

BIG AA MANUFACTURER, PETITIONER, VS. EUTQUIO ANTONIO, JAY ANTONIO, FELICISIMO ANTONIO, AND LEONARDO ANTONIO, SR., RESPONDENTS.*G.R. NO. 160854. March 03, 2006*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-160854/>**QUISUMBING, J:**

For review on certiorari is the Decision[1] dated April 11, 2003 of the Court of Appeals in CA-G.R. SP No. 70363 affirming the decision[2] of the National Labor Relations Commission (NLRC). The NLRC had modified the Labor Arbiter's decision[3] ordering petitioner to reinstate respondents to their former positions or to pay them separation pay in case reinstatement was no longer possible, with full backwages in either case. Also assailed is the appellate court's Resolution[4] dated November 17, 2003, denying the motion for reconsideration.

The instant petition arose from the following factual antecedents:

Petitioner is a sole proprietorship registered in the name of its proprietor, Enrico E. Alejo,[5] with office address at 311 Barrio Santol, Balagtas, Bulacan.

On January 13, 2000, herein respondents Eutiquio Antonio,[6] Jay Antonio, Felicisimo Antonio, Leonardo Antonio, Sr. and Roberto Fabian filed a complaint for illegal lay-off and illegal deductions before the NLRC's Regional Arbitration Branch No. III. They claimed that they were dismissed on January 11, 2000 and sought separation pay from petitioner.

When amicable settlement during the mandatory conference failed, the parties were required to file their position papers. The Labor Arbiter did not dismiss the complaint with respect to Roberto Fabian, despite his failure to file a position paper. Neither did the Labor Arbiter's decision concern Roberto Fabian. Hence, this petition shall apply only to Eutiquio, Jay, Felicisimo, and Leonardo, Sr., all surnamed Antonio, the respondents herein.

In respondents' position paper,[7] they alleged that as regular employees, they worked from 8:00 a.m. to 5:00 p.m. at petitioner's premises using petitioner's tools and equipment and they received P250 per day. Eutiquio was employed as carpenter-foreman from 1991-1999; Jay as carpenter from 1993-1999; Felicisimo as carpenter from 1994-1999; and Leonardo, Sr. also as carpenter from 1997-1999. According to respondents, they were dismissed without just cause and due process; hence, their prayer for reinstatement and full backwages. They also impleaded one Hermie Alejo, a relative of the petitioner's owner, as co-respondent in their complaint.

On the other hand, in its position paper, petitioner Big AA Manufacturer,[8] affirmed it is a sole proprietorship registered in the name of Enrico Alejo and engaged in manufacturing office furniture, but it denied that respondents were its regular employees. Instead, petitioner claimed that Eutiquio Antonio was one of its independent contractors who used the services of the other respondents. According to petitioner, its independent contractors were paid by results and were responsible for the salaries of their own workers. Allegedly, there was no employer-employee relationship between petitioner and respondents. However, petitioner stated it allowed respondents to use its facilities to meet job orders.

Petitioner also denied that respondents were laid-off by Big AA Manufacturer, since they were project employees only. It added that since Eutiquio Antonio had refused a job order of office tables, their contractual relationship ended. Petitioner surmised that Eutiquio resented the January 10, 2000 Implementing Guidelines it issued to improve efficiency and performance.

In their Reply[9] to petitioner's position paper, respondents stated that Enrico Alejo should be impleaded as a proper or indispensable party as sole proprietor of Big AA. They also pointed out that petitioner's payroll shows that Eutiquio Antonio was assigned in its carpentry section and obtained "vales" (advances on salaries) on various dates. The Implementing Guidelines and written warnings addressed to Eutiquio Antonio also prove that respondents were under petitioner's control and supervision.

In its own Reply[10] to respondents' position paper, petitioner labeled as fabricated the respondents' allegations. It presented additional evidence such as the bio-data of Eutiquio and Jay to disprove their claim that they worked with petitioner from 1991 and 1993, respectively. It also said that the claim that respondents received P250 per day based on its payroll was speculative. While petitioner admitted that respondents were issued identification cards to gain access to company premises to obtain raw materials, it denied that respondents worked from 8:00 a.m. to 5:00 p.m. It stated that respondents do not even have daily time records.

