

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**AIR MATERIAL WING SAVINGS AND
LOAN ASSOCIATION, INC.,**
Petitioner,

-versus-

**G.R. No. 111870
June 30, 1994**

**NATIONAL LABOR RELATIONS
COMMISSIONS, ET AL.,**
Respondents.

X-----X

DECISION

CRUZ, J.:

Private respondent Luis S. Salas was appointed “notarial and legal counsel” for petitioner Air Material Wings Savings and Loan Association (AMWSLAI) in 1980. The appointment was renewed for three years in an implementing order dated January 23, 1987, reading as follows:

**SUBJECT: Implementing Order on the Reappointment of the
Legal Officer**

TO: ATTY. LUIS S. SALAS

Per approval of the Board en banc in a regular meeting held on January 21, 1987, you are hereby reappointed as Notarial and Legal Counsel of this association for a term of three (3) years effective March 1, 1987, unless sooner terminated from office for cause or as may be deemed necessary by the Board for the interest and protection of the association.

Aside from notarization of loan & other legal documents, your duties and responsibilities are hereby enumerated in the attached sheet, per Articles IX, Section 1-d of the by-laws and those approved by the Board en banc.

Your monthly compensation/retainer's fee remains the same.

This shall form part of your 201 file.

BY AUTHORITY OF THE BOARD:

LUVIN S. MANAY
President & Chief of the Board

On January 9, 1990, the petitioner issued another order reminding Salas of the approaching termination of his legal services under their contract. This prompted Salas to lodge a complaint against AMWSLAI for separation pay, vacation and sick leave benefits, cost of living allowances, refund of SSS premiums, moral and exemplary damages, payment of notarial services rendered from February 1, 1980 to March 2, 1990, and attorney's fees.

Instead of filing an answer, AMWSLAI moved to dismiss for lack of jurisdiction. It averred that there was no employer-employee relationship between it and Salas and that his monetary claims properly fell within the jurisdiction of the regular courts. Salas opposed the motion and presented documentary evidence to show that he was indeed an employee of AMWSLAI.

The motion was denied and both parties were required to submit their position papers. AMWSLAI filed a motion for reconsideration ad cautelam, which was also denied. The parties were again ordered to submit their position papers but AMWSLAI did not comply. Nevertheless, most of Salas' claims were dismissed by the labor arbiter in his decision dated November 21, 1991.^[1]

It was there held that Salas was not illegally dismissed and so not entitled to collect separation benefits. His claims for vacation leave, sick leave, medical and dental allowances and refund of SSS premiums were rejected on the ground that he was a managerial employee. He was also denied moral and exemplary damages for lack of evidence of bad faith on the part of AMSWLAI. Neither was he allowed to collect his notarial fees from 1980 up to 1986 because the claim therefor had already prescribed. However, the petitioner was ordered to pay Salas his notarial fees from 1987 up to March 2, 1990, and attorney's fee equivalent to 10% of the judgment award.

On appeal, the decision was affirmed in toto by the respondent Commission, prompting the petitioner to seek relief in this Court.^[2]

The threshold issue in this case is whether or not Salas can be considered an employee of the petitioner company.

We have held in a long line of decisions that the elements of an employer-employee relationship are: (1) selection and engagement of the employee; (2) payment of wages; (3) power of dismissal; and (4) employer's own power to control employee's conduct.^[3]

The existence of such a relationship is essentially a factual question. The findings of the NLRC on this matter are accorded great respect and even finality when the same are supported by substantial evidence.^[4]

The terms and conditions set out in the letter-contract entered into by the parties on January 23, 1987, clearly show that Salas was an employee of the petitioner. His selection as the company counsel was done by the board of directors in one of its regular meetings. The petitioner paid him a monthly compensation/retainer's fee for his

services. Though his appointment was for a fixed term of three years, the petitioner reserved its power of dismissal for cause or as it might deem necessary for its interest and protection. No less importantly, AMWSLAI also exercised its power of control over Salas by defining his duties and functions as its legal counsel, to wit:

1. To act on all legal matters pertinent to his Office.
2. To seek remedies to effect collection of overdue accounts of members without prejudice to initiating court action to protect the interest of the association.
3. To defend by all means all suit against the interest of the Association.^[5]

In the earlier case of *Hydro Resources Contractors Corp. vs. Pagalilauan*,^[6] this Court observed that:

A lawyer, like any other professional, may very well be an employee of a private corporation or even of the government. It is not unusual for a big corporation to hire a staff of lawyers as its in-house counsel, pay them regular salaries, rank them in its table of organization, and otherwise treat them like its other officers and employees. At the same time, it may also contract with a law firm to act as outside counsel on a retainer basis. The two classes of lawyers often work closely together but one group is made up of employees while the other is not. A similar arrangement may exist as to doctors, nurses, dentists, public relations practitioners and other professionals.

We hold, therefore, that the public respondent committed no grave abuse of discretion in ruling that an employer-employee relationship existed between the petitioner and the private respondent.

We must disagree with the NLRC, however, on Salas' claims for notarial fees.

The petitioner contends that the public respondents are not empowered to adjudicate claims for notarial fees. On the other hand, the Solicitor General believes that the NLRC acted correctly when it

took cognizance of the claim because it arose out of Salas' employment contract with the petitioner which assigned him the duty to notarize loan agreements and other legal documents. Moreover, Section 9 of Rule 141 of the Rules of Court does not restrict or prevent the labor arbiter and the NLRC from determining claims for notarial fees.

Labor arbiters have the original and exclusive jurisdiction over money claims of workers when such claims have some reasonable connection with the employer-employee relationship. The money claims of workers referred to in paragraph 3 of Article 217 of the Labor Code are those arising out of or in connection with the employer-employee relationship or some aspect or incident of such relationship.

Salas' claim for notarial fees is based on his employment as a notarial officer of the petitioner and thus comes under the jurisdiction of the labor arbiter.

The public respondents agreed that Salas was entitled to collect notarial fees from 1987 to 1990 by virtue of his having been assigned as notarial officer. We feel, however, that there is no substantial evidence to support this finding.

The letter-contract of January 23, 1987, does not contain any stipulation for the separate payment of notarial fees to Salas in addition to his basic salary. On the contrary, it would appear that his notarial services were part of his regular functions and were thus already covered by his monthly compensation. It is true that the notarial fees were paid by members-borrowers of the petitioner for its own account and not of Salas. However, this is not a sufficient basis for his claim to such fees in the absence of any agreement to that effect.

ACCORDINGLY, the appealed judgment of the NLRC is **AFFIRMED**, with the modification that the award of notarial fees and attorney's fees is disallowed. It is so ordered.

SO ORDERED

Davide, Jr., Bellosillo, Quiason and Kapunan, *JJ.*, concur.

[1] Rollo, pp. 33-39.

[2] Rollo, pp. 50-62.

[3] Canlubang Security Agency Corp. vs. NLRC, 216 SCRA 280; Deferia vs. NLRC, 194 SCRA 525; Ecal vs. NLRC, 195 SCRA 224.

[4] Cathedral School of Technology vs. NLRC, 214 SCRA 551; Hydro Resources Contractors Corp. vs. Pagalilauan, 172 SCRA 399.

[5] Rollo, p. 35.

[6] 172 SCRA 399.

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