

## THIRD DIVISION

[ G.R. No. 239622, June 21, 2021 ]

**RUBEN CARPIO, PETITIONER, VS. MODAIR MANILA CO. LTD.,  
INC., RESPONDENT.**

### DECISION

**LOPEZ, J., J.:**

Ruben Carpio (*Carpio*) filed the instant Petition for Review on *Certiorari*<sup>[1]</sup> dated July 18, 2018, assailing the Decision<sup>[2]</sup> dated December 27, 2017 and the Resolution<sup>[3]</sup> dated April 30, 2018, rendered by the Court of Appeals Seventh Division (*Court of Appeals*) in CA-G.R. SP No. 143736, both of which granted the Petition for *Certiorari*<sup>[4]</sup> dated January 7, 2016 filed by Modair Manila Co. Ltd., Inc. (*Modair*), which assailed the Decision<sup>[5]</sup> dated September 29, 2015 and Resolution<sup>[6]</sup> dated October 30, 2015, rendered by the National Labor Relations Commission Sixth Division (*NLRC*) in NLRC LAC Case No. 06-001497-15, which reversed the ruling<sup>[7]</sup> of the Labor Arbiter in NLRC Case No. RAB-IV-10-01443-13-L, dismissing Carpio's Complaint for illegal dismissal and regularization.

#### ***Factual and Procedural Antecedents***

##### *Carpio's Work Engagements with Modair*

A Certificate of Employment dated May 23, 2013 issued by Modair's Deputy General Manager indicates that Carpio has been employed as a "contractor's employee (per project basis)," designated as "Electrician 3," from October 27, 1998 to April 10, 2013.<sup>[8]</sup> Apart from the Certificate of Employment, the evidence provides no further information regarding Carpio's employment between 1998 to 2008, only providing details from 2008 onwards.

In a Memorandum dated August 1, 2008, Modair informed Carpio that the "IBIDEN BACK END EXPANSION Project will soon cease operation due to its project completion[,]" (*Back End Expansion Project*) for which Carpio's "services will be terminated effective August 15, 2008" and that he will be "notified accordingly for re-contract if [his] services will again be needed." Identical language is found in a Memorandum dated November 30, 2009, terminating his services for the "PIL GREEN CONSTRUCTION Project" (*PIL Green Project*) effective December 15, 2009; and a Memorandum dated September 25, 2010, terminating his services for the "FAC D. UTIL. WORKS Project" (*UTIL. Works Project*) effective October 9, 2010.<sup>[9]</sup>

Apart from the foregoing, Modair also engaged Carpio for the "IBIDEN CPU S3 Project" (*Ibiden CPU Project*), for which Modair issued a Memorandum dated July 25, 2012, terminating his services effective August 10, 2012.<sup>[10]</sup> Modair submitted an Establishment Employment Report to the Department of Labor and Employment

(DOLE) Makati City Field Office, informing said office of the completion of the Ibiden CPU Project.<sup>[11]</sup> Accordingly, Carpio executed an Affidavit of Release and Quitclaim dated August 25, 2012, acknowledging that his project employment ceased upon termination of the project, stating that he had no claims against Modair, and that said affidavit was explained to him by a Modair official.<sup>[12]</sup>

Modair again hired Carpio for the "NYK TECH PARK project" (*NYK Project*), with his engagement covered by a Project Agreement dated August 8, 2012 (*NYK Project Agreement*), notably indicating that: Carpio would be hired "as the ELECTRICIAN 3 for the duration of the project undertaken by the company x x x effective August 26, 2012 with scheduled date of completion on March 25, 2013 or upon the completion of the phase of the work [for] which he is assigned"; that Carpio "shall work for the duration of the project unless he/she is terminated"; that the contract "is deemed terminated upon the completion of the project," among other eventualities; and that "[t]wo weeks prior to project completion, [Carpio] will receive a notice of project completion x x x to remind [Carpio] that the phase of the said project where [he is] assigned will soon be finished and therefore [his] services with the company will also be cessated."<sup>[13]</sup>

Modair issued a Memorandum dated March 25, 2013, with language similar to those above-enumerated, informing Carpio of the termination of his services effective April 10, 2013.<sup>[14]</sup> Modair also submitted an Establishment Employment Report to the DOLE Makati City Field Office, informing such office of the completion of the NYK Project.<sup>[15]</sup> Subsequently, Carpio signed his Final Release of Pay dated April 25, 2013, which incorporated a Quit Claim whereby he waived any claims against Modair and confirmed the full payment of everything due him from the NYK Project.<sup>[16]</sup> He also executed an Affidavit of Release and Quitclaim dated May 24, 2013, similar to that for the Ibiden CPU Project.<sup>[17]</sup>

