Republic of the Philippines
Supreme Court
Manila

**FIRST DIVISION**

# N O T I C E

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated* **July 7, 2020** *which reads as follows:*

**"G.R. No. 247676 – DOMINADOR R. LEGASPI, JR. v. KING'S COACH TOURS AND TRANSPORT CORP., FRANCIS CHUYACO and JEFFREY ANG**

## The Case

This petition for review on *certiorari*[1] seeks to reverse and set aside the following dispositions of the Court of Appeals (CA) in CA-G.R. SP No. 155441, *viz.:*

1. Decision[2] dated January 30, 2019, finding that petitioner was an independent contractor, hence, was not illegally dismissed; and

2. Resolution[3] dated May 27, 2019, denying petitioner's motion for reconsideration.

## Antecedents

Petitioner Dominador R. Legaspi, Jr. sued respondents King's Coach Tours and Transport Corp., and its officers Francis Chuyaco and Jeffrey Ang for illegal dismissal, separation pay, backwages, payment of benefits, damages, and attorney's fees.

**Petitioner's Version**

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1 Under Rule 45 of the 1997 Rules of Court, *rollo*, pp. 14-45.

2 Penned by Associate Justice Gabriel T. Robeniol and concurred in by Associate Justices Ramon R. Garcia and Eduardo B. Peralta, Jr., *id.* at 49-58.

3 *Id.* at 60-61.

In August 2014, respondents hired him as tour bus driver. He got paid on commission basis, the amount of which depended on the agreed contract price per trip between respondents and their clients. Respondents made several deductions on his wages including ₱400.00 for meal allowance between September 27, 2014 to October 3, 2014; ₱8,658.00 as "vale;" and ₱870.00 for Social Security System (SSS) contribution.[4]

On January 10, 2016, he did not receive any trip assignment from respondents. Thinking he got dismissed, he immediately filed a complaint for illegal dismissal the following day which he also withdrew later that day.[5]

On January 12, 2016, respondents gave him his last trip assignment. Two (2) days later, on January 14, 2016, respondents verbally dismissed him because they found out that he filed the earlier complaint for illegal dismissal, albeit he had withdrawn it.[6]

He was a regular employee of respondents. He was always accompanied by a tour guide who supervised his work. He was also required to fill out trip tickets so that respondents would know his whereabouts. He was not free to decline any trip assigned him by respondents. His work as a tour bus driver was necessary and desirable in the usual business of respondents as a travel company. He had been working for them for almost three (3) years already, from August 2014 to January 2016. Being a regular employee, he had security of tenure and can only be terminated for just or valid cause and after due process.[7]

**Respondents' Version**

Petitioner worked as a spare driver for the company from August 2014 until January 2016 when he stopped reporting for work. Right from the start, petitioner knew that his services were only needed when no regular driver was available; he was free to offer his services to other companies; and he shall be paid on commission basis, the amount of which depended on the contract rate between respondents and their clients.[8]

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4 *Id.* at 271-272.
5 *Id.* at 272.
6 *Id.*
7 *Id.* at 271-272.
8 *Id.* at 273.

Petitioner's daily commission ranged between ₱900.00 and ₱1,000.00 for Metro Manila trips, and P6,000.00 for provincial trips. As for the deductions on petitioner's pay, the same referred to his "vale," unliquidated toll fees, and unreturned meal allowance for cancelled trips. Based on their computation, petitioner still owed them ₱1,422.00 as advance meal allowances.[9]

Petitioner was not dismissed from work, much less, illegally terminated. In December 2015, he informed the company that he felt dizzy. After a few days, he returned and told them he was feeling better and ready to take on trips in case no driver was available. To ensure he was truly fit to go back to work, they required him to present a medical certificate. They pointed out that considering petitioner was over sixty (60) years old, it was only proper to require him to submit a medical certificate after he complained he was feeling dizzy. Instead of presenting a medical certificate, however, petitioner sued them for illegal dismissal.[10]

Petitioner was not a regular employee. Given the nature of its business, the company availed of the services of extra drivers during peak seasons. This employment arrangement was confirmed by Famela Magramo, respondents' Booking Officer who stated that petitioner was only a spare driver who got called only when they needed one. A spare driver may refuse a trip contract offer for whatever reason and was not required to be on call or to wait in the garage for trip assignment.[11]

**The Labor Arbiter's Ruling**

By Decision[12] dated January 31, 2017, Labor Arbiter Marita V. Padolina declared petitioner to have been illegally dismissed when respondents stopped giving him trip assignment, thus:

> **WHEREFORE, premises considered**, judgment is hereby rendered ordering respondent King's Coach Tours and Transport Corporation to pay complainant the following:
>
> 1. Separation pay in the amount of P38,298.00
> 2. Backwages in the amount of P168,763.40
> 3. 13th month pay in the amount (of) P12,419.12
> 4. Holiday pay in the amount of P8,719.00
> 5. Attorney's fees in the amount of (P22,819.95)

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9 *Id.*
10 *Id.* at 273-274, 444.
11 *Id.* at 273-274.
12 *Id.* at 56, 271-283.

All other claims are **DISMISSED** for want of basis.

