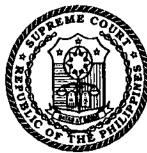

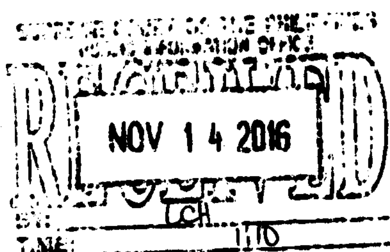

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
NOV 2016

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ALLAN BAZAR,
Petitioner,

-*versus*-

CARLOS A. RUIZOL,
Respondent.

G.R. No. 198782

Present:

VELASCO, JR., *J.*,
Chairperson,
PERALTA,
PEREZ,
REYES, and
JARDELEZA, *JJ.*

Promulgated:

October 19, 2016

x---x

DECISION

PEREZ, *J.*:

This is a petition for review of the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. SP No. 00937-MIN dated 11 November 2010 and 8 September 2011, respectively.

The antecedent facts follow.

Respondent Carlos A. Ruizol (also identified as Carlos Ruisol in the Complaint, Labor Arbiter's Decision and in other pleadings) was a mechanic at Norkis Distributors and assigned at the Surigao City branch. He was terminated effective 27 March 2002. At the time of his termination, respondent was receiving a monthly salary of ₱2,050.00 and was working from 8:00 a.m. to 5:00 p.m. with a one-hour meal break for six (6) days in a week. Respondent claimed that petitioner Allan Bazar came from Tandag branch before he was assigned as a new manager in the Surigao City branch.

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[1] *Rollo*, pp. 45-54; Penned by Associate Justice Ramon Paul L. Hernando with Associate Justices Romulo V. Borja and Edgardo T. Lloren concurring.
[2] Id. at 55-57.

Respondent added that he was dismissed by petitioner because the latter wanted to appoint his protégé as a mechanic. Because of his predicament, respondent filed a complaint before Regional Arbitration Branch No. XIII of the National Labor Relations Commission (NLRC) in Butuan City for illegal dismissal and other monetary claims. An Amended Complaint was filed on 12 August 2002 changing the name of the petitioner therein from Norkis Display Center to Norkis Distributors, Inc. (NDI).

Petitioner, on the other hand, alleged that NDI is a corporation engaged in the sale, wholesale and retail of Yamaha motorcycle units. Petitioner countered that respondent is not an employee but a franchised mechanic of NDI pursuant to a retainership agreement. Petitioner averred that respondent, being the owner of a motor repair shop, performed repair warranty service, back repair of Yamaha units, and ordinary repair at his own shop. Petitioner maintained that NDI terminated the retainership contract with respondent because they were no longer satisfied with the latter's services.

On 8 October 2003,[3] Executive Labor Arbiter Noel Augusto S. Magbanua ruled in favor of respondent declaring him a regular employee of NDI and that he was illegally dismissed, to wit:

> WHEREFORE, judgment is hereby rendered:
>
> 1. Declaring [respondent] a regular employee of [NDI and petitioner];
> 2. Declaring [respondent's] dismissal illegal;
> 3. Ordering [NDI] to pay [respondent] Carlos A. Ruisol the total amount of TWO HUNDRED THREE THOUSAND FIVE HUNDRED FIFTY ONE PESOS & 33/100 (P203,551.33) representing his monetary award computed above.
> 4. Other claims of [respondent] are dismissed for lack of merit.[4]

The Labor Arbiter stressed that an employer-employee relationship existed in this case. He did not give any weight to the unsworn contract of retainership based on the reason that it is a clear circumvention of respondent's security of tenure.

On appeal, petitioner reiterated that there is no employer-employee relationship between NDI and respondent because the latter is only a retainer mechanic of NDI. Finding merit in the appeal, the NLRC reversed the ruling of the Labor Arbiter and dismissed the case for lack of cause of

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[3] Id. at 142-156.
[4] Id. at 156.

action. The NLRC held that respondent failed to refute petitioner's allegation that he personally owns a motor shop offering repair and check-up services to other customers and that he worked on the units referred by NDI either at his own motor shop or at NDI's service shop. The NLRC also ruled that NDI had no power of control and supervision over the means and method by which respondent performed job as mechanic. The NLRC concluded that respondent is bound to adhere to and respect the retainership contract wherein he declared and acknowledged that he is not an employee of NDI.

Respondent filed a petition for *certiorari* before the Court of Appeals, submitting that the Labor Arbiter's ruling had become final with respect to NDI because the latter failed to appeal the same. Respondent asserted that the NLRC erred in ruling that there is no employer-employee relationship between the parties. Respondent also prayed for reinstatement.

On 11 November 2010, the Court of Appeals granted the petition. The Court of Appeals ruled that petitioner had no legal personality to make the appeal for NDI. The Court of Appeals held that the labor arbiter's decision with respect to NDI is final. The Court of Appeals found that there was employer-employee relationship between respondent and NDI and that respondent was unlawfully dismissed. Finally, the Court of Appeals awarded respondent separation pay in lieu of reinstatement.

Petitioner sought reconsideration of the decision but its motion for reconsideration was denied. Hence, this petition.

Before this Court, petitioner assigns the following alleged errors committed by the Court of Appeals:

1. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN GRANTING THE PETITION FOR CERTIORARI, AND REVERSING THE "*DECISION*" AND "*RESOLUTION*" (ANNEXES "A" AND "B") OF THE NATIONAL LABOR RELATIONS COMMISSION – FIFTH DIVISION, CAGAYAN DE ORO CITY, AS THE SAME ARE NOT IN ACCORDANCE WITH EXISTING LAWS AND/OR DECISIONS [PROMULGATED] BY THE HONORABLE SUPREME COURT.

   a. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FAILING TO APPLY THE DECISION OF THE HONORABLE SUPREME COURT THAT "JURISDICTION CANNOT BE ACQUIRED OVER THE DEFENDANT

WITHOUT SERVICE OF SUMMONS, EVEN IF HE KNOWS OF THE CASE AGAINST HIM, UNLESS HE VOLUNTARILY SUBMITS TO THE JURISDICTION OF THE COURT BY APPEARING THEREIN AS THROUGH HIS COUNSEL FILING THE CORRESPONDING PLEADING IN THE CASE", PURSUANT TO THE RULING OF THIS HONORABLE SUPREME COURT IN THE CASE OF "HABANA VS. VAMENTA, ET AL., L-27091, JUNE 30, 1970."

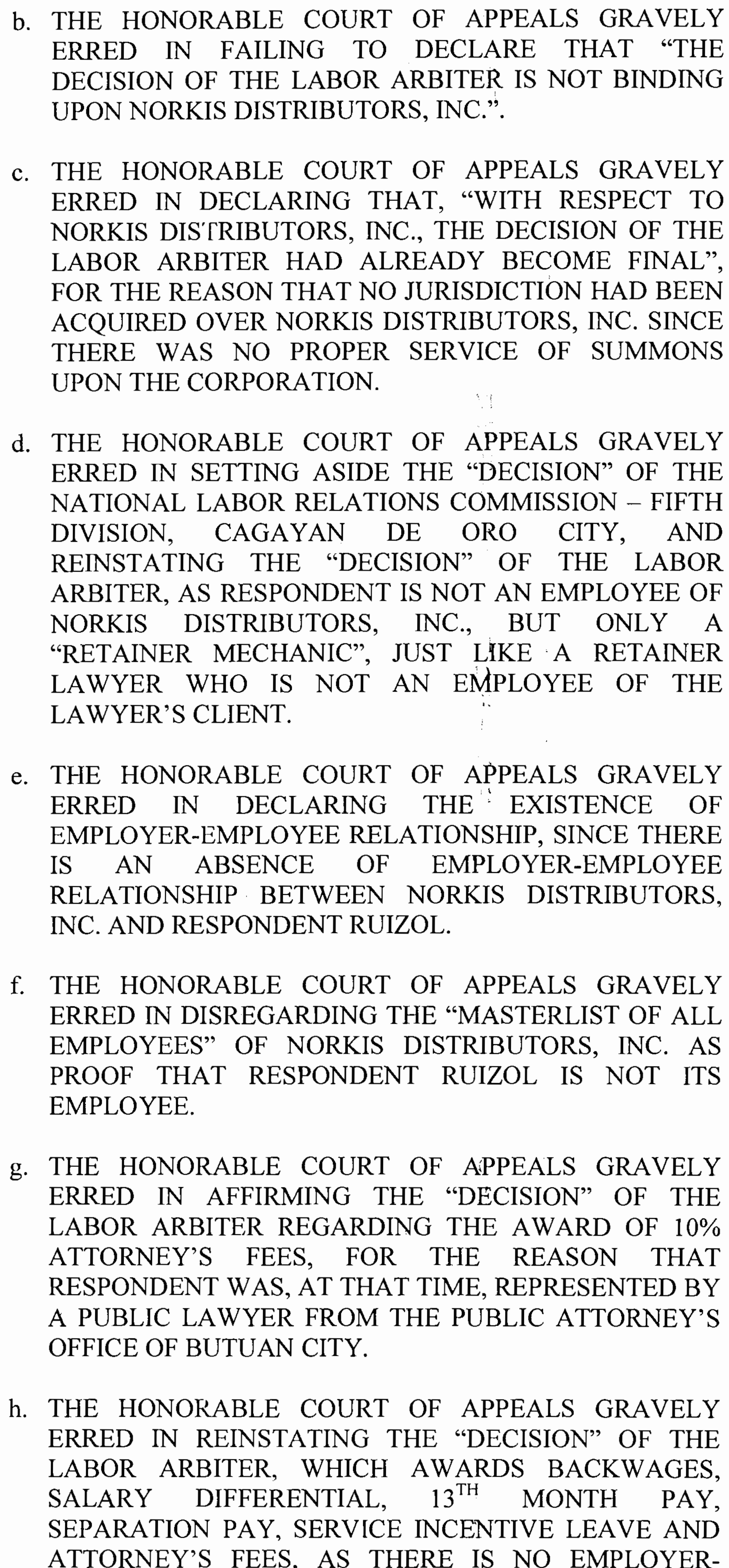
b. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FAILING TO APPLY THE LEGAL PRINCIPLE THAT "IT IS BASIC THAT A CORPORATION IS INVESTED BY LAW WITH A [PERSONALITY] SEPARATE AND DISTINCT FROM THOSE OF THE PERSONS COMPOSING IT AS WELL AS FROM THAT OF ANY OTHER LEGAL ENTITY TO WHICH IT MAY BE RELATED.", PURSUANT TO THE RULING OF THE HONORABLE SUPREME COURT IN THE CASE OF "ELCEE FARMS, INC. VS. NATIONAL LABOR RELATIONS COMMISSION, 512 SCRA 602."

c. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FAILING TO APPLY THE RULE REGARDING "DECLARATION AGAINST INTEREST", PURSUANT TO SECTION 38, RULE 130 ON THE REVISED RULES ON EVIDENCE.

d. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FAILING TO APPLY THE DECISION OF THE HONORABLE SUPREME COURT THAT "I.D. CARDS WHERE THE WORDS "EMPLOYEE'S NAME" APPEAR PRINTED THEREIN DO NOT PROVE EMPLOYER-EMPLOYEE RELATIONSHIP WHERE SAID I.D. CARDS ARE ISSUED FOR THE PURPOSE OF ENABLING CERTAIN "CONTRACTORS" SUCH AS SINGERS AND BAND PERFORMERS, TO ENTER THE PREMISES OF AN ESTABLISHMENT", PURSUANT TO THE RULING OF THIS HONORABLE SUPREME COURT IN THE CASE OF "TSPIC CORPORATION VS. TSPIC EMPLOYEES UNION (FFE), 545 SCRA 215."

