



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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THIRD DIVISION

**DOMINIC¹ INOCENTES, JEFFREY
 INOCENTES, JOSEPH CORNELIO
 and REYMARK CATANGUI,**
Petitioners,

G.R. No. 237020

Present:

PERALTA, *J.*, Chairperson,
 LEONEN,
 REYES, A., JR.,*
 HERNANDO, and
 INTING, *JJ.*

- versus -

Present:

**R. SYJUCO CONSTRUCTION, INC.
 (RSC) / ARCH. RYAN I. SYJUCO,**
Respondents.

July 29, 2019

Ryker Syjucan

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DECISION

INTING, J.:

This Petition for Review on *Certiorari* assails the Decision² dated October 5, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 150606, which annulled and set aside the Decision³ and Resolution⁴ respectively dated January 11, 2017 and February 23, 2017 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 09-002681-16. Also challenged is the CA Resolution⁵

¹ Domenic in some part of the records.

* On Official Leave.

² *Rollo*, pp. 44-64; penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Jose C. Reyes, Jr. (now a Member of this Court) and Renato C. Francisco.

³ *Id.* at 97-108; penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Gina F. Cenit-Escoto and Romeo L. Go.

⁴ *Id.* at 116-117.

⁵ *Id.* at 66-67.

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of January 19, 2018 denying the motion for reconsideration on the assailed Decision.

The Antecedents

Petitioners Dominic Inocentes (Dominic), Reymark Catangui (Reymark), Jeffrey Inocentes (Jeffrey), and Joseph Cornelio (Joseph) (petitioners) filed a Complaint⁶ against R. Syjuco Construction, Inc. (RSCI) and its owner, Ryan Syjuco (respondents). In their Position Paper,⁷ they claimed that RSCI, a construction corporation, employed them as construction workers with shifts from 7:00 p.m. to 7:00 a.m. every night. Despite this work circumstance, they purportedly never received night differential, overtime pay, rest day pay, service incentive leave pay, ECOLA,⁸ 13th month pay as well as holiday premium pay; and, neither did they receive the mandated minimum wage. They added that for more than a year, they worked for respondents on a no-work-no-pay basis.

Petitioners further alleged that on separate dates in September 2015, Reymark (September 9), Jeffrey (September 19), Joseph and Dominic (September 24) went to work but they were denied entry at the jobsite. The security guard instead informed them that they were already terminated. Petitioners insisted that they asked for reconsideration but only to be told to leave the premises. Hence, they filed a case for constructive dismissal and money claims against respondents.

Moreover, in their Reply,⁹ petitioners denied having to work for respondents on a project basis. They claimed that respondents did not present any employment contract evidencing that petitioners' work was coterminous with any project that respondents contracted. They also stressed that respondents did not report to the DOLE¹⁰ the termination of their supposed project employment. In sum, petitioners remained firm that they were regular employees and that they were terminated without any valid cause and without observance of due process of law.

For their part, respondents in their Position Paper¹¹ countered that they engaged petitioners in 2009 (Dominic and Reymark), 2010 (Jeffrey), and 2012 (Joseph) as carpenters. They asserted that petitioners were under project employment and that they did not work continuously because their assignments depended on the availability of projects.

⁶ Id. at 141-142.

⁷ Id. at 185-193.

⁸ Emergency Cost of Living Allowance.

⁹ *Rollo*, pp. 213-216.

¹⁰ Department of Labor and Employment.

¹¹ *Rollo*, pp. 143-146.

Respondents maintained that they did not constructively dismiss petitioners. They explained that in September 2015, petitioners were separated from work due to the completion of their respective project assignments. They stressed that RSCI was not a large construction company and most of its projects involved small structures that could be finished in a few months. They added that per the summary¹² of project assignments and length of service, petitioners' work was not continuous and the rule that no-project-no-work applied to them.

Additionally, respondents contended in their Reply¹³ that RSCI was just a construction company generally engaged in repair or renovation. They added that a few days or months after a repair or renovation project, they would inform the employees that they would be just called upon when a new project commences but for the time being, they could work or offer their services to other companies. They maintained that on the dates that petitioners were allegedly dismissed, petitioners were waiting for new project assignment. Respondents stressed that petitioners were not terminated but that they (petitioners) were the ones who declared their own dismissal.

Respondents further argued in their Rejoinder¹⁴ that the absence of their report on the termination of project employment to the DOLE did not remove petitioners' employment in the category of a project employment because at the time of their engagement, petitioners were briefed as to the nature of their work.

Ruling of the Labor Arbiter

On July 28, 2016, the Labor Arbiter (LA) rendered a Decision¹⁵ dismissing the complaint for illegal dismissal but nevertheless ordered RSCI to pay all petitioners the underpayment of salaries, overtime pay as well as 13th month pay; and, to also pay Dominic and Joseph holiday premium pay. The LA likewise granted nominal damages in the amount of ₱5,000.00 in favor of petitioners.

According to the LA, petitioners did not refute respondents' allegation that RSCI was not a big construction company and that most of its projects involved small structures that could be finished in a few months. Given this situation, the LA lent credence to the assertion of respondents that petitioners were project employees whose employment was coterminous with a specific project and subject to the availability of contracts. The LA stressed that petitioners failed to specifically allege and prove that respondents made them work uninterruptedly from one project to another while on the contrary, respondents were able to specify the periods

¹² Id. at 148-151.

¹³ Id. at 152-155.

¹⁴ Id. at 156-161.

¹⁵ Id. at 239-249; penned by Labor Arbiter Joel A. Allones.

of time and particular projects where they assigned petitioners. Hence, the LA decreed that petitioners were project employees and that they were not illegally dismissed from work.

Petitioners appealed.

Ruling of the National Labor Relations Commission

In its January 11, 2017 Decision, the NLRC partly granted the appeal ruling that petitioners were regular employees and that RSCI illegally dismissed them. Consequently, it ordered RSCI to pay petitioners backwages, separation pay, service incentive leave pay and attorney's fees equivalent to 10% of the total monetary award. It nonetheless affirmed the LA Decision relative to the underpayment of petitioners' salaries, 13th month pay, overtime pay, and holiday premium pay for Dominic and Joseph.

The NLRC ratiocinated that Policy Instruction No. 20 requires the employer of project employees to report to the DOLE certain matters including the duration and specific work to be done by the employee which must be made clear at the time of hiring as well as the dismissal of employees upon the completion of every project. It stressed that failure of the employer to comply with such reporting would establish that the employees are not project employees. It ruled that for the non-compliance by respondents with the reportorial requirement, petitioners were proved to be regular employees and may not be dismissed without valid cause and observance of the due process of law.

Thereafter, the NLRC denied respondents' motion for reconsideration prompting them to file a Petition for *Certiorari* with the CA.

Ruling of the Court of Appeals

On October 5, 2017, the CA annulled and set aside the NLRC Decision and Resolution and concomitantly, reinstated the LA Decision.

The CA ruled that the principal test to determine whether employees were project, not regular, employees, was to ascertain if they were assigned to carry out a specific project or undertaking, the scope and duration of which was specified and made known to the employees at the time of engagement.

According to the CA, as evidenced by the summary of their project assignments, petitioners were project employees because they were informed of the nature and duration of their work and the project at the time of their engagement. Like the LA, it found no evidence establishing that petitioners worked for respondent continuously and without interruption.

On January 19, 2018, the CA denied the motion for reconsideration on the assailed Decision.

Issues

Undaunted, petitioners filed this Petition raising the following issues:

WHETHER THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR OF LAW IN REVERSING THE DECISION AND RESOLUTION OF THE NATIONAL LABOR RELATIONS COMMISSION, RULING THAT [1.] THERE WAS NO ILLEGAL DISMISSAL [; AND, 2.] THEY ARE NOT ENTITLED TO THEIR MONEY CLAIMS.¹⁶

Petitioners aver that respondents did not submit even a single employment contract to prove the specific project/s, their duration and from where petitioners were supposedly to be assigned. Because of this absence, petitioners claim that they were not informed at their engagement that they were mere project employees. They also stress that instead of submitting employment contracts, respondents presented petitioners' alleged summary of project assignment and length of service, which is self-serving and can easily be fabricated. Overall, petitioners contend that they were regular employees since respondents failed to prove any indicator for them to fall under project employment.

Petitioners also posit that respondents illegally dismissed them considering that their termination was without any valid cause and without observance of due process of law. They reiterate that they were disallowed entry in the jobsite, without warning and without giving them any opportunity to explain. They remain firm that their dismissal was fatally flawed and thus, illegal.

On the other hand, respondents counter that RSCI substantially proved that petitioners worked with the company for various short-term projects and the duration of each was communicated to them based on the summary of petitioners' project assignments which contained information as to the respective projects where employees were assigned and the duration when petitioners worked for them.

¹⁶ Id. at 21.

While respondents admit that they did not submit employment contracts evidencing petitioners' engagement, they insist that this lapse is not fatal because employment contract is not a requisite to prove project employment.

Finally, respondents maintain that petitioners were not illegally dismissed because termination on the ground of project completion or contract expiration is a valid cause of terminating project employment.

Our Ruling

The Petition is impressed with merit.

At the outset, let it be stressed that the issue of whether a person is a regular employee (or a project employee at that) involves factual matters which are generally beyond the scope of a petition under Rule 45 of the Rules of Court as only questions of law may be raised in a petition for review on *certiorari*. However, due to the divergent factual findings of the LA and the CA, on one hand, and of the NLRC, on the other, the Court sees it necessary to review these findings for the just resolution of this case.¹⁷

Moreover, let it be emphasized that the Court's reviews of CA decisions in labor cases is a distinct one. Particularly, the review under Rule 45 endeavors to assess *whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC ruling*. It is limited into ascertaining the legal correctness of the CA ruling anent the NLRC decision, which findings and conclusion must, in turn, be supported by substantial evidence; for otherwise, grave abuse of discretion will be imputed against it (NLRC).¹⁸

In a number of cases, the Court expounded on the concept of "grave abuse of discretion" as the rendition of judgment in a capricious, whimsical or arbitrary manner tantamount to lack of jurisdiction. Moreover, the concept of "grave" connotes that the abuse of discretion is so gross and patent that amounts to "an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law."¹⁹ More specifically, in labor cases, as the one at bench, grave abuse of discretion is present when the NLRC's ruling is *not* supported by substantial evidence. Put in another way, where the NLRC decision has basis in evidence as well as in law and

¹⁷ *Dacutil vs. L.M. Camus Engineering Corp.*, 644 Phil. 158, 169 (2010).

¹⁸ *Quebral vs. Angus Construction, Inc.*, 798 Phil. 179, 187-188 (2016).

¹⁹ *Freyssinet Filipinas Corp. vs. Lapuz*, G.R. No. 226722, March 18, 2019.

jurisprudence, no grave abuse of discretion may be imputed against it, and necessarily, the CA must dismiss the petition for *certiorari* challenging the NLRC decision.²⁰

Taking into account these legal parameters, the Court finds that the CA committed reversible error in annulling the NLRC decision as the latter's findings – that petitioners were regular employees and that they were illegally dismissed – are well supported by substantial evidence, applicable law and jurisprudence.

Regular and project employee; distinguished

Article 295²¹ of the Labor Code, as amended and renumbered, defines a regular employee as (a) one that has been engaged to perform tasks usually necessary or desirable in the employer's usual business or trade – without falling within the category of either a fixed, a project, or a seasonal employee; or (b) one that has been engaged for a least a year, with respect to the activity he or she is engaged, and the work of the employee remains while such activity exists. On the other hand, a project employee is one whose employment has been fixed for a specified project or undertaking, the completion or termination of which is made known at the time of the engagement of the employee.

In Dacuital vs. L.M. Camus Engineering Corp.,²² the Court stressed that a project employee is assigned to a project that starts and ends at a determined or determinable time. The Court elucidated therein that the principal test to determine if an employee is a project employee is – whether he or she is assigned to carry out a particular project or undertaking, which duration or scope was specified at the time of engagement.

In this case, to ascertain whether petitioners were project employees, as claimed by respondents, it is primordial to determine whether notice was given them

²⁰ *Quebral vs. Angbus Construction, Inc.*, supra note 18 at 188.

²¹ *Labor Code of the Philippines, Presidential Decree No. 442 (Amended & Renumbered)*, July 21, 2015.

Article 295. [280] *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 be 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.

²² Supra note 17 at 170.

that they were being engaged just for a specific project, which notice must be made at the time of hiring. However, no such prior notice was given by respondents.

The Court notes that the summary of project assignments relied by the CA cannot be considered as the needed notice because it only listed down the projects from where petitioners were previously assigned but nowhere did it indicate that petitioners were informed or were aware that they were hired for a project or undertaking only.

Stated differently, the summary only listed the projects *after* petitioners were assigned to them but it did not reflect that petitioners were informed *at the time of engagement* that their work was only for the duration of a project. Notably, it was only in their Rejoinder (filed with the LA) that respondents stated that at the time of their engagement, petitioners were briefed as to the nature of their work but respondents did not fully substantiate this claim.

Moreover, the summary of project assignments even worked against respondents as it established the necessity and desirability of petitioners' tasks on the usual business of respondents. It is worth noting that respondents themselves admitted to such essentiality of the work because in their Reply (also submitted with the LA), respondents confirmed that days or a few months after a repair or renovation project, they would inform petitioners that they would be called upon when a new project commences. This matter only shows that petitioners' work for respondents did not end by the supposed completion of a project because respondents coordinated with and notified them that their services would still be necessary for respondents.

Also, the fact that respondents did not submit a report with the DOLE (anent the termination of petitioners' employment due to alleged project completion) further bolsters that petitioners were not project employees. In *Freyssinet Filipinas Corp. vs. Lapuz*,²³ the Court explained that the failure on the part of the employer to file with the DOLE a termination report *every time* a project or its phase is completed is an indication that the workers are not project employees but regular ones.

***Burden to prove project employment;
On the employer***

Equally important to stress that the employer has the burden to prove that the employee is indeed a project employee. On this, the employer must

²³ Supra note 19.

establish that (a) the employee was assigned to carry out a particular project or undertaking; and, (b) the duration and scope of which was specified at the time of engagement.²⁴

However, as already discussed, respondents did not prove that they informed petitioners, at the time of engagement, that they were being engaged as project employees. The duration and scope of their work was without prior notice to petitioners. While the lack of a written contract does not necessarily make one a regular employee, a written contract serves as proof that employees were informed of the duration and scope of their work and their status as project employee at the commencement of their engagement. There being none that was adduced here, the presumption that the employees are regular employees prevails.²⁵

***Termination; Valid cause
and observance of due process***

Notably, considering that respondents failed to discharge their burden to prove that petitioners were project employees, the NLRC properly found them to be regular employees. It thus follows that as regular employees, petitioners may only be dismissed for a just or authorized cause and upon observance of due process of law. As these requirements were not observed, the Court also sustains the finding of the NLRC that petitioners were illegally dismissed.²⁶

Let it be underscored too that even if we rely on the averment of respondents that petitioners ceased to work at the end of their purported project contract, this assertion will not hold water since it is not a valid cause to terminate regular employees. This is in addition to the fact that there was no showing that petitioners were given notice of their termination, an evident violation of their right to due process.²⁷

All told, the Court finds that the CA erred in ascribing grave abuse of discretion on the part of the NLRC in finding that petitioners were regular employees and that they were illegally dismissed. Consequently, the Court affirms the NLRC in awarding service incentive leave pay to petitioners, which benefit was not given by their employer, as well as the award of full backwages and separation pay. Separation pay is granted since reinstatement is no longer

²⁴ See *Bajaro vs. Metro Stonerich Corp.*, G.R. No. 227982, April 23, 2018.

²⁵ *Dacuital vs. L.M. Camus Engineering Corp.*, supra note 17 at 170-171.

²⁶ *Id.* at 172.


²⁷ See *Lingat vs. Coca-Cola Bottlers Philippines, Inc.*, G.R. No. 205688, July 4, 2018.

feasible by reason of strained relations between the parties and the possibility that the positions previously occupied by petitioners are already being held by new employees.²⁸

Lastly, the Court likewise sustains the award of attorney's fees of 10% of the total monetary award since petitioners were compelled to litigate in order to protect their rights. Pursuant to prevailing jurisprudence, we hereby impose the interest of 6% *per annum* on all the monetary awards from the finality of this Decision until paid in full.²⁹

WHEREFORE, the petition is **GRANTED**. The Decision dated October 5, 2017 and Resolution dated January 19, 2018 of the Court of Appeals in CA-G.R. SP No. 150606 are **REVERSED and SET ASIDE**. Accordingly, the decision of the National Labor Relations Commission in NLRC LAC No. 09-002681-16 is **REINSTATED WITH MODIFICATION** in that interest at the legal rate of 6% *per annum* shall be imposed on all monetary awards from the finality of this decision until fully paid.

SO ORDERED.



HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:



DIOSDADO M. PERALTA
Associate Justice
Chairperson

²⁸ *Innodata Knowledge Services, Inc. vs. Inting*, G.R. No. 211892, December 6, 2017, 848 SCRA 106, 148.

²⁹ *Bajaro vs. Metro Stonerich Corp.*, supra note 24.



MARVIC M.V. F. LEONEN
Associate Justice

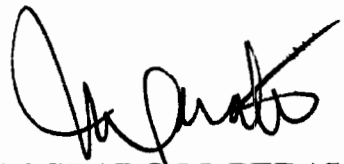
(On Official Leave)
ANDRES B. REYES, JR.
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice

ATTESTATION

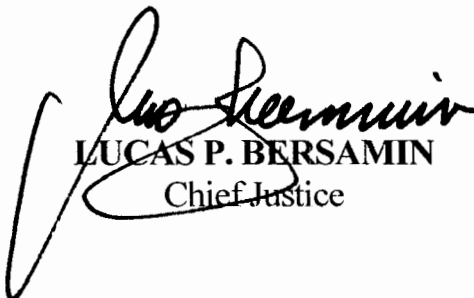
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
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.



LUCAS P. BERSAMIN
Chief Justice

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