

## FOURTH DIVISION

[ CA-G.R. SP. NO. 129673, June 19, 2014 ]

**EDILBERTO PADPAD, ET. AL., PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, TOP RATE CONSTRUCTION & GENERAL SERVICES, INC. AND/OR ALFREDO HOCSON AND RAUL NELSON S. SAÑARES, RESPONDENTS.**

### DECISION

**TOLENTINO, A.G., J.:**

Challenged in this petition for *certiorari*<sup>[1]</sup> under Rule 65 of the Revised Rules of Court is the decision dated January 18, 2013<sup>[2]</sup> and the resolution dated February 20, 2013<sup>[3]</sup>, for having been issued by the National Labor Relations Commission (NLRC) with grave abuse of discretion amounting to lack or excess of jurisdiction.

Culled from the records are the following facts:

The petitioners averred that they were hired as messengers, janitors, drivers and utility personnel by the private respondent Top Rate Construction & General Services, Inc. (Top Rate). They were immediately assigned to Banco Filipino Savings & Mortgage Bank (Banco Filipino). They alleged that they have rendered services from five (5) to twenty (20) years, to wit:

<u>Names</u>	<u>Year Hired</u>	<u>Years of Service</u>
1. AGUILLOS, Emiliano	November, 1994	18
2. ANGELES, Angelito	March 1, 1996	15
3. AQUINO, Franklin	March 7, 1997	14
4. ASISTIO, Jose Ronie	February 10, 1998	13
5. BACUS, Jaime	May 13, 2002	9
6. BRIONES, Elmer	March 18, 1996	15
7. CANON, Jophar	February 16, 1995	16
8. CASTILLO, Luisito	April 16, 1992	19
9. CATINDOY, Rogelio	August 17, 1997	14
10. CATINDOY,	May 16,	19

Roger	1992	
11. CULUBONG, Randy	March 7, 1997	14
12. CUPIDO, Jr., Bernardo	July 16, 1993	18
13. DE MANUEL, Bernie	March 11, 1996	15
14. DE VILLA, Salvador	December 1, 1997	14
15. DOLDOL, Roy Van Sherwin	January 17, 2002	9
16. DUCUT, Miguel	March 18, 1992	19
17. ENRIQUEZ, Eleazer	March 7, 1997	14
18. GARDOSE, Ricardo	May 9, 1995	16
19. GONZALES, Emmanuel	February 1997	14
20. JABOL, Alejandro	September 27, 1999	12
21. LEONARDO, Henry	August 1, 1994	17
22. MALLAO, Rogelio	January 13, 1997	14
23. MEDINA, Noel	April 24, 2001	10
24. NOCETE, Claudio	June 22, 1999	11
25. ORETA, Eduardo	May 10, 1994	17
26. PADPAD, Edilberto	February 15, 1997	14
27. PAGUIO, Jeffrey	January 4, 2006	5
28. PALMA, Ignacio	November 3, 1996	15
29. QUIJANO, Jr., Manuel	April 19, 1994	17
30. RAMOS, Joeven	July 1, 1994	17
31. REYES, Gerardo	November 2, 1995	16
32. RONDAEL, Ariel	March 9, 1997	14
33. SANTIAGO, Ronald	November 2, 1993	18
34. TAN, Ronaldo	December 3, 1998	13

35. TOLENTINO, August 1,	14
Allan 1997	
36. TORRES, July 16,	18 <sup>[4]</sup>
Reynaldo 1993	

On March 17, 2011, Banco Filipino declared a bank holiday. Soon thereafter, the Philippine Deposit Insurance Corporation (PDIC) took over Banco Filipino and placed it under receivership.

On March 21, 2011, the petitioners went at the office of Top Rate to inquire about the status of their employment. However, a Certification signed by private respondent Raul Nelson Sanares (Top Rate's Assistant Vice-President) was issued to them to the effect that they are contractual employees of Top Rate. The Certification was issued for employment purposes.

The petitioners alleged that they were regular employees considering that they have rendered service to Top Rate for so many years. They also rendered services necessary and desirable to the business of Top Rate. By operation of law, therefore, they argued that they are considered regular employees. As regular employees, the closure of Banco Filipino should not affect their status as regular employees.

The petitioners claimed that they were constructively dismissed when the private respondents Top Rate, Alfredo Hocson (Top Rate's President) and Sanares: (1) issued them the "Certification" which declared them to be contractual employees; (2) refused to pay their wages for the period March 11 to 17, 2011; (3) refused to pay their wages from March 17, 2011 up to the present; and (4) failed to ascertain their employment status.

On the other hand, the private respondents averred that Top Rate is a legitimate job contractor, and it was duly issued a Certificate of Registration by the Department of Labor and Employment (DOLE).

As legitimate job contractor, it entered into a Service Agreement with Banco Filipino to provide janitorial, messengerial, maintenance and other services. Top Rate then entered into Contractual Employment Contracts with the petitioners, the term of which was co-terminus with the term of the service agreement between Top Rate and Banco Filipino.

On March 17, 2011, PDIC implemented the closure of Banco Filipino, and upon taking over the entire operations of the bank, the Service Agreement between Top Rate and Banco Filipino was immediately terminated. The termination of the Service Agreement led to the expiration of the petitioners' employment.<sup>[5]</sup>

In the decision dated January 18, 2013, the Labor Arbiter ruled that despite the length of service of the petitioners, they cannot be considered regular employees. The petitioners are project employees whose employment was co-terminus with Top Rate's service agreement with Banco Filipino. Thus, when Banco Filipino was closed by the PDIC and placed under receivership, PDIC terminated the service agreement. This also effectively terminated petitioners' employment with Top Rate. This, however, should not be construed as an illegal dismissal of petitioners much more a constructive one. Petitioners' contract simply ended. Consequently, as they are project employees, they are not entitled to separation pay.<sup>[6]</sup>

The dispositive portion of the Labor Arbiter's decision states:

**"WHEREFORE**, the above complaints for illegal dismissal is (*sic*) **DISMISSED** for lack of merit. Respondent Top Rate Construction and General Services, Inc. are, however, ordered to pay EACH complainant:

1. Wages equivalent to two days;
2. Proportionate 13th month pay for 2011; and
3. Proportionate Service Incentive leave pay for 2010 to March 17, 2011. Computed from the anniversary of their employment.

All in the total sum of Php168,963.65.

All other claims are dismissed for lack of merit. The computation hereto attached is made an integral part hereof.

**SO ORDERED."**<sup>[7]</sup>

On appeal, the NLRC affirmed the decision of the Labor Arbiter, ruling that the petitioners are project employees and not regular employees based on Article 280 of the Labor Code. The finding that the petitioners are project employees finds support under Section 9 of Department Order No. 18-02 (series of 2002). The NLRC continued that the second paragraph of Article 280 of the Labor Code which states that an employee who has served for at least one year shall be considered a regular employee, relates to casual employee, not to project employees. Thus, even if the employees were repeatedly and successively re-hired on the basis of a contract of employment for more than one year, they cannot be considered regular employees because length of service is not the controlling determinant of the employment tenure of a project employee. The NLRC also ruled that there was no illegal dismissal as the sudden cessation of work was occasioned by the closure of Banco Filipino upon order of the Bangko Sentral ng Pilipinas.<sup>[8]</sup>

The petitioners filed a Motion for Reconsideration, which was denied in the resolution dated February 20, 2013.<sup>[9]</sup> Hence, this petition for *certiorari*.

The issue in this case is whether the NLRC committed grave abuse of discretion amounting to lack of jurisdiction in issuing the assailed decision and resolution.

### **THE PETITION MUST FAIL.**

At the outset, the private respondents pointed out that only petitioner Ricardo Gardose (Gardose) signed the verification. The private respondents contend that, it follows then that the assailed decision and resolution are deemed final and executory as far as petitioner Allan Tolentino and the 11 petitioners he represents.

A perusal of the verification/certification against forum shopping<sup>[10]</sup> reveals that the same was only signed by Gardose. There are 36 petitioners, 23 of them are represented by petitioner Ricardo Gardose<sup>[11]</sup>, while the 11 petitioners are represented by petitioner Allan Tolentino.<sup>[12]</sup>

This Court opts to disregard this procedural flaw. The verification requirement is deemed substantially complied with when, as in the present case, only one of the petitioners, who has sufficient knowledge and belief to swear to the truth of the allegations in the petition, signed the verification attached to it. Such verification is

deemed sufficient assurance that the matters alleged in the petition have been made in good faith or are true and correct, not merely speculative.<sup>[13]</sup>

As to the certification against forum shopping, the same must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.<sup>[14]</sup> Again, there was substantial compliance with the rule when only Gardose, for himself and for the the 23 other petitioners he represents, signed the certification against forum shopping. This is because all the petitioners share a common interest and invoke a common cause of action. They all claim that they are regular employees and that they were illegally dismissed.

We likewise cannot agree that petitioner Gardose's authority does not extend to the filing of the instant petition. On the contrary, petitioner Gardose is authorized to file the instant petition, as provided for in the Special Power of Attorney, to wit:

"1. To sign the Verification/Certification for Non-Forum Shopping in connection with the Labor Cases and other pleadings to be filed against Top Rate Construction & General Services and Banco Filipino xxx;

xxx xxx xxx

4. And to perform other acts appurtenant to the above purposes."<sup>[15]</sup>

Going now to the merits of the case, the petitioners themselves admit that Top Rate is an independent job contractor.<sup>[16]</sup> In any case, We defer to the following factual findings of the Labor Arbiter, as affirmed by the NLRC, to wit:

"Respondents have shown that Top Rate has been issued a Certificate of Registration xxx by the DOLE. This Certificate certifies that Top Rate has complied with the requirements to engage in legitimate job contracting as provided under the Labor Code and its implementing Rules.

"The Office gives deference to the DOLE on the matter of issuance of this kind of Certificate (of Registration) as it is primarily the government agency tasked to determine the check the applicant's compliance with the Labor Code. There is that strong presumption that in the issuance of such Certificate, the DOLE has properly and regularly performed its task in accordance with its mandate. In the absence of any evidence that would muddle such presumption, regularity in the performance of such government function must stand.

Top Rate has also shown that, as a construction and manpower firm, it previously engaged in other construction and service agreements. Thus, it entered into agreements with the Banco Filipino Savings & Mortgage Bank, Inc, Pilar Development Corporation, BF Citi Land Corporation, Good Shepherd Realty Corporation, Top Management Programs Corporation, BF Citi Realty Corporation and Trading Corporation and BF Homes, Incorporated. It has been engaged in legitimate business as an independent job contractor for the last 35 years.