

TREASURE STEELWORKS CORPORATION, PETITIONERS, VS. KRISS JAY P. ABE, MOISES D. ROVIRA, ELMER L. LUMAPGUID, RODERICK N. MENDOZA, LABOR ARBITER BEVERLY V. SELIM-MUSNI, NATIONAL LAB...

Ponente: CAMELLO, J.

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CAMELLO, J.:

This is a Petition for Certiorari[1] assailing the twin Resolution dated November 29, 2012[2] and January 31, 2013[3] of the public respondent National Labor Relations Commissions (NLRC) in NLRC No. MAC-10-012764-2012 which affirmed the Decision[4] dated July

11, 2012 of the Labor Arbiter of NLRC-Regional Arbitration Branch X, Iligan City.

The facts of the case follow:

Petitioner Treasure Steelworks Corp (Treasure) is a Philippine corporation engaged in manufacturing and marketing steel billets. Its main factory is located in Iligan City.

Treasure owns a barge registered under the name “Ironman I” used for hauling fine tailings necessary for billets production and heavy equipments, and to deliver billet products.[5] Sometime in August 2010,[6] Treasure hired private respondents Kriss Jay P. Abe (Abe), Moises D. Rovira (Rovira), and Elmer L. Lumapguid (Lumapguid) as Bargemen with a monthly fixed rate of P8,070.00 each. Private respondent Roderico Mendoza (Mendoza) was also hired as Barge Patron receiving a monthly fixed rate of P9,000.00. As Bargemen, Abe, Rovira, and Lumapguid render services related to the maintenance of “Ironman I”, particularly painting, rust chipping, cleaning, cable wire, and mooring line splicing, securing of cargoes, and helping the maneuvering of the barge.[7] Barge Patron Mendoza, on the other hand, acts as direct “leadman” of bargemen on board. He receives bill of lading, trims and arranges cargoes, and takes charge of the safety of the barge and personnel on board.[8]

Abe, Rovira, Lumapguid, and Mendoza allegedly worked on a 5-month (fixed-term) contract of employment, specifically:

Name of Employee Date of Employment [9] Date of effectivity of the Contract of Temporary Employment[10] Expiry Date[11] of the Contract of Temporary Employment

Kriss Jay P. Abe August 3, 2010 September 1, 2010 January 31, 2010

Moises D. Rovira August 3, 2010 September 1, 2010 January 31, 2010

Elmer L. Lumapguid August 2, 2010 August 2, 2010 January 1, 2011

Roderico Mendoza August 2, 2010 August 2, 2010 January 1, 2011

Since their employment in August 2010, these four (4) employees did routine hauling of iron fine tailings for Treasure from Nonuc, Island of Surigao; scrap iron from Sasa Pier, Davao City; iron ore from Malangas,

Zamboanga del Norte; billet products to Manila; and pieces of heavy equipment such as backhoe, pay-loader and others from Manila.

Abe, Rovira, Lumapguid, and Mendoza continued rendering their services to Treasure as Bargemen and Barge Patron even after their supposed 5-month contract had expired. So, on November 18, 2011, these four (4) employees separately filed actions for regularization.

In their responsive pleading, Treasure denied that Abe, Rovira, Lumapguid, and Mendoza are their regular employees.[12] These four (4) employees, Treasure alleged, do not perform activities that are necessary or desirable in its usual business which is manufacturing and selling of metal billet.[13] Treasure also insisted that Abe, Rovira, Lumapguid, and Mendoza had knowingly and freely agreed to work for them for a fixed period. These factors, according to Treasure, make all the private respondents fixed-term employees who cannot attain the regular status of employment.[14] Treasure claimed, in addition, that their fixed-term contracts met the twin conditions for validity; first, private respondents were apprised of the respective periods of their contracts as well as the terms and conditions of their employment, and second, they all voluntarily agreed, and they signed their contracts without force, duress, or moral dominance.[15]

On July 11, 2012, the Labor Arbiter rendered a decision[16] in favor of the private respondent. Its fallo reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Declaring the employment of complainants KRISS JAY P. ABE, ELMER L. LUMAPGUID, MOISES D. ROVIRA and RODERICO N. MENDOZA to be regular in status;
2. Ordering respondent Treasure Steelworks Corporation through its responsible officers to pay complainants exemplary damages at P5,000.00 each, moral damages at P5,000.00 each, benefits under the existing Collective Bargaining Agreement, and attorney's fees in the amount of P5,000.00;
3. Ordering that Mr. Alvin Tang be dropped as party respondent in this case.[17]

The Labor Arbiter reasoned:

After a judicious review of the evidence on record this Office finds for the complainants, in keeping with and guided by law and jurisprudence on fixed-period employment viz-a-viz on regular employment.

