

CENTURY IRON WORKS, INC. AND HENRY CHUA, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, THIRD DIVISION, AND MARLON L. CALUNDRE, RESPONDENTS.

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 February 28, 2014 and April 21, 2014 Resolutions[1] of the National Labor Relations Commission, Third Division, (hereinafter referred to as NLRC) in NLRC LAC No. 02-000432-14(8) [NLRC NCR Case No. 05-07109-13] which affirmed the November 29, 2013 Decision[2] of the Labor Arbiter.

In a Resolution dated August 7, 2014, this Court, without necessarily giving due course to the instant Petition, ordered, inter alia, private respondent Marlon L. Calundre, to file his Comment within a non-extendible period of ten (10) days from receipt of the resolution, and petitioners to file a Reply within five (5) days from receipt of the Comment, if they so desire. It was specified in the Resolution that upon submission of the aforesaid pleadings or the expiration of the period for filing the same, the Petition will be deemed submitted for decision, unless the Court requires the filing of memoranda from the parties.[3]

With the filing of private respondent's Comment[4] and Opposition[5] to the Application for the Issuance of a Writ of Preliminary Injunction or Temporary Restraining Order and petitioners' Reply[6] thereto, the instant petition is now deemed submitted for decision pursuant to this Court's August 7, 2014 Resolution.

The antecedent facts of the case are as follows:

On May 14, 2013, private respondent Marlon L. Calundre filed a complaint for illegal dismissal, underpayment of wages, 13th month and holiday pay, non-payment of separation pay, service incentive leave pay and night shift differential, as well as, recovery for moral and exemplary damages against herein petitioners before the NLRC.[7] According to private respondent, he was hired by petitioner Century Iron Works, Inc. [CIWI for brevity] in February 2003 as helper and welder. Private respondent argued that since 2003 he had been continuously hired by CIWI and assigned to different work locations of the company such as Cubao, Quezon City (Gateway Mall), Fort Bonifacio, Taguig, City (Serendra Mall and Market Market), Metro Manila (Metrobank), Davao City (NCC Mall) and the latest one was in Cebu City until he was unjustly dismissed from employment on April 26, 2013.

Private respondent further contended that he performed work necessary and desirable to petitioners' business for eight (8) hours a day, six (6) days a week with frequent overtime of at least two (2) hours a day and that he was only given a basic wage of P406.00 a day. Thus, it is now the contention of private respondent that he was summarily terminated from work without a just cause and was likewise deprived of due process of law.

For their part, petitioners denied that private respondent was a regular employee. Petitioners would insist that private respondent was actually a project employee whose employment was coterminous with each undertaking. The continued employment of private respondent, according to petitioners, was fixed for specific projects, and the

completion of which had been determined at the time of hiring. Furthermore, petitioners contended that there were gaps varied in length after the completion of each task and if there had been instances when private respondent's contract had been extended, as in the case of Veranza Mall Project, it was simply for the purpose of culminating said project.

On January 31, 2013, the Labor Arbiter rendered a judgment finding the commission of illegal dismissal on the part of petitioners and ordering the same to pay private respondent the following:

- a) Backwages in the amount of P87,984.06;
- b) Separation pay in the amount of P124,696.00;
- c) Service Incentive Leave Pay in the amount of P6,086.55;
- d) Cost of Living Allowance [COLA] in the amount of P14,127.36;
- e) 13[th] month differential in the amount of P8,443.78; and
- f) Moral and exemplary damages of P20,000.00.[8]

Upon appeal, the NLRC rendered a Decision affirming the findings of the Labor Arbiter with the modification that the award of separation pay be reduced to P44,304.00. In modifying the separation pay, the NLRC ratiocinated that the Labor Arbiter erred in reckoning the computation of said separation pay in 2007 considering that private respondent was working abroad around that time and did not return to petitioners' employ until 2009. Thereafter, the NLRC likewise denied petitioners' motion for reconsideration. In view of the foregoing, herein petitioners come 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 respondent was a regular employee who had been illegally dismissed from employment by petitioners. We hold in the negative.

In *Spic N' Span Services Corporation vs. Paje, et al.*,^[9] the High Court has explained that upon proof of termination of employment, the employer has the burden of proof that the dismissal was valid; absent this proof, the termination from employment is deemed illegal, as alleged by the dismissed employees. The fact of private respondent's termination was never disputed.

The records of the case would reveal that since 2003 private respondent was already part of petitioners' intermittent workforce. It was not until in 2009 that private respondent's employment had become somewhat more frequent before his termination in 2013. It would seem to appear that private respondent was a project employee, as can be gleaned from the various contracts of employment delineating the supposed venture to be undertaken. However, a closer look of the aforesaid contracts would indicate there was no actual project stipulated therein. The only stipulations in the contracts were the dates of their effectivity, the duties and responsibilities of private respondent as erector, fitter, welder and helper, the rights and obligations of the parties, and private respondent's compensation and allowances. As there was no specific project or undertaking to speak of, the petitioners cannot now claim that private respondent is a project employee. This is a clear attempt to frustrate the regularization of private respondent and to circumvent the law, as perfectly elucidated in *Malicdem, et al. vs. Marulas Industrial Corporation, et al.*^[10]

At this juncture, We deem it proper to enunciate the principle of regular seasonal employees as laid down in *Universal Robina Sugar Milling Corporation, et al. vs. Acibo, et al.*,^[11] viz:

Nevertheless, "where the circumstances evidently show that the employer imposed the period precisely to preclude the employee from acquiring tenurial security, the law and this Court will not hesitate to strike down

or disregard the period as contrary to public policy, morals, etc." In such a case, the general restrictive rule under Article 280 of the Labor Code will apply and the employee shall be deemed regular.

Clearly, therefore, the nature of the employment does not depend solely on the will or word of the employer or on the procedure for hiring and the manner of designating the employee. Rather, the nature of the employment depends on the nature of the activities to be performed by the employee, considering the nature of the employer's business, the duration and scope to be done, and, in some cases, even the length of time of the performance and its continued existence.

In light of the above legal parameters laid down by the law and applicable jurisprudence, the respondents are neither project, seasonal nor fixed-term employees, but regular seasonal workers of URSUMCO. The following factual considerations from the records support this conclusion:

First, the respondents were made to perform various tasks that did not at all pertain to any specific phase of URSUMCO's strict milling operations that would ultimately cease upon completion of a particular phase in the milling of sugar; rather, they were tasked to perform duties regularly and habitually needed in URSUMCO's operations during the milling season. The respondents' duties as loader operators, hookers, crane operators and drivers were necessary to haul and transport the sugarcane from the plantation to the mill; laboratory attendants, workers and laborers to mill the sugar; and welders, carpenters and utility workers to ensure the smooth and continuous operation of the mill for the duration of the milling season, as distinguished from the production of the sugarcane which involves the planting and raising of the sugarcane until it ripens for milling. The production of sugarcane, it must be emphasized, requires a different set of workers who are experienced in farm or agricultural work. Needless to say, they perform the activities that are necessary and desirable in sugarcane production. As in the milling of sugarcane, the plantation workers perform their duties only during the planting season.

Second, the respondents were regularly and repeatedly hired to perform the same tasks year after year. This regular and repeated hiring of the same workers (two different sets) for two separate seasons has put in place, principally through jurisprudence, the system of regular seasonal employment in the sugar industry and other industries with a similar nature of operations.

Under the system, the plantation workers or the mill employees do not work continuously for one whole year but only for the duration of the growing of the sugarcane or the milling season. Their seasonal work, however, does not detract from considering them in regular employment since in a litany of cases, this Court has already settled that seasonal workers who are called to work from time to time and are temporarily laid off during the off-season are not separated from the service in said period, but are merely considered on leave until re-employment. Be this as it may, regular seasonal employees, like the respondents in this case, should not be confused with the regular employees of the sugar mill such as the administrative or office personnel who perform their tasks for the entire year regardless of the season. The NLRC, therefore, gravely erred when it declared the respondents regular employees of URSUMCO without qualification and that they were entitled to the benefits granted, under the CBA, to URSUMCO'S regular employees.

Third, while the petitioners assert that the respondents were free to work elsewhere during the off-season, the records do not support this assertion. There is no evidence on record showing that after the completion of their tasks at URSUMCO, the respondents sought and obtained employment elsewhere.

Thus, We hold that the foregoing jurisprudential pronouncement is applicable in the present controversy. First, private respondent was made to perform various tasks that did not at all pertain to any specific phase of construction operations. Private respondent's duties as erector, fitter, welder and helper were necessary and desirable in the business of metal fabrication and structural works.

Second, private respondent was regularly and repeatedly hired to perform the same tasks year after year. The

repeated hiring of private respondent would already tell us the indispensability of his skills to petitioners' line of business. Petitioners cannot argue that there had been a hiatus after the completion of each contract. The interval of time upon each termination of contract was only for a short period and such circumstance would only show petitioners' ill intent of circumventing the labor policies on security of tenure. As in the case of other companies operating construction works, their employees would only commence to perform work during the time the services of said companies are engaged by the clients of the latter. Furthermore, petitioners were even quick to admit that there were instances when private respondent's employment was extended for the purpose of completing a particular undertaking. It goes without saying that these so-called contracts for project employment were immaterial in the designation of private respondent's work status. As enunciated in the previously cited jurisprudence, the test to determine whether employment is regular or not is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. If the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability of that activity to the business.[12]

Finally, there is no evidence on record showing that after the completion of his tasks at CIWI, respondent sought and obtained employment elsewhere. As correctly determined by the NLRC, private respondent was a regular employee who had been unjustly dismissed by petitioners.

The Constitution, statutes and jurisprudence uniformly mandate that no worker shall be dismissed except for a just or valid cause provided by law, and only after due process is properly observed. [13]

Article 279 of the Labor Code provides that [a]n 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.[14] Since reinstatement is no longer feasible in the present case, the award of separation pay in lieu of reinstatement is in order.[15]

In the same manner, We hold that the monetary grants shall earn interest at the rate of six percent (6%) per annum of the total monetary obligation computed from the time the same was judicially demanded and an additional six percent (6%) per annum from the time of the finality of this judgment until its full satisfaction shall be imposed in consonance with the pronouncement laid down in *Nacar vs. Gallery Frames, et al.*[16] Notwithstanding the foregoing ruling, the Court cannot sustain the assertion for recovery of moral and exemplary damages in the absence of evidence that private respondent's dismissal was tainted with bad faith and malice.[17]

In this case, 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*. [18] In the present case, petitioners failed to demonstrate any arbitrariness or lack of rational basis on the part of the NLRC.[19]

WHEREFORE, premises considered, the instant petition is DENIED. Accordingly, the February 28, 2014 and April 21, 2014 Resolutions of the National Labor Relations Commission, Third Division, in NLRC LAC No. 02-000432-14(8) [NLRC NCR Case No. 05-07109-13] are hereby AFFIRMED with a slight modification in that:

- a) the award for recovery of moral and exemplary damages is deleted, and;
- b) all monetary grants awarded shall earn interest at the rate of six percent (6%) per annum of the total monetary obligation computed from the time the same was judicially demanded and an additional six percent (6%) per annum from the time of the finality of judgment until its full satisfaction shall be imposed. This

interim period being deemed to be by then an equivalent to a forbearance of credit.

All other aspects of the fallo of the assailed Decision stand. Costs against petitioners.

SO ORDERED.

Dimaampao, J. B., Chairperson and Manahan, C. S., JJ., concur.

[1] Rollo, pp. 32-39 & 41-42.

[2] Id. at 183-190.

[3] Id. at 276

[4] Id. at 285-298.

[5] Id. at 320-328.

[6] Id. at 334-352.

[7] Id. at 44-46.

[8] Id. 188-189.

[9] G.R. No. 174084, August 25, 2010.

[10] G.R. No. 204406, February 26, 2014.

[11] G.R. No. 186439, January 15, 2014.

[12] Integrated Contractor and Plumbing Works, Inc., vs. NLRC, 503 Phil.875 (2005) as cited in Malicdem, et al. vs. Marulas Industrial Corporation, et al., supra.

[13] Baron, et al. vs. NLRC, et al., G.R. No. 182299, February 22, 2010.

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

[15] Ibid.

[16] G.R. No. 189871, August 13, 2013.

[17] Pepsi Cola Products Philippines, Inc., et al. vs. Santos, G.R. No. 165968, April 14, 2008 and Lambert Pawnbrokers and Jewelry Corporation, et al. vs. Binamira, G.R. No. 170464, July 12, 2010.

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

[19] Ibid.

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