SUPREME COURT
FIRST DIVISION

ALEJANDRO MARAGUINOT, JR. and PAULINO ENERO,
***Petitioners*,**

-versus-

G.R. No. 120969
January 22, 1998

NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION) composed of Presiding Commissioner RAUL T. AQUINO, Commissioner ROGELIO I. RAYALA and Commissioner VICTORIANO R. CALAYCAY (Ponente), VIC DEL ROSARIO and VIVA FILMS,
***Respondents*.**
x----------x

D E C I S I O N

DAVIDE, JR., *J.*:

By way of this Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court, petitioners seek to annul the 10 February 1995 Decision[1] of the National Labor Relations Commission (hereafter NLRC), and its 6 April 1995 Resolution[2] denying the Motion to Reconsider the former in NLRC-NCR-CA No. 006195-94. The

decision reversed that of the Labor Arbiter in NLRC-NCR-Case No. 00-07-03994-92.

The parties present conflicting sets of facts.

Petitioner Alejandro Maraguinot, Jr. maintains that he was employed by private respondents on 18 July 1989 as part of the filming crew with a salary of P375.00 per week. About four months later, he was designated Assistant Electrician with a weekly salary of P400.00, which was increased to P450.00 in May 1990. In June 1991, he was promoted to the rank of Electrician with a weekly salary of P475.00, which was increased to P593.00 in September 1991.

Petitioner Paulino Enero, on his part, claims that private respondents employed him in June 1990 as a member of the shooting crew with a weekly salary of P375.00, which was increased to P425.00 in May 1991, then to P475.00 on 21 December 1991.[3]

Petitioners' tasks consisted of loading, unloading and arranging movie equipment in the shooting area as instructed by the cameraman, returning the equipment to Viva Films' warehouse, assisting in the "fixing" of the lighting system, and performing other tasks that the cameraman and/or director may assign.[4]

Sometime in May 1992, petitioners sought the assistance of their supervisor, Mrs. Alejandria Cesario, to facilitate their request that private respondents adjust their salary in accordance with the minimum wage law. In June 1992, Mrs. Cesario informed petitioners that Mr. Vic del Rosario would agree to increase their salary only if they signed a blank employment contract. As petitioners refused to sign, private respondents forced Enero to go on leave in June 1992, then refused to take him back when he reported for work on 20 July 1992. Meanwhile, Maraguinot was dropped from the company payroll from 8 to 21 June 1992, but was returned on 22 June 1992. He was again asked to sign a blank employment contract, and when he still refused, private respondents terminated his services on 20 July 1992.[5] Petitioners thus sued for illegal dismissal[6] before the Labor Arbiter.

On the other hand, private respondents claim that Viva Films (hereafter VIVA) is the trade name of Viva Productions, Inc., and that it is primarily engaged in the distribution and exhibition of movies — but not in the business of making movies; in the same vein, private respondent Vic del Rosario is merely an executive producer, i.e., the financier who invests a certain sum of money for the production of movies distributed and exhibited by VIVA.[7]

Private respondents assert that they contract persons called "producers" — also referred to as "associate producers"[8] to "produce" or make movies for private respondents; and contend that petitioners are project employees of the associate producers who, in turn, act as independent contractors. As such, there is no employer-employee relationship between petitioners and private respondents.

Private respondents further contend that it was the associate producer of the film "Mahirap Maging Pogi," who hired petitioner Maraguinot. The movie shot from 2 July up to 22 July 1992, and it was only then that Maraguinot was released upon payment of his last salary, as his services were no longer needed. Anent petitioner Enero, he was hired for the movie entitled "Sigaw ng Puso," later re-titled "Narito ang Puso." He went on vacation on 8 June 1992, and by the time he reported for work on 20 July 1992, shooting for the movie had already been completed.[9]

After considering both versions of the facts, the Labor Arbiter found as follows:

> "On the first issue, this Office rules that complainants are the employees of the respondents. The producer cannot be considered as an independent contractor but should be considered only as a labor-only contractor and as such, acts as a mere agent of the real employer, the herein respondents. Respondents even failed to name and specify who are the producers. Also, it is an admitted fact that the complainants received their salaries from the respondents. The case cited by the respondents Rosario Brothers, Inc. vs. Ople, 131 SCRA 72 does not apply in this case."

It is very clear also that complainants are doing activities which are necessary and essential to the business of the respondents, that of movie-making. Complainant Maraguinot worked as an electrician while complainant Enero worked as a crew [member].[10]

Hence, the Labor Arbiter, in his decision of 20 December 1993, decreed as follows:

> WHEREFORE, judgment is hereby rendered declaring that complainants were illegally dismissed.

Respondents are hereby ordered to reinstate complainants to their former positions without loss [of] seniority rights and pay their backwages starting July 21, 1999 to December 31, 1993 temporarily computed in the amount of P38,000.00 for complainant Paulino Enero and P46,000.00 for complainant Alejandro Maraguinot, Jr. and thereafter until actually reinstated.

Respondents are ordered to pay also attorney's fees equivalent to ten (10%) and/or P8,400.00 on top of the award.[11]

Private respondents appealed to the NLRC (docketed as NLRC NCR-CA No. 006195-94). In its Decision[12] of 10 February 1995, the NLRC found the following circumstances of petitioners' work "clearly established:"

1. Complainants [petitioners herein] were hired for specific movie projects and their employment was co-terminus with each movie project the completion/termination of which are pre-determined, such fact being made known to complainants at the time of their engagement.

x x x

2. Each shooting unit works on one movie project at a time. And the work of the shooting units, which work independently from each other, are not continuous in nature but depends on the availability of movie projects.

3. As a consequence of the non-continuous work of the shooting units, the total working hours logged by complainants in a month show extreme variations. For instance, complainant Maraguinot worked for only 1.45 hours in June 1991 but logged a total of 183.25 hours in January 1992. Complainant Enero logged a total of only 31.57 hours in September 1991 but worked for 183.35 hours the next month, October 1991.

4. Further shown by respondents is the irregular work schedule of complainant on a daily basis. Complainant Maraguinot was supposed to report on 05 August 1991 but reported only on 30 August 1991, or a gap of 25 days. Complainant Enero worked on 10 September 1991 and his next scheduled working day was 28 September 1991, a gap of 18 days.

5. The extremely irregular working days and hours of complainants' work explain the lump sum payment for complainants' services for each movie project. Hence, complainants were paid a standard weekly salary regardless of the number of working days and hours they logged in. Otherwise, if the principle of "no work no pay" was strictly applied, complainants' earnings for certain weeks would be very negligible.

6. Respondents also alleged that complainants were not prohibited from working with such movie companies like Regal, Seiko and FPJ Productions whenever they are not working for the independent movie producers engaged by respondents. This allegation was never rebutted by complainants and should be deemed admitted.

The NLRC, in reversing the Labor Arbiter, then concluded that these circumstances, taken together, indicated that complainants (herein petitioners) were "project employees."

After their motion for reconsideration was denied by the NLRC in its Resolution[13] of 6 April 1995, petitioners filed the instant petition, claiming that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in: (1) finding that

petitioners were project employees; (2) ruling that petitioners were not illegally dismissed; and (3) reversing the decision of the Labor Arbiter.

To support their claim that they were regular (and not project) employees of private respondents, petitioners cited their performance of activities that were necessary or desirable in the usual trade or business of private respondents and added that their work was continuous, i.e., after one project was completed they were assigned to another project. Petitioners thus considered themselves part of a work pool from which private respondents drew workers for assignment to different projects. Petitioners lamented that there was no basis for the NLRC's conclusion that they were project employees, while the associate producers were independent contractors; and thus reasoned that as regular employees, their dismissal was illegal since the same was premised on a "false cause," namely, the completion of a project, which was not among the causes for dismissal allowed by the Labor Code.

Private respondents reiterate their version of the facts and stress that their evidence supports the view that petitioners are project employees; point to petitioners' irregular work load and work schedule; emphasize the NLRC's finding that petitioners never controverted the allegation that they were not prohibited from working with other movie companies; and ask that the facts be viewed in the context of the peculiar characteristics of the movie industry.

The Office of the Solicitor General (OSG) is convinced that this petition is improper since petitioners raise questions of fact, particularly, the NLRC's finding that petitioners were project employees, a finding supported by substantial evidence; and submits that petitioners' reliance on Article 280 of the Labor Code to support their contention that they should be deemed regular employees is misplaced, as said section "merely distinguishes between two types of employees, i.e., regular employees and casual employees, for purposes of determining the right of an employee to certain benefits."

The OSG likewise rejects petitioners' contention that since they were hired not for one project, but for a series of projects, they should be deemed regular employees. Citing Mamansag vs. NLRC,[14] the OSG

asserts that what matters is that there was a time-frame for each movie project made known to petitioners at the time of their hiring. In closing, the OSG disagrees with petitioners' claim that the NLRC's classification of the movie producers as independent contractors had no basis in fact and in law, since, on the contrary, the NLRC "took pains in explaining its basis" for its decision.

As regards the propriety of this action, which the Office of the Solicitor General takes issue with, we rule that a special civil action for *certiorari* under Rule 65 of the Rules of Court is the proper remedy for one who complains that the NLRC acted in total disregard of evidence material to or decisive of the controversy.[15] In the instant case, petitioners allege that the NLRC's conclusions have no basis in fact and in law, hence the petition may not be dismissed on procedural or jurisdictional grounds.

The judicious resolution of this case hinges upon, first, the determination of whether an employer-employee relationship existed between petitioners and private respondents or any one of private respondents. If there was none, then this petition has no merit; conversely, if the relationship existed, then petitioners could have been unjustly dismissed.

A related question is whether private respondents are engaged in the business of making motion pictures. Del Rosario is necessarily engaged in such business as he finances the production of movies. VIVA, on the other hand, alleges that it does not "make" movies, but merely distributes and exhibits motion pictures. There being no further proof to this effect, we cannot rely on this self-serving denial. At any rate, and as will be discussed below, private respondents' evidence even supports the view that VIVA is engaged in the business of making movies.

We now turn to the critical issues. Private respondents insist that petitioners are project employees of associate producers who, in turn, act as independent contractors. It is settled that the contracting out of labor is allowed only in case of job contracting. Section 8, Rule VIII, Book III of the Omnibus Rules Implementing the Labor Code describes permissible job contracting in this wise:

> Sec. 8. Job contracting. — There is job contracting permissible under the Code if the following conditions are met:
>
> (1) The contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and
>
> (2) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business.

Assuming that the associate producers are job contractors, they must then be engaged in the business of making motion pictures. As such, and to be a job contractor under the preceding description, associate producers must have tools, equipment, machinery, work premises, and other materials necessary to make motion pictures. However, the associate producers here have none of these. Private respondents' evidence reveals that the movie-making equipment are supplied to the producers and owned by VIVA. These include generators,[16] cables and wooden platforms,[17] cameras and "shooting equipment;"[18] in fact, VIVA likewise owns the trucks used to transport the equipment.[19] It is thus clear that the associate producer merely leases the equipment from VIVA.[20] Indeed, private respondents' Formal Offer of Documentary Evidence stated one of the purposes of Exhibit "148" as:

To prove further that the independent Producers rented Shooting Unit No. 2 from Viva to finish their films.[21]

While the purpose of Exhibits "149," "149-A" and "149-B" was:

> To prove that the movies of Viva Films were contracted out to the different independent Producers who rented Shooting Unit No. 3 with a fixed budget and time-frame of at least 30 shooting days or 45 days whichever comes first.[22]

Private respondents further narrated that VIVA's generators broke down during petitioners' last movie project, which forced the associate producer concerned to rent generators, equipment and crew from another company.[23] This only shows that the associate producer did not have substantial capital nor investment in the form of tools, equipment and other materials necessary for making a movie. Private respondents in effect admit that their producers, especially petitioners' last producer, are not engaged in permissible job contracting.

If private respondents insist that their associate producers are labor contractors, then these producers can only be "labor-only" contractors, defined by the Labor Code as follows:

> Art. 106. Contractor or subcontractor. — There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

A more detailed description is provided by Section 9, Rule VIII, Book III of the Omnibus Rules Implementing the Labor Code:

> Sec. 9. Labor-only contracting. — (a) Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting where such person:
>
> (1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and
>
> (2) The workers recruited and placed by such person are performing activities which are directly related to the

principal business or operations of the employer in which workers are habitually employed.

(b) Labor-only contracting as defined herein is hereby prohibited and the person acting as contractor shall be considered merely as an agent or intermediary of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

(c) For cases not falling under this Article, the Secretary of Labor shall determine through appropriate orders whether or not the contracting out of labor is permissible in the light of the circumstances of each case and after considering the operating needs of the employer and the rights of the workers involved. In such case, he may prescribe conditions and restrictions to insure the protection and welfare of the workers.

As labor-only contracting is prohibited, the law considers the person or entity engaged in the same a mere agent or intermediary of the direct employer. But even by the preceding standards, the associate producers of VIVA cannot be considered labor-only contractors as they did not supply, recruit nor hire the workers. In the instant case, it was Juanita Cesario, Shooting Unit Supervisor and an employee of VIVA., who recruited crew members from an "available group of free-lance workers which includes the complainants Maraguinot and Enero."[24] And in their Memorandum, private respondents declared that the associate producer "hires the services of 6) camera crew which includes (a) cameraman; (b) the utility crew; (c) the technical staff; (d) generator man and electrician; (e) clapper; etc."[25] This clearly showed that the associate producers did not supply the workers required by the movie project.

The relationship between VIVA and its producers or associate producers seems to be that of agency,[26] as the latter make movies on behalf of VIVA, whose business is to "make" movies. As such, the employment relationship between petitioners and producers is

actually one between petitioners and VIVA, with the latter being the direct employer.

The employer-employee relationship between petitioners and VIVA can further be established by the "control test." While four elements are usually considered in determining the existence of an employment relationship, namely: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee's conduct, the most important element is the employer's control of the employee's conduct, not only as to the result of the work to be done but also as to the means and methods to accomplish the same.[27] These four elements are present here. In their position paper submitted to the Labor Arbiter, private respondents narrated the following circumstances:

> The PRODUCER has to work within the limits of the budget he is given by the company, for as long as the ultimate finished product is acceptable to the company.
>
> To ensure that quality films are produced by the PRODUCER who is an independent contractor, the company likewise employs a Supervising PRODUCER, a Project accountant and a Shooting unit supervisor. The Company's Supervising PRODUCER is Mr. Eric Cuatico, the Project accountant varies from time to time, and the Shooting Unit Supervisor is Ms. Alejandria Cesario.
>
> The Supervising PRODUCER acts as the eyes and ears of the company and of the Executive Producer to monitor the progress of the PRODUCER's work accomplishment. He is there usually in the field doing the rounds of inspection to see if there is any problem that the PRODUCER is encountering and to assist in threshing out the same so that the film project will be finished on schedule. He supervises about 3 to 7 movie projects simultaneously [at] any given time by coordinating with each film "PRODUCER". The Project Accountant on the other hand assists the PRODUCER in monitoring the actual expenses incurred because the company wants to insure that any additional budget requested by the PRODUCER is really

> justified and warranted especially when there is a change of original plans to suit the taste of the company on how a certain scene must be presented to make the film more interesting and more commercially viable. (Emphasis ours)

VIVA's control is evident in its mandate that the end result must be a "quality film acceptable to the company." The means and methods to accomplish the result are likewise controlled by VIVA, viz., the movie project must be finished within schedule without exceeding the budget, and additional expenses must be justified; certain scenes are subject to change to suit the taste of the company; and the Supervising Producer, the "eyes and ears" of VIVA and del Rosario, intervenes in the movie-making process by assisting the associate producer in solving problems encountered in making the film.

It may not be validly argued then that petitioners are actually subject to the movie director's control, and not VIVA's direction. The director merely instructs petitioners on how to better comply with VIVA's requirements to ensure that a quality film is completed within schedule and without exceeding the budget. At bottom, the director is akin to a supervisor who merely oversees the activities of rank-and-file employees with control ultimately resting on the employer.

Moreover, appointment slips[28] issued to all crew members state:

> During the term of this appointment you shall comply with the duties and responsibilities of your position as well as observe the rules and regulations promulgated by your superiors and by Top Management.
>
> The words "superiors" and "Top Management" can only refer to the "superiors" and "Top Management" of VIVA. By commanding crew members to observe the rules and regulations promulgated by VIVA, the appointment slips only emphasize VIVA's control over petitioners.

Aside from control, the element of selection and engagement is likewise present in the instant case and exercised by VIVA. A sample appointment Slip offered by private respondents "to prove that

members of the shooting crew except the driver are project employees of the Independent Producers"[29] reads as follows:

> VIVA PRODUCTIONS, INC.
> 16 Sct. Albano St.
> Diliman, Quezon City
>
> PEDRO NICOLAS Date: June 15, 1992
> ————————
> ————————
>
> APPOINTMENT SLIP
>
> You are hereby appointed as SOUNDMAN for the film project entitled "MANAMBIT". This appointment shall be effective upon the commencement of the said project and shall continue to be effective until the completion of the same.
>
> For your services you shall receive the daily/weekly/monthly compensation of P812.50.
>
> During the term of this appointment you shall comply with the duties and responsibilities of your position as well as observe the rules and regulations promulgated by your superiors and by Top Management.
>
> Very truly yours,
>
> (an illegible signature)
>
> CONFORME:
>
> _____
> Name of appointee
>
> Signed in the presence of:
>
> ——————— ———————

Notably, nowhere in the appointment slip does it appear that it was the producer or associate producer who hired the crew members;

moreover, it is VIVA's corporate name which appears on the heading of the appointment slip. What likewise tells against VIVA is that it paid petitioners' salaries as evidenced by vouchers, containing VIVA's letterhead, for that purpose.[30]

All the circumstances indicate an employment relationship between petitioners and VIVA alone, thus the inevitable conclusion is that petitioners are employees only of VIVA.

The next issue is whether petitioners were illegally dismissed. Private respondents contend that petitioners were project employees whose employment was automatically terminated with the completion of their respective projects. Petitioners assert that they were regular employees who were illegally dismissed.

It may not be ignored, however, that private respondents expressly admitted that petitioners were part of a work pool;[31] and, while petitioners were initially hired possibly as project employees, they had attained the status of regular employees in view of VIVA's conduct.

A project employee or a member of a work pool may acquire the status of a regular employee when the following concur:

1) There is a continuous rehiring of project employees even after cessation of a project;[32] and

2) The tasks performed by the alleged "project employee" are vital, necessary and indispensable to the usual business or trade of the employer.[33]

However, the length of time during which the employee was continuously re-hired is not controlling, but merely serves as a badge of regular employment.[34]

In the instant case, the evidence on record shows that petitioner Enero was employed for a total of two (2) years and engaged in at least eighteen (18) projects, while petitioner Maraguinot was employed for some three (3) years and worked on at least twenty-three (23) projects.[35] Moreover, as petitioners' tasks involved,

among other chores, the loading, unloading and arranging of movie equipment in the shooting area as instructed by the cameramen, returning the equipment to the Viva Films' warehouse, and assisting in the "fixing" of the lighting system, it may not be gainsaid that these tasks were vital, necessary and indispensable to the usual business or trade of the employer. As regards the underscored phrase, it has been held that this is ascertained by considering the nature of the work performed and its relation to the scheme of the particular business or trade in its entirety.[36]

A recent pronouncement of this Court anent project or work pool employees who had attained the status of regular employees proves most instructive:

> The denial by petitioners of the existence of a work pool in the company because their projects were not continuous is amply belied by petitioners themselves who admit that:
>
> > A work pool may exist although the workers in the pool do not receive salaries and are free to seek other employment during temporary breaks in the business, provided that the worker shall be available when called to report for a project. Although primarily applicable to regular seasonal workers, this set-up can likewise be applied to project workers insofar as the effect of temporary cessation of work is concerned. This 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. Clearly, the continuous rehiring of the same set of employees within the framework of the Lao Group of Companies is strongly indicative that private respondents were an integral part of a work pool from which petitioners drew its workers for its various projects.

