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SECOND DIVISION

[G.R. No. 95845, February 21, 1996]

WILLIAM L. TIU, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND HERMES DELA CRUZ, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

On February 18, 1986, private respondent filed a complaint, for illegal dismissal, violation of the Minimum Wage Law and non-payment of the cost of living allowances, legal holiday pay, service incentive pay and separation pay, against petitioner. Petitioner denied that private respondent was his employee. But after consideration of the parties' evidence, the Labor Arbiter found that private respondent was an employee of petitioner and that he had been illegally dismissed. The Labor Arbiter ordered petitioner to pay private respondent the sum of P25,076.96, corresponding to the latter's differentials, 13th month pay and separation pay. On appeal, the Labor Arbiter's decision was affirmed in toto by the NLRC. Hence this petition for certiorari. Petitioner alleges that the NLRC's decision was made in "reckless disregard" of the applicable facts and law and that it amounts to a grave abuse of discretion of the NLRC.[1]

Petitioner, as operator of the D'Rough Riders Transportation, is engaged in the transportation of passengers from Cebu City to the northern towns of Cebu. Private respondent worked in petitioner's bus terminals as a "dispatcher," assisting and guiding passengers and carrying their bags. The Labor Arbiter and the NLRC found, and petitioner had admitted in his position paper below, that private respondent was paid a regular daily wage of P20.00.

Petitioner denies that private respondent was his employee. He alleges that he did not have the power of selection and dismissal nor the power of control over private respondent. According to petitioner, private respondent, together with so-called "standbys," hung around his bus terminals, assisting passengers with their baggages as "dispatchers." Petitioner claims that, in league with "bad elements" in the locality who threatened to cause damage to his passenger buses and scare passengers away if petitioner and other bus operators did not let them, private respondent and other "standbys" forced passengers to hire them as baggage boys. Petitioner alleges that he had no choice but to allow private respondent and other "standbys" to carry on their activities within the premises of his bus terminals.[2] He also claims he allowed them to do so even if their services as so-called "dispatchers" were not needed in his business. Petitioner insists that as "dispatcher," private respondent worked in his own way, without supervision by him.

The Labor Arbiter and the NLRC found private respondent to be an employee of petitioner, applying the Four-fold test, namely (a) who has the power of selection and engagement of the employees; (b) who pays the wages; (c) who has the power

of dismissal, and (d) and who has the power to control the employees' conduct. The Labor Arbiter stated in his decision:

> Respondents would want this office to believe that the sum of P20.00 that they pay complainant is ex gratia; hence, not compensation for services rendered. This is however belied by respondents' own allegation in their position paper that, "for purposes of preservation of his transportation business, agreed to give each "standby" a fixed daily rate; and in exchange, they would canvass, assist and help passengers of respondents' passenger trucks. This privilege or arrangement was made possible due to the efforts and representation of complainant's father, Mr. Regino dela Cruz, who is close and known to the standbys and/or dispatchers." The impression that this office gets from said allegation is that the P20.00 received by complainant represents the value that respondents attach to complainant's services; hence, it is remuneration for services rendered. Respondent's admission of regular payment of such an amount, already establishes the existence of one of the factors that indicate employment relationship.
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> The right to hire and fire, on the other hand, has been indubitably established by complainant's Exhibit "A" (rebuttal) which remains untraversed and unrefuted, a translation of its contents of which are hereunder quoted for quick and easy reference:
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> Since there was an agreement for your return that When you are caught that you are inside the terminal you are to be dismissed outright and you agreed to this condition so that last Tuesday you were caught taking a bath inside the terminal so that from now on you are no longer with the company "you are dismissed" because you broke the agreement.

Evident therefrom is management's unequivocal language as regards its exercise of the prerogative to dismiss.

> Complainant's Exhibit "D" rebuttal, respondent's official document, reflecting the designation of respondent's witness, (Regino) dela Cruz as Chief Dispatcher, likewise buttresses complainant's claim of employment, for the reason that the office of Chief (Dispatcher) presupposes the existence of subordinates over whom said chief exercises supervisory control. If a chief dispatcher works with the company, uses and signs official documents as is reflected in Exhibit "D", it follows that his employment as such was in consideration of a chief dispatcher's exercise of his duties to supervise and control subordinate dispatchers. Along this line, Regino dela Cruz's testimony that D'Rough Riders does not exercise control over the complainant cannot preponderate over Exhibit "D".
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> In fine, this Office finds that complainant was an employee of respondent.

Affirming the Labor Arbiter decision, the NLRC held:

> We perused at length the record of the instant case, analyzing in the process, the grounds and supporting arguments advanced in the appeal and the reply thereto and we found no merit in the appeal.
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> x x x A reading of the affidavit of Regino dela Cruz, a witness for the respondent who is the Chief Dispatcher and father of the complainant would reveal that it was he who included the complainant as one of the dispatchers of the respondents. Considering that Regino dela Cruz is the Chief Dispatcher, the selection and engagement of the complainant as a dispatcher of the respondents was made thru him and with the acquiescence of the management.
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> Also, it is admitted by the respondents, as borne out by the records, including the affidavit of Regino dela Cruz, that complainant was receiving a fixed daily rate from the respondent. The Labor Arbiter is therefore correct when she ruled that what complainant received from the respondents is a remuneration for services rendered.
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> The power of dismissal which respondents exercised over the person of the complainant is clearly established by complainants' Exhibit "A" (rebuttal). This exhibit refers to a disciplinary memorandum to the complainant written in Visayan dialect. This exhibit was not refuted by the respondents.
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> Also, we agree with the observation of the Labor Arbiter that respondent's Chief Dispatcher is exercising his supervision and control over the complainant who is a dispatcher as clearly manifested in Exhibit "D" (rebuttal) for the complainant.
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> A close scrutiny of the same exhibit would reveal that complainant was indeed signing a daily time record of their hours of work.
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> The evidences [sic] submitted by the complainant have proven that complainant is really an employee of the respondents.

The question whether an employer-employee relationship exists is a question of fact. As long as the findings of the labor agencies on this question are supported by substantial evidence, the findings will not be disturbed on review in this Court. Review in this Court concerning factual findings in labor cases is confined to determining allegations of lack of jurisdiction or grave abuse of discretion.[3]

We agree with the finding that an employer-employee relationship existed between petitioner and private respondent, such finding being supported by substantial evidence. Petitioner has failed to refute the evidence presented by private respondent. He points to his Chief Dispatcher, Regino dela Cruz, as the one who