

**NOELITO FABELA, MARCELO DELA CRUZ III, ROGELIO LASAT,
HENRY MALIWANAG, MANUEL DELOS SANTOS, AND ROMMEL
QUINES, PETITIONERS, VS. SAN MIGUEL CORPORATION AND ARMAN
HICARTE, RESPOND...**

G.R. NO. 150658. February 09, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On review is the July 30, 2001 Decision of the Court of Appeals reversing the ruling of the National Labor Relations Commission (NLRC) and the Labor Arbiter finding petitioners to have been illegally dismissed.

Petitioners, along with Joselito de Lara and John Alovera, were hired by respondent San Miguel Corporation (SMC) as "Relief Salesmen" for the Greater Manila Area (GMA) under separate but almost similarly worded "Contracts of Employment With Fixed Period." After having entered into successive contracts of the same nature with SMC, the services of petitioners, as well as de Lara and Alovera, were terminated after SMC no longer agreed to forge another contract with them.

The dates of hiring of petitioners, et al. and the termination of their employment are set forth below:[1]

NAME

DATE HIRED

DATE OF TERMINATION OF EMPLOYMENT

NOELITO FABELA MAY, 1992 AUGUST, 1996

ROGELIO LASAT AUGUST, 1995 SEPTEMBER, 1997

HENRY MALIWANAG MAY, 1995 SEPTEMBER, 1997

JOSELITO DE LARA MAY, 1994 JULY 30, 1997

ROMMEL QUINES OCTOBER, 1994 SEPTEMBER, 1997

MARCELO DELA CRUZ DECEMBER, 1991 MAY, 1997

JOHN ALOVERA JUNE, 1992 MAY, 1997

Respondent SMC and its co-respondent Arman Hicarte, who was its Human Resources Manager, claimed that the hiring of petitioners was not intended to be permanent, as the same was merely occasioned by the need to fill in a vacuum arising from SMC's gradual transition to a new system of selling and delivering its products.

Respondents explained that SMC previously operated under the "Route System,"[2] but began implementing in 1993 the "Pre-Selling System"[3] in which the salesmen under the earlier system would be replaced by Accounts Specialists which called for upgraded qualifications.[4]

In support of their claim, respondents presented the affidavit of Mariano N. Lopez, Assistant Vice President and Area Sales Manager for the GMA Sales Operations of San Miguel Brewing Philippines.[5]

While some of the qualified regular salesmen were readily upgraded to the position of Accounts Specialist, respondents claimed that SMC still had to sell its beer products using the conventional routing system during the transition stage, thus giving rise to the need for temporary employees; and the members of the regular Route Crew then existing were required to undergo a training program to determine whether they possessed or could be trained for the necessary attitude and aptitude required of an Accounts Specialist, hence, the hiring of petitioners and others for a fixed period, co-terminus with the completion of the transition period and Training Program for all prospective Accounts Specialists.[6]

Claiming that they were illegally dismissed, petitioners, as well as de Lara and Alovera, filed separate complaints for illegal dismissal against respondents. The complaints were consolidated.

By Decision dated September 23, 1998, Labor Arbiter Manuel P. Asuncion held that except for de Lara and Alovera, the complainants-herein petitioners were illegally dismissed. Thus the decision disposed:

IN LIGHT OF THE FOREGOING CONSIDERATIONS, the respondents are hereby ordered to reinstate Marcelo Dela Cruz, Norlito Fabela, Henry Maliwanag, Rogelio Lasat, Manuel Delos Santos and Rommel Quines to their former positions with full backwages from the time their salaries were withheld until they are actually reinstated. As of this date, their backwages has reached the sum of P562,336.64. (See attached computation). The complaints of Jun Alovera and Joselito De Lara must be dismissed for lack of merit.

SO ORDERED.

The Decision of the Labor Arbiter was affirmed on appeal by the NLRC, by Resolution of April 28, 2000. Respondents' Motion for Reconsideration was denied, hence, they filed a Petition for Certiorari with the Court of Appeals before which they contended that herein petitioners were validly hired for a fixed period which was not renewed, hence, the termination of their services was valid.

By Decision of July 30, 2001,[7] the Court of Appeals granted respondents' petition and accordingly reversed the decision of the Labor Arbiter and of the NLRC. The appellate court accordingly dismissed petitioners' complaints. In granting respondents' petition, the appellate court ratiocinated:

At bar, there is not any least indication that the employment contract was not knowingly and voluntarily agreed upon between the parties nary any force or improper pressure upon the employee nor any circumstances vitiating his consent. Neither is there any indication or signal of improper pressure in the execution of the contract nor that the employer and the employee did not deal with each other on equal terms absent any moral dominance by the employer upon the employee. Finally, at the time the contracts were entered into, the parties were pretty aware of the day certain which must necessarily come although still unknown when at which time the contract will self- expire.[8] (Underscoring supplied)

Their motion for reconsideration having been denied by the Court of Appeals by Resolution of October 29, 2001, petitioners filed the present petition.

The validity of the termination of petitioners' services depends on whether they were hired for a fixed period, as claimed by respondents, or as regular employees who may not be dismissed except for just or authorized causes.

Article 280 of the Labor Code defines regular employment as follows:

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 actually exists. (Emphasis, italics and underscoring supplied)

In *Pure Foods Corp. v. NLRC*,^[9] this Court held that under the above-quoted provision, there are two kinds of regular employees, namely: (1) those who are engaged to perform activities which are necessary or desirable in the usual business or trade of the employer, and (2) those casual employees who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed.

Article 280 also recognizes project employees, those whose "employment has been fixed for a specific project or undertaking." (Underscoring supplied)

Project employment is distinct from casual employment referred to in the second paragraph of Article 280 for, as clarified in *Mercado, Sr. v. NLRC*,^[10] the proviso that "any employee who has rendered at least one year of service . . . shall be considered a regular employee" does not apply to project employees, but only to casual employees.

Although Article 280 does not expressly recognize employment for a fixed period, which is distinct from employment which has been fixed for a specific project or undertaking, *Brent School, Inc. v. Zamora*^[11] has clarified that employment for a fixed period is not in itself illegal, viz:

There can of course be no quarrel with the proposition that where from the circumstances it is apparent that periods have been imposed to preclude acquisition of tenurial security by the employee, they should be struck down or disregarded as contrary to public policy, morals, etc. But where no such intent to circumvent the law is shown, or stated otherwise, where the reason for the law does not exist, e.g., where it is indeed the employee himself who insists upon a period or where the nature of the engagement is such that, without being seasonal or for a specific project, a definite date of termination is a *sine qua non*, would an agreement fixing a period essentially evil or illicit, therefore anathema? Would such an agreement come within the scope of Article 280 which admittedly was enacted "to prevent the circumvention of the right of the employee to be secured in x x (his) employment?"

x x x x

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. x x x (Emphasis and underscoring supplied)

Thus, even if the duties of an employee consist of activities usually necessary or desirable in the usual business of the employer, it does not necessarily follow that the parties are forbidden from agreeing on a period of time for the performance of such activities through a contract of employment for a fixed term.[12]

Respondents, without disputing that the duties of petitioners consisted of activities necessary or desirable in its usual business or trade, claim that the contracts of employment entered into by respondent SMC with the herein petitioners are valid fixed-term contracts under the Brent doctrine.

Albeit the Court of Appeals ruled in respondents' favor on the basis of a finding that petitioners were validly hired as project employees,[13] respondents deny that petitioners were project employees, asserting that they were hired only as fixed-term employees.[14]

Since respondents attribute the termination of petitioners' employment to the expiration of their respective contracts, a determination of whether petitioners were hired as project or seasonal employees, or as fixed-term employees without any force, duress or improper pressure having been exerted against them is in order. If petitioners fall under any of these categories, then indeed their termination follows from the expiration of their contracts.

Since, as earlier stated, respondents themselves deny that petitioners were project employees, and they do not allege that they were seasonal employees, what remains for determination is whether petitioners were fixed-term employees under the Brent doctrine.

