

## SECOND DIVISION

**[ G.R. No. 127864, December 22, 1999 ]**

**TRADERS ROYAL BANK, PETITIONER, VS. NATIONAL LABOR  
RELATIONS COMMISSION AND ROGELIO ESPAÑOLA,  
RESPONDENT.**

### **D E C I S I O N**

**BELLOSILLO, J.:**

Whether an employer-employee relationship exists between petitioner Traders Royal Bank and private respondent Rogelio Española - this is the issue on which hinges the fate of private respondent who after twenty (20) years of service found himself "jobless" and deprived of his only means of livelihood.

On 27 June 1974 Agro-Commercial Security Services Agency Inc. (AGRO) assigned Rogelio Española to work as a janitor at the Iloilo Branch of petitioner Traders Royal Bank (TRB). This assignment was covered by Mission Order No. 29 dated 26 June 1974 which was duly issued by the Administrative Officer of AGRO, Alberto G. Espinosa.<sup>[1]</sup> Sometime in 1982 Española was informed that he would be absorbed by a new agency, Royal Protective and Janitorial Services Inc. (ROYAL), and that he would perform the same functions.<sup>[2]</sup> However, since ROYAL was also managed and owned by the same people who previously handled AGRO, it did not give him separation pay or any other benefits. ROYAL also appointed Alberto G. Espinosa, AGRO's former Administrative Officer, as its General Manager.<sup>[3]</sup>

On 15 July 1988 TRB and ROYAL executed a new service agreement whereby ROYAL would continue supplying janitorial services TRB for one year, beginning 23 March 1988.<sup>[4]</sup> The contract also stated that if there was no notice to terminate at the end of the one (1) year period it would remain in force on a monthly basis.

When the service agreement expired on 23 March 1989 TRB did not issue a termination notice. Instead, it continued to avail of ROYAL's services on a monthly basis as stated in the contract. It was only on 4 February 1994 that TRB sent a letter to ROYAL apprising the latter of its desire to terminate the service agreement effective 16 March 1994.<sup>[5]</sup> In turn, ROYAL sent a notice to private respondent Española informing him that due to TRB's decision to end their contract his services were no longer needed.<sup>[6]</sup> After being dismissed ROYAL declined to give him any further assignment since his job was allegedly coterminus with its contract with TRB.

On 24 March 1994 Española filed a case against ROYAL, TRB and Alberto Espinosa for illegal dismissal, illegal deduction, underpayment of wages, non-payment of overtime pay, premium pay for rest day, service incentive leave pay, 13th month pay and night shift differentials with a prayer for reinstatement and back wages. He also claimed moral and exemplary damages as well as attorney's fees.<sup>[7]</sup>

On 20 December 1995 the Labor Arbiter ruled in favor of TRB holding that Española had no cause of action against it as there was no employer-employee relationship between them. The Labor Arbiter further ruled that Española was ROYAL's employee but he was not entitled to any monetary award since he did not prove his claims of underpayment and illegal deductions against ROYAL.<sup>[8]</sup>

On appeal public respondent National Labor Relations Commission (NLRC) reversed the decision of the Labor Arbiter and ruled that Española was not an employee of ROYAL but of TRB. NLRC then ordered TRB to reinstate him and to pay him the total amount of P110,829.78 broken down as follows: P81,265.90 for back wages, P736.92 for ERA, P15,698.08 for salary differentials, P3,143.45 for 13th month pay and P10,075.00 for attorney's fees.<sup>[9]</sup>

After its motion for reconsideration was denied TRB filed this special civil action for certiorari contending that the NLRC gravely abused its discretion in reversing the Labor Arbiter's decision and declaring Española to be its employee.<sup>[10]</sup>

Who was Española's real employer? If Española was ROYAL's employee then he would have no recourse against TRB since his dismissal was caused by the legitimate termination of a service contract. But if he was really TRB's employee then he would be entitled to reinstatement and full back wages as he was illegally dismissed.