**SO ORDERED.**[13]

## The National Labor Relations Commission (NLRC) Ruling

On appeal, the NLRC modified, thus:

> **WHEREFORE**, the decision of the Labor Arbiter Marita V. Padolina dated 31 January 2017 is hereby **MODIFIED** dismissing the complaint for illegal dismissal. Thus, the awards of separation pay and backwages are hereby deleted.
>
> The other awards are sustained subject to the adjustment of the attorney's fees.
>
> **SO ORDERED.**[14]

The NLRC declared that petitioner was a seasonal employee of respondents. Records show that petitioner started working for respondents in August 2014 as driver. Since the company was engaged in the business of tour and travel services, petitioner was only engaged to render his service during peak seasons.[15]

As for illegal dismissal, the NLRC found that petitioner failed to prove the fact of dismissal because he could not identify the specific date nor the person who allegedly dismissed him. Too, when petitioner filed his first complaint, he already claimed he got dismissed illegally, yet, he was thereafter again able to work for respondents.[16]

By Resolution dated February 12, 2018, petitioner's motion for reconsideration was denied.[17]

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13 *Id.* at 283.
14 Penned by Commissioner Romeo L. Go and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Gina F. Cenit-Escoto, *id.* at 103.
15 *Id.* at 101.
16 *Id.* at 102-103.
17 *Id.* at 108-109.

## The Court of Appeals' Ruling

Undaunted, petitioner elevated the case to the CA which under Decision dated January 30, 2019 affirmed with modification.[18] It held that petitioner was an independent contractor offering his driving services based on "per need" or "on-call" basis. Also, the fact that he got engaged to drive for the company only for a few months confirmed that he only did voluntary and occasional work for respondents. His pay slips, too, did not reflect monthly contributions to Pag-Ibig Fund and PhilHealth. This further cast doubt on petitioner's claim that he was a regular employee of the company. But even assuming he was a regular employee, he failed to prove by substantial evidence the fact of his dismissal, constructive or otherwise.[19]

Petitioner sought a reconsideration but the same was denied under Resolution[20] dated May 27, 2019.

## The Present Petition

Petitioner now asks the Court to reverse and set aside the CA's assailed dispositions. He essentially asserts that he was a regular employee of respondents. The fact that he was continuously rehired proved that his work was necessary and desirable to the main business of the company. Respondents failed to prove that he was only a spare driver who rendered his services during peak seasons only.[21] Also, he maintains that he was illegally dismissed after respondents learned that he filed an earlier complaint against them.[22]

For their part, respondents counter that petitioner was not its employee. Even assuming that he was a regular employee, petitioner failed to establish the fact of his dismissal. He could not even identify the specific date or the person who allegedly dismissed him.[23]

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18 *Id.* at 58.

> **WHEREFORE,** premises considered, the *Petition for Certiorari* is **DENIED**. The *Decision* dated October 25, 2017 and *Resolution* dated February 12, 2018 of public respondent National Labor Relations Commission in NLRC LAC No. 03-001308-17 are hereby **AFFIRMED** with the modification that petitioner Dominador R. Legaspi, Jr. does not qualify as a seasonal employee.
>
> **SO ORDERED.**

19 *Id.* at 56-57.

20 Supra note 3.

21 *Id.* at 29.

22 *Id.* at 35-36.

23 *Id.* at 444, 450-451.

**Core Issues**

1) Was petitioner a regular employee of respondents?

2) Was petitioner illegally dismissed?

**Ruling**

It is well settled that the Court is not a trier of facts and the scope of its authority under Rule 45 of the Rules of Court is confined only to errors of law. One of the recognized exception to this rule, however, is when the factual findings and conclusion of the labor tribunals are contradictory or inconsistent with those of the CA. When there is such variance in the factual findings, as in this case, it is incumbent upon the Court to re-examine the facts.[24]

**Employer-employee relationship existed between petitioner and respondents**

The following elements determine the existence of an employment relationship: 1) selection and engagement of the employee; 2) payment of wages; 3) power of dismissal; and 4) power to control over the employee's conduct. Out of these elements, the most important 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.

The Court finds that all these elements are present here.

**First**, respondents hired petitioner as tour bus driver.

**Second**, respondents paid petitioner his wages on commission basis.

***Chavez v. National Labor Relations Commission***[25] ordained that wages are "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."



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[24] *Convoy Marketing Corporation v. Albia*, 770 Phil. 654, 664 (2015).
[25] 489 Phil. 444, 456-457 (2005).

Thus, the fact that an employee was paid on per trip basis is irrelevant in determining the existence of an employer-employee relationship because the same was merely the method of computing the proper compensation due to the former.

**Third**, as ***CRC Agricultural Trading v. NLRC***[26] held, respondents' power to dismiss the petitioner was inherent in the fact that they engaged his services as driver.

**Finally**, respondents had the power of control over petitioner in the performance of his work. It is settled that the power of control refers merely to the existence of the power and not to the actual exercise thereof. Here, respondents' power of control was manifested by the following circumstances: 1) petitioner used respondents' bus when he rendered his services as tour bus driver; 2) a trip ticket was issued to petitioner indicating the places that he was required to bring the clients; 3) he was required to report his whereabouts to respondents; 4) he was provided with meal and gas allowances, and 5) he was required to submit a medical certificate to show he was fit to work.

**Petitioner was a regular employee of respondents**

**Article 295**[27] of the Labor Code classifies four (4) kinds of employees: a) *regular employees* or those who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; b) *project employees* or those whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the employees' engagement; c) *seasonal employees* or those who perform services which are seasonal in nature, and whose employment lasts during the duration of the season;

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26 623 Phil. 789, 798 (2009).

27 Art. 295. *Regular and casual employment.* - The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual 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.

An employment shall be deemed to he casual if it is not covered by the preceding paragraph: *Provided,* That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

and d) *casual employees* or those who are not regular, project, or seasonal employees. Jurisprudence has added a fifth kind - *fixed-term employees* or those hired only for a definite period of time.[28]

The NLRC considered petitioner as a seasonal employee while the CA found him to be an independent contractor.

We disagree. *Hacienda Fatima v. National Federation of Sugarcane Workers-Food and General Trade*[29] held that for an employee to be excluded from those classified as regular, it is not enough that he performs work or services that are seasonal in nature. He must have also been employed only for the duration of one season. In that case, the Court considered the workers who had been performing the same tasks for their employer every season for several years as regular employees for their respective tasks.

Here, petitioner was regularly and repeatedly hired since August 2014 to perform the same task of driving for respondents' travel business. His regular and repeated hiring made him a regular employee of respondents. Too, as decreed in *Dasco v. Philtranco Service Enterprises, Inc.*,[30] since respondents are engaged in the travel and tour business, petitioner's task as tour bus driver should is directly and necessary to respondents' business. Consequently, therefore, petitioner is a regular employee of respondents.

As for the CA's finding that petitioner was an independent contractor, the test is whether one claiming to be an independent contractor has contracted to do the work according to his own methods and without being subject to the control of the employer, except only as to the results of the work. Thus, the criteria in determining the existence of an independent and permissible contractor relationship are:

> . . . [W]hether or not the contractor is carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of a specified piece of work; the control and supervision of the work to another; the employer's power with respect to the hiring, firing and payment of the contractor's workers; the control of the premises; the duty to supply the premises, tools, appliances, materials, and labor; and the mode, manner and terms of payment.[31]

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28 *Minsola v. New City Builders, Inc.*, 824 Phil. 864, 875 (2018).
29 Phil. 587, 596-597 (2003).
30 788 Phil. 764, 773 (2016).
31 *Convoy Marketing Corporation v. Albia*, supra note 24, at 666.

Here, there is no showing at all that petitioner had substantial capital or investment in performing his services as tour bus driver. On the contrary, petitioner was hired as such and paid his wages on per trip basis. More, as discussed, respondents controlled petitioner's conduct in performing his tasks, not only as to the result of his work but also as to the means and methods by which such result was to be accomplished. This is certainly another eloquent proof that petitioner was a regular employee of respondents.

The next question: was petitioner illegally dismissed?

In illegal dismissal cases, the employer has the burden of proving that the termination was for a just or valid cause. It is incumbent, however, upon an employee to first establish by substantial evidence the fact of his dismissal by positive and overt acts of an employer indicating the intention to dismiss. The evidence thereof must be clear, positive, and convincing. Mere allegation is not proof.[32]

Here, there was no positive or direct evidence to substantiate petitioner's claim that he got dismissed from his employment. For aside from petitioner's unilateral assertion that he got dismissed, there is nothing on record to prove it. Petitioner even failed to name the person who supposedly ordered his dismissal. There is evidence though that respondents merely required him to undergo a medical examination before he could resume his duties as tour bus driver.

In ***MZR Industries v. Colambot***,[33] the Court held that other than the employee's unsubstantiated allegation of having been verbally terminated from his work, there was no evidence presented showing he was indeed dismissed from work or was prevented from returning to his work. The latter's claim of illegal dismissal, therefore, cannot be sustained – as the same would be self-serving, conjectural and of no probative value.

Following our ruling in ***Tri-C General Services v. Matuto***[34] where there is no dismissal to speak of, as in this case, the *status quo* between petitioner and respondents should be maintained. Thus, respondents should accept back and reinstate petitioner to his former position. But under the principle of "no work, no pay," petitioner cannot claim backwages.

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32 *MZR Industries v. Colambot*, 716 Phil. 617, 624 (2013).
33 *Id.*
34 770 Phil. 251, 264 (2015).

**WHEREFORE**, the petition is **PARTLY GRANTED**. The Court of Appeals' Decision dated January 30, 2019 and Resolution dated May 27, 2019 in CA-G.R. SP No. 155441 are **REVERSED AND SET ASIDE**. Dominador Legaspi, Jr. is declared a regular employee of King's Coach Tours and Transport Corporation and ordered reinstated to his former position, sans backwages.

**SO ORDERED."**

**By authority of the Court:**

**LIBRADA C. BUENA**
Division Clerk of Court 10/13

by:

**MARIA TERESA B. SIBULO**
Deputy Division Clerk of Court
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