Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

LEONIL MANALLO SANTOR, JOSEPH SANGALANG, PAUL GIRAY, RODOLFO CEÑIR, SR., JERSON C. VELASCO, LEO HADAP, Petitioners,	**G.R. No. 234691** Present: LEONEN, *J., Chairperson,* LAZARO-JAVIER, LOPEZ, M., LOPEZ, J., and KHO, JR., *JJ.*
-versus-	
ARLO ALUMINUM COMP., INC. and GALO Y. LIM, JR., Respondents.	**Promulgated:** DEC 07 2022

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DECISION

LEONEN, *J.*:

While it is a well-established rule that labor laws are to be construed in favor of the laborer, the interests of the employee and the employer must both be considered in the courts' rulings. Project employment has been duly constituted in both law and jurisprudence. This is especially true for construction companies whose work is contingent on securing contracts with clients. Accordingly, when the company complies with the requirements laid down for project employment, the valid dismissal of project employees will be upheld.

This Court resolves the Petition for Review on *Certiorari*[1] assailing the Court of Appeals Decision,[2] and the Court of Appeals Resolution,[3]

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1 *Rollo*, pp. 9–18. Filed under Rule 45 of the Rules of Court.

2 Id. at 184–200. The June 29, 2017 Decision in CA-G.R. SP No. 145622 was penned by Associate Justice Fernanda Lampas Peralta and concurred with by Associate Justices Jane Aurora C. Lantion and Victoria Isabel A. Paredes of the Former Fifth Division, Court of Appeals, Manila.

which nullified the National Labor Relations Commission Decision[4] and reinstated the labor arbiter's Decision[5] dismissing the petitioners' complaint and awarding them prorated 13th month pay.[6]

Arlo Aluminum Company, Inc. (Arlo Aluminum) is a domestic corporation engaged in fabricating customized aluminum moldings for construction companies.[7]

Arlo Aluminum hired the following employees at a per-project basis: Joseph M. Sangalang (Sangalang), Leonil M. Santor (Santor), Paul O. Giray (Giray), Rodolfo C. Ceñir, Sr.[8] (Ceñir), Jerson C. Velasco (Velasco), and Leo C. Hadap (Hadap). Below are the specific projects each were assigned to, the period of each project, and the functions they performed:[9]

Joseph M. Sangalang, *survey aide*	
Sonata project	May 25, 2011 to January 27, 2014
BDO project	May 28, 2014 to November 27, 2014

Leonil M. Santor, *fabricator*	
Texas Instruments Project	September 5, 2008 to May 5, 2009
Trag-3 project	August 6, 2009 to November 8, 2010
Sonata project	February 9, 2011 to June 8, 2012
8 Adriatico project	December 9, 2012 to December 8, 2013
The Grove project	March 9, 2014 to December 8, 2014

Paul O. Giray, *helper*	
Texas Instruments Project	September 6, 2008 to February 6, 2009
East of Galleria project	July 7, 2009 to December 6, 2009
Trag-3 project	May 6, 2010 to October 5, 2010
One Rockwell project	March 6, 2011 to August 5, 2011
Gateway project	January 6, 2012 to June 5, 2012
RCBC project	November 6, 2012 to April 5, 2013
Richmonde Tower project	February 6, 2014 to December 5, 2014

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3 Id. at 231–232. The October 10, 2017 Resolution was penned by was penned by Associate Justice Fernanda Lampas Peralta and concurred with by Associate Justices Jane Aurora C. Lanton and Victoria Isabel A. Paredes of the of the Former Fifth Division, Court of Appeals, Manila.

4 Id. at 705–714. The December 29, 2015 Decision was penned by Commissioner Isabel G. Panganiban-Ortiguerra and concurred with by Commissioner Nieves E. Vivar-De Castro and Presiding Commissioner Joseph Gerardo E. Mabilog of the Sixth Division, National Labor Relations Commission, Quezon City.

5 Id. at 1244–1255. The July 14, 2015 Decision was penned by Labor Arbiter Lilia S. Savari.

6 Id. at 9.

7 Id. at 185.

8 Cenir in some parts of the *rollo*.

9 *Rollo*, pp. 185–187 & 263–265. In p. 186 of the rollo, Giray was assigned from February 6, 2014 in the Richmonde Tower project. On p. 264, Giray was assigned to the same project from September 6, 2013.

Rodolfo C. Ceñir, Sr., *helper*	
Entrata project	March 3, 2011 to August 2, 2011
One Central project	January 3, 2012 to June 2, 2012
RCBC project	November 3, 2012 to April 2, 2013
Richmonde Tower project	September 3, 2012 to December 2, 2014

Leo C. Hadap, *fabricator*	
One Central project	January 3, 2012 to June 2, 2012
RCBC project	September 3, 2012 to December 2, 2013
Unilab project	March 3, 2014 to December 2, 2014

Jerson C. Velasco, *helper*	
One Rockwell project	August 2, 2011 to November 1, 2011
Belle Grande project	June 2, 2012 to November 1, 2012
Fairview Terraces project	April 2, 2013 to September 1, 2013
Eton Centris project	February 2, 2014 to December 1, 2014

On November 2014, Sangalang was terminated from employment. Santor, Giray, Ceñir, Velasco, and Hadap were likewise dismissed on December 2014.[10]

On January 7, 2015, Sangalang, Santor, Giray, Ceñir, Velasco, and Hadap (collectively, "employees") filed before the labor arbiter a Complaint for unfair labor practice, union busting, reinstatement, illegal dismissal, nonpayment of service incentive leave and 13th month pay, regularization, moral and exemplary damages, and attorney's fees. Alleging that they were regular employees,[11] they claimed in their Position Paper that they had been working for Arlo Aluminum for over a year when they were removed from employment. They asserted that they were illegally dismissed before the assigned projects expired due to their membership with the newly formed worker's union.[12]

Arlo Aluminum, in its Position Paper, stated that the employees were hired as project employees with the specific duration and nature of their employment made known to them. It explained that their employment was coterminous with the completion of the project or phase thereof that they

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10 Id. at 187.
11 Id. at 652.
12 Id. at 247.

were assigned to.[13] They further stated that the employees' claim of union busting had no factual basis.[14]

On July 14, 2015, the Labor Arbiter Lilia S. Savari dismissed the employees' Complaint. The labor arbiter found that the employees were project employees who were terminated from employment because their project contracts had ended.[15] The dispositive portion of the Decision[16] reads:

> WHEREFORE, a Decision is hereby rendered DISMISSING the case for lack of merit. However, Respondents are hereby ordered to pay Complainants their pro-rated 13th-month pay upon clearance.
>
> SO ORDERED.

The employees filed a Memorandum of Partial Appeal with the National Labor Relations Commission, arguing that the labor arbiter erred in declaring them project employees when they were regular employees who performed necessary work in Arlo Aluminum's business.[17]

Because of this, in its December 29, 2015 Decision,[18] the National Labor Relations Commission reversed the labor arbiter's Decision. It stated that Arlo Aluminum failed to prove that the employees knew of the duration and scope of the projects for which they were engaged, making them regular employees who were illegally dismissed.[19] It ordered their reinstatement and ordered that they be paid backwages and prorated 13th month pay.[20] The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, the appeal is hereby GRANTED. Complainants are declared illegally dismissed from employment. In addition to the award of 13th month pay granted by the Labor Arbiter, respondent Arlo Aluminum Company, Inc. is hereby ordered to reinstate complainants Leonil M. Santor, Joseph M. Sangalang, Paul O. Giray, Rodolfo C. Ceñir, Sr., Jerson C. Velasco, and Leo Hadap to their former or equivalent positions without loss of seniority rights and other privileges, and to pay the latter their full backwages computed from the date of their illegal dismissal until actual reinstatement.
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> SO ORDERED.

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13 Id. at 260
14 Id. at 267.
15 Id. at 188.
16 Id. at 651–663. The Decision was penned by Labor Arbiter Lilia S. Savari.
17 Id. at 665
18 Id. at 705–714. The Decision was penned by Commissioner Isabel G. Panganiban-Ortiguerra and concurred with by Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Nieves Vivar-De Castro.
19 Id. at 713.
20 Id. at 189.

Arlo Aluminum filed a Motion for Reconsideration,[21] but it was denied on February 29, 2016.[22] Aggrieved, the company filed a Petition for *Certiorari* before the Court of Appeals, alleging that the National Labor Relations Commission gravely abused its discretion in finding that the employees were regular employees when their employment contracts specified the nature and duration of the projects for which they were engaged.[23]

The Court of Appeals, in its June 29, 2017 Decision, granted Arlo Aluminum's Petition.[24] Its dispositive portion reads:

> WHEREFORE, the Decision dated December 29, 2015 and Resolution dated February 29, 2016 of public respondent NLRC are NULLIFIED; consequently, the Decision dated July 14, 2015 of the labor arbiter dismissing private respondents' complaint and awarding pre-rated 13th month pay to private respondents is REINSTATED.
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> SO ORDERED.[25]

The Court of Appeals declared that the employees knowingly entered into project employment contracts with Arlo Aluminum which "substantially complied with the requisites of designation of a specific project or undertaking and duration of their engagement as well as the nature of their job."[26] It found that Arlo Aluminum's submission of Employment Establishment Reports to the Department of Labor and Employment informing it of the employees' permanent termination indicated that the employees were indeed project employees.[27] The Court of Appeals also held that repeated rehiring did not transform the project employment to regular employment given that they were rehired for separate and specific projects.[28] Lastly, the Court of Appeals stated that Arlo Aluminum's nonpayment of a completion bonus to the employees was inconsequential.[29]

The employees filed a Motion for Reconsideration, but this was denied in the Court of Appeals' Resolution.[30] Hence, they filed a petition before this Court.[31]

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21 Id. at 715.
22 Id. at 189.
23 Id. at 718.
24 Id. at 200.
25 Id.
26 Id. at 195.
27 Id. at 197.
28 Id.
29 Id. at 199.
30 Id. at 231–232. The October 10, 2017 Resolution was penned by was penned by Associate Justice Fernanda Lampas Peralta and concurred with by Associate Justices Jane Aurora C. Lantoh and Victoria Isabel A. Paredes of the of the Former Fifth Division, Court of Appeals, Manila.
31 Id. at 9–18.

Arlo Aluminum, together with Galo Y. Lim, Jr., its Executive Vice President, filed its Comment.[32]

Petitioners assert that the Court of Appeals erred when it found that petitioners were validly dismissed as project employees of respondent.[33] They claim that they should be considered regular employees for performing functions necessary and desirable to the business of respondents[34] and being connected with the company for more than a year.[35] They claim that they were part of the company's work pool, and thus, are part of its operations.[36]

Petitioners further state that their contracts did not specify the exact duration of their assignments and merely mentioned which project they were to work on. They likewise claim that after their termination from one project, they would be rehired for a different one to exercise the same function.[37] They add that respondents only submitted termination reports in compliance with Department Order No. 19 upon the expiration of their last project contract with the company. That said, they assert that the failure to submit the required termination report indicated that they are indeed regular employees.[38]

On the other hand, respondents claim that since the company contracts with different clients on various projects, it engages project employees for each distinct project. They further assert that the nature and duration of the project employment are clear on the employee contracts[39] and are explained thoroughly to the employees upon their engagement.[40]

The core issue for this Court's resolution is whether the Court of Appeals was correct in declaring petitioners Joseph M. Sangalang, Leonil M. Santor, Paul O. Giray, Rodolfo C. Ceñir, Sr., Jerson C. Velasco, and Leo C. Hadap as project employees of respondent Arlo Aluminum Company Inc., and consequently, holding their dismissal to be valid.

The Petition has no merit.

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A petition for review on *certiorari* under Rule 45, Section 1 of the Revised Rules of Civil Procedure is generally limited to pure questions of

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32 Id. at p. 757–810.
33 Id. at 12.
34 Id.
35 Id. at 13.
36 Id.
37 Id. at 15.
38 Id. at 16.
39 Id. at 771.
40 Id. at 758.

law. As an exception, this Court has historically resolved questions of fact when the case falls under any of the following circumstances:

> (1) when the findings are grounded entirely on speculation, surmises, or conjectures;
> (2) when the inference made is manifestly mistaken, absurd, or impossible;
> (3) when there is grave abuse of discretion;
> (4) when the judgment is based on a misapprehension of facts;
> ***(5) when the findings of fact are conflicting;***
> (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
> (7) when the findings are contrary to those of the trial court;
> (8) when the findings are conclusions without citation of specific evidence on which they are based;
> (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and
> (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[41] (Emphasis supplied)

Here, this Court may properly review the labor tribunals' and the Court of Appeals' factual findings given that they conflict with each other. Notably, the labor arbiter's factual findings were reversed by the National Labor Relations Commission, whose factual findings were then reversed by the Court of Appeals. It behooves this Court to reexamine the evidence presented to arrive at the proper decision.[42]

The main contention here is whether the Court of Appeals was correct in reversing the National Labor Relations Commission's Decision and reinstating the Labor Arbiter's Decision, which found that petitioners to be project employees that were validly dismissed.

Article 295 of the Labor Code identifies four types of employment, namely: regular, project, seasonal, and casual employees. It provides:

> ARTICLE 295. 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.

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41 *Insurance Company of North America v. Asian Terminals, Inc.* 682 Phil. 213, 224 (2012) [Per J. Peralta, Third Division].

42 *Minsola v. New City Builders, Inc.*, 824 Phil. 864, 874 (2018) [Per J. Reyes, Jr., Second Division].

> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided*, That [sic], any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists. (Emphasis supplied)

The law defines a regular employee as one "engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer." The provision goes on to introduce the other types of employment "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."[43]

This case focuses on regular and project employment. As stated, the law distinguishes regular employees from project employees in that while both may perform functions that are necessary or desirable to the usual business or trade of the employer, project employees are generally needed and engaged to perform tasks that last for a specified duration.[44]

For one to be a project employee, this Court in *Gadia v. Sykes Asia, Inc.*[45] held that "the employer must show compliance with two (2) requisites, namely that: (a) the employee was assigned to carry out a specific project or undertaking; and (b) the duration and scope of which were specified at the time they were engaged for such project."

Petitioners contend that their employment contracts failed to clearly state the duration of the projects they were engaged in, as required by jurisprudence. Because of this, they should be deemed regular employees.

The argument is untenable.

Petitioners' employment contracts[46] boldly state: (a) the specific project they were assigned to carry out; and (b) the duration and scope of their employment upon their engagement. In effect, they were made aware that their services were acquired for a specific purpose and period only. Moreover, the employment contracts were clear that their employments were coterminous with the projects or project phases for which they were hired.

To illustrate, the pertinent portions of the petitioners' employment contracts are stated below. Their contents are identical, save for the

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43 *Paragele et al. v. GMA Network, Inc.*, G.R. No. 235315, July 13, 2020 [Per J. Leonen, Third Division] at 16. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

44 Id.

45 752 Phil. 413–423, 422 (2015) [Per J. Perlas-Bernabe, First Division].

46 *Rollo*, pp. 504–525.

employees' names, the projects and positions to which they were assigned, and the duration of each contract:

> This constitutes our agreement regarding the terms and conditions under which **Arlo Aluminum Co., Inc.,** hereinafter called the "Company" agrees to engage your services as Project/Temporary Employee in connection with the **8 Adriatico project**
>
> . . . .
>
> Your temporary employment is limited to the period of **March 9, 2013** to **June 8, 2013** or for the duration of the above mentioned project or completion of the phase thereof for which your services is necessary. It is clearly understood that you of which has been determined at the time of your hiring. However, as the manpower requirements of the project may vary due to unforeseen contingencies from time to time, the Company reserves the right to terminate your employment at any time even before the completion of the project should (i) your service be no longer needed; (ii) when your performance does not meet the reasonable standards; (iii) if it is discovered that you are not physically or medically fit; or (iv) when there is just cause for termination of your employment under the Company rules and/or the Labor Code.[47] (Emphasis in the original)

On the other hand, below are the important portions of petitioner Santor's employment contract in the vernacular:

> Ikaw ay tinatanggap bilang manggagawa sa proyektong gawa kaugnay sa proyekto ng Arlo Aluminum Co., Inc. sa **Trag-3 project** (Add: The Residences at Greenbelt Makati) ayon sa mga sumusunod na kundisyon;
>
> Ang magigigng gawain mo bilang ***Fabricator*** ay magsisimula sa August 6, 2009 hanggat ang iyong serbisyo ay kailangan sa nasabing Proyekto o bago matapo ang buwan ng January 5, 2010....[48]

Here, petitioners' employment contracts specifically state the project where each employee is to be engaged, and the exact period of their engagement. Respondent company likewise issued additional contracts having the same terms when there was a need to extend the employment of the employee due to the delay in the accomplishment of the project for which they were assigned. Moreover, petitioners received and signed their respective employment contracts when they were hired. They were likewise informed of the termination of a project and concomitantly, the cessation of their project employment beforehand. They were informed of the nature of their project employment from the very beginning until the end of their projects.

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47 *Rollo*, p. 514.
48 Id. at 506.

Petitioners further claim that they should be considered regular and permanent employees of respondent company given the nature of their functions as fabricators, delivery truck helpers, survey aide, and helpers. They contend that their repeated rehiring made them indispensable to the company's operations. However, petitioners fail to recognize that the functions they perform do not dictate one's type of employment. That the particular job assigned to an employee is within the employer's regular or usual business does not automatically make them a regular employee.

In *Paragele v. GMA Network, Inc.*,[49] citing *GMA Network, Inc. v. Pabriga*,[50] this Court delineated the two types of project employment and demonstrated how a project employee performing functions usually necessary or desirable in the employer's usual trade or business is distinguished from a regular employee.[51] It held:

> *Thus, in order to safeguard the rights of workers against the arbitrary use of the word "project" to prevent employees from attaining the status of regular employees, employers claiming that their workers are project employees should not only prove* ***that the duration and scope of the employment was specified at the time they were engaged,*** **but also** ***that there was indeed a project.*** As discussed above, the project could either be (1) 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; or (2) a particular job or undertaking that is not within the regular business of the corporation. As it was with regard to the distinction between a regular and casual employee, the purpose of this requirement is to delineate whether or not the employer is in constant need of the services of the specified employee. *If the particular job or undertaking is within the regular or usual business of the employer company and it is not identifiably distinct or separate from the other undertakings of the company, there is clearly a constant necessity for the performance of the task in question, and therefore said job or undertaking should not be considered a project.*
>
> From this, project employment ultimately requires the existence of a project or an undertaking which could either be: *(1) a particular job within the regular or usual business of the employer, but which is distinct and separate, and identifiable as such, from the other undertakings of the company;* or (2) a particular job not within the regular business of the company. It is not enough that the employee is made aware of the duration and scope of employment at the time of engagement. To rule otherwise would be to allow employers to easily circumvent an employee's right to security of tenure through the convenient artifice of communicating a duration or scope. (Emphasis supplied)

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49 G.R. No. 235315, July 13, 2020 [Per J. Leonen, Third Division].

50 722 Phil. 161–183, 172–173 (2013) [Per J. Leonardo-De Castro, First Division].

51 *Paragele v. GMA Network, Inc.*, G.R. No. 235315, July 13, 2020 [Per J. Leonen, Third Division] at 19. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

Accordingly, to determine the true nature of employment, one looks to the worker's functions *vis-à-vis* the employer's business and the duration and scope of the work tasked.[52]

Here, respondent company is engaged in the fabrication and installation of aluminum for various clients on "distinct, separate, and identifiable" projects. Petitioners' engagement depends on the availability of the projects the company secures. If there are no projects, there is no work for petitioners to accomplish. Accordingly, it is not feasible to regularly and permanently employ petitioners when the existence of projects is not always certain. This was explained in *Engineering & Construction Corporation of Asia v. Segundino Palle*,[53] where this Court took judicial notice that in a construction company, the nature of the laborers' employment is not permanent but coterminous with the project to which they are assigned:

> Generally, length of service is a measure to determine whether or not an employee who was initially hired on a temporary basis has attained the status of a regular employee who is entitled to security of tenure. However, such measure may not necessarily be applicable in a construction industry since construction firms cannot guarantee continuous employment of their workers after the completion stage of a project. In addition, a project employee's work may or may not be usually necessary or desirable in the usual business or trade of the employer. Thus, the fact that a project employee's work is usually necessary and desirable in the business operation of his/her employer does not necessarily impair the validity of the project employment contract which specifically stipulates a fixed duration of employment.[54]

In addition, the repeated hiring of petitioners for multiple projects does not regularize their project-based employment. In *Dacles v. Millennium Erectors Corporation*,[55] this Court held that rehiring for several projects does not negate the status of project employment, especially in the construction industry:

> At any rate, the repeated and successive rehiring of project employees does not, 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, but whether the employment has been fixed for a specific project or undertaking, with its completion having been determined at the time of the engagement of the employee. 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

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52 *San Miguel Corporation v. National Labor Relations Commission*, 357 Phil. 954, 962 (1998) [Per J. Quisimbing, First Division].

53 G.R. No. 201247, July 13, 2020 [Per J. Hernando, Second Division].

54 Id. at 8. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

55 763 Phil. 550, 560–561 (2015) [Per J. Perlas-Bernabe, First Division].

> 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.[56]

The illustration in *Dacles* is similar to the case at hand. Respondent, a construction company, has neither permanent customers nor clients that will warrant the employment of regular workers. Given that their operations depend on the demand and specifications of their clients, it is but logical and necessary that their employees be hired on a per-project basis. Petitioners' work was dependent on and coterminous with the existence of respondent company's contracts with its clients. It would not only be burdensome but even impractical if respondent company were to keep petitioner on its payroll even with no projects to work on.

Naturally, respondent company chooses to employ laborers that it has already worked with because there is an assurance that these laborers are experienced and familiar with company protocols and work ethic. Accordingly, repeated hiring for a different and separate project does not constitute regular employment. Notably, there were intervals in between the projects that petitioners were involved in. These would at times reach up to six months, which signifies that respondent company did not have a pending project available.

Petitioners make much of how respondent company neither submitted a report of petitioners' employment termination after each project had expired nor undertook to pay completion bonuses to employees, pursuant to Department Order No. 19, series of 1993, the pertinent provisions of which state:

> 2.2. Indicators of project employment. – *Either one or more of the circumstances, among others, may be considered as indicators that an employee is a project employee.*
>
> (a) The duration of the specific/identified undertaking for which the worker is engaged is reasonably determinable.
> (b) Such duration, as well as the specific work/service to be performed, is defined in an employment agreement and is made clear to the employee at the time of hiring.
> (c) The work/service performed by the employee is in connection with the particular project/undertaking for which he is engaged.
> (d) The employee, while not employed and awaiting engagement, is free to offer his services to any other employer.

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[56] Id.

(e) *The termination of his employment in the particular project/undertaking is reported to the Department of Labor and Employment (DOLE) Regional Office having jurisdiction over the workplace within 30 days following the date of his separation from work, using the prescribed form on employees' terminations/ dismissals/ suspensions.*

(f) An undertaking in the employment contract by the employer to pay completion bonus to the project employee as practiced by most construction companies. (Emphasis supplied)

This Court has held that the failure to file an establishment employment report is an indication that the employee is not a project employee.[57] However, this is not the only factor this Court has considered. In those cases, the nonobservance of the establishment employment report requirement was coupled with other indicators. These include the failure to inform the employees at the time of engagement that their work was only for the duration of a project;[58] or the continuous hiring of an employee making the latter's employment permanent and no longer coterminous with specific projects.[59]

Thus, the presence of the other indicators in Department Order No. 19, when taken cumulatively, will weigh more than the failure to comply with the filing of an establishment employment report. The wording of Department Order No. 19 says, "*Either one or more of the circumstances, among others, may be considered as indicators that an employee is a project employee.*" Appropriately, the absence of one or two of the indicators will not transform petitioners' project-based employment into regular employment. While labor laws are construed in favor of the laborer, the interests of the employee and the employer must both be considered. Project employment is valid in both law and jurisprudence.

Again, respondent company engaged petitioners to work on different projects under separate employment contracts that defined each project to which they were assigned, as well as its scope and duration. While petitioners worked for respondent company for several years, their projects were not continuous but intermittent, depending on the availability of the projects. Accordingly, petitioners are project employees. Ultimately, their termination from employment, after their work had been completed, was not illegal dismissal.[60]

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57 *Carpio v. Modair Manila Co. Ltd. Inc.*, G.R. No. 239622, June 21, 2021 [Per J. J. Lopez, Third Division] at 21. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

58 *Inocentes, Jr. v. R. Syjuco Construction, Inc.*, G.R. No. 240549, August 27, 2020 [Per J. Lazaro-Javier, First Division] at 11. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

59 *Integrated Contractor and Plumbing Works Inc. v. National Labor Relations Commission and Glen Solon*, 503 Phil. 875 (2005) [Per J. Quisimbing, First Division].

60 LABOR CODE, Omnibus Rules Implementing the Labor Code (1976), Book V, Rule XXIII, sec. 1(c) states:
Section 1. *Security of tenure.* — ....

ACCORDINGLY, the Petition is **DENIED**. The June 29, 2017 Decision and October 10, 2017 Resolution of the Court of Appeals in CA-G.R. SP No. 145622, which nullified the National Labor Relations Commission December 29, 2015 Decision and February 29, 2016 Resolution are **AFFIRMED**. The labor arbiter's July 14, 2015 Decision dismissing the complaint of Joseph M. Sangalang, Leonil M. Santor, Paul O. Giray, Rodolfo C. Ceñir, Sr., Jerson C. Velasco, and Leo C. Hadap, and awarding them prorated 13th month pay, is **REINSTATED**.

SO ORDERED.

MARVIC M.V.F. LEONEN
Senior Associate Justice

WE CONCUR:

AMY C. LAZARO-JAVIER
Associate Justice

MARIANO C. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

(c) *In cases of project employment* or employment covered by legitimate contracting or sub-contracting arrangements, *no employee shall be dismissed* ***prior*** *to the completion of the project or phase thereof for which the employee was engaged*, or prior to the expiration of the contract between the principal and contractor, *unless the dismissal* is for just or authorized cause subject to the requirements of due process or prior notice, or *is brought about by the completion of the phase of the project or contract for which the employee was engaged.* (Emphasis supplied)

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.

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

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