

REGIE G. PILAPIL, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, 7TH DIVISION, AND DKC TRANSPORT/DENTRADE ENTERPRISE/DENNIS CHIU & DANIEL CHIU, RESPONDENTS.

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

This is a Petition for Certiorari[1] under Rule 65 of the Rules of Court assailing, on the ground of grave abuse of discretion amounting to lack or in excess of jurisdiction, the July 16, 2013 Decision[2] and October 18, 2013 Resolution[3] of the National Labor Relations Commission (NLRC), 7[th] Division, Cebu City in NLRC Case No. VAC-04-000195-13. The assailed decision affirmed the February 25, 2013 Decision[4] of the Labor Arbiter dismissing petitioner's complaint for illegal dismissal which sought for his reinstatement and the payment of backwages, wage differential, overtime pay, holiday pay, 13th month pay, service incentive leave pay, damages and attorney's fees for lack of merit. On the other hand, the assailed resolution denied petitioner's motion for reconsideration.

The Antecedents

The instant petition stemmed from a Complaint[5] for illegal dismissal, underpayment of salaries, unpaid overtime pay, holiday pay, service incentive leave pay, vacation/sick leave pay, 13[th] month pay, moral and exemplary damages and attorney's fees filed by petitioner Regie G. Pilapil (Regie) against private respondents DKC Transport/Dentrade Enterprises/Dennis Chiu and Daniel Chiu, as owners, before the NLRC, Regional Arbitration Branch (RAB) No. VI, Bacolod City on November 19, 2012, docketed as RAB Case No. VI-11-10729-12. In his Complaint, petitioner Regie claims to have been dismissed on September 17, 2012 and demands for his reinstatement and payment of his monetary claims.

During the mandatory conference scheduled on January 14, 2012, the parties failed to reach a fair compromise. The mandatory conference was terminated and the parties were directed to submit their respective position papers inclusive of supporting proofs.[6]

In his Position Paper,[7] petitioner Regie alleged that he was employed as driver by the private respondents from January 2003 until his untimely dismissal on September 17, 2012; that private respondent DKC Transport is engaged in the business of transporting and delivering food and chemicals such as rice, flour, cooking oil, soy sauce, sugar, salt, sardines and soap among others. Private respondent DKC Transport is owned and managed by brothers Dennis and Daniel Chiu, herein private respondents, and operates under the name and style DKC Transport and/or Dentrade Enterprises. Petitioner Regie alleged that he was paid an amount of P100.00 a day and that he was required to report seven days a week including Sundays and holidays. According to petitioner Regie, he was not paid holiday pay, service incentive leave pay, 13th month pay and rest day premium pay. That prior to his dismissal, petitioner Regie had not incurred any derogatory record with the private respondents.

As a driver, petitioner Regie's tour of duty consisted of delivering the goods the private respondents distribute to its customers. In doing this, he was assisted by a helper whose work primarily involved loading and unloading of

the goods to and from the truck. The duty to identify which helper would be assigned to a particular driver, according to petitioner Regie, fell on Joel Riclamante who was formerly a uniformed security guard of the private respondents and was employed through a security agency. Allegedly, Joel Riclamante was dismissed by his security agency several years ago because of complaints by other workers concerning his behavior to put other down in order to gain recognition from the owners of DKC Transport. Such behavior, however, worked in Joel Riclamante's favor as he was absorbed and employed by the private respondents. That Joel Riclamante had many conflicts with the people in their workplace and in one instance, figured into a fight with a helper which resulted to the former being stabbed after criticizing the latter's wife.[8]

In August 2012, Joel Riclamante designated a petite worker as petitioner Regie's helper. Petitioner Regie knew the helper as Poktol. That Poktol's physical limitations caused considerable delay in petitioner Regie's work as he had to give Poktol more time to load and unload the goods before proceeding to their next assignment. That in some instances, petitioner Regie would need to assist Poktol in lifting the goods in order to get the work done. That on August 24, 2013, prior to embarking on his assigned trip, petitioner approached Joel Riclamante to request for a new helper. But instead of heeding his request, Joel Riclamante allegedly felt insulted and challenged him to a fight and attempted to grab his gun. Out of fear, petitioner Regie ran and was chased by Joel Riclamante. Allegedly, the latter was able to catch him and threw several punches at him resulting to some contusions on his face and body. Petitioner Regie alleged that he was able to hit back at Joel Riclamante but only to appease the latter and to protect himself. According to petitioner Regie, the said incident was duly reported to the police authorities.[9]

