COLUMBUS PHILIPPINES BUS CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, ZENAIDA DOMASIG AND ROMAN DOMASIG, RESPONDENTS.

G.R. Nos. 114858-59. September 07, 2001

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

This is a petition for certiorari[1] which seeks to nullify the Resolution[2] dated October 29, 1993 of the National LaborRelations Commission (NLRC) affirming the Decision[3] dated September 8, 1992 of the Labor Arbiter Ceferina J. Diosana who found and adjudged that private respondents Roman and Zenaida Domasig were illegally dismissed by petitioner Columbus Philippines Bus Corporation from their positions as driver and bus conductress, respectively.

Petitioner Columbus Philippines Bus Corporation is engaged in the business of operating passenger buses. Since the start of its operations in 1990, it has maintained a list of drivers and conductors who rendered service in its bus units allegedly on a "first come first served" basis and compensated purely on commission. The drivers and conductors/conductress worked for about ten (10) to fifteen (15) days a month and were allegedly not required to work everyday.

Private respondent Roman Domasig started working as a driver with the petitioner on August 30, 1990 with a daily income ranging from Three Hundred Fifty Pesos (P350.00) to Six Hundred Fifty Pesos (P650.00), while his wife and co-respondent, Zenaida Domasig, was employed as a bus conductress on October 1, 1990 with a daily income of Two Hundred Fifty Pesos (P250.00) to Five Hundred Pesos (P500.00). The employment of private respondents Roman and Zenaida Domasig with the petitioner was abruptly terminated on January 21 and 22, 1992, respectively, for their having allegedly formed a labor union.

Thus, these two (2) related cases of unfair labor practice, illegal dismissal, illegal deductions from salary, and non-payment of service incentive leave pay and 13[th] month pay were instituted by private respondents against petitioner Columbus Philippines Bus Corporation and its officers, Atty. Ferdinand Catabian and Mrs. Amelia de Dios, before the Department of Labor and Employment (DOLE), Arbitration Branch in Manila, National Capital Region. The said related cases were assigned to Labor Arbiter Ceferina J. Diosa.

In his "Sinumpaang Salaysay" private respondent Roman Domasig alleged, among others, the following in his affidavit-complaint, to wit:

> "xxx xxx xxx
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> "3. Sa tindi ng galit ng pangasiwaan at upang hindi mabuo ang itinatayo naming unyon, ako'y basta na lamang pinababa mula sa aking regular na bus na may numerong 109 nuong ika-21 ng Enero 1992, bandang alas 4:30 ng madaling araw nang ako'y papalabas na sa garahe at bumiyahe na sana. Simula na noon hindi na ako pinalabas sa biyahe. Ibinigay na sa iba ang aking regular na bus.

"4. Kami'y napilitang magtayo ng unyon dahil sa mahirap na kalagayan namin sa trabaho. Hinaharap namin ang sumusunod:

(a) Mahabang oras sa trabaho. Umaabot sa higit kumulang 19 hanggang 20 oras ang ginugugol namin sa trabaho. Kailangang nasa garahe na kami at lumabas ng alas-4 ng madaling araw at makaalis lamang pagkatapos makapag-engreso ng collection bandang hatinggabi na.

(b) Illegal deductions. Tuwing may labas kami, sapilitang kinakaltasan ang aming sahod para daw sa pulis. Hindi na nga kami binibigyan ng mga benepisyong itinatakda ng batas gaya ng 13[th] month pay at service incentive leave, kinakaltasan pa kami para daw sa pulis.

(k) Wala kaming kaseguruhan sa trabaho. Kapag kami'y nagreklamo, kami agad nilang tatanggalin. Napakadali nilang gawin. Hindi ka lang bibigyan ng bus assignment, wala ka ng magagawa.

"5. Tulad ng ganitong kalagayan namin sa trabaho, inumpisahan naming mangumbinsi sa kapwa naming empleyado noong Disyembre pa ng nakaraang taon. Ang ilan sa mga kasama ko ay sina Leon Agarao, Santiago Tagum, Alejandro Bayroon at Zenaida Domasig. Sila'y tinanggal din sa trabaho. Kumuha kami ng Sama-Samang Pahayag mula sa National Federation of Labor para papirmahan sa mga nais sumapi sa Unyon. Columbus Workers Union ang aming lokal at ito'y isinapi namin sa National Federation of Labor (NFL).

