

**TOCHIGI-KEN TECHNOLOGIES INTERNATIONAL, INC., PETITIONER,
VS. NATIONAL LABOR RELATIONS COMMISSION [FIRST DIVISION],
TOLENTINO P. GATELA, WILSON L. MABAO, JONARY C. BENGAN AND
EL...**

Ponente: DIAMANTE, J.

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DIAMANTE, J.:

This is a petition for certiorari under Rule 65 of the Revised Rules of Court assailing the September 30, 2013 and November 29, 2013 Resolutions[1] of the National Labor Relations Commission (hereinafter referred to as NLRC) in NLRC LAC No. 03-000921-13 [NLRC Case No. RAB-IV-03-00465-12-L] which dismissed the herein petitioner corporation's (petitioner) appeal and denied the Motion for Reconsideration, respectively.

The antecedent facts of the case, as found by public respondent, are as follows:

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The complainants [herein private respondents] alleged that they were hired by the respondent corporation on the following dates:

Name of Complainant

Date Hired

Elly Bernardo

3 March 2011

Tolentino P. Gatela

1 April 2010

Wilson L. Mabao

24 March 2010

Jonary C. Bengan

16 February 2010

as helper/ installer. At the time they were hired, they did not sign employment contracts. Throughout their employment with the respondents [herein petitioner] [they] did not receive service incentive leave pay and holiday pay. Whenever they would work the night shift (10:00 p.m. to 6:00 a.m.), they would not be paid night shift differential pay. They also claim to not have received holiday pay. They also did not receive 13[th] month pay. However, on the last week of December 2010 and on 17 December 2011 the respondents gave the following complainants Christmas bonuses: xxx xxx

The complainants further alleged that on 1 February 2012, individual respondent Marcel Arnanete ordered the

complainant and all other employees assigned at the Hitachi project to sign a project employment contract, otherwise they would not be allowed to work. They refused to sign. On 18 February 2012, the respondent corporation's time keeper Jojo Jaen informed complainants Gatela, Bengan and other employees not to report for work on 20 February 2012 due to their non-compliance with individual respondent Arnanete's directive. They were also told that their employment with the respondent corporation was already terminated. Complainant Bernardo on the other hand was informed on 22 February 2012 not to report for work on 23 February 2012. The complainants were not given their last salary in the following amounts:

Name of Complainant

Period

Amount

Elly Bernardo

16 to 22 February 2012

P1,672.30

Tolentino P. Gatela

16 to 18 February 2012 (with overtime)

P1,340.63

Wilson L. Mabao

P3,818.75

Jonary C. Bengan

16 to 18 February 2012

P975.00

On 20 February 2012, the complainants and their co-workers sought the assistance of a radio program the coordinator of which in turn wrote a letter addressed to the director of the Department of Labor and Employment Alex Avila. The complainants proceeded to the office of Alex Avila handing the letter to the latter. Mr. Avila directed them to file their complaint. The complainants filed the complaint under the single entry approach. As the respondents failed to appear in the hearings held at the office of the Department of Labor and Employment, the complaint was referred to the NLRC's regional office no. IV. The respondents also failed to appear at the mandatory conferences held therein. The parties were then asked to submit position papers.

The complainants argued that they were illegally dismissed. According to them, they were dismissed when they refused to sign the project employment contract.

The respondents on the other hand alleged that sometime in March 2011, the respondent corporation was contracted by Hitachi Global Storage Phils. Corp. for a certain installation project. The complainants were thus hired as project based employees for this purpose. On 28 May 2011, this project had already been completed. However, prior to the completion of this project, Hitachi engaged the services of the respondent corporation for another project. Instead of hiring another set of helpers for the new project, the respondent corporation thought it best to engage the services of the same group of employees. The respondent corporation then prepared the necessary documents for all project-based employees assigned to work on the project. Most of the employees

affixed their signatures to this document, except for complainants Gatela, Mabao and Bengan. Furthermore, they stopped reporting for work on the following days. On the succeeding days however, they went to the site not to work but to convince other fellow employees to join them. They were able to convince complainant Bernardo, as well as other co-workers Marvin Genova and Magwad Mesias.

The respondents further alleged that after the baseless complaint for illegal dismissal had been filed, the complainants allegedly wrote a letter to the respondents asking for at least sixty thousand pesos (P60,000.00) each as a condition for withdrawing the complaint.

According to the respondents, they did not dismiss the complainants. Rather, the complainants just left the respondents' employ. Furthermore, the complainants are not regular employees. They are project employees engaged for a specific project. When the project is completed, they also cease to be employees. They also alleged that the complainants cannot possibly be regular employees because they will not qualify as such. An investigation that they conducted revealed that the complainants were involved in the selling of scrap and other materials owned by the respondent corporation without its consent, which constitutes qualified theft.

The complainants in their reply denied the respondents' allegations that they were engaged as employees on March 2011 (except for complainant Bernardo). They also denied the allegation that Hitachi engaged the services of the respondents once again immediately after the completion of a project as the first project was completed on 28 May 2011 while the second project started on 7 February 2012 and was completed on 13 March 2012. They assert their status as regular employees as they performed activities necessary or desirable in the respondents' usual business or trade for at least one (1) year. According to them, the respondents failed to sufficiently establish that they were engaged on a per project basis.

The complainants also denied the allegation of abandonment against them, because they [had] no intention to relinquish their employment. According to them, the filing of the complaint is enough proof to support their desire to return to work. As for the allegation that they only filed the complaint to get money from the respondents, the complainants claimed that the letter submitted by the respondents was made after the mandatory conference held in the office of the labor arbiter. The tenor of the letter clearly states that the amount requested for the settlement of the case is subject to the agreement of the parties.

The respondents in their reply denied the complainants' allegation of constructive dismissal. The complainants were requested to sign a document "Kasulatan ng Paghirang," which they refused to sign realizing that the project they were working on at that time was about to be finished. The respondents claimed that the complainants' allegation that they were constructively dismissed by a certain Jojo (Dionisio Jaen, Jr.) was a mere afterthought.

The respondents also argued against the complainants' assertion that they are regular employees. According to the respondents, nowhere in Article 280 does it provide that construction helpers, who are mere project employees, will attain the status as regular employees. The respondents maintain their stand that the complainants are mere project employees.

The respondents also denied the complainants' allegations of underpayment of wages, as the complainants were receiving a daily wage of three hundred twenty five pesos (P325.00), which is over and above the minimum wage then prevailing over in Laguna.

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On December 28, 2012, the Labor Arbiter rendered a judgment ordering petitioner corporation and its officers (respondents therein) to reinstate herein private respondents to their former positions and pay their full backwages in the aggregate sum of P369,653.96.[2] It is noteworthy to mention that 13[th] month pay, service incentive leave pay and wage differential were likewise awarded, as reflected in the Computation attached to the aforesaid ruling.[3]

Upon appeal, the NLRC rendered a Decision affirming the findings of the Labor Arbiter with modification in that:

WHEREFORE, the instant appeal is DENIED for lack of merit. The labor arbiter's decision is affirmed with modification, revising the computation of the 13[th] month pay and further ordering the respondent corporation to pay the complainants their salaries withheld prior to their termination as follows: one thousand six hundred seventy two pesos and thirty centavos (P1,672.30) for complainant Elly Bernardo; one thousand three hundred forty pesos and sixty three centavos (P1,340.63) for complainant Tolentino P. Gatela; three thousand eight hundred eighteen pesos and seventy five centavos (P3,818.75) for complainant Wilson L. Mabao; and nine hundred seventy five pesos (P975.00) for complainant Jonary C. Bengan.

SO ORDERED.

Thereafter, the NLRC likewise denied herein petitioner's motion for reconsideration. In view of the foregoing, herein petitioner comes before this Court via a special action for certiorari assailing the decision of public respondent NLRC.

The petition is devoid of merit.

In this petition, the basic issue posed is whether or not public respondent NLRC erred in holding that private respondents were regular employees who had been constructively dismissed from employment by petitioner. We hold in the negative.

For its part, petitioner denied that private respondents were regular employees. Petitioner asseverated that private respondents were re-hired to carry out another project for Hitachi which had been contracting the former to supply workers for its undertakings. According to petitioner, it was deemed proper to retain the same group of workers considering that the latter were already familiar with the workplace and acquainted with the internal policies of Hitachi. However, petitioner insisted that private respondents would never attain the status of regular employees notwithstanding their length of service inasmuch as they were simply project workers employed for a specific duration. We are not persuaded.

In *GMA Network, Inc. vs. Pabriga, et al.*,^[4] the Supreme Court has emphatically espoused that in the realm of business and industry, the said Court delineates that the "project" of a particular company could either be; (1) a particular job or undertaking that is within the regular or usual business of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company, or (2) a particular job or undertaking that is not within the regular business of the corporation, as such:

It is evidently important to become clear about the meaning and scope of the term "project" in the present context. The "project" for the carrying out of which "project employees" are hired would ordinarily have some relationship to the usual business of the employer. Exceptionally, the "project" undertaking might not have an ordinary or normal relationship to the usual business of the employer. In this latter case, the determination of the scope and parameters of the "project" becomes fairly easy. It is unusual (but still conceivable) for a company to undertake a project which has absolutely no relationship to the usual business of the company; thus, for instance, it would be an unusual steel-making company which would undertake the breeding and production of fish or the cultivation of vegetables. From the viewpoint, however, of the legal characterization problem here presented to the Court, there should be no difficulty in designating the employees who are retained or hired for the purpose of undertaking fish culture or the production of vegetables as "project employees," as distinguished from ordinary or "regular employees," so long as the duration and scope of the project were determined or specified at the time of engagement of the "project employees." For, as is evident from the provisions of Article 280 of the Labor Code, quoted earlier, the principal test for determining whether particular employees are properly characterized as "project employees" as distinguished from "regular employees," is whether or not the "project employees" were assigned to carry out a "specific project or

undertaking," the duration (and scope) of which were specified at the time the employees were engaged for that project.

In the realm of business and industry, we note that "project" could refer to one or the other of at least two (2) distinguishable types of activities. Firstly, a project could refer to a particular job or undertaking that is within the regular or usual business of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company. Such job or undertaking begins and ends at determined or determinable times. The typical example of this first type of project is a particular construction job or project of a construction company. A construction company ordinarily carries out two or more [distinct] identifiable construction projects: e.g., a twenty-five-storey hotel in Makati; a residential condominium building in Baguio City; and a domestic air terminal in Iloilo City. Employees who are hired for the carrying out of one of these separate projects, the scope and duration of which has been determined and made known to the employees at the time of employment, are properly treated as "project employees," and their services may be lawfully terminated at completion of the project.

The term "project" could also refer to, secondly, a particular job or undertaking that is not within the regular business of the corporation. Such a job or undertaking must also be identifiably separate and distinct from the ordinary or regular business operations of the employer. The job or undertaking also begins and ends at determined or determinable times. x x x.

Thus, in order to safeguard the rights of workers against the arbitrary use of the word "project" to prevent employees from attaining the status of regular employees, employers claiming that their workers are project employees should not only prove that the duration and scope of the employment was specified at the time they were engaged, but also that there was indeed a project. As discussed above, the project could either be (1) a particular job or undertaking that is within the regular or usual business of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company; or (2) a particular job or undertaking that is not within the regular business of the corporation. As it was with regard to the distinction between a regular and casual employee, the purpose of this requirement is to delineate whether or not the employer is in constant need of the services of the specified employee. If the particular job or undertaking is within the regular or usual business of the employer company and it is not identifiably distinct or separate from the other undertakings of the company, there is clearly a constant necessity for the performance of the task in question, and therefore said job or undertaking should not be considered a project.

Based on the foregoing jurisprudential pronouncement, employers claiming that their workers are project employees should not only prove that the duration and scope of the employment was specified at the time they were engaged, but also that there was indeed a project. The purpose of such rule is to safeguard the rights of workers against the arbitrary use of the word "project" to prevent employees from attaining the status of regular employees.[5] In this case at bench, the fact that petitioner failed to provide or show the purported specific projects or undertakings and the duration and scope of the said projects at the time private respondents were engaged would belie the assertion that said private respondents were project employees. Except for its bare and self-serving statements, petitioner had not shown an iota of evidence of the existence of the so-called particular projects with specific duration undertaken by said private respondent for Hitachi. More importantly, petitioner's own admission that it had, once again, engaged the services of private respondents on the premise of familiarity and acquaintance on the part of said private respondents in the workplace would duly establish the claim of regular employment. As such, private respondents were responsible in assisting the operations of petitioner construction company when the same needed to supply utility workers for another corporation. Hence, private respondents' work was vital, necessary and indispensable to the usual business or trade of their employer.[6]

We can neither give credence to the invocation of petitioner that public respondent erred in ruling that there was constructive dismissal of private respondents.

Case law holds that constructive dismissal occurs when there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or diminution in pay or both; or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee.⁷ Petitioner's insistence that private respondents were project employees by making the latter sign a document denominated as "Kasulatan ng Paghirang" renders it liable for constructive dismissal.

It bears stressing that private respondents did not abandon their work. Even the malicious allegation of petitioner that private respondents had merely returned to their work site to influence other co-workers to stir up delay and disruption of work operations would already reveal thereto that abandonment in its technical meaning did not take place. The immediate filing of a complaint for illegal dismissal, more so when it includes a prayer for reinstatement, has been held to be totally inconsistent with a charge of abandonment.^[8]

Having been constructively dismissed, private respondents are entitled to reinstatement and full backwages, as correctly determined by the Labor Arbiter and the NLRC. Article 279 of the Labor Code provides that an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.^[9]

It goes without saying, therefore, that public respondent NLRC did not err in dismissing the appeal and, eventually, in denying the motion for reconsideration filed by herein petitioner. In the present controversy, both the Labor Arbiter and the NLRC made a finding that there was an illegal dismissal. As a general rule, the Court is not duty-bound to delve into the accuracy of the NLRC's factual findings in the absence of a clear showing that these were arbitrary and bereft of any rational basis, as espoused in *G & M (Philippines), Inc. vs. Cruz*.^[10] Petitioner failed to demonstrate any arbitrariness or lack of rational basis on the part of public respondent NLRC.^[11]

WHEREFORE, premises considered, the instant petition is DENIED. Accordingly, the September 30, 2013 and November 29, 2013 Resolutions of the National Labor Relations Commission in NLRC LAC No. 03-000921-13 [NLRC Case No. RAB-IV-03-00465-12-L] are hereby AFFIRMED.

Costs against petitioner.

SO ORDERED.

Librea-Leagogo, (Chairperson), and Sadang, JJ., concur.

[1] Rollo, pp. 15-26 & 28-29.

[2] Id. at 34-37.

[3] Id. at 38.

[4] G.R. No. 176419, November 27, 2013.

[5] Ibid.

[6] *Malicdem, et al., vs. Marulas Industrial Corporation, et al.*, G.R. No. 204406, February 26, 2014.

[7] *La Rosa, et al. vs. Ambassador Hotel*, G.R. No. 177059, March 13, 2009.

[8] *Tan Brothers Corporation of Basilan City vs. Escudero*, G.R. No. 188711, July 8, 2013.

[9] Pangilinan vs. Wellmade Manufacturing Corporation, G.R. No. 187005, April 7, 2010.

[10] G.R. No. 140495, April 15, 2005.

[11] Ibid.

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