

**D.M. CONSUNJI, INC., PETITIONER, VS. ANTONIO GOBRES,
MAGELLAN DALISAY, GODOFREDO PARAGSA, EMILIO ALETA AND
GENEROSO MELO, RESPONDENTS.**

G.R. No. 169170. August 08, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

This is a petition for review on certiorari^[1] of the Decision of the Court of Appeals in CA-G.R. SP No. 70708, dated March 9, 2005, and its Resolution, dated August 2, 2005, denying petitioner's motion for reconsideration.

The facts are as follows:

Respondents Antonio Gobres, Magellan Dalisay, Godofredo Paragsa, Emilio Aleta and Generoso Melo worked as carpenters in the construction projects of petitioner D.M. Consunji, Inc., a construction company, on several occasions and/or at various times. Their termination from employment for each project was reported to the Department of Labor and Employment (DOLE), in accordance with Policy Instruction No. 20, which was later superseded by Department Order No. 19, series of 1993. Respondents' last assignment was at Quad 4-Project in Glorietta, Ayala, Makati, where they started working on September 1, 1998. On October 14, 1998, respondents saw their names included in the Notice of Termination posted on the bulletin board at the project premises.

Respondents filed a Complaint with the Arbitration Branch of the National Labor Relations Commission (NLRC) against petitioner D.M. Consunji, Inc. and David M. Consunji for illegal dismissal, and non-payment of 13th month pay, five (5) days service incentive leave pay, damages and attorney's fees.

Petitioner D.M. Consunji, Inc. and David M. Consunji countered that respondents, being project employees, are covered by Policy Instruction No. 20, as superseded by Department Order No. 19, series of 1993 with respect to their separation or dismissal. Respondents were employed per project undertaken by petitioner company and within varying estimated periods indicated in their respective project employment contracts. Citing the employment record of each respondent, petitioner and David M. Consunji averred that respondents' services were terminated when their phases of work for which their services were engaged were completed or when the projects themselves were completed. Respondents' notices of termination were filed with the DOLE, in compliance with Policy Instruction No. 20,^[2] superseded by Department Order No.19, series of 1993.^[3] With respect to respondent Generoso G. Melo, petitioner and David M. Consunji maintained the same positions they had against the case of Melo's co-complainants.^[4] Petitioner contended that since respondents were terminated by reason of the completion of their respective phases of work in the construction project, their termination was warranted and legal.^[5]

Moreover, petitioner claimed that respondents have been duly paid their service incentive leave pay and 13th month pay through their respective bank accounts, as evidenced by bank remittances.^[6]

Respondents replied that the Quad 4-Project at Glorietta, Ayala, Makati City was estimated to take two years to

finish, but they were dismissed within the two-year period. They had no prior notice of their termination. Hence, granting that they were project employees, they were still illegally dismissed for non-observance of procedural due process.[7]

On October 4, 1999, the Labor Arbiter rendered a Decision[8] dismissing respondents' complaint. The Labor Arbiter found that respondents were project employees, that they were dismissed from the last project they were assigned to when their respective phases of work were completed, and that petitioner D.M. Consunji, Inc. and David M. Consunji reported their termination of services to the DOLE in accordance with the requirements of law.

Respondents appealed the Labor Arbiter's Decision to the NLRC

In a Resolution[9] dated July 31, 2001, the NLRC affirmed the decision of the Labor Arbiter, and dismissed the appeal for lack of merit.

Respondents' motion for reconsideration was denied by the NLRC for lack of merit in its Order[10] dated February 21, 2002.

Respondents filed a petition for certiorari with the Court of Appeals, seeking the annulment of the NLRC Resolution dated July 31, 2001 and Order dated February 21, 2002. Respondents prayed that their dismissal be declared as illegal, and that they be ordered reinstated to their former position with full backwages until actual reinstatement, and awarded moral, exemplary and nominal damages.

On March 9, 2005, the Court of Appeals rendered a Decision, the dispositive portion of which reads:

WHEREFORE, the Decision and Resolution of the NLRC in finding petitioners' dismissal as valid are AFFIRMED with MODIFICATION that private respondents are ordered to pay each of the petitioners the sum of P20,000.00 as nominal damages for non-compliance with the statutory due process. Costs against petitioners.[11]

The Court of Appeals sustained the findings of the NLRC that respondents are project employees. It held:

The Labor Arbiter and [the] NLRC correctly applied Article 280 of the Labor Code when it ruled that petitioners' employment, which is fixed for [a] specific project and the completion of which has been determined at the time that their services were engaged, makes them project employees. As could be gleaned from the last portion of Article 280 of the Labor Code, the nature of employment of petitioners, which is fixed for a specific project and the completion of which has been determined when they were hired, is excepted therefrom.

This is the reason why under Policy Instruction No. 20 and Department Order No. 19, series of 1993, employers of project employees are required to report their termination to DOLE upon completion of the project for which they were engaged.[12]

The CA stated that although respondents were project employees, they were entitled to know the reason for their dismissal and to be heard on whatever claims they might have. It held that respondents' right to statutory due process was violated for lack of advance notice of their termination, even if they were validly terminated for having completed the phases of work for which they were hired. The appellate court stated that had respondents been given prior notice, they would not have reported for work on October 14, 1998. It cited *Agabon v. NLRC*, [13] which held that where the dismissal is for a just cause, the lack of statutory due process should not nullify the dismissal, or render it illegal, or ineffectual, but the employer should indemnify the employee for the violation of his statutory rights by paying nominal damages. Hence, the Court of Appeals ordered petitioner and David M. Consunji to pay respondents P20,000.00 each as nominal damages for lack of advance notice of their

termination.

Petitioner and David M. Consunji filed a partial motion for reconsideration and prayed that the Decision of the Court of Appeals be partially reconsidered by deleting the award of nominal damages to each respondent. It pointed out that under Department Order No. 19, series of 1993, which is the construction industry's governing law, there is no provision requiring administrative hearing/investigation before a project employee may be terminated on account of completion of phase of work or the project itself. Petitioner also argued that prior notice of termination is not required in this case, and that Agabon is not applicable here, because the termination in Agabon was for cause, while herein respondents were terminated due to the completion of the phases of work for which their services were engaged.

In a Resolution[14] dated August 2, 2005, the Court of Appeals denied the partial motion for reconsideration. It held that the case of Agabon v. NLRC is the one controlling and in point. The appellate court stated that in Agabon, the Court ruled that even if the dismissal is legal, the employer should still indemnify the employee for the violation of his statutory rights. It added that no distinction was made in Agabon whether the employee is engaged in a construction project or not.

Petitioner D.M. Consunji, Inc. filed this petition raising this question of law:

WHETHER OR NOT THERE IS BASIS FOR THE COURT OF APPEALS IN ORDERING HEREIN PETITIONER TO PAY RESPONDENTS EACH THE SUM OF P20,000.00 AS NOMINAL DAMAGES FOR "ALLEGED" NON-COMPLIANCE WITH THE STATUTORY DUE PROCESS.[15]

Petitioner contends that the award of nominal damages in the amount of P20,000.00 to each respondent is unwarranted under Section 2 (III), Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code, which states, "If the termination is brought about by the completion of the contract or phase thereof, no prior notice is required." [16]

Petitioner also contends that Agabon v. NLRC is not applicable to this case. The termination therein was for just cause due to abandonment of work, while in this case, respondents were terminated due to the completion of the phases of work.

In support of its argument, petitioner cited Cioco, Jr. v. C.E. Construction Corporation,[17] which held:

x x x More importantly, Section 2 (III), Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code provides that no prior notice of termination is required if the termination is brought about by completion of the contract or phase thereof for which the worker has been engaged. This is because completion of the work or project automatically terminates the employment, in which case, the employer is, under the law, only obliged to render a report to the DOLE on the termination of the employment.[18]

The petition is meritorious.

Respondents were found to be project employees by the Labor Arbiter, the NLRC and the Court of Appeals. Their unanimous finding that respondents are project employees is binding on the Court. It must also be pointed out that respondents have not appealed from such finding by the Court of Appeals. It is only the petitioner that appealed from the decision of the Court of Appeals.

The main issue is whether or not respondents, as project employees, are entitled to nominal damages for lack of advance notice of their dismissal.

