

**FELIPE CAGUIMBAGA, JR. AND REYNALDO G. SERMONIA,  
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION,  
GENE CANAYA SAND AND GRAVEL, AND GENE C. CANAYA,  
RESPONDENTS,**

Ponente: LAGURA-YAP, J.

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**LAGURA-YAP, J.:**

This Petition for Certiorari under Rule 65 of the Rules of Court, as amended, seeks to nullify the decision[1] dated January 25, 2010 in NLRC Case No.VAC-08-000874-2009 SRAB CASE NO.VI-09-50485-2008 and SRAB CASE NO.VI-09-50517-2008 and to reinstate the award for backwages as held by the Labor Arbiter in its decision[2] dated May 20, 2009. The petition also seeks for the issuance of Writ of Preliminary Prohibitory Injunction against the public respondent's decision.

In NLRC SRAB VI CASE NO. 09-50485-2008 and NLRC SRAB VI CASE NO. 09-50517-2008 the Labor Arbiter declared that complainants are illegally terminated from their jobs. They were also held entitled for separation pay and backwages.

In NLRC Case No. VAC-08-000874-2009 the NLRC affirmed the decision of the Labor Arbiter with modification that the awards of backwages to Felipe Caguimbaga (Caguimbaga) and Reynaldo Sermonia (Sermonia) were deleted.

**THE ANTECEDENT FACTS**

The controversy stemmed from the complaints filed by Caguimbaga and Sermonia on September 8, 2008 and September 29, 2009, respectively. Caguimbaga filed for illegal dismissal, underpayment of salaries, non-payment of overtime pay, separation pay equivalent to one (1) month pay for every year of service for eight (8) years, 13th month pay and attorney's fees. Sermonia filed for illegal dismissal, both actual and constructive, non-payment of salaries, overtime pay, holiday pay, 13th month pay, rest day pay and separation pay equivalent to one (1) month pay for every year of service for six (6) years. Sermonia also asked moral, exemplary, actual damages and attorney's fees.

Culled from the Decision of the Labor Arbiter and the Decision of the NLRC, the facts are:

The complainants alleged that they were both regularly employed as drivers of the trucks owned by respondent. Caguimbaga was regularly employed as truck driver from January 2000 until August 21, 2008. While Sermonia was employed from March 3, 2002 until September 3, 2008. The respondent is an enterprise engaged in the business of transportation of sand and gravel. As truck drivers, the complainants directly provided benefit to the daily operations of the respondent. Caguimbaga, Jr., claims that he informed respondent Gene C. Canaya (Canaya) that he could not report for duty on August 20, 2008 because he was not feeling well. The following morning, to his surprise, his services were terminated without just or authorized cause. On the other hand, Sermonia claims that his services were terminated by Canaya because he demanded for his benefits like SSS,

Pag-ibig and Philhealth. When his demands were denied, he asked if a certificate of employment could be issued in his favor. On this basis, his services were thereafter terminated. The two assert that their dismissal was without proper notice as required in the law.

The respondent, on the other hand, contends that his business, Gene Canaya Sand and Gravel, is a sole proprietorship. The nature of his business is to supply sand and gravel to the clients. In order to operate his business, he engaged the services of truck drivers, helpers and office secretary. Truck drivers are hired on a verbal agreement that they will deliver the sand and gravel to the clients. They shall be paid Php 70.00 per trip plus Php 100.00 per day. They are assigned to a particular truck where they performed specific responsibilities. Working hours were clearly specified in their agreement. These should not exceed eight (8) hours a day and in cases of overtime they are entitled to a ninety (P90.00) pesos per trip. It came as a surprise to respondent that on September 2, 2008 Caguimbaga filed a case before the NLRC for illegal dismissal. Respondent denied having dismissed complainants from their work as it was the latter's volition not to return despite earnest efforts on respondent's to make them report back to work.

The Labor Arbiter rendered the decision[3] dated May 20, 2009, the dispositive portion of which, reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondent GENE C. CANAYA of CANAYA SAND and GRAVEL to pay complainants of the following, to wit:

SERMONIA

CAGUIMBAGA, JR.

TOTAL

Separation Pay

P 19,188.00

P 25,584.00

P 44,772.00

Backwages

P 40,144.00

P 45,162.00

P 85,306.00

TOTAL

P130,078.00

All other claims are hereby Dismissed for lack of merit.

SO ORDERED.

Petitioners, not satisfied with the Decision of Labor Arbiter, filed an appeal with the National Labor Relations Commission (NLRC) which affirmed it with modification. The NLRC deleted the award of backwages. The dispositive portion of the decision states:

WHEREFORE, premises considered, the decision of the Labor Arbiter dated May 20, 2009 is hereby AFFIRMED with MODIFICATION that the awards of backwages to complainants Felipe Caguimbaga, Jr. in the amount of P45,162.00 and to Reynaldo Sermonia in the amount of P40, 144.00 are DELETED.

