

SECOND DIVISION

[G.R. No. 195466, July 02, 2014]

**ARIEL L. DAVID, DOING BUSINESS UNDER THE NAME AND STYLE
"YIELS HOG DEALER," PETITIONER, VS. JOHN G. MACASIO,
RESPONDENT.**

D E C I S I O N

BRION, J.:

We resolve in this petition for review on *certiorari*^[1] the challenge to the November 22, 2010 decision^[2] and the January 31, 2011 resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 116003. The CA decision annulled and set aside the May 26, 2010 decision^[4] of the National Labor Relations Commission (NLRC)^[5] which, in turn, affirmed the April 30, 2009 decision^[6] of the Labor Arbiter (LA). The LA's decision dismissed respondent John G. Macasio's monetary claims.

The Factual Antecedents

In January 2009, Macasio filed before the LA a complaint^[7] against petitioner Ariel L. David, doing business under the name and style "Yiels Hog Dealer," for non-payment of **overtime pay, holiday pay** and **13th month pay**. He also claimed payment for **moral and exemplary damages** and **attorney's fees**. Macasio also claimed payment for **service incentive leave (SIL)**.^[8]

Macasio alleged^[9] before the LA that he had been working as a butcher for David since January 6, 1995. Macasio claimed that David exercised effective control and supervision over his work, pointing out that David: (1) set the work day, reporting time and hogs to be chopped, as well as the manner by which he was to perform his work; (2) daily paid his salary of P700.00, which was increased from P600.00 in 2007, P500.00 in 2006 and P400.00 in 2005; and (3) approved and disapproved his leaves. Macasio added that David owned the hogs delivered for chopping, as well as the work tools and implements; the latter also rented the workplace. Macasio further claimed that David employs about twenty-five (25) butchers and delivery drivers.

In his defense,^[10] David claimed that he started his hog dealer business in 2005 and that he only has ten employees. He alleged that he hired Macasio as a butcher or chopper on "*pakyaw*" or task basis who is, therefore, not entitled to overtime pay, holiday pay and 13th month pay pursuant to the provisions of the Implementing Rules and Regulations (IRR) of the Labor Code. David pointed out that Macasio: (1) usually starts his work at 10:00 p.m. and ends at 2:00 a.m. of the following day or earlier, depending on the volume of the delivered hogs; (2) received the fixed amount of P700.00 per engagement, regardless of the actual number of hours that

he spent chopping the delivered hogs; and (3) was not engaged to report for work and, accordingly, did not receive any fee when no hogs were delivered.

Macasio disputed David's allegations.^[11] He argued that, *first*, David did not start his business only in 2005. He pointed to the Certificate of Employment^[12] that David issued in his favor which placed the date of his employment, albeit erroneously, in January 2000. *Second*, he reported for work every day which the payroll or time record could have easily proved had David submitted them in evidence.

Refuting Macasio's submissions,^[13] David claims that Macasio was not his employee as he hired the latter on "*pakyaw*" or task basis. He also claimed that he issued the Certificate of Employment, upon Macasio's request, only for overseas employment purposes. He pointed to the "*Pinagsamang Sinumpaang Salaysay*,"^[14] executed by Presbitero Solano and Christopher (Antonio Macasio's co-butchers), to corroborate his claims.

In the April 30, 2009 decision,^[15] the LA dismissed Macasio's complaint for lack of merit. The LA gave credence to David's claim that he engaged Macasio on "*pakyaw*" or task basis. The LA noted the following facts to support this finding: (1) Macasio received the fixed amount of P700.00 for every work done, regardless of the number of hours that he spent in completing the task and of the volume or number of hogs that he had to chop per engagement; (2) Macasio usually worked for only four hours, beginning from 10:00 p.m. up to 2:00 a.m. of the following day; and (3) the P700.00 fixed wage far exceeds the then prevailing daily minimum wage of P382.00. The LA added that the nature of David's business as hog dealer supports this "*pakyaw*" or task basis arrangement.

The LA concluded that as Macasio was engaged on "*pakyaw*" or task basis, he is not entitled to overtime, holiday, SIL and 13th month pay.

