SUPREME COURT
FIRST DIVISION

ULTRA VILLA FOOD HAUS, and/or ROSIE TIO,
***Petitioners*,**

-versus-

G.R. No. 120473
June 23, 1999

RENATO GENISTON, NATIONAL LABOR RELATIONS COMMISSION PRESIDING COMMISSIONER (4th DIVISION),
***Respondents*.**
x----------x

D E C I S I O N

KAPUNAN, *J.*:

This Special Civil Action for *Certiorari* stems from a complaint for illegal dismissal filed by Renato Geniston, private respondent herein, against the Ultra Villa Food Haus restaurant and/or its alleged owner

Rosie Tio. Private respondent alleged that he was employed as a "do it all guy," acting as waiter, driver, and maintenance man, in said restaurant. His employment therein spanned from March 1, 1989 until he was dismissed on May 13, 1992. For his services, private respondent was paid P60.00 in 1989, P70.00 in 1990, P80.00 in 1991 and P90.00 when he was dismissed in 1992.

During the elections of May 11, 1992, private respondent acted as a Poll Watcher for the National Union of Christian Democrats. The counting of votes lasted until 3:00 p.m. the next day, May 12. Private respondent did not report for work on both days on account of his poll-watching.

Upon arriving home on May 12, private respondent discovered that Tio had phoned his mother that morning. Tio allegedly gave his mother "an inscrutable verbal lashing," and informed the latter that private respondent was dismissed from work. On May 13, 1992, private respondent went to Tio's residence to plead his case only to be subjected to a "brow beating" by Tio who even attempted to force him to sign a resignation letter.

Private respondent prayed that the Labor Arbiter order petitioner Tio to pay him overtime pay, premium pay, holiday pay, service incentive leave pay, salary differential and 13th month pay. He likewise prayed for reinstatement plus backwages or, in the alternative, separation pay, as well as moral damages, exemplary damages and attorney's fees.

Petitioner Rosie Tio, on the other hand, maintained that private respondent was her personal driver, not an employee of the Ultra Villa Food Haus. As petitioner's personal driver, private respondent was required to report for work at 7:00 a.m. to drive petitioner to Mandaue City where petitioner worked as the Manager of the CFC Corporation. Accordingly, private respondent was paid P65.00 a day in 1989 which was gradually increased to P70.00 then to P90.00. Private respondent was likewise given free meals as well as 13th month pay at the end of the year. Petitioner denied dismissing private respondent whom she claimed abandoned his job.

Though well aware that May 12, 1992 was a holiday, petitioner called up private respondent that day to ask him to report for work as she had some important matters to attend to. Private respondent's wife, however, coldly told petitioner that private respondent was helping in the counting of ballots. Petitioner was thus forced to hire another driver to replace private respondent. Private respondent came back a week after but only to collect his salary.

The Labor Arbiter found that private respondent was indeed petitioner's personal driver. Private respondent's claim that he was an employee of the Ultra Villa Food Haus was deemed by the Labor Arbiter to be a mere afterthought, considering that:

> In his verified complaint, complainant states that the nature of his work position was a driver. If it [were] true that he was made to perform these functions as a waiter, it would be incongruous with the position of a driver. The nature of the position of a waiter is one that requires him to be at the place of work at all times while that of a driver, complainant had to be away from the restaurant at all times. At any rate, an admission is made that he was only a personal driver of the individual respondent.[1]

The "admission" referred to above is contained in the mandatory conference order issued by the Labor Arbiter on January 10, 1994, to wit:

> Also on this date, the following matters were threshed out:
>
> > That complainant started his employment with the individual respondent as the latter's personal driver on March 1, 1989 and the last day of his service was on May 13, 1992;[2]

The Labor Arbiter concluded that private respondent, being a personal driver, was not entitled to overtime pay, premium pay, service incentive leave pay and 13th month pay. Private respondent's claim for salary differential was likewise denied since he "received a daily salary of P90.00 which is more than that set by law."[3]

Neither was private respondent awarded separation pay. While the hiring of a substitute driver amounted to a constructive dismissal, the Labor Arbiter ruled that the same was justified in view of petitioner's "dire need" for the services of a driver.

