

## THIRD DIVISION

[ G.R. No. 192282, October 05, 2016 ]

**A. NATE CASKET MAKER AND/OR ARMANDO AND ANELY NATE, PETITIONERS, VS. ELIAS V. ARANGO, EDWIN M. MAPUSAO, JORGE C. CARIÑO, JERMIE MAPUSAO, WILSON A. NATE, EDGAR A. NATE, MICHAEL A. MONTALES, CELSO A. NATE, BENJES A. LLONA AND ALLAN A. MONTALES, RESPONDENTS.**

### DECISION

**PERALTA, J.:**

Before us is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court which seeks the reversal of the Decision<sup>[2]</sup> dated January 6, 2010, and Resolution<sup>[3]</sup> dated May 13, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 106965. The CA reversed and set aside the Decision<sup>[4]</sup> of the National Labor Relations Commission (NLRC), Sixth Division, in NLRC NCR Case No. 00-02-01233-07 which affirmed the Decision<sup>[5]</sup> of the Labor Arbiter dismissing the complaint for illegal dismissal, underpayment of wages, and non-payment of overtime pay, holiday pay, service incentive leave pay and 13<sup>th</sup> month pay filed by respondents.

The factual antecedents are as follows:

Petitioners Armando and Anely Nate are the owners/proprietors of A. Nate Casket Maker. They employed respondents on various dates as carpenters, *mascilladors* and painters in their casket-making business from 1998 until their alleged termination in March 2007. Petitioners alleged in their Position Paper<sup>[6]</sup> that respondents are *pakyaw* workers who are paid per job order.<sup>[7]</sup> Respondents are "stay-in" workers with free board and lodging, but they would "always" drink, quarrel with each other on petty things such that they could not accomplish the job orders on time. Hence, petitioners would then be compelled to "contract out" to other workers for the job to be finished. On February 3, 2007, they met with respondents in order to present a proposed employment agreement which would change the existing *pakyaw* system to "contractual basis" and would provide for vacation leave and sick leave pay and other benefits given to regular employees. Petitioners alleged that the proposed employment agreement would be more beneficial to respondents.<sup>[8]</sup>

On the other hand, respondents alleged in their Position Paper,<sup>[9]</sup> that they worked from Monday to Saturday, from 7:00a.m. to 10:00 p.m., with no overtime pay and any monetary benefits despite having claimed for such. On March 15, 2007, they were called by petitioners and were made to sign a Contract of Employment<sup>[10]</sup> with the following terms and conditions: (1) they shall be working on contractual basis for a period of five months; (2) renewal of employment contract after such period shall be on a case-to-case basis or subject to respondents' efficiency and

performance; (3) petitioners shall reserve the right to terminate their employment should their performance fall below expectations or if the conditions under which they were employed no longer exist; (4) their wages shall be on a piece-rate basis; (5) in the performance of their tasks, they shall be obliged to strictly follow their work schedules; (6) they shall not be eligible to avail of sick leave or vacation leave, nor receive 13<sup>th</sup> month pay and/or bonuses, or any other benefits given to a regular employee. Respondents then alleged that when they were adamant and eventually refused to sign the contract, petitioners told them to go home because their employment has been terminated.

On February 8, 2007, respondents filed a Complaint for illegal dismissal and non-payment of separation pay against petitioners. On March 15, 2007, they amended the complaint to include claims for underpayment of wages, non-payment of overtime pay, holiday pay, 5-day service incentive leave pay and 13<sup>th</sup> month pay.

On August 15, 2007, Labor Arbiter (LA) Eduardo J. Carpio, issued a Decision dismissing the complaint for lack of merit. While the LA acknowledged that respondents being *pakyaw* workers are considered regular employees, he ruled that petitioners did not terminate the services of respondents and believed in the denial of petitioners that respondents were called to their office on March 15, 2007 since respondents already initiated the present case on February 8, 2007. On the issue of underpayment, the LA held that respondents were earning more than the minimum wage per day; and as *pakyaw* workers, though they are deemed regular workers, they are not entitled to overtime pay, holiday pay, service incentive leave pay and 13<sup>th</sup> month pay citing the case of field personnel and those paid on purely commission basis.

Thereafter, respondents elevated the case before the NLRC, Sixth Division. On July 29, 2008, the NLRC affirmed the Decision of the LA and held that no substantial evidence was presented to show that petitioners terminated the employment of respondents. It stated that *pakyaw* workers are not entitled to money claims because their work depends on the availability of job orders from petitioners' clients. Also, there was no proof that overtime work was rendered by respondents. A motion for reconsideration was filed by respondents but the same was denied.

Aggrieved, respondents filed a petition for *certiorari* before the CA. In a Decision dated January 6, 2010, the CA reversed and set aside the decision of the NLRC. The *fallo* states:

WHEREFORE, the petition for *certiorari* is GRANTED. Public Respondent's Decision dated July 29, 2008 and Resolution dated November 7, 2008 in NLRC LAC No. 12-003252-07 (NCR Case No. 00-02-01233-07) are REVERSED AND SET ASIDE, and in lieu thereof, a new one is ENTERED, declaring petitioners to have been illegally dismissed and ordering private respondents to pay them backwages, separation pay and other monetary benefits as required by law. Upon the finality of this decision and for the enforcement of the same, the Labor Arbiter of origin is directed to conduct further proceedings for the purpose of determining the amount of backwages and separation pay due petitioners.

SO ORDERED.<sup>[11]</sup>

A motion for reconsideration was filed by petitioners but the same was denied by the Court of Appeals on May 13, 2010.

Hence, this petition, raising the following issues for resolution:

1. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DECLARING THAT COMPLAINANTS WERE ILLEGALLY DISMISSED; [and]
2. THERE ARE SERIOUS ERRORS IN THE FINDINGS OF FACTS WHICH, IF NOT CORRECTED, WOULD CAUSE GRAVE AND IRREPARABLE DAMAGE TO THE PRIVATE RESPONDENTS.<sup>[12]</sup>

Petitioners emphasized in their petition that they had always agreed and admitted<sup>[13]</sup> from the beginning of the case the regular employment status of respondents. According to petitioners, what they are insisting, contrary to the findings of the CA, is the alleged fact that they never dismissed the respondents from their employment. They argued that since petitioners' business depended on the availability of job orders, necessarily the duration of respondents' employment is not permanent but coterminous with the completion of such job orders. They further argued that since respondents are "*pakyaw*" workers or "paid by result," they are not entitled to their money claims.

In their Comment to the Petition, respondents countered that only questions of law may be raised in a petition for review on *certiorari* and that the errors being raised by petitioners are questions of fact.

A petition for review on *certiorari* under Rule 45 is a mode of appeal where the issue is limited to questions of law. In labor cases, a Rule 45 petition is limited to reviewing whether the Court of Appeals correctly determined the presence or absence of grave abuse of discretion and deciding other jurisdictional errors of the National Labor Relations Commission.<sup>[14]</sup>

The case of *Career Philippines Shipmanagement, Inc., et al. v. Serna*,<sup>[15]</sup> citing *Montoya v. Transmed Manila Corp./Mr. Ellena, et al.*,<sup>[16]</sup> is instructive on the parameters of judicial review under Rule 45:

As a rule, only questions of law may be raised in a Rule 45 petition. In one case, we discussed the particular parameters of a Rule 45 appeal from the CA's Rule 65 decision on a labor case, as follows:

In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65.

Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.** In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.<sup>[17]</sup>

Therefore, in this kind of petition, the proper question to be raised is, "Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?" In other words, did the CA correctly determine whether the NLRC ruling had basis in fact and in law? In Our Rule 45 review, this Court must deny the petition if it finds that the CA correctly acted. These parameters shall be used in resolving the substantive issues in this petition.<sup>[18]</sup>

To resolve the issue of whether petitioners are guilty of illegal dismissal, We necessarily have to determine the veracity of the parties' allegations, a function we are ordinarily barred from performing when deciding a Rule 45 petition. However, due to the conflicting factual findings of the NLRC and the CA, we find the review of the evidence on record compelling and proper.<sup>[19]</sup>

The crux of the dispute boils down to two issues, namely, (a) whether respondents' employment was terminated, and (b) whether respondents who are *pakyaw* workers and considered regular workers are entitled to overtime pay, holiday pay, service incentive leave pay and 13<sup>th</sup> month pay. Both issues are clearly factual in nature as they involved appreciation of evidence presented before the NLRC.

There is no doubt that respondents have been under the employ of petitioners for some years. The conflict arose when petitioners presented to respondents an employment contract hereunder reproduced:

A. NATE CASKET MAKER  
30 Espirito St. Pangulo  
Malabon, Metro Manila

#### CONTRACT OF EMPLOYMENT

DATE: February 3, 2007

You are hereby assigned as worker/laborer at A. NATE CASKET MAKER. The following constitute the terms and conditions under which the management of NATE CASKET MAKER governs.

You will be working a 5-month contract basis. Your contract will be renewed on a case-to-case basis or based upon the efficiency of your

performance. The company also reserves the right to discontinue or terminate your employment anytime if your performance does not come to expectations or if the conditions under which you have been employed no longer exist.

You will be receiving remuneration on a per item/piece basis [i.e., per casket made]. You are obliged to follow strictly your schedules to work or perform your duty. During the period of your employment, you will not [be] eligible to earn or receive any sick leave pay, [vacation] leave pay, or any other benefits given to regular employees such as 13<sup>th</sup> month pay and bonuses.

This contract and other conditions of your employment are governed further by existing company policies and regulations, of which you have already been oriented into, and by future company policies which may be issued from time to time.

Mr. and Mrs. Armando and Anely NATE  
Proprietor Proprietress

I hereby accept this employment contract knowing and understanding fully well the terms and conditions under which it shall be governed. I hereby acknowledge that I have been thoroughly oriented and I fully understand the whole company policies, rules and regulations and thereby agree to abide by them when employed.

DATE: February 3, 2007

EMPLOYEE/WORKER<sup>[20]</sup>

The said contract with a short term of five (5) months, renewable upon the terms set by petitioners, was presented to respondents on February 3, 2007<sup>[21]</sup> (not February 8, 2007). Naturally, respondents who had been continuously reporting to the petitioners since 1998 without any interruption would have second thoughts on signing the said contract. Feeling disgruntled, they filed a Complaint with the NLRC on February 8, 2016 for money claims. To their minds, it was a way to protect their status of employment. It was explained in the Rejoinder they presented to the LA that it was purely money claims but, not being learned nor assisted by a lawyer, they also checked the box for "illegal dismissal."<sup>[22]</sup>

When the petitioners received the summons on March 15, 2007 in connection with the complaint, respondents were ordered by petitioners to go to the latter's office.<sup>[23]</sup> Because there was no dismissal yet, and thinking perhaps that it was for an amicable settlement of their claims, respondents went to the office of petitioners. However, respondents were presented with the same contract. According to respondents, their refusal to sign the contract irated petitioners who then told them to go home and not to report for work anymore.<sup>[24]</sup> This prompted respondents to file an amended complaint for illegal dismissal and money claims.

The meeting on March 15, 2007 was denied by petitioners as well as the dismissal of respondents. It is worth noting, however, that in the Position Paper of petitioners,