

## SECOND DIVISION

[ G.R. No. 242834, June 26, 2019 ]

**RAMON E. MIRANDILLA, RANIL D. ATULI, AND EDWIN D. ATULI,  
PETITIONERS, VS. JOSE CALMA DEVELOPMENT CORP. AND JOSE  
GREGORIO ANTONIO C. CALMA, JR., RESPONDENTS.**

### DECISION

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> are the Decision<sup>[2]</sup> dated February 28, 2018 and the Resolution<sup>[3]</sup> dated July 27, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 153206, which affirmed the Resolution<sup>[4]</sup> dated June 23, 2017 and the Resolution<sup>[5]</sup> dated August 22, 2017 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 06-001886-17, declaring petitioners Ramon E. Mirandilla (Ramon), Ranil D. Atuli (Ranil), and Edwin D. Atuli (Edwin; collectively, petitioners) as project employees, and thus, were not illegally dismissed.

#### The Facts

In May 2013, respondent Jose Calma Development Corp. (JCDC), a company engaged in the construction business, allegedly hired Ramon as finishing carpenter for the latter's construction project in Makati City, and later, in October 2014, also hired Ranil and Edwin as carpenter and finishing carpenter, respectively.<sup>[6]</sup> **Sometime in October 2015, Ramon was asked by JCDC to sign a document purporting to be a termination of his project employment contract; the following month, Ranil and Edwin were asked to sign a similar document.** Claiming that they were regular employees, petitioners were surprised to learn that their employment had been terminated despite not having violated any company policy.<sup>[7]</sup> This prompted them to file a complaint<sup>[8]</sup> for illegal dismissal and other money claims against JCDC and its president and owner, Jose Gregorio Antonio C. Calma, Jr. (Jose Gregorio; collectively, respondents), before the NLRC.<sup>[9]</sup>

For their part,<sup>[10]</sup> respondents denied that petitioners were illegally dismissed and asserted that the latter were project employees who were duly apprised of their status as such and whose employments were coterminous with the completion of their projects.<sup>[11]</sup>

Respondents added that Ramon committed several violations<sup>[12]</sup> of company rules and regulations, including commission of an offense against superior, non-compliance with the uniform and dress code policy, acts of discourtesy to persons in authority, immoral conduct, insubordination, and going on absence without leave, for which he was served with corresponding memoranda - which he refused to receive - requiring his explanation.<sup>[13]</sup> On October 29, 2015, JCDC submitted to the

Department of Labor and Employment (DOLE) an Establishment Employment Report<sup>[14]</sup> indicating the termination of Ramon's employment due to "project completion."<sup>[15]</sup>

With regard to Ranil and Edwin, respondents claimed that their project was completed in December 2015 and that they were correspondingly informed of the termination of their employment.<sup>[16]</sup> On December 23, 2015, they each received their 13<sup>th</sup> month pay<sup>[17]</sup> for the year 2015 and signed an Employee Clearance and Quit Claim.<sup>[18]</sup> On January 12, 2016, JCDC submitted to the DOLE an Establishment Termination Report with a List of Permanently Terminated Workers Due to Closure/Retrenchment,<sup>[19]</sup> which included the names of Ranil and Edwin among the employees whose employment has been terminated due to "project completion."<sup>[20]</sup>

To support their claims, respondents presented copies of Weekly Time Records (WTRs),<sup>[21]</sup> Metrobank Check No. 29134931.41<sup>[22]</sup> and Cash/Check Vouchers<sup>[23]</sup> indicating payment of petitioners' 13<sup>th</sup> month pay for the year 2015, Establishment Employment/Termination Reports,<sup>[24]</sup> and Employee Clearance and Quit Claims.<sup>[25]</sup>

### **The Labor Arbiter's Ruling**

In a Decision<sup>[26]</sup> dated April 25, 2017, the Labor Arbiter (LA) declared petitioners as regular employees, and thus, were illegally dismissed. Accordingly, the LA ordered JCDC to pay petitioners their separation pay, backwages, and service incentive leave pay, as well as ten percent (10%) attorney's fees.<sup>[27]</sup> As for Jose Gregorio, he was absolved from liability since there was no showing that any of the grounds to pierce the veil of JCDC's corporate fiction so as to hold him solidarity liable, exists.<sup>[28]</sup>

The LA held that petitioners were regular employees, considering that JCDC's evidence failed to show that the former were hired for a specific project or undertaking, which completion or termination had been determined at the time of their engagement. Moreover, the LA observed that while Ramon was assigned to several different project sites, JCDC failed to demonstrate that termination reports were filed after the completion of each project.<sup>[29]</sup> As to Ranil and Edwin, the list of permanently terminated workers submitted to the DOLE showed that they were terminated due to "closure/retrenchment" and not due to "project completion." Thus, for failure to prove the validity of petitioners' dismissal due to any just or authorized cause, the LA found JCDC liable for illegal dismissal.<sup>[30]</sup> However, it denied the other money claims for lack of merit.<sup>[31]</sup>

Aggrieved, respondents appealed<sup>[32]</sup> to the NLRC.

### **The NLRC Ruling**

In a Resolution<sup>[33]</sup> dated June 23, 2017, the NLRC granted the appeal and modified the LA Decision by deleting the award of backwages, separation pay, and attorney's fees.<sup>[34]</sup>

The NLRC ruled that petitioners were project employees, considering that: (a)

petitioners' work as finishing carpenters indicated the specific undertaking for which they were engaged; (b) petitioners were free to offer their services as carpenters to other employers while awaiting engagement after the end of each particular project; and (c) the submission to the DOLE of establishment termination reports showed that petitioners were project employees.<sup>[35]</sup> Aside from finding that Ramon was a project employee, it added that he could have been terminated for the series of infractions he committed. On the other hand, it found that Ranil and Edwin no longer had any cause of action against respondents after they executed their respective quitclaims and received their last pay after the completion of their project.<sup>[36]</sup>

Dissatisfied, petitioners moved for reconsideration<sup>[37]</sup> but the same was denied in a Resolution<sup>[38]</sup> dated August 22, 2017. Hence, petitioners elevated the matter to the CA via a petition for *certiorari*.<sup>[39]</sup>

### **The CA Ruling**

In a Decision<sup>[40]</sup> dated February 28, 2018, the CA dismissed the petition, finding no grave abuse of discretion on the part of the NLRC.<sup>[41]</sup>

The CA observed that as finishing carpenters, petitioners' nature of work clearly indicated the specific undertaking for which they were hired and the specific phase of work that their services were needed. Moreover, it observed that JCDC complied with the submission requirement to the DOLE by filing an Establishment Employment Report for Ramon and an Establishment Termination Report with a List, of Permanently Terminated Workers Due to Closure/Retrenchment for Ranil and Edwin. As such, petitioners' employment legally ended upon the completion of their projects, and thus, petitioners were not illegally dismissed.<sup>[42]</sup>

Besides, the CA pointed out that Ramon could also have been terminated on account of his numerous violations of company policies, including insubordination when he ignored the memoranda issued to him. As to Ranil and Edwin, it found that they voluntarily executed their quitclaims, and thus, were bound by the said transaction.<sup>[43]</sup>

Petitioners moved for reconsideration<sup>[44]</sup> but the same was denied in a Resolution<sup>[45]</sup> dated July 27, 2018; hence, this petition.

### **The Issue Before the Court**

The issue for the Court's resolution is whether or not the CA correctly ruled that petitioners were project employees, and thus, were legally dismissed.

### **The Court's Ruling**

The petition is partly meritorious.

At the outset, it bears stressing that in a Rule 45 review in labor cases, the Court examines the CA's Decision from the prism of whether the latter had correctly determined the presence or absence of grave abuse of discretion in the NLRC's

Decision.<sup>[46]</sup> In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.<sup>[47]</sup>

Guided by these considerations, the Court finds that the CA erred in dismissing petitioners' *certiorari* petition before it, since it failed to attribute grave abuse of discretion on the part of the NLRC which erroneously ruled that petitioners were project employees of JCDC despite the latter's failure to establish the former's project employment status through substantial evidence.

To expound, Article 295 (formerly 280) of the Labor Code, as amended, provides that a regular employee is one who has been engaged to perform activities which are usually necessary or desirable in the usual trade or business of the employer, while a project employee is one whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of engagement of the employee, to wit:

Article 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 (Underscoring supplied)

According to jurisprudence, the principal test for determining whether particular employees are properly characterized as project employees as distinguished from regular employees, is whether or not: **(a) the employees were assigned to carry out a specific project or undertaking;** and **(b) the duration and scope of which were specified at the time the employees were engaged for that project.**<sup>[48]</sup>

In this relation, case law states that in order to safeguard the rights of workers against the arbitrary use of the word "project" to prevent them from attaining regular status, **employers claiming that their workers are project employees should not only prove that the duration and scope of the employment were specified at the time they were engaged, but also that there was indeed a project.**<sup>[49]</sup> Furthermore, "[i]t is crucial that the employees were **informed of their status as project employees at the time of hiring and that the period of their employment must be knowingly and voluntarily agreed upon by the parties,** without any force, duress, or improper pressure being brought to bear upon the employees or any other circumstances vitiating their consent."<sup>[50]</sup>

In this case, records fail to disclose that petitioners were engaged for a specific project and that they were duly informed of its duration and scope at the time that

they were engaged.

As for Ramon, respondents submitted his WTRs<sup>[51]</sup> as primary proof of his alleged project employment status. While these WTRs do indicate Ramon's particular assignments for certain weeks starting from November 8, 2013 to May 27, 2015, they do not, however, indicate that he was particularly engaged by JCDC for each of the projects stated therein, and that the duration and scope thereof were made known to him at the time his services were engaged. At best, these records only show that he had worked for such projects. By and of themselves, they do not show that Ramon was made aware of his status as a project employee at the time of hiring, as well as of the period of his employment for a specific project or undertaking.

In fact, the WTRs actually show that Ramon was engaged as an all-purpose carpenter who was made to work at JCDC's several project sites on a regular basis, as his working assignments were just re-shuffled from one project to another without any clear showing that his engagement for each project site was constitutive of a particular contract of project employment. For instance, the WTRs show that during the weeks of November 14 to 20, 2013 and November 21 to 27, 2013, Ramon was assigned at the project sites "Friedberg One Serendra East Tower" and "Repetto Shangrila" on various dates.<sup>[52]</sup> However, the following week (*i.e.*, November 28 to December 4, 2013), he was only assigned at "Repetto Shangrila."<sup>[53]</sup> Similarly, on April 10 to 14, 2014, he was assigned at the project "Ernest Cu."<sup>[54]</sup> Then, the week after (*i.e.*, April 17 to 23, 2014), he alternated between the project sites "Yakal" and "Ernest Cu."<sup>[55]</sup> However, the following week (*i.e.*, April 24 to 30, 2014) he reported back to the project "Ernest Cu" and another called "Repetto Rockwell."<sup>[56]</sup> In all of these, it is noteworthy that no project employment contract was shown designating his engagement for each particular undertaking, much more was it demonstrated that he was informed of the scope and duration thereof. Clearly, by virtue of this pattern of reassignment, Ramon should be deemed as a regular employee, as he was actually tasked to perform work which is usually necessary and desirable to the trade and business of his employer, and not merely engaged for a specific project or undertaking. In *GMA Network, Inc. v. Pabriga*,<sup>[57]</sup> the Court pointed out that if the particular job or undertaking is within the regular or usual business of the employer company and it is not identifiably distinct or separate from the other undertakings of the company such that there is clearly a constant necessity for the performance of the task in question, said job or undertaking should not be considered a project,<sup>[58]</sup> as in this case.

In addition, if Ramon were to be considered as a project employee for each of the project sites indicated in the WTRs, then JCDC should have submitted a report of termination to the nearest public employment office every time his employment was terminated due to completion of each construction project. However, JCDC only submitted one (1) Establishment Employment Report dated October 29, 2015. In *Dacles v. Millenium Erectors, Corp.*,<sup>[59]</sup> the Court held that. "Policy Instruction No. 20 is explicit that employers of project employees are exempted from the clearance requirement but not from the submission of termination report. **[The Court has] consistently held that failure of the employer to file termination reports after every project completion proves that the employees are not project employees[.]**"<sup>[60]</sup> as in this case.