

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**GREAT PACIFIC LIFE ASSURANCE
CORPORATION,**

Petitioner,

-versus-

**G.R. Nos. 80750-51
July 23, 1990**

**NATIONAL LABOR RELATIONS
COMMISSION, ERNESTO RUIZ and
RODRIGO RUIZ,**

Respondents.

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DECISION

CORTES, J.:

Brothers Rodrigo and Ernesto Ruiz (private respondents herein) entered into individual agency agreements with petitioner Grepalife in 1977, each starting out as trainee-agents and later promoted to higher positions. On July 6, 1981, Ernesto was designated as district manager under a three-year Agreement of Managership [Annex "A", Rollo, p. 34]. However, he was dismissed from service on November 30, 1983, before the lapse of the period fixed in the contract, when upon audit he was found to have delayed the remittance of premium collections in his possession and to have appropriated for his own use the sum of Twelve Thousand Eight Hundred Eighteen Pesos and

Seventy-Three Centavos (P12,818.73) by remitting smaller amounts of premiums than that actually paid by policy holders. Grepalife then designated Rodrigo as officer-in charge to take over the functions of district manager in the Butuan district effective December 5, 1983, in addition to his responsibilities then as zone supervisor. Unfortunately, Rodrigo proved to be made of the same stuff as his brother. After his designation as officer-in-charge was recalled in January 1984, he instigated the other zone supervisors and debit agents of the Butuan district not to submit their weekly reports of business and not to remit the premium collections. Rodrigo's insistent violation despite warnings from the Vice-President for VisMin Sales prompted Grepalife to terminate his employment effective March 5, 1984 in a letter dated March 8, 1984. Although the ground for Rodrigo's dismissal was not given in said letter, petitioner maintained that it was for substantially the same infractions committed by Ernesto.

In the consolidated illegal dismissal cases (NLRC RAB X Case Nos. 4-0210-84 and 2-0103-85) filed by the brothers, the labor arbiter found that Rodrigo and Ernesto: (1) were employees of Grepalife; (2) committed acts inimical to Grepalife's business; and (3) were dismissed without first being afforded due process by way of a notice in writing of the grounds for their dismissal.

However, despite such findings, the labor arbiter ordered their reinstatement without backwages [Rollo, pp. 51-52].

Upon appeal, the National Labor Relations Commission (NLRC) affirmed the factual findings of the labor arbiter but reversed the order of reinstatement on the ground that Grepalife cannot be compelled to retain an employee found guilty of acts inimical to its interest. Nevertheless, "separation pay" was awarded in favor of private respondents for petitioner's failure to observe due process prior to their termination from employment. The dispositive portion of the decision reads:

x x x for failure of respondent [Grepalife and the branch manager] to give timely notice in writing to complainants of the acts constituting the grounds for their dismissal pursuant to Section 2, Rule XIV, of Batas Pambansa Blg. 130, respondent

should be ordered to pay complainants Rodrigo Ruiz and Ernesto Ruiz separation pay, equivalent to one-half month's salary for every year of service. [NLRC Resolution, p. 5; Rollo, p. 9; Emphasis supplied.]

Hence, the present petition.

The Solicitor General filed its comment on behalf of public respondent. Petitioner filed a reply thereto. Subsequently, the Court resolved to give the petition due course and to require the parties to submit their memoranda. Petitioner and public respondent complied and duly submitted their respective memoranda. On the other hand, private respondents did not file their comment and memorandum.

The existence of valid grounds for private respondents' dismissal is not disputed herein, and therefore the finding that the Ruiz brothers were dismissed for just cause is final. The only issues in this petition are (1) Whether or not there was grave abuse of discretion on the part of public respondent in holding that Ernesto and Rodrigo are employees of Grepalife; and (2) Whether or not there was grave abuse of discretion on the part of public respondent in ordering the award of separation pay to private respondents as sanction for Grepalife's failure to accord them due process even though there was finding of just cause for their dismissal.

With respect to the first issue, the Court finds no grave abuse of discretion.

Grepalife contends that Rodrigo and Ernesto are agents, not employees, of the company by alleging that they were hired under agency agreements, that they were not among the company's "organic personnel" who handled technical and administrative functions of the company, that they were paid on the basis of production/output (by way of commissions and bonuses, and not salaries), and that they were neither under any form of control whatsoever as to hours of work nor were they "on call" by the company. On the basis of the foregoing, Grepalife concluded that the relationship was one of principal-agent and therefore, necessarily, it is the Civil Code and the Insurance Code which properly govern the relationship, to the exclusion of the Labor Code.

This contention is devoid of merit.