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In the case at bar, respondent are found wholly deficient of compliance with the criteria set by the Supreme Court in the Philippine National Oil Company-Energy Development Corporation. This, after examination by the Office of the employment contracts proffered by respondents as evidence of complainants' purported fixed term employment.

Elaborating, the Labor Arbiter gave much significance to the absence of signatures in the employment documents submitted:

There is no way that these four (4) contracts could ever serve as evidence of "that day certain agreed upon by the parties for the commencement and termination of their employment relationship" for the following reasons:

- 1.The Contract of Temporary Employment xxx between respondent company and complainant Roderico N. Mendoza, Jr. bears neither the signature of respondent, nor any of their witnesses, nor of acknowledgment by a notary public. Resultantly, this purported contract is deemed a mere scrap of paper devoid of any probative weight nor value;
- 2.The Contract of Temporary Employment xxx between respondent company and complainant Moises Rovira, Sr. bears no signature at all, whether that of respondent company or that of complainant. Hence, it is also

declared a mere scrap of paper wanting of any probative worth;

3.The Contract of Temporary Employment xxx between respondent company and complainant Elmer L. Lumapguid again bears neither the signature of respondent, nor of any of their witnesses, nor acknowledgment by a notary public. Resultantly, this purported contract is likewise treated as a mere scrap of paper devoid of any probative weight nor value; and 4.The Contract of Temporary Employment (Annex "D", Respondents' Position Paper) also bears no signature at all, whether that of respondent company or that of the complainant. Hence, it is similarly considered as a mere scrap of paper devoid of any probative worth nor value.

After discrediting the evidentiary worth of the supposed contracts, the Labor Arbiter proceeded to justify his ruling in terms of length or duration of service, as well as its nature vis-a-vis the core business of Treasure, Thus:

Even on the assumption that the parties have duly signed the subject contracts, still these do not establish the fixed period of employment of complainants xxx. The reason is obvious: complainants remained in service way beyond the periods indicated, and have in fact remained in service even beyond the filing of these complaints on November 18, 2011.

These circumstances show there is no valid contract of fixed period employment entered into by the parties, much more knowingly and voluntarily. To the contrary, these four (4) purported contracts, all un-signed by respondent, are nothing but ill-disguised attacks on complainants' right to security of tenure inherent to their regular employment.

On the side, this Office strikes down respondents' claim that complainants' tasks would not qualify them for regular employment as respondents were engaged in the business of steel billet production, not in shipping. Respondents are mistaken. The reason is simple: their production and marketing of steel billets require transportation, overland or by sea. It is precisely to address this need for transportation that respondents own and operate two (2) units of barges manned by herein complainants: to haul fine tailings directly necessary for billet production, to deliver billet products, and to haul heavy equipments. Clearly, complainants qualify for regular employment for having been engaged to and for actually performing activities which are usually necessary or desirable in the usual business or trade of their employer.

Complainants' services as bargemen lasting for over a year from the date of their hiring likewise make them regular employees.

There are two kinds of regular employees recognized in this jurisdiction: (1) those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, and (2) those who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed.

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For having clearly established by substantial evidence that their service rendered for 1 ½ years as bargemen were necessary and desirable to respondents business, complainants are declared regular employees of the latter.

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From that basic holding, the Labor Arbiter gave his justification for the damages and benefits awarded to the employees:

This Office also sustains the claims of complainants for entitlement to CBA benefits, damages and attorney's fees.

Inherent to complainants' regular employment status are their right to self-organization and right to collective bargaining, as they have in fact joined the Treasure Steelworks Labor Union-Federation of Democratic Labor

Organization of Democratic. At this juncture, nothing bars the complainants from enjoying the benefits provided in the CBA existing between respondent company and the union.

As complainants' rights to security of tenure, self-organization and right to collective bargaining came under threat of decapitation as discussed above, they are entitled to and are hereby awarded moral damages at P5,000.00 each and exemplary damages at P5,000.00 each, if only to teach respondents not to do a repeat of the experience of complainants.

Complainants are, thus, awarded attorney's fees at P5,000.00 for the services of counsel they were compelled to retain if only to enforce their fundamental rights to security of tenure and regular employment, to self-organization and to collective bargaining and representation.

This Office finds no evidence to make respondent Alvin Tang solidarily liable with respondent company for the judgment award, there being no allegation that he acted personally with malice and bad faith in the commission of the acts complained of by complainants. xxx[18]

Dismayed with the Labor Arbiter's findings, Treasure appealed to the NLRC which denied the appeal,[19] and affirmed the July 11, 2012 decision of the Labor Arbiter. The ensuing motion for reconsideration was also denied in a Resolution dated January 31, 2013[20] which led to the present petition, where Treasure assigns the following errors:[21]

I

THE PUBLIC RESPONDENTS LABOR ARBITER AND NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT RULED THAT PRIVATE RESPONDENTS ARE NOT FIXED-TERM EMPLOYEES AND, HENCE, REGULAR EMPLOYEES OF THE PETITIONER COMPANY DESPITE SUBSTANTIAL EVIDENCE PRESENTED BY THE PETITIONER COMPANY PROVING THE CONTRARY.

II

THE PUBLIC RESPONDENT LABOR ARBITER AND NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OR JURISDICTION IN AWARDING PRIVATE RESPONDENTS MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES

Treasure had applied for a temporary restraining order and/or writ of preliminary injunction. We denied Treasure's prayer in our Resolution dated January 15, 2014.

Before resolving the first issue, we deem it proper to first determine the existence of written contracts between private respondents and Treasure. Treasure invokes Article 1356 of the Civil Code of the Philippines, which states:

Contracts shall be obligatory, in whatever form they may have been entered into, provided all the essential requisites for their validity are present. However, when the law requires that a contract be proved in a certain way, that requirement is absolute and indispensable. In such cases, the right of the parties stated in the following article cannot be exercised.

On the issue of existence of contracts, we find for Treasure. There indeed are contracts of temporary employment between them and the private respondents.

It has been held in that old case of Nielson & Company, Inc., v. Lepanto Consolidated Mining Company,[22] that a writing containing the terms of a contract if adopted by two persons may constitute a contract in writing even if the document is not signed by either of the parties. Also, it is said that an unsigned agreement the terms of which are embodied in a document unconditionally accepted by both parties is a written contract.

Private respondents themselves recognized as they themselves averred that they were hired for a 5-month fixed-term employment by Treasure, although only Mendoza and Lumaguid were able to sign the contract. Thus, the terms embodied in the unsigned contracts of temporary employment which were adopted by the private respondents and Treasure constitute a written contract between them.

We come now to the more important issue - are the fixed-term contracts of employment valid?

Jurisprudence recognizes the validity of fixed-term employment contracts; it has consistently held, though, that a fixed-term contract must be entered into in good faith and must not contravene any laws, morals, good customs, public order or public policy. The Supreme Court made it clear, in the case of *Brent School, Inc. v. Zamora*,^[23] that a contract of employment stipulating a fixed term, even if clear as regards the existence of a period, may be declared invalid if it can be shown that it was executed with the intention of circumventing an employee's right to security of tenure, and should thus be struck down for being contrary to law, morals, good customs, public order, and public policy.^[24]

The contracts of temporary employment submitted by Treasure are highly suspect. Treasure did not refute that it hired private respondents sometime in August 2010, yet, the contracts of Abe and Rovira were executed a month after their employment. The Court is convinced that the terms fixed in those contracts were meant to circumvent private respondents' right to security of tenure. The contracts are, therefore, void for being *contra bonos mores*.^[25] Also, we noted several provisions, which are similarly worded in the employment contracts of each of the private respondents, that display utter disregard for private respondents' security of tenure. Here are the following:

x. The EMPLOYER reserves the right to terminate this contract before its due date of expiration as the exigencies of the service may require.

