Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

REYMAN G. MINSOLA, Petitioner,	**G.R. No. 207613**
	Present:
- **versus** -	CARPIO, *J.*, *Chairperson*, PERALTA, PERLAS-BERNABE, CAGUIOA, and REYES, JR., *JJ.*
NEW CITY BUILDERS, INC. and ENGR. ERNEL FAJARDO, Respondents.	Promulgated: 31 JAN 2018

x---x

DECISION

REYES, JR., *J.*:

In labor cases, the courts are tasked with the delicate act of balancing the employee's right to security of tenure vis-á-vis the employer's right to freely exercise its management prerogatives. To preserve this harmony, the court recognizes the right of an employer to hire project employees, subject to the correlative obligation of sufficiently apprising the latter of the nature and terms of their employment, and paying them the wages and monetary benefits that they are lawfully entitled to.

This treats of the Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court seeking the reversal of the Decision[2] dated December 21, 2012, and Resolution[3] dated June 11, 2013,

---

[1] *Rollo*, pp. 10-35.

[2] Penned by Associate Justice Romeo F. Barza, with Associate Justices Normandie B. Pizarro and Ramon A. Cruz, concurring; id. at 52-62.

[3] Id. at 37-38.

issued by the Court of Appeals (CA) in CA-G.R. SP No. 121129, which dismissed petitioner Reyman G. Minsola's (Minsola) complaint for illegal dismissal.

The Antecedents

New City Builders, Inc. (New City) is a corporation duly organized under the laws of the Philippines engaged in the construction business, specializing in structural and design works.[4]

On December 16, 2008, New City hired Minsola as a laborer for the structural phase of its Avida Tower 3 Project (Avida 3).[5] Minsola was given a salary of Two Hundred Sixty Pesos (Php 260.00) per day.[6] The employment contract stated that the duration of Minsola's employment will last until the completion of the structural phase.[7]

Subsequently, on August 24, 2009, the structural phase of the Avida 3 was completed.[8] Thus, Minsola received a notice of termination, which stated that his employment shall be effectively terminated at the end of working hours at 5:00 p.m. on even date.

On August 25, 2009, New City re-hired Minsola as a mason for the architectural phase of the Avida 3.[9]

Meanwhile, sometime in December 2009, upon reviewing Minsola's employment record, New City noticed that Minsola had no appointment paper as a mason for the architectural phase. Consequently, New City instructed Minsola to update his employment record. However, the latter ignored New City's instructions, and continued to work without an appointment paper.

On January 20, 2010, Minsola was again summoned to the office of New City to sign his appointment paper. Minsola adamantly refused to comply with the directive. He stormed out of the office, and never reported back for work.[10]

---

4 Id. at 53.
5 Id.
6 Id. at 150.
7 Id.
8 Id. at 151.
9 Id. at 53.
10 Id. at 54.

On January 26, 2010, Minsola filed a Complaint for Illegal Dismissal, Underpayment of Salary, Non-Payment of 13th Month Pay, Separation Pay and Refund of Cash Bond.[11] In his position paper,[12] Minsola claimed that he was a regular employee of New City as he rendered work for more than one year and that his work as a laborer/mason is necessary and desirable to the former's business. He claimed that he was constructively dismissed by New City.

Ruling of the Labor Arbiter

On October 8, 2010, the Labor Arbiter (LA) rendered a Decision[13] dismissing the complaint for illegal dismissal. The LA found that Minsola was a project employee who was hired for specific projects by New City. The fact that Minsola worked for more than one year did not convert his employment status to regular. The LA stressed that the second paragraph of Article 280, which refers to the regularization of an employee who renders service for more than one year, pertains to casual employees.[14] Likewise, the LA opined that Minsola was not terminated from work. The LA noted that the records are bereft of any proof or evidence showing that Minsola was actually terminated from work. Rather, it was actually Minsola who suddenly stopped reporting after he was instructed to sign and update his employment record.[15] Thus, the LA ordered Minsola's reinstatement until the completion of the project.[16]

Anent Minsola's monetary claims, the LA awarded Two Thousand Six Hundred Fifty-Two Pesos (Php 2,652.00), as 13th month pay differential. The dispositive portion of the LA decision reads:

> WHEREFORE, premises considered, the complaint for illegal dismissal is DISMISSED for lack of merit. However, respondent NEW CITY BUILDERS, INC. is ordered to pay complainant his 13th month pay differentials in the amount of Php 2,652.00.
>
> All other claims are dismissed for want of merit.
>
> SO ORDERED.[17]

Aggrieved, Minsola filed an appeal[18] before the National Labor Relations Commission (NLRC).

---

11 Id. at 53.
12 Id. at 110-121.
13 Id. at 169-183.
14 Id. at 176.
15 Id. at 178.
16 Id. at 181.
17 Id. at 183.
18 Id. at 193-200.

Ruling of the NLRC

On April 29, 2011, the NLRC rendered a Decision[19] reversing the LA's ruling. The NLRC found that Minsola was a regular employee and was constructively dismissed when he was made to sign a project employment contract.[20] Citing the case of *Viernes v. NLRC,*[21] the NLRC concluded that Minsola became a regular employee when his services were continued beyond the original term of his project employment, without the benefit of a new contract fixing the duration of his employment. Likewise, the NLRC noted that Minsola's job as a laborer/mason was necessary and desirable to the usual business of New City.[22] Consequently, the NLRC ordered New City to reinstate Minsola and pay him full backwages from January 20, 2010, until his actual reinstatement.[23]

As for Minsola's monetary claims, the NLRC awarded the former his salary differentials, service incentive leave pay differentials and holiday pay.[24] The NLRC observed that the prevailing minimum wage rate at the time of Minsola's employment was Three Hundred Eighty-Two Pesos (Php 382.00) per day. This notwithstanding, Minsola merely received a wage of Php 260.00 per day. Hence, the NLRC awarded a salary differential of Forty-One Thousand Six Hundred Sixteen Pesos and Sixty-Four Centavos (Php 41,616.64), and a Service Incentive Leave Pay differential of Three Hundred Ten Pesos (Php 310.00).[25] In addition, the NLRC ordered the imposition of ten percent (10%) attorney's fees to the total monetary award.[26] The dispositive portion of the NLRC decision reads:

> WHEREFORE, the [LA's] Decision dated October 8, 2010 is hereby MODIFIED. In addition to the award of 13th month pay differential, [New City] is ordered to reinstate [Minsola] without loss of seniority rights and to pay him backwages (computed from January 20, 2010 up to the date of this decision), and Salary Differential (from December 16, 2008 up to January 19, 2010), Salary Incentive Leave Pay Differential, and 10% attorney's fee, to be computed by the Computation Unit (Commission), which computation shall be attached to and become part of this decision.
>
> SO ORDERED.[27]

---

19 Id. at 147-157.
20 Id. at 153.
21 448 Phil. 690, 702-703 (2003).
22 Rollo, p. 154.
23 Id.
24 Id. at 155.
25 Id.
26 Id. at 156.
27 Id.

Dissatisfied with the ruling, New City field a Motion for Reconsideration, which was denied by the NLRC in its Resolution[28] dated June 24, 2011.

Accordingly, New City filed a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court with the CA.

Ruling of the CA

On December 21, 2012, the CA reversed[29] the NLRC's decision. The CA ruled that Minsola was a project employee. The CA reasoned that Minsola was hired for specific phases in the Avida 3. He was originally hired as a laborer for the structural phase of the Avida 3. Upon the completion of the structural phase, he was re-hired in a different capacity, as a mason for the architectural phase of the Avida 3 construction. The CA observed that Minsola's tenure as a laborer was covered by an employment contract, which clearly provided that he was hired to work for a certain phase in the construction of the Avida 3, and that his term of employment will not extend beyond the completion of the same project. Likewise, the CA observed that the records are bereft of any proof showing that Minsola was constructively dismissed by New City.

Regarding the monetary awards, the CA reinstated the LA's ruling, thereby ordering the payment of Php 2,652.00, as 13th month pay differential. The dispositive portion of the assailed CA decision reads:

> WHEREFORE, the petition is GRANTED. The decision of the [NLRC] dated April 29, 2011 and its subsequent resolution dated June 24, 2011 are hereby ANNULLED and SET ASIDE. The decision of the [LA] is REINSTATED.
>
> SO ORDERED.[30]

Aggrieved, Minsola filed a Motion for Reconsideration, which was denied by the CA in its Resolution[31] dated June 11, 2013.

Undeterred, Minsola filed the instant Petition for Review on *Certiorari*[32] under Rule 45 of the Revised Rules of Court, seeking the reversal of the assailed CA decision and resolution.

---

28 Id. at 162-164.
29 Id. at 52-62.
30 Id. at 61.
31 Id. at 37-38.
32 Id. at 10-35.

The Issues

The instant legal conundrum rests on the following issues, to wit: (i) whether or not Minsola was a project employee; (ii) whether or not Minsola was constructively dismissed by New City; and (iii) whether or not Minsola is entitled to his monetary claims consisting of his salary differential, service incentive leave pay differential, holiday pay and 10% attorney's fees.[33]

Minsola claims that he is a regular employee as his work as a laborer/mason was necessary and desirable to New City's construction business. Added to this, Minsola points out that he worked for New City for more than one year, more particularly, for 13 months, thereby automatically bestowing upon him regular employment status. Although he was initially hired as a laborer, his employment in Avida 3 continued when he was re-hired as a mason, without the execution of another contract fixing the term of his employment. Minsola further asserts that New City's act of forcing him to sign an employment contract is a scheme to preclude him from acquiring permanent employment status.

In addition, Minsola prays for the payment of his salary differentials, 13th month pay differential, service incentive leave pay differential, holiday pay and attorney's fees. He asserts that he received a meager daily wage of Php 260.00, which was far below the prevailing minimum wage rate of Php 382.00 per day. As such, he is entitled to receive differentials for his salary, 13th month pay and service incentive leave pay. Moreover, Minsola claims that New City failed to present proof showing that he was given his holiday pay. Lastly, Minsola asserts that he is entitled to an award of attorney's fees, as he was forced to litigate and defend his rights against his illegal dismissal and the unlawful withholding of his wages.

On the other hand, New City counters that Minsola was hired as a project employee to work for the structural phase, and thereafter, the architectural phase of the Avida 3. His work as a laborer was completely different from his tasks as a mason.[34] In this regard, his subsequent re-hiring cannot be construed as a continuation of his former employment. Furthermore, the simple fact that his employment has gone beyond one year does not automatically convert his employment status. Finally, New City maintains that Minsola failed to present any proof to substantiate his claim of illegal dismissal. It did not dismiss Minsola, nor did it prevent the latter from reporting for work.[35]

---

[33] Id. at 18-19.
[34] Id. at 220.
[35] Id. at 225.

Ruling of the Court

The petition is partly impressed with merit.

As a general rule, the Court is not a trier of facts and does not normally embark in the evaluation of evidence adduced before the lower tribunals. However, this rule allows for exceptions. One of these is when the findings of fact of the quasi-judicial agencies concerned, are conflicting or contradictory with those of the CA. When there is a variance in the factual findings, it is incumbent upon the Court to re-examine the facts once again.[36]

Minsola is a Project Employee of New City

Essentially, the Labor Code classifies four (4) kinds of employees, namely: (i) regular employees or those who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; (ii) project employees or those 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 employees' engagement; (c) seasonal employees or those who perform services which are seasonal in nature, and whose employment lasts during the duration of the season; and (d) casual employees or those who are not regular, project, or seasonal employees. Jurisprudence has added a fifth kind — fixed-term employees or those hired only for a definite period of time.[37]

Focusing on the first two kinds of employment, Article 294 of the Labor Code, as amended, distinguishes regular from project-based employment as follows:

> **Article 294**. *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 services to be performed is seasonal in nature and the employment is for the duration of the season.

---

[36] *General Milling Corp. v. Viajar*, 702 Phil. 532, 540 (2013).

[37] *GMA Network, Inc. v. Pabriga, et al.*, 722 Phil. 161, 169 (2013), citing *Brent School, Inc. v. Zamora*, 260 Phil. 747 (1990).

Reyes

Parenthetically, in a project-based employment, the employee is assigned to a particular project or phase, which begins and ends at a determined or determinable time. Consequently, the services of the project employee may be lawfully terminated upon the completion of such project or phase.[38] For employment to be regarded as project-based, it is incumbent upon the employer to prove that (i) the employee was hired to carry out a specific project or undertaking, and (ii) the employee was notified of the duration and scope of the project.[39] In order to safeguard the rights of workers against the arbitrary use of the word "project" as a means to prevent employees from attaining regular status, employers must prove that the duration and scope of the employment were specified at the time the employees were engaged, and prove the existence of the project.[40]

In the case at bar, Minsola was hired by New City Builders to perform work for two different phases in the construction of the Avida 3. The records show that he was hired as a laborer for the structural phase of the Avida 3 from December 16, 2008 until August 24, 2009. Upon the completion of the structural phase, he was again employed on August 25, 2009, by New City, this time for the architectural phase of the same project. There is no quibbling that Minsola was adequately informed of his employment status (as a project employee) at the time of his engagement. This is clearly substantiated by the latter's employment contracts, stating that: (i) he was hired as a project employee; and (ii) his employment was for the indicated starting dates therein, and will end on the completion of the project.[41] The said contract sufficiently apprised Minsola that his security of tenure with New City would only last as long as the specific phase for which he was assigned.

Notwithstanding the notice regarding the term of his employment, Minsola avers that his continuous work as a laborer and mason, coupled with the fact that he performed tasks that are necessary and vital to New City's business, made him a regular employee of the latter.

The Court is not persuaded.

In *Gadia v. Sykes Asia, Inc.,*[42] the Court explained that the "projects" wherein the project employee is hired may consist of "(i) 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

---

[38] *Dacles v. Millenium Erectors Corp., et al.*, 763 Phil. 550, 558-559 (2015), citing *Omni Hauling Services, Inc., et al. v. Bon, et al.*, 742 Phil. 335, 343-344 (2014).

[39] *Dacles v. Millenium Erectors Corp., et al.*, id.

[40] Id.

[41] *Rollo*, p. 58.

[42] 752 Phil. 413, 421-422 (2015).

Meyer

the other undertakings of the company; or (ii) a particular job or undertaking that is not within the regular business of the corporation."[43]

Accordingly, it is not uncommon for a construction firm to hire project employees to perform work necessary and vital for its business. Suffice it to say, in William *Uy Construction Corp. and/or Uy, et al. v. Trinidad,*[44] the Court acknowledged the unique characteristic of the construction industry and emphasized that the laborer's performance of work that is necessary and vital to the employer's construction business, and the former's repeated rehiring, do not automatically lead to regularization, *viz.*:

> **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. But this standard <u>will not be fair,</u> if applied to the construction industry, simply because construction firms cannot guarantee work and funding for its payrolls beyond the life of each project.** And getting projects is not a matter of course. Construction companies have no control over the decisions and resources of project proponents or owners. There is no construction company that does not wish it has such control but the reality, understood by construction workers, is that work depended on decisions and developments over which construction companies have no say.
>
> For this reason, the Court held in *Caseres v. Universal Robina Sugar Milling Corporation* that **the repeated and successive rehiring of project employees do not qualify them as regular employees, as length of service is not the controlling determinant of the employment tenure of a project employee, but whether the employment has been fixed for a specific project or undertaking, its completion has been determined at the time of the engagement of the employee.**[45] (Citations omitted and emphasis and underscoring Ours)

