Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

MARIA DE LEON TRANSPORTATION, INC., represented by MA. VICTORIA D. RONQUILLO,
Petitioner,

- versus -

DANIEL M. MACURAY,
Respondent.

G.R. No. 214940

Present:

LEONARDO-DE CASTRO,*
Acting Chairperson,
DEL CASTILLO,
JARDELEZA,
TIJAM,** *and*
GESMUNDO,*** *JJ.*

Promulgated:
JUN 06 2018

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DECISION

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] seeks to set aside the March 17, 2014 Decision[2] and September 17, 2014 Resolution[3] of the Court of Appeals (CA) granting the Petition for *Certiorari*[4] in CA-G.R. SP No. 130387 and denying herein petitioner's Motion for Reconsideration,[5] respectively.

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* Per Special Order No. 2559 dated May 11, 2018.
** On official leave.
*** Per Special Order No. 2560 dated May 11, 2018.
1 *Rollo*, pp. 13-68.
2 Id. at 74-95; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Michael P. Elbinias and Victoria Isabel A. Paredes.
3 Id. at 70-72.
4 Id. at 190-216.
5 Id. at 373-392.

Factual Antecedents

On November 21, 2011, respondent Daniel M. Macuray filed a Complaint[6] for illegal dismissal against petitioner Maria De Leon Transportation, Inc. before the Regional Arbitration Branch No. 1 of San Fernando City, La Union, docketed as NLRC Case No. RAB-I-11-1119-11 (LC).

In his Position Paper,[7] respondent claimed that, in April, 1991, he was employed as a bus driver of petitioner, a company engaged in paid public transportation; that he plied the Laoag-Manila-Laoag route; that he received a monthly pay/commission of ₱20,000.00; that, in November 2009, petitioner's dispatcher did not assign a bus to him, for no apparent reason; that for a period of one month, he continually returned to follow up if a bus had already been assigned to him; that finally, when he returned to the company premises, the bus dispatcher informed him that he was already considered AWOL (absent without leave), without giving any reason therefor; that he went back to follow up his status for about six months in 2010, but nobody attended to him; that he was not given any notice or explanation regarding his employment status; that he felt betrayed by the petitioner, after having served the latter for 18 years; that he considered himself illegally dismissed; that during this time, he was already 62 years old, but he received no benefits for his service; that he was being charged for the cost of gasoline for the bus he would drive; and that petitioner owed him three months' salary for the year 2009. Thus, he prayed that he be awarded backwages, separation pay, retirement pay, 13th month pay, damages, attorney's fees, and costs of suit.

In its Position Paper and other pleadings,[8] petitioner claimed that respondent was hired on commission basis, on a "no work, no pay" and "per travel, per trip" basis; that respondent was paid an average of ₱10,000.00 commission per month without salary; that, contrary to his claim of illegal dismissal, respondent permanently abandoned his employment effective March 31, 2009, after he failed to report for work; that it received information later on that respondent was already engaged in driving his family truck and was seen doing so at public roads and highways; that respondent's claim of illegal dismissal was not true, as there was no dismissal or termination of his services, and no instructions to do so were given; that the bus dispatcher from whom respondent inquired about his status had no power to terminate or declare him AWOL; that respondent had not actually approached management to inquire about his employment status, even though he and all the other employees knew that the Assistant Manager, Corporate Secretary, and Director of the bus company, Elias

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6 Id. at 119.
7 Id. at 120-136.
8 Id. at 237-247, 315-337.