On June 1, 2000, the Labor Arbiter rendered a decision ordering "BIG-AA MANUFACTURERS II, ET AL." to pay respondents P136,500 as separation pay, and P121,160 as backwages. It was unclear concerning Enrico Alejo's liability as the sole proprietor of Big AA. The Labor Arbiter ruled that respondents were regular employees because their work as carpenters was necessary and desirable in petitioner's business. Since Eutiquio worked in petitioner's premises and was without substantial capital or investment in the form of tools, equipment, machinery or work premises, the Labor Arbiter held that Eutiquio was not an independent contractor. Noting the absence of contracts providing the duration of respondents' employment and of reports of project completion to the Department of Labor and Employment (DOLE), the Labor Arbiter also rejected petitioner's allegation that respondents were project employees. The Labor Arbiter further held that respondents were constructively dismissed when the Implementing Guidelines changed their status from regular employees to project employees.

Both parties appealed to the NLRC. Petitioner claimed that the Labor Arbiter committed errors in his findings of facts. It also prayed that (1) Eutiquio Antonio be declared a labor-only contractor; (2) Hermie Alejo be dropped from the case; (3) respondents be ordered to report back to work; and (4) the respondents' claim for separation pay and backwages be dismissed.

Respondents, on the other hand, assailed the Labor Arbiter's decision for not ordering their reinstatement to their former positions.

The NLRC modified the Labor Arbiter's decision. It ordered petitioner to reinstate respondents to their former positions or to pay them separation pay in case reinstatement was no longer feasible, with full backwages in either case. It also dropped Hermie Alejo as a party to the case for he may not be held personally liable with petitioner to satisfy the judgment in favor of respondents.[11] The NLRC ruled that respondents were regular employees, not independent contractors. It further held that petitioner failed to justify its reason for terminating respondents and its failure to comply with the due process requirements.

Upon denial of the parties' motions for reconsideration, petitioner filed a petition for certiorari before the Court of Appeals, which dismissed the petition but affirmed the NLRC decision.

Hence, this petition with prayer for Temporary Restraining Order (TRO). On December 12, 2003, we issued a TRO enjoining the Court of Appeals, NLRC, Labor Arbiter and respondents from implementing the appellate

court's Decision and Resolution.[12]

Before this Court, petitioner claims that the Court of Appeals erred in,

(A) ...finding that respondents are regular employees of petitioner,(B) ...finding that respondents were illegally dismissed by petitioner and(C) ...order[ing] petitioner to reinstate respondents [to their former positions with full backwages] without loss of seniority rights and should reinstatement not be feasible, to pay respondents separation pay.[13] (Emphasis supplied).

In effect, petitioner prays that we resolve the following issues: Are respondents regular employees of petitioner? Did they abandon their work? Were they illegally dismissed by petitioner? If so, what benefits, if any, are due them?

Petitioner contends that employment for more than one year and "performing carpentry works that were necessary and desirable" in petitioner's usual trade and business are "not controlling" factors in determining whether respondents are regular employees. Petitioner argues that Article 280[14] of the Labor Code and the "circumstances which attended the relationship between" the parties, must be considered. The circumstances of the case, according to petitioner, show that respondents were not its regular employees. Specifically, petitioner Eutiquio was an independent businessman and was contracted to render particular job orders using his own methods and style. Further, Eutiquio hired his own workers and used his own house as his factory and work premises where he kept his own tools, equipment and materials.[15]

Respondents point out that petitioner had offered inconsistent arguments. They note that before the Labor Arbiter, petitioner argued that Eutiquio was an independent contractor. In its appeal and motion for reconsideration before the NLRC, petitioner prayed that Eutiquio be declared a labor-only contractor. In this petition, it alleges that Eutiquio is an independent businessman. Respondents insist that they are petitioner's regular employees and that their job is necessary and desirable to its main business and day-to-day operations.

At the outset, it should be stressed that whether respondents are regular employees or project employees or independent contractors is a question of fact.[16] The unanimous finding of the Labor Arbiter, NLRC, and Court of Appeals that respondents were petitioner's regular employees, not independent contractors, binds this Court. Under Rule 45 of the Rules of Court, our jurisdiction is limited to questions of law. Notably, petitioner not only urges us to reexamine the evidence presented below but to consider evidence not presented before the Labor Arbiter. This practice of submitting evidence late is properly rejected as it defeats the speedy administration of justice involving poor workers. It is also unfair.[17]

Besides, petitioner is barred from raising its new theory that Eutiquio is an independent businessman who uses his own house as his factory. We consistently rejected this pernicious practice of shifting to a new theory on appeal in the hope of a favorable result. Fair play, justice and due process require that as a rule new matters cannot be raised for the first time before an appellate tribunal.[18]

Moreover, petitioner's inconsistent arguments reflect its lack of candor and its attempt to confuse the issues in this case to defeat respondents' claims. Before us, petitioner even admits that "respondents worked within" its premises "for purposes of convenience especially so since the tools and materials necessary for the job belonged to" it.[19] Recall also its position before the Labor Arbiter that it allowed respondents to use its facilities for the "proper implementation" of job orders.

Worse, petitioner first argued that Eutiquio is an independent contractor and that respondents are project employees, only to pray later that Eutiquio should be declared a labor-only contractor. It is also surprising how petitioner could argue that respondents are not its employees, in view of its prayer before the NLRC that

respondents be ordered to report back to work. And after the NLRC ruled that respondents should be reinstated, it petitioned the Court of Appeals to dismiss respondents' complaint.

Considering the submission of the parties, we are constrained to agree with the unanimous ruling of the Court of Appeals, NLRC and Labor Arbiter that respondents are petitioner's regular employees. Respondents were employed for more than one year and their work as carpenters was necessary or desirable in petitioner's usual trade or business of manufacturing office furniture. Under Article 280 of the Labor Code, the applicable test to determine whether an employment should be considered regular or non-regular is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer.[20]

True, certain forms of employment require the performance of usual or desirable functions and exceed one year but do not necessarily result to regular employment under Article 280 of the Labor Code.[21] Some specific exceptions include project or seasonal employment. Yet, in this case, respondents cannot be considered project employees. Petitioner had neither shown that respondents were hired for a specific project the duration of which was determined at the time of their hiring nor identified the specific project or phase thereof for which respondents were hired.

We also agree that Eutiquio was not an independent contractor for he does not carry a distinct and independent business, and he does not possess substantial capital or investment in tools, equipment, machinery or work premises.[22] He works within petitioner's premises using the latter's tools and materials, as admitted by petitioner. Eutiquio is also under petitioner's control and supervision. Attesting to this is petitioner's admission that it allowed respondents to use its facilities for the "proper implementation" of job orders. Moreover, the Implementing Guidelines regulating attendance, overtime, deadlines, penalties; providing petitioner's right to fire employees or "contractors"; requiring the carpentry division to join petitioner's exercise program; and providing rules on machine maintenance, all reflect control and supervision over respondents.

Petitioner likewise alleges that it did not dismiss respondents as they were not its regular employees; that respondents failed to sufficiently establish the fact of illegal dismissal; and that respondents abandoned the work after it issued the Implementing Guidelines.[23]

Having ruled that respondents are regular employees, we shall proceed to determine whether respondents have, as petitioner contends, abandoned their work, or they have been illegally dismissed.

The consistent rule is that the employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause, failing in which would make the termination illegal, as in this case.[24]

For accusing respondents of abandonment, petitioner must present evidence (1) not only of respondents' failure to report for work or absence without valid reason, but (2) also of respondents' clear intention to sever employer-employee relations as manifested by some overt acts. The second element is the more determinative factor.[25]

Here, petitioner's argument in support of its abandonment charge was that respondents may have resented its issuance of the Implementing Guidelines. This, in our view, fails to establish respondents' intention to abandon their jobs. On the contrary, by filing the complaint for illegal dismissal within two days of their dismissal on January 11, 2000 and by seeking reinstatement in their position paper, respondents manifested their intention against severing their employment relationship with petitioner and abandoning their jobs. It is settled that an employee who forthwith protests his layoff cannot be said to have abandoned his work.[26]

Finally, Article 279 of the Labor Code,[27] provides that a regular employee who is unjustly dismissed from work

is entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. If reinstatement is no longer feasible, separation pay equivalent to one month salary for every year of service should be awarded as an alternative. This has been our consistent ruling in the award of separation pay to illegally dismissed employees in lieu of reinstatement.[28]

Hence, the four respondents, Eutiquio, Felicisimo, Jay and Leonardo, Sr., all surnamed Antonio, are entitled to backwages and separation pay in case their reinstatement is no longer possible. Eutiquio's and Jay's bio-data reveal that they started working for petitioner only in 1993 (not 1991) and 1998 (not 1993), respectively. Regrettably, we find no factual basis for respondents' claim that they received P250 per day. Petitioner's manifestation reveals, however, that respondents' earnings in 1999 were P211,385 or P169.37 each per day,[28] which is a little less than the P171.50 minimum wage.[30] The NLRC should consider that Eutiquio started only in 1993 and Jay, in 1998 and use P171.50 as respondents' daily wage, not P250 or P169.37.

Lastly, we note the silence of the decisions below with respect to Enrico Alejo, in whose name petitioner is registered as a sole proprietorship. Alejo as the sole proprietor is liable to respondents for backwages and separation pay. We also note that Enrico is consistently represented as petitioner's sole-proprietor in its pleadings including this petition. Therefore, respondents properly sought the inclusion of Enrico Alejo as a proper or indispensable party to this case. Strictly speaking, he is the proper party in this case and the one liable to respondents, for petitioner has no juridical personality to defend this suit. We have held that:

a sole proprietorship ... does not have a separate juridical personality that could enable it to file a suit in court. In fact, there is no law authorizing sole proprietorships to file a suit in court.

A sole proprietorship does not possess a juridical personality separate and distinct from the personality of the owner of the enterprise. The law merely recognizes the existence of a sole proprietorship as a form of business organization conducted for profit by a single individual and requires its proprietor or owner to secure licenses and permits, register its business name, and pay taxes to the national government. The law does not vest a separate legal personality on the sole proprietorship or empower it to file or defend an action in court.[31]

WHEREFORE, the petition is DENIED for lack of merit. Petitioner thru its sole proprietor, Enrico Alejo, is ordered (1) to reinstate the four respondents to their former positions without loss of seniority rights and other privileges or to pay them separation pay in case reinstatement is no longer possible and (2) to pay them full backwages, in either case, computed from the time their compensation was withheld from them up to the time of their actual reinstatement or up to the time it is determined that reinstatement is no longer possible. The NLRC is also ordered to RECOMPUTE respondents, backwages and separation pay, as aforementioned, and execute the payments to respondents. Costs against the petitioner.

SO ORDERED.

Carpio, Carpio-Morales, and Tinga, JJ., concur.

[*] This case does not concern Roberto Fabian who did not pursue his case. He should not be included as respondent herein.

[1] Rollo, pp. 37-43. Penned by Associate Justice Mercedes Gozo-Dadole, with Associate Justices Conrado M. Vasquez Jr., and Rosmari D. Carandang concurring.

[2] Id. at 70-82.

[3] Id. at 155-161.

[4] Id. at 45.

[5] Id. at 6.

[6] Also referred to as "Tikyo" in other parts of the record.

[7] Records, Vol. I, pp. 36-43.

[8] Also referred to as Big AA Manufacturers II in other parts of the record.

[9] Records, Vol. I, pp. 44-54.

[10] Id. at 55-62.

[11] Rollo, pp. 80-81.

[12] Id. at 190-194.

[13] Id. at 311-312.

[14] 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.

[15] Rollo, pp. 312, 314-315.

[16] See *Cioco, Jr. v. C.E. Construction Corporation*, G.R. Nos. 156748 and 156896, 8 September 2004, 437 SCRA 648, 651.

[17] *Filipinas (Pre-fabricated Bldg.) Systems "FILSYSTEMS," Inc. v. National Labor Relations Commission*, G.R. No. 153859, 11 December 2003, 418 SCRA 404, 408.

[18] *PAL v. NLRC*, G.R. Nos. 114280 and 115224, 26 July 1996, 328 Phil. 814, 823-824.

[19] Rollo, p. 323.

[20] *Magsalin v. National Organization of Working Men*, G.R. No. 148492, 9 May 2003, 403 SCRA 199, 204.

[21] *Millares v. National Labor Relations Commission*, G.R. No. 110524, 29 July 2002, 434 Phil. 524, 538.

[22] Section 4(d) (i and ii) of DOLE Department Order No. 10 (1997); *Chavez v. National Labor Relations Commission*, G.R. No. 146530, 17 January 2005, 448 SCRA 478, 493.

[23] Rollo, pp. 319-320, 324-325.

[24] *Hantex Trading Co., Inc. v. Court of Appeals*, G.R. No. 148241, 27 September 2002, 438 Phil. 737, 747.

[25] Id. at 745.

[26] *Stamford Marketing Corp. v. Julian*, G.R. No. 145496, 24 February 2004, 423 SCRA 633, 649.

[27] ART. 279. Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[28] *Hantex Trading Co., Inc. v. Court of Appeals*, supra note 24, at 748.

[28] Records, Vol. 1, pp. 268-269.

[30] Wage Order No. RB III-06, approved January 22, 1998.

[31] *Mangila v. Court of Appeals*, G.R. No. 125027, 12 August 2002, 435 Phil 870, 886.

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