SUPREME COURT
THIRD DIVISION

PHILTRANCO SERVICE ENTERPRISE, INC.,
***Petitioner*,**

-versus-

G.R. No. 124100
April 1, 1998

NATIONAL LABOR RELATIONS COMMISSION and MR. ROBERTO NIEVA,
***Respondents*.**
x----------x

D E C I S I O N

ROMERO, *J.*:

Petitioner seeks, in this Petition for Certiorari under Rule 65, the reversal of the resolution of the National Labor Relations Commission dated November 29, 1995, ordering petitioner to pay private respondent Roberto Nieva back wages and separation pay.

The facts of the case are as follows:

Roberto Nieva who was employed as a driver by petitioner Philtranco Services Enterprises, Inc. (hereafter Philtranco) on April 13, 1977, was assigned to the Legaspi City-Pasay City route. On May 15, 1989, Nieva

sideswiped an owner-type jeep, damaging the latter's park light. Unfortunately, the vehicle's owner turned out to be a PC colonel who arrested Nieva and brought him to Camp Crame where, the corresponding criminal complaint was filed against him.

Nieva obtained his release from detention by virtue of a bail bond secured by Philtranco. He was suspended by the latter for thirty days effective June 8, 1989. Nieva reported back to work after serving his suspension. A few days after resuming his driving duties, however, he was re-arrested on the ground that his bail bond was fake. Nieva reported the incident to the management of Philtranco. On October 15, 1989, Nieva was advised by Philtranco's administrative officer, Epifanio Llado, that to avoid re-arrest, he would have to refrain from driving until a settlement could be reached with the jeep owner. From then on, Nieva would report for work only to be told to wait until his case was settled. The case was finally settled on July 20, 1991, with Philtranco paying for the damages to the jeep. Three days thereafter, Nieva reported for work, but he was requested to file a new application as he was no longer considered an employee of Philtranco, allegedly for being absent without leave from October 19 to November 20, 1989.

Aggrieved by this turn of events, Nieva filed a complaint for illegal dismissal and 13th month pay with the NLRC's National Capital Region Arbitration Branch in Manila, which docketed the same as NLRC NCR Case No. 03-01891-92. The case was subsequently assigned to Labor Arbiter Cornelio L. Linsangan.

Philtranco did not appear at the first four conferences scheduled by the arbiter, prompting the latter to warn Philtranco that it would be declared in default if it failed to appear at the next hearing. Threatened with such an eventuality, Philtranco's representative finally appeared. On August 28, 1992, it filed a position paper with motion to dismiss, stating, wrong other things, that the complaint should have been lodged with the NLRC's Regional Arbitration Branch in Legaspi City, not only because Nieva was a resident thereof, but also because the latter was hired, assigned, and based in Legaspi City.[1]

The motion to dismiss was denied by the labor arbiter in an order dated January 26, 1993. Nieva then presented his evidence. On August 30, 1993, Philtranco filed a second motion to dismiss, which was likewise denied by the arbiter on the ground that the same did not raise any new arguments. Thereafter, Philtranco presented its evidence to prove that Nieva had abandoned his work, having been absent without leave from October 19 to November 20, 1989.

After considering the evidence of the parties, the labor arbiter gave more credence to Nieva's version of facts, finding that the latter's absences were incurred with Philtranco's permission, since he was instructed not to drive until his case was settled. The arbiter dismissed Philtranco's allegation that Nieva had abandoned his work, stating that:

> "Persistence in pursuing his claim before the Labor Arbiter negates allegation of abandonment (Antonio Evangelista vs. NLRC and Arturo Mendoza, 195 SCRA 603). In the instant case, even before complainant filed his present complaint he had already shown his determination (and) persistence to return to his work as he untiringly kept on reporting for duty. In fact, as ordered by his supervisor in Legaspi City, he even went to respondent's main office in Pasay City to talk to the operations manager regarding his return to work. There could be no better manifestation of one's interest to his work than what complainant had done. Definitely, therefore, complainant did not abandon his job."[2]

Thus, on June 14, 1994, the labor arbiter rendered a decision awarding back wages and separation pay to Nieva. Said decision was seasonably appealed to the NLRC by Philtranco. In a resolution issued on September 15, 1995, the NLRC affirmed the decision of the labor arbiter, granting back wages and separation benefits as follows:

> "PREMISES CONSIDERED, WHEREFORE, respondent is directed to pay individual complainant Roberto Nieva both his backwages in the amount of P67,392.00 PESOS and separation benefits in the amount of P33,696.00 PESOS.
>
> SO ORDERED."[3]

Philtranco's motion for reconsideration of said resolution having been likewise denied by the NLRC in its resolution of November 29, 1995, Philtranco elevated its case to this Court, raising the following issues:

1. The NLRC committed grave abuse of discretion amounting to lack of jurisdiction when it denied the motion of Philtranco to dismiss complaint based on improper venue;

2. The Commission gravely abused its discretion amounting to lack or in excess of jurisdiction in ruling that Philtranco should be imposed backwages and separation pay;

3. Respondent Commission acted with grave abuse of discretion amounting to lack of jurisdiction as to its findings of facts and when it confirmed the labor arbiter's decision that there was no abandonment of work by the private respondent and that the latter showed his persistence to return to work.

The petition lacks merit.