Article 280 of the Labor Code provides that “[t]he provisions of written agreement to the contrary notwithstanding and regardless of the oral agreements of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer.” Furthermore, in determining who is considered an “employee”, the Court has time and again applied the “four-fold” test,^[*] with control being the most crucial and determinative indicator of an employer-employee relationship. The “employer” must have control (or must have reserved the right to control) not only over the result of the “employee’s” work but also the means and methods by which it is to be accomplished [Investment Planning Corp. of the Philippines vs. SSS, G.R. No. L-19124, November 18, 1967, 21 SCRA 924; Mafinco Trading Corp. vs. Ople, G.R. No. L-37790, March 25, 1976, 70 SCRA 139; Rosario Brothers, Inc. vs. Ople, G.R. No. 53590, July 31, 1984, 131 SCRA 72; Brotherhood Labor Unity Movement of the Philippines vs. Zamora, G.R. No. L-48645, January 7, 1987, 147 SCRA 49; Grepalife vs. NLRC, G.R. No. 73887, December 21, 1989].

Applying the above, the Court finds that, as correctly held by public respondent, the relationships of the Ruiz brothers and Grepalife were those of employer-employee.

First, their work at the time of their dismissal as zone supervisor and district manager are necessary and desirable to the usual business of the insurance company. They were entrusted with supervisory, sales and other functions to guard Grepalife’s business interests and to bring in more clients to the company, and even with administrative functions to ensure that all collections, reports and data are faithfully brought to the company.

Furthermore, it cannot be gainsaid that Grepalife had control over private respondents’ performance as well as the result of their efforts. A cursory reading of their respective functions as enumerated in their contracts reveals that the company practically dictates the manner by which their jobs are to be carried out. For instance, the District Manager must properly account, record and document the company’s

funds, spot-check and audit the work of the zone supervisors, conserve the company's business in the district through "reinstatements", follow up the submission of weekly remittance reports of the debit agents and zone supervisors, preserve company property in good condition, train understudies for the position of district manager, and maintain his quota of sales (the failure of which is a ground for termination). On the other hand, a zone supervisor must direct and supervise the sales activities of the debit agents under him, conserve company property through "reinstatements", undertake and discharge the functions of absentee debit agents, spot-check the records of debit agents, and insure proper documentation of sales and collections by the debit agents.

True, it cannot be denied that based on the definition of an "insurance agent" in the Insurance Code [Art. 300] some of the functions performed by private respondents were those of insurance agents. Nevertheless, it does not follow that they are not employees of Grepalife. The Insurance Code may govern the licensing requirements and other particular duties of insurance agents, but it does not bar the application of the Labor Code with regard to labor standards and labor relations.

Moreover, it is well-settled that the existence of an employer-employee relationship is ultimately a question of fact, and such findings of fact of the labor arbiter and the NLRC shall be accorded not only respect but even finality when supported by substantial evidence [RJL Martinez Fishing Corporation vs. NLRC, G.R. Nos. 63550-51, January 31, 1984, 127 SCRA 454; Asim vs. Castro, G.R. Nos. 75063-64, June 30, 1988, 163 SCRA 344, Murillo vs. Sun Valley Realty, Inc., G.R. No. 67272, June 30, 1988, 163 SCRA 271], as in this case.

With respect to the second issue, petitioner argues that private respondents are not entitled to separation pay since there was clear finding of just cause for dismissal, and furthermore "neither the law nor the rules implementing the same authorizes the award of separation pay as 'penalty'." [Petition, p. 8; Rollo, p. 25].

Again, the contention is devoid of merit.

It must be emphasized that the monetary award fixed by public respondent, although erroneously termed as “separation pay”, was in fact a sanction for the employer’s failure to observe the procedural requirements of due process provided under Rule XIV, Secs. 2, 5 and 6 of the rules implementing Batas Pambansa Blg. 130, and the parties’ own covenant [Annex “A”, Rollo, p. 38.] The imposition of such a sanction is in consonance with the ruling in the case of Wenphil vs. NLRC, [G.R. No. 80587, February 8, 1989, 170 SCRA 69]. The Court held therein that an indemnity, not “separation pay”, must be imposed on the employer for failure to observe the procedural requirements of notice and hearing prior to the dismissal of an employee for just cause. Considering the circumstances of the case at bar, petitioner must indemnify private respondents in the amount of One Thousand Pesos (P1,000.00) each [See also Shoemart, Inc. vs. NLRC, G.R. No. 74229, August 11, 1989].

IN VIEW OF THE FOREGOING, the decision of the NLRC is hereby MODIFIED insofar as the award of “separation pay” is concerned. In lieu of “separation pay” petitioner Grepalife is hereby ordered to indemnify private respondents Rodrigo Ruiz and Ernesto Ruiz the amount of One Thousand Pesos (P1,000.00) each.

SO ORDERED.

Fernan, (C.J.), Gutierrez, Jr., Feliciano and Bidin, JJ., concur.

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- [*] The elements of the “four-fold” test are:
- (1) the selection and engagement of the employee;
 - (2) the payment of wages;
 - (3) the power of dismissal; and
 - (4) the power to control the employee’s conduct.