RAYCOR AIRCONTROL SYSTEMS, INC., PETITIONER,VS. MARIO SAN PEDRO AND NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

G.R. NO. 158132. July 04, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Assailed in the Petition for Review[1] before this Court are the August 24, 2001 Decision[2] and April 30, 2003 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 63403.[4]

The facts are as stated by the CA.

Raycor Aircontrol Systems, Inc. (petitioner) hired Mario San Pedro (respondent) as tinsmith operator subject to the condition that his employment shall commence "on August 24, 1995 and shall be effective only for the duration of the contract at Uniwide Las Piñas after completion of which on November 18, 1995, it automatically terminates without necessity of further notice."[5] As the Uniwide Las Piñas project (first project) lasted for one year, petitioner extended respondent's contract beyond November 18, 1995. When this first project was finally completed, petitioner again extended respondent's employment by assigning him to its Olivarez Plaza, Biñan, Laguna project (second project) until December 1996. Subsequently, petitioner rehired respondent as ducting man and assigned him to its Cabuyao, Laguna project (third project) until April 1997. Thereafter, petitioner transferred respondent to its Llanas, Alabang project (fourth project) and later, to its Uniwide Coastal project in Baclaran, Paranaque (fifth project).[6] Petitioner did not anymore issue new contracts to respondent each time his employment was extended.

In a Memorandum[7] dated October 30, 1997, petitioner declared that the contract of employment of respondent was set to expire on November 1, 1997, the same to take effect on November 3, 1997. Thus, when respondent reported for work on November 3, 1997, he was informed by the company timekeeper that he had been terminated.

Respondent filed a Complaint[8] for illegal dismissal with damages. The Labor Arbiter (LA) rendered a Decision dated July 15, 1999 in favor of respondent, thus:

> WHEREFORE, premises considered, this Office finds and so rule that the complainant was illegally dismissed by the respondent without just cuase and without due process of law on November 3, 1997. As such he is entitled to reinstatement without loss of seniority rights and other benefits; and payment of full backwages from the time of his dismissal up to the time of his actual reinstatement which up to this date is in the amount of P105,534.00 (P198.00/day x 26 days x 20.5 mos.).
>
> Other claims are dismissed for lack of merit.
>
> SO ORDERED.[9]

On appeal by petitioner, the National Labor Relations Commission (NLRC) issued a Resolution[10] dated September 18, 2000, affirming the July 15, 1999 LA Decision, and a Resolution[11] dated December 15, 2000, denying petitioner's Motion for Reconsideration.

Petitioner filed a Petition for Certiorari which the CA denied in the August 24, 2001 Decision impugned herein. Its Motion for Reconsideration was also denied by the CA in a Resolution dated April 30, 2003.

Hence, the present recourse of petitioner on the sole issue:

> Whether or not the Court of Appeals committed grave error in ruling that private respondent was illegally dismissed.[12]

The Court denies the petition for lack of merit.

The CA, as well as the NLRC and LA, considered respondent a regular employee of petitioner because of the existence of a reasonable connection between the former's regular activity in relation to the latter's business. They based this finding on the uncontroverted fact that petitioner repeatedly rehired respondent in five successive projects for 23 continuous months - nine months in the first project, four months in the second, four months in the third, four months in the fourth, and two months in the fifth - which repeated rehiring is indicative of the desirability and indispensability of the activity performed by respondent to the usual business or trade of petitioner. They held that, being a regular employee entitled to security of tenure, respondent's dismissal was illegal for lack of a just or authorized cause and due process. [13]

Petitioner denies that it dismissed respondent, insisting that the latter's services were terminated for he was a mere project employee whose employment contract expired when the fifth project to which he was assigned was scrapped due to non-payment by the project owner, Uniwide Holdings, Inc. (Uniwide).[14] It argues that the rehiring of respondent for 23 months did not make him a regular employee, given the following nature of its business:

> Petitioner is engaged in the installation of air conditioning units in high and low rise building[s]. Petitioner gets business from architects/engineers who invite petitioner to participate in a public bidding on a certain project. If the project is awarded to it, that will only be the time when it mobilizes and engages the services of workers to install the air conditioning units in the building. Petititioner is not a manufacturing or trading company. Workers are hired according to their skills. It is for this reason that private respondent was hired as tinsmith operator.[15]

The concurrent findings of the CA and the labor tribunals on the existence of an employer-employee relationship between the parties in the present case are factual in nature and are accorded due deference[16] for being well-founded.

The issue of regularization of employees had already beset petitioner, as early as the year 1996, in Raycor Aircontrol Systems, Inc. v. National Labor Relations Commission.[17] In said case, the Court resolved the issue whether several individuals it hired and rehired to work as tinsmith, leadman, aircon mechanic, installer, welder, and painter in its various projects became regular employees after rendering service for more than one year, with some of them serving for two to six years. The Court recognized that petitioner was engaged in a peculiar business which constrained it not to maintain a regular work force. The Court observed:

> It is not so much that this Court cannot appreciate petitioner's contentions about the nature of its business and its inability to maintain a large workforce on its permanent payroll. Private respondents have admitted that petitioner is engaged only in the installation (not manufacture) of aircon systems or units in buildings, and since such a line of business would obviously be highly (if not wholly) dependent on the availability of buildings or projects requiring such installation services, which factor no businessman, no matter how savvy,

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> can accurately forecast from year to year, it can be easily surmised that petitioner, aware that its revenues and income would be unpredictable, would always try to keep its overhead costs to a minimum, and would naturally want to engage workers on a per-project or per-building basis only, retaining very few employees (if any) on its permanent payroll. It would also have been more than glad if its employees found other employment elsewhere, in between projects. To our mind, it appears rather unlikely that petitioner would keep private respondents -- all fifteen of them -- continuously on its permanent payroll for, say, ten or twelve years, knowing fully well that there would be periods (of uncertain duration) when no project can be had. To illustrate, let us assume that private respondents (who were each making about P118.00 to P119.50 per day in 1991) were paid only P100.00 per day. If the fifteen were, as they claimed, regular employees entitled to their wages regardless of whether or not they were assigned to work on any project, the overhead for their salaries alone --computed at P100.00/day for 30 days in a month -- would come to no less than P45,000.00 a month, or P540,000.00 a year, not counting 13th month pay, Christmas bonus, SSS/Medicare premium payments, sick leaves and service incentives leaves, and so forth. Even if petitioner may have been able to afford such overhead costs, it certainly does not make business sense for it or anyone else to do so, and is in every sense contrary to human nature, not to mention common business practice. On this score alone, we believe that petitioner could have made out a strong case. x x x (Emphasis ours)[18]

Nonetheless, the Court ruled against petitioner because the latter failed to adduce clear and convincing evidence that the projects to which its workers were assigned were of limited scope and duration and that, at the time of hiring, said workers knowingly accepted the restrictions on their employment, thus:

> For that matter, it seems self-evident to this Court that, even if the contracts presented by petitioner had been signed by the employees concerned, still, they would not constitute conclusive proof of petitioner's claim. After all, in the usual scheme of things, contract terms are normally dictated by the employer and simply acceded to and accepted by the employee, who may be desperate for work and therefore in no position to bargain freely or negotiate terms to his liking.
>
> In any event, petitioner in this case undoubtedly could have presented additional evidence to buttress its claim. For instance, petitioner could have presented copies of its contracts with its clients, to show the time, duration and scope of past installation projects. The data from these contracts could then have been correlated to the data which could be found in petitioner's payroll records for, let us say, the past three years or so, to show that private respondents had been working intermittently as and when they were assigned to said projects, and that their compensation had been computed on the basis of such work. But petitioner did not produce such additional evidence, and we find that it failed to discharge its burden of proof.[19] (Emphasis ours)

The same fate befalls petitioner once again.

Other than the 1995 employment contract it issued to respondent, which contract we have held to be insufficient evidence of project employment,[20] petitioner utterly failed to adduce additional evidence which would have convinced us that: 1) each time it hired and rehired respondent, it intended for him to accomplish specific tasks in the particular project to which he was assigned; 2) it intended for respondent to carry out these specific tasks in accordance with the project plan it had drawn out and within the limited time it had to complete the same; and 3) it made such restrictions on each engagement known to respondent, and the same were freely accepted by him. Petitioner's failure to present such evidence is inexcusable, given its access to such documents as project contracts, payment remittances, employment records and payslips.[21] Such lapse is dismaying, considering that in Raycor v. National Labor Relations Commission, the Court had signalled to petitioner that, given the peculiar nature of its business, it had a strong case against the regularization of some of its workers. The Court even enumerated the kind of evidence petitioner should present to establish the project employment of its workers.

Evidently, petitioner did not heed the Court's observations in Raycor v. National Labor Relations Commission, leaving us no option but to declare that it failed, yet again, to discharge its burden of proving that respondent was

a project employee.