Hence, this Petition for Certiorari.

#### ASSIGNMENT OF ERRORS

##### I

THE NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT FOUND THAT THE PETITIONERS WERE NOT DISMISSED FROM THEIR EMPLOYMENT BY THE HEREIN PRIVATE RESPONDENTS.

##### II

THE NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DELETED THE AWARD FOR BACKWAGES IN THE AMOUNTS OF P45,162.00 IN FAVOR OF PETITIONER FELIPE CAGUIMBAGA, JR., AND P40, 144.00 IN FAVOR OF PETITIONER REYNALDO SERMONIA.

##### III

THE PETITIONERS ARE ENTITLED TO THE ISSUANCE OF A WRIT OF PROHIBITION, INJUNCTION AND WRIT OF PRELIMINARY PROHIBITORY INJUNCTION AND/OR TEMPORARY RESTRAINING ORDER AGAINST THE PUBLIC RESPONDENT DURING THE PENDENCY OF THE FINAL RESOLUTION OF THIS PETITION, THEREBY ENJOINING THE RESPONDENTS AND ANY OTHER PERSONS ACTING UNDER THEIR AUTHORITY, STEAD, OR BEHALF, FROM REGISTERING, DEPOSITING, AND EXECUTING THE ASSAILED DECISION.

### RULING OF THE COURT

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 "[b]efore the [respondents] must bear the burden of proving that the dismissal was legal, [the petitioners] 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." [4]

The issues in determining if the public respondent committed grave abuse of discretion amounting to lack or in excess of jurisdiction in rendering the assailed NLRC decision are:

1. Whether there is employee-employer relationship that exist between petitioners Caguimbaga and Semonia and respondent Gene Canaya as owner of Gene Canaya Sand and Gravel.
2. Whether the petitioners were illegally dismissed by respondent Gene Canaya.
3. Whether the public respondent NLRC is correct when it deleted the award of backwages as decided by the Labor Arbiter.

In determining the presence or absence of an employer-employee relationship, the Court has consistently looked for the following incidents, to wit: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee on the means and methods by which the work is accomplished. The last element, the so-called control test, is the most important element. [5]

It can be deduced by applying the above four-fold test that the respondent has the power to control the petitioners. His (respondent) acts of hiring workers, supervising workers' performance, approving applications for leave and

paying the salary of the workers are acts representing the interests of the employer. Under Article 97, Chapter 1, Title II of the Labor Code, the petitioner is clearly included in the term “employer”.

In the case of *Pedro Chavez vs. NLRC*[6], the Supreme Court held that the fact that petitioner was paid on a per trip basis is not significant. This is merely a method of computing compensation and not a basis for determining the existence or absence of employer-employee relationship. One may be paid on the basis of results or time expended on the work, and may or may not acquire an employment status, depending on whether the elements of an employer-employee relationship are present or not. In this case, it can be gainsaid that the petitioner received compensation from the respondent company for the services that he rendered to the latter. Therefore, the contention of the respondent that petitioners are not employees but “independent contractors” because they are paid based on the number of daily trips they make, cannot be given credence.

“Independent contractor” is defined as one who carries on a distinct and independent business and undertakes to perform the job, work, or service on its own account and under its own responsibility according to its own manner and method, free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof.[7] In the case at bar, petitioners are not independent contractors because they do not have a distinct and independent business of their own. What they (petitioners) have with the respondent is an employment, where they are able to support their daily needs, as they do not have any other means to provide for themselves. This is affirmed by the documents[8] submitted by the petitioners stating therein that they are one of the indigent persons in their barangay.

We will now discuss if the petitioners were illegally dismissed by the respondent. This Court opines that there is no illegal dismissal in this case. Respondent Canaya was able to show that he never dismissed the petitioners. In fact, the attendance sheet[9] submitted by respondent shows the numerous and successive absences incurred by Caguimbaga. This was also corroborated by testimony the respondent's secretary in her affidavit stating therein that petitioner Caguimbaga did not give any justifiable reason of his absences. She (secretary) said that the respondent Canaya told her that in case she will be able to see Caguimbaga, she should inform the latter that the truck assigned to him is in good condition. The secretary also stated in her affidavit that they did not hear of any information from Caguimbaga, until they saw him driving the truck of their competitor.[10] In the affidavit of Roberto Taras, one of the witnesses of the respondent who is also his truck driver, Taras said that he told the respondent Canaya that he saw Caguimbaga several times driving the truck of respondent's competitor. To address the matter, respondent asked Taras to go to the house of Caguimbaga and inform the latter that he should come back and drive the truck, but this was of no avail.

These circumstances are similar with petitioner Sermonia. The attendance sheet[11] indicates several absences without offering any justifiable reasons by Sermonia. In the affidavit of Rene Taño, he said that Sermonia asked help from him to secure a certificate of employment from respondent Canaya. When Sermonia received the certificate, he told Taño that the issuance of certificate of employment constitutes as a voluntary resignation on his part and that he is freed from any liability. Sermonia did not report back to work despite earnest efforts from respondent Canaya. Later on, it was discovered that Sermonia had the intention to work for a particular liner company.

It is clear from the records, that the petitioner failed to present evidence that would controvert the counter allegations by respondent Canaya. As between petitioners' general allegation of being illegally dismissed from the service vis-a-vis those of respondent's evidence substantiated in the sworn statements of his witnesses, We are persuaded by the latter. Absent any showing of an overt or positive act proving that respondent had dismissed petitioners, the claim of illegal dismissal cannot be sustained.[12]

In one of the jurisprudence decided by the Supreme Court[13], it sustained the employer's denial as against the employees' categorical assertion of illegal dismissal. In so ruling, this Court held that:

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.

This case is one example of informal voluntary termination of employment by the petitioners. The pronouncement of Supreme Court in the case of *Edna Abad, et al vs. Roselle Cinema*[14] is relevant:

“In the present case, it must be stressed that there is no evidence showing that respondents were actually dismissed by petitioners let alone on ground of abandonment. Neither is there a showing that petitioners formally resigned from work. What is actually involved herein is the informal voluntary termination of employment by the petitioners employees.”

All told, petitioners failed to prove by substantial evidence that the public respondent NLRC exercised grave abuse of discretion, amounting to lack or excess of jurisdiction in deleting the award of backwages. However, given the jurisprudence in *Edna Abad, et al vs. Roselle Cinema*[15], since petitioners were not illegally dismissed, but voluntarily terminated from their work, they are not also entitled to an award of separation pay.

The rule is well-settled that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, i.e., the amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. But these findings are not infallible. When there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined by the courts. In this case, there was no showing of any arbitrariness on the part of the lower courts in their findings of facts. Hence, we follow the settled rule.[16]

WHEREFORE, in view of the foregoing, the instant Petition for Certiorari is DENIED. The Decision of the National Labor Relations Commission dated January 25, 2010 in NLRC Case No. VAC-08-000874-2009 SRAB CASE NO. VI-09-50485-2008 and SRAB CASE NO. VI-09-50517-2008 is hereby AFFIRMED with MODIFICATION that the awards of separation pay to petitioners Felipe Caguimbaga, Jr. in the amount of P25,584.00 and to Reynaldo Sermonia in the amount of P19,188.00, are also DELETED. The Writ of Preliminary Injunction and/or Temporary Restraining Order prayed for by the petitioners is DENIED for being moot and academic.

### **SO ORDERED.**

Lagura-yap, & \*Quijano-Padilla, JJ., concur.

\* Acting Junior Member per Office Order No. 472-13-ABR dated December 12, 2013.

[1] Rollo, pp. 132-149.

[2] Rollo, pp. 85-89.

[3] Rollo, p. 98, Annex “I”.

[4] *Exodus International Construction Corporation and Antonio P. Javalera, vs. Guillermo Biscocho, Fernando*

Pereda, Ferdinand Mariano, Gregorio Bellita and Miguel Bobillo, G.R. No. 166109, February 23, 2011 citing the case of Ledesma, Jr. v. National Labor Relations Commission, G.R. No. 174585, October 19, 2007.

[5] Charlie Jao, vs. BCC Products Sales Inc., and Terrance Ty, G.R. No. 163700, April 18, 2012 citing the case of Abante, Jr. v. Lamadrid Bearing & Parts Corp., G.R. No. 159890, May 28, 2004.

[6] G.R. No. 146530, January 17, 2005 citing the case of Tan v. Lagrama (2002).

[7] Ibid citing the case of Tan v. Lagrama (2002).

[8] Rollo, p. 24, Annex "A"; Rollo, 29, Annex "B".

[9] Rollo, p. 57, Annex "B"; Rollo, p. 58, Annex "C".

[10] Rollo, p. 54, Annex "C".

[11] Rollo, p. 67, Annexes "A-D".

[12] Supra note 4.

[13] Ibid. citing the case of Machica v. Roosevelt Services Center, Inc, G.R. No. 168664, May 4, 2006.

[14] G.R. NO. 141371, March 24, 2006.

[15] Ibid, citing the case of Sentinel Security Agency, Inc. v. National Labor Relations Commission 356 Phil. 434,447 (1998).

[16] Stolt-Nielsen Transportation Group, Inc. and Chung Gai Ship Management, vs. Sulpecio Medequillo, Jr., G.R. No. 177498, January 18, 2012, citing the case of Prince Transport, Inc. v. Garcia, G.R. No. 167291, 12 January 2011, 639 SCRA 312, 324 citing Philippine Veterans Bank v. National Labor Relations Commission, G.R. No. 188882, 30 March 2010, 617 SCRA 204 and Faeldonia v. Tong Yak Groceries, G.R. No. 182499, 2 October 2009, 602 SCRA 677, 684.

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