

BITOY JAVIER (DANILO P. JAVIER), PETITIONER, VS. FLY ACE CORPORATION/ FLORDELYN CASTILLO, RESPONDENTS.*G.R. No. 192558. February 15, 2012*

Ponente: MENDOZA, J.

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This is a petition under Rule 45 of the Rules of Civil Procedure assailing the March 18, 2010 Decision[1] of the Court of Appeals (CA) and its June 7, 2010 Resolution,[2] in CA-G.R. SP No. 109975, which reversed the May 28, 2009 Decision[3] of the National Labor Relations Commission (NLRC) in the case entitled *Bitoy Javier v. Fly Ace/Flordelyn Castillo*,[4] holding that petitioner Bitoy Javier (Javier) was illegally dismissed from employment and ordering Fly Ace Corporation (Fly Ace) to pay backwages and separation pay in lieu of reinstatement.

Antecedent Facts

On May 23, 2008, Javier filed a complaint before the NLRC for underpayment of salaries and other labor standard benefits. He alleged that he was an employee of Fly Ace since September 2007, performing various tasks at the respondent's warehouse such as cleaning and arranging the canned items before their delivery to certain locations, except in instances when he would be ordered to accompany the company's delivery vehicles, as *pahinante*; that he reported for work from Monday to Saturday from 7:00 o'clock in the morning to 5:00 o'clock in the afternoon; that during his employment, he was not issued an identification card and payslips by the company; that on May 6, 2008, he reported for work but he was no longer allowed to enter the company premises by the security guard upon the instruction of Ruben Ong (Mr. Ong), his superior;[5] that after several minutes of begging to the guard to allow him to enter, he saw Ong whom he approached and asked why he was being barred from entering the premises; that Ong replied by saying, "Tanungin mo anak mo;" [6] that he then went home and discussed the matter with his family; that he discovered that Ong had been courting his daughter Annalyn after the two met at a fiesta celebration in Malabon City; that Annalyn tried to talk to Ong and convince him to spare her father from trouble but he refused to accede; that thereafter, Javier was terminated from his employment without notice; and that he was neither given the opportunity to refute the cause/s of his dismissal from work.

To support his allegations, Javier presented an affidavit of one Bengie Valenzuela who alleged that Javier was a *stevedore* or *pahinante* of Fly Ace from September 2007 to January 2008. The said affidavit was subscribed before the Labor Arbiter (LA).[7]

For its part, Fly Ace averred that it was engaged in the business of importation and sales of groceries. Sometime in December 2007, Javier was contracted by its employee, Mr. Ong, as extra helper on a *pakyaw* basis at an agreed rate of ₱300.00 per trip, which was later increased to ₱325.00 in January 2008. Mr. Ong contracted Javier roughly 5 to 6 times only in a month whenever the vehicle of its contracted hauler, Milmar Hauling Services, was not available. On April 30, 2008, Fly Ace no longer needed the services of Javier. Denying that he was their employee, Fly Ace insisted that there was no illegal dismissal.[8] Fly Ace submitted a copy of its agreement with Milmar Hauling Services and copies of acknowledgment receipts evidencing payment to Javier for his contracted

services bearing the words, “daily manpower (pakyaw/piece rate pay)” and the latter’s signatures/initials.

Ruling of the Labor Arbiter

On November 28, 2008, the LA dismissed the complaint for lack of merit on the ground that Javier failed to present proof that he was a regular employee of Fly Ace. He wrote:

Complainant has no employee ID showing his employment with the Respondent nor any document showing that he received the benefits accorded to regular employees of the Respondents. His contention that Respondent failed to give him said ID and payslips implies that indeed he was not a regular employee of Fly Ace considering that complainant was a helper and that Respondent company has contracted a regular trucking for the delivery of its products.

Respondent Fly Ace is not engaged in trucking business but in the importation and sales of groceries. Since there is a regular hauler to deliver its products, we give credence to Respondents’ claim that complainant was contracted on “pakiao” basis.

As to the claim for underpayment of salaries, the payroll presented by the Respondents showing salaries of workers on “pakiao” basis has evidentiary weight because although the signature of the complainant appearing thereon are not uniform, they appeared to be his true signature.

x x x x

Hence, as complainant received the rightful salary as shown by the above described payrolls, Respondents are not liable for salary differentials. [9]

Ruling of the NLRC

On appeal with the NLRC, Javier was favored. It ruled that the LA skirted the argument of Javier and immediately concluded that he was not a regular employee simply because he failed to present proof. It was of the view that a pakyaw-basis arrangement did not preclude the existence of employer-employee relationship. “Payment by result x x x is a method of compensation and does not define the essence of the relation. It is a mere method of computing compensation, not a basis for determining the existence or absence of an employer-employee relationship.[10]” The NLRC further averred that it did not follow that a worker was a job contractor and not an employee, just because the work he was doing was not directly related to the employer’s trade or business or the work may be considered as “extra” helper as in this case; and that the relationship of an employer and an employee was determined by law and the same would prevail whatever the parties may call it. In this case, the NLRC held that substantial evidence was sufficient basis for judgment on the existence of the employer-employee relationship. Javier was a regular employee of Fly Ace because there was reasonable connection between the particular activity performed by the employee (as a “pahinante”) in relation to the usual business or trade of the employer (importation, sales and delivery of groceries). He may not be considered as an independent contractor because he could not exercise any judgment in the delivery of company products. He was only engaged as a “helper.”

Finding Javier to be a regular employee, the NLRC ruled that he was entitled to a security of tenure. For failing to present proof of a valid cause for his termination, Fly Ace was found to be liable for illegal dismissal of Javier who was likewise entitled to backwages and separation pay in lieu of reinstatement. The NLRC thus ordered:

WHEREFORE, premises considered, complainant’s appeal is partially GRANTED. The assailed Decision of the labor arbiter is VACATED and a new one is hereby entered holding respondent FLY ACE CORPORATION guilty of illegal dismissal and non-payment of 13th month pay. Consequently, it is hereby ordered to pay complainant DANILO “Bitoy” JAVIER the following:

- Backwages -P45,770.83
- Separation pay, in lieu of reinstatement - 8,450.00
- Unpaid 13th month pay (proportionate) - 5,633.33

TOTAL - P59,854.16

All other claims are dismissed for lack of merit.

SO ORDERED.[11]

Ruling of the Court of Appeals

On March 18, 2010, the CA annulled the NLRC findings that Javier was indeed a former employee of Fly Ace and reinstated the dismissal of Javier's complaint as ordered by the LA. The CA exercised its authority to make its own factual determination anent the issue of the existence of an employer-employee relationship between the parties. According to the CA:

x x x

In an illegal dismissal case the onus probandi rests on the employer to prove that its dismissal was for a valid cause. However, before a case for illegal dismissal can prosper, an employer-employee relationship must first be established. x x x it is incumbent upon private respondent to prove the employee-employer relationship by substantial evidence.

x x x

It is incumbent upon private respondent to prove, by substantial evidence, that he is an employee of petitioners, but he failed to discharge his burden. The non-issuance of a company-issued identification card to private respondent supports petitioners' contention that private respondent was not its employee.[12]

The CA likewise added that Javier's failure to present salary vouchers, payslips, or other pieces of evidence to bolster his contention, pointed to the inescapable conclusion that he was not an employee of Fly Ace. Further, it found that Javier's work was not necessary and desirable to the business or trade of the company, as it was only when there were scheduled deliveries, which a regular hauling service could not deliver, that Fly Ace would contract the services of Javier as an extra helper. Lastly, the CA declared that the facts alleged by Javier did not pass the "control test."

He contracted work outside the company premises; he was not required to observe definite hours of work; he was not required to report daily; and he was free to accept other work elsewhere as there was no exclusivity of his contracted service to the company, the same being co-terminous with the trip only.[13] Since no substantial evidence was presented to establish an employer-employee relationship, the case for illegal dismissal could not prosper.

The petitioners moved for reconsideration, but to no avail.

Hence, this appeal anchored on the following grounds:

I.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE PETITIONER WAS NOT A REGULAR EMPLOYEE OF FLY ACE.II.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE PETITIONER IS NOT ENTITLED TO HIS MONETARY CLAIMS.[14]

The petitioner contends that other than its bare allegations and self-serving affidavits of the other employees, Fly Ace has nothing to substantiate its claim that Javier was engaged on a pakyaw basis. Assuming that Javier was indeed hired on a pakyaw basis, it does not preclude his regular employment with the company. Even the acknowledgment receipts bearing his signature and the confirming receipt of his salaries will not show the true nature of his employment as they do not reflect the necessary details of the commissioned task. Besides, Javier's tasks as pahinante are related, necessary and desirable to the line of business by Fly Ace which is engaged in the importation and sale of grocery items. "On days when there were no scheduled deliveries, he worked in petitioners' warehouse, arranging and cleaning the stored cans for delivery to clients." [15] More importantly, Javier was subject to the control and supervision of the company, as he was made to report to the office from Monday to Saturday, from 7:00 o'clock in the morning until 5:00 o'clock in the afternoon. The list of deliverable goods, together with the corresponding clients and their respective purchases and addresses, would necessarily have been prepared by Fly Ace. Clearly, he was subjected to compliance with company rules and regulations as regards working hours, delivery schedule and output, and his other duties in the warehouse. [16]

The petitioner chiefly relied on *Chavez v. NLRC*, [17] where the Court ruled that payment to a worker on a per trip basis is not significant because "this is merely a method of computing compensation and not a basis for determining the existence of employer-employee relationship." Javier likewise invokes the rule that, "in controversies between a laborer and his master, x x x doubts reasonably arising from the evidence should be resolved in the former's favour. The policy is reflected is no less than the Constitution, Labor Code and Civil Code." [18]

Claiming to be an employee of Fly Ace, petitioner asserts that he was illegally dismissed by the latter's failure to observe substantive and procedural due process. Since his dismissal was not based on any of the causes recognized by law, and was implemented without notice, Javier is entitled to separation pay and backwages.

In its Comment, [19] Fly Ace insists that there was no substantial evidence to prove employer-employee relationship. Having a service contract with Milmar Hauling Services for the purpose of transporting and delivering company products to customers, Fly Ace contracted Javier as an extra helper or pahinante on a mere "per trip basis." Javier, who was actually a loiterer in the area, only accompanied and assisted the company driver when Milmar could not deliver or when the exigency of extra deliveries arises for roughly five to six times a month. Before making a delivery, Fly Ace would turn over to the driver and Javier the delivery vehicle with its loaded company products. With the vehicle and products in their custody, the driver and Javier "would leave the company premises using their own means, method, best judgment and discretion on how to deliver, time to deliver, where and [when] to start, and manner of delivering the products." [20]

Fly Ace dismisses Javier's claims of employment as baseless assertions. Aside from his bare allegations, he presented nothing to substantiate his status as an employee. "It is a basic rule of evidence 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." [21] Invoking the case of *Lopez v. Bodega City*, [22] Fly Ace insists that in an illegal dismissal case, the burden of proof is upon the complainant who claims to be an employee. It is essential that an employer-employee relationship be proved by substantial evidence. Thus, it cites:

In an illegal dismissal case, the onus probandi rests on the employer to prove that its dismissal of an employee was for a valid cause. However, before a case for illegal dismissal can prosper, an employer-employee relationship must first be established.

Fly Ace points out that Javier merely offers factual assertions that he was an employee of Fly Ace, "which are unfortunately not supported by proof, documentary or otherwise." [23] Javier simply assumed that he was an

employee of Fly Ace, absent any competent or relevant evidence to support it. “He performed his contracted work outside the premises of the respondent; he was not even required to report to work at regular hours; he was not made to register his time in and time out every time he was contracted to work; he was not subjected to any disciplinary sanction imposed to other employees for company violations; he was not issued a company I.D.; he was not accorded the same benefits given to other employees; he was not registered with the Social Security System (SSS) as petitioner’s employee; and, he was free to leave, accept and engage in other means of livelihood as there is no exclusivity of his contracted services with the petitioner, his services being co-terminus with the trip only. All these lead to the conclusion that petitioner is not an employee of the respondents.”[24]

Moreover, Fly Ace claims that it had “no right to control the result, means, manner and methods by which Javier would perform his work or by which the same is to be accomplished.”[25] In other words, Javier and the company driver were given a free hand as to how they would perform their contracted services and neither were they subjected to definite hours or condition of work.

Fly Ace likewise claims that Javier’s function as a pahinante was not directly related or necessary to its principal business of importation and sales of groceries. Even without Javier, the business could operate its usual course as it did not involve the business of inland transportation. Lastly, the acknowledgment receipts bearing Javier’s signature and words “pakiao rate,” referring to his earned salaries on a per trip basis, have evidentiary weight that the LA correctly considered in arriving at the conclusion that Javier was not an employee of the company.

The Court affirms the assailed CA decision.

It must be noted that the issue of Javier’s alleged illegal dismissal is anchored on the existence of an employer-employee relationship between him and Fly Ace. This is essentially a question of fact. Generally, the Court does not review errors that raise factual questions. However, when there is conflict among the factual findings of the antecedent deciding bodies like the LA, the NLRC and the CA, “it is proper, in the exercise of Our equity jurisdiction, to review and re-evaluate the factual issues and to look into the records of the case and re-examine the questioned findings.”[26] In dealing with factual issues in labor cases, “substantial evidence – that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion – is sufficient.”[27]

As the records bear out, the LA and the CA found Javier’s claim of employment with Fly Ace as wanting and deficient. The Court is constrained to agree. Although Section 10, Rule VII of the New Rules of Procedure of the NLRC[28] allows a relaxation of the rules of procedure and evidence in labor cases, this rule of liberality does not mean a complete dispensation of proof. Labor officials are enjoined to use reasonable means to ascertain the facts speedily and objectively with little regard to technicalities or formalities but nowhere in the rules are they provided a license to completely discount evidence, or the lack of it. The quantum of proof required, however, must still be satisfied. Hence, “when confronted with conflicting versions on factual matters, it is for them in the exercise of discretion to determine which party deserves credence on the basis of evidence received, subject only to the requirement that their decision must be supported by substantial evidence.”[29] Accordingly, the petitioner needs to show by substantial evidence that he was indeed an employee of the company against which he claims illegal dismissal.

Expectedly, opposing parties would stand poles apart and proffer allegations as different as chalk and cheese. It is, therefore, incumbent upon the Court to determine whether the party on whom the burden to prove lies was able to hurdle the same. “No particular form of evidence is required to prove the existence of such employer-employee relationship. Any competent and relevant evidence to prove the relationship may be admitted. Hence, while no particular form of evidence is required, a finding that such relationship exists must still rest on some substantial

evidence. Moreover, the substantiality of the evidence depends on its quantitative as well as its qualitative aspects.”[30] Although substantial evidence is not a function of quantity but rather of quality, the x x x circumstances of the instant case demand that something more should have been proffered. Had there been other proofs of employment, such as x x x inclusion in petitioner’s payroll, or a clear exercise of control, the Court would have affirmed the finding of employer-employee relationship.”[31]

In sum, the rule of thumb remains: the onus probandi falls on petitioner to establish or substantiate such claim by the requisite quantum of evidence.[32] “Whoever claims entitlement to the benefits provided by law should establish his or her right thereto x x x.”[33] Sadly, Javier failed to adduce substantial evidence as basis for the grant of relief.

In this case, the LA and the CA both concluded that Javier failed to establish his employment with Fly Ace. By way of evidence on this point, all that Javier presented were his self-serving statements purportedly showing his activities as an employee of Fly Ace. Clearly, Javier failed to pass the substantiality requirement to support his claim. Hence, the Court sees no reason to depart from the findings of the CA.

