SUPREME COURT
THIRD DIVISION

PHILIPPINE NATIONAL CONSTRUCTION CORPORATION,
***Petitioner*,**

-versus-

G.R. No. 107307
August 11, 1997

NATIONAL LABOR RELATIONS COMMISSION and LORENZO MENDOZA,
***Respondents*.**
x----------x

D E C I S I O N

PANGANIBAN, *J.*:

In the interpretation of an employer's retrenchment program providing for separation benefits, all doubts should be construed in favor of the underprivileged worker.

Statement of the Case

This principle is emphasized in resolving this Petition for *Certiorari*[1] under Rule 65 of the Rules of Court filed by Philippine National Construction Corporation (PNCC) assailing the September 30, 1992 Decision[2] of Respondent National Labor Relations Commission

(NLRC)[3] in NLRC NCR CA No. 001672-91 (NCR-00-09-04156-89). Public Respondent NLRC affirmed in all respects, except the award of attorney's fees,[4] Executive Labor Arbiter Valentin C. Guanio's decision, dated December 3, 1990, which ordered thus:[5]

> "WHEREFORE, in view of the foregoing, judgment is hereby rendered ordering the respondent corporation [petitioner herein] to pay complainant [private respondent herein] his separation pay of P9,204.00 plus ten percent (10%) thereof as attorney's fees."

The Facts

The facts in this case are undisputed. From July 14, 1981 until September 23, 1982, Petitioner PNCC employed Private Respondent Mendoza as Driver II at its Magat Dam Project. A few days after, on September 27, 1982, private respondent was again employed as Driver II at PNCC's LRT Project until January 31, 1983. The following day, February 1, 1983, UNTIL August 1, 1984, petitioner deployed private respondent, also as Driver II, in its Saudi Arabia Project. It took more than six months for private respondent to be repatriated to the Philippines. Upon his return, he resumed his work as Driver II in the PG-7B Project of petitioner from February 22, 1985 until May 18, 1986.

For more than two years afterwards, private respondent was not given any work assignment. On August 17, 1988, he was hired anew as Driver II for the Molave Project of petitioner. This lasted until June 15, 1989.

Thereafter, private respondent claimed the benefits of petitioner's Retrenchment Program, particularly under paragraph 2.1. thereof which provides:

> "Coverage. — Special separation benefits shall be given to all regular, project employees and permanent employees who have rendered at least one (1) year of continuous service with PNCC and are actively employed in the company as of the date of their separation."[6]

However, petitioner denied his claim. Thus, on September 5, 1989, private respondent filed a complaint for non-payment of separation pay as provided for in said program.[7] As earlier stated, the executive labor arbiter granted private respondent's plea, and public respondent affirmed such grant minus the award of attorney's fees.

No motion for reconsideration was filed because, according to petitioner, "the questions raised before this Honorable Court are the same questions which were considered by Public Respondent NLRC."[8]

Acting on the petition, this Court (Second Division) in a Resolution dated October 27, 1992 issued a restraining order enjoining respondents from enforcing the assailed Decision.[9]

NLRC's Ruling

In dismissing petitioner's appeal, Respondent NLRC ratiocinated thus:[10]

> "We fail to see any logic in respondent's [petitioner herein] contention that the period determinative of complainant's [private respondent herein] entitlement to separation benefits as per its Retrenchment Program of January 16, 1989 should be the latter's last assignment, which was for only about ten (10) months. PNCC's Retrenchment Program, particularly paragraph 2.1 thereof states that: 'Special separation benefits shall be given to regular, project employees and permanent employees who have rendered at least one year of continuous service in PNCC and are actively employed in the Company as of the date of their separation.'
>
> Hence, it is clear that the foregoing provision of PNCC's Retrenchment Program speaks of at least one year of continuous service without specifying as to whether it should be immediately prior to the employee's separation.
>
> We therefore discern no misappreciation of facts on the part of the Executive Labor Arbiter."

The Issues

Petitioner raises the following arguments:[11]

> "A
>
> The questioned decision of the labor arbiter which was affirmed by public respondent NLRC in its decision dated September 30, 1992 is not supported by evidence, applicable law and jurisprudence.
>
> x x x
>
> B
>
> Private respondent was a project employee and his service with petitioner was not continuous."

The executive labor arbiter phrased the latter issue thus:[12]

> "the issue of whether the complainant is a regular or a project employee is not relevant since respondent's retrenchment or separation program grants separation benefits to eligible employees irrespective of whether they are regular, project or permanent employees. The only important thing to consider is whether they are qualified or eligible to receive these benefits under the program."

Petitioner contends that the complaint is barred by Article 291[13] of the Labor Code for having been filed late on "September 5, 1989 or after the lapse of more than three (3) years" from his separation from employment on May 18, 1986.[14] Petitioner argues further that private respondent was employed only for ten (10) months from "August 17, 1988 again as project employee, until his separation on June 15, 1989."[15] Thus, he is not entitled to separation pay under its special separation program which applies only to employees who have rendered at least one year of continuous service at the time of their separation from PNCC.[16]

Private respondent, on the other hand, alleges that he cannot be expected to file a claim for separation benefits "within 3 years after 1986 when [he] was 'rehired' within two (2) years or in 1988."[17] Further, private respondent contends that since he was terminated from service on "15 June 1989 or five (5) months after the cut-off date of 16 January 1989," he was covered by the separation program.[18]

The Solicitor General "begs leave of this Honorable Court to discuss first and foremost the issue of whether or not Respondent Mendoza is a project employee, as the resolution of this issue in the negative will bar Respondent Mendoza's claim for separation pay."[19] The Solicitor General points out that "[w]hat is clear is the employment of Respondent Mendoza by herein petitioner on five (5) occasions for its five (5) different projects. Respondent Mendoza was drawn from a 'work pool' from which petitioner drew workers [for] assignment to other projects at its discretion."[20]

All told, the Court believes that this case can be resolved on the basis of two issues:

(1) Whether a motion for reconsideration is required prior to filing a petition for certiorari; and

(2) Whether private respondent is entitled to the separation benefits under petitioner's Retrenchment Program.

The Court's Ruling

The petition has no merit.

First Issue – Failure to File a Motion for Reconsideration

Petitioner, as noted earlier, admitted that it did not file a motion for reconsideration of the assailed NLRC Decision.[21] This premature action constitutes a fatal infirmity.[22] In Interorient Maritime Enterprises vs. National Labor Relations Commission,[23] this Court, citing a catena of cases, categorically ruled that:

> "The unquestioned rule in this jurisdiction is that certiorari will lie only if there is no appeal or any other plain, speedy and

> adequate remedy in the ordinary course of law against the acts of public respondent. In the instant case, the plain and adequate remedy expressly provided by law was a motion for reconsideration of the assailed decision, based on palpable errors, to be made under oath and filed within ten (10) calendar days from receipt of the questioned decision.
>
> (T)he filing of such motion is intended to afford public respondent an opportunity to correct any factual or fancied error attributed to it by way of a re-examination of the legal and factual aspects of the case. Petitioner's inaction or negligence under the circumstances is tantamount to a deprivation of the right and opportunity of the respondent Commission to cleanse itself of an error unwittingly committed or to vindicate itself of an act unfairly imputed.
>
> And for failure to avail of the correct remedy expressly provided by law petitioner has permitted the subject Resolution to become final and executory after the lapse of the ten day period within which to file such motion for reconsideration."

Earlier, in Labudabon vs. National Labor Relations Commission,[24] we already warned that, where no motion for reconsideration is filed within ten (10) calendar days from its receipt, the NLRC decision shall become final and executory:

> "The New Rules of Procedure of the National Labor Relations Commission mandate that a motion for reconsideration of any order, resolution or decision of the Commission must be filed within (10) calendar days from receipt of such order, resolution or decision. [Sec. 14, Rule VII of the New Rules of Procedure of the National Labor Relations Commission] If no motion for reconsideration is filed, the NLRC's order, resolution or decision shall become final and executory after ten (10) calendar days from receipt thereof.
>
> The Court ruled upon a similar issue in the case of Zapata vs. NLRC [175 SCRA 56, 5 July 1989], and recently in the case of G.A. Yupangco vs. NLRC [Minute Resolution dated 17 February 1992, G.R. No. 102191]. In the Zapata case, we held —

> 'The implementing rules of respondent NLRC are unequivocal in requiring that a motion for reconsideration of the order, resolution, or decision of the respondent Commission should be seasonably filed as a precondition for pursuing any further or subsequent remedy, otherwise the said order, resolution or decision shall become final and executory after ten calendar days from receipt thereof. Obviously, the rationale therefor is that the law intends to afford the NLRC an opportunity to rectify such errors or mistakes it may have lapsed into before resort to the courts of justice can be had.'
>
> In the case at bar, petitioner's failure to file a motion for reconsideration, for whatever reason, is a fatal procedural defect that warrants the dismissal of his present petition."

The law is clear that a motion for reconsideration is a mandatory requirement before one may resort to the special civil action of certiorari. While there are recognized exceptions to this rule, petitioner has not convinced us that this case is one of them.[24-a] Petitioner's bare allegation that the same questions raised before the public respondent were to be raised before this Court affords no excuse. Petitioner should have complied with the procedural requirement. On this ground alone, the petition should be denied. There is, however, another cogent reason for dismissing it.

Second Issue – Private Respondent Qualified Under Retrenchment Program

What is being contested in this case is whether private respondent is covered by paragraph 2.1 of the separation program of PNCC. We again quote the said paragraph:[25]

> "Coverage. — Special separation benefits shall be given to all regular, project employees and permanent employees who have rendered at least one (1) year of continuous service with PNCC and are actively employed in the company as of the date of their separation."

The Court notes that the photocopy of the "Separation Program with Special Benefits" shows that there is a comma after the word "regular"; thus, it reads: "all regular, project employees and permanent employees." The comma is also found in petitioner's Counter-Manifestation filed with the executive labor arbiter. In the petition itself, however, no comma was placed after the word "regular."

The requisites of petitioner's separation program are as follows:

1. The employee must be either a regular, project or permanent employee;

2. He rendered at least one (1) year of continuous service for the petitioner;

3. He was actively employed in the Company as of the date of his separation.

4. He must have been separated from service on the effectivity of the Separation Program or on January 16, 1989 or later.[26]

Regarding the first requisite, petitioner does not deny that private respondent was a "project employee;"[27] thus:

> "The employment terms and conditions of Private Respondent contained in the reverse side of his appointment paper (Exhs. "1" and "1-A" of PNCC's Reply Position Paper/Annex "C" to the Petition) clearly showed that he was a project worker. Moreover, his said appointment paper defined a regular employee as a permanent employee with respect to a particular project and in no instance beyond the completion of the items of work or project to which he is employed." (Emphasis supplied)

Moreover, private respondent's employment contracts explicitly describe his employment status as "regular." Private respondent's appointment paper dated September 23, 1982 contained the following particulars:[28]

"1. Re-hired

2. A regular employee

3. Entitled to the separate MELA under PD 1634, 1678, 1713 and wage order #1

4. Not entitled to meal allowance at project site

5. Paid wages, accrued leave benefits and portion of 13th month pay at EMO-Magat"

His second appointment paper dated October 6, 1982 included the following:[29]

"1. Re-hired from CSY

2. A regular employee

3. Entitled to separate MELAS per PD 1634, 1678, 1713 & W.O. # 1"

The clear provisions above have no other import than that private respondent was a regular employee as of September 23, 1982 and, as such, also covered by the separation program. These employment contracts ineludibly strengthen the right of private respondent to separation pay under the PNCC program. Whether as a regular or as a project employee, private respondent is clearly covered by the said program.

We also note that petitioner did not deny that it continuously employed private respondent starting July 14, 1981 in different work assignments, interrupted only by the completion of each project.

Private respondent likewise meets the second requisite of the separation program. He has rendered more than one (1) year of continuous service with petitioner; in fact, he had worked for petitioner for at least five (5) years, one (1) month and seven (7) days. Private respondent's first work engagement from July 14, 1981 to September 23, 1982 lasted for one (1) year, two (2) months and nine

(9) days. His second and third work engagements from September 27, 1982 to August 1, 1984 were for one (1) year, ten (10) months and three (3) days. His fourth work engagement from February 22, 1985 to May 18, 1986 lasted for one (1) year, two (2) months and twenty-six (26) days. The duration of his fifth, which was also his last work engagement, from August 17, 1988 to June 15, 1989, was nine (9) months and twenty-eight (28) days.

The program bases the computation of separation benefits on "every year of completed/credited service." Contrary to petitioner's claims, nothing in the phrase "every year of completed/credited service" can be understood as requiring that the service be continuous. Thus, it should be stressed that the requirement of continuous service pertains only to one's eligibility under the program. No such requirement restricts the computation of separation benefits. In other words, there is no prohibition for the cumulation of the services rendered by qualified employees.

Under the separation program, an employee may qualify if he has rendered "at least one year of continuous service." As public respondent has stated, the plain language of the program did not require that continuous service be immediately prior to the employee's separation. Thus, private respondent's other stints at PNCC prior to his last service in 1989 can properly be considered in order to qualify him under the program. That the duration of private respondent's last stint was less than one year does not militate against his qualification under the program. We grant this liberality in favor of private respondent in the light of the rule in labor law that "when a conflicting interest of labor and capital are weighed on the scales of social justice, the heavier influence of the latter must be counter-balanced by the sympathy and compassion the law must accord the under-privileged worker."[30]

Because private respondent was actively employed by PNCC until June 15, 1989, he was undoubtedly covered by the separation program embracing employment separation on or after January 16, 1989. Thus, his situation also meets the third and fourth requisites of the separation program.

In the interpretation of an employer's program providing for separation benefits, all doubts should be construed in favor of labor. After all, workers are the intended beneficiaries of such program and our Constitution mandates a clear bias in favor of the working class.

No Work Pool

In view of the foregoing, there appears no need to address the question of whether private respondent was part of a "work pool." We should point out, however, that the Solicitor General was inaccurate when he stated that petitioner had a "work pool" and Respondent Mendoza was a part thereof. In Raycor Aircontrol Systems, Inc. vs. National Labor Relations Commission,[31] we clarified the status of project employees in a "work pool" as recognized by Policy Instruction No. 20[32] thus:

> "Project employees may or may not be members of a work pool, (that is, the employer may or may not have formed a work pool at all), and in turn, members of a work pool could be either project employees or regular employees. In the instant case, respondent NLRC did not indicate how private respondent came to be considered members of a work pool as distinguished from ordinary (non-work pool) employees. It did not establish that a work pool existed in the first place. Neither did it make any finding as to whether the herein private respondents were indeed free to leave anytime and offer their services to other employers, as vigorously contended by petitioner, despite the fact that such a determination would have been critical in defining the precise nature of private respondent's employment. Clearly, the NLRC's conclusion of regular employment has no factual support and is thus unacceptable."

As clearly explained above, an employee in the work pool is not necessarily a regular employee; he may also be a project employee. But as earlier observed, the resolution of the issue of whether private respondent belonged to a "work pool" is not necessary to determine whether private respondent is qualified under PNCC's separation program.

Attorney's Fees

We disagree with Respondent NLRC's disallowance of the award of attorney's fees. Private respondent was evidently and legally entitled to separation benefits in the paltry amount of P9,204.00 when he was separated from service. But because of the unjustified stance of petitioner, he was compelled to litigate to obtain what was legally due him, that is, to retain a lawyer and to await for eight years for this case to be finally decided. It is settled that in actions for recovery of wages or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interests, the award of attorney's fees is legally and morally justifiable.[33]

WHEREFORE, premises considered, the petition is **DISMISSED** and the assailed Decision of Respondent NLRC is **AFFIRMED** with the **MODIFICATION** that the award of attorney's fees is **REINSTATED** and that legal interest of 6 percent per annum be paid to private respondent computed from the date of the filing of the complaint before the labor arbiter. The temporary restraining order issued on October 27, 1992 is likewise **LIFTED**. Costs against petitioner.

SO ORDERED.

Narvasa, *C.J.*, Davide, Jr., Melo and Francisco, *JJ.*, concur.

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[1] Rollo, pp. 2-18.
[2] Ibid., pp. 20-24.
[3] Second Division composed of Commissioner Rogelio I. Rayala, ponente; Presiding Commissioner Edna Bonto-Perez, concurring and Commissioner Domingo H. Zapanta, on leave.
[4] Rollo, p. 23.
[5] Ibid., p. 44.
[6] Original Records, p. 63; rollo, p. 10.
[7] Original Records, p. 2.
[8] Petition, p. 6; rollo, p. 7.
[9] Rollo, pp. 52-53.
[10] Ibid., pp. 22-23; NLRC's Decision, pp. 3-4.
[11] Petition, pp. 8 and 11, rollo, pp. 9 and 12.
[12] Labor Arbiter's Decision, pp. 2-3; rollo, pp. 42-43.

[13] "Article 291. Money claims. — All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be forever barred.

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[14] Petition, p. 9; rollo, p. 10.
[15] Ibid.
[16] Ibid., pp. 11-12; rollo, pp. 12-13.
[17] Private Respondent's Comment, p. 2; rollo, p. 62.
[18] Ibid., pp. 2-3; rollo, pp. 62-63.
[19] Public Respondent's Comment, p. 4; rollo, p. 100.
[20] Ibid., pp. 100-101.
[21] Petition, p. 6; rollo, p. 7.
[22] Building Care Corporation vs. NLRC and Rogelio Rodil, G.R. No. 94237, February 26, 1997.
[23] G.R. No. 115497, September 16, 1996, citing Restituto Palomado vs. National Labor Relations Commission, G.R. No. 96520, June 28, 1996; Pure Foods Corporation vs. NLRC, 171 SCRA 415, 425, March 21, 1989; Philippine National Construction Corporation (PNCC) vs. National Labor Relations Commission, 245 SCRA 668, 674-675, July 7, 1995.
[24] 251 SCRA 129, 132-133, December 11, 1995, per Padilla, J .
[24-a] See Regalado, Remedial Law Compendium, Vol. 1, Fifth Revised Ed., p. 460.
[25] Supra, footnote no. 6.
[26] Paragraph 2.2.4 of the Separation Program with Special Benefits.
[27] In its Consolidated Reply, petitioner states: "In other words, Private Respondent was merely a regular project employee in the sense that he cannot be terminated during the duration of the particular project or phase thereof without just cause." (Rollo, pp. 111-112, Consolidated Reply, pp. 2-3)
[28] Original Records, p. 44.
[29] Ibid., p. 45.
[30] City Fair Corporation vs. NLRC, 243 SCRA 572, 577, April 21, 1995.
[31] G.R. No. 114290, September 9, 1996.
[32] Entitled "Stabilizing Employer-Employee Relations in the Construction Industry" (Series of 1977).
[33] Rasonable vs. National Labor Relations Commission, 253 SCRA 815, 819, February 20, 1996, citing Article 2208 (7), Civil Code; Sebugeuro vs. National Labor Relations Commission, G.R. No. 115394, September 27, 1995; Article 2208 (2), Civil Code; Gaco vs. National Labor Relations Commission, G.R. No. 104690, February 23, 1994, 230 SCRA 260, 266.