

ALEXDAN ADSD, INCORPORATED, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND WILMOR BERCHEs, RESPONDENTS.

Ponente: GARCIA, R.R., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/c739ac479860/>

GARCIA, R.R., J.:

Before Us is a Petition for Certiorari[1] under Rule 65 of the 1997 Rules of Civil Procedure assailing the Decision[2] dated May 29, 2013 of public respondent National Labor Relations Commission (NLRC), Sixth Division, which affirmed with modification the Decision[3] dated November 29, 2012 of the Labor Arbiter in that only petitioner Alexdan Trucking was held liable for the illegal dismissal of private respondent Wilmor H. Berches with reinstatement and payment of full backwages; and the Resolution[4] dated July 29, 2013 denying the motion for reconsideration thereof.

THE FACTS

On February 2, 2012, private respondent Wilmor H. Berches filed a complaint for illegal dismissal, separation pay and other money claims with the Arbitration Branch of public respondent National Labor Relations Commission (NLRC) against petitioner Alexdan ADSD Incorporated, a domestic corporation engaged in trucking business, and its board director, Alfonso Dacumos.[5] On April 16, 2012, private respondent amended his complaint[6] to one for illegal dismissal, underpayment of 13th month pay and non-payment of service incentive leave pay where he prayed for reinstatement instead of separation pay.

In his position paper[7], private respondent alleged that on March 5, 2008, he was employed by petitioner as a trailer truck driver with a salary of P1,200.00 per trip. He rendered services as such for four (4) years. Effective January 2012, petitioner reduced the amount paid to drivers for the trips. For Manila-Batangas trips, the pay was reduced from P1,200.00 to P800.00; and for Manila-Laguna trips, the pay was reduced from P800.00 to P650.00. Because of the reduction in pay, private respondent approached the officers of petitioner and protested the same. He insisted that the drastic reduction in his salary is contrary to Article 100 of the Labor Code which prohibits the withdrawal or reduction of existing benefits given to employees. Instead of addressing his grievance, however, the representatives of petitioner got the keys of his assigned truck and terminated his services. Particularly, Alfonso Dacumos told him “Umuwi ka na, ayaw mo rin lang bumyahe”. Private respondent argued that as a regular employee, he cannot be terminated without a valid ground provided under the law. Having been illegally dismissed, he prayed for reinstatement and payment of his backwages. He also prayed that he be paid his 13th month pay and service incentive leave pay.

In their traverse, petitioner and Dacumos argued that the Labor Arbiter has no jurisdiction over the complaint for illegal dismissal because private respondent is not an employee of petitioner. They claimed that private respondent is one of the independent contractors being engaged by petitioner on a non-regular basis to drive one (1) of its four (4) trucks exclusively used in hauling goods for its only client, D & L Industries, Inc and its affiliates. Private respondent is only engaged by petitioner when there is a need to deliver the goods of its

exclusive client. If he is not available, petitioner seeks the services of the other independent contractors. Private respondent also performs his work independently as petitioner is interested only with the result of his work which is to pick up and deliver the products of petitioner's client. As such, private respondent has all the leeway to perform his job in his own method without being subjected to the control of petitioner. The allegation of private respondent that he is being paid P1,200.00 per trip has no basis. The truth is, the contract fee for the services of private respondent, is dependent on the distance of the trip made. On January 24, 2012, petitioner received a letter[8] from D&L Industries, Inc. that it is banning private respondent from its premises. Consequently, petitioner informed private respondent on January 26, 2012 that it will no longer engage his services. The fact that private respondent was banned by petitioner's lone client from its premises made it impossible for petitioner to engage private respondent's services again.

