

**ROMEO BASAY, JULIAN LITERAL AND JULIAN ABUEVA,
PETITIONERS, VS. HACIENDA CONSOLACION, AND/OR BRUNO
BOUFFARD III, JOSE RAMON BOUFFARD, MALOT BOUFFARD,
SPOUSES CARMEN AND STEVE BU...**

G.R. No. 175532. April 19, 2010

Ponente: DEL CASTILLO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-175532/>

DEL CASTILLO, J.:

Fair evidentiary rule dictates that before employers are burdened to prove that they did not commit illegal dismissal, it is incumbent upon the employee to first establish the fact of his or her dismissal.

This Petition for Review on Certiorari [1] assails the Decision[2] dated June 7, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 00313, which affirmed the March 22, 2004 Decision[3] of the National Labor Relations Commission (NLRC), dismissing the illegal dismissal case filed by petitioners against respondents.

Factual Antecedents

Respondents hired petitioners Romeo Basay (Basay) in 1967 and Julian Literal (Literal) in 1984, as tractor operators, and petitioner Julian Abueva (Abueva) in 1989, as laborer, in the hacienda devoted for sugar cane plantation.

On August 29, 2001, petitioners filed a complaint[4] for illegal dismissal with monetary claims against respondents. They alleged that sometime in July 2001, respondents verbally informed them to stop working. Thereafter, they were not given work assignments despite their status as regular employees. They alleged that their termination was done in violation of their right to substantive and procedural due process. Petitioners also claimed violation of Minimum Wage Law and non-payment of overtime pay, premium pay for holiday and rest day, five days service incentive leave pay, separation pay and 13th month pay. They also prayed for damages and attorney's fees.

Respondents denied petitioners' allegations. As regards Abueva, respondents averred that he is not an employee but a mere contractor in the hacienda. According to respondents, Abueva hired other men to perform weeding jobs and even entered into contract with neighboring haciendas for similar jobs. Respondents alleged that Abueva's name does not appear in the payroll, thus indicating that he is not an employee. As such, there can be no dismissal to speak of, much less an illegal dismissal.

With regard to petitioners Literal and Basay, respondents admitted that both are regular employees, each receiving P130.00 per day's work as evidenced by a Master Voucher.[5] However, respondents denied having illegally dismissed them and asserted that they abandoned their jobs.

Respondents alleged that Literal was facing charges of misconduct, insubordination, damaging and taking advantage of hacienda property, and unauthorized cultivation of a portion of the hacienda. Literal was ordered to

explain; instead of complying, Literal did not anymore report for work. Instead, he filed a complaint for illegal dismissal.

Respondents asserted that they sent a representative to convince petitioners to return but to no avail. Respondents maintained that they have been religiously giving 13[th] month pay to their employees as evidenced by a voucher[6] corresponding to year 2000.

Ruling of the Labor Arbiter

On December 19, 2001, the Labor Arbiter rendered a Decision[7] exonerating respondents from the charge of illegal dismissal as petitioners were the ones who did not report for work despite respondents' call. The Labor Arbiter, however, awarded petitioners' claim of 13[th] month pay and salary differentials. The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered declaring the Respondent not guilty of Illegal Dismissal but is however directed to pay the complainants their 13[th] Month Pay covering the years 1998 and 1999, and their Salary Differentials for 2 years at 6 months per year of service. The computation of the foregoing monetary awards are as follows:

I - 13[th]Month Pay: (For Each Complainant)

1998 & 1999 = 2 years or 12 months @ 6 months per year of service

P145.00/day x 26 days

=

P3,770.00/mo.

P3,770.00/mo. x 12 mos.

=

P45,240.00

=

P7,540.00

6

II - Salary Differential:

(a)

Romeo Basay:

Basic Pay

= P145.00/day

Salary Received

= P122.00/day

Salary Differential

= P 23.00/day

1998 & 1999 = 2 years or 312 days

P23.00/day x 312 days = P7,176.00

(b)

Julian Literal:

Basic Pay

= P145.00/day

Salary Received

= P 91.00/day

Salary Differential

= P 54.00/day

1998 & 1999 = 2 years or 312 days

P54.00/day x 312 days = P16,848.00

(c)

Julian Abueva:

Basic Pay

= P145.00/day

Salary Received

= P 91.50/day

Salary Differential

= P 53.50/day

1998 & 1999 = 2 years or 312 days

P53.50/day x 312 days = P16, 692.00

SUMMARY

1. ROMEO BASAY:

a)

13th Month Pay

= P7,540.00

b)

Salary Differential

= P7,176.00

Total

P14,716.00

2. JULIAN LITERAL

a)

13[th] Month Pay

= P 7,540.00

b)

Salary Differential

= P16,848.00

Total

P24,388.00

3. JULIAN ABUEVA

a)

13[th] Month Pay

= P 7,540.00

b)

Salary Differential

= P16,692.00

Total

P24,232.00

GRAND TOTAL.....

P63,336.00

Ten Percent (10%) Attorney's Fees is also adjudicated from the total monetary award.

SO ORDERED.[8]

Ruling of the National Labor Relations Commission

Both parties sought recourse to the NLRC. Petitioners filed a Partial Appeal[9] to the Decision declaring respondents not guilty of illegal dismissal. They argued that there was no proof of clear and deliberate intent to abandon their work. On the contrary, their filing of an illegal dismissal case negates the intention to abandon. Petitioners likewise alleged that respondents failed to observe procedural due process.

Respondents, for their part, filed a Memorandum on Appeal[10] with respect to the award of salary differentials and 13[th] month pay to petitioners. Respondents averred that the Labor Arbiter erred in finding that petitioners are entitled to receive a minimum wage of P145.00/day instead of P130.00/day which is the minimum wage rate for sugarcane workers in Negros Oriental per Wage Order No. ROVII-07.[11] Respondents likewise presented vouchers[12] to prove payment of 13[th] month pay for the years 1998 and 1999.

The NLRC, in its Decision[13] dated March 22, 2004, found merit in respondents' appeal. It ruled that respondents have satisfactorily proven payment of the correct amount of wages and 13[th] month pay for the years 1998, 1999 and 2000, as shown in the Master Voucher indicating the workers' payroll and the various vouchers for 13[th] month pay. The NLRC further ruled that Abueva is not an employee of the hacienda but a mere contractor; thus, he is not entitled to any of his claims. The NLRC thus affirmed with modification the Decision of the Labor Arbiter, viz:

WHEREFORE, finding complainants not illegally dismissed, judgment is hereby rendered AFFIRMING the Decision of the Labor Arbiter dated December 13, 2001, with the MODIFICATION that complainants Julian Literal and Romeo Basay are not entitled to their claims for salary differentials and 13[th] month pay for lack of legal basis. However, respondents are ordered to pay complainants Julian Literal and Romeo Basay proportionate 13[th] month pay computed from January 1, 2001 to August 29, 2001.

All other claims are dismissed for lack of merit.

SO ORDERED. [14]

Petitioners filed a Motion for Reconsideration[15] which was denied by the NLRC in a Resolution[16] dated September 3, 2004.

Ruling of the Court of Appeals

Aggrieved, petitioners filed with the CA a petition for certiorari. On June 7, 2006, however, the CA dismissed the petition and affirmed the findings of the NLRC. It opined that respondents have manifested their willingness to retain petitioners but the latter intentionally abandoned their work. The CA also struck down petitioners' contention that abandonment is inconsistent with the filing of a complaint for illegal dismissal as this rule applies only when a complainant seeks reinstatement and not when separation pay is instead prayed for, as in the case of petitioners. As to the issue posed by petitioners assailing the admissibility of the Master Voucher due to lack of petitioners' authentic signatures, the CA refrained from resolving the matter since the issue was only raised for the first time on appeal.

Petitioners moved for reconsideration, but to no avail.

Issue

Hence, this petition raising the issue of whether petitioners were illegally dismissed and are entitled to their money claims.

Petitioners contend that the CA erred in affirming the findings of the labor tribunals that they deliberately abandoned their work on the basis of respondents' self-serving allegation that they sent emissaries to persuade them to return to work. They maintain that in the absence of competent evidence to show clear intention to sever the employment relationship and compliance with the two-notice rule, no abandonment can exist. Moreover, the theory that abandonment of work is inconsistent with the filing of a complaint for illegal dismissal is applicable in the present case since what was prayed for in the complaint was reinstatement, contrary to the CA's finding that they were asking for separation pay. Petitioners likewise insist that the CA gravely erred in holding that they assailed the admissibility of the Master Voucher for the first time only during appeal. They claim that such issue was raised in their motion for reconsideration of the NLRC Decision. Finally, petitioners allege that the fact that they were staying inside the premises of the hacienda and had been working therein for more than a year is an indication that they are regular employees entitled to their monetary claims, as correctly found by the Labor Arbiter.

Our Ruling

The petition is partly meritorious.

There was no illegal dismissal.

We are not unmindful of the rule in labor cases that the employer has the burden of proving that the termination was for a valid or authorized cause; however, it is likewise incumbent upon the employees that they should first establish by competent evidence the fact of their dismissal from employment.[17] The one who alleges a fact has the burden of proving it and the proof should be clear, positive and convincing.[18] In this case, aside from mere allegations, no evidence was proffered by the petitioners that they were dismissed from employment. The records are bereft of any indication that petitioners were prevented from returning to work or otherwise deprived of any work assignment by respondents.

The CA, in sustaining the Labor Arbiter and NLRC's finding that there was no illegal dismissal, ruled that respondents have manifested their willingness to retain petitioners in their employ. Petitioners, however, complained that this finding is anchored on mere allegations of respondents.

We do not agree. Respondents presented a declaration[19] made under oath by Leopoldo Utlang, Jr., assistant supervisor of the hacienda, attesting that petitioners were asked to return to do some work for the hacienda but refused to do so upon the advice of their lawyer. Interestingly too, as late as November of 2001 or even after almost three months from the filing of the illegal dismissal case, the names of Literal and Basay were still listed and included in respondents' payroll as can be gleaned in the Master Voucher covering the employees' payroll of November 12 to 16, 2001. While a voucher does not necessarily prove payment, it is an acceptable documentary record of a business transaction.[20] As such, entries made therein, being entered in the ordinary or regular course of business, enjoy the presumption of regularity.[21] Hence, on the basis of this material proof evincing respondents' intention to retain petitioners as employees, we are not convinced that petitioners were told to stop working or were prevented from working in the hacienda. This may well be an indication of respondents' lack of intention to dismiss petitioners from employment since they were still considered employees as of that time. Records are likewise bereft of any showing that to date, respondents had already terminated petitioners from employment.

We are not persuaded by petitioners' contention that nothing was presented to establish their intention of abandoning their work, or that the fact that they filed a complaint for illegal dismissal negates the theory of abandonment.

It bears emphasizing that this case does not involve termination of employment on the ground of abandonment. As earlier discussed, there is no evidence showing that petitioners were actually dismissed. Petitioners' filing of a complaint for illegal dismissal, irrespective of whether reinstatement or separation pay was prayed for, could not by itself be the sole consideration in determining whether they have been illegally dismissed. All circumstances surrounding the alleged termination should also be taken into account.

In *Abad v. Roselle Cinema*, [22] we ruled that the substantial evidence proffered by the employer that it had not terminated the employee should not be ignored on the pretext that the employee would not have filed the complaint for illegal dismissal if he had not really been dismissed. We held that such non sequitur reasoning cannot take the place of the evidence of both the employer and the employee.

Given that there was no dismissal to speak of, there can be no question as to the legality or illegality thereof.

Basay and Literal are entitled to salary differentials for two years and proportionate 13th month pay from

January 1-29, 2001. Abueva is not an employee, thus not entitled to his claims.

We agree with the petitioners that the issue on the admissibility of the Master Voucher, which does not show that they actually received the amount of salary indicated therein, was raised in their motion for reconsideration of the NLRC Decision dated March 22, 2004 where the labor tribunal ruled that petitioners were duly compensated for their work on the basis of such voucher. At any rate, even if its admission as evidence is not put into issue, still, the Master Voucher did not prove that petitioners were indeed paid the correct amount of wages.

A perusal of the Master Voucher shows that it covers the employees' payroll for the period of November 12-16, 2001 only. Clearly, the Master Voucher cannot constitute as proof that petitioners were duly paid for other periods not covered by such voucher. No other pertinent vouchers, payrolls, records or other similar documents have been presented as proof of payment of the correct amount of salaries paid, particularly, for the years 1998 and 1999. As a general rule, one who pleads payment has the burden of proving it.^[23] Consequently, respondents failed to discharge the burden of proving payment thereby making them liable for petitioners' claim for salary differentials. We thus reinstate the Labor Arbiter's award of salary differentials for 1998 and 1999, computed at 6 months per year of service. However, the Labor Arbiter's computation must be modified pursuant to Wage Order No. ROVII-07. Under this wage order, the minimum wage rate of sugarcane plantation workers is at P130.00/day. The correct computation for the salary differentials due to Basay and Literal, who claimed to have received only P122.00 and P91.00 per day, respectively, should be as follows:

For ROMEO BASAY:

Basic Pay

= P130.00/day

Salary Received = P122.00/day

Salary Differential = P 8.00/day

P8.00/day x 312 days (for 1998 & 1999) = P2,496.00

For JULIAN LITERAL:

Basic Pay

= P130.00/day

Salary Received =

P 91.00/day

Salary Differential =

P 39.00/day

P39.00/day x 312 days (for 1998 & 1999) = P12,168.00

As regards the 13th month pay, respondents were able to adduce evidence that the benefit was given to the employees for the years 1998, 1999, and 2000. However, for an employee who has been separated from service before the time for payment of the 13th month pay, he is entitled to this monetary benefit in proportion to the length of time he worked during the year, reckoned from the time he started working during the calendar year up to the time of his separation.^[24] The NLRC's award of proportionate 13th month pay computed from January 1, 2001 to August 29, 2001 in favor of Basay and Literal, is therefore proper.