### *Proceedings Before the Labor Arbiter*

Despite executing the above instruments, Carpio filed against Modair a Complaint for illegal dismissal and regularization before Regional Arbitration Branch No. IV of the NLRC, docketed as NLRC Case No. RAB-IV-10-01443-13-L.<sup>[18]</sup> Sometime in December 2013, during the pendency of these proceedings, Carpio had gone to the Modair office, although minor details regarding this interaction (e.g., who had initiated contact, what representations or promises were made, and what assurances and apprehensions were exchanged) remain contested.

What remains uncontroverted, however, are the existence of: (1) a Project Employment Agreement dated December 11, 2013 (*FUNAI Project Agreement*), the terms of which are identical to the NYK Project Agreement, except with Carpio being engaged for the "FUNAI" Project from December 16, 2013 to March 31, 2014;<sup>[19]</sup> (2) two (2) Petty Cash Vouchers, one dated December 5, 2013, for P1,000.00 particularized as "cash advance," and another dated December 11, 2013, for P10,000.00, particularized as "for the death of his brother";<sup>[20]</sup> (3) an Affidavit of Desistance dated December 11, 2013, signed by Carpio, relative to NLRC Case No. RAB-IV-10-01443-13-L;<sup>[21]</sup> and (4) a Quitclaim and Release dated December 11, 2013, signed by Carpio, stating therein that he is withdrawing his Complaint in exchange for his acceptance of a new contract for project-based employment.<sup>[22]</sup>

Much to Modair's surprise, Carpio still proceeded to submit a "Sinumpaang Salaysay at Position Paper" dated January 8, 2014, wherein, curiously enough, he attached the Affidavit of Desistance and the Quitclaim and Release, both dated December 11, 2013. Additionally, Carpio argued that he had attained regular status owing to his repeated re-hiring by Modair for various construction projects; and that he was illegally dismissed since, despite other available projects, he was not given any work following completion of the NYK Project; ultimately praying for regularization, a finding of illegal dismissal, reinstatement with backwages, damages, and attorney's fees.<sup>[23]</sup> Modair prayed that the Complaint be dismissed, and argued that Carpio remained a project-based employee despite recurrent re-hiring; that he was not illegally dismissed as his engagement was co-terminus with each project; and that, at any rate, Carpio freely and knowingly executed the Affidavit of Desistance and the Quitclaim and Release, both dated December 11, 2013. Modair also presented a Resignation Letter dated February 14, 2000 (*Resignation Letter*), showing that Carpio voluntarily resigned effective February 19, 2000.<sup>[24]</sup>

The Labor Arbiter dismissed Carpio's Complaint in a Decision<sup>[25]</sup> dated March 12, 2015, the dispositive of which reads:

WHEREFORE, premises considered, the above-entitled case is  
DISMISSED for lack of merit.

SO ORDERED.<sup>[26]</sup>

The Labor Arbiter found that, not being covered then by any project employment contract, Carpio's service from 1998 was in the nature of regular employment, which, however, was interrupted when Carpio submitted the Resignation Letter. Since then, Carpio's employment had been covered by project-based contracts, making him a project-based employee who was not illegally dismissed, but whose engagement concluded following the completion of the respective projects.

#### *Proceedings Before the NLRC*

Carpio filed his Appeal Memorandum<sup>[27]</sup> dated April 10, 2015 with the NLRC, eventually docketed as NLRC LAC Case No. 06-001497-15, arguing that the Labor Arbiter misappreciated the facts and misapplied the law, since the absence of project employment contracts covering several other assignments made him a regular employee. In its Answer<sup>[28]</sup> dated April 30, 2015, Modair insisted on the correctness of the Decision dated March 12, 2015, reiterating its arguments before the Labor Arbiter.

In its Decision<sup>[29]</sup> dated September 29, 2015, the NLRC reversed the Labor Arbiter, disposing as follows:

WHEREFORE, premises considered, the Appeal filed by Complainant Ruben Carpio is hereby PARTLY GRANTED. The Decision dated 12 March 2015 of the Labor Arbiter *a quo*, is AFFIRMED with MODIFICATION declaring Complainant to be a regular employee of Respondent-Modair Manila Co. Ltd., Inc., and ORDERING the said Respondent to immediately reinstate the Complainant to his former position, without loss of seniority rights, but without backwages, and to assign him to its future projects, if warranted under the circumstances.

SO ORDERED.<sup>[30]</sup>

In so reversing, the NLRC downplayed the evidentiary weight of the Resignation Letter, saying that Carpio's signature therein does not match his other specimen signatures, and that the purported resignation is contradicted by the Certificate of Employment, attesting to Carpio's continuous employment from October 27, 1998 to April 10, 2013. Moreover, Carpio's employment from 2001 to 2010 was covered by continuous payslips, but Modair had failed to present project-based contracts to prove such nature of employment during this period. Nevertheless, the NLRC found that Carpio was not illegally dismissed since his severance was a consequence of the completion of the NYK Project. Despite both parties moving for partial reconsideration, the NLRC, in its Resolution<sup>[31]</sup> dated October 30, 2015, upheld its Decision dated September 29, 2015.

### *Proceedings Before the Court of Appeals*

Modair filed a Petition for *Certiorari*<sup>[32]</sup> dated January 7, 2016 before the Court of Appeals, docketed as CA-G.R. SP No. 143736, alleging grave abuse of discretion as the NLRC wrongly conferred Carpio with regular status. The Court of Appeals granted Modair's Petition for *Certiorari* in its Decision<sup>[33]</sup> dated December 27, 2017, the dispositive of which reads:

WHEREFORE, premises considered, the petition is GRANTED. The Decision dated 29 September 2015 and the Resolution dated 30 October 2015 of the National Labor Relations Commission in NLRC LAC No. 06-001497-15 are REVERSED and SET ASIDE. The Decision dated 12 March 2015 of Labor Arbiter Renell Joseph R. Dela Cruz in NLRC Case No. RAB-IV-10-01443-13-L is REINSTATED.

SO ORDERED.<sup>[34]</sup>

The Court of Appeals ruled that Carpio is a project employee, considering that he signed the NYK Project Agreement knowing that it covered only a specific project for a definite duration; that Modair had duly submitted the Establishment Employment Reports, indicative of project based employment; and, despite successive re-hiring, length of time is not decisive on whether an employee is project-based or regular. While Carpio moved for reconsideration, the Court of Appeals, in its Resolution<sup>[35]</sup> dated April 30, 2018, upheld its Decision dated December 27, 2017.

Carpio now comes before the Court via the instant Petition for Review on *Certiorari*<sup>[36]</sup> dated July 18, 2018. Modair filed its Comment to the Petition for Review<sup>[37]</sup> dated October 23, 2018, to which Carpio responded with a Reply to Respondent's Comment <sup>[38]</sup> dated June 11, 2019. Both parties essentially rehash their arguments from the proceedings below.

### ***Issues***

The Court resolves the interlocking issues of: (1) whether Carpio is a project-based or regular employee of Modair; and (2) whether Carpio was illegally dismissed.

### ***Ruling***

The Court partially grants the Petition for Review on *Certiorari*, resolving the first issue in favor of, and the second issue against, Carpio.

Granted, the above issues are factual questions which generally lie beyond the scope of the Court's review in a Rule 45 Petition for Review on *Certiorari*. Nevertheless, the Court may, in the exercise of its equity jurisdiction, review the facts and re-examine the records of the case, where there is a conflict between the factual findings of the Labor Arbiter and the Court of Appeals, on one hand, and those of the NLRC, on the other. In the present case, the NLRC and the Court of Appeals have opposing views.<sup>[39]</sup>

### *Regular Employment and Project-Based Employments, Distinguished*

Both regular and project employments find basis in Article 295 (previously Article 280) of the Labor Code, which provides:

ARTICLE 295. [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.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.<sup>[40]</sup>

As characterized, regular employment exists when the employee is: (a) engaged to perform activities that are usually necessary or desirable in the usual business or trade of the employer; or (b) a casual employee whose activities are not usually necessary or desirable in the employer's usual business or trade, and has rendered at least one year of service, whether continuous or broken, with respect to the activity in which he is employed; while project employment exists when the employee is hired under a contract which specifies that the employment will last only for a specific project or undertaking, the completion or termination of which is determined at the time of engagement.<sup>[41]</sup>

As regards security of tenure, regular employment may be terminated for just or authorized causes;<sup>[42]</sup> whereas, for project employment, lawful dismissal is brought about by the completion of the project or contract for which the employee was engaged, unless terminated during the life of the project, in which case, only just or authorized causes may be invoked.<sup>[43]</sup>