"6. Pagpasok ng bagong taon, 1992, mayroon na kaming napapirma na higit sa limampu (50). Mahigit tatlong daan kami, drayber at konduktor. Sa unang linggo pa lamang ng Enero 1992. Natutunan ng kompanya ang kilos namin. Tinawag na ako ni Atty. Ferdinand Catabian, General Manager ng CPBC bago ako'y tuluyan niyang tinanggal noong ika-21 ng Enero 1992 at tinanong kung totoo na mayroon kaming itinatatag na unyon. Tinanggihan ko noon at ako'y kanyang binigyan ng babala ng ganito: 'Domasig, ayaw ko ng unyon. Kapag mayroon akong mapapanghawakang ebidensiya na kayo'y nagtatayo ng unyon at ikaw ay kasama, titiyakin ko sa iyo na tanggal ka agad.'

"7. Dumating ang araw namin noong ika-21 ng Enero. Noong araw na iyon, humigit kumulang alas 4:30 ng madaling araw, ako'y papalabas ng garahe. Dala-Dala ko ang aking regular bus No. 109. Pinahinto ako ni Legorio Vellesar, dating dispatcher at ngayon ay traffic supervisor at sinabihan na itabi ko ang bus dahil kakausapin daw ako ni Atty. Catabian. Kinabahan na ako nang ibigay sa iba ang aking minamanehong bus.

"8. Pagpasok ko sa opisina ni Atty. Catabian, sinabihan agad ako ni Atty. Catabian ng ganito: `Domasig, Hindi ka na makakalusot pa. Tingnan mo ito.' Mayroon siyang ipinakitang xerox copy ng aming pinapipirmahan Sama-Samang Pahayag. Sa xerox na ito nakita ko ang pirma ni Zenaida Domasig. `Domasig, ito ang ebidensiya na ikaw ay kasama sa unyon. Alam mo Domasig, ako'y , mabuting kaibigan ngunit masamang kaaway. Sinabi ko sa iyo noon na kapag may mahawakan akong ebidensiya na nagtatayo kayo ng unyon maghihiwalay tayo. Ayaw na ayaw ko ng unyon.' Pagkasabi nito ni Atty. Catabian, ako'y kanyang pinalabas na dahil marami pang driver at konductor na nakapila sa labas.

"9. Katunayan, bago kinausap ni Atty. Catabian, marami na sa mga kapwa ko employado ang kinausap ni Atty. Catabian. Pinapipirma sila sa isang kasulatan na kung saan binabawi nila ang kanilang pirma sa Sama-Samang Pahayag. Ang hindi pumirma ay hindi na pinalabas sa biyahe.

"10. Ganon man ang nangyari, pinagpasiyahan pa rin ng mga kasama kong namumuno, kasama ako, na ipagpatuloy pa rin ang pagtatayo ng unyon. Dahil dito, ipinasiya ng mga namumuno, kasama ako at si Zenaida Domasig, na huwag pumirma sa kasulatan at ihain na ang petition for certification election.

"11. Nagdulot na matinding pagkabalisa at takot sa amin ni Zenaida Domasig ang biglang pagtanggal nila sa amin. Wala na kaming aasahan para sa araw-araw na pangangailangan ng aming pamilya. Nabaon kami sa utang

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at malaking kahihiyan sa mga kapit-bahay at kaibigan namin. Tuloy hating-gabi na kung minsan, pinag-iisipan pa rin namin ang kinabukasan ng mga bata: ano kaya ang kanilang kinabukasan. Kung kami o isa sa amin ay tatalikod sa aming pinirmahan, mapapahamak din ang kapwa naming empleyado at tuluyang mawasak ang unyon.

