

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**ARCHBUILD MASTERS AND
CONSTRUCTION, INC., and JOAQUIN
C. REGALA,**

Petitioners,

-versus-

**G.R. No. 108142
December 26, 1995**

**NATIONAL LABOR RELATIONS
COMMISSION and ROGELIO
CAYANGA,**

Respondents.

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DECISION

BELLOSILLO, J.:

This is a Petition for *Certiorari* filed by Archbuild Masters and Construction, Inc. (ARMACON), and its president Joaquin C. Regala against respondents National Labor Relations Commission and Rogelio Cayanga^[1] for grave abuse of discretion in holding that the latter respondent was illegally dismissed by petitioners.

Sometime in August 1988, petitioners entered into a contract with the government of the United States of America to lay water pipes inside the U.S. Naval Base in Subic, Zambales. This undertaking involved

the digging of ditches, laying of pipes and the filling up of all excavations resulting therefrom. On 20 March 1989, considering that the project would require the transporting of men and construction materials, petitioners hired the services of drivers one of whom was private respondent Rogelio Cayanga. His employment papers specifically provided that he was being hired as driver for the Subic project.^[2]

According to petitioners, in December 1989 the phase of work for which private respondent was hired neared its completion so that a lesser number of workers and construction materials were required to be transported to the digging sites, which meant fewer trips to the construction site and a reduction in the number of drivers. Thus on 26 December 1989 petitioners posted a list of employees whose services were no longer needed by reason of the reduction in manpower due to the completion of a phase of the Subic project. The list included private respondent.

In a letter dated 26 December 1989 petitioners asked for clearance from Regional Office No. 111, Zambales District Labor Office, Olongapo City, to terminate the services of private respondent and six (6) other employees to reduce the work force resulting from the completion of the phase of the project for which private respondent and six (6) others were employed.^[3] Petitioners likewise submitted the necessary Employer's Monthly Report on Employees' Termination or Suspension required by Sec. 2, Rule 14, of the Rules Implementing B.P. Blg. 130, for the month of January 1990.^[4]

On 22 January 1990 private respondent filed a complaint against petitioners for illegal dismissal.^[5] He asserted that his dismissal was done in bad faith and that the real reason for his removal was not the supposed proximate completion of the Subic project but his alleged absences without leave. According to him, when he first reported for work on 27 December 1989 after a six-day vacation (20 to 26 December 1989), of which petitioners were properly informed, he was verbally notified by his supervising engineer that his employment was already terminated because of his absences without proper leave. After vehemently denying that his vacation was unauthorized, he alleged that he was then allowed by petitioners to continue his employment for two more days when they realized that he could not

be validly dismissed on such ground. Then on 29 December 1989 private respondent found himself in a quandary when he unexpectedly read in the company bulletin board that his employment had already been terminated due to project completion. He contended that the supposed “project completion” cited by petitioners as the ground for his dismissal was just used by the latter to immediately terminate his employment. He insisted that the real reason for his dismissal was his absences allegedly incurred by him without proper leave, and that the latter only used “project completion” to camouflage his unlawful removal so that he could no longer be heard on the real reason for his dismissal.^[6]

Private respondent argued that there could not have been any completion of a phase or stage of the construction project because some employees who were previously dismissed were in fact either re-hired or replaced by petitioners,^[7] and that their bad faith in effecting his dismissal was further demonstrated by their inconsistent explanations for his dismissal. According to him, the Employer’s Monthly Report submitted by petitioners to the Department of Labor and Employment expressly stated that the nature of his termination was due to “shutdown/retrenchment” while the list of dismissed project employees posted in the company premises as well as the request to terminate these employees submitted to the district labor office declared “project completion” as the ground for dismissal. Under these circumstances, according to private respondent, if petitioners would instead invoke “shutdown/retrenchment” as the proper ground for his dismissal they would have again violated his rights under Art. 283 of the Labor Code which mandates that in order to dismiss an employee due to “shutdown/retrenchment” he must first be furnished a written notice of his dismissal at least one (1) month before its effectivity.

On 2 October 1990 Labor Arbiter Manuel R. Caday dismissed the complaint of private respondent for lack of merit. He ruled that private respondent’s separation from work was anchored on a just and valid ground and that it was not effected in a wanton or malevolent manner. However, he ordered petitioners to pay private respondent P396.00 for unpaid wage differentials from 1 July 1989 to 1 January 1990.^[8] On appeal, the NLRC reversed the Labor Arbiter. It ruled that private respondent was illegally dismissed and directed

petitioners to pay him back wages from 1 January 1990 up to the closure of the Subic Naval Base. The NLRC found that petitioners failed to refute the claim of private respondent that there was no project completion to speak of when they did not deny his allegation that another driver was hired to replace him after his dismissal. The NLRC also gave considerable weight to the established fact that the Employer's Monthly Report of petitioners expressly stated that private respondent's termination was due to "shutdown/retrenchment" and not to the completion of the project. According to the NLRC, this circumstance belied the claim of petitioners that they dismissed private respondent due to project completion. The NLRC then concluded that if indeed "shutdown/retrenchment" was the reason for private respondent's dismissal petitioners should have complied with the 30-day notice requirement under Art. 283 of the Labor Code.^[9] Petitioners motion for reconsideration was denied; hence, this appeal.

We affirm the decision of the NLRC as we find private respondent illegally dismissed by ARMACON.

It is not disputed that private respondent was a project employee of ARMACON. As such he was employed in connection with a particular project the completion of which had been determined at the time of his employment.^[10] Consequently, as a project employee of ARMACON, his employment may be terminated upon the completion of the project as there would be no further need for his services.^[11] Since a project employee's work depends on the availability of projects, necessarily the duration of his employment is not permanent but coterminous with the work to which he is assigned.^[12] It would be extremely burdensome for the employer, who depends on the availability of projects, to carry him as a permanent employee and pay him wages even if there are no projects for him to work on.^[13] The rationale behind this is that once the project is completed it would be unjust to require the employer to maintain these employees in their payroll. To do so would make the employee a privileged retainer who collects payment from his employer for work not done. This is extremely unfair and amounts to labor coddling at the expense of management.^[14]

However, for project workers employed in the construction industry like the one before us, employers are allowed to reduce their work force into a number suited for the remaining work to be done upon the completion or proximate accomplishment of the construction project. The employment of a project worker hired for a specific phase of a construction project is understood to be coterminous with the completion of such phase and not upon the accomplishment of the whole project. Thus, a worker hired for a particular phase of a construction project can be dismissed upon the completion of such phase. Project workers in the construction industry may also be terminated as the phase of a construction project draws nearer to completion when their services are no longer needed provided they are not replaced.^[15] Policy Instruction No. 20^[16] expressly recognizes these peculiar employment arrangements in the construction industry because each phase in these projects requires a varied number of workers. It is recognized in this jurisdiction that the number of maintained workers in a particular construction project must be flexible and must conform with the requirements of each phase that remains unaccomplished.

However, if a project employee is dismissed his removal must still comply with the substantive and procedural requirements of due process. Sec. 3, Art. XIII, of the Constitution mandates that the State shall afford full protection to labor and declares that all workers shall be entitled to security of tenure. The fundamental guarantee of security of tenure and due process dictates that no worker shall be dismissed except for a just and authorized cause provided by law and after due process has been properly complied with.^[17] Therefore, a project employee hired for a specific task also enjoys security of tenure. A termination of his employment must be for a lawful cause and must be done in a manner which affords him the proper notice and hearing. Thus, a project employee must be duly furnished a written notice of his impending dismissal and must be given the opportunity to dispute the legality of his removal.^[18]

In the case before us, we are convinced that private respondent Rogelio Cayanga was illegally dismissed by petitioners. In pursuing this appeal petitioners rely on Policy Instruction No. 20 to justify the dismissal of private respondent. They maintain that private respondent's discharge was necessary because as the Subic project

neared completion less and less employees were needed to finish the undertaking. They insist that Policy Instruction No. 20 provides the legal basis for his removal and assert that they faithfully complied with all the legal requirements therefor.

Although it is acknowledged that the employment of private respondent is terminable upon the completion or proximate accomplishment of the Subic project or a phase thereof under Policy Instruction No. 20, we nonetheless cannot sustain petitioners' assertion that Rogelio Cayanga's dismissal was lawful. To justly dismiss private respondent under Policy Instruction No. 20 it is incumbent upon petitioners to show proof of the proximate completion of the Subic project when respondent Cayanga questioned the veracity of such an allegation. In the case at bench, petitioners failed to present substantial evidence to prove the proximate completion of the Subic project. The affidavit executed by petitioners' personnel officer and the manpower schedule, which supposedly proves that private respondent's services were no longer necessary for the remaining duration of the project, are mere self-serving assertions that are not enough to substantiate their claim of proximate project completion. We find it in the interest of justice to require employers to state the reason for their project employees' dismissal and prove this ground once its veracity is challenged. Employers who hire project employees are mandated to prove the actual basis for the latter's dismissal. A mere claim of project completion is not sufficient to terminate a project worker's employment without adequate proof to demonstrate such claims. In termination cases, like the one at bench, the burden of proving that an employee has been lawfully dismissed lies with the employer.^[19] Moreover, to allow employers to exercise their prerogative to terminate a project worker's employment based on gratuitous assertions of project completion would destroy the constitutionally protected right of labor to security of tenure.^[20]

The facts and circumstances surrounding the dismissal of private respondent likewise cast serious doubt on whether project completion was the true reason behind the termination of his employment.

As correctly observed by the NLRC as well as private respondent, petitioners have not been consistent in citing project completion as the basis for the dismissal. After a careful perusal of the Employer's

Monthly Report on Employees' Termination accomplished and submitted by petitioners we cannot help entertaining serious doubt, as the NLRC did, on the proper cause for private respondent's dismissal from his employment.

WHEREFORE, the Petition for *Certiorari* is **DENIED**. The assailed Resolution of the National Labor Relations Commission dated 25 August 1992 directing petitioners "to pay complainant (private respondent) back wages computed from January 1, 1990 up to the closure of the Subic Naval Base that has been of public knowledge" is **AFFIRMED**. Costs against petitioners.

SO ORDERED.

Padilla, Davide, Jr., Kapunan and Hermosisima, Jr., JJ., concur.

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- [1] NLRC Resolution of 25 August 1992, Annex "M," Petition; Rollo, pp. 91-102.
- [2] Petition, p. 3.
- [3] Id., p. 36.
- [4] Id., p. 4.
- [5] Annex "D," Petition; Rollo, p. 38.
- [6] Annex "F," Petition; Rollo, pp. 43-44.
- [7] Rollo, p. 45.
- [8] Annex "J," Petition; Rollo, pp. 66-73.
- [9] See Note 1.
- [10] Art. 280, Labor Code; Rada vs. NLRC, G.R. No. 96078, 9 January 1992, 205 SCRA 69; Philippine National construction Corp. vs. NLRC, G.R. No. 95816, 27 October 1992, 215 SCRA 204; Sandoval Shipyards, Inc. vs. NLRC, G.R. No. 65689, and Sandoval Shipyards vs. Leogardo, G.R. No. 66119, 31 May 1985, 136 SCRA 674.
- [11] Philippine National Oil Co.-Energy Dev't. Corp vs. NLRC, G.R. No. 97747, 31 March 1993, 220 SCRA 695; Cartegenas vs. Romago, G.R. No. 82973, 15 September 1989, 177 SCRA 637.
- [12] Mamansag vs. NLRC, G.R. No. 97520, 9 February 1992, 218 SCRA 722.
- [13] Cartagenas vs. NLRC, see Note 11.
- [14] De Ocampo vs. NLRC, G.R. No. 81077, 6 June 1990, 186 SCRA 360.
- [15] Policy Instruction No. 20, pars. 6-7 provide: The employees of a particular project are not terminated at the same time. Some phases of the project are completed ahead of others. For this reason, the completion of a phase of the Project is the completion of the project for an employee employed in such phase. In other words, employees terminated upon the completion of their

phase of the project are not entitled to separation pay and exempt from the clearance requirement.

On the other hand, those employed in a particular phase of a construction project are also not terminated at the same time. Normally, less and less employees are required as the phase draws closer to completion. Project employees terminated because their services are no longer needed in their particular phase of the project are not entitled to separation pay and are exempt from the clearance requirement, provided they are not replaced. If they are replaced, they shall be entitled to reinstatement with back wages.

- [16] An undated issuance by then Secretary of Labor Blas Ople in order to stabilize the employer-employee relations in the construction industry.
- [17] Art. 277, Labor Code; Tanduary Distillery Labor Union vs. NLRC, G.R. No. 73352, 6 December 1994, 239 SCRA 1; BPI Credit Corporation vs. NLRC, G.R. No. 106027, 25 July 1994, 234 SCRA 441; De Ysasi III vs. NLRC, G.R. No. 104599, 11 March 1994, 231 SCRA 173.
- [18] Art. 277 (b), Labor Code.
- [19] Art. 277, par. (b), Labor Code; Golden Donuts, Inc. vs. NLRC, G.R. Nos. 105758-59, 21 February 1994, 230 SCRA 153; Gesulgon vs. NLRC, G.R. No. 90349, 5 March 1993, 219 SCRA 561; Sigma Personnel Services vs. NLRC, G.R. No. 108284, 30 June 1993, 224 SCRA 181; Philippine Manpower Services Inc. vs. NLRC, G.R. No. 108284, 30 June 1993, 224 SCRA 691; Pacific Timber Export Corp. vs. NLRC, G.R. No. 106170, 30 June 1993, 224 SCRA 860.
- [20] Art. XIII, Sec. 3, 1987 Constitution.