Dimaya, resided with his family within the bus company's station and compound in San Nicolas, Ilocos Norte; that respondent's witnesses had an axe to grind against petitioner, which accounts for their false testimonies; that based on respondent's Complaint, he claimed to have been illegally dismissed in January, 2009, which was contrary to the documentary evidence which showed that he continued to work until March, 2009, after which he completely abandoned his employment; that per Joint Affidavit[9] of petitioner's bus dispatchers, it is not true that respondent ever made inquiries and follow-ups about his employment until mid-2010; that there was no illegal dismissal, and thus respondent was not entitled to his monetary claims; that respondent never refuted the claim that he abandoned his employment with petitioner because he took on a new job as driver for his family's trucking business and was seen doing so in public roads and highways; that it was common practice for bus drivers of the petitioner to simply stop reporting for work for short periods of time, or even years, after which they would return and ask to be allowed to drive petitioner's buses once more, which management allowed after the absentee drivers gave satisfactory and reasonable explanations for their absences; that this practice was impliedly sanctioned in order to give the drivers the opportunity to take time off from the stress and boredom of driving on long trips; that respondent's allegations were not true, particularly his claim that he was told by a bus dispatcher that he was considered AWOL, since he refused to divulge the identity of the bus dispatcher who gave such information to him; and that there was no truth to respondent's allegations that the cost of gasoline for every bus trip was charged to him, as it was shouldered by the petitioner. Petitioner prayed for the dismissal of the case.

Ruling of the Labor Arbiter

On August 24, 2012, Labor Arbiter Irenarco R. Rimando rendered a Decision[10] dismissing the case for lack of merit, declaring that —

> x x x [Complainant] cannot state with certainty the date and time of his dismissal if it was January 2009, middle of 2009 or November 2009 x x x.
>
> [I]n his pro forma complaint sheet, he mentioned that he was already 61 at the time that he filed his complaint on 23 November 2011. Yet in his position paper he mentioned that he was already 62 years old after he rendered service for 18 years x x x.
>
> On the issue of constructive dismissal, seemingly Rudy Compañero and Loreto Casil presented a story that [showed] they were aware that Daniel Macuray was poorly treated by respondent when he was still employed between 2007 and 2009. But the records [did] not show that the complainant had shown any sign of whimper or protest. Therefore, x x x the claim is unfounded.

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9 Id. at 322-323.
10 Id. at 110-118.

> The [alleged] unpaid fuel expenses that were incurred by unidentified drivers for respondent's bus with Body No. 1 [was] not supported by substantial evidence which a reasonable mind might accept to justify a conclusion. He did not present a single accounting of his purchases for diesel fuel and how much. The complainant did not even claim that the unpaid gasoline expenses were charged to him.
>
> The complainant failed to present evidence that the treatment he received from respondent was unreasonable or oppressive and unbearable that would amount to a constructive dismissal x x x.
>
> x x x x
>
> The complainant never returned back to work after 31 March 2009. An informal voluntary termination is recognized under the law as an authorized ground for dismissal x x x. In such case compliance with the two (2) notice requirement of due process is not necessary. When this happens the employee is not entitled to separation pay and backwages. The dismissal is not illegal. Hence the claims for separation pay, backwages and damages are denied.
>
> x x x x
>
> IN VIEW THEREOF, this case is dismissed for lack of merit.
>
> SO ORDERED.[11] (Citations omitted)

Ruling of the National Labor Relations Commission

Respondent filed a Memorandum of Appeal[12] before the National Labor Relations Commission (NLRC). On December 28, 2012, a Resolution[13] was issued modifying the Labor Arbiter's judgment by awarding in favor of respondent the amount of ₱50,000.00 as financial assistance. The NLRC held:

> x x x A close evaluation of the records however [showed] that complainant-appellant was unsure of the date of his dismissal. In his complaint, he entered the date January, 2009, in his pleadings the year 2009 and [in] his position paper he stated the month of November, 2009. Moreover, he failed to identify the dispatcher who did not assign a bus to him. Complainant-appellant therefore failed to establish the fact of his alleged dismissal with substantial evidence.
>
> On the other hand, respondents-appellees stress that complainant-appellant did not report for work anymore from March 31, 2009 and in support thereof submitted folders showing the particulars of the trips where complainant-

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[11] Id. at 116-118.

[12] Id. at 137-168.

[13] Id. at 100-107; penned by Commissioner Pablo C. Espiritu, Jr. and concurred in by Presiding Commissioner Alex A. Lopez and Commissioner Gregorio O. Bilog III.

appellant served as assistant driver for the period 3 January to 30 March 2009; that neither did complainant-appellant file any leave of absence. Thus, respondents-appellees concluded that by his failure to report for work beginning 31 March 2009, complainant-appellant permanently abandoned and severed his employment effective 31 March 2009.

