

HANJIN HEAVY INDUSTRIES AND CONSTRUCTION CO. LTD., HAK KON KIM AND/OR JHUNIE ADAJAR PETITIONERS, VS. FELICITO IBAÑEZ, LIGWAS CAROLINO, ELMER GACULA, ENRIQUE DAGOTDOT AND RUEL CA...

G.R. No. 170181. June 26, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, assailing the Decision,[1] dated 28 July 2005, rendered by the Court of Appeals, reversing the Decision,[2] promulgated by the National Labor Relations Commission (NLRC) on 7 May 2004. The Court of Appeals, in its assailed Decision, declared that respondents are regular employees who were illegally dismissed by petitioner Hanjin Heavy Industries and Construction Company, Limited (HANJIN).

Petitioner HANJIN is a foreign company duly registered with the Securities and Exchange Commission to engage in the construction business in the Philippines. Petitioners Hak Kon Kim and Jhunie Adajar were employed as Project Director and Supervisor, respectively, by HANJIN.

On 11 April 2002, respondents Felicito Ibañez, Aligwas Carolino, Elmer Gacula, Enrique Dagotdot, Ruel Calda, and four other co-workers filed a complaint before the NLRC, docketed as NLRC Case No. RAB-IV-04-15515-02-RI, for illegal dismissal with prayer for reinstatement and full backwages against petitioners. In their Position Paper dated 29 July 2002, respondents alleged that HANJIN hired them for various positions on different dates, hereunder specified:

Position Date of Employment

Felicito Ibañez Tireman
7 March 2000

Elmer Gacula
Crane Operator 1992

Enrique Dagotdot Welder 1995

Aligwas Carolino Welder
September 1994

Ruel Calda
Warehouseman 26 January 1996[3]

Respondents stated that their tasks were usual and necessary or desirable in the usual business or trade of HANJIN. Respondents additionally averred that they were employed as members of a work pool from which

HANJIN draws the workers to be dispatched to its various construction projects; with the exception of Ruel Calda, who as a warehouseman was required to work in HANJIN's main office.[4] Among the various construction projects to which they were supposedly assigned, respondents named the North Harbor project in 1992-1994; Manila International Port in 1994-1996; Batangas Port in 1996-1998; the Batangas Pier, and La Mesa Dam.[5]

On 15 April 2002, Hanjin dismissed respondents from employment. Respondents claimed that at the time of their dismissal, HANJIN had several construction projects that were still in progress, such as Metro Rail Transit (MRT) II and MRT III, and continued to hire employees to fill the positions vacated by the respondents.[6]

Petitioners denied the respondents' allegations. They maintained that respondents were hired as project employees for the construction of the LRT/MRT Line 2 Package 2 and 3 Project. HANJIN and respondents purportedly executed contracts of employment, in which it was clearly stipulated that the respondents were to be hired as project employees for a period of only three months, but that the contracts may be renewed, to wit:

Article II

TERM OF AGREEMENT

This Agreement takes effect xxx for the duration of three (3) months and shall be considered automatically renewed in the absence of any Notice of Termination by the EMPLOYER to the PROJECT EMPLOYEE. This AGREEMENT automatically terminates at the completion of the project or any particular phase thereof, depending upon the progress of the project.[7]

However, petitioners failed to furnish the Labor Arbiter a copy of said contracts of employment.

Petitioners asserted that respondents were duly informed of HANJIN's policies, rules and regulations, as well as the terms of their contracts. Copies of the employees' rules and regulations were posted on the bulletin boards of all HANJIN campsite offices.[8]

Petitioners further emphasized that prior to 15 April 2002, Hak Kon Kim, HANJIN's Project Director, notified respondents of the company's intention to reduce its manpower due to the completion of the LRT/MRT Line 2 Package 2 and 3 Project. Respondents were among the project employees who were thereafter laid off, as shown in the Establishment Termination Report filed by HANJIN before the Department of Labor and Employment (DOLE) Regional Office (IV) in Cainta, Rizal on 11 April 2002.[9]

Finally, petitioners insist that in accordance with the usual practice of the construction industry, a completion bonus was paid to the respondents. [10] To support this claim, they offered as evidence payroll records for the period 4 April 2002 to 20 April 2002, with the words "completion bonus" written at the lower left corner of each page.[11]

Petitioners attached copies of the Quitclaims,[12] executed by the respondents, which uniformly stated that the latter received all wages and benefits that were due them and released HANJIN and its representatives from any claims in connection with their employment. These Quitclaims also contained Clearance Certificates which confirmed that the employees concerned were cleared of all accountabilities at the close of the working hours on 15 April 2002.

In their Reply[13]dated 27 August 2002, respondents vehemently refuted having signed any written contract stating that they were project employees.

The Labor Arbiter found merit in the respondents' complaint and declared that they were regular employees who had been dismissed without just and valid causes and without due process. It ruled that HANJIN's allegation that

respondents were project employees was negated by its failure to present proof thereof. It also noted that a termination report should be presented after the completion of every project or a phase thereof and not just the completion of one of these projects. The Labor Arbiter further construed the number of years that respondents rendered their services for HANJIN as an indication that respondents were regular, not project, employees.[14] The Labor Arbiter ordered in its Decision, dated 30 April 2003, that:

WHEREFORE, premises considered, judgment is hereby rendered as follows;

1) Declaring respondent HANJIN HEAVY INDUSTRIES CONSTRUCTION CO. LTD. guilty of illegal dismissal

2) Ordering respondent to reinstate all the complainants to positions previously occupied by them with full backwages from the time compensation was withheld from them up to date of actual reinstatement in the following amount (as of date of this decision):

1. Felicito Ibañez P88,020.83
2. Elmer A. Gacula 88,020.83
3. Rizalino De Vera 88,020.83
4. Enrique Dagotdot 88,020.83
5. Carolino Aligwas 88,020.83
6. Ruel Calda 88,020.83
7. Roldan Lanojan 88,020.83
8. Pascual Caranguian 88,020.83
9. Carmelito Dalumangcad 88,020.83

Total P792, 187.47

3) In lieu of reinstatement, respondent is ordered to pay complainants their separation pay in the following sum:

- Felicito Ibañez P19,500.00
- Elmer A. Gacula 71,500.00
- Rizalino De Vera 19,500.00
- Enrique Dagotdot 52,000.00
- Carolino Aligwas 58,500.00
- Ruel Calda 45,500.00
- Roldan Lanojan 19,500.00
- Pascual Caranguian 26,000.00
- Carmelito Dalumangcad 78,000.00

Total P390,000.00

4) Ordering respondent to pay each complainant P50,000.00 for moral damages and P30,000.00 as exemplary

damages, or the total sum of P450,000.00 and P270,000.00, respectively; and

5) Ordering respondent to pay complainants litigation expenses in the sum of P30,000.00

All other claims are DISMISSED for lack of merit.[15]

Petitioners filed an appeal before the NLRC. In their Notice of Appeal/Memorandum Appeal [16] dated 5 July 2003, petitioners discarded their earlier claim that respondents signed employment contracts, unequivocally informing them of their status as project employees. Nonetheless, they still contended that the absence of respondents' contracts of employment does not vest the latter with regular status.

