

AGUSAN DEL NORTE ELECTRIC COOPERATIVE, INC. AND HORACIO T. SANTOS, PETITIONERS, VS. JOEL CAGAMPANG AND GLENN GARZON,

G.R. No. 167627. October 10, 2008

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is a petition for review on certiorari to reverse and set aside the Decision [1] dated January 25, 2005 as well as the Resolution [2] dated March 10, 2005 of the Court of Appeals in CA-G.R. SP No. 76035. The appellate court reversed the October 14, 2002 and December 27, 2002 Resolutions [3] of the National Labor Relations Commission (NLRC), Fifth Division, in NLRC CA No. M-006466-2001 (RAB 13-01-00034-2001), which had set aside the Decision [4] of the Labor Arbiter declaring illegal the respondents' dismissal.

The facts, as found by the Court of Appeals, are as follows:

Respondents Joel Cagampang and Glenn Garzon started working as linemen for petitioner Agusan del Norte Electric Cooperative, Inc. (ANECO) on October 1, 1990, under an employment contract which was for a period not exceeding three months. They were both allegedly required to work eight hours a day and sometimes on Sundays, getting a daily salary of P122.00. When the contract expired, the two were laid-off for one to five days and then ordered to report back to work but on the basis of job orders.

After several renewals of their job contracts in the form of job orders for similar employment periods of about three months each, the said contracts eventually expired on April 31, 1998 and July 30, 1999. Respondents' contracts were no longer renewed, resulting in their loss of employment.

Thus, on January 11, 2001, respondents filed an illegal dismissal case against petitioners before the Honorable Labor Arbiter Alim D. Pangandaman, Regional Arbitration Branch No. XIII, Butuan City. They prayed for payment of backwages, salary differential, allowances, premium for alleged work during holidays and rest days, service incentive leave, and separation pay.

On June 22, 2001, the Labor Arbiter declared the dismissal illegal and directed petitioners to pay respondents the amount of P371,596.84 representing their money claims. The Labor Arbiter ruled as follows:

WHEREFORE, judgment is hereby rendered:

- Declaring complainants' dismissal illegal;
- Directing respondents to pay the complainants the total amount of P371,596.84 representing their money claims as computed above.

Complainants' other claims are dismissed for lack of merit.

SO ORDERED. [5]

Petitioners appealed the decision to the NLRC Fifth Division. On October 14, 2002, the NLRC set aside the decision of the Labor Arbiter except the portions granting service incentive leave pay; attorney's fees, fixed at ten percent (10%) of the total money award to both respondents; and salary differential to respondent Garzon. The NLRC decreed as follows:

WHEREFORE, foregoing premises considered, the appealed decision is Vacated and Set Aside, except the portions thereof granting service incentive leave pay and attorney's fees fixed at ten percent (10%) of the total monetary award to both complainants as well as salary differential to complainant Gar[z]on. In lieu thereof, a new judgment is rendered dismissing the above-entitled case for lack of merit, subject to the qualification stated above.

SO ORDERED. [6]

After their motion for reconsideration was denied, respondents filed a petition for certiorari with the Court of Appeals.

On January 25, 2005, the Court of Appeals granted the petition. The appellate court held:

PREMISES CONSIDERED, the Petition is GRANTED. The assailed Resolutions of the National Labor Relations Commission are SET ASIDE. The Decision of the Labor Arbiter dated 22 June 2001 is hereby reinstated. No pronouncement as to Costs.

SO ORDERED. [7]

Hence, the instant petition. Petitioners submit that the Court of Appeals erred:

I.

IN FINDING AND DECLARING THAT THE RESPONDENTS ARE (OR OUGHT TO BE CONSIDERED) "REGULAR" EMPLOYEES/WORKERS OF PETITIONER AGUSAN DEL NORTE ELECTRIC COOPERATIVE (ANECO), NOT "EMERGENCY WORKERS ON A CONTRACTUAL BASIS" HIRED FOR A FIXED PERIOD/TERM OF EMPLOYMENT, AND THAT SAID RESPONDENTS WERE "ILLEGALLY DISMISSED" BY PETITIONER ANECO THEREBY SUSTAINING OR AFFIRMING THE ALLEGED "FACTUAL FINDINGS" OF THE LABOR ARBITER IN THE LATTER'S DECISION IN NLRC CASE NO. RAB-13-01-00034-2001 ... AND ORDERING THE REINSTATEMENT OF THE SAID DECISION

II.

IN FINDING AND DECLARING THAT THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION (FIFTH DIVISION, CAGAYAN DE ORO CITY) COMMITTED "GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK/EXCESS OF JURISDICTION" IN ITS RESOLUTIONS DATED OCTOBER 14, 2002 AND DECEMBER 27, 2002 ... IN NLRC CA NO. M-006466-2001, WHICH RESOLUTION (OF OCTOBER 14, 2002) VACATED AND SET ASIDE (WITH EXCEPTIONS) THE DECISION OF THE LABOR ARBITER ... AND ORDERED THE DISMISSAL OF THE CASE FILED BY THE RESPONDENTS HEREIN ... AGAINST THE PETITIONERS FOR LACK OF MERIT. [8]

Simply stated, the issue before us is whether the respondents were illegally dismissed.

Petitioners claim that the respondents were individually hired only as emergency workers on a contractual basis and for a fixed or definite term/period of employment. Said contracts were never intended to circumvent the law on security of tenure, and that the contractual employment with a fixed period or term that existed between ANECO and respondents should have been considered rightly falling within the legally recognized and accepted concept of management prerogative. [9] Respondents, for their part, counter that there is no legal basis for an

inference that they were not dismissed and that their employment contract merely expired. [10]

After considering the facts and the submissions of the parties, we are in agreement that respondents were illegally dismissed, and that the petition by the employer lacks merit.

There is no dispute that the respondents' work as linemen was necessary or desirable in the usual business of ANECO. Additionally, the respondents have been performing the job for at least one year. The law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability, of that activity to the business. As held in *Integrated Contractor and Plumbing Works, Inc. v. National Labor Relations Commission*: [11]

The test to determine whether employment is regular or not is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. Also, if the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability of that activity to the business. Thus, we held that where the employment of project employees is extended long after the supposed project has been finished, the employees are removed from the scope of project employees and are considered regular employees.

While length of time may not be the controlling test for project employment, it is vital in determining if the employee was hired for a specific undertaking or tasked to perform functions vital, necessary and indispensable to the usual business or trade of the employer. Here, private respondent had been a project employee several times over. His employment ceased to be coterminous with specific projects when he was repeatedly re-hired due to the demands of petitioner's business. Where from the circumstances it is apparent that periods have been imposed to preclude the acquisition of tenurial security by the employee, they should be struck down as contrary to public policy, morals, good customs or public order. [12]

Respondents in the present case being regular employees, ANECO as the employer had the burden of proof to show that the respondents' termination was for a just cause. Unfortunately, however, what petitioners did was merely to refuse, without justifiable reason, to renew respondents' work contracts for the performance of what would otherwise be regular jobs in relation to the trade or business of the former. [13] Such conduct dismally falls short of the requirements of our labor laws regarding dismissals. No twin notices of termination were issued to the employees, hence the employer did not observe due process in dismissing them from their employment. Their dismissals were patently illegal.

In the case of *Casol v. Purefoods Corporation*, [14] we held:

Time and again we have said that in illegal dismissal cases, the employer is burdened to prove just cause for terminating the employment of its employee with clear and convincing evidence. The weakness of the employee's defense should not operate to relieve nor discharge the employer of its burden to prove its charges pursuant to the guaranty of tenure granted by the Constitution to employees under the Labor Code. The case of the employer must stand or fall on its own merits. [15]

This doctrine was reiterated in *Philippine Long Distance Telephone Company, Inc. v. Tiamson* [16] which held:

In termination cases, the burden of proof rests upon the employer to show that the dismissal is for just and valid cause; failure to do so would necessarily mean that the dismissal was illegal. The employer's case succeeds or fails on the strength of its evidence and not on the weakness of the employee's defense. If doubt exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. Moreover, the quantum of proof required in determining the legality of an employee's dismissal is only substantial evidence. Substantial evidence is more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds,

equally reasonable, might conceivably opine otherwise. [17]

WHEREFORE, the petition is denied for lack of merit. The Decision dated January 25, 2005 as well as the Resolution dated March 10, 2005 of the Court of Appeals in CA-G.R. SP No. 76035 is AFFIRMED.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] Rollo, pp. 31-41. Penned by Associate Justice Romulo V. Borja, with Associate Justices Edgardo A. Camello and Rodrigo F. Lim, Jr. concurring.

[2] Id. at 42-44.

[3] Id. at 87-91 and 92-93.

[4] Id. at 60-68. Dated June 22, 2001.

[5] Id. at 68.

[6] Id. at 90.

[7] Id. at 41.

[8] Id. at 179.

[9] Id. at 179-186.

[10] Id. at 61.

[11] G.R. No. 152427, August 9, 2005, 466 SCRA 265.

[12] Id. at 273.

[13] Rollo, p. 37.

[14] G.R. No. 166550, September 22, 2005, 470 SCRA 585.

[15] Id. at 592-593.

[16] G.R. Nos. 164684-85, November 11, 2005, 474 SCRA 761.

[17] Id. at 771.

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