

## FIRST DIVISION

[ G.R. NO. 152427, August 09, 2005 ]

**INTEGRATED CONTRACTOR AND PLUMBING WORKS, INC.,  
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION  
AND GLEN SOLON, RESPONDENTS.**

### DECISION

**QUISUMBING, J.:**

This petition for review assails the Decision<sup>[1]</sup> dated October 30, 2001 of the Court of Appeals and its Resolution<sup>[2]</sup> dated February 28, 2002 in CA-G.R. SP No. 60136, denying the petitioner's motion for reconsideration for lack of merit. The decision affirmed the National Labor Relations Commission (NLRC) which declared private respondent Glen Solon a regular employee of the petitioner and awarded him 13th month pay, service incentive leave pay, reinstatement to his former position with full backwages from the time his salary was withheld until his reinstatement.

Petitioner is a plumbing contractor. Its business depends on the number and frequency of the projects it is able to contract with its clients.<sup>[3]</sup>

Private respondent Solon worked for petitioner. His employment records is as follows:

December 14, 1994 up to January 14, 1995	St. Charbel Warehouse
February 1, 1995 up to April 30, 1995	St. Charbel Warehouse
May 23, 1995 up to June 23, 1995	St. Charbel Warehouse
August 15, 1995 up to October 31, 1995	St. Charbel Warehouse
November 2, 1995 up to January 31, 1996	St. Charbel Warehouse
May 13, 1996 up to June 15, 1996	Ayala Triangle
August 27, 1996 up to November 30, 1996	St. Charbel Warehouse <sup>[4]</sup>
July 14, 1997 up to November 1997	ICPWI Warehouse
November 1997 up to January 5, 1998	Cathedral Heights
January 6, 1998	Rockwell Center <sup>[5]</sup>

On February 23, 1998, while private respondent was about to log out from work, he was informed by the warehouseman that the main office had instructed them to tell him it was his last day of work as he had been terminated. When private respondent went to the petitioner's office on February 24, 1998 to verify his status, he found out that indeed, he had been terminated. He went back to petitioner's office on

February 27, 1998 to sign a clearance so he could claim his 13<sup>th</sup> month pay and tax refunds. However, he had second thoughts and refused to sign the clearance when he read the clearance indicating he had resigned. On March 6, 1998, he filed a complaint alleging that he was illegally dismissed without just cause and without due process.<sup>[6]</sup>

In a **Decision** dated February 26, 1999, the Labor Arbiter ruled that private respondent was a regular employee and could only be removed for cause. Petitioner was ordered to reinstate private respondent to his former position with full backwages from the time his salary was withheld until his actual reinstatement, and pay him service incentive leave pay, and 13<sup>th</sup> month pay for three years in the amount of P2,880 and P14,976, respectively.

Petitioner appealed to the National Labor Relations Commission (NLRC), which ruled:

WHEREFORE, prescinding from the foregoing and in the interest of justice, the decision of the Labor Arbiter is hereby AFFIRMED with a MODIFICATION that the 13th month pay should be given only for the year 1997 and portion of 1998. Backwages shall be computed from the time he was illegally dismissed up to the time of his actual reinstatement. Likewise, service incentive leave pay for three (3) years is also awarded to appellee in the amount of P2,880.00.

SO ORDERED.<sup>[7]</sup>

Petitioner's Motion for Reconsideration was denied.<sup>[8]</sup>

Petitioner appealed to the Court of Appeals, alleging that the NLRC committed grave abuse of discretion in finding that the private respondent was a regular employee and in awarding 13<sup>th</sup> month pay, service incentive leave pay, and holiday pay to the private respondent despite evidence of payment. The said petition was dismissed for lack of merit.<sup>[9]</sup>

Before us now, petitioner raises the following issues: (1) Whether the respondent is a project employee of the petitioner or a regular employee; and (2) Whether the Court of Appeals erred seriously in awarding 13th month pay for the entire year of 1997 and service incentive leave pay to the respondent and without taking cognizance of the evidence presented by petitioner.<sup>[10]</sup>

The petitioner asserts that the private respondent was a project employee. Thus, when the project was completed and private respondent was not re-assigned to another project, petitioner did not violate any law since it was petitioner's discretion to re-assign the private respondent to other projects.<sup>[11]</sup>

Article 280 of the Labor Code states:

The provisions of written agreement of 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' (Italics supplied.)

We held in *Tomas Lao Construction v. NLRC*<sup>[12]</sup> that the principal test in determining whether an employee is a "project employee" or "regular employee," is, whether he is assigned to carry out a "specific project or undertaking," the duration (and scope) of which are specified at the time the employee is engaged in the project.<sup>[13]</sup> "Project" refers to a particular job or undertaking that is within the regular or usual business of the employer, but which is distinct and separate and identifiable from the undertakings of the company. Such job or undertaking begins and ends at determined or determinable times.<sup>[14]</sup>

In our review of the employment contracts of private respondent, we are convinced he was initially a project employee. The services he rendered, the duration and scope of each project are clear indications that he was hired as a project employee.

We concur with the NLRC that while there were several employment contracts between private respondent and petitioner, in all of them, private respondent performed tasks which were usually necessary or desirable in the usual business or trade of petitioner. A review of private respondent's work assignments patently showed he belonged to a work pool tapped from where workers are and assigned whenever their services were needed. In a work pool, the workers do not receive salaries and are free to seek other employment during temporary breaks in the business. They are like regular seasonal workers insofar as the effect of temporary cessation of work is concerned. This arrangement is beneficial to both the employer and employee for it prevents the unjust situation of "coddling labor at the expense of capital" and at the same time enables the workers to attain the status of regular employees.<sup>[15]</sup> Nonetheless, the pattern of re-hiring and the recurring need for his services are sufficient evidence of the necessity and indispensability of such services to petitioner's business or trade.<sup>[16]</sup>

In *Maraguinot, Jr. v. NLRC*<sup>[17]</sup> we ruled that once a project or work pool employee has been: (1) continuously, as opposed to intermittently, re-hired by the same employer for the same tasks or nature of tasks; and (2) these tasks are vital, necessary and indispensable to the usual business or trade of the employer, then the employee must be deemed a regular employee.

In this case, did the private respondent become a regular employee then?

The test to determine whether employment is regular or not is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. Also, if the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability of that activity to the business.<sup>[18]</sup> Thus, we held that where the employment of project employees is extended long after the supposed project has been finished, the