The NLRC reversed the Labor Arbiter's Decision dated 30 April 2003, and pronounced that the respondents were project employees who were legally terminated from employment. [17] The NLRC gave probative value to the Termination Report submitted by HANJIN to the DOLE, receipts signed by respondents for their completion bonus upon phase completion, and the Quitclaims executed by the respondents in favor of HANJIN. The NLRC also observed that the records were devoid of any proof to support respondents' allegation that they were employed before 1997, the time when construction work on the MRT started. Lastly, it overruled the Labor Arbiter's award of moral and exemplary damages.[18] The dispositive part of the Decision dated 7 May 2004 of the NLRC states that:

WHEREFORE, in view of the foregoing, the decision subject of appeal is hereby REVERSED and SET ASIDE and a new one is entered DISMISSING complainants' complaint for lack of merit.[19]

On appeal, the Court of Appeals reversed the NLRC Decision, dated 7 May 2004. The appellate court looked with disfavor at the change in HANJIN's initial position before the Labor Arbiter--from its initial argument that respondents executed employment contracts; to its modified argument during its appeal before the NLRC--that respondents could still be categorized as project workers despite the absence of contracts of employment. Additionally, it adjudged the Termination Report as inconclusive proof that respondents were project employees. Emphasizing that the employer had the burden of proving the legality of the dismissal, the appellate court ruled that respondents were regular employees and upheld the Labor Arbiter's finding that they were illegally dismissed. The Court of Appeals, however, adopted the NLRC's deletion of the award of damages. [20] The decretal portion of the Decision of the Court of Appeals reads:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the challenged decision and resolution of the NLRC must be, as they hereby are, REVERSED and SET ASIDE. The decision of the Labor Arbiter is hereby REINSTATED relative to the award to petitioners of full backwages, separation pay in lieu of reinstatement, and litigation expenses, but not with respect to the awards for moral damages or for exemplary damages, both of which are hereby DELETED . Without costs in this instance.[21]

Hence, the present Petition, in which the following issues are raised:

I

WHETHER OR NOT THE FINDINGS OF THE HONORABLE COURT OF APPEALS ARE MERE CONCLUSIONS WITHOUT DELVING INTO THE RECORDS OF THE CASE AND EXAMINE (sic) FOR ITSELF THE QUESTIONED FINDINGS OF THE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION CONTRARY TO THE RULING IN THE CASE OF AGABON VS. NLRC, ET. AL. 442 SCRA 573.

II

WHETHER OR NOT THE HONORABLE COURT OF APPEALS MANIFESTLY OVERLOOKED CERTAIN RELEVANT FACTS WHICH, IF PROPERLY CONSIDERED, WOULD RESULT IN A DIFFERENT CONCLUSION.

III

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT APPLYING THE PERTINENT PROVISIONS OF POLICY INSTRUCTIONS NO. 20, AS AMENDED BY DEPARTMENT ORDER NO. 19 SERIES OF 1993 IN RELATION TO ARTICLE 280 OF THE LABOR CODE IN CONSIDERING WHETHER OR NOT RESPONDENTS ARE PROJECT EMPLOYEES.

IV

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT RESPONDENTS WERE ILLEGALLY DISMISSED.[22]

The Petition is without merit.

As a general rule, the factual findings of the Court of Appeals are binding upon the Supreme Court. One exception to this rule is when the factual findings of the former are contrary to those of the trial court or the lower administrative body, as the case may be. The main question that needs to be settled--whether respondents were regular or project employees--is factual in nature. Nevertheless, this Court is obliged to resolve it due to the incongruent findings of the NLRC and those of the Labor Arbiter and the Court of Appeals. [23]

Article 280 of the Labor Code distinguishes a "project employee" from a "regular employee" thus:

Article 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 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. (Emphasis supplied.)

From the foregoing provision, 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.[24]

In a number of cases, [25] the Court has held that the length of service or the re-hiring of construction workers on a project-to-project basis does not confer upon them regular employment status, since their re-hiring is only a natural consequence of the fact that experienced construction workers are preferred. Employees who are hired for carrying out a separate job, distinct from the other undertakings of the company, the scope and duration of which has been determined and made known to the employees at the time of the employment, are properly treated as project employees and their services may be lawfully terminated upon the completion of a project.[26] Should the terms of their employment fail to comply with this standard, they cannot be considered project employees.

In *Abesco Construction and Development Corporation v. Ramirez*, [27] which also involved a construction company and its workers, this Court considered it crucial that the employees were informed of their status as project employees:

The principal test for determining whether employees are "project employees" or "regular employees" is whether they are assigned to carry out a specific project or undertaking, the duration and scope of which are specified at the time they are engaged for that project. Such duration, as well as the particular work/service to

be performed, is defined in an employment agreement and is made clear to the employees at the time of hiring.

In this case, petitioners did not have that kind of agreement with respondents. Neither did they inform respondents of the nature of the latter's work at the time of hiring. Hence, for failure of petitioners to substantiate their claim that respondents were project employees, we are constrained to declare them as regular employees.

In *Caramol v. National Labor Relations Commission*, [28] and later reiterated in *Salinas, Jr. v. National Labor Relations Commission*, [29] the Court markedly stressed the importance of the employees' knowing consent to being engaged as project employees when it clarified that "there is no question that stipulation on employment contract providing for a fixed period of employment such as 'project-to-project' contract is valid provided the period was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent x x x."

During the proceedings before the Labor Arbiter, the petitioners' failure to produce respondents' contracts of employment was already noted, especially after they alleged in their pleadings the existence of such contracts stipulating that respondents' employment would only be for the duration of three months, automatically renewed in the absence of notice, and terminated at the completion of the project. Respondents denied having executed such contracts with HANJIN. In their appeal before the NLRC until the present, petitioners now claim that due to a lapse in management procedure, no such employment contracts were executed; nonetheless, the absence of a written contract does not remove respondents from the ambit of being project employees.[30]

While the absence of a written contract does not automatically confer regular status, it has been construed by this Court as a red flag in cases involving the question of whether the workers concerned are regular or project employees. In *Grandspan Development Corporation v. Bernardo* [31] and *Audion Electric Co., Inc. v. National Labor Relations Commission*, [32] this Court took note of the fact that the employer was unable to present employment contracts signed by the workers, which stated the duration of the project. In another case, *Raycor v. Aircontrol Systems, Inc. v. National Labor Relations Commission*, [33] this Court refused to give any weight to the employment contracts offered by the employers as evidence, which contained the signature of the president and general manager, but not the signatures of the employees. In cases where this Court ruled that construction workers repeatedly rehired retained their status as project employees, the employers were able to produce employment contracts clearly stipulating that the workers' employment was coterminous with the project to support their claims that the employees were notified of the scope and duration of the project. [34]

Hence, even though the absence of a written contract does not by itself grant regular status to respondents, such a contract is evidence that respondents were informed of the duration and scope of their work and their status as project employees. In this case, where no other evidence was offered, the absence of an employment contract puts into serious question whether the employees were properly informed at the onset of their employment status as project employees. It is doctrinally entrenched that in illegal dismissal cases, the employer has the burden of proving with clear, accurate, consistent and convincing evidence that a dismissal was valid.[35] Absent any other proof that the project employees were informed of their status as such, it will be presumed that they are regular employees in accordance with Clause 3.3(a) of Department Order No. 19, Series of 1993, which states that:

a) Project employees whose aggregate period of continuous employment in a construction company is at least one year shall be considered regular employees, in the absence of a "day certain" agreed upon by the parties for the termination of their relationship. Project employees who have become regular shall be entitled to separation pay.

A "day" as used herein, is understood to be that which must necessarily come, although it may not be known exactly when. This means that where the final completion of a project or phase thereof is in fact determinable

and the expected completion is made known to the employee, such project employee may not be considered regular, notwithstanding the one-year duration of employment in the project or phase thereof or the one-year duration of two or more employments in the same project or phase of the project. (Emphasis provided.)

Petitioners call attention to the fact that they complied with two of the indicators of project employment, as prescribed under Section 2.2(e) and (f) of Department Order No. 19, Series of 1993, entitled Guidelines Governing the Employment of Workers in the Construction Industry, issued by the DOLE:

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. (Emphasis provided.)