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x. Nothing in this Contract can be construed as granting or vesting upon EMPLOYEE the right to regular and Permanent employment with the EMPLOYER upon completion of this CONTRACT or an extension thereof

The obvious reason the Court gathers from these provisions is certainly to preclude regularization of private respondents' employment status.

Employment status is defined and prescribed by law and may not be contradicted by what the parties declare it to be. Article 280 of the Labor Code says so much:

Art. 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 engagement of the employee or where the work or services to be performed is seasonal in nature and 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 of 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. (Underscoring ours).

The quoted provision mandates that applicable statutes are deemed written into the contract, and the parties are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by

simply contracting with each other.[26] Labor contracts are placed on a higher plane than ordinary contracts,[27] for such agreements are heavily impressed with public interest such that labor contracts must yield to the common good.[28]

Article 280 clearly categorizes regular employees into two (2) kinds: (1) regular employees by nature of work; and (2) regular employees by years of service. The first kind refers to those employees who perform a particular activity which is necessary or desirable in the usual business or trade of the employer, regardless of their length of service; while the second kind refers to those employees who have been performing the job, regardless of its nature, for at least a year.

In *San Miguel Corp. v. Teodosio*,[29] the Supreme Court explained why length of service is indicative of the necessity of the service:

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.

Private respondents, in the present case, have been working for Treasure as bargemen and barge patron for more than one (1) year already. Their continued employment with Treasure, even after they had filed the cases in the Labor, has undoubtedly established the necessity of their work to Treasure business.

Now, as to the monetary awards, we find them unjustified under the circumstances. It is settled that moral damages are recoverable upon sufficient proof of moral suffering, mental anguish, fright or serious anxiety.[30] The claimant should satisfactorily show the existence of the factual basis of such type of damages. Our review of the records rendered no such factual basis. Private respondent simply failed to establish it.

We likewise find the award for exemplary and attorney's fee not proper. The rule says that no exemplary damages can be awarded in the absence of moral or actual damages. And where the awards for moral and exemplary damages are eliminated, so too must the award for attorney's fees.[31]

FOR THESE REASONS, the decision appealed from is **AFFIRMED** with the modification that the awards of moral and exemplary damages as well as attorney's fees are deleted for lack of factual basis.

SO ORDERED.

Inting and Perez, JJ., concur.

[1] Rollo, pp. 2-13.

[2] *Id.*, , pp. 20-27.

[3] *Id.*, pp. 30-31.

[4] Rollo, pp. 128-134.

[5] *Id.*, p. 4.

[6] *Id.*, pp. 40, 42, 44, 46.

[7] *Id.*, p. 83.

[8] *Ibid.*,

[9] Rollo, pp. 40,42, 44,46 [Complaints separately filed by private respondents].

[10] Id., pp. 57-68.

[11] Ibid.,

[12] Id., p. 52.

[13] Id., pp. 51-52.

[14] Rollo, p. 52.

[15] Id., pp. 52-53.

[16] Supra at Note No. 4.

[17] Rollo, p. 134.

[18] Rollo, pp. 130-134.

[19] Supra at Note no. 2.

[20] Supra at Note no. 3.

[21] Rollo, p. 6.

[22] G.R. No. L-21601, December 17, 1966.

[23] G.R. No. L-48494 February 5, 1990.

[24] Article 1306 of the Civil Code of the Philippines.

Article 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy

[25] Supra at Notes No. 23 and 24

[26] San Miguel Corp. v. Teodosio, G.R. No. 163033, October 2, 2009

[27] GMA Network, Inc., v. Pabriga, G.R. No. 176419, November 27, 2013

[28] Article 1700 of the Civil Code

Art. 1700. The relation between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to special laws on labor unions, collective bargaining, strikes and lockouts, closed shops, wages, working conditions, hours of labor and similar subjects

[29] G.R. No. 163033, October 2, 2009

[30] Philippine Long Distance Telephone Company, Inc., v. Paguio, G.R. No. 152689 October 12, 2005.

[31] Philippine Long Distance Telephone Company, Inc., v. Paguio, G.R. No. 152689 October 12, 2005.

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