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# SECOND DIVISION

# [ G.R. No. 120064, August 15, 1997 ]

## FERDINAND PALOMARES AND TEODULO MUTIA, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, (5TH DIVISION) AND NATIONAL STEEL CORPORATION, RESPONDENTS.

## D E C I S I O N

**ROMERO, J.:**

The issue presented before this Court is whether or not petitioners should be considered regular employees of respondent corporation.

Petitioners, along with other employees, filed a consolidated petition for regularization, wage differential, CBA coverage and other benefits.[2] In his decision dated April 29, 1992, Labor Arbiter Nicodemus G. Palangan ordered the dismissal of the complaint with respect to 26 complainants but ruled in favor of petitioners. Palomares, Mutia and four other complainants were adjudged as regular employees of respondent corporation. The dispositive portion of his decision reads:

"WHEREFORE, premises considered, the petition for regularization as well as the monetary benefits of the above-named complainants are hereby ordered DISMISSED for lack of merit except six complainants stated below.

However, the respondent shall not terminate their services while the activities they performed still exist, and to give them preference provided they are qualified in cases of vacancies when the expansion program becomes operational.

For the complainants who were terminated during the pendency of these cases the respondent is hereby ordered to pay them separation pay equivalent to one month salary for those who have rendered one or two years of service and three months salary for those who have served the company for at least 5 years.

For complainants Edgardo Pongase, Aquiles Colita, Lolinio Solatorio, Ferdinand Palomares, Teodulo Mutia, and Rodolfo Leopoldo, this office consider (sic) them as regular employees for reason that the activities they performed are regular, and necessary in the usual trade or course of business of the company.

Respondent is likewise ordered to pay these regular employees their salary differential to be computed three years back from the filing of

these complaints.

All other claims are hereby ordered dismissed.

SO ORDERED."[3] (Emphasis added)

On appeal, the NLRC reversed the findings of the Labor Arbiter in a decision dated November 23, 1994. Respondent Commission held that petitioners were project employees and that their assumption of regular jobs were mainly due to peakloads or the absence of regular employees during the latter's temporary leave.[4] After their motion for reconsideration was denied on March 30, 1995,[5] petitioners filed this petition.

The Court finds that petitioners failed to show any grave abuse of discretion on the part of the NLRC in rendering its questioned decision and resolutions of November 23, 1994 and March 30, 1995, respectively.

Petitioners argue that as regards functions and duration of work, contracted employees should, by operation of law, be considered regular employees. Respondent NSC, on the other hand, maintains that petitioners are mere project employees, engaged to work on the latter's Five-Year Expansion Projects (FYEP), Phases I and II-A, hence, dismissible upon the expiration of every particular project.

Article 280 of the Labor Code, the law on the subject of regular employment, reads:

> "The provisions of the written agreement to 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.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such actually exists." (Emphasis added).

The principal test for determining whether an employee is a project employee and not a regular employee is whether he was assigned to carry out a specific project or undertaking, the duration and scope of which were specified at the time he was engaged for that project.[6]

It is quite evident that petitioners were employed for a specific project or projects undertaken by respondent corporation. The component projects of the latter's Five Year Expansion Program include the setting up of a Cold Rolling Mill Expansion Project, establishing a Billet Steel-Making Plant, installation of a Five Stand TDM and Cold Mill Peripherals Project. In the case of ALU-TUCP v. NLRC, we held that the

same Five Year Expansion Program (or more precisely, each of its component projects) constitutes a distinct undertaking identifiable from the ordinary business and activity of NSC, which is the production and marketing of steel products.[7] Further:

> "Each component project, of course, begins and ends at specified times, which had already been determined by the time petitioners were engaged. We also note that NSC did the work here involved - the construction of buildings and civil and electrical works, installation of machinery and equipment and the commissioning of such machinery - only for itself. Private respondent NSC was not in the business of constructing buildings and installing plant machinery for the general business community, i.e., for unrelated, third party, corporations. NSC did not hold itself out to the public as a construction company or as an engineering corporation."(Emphasis supplied.)[8]

Respondent corporation's FYEP I was to cover years 1982 to 1988; the FYEP II to cover the years 1989 to 1994; and FYEP III to cover succeeding years. The NLRC added that FYEP III has not yet materialized due to financial and political difficulties. [9]

Mutia was initially assigned in the shipbreaking operations of the NSC. This venture consists of land and sea operations - the latter consisting of breaking salvaged vessels into chunks, while the land-based operation consists of cutting these chunks into small and meltable sizes. The metal scraps are consequently utilized to produce billets at NSC's Billet Steel-Making Plant (BSP), a completely new installation, and one of the component projects in the FYEP.

Unfortunately, the operation was found to be an unreliable source of scrap metals due to scarcity of vessels for salvaging, higher cost of operations and unsuitable raw material mix. It was permanently phased out sometime in November 1986.[10] Consequently, Mutia was transferred to other component projects of FYEP.

Palomares' assertion, on the other hand, that he was hired even before the FYEP began is misleading. He was actually employed on October 3, 1984, long after the FYEP began its preparatory stages in 1982. Two years from FYEP's inception, NSC found itself in need of more project workers. It was in this factual context that Palomares was engaged in 1984 as clerk typist detailed at the Office Services department of NSC.

The records show that petitioners were hired to work on projects for FYEP I and II-A. On account of the expiration of their contracts of employment and/or project completion, petitioners were terminated from their employment. They were, however, rehired for other component projects of the FYEP because they were qualified. Thus, the Court is convinced that petitioners were engaged only to augment the workforce of NSC for its aforesaid expansion program.

In the case of Philippine National Oil Company - Energy Development Corporation v. NLRC, we set forth the criteria for fixed contracts of employment which do not circumvent security of tenure, to wit: (1) The fixed period of employment was knowingly and voluntarily agreed upon by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other