A project employee is defined under Article 280 of the Labor Code as 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 services to be performed is seasonal in nature and the employment is for the duration of the season.”[19]

In this case, the Labor Arbiter, the NLRC and the Court of Appeals all found that respondents, as project employees, were validly terminated due to the completion of the phases of work for which their services were engaged. However, the Court of Appeals held that respondents were entitled to nominal damages, because petitioner failed to give them advance notice of their termination. The appellate court cited the case of *Agabon v. NLRC* as basis for the award of nominal damages.

The Court holds that *Agabon v. NLRC* is not applicable to this case, because it involved the dismissal of regular employees for abandonment of work, which is a just cause for dismissal under Article 282 of the Labor Code.[20] Although the dismissal was for a cause, the employer therein was required to observe the standard of due process for termination of employment based on just causes under Article 282 of the Labor Code, which procedural due process requirements are enumerated in Section 2, Rule 1, Book VI[21] of the Omnibus Rules Implementing the Labor Code.[22] Since the employer therein failed to comply with the twin requirements of notice and hearing, the Court ordered the employer to pay the employees involved nominal damages in the amount of P30,000.00 for failure to observe procedural due process.

Unlike in *Agabon*, respondents, in this case, were not terminated for just cause under Article 282 of the Labor Code. Dismissal based on just causes contemplate acts or omissions attributable to the employee.[23] Instead, respondents were terminated due to the completion of the phases of work for which their services were engaged.

As project employees, respondents' termination is governed by Section 1 (c) and Section 2 (III), Rule XXIII (Termination of Employment), Book V of the Omnibus Rules Implementing the Labor Code.

Section 1 (c), Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code states:

Section 1. Security of tenure. -- (a) In cases of regular employment, the employer shall not terminate the services of an employee except for just or authorized causes as provided by law, and subject to the requirements of due process.

x x x x

(c) In cases of project employment or employment covered by legitimate contracting or sub-contracting arrangements, no employee shall be dismissed prior to the completion of the project or phase thereof for which the employee was engaged, or prior to the expiration of the contract between the principal and contractor, unless the dismissal is for just or authorized cause subject to the requirements of due process or prior notice, or is brought about by the completion of the phase of the project or contract for which the employee was engaged.[24]

Records show that respondents were dismissed after the expiration of their respective project employment contracts, and due to the completion of the phases of work respondents were engaged for. Hence, the cited provision's requirements of due process or prior notice when an employee is dismissed for just or authorized cause (under Articles 282 and 283 of the Labor Code) prior to the completion of the project or phase thereof for which the employee was engaged do not apply to this case.

Further, Section 2 (III), Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code provides:

Section 2. Standard of due process: requirements of notice. -- In all cases of termination of employment, the following standards of due process shall be substantially observed.

1. For termination of employment based on just causes as defined in Article 282 of the Code:

- (a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;
- (b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and
- (c) A written notice [of] termination served on the employee indicating that upon due consideration of all the circumstance, grounds have been established to justify his termination.

In case of termination, the foregoing notices shall be served on the employee's last known address.

II. For termination of employment as based on authorized causes defined in Article 283 of the Code, the requirements of due process shall be deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department at least thirty (30) days before the effectivity of the termination, specifying the ground or grounds for termination.

III. If the termination is brought about by the completion of the contract or phase thereof, no prior notice is required. If the termination is brought about by the failure of an employee to meet the standards of the employer in the case of probationary employment, it shall be sufficient that a written notice is served the employee within a reasonable time from the effective date of termination.[25]

In this case, the Labor Arbiter, the NLRC and the Court of Appeals all found that respondents were validly terminated due to the completion of the phases of work for which respondents' services were engaged. The above rule clearly states, "If the termination is brought about by the completion of the contract or phase thereof, no prior notice is required." *Cioco, Jr. v. C.E. Construction Corporation*[26] explained that this is because completion of the work or project automatically terminates the employment, in which case, the employer is, under the law, only obliged to render a report to the DOLE on the termination of the employment.

Hence, prior or advance notice of termination is not part of procedural due process if the termination is brought about by the completion of the contract or phase thereof for which the employee was engaged. Petitioner, therefore, did not violate any requirement of procedural due process by failing to give respondents advance notice of their termination; thus, there is no basis for the payment of nominal damages.

In sum, absent the requirement of prior notice of termination when the termination is brought about by the completion of the contract or phase thereof for which the worker was hired, respondents are not entitled to nominal damages for lack of advance notice of their termination.

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals in CA-G.R. SP No. 70708, dated March 9, 2005, insofar as it upholds the validity of the dismissal of respondents is AFFIRMED, but the award of nominal damages to respondents is DELETED. The Resolution of the Court of Appeals, dated August 2, 2005, is SET ASIDE.

No costs.

SO ORDERED.

Carpio, (Chairperson), Nachura, Abad, and Mendoza, JJ. concur.

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

[2] Policy No. 20: Stabilizing Employer-Employee Relations in the Construction Industry

In the interest of stabilizing employer-employee relations in the construction industry and taking into consideration its unique characteristics, the following policy instructions are hereby issued for the guidance of all concerned:

Generally, there are two types of employees in the construction industry, namely: a) Project employees, and 2) Non-Project employees.

Project employees are those employed in connection with a particular construction project. x x x

Project employees are not entitled to termination pay if they are terminated as a result of the completion of the project or any phase thereof in which they are employed, regardless of the number of projects in which they have been employed by a particular construction company. Moreover, the company is not required to obtain a clearance from the Secretary of Labor in connection with such termination. What is required of the company is a report to the nearest Public Employment Office for statistical purposes.

[3] Department Order No. 19, series of 1993

x x x x

2.2 Indicators of project employment. Either one or more of the following circumstances, among others, may be considered as indicators that an employee is a project employee.

(a) The duration of the specific/identified undertaking for which the worker is engaged is reasonably determinable.

(b) Such duration, as well as the specific work/service to be performed, is defined in an employment agreement and is made clear to the employee at the time of hiring.

(c) The work/service performed by the employee is in connection with the particular project/undertaking for which he is engaged.

(d) The employee, while not employed and awaiting engagement, is free to offer his services to any other employer.

(e) The termination of his employment in the particular project/undertaking is reported to the Department of Labor and Employment (DOLE) Regional Office having jurisdiction over the workplace within 30 days following the date of his separation from work, using the prescribed form on employees' terminations dismissals suspensions.

(f) An undertaking in the employment contract by the employer to pay completion bonus to the project employee as practiced by most construction companies.

xxxx

6.1. Requirements of labor and social legislations. (a) The construction company and the general contractor and/or subcontractor referred to in Sec. 2.5 shall be responsible for the workers in its employ on matters of compliance with the requirements of existing laws and regulations on hours of work, wages, wage related benefits, health, safety and social welfare benefits, including submission to the DOLE-Regional Office of Work Accident/Illness Report, Monthly Report on Employees' Terminations/Dismissals/Suspensions and other reports x x x. (Emphasis supplied.)

[4] Decision of the Labor Arbiter, rollo, p. 264.

[5] Respondents' Position Paper, CA rollo, p. 27; Id.

[6] Respondents' Position Paper, CA rollo, p. 40.

[7] Reply & Rejoinder to Respondents' Position Paper, CA rollo, p. 46.

[8] Rollo, pp. 263-265.

[9] Id. at 283-285.

[10] Id. at 371-372.

[11] Id. at 37.

[12] Id. at 33.

[13] 485 Phil. 248 (2004).

[14] Rollo, pp. 47-49.

[15] Id. at 18.

[16] Emphasis supplied.

[17] 481 Phil. 270 (2004). (Emphasis and underscoring supplied.)

[18] Id. at 277-278.

[19] See *Saberola v. Suarez*, G.R. No. 151227, July 14, 2008, 558 SCRA 135, 142.

[20] 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.

[21] Section 2. Security of Tenure. x x x (d) In all cases of termination of employment, the following standards of due process shall be substantially observed: For termination of employment based on just causes as defined in Article 282 of the Code:

- (i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.
- (ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him.
- (iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstance, grounds have been established to justify his termination.

[22] Agabon v. National Labor Relations Commission, supra note 13, at 284.

[23] Id.

[24] Emphasis and underscoring supplied.

[25] Emphasis and underscoring supplied.

[26] Supra note 17.

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