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**SUPREME COURT
SECOND DIVISION**

**ELIAS VILLUGA, RENATO ABISTADO,
JILL MENDOZA, ANDRES ABAD,
BENJAMIN BRIZUELA, NORLITO
LADIA, MARCELO AGUILAN, DAVID
ORO, NELIA BRIZUELA, FLORA
ESCOBIDO, JUSTILITA CABANIG, and
DOMINGO SAGUIT,**

Petitioners,

-versus-

**G.R. No. 75038
August 23, 1993**

**NATIONAL LABOR RELATIONS
COMMISSION (THIRD DIVISION) and
BROAD STREET TAILORING and/or
RODOLFO ZAPANTA,**

Respondents.

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DECISION

NOCON, J.:

A basic factor underlying the exercise of rights and the filing of claims for benefits under the Labor Code and other presidential issuances or labor legislations is the status and nature of one's employment. Whether an employer-employee relationship exists and whether such employment is managerial in character or that of a rank and file employee are primordial considerations before extending labor benefits. Thus, the petitioners in this case seek a definitive ruling on the status and nature of their employment with Broad Street Tailoring and pray for the nullification of the resolution dated May 12, 1986 of the National Labor Relations Commission in NLRC Case No. RB-IV-21558-78-T affirming the decision of Labor Arbiter Ernilo V. Peñalosa dated May 28, 1979, which held eleven of them as independent contractors and the remaining one as an employee but of managerial rank.

The facts of the case show that petitioner Elias Villuga was employed as cutter in the tailoring shop owned by private respondent Rodolfo Zapanta and known as Broad Street Tailoring located at Shaw Boulevard, Mandaluyong, Metro Manila. As cutter, he was paid a fixed monthly salary of P840.00 and a monthly transportation allowance of P40.00. In addition to his work as cutter, Villuga was assigned the chore of distributing work to the shop's tailors or sewers when both the shop's manager and assistant manager would be absent. He saw to it that their work conformed with the pattern he had prepared and if not, he had them redone, repaired or resewn.

The other petitioners were either ironers, repairmen and sewers. They were paid a fixed amount for every item ironed, repaired or sewn, regardless of the time consumed in accomplishing the task. Petitioners did not fill up any time record since they did not observe regular or fixed hours of work. They were allowed to perform their work at home especially when the volume of work, which depended on the number of job orders, could no longer be coped up with.

From February 17 to 22, 1978, petitioner Villuga failed to report for work allegedly due to illness. For not properly notifying his employer, he was considered to have abandoned his work.

In a complaint dated March 27, 1978, filed with the Regional Office of the Department of Labor, Villuga claimed that he was refused admittance when he reported for work after his absence, allegedly due to his active participation in the union organized by private respondent's tailors. He further claimed that he was not paid overtime pay, holiday pay, premium pay for work done on rest days and holidays, service incentive leave pay and 13th month pay.

Petitioners Renato Abistado, Jill Mendoza, Benjamin Brizuela and David Oro also claimed that they were dismissed from their employment because they joined the Philippine Social Security Labor Union (PSSLU). Petitioners Andres Abad, Norlito Ladia, Marcelo Aguilan, Nelia Brizuela, Flora Escobido, Justilita Cabaneg and Domingo Saguit claimed that they stopped working because private respondents gave them few pieces of work to do after learning of their membership with PSSLU. All the petitioners laid claims under the different labor standard laws which private respondent allegedly violated.

On May 28, 1979, Labor Arbiter Ernilo V. Peñalosa rendered a decision ordering the dismissal of the complaint for unfair labor practices, illegal dismissal and other money claims except petitioner Villuga's claim for 13th month pay for the years 1976, 1977 and 1980. The dispositive portion of the decision states as follows:

“WHEREFORE, premises considered, the respondent Broad Street Tailoring and/or Rodolfo Zapanta are hereby ordered to pay complainant Elias Villuga the sum of ONE THOUSAND TWO HUNDRED FORTY-EIGHT PESOS AND SIXTY-SIX CENTAVOS (P1,248.66) representing his 13th month pay for the years 1976, 1977 and 1978. His other claims in this case are hereby denied for lack of merit.

