

SECOND DIVISION

[G.R. No. 199547, September 24, 2012]

THE NEW PHILIPPINE SKYLANDERS, INC. AND/OR JENNIFER M. EÑANO-BOTE, PETITIONERS, VS. FRANCISCO N. DAKILA, RESPONDENT.

RESOLUTION

PERLAS-BERNABE, J.:

The Petition for Review on Certiorari^[1] assails the August 31, 2011^[2] and November 23, 2011^[3] Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 113015 which affirmed the September 10, 2009 Decision^[4] and December 15, 2009 Resolution^[5] of the National Labor Relations Commission (NLRC) finding respondent Francisco N. Dakila (respondent Dakila) to have been illegally dismissed.

The Factual Antecedents

Respondent Dakila was employed by petitioner corporation as early as 1987 and terminated for cause in April 1997 when the corporation was sold. In May 1997, he was rehired as consultant by the petitioners under a Contract for Consultancy Services^[6] dated April 30, 1997.

Thereafter, in a letter^[7] dated April 19, 2007, respondent Dakila informed petitioners of his compulsory retirement effective May 2, 2007 and sought for the payment of his retirement benefits pursuant to the Collective Bargaining Agreement. His request, however, was not acted upon. Instead, he was terminated from service effective May 1, 2007.

Consequently, respondent Dakila filed a complaint for constructive illegal dismissal, non-payment of retirement benefits, under/non-payment of wages and other benefits of a regular employee, and damages against petitioners, The New Philippine Skylanders, Inc. and its President and General Manager, Jennifer M. Eñano-Bote, before the NLRC. He averred, among others, that the consultancy contract was a scheme to deprive him of the benefits of regularization, claiming to have assumed tasks necessary and desirable in the trade or business of petitioners and under their direct control and supervision. In support of his claim, he submitted, among others, copies of his time cards, Official Business Itinerary Slips, Daily Attendance Sheets and other documents prescribing the manner in which his tasks were to be accomplished under the control of the petitioners and acknowledging his status as a regular employee of the corporation.

On the other hand, petitioners, in their position paper,^[8] asserted that respondent Dakila was a consultant and not their regular employee. The latter was not included in petitioners' payroll and paid a fixed amount under the consultancy contract. He

was not required to observe regular working hours and was free to adopt means and methods to accomplish his task except as to the results of the work required of him. Hence, no employer-employee relationship existed between them. Moreover, respondent Dakila terminated his contract in a letter dated April 19, 2007, thus, negating his dismissal.

Ruling of the Labor Arbiter

On May 28, 2008, Labor Arbiter Thomas T. Que, Jr. rendered a decision^[9] finding respondent Dakila to have been illegally dismissed and ordered his reinstatement with full backwages computed from the time of his dismissal on May 1, 2007 until his actual reinstatement as well as the payment of his unpaid benefits under the Collective Bargaining Agreement (CBA). He declared respondent Dakila to be a regular employee on the basis of the un rebutted documentary evidence showing that he was under the petitioners' direct control and supervision and performed tasks that were either incidental or usually desirable and necessary in the trade or business of petitioner corporation for a period of ten years. Having been dismissed without cause and notice, respondent Dakila was awarded moral and exemplary damages in the amount of P50,000.00 each. He is also entitled to avail of the corporation's retirement benefits upon his reinstatement.

Ruling of the NLRC

On appeal, the NLRC sustained the Labor Arbiter's (LA) finding that respondent Dakila was a regular employee and that his dismissal was illegal. However, it noted that since he was already beyond the retirement age, his reinstatement was no longer feasible. As such, it ordered the payment of his retirement pay to be computed from 1997 until the date of the decision. Moreover, it found respondent Dakila entitled to reinstatement wages from the time petitioners received a copy of the LA's Decision on July 7, 2008 up to the date of the NLRC's decision. Thus, it ordered the petitioners to pay respondent Dakila the additional amount of P278,508.33 representing reinstatement wages and retirement pay.^[10]

The petitioners' motion for reconsideration having been denied in the Resolution^[11] dated December 15, 2009, they filed a petition for certiorari^[12] before the CA raising the following errors:

- (1) the complaint should have been dismissed against petitioner Jennifer M. Eñano-Bote absent any showing of bad faith;
- (2) respondent Dakila is not a regular employee;
- (3) respondent was not illegally dismissed as it was the respondent who resigned; and
- (4) the LA's monetary award has no basis.

Ruling of the CA