

THIRD DIVISION

[G.R. No. 148508, May 20, 2004]

R TRANSPORT CORPORATION, PETITIONER, VS. ROGELIO EJANDRA, RESPONDENT.

D E C I S I O N

CORONA, J.:

Before us is a petition for review of the decision^[1] of the Court of Appeals^[2] dated December 22, 2000 dismissing the petition for certiorari of the decision of the National Labor Relations Commission^[3] (NLRC) dated May 30, 1997. The latter affirmed the decision^[4] of the labor arbiter dated February 27, 1997 holding petitioner liable for illegal dismissal and directing private respondent's reinstatement.

Private respondent Rogelio Ejandra alleged that, for almost six years, from July 15, 1990 to January 31, 1996, he worked as a bus driver of petitioner R Transport Corporation. He plied the route "Muntilupa-Alabang-Malanday-Monumento-UE-Letre-Sangandaan" from 5:00 a.m. up to 2:00 a.m. the next day and was paid 10% of his daily earnings.

On January 31, 1996, an officer of the Land Transportation Office (LTO), Guadalupe Branch, Makati City, apprehended him for obstruction of traffic for which his license was confiscated. Upon his arrival at petitioner's garage, he immediately reported the incident to his manager, Mr. Oscar Pasquin, who gave him P500 to redeem his license. The following day, he went to LTO, Guadalupe Branch, to claim it but he was told that it had not yet been turned over by the officer who apprehended him. He was able to retrieve his license only after a week.

On February 8, 1996, private respondent informed Mr. Pasquin that he was ready to report for work. However, he was told that the company was still studying whether to allow him to drive again. Private respondent was likewise accused of causing damage to the bus he used to drive. Denying the charge, private respondent blamed the person who drove the said bus during his absence, considering that the damage was sustained during the week that he did not drive the bus. Mr. Pasquin nonetheless told him "*Magpahinga ka muna at tatawagin ka na lang namin kung kailangan ka na para magmaneho. Magbakasyon ka muna, bata.*" When respondent asked how long he had to rest, the manager did not give a definite time.

Petitioner denied private respondent's allegations and claimed that private respondent, a habitual absentee, abandoned his job. To belie private respondent's allegation that his license had been confiscated, petitioner asserted that, had it been true, he should have presented an apprehension report and informed petitioner of his problems with the LTO. But he did not. Petitioner further argued that private respondent was not an employee because theirs was a contract of lease and not of

employment, with petitioner being paid on commission basis.

On February 23, 1997, labor arbiter Rogelio Yulo rendered his decision in favor of private respondent. The dispositive portion of the decision read:

PREMISES CONSIDERED, judgment is hereby rendered finding the dismissal of Rogelio Ejandra to be without just cause and, therefore, illegal and ORDERING R-Transport to REINSTATE him to his former position without loss of seniority and other benefits and to pay him backwages from the time of his dismissal until actual reinstatement.

SO ORDERED.^[5]

Labor arbiter Yulo gave no weight to petitioner's claim that private respondent abandoned his work. His one-week absence did not constitute abandonment of work considering that it took him the whole week to reclaim his license. Private respondent could not retrieve it unless and until the apprehending officer first transmitted it to their office. His inability to drive for petitioner that whole week was therefore not his fault and petitioner could be held liable for illegal dismissal. Due process was not accorded to private respondent who was never given the opportunity to contest the charge of abandonment. Moreover, assuming actual abandonment, petitioner should have reported such fact to the nearest employment office of the Department of Labor and Employment. But no such report was ever made.

On May 30, 1997, the NLRC rendered a decision affirming the decision of the labor arbiter:

WHEREFORE, premises considered, the appeal is hereby DISMISSED and the appealed decision AFFIRMED in toto.

SO ORDERED.^[6]

In disputing petitioner's claim that private respondent was not its employee and was not therefore entitled to notice and hearing before termination, the NLRC held that:

It is very clear that (sic) from no less than appellants' admission, that complainant was not afforded his right to due process prior to the severance of his employment with respondents. (First par. p.3, respondents' Appeal Memorandum, p. 45, Rollo)

Appellants' defense of denying the existence of employer-employee relationship with the complainant based on the manner by which complainant was being paid his salary, cannot hold water.

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While employees paid on piece-rate and commission basis are not covered by the provisions of the Labor Code, as amended, on hours of work, these employees however, for all intents and purposes, are employees of their employers.

xxx xxx xxx^[7]

Petitioner filed in the Court of Appeals a petition for certiorari on the ground that the NLRC committed grave abuse of discretion in affirming the decision of the labor arbiter. On December 22, 2000, the Court of Appeals rendered a decision, the dispositive portion of which read:

WHEREFORE, the instant petition is hereby DENIED for lack of merit.

SO ORDERED.^[8]

Categorizing the issues raised by petitioner as factual, the appellate court held that the findings of fact of the labor arbiter (affirmed by the NLRC) were entitled to great respect because they were supported by substantial evidence. The Court of Appeals also ruled that petitioner was barred from denying the existence of an employer-employee relationship because petitioner invoked its rights under the law and jurisprudence as an *employer* in dismissing private respondent.

Hence, this appeal based on the following assignments of errors:

A

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS, TENTH DIVISION COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT AFFIRMED/ADOPTED IN TOTO THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) BASED PURELY ON A SPECULATION, SURMISE OR CONJECTURE.

B

THE FINDINGS OF FACTS ARE MERE CONCLUSIONS WITHOUT CITATION OR SPECIFIC EVIDENCE ON WHICH THEY ARE BASED.

C

FURTHER, THE HONORABLE COURT OF APPEALS, TENTH DIVISION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT RULING THAT THE RELATIONSHIP IN LAW OCCURRING BETWEEN THE PETITIONER R TRANSPORT CORPORATION AND THE PRIVATE RESPONDENT WAS IN A NATURE OF "LESSOR AND LESSEE."

D

MOREOVER, THERE IS A NEED BY THIS HONORABLE COURT TO GIVE A SECOND LOOK ON THE RECORDS OF NLRC NCR CASE RAB NO. IV-2-7910-R / NLRC NCR CA-012-605-97 TO AVOID MISCARRIAGE OF JUSTICE AND FURTHERANCE OF THE STATUTORY REQUIREMENTS OF DUE PROCESS.

E

FINALLY, THE HONORABLE COURT OF APPEALS, TENTH DIVISION GRAVELY ERRED IN DENYING THE PETITION IN CA-G.R. SP. NO. 51962