Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

HSY MARKETING LTD., CO.,*	**G.R. No. 219569**
Petitioner,	
	Present:
- versus -	SERENO, *C.J.*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN,
VIRGILIO O. VILLASTIQUE, Respondent.	PERLAS-BERNABE, and CAGUIOA, *JJ.*
	Promulgated:
	AUG 17 2016

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DECISION

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated October 29, 2014 and the Resolution[3] dated July 14, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 05002-MIN, which affirmed the Resolutions dated April 30, 2012[4] and June 29, 2012[5] of the National Labor Relations Commission (NLRC) in NLRC Case No. MAC-02-012459-2012 (RAB-X-04-00179-2011), upholding the Labor Arbiter's (LA) dismissal of respondent Virgilio O. Villastique's (respondent) complaint for illegal dismissal against petitioner HSY Marketing Ltd., Co. (petitioner), and the award of separation pay in lieu of reinstatement, as well as service incentive leave pay, in favor of respondent.[6]

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* HSY Manufacturing Ltd., Co. in some parts of the *rollo*.

1 *Rollo*, pp. 9-25.

2 Id. at 30-40. Penned by Associate Justice Oscar V. Badelles with Associate Justices Romulo V. Borja and Maria Filomena D. Singh concurring.

3 Id. at 42-43.

4 Id. at 61-67. Penned by Commissioner Proculo T. Sarmen with Commissioner Dominador B. Medroso, Jr. concurring. Presiding Commissioner Bario-Rod M. Talon was on leave.

5 Id. at 68-69. Penned by Commissioner Proculo T. Sarmen with Presiding Commissioner Bario-Rod M. Talon and Commissioner Dominador B. Medroso, Jr. concurring.

6 See Decision dated November 28, 2011 penned by LA Rammex C. Tiglao; id. at 117-124.

The Facts

On January 3, 2003, petitioner hired respondent as a field driver for Fabulous Jeans & Shirt & General Merchandise[7] (Fabulous Jeans), tasked to deliver ready-to-wear items and/or general merchandise for a daily compensation of ₱370.00.[8] On January 10, 2011, respondent figured in an accident when the service vehicle (a 2010-model Mitsubishi Strada pick up) he was driving in Iligan City bumped a pedestrian, Ryan Doratayro (Doratayro).[9] Fabulous Jeans shouldered the hospitalization and medical expenses of Doratayro in the amount of ₱64,157.15, which respondent was asked to reimburse, but to no avail.[10] On February 24, 2011,[11] respondent was allegedly required to sign a resignation letter, which he refused to do. A couple of days later, he tried to collect his salary for that week but was told that it was withheld because of his refusal to resign.[12] Convinced that he was already terminated on February 26, 2011,[13] he lost no time in filing a complaint for illegal dismissal with money claims[14] against petitioner, Fabulous Jeans, and its owner, Alexander G. Arqueza (Arqueza; collectively, petitioner, *et al.*) before the NLRC, docketed as RAB-X-04-00179-2011.

In their defense,[15] petitioner, *et al.* contended that respondent had committed several violations in the course of his employment, and had been found by his superior and fellow employees to be a negligent and reckless driver, which resulted in the vehicular mishap involving Doratayro.[16] After they paid for Doratayro's hospitalization and medical expenses, respondent went on absence without leave, presumably to evade liability for his recklessness.[17] Since respondent was the one who refused to report for work, he should be considered as having voluntarily severed his own employment.[18] Thus, his money claims cannot prosper as he was not terminated.

The LA Ruling

In a Decision[19] dated November 28, 2011, the LA dismissed the charge of illegal dismissal, finding no evidence to substantiate respondent's

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7 "Fabulous Jeans & Shirts & General Merchandise" in some parts of the *rollo*.
8 *Rollo*, pp. 31 and 117.
9 "Dorotayo" or "Dorotaryo" in some parts of the *rollo*.
10 *Rollo*, pp. 31 and 117-118.
11 In respondent's position paper, he claimed that it was on February 23, 2011 when he was required to sign a resignation letter (see id. at 86).
12 Id. at 31-32 and 118.
13 See id. at 87,110, and 120.
14 See Complaint dated April 4, 2011; id. at 70-71.
15 See petitioner, *et al.*'s position paper dated June 23, 2011; id. at 72-80.
16 Id. at 73.
17 Id.
18 Id. at 74.
19 Id. at 117-124.

claim that he was dismissed from his job on February 26, 2011.[20] The LA declared that neither was there a notice of termination issued to him, nor was he prevented from showing up in petitioner's place of business.[21] There was likewise no evidence submitted by petitioner that respondent had indeed voluntarily resigned.[22] According to the LA, mere absence or failure to report for work, even after a notice to return, is not tantamount to abandonment.[23] However, it was not even shown that respondent was notified in writing to report for work, or warned that his continued failure to report would be construed as abandonment or resignation.[24] Thus, the LA ruled that the employer-employee relationship between the parties should be maintained.[25] Nonetheless, since the LA pronounced that there were strained relations between the parties, petitioner was not ordered to reinstate respondent, and instead, was directed to pay the latter the amount of ₱86,580.00 as separation pay.[26]

Also, the LA awarded respondent the amount of ₱16,418.75 as service incentive leave pay, pointing out that respondent was a field driver who regularly performed work outside petitioner's place of business and whose hours of work could not be ascertained with reasonable certainty; and that petitioner had failed to present the payroll or pay slips to prove that respondent was paid such benefit.[27]

Finally, the LA dismissed the complaint against Fabulous Jeans and Arqueza for lack of factual and evidentiary basis, finding petitioner to be respondent's employer.[28]

Aggrieved, petitioner, *et al.* appealed[29] the case to the NLRC, imputing error on the part of the LA in holding that respondent did not voluntarily resign from his employment, and in awarding separation pay and service incentive leave pay.[30] They likewise asserted that petitioner was not the employer of respondent.[31]

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20 Id. at 120.
21 Id. at 120-121.
22 Id. at 121.
23 Id.
24 Id. at 122.
25 Id.
26 See id. at 123-124.
27 Id.
28 Id. at 124.
29 Docketed as NLRC Case No. MAC-02-012459-2012. See Notice of Appeal with Memorandum of Appeal dated February 10, 2012; id. at 126-127 and 128-139.
30 See id. at 132-136.
31 Id. at 137.

The NLRC Ruling

In a Resolution[32] dated April 30, 2012, the NLRC affirmed the finding of the LA that there was no illegal dismissal to speak of, stressing the failure of respondent to discharge the burden of proof, which shifted to him when his employer denied having dismissed him.[33] Similarly, the NLRC found no evidence of deliberate or unjustified refusal on the part of respondent to resume his employment, or of overt acts unerringly pointing to the fact that respondent did not want to work anymore.[34]

Petitioner, *et al.* moved for reconsideration,[35] but was denied in a Resolution[36] dated June 29, 2012. Undaunted, they elevated the case to the CA by way of *certiorari*.[37]

The CA Ruling

In a Decision[38] dated October 29, 2014, the CA affirmed *in toto* the NLRC Resolutions, observing that the failure of petitioner, *et al.* to present the alleged resignation letter of respondent belied their claim that he voluntarily resigned; and that the fact of filing by respondent of the labor complaint was inconsistent with the charge of abandonment.[39] Thus, the CA found no grave abuse of discretion on the part of the NLRC in sustaining the award of separation pay, which respondent had expressly prayed for from the very start of the proceedings,[40] thereby foreclosing, by implication, reinstatement as a relief.[41] In addition, the CA held that reinstatement was no longer feasible considering the resentment and enmity between the parties.[42]

On the issue of respondent's entitlement to service incentive leave pay, the CA declared that respondent was not a field personnel but a regular employee whose task was necessary and desirable to the usual trade and business of his employer, which, thus, entitled him to the benefit in question.[43]

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32 Id. at 61-67.
33 Id. at 64.
34 Id. at 65.
35 See motion for reconsideration dated May 28, 2012; id. at 158-164.
36 Id. at 68-69.
37 Id. at 44-60.
38 Id. at 30-40.
39 See id. at 35-36.
40 In his Complaint filed before the NLRC Regional Arbitration Branch 10, Cagayan de Oro City, respondent prayed for reinstatement with full backwages (see id. at 70-71). However, in his position paper, respondent alleged that due to strained relationship with petitioner, he should be given separation pay instead (see id. at 92).
41 Id. at 38.
42 Id.
43 Id. at 39.

Finally, the CA debunked petitioner's contention that it is a total stranger to the case, not having shown that it has a personality separate and distinct from that of Fabulous Jeans.[44]

Again, petitioner, *et al.* moved for reconsideration,[45] but was denied in a Resolution[46] dated July 14, 2015; hence, this petition solely filed by herein petitioner.

The Issues Before the Court

The issues for the Court's resolution are whether or not the CA correctly: (*a*) found that an employment relationship existed between the parties in this case; (*b*) affirmed the findings of the NLRC that respondent did not voluntarily resign from work and petitioner did not dismiss him from employment, and consequently, awarded respondent separation pay; and (*c*) declared respondent to be a regular employee and thus, awarded him service incentive leave pay.

The Court's Ruling

The petition is partly meritorious.

I.

The Court first resolves the issue on the parties' employment relationship.

Case law instructs that **the issue of whether or not an employer-employee relationship exists in a given case is essentially a question of fact**. It is settled that the Court is not a trier of facts, and this rule applies with greater force in labor cases.[47] Generally, it may only look into factual issues in labor cases when the factual findings of the LA, the NLRC, and the CA are conflicting.[48] Hence, if there is no cogent reason to hold otherwise, the Court ought to defer to the findings of the foregoing tribunals on this question of fact.

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44 Id.
45 See motion for reconsideration dated November 25, 2014; id. at 170-178.
46 Id. at 42-43.
47 *South East International Rattan, Inc. v. Coming*, G.R. No. 186621, March 12, 2014, 718 SCRA 658, 666.
48 Id.

In this case, it should be recalled that in the LA's November 28, 2011 Decision, the LA categorically declared petitioner to be the employer of respondent and accordingly, dismissed the complaint against Fabulous Jeans and Arqueza.[49] Consequently, in the Memorandum of Appeal[50] before the NLRC, where Fabulous Jeans joined petitioner as respondent-appellant, it was argued that the LA should have dismissed the charges against petitioner instead, considering that respondent was employed as a field driver for Fabulous Jeans, and that there was no employer-employee relationship between him and petitioner.[51] The NLRC failed to explicitly address the said issue in its April 30, 2012 Resolution, referring to respondents-appellants (petitioner, *et al.* in this case) collectively as the employer. However, it particularly debunked petitioner's assertion that there was ample evidence that respondent voluntarily resigned and that he refused to return to work anymore;[52] and pinpointed petitioner as the one that knew where to look for respondent after the latter had allegedly disappeared.[53] The CA, on the other hand, minced no words when it declared petitioner as attempting to avoid liability by claiming that it has a separate and distinct personality from that of Fabulous Jeans without offering evidence to buttress the same.[54] Hence, considering that the LA, the NLRC, and the CA consistently found petitioner liable as the employer of respondent, the Court sees no compelling reason to depart from their judgment on this score.

In fact, it is even worth noting that respondent claimed in his Position Paper[55] before the LA that he was hired by petitioner and was required to report for work at its store in Cagayan de Oro City.[56] This was confirmed by petitioner in its own Position Paper,[57] declaring respondent to be "a field driver for the Cagayan de Oro Branch of (petitioner) HSY MARKETING LTD., CO., (NOVO JEANS & SHIRT)."[58] Clearly, petitioner should be bound by such admission and must not be allowed to continue to deny any employer-employee relationship with respondent.

To add, the Court had already exposed the practice of setting up "distributors" or "dealers" which are, in reality, dummy companies that allow the mother company to avoid employer-employee relations and, consequently, shield the latter from liability from employee claims in case of illegal dismissal, closure, unfair labor practices, and the like.[59] Respondent had categorically alleged the commission of such pernicious practice in his Affidavit[60] dated July 14, 2011, as follows:

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49 *Rollo*, p. 124.
50 Id. at 128-142.
51 Id. at 137.
52 Id. at 64.
53 Id. at 65.
54 Id. at 39.
55 Id. at 84-94.
56 Id. at 85.
57 Id. at 72-80.
58 Id. at 72.
59 *San Miguel Corporation v. NLRC*, 539 Phil. 236, 249-250 (2006).
60 *Rollo*, pp. 113-114.

> 2. That for the many years that I have been employed with NOVO, I have observed that although they used the business name NOVO Jeans and Shirts, the ownership of each and every branch in the entire Mindanao was put under different corporate names like a) Asian Distributor in Bayugan; b) Novotel (with Hotel) in Ozamis City; c) HSY Marketing Limited Corporation as their mother corporation; d) Fabulous Jeans and Shirts in Iligan City and Cagayan de Oro City;
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> 3. That the different ownership used by Respondent NOVO in its different branches was to minimize business tax;[61]

Despite these statements, petitioner failed to present evidence to rebut the same. Therefore, it cannot be allowed to evade liability as the employer of respondent.

II.

The Court likewise upholds the unanimous conclusion of the lower tribunals that respondent had not been dismissed at all. Other than the latter's unsubstantiated allegation of having been verbally terminated from his work, no substantial evidence was presented to show that he was indeed dismissed or was prevented from returning to his work. In the absence of any showing of an overt or positive act proving that petitioner had dismissed respondent, the latter's claim of illegal dismissal cannot be sustained, as such supposition would be self-serving, conjectural, and of no probative value.[62]

Similarly, petitioner's claims of respondent's voluntary resignation and/or abandonment deserve scant consideration, considering petitioner's failure to discharge the burden of proving the deliberate and unjustified refusal of respondent to resume his employment without any intention of returning. It was incumbent upon petitioner to ascertain respondent's interest or non-interest in the continuance of his employment, [63] but to no avail.

Hence, since there is no dismissal or abandonment to speak of, the appropriate course of action is to reinstate the employee (in this case, herein respondent) without, however, the payment of backwages.[64]

Notably, the reinstatement ordered here should not be construed as a relief proceeding from illegal dismissal; instead, it should be considered as a declaration or affirmation that the employee may return to work because he

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61 Id. at 113.
62 *MZR Industries v. Colambot*, 716 Phil. 617, 624 (2013).
63 Id. at 628.
64 See *Exodus International Construction Corporation v. Biscocho*, 659 Phil. 146 (2011).

was not dismissed in the first place.[65] For this reason, the Court agrees with petitioner that the LA, the NLRC, and the CA erred in awarding separation pay in spite of the finding that respondent had not been dismissed. Properly speaking, **liability for the payment of separation pay is but a legal consequence of illegal dismissal where reinstatement is no longer viable or feasible**. As a relief granted in lieu of reinstatement, it goes without saying that an award of separation pay is inconsistent with a finding that there was no illegal dismissal.[66] **This is because an employee who had not been dismissed, much less illegally dismissed, cannot be reinstated**.[67] Moreover, **as there is no reinstatement to speak of, respondent cannot invoke the doctrine of strained relations**[68] to support his prayer for the award of separation pay. In the case of *Capili v. NLRC*,[69] the Court explained that:

> The award of separation pay cannot be justified solely because of the existence of "strained relations" between the employer and the employee. **It must be given to the employee only as an alternative to reinstatement emanating from illegal dismissal. When there is no illegal dismissal, even if the relations are strained, separation pay has no legal basis.** Besides, the doctrine on "strained relations" cannot be applied indiscriminately since every labor dispute almost invariably results in "strained relations;" otherwise, reinstatement can never be possible simply because some hostility is engendered between the parties as a result of their disagreement. That is human nature. [70] (Emphasis supplied)

In fine, petitioner is ordered to reinstate respondent to his former position without the payment of backwages. If respondent voluntarily chooses not to return to work, he must then be considered as having resigned from employment. This is without prejudice, however, to the willingness of both parties to continue with their former contract of employment or enter into a new one whenever they so desire.[71]

III.

While petitioner should not be adjudged liable for separation pay, the Court nonetheless sustains the award of service incentive leave pay in favor of respondent, in accordance with the finding of the CA that respondent was a regular employee of petitioner and is, therefore, entitled to such benefit. As the CA aptly pointed out:

> [R]espondent is not a field personnel as defined above because of the nature of his job as a company driver. Expectedly, respondent is directed to deliver the goods at a specified time and place and he is not given the

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65 *Capili v. NLRC*, 337 Phil. 210, 216 (1997).
66 *Leopard Security and Investigation Agency v. Quitoy*, 704 Phil. 449, 460 (2013).
67 *Jordan v. Grandeur Security & Services, Inc.*, G.R. No. 206716, June 18, 2014, 727 SCRA 36, 48.
68 *Verdadero v. Barney Autolines Group of Companies Transport, Inc.*, 693 Phil. 646, 660 (2012).
69 Supra note 65.
70 Id. at 216.
71 Id. at 217.

> discretion to solicit, select[,] and contact prospective clients. Respondent in his Position Paper claimed that he was required to report for work from 8:00 a.m. to 8:00 p.m. at the company's store located at Velez-Gomez Street, Cagayan de Oro City. Certainly then, respondent was under the control and supervision of petitioners. Respondent, therefore, is a regular employee whose task is usually necessary and desirable to the usual trade and business of the company. Thus, he is entitled to the benefits accorded to regular employees, including service incentive leave pay.[72]

The Court has already held that **company drivers who are under the control and supervision of management officers – like respondent herein – are regular employees entitled to benefits including service incentive leave pay**.[73] "Service incentive leave is a right which accrues to every employee who has served 'within 12 months, whether continuous or broken reckoned from the date the employee started working, including authorized absences and paid regular holidays unless the working days in the establishment as a matter of practice or policy, or that provided in the employment contracts, is less than 12 months, in which case said period shall be considered as one [(1)] year.' It is also commutable to its money equivalent if not used or exhausted at the end of the year. In other words, an employee who has served for one (1) year is entitled to it. He may use it as leave days or he may collect its monetary value."[74]

Petitioner, as the employer of respondent, and having complete control over the records of the company, could have easily rebutted the said monetary claim against it by presenting the vouchers or payrolls showing payment of the same. However, since petitioner opted not to lift a finger in providing the required documentary evidence, the ineluctable conclusion that may be derived therefrom is that it never paid said benefit and must, perforce, be ordered to settle its obligation to respondent.[75]

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated October 29, 2014 and the Resolution dated July 14, 2015 of the Court of Appeals in CA-G.R. SP No. 05002-MIN are hereby **AFFIRMED** with **MODIFICATION** deleting the award of separation pay in the amount of ₱86,580.00. Instead, petitioner HSY Marketing Ltd., Co. is **ORDERED** to reinstate respondent Virgilio O. Villastique to his former position without payment of backwages in accordance with this Decision. Furthermore, petitioner is **ORDERED** to pay respondent his unpaid service incentive leave pay in the amount of ₱16,418.75.

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72 *Rollo*, p. 39.

73 See *Far East Agricultural Supply, Inc. v. Lebatique*, 544 Phil. 420, 429 (2007).

74 *Mansion Printing Center v. Bitara, Jr.*, 680 Phil. 43, 62 (2012); citations omitted.

75 *Exodus International Construction Corporation v. Biscocho*, supra note 64, at 158.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice