

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
THIRD DIVISION**

**AUDION ELECTRIC CO., INC.,  
*Petitioner,***

***-versus-***

**G.R. No. 106648  
June 17, 1999**

**NATIONAL LABOR RELATIONS  
COMMISSION and NICOLAS  
MADOLID,  
*Respondents.***

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**D E C I S I O N**

**GONZAGA-REYES, J.:**

In this Special Civil Action for Certiorari, petitioner seeks the annulment of the Resolution<sup>[1]</sup> dated March 24, 1992, of the National Labor Relations Commission in NLRC NCR-CA No. 001034-90 and the Order<sup>[2]</sup> dated July 31, 1992, denying petitioner's motion for reconsideration dated April 22, 1992.

The facts of the case as summarized by Labor Arbiter Cresencio R. Iniego in his decision rendered on November 15, 1990 in NLRC-NCR Case No. -00-08-03906-89, and which are quoted in the questioned Resolution dated March 24, 1992 of the public respondent are as follows:

“From the position paper and affidavit corroborated by oral testimony, it appears that complainant was employed by respondent Audion Electric Company on June 30, 1976 as fabricator and continuously rendered service assigned in different offices or projects as helper electrician, stockman and timekeeper. He has rendered thirteen (13) years of continuous, loyal and dedicated service with a clean record. On August 3, complainant was surprised to receive a letter informing him that he will be considered terminated after the turnover of materials, including respondents’ tools and equipments not later than August 15, 1989.

Complainant claims that he was dismissed without justifiable cause and due process and that his dismissal was done in bad faith which renders the dismissal illegal. For this reason, he claims that he is entitled to reinstatement with full backwages. He also claims that he is entitled to moral and exemplary damages. He includes payment of his overtime pay, project allowance, minimum wage increase adjustment, proportionate 13<sup>th</sup> month pay and attorney’s fees.

On its part, respondent merely relied on its unverified letter-communication signed by its project manager, dated September 25, 1989, the contents of which are as follows:

Your Honor:

Apropos to the complaints filed by NICOLAS MADOLID with your honorable office are as stated and corresponding allegations as our defense to said complaints.

A. ILLEGAL DISMISSAL — There is no course (sic) to complain since employment contract signed by complainant with respondent is co-terminus with the project.

B. UNPAID WAGES — Admitting that salary payment was delayed due to late remittance of collection from respondent’s Japanese prime contractor but nonetheless settled with

complainant as evidenced by signed Payroll Slips by complainant.

C. NON-PAYMENT OF 13th MONTH PAY — As earlier admitted, there was a relative delay in the remittance of collection payment from our Japanese prime contractor but respondent knowing the economic predicament (sic) of complainant has seen to it that respondent be satisfied without awaiting for remittance of 13th month from its Japanese contractor.

In full satisfaction of the enumerated complaints made by complainant NICOLAS MADOLID against respondent THE AUDION ELECTRIC CO., INC., we pray that charges against respondent be withdrawn and dropped.”<sup>[3]</sup>

On November 15, 1990, Labor Arbiter Cresencio R. Iniego rendered a decision, the dispositive portion states:

“WHEREFORE, judgment is hereby rendered ordering respondent Audion Electric Co., Inc. and/or Robert S. Coran, Manager:

1. to reinstate complainant Nicolas Madolid to his former position with full backwages from the date of his dismissal on August 15, 1989 up to the signing of this decision without loss of seniority rights in the amount of P34,710.00;
2. to pay complainant his overtime pay for the period March 16 to April 3, 1989 in the amount of P765.63;
3. to pay complainant his project allowances as follows:

April 16, 1989 to April 30, 1989	P30.00
May 1 to May 15, 1989	P45.00
May 16 to May 31, 1989	P30.00
June 1 to June 15, 1989	P45.00
June 16 to June 30, 1989	P30.00
July 1 to July 15, 1989	P30.00

July 16 to July 31, 1989

P45.00

4. to pay complainant the minimum wage increase adjustment from August 1 to 14, 1989 in the amount of P256.50;
5. to pay complainant his proportionate 13th month pay from January to May 1988 in the amount of P700.00;
6. to pay complainant moral and exemplary damages in the amount of P20,000.00; and
7. to pay attorney's fees equivalent to 10% of the total award of complainant."<sup>[4]</sup>

Petitioner appealed to the National Labor Relations Commission which rendered the questioned Resolution dated March 24, 1992 dismissing the appeal.

The motion for reconsideration filed by petitioner was denied by the NLRC in its Order dated July 31, 1992.

Petitioner is now before us raising the following issues:

## I

THE RESPONDENT COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION IN AFFIRMING THE DECISION OF THE LABOR ARBITER DIRECTING THE REINSTATEMENT OF THE PRIVATE RESPONDENT TO HIS FORMER POSITION WITHOUT LOSS OF SENIORITY RIGHTS AND WITH BACKWAGES AMOUNTING TO P34,710.00 NOTWITHSTANDING THE FACT THAT THE PRIVATE RESPONDENT WAS MERELY A PROJECT EMPLOYEE.

## II

THE RESPONDENT COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT AWARDED THE CLAIM

FOR OVERTIME PAY TO PRIVATE RESPONDENT WHEN NO OVERTIME WORK WAS RENDERED.

III

THE RESPONDENT COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT AWARDED THE CLAIMS OF PRIVATE RESPONDENT FOR PROJECT ALLOWANCES, MINIMUM WAGE INCREASE ADJUSTMENT AND PROPORTIONATE 13<sup>TH</sup> MONTH PAY WITHOUT ANY EVIDENCE TO PROVE THE SAME.

IV

THE RESPONDENT COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT DENIED PETITIONER'S CLAIM THAT IT WAS DENIED DUE PROCESS.

V

THE RESPONDENT COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT DID NOT TOUCH UPON MUCH LESS DISCUSS THE PETITIONER'S ASSIGNMENTS OF ERRORS IN ITS APPEAL.

VI

THE RESPONDENT COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION IN AWARDING MORAL AND EXEMPLARY DAMAGES IN THE AMOUNT OF P20,000 AS WELL AS ATTORNEY'S FEES CONSIDERING THAT THE SAME ARE WITHOUT FACTUAL AND LEGAL BASIS.<sup>[5]</sup>

The core issues presented before us are (a) whether the respondent NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that private respondent was a regular employee and not a project employee, (b) whether petitioner was denied due process when all the money claims of private respondent, i.e. overtime pay, project allowances, salary differential,

proportionate 13<sup>th</sup> month pay, moral and exemplary damages as well as attorney's fees, were granted.

Petitioner contends that as an electrical contractor, its business depends on contracts it may obtain from private and government establishments, hence the duration of the employment of its work force is not permanent but co-terminus with the project to which they are assigned; that the conclusion reached by the Labor Arbiter and affirmed by the respondent court that private respondent was a regular employee of petitioner was merely based on mere allegations of private respondent since the Labor Arbiter did not consider the letter-communication filed by petitioner through its project manager for the reason that it was not under oath; that although private respondent's employment records showed that he was hired by petitioner as fabricator, helper/electrician, stockman and timekeeper in its various projects from 1976 to August 14, 1989, the same employment record showed a gap in his employment service by reason of completion of a particular project, hence, private respondent would be re-assigned to other on-going projects of the petitioner or be laid off if there is no available project; that private respondent is a project worker whose employment is co-terminus with the completion of project, regardless of the number of projects in which he had worked as provided under Policy Instruction No. 20 of the Labor Department defining project employees as those employed in connection with a particular construction project. Petitioner relies on the rulings laid down in *Sandoval Shipyard Inc. vs. NLRC*<sup>[6]</sup> and *Cartagenas vs. Romago Electric Co., Inc.*<sup>[7]</sup> where this court declared the employment of project employees as co-terminus with the completion of the project for which they were hired.

Well-settled is the rule that the findings of the NLRC, except when there is grave abuse of discretion, are practically conclusive on this Court. It is only when the NLRC's findings are bereft of any substantial support from the records that the Court may step in and proceed to make its own independent evaluation of the facts.<sup>[8]</sup> We see no reason to deviate from the rule.

In finding that private respondent was a regular employee of petitioner and not a mere project employee, the respondent Commission held:

“Firstly, respondent’s assigning complainant to its various projects did not make complainant a project worker. As found by the Labor Arbiter, ‘it appears that complainant was employed by respondent as fabricator and or projects as helper electrician, stockman and timekeeper.’ Simply put, complainant was a regular non-project worker.”<sup>[9]</sup>

Private respondent’s employment status was established by the Certification of Employment dated April 10, 1989 issued by petitioner which certified that private respondent is a bona-fide employee of the petitioner from June 30, 1976 up to the time the certification was issued on April 10, 1989. The same certificate of employment showed that private respondent’s exposure to their field of operation was as fabricator, helper/electrician, stockman/timekeeper. This proves that private respondent was regularly and continuously employed by petitioner in various job assignments from 1976 to 1989, for a total of 13 years. The alleged gap in employment service cited by petitioner does not defeat private respondent’s regular status as he was rehired for many more projects without interruption and performed functions which are vital, necessary and indispensable to the usual business of petitioner.

We have held that where the employment of project employees is extended long after the supposed project has been finished, the employees are removed from the scope of project employees and considered regular employees.<sup>[10]</sup> Private respondent had presented substantial evidence to support his position, while petitioner merely presented an unverified position paper merely stating therein that private respondent has no cause to complain since the employment contract signed by private respondent with petitioner was co-terminus with the project. Notably, petitioner failed to present such employment contract for a specific project signed by private respondent that would show that his employment with the petitioner was for the duration of a particular project. Moreover, notwithstanding petitioner’s claim in its reply that in taking interest in the welfare of its workers, petitioner would strive to provide them with more continuous work by successively employing its workers, in this case, private respondent, petitioner failed to present any report of termination. Petitioner should have submitted or filed as many

reports of termination as there were construction projects actually finished, considering that private respondent had been hired since 1976. The failure of petitioner to submit reports of termination supports the claim of private respondent that he was indeed a regular employee.

Policy Instruction No. 20 of the Department of Labor is explicit that employers of project employees are exempted from the clearance requirement but not from the submission of termination report. This court has consistently held that failure of the employer to file termination reports after every project completion with the nearest public employment office is an indication that private respondent was not and is not a project employee.<sup>[11]</sup> Department Order No. 19 superseding Policy Instruction No. 20 expressly provides that the report of termination is one of the indications of project employment.<sup>[12]</sup>

As stated earlier, the rule in our jurisdiction is that findings of facts of the NLRC affirming those of the Labor Arbiter are entitled to great weight and will not be disturbed if they are supported by substantial evidence.<sup>[13]</sup> Substantial evidence is an amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.<sup>[14]</sup> We find no grave abuse of discretion committed by NLRC in finding that private respondent was not a project employee.

Our ruling in the case of Sandoval Shipyard vs. NLRC, supra, is not in point. In the said case, the hiring of construction workers was not continuous for the reason that the shipyard merely accepts contracts for shipbuilding or for repair of vessels from third parties and, it is only on occasions when it has work contracts of this nature that it hires workers for the job which lasts only for less than a year or longer. With respect to Cartagenas vs. Romago Electric Co. also relied upon by the petitioner, the complainants were considered project employees because they were issued appointments from project to project, which were co-terminus with the phase or item of work assigned to them in said project, a situation which is not obtaining in the instant case.

Petitioner further claims that respondent Commission erred in sustaining the awards for overtime pay, project allowances, minimum

wage increase adjustment and proportionate 13<sup>th</sup> month pay to private respondent in the absence of any substantial evidence supporting the same; that private respondent failed to present any documentary evidence other than his self-serving allegation that he actually rendered overtime work and that he failed to specify in his position paper the actual number of overtime work alleged to have been rendered; that in petitioner's letter-communication filed with the labor arbiter, it showed that claims for allowances and salary differential and 13<sup>th</sup> month pay were already satisfied although petitioner admitted that there was a delay in the payment which was not rebutted by private respondent.

We find no merit in petitioner's contention.

Private respondent clearly specified in his affidavit the specific dates in which he was not paid overtime pay, that is, from the period March 16, 1989 to April 3, 1989 amounting to P765.63, project allowance from April 16, 1989 to July 31, 1989 in the total amount of P255.00, wage adjustment for the period from August 1, 1989 to August 14, 1989 in the amount of P256.50 and the proportionate 13<sup>th</sup> month pay for the period covering January to May 1988, November-December 1988, and from January to August 1989. This same affidavit was confirmed by private respondent in one of the scheduled hearings where he moved that he be allowed to present his evidence ex-parte for failure of petitioner or any of his representative to appear thereat. On the other hand, petitioner submitted its unverified Comment to private respondent's complaint stating that he had already satisfied the unpaid wages and 13<sup>th</sup> month pay claimed by private respondent, but this was not considered by the Labor Arbiter for being unverified. As a rule, one who pleads payment has the burden of proving it. Even where the plaintiff must allege non-payment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment.<sup>[15]</sup> The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.<sup>[16]</sup> Petitioner failed to rebut the claims of private respondent. It failed to show proof by means of payroll or other evidence to disprove the claim of private respondent. Petitioner was given the opportunity to cross-examine private respondent yet petitioner forfeited such chance when it did not attend the hearing, and failed to rebut the claims of private respondent.

Petitioner's contention that it was denied due process when it was not given the chance to cross-examine the adverse party and his witnesses, is devoid of merit. The essence of due process is simply an opportunity to be heard<sup>[17]</sup> or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.<sup>[18]</sup> What the law prohibits is absolute absence of the opportunity to be heard; hence, a party cannot feign denial of due process where he had been afforded the opportunity to present his side.<sup>[19]</sup> Petitioner was not denied due process. As the respondent commission observed:

“The case was initially set for hearing on September 12, 1989 wherein complainant himself appeared. Respondents' representative appeared late. For this reason, the case was reset to September 26, 1989 at 9:30 a.m. wherein both parties appeared. Complainant filed his position paper and respondents through its project manager filed a one-page unverified communication stating therein its defense. The case was then reset to October 9 and 10, 1990 both at 3:00 p.m. warning the parties that no further postponement will be allowed. On October 9, 1989 complainant and his counsel appeared but respondents and representative failed to appear despite due notice and warning. A reply to respondent's position paper was filed by complainant through counsel during the hearing. To give a chance to respondents to appear, hearing was reset the next day, October 10, 1989. However, respondents or representative again failed to appear which constrained counsel for complainant to move that he be allowed to present evidence ex-parte which motion was granted. Complainant was presented as witness, confirmed his affidavit, testified on additional direct examination and identified the annexes attached to his position paper.

To allow the respondents to cross examine the complainant, hearing was again reset to October 31, 1989 at 9:30 a.m. with the warning that if respondents again fail to appear, presentation of evidence will be deemed waived and the case will be considered submitted for decision. On October 31, 1989, despite due notice and warning, counsel for respondents failed

to appear although a representative appeared requesting for a resetting alleging that counsel for respondents is busy with the Office of the Commission of Immigration. Said motion was denied and the motion of counsel for complainant to submit the case for decision was granted.”<sup>[20]</sup>

Clearly, petitioner had ample opportunity to present its side of the controversy not only before the Labor Arbiter but also with the NLRC on appeal, where petitioner submitted a memorandum as well as a motion for reconsideration, which were all considered by the NLRC in the course of resolving the case.<sup>[21]</sup> It cannot thereafter interpose lack of due process since it was given the chance to be heard and present his case.<sup>[22]</sup> Consequently, the alleged defect in the proceedings before the Labor Arbiter, if there be any, should be deemed cured.

Petitioner’s contention that the respondent Commission did not touch upon each one of the errors enumerated in petitioner’s appeal in its resolution of March 24, 1992 is untenable. In affirming the decision of the Labor Arbiter, the respondent NLRC found the evidence supporting the labor arbiter’s factual findings to be substantial, and for this reason found it unnecessary to make a separate discussion.

However, the award of moral and exemplary damages must be deleted for being devoid of legal basis. Moral and exemplary damages are recoverable only where the dismissal of an employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy.<sup>[23]</sup> The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith.<sup>[24]</sup> It is not enough that one merely suffered sleepless nights, mental anguish, serious anxiety as the result of the actuations of the other party. Invariably, such action must be shown to have been willfully done in bad faith or with ill motive, and bad faith or ill motive under the law cannot be presumed but must be established with clear and convincing evidence.<sup>[25]</sup> Private respondent predicated his claim for such damages on his own allegations of sleepless nights and mental anguish, without establishing bad faith, fraud or ill motive as legal basis therefor.

Private respondent not being entitled to award of moral damages, an award of exemplary damages is likewise baseless.<sup>[26]</sup> Where the award of moral and exemplary damages is eliminated, so must the award for attorney's fees be deleted.<sup>[27]</sup> Private respondent has not shown that he is entitled thereto pursuant to Art. 2208 of the Civil Code.

**WHEREFORE**, the challenged resolutions of the respondent NLRC are hereby **AFFIRMED** with the **MODIFICATION** that the awards of moral and exemplary damages and attorney's fees are **DELETED**.

**SO ORDERED.**

**Romero, Vitug, Panganiban and Purisima, JJ., concur.**

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- [1] Rollo, pp. 34-43, penned by Commissioner Vicente S. E. Veloso, concurred by Presiding Commissioner Bartolome S. Carale and Commissioner Romeo Putong.
- [2] Id., p. 27.
- [3] Rollo, pp. 34-37.
- [4] Rollo, 37-38.
- [5] Rollo, pp. 9-10.
- [6] 136 SCRA 675.
- [7] 177 SCRA 637.
- [8] *CMP Federal Security Agency, Inc. vs. NLRC, et al.* GR No. 125298, February 11, 1999; *Agoy vs. NLRC*, 252 SCRA 588.
- [9] NLRC Resolution, pp. 8-9; Rollo, pp. 41-42.
- [10] *Tomas Lao Construction vs. NLRC*, 278 SCRA 716; *Phesco Inc. vs. NLRC*; 239 SCRA 446; *Capitol Industrial Construction Group vs. NLRC*, 221 SCRA 469.
- [11] *Ochoco vs. NLRC*, 120 SCRA 774, *Capitol Industrial Construction Corp. vs. NLRC*, 221 SCRA 469, *Phil. National Construction Corp. vs. NLRC*, 174 SCRA 191, *Philippine National Construction Corporation vs. NLRC*, 215 SCRA 204, *Aurora Land Projects Corp. vs. NLRC*, 266 SCRA 48; *Tomas Lao Construction vs. NLRC*, supra.
- [12] *Tomas Lao Construction vs. NLRC*, supra, citing Sec. 2.2 (e), Department Order No. 19, April 1, 1993.
- [13] *Western Shipping Agency, Inc. vs. NLRC*, 253 SCRA 495, *Agoy vs. NLRC*, supra.
- [14] *Madlos vs. NLRC*, 254 SCRA 248.
- [15] *Jimenez vs. NLRC*, 256 SCRA 84 citing 60 Am. Jur. 2d, Payment, Sec. 171, 997.
- [16] *Jimenez vs. NLRC*, supra citing *Motor Finance Co. vs. Universal Motors, La. App.*, 182 So. 143 - *Moreira's Succession*, 16 La. Ann. 368.

- [17] Eden vs. MOLE, 182 SCRA 840.
- [18] Philippine Phosphate Fertilizer Corp. vs. Torres, 231 SCRA 235.
- [19] Garcia vs. NLRC, 264 SCRA 261.
- [20] Rollo, pp. 34-35.
- [21] Lloria Motors, Inc. vs. Drilon, 179 SCRA 175, Artex Development Co. Inc., vs. NLRC, 187 SCRA 611, citing Maglasang vs. Ople, et al., 63 SCRA 508, Cuerdo vs. COA, 166 SCRA 657.
- [22] Ong, Sr. vs. Parel, 156 SCRA 768, Adamson & Adamson, Inc. vs. Amores, 152 SCRA 237.
- [23] Ford Philippines, Inc. vs. CA, 267 SCRA 320, Equitable Banking Corporation vs. NLRC, 273 SCRA 352.
- [24] Equitable Banking Corporation, supra.
- [25] Bernardo vs. CA, 275 SCRA 413.
- [26] Ibid.
- [27] Ibid. citing Philippine Airlines vs. Miano, 242 SCRA 235.