The NLRC's Ruling

In its May 26, 2010 decision,^[16] the NLRC affirmed the LA ruling.^[17] The NLRC observed that David did not require Macasio to observe an eight-hour work schedule to earn the fixed P700.00 wage; and that Macasio had been performing a non-time work, pointing out that Macasio was paid a fixed amount for the completion of the assigned task, irrespective of the time consumed in its performance. Since Macasio was paid by result and not in terms of the time that he spent in the workplace, Macasio is not covered by the Labor Standards laws on overtime, SIL and holiday pay, and 13th month pay under the Rules and Regulations Implementing the 13th month pay law.^[18]

Macasio moved for reconsideration^[19] but the NLRC denied his motion in its August 11, 2010 resolution,^[20] prompting Macasio to elevate his case to the CA *via* a petition for *certiorari*.^[21]

The CA's Ruling

In its November 22, 2010 decision,^[22] the CA partly granted Macasio's *certiorari* petition and reversed the NLRC's ruling for having been rendered with grave abuse of discretion.

While the CA agreed with the LA and the NLRC that Macasio was a task basis employee, it nevertheless found Macasio entitled to his monetary claims following the doctrine laid down in *Serrano v. Severino Santos Transit*.^[23] The CA explained that as a task basis employee, Macasio is excluded from the coverage of holiday, SIL and 13th month pay *only if* he is likewise a "field personnel." As defined by the Labor Code, a "field personnel" is one who performs the work away from the office or place of work and whose regular work hours cannot be determined with reasonable certainty. In Macasio's case, the elements that characterize a "field personnel" are evidently lacking as he had been working as a butcher at David's "Yiels Hog Dealer" business in Sta. Mesa, Manila under David's supervision and control, and for a fixed working schedule that starts at 10:00 p.m.

Accordingly, the CA awarded Macasio's claim for holiday, SIL and 13th month pay for three years, with 10% attorney's fees on the total monetary award. The CA, however, denied Macasio's claim for moral and exemplary damages for lack of basis.

David filed the present petition after the CA denied his motion for reconsideration^[24] in the CA's January 31, 2011 resolution.^[25]

The Petition

In this petition,^[26] David maintains that Macasio's engagement was on a "*pakyaw*" or task basis. Hence, the latter is excluded from the coverage of holiday, SIL and 13th month pay.

David reiterates his submissions before the lower tribunals^[27] and adds that he never had any control over the manner by which Macasio performed his work and he simply looked on to the "end-result." He also contends that he never compelled Macasio to report for work and that under their arrangement, Macasio was at liberty to choose whether to report for work or not as other butchers could carry out his tasks. He points out that Solano and Antonio had, in fact, attested to their (David and Macasio's) established "*pakyawan*" arrangement that rendered a written contract unnecessary. In as much as Macasio is a task basis employee – who is paid the fixed amount of P700.00 per engagement regardless of the time consumed in the performance – David argues that Macasio is not entitled to the benefits he claims. Also, he posits that because he engaged Macasio on "*pakyaw*" or task basis then no employer-employee relationship exists between them.

Finally, David argues that factual findings of the LA, when affirmed by the NLRC, attain finality especially when, as in this case, they are supported by substantial evidence. Hence, David posits that the CA erred in reversing the labor tribunals' findings and granting the prayed monetary claims.

The Case for the Respondent

Macasio counters that he was not a task basis employee or a "field personnel" as

David would have this Court believe.^[28] He reiterates his arguments before the lower tribunals and adds that, contrary to David's position, the P700.00 fee that he was paid for each day that he reported for work does not indicate a "*pakyaw*" or task basis employment as this amount was paid daily, regardless of the number or pieces of hogs that he had to chop. Rather, it indicates a daily-wage method of payment and affirms his regular employment status. He points out that David did not allege or present any evidence as regards the quota or number of hogs that he had to chop as basis for the "*pakyaw*" or task basis payment; neither did David present the time record or payroll to prove that he worked for less than eight hours each day. Moreover, David did not present any contract to prove that his employment was on task basis. As David failed to prove the alleged task basis or "*pakyawan*" agreement, Macasio concludes that he was David's employee.

Procedurally, Macasio points out that David's submissions in the present petition raise purely factual issues that are not proper for a petition for review on *certiorari*. These issues – whether he (Macasio) was paid by result or on "*pakyaw*" basis; whether he was a "field personnel"; whether an employer-employee relationship existed between him and David; and whether David exercised control and supervision over his work – are all factual in nature and are, therefore, proscribed in a Rule 45 petition. He argues that the CA's factual findings bind this Court, absent a showing that such findings are not supported by the evidence or the CA's judgment was based on a misapprehension of facts. He adds that the issue of whether an employer-employee relationship existed between him and David had already been settled by the LA^[29] and the NLRC^[30] (as well as by the CA per Macasio's manifestation before this Court dated November 15, 2012),^[31] in his favor, in the separate illegal case that he filed against David.

The Issue

The issue revolves around the proper application and interpretation of the labor law provisions on holiday, SIL and 13th month pay to a worker engaged on "*pakyaw*" or task basis. In the context of the Rule 65 petition before the CA, the issue is whether the CA correctly found the NLRC in grave abuse of discretion in ruling that Macasio is entitled to these labor standards benefits.

The Court's Ruling

We **partially grant** the petition.

Preliminary considerations: the Montoya ruling and the factual-issue-bar rule

In this Rule 45 petition for review on *certiorari* of the CA's decision rendered under a Rule 65 proceeding, this Court's power of review is limited to resolving matters pertaining to any perceived legal errors that the CA may have committed in issuing the assailed decision. This is in contrast with the review for jurisdictional errors, which we undertake in an original *certiorari* action. In reviewing the legal correctness of the CA decision, we examine the CA decision based on how it determined the presence or absence of grave abuse of discretion in the NLRC decision before it and not on the basis of whether the NLRC decision on the merits

of the case was correct.^[32] In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.^[33]

Moreover, the Court's power in a Rule 45 petition limits us to a review of questions of law raised against the assailed CA decision.^[34]

In this petition, David essentially asks the question – whether Macasio is entitled to holiday, SIL and 13th month pay. This one is a question of law. The determination of this question of law however is intertwined with the largely factual issue of whether Macasio falls within the rule on entitlement to these claims or within the exception. In either case, the resolution of this factual issue presupposes another factual matter, that is, the presence of an employer-employee relationship between David and Macasio.

In insisting before this Court that Macasio was not his employee, David argues that he engaged the latter on "*pakyaw*" or task basis. Very noticeably, David confuses engagement on "*pakyaw*" or task basis with the lack of employment relationship. Impliedly, David asserts that their "*pakyawan*" or task basis arrangement negates the existence of employment relationship.

At the outset, we reject this assertion of the petitioner. Engagement on "*pakyaw*" or task basis does not characterize the relationship that may exist between the parties, *i.e.*, whether one of employment or independent contractorship. Article 97(6) of the Labor Code defines wages as "xxx the **remuneration or earnings**, however designated, capable of being expressed in terms of money, **whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same**, which is **payable by an employer to an employee** under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered[.]"^[35] In relation to Article 97(6), Article 101^[36] of the Labor Code speaks of workers paid by results or those whose pay is calculated in terms of the quantity or quality of their work output which includes "*pakyaw*" work and other non-time work.

More importantly, by implicitly arguing that his engagement of Macasio on "*pakyaw*" or task basis negates employer-employee relationship, David would want the Court to engage on a factual appellate review of the entire case to determine the presence or existence of that relationship. This approach however is not authorized under a Rule 45 petition for review of the CA decision rendered under a Rule 65 proceeding.

First, the LA and the NLRC denied Macasio's claim *not* because of the absence of an employer-employee but because of its finding that since Macasio is paid on *pakyaw* or task basis, then he is not entitled to SIL, holiday and 13th month pay. *Second*, we consider it crucial, that in the separate illegal dismissal case Macasio filed with the LA, the LA, the NLRC and the CA uniformly found the existence of an employer-employee relationship.^[37]

In other words, aside from being factual in nature, the existence of an employer-employee relationship is in fact a non-issue in this case. To reiterate, in deciding a Rule 45 petition for review of a labor decision rendered by the CA under 65, the