

THIRD DIVISION

[G.R. No. 103670, July 10, 1998]

**PHILIPPINE NATIONAL CONSTRUCTION CORPORATION,
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION,
EFREN MANABO AND IRENEO SORIANO, RESPONDENTS.**

D E C I S I O N

ROMERO, J.:

Assailed in this special civil action of certiorari under Rule 65 of the Rules of Court is the decision of the respondent National Labor Relations Commission (NLRC) reversing the Labor Arbiter's dismissal of private respondents' complaints and awarding them separation pay upon the finding that they were regular, not project employees, who were illegally terminated by petitioner.

Private respondents Efren Manabo and Ireneo Soriano, for about seven and nine years respectively, had been employees of petitioner, a government-owned and controlled corporation engaged in the business of general construction, both in the Philippines and overseas. On July 19, 1985 private respondents filed separate complaints against petitioner charging illegal dismissal and claiming separation pay.

[1]

Petitioner hired Efren Manabo as a laborer on July 10, 1976 at the petitioner's MSEX/Carmona Project, where he was paid P1.35 pesos per hour. On October 11, 1977 he was transferred to the company's international operation in Najran, Kingdom of Saudi Arabia working initially as shovel raker and eventually as asphalt distributor, for which he was compensated \$1.90 per hour. Upon completion of the project, he was repatriated to the Philippines on August 7, 1983. However, after his return to the Philippines, he was not given any assignment for which reason he claims that he was illegally dismissed.[2]

Ireneo Soriano was hired by petitioner on November 26, 1975 as lead mechanic with the petitioner's equipment and management department with a salary of P4.50 pesos per hour. On August 19, 1981, he was transferred to petitioner's international operation in Najran, KSA project, where he also served as a lead mechanic with a salary of \$2.20 per hour. On June 6, 1984, upon completion of the project, he was repatriated to the Philippines. Soriano claimed that petitioner failed to assign him to any local project upon his arrival in the Philippines which was, according to him, tantamount to his separation from employment.[3]

Petitioner, on the other hand, claims that private respondents were project employees; that they were hired for specific projects and their tenure was fixed for the duration of the project; and it was the termination of the project that ended their employment. Therefore, they are not entitled to any separation pay pursuant to the provisions of Policy Instruction No. 20.[4]

On June 26, 1990, the Labor Arbiter dismissed the complaints for lack of merit declaring private respondents project employees of petitioner. Private respondents appealed.

In a decision dated January 13, 1992 respondent NLRC reversed the Labor Arbiter after finding private respondents to be regular, not project employees, of the petitioner and therefore entitled to separation pay:

“WHEREFORE, premises considered, the decision dated June 26, 1990 is hereby reversed and respondent Construction Development Corporation of the Philippines (now Philippine National Construction Corporation) is hereby ordered to pay as his separation pay to Efren Manabo, the amount of SEVENTY FOUR THOUSAND SIX HUNDRED NINETY TWO AND 80/100 PESOS (P74,692.80); and similarly to Ireneo Soriano, the sum of ONE HUNDRED ELEVEN THOUSAND ONE HUNDRED NINETY SIX AND 80/100 PESOS (P111,196.80).”^[5]

Petitioner did not file a motion for reconsideration stating that it was not aware of the appeal interposed by private respondents, as it was not furnished a copy of private respondents’ memorandum of appeal. Instead, petitioner directly filed this petition for certiorari.

We find the petition meritorious.

Petitioner claims that respondent NLRC acted in excess of its jurisdiction when it entertained the instant appeal when the same is null and void. In this regard, the Solicitor General recommends that the NLRC decision be set aside on the ground that petitioner was denied due process and that further proceedings be held to afford petitioner the opportunity to participate therein.^[6]

After a careful examination of the records, the Court fully agrees with the Solicitor General’s view that the proceedings before the NLRC were tainted with due process violation. It appears that petitioner was not a participant in the appeal interposed by private respondents. Apparently, such non-participation was never petitioner’s choice as the record is bereft of any indication that petitioner was ever informed or notified of private respondents’ appeal. There is no proof that petitioner was furnished a copy of private respondents’ Memorandum of Appeal, nor was it required to comment thereon. No reference is made whatsoever in the NLRC Decision to any argument, position or comment raised by petitioner in response to the appeal. That petitioner was denied due process is well-substantiated.

The NLRC’s grave omission to afford petitioner a chance to be heard on appeal is a clear violation of its constitutional right and has the effect of rendering its judgment null and void.^[7]

It is a cardinal rule in law that a decision or judgment is fatally defective if rendered in violation of a party-litigant’s right to due process.

Petitioner’s non-filing of a motion for reconsideration of the NLRC’s decision is understandable considering that it was deprived of due process. The Court has ruled that a motion for reconsideration may be dispensed with prior to commencement of