

SECOND DIVISION

[G.R. No. 120944, July 23, 1998]

**SPOUSES JOSE AND CARMEN SANTOS, PETITIONERS, VS.
NATIONAL LABOR RELATIONS COMMISSION AND LUDOVICO
PAMPLONA, RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This is a petition for certiorari to annul and set aside the decision^[1] of the National Labor Relations Commission, dated June 29, 1994, affirming the labor arbiter's decision and ordering petitioners to pay private respondent Ludovico Pamplona wage differential, 13th month pay, service incentive leave pay, and attorney's fees.

The facts are as follows:

Petitioner spouses Jose and Carmen Santos operate two gasoline stations and maintain a depot for the storage of gasoline in Iloilo City. Private respondent Ludovico Pamplona worked in said gasoline stations and at the depot. The question is whether he was an employee of petitioners or an independent contractor doing vulcanizing jobs.

The question arose because on November 13, 1992, private respondent filed a complaint against petitioners for underpayment of wages, non-payment of 13th month pay, and attorney's fees.^[2] His complaint was later amended to include nonpayment of overtime pay, premium pay for holiday, premium pay for rest day, holiday pay, service incentive leave pay, night shift differential, and separation pay.^[3] In his position paper, private respondent alleged that he started working for petitioners on November 23, 1970 as a gasoline station helper at the latter's gasoline station located at Fuentes-Ledesma Streets;^[4] that he was later assigned to work as watchman at petitioners' Getty Installation in Lapuz, Iloilo City in 1981;^[5] that in 1985, he was transferred and assigned to petitioners' gasoline station in Oton, Iloilo City where he worked as attendant until his retirement in 1991;^[6] that he was petitioners' employee, as defined in Art. 280 of the Labor Code, due to the fact that he had performed services which were necessary or desirable in the usual course of business of petitioners;^[7] that he was paid wages below the prevailing minimum wage at that time;^[8] that he was not given either overtime pay^[9] or 13th month pay, retirement benefits, and other bonuses to which he was entitled.^[10] In support of these allegations he submitted his affidavit and that of Bonifacio Mirasol.^[11]

Petitioners filed a position paper, dated October 12, 1993, in which they denied that private respondent Pamplona was their employee and alleged that the latter was, in fact, a vulcanizer who had a shop beside their gasoline station in Oton, Iloilo; that private respondent was not on their payroll and had no SSS record.^[12] The position paper was supported by the affidavit of petitioner Jose Santos.^[13]

On October 27, 1993, the labor arbiter rendered a decision ordering petitioners to pay private respondent wage differential, 13th month pay, service incentive leave pay, and attorney's fees. The dispositive portion of the decision reads:^[14]

FOREGOING PREMISES CONSIDERED, judgment is hereby rendered directing the respondents to pay the complainant, jointly and severally, his benefits, to wit:

P41,157.28 as wage differential;
4,865.98 as 13th month pay;
445.00 as service incentive leave pay; or a total of
P51,115.09

Said respondents are further ordered to pay attorney's fees equivalent to ten (10%) per centum of the total award or P5,111.50.

All other claims are hereby ordered DISMISSED.

SO ORDERED.

In finding the existence of an employer-employee relationship between the parties, the labor arbiter said:^[15]

We give credence to the allegations of the complainant and Bonifacio Mirasol. It would be easy for the respondents to deny their relationship with the complainant. It would be very easy for the respondents to say that the complainant is not their employee. But respondents should bear in mind that complainant had been an instrument to their business. Including the name of the complainant in the payrolls is a unilateral act of the respondents. Whether or not the name of the complainant is included in their payroll is immaterial as long as the complainant is suffered to work for them. Covering the employees with Social Security System coverage [sic] is also a unilateral act of the respondents. Employers, more often than not, do not report their employees for SSS coverage.

Moreover, why should respondents allow complainant to live in Lapuz with their employees and in Oton when they bought the Oton Gasoline Station? Why should respondents allow complainant to live in Oton or Lapuz when they claim that complainant is an independent vulcanizer? Apparently, the respondents did these because [respondents] suffered the complainant to work for them.

On November 19, 1993, petitioners appealed to the National Labor Relations Commission.^[16] On January 4, 1994, they filed a supplemental memorandum of appeal "to correct, supplement and amplify inadequate allegations and certain

omissions" in their memorandum of appeal.^[17] Attached to the supplemental memorandum are the following:^[18]

<u>EXHIBITS</u>	<u>DESCRIPTION</u>
"1"	Complaint of Appellee dated 13 November, 1993;
"2"	Notification and Summons dated 25 November, 1993;
"3"	Notice of Hearing dated 16 February, 1993;
"4"	Notice of Hearing dated 05 May, 1993;
"5"	Notice of Hearing dated 07 June, 1993;
"6"	Order dated 19 July, 1993
"7"	Motion for Extension of Time to File Position Paper dated 05 August 1993 filed by complainant;
"8"	Motion to Amend Complaint dated 12 August, 1993 filed by Complainant;
"9"	Position Paper for the Complainant dated 19 August, 1993;
"10" 1993;	Affidavit of appellee Ludovico Pamplona dated 12 August
"11"	Affidavit of Bonifacio Mirasol dated 17 August, 1993;
"12"	Order dated 24 September, 1993;
"13"	Motion for Reconsideration of the Order dated September 24, 1993, filed by respondents-appellants;
"14"	Position Paper for the Appellants dated 12 October, 1993;
"15"	Affidavit of appellant Jose Santos dated 12 October, 1993;
"16" 1993;	Opposition to the Motion for reconsideration dated 23 Oct.
"17"	Reply to Opposition to the Motion for Reconsideration dated 05 Nov. 93;
"18"	Decision dated 27 October, 1993;
"19"	Affidavit of Rodolfo Mirasol dated 28 December, 1993;
"20"	Affidavit of Camelo Terente dated 28 December, 1993;

- "21" Affidavit of Nestor Bautista dated 28 December, 1993;
- "22" Affidavit of Magela A. Malaca dated 28 December, 1993;
- "23" Affidavit of Gerondio Mente dated 28 December, 1993;
- "24" Affidavit of Juanito Navarro dated 28 December, 1993;
- "25" Affidavit of Mario Martinez dated 28 December, 1993;
- "26" Affidavit of Bonifacio Mirasol dated 17 December, 1993;
- "26-A" Official translation of Annex "26";
- "27" Certification issued by Pilipinas Shell Petro-leum Corporation;
- "28" Certification issued by the Department of Labor and Employment.

Private respondent filed an opposition to petitioners' "Motion for Leave to File and for Admission of Supplemental Memorandum of Appeal."^[19]

On June 29, 1994, the NLRC rendered a decision affirming that of the labor arbiter. The NLRC denied petitioners' motion for leave to adduce additional evidence.^[20] Petitioners filed a motion for reconsideration, but it was likewise denied by the NLRC in its resolution dated May 2, 1995.^[21] Hence, this petition.

Petitioners contend:

1. THE HONORABLE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONERS' MOTION FOR LEAVE TO FILE AND FOR ADMISSION OF SUPPLEMENTAL MEMORANDUM OF APPEAL;
2. THE HONORABLE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT AN EMPLOYER-EMPLOYEE RELATIONSHIP EXISTED BETWEEN HEREIN PETITIONERS AND RESPONDENT LUDOVICO PAMPLONA DESPITE WANT OF EVIDENCE;
3. THE HONORABLE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT RESPONDENT LUDOVICO PAMPLONA IS ENTITLED TO WAGE DIFFERENTIAL, 13TH MONTH PAY AND SERVICE INCENTIVE LEAVE WITH PAY;

Petitioners argue that since they filed their memorandum of appeal within the ten-day reglementary period, their subsequent pleadings seeking to introduce new evidence should have been admitted by the NLRC. They claim that the new evidence would show the lack of employer-employee relationship between them and private respondent Pamplona; that a hearing should have been conducted by the labor

arbiter considering their denial that an employer-employee relationship existed between them and private respondent; that there was no legal or factual basis for the awards made by the labor arbiter; and, that they should not be bound by the gross negligence of their former counsel.

On the other hand, private respondent contends that the supplemental memorandum of appeal of petitioner was filed beyond the ten-day reglementary period provided by law; that petitioners are bound by their counsel's failure to present in the NLRC the additional evidence they sought to introduce; that, in fact, the nonproduction of the evidence was a strategy consciously adopted by petitioners' counsel with their conformity; that new evidence should not really be allowed on appeal; that petitioners should have asked for a full-blown hearing earlier; that the existence of an employer-employee relationship between him and petitioners was sufficiently proved; and, that the factual findings of the NLRC and the labor arbiter on this matter should be accorded great weight.

The Solicitor General, in behalf of the NLRC, filed a comment in which he argues that the factual findings of the NLRC and the labor arbiter are based on substantial evidence and that petitioners have not given any justifiable reason for the allowance in the NLRC of additional evidence for them.

Indeed, in his affidavit,^[22] private respondent stated:

I, LUDOVICO P. PAMPLONA, of legal age, single, Filipino and resident of Zone 5, Molo Blvd., Iloilo City after having been sworn to in accordance with law do hereby depose and say, that:

1. I started working on November 23, 1970 as a gasoline station helper from 2:00 PM to 10:00 PM and 4:00 AM to 7:00 AM, the whole week at the Caltex Gasoline Station located in Fuentes-Ledesma Sts., Iloilo City owned and operated by Spouses Jose and Carmen Santos;
2. I was transferred in 1981 as a watchman by Spouses Jose and Carmen Santos to the Getty Installation in Lapuz, Iloilo City which they rented and used for storing petroleum products;
3. Aside from being a watchman in that installation, I [was] also made to work on Saturdays and Sundays receiving purchase orders for gasoline and other petroleum products sold by the aforementioned spouses from their stored gasoline and other petroleum products in that installation;
4. When the said rent over the Getty Installation expired in 1985 I was assigned and transferred to the gasoline station in Oton, Iloilo owned and operated by the Spouses Jose and Carmen Santos and I worked in that gasoline station from 4:00 AM to 10:00 AM and from 2:00 PM to 7:00 PM until my retirement in August, 1991;
5. I received a salary of twenty pesos per week when I was working at the Caltex Gasoline Station at Fuentes-Ledesma, Iloilo City: at the Getty Installation, my salary was one hundred twenty pesos per week, and in the Oton Gasoline Station my salary was one hundred pesos per week until my retirement in August, 1991;
6. After working for more than twenty years (20) in the businesses of Spouses Jose