

MARIO N. FELICILDA, PETITIONER, VS. MANCHESTEVE H. UY, RESPONDENT.*G.R. No. 221241. September 14, 2016*

Ponente: PERLAS-BERNABE, J.

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Assailed in this petition for review on certiorari[1] are the Decision[2] dated July 10, 2015 and the Resolution[3] dated October 21, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 129784, which set aside the Decision[4] dated November 16, 2012 and the Resolution[5] dated February 28, 2013 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 08-002277-12 / NLRC NCR Case No. 12-18409-11 and, instead, dismissed Mario N. Felicilda's (petitioner) complaint for illegal dismissal with money claims for lack of merit.

The Facts

Petitioner alleged that on October 29, 2010, respondent Manchesteve H. Uy (respondent) hired him as a truck driver for the latter's trucking service under the business name "Gold Pillars Trucking"[6] (GPT). In connection, therewith, petitioner was issued a company identification card (ID), assigned in one of GPT's branches in Manila, and paid on a percentage basis.[7] On December 9, 2011, petitioner took a nap at the work station while waiting for his truck to be loaded with cargoes, all of which were delivered to respondent's clients on schedule. The next day, or on December 10, 2011, respondent's helper told petitioner that his employment was already terminated due to his act of sleeping while on the job.[8] Claiming that he was dismissed without just cause and due process, and that his act of taking a nap did not prejudice respondent's business, petitioner filed a complaint[9] for illegal dismissal with money claims against respondent, before the NLRC, docketed as NLRC NCR Case No. 12-18409-11.[10]

In his defense,[11] respondent denied the existence of an employer--employee relationship between him and petitioner, considering that petitioner was: (a) paid merely on a per trip "percentage" basis and was not required to regularly report for work; (b) free to offer his services to other companies; and (c) not under respondent's control with respect to the means and methods by which he performed his job as a truck driver. Respondent added that petitioner's company ID did not indicate that the latter was his employee, but only served the purpose of informing the GPT's clients that petitioner was one of respondent's authorized drivers. Finally, respondent averred that it no longer engaged petitioner's services due to the latter's "serious transgressions and misconduct." [12]

The Labor Arbiter's Ruling

In a Decision[13] dated June 29, 2012, the Labor Arbiter (LA) ruled in petitioner's favor and, accordingly, ordered respondent to pay the aggregate sum of P80,145.52 representing his backwages and separation pay.[14]

Finding that petitioner's service as truck driver was indispensable to respondent's business operations, the LA concluded that petitioner was respondent's regular employee and, thus, may only be dismissed for just or authorized cause and with due process. Absent any showing of a clear and valid cause to terminate petitioner's

employment, respondent was, therefore, guilty of illegal dismissal.[15]

Aggrieved, respondent appealed[16] to the NLRC, docketed as NLRC LAC No. 08-002277-12.

The NLRC Ruling

In a Decision[17] dated November 16, 2012, the NLRC affirmed the LA ruling. It ruled that an employer-employee relationship existed between the parties, considering that: (a) respondent engaged petitioner's services without the aid of a third party or a manpower agency; (b) the payment of wages on a percentage basis did not negate such existence; (c) respondent's power to dismiss petitioner was inherent in his selection and engagement of the latter as truck driver; and (d) respondent exercised control and supervision over petitioner's work as shown in the former's determination of the latter's delivery areas and schedules.[18] Considering that respondent failed to show a lawful cause for petitioner's dismissal, the NLRC sustained the order of payment of monetary awards in petitioner's favor.[19]

Respondent moved for reconsideration,[20] but was denied in a Resolution[21] dated February 28, 2013. Undaunted, respondent filed a petition for certiorari[22] before the CA.

The CA Ruling

In a Decision[23] dated July 10, 2015, the CA set aside the NLRC ruling and, instead, dismissed petitioner's complaint for illegal dismissal with money claims for lack of merit.[24] Contrary to the findings of the LA and the NLRC, the CA held that the elements of payment of wages and control in determining an employer-employee relationship were absent, considering that petitioner was not paid wages, but commissions only, which amounts varied depending on the kind of cargo, length of trip, and fuel consumption. The CA observed that there was no evidence to show that respondent exercised control over the means and methods by which petitioner was to perform his duties. Further, petitioner failed to refute the claims that: (a) the payment of his commission was dependent on his efficiency, discipline, and industry, which factors were beyond respondent's control; (b) he was not required to regularly report for work and may make himself available to other companies; and (c) the company ID was merely issued to him for the purpose of apprising respondent's clients that he was the authorized driver.[25]

Petitioner moved for reconsideration,[26] but was denied in a Resolution[27] dated October 21, 2015; hence, this petition.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA correctly ascribed grave abuse of discretion on the part of the NLRC in ruling that no employer-employee relationship existed between petitioner and respondent and, thus, the latter could not have illegally dismissed the former.

The Court's Ruling

The petition is impressed with merit.

At the outset, it should be mentioned that the jurisdiction of the Supreme Court in cases brought before it from the CA via Rule 45 of the Rules of Court is generally limited to reviewing errors of law and does not extend to a re-evaluation of the sufficiency of evidence upon which the courts a quo had based its determination. This rule, however, is not ironclad and a departure therefrom may be warranted where the findings of fact of the LA and the NLRC, on the one hand, and the CA, on the other, are contradictory, as in this case. There is therefore a need to review the records to determine whether the CA, in the exercise of its certiorari jurisdiction, erred in finding grave abuse of discretion on the part of the NLRC in ruling that respondent was not illegally dismissed.[28]

To justify the grant of the extraordinary remedy of certiorari, petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[29]

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, inter alia, its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[30]

Guided by the foregoing considerations, the Court finds that the CA committed reversible error in granting respondent's certiorari petition since the NLRC did not gravely abuse its discretion in ruling that petitioner was respondent's regular employee and, hence, was illegally dismissed by the latter. In this case, respondent disclaims any liability for illegal dismissal, considering that, in the first place, no employer-employee relationship existed between him and petitioner.

To ascertain the existence of an employer-employee relationship, jurisprudence has invariably adhered to the four-fold test, to wit: (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, or the so-called "control test." [31] Verily, the power of the employer to control the work of the employee is considered the most significant determinant of the existence of an employer-employee relationship. This is the so-called "control test," and is premised on whether the person for whom the services are performed reserves the right to control both the end achieved and the manner and means used to achieve that end.[32] It must, however, be stressed that the "control test" merely calls for the existence of the right to control, and not necessarily the exercise thereof. To be clear, the test does not require that the employer actually supervises the performance of duties by the employee.[33]

Contrary to respondent's submission, which was upheld by the CA, the Court agrees with the labor tribunals that all the four (4) elements are present in this case:

First. It is undisputed that respondent hired petitioner to work as a truck driver for his private enterprise, GPT.

Second. Petitioner received compensation from respondent for the services he rendered. Contrary to the findings of the CA, while the wages paid was determined on a "per trip" or commission basis, it has been constantly ruled that such does not negate employment relationship.[34] Article 97 (f) of the Labor Code broadly defines the term "wage" as "the remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered x x x." [35] That petitioner was paid on a "per trip" or commission basis is insignificant as this is merely a method of computing compensation and not a basis for determining the existence or absence of an employer--employee relationship.[36]

Third. Respondent's power to dismiss was inherent in the selection and engagement of petitioner as truck driver.

Fourth. The presence of the element of control, which is the most important element to determine the existence or absence of employment relationship, can be safely deduced from the fact that: (a) respondent owned the trucks that were assigned to petitioner; (b) the cargoes loaded in the said trucks were exclusively for respondent's clients; and (c) the schedule and route to be followed by petitioner were exclusively determined by respondent. The latter's claim that petitioner was permitted to render service to other companies was not substantiated and there was no showing that he indeed worked as truck driver for other companies. Given all these considerations, while

petitioner was free to carry out his duties as truck driver, it cannot be pretended that respondent, nonetheless, exercised control over the means and methods by which the former was to accomplish his work. To reiterate, the power of control refers merely to the existence of the power. It is not essential for the employer to actually supervise the performance of duties of the employee, as it is sufficient that the former has a right to wield the power,[37] as in this case.

Having established that an employer-employee relationship exists between the parties, it is now incumbent for the Court to determine whether or not respondent validly terminated petitioner's employment.

For a dismissal to be valid, the rule is that the employer must comply with both the substantive and procedural due process requirements. Substantive due process requires that the dismissal must be pursuant to either a just or an authorized cause under Articles 297, 298, and 299 (formerly Articles 282, 283 or 284)[38] of the Labor Code, as amended.[39]

Procedural due process, on the other hand, mandates that the employer must observe the twin requirements of notice and hearing before a dismissal can be effected.[40]

In this case, suffice it to say that aside from respondent's averment that petitioner committed "serious transgressions and misconduct" resulting in the former's loss of trust and confidence, no other evidence was shown to substantiate the same. Such averment should be properly deemed as a self-serving assertion that deserves no weight in law.[41] Neither was petitioner accorded procedural due process as he was merely informed by respondent's helper that he was already terminated from his job. Clearly, respondent illegally dismissed petitioner, and as such, the latter is entitled to backwages and separation pay in lieu of reinstatement, as correctly ruled by the labor tribunals.

WHEREFORE, the petition is GRANTED. The Decision dated July 10, 2015 and the Resolution dated October 21, 2015 of the Court of Appeals in CA-G.R. SP No. 129784 are hereby REVERSED and SET ASIDE. The Decision dated November 16, 2012 and the Resolution dated February 28, 2013 of the National Labor Relations Commission in NLRC LAC No. 08-002277-12 / NLRC NCR Case No. 12-18409-11 are REINSTATED.

SO ORDERED.

Sereno, C. J., Leonardo-De Castro, and Caguioa, JJ., concur.
Bersamin, J., on official leave.

[1] Rollo, pp. 11-24.

[2] Id. at 31-41. Penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justice Fernanda Lampas Peralta and Jane Aurora C. Lantion concurring.

[3] Id. at 43-44.

[4] Id. at 56-62. Penned by Commissioner Perlita B. Velasco with Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go concurring.

[5] Id. at 63-64.

[6] "Goldpillars Trucking" or "Gold Pellars Trucking" in some parts of the rollo.

[7] Rollo, pp. 32. See also id. at 56-57.

[8] Id. at 32 and 57.

- [9] Dated December 12, 2011; id. at 65-67.
- [10] See petitioner's Position Paper dated March 19, 2012; id. at 73.
- [11] See respondent's Position Paper dated February 28, 2012; id. at 80-84.
- [12] See id. at 33 and 57.
- [13] Id. at 93-100. Penned by Labor Arbiter Virginia T. Luyas-Azarraga.
- [14] Id. at 100.
- [15] See id. at 98-99.
- [16] See Memorandum of Appeal dated August 3, 2012; id. at 101-106.
- [17] Id. at 56-62.
- [18] See id. at 58-59.
- [19] Id. at 60-61.
- [20] See motion for reconsideration dated December 11, 2012; id. at 108-111.
- [21] Id. at 63-64.
- [22] Dated May 1, 2013. Id. at 45-53.
- [23] Id. at 31-41.
- [24] Id. at 40.
- [25] See id. at 39-40.
- [26] See motion for reconsideration dated August 18, 2015; id. at 126-136.
- [27] Id. at 43-44.
- [28] See *Tan Brothers Corporation of Basilan City v. Escudero*, 713 Phil. 392, 399-400 (2013).
- [29] See *Cebu People's Multi-purpose Cooperative v. Carbonilla, Jr.*, G.R. No. 212070, January 27, 2016, citing *Bahia Shipping Services, Inc. v. Hipe, Jr.*, G.R. No. 204699, November 12, 2014, 740 SCRA 330, 339.
- [30] See *Cebu People's Multi-purpose Cooperative v. Carbonilla, Jr.*, citing *Bahia Shipping Services, Inc. v. Hipe, Jr.*, id.
- [31] *South East International Rattan, Inc. v. Coming*, G.R. No. 186621, March 12, 2014, 718 SCRA 658, 666, citing *Atok Big Wedge Company, Inc. v. Gison*, 670 Phil. 615, 626-627 (2011).
- [32] *Legend Hotel (Manila) v. Realuyo*, 691 Phil. 226, 240 (2012), citations omitted.
- [33] See *Tongko v. The Manufacturers Life Insurance Co. (Phils.), Inc.*, 655 Phil. 384 (2011).
- [34] "It should also be remembered that a regular status of employment is not based on how the salary is paid to an employee. An employee may be paid purely on commission and still be considered a regular employee." (*AGG Trucking v. Yuag*, 675 Phil. 108, 122 [2011].)
- [35] Italics supplied.

[36] See *Chavez v. NLRC*, 489 Phil. 444, 456-457 (2005).

[37] *Lirio v. Genovia*, 677 Phil. 134, 149 (2011), citing *Social Security System v. CA*, 401 Phil. 132, 151 (2000).

[38] As renumbered under Republic Act No. 10151 entitled "AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS, THEREBY REPEALING ARTICLES 130 AND 131 OF PRESIDENTIAL DECREE NUMBER FOUR HUNDRED FORTY-TWO, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES" approved on June 21, 2011.

[39] See Department of Labor and Employment Department Advisory No. 01, Series of 2015 entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED," approved on July 27, 2015.

[40] *ALPS Transportation v. Rodriguez*, 711 Phil. 122, 129 (2013), citations omitted.

[41] See *People of the Philippines v. Mangune*, 698 Phil. 759, 771 (2012), citing *People v. Espinosa*, 476 Phil. 42, 62 (2004).

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