

MILLENNIUM ERECTORS CORPORATION, PETITIONER, VS. VIRGILIO MAGALLANES, RESPONDENT.

G.R. No. 184362. November 15, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Respondent Virgilio Magallanes started working in 1988 as a utility man for Laurencito Tiu (Tiu), Chief Executive Officer of Millennium Erectors Corporation (petitioner), Tiu's family, and Kenneth Construction Corporation. He was assigned to different construction projects undertaken by petitioner in Metro Manila, the last of which was for a building in Libis, Quezon City. In July of 2004 he was told not to report for work anymore allegedly due to old age, prompting him to file on August 6, 2004 an illegal dismissal complaint[1] before the Labor Arbiter.

In its Position Paper,[2] petitioner claimed that respondent was a project employee whom it hired for a building project in Libis on January 30, 2003, to prove which it submitted the employment contract[3] signed by him; that on August 3, 2004, respondent's services were terminated as the project was nearing completion; and he was given financial assistance[4] in the amount of P2,000, for which he signed a quitclaim and waiver.[5] Petitioner likewise submitted a termination report to the Department of Labor and Employment (DOLE) dated August 17, 2004.

Rebutting respondent's claim that he was employed since 1988, petitioner contended that it was incorporated only in February 2000, and Kenneth Construction Corporation which was established in 1989 and dissolved in 2000, was a separate and distinct entity.

By Decision[6] of November 25, 2005, the Labor Arbiter ruled in favor of petitioner and dismissed the complaint, holding that respondent knew of the nature of his employment as a project employee, he having executed an employment contract specifying therein the name of and duration of the project from January 2003 until its completion; and that the services of respondent were terminated due to the completion of the project as shown by the termination report submitted to the DOLE. The Labor Arbiter noted that respondent admitted having been assigned to several building projects and that he failed to give pertinent details of his dismissal - such as who terminated him, when he was terminated, and what were the "overt" acts leading to his dismissal.

On appeal, the National Labor Relations Commission (NLRC) set aside the Labor Arbiter's Decision[7] of February 6, 2007 holding that respondent was a regular, not a project employee, as the employment contract he supposedly signed contained the date of commencement but not a specific date when it would end, contrary to the rule that the duration and scope of similar contracts should be clearly set forth therein; and that based on the payrolls[8] petitioner submitted and contrary to its claim that respondent was hired in January 2003, he had been employed in 2001, not 2003, lending weight to his claim that he had worked for petitioner for 16 years prior to the filing of his complaint.

The NLRC thus concluded that while respondent's work as a utility man may not have been necessary or desirable

in the usual business of petitioner as a construction company, that he performed the same functions continuously for 16 years converted an otherwise casual employment to regular employment, hence, his termination without just or authorized cause amounted to illegal dismissal.

Petitioner moved for reconsideration of the NLRC decision, contending that respondent's motion for reconsideration which it treated as an appeal was not perfected, it having been belatedly filed; that there was no statement of the date of receipt of the appealed decision; and that it lacked verification and copies thereof were not furnished the adverse parties. Petitioner's motion was denied.

The Court of Appeals, to which petitioner appealed, affirmed the NLRC's ruling by Decision[9] of April 11, 2008. Petitioner's motion for reconsideration having been denied by Resolution[10] of August 28, 2008, it filed the present petition for review.

Petitioner contends that the Labor Arbiter's Decision dismissing the complaint had become final and executory following respondent's failure to perfect his appeal, maintaining that the requirements for perfection of an appeal and for proof of service are not mere rules of technicality which may easily be set aside.

The petition fails.

The NLRC did not err in treating respondent's motion for reconsideration as an appeal, the presence of some procedural flaws including the lack of verification and proof of service notwithstanding.

In labor cases, rules of procedure should not be applied in a very rigid and technical sense. They are merely tools designed to facilitate the attainment of justice, and where their strict application would result in the frustration rather than promotion of substantial justice, technicalities must be avoided. Technicalities should not be permitted to stand in the way of equitably and completely resolving the rights and obligations of the parties. Where the ends of substantial justice shall be better served, the application of technical rules of procedure may be relaxed.[11] (emphasis supplied)

Respecting the lack of verification, *Pacquing v. Coca-Cola Philippines, Inc.*[12] instructs:

As to the defective verification in the appeal memorandum before the NLRC, the same liberality applies. After all, the requirement regarding verification of a pleading is formal, not jurisdictional. Such requirement is simply a condition affecting the form of pleading, the non-compliance of which does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The court or tribunal may order the correction of the pleading if verification is lacking or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served. (emphasis supplied)

As for the requirement on proof of service, it may also be dispensed with since in appeals in labor cases, non-service of copy of the appeal or appeal memorandum to the adverse party is not a jurisdictional defect which calls for the dismissal of the appeal.[13]

On the merits of the case, the Court finds that, indeed, respondent was a regular, not a project employee.

Saberola v. Suarez[14] reiterates the well-settled definition of "project employee," viz:

A project employee is 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 service to be performed is seasonal in nature and the employment is for the duration of the season." (emphasis and underscoring supplied)

And Equipment Technical Services v. Court of Appeals[15] emphasizes the difference between a regular employee and a project employee:

As the Court has consistently held, the service of project employees are coterminus [sic] with the project and may be terminated upon the end or completion of that project or project phase for which they were hired. Regular employees, in contrast, enjoy security of tenure and are entitled to hold on to their work or position until their services are terminated by any of the modes recognized under the Labor Code. (emphasis and underscoring supplied)

Petitioner's various payrolls dating as early as 2001 show that respondent had been employed by it. As aptly observed by the appellate court, these documents, rather than sustaining petitioner's argument, only serve to support respondent's contention that he had been employed in various projects, if not for 16 years, at the very least two years prior to his dismissal.

Assuming arguendo that petitioner hired respondent initially on a per project basis, his continued rehiring, as shown by the sample payrolls converted his status to that of a regular employee. Following Cocomangas Beach Hotel Resort v. Visca,[16] the repeated and continuing need for respondent's services is sufficient evidence of the necessity, if not indispensability, of his services to petitioner's business and, as a regular employee, he could only be dismissed from employment for a just or authorized cause.

Petitioner having failed to discharge its burden of proving that it terminated the services of respondent for cause and with due process, the challenged decision must remain.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and Sereno, JJ., concur.

[1] CA rollo, pp. 32.

[2] Id. at 46-53.

[3] Id. at 54.

[4] See Cash Voucher, id. at 56.

[5] Id. at 57.

[6] Id. at 27-29. Penned by Labor Arbiter Jose G. de Vera.

[7] Id. at 20-26. Penned by Commissioner (now Court of Appeals Associate Justice) Angelita A. Gacutan and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay.

[8] Id. at 64-65.

[9] Rollo, pp. 24-34. Penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Rebecca de Guia-Salvador and Vicente S. E. Veloso.

[10] Id. at 35. Penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Rebecca de Guia-Salvador and Vicente S. E. Veloso.

[11] Tres Reyes v. Maxim's Tea House, G.R. No. 140853, February 27, 2003, 398 SCRA 288.

[12] G.R. No. 157966, January 31, 2008, 543 SCRA 344, 356-357.

[13] Remerco Garments Manufacturing v. Minister of Labor and Employment, G.R. Nos. L-56176-77 February 28, 1985, 135 SCRA 167.

[14] G.R. No. 151227, July 14, 2008, 558 SCRA 135, 142. a

[15] G.R. No. 157680, October 08, 2008, 568 SCRA 122, 130.

[16] G.R. No. 167045, August 29, 2008, 563 SCRA 705.

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