SECOND DIVISION

[CA-G.R. SP NO. 134137, February 27, 2015]

KING RICE MILL MILLING CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND DOMINADOR GARCIA, JR., RESPONDENTS.

DECISION

GONZALES-SISON, M., J.:

For resolution is petitioner King Rice Mill Milling Corporation's ("petitioner") petition for *certiorari*[1] under Rule 65 of the Rules of Court (the "Rules"), praying for the nullification of the Decision[2] of the Third Division of the public respondent National Labor Relations Commission ("NLRC"), in NLRC LAC No. 10-002931-13 promulgated on 30 October 2013, which modified the Decision[3] of the Labor Arbiter in NLRC Case No. RAB-III-02-19764-13, as well as the Resolution[4] of the NLRC denying petitioner's Motion for Reconsideration from the assailed Decision.

The 30 October 2013 Decision disposed:

> "Wherefore, premises considered, the Decision dated September 16, 2013 is hereby MODIFIED by declaring that complainant DOMINADOR GARCIA, JR. was illegally dismissed and by ordering KING RICE MILL MILLING CORPORATION to pay complainant DOMINADOR GARCIA, JR, backwages and separation pay to be computed during the execution proceedings."

The assailed Resolution disposed:

> "ACCORDINGLY, the instant Motion for Reconsideration is hereby DENIED for lack of merit.
>
> No further Motions for Reconsideration shall be entertained.
>
> SO ORDERED."

Now to the antecedents. The Labor Arbiter summarized the original position of the parties as follows:

> " In complainant's position paper, he states that he was employed as a driver in respondent employer King Rice Mill from 1999 up to February 2013. He drove trucks for respondent in San Jose City, Nueva Ecija up to parts of Metro Manila and Southern Luzon. He alleges that he was not "on call" as he was suffered to remain with the rice mill and was required to be at a workplace all the time. He alleges that he was paid at P1,500.00 per trip, payable every trip. Further, complainant asserts that he suffered to work in an indefinite time beyond eight (8) hours per day

and is required to be at work place (sic) seven days a week. He was at the workplace from 7:00 am to 7:00 in the evening. He also alleges that he used to work as mechanic of vehicles used in their trade.

Complainant further stresses that the amount of P1,500.00 per trip was being deducted of P300.00 per trip, allegedly for payment of vehicle parts that could possibly break down as a consequence of wear and tear due to the length of trip and weight of the cargo. He was also burden (*sic*) for paying of (*sic*) parking fees of the trucks he drove without the employer reimbursing him.

Complainant further claims that he was not (*sic*) required to work during holidays but no holiday pay was given to him as provided by law. He also was not paid or availed of Service Incentive Leave. In addition, he alleges that he was not enrolled by his employer at (*sic*) Social Security System (SSS).

Sometimes (*sic*) in late June 2013, complainant was asked by the respondent to drive a closed-van truck carrying rice from San Jose City to Canlubang, Laguna. He arrived in Canlubang and unloaded the cargo. On his way back to San Jose City, the vehicle broke down when its oil filter was punctured. Thus, the vehicle was stuck somewhere in Sucat, Parañaque, and the same was towed by a designated towing company. Complainant further states that he called respondent Manuel Lim and the latter instructed him to remain with the truck. He stayed with the vehicle for two days before another employee of respondents caused the payment of the towing fee thus the release of impounded truck (*sic*).

Complainant contends that upon his return, he was allegedly confronted by respondent Lim and even (sic) uttered degrading remarks branding him as "bad luck" for the respondent corporation, and then blamed complainant for the broken truck and even demanded Garcia to look for another job.

After said meeting, complainant was no longer allowed to work at respondent ricemill and he never received anything from the respondents.

For their defense, respondents through Manuel Lim, avers that Complainant was not a regular employee but only "on call", in the sense that he would only be summoned in the event no driver is available in the rice mill.

Sometimes (*sic*) on 31 December 2012, complainant drove respondents' cargo truck loaded with 470 cavans of rice for delivery to Laguna but instead of delivering 470 cavans of rice, he only delivered o (*sic*) 468 cavans of rice. He discovered from the receipt of the buyer that complainant only delivered 468 cavans with a balance of 2 cavans of rice, until respondent learned from his own truck helper, Raymond D. Lao, that complainant ordered them to unload 2 sacks of rice and sold the same to the "pakwan" vendor at Baliwag, Bulacan.

> Respondents considered complainant committed qualified theft, and thus they filed a criminal case against him before the Office of City of Prosecutor (*sic*) of San Jose City (see Annexes "1", "2" and "3" of respondent's Answer). Thereafter, complainant allegedly admitted that he committed such crime and he promised before respondent that he shall never do the same act. Respondent did not immediately institute any criminal action against the complainant and still allowed him to drive the truck on a case to case basis or on call basis. However, on January 1, 2013[5], respondents allege that due to complainant's negligence, the engine of the truck he was driving bogged down. Due to this, his truck was towed in Taguig City. Respondents further allege that complainant did not show his face until the (sic) received this instant complaint."

Petitioner (then one of the respondents), by Reply, asserted that no employer-employee relationship between it and respondent Dominador Garcia, Jr. ("respondent"), the four elements of the relationship being absent. It also contended that respondent abandoned his work, and denied that respondent worked and was paid P1,500 daily, that his wage was slapped with deductions, and that respondent was dismissed.

Respondent countered by Rejoinder.

The Labor Arbiter dismissed respondent's Complaint. While it ruled that the four elements of an employer-employee relationship existed, and that respondent was a regular employee of petitioner, the Labor Arbiter found that petitioner could not be held liable for illegally dismissing the respondent, as alleged in the latter's Complaint.

The Labor Arbiter explained that respondent failed to substantiate his claim that he was dismissed in the first place. Further, granting that his employer had cursed him and exhorted him to find another job, the Labor Arbiter ruled that respondent failed to show that the same qualified as a dismissal.

Addressing petitioner's claims for unpaid overtime pay, holiday pay, right to service incentive leave, 13th month pay, and wage deduction, the Labor Arbiter denied all these for lack of merit.

According to the Labor Arbiter, respondent is a field personnel, being a non-agricultural employee who regularly performs his duty away from the principal place of business, and whose hours of work cannot be determined with reasonable certainty. Such personnel, held the Labor Arbiter, are not covered by the provisions of the Labor Code which provide for the benefits prayed for by the respondent[6].

The Labor Arbiter also held that respondent was not entitled to 13th month pay. According to the Rules and Regulations Implementing P.D. No. 851, employees who are paid a fixed amount for performing a specific work, and irrespective of time spent in performing the same, under which classification respondent fell, are not entitled to the particular benefit of the 13th month pay.

Lastly, the Labor Arbiter denied respondent from recovering the alleged deductions, as he adduced no evidence that petitioner indeed made those deductions.

The Labor Arbiter's Decision disposed:

> "WHEREFORE, in view of the foregoing, judgment is hereby rendered dismissing the complaint for illegal dismissal for lack of merit and basis.
>
> All money claims of complainant are likewise denied for lack of basis.
>
> SO ORDERED."

The defeated respondent then appealed before the NLRC[7].

On 30 October 2013, the NLRC promulgated the assailed Decision, finding for the employee and ruling that he was illegally dismissed.

The NLRC agreed with the Labor Arbiter that respondent was a regular employee working for the petitioner. The NLRC, however, was unpersuaded that respondent abandoned his work. It held that for abandonment to prosper, the employee must have left his work for no valid or justifiable reason, and that there must be shown a clear intent to sever the employer-employee relationship. Such clear intent, the NLRC discussed, has not been manifested, considering that respondent, the employee, filed a charge for illegal dismissal against his employer, which act jurisprudence has held to be inconsistent with abandonment.[8]

Considering the absence of abandonment, the NLRC held that petitioner had dismissed respondent. Having dismissed its employee, it must then prove the presence of a just cause to validate the dismissal; petitioner, the NLRC found, failed to allege and prove the existence of such just cause.

The NLRC then observed that the relations between petitioner and respondent had been strained, and so ruled that respondent ought to receive separation pay rather than be reinstated. It then remanded the computation of backwages to the Labor Arbiter, following the insufficiency of information to compute respondent's monthly pay, based on a per-trip basis. It also ruled that it could not pass upon the issue of respondent's non-enrollment with the SSS, for lack of jurisdiction.

Petitioner filed a Motion for Reconsideration, but the same was denied.

Hence, this Petition.

Petitioner raised the following issues:

> WHETHER OR NOT PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN MODIFYING/REVERSING THE DECISION DATED SEPTEMBER 16, 2013 OF THE LABOR ARBITER BY DECLARING THE PRIVATE RESPONDENT TO HAVE BEEN ILLEGALLY DISMISSED DESPITE A CLEAR SHOWING THAT THE LATTER WAS NOT DISMISSED BUT IT WAS HE WHO DID NOT SHOWED (*sic*) TO THE PETITIONER AFTER HE ABANDONED THE TRUCK HE WAS DRIVING AFTER ITS ENGINE BOGGED DOWN DUE TO HIS NEGLIGENCE.

> WHETHER OR NOT PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN MODIFYING/REVERSING THE DECISION DATED SEPTEMBER 16, 2013 OF THE LABOR ARBITER BY ORDERING PETITIONER TO PAY HIS (*sic*) BACKWAGES AND SEPARATION (*sic*) IN SPITE OF THE FACT THAT HE WAS NOT DISMISSED FROM HIS EMPLOYMENT BUT IT WAS HE WHO DID NOT REPORT TO PETITIONER CORPORATION.

Petitioner insists that respondent abandoned his work and that there was no dismissal. It argues that what actually happened when the truck, driven by respondent, broke down in Taguig on 1 February 2013, respondent simply fled the scene. It calls respondent's version, in which respondent returned to petitioner's office and was cursed and branded as "bad luck", a mere falsehood.

Petitioner adds that the pending criminal cases it had initiated against respondent puts to doubt the respondent's credibility. Furthermore, respondent did not adduce evidence to support his claim that he had been dismissed, much more, illegally dismissed.

Respondent filed his Comment[9] on 15 July 2014.

He avers that the petitioner failed to contradict the NLRC's finding that he was petitioner's employee, and hence, must have admitted the same. He also argues that the NLRC correctly ruled that he had not abandoned his work, as petitioner failed to establish that he clearly intended to sever his relations with the petitioner. He continues that his filing for illegal dismissal shows that he had no clear intent to abandon his employment.

Respondent then insists that he had indeed been dismissed, for no apparent just cause, after the truck he was driving had broken down and been towed. He denies abandoning it, alleging that he stayed with the vehicle, then reported back for duty, where he was cursed at and exhorted to look for work elsewhere.

Petitioner subsequently filed a Reply, reiterating its position that respondent renders work only on an "on-call" basis, to substitute only when there are no regular drivers who can drive for the petitioner. It maintains that respondent was never dismissed, that there is no proof of that dismissal. The correct conclusion, petitioner contends, is that respondent abandoned his work.

On 1 December 2014, respondent filed his Memorandum[10]. Petitioner did not file a Memorandum, and, following the lapse of the period to do so[11], We now resolve this case.

The core issue is whether or not respondent had been dismissed. In resolving this issue, We shall also confront the other side of the coin, that is, whether or not respondent had abandoned his work. Should We find respondent to have been dismissed, We consequently resolve whether the dismissal was illegal and whether respondent must be paid backwages and separation pay.

Preliminarily, We find that the issue of whether or not respondent is a regular