

FIRST DIVISION

[G.R. No. 121288, November 20, 1998]

ROLANDO DELA CRUZ, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND EMMANUEL LO, RESPONDENTS.

DECISION

DAVIDE, JR., J.:*

In this special civil action for *certiorari* under Rule 65 of the Rules of Court, petitioner seeks to set aside, on ground of grave abuse of discretion, the Decision^[1] of 17 March 1995 of the National Labor Relations Commission (NLRC) in NLRC Case No. V-0254-92 (RAB-06-09-50298-91) and its Resolution^[2] of 19 May 1995 denying the motion for reconsideration. The former affirmed the 15 February 1994 Decision^[3] of Labor Arbiter Rodolfo G. Lagoc ordering private respondent Emmanuel Lo to pay petitioner separation pay but dismissing all other claims of petitioner.

In a complaint^[4] filed on 5 September 1991 before Sub-Regional Arbitration Branch No. 6 of the NLRC, situated in Iloilo City, petitioner charged private respondent Emmanuel Lo with unfair labor practice, illegal dismissal, underpayment of salary, non-payment of overtime pay, legal holiday pay, premium pay for holiday and rest day, and non-payment of wages or commission and separation pay. The case was docketed as SRAB Case No. 06-09-50298-91.

Private respondent filed his Answer^[5] on 9 October 1991. Petitioner and private respondent then filed their position papers^[6] on 4 November 1991 and 21 November 1991, respectively.

On 7 August 1992, after appropriate proceedings, Labor Arbiter Dennis D. Juanon rendered a decision^[7] dismissing the complaint for lack of merit due to the absence of an employer-employee relationship between petitioner and private respondent.

Petitioner seasonably appealed to the NLRC on 9 September 1992. The appeal was docketed as NLRC Case No. V-0254-92 (RAB-06-09-50298-91).

In its Resolution^[8] of 22 October 1992, the NLRC granted petitioner's appeal and remanded the case to Labor Arbiter Juanon for appropriate proceedings. Upon petitioner's motion, Labor Arbiter Juanon inhibited himself from the case.^[9] As such, the case was ultimately reassigned to Labor Arbiter Rodolfo G. Lagoc.

In his decision^[10] of 15 February 1994, Labor Arbiter Lagoc found that petitioner was an employee of private respondent and was illegally dismissed from the service, hence entitled to separation pay, but rejected the charge of unfair labor practice and

dismissed, for lack of merit, petitioner's other monetary claims. The dispositive portion of the decision read as follows:

WHEREFORE, premises considered judgment is rendered as follows:

Respondent Emmanuel Lo is hereby ordered to pay complainant the amount [of] P4,628.00 representing his separation pay.

All other claims are hereby dismissed.

SO ORDERED.

Labor Arbiter Lagoc summarized the factual contentions of the parties, thus:

Complainant [petitioner herein] alleged in his position paper that he started working with respondent Emmanuel Lo in June 1988 as ordinary crew and received wages in cash from the share of the catch of the fishing boat of said respondent; that on January 1989, the complainant was promoted to light boat operator and the wages was [sic] increased from one (1) share as a crew [member] to five (5) shares; that in March 1989 the complainant was again promoted to 'secondo patron' with fixed salary of P200.00 in addition to five (5) shares of the catch and P1.00/fish box commission; that in November 1989, complainant became a full-pledged patron (Captain of respondent's fishing boat known as M/DCA 'Sheenly Joy 1'); that as captain, the complainant received a monthly salary of P450.00 and ten (10) shares of the fish catch plus P2.00/fish box commission; that on December 2, 1990, the undersigned complainant was dismissed by the respondent Emmanuel Lo illegally and unlawfully without notice and separation pay; that on December 13, 1990, the complainant came to the office of the undersigned counsel and the latter wrote respondent a letter of demand; that in 1988, when the complainant was employed by the respondent, the latter owned one fishing boat and when the complainant was dismissed in 1990, the respondent had increased his fishing boat to three (3) boats out of his profit from his first; that each of the respondent's fishing boat[s] went fishing for 22-23 days every month and all the fish caught [sic] on these days were sold everyday and the cash proceeds were kept by the respondent; that at the end of every 22-23 days of fishing, the fishing boat was cleaned by the crew, engine, net and light boat were repaired by the crew, helped and managed by the officers including the complainant; that these cleaning and repair [sic] were charged to the gross income of the month; that the monthly income of the crew would not be given unless these cleaning and repair [sic] were all done; that the system of sharing of the monthly income of the fishing boat was done by the respondent in the following manner:

1. From the monthly gross income, the respondent [would] deduct 25% for maintenance;
2. After deducting the 25%, the respondent and the officers/crew got 10% each (total 20%) from the remaining 75% of the gross, known as "sideline"; the officers/crew (about 24 men) share[d] the sideline (10%) as follows:

- a. Captain 10 shares
- b. Engineer 8 shares
- c. Secondo Captain 8 shares
- d. Encargado 8 shares
- e. Light Boat Chief 6 shares
- f. Secondo Chief 5 shares
- g. Chief Lambatero 6 shares
- h. Secondo Lambatero 4 shares
- I. Lambatero 3 shares
- j. Chief Swimmer 6 shares
- k. Winch Operator 4 shares
- l. Other crew 2 shares

3. Out of the remaining 55% of the remaining of the gross monthly earning, the expenses for the repairs of boat, net, engine, and light boat, oil and fuel, and food and ropes were charged [to the] remaining amount which expenses usually exceeded 55% of the monthly gross income and left nothing to the officers and crew like the complainant.

4. The Officers and crew, including the complainant received monthly income on 10% "sideline" aforementioned and commission P8.00/fish box sold every day which they shared, while the respondent who kept the record of the income and expenses got 35% of the gross monthly income, and free maintenance and repair of his fishing boat and equipment. He also control [sic] the selling price of the daily fish catch and [sic] unknown to the officers and crew.

The respondent was the one who hired the complainant. He made all the job promotions, paid the salaries and dismissed the complainant. The respondent directed personally the fishing operation, where to send the light boat, where to fish and when to [go] ashore. In other words he had complete control of his fishing boat, the officers and crew.

Respondent on the other hand, in [his] Answer and Position Paper, states that he is the owner and operator of three (3) fishing boats operating in the province of Antique; that complainant used to work as patron of one of the fishing vessels owned by the respondent; that the agreement between the complainant and respondent was for the former to share with the members of the crew [sic] and the respondent the catch of the fishing vessels with the respondent providing for fuel and oil, equipments [sic] and other [sic] which the complainant and the crew needs [sic] for a particular voyage; that the fishing vessels go out fishing at the initiative of the complainant and the crew members; that the respondent has no participation whatsoever in so far as the decision when to go out is concerned; that the respondent's only obligation is to provide for fuel and oil and the equipments [sic] needed by the crew; that the complainant was not paid any salary and his compensation consist [sic] only of his share in the catch of the fishing vessel everytime it goes out fishing; that the fishing vessel does not go out everyday nor the whole year round; that it is not true that the complainant receives [a] monthly salary of P450.00 per month because his only compensation is his share in the

catch of the fishing vessel; that there is no employer-employee relationship which exist [sic] between the complainant and the respondent because as alleged patron of the respondent's fishing boat, the complainant is not under the orders of the respondent as regards his alleged employment; that the complainant and the crew go out to sea not upon the direction of the boat owner but upon their own volition as to when and how long and where to go fishing; that the latter perform no services for the boat owner but for their benefit; that the undertaking therefore is a joint venture with the respondent as boat owner, supplying the boat and its equipment and the patron (the complainant) and the crew members contributing necessary labor and the parties getting specific shares for their respective contributions.^[11]

In determining the existence of an employer-employee relationship, Labor Arbiter Lagoc meticulously discussed the elements thereof, especially that of private respondent's power of control over petitioner with respect to the means and methods by which the work was to be accomplished, thus:

Complainant's evidence that control and supervision is exercised by respondent, and certain amounts are given to him aside from his fish share in the catch is his testimony on cross-examination:

"Q. As patron you also decide when to set on [sic] to go out fishing and usually this happen [sic] when the right start [sic]?"

A. Yes, it depends upon the order of the owner, we just obey." (p. 3, TSN 6 August 1993)

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and in the re-direct examination, viz:

"Q. What about when you were patron of the fishing boat of Mr. Lo what you [would] get aside from your share of fish catch monthly or any other compensations [sic]?"

"Labor Arbiter:

Your question is already stated in your Position Paper, paragraph 4'

'Atty. Pefianco:

Yes, Okey [sic] but I want to reiterate it now.

A. P200.00 every month and two pesos per box and there are 15 of us.

Q. That is in your position paper, you stated here P250.00 so which is correct Mr. Witness 250.00 or 500.00 a month?

Atty. Operiano:

I object that is not proper for re-direct.

A. P450.00"

(p. 19, TSN 6 August 1993)

Respondent's evidence on the same issue is his testimony, corroborated by Nismal and Tonding that it is complainant who decides when to sail out to the [sic] sea, where to fish, how long they will stay fishing [at] sea and when to go bank [sic] to the port.

Nismal is the fish dealer of Sheenly Joy 1 owned by respondent while Tonding work[s] as [a] crew member of respondent's boat Sheenly Joy 3.

No material inconsistencies were shown in all the witnesses [sic] testimonies during cross-examination. We are placed in a quandary since both parties may be assumed to be aware of the Supreme Court's ruling in [the] Pajarillo and Ruga cases and adopted their respective positions to conform with the facts of those two (2) cases.

But be that as it may, although respondent's declaration that he does not have supervision and control over the work of complainant is corroborated by witnesses Nismal and Tonding, We nevertheless find the testimonies of the corroborating witnesses as wanting in probative value since there are ties between the witnesses and respondent which under the natural course of things will cause them (witnesses) to take the side of respondent.

There is more probative value in complainant's testimony that respondent gave orders to set sail and that the patron and crew [would] merely obey.

Respondent ha[s] been in the fishing business for years. He first had only one boat. He infused hundreds of thousands, if not millions, as capital in the business and caused the acquisition of two (2) more boats.

This simply means that he is knowledgeable about the deep sea fishing business. Indeed, it is foolhardy for a businessman to invest this kind of money in a fishing boat and let somebody operate it without him exercising at the least the right to control the manner its [sic] going to be used in the work to be done although not actually exercising such right.

Complainant's testimony although uncorroborated is more [within] the realm of the actual facts surrounding the circumstances of this case. Moreover, the positive allegations of complainant prevails over the denials of respondent.

As to the issue concerning illegal dismissal, unfair labor practice and other money claims, Labor Arbiter Lagoc held:

On the issue of illegal dismissal we find for the complainant. The charges of illegal dismissal was by invoking no employer-employee relationship, not refuted by respondent. Thus we find that the severance of [the]