SUPREME COURT
SECOND DIVISION

ROSITA PANGILINAN, YOLANDA LAYOLA, SALLY GOLDE, AIDA QUITE, FERDINAND CALE, RAUL ARUITA, MANUEL ERIFUL, ARNEL PAULO, ROSEMARIE GEOTINA, SAMUELA KUMAR, REBECCA PEREZ, EDGAR BELLO, JOSEPH SORIANO, DANILO AMPULLER, TOLENTINO CALLAO, MANOLITA MANALANG, TORIBIO LETIM, NANCY BELGICA, ALFREDO ARELLANO, JOSEFA CEBUJANO, JUN DEL ROSARIO, AVELINO AGUILAR, MILAROSA TIAMSON, EDNA DICHOSO, JASMIN BOLISAY, JULIETA DIDAL, GERARDO BARISO, ANGELITO PEÑAFLOR, NERISSA LETIM, ALEXANDER BARBOSA, ELIZABETH SAENS, NYMPHA LUGTU, MYRNA MORALES, LIZA CRUZ, ELENA FANG, EDNA CRUZA, GORGONIO PALMA, JOSE VERGARA, ALDRIN REMORQUE, RUDY BLANCO, MARIO BUENVIAJE, MA. CRISTY CEA, REYNALDO GUELAS VILLASENOR, RHOY TADO, LYDIA SALIPOT, ANGELITO PEREZ VERGARA, RODOLFO GACHO, JESSIE SAN PEDRO, MARINAO ORCA, JR., PEBELITO LERONA, PEPE CONGRESO, NIMFA NAPAO, WILHELMINA BAGUISA, OLIVIA CAINCAY, JERRY MANUEL NICOLAS,

CARLOS ABRATIQUE, JESUS LIM, JR., AND GERRY ROXAS,
Petitioners,

-versus-

G.R. No. 149329
July 12, 2004

GENERAL MILLING CORPORATION,
Respondent.
x----------x

D E C I S I O N

CALLEJO, SR., *J.*:

Before this Court is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 51678 and its Resolution denying the motion for reconsideration thereon.

The Antecedents

The respondent General Milling Corporation is a domestic corporation engaged in the production and sale of livestock and poultry.[2] It is, likewise, the distributor of dressed chicken to various restaurants and establishments nationwide.[3] As such, it employs hundreds of employees, some on a regular basis and others on a casual basis, as "emergency workers."

The petitioners[4] were employed by the respondent on different dates as emergency workers at its poultry plant in Cainta, Rizal, under separate "temporary/casual contracts of employment" for a period of five months.[5] Most of them worked as chicken dressers, while the others served as packers or helpers.[6] Upon the expiration of their respective contracts, their services were terminated. They later filed separate complaints for illegal dismissal and non-payment of holiday

pay, 13th month pay, night-shift differential and service incentive leave pay against the respondent before the Arbitration Branch of the National Labor Relations Commission, docketed as NLRC Case No. RAB-IV-9-4519-92-RI; NLRC Case No. RAB-IV-9-4520-92-RI; NLRC Case No. RAB-IV-9-4521-92-RI; NLRC Case No. RAB-IV-9-4541-92-RI; NLRC Case No. RAB-IV-10-4552-92-RI; NLRC Case No. RAB-IV-10-4595-92-RI and NLRC Case No. RAB-IV-11-4599-92-RI.[7]

The petitioners alleged that their work as chicken dressers was necessary and desirable in the usual business of the respondent, and added that although they worked from 10:00 p.m. to 6:00 a.m., they were not paid night-shift differential.[8] They stressed that based on the nature of their work, they were regular employees of the respondent; hence, could not be dismissed from their employment unless for just cause and after due notice. In support thereof, the petitioners cited the decision of the Honorable Labor Arbiter Perlita B. Velasco in NLRC Case No. NCR-6-2168-86, entitled Estelita Jayme, et al. vs. General Milling Corporation; and NLRC Case No. NCR-9-3726-86, entitled Marilou Carino, et al. vs. General Milling Corporation.[9] They asserted that the respondent GMC terminated their contract of employment without just cause and due notice. They further argued that the respondent could not rely on the nomenclature of their employment as "temporary or casual."

On August 18, 1997, Labor Arbiter (LA) Voltaire A. Balitaan rendered a decision in favor of the petitioners declaring that they were regular employees. Finding that the termination of their employment was not based on any of the just causes provided for in the Labor Code, the LA declared that they were allegedly illegally dismissed. The decretal portion of the decision reads:

> WHEREFORE, judgment is hereby rendered in these cases, as follows:
>
> 1. Declaring respondent corporation guilty of illegally dismissing complainants, except Rosalina Basan and Filomena Lanting whose complaints are hereby dismissed on ground of prescription, and as a consequence therefor ordering the said respondent corporation to reinstate them to their former positions without loss of seniority rights and

other privileges and with full backwages from the time they were illegally dismissed in the aggregate amount of P15,328,594.04;

2. Ordering respondent corporation to pay the said complainants their 13th month pay, holiday pay and service incentive leave pay in the aggregate amount of P1,979,148.23; and

3. Ordering respondent corporation to pay said complainants the amount of P1,730,744.22 by way of attorney's fees, representing ten (10%) percentum of the total judgment awards.

The case against individual respondent Medardo Quiambao is hereby dismissed.[10]

A copy of the decision was sent by registered mail to the respondent on October 23, 1997 under Registered Mail No. 004567 addressed to Atty. Emmanuel O. Pacsi, counsel for GMC, 6th Floor, Corinthian Plaza Bldg., 121 Paseo de Roxas, Makati City.[11] However, Beth Cacal, a clerk of the respondent GMC received the said decision on October 28, 1997.[12] Contending that a copy thereof was received only on November 3, 1997, the respondent filed an appeal on November 12, 1997, before the National Labor Relations Commission (NLRC), docketed as NLRC NCR CA No. 014462-98. The petitioners filed a Motion to Dismiss Respondents' Notice of Appeal/Appeal Memorandum on the ground that the appeal was filed five days late, considering that the August 18, 1997 Decision was received by the respondent through its employee, Beth Cacal, on October 28, 1997.[13]

The respondent opposed the motion, contending that Cacal was a mere clerk, and was not a member of the staff of its Legal Department. It further contended that the Legal Department was located at the sixth (6th) floor of Corinthian Plaza and had its own staff, including the legal secretary who served as the Legal Department's receiving clerk.[14] Invoking Section 10, Rule 13 of the Rules of Court, in relation to Section 2 thereof, the respondent alleged that Cacal's receipt of the mail and/or decision was not equivalent to receipt by its counsel. In support thereof, the respondent cited the

cases of Adamson University vs. Adamson University Faculty and Employees Association,[15] and PLDT vs. NLRC.[16]

On May 25, 1998, the NLRC rendered a decision reversing that of the Labor Arbiter, the dispositive portion of which is herein quoted:

> WHEREFORE, except for its award of "13th month pay, holiday pay and service incentive leave pay in the aggregate amount of P1,979,148.23" which is hereby affirmed, the appealed decision is set aside for being contrary to settled jurisprudence.[17]

The NLRC ruled that the respondent GMC filed its appeal within the reglementary period. Citing the case of Cañete vs. NLRC[18] which, in turn, cited Adamson vs. Adamson[19] and United Placement International vs. NLRC,[20] the NLRC held that service by registered mail is completed only "upon actual receipt thereof by the addressee." Since the addressee of the mail is the respondent's counsel and the person who received it was a non-member of the Legal Staff, the decision cannot be said to have been validly served on the respondent's counsel on October 28, 1997.

The NLRC also held that the petitioners, who were temporary or contractual employees of the respondent, were legally terminated upon the expiration of their respective contracts. Citing the case of Brent School, Inc. vs. Zamora,[21] the NLRC explained that while the petitioners' work was necessary and desirable in the usual business of GMC, they cannot be considered as regular employees since they agreed to a fixed term.

The petitioners' motion for reconsideration of the decision having been denied by the NLRC on October 12, 1998,[22] they filed a petition for certiorari before the Court of Appeals and assigned the following errors:

I

> THE RESPONDENT COMMISSION SERIOUSLY ERRED AND ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR IN EXCESS OF ITS JURISDICTION IN ENTERTAINING AND GIVING DUE COURSE TO

> RESPONDENT COMPANY'S APPEAL WHICH WAS UNDENIABLY FILED OUT OF TIME AND CONSEQUENTLY SETTING ASIDE THE FINAL DECISION OF THE LABOR ARBITER.
>
> II
>
> THE RESPONDENT COMMISSION SERIOUSLY ERRED AND ACTED WITH GRAVE ABUSE OF DISCRETION IN HOLDING THAT PETITIONERS' DISMISSAL WAS LEGAL ON THE GROUND OF EXPIRATION OF EMPLOYMENT CONTRACT WHICH IS NOT A STATUTORY CAUSE UNDER THE LABOR CODE.
>
> III
>
> THE RESPONDENT COMMISSION [S]ERIOUSLY ERRED AND ACTED WITH GRAVE ABUSE OF DISCRETION IN NOT FINDING THAT PETITIONERS, AS REGULAR EMPLOYEES, CANNOT BE DISMISSED WITHOUT JUST CAUSE AND THE REQUIRED DUE PROCESS.[23]

On September 29, 2000, the CA rendered a decision affirming with modification the decision of the NLRC, the decretal portion of which reads:

> WHEREFORE, the appealed decision of the NLRC is hereby AFFIRMED, with the MODIFICATION that the award of 13th month pay, holiday pay, and service incentive leave pay shall cover only the year or years when petitioners were actually employed with herein respondent General Milling Corporation.[24]

The CA ruled that no grave abuse of discretion could be imputed to the NLRC, considering that the ten-day period to appeal began to run only from the date the decision of the LA was validly served on the respondent's counsel. The appellate court also ruled that even assuming arguendo that the respondent GMC's appeal was filed late, in view of the substantial amount involved, giving due course to the appeal did not amount to grave abuse of discretion.

On the merits of the petition, the CA ruled that where the duties of the employee consist of activities usually necessary or desirable in the usual business of the employer, it does not necessarily follow that the parties are forbidden from agreeing on a period of time for the performance of such activities, and cited the case of St. Theresa's School of Novaliches Foundation vs. NLRC.[25] The CA affirmed the entitlement of the petitioners to a proportionate thirteenth (13th) month pay for the particular year/s the petitioners were employed. As to the awards of holiday pay and service incentive leave pay, the CA ruled that they should be limited to the year/s of actual service.[26]

The petitioners filed a motion for reconsideration of the said decision, which was denied on July 24, 2001.[27]

The Present Petition

The petitioners filed the instant petition, ascribing the following errors to the appellate court:

I

> THE HONORABLE COURT OF APPEALS GRAVELY ERRED AND ACTED WITHOUT JURISDICTION WHEN IT MODIFIED THE LABOR ARBITER'S JUDGMENT THAT HAS BECOME FINAL AND EXECUTORY FOR FAILURE OF THE RESPONDENT TO APPEAL WITHIN THE REGLEMENTARY PERIOD.

II

> THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE DECISION OF THE LABOR ARBITER WAS DEEMED SERVED NOT ON THE DATE WHEN THE DECISION WAS DELIVERED BY THE POSTMASTER TO THE OFFICE OF THE RESPONDENT'S LAWYER, BUT ON THE DATE WHEN THE RECEIVING CLERK GAVE THE DECISION TO THE LAWYER.

III

THE RESPONDENT'S PRACTICE OF HIRING CHICKEN DRESSERS ON A 5-MONTH CONTRACT AND REPLACING THEM WITH ANOTHER SET OF 5-MONTH CONTRACT WORKERS, OBVIOUSLY TO PREVENT THEM FROM ATTAINING REGULAR STATUS, IS VIOLATIVE OF THE CONSTITUTION AND ARTICLES 279 AND 280 OF THE LABOR CODE.[28]

The issues for resolution are (a) whether or not the respondent's appeal from the Labor Arbiter's decision was filed within the reglementary period therefor; and, (b) whether or not the petitioners were regular employees of the respondent GMC when their employment was terminated.

In petitions for review on certiorari of the decision of the CA, only errors of law are generally reviewed.[29] Normally, the Supreme Court is not a trier of facts.[30] In the absence of any showing that the NLRC committed grave abuse of discretion, or otherwise acted without or in excess of jurisdiction, the Court is bound by its findings.[31] Such findings are not infallible, however, particularly when there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record. In such case, they may be re-examined by the Court.

Hence, when the factual findings of the NLRC are contrary to those of the Labor Arbiter, the evidentiary facts may be reviewed by the appellate court.[32] Considering that the NLRC's findings clash with those of the Labor Arbiter's, this Court is compelled to go over the records of the case as well as the submissions of the parties.[33]

The Ruling of the Court

The petition is bereft of merit.

Anent the first issue, we agree with the CA that the NLRC did not act with grave abuse of discretion when it gave due course to the appeal of the respondent. Decisions of the Labor Arbiter are final and executory, unless appealed to the Commission, within ten (10)

calendar days from receipt thereof.[34] Copies of decisions or final awards are served on both parties and their counsel by registered mail,[35] and such service by registered mail is completed upon actual receipt by the addressee or five (5) days from receipt of the first notice of the postmaster, whichever is earlier.[36]

The records show that the August 18, 1997 Decision of the Labor Arbiter was served via registered mail, addressed to the respondent GMC's counsel, Atty. Emmanuel O. Pacsi, at the sixth (6th) Floor, Corinthian Plaza Bldg., 121 Paseo de Roxas, Makati City.[37] It was received by Beth Cacal, a clerk of the respondent, on October 28, 1997. The petitioners insist that Cacal is a person with authority to receive legal and judicial correspondence for the respondent's Legal Department. They point out that such authority to receive mail for and in behalf of the respondent's Legal Department is bolstered by the certification from the Makati Post Office that she received the copy of their motion to dismiss the appeal, addressed to the said department.

The respondent GMC counters that the service of the LA's decision to a person not connected to its Legal Department is not a valid service, and that it is only when a copy of such decision is actually given to such department that a valid service of the decision is deemed to have been made. Stressing that factual issues are not proper in a petition for certiorari under Rule 45, the respondent no longer discussed Cacal's authority to receive legal and judicial communications for the respondent.

A review of the records reveal that Cacal was a clerk at the respondent's office and was assigned at the sixth floor of the Corinthian Plaza Bldg. She was not assigned at the respondent's Legal Department, which has its own office staff, including a secretary who serves as the department's receiving clerk.[38] The Court has ruled that a service of a copy of a decision on a person who is neither a clerk nor one in charge of the attorney's office is invalid.[39] Thus, there was no grave abuse of discretion on the part of the NLRC in giving due course to the respondent's appeal.

On the second issue, we agree that the petitioners were employees with a fixed period, and, as such, were not regular employees.

Article 280 of the Labor Code comprehends three kinds of employees:

> (a) regular employees or those whose work is necessary or desirable to the usual business of the employer;
>
> (b) project employees or those 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 or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season; and
>
> (c) casual employees or those who are neither regular nor project employees.[40]

A regular employee is one who is engaged to perform activities which are necessary and desirable in the usual business or trade of the employer as against those which are undertaken for a specific project or are seasonal.[41] There are two separate instances whereby it can be determined that an employment is regular: (1) if the particular activity performed by the employee is necessary or desirable in the usual business or trade of the employer; and, (2) if the employee has been performing the job for at least a year.[42]

In the case of St. Theresa's School of Novaliches Foundation vs. NLRC,[43] we held that Article 280 of the Labor Code does not proscribe or prohibit an employment contract with a fixed period. We furthered that it does not necessarily follow that where the duties of the employee consist of activities usually necessary or desirable in the usual business of the employer, the parties are forbidden from agreeing on a period of time for the performance of such activities. There is thus nothing essentially contradictory between a definite period of employment and the nature of the employee's duties.

Indeed, in the leading case of Brent School Inc. vs. Zamora,[44] we laid down the guideline before a contract of employment may be held as valid, to wit:

> Stipulations in employment contracts providing for term employment or fixed period employment are valid when the period were agreed upon knowingly and voluntarily by the parties without force, duress or improper pressure, being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter.[45]

An examination of the contracts entered into by the petitioners showed that their employment was limited to a fixed period, usually five or six months, and did not go beyond such period.

> **TEMPORARY/CASUAL CONTRACT OF EMPLOYMENT**
>
> KNOW ALL MEN BY THESE PRESENTS:
>
> That the GENERAL MILLING CORPORATION, hereby temporarily hires _____ as Emergency worker for a period beginning from _____ to _____, inclusive, at the rate of _____ per day, payable every 15th [day] and end of each month.
>
> _____ hereby binds and obligates himself/herself to perform his/her assigned work diligently and to the best of his/her ability, and promise to obey all lawful orders of his/ her superior and/or representatives made in connection with the work for which he/she is employed.
>
> IT IS CLEARLY STIPULATED THAT THE CONDITION OF THIS EMPLOYMENT SHALL BE AS FOLLOWS:
>
> 1. This employment contract shall be on a DAY-TO-DAY BASIS and shall not extend beyond the period specified above;
>
> 2. The employee aforementioned may be laid off or separated from the Firm, EVEN BEFORE THE EXPIRY DATE OF THIS CONTRACT, if his/her

services are no longer needed, or if such services are found to be unsatisfactory, or if she/he has violated any of the established rules and regulations of the Company;

3. In any case, the period of employment shall not go beyond the duration of the work or purpose for which the aforementioned employee has been engaged;

4. That the employee hereby agrees to work in any work shift schedule that may be assigned to him by the Firm during the period of this contract; and

This Temporary/Casual Employment contract, unless sooner terminated for any of the causes above-cited, shall then automatically cease on its expiry date, without the necessity of any prior notice to the employee concerned.[46]

The records reveal that the stipulations in the employment contracts were knowingly and voluntarily agreed to by the petitioners without force, duress or improper pressure, or any circumstances that vitiated their consent. Similarly, nothing therein shows that these contracts were used as a subterfuge by the respondent GMC to evade the provisions of Articles 279 and 280 of the Labor Code.

The petitioners were hired as "emergency workers" and assigned as chicken dressers, packers and helpers at the Cainta Processing Plant. The respondent GMC is a domestic corporation engaged in the production and sale of livestock and poultry, and is a distributor of dressed chicken. While the petitioners' employment as chicken dressers is necessary and desirable in the usual business of the respondent, they were employed on a mere temporary basis, since their employment was limited to a fixed period. As such, they cannot be said to be regular employees, but are merely "contractual employees." Consequently, there was no illegal dismissal when the petitioners' services were terminated by reason of the expiration of their contracts.[47] Lack of notice of termination is of no consequence, because when the contract specifies the period of its duration, it terminates on the expiration of such period. A contract for

employment for a definite period terminates by its own term at the end of such period.[48]

In sum, we rule that the appeal was filed within the ten (10)-day reglementary period. Although the petitioners who mainly worked as chicken dressers performed work necessary and desirable in the usual business of the respondent, they were not regular employees therein. Consequently, the termination of their employment upon the expiry of their respective contracts was valid.

IN LIGHT OF ALL THE FOREGOING, the petition is hereby **DENIED DUE COURSE**. The Decision of the Court of Appeals in CA-G.R. SP No. 51678 is **AFFIRMED**. No costs.

SO ORDERED.

PUNO, *J.*, *Chairman.*, QUISUMBING, AUSTRIA-MARTINEZ, and TINGA, *JJ.*, concur.

---

[1] Penned by Associate Justice Conchita Carpio Morales (now an Associate Justice of the Supreme Court), Associate Justices Candido V. Rivera (retired) and Josefina Guevara-Salonga, concurring.
[2] Rollo, p. 6.
[3] Id. at 60.
[4] Rosita Pangilinan, Yolanda Layola, Sally Golde, Aida Quite, Ferdinand Cale, Raul Aruita, Manuel Eriful, Arnel Paulo, Rosemarie Geotina, Samuela Kumar, Rebecca Perez, Edgar Bello, Joseph Soriano, Danilo Ampuller, Tolentino Callao, Manolita Manalang, Toribio Letim, Nancy Belgica, Alfredo Arellano, Josefa Cebujano, Jun del Rosario, Avelino Aguilar, Milarosa Tiamson, Edna Dichoso, Jasmin Bolisay, Julieta Didal, Gerardo Bariso, Angelito Peñaflor, Nerissa Letim, Alexander Barbosa, Elizabeth Saens, Nympha Lugtu, Myrna Morales, Liza Cruz, Elena Fang, Edna Cruza, Gorgonio Palma, Jose Vergara, Aldrin Remorque, Rudy Blanco, Mario Buenviaje, Ma. Cristy Cea, Reynaldo Guelas Villasenor, Rhoy Tado, Lydia Salipot, Angelito Perez Vergara, Rodolfo Gacho, Jessie San Pedro, Marinao Orca, Jr., Pebelito Lerona, Pepe Congreso, Nimfa Napao, Wilhelmina Baguisa, Olivia Caincay, Jerry Manuel Nicolas, Carlos Abratique, Jesus Lim, Jr., and Gerry Roxas.
[5] CA Rollo. pp. 189-194.
[6] Rollo, p. 7.
[7] CA Rollo, pp. 78-102; 195-197.
[8] Rollo, pp. 58-74.

[9] Id. at 170-177.
[10] Id. at 155.
[11] CA Rollo, p. 301.
[12] Id. at 302.
[13] Id. at 297-298.
[14] Rollo, p. 304.
[15] 179 SCRA 279 (1989).
[16] 128 SCRA 402 (1984); CA Rollo, pp. 305-307.
[17] CA Rollo, p. 67.
[18] 250 SCRA 259 (1995).
[19] Supra.
[20] 257 SCRA 404 (1996).
[21] 181 SCRA 702 (1990).
[22] CA Rollo, pp. 72-74.
[23] Id. at 13.
[24] Rollo, pp. 30-31.
[25] 289 SCRA 110 (1998).
[26] Rollo, pp. 26-31.
[27] Id. at 277.
[28] Id. at 10.
[29] Producers Bank vs. Court of Appeals, 397 SCRA 651 (2003).
[30] R & E Ttransport, Inc. and Honorio Enriquez vs. Avelina P. Latag, G.R. No. 155214, February 13, 2004.
[31] Lydia Buenaobra, et. al., vs. Lim King Guan, et. al., G.R. No. 150147, January 20, 2004.
[32] R & E Transport, Inc. and Honorio Enriques vs. Avelina P. Latag, supra.
[33] Zafra vs. Court of Appeals, 389 SCRA 200, 207 (2002).
[34] Article 223. Appeal. – Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. (Labor Code)
[35] Section 5, Rule III, NLRC Rules of Procedure.
[36] Section 10, Rule 13 of the 1997 Revised Rules of Court reads:
Section 10. Completeness of service. – Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of ten (10) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever date is earlier.
[37] CA Rollo, p. 301.
[38] Id. at 304.
[39] Cañete vs. National Labor Relations Commission, supra.
[40] Phil. Federation of Credit Cooperatives, Inc. vs. NLRC, 300 SCRA 72 (1998).
[41] Paguio vs. National Labor Relations Commission, 403 SCRA 190 (2003).
[42] Viernes vs. National Labor Relations Commission, 400 SCRA 557 (2003).
[43] Supra.
[44] Supra.

[45] Cited in Phil. Federation of Credit Cooperatives, Inc. vs. NLRC, 300 SCRA 72 (1998).
[46] CA Rollo, p. 189.
[47] Blancaflor vs. NLRC, 218 SCRA 366 (1993).
[48] Ibid.