Later that day, petitioner Regie boarded his assigned truck and was about to embark on his next delivery assignment when private respondent Daniel Chiu arrived and instructed him to come down from his truck as a new driver, known as Gilbert, will be replacing him. Petitioner Regie alleged that there was no other reason for his relief other than the incident with Joel Riclamante. Petitioner Regie was able to drive again but was permanently relieved from service allegedly on September 17, 2012 without the benefit of any written or formal communication. Hence, this complaint. Meanwhile, petitioner Regie filed a criminal complaint against Joel Riclamante with the city prosecutor who found probable cause to hold Joel Riclamante for trial.[10]

On the contrary, private respondents averred, in its Position Paper, that petitioner Regie was hired as a driver by private respondent DKC Transport. Private respondents, however, pointed out that private respondent Dennis Chiu is the general manager of DKC Transport while private respondent Dentrade Enterprises, managed by Daniel Chiu, is one of the customers of DKC Transport. Private respondent averred that petitioner Regie worked for six days in a week and was paid on a weekly basis. Petitioner Regie's daily pay is P232.69. According to private respondents, since petitioner Regie was a field worker, he is not entitled to overtime pay. As opposed to petitioner Regie's claim, private respondents averred that the former was paid 13th month pay and incentive leave pay.[11]

That on August 24, 2012, petitioner Regie figured into a fistfight with the security guard within the private respondent DKC Transport's premises. The incident was blotted before the police station by both of them. After the said incident, petitioner Regie allegedly never reported back for work and this prompted the management to send him a memorandum, informing him that his refusal to take on the helper assigned to him was a violation of company policies and directed him to report back for work immediately. The memorandum was served upon petitioner Regie personally and through registered mail. That notwithstanding receipt of the memorandum, petitioner Regie continued to be absent from work. Another memorandum was served upon complainant, personally and via registered mail, reiterating the contents of the first memorandum.[12]

On September 10, 2012, petitioner Regie allegedly reported for work but made a verbal demand upon the General

Manager Dennis Chiu, herein private respondent, that Joel Riclamante be replaced by another security guard. Petitioner Regie threatened that should his demand be ignored, he would no longer report for work. Herein private respondent Dennis Chiu explained to petitioner Regie the need for a strict security guard who will enforce the company's policy in ensuring that a driver be always accompanied by a truck helper, both for the driver's sake, as well as the company's. Aside from assisting the driver in his work, the helper would also help deter some abusive drivers from making extra trips for their personal gain or from stealing fuel from the truck assigned to them. A week after his return to work without the company heeding his unreasonable demand, petitioner Regie allegedly did not again report for work. Hence, on September 18, 2012, another memorandum was sent to him asking him to explain his absence. That while waiting for petitioner Regie's return to work, private respondents were surprised to learn of the filing of this case. Private respondents assert that petitioner Regie was never dismissed from work.[13]

The Decisions of the Labor Arbiter and NLRC

After a careful scrutiny of the arguments and evidence presented by both parties, the Labor Arbiter rendered its Decision[14] dated February 25, 2013 dismissing petitioner's complaint for lack of merit but ordered for petitioner Regie's reinstatement, without backwages, if the latter desires to continue his employment with private respondents. The dispositive portion of said Decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the above-entitled case for lack of merit.

However, respondents DKC TRANSPORT/DENTRADE ENTERPRISES/DENNIS CHIU and DANIEL CHIU are DIRECTED to reinstate complainant REGIE G. PILAPIL, sans backwages, to his former job if the latter indicates his desire to continue working with the former."

On appeal,[15] the NLRC affirmed[16] the Labor Arbiter's Decision and its dispositive portion reads thus:

"WHEREFORE, premises considered, complainant's appeal is DISMISSED and the decision of the Labor Arbiter is AFFIRMED in toto."[17]

On September 19, 2013, petitioner Regie moved for reconsideration[18] but the NLRC denied the same through its October 18, 2013 Resolution.[19]

Hence, petitioner Regie filed the present petition imputing grave abuse of discretion on the part of the NLRC on the following grounds:

I.

THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO WANT OR EXCESS OF JURISDICTION WHEN IT RULED THAT PETITIONER WAS NOT ILLEGALLY DISMISSAL (SIC).

II.

THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO WANT OR EXCESS OF JURISDICTION WHEN IT RULED THAT PETITIONER IS NOT ENTITLED TO HIS MONEY CLAIMS.

III.

THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO WANT OR EXCESS OF JURISDICTION WHEN IT FAILED TO ORDER PETITIONER'S REINSTATEMENT AND PAYMENT OF BACKWAGES AND OTHER RELIEFS.[20]

This Court's Ruling

The petition is bereft of merit.

Basic is the rule that judicial review of labor cases does not go so far as to evaluate the sufficiency of evidence on which the labor officials' findings rest; more so when both the Labor Arbiter and the NLRC share the same findings.[21]

No Grave Abuse of Discretion On the Part of the NLRC

At the outset, We must stress that a petition for certiorari is an extraordinary remedy that is available only and restrictively in truly exceptional cases. The sole office of this is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction. It does not include correction of the NLRC's evaluation of the evidence or of its factual findings.[22]

In a special action for certiorari, the burden is on the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent. "By grave abuse of discretion is meant capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law." [23]

The Court cannot be tasked to go over the proofs presented by the parties and analyze, assess and weigh them all over again to ascertain if the trial court or quasi-judicial agency and the appellate court were correct in according superior credit to this or that piece of evidence of one party or the other.[24] The sole office of a writ of certiorari is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack of jurisdiction, and does not include the review of public respondent's evaluation of the evidence and the factual findings based thereon.[25]

Thus, a party assailing the findings of the NLRC bears the burden of showing that the tribunal acted capriciously and whimsically or in total disregard of evidence material to the controversy in order that the extraordinary writ of certiorari will lie.[26]

Given the foregoing precepts, this Court is of the view that nowhere in the records is there any acceptable demonstration that the public respondent NLRC acted either with grave abuse of discretion or without or in excess of its jurisdiction.

In this case, petitioner merely stated generalizations and conclusions of law instead of discussing how the public respondent NLRC acted capriciously or in total disregard of the material evidence at hand. Thus, We must say that petitioner failed to discharge his burden.

Nevertheless, We shall look into the factual issues raised by petitioner not so much to address the merit of this petition, for there is none, but only to the extent of considering the submission that the NLRC went beyond its jurisdiction or gravely abused its discretion.

It bears stressing that the issues raised by petitioner, i.e., whether he was illegally dismissed and whether he is entitled to backwages and his other monetary claims, are not proper subjects of a petition for certiorari. They involve an inquiry into factual matters. Even assuming that there is an error of judgment in the resolution of these factual issues by public respondent NLRC, there is, to Our mind, no capricious exercise of judgment that would warrant the issuance of the extraordinary writ of certiorari.

We do not find any reason to divert from the findings of the Labor Arbiter and NLRC. The unanimous findings of

the Labor Arbiter and the NLRC that petitioner failed to discharge his burden of presenting substantial evidence to prove the fact of his dismissal is binding in this Court. As a rule, questions or findings of fact of the inferior tribunal cannot be reviewed on certiorari. To the point of being repetitive, in a special civil action for certiorari under Rule 65, questions of fact are generally not permitted, the inquiry being limited to whether the public respondent NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion. [27]

Furthermore, well-settled is the rule that the findings of fact of quasi-judicial agencies, like the NLRC, are accorded not only respect but at times even finality if such findings are supported by substantial evidence.[28] The findings of fact made therein can only be set aside upon a showing of grave abuse of discretion, fraud, or error of law.[29] The issue, therefore, of whether petitioner was illegally dismissed has been adequately dealt with. The Labor Arbiter and the NLRC have similarly held that petitioner lost his employment by his own volition. We shall underscore hereunder the factual findings of the Labor Arbiter on this matter:

“We have carefully gone over the arguments of the parties in their respective position papers as well as the documentary evidences presented, and we are not convinced that complainant was terminated from his employment by the respondents on account of the incident that ensued on 24 August 2012.

We note that respondents had been instructing the complainant by way of memoranda for him to report for work and explain his absences. As the records would show, several memos dated 31 August 2012, 5 September 2012, 18 September 2012 and 20 September 2012, were sent to him directing him to report for duty and to explain his absences.

There is no showing that complainant made his explanation in all the memos sent to him. We can surmise that complainant intentionally did not report for work unless the security guard, Joel R[e]clamante would have been dismissed or replaced by the respondents on account of the incident that happened on 24 August 2012.

However, respondent did not heed to the wishes of the complainant. Instead, respondent explained to him the need of a strict security guard especially in enforcing the accompaniment of truck helper for every delivery not only for the purpose of assisting drivers in their work, especially when engine trouble or mechanical breakdown on the road occurred, but also to deter some abusive or unscrupulous drivers from catering to strangers by doing “extra trips” or “sidelines” for their own personal gain and benefit during their deliveries. It would seem that complainant did not mind the verbal explanation of the respondents. He instead filed the instant complaint claiming that he was illegally dismissed.

We cannot understand this action of the complainant.

Complainant has no right to instruct the respondents to change the security guard if only to suit his purpose. Complainant is duty bound to follow the instructions, rules and regulations imposed by the respondents especially so when the policies imposed do not violate his right to his employment.

The act of the respondents in hiring security guards or any other employees is a management prerogative that even the Court cannot interfere.

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So that, when the security guard, Joel R[e]clamante, assigned a helper to the complainant, he was only acting pursuant to the instruction of the management, the respondents herein. Complainant has no right to question the kind of helper assigned to him, be he a petite or slow worker. After all, it is up for the management to assess the performance of their workers on how well they performed their duties and responsibilities in the course of their employment.

In the instant case, the record is bereft of any evidence showing that respondents terminated his employment.

In fact, it was the complainant who demanded from the respondents to change the security guard who was very

strict, otherwise, he would not report for work anymore. When his demand was not heeded by the respondents, complainant did not report for work anymore. This only shows the kind of attitude displayed by the complainant toward his employer.

We therefore find no illegal dismissal in the instant case. Complainant lost his employment because he chose to do so. Complainant simply stated that he was terminated from his employment on 17 September 2012, but failed to substantiate on the manner in which he was allegedly dismissed.

In the case at bar, we have determined that complainant did not fully substantiate her (sic) claim that the respondent illegally dismissed her (sic). Complainant's allegation that she (sic) was illegally dismissed was uncorroborated by evidence on record, thus, it cannot be given credence. xxx.”[30]

The NLRC, in concurring with the Labor Arbiter's finding, added further that:

“After going over the complainant's allegations and evidence, We find that he failed to discharge his burden of presenting substantial evidence to prove the fact of his dismissal. The police blotter and the Resolution of the City Prosecutor only prove complainant's altercation with the security guard but they do not competently prove his claim that he was dismissed from his post. Needless to say, complainant's affidavit is self-serving and of little evidentiary value, if any. His affidavit and the affidavit of his alleged witness do not even give the details of his alleged dismissal. We also find it rather unlikely for respondent to bar him from driving his assigned truck, allow him to resume his post for a few days and then eventually terminate his employment for good. Such version of the facts made by complainant is unbelievable. On the other hand, We give more credence to respondent's allegation that it was complainant himself who absented from work after his scuffle with the security guard. He was served two memoranda asking him to explain the incident with the security guard and his absence from work, as well as to immediately report back for work. Such fact is proved by copies of the memoranda and the registry return receipt. Receipt of the memoranda was also not denied by complainant. Hence, We find it more believable that complainant was constrained to report back for work when he received the memoranda and after going on his self-imposed leave from work. He opted to make himself scarce from work again after his demand for the replacement of the security guard was not heeded. That he he did make such a demand is believable considering his personal grudge against said security guard. We find such a demand, however, to be unreasonable for, indeed, the choice of security guards and the implementation of certain company policies are prerogatives of the management, which complainant has no right to interfere.

Complainant, on appeal, has also argued that the Labor Arbiter erred in dismissing his complaint considering that there is no substantial evidence to prove that he abandoned his job. Such argument, however, is untenable. The Labor Arbiter did rule that there was no abandonment on the part of complainant for which reason he decreed that complainant should be admitted back to work. While it has, indeed, not been proven that complainant abandoned his job, such does not change the fact that complainant bears the burden of presenting evidence to prove his claim of dismissal. That there is no finding of abandonment does not ipso facto mean that there is illegal dismissal.”[31]

Since it is a settled rule that the factual findings of quasi-judicial agencies which have acquired expertise in the matters entrusted to their jurisdiction are accorded by this Court not only respect but even finality,[32] We shall no longer disturb their findings.

There Was No Illegal Dismissal

We are not unmindful of the rule in labor cases that the employer has the burden of proving that the termination was for a valid authorized cause; however, it is likewise incumbent upon the employees that they should first establish by competent evidence the fact of their dismissal from employment. The one who alleges a fact has the burden of proving it and the proof should be clear, positive and convincing.[33]

In *Exodus International Construction Corporation v. Biscocho*,[34] the Supreme Court said:

This Court is not unmindful of the rule that in cases of illegal dismissal, the employer bears the burden of proof to prove that the termination was for a valid or authorized cause. But before the respondents must bear the burden of proving that the dismissal was legal, [the respondents] must first establish by substantial evidence that indeed they were dismissed. If there is no dismissal, then there can be no question as to the legality or illegality thereof.

In the present case, the records sufficiently show that there was no illegal dismissal. After carefully weighing the parties' submissions and documentary evidence, petitioner's claim of illegal dismissal is wanting of any proof to substantiate the same. Therefore, as between petitioner's general allegation of having been illegally dismissed from service, bereft of sufficient substantiation, vis-à-vis private respondents' denial substantiated by documentary proofs, We are persuaded by the latter.

In *Machica v. Roosevelt Services Center, Inc.*, [35] the Supreme Court held:

The rule is that one who alleges a fact has the burden of proving it; thus, petitioners were burdened to prove their allegation that respondents dismissed them from their employment. It must be stressed that the evidence to prove this fact must be clear, positive and convincing. The rule that the employer bears the burden of proof in illegal dismissal cases finds no application here because the respondents deny having dismissed the petitioners.

Moreover, fair evidentiary rule dictates that before employers are burdened to prove that they did not commit illegal dismissal, it is incumbent upon the employee to first establish the fact of his or her dismissal. [36]

No Basis to Grant Petitioner's Monetary Claims

With respect to the petitioner's monetary claims, as earlier discussed, the allegation of illegal dismissal having no leg to stand on, the claims for backwages, separation pay and other benefits must likewise fail.

From the foregoing disquisition, We find and so hold that no grave abuse of discretion could be imputed to the public respondent for rendering the assailed resolutions.

WHEREFORE, the instant Petition is hereby **DISMISSED** for lack of merit. The July 16, 2013 Decision and October 18, 2013 Resolution of the NLRC, 7[th] Division, Cebu City in NLRC Case No. VAC-04-000195-13 are hereby **AFFIRMED** in toto.

SO ORDERED.

Hernando, J., Chairperson and Azcarraga-Jacob, JJ., concur.

[1] Rollo, pages 3-15.

[2] Penned by Commissioner by Julie C. Rendoque, rollo, pages 20-27.

[3] Penned by Commissioner by Julie C. Rendoque, rollo, pages 28-29.

[4] Penned by Acting Executive Labor Arbiter Romulo P. Sumalinog, rollo, pages 47-61.

[5] Rollo, page 30.

[6] See page 2 of LA's Decision, rollo, page 48.

[7] Rollo, pages 31-37.

[8] See Position Paper before the Labor Arbiter, *supra*, at note 7.

- [9] Supra.
- [10] Supra.
- [11] See pages 3-4 of NLRC Decision, rollo, pages 22-23.
- [12] Supra.
- [13] Supra.
- [14] Supra, at note 4.
- [15] See Memorandum on Appeal, rollo, pages 62-69.
- [16] Supra, at note 2.
- [17] See page 7 of the NLRC Decision, rollo, page 26.
- [18] Rollo, pages 86-89.
- [19] Supra, at note 3.
- [20] Rollo, pages 8-9.
- [21] CBL Transit, Inc. v. NLRC, G.R. No. 128425, March 11, 2004; Austria v. NLRC, G.R. 123646, July 14, 1999.
- [22] Odango v. NLRC, G.R. No. 147420. June 10, 2004.
- [23] Solvic Industrial Corp. vs. NLRC, 296 SCRA 432, 441 [1998]; Tomas Claudio Memorial College, Inc. vs. Court of Appeals, G.R. No. 124262, October 12, 1999.
- [24] Yuchengco v. Court of Appeals, 427 Phil. 11 (2002) .
- [25] Yuchengco v. Court of Appeals, 427 Phil. 11 (2002) .
- [26] Odango v. NLRC, G.R. No. 147420. June 10, 2004.
- [27] Ong v. PDIC, G.R. No. 175116. August 18, 2010.
- [28] Felix v. Enertech Systems Industries, Inc., G.R. No. 142007. March 28, 2001; Samahang Manggagawa sa Top Form Manufacturing-United Workers of the Philippines v. NLRC, 295 SCRA 171 (1998); Manila Mandarin Employees Union v. NLRC, 154 SCRA 368 (1987).
- [29] Felix v. Enertech Systems Industries, Inc., supra; Lo v. CA, 321 SCRA 190 (1999); Timbancaya v. Vicente, 9 SCRA 852 (1963).
- [30] See pages 10-13 of the LA Decision, rollo, pages 56-59.
- [31] Pages 6-7 of NLRC Decision, rollo, pages 25-26.
- [32] Falguera v. Linsangan, G.R. No. 114848, December 14, 1995.
- [33] Basay v. Hacienda Consolacion, G.R. No. 175532. April 19, 2010.
- [34] G.R. No. 166109. February 23, 2011.
- [35] G.R. No. 168664. May 4, 2006.

[36] Basay, et al. v. Hacienda Consolacion, G.R. No. 175532. April 19, 2010.

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