SUPREME COURT
SECOND DIVISION

PEDRO CHAVEZ,
***Petitioner*,**

-versus-

G.R. No. 146530
January 17, 2005

NATIONAL LABOR RELATIONS COMMISSION, SUPREME PACKAGING, INC. and ALVIN LEE, Plant Manager,
***Respondents*.**
x----------x

D E C I S I O N

CALLEJO, SR., *J.*:

Before the Court is the Petition for Review on Certiorari of the Resolution[1] dated December 15, 2000 of the Court of Appeals (CA) reversing its Decision dated April 28, 2000 in CA-G.R. SP No. 52485. The assailed resolution reinstated the Decision dated July 10, 1998 of the National Labor Relations Commission (NLRC), dismissing the complaint for illegal dismissal filed by herein petitioner Pedro Chavez. The said NLRC decision similarly reversed its earlier Decision dated January 27, 1998 which, affirming that of the Labor Arbiter, ruled that the petitioner had been illegally dismissed by respondents Supreme Packaging, Inc. and Mr. Alvin Lee.

The case stemmed from the following facts:

The respondent company, Supreme Packaging, Inc., is in the business of manufacturing cartons and other packaging materials for export and distribution. It engaged the services of the petitioner, Pedro Chavez, as truck driver on October 25, 1984. As such, the petitioner was tasked to deliver the respondent company's products from its factory in Mariveles, Bataan, to its various customers, mostly in Metro Manila. The respondent company furnished the petitioner with a truck. Most of the petitioner's delivery trips were made at nighttime, commencing at 6:00 p.m. from Mariveles, and returning thereto in the afternoon two or three days after. The deliveries were made in accordance with the routing slips issued by respondent company indicating the order, time and urgency of delivery. Initially, the petitioner was paid the sum of P350.00 per trip. This was later adjusted to P480.00 per trip and, at the time of his alleged dismissal, the petitioner was receiving P900.00 per trip.

Sometime in 1992, the petitioner expressed to respondent Alvin Lee, respondent company's plant manager, his (the petitioner's) desire to avail himself of the benefits that the regular employees were receiving such as overtime pay, nightshift differential pay, and 13th month pay, among others. Although he promised to extend these benefits to the petitioner, respondent Lee failed to actually do so.

On February 20, 1995, the petitioner filed a complaint for regularization with the Regional Arbitration Branch No. III of the NLRC in San Fernando, Pampanga. Before the case could be heard, respondent company terminated the services of the petitioner. Consequently, on May 25, 1995, the petitioner filed an amended complaint against the respondents for illegal dismissal, unfair labor practice and non-payment of overtime pay, nightshift differential pay, 13th month pay, among others. The case was docketed as NLRC Case No. RAB-III-02-6181-95.

The respondents, for their part, denied the existence of an employer-employee relationship between the respondent company and the petitioner. They averred that the petitioner was an independent contractor as evidenced by the contract of service which he and the

respondent company entered into. The said contract provided as follows:

> That the Principal [referring to Supreme Packaging, Inc.], by these presents, agrees to hire and the Contractor [referring to Pedro Chavez], by nature of their specialized line or service jobs, accepts the services to be rendered to the Principal, under the following terms and covenants heretofore mentioned:
>
> 1. That the inland transport delivery/hauling activities to be performed by the contractor to the principal, shall only cover travel route from Mariveles to Metro Manila. Otherwise, any change to this travel route shall be subject to further agreement by the parties concerned.
>
> 2. That the payment to be made by the Principal for any hauling or delivery transport services fully rendered by the Contractor shall be on a per trip basis depending on the size or classification of the truck being used in the transport service, to wit:
>
>   a) If the hauling or delivery service shall require a truck of six wheeler, the payment on a per trip basis from Mariveles to Metro Manila shall be THREE HUNDRED PESOS (P300.00) and EFFECTIVE December 15, 1984.
>
>   b) If the hauling or delivery service require a truck of ten wheeler, the payment on a per trip basis, following the same route mentioned, shall be THREE HUNDRED FIFTY (P350.00) Pesos and Effective December 15, 1984.
>
> 3. That for the amount involved, the Contractor will be to [sic] provide for [sic] at least two (2) helpers;
>
> 4. The Contractor shall exercise direct control and shall be responsible to the Principal for the cost of any damage to, loss of any goods, cargoes, finished

products or the like, while the same are in transit, or due to reckless [sic] of its men utilized for the purpose above mentioned;

