

GREGORIO S. SABEROLA, PETITIONER, VS. RONALD SUAREZ AND RAYMUNDO LIRASAN, JR., RESPONDENTS.

G.R. No. 151227. July 14, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the Decision[1] dated March 30, 2001 and the Resolution[2] dated November 23, 2001 of the Court of Appeals (CA) in CA-G.R. SP No. 56503.

The Facts

The case stemmed from a Complaint[3] for illegal dismissal with money claims filed on November 10, 1997 by respondents against petitioner before the Regional Arbitration Branch of Davao City. Petitioner is the owner and manager of G.S. Saberola Electrical Services, a firm engaged in the construction business specializing in installing electrical devices in subdivision homes and in commercial and non-commercial buildings. Respondents were employed by petitioner as electricians. They worked from Monday to Saturday and, occasionally, on Sundays, with a daily wage of P110.00.

Respondent Ronald Suarez (Suarez) was employed by petitioner from February 1995 until October 1997; while respondent Raymundo Lirasan, Jr. (Lirasan) worked from February 1995 until September 1997.[4] Respondent Lirasan alleged that he was dismissed without cause and due process. He was merely informed by petitioner that his services were no longer needed without any explanation why he was terminated. Both respondents claimed that they received compensation below the minimum wage. They were given a fixed rate of P110.00 while the mandated minimum wage was P135.00, per Wage Order No. 5 issued by the Regional Tripartite and Productivity Board of Region XI. They also alleged that they did not receive 13[th] month pay for the entire period of their employment.[5] Both likewise claimed payment of overtime and service incentive leave.

In his defense, petitioner averred that respondents were part-time project employees and were employed only when there were electrical jobs to be done in a particular housing unit contracted by petitioner. He maintained that the services of respondents as project employees were coterminous with each project. As project employees, the time of rendition of their services was not fixed. Thus, there was no practical way of determining the appropriate compensation of the value of respondents' accomplishment, as their work assignment varied depending on the needs of a specific project.[6]

On September 24, 1998, the Labor Arbiter rendered a Decision[7] dismissing the complaint for lack of merit. The Labor Arbiter ruled that respondents were project employees and were not entitled to their monetary claims.

On appeal, the National Labor Relations Commission (NLRC) affirmed with modification the findings of the Labor Arbiter in a Resolution[8] dated July 9, 1999. It maintained that respondents were project employees of petitioner. However, it declared that respondent Suarez was illegally dismissed from employment. It also awarded the monetary claims of respondents. The dispositive portion of the Resolution reads:

WHEREFORE, foregoing considered, the decision on appeal is hereby MODIFIED declaring complainant RONALD SUAREZ illegally dismissed and directing respondent to pay the following

- RONALD SUAREZ
- Separation Pay
- Wage Differential
- 13[th] Month pay
- Service Incentive Leave Pay
- RAYMUNDO LIRASAN, JR.
- Wage Differential
- 13[th] Month Pay
- Service Incentive Leave Pay
- Attorney's fees equivalent to 10% of the total award.

SO ORDERED.[9]

Petitioner filed a motion for reconsideration. On October 29, 1999, the NLRC issued a Resolution[10] denying the same. A detailed computation of the money claims awarded to respondents was incorporated in the Resolution, summarized as follows:

- 1) Ronald Suarez
- 1. Separation Pay
- =
- P10,530.00
- 2. Wage Differential
- =
- P 8,268.00
- 3. 13[th] Month Pay
- =
- P 8,790.16
- 4. SILP
- =
- P 1,350.00
- TOTAL
- =
- P28,938.16

2) Raymundo Lirasan, Jr.

1. Wage Differentia

=

P 7,878.00

2 13[th] Month Pay

=

P 8,497.66

3. SILP

=

P 1,350.00

4 TOTAL

=

P17,725.66

Attorney's fees

=

P 4,666.38[11]

Petitioner filed a petition for certiorari under Rule 65 of the Rules of Court before the CA. Petitioner asserted that the NLRC committed grave abuse of discretion when it declared him guilty of illegally terminating respondent Suarez and in awarding both respondents their monetary claims.

On March 30, 2001, the CA rendered a Decision[12] dismissing the petition for lack of merit. Petitioner filed a motion for reconsideration which, however, was denied in a Resolution[13] dated November 23, 2001. Hence, this petition.

The Issues

Petitioner submits the following issues for resolution: (1) whether respondent Suarez was illegally terminated, and (2) whether respondents are entitled to their monetary claims.

The Ruling of the Court

Petitioner's business, specializing in installing electrical devices, needs electricians only when there are electrical devices to be installed in subdivision homes or buildings covered by an appropriate contract. Petitioner, as an electrical contractor, depends for his business on the contracts that he is able to obtain from real estate developers and builders of buildings. Thus, the work provided by petitioner depends on the availability of such contracts or projects. The duration of the employment of his work force is not permanent but coterminous with the projects to which the workers are assigned. Viewed in this context, the respondents are considered as project employees of petitioner. Indeed, the status of respondents as project employees was upheld by the Court of Appeals based on the findings of facts of the Labor Arbiter and the NLRC.

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 service to be performed is seasonal in nature and the employment is for the duration of the season." [14]

However, respondents, even if working as project employees, enjoy security of tenure. Section 3, Article XIII, of the Constitution guarantees the right of workers to security of tenure, and because of this, an employee may only be terminated for just [15] or authorized [16] causes that must comply with the due process requirements [17] mandated by law.

In *Archbuild Masters and Construction, Inc. v. NLRC*, [18] we held that the employment of a project worker hired for a specific phase of a construction project is understood to be coterminous with the completion of such phase and not upon the accomplishment of the whole project. A worker hired for a particular phase of a construction project can be dismissed upon the completion of such phase. Project workers in the construction industry may also be terminated as the phase of a construction project draws nearer to completion when their services are no longer needed, provided they are not replaced. [19]

Nonetheless, when a project employee is dismissed, such dismissal must still comply with the substantive and procedural requirements of due process. Termination of his employment must be for a lawful cause and must be done in a manner which affords him the proper notice and hearing. [20]

In this regard, we hold that respondent Suarez was illegally terminated by petitioner. A project employee must be furnished a written notice of his impending dismissal and must be given the opportunity to dispute the legality of his removal. [21] In termination cases, the burden of proof rests on the employer to show that the dismissal was for a just or authorized cause. Employers who hire project employees are mandated to state and prove the actual basis for the employee's dismissal once its veracity is challenged. [22]

Petitioner failed to present any evidence to disprove the claim of illegal dismissal. It was uncontested that the last work of the respondents with petitioner's company was the electrical installation in some housing units at the Ciudad Esperanza Housing Project. No evidence was presented by petitioner to show the termination of the project which would justify the cessation of the work of respondents. Neither was there proof that petitioner complied with the substantive and procedural requirements of due process.

As to respondents' monetary claims, we uphold the findings of the NLRC. As employer, the petitioner has the burden of proving that the rate of pay given to the respondents is in accordance with the minimum fixed by the law and that he paid thirteenth month pay, service incentive leave pay and other monetary claims.

We have consistently held that as a rule, one who pleads payment has the burden of proving it. Even when the plaintiff alleges non-payment, still the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment. The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment. When the existence of a debt is fully established by the evidence contained in the record, the burden of proving that it has been extinguished by payment devolves upon the debtor who invokes such a defense against the claim of the creditor. When the debtor introduces some evidence of payment, the burden of going forward with the evidence -- as distinct from the general burden of proof -- shifts to the creditor, who is then under a duty of producing some evidence to show non-payment. [23]

In the instant case, the burden of proving payment of the monetary claims rests on petitioner, being the employer of respondents. This is because the pertinent personnel files, payrolls, records, remittances and other similar documents that would show that the claims have been paid are not in the possession of the worker but in the custody and absolute control of the employer. [24] Sadly, the petitioner failed to do so.

WHEREFORE, in lieu of the foregoing, the instant petition is DENIED. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 56503 are hereby AFFIRMED.

SO ORDERED.

Quisumbing, Ynares-Santiago, Austria-Martinez, and Reyes, JJ., concur.

* In lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 508, dated June 25, 2008.

[1] Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Cancio C. Garcia and Oswaldo D. Agcaoili, concurring; rollo, pp. 51-56.

[2] Rollo, p. 61.

[3] Id. at 69.

[4] NLRC Resolution dated July 9, 1999; rollo, p. 78.

[5] CA Decision dated March 30, 2001; id. at 91.

[6] Id.

[7] Penned by Labor Arbiter Amado M. Solamo; id. at 70-74.

[8] Penned by Commissioner Oscar Y. Abella, with Presiding Commissioner Salic B. Dumarpa and Commissioner Leon G. Gonzaga, Jr., concurring; rollo, pp. 75-79.

[9] Id. at 79.

[10] Id. at 85-88.

[11] Id. at 88.

[12] Id. at 51-56.

[13] Id. at 100.

[14] Article 280, Labor Code; Olongapo Maintenance Services, Inc. v. Chantengco, G.R. No. 156146, June 21, 2007; Fabela v. San Miguel Corporation, G.R. No. 150658, February 9, 2007; Liganza v. RBL Shipyard Corporation, G.R. No. 159862, October 17, 2006.

[15] ART. 282. TERMINATION BY EMPLOYER

An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

[16] ART. 283. CLOSURE OF ESTABLISHMENT AND REDUCTION OF PERSONNEL

The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

ART. 284. DISEASE AS GROUND FOR TERMINATION

An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

ART. 287. RETIREMENT

Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, that an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term "one-half (1/2) month salary" shall mean fifteen (15) days plus one-twelfth (1/12) of the 13[th]-month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

An underground mining employee upon reaching the age of fifty (50) years or more, but not beyond sixty (60) years which is hereby declared the compulsory retirement age for underground mine workers, who has served at least five (5) years as underground mine worker, may retire and shall be entitled to all the retirement benefits provided for in this Article. (R.A. No. 8558, approved on February 26, 1998.)

Retail, service and agricultural establishments or operations employing not more than ten (10) employees or

workers are exempted from the coverage of this provision.

Violation of this provision is hereby declared unlawful and subject to the penal provisions provided under Article 288 of this Code.

[17] ART. 277. MISCELLANEOUS PROVISIONS

X X X X

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the workers to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer.

The Secretary of the Department of Labor and Employment may suspend the effects of the termination pending resolution of the dispute in the event of a prima facie finding by the appropriate official of the Department of Labor and Employment before whom such dispute is pending that the termination may cause a serious labor dispute or is in implementation of a mass layoff.

[18] Supra note 11.

[19] Id. at 876.

[20] Id. at 877.

[21] Archbuild Masters and Construction, Inc. v. NLRC, 321 Phil. 869, 877 (1995).

[22] Liganza v. RBL Shipyard Corporation, G.R. No. 159862, October 17, 2006, 504 SCRA 678, 687.

[23] Villar v. NLRC, 387 Phil. 706, 716 (2000); National Semiconductor, (HK) Distribution, Ltd. v. NLRC, 353 Phil. 551, 557 (1998); Jimenez v. NLRC, 326 Phil. 89, 95 (1996).

[24] Id.

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