

THELMA H. REBLORA AND ROBERTO BERDOS, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, PAPER SHOES, CMS SHOE SHOP AND CRISTINA S. SANTOS, RESPONDENTS.

Ponente: DICDICAN, J.

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DICDICAN, J.:

Before this Court is a Petition for Certiorari[1], filed pursuant to Rule 65 of the Revised Rules of Court, seeking the reversal of the Decision[2], dated May 2, 2013, and Resolution[3], dated June 25, 2013, both promulgated by the public respondent National Labor Relations Commission in NLRC LAC No. 08-002311-12 which affirmed the Labor Arbiter's dismissal of the complaint filed by petitioners Thelma H. Reblora and Roberto Berdos against private respondent CMS Shoe Shop or Cristina S. Santos.

The antecedent facts are the following:

Private respondent CMS Shoe Shop manufactures shoes at a house in Marikina City. Private respondent Cristina S. Santos is the proprietress thereof.

According to petitioners, Thelma H. Reblora was hired by the private respondent on September 3, 1997 while Roberto Berdos was hired sometime in August of 2010. They allegedly worked from Monday to Saturday, with petitioner Thelma Reblora working from 8:00 a.m. until 8:00 p.m. while petitioner Roberto Berdos worked from 9:00 a.m. until to 6:00 p.m. They both worked longer when there was a scheduled delivery of items. Despite this work schedule, petitioner Thelma Reblora received payment of P5,000.00 a month while petitioner Roberto Berdos was given P4,500.00 a month. On the second week of July, 2011, petitioner Roberto Berdos was allegedly illegally dismissed by private respondent without just cause and due process. On August 19, 2011, private respondent was allegedly irritated by petitioner Thelma Reblora because she asked the proprietress why a worker named Jayson Banaga was previously terminated. Petitioner Thelma Reblora was purportedly told to pack her things since her services were not needed anymore.

On August 25, 2011, petitioners filed a complaint before the labor arbiter against private respondent for overtime pay, premium pay, service incentive leave pay, 13[th] month pay, rest day pay, holiday pay, ECOLA and night shift differentials. The complaint was docketed as NLRC-NCR Case No. 08-13126-11.

In private respondent's Position Paper[4] dated October 13, 2011, Cristina S. Santos explained that no employer-employee relationship existed between her and the petitioners. Petitioners were not required to enter their time-in and time-out in any document and could come and go as they please, provided that the job orders assigned to them were submitted on time. Although petitioner Roberto Berdos worked inside the premises of private respondent, she had no control of how he would perform work. On the other hand, petitioner Thelma Reblora worked at the comfort of her own house. Private respondent further claimed that petitioners were not illegally dismissed but that they simply stopped performing their work. As such, they were not entitled to separation pay and other monetary claims that they prayed for.

The labor arbiter consolidated the complaint of petitioners with the complaint of other alleged workers of private respondent. These other complainants were named as Jayson Banaga, Michael Gliponeo and Rene Aquino. Dismissing the complaints for lack of merit, the labor arbiter held that herein petitioners and the other complainants were piece-rate workers and not regular employees. They were the ones who left their jobs, there being no showing that they were prevented from reporting to work. Thus, there was no illegal dismissal.

Only herein petitioners interposed an appeal from the decision of the labor arbiter. The appeal was docketed as NLRC LAC No. 08-002311-12. With respect to the other complainants, the labor arbiter's decision[5] became final and binding.

In the assailed Decision dated May 2, 2013, the Commission ruled that petitioners Thelma H. Reblora and Roberto Berdos were contracted by private respondents to perform work according to their own methods and without being subject to the control of private respondents, except as to the deadlines imposed upon them within which to produce the finished work. Judicial notice was taken of the fact that frequency of orders in the shoe-making industry cannot be ascertained and that this justified the industry practice of not maintaining a regular roster of employees. The dispositive portion of the decision thus reads as follows:

“WHEREFORE, premises considered, the appeal is DISMISSED. The decision dated June 29, 2012 is AFFIRMED in toto.”[6]

Petitioners filed a Motion for Reconsideration[7] dated May 30, 2013. In the challenged Resolution dated June 25, 2013, the Commission denied petitioners' Motion for Reconsideration, finding no reason to modify, alter or reverse its findings and conclusions reached in the Decision dated May 2, 2013.

Hence, petitioners filed the instant petition before this Court on the ground that the Commission allegedly committed grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed petitioners' appeal and denied their subsequent motion for reconsideration. In discussing the alleged grave abuse committed by the Commission, the petitioners submitted the following arguments:

- a) The NLRC committed grave reversible error and gross misapprehension of facts and law when it ruled that petitioners are independent contractors;
- b) The NLRC erred in holding that private respondent did not exercise control over petitioners thus allegedly negating the existence of employer-employee relationship;
- c) Petitioners were illegally dismissed by private respondents; and
- d) Petitioners are entitled to their monetary claims.[8]

In discussing the above-stated arguments, petitioners claim that they had no substantial capital, tools, equipments, machinery and work premises to consider them as independent contractors. They did not work in their own pace and they observed specific working hours in the conduct of their work and received specific instructions from private respondent. As proof of employment, specifically for petitioner Thelma Reblora, a few Social Security System documents[9] and a letter written by private respondent, dated August 19, 2011[10], were submitted to this Court.

Petitioners also claim that they were not dismissed for just or authorized causes under the Labor Code. Neither were they given notice as required by Article 277 (b) of the Labor Code, thus their dismissal were illegal, thereby entitling them to their monetary claims such as overtime pay, premium pay, service incentive leave pay, 13th month pay, rest day pay, holiday pay, ECOLA, night shift differentials, full backwages, damages and attorney's fees.

On the other hand, private respondent Cristina Santos explains in her Comment[11], dated December 10, 2013, that petitioner Thelma Reblora did not have an exclusive contract with her. She was an independent contractor who did not need substantial capital in the form of tools because all she needed was a scissor and an ordinary sewing machine. Most of the materials were already provided by private respondent and merely needed to be put together with an adhesive. Petitioner received her payment based on the job delivered and did not work on a regular basis. This was the reason why the workers had no time cards, log books or anything that required attendance. When private respondent Cristina Santos had an argument with another worker, petitioner Thelma Reblora confronted her and returned all the materials she was previously given, even as her work was unfinished. As for petitioner Roberto Berdos, on the other hand, private respondent alleges that he is a physically challenged individual who has no fingers on both hands. He was not skilled in shoe making and was merely accommodated out of generosity to do some menial errands not related to shoe manufacturing. He worked for only a month before seeking permission to leave the shop.

We find the petition to be bereft of merit.

The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. 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. From the foregoing definition, it is clear that the special civil action of certiorari under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioners could manifestly show that such act was patent and gross.[12]

We find that the public respondent Commission did not commit grave abuse of discretion in concluding that petitioners are not entitled to their monetary claims as there is no illegal dismissal to speak of.

We shall first discuss the allegations of petitioner Thelma Reblora. From the evidence on record, the strongest proof that Thelma Reblora offered to show that she was an employee of private respondent is the Social Security System document which she submitted to the Commission in her Appeal Memorandum dated July 31, 2012[13].

Labor tribunals, such as the National Labor Relations Commission, are not precluded from receiving evidence submitted on appeal as technical rules are not binding in cases submitted before them. However, any delay in the submission of evidence should be adequately explained and should adequately prove the allegations sought to be proven.[14]

The belated submission of the Social Security System documents casts doubt on the credibility and probative value of the evidence. Petitioners did not cite any reason why they failed to present the Social Security System documents before the Labor Arbiter despite opportunity to do so. It was only after an adverse decision was rendered by the labor arbiter that petitioner Thelma Reblora presented the document in her appeal to the Commission. Notably, the Social Security System document is not a newly discovered evidence as this was available even during the proceedings before the labor arbiter.

Neither was the Social Security System document properly authenticated. Under Section 25, Rule 132 of the Rules of Court "an official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody". Without such attestation of the officer having legal custody of the record, the document presented by

petitioner is a mere scrap of paper devoid of any evidentiary value as it is nothing but a self-serving document.

Self-serving and unsubstantiated declarations are not sufficient where the quantum of evidence required to establish a fact is substantial evidence, described as more than a mere scintilla.[15] The evidence must be real and substantial, and not merely apparent.[16]

Prescinding from this, we have no option but to uphold the findings of the labor arbiter and that of the Commission that petitioner Thelma Reblora is an independent contractor.

Hence, the Commission properly found that petitioner, who was paid on a piece-rate basis, was not a regular employee of private respondent. In its challenged decision, it explained as follows:

“However, while it is true that piece rate employees may be deemed regular employees, the following factors should be present for them to be considered as such:

First, that their work is usually necessary or desirable in the trade of the employer, next that they worked for the employer throughout the year, their employment not being dependent on a specific project or season, and finally, that they worked for the employer for more than one year. Appellants have failed to show through any evidence that they worked for respondents throughout the whole year. On the other hand, appellees maintain that work is given to appellants only when they have confirmed orders from their customers, which happens on a seasonal, and not a regular basis.”[17]

There are two (2) jurisprudential rules of long-standing in this jurisdiction. First is the hoary rule that factual issues are beyond the scope of certiorari as they do not involve any jurisdictional issue. As held by the Supreme Court in *Quiambao vs. Court of Appeals*[18], in certiorari proceedings under Rule 65, questions of fact are not generally permitted, the inquiry being limited essentially to whether or not the respondent tribunal acted without or in excess of its jurisdiction. Second is the cardinal principle that factual findings of the National Labor Relations Commission affirming those of the Labor Arbiter, when devoid of any unfairness or arbitrariness, are accorded respect if not finality by the Court of Appeals.[19]

In legitimate job contracting, an independent contractor undertakes to perform work on its own account, under its own responsibility and according to its own manner and method, free from the control and direction of the principal.[20]

Except as to the time within which the items must be delivered, there is no showing that private respondent was involved in the manner and method under which petitioner Thelma Reblora performed her work. Hence, the situation of petitioner fails to pass the “control test”. To ascertain the existence of an employer-employee relationship, jurisprudence has invariably applied the four-fold test, namely: (1) the manner of selection and engagement; (2) the payment of wages; (3) the presence or absence of the power of dismissal; and (4) the presence or absence of the power of control. Of these four, the last one is the most important. The so-called “control test” is commonly regarded as the most crucial and determinative indicator of the presence or absence of an employer-employee relationship. Under the control test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved, but also the manner and means to be used in reaching that end.[21]

Private respondent's letter dated August 19, 2011 which petitioner cites as her proof that private respondent exercised control over her workers is of no significance since the letter is not only unsubscribed and unverified but will readily show that it does not pertain to petitioner but to a certain Jayson Banaga. Hence, pertinent parts of the letter read as follows:

“Huwebes ay hindi ko na pinapasok si Jayson sa gawaan, biyernes ng umaga text ng text ang kanyang tiyahin

na bakit daw hindi na pinapasok ang kanyang pamangkin, nakipagusap sya sa akin at hanggang sa nagalit na si Thelma Guito, at pati ang ibang manggagawa ay kanya na rin dinamay at inaway dahil sa personal nyang galit, lahat ng mga kasamahang babaeng manggagawa ay kanyang mga kaaway.

“Kaming mga may-ari ng pagawaan ay may karapatan magtanggag kung ang isang manggagawa ay tamad (walang kakayahang gampanan ang kanyang mga obligasyon o kung laging wala sa kanyang trabaho sa dahilanan lagi syang tulog tuwing may gawain kaya ito ang dahilan upang matagalan ang pag deliver sa aming mga customer na syang hadlang sa pagunlad ng aming negosyo).”[22]

There being no proof that petitioner was similarly situated, the unverified letter is irrelevant and of no value in the instant case as regards herein petitioner.

In sum, not being an employee of private respondent, petitioner Thelma Reblora is not entitled to her monetary claims.

As regards petitioner Roberto Berdos, on the other hand, he consistently merely alleged before the labor arbiter that, in the second week of July, 2011, he was “illegally dismissed” by private respondent “without just cause and due process.” Nothing more was said about the plight or circumstance of petitioner as the joint pleadings mostly discussed the allegations of petitioner Thelma Reblora and of other complainants. More importantly, no substantial evidence was adduced to support petitioner Roberto Berdos' scant and bare allegations.

The rule is that one who alleges a fact has the burden of proving it; thus, petitioner was burdened to prove his allegation that private respondent dismissed him from 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 private respondent denies having dismissed the petitioner.[23]

Obviously, this is a recognition of the contractual nature of employment which requires mutuality of consent between the parties. An employment contract is consensual and voluntary. Hence, if the employee "finds himself in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service, then he has no other choice but to disassociate himself from his employment". If accepted by the employer, the consequent effect of resignation is severance of the contract of employment.[24]

In view of the foregoing, we find that, in reaching its conclusions, the National Labor Relations Commission did not commit grave abuse of discretion amounting to excess or lack of jurisdiction. It is not sufficient that a tribunal, or quasi-judicial agency of the government, in the exercise of its power, abused its discretion; such abuse must be grave.[25]

WHEREFORE, in view of the foregoing premises, the petition filed in this case is hereby DENIED.

SO ORDERED.

Elbinias and Paredes, JJ., concur.

[1] Rollo, Petition, pp. 3-22

[2] Ibid., Decision, pp. 23-32

[3] Ibid., Decision, pp. 33-35

[4] Ibid., pp. 68-77

- [5] Ibid., Decision, pp. 87-91
- [6] Ibid., page 31
- [7] Ibid., pp. 36-47
- [8] Ibid., pp. 9-14
- [9] Ibid., pp. 56-58
- [10] Ibid., page 52
- [11] Ibid., pp. 256-266
- [12] *Malayang Manggagawa ng Stayfast Phils., Inc. vs National Labor Relations Commission* (G.R. No. 155306, August 28, 2013), citing *Yu v. Judge Reyes-Carpio* (G.R. No. 189207, June 15, 2011, 652 SCRA 341, 348).
- [13] *Rollo*, pp. 94-107
- [14] *Misamis Oriental II Electric Service Cooperative vs Cagalawan*, G.R. No. 175170, September 5, 2012
- [15] *Coastal Safeway Marine Services, Inc. v. Esguerra*, G.R. No. 185352, August 10, 2011, 655 SCRA 300, 309.
- [16] *Jebsens Maritime Inc. v. Undag*, G.R. No. 191491, December 14, 2011.
- [17] *Rollo*, pp. 29-30
- [18] G.R. No. 128305, March 28, 2005, 454 SCRA 17
- [19] *Pfizer, Inc. vs Galan*, G.R. No. 158460, August 24, 2007
- [20] *Philippine Airlines, Inc. vs National Labor Relations Commission*, G.R. No. 125792, November 9, 1998
- [21] *Lopez vs Bodega City*, G.R. No. 155731, September 3, 2007
- [22] *Rollo*, page 52
- [23] See *Philippine Rural Reconstruction Movement vs Pulgar* (G.R. No. 169227, July 5, 2010) citing *Machica v. Roosevelt Services Center, Inc.*, G.R. No. 168664, May 4, 2006, 489 SCRA 534.
- [24] *BMG Records (Phils.), Inc. vs Aparecio* (G.R. No. 153290, September 5, 2007) citing *Philippine Today, Inc. v. NLRC* (334 Phil. 854, 877 [1997])
- [25] *Machica vs Roosevelt Services Center, Inc.* G.R. No. 168664, May 4, 2006

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