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# SECOND DIVISION

# [ G.R. No. 207253, August 20, 2014 ]

## CRISPIN B. LOPEZ, PETITIONER, VS. IRVINE CONSTRUCTION CORP. AND TOMAS SY SANTOS, RESPONDENTS.

## D E C I S I O N

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated September 14, 2012 and the Resolution[3] dated April 12, 2013 of the Court of Appeals (CA) in CA-GR. SP No. 108385-MIN which annulled and set aside the Resolutions dated October 31, 2008[4] and February 12, 2009[5] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 01-000428-2008, and thereby dismissed petitioner Crispin B. Lopez's (Lopez) complaint for illegal dismissal.

### The Facts

Respondent Irvine Construction Corp. (Irvine) is a construction firm with office address at San Juan, Manila.[6] It initially hired Lopez as laborer in November 1994 and, thereafter, designated him as a guard at its warehouse in Dasmarifias, Cavite in the year 2000, with a salary of P238.00 per day and working hours from 7 o'clock in the morning until 4 o'clock in the afternoon, without any rest day.[7] On December 18, 2005, Lopez was purportedly terminated from his employment, whereupon he was told "*Ikaw ay lay-off muna*."[8] Thus, on January 10, 2006, he filed a complaint[9] for illegal dismissal with prayer for the payment of separation benefits against Irvine before the NLRC Sub-Regional Arbitration Branch No. IV in San Pablo City, Laguna, docketed as NLRC Case No. SRAB-IV 1-8693-06-Q.

For its part, Irvine denied Lopez's claims, alleging that he was employed only as a laborer who, however, sometimes doubled as a guard. As laborer, Lopez's duty was to bring construction materials from the suppliers' vehicles to the company warehouse when there is a construction project in Cavite.[10] As evidenced by an Establishment Termination Report[11] dated December 28, 2005 which Irvine previously submitted before the Department of Labor and Employment (DOLE), Lopez was, however, temporarily laid-off on December 27, 2005 after the Cavite project was finished.[12] Eventually, Lopez was asked to return to work through a letter[13] dated June 5, 2006 (return to work order), allegedly sent to him within the six (6) month period under Article 286 of the Labor Code which pertinently provides that "[t]he *bona-fide* suspension of the operation of a business or undertaking for a period not exceeding six (6) months x x x shall not terminate employment." As such, Irvine argued that Lopez's filing of the complaint for illegal dismissal was premature.[14]

**The LA Ruling**

On December 6, 2007, the Labor Arbiter (LA) rendered a Decision[15] ruling that Lopez was illegally dismissed.

The LA did not give credence to Irvine's argument that the lack of its project in Cavite resulted in the interruption of Lopez's employment in view of Irvine's contradictory averment that Lopez was merely employed on temporary detail and that he only doubled as a guard. Granting that Lopez's work as a laborer or as a guard was really affected by the suspension of the operations of Irvine in Cavite, the LA still discredited Irvine's lay-off claims considering that the return to work order Irvine supposedly sent to Lopez was not even attached to its pleadings. Hence, without any proof that Lopez was asked to return to work, the LA concluded that the dismissal of Lopez went beyond the six-month period fixed by Article 286 of the Labor Code and was therefore deemed to be a permanent one effectuated without a valid cause and due process.[16] Accordingly, Irvine was ordered to pay Lopez the sum of P272,222.17, consisting of P176,905.70 as backwages and other statutory benefits, and P95,316.00 as separation pay.[17]

At odds with the LA's ruling, Irvine elevated the matter on appeal[18] to the NLRC.

**The NLRC Ruling**

On October 31, 2008, the NLRC rendered a Resolution[19] upholding the LA's ruling.

It debunked Irvine's contention that Lopez was not illegally dismissed since he was merely placed on temporary lay-off due to the lack of project in Cavite for the reason that there was no indication, much less substantial evidence, that Lopez was a project employee who was assigned to carry out a specific project or undertaking, with the duration and scope specified at the time of the engagement. In this relation, it observed that Lopez worked with Irvine since 1994 and therefore earned the disputable presumption that he was a regular employee entitled to security of tenure.[20] Thus, since Lopez was not relieved for any just or authorized cause under Articles 282 and 283 of the Labor Code, the NLRC upheld the LA's finding that he was illegally dismissed.[21]

Dissatisfied, Irvine filed a motion for reconsideration[22] which was, however, denied in a Resolution[23] dated February 12, 2009; hence, it filed a petition for *certiorari*[24] before the CA.

**The CA Ruling**

The CA granted Irvine's *certiorari* petition m a Decision[25] dated September 14, 2012, thereby reversing the NLRC.

It held that Lopez's complaint for illegal dismissal was prematurely filed since there was no *indicia* that Lopez was actually prevented by Irvine from returning to work or was deprived of any work assignments or duties.[26] On the contrary, the CA found that Lopez was asked to return to work within the six-month period under Article

286 of the Labor Code. Accordingly, it concluded that Lopez was merely temporarily laid off, and, thus, he could not have been dismissed.[27]

Aggrieved, Lopez sought reconsideration[28] but the same was denied in a Resolution[29] dated April 12, 2013, hence, this petition.

**The Issue Before the Court**

The core issue for the Court's resolution is whether or not the CA erred in finding that the NLRC gravely abused its discretion in affirming the LA's ruling that Lopez was illegally dismissed.

**The Court's Ruling**

The petition is meritorious.

Ruling on the propriety of Irvine's course of action in this case preliminarily calls for a determination of Lopez's employment status that is, whether Lopez was a project or a regular employee.

Case law states that the principal test for determining whether particular employees are properly characterized as "project employees" as distinguished from "regular employees," is whether or not the "project employees" were assigned to carry out a "specific project or undertaking," the duration and scope of which were specified at the time the employees were engaged for that project. The project could either be (1) a particular job or undertaking that is within the regular or usual business of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company; or (2) a particular job or undertaking that is not within the regular business of the corporation. In order to safeguard the rights of workers against the arbitrary use of the word "project" to prevent employees from attaining the status of regular employees, employers claiming that their workers are project employees should not only prove that the duration and scope of the employment was specified at the time they were engaged, but also that there was indeed a project.[30]

In this case, the NLRC found that no substantial evidence had been presented by Irvine to show that Lopez had been assigned to carry out a "specific project or undertaking," with its duration and scope specified at the time of engagement. In view of the weight accorded by the courts to factual findings of labor tribunals such as the NLRC, the Court, absent any cogent reason to hold otherwise, concurs with its ruling that Lopez was not a project but a regular employee.[31] This conclusion is bolstered by the undisputed fact that Lopez had been employed by Irvine since November 1994,[32] or more than 10 years from the time he was laid off on December 27, 2005.[33] Article 280 of the Labor Code provides 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:

> Art. 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** x x x. (Emphasis supplied)

As a regular employee, Lopez is entitled to security of tenure, and, hence, dismissible only if a just or authorized cause exists therefor. Article 279 of the Labor Code states this fundamental rule:

Art. 279. **Security of tenure. In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title**. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. (Emphasis supplied)

Among the authorized causes for termination under Article 283 of the Labor Code is retrenchment, or what is sometimes referred to as a "lay-off':

Art. 283. **Closure of Establishment and Reduction of Personnel**. The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, **retrenchment** to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, **by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof.** In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (112) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year. (Emphases supplied)

It is defined as the severance of employment, through no fault of and without prejudice to the employee, resorted to by management during the periods of business recession, industrial depression, or seasonal fluctuations, or during lulls caused by lack of orders, shortage of materials, conversion of the plant to a new production program or the introduction of new methods or more efficient machinery, or of automation.[34] Elsewise stated, lay-off is an act of the employer of dismissing employees because of losses in the operation, lack of work, and considerable reduction on the volume of its business, a right recognized and affirmed by the Court.[35] However, a lay-off would be tantamount to a dismissal only if it is pennanent. When a lay-off is only temporary, the employment status of the employee is not deemed terminated, but merely suspended.[36]

Pursuant to Article 286 of the Labor Code, the suspension of the operation of business or undertaking in a temporary lay-off situation must not exceed six (6) months:[37]

> ART. 286. **When Employment not Deemed Terminated. The *bona-fide* suspension of the operation of a business or undertaking for a period not exceeding six (6) months**, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty. (Emphasis supplied)

Within this six-month period, the employee should either be recalled or permanently retrenched. Otherwise, the employee would be deemed to have been dismissed, and the employee held liable therefor. As pronounced in the case of *PT & T Corp. v. NLRC*:[38]

> [Article 283 of the Labor Code as above-cited] x x x speaks of a permanent retrenchment as opposed to a temporary lay-off as is the case here. There is no specific provision of law which treats of a temporary retrenchment or lay-off and provides for the requisites in effecting it or a period or duration therefor. These employees cannot forever be temporarily laid-off. To remedy this situation or fill the hiatus, Article 286 may be applied but only by analogy to set a specific period that employees may remain temporarily laid-off or in floating status. Six months is the period set by law that the operation of a business or undertaking may be suspended thereby suspending the employment of the employees concerned. **The temporary lay-off wherein the employees likewise cease to work should also not last longer than six months. After six months, the employees should either be recalled to work or permanently retrenched following the requirements of the law, and that failing to comply with this would be tantamount to dismissing the employees and the**