

MARVIN S. CUNANAN, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND MRS. REGINA B. GO, RESPONDENTS,

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/fde542160bc6/>

MACALINO, J:

THE CASE

This is a Petition for Certiorari under Rule 65 of the Rules of Court[1], seeking to annul and set aside the 30 August 2013 Decision[2] (“Assailed Decision”) and the 16 October 2013 Resolution[3] denying the Motion for Reconsideration, promulgated by the National Labor Relations Commission (“Public Respondent”) in NLRC NCR Case No. 01-100105-13 [NLRC LAC No. 07-001952-13]. The dispositive portion[4] of the assailed Decision reads:

“WHEREFORE, the Appeal is GRANTED and the Decision of the Labor Arbiter, dated 30 April 2013 is hereby REVERSED and SET ASIDE and a new one issued declaring the Complainant as a househelper. Nonetheless, considering that the Complainant was unjustly terminated from service, Respondent-Gina B. Go is ordered to pay the Complainant an indemnity equivalent to fifteen [15] days wage or Php8,700.00

SO ORDERED.”

FACTS OF THE CASE

According to Marvin S. Cunanan (“Petitioner”), he was hired by Regina B. Go (“Private Respondent”) as driver sometime in November 1997. He was issued an Identification Card (“ID”) to gain ingress and egress to the residence of his employer. As Driver, he would drive the children of Private Respondent to their respective schools and thereafter, the Private Respondent to her office. Before Petitioner would fetch the children after school, he was required to drive to Alabang, Muntinlupa and Greenhills, San Juan to deliver some items to Private Respondent's store, G-Stop.[5] It was his firm belief that he was not a mere family driver but a driver for the Private Respondent's business establishment for the reason that since his employment, Petitioner was not made to sign any contract indicating his position as family driver.[6] As driver, he was paid a salary of Php580.00 a day or more or less Php15,00.00 a month. On 26 November 2012, Petitioner sent a text message to Private Respondent regarding his salary which was short of seven (7) days since he was only paid for fourteen (14) days instead of twenty-one (21) days of work. The day after, on 27 November 2012, to the surprise of Petitioner, Private Respondent dismissed him from employment by calling him up and telling him: “KUNG HINDI KA NA MASAYA DITO, UMALIS KANA AT UMALIS KANA.”[7]

According to Private Respondent, Petitioner was hired as a family driver sometime in December 1997 and was paid above the minimum wage mandated by law.[8] Adhering to the policy of no work-no pay, Private Respondent still pays Petitioner his daily wages on Maundy Thursday, Good Friday, Christmas eve, Christmas day, 30 and 31 December and New Year's Day. Out of generosity, she also makes sure that Petitioner receives a Christmas bonus. Moreover, since 2001, even before the compulsory coverage under the SSS Law was made mandatory, Private Respondent had been consistently contributing Petitioner's share to the Social Security System and the Philippine Health Insurance Corporation until Petitioner was dismissed from employment.[9] As her

stay-in driver, Private Respondent provides free board and lodging as well as a meal allowance of Php100.00 to Petitioner whenever he would be out driving at mealtimes. In addition, she would also shoulder Php250.00 of the Php350.00 postpaid plan per month of the Petitioner that he uses even for his personal calls.[10] Despite such benefits, on 26 November 2011, a series of exchanges of text messages wherein Petitioner was asking for his thirteenth (13th) month pay led to the severance of Petitioner's employment with the Private Respondent the day after.[11]

In view thereof, Petitioner instituted a Complaint with the Labor-Arbiter on 04 January 2013[12] and was set for preliminary hearing on 28 January 2012 and 04 February 2013.[13] The parties failed to arrive at an amicable settlement and were required to submit their respective position papers and supporting documentary evidence instead.[14] On 15 February 2013, the Labor-Arbiter received the Petitioner's Position Paper.[15] The Private Respondent's Position paper was also received on the same date.[16] The Private Respondent filed her Reply Position Paper on 27 February 2013, insisting that Petitioner is a househelper, as the latter attends to the personal comfort and enjoyment of her family.[17] Petitioner's trips to Private Respondent's business establishment was only for the purpose of running errands and to fetch her from her place of work. On the same date, Petitioner filed his Reply, claiming that attending to Private Respondent's family was just an additional task for him as driver of G-Stop.[18]

On 30 April 2013, Labor-Arbiter Joel S. Lustria rendered a Decision[19] declaring Petitioner as a regular employee of G-stop and his being a driver to Private Respondent's family is only an additional task. For having been illegally dismissed, Private Respondent was ordered to pay Petitioner backwages, separation pay, his thirteenth month pay and attorney's fees.