While Javier remains firm in his position that as an employed stevedore of Fly Ace, he was made to work in the company premises during weekdays arranging and cleaning grocery items for delivery to clients, no other proof was submitted to fortify his claim. The lone affidavit executed by one Bengie Valenzuela was unsuccessful in strengthening Javier’s cause. In said document, all Valenzuela attested to was that he would frequently see Javier at the workplace where the latter was also hired as stevedore.[34] Certainly, in gauging the evidence presented by Javier, the Court cannot ignore the inescapable conclusion that his mere presence at the workplace falls short in proving employment therein. The supporting affidavit could have, to an extent, bolstered Javier’s claim of being tasked to clean grocery items when there were no scheduled delivery trips, but no information was offered in this subject simply because the witness had no personal knowledge of Javier’s employment status in the company. Verily, the Court cannot accept Javier’s statements, hook, line and sinker.

The Court is of the considerable view that on Javier lies the burden to pass the well-settled tests to determine the existence of an employer-employee relationship, viz: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee’s conduct. Of these elements, the most important criterion is whether the employer controls or has reserved the right to control the employee not only as to the result of the work but also as to the means and methods by which the result is to be accomplished.[35]

In this case, Javier was not able to persuade the Court that the above elements exist in his case. He could not submit competent proof that Fly Ace engaged his services as a regular employee; that Fly Ace paid his wages as an employee, or that Fly Ace could dictate what his conduct should be while at work. In other words, Javier’s allegations did not establish that his relationship with Fly Ace had the attributes of an employer-employee relationship on the basis of the above-mentioned four-fold test. Worse, Javier was not able to refute Fly Ace’s assertion that it had an agreement with a hauling company to undertake the delivery of its goods. It was also baffling to realize that Javier did not dispute Fly Ace’s denial of his services’ exclusivity to the company. In short, all that Javier laid down were bare allegations without corroborative proof.

Fly Ace does not dispute having contracted Javier and paid him on a “per trip” rate as a stevedore, albeit on a pakyaw basis. The Court cannot fail to note that Fly Ace presented documentary proof that Javier was indeed paid on a pakyaw basis per the acknowledgment receipts admitted as competent evidence by the LA. Unfortunately for Javier, his mere denial of the signatures affixed therein cannot automatically sway us to ignore the documents because “forgery cannot be presumed and must be proved by clear, positive and convincing evidence and the

burden of proof lies on the party alleging forgery.”[36]

Considering the above findings, the Court does not see the necessity to resolve the second issue presented.

One final note. The Court’s decision does not contradict the settled rule that “payment by the piece is just a method of compensation and does not define the essence of the relation.”[37] Payment on a piece-rate basis does not negate regular employment. “The term ‘wage’ is broadly defined in Article 97 of the Labor Code as remuneration or earnings, capable of being expressed in terms of money whether fixed or ascertained on a time, task, piece or commission basis. Payment by the piece is just a method of compensation and does not define the essence of the relations. Nor does the fact that the petitioner is not covered by the SSS affect the employer-employee relationship. However, in determining whether the relationship is that of employer and employee or one of an independent contractor, each case must be determined on its own facts and all the features of the relationship are to be considered.”[38] Unfortunately for Javier, the attendant facts and circumstances of the instant case do not provide the Court with sufficient reason to uphold his claimed status as employee of Fly Ace.

While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. Management also has its rights which are entitled to respect and enforcement in the interest of simple fair play. Out of its concern for the less privileged in life, the Court has inclined, more often than not, toward the worker and upheld his cause in his conflicts with the employer. Such favoritism, however, has not blinded the Court to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and the applicable law and doctrine.[39]

WHEREFORE, the petition is DENIED. The March 18, 2010 Decision of the Court of Appeals and its June 7, 2010 Resolution, in CA-G.R. SP No. 109975, are hereby AFFIRMED.

SO ORDERED.

Carpio, Peralta, Abad, and Perez, JJ., concur.

[*] Designated as additional member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1185 dated February 10, 2012.

[**] Designated as Acting Chairperson, per Special Order No. 1184 dated February 10, 2012.

