



Republic of the Philippines
Supreme Court
 Manila

THIRD DIVISION

**DYNAMIQ MULTI-RESOURCES,
 INC.,**

G.R. No. 239349

Petitioner,

Present:

- versus -

LEONEN, J.,
 Chairperson,
 HERNANDO,
 INTING,
 DELOS SANTOS, and
 LOPEZ, J., JJ.

ORLANDO D. GENON,

Promulgated:

Respondent.

June 28, 2021

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DECISION

DELOS SANTOS, J.:

Before the Court is a Petition for Review on *Certiorari*¹ under Rule 45 assailing the Decision² dated October 19, 2017 and the Resolution³ dated May 10, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 145918 which reversed and set aside the Decision⁴ dated January 28, 2016 and the Resolution⁵ dated March 28, 2016 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 01-000046-16(4) and reinstated with modification the Decision⁶ dated October 14, 2015 of the Labor Arbiter.

¹ *Rollo*, pp. 3-25.
² *Id.* at 26-34; penned by Associate Justice Japar B. Dimaampao, with Associate Justices Amy C. Lazaro-Javier (now a Member of the Court) and Pedro B. Corales, concurring.
³ *Id.* 35-36.
⁴ *Id.* at 167-179.
⁵ *Id.* at 181-182.
⁶ *Id.* at 144-154.

The antecedent facts as summarized by the CA are as follows:

An Amended Complaint for non-payment of 13th month pay, illegal deductions, moral and exemplary damages, and attorney's fees was filed by Orlando Genon (Genon) against Dynamiq Multi-Resources, Inc. (Dynamiq) before the NLRC-National Capital Region.⁷ Conciliation and mediation proceedings proved futile in resolving the dispute.⁸

Genon averred that he worked as a truck driver for Dynamiq, a hauling business, from September 10, 2009 until he resigned⁹ on June 3, 2014. During his employment, he was made to work from Monday to Saturday and received his salary every 15th day of the month. Cash bond, insurance, and phone bills were deducted from his salary. When he resigned, Dynamiq refused to return his cash bond and other deductions. Moreover, he avowed that he was not given his 13th month pay during his employment. To bolster his claim, he submitted his driver's itinerary from January 2011 until May 2014 and payslips.¹⁰

Disagreeing with the foregoing averments, Dynamiq maintained that their *Agreement*¹¹ showed no employer-employee relationship as Genon was merely an independent contractor paid on commission basis. As such, he was not entitled to 13th month pay. The deductions were allegedly effected in accordance with the terms and conditions of Genon's engagement, which he explicitly agreed upon signing the *Agreement*. It also claimed that Genon's cash bond was already returned to him, less all the cash advances or *vales* that he made during his employment.¹²

Labor Arbiter's Ruling

In a Decision¹³ dated October 14, 2015 rendered by Labor Arbiter (LA) Thomas T. Que, Jr., Genon was found to be a regular employee of Dynamiq and thus entitled to the following:

1. Php 34,354.74 as balance for the refund of his cash bond;
2. Php 21,662.60 as 13th month pay for August to December 2011;
3. Php 19,877.45 as 13th month pay for 2012;
4. Php 14,215.50 as 13th month pay for 2013; and (sic)
5. Php 7,942.87 as 13th month pay for 2014 (pro-rated); [and]
6. Plus attorney's fees equivalent to 10% of the monetary award.¹⁴

⁷ Id. at 26-27.

⁸ Id. at 27.

⁹ Id. at 55.

¹⁰ Id. at 27.

¹¹ Id. at 50-54.

¹² Id. at 27.

¹³ Id. at 144-154.

¹⁴ Id. at 154.

Aggrieved, Dynamiq interposed an Appeal¹⁵ to the NLRC, raising the sole issue of whether the LA committed grave error and abuse of discretion in finding that Genon is entitled to 13th month pay, illegal deduction of insurance, moral and exemplary damages, attorney's fees, cash bond, and certificate of employment.¹⁶

NLRC Ruling

In a Decision¹⁷ issued on January 28, 2016, the NLRC granted Dynamiq's appeal, to wit:

WHEREFORE, the appeal filed by respondents Dynamiq Multi Resources, Inc. is GRANTED.

The Labor Arbiter's decision is REVERSED and SET ASIDE, and a new one is issued DISMISSING the complaint.

SO ORDERED.¹⁸

Genon filed a Motion for Reconsideration.

On March 28, 2016, the NLRC issued a Resolution¹⁹ denying Genon's Motion for Reconsideration.

Thus, Genon elevated the matter to the CA via Petition for *Certiorari* under Rule 65 of the Rules of Court docketed as CA-G.R. SP No. 145918.

In his Petition,²⁰ Genon argued that he is a regular employee of Dynamiq and, thus, entitled to 13th month pay. He contended that there exists an employer-employee relationship in this case. *First*, he claimed the record is bereft of evidence to show that it was not Dynamiq that engaged him and hence, the logical conclusion is that it was the former that hired the latter. *Second*, he alleged that it is undisputed that Dynamiq paid Genon his wage every 15 days. *Third*, Dynamiq already had the power to dismiss him, which is inherent in its power of selection and engagement. *Lastly*, he claimed Dynamiq had power of control over him.

¹⁵ Id. at 155-165.

¹⁶ Id. at 157.

¹⁷ Id. at 167-179.

¹⁸ Id. at 178-179.

¹⁹ Id. at 181-182.

²⁰ Id. at 183-205.

In its Comment/Opposition,²¹ Dynamiq maintained that there was no employer-employee relationship between the company and Genon. It claimed that Genon was paid on a commission basis as evidenced by the *Agreement* dated July 4, 2013 and the payslips issued to Genon. Moreover, it emphasized that Genon freely and voluntarily signed and executed a quitclaim and waiver.

CA Ruling

In a Decision²² dated October 19, 2017, the CA granted the petition, the dispositive portion of which reads:

WHEREFORE, the Petition for Certiorari is hereby **PARTLY GRANTED**. The Decision dated 28 January 2016 and Resolution dated 28 March 2016 of the National Labor Relations Commission in NLRC LAC No. 01-000046-16(4) are **REVERSED** and **SET ASIDE**. The Labor Arbiter's Decision dated 14 October 2015 is **REINSTATED with MODIFICATION** in that private respondent Dynamiq Multi-Resources, Inc. is **ORDERED** to pay petitioner Orlando Genon legal interest on the monetary awards (13th month pay and attorney's fees) at the rate of six percent (6%) per annum from finality of this judgment until fully paid.

SO ORDERED.²³

Contrary to the submission made by Dynamiq which was upheld by the NLRC, the CA concurred with the Labor Arbiter that Genon was a regular employee prior to his resignation. As such, he is entitled to the payment of 13th month pay as mandated by law. The CA also agreed with the Labor Arbiter that Genon is entitled to his cash bond refund from August 6, 2011 to August 6, 2014 after taking into consideration the three-year prescriptive period.²⁴

On November 9, 2017, Dynamiq filed its Motion for Reconsideration.²⁵ Meanwhile, Genon filed a Motion for Partial Reconsideration on November 17, 2017.²⁶

On May 10, 2018, the CA denied in a Resolution²⁷ the Motions for lack of merit. Hence, this Petition raising the sole issue:

²¹ Id. at 206-225.

²² Id. at 26-34.

²³ Id. at 34.

²⁴ Id. at 31-34.

²⁵ Id. at 282-294.

²⁶ Id. at 310-312.

²⁷ Id. at 35-36.



WHETHER OR NOT, UNDER THE PREVAILING LAW AND JURISPRUDENCE, AN EMPLOYEE PAID ON COMMISSION BASIS IS ENTITLED TO 13TH MONTH PAY, REGARDLESS OF HIS EMPLOYMENT STATUS.

The Court's Ruling

The fundamental issue that the Court must resolve is whether Genon is a regular employee entitled to 13th month pay.

The petition is bereft of merit.

Preliminarily, it must be emphasized that only questions of law may be raised in a petition for review on *certiorari* as the Court is not a trier of facts. The issue of the existence of an employer-employee relationship is ultimately a question of fact. However, by way of exception, when there is a conflict among the factual findings of the LA and the CA as opposed to that of the NLRC, as in this case, it is proper, in the exercise of the Court's equity jurisdiction, to review and re-evaluate the factual issues and to look into the records of the case and re-examine the questioned findings.²⁸

Employer-employee relationship, when exists.

In the case of *Felicilda v. Uy*,²⁹ the Court held:

To ascertain the existence of an employer-employee relationship, the Supreme Court has invariably adhered to the four-fold test, to wit: (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, or the so-called "control test." Verily, the power of the employer to control the work of the employee is considered the most significant determinant of the existence of an employer-employee relationship. This is the so-called "control test," and is premised on whether the person for whom the services are performed reserves the right to control both the end achieved and the manner and means used to achieve that end. It must, however, be stressed that the "control test" merely calls for the existence of the right to control, and not necessarily the exercise thereof. To be clear, the test does not require that the employer actually supervises the performance of duties by the employee.³⁰

Contrary to Dynamiq's submission, the Court agrees with the CA and the LA that all four (4) elements are present in this case:

²⁸ *Dusol v. Lazo*, G.R. No. 200555, January 20, 2021.

²⁹ 795 Phil. 408 (2016).

³⁰ *Id.* at 415.

First. It is undisputed that Dynamiq hired Genon as a truck driver for its hauling business.³¹

Second. Genon received compensation from Dynamiq for the services he rendered as evidenced by the former's paylips. The Court agrees with the CA that contrary to the findings of the NLRC, while wages paid were determined on a "per trip" or commission basis, it has been constantly ruled that such does not negate employment relationship.³² Wages are defined as "the 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 services rendered or to be rendered."³³ That Genon was paid on a "per trip" or commission basis is insignificant as "this is merely a method of computing compensation, not a basis for determining the existence or absence of an employer-employee relationship."³⁴

Third. Dynamiq's power to dismiss was inherent in the selection and engagement of Genon as a truck driver.

Fourth. The presence of the element of control, the most important element to determine the existence or absence of employment relationship, can be safely deduced from the fact that: (a) the trucks used by Genon to perform his job were owned by Dynamiq; (b) the hauling trips completed by Genon were exclusively for Dynamiq's clients; and (c) the schedule and route to be followed by Genon were determined and strictly monitored by Dynamiq.

It is important to note that Dynamiq's claim that Genon rendered service to other companies was unsubstantiated as there was no evidence presented showing that Genon indeed worked as truck driver for other companies. Moreover, what is important is the existence of the right to control and not necessarily the exercise thereof. To reiterate, the power of control refers merely to the existence of the power. It is not essential for the employer to actually supervise the performance of duties of the employee, as it is sufficient that the former has the ability to wield the power,³⁵ as in this case.

³¹ *Rollo*, p. 31.

³² *Felicilda v. Uy*, supra note 29, at 416.

³³ Article 97(f) of the Labor Code

³⁴ *Chavez v. NLRC*, 489 Phil. 444, 457 (2005).

³⁵ *Alaska Milk Corp. v. Paez*, G.R. Nos. 237277 & 237317, November 27, 2019.

Genon is a regular employee.

Article 295 of the Labor Code provides that an employment shall be deemed regular where the employee has been engaged to perform activities which are usually desirable in the usual course of business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.³⁶

In *Espina v. Highlands Camp/Rawlings Foundation, Inc.*,³⁷ citing *Abaloso v. NLRC*,³⁸ the Court decreed the standard to determine regular employment status, thus:

The primary standard, therefore, of determining a regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. The connection can be determined by considering the nature of the work performed and its relation to the scheme of the particular business or trade in its entirety. Also, if the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of that activity to the business. Hence, the employment is also considered regular, but only with respect to such activity and while such activity exists.

Being a truck driver of a hauling business, Genon necessarily performed an activity connected with the usual course of business or trade of Dynamiq. Moreover, having worked as a truck driver since 2009, or for almost five (5) years, with Dynamiq, the repeated and continuing need for his services is sufficient evidence of the necessity of his activity to Dynamiq's business.

Having established that an employer-employee relationship exists between the parties and having ruled that Genon was a regular employee, then the payment of 13th month pay, as mandated by law, is legally justified.

³⁶ Formerly Article 280 of the Labor Code

³⁷ G.R. Nos. 220935 & 219868, July 28, 2020.

³⁸ 400 Phil. 86 (2000).

Payment of 13th month pay, when valid.

The governing law on 13th month pay is Presidential Decree No. 851.³⁹ Dynamiq asserts that Genon is not entitled to 13th month pay because employees paid on commission basis are not entitled to 13th month pay.

We do not agree.

Although Genon was paid on a commission basis, he is a regular employee. It should be remembered that a regular status of employment is not based on how the salary is paid to an employee. An employee may be paid purely on commission and still be considered a regular employee.⁴⁰ As a regular employee, Genon is entitled to receive 13th month pay.

“[A]n employee who has resigned, or whose services were terminated at any time before the payment of the 13th month pay, is entitled to this monetary benefit in proportion to the length of time [they] worked during the year, reckoned from the time [they] started working during the calendar year up to the time of [their] resignation or termination from the service.”⁴¹ Considering that Genon resigned in June 2014, and there was no showing that the amount was paid, we sustain the 13th month pay awarded by the Labor Arbiter, as affirmed by the CA, in the following amounts:

1. ₱21,662.60 as 13th month pay for August to December 2011;
2. ₱19,877.45 as 13th month pay for 2012;
3. ₱14,215.50 as 13th month pay for 2013; and
4. ₱7,942.87 as 13th month pay for 2014 (pro-rated);

Legal interest at the rate of 6% per annum is imposed on the total monetary award from the finality of this Decision until full payment.

³⁹ The pertinent portion of the Revised Guidelines on the Implementation of the 13 Month Pay law provides:

Section 1 of Presidential Decree No. 851 is hereby modified to the extent that all employers are hereby required to pay all their rank-and-file employees a 13th month pay not later than December 24 of every year.

Moreover, Labor Advisory No. 28, Series of 2020 (Guidelines on the Payment of Thirteenth Month Pay) reads:

I. COVERAGE

Rank-and-file employees in the private sector shall be entitled to 13th month pay regardless of their position, designation, or employment status, and irrespective of the method by which their wages are paid, provided that they worked for at least one (1) month during the calendar year.

⁴⁰ *AGG Trucking v. Yuag*, 675 Phil. 108, 122 (2011).

⁴¹ *Mariano v. G.V. Florida Transport*, G.R. No. 240882, September 16, 2020.

Final Word.

“The supremacy of the law over the nomenclature of the contract and its pacts and conditions is to bring life to the policy enshrined in the Constitution to afford full protection to labor. Thus, labor contracts are placed on a higher plane than ordinary contracts since these are imbued with public interest and, therefore, subject to the police power of the State.”⁴²

WHEREFORE, the petition is **DENIED**. The October 19, 2017 Decision and the May 10, 2018 Resolution of the Court of Appeals in CA-G.R. SP No. 145918 are hereby **AFFIRMED**. Dynamiq Multi-Resources, Inc, is hereby **ORDERED** to **PAY** Orlando D. Genon the following amounts:

1. ₱34,354.74 as balance for the refund of his cash bond;
2. ₱21,662.60 as 13th month pay for August to December 2011;
3. ₱19,877.45 as 13th month pay for 2012;
4. ₱14,215.50 as 13th month pay for 2013;
5. ₱7,942.87 as 13th month pay for 2014 (pro-rated); and
6. Attorney’s fees equivalent to 10% of the monetary award.


Dynamiq Multi-Resources, Inc, is also **ORDERED** to **PAY** Orlando D. Genon legal interest on the monetary awards (13th month pay and attorney’s fees) at the rate of six percent (6%) per *annum* from finality of this judgment until fully paid.


SO ORDERED.


EDGARDO L. DELOS SANTOS
Associate Justice

⁴² *Innodata Knowledge Services, Inc. v. Inting*, 822 Phil. 314, 335 (2017).

WE CONCUR:


MARVIC MARIO VICTOR F. LEONEN
Associate Justice
Chairperson


RAMON PAUL L. HERNANDO
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


JHOSEP V. LOPEZ
Associate Justice

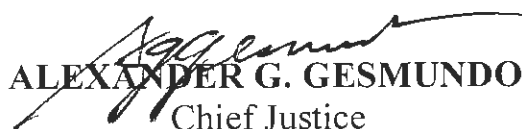
ATTESTATION

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.


MARVIC MARIO VICTOR F. LEONEN
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division 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.


ALEXANDER G. GESMUNDO
Chief Justice