385 Phil. 999

SECOND DIVISION

[G.R. No. 114734, March 31, 2000]

VIVIAN Y.IMBUIDO, PETITIONER, *VS*. NATIONAL LABOR RELATIONS COMMISSION, INTERNATIONAL INFORMATION SERVICES, INC. AND GABRIEL LIBRANDO, RESPONDENTS.

D E C I S I O N

BUENA, J.:

This special civil action for *certiorari* seeks to set aside the Decision[1] of the National Labor Relations Commission (NLRC) promulgated on September 27, 1993 and its Order dated January 11, 1994, which denied petitioner's motion for reconsideration.

Petitioner was employed as a data encoder by private respondent International Information Services, Inc., a domestic corporation engaged in the business of data encoding and keypunching, from August 26, 1988 until October 18, 1991 when her services were terminated. From August 26, 1988 until October 18, 1991, petitioner entered into thirteen (13) separate employment contracts with private respondent, each contract lasting only for a period of three (3) months. Aside from the basic hourly rate, specific job contract number and period of employment, each contract contains the following terms and conditions:

> "a. This Contract is for a specific project/job contract only and shall be effective for the period covered as above-mentioned unless sooner terminated when the job contract is completed earlier or withdrawn by client, or when employee is dismissed for just and lawful causes provided by law. The happening of any of these events will automatically terminate this contract of employment.
>
> "b. Subject shall abide with the Company's rules and regulations for its employees attached herein to form an integral part hereof.
>
> "c. The nature of your job may require you to render overtime work with pay so as not to disrupt the Company's commitment of scheduled delivery dates made on said job contract."[2]

In September 1991, petitioner and twelve (12) other employees of private respondent allegedly agreed to the filing of a petition for certification election involving the rank-and-file employees of private respondent.[3] Thus, on October 8, 1991, Lakas Manggagawa sa Pilipinas (LAKAS) filed a petition for certification election with the Bureau of Labor Relations (BLR), docketed as NCR-OD-M-9110-128.[4]

Subsequently, on October 18, 1991, petitioner received a termination letter from Edna Kasilag, Administrative Officer of private respondent, allegedly "due to low volume of work."[5]

Thus, on May 25, 1992, petitioner filed a complaint for illegal dismissal with prayer for service incentive leave pay and 13th month differential pay, with the National Labor Relations Commission, National Capital Region, Arbitration Branch, docketed as NLRC-NCR Case No. 05-02912-92.[6]

In her position paper dated August 3, 1992 and filed before labor arbiter Raul T. Aquino, petitioner alleged that her employment was terminated not due to the alleged low volume of work but because she "signed a petition for certification election among the rank and file employees of respondents," thus charging private respondent with committing unfair labor practices. Petitioner further complained of non-payment of service incentive leave benefits and underpayment of 13th month pay.[7]

On the other hand, private respondent, in its position paper filed on July 16, 1992, maintained that it had valid reasons to terminate petitioner's employment and disclaimed any knowledge of the existence or formation of a union among its rank-and-file employees at the time petitioner's services were terminated.[8] Private respondent stressed that its business "...relies heavily on companies availing of its services. Its retention by client companies with particular emphasis on data encoding is on a project to project basis,"[9] usually lasting for a period of "two (2) to five (5) months." Private respondent further argued that petitioner's employment was for a "specific project with a specified period of engagement." According to private respondent, "...the certainty of the expiration of complainant's engagement has been determined at the time of their (sic) engagement (until 27 November 1991) or when the project is earlier completed or when the client withdraws," as provided in the contract.[10] "The happening of the second event [completion of the project] has materialized, thus, her contract of employment is deemed terminated per the Brent School ruling."[11] Finally, private respondent averred that petitioner's "claims for non-payment of overtime time (sic) and service incentive leave [pay] are without factual and legal basis."[12]

In a decision dated August 25, 1992, labor arbiter Raul T. Aquino, ruled in favor of petitioner, and accordingly ordered her reinstatement without loss of seniority rights and privileges, and the payment of backwages and service incentive leave pay. The dispositive part of the said decision reads:

> "**WHEREFORE**, responsive to the foregoing, judgment is hereby rendered ordering respondents to immediately reinstate complainant [petitioner herein] as a regular employee to her former position without loss of seniority rights and privileges and to pay backwages from the time of dismissal up to the date of this decision, the same to continue until complainant [`s] [petitioner herein] actual reinstatement from (sic) the service. Respondents are likewise ordered to pay complainant [petitioner herein] service incentive leave pay computed as follows:

Backwages:

10/18/91 - 8/25/92 = 10.23 mos.
P118.00 x 26 x 10.23 mos. = P31,
385.64

Service Incentive Leave Pay
1989 = P89.00 x 5 days = P445.00

1990 = 106 x 5 days = P530.00
1991 = 118 x 5 days = P590.00

P 1, 565.00

Total P32, 950.64

SO ORDERED."[13]

In his decision, the labor arbiter found petitioner to be a regular employee, ruling that "[e]ven if herein complainant [petitioner herein] had been obstensively (sic) hired for a fixed period or for a specific undertaking, she should be considered as [a] regular employee of the respondents in conformity with the provisions (sic) laid down under Article 280 of the Labor Code,"[14] after finding that "...[i]t is crystal clear that herein complainant [petitioner herein] performed a job which are (sic) usually necessary or desirable in the usual business of respondent [s]."[15] The labor arbiter further denounced "...the purpose behind the series of contracts which respondents required complainant to execute as a condition of employment was to evade the true intent and spirit of the labor laws for the workingmen...."[16] Furthermore, the labor arbiter concluded that petitioner was illegally dismissed because the alleged reason for her termination, that is, low volume of work, is "not among the just causes for termination recognized by law,"[17] hence, he ordered her immediate reinstatement without loss of seniority rights and with full backwages. With regard to the service incentive leave pay, the labor arbiter decided "...to grant the same for failure of the respondents to fully controvert said claims."[18] Lastly, the labor arbiter rejected petitioner's claim for 13th month pay "...since complainant [petitioner herein] failed to fully substantiate and argued (sic) the same."[19]

On appeal, the NLRC reversed the decision of the labor arbiter in a decision[20] promulgated on September 27, 1993, the dispositive part of which reads:

> "**WHEREFORE**, the appealed decision is hereby set aside. The complaint for illegal dismissal is hereby dismissed for being without merit. Complainant's [petitioner herein] claim for service incentive leave pay is hereby remanded for further arbitration.
>
> **SO ORDERED**."[21]

The NLRC ruled that "[t]here is no question that the complainant [petitioner herein],

viewed in relation to said Article 280 of the [Labor] Code, is a regular employee judging from the function and/or work for which she was hired. xxx xxx. But this does not necessarily mean that the complainant [petitioner herein] has to be guaranteed a tenurial security beyond the period for which she was hired."[22] The NLRC held that `...the complainant [petitioner herein], while hired as a regular worker, is statutorily guaranteed, in her tenurial security, only up to the time the specific project for which she was hired is completed."[23] Hence, the NLRC concluded that "[w]ith the specific project "at RCBC 014" admittedly completed, the complainant [petitioner herein] has therefore no valid basis in charging illegal dismissal for her concomittant (sic) dislocation."[24]

In an Order dated January 11, 1994, the NLRC denied petitioner's motion for reconsideration.[25]

In this petition for *certiorari*, petitioner, for and in her behalf, argues that (1) the public respondent "committed grave abuse of discretion when it ignored the findings of Labor Arbiter Raul Aquino based on the evidence presented directly before him, and when it made findings of fact that are contrary to or not supported by evidence,"[26] (2) "[p]etitioner was a "regular employee," NOT a "project employee" as found by public respondent NLRC,"[27] (3) "[t]he termination of petition (sic) was tainted with unfair labor practice,"[28] and (4) the public respondent "committed grave abuse of discretion in remanding the awarded service incentive leave pay for further arbitration."[29]

The petition is impressed with merit.

We agree with the findings of the NLRC that petitioner is a project employee. The principal test for determining whether an employee is a project employee or a regular employee is whether the project employee was assigned to carry out a specific project or undertaking, the duration and scope of which were specified at the time the employee was engaged for that project.[30] A project employee is 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.[31] In the instant case, petitioner was engaged to perform activities which were usually necessary or desirable in the usual business or trade of the employer, as admittedly, petitioner worked as a data encoder for private respondent, a corporation engaged in the business of data encoding and keypunching, and her employment was fixed for a specific project or undertaking the completion or termination of which had been determined at the time of her engagement, as may be observed from the series of employment contracts[32] between petitioner and private respondent, all of which contained a designation of the specific job contract and a specific period of employment.

However, even as we concur with the NLRC's findings that petitioner is a project employee, we have reached a different conclusion. In the recent case of Maraguinot, Jr. vs. NLRC,**[33]** we held that "[a] project employee or a member of a work pool may acquire the status of a regular employee when the following concur: