

**REYNALDO E. FEGURIN, ISIDRO D. RIVERA, JAIME J. HERMOSURA,
JAIME G. BOCO, ELPIDIO G. BOCO, PABLO L. CABASOG AND PEDRO
G. BARBERO, PETITIONERS, VS. NATIONAL LABOR RELATIONS
COMMI...**

G.R. No. 54083. February 28, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The individual petitioners seek a reversal of the resolution of the National Labor Relations Commission (NLRC) in NLRC Case No. RB-IV-20578-78-T entitled "Federation of Free Workers, Reynaldo E. Fegurin, et als. vs. Francisco Cacho & Co., Inc.," which affirmed the decision of the Labor Arbiter dismissing petitioners' complaint for unfair labor practice and illegal dismissal.

Francisco Cacho & Co. (Company, for short) is engaged in the construction business which hired petitioners either as carpenters, masons or laborers, on different dates.

On January 11, 1978, petitioners, together with the Federation of Free Workers (Francisco Cacho & Co., Inc. Chapter), filed with the National Capital Region of the Ministry of Labor a complaint against the Company alleging that they were all its regular and permanent workers and were illegally dismissed for union activities on September 28, 1977. They prayed for reinstatement with backwages and other benefits.

The Company traversed the complaint by stating that petitioners were project workers assigned to different projects as stated in their individual contracts of employment and that pursuant to the same, their employment was ipso facto terminated upon completion of the project or the phase of work requiring the services of mason/carpenter/laborer; that on September 28, 1977, petitioners' services were terminated due to the completion of the phase of work in the projects where they were individually assigned; and that the required Report of Termination, dated September 17, 1977, was duly submitted to the Ministry of Labor.

On February 13, 1979, the Labor Arbiter dismissed petitioners' Complaint stating that

"Inasmuch as individual complainants' employment contracts indicate they are project employees, the company is absolved of the charge of unfair labor practice — meaning the company is not guilty of dismissing complainants because of their alleged union activities. In the request for clearance or report filed by management with the Ministry of Labor on 20 September 1977, there were twenty seven (27) employees involved including the herein complainants. This fact alone clearly emphasizes that petitioners were not singled out for termination because of their union memberships. On the contrary, they were separated due to the completion of phase of work where they were individually assigned."

On appeal by petitioners, the NLRC affirmed the decision of the Labor Arbiter but ordered private respondent to rehire petitioners to work in any of its future projects.

Before us now, petitioners assail that decision for having been issued with grave abuse of discretion amounting to

lack of or excess of jurisdiction.

We dismissed the Petition for late filing. However, the dismissal was reconsidered in the interest of substantial justice and equity, and we gave due course to the Petition on 23 February 1981.

The basic issue is whether petitioners are regular and permanent employees or project workers whose employments were terminated at the completion of the project to which assigned or any phase thereof.

Petitioners take the position that they are regular and permanent employees as they had been employed since 1968 or 1969; that they are members of the SSS; and that in the Collective Bargaining Agreement between the Union to which petitioners are affiliated and the Company, they were considered as permanent and regular construction workers.

On the other hand, the Company claims that petitioners are "project employees" or those employed in connection with a particular construction project so that their employment was "automatically terminated either at the completion of the project or upon the completion of the phase of work requiring their respective services." The Company relies heavily on Notices of Employment issued to petitioners of the following typical tenor:

"NOTICE OF EMPLOYMENT

This is to inform you that you have been hired at the Metro Bank Plaza Bldg., as Mason B at a monthly salary/daily or hourly wage of P12.40.

Your employment shall be deemed automatically terminated either at the completion of the project or upon the completion of the work requiring the services of mason. To start: May 12, 1977

ACCEPTED:

SGD: REYNALDO FEGURIN

T/REYNALDO FEGURIN

EMPLOYEE." (ANNEX 'I' respondent's position paper).[1]

We find merit in petitioners' stand that they are regular and permanent employees. Under Article 281 of the Labor Code, any employee who has rendered at least one year of service, or who performs activities usually necessary or desirable in the usual business of the employer, is considered a regular employee, the provision of written agreement to the contrary notwithstanding.

"ART. 281. Regular and Casual Employment. — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreements 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 employment or where the work or service 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 exists."[2] (Italics supplied)

In this case, four of the petitioners[3] had been working with the Company for nine years, one[4] for 8 years,

another[5] for 6 years, the shortest term being 3 years.[6] The Company has not rebutted petitioners' averments that they had been employed for several years before their services were terminated. The Notices of Employment, therefore, do not reflect accurately petitioners' respective lengths of service as they give the starting point of petitioners' employment as between 1975 and 1977,[7] or just a few months before their dismissal. Moreover, they performed activities usually necessary or desirable in the usual business of the Company, their employer, hence, their employment is deemed regular.

Policy Instructions No. 20 of the Minister of Labor, intended to stabilize employer-employee relations in the construction industry, also lays down the distinction between project employees and non-project employees, thus:

"Generally, there are two types of employees in the construction industry, namely: 1) Project employees, and 2) Non-Project employees.

Project employees are those employed in connection with a particular construction project. Non-project employees are those employed by a construction company without reference to any particular project.

.....

Members of a work pool from which a construction company draws its project employees, if considered employees of the construction company while in the work pool, are non-project employees or employees for an indefinite period. If they are employed in a particular project, the completion of the project or of any phase thereof will not mean severance of employer-employee relationship."[8]

Considering the nature of the work of petitioners, that of carpenter, laborer or mason, their respective jobs would actually be continuous and on-going. When a project to which they are individually assigned is completed, they would be assigned to the next project or a phase thereof. In other words, they belonged to a "work pool" from which the Company would draw workers for assignment to other projects at its discretion. They are, therefore, actually "non-project employees".

Moreover, as brought out by the Solicitor General, in the Collective Bargaining Agreement between petitioners' Union and the Company, the latter had categorically recognized petitioners as regular and permanent employees effective May 1, 1976 "for the purpose of forming a core group of permanent and regular construction workers" for the Company. Thus, Section 1, Article I of the CBA provides:

"Section 1. The Company recognizes the Union as the only and properly designated and authorized representative for the permanent and regular employees of the company, except the following:

- Supervisory personnel;
- Workers hired on casual basis;
- Workers hired on contract basis for the construction of company's projects;
- Company watchmen and security guards.

For the purpose of forming a core group of permanent and regular construction workers, the Company hereby extends permanent and regular employment effective May 1, 1976 to the individuals named in Annex 'A' (Annex 'B-1' of this Petition) hereof; and effective November 1, 1974 to the individuals named in Annex 'B' (Annex 'B-2' of this Petition) hereof. Vacancies in the said core group occasioned by retirement, dismissal, death or permanent disability may be filled by the Company at its option, upon consultation with the Union, whose opinion shall be regarded as advisory. (Italics supplied)"[9]

The names of petitioners appear in Annex "A" of the CBA[10] except in respect of petitioner Pedro B. Barbero, who obtained employment with the Company in August, 1968. Having been in the Company's employ for several

years, even the Notices of Employment (*supra*) would show a clear violation of the CBA, which recognizes petitioners as "regular and permanent" employees of the Company. The terms and conditions of the CBA must be complied with as they constitute the law between the parties.[11]

The fact that petitioners did not present the CBA as evidence before the agencies below will not alter the conclusion arrived at because the Supreme Court has the authority to review matters even if they are not assigned as errors in the appeal, if it is found that their consideration is necessary in arriving at a just decision of the case.[12]

Besides, even disregarding the CBA, the records show that public respondents had overlooked and failed to appreciate the letter dated 13 June 1978 of the Social Security System Production Manager, Avelina B. Conte[13] submitted before the agencies below, with the following pertinent information:

"(x) Our records show that Francisco Cacho & Co., Inc. has reported the following for registration:

Name

SSS Number

Date of Coverage

Elpidio G. Boco

03-1876160

July 25, 1968

Jaime Boco

03-2147432

October 16, 1968

Pedro B. Barbero

03-2070210

August 27, 1968

Pedro L. Cabasog

03-3657648

April 12, 1975

Reynaldo E. Fegurin

03-1876073

July 3, 1968

Jaime H. Hermosura

03-2370000

September 2, 1971

Isidro Rivera

03-2050059

January 12, 1969"[14]

This piece of evidence shows that the Company had reported petitioners for registration and membership with the Social Security System, and is an implicit admission by it of the actual dates of employment of petitioners as above-enumerated, and not as stated in the individual Notices of Employment allegedly commencing in 1975, 1976 and 1977, or just some months prior to their dismissal in 1977.

The Solicitor General is also of the view that petitioners are regular and permanent employees and has recommended that they be reinstated with backwages.

WHEREFORE, the Petition for Certiorari is granted, and the Resolution of the National Labor Relations Commission, dated 29 October 1979, is hereby SET ASIDE. Private respondent, Francisco Cacho & Co., Inc., is hereby ordered to reinstate petitioners and pay each of them their backwages for three years.

Costs against private respondent.

SO ORDERED.

Teehankee (Chairman), Plana, Vasquez, Relova and Gutierrez, Jr., JJ., concur.

[1] p. 117, Rollo.

[2] p. 118, Ibid.

[3] Reynaldo Fegurin, from July 1, 1968, Jaime C. Boco, Elpidio Boco, Pedro B. Barbero, from August, 1968.

[4] Isidro D. Rivera from January 2, 1969.

[5] Jaime Hermosura, from September 2, 1971.

[6] Pablo Cabasog, from April 1974.

[7] Isidro Rivera and Jaime Boco were supposed to have worked at the "Rancho Estate Housing" starting August 25, 1976 and November 19, 1975, respectively; Jaime Hermosura, Pablo Cabasog, Elpidio Boco and Pedro Barbero at the Metro Bank Plaza Bldg., starting November 17, 1975, May 13, 1977, November 17, 1975 and May 12, 1977, respectively.

[8] p. 122, Rollo.

[9] p. 119, Ibid.

[10] Annex "B-1", Petition.

[11] Citibank Phils. Employees Union — NATU vs. Minister of Labor, 97 SCRA 52 (1980).

[12] Saura Import & Export Co., Inc. vs. Phil. International Surety Co., Inc., 8 SCRA 143 (1963); Miguel vs. Court of Appeals, 29 SCRA 760 (1969).

[13] Annex "D", Petition.

[14] p. 39, Rollo.

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