

SECOND DIVISION

[G.R. NO. 155645, November 24, 2006]

**PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, INC.
(PLDT), PETITIONER, VS. MAYFLOR T. YLAGAN, RESPONDENT.**

DECISION

CORONA, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court seeks a review and reversal of the Court of Appeals (CA) decision^[1] and resolution^[2] in CA-G.R. SP No. 57535.

The facts follow.

In November 1992, respondent Mayflor T. Ylagan was hired as an accounting clerk in the Cost Accounting Department (CAD) of petitioner Philippine Long Distance Telephone Company, Inc. (PLDT). In January 1994, she was transferred to the Revenue Auditing Department. Later, on July 3, 1995, she was brought back to the CAD to perform the same accounting duties.

Respondent claims that in May 1996, PLDT refused to renew her employment unless she signed up with an employment agency known as Corporate Executive Search, Inc. (CESI). She was allegedly constrained to sign an employment contract with the agency in order to keep her job with PLDT. But on February 5, 1997, PLDT allegedly refused to allow her to report for work since her employment contract with CESI had already expired.

PLDT, however, maintains that respondent was hired as a project employee assigned to the Employment Payroll System Project from the onset of her employment. The project allegedly started on September 21, 1992. It was discontinued in March 1997 when a new system was developed to replace it. PLDT asserts that respondent's project employment was covered by contracts for the period of July 3, 1995 to October 2, 1995 and October 3, 1995 to January 2, 1996. Hence, respondent was not dismissed from her work; her employment contract merely expired as of January 2, 1996. PLDT, however, did not explain why respondent had to sign up with CESI in May 1996.

Claiming that her regular employment was terminated without cause, respondent filed a complaint for illegal dismissal. She prayed^[3] for reinstatement with full backwages and all the benefits due a regular employee from the start of her employment in November 1992 until her dismissal, plus damages and attorney's fees.

On September 30, 1998, the labor arbiter ruled in her favor.

WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering [petitioner] to reinstate [respondent] to her former position or to a substantially equivalent position with all the rights, privileges and benefits due a regular employee, and to pay her backwages tentatively computed at P94,514.00 up to September 30, 1998, and to such further backwages as they accrue until final reinstatement. Further, [petitioner] is ordered to pay [respondent] her wage differentials as a regular employee from July 3, 1995 up to February 3, 1997 to be computed by the Research and Computation Unit. And finally, [petitioner] is ordered to pay [respondent] attorney's fees at the rate of ten percent (10%) of the total judgment award.

SO ORDERED.^[4]

Petitioner appealed the decision to the NLRC.^[5] In a resolution dated July 8, 1999, the NLRC reversed and set aside the labor arbiter's decision. It held that respondent's complaint against petitioner was without merit.^[6] It denied respondent's motion for reconsideration.^[7]

The NLRC resolutions became the subject of respondent's petition for certiorari in the CA, docketed as CA-G.R. SP No. 57535. The CA granted the petition, setting aside the NLRC resolutions and reinstating the labor arbiter's decision.^[8]

Before us, PLDT essentially maintains its stand that respondent, as a project employee, was not dismissed from work but her employment ceased upon the expiration of her project employment contracts with PLDT.

The main points of contention in this petition are: (1) the status of respondent's employment and (2) the validity of the termination of her employment.

Generally, this Court refrains from reviewing factual matters already settled by the CA. We are, however, constrained to review respondent's employment status due to the incongruent findings of the NLRC on one hand, and the CA, on the other.

We uphold the appellate court.

A project employee is assigned to carry out a specific project or undertaking the duration and scope of which are specified at the time the employee is engaged in the project.^[9] A project is a job or undertaking which is distinct, separate and identifiable from the undertakings of the company.^[10] A project employee is assigned to a project which begins and ends at determined or determinable times.^[11]

Various indicators convince us that respondent was not a project employee but a regular employee who was illegally dismissed.

First, respondent worked continuously for PLDT from November 1992 to July 1995 without any mention of a "project" to which she was specifically assigned. She was hired to perform accounting duties which were not shown as distinct, separate and identifiable from the usual undertakings of the company. Although essentially a telephone company, PLDT maintains its own accounting department to which

respondent was assigned.

Second, aside from its statement that respondent was hired as a project employee for the Employment Payroll System Project which began in 1992, PLDT did not provide evidence of the project employment contracts covering the period from November 1992 (when respondent was hired) to July 1995. PLDT mentioned only two contracts but these pertained to her employment period from July 1995 to January 1996.

Third, despite the supposed expiration of respondent's project employment contract on January 2, 1996, respondent continued to work for PLDT until May 2, 1996 when respondent was required to sign up with CESI.^[12] Respondent worked for PLDT, under contract with CESI, until February 3, 1997. PLDT explained that it no longer allowed respondent to report for work by then since the project was already done. But the project was only completed in March 1997.

Most important of all, based on the records, PLDT did not report the termination of respondent's supposed project employment to the Department of Labor and Employment as project employee. Department Order No. 19 (as well as the old Policy Instructions No. 20) required employers to submit a report of an employee's termination to the nearest public employment office every time his employment was terminated due to a completion of a project.^[13] PLDT's failure to file termination reports was an indication that the respondent was not a project employee but a regular employee.^[14]

The test to determine whether employment is regular or not is the **reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. Also, if the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability of that activity to the business.** Thus, we held that where the employment of project employees is extended long after the supposed project has been finished, the employees are removed from the scope of project employees and are considered regular employees.

^[15] (emphasis ours)

While length of time may not be the controlling test for project employment, it is crucial in determining if the employee is hired for a specific undertaking to perform functions vital, necessary and indispensable to the usual business of the company.^[16]

Here, respondent worked in PLDT's accounting department from November 1992 to July 1995 *without* any project employment contract. Her employment was continuous until she was constrained to sign up with CESI in May 1996. It was almost a year later when she was no longer allowed to report for work in PLDT due to the alleged expiration of her contract with CESI.

PLDT asserts that even if respondent rendered continuous service for a year or so, she could not be deemed a regular employee because the services performed were