As for petitioner Abueva, he is not entitled to his claims. The NLRC excluded Abueva in its judgment award, ruling that he is not an employee but a mere contractor. The existence of an employer-employee relationship is ultimately a question of fact.[25] Settled is the rule that only errors of law are generally reviewed by this Court.[26] Factual findings of administrative and quasi-judicial agencies specializing in their respective fields, especially when affirmed by the CA, must be accorded high respect, if not finality.[27]

The elements to determine the existence of an employment relationship are: (1) selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the employer's power to control the employee's conduct.[28] In filing a complaint for illegal dismissal, it is incumbent upon Abueva to prove the relationship by substantial evidence.

In this regard, petitioners claim that Abueva has worked with respondents for more than a year already and was allowed to stay inside the hacienda. As such, he is a regular employee entitled to monetary claims. However, petitioners have not presented competent proof that respondents engaged the services of Abueva; that respondents paid his wages or that respondents could dictate what his conduct should be while at work. In other words, Abueva's allegations did not establish that his relationship with respondents has the attributes of employer-employee on the basis of the above-mentioned four-fold test. Therefore, Abueva was not able to discharge the burden of proving the existence of an employer-employee relationship. Moreover, Abueva was not able to refute respondents' assertions that he hires other men to perform weeding job in the hacienda and that he is not exclusively working for respondents.

WHEREFORE, the petition is PARTLY GRANTED. The Decision of the Court of Appeals in CA-G.R. SP No. 00313 dated June 7, 2006, finding petitioners Romeo Basay, Julian Literal and Julian Abueva not illegally dismissed and awarding petitioners Romeo Basay and Julian Literal their proportionate 13[th] month pay computed from January 1, 2001 to August 29, 2001, is AFFIRMED with MODIFICATION that the petitioners Romeo Basay and Julian Literal are entitled to receive the amounts of P2,496.00 and P12,168.00 as salary differentials, respectively.

SO ORDERED.

Carpio, (Chairperson), Brion, Abad, and Perez, JJ., concur.

[1] Rollo, pp. 14-37.

[2] Id. at 164-172; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Apolinario D. Bruselas Jr. and Agustin S. Dizon.

[3] Id. at 137-141; penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Edgardo M. Enerlan and Oscar S. Uy.

[4] Id. at 214- 216. The complaints were later amended on September 27, 2001, id. at 74-76.

[5] Voucher covering the payroll for the period November 12-16, 2001, Annex "1" of Respondents' Position Paper, Id. at 96.

[6] Voucher dated January 4, 2000, Annex "5" of Respondents' Position Paper, Id. at 100-102.

[7] Id. at 105-110.

[8] Id. at 108-109.

- [9] Id. at 111-114.
- [10] Id. at 115-124.
- [11] Annex "2" of Respondents' Memorandum on Appeal, Id. at 131.
- [12] Annex "3" of Respondents' Memorandum on Appeal, Id. at 132-135.
- [13] Supra note 3.
- [14] Rollo, p. 141.
- [15] Id. at 142-154.
- [16] Id. at 158.
- [17] Ledesma, Jr. v. National Labor Relations Commission, G.R. No. 174585, October 19, 2007, 537 SCRA 358, 370.
- [18] Leopard Integrated Services, Inc. v. Macalinao, G.R. No. 159808, September 30, 2008, 567 SCRA 192, 200.
- [19] Annex "4" of respondents' Position Paper, rollo, p. 99.
- [20] Alonzo v. San Juan, 491 Phil. 232, 244 (2005).
- [21] See RULES OF COURT, Rule 130, Section 43.
- [22] G.R. No. 141371, March 24, 2006, 485 SCRA 262, 272.
- [23] Agabon v. National Labor Relations Commission, 485 Phil. 248, 289 (2004).
- [24] Mantle Trading Services, Inc. v. National Labor Relations Commission, G.R. No. 166705, July 28, 2009.
- [25] Aklan v. San Miguel Corporation, G.R. No. 168537, December 11, 2008, 573 SCRA 675, 685.
- [26] Lopez v. Bodega City, G.R. No. 155731, September 3, 2007, 532 SCRA 56, 64.
- [27] V.V. Aldaba Engineering v. Ministry of Labor and Employment, G.R. No. 76925, September 26, 1994, 237 SCRA 31, 38-39.
- [28] CRC Agricultural Trading v. National Labor Relations Commission, G.R. No. 177664, December 23, 2009.

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.