Additionally, in *Malicdem, et al. v. Marulas Industrial Corporation, et al.,*[46] the Court took judicial notice of the fact that in the construction industry, an employee's work depends on the availability of projects. The employee's tenure "is not permanent but coterminous with the work to which he is assigned."[47] Consequently, it would be extremely burdensome for the employer, who depends on the availability of projects, to carry the employee on a permanent status and pay him wages even if there are no projects for him to work on. An employer cannot be forced to maintain the employees in the payroll, even after the completion of the project.[48] "To do so would make the employee a privileged retainer who collects payment

---

43 Id. at 421, citing *Omni Hauling Services, Inc., et al. v. Bon, et al.*, supra note 38, at 344.
44 629 Phil. 185, 189 (2010).
45 Id. at 190.
46 728 Phil. 264 (2014).
47 Id. at 275
48 Id.

from his employer for work not done. This is extremely unfair to the employers and amounts to labor coddling at the expense of management."[49]

Accordingly, it is all too apparent that the employee's length of service and repeated re-hiring constitute an unfair yardstick for determining regular employment in the construction industry. Thus, Minsola's rendition of more than one year of service and his repeated re-hiring are not badges of regularization.

Minsola was not constructively dismissed by New City

Minsola contends that New City constructively dismissed him, when he was allegedly forced to sign an employment contract, termination report and other documents.

The Court is not persuaded.

In labor law, constructive dismissal, also known as a dismissal in disguise, exists "where there is cessation of work, because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay" and other benefits. There must be an act amounting to dismissal but made to appear as if it were not. It may likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment."[50]

In the case at bar, Minsola failed to advert to any particular act showing that he was actually dismissed or terminated from his employment. Neither did he allege that his continued employment with New City was rendered impossible, unreasonable or unlikely; nor was he demoted, nor made to suffer from any act of discrimination or disdain.[51] Neither was there any single allegation that he was prevented or barred from returning to work. On the contrary, it was actually Minsola who stormed out of New City's office and refused to report for work. It cannot be gainsaid that there is no illegal dismissal to speak of where the employee was not notified that he had been dismissed from employment nor was he prevented from returning to his work.

---

[49] Id.

[50] *Verdadero v. Barney Autolines Group of Companies Transport, Inc., et al.*, 693 Phil. 646, 656 (2012), citing *Morales v. Harbour Centre Port Terminal, Inc.*, 680 Phil. 112, 120-121 (2012).

[51] *Rollo*, p. 102.

Minsola is entitled to Salary Differentials, 13th Month Pay Differentials, Service Incentive Leave Pay Differentials, Holiday Pay and Attorney's Fees

Notably, in determining the employee's entitlement to monetary claims, the burden of proof is shifted from the employer or the employee, depending on the monetary claim sought.

In claims for payment of salary differential, service incentive leave, holiday pay and 13th month pay, the burden rests on the employer to prove payment. This standard follows the basic rule that in all illegal dismissal cases the burden rests on the defendant to prove payment rather than on the plaintiff to prove non-payment. This likewise stems from the fact that all pertinent personnel files, payrolls, records, remittances and other similar documents – which will show that the differentials, service incentive leave and other claims of workers have been paid – are not in the possession of the worker but are in the custody and control of the employer.[52]

On the other hand, for overtime pay, premium pays for holidays and rest days, the burden is shifted on the employee, as these monetary claims are not incurred in the normal course of business.[53] It is thus incumbent upon the employee to first prove that he actually rendered service in excess of the regular eight working hours a day, and that he in fact worked on holidays and rest days.[54]

In the instant case, the records show that Minsola was given a daily wage of Php 260.00, as shown by his employment contract dated December 16, 2008. It must be noted that this amount falls below the prevailing minimum wage of Php 382.00, mandated by Wage Order No. NCR-15, effective August 28, 2008 to June 30, 2010. Clearly, Minsola is entitled to salary differentials from December 16, 2008 until January 19, 2010, in the amount of Php 41,616.64.[55] Likewise, Minsola is entitled to service incentive leave pay differentials in the amount of Php 310.00, as the amount of service incentive leave pay he received on December 19, 2009 was only Php 1,600.00, instead of Php 1,900.[56] He is also entitled to a 13th month pay differential of Php 2,652.00.[57]

---

52 *Loon, et al. v. Power Master, Inc., et al.*, 723 Phil. 515, 531-532 (2013).

53 Id. at 532, citing *Lagatic v. NLRC*, 349 Phil. 172, 185-186 (1998).

54 Id.

55 He is therefore entitled to salary differentials from December 16, 2008 until January 19, 2010 in the amount of Php 41,616.64 (Php 382.00 = Php 122.00 x 26 days x 13.12 months).

56 *Rollo*, p. 155.

57 Id.

Moreover, Minsola is entitled to a holiday pay of Php 5,340.00 for two unworked legal holidays in December 2008, 11 unworked legal holidays in 2009 and one legal holiday in January 2010, as New City failed to present the payrolls that would show that Minsola's salary was inclusive of holiday pay.[58]

On the other hand, Minsola's claims for premium pay for holiday and rest day, as well as night shift differential pay are denied for lack of factual basis, as Minsola failed to specify the dates when he worked during special days, or rest days, or between 10:00 p.m. and 6:00 a.m.[59]

Finally, Minsola should likewise be awarded attorney's fees, as the instant case includes a claim for unlawfully withheld wages.[60]

All told, the Court affirms the right of an employer to hire project employees for as long as the latter are sufficiently apprised of the nature and term of their employment. New City was not remiss in informing Minsola of his limited tenure as a project employee. However, New City failed to pay Minsola the proper amount of wages due him. Thus, a modification of the CA decision as to the monetary awards is in order.

WHEREFORE, premises considered, the petition is partly granted. The Decision dated December 21, 2012 of the Court of Appeals in CA-G.R. SP No. 121129, is **modified** by awarding petitioner Reyman G. Minsola his salary differentials, service incentive leave pay differentials, holiday pay, and ten percent attorney's fees, in addition to his 13th month pay differential awarded by the appellate court. The Labor Arbiter is ordered to prepare a comprehensive accounting of all monetary claims pursuant to this Court's ruling. The total amount shall earn legal interest of six percent (6%) *per annum* from the finality of this Decision until full satisfaction of the obligation.

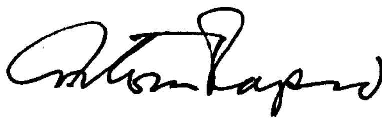
SO ORDERED.

ANDRES B. REYES, JR.
Associate Justice

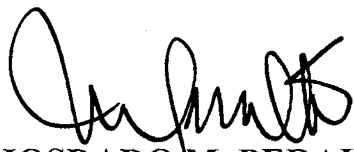
---

58 Id.
59 Id.
60 LABOR CODE OF THE PHILIPPINES, Article 111.

WE CONCUR:

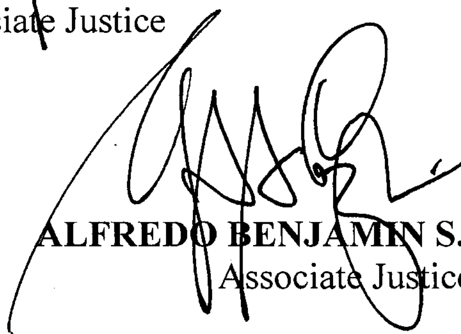


ANTONIO T. CARPIO
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice

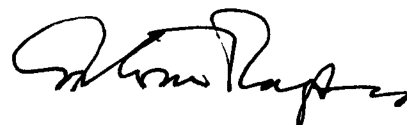
ESTELA M. PERLAS-BERNABE
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ATTESTATION

I attest 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.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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