



Republic of the Philippines
Supreme Court
 Baguio City

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

**HERMA SHIPYARD, INC., and
 MR. HERMINIO ESGUERRA,**
Petitioners,

G.R. No. 208936

- versus -

**DANILO OLIVEROS,
 JOJIT BESA,
 ARNEL SABAL,
 CAMILO OLIVEROS,
 ROBERT NARIO,
 FREDERICK CATIG,
 RICARDO ONTALAN,
 RUBEN DELGADO,
 SEGUNDO LABOSTA,
 EXEQUIEL OLIVERIA,
 OSCAR TIROL and
 ROMEO TRINIDAD,**
Respondents.

Present:

SERENO, *C.J., Chairperson,*
 LEONARDO-DE CASTRO,
 DEL CASTILLO,
 PERLAS-BERNABE, *and*
 CAGUIOA, *JJ.*

Promulgated:

APR 17 2017

X-----X

DECISION

DEL CASTILLO, J.:

This Petition for Review on *Certiorari*¹ assails the Decision² dated May 30, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 118068 that reversed the Decisions of the National Labor Relations Commission (NLRC) and the Labor Arbiter and declared that Danilo Oliveros, Jojit Besa, Arnel Sabal, Camilo Oliveros, Robert Nario, Frederick Catig, Ricardo Ontalan, Ruben Delgado, Segundo Labosta, Exequiel Oliveria, Oscar Tirol and Romeo Trinidad (respondents) are regular employees of petitioner Herma Shipyard, Inc. (Herma Shipyard).

M. M.

¹ *Rollo*, pp. 3-58.

² *CA rollo*, Vol. I, pp. 480-493; penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Jose C. Reyes, Jr. and Mario V. Lopez.

Factual Antecedents

Herma Shipyard is a domestic corporation engaged in the business of shipbuilding and repair. The respondents were its employees occupying various positions such as welder, leadman, pipe fitter, laborer, helper, etc.

On June 17, 2009, the respondents filed before the Regional Arbitration Branch III, San Fernando City, Pampanga a Complaint³ for illegal dismissal, regularization, and non-payment of service incentive leave pay with prayer for the payment of full backwages and attorney's fees against petitioners. Respondents alleged that they are Herma Shipyard's regular employees who have been continuously performing tasks usually necessary and desirable in its business. On various dates, however, petitioners dismissed them from employment.

Respondents further alleged that as a condition to their continuous and uninterrupted employment, petitioners made them sign employment contracts for a fixed period ranging from one to four months to make it appear that they were project-based employees. Per respondents, petitioners resorted to this scheme to defeat their right to security of tenure, but in truth there was never a time when they ceased working for Herma Shipyard due to expiration of project-based employment contracts. In fact, if they were indeed project employees, petitioners should have reported to the Department of Labor and Employment (DOLE) the completion of such project. But petitioners have never submitted such report to the DOLE.

For their defense, petitioners argued that respondents were its project-based employees in its shipbuilding projects and that the specific project for which they were hired had already been completed. In support thereof, Herma Shipyard presented contracts of employment, some of which are written in the vernacular and denominated as *Kasunduang Paglilingkod (Pang-Proyektong Kawani)*.⁴

Ruling of the Labor Arbiter

On May 24, 2010, the Labor Arbiter rendered a Decision⁵ dismissing respondents' Complaint. The Labor Arbiter held that respondents were project-based employees whose services were validly terminated upon the completion of the specific work for which they were individually hired. The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, premises considered, let the instant complaint be, as it is hereby ORDERED dismissed for lack of merit.



³ Records, pp. 1-2.

⁴ *Rollo*, pp. 116-143.

⁵ Records, pp. 109-119; penned by Labor Arbiter Reynaldo V. Abdon.

All the money claims as well as moral and exemplary damages and attorney's fees raised by the complainants in their complaint are likewise DENIED for lack of merit.

SO ORDERED.⁶

Respondents thus appealed to the NLRC.

Ruling of the National Labor Relations Commission

On September 7, 2010, the NLRC rendered its Decision⁷ denying respondents' appeal and affirming *in toto* the Decision of the Labor Arbiter. It sustained the finding of the Labor Arbiter that based on their employment contracts, respondents were project-based employees hired to do a particular project for a specific period of time.

Respondents moved for reconsideration but the NLRC denied their Motion for Reconsideration⁸ in its November 11, 2010 Resolution.⁹

Unfazed, respondents filed a Petition for *Certiorari*¹⁰ before the CA imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the labor tribunals in finding that they were project-based employees and in not awarding them service incentive leaves. Respondents contended that the labor tribunals grievously erred in relying on the project employment contracts which were for a uniform duration of one month. They argued that if it were true that they were project-based employees, the duration of their employment should have coincided with the completion of the project for which they were hired and not for a uniform period of one month.

Ruling of the Court of Appeals

On May 30, 2013, the CA rendered its assailed Decision¹¹ granting respondents' Petition for *Certiorari* and setting aside the labor tribunals' Decisions. It held that even if the contracts of employment indicated that respondents were hired as project-based workers, their employment status have become regular since: they were performing tasks that are necessary, desirable, and vital to the operation of petitioners' business; petitioners failed to present proof that respondents were hired for a specific period or that their employment

⁶ Id. at 118-119.

⁷ Id. at 164-172; penned by Commissioner Napoleon M. Manese and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Teresita D. Castillon-Lora.

⁸ Id. at 182-187.

⁹ Id. at 196-197.

¹⁰ CA *rollo*, Vol. I, pp. 9-18.

¹¹ Id. at 480-493.

was coterminous with a specific project; it is not clear from the contracts of employment presented that the completion or termination of the project or undertaking was already determined at the time petitioners engaged the services of respondents; respondents were made to work not only in one project but also in different projects and were assigned to different departments of Herma Shipyard; respondents were repeatedly and successively rehired as employees of Herma Shipyard; except with regard to respondents' last employment, petitioners failed to present proof that they reported to the nearest public employment office the termination of respondents' previous employment or every time a project or a phase thereof had been completed; and, petitioners failed to file as many reports of termination as there were shipbuilding and repair projects actually completed. The CA concluded that the project employment contracts were indeed used as a device to circumvent respondents' right to security of tenure. The *fallo* of the assailed CA Decision reads:

WHEREFORE, the instant petition for *certiorari* is GRANTED. The assailed decision and resolution of the respondent National Labor Relations Commission are REVERSED and SET ASIDE, and a new judgment is hereby rendered holding petitioners as regular employees and declaring their dismissal as illegal. Accordingly, private respondents are hereby ordered to REINSTATE petitioners to their former employment. Should reinstatement be not possible due to strained relations, private respondents are ordered to pay petitioners their separation pay equivalent to one-month pay or one-half-month pay for every year of service, whichever is higher, with full backwages computed from the time of dismissal up to the finality of the decision. For this purpose, the case is hereby REMANDED to the respondent NLRC for the computation of the amounts due petitioners.

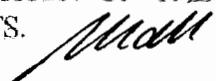
SO ORDERED.¹²

Petitioners moved for reconsideration. In a Resolution¹³ dated August 30, 2013, however, the CA denied their Motion for Reconsideration.¹⁴

Hence, this Petition for Review on *Certiorari* assailing the May 30, 2013 Decision and August 30, 2013 Resolution of the CA. Petitioners anchor their Petition on the following arguments:

A

PREVAILING JURISPRUDENCE DICTATES THAT RESPONDENTS ARE NOT REGULAR EMPLOYEES OF PETITIONER [HERMA SHIPYARD]. THEY ARE PROJECT EMPLOYEES WHOSE TERMS OF EMPLOYMENT WERE VALIDLY TERMINATED UPON THE EXPIRATION OF THE TERM OF THEIR PROJECT EMPLOYMENT CONTRACTS.



¹² Id. at 492.

¹³ Id. at 1030-1031.

¹⁴ Id. at 504-554.

B

THE ASSAILED DECISION AND ASSAILED RESOLUTION RULED ON ISSUES WHICH WERE NEITHER DISPUTED IN RESPONDENTS' PETITION FOR CERTIORARI NOR RAISED IN THE DECISION OF THE HONORABLE [NLRC].

C

AS BORNE BY THE PROJECT EMPLOYMENT CONTRACTS OF RESPONDENTS AND TERMINATION REPORTS SUBMITTED TO THE DEPARTMENT OF LABOR AND EMPLOYMENT, RESPONDENTS ARE UNDOUBTEDLY PROJECT EMPLOYEES OF PETITIONER [HERMA SHIPYARD].

D

THE HONORABLE COURT OF APPEALS FAILED TO CONSIDER THAT RESPONDENTS' PETITION FOR CERTIORARI DID NOT RAISE AS AN ISSUE THE ACTS COMMITTED BY THE HONORABLE [NLRC] WHICH AMOUNTED TO GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.

E

BY VIRTUE OF THE DOCTRINE OF SEPARATE JURIDICAL PERSONALITY, PETITIONER ESGUERRA SHOULD NOT BE HELD LIABLE IN THE INSTANT LABOR COMPLAINT.

F

THE HONORABLE COURT OF APPEALS FAILED TO GIVE WEIGHT AND RESPECT TO THE FACTUAL FINDINGS OF THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION AND THE HONORABLE LABOR ARBITER.

G

THE HONORABLE COURT OF APPEALS DID NOT ACQUIRE JURISDICTION OVER THE INSTANT CASE AS THE HONORABLE NLRC'S DECISION AND RESOLUTION ALREADY BECAME EXECUTORY CONSIDERING THAT RESPONDENTS' PETITION FOR CERTIORARI WAS FILED BEYOND THE REGLEMENTARY PERIOD PRESCRIBED BY THE RULES.¹⁵

Petitioners contend, among others, that necessity and desirability of respondents' services in Herma Shipyard's business are not the only factors to be considered in determining the nature of respondents' employment. They assert that the CA should have also taken into consideration the contracts of employment signed by the respondents apprising them of the fact that their services were engaged for a particular project only and that their employment was coterminous therewith. The authenticity and genuineness of said contracts, according to petitioners, were never disputed by the respondents during the pendency of the case before the labor tribunals. It was only in their Comment¹⁶ to the instant

¹⁵ *Rollo*, pp. 1078-1079.

¹⁶ *Id.* at 1022-1028.

Petition that respondents disavow said contracts of employment for allegedly being fictitious.

Petitioners aver that the CA also erred in ruling that the duration of respondents' employment depends upon a progress accomplishment as paragraph 10 of the employment contract readily shows that the same is dependent upon the completion of the project indicated therein.

With regard to the repeated rehiring of the respondents, petitioners insist that the same will not result in respondents becoming regular employees because length of service does not determine employment status. What is controlling of project-based employment is whether the employment has been fixed for a specific project or undertaking, its completion having been determined and made known to the employees at the time of their engagement. Thus, regardless of the number of projects for which respondents had been repeatedly hired, they remained project-based employees because their engagements were limited to a particular project only. Petitioners emphasize that Herma Shipyard merely accepts contracts for shipbuilding and for repair of vessels. It is not engaged in the continuous production of vessels for sale which would necessitate the hiring of a large number of permanent employees.

Respondents, for their part, deny having worked for a specific project or undertaking. They insist that the employment contracts presented by petitioners purportedly showing that they were project-based employees are fictitious designed to circumvent the law. In any case, said contracts are not valid project employment contracts because the completion of the project had not been determined therein or at the time of their engagement. In fact, the duration of their contracts with Herma Shipyard may be extended as needed for the completion of various projects and not for a definite duration. And even assuming that they were previously hired as project employees, their employment ceased to be coterminous with a specific project and became regular after they were repeatedly rehired by the petitioners for various projects.

Our Ruling

The Petition is impressed with merit.

At the outset, the issue of whether petitioners were project-based employees is a question of fact that, generally, cannot be passed and ruled upon by this Court in a petition for review on *certiorari* filed under Rule 45 of the Rules of Court. It is settled that the jurisdiction of this Court in a Rule 45 petition is generally limited to reviewing errors of law. Nevertheless, in view of the



opposing views of the tribunals below, this Court shall take cognizance of and resolve the factual issues involved in this case.¹⁷

Who are project-based employees?

A project employee under Article 280 (now Article 294)¹⁸ of the Labor Code, as amended, is one whose 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. Thus:

Art. 280. *Regular and Casual Employment.* – The provisions of 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 service to be performed is seasonal in nature and the employment is for the duration of the season.

x x x x (Emphasis supplied)

The services of project-based employees are co-terminous with the project and may be terminated upon the end or completion of the project or a phase thereof for which they were hired.¹⁹ The principal test in determining whether particular employees were engaged as project-based employees, as distinguished from regular employees, is whether they were assigned to carry out a specific project or undertaking, the duration and scope of which was specified at, and made known to them, at the time of their engagement.²⁰ It is crucial that the employees were informed of their status as project employees at the time of hiring and that the period of their employment must be knowingly and voluntarily agreed upon by the parties, without any force, duress, or improper pressure being brought to bear upon the employees or any other circumstances vitiating their consent.²¹

Respondents knowingly and voluntarily entered into and signed the project-



¹⁷ *Dahle-Philman Manning Agency, Inc. v. Heirs of Andres G. Gazzingan*, G.R. No. 199568, June 17, 2015, 759 SCRA 209, 224-225.

¹⁸ The provisions of the Labor Code had been renumbered due to the taking effect of Republic Act No. 10151 entitled AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS, THEREBY REPEALING ARTICLES 130 AND 131 OF THE LABOR CODE.

¹⁹ *ALU-TUCP v. National Labor Relations Commission*, 304 Phil. 844, 850 (1994).

²⁰ *ALU-TUCP v. National Labor Relations Commission*, id. at 851; *Tomas Lao Construction v. National Labor Relations Commission*, 344 Phil. 268, 278 (1997); *Jamias v. National Labor Relations Commission*, G.R. No. 159350, March 9, 2016; *Pasos v. Philippine National Construction Corporation*, 713 Phil. 416, 433 (2013).

²¹ *Jamias v. National Labor Relations Commission*, id.

based employment contracts.

The records of this case reveal that for each and every project respondents were hired, they were adequately informed of their employment status as project-based employees at least at the time they signed their employment contract. They were fully apprised of the nature and scope of their work whenever they affixed their signature to their employment contract. Their contracts of employment (mostly written in the vernacular) provide in no uncertain terms that they were hired as project-based employees whose services are coterminous with the completion of the specific task indicated therein. All their contracts of employment state clearly the date of the commencement of the specific task and the expected completion date thereof. They also contain a provision expressly stating that respondents' employment shall end upon the arrival of the target completion date or upon the completion of such project. Except for the underlined portions, the contracts of employment read:

KASUNDUAN NG PAGLILINGKOD
(PANG-PROYEKTONG KAWANI)

PARA SA KAALAMAN NG LAHAT:

ALAMIN NG LAHAT NA:

HERMA SHIPYARD, INC., isang Korporasyon na itinatag at nananatili sa ilalim ng batas ng Pilipinas at may tanggapan sa Herma Industrial Complex, Mariveles, Bataan na kinakatawan [ni] EDUARDO S. CARANCIO ay makikilala bilang KUMpanya;

OLIVEROS, CAMILO IBANEZ, sapat ang gulang, Pilipino, may asawa/walang asawa na tubong _____, naninirahan sa BASECO Country Agwawan, Mariveles, Bataan dito ay makikilala bilang PANG-PROYEKTONG KAWANI;

NAGSASAYSAY NA:

NA, ang Kumpanya ay nangangailangan ng paglilingkod ng isang Ship Fitter Class A sa panandaliang panahon at bilang pang suporta sa paggawa at pagsasaayos ng proyekto para sa MT Masinop.

