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THIRD DIVISION

[G.R. No. 114290, September 09, 1996]

RAYCOR AIRCONTROL SYSTEMS, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND ROLANDO LAYA, ET AL., RESPONDENTS.

D E C I S I O N

PANGANIBAN, J.:

Were private respondents, employed by petitioner in its business of installing airconditioning systems in buildings, project employees or regular employees? And were their dismissals "due to (petitioner's) present business status" and effective the day following receipt of notice legal? Where both the petitioner and the respondents fail to present sufficient and convincing evidence to prove their respective claims, how should the case be decided?

This Court answers the foregoing questions in resolving this petition for certiorari assailing the Decision[1] promulgated November 29, 1993 by the National Labor Relations Commission,[2] which set aside and reversed the decision of the labor arbiter[3] dated 22 January 1993, as well as the subsequent order of respondent Commission denying petitioner's motion for reconsideration.

The Facts

Petitioner's sole line of business is installing airconditioning systems in the buildings of its clients. In connection with such installation work, petitioner hired private respondents Roberto Fulgencio, Rolando Laya, Florencio Espina, Romulo Magpili, Ramil Hernandez, Wilfredo Brun, Eduardo Reyes, Crisostomo Donompili, Angelito Realingo, Hernan Delima, Jaime Calipayan, Jorge Cipriano, Carlito de Guzman, Susano Atienza, and Gerardo de Guzman, who worked in various capacities as tinsmith, leadman, aircon mechanic, installer, welder and painter. Private respondents insist that they had been regular employees all along, but petitioner maintains that they were project employees who were assigned to work on specific projects of petitioner, and that the nature of petitioner's business -- mere installation (not manufacturing) of aircon systems and equipment in buildings of its clients -- prevented petitioner from hiring private respondents as *regular* employees. As found by the labor arbiter, their average length of service with petitioner exceeded one year, with some ranging from two to six years (but private respondents claim much longer tenures, some allegedly exceeding ten years).

In 1991, private respondent Laya and fourteen other employees of petitioner filed NLRC NCR Case No. 00-03-02080-92 for their "regularization". This case, was dismissed on May 20, 1992 for want of cause of action.[4]

On different dates in 1992, they were served with uniformly-worded notices of

"Termination of Employment" by petitioner "due to our present business status", which terminations were to be effective the day following the date of receipt of the notices. Private respondents felt they were given their walking papers after they refused to sign a "Contract Employment" providing for, among others, a fixed period of employment which "automatically terminates without necessity of further notice" or even earlier at petitioner's sole discretion.

Because of the termination, private respondents filed three cases of illegal dismissal against petitioner, alleging that the reason given for the termination of their employment was not one of the valid grounds therefor under the Labor Code. They also claimed that the termination was without benefit of due process.

The three separate cases filed by private respondents against petitioner, docketed as NLRC-NCR 00-03-05930-92, NLRC NCR 00-05-02789-92, and NLRC NCR 00-07-03699-92, were subsequently consolidated. The parties were given opportunity to file their respective memoranda and other supplemental pleadings before the labor arbiter.

On January 22, 1993, the Labor Arbiter issued his decision *dismissing the complaints for lack of merit.* He reasoned that the evidence showed that the individual complainants (private respondents) were project employees within the meaning of Policy Instructions No. 20 (series of 1977)[5] of the Department of Labor and Employment, having been assigned to work on specific projects involving the installation of air-conditioning units as covered by contracts between their employer and the latter's clients. Necessarily, the installation of airconditioning systems "must come to a halt as projects come and go", and "(o)f consequence, the [petitioner] cannot hire workers in perpetuity. And as project employees, private respondents would not be entitled to termination pay, separation pay, holiday premium pay, etc.; and neither is the employer required to secure a clearance from the Secretary of Labor in connection with such termination.

Private respondents appealed to the respondent NLRC, which in its November 29, 1993 Decision *reversed* the arbiter and found private respondents to have been regular employees illegally dismissed. The respondent Commission made the following four-paragraph disquisition:

> "From the above rules, it can easily be- gleaned that complainants belong to a work pool from which the respondent company drew its manpower requirements. This is buttressed by the fact that many of the complainants have been employed for long periods of time already.
>
> We doubt respondent's assertion that complainants were really assigned to different projects. The 'Contract Employment' which it submitted (see pp. 32-38, record) purporting to show particular projects are not reliable nay even appears to have been contrived. The names of the projects clearly appear to have been recently typewritten. In the 'Contract Employment' submitted by complainants (see p. 65, record), no such name of project appears. Verily, complainants were non-project employees.
>
> Anent the dismissal of complainants, suffice it to state that the same was capricious and whimsical as shown by the vague reason proffered by

respondent for said dismissal which is 'due to our present business states' (should read 'status') is undoubtedly not one of the valid causes for termination of an employment. We are thus inclined to give credence to complainants' allegation that they were eased out of work for their refusal to sign the one-sided 'Contract Employment.'

The fact that complainants were dismissed merely to spite them is made more manifest by respondent's failure to make a report of dismissal or secure a clearance from the Department of Labor (see pp. 196 and 197, record) as required under P.I. No. 20 and their publication of an advertisement for replacements for the same positions held by complainants (see p. 298, record). Even assuming that complainants were project employees, their unceremonious dismissal coupled with the attempt to replace them via the newspaper advertisement entitles them to reinstatement with backwages under P.I., No. 20."

The dispositive portion followed immediately and read:

"WHEREFORE, the appealed Decision is hereby SET ASIDE and a new one entered ordering respondent to:

1. Immediately reinstate complainants (private respondents) to their former positions without loss of seniority rights and privileges; and

2. Pay them full backwages from the time they were dismissed up to the time they are actually reinstated."

Petitioner's motion for reconsideration was denied by public respondent on February 23, 1994 for lack of merit. Hence, this petition.

Issues

Petitioner charges public respondent NLRC with grave abuse of discretion in finding private respondents to have been non-project employees and illegally dismissed, and in ordering their reinstatement with full backwages.

For clarity's sake, let us re-state the pivotal questions involved in the instant case as follows: whether private respondents were project employees or regular (non-project) employees, and whether or not they were legally dismissed.

In support of its petition, petitioner reiterates the same points it raised before the tribunals below: that it is engaged solely in the business of installation of airconditioning units or systems in the buildings of its clients. It has no permanent clients with continuous projects where its workers could be assigned; neither is it a manufacturing firm. Most of its projects last from two to three months. (The foregoing matters were never controverted by private respondents.) Thus, for petitioner, work is "not done in perpetuity but necessarily comes to a halt when the installation of airconditioning units is completed."

On the basis of the foregoing, petitioner asserts that it could not have hired private respondents as anything other than project employees. It further insists that "(a)t the incipience of hiring, private respondents were appraised (sic) that their work

consisted only in the installation of airconditioning units and that as soon as the installation is completed, their work ceases and that they have to wait for another installation projects (sic)." In other words, their work was co-terminous with the duration of the project, and was not continuous or uninterrupted as claimed by them. Petitioner also claims that the private respondents signed project contracts of employment indicating the names of the projects or buildings they are working on. And when between projects, there project employees were free to work elsewhere with other establishments.

Private respondents controverted these assertions of petitioner, claiming that they had worked *continuously* for petitioner for several years, some of them as long as ten years, and thus, by operation of law had become regular employees.

The Court's Ruling

Ordinarily, the findings made by the NLRC are entitled to great respect and are even clothed with finality and deemed binding on this Court, except that when such findings are contrary to those of the labor arbiter, this Court may choose to re-examine the same, as we hereby do in this case nor.

The First Issue: Project Employees or Regular Employees?

An Unfounded Conclusion

We scoured the assailed Decision for any trace of arbitrariness, capriciousness or grave abuse of discretion, and noted that the respondent Commission first cited the facts of the case, then quoted part of the arbiter's disquisition along with relevant portions of Policy Instructions No. 20, after which it immediately leapt to the conclusion that *"(F)rom the above rules, it can easily be gleaned that complainants belong to a work pool from which the respondent company drew its manpower requirements. This is buttressed by the fact that many of the complainants have been employed for long periods of time already."* (underscoring supplied) By reason of such "finding", respondent NLRC concluded that private respondents were *regular* (not project) employees, but failed to indicate the basis for such finding and conclusion. For our part, we combed the Decision in search of such basis. However, repeated scrutiny of the provisions of Policy Instructions No. 20 pertaining to work pools merely raised further questions.

> "Members of a work pool from which a construction company draws its project employees, if considered employees of the construction company while in the work pool, are non-project employees or employees for an idefinite period. If they are employed in a particular project, the completion of the project or of any phase thereof will not mean severance of employer-employee relationship.
>
> However, if the workers in the workpool are free to leave anytime and offer their services to other employers then they are project employees employed by a construction company in a particular project or in a phase thereof."

A careful reading of the aforequoted and preceding provisions establishes the fact that **project employees may or may not be members of a workpool, (that is,**

the employer may or may not have formed a work pool at all), and in turn, members of a work pool could be either project employees or regular employees. In the instant case, respondent NLRC did not indicate how private respondents came to be considered members of a work pool as distinguished from ordinary (non-work pool) employees. It did not establish that a work pool existed in the first place. Neither did it make any finding as to whether the herein private respondents were indeed free to leave anytime and offer their services to other employers, as vigorously contended by petitioner, despite the fact that such a determination would have been critical in defining the precise nature of private respondents' employment. Clearly, the NLRC's conclusion of regular employment has no factual support and is thus unacceptable.

Conclusion Based on Unwarranted Assumption of Bad Faith

Immediately thereafter, respondent Commission determined -- without sufficient basis -- that complainants were non-project employees. We quote:

> "We doubt respondent's (petitioner's) assertion that complainants (private respondents) were really assigned to different projects. The "Contract Employment" which it submitted (see pp. 32-38, record) purporting to show particular pojects are not reliable nay even appears to have been contrived. The names of the projects clearly appear to have been recently typewritten. In the 'Contract Employment' submitted by complainants (see p. 65, record), no such name of project appears. Verily, complainants were non-project employees." (underscoring supplied)

The basis for respondent NLRC's statement that the contracts were contrived was the fact that the names of projects clearly appeared to have been typed in only after the contracts had been prepared. However, our examination of the contracts (presented by petitioner as Annexes "A", "B", "B-1", "C", "D", "E" and "F"[6] to its Position Paper dated July 30, 1992 filed with the labor arbiter) did not lead inexorably to the conclusion that these were "contrived". Said Annexes were photocopies of photocopies of the original "Contract Employments",[7] and the names of projects had been typed onto these photocopies, meaning that the originals of said contracts probably did not indicate the project names. But this alone did not automatically or necessarily mean that petitioner had committed any falsehood or fraud, or had any intent to deceive or impose upon the tribunals below, because the names of the projects could have been typed/filled in good faith, *nunc pro tunc,* in order to supply the data which ought to have been indicated in the originals at the time those were issued, but which for some reason or other were omitted. In short, the names of projects could have been filled in simply in order to make the contracts speak the truth more clearly or completely. Notably, no reason was advanced for not according the petitioner the presumption of good faith. Respondent NLRC, then, made an unwarranted assumption that bad faith and fraudulent intent attended the filling in of the project names in said Annexes. In any event, it can be easily and clearly established with the use of the naked eye that the dates and durations of the projects and/or work assignments had been typed into the original contracts, and therefore, petitioner's failure to indicate in the originals of the contracts the name(s) of the project(s) to which private respondents were assigned *does not necessarily mean* that they could not have been project employees. (Incidentally, we should make mention here that what is or is not stated