SUPREME COURT
FIRST DIVISION

INTEGRATED CONTRACTOR AND PLUMBING WORKS, INC.,
***Petitioner*,**

-versus-

G.R. No. 152427
August 9, 2005

NATIONAL LABOR RELATIONS COMMISSION and GLEN SOLON,
***Respondents*.**
x----------x

D E C I S I O N

QUISUMBING, *J.*:

This Petition for Review assails the Decision[1] dated October 30, 2001 of the Court of Appeals and its Resolution[2] dated February 28, 2002 in CA-G.R. SP No. 60136, denying the petitioner's motion for reconsideration for lack of merit. The decision affirmed the National Labor Relations Commission (NLRC) which declared private respondent Glen Solon a regular employee of the petitioner and awarded him 13th month pay, service incentive leave pay, reinstatement to his former position with full backwages from the time his salary was withheld until his reinstatement.

Petitioner is a plumbing contractor. Its business depends on the number and frequency of the projects it is able to contract with its clients. [3]

Private respondent Solon worked for petitioner. His employment records is as follows:

December 14, 1994 up to January 14, 1995	St. Charbel Warehouse
February 1, 1995 up to April 30, 1995	St. Charbel Warehouse
May 23, 1995 up to June 23, 1995	St. Charbel Warehouse
August 15, 1995 up to October 31, 1995	St. Charbel Warehouse
November 2, 1995 up to January 31, 1996	St. Charbel Warehouse
May 13, 1996 up to June 15, 1996	Ayala Triangle
August 27, 1996 up to November 30, 1996	St.Charbel Warehouse[4]
July 14, 1997 up to November 1997	ICPWI Warehouse
November 1997 up to January 5, 1998	Cathedral Heights
January 6, 1998	Rockwell Center[5]

On February 23, 1998, while private respondent was about to log out from work, he was informed by the warehouseman that the main office had instructed them to tell him it was his last day of work as he had been terminated. When private respondent went to the petitioner's office on February 24, 1998 to verify his status, he found out that indeed, he had been terminated. He went back to petitioner's office on February 27, 1998 to sign a clearance so he could claim his 13th month pay and tax refunds. However, he had second thoughts and refused to sign the clearance when he read the clearance indicating he had resigned. On March 6, 1998, he filed a complaint alleging that he was illegally dismissed without just cause and without due process.[6]

In a Decision dated February 26, 1999, the Labor Arbiter ruled that private respondent was a regular employee and could only be removed for cause. Petitioner was ordered to reinstate private respondent to his former position with full backwages from the time his salary was withheld until his actual reinstatement, and pay him service incentive leave pay, and 13th month pay for three years in the amount of P2,880 and P14,976, respectively.

Petitioner appealed to the National Labor Relations Commission (NLRC), which ruled:

> WHEREFORE, prescinding from the foregoing and in the interest of justice, the decision of the Labor Arbiter is hereby AFFIRMED with a MODIFICATION that the 13th month pay should be given only for the year 1997 and portion of 1998. Backwages shall be computed from the time he was illegally dismissed up to the time of his actual reinstatement. Likewise, service incentive leave pay for three (3) years is also awarded to appellee in the amount of P2,880.00.
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> SO ORDERED.[7]

Petitioner's Motion for Reconsideration was denied.[8]

Petitioner appealed to the Court of Appeals, alleging that the NLRC committed grave abuse of discretion in finding that the private respondent was a regular employee and in awarding 13th month pay, service incentive leave pay, and holiday pay to the private respondent despite evidence of payment. The said petition was dismissed for lack of merit.[9]

Before us now, petitioner raises the following issues: (1) Whether the respondent is a project employee of the petitioner or a regular employee; and (2) Whether the Court of Appeals erred seriously in awarding 13th month pay for the entire year of 1997 and service incentive leave pay to the respondent and without taking cognizance of the evidence presented by petitioner.[10]

The petitioner asserts that the private respondent was a project employee. Thus, when the project was completed and private respondent was not re-assigned to another project, petitioner did not violate any law since it was petitioner's discretion to re-assign the private respondent to other projects.[11]

Article 280 of the Labor Code states:

> The provisions of written agreement of 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. *(Italics supplied)*

We held in Tomas Lao Construction vs. NLRC[12] that the principal test in determining whether an employee is a "project employee" or "regular employee," is, whether he is assigned to carry out a "specific project or undertaking," the duration (and scope) of which are specified at the time the employee is engaged in the project.[13] "Project" refers to a particular job or undertaking that is within the regular or usual business of the employer, but which is distinct and separate and identifiable from the undertakings of the company. Such job or undertaking begins and ends at determined or determinable times.[14]

In our review of the employment contracts of private respondent, we are convinced he was initially a project employee. The services he rendered, the duration and scope of each project are clear indications that he was hired as a project employee.

We concur with the NLRC that while there were several employment contracts between private respondent and petitioner, in all of them, private respondent performed tasks which were usually necessary or desirable in the usual business or trade of petitioner. A review of private respondent's work assignments patently showed he belonged to a work pool tapped from where workers are and assigned whenever their services were needed. In a work pool, the workers do not receive salaries and are free to seek other employment during temporary breaks in the business. They are like regular seasonal workers insofar as the effect of temporary cessation of work is concerned. This arrangement 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.[15] Nonetheless, the pattern of re-hiring and the recurring need for his services are sufficient evidence of the necessity and indispensability of such services to petitioner's business or trade.[16]

In Maraguinot, Jr. vs. NLRC[17] we ruled 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.

In this case, did the private respondent become a regular employee then?

The test to determine whether employment is regular or not is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. Also, if the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability of that activity to the business.[18] Thus, we 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 are considered regular employees.[19]

While length of time may not be the controlling test for project employment, it is vital in determining if the employee was hired for a specific undertaking or tasked to perform functions vital, necessary and indispensable to the usual business or trade of the employer. Here, private respondent had been a project employee several times over. His employment ceased to be coterminous with specific projects when he was repeatedly re-hired due to the demands of petitioner's business.[20] Where from the circumstances it is apparent that periods have been imposed to preclude the acquisition of tenurial security by the employee, they should be struck down as contrary to public policy, morals, good customs or public order.[21]

Further, Policy Instructions No. 20 requires employers to submit a report of an employee's termination to the nearest public employment office every time his employment was terminated due to a completion of a project. The failure of the employer to file termination reports is an indication that the employee is not a project employee.[22] Department Order No. 19 superseding Policy Instructions No. 20 also expressly provides that the report of termination is one of the indications of project employment.[23] In the case at bar, there was only one list of terminated workers submitted to the Department of Labor and Employment.[24] If private respondent was a project employee, petitioner should have submitted a termination report for every completion of a project to which the former was assigned.

Juxtaposing private respondent's employment history, vis the requirements in the test to determine if he is a regular worker, we are constrained to say he is.

As a regular worker, private respondent is entitled to security of tenure under Article 279 of the Labor Code[25] and can only be removed for cause. We found no valid cause attending to private respondent's dismissal and found also that his dismissal was without due process.

Additionally, Article 277(b) of the Labor Code provides that:

> Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment.

The failure of the petitioner to comply with these procedural guidelines renders its dismissal of private respondent, illegal. An

illegally dismissed employee is entitled to reinstatement with full backwages, inclusive of allowances, and to his other benefits computed from the time his compensation was withheld from him up to the time of his actual reinstatement, pursuant to Article 279 of the Labor Code.

However, we note that the private respondent had been paid his 13th month pay for the year 1997. The Court of Appeals erred in granting the same to him.

Article 95(a) of the Labor Code governs the award of service incentive leave. It provides that 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, and Section 3, Rule V, Book III of the Implementing Rules and Regulations, defines the term "at least one year of service" to mean service within 12 months, whether continuous or broken reckoned from the date the employee started working, including authorized absences and paid regular holidays, unless the working days in the establishment as a matter of practice or policy, or that provided in the employment contract is less than 12 months, in which case said period shall be considered as one year. Accordingly, private respondent's service incentive leave credits of five days for every year of service, based on the actual service rendered to the petitioner, in accordance with each contract of employment should be computed up to the date of reinstatement pursuant to Article 279 of the Labor Code.[26]

WHEREFORE, the assailed Decision dated October 30, 2001 and the Resolution dated February 28, 2002 of the Court of Appeals in CA-G.R. SP No. 60136, are **AFFIRMED** with **MODIFICATION**. The petitioner is hereby **ORDERED** to (1) reinstate the respondent with no loss of seniority rights and other privileges; and (2) pay respondent his backwages, 13th month pay for the year 1998 and Service Incentive Leave Pay computed from the date of his illegal dismissal up to the date of his actual reinstatement. Costs against petitioner.

SO ORDERED.

DAVIDE, JR., *C.J.*, *(Chairman)*, YNARES-SANTIAGO, CARPIO, and AZCUNA, *JJ.*, concur.

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[1] Rollo, pp. 36-44. Penned by Associate Justice Marina L. Buzon, with Associate Justices Buenaventura J. Guerrero, and Alicia L. Santos concurring.
[2] Id. at 46-47.
[3] Id. at 17.
[4] Ibid.
[5] CA Rollo, pp. 20-22.
[6] Id. at 20-21.
[7] Rollo, p. 38.
[8] Ibid.
[9] Id. at 38-43.
[10] Id. at 20, 27.
[11] Id. at 27.
[12] G.R. No. 116781, 5 September 1997, 278 SCRA 716, 726, citing ALU-TUCP vs. National Labor Relations Commission, G.R. No. 109902, 2 August 1994, 234 SCRA 678, 685.
[13] Uy vs. National Labor Relations Commission, G.R. No. 117983, 6 September 1996, 261 SCRA 505, 513.
[14] Tomas Lao Construction vs. NLRC, supra, note 12.
[15] Tomas Lao Construction vs. NLRC, supra, note 12 at 727-728.
[16] Baguio Country Club Corporation vs. NLRC, G.R. No. 71664, 28 February 1992, 206 SCRA 643, 650.
[17] G.R. No. 120969, 22 January 1998, 284 SCRA 539, 561.
[18] De Leon vs. National Labor Relations Commission, G.R. No. 70705, 21 August 1989, 176 SCRA 615, 621.
[19] Tomas Lao Construction vs. NLRC, supra, note 12 at 726.
[20] Id. at 726-727.
[21] Samson vs. National Labor Relations Commission, G.R. No. 113166, 1 February 1996, 253 SCRA 112, 124.
[22] Aurora Land Projects Corp. vs. NLRC, G.R. No. 114733, 2 January 1997, 266 SCRA 48, 63-64; Philippine National Construction Corp. vs. NLRC, G.R. No. 95816, 27 October 1992, 215 SCRA 204, 211; Philippine National Construction Corporation vs. NLRC, G.R. No. 85323, 20 June 1989, 174 SCRA 191, 194; Ochoco vs. National Labor Relations Commission, No. L-56363, 24 February 1983, 120 SCRA 774, 777.
[23] Tomas Lao Construction vs. NLRC, supra, note 12 at 729-730, citing Sec. 2.2 (e), Department Order No. 19, April 1, 1993.
[24] Rollo, p. 18.
[25] ART. 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.

[26] Imbuido vs. National Labor Relations Commission, G.R. No. 114734, 31 March 2000, 329 SCRA 357, 368.