coca-Cola exercised its power to hire the services of petitioner.
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> Secondly, paragraph (2) of the agreements showed that petitioner would be entitled to a final compensation of Three Thousand Eight Hundred Pesos per month, which amount was later raised to Seven Thousand Five Hundred on the latest contract. This would represent the element of payment of wages.
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> Thirdly, it was provided in paragraph (1) of the agreements that the same shall be valid for a period of one year. "The said term notwithstanding, either party may terminate the contract upon giving a