

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
SECOND DIVISION**

**HIGHWAY COPRA TRADERS and/or  
GERSON DULANG (Owner-  
Operator)/LUZVIMINDA DULANG,  
*Petitioners,***

***-versus-***

**G.R. No. 108889  
July 30, 1998**

**NATIONAL LABOR RELATIONS  
COMMISSION — Cagayan de Oro, and  
DAVID EMPEYNADO,  
*Respondents.***

X-----X

**DECISION**

**MARTINEZ, J.:**

On May 15, 1986, private respondent David Empeynado was employed as a general utility man by petitioners in their business of trading copra and charcoal with a daily wage of P35.00. Private respondent's work consisted of weighing copra or charcoal, bagging copra for loading and ascertaining the moisture content thereof. He was likewise a multi-purpose handyman since he worked as a driver of petitioners' trucks, a mechanic and a messenger to follow-up petitioners' contracts with other companies, to register their vehicles, to pay their taxes, and to collect and receive payments in their behalf.

Private respondent, however, was not paid his full salary but was merely given cash advances. When he sought full payment thereof, petitioners informed him not to report for work starting January 12, 1987, and wait until he is re-hired which never happened. Thus, on December 16, 1987, he filed before the Labor Arbiter a complaint for illegal dismissal and non-payment of regular salaries against petitioners. After hearing, the Labor Arbiter found that private respondent was merely a casual employee and accordingly dismissed his complaint in a decision the dispositive portion of which reads:<sup>[1]</sup>

“WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered: (1) declaring that complainant’s employment status with respondent is casual; and (2) dismissing complainant’s charge for illegal dismissal and the money claims for overtime pay, holiday pay, 13<sup>th</sup> month pay, emergency cost of living allowance, and unpaid wages against respondent for lack of merit.

SO ORDERED.”<sup>[2]</sup>

On appeal, the National Labor Relations Commission (NLRC) reversed the Labor Arbiter’s decision and ruled in this wise:

“WHEREFORE, the decision appealed from is Annulled and Set Aside and a new one entered declaring complainant David Empeynado a regular employee and his termination from the service held as illegal. Accordingly, respondents are ordered jointly and solidarily to reinstate complainant and pay his backwages effective from his date of lay-off on January 12, 1987 up to January 11, 1990 plus his claims for unpaid wages and salary differentials and proportionate 13<sup>th</sup> month pay for three (3) years, less complainant’s cash advance of P2,000.00 or in the net award of P60,306.67 as computed above.

In case the reinstatement of complainant is found impractical due to any lawful supervening event not attributable to the fault of respondents, the determination of which in case of dispute over the matter is tasked to the Labor Arbiter below after due notice and hearing during the execution stage, complainant is

granted the alternative relief of payment of separation pay which is hereby fixed for a total of three (3) months salary based on the prevailing statutory rate at the time of his termination on January 12, 1987. With costs against respondents.

SO ORDERED.”<sup>[3]</sup>

When their Motion for Reconsideration was denied by the NLRC,<sup>[4]</sup> petitioners elevated the case via petition for *certiorari*. Petitioners principally ascribe grave abuse of discretion on the part of the NLRC for declaring private respondent a regular employee and thus, entitled to unpaid wages and other monetary benefits. They argue that private respondent performed tasks which were menial and not in any way connected with petitioners’ copra business and that he was hired only on a “per need basis.”

The petition must fail.

The factual milieu of this case undisputably shows that private respondent was a regular employee of petitioners’ copra business. Article 280 of the Labor Code<sup>[5]</sup> describes a regular employee as one who is either (1) engaged to perform activities which are necessary or desirable in the usual business or trade of the employer; and (2) those casual employees who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which he is employed.<sup>[6]</sup>

The Labor Code draws a fine line between regular and casual employees to protect the interests of labor. We ruled in *Baguio Country Club Corporation vs. NLRC*<sup>[7]</sup> that “its language evidently manifests the intent to safeguard the tenurial interest of the worker who may be denied the rights and benefits due a regular employee by virtue of lopsided agreements with the economically powerful employer who can maneuver to keep an employee on a casual status for as long as convenient.” Thus, notwithstanding any agreements to the contrary, an employment is deemed regular when the activities performed by the employee are usually necessary or desirable in the usual business or trade of the employer.<sup>[8]</sup> The primary standard, therefore, of determining a regular employment is the reasonable connection between the particular activity performed by the employee

in relation to the usual business or trade of the employer, i.e. if the work is usually necessary or desirable in the usual business or trade of the employer. The connection can be determined by considering the nature of the work performed and its relation to the scheme of the particular business or trade in its entirety.<sup>[9]</sup>

In this case, the nature of private respondent's work as a general utility man was definitely necessary and desirable to petitioners' business of trading copra and charcoal regardless of the length of time he worked therein. As such, he is a regular employee pursuant to the first paragraph of Article 280 of the Labor Code.

Petitioners further argue that private respondent was only engaged for a specific task, the completion of which resulted in the cessation of his employment. This is not correct. By "specific project or undertaking," Article 280 of the Labor Code contemplates an activity which is not commonly or habitually performed or such type of work which is not done on a daily basis but only for a specific duration of time or until completion in which case, the services of an employee are necessary and desirable in the employer's usual business only for the period of time it takes to complete the project.<sup>[10]</sup> Such circumstance does not obtain in this case.

We now turn to the issue of backwages. In determining the proper amount of backwages, the material date to consider is March 21, 1989 which is when Republic Act No. 6715<sup>[11]</sup> took effect. This law amended, among others, Article 279 (related to backwages) of the Labor Code.<sup>[12]</sup>

Said amendatory law, however, does not cover illegal dismissals effected prior to March 21, 1989, hence, we apply the "Mercury Drug Rule" as enunciated in the landmark case of Mercury Drug Co., Inc., et. al. vs. CIR, et. al.<sup>[13]</sup> In this case, the Court fixed the amount of backwages to be awarded to an illegally dismissed employee to three (3) years without further qualifications or deductions, for reason of expediency in the execution of the decision. Any award in excess of the three years is null and void as to the excess.<sup>[14]</sup>

Of note also is the "Ferrer Doctrine" laid down in the case of Ferrer vs. NLRC<sup>[15]</sup> as reiterated in Pines City Educational Center vs.

NLRC<sup>[16]</sup> which adopted the rule applied prior to the “Mercury Drug Rule.” The said doctrine states that the employer may, however, deduct any amount which the employee may have earned during the period of his illegal termination.<sup>[17]</sup> Computation of full backwages and presentation of proof as to income earned elsewhere by the illegally dismissed employee after his termination and before actual reinstatement should be ventilated in the execution proceedings before the Labor Arbiter concordant with Section 3, Rule 8 of the 1990 New Rules of Procedure of the NLRC.<sup>[18]</sup>

To settle once and for all the rule on the correct computation of the award of backwages, this Court laid down jurisprudence in its Resolution en banc in Bustamante vs. NLRC<sup>[19]</sup> with regard to illegal dismissals effected after March 21, 1989 applying Article 279 of the Labor Code, as amended. Thus, an illegally dismissed employee is entitled to his full backwages from the time his compensation was withheld from him (which, as a rule, is from the time of his illegal dismissal) up to the time of his actual reinstatement. The legislative policy behind Republic Act No. 6715 points to “full backwages” as meaning exactly that, i.e. without deducting from backwages the earnings derived elsewhere by the concerned employee during the period of his illegal dismissal.

Considering that private respondent was terminated from service on January 12, 1987, which is prior to March 21, 1989, the NLRC correctly applied the ruling in the Mercury Drug case.<sup>[20]</sup>

**WHEREFORE**, premises considered, the instant Petition is **DISMISSED**. The assailed Resolution dated November 13, 1992 of the National Labor Relations Commission is **AFFIRMED**.

**SO ORDERED.**

**Regalado, Melo, Puno and Mendoza, JJ., concur.**

---

[1] Decision of Labor Arbiter Arturo M. Paculanang dated May 15, 1989 in Case No. Sub-RAB IX-01-10064-88.

[2] Rollo, p. 57.

- [3] NLRC (Fifth Division) Resolution dated November 13 1992 penned by Presiding Commissioner Musib M. Buat, and concurred in by Commissioners Oscar N. Abella and Leon G. Gonzaga, Jr.; Rollo, pp. 38-39.
- [4] Resolution dated January 14, 1993.  
“Regular and Casual Employment. — The provisions of 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.
- [5] 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.”
- [6] Purefoods Corporation vs. NLRC, Rodolfo Cordova, Violeta Crusis, et. al., G.R. No. 122653, December 12, 1997 citing the cases of Philippine Geothermal, Inc. vs. NLRC, 189 SCRA 211, 215 [1990], Mercado vs. NLRC, 201 SCRA 332, 341-342 [1991], and Aurora Land Project Corp. vs. NLRC, G.R. No. 114733, January 2, 1997, 266 SCRA 48.
- [7] 206 SCRA 643 [1992], citing De Leon vs. NLRC, 176 SCRA 615 [1989], which is cited in Bustamante vs. NLRC, 255 SCRA 145 [1996].
- [8] De Leon vs. NLRC, supra., 621.
- [9] Ibid.
- [10] Tucor Industries, Inc. vs. NLRC, 197 SCRA 296, 301 [1991] cited in Purefoods Corporation vs. NLRC, Rodolfo Cordova, Violeta Crusis, et. al., supra.
- [11] Otherwise known as the Herrera-Veloso Law.
- [12] Article 279. Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.
- [13] 56 SCRA 694, 709.
- [14] Medado vs. Court of Appeals, 185 SCRA 80 [1990], cited in Bustamante vs. NLRC, G.R. No. 111651, November 28, 1996, 265 SCRA 61, 69.
- [15] G.R. No. 100898, July 5, 1993, 224 SCRA 410, 423.
- [16] G.R. No. 96779, November 10, 1993, 227 SCRA 655.
- [17] Ferrer vs. NLRC, supra. 423., citing East Asiatic Company, Ltd. vs. Court of Industrial Relations, 40 SCRA 521 [1971].
- [18] Ibid.

[19] 265 SCRA 61.

[20] NLRC Resolution, Rollo pp. 36-38.

---

Philippine Copyright © 2005  
ChanRobles Publishing Company  
[www.chanrobles.com](http://www.chanrobles.com)