SUPREME COURT
THIRD DIVISION

RAYCOR AIRCONTROL SYSTEM, INC.,
***Petitioner*,**

-versus-

G.R. No. 114290
September 9, 1996

NATIONAL LABOR RELATIONS COMMISSION AND ROLANDO LAYA, Et., Al.,
***Respondents*.**
x----------x

D E C I S I O N

PANGANIBAN, *J.*:

Were private respondents, employed by petitioner in its business of installing air-conditioning systems in buildings, project employees or regular employees? And were their dismissals "due to (petitioner's) present business status" and effective the day following receipt of notice legal? Where both the petitioner and the respondents fail to present sufficient and convincing evidence to prove their respective claims, how should the case be decided?

This Court answers the foregoing questions in resolving this Petition for *Certiorari* assailing the Decision[1] promulgated November 29, 1993 by the National Labor Relations Commission,[2] which set aside

and reverse the Decision of the Labor Arbiter[3] dated 22 January 1993, as well as the subsequent order of respondent Commission denying petitioner's motion for reconsideration.

The Facts

Petitioner's sole line of business is installing air-conditioning systems in the buildings of its clients. In connection will such installation work, petitioner hired private respondents Roberto Fulgencio, Rolando Laya, Florencio Espina, Romulo Magpili, Ramil Hernandez, Wilfredo Brun, Eduardo Reyes, Crisostomo Donompili, Angelito Realingo, Hernan Delima, Jaime Calipayan, Jorge Cipriano, Carlito de Guzman, Susano Atienza, and Gerardo de Guzman, who worked in various capacities as tinsmith, aircon mechanic, installer, welder and painter. Private respondents insist that they had been regular employees all along, but petitioner maintains that they were project employees who were assigned to work on specific projects of petitioner, and that the nature of petitioner's business — mere installation (not manufacturing) of aircon systems and equipment in buildings of its clients — prevented petitioner from hiring private respondents as regular employees. As found by the labor arbiter, their average length of service with petitioner exceeded one year, with some ranging from two to six years (but private respondents claim much longer tenures, some allegedly exceeding ten years).

In 1991, private respondent Laya and fourteen other employees of petitioner filed NLRC NCR Case No. 00-03-02080-92 for their "regularization." This case was dismissed on May 20, 1992 for want of cause of action.[4]

On different dates in 1992, they were served with uniformly-worded notices of "Termination of Employment" by petitioner "due to our present business status", which terminations were to be effective the day following the date of receipt of the notices. Private respondents felt they were given their walking papers after they refused to sign a "Contract Employment" providing for, among others, a fixed period of employment which "automatically terminates without necessity of further notice" or even earlier at petitioner's sole discretion.

Because of the termination, private respondents filed three cases of illegal dismissal against petitioner, alleging that the reason given for the termination of their employment was not one of the valid grounds therefor under the Labor Code. They also claimed that the termination was without benefit of due process.

The three separate cases filed by private respondents against petitioner, docketed as NLRC-NCR 00-03-05930-92, NLRC NCR 00-05-02789-92, and NLRC NCR 00-07-03699-92, were subsequently consolidated. The parties were given opportunity to file their respective memoranda and other supplemental pleadings before the labor arbiter.

On January 22, 1993, the Labor Arbiter issued his Decision dismissing the Complaints for lack of merit. He reasoned that the evidence showed that the individual complaints (private respondents) were project employees within the meaning of Policy Instructions No. 20 (series of 1977)[5] of the Department of Labor and Employment, having been assigned to work on specific projects involving the installation of air-conditioning units as covered by contracts between their employer and the latter's clients.[5a] Necessarily, the installation of air-conditioning systems "must come to a halt as project come and go", and "(o)f consequence, the [petitioner] cannot hire workers in perpetuity. And as project employees, private respondents would not be entitled to termination pay, separation pay, holiday premium pay, etc.; and neither is the employer required to secure a clearance from the Secretary of Labor in connection with such termination.

Private respondents appealed to the respondent NLRC, which in its November 29, 1993 Decision reversed the arbiter and found private respondents to have been regular employees illegally dismissed. The respondent Commission made the following four-paragraph disquisition:

> "From the above rules, it can easily be gleaned that complainants belong to a work pool from which the respondents company drew its manpower requirements. This is buttressed by the fact that many of the complainants have been employed for long periods of time already.

We doubt respondent's assertion that complainants were really assigned to different projects. The 'Contract Employment' which it submitted (see pp. 32-38, record) purporting to show particular projects are not reliable may even appears to have been contrived. The names of the projects clearly appear to have been recently typewritten. In the 'Contract Employment' submitted by complainants (see p. 65, record), no such name of project appears. Verily, complainants were non-project employees.

Anent the dismissal of complainants, suffice it to state that the same was capricious and whimsical as shown by the vague reason proffered by respondent for said dismissal which is 'due to our present business states' (should read 'status') is undoubtedly not one of the valid causes for termination of an employment. We are thus inclined to give credence to complainants' allegation that they were eased out of work for their refusal to sign the one-sided 'Contract Employment'.

The fact that complainants were dismissed merely to spite them is made more manifest by respondent's failure to make a report of dismissal or secure a clearance from the Department of Labor (see pp. 196 and 197, record) as required under P.I. No. 20 and their publication of an advertisement for replacements for the same positions held by complainants (see p. 198, record). Even assuming that complainants were project employees, their unceremonious dismissal coupled with the attempt to replace them via the newspaper advertisement entitles them to reinstatement with backwages under P.I. No. 20."

The dispositive portion followed immediately and read:

"WHEREFORE, the appealed Decision is hereby SET ASIDE and a new one entered ordering respondent to:

1. Immediately reinstate complainants (private respondents) to their former positions without loss of seniority rights and privileges; and

2. Pay them full backwages from the time they were dismissed up to the time they are actually reinstated."

Petitioner's motion for reconsideration was denied by public respondent on February 23, 1994 for lack of merit. Hence, this petition.

Issues

Petitioner charges public respondent NLRC with grave abuse of discretion in finding private respondents to have been non-project employees and illegally dismissed, and in ordering their reinstatement with full backwages.

For clarity's sake, let us re-state the pivotal questions involved in the instant case as follows: whether private respondents were project employees or regular (non-project) employees, and whether or not they were legally dismissed.

In support of its petition, petitioner reiterates the same points it raised before the tribunals below: that it is engaged solely in the business of installation of air-conditioning units or systems in the buildings of its clients. It has no permanent clients with continuous projects where its workers could be assigned; neither is it a manufacturing firm. Most of its project last from two to three months. (The foregoing matters were never controverted by private respondents.) Thus, for petitioner, work is "not done in perpetuity but necessarily comes to a halt when the installation of air-conditioning units is completed."

On the basis of the foregoing, petitioner asserts that it could not have hired private respondents as anything other than projects employees. It further insists that "(a)t the incipience of hiring, private respondents were appraised (sic) that their work consisted only in the installation of air-conditioning units and that as soon as the installation is completed, their work ceases and that they have to wait for another installation projects (sic)." In other words, their work was co-terminous with the duration of the project, and was not continuous or uninterrupted as claimed by them. Petitioner also claims that the private respondents signed project contracts of

employment indicating the names of the projects or buildings they were working on. And when between projects, these project employees were free to work elsewhere with other establishments.

Private respondents controverted these assertions of petitioner, claiming that they had worked continuously for petitioner for several years, some of them as long as ten years, and thus, by operation of law had become regular employees.

The Court's Ruling

Ordinarily, the findings made by the NLRC are entitled to great respect and are even clothed with finality and deemed binding on this Court, except that when such findings are contrary to those of the labor arbiter, this Court may choose to re-examine the same, as we hereby do in this case now.

The First Issue: Project Employees or Regular Employees?

An Unfounded Conclusion

We scoured the assailed Decision for any trace of arbitrariness, capriciousness or grave abuse of discretion, and noted that the respondent Commission first cited the facts of the case, then quoted part of the arbiter's disquisition along with relevant portions of Policy Instructions No. 20, after which it immediately leapt to the conclusion that "(F)rom the above rules, it can easily be gleaned that complainants belong to a work pool from which the respondent company drew its manpower requirements. This is buttressed by the fact that many of the complainants have been employed for long periods of time already." (emphasis supplied) By reason of such "finding", respondent NLRC concluded that private respondents were regular (not project) employees, but failed to indicate the basis for such finding and conclusion. For our part, we combed the Decision in search of such basis. However, repeated scrutiny of the provisions of Policy Instructions No. 20 pertaining to work pools merely raised further questions.

> "Members of a work pool from which a construction company draws its project employees, if considered employees of the

> construction company while in the work pool, are non-project employees or employees for an indefinite period. If they are employed in a particular project, the completion of the project or of any phase thereof will not mean severance of employer-employee relationship.
>
> However, if the workers in the work pool are free to leave anytime and offer their services to other employers then they are project employees employed by a construction company in a particular project or in a phase thereof."

A careful reading of the aforequoted and preceding provisions establishes the fact that 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 respondents 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.

Conclusion Based on Unwarranted Assumption of Bad Faith

Immediately thereafter, respondent Commission determined — without sufficient basis — that complainants were non-project employees. We quote:

> "We doubt respondent's (petitioner's) assertion that complainants (private respondents) were really assigned to different projects. The "Contract Employment" which it submitted (see pp. 32-38, record) purporting to show particular projects are not reliable nay even appears to have been contrived. The names of the projects clearly appear to have been

> recently typewritten. In the 'Contract Employment' submitted by complainants (see p. 65, record), no such name of project appears. Verily, complainants were non-project employees." (Emphasis supplied)

The basis for respondent NLRC's statement that the contracts were contrived was the fact that the names of projects clearly to have been typed in only after the contracts had been prepared. However, our examination of the contracts (presented by petitioner as Annexes "A", "B", "B-1", "C", "D", "E", and "F"[6] to its Position Paper dated July 30, 1992 filed with the labor arbiter) did not lead inexorably to the conclusion that these were "contrived". Said Annexes were photocopies of photocopies of the original "Contract Employments,"[7] and the names of projects had been typed onto these photocopies, meaning that the originals of said contracts probably did not indicate the project names. But this alone did not automatically or necessarily mean that petitioner had committed any falsehood or fraud, or had any intent to deceive or impose upon the tribunals below, because the names of the projects could have been typed/filled in good faith, nunc pro tunc, in order to supply the data which ought to have been indicated in the originals at the time those were issued, but which for some reason or other were omitted. In short, the names of projects could have been filled in simply in order to make the contracts speak the truth more clearly or completely. Notably, no reason was advanced for not according the petitioner the presumption of good faith. Respondent NLRC, then, made an unwarranted assumption that bad faith and fraudulent intent attended the filling in of the project names in said Annexes. In any event, it can be easily established with the use of the naked eye that the dates and durations of the projects and/or work assignments had been typed into the original contracts, and therefore, petitioner's failure to indicate in the originals of the contracts the name(s) of the project(s) to which private respondents were assigned does not necessarily mean that they could not have been project employees. (Incidentally, we should make mention here that what is or is not stated in a contract does not control nor change the juridical nature of an employment relationship since the same is determined and fixed by law. As a matter of fact, we note that there is no requirement in Policy Instructions No. 20 that project employees should be issued written contracts of employment,

let alone that a written contract should indicate the name of the project to which the employee concerned is being assigned.)

Statutory Basis for Determining Nature of Employment

The parties and their respective counsel, as well as respondent Commission and the Solicitor General, should have re-read and carefully studied ALU-TUCP vs. National Labor Relations Commission,[8] which is highly instructional on this question:

> "The law on the matter is Article 280 of the Labor Code which reads in full:
>
> > 'Article 280. Regular and Casual Employment — The provisions of the written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except 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 or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.
> >
> > An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.'
>
> x x x
>
> For, as is evident from the provisions of Article 280 of the Labor Code, quoted earlier, the principal test for determining whether particular employees are properly

> characterized as 'project employees' as distinguished from 'regular employees,' is whether or not the 'project employees' were assigned to carry out a 'specific project or undertaking,' the duration (and scope) of which were specified at the time the employees were engaged for that project. (Emphasis ours)
>
> In the realm of business and industry, we note that 'project' could refer to a particular job or undertaking that is within the regular or usual business of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company. Such job or undertaking begins and ends at determined or determinable times. The typical example of this type of project is a particular construction job or project of a construction company. A construction company ordinarily carried out two or more discrete identifiable construction projects: e.g., a twenty-five story hotel in Makati; a residential condominium building in Baguio City; and a domestic air terminal in Iloilo City. Employees who are hired for the carrying out of one of these separate projects, the scope and duration of which has been determined and made known to the employees at the time of employment, are properly treated as 'project employees,' and their services may be lawfully terminated at completion of the project."

The same decision goes on to say:[9]

> "The simple fact that the employment of petitioners as project employees had gone beyond one (1) year, does not detract from, or legally dissolve, their status as project employees. The second paragraph of Article 280 of the Labor Code, quoted above, providing that an employee who has served for at least one (1) year, shall be considered a regular employee, relates to casual employees, not to project employees.
>
> In the case of Mercado, Sr. vs. National Labor Relations Commission (201 SCRA 332 [1991], this Court ruled that the proviso in the second paragraph or Article 280 relates only to casual employees and is not applicable to those who fall within

the definition of said Article's first paragraph, i.e., project employees."

Incidentally, we should mention that both respondent Commission and the Solicitor General were in error in concluding based on private respondents' claimed length of employment (allegedly for over ten years) that they were regular employees. Sad to state, the Solicitor General in his arguments tried to "force-fit" private respondents into the "regular employee" category and completely disregarded the critical distinctions set forth in ALU-TUCP and earlier cases.

Inconclusive Evidence

Based on the foregoing considerations, it is patent that, in the instant case, there needs to be a finding as to whether or not the duration and scope of the project or projects were determined or specified and made known to herein private respondents at the time of their engagement. The labor arbiter tried to do this, relying heavily on the "Contract(s) Employment" presented in petitioner's Annexes as well as on private respondents' own Annex "A"[10] attached to their Position Paper and citing the fact that the said contracts of employment indicated the duration of the projects to which the private respondents had been assigned. He then held that "(t)here is no denial that complainants were assigned to work in these projects,"[11] and concluded that they were indeed project employees.

But the arbiter completed ignored the fact that all the "Contract(s) Employment" presented in evidence by both petitioner and private respondents had been signed only by petitioner's president and general manager, Luis F. Ortega, but not by the employees concerned, who had precisely refused to sign them. The said contracts therefore could in no wise be deemed conclusive evidence. Thus, private respondents faulted the labor arbiter for giving credence and probative value to said contracts. Besides, they claimed, only seven contracts in all were presented in evidence, pertaining to seven individual employees, while there are fifteen employees involved in the complaints. Moreover, these contracts, purportedly issued either in July or December of 1991, except for one dated May 1992, were all one-shot contracts of short duration, the longest being for about five months. Now, inasmuch as petitioner had not denied nor rebutted

private respondents' allegations that they had each worked several years for the petitioner, the obvious question is, why didn't petitioner produce in evidence similar contracts for all the other years that private respondents had worked as project employees? To these points, petitioner offered no explanation whatsoever.

Failure Discharge Burden of Proof

For that matter, it seems self-evident to this Court that, even if the contracts presented by petitioner had been signed by the employees concerned, still, they would not constitute conclusive proof of petitioner's claim. After all, in the usual scheme of things, contract terms are normally dictated by the employer and simply acceded to and accepted by the employee, who may be desperate for work and therefore in no position to bargain freely or negotiate terms to his liking.

In any event, petitioner in this case undoubtedly could have presented additional evidence to buttress its claim. For instance, petitioner could have presented copies of its contracts with its clients, to show the time, duration and scope of past installation projects. The data from these contracts could then have been correlated to the data which could be found in petitioner's payroll records for, let us say, the past three years or so,[12] to show that private respondents had been working intermittently as and when they were assigned to said projects, and that their compensation had been computed on the basis of such work. But petitioner did not produced such additional evidence, and we find that it failed to discharge its burden of proof.

It is not so much that this Court cannot appreciate petitioner's contentions about the nature of its business and its inability to maintain a large workforce on its permanent payroll. Private respondents have admitted that petitioner is engaged only in the installation (not manufacture) of aircon systems or units in buildings, and since such a line of business would obviously be highly (if not wholly) dependent on the availability of buildings or projects requiring such installation services, which factor no businessman, no matter how savvy, can accurately forecast from year to year, it can be easily surmised that petitioner, aware that its revenues and income would be unpredictable, would always try to keep its overhead costs

to a minimum, and would naturally want to engage workers on a per-project or per-building basis only, retaining very few employees (if any) on its permanent payroll. It would also have been more than glad if its employees found other employment elsewhere, in between projects. To our mind, it appears rather unlikely that petitioner would keep private respondents — all fifteen of them — continuously on its permanent payroll for, say, ten or twelve years, knowing fully well that there would be periods (of uncertain duration) when no project can be had. To illustrate, let us assume that private respondents (who were each making about P118.00 to P119.50 per day in 1991) were paid only P100.00 per day. If the fifteen were, as they claimed, regular employees entitled to their wages regardless of whether or not they were assigned to work on any project, the overhead for their salaries alone — computed at P100.00/day for 30 days in a month — would come to no less than P45,000.00 a month, or P540,000.00 a year, not counting 13th month pay, Christmas bonus, SSS/Medicare premium payments, sick leaves and service incentives leaves, and so forth. Even if petitioner may have been able to afford such overhead costs, it certainly does not make business sense for it or anyone else to do so, and is in every sense contrary to human nature, not to mention common business practice. On this score alone, we believe that petitioner could have made out a strong case. Which is why we have difficulty understanding its failure to present clear and convincing evidence on this point, it being doctrinal that in illegal dismissal cases, the employer always has the burden of proof.[13]

Petitioner's problem of weak evidence was further compounded by certain documentary evidence in the records below which controverted petitioner's position, or, at the very least, tended to confuse rather than clarify matters. For instance, we noted that in their Memorandum of Appeal dated February 17, 1993 filed with the respondent Commission, herein private respondents had attached as annexes thereto the following documents:

1. As Annex "B" thereof, a Certification dated January 28, 1992, signed by one Flora P. Perez, Administrative/Accountant of Raycor, certifying that "Mr. Roberto B. Fulgencio (one of the private respondents) has been connected with the undersigned corporation (Raycor) from August 22, 1986 to

May 18, 1991 and September 01, 1990 to January 25, 1992 as Aircon Installer;"

2. As Annex "C" thereof, a Certification dated May 7, 1985, signed by Luis F. Ortega, President and General Manager of herein petitioner corporation, to the effect that "Mr. Jaime Calipayan (another one of the private respondents) has been connected with the undersigned corporation from June 18, 1982 up to present as a Mechanical Installer;" and

3. As Annex "D" thereof, a Certification dated June 06, 1991, likewise signed by Luis G. Ortega, president and general manager of Rayco, certifying that "Mr. Susano A. Atienza (still another of the private respondents) has been connected with the undersigned corporation from October 10, 1983 up to present as Aircon Mechanic/Technician."

Understandably, private respondents made big capital out of these certifications. But, while petitioner failed utterly to offer rebutting evidence, still and all, we are not prepared to conclude on the basis of these certifications alone that private respondents were indeed regular employees. First of all, said certifications refer only to three out of the fifteen private respondents, so what could be true of them may not necessarily apply with respect to the other twelve. Moreover, the certifications do not categorically state that the three employees had been permanent employees of Raycor. In other words, they do not necessarily overturn petitioner's contention that private respondents were project employees, since it is still possible to read the documents as saying that the named employees were working as project employees during the periods therein specified. This is especially so since the said certifications were prepared by non-lawyers who in all likelihood were not aware of the potential legal implications and ramifications of what were ostensibly innocuous certifications. As held in one recent case, "it is however not difficult to understand that ordinary business activities are performed in the normal course without anticipation nor foreknowledge of litigation, often with dispatch and usually with a minimum of documentation."[14] Nonetheless, all things considered, the certifications, issued by petitioner itself, tend to put its claims in serious doubt.

The situation was still further aggravated by the manner in which petitioner dismissed private respondents. As found by respondent Commission, the reason given for the dismissals, i.e., "due to our present business status," is vague, to say the least, and unarguably is not one of the valid or just causes provided by law for termination of an employment, whatever its classification. But more significantly — if indeed private respondents were project employees, there would have been no need to terminate them by sending them notices of termination, inasmuch as their employment ceases "as a result of the completion of the project or any phase thereof in which they are employed," per Policy Instruction No. 20 itself. Thus, if petitioner resorted to such dismissals, there is the unavoidable inference that petitioner regarded the private respondents as regular employees after all. But again, this is inconclusive, since the notices of termination were signed, and in all likelihood prepared, by the president and general manager of petitioner, probably sans any legal advice or awareness of the implications of such a move.

All the aforesaid conflicting data have the net effect of casting doubt upon and clouding the real nature of the private respondents' employment status. And we are mandated by law to resolve all doubts in favor of labor. For which reason, we hereby hold that private respondents were regular employees of the petitioner.

Having arrived at basically the same results as respondent NLRC with respect to private respondents' employment status, did this Court waste its time and effort in re-examining the instant case? The answer is in the negative. This Court cannot affirm a decision or judgment based on erroneous findings and conclusions, for justice can never be adequately dispensed to all parties if a judgment is not grounded on the truth.

Second Issue: Terminations Illegal

On the second issue of alleged illegality of the subject dismissals, we agree with respondent Commission when it held, as mentioned above, that "the same was capricious and whimsical as shown by the vague reason proffered by respondent for said dismissal which is 'due to our present business states' (should read 'status') is undoubtedly

not one of the valid causes for termination of an employment." True indeed, for neither the Labor Code nor Policy Instructions No. 20 allows termination on such ground. Even Art. 283 of the Labor Code as amended, which treats of retrenchments and closures due to business losses, requires that the employer first serve written notice on the workers and the Department of Labor at least one month before the intended date thereof; and in certain cases, separation pay must be paid. And it cannot be denied that in the instant case, petitioner did not afford them due process thru the twin requirements of notice and hearing,[15] as the terminations took effect the day following receipt of the notices of termination. Ineluctably, the said terminations are not in accordance with law and therefore illegal.

On top of that, there is evidence of the bad faith of petitioner in terminating the private respondents. Petitioner placed an ad[16] in the classified ads section of the People's Journal, sometime in June 1992,[17] which read:

"WANTED IMMEDIATELY
MECHANICAL INSTALLERS
TINSMITHS
WELDERS/PIPEFITTERS
APPLY IN PERSON:

RAYCOR AIR CONTROL
SYSTEMS, INC.
RM 306 20TH CENTURY BLDG.
632 SHAW BLVD., MAND.
METRO MANILA"

Unmistakably, petitioner, in placing the ad, must have had at least one project, maybe more, "in the pipeline" at that time, and was clearly in need of replacements for private respondents whom it had just fired. Thus, the dismissals could hardly have been due to a valid cause, not even due to petitioner's alleged "present business status." On this count as well, the dismissals were illegal.

And lastly, we should mention that an order for reinstatement with payment of backwages must be based on the correct premises. This point is best illustrated by considering the last ratiocination utilized

by public respondent: "Even assuming that complainants were project employees, their unceremonious dismissal coupled with the attempt to replace them via the newspaper advertisement entitles them to reinstatement with backwages under P.I. No. 20." There is a world of difference between reinstatement as project employees and reinstatement as regular employees, but the difference was obviously lost on the respondent NLRC.

Conclusion

We reiterate that this Court waded through the records of this case searching for solid evidence upon which to decide the case either way. But all told, neither party managed to make out a clear case. Therefore, considering that in illegal dismissal cases, the employer always has the burden of proof, and considering further that the law mandates that all doubts, uncertainties, ambiguities, and insufficiencies be resolved in favor of labor, we perforce rule against petitioner and in favor of private respondents.

WHEREFORE, the foregoing considered, the assailed Decision is hereby **SET ASIDE** and a new one rendered holding that petitioner had failed to discharge its burden of proof in the instant case and therefore **ORDERING** the reinstatement of private respondents as regular employees of petitioner, without loss of seniority rights and privileges and with payment of backwages from the day they were dismissed up to the time they are actually reinstated. No costs.

SO ORDERED.

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

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[1] Rollo, pp. 34-42.
[2] First Division, composed of Comm. Vicente S. E. Veloso, ponente, and Pres. Comm. Bartolome S. Carale and Comm. Alberto R. Quimpo, concurring.
[3] Oswald B. Lorenzo.
[4] Rollo, p. 24.
[5] Policy Instructions No. 20 (series of 1977), entitled "Stabilizing Employer-Employee Relations in the Construction Industry", provides in relevant part:
[5a] "In the interest of stabilizing employer-employee relations in the construction industry and taking into consideration its unique

characteristics, the following policy instructions are hereby issued for the guidance of all concerned:

Generally, there are two types of employees in the construction industry, namely: 1) Project employees, and 2) Non-Project employees.

Project employees are those employed in connection with a particular construction project. Non-project 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 a clearance from the Secretary of Labor in connection with such termination. What is required of the company is a report to the nearest Public Employment Office for statistical purposes.

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 with 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 backwages.

The employees of a particular project are not terminated at the same time. Some phases of the project are completed ahead of others. For this reason, the completion of a phase of the Project is the completion of the project for an employee employed in such phase. In other words, employees terminated upon the completion of their phase of the project are not entitled to separation pay and exempt from the clearance requirement.

On the other hand, those employed in a particular phase of a construction project are also not terminated at the same time. Normally, less and less employees are required as the phase draws closer to completion. Project employees terminated because their services are no longer needed in their particular phase of the project are not entitled to separation pay and are exempt from the clearance requirement, provided they are not replaced. If they are replaced, they shall be entitled to reinstatement with backwages.

Members of a work pool from which a construction company draws its project employees, if considered employees of the construction company while in the work pool, are non-project employees or employees for an indefinite period. If they are employed in a particular project, the completion of the project or of any phase thereof will not mean severance of employer-employee relationship.

However, if the workers in the work pool are free to leave anytime and offer their services to other employers then they are project employees employed by a construction company in a particular project or in a phase thereof.

Generally, there are three (3) types of non-project employees: first, probationary employees; second, regular employees; and third, casual employees.

Probationary employees are those who, upon the completion of the probationary period, are entitled to regularization. Regular employees are those who have completed the probationary period or those appointed to fill up regular positions vacated as a result of death, retirement, resignation, or termination of the regular holder thereof. On the other hand, casual employees are those employed for a short term duration to perform work not related to the main line of the business of the employer.

x x x

Policy Instructions No. 20 was subsequently superseded by Department Order No. 19 (series of 1993) dated April 1, 1993 of the Department of Labor and Employment.

[6] Records, pp. 32.38.

[7] Below is a sample of a "Contract Employment" (from Records, p. 36):

RAYCOR AIRCONTROL SYSTEMS, INC.,
Rms. 306-307 20th Century Bldg., 632 Shaw Blvd.
Mandaluyong, Rizal
NOTE: Please return with your signature.

CONTRACT EMPLOYMENT
September 01, 1991

TO: FULGENCIO ROBERTO

You are hereby hired as a Contract Employee/worker, subject to the following conditions:

1) Your employment commences on September 01, 1991 and shall be effective only for the duration of the contract at Far East Bank & Trust Co. after completion of which on January, 1992 it automatically terminates without necessity of further notice; provided, however, that it is expressly understood that the Company, at its sole discretion, may terminate said employment at any time even before completion of aforesaid contract job;

2) Since your employment is contractual in nature, you may be terminated at any time without necessity of prior notice or terminal pay;

3) You are obliged to serve the Company during the full duration of the contract unless your services are earlier terminated as provided in paragraph 1 hereof;

4) Your wages shall be at the rate of P118.00 per day

If the above terms are acceptable, please sign your conformity therewith.

RAYCOR AIRCONTROL SYSTEMS, INC.
BY:
LUIS F. ORTEGA
President & General Manager

I certify that I have read and fully understood the above terms and conditions of employment and that I agree and abide by them.

FULGENCIO ROBERTO
Employee

Project:

Far East Bank & Trust Co.
(Balayan Branch) including
National Bookstore Inc.
C.E. NO.__

[8] 234 SCRA 678, 683-685, August 2, 1994.

[9] Ibid., p. 688.

[10] Records, p. 65. This Annex "A" is exactly the same contract form as petitioner's Annexes "A" to "F".

[11] This finding was never challenged by the private respondents.

[12] After all, every employer is required by law (Section 12 in relation to Section 6 of Rule X, Book III of the Omnibus Rules Implementing the Labor Code) to preserve its payroll and employment records for at least three years from the date of the last entry in such records.

[13] See Golden Donuts, Inc. vs. NLRC, 230 SCRA 153, February 21, 1994, and Mapalo vs. NLRC, 233 SCRA 266, June 17, 1994.

[14] MGG Marine Services, Inc. et al., vs. NLRC, et al., G.R. No. 114313, July 29, 1996, at p. 25.

[15] MGG Marine Services, Inc. vs. NLRC, supra, at pp. 15-17, citing Kwikway Engineering Works vs. NLRC, 195 SCRA 526, March 22, 1991, and Pepsi-Cola Bottling Co. vs. NLRC, 210 SCRA 277, June 23, 1992.

[16] Records, p. 198.

[17] The machine copy of the ad does not indicate the date or edition/issue number of the newspaper, but it can be inferred from other articles appearing on the same page that the particular edition in which the ad appeared must have been published between May 27 and June 12, 1992, some time after private respondents herein were terminated by petitioner.