Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

FREDDIE B. LAURENTE,
Petitioner,

-versus-

HELENAR CONSTRUCTION and JOEL ARGARIN,
Respondents.

G.R. No. 243812

Present:

PERLAS-BERNABE, *S.A.J.*,
Chairperson,
LAZARO-JAVIER,
LOPEZ, M.,
ROSARIO, and
LOPEZ, J.,* *JJ.*

Promulgated:

JUL 07 2021

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DECISION

M. LOPEZ, *J.*:

The regularity of employment and the validity of dismissal are the main issues in this petition for review on *certiorari*[1] assailing the Court of Appeals' (CA) Decision[2] dated May 25, 2018 and Resolution dated December 14, 2018 in CA-G.R. SP No. 144642.

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* Designated as additional member per Special Order No. 2822 dated April 7, 2021.
1 *Rollo*, pp. 12-36.
2 Id. at 38-49.

ANTECEDENTS

On November 9, 2014, petitioner Freddie B. Laurente (Freddie) filed a complaint for Illegal Dismissal with Money Claims against respondents Helenar Construction and its registered owner Joel Argarin (respondents) before the Labor Arbiter (LA). Allegedly, Freddie is a regular employee doing work that is necessary and desirable for respondents' construction business. Specifically, Freddie continuously performed tasks as a painter since April 2012 in respondents' various project locations, namely: (a) Binondo, Manila from April 2012 to May 2012; (b) Buendia, Makati from May 2012 to July 2012; and (c) Little Baguio Terraces, San Juan Manila from July 2012 until the termination of his service in November 2014. Freddie narrated that on October 24, 2014, respondents' foreman William Bragais (William) required him to sign a labor contract for a period of three (3) months with a clause stating that his employment would be renewable *"depending on the evaluation of the site engineer and foreman,"* to wit:

> LABOR CONTRACT para sa PROYEKTONG
> LITTLE BAGUIO TERRACES
> N. Domingo San Juan, Metro Manila
>
> Ang kontratang ito ay para sa nasabing proyekto lamang na nilagdaan at pinagkasunduan ngayong ika-___ ng ___ taong 2014 sa lungsod/munisipalidad ng _____ sa pagitan ni _____ (ang unang partido) bilang "subcontractor of painting" at _____ (ikalawang partido), Pilipino at nasa wastong edad na nakatira sa _____. Inuupahan ng unang partido ang ikalawang partido bilang _____ sa naturang proyekto ayon sa mga sumusunod na termino at kondisyon:
>
> x x x x
>
> **4. Ang unang partido ay may kapangyarihan na tanggalin ang ikalawang partido bago matapos ang proyekto kung lalabag sa mga nakasaad na patakaran na napakaloob sa kontratang ito.**
>
> **5. Ang ikalawang partido ay magtratrabaho ng walong (8) oras bawat araw.**
>
> x x x x
>
> **8. Bisa ng kontrata: Tatlong (3) buwan lamang at maaring "marenew" depende sa ebalwasyon ng site engineer at foreman.**
> (Emphases Supplied)

Yet, Freddie refused to sign the contract because it would violate his security of tenure. On November 7, 2014, respondents' project-in-charge, Engineer Camille Palattao, barred Freddie from entering the construction site.[3] On the other hand, respondents countered that Freddie is not their regular

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[3] Id. at 82-83.

employee. Rather, it was their subcontractor, William, who recruited Freddie as a painter for the project. Moreover, it is a practice in the construction industry that subcontractors are hired for the flooring, ceiling, painting, electrical and other related services. Respondents likewise claimed that Freddie refused to sign the labor contract that they prepared and unjustifiably stopped reporting for work.[4]

On July 6, 2015, the LA held that Freddie is an employee of respondents and was illegally dismissed from service. It also ruled that Freddie was a regular employee, not a project employee, and noted that it was respondents who prepared the labor contract and not William. Furthermore, respondents and its alleged subcontractor did not report to the Department of Labor and Employment (DOLE) Freddie's termination of work due to completion of the projects. Worse, Freddie has no project employment contracts. At any rate, Freddie performed work that is necessary and desirable to respondents' business. Consequently, the LA awarded Freddie backwages, separation pay, service incentive leave pay, and 13th month pay,[5] *viz.*:

> It is inescapable, however, that neither respondents nor the Bragais brothers presented any termination report x x x with the Department of Labor and Employment (DOLE). Department Order No. 19 x x x explicitly requires employers to submit a written report with the nearest public employment office, every time a worker's employment was terminated due to project completion.
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> Such failure to comply with said requirement is an indication that complainant was not a project employee. At any rate, complainant's identification card x x x shows respondent Helenar Construction's name and logo, and identifies the complainant as its employee with the position of a painter.
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> While the identification card, by itself, does not substantially [prove] the existence of [an] employer-employee relationship between parties, respondents explicitly admitted that they were the ones who prepared complainant's employment contract, to wit: *"Sometime in September 2014, complainant/painter Freddie Laurente was being asked to sign the employment contract prepared by the company but he arrogantly refused to sign it* x x x."
>
> x x x x
>
> In the instant case, complainant was not informed of the nature, scope, and duration of his employment. In fact, there is no evidence of any employment contract which could establish whether complainant's employment was for a specific project only.
>
> More importantly, complainant performed works which are necessary or desirable to the business of respondents. As a painter,

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4 Id. at 111-112.
5 Id. at 221-228.

complainant's duty is relevant to the core of respondent's business.

x x x x

WHEREFORE, foregoing considered, complainant is hereby found illegally dismissed. Respondents Helenar Construction and Joel Argarin, being the real employers of complainant, are ordered to pay the sum of Php177.294.40 representing his separation pay with backwages, service incentive leave pay and 13th month pay.

All other claims are dismissed for lack of basis.

x x x x

SO ORDERED.

Aggrieved, respondents appealed to the National Labor Relations Commission (NLRC). On October 26, 2015, the NLRC reversed the LA's findings and declared that no employment relationship existed between Freddie and respondents. Applying the four-fold tests, the NLRC ruled that William is the true employer of Freddie. First, the unsigned contract bears the name of "William Bragais" and identifies him as the employer. Second, the cash vouchers show that the Bragais brothers are the ones paying Freddie's weekly wages. Third, the contract shows that William reserved to himself the right to dismiss his painters if they have violated the terms of the labor contract. Finally, respondents hired subcontractors for specific works such as painting,[6] thus:

WHEREFORE, premises considered, this instant Appeal is GRANTED. The assailed Decision dated 6 July 2015 is REVERSED and SET ASIDE. However, Respondents-Appellants are ORDERED to pay Complainant-Appellee his remaining five-day salary in the total amount of Php2,330.00.

SO ORDERED.

Unsuccessful at a reconsideration, Freddie elevated the case to the CA through a petition for *certiorari* docketed as CA-G.R. SP No. 144642. On May 25, 2018, the CA affirmed the NLRC's judgment and explained that "*the fact that the labor contract was unsigned is of no moment*,"[7] thus:

A perusal of the "Labor Contract para sa Proyektong Little Baguio Terraces" reveals that William hired several painters for the said project. **The first paragraph of the contract explains that Laurente was hired as a painter for the said projeet. The duration of the project has also been determined aceording to paragraph 8 of the said document expressly stating that, "Bisa ng kontrata: Tatlong (3) buwan lamang at maaaring**

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6 Id. at 258-267.

7 Id. at 38-49. Penned by Associate Justice Zenaida T. Galapate-Laguilles, with the concurrence of Associate Justices Remedios A. Salazar Fernando and Germano Fransisco D. Legaspi.

"marenew" depende sa ebalwasyon ng site engineer at foreman." It is clear at the outset that Laurente was well informed of the nature of his work and the duration of the project. The fact that the labor contract was unsigned is of no moment. It is undisputed that Laurente nonetheless performed his task in accordance with the contract.

x x x x

Also, the stipulations, clauses, and terms and conditions enumerated in the "Labor Contract para sa Proyektong Little Baguio Terraces" [show] that **William has the prerogative to terminate his employees as shown by the following statement: "ang unang partido ay may kapangyarihan na tanggalin ang ikalawang partido bago matapos ang proyekto kung lalabag sa mga nakasaad na patakaran na napakaloob sa kontratang ito."** Glaringly, it cannot be gainsaid that the Bragais brothers have the power to dismiss Laurente.

x x x x

x x x The labor contract, xxx shows that William had control over the work of Laurente. x x x **"Ang ikalawang partido ay magtratrabaho ng walong oras (8) oras bawat araw."** As subcontractors, William was responsible for the completion of the assigned task with Raul, his foreman who supervised the manners and means of the work without any interference of Helenar. x x x.

x x x x

Based on the foregoing discussion and as aptly held by the NLRC, Laurente failed to establish that Helenar Construction is his employer. The NLRC correctly ruled that "there is no reason to proceed to the [next] issue of whether or not Complainant-Appellee was illegally dismissed by Respondents-Appellants. Not being his employers, it follows that Respondent-Appellants could not have dismissed Complainant-Appellee. His cause of action on this matter is with his own cousins, the Bragais brother who are unfortunately not impleaded as parties in the Complaint.

Having thus ruled, We see no reason to discuss the issue of Helenar's non-submission of a termination report to the DOLE as required under Department Order No. 19.

WHEREFORE, the petition is DISMISSED. The Decision dated October 26, 2015 and the December 28, 2015 Resolution of the public respondent National Labor Relations Commission ("NLRC") in NLRC NCR No. 11-14197-14 and NLRC LAC No. 09-002401-15 dismissing the case filed by petitioner Freddie B. Laurente ("Laurente"), against private respondent Helenar Construction ("Helenar") and Joel Argarin ("Argarin") are hereby AFFIRMED.

SO ORDERED. (Emphases Supplied)

Freddie sought reconsideration but was denied.[8] Hence, this recourse.[9] Freddie maintains that he is a regular employee of respondents and was illegally terminated. As such, Freddie is entitled to his monetary claims.

RULING

The petition is meritorious.

At the outset, we stress that what determines regular employment is not the employment contract, written or otherwise, but the nature of the job.[10] The applicable test is the reasonable connection between the particular activity performed by the employee in relation to the usual business of the employer.[11] Apropos is Article 280 of the Labor Code, to wit:

> 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 services to be performed is seasonal in nature and the employment is for the duration of the season. (Emphasis Supplied)

Clearly, the standard supplied by the law itself is whether the work undertaken is necessary or desirable in the usual business or trade of the employer. This can be assessed by looking into the nature of the services rendered and its relation to the general scheme under which the business is pursued in the usual course.[12] In this case, respondents are principally engaged in the construction business. Freddie, as a painter, is tasked with preparing, sanding and painting various construction works. Inarguably, the nature of Freddie's job required him to perform activities, which were deemed necessary in the usual business of respondents. As the LA aptly observed, Freddie's duty is relevant to the core of respondents' business. Indeed, Freddie's continuous rehiring to different construction projects of respondents from April 2012 until his termination in November 2014 attests to the desirability of his services.

Contrary to the CA and the NLRC's findings, Freddie's nature of work as usually necessary and desirable disqualifies it outrightly as a specific

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8 Id. at 51-52.
9 Id. at 12-33.
10 *A.M. Oreta and Co., Inc v. NLRC*, 257 Phil. 224 (1989).
11 *De Leon v. NLRC*, 257 Phil. 626 (1989).
12 *Magsalin v. National Organization of Working Men*, 451 Phil. 254 (2003).

undertaking.[13] At any rate, respondents as well as the supposed subcontractor did not comply with the requirements of the law with respect to the hiring of project employees. It bears emphasis that the services of a project employee may be terminated upon the end or completion of the project or a phase thereof for which he was hired. [14] The principal test in determining project-based employment is whether he was assigned to carry out a specific project or undertaking, the duration and scope of which was specified at, and made known to him, at the time of his engagement.[15] It is crucial that the worker was informed of his status as a project employee at the time of hiring and that the period of his employment must be knowingly and voluntarily agreed upon by the parties, without any force, duress, or improper pressure vitiating consent.[16]

In this case, there is no substantial evidence that Freddie was adequately informed of his status as a project employee at least at the time of his engagement. Also, Freddie was not fully apprised of the duration and scope of the projects. At most, the CA and the NLRC heavily relied on the provisions of the unsigned labor contract to characterize Freddie as a project employee. However, respondents did not offer any plausible reason why their supposed subcontractor will require Freddie to sign the contract only on October 24, 2014, or way beyond the date Freddie started reporting for work. Worse, Freddie has no employment contracts for his past projects in 2012. Evidently, the labor contract was an afterthought designed to deny Freddie the benefits of a regular employee, particularly, his security of tenure. On this point, the Court reiterates that a worker shall be presumed a regular employee absent clear agreement showing that he was properly informed of the nature of his employment.[17] Thus, the LA correctly held that Freddie is a regular employee of respondents.

As a regular employee, Freddie may be dismissed subject to both substantive and procedural limitations. This means that the dismissal must be for a just or authorized cause provided in the Labor Code, and the employee must be accorded due process, basic of which is the opportunity to be heard and to defend himself. Anent the first requirement, respondents failed to prove a valid cause for dismissing Freddie. There is no proof that Freddie unjustifiably stopped reporting for work. What is extant from the facts is that Freddie refused to sign the belated labor contract that respondents prepared. This irked respondents, their foreman and engineer. Thereafter, Freddie was barred from the construction site. Similarly, the dismissal was attended with procedural infirmity. There was no administrative investigation conducted or prior notices served upon Freddie. In termination disputes, it is settled that the burden of proof is always on the employer to prove that the dismissal was for a valid cause,[18] failure to do so would necessarily mean that the dismissal is

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13 *Beta Electric Corporation v. NLRC*, 261 Phil. 496 (1990).

14 Article 280 (now Article 295) of the Labor Code.

15 *Pasos v. Philippine National Labor Construction Corporation*, 713 Phil. 416 (2013).

16 *Jamias v. NLRC*, 783 Phil. 16 (2016).

17 *Regala v. Manila Hotel Corp.*, G.R. No. 204684, October 5, 2020.

18 *Mendoza v. NLRC*, 369 Phil. 1113 (1999); *Austria v. NLRC*, 369 Phil. 557 (1999); and *Maranaw Hotels*

not justified.[19] Likewise, evidence must be clear, convincing and free from any inference that the prerogative to dismiss an employee was abused and unjustly used by the employer to further any vindictive end.[20]

In sum, the Court affirms the findings of the LA that Freddie is illegally dismissed, and on account of the strained relationship between the parties, the more equitable disposition of the case would be an award of separation pay in lieu of reinstatement.[21] The award of backwages is also proper. Suffice it to say that backwages is a relief given to illegally dismissed employees. The LA likewise correctly ordered respondents to give Freddie his service incentive leave pay and 13th month pay absent proof of payment. In addition, the grant of 10% of the total monetary award as attorney's fees is warranted since Freddie was forced to litigate and incur expenses to protect his interests.[22] Finally, the total award shall earn interest at the rate of 6% per annum computed from the date of finality of this Decision until it is fully paid.[23]

FOR THESE REASONS, the petition is **GRANTED**. The Court of Appeals' Decision dated May 25, 2018 and Resolution dated December 14, 2018 in CA-G.R. SP No. 144642 are **REVERSED**. The Labor Arbiter's Decision dated July 6, 2015 is **REINSTATED** with **MODIFICATIONS** in that petitioner Freddie B. Laurente is granted 10% of the total monetary award as attorney's fees. The total monetary award shall then earn interest at the rate of 6% per annum from the date of finality of this Decision until it is fully paid.

SO ORDERED.

MARIO V. LOPEZ
Associate Justice

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and Resort Corporation v. NLRC, 363 Phil. 163 (1999).

19 *Harborview Restaurant v. Labro*, 605 Phil. 349 (2009).

20 *St. Michael's Institute v. Santos*, 422 Phil. 723 (2001).

21 *Jardine Davies, Inc. v. NLRC*, 370 Phil. 310 (1999); and *Lopez v. NLRC*, 358 Phil. 141 (1998).

22 *Phil-Man Marine Agency, Inc. v. Dedace*, Jr., 835 Phil. 536 (2018).

23 *Dusol v. Lazo*, G.R. No. 200555, January 20, 2021, citing *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Senior Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
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.

ESTELA M. PERLAS-BERNABE
Senior 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.

ALEXANDER G. GESMUNDO
Chief Justice