In his Reply, private respondent explained that he could not be an independent contractor because he has no capital, investment and workers of his own. The truck he drives is provided by petitioner which pays him compensation for every trip that he makes.[9] In his Rejoinder, petitioner adduced in evidence his identification card issued by petitioner.[10]

In a Decision[11] dated November 29, 2012, the Labor Arbiter ruled in favor of private respondent and declared that he was illegally dismissed. In debunking petitioner's defense that private respondent is an independent contractor, the Labor Arbiter pointed out that private respondent does not have his own vehicle to deliver the goods of petitioner's client but uses the truck of petitioner. Also, petitioner failed to discharge its burden of proof that private respondent was dismissed on a just or valid ground and that he was afforded due process. Consequently, petitioner and Dacumos were ordered to pay private respondent's backwages based on the minimum wage as well as separation pay equivalent to one (1) month salary for every year of service. The dispositive portion of the Labor Arbiter's decision is quoted:

WHEREFORE, a Decision is hereby rendered declaring that Complainant was illegally dismissed. Corollarilly, Respondents are hereby ordered to pay Complainant backwages from the time of dismissal up to the rendition of this Decision based on the minimum wage. As he does not pray for reinstatement, he must be paid separation pay at one (1) month salary for every year of service. Computation is as follows:

a) BACKWAGES

1/16/12 – 6/2/12 = 4.20 mos.

P426 x 26 x 4.20 =

46,519.20

6/3/12 – 10/31/12 = 4.93 mos.

P466 x 26 x 4.93 =

57,168.28

11/1/12 – 11/15/12 = [.]50 mo.

P456 x 26 x .50 =

5,928.00

109,615.48

b) SEPARATION PAY

3/5/08 – 11/15/12 = 5 yrs.

P456 x 26 x5 =

59,280.00

Total

P168,895.48

SO ORDERED.[12]

Aggrieved, petitioner and Dacumos filed an appeal with public respondent NLRC which, in the assailed Decision[13] dated May 29, 2013 affirmed the findings of the Labor Arbiter that private respondent is indeed an employee of petitioner and that he was illegally dismissed. Public respondent NLRC, however, modified the Labor Arbiter's decision in that only petitioner was held liable for private respondent's illegal dismissal. Also, instead of awarding separation pay in favor of private respondent, petitioner was ordered to reinstate him. In concluding that private respondent is an employee of petitioner, public respondent NLRC explained that the former is under the control and supervision of the latter. It is petitioner which gives private respondent his assigned truck and his trip schedules. Private respondent is also required to return the delivery truck after every trip. Also, using the economic reality test, private respondent should be considered an employee of petitioner since he has worked with petitioner for four (4) years. As such, he is economically dependent on the same. The pertinent portions of the assailed decision are quoted:

We totally agree with the Labor Arbiter in holding that the complainant was not an independent contractor for he does not carry a distinct and independent business and does not possess substantial capital or investment in tools, equipment, machinery or work premises. We noted that he did not provide the delivery truck he drives but is owned by respondent company.

Also, respondent did not deny having issued the complainant with company identification card.

It is common practice for companies to provide identification cards to individuals not only as a security measure, but more importantly to identify the bearers thereof as bona fide employees of the firm or institution that issued them.

xxx

In the instant case, applying the control test, there is no doubt that the complainant is an employee of the respondent company because he is under its control and supervision. As admitted, respondent company gives the complainant his assigned truck and his trip schedules. He is required to return the delivery truck after every trip.

Using the broader economic reality test, the complainant is also considered an employee of the respondent company since he worked with [the] company for four (4) years before his dismissal, receiving his compensation on per trip basis. Clearly, he was economically dependent on the said corporation.

xxx

Having sustained the ruling of the Labor Arbiter that the complainant is an employee of respondent company, we shall proceed to rule on the issue of illegal dismissal.

xxx

The Labor Arbiter correctly ruled that the respondents failed to discharge the burden of showing that the “complainant was dismissed for just or valid cause, and was afforded due process.”

As admitted by the respondents, the respondent company merely informed the complainant of the decision of D & L banning him from its premises. Indeed, the records show not only the absence of any ground to dismiss the complainant but also that he was not afforded the opportunity to explain his [side] before his dismissal. Hence, we sustain the illegality of complainant's termination.

xxx

We sustain the award of backwages but not the separation pay.

Given the conflicting claims of parties on the actual compensation received by the complainant per trip, the Labor Arbiter was justified in computing his backwages based on the applicable minimum wages.

