



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ENGINEERING &
CONSTRUCTION CORPORATION OF ASIA [now
FIRST BALFOUR,
INCORPORATED],
Petitioner,

- versus -

SEGUNDINO PALLE, FELIX
VELOSA, ALBERTO
PAMPANGA, RANDY
GALABO, MARCO GALAPIN
and GERARDO FELICITAS,
Respondents.

G.R. No. 201247

Present:

PERLAS-BERNABE,
Chairperson,
LEONEN,^{*}
HERNANDO,
INTING, and
DELOS SANTOS, JJ.

Promulgated:

13 JUL 2020

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DECISION

HERNANDO, J.:

Challenged in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court are the September 13, 2011 Decision¹ of the Court of Appeals (CA) in CA-G.R. SP No. 114599 which held that respondents Segundino Palle (Palle), Felix Velosa (Velosa), Alberto Pampanga (Pampanga), Randy Galabo (Galabo), Marco Galapin (Galapin) and Gerardo Felicitas (Felicitas) were regular employees of petitioner Engineering & Construction Corporation of Asia (ECCA) who were illegally terminated, and its March 22, 2012 Resolution² which denied the Motion for Partial Reconsideration thereof.

* Designated as Additional Member of the Second Division per Special Order No. 2780-QQ dated July 3, 2020.

¹Rollo, pp. 36-54; penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Ricardo R. Rosario and Danton Q. Bueser.

² *Id.* at 56-57.

The Parties

Petitioner ECCA, now known as First Balfour Incorporated, is a domestic corporation engaged in the construction business. In 2003, it merged with First Philippine Balfour Beatty Incorporated, with the latter being absorbed by the former. Subsequently, it was renamed First Balfour Incorporated.³

Respondents Palle, Velosa, Pampanga, Galabo, Galapin and Felicitas (collectively, respondents) were hired by ECCA on various dates to work in its construction business.

The Antecedents

The instant case stemmed from the illegal dismissal complaint filed in 2004 by the respondents with the National Labor Relations Commission (NLRC) against ECCA and its president, Oscar Lopez.

Petitioner ECCA's Version

ECCA claimed that respondents, as project employees, were validly terminated in view of the project's completion. It pointed out that respondents were not regular employees, but merely project employees since they were hired for a specific project or undertaking, the termination of which was determined at the time they were hired.⁴

In addition, it argued that: (i) the company hired respondents as project employees to work at its various construction projects from the year 1990; (ii) it informed them of the scope and duration of their work at the time they were engaged in each of those projects; and (iii) their project employment contract expired upon completion of the specific project. Consequently, they were also separated from service upon completion of each project.⁵

Respondents' Version

Respondents mainly argued that they were not project employees but were regular employees of ECCA.⁶ They claimed that ECCA hired them on different dates to perform tasks which were necessary and desirable in its

³ *Id.* at 9.

⁴ *Id.* at 11 and 22.

⁵ *Id.* at 22.

⁶ *Id.* at 38.

construction business. However, ECCA informed them that the cause of their termination was “project completion.” The details of respondents’ employment terms were as follows:⁷

Complainants	Date Hired	Nature of Work	Date of Termination
Palle	1975	Carpenter	Aug. 30, 2001
Velosa	1982	Carpenter	Feb. 25, 2001
Felicitas	1982	Carpenter	Aug. 30, 2001
Pampanganga	Feb. 4, 1997	Plumber/ Pipefitter	Sept. 1, 2001
Galabo	Oct. 1998	Steelman	Sept. 10, 2001
Galapin	Oct. 1998	Steelman	Sept. 15, 2001

Respondents further claimed that ECCA continuously employed them for different construction projects of the company. However, they did not enjoy the benefits given by the company to its regular employees, such as, Christmas bonuses, hospitalization benefits, sick leaves, vacation leaves and service incentive leaves, among others.⁸

Respondents further pointed out that they were regular employees, and not project employees, since they performed tasks which were vital, necessary and indispensable to ECCA’s construction business, thus there was a reasonable connection between their nature of work and ECCA’s business.⁹

Moreover, respondents asserted that although they may have signed employment contracts for some of ECCA’s projects, they were asked to work in new projects or transferred to other existing projects without the benefit of corresponding employment contracts.¹⁰

Furthermore, respondents claim that ECCA’s failure to report the termination of their employment to the Department of Labor and Employment (DOLE) every time that the company completed a project proved that respondents were not project employees but its regular employees.¹¹

In addition, respondents argued that since they have attained the status as ECCA’s regular employees, they were entitled to all the benefits and rights appurtenant to a regular employee, including security of tenure. Thus, respondents prayed that they be reinstated to their former positions

⁷ *Id.* at 37.

