

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
SECOND DIVISION**

**CISELL A. KIAMCO,  
*Petitioner,***

***-versus-***

**G.R. No. 129449  
June 29, 1999**

**NATIONAL LABOR RELATIONS  
COMMISSION (4<sup>TH</sup> DIVISION),  
PHILIPPINE NATIONAL OIL  
COMPANY (PNOC) and PNOC-ENERGY  
DEVELOPMENT CORPORATION  
(PNOC-EDC),**

***Respondents.***

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**DECISION**

**BELLOSILLO, J.:**

On 1 July 1992 private respondent PHILIPPINE NATIONAL OIL COMPANY (PNOC) through its Energy Research and Development Division, later incorporated as PNOC-ENERGY DEVELOPMENT CORPORATION (PNOC-EDC) (now its co-private respondent herein), hired petitioner Cisell Kiamco as a project employee in its Geothermal Agro-Industrial Plant Project in Valencia, Negros Oriental. The Contract of Employment 1 stipulated among others that Kiamco was being hired by the company as a technician for a period

of five (5) months from 1 July 1992 to 30 November 1992, or up to the completion of the project, whichever would come first, at a monthly salary of P3,500.00.

After the termination of the contract, a second one was entered into by the parties containing basically the same terms and conditions except that the work-time was reduced to twenty-two (22) days per month instead of twenty-six (26) days as stipulated in the first contract. The period of employment was from<sup>[1]</sup> December 1992 to 30 April 1993.<sup>[2]</sup> Thereafter Kiamco was again re-hired. This time the contract was for six (6) months spanning 1 May 1993 to 30 November 1993 with an increased salary of P3,850.00 per month.<sup>[3]</sup>

However on 20 October 1993 Kiamco received a Memorandum<sup>[4]</sup> from the administration department demanding an explanation from him on certain infractions he allegedly committed as follows:

1. Misconduct — for having replaced the stereo of a UNDP-ERDC vehicle without permission from the company;
2. Absence without official leave (AWOL) — for petitioner's absence on 13 October 1993 and 15 October 1993;
3. Non-compliance of administrative reporting procedure on accidents — for having failed to submit the Police Accident Report and other necessary requirements of a vehicular accident Kiamco was involved in;
4. Unauthorized use of company vehicles — for having used the UNDP-ERDC company vehicle without permission from his superiors.

In a letter dated 22 October 1993 Kiamco tried to explain his side<sup>[5]</sup> but private respondents found his explanation unsatisfactory. On 28 October 1993 Kiamco received a Memorandum<sup>[6]</sup> placing him under preventive suspension from 1 November 1993 to 30 November 1993 pending further investigation. No investigation however was ever conducted. Private respondents contended that an investigation was not necessary since Kiamco had ceased to be an employee ipso facto

upon the expiration of his employment contract on 30 November 1993.

On 1 December 1993 Kiamco reported back to work but was prevented by security guards from entering the company premises. On 27 May 1994 private respondent PNOC-EDC reported to the Department of Labor and Employment that petitioner Kiamco was terminated on 1 November 1993 due to the expiration of his employment contract and the abolition of his position.<sup>[7]</sup>

Thus on 25 April 1994 Kiamco filed before the NLRC Sub-Regional Arbitration Branch No. VII, Dumaguete City, a Complaint for illegal suspension and dismissal against the PNOC.<sup>[8]</sup> He prayed that he be reinstated to his former position and paid back wages. On 30 June 1995 Labor Arbiter Geoffrey P. Villahermosa rendered a Decision dismissing the complaint for lack of merit.<sup>[9]</sup> According to the Labor Arbiter, the three (3) employment contracts were freely and voluntarily signed by Kiamco and the PNOC representatives. The contracts plainly stated that Kiamco was being hired for a specific project and for a fixed term. Therefore Kiamco could not question his dismissal since it was in accordance with his employment contract.

Kiamco appealed the decision of the Labor Arbiter to public respondent National Labor Relations Commission (NLRC) which on 27 September 1996 reversed the Labor Arbiter and ruled —

WHEREFORE, the decision appealed from is REVERSED, VACATED and SET ASIDE and a new one entered declaring the complainant as a regular employee of the respondents and to have been illegally dismissed by the latter. Ordering respondents to REINSTATE the complainant to his former position without loss of seniority rights and privileges with back wages from the date of his dismissal up to actual reinstatement less any income he may have earned during the pendency of the case.<sup>[10]</sup>

On 12 November 1996 private respondents filed a Motion for Reconsideration of the decision of the NLRC<sup>[11]</sup> contending that it erred in holding that Kiamco was a regular employee and that the findings of the Labor Arbiter that Kiamco was a project employee

should be affirmed. On 23 January 1997 the NLRC issued a Resolution modifying its 27 September 1996 Decision in NLRC Case No. V-0316-95 the dispositive portion of which reads —

WHEREFORE, the decision in question is MODIFIED in accordance with Our above discussion. Accordingly, the complainant-appellant is declared a project employee at respondent's Geothermal Agro-Industrial Demonstration Plant and to continue with said employment until the full completion of the project but in the absence of proof to that effect, complainant is hereby awarded back wages for a period of six (6) months or in the amount of P23,100.00. The order declaring the complainant-appellant as a regular employee of respondent Philippine National Oil Corporation [sic], and for said company to reinstate the complainant with full back wages is hereby deleted.<sup>[12]</sup>

In his petition for certiorari Kiamco assails the 23 January 1997 Resolution of the NLRC. He charges the NLRC with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the questioned Resolution and prays that it be nullified and he reinstated to his former position. He also seeks payment of back wages, damages and attorney's fees. The petition also raises the following issues: (a) whether the petition should be dismissed for failure of petitioner Kiamco to file a motion for reconsideration with the NLRC; (b) whether petitioner is a regular employee or a project employee; (c) whether petitioner is entitled to reinstatement without loss of seniority rights and privileges and to the payment of full back wages; and, (d) whether petitioner is entitled to moral and exemplary damages.

Both the Solicitor General and private respondents insist that the petition should be dismissed because of petitioner's failure to file a motion for reconsideration with the NLRC, pleading that —

It is undisputed that petitioner failed to file a motion for reconsideration of the assailed Resolution before filing this petition. Such being the case, the assailed Resolution became final and executory, petitioner can no longer question the correctness of the assailed Resolution before this Honorable

Court. As ruled in *Palomado vs. NLRC* (257 SCRA 680, 687-699 [1996]): Additionally, the allegations in the petition clearly show that petitioner failed to file a motion for reconsideration of the assailed Resolution before filing the instant petition such failure constitutes a fatal infirmity even if the petition be treated as a special civil action for certiorari. The unquestioned rule in this jurisdiction is that certiorari will lie only if there is no appeal or any other plain, speedy and adequate remedy expressly provided by law against the acts of public respondent. In the instant case, the plain and adequate remedy expressly provided by law was a motion for reconsideration of the assailed decision made under oath and filed within ten (10) days from receipt of the questioned decision. And for failure to avail of the correct remedy expressly provided by law, petitioner has permitted the subject Resolution to become final and executory after the lapse of the ten-day period.<sup>[13]</sup>

But this is not a rigid rule. In *Macawiwili Gold Mining and Development Co., Inc. vs. Court of Appeals*<sup>[14]</sup> we held —

Ordinarily, *certiorari* as a special civil action will not lie unless a motion for reconsideration is first filed before the respondent tribunal, to allow it an opportunity to correct its assigned errors (citation omitted). This rule, however, is not without exceptions. In *Pajo vs. Ago and Ortiz* (108 Phil. 905) we held: Respondent contends that petitioners should have filed a motion for reconsideration of the order in question, or asked for the dissolution of the preliminary injunction issued by the trial court, before coming to us.

This is not always so. It is only when the questions are raised for the first time before this Court in a certiorari proceeding that the writ shall not issue unless the lower court had first been given the opportunity to pass upon the same. In fine, when the questions raised before this Court are the same as those which have been squarely raised in and passed upon by the court below, the filing of a motion for reconsideration in said court before certiorari can be instituted in this Court is no longer prerequisite. In *Locsin vs. Climaco* (26 SCRA 816) it was stated: When a definite question has been properly raised, argued and submitted to a lower court, and the latter has decided the

question, a motion for reconsideration is no longer necessary as a condition precedent to the filing of a petition for certiorari in this Court.

The issues now raised by petitioner Kiamco were the very same issues submitted before the NLRC. And, as correctly pointed out by Kiamco, the questioned resolution was in fact already the result of a motion for reconsideration filed by the original private respondent. Thus, a motion for reconsideration filed before the NLRC would only be a rehash of the same arguments it previously considered. We therefore hold that Kiamco's failure to file a motion for reconsideration is not fatal to his present petition.

The more important question to be resolved in this case is whether petitioner Kiamco is a regular employee or a project employee. Article 280 of the Labor Code answers this query thus —

ARTICLE 280. 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 service to be performed is seasonal in nature and the employment is for the duration of the season.

An employee 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.

In *Violeta vs. NLRC*<sup>[15]</sup> we held —

The principal test for determining whether particular employees are properly characterized as “project employees,” as distinguished from “regular employees,” is whether or not the “project employees” were assigned to carry out a “specific project or undertaking,” the duration (and scope) of which were specified at the time the employees were engaged for that project. As defined, project employees are those workers hired (1) for a specific project or undertaking, and (2) the completion or termination of such project or undertaking has been determined at the time of engagement of the employee.

Under Policy Instruction No. 20 of the Secretary of Labor, project employees are those employed in connection with a particular project. Non-project or regular employees are those employed without reference to any particular project.<sup>[16]</sup>

All the employment contracts which Kiamco signed stipulated that he was being employed by private respondents in their Geothermal Agro-Industrial Demonstration Plant Project in Valencia, Negros Occidental. The contracts similarly provided —

WHEREAS, the COMPANY is undertaking projects related to applied research and development, technical consultancy, training, information and planning services on energy and related technologies, that include the implementation and completion of (the) Geothermal Agro-industrial Demonstration Plant Project with Project Code: 15-04309912-117 hereinafter referred to as the PROJECT.<sup>[17]</sup>

Furthermore, not only was Kiamco assigned to a specific project, but the duration and completion of such project had also been determined at the time of his employment. Thus —

NOW THEREFORE, for and in consideration of the foregoing, the COMPANY and the PROJECT EMPLOYEE hereby agree as follows:

1. The COMPANY hires and engages the services of (the) PROJECT EMPLOYEE, and the latter has agreed to render and perform services for the COMPANY, as

Technician for a period commencing on 01 May 1993 to 31 October 1993 or up to the completion of the PROJECT, whichever comes first. (Emphasis supplied).

From the foregoing discussion it is apparent that Kiamco was correctly labeled by the NLRC as a project employee. The basis for this conclusion is indeed well-founded. The three (3) Contracts of Employment entered into by Kiamco clearly established that he was a project employee because (a) he was specifically assigned to work for a particular project, which was the Geothermal Agro-Industrial Demonstration Plant Project of private respondents, and (b) the termination and the completion of the project or undertaking was determined and stipulated in the contract at the time of his employment.

The next issue to be addressed is whether petitioner Kiamco, as a project employee, is entitled to reinstatement and payment of back wages. Private respondents postulate that Kiamco could not be reinstated for the following reasons: (a) Kiamco was not a regular employee; (b) the position had already been abolished; (c) petitioner failed to substantiate his claim that the project was still on-going; and, (d) the separation of Kiamco from his employment was not exactly cordial, incurring the ire and anger of both his co-workers and superiors.<sup>[18]</sup>

In Santos vs. NLRC<sup>[19]</sup> we said —

The normal consequences of a finding that an employee has been illegally dismissed are, that the employee becomes entitled to reinstatement to his former position without loss of seniority rights and the payment of back wages.

Reinstatement restores the employee who was unjustly dismissed to the position from which he was removed, that is, to his status quo ante dismissal; while the grant of back wages allows the same employee to recover from the employer that which he had lost by way of wages as a result of his dismissal.

The argument of private respondents that reinstatement and payment of back wages could not be made since Kiamco was not a regular employee is apparently misplaced. As quoted above, the normal consequences of an illegal dismissal are the reinstatement of the aggrieved employee and the grant of back wages. These rights of an employee do not depend on the status of his employment prior to his dismissal but rather to the legality and validity of his termination. The fact that an employee is not a regular employee does not mean that he can be dismissed any time, even illegally, by his employer.

It cannot be gainsaid that the dismissal of an employee should be for any of the just and authorized causes enumerated in the Labor Code. <sup>20</sup> However, petitioner's case no proof or evidence was ever presented by private respondents to justify his termination. On the contrary, they relied solely on the expiration of the employment contract to legitimize his termination, instead of the administrative infractions he allegedly committed, thus abandoning altogether any valid cause private respondents might have under the Labor Code that could justify his dismissal.

In *De la Cruz vs. NLRC*<sup>[21]</sup> we held —

In termination cases, the burden of proving just and valid cause for dismissing an employee from his employment rests upon the employer, and the latter's failure to do so results in finding that the dismissal is unjustified.

Furthermore, private respondents not only failed to give a valid and justifiable reason to terminate Kiamco, but they also ignored the due process requirement of the law. Due process in termination cases requires the employer to furnish the worker or employee sought to be dismissed with two (2) written notices, i.e., a notice which apprises the employee of the particular acts or omissions for which his dismissal is sought, and a subsequent notice which informs the employee of the employer's decision to dismiss him.

The records show that the second written notice informing petitioner of his actual dismissal was not complied with. When Kiamco returned to work he was bluntly informed by private respondents that he was already terminated due to the expiration of his employment contract. Indeed, the failure of private respondents to comply with the due process requirement further tainted Kiamco's dismissal with irregularity.<sup>[22]</sup>

While it is true that in some cases, among which are *Wenphil Corp. vs. NLRC*<sup>[23]</sup> and *Rubberworld (Phils.) vs. NLRC*,<sup>[24]</sup> the lack of due process before the dismissal of the employee was deemed corrected by the subsequent administrative proceedings where the dismissed employee was given a chance to be heard, those cases involved dismissals that were later proved to be for a valid cause. However, the doctrine in those cases is not applicable to the case at bar because Kiamco's dismissal was not proved by private respondents to be for any valid or justifiable cause.<sup>[25]</sup>

Nonetheless even if the last contract signed by Kiamco fixed the term of his employment from 1 May 1993 to 31 October 1993, this did not give private respondent corporations the unbridled authority to terminate Kiamco upon the expiration thereof. As discussed earlier, Kiamco was a project employee who was specifically assigned to work in a particular project. Therefore, in the absence of any valid reason to terminate him, private respondents should have retained his services until the actual completion of the project. We ruled in *De Ocampo, Jr. vs. NLRC*<sup>[26]</sup> —

The record shows that although the contracts of the project workers had indeed expired, the project itself was still on-going and so continued to require the worker's services for its completion. There is no showing that such services were unsatisfactory to justify their termination. This is not even alleged. One can therefore only wonder why, in view of these circumstances, the contract workers were not retained to finish the project they had begun and were still working on.

Private respondent corporations further argue that reinstatement was no longer possible since the position had already been abolished for being unnecessary. But, it was correctly pointed by the NLRC that —

The respondent's other theory of abolition of position for being no longer necessary deserves scant consideration. An examination of the three contracts of employment of the complainant show that the complainant has always been task(ed) to perform the following comprehensive functions:

To provide assistance in the installation, operation and maintenance of the plant which include installation, operation of plant equipment, handling of raw materials and safekeeping of all equipment, tools, service vehicle, and supplies in the project area. He will also be tasked to service the transportation requirements in the project site when required.

It is clear from the above stipulated duties that the complainant's service is needed until the full completion of the so-called Geothermal Agro-industrial Demonstration Project. It is unrefuted on record that when complainant's service was terminated, work in the project was still going on. In fact, the respondents failed to show proof as to when it was completed.<sup>[27]</sup>

Thus, the argument that petitioner could no longer be reinstated since he failed to substantiate the existence of the project is untenable. The burden of proving that petitioner Kiamco is not entitled to reinstatement rests on private respondent corporations. Being the employer, the private respondents would have in their possession the necessary documents and proof to show that the project had already been terminated. The NLRC even commented in its assailed resolution that in fact private respondents failed to show proof as to when the project was completed.<sup>[28]</sup>

Lastly, private respondents argue against reinstatement on the basis of the "strained relations" principle. They claim that after the termination of Kiamco he had incurred the ire and anger of his co-employees and superiors. In this regard, it may be worth to mention

that in *Globe-Mackay Cable and Radio Corp. vs. NLRC*<sup>[29]</sup> this Court qualified the application of the “strained relations” principle when it held —

If in the wisdom of the Court, there may be a ground or grounds for the non-application of the above-cited provision (Art. 279, Labor Code) this should be by way of exception, such as when the reinstatement may be inadmissible due to ensuing strained relations between the employer and employee.

In such cases, it should be proved that the employee concerned occupies a position where he enjoys the trust and confidence of his employer; and that it is likely that if reinstated, an atmosphere of antipathy and antagonism may be generated as to adversely affect the efficiency and productivity of the employee concerned. Obviously, the principle of “strained relations” cannot be applied indiscriminately. Otherwise, reinstatement can never be possible simply because some hostility is invariably engendered between the parties as a result of litigation. That is human nature.

Besides, no strained relations should arise from a valid legal act of asserting one’s right; otherwise an employee who shall assert his right could be easily separated from the service, by merely paying his separation pay on the pretext that his relationship with his employer had already become strained.

Finally, as to the claim of moral and exemplary damages, jurisprudence is replete with cases holding that moral damages are recoverable only where the dismissal of the employee was attended with bad faith or fraud or constituted an act oppressive to labor or was done in a manner contrary to morals, good custom or public policy. Exemplary damages, on the other hand, may be awarded only if the dismissal was effected in a wanton, oppressive or malevolent manner. The evidence on record does not show any fraud, malice or bad faith on the part of private respondents that would justify payment to petitioner of moral and exemplary damages.

**WHEREFORE**, the assailed Resolution of public respondent NLRC dated 23 January 1997 modifying its earlier Decision of 27 September 1996 in NLRC Case No. V-0316-95 is **MODIFIED**. Private

respondents Philippine National Oil Company (PNOC) and PNOC-Energy Development Corporation (PNOC-EDC) are **ORDERED** to **REINSTATE** petitioner Cisell A. Kiamco immediately to his former position without loss of seniority rights and privileges with full back wages from the date of his dismissal until his actual reinstatement. Costs against private respondents.

**SO ORDERED.**

**Puno, Mendoza, Quisumbing and Buena, JJ., concur.**

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- [1] Rollo, p. 97.  
[2] Contract of Employment, Annex “B;” Rollo, p. 100.  
[3] Contract of Employment, Annex “C;” Rollo, p. 103.  
[4] Rollo, p. 106.  
[5] Rollo, p. 107.  
[6] *Id.*, p. 109.  
[7] Records, p. 68.  
[8] *Id.*, p. 1.  
[9] Decision penned by Labor Arbiter Geoffrey P. Villahermosa, NLRC, Dumaguete City, Sub-Regional Arbitration Branch No. VII, Case No. RAB-VII-04-0057-94-D, 30 June 1995; Rollo, p. 28.  
[10] Decision penned by Presiding Commissioner Irene E. Ceniza, concurred in by Commissioner Bernabe S. Batuhan and Commissioner Amorito V. Cañete, NLRC Fourth Division, Cebu City, NLRC Case No. V-0316-95, 27 September 1996; Rollo, p. 56.  
[11] Rollo, p. 67.  
[12] Resolution penned by Presiding Commissioner Irene E. Ceniza, concurred in by Commissioner Bernabe S. Batuhan and Commissioner Amorito V. Cañete, NLRC Fourth Division, Cebu City, NLRC Case No. V-0316-95, 23 January 1997; Rollo, p. 19.  
[13] Comment of the Solicitor General; Rollo, pp. 141-142.  
[14] G.R. No. 115104, 12 October 1998.  
[15] G.R. No. 119523, 10 October 1997, 280 SCRA 520.  
[16] See *Sandoval Shipyards, Inc. vs. NLRC*, G.R. No. 65689, 31 May 1985, 136 SCRA 674.  
[17] Rollo, pp. 97, 100, and 103.  
[18] Comment of Respondent; Rollo, p. 162.  
[19] G.R. No. 76721, 21 September 1987, 154 SCRA 166.  
[20] Art. 282. Termination by employer. — An employer may terminate an employment for any of the following causes:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by his employee or duly authorized representative;
- (d) Commission of a crime or offense by his employee or any immediate member of his family or his duly authorized representative; and
- (e) Other causes analogous to the foregoing.

Art. 283. Closure of establishment and reduction of personnel. — The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices and redundancy, the worker affected thereby shall be entitled to separation pay or to at least one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in case of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

Art. 284. Disease as ground for termination. — An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, that he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

- [21] G.R. No. 119536, 17 February 1997, 268 SCRA 458.
- [22] See Cebu Engineering and Development Company, Inc. vs. NLRC and Jaime Perez, G.R. No. 118695, 22 April 1998, 289 SCRA 701.
- [23] G.R. No. 80587, 8 February 1989, 170 SCRA 69.
- [24] G.R. No. 72779, 21 March 1990, 183 SCRA 421.
- [25] See Hellenic Philippine Shipping, Inc. vs. Epifano C. Siete and NLRC, G.R. No. 84082, 13 March 1991, 195 SCRA 179.
- [26] G.R. No. 81077, 6 June 1990, 186 SCRA 360.
- [27] NLRC Resolution; Rollo, pp. 21-22.
- [28] Ibid.
- [29] G.R. No. 82511, 3 March 1992, 206 SCRA 701.