Consequently, the Court affirms the finding of the CA and the labor tribunals that respondent became a regular employee after 23 months of rehiring.

The next question then is whether respondent was validly dismissed on November 3, 1997.

Petitioner claims that respondent was laid off due to adverse business conditions it suffered at that time, attributing these to the Asian currency crisis, in general, and to the rehabilitation of Uniwide, in particular.[22]

The CA rejected such pretext and held:

> In the instant case, Raycor merely alleged that its business was affected by the Asian currency. It could not also rely on the financial reverses suffered by its client, Uniwide Holdings, Inc. without adducing sufficient and convincing proof that by reason of such economic reverses, it suffered imminent substantial losses and retrenchment was the most reasonable and effective recourse to prevent the expected losses. In short, Raycor could not establish exculpation from liability in the illegal dismissal of San Pedro by invoking another company's economic reverses.[23]

The CA is correct.

To justify termination of employment under Article 283[24] of the Labor Code, the employer must prove compliance with the following requirements: (a) a written notice must be served on the employees, and the Department of Labor and Employment (DOLE) at least one month before the intended cessation of business;[25] and (b) the cessation of business must be bona fide in character.[26]

It is readily apparent that petitioner did not comply with any of the foregoing requirements. There is no evidence that it complied with the one-month notice requirement. While petitioner claims that it issued to respondent an October 30, 1997 Memorandum of termination of employment, it failed to prove that such document was ever served upon respondent and the DOLE. Moreover, the notice is less than one month, for the memorandum states that respondent's contract of employment is to expire on November 3, 1997, or only three days later from the date of the Memorandum.

Worse, there is no evidence at all that petitioner dismissed respondent because it actually ceased or suspended business operations, or it resorted to the dismissal of respondent and other employees to stave off cessation or suspension of its business. The best evidence of reversal of fortune is audited financial and income statements which detail the extent and pattern of business losses suffered by the employer.[27] Petitioner did not present any such document where it could have demonstrated how the 1997 Asian financial currency crisis or the rehabilitation of Uniwide adversely and significantly affected the viability of its business.

Again, for failure of petitioner to discharge its burden of proving business reverses as a ground for the lay-off of respondent, we uphold the CA in ruling that the latter's dismissal was illegal.

WHEREFORE, the petition is DENIED.

Costs against petitioner.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, and Nachura, JJ., concur.

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[1] Under Rule 45 of the Rules of Court.

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[2] Penned by Associate Justice Eriberto U. Rosario, Jr., with the concurrence of Associate Justices Buenaventura J. Guerrero and Edgardo P. Cruz; rollo, p. 26.

[3] Penned by Associate Justice Buenaventura J. Guerrero with the concurrence of Associate Justices Martin S. Villarama, Jr. and Edgardo P. Cruz; id. at 36.

[4] Entitled "Raycor Aircontrol Systems, Inc., Petitioner, v. National Labor Relations Commission and Mario San Pedro, Respondents."

[5] Contract of Employment, CA rollo, p. 95.

[6] CA Decision, rollo, p. 27.

[7] CA rollo, p. 32.

[8] Id. at 26.

[9] Id. at 63-64.

[10] Id. at 17.

[11] Id. at 24.

[12] Petition, rollo, p. 14.

[13] CA Decision, rollo, pp. 30-31.

[14] Id. at 14-20.

[15] Id. at 14-15.

[16] San Miguel Corporation v. SMC, G.R. No. 147566, December 6, 2006.

[17] 330 Phil. 306 (1996).

[18] Id. at 329-330.

[19] Id. at 328-329.

[20] Id. at 328.

[21] Poseidon Fishing v. National Labor Relations Commission, G.R. No. 168052, February 20, 2006, 482 SCRA 717, 734.

[22] Rollo, p. 19.

[23] Id. at 33.

[24] 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 workers and the Department of Labor and Employment at least one (1) month before the intended date thereof. x x x 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 pay or to 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 one (1) whole year.

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[25] Espina v. National Labor Relations Commission, G.R. No. 164582, March 28, 2007.

[26] Galaxie Steel Workers Union v. National Labor Relations Commission, G.R. No. 165757, October 17, 2006.

[27] Filipinas Systems, Inc. v. Gatlabayan, G.R. No. 167959, April 19, 2006, 487 SCRA 673, 692; J.A.T. General Services v. National Labor Relations Commission, 465 Phil. 785, 795 (2004).

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