⁸ *Id.* at 38.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 38-39.

and that they be awarded wages and other monetary benefits, as authorized by law.¹²

Labor Arbiter's Decision

In a June 16, 2007 Decision,¹³ the Labor Arbiter held that respondents were regular employees of ECCA. The Labor Arbiter pointed out that the company has not presented any document showing that in every termination of the project, respondents' employment was also terminated.¹⁴ Furthermore, the Labor Arbiter also noted that respondents were hired by ECCA for one project but were later repeatedly rehired for more than 20 to 30 years in several other projects. Thus, this showed that respondents have become regular employees of ECCA. The Labor Arbiter emphasized that where the employment of project employees is extended long after the first project had been finished, the employees are removed from the scope of project employment and are considered regular employees. Furthermore, the Labor Arbiter held that respondents have become regular employees of ECCA by the mere fact that the company failed to submit termination reports to the DOLE following the termination of respondents' project employment.¹⁵ Thus, the Labor Arbiter ordered ECCA to reinstate respondents to their former positions effective June 16, 2007 and to pay them full backwages, 13th month pay, service incentive leave pay, and cost of living allowance, or a total of ₱3,655,326.82.¹⁶ The dispositive portion of the Labor Arbiter's Decision partly reads:

WHEREFORE, [petitioner is] hereby directed to reinstate complainants to their former positions effective June 16, 2007 and to pay full backwages in the total amount of ₱3,655,328.82 [x x x].¹⁷

National Labor Relations Commission's Decision

Aggrieved, ECCA filed an appeal with the NLRC. In its March 23, 2009 Decision,¹⁸ the NLRC reversed the findings of the Labor Arbiter and granted ECCA's appeal. The NLRC cited the rulings in *Cioco, Jr. v. C.E. Construction Corporation*¹⁹ and *Filipinas Pre-Fabricated Building Systems (Filsystems), Inc. v. Puente*²⁰ that repeated hiring does not change

¹² *Id.* at 39.

¹³ *Id.* at 424-434; penned by Labor Arbiter Nieves Vivar De Castro.

¹⁴ *Id.* at 430.

¹⁵ *Id.* at 43; *see also* June 16, 2007 Labor Arbiter's Decision, p. 430.

¹⁶ *Id.* at 41; *see also* June 16, 2007 Labor Arbiter's Decision, p. 433.

¹⁷ *Id.* at 433-434.

¹⁸ *Id.* at 393-405; penned by Commissioner Romeo L. Go, and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Perlita B. Velasco.

¹⁹ 481 Phil. 270, 276 (2004).

²⁰ 493 Phil. 923, 934 (2005).

the status of one's employment as project employee or automatically makes one as a regular employee.²¹ Thus, the NLRC held that respondents were not illegally terminated but that their employment ended in view of the completion of the projects.²² The dispositive portion of said Decision reads:

WHEREFORE, the instant appeal is hereby **GRANTED**. The assailed decision of the Labor Arbiter dated 16 June 2007 is **REVERSED** and **SET ASIDE** and the complaint dismissed for lack of merit.²³

Respondents filed a Motion for Reconsideration of the foregoing Decision, which was denied in the NLRC's March 24, 2010 Resolution.²⁴

Court of Appeals' Decision

Aggrieved, respondents filed a Petition for *Certiorari*²⁵ under Rule 65 of the Rules of Court with the CA. In its September 13, 2011 Decision, the CA held in favor of respondents and ruled that they were regular employees, and were therefore illegally dismissed. The appellate court pointed out that ECCA failed to present any written contract of employment to substantiate its claim before the court. Thus, the appellate court held that although the absence of a written contract does not by itself grant regular status to the employees, it is evidence that they were informed of the duration and scope of their work and their status as project employees at the start of their engagement.²⁶ The dispositive portion of said Decision reads:

WHEREFORE, the petition is **GRANTED**. The assailed March 23, 2009 Decision of public respondent NLRC in NLRC-NCR CA No. 00-002296-07 [NLRC Case No. NCR 00-09-10553-04] is **REVERSED and SET ASIDE**. In lieu thereof, a new judgment is rendered reinstating the Decision dated June 16, 2007 of the Labor Arbiter in NLRC-NCR Case Nos. 00-08-09014-04, 00-09-09960-04 and 00-09-10553-04 with the **MODIFICATION** that the liability of respondent Oscar Lopez for the payment of backwages and other monetary benefits in favor of [respondents] is **DELETED**.

SO ORDERED.²⁷

²¹ *Rollo*, p. 400.

²² *Id.* at 403.

²³ *Id.*

²⁴ *Id.* at 45.

²⁵ *Id.* at 8-34.

²⁶ *Id.* at 51.

²⁷ *Id.* at 53-54.

ECCA filed a Motion for Reconsideration which was denied in the CA's March 22, 2012 Resolution.²⁸

ECCA then filed the instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, raising the following assignment of error:

The Court of Appeals erred and gravely abused its discretion in granting the petition and finding that respondents were regular employees of petitioner and were illegally dismissed.²⁹

In sum, the main issue in the instant case is whether or not respondents were illegally dismissed as regular employees or validly terminated in view of the completion of their contract as project employees.

The Court's Ruling

We find ECCA's petition unmeritorious. Thus, we uphold the findings of the CA that respondents were regular employees who were illegally terminated.

Regular and Project Employees, distinguished.

Article 295 [280] of the Labor Code provides the following definition of regular and project employees:

ARTICLE 295. [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 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*)

²⁸ *Id.* at 56-57.

²⁹ *Id.* at 19.

On the other hand, DOLE's Department Order No. 19, series of 1993 (D.O. No. 19), otherwise known as the Guidelines Governing the Employment of Workers in the Construction Industry, provides:

Section 2. EMPLOYMENT STATUS

2.1 Classification of employees. - The employees in the construction industry are generally categorized as a.) project employees and b.) non-project employees. Project employees are those employed in connection with a particular construction project or phase thereof and whose employment is co-terminous with each project or phase of the project to which they are assigned.

X X X X

2.3 Project completion and rehiring of workers. -

X X X X

b.) Upon completion of the project or a phase thereof, the project employee may be rehired for another undertaking provided, however, that such rehiring conforms with the provisions of law and this issuance. In such case, the last day of service with the employer in the preceding project should be indicated in the employment agreement.

X X X X

Thus, based on the foregoing provisions, an employment is generally deemed regular where: (i) the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, subject to exceptions, such as when one is a fixed, project or seasonal employee; or (ii) the employee has been engaged for at least a year, with respect to the activity he or she is hired, and the employment of such employee remains while such activity exists.

On the other hand, 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."³⁰ Thus, the "services of project-based employees are co-terminous with the project and may be terminated upon the end or completion of the project or a phase thereof for which they were hired."³¹

³⁰ *Herma Shipyard, Inc. v. Oliveros*, 808 Phil. 668, 679 (2017).

³¹ *Id.*

Generally, length of service is a measure to determine whether or not an employee who was initially hired on a temporary basis has attained the status of a regular employee who is entitled to security of tenure. However, such measure may not necessarily be applicable in a construction industry since construction firms cannot guarantee continuous employment of their workers after the completion stage of a project.³² In addition, a project employee's work may or may not be usually necessary or desirable in the usual business or trade of the employer. Thus, the fact that a project employee's work is usually necessary and desirable in the business operation of his/her employer does not necessarily impair the validity of the project employment contract which specifically stipulates a fixed duration of employment.³³

In *Lopez v. Irvine Construction Corp.*,³⁴ it was held that "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."

In the instant case, in order to ascertain whether respondents were project employees, as claimed by ECCA, it is essential to determine whether notice was given to them that they were being engaged just for a specific project, which notice must be made at the time of hiring.

We find that ECCA failed to present substantial evidence to show that it informed respondents of the duration and scope of their work at the time of their hiring. Upon careful review of the company's respective contracts of employment with respondents, this Court holds that the employment contracts were lacking in details to prove that respondents had been duly informed of the duration and scope of their work, and of their status as project employees at the time of their hiring. The respective contracts of respondents may have been dated at the time of their issuance, but nowhere did said contracts show as to when respondents supposedly signed or received the same or were informed of the contents thereof. This gives rise to the distinct possibility that respondents were not informed of their status as project employees, as well as the scope and duration of the projects that were assigned to them at the time of their engagement. Thus, ECCA failed to refute respondents' claim that they worked in new projects

³² *William Uy Construction Corp. v. Trinidad*, 629 Phil. 185, 190 (2010).

³³ *Herma Shipyard, Inc. v. Oliveros*, supra note 31, at 684-685; see also *San Esteban v. Sowa Construction*, G.R. No. 241612 (Notice), December 3, 2018 citing *Palomares v. National Labor Relations Commission*, 343 Phil. 213, 223 (1997).

³⁴ 741 Phil. 728, 737 (2014); see also *Quebral v. Angbus Construction, Inc.*, 798 Phil. 179, 191 (2016); and *William Uy Construction Corp. v. Trinidad*, supra at 191.

or they were transferred to other existing projects without the benefit of their corresponding employment contracts.³⁵ Therefore, ECCA failed to persuasively show that respondents herein were informed *at the time of their engagement* that their work was only for the duration of the project.

Moreover, ECCA failed to present other evidence or other written contracts to show that it informed respondents of the duration and scope of their work. Settled is the rule that “although the absence of a written contract does not by itself grant regular status to the employees, it is evidence that they were informed of the duration and scope of their work and their status as project employees at the start of their engagement. When no other evidence is offered, the absence of employment contracts raises a serious question of whether the employees were sufficiently apprised at the start of their employment of their status as project employees.”³⁶

In addition, We likewise note that the company did not submit a report with the DOLE of the termination of respondents’ employment every time a project is completed, which is an indication that the workers were not project employees but regular ones.³⁷

The employer has the burden to prove that an employee was hired for project employment.

It is necessary to note that an employer has the burden to prove that the employee is indeed a project employee. Thus, “the employer must establish that (a) the employee was assigned to carry out a particular project or undertaking; and, (b) the duration and scope of which was specified at the time of engagement.”³⁸

However, this Court finds that ECCA failed to prove that it informed respondents, at the time of engagement, that they were hired as project employees. Hence, respondents were without prior notice of the duration and scope of their work. Indeed, “[w]hile the lack of a written contract does not necessarily make one a regular employee, a written contract serves as proof that employees were informed of the duration and scope of their work and their status as project employee at the commencement of their engagement.”³⁹

³⁵ *Id.*; See also *Rollo*, Employment Contracts of respondents, pp. 82-126.

³⁶ *Quebral v. Angbus Construction, Inc.*, supra note 34 at 192; citations omitted.

³⁷ D.O. No. 19, series of 1993, Section 2.2.(e); see also *Inocentes v. R. Syjuco Construction, Inc.*, G.R. No. 237020, July 29, 2019.

³⁸ *Inocentes v. R. Syjuco Construction, Inc.*, G.R. No. 237020, July 29, 2019.

³⁹ *Id.*

Therefore, without such proof, it is presumed that respondents are regular employees.⁴⁰

Respondents were illegally terminated.

In view of ECCA's indisputable failure to discharge its burden to prove that respondents were project employees, We find that the CA properly found them to be regular employees. Therefore, respondents, as regular employees, may only be dismissed for just or authorized causes and upon compliance with procedural due process, *i.e.*, notice and hearing.⁴¹ This Court notes that completion of a project is not a valid cause to terminate regular employees, such as respondents herein.⁴²

Since the foregoing requirements were not observed, this Court upholds the finding of the CA and Labor Arbiter that the respondents were illegally dismissed.

Finally, pursuant to prevailing jurisprudence, we hereby impose interest at the rate of six percent (6%) per *annum* on all the monetary awards from the finality of this Decision until paid in full.⁴³

ACCORDINGLY, the instant Petition is **DENIED**. The assailed September 13, 2011 Decision and the March 22, 2012 Resolution of the Court of Appeals in CA G.R. SP No. 114599 are hereby **AFFIRMED with MODIFICATION** that interest at the rate of six percent (6%) per *annum* is imposed on all monetary awards from the finality of this Decision until fully paid. No pronouncement as to costs.

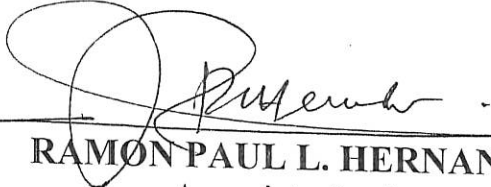
⁴⁰ *Quebral v. Angbus Construction, Inc.*, supra note 34 at 192.

⁴¹ *Lopez v. Irvine Construction Corp.*, 741 Phil. 728, 739 (2014).

⁴² *Inocentes v. R. Syjuco Construction*, supra note 38.

⁴³ *Id.*


SO ORDERED.


RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice



MARVIC M. V. F. LEONEN
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice