

## THIRD DIVISION

[ G.R. No. 184362, November 15, 2010 ]

**MILLENNIUM ERECTORS CORPORATION, PETITIONER, VS.  
VIRGILIO MAGALLANES, RESPONDENT.**

### DECISION

**CARPIO MORALES, J.:**

Respondent Virgilio Magallanes started working in 1988 as a utility man for Laurencito Tiu (Tiu), Chief Executive Officer of Millennium Erectors Corporation (petitioner), Tiu's family, and Kenneth Construction Corporation. He was assigned to different construction projects undertaken by petitioner in Metro Manila, the last of which was for a building in Libis, Quezon City. In July of 2004 he was told not to report for work anymore allegedly due to old age, prompting him to file on August 6, 2004 an illegal dismissal complaint<sup>[1]</sup> before the Labor Arbiter.

In its Position Paper,<sup>[2]</sup> petitioner claimed that respondent was a project employee whom it hired for a building project in Libis on January 30, 2003, to prove which it submitted the employment contract<sup>[3]</sup> signed by him; that on August 3, 2004, respondent's services were terminated as the project was nearing completion; and he was given financial assistance<sup>[4]</sup> in the amount of P2,000, for which he signed a quitclaim and waiver.<sup>[5]</sup> Petitioner likewise submitted a termination report to the Department of Labor and Employment (DOLE) dated August 17, 2004.

Rebutting respondent's claim that he was employed since 1988, petitioner contended that it was incorporated only in February 2000, and Kenneth Construction Corporation which was established in 1989 and dissolved in 2000, was a separate and distinct entity.

By Decision<sup>[6]</sup> of November 25, 2005, the Labor Arbiter ruled in favor of petitioner and dismissed the complaint, holding that respondent knew of the nature of his employment as a project employee, he having executed an employment contract specifying therein the name of and duration of the project from January 2003 until its completion; and that the services of respondent were terminated due to the completion of the project as shown by the termination report submitted to the DOLE. The Labor Arbiter noted that respondent admitted having been assigned to several building projects and that he failed to give pertinent details of his dismissal - such as who terminated him, when he was terminated, and what were the "overt" acts leading to his dismissal.

On appeal, the National Labor Relations Commission (NLRC) set aside the Labor Arbiter's Decision<sup>[7]</sup> of February 6, 2007 holding that respondent was a regular, not a project employee, as the employment contract he supposedly signed contained the date of commencement but not a specific date when it would end, contrary to

the rule that the duration and scope of similar contracts should be clearly set forth therein; and that based on the payrolls<sup>[8]</sup> petitioner submitted and contrary to its claim that respondent was hired in January 2003, he had been employed in 2001, not 2003, lending weight to his claim that he had worked for petitioner for 16 years prior to the filing of his complaint.

The NLRC thus concluded that while respondent's work as a utility man may not have been necessary or desirable in the usual business of petitioner as a construction company, that he performed the same functions continuously for 16 years converted an otherwise casual employment to regular employment, hence, his termination without just or authorized cause amounted to illegal dismissal.

Petitioner moved for reconsideration of the NLRC decision, contending that respondent's motion for reconsideration which it treated as an appeal was not perfected, it having been belatedly filed; that there was no statement of the date of receipt of the appealed decision; and that it lacked verification and copies thereof were not furnished the adverse parties. Petitioner's motion was denied.

The Court of Appeals, to which petitioner appealed, affirmed the NLRC's ruling by Decision<sup>[9]</sup> of April 11, 2008. Petitioner's motion for reconsideration having been denied by Resolution<sup>[10]</sup> of August 28, 2008, it filed the present petition for review.

Petitioner contends that the Labor Arbiter's Decision dismissing the complaint had become final and executory following respondent's failure to perfect his appeal, maintaining that the requirements for perfection of an appeal and for proof of service are not mere rules of technicality which may easily be set aside.

The petition fails.

The NLRC did not err in treating respondent's motion for reconsideration as an appeal, the presence of some procedural flaws including the lack of verification and proof of service notwithstanding.

**In labor cases, rules of procedure should not be applied in a very rigid and technical sense.** They are merely tools designed to facilitate the attainment of justice, and where their strict application would result in the frustration rather than promotion of substantial justice, technicalities must be avoided. **Technicalities should not be permitted to stand in the way of equitably and completely resolving the rights and obligations of the parties. Where the ends of substantial justice shall be better served, the application of technical rules of procedure may be relaxed.**<sup>[11]</sup> (emphasis supplied)

Respecting the lack of verification, *Pacquing v. Coca-Cola Philippines, Inc.*<sup>[12]</sup> instructs:

**As to the defective verification in the appeal memorandum before the NLRC, the same liberality applies. After all, the requirement**