

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**PHESCO, INC. and CARLOS GANZON,
*Petitioners,***

-versus-

**G.R. Nos. 104444-49
December 27, 1994**

**THE NATIONAL LABOR RELATIONS
COMMISSION, NICANOR DURO,
MANUEL JABLA, AURELIO ERMAC,
RODOLFO RAMIREZ, WELITO
SABADUQUITA and FERNANDO
DORIO,**

Respondent.

X-----X

DECISION

QUIASON, J.:

This is a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court to reverse and set aside the Decision dated August 23, 1991 of the National Labor Relations Commission (NLRC) in NLRC RAB XII Cases Nos. 12-05-10305 (10307, 10309, 10311, 10313, 10315)-89, and its Resolution dated February 28, 1992 denying reconsideration thereof.

Petitioner Phesco, Inc., (Phesco) is engaged in the construction business. It undertook the construction of three hydroelectric plants (MC-5, Agus I and Agus II) in Mindanao. To assure a steady supply of aggregates for Agus I, it put up an aggregate processing plant in Iligan City, with petitioner Carlos Ganzon as the head thereof.

Private respondents Nicanor Duro, Manuel Jabla, Aurelio Ermac, Rodolfo Ramirez, Welito Sabaduquia and Fernando Dorio were separately hired by petitioners between 1975 and 1977 to work at the Agus I site in Marawi City. Because of a strike staged by the workers in the project on June 2, 1986, private respondents were reassigned on a periodic basis to the aggregate processing plant. At the time the strike was called, the construction of Agus I was already in its final stage and needed only maintenance services (Rollo, p. 6). When the strike was resolved in August 1988, petitioner Phesco ceased extending the appointments of private respondents.

On May 3, 1989, private respondents filed a complaint against petitioners for illegal dismissal, separation pay and damages with the Sub-Regional Arbitration Branch XII, Iligan City (Rollo, p. 30). In their answer, petitioners claimed that the termination of the services of private respondents was valid since their services as project employees were no longer needed. They also contended that private respondents, being project employees, were not entitled to separation pay.

In his Decision dated January 26, 1990, the Labor Arbiter ruled that private respondents were regular employees, not project employees of the aggregate processing plant, and in view of the cessation of business of the plant, they were entitled to separation pay (Rollo, p. 64). The Labor Arbiter disposed as follows:

“WHEREFORE, Premises Considered, the issue for illegal dismissal is hereby ordered dismissed for lack of merit but the respondent is hereby ordered to pay separation pay equivalent to one-half month salary for every year of service to Nicanor Duro, Manuel Jabla, Aurelio Ermac, Rodolfo Ramirez, Welito Sabaduquia and Fernando Dorio” (Rollo, p. 69).

On appeal, the Fifth Division of the NLRC, Cagayan de Oro City, in its Decision dated August 28, 1991 reversed the decision of the Labor Arbiter and ruled:

“WHEREFORE, in view of the foregoing, the questioned Decision is hereby SET ASIDE, and another one entered finding [petitioners] guilty of Illegal Dismissal.

“[Petitioners] are hereby ordered:

- (a) To reinstate Nicanor Duro, Manuel Jabla, Aurelio Ermac, Rodolfo Ramirez, Welito Sabadugua and Fernando Dorio to their former positions without loss of seniority rights and privileges; however, if reinstatement of complainants are no longer feasible, a separation pay equivalent to one (1) month salary for every year of service shall be awarded as follows:

NICANOR DURO	P27,040.00
MANUEL JABLA	27,040.00
AURELIO ERMAC	25,350.00
RODOLFO RAMIREZ	27,040.00
WELITO SABADUQUIA	27,040.00
FERNANDO DORIO	<u>23,660.00</u>
Total:	P157,170.00
	=====

- (b) To pay complainants back wages without qualifications, from the date of termination up to three (3) years jurisprudential limitation:

NICANOR DURO	P60,840.00
MANUEL JABLA	60,840.00
AURELIO ERMAC	60,840.00
RODOLFO RAMIREZ	60,840.00
WELITO SABADUQUIA	60,840.00
FERNANDO DORIO	<u>60,840.00</u>
Total:	P365,040.00
	=====

(c) To pay attorney's fees equivalent to eight (8%) percent of the total monetary award or in the sum of P41,776.80.

“For lack of sufficient evidence, the claim for moral damages is DENIED for the lack of merit (Rollo, pp. 24-25).

The NLRC denied the motion for reconsideration filed by petitioners (Rollo, pp. 26-29).

Hence, the present petition where petitioners charged the NLRC of grave abuse of discretion in finding that petitioners were guilty of illegal dismissal and that private respondents were regular employees entitled to separation pay, back wages and attorney's fees.

We dismiss the petition.

II

We see no reversible error in the decision of the NLRC.

Private respondents cannot be considered project employees considering their length of service and the nature of their employment, which is necessary in the business of petitioners.

Significantly, the NLRC found that petitioners did not limit the supply of aggregates to the Agus I project site but also to the general public. This fact is not denied by petitioners, who instead argued that the sale of the aggregates to the public was on a limited scale and only for accommodation (Rollo, p. 15).

The issue whether petitioner Phesco is selling aggregates to the public on a regular basis or only for accommodation involves a question of fact, the determination of which is best left with the NLRC (*Wyeth-Suaco Laboratories, Inc., vs. National Labor Relations Commission*, 219 SCRA 356 [1993]).

Petitioners alleged that at the inception of the strike, the Agus I project was in its final stage and that there would be no more need of the rock-crushing plant (Rollo, p. 6). Yet from 1986 to 1988, private respondents were continuously employed thereat, lending credence to

private respondents' claim that the rock crusher plant did not only supply aggregates to the Agus I project but also sold aggregates to the public.

In *Capitol Industrial Construction Groups vs. National Labor Relations Commission*, 221 SCRA 469 (1993), we ruled that where the employment of project employees is extended long after the supposed project had been finished, the employees are removed from the scope of project employees and they shall be considered regular employees. Petitioners had repeatedly extended the employment contracts of private respondents long after the completion of the Agus I project.

If private respondents were truly project employees, petitioners should have presented proof that they submitted a report of termination to the nearest public employment office of the services of their project employees upon the completion of the construction project, as required by Policy Instruction No. 20 (*Magante vs. National Labor Relations Commission*, 185 SCRA 21, [1990]).

Anent the issue that private respondents Ermac and Ramirez were dismissed for their failure to report for work, we reiterate the finding of the NLRC that petitioners failed to present proof that said respondents indeed received notices to return to work (Rollo, pp. 62-63).

WHEREFORE, the Petition for *Certiorari* is **DISMISSED**.

SO ORDERED.

Padilla, Davide, Jr., Bellosillo and Kapunan, JJ., concur.