The Labor Arbiter, however, noted that petitioner failed to comply with procedural due process in dismissing private respondent and thus ordered the former to indemnify the latter the amount of P1,000.00. The dispositive portion of the Labor Arbiter's decision states:

> WHEREFORE, in the light of the foregoing premises, judgment is rendered finding complainant's dismissal for a valid cause. Complaint is hereby ordered dismissed. However, respondent is directed to indemnify complainant the amount of P1,000.00 for failure to observe the due process requirement before dismissing the complainant.
>
> SO ORDERED.[4]

Both parties appealed the decision of the Labor Arbiter to the National Labor Relations Commission (NLRC).

Petitioner questioned the Labor Arbiter's decision insofar as it required her to pay private respondent the amount of P1,000.00. Petitioner maintained that private respondent abandoned his job, and was not constructively dismissed as found by the Labor Arbiter. Petitioner concluded that she could not be held liable for failing to observe procedural due process in dismissing private respondent, there being no dismissal to speak of.

On the other hand, private respondent denied admitting that he was employed as petitioner's personal driver. He alleged that what was admitted during the mandatory conference was that he was made to drive for the manager and his wife (petitioner) on top of his other duties which were necessary and desirable to petitioner's business. Private respondent likewise maintained his claim that he was unjustly dismissed, contending that his absence on May 11 and 12, 1992 did not warrant dismissal since those days were official holidays.

The NLRC found private respondent's arguments meritorious, and ordered petitioner to reinstate private respondent and to pay him the sum of P45,311.55 in backwages, overtime pay, premium pay for holiday and rest days, 13th month pay, and service incentive pay. Thus:

> WHEREFORE, the respondents are hereby ordered to reinstate the complainant with backwages fixed for 6 months as he delayed in filing this case.
>
> The respondents are likewise ordered to pay the complainant his overtime pay, holiday pay, premium pay for holiday and rest day, 13th month pay, and service incentive leave covering the period from October 28, 1990 to May 10, 1992.
>
> Complainant's backwages up to the time of this Decision and his other monetary claims as computed by Nazarina C. Cabahug, Fiscal Examiner II of the Commission are the following:
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> x x x
>
> **SUMMARY**
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> | | |
> |---|---|
> | 1) Backwages | P14,130.00 |
> | 2) Overtime Pay | P22,060.00 |
> | 3) Holiday Pay; Premium Pay for Holiday | P1,554.00 |
> | 4) Premium Pay for Rest Day | P1,683.00 |
> | 5) 13th Month Pay | P5,484.55 |
> | 6) Service Incentive Leave | P 400.00 |
> | TOTAL | P45,311.55 |
> | | ======= |
>
> SO ORDERED.[5]

Acting on the parties' respective motions for reconsideration, the NLRC granted private respondent separation pay in lieu of reinstatement on account of the establishment's closure but denied his prayer for moral, actual and exemplary damages, and attorney's fees. The NLRC also denied petitioner's motion, reiterating its earlier

ruling that private respondent was an employee of the Ultra Villa Food Haus.

Two issues are thus presented before this Court:

(1) Whether private respondent was an employee of the Ultra Villa Food Haus or the personal driver of petitioner; and

(2) Whether private respondent was illegally dismissed from employment.

I

The Solicitor General, in his "Manifestation and Motion In Lieu of Comment," agrees with petitioner's submission that private respondent was her personal driver.[6]

We find that private respondent was indeed the personal driver of petitioner, and not an employee of the Ultra Villa Food Haus. There is substantial evidence to support such conclusion, namely:

(1) Private respondent's admission during the mandatory conference that he was petitioner's personal driver.[7]

(2) Copies of the Ultra Villa Food Haus payroll which do not contain private respondent's name.[8]

(3) Affidavits of Ultra Villa Food Haus employees attesting that private respondent was never an employee of said establishment.[9]

(4) Petitioner Tio's undisputed allegation that she works as the branch manager of the CFC Corporation whose office is located in Mandaue City. This would support the Labor Arbiter's observation that private respondents' position as driver would be "incongruous" with his functions as a waiter of Ultra Villa Food Haus.[10]

(5) The Joint Affidavit of the warehouseman and warehouse checker of the CFC Corporation stating that:

> Renato Geniston usually drive[s] Mrs. Tio from her residence to the office. Thereafter, Mr. Geniston will wait for Mrs. Tio in her car. Most of the time, Renato Geniston slept in the car of Mrs. Tio and will be awakened only when the latter will leave the office for lunch.
>
> Mr. Geniston will again drive Mrs. Tio to the office at around 2:00 o'clock in the afternoon and thereafter the former will again wait for Mrs. Tio at the latter's car until Mrs. Tio will again leave the office to make her rounds at our branch office at the downtown area.[11]

In contrast, private respondent has not presented any evidence other than his self-serving allegation to show that he was employed in the Ultra Villa Food Haus. On this issue, therefore, the evidence weighs heavily in petitioner's favor. The Labor Arbiter thus correctly ruled that private respondent was petitioner's personal driver and not an employee of the subject establishment.

Accordingly, the terms and conditions of private respondent's employment are governed by Chapter III, Title III, Book III of the Labor Code[12] as well as by the pertinent provisions of the Civil Code.[13] Thus, Article 141 of the Labor Code provides:

> ARTICLE 141. Coverage. — This Chapter shall apply to all persons rendering services in households for compensation.
>
> "Domestic or household service" shall mean services in the employers home which is usually necessary or desirable for the maintenance and enjoyment thereof and includes ministering to the personal comfort and convenience of the members of the employers household, including services of family drivers. (Emphasis supplied.)

Chapter III, Title III, Book III, however, is silent on the grant of overtime pay, holiday pay, premium pay and service incentive leave to those engaged in the domestic or household service.

Moreover, the specific provisions mandating these benefits are found in Book III, Title I of the Labor Code,[14] and Article 82, which defines the scope of the application of these provisions, expressly excludes domestic helpers from its coverage:

> ARTICLE 82. Coverage. — The provision of this title shall apply to employees in all establishments and undertakings whether for profit or not, but not to government employees, managerial employees, field personnel, members of the family of the employer who are dependent on him for support, domestic helpers, persons in the personal service of another, and workers who are paid by results as determined by the Secretary of Labor in appropriate regulations. (Emphasis supplied.)

The limitations set out in the above article are echoed in Book III of the Omnibus Rules Implementing the Labor Code.[15]

Clearly then, petitioner is not obliged by law to grant private respondent any of these benefits.

Employing the same line of analysis, it would seem that private respondent is not entitled to 13th month pay. The Revised Guidelines on the Implementation of the 13th Month Pay Law also excludes employers of household helpers from the coverage of Presidential Decree No. 851, thus:

> 2. Exempted Employers
>
> The following employers are still not covered by P.D. No. 851:
>
> a. x x x;
>
> b. Employers of household helpers.;
>
> c. x x x;
>
> d. x x x.

> Nevertheless, we deem it just to award private respondent 13th month pay in view of petitioner's practice of according private respondent such benefit. Indeed, petitioner admitted that she gave private respondent 13th month pay every December.[16]

II

> We come now to the issue of private respondent's dismissal. Petitioner submits that private respondent abandoned his job, preferring to work as an election watcher instead.

We do not agree. To constitute abandonment, two requisites must concur: (1) the failure to report to work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship as manifested by some overt acts, with the second requisite as the more determinative factor.[17] The burden of proving abandonment as a just cause for dismissal is on the employer.[18] Petitioner failed to discharge this burden. The only evidence adduced by petitioner to prove abandonment is her affidavit, the pertinent portion of which states:

> On May 12, 1992, a day after the election, complainant was again absent. Since it was a holiday and I have no work on that day, I just did not bother to call up complainant. Although the following day was still a holiday, I called up complainant to inform him that he has to report for work as I will report to the office to do some important things there. Unfortunately, complainant's wife instead coldly told me that complainant was fetched by the latter's uncle to help in the counting of ballots. I then told his wife to let complainant choose between his job with me or that of election watcher. The following day, I was informed again by complainant's wife that he is no longer interested to work with me as he is earning more as election watcher. I was really disenchanted to know his response as all of a sudden, I have no driver to drive me to my place of work. Nevertheless, I have no other choice to accept it as I can not also forced him to continue working with me. Hence, I was really inconvenience for about a week due to the absence of a driver.

