FOURTH DIVISION

[CA-G.R. SP NO. 130803, March 09, 2015]

LIGHTNING TRUCKING SERVICE AND ARNEL TESORERO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, DANILO P. SULIT, RODRIGO P. GANOB, MARIO G. VILLARIN, RITO M. ADRAN AND ROMEO D. SOTILLO, RESPONDENTS.

DECISION

BALTAZAR-PADILLA, J.:

Before US is a petition for *certiorari* to annul the February 28, 2013 Decision[1] of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. 01-00201-12 and the Resolution[2] denying the motion for reconsideration thereof. The NLRC affirmed the Decision of the Labor Arbiter declaring the dismissal of respondents Danilo P. Sulit (Sulit), Rodrigo P. Ganob (Ganob), Mario G. Villarin (Villarin), Rito M. Adrian (Adrian) and Romeo D. Sotillo (Sotillo) illegal and ordering petitioners to pay them separation pay, backwages and attorney's fees.

Petitioner corporation Lightning Trucking Services, Inc. is a domestic corporation duly organized and existing under Philippine laws while co-petitioner Arnel V. Tesosero (Tesosero) is petitioner company's President. They shall be collectively referred to as petitioners. Respondents were formerly working as truck drivers of petitioner corporation. Public respondent NLRC is impleaded as a nominal party for issuing the herein impugned Decision and Resolution.

The present controversy traces its roots to the Complaint for illegal dismissal with payment of money claims, illegal deduction, separation pay, moral and exemplary damages and attorney's fees filed by respondents against petitioners.

In their Position Paper[3], respondents allege that they were hired by petitioners as regular drivers on different dates, to wit: Sulit – May 19, 2006; Sotillo – November 27, 2006; Ganob, Jr. - February 1, 2007; and Adran – May 28, 2008. They were merely paid on a per trip basis even though they are reporting daily for work. The trucks they were driving are "colorum" and they were made to pay for the fines for any traffic violations. They also paid the penalty of P1,200 for every damaged box. They were usually given P1,000 after every three successful deliveries as allowance for the trucks' maintenance and payment of the toll fees.

On November 15, 2011, respondents were purportedly illegally dismissed by petitioners because they sought the help of Mr. Raffy Tulfo for the latter's failure to give them the proper amount of salaries and benefits. They were advised to file the instant complaint before the Department of Labor and Employment (DOLE), National Capital Region (NCR). They maintained that petitioners failed to observe substantive and procedural due process. Since their dismissal was not based on any of the causes recognized by law, and the same was implemented without notice, they are

entitled to separation pay, full backwages and other benefits.

Petitioners countered that they did not regularly engage the services of respondents. Petitioners asserted that respondents did not sign employment contracts with them, hence, there was no employer-employee relationship between them. Respondents were hired by petitioners as truck drivers on a per trip basis at the rate of Three Hundred Fifty Pesos (350.00) to Three Thousand Five Hundred Pesos (P3,500.00). Their assigned travel route starts at Carmona, Cavite to any point in Luzon or Visayas. Respondents' services were supposedly only engaged when there would be deliveries to be done. They were issued their pay slips showing the corresponding payments they received for the days that they had worked. They were provided with identification cards solely to be used as gate passes and for them to be easily identified by petitioners' clients when they make their deliveries. They can work for other employers when their services are not engaged by petitioners. As a company policy, respondents were given reserved funds to be used as payment for toll fees, wrecker charges and other charges during emergencies. It was their agreement that respondents shall shoulder all the damages that may be incurred during their deliveries.[4]

Sometime in November 2011, petitioners ordered respondents to make certain deliveries but the latter disregarded such directive. Respondents did not report for work from then on. They clearly abandoned their work, hence, they are not entitled to backwages and other benefits. Petitioners, therefore, were forced to hire other drivers. Petitioners were later surprised when they learned that respondents already instituted the extant complaint before the DOLE, NCR. Respondents evidently acted in bad faith when they lodged the present complaint which compelled petitioners to engage the services of a counsel to defend and protect their rights.[5]

After the parties had filed their respective pleadings, the Labor Arbiter rendered the Decision dated August 17, 2012, finding petitioners guilty of illegal dismissal. The Labor Arbiter held that respondents performed their tasks as per the instructions of petitioners. They were expected to carry out their assigned duties based on the guidelines provided by petitioners. Under the control test, there is an employer-employee relationship when the person for whom the services are performed reserves the right to control not only the end achieved but also the manner and means used to achieve that end. Accordingly, petitioners were ordered to pay respondents their full backwages and separation pay. The dispositive portion of the said Decision states:

> "WHEREFORE, premises considered, decision is hereby rendered declaring complainant's dismissal to be illegal. Respondents LIGHTNING TRUCKING SERVICE and/or ARNEL TESORERO are hereby ordered to pay complainants separation pay and full backwages as follows:
>
> Backwages Separation Pay Total
>
> | | | | |
> |---|---|---|---|
> | DANILO P. SULIT | 110,500.00 | 78,000.00 | 188,500.00 |
> | RODRIGO P. GANOB | 77,350.00 | 54,600.00 | 131,950.00 |
> | RITO M. ADRAN | 99,450.00 | 35,100.00 | 134,550.00 |
> | ROMEO D. SOTILLO | 97,929.00 | 70,200.00 | 168,129.00 |
> | TOTAL | | | 623,129.00 |

the detailed computation of which is found in the attached Report submitted by the Computation and Examination Unit of this Branch which is considered as part of this decision.

In addition, respondents are ordered to pay complainants attorney's fees equivalent to ten (10%) of the total judgment award or 62,312.90.

Complainants' money claims are denied for lack of basis.

SO ORDERED."

On appeal, the NLRC dismissed petitioners' appeal and partially affirmed the Decision of the Labor Arbiter. The NLRC decreed in this wise:

"**WHEREFORE,** premises considered, the appeal is **DISMISSED** for lack of merit. The decision dated August 14, 2012, finding complainants' dismissal illegal and directing respondents appellants to pay separation pay and full backwages is **AFFIRMED.**

SO ORDERED."

Petitioners sought reconsideration of the above-quoted Decision of the NLRC but the same was denied in a Resolution dated April 29, 2013.

Hence, petitioners are before US via the instant petition raising the following grounds in support thereof, to wit:

I

THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN FINDING THAT THERE IS NO IMPROPER VENUE.

II

THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AND IS IN EXCESS OF ITS JURISDICTION WHEN IT FOUND THAT THERE WAS AN EMPLOYER-EMPLOYEE RELATIONSHIP AND THAT PRIVATE RESPONDENTS WERE ILLEGALLY DISMISSED WITHOUT ANY SUBSTANTIAL EVIDENCE TO SUPPORT THE SAME.

III

THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AND IS IN EXCESS OF ITS JURISDICTION WHEN IT INCLUDED THE INDIVIDUAL RESPONDENT AS LIABLE FOR THE MONETARY AWARD OF THE PRIVATE RESPONDENTS.

Petitioners contend that there being no written agreement between the parties to change or transfer the venue to NCR Arbitration Branch, the jurisdiction of the extant complaint lies with the Arbitration Branch of Region IV since the respondents' workplace is situated at Carmona, Cavite. The 2011 NLRC Rules of Procedure provides that for purposes of venue, the workplace shall be understood as the place

or locality where the employee is regularly assigned at the time the cause of action arose. Accordingly, the extant case filed in the NCR Arbitration Branch must necessarily be dismissed for improper venue.[6]

Petitioners further assert that there was no substantial evidence to prove that an employer-employee relationship existed between them and respondents. The burden of evidence lies with respondents since they were the ones asserting an affirmative allegation that there exists an employer-employee relationship. Moreover, respondents are not regular employees of petitioner for the following reasons: (1) they were only on-call drivers as they would be given their respective dates of work merely on calls or notices of petitioners; and (2) they can only use petitioners' garage whenever they were called for work. Aside from their self-serving allegations, respondents did not present substantial evidence to prove that they were prevented from returning to their work. Absent any showing of an overt or positive act proving that petitioners had dismissed respondents, the latter's claim of dismissal cannot be sustained.[7]

Petitioners asseverate that the liability of individual petitioner to respondents has no valid and legal bases sans any finding by the respondent Commission that he willfully and knowingly agreed to patently unlawful acts of petitioner company. The individual petitioner did not show malice, fraud or bad faith in the alleged illegal dismissal of respondents. Respondents failed to prove that their dismissal was orchestrated by the individual petitioner, hence, the latter should not be held solidarily liable with the petitioner corporation.[8]

Respondents failed to file their Comment and Memoranda.[9]

The petition is partly meritorious.

Preliminarily, WE shall resolve the procedural issue raised by petitioners that the venue of the extant case was improperly laid.

Section 1 (a), Rule IV of the 2011 NLRC Rules of Procedure, as amended, provides:

> "SECTION 1. *Venue.* – (a) All cases which Labor Arbiters have authority to hear and decide **may** be filed in the Regional Arbitration Branch having jurisdiction over the workplace of the complainant/petitioner.
>
> **For purposes of venue, workplace shall be understood as the place or locality where the employee is regularly assigned when the cause of action arose.** It shall include the place where the employee is supposed to report back after a temporary detail, assignment or travel. In the case of field employees, as well as ambulant or itinerant workers, their workplace is where they are regularly assigned, or where they are supposed to regularly receive their salaries/wages or work instructions from and report the results of their assignment to, their employers." (emphasis supplied)

In ***Philtranco Service Enterprises, Inc. vs. NLRC et al.,***[10] the above-cited provision was already declared by the Supreme Court as merely permissive. The said provision uses the word "may" allowing a different venue when the interests of

substantial justice demand a different one. In any case, the Constitutional protection accorded to labor is a paramount and compelling factor, provided the venue chosen is not altogether oppressive to the employer. Furthermore, the same provision states that "for purposes of venue, workplace shall be understood as the place or locality where the employee is regularly assigned when the cause of action arose". Since respondents' regular route is from Carmona, Cavite to any place in Luzon or Visayas, WE hold that the filing of the present case before the NCR Arbitration Branch was proper since NCR could be considered as part of respondents' territorial workplace. Respondent NLRC, therefore, committed no grave abuse of discretion in allowing this case to be heard by the NCR Arbitration Branch. In ***Sulpicio Lines, Inc. vs. NLRC,***[11] the High Court discoursed that the courts will not hesitate to set aside the rules on venue if the same would promote the ends of justice, thus:

> "The question of venue essentially relates to the trial and touches more upon the convenience of the parties, rather than upon the substance and merits of the case. Our permissive rules underlying provisions on venue are intended to assure convenience for the plaintiff and his witnesses and to promote the ends of justice. This axiom all the more finds applicability in cases involving labor and management because of the principle, paramount in our jurisdiction, that the State shall afford full protection to labor."

Anent the second ground, petitioners aver that the Commission a quo committed grave abuse of discretion when it affirmed the Labor Arbiter's finding that there exists an employer-employee relationship between them and respondents. 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 respondents 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.[12] All these elements are present in this case.

First, petitioners were the ones who selected and engaged the services of respondents on various dates. Sulit was hired on May 19, 2006; Sotillo on November 27, 2006; Ganob, Jr. on February 1, 2007; and Adran on May 28, 2008. Petitioners categorically confirmed in their pleadings that they hired respondents as drivers to make deliveries from their workplace at Carmona, Cavite to any point in Luzon or Visayas. ***Second,*** petitioners paid respondents their salaries on a per trip basis at the rate of Three Hundred Fifty Pesos (350.00) to Three Thousand Five Hundred Pesos (P3,500.00). Jurisprudence holds that the payment to a worker on a per trip basis is not significant because this is merely a method of computing compensation and not a basis for determining the existence of employer-employee relationship.[13] ***Third,*** petitioners' power to dismiss respondents was inherent in the fact that they engaged the services of respondents as drivers and had the power to determine when and where the deliveries of respondents would be made which obviously implies power of control. As a matter of fact, in their "Pinagsama-Samang Sinumpaang Salaysay,[14]" respondents declared that they were obliged to pay the fines for the traffick violations that may be committed in the course of their