[***] Designated as additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1192 dated February 10, 2012.

[1] Rollo, pp. 33-46. Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justice Bienvenido L. Reyes (now a member of this Court) and Associate Justice Stephen C. Cruz.

[2] Id. at 30-31.

[3] Id. at 77-86.

[4] Docketed as NLRC LAC No. 02-000346-09(8) and NLRC NCR CN. 05-07424-08.

[5] Rollo, p. 78.

[6] Decision of LA, id. at 88.

[7] Id. at 87.

[8] Id. at 78.

[9] Id. at 92-93.

[10] Id. at 80.

[11] Id. at 86.

[12] Id. at 42.

[13] Id. at 44.

[14] Id. at 16.

[15] Id. at 20.

[16] Id.

[17] 489 Phil. 44 (2005).

[18] *Dealco Farms v. NLRC*, G.R. No. 153192, January 30, 2009, 577 SCRA 280.

[19] *Rollo*, pp. 207-220.

[20] Id. at 209.

[21] Id. at 211.

[22] G.R. No. 155731, September 3, 2007, 532 SCRA 56.

[23] Respondent's Comment, *rollo*, p. 212.

[24] Id. at 215-216.

[25] Id. at 216.

[26] *Masing and Sons Development Corporation and Crispin Chan v. Gregorio P. Rogelio*, G.R. No. 161787, April 27, 2011.

[27] Id., citing *Opulencia Ice Plant and Storage v. NLRC*, G.R. No. 98368, December 15, 1993, 228 SCRA 473, 478.

[28] "The rules of procedure and evidence prevailing in courts of law and equity shall not be controlling and the Commission shall use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process."

[29] *Salvador Lacorte v. Hon. Amado G. Inciong*, 248 Phil. 232 (1988), citing *Gelmart Industries [Phil.] Inc. v. Leogardo, Jr.*, 239 Phil. 386 (1987).

[30] *People's Broadcasting (Bombo Radyo Phils., Inc.) v. The Secretary of the Department of Labor and Employment*, G.R. No. 179652, May 8, 2009, 587 SCRA 724, citing *Opulencia Ice Plant and Storage v. NLRC*, G.R. No. 98368, December 15, 1993, 228 SCRA 473 and *Insular Life Assurance Co., Ltd. Employees Association-Natu v. Insular Life Assurance Co., Ltd.*, 166 Phil. 505 (1977).

[31] Id.

[32] *Jebsens Maritime Inc., represented by Ms. Arlene Asuncion and/or Alliance Marine Services, Ltd. v. Enrique Undag*, G.R. No. 191491, December 14, 2011.

[33] Alex C. Cootauco v. MMS Phil. Maritime Services, Inc., Ms. Mary C. Maquilan and/or MMS Co. Ltd., G.R. No. 184722, March 15, 2010, 615 SCRA 529, 544-545.

[34] Rollo, p. 126.

[35] Avelino Lambo and Vicente Belocura v. NLRC and J.C. Tailor Shop and/or Johnny Co., 375 Phil. 855 (1999), citing Makati Haberdashery, Inc. v. NLRC, 259 Phil. 52 (1989).

[36] Dionisio C. Ladignon v. Court of Appeals and Luzviminda C. Dimaun, 390 Phil. 1161 (2000), citing Heirs of Gregorio v. Court of Appeals, 360 Phil. 753 (1998).

[37] Elias Villuga v. NLRC, G.R. No. L-75038, August 23, 1993, 225 SCRA 537, citing Dy Keh Beng v. International Labor and Marine Union of the Philippines, 179 Phil. 131 (1979).

[38] Avelino Lambo and Vicente Belocura v. NLRC and J.C. Tailor Shop and/or Johnny Co., supra note 35, citing Elias Villuga v. NLRC, G.R. No. L-75038, August 23, 1993, 225 SCRA 537.

[39] Philippine Rural Reconstruction Movement (PRRM) v. Virgilio E. Pulgar, G.R. No. 169227, July 5, 2010, 623 SCRA 244, 257.

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