Complainant then collected his salary after one week's absence.[19]

It is quite unbelievable that private respondent would leave a stable and relatively well paying job as petitioner's family driver to work as an election watcher. Though the latter may pay more in a day, elections in this country are so far in between that it is unlikely that any person would abandon his job to embark on a career as an election watcher, the functions of which are seasonal and temporary in nature. Consequently, we do not find private respondent to have abandoned his job. His dismissal from petitioner's employ being unjust, petitioner is entitled to an indemnity under Article 149 of the Labor Code:[20]

> ARTICLE 149. Indemnity for unjust termination of services. — If the period of household service is fixed, neither the employer nor the househelper may terminate the contract before the expiration of the term, except for a just cause. If the househelper is unjustly dismissed, he or she shall be paid the compensation already earned plus that for fifteen (15) days by way of indemnity.
>
> If the househelper leaves without justifiable reason he or she shall forfeit any unpaid salary due him or her not exceeding fifteen (15) days. (Emphasis supplied.)

Petitioner likewise concedes that she failed to comply with due process in dismissing private respondent since private respondent had already abandoned his job.[21] As we have shown earlier however, petitioner's theory of abandonment has no leg to stand on, and with it, her attempts to justify her failure to accord due process must also fall. Accordingly, private respondent is ordered to pay private respondent the sum of P1,000.00.[22]

WHEREFORE, the Decision of the National Labor Relations Commission is hereby **REVERSED** and a new one entered declaring:

(1) Private respondent Renato Geniston, the personal driver of petitioner Rosie Tio, and not an employee of the Ultra Villa Food Haus;

(2) The dismissal of private respondent to be without a valid cause and without due process. Accordingly, petitioner Rosie Tio is ordered to pay private respondent:

(a) Thirteenth Month Pay to be computed in accordance with the Rules and Regulations, and the Revised Guidelines, Implementing Presidential Decree No. 851;

(b) Indemnity equal to 15 days of his salary as personal driver at the time of his unjust dismissal; and

(c) Indemnity in the sum of P1,000.00.

SO ORDERED.

Davide, Jr., *C.J.*, Melo, Pardo and Ynares-Santiago, *JJ.*, concur.

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[1] Records, pp. 80, 89.
[2] Id., at 8.
[3] Rollo, p. 33.
[4] Id., p. 34.
[5] Id., at 40-42.
[6] Id., at 134.
[7] See note 2.
[8] Rollo, pp. 123-125.
[9] Annexes 'F' and 'G,' id., at 55-56.
[10] See note 1.
[11] Annex "E," Rollo, p. 54.
[12] Articles 141-152.
[13] See Articles 1689-1699 insofar as they have not been amended by the Labor Code.
[14] Article 87 governs overtime pay; Article 93, premium pay; Article 94, holiday pay; and Article 95, service incentive leave.
[15] See Rule I, Section 8 in relation to Sections 1 and 2 (d) regarding hours of work, and Section 9 (a) on premium pay; Rule IV, Section 1 (c), holiday pay; Rule V, Section 1 (b), service incentive leave.
[16] Records, p. 25.
[17] Trendline Employees Association-Southern Philippines Federation of Labor vs. National Labor Relations Commission, 272 SCRA 172 (1997), citing Labor vs. NLRC, 248 SCRA 183 (1995).

[18] Cañete vs. National Labor Relations Commission, 250 SCRA 259 (1995)
[19] Records, pp. 25-26.
[20] See Daughson Construction Co., Ltd., et al. vs. The National Labor Relations Commission, Minute Resolution, G.R. No. 72945, May 19, 1986.
[21] Rollo, p. 23.
[22] Segismundo vs. NLRC, 239 SCRA 167(1994).