SUPREME COURT
SECOND DIVISION

PHILIPPINE NATIONAL OIL COMPANY-ENERGY DEVELOPMENT CORPORATION/FRANCIS PALAFOX,
***Petitioners*,**

-versus-

G.R. No. 97747
March 31, 1993

NATIONAL LABOR RELATIONS COMMISSION and FRANCISCO MATA,
***Respondents*.**
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D E C I S I O N

NOCON, *J.*:

Texans used to complain that when they tried to dig for water, all they struck was oil. On the other hand, Filipinos have been heard to complain that every time they tried to dig for oil, all they got was water — and steam, to hoot. In the 1970's, with the energy crisis having become unmanageable, the government decided to harness steam to drive turbine engines to generate electricity. When

petitioner Philippine National Oil Company-Energy Development Corporation started to develop the Bacon-Manito Geothermal Project in Bonga, Sorsogon, one question which arose is whether or not an employee contracted to drive for petitioner during the construction of the steam wells is considered a project employee or a regular employee.

As summarized by the Solicitor General, the facts leading to the filing of the instant petition, are as follows:

> "On November 11, 1980, petitioners hired private respondent Francisco Mata as Service Driver on a daily wage of P39.74. Assigned to the PNOC-EDA Bacon-Manito Geothermal Project in Bonga, Sorsogon, Sorsogon, he worked there until September 1, 1985. On this day, his employment was terminated through a letter advice dated September 1, 1985, signed be his supervisor, B.B. Balista, allegedly for 'contract expiration' (Exh. 'A', p. 10, Records), even when the project was still a continuing one.
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> "On November 8, 1985, private respondent complained of illegal dismissal, and accused petitioners of withholding his backwages, overtime pay, and separation pay (p. 1, Records). A dismissal of the complaint was sought on jurisdictional ground, petitioner company asserting that it is a government-owned and controlled corporation, hence, its employees must be governed be the Civil Service Law and not by the Labor Code, and citing National Housing Corporation vs. Benjamin Juco and the NLRC (134 SCRA 176).
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> "On February 26, 1987, Labor Arbiter Voltaire A. Balitaan dismissed the complaint for lack of jurisdiction (pp. 116-118, Records). On appeal to public respondent, however, the First Division, on September 16, 1988, set aside the Labor Arbiter's decision, assumed jurisdiction over the case, and directed the Arbitration Branch to conduct further proceedings (pp. 127-131, Records).
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> "Petitioners maintained that private respondent was a project employee whose employment was for a definite period and

coterminous with the project for which he was hired. It was for this reason that his employment was terminated.

"Finding for private respondent, Executive Labor Arbiter Vito C. Bose's Decision of August 23, 1990, held:

> 'There is no dispute that complainant was hired as service driver assigned in the Administrative Department of respondent since November 11, 1980 at its Bacon-Manito Geothermal Project working regularly from 6:00 AM. to 6:00 P.M. Monday thru Saturday until he was dismissed on September 15, 1985 for alleged contract expiration. As driver assigned in the Administrative Department servicing or performing activities which are usually necessary or at least desirable in the business of the company. He was actually a company driver and not a contractual project employee as what respondent perceived him to be.
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> Hence, contrary to the provisions of the Employment Contract, complainant is a regular and permanent employee of respondent entitled to the protective mantle of the security of tenure provisions of the Labor Code.'

"We entertain no doubt that respondent is guilty of illegal dismissal for having terminated the services of complainant without just or authorized cause. The alleged contract expiration is not one of the valid or authorized causes for dismissal.' (pp. 67, Decision, pp. 175-176, Records).

and concluded:

> 'WHEREFORE, judgment is hereby rendered finding respondent company guilty of illegal dismissal and ordering the same to pay complainant thru this Branch within ten (10) days from receipt of this order, the following:
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> |---|---|---|
> | 1 | Backwages | P51,408.00 |
> | 2. | Overtime pay | 2,100.00 |

3. Separation pay	3,570.00
4. Moral damages	20,000.00
5. Exemplary damages	20,000.00
6. Attorney's fee (10% of the award)	5,350.00
	P102,428.00

'SO ORDERED' (p. 8, Decision, p. 177, Records).

"Dissatisfied, petitioners appealed to public respondent, on the following grounds:

'A. THAT THE EXECUTIVE LABOR ARBITER ERRED WHEN IT RULED THAT FRANCISCO MATA WAS A REGULAR EMPLOYEE;

'B. WHEN IT RULED THAT FRANCISCO MATA WAS TERMINATED ILLEGALLY; and

'C. WHEN IT AWARDED BACKWAGES, OVERTIME PAY, MORAL DAMAGES, EXEMPLARY DAMAGES, AND ATTORNEYS FEES' (p. 178, Records).'

"Public respondent, through its Third Division, modified the appealed decision in its Resolution of November 29, 1990, (as follows).

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'WHEREFORE, premises considered, except to the awards of backwages and separation pay which are hereby AFFIRMED, all other claims are DISMISSED for lack of merit' (pp. 4-7, Resolution, annex 'H', Petition).

"On January 15, 1991, petitioners filed a Motion for Reconsideration based on practically the same grounds (Annex 'I', Petition). This was denied for lack of merit by public respondent in the second question Resolution issued on February 15, 1991 (Annex 'J', Petition)."[1]

Thus, petitioners filed this petition for *certiorari*.

The three (3) issues presented to this Court are whether or not public respondent National Labor Relations Commission committed grave abuse of discretion amounting to lack of jurisdiction when it ruled that Francisco Mata was (a) a regular employee and (b)that he was illegally terminated; and (c) when it awarded Francisco Mata backwages and separation pay.[2]

I

Petitioners claim that the fixed contract of employment which private respondent entered into was read, translated to, comprehended and voluntarily accepted by him. No evidence was presented to prove improper pressure or undue influence when he entered, perfected and consummated said contract. And even if private respondent's services were necessary and desirable in petitioner's business, nevertheless private respondent's term was limited, citing as authority Brent School vs. Zamora.[3]

Private respondent, while admitting such fixed term contract of employment, counters that the same was used as a vehicle to circumvent the law on security of tenure, as provided not only by the Labor Code but likewise guaranteed by the Constitution.

Much can be learned from the leading case of Brent School vs. Zamora, supra. In this case, the Court analyzed the development of Article 280 from its first version as Article 319 and its amendments under PD 850 and BP 130 and made the following observation:

> "Accordingly, and since the entire purpose behind the development of legislation culminating In the present Article 280 of the Labor Code clearly appears to have been, as already observed, to prevent circumvention of the employee's right to be secure in his tenure, the clause in said article indiscriminately and completely ruling out all written or oral agreements conflicting with the concept of regular employment as defined therein should be construed to refer to the substantive evil that the Code

> itself has singled out: agreements entered into precisely to circumvent security of tenure. It should have no application to instances where a fixed period of employment was agreed upon knowingly and voluntarily by the parties, without any 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. Unless thus limited in its purview, the law would be made to apply to purposes other than those explicitly stated by its framers; it thus becomes pointless and arbitrary, unjust in its effects and apt to lead to absurd and unintended consequences."[4] (Emphasis and emphasis supplied)

As can be gleaned from the said case, the two guidelines, by which fixed contracts of employments can be said NOT to circumvent security of tenure, are either:

1. The fixed period of employment was knowingly and voluntarily agreed upon by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or:

2. 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 on the latter.

Does petitioner's fixed contract of employment with private respondent satisfy any of the guidelines above stated?

Yes, it does.

A careful examination of the last Employment Contract signed by respondent Mata shows that he indeed signed the same.[5] In fact petitioners claim that all the previous employment

contracts were also translated for the benefit of private respondent, and it was only when he understood the same that he signed said contracts. As per Guideline No. 1, given the circumstances behind private respondent Mata's employment, private respondent is a project employee.

As explained by petitioners in their Memorandum:

> "[I]t must be clarified that the Bacon-Manito Geothermal Project is one big 'project consisting of several phases, namely the exploration, development and operation stages. Mata was employed in connection with the well-completion project which was part of the exploration stage. Said well-completion which follows a drilling operation is now finished and completed. The other projects in the development stage are still on-going but the project for which Mata's services were required is not complete and terminated."[6] (Italics in petitioner's memorandum)

Paraphrasing Rada vs. NLRC,[7] it is clear that private respondent Mata is a project employee considering that he does not belong to a "work pool" from which petitioner PNOC would draw workers for assignment to other projects at its discretion. It is likewise apparent from the facts of the case that private respondent Mata was utilized only for one particular project, the well-completion project which was part of the exploration stage of the PNOC Bacon-Manito Geothermal Project. Hence, private respondent Mata can be dismissed upon the termination of the projects as there would be no need for his services. We should not expect petitioner to continue on hiring private respondent in the other phases of the project when his services will no longer be needed.[8]

II

As a project employee, was he legally terminated?

Paragraph No. 5, Policy Instruction No. 20,[9] reads, as follows:

> "If a construction project or any phase thereof has a duration of more than one year and a Project employee is allowed to be employed therein for at least one year, such employee may not be terminated until the completion of the project or of any phase thereof in which he is employed without a previous written clearance from the Secretary of Labor. If such an employee is terminated without a clearance from the Secretary of Labor, he shall be entitled to reinstatement with back wages.

As to the manner private respondent was terminated, public respondent NLRC found it to be as follows:

> "[I]n the case of Ochoco vs. NLRC, 120 SCRA 774, the Supreme Court ruled that 'if petitioner was employed as a project employee, private respondent should have submitted a report of termination to the nearest public employment office every time his employment is terminated due to the completion of each project as required by Policy Instruction No. 20.'
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> "Applying the (Ochoco) doctrine to the instant case, respondent corporation should have filed as many reports of termination as there were construction projects actually finished, considering that petitioner had been hired since 1980 up to 1985. Not a single report was submitted by the respondent company. This failure to submit reports of termination convinced Us more that petitioner was indeed a regular employee."'[10]

The records do not show that petitioners obtained the necessary written clearance to terminate the contract of employment of private respondent Mata. The latter is, therefore, entitled to reinstatement with backwages.

Considering, however, that the Bacon-Manito project has already been completed and is, presumably, now operating,[11] reinstatement of private respondent is impossible. He is, how-ever, entitled to backwages and separation pay. For this purpose, We adopt the Executive Labor Arbiter's computation as to how much backwages and separation pay private respondent will get, as follows:

> "[S]ince at the time of his dismissal complainant was receiving P56.00 daily wage then his backwages for three (3) years amounted to P51,408.00 computed as follows: P56.00 daily wage x 25.5 normal days work in a month x 12 mos. x 3 years.
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> x x x
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> "[W]e feel that reinstatement is no longer feasible or advisable hence, separation pay equivalent to one-half month pay for every year of service should take its place. Since, complainant started working with respondent on November 11, 1980 and stopped on September 18, 1985 or five (5) years, the complainant's separation pay should be P3,570.00 (P1,428.00 monthly rate x 5 years + 2)."[12]

Note, that while We have reversed the decision of the public respondent, We still affirm the granting of backwages and separation pay due to the fact that petitioners did not secure the necessary written clearance from the Secretary of Labor in terminating private respondent Mata. The dispositive portions of the public respondent's resolutions — which actually constitute the resolutions of public respondent NLRC — have to be affirmed.

WHEREFORE, the petitioner is **DISMISSED**. It is hereby ORDERED that petitioners pay private respondent Mata P51, 408.00 as backwages and P3,570.00 as separation pay.

SO ORDERED.

Narvasa, *C.J.*, *(Chairman)*, Padilla, Regalado and Campos, Jr., *JJ.*, concur.

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[1] Rollo, pp. 129-135.
[2] Ibid., pp. 6-7.
[3] 181 SCRA 702 (1990).
[4] Ibid., p. 716.
[5] "I, the above name(d) applicant, hereby certify that: I have read or _____ (interpreter) has read and translated to me the contents of this Contract of employment; I have understood all the contents hereof; and I agree and accept all its terms and conditions." (Rollo, p. 155)

[6] Rollo, pp. 149150.
[7] 205 SCRA 69, 81 (1992), where petitioner Rada therein claimed that he was a regular employee since he bed driven for private respondent PHILNOR Consultants and Planners, Inc.
[8] Cartagenas vs. Romago Electric Company, Inc., 177 SCRA 637 (1989).
[9] Undated issuance by Hon. Blas F. Ople, Secretary of Labor, entitled "Employer-Employee Relations in the Construction Industry."
[10] Mata vs. Philippine National Oil Co.-Energy Development Corporation, RAB-V-0391-85, promulgated November 29, 1990, Royales, Commissioner, ponente: Javier, Presiding Commissioner, and Bernardo, Commissioner, concurring, pp. 4-5, Decision; Rollo, pp. 67-68.
[11] "'MT. POCDOL, Sorsogon — Deep in the wilderness of this geothermal energy rich mountain range some 700 meters above sea level, heavy construction work is going on. The Philippine National Oil Company (PNOC) is rushing the P7-billion geothermal energy project which will boost Bicol region's power output by 150 megawatts.

"Hundreds of heavy equipment and over 1,500 workers are involved in the first phase of the project which is expected to be finished this month. President Aquino will grace the inaugural switching on of the first phase of the PNOC's Bacon-Manito (Bac-Man) geothermal energy development project, said Carli Recto, PNOC resident manager.

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"He said 22 production and seven reinjection wells each costing P30 million to P45 million have been drilled. Each production well can generate an average of seven megawatts."

(Philippine Daily Inquirer, March 2, 1992).
[12] Rollo, pp. 54 & 55.