In a final attempt to convince the Court that private respondents were indeed project employees, petitioners point out that the workers were not regularly maintained in the payroll and were free to offer their services to other companies when there were no on-going projects. This argument however cannot defeat the workers' status of

regularity. We apply by analogy the case of Industrial-Commercial-Agricultural Workers Organization vs. CIR [16 SCRA 562, 567-68 (1966)] which deals with regular seasonal employees. There we held:

> Truly, the cessation of construction activities at the end of every project is a foreseeable suspension of work. Of course, no compensation can be demanded from the employer because the stoppage of operations at the end of a project and before the start of a new one is regular and expected by both parties to the labor relations. Similar to the case of regular seasonal employees, the employment relation is not severed by merely being suspended. [citing Manila Hotel Co. v CIR, 9 SCRA 186 (1963)] The employees are, strictly speaking, not separated from services but merely on leave of absence without pay until they are reemployed. Thus we cannot affirm the argument that non-payment of salary or non-inclusion in the payroll and the opportunity to seek other employment denote project employment.[37] (Emphasis supplied)

While Lao admittedly involved the construction industry, to which Policy Instruction No. 20/Department Order No. 19[38] regarding work pools specifically applies, there seems to be no impediment to applying the underlying principles to industries other than the construction industry.[39] Neither may it be argued that a substantial distinction exists between the projects undertaken in the construction industry and the motion picture industry. On the contrary, the *raison d' etre* of both industries concern projects with a foreseeable suspension of work.

At this time, we wish to allay any fears that this decision unduly burdens an employer by imposing a duty to re-hire a project employee even after completion of the project for which he was hired. The import of this decision is not to impose a positive and sweeping obligation upon the employer to re-hire project employees. What this decision merely accomplishes is a judicial recognition of the employment status of a project or work pool employee in accordance with what is fait accompli, i.e., the continuous re-hiring by the employer of project or work pool employees who perform tasks necessary or desirable to the employer's usual business or trade. Let it not be said that this decision "coddles" labor, for as Lao has ruled,

project or work pool employees who have gained the status of regular employees are subject to the "no work-no pay" principle, to repeat:

> A work pool may exist although the workers in the pool do not receive salaries and are free to seek other employment during temporary breaks in the business, provided that the worker shall be available when called to report for a project. Although primarily applicable to regular seasonal workers, this set-up can likewise be applied to project workers insofar as the effect of temporary cessation of work is concerned. This 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.

The Court's ruling here is meant precisely to give life to the constitutional policy of strengthening the labor sector,[40] but, we stress not at the expense of management. Lest it be misunderstood, this ruling does not mean that simply because an employee is a project or work pool employee even outside the construction industry, he is deemed, *ipso jure*, a regular employee. All that we hold today is 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, pursuant to Article 280 of the Labor Code and jurisprudence. To rule otherwise would allow circumvention of labor laws in industries not falling within the ambit of Policy Instruction No. 20/Department Order No. 19, hence allowing the prevention of acquisition of tenurial security by project or work pool employees who have already gained the status of regular employees by the employer's conduct.

In closing then, as petitioners had already gained the status of regular employees, their dismissal was unwarranted, for the cause invoked by private respondents for petitioners' dismissal, viz., completion of project, was not, as to them, a valid cause for dismissal under Article 282 of the Labor Code. As such, petitioners are now entitled to back wages and reinstatement, without loss of seniority rights and other benefits that may have accrued.[41] Nevertheless, following the

principles of "suspension of work" and "no pay" between the end of one project and the start of a new one, in computing petitioners' back wages, the amounts corresponding to what could have been earned during the periods from the date petitioners were dismissed until their reinstatement when petitioners' respective Shooting Units were not undertaking any movie projects, should be deducted.

Petitioners were dismissed on 20 July 1992, at a time when Republic Act No. 6715 was already in effect. Pursuant to Section 34 thereof which amended Section 279 of the Labor Code of the Philippines and Bustamante vs. NLRC,[42] petitioners are entitled to receive full back wages from the date of their dismissal up to the time of their reinstatement, without deducting whatever earnings derived elsewhere during the period of illegal dismissal, subject, however, to the above observations.

WHEREFORE, the instant Petition is **GRANTED**. The assailed Decision of the National Labor Relations Commission in NLRC NCR CA No. 006195-94 dated 10 February 1995, as well as its Resolution dated 6 April 1995, are hereby **ANNULLED** and **SET ASIDE** for having been rendered with grave abuse of discretion, and the Decision of the Labor Arbiter in NLRC NCR Case No. 00-07-03994-92 is **REINSTATED**, subject, however, to the modification above mentioned in the computation of back wages.