Although absence without valid or justifiable reason is an element of abandonment, settled is the rule, however, that mere absence or failure to report for work is not tantamount to abandonment of work. x x x

x x x Respondents-appellees' conclusion that complainant-appellant abandoned his work lacks factual basis.

In the consolidated cases of Leonardo vs. NLRC x x x the Supreme Court also ordered the reinstatement sans backwages of the employee x x x who was declared neither to have abandoned his job nor was he constructively dismissed. As pointed out by the Court, in a case where the employee's failure to work was occasioned neither by his abandonment nor by a termination, the burden of economic loss is not rightfully shifted to the employer. Each party must bear his own loss.

In this case, we note that complainant-appellant is already sixty-two years old and he may not be apt for the job as bus driver considering the long hours of travel from Laoag City to Manila. Hence, his reinstatement may no longer be possible. Separation pay however[,] cannot also be awarded to complainant-appellant because he was not dismissed by respondent-appellee. In cases where there was no dismissal at all, separation pay should not be awarded. x x x

Under this circumstance, financial assistance may be allowed as a measure of social justice and as an equitable concession. x x x

x x x Respondents-appellees are therefore ordered to award financial assistance to complainant-appellant in the amount of FIFTY THOUSAND PESOS (₱50,000.00).

WHEREFORE, premises considered, the DECISION dated 24 August 2012 is hereby MODIFIED ordering respondents-appellees to award financial assistance by (sic) complainant-appellant in the amount of FIFTY THOUSAND (₱50,000.00) PESOS.

SO ORDERED.[14] (Citations omitted)

Respondent filed a Motion for Reconsideration,[15] which the NLRC denied in a March 18, 2013 Resolution.[16]

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14 Id. at 104-107.
15 Id. at 169-183.
16 Id. at 96-98.

Ruling of the Court of Appeals

Respondent filed a Petition for *Certiorari*[17] before the CA, questioning the NLRC dispositions and praying for the relief he originally sought in his labor complaint.

On March 17, 2014, the CA rendered the assailed Decision, decreeing thus:

> We find the petition to be meritorious.
>
> x x x x
>
> In an illegal dismissal case, the *onus probandi* rests on the employer company to prove that its dismissal of an employee was for a valid cause. There is no such proof of a valid cause in the instant case. On the contrary, the facts bear the marks of constructive dismissal.
>
> x x x x
>
> The Labor Arbiter's findings that there was an informal voluntary termination has no basis. Based on the age of petitioner as appearing in the records of this case, he was 58 years of age in November of 2009 when he was no longer assigned any bus. Nearing his retirement, it [was] irrational that he would suddenly opt for an informal voluntary termination. Thus, the NLRC's appreciation of facts is more in keeping with logic as it held that there was no abandonment. Surely, petitioner kept going back to the respondent company to check whether or not there would already be a bus assigned to him. There being no bad records or previous transgressions committed by the petitioner against respondent company, or any third party in relation to his job during his eighteen (18) years of working for respondent company, there was no rhyme nor reason why he would suddenly not be assigned a bus to drive and no reason why he would suddenly voluntarily stop working while nearing his retirement.
>
> x x x x
>
> Reinstatement of petitioner, however, may not be in the best interest of respondent company and of petitioner himself. As correctly declared by the NLRC, petitioner is 'already sixty-two years old and he may not be apt for the job as a bus driver considering the long hours of travel from Laoag City to Manila. Hence, his reinstatement may no longer be possible.'
>
> x x x x
>
> Undoubtedly, herein petitioner Daniel Macuray was performing a job that has an intimate connection to the business of respondent company as he worked as a driver of respondent Maria de Leon Transportation, a public transportation business company, for eighteen (18) years. As a regular employee

[17] Id. at 190-216.

who has been constructively dismissed, petitioner is entitled to separation pay equivalent to one (1) month salary for every year of service.

Under the above-mentioned twin remedies, there is likewise basis for the grant of backwages. x x x. In this case, petitioner was illegally dismissed in November of 2009 when he was no longer assigned any bus without cause or reason. Thus, his backwages may be computed from November of 2009 until December 28, 2012, when the NLRC held that 'reinstatement may no longer be possible.'

Reinstatement being no longer possible and petitioner being 62 years old, petitioner is entitled to retirement pay, having worked for respondent company for eighteen (18) years. It is herein noted that the required length of service, to be entitled to retirement pay under the law, is only five (5) years. The applicable law is Article 287 of the Labor Code, as amended by R.A. No. 7641 x x x:

x x x x

In view thereof, petitioner is entitled to one-half (1/2) of his monthly commission for every year of service. x x x. Thus, for having been illegally dismissed, petitioner therein was entitled not only to separation pay and full backwages, but additionally, to his retirement benefits pursuant to any collective bargaining agreement in the workplace or, in the absence thereof, as provided in Section 14, Book VI 8 of the Implementing Rules of the Labor Code.

x x x x

As interpreted by the Supreme Court in *Auto Bus Transport Systems vs. Bautista*, 'employees engaged on task or contract basis or paid on purely commission basis are not automatically exempted from the grant of service incentive leave, unless, they fall under the classification of field personnel.' Herein petitioner does not fall under the classification of field personnel. If required to be at specific places at specific times, employees including drivers cannot be said to be field personnel despite the fact that they are performing work away from the principal office of the [employer]. In this regard, Section 2, Rule V, Book III of the Implementing Rules and Regulations provides that '[e]very employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay.' x x x

Petitioner, who is paid on purely commission basis, is however not entitled to a 13th month pay, being among those specifically enumerated by law as not covered by PD No. 851 (the law requiring employers to pay employees 13th month pay) x x x

x x x x

Prescinding from the foregoing, moral damages, exemplary damages, nominal damages and attorney's fees are due to the petitioner.

x x x Petitioner is thus awarded moral damages in the amount of ₱100,000.00 and exemplary damages in the amount of ₱50,000.00.

x x x In accordance with existing jurisprudence, petitioner is awarded ₱30,000.00 in nominal damages.

A grant of attorney's fees in the amount of ₱20,000.00 is likewise proper.
x x x

WHEREFORE, in view of the foregoing premises, the petition is hereby GRANTED. The Resolutions dated December 28, 2012 and March 18, 2013 issued by the National Labor Relations Commission in NLRC LAC No. 10-003028-12 and Decision dated August 24, 2012, rendered by the Regional Arbitration Branch No. 1 of the Commission in NLRC Case No. RAB-I-11-1119-11 (LC) are REVERSED AND SET ASIDE.

Accordingly, a NEW JUDGMENT is entered finding herein petitioner to have been illegally dismissed by respondent company from employment and thus is entitled to: 1) separation pay; 2) backwages; 3) retirement pay; 4) service incentive leave; 5) moral damages; 6) exemplary damages; 7) nominal damages; and 8) attorney's fees.

Let this case be remanded to the NLRC for computation of the exact amounts due to the petitioner consistent with the findings made in this Decision.

SO ORDERED.[18] (Citations omitted)

Petitioner filed a motion for reconsideration, but the CA denied the same through its September 17, 2014 Resolution. Hence, the instant Petition.

In an April 18, 2016 Resolution,[19] the Court resolved to give due course to the Petition.

Issue

Petitioner argues in this Petition that —

1. THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN NOT DISMISSING OUTRIGHT THE PETITION FOR *CERTIORARI* FOR HAVING BEEN FILED X X X BEYOND THE 60-DAY REGLEMENTARY PERIOD. X X X

X X X X

3. THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN NOT DISMISSING OUTRIGHT THE PETITION FOR *CERTIORARI* ON THE GROUND THAT THE DOCKET FEES WERE NOT PAID BY PRIVATE RESPONDENT AT THE TIME HE FILED THE PETITION OR WITHIN HIS REQUESTED PERIOD OF

[18] Id. at 83-94.
[19] Id. at 513-514.

EXTENSION X X X

4. THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN NOT DISMISSING OUTRIGHT THE PETITION FOR *CERTIORARI* OF THE PRIVATE RESPONDENT ON THE GROUND THAT HE FAILED TO INDICATE THEREIN THE OTHER TWO (2) MATERIAL DATES, NAMELY: THE DATE OF HIS RECEIPT OF THE RESOLUTION DATED 28 DECEMBER 2012 OF RESPONDENT COMMISSION MODIFYING THE DECISION DATED 24 AUGUST 2012 OF EXECUTIVE LABOR ARBITER, AND THE DATE WHEN HE FILED HIS MOTION FOR RECONSIDERATION THERETO. X X X

5. THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN CONCLUDING THAT PRIVATE RESPONDENT WAS CONSTRUCTIVELY OR ILLEGALLY DISMISSED BY PETITIONER X X X

6. THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN CONCLUDING THAT PRIVATE RESPONDENT IS ENTITLED TO SEPARATION PAY, BACKWAGES, RETIREMENT PAY, SERVICE INCENTIVE LEAVE PAY, MORAL DAMAGES, EXEMPLARY DAMAGES, NOMINAL DAMAGES AND ATTORNEY'S FEES.[20]

Petitioner's Arguments

Petitioner argues that the CA erred in entertaining respondent's Petition for *Certiorari* as it was belatedly filed and defective in form; that the CA erred in failing to appreciate that respondent was not illegally dismissed, but that he voluntarily resigned and abandoned his employment when he left to work for his family's trucking business; that respondent knowingly timed the filing of the instant labor case in such a way as to recover retirement and other benefits; and that since there was no illegal dismissal, respondent was thus not entitled to his money claims, including retirement pay and damages, as there was no bad faith on petitioner's part.

Respondent's Arguments

Respondent argues that the Petition should be denied for lack of merit; that the CA's dispositions are correct and must be upheld; that there were no procedural lapses in the filing of the CA Petition for *Certiorari*; that petitioner itself was guilty of procedural lapses in the filing of the instant Petition; that the CA was correct in finding that he was illegally dismissed from employment; and that the CA did not err in awarding his money claims.

[20] Id. at 29-32.

Our Ruling

Respondent claims that he continued to follow up on his employment status for six months. Petitioner counters that he could not have done the follow ups because members of its top management never met with him; even the bus dispatchers, who were not part of the bus company's management, denied meeting with respondent; they declared in a joint affidavit submitted to the labor tribunals that respondent never approached them at any time during the said period that respondent claimed he continued following up on his work status.

Indeed, respondent did not specify to whom his follow-ups were directed; if they were upon management, he would have said so, and the bus company management would have had no reason to deny this claim. However, the only follow-up he particularly referred to was one directed to a bus dispatcher, a certain Roger Pasion, who even denied the claim in an affidavit.[21]

For its part, petitioner claims that respondent simply stopped reporting for work; that he left his post as bus driver to work for his family's trucking business; and that he was seen driving the family truck on public roads and highways. This was not denied by the respondent. Petitioner further contends that what respondent did was typical of its bus drivers; they simply stop reporting for work for short periods of time, even years, only to re-appear looking to work for the company once again. Petitioner states that this is allowed in order to give its drivers the needed break from boredom typically encountered from driving on long trips on familiar, boring routes, a sort of therapy and sabbatical, a time to refresh oneself from monotonous work that benefits the driver, passengers, and the bus company itself; that this practice also affords its drivers the opportunity to find more lucrative employment or greener pastures elsewhere without foreclosing the possibility of returning to work for the company in the future.

The Court is inclined to believe petitioner's allegations: respondent left his work as bus driver to work for his family's trucking business. There is no truth to the allegation that respondent was dismissed, actually or constructively. He claims that the dispatcher informed him that he was AWOL; however, a mere bus dispatcher does not possess the power to fire him from work – this is a prerogative belonging to management. Respondent did not show that he met with management to inquire on his status. On the other hand, it appears that the Assistant Manager, Corporate Secretary, and Director of the bus company, Elias Dimaya, resided with his family within the bus company's station and compound in San Nicolas, Ilocos Norte. Having worked for the bus company for 18 years, respondent should have known this fact, and he could have visited with Elias

[21] Id. at 322-323.

Dimaya at anytime, if his employment was so important that it meant his own survival and that of his family. Apparently, however, it would appear that this was not the case, for the simple reason that respondent had found employment elsewhere.

Thus, respondent's failure to show that his follow-ups were properly directed at management bolsters petitioner's claim that no follow-ups were made by him. The logical explanation for this is that he found employment elsewhere and thus opted to stop reporting for work, as was the practice of other bus drivers working for petitioner.

At any rate, even assuming that respondent was indeed told by respondent's bus dispatcher Roger Pasion that he was AWOL, this was not tantamount to dismissal, actual or constructive. An ordinary bus dispatcher has no power to dismiss an employee; in a typical bus company, a driver might even be of more significance than an ordinary dispatcher. Bus drivers are a more valuable resource than a dispatcher; without the former, the latter is useless. Without a driver, there could be no bus to dispatch or trip to schedule. It cannot therefore be said that an ordinary dispatcher is superior to a bus driver; at most, they are equal in rank.

The fact that respondent made no sincere effort to meet with the management of the bus company gives credence to petitioner's allegation that he was never fired from work.

However, it cannot be said that respondent abandoned his employment. Petitioner itself admitted that it sanctioned the practice of allowing its drivers to take breaks from work in order to afford them the opportunity to recover from the stresses of driving the same long and monotonous bus routes by accepting jobs elsewhere, as some form of sabbatical or vacation, without losing productivity and income and to safeguard the interests of the company and its patrons, as well as to avoid fatal accidents were the drivers to be suffered to work under continuous stressful conditions occasioned by driving on the same monotonous routes day in and day out.

Simply put, respondent availed of petitioner's company practice and unwritten policy – of allowing its bus drivers to take needed breaks or sabbaticals to enable them to recover from the monotony of driving the same route for long periods – and obtained work elsewhere. It appears that what matters to respondent is that when he did this, he was already approaching retirement age – he was 58 years old in April, 2009, when he took a break from being a bus driver – and when he filed the labor case in November, 2011, he was already 60. He was born on

May 20, 1951.[22] By that time, he had served petitioner for 18 years, or from April 1991 up to March 31, 2009. Respondent may have thought that for serving the bus company for a significant period, he should be rewarded for his loyalty.

Thus, since respondent was not dismissed from work, petitioner may not be held liable for his (respondent's) monetary claims, except those that were actually owing to him by way of unpaid salary/commission, and retirement benefits, which are due to him for the reason that he reached the age of retirement while under petitioner's employ. As to unpaid salaries/commissions, it appears from the record that petitioner failed to pay respondent three months' worth, that is, for the period January to March, 2009 – which, at ₱10,000.00 per month – amounts to ₱30,000.00. Indeed, this could be one of the reasons why respondent stopped reporting after March 31, 2009, as he complained of petitioner's failure to pay his salaries/commissions for the said period.

As for retirement benefits, respondent is entitled to them considering that he was never dismissed from work, either for cause or by resignation or abandonment. As far as petitioner is concerned, he merely went on a company-sanctioned sabbatical. It just so happened that during this sabbatical, he reached the retirement age of 60; by this time, he is already 67 years old. By filing the labor case, he may have pre-empted the payment of his retirement benefits; but it is a clear demand for retirement benefits nonetheless. Understandably, respondent may have already expected that he would not be paid retirement benefits since he stopped reporting for work in 2009, when he took his sabbatical; for him, such move might have been construed as a resignation or abandonment by his employer, the petitioner, and rightly so – for this is precisely petitioner's defense in this case.

Under Article 287 of the Labor Code,

> Art. 287. Retirement. - Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.
>
> In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.
>
> In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay

[22] Id. at 80.

> equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.
>
> Unless the parties provide for broader inclusions, the term one-half (1/2) month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.
>
> Retail, service and agricultural establishments or operations employing not more than (10) employees or workers are exempted from the coverage of this provision.
>
> Violation of this provision is hereby declared unlawful and subject to the penal provisions provided under Article 288 of this Code.

In the absence of a retirement plan or agreement in Maria De Leon Transportation, Inc., the Court hereby declares that respondent is entitled to one month's salary for every year of service, that is:

₱10,000.00 x 18 years = ₱180,000.00

Retirement compensation equivalent to one month's salary for every year of service is more equitable and just than the CA's pronouncement of one-half month's salary per year of service, which the Court finds insufficient. This is considering that petitioner has been paying its drivers commission equivalent to less than the minimum wage for the latter's work, and in respondent's case, it has delayed payment of the latter's compensation for three months. On the other hand, petitioner's lax policies regarding the coming and going of its drivers, as well as the fact that respondent's layovers are considerable – it appears that throughout his employment, respondent spends a good number of days each month not driving for petitioner, which thus allows him to accept other work outside – makes up for deficiencies in the parties' compensation arrangement.

Petitioner's argument that respondent's CA Petition for *Certiorari* should have been dismissed outright for being tardy and for being procedurally defective deserves no consideration. As has been shown above, respondent is entitled to part of his monetary claims; the NLRC judgment failed to appreciate that respondent remained an employee of petitioner. As against petitioner's claim of procedural infirmities, the Court must uphold and protect respondent's substantive rights. Procedure cannot prevail over substantive rights in this case.

> Indeed, where as here, there is a strong showing that grave miscarriage of justice would result from the strict application of the [r]ules, we will not hesitate to relax the same in the interest of substantial justice. It bears stressing that the rules of procedure are merely tools designed to facilitate the attainment of justice. They were conceived and promulgated to effectively aid the court in the

> dispensation of justice. Courts are not slaves to or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat against substantive rights, and not the other way around. Thus, if the application of the Rules would tend to frustrate rather than promote justice, it is always within our power to suspend the rules, or except a particular case from its operation.[23]

On the other hand, the CA Decision is unwarranted on account of its declaration that respondent was illegally dismissed from work, which is not the case. As a result, it awarded other claims that respondent was not entitled to.

As for attorney's fees, the Court finds that respondent is entitled thereto. Under paragraphs 7 and 11, respectively, of Article 2208 of the Civil Code, attorney's fees and expenses of litigation, other than judicial costs, may be recovered "in actions for the recovery of wages of household helpers, laborers and skilled workers" and "in any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered." The CA award of ₱20,000.00 is thus reasonable and just under the circumstances.

Having resolved the case in the foregoing manner, the Court finds no need to address the other issues raised by the parties. They have become unnecessary and superfluous; their resolution contributes nothing to the essence of the Court's disposition.

WHEREFORE, the March 17, 2014 Decision and September 17, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 130387 are **REVERSED** and **SET ASIDE**, and in lieu thereof, judgment is hereby rendered **AWARDING** respondent Daniel M. Macuray the following amounts:

1. ₱30,000.00 as unpaid salaries/commissions for the period January to March, 2009;

2. ₱180,000.00 as retirement pay;

3. ₱20,000.00 as and by way of attorney's fees; and

4. Interest of 12% *per annum* on the total monetary awards, computed from the filing of the Complaint up to June 30, 2013, and thereafter, 6% *per annum* from July 1, 2013 until their full satisfaction.

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[23] *Coronel v. Hon. Desierto*, 448 Phil. 894, 903 (2003).

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

FRANCIS H. JARDELEZA
Associate Justice

(On official leave)
NOEL GIMENEZ TIJAM
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

I attest 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.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

Certified True Copy

Librada C. Buena
Deputy Division Clerk of Court
First Division
Supreme Court

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, 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.

ANTONIO T. CARPIO
Acting Chief Justice