CEBU CITY

NINETEENTH DIVISION

[CA-G.R. SP NO. 07753, January 30, 2015]

PATERNO BARCELONA, JR., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (7TH DIVISION), CEBU CITY, JOE JERRY DY, ROSE C ROSENBERGL, MRG/ BERND/ ROSE TAXI, RESPONDENTS.

D E C I S I O N

LOPEZ, J.:

Before Us is a Petition for Certiorari[1] assailing the Decision dated February 22, 2013 of the National Labor Relations Commission, 7th Division, Cebu City (hereafter NLRC),[2] the *fallo* of which reads:

> WHEREFORE, premises considered, respondent's appeal is GRANTED as the [Decision] of the Labor Arbqiter is hereby REVERSED AND SET ASIDE and a NEW ONE ENTERED declaring that complainant was present on 14 and 16 March 2012, that no dismissal, whether legal or illegal, is present in this case and that complainant informally and voluntarily terminated his employment with respondents. Consequently, there is no basis for the grant of separation pay, backwages and attorney's fees.
>
> SO ORDERED.[3]

Also assailed is the Resolution dated April 1, 2013[4] denying the Motion for Reconsideration filed thereon.[5]

The antecedent facts are as follows:

On November 20, 2009, herein petitioner Paterno Bacelona, Jr. (hereafter, Paterno) started driving a taxi unit owned by BERND Taxi, which was owned by private respondent Rose C. Rosenberg (hereafter, Rose). He was allegedly hired by his longtime friend, private respondent Joe Jerry Dy (hereafter, Joe), Rose's live-in partner.

Paterno drove an assigned taxi for six days per week, with Thursdays as his time off. He used the taxi from 6:00 o'clock in the morning until around 8-9:00 o'clock in the evenings, and paid to Rose Taxi the amount of P800.00 for its use at the end of each day. He also shouldered the cost for its LPG fuel which was bought at a refilling station specifically named by Rose for her fleet of taxicabs. His daily income comprised what remains after deducting these expenses. The taxi units' maintenance, however, was shouldered by private co-respondents.

Petitioner narrates that on March 12, 2012, he informed Jerry that he had to

accompany his live-in partner in going to Cagayan de Oro that night. Since it was Wednesday and it was his day-off the next day, he told Jerry that he would only be absent on that Friday, March 16. Jerry gave his permission but emphasized that Paterno had to be back on Friday because they were already short of drivers.

They left Cebu City aboard a Supershuttle Ferry that night and arrived in Cagayan de Oro the next day. On March 15, 2012, Thursday, they boarded Trans-Asia II of the Trans-Asia Shipping Lines which was scheduled to arrive in Cebu City at 6:00 o'clock in the morning of the next day, Friday.

Unfortunately, the ship encountered engine trouble and was able to arrive in Cebu City only at around 12:00 o'clock in the afternoon. Petitioner did not go to work because he had already sent Jerry a text message informing the latter that he could not be present that day. Jerry did not reply.

O March 17, 2012, petitioner went to the taxi garage at 6:00 o'clock in the morning but was surprised when the dispatcher told him that Jerry gave instructions not to give him the unit he usually used. Instead, the taxi (with license plate GXE- 733) was given to another driver. He was asked to wait for Jerry who arrived three hours later.

Addressing petitioner by his nickname "Boloy", Jerry apologetically told him that *"Loy, pasensya na kaayo. Pangita na lang ug lain na ka-drayban ky dili na gusto si Rose nga mo-drive pa ka."* ("Loy, I'm sorry. You have to look for another employer because Rose does not want you to drive our units anymore.") When he pressed further, Jerry explained that Rose had gotten angry that he went to Cagayan de Oro and was not able to immediately report for work that Friday. Petitioner pleaded with Jerry but his friend only stated that he could not do anything as the business was owned by Rose who makes the final decisions.

After Paterno succeeded in finding another employment, Paterno filed a Complaint for Illegal Dismissal and Money Claims before the National Labor Relations Commission, Regional Arbitration Branch VII (RAB-VII) on April 20, 2012.[6]

In their Position Paper,[7] Jerry and Rose interposed that their agreement with Paterno was for bailment, not for employment. Paterno and all the other drivers use their taxi units in exchange for rental payments paid upon the return of the unit. In fact, Paterno still owed them a total of P1,390.00 because he fell short of the previous payments due.

While private respondents admitted that they had a semblance of control over the drivers, it was only to ensure compliance with the legislative requirements for public transportation. They pointed out that if Paterno was actually their employee, he would not have been at liberty to be absent for work for days only to present himself one day eager again to drive a taxi unit.

They were also dumbfounded that Paterno represented that he was not allowed to drive on March 16, 2012 because he was able to drive a unit and had even paid the P800.00 rent in full at the end of that day as shown in their office logbook.[8]

On September 28, 2012, the RAB-VII Labor Arbiter rendered its Decision finding in favor of Paterno. It resolved that:

> WHEREFORE, above premises considered, this Court finds that complainant PATERNO BARCELONA, JR. to have been illegally dismissed by respondents JOE JERRY DY and ROSE C. ROSENBERG, proprietors of MRG Taxi/BERND Taxi/ Rose Taxi, and thus herein respondents shall be solidarily liable to pay him the following:
>
> 1. Backwages in the amount of P132,800.00 tentatively computed at the time of the rendition of this Decision or until finality thereof;
> 2. Separation pay in the amount of P41,000.00;
> 3. Attorney's fees equivalent to 10% of the total monetary awards or in the amount of P17,440.00.
>
> However, the complainant shall pay from his monetary awards, his rental shortages in the amount of P1,390.00 to the respondents.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.

