

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**TUCOR INDUSTRIES, INC. and
PATRICK BOLL,**
Petitioners,

-versus-

**G.R. Nos. 96608-09
May 20, 1991**

**NATIONAL LABOR RELATIONS
COMMISSION, FLORENCIO BASCO,
REGINO DAYRIT, FLORANIO GARCIA,
JESUS CANLAS, ABEL DAVID,
REYNALDO INFANTE, EDISON
TAPANG, LARRY ENRIQUEZ, REY
SALALILA and PACIFICO C. DIZON,**
Respondents.

X-----X

DECISION

GANCAYCO, J.:

The issue of whether private respondents are regular or casual employees is the center of this controversy.

Petitioner is a corporation principally engaged in the moving and storage of various goods owned by military personnel residing within the United States military facilities in the Philippines. On various

dates herein private respondents were hired as packers, drivers and utilitymen/carpenters. They signed uniform company-prepared master employment contracts, the terms and conditions of which are as follows:

- “a. You agree to be employed on ‘As-Needed’ basis and to the principle of ‘no work, no pay.’ This is so because of the very nature of the business of Tucor Moving and Storage wherein the volume of work handled by the Company varies from day to day and from project to project.
- “b. Other than salaries actually earned, you as a daily-hired worker, shall not be entitled to any of the benefits enjoyed by the permanent employees of the Company.

“x x x

- “e. Due to the nature of our business, you agree to undergo periodic security screening, which can include the polygraph examination the result of which shall be used as basis for, among others, the issuance or renewal of Base Pass, Company ID and/or handling of confidential documents or high-value items whenever necessary or applicable.
- “f. You agree to undergo investigation, to include the polygraph at the discretion of the Company, when you are implicated in any irregularity involving classified information, supplies, materials and equipment of the Company or its clients.”^[1]

In a memorandum letter dated July 17, 1989, the Chief of Traffic Management of Clark Air Base reminded all agents, including petitioner of the base policy that “(E)mloyees who already have passes in their possession and who fail the polygraph.” administered by an acknowledged security company will be required to return their passes. On the same day petitioner terminated the employment of private respondents by sending them separate identical notices of termination, as follows:

“You are well aware that your employment with Tucor Industries, Inc. is on ‘as-needed basis’ per your Master Employment Contract. You are also well-aware that your work assignment is within Clark Air Base and for this purpose, you should be equipped with a Base Pass duly issued by the American authorities. We are sorry to inform you that after an intensive and extensive investigation conducted as a result of numerous reports of missing items from shipments, your Base Pass was not cleared by the American authorities. For this reason, the Company could not avail of your services.

“In view of the foregoing, we regret to inform you that the Company could no longer retain you under its employ as a consequence of the denial of the Base authorities to clear and grant you the Base Pass.”^[2]

All of private respondents had continuously been employed by petitioner for more than a year before the services were terminated.

On August 2, 1989, private respondents, except Pacifico Dizon, filed a complaint for illegal dismissal against petitioner with the Regional Arbitration Branch No. 5 of the National Labor Relations Commission (NLRC) in San Fernando, Pampanga, Private respondent Dizon filed a complaint later. The case was heard and the parties submitted their respective position papers. On August 7, 1989, the Executive Labor Arbiter rendered a decision, the dispositive part of which reads as follows:

“WHEREFORE, judgment is hereby rendered against respondent Tucor Industries, Inc., directing it:

- “1. To pay the backwages of the complainants in the total amount of P205,457.56;
- “2. To reinstate complainants without loss of seniority rights and other privileges upon receipt of this Decision or reinstate them in payroll, in both instance at least at par with the minimum wage.”^[3]

Petitioners appealed therefrom to public respondent NLRC. On September 14, 1990, the appeal was dismissed for lack of merit and the challenged decision of the Executive Labor Arbiter was affirmed in toto. A motion for reconsideration thereof filed by petitioner was denied in a resolution dated November 20, 1990.

Hence, this petition for *certiorari* and prohibition with prayer for the issuance of a writ of preliminary injunction and restraining order. The petition raises the following assigned errors:

“I

THAT THE PUBLIC RESPONDENT A QUO GRAVELY ABUSED ITS DISCRETION, IN A MANNER AMOUNTING TO EXCESS OF JURISDICTION, IN ERRONEOUSLY CONCLUDING THAT HEREIN PRIVATE RESPONDENTS CAN BE CONSIDERED AS REGULAR EMPLOYEES OF PETITIONER COMPANY.

II

THAT THE PUBLIC RESPONDENT GRAVELY ABUSE ITS DISCRETION WHEN IT AFFIRMED THE HONORABLE LABOR ARBITER’S FINDING THAT THE TERMINATION OF THE PRIVATE RESPONDENTS FROM THEIR EMPLOYMENT BY HEREIN PETITIONER COMPANY CONSTITUTES ILLEGAL DISMISSAL.

III

THAT THE PUBLIC RESPONDENT FAILED TO CONSIDER THE PECULIARITY OF THE FACTS AND SITUATION IN THE CASE AT HAND, IN A MANNER AMOUNTING TO GRAVE ABUSE OF DISCRETION, WHEN IT REVIEWED THAT LABOR ARBITER’S RULING.”^[4]

Acting on the petition, the Court, on January 21, 1991, without giving due course to the same, required the respondents to comment thereon within ten (10) days from notice thereof and issued a temporary restraining order enjoining the respondent Commission

from enforcing its resolutions until further orders. Petitioners filed a bond in the amount of P100,000.00 as required.

The petition is devoid of merit.

Petitioners contend that private respondents cannot be considered as its regular employees inasmuch as the employment of the latter was contractual in nature; that they were deemed hired for a specific or a fixed undertaking on an “as needed basis,” the efficacy of said contract being coterminous with or dependent upon the company and its clients.

Article 280 of the Labor Code, as amended, provides as follows:.

“Art. 280. Regular and casual employment. — The provisions of a written agreement to the contrary notwithstanding and regardless of the oral agreements 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 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.)

Policy Instructions No. 12 of the Ministry of Labor and Employment provides that —

“PD 850 has refined the concept of regular and casual employment. What determines regularity or casualness is not the employment contract, written or otherwise, but the nature

of the job. If the job is usually necessary or desirable to the main business of the employer, then the employment is regular; if not, then the employment is casual. (Emphasis supplied.)

An examination of the contract of employment does not show that private respondents were hired for a “specific project or undertaking” nor was the completion or termination of the alleged project for which private respondents were hired determined at the start of the employment.

The term “specific project or undertaking” under Article 280 of the Labor Code contemplates an activity which was 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 the completion of the project. The services employed are thus necessary or desirable in the employer’s usual business only for the period of time it takes to complete the project. Without the performance of such services on a regular basis, the employer’s main business is not expected to grind to a halt.

In the case at bar, private respondents were assigned to do carpentry work, packing and driving, activities which are usually necessary and desirable in petitioners’ usual business and which thus had to be done on a regular basis.

The fact that private respondents had rendered more than one year of service at the time of their dismissal overturns the petitioner’s allegation that private respondents were hired for a specific or a fixed undertaking for a limited period of time. The company-prepared master employment contracts placed the private respondents at the mercy of those who crafted the said contract. The work of the private respondents is hardly “specific” or “seasonal.” Such is one instance under the Code “where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business.”^[5]

Private respondents are therefore regular employees of petitioner the provisions of their contract of employment notwithstanding. They are entitled to security of tenure. The contention of the petitioners that private respondents were employed on “as needed basis” and under

the principle of “no work, no pay” and that when such needs cease, petitioners, at their option may terminate their contract, is certainly untenable.

Verily, the relation between capital and labor is not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good.^[6]

The alleged non-renewal of the base passes of private respondents by the Clark Air Base authorities seems to be a mere ploy to dismiss private respondents from employment. No evidence was adduced as to the alleged investigation conducted by petitioner. There is no indication whether or not private respondents were subjected to polygraph tests for the possible renewal of their passes.

At any rate, inasmuch as private respondents were engaged in the activities which are usual and necessary in usual business or trade of petitioner company, they are regular employees entitled to security of tenure, the provision of the written agreement to the contrary notwithstanding. Their dismissal without just cause in this case and without appropriate investigation is certainly illegal.

WHEREFORE, the Petition is **DISMISSED** for lack of merit. The Temporary Restraining Order issued by this Court on January 21, 1991 is hereby lifted, with costs against petitioners.

SO ORDERED.

Narvasa, Cruz, Griño-Aquino and Medialdea, JJ., concur.

[1] Page 107, Rollo; pages 22-23, Record.

[2] Page 108, Rollo; pages 42-51, Record.

[3] Page III, Rollo; pages 106-114, Record.

[4] Page 8, Rollo.

[5] Article 280, Labor Code.

[6] Article 1700, Civil Code.