Petitioners argue that the Termination Report filed before the DOLE Regional Office (IV) in Cainta, Rizal on 11 April 2002 signifies that respondents' services were engaged merely for the LRT/MRT Line 2 Package 2 and 3 Project.

Given the particular facts established in this case, petitioners' argument fails to persuade this Court. Petitioners were not able to offer evidence to refute or controvert the respondents' claim that they were assigned to various construction projects, particularly the North Harbor Project in 1992-1994; Manila International Port in 1994-1996; Batangas Port in 1996-1998; the Batangas Pier; and La Mesa Dam. [36] Had respondents' allegations been false, petitioners could simply present as evidence documents and records in their custody to disprove the same, i.e., payroll for such projects or termination reports, which do not bear respondents' names. Petitioners, instead, chose to remain vague as to the circumstances surrounding the hiring of the respondents. This Court finds it unusual that petitioners cannot even categorically state the exact year when HANJIN employed respondents.

It also bears to note that petitioners did not present other Termination Reports apart from that filed on 11 April 2002. The failure of an employer to file a Termination Report with the DOLE every time a project or a phase thereof is completed indicates that respondents were not project employees. [37] Employers cannot mislead their employees, whose work is necessary and desirable in the former's line of business, by treating them as though they are part of a work pool from which workers could be continually drawn and then assigned to various projects and thereafter denied regular status at any time by the expedient act of filing a Termination Report. This would constitute a practice in which an employee is unjustly precluded from acquiring security of tenure, contrary to public policy, morals, good customs and public order.[38]

In this case, only the last and final termination of petitioners was reported to the DOLE. If respondents were actually project employees, petitioners should have filed as many Termination Reports as there were construction projects actually finished and for which respondents were employed. Thus, a lone Termination Report filed by petitioners only upon the termination of the respondents' final project, and after their previous continuous employment for other projects, is not only unconvincing, but even suspicious.

Petitioners insist that the payment to the respondents of a completion bonus indicates that respondents were project employees. To support their claim, petitioners presented payroll records for the period 4 April 2002 to 20 April 2002, with the words "completion bonus" written at the lower left corner of each page.^[39] The amount paid to each employee was equivalent to his fifteen-day salary. Respondents, however, deny receiving any such amount.

Assuming that petitioners actually paid respondents a completion bonus, petitioners failed to present evidence showing that they undertook to pay respondents such a bonus upon the completion of the project, as provided under Section 2.2(f) of Department Order No. 19, Series of 1993.^[40] Petitioners did not even allege how the "completion bonus" was to be computed or the conditions that must be fulfilled before it was to be given. A completion bonus, if paid as a mere afterthought, cannot be used to determine whether or not the employment was regular or merely for a project. Otherwise, an employer may defeat the workers' security of tenure by paying them a completion bonus at any time it is inclined to unjustly dismiss them.

Department Order No. 19, Series of 1993, provides that in the absence of an undertaking that the completion bonus will be paid to the employee, as in this case, the employee may be considered a non-project employee, to wit:

3.4 Completion of the project. Project employees who are separated from work as a result of the completion of the project or any phase thereof in which they are employed are entitled to the pro-rata completion bonus if there is an undertaking by for the grant of such bonus. An undertaking by the employer to pay a completion bonus shall be an indicator that an employee is a project employee. Where there is no such undertaking, the employee may be considered a non-project employee. The pro-rata completion bonus may be based on the industry practice which is at least the employee's one-half (1/2) month salary for every 12 months of service and may be put into effect for any project bid (in case of bid projects) or tender submitted (in case of negotiated projects) thirty (30) days from the date of issuances of these Guidelines. (Emphasis supplied.)

Furthermore, after examining the payroll documents submitted by petitioners, this Court finds that the payments termed as "completion bonus" are not the completion bonus paid in connection with the termination of the project. First of all, the period from 4 April 2002 to 20 April 2002, as stated in the payrolls, bears no relevance to a completion bonus. A completion bonus is paid in connection with the completion of the project, and is not based on a fifteen-day period. Secondly, the amount paid to each employee as his completion bonus was uniformly equivalent to his fifteen-day wages, without consideration of the number of years of service rendered. Section 3.4 of Department Order No. 19, Series of 1993, provides that based on industry practice, the completion bonus is at least the employee's one-half month salary for every twelve months of service.

Finally, the Quitclaims which the respondents signed cannot bar them from demanding what is legally due them as regular employees. As a rule, quitclaims and waivers or releases are looked upon with disfavor and frowned upon as contrary to public policy. They are thus ineffective to bar claims for the full measure of a worker's legal rights, particularly when the following conditions are applicable: 1) where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or (2) where the terms of settlement are unconscionable on their face.^[41] To determine whether the Quitclaims signed by respondents are valid, one important factor that must be taken into account is the consideration accepted by respondents; the amount must constitute a reasonable

settlement equivalent to the full measure of their legal rights.[42] In this case, the Quitclaims signed by the respondents do not appear to have been made for valuable consideration. Respondents, who are regular employees, are entitled to backwages and separation pay and, therefore, the Quitclaims which they signed cannot prevent them from seeking claims to which they are entitled.[43]

Due to petitioners' failure to adduce any evidence showing that petitioners were project employees who had been informed of the duration and scope of their employment, they were unable to discharge the burden of proof required to establish that respondents' dismissal was legal and valid. Furthermore, it is a well-settled doctrine that if doubts exist between the evidence presented by the employer and that by the employee, the scales of justice must be tilted in favor of the latter.[44] For these reasons, respondents are to be considered regular employees of HANJIN.

Finally, in the instant case, records failed to show that HANJIN afforded respondents, as regular employees, due process prior to their dismissal, through the twin requirements of notice and hearing. Respondents were not served notices informing them of the particular acts for which their dismissal was sought. Nor were they required to give their side regarding the charges made against them. Certainly, the respondents' dismissal was not carried out in accordance with law and was, therefore, illegal.[45]

IN VIEW OF THE FOREGOING, the instant Petition is DENIED. This Court AFFIRMS the assailed Decision of the Court of Appeals in CA-G.R. SP No. 87474, promulgated on 28 July 2005, declaring that the respondents are regular employees who have been illegally dismissed by Hanjin Heavy Industries Construction Company, Limited, and are, therefore, entitled to full backwages, separation pay, and litigation expenses. Costs against the petitioners.

SO ORDERED.

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

[1] Penned by Associate Justice Renato C. Dacudao with Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao, concurring. Rollo, pp. 273-289.

[2] Rollo, pp. 200-216.

[3] Id. at 82-83.

[4] Id. at 83

[5] Id. at 237.

[6] Id. at 99.

[7] Id. at 43.

[8] Id.

[9] Id. at 43 and 52-59.

[10] Id. at 47.

[11] Id at 60-63.

[12] Id. at 72-80.

[13] Id. at 89.

[14] Id. at 100-101.

[15] Id. at 101-102.

[16] Id. at 103-120.

[17] Id. at 212-213. Respondents' four other co-workers who originally joined the complaint but failed to sign the position papers were excluded as complainants. Another co-worker, Carmelito Dalumangcad, who died on 5 May 2002, before the conduct of the conciliation/mediation proceedings and filing of the position papers, was likewise excluded as a complainant.

[18] Id. at 212-215.

[19] Id. at 215.

[20] Id. at 286-288.

[21] Id. at 288-289.

[22] Id. at 402-403.

[23] *Filipinas Pre-Fabricated Building Systems (Filsystems), Inc. v. Puente*, G.R. No. 153832, 18 March 2005, 453 SCRA 820, 826.

[24] *ALU-TUCP v. National Labor Relations Commission*, G.R. No. 109902, 2 August 1994, 234 SCRA 678, 685.

[25] *Cioco, Jr. v. C.E. Construction Corporation*, G.R. Nos. 156748 and 156896, 8 September 2004, 437 SCRA 648, 652; *Filipinas Pre-Fabricated Building System (Filsystem), Inc. v. Puente*, supra note 23 at 831; *Abesco Construction and Development Corporation v. Ramirez*, G.R. No. 141168, 10 April 2006, 487 SCRA 9, 14; *D.M. Consunji, Inc. v. National Labor Relations Commission*, 401 Phil. 635, 641 (2000).

[26] *ALU-TUCP v. National Labor Relations Commission*, supra note 24 at 685; *Grandspan Development Corporation v. Bernardo*, G.R. No. 141464, 21 September 2005, 470 SCRA 461, 470.

[27] Supra note 25 at 14-15.

[28] G.R. No. 102973, 24 August 1993, 225 SCRA 582, 586.

[29] G.R. No. 114671, 24 November 1999, 319 SCRA 54, 61.

[30] Rollo, pp. 410-411.

[31] Supra note 26 at 470.

[32] G.R. No. 106648, 17 June 1999, 308 SCRA 341, 350.

[33] G.R. No. 114290, 9 September 1996, 261 SCRA 589, 608.

[34] *Cioco, Jr. v. C.E. Construction Corporation*, supra note 25 at 649; *Filipinas Pre-Fabricated Building System (Filsystem), Inc. v. Puente*, supra note 23 at 828.

[35] *Austria v. National Labor Relations Commission*, G.R. No. 123646, 14 July 1999, 310 SCRA 293, 300; *Bank of the Philippine Islands v. Uy*, G.R. No. 156994, 31 August 2005, 468 SCRA 633, 646; and *Grandspan Development Corporation v. Bernardo*, supra note 26 at 470.

[36] Rollo, p. 237.

[37] *Violeta v. National Labor Relations Commission*, G.R. No. 119523, 10 October 1997, 280 SCRA 520, 533; *Audion Electric Co., Inc. v. National Labor Relations Commission*, supra note 32 at 350; *E. Ganzon, Inc. v. National Labor Relations Commission*, G.R. No. 123769, 22 December 1999, 321 SCRA 434, 442.

[38] *Samson v. National Labor Relations Commission*, G.R. No. 113166, 1 February 1996, 253 SCRA 112, 124; *Salinas, Jr. v. National Labor Relations Commission*, supra note 29 at 61; and *Caramol v. National Labor Relations Commission*, supra note 28 at 586.

[39] Rollo, pp. 60-63.

[40] 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.

x x x x

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

[41] *Philippine Employ Services and Resources, Inc. v. Paramio*, G.R. No. 144786, 15 April 2004, 427 SCRA 732, 755.

[42] *Land and Housing Development Corporation v. Esquillo*, G.R. No. 152012, 30 September 2005, 471 SCRA 488, 499; *C. Planas Commercial v. National Labor Relations Commission*, G.R. No. 144619, 11 November 2005, 474 SCRA 608, 620; *Martinez v. National Labor Relations Commission*, G.R. No. 118743, 12 October 1998, 297 SCRA 643, 652.

[43] *Sanyo Travel Corporation v. National Labor Relations Commission*, G.R. No. 121449, 2 October 1997, 280 SCRA 129, 139,

[44] *Nicario v. National Labor Relations Commission*, G. R. No. 125340, 17 September 1998, 295 SCRA 619, 626-627; *Asuncion v. National Labor Relations Commission*, 414 Phil. 329, 341-342 (2001); *Raycor v. Aircontrol Systems, Inc. v. National Labor Relations Commission* supra note 33 at 612.

[45] *Abesco Construction and Development Corporation v. Ramirez*, supra note 25 at 15; *Grandspan Development Corporation v. Bernardo*, supra note 26 at 470; and *Raycor v. Aircontrol Systems, Inc. v. National Labor Relations Commission*, id. at 613.

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