No pronouncement as to costs.

SO ORDERED.

Bellosillo, Vitug and Kapunan, *JJ.*, concur.

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[1] Per Commissioner Victoriano R. Calaycay, with Commissioners Raul T. Aquino and Rogelio I. Rayala, concurring. Annex "A" of Petition, Rollo, 20-29.
[2] Rollo, 30.
[3] Complaint, 1; Original Record (OR), 2; Rollo, 3-4.
[4] Position Paper for Complainant, 1; OR, 37; Rollo, 4.
[5] Position Paper for complainant, 2; OR, 38; Petition, 3-4; Rollo, 4-5.
[6] OR, 2-4.
[7] Respondents' Position Paper, 1; OR, 8; Comment, 1; Rollo, 47.

[8] Annexes 4 and 4-A, Private Respondents' Position Paper before the Labor Arbiter; OR 28-29.
[9] Respondents' Position Paper, 5-6; OR, 12-13; Comment, 4-6; Rollo, 50-52.
[10] Quoted from Petition, 7; Rollo, 8.
[11] Quoted from NLRC decision, Annex "A" of Petition; Rollo, 20.
[12] Supra, note 1.
[13] Supra note 2.
[14] 218 SCRA 722 [1993].
[15] See Sajonas vs. NLRC, 183 SCRA 182, 1861 [1990].
[16] TSN, 12 October 1992, 9-10; OR, 106-107; TSN, 25 January 1993, 12; OR, 246.
[17] TSN, 25 January 1993, 54-55; OR, 288-289.
[18] Id., 12, 14-15; Id, 246, 248-249.
[19] Id., 12-13; Id., 246-247.
[20] Respondent's Position Paper, 12; OR, 19.
[21] OR, 340.
[22] Id., 341.
[23] Respondent's Position Paper, 12; OR, 19.
[24] Respondent's Position Paper, 4; OR, 11.
[25] Memorandum, 3; Rollo, 118.
[26] The Civil Code defines a contract of agency in this wise:
Art. 1868. By the contract of agency a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.
[27] Encyclopedia Britannica (Phils.) vs. NLRC, 264 SCRA 1, 7 [1996]; Aurora Land Projects Corporation vs. NLRC, G.R. No. 114733, January 1997, 5-6.
[28] Annexes "5," "5-A" to 5-D of Respondents' Position Paper; OR, 30-34.
[29] OR, 389.
[30] Exhibits "155," "155-A," "155-B," "156," to "164," inclusive, OR, 351-356.
[31] Respondents' Position Paper, 4; OR, 11; Supplemental Position Paper, 1; OR, 301.
[32] Philippine National construction Corp. vs. NLRC, 174 SCRA 191, 193 [1989].
[33] Capitol Industrial Construction Groups vs. NLRC, 221 SCRA 469, 473-474 [1993].
[34] Tomas Lao Construction, et al. vs. NLRC, et al., G.R. No. 116781, 5 September 1997, at 7.
[35] According to private respondents (Annex "4" of Respondents' Position Paper; OR, 28), Enero was part of Shooting Unit II, which worked on the following films:

FILM	DATE STARTED	DATE COMPLETED	ASSOCIATE PRODUCER
LOVE AT FIRST SIGHT	1/3/90	2/16/90	MARIVIC ONG
PAIKOT-IKOT	1/26/90	3/11/90	EDITH MANUEL
ROCKY & ROLLY	2/13/90	3/29/90	M. ONG
PAIKOT-IKOT (addl. ½)	3/12/90	4/3/90	E. MANUEL
ROCKY & ROLLY (2nd contract)	4/6/90	5/20/90	M. ONG
NARDONG TOOTHPICK	4/4/90	5/18/90	JUN CHING

BAKIT KAY TAGAL NG SANDALI	6/26/90	8/9/90	E. MANUEL
BAKIT KAY TAGAL (2nd contract)	8/10/90	9/23/90	E. MANUEL
HINUKAY KO NA ANG LIBINGAN MO	9/6/90	10/20/90	JUN CHING
MAGING SINO KA MAN	10/25/90	12/8/90	SANDY STA. MARIA
M. SINO KA MAN (2nd contract)	12/9/90	1/22/91	SANDY S.
NOEL JUICO	1/29/91	3/14/91	JUN CHING
NOEL JUICO (2nd contract)	3/15/91	4/6/91	JUN CHING
ROBIN GOOD	5/7/91	6/20/91	M. ONG
UTOL KONG HOODLUM # 1	6/23/91	8/6/91	JUN CHING
KAPUTOL NG ISANG AWIT	8/18/91	10/2/91	SANDY S.
DARNA	10/4/91	11/18/91	E. MANUEL
DARNA (addl. ½)	11/20/91	12/12/91	E. MANUEL
MAGNONG REHAS	12/13/91	1/27/92	BOBBY GRIMALT
M. REHAS (2nd contract)	1/28/92	3/12/92	B. GRIMALT
HIRAM NA MUKHA	3/15/92	4/29/92	M. ONG
HIRAM (2nd contract)	5/1/92	6/14/92	M. ONG
KAHIT AKO'Y BUSABOS	5/28/92	7/7/92	JERRY OHARA
SIGAW NG PUSO	7/1/92	8/4/92	M. ONG
SIGAW (addl. ½)	8/15/92	9/5/92	M. ONG
NGAYON AT KAILANMAN	9/6/92	10/20/92	SANDY STAMARIA

While Maraguinot was a member of Shooting Unit III, which made the following movies (Annex "4-A" of Respondents' Position Paper; OR, 29):

FILM	DATE STARTED	DATE COMPLETED	ASSOCIATE PRODUCER
GUMAPANG KA SA LUSAK	1/27/90	3/12/90	JUN CHING
PETRANG KABAYO	2/19/90	4/4/90	RUTH GRUTA
LUSAK (2nd contract)	3/14/90	4/27/90	JUN CHING
P. KABAYO (addl. ½ contract)	4/21/90	5/13/90	RUTH GRUTA
BADBOY	6/15/90	7/29/90	EDITH MANUEL
BADBOY (2nd contract)	7/30/90	8/21/90	E. MANUEL
ANAK NI BABY AMA	9/2/90	10/16/90	RUTH GRUTA
A. B. AMA (addl. ½)	10/17/90	11/8/90	RUTH GRUTA
A. B. AMA (addl. 2nd ½)	11/9/90	12/1/90	R. GRUTA
BOYONG MAÑALAC	11/30/90	1/14/91	MARIVIC ONG
HUMANAP KA NG PANGET	1/20/91	3/5/91	EDITH MANUEL
H. PANGET (2nd contract)	3/10/91	4/23/91	E. MANUEL
B. MAÑALAC (2nd contract)	5/22/91	7/5/91	M. ONG
ROBIN GOOD (2nd contract)	7/7/91	8/20/91	M. ONG
PITONG GAMOL	8/30/91	10/13/91	M. ONG
P. GAMOL (2nd contract)	10/14/91	11/27/91	M. ONG
GREASE GUN GANG	12/28/91	2/10/92	E. MANUEL
ALABANG GIRLS (½ contract)	3/4/92	3/26/92	M. ONG
BATANG RILES	3/9/92	3/30/92	BOBBY GRIMALT
UTOL KONG HOODLUM (part 2)	3/22/92	5/6/92	B. GRIMALT
UTOL (addl. ½ contract)	5/7/92	5/29/92	B. GRIMALT
MANDURUGAS (2nd contract)	5/25/92	7/8/92	JERRY OHARA

[36] De Leon vs. NLRC, 176 SCRA 615, 621 [1989].
[37] Tomas Lao, supra note 34, at 7-9.
[38] The former was issued by then Secretary of Labor Blas F. Ople, while the latter, superseding the former, is dated 1 April 1993.
[39] See for instance Chua vs. Civil Service Commission, 206 SCRA 65, 76 [1992], where the Court was ready to appreciate the badges of regular employment even against Government as an employer.
[40] Section 3, Article XIII, 1987 constitution.
[41] Section 3, Rule I, Book VI, Omnibus Rules Implementing the Labor Code.
[42] 265 SCRA 61 [1996].