

GILBERT A. DY, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, MARLITO V. LAPUZ, RESPONDENTS.

Ponente: PAREDES, J.

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PAREDES, J.:

THE CASE

THIS PETITION[1] FOR CERTIORARI filed by petitioner Gilbert Dy (petitioner) seeks to reverse and set aside the Decision[2] dated March 30, 2012, and the Resolution[3] dated May 31, 2012, issued by the National Labor Relations Commission (NLRC) in NLRC LAC Case No. 09-002541-11 (NLRC NCR Case No. 10-15420-10).

THE ANTECEDENTS

Private respondent Marlito V. Lapuz (private respondent) alleged[4] that, on August 6, 2005, he started working as driver for Recycle Bin owned by petitioner with salary at the rate of P12,000.00 a month. After about five (5) years in petitioner's employ, on October 16, 2010, he was unceremoniously arrested by policemen on the complaint of petitioner who claimed that he squandered money entrusted to him meant for the purchase scrap materials; the truth being that he had turned over the receipt for the amount claimed by petitioner.

On the other hand, petitioner averred[5] that he put up a small business as dealer of scrap materials, specifically, of broken glass and sell these broken glasses to bottling and packaging companies which melt these materials into finished products. Meanwhile, to enable him to cover a wider area, he enlisted the aid of, among others, private respondent, Nomer Gabiana (Nomer), Kristine Padilla (Kristine) and Jomer Gabiana (Jomer) on the agreement that, in exchange for every purchase or load of broken glass, private respondent and the others, would get a percentage of the same. It was also agreed, between petitioner on the one hand, and private respondent and Nomer on the other, that petitioner would provide for a vehicle for the loading and transportation of broken glass; he also gave private respondent money to purchase the materials. Petitioner had no idea where, how, and exactly how much private respondent was getting from the purchase of the broken glass. He suspects that private respondent gets an additional cut of the profits since he is the one who determines the itinerary or daily schedule of the truck, who or which supplier would be met on a particular day, at what time, and the quantity of the broken glass to be purchased. Moreover, there was no way for petitioner to ascertain whether or not private respondent was using the same truck to transport and deliver some portions of the broken glass to petitioner's own buyers. Still, petitioner did not complain as long as he got his own anticipated and projected share.

However, there were times when private respondent would ask for additional amount to purchase certain quantities of broken glass that are not formally reported in the records of petitioner. In all, petitioner claims that private respondent still owes him P94,000.00 for the cash which private respondent failed to remit and liquidate.

Things turned bad when, on October 14, 2010, private respondent did not return from his earlier itinerary. Despite repeated and attempted calls, private respondent did not return to report what transpired from the transaction at his earlier itinerary. Moreover, he did not fully account for the P10,000.00 which petitioner gave for the purchase of

the materials. Petitioner was then compelled to report the incident to the police. Without any further communication from private respondent, petitioner was compelled to file a criminal complaint for estafa against private respondent. In retaliation, private respondent filed this complaint for illegal dismissal.

Private respondent claims[6] that the criminal charge filed against him is immaterial to the issue in the instant case; and that the filing thereof was merely a ploy to dismiss him. Petitioner counters[7] that private respondent was inconsistent in his claim that he was hired as a driver but his customary duty was to buy scrap materials, arguing that a driver and a buyer of scrap materials are two (2) different endeavors.

On June 30, 2011, the Labor Arbiter rendered a Decision[8], the dispositive portion reads, thus:

WHEREFORE, respondent Gilbert Dy is hereby ordered to pay complainant Marlito Lapuz the following amounts:

Backwages (October 17, 2010 up to June 20, 2011)

-

P111,738.85

Separation Pay

-

72,000.00

Unpaid holiday pay

-

11,076.96

Unpaid 13[th] month pay

-

35,600.00

10% attorney's fees

-

23,041.58

TOTAL JUDGMENT AWARD

-

P253,457.39

Aggrieved, petitioner appealed to the NLRC which, on March 30, 2012, issued the assailed Decision[9] affirming in toto the Decision of the Labor Arbiter and dismissing the appeal for lack of merit.

Petitioner moved for reconsideration but the same was denied in the Resolution[10] dated May 31, 2012.

Undeterred, petitioner filed the Petition at bar.

THE ISSUES

Petitioner now comes before Us raising[11] the following assignment of errors:

(A)

THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AFFIRMED THE ERRONEOUS DECISION OF THE LABOR ARBITER USING [THE] ARTICLE 281 OF THE LABOR CODE ON THE DEFINITION OF REGULAR EMPLOYMENT IN DETERMINING THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP.

(B)

THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FAILING TO UTILIZE THE FOUR-FOLD TEST PROVIDED BY LABOR LAW (AND) JURISPRUDENCE IN FINDING THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE PETITIONER AND THE PRIVATE RESPONDENT.

THE COURT'S RULING

The Petition deserves scant consideration.

Before classifying a person as a regular employee, it is necessary to first ascertain if the person is indeed an employee, especially when the alleged employer disputes the existence of the relationship.

In determining whether there is an employer-employee relationship, the Supreme Court has applied a "four-fold test," to wit: (1) whether the alleged employer has the power of selection and engagement of employees; (2) whether he has control of the employee with respect to the means and methods by which work is to be accomplished; (3) whether he has the power to dismiss; and (4) whether the employee was paid wages[12].

The issue of whether or not there existed an employer-employee relationship between petitioner and respondent is essentially a question of fact. The factors that determine the issue include who has the power to select the employee, who pays the employee's wages, who has the power to dismiss the employee, and who exercises control of the methods and results by which the work of the employee is accomplished[13]. In dealing with such question, substantial evidence — that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion — is sufficient[14].

Based on the admissions of the parties, it is inescapable that private respondent was an employee of petitioner. Several factors contribute to this conclusion. First, the truck used by private respondent in loading and transporting scrap materials belongs to petitioner. Second, petitioner provides private respondent with the money for the purchase of scrap materials. Third, as found by the Labor Arbiter and affirmed by the NLRC, petitioner submitted a "Sinumpaang Salaysay ng Pagrereklamo at Paghuli" in his complaint for estafa, as well as in the "Booking Sheet and Arrest Report", where petitioner referred to private respondent as stay-in driver or truck driver[15]. Fourth, private respondent was required to report to petitioner regarding his transactions. In fact, it was the private respondent's failure to return and report what transpired from the transaction at his earlier itinerary which allegedly compelled petitioner to go to the police. This is contrary to petitioner's claim that private respondent does his work at his own pleasure and was not subject to definite hours or conditions of work[16].

We agree with the NLRC that the employer-employee relationship between petitioner and private respondent was further bolstered by petitioner agreeing to be paid through "salary deduction" in the amount of P2,000.00 every month as evidenced by a promissory note executed by private respondent[17].

Petitioner argues that private respondent was inconsistent in claiming that he was hired as a driver but his customary duty is to purchase scrap materials. There is no inconsistency in private respondent's claim.

It must be emphasized, as admitted by petitioner, that he provided the financing and the vehicle to private respondent to carry out his business of buy-and-sell of scrap materials. It is not impossible for private respondent to be given two (2) functions in his employment with petitioner. The nature of the work of a driver and that of a buyer of scrap materials can obviously be done and accomplished by one person alone since the two (2) jobs have complimentary functions.

Having ascertained the existence of employer-employee relationship between petitioner and private respondent, We now determine whether private respondent was illegally dismissed from employment. We rule in the affirmative.

While it may be true that private respondent already had a previous infraction by misappropriating P94,599.30 from petitioner resulting in his execution of a promissory note[18] on March 16, 2009, it appears that petitioner opted to retain him in his employ until the arrest of private respondent more than a year thereafter on October 16, 2010. Since the previous charge had been novated to a civil claim for collection, and considering that there has been no resolution on the present charge of estafa, the private respondent must still be presumed as innocent thereof; hence, petitioner cannot use the present charge as ground for the dismissal of private respondent. Moreover, petitioner was less than forthcoming in his charge of estafa against private respondent, for while petitioner claimed that he was no longer able to contact private respondent after the latter failed to account for the amount of P10,000.00, nonetheless, the Booking Sheet and Arrest Report[19] stated that private respondent was arrested at the office of petitioner at 435 H. Lopez Blvd., Tondo, Manila which, coincidentally, was the address[20] of record of private respondent in his Kontra Salaysay, and the address adverted to by petitioner when he, in his Sinumpaang Salaysay, referred to private respondent as a stay-in driver or truck driver.

It is settled that in illegal dismissal cases, the employer has the burden of proving just cause for terminating the employment of its employee with clear and convincing evidence[21]. The Labor Arbiter and the NLRC have found that private respondent had been illegally dismissed because petitioner failed to prove a just cause for his dismissal. We concur with such ruling. Factual findings of labor officials who are deemed to have acquired expertise in matters within their respective jurisdiction are likewise generally accorded not only respect, but even finality, as long as the findings are supported by substantial evidence[22]. Substantial evidence is an amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion[23]. Unless the aggrieved party establishes that grave abuse of discretion amounting to excess or lack of jurisdiction was committed, such factual findings are conclusive on this Court[24]. The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility". Furthermore, the use of a petition for certiorari is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void"[25]. The conclusions arrived at by the NLRC are substantially supported by the evidence on record.

As a rule, employees who are illegally dismissed are entitled to full backwages and reinstatement to their former positions without loss of seniority rights[26]. The payment of backwages is generally granted on grounds of equity. It is a form of relief that restores the income that was lost by reason of the unlawful dismissal; the grant thereof is intended to restore the earnings that would have accrued to the dismissed employee during the period of dismissal until it is determined that the termination of employment is for a just cause[27]. In the instant case, private respondent is entitled to the award of backwages computed from the time of his dismissal up to the time of the finality of this decision, without any deduction or qualification[28]. With respect to reinstatement, We find the

same to be no longer viable since it appears that the relations between the employer and the employee have been so severely strained that it is not advisable to order reinstatement[29]. Therefore, the award of separation pay is proper.

We also affirm the award of holiday pay and 13th month pay granted by the Labor Arbiter and the NLRC in the absence of proof of payment of the correct amount of holiday pay and 13th month pay to private respondent[30]. An employee should be compensated for the work he has rendered in accordance with the minimum wage, and must be appropriately remunerated when he was suffered to work on a regular holiday during the time he was employed by the petitioner. As regards the 13th month pay, an employee who was terminated at any time before the time for payment of the 13th month pay is entitled to this monetary benefit in proportion to the length of time he worked during the year, reckoned from the time he started working during the calendar year up to the time of his termination from the service[31].

Lastly, an award of attorney's fees is also warranted since it has been established that legal services have been rendered by the lawyer of the private respondent[32].

WHEREFORE, premises considered, this Petition is DISMISSED. The Decision dated March 30, 2012, and the Resolution dated May 31, 2012, issued by the National Labor Relations Commission (NLRC) in NLRC LAC Case No. 09-002541-11 (NLRC NCR Case No. 10-15420-10), are AFFIRMED.

SO ORDERED.

Didican, I.P., (Chairperson) and Inting, S.B.,[*] JJ., concur.

[*] Acting Senior Member vice J. Amy C. Lazaro-Javier per Office Order No. 516-14-RSF dated December 5, 2014.

[1] Rollo, pp. 3-20.

[2] Id., pp. 24-31.

[3] Id., pp. 33-34.

[4] Position Paper, rollo, pp. 99-102.

[5] Position Paper, id., pp. 104-109.

[6] Reply, id., pp. 115-116.

[7] Reply (rejoinder), id., pp. 118-121.

[8] Rollo, pp. 57-61.

[9] Id., pp. 24-31.

[10] Id., pp. 33-34.

[11] Id., p. 12.

[12] Tan vs. Lagrama, GR No. 151228, August 15, 2002.

[13] Legend Hotel vs. Realuyo, GR No. 153511, July 18, 2012.

[14] Masing and Sons Development Corporation vs. Rogelio, GR No. 161787, July 27, 2011.

- [15] See Decision of Labor Arbiter dated June 30, 2011, rollo, p. 42.
- [16] See *Id.*, p. 19.
- [17] *Id.*, p. 29.
- [18] See Promissory Note, *Id.*, p. 37.
- [19] Rollo, p. 38.
- [20] See Kontra Salaysay of Marlito Lapuz, *Id.*, pp. 111-112 and Booking Sheet and Arrest Report, *Id.*
- [21] *Litton Mills vs. Sales*, GR No. 151400, September 1, 2004.
- [22] *Johansen World group Corporation vs. Gonzales*, GR No. 198733, October 10, 2012.
- [23] See *Pharmacia and Upjohn, Inc. vs. Albayda, Jr.*, GR No. 172724, August 23, 2010.
- [24] *7K Corporation vs. National Labor Relations Commission*, GR No. 148490, November 22, 2006.
- [25] *Malayang Manggagawa ng Stayfast Phils., Inc. vs. National Labor Relations Commission*, GR No. 155306, August 28, 2013.
- [26] *Solidbank Corporation vs. Court of Appeals*, GR No. 151026, August 25, 2003.
- [27] *Tomas Claudio Memorial College vs. National Labor Relations Commission*, GR No. 152568, February 16, 2004.
- [28] See *Tan vs. Lagrama*, *supra*.
- [29] See *Solidbank Corporation vs. Court of Appeals*, *supra*.
- [30] See *Mantle Trading Services, Inc. vs. National Labor Relations Commission*, GR No. 166705, July 28, 2009.
- [31] *Id.*
- [32] See *Rutaquio vs. National Labor Relations Commission*, GR No. 97652-53, October 19, 1999.

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