“The complaint insofar as the other eleven (11) complainants are concerned should be, as it is hereby dismissed for want of jurisdiction.”^[1]

On appeal, the National Labor Relations Commission affirmed the questioned decision in a resolution dated May 12, 1986, the dispositive portion of which states as follows:

“WHEREFORE, premises considered, the decision appealed from is, as it is hereby AFFIRMED, and the appeal dismissed.”^[2]

Presiding Commissioner Guillermo C. Medina merely concurred in the result while Commissioner Gabriel M. Gatchalian rendered a dissenting opinion which states as follows:

“I am for upholding employer-employee relationship as argued by the complainants before the Labor Arbiter and on appeal. The further fact that the proposed decision recognizes complainants’ status as piece-rate worker all the more crystallizes employer-employee relationship the benefits prayed for must therefore be granted.”^[3]

Hence, petitioners filed this instant certiorari case on the following grounds:

- “1. That the respondent National Labor Relations Commission abused its discretion when it ruled that petitioner/complainant, Elias Villuga falls within the category of a managerial employee;
- “2. When it ruled that the herein petitioners were not dismissed by reason of their union activities;
- “3. When it ruled that petitioners Andres Abad, Benjamin Brizuela, Norlito Ladia, Marcelo Aguilan, David Oro, Nelia Brizuela, Flora Escobido, Justilita Cabaneg and Domingo Saguit were not employees of private respondents but were contractors.
- “4. When it ruled that petitioner Elias Villuga is not entitled to overtime pay and services for Sundays and Legal Holidays; and
- “5. When it failed to grant petitioners their respective claims under the provisions of P.D. Nos. 925, 1123 and 851.”^[4]

Under Rule I, Section 2(c), Book III of the Implementing Rules of the Labor Code, to be a member of a managerial staff, the following elements must concur or co-exist, to wit: (1) that his primary duty consists of the performance of work directly related to management policies; (2) that he customarily and regularly exercises discretion and independent judgment in the performance of his functions; (3) that he regularly and directly assists in the management of the establishment; and (4) that he does not devote twenty per cent of his time to work other than those described above.

Applying the above criteria to petitioner Elias Villuga's case, it is undisputed that his primary work or duty is to cut or prepare patterns for items to be sewn, not to lay down or implement any of the management policies, as there is a manager and an assistant manager who perform said functions. It is true that in the absence of the manager and assistant manager, he distributes and assigns work to employees but such duty, though involving discretion, is occasional and not regular or customary. He had also the authority to order the repair or resewing of defective items but such authority is part and parcel of his function as cutter to see to it that the items cut are sewn correctly lest the defective nature of the workmanship be attributed to his "poor cutting." Elias Villuga does not participate in policy-making. Rather, the functions of his position involve execution of approved and established policies. In *Franklin Baker Company of the Philippines vs. Trajano*,^[5] it was held that employees who do not participate in policy-making but are given ready policies to execute and standard practices to observe are not managerial employees. The test of "supervisory or managerial status" depends on whether a person possesses authority that is not merely routinary or clerical in nature but one that requires use of independent judgment. In other words, the functions of the position are not managerial in nature if they only execute approved and established policies leaving little or no discretion at all whether to implement said policies or not.^[6]

Consequently, the exclusion of Villuga from the benefits claimed under Article 87 (overtime pay and premium pay for holiday and rest day work), Article 94, (holiday pay), and Article 95 (service incentive leave pay) of the Labor Code, on the ground that he is a managerial employee is unwarranted. He is definitely a rank and file employee hired to perform the work of a cutter and not hired to perform

supervisory or managerial functions. The fact that he is uniformly paid by the month does not exclude him from the benefits of holiday pay as held in the case of *Insular Bank of America Employees Union vs. Inciong*.^[7] He should therefore be paid in addition to the 13th month pay, his overtime pay, holiday pay, premium pay for holiday and rest day, and service incentive leave pay.

As to the dismissal of the charge for unfair labor practices of private respondent consisting of termination of employment of petitioners and acts of discrimination against members of the labor union, the respondent Commission correctly held the absence of evidence that Mr. Zapanta was aware of petitioner's alleged union membership on February 22, 1978 as the notice of union existence in the establishment with proposal for recognition and collective bargaining negotiation was received by management only on March 3, 1978. Indeed, self-serving allegations without concrete proof that the private respondent knew of their membership in the union and accordingly reacted against their membership do not suffice.

Nor is private respondent's claim that petitioner Villuga abandoned his work acceptable. For abandonment to constitute a valid cause for dismissal, there must be a deliberate and unjustified refusal of the employee to resume his employment. Mere absence is not sufficient; it must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore.^[8] At any rate, dismissal of an employee due to his prolonged absence without leave by reason of illness duly established by the presentation of a medical certificate is not justified.^[9] In the case at bar, however, considering that petitioner Villuga absented himself for four (4) days without leave and without submitting a medical certificate to support his claim of illness, the imposition of a sanction is justified, but surely, not dismissal, in the light of the fact that this is petitioner's first offense. In lieu of reinstatement, petitioner Villuga should be paid separation pay where reinstatement can no longer be effected in view of the long passage of time or because of the realities of the situation.^[10] But petitioner should not be granted backwages in addition to reinstatement as the same is not just and equitable under the circumstances considering that he was not entirely free from blame.^[11]

As to the other eleven petitioners, there is no clear showing that they were dismissed because the circumstances surrounding their dismissal were not even alleged. However, we disagree with the finding of respondent Commission that the eleven petitioners are independent contractors.

For an employer-employee relationship to exist, the following elements are generally considered: “(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.”^[12]

Noting that the herein petitioners were oftentimes allowed to perform their work at home and were paid wages on a piece-rate basis, the respondent Commission apparently found the second and fourth elements lacking and ruled that “there is no employer-employee relationship, for it is clear that respondents are interested only in the result and not in the means and manner and how the result is obtained.”

Respondent Commission is in error. The mere fact that petitioners were paid on a piece-rate basis is no argument that herein petitioners were not employees. The term “wage” has been broadly defined in Article 97 of the Labor Code as remuneration or earnings, capable of being expressed in terms of money whether fixed or ascertained on a time, task, piece or commission basis.” The facts of this case indicate that payment by the piece is just a method of compensation and does not define the essence of the relations.^[13] That petitioners were allowed to perform their work at home does not likewise imply absence of control and supervision. The control test calls merely for the existence of a right to control the manner of doing the work, not the actual exercise of the right.^[14]

In determining whether the relationship is that of employer and employee or one of an independent contractor, “each case must be determined on its own facts and all the features of the relationship are to be considered.”^[15] Considering that petitioners who are either sewers, repairmen or ironer, have been in the employ of private respondent as early as 1972 or at the latest in 1976, faithfully rendering services which are desirable or necessary for the business of private respondent, and observing management’s approved

standards set for their respective lines of work as well as the customers' specifications, petitioners should be considered employees, not independent contractors.

Independent contractors are those who exercise independent employment, contracting to do a piece of work according to their own methods and without being subjected to control of their employer except as to the result of their work. By the nature of the different phases of work in a tailoring shop where the customers' specifications must be followed to the letter, it is inconceivable that the workers therein would not be subjected to control.

In *Rosario Brothers, Inc. vs. Ople*,^[16] this Court ruled that tailors and similar workers hired in the tailoring department, although paid weekly wages on piece-work basis, are employees not independent contractors. Accordingly, as regular employees, paid on a piece-rate basis, petitioners are not entitled to overtime pay, holiday pay, premium pay for holiday/rest day and service incentive leave pay. Their claim for separation pay should also be denied for lack of evidence that they were in fact dismissed by private respondent. They should be paid, however, their 13th month pay under P.D. 851, since they are employees not independent contractors.

WHEREFORE, in view of the foregoing reasons, the assailed decision of respondent National Labor Relations Commission is hereby **MODIFIED** by awarding —

- (a) in favor of petitioner Villuga, overtime pay, holiday pay, premium pay for holiday and rest day, service incentive leave pay and separation pay, in addition to his 13th month pay; and
- (b) in favor of the rest of the petitioners, their respective 13th month pay.

The case is hereby **REMANDED** to the National Labor Relations Commission for the computation of the claims herein-above mentioned.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado and Puno, JJ., concur.

- [1] Rollo, pp. 12-13.
- [2] Ibid., p. 17.
- [3] Ibid.
- [4] Rollo, pp. 5-9.
- [5] G.R. No. 75039, 157 SCRA 416 (1988).
- [6] Southern Philippines Federation of Labor (SPFL) vs. Calleja, G.R. No. 80882, 172 SCRA 676 (1989).
- [7] G.R. No. 52415, 132 SCRA 663 (1984).
- [8] Flexo Manufacturing Corporation vs. NLRC, et al. G.R. No. 55971, 135 SCRA (1985); Nueva Ecija Electric Cooperative, Inc. v Minister of Labor, et al., G.R. No. 61965, 184 SCRA 25 (1990).
- [9] Atlas Consolidated Mining and Development Corporation vs. NLRC, et al. G.R. No. 67880, 177 SCRA 537 (1989).
- [10] Esmalin vs. NLRC, G.R. No. 67880, 177 SCRA 537 (1989).
- [11] See: San Miguel Corporation vs. NLRC, G.R. No. 60067, 115 SCRA 907 (1982).
- [12] Singer Sewing Machine Co. vs. Drilon, G.R. No. 91307, 193 SCRA 270 (1991); Deferia vs. National Labor Relations Commission, G.R. No. 78713; 194 SCRA 525; Ecal vs. National Labor Relations Commission, G.R. Nos. 92777-78, 195 SCRA 224 (1991); Hijos de F. Escaño, Inc. vs. NLRC, G.R. No. 59229, 201 SCRA 63 (1991).
- [13] Dy Keh Beng vs. International Labor and Marine Union of the Philippines, et al., G.R. No. L-32245, 90 SCRA 161 (1979).
- [14] Feati University vs. Bautista, et al., G.R. No. L-21500, 18 SCRA 1191 (1966).
- [15] 56 CJS 45.
- [16] G.R. No. 53590, 131 SCRA 72 (1984).