

RIZALINO P. UY, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION), FELIPE O. MAGBANUA, CARLOS DELA CRUZ, REMY ARNAIZ, BILLY ARNAIZ, ROLLY ARNAIZ, DOMINGO SAL...

G.R. No. 117983. September 06, 1996

Ponente: PUNO, J.

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PUNO, J.:

Petitioner Fizalino P. Uy files this petition for certiorari and prohibition to annul and set aside the Decision and Resolution of the National Labor Relations Commission in NLRC Case No. V-0427-93 finding him liable for illegal dismissal and ordering him to pay private respondents back wages, separation pay and wage differentials.

Private respondents Felipe O. Magbanua, Carlos dela Cruz, Remy Arnaiz, Billy Arnaiz, Rolly Arnaiz, Domingo Salarda, Julio Cahilig and Nicanor Labuen were employees of petitioner, a private contractor engaged principally in the construction business. On September 27, 1990, private respondents filed separate complaints against petitioner before Sub-Regional Arbitration Branch No. VI, Iloilo City, Department of Labor and Employment for illegal dismissal, payment of back wages, overtime pay, separation pay, 13th-month pay, service incentive leave pay, holiday pay, premium pay and damages.[1]

Felipe Magbanua alleged that he was employed by petitioner as mason from 1982 to June 1990 with an initial daily wage of P18.00 which was increased to P60.00 at the time of his dismissal. Carlos dela Cruz alleged that he was employed as laborer from 1982 to March 1990 with a fixed daily wage of P40.00. Remy Arnaiz claimed that he was employed as mason from 1980 to August 1990 with an initial daily wage of P20.00 which was increased to P70.00 at the time of his dismissal. Billy Arnaiz alleged that he was employed as a laborer from 1985 to August 1990 with a daily wage of P45.00. Rolly Arnaiz claimed that he was employed as a laborer from 1983 to 1987 and from 1989 to August 1990 with an initial daily wage of P17.00 which was increased to P45.00. Domingo Salarda alleged that he was employed as laborer from 1982 to December 1989 with a fixed daily wage of P40.00. Julio Cahilig alleged that he was employed as mason from 1987 to August 1990 with an initial daily wage of P40.00 which was increased to P70.00. Nicanor Labuen alleged that he was employed as a carpenter from 1979 to 1989 with an initial daily wage of P25.00 and increased to P60.00 at the time of his dismissal.[2]

Private respondents alleged in common that during their employment with petitioner, they rendered services in petitioner's construction projects and in his other businesses such as gasoline station, lumber and equipment yards; that their working hours were from 7:00 A.M. to 5:00 P.M. with a one to two-hour noon break for six days a week, from Monday to Saturday; that they worked during holidays but were paid only their daily wages; and that after their dismissal, petitioner hired new workers at wages lower than what they were receiving at the time they were dismissed.[3]

In his answer, petitioner denied having businesses other than his construction company. He alleged that private respondents were project employees; that they were hired by his foremen who paid them on a "pakyaw" or daily

wage basis in a construction project; that after completion of a project, private respondents were free to find other jobs and engage in other sources of livelihood; that in fact, Felipe Magbanua and Nicanor Labuen were farmers who worked for petitioner only after the harvest season, Carlos dela Cruz worked for another businessman and was hired by petitioner only once in 1985, Remy Arnaiz worked for the National Irrigation Administration, Billy and Rolly Arnaiz were fishermen and Rolly was sometimes employed by the Department of Public Works and Highways, Domingo Salarda was a tricycle driver who also worked in a farm, and Julio Cahilig was a carpenter who worked for petitioner whenever his services were not contracted by other persons.[4]

On August 23, 1993, the labor arbiter[5] dismissed the complaints for lack of merit declaring that private respondents were project employees of petitioner.

In a decision dated May 31, 1994, the National Labor Relations Commission[6] reversed the labor arbiter after finding private respondents to be regular, not project, employees of petitioner, thus:

"WHEREFORE, judgment is hereby rendered reversing and setting aside the aforementioned decision dated August 23, 1993 of Labor Arbiter Dennis D. Juanon and ordering that:

1. The respondent-appellee shall pay to the complainant-appellants backwages to be computed from the date or dates of their illegal dismissal from the service up to the finality of this decision less earnings elsewhere, if any, during the aforesaid period. The Labor Arbiter shall make the computation of the backwages to be paid to the complainant-appellants in accordance with this order and for this purpose the Arbiter is directed to ascertain through proper evidence and appropriate proceedings the specific dates of termination of employment of the complainant-appellants and to apply the salary rates indicated in the foregoing discussions in computing the backwages to which the herein complainant-appellants are entitled.

2. The respondent-appellee shall pay to the complainant-appellants their claims for separation pay at the rate of one month for every year of service. The Labor Arbiter is hereby directed to make the computation of the amounts of separation pay that should be paid to complainant-appellants particularly based on the salary rates that they were supposed to receive at the time of their dismissal from the service in accordance with the statutory minimum wage, as indicated in the foregoing discussions on this subject.

3. The respondent-appellee shall pay to the complainant-appellants the following salary differentials:

Name Amount

1. Felipe O. Magbanua P 31,320.00
2. Carlos de la Cruz 53,920.00
3. Remy Arnaiz 20,520.00
4. Billy Arnaiz 47,520.00
5. Rolly Arnaiz 47,520.00
6. Domingo Salarda 52,920.00
7. Julio Cahilig 20,520.00
8. Nicanor Labuen 31,320.00
- Total P 304,560.00

4. The claims for overtime pay, 13th-month pay, holiday pay, rest-day pay, and for moral and exemplary damages of complainant-appellants are hereby DISMISSED for lack of merit.

SO ORDERED.[7]

Petitioner filed a Motion for Reconsideration. In addition, he filed a "Manifestation and Motion to Admit and Consider Evidence" praying for the admission of additional evidence consisting of typical construction contracts between his firm and government agencies.[8] The Motion and Manifestation were denied by respondent

Commission on November 8, 1994.[9] Hence this recourse.

Petitioner asserts that:

(1)

THE HONORABLE COMMISSION GRAVELY ABUSED ITS DISCRETION IN DISREGARDING THE FACT THAT PETITIONER IS A MODEST GENERAL CONTRACTOR CATERING TO SMALL AND MEDIUM-SCALE GOVERNMENT CONTRACTS FOR PUBLIC WORKS WITH SHORT-TERM PERIODS FOR COMPLETION.

(2)

THE HONORABLE COMMISSION GRAVELY ABUSED ITS DISCRETION IN HOLDING THAT PRIVATE RESPONDENTS HEREIN ARE REGULAR EMPLOYEES. DESPITE THEIR ADMISSIONS AND CORROBORATING EVIDENCE ON RECORD THAT THEY WORKED ON PROJECTS.

(3)

THE HONORABLE COMMISSION GRAVELY ABUSED ITS DISCRETION IN RULING THAT PRIVATE RESPONDENTS BELONGED TO A "WORK POOL" DESPITE THE UNCONTROVERTED EVIDENCE THAT EACH HAD A REGULAR SOURCE OF LIVELIHOOD, AND THAT THEY WERE FREE TO SEEK EMPLOYMENT ELSEWHERE BETWEEN PROJECTS.

(4)

THE HONORABLE COMMISSION GRAVELY ABUSED ITS DISCRETION IN DISREGARDING THE UNCONTROVERTED EVIDENCE THAT PETITIONER HAS NO OTHER BUSINESS ESTABLISHMENT WHERE PRIVATE RESPONDENTS COULD HAVE WORKED BETWEEN PROJECTS.

(5)

THE HONORABLE COMMISSION GRAVELY ABUSED ITS DISCRETION IN HOLDING THAT PRIVATE RESPONDENTS HAVE BECOME REGULAR EMPLOYEES BY YEARS OF WORK, CONTRARY TO THE RULING IN *MERCADO V. NLRC*, 201 SCRA 332 [1991] AND *AL U-TUCP V NLRC*, G.R. NO. 109902, AUGUST 02, 1994.

(6)

THE HONORABLE COMMISSION GRAVELY ABUSED ITS DISCRETION AND DENIED PETITIONER DUE PROCESS IN REFUSING TO ADMIT AND CONSIDER THE ADDITIONAL EVIDENCE OF PETITIONER, CONTRARY TO THE RULING IN *NEW VALLEY TIMES V NLRC*, 211 SCRA 509 [1992].

(7)

THE HONORABLE COMMISSION GRAVELY ABUSED ITS DISCRETION IN ARBITRARILY AND CAPRICIOUSLY AWARDING WAGE DIFFERENTIALS UNIFORMLY TO ALL PRIVATE RESPONDENTS FOR THREE (3) FULL YEARS FROM 1988-1990, THEREBY ERRONEOUSLY APPLYING THE PRESCRIPTIVE PERIOD IN ARTICLE 291 OF THE LABOR CODE, DISREGARDING THE EVIDENCE, PER THE STATEMENTS OF PRIVATE RESPONDENTS THEMSELVES, THAT THEY HAD DIFFERENT PERIODS OF EMPLOYMENT, AND DISREGARDING THE APPLICABLE WAGE RATES FOR THE PERIODS COVERED BY THE CLAIMS."[10]

Petitioner argues that private respondents were project employees and as such they were validly terminated upon completion of the construction project for which they were hired.[11]

In dismissal cases, the burden of proving that the dismissal was for a valid or authorized cause rests on the employer and his failure to do so results in a finding that the dismissal was unjustified.[12]

Petitioner has failed to discharge this burden.

Article 280 of the Labor Code defines "project employees" as:

"Art. 280. Regular and Casual Employment. - The provisions of written agreements 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 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.[13]

Project employees are those workers hired (1) for a specific project or undertaking; and (2) the completion or termination of which project or undertaking has been determined at the time of engagement of the employee.

Petitioner has not shown that private respondents were hired for a specific project the duration of which had been determined at the time of hiring. In fact, petitioner has not identified the specific project or undertaking or any phase thereof for which private respondents were hired.[14] He failed to submit any document such as private respondents employment contracts and employment records that would show the dates of hiring and termination in relation to the particular construction project or the phases in which they were employed.[15] More importantly, petitioner has not presented the termination reports required to be submitted to the Department of Labor and Employment Regional Office every time his employees' services were terminated upon completion of a project.[16]

The claim that private respondents were paid on a "pakyaw" basis and that between projects they worked for, or were at least free to offer their services to other employers, has not been sufficiently substantiated. The affidavit of petitioner and two of his foremen are self-serving.[17] The construction contracts between petitioner and government agencies are insufficient. These additional evidence were correctly disregarded by respondent Commission for having been filed belatedly.

Even assuming that the contracts were admitted, they, at best, prove that petitioner was engaged in construction projects in the province of Antique and Region VI,[18] and that his firm is capable of undertaking several major construction projects simultaneously[19] contrary to petitioner's claims of being a modest provincial contractor. In two of these contracts, petitioner is referred to as "Rizalino P. Uy General Merchant." [20] This description ironically supports private respondents' allegation that aside from his construction firm, petitioner was also engaged as in other businesses to which he assigned private respondents in-between projects.

Private respondents' allegations therefore remain unrebutted. All eight (8) of them worked for petitioner continuously without having been laid off for several years -the minimum being three (3) years in the case of Cahilig and the maximum being ten (10) years in the cases of Remy Arnaiz and Nicanor Labuen. Their jobs were continuous and on-going such that when a project to which they were individually assigned was completed, they were reassigned to the other businesses of petitioner or to the next project, if any. In short, they were employed by petitioner without reference to any particular construction project and belonged to a work pool from which petitioner, in his discretion, drew workers for assignment to his various projects and businesses.

Policy Instructions No. 20 is the regulation that governed employer-employee relations in the construction industry at the time this case arose. It provides:

"Members of a work pool from which a construction company draws its project employees are non-project employees if considered employees of the construction company while in the work pool, for an indefinite period. If they are employed in a particular project, the completion of the project or of any phase thereof will

not mean severance of employer-employee relationship."

Clearly, private respondents were non-project employees. As mason, carpenter and laborer, they performed work necessary and desirable in the usual business of petitioner, and are thus deemed regular employees.[21] They were, however, dismissed without just cause and without proper notice and hearing. Their dismissal was illegal for which reason the respondent Commission correctly awarded them back wages and separation pay.

However, we cannot sustain the amount of P304,560.00 as salary differential for 1988-1990. The complaints were filed on September 27, 1990 and under Article 291 of the Labor Code, money claims arising from an employer-employee relationship must be filed within three years from the time the cause of action accrued.[22] Wage differentials can only be recovered from September 27, 1987, i.e., three years before September 27, 1990, until the date of dismissal. Moreover, in computing wage differentials, the actual minimum wage rate then prevailing should be used as basis, in the absence of proof of the amount of wages received during said period.[23] The difference between the minimum wage and the actual wage received must be multiplied by 26, not 30 days as the respondent Commission erroneously computed. Private respondents alleged that they worked for 6 days a week, hence, 26 days a month.

IN VIEW WHEREOF, the decision of the National Labor Relations Commission in NLRC Case No. V-0427-93 is affirmed with modification. The Labor Arbiter is ordered to compute private respondents' wage differentials in accordance with the minimum daily wage from 1987 to 1990 as discussed above.

SO ORDERED.

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

[1] RAB Cases No. VI-06-0950394 to 06-09-50400-90.

[2] Records, pp.1-17.

[3] Records, pp.33-46, 54-61, 71-73, 78-80.

[4] Records, pp.30-32, 50-53.

[5] Labor Arbiter Dennis D. Juanan.

[6] Fourth Division.

[7] NLRC Decision, pp.53-55, Rollo, pp.246-248.

[8] Records, pp.307-359.

[9] Rollo, pp.59-60.

[10] Petition, pp.11-12, Rollo, pp.12-13; Underscoring as copied.

[11] Petition, p.13; Rollo, p.14.

[12] Labor Code, Article 277 (b); *Golden Donuts, Inc. v. National Labor Relations Commission*, 230 SCRA 153 [1994]; *Reyes & Lim Co., Inc. v. National Labor Relations Commission*, 201 SCRA 772, 775 [1991]

[13] Underscoring supplied.

[14] *ALU-TUCP v. National Labor Relations Commission*, 234 SCRA 678, 685 [1994]; *Fernandez v. National Labor Relations Commission*, 230 SCRA 460 [1994].

[15] cf. *Fernandez v. National Labor Relations Commission*, supra, at 465; *Philippine National Oil Co.- Energy Dev. Corp. v. National Labor Relations Commission*, 220 SCRA 695, 699-701 [1993]; *Rada v. National Labor Relations Commission*, 205 SCRA 69, 81 [1992].

[16] Policy Instructions No. 20; *Phesco, Inc. v. National Labor Relations Commission*, 239 SCRA 446, 450 [1994]; *Caramol v. National Labor Relations Commission*, 225 SCRA 582, 588-589 [1993].

[17] Annexes "A", "B", and "C to Position Paper of Rizalino Uy before the Labor Arbiter, Records, pp.30-32.

[18] Annex "L" to Manifestation, Records, p.354.

[19] Annexes "J", "L", and "K" to Manifestation, Records, pp. 347-356, Rollo, pp. 161-170.

1) Annex "J" - Executed on May 23, 1989, the contract amount is P525,709.93 for the construction of a river control for 180 days.

2) Annex "L" - Executed on July 5, 1989, the contract amount is P2,134,470.30 for the construction of a bridge for 210 days.

3) Annex "K" - Executed on July 7, 1989, the contract amount is P989,415.90 for the construction of an additional hospital ward for 240 days.

Petitioner has failed to dispute private respondent's claim that these projects took place simultaneously.

[20] Annexes "K" and "M" to Manifestation, Records, pp.350, 357, Rollo, pp.164, 171.

[21] Labor Code, Article 280, 1st sentence.

[22] *Central Negros Electric Cooperative, Inc. v. National Labor Relations Commission*, 236 SCRA 108 [1994].

[23] The complaints were filed on September 27, 1990 and the minimum daily wage at that time was 54.00 which was increased to P64.00 on December 14, 1987 (R.A. 6640) and later increased to P89.00 on July 1, 1989 (R.A. 6727).

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