

# SPECIAL FIFTEENTH DIVISION

[ CA – G.R. SP No. 130204, April 22, 2014 ]

## SUBIC DRYDOCK CORP., PETITIONER, VS. GERONIMO MARIANO, HON. LABOR ARBITER LEANDRO JOSE, AND NATIONAL LABOR RELATIONS COMMISSION (NLRC) , RESPONDENTS.

### D E C I S I O N

#### **GALAPATE-LAGUILLES, J:**

Before this Court is a Petition for Certiorari<sup>[1]</sup> filed in accordance with Rule 65 of the Rules of Court assailing the following issuances of the National Labor Relations Commission in NLRC LAC No. 10-002840-12(8)/NLRC CN RAB-III-04-18772-12, entitled "*Geronimo S. Mariano, Jr., versus Subic Drydock Corporation/ and Gerald J. Hammond, Gen. Manager:*"

a.) *Resolution*<sup>[2]</sup> dated December 19, 2012 dismissing petitioner's appeal for lack of merit; and

b.) *Resolution*<sup>[3]</sup> dated March 20, 2013 denying petitioner's *Motion for Reconsideration* of said adverse judgment.

#### **The Facts:**

On June 2, 2008, private respondent Geronimo S. Mariano, Jr. (private respondent) was hired as carpenter/shipbuilder/garbage disposal officer of petitioner Subic Drydock Corporation (petitioner).<sup>[4]</sup> Petitioner at the time was engaged in the business of ship repair.<sup>[5]</sup> On February 3, 2012 private respondent was denied entry to work as his fingerprints were no longer recognized by petitioner's biometric machine.<sup>[6]</sup> As per inquiry, petitioner's Human Resources Officer Ms. Anna Gregorio informed private respondent of his termination due to alleged "end of contract".<sup>[7]</sup> Private respondent begged for reconsideration but to no avail.

Aggrieved, private respondent filed a *Complaint*<sup>[8]</sup> for illegal dismissal claiming that his regular employment was terminated without cause. He prayed, among others, for reinstatement with full backwages.

Petitioner opposed<sup>[9]</sup> the *Complaint* contending that private respondent was hired as a carpenter in a "*project-to-project*" basis from the onset of his employment. Petitioner further averred that private respondent's project employments were all covered by separate Appointment Papers<sup>[10]</sup> and *Personnel Action Notices*<sup>[11]</sup>. It points out that private respondent's last engagement was for the rehabilitation of Bldg. 15 which started from November 7, 2011 and ended on February 2, 2012. For this reason, petitioner argued, private respondent was not dismissed from his work as his employment contract merely expired on February 2, 2012 as shown by his

Appointment Paper<sup>[12]</sup> dated November 7, 2011, Letter<sup>[13]</sup> dated February 2, 2012, and *Employment Establishment Report*<sup>[14]</sup> it (petitioner) submitted to the DOLE.

On July 30, 2012, Labor Arbiter Leandro M. Jose (LA Jose) ruled<sup>[15]</sup> in favor of private respondent stating, in part, as follows:

"As established by prevailing jurisprudence, either one or more of the following circumstances, among others, may be considered as indicator/s than an employee is a project one:

1. The duration of the specific/identified undertaking for which the worker is engaged is reasonably determinable.
2. Such duration, as well as the specific work/service to be performed, is defined in an employment agreement and is made clear to the employee at the time of his hiring.
3. The work/service performed by the employee is in connection with the particular project or undertaking for which he is engaged.
4. The employee, while not employed and awaiting engagement, is free to offer his services to any other employer.
5. The termination of his employment in the particular project/undertaking is reported to the Regional Office of DOLE having jurisdiction over the workplace, within 30 days following the date of his separation from work, using the prescribed form on employee's terminations or dismissals or suspensions.
6. An undertaking in the employment contract by the employer to pay completion bonus to the project employee as practiced by most construction companies. (section 2.2, Department Order No. 19, Series of 1993)

Accordingly, instead of the notice of termination to the affected employees upon completion of the project or any phase thereof,, (sic) the law merely required that the employer should render a report to the DOLE on the termination of their employment. (Cioco vs. C.E. Construction Corp., G.R. No. 156748, September 8, 2004)

But the termination report should be made after every completion of a project or any phase thereof. The failure of the employer to file termination reports after every completion of a project or any phase thereof with the nearest PEO-DOLE is an indication that the employees are not project employees but regular employees. (Equipment Technical Services vs. CA, G.R. No. 157680, October 8, 2008)

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It appears that respondent's defense focused solely on the alleged expiration of complainant's contract and never dwelt on the just cause for the latter's dismissal. Hence, as far as the issues of illegal dismissal is

concerned, we find that respondent's failed to discharge their onus probandi. Thus, there is illegal dismissal.

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WHEREFORE, premises considered, the following findings are made:

1. That complainant is a regular employee of respondents.
2. That complainant was illegally dismissed even as respondents are held liable therefor.

Consequently, respondent corporation is hereby ordered to reinstate complainant to his former position without loss of seniority rights and other privileges, with full backwages initially computed at this time at P56,923.41.

The reinstatement aspect of this decision is immediately executory even as respondents are hereby enjoined to submit a report of compliance herewith within ten (10) days from receipt hereof.

All other claims are hereby dismissed for lack of merit."<sup>[16]</sup>

The above ruling was thereafter affirmed<sup>[17]</sup> on appeal<sup>[18]</sup> by public respondent Third (3rd) Division of National Labor Relations Commission (respondent NLRC). Dissatisfied, petitioner filed a Motion for Reconsideration<sup>[19]</sup> but the same was denied in a Resolution<sup>[20]</sup> dated March 20, 2013.

Hence, the present recourse<sup>[21]</sup> faulting the public respondent:

**I**

**WHEN IT DECLARED THAT MARIANO WAS A REGULAR EMPLOYEE;**

**II.**

**WHEN IT FAILED TO RECOGNIZE THAT HIRING OF PROJECT EMPLOYEES IS SANCTIONED BY AND PROVIDED FOR IN THE LABOR CODE (sic)**

**III.**

**WHEN IT DISREGARDED THE SUPREME COURT RULINGS STATING THAT "A PARTICULAR EMPLOYEE IS A PROJECT EMPLOYEE IF HE IS ASSIGNED TO CARRY OUT A SPECIFIC PROJECT OR UNDERTAKING, THE DURATION AND SCOPE OF WHICH WERE SPECIFIED AT THE TIME THE EMPLOYEE WAS ENGAGED FOR THE PROJECT" (sic)**

**IV.**

**WHEN IT DISREGARDED THE SUPREME COURT RULINGS STATING THAT THE "REPEATED AND SUCCESSIVE REHIRING OF PROJECT EMPLOYEES DO NOT QUALIFY THEM AS REGULAR EMPLOYEES, AS LENGTH OF SERVICE IS NOT THE CONTROLLING DETERMINANT OF THE EMPLOYMENT TENURE OF A PROJECT EMPLOYEE" (sic)**

**V.**

**WHE IT RENDERED JUDGMENT GIVING MONETARY AWARD TO PRIVATE RESPONDENT (sic)**

At the heart of the controversy is whether or not respondent NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it held that: (a) private respondent is a regular employee and not merely hired on a per project basis; and (b) private respondent was illegally dismissed.

**The Petition must fail.**

Preliminarily, a mere cursory reading of the instant Petition reveals that petitioner raises purely factual issues revolving around the propriety of the Decision rendered by respondent NLRC. Elsewise stated, petitioner is in reality asking Us to revisit the factual findings of respondent NLRC by re-examining the probative value of the evidence on record. As a rule, the Court refrains from reviewing factual assessments of lower courts and agencies exercising adjudicative functions, such as the NLRC<sup>[22]</sup> because factual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind the Court when supported by substantial evidence.<sup>[23]</sup> Rule 133, Section 5 of the Rules of Court defines substantial evidence as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."<sup>[24]</sup>

Further, in certiorari proceedings under Rule 65, judicial review does not go as far as to evaluate the sufficiency of evidence upon which the NLRC based its determinations, the inquiry being limited essentially to whether said tribunal has acted without or in excess of its jurisdiction or with grave abuse of discretion.<sup>[25]</sup> As ordained in ***AGG Trucking and/or Alex Ang Gaeid vs. Melanio B. Yuag***<sup>[26]</sup>

"Certiorari is a remedy narrow in its scope and inflexible in character. It is not a general utility tool in the legal workshop. Certiorari will issue only to correct errors of jurisdiction and not to correct errors of judgment. An error of judgment is one which the court may commit in the exercise of its jurisdiction, and which error is reviewable only by an appeal. Error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction and which error is correctible only by the extraordinary writ of certiorari. As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctible by an appeal if the aggrieved party raised factual and legal issues; or a petition for review under Rule 45 of the Rules of Court if only questions of law are involved.

A cert[iorari] writ may be issued if the court or quasi-judicial body issues an order with grave abuse of discretion amounting to excess or lack of jurisdiction. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. Mere abuse of discretion is not enough. Moreover, a party is entitled to a writ of certiorari only if there is no appeal nor any plain, speedy or adequate relief in the ordinary course of law.

The raison d'être for the rule is that when a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error was committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. In such a situation, the administration of justice would not survive. Hence, **where the issue or question involved affects the wisdom or legal soundness of the decision – not the jurisdiction of the court to render said decision – the same is beyond the province of a special civil action for certiorari.**”(boldness and underscoring supplied)

Occasionally, however, the Court is constrained to wade into factual matters when there is insufficient or insubstantial evidence on record to support those factual findings; or when too much is concluded, inferred or deduced from the bare or incomplete facts appearing on record.<sup>[27]</sup> None, however, is extant in this case.

Nevertheless, We address petitioner's insistence that respondent NLRC gravely abused its discretion when it issued the challenged rulings.

Petitioner disputes the sufficiency of the basis arguing that there is no illegal dismissal to speak of since private respondent is not a regular employee but was one merely hired on a “*per project basis*” with the terms of employment made known to him at the time of the engagement.<sup>[28]</sup> Petitioner vigorously insists that private respondent was validly dismissed upon the expiration of the term of his project employment.<sup>[29]</sup>

Private respondent, on the other hand, maintains that he is a regular employee because he was re-hired every termination of his employment contract and performed work desirable or necessary to petitioner's regular business.<sup>[30]</sup>

*Petitioner's arguments fail to convince.*

A project employee is assigned to carry out a specific project or undertaking the duration and scope of which are specified at the time the employee is engaged in the project.<sup>[31]</sup> A project is a job or undertaking which is distinct, separate and identifiable from the usual or regular undertakings of the company.<sup>[32]</sup> A true project employee should be assigned to a project which begins and ends at determined or determinable times.<sup>[33]</sup> Although, length of time is not the controlling