

## SECOND DIVISION

**[ G.R. No. 119523, October 10, 1997 ]**

**ISABELO VIOLETA AND JOVITO BALTAZAR, PETITIONERS, VS.  
NATIONAL LABOR RELATIONS COMMISSION, FIFTH DIVISION,  
AND DASMARINAS INDUSTRIAL AND STEELWORKS  
CORPORATIONS, RESPONDENTS.  
D E C I S I O N**

**REGALADO, J.:**

Petitioners Isabelo Violeta and Jovito Baltazar were former employees of private respondent Dasmariñas Industrial and Steelworks Corporation (DISC). Their records of service and employment, insofar as the same are material to this case, are not in dispute.

Petitioner Violeta worked in Construction and Development Corporation of the Philippines (CDCP), a sister corporation of private respondent, at its project in CDCP Mines, Basay, Negros Oriental from December 15, 1980 up to February 15, 1981. Private respondent then hired him as Erector II at the former's project for Philphos in Isabel, Leyte on November 10, 1982 until the termination of the project on December 3, 1984. On January 21, 1985, he was reassigned as Erector II for Five Stand TCM Project, with vacation and sick leaves, and was designated as a regular project employee at private respondent's project for National Steel Corporation (NSC) in Iligan City. After receiving a salary adjustment, he was again hired on June 6, 1989 as Handyman for the civil works of a construction project for NSC.<sup>[1]</sup> On February 10, 1992, he was appointed for project employment, again as Handyman, to NSC ETL #3 Civil Works by private respondent. Due to the completion of the particular item of work he was assigned to, private respondent terminated the services of petitioner Violeta on March 15, 1992.<sup>[2]</sup>

Petitioner Baltazar started in the employ of CDCP on June 23, 1980. He was hired by private respondent as Lead Carpenter for project Agua VII on October 1, 1981. Like petitioner Violeta, he was transferred from one project to another as a regular project employee.<sup>[3]</sup> On November 28, 1991, he was hired as Leadman II in ETL #3 Civil Works by private respondent in its project for NSC, but he was separated from such employment on December 20, 1991 as a result of the completion of said item of work.<sup>[4]</sup>

Upon their separation, petitioners executed a quitclaim wherein they declared that they have no claim against private respondent and supposedly discharged private respondent from any liability arising from their employment.<sup>[5]</sup>

Contending that they are already regular employees who cannot be dismissed on the ground of completion of the particular project where they are engaged, petitioners filed two separate complaints for illegal dismissal against private

respondent, with a prayer for reinstatement and back wages plus damages.

Private respondent admitted that it is engaged in the development and construction of infrastructure projects and maintained that Violeta was hired on June 6, 1989 to March 15, 1992 as Handyman while Baltazar was employed on June 6, 1989 to December 20, 1991 as Leadman II.<sup>[6]</sup> It argued that both are project employees based on their declaration in their Appointments for Project Employment that they are employed only for the period and specific works stated in their respective appointments, in addition to their admission that they are project employees who are subject to the provisions of Policy Instruction No. 20.<sup>[7]</sup>

Labor Arbiter Guardson A. Siao dismissed the claims of petitioners for lack of merit but ordered private respondent to grant them separation pay.<sup>[8]</sup> The labor arbiter concluded that petitioners are project employees based on their admission that they are regular project employees. Thus, their employment was deemed coterminous with the project for which their employer engaged them. Their separation was declared valid and their claims for reinstatement and back wages were denied. The award of separation pay was based on the findings of the labor arbiter that it is the policy of private respondent to pay employees who have rendered at least one year of continuous service.

Petitioners and private respondent duly appealed the ruling of the labor arbiter to respondent NLRC.

Finding petitioners to be non-project employees in its resolution dated August 17, 1994,<sup>[9]</sup> the Fifth Division of the NLRC reversed the decision of the labor arbiter and declared petitioners' dismissal as illegal. Private respondent company was thereafter ordered to reinstate petitioners to their former positions without loss of seniority rights and to pay them back wages operative from the date of petitioners' dismissal. In the event that reinstatement can no longer be made due to any lawful supervening event, the labor tribunal directed private respondent to further give petitioners the corresponding separation pay. Private respondent was also required to pay attorney's fees to petitioners.

According to the NLRC, although the appointment contracts of petitioners specified fixed terms or periods of employment, the fact that they were hired and transferred from one project to another made both petitioners non-project employees who cannot be terminated by reason alone of the completion of the project. They were hired not only for one particular project but different projects, one after the other.

However, on November 15, 1994,<sup>[10]</sup> the same division of the NLRC reversed itself upon motion of private respondent and set aside its earlier resolution. Reportedly, a reexamination of the same evidence before it led the labor court to conclude that the employment of petitioners in ETL #3 Civil Works was allegedly for a specific or fixed period thus making petitioners project employees. This time, it held that since the termination of petitioners' employment was due to the completion of the project, petitioners are therefore not entitled to separation pay. It ruled that this would hold true even if petitioners were categorized as regular project employees because their employment was not permanent but coterminous with the projects to which they were assigned. No other substantial reason was given for the adjudicative turnabout.

In this petition for certiorari, petitioners contend that public respondent (NLRC) committed grave abuse of discretion amounting to lack of jurisdiction when it granted the motion for reconsideration of private respondents in its November 15, 1994 resolution. Such novatory resolution, petitioners contend, was not only too abbreviated but actually disregarded applicable laws and jurisprudence governing the characterization of employees in the construction industry.

We have held that the services of project employees are coterminous with the project and may be terminated upon the end or completion of that project for which they were hired. Regular employees, in contrast, are legally entitled to remain in the service of their employer until their services are terminated by one or another of the recognized modes of termination of service under the Labor Code.<sup>[11]</sup>

Foremost for our resolution then is the issue of whether petitioners are regular (non-project) employees or project employees. Upon the resolution of this query rests the validity of petitioners' dismissal.

The source of the definition of a regular employee vis-à-vis a project employee is found in Article 280 of the Labor Code which provides:

*Art. 280. Regular and casual employment.* - The provisions of 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 service to be performed is seasonal in nature and the employment is for the duration of the season.

An employee 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 activity exists. (Emphases ours).

Article 280 was emplaced in our statute books to prevent the circumvention of the employee's right to be secure in his tenure by indiscriminately and completely ruling out all written and oral agreements inconsistent with the concept of regular employment defined therein.<sup>[12]</sup> Where an employee has been engaged to perform activities which are usually necessary or desirable in the usual business of the employer, such employee is deemed a regular employee and is entitled to security of tenure notwithstanding the contrary provisions of his contract of employment.<sup>[13]</sup>

As Handyman and Erector II, respectively, petitioners' services are both necessary and vital to the operation of the business of private respondent. This is not at all

traversed, but is even confirmed by the fact that they were continually and successively assigned to the different projects of private respondent and its sister company, CDCP.

In order to properly characterize petitioners' employment, we now proceed to ascertain whether or not their employment falls under the exceptions provided in Article 280 of the Code.

The principal test for determining whether particular employees are properly characterized as "project employees," as distinguished from "regular employees," is whether or not the "project employees" were assigned to carry out a "specific project or undertaking," the duration (and scope) of which were specified at the time the employees were engaged for that project.<sup>[14]</sup> As defined, project employees are those workers hired (1) for a specific project or undertaking, and (2) the completion or termination of such project or undertaking has been determined at the time of engagement of the employee.<sup>[15]</sup>

Based on the above criteria, we find petitioners to be regular employees of private respondent, and not project employees as postulated by respondent NLRC. Petitioners' dismissal, therefore, could not be justified by the completion of their items of work.

The predetermination of the duration or period of a project employment is important in resolving whether one is a project employee or not. On this score, the term period has been defined to be "a length of existence; duration. A point of time marking a termination as of a cause or an activity; an end, a limit, a bound; conclusion; termination. A series of years, months or days in which something is completed. A time of definite length or the period from one fixed date to another fixed date."<sup>[16]</sup>

There is no debate that petitioners were hired for a specific project or undertaking. Their Appointments for Project Employment clearly state that their employment is for NSC ETL #3 Civil Works. The fact of the completion of said item of work is also undisputed. However, the records are barren of any definite period or duration for the expiration of the assigned items of work of petitioners at the time of their engagement. An examination of said appointments reveal that the completion or termination of the project for which petitioners were hired was not determined at the start of their employment. There is no specific mention of the period or duration when the project will be completed or terminated. In fact, the lines for "DATE OF COVERAGE" in the appointments (referring to the particular items of work for which petitioners are engaged) are left blank.

While the word "co-terminus" was adopted in the appointments of petitioners, it cannot readily be concluded that their employment with private respondent is for a definite duration, that is, until the completion of their items of work, because there are other words used in the aforesaid appointments affecting their entitlement to stay in their job. To be concrete, the pertinent terms of the Appointments For Project Employment of petitioners are quoted below, thus: