

SECOND DIVISION

[G.R. No. 208567, November 26, 2014]

JEANETTE V. MANALO, VILMA P. BARRIOS, LOURDES LYNN MICHELLE FERNANDEZ AND LEILA B. TAIÑO, PETITIONERS, VS. TNS PHILIPPINES INC., AND GARY OCAMPO, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

This petition for review on *certiorari* under Rule 45 of the Rules of Court assails the January 29, 2013 Decision^[1] and the August 7, 2013 Resolution^[2] of the Court of Appeals (CA), in CA-G.R. SP No. 117637, which set aside the July 23, 2010 Decision^[3] of the National Labor Relations Commission (NLRC) and its October 28, 2010 Resolution^[4] and reinstated the May 29, 2009 Decision^[5] of the Labor Arbiter's finding that petitioners were project employees.

Respondent TNS Philippines Inc. (*TNS*), with Gary Ocampo as its president and general manager, was engaged primarily in the business of marketing research and information, as well as research consultancy and other value-added services to a wide base of clients, both local and international.^[6] As a market research facility, TNS conducted public surveys about consumer goods, products, merchandise and/or services of its clients.^[7] TNS hired several field personnel on a project-to-project basis whose functions were the following: a) to gather data on consumer goods, commodities, merchandise, and such other products as requested by clients, through personal interviews, telephone interviews and/or such other modes akin to the foregoing; and b) to submit the gathered data to the company for evaluation and/or analysis.^[8]

Petitioners Jeanette V. Manalo, Vilma P. Barrios, Lourdes Lynn Michelle Fernandez, and Leila B. Taiño (*petitioners*) were hired by TNS as field personnel on various dates starting 1996 for several projects. They were made to sign a project-to-project employment contract. Thereafter, TNS would file the corresponding termination report with the Department of Labor and Employment Regional Office (*DOLE-RO*).^[9]

Petitioners were likewise assigned office-based tasks for which they were required to be in the office from 9:00 o'clock in the morning to 6:00 o'clock in the evening, but most of the time, they worked beyond 6:00 o'clock without receiving the corresponding overtime pay. These office-based tasks were not on a per project basis and petitioners did not sign any contract for these jobs. These assignments were not reported to the DOLE either.^[10]

Later in August 2008, a meeting among the Field Interviewers (*FIs*) was called by TNS' field manager. They were told that all old FIs assigned in the "tracking"

projects would be pulled out eventually and replaced by new FIs contracted from an agency. Old FIs would be assigned only to “ad hoc” projects which were seasonal. This prompted petitioners to file a consolidated complaint for regularization before the LA.^[11]

On October 20, 2008, petitioners and TNS were required to file their respective position papers. On October 21, 2008, petitioners were advised by TNS not to report for work anymore because they were being pulled out from their current assignments and that they were not being lined up for any continuing or incoming projects because it no longer needed their services. They were also asked to surrender their company IDs.^[12] Petitioners, thereafter, filed a complaint for illegal dismissal, overtime pay, damages, and attorney’s fees against TNS. Later, the labor cases for regularization and illegal dismissal were consolidated.

On May 29, 2009, the LA rendered a decision,^[13] dismissing the complaint on the ground that petitioners were found to be project employees who knew the nature of their positions as such at the time of their employment and who agreed with full understanding that the contracts would lapse upon completion of the project stated in their respective contracts.^[14] The LA further ruled that even if petitioners were continuously rehired for several and different projects, the determining factor was whether, at the time of hiring, the employment was fixed for a specific project or undertaking and its completion was predetermined.^[15]

The LA was also of the view that petitioners were not illegally dismissed because as project employees, the employer-employee relationship was terminated upon completion of the project or phase for which they were hired. The term of their employment was coterminous with the duration and until the accomplishment of the project.^[16]

As to the claim for overtime pay and damages, the LA held that petitioners were not entitled to them. Field personnel were excluded from the coverage of the minimum requirements on hours of work and overtime pay.

Aggrieved, petitioners filed an appeal before the NLRC. Consequently, the NLRC rendered its judgment^[17] in favor of petitioners and *reversed* the LA ruling. Thus:

We note that, initially, complainants used to be project employees as shown by the samples of project-to-project employment contracts, project clearance slips, and the establishment termination reports adduced in evidence. Case records, however, show that the **last time respondent company filed an establishment termination report was in November 2007 indicating project completion on November 30, 2007**. What is clear though is that **complainants were allowed to continue working after November 30, 2007**. Respondent company **did not adduce in evidence employment contracts** relating to the latest employment of the complainants. In the absence of proof that the subsequent employment of the complainants continued to be on a project-to-project basis under a contract of employment, complainants are considered to have become regular employees after November 30, 2007. **The failure to present contract of project employment**

means that the employees are regular.^[18]

[Emphases supplied]

The NLRC further ruled that, being regular employees, petitioners were illegally dismissed because TNS, who had the burden of proving legality in dismissal cases, failed to show how and why the employment of petitioners was terminated on October 21, 2008.^[19] Thus, the NLRC set aside the LA decision and held TNS liable for illegal dismissal, ordering the latter to pay petitioners their respective backwages and separation pay.^[20]

TNS moved for reconsideration, but its motion was denied. Thus, it filed a petition for *certiorari* with prayer for preliminary injunction and/or temporary restraining order before the CA.

On January 29, 2013, the CA ruled in favor of TNS and opined that the projects assigned to petitioners were distinct and separate from the other undertakings of TNS; that they were required to sign project-to-project employment contracts; and that a corresponding termination report was made to DOLE for every accomplished project. Further, it stated that the repeated re-hiring of petitioners for at least one (1) year did not *ipso facto* convert their status to regular employees. According to the CA, the mere fact that a project employee had worked on a specific project for more than one (1) year did not necessarily change his status from project employee to regular or permanent employee.^[21]

As to the issue of grave abuse of discretion, the CA held that the NLRC committed such abuse when it refused to consider the pieces of evidence submitted by TNS during its determination of the merits of the latter's motion for reconsideration. It stressed that the technical rules of evidence were not binding in labor cases,^[22] that even if the evidence was not submitted to the LA, the fact that it was duly introduced on appeal before the NLRC was enough basis for it to admit them.^[23]

Not in conformity, petitioners filed a motion for reconsideration but it was eventually denied.

Hence, this petition presenting the following

ARGUMENTS:

I. WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE PETITIONERS ARE NOT REGULAR EMPLOYEES OF THE RESPONDENT COMPANY.

II. WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE HONORABLE NLRC COMMITTED GRAVE ABUSE OF DISCRETION.^[24]

Petitioners assert that the factual circumstances of the case undoubtedly show their

regular employment status and that the NLRC correctly exercised its discretion. The respondents argue otherwise insisting that the decision of the CA was correct.

The Court's Ruling

At the outset, it must be stressed that the Court is not a trier of facts. In petitions for review under Rule 45, the Court only resolves pure questions of law and is precluded from reviewing factual findings of the lower tribunals, subject to certain exceptions. This case is an exception as "this Court may review factual conclusions of the CA when they are contrary to those of the NLRC or of the Labor Arbiter."^[25]

Upon review of the records, the evidence failed to clearly, accurately, consistently, and convincingly show that petitioners were still project employees of TNS.

Article 280 of the Labor Code, as amended, clearly defined a project employee as 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 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. Additionally, a project employee is one whose termination of his employment contract is reported to the DOLE **everytime** the project for which he was engaged has been completed.

In their Comment,^[26] the respondents stressed that the NLRC decision was mainly anchored upon the supposed lack of compliance with the termination report requirement under the applicable DOLE Department Orders. The NLRC ruled that petitioners were regular employees for having been allowed to continue working after the last submitted termination report. Thus, TNS submitted, albeit belatedly, the termination reports from November 2007 up to the last termination report filed on November 18, 2008, by attaching it to the *motion for reconsideration* filed before the NLRC.^[27]

Although TNS belatedly submitted the supposed lacking termination reports, it failed to show the corresponding project employment contracts of petitioners covering the period indicated in the said termination reports. TNS itself stated in its motion for reconsideration^[28] before the NLRC that the project employee status of the employee could be proved by the employment contracts signed voluntarily by the employees and by the termination report filed with the DOLE after the completion of every project.^[29] Yet, no project employment contracts were shown. It is well-settled that rules of evidence shall be liberally applied in labor cases, but this does not detract from the principle that piecemeal presentation of evidence is simply not in accord with orderly justice.^[30] The NLRC was correct in saying that in the absence of proof that the subsequent employment of petitioners continued to be on a project-to-project basis under a contract of employment, petitioners were considered to have become regular employees.^[31]

TNS contended that the repeated and successive rehiring of project employees does not qualify petitioners as regular employees, as length of service is not the controlling determinant of the employment tenure of a project employee, but whether the employment has been fixed for a specific project or undertaking and its