

## TWENTIETH DIVISION

[ CA-G.R. SP NO. 07373, January 12, 2015 ]

**DANILO J. NACARIO AND DOMINGO BAÑO, PETITIONERS, VS.  
NATIONAL LABOR RELATIONS COMMISSION, 7TH DIVISION,  
PRIMARY STRUCTURES CORPORATION, WILLIAM LIU, AND  
PAULETTE D. LIU, RESPONDENTS.**

### D E C I S I O N

#### **QUIJANO-PADILLA, J.:**

This is a Petition for Certiorari under Rule 65 of the Rules of Court assailing the following issuances of public respondent National Labor Relations Commission (NLRC) in NLRC Case No. VAC-04-000263-2012, to wit: (1) Decision<sup>[1]</sup> dated July 16, 2012 dismissing petitioners' appeal and affirming the decision<sup>[2]</sup> of the labor arbiter dated February 3, 2012; and (2) Resolution<sup>[3]</sup> dated September 21, 2012 denying petitioners' motion for reconsideration.

#### The Antecedents

Petitioners Danilo Nacario (Nacario) and Domingo Baño (Baño) filed with the labor arbiter a case against private respondents for illegal dismissal; monetary claims for: unpaid salaries, overtime, holiday, night shift differential, 13<sup>th</sup> month and service incentive leave pays; and for backwages and damages.<sup>[4]</sup>

Nacario and Baño claimed that they were hired to work for private respondent Primary Structures Corporation (Primary Structures) on February 22, 2000 and January 15, 2007, respectively. They were continuously employed until they were told on September 26, 2011 by Emmanuel Nieves, private respondents' administrative assistant, that they were terminated because of business losses. Petitioners were instantly forced out from private respondents' premises and were not even given time to collect their personal belongings, and these were just turned-over to them later by their co-workers.

On the part of private respondents, they countered that petitioners were hired for the construction projects of Primary Structures. They were made to understand that their employments were co-terminous with the phases of work to which they were assigned. Petitioners signed appointment letters<sup>[5]</sup> indicating the duration of the projects or phases thereof, for which their services were engaged. Upon the termination or completion of the projects, petitioners were given notices of completion. Private respondents also notified the Department of Labor and Employment (DOLE) of petitioners' termination by reason of the completion of the project or the phase of work to which they were assigned. After their terminations due to the completion of work or project, petitioners re-applied with Primary Structure for the latter's other construction projects. Every time that they were

hired, petitioners were issued and made to sign appointment letters. The procedures of giving notices of completion to petitioners and notifying the DOLE of their termination were observed every time petitioners were terminated due to the completion of the project or phase of work for which they were hired.

Due to the sudden slump in the construction business caused by the worldwide economic crisis, private respondents were not able to conclude a new project. Hence, they advised their workers of their inability to provide them with employment but promised to immediately inform them as soon as work would be available. Private respondents were just surprised when they learned that petitioners filed the case and pleaded for monetary claims considering that they paid petitioners the mandated minimum wage, 13<sup>th</sup> month pay, last salary and completion bonus for their last project.

In the proceedings before the labor arbiter, petitioners already raised the concern that the contracts presented by private respondents were forgeries. Private respondent Nacario claimed that his signature had a notable formation of a straight line to the right but the one appearing in the contracts did not show a straight line, but rather, a zigzagged line.

Upon the parties' respective evidence, the labor arbiter ruled in favor of private respondents. She found that petitioners were project employees based on the following evidence, to wit: the appointment letters they signed every time their services were engaged; the project payrolls, the completion notices sent to petitioners; and the compliance with the reportorial requirements to the DOLE. The labor arbiter also confronted the matter raised by Nacario regarding the alleged forgeries in his signatures. The labor arbiter addressed the issue, as follows:

The only basis in Nacario's questioning the signature affixed on his appointment letters as allegedly not his genuine signature is the wavy strokes before the signature ended in a straight line to the right. Nacario did not question the main signature itself but only the ending stroke. The main signature itself appears very difficult to forge in view of its various strokes, as compared to the ending stroke. In the minutes of the 11 October 2011 mediation and conciliation conference, complainant Nacario affixed his signature, which appears to have a wavy stroke before it ended in a straight line to the right. Glaringly, Nacario's signature on this Minutes of conference bears similarity to the signature as affixed on his appointment letters. Nacario likewise affixed his signature on the Minutes of the mediation and conciliation proceeding on 17 October 2011, and it appears to have no wavy stroke before it ended in a straight line to the right. Nacario's signature on the Minutes of these two separate mediation and conciliation conferences vary in that one bears a wavy stroke before it ended in a straight line to the right, the other is without a wavy stroke. These two different signatures are the genuine signatures of Nacario since it was him who signed the Minutes of the proceeding after the conference.

As a matter of fact **upon perusal of the various documents consisting of payrolls, etc. proffered by the respondents, it is found out that there are distinctive variations in the signature affixed opposite the name of Nacario, which is understood to**

**mean that this signature is that of Nacario. It is emphasized that these documents consist mostly of payrolls, and that Nacario is not the only payee, as Nacario's name and signature are not the only entries on these documents. Our observations considered, We are not persuaded by Nacario's claim that his signature on the appointment letters are a forgery. We are inclined to believe that Nacario did sign those appointment letters.**<sup>[6]</sup> [Emphasis supplied.]

Consequently, the labor arbiter ordered the dismissal of petitioners' complaint but ordered Primary Structures to pay holiday pay to petitioners for the holidays falling within the period of their employment based on the payrolls presented, but limited only to three years, in accordance with the prescriptive period in Article 291<sup>[7]</sup> of the Labor Code. The labor arbiter likewise ordered the payment of attorney's fees. The dispositive portion of her decision reads, *viz.*:

WHEREFORE, judgment is hereby rendered DISMISSING the complaint for illegal dismissal. This notwithstanding, the respondent PRIMARY STRUCTURES CORPORATION is hereby directed to pay complainants, as follows:

DANILO J. NACARIO	-	P 8,742.00
DOMINGO BAÑO	-	<u>8,742.00</u>

TOTAL		P
		17,484.00

Add: 10% Attorney's Fees		<u>1,748.40</u>
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GRAND TOTAL		P19,232.00
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in concept of holiday pay and attorney's fees either in cash or in manager's check payable to the NLRC-RAB VII, Cebu City, through the Cashier of this Arbitration Branch, within ten (10) days from receipt of this Decision and further, to submit a manifestation/compliance of this directive attaching thereto a copy of the evidence of payment, immediately thereafter.

All other claims are DISMISSED for being dropped/abandoned or for lack of specifics/failure to substantiate and/or for lack of merit.

The case and the claims against the individual respondents WILLIAM LIU and PAULETTE D. LIU are DISMISSED for lack of merit.

SO ORDERED.<sup>[8]</sup>

Petitioners appealed to the NLRC.<sup>[9]</sup> They insisted that they were regular employees since the signatures in the appointment letters were forged. According to petitioners, their supposed project employment existed only in their contracts but in

reality, they were regular employees since they were continuously engaged and their employments were not specified only to a certain project. Since they were regular employees, they were illegally dismissed when they were terminated. Consequently, they were entitled to full backwages, separation pay, damages and attorney's fees.

The NLRC, however, dismissed the appeal and affirmed the labor arbiter's decision that petitioners were project employees. Petitioners moved for reconsideration<sup>[10]</sup> but the NLRC denied their motion.

Hence, petitioners brought this petition raising the following issues, viz.:

I.

WHETHER OR NOT PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT AFFIRMED THE FINDINGS OF THE LABOR ARBITER THAT HEREIN PETITIONERS ARE PROJECT EMPLOYEES AND THEIR DISMISSAL WAS LEGAL;

II.

WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT DID NOT GRANT THE MONETARY CLAIMS OF THE PETITIONERS.

This Court's Ruling

The petition is unimpressed with merit.

Petitioners insist that they were regular employees and that they worked for private respondents without interruption. They ask this Court to look into the daily equipment utilization reports purportedly showing that they were always sent to various project sites for the purpose of augmenting the labor needs in private respondents' projects. According to petitioners, the intermittent periods were allegedly fabricated by private respondents to make it appear that they were project employees. Petitioners also reiterated that the signatures in the contracts were forged. As for their money claims, petitioners argued that since they were regular employees who were illegally dismissed, they were entitled to backwages, separation pay in lieu of reinstatement, damages and attorney's fees.

Generally, in a certiorari proceeding such as this case, this Court does not assess and weigh each piece of evidence introduced in the case and which were used by the labor arbiter and the NLRC to justify their decisions. Instead, Our query is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision.<sup>[11]</sup> We examine only the factual findings of the NLRC to determine whether or not its conclusions are supported by substantial evidence.

After scrutinizing the record, We find that no grave abuse of discretion could be ascribed to the NLRC for affirming the labor arbiter's findings that petitioners were project employees.

*Firstly*, it was undisputed that Primary Structures is a construction company.