5. That the Contractor shall have absolute control and disciplinary power over its men working for him subject to this agreement, and that the Contractor shall hold the Principal free and harmless from any liability or claim that may arise by virtue of the Contractor's non-compliance to the existing provisions of the Minimum Wage Law, the Employees Compensation Act, the Social Security System Act, or any other such law or decree that may hereafter be enacted, it being clearly understood that any truck drivers, helpers or men working with and for the Contractor, are not employees who will be indemnified by the Principal for any such claim, including damages incurred in connection therewith;

6. This contract shall take effect immediately upon the signing by the parties, subject to renewal on a year-to-year basis.[2]

This contract of service was dated December 12, 1984. It was subsequently renewed twice, on July 10, 1989 and September 28, 1992. Except for the rates to be paid to the petitioner, the terms of the contracts were substantially the same. The relationship of the respondent company and the petitioner was allegedly governed by this contract of service.

The respondents insisted that the petitioner had the sole control over the means and methods by which his work was accomplished. He paid the wages of his helpers and exercised control over them. As such, the petitioner was not entitled to regularization because he was not an employee of the respondent company. The respondents, likewise, maintained that they did not dismiss the petitioner. Rather, the severance of his contractual relation with the respondent company was due to his violation of the terms and conditions of their contract. The petitioner allegedly failed to observe the minimum degree of diligence in the proper maintenance of the truck he was

using, thereby exposing respondent company to unnecessary significant expenses of overhauling the said truck.

After the parties had filed their respective pleadings, the Labor Arbiter rendered the Decision dated February 3, 1997, finding the respondents guilty of illegal dismissal. The Labor Arbiter declared that the petitioner was a regular employee of the respondent company as he was performing a service that was necessary and desirable to the latter's business. Moreover, it was noted that the petitioner had discharged his duties as truck driver for the respondent company for a continuous and uninterrupted period of more than ten years.

The contract of service invoked by the respondents was declared null and void as it constituted a circumvention of the constitutional provision affording full protection to labor and security of tenure. The Labor Arbiter found that the petitioner's dismissal was anchored on his insistent demand to be regularized. Hence, for lack of a valid and just cause therefor and for their failure to observe the due process requirements, the respondents were found guilty of illegal dismissal. The dispositive portion of the Labor Arbiter's decision states:

> WHEREFORE, in the light of the foregoing, judgment is hereby rendered declaring respondent SUPREME PACKAGING, INC. and/or MR. ALVIN LEE, Plant Manager, with business address at BEPZ, Mariveles, Bataan guilty of illegal dismissal, ordering said respondent to pay complainant his separation pay equivalent to one (1) month pay per year of service based on the average monthly pay of P10,800.00 in lieu of reinstatement as his reinstatement back to work will not do any good between the parties as the employment relationship has already become strained and full backwages from the time his compensation was withheld on February 23, 1995 up to January 31, 1997 (cut-off date) until compliance, otherwise, his backwages shall continue to run. Also to pay complainant his 13th month pay, night shift differential pay and service incentive leave pay hereunder computed as follows:
>
> a) Backwages P248,400.00
>
> b) Separation Pay P140,400.00

c)	13th month pay	P 10,800.00
d)	Service Incentive Leave Pay	2,040.00
	TOTAL	P401,640.00

Respondent is also ordered to pay ten (10%) of the amount due the complainant as attorney's fees.

SO ORDERED.[3]

The respondents seasonably interposed an appeal with the NLRC. However, the appeal was dismissed by the NLRC in its Decision[4] dated January 27, 1998, as it affirmed in toto the decision of the Labor Arbiter. In the said decision, the NLRC characterized the contract of service between the respondent company and the petitioner as a "scheme" that was resorted to by the respondents who, taking advantage of the petitioner's unfamiliarity with the English language and/or legal niceties, wanted to evade the effects and implications of his becoming a regularized employee.[5]

The respondents sought reconsideration of the January 27, 1998 Decision of the NLRC. Acting thereon, the NLRC rendered another Decision[6] dated July 10, 1998, reversing its earlier decision and, this time, holding that no employer-employee relationship existed between the respondent company and the petitioner. In reconsidering its earlier decision, the NLRC stated that the respondents did not exercise control over the means and methods by which the petitioner accomplished his delivery services. It upheld the validity of the contract of service as it pointed out that said contract was silent as to the time by which the petitioner was to make the deliveries and that the petitioner could hire his own helpers whose wages would be paid from his own account. These factors indicated that the petitioner was an independent contractor, not an employee of the respondent company.

The NLRC ruled that the contract of service was not intended to circumvent Article 280 of the Labor Code on the regularization of employees. Said contract, including the fixed period of employment

contained therein, having been knowingly and voluntarily entered into by the parties thereto was declared valid citing Brent School, Inc. vs. Zamora.[7] The NLRC, thus, dismissed the petitioner's complaint for illegal dismissal.

The petitioner sought reconsideration of the July 10, 1998 Decision but it was denied by the NLRC in its Resolution dated September 7, 1998. He then filed with this Court a petition for certiorari, which was referred to the CA following the ruling in St. Martin Funeral Home vs. NLRC.[8]

The appellate court rendered the Decision dated April 28, 2000, reversing the July 10, 1998 Decision of the NLRC and reinstating the decision of the Labor Arbiter. In the said decision, the CA ruled that the petitioner was a regular employee of the respondent company because as its truck driver, he performed a service that was indispensable to the latter's business. Further, he had been the respondent company's truck driver for ten continuous years. The CA also reasoned that the petitioner could not be considered an independent contractor since he had no substantial capital in the form of tools and machinery. In fact, the truck that he drove belonged to the respondent company. The CA also observed that the routing slips that the respondent company issued to the petitioner showed that it exercised control over the latter. The routing slips indicated the chronological order and priority of delivery, the urgency of certain deliveries and the time when the goods were to be delivered to the customers.

The CA, likewise, disbelieved the respondents' claim that the petitioner abandoned his job noting that he just filed a complaint for regularization. This actuation of the petitioner negated the respondents' allegation that he abandoned his job. The CA held that the respondents failed to discharge their burden to show that the petitioner's dismissal was for a valid and just cause. Accordingly, the respondents were declared guilty of illegal dismissal and the decision of the Labor Arbiter was reinstated.

In its April 28, 2000 Decision, the CA denounced the contract of service between the respondent company and the petitioner in this wise:

> In summation, we rule that with the proliferation of contracts seeking to prevent workers from attaining the status of regular employment, it is but necessary for the courts to scrutinize with extreme caution their legality and justness. Where from the circumstances it is apparent that a contract has been entered into to preclude acquisition of tenurial security by the employee, they should be struck down and disregarded as contrary to public policy and morals. In this case, the "contract of service" is just another attempt to exploit the unwitting employee and deprive him of the protection of the Labor Code by making it appear that the stipulations of the parties were governed by the Civil Code as in ordinary transactions.[9]

However, on motion for reconsideration by the respondents, the CA made a complete turn around as it rendered the assailed Resolution dated December 15, 2000 upholding the contract of service between the petitioner and the respondent company. In reconsidering its decision, the CA explained that the extent of control exercised by the respondents over the petitioner was only with respect to the result but not to the means and methods used by him. The CA cited the following circumstances: (1) the respondents had no say on how the goods were to be delivered to the customers; (2) the petitioner had the right to employ workers who would be under his direct control; and (3) the petitioner had no working time.

The fact that the petitioner had been with the respondent company for more than ten years was, according to the CA, of no moment because his status was determined not by the length of service but by the contract of service. This contract, not being contrary to morals, good customs, public order or public policy, should be given the force and effect of law as between the respondent company and the petitioner. Consequently, the CA reinstated the July 10, 1998 Decision of the NLRC dismissing the petitioner's complaint for illegal dismissal.

Hence, the recourse to this Court by the petitioner. He assails the December 15, 2000 Resolution of the appellate court alleging that:

(A)

THE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OF JURISDICTION IN GIVING MORE CONSIDERATION TO THE "CONTRACT OF SERVICE" ENTERED INTO BY PETITIONER AND PRIVATE RESPONDENT THAN ARTICLE 280 OF THE LABOR CODE OF THE PHILIPPINES WHICH CATEGORICALLY DEFINES A REGULAR EMPLOYMENT NOTWITHSTANDING ANY WRITTEN AGREEMENT TO THE CONTRARY AND REGARDLESS OF THE ORAL AGREEMENT OF THE PARTIES;

(B)

THE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OF JURISDICTION IN REVERSING ITS OWN FINDINGS THAT PETITIONER IS A REGULAR EMPLOYEE AND IN HOLDING THAT THERE EXISTED NO EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN PRIVATE RESPONDENT AND PETITIONER IN AS MUCH AS THE "CONTROL TEST" WHICH IS CONSIDERED THE MOST ESSENTIAL CRITERION IN DETERMINING THE EXISTENCE OF SAID RELATIONSHIP IS NOT PRESENT.[10]

The threshold issue that needs to be resolved is whether there existed an employer-employee relationship between the respondent company and the petitioner. We rule in the affirmative.

The elements to determine the existence of an employment relationship are: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the employer's power to control the employee's conduct.[11] The most important element is the employer's control of the employee's conduct, not only as to the result of the work to be done, but also as to the means and methods to accomplish it.[12] All the four elements are present in this case.

First. Undeniably, it was the respondents who engaged the services of the petitioner without the intervention of a third party.

Second. Wages are defined as "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 service rendered or to be rendered."[13] That the petitioner was paid on a per trip basis is not significant. This is merely a method of computing compensation and not a basis for determining the existence or absence of employer-employee relationship. One may be paid on the basis of results or time expended on the work, and may or may not acquire an employment status, depending on whether the elements of an employer-employee relationship are present or not.[14] In this case, it cannot be gainsaid that the petitioner received compensation from the respondent company for the services that he rendered to the latter.

Moreover, under the Rules Implementing the Labor Code, every employer is required to pay his employees by means of payroll.[15] The payroll should show, among other things, the employee's rate of pay, deductions made, and the amount actually paid to the employee. Interestingly, the respondents did not present the payroll to support their claim that the petitioner was not their employee, raising speculations whether this omission proves that its presentation would be adverse to their case.[16]

Third. The respondents' power to dismiss the petitioner was inherent in the fact that they engaged the services of the petitioner as truck driver. They exercised this power by terminating the petitioner's services albeit in the guise of "severance of contractual relation" due allegedly to the latter's breach of his contractual obligation.

Fourth. As earlier opined, of the four elements of the employer-employee relationship, the "control test" is the most important. Compared to an employee, an independent contractor is one who carries on a distinct and independent business and undertakes to perform the job, work, or service on its own account and under its own responsibility according to its own manner and method, free from the control and direction of the principal in all matters

connected with the performance of the work except as to the results thereof.[17] Hence, while an independent contractor enjoys independence and freedom from the control and supervision of his principal, an employee is subject to the employer's power to control the means and methods by which the employee's work is to be performed and accomplished.[18]

Although the respondents denied that they exercised control over the manner and methods by which the petitioner accomplished his work, a careful review of the records shows that the latter performed his work as truck driver under the respondents' supervision and control. Their right of control was manifested by the following attendant circumstances:

1. The truck driven by the petitioner belonged to respondent company;

2. There was an express instruction from the respondents that the truck shall be used exclusively to deliver respondent company's goods;[19]

3. Respondents directed the petitioner, after completion of each delivery, to park the truck in either of two specific places only, to wit: at its office in Metro Manila at 2320 Osmeña Street, Makati City or at BEPZ, Mariveles, Bataan;[20] and

4. Respondents determined how, where and when the petitioner would perform his task by issuing to him gate passes and routing slips.[21]

    a. The routing slips indicated on the column REMARKS, the chronological order and priority of delivery such as 1st drop, 2nd drop, 3rd drop, etc. This meant that the petitioner had to deliver the same according to the order of priority indicated therein.

    b. The routing slips, likewise, showed whether the goods were to be delivered urgently or not by the word RUSH printed thereon.

c. The routing slips also indicated the exact time as to when the goods were to be delivered to the customers as, for example, the words "tomorrow morning" was written on slip no. 2776.

These circumstances, to the Court's mind, prove that the respondents exercised control over the means and methods by which the petitioner accomplished his work as truck driver of the respondent company. On the other hand, the Court is hard put to believe the respondents' allegation that the petitioner was an independent contractor engaged in providing delivery or hauling services when he did not even own the truck used for such services. Evidently, he did not possess substantial capitalization or investment in the form of tools, machinery and work premises. Moreover, the petitioner performed the delivery services exclusively for the respondent company for a continuous and uninterrupted period of ten years.

The contract of service to the contrary notwithstanding, the factual circumstances earlier discussed indubitably establish the existence of an employer-employee relationship between the respondent company and the petitioner. It bears stressing that the existence of an employer-employee relationship cannot be negated by expressly repudiating it in a contract and providing therein that the employee is an independent contractor when, as in this case, the facts clearly show otherwise. Indeed, the employment status of a person is defined and prescribed by law and not by what the parties say it should be.[22]

Having established that there existed an employer-employee relationship between the respondent company and the petitioner, the Court shall now determine whether the respondents validly dismissed the petitioner.

As a rule, the employer bears the burden to prove that the dismissal was for a valid and just cause.[23] In this case, the respondents failed to prove any such cause for the petitioner's dismissal. They insinuated that the petitioner abandoned his job. To constitute abandonment, these two factors must concur: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear

intention to sever employer-employee relationship.[24] Obviously, the petitioner did not intend to sever his relationship with the respondent company for at the time that he allegedly abandoned his job, the petitioner just filed a complaint for regularization, which was forthwith amended to one for illegal dismissal. A charge of abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal, more so when it includes a prayer for reinstatement.[25]

Neither can the respondents' claim that the petitioner was guilty of gross negligence in the proper maintenance of the truck constitute a valid and just cause for his dismissal. Gross negligence implies a want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[26] The negligence, to warrant removal from service, should not merely be gross but also habitual.[27] The single and isolated act of the petitioner's negligence in the proper maintenance of the truck alleged by the respondents does not amount to "gross and habitual neglect" warranting his dismissal.

The Court agrees with the following findings and conclusion of the Labor Arbiter:

> As against the gratuitous allegation of the respondent that complainant was not dismissed from the service but due to complainant's breach of their contractual relation, i.e., his violation of the terms and conditions of the contract, we are very much inclined to believe complainant's story that his dismissal from the service was anchored on his insistent demand that he be considered a regular employee. Because complainant in his right senses will not just abandon for that reason alone his work especially so that it is only his job where he depends chiefly his existence and support for his family if he was not aggrieved by the respondent when he was told that his services as driver will be terminated on February 23, 1995.[28]

Thus, the lack of a valid and just cause in terminating the services of the petitioner renders his dismissal illegal. Under Article 279 of the Labor Code, an employee who is unjustly dismissed is entitled to

reinstatement, without loss of seniority rights and other privileges, and to the payment of full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time his compensation was withheld from him up to the time of his actual reinstatement.[29] However, as found by the Labor Arbiter, the circumstances obtaining in this case do not warrant the petitioner's reinstatement. A more equitable disposition, as held by the Labor Arbiter, would be an award of separation pay equivalent to one month for every year of service from the time of his illegal dismissal up to the finality of this judgment in addition to his full backwages, allowances and other benefits.

WHEREFORE, the instant petition is **GRANTED**. The Resolution dated December 15, 2000 of the Court of Appeals reversing its Decision dated April 28, 2000 in CA-G.R. SP No. 52485 is **REVERSED** and **SET ASIDE**. The Decision dated February 3, 1997 of the Labor Arbiter in NLRC Case No. RAB-III-02-6181-5, finding the respondents guilty of illegally terminating the employment of petitioner Pedro Chavez, is **REINSTATED**.

SO ORDERED.

Puno, *J.*, *(Chairman)*, Austria-Martinez, Tinga, and Chico-Nazario, *JJ.*, concur.

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[1] Penned by Associate Justice Oswaldo D. Agcaoili (retired), with Associate Justices Renato C. Dacudao and Andres B. Reyes, Jr., concurring.
[2] Rollo, pp. 113-114.
[3] Id. at 151.
[4] Penned by Commissioner Rogelio I. Rayala, with Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay, concurring; Id. at 177-184.
[5] Rollo, pp. 183-184.
[6] Penned by Commissioner Angelita A. Gacutan, with Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay, concurring; Id. at 60-73.
[7] 181 SCRA 702 (1990).
[8] 295 SCRA 494 (1998).
[9] Rollo, pp. 42-43.
[10] Id. at 13-14.
[11] Sy vs. Court of Appeals, 398 SCRA 301 (2003).

[12] Id. at 307-308.
[13] LABOR CODE, ART. 97(f).
[14] Tan vs. Lagrama, 387 SCRA 393 (2002).
[15] Book III, Rule X, Sec. 6(a).
[16] Tan vs. Lagrama, supra.
[17] Id. at 399.
[18] Id.
[19] Annex C of Respondents' Position Paper; Rollo, p. 117.
[20] Ibid.
[21] Annexes A to C of Petitioner's Reply to Respondents' Position Paper.
[22] AZUCENA, I THE LABOR CODE (1999 ed.) 127.
[23] Hacienda Fatima vs. National Federation of Sugarcane Workers-Food and General Trade, 396 SCRA 518 (2003).
Article 282 of the Labor Code provides: An employer may terminate an employment for any of the following causes:
(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
(b) Gross and habitual neglect by the employee of his duties;
(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative;
(e) Other causes analogous to the foregoing.
[24] Buenviaje vs. Court of Appeals, 391 SCRA 440 (2002).
[25] Globe Telecom, Inc. vs. Florendo-Flores, 390 SCRA 201 (2002)
[26] Philippine Aeolus Automotive United Corporation vs. NLRC, 331 SCRA 237 (2000).
[27] Id. at 247.
[28] Rollo, pp. 149-150.
[29] Cebu Marine Beach Resort vs. NLRC, 414 SCRA 173 (2003).