

J. D.O. AGUILAR CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND ROMEO ACEDILLO, RESPONDENTS.

G.R. No. 116352. March 13, 1997

Ponente: ROMERO, J.

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ROMERO, J.:

This petition for certiorari is questioning the decision of respondent National Labor Relations Commission dated March 30, 1994, as well as its resolution of June 20, 1994, denying for lack of merit petitioner's motion for reconsideration of said decision.

Private respondent Romeo Acedillo began working for petitioner in February 1989 as a helper-electrician. On January 16, 1992, he received a letter from petitioner informing him of his severance from the company allegedly due to lack of available projects and excess in the number of workers needed. He decided to file a case for illegal dismissal before the NLRC after learning that new workers were being hired by petitioner while his request to return to work was being ignored. In reply, petitioner maintained that its need for workers varied, depending on contracts procured in the course of its business of contracting refrigeration and other related works. It contended that its workers are hired on a contractual or project basis, and their employment is deemed terminated upon completion of the project for which they were hired. Finally, petitioner argued that Acedillo was not a regular employee because his employment was for a definite period and apparently made only to augment the regular work force.

On June 17, 1993, Labor Arbiter Arthur L. Amansec rendered judgment declaring Acedillo's dismissal to be illegal, finding him to be a member of the regular work pool, and ordering petitioner to pay him a total of P71,906.00 representing backwages, 13th month pay, separation pay in lieu of reinstatement, service incentive leave pay and underpayment of wages.

On appeal, the NLRC affirmed Labor Arbiter Amansec's decision after making the following observations:

"While respondent (herein petitioner) strongly maintains that complainant (Acedillo) was not a regular worker, however, the nature of his job as a helper and the length of service that he had been with respondent are clear proof(s) that he was a regular employee. For what determines whether a certain employment is regular or casual is not the will and word of the employer, to which the desperate worker often accedes, much less the procedure of hiring the employee or the manner of paying (sic) his salary. It is the nature of the activities performed in relation to the particular business or trade (of the employer) considering all circumstances, and in some cases the length of time of its performance and its continued existence.[1] x x x Suffice it to state that respondent's contention to show that he (Acedillo) was (a) regular employee will not prosper because in the absence of any proof that he was hired on a project or contractual basis, the valid presumption is that the employment is regular.

Likewise, respondent's allegation that since complainant was not a regular employee, he was not entitled to any of his monetary claims must fail. Respondent must be reminded that payment of these benefits in accordance with law does not depend on whether the worker is a regular, casual or project worker. It is bound to comply

with the basic requirement of (labor standards) law on payment of (wages and other benefits) and proof of payment or non-payment thereof rests on the respondent. It must be so because where the issue is the payment of labor standards benefits, burden of proof is on the employer, not on the employees because the latter are neither required nor expected to keep records of payment or non-payment of benefits granted to them by law."

Its motion for reconsideration of the said decision having been rejected by the NLRC, petitioner filed the instant petition arguing that the NLRC committed grave abuse of discretion in ruling that Acedillo was a permanent worker and in affirming the labor arbiter's grant of monetary benefits to him.

It is immediately apparent that the issues raised in the instant petition are factual, dealing as they do with the appreciation of evidence by the Labor Arbiter and the NLRC. On this sole ground, the petition may justifiably be dismissed. However, a closer examination of the records and of the papers and pleadings filed doubly convinces the Court of the futility of this action.

Petitioner is to be reminded that a project employee is one whose "employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season." [2] The records reveal that petitioner did not specify the duration and scope of the undertaking at the time Acedillo's services were contracted. Petitioner could have easily presented an employment contract showing that he was engaged only for a specific project, but it failed to do so. It is not even clear if Acedillo ever signed an employment contract with petitioner. Neither is there any proof that the duration of his assignment was made clear to him other than the self-serving assertion of petitioner that the same can be inferred from the tasks he was made to perform.

What is clear is that Acedillo's work as a helper-electrician was an activity "necessary or desirable in the usual business or trade" [3] of petitioner, since refrigeration requires considerable electrical work. This necessity is further bolstered by the fact that petitioner would hire him anew after the completion of each project, a practice which persisted throughout the duration of his tenure.

The petitioner admits that it maintains two sets of workers, viz., those who are permanently employed and get paid regardless of the availability of work and those who are hired on a project basis. [4] This practice of keeping a work pool further renders untenable petitioner's position that Acedillo is not a regular employee. As we held in the case of *Philippine National Construction Corporation v. NLRC*, [5]

"Members of a work pool from which a construction company draws its project employees, if considered employees of the construction company while in the work pool, are non-project employees or employees for an indefinite period. If they are employed in a particular project, the completion of the project or any phase thereof will not mean severance of (the) employer-employee relationship." (Italics supplied)

WHEREFORE, in view of the foregoing, the instant petition for certiorari is DISMISSED. Costs against petitioner.

SO ORDERED.

Regalado, (Chairman), Puno, Mendoza, and Torres, Jr., JJ., concur.

[1] Citing *De Leon v. NLRC*, 176 SCRA 615 (1989).

[2] Article 280, Labor Code of the Philippines, as amended.

[3] *Ibid.*

[4] Rollo, p. 27.

[5] 174 SCRA 191 (1989), citing Policy Instruction No. 30.

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