

## THIRD DIVISION

[ G.R. NO. 159862, October 17, 2006 ]

**HERMONIAS L. LIGANZA, PETITIONER, VS. RBL SHIPYARD CORPORATION AND ENGR. BEN LIM, JR., RESPONDENTS.**

### DECISION

**TINGA, J.:**

This is a petition for certiorari to review the Decision of the Court of Appeals in CA-G.R. SP No. 71459 affirming the ruling of the National Labor Relations Commission (NLRC) that petitioner is a project employee.

After working as a carpenter for respondent since August 1991, petitioner's employment was terminated on 30 October 1999. This prompted petitioner to file a complaint for illegal dismissal, alleging that on said date he was verbally informed that he was already terminated from employment and barred from entering the premises. On the same occasion, he was told to look for another job. Thus, he claimed that he was unceremoniously terminated from employment without any valid or authorized cause. On the other hand, respondent insisted that petitioner was a mere project employee who was terminated upon completion of the project for which he was hired.

In a Decision dated 22 February 2001, the Labor Arbiter ruled that petitioner is a regular, not a project employee, since respondent failed to present the alleged project employment contracts.<sup>[1]</sup> Furthermore, the ruling went on, as petitioner's dismissal was not done in accordance with the due process requirement of twin notices, said dismissal is illegal. The Labor Arbiter thus ordered the reinstatement of petitioner, and the payment of backwages, as well as moral and exemplary damages.<sup>[2]</sup>

On appeal to the NLRC, respondent presented the other project employment contracts with petitioner and the termination reports<sup>[3]</sup> submitted to the Department of Labor and Employment (DOLE). Convinced, and finding sufficient proof that petitioner's employment was covered by contracts with specific duration identifying the project and nature of activity, the Commission set aside the Labor Arbiter's Decision.<sup>[4]</sup> According to the NLRC, petitioner's service of eight (8) years is not the controlling factor in determining the nature of his employment, it appearing that the employment contracts he entered into were renewed every six (6) months and that from the contracts he knew beforehand when his engagement was supposed to end.<sup>[5]</sup> Finding that petitioner's termination was not attended by bad faith or malice, but was merely brought about by the completion of the phase of work for which he was hired, the NLRC ruled that the award of damages was not warranted.<sup>[6]</sup> Petitioner sought reconsideration of the Resolution but to no avail, as the NLRC stood pat on its stand issuing the Resolution of 8 May 2002.<sup>[7]</sup>

Petitioner went up to the Court of Appeals via a petition for review on certiorari, positing that the NLRC committed grave abuse of discretion in coming out with the challenged issuances which reversed the factual findings and the decision of the Labor Arbiter. The Court of Appeals dismissed the petition. According to the appellate court, while it is true that petitioner has worked for more than a year for respondent and that his work as a carpenter is necessary and desirable to respondent's usual trade or business, still he cannot be considered a regular employee. It noted that (i) petitioner's appointment papers provided for the specific project to be undertaken and the duration of such project; (ii) that he was issued an accountability clearance; and (iii) that respondent submitted the requisite employment termination reports.<sup>[8]</sup> Petitioner filed a motion for reconsideration which was, however, denied for lack of merit.<sup>[9]</sup>

Feeling aggrieved by the resolutions of the Court of Appeals, petitioner has come to this Court via the present petition for review raising the following errors:

1. The Court of Appeals seriously erred in concluding that "petitioner is a project employee, not a regular employee;"
2. The Court of Appeals erred in declaring that "all of petitioner's appointment papers with private respondent corporation specially provided for the project to be undertaken and the duration of such project;"
3. The Court of Appeals erred in declaring that "after the completion of each project, petitioner was issued an accountability clearance, even as private respondent submitted a report of the said termination to the regional/district office of the Department of Labor and Employment (DOLE) as required by Policy Instruction No. 20 of the Department of Labor and Employment;"
4. The Court of Appeals erred in finding that "the evidence presented by petitioner himself showed that the service rendered with private respondent corporation was to end at a specific date, i.e. in the year 1999;" and
5. The Court of Appeals erred in holding that it is "unnecessary to discuss the collateral issue of illegal dismissal."<sup>[10]</sup>

The issue boils down to whether petitioner is a project employee and whether his termination was illegal.

The petition must be granted.

A project employee is one whose "employment has been fixed 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 service to be performed is seasonal in nature and the employment is for the duration of the season."<sup>[11]</sup> Before an employee hired on a per project basis can be dismissed, a report must be made to the nearest employment office of the termination of the services of the workers every time it completed a project, pursuant to Policy Instruction No. 20.<sup>[12]</sup>

Petitioner claims he is a regular employee since he worked for respondent continuously and without interruption from 13 August 1991 up to 30 October 1999 and that his work as a carpenter was necessary and desirable to the latter's usual business of shipbuilding and repair. He asserts that when he was hired by respondent in 1991, there was no employment contract fixing a definite period or duration of his engagement, and save for the contract covering the period 20 September 1999 to 19 March 2000, respondent had been unable to show the other project employment contracts ever since petitioner started working for the company. Furthermore, respondent failed to file as many termination reports as there are completed projects involving petitioner, he adds.

On the other hand, respondent insists that petitioner is a project employee as evidenced by the project employment contracts it signed with him and employee termination reports it submitted to the DOLE.

In finding that petitioner was a project employee, both the NLRC and the Court of Appeals relied greatly on the aforementioned contracts. While administrative findings of fact are accorded great respect and even finality when supported by substantial evidence, nevertheless, when it can be shown that administrative bodies grossly misappreciated evidence of such nature as to compel a contrary conclusion, this Court will not hesitate to reverse their factual findings.<sup>[13]</sup>

While the appropriate evidence to show that a person is a project employee is the employment contract specifying the project and the duration of such project, the existence of such contract is not always conclusive of the nature of one's employment. In the instant case, respondent seeks to prove the status of petitioner's employment through four (4) employment contracts covering a period of only two (2) years to declare petitioner as a project employee.

All that respondent submitted were four (4) contracts covering the periods 29 July 1997 to 28 January 1998, 24 August 1998 to 25 February 1999, 3 March 1999 to 2 September 1999, and 20 September 1999 to 19 March 2000, as well as the employment termination reports for January 1998, August 1998, February 1999 and October 1999.<sup>[14]</sup> Respondent failed to present the contracts purportedly covering petitioner's employment from 1991 to July 1997, spanning six (6) years of the total eight (8) years of his employment. To explain its failure in this regard, respondent claims that the records and contracts covering said period were destroyed by rains and flashfloods that hit the company's office.<sup>[15]</sup> We are not convinced.

To begin with, respondent has been unable to refute petitioner's allegation that he did not sign any contract when he started working for the company. The four employment contracts are not sufficient to reach the conclusion that petitioner was, and has been, a project employee earlier since 1991. The Court is not satisfied with the explanation that the other employment contracts were destroyed by floods and rains. Respondent could have used other evidence to prove project employment, but it did not do so, seemingly content with the convenient excuse of "destroyed documents."

The Court takes exception to the Court of Appeals' finding that "after every completion of the project, petitioner was free to seek other employments outside the private respondent's company."<sup>[16]</sup> This conclusion is not supported by the

record. As respondent has affirmed, it executes three (3)-month or six (6)-month contracts with its so-called project employees.<sup>[17]</sup> Except for respondent's claim that petitioner and its other project employees are free to seek work after the termination of their contracts, no other proof was shown to this effect. In fact, from the very scant record of petitioner's employment, it may be inferred that the contracts entered into by petitioner could not have been spaced so far apart as to allow petitioner seek lucrative employment elsewhere. For example, there was an interval of only four (4) days between petitioner's contracts for the periods 24 August 1998 to 25 February 1999 and 3 March 1999 to 2 September 1999, and only 17 days between the contracts for 3 March 1999 to 2 September 1999 and 20 September 1999 to 19 March 2000. Thus, from these facts alone, it would be difficult to conclude that petitioner indeed was allowed to seek other employment in between contracts.

Even assuming that petitioner is a project employee, respondent failed to prove that his termination was for a just and valid cause. While it is true that the employment contract states that the contract ends upon a specific date, or upon completion of the project, respondent failed to prove that the last project was indeed completed so as to justify petitioner's termination from employment.

In termination cases, the burden of proof rests on the employer to show that the dismissal is for a just cause.<sup>[18]</sup> Thus, employers who hire project employees are mandated to state and, once its veracity is challenged, to prove the actual basis for the latter's dismissal.<sup>[19]</sup> Respondent could have easily proved that the project or phase for which petitioner was hired has already been completed. A certificate from the owner of the vessel serviced by the company, pictures perhaps, of the work accomplished, and other proof of completion could have been procured by respondent. However, all that we have is respondent's self-serving assertion that the project has been completed.

This Court has held that an employment ceases to be co-terminous with specific projects when the employee is continuously rehired due to the demands of employer's business and re-engaged for many more projects without interruption.<sup>[20]</sup> In *Maraguinot, Jr. v. NLRC (Second Division)*,<sup>[21]</sup> the Court ruled that "once a project or work pool employee has been: (1) continuously, as opposed to intermittently, rehired by the same employer for the same tasks or nature of tasks; and (2) these tasks are vital, necessary and indispensable to the usual business or trade of the employer, then the employee must be deemed a regular employee, pursuant to Article 280 of the Labor Code and jurisprudence."<sup>[22]</sup>

Contrary to the Court of Appeals' observation,<sup>[23]</sup> the situation obtaining in this case is not at all in *pari materia* with that of *Sandoval Shipyards, Inc. v. NLRC*.<sup>[24]</sup> In the cited case, a company engaged in the building and repair of vessels hired welders, helpers and construction workers to work in the repair or construction of a specified vessel. Upon completion of **only** one particular project, several workers were terminated from work, and the termination was reported to the then Ministry of Labor and Employment. The employees filed complaints for illegal dismissal. This Court found the complaining employees to be project employees whose work were co-terminous with the project for which they were hired.