

PHILEX MINING CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, ROSELLA AUSTRIA, LINA TAMONDONG, CORNELIO BORJA, JR. AND GERALD DELA CRUZ, RESPONDENTS.

G.R. No. 125132. August 10, 1999

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Before us is a petition for certiorari under Rule 65 of the Rules of Court seeking to annul the Decision dated May 31, 1995 and the Resolution dated February 21, 1996, both issued by the National Labor Relations Commission in NLRC Cases No. 01-11-0707-90. The questioned decision reversed the Decision dated November 21, 1991 of the Labor Arbiter, and directed the reinstatement of private respondents upon the finding that they had been illegally dismissed by petitioner Philex Mining Corporation.

The facts of the case are as follows:

Private respondents Rosella Austria and Lina Tamondong, both licensed chemical engineers, alleged that they undertook training at the Assay/Metallurgical Department of Philex Mining Corporation from October 1987 to March 1988. After completing their training, both Austria and Tamondong were supposedly hired by petitioner in June 1988 as Geochemical Aides, performing the regular duties of the Atomic Absorption Spectrometer (AAS) technicians. Private respondents Cornelio Borja, an Electrical Technician graduate, and Gerald dela Cruz, a licensed Mechanical Engineer, on the other hand, claimed that they were hired by petitioner on January 24 and 25, 1989, respectively. Borja and dela Cruz were assigned to work in petitioner's Metallurgical Department.

Each of the private respondents subsequently signed a "Contract of Temporary Employment" with petitioner. The contracts were all dated April 15, 1989 and contained similar provisions, to wit:

In connection with the special project of the Metallurgical Department on Geochemical Analysis, we confirm your temporary employment for a period of one (1) year, effective April 16, 1989 up to April 16, 1990 unless sooner terminated for cause.

The terms and conditions of your employment are as follows:

x x x

4. As a temporary employee, you are not entitled to the benefits being granted to members of the regular work force;

5. It has been made understood that you have engaged to work in an exploration project, which has specific completion date, and further understand that the same is not part of the regular mining activity of the Company. As such, your employment will be terminated at the expiration date stated above without the need of further notice.

If you are agreeable with the terms and conditions set forth above, please signify your conformity by affixing

your signature on the space provided below.[1]

The contract likewise defined the nature of private respondents' respective functions. Austria and Tamondong were designated "Geochemical Aides" tasked "to assist the Geochemist in the analyses of soil samples by micro-pipetting, extractions with MIBK, preparation of solutions, etc. for presentation to AAS measurement" and to "prepare reports of analyses." Borja and dela Cruz' designation was that of "utility" men whose functions were "to assist the Geochemist in the analyses of samples particularly on weighing, acid digestion & filtration of samples," and in "washing & drying of Lab glasswares [sic]."

On June 27, 1989, private respondents were informed that they would not be allowed to work anymore, prompting their institution of separate complaints for illegal dismissal against petitioner before the Labor Arbiter.

On November 21, 1991, Labor Arbiter Irenarco R. Rimando rendered his decision dismissing private respondents' complaints. The Labor Arbiter ruled that private respondents were merely contractual employees and the termination of their services was but a result of the expiration of their contracts of employment.

On appeal, the National Labor Relations Commission (NLRC) reversed the decision of the Labor Arbiter. The NLRC declared the contracts between petitioner and private respondents void for being violative of the provisions of Article 280[2] of the Labor Code. The NLRC likewise found that private respondents were performing jobs usually necessary or desirable in the usual business or trade of the employer, and therefore deemed to be regular employees. The dispositive portion of the decision of the NLRC reads:

WHEREFORE, premises considered, the appealed decision is hereby reversed in so far as the termination of Complainants is concerned, and respondents are hereby ordered to reinstate Complainants to their former positions with salaries presently give [sic] to said positions, without loss of seniority rights, with full backwages from the time of dismissal up to the time of actual reinstatement, less earnings elsewhere.

All other claims of complainants are hereby DENIED for lack of merit.

SO ORDERED.[3]

Its motion for reconsideration having been denied, petitioner is now before this Court seeking the annulment of the decision of the NLRC.

Two issues are presented before this Court: (1) the validity of the "Contract of Temporary Employment," and (2) the status of private respondents' employment.

Petitioner contends that private respondents are not regular, but project, employees. In 1989, petitioner allegedly embarked on a large-scale mining exploration throughout the country. Thousands of ore samples were brought in from potential mining sites to petitioner's laboratory for analysis. The lack of regular personnel in petitioner's laboratory necessitated the hiring of private respondents during this exploration phase.

The employment status of private respondents as project employees is, according to petitioner, apparent in the "Contracts of Temporary Employment." Petitioner points out that said contract, at the outset, makes express reference to "the special project of the Metallurgical Department of Geochemical Analysis." That the contracts stipulate a specific period of employment and that private respondents were allowed to work beyond said period did not convert private respondents' status to regular employees. Petitioner argues that the controlling factor in determining the term of private respondents' employment is the duration of the project itself, not the period stipulated in the contract. Thus, upon the completion of the geochemical analysis activities in conjunction with the exploration phase, private respondents' services were terminated.

Petitioner further submits that contrary to the NLRC's opinion, the above contracts are not void. In support of this

contention, petitioner invokes the case of *Brent School vs. Zamora*[4] where this Court upheld the validity of the contract between petitioner school and private respondent, a teacher in said school, fixing the latter's period of employment. This Court laid down the following criteria for judging the validity of such contracts:

Accordingly, and since the entire purpose behind the development of legislation culminating in the present Article 280 of the Labor Code clearly appears to have been, as already observed, to prevent circumvention of the employee's right to be secure in his tenure, the clause in said article indiscriminately and completely ruling out all written or oral agreements conflicting with the concept of regular employment as defined therein should be construed to refer to the substantive evil that the Code itself has singled out: agreements entered into precisely to circumvent security of tenure. It should have no application to instances where a fixed period of employment was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter. Unless thus limited in its purview, the law would be made to apply to purposes other than those explicitly stated by its framers; it thus becomes pointless and arbitrary, unjust in its effects and apt to lead to absurd and unintended consequences.

Expounding on the *Brent* ruling, the Court, in *Pakistan International Airlines vs. Ople*,[5] held:

xxx. It is apparent from *Brent School* that the critical consideration is the presence or absence of a substantial indication that the period specified in an employment agreement was designed to circumvent the security of tenure of regular employees which is provided for in Articles 280 and 281 of the Labor Code. This indication must ordinarily rest upon some aspect of the agreement other than the mere specification of a fixed term of the employment agreement, or upon evidence aliunde of the intent to evade.

Thus, the Court, in *Cielo vs. NLRC*,[6] did not hesitate to invalidate employment contracts stipulating a fixed term after finding that "the purpose behind these individual contracts was to evade the application of the labor laws." In this case, petitioner's intent to evade the application of Article 280 of the Labor Code is evident.

Private respondents allege that they were actually hired before the date reflected in the contracts, i.e., April 16, 1989. *Borja* and *de la Cruz* claim that they were hired on January 1989. *Austria* and *Tamondong*, on the other hand were supposedly hired on June 1988, after undergoing training at petitioner's assay department. To prove such claim, private respondent *Austria* presented before the Labor Arbiter Cash Vouchers[7] representing receipt of wages and allowances from June 16, 1988 to April 10, 1989 from *Philex Mining*. Similarly, private respondent *Tamondong* offered in evidence Cash Vouchers[8] for her wages and allowances for the period beginning June 30, 1988 to April 10, 1989.

Petitioner, however, brushes off these allegations by stating that private respondents were hired on April 16, 1989. In the alternative, petitioner contends that:

Assuming *arguendo* that Private Respondents worked for a short period of time for the Petitioner prior to the signing of the Contract of Temporary Employment they subsequently entered into with the Company, still this does not in any way affect the binding effect of the terms or conditions of the Contracts of Temporary Employment they subsequently entered into with the Company, in particular the duration of their employment, i.e., fixed-term employment: In effect, private respondents voluntarily agreed to enter into a new employment status with petitioner, i.e., as a fixed term employee. Accordingly, their employment with petitioner prior to the signing of the Contracts of Temporary Employment, if any, is irrelevant.[9]

However, petitioner's failure to refute private respondents' evidence or even categorically deny private respondents' allegations leads us to no other conclusion than that private respondents were indeed hired before April 16, 1989.

The actual date of the hiring of private respondent is significant in the light of the collective bargaining agreement (CBA) between petitioner and its other employees. It is not disputed that said CBA fixes the probationary period of Geochemical Aides at six (6) months, while that of Utility Men, at three (3) months. This means that, as the Solicitor General correctly observes:

x x x at the time private respondents Tamondong and Austria were made to sign the subject contracts, they had already attained the status of regular employees, having been allowed to work by petitioner beyond the probationary period of six (6) months. Private respondents Borja and Dela Cruz, on the other hand, were just nine (9) days short of completing their probationary period of three (3) months when they were made to sign said contracts by petitioner.[10]

Petitioner's timing is indeed suspicious. The signing of the contracts at a time when private respondents had already attained, in the case of Austria and Tamondong, or were about to attain, in the case of Borja and de la Cruz, regular employment status under the CBA is an indication of petitioner's illegal intent. The contracts appear to be a subterfuge, having been foisted upon private respondents to circumvent their right to be secure in their tenure.

The fact that private respondents were made to sign such agreement after they were hired is not as "absurd" as the Labor Arbiter thought. In finding that petitioners were hired on April 16, 1989, the Labor Arbiter held that:

x x x It also sounds ridiculous for a company to hire a person first then require him to sign his contract of employment later. The hiring of employees verbally may seem possible for small establishments. But it is rather improbable for the Philex Mining Corporation, a company with vast operations, with its own personnel office, would also hire employees without any written employment contracts.[11]

As even a cursory study of jurisprudence would show, companies "with vast operations" are not immune from the temptation of circumventing labor laws for the sake of profit.

Petitioner's contention that private respondents are project employees likewise lacks merit. Project employees are those workers hired (1) for a specific project or undertaking, and (2) the completion or termination of such project has been determined at the time of the engagement of the employee.[12] The principal test for determining whether particular employees 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.[13] In this case, petitioner has not shown that private respondents were informed that they were to be assigned to a "specific project or undertaking." Neither has it been established that they were informed of the duration and scope of such project or undertaking at the time of their engagement, that is, on June 1988 on the part of Austria and Tamondong, and on January 1989 in the case of Borja and de la Cruz. Private respondents were informed thereof only much later on April 1989. We likewise agree with the Solicitor General when he notes that:

x x x while the subject contracts purport to be for a specific project or undertaking only, the record is bereft of evidence as to what this specific project or undertaking actually is. Neither is there any evidence that such project or undertaking had already been completed or terminated as could possibly justify the dismissal of private respondents in accordance with said contracts. x x x.[14]

Accordingly, we find private respondents to be regular employees of petitioner. Private respondents' functions as described above are no doubt "usually necessary or desirable in the usual business or trade" of petitioner-mining company. Consequently, the NLRC should not have denied private respondents' claim to rights and benefits attached to such status pursuant to petitioner's collective bargaining agreement.

WHEREFORE, the petition is hereby dismissed. The decision of the National Labor Relations Commission is

AFFIRMED WITH MODIFICATIONS. Petitioner is ordered to pay private respondents the difference between the actual basic wages and benefits paid to private respondents and those paid to its regular employees from the time said respondents attained regular employment status under the CBA.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

[1] Rollo, pp. 66-69.

[2]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 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.

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.

[3]Rollo, pp. 44-45.

[4] 181 SCRA 702 (1990).

[5] 190 SCRA 90 (1990).

[6] 193 SCRA 410 (1991).

[7] Annexes "B" to "B-18." Records, pp. 110-128.

[8] Annexes "A" to "A-20." Records, pp. 45-65.

[9] Rollo, p. 158. Underscoring in the original.

[10] Id., at 121-122.

[11] Id., at 58-59.

[12] Violeta vs. NLRC, 280 SCRA 520 (1997).

[13] Id.

[14] Rollo, p. 123.

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