

THIRD DIVISION

[CA-G.R. SP. No. 132138, May 29, 2014]

ALEXDAN ADSD, INCORPORATED, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND WILMOR BERCHES, RESPONDENTS.

D E C I S I O N

GARCIA, R.R., J.:

Before Us is a Petition for Certiorari^[1] under Rule 65 of the 1997 Rules of Civil Procedure assailing the Decision^[2] dated May 29, 2013 of public respondent National Labor Relations Commission (NLRC), Sixth Division, which affirmed with modification the Decision^[3] dated November 29, 2012 of the Labor Arbiter in that only petitioner Alexdan Trucking was held liable for the illegal dismissal of private respondent Wilmor H. Berches with reinstatement and payment of full backwages; and the Resolution^[4] dated July 29, 2013 denying the motion for reconsideration thereof.

THE FACTS

On February 2, 2012, private respondent Wilmor H. Berches filed a complaint for illegal dismissal, separation pay and other money claims with the Arbitration Branch of public respondent National Labor Relations Commission (NLRC) against petitioner Alexdan ADSD Incorporated, a domestic corporation engaged in trucking business, and its board director, Alfonso Dacumos.^[5] On April 16, 2012, private respondent amended his complaint^[6] to one for illegal dismissal, underpayment of 13th month pay and non-payment of service incentive leave pay where he prayed for reinstatement instead of separation pay.

In his position paper^[7], private respondent alleged that on March 5, 2008, he was employed by petitioner as a trailer truck driver with a salary of P1,200.00 per trip. He rendered services as such for four (4) years. Effective January 2012, petitioner reduced the amount paid to drivers for the trips. For Manila-Batangas trips, the pay was reduced from P1,200.00 to P800.00; and for Manila-Laguna trips, the pay was reduced from P800.00 to P650.00. Because of the reduction in pay, private respondent approached the officers of petitioner and protested the same. He insisted that the drastic reduction in his salary is contrary to Article 100 of the Labor Code which prohibits the withdrawal or reduction of existing benefits given to employees. Instead of addressing his grievance, however, the representatives of petitioner got the keys of his assigned truck and terminated his services. Particularly, Alfonso Dacumos told him "*Umuwi ka na, ayaw mo rin lang bumyahe*". Private respondent argued that as a regular employee, he cannot be terminated without a valid ground provided under the law. Having been illegally dismissed, he prayed for reinstatement and payment of his backwages. He also prayed that he be paid his 13th month pay and service incentive leave pay.

In their traverse, petitioner and Dacumos argued that the Labor Arbiter has no jurisdiction over the complaint for illegal dismissal because private respondent is not an employee of petitioner. They claimed that private respondent is one of the independent contractors being engaged by petitioner on a non-regular basis to drive one (1) of its four (4) trucks exclusively used in hauling goods for its only client, D & L Industries, Inc and its affiliates. Private respondent is only engaged by petitioner when there is a need to deliver the goods of its exclusive client. If he is not available, petitioner seeks the services of the other independent contractors. Private respondent also performs his work independently as petitioner is interested only with the result of his work which is to pick up and deliver the products of petitioner's client. As such, private respondent has all the leeway to perform his job in his own method without being subjected to the control of petitioner. The allegation of private respondent that he is being paid P1,200.00 per trip has no basis. The truth is, the contract fee for the services of private respondent, is dependent on the distance of the trip made. On January 24, 2012, petitioner received a letter^[8] from D&L Industries, Inc. that it is banning private respondent from its premises. Consequently, petitioner informed private respondent on January 26, 2012 that it will no longer engage his services. The fact that private respondent was banned by petitioner's lone client from its premises made it impossible for petitioner to engage private respondent's services again.

In his Reply, private respondent explained that he could not be an independent contractor because he has no capital, investment and workers of his own. The truck he drives is provided by petitioner which pays him compensation for every trip that he makes.^[9] In his Rejoinder, petitioner adduced in evidence his identification card issued by petitioner.^[10]

In a Decision^[11] dated November 29, 2012, the Labor Arbiter ruled in favor of private respondent and declared that he was illegally dismissed. In debunking petitioner's defense that private respondent is an independent contractor, the Labor Arbiter pointed out that private respondent does not have his own vehicle to deliver the goods of petitioner's client but uses the truck of petitioner. Also, petitioner failed to discharge its burden of proof that private respondent was dismissed on a just or valid ground and that he was afforded due process. Consequently, petitioner and Dacumos were ordered to pay private respondent's backwages based on the minimum wage as well as separation pay equivalent to one (1) month salary for every year of service. The dispositive portion of the Labor Arbiter's decision is quoted:

WHEREFORE, a Decision is hereby rendered declaring that Complainant was illegally dismissed. Corollarilly, Respondents are hereby ordered to pay Complainant backwages from the time of dismissal up to the rendition of this Decision based on the minimum wage. As he does not pray for reinstatement, he must be paid separation pay at one (1) month salary for every year of service. Computation is as follows:

a) BACKWAGES

$$\begin{array}{l} 1/16/12 - 6/2/12 = \\ 4.20 \text{ mos.} \\ P426 \times 26 \\ \times 4.20 = \quad 46,519.20 \end{array}$$

6/3/12 – 10/31/12 =
4.93 mos.
P466 x 26
x 4.93 = 57,168.28
11/1/12 – 11/15/12
= [.]50 mo.
P456 x 26
x .50 = 5,928.00
109,615.48

b) SEPARATION PAY

3/5/08 –
11/15/12 = 5
yrs.
P456 x 26 x 5 =
59,280.00

Total P168,895.48

SO ORDERED.^[12]

Aggrieved, petitioner and Dacumos filed an appeal with public respondent NLRC which, in the assailed Decision^[13] dated May 29, 2013 affirmed the findings of the Labor Arbiter that private respondent is indeed an employee of petitioner and that he was illegally dismissed. Public respondent NLRC, however, modified the Labor Arbiter's decision in that only petitioner was held liable for private respondent's illegal dismissal. Also, instead of awarding separation pay in favor of private respondent, petitioner was ordered to reinstate him. In concluding that private respondent is an employee of petitioner, public respondent NLRC explained that the former is under the control and supervision of the latter. It is petitioner which gives private respondent his assigned truck and his trip schedules. Private respondent is also required to return the delivery truck after every trip. Also, using the economic reality test, private respondent should be considered an employee of petitioner since he has worked with petitioner for four (4) years. As such, he is economically dependent on the same. The pertinent portions of the assailed decision are quoted:

We totally agree with the Labor Arbiter in holding that the complainant was not an independent contractor for he does not carry a distinct and independent business and does not possess substantial capital or investment in tools, equipment, machinery or work premises. We noted that he did not provide the delivery truck he drives but is owned by respondent company.

Also, respondent did not deny having issued the complainant with company identification card.

It is common practice for companies to provide identification cards to individuals not only as a security measure, but more importantly to identify the bearers thereof as bona fide employees of the firm or institution that issued them.

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In the instant case, applying the control test, there is no doubt that the complainant is an employee of the respondent company because he is under its control and supervision. As admitted, respondent company gives the complainant his assigned truck and his trip schedules. He is required to return the delivery truck after every trip.

Using the broader economic reality test, the complainant is also considered an employee of the respondent company since he worked with [the] company for four (4) years before his dismissal, receiving his compensation on per trip basis. Clearly, he was economically dependent on the said corporation.

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Having sustained the ruling of the Labor Arbiter that the complainant is an employee of respondent company, we shall proceed to rule on the issue of illegal dismissal.

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The Labor Arbiter correctly ruled that the respondents failed to discharge the burden of showing that the "complainant was dismissed for just or valid cause, and was afforded due process."

As admitted by the respondents, the respondent company merely informed the complainant of the decision of D & L banning him from its premises. Indeed, the records show not only the absence of any ground to dismiss the complainant but also that he was not afforded the opportunity to explain his [side] before his dismissal. Hence, we sustain the illegality of complainant's termination.

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We sustain the award of backwages but not the separation pay.

Given the conflicting claims of parties on the actual compensation received by the complainant per trip, the Labor Arbiter was justified in computing his backwages based on the applicable minimum wages.

The Labor Arbiter awarded separation pay to the complainant for he did not pray for reinstatement. This is erroneous. He prayed for reinstatement in his amended complaint. Hence, he should be reinstated.

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In the appealed decision, the Labor Arbiter did not discuss the basis for holding the respondent Dacumos liable with the respondent to the monetary award in favor of the complainant. We also note the complainant failed to allege bad faith or malice on the part of respondent Dacumos in dismissing him. It is a basic principle that good faith is presumed.

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Accordingly, respondent Dacumos is absolved from any liability. Only the respondent company should be held liable.

WHEREFORE, premises considered, the Decision dated November 29, 2012 is AFFIRMED WITH MODIFICATION in that:

(a) respondent Alexdan ADSD Incorporated is hereby ordered to reinstate the complainant to his former position or equivalent position without loss of seniority rights;

(b) the award of separation pay is hereby deleted; and

(c) only the respondent company is held liable to pay complainant the backwages adjudged in the appealed decision.

SO ORDERED.^[14]

Petitioner's motion for reconsideration was denied in a Resolution^[15] dated July 29, 2013.

Hence, the instant petition for certiorari filed by herein petitioner raising the following grounds for its allowance^[16], to wit:

I

PUBLIC RESPONDENT NLRC ACTED WITHOUT JURISDICTION AND/OR IN EXCESS THEREOF AND HAD GRAVELY ABUSED ITS DISCRETION IN ISSUING THE ASSAILED DECISION AND RESOLUTION WHICH TOOK COGNIZANCE OF AN ORDINARY CIVIL DISPUTE BETWEEN TWO INDEPENDENT CONTRACTING PARTIES, THEREBY RENDERING ITS ASSAILED DECISION AND RESOLUTION NULL AND VOID; AND

II

PUBLIC RESPONDENT NLRC ACTED WITHOUT JURISDICTION AND/OR IN EXCESS THEREOF AND HAD GRAVELY ABUSED ITS DISCRETION IN ISSUING THE ASSAILED DECISION AND RESOLUTION WHICH AFFIRMED WITH MODIFICATION THE DECISION OF THE LABOR ARBITER DESPITE ISSUES OF JURISDICTION HAVING BEEN TIMELY RAISED THEREBY RENDERING ITS ASSAILED DECISION AND RESOLUTION NULL AND VOID.

THE ISSUES

The issues to be resolved in the instant case are whether or not public respondent NLRC committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in ruling that private respondent is an employee of petitioner and that he was illegally dismissed.

THE RULING

The petition is bereft of merit.

Petitioner essentially argues that public respondent NLRC gravely abused its discretion when it affirmed the ruling of the Labor Arbiter that private respondent is an employee of petitioner. Private respondent is an independent contractor engaged