

THIRD DIVISION

[G.R. No. 100353, October 22, 1999]

**PHILIPPINE NATIONAL CONSTRUCTION CORPORATION (PNCC),
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSIONS
(NLRC), HONORABLE LABOR ARBITER LITA V. AGLIBUT IN HER
CAPACITY AS NLRC LABOR ARBITER AND ERNESTO N. SUAREZ,
RESPONDENTS.**

DECISION

PURISIMA, J.:

At bar is a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court seeking to set aside the Resolution^[1] dated May 31, 1991 of the National Labor Relations Commission^[2] in NLRC CA No. L-000135^[3] which affirmed the Decision of the Executive Labor Arbiter, dated March 27, 1991, in NLRC Case No. RABIII-12-1287-89.

The antecedent facts are as follows:

On April 23, 1967, private respondent Ernesto M. Suarez was hired by the petitioner, Philippine National Construction Corporation (PNCC), a government owned and controlled corporation, as "Heavy Equipment Operator" under a temporary employment contract which stipulated, among other things, for sick leave, vacation leave with pay, separation pay provided that the employee had served the company continuously for at least one hundred eighty (180) working days. Private respondent worked for the petitioner from 1967 to 1989 under the following projects:

"PROJECT ASSIGNED	PERIOD COVERED
MNEX Jan. 31, 1969.	April 23, 1967 to
SJB-HCG Dec. 19, 1972	April 18, 1969 to
CSY Jan. 5, 1973	Dec. 20, 1972 to
UPRP 16, 1973	Oct. 6, 1973 to Sept.
CCP Dec. 31, 1974	Sept. 17, 1973 to
MNEK2 15, 1975	Jan. 01, 1975 to April

SCG-PUL March 11, 1976	May 16, 1975 to
SCY April 20, 1976	March 12, 1976 to
SCG-MCCRP 07, 1977	April 21, 1976 to Aug.
MSEX-CAR 31, 1978	Aug. 08, 1977 to Jan.
International Proj. (Malaysia) Feb. 12, 1980	Feb. 01, 1979 to
International Proj. May 25, 1982	April 25, 1981 to
- do - May 24, 1983	April 26, 1982 to
- do - May 23, 1985	April 25, 1983 to
NLE3 May 20, 1988	Feb. 13, 1987 to
EMD Sept. 15, 1989" ^[4]	June 30, 1988 to

On April 11, 1969, petitioner issued a regular appointment to the private respondent as "Crane Operator" with compensation at the rate of P1.75 per hour.

Records show that from 1978 to May 23, 1985, private respondent worked for petitioner's project in Malaysia, and was later advised to take a vacation and wait a call for his services.

On February 13, 1987, private respondent was again hired by the petitioner until August 16, 1989 when he received a notice terminating his services effective thirty (30) days from said date, citing as a ground therefor retrenchment and the policy of the state to privatize government-owned and controlled corporations. Private respondent was thus granted separation pay equivalent to two years, covering the period from 1987 to 1989 under the petitioner's special separation program for project employees.

Thereafter, private respondent pleaded for a separation pay equivalent to his full years of service, and not just for two years. Failing to obtain a favorable response, private respondent, due to financial constraints, executed a quitclaim and release in consideration of the amount of P18,815.35, representing retrenchment and terminal benefits.

On December 28, 1989, private respondent brought a Complaint for illegal dismissal against the petitioner, and praying for the payment of separation pay from April 1967 to September 1989. Petitioner countered that the private respondent, being a project employee, is not entitled to separation pay and that the cause of action of the private respondent has already prescribed.

In a decision dated March 27, 1991, the Labor Arbiter ruled in favor of the private respondent, holding thus:

"WHEREFORE, respondent is hereby ordered to pay complainant's additional separation pay for services rendered from 1967 to 1958 in the total amount of SEVENTY EIGHT THOUSAND SIX HUNDRED TWENTY-FOUR PESOS (P78, 624.00).

SO ORDERED."^[5]

Therefrom, petitioner appealed to the NLRC. But on May 31, 1991, the public respondent came out with a Resolution dismissing the appeal and affirming the decision of the Labor Arbiter:^[6]

Undaunted, the petitioner found its way to this court via the present petition, theorizing that the public respondent gravely abused its discretion in:

"a) disregarding altogether the evidence on record that private respondent was hired as a "project employee" and thus was enjoying limited tenure/co-terminus with the completion of the project.

b) in finding, contrary to evidence, that herein private respondent was a regular employee.

c) in declaring that private respondent's cause of action for recovery of additional separation pay has not prescribed.

d) in declaring that private respondent is not estopped from claiming separation pay despite his execution of Quitclaim/waiver."^[7]

The petition is devoid of merit.

Article 280 of the Labor Code provides:

"Art. 280. Regular and Casual Employment. - The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer except where the 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."

x x x" (Emphasis supplied)

The principal test in determining whether particular employees are "project employees" as distinguished from "regular employees" is whether the "project employees" are assigned to carry out "specific project or undertaking", the duration (and scope) of which are specified at the time the employees are engaged for the project.^[8] In the case under scrutiny, the documents covering private respondent's temporary and regular employments do not state that the private respondent was hired as a project employee nor was there a period indicating the duration of the job as required of a project employment. In fact, the space in the temporary