

## FIRST DIVISION

[ G.R. No. 177664, December 23, 2009 ]

**CRC AGRICULTURAL TRADING AND ROLANDO B. CATINDIG,  
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION  
AND ROBERTO OBIAS, RESPONDENTS.**

### D E C I S I O N

**BRION, J.:**

Before this Court is the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision<sup>[1]</sup> of the Court of Appeals (CA) dated February 20, 2007 and its related Resolution dated April 30, 2007<sup>[2]</sup> in CA-G.R. SP No. 95924. The assailed decision reversed and set aside the August 15, 2006 Resolution<sup>[3]</sup> of the National Labor Relations Commission (NLRC), and reinstated the Labor Arbiter's April 15, 2005 Decision<sup>[4]</sup> finding respondent Roberto Obias (*respondent*) illegally dismissed from his employment.

### ANTECEDENT FACTS

The present petition traces its roots to the complaint<sup>[5]</sup> for illegal dismissal filed by the respondent against petitioners CRC Agricultural Trading and its owner, Rolando B. Catindig (collectively, *petitioners*), before the Labor Arbiter on June 22, 2004.

In his *Sinumpaang Salaysay*,<sup>[6]</sup> the respondent alleged that the petitioners employed him as a driver sometime in 1985. The respondent worked for the petitioners until he met an accident in 1989, after which the petitioners no longer allowed him to work. After six years, or in February 1995, the petitioners again hired the respondent as a driver and offered him to stay inside the company's premises. The petitioners gave him a P3,000.00 loan to help him build a hut for his family.

Sometime in March 2003, the petitioners ordered respondent to have the alternator of one of its vehicles repaired. The respondent brought the vehicle to a repair shop and subsequently gave the petitioners two receipts issued by the repair shop. The latter suspected that the receipts were falsified and stopped talking to him and giving him work assignments. The petitioners, however, still paid him P700.00 and P500.00 on April 15 and 30, 2004, respectively, but no longer gave him any salary after that. As a result, the respondent and his family moved out of the petitioners' compound and relocated to a nearby place. The respondent claimed that the petitioners paid him a daily wage of P175.00, but did not give him service incentive leave, holiday pay, rest day pay, and overtime pay. He also alleged that the petitioners did not send him a notice of termination.

In opposing the complaint, the petitioners claimed that the respondent was a

seasonal driver; his work was irregular and was not fixed. The petitioners paid the respondent P175.00 daily, but under a "no work no pay" basis. The petitioners also gave him a daily allowance of P140.00 to P200.00. In April 2003, the respondent worked only for 15 days for which he was paid the agreed wages. The petitioners maintained that they did not anymore engage the respondent's services after April 2003, as they had already lost trust and confidence in him after discovering that he had forged receipts for the vehicle parts he bought for them. Since then, the respondent had been working as a driver for different jeepney operators.<sup>[7]</sup>

### **The Labor Arbiter Ruling**

Labor Arbiter Rennell Joseph R. Dela Cruz, in his decision of April 15, 2005, ruled in the respondent's favor declaring that he had been illegally dismissed. The labor arbiter held that as a regular employee, the respondent's services could only be terminated after the observance of due process. The labor arbiter likewise disregarded the petitioners' charge of abandonment against the respondent. He thus decreed:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondents CRC AGRICULTURAL TRADING and ROLANDO CATINDIG to pay complainant jointly and severally the following:

Separation Pay	-	P64,740.00
Backwages		
Basic pay	-	P146,491.80
13 <sup>th</sup> month pay	-	12,207.65
SIL	-	2,347.63
Salary Differential	-	47,944.00
Unpaid SIL	-	3,467.00
	-	<u>P277,198.08</u>
10% attorney's fees	-	27,719.80
GRAND TOTAL	-	<u>P304,917.80</u>

SO ORDERED.<sup>[8]</sup>

### **The NLRC Ruling**

The petitioners and the respondent both appealed the labor arbiter's decision to the NLRC. The petitioners specifically questioned the ruling that the respondent was illegally dismissed. The respondent, for his part, maintained that the labor arbiter erred when he ordered the payment of separation pay in lieu of reinstatement.

The NLRC, in its resolution of August 15, 2006,<sup>[9]</sup> modified the labor arbiter's decision. The NLRC ruled that the respondent was not illegally dismissed and deleted the labor arbiter's award of backwages and attorney's fees. The NLRC

reasoned out that it was respondent himself who decided to move his family out of the petitioners' lot; hence, no illegal dismissal occurred. Moreover, the respondent could not claim wages for the days he did not work, as he was employed by the petitioners under a "no work no pay" scheme.

### **The CA Decision**

The petitioners filed on August 30, 2006 a petition for *certiorari* with the CA alleging that the NLRC erred in awarding the respondent separation pay and salary differentials. They argued that an employee who had abandoned his work, like the respondent, is no different from one who voluntarily resigned; both are not entitled to separation pay and to salary differentials. The petitioners added that since they had already four regular drivers, the respondent's job was already unnecessary and redundant. They further argued that they could not be compelled to retain the services of a dishonest employee.

The CA, in its decision dated February 20, 2007, reversed and set aside the NLRC resolution dated August 15, 2006, and reinstated the labor arbiter's April 15, 2005 decision.

The CA disregarded the petitioners' charge of abandonment against the respondent for their failure to show that there was deliberate and unjustified refusal on the part of the respondent to resume his employment. The CA also ruled that the respondent's filing of a complaint for illegal dismissal manifested his desire to return to his job, thus negating the petitioners' charge of abandonment. Even assuming that there had been abandonment, the petitioners denied the respondent due process when they did not serve him with two written notices, *i.e.*, (1) a notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) a subsequent notice which advises the employee of the employer's decision to dismiss him. Thus, the respondent is entitled to full backwages without deduction of earnings derived elsewhere from the time his compensation was withheld from him, up to the time of his actual reinstatement. The CA added that reinstatement would no longer be beneficial to both the petitioners and respondent, as the relationship between them had already been strained.

Petitioners moved to reconsider the decision, but the CA denied the motion for lack of merit in its Resolution dated April 30, 2007.

In the present petition, the petitioners alleged that the CA erred when it awarded the respondent separation pay, backwages, salary differentials, and attorney's fees. They reiterated their view that an abandoning employee like respondent is not entitled to separation benefits because he is no different from one who voluntarily resigns.

### **THE COURT'S RULING**

**We do not find the petition meritorious.**

***The existence of an employer-employee relationship***

A paramount issue that needs to be resolved before we rule on the main issue of illegal dismissal is whether there existed an employer-employee relationship between the petitioners and the respondent. This determination has been rendered imperative by the petitioners' denial of the existence of employer-employee relationship on the reasoning that they only called on the respondent when needed.

The elements to determine the existence of an employment relationship are: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the employer's power to control the employee's conduct. The most important element is the employer's control of the employee's conduct, not only as to the result of the work to be done, but also as to the means and methods to accomplish it. All the four elements are present in this case.<sup>[10]</sup>

*First*, the petitioners engaged the services of the respondent in 1995. *Second*, the petitioners paid the respondent a daily wage of P175.00, with allowances ranging from P140.00 to P200.00 per day. The fact the respondent was paid under a "no work no pay" scheme, assuming this claim to be true, is not significant. The "no work no pay" scheme is merely a method of computing compensation, not a basis for determining the existence or absence of employer-employee relationship. *Third*, the petitioners' power to dismiss the respondent was inherent in the fact that they engaged the services of the respondent as a driver. *Finally*, a careful review of the record shows that the respondent performed his work as driver under the petitioners' supervision and control. Petitioners determined how, where, and when the respondent performed his task. They, in fact, requested the respondent to live inside their compound so he (respondent) could be readily available when the petitioners needed his services. Undoubtedly, the petitioners exercised control over the means and methods by which the respondent accomplished his work as a driver.

We conclude from all these that an employer-employee relationship existed between the petitioners and respondent.

### ***The respondent did not abandon his job***

In a dismissal situation, the burden of proof lies with the employer to show that the dismissal was for a just cause. In the present case, the petitioners claim that there was no illegal dismissal, since the respondent abandoned his job. The petitioners point out that the respondent freely quit his work as a driver when he was suspected of forging vehicle parts receipts.

Abandonment of work, or the deliberate and unjustified refusal of an employee to resume his employment, is a just cause for the termination of employment under paragraph (b) of Article 282 of the Labor Code, since it constitutes neglect of duty.

<sup>[11]</sup> The jurisprudential rule is that abandonment is a matter of intention that cannot be lightly presumed from equivocal acts. To constitute abandonment, two elements must concur: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intent, manifested through overt acts, to sever the employer-employee relationship. The employer bears the burden of showing a deliberate and unjustified refusal by the employee to resume his employment without any intention of returning.<sup>[12]</sup>