

FIRST DIVISION

[G.R. No. 192998, April 02, 2014]

BERNARD A. TENAZAS, JAIME M. FRANCISCO AND ISIDRO G. ENDRACA, PETITIONERS, VS. R. VILLEGAS TAXI TRANSPORT AND ROMUALDO VILLEGAS, RESPONDENTS.

D E C I S I O N

REYES, J.:

This is a petition for review on *certiorari*^[1] filed under Rule 45 of the Rules of Court, assailing the Decision^[2] dated March 11, 2010 and Resolution^[3] dated June 28, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 111150, which affirmed with modification the Decision^[4] dated June 23, 2009 of the National Labor Relations Commission (NLRC) in NLRC LAC Case No. 07-002648-08.

The Antecedent Facts

On July 4, 2007, Bernard A. Tenazas (Tenazas) and Jaime M. Francisco (Francisco) filed a complaint for illegal dismissal against R. Villegas Taxi Transport and/or Romualdo Villegas (Romualdo) and Andy Villegas (Andy) (respondents). At that time, a similar case had already been filed by Isidro G. Endraca (Endraca) against the same respondents. The two (2) cases were subsequently consolidated.^[5]

In their position paper,^[6] Tenazas, Francisco and Endraca (petitioners) alleged that they were hired and dismissed by the respondents on the following dates:

Name		Date of Hiring	Date of Dismissal	Salary
Bernard Tenazas	A.	10/1997	07/03/07	Boundary System
Jaime Francisco	M.	04/10/04	06/04/07	Boundary System
Isidro Endraca	G.	04/2000	03/06/06	Boundary System ^[7]

Relaying the circumstances of his dismissal, Tenazas alleged that on July 1, 2007, the taxi unit assigned to him was sideswiped by another vehicle, causing a dent on the left fender near the driver seat. The cost of repair for the damage was estimated at P500.00. Upon reporting the incident to the company, he was scolded by respondents Romualdo and Andy and was told to leave the garage for he is already fired. He was even threatened with physical harm should he ever be seen in the company's premises again. Despite the warning, Tenazas reported for work on the following day but was told that he can no longer drive any of the company's units as he is already fired.^[8]

Francisco, on the other hand, averred that his dismissal was brought about by the company's unfounded suspicion that he was organizing a labor union. He was instantaneously terminated, without the benefit of procedural due process, on June 4, 2007.^[9]

Endraca, for his part, alleged that his dismissal was instigated by an occasion when he fell short of the required boundary for his taxi unit. He related that before he was dismissed, he brought his taxi unit to an auto shop for an urgent repair. He was charged the amount of ₱700.00 for the repair services and the replacement parts. As a result, he was not able to meet his boundary for the day. Upon returning to the company garage and informing the management of the incident, his driver's license was confiscated and was told to settle the deficiency in his boundary first before his license will be returned to him. He was no longer allowed to drive a taxi unit despite his persistent pleas.^[10]

For their part, the respondents admitted that Tenazas and Endraca were employees of the company, the former being a regular driver and the latter a spare driver. The respondents, however, denied that Francisco was an employee of the company or that he was able to drive one of the company's units at any point in time.^[11]

The respondents further alleged that Tenazas was never terminated by the company. They claimed that on July 3, 2007, Tenazas went to the company garage to get his taxi unit but was informed that it is due for overhaul because of some mechanical defects reported by the other driver who takes turns with him in using the same. He was thus advised to wait for further notice from the company if his unit has already been fixed. On July 8, 2007, however, upon being informed that his unit is ready for release, Tenazas failed to report back to work for no apparent reason.^[12]

As regards Endraca, the respondents alleged that they hired him as a spare driver in February 2001. They allow him to drive a taxi unit whenever their regular driver will not be able to report for work. In July 2003, however, Endraca stopped reporting for work without informing the company of his reason. Subsequently, the respondents learned that a complaint for illegal dismissal was filed by Endraca against them. They strongly maintained, however, that they could never have terminated Endraca in March 2006 since he already stopped reporting for work as early as July 2003. Even then, they expressed willingness to accommodate Endraca should he wish to work as a spare driver for the company again since he was never really dismissed from employment anyway.^[13]

On May 29, 2008, the petitioners, by registered mail, filed a Motion to Admit Additional Evidence.^[14] They alleged that after diligent efforts, they were able to discover new pieces of evidence that will substantiate the allegations in their position paper. Attached with the motion are the following: (a) Joint Affidavit of the petitioners;^[15] (2) Affidavit of Good Faith of Aloney Rivera, a co-driver;^[16] (3) pictures of the petitioners wearing company shirts;^[17] and (4) Tenazas' Certification/Record of Social Security System (SSS) contributions.^[18]

The Ruling of the Labor Arbiter

On May 30, 2008, the Labor Arbiter (LA) rendered a Decision,^[19] which pertinently states, thus:

In the case of complainant Jaime Francisco, respondents categorically denied the existence of an employer-employee relationship. In this situation, the burden of proof shifts to the complainant to prove the existence of a regular employment. Complainant Francisco failed to present evidence of regular employment available to all regular employees, such as an employment contract, company ID, SSS, withholding tax certificates, SSS membership and the like.

In the case of complainant Isidro Endraca, respondents claim that he was only an extra driver who stopped reporting to queue for available taxi units which he could drive. In fact, respondents offered him in their Position Paper on record, immediate reinstatement as extra taxi driver which offer he refused.

In case of Bernard Tenazas, he was told to wait while his taxi was under repair but he did not report for work after the taxi was repaired. Respondents[,] in their Position Paper, on record likewise, offered him immediate reinstatement, which offer he refused.

We must bear in mind that the complaint herein is one of actual dismissal. But there was no formal investigations, no show cause memos, suspension memos or termination memos were never issued. Otherwise stated, there is no proof of overt act of dismissal committed by herein respondents.

We are therefore constrained to rule that there was no illegal dismissal in the case at bar.

The situations contemplated by law for entitlement to separation pay does [sic] not apply.

WHEREFORE, premises considered, instant consolidated complaints are hereby dismissed for lack of merit.

SO ORDERED.^[20]

The Ruling of the NLRC

Unyielding, the petitioners appealed the decision of the LA to the NLRC. Subsequently, on June 23, 2009, the NLRC rendered a Decision,^[21] reversing the appealed decision of the LA, holding that the additional pieces of evidence belatedly submitted by the petitioners sufficed to establish the existence of employer-employee relationship and their illegal dismissal. It held, thus:

In the challenged decision, the Labor Arbiter found that it cannot be said that the complainants were illegally dismissed, there being no showing, in the first place, that the respondent [sic] terminated their services. A portion thereof reads:

"We must bear in mind that the complaint herein is one of actual dismissal. But there were no formal investigations, no show cause memos, suspension memos or termination memos were never issued. Otherwise stated, there is no proof of overt act of dismissal committed by herein respondents.

We are therefore constrained to rule that there was no illegal dismissal in the case at bar."

Issue: [W]hether or not the complainants were illegally dismissed from employment.

It is possible that the complainants' Motion to Admit Additional Evidence did not reach the Labor Arbiter's attention because he had drafted the challenged decision even before they submitted it, and thereafter, his staff attended only to clerical matters, and failed to bring the motion in question to his attention. It is now up to this Commission to consider the complainants' additional evidence. Anyway, if this Commission must consider evidence submitted for the first time on appeal (*Andaya vs. NLRC*, G.R. No. 157371, July 15, 2005), much more so must it consider evidence that was simply overlooked by the Labor Arbiter.

Among the additional pieces of evidence submitted by the complainants are the following: (1) joint affidavit (records, p. 51-52) of the three (3) complainants; (2) affidavit (records, p. 53) of Aloney Rivera y Aldo; and (3) three (3) pictures (records, p. 54) referred to by the complainant in their joint affidavit showing them wearing t-shirts bearing the name and logo of the respondent's company.

x x x x

WHEREFORE, the decision appealed from is hereby **REVERSED**. Respondent Rom[u]aldo Villegas doing business under the name and style Villegas Taxi Transport is hereby ordered to pay the complainants the following (1) full backwages from the date of their dismissal (July 3, 2007 for Tena[z]as, June 4, 2004 for Francisco, and March 6, 2006 for Endraca[]) up to the date of the finality of this decision[;] (2) separation pay equivalent to one month for every year of service; and (3) attorney's fees equivalent to ten percent (10%) of the total judgment awards.

SO ORDERED. ^[22]

On July 24, 2009, the respondents filed a motion for reconsideration but the NLRC denied the same in its Resolution^[23] dated September 23, 2009.

The Ruling of the CA

Unperturbed, the respondents filed a petition for certiorari with the CA. On March 11, 2010, the CA rendered a Decision,^[24] affirming with modification the Decision dated June 23, 2009 of the NLRC. The CA agreed with the NLRC's finding that Tenazas and Endraca were employees of the company, but ruled otherwise in the case of Francisco for failing to establish his relationship with the company. It also deleted the award of separation pay and ordered for reinstatement of Tenazas and Endraca. The pertinent portions of the decision read as follows:

At the outset, We declare that respondent Francisco failed to prove that an employer-employee relationship exists between him and R. Transport. If there is no employer-employee relationship in the first place, the duty of R. Transport to adhere to the labor standards provisions of the Labor Code with respect to Francisco is questionable.

x x x x

Although substantial evidence is not a function of quantity but rather of quality, the peculiar environmental circumstances of the instant case demand that something more should have been proffered. Had there been other proofs of employment, such as Francisco's inclusion in R.R. Transport's payroll, this Court would have affirmed the finding of employer-employee relationship. The NLRC, therefore, committed grievous error in ordering R. Transport to answer for Francisco's claims.

We now tackle R. Transport's petition with respect to Tenazas and Endraca, who are both admitted to be R. Transport's employees. In its petition, R. Transport puts forth the theory that it did not terminate the services of respondents but that the latter deliberately abandoned their work. We cannot subscribe to this theory.

x x x x

Considering that the complaints for illegal dismissal were filed soon after the alleged dates of dismissal, it cannot be inferred that respondents Tenazas and Endraca intended to abandon their employment. The complainants for dismissal are, in themselves, pleas for the continuance of employment. They are incompatible with the allegation of abandonment. x x x.

For R. Transport's failure to discharge the burden of proving that the dismissal of respondents Tenazas and Endraca was for a just cause, We are constrained to uphold the NLRC's conclusion that their dismissal was not justified and that they are entitled to back wages. Because they were illegally dismissed, private respondents Tenazas and Endraca are entitled to reinstatement and back wages x x x.

x x x x

However, R. Transport is correct in its contention that separation pay should not be awarded because reinstatement is still possible and has