

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**ISAAC CIOCO, JR., REBIE A.
MERCADO, BENITO V. GALVADORES,
CECILIO SOLVER, CARMELO
JUANZO,^[1] BENJAMIN BAYSA, and
RODRIGO NAPOLES,**

Petitioners,

-versus-

**G.R. No. 156748
September 8, 2004**

**C. E. CONSTRUCTION CORPORATION
and/or JOHNNY TAN,**

Respondents.

X-----X

**C. E. CONSTRUCTION CORPORATION,
*Petitioner,***

-versus-

**G.R. No. 156896
September 8, 2004**

**ISAAC CIOCO, JR., REBIE A.
MERCADO, BENITO V. GALVADORES,
CECILIO SOLVER, CARMELO JUANZO,
BENJAMIN BAYSA, and RODRIGO
NAPOLES,**

Respondents.

X-----X

DECISION

PUNO, J.:

Before us are two (2) Petitions for Review of the Decision dated August 28, 2002^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 68937,^[3] which reversed the National Labor Relations Commission (NLRC), as well as its Resolution dated January 7, 2003,^[4] which denied the parties' separate motions for reconsideration.

The antecedent facts are as follows:

Isaac Cioco, Jr., Rebie A. Mercado, Benito V. Galvadores, Cecilio Solver, Carmelo Juanzo, Benjamin Baysa, and Rodrigo Napoles (WORKERS) were hired by C.E. Construction Corporation (COMPANY), a domestic corporation engaged in the construction business and managed by its owner-president, Mr. Johnny Tan. They were hired as carpenters and laborers in various construction projects from 1990 to 1999, the latest of which was the GTI Tower in Makati. Prior to the start of every project, the WORKERS signed individual employment contracts which uniformly read.^[5] -

I hereby apply as carpenter/laborer on the GTI Tower project. It is understood that if accepted, the period of employment shall be co-terminus with the completion of the project, unless sooner terminated by you prior to the completion of the project.

I agree to comply with such rules and regulations and instructions which you may issue from time to time and to accomplish such forms and papers pertinent to my employment.

In the event my service is terminated prior to completion of the project or upon its completion as above fixed, I hereby release and hold you harmless and free from any claim, demand or cause of actions.

Sometime in May and June 1999, the WORKERS, along with sixty-six (66) others, were terminated by the COMPANY on the ground of completion of the phases of the GTI Tower project for which they had been hired. Alleging that they were regular employees, the WORKERS filed complaints for illegal dismissal with the Arbitration Branch of the NLRC. Claims for underpaid wages and unpaid overtime pay, premium for holiday and rest days, service incentive leave pay, night shift differential, and 13th month pay were likewise demanded.

On April 17, 2000, the Labor Arbiter rendered judgment in favor of the COMPANY.^[6] He ruled that the WORKERS were project employees as evident from their individual employment contracts; that due notices of termination were given to them; and, that the required termination reports were submitted to the Department of Labor and Employment (DOLE).^[7] The money claims were dismissed for lack of basis.

The NLRC affirmed the labor arbiter's decision on appeal.^[8] After their motion for reconsideration was denied, the WORKERS filed a special civil action for certiorari with the CA.^[9]

On August 28, 2002, the CA rendered its now assailed decision, the dispositive portion of which reads –

WHEREFORE, premises considered, the instant petition is partially given DUE COURSE. The assailed Decision of the National Labor Relations Commission dated October 26, 2001 affirming the Decision of the Labor Arbiter dated April 17, 2000 dismissing the petitioners' complaint for illegal dismissal and claims for under payment (sic) and non-payment of monetary benefits for lack of merit, and its Resolution of November 29, 2001 denying petitioners' Motion for Reconsideration are hereby AFFIRMED, but MODIFIED, in that although petitioners were project employees, their dismissal as such project employees is hereby declared ILLEGAL, and private respondent C.E. Construction Corporation is directed to pay back wages computed from the date of termination, i.e., May 27, 1999 for petitioners Isaac Cioco, Jr., Carmelo Juanzo, Cecelio

(sic) Soler and Benito Galvadores and from June 5, 1999 for petitioners Rebie Mercado, Baysa Benjamin (sic) and Rodrigo Napoles, up to the date of completion of the construction of the GTI Tower project.^[10]

The parties filed separate motions for reconsideration which were denied. Hence, the present petitions for review which we consolidated in our Resolution dated February 26, 2003.

The WORKERS contend that they are regular employees of the COMPANY, hence, entitled to reinstatement and backwages from the time of their illegal dismissal up to the date of their actual reinstatement.

The COMPANY, on the other hand, contends that the WORKERS are its project employees; that they were not illegally dismissed; and, that in ruling otherwise, the CA disregarded the documentary evidence, i.e., Progress Billing and Notice of Termination Reports, clearly showing completion of the phases of the GTI Tower project for which the services of the WORKERS had been engaged.

The issue of whether the WORKERS were regular or project employees of the COMPANY is a question of fact which shall no longer be dealt with in this petition for review, the Court's jurisdiction being limited to questions of law. The Labor Arbiter, the NLRC, and the CA, unanimously found that the WORKERS were project employees of the COMPANY. This finding is binding on this Court.

We again hold that the fact that the WORKERS have been employed with the COMPANY for several years on various projects, the longest being nine (9) years, did not automatically make them regular employees considering that the definition of regular employment in Article 280^[11] of the Labor Code, makes specific exception with respect to project employment. The re-hiring of petitioners on a project-to-project basis did not confer upon them regular employment status. The practice was dictated by the practical consideration that experienced construction workers are more preferred.^[12] It did not change their status as project employees.

The next issue is whether the WORKERS were illegally dismissed. The CA ruled that they were illegally dismissed as there was no evidence presented by the COMPANY to show that the WORKERS had been duly notified or informed beforehand of their dismissal and the reasons therefor. Furthermore, the COMPANY allegedly failed to present evidence conclusively proving completion of the GTI Tower project or phases thereof for which the services of the WORKERS had been engaged.

The records show otherwise. Individual notices of termination had been sent to the WORKERS which uniformly read:^[13]

X X X

Dear _____,

Malungkot namin ipinaalam sa iyo na simula sa Mayo 29, 1999 ay hindi na namin maipagpapatuloy ang iyong paggawa sa GT TOWER INTERNATIONAL project sa kadahilanang tapos na ang “phase of work” ng project na iyong kinabibilangan.

Ang pamunuan ng GT TOWER INTERNATIONAL project ay nagpapasalamat sa iyo. Inaasahan namin ang iyong pang-unawa.

CE CONSTRUCTION CORPORATION

(Signed)

ENGR. HERMOGENES L. MARTINEZ

Project Engineer

In his Decision dated April 17, 2000, the labor arbiter categorically found that the appropriate notices to the WORKERS and the corresponding reports were submitted by the COMPANY to the DOLE. The NLRC affirmed this finding of fact on appeal. The rule is that factual findings of administrative agencies, if supported by substantial evidence, are entitled to great weight.^[14] More importantly, Section 2^[15] (III), Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code provides that no prior notice of termination is required if the termination is brought about by

completion of the contract or phase thereof for which the worker has been engaged. This is because completion of the work or project automatically terminates the employment, in which case, the employer is, under the law, only obliged to render a report to the DOLE on the termination of the employment.^[16]

Finally, the CA ruled that the COMPANY failed to present evidence conclusively showing actual completion of the GTI Tower project or respective phases thereof for which the WORKERS had been hired. Allegedly, the best evidence of this fact is the schedule of completion of the whole or various phases of the construction project in the COMPANY's possession.

Again, a review of the records shows that the COMPANY submitted the needed evidence. In its motion for reconsideration of the CA's decision, the COMPANY attached as Annexes "A"^[17] and "B,"^[18] Progress Billing Reports clearly showing that the GTI Tower project was already 80.9203% and 81.3747% accomplished as of May 31, 1999 and June 30, 1999, respectively. Specifically, the particular form, concreting and masonry works for which the WORKERS had been hired and assigned were already completed or near completion, as shown by Annexes "A-3," "A-4," and "A-6" of the May Progress Billing Report, and Annexes "B-3," "B-4," "B-6" and "B-7" of the June Progress Billing Report. The WORKERS did not question the veracity of the evidence presented and just insisted that they are regular employees of the COMPANY, hence, not liable for termination on mere ground of project completion.

Considering the foregoing, we hold that the COMPANY complied with the procedural as well as the substantive requirements of due process with respect to the WORKERS' termination, as found by the Labor Arbiter and the NLRC. We reverse the CA.

IN VIEW WHEREOF, the assailed Decision dated August 28, 2002 of the Court of Appeals in CA-G.R. SP No. 68937 is **MODIFIED**. The termination from employment of project employees Isaac Cioco, Jr., Rebie A. Mercado, Benito V. Galvadores, Cecilio Solver, Carmelo Juanzo, Benjamin Baysa, and Rodrigo Napoles is hereby declared valid and legal. Their award of backwages computed from the date of their termination is set aside.

SO ORDERED.

**Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.
Austria-Martinez, J., on official leave.**

- [1] This petitioner was mistakenly identified as Carmelo “Jaunzo” in the title of the assailed decision of the Court of Appeals.
- [2] Penned by Justice Sergio L. Pestaño, Delilah Vidallon-Magtolis and Josefina Guevara-Salonga, JJ., concurring; Rollo, G. R. No. 156748, pp. 14-24.
- [3] Entitled “Isaac Cioco, Jr., et al. vs. National Labor Relations Commission, et al.”
- [4] Rollo, G. R. No. 156748, pp. 26-27.
- [5] Annexes “G-2” to “G-6”; Id., pp. 46-50.
- [6] Id., pp. 54-57.
- [7] Implied in Department Order No. 19 of the DOLE is the submission of a Monthly Report of Employees’ Terminations to the DOLE-Regional Office. Submission of such reports is listed as one of the indicators of project employment under Sec. 2.2(e) of the Order.
- [8] Decision dated October 26, 2001.
- [9] Docketed as CA-G.R. SP No. 68937; Supra at 3.
- [10] CA Rollo, p. 217.
- [11] Regular and Casual Employment. – The provisions of written greement 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 of 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 activity exists.
- [12] Millares vs. NLRC, 385 SCRA 306 (2002).
- [13] See Annexes “D,” “E,” “G,” “I,” “J,” “K,” and “L”; CA Rollo, pp. 262-270.
- [14] Mercado, Sr. vs. NLRC, 201 SCRA 333 (1991).
- [15] On “standards of due process: requirements of notice.”
- [16] See Note 7.
- [17] CA Rollo, pp. 241-250.
- [18] Id., pp. 251-260.

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