

**PHILIPPINE NATIONAL CONSTRUCTION CORPORATION (PNCC),
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION
(SECOND DIVISION) AND EMELITO P. PORCIUNCULA, RESPONDENTS.**

G.R. No. 85323. June 20, 1989

Ponente: GRIÑO-QUINO, J.

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GRIÑO-QUINO, J.:

Assailed in this petition for certiorari is the decision dated September 30, 1988 of the National Labor Relations Commission (NLRC), affirming the decision dated August 21, 1987, of the Labor Arbiter ordering the reinstatement with back wages of the private respondent on the ground that he was not a project employee but a member of the work pool and that he was illegally dismissed on April 20, 1986.

The private respondent was employed by PNCC as an oiler from November 4, 1973 until he was terminated on April 20, 1986, on the ground of completion of the project to which he was assigned.

The private respondent, in his complaint for illegal dismissal, alleged that he was discharged not for cause, but because the newly designated supervisor, Reynaldo Bonifacio, wanted to put in his own man.

The point in issue is whether or not the private respondent was a member of the work pool, therefore, considered a regular employee (Art. 280, Labor Code), or a project employee, whose employment was co-terminus with the projects to which he was assigned.

After a careful consideration of the petition and the comment filed by the Solicitor General for the respondents, We hold that the NLRC did not abuse its discretion in affirming the Labor Arbiter's conclusion that the private respondent was a member of the work pool and that he was illegally dismissed from his job.

"Members of a work pool from which a construction company draws its project employees, if considered employee 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 any phase thereof will not mean severance of employer-employee relationship." (Policy Instruction No. 20, underscoring supplied.)

"x x x. 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 which he is employed and his employment shall continue while such actually exists." (Art. 280, Labor Code.)

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 services to be performed is seasonal in nature and the employment is for the duration of the season." (Sec. 280, Labor Code; *Sandoval Shipping, Inc. vs. NLRC*, 136 SCRA 674.)

In finding that Porciuncula was a regular employee, the Labor Arbiter noted that it was the petitioner's practice to re-hire him after the completion of every project and this re-hiring continued throughout Porciuncula's 13 years of

employment in the company.

The Labor Arbiter also observed that the petitioner never reported the completion of its projects and the termination of the employees (like Porciuncula) in its finished projects, to the nearest Public Employment Office as required by Policy Instruction No. 20 of the Secretary of Labor. In the case of *Ochoco vs. NLRC*, 120 SCRA 774, the failure of the employer to report to the nearest employment office the termination of the workers everytime it completed a project was considered by this Court as proof that they were not project employees.

We, therefore, find no grave abuse of discretion in the Labor Arbiter's holding so, nor in the NLRC's affirmance of the decision.

WHEREFORE, the petition for certiorari is dismissed for lack of merit. Costs against the petitioner.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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