# G & S TRANSPORT CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND GERMAN S. VIREYNATO, RESPONDENTS.

Ponente: ELBINIAS, J.

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**ELBINIAS, J.:**

For disposition is a Petition for Certiorari[1] filed under Rule 65 of the Rules of Court. The Petition assails the Decision[2] dated September 9, 2010 of public respondent National Labor Relations Commission (“public respondent NLRC” for brevity) in NLRC LAC No. 03-000550-10 (NLRC-NCR Case # 08-12048-09). The Petition also questions public respondent NLRC's Resolution[3] dated November 18, 2010, which denied petitioner's eventual Motion for Reconsideration[4].

Among the salient facts are those as stated in the Labor Arbiter's Decision[5] of January 18, 2010, which are as follows:

> “Complainant (private respondent here) averred that he started as a 'Driver' with the respondent company (petitioner here) on October 31, 2006. At the start he (private respondent) was made to sign a contract entitled 'PROJECT EMPLOYMENT AGREEMENT' and was assigned to the Globe Telecoms Project. Notwithstanding his assignment to a specific project, he (private respondent) was actually assigned by the company to do works at its Headquarters/Central Garage such as road testing of company vehicles, bringing and pulling out of company vehicles to and from the repair shop, acting as back up for absent drivers, etc.. As proof thereof, the complainant's 'Daily ACCOMPLISHMENT REPORTS' for October 31, 2006, November 9, 23, 25 and 30, 2006, January 9 and 11, 2007 duly noted by the dispatcher on duty are attached as Annexes xxx of Complainant's Position Paper.
>
> Complainant (private respondent) was assigned by the company to the EDSA Shangri-la (Limousine) Project and was made to sign 'Project Employment Agreement'.
>
> xxx
>
> On March 3, 2009, the complainant (private respondent ) was again made by the company to sign for his assignment to EDSA Shangri-la (Limousine) Project to begin on April 1, 2008 and to end on March 31, 2012. xxx
>
> On July 20, 2009 the complainant (private respondent) was served a notice by Ms. Grace Sandagon, the company's Assistant Station Manager, for him to explain the alleged violation of the company's Code of Discipline.
>
> xxx
>
> On the same explanation form, the complainant (private respondent) explained his side point by point xxx
>
> On July 28, 2009, complainant (private respondent) received the fifteen (15) day suspension meted out by the company and the recommendation for his transfer to the Central Garage effective August 3, 2009. xxx

> On August 1, 2009, the complainant (private respondent) was served the Memorandum for his transfer from EDSA Shangri-la Hotel station to central Garage as chauffer after his suspension without pay from August 3, 2009 to August 19, 2009. xxx
>
> On August 3, 2009 the complainant (private respondent) went to respondent Ms. Arlene S. Espiritu, to appeal such decision but the latter advised him that he should serve first the 15-day suspension.
>
> Complainant (private respondent) was again on August 27, 2009 made to sign a new Project Employment Agreement with San Miguel Corporation beginning August 20, 2009 up to July 14, 2010.
>
> xxx xxx xxx
>
> Complainant (private respondent) went further that from the date of hiring on October 31, 2006, he has not been accorded a regular status of employment. Further, he rendered work from 12:00 noon to 9:00 in the evening but he was only paid for eight (8) hours. Thus he has an unpaid overtime of one hour per day as he did not consume his one hour break everyday due to the exigency of the service as he was on call anytime."[6] (Emphasis Supplied)

On August 20, 2009, private respondent German S. Vireynato ("private respondent" for brevity) filed before the Labor Arbiter, a Complaint[7] for "regularization, illegal suspension and non-payment of overtime pay"[8] against petitioner G&S Transport Corporation ("petitioner" for brevity).

On January 18, 2010, the Labor Arbiter rendered a Decision[9] dismissing private respondent's Complaint[10] for lack of merit.[11]

Private respondent then appealed from the Labor Arbiter's Decision[12] of January 18, 2010 to public respondent NLRC.[13]

On September 9, 2010, public respondent NLRC rendered its assailed Decision[14] reversing the Labor Arbiter's Decision. Public respondent NLRC's Decision[15] declared private respondent as a regular employee of petitioner, and found private respondent to have been illegally suspended by petitioner. Public respondent NLRC also ordered petitioner to pay private respondent his salary during his illegal suspension covering the period of August 3-19, 2010.

After petitioner's Motion for Reconsideration[16] was denied by public respondent NLRC in its assailed Resolution[17] of November 18, 2010, petitioner filed the Petition[18] at bench, praying that:

> "After due proceedings, this Honorable Court render judgment annulling and/or setting aside the Assailed Decision and Resolution, respectively, rendered by the Second Division of the National Labor Relations Commission, and reinstating the Decision of the Labor Arbiter dated 18 January 2009 and dismissing private respondent's complaint for utter lack of merit."[19]

Petitioner raised the following grounds:

> "5.1 THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN ENTERTAINING THE COMPLAINT FOR REGULARIZATION AND DECLARING PRIVATE RESPONDENT A REGULAR EMPLOYEE.
> 5.1.1 A COMPLAINT FOR REGULARIZATION CANNOT PER SE BE THE PRINCIPAL CAUSE OF ACTION UNDER THE LABOR CODE, AS AMENDED.
>
> 5.1.2 ASSUMING THAT THE ISSUES IS (sic) RIPE FOR ADJUDICATION THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN DECLARING PRIVATE RESPONDENT A REGULAR EMPLOYEE.


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5.2 THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN FINDING THAT PRIVATE RESPONDENT WAS ILLEGALLY SUSPENDED."[20]

Contrary to petitioner's arguments in its assigned grounds 5.1, 5.1.1, and 5.1.2, private respondent was a regular employee of petitioner.

Petitioner had argued as follows:

> "6.9 In this case the mass of documentary evidence denominated as Project Employment Agreement, some of which were even submitted by the private respondent, show that he was hired as project employee and was assigned on a specific project.
>
> 6.10 The hiring of private respondent and other project employees was succinctly explained in petitioner's position paper, thus –
>
> 'xxx As the business developed, the increase in competition and the drive for more clients, the operation or business of the company transformed from a simple maintenance of station wherein the general public may walk-in or call-in to avail of the services of the company to a situation where the company has to participate in biddings in order to obtain exclusive service contracts such as but not limited to hotels and airports. These exclusive contracts have specific durations of one (1) year to two (2) years.'
>
> 6.11 In view of the foregoing and particularly in relation to these exclusive contracts with specific durations, it has become necessary for the company, to hire contractual or project employees to service these contracts. Like other project employees, private respondent's employment is co-terminous with the duration of the project and upon the end of the project the employee is paid separation pay.
>
> 6.12 The project employment agreements on record covering private respondent's employment read as follows:
>
> 'The employment of the project employee shall begin on March 12, 2007. The employment of the project employee shall be co-terminous with the specific project or until actual termination (which under the Company's Memorandum of Agreement with Shangrila-Edsa Limousine shall be for a period of four (4) years from April 01, 2004 to March 31, 2008) or as may be determined by the Company, or the phase of work of the project for which the project employee hired, unless sooner terminated for any cause without any need of verbal or written notice.'
>
> 6.13 As culled from the foregoing, private respondent as in his previous project employment was hired for a specific project (i.e. Globe Project and SMC Project) and with a clear agreement on the completion or termination of the project at the time he was engaged that is –from 10 August 2009 to 14 July 2010. xxx.
>
> 6.14 As repeatedly stated by petitioner and which is not refuted by the private respondent, upon the completion of every project and the termination of the project employee, petitioner submits written reports of its finished projects and affected employees to the nearest Public Employment Office, in this case DOLE-NCR, in accordance with Policy Instruction No. 20 of the then DOLE Secretary Blas F. Ople. Also, if and when the contract of G&S expires or not renewed, it pays its project employees separation pay for every completion of the project."[21] (Emphasis Supplied)

Defeating petitioner's arguments however, is that petitioner, which is a domestic corporation engaged in the rent-a-car business,[22] had repeatedly re-hired private respondent for the same position of chauffeur for the company's projects[23] for a period of about four (4) years. This situation therefore showed that private respondent's services were necessary and indispensable to petitioner's business, as was also found by public respondent NLRC, to wit:

> "xxx this Commission is not convinced that complainant-appellant is a project employee.

> Well to note that complainant-appellant was repeatedly re-hired for the same position as chauffer for the company's projects xxx
>
> xxx
>
> The pattern of re-hiring and recurring need for the services of complainant-appellant evidently shows that his services are necessary and indispensable to the business of respondent-appellee company.
>
> In the case of PLDT vs. Mayflor T. Ilagan, 508 SCRA 31, citing, Integrated Contractor and Plumbing Works, Inc. vs. NLRC, G.R. No. 152427, August 9, 2005, the Supreme Court ruled that once an employee has been: (1) continuously, as opposed to intermittently, re-hired by the same employer for the same tasks or nature of tasks; and (2) these tasks are vital, necessary and indispensable to the usual business or trade of the employer, then the employee must be deemed a regular employee.
>
> In the light of the foregoing factual circumstances and in the light of the aforementioned jurisprudence, there is no denial that complainant-appellant had become a regular employee of respondent-appellee company."[24] (Emphasis Supplied)

A project employee, such as private respondent, who had been continuously, repeatedly, and successively rehired by the employer, such as petitioner here, to perform tasks that were necessary and desirable to the employer's business is deemed as a regular employee. This was as similarly held by the Supreme Court in D.M. Consunji, Inc. and.or David M. Consunji vs. Estelito L. Jamin, G.R. No. 192514, April 18, 2012, as follows:

> "To reiterate, Jamin's employment history with DMCI stands out for his continuous, repeated and successive rehiring in the company's construction projects. In all the 38 projects where DMCI engaged Jamin's services, the tasks he performed as a carpenter were indisputably necessary and desirable in DMCI's construction business. He might not have been a member of a work pool as DMCI insisted that it does not maintain a work pool, but his continuous rehiring and the nature of his work unmistakably made him a regular employee. In Maraguinot, Jr. v. NLRC,43 the Court held that once a project or work pool employee has been: (1) continuously, as opposed to intermittently, rehired by the same employer for the same tasks or nature of tasks; and (2) these tasks are vital, necessary and indispensable to the usual business or trade of the employer, then the employee must be deemed a regular employee.
>
> xxx xxx xxx
>
> '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.' Without doubt, Jamin's case fits squarely into the employment situation just quoted." (Emphasis Supplied)

Contrary to petitioner's arguments in its assigned ground 5.2, private respondent was illegally suspended.

Petitioner had argued the following:

> "6.21 The fact that the incident between the private respondent and the above mentioned personnel of EDSA-SHANGRILA occurred is evident from the written explanation of private respondent. As earlier pointed out prior to the engagement of the private respondent with the SMC Project, he received a memorandum dated 14 July 2009 directing him to explain in the same form why he should not be penalized for 'wrong drop-off point' and 'no spiel' and 'texting while driving'.
>
> 6.22 On 20 July 2009, in the same form private respondent wrote his explanation claiming that there was no specific instruction about the dropping point; that he did not apply the standard spiel because customers were

> exchanging conversation and that he did not use his mobile phone to send a text message while driving.
>
> 6.23 As stated in petitioner's position [paper] after due evaluation of the explanations and the circumstances particularly of the fact that it finds no ill-motive on the part of the personnel of the client to complain and further considering the past records of the private respondent, he was meted a suspension of 15 days without pay."[25] (Emphasis Supplied)

Prevailing over petitioner's arguments however, is that petitioner failed to prove its allegation that private respondent violated the company's Code of Discipline. Petitioner failed to present any evidence that would substantiate its allegations, as had been similarly found by public respondent NLRC, as follows:

> "Going into the suspension of complainant-appellant, this Commission finds the suspension illegal.
>
> Record bears that except for the bare-faced allegation of respondents-appellees that Messrs. Yilmaz and Soo of Edsa Shangri-la complained certain acts that were allegedly committed and omitted by complainant-appellant on July 3, 2009, no evidence was however submitted by them to bolster the allegations. Basic is the rule in evidence that mere allegation or accusation is not evidence and is not equivalent to proof. Substantial evidence is still required to prove the affirmative allegation xxx. Failing on this aspect, respondents-appellees allegation is but an empty allegation of fact which does not have any probative weight."[26] (Emphasis Supplied)

Because of petitioner's failure to substantiate its allegation of private respondent's supposed violation of the Company's Code of Discipline, then, petitioner's suspension of private respondent was illegal. Consequently, petitioner is liable to pay private respondent his salary covering the period of such illegal suspension. This was as also found by public respondent NLRC, to wit:

> "Going into the suspension of complainant-appellant, this Commission finds the suspension illegal.
>
> Record bears that except for the bare-faced allegation of respondents-appellees that Messrs. Yilmaz and Soo of Edsa Shangri-la complained certain acts that were allegedly committed and omitted by complainant-appellant on July 3, 2009, no evidence was however submitted by them to bolster the allegations. Basic is the rule in evidence that mere allegation or accusation is not evidence and is not equivalent to proof. Substantial evidence is still required to prove the affirmative allegation xxx. Failing on this aspect, respondents-appellees allegation is but an empty allegation of fact which does not have any probative weight.
>
> In view whereof, complainant-appellant is rightfully entitled to be paid his salary covering the period of his illegal suspension from August 3 to August 19, 2009 xxx."[27] (Emphasis Supplied)

Indeed, the findings of the NLRC when supported by evidence on record as in this case, are accorded due respect and finality, and are binding upon the court.[28]

After careful consideration of all the facts, arguments, and issues appearing on the records, as well as of the pertinent laws and jurisprudence, public respondent NLRC was shown not to have committed grave abuse of discretion, which in turn is meant as such capricious and whimsical exercise of judgment that is equivalent to an excess or lack of jurisdiction.[29]

IN VIEW OF ALL THESE, the Petition is DENIED.

**SO ORDERED.**

Dicdican, and Paredes, JJ., concur.

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[1] Rollo, pp. 3-16.


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[2] Rollo, pp. 19-25.

[3] Rollo, pp. 26-27.

[4] Rollo, pp. 139-146.

[5] Rollo, pp. 29-40.

[6] Rollo, pp. 29-33.

[7] Rollo, pp. 41-44.

[8] Rollo, p. 29.

[9] Rollo, pp. 29-40.

[10] Rollo, pp. 41-44.

[11] Rollo, p. 40.

[12] Rollo, pp. 29-40.

[13] Rollo, pp. 128-138.

[14] Rollo, pp. 19-25.

[15] Rollo, pp. 19-25.

[16] Rollo, pp. 139-146.

[17] Rollo, pp. 26-27.

[18] Rollo, pp. 3-16.

[19] Rollo, p. 15.

[20] Rollo, p. 8.

[21] Rollo, pp. 10-12.

[22] Rollo, p. 60.

[23] Rollo, pp. 93-102, “LIMOUSINE SERVICES CONCESSION AGREEMENT” dated March 3, 2004; Rollo, pp. 77-78, “PROJECT EMPLOYMENT AGREEMENT” effective March 12, 2007; Rollo, pp. 79-80, “PROJECT EMPLOYMENT AGREEMENT” effective April 1, 2008.

[24] Rollo, pp. 22-23

[25] Rollo, pp. 14-15.

[26] Rollo, pp. 23-24.

[27] Rollo, pp. 23-24.

[28] German Machineries Corporation vs. Eddie D. Endaya, G.R. No. 156810, November 25, 2004

[29] First Women's Credit Corporation, et al. vs. Glicerio Perez, et al., G.R. No. 169026, June 15, 2006.

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