

UNIVERSAL ROBINA SUGAR MILLING CORPORATION AND RENE CABATI, PETITIONERS, VS. FERDINAND ACIBO, ROBERTO AGUILAR, EDDIE BALDOZA, RENE ABELLAR, DIOMEDES ALICOS, MIGUEL ALICOS, ROGEL...

G.R. No. 186439. January 15, 2014

Ponente: BRION, J.

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BRION, J.:

We resolve in this petition for review on certiorari[1] the challenge to the November 29, 2007 decision[2] and the January 22, 2009 resolution[3] of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 02028. This CA decision affirmed with modification the July 22, 2005 decision[4] and the April 28, 2006 resolution[5] of the National Labor Relations Commission (NLRC) in NLRC Case No. V-00006-03 which, in turn, reversed the October 9, 2002 decision[6] of the Labor Arbiter (LA). The LA's decision dismissed the complaint filed by complainants Ferdinand Acibo, et al.[7] against petitioners Universal Robina Sugar Milling Corporation (URSUMCO) and Rene Cabati.

The Factual Antecedents

URSUMCO is a domestic corporation engaged in the sugar cane milling business; Cabati is URSUMCO's Business Unit General Manager.

The complainants were employees of URSUMCO. They were hired on various dates (between February 1988 and April 1996) and on different capacities,[8] i.e., drivers, crane operators, bucket hookers, welders, mechanics, laboratory attendants and aides, steel workers, laborers, carpenters and masons, among others. At the start of their respective engagements, the complainants signed contracts of employment for a period of one (1) month or for a given season. URSUMCO repeatedly hired the complainants to perform the same duties and, for every engagement, required the latter to sign new employment contracts for the same duration of one month or a given season.

On August 23, 2002,[9] the complainants filed before the LA complaints for regularization, entitlement to the benefits under the existing Collective Bargaining Agreement (CBA), and attorney's fees.

In the decision[10] dated October 9, 2002, the LA dismissed the complaint for lack of merit. The LA held that the complainants were seasonal or project workers and not regular employees of URSUMCO. The LA pointed out that the complainants were required to perform, for a definite period, phases of URSUMCO's several projects that were not at all directly related to the latter's main operations. As the complainants were project employees, they could not be regularized since their respective employments were coterminous with the phase of the work or special project to which they were assigned and which employments end upon the completion of each project. Accordingly, the complainants were not entitled to the benefits granted under the CBA that, as provided, covered only the regular employees of URSUMCO.

Of the twenty-two original complainants before the LA, seven appealed the LA's ruling before the NLRC, namely: respondents Ferdinand Acibo, Eddie Baldoza, Andy Banjao, Dionisio Bendijo, Jr., Rodger Ramirez, Diocito Palagtiw, Danny Kadusale and Allyrobyl Olpus.

The Ruling of the NLRC

In its decision^[11] of July 22, 2005, the NLRC reversed the LA's ruling; it declared the complainants as regular URSUMCO employees and granted their monetary claims under the CBA. The NLRC pointed out that the complainants performed activities which were usually necessary and desirable in the usual trade or business of URSUMCO, and had been repeatedly hired for the same undertaking every season. Thus, pursuant to Article 280 of the Labor Code, the NLRC declared that the complainants were regular employees. As regular employees, the NLRC held that the complainants were entitled to the benefits granted, under the CBA, to the regular URSUMCO employees.

The petitioners moved to reconsider this NLRC ruling which the NLRC denied in its April 28, 2006 resolution.^[12] The petitioners elevated the case to the CA via a petition for certiorari.^[13]

The Ruling of the CA

In its November 29, 2007 decision,^[14] the CA granted in part the petition; it affirmed the NLRC's ruling finding the complainants to be regular employees of URSUMCO, but deleted the grant of monetary benefits under the CBA.

The CA pointed out that the primary standard for determining regular employment is the reasonable connection between a particular activity performed by the employee vis-à-vis the usual trade or business of the employer. This connection, in turn, can be determined by considering the nature of the work performed and the relation of this work to the business or trade of the employer in its entirety.

In this regard, the CA held that the various activities that the complainants were tasked to do were necessary, if not indispensable, to the nature of URSUMCO's business. As the complainants had been performing their respective tasks for at least one year, the CA held that this repeated and continuing need for the complainants' performance of these same tasks, regardless of whether the performance was continuous or intermittent, constitutes sufficient evidence of the necessity, if not indispensability, of the activity to URSUMCO's business.

Further, the CA noted that the petitioners failed to prove that they gave the complainants opportunity to work elsewhere during the off-season, which opportunity could have qualified the latter as seasonal workers. Still, the CA pointed out that even during this off-season period, seasonal workers are not separated from the service but are simply considered on leave until they are re-employed. Thus, the CA concluded that the complainants were regular employees with respect to the activity that they had been performing and while the activity continued.

On the claim for CBA benefits, the CA, however, ruled that the complainants were not entitled to receive them. The CA pointed out that while the complainants were considered regular, albeit seasonal, workers, the CBA-covered regular employees of URSUMCO were performing tasks needed by the latter for the entire year with no regard to the changing sugar milling season. Hence, the complainants did not belong to and could not be grouped together with the regular employees of URSUMCO, for collective bargaining purposes; they constitute a bargaining unit separate and distinct from the regular employees. Consequently, the CA declared that the complainants could not be covered by the CBA.

The petitioners filed the present petition after the CA denied their motion for partial reconsideration^[15] in the CA's January 22, 2009 resolution.^[16]

The Issues

The petition essentially presents the following issues for the Court's resolution: (1) whether the respondents are regular employees of URSUMCO; and (2) whether affirmative relief can be given to the fifteen (15) of the complainants who did not appeal the LA's decision.[17]

The Court's Ruling

We resolve to partially GRANT the petition.

On the issue of the status of
the respondents' employment

The petitioners maintain that the respondents are contractual or project/seasonal workers and not regular employees of URSUMCO. They thus argue that the CA erred in applying the legal parameters and guidelines for regular employment to the respondents' case. They contend that the legal standards – length of the employee's engagement and the desirability or necessity of the employee's work in the usual trade or business of the employer – apply only to regular employees under paragraph 1, Article 280 of the Labor Code, and, under paragraph 2 of the same article, to casual employees who are deemed regular by their length of service.

The respondents, the petitioners point out, were specifically engaged for a fixed and predetermined duration of, on the average, one (1) month at a time that coincides with a particular phase of the company's business operations or sugar milling season. By the nature of their engagement, the respondents' employment legally ends upon the end of the predetermined period; thus, URSUMCO was under no legal obligation to rehire the respondents.

In their comment,[18] the respondents maintain that they are regular employees of URSUMCO. Relying on the NLRC and the CA rulings, they point out that they have been continuously working for URSUMCO for more than one year, performing tasks which were necessary and desirable to URSUMCO's business. Hence, under the above-stated legal parameters, they are regular employees.

We disagree with the petitioners' position. We find the respondents to be regular seasonal employees of URSUMCO.

As the CA has explained in its challenged decision, Article 280 of the Labor Code provides for three kinds of employment arrangements, namely: regular, project/seasonal and casual. Regular employment refers to that arrangement whereby the employee "has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer[.]"[19] Under the definition, the primary standard that determines regular employment is the reasonable connection between the particular activity performed by the employee and the usual business or trade of the employer;[20] the emphasis is on the necessity or desirability of the employee's activity. Thus, when the employee performs activities considered necessary and desirable to the overall business scheme of the employer, the law regards the employee as regular.

By way of an exception, paragraph 2, Article 280 of the Labor Code also considers regular a casual employment arrangement when the casual employee's engagement has lasted for at least one year, regardless of the engagement's continuity. The controlling test in this arrangement is the length of time during which the employee is engaged.

A project employment, on the other hand, contemplates an arrangement whereby "the employment has been fixed for a specific project or undertaking whose completion or termination has been determined at the time of the engagement of the employee[.]"[21] Two requirements, therefore, clearly need to be satisfied to remove the engagement from the presumption of regularity of employment, namely: (1) designation of a specific project or

undertaking for which the employee is hired; and (2) clear determination of the completion or termination of the project at the time of the employee's engagement.[22] The services of the project employees are legally and automatically terminated upon the end or completion of the project as the employee's services are coterminous with the project.

Unlike in a regular employment under Article 280 of the Labor Code, however, the length of time of the asserted "project" employee's engagement is not controlling as the employment may, in fact, last for more than a year, depending on the needs or circumstances of the project. Nevertheless, this length of time (or the continuous rehiring of the employee even after the cessation of the project) may serve as a badge of regular employment when the activities performed by the purported "project" employee are necessary and indispensable to the usual business or trade of the employer.[23] In this latter case, the law will regard the arrangement as regular employment.[24]

Seasonal employment operates much in the same way as project employment, albeit it involves work or service that is seasonal in nature or lasting for the duration of the season.[25] As with project employment, although the seasonal employment arrangement involves work that is seasonal or periodic in nature, the employment itself is not automatically considered seasonal so as to prevent the employee from attaining regular status. To exclude the asserted "seasonal" employee from those classified as regular employees, the employer must show that: (1) the employee must be performing work or services that are seasonal in nature; and (2) he had been employed for the duration of the season.[26] Hence, when the "seasonal" workers are continuously and repeatedly hired to perform the same tasks or activities for several seasons or even after the cessation of the season, this length of time may likewise serve as badge of regular employment.[27] In fact, even though denominated as "seasonal workers," if these workers are called to work from time to time and are only temporarily laid off during the off-season, the law does not consider them separated from the service during the off-season period. The law simply considers these seasonal workers on leave until re-employed.[28]

Casual employment, the third kind of employment arrangement, refers to any other employment arrangement that does not fall under any of the first two categories, i.e., regular or project/seasonal.

Interestingly, the Labor Code does not mention another employment arrangement – contractual or fixed term employment (or employment for a term) – which, if not for the fixed term, should fall under the category of regular employment in view of the nature of the employee's engagement, which is to perform an activity usually necessary or desirable in the employer's business.

In *Brent School, Inc. v. Zamora*,^[29] the Court, for the first time, recognized and resolved the anomaly created by a narrow and literal interpretation of Article 280 of the Labor Code that appears to restrict the employee's right to freely stipulate with his employer on the duration of his engagement. In this case, the Court upheld the validity of the fixed-term employment agreed upon by the employer, Brent School, Inc., and the employee, Dorotio Alegre, declaring that the restrictive clause in Article 280 "should be construed to refer to the substantive evil that the Code itself x x x singled out: agreements entered into precisely to circumvent security of tenure. It should have no application to instances where [the] fixed period of employment was agreed upon knowingly and voluntarily by the parties x x x absent any x x x circumstances vitiating [the employee's] consent, or where [the facts satisfactorily show] that the employer and [the] employee dealt with each other on more or less equal terms[.]"^[30] The indispensability or desirability of the activity performed by the employee will not preclude the parties from entering into an otherwise valid fixed term employment agreement; a definite period of employment does not essentially contradict the nature of the employees duties^[31] as necessary and desirable to the usual business or trade of the employer.

Nevertheless, “where the circumstances evidently show that the employer imposed the period precisely to preclude the employee from acquiring tenurial security, the law and this Court will not hesitate to strike down or disregard the period as contrary to public policy, morals, etc.”[32] In such a case, the general restrictive rule under Article 280 of the Labor Code will apply and the employee shall be deemed regular.

Clearly, therefore, the nature of the employment does not depend solely on the will or word of the employer or on the procedure for hiring and the manner of designating the employee. Rather, the nature of the employment depends on the nature of the activities to be performed by the employee, considering the nature of the employer’s business, the duration and scope to be done,[33] and, in some cases, even the length of time of the performance and its continued existence.

In light of the above legal parameters laid down by the law and applicable jurisprudence, the respondents are neither project, seasonal nor fixed-term employees, but regular seasonal workers of URSUMCO. The following factual considerations from the records support this conclusion:

First, the respondents were made to perform various tasks that did not at all pertain to any specific phase of URSUMCO’s strict milling operations that would ultimately cease upon completion of a particular phase in the milling of sugar; rather, they were tasked to perform duties regularly and habitually needed in URSUMCO’s operations during the milling season. The respondents’ duties as loader operators, hookers, crane operators and drivers were necessary to haul and transport the sugarcane from the plantation to the mill; laboratory attendants, workers and laborers to mill the sugar; and welders, carpenters and utility workers to ensure the smooth and continuous operation of the mill for the duration of the milling season, as distinguished from the production of the sugarcane which involves the planting and raising of the sugarcane until it ripens for milling. The production of sugarcane, it must be emphasized, requires a different set of workers who are experienced in farm or agricultural work. Needless to say, they perform the activities that are necessary and desirable in sugarcane production. As in the milling of sugarcane, the plantation workers perform their duties only during the planting season.

Second, the respondents were regularly and repeatedly hired to perform the same tasks year after year. This regular and repeated hiring of the same workers (two different sets) for two separate seasons has put in place, principally through jurisprudence, the system of regular seasonal employment in the sugar industry and other industries with a similar nature of operations.

Under the system, the plantation workers or the mill employees do not work continuously for one whole year but only for the duration of the growing of the sugarcane or the milling season. Their seasonal work, however, does not detract from considering them in regular employment since in a litany of cases, this Court has already settled that seasonal workers who are called to work from time to time and are temporarily laid off during the off-season are not separated from the service in said period, but are merely considered on leave until re-employment.[34] Be this as it may, regular seasonal employees, like the respondents in this case, should not be confused with the regular employees of the sugar mill such as the administrative or office personnel who perform their tasks for the entire year regardless of the season. The NLRC, therefore, gravely erred when it declared the respondents regular employees of URSUMCO without qualification and that they were entitled to the benefits granted, under the CBA, to URSUMCO’S regular employees.

Third, while the petitioners assert that the respondents were free to work elsewhere during the off-season, the records do not support this assertion. There is no evidence on record showing that after the completion of their tasks at URSUMCO, the respondents sought and obtained employment elsewhere.

Contrary to the petitioners’ position, *Mercado, Sr. v. NLRC*, 3rd Div.[35] is not applicable to the respondents as this case was resolved based on different factual considerations. In *Mercado*, the workers were hired to perform

phases of the agricultural work in their employer's farm for a definite period of time; afterwards, they were free to offer their services to any other farm owner. The workers were not hired regularly and repeatedly for the same phase(s) of agricultural work, but only intermittently for any single phase. And, more importantly, the employer in Mercado sufficiently proved these factual circumstances. The Court reiterated these same observations in *Hda. Fatima v. Nat'l Fed. of Sugarcane Workers-Food and Gen. Trade*[36] and *Hacienda Bino/Hortencia Starke, Inc. v. Cuenca*.[37]

At this point, we reiterate the settled rule that in this jurisdiction, only questions of law are allowed in a petition for review on certiorari.[38] This Court's power of review in a Rule 45 petition is limited to resolving matters pertaining to any perceived legal errors, which the CA may have committed in issuing the assailed decision.[39] In reviewing the legal correctness of the CA's Rule 65 decision in a labor case, we examine the CA decision in the context that it determined, i.e., the presence or absence of grave abuse of discretion in the NLRC decision before it and not on the basis of whether the NLRC decision on the merits of the case was correct.[40] In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.[41]

Viewed in this light, we find the need to place the CA's affirmation, albeit with modification, of the NLRC decision of July 22, 2005 in perspective. To recall, the NLRC declared the respondents as regular employees of URSUMCO.[42] With such a declaration, the NLRC in effect granted the respondents' prayer for regularization and, concomitantly, their prayer for the grant of monetary benefits under the CBA for URSUMCO's regular employees. In its challenged ruling, the CA concurred with the NLRC finding, but with the respondents characterized as regular seasonal employees of URSUMCO.

The CA misappreciated the real import of the NLRC ruling. The labor agency did not declare the respondents as regular seasonal employees, but as regular employees. This is the only conclusion that can be drawn from the NLRC decision's dispositive portion, thus:

WHEREFORE, premises considered, the appeal is hereby GRANTED. Complainants are declared regular employees of respondent. As such, they are entitled to the monetary benefits granted to regular employees of respondent company based on the CBA, reckoned three (3) years back from the filing of the above-entitled case on 23 August 2002 up to the present or to their entire service with respondent after the date of filing of the said complaint if they are no longer connected with respondent company.[43]

It is, therefore, clear that the issue brought to the CA for resolution is whether the NLRC gravely abused its discretion in declaring the respondents regular employees of URSUMCO and, as such, entitled to the benefits under the CBA for the regular employees.

Based on the established facts, we find that the CA grossly misread the NLRC ruling and missed the implications of the respondents' regularization. To reiterate, the respondents are regular seasonal employees, as the CA itself opined when it declared that "private respondents who are regular workers with respect to their seasonal tasks or activities and while such activities exist, cannot automatically be governed by the CBA between petitioner URSUMCO and the authorized bargaining representative of the regular and permanent employees." [44] Citing jurisprudential standards,[45] it then proceeded to explain that the respondents cannot be lumped with the regular employees due to the differences in the nature of their duties and the duration of their work vis-a-vis the operations of the company.

The NLRC was well aware of these distinctions as it acknowledged that the respondents worked only during the milling season, yet it ignored the distinctions and declared them regular employees, a marked departure from existing jurisprudence. This, to us, is grave abuse of discretion, as it gave no reason for disturbing the system of

regular seasonal employment already in place in the sugar industry and other industries with similar seasonal operations. For upholding the NLRC's flawed decision on the respondents' employment status, the CA committed a reversible error of judgment.

In sum, we find the complaint to be devoid of merit. The issue of granting affirmative relief to the complainants who did not appeal the CA ruling has become academic.

WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. Except for the denial of the respondents' claim for CBA benefits, the November 29, 2007 decision and the January 22, 2009 resolution of the Court of Appeals are **SET ASIDE**. The complaint is **DISMISSED** for lack of merit.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, Perez, and Perlas-Bernabe, JJ. concur.

[1] Dated March 18, 2009 and filed on April 3, 2009 under Rule 45 of the Rules of Court; rollo, pp. 11-39.

[2] Penned by Associate Justice Pampio A. Abarintos, and concurred in by Associate Justices Francisco P. Acosta and Amy Lazaro-Javier; id. at 47-56.

[3] Id. at 58-59; penned by Associate Justice Francisco P. Acosta, and concurred in by Associate Justices Antonio L. Villamor and Amy C. Lazaro-Javier.

[4] Penned by Commissioner Aurelio D. Menzon; id. at 154-157.

[5] Id. at 175-177.

[6] Penned by Labor Arbiter Geoffrey P. Villahermosa; id. at 140-145.

[7] The other named respondents are as follows: Roberto Aguilar, Eddie Baldoza, Rene Abellar, Diomedes Alicos, Miguel Alicos, Rogelio Amahit, Larry Amasco, Felipe Balansag, Romeo Balansag, Manuel Bangot, Andy Banjao, Dionisio Bendijo, Jr., Joventino Broce, Enrico Literal, Rodger Ramirez, Bienvenido Rodriguez, Diocito Palagtiw, Ernie Sablan, Richard Pancho, Rodrigo Estrabela, Danny Kadusale and Allyrobyl Olpus.

Only those whose names are in bold letters appealed the LA's October 9, 2002 decision before the NLRC; id. at 152.

[8] Id. at 135. The following are the respective hiring dates and duties of the named respondents:

Name

Duties

Hiring Date

Allyrobyl P. Olpus

Hooker

February 24, 1988

Felipe B. Balansag

Driver

March 8, 1988

Richard E. Pancho

Loader Operator

March 24, 1989

Joventino C. Broce

Gantry Hooker

April 3, 1989

Romeo B. Balansag

Driver

May 1, 1989

Ferdinand G. Acibo

Utility

February 19, 1990

Danny S. Kadusale

Crane Operator

September 11, 1991

Dionisio Bendijo, Jr.

Welder

September 16, 1991

Eddie Z. Baldoza

Welder

October 16, 1991

Andy C. Banjao

Welder

October 16, 1991

Diocito H. Palagtiw

Welder

October 21, 1991

Diomedes F. Alicos

Prod. Raw Maintenance

February 28, 1992

Rodrigo A. Estrabela

Utility

June 4, 1992

Miguel F. Aliocos

Utility

January 28, 1993

Bienvenido M. Rodriguez

Lime Attendant

August 25, 1993

Manuel T. Bangot

Driver

February 1, 1994

Rodger L. Ramirez

Utility

August 1, 1994

Rogelio M. Amahit

Prod. Raw Maintenance

August 15, 1994

Ernie D. Sabla-on

Welder

February 8, 1996

Rene V. Abellar

Lime Tender

February 10, 1996

Larry C. Amosco

Evaporator Helper

March 26, 1996

Enrico A. Literal

Prod. Raw Maintenance

March 26, 1996

Roberto S. Aguilar

Lime Attendant

April 8, 1996

[9] Id. at 88-129.

[10] Supra note 6.

[11] Supra note 4.

[12] Supra note 5.

[13] Rollo, pp. 178-197.

[14] Supra note 2.

[15] Rollo, pp. 60-79.

[16] Supra note 3.

[17] The matter of the respondents' non-entitlement to the CBA benefits, as declared by the CA, was not raised before this Court in the present proceeding either by the petitioners or the respondents.

[18] Rollo, pp. 246-249.

[19] Article 280 of the Labor Code reads in full:

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 exists.

[20] *De Leon v. National Labor Relations Commission*, 257 Phil. 626, 632 (1989). See also *Hda. Fatima v. Nat'l Fed. of Sugarcane Workers-Food and Gen. Trade*, 444 Phil. 587, 596 (2003); *Abasolo v. National Labor Relations Commission*, 400 Phil. 86, 103 (2000); and *Hacienda Bino/Hortencia Starke, Inc. v. Cuenca*, 496 Phil. 198, 209 (2005).

[21] LABOR CODE, Article 280.

[22] See *Violeta v. NLRC*, 345 Phil. 762, 771 (1997).

[23] See *Tomas Lao Construction v. NLRC*, 344 Phil. 268, 279 (1997).

[24] See *Maraguinot, Jr. v. NLRC*, 348 Phil. 580, 600-601 (1998).

[25] *Ibid.*

[26] See *Hacienda Bino/Hortencia Starke, Inc. v. Cuenca*, *supra* note 20, at 209; and *Hda. Fatima v. Nat'l Fed. of Sugarcane Workers-Food and Gen. Trade*, *supra* note 20, at 596.

[27] See *Abasolo v. National Labor Relations Commission*, *supra* note 20, at 103-104.

[28] *Id.*

[29] 260 Phil. 747 (1990).

[30] *Id.* at 763.

[31] See *St. Theresa's School of Novaliches Foundation v. NLRC*, 351 Phil. 1038, 1043 (1998); *Pure Foods Corp. v. NLRC*, 347 Phil. 434, 443 (1997); and *Philips Semiconductors (Phils.), Inc. v. Fadriquela*, G.R. No. 141717, April 14, 2004, 427 SCRA 408, 421-422.

[32] *Cielo v. NLRC*, 271 Phil. 433, 442 (1991).

[33] *Abasolo, et al. v. NLRC*, 400 Phil. 86, 103 (2000).

[34] *Id.* at 104.

[35] 278 Phil. 345 (1991).

[36] Supra note 20.

[37] Supra note 20.

[38] Id.

[39] Montoya v. Transmed Manila Corporation, G.R. No. 183329, August 27, 2009, 597 SCRA 334, 342.

[40] Id. at 342-343.

[41] Career Philippines Shipmanagement, Inc. v. Serna, G.R. No. 172086, December 3, 2012, 686 SCRA 676, 683-684.

[42] Rollo, p. 157.

[43] Ibid.

[44] Id. at 55.

[45] Golden Farms, Inc. v. Secretary of Labor, G.R. No. 102130, July 26, 1994, 234 SCRA 517.

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