

## THIRD DIVISION

[ G.R. No. 102199, January 28, 1997 ]

**AFP MUTUAL BENEFIT ASSOCIATION, INC., PETITIONER, VS.  
NATIONAL LABOR RELATIONS COMMISSION AND EUTIQUIO  
BUSTAMANTE, RESPONDENTS.  
D E C I S I O N**

**PANGANIBAN, J.:**

The determination of the proper forum is crucial because the filing of the petition or complaint in the wrong court or tribunal is fatal, even for a patently meritorious claim. More specifically, labor arbiters and the National Labor Relations Commission have no jurisdiction to entertain and rule on money claims where no employer-employee relations is involved. Thus, any such award rendered without jurisdiction is a nullity.

This petition for certiorari under Rule 65, Rules of Court seeks to annul the Resolution<sup>[1]</sup> of the National Labor Relations Commission, promulgated September 27, 1991, in NLRC-NCR Case No. 00-02-01196-90, entitled "Eutiquio Bustamante vs. AFP Mutual Benefit Association, Inc.," affirming the decision of the labor arbiter which ordered payment of the amount of P319,796.00 as insurance commissions to private respondent.

**The Antecedent Facts**

The facts are simple. Private respondent Eutiquio Bustamante had been an insurance underwriter of petitioner AFP Mutual Benefit Association, Inc. since 1975. The Sales Agent's Agreement between them provided:<sup>[2]</sup>

"B. Duties and Obligations:

1. During the lifetime of this Agreement, the SALES AGENT (private respondent) shall solicit exclusively for AFPMBAI (petitioner), and shall be bound by the latter's policies, memo circulars, rules and regulations which it may from time to time, revise, modify or cancel to serve its business interests.
2. The SALES AGENT shall confine his business activities for AFPMBAI while inside any military camp, installation or residence of military personnel. He is free to solicit in the area for which he/she is licensed and as authorized, provided however, that AFPMBAI may from time to time, assign him a specific area of responsibility and a production quota on a case to case basis.lex

x x x    x x x    x x x

C. Commission

1. The SALES AGENT shall be entitled to the commission due for all premiums actually due and received by AFPMBAI out of life insurance policies solicited and obtained by the SALES AGENT at the rates set forth in the applicant's commission schedules hereto attached.

x x x    x x x    x x x

D. General Provisions

1. There shall be no employer-employee relationship between the parties, the SALES AGENT being hereby deemed an independent contractor."

As compensation, he received commissions based on the following percentages of the premiums paid:[3]

"30% of premium paid within the first year;

10% of premium paid with the second year;

5% of the premium paid during the third year;

3% of the premium paid during the fourth year; and

1% of the premium paid during the fifth year up-to the tenth year."

On July 5, 1989, petitioner dismissed private respondent for misrepresentation and for simultaneously selling insurance for another life insurance company in violation of said agreement.

At the time of his dismissal, private respondent was entitled to accrued commissions equivalent to twenty four (24) months per the Sales Agent Agreement and as stated in the account summary dated July 5, 1989, approved by Retired Brig. Gen. Rosalino Alquiza, president of petitioner-company. Said summary showed that private respondent had a total commission receivable of P438,835.00, of which only P78,039.89 had been paid to him.

Private respondent wrote petitioner seeking the release of his commissions for said 24 months. Petitioner, through Marketing Manager Juan Concepcion, replied that he was entitled to only P75,000.00 to P100,000.00. Hence, believing Concepcion's computations, private respondent signed a quitclaim in favor of petitioner.

Sometime in October 1989, private respondent was informed that his check was ready for release. In collecting his check, he discovered from a document (account summary) attached to said check that his total commissions for the 24 months actually amounted to P354,796.09. Said document stated:[4]

"6. The total receivable for Mr. Bustamante out of the renewals and old business generated since 1983 grosses P438,835.00 less his outstanding obligation in the amount of P78,039.89 as of June 30, 1989, total expected commission would amount to P354,796.09. From that figure at a 15% compromise settlement this would mean P53,219.41 due him to settle his claim."

Private respondent, however, was paid only the amount of P35,000.00.

On November 23, 1989, private respondent filed a complaint with the Office of the Insurance Commissioner praying for the payment of the correct amount of his commission. Atty. German C. Alejandria, Chief of the Public Assistance and Information Division, Office of the Insurance Commissioner, advised private respondent that it was the Department of Labor and Employment that had jurisdiction over his complaint.

On February 26, 1990, private respondent filed his complaint with the Department of Labor claiming: (1) commission for 2 years from termination of employment equivalent to 30% of premiums remitted during employment; (2) P354,796.00 as commission earned from renewals and old business generated since 1983; (3) P100,000.00 as moral damages; and (4) P100,000.00 as exemplary damages.

After submission of position papers, Labor Arbiter Jose G. de Vera rendered his decision, dated August 24, 1990, the dispositive portion of which reads:<sup>[5]</sup>

"WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered declaring the dismissal of the complainant as just and valid, and consequently, his claim for separation pay is denied. On his money claim, the respondent company is hereby ordered to pay complainant the sum of P319,796.00 plus attorney's fees in the amount of P31,976.60.

All other claims of the complainant are dismissed for want of merit."

The labor arbiter relied on the Sales Agent's Agreement proviso that petitioner could assign private respondent a specific area of responsibility and a production quota, and read it as signaling the existence of employer-employee relationship between petitioner and private respondent.

On appeal, the Second Division<sup>[6]</sup> of the respondent Commission affirmed the decision of the Labor Arbiter. In the assailed Resolution, respondent Commission found no reason to disturb said ruling of the labor arbiter and ruled:<sup>[7]</sup>

"WHEREFORE, in view of the foregoing considerations, the subject appeal should be as it is hereby, denied and the decision appealed from affirmed.

SO ORDERED."

Hence, this petition.

### **The Issue**

Petitioner contends that respondent Commission committed grave abuse of discretion in ruling that the labor arbiter had jurisdiction over this case. At the heart of the controversy is the issue of whether there existed an employer-employee relationship between petitioner and private respondent.

Petitioner argues that, despite provisions B(1) and (2) of the Sales Agent's Agreement, there is no employer-employee relationship between private respondent and itself. Hence, respondent commission gravely abused its discretion when it held that the labor arbiter had jurisdiction over the case.

### **The Court's Ruling**

The petition is meritorious.

#### **First Issue: Not All That Glitters Is Control**

Well-settled is the doctrine that the existence of an employer-employee relationship is ultimately a question of fact and that the findings thereon by the labor arbiter and the National Labor Relations Commission shall be accorded not only respect but even finality when supported by substantial evidence.<sup>[8]</sup> The determinative factor in such finality is the presence of substantial evidence to support said finding, otherwise, such factual findings cannot bind this Court.

Respondent Commission concurred with the labor arbiter's findings that:<sup>[9]</sup>

"x x x The complainant's job as sales insurance agent is usually necessary and desirable in the usual business of the respondent company. Under the Sales Agents Agreement, the complainant was required to solicit exclusively for the respondent company, 'and he was bound by the company policies, memo circulars, rules and regulations which were issued from time to time. By such requirement to follow strictly management policies, orders, circulars, rules and regulations, it only shows that the respondent had control or reserved the right to control the complainant's work as solicitor. Complainant was not an independent contractor as he did not carry on an independent business other than that of the company's x x x."

To this, respondent Commission added that the Sales Agent's Agreement specifically provided that petitioner may assign private respondent a specific area of responsibility and a production quota. From there, it concluded that apparently there is that exercise of control by the employer which is the most important element in determining employer-employee relationship.<sup>[10]</sup>

We hold, however, that respondent Commission misappreciated the facts of the case. Time and again, the Court has applied the "four-fold" test in determining the existence of employer-employee relationship. This test considers the following elements: (1) the power to hire; (2) the payment of wages; (3) the power to dismiss; and (4) the power to control, the last being the most important element.

<sup>[11]</sup>

The difficulty lies in correctly assessing if certain factors or elements properly indicate the presence of control. Anent the issue of exclusivity in the case at bar, the fact that private respondent was required to solicit business exclusively for petitioner could hardly be considered as control in labor jurisprudence. Under Memo Circulars No. 2-81<sup>[12]</sup> and 2-85, dated December 17, 1981 and August 7, 1985, respectively, issued by the Insurance Commissioner, insurance agents are barred from serving more than one insurance company, in order to protect the public and to enable insurance companies to exercise exclusive supervision over their agents in their solicitation work. Thus, the exclusivity restriction clearly springs from a regulation issued by the Insurance Commission, and not from an intention by petitioner to establish control over the method and manner by which private respondent shall accomplish his work. This feature is not meant to change the nature of the relationship between the parties, nor does it necessarily imbue such relationship with the quality of control envisioned by the law.

So too, the fact that private respondent was bound by company policies, memo/circulars, rules and regulations issued from time to time is also not indicative of control. In its Reply to Complainant's Position Paper,<sup>[13]</sup> petitioner alleges that the policies, memo/circulars, and rules and regulations referred to in provision B(1) of the Sales Agent's Agreement are only those pertaining to payment of agents' accountabilities, availment by sales agents of cash advances for sorties, circulars on incentives and awards to be given based on production, and other matters concerning the selling of insurance, in accordance with the rules promulgated by the Insurance Commission. According to the petitioner, insurance solicitors are never affected or covered by the rules and regulations concerning employee conduct and penalties for violations thereof, work standards, performance appraisals, merit increases, promotions, absenteeism/attendance, leaves of absence, management-union matters, employee benefits and the like. Since private respondent failed to rebut these allegations, the same are deemed admitted, or at least proven, thereby leaving nothing to support the respondent Commission's conclusion that the foregoing elements signified an employment relationship between the parties.

In regard to the territorial assignments given to sales agents, this too cannot be held as indicative of the exercise of control over an employee. First of all, the place of work in the business of soliciting insurance does not figure prominently in the equation. And more significantly, private respondent failed to rebut petitioner's allegation that it had never issued him any territorial assignment at all. Obviously, this Court cannot draw the same inference from this feature as did the respondent Commission.

To restate, the significant factor in determining the relationship of the parties is the presence or absence of supervisory authority to control the method and the details of performance of the service being rendered, and the degree to which the principal may intervene to exercise such control. The presence of such power of control is indicative of an employment relationship, while absence thereof is indicative of independent contractorship. In other words, the test to determine the existence of independent contractorship is whether one claiming to be an independent contractor has contracted to do the work according to his own methods and without being subject to the control of the employer except only as to the result of the work<sup>[14]</sup>. Such is exactly the nature of the relationship between petitioner and private respondent.