As regards the first issue, this Court has previously declared that the question of venue essentially pertains to the trial and relates more to the convenience of the parties rather than upon the substance and merits of the case.[4] Provisions on venue are intended to assure convenience for the plaintiff and his witnesses and to promote the ends of justice. In fact, Section 1(a), Rule IV of the New Rules of Procedure of the NLRC, cited by Philtranco in support of its contention that venue of the illegal dismissal case filed by Nieva is improperly laid, speaks of the complainant/petitioner's workplace, evidently showing that the rule is intended for the exclusive benefit of the worker. This being the case, the worker may waive said benefit.[5]

Furthermore, the aforesaid Section has been declared by this Court to be merely permissive. In Dayag vs. NLRC,[6] this Court held that:

> "This provision is obviously permissive, for the said section uses the word 'may,' allowing a different venue when the interests of

> substantial justice demand a different one. In any case, as stated earlier, the Constitutional protection accorded to labor is a paramount and compelling factor, provided the venue chosen is not altogether oppressive to the employer."

Moreover, Nieva, as a driver of Philtranco, was assigned to the Legaspi City-Pasay City route. Sulpicio Lines, Inc. vs. NLRC[7] is exactly in point. In said case, we held that:

> "Section 1, Rule IV of the 1990 NLRC Rules additionally provides 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 the private respondent's regular place of assignment is the vessel MV Cotabato Princess which plies the Manila-Estancia-Iloilo-Zamboanga-Cotabato route, we are of the opinion that Labor Arbiter Arthur L. Amansec was correct in concluding that Manila could be considered part of the complainant's territorial workplace."

From the foregoing, it is obvious that the filing of the complaint with the National Capital Region Arbitration Branch was proper, Manila being considered as part of Nieva's workplace by reason of his plying the Legaspi City-Pasay City route.

As regards the second and third issues, Philtranco contends that the NLRC committed grave abuse of discretion when it affirmed the labor arbiter's finding of non-abandonment by Nieva of his work. It harps on the alleged paucity of Nieva's evidence, while citing the numerous exhibits marshaled on its behalf. Philtranco cites, as proof of Nieva's abandonment of his work, two irregularity reports to the effect that Nieva was absent without leave from October 19-31 and November 1-20, 1989; a letter from Philtranco's assistant manager to Nieva requiring the latter to report within five days from receipt thereof, on pain of being dropped from the roll; and a termination letter from Philtranco's company lawyer to Nieva, for his failure to report for work as directed.

Suffice it to say that these issues raised by Philtranco relate to the veracity of the findings of fact of the NLRC and the labor arbiter. It

should be noted that a petition for certiorari under Rule 65 of the Rules of Court will prosper only if there is a showing of grave abuse of discretion or an act without or in excess of jurisdiction on the part of the National Labor Relations Commission. It does not include an inquiry as to the correctness of the evaluation of evidence which was the basis of the labor official or officer in determining his conclusion. It is not for this Court to re-examine conflicting evidence, re-evaluate the credibility of witnesses, nor substitute the findings of fact of an administrative tribunal which has gained expertise in its special field.[8]

Parenthetically, the labor arbiter, in finding that Nieva did not abandon his job, held that:

> "Complainant categorically stated in his position paper and Sinumpaang Salaysay that on 15 October 1989 he was instructed by Epifanio Llado, respondent company's administrative officer, not to drive his vehicle until the case filed by the PC Colonel arising from the vehicular accident is settled. This assertion repeatedly made by complainant was never refuted by respondent. Such being the case, the respondent cannot conveniently contend that the absence of complainant was without permission."[9]

Considering that the findings of fact of the Labor Arbiter and the NLRC are supported by evidence on record, the same must be accorded due respect and finality.[10]

Likewise, the labor arbiter considered Nieva's absence from work as not equivalent to abandonment. We agree. Time and again, we have held that the immediate filing of a complaint for illegal dismissal by an employee, as in this case, is inconsistent with abandonment.[11]

From the foregoing, we hold that the NLRC did not commit abuse of discretion, much less grave abuse, when it denied Philtranco's motion to dismiss Nieva's complaint on the ground of improper venue and affirmed the labor arbiter's award of back wages and separation pay to the latter.

WHEREFORE, finding no grave abuse of discretion committed by public respondent NLRC, the assailed Resolution of November 29, 1995 is **AFFIRMED** and this petition is hereby **DISMISSED** for lack of merit. Costs against petitioner.

SO ORDERED.

Narvasa, *C.J.*, Kapunan and Purisima, *JJ.*, concur.

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[1] Philtranco bases its position on Section 1(a), Rule IV of the New Rules of Procedure of the National Labor Relations Commission, which 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.

x x x"

[2] Rollo, p. 121.
[3] Ibid, p. 144.
[4] Dayag vs. NLRC, G.R. No. 124193, March 6, 1998,
[5] Nestlé Philippines, Inc. vs. NLRC, 209 SCRA 834 (1992).
[6] Supra, Note 4.
[7] 254 SCRA 507 (1996).
[8] NFL vs. NLRC, G.R. No. 113466, December 15, 1997, citing ComSavings Bank vs. NLRC, 257 SCRA 307 (1996).
[9] Rollo, p. 120.
[10] ComSavings Bank vs. NLRC, supra.
[11] PASUDECO vs. NLRC, G.R. No. 112650, May 29, 1997; Jackson Building Condominium Corporation vs. NLRC, 246 SCRA 329 (1995); Ranara vs. NLRC, 212 SCRA 631 (1992).
