

**PNOC-ENERGY DEVELOPMENT CORPORATION, SOUTHERN NEGROS
GEOTHERMAL PROJECT, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION, FOURTH DIVISION, CEBU CITY, AND
PNOC-EDC, SNGPEU-AS...**

G.R. NO. 169353. April 13, 2007

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 77584 as well as its Resolution[2] dated August 11, 2005.

The antecedents are as follows:

Petitioner PNOC-Energy Development Corporation is a government-owned and controlled corporation engaged in the exploration, development, and utilization of energy. It undertakes several projects in areas where geothermal energy has been discovered. Each geothermal project undergoes the stages of exploration, development, and utilization or production. For each stage, several activities are undertaken such as drilling, construction, civil works, structural works, mechanical works, and electrical works until the project is finally completed. Aside from its projects in Negros Oriental, petitioner also had geothermal projects in Negros Occidental, Leyte, Albay, Sorsogon, and North Cotabato.

Petitioner's Southern Negros Geothermal Production Field in Negros Oriental is divided into two phases: Palinpinon I (PAL I) and Palinpinon II (PAL II). To augment its manpower requirement occasioned by the increased activities in the development of PAL II, petitioner hired the following employees in the Administration and Maintenance Section:

Name Date Hired Position Date Separated

- 1) Leonora Torres July 3, 1995 Clerk/Typist June 30, 1998
- 2) Rosela Calimpong July 1, 1997 Clerk/Typist June 30, 1998
- 3) Arnel Amor May 24, 1995 Helper Mechanic June 30, 1998
- 4) Wilson Nuay May 16, 1995 Service Driver June 30, 1998
- 5) Roberto Renzal January 25, 1995 Pipe Fitter June 30, 1998
- 6) Alejandro Tabañera February 27, 1996 Mechanic June 30, 1998

The termination/expiration of their respective employment were specified in their initial employment contracts, which, however, were renewed and extended on their respective expiry dates.

On May 29, 1998, petitioner submitted reports[3] to the Department of Labor and Employment (DOLE) Regional

Sub-Branch No. VII in Dumaguete City, stating that six of its employees were being terminated.

Petitioner thereafter furnished the employees uniformly worded notices of termination, stating that they were being terminated from employment effective June 30, 1998 due to the substantial completion of the civil works phase of PAL II.

On October 29, 1998, the six employees, herein respondents, filed before the National Labor Relations Commission (NLRC) a complaint for illegal dismissal against petitioner. Aside from reinstatement, respondents sought the payment of backwages, salary differential, collective bargaining agreement benefits, damages and attorney's fees.

In their Position Paper, respondents averred that they had rendered continuous and satisfactory services from the dates of their respective employment until illegally dismissed on June 30, 1998:

NAMES MONTHS and YEARS OF SERVICE

- 1) Arnel Amor 3 years and 1 month
- 2) Rosela Calimpong 2 years and 11 months
- 3) Wilson Nuay 3 years and 1 month
- 4) Roberto Renzal 3 years and 5 months
- 5) Alejandro Tabañera 2 years and 4 months
- 6) Leonora Torres 2 years and 11 months

Respondents further contended that their dismissal from employment was a clear case of union busting for they had previously sought union membership and actually filed a notice of strike.

For its part, petitioner asseverated that respondents were contractual employees; as such, they cannot claim to have been illegally dismissed because upon the expiration of the term of the contract or the completion of the project, their employer-employee relationship also ended.

After evaluating the evidence presented, the Labor Arbiter rendered judgment dismissing the complaint for lack of legal and factual basis.[4] The Labor Arbiter ruled that respondents were not dismissed from work; the employer-employee relationship between the parties was severed upon the expiration of the respective contracts of respondents and the completion of the projects concerned.

Not satisfied, respondents interposed an appeal to the NLRC which rendered judgment reversing the decision of the Labor Arbiter. The dispositive portion reads:

WHEREFORE, the decision of the Labor Arbiter dated May 31, 1999 is SET ASIDE and a new one is rendered ORDERING the respondent the following:

(1) to immediately reinstate the following complainants to their respective positions without loss of seniority rights and other privileges:

- a) LEONORA TORRES
- b) ARNEL AMOR
- c) WILSON NUAY
- d) ROBERTO RENZAL, and
- e) ALEJANDRO TABAÑERA;

(2) to pay each of the complainants his/her backwages from July 1, 1998 until actual reinstatement at the rate of P116.00 per day plus his/her 13th month pay and service incentive leave pay for the same period.

(3) to pay attorney's fees equivalent to ten percent (10%) of the total award.

The claim of Rosela Calimpong is dismissed for lack of merit.

SO ORDERED.[5]

The NLRC ratiocinated that respondents were regular non-project employees for having worked for more than one year in positions that required them to perform activities necessary and desirable in the normal business or trade of petitioner. The NLRC further ruled that the employment contracts of respondents were not for a specific project or for a fixed period. According to the NLRC, the dismissals made on June 30, 1998 under the pretext of project completion were illegal, being founded on an invalid, unjust, and unauthorized cause.

Respondents filed a motion for reconsideration, which the NLRC denied with modification in a Resolution[6] dated March 19, 2003. Only respondent Rosela Calimpong was granted relief.

Aggrieved, petitioner filed a petition for certiorari before the CA seeking to have the NLRC decision reversed. It claimed that respondents were engaged for one definite phase of petitioner's geothermal project, the execution and implementation of the civil works portion of the Fluid Collection and Disposal System (FCDS) and Associated Work Projects. Petitioner averred that at the time of respondents' termination, the projects had already been substantially if not fully completed.

On August 31, 2004, the CA dismissed the petition. The fallo of the decision reads:

WHEREFORE, premises considered, the petition is hereby DENIED. The assailed May 23, 2001 Decision and March 19, 2003 Resolution of the National Labor Relations Commission, Fourth Division of Cebu City are AFFIRMED.

SO ORDERED.[7]

The CA ruled that respondents were performing activities necessary and desirable in the normal operations of the business of petitioner. The appellate court explained that the repeated re-hiring and the continuing need for the services of the project employees over a span of time had made them regular employees. The motion for reconsideration filed by petitioner was denied by the CA in its Resolution[8] dated August 11, 2005.

Petitioner sought relief from this Court via petition for review on certiorari.

The pivotal questions involved in this case for our resolution are: (a) whether respondents were project employees or regular employees; and (b) whether or not they were illegally dismissed from employment.

Petitioner argues that respondents are project employees because as gleaned from their standard contracts of employment, they were hired for a specific project or undertaking, the completion or termination of which had been determined at the time of their engagement. Their contracts clearly indicated the completion or termination of the specific project or of the specific phase thereof at the time they were engaged.

For their part, respondents posit that they were undeniably performing activities which are necessary or desirable in the usual trade or business of petitioner. They aver that the completion of their individual employment was not determined at the time of their engagement due to the fact that their contracts were renewed and extended over and over again. They claim that had the periods of their employment been determined, then their work with petitioner would not have lasted beyond the three-month period provided in their respective initial employment contracts. They likewise theorized that the contracts they signed were short-term contracts covering a long period

of the same activity, not for a specific project or undertaking.

The contentions of petitioner have no merit.

Customarily, the findings made by the NLRC are afforded great respect and are even clothed with finality and considered binding on this Court, except that when such findings are contrary to those of the Labor Arbiter, this Court may elect to re-examine the same, as we shall do in this case now.

Article 280 of the Labor Code of the Philippines states —

Article 280. REGULAR AND CASUAL EMPLOYEES. — 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.

Thus, the applicable formula to ascertain 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.[9] As we held in *Grandspan Development Corporation v. Bernardo*: [10]

The principal test for determining whether particular employees are properly characterized as "project employees," as distinguished from "regular employees," is whether or not the project employees were 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.[11]

As defined, project employees are those workers hired (1) for a specific project or undertaking, and (2) the completion or termination of such project or undertaking has been determined at the time of the engagement of the employee.[12] However, petitioner failed to substantiate its claim that respondents were hired merely as project employees. A perusal of the records of the case reveals that the supposed specific project or undertaking of petitioner was not satisfactorily identified in the contracts of respondents. To illustrate, the following is a list of the names of respondents and the projects written in their employment contracts:

NAMES PROJECT NAME

Leonora A. Torres Additional Manpower cover additional workloads of PAL II transferred to PAL I Operations,[13] PAL II Transfer to PAL I Operations[14]

Arnel T. Amor EDC-Drilling,[15] Maintenance of Drilling Materials,[16] Assist in Repair Maintenance of Vehicles/Equipments at Equipment Maintenance Section[17]

Wilson D. Nuay EDC Drilling Activities,[18] Rig #3 Operation on OK-3RWOB-2DWO,[19] Maintenance of Drilling Materials,[20] LG4D Drilling Operation,[21] SNGP FCDS Project,[22] Fabrication Personal Driver for CD Turned-Over Projects[23]

Roberto S. Renzal PAL II FCDS Nasuji-NJA RI Line and Associated Works,[24] PAL II FCDS PN33/PN25 Branchline/ Nasuji-NJA-Sogongon,[25] SNGP FCDS Project,[26] Cawayan Restoration Works,[27] SNGP FCDS

Project PAL I/PAL II Refurbishments,[28] Support Workload increase in Fabrication/Equipment Maintenance Section[29]

Alejandro B. Tabañera, Jr. Temporary Increase in Workload of Maintenance and Repair Activities of Light and Heavy Equipment,[30] Troubleshooting/Repair of All Equipments[31]

Rosela S. Calimpong PAL II Transfer to PAL I Operations Clerical Workloads,[32] Additional Manpower to cover additional workloads of PAL II transferred to PAL I Operations[33]

Unmistakably, the alleged projects stated in the employment contracts were either too vague or imprecise to be considered as the "specific undertaking" contemplated by law. Petitioner's act of repeatedly and continuously hiring respondents to do the same kind of work belies its contention that respondents were hired for a specific project or undertaking. The absence of a definite duration for the project/s has led the Court to conclude that respondents are, in fact, regular employees.

Another cogent factor which militates against petitioner's insistence that the services of respondents were terminated because the projects for which they were hired had been completed is the fact that respondents' contracts of employment were extended a number of times for different or new projects. It must be stressed that a contract that misuses a purported fixed-term employment to block the acquisition of tenure by employees deserves to be struck down for being contrary to law, morals, good customs, public order and public policy.[34]

In *Filipinas Pre-Fabricated Building Systems (Filsystems), Inc. v. Puente*,[35] the Court ruled that "the length of service of a project employee is not the controlling test of employment tenure but whether or not 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." [36] Indeed, 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, respondents had been project employees several times over. Their employment ceased to be coterminous with specific projects when they were repeatedly re-hired by petitioner.[37] 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.[38]

As regular workers, respondents are entitled to security of tenure under Article 279 of the Labor Code and can only be dismissed for a just or authorized cause. Article 279 of the Labor Code provides:

Article. 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.

In termination cases, it is incumbent upon the employer to prove by the quantum of evidence required by law that the dismissal of an employee is not illegal; otherwise the dismissal would be unjustified.[39] In the case at bar, petitioner failed to discharge the burden.

The notices of termination indicated that respondents' services were terminated due to the completion of the project. However, this allegation is contrary to the statement of petitioner in some of its pleadings that the project was merely "substantially completed." There is likewise no proof that the project, or the phase of work to which respondents had been assigned, was already completed at the time of their dismissal.

Since respondents were illegally dismissed from work, they are entitled to reinstatement without loss of seniority rights, full backwages, inclusive of allowances and other benefits or their monetary equivalent computed from the time their compensation was withheld from them up to the time of their actual reinstatement, pursuant to Article 279 of the Labor Code.[40]

WHEREFORE, in the light of the foregoing, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 77584 and the Resolution are AFFIRMED. No costs.

SO ORDERED.

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

[1] Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Isais P. Dicdican and Ramon M. Bato, Jr., concurring; rollo, pp. 27-32.

[2] Rollo, p. 33.

[3] CA rollo, pp. 40-44.

[4] CA Rollo, pp. 62-67.

[5] Id. at 22-23.

[6] Id. at 25-28.

[7] Rollo, p. 32.

[8] Id. at 33.

[9] Big AA Manufacturer v. Antonio, G.R. No. 160854, March 3, 2006, 484 SCRA 33, 44, citing Magsalin v. National Organization of Working Men, 403 SCRA 199, 204 (2000).

[10] G.R. No. 141464, September 21, 2005, 470 SCRA 461.

[11] Id. at 470, citing Kiamco v. National Labor Relations Commission, G.R. No. 129449, June 29, 1999, 309 SCRA 424, 432; Violeta v. National Labor Relations Commission, 280 SCRA 520.

[12] Poseidon Fishing v. National Labor Relations Commission, G.R. No. 168052, February 20, 2006, 482 SCRA 717, 734, citing Philex Mining Corporation v. National Labor Relations Commission, 371 Phil. 48, 57 (1999).

[13] CA rollo, p. 30.

[14] Id. at 81.

[15] Id. at 86.

[16] Id. at 92.

[17] Id. at 95.

[18] Id. at 105.

[19] Id. at 108.

[20] Id. at 111.

[21] Id. at 114.

[22] Id. at 117.

[23] Id. at 132.

[24] Id. at 138.

[25] Id. at 142.

[26] Id. at 146.

[27] Id. at 150.

[28] Id. at 154.

[29] Id. at 158.

[30] Id. at 166.

[31] Id. at 173.

[32] Records, p. 30.

[33] Id. at 162.

[34] Innodata Philippines, Inc. v. Quejada-Lopez, G.R. No. 162839, October 12, 2006.

[35] G.R. No. 153832, March 18, 2005, 453 SCRA 820.

[36] Id. at 828, citing D.M. Consunji, Inc. v. NLRC, G.R. No. 116572, December 18, 2000, 348 SCRA 441, 447.

[37] See Integrated Contractor and Plumbing Works, Inc. v. National Labor Relations Commission, G.R. No. 152427, August 9, 2005, 466 SCRA 265, 273, citing Tomas Lao Construction v. National Labor Relations Commission, 278 SCRA 716, 726 (1997).

[38] Tomas Lao Construction v. National Labor Relations Commission, *supra*, at 726.

[39] Me-Shurn Corporation v. Me-Shurn Workers Union-FSM, G.R. No. 156292, January 11, 2005, 448 SCRA 41, 50.

[40] Casol v. Purefoods Corporation, G.R. No. 166550, November 18, 2005, 475 SCRA 559, 561.

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