

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
SECOND DIVISION**

**VIVIAN Y. IMBUIDO,  
*Petitioner,***

***-versus-***

**G.R. No. 114734  
March 31, 2000**

**NATIONAL LABOR RELATIONS  
COMMISSION, INTERNATIONAL  
INFORMATION SERVICES, INC. and  
GABRIEL LIBRANDO,  
*Respondents.***

X-----X

**DECISION**

**BUENA, J.:**

This Special Civil Action for Certiorari seeks to set aside the Decision<sup>[1]</sup> of the National Labor Relations Commission (NLRC) promulgated on September 27, 1993 and its Order dated January 11, 1994, which denied petitioner's motion for reconsideration.

Petitioner was employed as a data encoder by private respondent International Information Services, Inc., a domestic corporation engaged in the business of data encoding and keypunching, from August 26, 1988 until October 18, 1991 when her services were terminated. From August 26, 1988 until October 18, 1991, petitioner

entered into thirteen (13) separate employment contracts with private respondent, each contract lasting only for a period of three (3) months. Aside from the basic hourly rate, specific job contract number and period of employment, each contract contains the following terms and conditions:

“a. This Contract is for a specific project/job contract only and shall be effective for the period covered as above-mentioned unless sooner terminated when the job contract is completed earlier or withdrawn by client, or when employee is dismissed for just and lawful causes provided by law. The happening of any of these events will automatically terminate this contract of employment.

“b. Subject shall abide with the Company’s rules and regulations for its employees attached herein to form an integral part hereof.

“c. The nature of your job may require you to render overtime work with pay so as not to disrupt the Company’s commitment of scheduled delivery dates made on said job contract.”<sup>[2]</sup>

In September 1991, petitioner and twelve (12) other employees of private respondent allegedly agreed to the filing of a petition for certification election involving the rank-and-file employees of private respondent.<sup>[3]</sup> Thus, on October 8, 1991, Lakas Manggagawa sa Pilipinas (LAKAS) filed a petition for certification election with the Bureau of Labor Relations (BLR), docketed as NCR-OD-M-9110-128.<sup>[4]</sup>

Subsequently, on October 18, 1991, petitioner received a termination letter from Edna Kasilag, Administrative Officer of private respondent, allegedly “due to low volume of work.”<sup>[5]</sup>

Thus, on May 25, 1992, petitioner filed a complaint for illegal dismissal with prayer for service incentive leave pay and 13th month differential pay, with the National Labor Relations Commission, National Capital Region, Arbitration Branch, docketed as NLRC-NCR Case No. 05--02912-92.<sup>[6]</sup>

In her position paper dated August 3, 1992 and filed before labor arbiter Raul T. Aquino, petitioner alleged that her employment was terminated not due to the alleged low volume of work but because she “signed a petition for certification election among the rank and file employees of respondents,” thus charging private respondent with committing unfair labor practices. Petitioner further complained of non-payment of service incentive leave benefits and underpayment of 13<sup>th</sup> month pay.<sup>[7]</sup>

On the other hand, private respondent, in its position paper filed on July 16, 1992, maintained that it had valid reasons to terminate petitioner's employment and disclaimed any knowledge of the existence or formation of a union among its rank-and-file employees at the time petitioner's services were terminated.<sup>[8]</sup> Private respondent stressed that its business “relies heavily on companies availing of its services. Its retention by client companies with particular emphasis on data encoding is on a project to project basis,”<sup>[9]</sup> usually lasting for a period of “two (2) to five (5) months.” Private respondent further argued that petitioner's employment was for a “specific project with a specified period of engagement.” According to private respondent, “the certainty of the expiration of complainant's engagement has been determined at the time of their (sic) engagement (until 27 November 1991) or when the project is earlier completed or when the client withdraws,” as provided in the contract.<sup>[10]</sup> “The happening of the second event completion of the project has materialized, thus, her contract of employment is deemed terminated per the Brent School ruling.”<sup>[11]</sup> Finally, private respondent averred that petitioner's “claims for non-payment of overtime time (sic) and service incentive leave pay are without factual and legal basis.”<sup>[12]</sup>

In a decision dated August 25, 1992, labor arbiter Raul T. Aquino, ruled in favor of petitioner and accordingly ordered her reinstatement without loss of seniority rights and privileges, and the payment of backwages and service incentive leave pay. The dispositive part of the said decision reads:

“WHEREFORE, responsive to the foregoing, judgment is hereby rendered ordering respondents to immediately reinstate

complainant petitioner herein as a regular employee to her former position without loss of seniority rights and privileges and to pay backwages from the time of dismissal up to the date of this decision, the same to continue until complainant's petitioner herein actual reinstatement from (sic) the service. Respondents are likewise ordered to pay complainant petitioner herein service incentive leave pay computed as follows:

Backwages:

10/18/91 - 8/25/92 = 10.23 mos.

P118.00 x 26 x 10.23 mos. = P31,385.64

Service Incentive Leave Pay

1989 = P89.00 x 5 days = P445.00

1990 = 106 x 5 days = P530.00

1991 = 118 x 5 days = P590.00

-----  
P1,565.00

Total

-----  
P32,950.64

=====

SO ORDERED.”<sup>[13]</sup>

In his decision, the labor arbiter found petitioner to be a regular employee, ruling that even if herein complainant [petitioner herein] had been obstensively (sic) hired for a fixed period or for a specific undertaking, she should be considered as a regular employee of the respondents in conformity with the provisions (sic) laid down under Article 280 of the Labor Code,”<sup>[14]</sup> after finding that “it is crystal clear that herein complainant [petitioner herein] performed a job which are (sic) usually necessary or desirable in the usual business of respondents.”<sup>[15]</sup> The labor arbiter further denounced “the purpose behind the series of contracts which respondents required complainant to execute as a condition of employment was to evade the true intent and spirit of the labor laws for the working men”<sup>[16]</sup> Furthermore, the labor arbiter concluded that petitioner was illegally dismissed because the alleged reason for her termination, that is, low volume of work, is “not among the just causes for termination recognized by law,”<sup>[17]</sup> hence, he ordered her immediate reinstatement without loss of seniority rights and with full backwages. With regard

to the service incentive leave pay, the labor arbiter decided to grant the same for failure of the respondents to fully controvert said claims.”<sup>[18]</sup> Lastly, the labor arbiter rejected petitioner’s claim for 13<sup>th</sup> month pay “since complainant [petitioner herein] failed to fully substantiate and argued (sic) the same.”<sup>[19]</sup>

On appeal, the NLRC reversed the decision of the labor arbiter in a decision<sup>[20]</sup> promulgated on September 27, 1993, the dispositive part of which reads:

“WHEREFORE, the appealed decision is hereby set aside. The complaint for illegal dismissal is hereby dismissed for being without merit. Complainant’s [petitioner herein] claim for service incentive leave pay is hereby remanded for further arbitration.

SO ORDERED.”<sup>[21]</sup>

The NLRC ruled that “there is no question that the complainant [petitioner herein], viewed in relation to said Article 280 of the [Labor] Code, is a regular employee judging from the function and/or work for which she was hired. But this does not necessarily mean that the complainant [petitioner herein] has to be guaranteed a tenurial security beyond the period for which she was hired.”<sup>[22]</sup> The NLRC held that ‘the complainant [petitioner herein], while hired as a regular worker, is statutorily guaranteed, in her tenurial security, only up to the time the specific project for which she was hired is completed.”<sup>[23]</sup> Hence, the NLRC concluded that “with the specific project “at RCBC 014” admittedly completed, the complainant [petitioner herein] has therefore no valid basis in charging illegal dismissal for her concomitant (sic) dislocation.”<sup>[24]</sup>

In an Order dated January 11, 1994, the NLRC denied petitioner’s motion for reconsideration.<sup>[25]</sup>

In this petition for certiorari, petitioner, for and in her behalf, argues that (1) the public respondent “committed grave abuse of discretion when it ignored the findings of Labor Arbiter Raul Aquino based on the evidence presented directly before him, and when it made findings of fact that are contrary to or not supported by evidence,”<sup>[26]</sup>

(2) “petitioner was a “regular employee,” NOT a “project employee” as found by public respondent NLRC,”<sup>[27]</sup> (3) “the termination of petition (sic) was tainted with unfair labor practice,”<sup>[28]</sup> and (4) the public respondent “committed grave abuse of discretion in remanding the awarded service incentive leave pay for further arbitration.”<sup>[29]</sup>

The petition is impressed with merit.

We agree with the findings of the NLRC that petitioner is a project employee. The principal test for determining whether an employee is a project employee or a regular employee is whether the project employee was assigned to carry out a specific project or undertaking, the duration and scope of which were specified at the time the employee was engaged for that project.<sup>[30]</sup> A project employee is one whose 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 service to be performed is seasonal in nature and the employment is for the duration of the season.<sup>[31]</sup> In the instant case, petitioner was engaged to perform activities which were usually necessary or desirable in the usual business or trade of the employer, as admittedly, petitioner worked as a data encoder for private respondent a corporation engaged in the business of data encoding and keypunching, and her employment was fixed for a specific project or undertaking the completion or termination of which had been determined at the time of her engagement, as may be observed from the series of employment contracts<sup>[32]</sup> between petitioner and private respondent, all of which contained a designation of the specific job contract and a specific period of employment.

However, even as we concur with the NLRC’s findings that petitioner is a project employee, we have reached a different conclusion. In the recent case of Maraguinot, Jr. vs. NLRC,<sup>[33]</sup> we held that “a project employee or a member of a work pool may acquire the status of a regular employee when the following concur:

- 1) There is a continuous rehiring of project employees even after the cessation of a project;<sup>[34]</sup> and

2) The tasks performed by the alleged “project employee” are vital, necessary and indispensable to the usual business or trade of the employer.”<sup>[35]</sup>

The evidence on record reveals that petitioner was employed by private respondent as a data encoder, performing activities which are usually necessary or desirable in the usual business or trade of her employer, continuously for a period of more than three (3) years, from August 26, 1988 to October 18, 1991<sup>[36]</sup> and contracted for a total of thirteen ( 13) successive projects. We have previously ruled that “however, the length of time during which the employee was continuously re-hired is not controlling, but merely serves as a badge of regular employment.”<sup>[37]</sup> Based on the foregoing, we conclude that petitioner has attained the status of a regular employee of private respondent.

At this point, we reiterate with emphasis that:

“ x x x

“At this time, we wish to allay any fears that this decision unduly burdens an employer by imposing a duty to re-hire a project employee even after completion of the project for which he was hired. The import of this decision is not to impose a positive and sweeping obligation upon the employer to re-hire project employees. What this decision merely accomplishes is a judicial recognition of the employment status of a project or work pool employee in accordance with what is fait accompli, i.e., the continuous re-hiring by the employer of project or work pool employees who perform tasks necessary or desirable to the employers usual business or trade. Let it not be said that this decision “coddles” labor, for as Lao<sup>[38]</sup> has ruled, project or work pool employees who have gained the status of regular employees are subject to the “no work-no pay” principle, to repeat:

“A work pool may exist although the workers in the pool do not receive salaries and are free to seek other employment during temporary breaks in the business, provided that the worker shall be available when called to

report for a project. Although primarily applicable to regular seasonal workers, this set-up can likewise be applied to project workers insofar as the effect of temporary cessation of work is concerned. This is beneficial to both the employer and employee for it prevents the unjust situation of “coddling labor at the expense of capital” and at the same time enables the workers to attain the status of regular employees.

“The Court’s ruling here is meant precisely to give life to the constitutional policy of strengthening the labor sector, but, we stress, not at the expense of management. Lest it be misunderstood, this ruling does not mean that simply because an employee is a project or work pool employee even outside the construction industry, he is deemed, ipso jure, a regular employee. All that we hold today is that once a project or work pool employee has been: 1) continuously, as opposed to intermittently, re-hired by the same employer for the same tasks or nature of tasks; and (2) these tasks are vital, necessary and indispensable to the usual business or trade of the employer, then the employee must be deemed a regular employee, pursuant to Article 280 of the Labor Code and jurisprudence. To rule otherwise would allow circumvention of labor laws in industries not falling within the ambit of Policy Instruction No. 20/Department Order No. 19, hence allowing the prevention of acquisition of tenurial security by project or work pool employees who have already gained the status of regular employees by the employer’s conduct.”<sup>[39]</sup> (*Emphasis supplied*).

Being a regular employee, petitioner is entitled to security of tenure and could only be dismissed for a just or authorized cause, as provided in Article 279 of the Labor Code, as amended:

“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.”

The alleged causes of petitioner’s dismissal (low volume of work: and belatedly, completion of project) are not valid causes for dismissal under Articles 282 and 283 of the Labor Code. Thus, petitioner is entitled to reinstatement without loss of seniority rights and other privileges, and to her full backwages, inclusive of allowances, and to her other benefits or their monetary equivalent computed from the time her compensation was withheld from her up to the time of her actual reinstatement. However, complying with the principles of “suspension of work” and “no work, no pay” between the end of one project and the start of a new one, in computing petitioner’s backwages, the amounts corresponding to what could have been earned during the periods from the date petitioner was dismissed until her reinstatement when private respondent was not undertaking any project, should be deducted.

With regard to petitioner’s claim for service incentive leave pay, we agree with the labor arbiter that petitioner is entitled to service incentive leave pay, as provided in Article 95 of the Labor Code, which reads:

“ARTICLE 95. Right to service incentive leave. —

(a) Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay.

x x x”

Having already worked for more than three (3) years at the time of her unwarranted dismissal, petitioner is undoubtedly entitled to service incentive leave benefits, computed from 1989 until the date of her actual reinstatement. As we ruled in the recent case of Fernandez

vs. NLRC,<sup>[40]</sup> “since a service incentive leave is clearly demandable after one year of service — whether continuous or broken — or its equivalent period, and it is one of the “benefits” which would have accrued if an employee was not otherwise illegally dismissed, it is fair and legal that its; computation should be up to the date of reinstatement as provided under Section [Article] 279 of the Labor Code, as amended, which reads:

“ARTICLE 279. Security of Tenure. — 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 is withheld from him up to the time of his actual reinstatement.” (emphasis supplied).

**WHEREFORE**, the instant petition is **GRANTED**. The assailed decision of the National Labor Relations Commission in NLRC NCR CA No. 003845-92 dated September 27, 1993, as well as its Order dated January 11, 1994, are hereby **ANNULLED** and **SET ASIDE** for having been rendered with grave abuse of discretion and the decision of the Labor Arbiter in NLRC NCR Case No. 05-02912-92 is **REINSTATED** with **MODIFICATION** as above-stated, with regard to the computation of back wages and service incentive leave pay.

**SO ORDERED.**

**Bellosillo, Mendoza, Quisumbing and De Leon, Jr., JJ., concur.**

---

[1] Penned by Commissioner Vicente S.E. Veloso, and concurred in by Commissioners Bartolome S. Carale and Alberto R. Quimpo.

[2] Rollo, pp. 44-56.

[3] Ibid., p. 117.

[4] Ibid.

[5] Ibid., p. 118.

[6] Ibid., p. 26

[7] Ibid., pp. 26-27.

[8] Ibid., pp.27-28.

[9] Ibid., p. 28.

- [10] Ibid., p. 32.
- [11] Ibid.
- [12] Ibid.
- [13] Ibid., pp. 24-25
- [14] Ibid., p. 22.
- [15] Ibid.
- [16] Ibid., p. 23.
- [17] Ibid.
- [18] Ibid., p. 24.
- [19] Ibid.
- [20] Ibid., p. 26.
- [21] Ibid., p. 40.
- [22] Ibid., p. 38.
- [23] Ibid., p. 39.
- [24] Ibid.
- [25] Ibid., p. 42.
- [26] Ibid., p. 158.
- [27] Ibid., p. 161.
- [28] Ibid., p. 162.
- [29] Ibid., p. 163.
- [30] Nagusara, at al. vs. National Labor Relations Commission, G.R. Nos. 117936-37, May 20, 1998.
- [31] Brahm Industries, Inc. vs. National Labor Relations Commission, 280 SCRA 828, 834 (1997). See also Article 280 of the Labor Code.
- [32] The Court observes that of the thirteen (13) employment contracts involved, only the second and the last contracts contain the signature of petitioner.
- [33] Maraguinot, Jr. vs. National Labor Relations Commission, 284 SCRA 539,556(1998), penned by Justice (now Chief Justice) Davide, Jr. and concurred in by Justices Bellosillo, Vitug and Kapunan.
- [34] Philippine National Construction Corp. vs. National Labor Relations Commission, 174 SCRA 191,193(1989)
- [35] Capitol Industrial Construction Groups vs. National Labor Relations Commission, 221 SCRA 469,473-474(1993).
- [36] Rollo, pp. 44-56.
- [37] Maraguinot, Jr. vs. National Labor Relations Commission, 284 SCRA 539,556(1998).
- [38] Tomas Lao Construction vs. National Labor Relations Commission, 278 SCRA 716(1997).
- [39] Maraguinot, Jr. vs. National Labor Relations Commission, 284 SCRA 539, 560-561(1998).
- [40] Fernandez vs. National Labor Relations Commission, 285 SCRA 149,176 (1998).