553 Phil. 395

THIRD DIVISION

[G.R. NO. 158132, July 04, 2007]

RAYCOR AIRCONTROL SYSTEMS, INC., PETITIONER,VS. MARIO SAN PEDRO AND NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Assailed in the Petition for Review[1] before this Court are the August 24, 2001 Decision [2] and April 30, 2003 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 63403.[4]

The facts are as stated by the CA.

Raycor Aircontrol Systems, Inc. (petitioner) hired Mario San Pedro (respondent) as tinsmith operator subject to the condition that his employment shall commence "on August 24, 1995 and shall be effective only for the duration of the contract at Uniwide Las Piñas after completion of which on November 18, 1995, it automatically terminates without necessity of further notice."[5] As the Uniwide Las Piñas project (first project) lasted for one year, petitioner extended respondent's contract beyond November 18, 1995. When this first project was finally completed, petitioner again extended respondent's employment by assigning him to its Olivarez Plaza, Biñan, Laguna project (second project) until December 1996. Subsequently, petitioner rehired respondent as ducting man and assigned him to its Cabuyao, Laguna project (third project) until April 1997. Thereafter, petitioner transferred respondent to its Llanas, Alabang project (fourth project) and later, to its Uniwide Coastal project in Baclaran, Paranaque (fifth project).[6] Petitioner did not anymore issue new contracts to respondent each time his employment was extended.

In a Memorandum[7] dated October 30, 1997, petitioner declared that the contract of employment of respondent was set to expire on November 1, 1997, the same to take effect on November 3, 1997. Thus, when respondent reported for work on November 3, 1997, he was informed by the company timekeeper that he had been terminated.

Respondent filed a Complaint[8] for illegal dismissal with damages. The Labor Arbiter (LA) rendered a Decision dated July 15, 1999 in favor of respondent, thus:

> WHEREFORE, premises considered, this Office finds and so rule that the complainant was illegally dismissed by the respondent without just cuase and without due process of law on November 3, 1997. As such he is entitled to reinstatement without loss of seniority rights and other benefits; and payment of full backwages from the time of his dismissal

> up to the time of his actual reinstatement which up to this date is in the amount of P105,534.00 (P198.00/day x 26 days x 20.5 mos.).
>
> Other claims are dismissed for lack of merit.
>
> SO ORDERED.[9]

On appeal by petitioner, the National Labor Relations Commission (NLRC) issued a Resolution[10] dated September 18, 2000, affirming the July 15, 1999 LA Decision, and a Resolution[11] dated December 15, 2000, denying petitioner's Motion for Reconsideration.

Petitioner filed a Petition for *Certiorari* which the CA denied in the August 24, 2001 Decision impugned herein. Its Motion for Reconsideration was also denied by the CA in a Resolution dated April 30, 2003.

Hence, the present recourse of petitioner on the sole issue:

> Whether or not the Court of Appeals committed grave error in ruling that private respondent was illegally dismissed.[12]

The Court denies the petition for lack of merit.

The CA, as well as the NLRC and LA, considered respondent a regular employee of petitioner because of the existence of a reasonable connection between the former's regular activity in relation to the latter's business. They based this finding on the uncontroverted fact that petitioner repeatedly rehired respondent in five successive projects for 23 continuous months - nine months in the first project, four months in the second, four months in the third, four months in the fourth, and two months in the fifth - which repeated rehiring is indicative of the desirability and indispensability of the activity performed by respondent to the usual business or trade of petitioner. They held that, being a regular employee entitled to security of tenure, respondent's dismissal was illegal for lack of a just or authorized cause and due process. [13]

Petitioner denies that it dismissed respondent, insisting that the latter's services were terminated for he was a mere project employee whose employment contract expired when the fifth project to which he was assigned was scrapped due to non-payment by the project owner, Uniwide Holdings, Inc. (Uniwide).[14] It argues that the rehiring of respondent for 23 months did not make him a regular employee, given the following nature of its business:

> Petitioner is engaged in the installation of air conditioning units in high and low rise building[s]. Petitioner gets business from architects/engineers who invite petitioner to participate in a public bidding on a certain project. If the project is awarded to it, that will only be the time when it mobilizes and engages the services of workers to install the air conditioning units in the building. Petititioner is not a manufacturing or trading company. Workers are hired according to their skills. It is for this reason that private respondent was hired as tinsmith operator.[15]

The concurrent findings of the CA and the labor tribunals on the existence of an employer-employee relationship between the parties in the present case are factual in nature and are accorded due deference[16] for being well-founded.

The issue of regularization of employees had already beset petitioner, as early as the year 1996, in *Raycor Aircontrol Systems, Inc. v. National Labor Relations Commission.*[17] In said case, the Court resolved the issue whether several individuals it hired and rehired to work as tinsmith, leadman, aircon mechanic, installer, welder, and painter in its various projects became regular employees after rendering service for more than one year, with some of them serving for two to six years. The Court recognized that petitioner was engaged in a peculiar business which constrained it not to maintain a regular work force. The Court observed:

> It is not so much that this Court cannot appreciate petitioner's contentions about the nature of its business and its inability to maintain a large workforce on its permanent payroll. ***Private respondents have admitted that petitioner is engaged only in the installation (not manufacture) of aircon systems or units in buildings, and since such a line of business would obviously be highly (if not wholly) dependent on the availability of buildings or projects requiring such installation services, which factor no businessman, no matter how savvy, can accurately forecast from year to year, it can be easily surmised that petitioner, aware that its revenues and income would be unpredictable, would always try to keep its overhead costs to a minimum, and would naturally want to engage workers on a per-project or per-building basis only, retaining very few employees (if any) on its permanent payroll. It would also have been more than glad if its employees found other employment elsewhere, in between projects. To our mind, it appears rather unlikely that petitioner would keep private respondents -- all fifteen of them -- continuously on its permanent payroll for, say, ten or twelve years, knowing fully well that there would be periods (of uncertain duration) when no project can be had***. To illustrate, let us assume that private respondents (who were each making about P118.00 to P119.50 per day in 1991) were paid only P100.00 per day. If the fifteen were, as they claimed, regular employees entitled to their wages regardless of whether or not they were assigned to work on any project, the overhead for their salaries alone --computed at P100.00/day for 30 days in a month -- would come to no less than P45,000.00 a month, or P540,000.00 a year, not counting 13th month pay, Christmas bonus, SSS/Medicare premium payments, sick leaves and service incentives leaves, and so forth. Even if petitioner may have been able to afford such overhead costs, it certainly does not make business sense for it or anyone else to do so, and is in every sense contrary to human nature, not to mention common business practice. On this score alone, we believe that petitioner could have made out a strong case. x x x (Emphasis ours)[18]

Nonetheless, the Court ruled against petitioner because the latter failed to adduce clear and convincing evidence that the projects to which its workers were assigned were of limited scope and duration and that, at the time of hiring, said workers knowingly accepted the restrictions on their employment, thus: