

JACA CONSTRUCTION AND MANAGEMENT CORPORATION AND ARNULFO D. MONDERIN, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION) AND MARIO DIOLA, RESPONDENTS.

Ponente: BARRIOS, M. M., J.

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BARRIOS, M. M., J.:

This is a Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure assailing, on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction, the Resolution dated 12 January 2011[1] of the National Labor Relations Commission that overturned the decision of the Labor Arbiter. The decretal part reads:

X X X

“WHEREFORE, premises considered, the appealed decision is hereby REVERSED and SET ASIDE, and a new one entered, declaring Respondents to have illegally dismissed Complainant, who is hereby ordered reinstated without the loss of seniority rights and privileges, and paid full backwages up to reinstatement.

SO ORDERED.”

X X X

Likewise assailed is the Resolution[2] dated 24 March 2011 denying petitioner's motion for reconsideration.

The Antecedents

Private respondent was employed by petitioner-corporation on August 2008 and was initially assigned as helper in the Septic Tank Project of petitioner. He was thereafter transferred to Pudong Tool Transfer Project at CV2 Numonyx Phils. Later on, private respondent was assigned in South Forbes, Barangay Inchican, Silang, Cavite, and lastly, as a welder in the Madison Project of petitioner on March 2010.

After the completion of the last project, Engr. Arvin Burgos informed private respondent that he will just summon the latter for the next project. However, private respondent did not receive any call for the next project; and when he inquired, he was asked to wait. On 07 April 2010, with no probable work assignment from petitioner, private respondent filed an illegal dismissal case against petitioner praying for reinstatement, full backwages and other monetary benefits.

On the other hand, petitioner averred that it is engaged in the construction business and undertake the specific projects of its clients. Private respondent was hired as a project employee in connection with several projects pursued by petitioner. Accordingly, several contracts of employment written in Pilipino were executed by the parties whereby the services of private respondent were engaged for a fixed period for the specific project assigned to him. Thus, for the Pudong Tool Transfer Project undertaken for Numonyx Phils., petitioner hired private respondent for a three (3) month period from 15 January 2009 until 15 April 2009. Then, the latter was

re-hired as helper in the same project from 15 May 2009 until 15 August 2009. Thereafter, private respondent was again hired as helper for the Madison South Subdivision (Hillary Phase 2) project in Calamba, Laguna from 15 September 2009 until 15 December 2009, and then again, from 15 January 2010 until 15 April 2010 in another phase (Nancy Phase I) of the subdivision project. After the aforesaid housing project contract was completed, private respondent was notified that his employment was terminated due to the completion of the project for which he was hired. Petitioners maintain that private respondent was a project employee, and not a regular employee.

On 29 June 2010, the Labor Arbiter rendered a decision dismissing private respondent's complaint for lack of merit. The Labor Arbiter posited that private respondent was a project employee and was not illegally dismissed inasmuch as his employment automatically ceased after the completion of the specific project for which he was hired by petitioner.

On appeal, however, public respondent NLRC reversed the decision of the Labor Arbiter per its Resolution dated 12 January 2011, and ruled that there was illegal dismissal and therefore awarded money claims in favor of private respondent. Petitioners filed a Motion for Reconsideration, but this was denied in a Resolution dated 24 March 2011. Hence, this instant petition premised on the following arguments:

I.

PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION IN RULING THAT PRIVATE RESPONDENT MARIO DIOLA WAS A REGULAR EMPLOYEE OF PETITIONER CONSTRUCTION COMPANY SINCE AUGUST 29, 2008, WHO WAS ILLEGALLY DISMISSED ON MARCH 27, 2010, CONTRARY TO THE ADMITTED FACTS AND RECORDS OF THE CASE.

II.

PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION AND CONTRARY TO LAW AND EXISTING JURISPRUDENCE, (sic) IN DECLARING PRIVATE RESPONDENT TO BE ENTITLED TO REINSTATEMENT AND PAYMENT OF BACK WAGES AND EMPLOYEE BENEFITS.

III.

PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION AND CONTRARY TO LAW AND EXISTING JURISPRUDENCE, (sic) IN DECLARING PETITIONERS LIABLE TO THE "TWIN RELIEFS" OF REINSTATEMENT AND PAYMENT OF FULL BACK WAGES UNTIL REINSTATEMENT, (sic) AS PRAYED FOR BY PRIVATE RESPONDENT.

The Court's Ruling

The petition is meritorious.

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. As defined, project employees are those workers hired (1) for a specific project or undertaking, and (2) the completion or termination of such project or undertaking has been determined at the time of engagement of the employee.[3]

Reviewing the records, We immediately take note that all the employment contracts signed by private respondent Mario Diola is titled “Kontrata ng Gawain (Project Basis Contract)” and clearly indicated the specific project or undertaking for which he was hired, e.g. “Pudong Tool Transfer Project”, “Residential Housing Project - Madison South Subdivision (Hillary Phase 2)”. Said employment contracts also indicate the specific period of employment, the latest being “Enero 15, 2010 matatapos sa o bago mag Abril 15, 2010”. Moreover, there is even a clear agreement on the termination of respondent's employment, viz: “Kung sakaling pansamantala o tuluyang mahinto o matapos ang trabaho sa nabanggit na proyekto, kayo ay maaring tanggalin o bawasan sa trabaho, at wala magiging pananagutan ang kumpanya sa pagtetermena ng inyong kontrata ng gawain.”

From these factors, it is clearly evident that respondent Diola knew fully well that his employment is not regular but for a specific period and project only.

In this regard, We quote with approbation the ruling of the Labor Arbiter, thus:

x x x

“We hold that Complainant was a project employee considering that he was hired for specific projects or undertakings the completion or termination of which had been determined at the time of his engagement. (Article 280, Labor Code)

Specifically, admitted by Complainant in his Position Paper, His first work for Respondent JCMC was, as Helper in “Septic Tank Project”; then in “PUDONG Tool Transfer Project” for CV2 Numonyx Phils.; next, in “South Forbes”, also, a project in Brgy. Inchican, Silang Cavite, and lastly, in “Madison Project” as a Welder”. (Page 1, pars. 6 and 7, Complainant's Position Paper)

Complainant further admitted that “on March 26, 2010, the last day of the Madison Project”, he was informed by Engr. Arvin Burgos that he would be called “for the next project”. (Page 1, par. 8, *ibid*) And it was when he was not assigned to any project, and was “just told to wait”, that he filed the present labor complainant.

Thus, undisputedly, by Complainant's own allegation, his last work for Respondents was in the Madison Project, the “last day” of which was on March 26, 2010. This fact is even corroborated by the evidence that the said completed project was actually accepted by the project owner on March 30, 2010, for purposes of processing the final billing of Respondent Construction Company as Contractor. (CF, Annex “4”, Respondent's Position Paper)

His project at Madison having been completed on March 26, 2010, his employment automatically ceased on that date pursuant to his last project employment contract. It cannot thus be figured by any stretch of the imagination how he could be illegally dismissed.

Concordantly, Complainant is not therefore entitled to 1) position reinstatement, 2) full backwages and other benefits payment and 3) continuous enjoyment of seniority rights and privileges.”

x x x

We find as reasonable, logical and just the petitioner's explication that the usual standard of considering length of service to determine when the employment of an employee becomes permanent cannot be applied to the construction industry; as it would be unfair and prejudicial because construction firms cannot guarantee work and payroll beyond the termination of a project. The employment of a project employee should end on the date specified in the contract or upon the completion of the project. Here, the latest project where private respondent worked (i.e. Madison South Subdivision – Julia Phase 3) was completed and actually turned over on 30 March 2010.

WHEREFORE, premises considered, the petition is GRANTED. The Resolutions dated 12 January 2011[4] and

the Resolution[5] dated 24 March 2011 of the National Labor Relations Commission are ANNULLED and SET ASIDE, and the Decision[6] dated 29 June 2010 of Labor Arbiter Robert A. Jerez dismissing private respondent's complaint is hereby REINSTATED.

SO ORDERED.

Reyes, Jr., (Chairperson) and Pizarro, JJ., concur.

[1] Rollo, pp. 19-26.

[2] Id., pp. 28-29.

[3] Grandspan Development Corporation vs. Bernardo, G.R. No. 141464, September 21, 2005, 470 SCRA 461.

[4] Supra note 1.

[5] Supra note 2.

[6] Rollo, pages 41 to 47.

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