

PADERNAL CONSTRUCTION CO., INC. AND/OR THEODORE M. PADERNAL, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND GODOFREDO DUMALAG, RESPONDENTS.

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

This is a Petition for Certiorari under Rule 65 of the Rules of Court seeking to annul and set aside the Decision[1] of the National Labor Relations Commission, Seventh Division, Cebu City, promulgated on April 30, 2012 the dispositive portion of which, states:

“WHEREFORE, premises considered, the Decision rendered by the Labor Arbiter on 27 September 2011 is hereby MODIFIED, to the effect, that the holiday pay and service incentive leave pay awarded to complainant are CANCELLED. While as to his ten percent (10%) attorney's fees, the same shall be adjusted commensurate to the reduction of the total monetary award.

SO ORDERED.”

Factual and Procedural Antecedents

This petition stems from a complaint[2] for illegal dismissal, non-payment of overtime pay, 13th month pay, service incentive leave pay, separation pay, damages and attorney's fees filed on September 8, 2010 by respondent Godofredo Dumalag against herein petitioners.

On October 22, 2009, private respondent Dumalag was hired as foreman in petitioner's construction business. He worked from 8:00 o'clock in the morning until 6:00 o'clock in the evening. He allegedly applied for and was granted three (3) days leave of absence on August 17, 2010. Upon his return to work on August 20, 2010, the petitioners, through a certain Engr. Sabio, were said to have informed the respondent Dumalag that his employment had been terminated effective that same day.

On the other hand, petitioners contend that respondent Dumalag was hired as a project/ seasonal employee for the Quinoguitan Bridge Project in Loboc, Bohol, which started in August 2009. Respondent Dumalag's job was allegedly limited to a specific completion phase of the Quinoguitan Bridge project, which was said to be explained to respondent Dumalag at the onset.

Petitioners allege that during the crucial phases of the construction project in August 2010, complainant purportedly abandoned his work as a foreman forcing the petitioners to make adjustments and re-deploy workers to make up for Dumalag's extended unexcused absences. The project phase for which the respondent Dumalag was hired was said to be completed during his unauthorized absence.

Ruling of the Labor Arbiter

The Labor Arbiter ruled that while the respondents kept insisting that respondent Dumalag is a project employee, they failed to present the employment contract between them. Thus, there was no showing that petitioners herein

informed respondent Dumalag of the nature and duration of his employment. Furthermore, the petitioners failed to show that respondents submitted an employee termination report to the DOLE, per Department Order No. 19. Petitioners' omissions, are clear indications of respondent Dumalag's regular employment, the Labor Arbiter ruled. The Labor Arbiter also rejected herein petitioners' allegation that respondent Dumalag abandoned his job. The Labor Arbiter did not find evidence pointing to the fact that Dumalag deliberately and unreasonably refused to get back to work.

Thus, in a Decision[3] dated September 27, 2011, the Labor Arbiter declared the respondent Dumalag a regular employee and that he was illegally dismissed by herein petitioners. The Labor Arbiter awarded separation pay, backwages, 13th month pay, holiday pay and service incentive leave pay. The total monetary award adjudged in favor of respondent Dumalag, inclusive of ten (10%) percent attorney's fees amounted to One Hundred Thirty One Thousand Nine Hundred Forty Five (P131,945.00) Pesos.

Ruling of the NLRC

Aggrieved, the petitioners then filed an appeal before the respondent NLRC, which, in turn, affirmed the Labor Arbiter's decision. The NLRC rejected the petitioners' submission that respondent Dumalag is a project employee because the petitioners failed to show by clear, positive and convincing evidence was engaged to work on a specific phase of the Quinoguitan bridge project and that the private respondent was duly informed and of the nature of his employment and the duration thereof.

The NLRC likewise rejected the petitioners' submission that Dumalag abandoned his work and thus, there can be no illegal dismissal to speak of. The NLRC ruled that since respondent Dumalag is a regular employee, he is entitled to security of tenure and enjoys the right not to be dismissed from work without just or valid cause or without due process. Respondent Dumalag's right having been violated, the NLRC sustained the separation pay and backwages awarded to him.

However, the NLRC modified the other monetary award granted by the Labor Arbiter. The NLRC ruled that there is no basis for the award of holiday pay since Dumalag did not pray for such relief in his complaint. Likewise, the award for service incentive leave was improper since only employees who have rendered at least one (1) year of service is entitled to a yearly service incentive leave of five (5) days with pay, pursuant to Article 95 of the Labor Code.