NA, ang PANG-PROYEKTONG KAWANI ay nagpapahayag ng kanyang kakayahan at kagustuhang isagawa ang proyektong iniaalok ng KUMpanya at handing tuparin ang nasabing Gawain sa KUMpanya sa ilalim ng sumusunod na kondisyon;

Bilang pagkilala sa mga nasabing batayan, ang mga kinauukulang partido ay nagkakasundo at nagtatakda ng mga sumusunod:

- 1) *Ang KUMpanya ay pumapayag na bayaran ang serbisyo ng PANG-PROYEKTONG KAWANI bilang isang Ship Fitter Class A sa nasabing proyekto simula 4/1/2009 hanggang 4/30/2009 o sa sandaling matapos ang nasabing gawain o anumang bahagi nito kung saan siya ay inupahan o kung saan ang kanyang serbisyo ay kailangan at ang PANG-PROYEKTONG KAWANI ay sumasang-*

ayon. Ang mga gawaing nabanggit sa kasunduang ito ay hindi pangkaraniwang ginagawa ng KUMPANYA kundi para lamang sa itinakdang panahon o hanggang matapos ang nasabing proyekto;

- 2) Ang KUMPANYA ay may karapatan na pawalang bisa o kanselahin ang kasunduang ito anomang oras kung mapatutunayan na ang PANG-PROYEKTONG KAWANI ay walang kakayahan na gawin ang naturang gawain kung saan siya ay inupahan nang naaayon sa pamantayan o sa kagustuhan ng KUMPANYA o sa anumang dahilan na naaayon sa batas, kasama na rito ang paglabag ng PANG-PROYEKTONG KAWANI sa mga alituntunin ng KUMPANYA;
- 3) Ang PANG-PROYEKTONG KAWANI ay sumasang-ayon na gampanan ang mga gawaing ito para sa KUMPANYA buong katapatan at lusay;
- 4) Ang PANG-PROYEKTONG KAWANI ay magtratrabaho ng walong (8) oras sa bawat araw ng trabaho ayon sa oras na itinakda ng KUMPANYA at siya ay babayaran ng ₱405 (₱397.00/basic + 8/ecola) bawat araw at ito ay kanyang matatanggap tuwing ika-labinlimang araw at katapusan ng buwan na kanyang ipinagtrabaho. Ang PANG-PROYEKTONG KAWANI ay hindi babayaran sa mga araw na hindi siya pumasok sa trabaho sa KUMPANYA;
- 5) Lahat ng kaalaman o impormasyon na maaaring mabatid ng PANG-PROYEKTONG KAWANI habang siya ay may kaugnayan sa KUMPANYA ay iingat na hindi maaaring gamitin, ipasipi o ipaalam sa kaninuman ng walang kaukulang pahintulot lalo na kung ito ay maaaring makapinsala sa KUMPANYA;
- 6) Ang PANG-PROYEKTONG KAWANI ay nangangako na ibibigay ang kanyang panahon at buong kakayahan para sa kapakanan ng KUMPANYA, tutugon sa lahat ng alituntunin ng KUMPANYA, susunod sa utos ng mga namumuno na naaayon sa batas, at tatanggapin ang pananagutan sa lahat ng kanyang mga galaw na maaaring makapinsala o makasakit sa kapwa kawani at sa ari-arian ng KUMPANYA, ganun din ang kapakanan at ari-arian ng ibang tao;
- 7) *Nababatid at nauunawaan ng bawat partido sa kasunduang ito na ang PANG-PROYEKTO KAWANI ay hindi maituturing na pampirmihan or "regular" na kawani ano man at gaano man katagal ang kanyang paglingkod sa Kumpanya. Sa ganitong kadahilanan, ang PANG-PROYEKTO KAWANI ay hindi tatanggap ng karaniwang benepisyo na ipinagkakaloob sa pampirmihan o "regular" na kawani; katulad ng bonuses, medical insurance, at retirement benefits, maliban sa ilang benepisyo na pinagkakaloob ng batas.*
- 8) Sa pagtupad ng mga nasabing gawa, nalalaman at inaasahan ng PANG-PROYEKTONG KAWANI ang ilang kaakibat na peligro sa maayos na pagganap ng naturang mga gawa. Alam ng PANG-PROYEKTONG KAWANI na ang KUMPANYA ay walang kinalaman sa bagay na ito at hindi dapat panagutin ukol dito;



- 9) Ang lahat ng mga nakasaad at nasusulat na mga kondisyon sa kasunduang ito ay nauunawaan at naiintindihan ng PANG-PROYEKTONG KAWANI;
- 10) Ang kasunduang ito ay maaaring palawigin ng mas mahabang panahon na maaaring kailanganin para sa matagumpay na pagtatapos ng mga gawa o proyektong pinagkasunduan;

BILANG SAKSI sa kasundang ito, ang mga partido ay lumagda ngayong ika-1 ng Abril 2009 sa Mariveles, Bataan, Pilipinas;²² (Emphases supplied)

There is no indication that respondents were coerced into signing their employment contracts or that they affixed their signature thereto against their will. While they claim that they signed the said contracts in order to secure continuous employment, they have not, however, presented sufficient evidence to support the same other than their bare allegations. It is settled that “[c]ontracts for project employment are valid under the law.”²³ Thus, in *Jamias v. National Labor Relations Commission*,²⁴ this Court upheld the project employment contracts which were knowingly and voluntarily signed by the employees for want of proof that the employers employed force, intimidation, or fraudulently manipulated them into signing the same. Similarly in this case, by voluntarily entering into the aforementioned project employment contracts, respondents are deemed to have understood that their employment is coteminous with the particular project indicated therein. They cannot expect to be employed continuously beyond the completion of such project because a project employment terminates as soon as it is completed.

Performance by project-based employees of tasks necessary and desirable to the usual business operation of the employer will not automatically result in their regularization.

In disregarding the project employment contracts and ruling that respondents are regular employees, the CA took into consideration that respondents were performing tasks necessary and desirable to the business operation of Herma Shipyard and that they were repeatedly hired. Thus:

[I]t is significant to note that even if the contract of employment indicates that [respondents] were hired as project workers, they are still considered regular employees on the ground that as welder, ship fitter, pipe fitter, expediter and helper, [respondents'] services are all necessary, desirable and vital to the operation of the ship building and repair business of [petitioners]. A confirmation

²² Records, pp. 26-27.

²³ *Villa v. National Labor Relations Commission*, 348 Phil. 116, 141 (1998).

²⁴ Supra note 20.

of the necessity and desirability of their services is the fact that [respondents] were continually and successively assigned to the different projects of private respondents even after the completion of a particular project to which they were previously assigned. On this score, it cannot be denied that petitioners were regular employees.²⁵

It is settled, however, that project-based employees may or may not be performing tasks usually necessary or desirable in the usual business or trade of the employer. The fact that the job is usually necessary or desirable in the business operation of the employer does not automatically imply regular employment; neither does it impair the validity of the project employment contract stipulating a fixed duration of employment.²⁶ As this Court held in *ALU-TUCP v. National Labor Relations Commission*:²⁷

In the realm of business and industry, we note that 'project' could refer to one or the other of at least two (2) distinguishable types of activities. Firstly, a 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 first type of project is a particular construction job or project of a construction company. A construction company ordinarily carries out two or more discrete identifiable construction projects: e.g., a twenty-five-storey 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 term 'project' could also refer to, secondly, a particular job or undertaking that is not within the regular business of the corporation. Such a job or undertaking must also be identifiably separate and distinct from the ordinary or regular business operations of the employer. The job or undertaking also begins and ends at determined or determinable times.²⁸

Here, a meticulous examination of the contracts of employment reveals that while the tasks assigned to the respondents were indeed necessary and desirable in the usual business of Herma Shipyard, the same were distinct, separate, and identifiable from the other projects or contract services. Below is the summary of respondents' employment contracts indicating the positions they held, the specific projects for which they were hired, and the duration or expected completion thereof:



²⁵ CA rollo, p. 485.

²⁶ *Palomares v. National Labor Relations Commission*, 343 Phil. 213, 223 (1997).

²⁷ *Supra* note 19.

²⁸ *Id.* at 851-852.

Names	Positions	Projects	Durations
1. Ricardo J. Ontolan	Pipe Fitter Pipe Fitter Pipe Fitter Pipe Fitter Pipe Fitter Pipe Fitter	MT Masinop 12mb_phase 3 12mb/ Petrotrade 6 Alcem Calaca Hull 0102-phase 6 Hull 0103 & Hull 0104-phase 1	03/18/09-03/31/09 ²⁹ 09/15/08-12/20/08 ³⁰ 05/29/08-08/31/08 ³¹ 04/29/08-completion ³² 12/17/07-03/03/08 ³³ 09/11/07-12/11/07 ³⁴
2. Robert T. Nario	Welder 6G Welder 6G Welder 6G Welder 6G	MT Masinop 12 mb/ Matikas/ Red Dragon 22mb/ 12mb/ Galapagos/ Petrotrade 7/ Ma Oliva/ Solid Sun/ Hagonoy/ Banga Uno/Bigaa Hull 0102-phase 5	03/18/09-03/31/09 ³⁵ 06/02/08-07/31/08 ³⁶ 03/04/08-06/05/08 ³⁷ 10/18/07-12/18/07 ³⁸
3. Oscar J. Tirol	Pipe Fitter Class B Pipe Fitter	Red Dragon (installation of lube oil, diesel oil, air compressed line, freshwater cooling, lavatory, sea water pipe line) MT Magino/MV Diana Petrotrade 7/Solid Gold	01/16/09-02/15/09 ³⁹ 06/27/08-completion ⁴⁰ 02/08/08 ⁴¹ -02/08/08 ⁴²
4. Exequiel R. Oliveria	Leadman Leadman Leadman Leadman Leadman	12mb/Petrotrade 6 Red Dragon Hull 0102-phase 6 Hull 0102-phase 5 Hull 0102-phase 4	05/29/08-08/31/08 ⁴³ 04/29/08-05/31/08 ⁴⁴ 12/01/07 ⁴⁵ 03/03/08 ⁴⁶ 09/11/07-11/30/07 ⁴⁷ 06/07/07-08/27/07 ⁴⁸
5. Arnel S. Sabal	Leadman	MT Masinop	03/18/09-03/31/09 ⁴⁹

²⁹ CA rollo, Vol. 1, p. 586.

³⁰ Id. at 593 and 595.

³¹ Id. at 613.

³² Id. at 598.

³³ Id. at 603 and 605.

³⁴ Id. at 608 and 610.

³⁵ Id. at 624 and 626.

³⁶ Id. at 635.

³⁷ Id. at 631.

³⁸ Id. at 619.

³⁹ Id. at 639.

⁴⁰ Id. at 643.

⁴¹ Id. at 648.

⁴² Id. at 650.

⁴³ Id. at 669.

⁴⁴ Id. at 671.

⁴⁵ Id. at 659.

⁴⁶ Id. at 651.

⁴⁷ Id. at 664.

⁴⁸ Id. at 654.

⁴⁹ Id. at 735.

Names	Positions	Projects	Durations
	Leadman	12mb-phase 3	09/15/08 ⁵⁰ -12/20/08 ⁵¹
	Leadman	12mb/Petrotrade 6	05/29/08-08/31/08 ⁵²
	Leadman	22mb/12mb/Galapagos/ Petrotrade 7/ Ma Oliva/ Solid Sun/ Hagonoy/ Banga Uno/ Bigaa	03/04/08-06/05/08 ⁵³
	Leadman	Hull 0102-phase 6	12/01/2007 ⁵⁴ -3/03/08 ⁵⁵
	Leadman	Hull 0102-phase 5	09/11/07-11/30/07 ⁵⁶
	Pipe Fitter	Hull 0102-phase 4	06/13/07-09/04/07 ⁵⁷
		Hull 0102-phase 2	01/15/07-03/30/07 ⁵⁸
	Pipe Fitter	Hull 0102	01/08/07-completion ⁵⁹
	Pipe Fitter	Petro Trade 8/EUN HEE	05/17/06-completion ⁶⁰
	Pipe Fitter	MT Angat	06/02/05 ⁶¹ -06/25/05 ⁶²
	Pipe Fitter	M/T Pandi	12/08/04-completion ⁶³
	Pipe Fitter	M/T Makisig	11/08/04-completion ⁶⁴
	Pipe Fitter	Petro Trade – 7	08/12/04 ⁶⁵ -09/13/04 ⁶⁶
6. Segundo Q. Labosta, Jr.	ABS Welder 6G	MT Masinop	03/18/09-03/31/09 ⁶⁷
	ABS Welder 6G	12mb-phase 3	09/26/08-12/20/08 ⁶⁸
	ABS Welder 6G	Petrotrade 6/12 mb	08/01/08-10/31/08 ⁶⁹
	ABS Welder 6G	Cagayan de Oro/ Petrotrade 6/ Plaridel	06/01/08-07/31/08 ⁷⁰
7. Jojit A. Besa	Leadman -- ABS 6G	MT Masinop	03/18/09-03/31/09 ⁷¹
	Leadman -- ABS 6G	12mb/Barge Kwan Sing/ Solid Pearl	01/16/09-03/14/09 ⁷²
	Leadman -- ABS 6G	12mb-phase 3	10/10/08-12/20/08 ⁷³
	ABS Welder 6G	Hull 0102-phase 6	12/01/07-02/29/08 ⁷⁴
	Pipe Welder	Hull 0102-phase 4	06/07/07-08/29/07 ⁷⁵

⁵⁰ Id. at 730.⁵¹ Id. at 732.⁵² Id. at 721.⁵³ Id. at 725.⁵⁴ Id. at 716.⁵⁵ Id. at 718.⁵⁶ Id. at 711.⁵⁷ Id. at 706.⁵⁸ Id. at 701.⁵⁹ Id. at 699.⁶⁰ Id. at 692.⁶¹ Id. at 688.⁶² Id. at 691.⁶³ Id. at 675.⁶⁴ Id. at 683.⁶⁵ Id. at 679.⁶⁶ Id. at 682.⁶⁷ Id. at 747.⁶⁸ Id. at 742.⁶⁹ Id. at 753.⁷⁰ Id. at 758.⁷¹ Id. at 823.⁷² Id. at 770 and 825.⁷³ Id. at 797 and 799.⁷⁴ Id. at 802.⁷⁵ Id. at 787.

Names	Positions	Projects	Durations
	Pipe Welder Pipe Fitter Pipe Fitter	Hull 0102-phase 4 MT Matilde/M/Tug Mira MT Maranga/ MT Masikap/ MT Maginoo/ Petro Trade 8	06/01/07-08/27/07 ⁷⁶ 08/07/06-completion ⁷⁷ 04/15/06-completion ⁷⁸
	Pipe Fitter/Welder Pipe Fitter	MV ST Ezekiel Moreno MT Plaridel/Monalinda 95/Tug Boat Sea Lion	03/01/06-completion ⁷⁹ 11/03/05-completion ⁸⁰
	Pipe Fitter Pipe Fitter Pipe Fitter	MT Angat/Banga Dos M/T Makisig M/T Baliuag Oceantique Petro Trade - 7	05/31/05-06/30/05 11/08/04-completion ⁸¹ 10/18/04-completion ⁸²
	Pipe Fitter Pipe Fitter Pipe Fitter	Petro Trade V/Guiguinto	9/17/04-one month/ completion ⁸³ 08/03/04-two months/ completion ⁸⁴ 07/03/04-one month/ completion ⁸⁵
8. Camilo I. Oliveros	Ship Fitter Class A Leadman ABS Welder 6G Welder Welder Welder Welder Ship Welder	MT Masinop Petrotrade 6/ Plaridel/ Red Dragon Hull 0102/0103 Hull 0102-phase 5 Hull 0102-phase 4 Hull 0102-phase 3 Hull 0102-phase 2 22 mb oil tanker	04/01/09-04/30/09 ⁸⁶ 06/03/08-09/10/08 ⁸⁷ 01/15/08-completion ⁸⁸ 09/11/07-12/04/07 ⁸⁹ 06/06/07-08/28/07 ⁹⁰ 04/12/07-06/12/07 ⁹¹ 01/24/07-03/30/07 ⁹² 09/06/06-completion ⁹³
9. Romeo I. Trinidad	Helper Laborer	Modernization project – painting of prod'n bldg. and overhead crane Pin Jiq assembly, building table construction, painting of ex-oxygen	01/24/07-01/28/07 ⁹⁴ 09/10/07-12/10/07 ⁹⁵

⁷⁶ Id. at 829.
⁷⁷ Id. at 765.
⁷⁸ Id. at 763.
⁷⁹ Id. at 779.
⁸⁰ Id. at 819.
⁸¹ Id. at 815.
⁸² Id. at 811.
⁸³ Id. at 775.
⁸⁴ Id. at 807.
⁸⁵ Id. at 792.
⁸⁶ Id. at 858.
⁸⁷ Id. at 866.
⁸⁸ Id. at 871.
⁸⁹ Id. at 851.
⁹⁰ Id. at 839.
⁹¹ Id. at 833.
⁹² Id. at 845.
⁹³ Id. at 878.
⁹⁴ Id. at 893.
⁹⁵ Id. at 887.

Names	Positions	Projects	Durations
	Laborer	bldg, fabrication of slipway railings Ground level of main entrance road & CHB wall plastering/repair of warehouse no 1 for conversion to training bldg.	04/23/07-05/31/07 ⁹⁶
	Electrician/ Laborer	Construction of launchway and perimeter fence	12/04/06-completion ⁹⁷
10. Ruben F. Delgado	Leadman	Red Dragon (water tight door installation, soft batch)	01/16/09-02/15/09 ⁹⁸
	Leadman	Red Dragon	10/13/08-12/20/08 ⁹⁹
	Leadman	MV Ma. Diana	06/28/08-completion ¹⁰⁰
	Ship Fitter	Hull 0102-Phase 4	05/30/07-08/26/07 ¹⁰¹
	Ship Fitter	Thomas Cloma	12/03/07-completion ¹⁰²
	Ship Fitter	MV Solid Jade/ Construction of New Caisson Gate	03/10/07-completion ¹⁰³
	Ship Fitter	MT Hagonoy	02/01/07 ¹⁰⁴ 02/21/07 ¹⁰⁵
	Ship Fitter	MT Mabiug	01/09/07-completion ¹⁰⁶
	Ship Fitter	MT Ma Xenia	12/18/06 ¹⁰⁷ -1/07/07 ¹⁰⁸
11. Danilo I. Oliveros	Welder 3G & 4G	MT Hagonoy/ MT Masinop/MT Matikas	04/01/09-04/15/09 ¹⁰⁹
	Welder 3G & 4G	Hagonoy	03/20/09-03/31/09 ¹¹⁰
	Welder 3G & 4G	12mb-phase 3	09/25/08-12/20/08 ¹¹¹
	Welder	12mb/Petrotrade 6	07/01/08-09/30/08 ¹¹²
	Welder 3G & 4G	Hull 0102-phase 6	12/08/07-03/08/08 ¹¹³
	Welder	Hull 0102-phase 5	09/10/07-12/10/07 ¹¹⁴
	Welder	Hull 0102	12/19/06-completion ¹¹⁵

⁹⁶ Id. at 883.⁹⁷ Id. at 898.⁹⁸ Id. at 927.⁹⁹ Id. at 922.¹⁰⁰ Id. at 917.¹⁰¹ Id. at 932.¹⁰² Id. at 912.¹⁰³ Id. at 936.¹⁰⁴ Id. at 907.¹⁰⁵ Id. at 909.¹⁰⁶ Id. at 902.¹⁰⁷ Id. at 942.¹⁰⁸ Id. at 944.¹⁰⁹ Id. at 965.¹¹⁰ Id. at 953.¹¹¹ Id. at 971.¹¹² Id. at 953.¹¹³ Id. at 976.¹¹⁴ Id. at 947.¹¹⁵ Id. at 981.

Names	Positions	Projects	Durations
12. Frederick C. Catig	Pipe Fitter Class C	MT Masinop	02/06/09-02/28/09 ¹¹⁶
	Pipe Fitter Class C	12mb	01/08/09-01/31/09 ¹¹⁷
	Helper	12mb_phase 3	09/15/08-completion ¹¹⁸
	Helper	12mb/Petrotrade 6	05/29/08-08/31/08 ¹¹⁹
	Helper	Hull 0102-phase 6	01/02/08-03/31/08 ¹²⁰
	Helper	Hull 0102, Hull 0103, Hull 0104	10/01/07-12/31/07 ¹²¹
	Helper	Hull 0103 phase 1	07/25/07-09/31/07 ¹²²

As shown above, respondents were hired for various projects which are distinct, separate, and identifiable from each other. The CA thus erred in immediately concluding that since respondents were performing tasks necessary, desirable, and vital to Herma Shipyard's business operation, they are regular employees.

Repeated rehiring of project employees to different projects does not ipso facto make them regular employees.

"[T]he repeated and successive rehiring [of respondents as project-based employees] does not [also], by and of itself, qualify them as regular employees. Case law states that length of service (through rehiring) is not the controlling determinant of the employment tenure [of project-based employees but, as earlier mentioned], whether the employment has been fixed for a specific project or undertaking, with its completion having been determined at the time of [their] engagement."¹²³ Stated otherwise, the rule that employees initially hired on a temporary basis may become permanent employees by reason of their length of service is not applicable to project-based employees. Our ruling in *Villa v. National Labor Relations Commission*¹²⁴ is instructive on the matter, viz.:

Thus, the fact that petitioners worked for NSC under different project employment contracts for several years cannot be made a basis to consider them as regular employees, for they remain project employees regardless of the number of projects in which they have worked. Length of service is not the controlling determinant of the employment tenure of a project employee. In the case of *Mercado Sr. v. NLRC*, this Court ruled that the proviso in the second paragraph of Article 280, providing that an employee who has served for at least

¹¹⁶ Id. at 1014.

¹¹⁷ Id. at 1020.

¹¹⁸ Id. at 1007.

¹¹⁹ Id. at 997.

¹²⁰ Id. at 1002.

¹²¹ Id. at 992.

¹²² Id. at 987.

¹²³ *Dacles v. Millenium Erectors Corporation*, G.R. No. 209822, July 8, 2015, 762 SCRA 420, 431.

¹²⁴ *Supra* note 23 at 144-145.

one year, shall be considered a regular employee, relates only to casual employees and not to project employees.

The rationale for the inapplicability of this rule to project-based employees was discussed in *Dacles v. Millenium Erectors Corporation*,¹²⁵ to wit:

x x x While generally, length of service provides a fair yardstick for determining when an employee initially hired on a temporary basis becomes a permanent one, entitled to the security and benefits of regularization, this standard will not be fair, if applied to the construction industry because construction firms cannot guarantee work and funding for its payrolls beyond the life of each project as they have no control over the decisions and resources of project proponents or owners. Thus, once the project is completed it would be unjust to require the employer to maintain these employees in their payroll since this would be tantamount to making the employee a privileged retainer who collects payment from his employer for work not done, and amounts to labor coddling at the expense of management.¹²⁶

Indeed, if we consider the nature of Herma Shipyard's business, it is clear that Herma Shipyard only hires workers when it has existing contracts for shipbuilding and repair. It is not engaged in the business of building vessels for sale which would require it to continuously construct vessels for its inventory and consequently hire a number of permanent employees. In *Sandoval Shipyards, Inc. v. National Labor Relations Commission*¹²⁷ where therein petitioner was engaged in a similar kind of business, this Court opined that:

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.¹²⁸

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.

Hence, Herma Shipyard should be allowed "to reduce [its] work force into a number suited for the remaining work to be done upon the completion or proximate accomplishment of [each particular] project."¹²⁹ As for respondents, since they were assigned to a project or a phase thereof which begins and ends at

¹²⁵ Supra note 123.

¹²⁶ Id. at 431-432.

¹²⁷ 221 Phil. 369 (1985).

¹²⁸ Id. at 364.

¹²⁹ *Villa v. National Labor Relations Commission*, supra note 23 at 141.

determined or determinable times, their services were lawfully terminated upon the completion of such project or phase thereof.¹³⁰

Moreover, our examination of the records revealed other circumstances that convince us that respondents were and remained project-based employees, albeit repeatedly rehired. Contrary to their claim, respondents' employment were neither continuous and uninterrupted nor for a uniform period of one month; they were intermittent with varying durations, as well as gaps ranging from a few days to several weeks or months. These gaps coincide with the completion of a particular project and the start of a new specific and distinct project for which they were individually rehired. And for each completed project, petitioners submitted the required Establishment Employment Records to the DOLE which is a clear indicator of project employment.¹³¹ The records also show that respondents' employment had never been extended beyond the completion of each project or phase thereof for which they had been engaged.

The project employment contract is not subject to a condition.

The CA likewise erred in holding that paragraph 10 of the employment contract allowing the extension of respondents' employment violates the second requisite of project employment that the completion or termination of such project or undertaking be determined at the time of engagement of the employee. It reads:

- 10 Ang kasunduang ito ay maaaring palawigin ng mas mahabang panahon na maaaring kailanganin para sa matagumpay na pagtatapos ng mga gawa o proyektong pinagkasunduan;¹³²

To our mind, paragraph 10 is in harmony with the agreement of the parties that respondents' employment is coterminous with the particular project stated in their contract. It was placed therein to ensure the successful completion of the specific work for which respondents were hired. Thus, in case of delay or where said work is not finished within the estimated date of completion, respondents' period of employment can be extended until it is completed. In which case, the duration and nature of their employment remains the same as previously determined in the project employment contract; it is still coterminous with the particular project for which they were fully apprised of at the time of their engagement.

As to the requirement that the completion or termination of the specific project or undertaking for which respondents were hired should be determined at

¹³⁰ *Dacles v. Millenium Erectors Corporation*, supra note 123 at 428-429.

¹³¹ *Id.* at 430-431.

¹³² Records, p. 27.

the time of their engagement, we rule and so hold that it is enough that Herma Shipyard gave the approximate or target completion date in the project employment contract. Given the nature of its business and the scope of its projects which take months or even years to finish, we cannot expect Herma Shipyard to give a definite and exact completion date. It can only approximate or estimate the completion date. What is important is that the respondents were apprised at the time of their engagement that their employment is coterminous with the specific project and that should their employment be extended by virtue of paragraph 10 the purpose of the extension is only to complete the same specific project, and not to keep them employed even after the completion thereof. Put differently, paragraph 10 does not allow the parties to extend the period of respondents' employment after the completion of the specific project for which they were hired. Their employment can only be extended if that particular project, to which their employment depends, remains unfinished.

In sum, the CA erred in disregarding the project employment contracts and in concluding that respondents have become regular employees because they were performing tasks necessary and desirable to the business of Herma Shipyard and were repeatedly rehired. The Labor Arbiter and the NLRC, which have expertise in their specific and specialized jurisdiction, did not err, much less commit grave abuse of discretion in holding that respondents were project-based employees. Their uniform conclusion is supported by substantial evidence and should, therefore, be accorded not only respect, but even finality.

WHEREFORE, the instant Petition for Review on *Certiorari* is **GRANTED**. The assailed Decision dated May 30, 2013 of the Court of Appeals in CA-G.R. SP No. 118068 is **REVERSED and SET ASIDE**. The May 24, 2010 Decision of the Labor Arbiter dismissing respondents' Complaint and affirmed by the National Labor Relations Commission in its Decision dated September 7, 2010 is **REINSTATED and AFFIRMED**.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

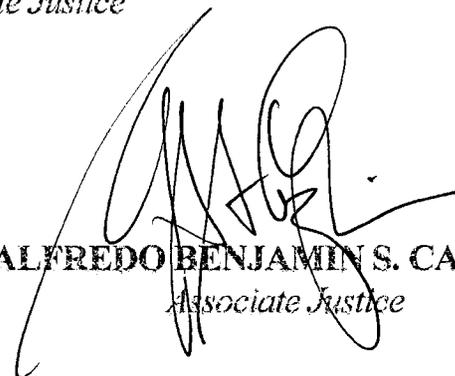
WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

W. Perlas Bernabe
ESTELA M. PERLAS-BERNABE
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice

