

NELLY ACTA MARTINEZ, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, DOMINADOR CORRO, PASTOR CORRO, CELESTINO CORRO, LUIS CORRO, EREBERTO CORRO, JAIME CRUZ, WENCESLAO DELVO...

G.R. No. 117495. May 29, 1997

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

RAUL MARTINEZ was operator of two (2) taxicab units under the business name PAMA TX and two (2) additional units under the name P. J. TIGER TX. Private respondents Dominador Corro, Pastor Corro, Celestino Corro, Luis Corro, Ereberto Corro, Jaime Cruz, Wenceslao Delvo, Gregorio Delvo, Hermejias Colibao, Jose Ogana and Alonso Albao worked for him as drivers. On 18 March 1992 Raul Martinez died leaving behind his mother, petitioner Nelly Acta Martinez, as his sole heir.

On 14 July 1992 private respondents lodged a complaint against Raul Martinez and petitioner Nelly Acta Martinez before the Labor Arbiter for violation of P. D. 851[1] and illegal dismissal. They alleged that they have been regular drivers of Raul Martinez since 20 October 1989 earning no less than P400.00 per day driving twenty-four (24) hours every other day. For the duration of employment, not once did they receive a 13th month pay. After the death of Raul Martinez, petitioner took over the management and operation of the business. On or about 22 June 1992 she informed them that because of difficulty in maintaining the business, she was selling the units together with the corresponding franchises. However, petitioner did not proceed with her plan; instead, she assigned the units to other drivers.

Petitioner traversed the claim for 13th month pay by contending that it was personal and therefore did not survive the death of her son. Besides, private respondents were not entitled thereto as Sec. 3, par. (e), of the Rules and Regulations Implementing P. D. 851 is explicit that employers of those who are paid on purely boundary basis are not covered therein. The relationship between her son and private respondents was not that of employer-employee but of lessor-lessee. The operation of the business ceased upon the death of her son and that she did not continue the business because she did not know how to run it.

On 30 August 1993 the Labor Arbiter dismissed the complaint on the following grounds: (a) private respondents' claims being personal were extinguished upon the death of Raul Martinez; (b) petitioner was a mere housewife who did not possess the required competence to manage the business; and, (c) private respondents were not entitled to 13th month pay because the existence of employer-employee relationship was doubtful on account of the boundary system adopted by the parties.[2]

However, respondent National Labor Relations Commission viewed the case differently. According to NLRC, (a) private respondents were regular drivers because payment of wages, which is one of the essential requisites for the existence of employment relation, may either be fixed, on commission, boundary, piece-rate or task basis; (b) the management of the business passed on to petitioner who even replaced private respondents with a new set of

drivers; and, (c) the claims of private respondents survived the death of Raul Martinez considering that the business did not cease operation outright but continued presumably, in the absence of proof of sale, up to the moment. As regards the claim for 13th month pay, NLRC upheld the stand of petitioner based on the express provision of P. D. 851 as reiterated in the revised guidelines on the implementation thereof. On 28 January 1994 respondent NLRC thus set aside the appealed decision, and as alternative to reinstatement, ordered petitioner to grant respondents separation pay equivalent to one (1) month salary for every year of service a fraction of six (6) months being considered as one (1) whole year.[3] On 30 September 1994 the motion for reconsideration was denied.[4] Hence, this recourse of petitioner.

On 11 October 1995 the Court issued a temporary restraining order enjoining the execution of the assailed decision of respondent NLRC. Petitioner imputes grave abuse of discretion on respondent NLRC in reversing the decision of the Labor Arbiter.

Petitioner argues that respondent NLRC acted as a probate court when it assumed jurisdiction over the estate of a deceased person, pronounced her legally entitled to succeed the deceased and ordered her to pay the money claim of private respondents. Moreover, petitioner argues that the claims of private respondents were personal to her son and thus were abated by his death.

Petitioner's arguments are well-taken. The claim for 13th month pay pertains to the personal obligation of Raul Martinez which did not survive his death. The rule is settled that unless expressly assumed, labor contracts are not enforceable against the transferee of an enterprise. In the present case, petitioner does not only disavow that she continued the operation of the business of her son but also disputes the existence of labor contracts between her son and private respondents. The reason for the rule is that labor contracts are in personam,[5] and that claims for backwages earned from the former employer cannot be filed against the new owners of an enterprise.[6] Nor is the new operator of a business liable for claims for retirement pay of employees.[7] Thus the claim of private respondents should have been filed instead in the intestate proceedings involving the estate of Raul Martinez in accordance with Sec. 5, Rule 86, of the Rules of Court which provides in part -

Sec. 5. Claims which must be filed under the notice. If not filed, barred; exceptions. - All claims for money against the decedent, arising from contract, express or implied, whether the same be due, not due, or contingent, all claims for funeral expenses and expenses for the last sickness of the decedent, and judgment for money against the decedent, must be filed within the time limited in the notice; otherwise they are barred forever, except that they may be set forth as counterclaims in any action that the executor or administrator may bring against the claimants x x x x

Under this rule, upon the death of the defendant, a testate or intestate proceeding shall be instituted in the proper court wherein all his creditors must appear and file their claims which shall be paid proportionately out of the property left by the deceased. The objective is to avoid duplicity of procedures. Hence, the ordinary actions must be taken out from the ordinary courts. Conformably with Art. 110 of the Labor Code, money claims of laborers enjoy preference over claims of other creditors in case of bankruptcy or liquidation of the employer's business.[8]

Petitioner also insists on the absence of employer-employee relationship between her son and private respondents because there is no evidence that her son paid a single centavo by way of wages to private respondents; rather, they were governed by the boundary system. Neither is there such relationship between her and private respondents because she did not continue the operation of the business which ceased upon the death of her son.

As early as 3 March 1956, in *National Labor Union v. Dinglasan*,[9] this Court ruled that the relationship between jeepney owners/operators on one hand and jeepney drivers on the other under the boundary system is that of employer-employee and not of lessor-lessee. Therein we explained that in the lease of chattels the lessor loses

complete control over the chattel leased although the lessee cannot be reckless in the use thereof, otherwise he would be responsible for the damages to the lessor. In the case of jeepney owners/operators and jeepney drivers, the former exercise supervision and control over the latter. The fact that the drivers do not receive fixed wages but get only that in excess of the so-called "boundary" they pay to the owner/operator is not sufficient to withdraw the relationship between them from that of employer and employee. The doctrine is applicable by analogy to the present case. Thus, private respondents were employees of Raul Martinez because they had been engaged to perform activities which were usually necessary or desirable in the usual business or trade of the employer.[10] The records show that private respondents had been employed since 20 October 1989 except for Ogana, the Delves, Albao and Colibao who were employed on later dates.[11]

Hence, these questions arise: Do private respondents, being then employees of Raul Martinez, necessarily continue to be employees of the petitioner as the new operator of the business? In the affirmative, were they illegally dismissed?

The factual findings of quasi-judicial agencies such as respondent NLRC, which have acquired expertise in the matters entrusted to their jurisdiction, are accorded by this Court not only respect but also finality if they are supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[12] As respondent NLRC found -

The facts of the case will readily show that before respondent taxi owner Raul Martinez died, he became bedridden and the management of his taxi business passed on to his mother who was his only surviving heir. It will also be noted that despite the information given by the mother that she will sell the business and extend separation benefits to complainants, no such thing occurred. Instead, she replaced complainants with a new set of drivers (See Complainants' Position paper, p. 25, Record). [13]

The above findings, however, were culled from mere allegations in private respondents' position paper. But mere allegation is not evidence.[14] It is a basic rule in evidence that each party must prove his affirmative allegation.[15] In *Opulencia Ice Plant and Storage v. NLRC*[16] we ruled that no particular form of evidence is required to prove the existence of an employer-employee relationship. Any competent and relevant evidence to prove the relationship may be admitted. In that case, the relationship was sufficiently proved by testimonial evidence. In the present case, however, private respondents simply assumed the continuance of an employer-employee relationship between them and petitioner, when she took over the operation of the business after the death of her son Raul Martinez, without any supporting evidence. Consequently, we cannot sustain for lack of basis the factual finding of respondent NLRC on the existence of employer-employee relationship between petitioner and private respondents. Clearly, such finding emanates from grave abuse of discretion. With this conclusion, consideration of the issue on illegal dismissal becomes futile and irrelevant.

WHEREFORE, the petition is GRANTED. The Decision of respondent National Labor Relations Commission dated 28 January 1994 ordering petitioner Nelly Acta Martinez to grant respondents separation pay as well as its Order of 30 September 1994 denying reconsideration is SET ASIDE. The Decision of the Labor Arbiter dated 30 August 1993 dismissing the complaint is REINSTATED.

The temporary restraining order issued on 11 October 1995 is made PERMANENT.
SO ORDERED.

Vitug, Kapunan, and Hermosisima, Jr., concur.
Padilla, (Chairman), on leave

[1] Requiring all employers to pay their employees a 13th month pay.

- [2] Penned by Labor Arbiter Jesus N. Rodriguez Jr.; Rollo, p. 51.
- [3] Penned by Commissioner Vicente S.E. Veloso with the concurrence of Presiding Commissioner Bartolome S. Carale and Commissioner Alberto R. Quimpo; Rollo, p. 60.
- [4] Rollo, p. 79.
- [5] Robledo v. NLRC, G.R. No. 110358, 9 November 1994, 238 SCRA 52.
- [6] Sundowner Development Corporation v. Drilon, G.R. No. 82341, 6 December 1989, 180 SCRA 14.
- [7] Filipinas Port Services, Inc. v. NLRC, G.R. No. 86026, 31 August 1989, 177 SCRA 203.
- [8] See Note 5.
- [9] 98 Phil. 648, reiterated in Magboo v. Bernardo, No. L-16790, 30 April 1963, 7 SCRA 952, and Lantaco Sr. v. Llamas, Adm. Matter No. 1037-CJ, 28 October 1981, 108 SCRA 502.
- [10] Art. 280, The Labor Code of the Philippines, Zanotte Shoes v. NLRC, G.R. No. 100665, 13 February 1995, 241 SCRA 261.
- [11] Records, p. 9.
- [12] Falguera v. Linsangan, G.R. No. 114848, 14 December 1995, 251 SCRA 364.
- [13] Rollo, p. 59.
- [14] P.T. Cerna Corporation v. Court of Appeals, G.R. No. 91622, 6 April 1993, 221 SCRA 19.
- [15] Jimenez v. NLRC, G.R. No. 116960, 2 April 1996, 256 SCRA 84.
- [16] G.R. No. 98368, 15 December 1993, 228 SCRA 473.

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