

SECOND DIVISION

[G.R. No. 183250, March 10, 2010]

**WILLIAM UY CONSTRUCTION CORP. AND/OR TERESITA UY AND
WILLIAM UY, PETITIONERS, VS. JORGE R. TRINIDAD,
RESPONDENT.**

D E C I S I O N

ABAD, J.:

This case is about the tenure of project employees in the construction industry.

The Facts and the Case

On August 1, 2006 respondent Jorge R. Trinidad filed a complaint for illegal dismissal and unpaid benefits against petitioner William Uy Construction Corporation. Trinidad claimed that he had been working with the latter company for 16 years since 1988 as driver of its service vehicle, dump truck, and transit mixer. He had signed several employment contracts with the company that identified him as a project employee although he had always been assigned to work on one project after another with some intervals.

Respondent Trinidad further alleged that in December 2004 petitioner company terminated him from work after it shut down operations because of lack of projects. He learned later, however, that although it opened up a project in Batangas, it did not hire him back for that project.

Petitioner company countered^[1] that it was in the construction business. By the nature of such business, it had to hire and engage the services of project construction workers, including respondent Trinidad, whose employments had to be co-terminous with the completion of specific company projects. For this reason, every time the company employed Trinidad, he had to execute an employment contract with it, called *Appointment as Project Worker*.

Petitioner company stressed that employment intervals or gaps were inherent in the construction business. Consequently, after it finished its Boni Serrano-Katipunan Interchange Project in December 2004, Trinidad's work ended as well. In compliance with labor rules, the company submitted an establishment termination report to the Department of Labor and Employment (DOLE).

On December 23, 2006 the Labor Arbiter rendered a decision, dismissing respondent Trinidad's complaint for unjust dismissal. The Labor Arbiter, however, ordered petitioner company to pay Trinidad P1,500.00 in unpaid service incentive leave, taking into consideration the three-year prescriptive period for money claims.

^[2] The Labor Arbiter held that, since Trinidad was a project employee and since his company submitted the appropriate establishment termination report to DOLE, his

loss of work cannot be regarded as unjust dismissal. The Labor Arbiter found no basis for granting Trinidad overtime pay, holiday pay, and 13th month pay.

On August 31, 2007 the National Labor Relations Commission (NLRC) affirmed the Labor Arbiter's ruling,^[3] prompting respondent Trinidad to elevate his case to the Court of Appeals (CA).^[4] On April 24, 2008 the latter rendered a decision, reversing the NLRC's findings. Petitioner company moved for a reconsideration of the decision but the CA denied the motion.

The Issue Presented

The core issue presented in the case is whether or not the CA correctly ruled that petitioner company's repeated rehiring of respondent Trinidad over several years as project employee for its various projects automatically entitled him to the status of a regular employee.

The Court's Ruling

The CA held that, although respondent Trinidad initially worked as a project employee, he should be deemed to have acquired the status of a regular employee since petitioner company repeatedly rehired him in its past 35 projects that lasted 16 years. The CA explained that Trinidad's work as driver of the company's service vehicle, dump truck, and transit mixer was vital, necessary, and indispensable to the company's construction business. The intervals between his employment contracts were inconsequential since stoppage in operations at the end of every construction project was a foreseeable interruption of work.

But the test for distinguishing a "project employee" from a "regular employee" is whether or not he has been assigned to carry out a "specific project or undertaking," with the duration and scope of his engagement specified at the time his service is contracted.^[5] Here, it is not disputed that petitioner company contracted respondent Trinidad's service by specific projects with the duration of his work clearly set out in his employment contracts.^[6] He remained a project employee regardless of the number of years and the various projects he worked for the company.^[7]

Generally, length of service provides a fair yardstick for determining when an employee initially hired on a temporary basis becomes a permanent one, entitled to the security and benefits of regularization. But this standard will not be fair, if applied to the construction industry, simply because construction firms cannot guarantee work and funding for its payrolls beyond the life of each project. And getting projects is not a matter of course. Construction companies have no control over the decisions and resources of project proponents or owners. There is no construction company that does not wish it has such control but the reality, understood by construction workers, is that work depended on decisions and developments over which construction companies have no say.

For this reason, the Court held in *Caseres v. Universal Robina Sugar Milling Corporation*^[8] that the repeated and successive rehiring of project employees do not qualify them as regular employees, as length of service is not the controlling