SEVENTH DIVISION

[CA-G.R. SP NO. 73377, September 18, 2006]

BUENAVENTURA B. VERGARA AND ROSELYN T. TUMASIS, PETITIONERS, VS. GLORY PHILIPPINES, INC., AND NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

D E C I S I O N

BERSAMIN, L. P., J.:

By *certiorari*, the employees seek to nullify the order dated December 20, 2001 setting aside and reversing the decision in their favor dated June 8, 2001 upon the employer's motion for reconsideration, thereby classifying them as project employees;[1] and the order dated July 22, 2002 denying their motion for reconsideration,[2] both issued by the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 022914-00 entitled *Buenaventura Vergara and Roselyn T. Tumasis v. Glory Philippines, Inc.*,[3] on the ground that the NLRC thereby committed grave abuse of discretion amounting to loss of jurisdiction.

We adopt the rendition of the antecedent facts contained in the decision of the Labor Arbiter dated October 29, 1999, to wit:

> Complainants Tumasis and Vergara were employed by respondent on July 6, 1998 initially as staff members of the parts Inspection Area, of respondent corporation. However, when they signed their employment contract on August 18, 1998, they were actually hired as Production Operators in the Production section with a daily wage of P188.00. Although complainants actually started to work on July 6, 1998, their respective employment contracts did not state this fact (Annex "A" of complainant's position paper).
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> For the period July 31, 1998 to November 30, 1998, complainant were made to sign uniformed employment contracts which both indicated their designations as Parts Inspection Staff and their respective employment was continuously extended every month: first, from July 31, 1998 to August 30, 1998; second, from August 31, 1998 to October 20, 1998; third, from October 21, 1998 to November 30, 1998.
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> From December 1, 1998 until April 27, 1999, they were allowed to work with the same function but without any employment contract. On April 27, 1999, they were separately made to signify conformity to an employment contract for the period 28 February to 30 April 1999, with the same rate of P188.00 per day.
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> After April 30, 1999, despite the lapse of their last employment contracts, complainants were made to conform to their new employment

contracts "effective 01 to 15 May 1999," but a higher wage of P200 per day.

Although the contract was only until May 15, 1999, complainants were allowed to continue their employment until May 25, 1999. However, at the close of working hours, respondent, through its security guard on duty, advised them that their employments were terminated and thereafter would not be allowed to enter the premises of respondent company. Allegedly, without cause and prior notice, the services of complainants were illegally terminated by respondent Glory.

Hence, on May 27, 1999, complainants filed separate complaints for illegal dismissal at DOLE, Region IV. In the subsequent hearing, complainant declared that they both preferred reinstatement to their respective positions or other employment with respondent glory, which was however turned down by Annie Furukawa, respondent's representative. Instead, Furukawa instructed complainants to collect the wages that might have been due them.

Upon reaching respondent's office, Furukawa tried to persuade the complainants to sign a "quitclaim" before payment of their wages. However, complainants refused to sign said "quitclaim". Furukawa thereafter, refused payment of complainants' wages.

Upon the other hand, respondent averred in its position paper that the corporation is engaged in the business of manufacturing money-counting machines. Sometime in June, 1998, respondent established the parts Inspection Section ("PIS") which was in charge of inspection, to detect possible defects, of the manufactured money-counting machines parts supplied by Megastamp before exportation to its exclusive buyer, Glory Limited Japan ("Glory Japan"). The continued existence of PIS was subject to the condition that the quality of the machine parts would adhere to the strict quality standard of Glory Japan. In July, 1998, respondent conducted dry-run activities to test the viability of the PIS in relation to the business operations of respondent. Thus, on July 6, 1999, respondent hired complainants as PIS personnel.

Respondent claimed that, at the time of their employment it carefully explained to the complainant the fixed period of their employment, that it would automatically expire on July 30, 1998, unless renewed by the parties. Hence, as college graduates, complainant understood the status of their employment and thus voluntarily agreed to the same. However, the training period of complainants were not completed on time. Thus, parties agreed to extend the contract until August 30, 1998 (Annexes "3" and "4" of respondents' position paper).

Respondent now asserted that inspite of the declining order from Glory Japan coupled with complainants' poor performance, respondent extended complainants' employment from October 21, 1998 until February 27, 1999. The extension of the period was due to complainants' alleged insistent pleas, citing the difficulty in finding other work caused by the economic crisis.

Complainant, as alleged by respondent, requested again for an extension of their employment. Respondent agreed to extend complainants' employment until 30 April 1999 (Annexes "5" and "6" of respondents' position paper).

On April 26, 1999, Mr. Takeo Oshima, respondent's President formally advised Annie Furukuwa, respondent's Assistant Manager that Glory Japan had cancelled its orders for Machine Part (Annex "7").

However, respondent reluctantly agreed to prolong complainants; employment until May 15, 1999.[4]

On October 29, 1999, Labor Arbiter Dominador B. Medroso, Jr. rendered a decision, [5] declaring the petitioners to be regular employees as defined under Art. 280, *Labor Code*, for having been engaged to perform activities that were desirable in the usual business or trade of their employer for almost 11 months continuously, that is, from July 6, 1998 to May 25, 1998, and finding them to be illegally dismissed for lack of just cause and for the non-observance of due process. The dispositive portion of the Labor Arbiter's decision states:

WHEREFORE, premises considered, judgment is hereby rendered declaring the DISMISSAL of complainants BUENAVENTURA VERGARA and ROSELYN TUMASIS by respondent GLORY PHILIPPINES, INC. as ILLEGAL and hereby order said respondent to pay complainants Vergara and Tumasis the followint to wit:

A.) BUENAVENTURA VERGARA:

1. BACKWAGES: May 26, 1999 to October 29, 1999 = 6 months P200.00/day x 26 days/month x 11/12 month	=P19,200.00
2. 13th MONTH PAY: -July 6, 1998 to May 26, 1999 = 11 months P200.00/day x 26 days/month x 11/12 month	2,933.00
3. SERVICE INCENTIVE LEAVE PAY: P200.00/day x 5 days	= 1,000.00
Total	=P23,133.00

B.) EVELYN TUMASIS:

1. BACKWAGES: May 26, 1999 to October 29, 1999 = 6 months P200.00/day x 26 days/month x 11/12 month	=P19,200.00
2. 13th MONTH PAY: - July 6, 1998 to May 26, 1999 = 11	2,933.00

months P200/day x 26
days/month x 11/12 month

3. SERVICE INCENTIVE LEAVE
PAY: P200.00/Dday x 5 days = 1,000.00

Total =P23,133.00

SO ORDERED.[6]

The private respondent appealed.[7]

On June 8, 2001, the NLRC affirmed the Labor Arbiter, holding and ruling thus:

> We have to point out, preliminarily, that the appealed decision is supported by substantial evidence, particularly "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion" *[Section 5, Rule 133, Rules of Court, Enrique Barros vs. NLRC, et al., G.R. No. 123901, September 22, 1999]*
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> The only way, therefore, that we can disregard the findings and conclusions of the Arbiter is by our coming out with facts separate from those he found as stated in the appealed decision. But as an appellate body exercising appellate jurisdiction under Article 223 of the Labor code, we basically are not trier of facts. [Nagkakaisang Mangagawa sa Sony vs. NLRC, 272 SCRA 209, 218 (1997)]. Worse is that even by way of exception, we do not find that exceptional need to stray away from our appellate function and conduct a trial on the merits in this case.
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> Of course, the appellant may fault the Arbiter for giving credence to the factual version of appellee. But the Supreme Court already held that "(w)hen confronted with conflicting versions of factual matters," the Arbiter has the "discretion to determine which party deserves credence on the basis of evidence received" *[Gelmart Industries (Phils.), Inc. v. Leogardo, 155 SCRA 403, 409]*; and that "(t)he matter of evaluating the merits and demerits of the case, as long as the decision is supported by the facts and the evidence is left to the sound discretion of the Labor Arbiter *[Metropolitan Bank and Trust Company vs. NLRC, et al., 235 SCRA 400, 403 (1994)]*.
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> So convincing in fact are the findings of the Arbiter as substantially supported by the facts on record that we find "it unnecessary to make a separate discussion" on "each of the errors enumerated" in the subject appeal *[Audion Electric Co., Inc. vs. NLRC, G.R. No. 106648, June 17, 1999]).*
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> All told, the "findings of the Labor Arbiter should be respected and left undisturbed there being substantial evidence to support them" *[Union of Filipino workers vs. NLRC, et al., 221 SCRA 267, 280 (1993]).*
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> WHEREFORE, respondent's appeal is dismissed.

SO ORDERED.[8]

On August 7, 2001, the private respondent filed its motion for reconsideration.[9]

On December 20, 2001, the NLRC promulgated another decision,[10] disposing thus:

> WHEREFORE, Our decision dated June 8, 2001 is set aside. The complainant's urgent ex-parte motion to order the release of additional amounts garnished from respondent's account is denied. The complaint below is ordered dismissed for lack of merit.
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> SO ORDERED.

Thereby, the NLRC entirely changed its stand. It adopted the entire report of Labor Arbiter Thelma M. Concepcion to whom the NLRC had meanwhile assigned the review of the case for purposes of resolving the private respondent's motion for reconsideration. Labor Arbiter Concepcion's report essentially found that the petitioners were project employees because they were informed at the time of their employment that their tenure would depend on the Parts Inspection Section (PIS) being able to meet the stringent quality standards for the machine parts exported to the private respondent's exclusive buyer, Glory Limited Japan (Glory Japan); that the dry run would last up to October 20, 1998; and that when Glory Japan subsequently cancelled its order, the operation of PIS was discontinued, leading to the termination of the petitioners' employment.[11]

As expected, the petitioners sought reconsideration of the second decision,[12] but the NLRC denied their motion for reconsideration on July 22, 2002.[13]

Hence, this special civil action for *certiorari*, wherein the petitioners submit that the NLRC committed grave abuse of discretion amounting to loss of jurisdiction by reversing itself.

The petitioners anchor their petition on the inconsistency of the NLRC because although it had initially affirmed the decision of Labor Arbiter Medroso, Jr. for being supported by substantial evidence it later on discarded such affirmance to adopt "hook, line and sinker" the report of Labor Arbiter Concepcion despite the report being baseless and constituting merely Labor Arbiter Concepcion's rendition of her own judgment over the case, not confining herself to merely a review of the case that she had been tasked to do.

They claim that the NLRC had questionable motive in assigning the review to a different reviewing Labor Arbiter, ignoring the Labor Arbiter who had previously reviewed the case on appeal; and that such assignment was an irregularity and a mere ploy to set the stage for reversal.

We would not find anything radical and questionable on the part of the NLRC in reversing its original decision had the reversal been supported by substantial evidence, for the precise purpose of a motion for reconsideration is concededly to point out the findings and conclusions of the decision that, in the movant's view, have no support from the law or the evidence. The movant is, at that point,