To prove that Española was not its employee TRB cites Mission Order No. 29 signed by AGRO Administrative Officer Alberto G. Espinosa. The order stated that Rogelio Española would be assigned as janitor to TRB's Iloilo Branch. It also provided that his employment would be from 26 January 1974 until revoked.<sup>[11]</sup> TRB argues that this proves that AGRO was Española's employer from 1974 to 1982. And when he agreed to be absorbed by ROYAL he became its employee from 1982 to 1994. Hence, he was never employed by TRB. To bolster its contention TRB refers to the provisions of its service agreement with ROYAL, dated 15 July 1988, which state that:

*2. That the janitor and/or janitress assigned to the PARTY OF THE FIRST PART (petitioner) shall in no way be considered as employees of the PARTY OF THE FIRST PART and the PARTY OF THE SECOND PART (ROYAL) shall be responsible for the conduct and performance of its duties;*

*6. For and in consideration of the services to be rendered by he PARTY OF THE SECOND PART to the PARTY OF THE FIRST PART, the latter shall pay to the PARTY OF THE SECOND PART (under this agreement) the amount of TWO THOUSAND TWO HUNDRED FIFTY SEVEN & 32/100 ONLY (2,257.32), Philippine Currency, per month per janitress, the same payable in two (2) installments on the 15th and last day of every month.*

TRB asserts that aside from the agreement itself which reveals that it was ROYAL which provided the janitors' salary, par. 2 thereof also states that the janitors were its own employees. Thus, Española's dismissal was the result of a valid termination of its service agreement with ROYAL.

We are not convinced. This Court has ruled that the existence of employer-employee relationship cannot be proved by merely showing the agreement of the parties.<sup>[12]</sup> It is a question of fact which should be supported by substantial evidence.<sup>[13]</sup> And in determining the existence of such relationship the elements usually considered are: (a) the selection of the employee; (b) the payment of wages; (c) the power of dismissal; and, (d) the power to control the employee's conduct, with the "control test" generally assuming primacy in the overall consideration.<sup>[14]</sup>

Who then had control over Española's conduct? Was it ROYAL or TRB? Between the two, we believe it was TRB. Española claimed in his position paper that -

*Complainant, as previously stated, was required to work as a janitor and as a driver. Moreover, he was required to do his cleaning chores at night in order not to disturb the transaction of business at the bank during office hours. Thus, every night from Sunday to Thursday he was required to clean the bank premises of respondent TRB. From Monday to Friday he was required to drive TRB's armored car and pick up the children of respondent TRB's manager, Mrs. Erlinda Ocampo, then drive them to Angelicum School in Jaro, Iloilo City. Thereafter, he was required to stay in the bank premises until 5:00 P.M., except for lunch break, run errands and discharge other tasks and chores assigned to him by respondent TRB's employees. After 5:00 P.M. complainant was required to drive the above named officers of respondent TRB home. He usually got back to the bank between 6:00 P.M. to 7:00 P.M. Upon his arrival he would start cleaning the bank and, since the premises was big, it usually took about 2 hours or up to 9:00 P.M. to finish his cleaning. Because he had to work late and start working early and since his residence was in Sta. Barbara, Iloilo, where there was no public transportation at night, he had to sleep in the bank. His day-to-day work was monitored and supervised by respondent TRB.*<sup>[15]</sup>

The above allegations contained in the position paper of Española were never refuted. TRB could have easily presented affidavits, written explanations or any other pleadings to defend itself and disprove Española's claims.<sup>[16]</sup> However, the only evidence it ever presented was its service agreement with ROYAL. From the time TRB submitted its position paper to the Labor Arbiter up to the time it submitted its memorandum to the Supreme Court, not once did it deny that it designated Española as its driver. On the other hand, Española constantly reiterated in his pleadings that TRB supervised and controlled his work as its janitor-driver. The fact that Española's allegations were never controverted at any stage of the proceedings affirms that such averments were true.<sup>[17]</sup> Furthermore, Rule 9, Sec. 11, of the Rules of Court, which supplements the NLRC rules, also provides that an allegation which is not specifically denied is deemed admitted.<sup>[18]</sup>

Besides, even if this Court relied on the service agreement, as espoused by TRB, it can still be seen that TRB was the one which controlled and supervised Española. Paragraph 3 of the contract states -

*3. That the PARTY OF THE FIRST PART shall have the direct control and supervision over their janitor's and janitress' conduct and performance in consonance with the preceding paragraph, with minimum interference by*