

SPECIAL ELEVENTH DIVISION

[CA-G.R. SP No. 125763, December 11, 2014]

GILBERT A. DY, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, MARLITO V. LAPUZ, RESPONDENTS.

DECISION

PAREDES, J.:

THE CASE

THIS PETITION^[1] FOR CERTIORARI filed by petitioner Gilbert Dy (petitioner) seeks to reverse and set aside the Decision^[2] dated March 30, 2012, and the Resolution^[3] dated May 31, 2012, issued by the National Labor Relations Commission (NLRC) in NLRC LAC Case No. 09-002541-11 (NLRC NCR Case No. 10-15420-10).

THE ANTECEDENTS

Private respondent Marlito V. Lapuz (private respondent) alleged^[4] that, on August 6, 2005, he started working as driver for Recycle Bin owned by petitioner with salary at the rate of P12,000.00 a month. After about five (5) years in petitioner's employ, on October 16, 2010, he was unceremoniously arrested by policemen on the complaint of petitioner who claimed that he squandered money entrusted to him meant for the purchase scrap materials; the truth being that he had turned over the receipt for the amount claimed by petitioner.

On the other hand, petitioner averred^[5] that he put up a small business as dealer of scrap materials, specifically, of broken glass and sell these broken glasses to bottling and packaging companies which melt these materials into finished products. Meanwhile, to enable him to cover a wider area, he enlisted the aid of, among others, private respondent, Nomer Gabiana (Nomer), Kristine Padilla (Kristine) and Jomer Gabiana (Jomer) on the agreement that, in exchange for every purchase or load of broken glass, private respondent and the others, would get a percentage of the same. It was also agreed, between petitioner on the one hand, and private respondent and Nomer on the other, that petitioner would provide for a vehicle for the loading and transportation of broken glass; he also gave private respondent money to purchase the materials. Petitioner had no idea where, how, and exactly how much private respondent was getting from the purchase of the broken glass. He suspects that private respondent gets an additional cut of the profits since he is the one who determines the itinerary or daily schedule of the truck, who or which supplier would be met on a particular day, at what time, and the quantity of the broken glass to be purchased. Moreover, there was no way for petitioner to ascertain whether or not private respondent was using the same truck to transport and deliver some portions of the broken glass to petitioner's own buyers. Still, petitioner did not

complain as long as he got his own anticipated and projected share.

However, there were times when private respondent would ask for additional amount to purchase certain quantities of broken glass that are not formally reported in the records of petitioner. In all, petitioner claims that private respondent still owes him P94,000.00 for the cash which private respondent failed to remit and liquidate.

Things turned bad when, on October 14, 2010, private respondent did not return from his earlier itinerary. Despite repeated and attempted calls, private respondent did not return to report what transpired from the transaction at his earlier itinerary. Moreover, he did not fully account for the P10,000.00 which petitioner gave for the purchase of the materials. Petitioner was then compelled to report the incident to the police. Without any further communication from private respondent, petitioner was compelled to file a criminal complaint for estafa against private respondent. In retaliation, private respondent filed this complaint for illegal dismissal.

Private respondent claims^[6] that the criminal charge filed against him is immaterial to the issue in the instant case; and that the filing thereof was merely a ploy to dismiss him. Petitioner counters^[7] that private respondent was inconsistent in his claim that he was hired as a driver but his customary duty was to buy scrap materials, arguing that a driver and a buyer of scrap materials are two (2) different endeavors.

On June 30, 2011, the Labor Arbiter rendered a Decision^[8], the dispositive portion reads, thus:

WHEREFORE, respondent Gilbert Dy is hereby ordered to pay complainant Marlito Lapuz the following amounts:

Backwages (October 17, 2010 up to June 20, 2011)	-P111,738.85
Separation Pay	- 72,000.00
Unpaid holiday pay	- 11,076.96
Unpaid 13 th month pay	- 35,600.00
10% attorney's fees	- <u>23,041.58</u>
TOTAL JUDGMENT AWARD	-P253,457.39

Aggrieved, petitioner appealed to the NLRC which, on March 30, 2012, issued the assailed Decision^[9] affirming *in toto* the Decision of the Labor Arbiter and dismissing the appeal for lack of merit.

Petitioner moved for reconsideration but the same was denied in the Resolution^[10] dated May 31, 2012.

Undeterred, petitioner filed the Petition at bar.

THE ISSUES

Petitioner now comes before Us raising^[11] the following assignment of errors:

(A)

THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AFFIRMED THE ERRONEOUS DECISION OF THE LABOR ARBITER USING [THE] ARTICLE 281 OF THE LABOR CODE ON THE DEFINITION OF REGULAR EMPLOYMENT IN DETERMINING THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP.

(B)

THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FAILING TO UTILIZE THE FOUR-FOLD TEST PROVIDED BY LABOR LAW (AND) JURISPRUDENCE IN FINDING THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE PETITIONER AND THE PRIVATE RESPONDENT.

THE COURT'S RULING

The Petition deserves scant consideration.

Before classifying a person as a regular employee, it is necessary to first ascertain if the person is indeed an employee, especially when the alleged employer disputes the existence of the relationship.

In determining whether there is an employer-employee relationship, the Supreme Court has applied a "four-fold test," to wit: (1) whether the alleged employer has the power of selection and engagement of employees; (2) whether he has control of the employee with respect to the means and methods by which work is to be accomplished; (3) whether he has the power to dismiss; and (4) whether the employee was paid wages^[12].

The issue of whether or not there existed an employer-employee relationship between petitioner and respondent is essentially a question of fact. The factors that determine the issue include who has the power to select the employee, who pays the employee's wages, who has the power to dismiss the employee, and who exercises control of the methods and results by which the work of the employee is accomplished^[13]. In dealing with such question, substantial evidence — that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion — is sufficient^[14].

Based on the admissions of the parties, it is inescapable that private respondent was an employee of petitioner. Several factors contribute to this conclusion. *First*, the truck used by private respondent in loading and transporting scrap materials belongs to petitioner. *Second*, petitioner provides private respondent with the money for the purchase of scrap materials. *Third*, as found by the Labor Arbiter and affirmed by the NLRC, petitioner submitted a "*Sinumpaang Salaysay ng*