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BORJA, J.,[*]

On February 27, 2014, this Court rendered a Decision granting the petition and, thus, setting aside the NLRC's Resolutions dated October 29, 2010 and January 28, 2011, respectively.

Private respondent DOLE moves to reconsider the above Decision on the following grounds, viz:

- Petitioners were not illegally dismissed from work. Their services were hired for “non-core” projects of the DOLE which were temporary in character; and their employment was for a specific project or undertaking, the completion or termination of which had been determined and made known to them at the time of their engagement. Consequently, their (petitioners’) cessation from work as a consequence of the expiration of project or fixed-term employment contract does not amount to illegal dismissal.
- There being no illegal or constructive dismissal to speak of, there is no factual and legal basis to award the petitioners nominal damages and attorney’s fees.

The foregoing grounds have already been addressed by the Court in its February 27, 2014, thus:

xxx Dole asserts that petitioners were made to understand before the start of their employment that their work was merely temporary in nature and that the contracts they voluntarily signed with Dole specified the following: a) the specific project or undertaking where the employee will be assigned; b) the term of employment; c) the specific duties of the employee; and d) the compensation package. However, it can be readily inferred from such allegation that Dole failed to specify the duration or scope of the specific project or undertaking for which the petitioners were hired at the time they were engaged.

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In the case at bench, upon scrutiny of the contracts for project employment petitioners signed with Dole, We hold that what was specified therein is the period of employment and not the duration or scope of the project for which the petitioners were hired. Petitioners were assigned to a purported project the beginning and end of which were not determined nor specified at determinable times. We therefore agree with petitioners in their claim that these contracts failed to provide a definite duration for the completion or termination of the project for which petitioners were hired. While they were initially hired as project employees, their employment ceased as such when no scope or duration of the project was specified nor was their employment proven to be coterminous with specific projects. Moreover, Dole alleges that the supposed projects to which the petitioners were assigned are non-core projects which are temporary in character. Except for its bare allegations, however, Dole failed to substantially show that its so-called “non-core projects” are distinct, separate, and identifiable from its usual or regular business which it describes as the production and marketing of “fresh fruits, fresh vegetables and fresh-cut flowers, with a growing line of quality packaged foods.”

Further, the petitioners’ claim that they attained regular status as they were continuously and successively

re-hired by Dole and performed functions which are necessary and desirable in the usual business of Dole finds support in the ruling of the High Court in the case of *D.M. Consunji, Inc. v. NLRC* which held, thus: Surely, length of time is not the controlling test for project employment. Nevertheless, it is vital in determining if the employee was hired for a specific undertaking or tasked to perform functions vital, necessary and indispensable to the usual business or trade of the employer. Here, [private] respondent had been a project employee several times over. His employment ceased to be coterminous with specific projects when he was repeatedly re-hired due to the demands of petitioner's business." (underscoring in the original, emphasis supplied)

Here, while the petitioners were initially hired either as project or fixed-term employees, their employment as such ceased and they attained regular status when they were repeatedly and continuously re-hired ranging from three (3) years to eight (8) years as general utility personnel performing functions which are necessary and desirable in the business of Dole.

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xxx Dole contends that petitioners' employment was terminated due to the completion/cessation of the specific project to which they were assigned. Thus, they were not illegally dismissed.

We are not convinced.

Dole capitalizes on the ruling that the employment of project or seasonal employees "legally ends upon completion of the project or the [end of the] season". However, it failed to substantiate their claim of project completion by adducing substantial proof indicating that indeed, the project for which the petitioners were hired had already been completed or terminated justifying Dole's dismissal of petitioners in accordance with their contracts. Bare allegation is not proof.

On the contrary, petitioners aver that the activities to which they were engaged are still subsisting and in fact expanding; and that they were simply replaced by workers supplied by CAMPCO. This claim notably remained undisputed by Dole.

The rule is that it is incumbent upon the employer to prove by the quantum of evidence required by law that the dismissal or an employee is not illegal, otherwise, the dismissal would be unjustified. Here, Dole failed to discharge this burden.

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xxx [P]etitioners' dismissal, having been effected without just or authorized cause and without complying with the requirements of due process, entitles them to nominal damages and attorney's fees.

XXX

Dole, having dismissed petitioners without complying with the requirement of due process laid down in Article 283 of the Labor Code, specifically the service of notice of dismissal to the employee sought to be dismissed and to the Department of Labor and Employment, at least one (1) month before the intended date of termination, is liable to pay petitioners nominal damages.

As regards attorney's fees, the same is awarded in labor cases "specifically in actions for recovery of wages or where an employee was forced to litigate and thus incurred expenses to protect his rights and interest. xxx

[Citations and underscorings omitted]

Finding the grounds raised in the motion as mere reiterations of matters already ruled upon by this Court in its Decision, the Court DENIES the motion for reconsideration.

SO ORDERED.

[**]Badelles, and Singh, JJ., concur.

[*] New Ponente vice J. Francisco per raffle dated June 11, 2014

[**] Third Member per raffle dated June 11, 2014

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