SUPREME COURT
FIRST DIVISION

LT. DATU AND CO., INC., AND/OR HERMILO DATU,
***Petitioner*,**

-versus-

G.R. No. 113162
February 9, 1996

NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER JOSE G. DE VEYRA, VICTOR MELANIO and GREGORIO F. FLORENDO,
***Respondents*.**
x----------x

D E C I S I O N

KAPUNAN, *J.*:

This is a Petition for *Certiorari* under Rule 65 of the Rules of Court questioning the Resolution of the respondent National Labor Relations Commission (NLRC) in NLRC NCR CA 003066-92 which affirmed with modification the decision of the Labor Arbiter Jose G. De Vera in NLRC NCR CASE NO. 00- 08-04514-91.

The facts of the case are as follows:

Private respondent Victor Melanio and Gregorio Florendo were hired by the petitioner as plumbers sometime in June, 1979.

On July 19, 1991, petitioner, through a certain Ging B. Salera, issued a memorandum addressed to the Project In- Charge/GPI Building which reads:

19 July 1991

MEMO

TO: Project In-Charge/GPI Building

FROM: GING B. SALERA
SUBJECT: Timed in Workers on Strike

As per report of your foreman, Rod Agustin, the following workers timed-in and are in the building and NOT WORKING.

1. Melanio, Victor
2. Bruca, Marco
3. Bruca, Ernesto
4. Fajardo, Jesus
5. Florendo, Eduardo
6. Osas, Danilo
7. Villapana, Arsenio
8. Pispis, Alejandro
9. Tolete, Rolando
10. Florendo, Gregorio

I will not wish to condone this act. Hence, please advice them to report to the office tomorrow, Saturday, 20 July 1991 to settle their salaries and I would NOT LIKE TO SEE them in this project anymore, lest, they say in the worker's quarters. Further, I am making them absent today and will cancel their names in the daily time record.

For your information and strict compliance.

(Sgd.)
GING B. SALERA[1]

Private respondents interpreted the above-quoted memorandum as a termination order considering that prior thereto, they and several other workers protested what they claimed to be petitioners undue delay in the payment of their salaries. Consequently, petitioners filed with the Department of Labor and Employment (DOLE) on August 2, 1991 a complaint for illegal dismissal and non-payment of salaries/wages, docketed as NLRC-NCR CASE NO. 084514-91 and was assigned to Labor Arbiter Jose G. De Vera for arbitration.

The parties submitted their respective position papers and on February 27, 1992, a Decision[2] was rendered the pertinent portions of which states:

> Consequently, for being dismissed without just and valid cause, the complainants in lieu of reinstatement must be paid by the respondents of their separation pay at the rate of one (l) month pay for every year of service. Said separation pay is hereunder computed as follows:
>
> | | |
> |---|---|
> | P129.00/day x 26 days | = P3,354.00/mo. |
> | P3,354.00/mo. x 12 years | = P40, 248.00 |
> | P40,248.00 x 2 complainants | = P280,496.00 |
>
> Finally, being compelled to litigate, it is but just and mete that complainants must be awarded attorney's fees equivalent to ten percent (10%) of the amount adjudicated in their favor.
>
> WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering the respondents L.T. Datu and Co., and/or Hermilo Datu, jointly and solidarily, to pay complainants the aggregate sum of P80,496.00 plus attorney's fees in the amount of P8,049.60.
>
> SO ORDERED.

Not satisfied with the decision, petitioner interposed an appeal with the respondent NLRC which rendered a Resolution dated July 19, 1993, the dispositive portion of which reads:

> PREMISES CONSIDERED, the appealed decision is hereby AFFIRMED with modification that in addition to the separation benefit awarded to the complainants in the aggregate sum of P80,494.00, the same to include the award of backwages from the time of complainants dismissal in July 1991 up to the time of the Arbiter's decision, quantified in the amount of P23,478.00 due each complainant plus attorney's fee equivalent to 10% of total award in the amount of P12,745.20.
>
> SO ORDERED.[3]

A Motion for Reconsideration was filed but was denied by the NLRC in its Resolution dated September 10, 1993.[4]

Hence, this petition with petitioner raising the following grounds for granting the petition, to wit:

> I
>
> THE NLRC AND THE ARBITER COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN BY MERE SPECULATION CONJECTURE OR MISAPPREHENSION IT ARBITRARILY RULED THAT THE MEMORANDUM DATED JULY 19, 1991 IS A DISMISSAL LETTER WITHOUT GIVING ANY REASON FOR SUCH RULING;
>
> II
>
> THE NLRC AND THE ARBITER COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT ARBITRARILY AND WHIMSICALLY RULED CONTRARY TO LAW AND EVIDENCE THAT PRIVATE RESPONDENTS WERE MEMBERS OF A WORK POOL AND WERE REGULAR EMPLOYEES;

III

THE NLRC AND THE ARBITER COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT ARBITRARILY RULED CONTRARY TO LAW AND WITHOUT ANY FACTUAL BASIS THAT PRIVATE RESPONDENTS ARE ENTITLED TO SEPARATION PAY AND BACKWAGES.[5]

We find no merit in the petition.

Petitioner alleges that the Memorandum of July 19, 1991 was not a dismissal letter but merely an inter-office directive for the Officer-in-Charge of the project to advise the subject employees including private respondents to report to the office to settle their salaries. The statement in said memorandum "I do not like to see them in this project anymore" was meant to transfer them to minor projects that could tolerate some delay as the employees concerned had not been working full time contrary to what appeared in their daily time record.[6]

We are not persuaded.

A close reading of the above-quoted memorandum would lead to the conclusion that indeed the private respondents were terminated from service by the petitioner. In the first place, if the private respondents were merely being transferred to another project, why would there be a need to settle their salaries? If indeed the purpose of petitioner was to ascertain the actual work rendered by private respondents so that they would be given their commensurate salaries on the principle of "no work no pay", then, as correctly observed by the Solicitor General, petitioner should have required the workers to explain why they did not work full time rather than issue the questioned memorandum.[7]

The statement in the memorandum "I would not like to see them in this project anymore, lest, they stay in the workers' quarters" could only lead to the conclusion that private respondents were terminated since they were admittedly prevented or barred from reporting to their place of work by petitioner's security guards. Thus we quote with favor the findings of the Labor Arbiter on this matter:

x x x

> The above-quoted memorandum negates the respondents' assertion that complainants were not terminated as well as their allegation that complainants refused to accept a new assignment in a new project. Said memorandum demonstrably shows that complainants were summarily dismissed without being afforded their rights to due process as mandatorily required under Article 277 of the Labor Code. as amended.
>
> If indeed the ten (10) workers involved including the herein two (2) complainants were not working although they reported for work and timed-in on July 19, 1991, what the respondents should have done was to require the subject workers to explain in writing why they should not be dealt (sic) with any disciplinary action including dismissal for their act of refusing to work and staying at the workers' quarters. This is in line with the requirement of the law obligating employers to issue a prior notice stating the grounds for any termination and allowing the workers involved to explain their side. While the respondents have the prerogatives to dismiss and discipline their employees, nevertheless, they cannot disregard at will the mandatory requirements of the law before exercising such prerogatives.
>
> What we discern from the circumstances of the instant case is that complainants together with eight (8) other workers indeed protested the delay in the payment of their salaries, and by way of protest they simply refused to work on July 19, 1991 by staying inside the workers' quarters. The complainants cannot be faulted from resorting to protest actions and part of the blame rests on the respondents. While the act of the complainants may not be tolerated, nonetheless, such act will definitely not justify the termination of said complainants' services.[8]

If petitioner really meant only to transfer private respondents to another project, the memorandum should have simply stated so. No word implying reassignment can be discerned in the said memorandum. Neither does it mention the project to which they

would be reassigned. Moreover, it is a settled rule that in controversies between a laborer and his master, doubts reasonably arising from the evidence, or in the interpretation of agreements and writings should be resolved in the former's favor.[9]

Petitioners, likewise, claims that private respondents were project employees as contemplated under Policy Instruction No. 20 and not regular employees. They were not members of a workpool and were not prohibited to leave anytime or offer their services to other employers.

We disagree.

Article 280 of the Labor Code provides:

> 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 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. (Emphasis supplied.)

In the case at bench, it cannot be denied that private respondents had been performing activities which were necessary or desirable in the usual trade or business of petitioner. Admittedly, petitioner is engaged in the construction business, particularly in the plumbing

aspect of construction.[10] Private respondents were hired as plumbers for more than a decade by petitioner. There was no evidence that private respondents' employment was fixed for only a specific project. In fact, during this period, private respondents were assigned from one project to another for a period of twelve years without any appreciable gap between the last project and the succeeding one. Thus we quote with approval the decision of the Labor Arbiter on this matter:

x x x

> The argument adopted by the respondents that complainants are project employees cannot be accorded with merit. Complainants have been in the employ of the respondents since 1979 or for a period of twelve (12) years, more or less. The admission by the respondents that complainants are being transferred to another project has led this Branch to the conclusion that at least, complainants were part of a work pool being maintained by the respondent company. Besides, the continuity of the complainants' employment by the respondents for such a long period of time being assigned from one project after another militates strongly against the respondents' contention. This Branch finds the complainants as regular employees.[11]

In De Leon vs. NLRC[12] this Court ruled that when the activities performed by the employee are usually necessary or desirable in the usual business or trade of the employer, the employment is deemed regular notwithstanding contrary agreement. The determination of whether employment is casual or regular does not depend on the will or word of the employer, and the procedure of hiring and manner of paying, but on the nature of the activities performed by an employee, and to some extent, the length of performance, and its continued existence.[13]

More enlightening is the case of Mehitabel Furniture Co., Inc. vs. NLRC[14] where we ruled as follows:

> By petitioner's own admission, the private respondents have been hired to work on certain special orders that as a matter of

> business policy it cannot decline. These projects are necessary or desirable in its usual business or trade, otherwise they could not have been accepted by the petitioner. Significantly, such special orders are not really seasonal but more or less regular, requiring the virtually continuous services of the "temporary workers."

The NLRC also correctly observed that "if we were to accept respondent's theory, it would have no regular workers because all of its orders would be special undertakings or projects." The petitioner could then hire all its workers on a contract basis only and prevent them from attaining permanent status regardless of the length of their service

Furthermore, the NLRC has determined that the private respondents have worked for more than one year in the so-called "special projects" of the petitioner and so also fall under the second condition specified in the above-quoted provision. The public respondent did not err in giving little probative value to the temporary employment contracts submitted by the petitioner because they did not accurately reflect the length of time the employees actually worked for the petitioner. This is a factual findings of the administrative agency that, in line with a long-standing policy, this Court will not disturb

In the present case, petitioner's business is concentrated on plumbing services, and the work activities of private respondents were characterized by regularity. Their services were continuously used by petitioner in the operation of its business. To deny them the status of regular employees would be a blatant violation of the Labor Code which this Court cannot permit.

Furthermore, the length of time the private respondents were in the employ of petitioner would disprove the contention of petitioner that they were mere project employees.

In Phesco, Inc. vs. National Labor Relations Commission[15] we ruled that:

> Where the employment of project employees is extended long after the supposed project had been finished, the employees are

removed from the scope of project employees and they shall be considered regular employees.[16]

The fact that private respondents had worked continuously for a period of twelve years before their services were terminated argues persuasively for the existence of a work pool in the petitioner's establishment from which the company drew its project employees, among whom were private respondents. This being the case, private respondents were non-project employees or employees for an indefinite period within the contemplation of Policy Instruction No. 20 of the Department of Labor and Employment (Stabilizing Employer-Employee Relations In the Construction Industry), the pertinent portions of which reads:

Members of a work pool from which a construction company draws its project employees, if considered employees of the construction company while in the workpool, are non-project employees or employees for an indefinite period. If they are employed in a particular project, the completion of the project or of any phase thereof will not mean severance of employer-employee relationship.

It is obvious that private respondents were employed not in connection with a particular construction project because if this were so, the completion of that project would necessarily have the effect of terminating their services automatically. The twelve long years private respondents had been employed with petitioner would logically support the proposition that private respondents had been working on several projects either simultaneously or successively and they continued with their services regardless of the completion of said projects because they came from a work pool from which petitioner drew its project employees.

Petitioner contends that private respondents are not entitled to separation pay or backwages. Moreover, as to the backwages, the same, according to petitioner, is not an issue in this case as it was never claimed or alleged in the complaint or position paper of private respondents. Petitioner points out that Section 2, Rule VII, Revised Rules of NLRC prohibits the presentation of evidence to prove facts not alleged or raised in the complaint or position paper.

The arguments are devoid of merit.

Under our laws, the legal consequence of such illegal dismissal is reinstatement with backwages.[17] However, the events that unfolded created strained relations between the parties making reinstatement no longer feasible and advisable. In such instance, it is only just and equitable to award separation pay in lieu of reinstatement.[18]

While private respondents failed to claim backwages in their Complaint or Position Paper, this is only a procedural lapse which cannot defeat a right which is granted to them under a substantive law. Technicalities have no room in labor cases, where the Rules of Court are applicable only in order to effectuate the objectives of the Labor Code and not to defeat them. Rule VII, Sec. 10 of the 1990 Rules of Procedure of the National Labor Relations Commission provides that the rules or procedure and evidence prevailing in courts of law and equity shall not be controlling and the Commission shall use every and all reasonable means to ascertain the facts in each case speedily and objectively without regard to technicalities of law or procedure, all in the interest of due process. In the case of General Baptist Bible College vs. NLRC[19] we emphatically held that:

> Basa's failure to specifically pray for the relief of reinstatement in a complaint which he personally prepared and signed using a standard form prepared by the NLRC Regional Arbitration, Branch No. XI, Davao City, is a procedural lapse which he is entitled under a substantive law. Technicalities have no room in labor cases, where the Rules of Court are applicable only in order to effectuate the objectives of the Labor Code and not to defeat them. The pertinent provisions of the Revised Rules of Court of the Philippines and prevailing jurisprudence may be applied by analogy or in a suppletory character to effect an expeditious resolution of labor controversies in a practical and convenient manner. We are inclined to overlook a procedural defect if only to promote substantial justice.
>
> x x x

The NLRC, however, erroneously referred to unpaid salaries as 'backwages' when it excluded allowances therefrom. In order to

obviate any further controversy on this matter, We would like to clarify the difference between the two terms. When the term 'backwages' was used in the NLRC Decision, what was actually meant was unpaid salaries, which pertain to compensation due the employee for services actually rendered before termination. Backwages, on the other hand, refer to his supposed earnings had he not been illegally dismissed. Unpaid salaries refer to those earned prior to dismissal whereas backwages refer to those earnings lost after illegal dismissal. Thus, reinstatement would always bring with it payment of backwages but not necessarily payment of unpaid salaries. Payment of unpaid salaries is only ordered if there are still salary's collectible from his employer by reason of services already rendered.

WHEREFORE, all premises considered, this Court hereby **DISMISSES** the Petition for failure of petitioner to show that respondent Commission committed grave abuse of discretion in rendering its Decision.

SO ORDERED.

Padilla, Bellosillo, Vitug and Hermosisima, *JJ.*, concur.

---

[1] Rollo, pp. 3-4.
[2] Id., at 25-30.
[3] Id., at 31-35.
[4] Id., at 6.
[5] Ibid.
[6] Id., at 8.
[7] Id., at 93.
[8] Id., at 27-30
[9] Soriano vs. Offshore Shipping and Manning Corporation, 177 SCRA 513; Standford Microsystems, Inc. vs. NLRC, 157 SCRA 410.
[10] Position paper for Respondents, Rollo, pp. 21-24.
[11] Id., at 28-29.
[12] 176 SCRA 615.
[13] See also: A.M. Oreta and Company Incorporated vs. National Labor Relations Commission, 176 SCRA 218.
[14] 220 SCRA 602.
[15] 239 SCRA 446.
[16] See also: Capitol Industrial Construction Groups vs. National Labor Relations Commission, 221 SCRA 469.

[17] Article 279 of the Labor Code.
[18] Arms Taxi vs. NLRC, 219 SCRA 706; Philtread Tire and Rubber Corporation vs. NLRC, 218 SCRA 805; Hydro Resources Contractors Corp. vs. Pagaliluan, 172 SCRA 399; Phil. National Construction Corp. Tollways Division vs. NLRC, 172 SCRA 359; Lim vs. NLRC, 171 SCRA 328; Citytrust Finance Corporation vs. NLRC, 157 SCRA 87.
[19] 219 SCRA 549; See also: Rule I, Sec. 2 of the 1990 Rules of Procedure of the National Labor Relations Commission.