

**PIER 8 ARRASTRE & STEVEDORING SERVICES, INC. AND/ OR
ELIODORO C. CRUZ, PETITIONERS, VS. JEFF B. BOCLOT,
RESPONDENT.**

G.R. No. 173849. September 28, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

In this Petition for Review on Certiorari under Rule 45 of the Rules of Civil Procedure, petitioners pray that this Court annul and set aside the (a) Decision[1] dated 18 November 2005 of the Court of Appeals in CA-G.R. SP No. 88929 affirming the twin Resolutions[2] dated 29 October 2004[3] and 29 December 2004[4] of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 038683-04; and (b) Resolution dated 21 July 2006 of the appellate court in the same case, denying petitioners' Motion for Reconsideration of the aforementioned Decision.

The factual antecedents of the present petition are as follows:

Petitioner Pier 8 Arrastre and Stevedoring Services, Inc. (PASSI) is a domestic corporation engaged in the business of providing arrastre and stevedoring services[5] at Pier 8 in the Manila North Harbor. PASSI has been rendering arrastre and stevedoring services at the port area since 1974 and employs stevedores who assist in the loading and unloading of cargoes to and from the vessels. Petitioner Eliodoro C. Cruz is its Vice-President and General Manager.

Respondent Jeff B. Boclot was hired by PASSI to perform the functions of a stevedore starting 20 September 1999.

The facts show that respondent rendered actual services to PASSI during the following periods:

Period

Duration

September - December 1999 (4 months) 21 days

January - April 2000 (4 months) 20 days

March - December 2001 (10 months) 85 days

January - December 2002 (12 months) 70.5 days

January – June 2003 (6 months) 32 days

Total 36 months 228.5 days[6]

On 15 April 2000, the Philippine Ports Authority (PPA) seized the facilities and took over the operations of PASSI through its Special Takeover Unit, absorbing PASSI workers as well as their relievers. By virtue of a Decision dated 9 January 2001 of the Court of Appeals, petitioners were able to regain control of their arrastre and stevedoring operations at Pier 8 on 12 March 2001.[7]

On 9 May 2003, respondent filed a Complaint with the Labor Arbiter of the NLRC, claiming regularization; payment of service incentive leave and 13th month pays; moral, exemplary and actual damages; and attorney's fees. Respondent alleged that he was hired by PASSI in October 1999 and was issued company ID No. 304,[8] a PPA Pass and SSS documents. In fact, respondent contended that he became a regular employee by April 2000, since it was his sixth continuous month in service in PASSI's regular course of business. He argued on the basis of Articles 280[9] and 281[10] of the Labor Code. He maintains that under paragraph 2 of Article 280, he should be deemed a regular employee having rendered at least one year of service with the company.

According to respondent, he remained a casual employee from the time he was first hired to perform the services of a stevedore. Thus, respondent claimed he was denied the rights and privileges of a regular employee, including those granted under the Collective Bargaining Agreement (CBA) such as wage increase; medical, dental and hospitalization benefits; vacation and sick leaves; uniforms, Christmas gifts, productivity bonus, accident insurance, special separation pays, and others.[11]

Respondent relied on Article XXV of the company's existing CBA, effective 4 March 1998 to 3 March 2003, which states the following:

The Company agrees to convert to regular status all incumbent probationary or casual employees and workers in the Company who have served the Company for an accumulated service term of employment of not less than six (6) months from his original date of hiring

The probationary period for all future workers or employees shall be the following:

- All skilled workers such as crane operator, mechanic, carpenter, winchman, signalman and checkers shall become regular after three (3) months continuous employment;
- All semi-skilled personnel shall become regular after four (4) months of continuous employment;
- All non-skilled personnel shall be regular after six (6) months continuous employment.[12]

In opposition thereto, petitioners alleged that respondent was hired as a mere "reliever" stevedore and could thus not become a regular employee.

On 24 November 2003, NLRC Labor Arbiter Felipe P. Pati ruled for petitioners and dismissed respondent's complaint. In finding no factual or legal basis for the regularization of respondent, the Labor Arbiter came to the conclusion that respondent was "nothing more than an extra worker who is called upon to work at the pier in the absence of regular stevedores at a certain shift." [13] He deemed that Articles 280 and 281 of the Labor Code were inapplicable, on the contention that the aforementioned articles speak of probationary employees and casual employees while respondent, as a reliever, is neither a probationary employee nor a casual employee. Neither was respondent qualified to avail himself of Service Incentive Leave benefits, even assuming he was a regular employee, because the number of days of service he had rendered reached a total of 228.5 days only -- short of 365 days, the one-year requirement to qualify for this benefit. Finally, respondent's prayer for the grant of attorney's fees, and for moral and exemplary damages, was also denied.

Respondent appealed the Labor Arbiter's dismissal of his complaint to the NLRC. Thereafter, the NLRC issued a

Resolution on 29 October 2004 modifying the Labor Arbiter's Decision, ruling:

WHEREFORE, premises considered, complainant's appeal is partly GRANTED. The Labor Arbiter's assailed Decision in the above-entitled case is hereby MODIFIED. Complainant is hereby declared a regular employee of Respondents. The dismissal of Complainant's claim for benefits under the CBA and other monetary claims are AFFIRMED for lack of jurisdiction and lack of merit, respectively.[14] (Italics ours.)

The NLRC gave credence to respondent's allegations that the Labor Arbiter committed grave abuse of discretion in dismissing respondent's claim for regularization. The NLRC ruled that petitioners' failure, without reasonable explanation, to present proof of absences of "regular" stevedores leads to the conclusion that the stevedores, termed by petitioners as "relievers," work on rotation basis, just like the "regular" stevedores. The NLRC predicated its findings that respondent is a regular employee of petitioners on the reasonable connection between the activity performed by the employee in relation to the usual business or trade of the employer. According to the NLRC, although respondent rendered an average of 6.34 days of work a month, the activities performed were usually necessary and desirable in the business of petitioners.

Petitioners filed a Motion for Reconsideration of the foregoing NLRC Resolution dated 29 October 2004 but this was subsequently denied in another NLRC Resolution issued on 29 December 2004.

Upon a denial of their motion for reconsideration by the NLRC, petitioners elevated their case to the Court of Appeals via a Petition for Certiorari with prayer for the issuance of a Temporary Restraining Order (TRO) and/or writ of preliminary injunction.

On 18 November 2005, the Court of Appeals dismissed the Petition for Certiorari and affirmed the Resolutions of the NLRC finding respondent to be a regular employee. The Court of Appeals grounded its Decision on this Court's previous rulings that what determines regularity or casualness is not the employment contract, written or otherwise, but the nature of the job. Citing *De Leon v. National Labor Relations Commission*,^[15] which enumerated the standards for determining regular employment, the Court of Appeals ruled that even assuming that respondent was able to render services for only 228.5 days in a period of 36 months, the fact remains that his services were continuously utilized by petitioners in their business. Where the job is usually necessary or desirable to the main business of the employer, then the employment is regular.^[16] The pertinent portions of the assailed Decision of the Court of Appeals are herein reproduced:

Applying the above-mentioned principles, private respondent's task of loading and unloading cargoes to and from the vessels is undoubtedly necessary and desirable to the business of petitioners' arrastre and stevedoring services. Equally unavailing is the petitioners' contention that being a reliever or an extra worker, private respondent cannot be deemed as a regular employee. This cannot be accorded with merit as the same does not change the nature of the latter's employment. Whether private respondent was hired only in the absence of regular stevedores, as petitioners maintain, let it be emphasized that the determination of whether the employment is casual or regular does not depend on the will or word of the employer, and the procedure of hiring and manner of paying, but on the nature of the activities performed by an employee, and to some extent, the length of performance, and its continued existence. Petitioners' admission that it has been an industry practice to hire relievers whenever the need arises to ensure that operations at the pier continue for 24 hours only proves that private respondent's services are necessary or desirable in its usual business, otherwise, private respondent should not have been at the employ of petitioners for a period [of] 36 months. Even assuming that private respondent was able to render only 228.5 days out of 36 months, the undisputed fact remains that private respondent's services was continuously utilized by petitioners in the operation of its business. Whether one's employment is regular is not determined by the number of the hours one works, but by the nature of the work and by the length of time one has been in that particular job. To uphold petitioners' argument would preclude and deprive workers, like private respondent herein, to acquire regular status

favorably mandated by the Labor Code.

x x x x

WHEREFORE, the instant petition is DISMISSED for lack of merit and the assailed resolutions of public respondent National Labor Relations Commission dated October 29, 2004 and December 29, 2004 are hereby AFFIRMED.[17]

On 14 December 2005, petitioners filed a Motion for Reconsideration, which was denied by the Court of Appeals in a Resolution dated 21 July 2006.

Hence, through this Petition for Review on Certiorari, petitioners assail the Decision of the Court of Appeals, raising the sole argument that:

THE COURT OF APPEALS ERRED IN RULING THAT PRIVATE RESPONDENT JEFF BOCLOT IS A REGULAR EMPLOYEE OF PETITIONER PIER 8 ARRASTRE & STEVEDORING SERVICES, INC. BECAUSE HE PERFORMED TASKS WHICH ARE USUALLY NECESSARY AND DESIRABLE TO THE MAIN BUSINESS OF PETITIONER CORPORATION

Evidently, the only issue subject to the resolution of this Court is whether or not respondent has attained regular status as PASSI's employee.

In the instant petition, petitioners are vehemently denying that respondent has become PASSI's regular employee. Petitioners insist that respondent was hired as a mere "reliever" stevedore and, thus, could not become a regular stevedore. Petitioners presented a list of the days when respondent's services as stevedore were engaged, to support its claim that respondent is a reliever. Petitioners aver that the employment of the stevedores is governed by a system of rotation. Based on this system of rotation, the work available to reliever stevedores is dependent on the actual stevedoring and arrastre requirements at a current given time. Petitioners posit that respondent, as a reliever stevedore, is a mere extra worker whose work is dependent on the absence of regular stevedores during any given shift. During "rotation proper," as petitioners term it, all regular employees are first called and given work before any reliever is assigned. Petitioners assert that while the regular stevedores work an average of 4 days a week (or 16 days a month), respondent performed services for a total of 228.5 days (or only for an average of 6.34 days a month) from September 1999 to June 2003. In defense of the Court of Appeals' ruling grounded on Articles 280 and 281 of the Labor Code, petitioners maintain that the foregoing provisions are inapplicable on the postulation that respondent is neither a probationary nor a casual employee. For the same reasons, petitioners argue that Article XXV of the CBA cannot be used to support respondent's contention that he is a regular employee since the CBA provision he invokes refers to "all incumbent probationary or casual employees and workers in the company" and not to respondent who is neither a casual nor a probationary employee.

After a deliberate study of Labor Law provisions and jurisprudence, and in light of the particular circumstances of this case, this Court has arrived at the same conclusion as those of the NLRC and the Court of Appeals that respondent is a regular employee, but on a different basis.

Under the 1987 Philippine Constitution, the State affords full protection to labor, local and overseas, organized and unorganized; and the promotion of full employment and equality of employment opportunities for all. The State affirms labor as a primary social economic force and guarantees that it shall protect the rights of workers and promote their welfare.[18]

The Labor Code, which implements the foregoing Constitutional mandate, draws a fine line between regular and casual employees to protect the interests of labor.[19] "Its language evidently manifests the intent to safeguard the tenurial interest of the worker who may be denied the rights and benefits due a regular employee by virtue of

lopsided agreements with the economically powerful employer who can maneuver to keep an employee on a casual status for as long as convenient.”[20] Thus, the standards for determining whether an employee is a regular employee or a casual or project employee have been delineated in Article 280 of the Labor Code, to wit:

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 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 actually exist.

Under the foregoing provision, a regular employee is (1) one who is either engaged to perform activities that are necessary or desirable in the usual trade or business of the employer except for project[21] or seasonal employees; or (2) a casual employee who has rendered at least one year of service, whether continuous or broken, with respect to the activity in which he is employed.[22] Additionally, Article 281 of the Labor Code further considers a regular employee as one who is allowed to work after a probationary period. Based on the aforementioned, although performing activities that are necessary or desirable in the usual trade or business of the employer, an employee such as a project or seasonal employee is not necessarily a regular employee. The situation of respondent is similar to that of a project or seasonal employee, albeit on a daily basis.

Under the second paragraph of the same provision, all other employees who do not fall under the definition of the preceding paragraph are casual employees. However, the second paragraph also provides that it deems as regular employees those casual employees who have rendered at least one year of service regardless of the fact that such service may be continuous or broken.

De Leon v. National Labor Relations Commission[23] succinctly explains the delineation of the foregoing employee classification, to wit:

The primary standard, therefore, of determining a regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. The connection can be determined by considering the nature of the work performed and its relation to the scheme of the particular business or trade in its entirety. 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. Hence, the employment is also considered regular, but only with respect to such activity and while such activity exists. (Emphasis supplied.)

PASSI is engaged in providing stevedoring and arrastre services in the port area in Manila. Stevedoring, dock and arrastre operations include, but are not limited to, the opening and closing of a vessel's hatches; discharging of cargoes from ship to truck or dock, lighters and barges, and vice-versa; movement of cargoes inside vessels, warehouses, terminals and docks; and other related work. In line with this, petitioners hire stevedores who assist in the loading and unloading of cargoes to and from the vessels.

Petitioners concede that whenever respondent worked as a reliever stevedore due to the absence of a regular

stevedore, he performed tasks that are usually necessary and desirable to their business. Petitioners, however, contend that this in itself does not make him a regular stevedore, postulating that the hiring of respondent as a reliever is akin to a situation in which a worker goes on vacation leave, sick leave, maternity leave or paternity leave; and the employer is constrained to hire another worker from outside the establishment to ensure the smooth flow of its operations.

Based on the circumstances of the instant case, this Court agrees. It takes judicial notice^[24] that it is an industry practice in port services to hire “reliever” stevedores in order to ensure smooth-flowing 24-hour stevedoring and arrastre operations in the port area. No doubt, serving as a stevedore, respondent performs tasks necessary or desirable to the usual business of petitioners. However, it should be deemed part of the nature of his work that he can only work as a stevedore in the absence of the employee regularly employed for the very same function. Bearing in mind that respondent performed services from September 1999 until June 2003 for a period of only 228.5 days in 36 months, or roughly an average of 6.34 days a month; while a regular stevedore working for petitioners, on the other hand, renders service for an average of 16 days a month, demonstrates that respondent’s employment is subject to the availability of work, depending on the absences of the regular stevedores. Moreover, respondent does not contest that he was well aware that he would only be given work when there are absent or unavailable employees. Respondent also does not allege, nor is there any showing, that he was disallowed or prevented from offering his services to other cargo handlers in the other piers at the North Harbor other than petitioners. As aforesaid, the situation of respondent is akin to that of a seasonal or project or term employee, albeit on a daily basis.

Anent petitioners’ contention that respondent is neither a probationary nor a casual employee, this Court again refers to Article 280 of the Labor Code.

The second paragraph thereof stipulates in unequivocal terms that all other employees who do not fall under the definitions in the first paragraph of regular, project and seasonal employees, are deemed casual employees.^[25] Not qualifying under any of the kinds of employees covered by the first paragraph of Article 280 of the Labor Code, then respondent is a casual employee under the second paragraph of the same provision.

The same provision, however, provides that a casual employee can be considered as regular employee if said casual employee has rendered at least one year of service regardless of the fact that such service may be continuous or broken. Section 3, Rule V, Book II of the Implementing Rules and Regulations of the Labor Code clearly defines the term “at least one year of service” to mean service within 12 months, whether continuous or broken, reckoned from the date the employee started working, including authorized absences and paid regular holidays, unless the working days in the establishment as a matter of practice or policy, or that provided in the employment contract, is less than 12 months, in which case said period shall be considered one year.^[26] 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 of the employer.^[27] Applying the foregoing, respondent, who has performed actual stevedoring services for petitioners only for an accumulated period of 228.5 days does not fall under the classification of a casual turned regular employee after rendering at least one year of service, whether continuous or intermittent.^[28]

Both the Constitution and the Labor Code mandate the protection of labor. Hence, as a matter of judicial policy, this Court has, in a number of instances, leaned backwards to protect labor and the working class against the machinations and incursions of their more financially entrenched employers.^[29] Where from the circumstances it is apparent that periods have been imposed to preclude acquisition of tenurial security by an employee, such imposition should be struck down or disregarded as contrary to public policy and morals.^[30] However, we take

this occasion to emphasize that the law, while protecting the rights of the employees, authorizes neither the oppression nor the destruction of the employer. When the law tilts the scale of justice in favor of labor, the scale should never be so tilted if the result would be an injustice to the employer.[31] Thus, this Court cannot be compelled to declare respondent as a regular employee when by the nature of respondent's work as a reliever stevedore and his accumulated length of service of only eight months do not qualify him to be declared as such under the provisions of the Labor Code alone.[32]

NONETHELESS, this Court still finds respondent to be a regular employee on the basis of pertinent provisions under the CBA between PASSI and its Workers' union, which was effective from 4 March 1998 to 3 March 2003:

The Company agrees to convert to regular status all incumbent probationary or casual employees and workers in the Company who have served the Company for an accumulated service term of employment of not less than six (6) months from his original date of hiring.

The probationary period for all future workers or employees shall be the following: (a) All skilled workers such as crane operator, mechanic, carpenter, winchman, signalman and checkers shall become regular after three (3) months continuous employment;

(b) All semi-skilled personnel shall become regular after four (4) months of continuous employment;

(c) All non-skilled personnel shall be regular after six (6) months continuous employment.[33] (*Italics ours.*)

Petitioners were crucified on this argument raised by respondent. The union which negotiated the existing CBA is the sole and exclusive bargaining representative of all the stevedores, dock workers, gang bosses, rank and file employees working at Pier 8, and its offices. The NLRC ruled that respondent's reliance on the CBA to show that he has become a regular employee is misplaced for the reason that the CBA applies only to regular workers of the company.[34] Respondent assents that he is not a member of the union, as he was not recognized by PASSI as its regular employee, but this Court notes that PASSI adopts a union-shop agreement, culling from Article II of the CBA which stipulates:

The Union and the Company (PASSI) hereby agree to adopt the "Union Shop" as a condition of employment to the position (sic) covered by this Agreement.[35]

Under a union-shop agreement, although nonmembers may be hired, an employee is required to become a union member after a certain period, in order to retain employment. This requirement applies to present and future employees.[36] The same article of the CBA stipulates that employment in PASSI cannot be obtained without prior membership in the union.

Apropos, applying the foregoing provisions of the CBA, respondent should be considered a regular employee after six months of accumulated service. It is clearly stipulated therein that petitioners shall agree to convert to regular status all incumbent probationary or casual employees and workers in PASSI who have served PASSI for an accumulated service term of employment of not less than six months from the original date of hiring. Having rendered 228.5 days, or eight months of service to petitioners since 1999, then respondent is entitled to regularization by virtue of the said CBA provisions.

In light of the foregoing, petitioners must accord respondent the status of a regular employee.

Additionally, respondent is not yet entitled to avail himself of service incentive leave benefits for his failure to render at least one year of service. As to the 13th month pay, petitioners have shown that respondent has been paid the same. Respondent is also not entitled to moral and exemplary damages and attorney's fees for the reason that an employer may only be held liable for damages if the attendant facts show that it was oppressive to labor or

done in a manner contrary to morals, good customs and public policy. None of the aforementioned circumstances are present. Neither was there any appeal raised by respondent pertaining to the non-award of the foregoing claims.

WHEREFORE, in view of the foregoing, the instant Petition is DENIED and the Decision of the Court of Appeals dated 18 November 2005 and its Resolution dated 21 January 2006, in CA-G.R. SP No. 88929 are AFFIRMED in the manner herein discussed. Costs against petitioners.

SO ORDERED.

Puno, C.J., Ynares-Santiago, (Chairperson), Austria-Martinez, and Nachura, JJ., concur.

[1] Penned by Associate Justice Aurora Santiago-Lagman with Associate Justices Ruben T. Reyes (now Associate Justice of the Supreme Court) and Rebecca de Guia-Salvador, concurring; CA rollo, pp. 165-174.

[2] In NLRC NCR Case No. 00-05-05588-03, NLRC NCR CA No. 038683-04; the first resolution modified the Decision dated 24 November 2003 of the Labor Arbiter which dismissed private respondent's complaint.

[3] Penned by Commissioner Victoriano R. Calaycay with Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan, concurring; rollo, p. 48-49.

[4] Resolution denying the Motion for Reconsideration filed by petitioner and affirming the Resolution dated 29 October 2004; rollo, pp. 60-61.

[5] Stevedoring, dock and arrastre operations shall include but not be limited to, opening and closing of vessel's hatches; discharging of cargoes from ship to truck or dock, lighters, barges and vice-versa; movement of cargoes inside vessels, warehouses, terminals and docks; and other related work.

[6] Annexes "C" and "C-1," CA rollo, pp. 31-32.

[7] G.R. Nos. and title of the case are not indicated in the records. The fact of the issuance and the content of such Decision not contested.

[8] Petitioner questions the authenticity of this ID.

[9] 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 exist.

[10] ART. 281. Probationary Employment. — Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just

cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

[11] Petitioner and its employees observe a union-shop agreement.

[12] CA rollo, p. 55.

[13] Decision of the Labor Arbiter dated 24 November 2003; rollo, p. 45.

[14] Id. at 58-59.

[15] G.R. No. 70705, 21 August 1989, 176 SCRA 615, 623-624.

[16] Id.

[17] Rollo, pp. 32-33.

[18] Constitution, Article II, Sec. 18.

[19] Highway Copra Traders v. National Labor Relations Commission, 355 Phil. 86, 91 (1998).

[20] Id., citing Baguio Country Club Corporation v. National Labor Relations Commission, G.R. No. 71664, 28 February 1992, 206 SCRA 643, 651.

[21] A project employee is one whose employment has been fixed for a specified 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 service to be performed is seasonal in nature and the employment is for the duration of the season.

[22] Philippine Long Distance Telephone Company, Inc. v. Arceo, G.R. No. 149985, 5 May 2006, 489 SCRA 617, 622.

[23] Supra note 15 at 621.

[24] Matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of jurisdiction of the court. (D.O. Plaza Mgt. Corp. v. Co-owners Heirs of Andres Atega, G.R. No. 158526, 16 December 2004, 447 SCRA 171, 185.)

[25] The second paragraph of Article 280 of the Labor Code provides that it deems as regular employees those casual employees who have rendered at least one year of service regardless of the fact that such service may be continuous or broken.

[26] Integrated Contractor and Plumbing Works, Inc. v. National Labor Relations Commission, G.R. No. 152427, 9 August 2005, 466 SCRA 265, 275.

[27] See Mercado, Sr. v. National Labor Relations Commission, G.R. No. 79869, 5 September 1991, 201 SCRA 332, 341; Philips Semiconductors, Inc. v. Fadriquela, G.R. No. 141717, 14 April 2004, 427 SCRA 408, 419; E. Ganson, Inc. v. National Labor Relations Commission, 378 Phil. 1048, 1055 (1999).

[28] Concomitantly, respondent is not qualified to avail himself of Service Incentive Leave benefits, which may be enjoyed by an employee who has rendered at least one year of service. Article 95 of the Labor Code stipulates that every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay; JPL Marketing Promotions v. Court of Appeals, G.R. No. 151966, 8 July 2005, 463 SCRA 136, 148.

[29] Philippine Today, Inc. v. National Labor Relations Commission, 334 Phil. 854, 880 (1997).

[30] Philips Semiconductors, Inc. v. Fadriquela, *supra* note 27.

[31] Saint Mary's University v. Court of Appeals, G.R. No. 157788, 8 March 2005, 453 SCRA 61, 68-69, citing DI Security and General Services, Inc. v. National Labor Relations Commission, 332 Phil. 497, 506 (1996); St. Theresa's School of Novaliches Foundation v. National Labor Relations Commission, 351 Phil. 1038, 1040 (1998).

[32] The circumstances in Philippine Telegraph and Telephone Company v. National Labor Relations Commission, 338 Phil. 1093 (1997) are not on all fours with the instant case.

[33] CA rollo, p. 55.

[34] Rollo, p. 45.

[35] CA rollo, p. 44.

[36] Barron's Law Dictionary, 3rd edition; Black's Law Dictionary, 8th edition.

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