

**PHILIPPINE NATIONAL CONSTRUCTION CORPORATION,
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND
JEOFFREY G. GABAYA, EGMEDIO ARINES, JAIME ALLAPITAN,
ROBERTO BALAJADIA, L...**

G.R. No. 95816. October 27, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

This is a petition for review on certiorari assailing the Resolution* dated October 19, 1990 of public respondent National Labor Relations Commission (First Division) (hereinafter referred to as NLRC for brevity) which affirmed the November 19, 1989 decision of Labor Arbiter Jose de Vera in NCR Cases Nos. 00-04-1890-89, 00-05-02388-89, 00-06-02633-89 and 00-06-02078--89 granting separation pay to the complainants, herein private respondents.

Petitioner Philippine National Construction Corporation (PNCC for brevity) is a government owned and controlled corporation engaged in general construction work both in the Philippines and abroad. Private respondents were employed by the PNCC until their retrenchment as specified hereunder:

Employee

Date Employed

Nature of Employment

Separated

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.

10.

11.

12.

13.

14.

Jeoffrey Gabaya

Egmedio Arines

Jaime Allapitan

Roberto Balajadia

Luciano Lacorta

Agapito Lundang

Ponciano Pepito

Remigio Mequiota

Ernesto Venancio

Isabelo de Castro

Ricardo Dimanlig

Perfecto Raymundo

Alfredo Gabriel

Alfredo Ramos

6-01-76

3-27-73

3-15-72

7-04-74

10-10-71

12-18-73

9-22-72

4-05-75

7-12-74

10-11-74

March/78

9-01-75

2-14-72

2-04-78

H.E. Operator

Foreman

Instrumentman

Carpenter

Carpenter Welder

Survey Aide

Welder III

Loader Operator

Truck Driver

Plant Tender

Mechanic

Plant Mechanic

Storekeeper

Truck Driver

3-15-89

3-18-89

3-18-89

3-18-89

3-07-89

3-18-89

3-15-89

3-15-89

4-12-89

6-30-89

6-30-89

6-30-89

7-05-89

4-03-89

(p. 65, Rollo.)

Sometime in February, 1989, PNCC embarked upon a retrenchment program and notified its employees, including the private respondents, through individual form letters which read in part:

"As we all know, it is the declared policy of the State that whenever and wherever possible, the government shall privatize all business enterprises owned or controlled by it, one of which is the construction business of PNCC. This matter has been announced by a management memorandum at a much earlier date. You will also note that we have avoided bidding for new projects and have slowed down operations in some areas. In view of this, we are constrained to reduce the company's workforce gradually until the sale of the construction business shall have been completed.

"It is my painful task to advise you that your employment with PNCC will be terminated effective 30 days from date hereof under a special separation program which provides more benefits than what the law requires.

"You will receive separation benefits according to the following formula:

"1. One Hundred Percent (100%) of the latest Monthly Basic Salary for entitled employees with at least one (1) year but less than ten (10) years of completed/credited service in the Company.

"2. One Hundred Twenty-Five Percent (125%) of the latest Monthly Basic Salary for entitled employees with at least ten (10) years and above completed/credited service in the Company.

"3. For entitled employees who have completed at least one (1) full year service, a fraction of at least six (6) months in their succeeding months/years of service shall be considered as one (1) year for the purpose of computing their separation benefits entitlement." (pp. 33-34, Rollo.)

Believing that they had been underpaid their separation benefits (or not paid at all, as in the case of Alfredo T. Gabriel), the private respondents filed four (4) separate complaints in the NLRC (NCR Cases Nos. 00-04-01890-89, 00-05-02388-89, 00-06-02633-89 and 00-06-02078-89) for the payment of said benefits.

During the proceedings before the Labor Arbiter, it was established that, except for respondent Egmedio Arines, the other respondents had been assigned to foreign projects of the company. Under the "Agreement for Overseas Assignment," a temporary foreign assignment would not interrupt the employees' length of service in the company and any employee who completed his foreign assignment would be credited 1.5 years of service for every year of continuous service in such foreign assignment. Petitioner PNCC did not deny the overseas assignments of the following employees:

1. Jeoffrey Gabaya - December 5, 1978 to December 6, 1980 August 6, 1981 to August 9, 1983 (Malaysia)
2. Jaime Allapitan - March 11, 1981 to February 11, 1983 (Iraq)
3. Roberto Balajadia - October 4, 1981 to August 21, 1983 (Iraq)
4. Luciano Lacorta - June 7, 1979 to July 11, 1985 (Malaysia)
5. Agapito Lundang - December 15, 1978 to June 1, 1982 (Saudi Arabia)
6. Ponciano Pepito - 1979 to 1984 (Malaysia)
7. Remigio Mequiota - 1978 to 1984 (Malaysia)
8. Ernesto Venancio - January 11, 1979 to August 8, 1983 (Saudi Arabia)
9. Isabelo de Castro - 1981 to 1983 (Iraq)
10. Ricardo Dimanlig - October 30, 1981 to September 30, 1983 (Iraq)

11. Perfecto Raymundo - 1981 to 1983 (Iraq)
12. Alfredo Gabriel - 1979 to 1982 (Saudi Arabia)
13. Alfredo Ramos - September 4, 1982 to December 15, 1983 (Iraq)

On the other hand, the above private respondents admitted that they had no project assignments on the following dates:

1. Jeoffrey Gabaya - August 10, 1983 to January 8, 1986
2. Egmedio Arines - 1985 to 1986
3. Jaime Allapitan - February 12, 1983 to March 13, 1985
4. Roberto Balajadia - August 22, 1983 to February 15, 1985
5. Luciano Lacorta - June 7, 1985 to February 4, 1987
6. Agapito Lundang - June 1, 1982 to March 5, 1985
7. Ponciano Pepito - October 7, 1984 to January 13, 1986
8. Remigio Mequiota - November 18, 1984 to December 11, 1986
9. Ernesto Venancio - August 10, 1983 to January 2, 1985
10. Isabelo de Castro - 1983 to 1986
11. Ricardo Dimanlig - October, 1983 to September, 1987
12. Perfecto Raymundo - 1983 to February 1988
13. Alfredo Gabriel - October 24, 1985 to August 22, 1988
14. Alfredo Ramos - December 16, 1983 to January, 1985

Thus, based on their employment records, both local and overseas, less the period when they had no project assignment, the Labor Arbiter credited each private respondent with the following length of service with the PNCC.

1. Jeoffrey Gabaya - 16 years, 4 months & 15 days
2. Egmedio Arines - 13 years, 11 months & 19 days
3. Jaime Allapitan - 17 years, 11 months & 27 days
4. Roberto Balajadia - 15 years, 2 months & 10 days
5. Luciano Lacorta - 24 years, 9 months & 11 days
6. Agapito Lundang - 18 years, 6 months & 4 days
7. Ponciano Pepito - 22 years, 8 months & 17 days
8. Remigio Mequiota - 20 years, 10 months & 10 days
9. Ernesto Venancio - 19 years, 4 months & 14 days
10. Isabelo de Castro - 13 years, 8 months & 19 days

11. Ricardo Dimanlig - 10 years & 3 months
12. Perfecto Raymundo - 11 years, 9 months & 29 days
13. Alfredo Gabriel - 19 years & 8 days
14. Alfredo Ramos - 11 years & 7 months.

In a decision dated November 19, 1989, the Labor Arbiter ruled that in providing a retrenchment program for its employees, the PNCC expressly admitted that respondents were not project employees. Hence, pursuant to the provision of the retrenchment program that employees with more than ten (10) years of credited service shall receive separation benefits equivalent to 125% of the latest monthly basic salary for each year of service, the Labor Arbiter ordered the payment of separation benefits as follows:

"WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering respondent company to pay complainants the latter's separation benefits as follows:

Alfredo Gabaya - P48,826.40

Egmedio Arines - 58,065.00

Jaime Allapitan - 59,436.00

Roberto Balajadia - 41,250.00

Luciano Lacorta - 66,950.00

Agapito Lundang - 56,050.00

Ponciano Pepito - 68,367.50

Remigio Mequiota - 60,900.00

Ernesto Venancio - 59,280.00

Isabelo de Castro - 37,856.00

Ricardo Dimanlig - 26,520.00

Perfecto Raymundo - 28,860.00

Alfredo Gabriel - 46,193.75

Alfredo Ramos - 34,476.00

less whatever sums of money paid by respondent to the above-named complainants by way of separation pay.

"Further, respondent is also ordered to pay complainants attorney's fees at the rate of 10% of whatever sum herein adjudicated in favor of the complainants in accordance with the above disposition." (pp. 39-40, Rollo.)

On appeal to the NLRC, the Commission affirmed the decision of the Labor Arbiter and dismissed the appeal for lack of merit.

Hence, this petition for review on certiorari by the PNCC which maintains that respondents are project employees within the purview of Policy Instruction No. 20, hence, they are not entitled to separation pay. The company hires workers only if it has an on-going project and terminates their employment once the project is completed. It has been the policy of the company to inform the workers hired that their employment is co-terminous with the particular project for which they are hired and the continuation of their service is dependent upon the continued

demand for the worker's particular skill. When there is no project for them to work on, respondents are free to seek employment with other contractors.

Petitioner PNCC further submits that respondent's claims against the company are already barred by estoppel and prescription. When the services of the respondents were terminated due to the completion of the project, they signed the quitclaim incorporated in the Personnel Action Form. Not one of them registered his objection to this procedure which had been followed several times in the past. For failure to object to the quitclaims which they had voluntarily signed, the private respondents are in estoppel to assert their present claims against the company.

Petitioner further alleges that while the retrenchment program of the company is intended to include only the project employees currently employed in the projects of the company, the separation pay demanded by the private respondents pertains to their past employment in the company's projects way back in 1976 and for which they have already received the corresponding benefits. Respondent's right of action has prescribed.

Private respondents, on the other hand, hold that they are not project employees because they were hired continuously for a series of projects for several years. They were described as either "regular" or "probationary" employees in their employment papers and were given separation pay only in 1989. As held in *Philippine National Construction Corporation vs. NLRC* (174 SCRA 191), PNCC's practice of rehiring an employee after the completion of every project for several years, without reporting to the nearest public employment office, the termination of the employment every time a project is completed, as required under Policy Instruction No. 20, shows that the employee is a regular employee and not a mere project employee.

The petition is bereft of merit.

Project employees are those whose work is coterminous with the project for which they were hired (*Sandoval Shipyards, Inc. vs. NLRC*, 136 SCRA 674). As distinguished from regular or non-project employees, they are those who are hired "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." (Art. 280, Labor Code.)

However, in *Philippine National Construction Corporation vs. NLRC*, (supra), a case involving the petitioner and an oiler who had worked with the company for thirteen (13) years, the Court affirmed the Labor Arbiter's ruling that since the company had rehired the oiler after the completion of every project and this rehiring continued throughout the oiler's period of employment, the latter was a regular employee. The same conclusion should be arrived at in this case where the private respondents had been hired and rehired for the period of their respective employment with the company which ranged from eleven years to more than twenty-four years.

Indeed, if the private respondents were project employees, the petitioner should have submitted a report of their termination to the nearest public employment office everytime their employment was terminated due to the completion of the project, as required under Policy Instruction No. 20 which provides:

"Project employees are not entitled to termination pay if they are terminated as a result of the completion of the project or any phase thereof in which they are employed, regardless of the number of projects in which they have been employed by a particular construction company. Moreover, the company is not required to obtain a clearance from the Secretary of Labor in connection with such termination. What is required of the company is a report to the nearest Public Employment Office for statistical purposes." (*PNCC vs. NLRC*, 174 SCRA 191; *Magante vs. NLRC*, 185 SCRA 21, 28.)

The termination letter which PNCC sent to each of the private respondents expressly promised them separation benefits. As observed by the Labor Arbiter, this is an express admission by the petitioner that the private

respondents are not project employees for, as provided in Policy Instruction No. 20, "project employees are not entitled to termination pay if they are terminated as a result of the completion of the project or any phase thereof in which they are employed." (p. 13, Rollo.)

The fact that the respondents-employees signed quitclaims will not bar them from pursuing their claims against the company for quitclaims executed by laborers are frowned upon as contrary to public policy, and are ineffective to bar claims for the full measure of the workers' legal rights (*Lopez Sugar Corporation vs. Federation of Free Workers*, 189 SCRA 179).

Petitioner's contention that the respondents' cause of action has prescribed is not well taken. The three-year prescriptive period under Article 291 of the Labor Code is counted from the time the cause of action accrues. Respondents' cause of action accrued only in March, 1989. The complaint for underpayment of separation pay was filed on April 18, 1989, barely a month after their separation from employment. Clearly, prescription had not yet extinguished their claims.

WHEREFORE, the petition for certiorari is DENIED for lack of merit and the Resolution dated October 19, 1990 of the NLRC is AFFIRMED.

SO ORDERED.

Padilla, (Acting Chairman), Medialdea, and Bellosillo, JJ., concur.
Cruz, J., (Chairman), on leave.

* Penned by Presiding Commissioner Bartolome S. Carale and concurred in by Commissioners Vicente S.E. Veloso III and Romeo Putong.

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