

TWELFTH DIVISION

[CA-G.R. SP. No. 117876, June 25, 2014]

G & S TRANSPORT CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND GERMAN S. VIREYNATO, RESPONDENTS.

DECISION

ELBINIAS, J.:

For disposition is a Petition for Certiorari^[1] filed under Rule 65 of the Rules of Court. The Petition assails the Decision^[2] dated September 9, 2010 of public respondent National Labor Relations Commission ("public respondent NLRC" for brevity) in NLRC LAC No. 03-000550-10 (NLRC-NCR Case # 08-12048-09). The Petition also questions public respondent NLRC's Resolution^[3] dated November 18, 2010, which denied petitioner's eventual Motion for Reconsideration^[4].

Among the salient facts are those as stated in the Labor Arbiter's Decision^[5] of January 18, 2010, which are as follows:

"Complainant (*private respondent here*) **averred that he started as a 'Driver' with the respondent company** (*petitioner here*) **on October 31, 2006.** At the start he (*private respondent*) was made to sign a contract entitled 'PROJECT EMPLOYMENT AGREEMENT' and was assigned to the Globe Telecoms Project. Notwithstanding his assignment to a specific project, he (*private respondent*) **was actually assigned by the company to do works at its Headquarters/Central Garage such as road testing of company vehicles, bringing and pulling out of company vehicles to and from the repair shop, acting as back up for absent drivers, etc.. As proof thereof, the complainant's 'Daily ACCOMPLISHMENT REPORTS' for October 31, 2006, November 9, 23, 25 and 30, 2006, January 9 and 11, 2007 duly noted by the dispatcher on duty are attached as Annexes xxx of Complainant's Position Paper.**

Complainant (*private respondent*) **was assigned by the company to the EDSA Shangri-la (Limousine) Project and was made to sign 'Project Employment Agreement'.**

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On March 3, 2009, the complainant (*private respondent*) **was again made by the company to sign for his assignment to EDSA Shangri-la (Limousine) Project to begin on April 1, 2008 and to end on March 31, 2012.** xxx

On July 20, 2009 the complainant (*private respondent*) was served a notice by Ms. Grace Sandagon, the company's Assistant Station Manager, for him to explain the alleged violation of the company's Code of Discipline.

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On the same explanation form, the complainant (*private respondent*) explained his side point by point xxx

On July 28, 2009, complainant (*private respondent*) received the fifteen (15) day suspension meted out by the company and the recommendation for his transfer to the Central Garage effective August 3, 2009. xxx

On August 1, 2009, the complainant (*private respondent*) was served the Memorandum for his transfer from EDSA Shangri-la Hotel station to central Garage as chauffeur after his suspension without pay from August 3, 2009 to August 19, 2009. xxx

On August 3, 2009 the complainant (*private respondent*) went to respondent Ms. Arlene S. Espiritu, to appeal such decision but the latter advised him that he should serve first the 15-day suspension.

Complainant (*private respondent*) was again on August 27, 2009 made to sign a new Project Employment Agreement with San Miguel Corporation beginning August 20, 2009 up to July 14, 2010.

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Complainant (*private respondent*) went further that from the date of hiring on October 31, 2006, he has not been accorded a regular status of employment. Further, he rendered work from 12:00 noon to 9:00 in the evening but he was only paid for eight (8) hours. Thus he has an unpaid overtime of one hour per day as he did not consume his one hour break everyday due to the exigency of the service as he was on call anytime.”^[6] (*Emphasis Supplied*)

On August 20, 2009, private respondent German S. Vireynato (“private respondent” for brevity) filed before the Labor Arbiter, a Complaint^[7] for “regularization, illegal suspension and non-payment of overtime pay”^[8] against petitioner G&S Transport Corporation (“petitioner” for brevity).

On January 18, 2010, the Labor Arbiter rendered a Decision^[9] dismissing private respondent's Complaint^[10] for lack of merit.^[11]

Private respondent then appealed from the Labor Arbiter's Decision^[12] of January 18, 2010 to public respondent NLRC.^[13]

On September 9, 2010, public respondent NLRC rendered its assailed Decision^[14] reversing the Labor Arbiter's Decision. Public respondent NLRC's Decision^[15] declared private respondent as a regular employee of petitioner, and found private respondent to have been illegally suspended by petitioner. Public respondent NLRC also ordered petitioner to pay private respondent his salary during his illegal suspension covering the period of August 3-19, 2010.

After petitioner's Motion for Reconsideration^[16] was denied by public respondent NLRC in its assailed Resolution^[17] of November 18, 2010, petitioner filed the Petition^[18] at bench, praying that:

"After due proceedings, this Honorable Court render judgment annulling and/or setting aside the Assailed Decision and Resolution, respectively, rendered by the Second Division of the National Labor Relations Commission, and reinstating the Decision of the Labor Arbiter dated 18 January 2009 and dismissing private respondent's complaint for utter lack of merit."^[19]

Petitioner raised the following grounds:

"5.1 THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN ENTERTAINING THE COMPLAINT FOR REGULARIZATION AND DECLARING PRIVATE RESPONDENT A REGULAR EMPLOYEE.

5.1.1 A COMPLAINT FOR REGULARIZATION CANNOT PER SE BE THE PRINCIPAL CAUSE OF ACTION UNDER THE LABOR CODE, AS AMENDED.

5.1.2 ASSUMING THAT THE ISSUES IS (*sic*) RIPE FOR ADJUDICATION THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN DECLARING PRIVATE RESPONDENT A REGULAR EMPLOYEE.

5.2 THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN FINDING THAT PRIVATE RESPONDENT WAS ILLEGALLY SUSPENDED."^[20]

Contrary to petitioner's arguments in its *assigned grounds 5.1, 5.1.1, and 5.1.2*, private respondent was a regular employee of petitioner.

Petitioner had argued as follows:

"6.9 In this case **the mass of documentary evidence denominated as Project Employment Agreement**, some of which were even submitted by the private respondent, **show that he was hired as project employee and was assigned on a specific project.**

6.10 The hiring of private respondent and other project employees was succinctly explained in petitioner's position paper, thus –

'xxx **As the business developed, the increase in competition and the drive for more clients, the operation or business of the company transformed from a simple maintenance of station wherein the general public may walk-in or call-in to avail of the services of the company to a situation where the company has to participate in biddings in order to obtain exclusive service contracts such as but not limited to hotels and airports. These exclusive contracts have specific durations of one (1) year to two (2) years.'**

6.11 In view of the foregoing and particularly **in relation to these exclusive contracts with specific durations, it has become necessary for the company, to hire contractual or project employees to service these contracts.** Like other project employees, private respondent's employment is co-terminous with the duration of the project and upon the end of the project the employee is paid separation pay.

6.12 The project employment agreements on record covering private respondent's employment read as follows:

'The employment of the project employee shall begin on March 12, 2007. **The employment of the project employee shall be co-terminous with the specific project or until actual termination** (which under the Company's Memorandum of Agreement with Shangrila-Edsa Limousine shall be for a period of four (4) years from April 01, 2004 to March 31, 2008) **or as may be determined by the Company, or the phase of work of the project for which the project employee hired, unless sooner terminated for any cause without any need of verbal or written notice.'**

6.13 As culled from the foregoing, **private respondent as in his previous project employment was hired for a specific project** (i.e. Globe Project and SMC Project) **and with a clear agreement on the completion or termination of the project at the time he was engaged that is –from 10 August 2009 to 14 July 2010.** xxx.

6.14 As repeatedly stated by petitioner and which is not refuted by the private respondent, **upon the completion of every project and the termination of the project employee, petitioner submits written reports of its finished projects and affected employees to the nearest Public Employment Office,** in this case DOLE-NCR, in accordance with Policy Instruction No. 20 of the then DOLE Secretary Blas F. Ople. Also, if and when the contract of G&S expires or not renewed, **it pays its project employees separation pay for every completion of the project."**^[21] (*Emphasis Supplied*)

Defeating petitioner's arguments however, is that petitioner, which is a domestic corporation engaged in the rent-a-car business,^[22] had repeatedly re-hired private respondent for the same position of chauffeur for the company's projects^[23] for a period of about four (4) years. This situation therefore showed that private