Private respondents filed their Notice of Appeal on January 10, 2013[9] before the public respondent NLRC which rendered the assailed Decision[10] and Resolution.[11]

On July 3, 2013, Paterno filed this Petition for Certiorari under Rule 65.

Assignment of Errors:

> I. WHETHER OR NOT THE PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN OVERTURNING THE LABOR ARBITER'S FINDING AND IN RULING THAT THERE IS NO TERMINATION OR DISMISSAL OF EMPLOYMENT IN THIS CASE, WHETHER LEGAL OR ILLEGAL, DESPITE THE REPEATED ADMISSION OF RESPONDENTS THAT THEIR ALLEGED BAILMENT CONTRACT OR EMPLOYER-EMPLOYEE RELATIONSHIP WTH COMPLAINANT IS ALREADY TERMINATED, AND DESPITE PUBLIC RESPONDENT'S OWN FINDING THAT THERE IS NO ABANDONMENT BY THE PETITIONER OF HIS EMPLOYMENT;
>
> II. WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXERCISE OF JURISDICTION IN RULING THAT WHAT ACTUALLY TOOK PLACE IS THE INFORMAL VOLUNTARY TERMINATION OF EMPLOYMENT BY PETITIONER DESPITE ITS FINDING THAT COMPLAINANT DID NOT ABANDON HIS JOB, DID NO RESIGN, AND FURTHERMORE, DESPITE THE IMMEDIATE FILING BY COMPLAINANT OF AN ILLEGAL DISMISSAL CASE.

Ruling:

Petitioner faults the NLRC's ruling declaring that he was not illegally dismissed by private respondents since he was proven to be present on the day he alleged that he

was absent thus resulting in his termination from employment. He further argues that his filing of a complaint for illegal dismissal belied the defense of voluntary termination of employment.

The petition is bereft of merit.

An employee-employer relationship existed.

Private respondents maintain that no employer-employee relationship existed between them and Paterno because what they entered into was a contract of bailment for each time that Paterno used one of their taxi units. They posited that if he was their employee, Paterno should be receiving wages from them, but it was in fact Paterno who owed them money for days when he fell short on his rent payment.

Their argument miserably fails in the light of the Supreme Court ruling in *Paguio Transport Corporation vs. NLRC and Melchor*[12] wherein It pronounced that:

> Petitioner argues that under said arrangement, he had no control over the number of hours private respondent had to work and the routes he had to take. Therefore, he concludes that the employer-employee relationship cannot be deemed to exist.
>
> Petitioner's contention is not novel. *In Martinez vs. National Labor Relations Commission,* [G.R. No. 117495, May 29, 1997] this Court already ruled that the relationship of taxi owners and taxi drivers is the same as that between jeepney owners and jeepney drivers under the "boundary system." In both cases, the employer-employee relationship was deemed to exist, *viz*:
>
> > The relationship between jeepney owners/operators on one hand and jeepney drivers on the other under the boundary system is that of employer-employee and not of lessor-lessee. In the lease of chattels, the lessor loses complete control over the chattel leased. In the case of jeepney owners/operators and jeepney drivers, the former exercise supervision and control over the latter. The fact that the drivers do not receive fixed wages but get only the excess of that so-called boundary they pay to the owner/operator is not sufficient to withdraw the relationship between them from that of employer and employee. The doctrine is applicable in the present case. Thus, private respondents were employees because they had been engaged to perform activities which were usually necessary or desirable in the usual trade or business of the employer.

The case of *Jardin vs. NLRC and Goodman Taxi*[13] also tackles the same issue. Here, the Court of Appeals (hereafter, CA) upheld the NLRC ruling that no employer-employee relationship existed between taxicab owners and taxi drivers who use the *boundary* system. The High Court reversed the CA decision and discussed in this wise:

As mentioned earlier, its October 28, 1994 judgment is not in accord with the applicable decisions of this Court. The labor tribunal reasoned out as follows:

> On the issue of whether or not employer-employee relationship exists, admitted is the fact that complainants are taxi drivers purely on the "boundary system". Under this system the driver takes out his unit and pays the owner/operator a fee commonly called "boundary" for the use of the unit. Now, in the determination of the existence of employer-employee relationship, the Supreme Court in the case of *Sara, et al., vs. Agarrado, et al.* (G.R. No. 73199, 26 October 1988) has applied the following four-fold test: "(1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power of control on the employees conduct."
>
> "Among the four (4) requisites", the Supreme Court stresses that "control is deemed the most important that the other requisites may even be disregarded". Under the control test, an employer-employee relationship exists if the "employer" has reserved the right to control the "employee" not only as to the result of the work done but also as to the means and methods by which the same is to be accomplished. Otherwise, no such relationship exists.
>
> Applying the foregoing parameters to the case herein obtaining, it is clear that the respondent does not pay the drivers, the complainants herein, their wages. Instead, the drivers pay a certain fee for the use of the vehicle. On the matter of control, the drivers, once they are out plying their trade, are free to choose whatever manner they conduct their trade and are beyond the physical control of the owner/operator; they themselves determine the amount of revenue they would want to earn in a day's driving; and, more significantly aside from the fact that they pay for the gasoline they consume, they likewise shoulder the cost of repairs on damages sustained by the vehicles they are driving.
>
> Verily, all the foregoing attributes signify that the relationship of the parties is more of a leasehold or one that is covered by a charter agreement under the Civil Code rather than the Labor Code.
>
> The foregoing ratiocination goes against prevailing jurisprudence.
>
> In a number of cases decided by this Court,[19] We ruled that the relationship between jeepney owners/operators on one hand and jeepney drivers on the other under the boundary system is that of employer-employee and not of lessor-lessee. We explained that in the lease of chattels, the lessor loses