2. THE HONORABLE COURT OF APPEALS MANIFESTLY OVERLOOKED CERTAIN RELEVANT AND UNDISPUTED FACTS THAT, IF PROPERLY CONSIDERED, WOULD JUSTIFY A DIFFERENT CONCLUSION.

a. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FAILING TO DECLARE THAT "NORKIS DISTRIBUTORS, INC. IS NOT A PARTY IN THE INSTANT CASE."



b. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FAILING TO DECLARE THAT "THE DECISION OF THE LABOR ARBITER IS NOT BINDING UPON NORKIS DISTRIBUTORS, INC.".

c. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DECLARING THAT, "WITH RESPECT TO NORKIS DISTRIBUTORS, INC., THE DECISION OF THE LABOR ARBITER HAD ALREADY BECOME FINAL", FOR THE REASON THAT NO JURISDICTION HAD BEEN ACQUIRED OVER NORKIS DISTRIBUTORS, INC. SINCE THERE WAS NO PROPER SERVICE OF SUMMONS UPON THE CORPORATION.

d. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN SETTING ASIDE THE "DECISION" OF THE NATIONAL LABOR RELATIONS COMMISSION – FIFTH DIVISION, CAGAYAN DE ORO CITY, AND REINSTATING THE "DECISION" OF THE LABOR ARBITER, AS RESPONDENT IS NOT AN EMPLOYEE OF NORKIS DISTRIBUTORS, INC., BUT ONLY A "RETAINER MECHANIC", JUST LIKE A RETAINER LAWYER WHO IS NOT AN EMPLOYEE OF THE LAWYER'S CLIENT.

e. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DECLARING THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP, SINCE THERE IS AN ABSENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN NORKIS DISTRIBUTORS, INC. AND RESPONDENT RUIZOL.

f. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DISREGARDING THE "MASTERLIST OF ALL EMPLOYEES" OF NORKIS DISTRIBUTORS, INC. AS PROOF THAT RESPONDENT RUIZOL IS NOT ITS EMPLOYEE.

g. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE "DECISION" OF THE LABOR ARBITER REGARDING THE AWARD OF 10% ATTORNEY'S FEES, FOR THE REASON THAT RESPONDENT WAS, AT THAT TIME, REPRESENTED BY A PUBLIC LAWYER FROM THE PUBLIC ATTORNEY'S OFFICE OF BUTUAN CITY.

h. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN REINSTATING THE "DECISION" OF THE LABOR ARBITER, WHICH AWARDS BACKWAGES, SALARY DIFFERENTIAL, 13TH MONTH PAY, SEPARATION PAY, SERVICE INCENTIVE LEAVE AND ATTORNEY'S FEES, AS THERE IS NO EMPLOYER-

EMPLOYEE RELATIONSHIP BETWEEN NDI AND RESPONDENT RUIZOL. [5]

Petitioner first raises a question of procedure. Petitioner asserts that no summons was served on NDI. Thus, NDI had no reason to appeal the adverse decision of the Labor Arbiter because jurisdiction over its person was not acquired by the labor tribunal. Considering the foregoing, petitioner maintains that he cannot be made personally liable for the monetary awards because he has a personality separate and distinct from NDI.

We partly grant the petition.

The NLRC, despite ruling against an employer-employee relationship had nevertheless upheld the jurisdiction of the Labor Arbiter over NDI. The NLRC ruled and we agree, thus:

> Indeed, NDI was impleaded as respondent in this case as clearly indicated in the amended complaint filed by [respondent] on August 12, 2002, contrary to the belief of [NDI and petitioner]. And considering that the summons and other legal processes issued by the Regional Arbitration Branch a quo were duly served to [petitioner] in his capacity as branch manager of NDI, the Labor Arbiter had validly acquired jurisdiction over the juridical person of NDI.[6]

The Court of Appeals correctly added that the Labor Arbiter's ruling with respect to NDI has become final and executory for the latter's failure to appeal within the reglementary period; and that petitioner had no legal personality to appeal for and/or behalf of the corporation.

Interestingly, despite vehemently arguing that NDI was not bound by the ruling because it was not impleaded as respondent to the complaint, petitioner in the same breath admits even if impliedly NDI is covered by the ruling, arguing that there cannot be any illegal dismissal because there is no employer-employee relationship between NDI and respondent. We are not convinced.

We emphasize at the outset that the existence of an employer-employee relationship is ultimately a question of fact. Only errors of law are generally reviewed by this Court. Factual findings of administrative and quasi-judicial agencies specializing in their respective fields, especially

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5 Id. at 16-20.
6 Id. at 212.

when affirmed by the Court of Appeals, must be accorded high respect, if not finality.[7] We here see an exception to the rule on the binding effect on us of the factual conclusiveness of the quasi-judicial agency. The findings of the Labor Arbiter are in conflict with that of the NLRC and Court of Appeals. We can thus look into the factual issues involved in this case.

The four-fold test used in determining the existence of employer-employee relationship are: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee with respect to the means and method by which the work is to be accomplished.[8]

In finding that respondent was an employee of NDI, the Court of Appeals applied the four-fold test in this wise:

> x x x *First*, the services of [respondent] was indisputably engaged by the [NDI] without the aid of a third party. *Secondly*, the fact that the [respondent] was paid a retainer fee and on a *per diem* basis does not altogether negate the existence of an [employer]-employee relationship. The retainer agreement only provided the breakdown of the [respondent's] monthly income. On a more important note, the [NDI] did not present its payroll, which it could conveniently do, to disprove the [respondent's] claim that he was their employee. x x x
>
> Third, the [NDI's] power of dismissal can be [gleaned] from the termination of the [respondent] although couched under the guise of the non-renewal of his contract with the company. Also, the contract alone showed that the [respondent] provided service to Yamaha motorbikes brought to the NDI service shop in accordance with the manual of the unit and subject to the minimum standards set by the company. Also, tool kits were furnished to the mechanics which they use in repairs and checking of the units conducted inside or in front of the Norkis Display Center.[9]

Petitioner argues that respondent was not engaged as an employee but the parties voluntarily executed a retainership contract where respondent became NDI's retainer mechanic; that respondent was paid a retainer's fee similar to that of the services of lawyers; that the termination of the retainership contract does not constitute illegal dismissal of the retained mechanic; and that NDI is only interested in the outcome of respondent's work. Petitioner further explained that respondent is free to use his own means and methods by which his work is to be accomplished and the manual

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[7] *Basay v. Hacienda Consolacion and/or Bouffard*, 632 Phil. 430, 444 (2010).

[8] *Royale Homes Marketing Corporation v. Alcantara*, G.R. No. 195190, 28 July 2014, 731 SCRA 147, 162.

[9] *Rollo*, pp. 50-51.

of the Yamaha motorbike unit is necessary in order to guide respondent in the repairs of the motorbikes.

At the outset, respondent denied the existence of a retainership contract. Indeed, the contract presented by NDI was executed by the latter and a certain Eusequio Adorable. The name "Carlos Ruizol" was merely added as a retainer/franchised mechanic and the same was unsigned. Assuming, however, that such a contract did exist, its provisions should not bind respondent. We agree with the Labor Arbiter on the following points:

> Paragraph 5 and 6 of the unswomed contract of Retainership between [respondent] and [NDI and petitioner] dated March 1, 1989 states as follows:
>
> > "5. That the franchised mechanic, though not an employee of the NDI agrees to observe and abide by the rules and regulations by the NDI aims to maintain a good quality and efficient service to customer.
> >
> > 6.) Franchised mechanic hereby acknowledge that he is not an employee of NDI, hence, not entitled to Labor Standard benefits.
>
> It bears stressing that the contents of the unsworn Contract of Retainership is a clear circumvention of the security of tenure pursuant to Articles 279 and 280 of the Labor Code. The agreement embodied in the said contract is contrary to law, thus [respondent] is not bound to comply with the same. [10]

NDI admitted to have engaged the services of respondent, although under the guise of a retainership agreement. The fact of engagement does not exclude the power of NDI to hire respondent as its employee.

Assuming that respondent signed the retainership agreement, it is not indicative of his employment status. It is the law that defines and governs an employment relationship, whose terms are not restricted by those fixed in the written contract, for other factors, like the nature of the work the employee has been called upon to perform, are also considered. The law affords protection to an employee, and does not countenance any attempt to subvert its spirit and intent. Any stipulation in writing can be ignored when the employer utilizes the stipulation to deprive the employee of his security of tenure. The inequality that characterizes employer-employee relations

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[10] Id. at 153.

generally tips the scales in favor of the employer, such that the employee is often scarcely provided real and better options.[11]

Petitioner claims that respondent was receiving ₱2,050.00 as his monthly retainer's fee as of his termination in March 2002. This fee is covered by the term "wages" and defined as 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.[12] For services rendered to NDI, respondent received compensation. NDI could have easily disproved that respondent was its employee by presenting the manner by which such compensation was paid to respondent. NDI did not do so.

That NDI had the power to dismiss respondent was clearly evidenced by the fact that respondent's services were terminated.

The control test is the most crucial and determinative indicator of the presence or absence of an employer-employee relationship. Under the control test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved, but also the manner and means to be used in reaching that end.[13]

Petitioner asserts that NDI did not exercise the power of control over respondent because he is free to use his own means and methods by which his work is to be accomplished. The records show the contrary. It was shown that respondent had to abide by the standards sets by NDI in conducting repair work on Yamaha motorbikes done in NDI's service shop. As a matter of fact, on allegations that respondent failed to live up to the demands of the work, he was sent several memoranda[14] by NDI. We agree with the Labor Arbiter that the presence of control is evident thus:

> This Branch agree with the complainants' contention that there is no contract and that he is a regular employee as shown in Annexes "2" & "3" respectively of the respondents position paper, as follows:

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[11] *Legend Hotel v. Realuyo*, 691 Phil. 226, 238 (2012).
[12] *Tan v. Lagrama*, 436 Phil. 190, 203 (2002).
[13] *Atok Big Wedge Co., Inc. v. Gison*, 670 Phil. 615, 627 (2011).
[14] See Respondent's Position Paper, *rollo*, pp. 122-134.

> "Furthermore, you are directed and advice to religiously follow orders from your immediate superior x x x
>
> Failure on your part to submit a written explanation will be construed as a waiver of your right and your case will be decided based on available information"
>
> The above memo is so worded in a way that it unmistakably show that it is addressed to the [respondent] who is an employee of [NDI]. It shows clearly the presence of the element of "control" by [NDI and petitioner] over [respondent's] manner of work.[15]

Petitioner points out that respondent actually owns a motor repair shop where he performs repair warranty service and back job repairs of Yamaha motorcycles for NDI and other clients. This allegation was unsubstantiated. We cannot give credit to such claim.

Petitioner argues that the appellate court erred in holding that respondent is an employee of NDI based on the identification card issued to him. While it is true that identification cards do not prove employer-employee relationship, the application of the four-fold test in this case proves that an employer-employee relationship did exist between respondent and NDI.

Since it was sufficiently established that petitioner is an employee of NDI, he is entitled to security of tenure. He can only be dismissed for a just or authorized cause. Petitioner was dismissed through a letter informing him of termination of contract of retainership which we construe as a termination notice. For lack of a just or authorized cause coupled with failure to observe the twin-notice rule in termination cases, respondent's dismissal is clearly illegal.

An illegally dismissed employee is entitled to two reliefs: backwages and reinstatement. The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.[16]

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15 *Rollo*, pp. 153-154.

16 *Bani Rural Bank, Inc. v. De Guzman*, 721 Phil. 84, 101 (2003) citing Article 279 of the Labor Code.

Based on the foregoing, we affirm that NDI is not only liable for respondent's illegal dismissal, but that the Labor Arbiter's decision against it had already become final and executory.

We now go to the liability of petitioner for payment of the monetary award. There is solidary liability when the obligation expressly so states, when the law so provides, or when the nature of the obligation so requires.[17] Settled is the rule that a director or officer shall only be personally liable for the obligations of the corporation, if the following conditions concur: (1) the complainant alleged in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) the complainant clearly and convincingly proved such unlawful acts, negligence or bad faith.[18]

In the instant case, there is an allegation that petitioner dismissed respondent because he wanted to hire his own mechanic. However, this remained to be an allegation absent sufficient proof of motive behind respondent's termination. Petitioner may have directly issued the order to dismiss respondent but respondent must prove with certainty bad faith on the part of petitioner. No bad faith can be presumed from the lone fact that immediately after respondent's termination, a new mechanic was hired. That the new mechanic was actually petitioner's protégé is a mere allegation with no proof. Therefore, petitioner, as branch manager, cannot be held solidarily liable with NDI.

WHEREFORE, the instant Petition is **PARTLY GRANTED**. The Decision dated 11 November 2010 and Resolution dated 8 September 2011 of the Court of Appeals in CA-G.R. SP No. 00937-MIN reinstating the Decision of the Labor Arbiter declaring respondent Carlos Ruizol's dismissal as illegal are **AFFIRMED**. Petitioner Allan Bazar is however **ABSOLVED** from the liability adjudged against Norkis Distributors, Inc.

SO ORDERED.

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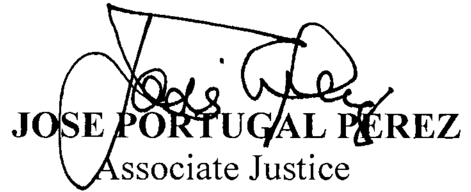
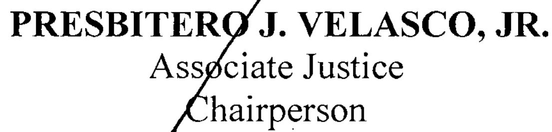
[17] *Grandteq Industrial Steel Products, Inc. v. Estrella*, 661 Phil. 735, 747-748 (2011).

[18] *FVR Skills and Services Exponents, Inc. v. Seva*, G.R. No. 200857, 22 October 2014, 739 SCRA 271, 289-290.

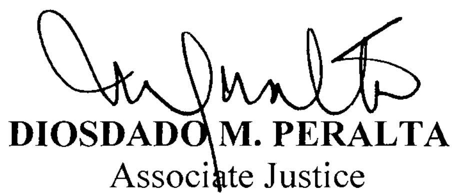


JOSE PORTUGAL PEREZ
Associate Justice

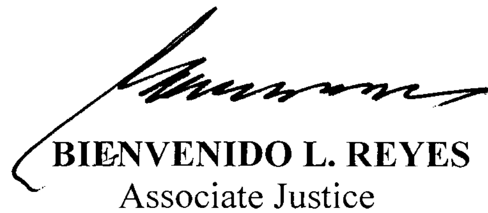
WE CONCUR:



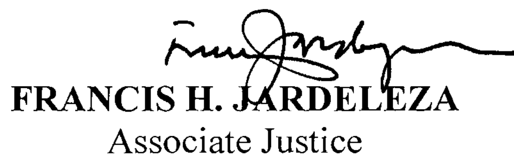
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice



BIENVENIDO L. REYES
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified 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.

MARIA LOURDES P. A. SERENO
Chief Justice