

CONRADO C. CONDE, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, SUBIC DRYDOCK CORPORATION / AGNES ESCASINAS, RESPONDENTS.

Ponente: BATO, JR., J.

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BATO, JR., J.:

This Petition for Certiorari[1] under Rule 65 of the Rules of Court seeks to set aside the 11 June 2012 Decision[2] and 27 July 2012 Resolution[3] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 03-000912-12.

Private respondent Subic Drydock Corporation (“Subic Drydock” for brevity) is a domestic corporation engaged in the business of ship repair. Private respondent Agnes M. Escasinas is Subic Drydock’s Human Resource Officer.

Petitioner Conrad C. Conde alleged that he was hired by Subic Drydock on 13 October 2008, to remove and repair ship propellers and rudders. At the inception of his employment, he was required to sign an employment contract which stated that he would only be employed for a period of three (3) months, or from 13 October 2008 to 13 January 2009. After the end of his first contract, he continued working for Subic Drydock as can be gleaned from the several contracts that he was made to sign. In sum, he signed five (5) employment contracts with Subic Drydock covering the following periods: 1) 13 October 2008 to 13 January 2009; 2) 14 January 2009 to 14 July 2009; 3) 15 July 2009 to 15 January 2010; 4) 16 January 2010 to 16 July 2010; and 5) 17 July 2010 to 05 January 2011. But on 04 January 2011, he was given a termination letter informing him that said day would be his last day of work.

Hence, he filed a complaint for illegal dismissal, non-payment of service incentive leave and separation pay against the herein private respondents before the NLRC, Regional Arbitration Branch No. III, San Fernando City, Pampanga.

Private respondents countered that Conde was not illegally dismissed since he was not a regular employee of Subic Drydock. As gleaned from his appointment papers, Conde was a project employee whose stint in Subic Drydock can be summarized as follows:

DATE OF APPOINTMENT PERIOD OF EMPLOYMENT PROJECT DESIGNATION

13 Oct. 2008 10/13/2008 to 01/13/2009 Shipwright Scaffolder/Rigger

15 January 2009 01/15/2009 to 04/15/2009 MTSC Projects/Cattleya Scaffolder

16 April 2009 04/16/2009 to 07/15/2009 Super Shuttle Mechanical Rigger

16 July 2009 07/16/2009 to 10/15/2009

Super Shuttle Mechanical Rigger

17 Oct. 2009 10/17/2009 to 01/15/2010 Super Shuttle Mechanical Rigger

18 Jan. 2010 01/18/2010 to 04/30/2010

Super Shuttle/MT Trabajador

Mechanical Rigger

01 May 2010 05/01/2010 to 06/30/2010 MTSC Projects/ Commercial Vessels Mechanical Rigger

28 June 2010 07/01/2010 to 09/30/2010 MTSC Vessels Mechanical Rigger

30 Sept. 2010 10/01/2010 to 12/30/2010 M/V Cabilao, M/V Magsino, M/V Cabo Mechanical Rigger

In a Decision[4] dated 03 February 2012, the Labor Arbiter ruled that Conde was a regular employee of Subic Drydock, ratiocinating as follows:

“We give due consideration to the nature of the business of respondents, which is ‘ship repair’ that surely shall depends (sic) on the contracts that respondents can enter into with clients. However, respondents miserably failed to support and substantiate such possibility by any contract showing that they entered into a fixed period contracts with their clients in order to show and prove that indeed their employees, particularly the complainant in this case, was hired on various periods based on fixed contracts that respondents have entered into with their clients. In the absence of any proof therefore that the complainant was hired on several occasions to perform and work for a specific project with fixed period of completion, he is considered as ‘REGULAR EMPLOYEE’ entitled to all the benefits and privileges of a regular employee and cannot be dismissed without a just or valid cause/s and without due process.”[5]

The dispositive portion of the Labor Arbiter’s Decision reads:

“WHEREFORE, premises considered, judgment is hereby rendered declaring the dismissal of complainant ‘ILLEGAL’.

Accordingly, respondent Subic Drydock Corporation is SOLELY liable and thus, directed to pay the complainant the following benefits, to wit:

- BACKWAGES in the amount of ONE HUNDRED THIRTY FIVE THOUSAND TWO HUNDRED PESOS (P135,200.00);
- SEPARATION PAY in the amount of THIRTY ONE THOUSAND TWO HUNDRED PESOS (P31,200.00);
- SERVICE INCENTIVE LEAVE PAY in the amount of FOUR THOUSAND PESOS (P4,000.00); and
- All other claims raised by the complainant are dismissed for lack of merit.

SO ORDERED.”

Subic Drydock then appealed to the NLRC, maintaining its stand that Conde was not illegally dismissed because he was a project employee.

In the assailed 11 June 2012 Decision,[6] the NLRC gave due course to Subic Drydock’s appeal. It ruled that Conde was indeed a project employee of Subic Drydock, viz.:

“Undisputed is the fact that the Respondents merely accept contracts for repairs/maintenance of vessels from third parties and only on occasion when it has contracts of this nature that it will hire workers to do the job. The various contracts entered into between the Complainant and the Respondents (Annexes ‘2’ to ‘10’, inclusive, Respondents’ Position Paper) sufficiently prove the fixed-term employment between them. Careful review of the aforesaid documents shows that Complainant-Conde was hired as Mechanical Rigger assigned to different clients of Respondent-SDC such as MTSC Projects/Catleya; Super Shuttle Project; for M/V Cabilao, M/V Magsino and M/V Cabo (Annexes ‘3’, ‘4’ and ‘10’, respectively). Thus, Respondent-SDC relies mainly on, and contingent to, the project it enters and thus, it hires project employees to meet the demands of specific projects.

The fact that Complainant-Conde is a project employee is bolstered further with the Complainant having signed his various employment contracts for specific projects and specific period of time. He likewise signed the notice given him upon the expiration of each and every contract.

X X X

X X X

X X X

The fact that Complainant worked for several contractual jobs for the company is no basis to consider him as regular employee as by the very nature of his employer’s business he will always remain contractual employee regardless of the number of projects in which he has worked.

Viewed from all the foregoing, We rule and so hold that Complainant-Conde is a project employee. Consequently therefore, the complaint for illegal dismissal, as well as the Complainant’s money claims, must perforce, fail.

WHEREFORE, the appealed Decision dated February 3, 2012 is hereby SET ASIDE and a new ONE entered dismissing the complaint for lack of merit.

SO ORDERED.”[7]

Conde filed a motion for reconsideration but the same was denied by the NLRC via the assailed 27 July 2012 Resolution.[8]

Hence, Conde filed the instant petition raising the lone issue for the Court’s resolution:

“WHETHER THE PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION (NLRC) ACTED WITH GRAVE ABUSE OF DISCRETION IN RULING THAT THERE WAS NO ILLEGAL DISMISSAL.”[9]

By way of Comment,[10] Subic Drydock alleges that there is no grave abuse of discretion in the present case since the NLRC’s conclusion that Conde was a project employee is supported by substantial evidence.

As defined by jurisprudence, grave abuse of discretion means such capricious and arbitrary exercise of judgment as equivalent, in the eyes of the law, to lack of jurisdiction.[11] There is grave abuse of discretion where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility amounting to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[12] Through time, the meaning of grave abuse of discretion has been expanded to include any action done contrary to the constitution, the law or jurisprudence.[13]

Premised on the foregoing, the Court finds no grave abuse of discretion on the part of the NLRC when it ruled that Conde was a project employee.

Project employees are 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 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.[14] 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.[15]

Here, the duly signed appointment papers[16] of Conde reveal that he was aware that he was hired by Subic Drydock for specific projects with the duration of his work clearly set out therein. His series of employments with Subic Drydock were coterminous with the completion of the projects. When each project was finished, his employment ended with it. He was even given a termination letter[17] every time a project ended. But for reasons only known to him, Conde questioned his termination only after the expiration of his 9[th] contract or after working for Subic Drydock for more than two (2) years.

Subic Drydock’s repeated and successive rehiring of Conde as a project employee does not qualify him as a regular employee. Jurisprudence is settled that length of service is not the controlling determinant of the employment tenure of a project employee, but whether the employment has been fixed for a specific project or undertaking, its completion has been determined at the time of the engagement of the employee.[18]

Subic Drydock is a corporation engaged in the business of ship repair. Hence, its business depends on the contracts it is able to obtain from third parties. Since its business depends on the availability of such contracts or projects, it necessarily follows that the duration of the employment of its work force is not permanent but coterminous with the projects to which they are assigned.

It may not be amiss to point out that this case is similar to *Sandoval Shipyards, Inc. vs. NLRC*,[19] where the Supreme Court citing Deputy Minister Inciong in *TFU Case No. 1530, In Re Sandoval Shipyards, Inc. Application for Clearance to Terminate Employees*, declared that:

“To our mind, the employment of the employees concerned were fixed for a specific project or undertaking. For the nature of the business the corporation is engaged into is one which will not allow it to employ workers for an indefinite period.

It is significant to note that the corporation does not construct vessels for sale or otherwise which will demand continuous productions of ships and will need permanent or regular workers. It merely accepts contracts for ship-building or for repair of vessels from third parties and, only, on occasion when it has work contract of this nature that it hires workers to do the job which, needless to say, lasts only for less than a year or longer.”
(Emphasis supplied)

The Court, therefore, holds that the NLRC did not abuse its discretion in finding, based on substantial evidence in the records, that Conde was a project employee of Subic Drydock.

WHEREFORE, the petition for certiorari is DENIED for lack of merit.

SO ORDERED.

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified 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.

Zalameda and Diy, JJ., concur.

[1] Rollo, pp. 3-21.

[2] Rollo, pp. 125-132.

[3] Rollo, pp. 145-146.

[4] Rollo, pp. 97-105.

[5] Rollo, pp. 101-102.

[6] Supra, at note 2.

[7] Rollo, pp. 129-131.

[8] Supra, at note 3.

[9] Petition, p. 11; Rollo, p. 14.

[10] Rollo, pp. 154-165.

[11] Vda. De Bacling vs. Laguda, 54 SCRA 243, p. 251 [1973]; Bacelonia vs. CA, 397 SCRA 286, p. 291 [2003].

[12] Cuison vs. CA, 289 SCRA 159, p. 171 [1998]; Benito vs. COMELEC, 349 SCRA 705, p. 712 [2001].

[13] Republic vs. Cocofed, 372 SCRA 462, p. 493 [2001].

[14] Perpetual Help Credit Cooperative, Inc. vs. Faburada, G.R. No. 121948, October 8, 2001.

[15] Grandspan Development Corporation vs. Bernardo, G.R. No. 141464, September 21, 2005 citing Kiamco vs. NLRC, G.R. No. 129449, June 29, 1999.

[16] Rollo, pp. 62-70.

[17] Rollo, pp. 70-77.

[18] Caseres vs. Universal Robina Sugar Milling Corporation, G.R. No. 159343, September 28, 2007.

[19] G.R. Nos. L-65689 & L-66119, May 31, 1985.

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