

THIRD DIVISION

[G.R. No. 106648, June 17, 1999]

**AUDION ELECTRIC CO., INC., PETITIONER, VS. NATIONAL
LABOR RELATIONS COMMISSION AND NICOLAS MADOLID,
RESPONDENTS.**

D E C I S I O N

GONZAGA_REYES, J.:

In this special civil action for *certiorari*, petitioner seeks the annulment of the resolution^[1] dated March 24, 1992, of the National Labor Relations Commission in NLRC NCR-CA No. 001034-90 and the Order^[2] dated July 31, 1992, denying petitioner's motion for reconsideration dated April 22, 1992.

The facts of the case as summarized by Labor Arbiter Cresencio R. Iniego in his decision rendered on November 15, 1990 in NLRC-NCR Case No. -00-08-03906-89, and which are quoted in the questioned Resolution dated March 24, 1992 of the public respondent are as follows:

"From the position paper and affidavit corroborated by oral testimony, it appears that complainant was employed by respondent Audion Electric Company on June 30, 1976 as fabricator and continuously rendered service assigned in different offices or projects as helper electrician, stockman and timekeeper. He has rendered thirteen (13) years of continuous, loyal and dedicated service with a clean record. On August 3, complainant was surprised to receive a letter informing him that he will be considered terminated after the turnover of materials, including respondents' tools and equipments not later than August 15, 1989.

Complainant claims that he was dismissed without justifiable cause and due process and that his dismissal was done in bad faith which renders the dismissal illegal. For this reason, he claims that he is entitled to reinstatement with full backwages. He also claims that he is entitled to moral and exemplary damages. He includes payment of his overtime pay, project allowance, minimum wage increase adjustment, proportionate 13th month pay and attorney's fees.

On its part, respondent merely relied on its unverified letter-communication signed by its project manager, dated September 25, 1989, the contents of which are as follows:

Your Honor:

Apropos to the complaints filed by NICOLAS MADOLID with your

honorable office are as stated and corresponding allegations as our defense to said complaints.

- A. ILLEGAL DISMISSAL- There is no course (sic) to complain since employment contract signed by complainant with respondent is co-terminus with the project. xxx
- B. UNPAID WAGES- Admitting that salary payment was delayed due to late remittance of collection from respondent's Japanese prime contractor but nonetheless settled with complainant as evidenced by signed Payroll Slips by complainant. xxx
- C. NON-PAYMENT OF 13th MONTH PAY- As earlier admitted, there was a relative delay in the remittance of collection payment from our Japanese prime contractor but respondent knowing the economic predicament (sic) of complainant has seen to it that respondent be satisfied without awaiting for remittance of 13th month from its Japanese contractor. attached is a xxx

In full satisfaction of the enumerated complaints made by complainant NICOLAS MADOLID against respondent THE AUDION ELECTRIC CO., INC., we pray that charges against respondent be withdrawn and dropped."^[3]

On November 15, 1990, Labor Arbiter Cresencio R. Iniego rendered a decision, the dispositive portion states:

"WHEREFORE, judgment is hereby rendered ordering respondent Audion Electric Co., Inc. and/or Robert S. Coran, Manager:

- 1. to reinstate complainant Nicolas Madolid to his former position with full backwages from the date of his dismissal on August 15, 1989 up to the signing of this decision without loss of seniority rights in the amount of P34,710.00;
- 2. to pay complainant his overtime pay for the period March 16 to April 3, 1989 in the amount of P 765.63;
- 3. to pay complainant his project allowances as follows:
 - April 16, 1989 to April 30, 1989 P30.00
 - May 1 to May 15, 1989 P45.00
 - May 16 to May 31, 1989 P30.00
 - June 1 to June 15, 1989 P45.00
 - June 16 to June 30, 1989 P30.00
 - July 1 to July 15, 1989 P30.00
 - July 16 to July 31, 1989 P45.00
- 4. to pay complainant the minimum wage increase adjustment from August 1 to 14, 1989 in the amount of P256.50;
- 5. to pay complainant his proportionate 13th month pay from January to May 1988 in the amount of P700.00;

6. to pay complainant moral and exemplary damages in the amount of P20,000.00; and

7. to pay attorney's fees equivalent to 10% of the total award of complainant."^[4]

Petitioner appealed to the National Labor Relations Commission which rendered the questioned Resolution dated March 24, 1992 dismissing the appeal.

The motion for reconsideration filed by petitioner was denied by the NLRC in its Order dated July 31, 1992.

Petitioner is now before us raising the following issues:

I

THE RESPONDENT COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION IN AFFIRMING THE DECISION OF THE LABOR ARBITER DIRECTING THE REINSTATEMENT OF THE PRIVATE RESPONDENT TO HIS FORMER POSITION WITHOUT LOSS OF SENIORITY RIGHTS AND WITH BACKWAGES AMOUNTING TO P34,710.00 NOTWITHSTANDING THE FACT THAT THE PRIVATE RESPONDENT WAS MERELY A PROJECT EMPLOYEE.

II

THE RESPONDENT COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT AWARDED THE CLAIM FOR OVERTIME PAY TO PRIVATE RESPONDENT WHEN NO OVERTIME WORK WAS RENDERED.

III

THE RESPONDENT COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT AWARDED THE CLAIMS OF PRIVATE RESPONDENT FOR PROJECT ALLOWANCES, MINIMUM WAGE INCREASE ADJUSTMENT AND PROPORTIONATE 13TH MONTH PAY WITHOUT ANY EVIDENCE TO PROVE THE SAME.

IV

THE RESPONDENT COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT DENIED PETITIONER'S CLAIM THAT IT WAS DENIED DUE PROCESS.

V

THE RESPONDENT COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT DID NOT TOUCH UPON MUCH LESS DISCUSS THE PETITIONER'S ASSIGNMENTS OF ERRORS IN ITS APPEAL.

VI

THE RESPONDENT COMMISSION ACTED WITH GRAVE ABUSE OF

DISCRETION IN AWARDING MORAL AND EXEMPLARY DAMAGES IN THE AMOUNT OF P20,000 AS WELL AS ATTORNEY'S FEES CONSIDERING THAT THE SAME ARE WITHOUT FACTUAL AND LEGAL BASIS.^[5]

The core issues presented before us are (a) whether the respondent NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that private respondent was a regular employee and not a project employee, (b) whether petitioner was denied due process when all the money claims of private respondent, i.e. overtime pay, project allowances, salary differential, proportionate 13th month pay, moral and exemplary damages as well as attorney's fees, were granted.

Petitioner contends that as an electrical contractor, its business depends on contracts it may obtain from private and government establishments, hence the duration of the employment of its work force is not permanent but co-terminous with the project to which they are assigned; that the conclusion reached by the Labor Arbiter and affirmed by the respondent court that private respondent was a regular employee of petitioner was merely based on mere allegations of private respondent since the Labor Arbiter did not consider the letter-communication filed by petitioner through its project manager for the reason that it was not under oath; that although private respondent's employment records showed that he was hired by petitioner as fabricator, helper/electrician, stockman and timekeeper in its various projects from 1976 to August 14, 1989, the same employment record showed a gap in his employment service by reason of completion of a particular project, hence, private respondent would be re-assigned to other on-going projects of the petitioner or be laid off if there is no available project; that private respondent is a project worker whose employment is co-terminous with the completion of project, regardless of the number of projects in which he had worked as provided under Policy Instruction No. 20 of the Labor Department defining project employees as those employed in connection with a particular construction project. Petitioner relies on the rulings laid down in *Sandoval Shipyard Inc. vs. NLRC*^[6] and *Cartagenas vs. Romago Electric Co., Inc.*^[7] where this court declared the employment of project employees as co-terminous with the completion of the project for which they were hired.

Well-settled is the rule that the findings of the NLRC, except when there is grave abuse of discretion, are practically conclusive on this Court. It is only when the NLRC's findings are bereft of any substantial support from the records that the Court may step in and proceed to make its own independent evaluation of the facts.^[8] We see no reason to deviate from the rule.

In finding that private respondent was a regular employee of petitioner and not a mere project employee, the respondent Commission held:

"Firstly, respondent's assigning complainant to its various projects did not make complainant a project worker. As found by the Labor Arbiter, 'it appears that complainant was employed by respondent xxx as fabricator and or projects as helper electrician, stockman and timekeeper.' Simply put, complainant was a regular non-project worker."^[9]

Private respondent's employment status was established by the Certification of Employment dated April 10, 1989 issued by petitioner which certified that private

respondent is a bonafide employee of the petitioner from June 30, 1976 up to the time the certification was issued on April 10, 1989. The same certificate of employment showed that private respondent's exposure to their field of operation was as fabricator, helper/electrician, stockman/timekeeper. This proves that private respondent was regularly and continuously employed by petitioner in various job assignments from 1976 to 1989, for a total of 13 years. The alleged gap in employment service cited by petitioner does not defeat private respondent's regular status as he was rehired for many more projects without interruption and performed functions which are vital, necessary and indispensable to the usual business of petitioner.

We have 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 considered regular employees.^[10] Private respondent had presented substantial evidence to support his position, while petitioner merely presented an unverified position paper merely stating therein that private respondent has no cause to complain since the employment contract signed by private respondent with petitioner was co-terminous with the project. Notably, petitioner failed to present such employment contract for a specific project signed by private respondent that would show that his employment with the petitioner was for the duration of a particular project. Moreover, notwithstanding petitioner's claim in its reply that in taking interest in the welfare of its workers, petitioner would strive to provide them with more continuous work by successively employing its workers, in this case, private respondent, petitioner failed to present any report of termination. Petitioner should have submitted or filed as many reports of termination as there were construction projects actually finished, considering that private respondent had been hired since 1976. The failure of petitioner to submit reports of termination supports the claim of private respondent that he was indeed a regular employee.

Policy Instruction No. 20 of the Department of Labor is explicit that employers of project employees are exempted from the clearance requirement but not from the submission of termination report. This court has consistently held that failure of the employer to file termination reports after every project completion with the nearest public employment office is an indication that private respondent was not and is not a project employee.^[11] Department Order No. 19 superseding Policy Instruction No. 20 expressly provides that the report of termination is one of the indications of project employment.^[12]

As stated earlier, the rule in our jurisdiction is that findings of facts of the NLRC affirming those of the Labor Arbiter are entitled to great weight and will not be disturbed if they are supported by substantial evidence.^[13] Substantial evidence is an amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.^[14] We find no grave abuse of discretion committed by NLRC in finding that private respondent was not a project employee.

Our ruling in the case of *Sandoval Shipyard vs. NLRC*, *supra*, is not in point. In the said case, the hiring of construction workers was not continuous for the reason that the shipyard merely accepts contracts for shipbuilding or for repair of vessels from third parties and, it is only on occasions when it has work contracts of this nature that it hires workers for the job which lasts only for less than a year or longer. With