Issues

Undaunted, petitioners now come before this Court via a Petition for Certiorari under Rule 65 grounded on the following:

- The NLRC committed serious error amounting to grave abuse of discretion, when it ruled that private respondent Dumalag is not a project employee but a regular employee;
- The NLRC committed serious error amounting to grave abuse of discretion, when it ruled that private respondent Dumalag did not abandon his work but instead he was illegally dismissed;
- The NLRC committed serious error amounting to grave abuse of discretion when it awarded the money claims of private respondent Dumalag, especially backwages even after the completion of the Quinoguitan Bridge Project and despite the fact that backwages was not claimed and not discussed in the private respondent's Position Paper, and despite the award of separation pay.
- The NLRC committed serious error amounting to grave abuse of discretion, when it awarded attorney's fees.

Argument for the Petitioners

Petitioners insist that private respondent Dumalag was hired for the construction of the Quinoguitan Bridge Project in Loboc, Bohol. As project employee, private respondent Dumalag's employment was co-terminus with the completion of the aforementioned bridge project. Petitioners further reiterate that although there was no written contract between the petitioners and the private respondent Dumalag, the latter was duly informed of the nature and duration of his employment at the beginning of his engagement as foreman for the said project.

The private respondent Dumalag, during his stint with the petitioners, also served as Barangay Kagawad and later Barangay Chairman in one of the barangays in Loboc, Bohol where he was a resident at the time. This was the reason why private respondent Dumalag was oftentimes absent during the crucial phases of construction of Quinoguitan Bridge. Petitioners argue that private respondent Dumalag's absenteeism forced the petitioners to make adjustments and re-deployment of workers to make up for Dumalag's extended and unexcused absences. The project phase for which Dumalag was hired was completed during his unauthorized absence. Petitioners argue that even if there were still other phases to complete, the work attitude shown by Dumalag did not merit private respondent's rehiring.

Finally, petitioners contend that respondent Dumalag is not entitled to backwages from October 2009 to September 2011. Petitioners argue that if Dumalag was deemed separated from work in August 2010, then there is neither legal nor factual basis for awarding backwages for the period prior to August 2010, since his wages for the said period had already been paid. Moreover, petitioners further argue that since the Quinoguitan Bridge Project was completed in June 2011, then there is no more basis for the award of backwages until September 2011.

Argument for the Private Respondent

The private respondent Dumalag contends that the records of this case is bereft of any concrete proof that petitioners informed Dumalag of the duration and scope of his employment when he was hired. Established jurisprudence holds that the absence of an employment contract gives rise to a presumption that an employee was not duly informed of his status as a project employee, hence, such employee will be presumed to be a regular employee.

Private respondent Dumalag further argues that even if he can be considered a project employee, he still enjoys security of tenure during the duration of his supposed project employment. Thus, he should have been accorded due process and the petitioner company must prove its grounds for dismissal and the fact of project/phase completion. Unfortunately for petitioners, none was offered to validate that the respondent Dumalag abandoned his job and that his employment ended in August 2010.

Therefore, Dumalag, a regular employee who has been illegally dismissed, is entitled to reinstatement or separation pay, plus full backwages. Public respondent's award of full backwages was clearly for the period from August 2010 onwards and not from October 2009 to August 2010, as claimed by petitioners. Likewise, being a regular employee, petitioners' insistence that his backwages be computed only up to June 2011 when the project was allegedly completed is totally irrelevant. Further proceeding from the same premise of Dumalag being a regular employee, other money claims granted by public respondent should be affirmed as a matter of right.

Private respondent Dumalag submits that the public respondent NLRC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in promulgating the 30 April 2012 decision. Irrefutably, it ruled based on proper appreciation of evidence and application of prevailing rules, laws and jurisprudence.

Ruling of the Court

The petition is bereft of merit.

Article 280 of the Labor Code distinguishes a “project employee” from a “regular employee” thus:

Article 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 services 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 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.

A project employee is assigned to a project which begins and ends at determined or determinable times.[4] 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.[5]

In this case, the petitioners did not present any employment contract between petitioner Padernal Construction Co., Inc. and the respondent Dumalag. While the absence of a written contract does not by itself grant regular status to private respondent Dumalag, such a contract is evidence that the employee was informed of the duration and scope of his work and his status as project employee.[6] Where no other evidence was offered, such as in this case, the absence of the employment contracts raises a serious question of whether the private respondent Dumalag was properly informed at the onset of his employment of his status as project employee nor of the duration of his employment.[7]

As correctly held by the respondent NLRC, while there is indeed a Quinoguitan Bridge Project undertaken by the petitioner corporation pursuant to a Sub-Contract Agreement between the latter and Toyo-Tobishima Joint Venture[8], said contract does not prove that the respondent Dumalag was duly informed of the nature and duration of his employment with the petitioner corporation.

It is a principle oft-repeated in our jurisprudence that in illegal dismissal cases, the employer has the burden of proving with clear, accurate, consistent, and convincing evidence that the dismissal was valid. Absent any other proof that the project employees were informed of their status as such, it will be presumed that they are regular employees.[9]

As a regular employee, the private respondent Dumalag enjoys security of tenure[10]. Thus, he can only be dismissed for just or valid cause and upon compliance with due process, (i.e., after notice and hearing).

In this case, the petitioners were unable to discharge the burden to prove that Dumalag's dismissal was legal. The records failed to show that petitioner company afforded Dumalag due process prior to his dismissal, through the twin requirements of notice and hearing. The respondent Dumalag was not served notices informing him of the particular acts, including the respondent Dumalag's unauthorized absences from work, for which his dismissal was sought. Nor was he required to give his side regarding the charges made against him, if any. Certainly, private respondent Dumalag's dismissal was not carried out in accordance with law and was, therefore, illegal.

The petitioners' effort to evade liability by raising the issue of abandonment does not hold water. As correctly held by the Labor Arbiter and affirmed by the respondent NLRC, there is no evidence to prove that Dumalag

abandoned his employment. For abandonment to exist, the following requisites must concur: 1) the employee must have failed to report for work or must have been absent without valid or justifiable reason; and 2) there must have been a clear intention on the part of the employee to sever the employer-employee relationship as manifested by some overt acts. In this case, respondent Dumalag's filing of a complaint for illegal dismissal immediately after his termination from work negates the petitioners' allegation of abandonment.[11]

Finally, petitioners' claim that the respondent Dumalag was awarded backwages from October 2009 is erroneous. The Labor Arbiter's award of backwages is clearly reckoned from August 2010 to September 2011[12]. However, Public respondent's award of full backwages was clearly for the period from August 2010 onwards and not from October 2009 to August 2010, as claimed by petitioners. However, while the award for backwages was correct, the computation thereof is not in accordance with Article 279 of the Labor Code.

Article 279 of the Labor Code, as amended, provides that an illegally dismissed employee shall be entitled to reinstatement, full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent from the time his compensation was withheld from him up to the time of his actual reinstatement.[13] Thus, the backwages due the private respondent Dumalag must be computed from the time he was unjustly dismissed on August 20, 2010 until actual reinstatement to his former position. Thus, until petitioner Padernal Construction Co. Inc. implements the reinstatement aspect, its obligation to respondent Dumalag, insofar as accrued backwages and other benefits are concerned, continues to accumulate.[14]

WHEREFORE, the petition is DENIED. The assailed Decision dated April 30, 2012 rendered by the National Labor Relations Commission Seventh Division in NLRC Case No. VAC-12-000897-2011 is hereby AFFIRMED with MODIFICATION as to the award of full backwages to include the period from the time of illegal dismissal on August 20, 2010 until private respondent's actual reinstatement.

SO ORDERED.

Maxino, P.A.A., and Francisco, R.C., JJ., concur.

[1] Pages 34-45, rollo.

[2] Pages 100-101, rollo.

[3] Pages 22-33, rollo.

[4] *Goma v. Pamplona Plantation, Incorporated*, G.R. No. 160905, July 4, 2008, 557 SCRA 124, 134.

[5] *Goma v. Pamplona Plantation, Incorporated*, supra note 1, at 135; *Hanjin Heavy Industries and Construction Co., Ltd. v. Ibañez*, supra note 34, at 550. See also *ALU-TUCP v. National Labor Relations Commission*, G.R. No. 109902, 2 August 1994, 234 SCRA 678, 685.

[6] *Hanjin Heavy Industries and Construction Co., Ltd. v. Ibañez*, G.R. No. 170181, June 26, 2008, 555 SCRA 537.

[7] *Judy O. Dacuital, et. al. vs. L.M. Camus Engineering, et. al.*, G.R. No. 176748, September 1, 2010.

[8] Pages 46-72, rollo.

[9] *Nicario v. National Labor Relations Commission*, G. R. No. 125340, 17 September 1998, 295 SCRA 619, 626-627; *Asuncion v. National Labor Relations Commission*, 414 Phil. 329, 341-342 (2001).

- [10] Goma v. Pamplona Plantation, Incorporated, G.R. No. 160905, July 4, 2008, 557 SCRA 124.
- [11] See Seven Star Textile Company v. Marcos Dy, et. al., G.R. No. 166846, January 24, 2007.
- [12] See pages 8-9 of Labor Arbiter's Decision, pages 31-32, rollo.
- [13] Cocomangas Hotel Beach Resort v. Visca, G.R. No. 167045, August 29, 2008, 563 SCRA 705.
- [14] See Cocomangas Hotel Beach Resort v. Visca, G.R. No. 167045, August 29, 2008, 563 SCRA 705.

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