"12. Sadyang napakalupit at hindi makatao ang ginawa ng kompanya sa aming mag-asawa at sa kapwa namin empleyado. Wala man lamang notice sa amin. Hindi man lang kami pinagpaliwanag. Wala naman anumang violations na nagawa namin kundi ang pagtatayo ng unyon.

"13. Dahil dito, hinihingi ko sa Tanggapan ito na ibalik sa akin, para sa pamilya, ang nawalang sahod ko sa panahon na ako'y tanggal sa trabaho. Tuwing labas kumikita ako mula P350 hanggang P650.00 sa loob ng 20 oras humigit kumulang. Hinihingi ko rin na ibalik ako sa trabaho at pagbayarin ang kompanya ng damages bunga ng pinsalang tinamasa namin."

Private respondent Zenaida Domasig also made the following allegations in her affidavit-complaint, to wit:

> "3. Kami'y nagtayo ng unyon dahil sa api naming kalagayan sa trabaho. Napakahaba ang oras ng trabaho namin. Kailangan pumasok kami ng alas-4 ng madaling araw at makakuwi kami ng alas-12 ng hatinggabi. Salitan ng trabaho at pahinga ang aming pagtatarabaho: dalawang (2) araw na labas at dalawang (2) araw na pahinga. Maraming sapilitang kaltas mula sa sahod namin. Tuwing labas namin kinakaltasan kami ng halagang P18.50 ngunit hindi maliwanag kung para saan ito. Mayroon P300 namang resibong ibinibigay. Kapag magreklamo kami, hindi naman kami pasasampahin sa bus.
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> "4. Ang benepisyong itinatakda ng batas ay hindi pa ibinibigay. Ako'y nagkasakit mula ika-15 ng Nobyembre 1991 hanggang ika-14 ng Disyembre1991. Gumawa ako ng sick leave application: isa para sa SSS at isa para sa Employees Compensation Commission. Si Ginoong Roman Domasig ang nagpapirma ng aking applications sa kompanya. Nguni't, hindi nila ibinalik kay Ginoong Domasig and aking applications. Noong lamang ika-12 ng Enero 1992 nila ibinigay sa SSS ang aking sick leave application. Hindi nila ibinigay sa ECC ang isang application ko at ibinalik na lang basta sa akin.
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> "5. Ang hindi nila pagfile agad ng aking sick leave ay ginawa ng kompanya upang magipit kaming mga nangungunang kasapi ng unyon.
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> "6. Sa layuning mapabuti ang aming kalagayan, inumpisahan naming buuin ang unyon noong mga huling buwan ng 1991. Kumuha kami ng application for membership sa National Federation of Labor (NFL). Ito'y ang Sama-samang Pahayag. Bago matapos ang taong 1991, kami'y nakapagpapirma ng hindi kukulangin sa tatlumpu. Sa una o pangalawang linggong Enero 1992, umabot na malamang sa 70 ang nakapirma Ngunit sa unang linggo pa lamang ng Enero 1992, mukhang natutunogan ng pangasiwaan na mayroong nagtatayo ng unyon. Inumpisahan na ni Atty. Ferdinand Catabian na isa-isang pagtatanungin ang kanilang pinaghihinalaang lider ng unyon.
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> Isa sa aking asawa sa mga tinatawag at pinagtatanong ni Atty. Catabian. Sila'y binigyan ng mahigpit na babala. Tinawag uli si Ginoong Domasig noong ika-21 ng Enero 1992. Bago siya tinawag marami ng drayber at konduktor/konduktora na pinatawag ni Atty. Catabian at sila'y naghihintay na kausapin ni Atty. Catabian. Ang mga kinausap ay hindi pinalalabas hanggang hindi sila pumirma sa kasulatan na kanilang binabawi ang kanilang pagsapi sa unyon, ang Columbus Workers Union. Hindi na pinalabas si Ginoong Domasig mula ng araw na iyon dahil hindi siya pumirma sa kasulatan.
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> "7. Kinabukasan, ika-22 ng Enero 1992, ako'y hindi na rin binigyan ng bus assignment. Wala namang ibinibintang na violation laban sa akin. Gaya ng nasabi ko na, wala namang memorandum na ibinigay sa akin. Basta na lamang hindi ako binibigyan ng bus assignment mula noon magpahanggang ngayon. Ang tanging dahilan ng pagtanggal nila sa akin ay ang aking pagsapi sa unyon. Ako'y isa sa mga naunang pumirma sa Sama-Samang Pahayag ng pagsapi sa unyon na kinuha namin mula sa National Federation.

> "8. Agad agad na pinag-usapan ng liderato ng unyon ang panggigipit ng isinagawa ng pangasiwaan. Nagpasiya and iba na para makalabas sila at may makain ang pamilya nila na pumirma sa kasulatan ng pagbawi ng pagiging kasapi nila ng CWU. Sila'y pinalabas. Si Felipe Madrid, isa sa lider namin, ay inilipat pa nga sa Air Conditioned bus pagkatapos niyang pumirma sa kasulatan. Ang dati niyang bus ay No. 109. Hindi ito Air Con. Ngayon, ang kanyang minamaneho ay Bus No. 17 isang Air Con Bus. Ang mga hindi pumirma ay hindi na pinalabas.
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> "9. Ganon paman, pinagpasiyahan na ituloy namin ang pagtatayo ng unyon. Kaya't naghain na kami ng isang petition for certification election sa Department of Labor and Employment.
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> "10. Ang ginawang pagtanggal sa aming mag-asawa ay nagdulot ng malaking pinsala sa aming pamilya. Nabalisa kaming mag-asawa dahil wala na kaming maasahang trabaho. Napilitan kami umutang na sa mga kaibigan at kapit-bahay. Dahil hindi kami makapagbayad sa takdang araw, malaking kahihiyan ang inaabot namin. Naguguluhan din ang pag-iisip namin lalung-lalo na kapag gutom ang mga anak namin at wala man lang kaming pambili ng panawid-gutom. Hindi naman namin maaaring talikuran ang unyon. Kami ang nauna sa pagpapirma sa unyon."

In support of their respective allegations, private respondents submitted documentary evidence such as the Petition for Certification Election, Sama-samang Pahayag ng Pagsapi, Payroll Slips and Parking Fee Slip Receipt.

On the other hand, the petitioner failed to attend the scheduled hearings of the said cases on the alleged ground that it was not notified. It was only after an adverse judgment of the Labor Arbiter that petitioner finally filed its position papers.

In her Decision dated September 8, 1992, the Labor Arbiter found for the complainants, herein private respondents, and ordered the petitioner to reinstate private respondents Roman and Zenaida Domasig to their former positions as driver and bus conductress, respectively, without loss of seniority rights and with backpay accruing from January 21, 1992 and January 22, 1992 up to their actual reinstatement. However, private respondents' other money claims were dismissed for lack of merit.

Aggrieved by the adverse judgment of the Labor Arbiter, petitioner appealed to public respondent National Labor Relations Commission (NLRC) where it was assigned to the First Division. On October 29, 1993, the NLRC affirmed in toto the Labor Arbiter's decision, and in its Order[4] dated January 7, 1994 denied the petitioner's motion for reconsideration. The petitioner now challenges the correctness of the NLRC's decision via the instant petition.

The petitioner Columbus Philippines Bus Corporation alleges that the private respondents like its other drivers and conductors are not regular employees, that the services of private respondents were rendered on a "first come first served" basis and compensated purely on commission basis; that they worked for only about ten (10) to fifteen (15) days a month, and only when they felt like doing so.

To determine whether the employment of an employee is regular or casual, Article 280[5] of the Labor Code is definitive; and whether such employment is regular or casual has nothing to do with the manner of computing and paying the employee's wages or compensation. Rather the said provision of the Labor Code provides that:

> The primary standard, x x x of determining a regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. The connection can be determined by considering the nature of the work performed and its relation to the scheme of the particular business or trade in its entirety. Also, if the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of that

> activity to the business. Hence, the employment is also consider regular, but only with respect to such activity and while such activity exists.[6]

Considering the above-quoted standard for determining a regular employment, it appears that the employment of private respondents is regular. They perform work necessary and desirable in the business of the petitioner. Without the services of the bus drivers and conductors, like the private respondents, the petitioner could not have operated and managed its business of providing transportation services to the public. However, not all employees paid on commission basis can legally be considered as regular employees. In the case of Singer Sewing Machine Company v. Drilon,[7] it was held that while certain individuals were hired to work as collectors or "collecting agents" of the company, nevertheless, per a certain written agreement they were considered as independent contractors and not employees of the company.

As its principal contention, petitioner ascribes grave abuse of discretion on the part of public respondent NLRC in affirming the decision of the Labor Arbiter for being violative of due process and in not ordering the latter to conduct a formal hearing of the case.

Petitioner argues that it did not receive any notice for the hearing scheduled on April 14, 1992. It stressed that the registered mail supposedly containing the notice for the aforesaid hearing was returned "unclaimed" and that no registry notice from the post office was ever delivered to it so that it could claim the same. Petitioner likewise contends that public respondent NLRC disregarded the pronouncement of this Court in the case of Johnson & Johnson (Phils.) Inc. v. Court of Appeals,[8] where we held that:

> The general rule is that service by registered mail is complete upon actual receipt thereof by the addressee. The exception is where the addressee does not claim his mail within 5 days from the date of the first notice of the postmaster, in which case the service takes effect upon the expiration of such period.
>
> Inasmuch as the exception refers to only constructive and not actual service, such exception must be applied only upon conclusive proof that a first notice was duly sent by the postmaster to the addressee. The presumption that official duty has been regularly performed is not applicable where there is evidence to the contrary, as in the case at bar.
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> A certification from the postmaster would be the best evidence to prove that the notice has been validly sent. The mailman may also testify that the notice was actually delivered, as we held in Aldecoa vs. Hon. Arellano and Siquenza. The postmaster should certify not only that the notice was issued or sent but also as to how, when and to whom the delivery thereof was made.

In the light of the record and the evidence adduced in these two (2) related cases, petitioner's argument appears to be without basis. Hence, the petition must be dismissed.

Sections 4 and 5 of the Revised Rules of Procedure of the NLRC, provides the rule for the service of summons and notices in NLRC cases, to wit:

> Sec. 4. Service of notices and resolutions. - a) Notices or summons and copies of orders, resolutions or decisions shall be served personally by the bailiff or the duly authorized public officer or by registered mail on the parties to the case within five (5) days from receipt thereof by the serving officer; Provided, that where a party is represented by counsel or authorized representative, service shall be made on the latter.
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> Sec. 5. Proof and completeness of service. - The return is prima facie proof of the facts indicated therein. Service by registered mail is complete upon receipt by the addressee or his agent.[9]

Considering the above-quoted provisions of the Revised Rules of Procedure of the NLRC, service by registered mail is complete after five (5) days from the date of first notice of the postmaster in the event that the addressee

fails to claim his registered mail from the post office. In the instant cases, petitioner merely stressed that the registered mail containing the notice for the aforesaid scheduled hearing was returned "unclaimed" and that it did not allegedly receive any registry notice from the post office. However, it is a fundamental rule that unless the contrary is proven, official duty is presumed to have been performed regularly and judicial proceedings regularly conducted. This presumption of the regularity of the quasi-judicial proceedings before DOLE includes the presumption of regularity of service of summons and other notices. It was therefore incumbent upon herein petitioner to rebut that legal presumption with competent and proper evidence, for the return of the registered mail as "unclaimed" is prima facie proof of the facts indicated therein.[10] But petitioner failed to do so.

A thorough review of the record of this case discloses the following facts and circumstances, to wit:

> - Petitioner was notified of the hearing on March 12, 1992, at 10:30 o'clock in the morning, with the following warning:
> Failure to appear and submit position paper with affidavit of witness or witnesses and other documentary evidence, if any, will be construed as a waiver of the opportunity to be heard and case will be heard ex-parte.

- Since there was no proof of service to petitioner of this scheduled hearing, another hearing was set on March 26, 1992 at 1:30 o'clock in the afternoon.