The Labor Arbiter awarded separation pay to the complainant for he did not pray for reinstatement. This is erroneous. He prayed for reinstatement in his amended complaint. Hence, he should be reinstated.

xxx

In the appealed decision, the Labor Arbiter did not discuss the basis for holding the respondent Dacumos liable with the respondent to the monetary award in favor of the complainant. We also note the complainant failed to allege bad faith or malice on the part of respondent Dacumos in dismissing him. It is a basic principle that good faith is presumed.

xxx

Accordingly, respondent Dacumos is absolved from any liability. Only the respondent company should be held liable.

WHEREFORE, premises considered, the Decision dated November 29, 2012 is AFFIRMED WITH MODIFICATION in that:

(a) respondent Alexdan ADSD Incorporated is hereby ordered to reinstate the complainant to his former position or equivalent position without loss of seniority rights;

(b) the award of separation pay is hereby deleted; and

(c) only the respondent company is held liable to pay complainant the backwages adjudged in the appealed decision.

SO ORDERED.[14]

Petitioner's motion for reconsideration was denied in a Resolution[15] dated July 29, 2013.

Hence, the instant petition for certiorari filed by herein petitioner raising the following grounds for its allowance[16], to wit:

I

PUBLIC RESPONDENT NLRC ACTED WITHOUT JURISDICTION AND/OR IN EXCESS THEREOF AND HAD GRAVELY ABUSED ITS DISCRETION IN ISSUING THE ASSAILED DECISION AND RESOLUTION WHICH TOOK COGNIZANCE OF AN ORDINARY CIVIL DISPUTE BETWEEN TWO INDEPENDENT CONTRACTING PARTIES, THEREBY RENDERING ITS ASSAILED DECISION AND RESOLUTION NULL AND VOID; AND

II

PUBLIC RESPONDENT NLRC ACTED WITHOUT JURISDICTION AND/OR IN EXCESS THEREOF AND HAD GRAVELY ABUSED ITS DISCRETION IN ISSUING THE ASSAILED DECISION AND RESOLUTION WHICH AFFIRMED WITH MODIFICATION THE DECISION OF THE LABOR ARBITER DESPITE ISSUES OF JURISDICTION HAVING BEEN TIMELY RAISED THEREBY RENDERING ITS ASSAILED DECISION AND RESOLUTION NULL AND VOID.

THE ISSUES

The issues to be resolved in the instant case are whether or not public respondent NLRC committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in ruling that private respondent is an employee of petitioner and that he was illegally dismissed.

THE RULING

The petition is bereft of merit.

Petitioner essentially argues that public respondent NLRC gravely abused its discretion when it affirmed the ruling of the Labor Arbiter that private respondent is an employee of petitioner. Private respondent is an independent contractor engaged by petitioner to drive one of its delivery trucks. While private respondent has no monetary capital, his driving expertise and experience should be considered as his capital that contribute in the fruition of work that both he and petitioner undertook to do. Private respondent is already estopped from claiming that he is an employee of petitioner because he is declared as a contractor in BIR Form 1601-E or the Monthly Remittance Return for Creditable Income Tax Withheld[17] filed by petitioner. Petitioner also reiterated that it never dismissed private respondent. It was the latter who disappeared and took away the key of the truck he was driving.

We are not persuaded.

At the outset, it is well to emphasize that factual findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind the courts when supported by substantial evidence.[18] A scrutiny of the records shows that the consistent findings of the Labor Arbiter and public respondent NLRC that private respondent is an employee of petitioner and that the former was illegally dismissed by the latter is supported by substantial evidence.

Jurisprudence is firmly settled that whenever the existence of an employment relationship is in dispute, four elements constitute the reliable yardstick, namely: (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's conduct.[19] It is the so-called "control test" which constitutes the most important index of the existence of the employer-employee relationship, that is, whether the employer controls or has reserved the right to control the employee not only as to the result of the work to be done but also as to the means and methods by which the same is to be accomplished.[20]

All the foregoing elements are present in this case. First off, it is not disputed that it was petitioner which selected and engaged the services of private respondent as its driver for one of its delivery trucks. The element of payment of wages is likewise present. In *Chavez vs. National Labor Relations Commission, et al.*[21], the High Court defined wages as remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work

done or to be done, or for service rendered or to be rendered. Here, the parties are in agreement that private respondent is paid by petitioner for the services he rendered to petitioner in driving the latter's delivery truck and in accomplishing the delivery of the goods of petitioner's client. That petitioner was paid on a per trip basis is not significant.[22] This is merely a method of computing compensation and not a basis for determining the existence or absence of employer-employee relationship.[23] The power to dismiss private respondent is likewise lodged in petitioner. Petitioner's power to dismiss private respondent is inherent in the fact that it engaged the services of private respondent as truck driver. In fact, petitioner exercised this power by terminating private respondent's services allegedly because petitioner's client banned him from its premises.

Most importantly, the element of control is attendant in the present case. Contrary to the insistence of petitioner, private respondent cannot be considered as an independent contractor. Compared to an employee, an independent contractor is 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.[24] Hence, while an independent contractor enjoys independence and freedom from the control and supervision of his principal, an employee is subject to the employer's power to control the means and methods by which the employee's work is to be performed and accomplished.[25]

Here, the records show that private respondent does not have a distinct and independent business undertaking. He does not possess substantial capitalization or investment in the form of tools, machinery and work premises to undertake an independent business.[26] In fact, he does not even own the truck he drives. It does not also appear that he renders trucking services according to his own manner and method, without any control or direction from petitioner. What is evident from the records is that petitioner has control not only over the result of private respondent's work but also over the means and methods used in achieving such result. For one thing, the fact that it is petitioner which provides the delivery truck used by private respondent in hauling the goods of petitioner's client is indicative of the extent of control that petitioner exercises over his work. Indeed, it is petitioner which has the prerogative which vehicle would be assigned to private respondent or if any vehicle would be assigned to him at all. It is also petitioner which provides the trip schedules of private respondent, designating the day and time of delivery as well as the places where the goods are to be picked-up and disembarked. Private respondent does not exercise any discretion as to which deliveries he should prioritize and which ones he could schedule on a later date. He could not also decide for himself the means of hauling the goods he delivers, whether the same be by trailer trucks, container vans or any other vehicle available to him. All these details are decided upon by petitioner and private respondent simply has to obey its instructions. Given these circumstances, by no stretch of imagination can private respondent be considered an independent contractor. Indubitably, he is an employee of petitioner who is under the control and supervision of the latter. That private respondent has a skill and experience in driving a special type of delivery truck and that petitioner deducts contractor's tax from his compensation do not make him an independent contractor. As previously discussed, it is the four-fold test that is determinative of the presence or absence of an employer-employee relationship.

Having been employed by petitioner as truck driver for around four (4) years, private respondent has become its regular employee pursuant to Article 280[27] of the Labor Code. It is well to note that private respondent's work of driving one of petitioner's delivery trucks is vital, necessary and desirable to the business of petitioner which is that of providing trucking services. Being a regular employee, private respondent cannot be dismissed except for a just or authorized cause as found in the Labor Code.[28] The well-settled rule is that the employer has the burden of proving the lawfulness of an employee's dismissal.[29] The validity of the charge must be clearly established in a manner consistent with due process.[30] Petitioner, however, miserably failed to discharge its burden of proof.

The just causes of dismissal are enumerated in Article 282 of the Labor Code, to wit: (a) serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work; (b) gross and habitual neglect by the employee of his duties; (c) fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative; (d) commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; (e) other causes analogous to the foregoing. The authorized causes on the other hand, as enumerated under Articles 283 and 284 of the Labor Code are as follows: (a) installation of labor-saving devices; (b) redundancy; (c) retrenchment; (d) closure or cessation of operations of the establishment or undertaking; and (e) disease.

In the instant case, none of these just and authorized causes was cited by petitioner as ground for the dismissal of private respondent's employment. Instead, petitioner claimed that the reason why private respondent's services were no longer engaged was that its client banned him from entering its premises. The reason proffered by petitioner, however, does not fall under any of the just and authorized causes specified under the law. Consequently, the severance of private respondent's employment based on this ground is rendered illegal. It is well to emphasize that no less than the Constitution guarantees security of tenure for workers and because of this, an employee may only be terminated for just or authorized causes that must comply with the due process requirements mandated by law.[31] Employers are barred from arbitrarily removing their workers whenever and however they want. The law sets the valid grounds for termination as well as the proper procedure to take when terminating the services of an employee.[32] Having failed to satisfy these requirements, petitioner should be held liable to private respondent.

Resultantly, private respondent who was illegally dismissed is entitled to the twin reliefs of full backwages and reinstatement. Under Article 279[33] of the Labor Code an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges; to his full backwages, inclusive of allowances; and to other benefits or their monetary equivalent computed from the time his compensation was withheld up to the time of his actual reinstatement. The tribunals a quo correctly based the computation of his backwages on the minimum wage in the absence of conclusive evidence anent the actual compensation received by private respondent.

In fine this Court finds no reason, cause or justification for the issuance of the extraordinary writ of certiorari. It is well to stress that the writ of certiorari is directed against a tribunal, board or officer exercising judicial or quasi-judicial functions that acted without or in excess of its or his jurisdiction or with grave abuse of discretion. Grave abuse of discretion means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify the issuance of the writ of certiorari, the abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and 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, as to be equivalent to having acted without jurisdiction.[34] Such is not the case here.

WHEREFORE, premises considered, the instant Petition for Certiorari is hereby DISMISSED.

SO ORDERED.

De Guia-Salvador (Chairperson) and Bueser, JJ., concur.

[1] Rollo, pp. 3-20.

- [2] Rollo, pp. 16-28.
- [3] Rollo, pp. 107-113.
- [4] Rollo, pp. 29-30.
- [5] Decision dated May 29, 2013, Rollo, p. 17.
- [6] Rollo, pp. 70-72.
- [7] Rollo, pp. 73-76.
- [8] Rollo, p. 88.
- [9] Rollo, p. 19
- [10] Ibid.
- [11] Supra, at Note 3.
- [12] Rollo, pp. 112-113.
- [13] Supra, at Note 2.
- [14] Rollo, pp. 20-27.
- [15] Supra, at Note 4.
- [16] Rollo, pp. 7-8.
- [17] Rollo, pp. 31-64.
- [18] Garden of Memories and Life Plan, Inc., et al. vs. National Labor Relations Commission, et al., G.R. No. 160278, February 8, 2012.
- [19] Tongko vs. The Manufacturers Life Insurance Co. (Phils.), Inc. et al., G.R. No. 167622, November 7, 2008.
- [20] Ibid.
- [21] G.R. No. 146530, January 17, 2005.
- [22] Vide: Chavez vs. National Labor Relations Commission, et al. G.R. No. 146530, January 17, 2005.
- [23] Ibid.
- [24] Tan vs. Lagrama, et al., G.R. No. 151228, August 15, 2002.
- [25] Ibid.
- [26] Vide: Chavez vs. National Labor Relations Commission, G.R. No. 146530, January 17, 2005.
- [27] Article 280 of the Labor Code reads:

Art. 280. Regular and Casual Employment. The - provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of engagement of the employee or where the work or services to be performed is seasonal in nature and employment is for the

duration of the season.

xxx

[28] Vide: Mitsubishi Motors Philippines Corporation vs. Chrysler Philippines Labor Union, et al., G.R. No. 148738, June 29, 2004.

[29] Tan vs. Lagrama, et al., G.R. No. 151228, August 15, 2002.

[30] Ibid.

[31] Alert Security and Investigation Agency, Inc., et al. vs. Pasawilan, G.R. No. 182397, September 14, 2011.

[32] Ibid.

[33] Article 279 of the Labor Code reads:

ART. 279. Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[34] C.F. Sharpe Crew Management, Inc., et. al. vs. Taok, G.R. No. 193679, July 18, 2012.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.