SUPREME COURT
SECOND DIVISION

HILARIO RADA,
***Petitioner*,**

-versus-

G.R. No. 96078
January 9, 1992

NATIONAL LABOR RELATIONS COMMISSION (Second Division) and PHILNOR CONSULTANTS AND PLANNERS, INC.,
***Respondents*.**
x----------x

D E C I S I O N

REGALADO, *J.*:

In this Special Civil Action for *Certiorari*, petitioner Rada seeks to annul the decision of respondent National Labor Relations Commission (NLRC), dated November 19, 1990, reversing the decision of the labor arbiter which ordered the reinstatement of petitioner with backwages and awarded him overtime pay.[1]

The facts, as stated in the Comment of private respondent Philnor Consultants and Planners, Inc. (Philnor), are as follows:

"Petitioner's initial employment with this Respondent was under a 'Contract of Employment for a Definite Period' dated July 7, 1977, copy of which is hereto attached and made an integral part hereof as Annex A whereby Petitioner was hired as 'Driver' for the construction supervision phase of the Manila North Expressway Extension, Second Stage (hereinafter referred to as MNEE Stage 2) for a term of 'about 24 months effective July 1, 1977.'

x x x

"Highlighting the nature of Petitioner's employment, Annex A specifically provides as follows:

'It is hereby understood that the Employer does not have a continuing need for the services of the Employee beyond the termination date of this contract and that the Employee's services shall automatically, and without notice, terminate upon the completion of the above specified phase of the project; and that it is further understood that the engagement of his/her services is coterminous with the same and not with the whole project or other phases thereof wherein other employees of similar position as he/she have been hired.' (Par. 7, emphasis supplied).

"Petitioner's first contract of employment expired on June 30, 1979. Meanwhile, the main project, MNEE Stage 2, was not finished on account of various constraints, not the least of which was inadequate funding, and the same was extended and remained in progress beyond the original period of 2.3 years. Fortunately for the Petitioner, at the time the first contract of employment expired, Respondent was in need of Driver for the extended project. Since Petitioner had the necessary experience and his performance under the first contract of employment was found satisfactory, the position of Driver was offered to Petitioner, which he accepted. Hence a second Contract of Employment for a Definite Period of 10 months, that is, from July 1, 1979 to April 30, 1980 was executed between Petitioner and Respondent on July 7, 1979.

> "In March 1980 some of the areas or phases of the project were completed, but the bulk of the project was yet to be finished. By that time some of those project employees whose contracts of employment expired or were about to expire because of the completion of portions of the project were offered another employment in the remaining portion of the project. Petitioner was among those whose contract was about to expire, and since his service performance was satisfactory, respondent renewed his contract of employment in April 1980, after Petitioner agreed to the offer. Accordingly, a third contract of employment for a definite period was executed by and between the Petitioner and the Respondent whereby the Petitioner was again employed as Driver for 19 months, from May 1, 1980 to November 30, 1981.
>
> "This third contract of employment was subsequently extended for a number of times, the last extension being for a period of 3 months, that is, from October 1, 1985 to December 31, 1985.
>
> "The last extension, from October 1, 1985 to December 31, 1985 (Annex E) covered by an 'Amendment to the Contract of Employment with a Definite Period,' was not extended any further because Petitioner had no more work to do in the project. This last extension was confirmed by a notice on November 28, 1985 duly acknowledged by the Petitioner the very next day.
>
> "Sometime in the 2nd week of December 1985, Petitioner applied for 'Personnel Clearance' with Respondent dated December 9, 1985 and acknowledged having received the amount of P3,796.20 representing conversion to cash of unused leave credits and financial assistance. Petitioner also released Respondent from all obligations and or claims, etc. in a 'Release, Waiver and Quitclaim.'"[2]

Culled from the records, it appears that on May 20, 1987, petitioner filed before the NLRC, National Capital Region, Department of Labor and Employment, a Complaint for nonpayment of separation pay and overtime pay. On June 3, 1987, Philnor filed its Position Paper alleging, *inter alia*, that petitioner was not illegally terminated since

the project for which he was hired was completed; that he was hired under three distinct contracts of employment, each of which was for a definite period, all within the estimated period of MNEE Stage 2 Project, covering different phases or areas of the said project; that his work was strictly confined to the MNEE Stage 2 Project and that he was never assigned to any other project of Philnor; that he did not render overtime services and that there was no demand or claim for him for such overtime pay; that he signed a "Release, Waiver and Quitclaim," releasing Philnor from all obligations and claims; and that Philnor's business is to provide engineering consultancy services, including supervision of construction services, such that it hires employees according to the requirements of the project manning schedule of a particular contract.[3]

On July 2, 1987, petitioner filed an Amended Complaint alleging that he was illegally dismissed and that he was not paid overtime pay although he was made to render three hours overtime work from Monday to Saturday for a period of three years.

On July 7, 1987, petitioner filed his Position Paper claiming that he was illegally dismissed since he was a regular employee entitled to security of tenure; that he was not a project employee since Philnor is not engaged in the construction business as to be covered by Policy Instructions No. 20; that the contract of employment for a definite period executed between him and Philnor is against public policy and a clear circumvention of the law designed merely to evade any benefits or liabilities under the statute; that his position as driver was essential, necessary and desirable to the conduct of the business of Philnor; that he rendered overtime work until 6:00 P.M. daily except Sundays and holidays and, therefore, he was entitled to overtime pay.[4]

In his Reply to Respondent's Position Paper, petitioner claimed that he was a regular employee pursuant to Article 278(c) of the Labor Code and, thus, he cannot be terminated except for a just cause under Article 280 of the Code; and that the public respondent's ruling in Quiwa vs. Philnor Consultants and Planners, Inc.[5] is not applicable to his case since he was an administrative employee working as a company driver, which position still exists and is essential to the conduct of the business of Philnor even after the completion of his

contract of employment.[6] Petitioner likewise avers that the contract of employment for a definite period entered into between him and Philnor was a ploy to defeat the intent of Article 280 of the Labor Code.

On July 28, 1987, Philnor filed its Respondent's Supplemental Position Paper, alleging therein that petitioner was not a company driver since his job was to drive the employees hired to work at the MNEE Stage 2 Project to and from the field office at Sto. Domingo Interchange, Pampanga; that the office hours observed in the project were from 7:00 A.M. to 4:00 P.M., Mondays through Saturdays; that Philnor adopted the policy of allowing certain employees, not necessarily the project driver, to bring home project vehicles to afford fast and free transportation to and from the project field office considering the distance between the project site and the employees' residences, to avoid project delays and inefficiency due to employee tardiness caused by transportation problems; that petitioner was allowed to use a project vehicle which he used to pick up and drop off some ten employees along Epifanio de los Santos Avenue (EDSA), on his way home to Marikina, Metro Manila; that when he was absent or on leave, another employee living in Metro Manila used the same vehicle in transporting the same employees; that the time used by petitioner to and from his residence to the project site from 5:30 A.M. to 7:00 A.M. and from 4:00 P.M. to 6:00 P.M., or about three hours daily, was not overtime work as he was merely enjoying the benefit and convenience of free transportation provided by Philnor, otherwise without such vehicle he would have used at least four hours by using public transportation and spent P12.00 daily as fare; that in the case of Quiwa vs. Philnor Consultants and Planners Inc., supra, the NLRC upheld Philnor's position that Quiwa was a project employee and he was not entitled to termination pay under Policy Instructions No. 20 since his employment was coterminous with the completion of the project.

On August 25, 1987, Philnor filed its Respondent's Reply/Comments to Complainant's Rejoinder and Reply, submitting therewith two letters dated January 5, 1985 and February 6, 1985, signed by MNEE Stage 2 Project employees, including herein petitioner, where they asked what termination benefits could be given to them as the MNEE Stage 2 Project was nearing completion, and Philnor's letter-reply

dated February 22, 1985 informing them that they are not entitled to termination benefits as they are contractual/project employees.

On August 31, 1989, Labor Arbiter Dominador M. Cruz rendered a Decision,[7] with the following dispositive portion:

> "WHEREFORE, in view of all the foregoing considerations, judgment is hereby rendered:
>
> (1) Ordering the respondent company to reinstate the complainant to his former position without loss of seniority right and other privileges with full backwages from the time of his dismissal to his actual reinstatement;
>
> (2) Directing the respondent company to pay the complainant overtime pay for the three excess hours of work performed during working days from January 1983 to December 1985; and
>
> (3) Dismissing all other claims for lack of merit.
>
> SO ORDERED."

Acting to Philnor's appeal, the NLRC rendered its assailed decision dated November 19, 1990, setting aside the labor arbiter's aforequoted decision and dismissing petitioner's complaint.

Hence this petition wherein petitioner charges respondent NLRC with grave abuse of discretion amounting to lack of jurisdiction for the following reasons:

1. The decision of the labor arbiter, dated August 31, 1989, has already become final and executory;

2. The case of Quiwa vs. Philnor Consultants and Planners, Inc. is not binding nor is it applicable to this case;

3. The petitioner is a regular employee with eight years and five months of continuous services for his employer, private respondent Philnor;

4. The claims for overtime services, reinstatement and full backwages are valid and meritorious and should have been sustained; and

5. The decision of the labor arbiter should be reinstated as it is more in accord with the facts, the law and evidence.

The petition is devoid of merit.

1. Petitioner questions the jurisdiction of respondent NLRC in taking cognizance of the appeal filed by Philnor in spite of the latter's failure to file a supersedeas bond within ten days from receipt of the labor arbiter's decision, by reason of which the appeal should be deemed to have been filed out of time. It will be noted, however, that Philnor was able to file a bond although it was made beyond the 10-day reglementary period.

While it is true that the payment of the supersedeas bond is an essential requirement in the perfection of an appeal, however, where the fee had been paid although payment was delayed, the broader interests of justice and the desired objective of resolving controversies on the merits demands that the appeal be given due course. Besides, it was within the inherent power of the NLRC to have allowed late payment of the bond, considering that the aforesaid decision of the labor arbiter was received by private respondent on October 3, 1989 and its appeal was duly filed on October 13, 1989. However, said decision did not state the amount awarded as backwages and overtime pay, hence the amount of the supersedeas bond could not be determined. It was only in the order of the NLRC of February 16, 1990 that the amount of the supersedeas bond was specified and which bond, after an extension granted by the NLRC, was timely filed by private respondent.

Moreover, as provided by Article 221 of the Labor Code, "in any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in Courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively without regard to technicalities of law or procedure, all in the interest of due process.[8] Finally, the issue of timeliness of the appeal being an entirely new and unpleaded matter in the proceedings below it may not now be raised for the first time before this Court.[9]

2. Petitioner postulates that as a regular employee, he is entitled to security of tenure, hence he cannot be terminated without cause. Private respondent Philnor believes otherwise and asserts that petitioner is merely a project employee who was terminated upon the completion of the project for which he was employed.

In holding that petitioner is a regular employee, the labor arbiter found that:

"There is no question that the complainant was employed as driver in the respondent company continuously from July 1, 1977 to December 31, 1985 under various contracts of employment. Similarly, there is no dispute that respondent Philnor Consultants & Planners, Inc., as its business name connotes, has been engaged in providing to its client(e)le engineering consultancy services. The record shows that while the different labor contracts executed by the parties stipulated definite periods of engaging the services of the complainant, yet the latter was suffered to continue performing his job upon the expiration of one contract and the renewal of another. Under these circumstances, the complainant has obtained the status of regular employee, it appearing that he has worked without fail for almost eight years a fraction of six months considered as one whole year, and that his assigned task as driver was necessary and desirable in the usual trade business of the respondent employer. Assuming to be true, as spelled out in the employment contract, that the Employer has no 'continuing

need for the services of the Employe(e) beyond the termination date of this contract and that the Employee's services shall automatically, and without notice, terminate upon completion of the above specified phase of the project,' still we cannot see our way clear why the complainant was hired and his services engaged contract after contract straight from 1977 to 1985 which, to our considered few, lends credence to the contention that he worked as regular driver ferrying early in the morning office personnel to the company main office in Pampanga and bringing them back late in the afternoon to Manila, and driving company executives for inspection of construction projects, as well as engineers and workers to the jobsites. All told, we believe that the complainant, under the environmental facts obtaining in the case at bar, is a regular employee, the provision of written agreement to the contrary notwithstanding and regardless of the oral understanding of the parties."[10]

On the other hand, respondent NLRC declared that, as between the uncorroborated and unsupported assertions of petitioner and those of private respondent which are supported by documents, greater credence should be given the latter. It further held that:

"Complainant was hired in a specific project or undertaking as driver. While such project was still on-going he was hired several times with his employment period fixed every time his contract was renewed. At the completion of the specific project or undertaking his employment contract was not renewed.

"We reiterate our ruling, in the case of (Quiwa) vs. Philnor Consultants and Planners, Inc., NLRC RAB III 5-1738-84, it being applicable in this case, viz:

"While it is true that the activities performed by him were necessary or desirable in the usual business or trade of the respondent as consultants, planners, contractor and while it is also true that the duration of his employment was for a period of about seven years, these circumstances did not make him a regular employee in contemplation of Article 281 of (the) Labor Code."[11]

Our ruling in Sandoval Shipyards, Inc. vs. National Labor Relations Commission, et al.,[12] is applicable to the case at bar. Thus:

> "We hold that private respondents were project employees whose work was coterminous with the project for which they were hired. Project employees, as distinguished from regular or non-project employees, are mentioned in section 281 of the Labor Code as those 'where the 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.'
>
> "Policy Instructions No. 20 of the Secretary of Labor, which was issued to stabilize employer-employee relations in the construction industry, provides:
>
> > 'Project employees are those employed in connection with a particular construction project. Non-project (regular) employees are those employed by a construction company without reference to any particular project.
> >
> > 'Project employees are not entitled to termination pay if they are terminated as a result of the completion of the project or any phase thereof in which they are employed, regardless of the number of projects in which they have been employed by a particular construction company. Moreover, the company is not required to obtain clearance from the Secretary of Labor in connection with such termination.'
>
> "The petitioner cited three of its own cases wherein the National Labor Relations Commission, Deputy Minister of Labor and Employment Inciong and the Director of the National Capital Region held that the layoff of its project employees was lawful. Deputy Minister Inciong in TFU Case No. 1530, In Re Sandoval Shipyards, Inc. Application for Clearance to Terminate Employees, rendered the following ruling on February 26, 1979:
>
> > 'We feel that there is merit in the contention of the applicant corporation. To our mind, the employment of

> the employees concerned were fixed for a specific project or undertaking. For the nature of the business the corporation is engaged into is one which will not allow it to employ workers for an indefinite period.
>
> 'It is significant to note that the corporation does not construct vessels for sale or otherwise which will demand continuous productions of ships and will need permanent or regular workers. It merely accepts contracts for shipbuilding or for repair of vessels from third parties and, only, on occasion when it has work contract of this nature that it hires workers to do the job which, needless to say, lasts only for less than a year or longer.
>
> 'The completion of their work or project automatically terminates their employment, in which case, the employer is, under the law, only obliged to render a report on the termination of the employment. (139-140, Rollo of G.R. No. 65689)'" (Emphasis supplied.)

In Cartagenas, et al. vs. Romago Electric Company, Inc., et al.,[13] we likewise held that:

> "As an electrical contractor, the private respondent depends for its business on the contracts it is able to obtain from real estate developers and builders of buildings. Since its work depends on the availability of such contracts or 'projects,' necessarily the duration of the employments of its work force is not permanent but co-terminus with the projects to which they are assigned and from whose payrolls they are paid. It would be extremely burdensome for their employer who, like them, depends on the availability of projects, if it would have to carry them as permanent employees and pay them wages even if there are no projects for them to work on" (Emphasis supplied.)

It must be stressed herein that although petitioner worked with Philnor as a driver for eight years, the fact that his services were rendered only for a particular project which took that same period of time to complete categorizes him as a project employee. Petitioner was employed for one specific project.

A non-project employee is different in that the employee is hired for more than one project. A non-project employee, *vis-a-vis* a project employee, is best exemplified in the case of Fegurin, et al. vs. National Labor Relations Commission, et al.[14] wherein four of the petitioners had been working with the company for nine years, one for eight years, another for six years, the shortest term being three years. In holding that petitioners are regular employees, this Court therein explained:

> "Considering the nature of the work of petitioners, that of carpenter, laborer or mason, their respective jobs would actually be continuous and on-going. When a project to which they are individually assigned is completed, they would be assigned to the next project or a phase thereof. In other words, they belonged to a work pool' from which the company would draw workers for assignment to other projects at its discretion. They are, therefore, actually 'non-project employees.'"

From the foregoing, it is clear that petitioner is a project employee considering that he does not belong to a "work pool" from which the company would draw workers for assignment to other projects at its discretion. It is likewise apparent from the facts obtaining herein that petitioner was utilized only for one particular project, the MNEE Stage 2 Project of respondent company. Hence, the termination of herein petitioner is valid by reason of the completion of the project and the expiration of his employment contract.

3. Anent the claim for overtime compensation, we hold that petitioner is entitled to the same. The fact that he picks up employees of Philnor at certain specified points along EDSA in going to the project site and drops them off at the same points on his way back from the field office going home to Marikina, Metro Manila is not merely incidental to petitioner's job as a driver. On the contrary, said transportation arrangement had been adopted, not so much for the convenience of the employees, but primarily for the benefit of the employer, herein private respondent. This fact is inevitably deducible from the Memorandum of respondent company:

> "The herein Respondent resorted to the above transport arrangement because from its previous project construction supervision experiences, Respondent found out that project delays and inefficiencies resulted from employees' tardiness; and that the problem of tardiness, in turn, was aggravated by transportation problems, which varied in degrees in proportion to the distance between the project site and the employees' residence. In view of this lesson from experience, and as a practical, if expensive, solution to employees' tardiness and its concomitant problems, Respondent adopted the policy of allowing certain employees — not necessarily project drivers — to bring home project vehicles, so that employees could be afforded fast, convenient and free transportation to and from the project field office."[15]

Private respondent does not hesitate to admit that it is usually the project driver who is tasked with picking up or dropping off his fellow employees. Proof thereof is the undisputed fact that when petitioner is absent, another driver is supposed to replace him and drive the vehicle and likewise pick up and/or drop off the other employees at the designated points on EDSA. If driving these employees to and from the project site is not really part of petitioner's job, then there would have been no need to find a replacement driver to fetch these employees. But since the assigned task of fetching and delivering employees is indispensable and consequently mandatory, then the time required of and used by petitioner in going from his residence to the field office and back, that is, from 5:30 A.M. to 7:00 A.M. and from 4:00 P.M. to around 6:00 P.M., which the labor arbiter rounded off as averaging three hours each working day, should be paid as overtime work. Quintessentially, petitioner should be given overtime pay for the three excess hours of work performed during working days from January, 1983 to December, 1985.

WHEREFORE, subject to the modification regarding the award of overtime pay to herein petitioner, the decision appealed from is **AFFIRMED** in all other respects.

SO ORDERED.

Melencio-Herrera, Paras and Padilla, *JJ.*, concur.
Nocon, *J.*, took no part.

---

[1] Annex F, Petition; Rollo, 40.
[2] Rollo, 79-82.
[3] Ibid., 61-62.
[4] Ibid., 63.
[5] NLRC Case No. RAB-III-5-1738-84, January 28, 1986. The petition for certiorari in G.R. No. 73962, assailing the decision in the aforesaid case, was dismissed for lack of merit by this Court in its resolution of July 2, 1986.
[6] Ibid., 64.
[7] Annex A, Petition; Rollo, 28.
[8] Philamlife Insurance Co. vs. Bonto-Perez, et al., 170 SCRA 508 (1989).
[9] Arrastre Security Association-TUPAS, et al. vs. Ople, et al., 127 SCRA 580 (1984).
[10] Rollo, 32-33.
[11] Ibid., 47.
[12] 136 SCRA 674 (1985).
[13] 177 SCRA 637 (1989).
[14] 120 SCRA 910 (1983).
[15] Rollo, 195.
