

FIRST DIVISION

[G.R. No. 119930, March 12, 1998]

**INSULAR LIFE ASSURANCE CO., LTD., PETITIONER, VS.
NATIONAL LABOR RELATIONS COMMISSION (FOURTH
DIVISION, CEBU CITY), LABOR ARBITER NICASIO P. ANINON
AND PANTALEON DE LOS REYES, RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

On 17 June 1994 respondent Labor Arbiter dismissed for lack of jurisdiction NLRC RAB-VII Case No. 03-0309-94 filed by private respondent Pantaleon de los Reyes against petitioner Insular Life Assurance Co., Ltd. (INSULAR LIFE), for illegal dismissal and nonpayment of salaries and back wages after findings no employer-employee relationship between De los Reyes and petitioner INSULAR LIFE.^[1] On appeal by private respondent, the order of dismissal was reversed by the National Labor Relations Commission (NLRC) which ruled that respondent De los Reyes was an employee of petitioner.^[2] Petitioner's motion for reconsideration having been denied, the NLRC remanded the case to the Labor Arbiter for hearing on the merits.

Seeking relief through this special civil action for *certiorari* with prayer for a restraining order and/or preliminary injunction, petitioner now comes to us praying for annulment of the decision of respondent NLRC dated 3 March 1995 and its Order dated 6 April 1995 denying the motion for reconsideration of the decision. It faults NLRC for acting without jurisdiction and/or with grave abuse of discretion when, contrary to established facts and pertinent law and jurisprudence, it reversed the decision of the Labor Arbiter and held instead that the complaint was properly filed as an employer-employee relationship existed between petitioner and private respondent.

Petitioner reprises the stand it assumed below that it never had any employer-employee relationship with private respondent, this being an express agreement between them in the agency contracts, particularly reinforced by the stipulation therein de los Reyes was allowed discretion to devise ways and means to fulfill his obligations as agent and would be paid commission fees based on his actual output. It further insists that the nature of this work status as described in the contracts had already been squarely resolved by the Court in the earlier case of *Insular Life Assurance Co., Ltd. v. NLRC and Basiao* ^[3] where the complainant therein, Melecio Basiao, was similarly situated as respondent De los Reyes in that he was appointed first as an agent and then promoted as agency manager, and the contracts under which he was appointed contained terms and conditions identical to those of De los Reyes. Petitioner concludes that since Basiao was declared by the Court to be an independent contractor and not an employee of petitioner, there should be no reason why the status of De los Reyes herein *vis-à-vis* petitioner should not be similarly determined.

We reject the submissions of petitioner and hold that respondent NLRC acted appropriately within the bounds of the law. The records of the case are replete with

telltale indicators of an existing employer-employee relationship between the two parties despite written contractual disavowals.

These facts are undisputed: on 21 August 1992 petitioner entered into an agency contract with respondent Pantaleon de los Reyes^[4] authorizing the latter to solicit within the Philippines applications for life insurance and annuities for which he would be paid compensation in the form of commissions. The contract was prepared by petitioner in its entirety and De los Reyes merely signed his conformity thereto. It contained the stipulation that no employer-employee relationship shall be created between the parties and that the agent shall be free to exercise his own judgment as to time, place and means of soliciting insurance. De los Reyes however was prohibited by petitioner from working for any other life insurance company, and violation of this stipulation was sufficient ground for termination of the contract. Aside from soliciting insurance for the petitioner, private respondent was required to submit to the former all completed applications for insurance within ninety (90) consecutive days, deliver policies, receive and collect initial premiums and balances of first year premiums, renewal premiums, deposits on applications and payments on policy loans. Private respondent was also bound to turn over to the company immediately any and all sums of money collected by him. In a written communication by petitioner to respondent De los Reyes, the latter was urged to register with the Social Security System as a self-employed individual as provided under PD No. 1636.^[5]

On 1 March 1993 petitioner and private respondent entered into another contract^[6] where the latter was appointed as Acting Unit Manager under its office – the Cebu DSO V (157). As such, the duties and responsibilities of De los Reyes included the recruitment, training, organization and development within his designated territory of a sufficient number of qualified, competent and trustworthy underwriters, and to supervise and coordinate the sales efforts of the underwriters in the active solicitation of new business and in the furtherance of the agency's assigned goals. It was similarly provided in the management contract that the relation of the acting unit manager and/or the agents of his unit to the company shall be that of independent contractor. If the appointment was terminated for any reason other than for cause, the acting unit manager would be reverted to agent status and assigned to any unit. As in the previous agency contract, De los Reyes together with his unit force was granted freedom to exercise judgment as to time, place and means of soliciting insurance. Aside from being granted override commissions, the acting unit manager was given production bonus, development allowance and a unit development financing scheme euphemistically termed "financial assistance" consisting of payment to him of a free portion of P300.00 per month and a valdate portion of P1,200.00. While the latter amount was deemed as an advance against expected commissions, the former was not and would be freely given to the unit manager by the company only upon fulfillment by him of certain manpower and premium *quota* requirements. The agents and underwriters recruited and trained by the acting unit manager would be attached to the unit but petitioner reserved the right to determine if such assignment would be made or, for any reason, to reassign them elsewhere.

Aside from soliciting insurance, De los Reyes was also expressly obliged to participate in the company's conservation program, i.e., preservation and maintenance of existing insurance policies, and to accept moneys duly receipted on agent's receipts provided the same were turned over to the company. As long as he was unit manager in an acting capacity, De los Reyes was prohibited from working for other life insurance companies or with the government. He could not also accept a managerial or

supervisory position in any firm doing business in the Philippines without the written consent of petitioner.

Private respondent worked concurrently as agent and Acting Unit Manager until he was notified by petitioner on 18 November 1993 that his services were terminated effective 18 December 1993. On 7 March 1994 he filed a complaint before the Labor Arbiter on the ground that he was illegally dismissed and that he was not paid his salaries and separation pay.

Petitioner filed a motion to dismiss the complaint of De los Reyes for lack of jurisdiction, citing the absence of employer-employee relationship. It reasoned out that based on the criteria for determining the existence of such relationship or the so-called "four-fold test," i.e., (a) selection and engagement of employee, (b) payment of wages, (c) power of dismissal, and, (d) power of control, De los Reyes was not an employee but an independent contractor.

On 17 June 1994 the motion of petitioner was granted by the Labor Arbiter and the case was dismissed on the ground that *the element of control was not sufficiently established since the rules and guidelines set by petitioner in its agency agreement with respondent De los Reyes were formulated only to achieve the desired result without dictating the means or methods of attaining it.*

Respondent NLRC however appreciated the evidence from a different perspective. It determined that respondent De los Reyes *was under the effective control of petitioner in the critical and most important aspects of his work as Unit Manager.* This conclusion was derived from the provisions in the contract which appointed private respondent as Acting Unit Manager, to wit: (a) De los Reyes was to serve exclusively the company, therefore, he was not an independent contractor; (b) he was required to meet certain manpower and production *quota*; and, (c) petitioner controlled the assignment to and removal of soliciting agents from his unit.

The NLRC also took into account other circumstances showing that petitioner exercised employer's prerogatives over De los Reyes, e.g., (a) limiting the work of respondent De los Reyes to selling a life insurance policy known as "Salary Deduction Insurance" *only* to members of the Philippine National Police, public and private school teachers and other employees of private companies; (b) assigning private respondent to a particular place and table where he worked whenever he was not in the field; (c) paying private respondent during the period of twelve (12) months of his appointment as Acting Unit Manager the amount of ₱1,500.00 as Unit Development Financing of which 20% formed his salary and the rest, i.e., 80%, as advance of his expected commissions; and (d) promising that upon completion of certain requirements, he would be promoted to Unit Manager with the right of petitioner to revert him to agent status when warranted.

Parenthetically, both petitioner and respondent NLRC treated the agency contract and the management contract entered into between petitioner and De los Reyes as contracts of agency. We however hold otherwise. Unquestionably there exist major distinctions between the two agreements. While the first has the earmarks of an agency contract, the second is far removed from the concept of agency in that provided therein are conditionalities that indicate an employer-employee relationship. The NLRC therefore was correct in finding that private respondent was an employee of petitioner, but this holds true only insofar as the management contract is concerned. In view thereof, the Labor Arbiter has jurisdiction over the case.

It is axiomatic that the existence of an employer-employee relationship cannot be negated by expressly repudiating it in the management contract and providing therein that the “employee” is an independent contractor when the terms of agreement clearly show otherwise. For, the employment status of a person is defined and prescribed by law and not by what the parties say it should be.^[7] In determining the status of the management contract, the “four-fold test” on employment earlier mentioned has to be applied.

Petitioner contends that De los Reyes was never required to go through the pre-employment procedures and that the probationary employment status was reserved only to employees of petitioner. On this score, it insists that the first requirement of selection and engagement of the employee was not met.

A look at the provisions of the contract shows that private respondent was appointed as Acting Unit Manager only upon recommendation of the District Manager.^[8] This indicates that private respondent was hired by petitioner because of the favorable endorsement of its duly authorized officer. But, this approbation could only have been based on the performance of De los Reyes with petitioner was nothing more than a trial or probationary period for his eventual appointment as Acting Unit Manager of petitioner. Then, again, the very designation of the appointment of private respondent as “acting” unit manager obviously implies a temporary employment status which may be made permanent only upon compliance with company standards such as those enumerated under Sec. 6 of the management contract.^[9]

On the matter of payment of wages, petitioner points out that respondent was compensated strictly on commission basis, the amount of which was totally dependent on his total output. But, the manager’s contract speaks differently. Thus –

4. *Performance Requirements.*- To maintain your appointment as Acting Unit Manager you must meet the following manpower and production requirements:

Quarter	Active Production Agents	Calendar Year Cumulative FYP Production
1 ST	2	₱125,000
2 ND	3	250,000
3 RD	4	375,000
4 TH	5	500,000

5.4 *Unit Development Financing (UDF).* – As an Acting Unit Manager you shall be given during the first 12 months of your appointment a financial assistance which is composed of two parts:

5.4.1 Free Portion amounting to ₱300 per month, subject to your meeting prescribed minimum performance requirement on manpower and premium production. The free portion is not payable by you.

5.4.2 Validate Portion amounting to ₱1,200 per month, also subject to meeting the same prescribed minimum performance requirements on manpower and premium production. The validated portion is an advance against expected compensation during the UDF period and thereafter as may be necessary.