

**EQUIPMENT TECHNICAL SERVICES OR JOSEPH JAMES DEQUITO,
PETITIONERS, VS. COURT OF APPEALS, ALEX ALBINO, REY ALBINO,
JULIUS ABANES, MIGUEL ALINAB, CHRISTOPHER BIOL, NELSON
CATONG, ...***G.R. No. 157680. October 08, 2008*

Ponente: VELASCO JR., J.

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This petition for review under Rule 45 assails and seeks the reversal of the Amended Decision and Resolution dated March 3, 2003 and March 24, 2003, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 67568. The assailed amended decision and resolution effectively set aside and reversed the consolidated resolutions dated July 30, 2001 and September 24, 2001 rendered by the National Labor Relations Commission (NLRC) and reinstated the July 24, 2000 Decision of Labor Arbiter Ermita T. Abrasaldo-Cuyuca in NLRC NCR Case Nos. 00-01-00571-99, 00-02-01429-99, and 00-02-01615-99.

Petitioner Equipment Technical Services (ETS) is primarily engaged in the business of sub-contracting plumbing works of on-going building construction. Among its clients was Uniwide Sales, Inc. (Uniwide). Petitioner Joseph James Dequito was, during the period material, occupying the position of manager of ETS,[1] albeit the CA referred to him as ETS' president. On various occasions involving different projects, ETS hired the services of private respondents as pipe fitters, plumbers, or threaders.

In December 1998, ETS experienced financial difficulties when Uniwide, its client at the time, failed to pay for the plumbing work being done at its Coastal Mall. As a result, ETS was only able to pay its employees 13th month pay equivalent to two weeks' salary.

Unhappy over what they thought was ETS' failure to release the balance of their 13th month pay, private respondents brought their case before the Arbitration Branch of the NLRC, docketed as NLRC NCR Case No. 00-01-00571-99 and entitled as Alex Albino, Renato Dulot, Miguel Alinab, Marcelito Gamas, Julius Abanes, Christopher Biol, Sammy Mesagal, Conrado Sulibaga, Floro Pacundo v. Equipment Technical Services or Joseph James Dequito.

Later, two other cases were filed against ETS for illegal dismissal and payment of money claims when the complainants thereat were refused work in another ETS project, i.e., Richville project, allegedly because they refused to sign individual employment contracts with ETS. These two other cases were Nelson Catong, Roger Lamayon, Christopher Lamayon v. Equipment Technical Services or Joseph James Dequito, docketed as NLRC NCR Case No. 00-02-01429-99; and Rey Albino, Ernesto Padilla, Reynaldo Lima v. Equipment Technical Services or Joseph James Dequito, docketed as NLRC NCR Case No. 00-02-01615-99.

The three cases were consolidated before the labor arbiter. Following failed conciliation efforts, all concerned, except Roger and Christopher Lamayon, submitted, as the labor arbiter directed, their respective position papers.

Private respondents' position[2] is summed up as follows: (1) they are regular employees of ETS; (2) ETS dismissed them without cause and without due process after they filed cases for money claims against ETS in the arbitration branch of the NLRC; (3) ETS has not paid them their salaries, 13th month pay, service incentive leave pay, overtime pay, and premium pay for holidays and rest days; and (4) they are entitled to reinstatement to their former positions with paid backwages in addition to their money claims and payment of attorney's fees.

ETS' position[3] may be summed up as follows: (1) private respondents were its contractual/project employees engaged for different projects of the company; (2) they were not illegally dismissed, having been hired on a per project basis; (3) ETS was unable to fully release private respondents' 13th month pay because Uniwide failed to pay for its contracted plumbing project; (4) ETS was forced to abandon the Uniwide project and undertake another project, the Richville project, because the chances of being paid by Uniwide were dim; (5) ETS asked private respondents to sign employment contracts to formalize their previous agreement but said private respondents refused; and (6) as a result, ETS was constrained to deny employment to private respondents as it considered the execution of employment contracts part of management prerogative before employment commences.

On July 24, 2000, Labor Arbiter Abrasaldo-Cuyuca issued a Decision, holding that private respondents were ETS' regular, not merely project, employees. Accordingly, ETS was adjudged liable for illegal dismissal and directed to pay private respondents their money claims plus 10% of the total award as attorney's fees. The fallo of the subject decision reads as follows:

WHEREFORE, judgment is hereby rendered declaring the dismissal of the complainants illegal.

Further, respondents are further ordered to pay the complainants their backwages, proportionate 13[th] month pay, [holiday] and service incentive leave pay.

Ten percent of the total award as attorney's fees.

Other claims are dismissed for lack of merit.

The complaints of Roger and Christopher all surnamed Lamayon are dismissed without prejudice.

The computation prepared by the Computation Unit, NCR, this Commission is attached [sic] forming part of this decision.

SO ORDERED.[4]

ETS appealed from the above labor arbiter's decision. On July 30, 2001, the NLRC rendered a resolution which, while reversing the labor arbiter's holding with respect to the nature of private respondents' employment and the illegality of their dismissal, nevertheless upheld the validity of the monetary award extended by the labor arbiter, part of which included the award of backwages. The pertinent portion of the modificatory resolution reads as follows:

ACCORDINGLY, premises considered, the decision appealed from is hereby MODIFIED in that the findings of regularity of employment and illegal dismissal are hereby VACATED. However, respondents are ordered to give complainants priority in hiring for present and future projects. All other dispositions are hereby AFFIRMED in toto.

SO ORDERED.

Following the denial on September 24, 2001 of ETS' motion for reconsideration, ETS elevated its case to the CA via a petition for certiorari under Rule 65, the recourse docketed as CA-G.R. SP No. 67568. As its principal contention, ETS ascribed on the NLRC the commission of grave abuse of discretion in affirming the monetary award in favor of private respondents, despite its finding that there was no illegal dismissal in this case.

On January 23, 2002, the CA rendered judgment disposing as follows:

WHEREFORE, premises considered, the assailed resolutions of the National Labor Relations Commission dated July 30, 2001 and September 24, 2001 are hereby ANNULLED and SET ASIDE and a new one rendered ORDERING petitioner Equipment Technical Services to pay private respondents their holiday pay and service incentive leave pay for the year 1998 and the balance of their 13[th] month pay for the year 1999.

The case is hereby REMANDED to Labor Arbiter Ermita T. Abrasaldo-Cuyuca for the computation of the same.

The complaint against petitioner Joseph James Dequito is hereby DISMISSED, for lack of merit.

No pronouncement as to costs.

SO ORDERED.

Upon motion of private respondents for reconsideration, the CA issued an Amended Decision[5] dated March 3, 2003 vacating its earlier January 23, 2002 decision. The CA, in main support of its present disposition, stated that the NLRC's determination that private respondents are "project workers" is "utterly unsupported by the evidence on record and is patently erroneous" and, therefore, is tainted with grave abuse of discretion.[6] The fallo of the Amended Decision reads:

WHEREFORE, premises considered, the present motion for reconsideration is hereby GRANTED. The petition is hereby DENIED DUE COURSE and accordingly DISMISSED, for lack of merit. Our Decision dated January 23, 2002 is hereby RECONSIDERED and SET ASIDE and a new one is hereby entered REVERSING and SETTING ASIDE the assailed Resolutions dated July 30, 2001 and September 24, 2001 of public respondent NLRC in NLRC NCR case No. 00-01-00571-99 (NLRC CA No. 027203-2001), NLRC NCR Case No. 00-02-01429-99 and NLRC NCR Case No. 00-02-01615-99. The Decision dated July 24, 2000 rendered by Labor Arbiter Ermita T. Abrasaldo-Cuyuca is hereby REINSTATED and AFFIRMED in all respects, including the computation of the monetary awards in favor of private respondents forming part of and attached to the same.

With costs against the petitioners.

SO ORDERED.

Hence, this petition on the submission that, contrary to the findings of the CA, but conformably with the determination of the NLRC, private respondents are seasonal or project workers; the duration of their employment is not permanent but coterminus with the project to which they are assigned and from whose payroll they are paid. As project employees, private respondents cannot, according to petitioners, validly maintain an action for illegal dismissal with prayer for reinstatement and payment of backwages, both reliefs being usually accorded following a finding of illegal dismissal.

The petition is without merit. As we see it, as did the CA and the NLRC, the primary question to be resolved and to which all others must yield is whether or not private respondents are project employees. The CA, siding with the labor arbiter, as indicated earlier, answered the poser in the affirmative, while the NLRC resolved it in the negative.

As the Court has consistently held, the service of project employees are coterminus with the project and may be terminated upon the end or completion of that project or project phase for which they were hired. Regular employees, in contrast, enjoy security of tenure and are entitled to hold on to their work or position until their services are terminated by any of the modes recognized under the Labor Code.[7]

The principal test for determining whether an employee is properly characterized as "project employee," as distinguished from "regular employee," is whether or not "the project employee" was 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.[8] And as Article 280 of the Labor Code, defining a regular employee vis-à-vis a project employee, would have it:

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 x x x.

It bears to stress at the outset that ETS admits hiring or employing private respondents to perform plumbing works for various projects. Given this postulate, regular employment may reasonably be presumed and it behooves ETS to prove otherwise, that is, that the employment in question was contractual in nature ending upon the expiration of the term fixed in the contract or for a specific project or undertaking. But the categorical finding of the CA, confirmatory for the most part of that of the labor arbiter, is that not a single written contract of employment fixing the terms of employment for the duration of the Uniwide project, or any other project, was submitted by ETS despite the latter's allegations that private respondents were merely contractual employees. Records of payroll and other pertinent documents, such as job contracts secured by ETS showing that private respondents were hired for specific projects, were also not submitted by ETS.[9]

Moreover, if private respondents were indeed employed as project employees, petitioners should have had submitted a report of termination every time their employment was terminated owing to the completion of each plumbing project. As correctly held by the CA in its Amended Decision, citing *Tomas Lao Construction v. NLRC*,[10] ETS' failure to report the employment termination and file the necessary papers after every project completion tends to support the claim of private respondents about their not being project employees.[11] Under Policy Instruction No. 20, Series of 1977,[12] the report must be made to the nearest public office employment.[13] The decision in *Violeta v. NLRC* is also apropos, particularly when it held:

[The employer] should have filed as many reports of termination as there were construction projects actually finished if petitioners [employees] were indeed project employees, considering that petitioners were hired and again [hired] for various projects or phases of work therein. Its failure to submit reports of termination cannot but sufficiently convince us further that petitioners are truly regular employees. Just as important, the fact that petitioners had rendered more than one year of service at the time of their dismissal overturns private respondent's allegations that petitioners were hired for a specific or fixed undertaking for a limited period of time.[14]

The Court can allow that, in the instant case, private respondents may have initially been hired for specific projects or undertaking of petitioner ETS and, hence, may be classified as project employees. Their repeated rehiring to perform tasks necessary to the usual trade or business of ETS changed the legal situation altogether, for in the later instance, their continuous rehiring took them out from the scope of workers coterminous with specific projects and had made them regular employees. We said as much in *Phesco, Inc. v. NLRC* that "where the employment of project employees is extended long after the supposed project had been finished, the employees are removed from the scope of project employees and they shall be considered regular employees." [15]

Parenthetically, petitioners' assertion that there can be no illegal dismissal of project employees inasmuch as they

are not entitled to security of tenure is inaccurate. The constitutionally-protected right of labor to security of tenure covers both regular and project workers.[16] Their termination must be for lawful cause and must be done in a way which affords them proper notice and hearing.[17]

In termination disputes, the burden of proving that an employee had been dismissed for a lawful cause or that the exacting procedural requirements under the Labor Code had been complied with lies with the employer.[18] Where there is no showing of a clear, valid, and legal cause for termination of employment, the law considers the case a matter of illegal dismissal.[19]

Based on the foregoing criteria, the factual findings of the labor arbiter on the regular nature of private respondents' employment, juxtaposed with ETS' failure to support its "project-workers theory," impel us to dismiss the instant petition. This is as it should be for, to paraphrase *Asuncion v. NLRC*, if doubt exists between the evidence of the employers and the employees, the scales of justice must be tilted in favor of the latter--the employers must adequately show rationally adequate evidence that their case is preponderantly superior.[20]

As did the CA, the Court holds that private respondents are regular employees whose services were terminated without lawful cause and effected without the requisite notice and hearing.

In view of the illegality of the dismissal, the fallo of the Decision of Labor Arbiter Abrasaldo-Cuyuca, as reinstated by the CA in its assailed Amended Decision, has to be modified in the sense that private respondents are entitled to reinstatement to their previous positions as pipe fitters or threaders, as the case may be, without loss of rank and seniority rights and with full backwages.

At this juncture, the Court wishes to state that it is taking judicial notice of the fact that no corporation is registered with the Securities and Exchange Commission under the name "Equipment Technical Services." It is thus but fair that both petitioners' liability under this Decision be joint and several.

WHEREFORE, the Amended Decision dated March 3, 2003 of the CA in CA-G.R. SP No. 67568, reinstating the July 24, 2000 Decision of Labor Arbiter Abrasaldo-Cuyuca, is **AFFIRMED** with the **MODIFICATION** that petitioners are jointly and severally ordered to reinstate private respondents to their former positions, without loss of rank and seniority rights, with backwages from the date of dismissal until reinstated. As modified, the fallo of the labor arbiter's Decision shall read:

WHEREFORE, judgment is hereby rendered declaring the dismissal of private respondents illegal.

Petitioners ETS and Joseph James Dequito are ordered jointly and severally to reinstate private respondents ALEX ALBINO, REY ALBINO, JULIUS ABANES, MIGUEL ALINAB, CHRISTOPHER BIOL, NELSON CATONG, RENATO DULOT, FLORO PACUNDO, MARCELITO GAMAS, REYNALDO LIMA, SAMMY MESAGAL, ERNESTO PADILLA, and CONRADO SULIBAGA to their respective positions without loss of rank and seniority rights with full backwages from the date of dismissal up to the date of actual reinstatement. Petitioners are likewise jointly and severally liable to private respondents for proportionate 13[th] month pay, holiday pay, and service incentive leave pay.

Ten percent of the total award shall be paid to the counsel of private respondents as attorney's fees.

Other claims are dismissed for lack of merit.

The complaints of Roger and Christopher, both surnamed Lamayon, are dismissed without prejudice.

Costs against petitioners.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Tinga, and Brion, JJ., concur.

[1] Rollo, p. 34.

[2] Id. at 140.

[3] Id. at 140-141.

[4] Id. at 77.

[5] Id. at 166-173. Penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Remedios Salazar-Fernando and Sergio L. Pestaño.

[6] Id. at 169.

[7] Violeta v. NLRC, G.R. No. 119523, October 10, 1997, 280 SCRA 520, 528-529.

[8] Id.

[9] Rollo, p. 169.

[10] G.R. No. 116781, September 5, 1997, 278 SCRA 716.

[11] Rollo, p. 171.

[12] Superseded by Department Order No. 19 dated April 1, 1993, requiring the report to be made before the Department of Labor and Employment Regional Office having jurisdiction over the workplace.

[13] Tomas Lao Construction, supra note 10, at 729.

[14] Supra note 7, at 533.

[15] G.R. Nos. 104444-49, December 27, 1994, 239 SCRA 446, 449.

[16] Archbuild Masters and Construction, Inc. v. NLRC, G.R. No. 108142, December 26, 1995, 251 SCRA 483, 491.

[17] R.B. Michael Press v. Galit, G.R. No. 153510, February 13, 2008, 545 SCRA 23, 35-36.

[18] King of Kings Transport, Inc. v. Mamac, G.R. No. 166208, June 29, 2007, 526 SCRA 116, 124; citing the Labor Code, Art. 277(b).

[19] Mayon Hotel & Restaurant v. Adana, G.R. No. 157634, May 16, 2005, 458 SCRA 609, 639.

[20] G.R. No. 129329, July 31, 2001, 362 SCRA 56, 68.

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