- However, on March 16, 1992, petitioner through its liason officer, Mr. Napoleon Pandes, filed a Manifestation and Motion to Reset Schedule Hearing, stating, among other things, that the hearing be reset to April 9, 1992 at 9:30 o'clock in the morning or at a later date and time convenient to this Honorable Commission.

- Thus another hearing was set on April 14, 1992 at 10:00 o'clock in the morning again with the same warning as above quoted.

- In the April 14, 1992 hearing, private respondents appeared as scheduled and waited up to 11:05 a.m., but petitioner failed to appear and submit the required position paper, hence, upon motion of private respondents the case was submitted for decision.

As clearly gleaned from the foregoing facts, petitioner was afforded more than an adequate opportunity to present its evidence. In fact, on March 16, 1992, petitioner through its Liason Officer, Mr. Napoleon Pandes, even filed a Manifestation and Motion, praying that the hearing set on March 26, 1992 be reset to April 9, 1992 or at a later date and time convenient to the Commission. But on the re-scheduled hearing on April 14, 1992, petitioner again failed to appear nor did it file its position paper. If petitioner were really concerned with the outcome of the instant cases, petitioner should have verified, at the very least whether its Manifestation and Motion was acted upon. As correctly stated by the NLRC in its Resolution:

> Obviously, respondents were not so inclined as they must have found the same as an excuse to delay the proceedings in the instant cases. For how else can one explain respondents' failure to show up or follow up on their motions requesting for resetting, and their filing of a position paper five (5) long months after filing their motions and only after a Decision not to their liking was rendered by the Labor Arbiter.

Likewise, notwithstanding petitioner's allegation that it has not received the notices of the Labor Arbiter, it, however, admittedly received a copy of the decision of the Labor Arbiter, and then seasonably pleaded its case by way of appeal before the NLRC. In the interest of justice, the NLRC considered petitioner's position paper, even if it was filed late.

As to the question whether the Labor Arbiter should have conducted a formal hearing, Section 4 of Rule V of the New Rules of Procedure of the NLRC, clearly provides that:

> Determination of Necessity of Hearing. - Immediately after the submission by the parties of their position

> papers/memorandum, the Labor Arbiter shall motu proprio determine whether there is need for a formal trial or hearing. At this stage, he may, at his discretion and for the purpose of making such determination, ask clarificatory questions to further elicit facts or information, including but not limited to the subpoena of relevant documentary evidence, if any from any party or witness.

It is clear from the above-quoted procedural rule that the Labor Arbiter has the authority to determine whether or not there is a necessity for conducting formal hearings in cases brought before him for adjudication. In other words, the holding of a formal hearing or trial is discretionary with the Labor Arbiter and is something that the parties cannot demand as a matter of right.[11] It is entirely within the authority of the Labor Arbiter to decide a labor case before him, based on the position papers and supporting documents of the parties, without a trial or formal hearing. The requirement of due process in labor cases before a Labor Arbiter is satisfied when the parties are given the opportunity to submit their position papers to which they are supposed to attach all the supporting documents or documentary evidence that would prove their respective claims, in the event the Labor Arbiter determines that no formal hearing would be conducted or that such hearing was not necessary.[12]

Equally without merit is petitioner's contention that public respondent NLRC committed grave abuse of discretion amounting to lack of jurisdiction in holding that private respondents were illegally dismissed. Petitioner's contention that the Labor Arbiter ruled in favor of private respondents not because of the evidence submitted by the private respondents but because of petitioner's failure to appear in the scheduled hearing on April 14, 1992 is without factual basis as shown by the record.

The NLRC, in arriving at its decision regarding the illegal dismissal of private respondents, considered the position papers of the parties and the evidence on record. The NLRC in its decision agreed with the Labor Arbiter's findings and conclusions and found nothing substantial in petitioner's position paper to warrant a reversal thereof, thus:

> At any rate, and in the interest of justice, We have considered respondents' Position Paper, although filed belatedly, and We find that the allegations therein and the evidence introduced in support thereof (See annexes "A" to "D-12" of respondents' Position Paper; pp. 62-73 of the Records) do not suffice to support respondents' claim that complainants were not dismissed from their employment.
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> We, therefore, find that the Labor Arbiter did not commit any error in holding that:
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> "Complainants' claim that due to their union activities, as they were the ones instrumental in the formation of the union in the respondents' premises, enlisted employees to be members of the local union, coupled with the fact that a petition for certification of an election was filed before the Department of Labor and Employment, in view of which they were not given any bus assignments, which is tantamount to their dismissal from the service, appears to be credible and with basis. As above stated, respondents miserably failed to controvert this fact, thus, complainants should be reinstated to their former positions, Roman Domasig as driver, and Zenaida Domasig as conductress, with full backwages and other benefits and without loss of seniority rights.

Well-settled is the jurisprudential rule that factual findings of quasi-judicial agencies, such as the NLRC, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect but even finality. They are binding upon this Court which is not a trier of facts. Only upon clear showing of grave abuse of discretion, or that such factual findings were arrived at arbitrarily or in disregard of the evidence on record will this Court step in and proceed to make its own independent evaluation of the facts.[13] No cogent reason exists in the instant cases to deviate from this settled rule.

In termination cases, like the ones before us, the burden of proving that the dismissal of the employees was for a valid and authorized cause rests on the employer. It was incumbent upon petitioner Columbus Philippines Bus Corporation to show by substantial evidence that the termination of the employment of private respondents was

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validly made and failure to discharge that duty would mean that the dismissal is not justified and therefore illegal.[14] On the other hand, abandonment as a just and valid ground for dismissal requires the deliberate, unjustified refusal of the employee to resume his employment. Mere absence or failure to report for work, after notice to return, is not enough to amount to such abandonment.

For a valid finding of abandonment, two (2) factors must be present, viz: (a) the failure to report for work or absence without valid or justifiable reason; and (b) a clear intention to sever employer-employee relationship, with the second element as the more determinative factor being manifested by some overt acts.[15] The herein petitioner failed to present evidence to justify the dismissal of the private respondents. The position paper of petitioner merely contains bare allegations that the hiring of private respondents was purely on commission basis; that they have no working hours; that they are not required to work everyday and that they work only when they wish to earn. It also alleged that private respondents were not dismissed nor suspended, but that they allegedly abandoned their jobs by simply failing to work.

From the factual findings of the Labor Arbiter, the absence of private respondents from work was not without valid or justifiable reason. First, on January 21 and 22, 1992, private respondents were asked to relinquish their assigned buses and from that date forward, they were not given bus assignments. Thus, under the circumstances, we find private respondents' absences supported with valid reason. Second, it appeared that private respondents never intended to sever their working relationship with petitioner. Two weeks after private respondents were not given bus assignments, they filed their subject complaint for illegal dismissal with the DOLE. An employee who forthwith takes steps to protest his layoff cannot be said to have abandoned his work.

It is our view and we hold that the finding and conclusion of the Labor Arbiter and the respondent NLRC that private respondents were illegally dismissed are correct and not arbitrary. We find no cogent reason to reverse the same.

However, the amount of backwages must be properly computed inasmuch as in their respective complaints, private respondents Roman and Zenaida Domasig alleged that they received a daily income ranging from Three Hundred Fifty Pesos (P350.00) to Six Hundred Fifty Pesos (P650.00), and Two Hundred Fifty Pesos (P250.00) to Five Hundred Pesos (P500.00) respectively. The pronouncement of this Court in the case of Icawat v. NLRC,[16] is relevant and instructive, to wit:

> x x x, the dismissal of private respondent being illegal, he is entitled to the payment of backwages. We do not, however, agree with the amount awarded to herein private respondent in the absence of any factual basis thereof. Private respondent has not presented any evidence to warrant such award. The statement in his complaint that he is earning P800.00 to P1,000.00 when he is driving petitioners' jeepney on a "straight" basis, or P500.00 when driving on "half shift" basis, is purely self serving and speculative.

WHEREFORE, the petition is hereby DISMISSED, and the challenged Resolution of public respondent NLRC is AFFIRMED. The computation of the amount of backwages to which private respondents Roman Domasig and Zenaida Domasig are entitled is hereby REMANDED to the Labor Arbiter for appropriate action.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

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[1] Under Rule 65 of the then Revised Rules of Court, now 1997 Rules of Civil Procedure.

[2] Penned by Presiding Commissioner Bartolome S. Carale and concurred in by Commissioners Vicente S.E.

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Veloso and Alberto R. Quimpo, First Division, in NLRC-NCR Case No. 00-02-00858-92 and NLRC-NCR Case No. 00-02-00981-92; Rollo, pp. 64-79.

[3] Rollo, pp. 55-63.

[4] Rollo, pp. 80-81.

[5] "Art. 280. Regular and Casual Employment. - The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exist."

[6] De Leon v. National Labor Relations Commission, 176 SCRA 615, 621 [1989], cited in Baguio Country Club Corporation v. NLRC, 206 SCRA 643, 649 [1992].

[7] 193 SCRA 270, 276-279 [1991] cited in San Miguel Jeepney Service v. NLRC, 265 SCRA 35, 48 [1996]. In these cases, the Court after applying the control test held:

xxx xxx xxx

The nature of the relationship between a company and its collecting agents depends on the circumstances of each particular relationship. Not all collecting agents are employees and neither are all collecting agents independent contractors. The collectors could fall under either category depending on the facts of each case.

The agreement confirms the status of the collecting agent in this case as an independent contractor not only because he is explicitly described as such but also because the provisions permit him to perform collection services for the company without being subject to the control of the latter except only as to the result of his work. x x x.

xxx xxx xxx

The Court finds the contention of the respondents that the union members are employees under Article 280 of the Labor Code to have no basis. The definition that regular employees are those who perform activities which are desirable and necessary for the business of the employer is not determinative in this case. Any agreement may provide that one party shall render services for and in behalf of another for a consideration (no matter how necessary for the latter's business) even without being hired as an employee. This is precisely true in the case of an independent contractorship as well as in an agency agreement. The Court agrees with the petitioner's argument that Article 280 is not the yardstick for determining the existence of an employment relationship because it merely distinguishes between two kinds of employment, i.e., regular employees and casual employees, for purposes of determining the right of an employee to certain benefits, to join or form a union, or to security of tenure. Article 280 does not apply where the existence of an employment relationship is in dispute.

[8] 201 SCRA 768, 770, 771 [1991].

[9] This has been amended by "The New Rules of Procedure of the National Labor Relation Commission" which took effect on December 5, 1996. It now provides that:

> "Sec. 4. Service of notices and resolutions. - a) Notices or summons and copies of orders, resolutions or decisions shall be served on the parties to the case personally by the bailiff or the duly authorized public officer within three (3) days from receipt thereof or by registered mail; Provided that where a party is represented by counsel or authorized representative, service shall be made on such counsel or authorized representative; provided further that in case of decision and final awards, copies thereof shall be served on both the parties and their counsel; provided finally, that in case where parties are so numerous, service shall be made on counsel and upon such number of complainants as may be practicable, which shall be considered substantial compliance with Article 224 (a) of the Labor Code, as amended.
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> xxx xxx xxx
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> "Sec. 5. Proof and completeness of service. - The return is prima facie proof of the facts indicated therein. Service by registered mail is complete upon receipt by the addressee or his agent; but if the addressee fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect after such time.

[10] Masagana Concrete Products v. NLRC, 313 SCRA 576, 586-587 [1999].

[11] Suarez v. National Labor Relation Commission, 293 SCRA 496, 503 [1998].

[12] Mark Roche International, et al., v. NLRC, 313 SCRA 356, 365 [1999].

[13] Audion Electric Co., Inc. v. NLRC, 308 SCRA 340, 349 [1999].

[14] Kiamco v. NLRC, 309 SCRA 424, 435 [1999] citing De La Cruz v. NLRC, 268 SCRA 458 [1997].

[15] Pare v. NLRC, 318 SCRA 179, 183 [1999].

[16] G.R. No. 133573, June 20, 2000.

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