

## FIRST DIVISION

[ G.R. No. 221241, September 14, 2016 ]

**MARIO N. FELICILDA, PETITIONER, VS. MANCHESTEVE H. UY,  
RESPONDENT.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> are the Decision<sup>[2]</sup> dated July 10, 2015 and the Resolution<sup>[3]</sup> dated October 21, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 129784, which set aside the Decision<sup>[4]</sup> dated November 16, 2012 and the Resolution<sup>[5]</sup> 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"<sup>[6]</sup> (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.<sup>[7]</sup> 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.<sup>[8]</sup> 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<sup>[9]</sup> for illegal dismissal with money claims against respondent, before the NLRC, docketed as NLRC NCR Case No. 12-18409-11.<sup>[10]</sup>

In his defense,<sup>[11]</sup> 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."<sup>[12]</sup>

## **The Labor Arbiter's Ruling**

In a Decision<sup>[13]</sup> 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.<sup>[14]</sup>

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.<sup>[15]</sup>

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

## **The NLRC Ruling**

In a Decision<sup>[17]</sup> 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.<sup>[18]</sup> 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.<sup>[19]</sup>

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

## **The CA Ruling**

In a Decision<sup>[23]</sup> 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.<sup>[24]</sup> 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.<sup>[25]</sup>

Petitioner moved for reconsideration,<sup>[26]</sup> but was denied in a Resolution<sup>[27]</sup> 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.<sup>[28]</sup>

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.<sup>[29]</sup>

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.<sup>[30]</sup>

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."<sup>[31]</sup> 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.