

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
EN BANC**

**ALU-TUCP, Representing Members:  
ALAN BARINQUE, with 13 others,  
namely: ENGR. ALAN G. BARINQUE,  
ENGR. DARRELL LEE ELTAGONDE,  
EDUARD H. FOOKSON, JR., ROMEO R.  
SARONA, RUSSELL GACUS, JERRY  
BONTILAO, EUSEBIO MARIN, JR.,  
LEONIDO ECHAVEZ, BONIFACIO  
MEJOS, EDGAR S. BONTUYAN, JOSE  
G. GARGUENA, JR., OSIAS B.  
DANDASAN, and GERRY I.  
FETALVERO,**

*Petitioners,*

*-versus-*

**G.R. No. 109902  
August 2, 1994**

**NATIONAL LABOR RELATIONS  
COMMISSION and NATIONAL STEEL  
CORPORATION (NSC),**

*Respondents.*

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**DECISION**

**FELICIANO, J.:**

In this Petition for *Certiorari*, petitioners assail the Resolution of the National Labor Relations Commission (“NLRC”) dated 8 January 1993 which declared petitioners to be project employees of private respondent National Steel Corporation (“NSC”), and the NLRC’s subsequent Resolution of 15 February 1993, denying petitioners’ Motion for Reconsideration.

Petitioners plead that they had been employed by respondent NSC in connection with its Five Year Expansion Program (FAYEP I & II)<sup>[1]</sup> for varying lengths of time when they were separated from NSC’s service:

<u>Employee</u>	<u>Date Employed</u>	<u>Nature of Employment</u>	<u>Separated</u>
1. Alan Barinque	5-14-82	Engineer	18-31-91
2. Jerry Bontilao	8-05-85	Engineer	16-30-92
3. Edgar Bontuyan	11-03-82	Chairman	to present
4. Osias Dandasan	9-21-82	Utilityman	1991
5. Leonido Echavez	6-16-82	Eng. Assistant	6-30-92
6. Darrell Eltagonde	5-20-85	Engineer	18-31-91
7. Gerry Fetalvero	4-08-85	Mat. Expediter	regularized
8. Eduard Fookson	9-20-84	Eng. Assistant	8-31-91
9. Russell Gacus	1-30-85	Engineer	16-30-92
10. Jose Garguena	3-02-81	Warehouseman	to present
11. Eusebio Marin, Jr.	7-07-83	Survey Aide	8-31-91
12. Bonifacio Mejos	11-17-82	Surv. Party Head	1992
13. Romeo Saron	2-26-83	Machine Operator	8-31-91 <sup>[2]</sup>

On 5 July 1990, petitioners filed separate complaints for unfair labor practice, regularization and monetary benefits with the NLRC, Sub-Regional Arbitration Branch XII, Iligan City.

The complaints were consolidated and after hearing, the Labor Arbiter in a Decision dated 7 June 1991, declared petitioners “regular project employees who shall continue their employment as such for as long as such [project] activity exists,” but entitled to the salary of a regular employee pursuant to the provisions in the collective bargaining agreement. It also ordered payment of salary differentials.<sup>[3]</sup>

Both parties appealed to the NLRC from that decision. Petitioners argued that they were regular, not project, employees. Private

respondent, on the other hand, claimed that petitioners are project employees as they were employed to undertake a specific project — NSC's Five Year Expansion Program (FAYEP I & II).

The NLRC in its questioned resolutions modified the Labor Arbiter's decision. It affirmed the Labor Arbiter's holding that petitioners were project employees since they were hired to perform work in a specific undertaking — the Five Year Expansion Program, the completion of which had been determined at the time of their engagement and which operation was not directly related to the business of steel manufacturing. The NLRC, however, set aside the award to petitioners of the same benefits enjoyed by regular employees for lack of legal and factual basis.

Deliberating on the present Petition for *Certiorari*, the Court considers that petitioners have failed to show any grave abuse of discretion or any act without or in excess of jurisdiction on the part of the NLRC in rendering its questioned resolutions of 8 January 1993 and 15 February 1993.

The law on the matter is Article 280 of the Labor Code which reads in full:

“ARTICLE 280. Regular and Casual Employment. — The provisions of the written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year service, whether such service is continuous or broken, shall be considered a regular employee

with respect to the activity in which he is employed and his employment shall continue while such actually exists.” (Emphases supplied).

Petitioners argue that they are “regular” employees of NSC because: (i) their jobs are “necessary, desirable and work-related to private respondent’s main business, steel-making”; and (ii) they have rendered service for six (6) or more years to private respondent NSC.<sup>[4]</sup>

The basic issue is thus whether or not petitioners are properly characterized as “project employees” rather than “regular employees” of NSC. This issue relates, of course, to an important consequence: the services of project employees are co-terminous with the project and may be terminated upon the end or completion of the project for which they were hired.<sup>[5]</sup> Regular employees, in contrast, are legally entitled to remain in the service of their employer until that service is terminated by one or another of the recognized modes of termination of service under the Labor Code.<sup>[6]</sup>

It is evidently important to become clear about the meaning and scope of the term “project” in the present context. The “project” for the carrying out of which “project employees” are hired would ordinarily have some relationship to the usual business of the employer. Exceptionally, the “project” undertaking might not have an ordinary or normal relationship to the usual business of the employer. In this latter case, the determination of the scope and parameters of the “project” becomes fairly easy. It is unusual (but still conceivable) for a company to undertake a project which has absolutely no relationship to the usual business of the company; thus, for instance, it would be an unusual steel-making company which would undertake the breeding and production of fish or the cultivation of vegetables. From the viewpoint, however, of the legal characterization problem here presented to the Court, there should be no difficulty in designating the employees who are retained or hired for the purpose of undertaking fish culture or the production of vegetables as “project employees,” as distinguished from ordinary or “regular employees,” so long as the duration and scope of the project were determined or specified at the time of engagement of the “project employees.”<sup>[7]</sup> For, as is evident from the provisions of Article

280 of the Labor Code, quoted earlier, the principal test for determining whether particular employees are properly characterized as “project employees” as distinguished from “regular employees,” is whether or not the “project employees” were assigned to carry out a “specific project or undertaking,” the duration (and scope) of which were specified at the time the employees were engaged for that project.

In the realm of business and industry, we note that “project” could refer to one or the other of at least two (2) distinguishable types of activities. Firstly, a project could refer to a particular job or undertaking that is within the regular or usual business of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company. Such job or undertaking begins and ends at determined or determinable times. The typical example of this first type of project is a particular construction job or project of a construction company. A construction company ordinarily carries out two or more discrete identifiable construction projects: e.g., a twenty-five-storey hotel in Makati; a residential condominium building in Baguio City; and a domestic air terminal in Iloilo City. Employees who are hired for the carrying out of one of these separate projects, the scope and duration of which has been determined and made known to the employees at the time of employment, are properly treated as “project employees,” and their services may be lawfully terminated at completion of the project.

The term “project” could also refer to, secondly, a particular job or undertaking that is not within the regular business of the corporation. Such a job or undertaking must also be identifiably separate and distinct from the ordinary or regular business operations of the employer. The job or undertaking also begins and ends at determined or determinable times. The case at bar presents what appears to our mind as a typical example of this kind of “project.”

NSC undertook the ambitious Five Year Expansion Program I and II with the ultimate end in view of expanding the volume and increasing the kinds of products that it may offer for sale to the public. The Five Year Expansion Program had a number of component projects: e.g., (a) the setting up of a “Cold Rolling Mill Expansion Project”; (b) the

establishment of a “Billet Steel-Making Plant” (BSP); (c) the acquisition and installation of a “Five Stand TDM”; and (d) the “Cold Mill Peripherals Project.”<sup>[8]</sup> Instead of contracting out to an outside or independent contractor the tasks of constructing the buildings with related civil and electrical works that would house the new machinery and equipment, the installation of the newly acquired mill or plant machinery and equipment and the commissioning of such machinery and equipment, NSC opted to execute and carry out its Five Year Expansion Projects “in house,” as it were, by administration. The carrying out of the Five Year Expansion Program (or more precisely, each of its component projects) constitutes a distinct undertaking identifiable from the ordinary business and activity of NSC. Each component project, of course, begins and ends at specified times, which had already been determined by the time petitioners were engaged. We also note that NSC did the work here involved — the construction of buildings and civil and electrical works, installation of machinery and equipment and the commissioning of such machinery — only for itself . Private respondent NSC was not in the business of constructing buildings and installing plant machinery for the general business community, i.e., for unrelated, third party, corporations. NSC did not hold itself out to the public as a construction company or as an engineering corporation.

Whichever type of project employment is found in a particular case, a common basic requisite is that the designation of named employees as “project employees” and their assignment to a specific project, are effected and implemented in good faith, and not merely as a means of evading otherwise applicable requirements of labor laws.

Thus, the particular component projects embraced in the Five Year Expansion Program, to which petitioners were assigned, were distinguishable from the regular or ordinary business of NSC which, of course, is the production or making and marketing of steel products. During the time petitioners rendered services to NSC, their work was limited to one or another of the specific component projects which made up the FAYEP I and II. There is nothing in the record to show that petitioners were hired for, or in fact assigned to, other purposes, e.g., for operating or maintaining the old, or previously installed and commissioned, steel-making machinery and equipment, or for selling the finished steel products.

We, therefore, agree with the basic finding of the NLRC (and the Labor Arbiter) that the petitioners were indeed “project employees:”

“It is well established by the facts and evidence on record that herein 13 complainants were hired and engaged for specific activities or undertaking the period of which has been determined at time of hiring or engagement. It is of public knowledge and which this Commission can safely take judicial notice that the expansion program (FAYEP) of respondent NSC consist of various phases [of] project components which are being executed or implemented independently or simultaneously from each other.

In other words, the employment of each ‘project worker’ is dependent and co-terminous with the completion or termination of the specific activity or undertaking [for which] he was hired which has been pre-determined at the time of engagement. Since, there is no showing that they (13 complainants) were engaged to perform work-related activities to the business of respondent which is steel-making, there is no logical and legal sense of applying to them the proviso under the second paragraph of Article 280 of the Labor Code, as amended.

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The present case therefore strictly falls under definition of ‘project employees’ on paragraph one of Article 280 of the Labor Code, as amended. Moreover, it has been held that the length of service of a project employee is not the controlling test of employment tenure but whether or not ‘the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee’. (See Hilario Rada vs. NLRC, G.R. No. 96078, January 9, 1992; and Sandoval Shipping, Inc. vs. NLRC, 136 SCRA 674 (1985).”<sup>[9]</sup>

Petitioners next claim that their service to NSC of more than six (6) years should qualify them as regular employees. We believe this claim

is without legal basis. The simple fact that the employment of petitioners as project employees had gone beyond one (1) year, does not detract from, or legally dissolve, their status as project employees.<sup>[10]</sup> The second paragraph of Article 280 of the Labor Code, quoted above, providing that an employee who has served for at least one (1) year, shall be considered a regular employee, relates to casual employees, not to project employees.

In the case of Mercado, Sr. vs. National Labor Relations Commission,<sup>[11]</sup> this Court ruled that the proviso in the second paragraph of Article 280 relates only to casual employees and is not applicable to those who fall within the definition of said Article's first paragraph, i.e., project employees. The familiar grammatical rule is that a proviso is to be construed with reference to the immediately preceding part of the provision to which it is attached, and not to other sections thereof, unless the clear legislative intent is to restrict or qualify not only the phrase immediately preceding the proviso but also earlier provisions of the statute or even the statute itself as a whole. No such intent is observable in Article 280 of the Labor Code, which has been quoted earlier.

**ACCORDINGLY**, in view of the foregoing, the Petition for *Certiorari* is hereby **DISMISSED** for lack of merit. The Resolutions of the NLRC dated 8 January 1993 and 15 February 1993 are hereby **AFFIRMED**. No pronouncement as to costs.

**SO ORDERED.**

**Narvasa, C.J., Cruz, Padilla, Bidin, Regalado, Davide, Jr., Romero, Melo, Quiason, Puno, Vitug, Kapunan and Mendoza, JJ., concur.**  
**Bellosillo, J., is on leave.**

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[1] NLRC Resolution, 8 January 1993, p. 7; Rollo, p. 75.

[2] Petition for *Certiorari*, 7 May 1993, pp. 3-11, Rollo, pp. 4-12.

[3] NLRC Decision, 7 June 1991, Rollo, pp. 48-39; underscoring and brackets supplied.

[4] Petition for *Certiorari*, 7 May 1993; p. 15; Rollo, p. 16.

- [5] Beta Electric Corporation vs. National Labor Relations Commission, 182 SCRA 380 (1990); Cartagenas vs. Romago Electric Co., Inc., 177 SCRA 637 (1989); Sandoval Shipyards, Inc. vs. National Labor Relations Commission, 136 SCRA 674 (1985).
- [6] Articles 281-286, Labor Code, as amended.
- [7] Fortunato Mercado, Sr., et al. vs. NLRC, et al. 201 SCRA 332 (1991); Philippine National Construction Corp. vs. NLRC, 174 SCRA 191 (1989); Sandoval Shipping, Inc. vs. NLRC, 136 SCRA 674 (1985); Ochoco vs. NLRC, 120 SCRA 774 (1983).
- [8] Petition for *Certiorari*, pp. 3-11; Rollo, pp. 4-12. NLRC Resolution of 8 January 1993, pp. 7-13; Rollo, pp. 75-81.
- [9] NLRC Decision, Rollo, pp. 65-66.
- [10] Rada vs. National Labor Relations Commission, 205 SCRA 69 (1992).
- [11] 201 SCRA 332 (1991).