

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
SECOND DIVISION**

**BERNARDO JIMENEZ and JOSE  
JIMENEZ, as operation of JJ's  
TRUCKING,**  
*Petitioner,*

*-versus-*

**G.R. No. 116960  
April 2, 1996**

**NATIONAL LABOR RELATIONS  
COMMISSION, PEDRO JUANATAS and  
FREDELITO JUANATAS,**  
*Respondents.*

X-----X

**DECISION**

**REGALADO, J.:**

This Petition for Certiorari seeks the Annulment of the Decision of respondent National Labor Relations Commission (NLRC), dated May 27, 1994, as well as its Resolution, dated August 8, 1994, denying petitioner's Motion for Reconsideration,<sup>[1]</sup> which assailed decision affirmed with modifications the adverse decision of the labor arbiter against herein petitioners.

On June 29, 1990, herein private respondents Pedro and Fredelito Juanatas, father and son, filed a claim for unpaid

wages/commissions, separation pay and damages against JJ's Trucking and/or Dr. Bernardo Jimenez. Said respondents, as complainants therein, alleged that in December, 1987, they were hired by herein petitioner Bernardo Jimenez as drive/mechanic and helper, respectively, in his trucking firm, JJ Trucking. They were assigned to a ten-wheeler truck to haul soft drinks if Coca-Cola Bottling Company and paid on commission basis, initially fixed at 17% but later increased to 20% in 1988.

Private respondents further alleged that for the years 1988 and 1989 they received only a partial commission of P84,000.00 from petitioners' total gross income of almost P1,000.00 for the said two years. Consequently, with there commission for that period being computed at 20% of said income, there was an unpaid balance to them of P106,211.86; that until March, 1990 when their services were illegally terminated, were further entitled to P15,050.309 which, excluding the partial payment of P1,000.00, added up to a grand total of P114,261.86 due and payable to them; and that petitioners' refusal to pay their aforestated commission was a ploy to unjustly terminate them.

Disputing the complaint, petitioners contend that respondent Fredelito Juanatas was not an employee of the firm but was merely a helper of his father Pedro; that all commissions for 1988 and 1989, as well as those up to March, 1990, were duly paid; and that the truck driven by respondent Pedro Juanatas was sold to one Winston Flores in 1991 and, therefore, private respondents were not illegally dismissed.<sup>[2]</sup>

After hearings duly conducted, and with the submission of the parties' position/supporting papers, Labor Arbiter Roque B. de Guzman rendered a decision dated March 9, 1993, with this decretal portion:

“WHEREFORE, decision is hereby issued ordering respondents JJ's Trucking and/or Dr. Bernardo Jimenez to pay jointly and severally complainant Pedro Juanatas a separation pay of FIFTEEN THOUSAND FIFTY (P15,050.00) PESOS, plus attorney's fee equivalent to ten percent (10%) of the award. The complaint of Fredelito Juanatas is hereby dismissed for lack of merit.”<sup>[3]</sup>

On appeal filed by private respondents, the NLRC modified the decision of the labor arbiter and disposed as follows:

“PREMISES CONSIDERED, the Decision of March 9, 1993 is hereby MODIFIED, to wit:

1. Complaint Fredelito Juanatas is hereby declared respondents' employee and shares in (the) commission and separation pay awarded to complainant Pedro Juanatas, his father.
2. Respondent JJ's Trucking and Dr. Bernardo Jimenez are jointly and severally liable to pay complainants their unpaid commissions in the total amount of Eighty Four Thousand Three Hundred Eighty Seven Pesos and 05/100 (P84,387.05).
3. The award of attorney's fees is reduced accordingly to eight thousand four hundred thirty eight pesos and 70/100 (P8,438.70).
4. The other findings stand affirmed.”<sup>[4]</sup>

Petitioners' motion for reconsideration having been denied thereafter in public respondent's resolution dated August 8, 1994,<sup>[5]</sup> petitioners have come to us in this recourse, raising for resolution the issues as to whether or not respondent NLRC committed grave abuse of discretion in ruling (a) that private respondents were not paid their commission in full and (b) that respondent Fredelito Juanatas was an employee of JJ's Trucking.

The review of labor cases elevated to us on certiorari is confined to questions of jurisdiction or grave abuse of discretion.<sup>[6]</sup> As a rule, this Court does not review supposed errors in the decision of the NLRC which raise factual issues, because factual findings of agencies exercising quasi-judicial functions are accorded not only respect but even finality,<sup>[7]</sup> aside from the consideration that the Court is essentially not a trier of facts. However, in the case at bar, a review of the records thereof with an assessment of the facts is necessary since

the victual findings of the NLRC and the labor arbiter are at odds with each other.<sup>[8]</sup>

On the first issue, we find no reason to disturb the findings if respondent NLRC that the entire amount of commissions was not paid, this by reason of the evident failure of herein petitioner to present evidence that full payment there has been made. It is a basic rule in evidence that each party must prove his affirmative allegation. Since the burden of evidence lies with the party who asserts an affirmative allegation, the plaintiff or complainant has to prove his affirmative allegation, in the complaint and the defendant or respondent has to prove the affirmative allegations in his affirmative defenses and counterclaim. Considering that petitioners herein assert that the disputed commission have been paid, they have the bounden duty to prove that fact.

As a general rule, one who pleads payment has the burden of proving it.<sup>[9]</sup> Even where the plaintiff must allege non-payment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment.<sup>[10]</sup> The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.<sup>[11]</sup>

When the existence of a debt is fully established by the evidence contained in the record, the burden of proving that it has been extinguished by payment devolves upon the debtor who offers such a defense to the claim of the creditor.<sup>[12]</sup> Where the debtor introduces some evidence of payment, the burden of going forward with the evidence — as distinct from the general burden of proof — shifts to the creditor, who is then under a duty of producing some evidence to show non-payment.<sup>[13]</sup>

In the instant case, the right of respondent Pedro Juanatas to be paid a commission equivalent to 17%, later increased to 20%, of the gross income is not disputed by petitioners. Although private respondents admit receipt of partial payment, petitioners still have to present proof of full payment. Where the defendant sued for a debt admits that the debt was originally owed, and pleads payment in whole or in part, it is incumbent upon him to prove such payment. That a plaintiff admits that some payments have been made does not change the

burden of proof. The defendant still has the burden of establishing payments beyond those admitted by plaintiff.<sup>[14]</sup>

The testimony of petitioners which merely denied the claim of private respondents, unsupported by documentary evidence, is not sufficient to establish payment. Although petitioners submitted a notebook showing the alleged vales of private respondents for the year 1990,<sup>[15]</sup> the same is inadmissible and cannot be given probative value considering that it is not property accomplished, is undated and unsigned, and is thus uncertain as to its origin and authenticity.<sup>[16]</sup>

The positive testimony of a creditor may be sufficient of itself to show non-payment, even when met by indefinite testimony of the debtor. Similarly, the testimony of the debtor may also be sufficient to show payment but, where his testimony is contradicted by the other party or by a disinterested witness, the issue may be determined against the debtor since he has the burden of proof. The testimony of the debtor creating merely an inference of payment will not be regarded as conclusive on that issue.<sup>[17]</sup>

Hence, for failure to present evidence to prove payment, petitioners defaulted in their defense and in effect admitted the allegations of private respondents.

With respect to the second issues, however, we agree with petitioners that the NLRC erred in holding that the son, Fredelito, was an employee of petitioners.

We have consistently ruled that in determining the existence of an employer-employee relationship, the elements that are generally considered are the following: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct,<sup>[18]</sup> with the control test assuming primacy in the overall consideration.

In the case at bar, the aforementioned elements are not present. The agreement was between petitioner JJ's Trucking and respondent Pedro Juanatas, The hiring of a helper was discretionary on the part of Pedro. Under their contract, should he employ a helper, he would be responsible for the latter's compensation. With or without a

helper, respondent Pedro Juanatas was entitled to the same percentage of commission. Respondent Fredelito Juanatas was hired by his father, Pedro, and the compensation he received was paid by his father out of the latter's commission. Further, Fredelito was not subject to the control and supervision of and dismissal by petitioners but of and by his father.

Even the Solicitor General, in his comment, agreed with the finding of the labor arbiter that Fredelito was not an employee of petitioners, to wit:

“Public respondent committed grave abuse of discretion in holding that said private respondent is an employee of JJ's Trucking on the ground that, citing Article 281 of the Labor Code, ‘Fredelito's functions as helper was (sic) necessary and desirable to respondent's trucking business’.

“In the first place, Article 281 of the Labor Code does not refer to the basic factors that must underlie every existing employer-employee relationship, the absence of any of which will negate such existence. It refers instead to the qualifications of “(A)n employee who is allowed to work after a probationary period’ and who, employee who as a consequence, “shall be considered a regular employee.’ Secondly, the test in determining the existence of an employee-employer relationship is not the necessity and /or desirability of one's functions in relation to an employer's business, but ‘(1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct. The latter is the most important element’ (Singer Sewing Machine Company vs. Drilon, 193 SCRA 270, 2575; Deferia vs. NLRC, 194 SCRA 531, 525; Ecal vs. NLRC, 224, 228; Hijos De F. Escano, Inc. vs. NLRC, 224 SCRA 781, 785). The aforementioned pertinent findings of the Labor Arbiter indicate (that) the foregoing requirements do not exist between petitioner and private respondent Fredelito Juanatas. Thus, the labor arbiter stated that respondent Fredelito Juanatas was never hired by petitioners. Instead the former's services were availed of by respondent Pedro Juanatas his father, who, at the same time, supervised and controlled his work and paid his commissions.

Respondent NLRC's ruling did not traverse these findings of the labor arbiter."<sup>[19]</sup>

**WHEREFORE**, the judgment of respondent National Labor Relations Commission is hereby **AFFIRMED**, with the **MODIFICATION** that paragraph 1 thereof, declaring Fredelito Juanatas an employee of petitioners and entitled to share in the award for commission and separation pay, is hereby **DELETED**.

**SO ORDERED.**

**Romero, Puno and Mendoza, JJ., concur.  
Torres, Jr., is on leave.**

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- [1] Penned by Presiding Commissioner Lourdes C. Javier, with Commissioners Ireneo B. Bernardo and Joaquin A. Tanodra concurring.
- [2] Rollo, 107; NLRC Decision, 2.
- [3] Ibid., 82.
- [4] Ibid., 112-113.
- [5] Ibid., 122-123.
- [6] Loadstar Shipping Co., Inc. vs. Gallo, et al., G.R. No. 102845, February 4, 1994, 229 SCRA 654; Philippine Overseas Drilling and Oil Development Corporation vs. Ministry of Labor, et al., G.R. No. 55703, November 27, 1986, 146 SCRA 79.
- [7] Sta. Fe Construction Ce., et al. vs. NLRC et al., G.R. No. 101280, March 2, 1994, 230 SCRA 593; San Miguel Corporation vs. Javate, Jr., et al., G.R. No. 54244, January 27, 1992, 205 SCRA 469.
- [8] See Prieto, et al. vs. NLRC, et al., G.R. No. 93699, September 10, 1993 226 SCRA 232; Rapiz, et al. vs. NLRC, et al., G.R. No. 911271, March 16, 1992, 207 SCRA 243; Llobera vs. NLRC, et al., G.R. No. 76271, June 28, 1988, 162 SCRA 788.
- [9] Simoton vs. Winter, 30 U.S 141, 8 L Ed 75; Levy vs. Chicago National Bank, 158 I11 88, 42 N.E. 129.
- [10] 60 Am. Jur. 2d, Payment, Sec. 171, 997.
- [11] Motor Finance Co. vs. Universal Motors, La. App., 182 So. 143 — Moreira's Succession, 16 La. Ann. 386.
- [12] Biala vs. Court of Appeals, et al., G.R. No. 43503, October 31, 1990, 191 SCRA 50; Servicewide Specialist, Inc. vs. Intermediate Appellate Court, et al., G.R. No. 74553, June 8, 1989, 174 SCRA 80
- [13] 60 Am. Ur. 2d, Payment, Sec. 174, 998.
- [14] Ibid., id., Sec. 171, 996-997.
- [15] Original Record, 375-377.

- [16] See *Callanta vs. NLRC, et al.*, G.R. No. 105083, August 20, 1993, 225 SCRA 526.
- [17] 70 C.J.S., *Payment*, Sec. 121, 334.
- [18] *Canlubang Security Agency vs. NLRC, et al.*, G.R. No. 97492, December 8, 1992, 216 SCRA 280; *Ruga, et al. vs. NLRC, et al.*, G.R. Nos. 72654-61, January 22, 1990, 181, SCRA 266; *Makati Haberdashery, Inc., et al. vs. NLRC, et al.*, G.R. Nos. 83380-81, November 15, 1989, 179 SCRA 448.
- [19] *Rollo*, 166-167.

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