

SECOND DIVISION

[G.R. No. 227982, April 23, 2018]

MARIO DIESTA BAJARO, PETITIONER, VS. METRO STONERICH CORP., AND/OR IBRAHIM M. NUÑO, RESPONDENTS.

DECISION

REYES, JR., J:

In view of the distinct nature of the construction industry, the Court recognizes the right of an employer to hire a construction worker for a specific project, provided that the latter is sufficiently apprised of the duration and scope of such undertaking. In this instance, the worker's tenure shall be coterminous with the project. Notably, the employee's performance of work that is necessary and desirable to the construction business, as well as his repeated rehiring, do not bestow upon him regular employment status.

This treats of the Petition for Review on *Certiorari*^[1] under Rule 45 of the Revised Rules of Court seeking the reversal of the Decision^[2] dated July 22, 2016, and Resolution^[3] dated October 27, 2016, rendered by the Court of Appeals (CA) in CA-G.R. SP No. 143243. The CA affirmed the ruling of the National Labor Relations Commission (NLRC), Second Division, in NLRC LAC No. 07-001980-15(4) and NLRC NCR CN. 06-06903-14,^[4] which dismissed the Complaint for illegal dismissal filed by petitioner Mario Diesta Bajaro (Bajaro) against respondent Metro Stonerich Corporation (Metro Stonerich) and/or Ibrahim M. Nuño (Nuño).

The Antecedents

Metro Stonerich is a domestic entity engaged in the construction business, owned and operated by Nuño.^[5]

On June 4, 2008, Metro Stonerich hired Bajaro as a concrete pump operator, tasked with operating the pouring of freshly mixed concrete on the former's construction projects. Bajaro was called to work from 7:00 a.m. until 4:00 p.m., from Mondays to Saturdays.^[6] He was assigned in various construction projects until May 10, 2014.^[7] He received a daily wage of Php 500.00.^[8]

Sometime in April 21, 2014, while Bajaro was working at the KCC Mall of Marbel in Koronadal City, South Cotabato, he noticed that one of the pipes was filled with concrete. He lifted the said pipe to empty and clean it. Upon lifting, he suddenly felt an excruciating pain on his thighs and since then, could no longer walk properly.^[9] Due to his injury, he requested the Secretary and Manager of Metro Stonerich to take him to the hospital. However, he was ignored and instead, was told to go home and have himself treated.^[10]

On April 23, 2014, Bajaro went to the office of Metro Stonerich to seek financial help, but Metro Stonerich refused to pay for his medical expenses.^[11]

Bajaro went to the East Avenue Medical Center to have himself treated.^[12] He fully recovered after two weeks. Consequently, on May 5, 2014, he was issued a Certificate that he was fit to return to work.^[13]

Thus, on May 7, 2014, Bajaro arrived at his work place. However, he was informed to return to work the next day.^[14]

Meanwhile, on May 8 and 9, 2014, Bajaro was informed that he should no longer report for work. Instead, he was offered money in lieu of his employment. He did not accept the money.^[15]

This prompted Bajaro to file a complaint before the Labor Arbiter (LA) for illegal dismissal with monetary claims against Metro Stonerich.^[16] In his position paper, Bajaro asserted that he was a regular employee of Metro Stonerich,^[17] as he was continuously employed for six years and performed activities that were necessary and desirable to the latter's usual business. As a regular employee, he was entitled to security of tenure and could not be dismissed except for just or authorized cause.^[18]

Additionally, Bajaro claimed that he was entitled to his monetary benefits consisting of overtime pay differential, as he was merely given Php 50.00 per hour of overtime pay. He also alleged that he was entitled to night shift differential, holiday pay, and proportionate 13th month pay.^[19] Finally, Bajaro sought an award of moral damages, exemplary damages and attorney's fees.^[20]

On the other hand, Metro Stonerich argued that Bajaro is not a regular employee, but a project employee. Bajaro was hired for five different construction projects, with each project lasting for a period of five months or 12 months. As proof that Bajaro was engaged on a per project basis, Metro Stonerich pointed out that it even submitted reports to the Department of Labor and Employment (DOLE) upon the completion of the projects Bajaro was engaged in.^[21]

Furthermore, Metro Stonerich countered that contrary to Bajaro's claim that he was not given the monetary benefits due him, he was actually given overtime pay, service incentive leave (SIL) pay and 13th month pay as shown in its accounting ledgers.^[22]

Ruling of the LA

On June 25, 2014, the LA rendered a Decision^[23] dismissing Bajaro's complaint for illegal dismissal. The LA held that Bajaro was a project employee, as evidenced by the employment contracts he signed each time he was engaged by Metro Stonerich. Each contract clearly indicated the specific project, as well as the duration of his work. As a project employee, his employment was coterminous with each project.

As for Bajaro's money claims, the LA awarded a total overtime pay differential of

Php 14,921.10, finding that Bajaro was entitled to an overtime pay differential of Php 28.10 per hour of overtime pay, multiplied by the 531 (overtime) hours. Also, the LA awarded Php 4,333.30 as proportionate 13th month pay for 2014, and Php 7,500.00, as SIL pay equivalent to 15 days. In addition, the LA awarded attorney's fees equivalent to 10% of the total monetary award, recognizing that Bajaro was forced to litigate to protect his rights.^[24]

The LA denied Bajaro's other claims of holiday pay and rest pay premiums, due to the latter's failure to substantiate his claims. The LA also denied Bajaro's claims for moral and exemplary damages, finding that there was no illegal dismissal to speak of.^[25]

The dispositive portion of the LA decision reads:

WHEREFORE premises considered, judgment is hereby rendered DISMISSING the complaint for illegal dismissal. However, respondent Metro Stonerich Corporation/Ibrahim M. Nuño are directed to pay [Bajaro] the amount of Php 14,921.10 representing his underpaid overtime pay, Php 4,333.30 unpaid proportionate 13th month pay for 2014 and unpaid [SIL] pay in the amount of Php 7,500.00 plus ten percent by way of attorney's fees in the amount of Php 2,675.44 or a total of Php 29,429.84.

Other claims are DISMISSED for lack of merit.

SO ORDERED.^[26]

Aggrieved, Bajaro filed an appeal against the same LA decision.

Ruling of the NLRC

On July 30, 2015, the NLRC rendered a Resolution^[27] dismissing Bajaro's appeal for lack of merit. Echoing the ruling of the LA, the NLRC found that Bajaro was a project employee since his employment contracts prove that at the time he was hired/rehired, the duration and scope of his engagement were already specified. The NLRC rejected Bajaro's claim that his continued and repeated rehiring made him a regular employee. The NLRC observed that based on the records presented by Metro Stonerich, it was clear that Bajaro was hired on different dates for various projects. The projects for which he was hired had gaps in between, and did not constitute a continuous employment. Thus, the NLRC concluded that Bajaro was validly dismissed due to the completion of the project in which he was hired. Furthermore, the NLRC affirmed the monetary awards granted by the LA.

The dispositive portion of the NLRC resolution reads:

WHEREFORE, the appeal filed by [Bajaro] is DISMISSED.

The [LA's] decision is AFFIRMED.

SO ORDERED.^[28]

Dissatisfied with the ruling, Bajaro filed with the CA a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court.

Ruling of the CA

On July 22, 2016, the CA rendered the assailed Decision^[29] dismissing the Petition for *Certiorari*, on the ground that the NLRC did not commit any grave abuse of discretion to warrant the nullification of its decision. The CA agreed with the findings of the NLRC that Bajaro was a project employee. The CA opined that every time Bajaro was hired as a concrete pump operator on Metro Stonerich's projects, he was made to sign a *Kasunduan Para Sa Katungkulang Serbisyo (Pamproyekto)*. This indicated that Bajaro was adequately apprised of his employment status, and was sufficiently informed that his employment will last only until the completion of each construction project. Accordingly, the CA held that Bajaro was not illegally dismissed as his employment was terminated due to the completion of the project. The CA affirmed the benefits awarded by the LA and the NLRC.

The dispositive portion of the CA decision states:

WHEREFORE, the instant Petition is DISMISSED and the assailed Resolutions dated July 30, 2015 and September 30, 2015 of the NLRC, Second Division, in NLRC LAC No. 07-001980-15(4) and NLRC NCR CN. 06-06903-14 are hereby AFFIRMED.

SO ORDERED.^[30]

Undeterred, Bajaro filed the instant Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court.

Issues

The main issues raised for the Court's resolution are: (i) whether or not Bajaro was a regular employee of Metro Stonerich; and (ii) whether or not he was illegally dismissed by the latter company.

Ruling of the Court

The instant petition is bereft of merit.

It is a well-settled rule that the jurisdiction of the Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited only to reviewing errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts.^[31] The Court finds that none of the mentioned circumstances are present to warrant a review of the factual findings of the case. At any rate, the CA did not commit any reversible error that would warrant the exercise of the Court's appellate jurisdiction.

Bajaro is a Project Employee of Metro Stonerich

Essentially, the Labor Code classifies four (4) kinds of employees, namely: (i) regular employees or those who have been engaged to perform activities which are

usually necessary or desirable in the usual business or trade of the employer; (ii) project employees or those whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the employees' engagement; (iii) seasonal employees or those who perform services which are seasonal in nature, and whose employment lasts during the duration of the season; and (iv) casual employees or those who are not regular, project, or seasonal employees. Jurisprudence has added a fifth kind fixed-term employees or those hired only for a definite period of time.^[32]

Focusing on the first two kinds of employment, Article 294 of the Labor Code distinguishes a regular from project-based employment as follows:

Art. 294. 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 services to be performed is seasonal in nature and the employment is for the duration of the season.

Parenthetically, in a project-based employment, the employee is assigned to a particular project or phase, which begins and ends at a determined or determinable time. Consequently, the services of the project employee may be lawfully terminated upon the completion of such project or phase.^[33] For employment to be regarded as project-based, it is incumbent upon the employer to prove that (i) the employee was hired to carry out a specific project or undertaking; and (ii) the employee was notified of the duration and scope of the project.^[34] In order to safeguard the rights of workers against the arbitrary use of the word "project" as a means to prevent employees from attaining regular status, employers must prove that the duration and scope of the employment were specified at the time the employees were engaged, and prove the existence of the project.^[35]

In the case at bar, Bajaro was hired by Metro Stonerich as a concrete pump operator in five different construction projects, to wit: (i) SM Cubao Expansion and Renovation project located at Araneta Center, Cubao for five months, which began on June 3, 2008; (ii) Robinson's Place Ilocos Nmie for five months, which commenced on January 24, 2009; (iii) Robinson's Tacloban, Marasbaras for five months, which stmied on December 14, 2010; (iv) KCC Mall Marbel Expansion, Koronadal City for 12 months, which commenced on October 24, 2011; and (v) KCC Mall Zamboanga Project, Zamboanga City for 12 months, which started on January 11, 2013.^[36]

It is undisputed that Bajaro was adequately informed of his employment status (as a project employee) at the time of his engagement. This is clearly substantiated by his employment contracts (*Kasunduan Para sa Katungkulang Serbisyo (Pamproyekto)*), stating that: (i) he was hired as a project employee; and (ii) his employment was for the indicated stmiing dates therein, and will end on the completion of the project. The said contracts that he signed sufficiently apprised him that his security