As the resolution of this issue necessarily involves a calibration of respondents' evidence, the factual findings of the Labor Arbiter and the NLRC assume importance.[15]

This Court has consistently adhered to the rule that in reviewing administrative decisions such as those rendered by the NLRC, the findings of fact made therein are to be accorded not only great weight and respect, but even finality, for as long as they are supported by substantial evidence. It is not the function of the Court to once again review and weigh the conflicting evidence, determine the credibility of the witnesses or otherwise substitute its own judgment for that of the administrative agency on the sufficiency of the evidence. Nevertheless, when the inference made or the conclusion drawn on the basis of certain state of facts is manifestly mistaken, the Court is not estopped from exercising its power of review. (Emphasis and underscoring supplied)

Significantly, both the Labor Arbiter and the NLRC found that petitioners were all regular employees. The NLRC even explicitly stated that the periods stated in petitioners' contracts were fixed not because of temporary exigencies but because of a scheme to preclude petitioners from acquiring tenurial security.

The Court of Appeals, however, found that "[a]ll indications and established facts lead to the inevitable conclusion that the contracts of employment subject matter of this case were executed in good faith and for a lawful and moral purpose,"[16] and thus concluded that the NLRC committed grave abuse of discretion for holding otherwise.

A considered assessment of the findings of the Labor Arbiter and the NLRC, however, shows that the same are supported by substantial evidence.

Respondents' contention that there are fixed periods stated in the contracts of employment does not lie. Brent instructs that a contract of employment stipulating a fixed-term, even if clear as regards the existence of a period, is invalid if it can be shown that the same was executed with the intention of circumventing security of tenure, and should thus be ignored. And so does *Paguio v. NLRC*,^[17] thus:

x x x A stipulation [for a fixed-term] in an agreement can be ignored as and when it is utilized to deprive the employee of his security of tenure. The sheer inequality that characterizes employer-employee relations, where the scales generally tip against the employee, often scarcely provides him real and better options.

Indeed, substantial evidence exists in the present case showing that the subject contracts were utilized to deprive petitioners of their security of tenure.

The contract of employment of petitioner Fabela, for instance, states that the transition period from the Route System to the Pre-Selling System would be twelve (12) months from April 4, 1995, thus:

WHEREAS, the FIRST PARTY [San Miguel Corporation] is undertaking a project to manage the transition in fully implementing the pre-selling system;

WHEREAS, during the transition period, which is twelve (12) months before the new system will be fully implemented in the districts planned for in 1995, the FIRST PARTY will conduct a training for the regular Salesmen and will continue to sell its therefore (sic) beer products using the conventional system and will therefore need to hire relief personnel to undertake the activities thereafter mentioned which are to be undertaken/performed for a limited/specific period which activities shall hereinafter be referred to as PROJECT ACTIVITIES.

x x x x

SECTION ONE: "TERM OF CONTRACT"

The FIRST PARTY hereby hires the SECOND PARTY as "PROJECT RELIEF SALESMAN" to perform/undertake the activities listed in Annex "A" hereof at its Greater Manila Area Sales Operations, San Miguel Brewing Group and the latter hereby accepts and agrees such undertaking for a period of twelve (12) months, starting from April 4, 1995 to April 3, 1996 or upon completion of the project hereinafter referred to, whichever comes first, subject to the general supervision, order, advice and directions of the FIRST PARTY.

x x x x^[18] (Emphasis and underscoring supplied)

It bears noting, however, that petitioner Fabela, besides being hired again for another fixed period of four (4) months after the lapse in April 1996 of the one-year contract, had already been working for respondent SMC on a fixed-term basis as early as 1992, or one year before respondent SMC even began its shift to the Pre-selling System in 1993.

Similarly, petitioner Marcelo dela Cruz III was hired prior to the alleged transition to the new system. In fact, he was hired in December 1991, even earlier than petitioner Fabela.

The NLRC, therefore, had sufficient basis to believe that the shift of SMC to the Pre-Selling System was not the real basis for the forging of fixed-term contracts of employment with petitioners and that the periods were fixed only as a means to preclude petitioners from acquiring security of tenure.

Moreover, other than the earlier-mentioned affidavit of Mariano N. Lopez, respondents have presented no evidence that the shift to the Pre-Selling System occurred as early as 1993. The employment contracts presented

by respondents in support of their claim that petitioners were hired only for the transition stage are dated not earlier than April 1995.[19] Even the contract of petitioner Fabela expressly states that the transition period is twelve months, beginning in 1995, rather than 1993. If the shift to the new system only began in 1995, however, then not only petitioners Fabela and dela Cruz were hired prior to the transition, but also petitioner Quines, who was hired in 1994.

As Brent pronounces, a fixed-term employment is valid only under certain circumstances, such as when the employee himself insists upon the period, or where the nature of the engagement is such that, without being seasonal or for a specific project, a definite date of termination is a *sine qua non*.

That petitioners themselves insisted on the one-year fixed-term is not even alleged by respondents. In fact, the sustained desire of each of the petitioners to enter into another employment contract upon the termination of the earlier ones clearly indicates their interest in continuing to work for SMC.

Moreover, respondents have not established that the engagement of petitioners' services, which is not in the nature of a project employment, required a definite date of termination as a *sine qua non*.

In fine, the finding of the Labor Arbiter and the NLRC that the execution of the contracts was merely intended to circumvent petitioners' security of tenure merits this Court's concurrence.

WHEREFORE, the petition is GRANTED. The assailed Decision of the Court of Appeals is SET ASIDE. The Decision dated September 23, 1998 of the Labor Arbiter, which was affirmed by the National Labor Relations Commission by Resolution of April 28, 2000, is REINSTATED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

[1] Court of Appeals Decision (Rollo, p. 27).

[2] Respondents explain the meaning of the Route System in their Supplemental Comment, as follows:

"3.1 Under the Route System, the basic unit of the Company's Sales Force was a Route Crew composed of a Regular Salesman and two (2) Route Helpers. Compensation for the Regular Salesman consisted of a basic salary and a sales commission. The Route Crew was assigned a Company-owned truck and a specified route or territory consisting of outlets or stores to which the Company sells and delivers its products. Regular Route Salesman and Route Helpers within a specified territory were under the supervision of a District Sales Supervisor.

3.2 The Route Crew performed both selling and delivery functions. At the start of the day, the crew loads products in the Company-owned truck and sells and delivers the products to outlets within the Route. Necessarily, the products which will be sold by the crew are limited only to those which they have with them during their visit to the customers." (Rollo, pp. 503-504)

[3] Respondents explain the meaning of the Pre-Selling System in their Supplemental Comment, as follows:

"5.1 Under the Pre-Selling System, the Company separated the selling and delivery functions. Route crews were abolished and Company trucks were disposed of. Selling would be undertaken by an "Accounts Specialist," a new position with upgraded qualifications in lieu of the Salesman, to undertake the relatively difficult functions of marketing and selling multi-brands.

5.2 To address the problem of the Salesman pushing only fast moving products to get their commissions, a new

compensation structure was devised for the Account Specialists. A portion of the commission was integrated into basic pay and a variable pay was formulated dependent on the Accounts Specialists meeting his sales forecast.

5.3 The delivery of products will then be undertaken by third party warehouse and delivery contractors equipped with warehouse, trucks and delivery crews in accordance with the booking with the book orders received from the Account Specialists.

5.4 Consequently, the Account Specialists, with the separation of selling and delivery functions, will have more time to devote to selling activities compared to a Salesman who had to wait for the route crew to complete delivery, checking of the outlets inventory and retrieve empty bottles, before he can move on to the next customer.

5.5 With more time devoted to selling, Account Specialists will have more time to open new outlets and develop the market." (Rollo, pp. 505-506)

[4] Rollo, pp. 521-522.

[5] Id. at 527-530.

[6] Id. at 506-507.

[7] Penned by Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Martin S. Villarama, Jr. and Sergio L. Pestaño.

[8] Rollo, p. 33.

[9] 347 Phil. 434, 442 (1997).

[9] G.R. No. 79869, September 5, 1991, 201 SCRA 332, 342.

[11] G.R. No. 48494, February 5, 1990, 181 SCRA 702, 714-716.

[12] *St. Theresa's School of Novaliches Foundation v. NLRC*, G.R. No. 122955, April 15, 1998, 289 SCRA 110, 115.

[13] Rollo, p. 35.

[14] Id. at 258.

[15] *Agoy v. NLRC*, 322 Phil. 636, 644-645 (1996).

[16] Rollo, p. 34.

[17] 451 Phil. 243, 253 (2003).

[18] Rollo, pp. 531-532.

[19] Id. at 532.

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