

**ZANOTTE SHOES/LEONARDO LORENZO, PETITIONERS, VS.
NATIONAL LABOR RELATIONS COMMISSION, HON. BENIGNO C.
VILLARENTE, JR., JOSEPH LLUZ, LOLITO LLUZ, NOEL ADARAYAN,
ROGELIO SIRA, VIR...**

G.R. No. 100665. February 13, 1995

Ponente: VITUG, J.

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VITUG, J.:

This petition for certiorari assails the 24th April 1991 resolution of respondent National Labor Relations Commission ("NLRC"), as well as its resolution of 30 May 1991 denying a motion for reconsideration, which has dismissed herein petitioners' appeal of the 16th October 1989 decision of Labor Arbiter Benigno C. Villarente, Jr.

Private respondents filed a complaint for illegal dismissal and for various monetary claims, including the recovery of damages and attorney's fees, against petitioners. In their supplemental position paper, the complainants subsequently confined themselves to the illegal dismissal charge and abandoned the monetary claims. One of the original eight complainants, Virgilio Alcanaba, decided to resume his work with petitioners, thus leaving the rest to pursue the case. Private respondents averred that they started to work for petitioners on, respectively, the following dates:

"NAME

DATE

"1.

Joseph Lluz

March, 1985

"2.

Noel Adarayan

Feb. 17, 1980

"3.

Rogelio Sira

January, 1982

"4.

Lolito Lluz

March, 1982

“5.

Virginia Heresano

May, 1987

“6.

Genelito Heresano

Oct. 20, 1987

“ 7.

Carmelita de Dios

January, 1975” [1]

that they worked for a minimum of twelve hours daily, including Sundays and holidays when needed; that they were paid on piece-work basis; that it "angered" petitioner Lorenzo when they requested to be made members of the Social Security System ("SSS"); and that, when they demanded an increase in their pay rates, they were prevented (starting 24 October 1988) from entering the work premises.

Petitioners, in turn, claimed that their business operations were only seasonal, normally twice a year, one in June (coinciding with the opening of school classes) and another in December (during the Christmas holidays), when heavy job orders would come in. Private respondents, according to petitioners, were engaged on purely contractual basis and paid the rates conformably with their respective agreements.

On 16 October 1989, Labor Arbiter Benigno C. Villarente, Jr., rendered judgment in favor of the complainants, thus:

"WHEREFORE, judgment is hereby rendered declaring that there was an employer-employee relationship between complainants and respondents and that the former were regular employees of the latter. Accordingly, respondents are hereby directed to pay all complainants their respective separation pay based on their one-half month's earnings per year of service, a fraction of at least six months to be considered one whole year, or the following amounts:

“1.

Joseph Lluz

P 7,488.00 (3 yrs. & 7 mos.)

“2.

Noel Adarayan

12,636.00 (8 yrs. & 8 mos.)

“3.

Rogelio Sira

8,828.00 (6 yrs. & 9 mos.)

“4.

Lolito Lluz

8,828.00 (6 yrs. & 7 mos.)

“5.

Genelito Heresano

1,404.00 (1 year)

“6.

Virginia Heresano

665.00 (1 yr. & 5 mos.)

“ 7.

Carmelita de Dios

19,656.00 (13 yrs. & 9 mos.)

"Total - - - -

59,515.00 [2]

"Respondents are also hereby directed to pay complainants' counsel the amount of P5,950.00 which is equivalent to 10% of the above total awards as attorney's fees.

"SO ORDERED." [3]

An appeal was interposed by petitioners. The NLRC, on 24 April 1991, sustained the findings of the Labor Arbiter and dismissed the appeal. On 30 May 1991, the NLRC denied petitioners' motion for reconsideration.

Hence, the instant petition.

In his comment, dated 14 October 1991, the Solicitor General moved for the modification of NLRC's resolution of 24 April 1991. While conceding that an employer-employee relationship existed between petitioners and private respondents, the Solicitor General, nevertheless, expressed strong reservations on the award of separation pay in view of the findings by both the Labor Arbiter and the NLRC that there was neither dismissal nor abandonment in the case at bench. The NLRC submitted its own comment on 11 February 1992.

Well-settled is the rule that factual findings of the NLRC, particularly when they coincide with that of the Labor Arbiter, are accorded respect, if not finality, and will not be disturbed absent any showing that substantial evidence which might otherwise affect the result of the case has been discarded. We see no reason, in this case at bench, for disturbing the findings of the Labor Arbiter and the NLRC on the existence of an employer-employee relationship between herein private parties. The work of private respondents is clearly related to, and in the pursuit of, the principal business activity of petitioners. The indicia used for determining the existence of an employer-employee relationship, all extant in the case at bench, include (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 with respect to the result of the work to be done and to the means and methods by which the work is to be accomplished. The last requirement, so herein posed as an issue, refers to the existence of the right to control and not necessarily to the actual exercise of the right. In *Dy Keh Beng vs. International Labor and Marine Union of the Philippines, et al.*, [4] the Court has held:

"While this Court upholds the control test under which an employer-employee relationship exists 'where the person for whom the services are performed reserves a right to control not only the end to be achieved but also the means to be used in reaching such end,' it finds no merit with petitioner's arguments as stated above. It should be borne in mind that the control test calls merely for the existence of the right to control the manner of doing the work, not the actual exercise of the right. Considering the finding by the Hearing Examiner that the establishment of Dy Keh Beng is 'engaged in the manufacture of baskets known as kaing,' it is natural to expect that those working under Dy would have to observe, among others, Dy's requirements of size and quality of the kaing. Some control would necessarily be exercised by Dy as the making of the kaing would be subject to Dy's specifications. Parenthetically, since the work on the baskets is done at Dy's establishments, it can be inferred that the proprietor Dy could easily exercise control on the men he employed."

We share the opinion of the Solicitor General that the award of separation pay to private respondents appears, nonetheless, to be unwarranted.

The Labor Arbiter, sustained by the NLRC, concluded that there was neither dismissal nor abandonment. The Labor Arbiter said -

"x x x. At any rate, records show that even during the conciliation stage, respondents had repeatedly indicated that they were willing to accept back all complainants aside from denying complainants' allegation. Hence, it is clear that there was no dismissal to talk about in the first place which would have to be determined whether legal or not. We also take particular note of complainants' desire to be given separation pay instead of being ordered back to work. Considering all these factors, we hereby rule that there was neither dismissal nor abandonment but complainants are simply out of job for reasons not attributable to either party." (Rollo , pp. 30-31.)

The NLRC, in nonetheless agreeing with the Labor Arbiter on the latter's award of separation pay, ventured to say:

"x x x It is not difficult to see the rationale behind the Labor Arbiter's disposition - he saw in respondents' offer of reinstatement the commanding advantage it had to later force (by whatever unlawful means they may resort to) the complainants out of job, just as the Labor Arbiter saw that fear on the part of complainants to enter into a trap being laid before them for indeed, it is peculiar for an employer who wants to get rid of its employees, to insist on reinstatement rather than a separation pay scheme which the law allows them so they may be able to better manage their business." (Rollo , p. 39.)

We find the above disquisition of the NLRC too speculative and conjectural to be sustained. The fact of the matter is that petitioners have repeatedly indicated their willingness to accept private respondents but the latter have steadfastly refused the offer. For being without any clear legal basis, the award of separation pay must thus be set aside. [5] There is nothing, however, that prevents petitioners from voluntarily giving private respondents some amounts on ex gratia basis.

WHEREFORE, the questioned findings and resolutions of respondents Labor Arbiter and NLRC are MODIFIED by deleting the award of separation pay and the corresponding attorney's fees. No costs.

SO ORDERED.

Feliciano, (Chairman), Romero, Melo, and Francisco, JJ., concur.

[1] Rollo , p. 27.

[2] The total amount should be P59,505.00.

[3] Rollo , p. 31.

[4] 90 SCRA 161.

[5] 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." (Labor Code)

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