TENTH DIVISION

[CA-G.R. SP 136136, February 05, 2015]

CENTURY IRON WORKS, INC. AND HENRY CHUA, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, THIRD DIVISION, AND MARLON L. CALUNDRE, RESPONDENTS.

DECISION

DIAMANTE, J.:

This is a petition for certiorari under Rule 65 of the Revised Rules of Court assailing the February 28, 2014 and April 21, 2014 Resolutions[1] of the National Labor Relations Commission, Third Division, (hereinafter referred to as NLRC) in NLRC LAC No. 02-000432-14(8) [NLRC NCR Case No. 05-07109-13] which affirmed the November 29, 2013 Decision[2] of the Labor Arbiter.

In a Resolution dated August 7, 2014, this Court, without necessarily giving due course to the instant Petition, ordered, *inter alia,* private respondent Marlon L. Calundre, to file his Comment within a non-extendible period of ten (10) days from receipt of the resolution, and petitioners to file a Reply within five (5) days from receipt of the Comment, if they so desire. It was specified in the Resolution that upon submission of the aforesaid pleadings or the expiration of the period for filing the same, the Petition will be deemed submitted for decision, unless the Court requires the filing of memoranda from the parties.[3]

With the filing of private respondent's Comment[4] and Opposition[5] to the Application for the Issuance of a Writ of Preliminary Injunction or Temporary Restraining Order and petitioners' Reply[6] thereto, the instant petition is now deemed submitted for decision pursuant to this Court's August 7, 2014 Resolution.

The antecedent facts of the case are as follows:

On May 14, 2013, private respondent Marlon L. Calundre filed a complaint for illegal dismissal, underpayment of wages, 13th month and holiday pay, non-payment of separation pay, service incentive leave pay and night shift differential, as well as, recovery for moral and exemplary damages against herein petitioners before the NLRC.[7] According to private respondent, he was hired by petitioner Century Iron Works, Inc. [CIWI for brevity] in February 2003 as helper and welder. Private respondent argued that since 2003 he had been continuously hired by CIWI and assigned to different work locations of the company such as Cubao, Quezon City (Gateway Mall), Fort Bonifacio, Taguig, City (Serendra Mall and Market Market), Metro Manila (Metrobank), Davao City (NCC Mall) and the latest one was in Cebu City until he was unjustly dismissed from employment on April 26, 2013.

Private respondent further contended that he performed work necessary and

desirable to petitioners' business for eight (8) hours a day, six (6) days a week with frequent overtime of at least two (2) hours a day and that he was only given a basic wage of P406.00 a day. Thus, it is now the contention of private respondent that he was summarily terminated from work without a just cause and was likewise deprived of due process of law.

For their part, petitioners denied that private respondent was a regular employee. Petitioners would insist that private respondent was actually a project employee whose employment was coterminous with each undertaking. The continued employment of private respondent, according to petitioners, was fixed for specific projects, and the completion of which had been determined at the time of hiring. Furthermore, petitioners contended that there were gaps varied in length after the completion of each task and if there had been instances when private respondent's contract had been extended, as in the case of Veranza Mall Project, it was simply for the purpose of culminating said project.

On January 31, 2013, the Labor Arbiter rendered a judgment finding the commission of illegal dismissal on the part of petitioners and ordering the same to pay private respondent the following:

a) Backwages in the amount of P87,984.06;
b) Separation pay in the amount of P124,696.00;
c) Service Incentive Leave Pay in the amount of P6,086.55;
d) Cost of Living Allowance [COLA] in the amount of P14,127.36;
e) 13th month differential in the amount of P8,443.78; and
f) Moral and exemplary damages of P20,000.00.[8]

Upon appeal, the NLRC rendered a Decision affirming the findings of the Labor Arbiter with the modification that the award of separation pay be reduced to P44,304.00. In modifying the separation pay, the NLRC ratiocinated that the Labor Arbiter erred in reckoning the computation of said separation pay in 2007 considering that private respondent was working abroad around that time and did not return to petitioners' employ until 2009. Thereafter, the NLRC likewise denied petitioners' motion for reconsideration. In view of the foregoing, herein petitioners come before this Court via a special action for certiorari assailing the decision of public respondent NLRC.

The petition is devoid of merit.

In this petition, the basic issue posed is whether or not public respondent NLRC erred in holding that private respondent was a regular employee who had been illegally dismissed from employment by petitioners. We hold in the negative.

In *Spic N' Span Services Corporation vs. Paje, et al.,*[9] the High Court has explained that upon proof of termination of employment, the employer has the burden of proof that the dismissal was valid; absent this proof, the termination from employment is deemed illegal, as alleged by the dismissed employees. The fact of private respondent's termination was never disputed.

The records of the case would reveal that since 2003 private respondent was already part of petitioners' intermittent workforce. It was not until in 2009 that private respondent's employment had become somewhat more frequent before his

termination in 2013. It would seem to appear that private respondent was a project employee, as can be gleaned from the various contracts of employment delineating the supposed venture to be undertaken. However, a closer look of the aforesaid contracts would indicate there was no actual project stipulated therein. The only stipulations in the contracts were the dates of their effectivity, the duties and responsibilities of private respondent as erector, fitter, welder and helper, the rights and obligations of the parties, and private respondent's compensation and allowances. As there was no specific project or undertaking to speak of, the petitioners cannot now claim that private respondent is a project employee. This is a clear attempt to frustrate the regularization of private respondent and to circumvent the law, as perfectly elucidated in *Malicdem, et al. vs. Marulas Industrial Corporation, et al.*[10]

At this juncture, We deem it proper to enunciate the principle of regular seasonal employees as laid down in *Universal Robina Sugar Milling Corporation, et al . vs. Acibo, et al.,*[11] *viz*:

> Nevertheless, "where the circumstances evidently show that the employer imposed the period precisely to preclude the employee from acquiring tenurial security, the law and this Court will not hesitate to strike down or disregard the period as contrary to public policy, morals, etc." In such a case, the general restrictive rule under Article 280 of the Labor Code will apply and the employee shall be deemed regular.
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> Clearly, therefore, the nature of the employment does not depend solely on the will or word of the employer or on the procedure for hiring and the manner of designating the employee. Rather, the nature of the employment depends on the nature of the activities to be performed by the employee, considering the nature of the employer's business, the duration and scope to be done, and, in some cases, even the length of time of the performance and its continued existence.
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> In light of the above legal parameters laid down by the law and applicable jurisprudence, the respondents are neither project, seasonal nor fixed-term employees, but regular seasonal workers of URSUMCO. The following factual considerations from the records support this conclusion:
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> First, the respondents were made to perform various tasks that did not at all pertain to any specific phase of URSUMCO's strict milling operations that would ultimately cease upon completion of a particular phase in the milling of sugar; rather, they were tasked to perform duties regularly and habitually needed in URSUMCO's operations during the milling season. The respondents' duties as loader operators, hookers, crane operators and drivers were necessary to haul and transport the sugarcane from the plantation to the mill; laboratory attendants, workers and laborers to mill the sugar; and welders, carpenters and utility workers to ensure the smooth and continuous operation of the mill for the duration of the milling season, as distinguished from the production of the sugarcane which involves the planting and raising of the sugarcane until it ripens for milling. The production of sugarcane, it must be emphasized, requires a different set of workers who are experienced in farm or agricultural work.