SUPREME COURT
THIRD DIVISION

R TRANSPORT CORPORATION,
***Petitioner*,**

-versus-

G.R. No. 148508
May 20, 2004

ROGELIO EJANDRA,
***Respondent*.**
x----------x

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. Pacquin 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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> x x x
>
> 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.
>
> x x x[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 IN ITS DECISION PROMULGATED ON DECEMBER 22, 2000 (ANNEXES "G" AND "G-1") AND IN

ITS RESOLUTION DATED JUNE 4, 2001 (ANNEX "B"), HAS ACTED CONTRARY TO LAW AND THE RULES OF COURT.[9]

According to the petitioner, the appellate court erred in not finding that private respondent abandoned his work; that petitioner was not the lessor of private respondent; that, as such, the termination of the contract of lease of services did not require petitioner to respect private respondent's rights to notice and hearing; and, that private respondent's affidavit was hearsay and self-serving.

We deny the appeal.

Under Section 1, Rule 45 of the 1997 Rules of Civil Procedure, a petition for review shall only raise questions of law considering that the findings of fact of the Court of Appeals are, as a general rule, conclusive upon and binding on this Court.[10] This doctrine applies with greater force in labor cases where the factual findings of the labor tribunals are affirmed by the Court of Appeals. The reason is because labor officials are deemed to have acquired expertise in matters within their jurisdiction and therefore, their factual findings are generally accorded not only respect but also finality, and are binding on this Court.[11]

In the case at bar, the labor arbiter, the NLRC and the Court of Appeals were unanimous in finding that private respondent worked as a driver of one of the buses of petitioner and was paid on a 10% commission basis. After he was apprehended for a traffic violation, his license was confiscated. When he informed petitioner's general manager of such fact, the latter gave him money to redeem his license. He went to the LTO office everyday but it was only after a week that he was able to get back his license. When he reported back to work, petitioner's manager told him to wait until his services were needed again. Considering himself dismissed, private respondent filed a complaint for illegal dismissal against petitioner.

We have no reason to disturb all these factual findings because they are amply supported by substantial evidence.

Denying the existence of an employer-employee relationship, petitioner insists that the parties' agreement was for a contract of

lease of services. We disagree. Petitioner is barred to negate the existence of an employer-employee relationship. In its petition filed before this Court, petitioner invoked our rulings on the right of an employer to dismiss an employee for just cause.[12] Petitioner maintained that private respondent was justifiably dismissed due to abandonment of work. By adopting said rulings, petitioner impliedly admitted that it was in fact the employer of private respondent. According to the control test, the power to dismiss an employee is one of the indications of an employer-employee relationship.[13] Petitioner's claim that private respondent was legally dismissed for abandonment was in fact a negative pregnant:[14] an acknowledgement that there was no mutual termination of the alleged contract of lease and that private respondent was its employee. The fact that petitioner paid private respondent on commission basis did not rule out the presence of an employee-employer relationship. Article 97(f) of the Labor Code clearly provides that an employee's wages can be in the form of commissions.

We now ask the next question: was private respondent, an employee of petitioner, dismissed for just cause? We do not think so.

According to petitioner, private respondent abandoned his job and lied about the confiscation of his license. To constitute abandonment, two elements must concur: (1) the failure to report for work or absence without valid or justifiable reason and (2) a clear intention to sever the employer-employee relationship. Of the two, the second element is the more determinative factor and should be manifested by some overt acts. Mere absence is not sufficient. It is the employer who has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning.[15]

In the instant case, petitioner fell short of proving the requisites. To begin with, petitioner's absence was justified because the LTO, Guadalupe Branch, did not release his license until after a week. This was the unanimous factual finding of the labor tribunals and the Court of Appeals. As aptly held by Labor Arbiter Yulo, the process of redeeming a confiscated license, based on common experience, depended on when the apprehending officer turned over the same. Second, private respondent never intended to sever his employment

as he in fact reported for work as soon as he got his license back. Petitioner offered no evidence to rebut these established facts. Third, Labor Arbiter Yulo correctly observed that, if private respondent really abandoned his work, petitioner should have reported such fact to the nearest Regional Office of the Department of Labor and Employment in accordance with Section 7, Rule XXIII, Book V of Department Order No. 9, series of 1997[16] (Rules Implementing Book V of the Labor Code). Petitioner made no such report.

In addition to the fact that petitioner had no valid cause to terminate private respondent from work, it violated the latter's right to procedural due process by not giving him the required notice and hearing. Section 2, Rule XXIII, Book V of Department Order No. 9 provides for the procedure for dismissal for just or authorized cause:

> SEC. 2. Standards of due process; requirement of notice. – In all cases of termination of employment, the following standards of due process shall be substantially observed:
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> I. For termination of employment based on just causes as defined in Article 282 of the Code:
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> (a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;
>
> (b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and
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> (c) A written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. In case of termination, the foregoing notices

shall be served on the employee's last known address.

II. For termination of employment as based on authorized causes defined in Article 283 of the Code, the requirements of due process shall be deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department at least thirty days before the effectivity of the termination, specifying the ground or grounds for termination.

III. If termination is brought about by the completion of the contract or phase thereof, no prior notice is required. If the termination is brought about by the failure of an employee to meet the standards of the employer in case of probationary employment, it shall be sufficient that a written notice is served the employee within a reasonable time from the effective date of termination.

WHEREFORE, premises considered, the petition is hereby **DENIED**. Costs against the petitioner.

SO ORDERED.

Vitug, *J.*, *(Chairman and Acting Chief Justice)*, Sandoval-Gutierrez, and Carpio-Morales, *JJ.*, concur.

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[1] Penned by Associate Justice Ramon C. Barcelona and concurred in by Associate Justices Rodrigo V. Cosico and Bienvenido L. Reyes; Rollo, pp. 29-34.
[2] Tenth Division.
[3] Penned by Commissioner Rogelio I. Rayala and concurred in by Presiding Commissioner Raul Aquino and Commissioner Victoriano Calycay; Rollo, pp. 93-98.
[4] Penned by Labor Arbiter Gerardo A. Yulo; Rollo, pp. 63-67.
[5] Rollo, p. 67.
[6] Rollo, p. 98.
[7] Rollo, pp. 96-98.

[8] Rollo, p. 34.
[9] Rollo, p. 13.
[10] Herbosa, et. al. vs. Court of Appeals, 374 SCRA 578, 591 [2001].
[11] Alfaro vs. Court of Appeals, 363 SCRA 799 [2001].
[12] Rollo, p. 19-20.
[13] Jimenez vs. National Labor Relations Commission, 256 SCRA 84 [1996].
[14] A negative pregnant is a form of negative expression which carries with it an affirmation or at least an implication of some kind favorable to the adverse party. It is a denial pregnant with an admission of the substantial facts alleged in the pleading. Where a fact is alleged with qualifying or modifying language and the words of the allegation as so qualified or modified are literally denied, has been held that the qualifying circumstances alone are denied while the fact itself is admitted. (Republic vs. Sandiganbayan, et. al., G.R. No. 152154, July 15, 2003)
[15] Millares, et. al., vs. National Labor Relations Commission, 328 SCRA 79 [2000].
[16] SEC. 7. Report of dismissal. – The employer shall submit a monthly report to the Regional Office having jurisdiction over the place of work all dismissals effected by it during the month, specifying therein the names of the dismissed workers, the reasons for their dismissal, the dates of commencement and termination of employment, the positions last held by them and such other information as may be required by the Department for policy guidance and statistical purposes.