Aggrieved with the Decision of the Labor-Arbiter, Private Respondent elevated the case to the National Labor Relations Commission, Public Respondent, via a Notice of Appeal[20] with Memorandum of Appeal[21] dated 27 June 2013, assigning the following errors, to wit: (1) the Labor-Arbiter gravely erred in finding that Petitioner is a regular employee of appellant and not a member of her household as a family driver as he was issued an ID to enter the village everyday pursuant to the village rules that require all household/domestic helpers to have an ID for records and security reasons.[22] Moreover, Petitioner cannot assert that he was a driver of G-Stop for fifteen (15) years as G-Stop commenced operations only in late 2011[23]; (2) the Labor-Arbiter gravely erred in totally disregarding the vital pieces of evidence, i.e., SSS Contribution Collection List, Identification Card issued by the Private Respondent's village, and Petitioner's own declaration under oath in his Complaint and Amended Complaint which indicated "PRIVATE HOUSEHOLD" under "Industry Classification"[24]; (3) the Labor-Arbiter gravely erred in finding that Petitioner was illegally dismissed by Private Respondent as the latter had lost trust and confidence with Petitioner. As househelper, Private Respondent need not comply with the two-notice rule since such procedural requirements are only applicable to regular employees[25]; and lastly, (4) the Labor-Arbiter gravely erred in awarding Petitioner backwages, separation pay, thirteenth month pay, and attorney's fees. Pursuant to the Thirteenth Month Law, family drivers are not covered. Even if Private Respondent is not obligated to give Petitioner the benefit of a thirteenth month pay, the former had been giving him a Christmas bonus equivalent to such benefit.[26]

Praying that the appeal of the Private Respondents be denied for utter lack of merit, Petitioner filed his Comment on 15 July 2014.[27]

RULING OF THE NLRC

On 30 August 2013, the National Labor Relations Commission, the Public Respondent, rendered a Decision[28] reversing and setting aside the Decision of the Labor-Arbiter, declaring the Petitioner as a househelper. Nonetheless, considering that Petitioner was unjustly terminated from service, Private Respondent was ordered to

pay Petitioner an indemnity to fifteen (15) days wage or Php8,700.00.

In reversing the decision of the Labor Arbiter, the Public Respondent ruled in this wise:

XXX

“The Labor Arbiter, in the assailed Decision, concluded that the Complainant was a regular employee of the Respondent's business since 1997 until his dismissal on 27 November 2012. However, we must agree with the Respondent that this conclusion has no basis in fact and in law. As established by the evidence on record, Dameka Trading, which owned G-Stop, was merely incorporated on 10 May 2011. Subsequently, G-Stop was only issued business permit on 16 November 2011 to operate in Alabang Town Center in Muntinlupa and the one in Greenhills, San Juan on 07 February 2012. Verily, the Complainant could not possibly work for G-Stop in its branches from the time of his employment in December 1997 considering that this business was merely incorporated in 2011 and its branches were only issued permits to operate in November 2011 and February 2012, respectively. There is neither showing that the Complainant was elevated to company driver at the start of the Respondent's business in 2011.

We are not unmindful of the ruling that any competent and relevant evidence to prove employment relationship may be admitted, such as identification cards, cash vouchers, social security registration, appointment letters or employment contracts, payrolls, organization charts, and personnel lists, which are readily available, as they are in the possession of either the employee or the employer. However, in this case, aside from the Complainant's allegation that he was the company driver of G-Stop, he has not presented any of the relevant evidence that could have proved his allegation.

The fact there was no Contract of Domestic Service between the Respondent and the Complainant, as mandated by Article 142 of the Labor Code, did not automatically convert the household employment of the Complainant into a regular employment. Neither can we conclude that the higher daily wage received by the Complainant compared to the daily wage of domestic helpers imposed by Article 143 of the Labor Code, made the Complainant a regular employee of the Respondent's business. Certainly, the character of the employment is neither determined by the presence or absence of a contract or stipulations in the contract nor by the rate of the wage, but by the nature of the work performed.

XXX

On the second issue, we however hold that the Complainant was unjustly terminated. The Respondent terminated the services of the Complainant due to loss of trust and confidence. This was predicated on the exchanges of text messages between the Respondent and the Complainant whereby the latter admitted that the former may have lost her trust in him. However, loss of confidence as a just cause for termination of employment must be related to the performance of the duties of the dismissed employee and must show that he or she is unfit to continue working for the employer for violation of the trust reposed in the employee. In this case, however, the record is bereft of any showing that the Complainant committed any unlawful acts while in the performance of his duty as a family driver, which could have transgressed the trust reposed in him by the Respondent. Consequently, we are not convinced that the Complainant was unfit to continue working simply because he suspected that the Respondent already lost her trust in him. Further more, the Respondent failed to notify the Complainant five [5] days before the intended termination of services as required by Article 150 of the Labor Code. What is apparent from the record is that the day after the Complainant and the Respondent had exchange of text messages, or on 27 November 2012, the Respondent already terminated the Complainant. Successively, on 28 November 2012, the Respondent requested the village security not to allow the Complainant entry without her prior knowledge or consent.”

XXX

THE ISSUES

In praying that the Decision and Resolution of the Public Respondent be overturned, Petitioner raises the

following issues before this Court:

“I. PUBLIC RESPONDENT COMMISSION (SIXTH DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN REVERSING THE DECISION OF THE LABOR ARBITER THAT COMPLAINANT (PETITIONER) (SIC.) AND HOLDING AND DECLARING THA[T] COMPLAINANT-PETITIONER WAS NOT A REGULAR EMPLOYEE OF RESPONDENT REGINA B. GO/G-STOP STORE SUCH FINDINGS SUCH FINDINGS AND CONCLUSION BEING CONTRARY TO FACTS OF THE CASE, LAW AND EXISTING JURISPRUDENCE.

II. PUBLIC RESPONDENT COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT ALTHOUGH COMPLAINANT WAS UNJUSTLY DISMISSED HE IS NOT ENTITLED TO SEPARATION PAY AND BACKWAGES, 13TH MONTH PAY DECLARING ERRONEOUSLY THAT HE WAS NOT A REGULAR EMPLOYEE.”

THE RULING OF THIS COURT

We resolve to deny the petition.

As the dismissal and the filing of the instant Complaint occurred before Republic Act No. 10361 or the “Domestic Workers Act” became effective, the applicable law is Presidential Decree No. 442 (“Labor Code of the Philippines”), specifically, the provisions on the employment of househelpers.

Article 141 of the aforementioned law defines the services rendered by househelpers, viz.:

“ARTICLE 141. Coverage. — This Chapter shall apply to all persons rendering services in households for compensation.

"Domestic or household service" shall mean services in the employer's home which is usually necessary or desirable for the maintenance and enjoyment thereof and includes ministering to the personal comfort and convenience of the members of the employer's household, including services of family drivers.” (Emphasis Ours)

In addition, the landmark case of *Apex Mining Company, Inc. v. NLRC, et al.*[29] had the opportunity to define the persons considered as househelpers as well as the criteria to be considered as such:

XXX

“The foregoing definition clearly contemplates such househelper or domestic servant who is employed in the employer's home to minister exclusively to the personal comfort and enjoyment of the employer's family. Such definition covers family drivers, domestic servants, laundry women, yayas, gardeners, houseboys and other similar househelps.

The definition cannot be interpreted to include househelp or laundry women working in staffhouses of a company, like petitioner who attends to the needs of the company's guest and other persons availing of said facilities. By the same token, it cannot be considered to extend to the driver, houseboy, or gardener exclusively working in the company, the staffhouses and its premises. They may not be considered as within the meaning of a "househelper" or "domestic servant" as above-defined by law.

The criteria is the personal comfort and enjoyment of the family of the employer in the home of said employer.” (Emphasis Ours)

XXX

In the case at bench, it is indubitable that Petitioner is a househelper employed in the household of Private

Respondent.

As admitted by Petitioner in his Position Paper, he was primarily tasked to drive Private Respondent's children to school and thereafter, bring Private Respondent to her office.[30] Petitioner's tasks were affirmed by Private Respondent in her Position Paper, adding that after his morning routine, Petitioner would be waiting in Private Respondent's residence to pass the time, resting or watching television until he would fetch the children to school,[31] to which the Petitioner failed to overcome through counter-evidence.

This Court also relies on the exchange of text messages of Petitioner and Private Respondent, specifically the one sent by Petitioner on 26 November 2012[32], which admits of the nature of his employment, to wit: “Binabayaran naman po kta sa mga utang ko ate gi.. Kpg my parting puntahan c kev at wis wla po akong reklamo kht madaling araw na silang umuwi. Tsaka sa inyo po ako nagtatrabaho kya sa inyo ako umuutang. Dhl ang puhunan ko po d2 tiwala nyo sa akin. Ngayon kung wla na po kyong tiwala sa akin nasa inyo na po un.” Given the foregoing statement, Petitioner himself admitted that his job as driver was to personally attend to the needs of Private Respondent's household, having suffered to wait and fetch the latter's children during their late night parties. Petitioner also revealed that he acknowledged Private Respondent as his direct employer as it was with the latter that he was asking for a loan and not from his alleged employer, G-Stop. It is also worthy to note that in all of the Private Respondent's SSS Contributions[33] for Petitioner, the former has indicated that she was a “Household Employer” instead of a “Regular Employer.” Petitioner, having alleged to have worked for Private Respondent since 1997, could have easily retrieved a copy of such collection list to be fully apprised of the nature of his employment to which he failed to do.

Corollarily, an affidavit[34] by one Gina Retocsan Nonay, if taken together with all the factual antecedents pointing to Petitioner's status as househelper, deserves credence. The said affiant, who formerly worked as a *yaya* for sixteen (16) years for Private Respondent, attested that she, together with Petitioner, would bring Private Respondent's children to and from school. Interestingly, Petitioner did not even bother to refute nor counter the statements made by affiant.

In addition, there is nothing on record that would attest to Petitioner's claim of regular employment with G-Stop. It should be noted that a mere lack of a Contract of Domestic Service pursuant to Art. 140 of the Labor Code of the Philippines does not give Petitioner the right to assume that he was regularly employed in the Private Respondent's business establishment. In fact, no such Contract of Employment with G-Stop nor proof of the terms and conditions of his employment and his specific tasks and responsibilities were given to substantiate his claim of regular employment. This alone should suffice in raising serious doubts as to the veracity of Petitioner's claims. Moreover, as correctly found by Public Respondent, the claims made by Petitioner that he was hired as a regular employee from “November 21, 1997 up to the time of his dismissal on 30 November 2013” was patently erroneous.[35] Dameka Trading, Inc., the owner of G-Stop, was only incorporated last 10 May 2011[36] and was only granted a Permit to Operate in Greenhills on 07 February 2012[37] and in Alabang Town Center on 16 November 2011.[38] Thus, it would be absurd for Petitioner to have been hired as a company driver from 1997; up until 2011, there was no company nor business establishment to speak of.

A similar situation appears in jurisprudence wherein an alleged domestic helper, in certain cases, would be considered as a regular employee. In the case of *Remington Industrial Sales Corporation v. Castaneda*[39], the Honorable Supreme Court ruled, to wit:

XXX

“In the case at bar, the petitioner itself admits in its position paper that respondent worked at the company premises and her duty was to cook and prepare its employees' lunch and merienda. Clearly, the situs, as well as the nature of respondent's work as a cook, who caters not only to the needs of Mr. Tan and his family but also

to that of the petitioner's employees, makes her fall squarely within the definition of a regular employee under the doctrine enunciated in the Apex Mining case. That she works within company premises, and that she does not cater exclusively to the personal comfort of Mr. Tan and his family, is reflective of the existence of the petitioner's right of control over her functions, which is the primary indicator of the existence of an employer-employee relationship.

Moreover, it is wrong to say that if the work is not directly related to the employer's business, then the person performing such work could not be considered an employee of the latter. The determination of the existence of an employer-employee relationship is defined by law according to the facts of each case, regardless of the nature of the activities involved. Indeed, it would be the height of injustice if we were to hold that despite the fact that respondent was made to cook lunch and merienda for the petitioner's employees, which work ultimately redounded to the benefit of the petitioner corporation, she was merely a domestic worker of the family of Mr. Tan.

We note the findings of the NLRC, affirmed by the Court of Appeals, that no less than the company's corporate secretary has certified that respondent is a bonafide company employee; she had a fixed schedule and routine of work and was paid a monthly salary of P4,000.00; she served with the company for 15 years starting in 1983, buying and cooking food served to company employees at lunch and merienda, and that this service was a regular feature of employment with the company.” (Emphasis Ours)

XXX

It is evident from the case at bench that the situs and nature of employment of Petitioner is exclusively with the Private Respondent, having been employed for more than ten (10) years with the latter, as opposed to his alleged affiliation with G-Stop, which only began in 2011 when it commenced operations. Compared to the abovementioned case which found for regular employment, no evidence to prove that Petitioner resided within company premises to cater to the needs of the company nor any certification from any of the company's employees to attest to Petitioner's employment with the company were submitted. In fact, Petitioner was even issued an ID to secure easy entry and exit to and from Private Respondent's residence. As stated in the case of *Domasig v. NLRC*,^[40]

XXX

“...an identification card is usually provided not only as security measure but mainly to identify the holder thereof as a bona fide employee of the firm that issues it.”

XXX

It is a basic rule in evidence, as ratiocinated in the recent case of *Javier v. Fly Ace Corp.*^[41] that “each party must prove his affirmative allegation. If he claims a right granted by law, he must prove his claim by competent evidence, relying on the strength of his own evidence and not upon the weakness of his opponent.” Given the foregoing circumstances, this Court is convinced that Petitioner was clearly unable to prove by competent evidence that an employer-employee relationship exists between him and G-Stop.

Lastly, this Court adheres to Public Respondent's Decision that Petitioner was indeed unjustly dismissed from employment. Section 150 of the Labor Code of the Philippines provide for the termination of househelpers:

ARTICLE 150. Rules on services of termination notice. — If the duration of the household service is not determined either by stipulation or by the nature of the service, the employer or the househelper may give notice to put an end to the relationship five (5) days before the intended termination of the service.” (Emphasis Ours)

Contrary to Private Respondent's assertions that she was justified in severing Petitioner's services since the latter

left it upon the former to decide on the issue, Petitioner's right to due process should still be upheld in accordance with law. In a letter dated 28 November 2012[42] by Private Respondent's hand and addressed to her village's homeowner's association, she clearly stipulated that Petitioner was terminated from employment and barred from entering the village premises after only one (1) day from their series of text messages. Thus, Petitioner was not accorded the proper period provided by law in order to give him ample time to secure employment elsewhere. Due to such unjust dismissal, Petitioner is entitled an indemnity pursuant to Art. 149 of the Labor Code of the Philippines:

“ARTICLE 149. Indemnity for unjust termination of services. — If the period of household service is fixed, neither the employer nor the househelper may terminate the contract before the expiration of the term, except for a just cause. If the househelper is unjustly dismissed, he or she shall be paid the compensation already earned plus that for fifteen (15) days by way of indemnity.

If the househelper leaves without justifiable reason, he or she shall forfeit any unpaid salary due him or her not exceeding fifteen (15) days.” (Emphasis Ours)

WHEREFORE, based on the foregoing, the petition is DENIED. The 30 August 2013 Decision and the 16 October 2013 Resolution of the NLRC in NLRC NCR Case No. 01-100105-13 [NLRC LAC No. 07-001952-13] are AFFIRMED.

SO ORDERED.

Castillo, M., Chairperson,, and Galapate-Laguilles, Z.T., JJ., concur.

[1] Rollo, p. 3.

[2] Rollo, p. 121.

[3] Rollo, p. 132.

[4] Rollo, p. 140.

[5] Rollo, p. 5.

[6] Id.

[7] Rollo, p. 6.

[8] Rollo, p. 176.

[9] Rollo, p. 178.

[10] Id.

[11] Rollo, p. 180.

[12] Rollo, p. 145.

[13] Rollo, p. 146.

[14] Id.

[15] Rollo, p. 143.

[16] Rollo, p. 176.

- [17] Rollo, p. 188.
- [18] Rollo, p. 202.
- [19] Rollo, p. 19.
- [20] Rollo, p. 34.
- [21] Rollo, p. 36.
- [22] Rollo, p. 44.
- [23] Rollo, p. 45.
- [24] Rollo, p. 41.
- [25] Rollo, p. 50.
- [26] Rollo, p. 52.
- [27] Rollo, p. 114.
- [28] Rollo, p. 121.
- [29] Apex Mining Company, Inc. v. NLRC, et al., G.R. No. 94951, April 22, 1991.
- [30] Rollo, p. 144.
- [31] Rollo, p. 178.
- [32] Rollo, pp. 101-102.
- [33] Rollo, pp. 105-106.
- [34] Rollo, p. 104.
- [35] Rollo, p. 299.
- [36] Rollo, p. 197.
- [37] Rollo, p. 198.
- [38] Rollo, p. 199.
- [39] Remington Industrial Sales Corporation v. Castaneda, G.R. Nos. 169295-96, November 20, 2006.
- [40] Domasig v. NLRC, G.R. No. 118101, September 16, 1996.
- [41] Javier v. Fly Ace Corp., G.R. No. 192558, February 12, 2012.
- [42] Rollo, p. 103.

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.