

**RODRIGO BORDEOS, REYNALDO CERUMA, EDGAR CONCINA,
SALVADOR CONSUELO, GODOFREDO CAS IV, LORENZO CLARINO,
LORENZO BELO, ROMEO BUENO AND LEO CARULLO, PETITIONERS,
VS. NATIONAL LABOR...**

G.R. Nos. 115314-23. September 26, 1996

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Petitioners, formerly engaged as project employees of Build-O-Weld Services Co. (BOWSC), claim that said BOWSC was a labor-only contractor of the Philippine Geothermal, Inc. (PGI), and that they (petitioners) performed were regular employees of PGI who were wrongfully terminated.

The instant petition challenges the Resolution[1] of respondent National Labor Relations Commission[2] promulgated[3] on November 9, 1993, which dismissed the petitioners' appeal for lack of merit and affirmed the decision dated September 7, 1992 of the labor arbiter,[4] who held that herein petitioners were project employees of BOWSC and therefore were properly terminated and thus, were not entitled to the benefits to be accorded regular employees.

The Facts

While respondent Commission's narration of facts is rather lengthy, we quote the same for its informative value:[5]

"Pursuant to its desire to be less dependent on oil-generated power, our government encourages the exploration and use of alternative sources of energy, one of which is geothermal power. PGI is engaged in this particular line of business. Through the National Power Corporation, government consequently tapped PGI to develop, explore and promote the use of geothermal energy. PGI has exploration wells located in the province of Laguna and the Bicol Region (TIWI, Albay) where they (geothermal energy) are known to be abundant.

Due to the 'peculiar nature' of the multifarious activities undertaken in each project site, PGI subsequently engaged the services of contractors to perform particular work/job in certain phases of its project. One of the contractors commissioned by PGI was respondent-appellee BOWSC. The 'Job Contracting Agreement' between PGI (referred to therein as the OPERATOR) and BOWSC (then known as C.B. DL Labor and Allied Services Co., likewise referred to therein as the CONTRACTOR) specifically stated, that:

"WHEREAS, the OPERATOR has a contract with the National Power Corporation for the exploration and exploitation of geothermal resources on the Island of Luzon, Philippines and is now operating in the Tiwi and Mak-Bank geothermal areas within the province of Albay and Laguna, respectively;

WHEREAS, the OPERATOR is desirous of contracting out parts and phases of its works in its operations in the Tiwi area to bona fide independent job contractors;

WHEREAS, the CONTRACTOR has the legal, capacity, professional ability, manpower capability, and is possessed of sufficient implements and capitalization to undertake such contracts and works that can meet the

needs of the OPERATOR.

x x x x x x x x

1.1 The OPERATOR shall engage the CONTRACTOR to work on such parts (and) phases of the former's operations as may from time to time be found by the OPERATOR to be suitable, proper, and feasible for job contracting by the CONTRACTOR. This Agreement shall not prevent the OPERATOR from engaging the services of other independent contractors for other parts and phases of its operations as its deems necessary.

1.2 The OPERATOR shall issue a written work order to the CONTRACTOR for each job. The CONTRACTOR shall acknowledge acceptance of the terms and receipt of the work order by signing his acceptance thereof.

2. WORK SPECIFICATIONS

2.1 The OPERATOR shall provide the plans and determine the work specifications of each job to be contracted, and shall, from time to time, advise the CONTRACTOR of any change in such plans or specifications including any change in the time limits for the completion of each job. In the same manner, the CONTRACTOR shall inform the OPERATOR, within twenty-four (24) hours from its occurrence (sic), of any change in its work schedule, manpower size and other operational problems.

2.2 The CONTRACTOR shall be responsible for the completion of each job according to the aforesaid plans and specifications and within the time set for its completion. x x x

x x x x x x x x

2.5 For the purpose of carrying out paragraphs 2.1 and 2.2 hereof, and in order to establish an effective working coordination between the parties, the OPERATOR shall assign a representative to every job being worked by the CONTRACTOR to give instructions to and receive advise from the CONTRACTOR. The CONTRACTOR shall maintain a field office at the worksite with a representative assigned there(to) to receive instructions from and give advise to the OPERATOR.

3. FEE ARRANGEMENT

3.1 For services rendered, the OPERATOR undertakes to reimburse the CONTRACTOR as follows:

a) For work performed on a lump-sum basis, OPERATOR shall pay the CONTRACTOR the amount billed for progress payments up to a total of ninety percent of the lump-sum amount. OPERATOR shall pay the balance due the CONTRACTOR upon completion and acceptance of the work.

b) For work on a force-account basis, OPERATOR shall pay all sums due to CONTRACTOR at the end of each billing period. Labor and use of equipment shall be paid in accordance with CONTRACTOR's unit price schedule, which shall indicate an effective date of the price schedule, ANNEX 'A'.

x x x x x x x x

4. INDEPENDENT JOB CONTRACTOR

4.1 The CONTRACTOR shall provide itself with the equipment, tools and implements needed for carrying out each work order, except those highly technical equipment required for drilling and other phases of operations which shall be provided by the OPERATOR, or those equipment which the OPERATOR elects to provide.

4.2 The CONTRACTOR shall be responsible for the recruitment, hiring, placement, assignment, supervision, promotion, disciplining and termination or lay-off of its employees assigned to the job contracts. It shall be responsible for the payment of such employees' salaries or wages; allowances, vacation leaves, incentive leaves, (sick) leaves, holiday and rest day pay and premiums, overtime work pay, termination or separation

pay, retirement pay, or any other remuneration pay due them whether by provision of law, contract or employment practice. The CONTRACTOR shall also be responsible for its employees' membership with the SSS/EC/Medicare or any other compulsory system and for the payment of the corresponding membership fees and premiums thereof and shall furnish to the OPERATOR proof of such membership. The CONTRACTOR shall likewise be responsible for any and all employment benefits that may now or hereafter accrue by law, contract (or) employer grant;

4.3 The CONTRACTOR agree (sic) to withdraw from the OPERATOR's project: (a) employees whose employment is for fixed periods upon the expiration of their contracts; (b) those whose employment is coterminous with the project, upon the completion of the project; (c) those whose services are no longer needed due to partial completion of the project or where their particular skills are no longer necessary; or (d) those who are found to be in violation of the OPERATOR's rules on conduct, safety, and standard operating procedures. The OPERATOR hereby reserves the right to determine at anytime during the effectivity of this Agreement, the occurrence of any of the foregoing causes for withdrawal of the CONTRACTOR's Employees from the projects.

x x x x x x x x

4.6 The CONTRACTOR shall at all times, while work is being performed, have a competent superintendent on the job site who shall be in complete control (of) all the work. He shall be the only person of the CONTRACTOR's field employees who will be contacted for information and to whom instructions will be given by PGI's field representatives. Instructions given to said superintendent by OPERATOR shall be binding on the CONTRACTOR as if given directly to the CONTRACTOR. The superintendent shall be capable of laying out all work from the designs and specifications set forth by the OPERATOR." (Annex "A", PGI Position Paper)

Pursuant thereto, BOWSC recruited workers to undertake its contractual obligations in favor of PGI. In the process, complainants (petitioners herein) were individually engaged as pipe fitters and pipe welders on different occasions (sic) and at different periods of time (various annexes to parties' position papers enumerated here). Depending on the need for their individual services, (petitioners) were consequently terminated but were then re-hired by BOWSC.

From May 31 1991 to July 31, 1991, (petitioners) were terminated by BOWSC purportedly on the basis of the 'completion of several P.G.I. projects' or its 'slowing down' thereof. This fact was clearly stated in the individual termination letters addressed to each of the (petitioners) (more annexes cited). From June 28, 1991 to August 2, 1991, (petitioners) individually instituted their instant complaints at the Arbitration Branch below (Regional Arbitration Branch in Legaspi City). They prayed that they be reinstated and awarded their pecuniary claims. They also prayed that BOWSC be declared to be a 'labor-only contractor', and consequently, to declare them to be regular employees of PGI.

(Petitioners) aver that they are already regular employees of PGI because:

1. They each have rendered more than one year of service to PGI specifically citing Article 280 of the amended Labor Code;
2. The service they render are not only usual and necessary, but are essential to the main line of business of PGI;
3. BOWSC is merely a 'labor-only contractor' and therefore, PGI should be considered their true and lawful employer;
4. BOWSC does not have the requisite capital, tools, and equipment to validly pursue the work it undertook to perform in favor of PGI. In fact, they further claim that even the tools they use in performing their work is owned by PGI. Corollarily, it is argued that BOWSC does not even have the technical experties (sic) and capability to perform the job contracted to it by PGI;

5. Complainants are controlled and supervised by PGI technical field personnel (referring to respondent Rodolfo Cerdeno);

Meeting the arguments interposed therein, respondent's De Leon and Barba representing BOWSC aver that:

1. (Petitioners) are all their employees. They were all individually hired and engaged by BOWSC particularly for the PGI project.
2. BOWSC is an independent contractor. BOWSC meets the requirements to be validly considered as such.
3. BOWSC has an existing job-contract with PGI. Consequently, BOWSC directly exercises supervision and control over all the (petitioners).
4. Salaries and other wages due (petitioners) are directly paid to all of them by BOWSC alone.
5. It is solely BOWSC who terminated the services of the (petitioners), and who again re-hired them according to the need/demand for their individual services.

On their part, PGI postulated the following defenses, to wit:

1. There is no privity of contract between the individual (petitioners) and PGI. It was BOWSC alone who engaged (petitioners') services. BOWSC is, therefore, the employer of complainants. As far as PGI is concerned, it does not know any of the individual (petitioners). Wages and other benefits due the (petitioners) are solely paid by BOWSC.
2. BOWSC is an independent contractor who meets the requisites defined by law to be validly considered as such.
3. There is an existing 'Job Contracting Agreement' between PGI and BOWSC. (Petitioners) were detailed by BOWSC the PGI project pursuant to said contract.
4. PGI does not control and/or supervise the (petitioners).
5. It was solely BOWSC who terminated each of the (petitioners).

In the arbitration proceedings below, (petitioners) presented, among others, the following documentary evidence to buttress their claims that they are actually employees of PGI, not BOWSC, to wit: a) Daily Time Records x x x, to show that PGI required each of them to register their arrival and departure in the project site; (b) Borrower's Slip x x x, to show that they borrowed tools and other equipments owned by PGI in the conduct of their work; (c) Manpower Progress Report x x x, to show that they even reported their activities to PGI; and (d) PGI Memorandum dated 19 June 1991 addressed to BOWSC Supervisors, Team Leaders and Work Personnel x x x, to show that PGI directly Supervised them and even assigned them to specific work groups."

After considering the respective position papers and documentary evidence of the parties, the labor arbiter rendered his decision finding that the case fell exactly within the ambit of Policy Instructions No. 20,[6] series of 1977 of the Department of Labor and Employment, and that all the petitioners, whose employments were shown to have been intermittent ("off and on"), were clearly project employees of BOWSC and not regular employees (whether of BOWSC or PGI), and since their services had been terminated as the project (or phases thereof) drew closer to completion, said terminations were valid for being in accord with said Policy Instructions No. 20; hence, they were not entitled to the claimed benefits, which are due only to regular employees.

The arbiter discounted petitioners' allegation that they were not apprised of the nature and duration of their work at the time of their employment, saying that such claims had "no leg to stand with" and that "(p)ositive proof cannot be overcome and defeated by mere denials or negative assertion x x x." He likewise considered the alleged punching of daily time records and submission of manpower progress reports as being purely incidental, as the nature and exigencies of their work so required such acts. He further declared that petitioners had failed to adduce substantial proof that BOWSC did not have sufficient capital or investments in the form of tools, equipment, machineries, work premises, etc., as to classify, it as a labor-only contractor, and that "(g)ranting arguendo that

indeed BOWSC is a labor-only contractor, the stubborn fact however, remains x x x that herein complainants are project employees", which fact defeated petitioner's claim as to the existence of employer-employee relationship with PGI.

However, for reasons of equity and justice, and inasmuch as petitioners had through their labor and in their own way contributed to respondents' financial growth, the arbiter ordered BOWSC to give petitioners "financial assistance" equivalent to one (1) month pay for every year of service computed at their prevailing wage rate to be reckoned from the time PGI entered into its contract with BOWSC in April 1988 until the petitioners' respective separation from service. The dispositive portion of the arbiter's decision states:[7]

"WHEREFORE, judgment is hereby rendered dismissing the complaint for lack of merit. However, respondent Build-O-Weld Service Co., thru its responsible officials is hereby ordered to pay individual complainants their financial assistance within ten (10) days from receipt hereof thru this, Branch, as follows:

1. Rodrigo Bordeos P9,464.00
2. Lorenzo Belo 9,464.00
3. Romeo Bueno 17,628.00
4. Hermie Crucillo 3,328.00
5. Reynaldo Ceruma 12,324.00
6. Leo Cerullo 11,754.00
7. Salvador Consuelo 11,754.00
8. Edgar Concina 14,196.00
9. Godofredo Cas 4,732.00
10. Lorenzo Clariño 4,108.00
- GRAND TOTAL P98,752.00

Other claims are dismissed for lack of merit."

Dissatisfied, petitioners interposed an appeal to respondent. Commission which, in the now-assailed Resolution, dismissed the same for lack of merit and affirmed the decision of the arbiter. The financial assistance was upheld as BOWSC did not appeal from the arbiter's ruling.

As their motion for, reconsideration was denied by respondent Commission in its Resolution of January 24, 1994, petitioners elevated the matter to this Court via the instant petition under Rule 65 of the Rules of Court.

The Issues

Petitioners apprehend grave abuse of discretion by respondent Commission in the following respects:

- "I - The resolution of public respondent contains a finding not disclosed by the records.
- II. - Public respondent committed grave abuse of discretion in concluding that BOWSC is a legitimate contractor.
- III - Public respondent committed grave abuse of discretion in concluding that petitioners are project employees.
- IV - Public respondent committed; grave abuse of discretion in concluding that petitioners were legally dismissed."

But the main issues in this case are whether BOWSC was an independent job contractor, or a labor-only contractor, (the answer to which will determine whether an employer-employee relationship exists between PGI and the petitioners), and whether petitioners were project employees, as found by the arbiter and affirmed by respondent NLRC, or regular employees, as claimed by petitioners (which in turn determines the subsidiary

question of the legality of their dismissal).

[The first ground raised may be disregarded, as petitioners merely claim that the assailed Resolution contained a finding to the effect that private respondents de Leon and Barba, general manager and office manager respectively, of BOWSC had resigned from BOWSC, which fact was allegedly not disclosed by the records, and of which they were not informed.[8] The same, however, is immaterial as a cursory perusal of the assailed Resolution will reveal that this was nothing but an innocuous statement which had no bearing at all in respondent NLRC's determination of the case below. Hardly any grave abuse was, or could have been, committed by respondent Commission's taking cognizance of such resignations or making such a statement which, in any event, could not affect the cause of petitioners inasmuch as they had already been awarded "financial assistance" chargeable against BOWSC, employer of the aforementioned individual respondents.]

Petitioners' Arguments

On the NLRC's finding that BOWSC is a legitimate job contractor, petitioners argue that the same is not supported by evidence, considering that the "Job Contracting Agreement" cited by respondent NLRC was originally entered into by PGI with an entity called CBDL Labor and Allied Services Co., and that no evidence was presented to show the assumption by BOWSC of CBDL's role under said agreement, nor of BOWSC's status as a registered contractor. Petitioners allege that they were able to present evidence that BOWSC and Petitioners "were not free from the control of PGI".[9] Petitioners further contend, that BOWSC cannot be considered an independent job contractor due to the fact that it failed to prove that it has substantial capital or investment in the form of tools, equipments, etc. They thus conclude that, in as much as there are abundant indicia of labor-only contracting, perforce, respondent NLRC should have declared BOWSC as a labor-only contractor, and PGI as the real employer of petitioners. Petitioners cite *Industrial Timber Corporation vs. NLRC*[10] as authority.

On the issue of their employment status, petitioners insist that, notwithstanding the employment contracts used as evidence by the arbiter and respondent Commission in determining that petitioners were project employees, it was not disputed by private respondents that the petitioners, despite the statement in their contracts, that they were assigned to the "PGI Construction Project," were in fact assigned to and actually worked on routine repair/maintenance/installation jobs on pipelines and other structures indispensable to the operation of the PGI Tiwi Geothermal Plant for all the time that they were deployed at PGI, and that maintenance and repair is technically distinct from construction. Petitioners also argue that they cannot be considered project employees of BOWSC because there were no specific projects to speak of, and assuming that there were, the completion of such projects could not have been determined at the time of their engagement, since they were made to sign the employment contracts only after they had started working.[11] Additionally, petitioners question the arbiter's and respondent Commission's appreciation of their evidence.

Summing up, petitioners allege that, as in all illegal dismissal cases, private respondents had the burden of proof and failed to discharge the same,[12] hence, the respondent Commission's conclusion that petitioners were legally dismissed had no basis.

The Court's Ruling

The petitioners have failed to make out a case.

We have held in countless cases that, in a petition for certiorari such as the instant case filed pursuant to Rule 65 of the Rules of Court, which is the only way a labor case may reach the Supreme Court,[13] the petitioner or petitioners must clearly show, among other things, that the NLRC acted without or in excess of jurisdiction or with grave abuse of discretion. In this connection, we note that the gravamens of the instant petition are issues of fact. We thus remind petitioners that:

"As a rule, the original and exclusive jurisdiction to review a decision or resolution of respondent NLRC, in a petition for certiorari under Rule 65 of the Rules of Court, does not include a correction of its evaluation of the evidence but is confined to issues of jurisdiction or grave abuse of discretion." [14]

"x x x In certiorari proceedings under Rule 65 of the Rules of Court, judicial review by this Court does not go so far as to evaluate the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their determinations, the inquiry being limited essentially to whether or not said public respondents had acted, without or in excess of x x x jurisdiction or with grave abuse of discretion. x x x." [15]

And, more than just a settled rule, it is a doctrine approximating immutability that the factual findings of labor tribunals are conclusive and binding on this Court when supported by substantial evidence. [16] We reiterate that:

"The NLRC's factual findings, if supported by substantial evidence, are entitled to great respect and even finality, unless petitioner is able to show that it simply and arbitrarily disregarded evidence before it or had misapprehended evidence to such an extent as to compel a contrary conclusion if such evidence had been properly appreciated." [17]

Petitioners have precisely failed in that respect. A close look at the NLRC Resolution in question, which upheld the arbiter's decision, confirms that the findings of facts therein are supported by substantial evidence. [18] Hence, they can no longer be disturbed by this Court.

It is not difficult to demonstrate that the challenged findings of facts are indeed based on substantial evidence.

Independent Job Contractor, or Labor-Only Contractor?

In the instant case, respondent Commission clearly laid out the basis for its finding that BOWSC was an independent contractor and as such, was not subject to the control of PGI in the performance of the services stipulated, except only as to the end result. The NLRC found: [19]

"The agreement (Job Contracting Agreement) confirms the status of BOWSC as an independent contractor not only because BOWSC is explicitly and specifically described as such, but also because its provisions specifically permit BOWSC to perform the stipulated services to PGI without being subject to the control of the latter, except only as to the result of the work to be performed (Ibid., *Singer Sewing Machine Company vs. Drilon*, p. 276). While it may be true that (petitioners) were required to submit manpower progress reports and to register their respective arrivals and departures) through individual time cards, these, to our mind, are not enough indicators to demonstrate control of PGI over them. At most, they merely ensure order in the project site. But they do not indicate PGI's control over the means BOWSC, through (petitioners), will perform the work it contracted to do. This conclusion of ours finds support in jurisprudence. In a similar case, the Supreme Court recently held, that:

"The requirement that collection agents utilize only receipt forms and report forms issued by the Company and that reports shall be submitted at least once a week is not necessarily an indication of control over the means by which the job of collection is to be performed. The agreement itself specifically explains that receipt forms shall be used for the purpose of avoiding a co-mingling of personal funds of the agent with money collected on behalf of the Company. Likewise, the use of standard report forms as well as the regular time within which to submit a report of collection are intended to facilitate order in office procedures. Even if the report requirements are to be called control measures, any control is only with respect to the end result of the collection since the requirements regulate the things to be done after the performance of the collection job or the rendition of the service.' (*Singer Sewing Machine Company vs. Drilon*, 193 SCRA 270, 276, emphasis merely added)"

The above finding is buttressed by that of the labor arbiter who also held, that BOWSC was indeed an independent contractor. Said the arbiter:

"As contractor, it undertakes the contract work on its own account under its own responsibility according to his (sic) own manner and method free from the control and direction of PGI or its representative in all matters connected with the performance of the work except the results of the work performed and accomplished. It took (charge) in the fixing and payment of salaries for its workers. Likewise it supervises the (petitioners) in the performance and accomplishment of their work. It also provides for the tools, equipment, machineries necessary in the conduct of its business.[20]

x x x x x x x x

"Another line of theory set by the (petitioners) in order to establish employer-employee relationship with PGI and to further convince us that they are regular employees of the latter, is the allegation that respondent Build-O-Weld was a labor only contractor. Nonetheless, it was not substantially proven by (petitioners) that the former does not have capital or investment in the form of tools, equipment, machineries, work premises. On the contrary, records will however reveal that Build-O-Weld has a performance bond in the amount of P100,000.00 to answer for the faithful compliance and performance of its obligation embodied in the contract (Annex B, respondent PGI position paper). He who alleges a particular fact must prove (it). The evidence of (petitioners) are mute evidence (sic) to sustain a finding that Build-O-Weld is a labor only contractor." [21]

Consequently, the findings of both the arbiter and respondent Commission take BOWSC out of the ambit of labor-only contracting as proscribed in Article 106 of the Labor Code[22] and further discussed in Sections 8 and 9, Rule VIII, Book III of the Omnibus Rules Implementing the Labor Code.[23]

In light thereof, we hold that respondent Commission did not commit any grave abuse of discretion in determining that petitioners were not indirect employees of respondent PGI.

Project Employees or Regular Employees?

On the issue of petitioners' employment status, respondent Commission made a finding, based on the evidence submitted by the parties, that petitioners were indeed project employees of BOWSC:[24]

In this case, records reveal that (petitioners) were employed only for the PGI project. Upon completion of the PGI (project) or the phase for which their services were engaged, they were terminated by BOWSC. They were never recalled nor were they ever required to be, in a work pool from which BOWSC could utilize them in another project. It was only when their services were subsequently needed for the PGI project that they were again engaged by BOWSC. Thus, (petitioners) were clearly and correctly declared to be project employees (Philippine National Construction Corporation vs. National Labor Relations Commission, 174 SCRA 191). In the case of lead complainant (petitioner) Rodrigo Bordoos, there was even an instance when he himself resigned from BOWSC (Letter of Resignation from Mr. Bordoos dated 9 January 1990, addressed to respondent Mrs. Aida Barba, Annex "A-5", respondent De Leon and Barba's Position Paper). This indubitably shows that Mr. Bordoos himself recognized BOWSC as his actual employer. x x x.

Based on the aforequoted declaration, it is apparent that (petitioners) were correctly declared to be project employees of BOWSC. The evidence clearly established that they were solely hired by BOWSC, notwithstanding unsubstantiated claims to the contrary. It would therefore be most unfair and unjust to hold PGI to be the employer of (petitioners) (Luzviminda Visayan, et al., vs. National Labor Relations Commission, 196 SCRA 410, 418). Wages (were) paid each of the individual (petitioners) only by BOWSC (Sara vs. Aguinaldo, 166 SCRA 625, 629). Add to this, the independent contractorship relation between PGI and BOWSC, all these lead us to this inescapable conclusion. The decision of the Labor Arbiter below is valid, legal, binding, and is furthermore supported by substantial evidence (Mercado, Sr. vs. National Labor Relations Commission, 201 SCRA 332, 339)."

In addition to the foregoing, we also considered the following significant observation made by the arbiter:

"Noticeably, (petitioners') employment was on and off, as shown in their position paper. This (led) us more to

be believe that indeed they (were) project employees, whose employment ceased after the completion of a particular project and rehired again for another project. This fact cast serious doubts on the assertion of (petitioners) that they are regular employees of respondent PGI."

Given the foregoing discussions, the ineludible conclusion is that the requirement of substantial evidence to support respondent Commission's Resolution has been met. We uphold respondent NLRC's determination that indeed, petitioners had been satisfactorily shown to be project employees of BOWSC. For that matter, we also agree with respondent Commission's affirmance of the arbiter's finding that petitioners' case fell within the purview of Policy Instructions No. 20.

Petitioners' persistent refrain -- that they could not have been project employees since there were "no specific projects to speak of", that no written work orders were issued by PGI to BOWSC for the jobs to be undertaken (as stipulated in their contract), that petitioners were deployed at the Tiwi Plant to do routine repair/maintenance work on pipelines and other structures involved in the operation of said plant, and that the arbiter and the NLRC misappreciated the evidence -- failed to persuade. Contentions as to the non-existence of specific projects vanish into thin air when scrutinized in the light of NLRC's factual findings aforequoted. It matters not at all that the employment contracts issued to petitioners may not have expressly stated the particular project which they had been assigned to, or that PGI did not bother to issue a written work order to BOWSC for each particular job because petitioners never denied but instead admitted having worked on the Tiwi Geothermal Plant Project. Besides, the law does not even require that an employer issue any written contracts of employment to project employees, much less that a written contract indicate the name of the project to which the employee is being assigned.[25] As to the question about the type of work petitioners actually performed (whether maintenance/repair work, or construction project), we can see no reason to depart from the respondent Commission's and the labor arbiter's findings thereon.

As a consequence of the nature of petitioner's employment, it is clear (and the arbiter correctly ruled) that petitioners cannot complain about the termination of their services, since their tenure is conterminous with the completion of the project.

Finally, with respect to petitioners' tireless insistence that they should be considered regular employees by virtue of having rendered more than one year of service (relying on the second paragraph of Art. 280, Labor Code), and having performed activities necessary and desirable in the usual business of PGI (per Art. 280, first paragraph), suffice it to say that the respondent Commission has thoroughly and extensively discussed the issue,[26] and inasmuch as this Court had on several past occasions ruled on the same issue, we shall no longer delve into the matter here but will simply refer the petitioners and their counsel to our decisions in Mercado, Sr. vs. NLRC[27] and ALU-TUCP. vs. NLRC.[28]

The Court feels that it is appropriate to remind petitioners at this point that they have already been granted financial assistance from BOWSC in an amount equivalent to their financial claims. This award was based on equity consideration, and BOWSC did not appeal from the arbiter's decision anymore. Thus, petitioners were not at all left empty-handed.

WHEREFORE, in view of the foregoing, the instant Petition is hereby DISMISSED and the questioned Resolution is AFFIRMED. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Rollo, pp. 24-46.

[2] Third Division, composed of Comm. Ireneo B. Bernardo, ponente, and Pres. Comm. Lourdes C. Javier and Comm. Joaquin A. Tanodra, concurring.

[3] In NLRC RAB-V-CNS-06-00171-91 and nine other companion cases consolidated therewith.

[4] Executive Labor Arbiter Vito Bose.

[5] Rollo, pp. 25-34.

[6] Policy Instructions No. 20 (series of 1977), entitled "Stabilizing Employer-Employee Relations in the Construction Industry", provided in relevant part:

"In the interest of stabilizing employer-employee relations in the construction industry and taking into consideration its unique characteristics, the following policy instructions are hereby issued for the guidance of all concerned:

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.

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.

If a construction project or any phase thereof has a duration of more than one year and a Project employee is allowed to be employed therein for at least one year, such employee may not be terminated until the completion of the project or of any phase thereof in which he is employed with a previous written clearance from the Secretary of Labor. If such an employee is terminated without a clearance from the Secretary of Labor, he shall be entitled to reinstatement with backwages.

The employees of a particular project are not terminated at the same time. Some phases of the project are completed ahead of others. For this reason, the completion of a phase of the Project is the completion of the project for an employee employed in such phase. In other words, employees terminated upon the completion of their phase of the project are not entitled to separation pay and exempt from the clearance requirement.

On the other hand, those employed in a particular phase of a construction project are also not terminated at the same time. Normally, less and less employees are required as the phase draws closer to completion. Project employees terminated because their services are no longer needed in their particular phase of the project are not entitled to separation pay and are exempt from the clearance requirement, provided they are not replaced. If they are replaced, they shall be entitled to reinstatement with backwages.

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.

However, if the workers in the work pool are free to leave anytime and offer their services to other employers then they are project employees employed by a construction company in a particular project or in a phase thereof.

Generally, there are three (3) types of non-project employees: first, probationary employees; second, regular employees; and third, casual employees.

x x x x x x x x.

Policy Instructions No. 20 was subsequently superseded by Department Order No. 19 (series of 1993) dated April 1, 1993 of the Department of Labor and Employment.

[7] Rollo, pp. 57-58.

[8] Rollo, pp. 9-10.

[9] Rollo, pp. 11-12.

[10] 169 SCRA 341, January 20, 1989.

[11] Rollo, pp. 15-16.

[12] Rollo, pp. 19-20.

[13] Philippine National Construction Corporation (PNCC) vs. National Labor Relations Commission, 245 SCRA 668, July 7, 1995.

[14] Loadstar Shipping Co., Inc. vs. Gallo, 229 SCRA 654, 659-660, February 4, 1994.

[15] Ilocos Sur Electric Cooperative, Inc. vs. NLRC, 241 SCRA 36, 50, February 1, 1995.

[16] PNCC vs. NLRC, *supra*; see also Loadstar Shipping Co., Inc. vs. Gallo, *supra* and Oscar Ledesma and Company vs. National Labor Relations Commission, 246 SCRA 47, 51, July 13, 1995.

[17] Loadstar Shipping Co., Inc. vs. Gallo, *supra*, at p. 660; italics and underscoring ours.

[18] "Substantial evidence, which is the quantum of evidence required to establish a fact in cases before administrative and quasi-judicial bodies, is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." -- Reno Foods, Inc. vs. National Labor Relations Commission, 249 SCRA 379, 385, October 18, 1995.

[19] NLRC Resolution, pp. 14-15; rollo, pp. 37-38.

[20] Arbiter's Decision, p. 6; Rollo, p. 54.

[21] *Ibid.*, p. 8; Rollo, p. 56.

[22] "Art. 106. Contractor or subcontractor.--x x x.

x x x x x x x x

There is 'labor-only' contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him."

[23] "Sec. 8. Job contracting. --- There is job contracting permissible under the Code if the following conditions are met:

(1) The contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and

(2) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business.

"Sec. 9. Labor-only contracting. -- (a) Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting where such person:

(1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and

(2) The workers recruited and placed by such person are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed.

(b) Labor-only contracting as defined herein is hereby prohibited and the person acting as contractor shall be considered merely as an agent or intermediary of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

x x x x x x x x

[24] Rollo, pp. 43-45.

[25] Vide: Raycor Aircontrol Systems, Inc. vs. National Labor Relations Commission, et al., G.R. No. 114290, September 9, 1996, at p. 13.

[26] Resolution, pp. 15-20; Rollo, pp. 38-43.

[27] 201 SCRA 332, September 5, 1991.

[28] 234 SCRA 678, August 2, 1994.

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