Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

GMA NETWORK, INC., Petitioner,	**G.R. No. 176419**
	Present:
- *versus* -	SERENO, *CJ.*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.*
CARLOS P. PABRIGA, GEOFFREY F. ARIAS, KIRBY N. CAMPO, ARNOLD L. LAGAHIT and ARMAND A. CATUBIG, Respondents.	Promulgated: NOV 2 7 2013

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DECISION

LEONARDO-DE CASTRO, *J.*:

This is a Petition for Review on *Certiorari* filed by petitioner GMA Network, Inc. assailing the Decision [1] of the Court of Appeals dated September 8, 2006 and the subsequent Resolution[2] dated January 22, 2007 denying reconsideration in CA-G.R. SP No. 73652.

The Court of Appeals summarized the facts of the case as follows:

> On July 19, 1999, due to the miserable working conditions, private respondents were forced to file a complaint against petitioner before the National Labor Relations Commission, Regional Arbitration Branch No. VII, Cebu City, assailing their respective employment circumstances as follows:

NAME	DATE HIRED	POSITION
Carlos Pabriga	2 May 1997	Television Technicians
Geoffrey Arias	2 May 1997	Television Technicians
Kirby Campo	1 Dec. 1993	Television Technicians
Arnold Laganit	11 Feb. 1996	Television Technicians
Armand Catubig	2 March 1997	Television Technicians

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1 *Rollo*, pp. 9-23; penned by Associate Justice Priscilla Baltazar-Padilla with Associate Justices Isaias P. Dicdican and Romeo F. Barza, concurring.

2 Id. at 25-26.

Private respondents were engaged by petitioner to perform the following activities, to wit:

1) Manning of Technical Operations Center:
   (a) Responsible for the airing of local commercials; and
   (b) Logging/monitoring of national commercials (satellite)

2) Acting as Transmitter/VTR men:
   (a) Prepare tapes for local airing;
   (b) Actual airing of commercials;
   (c) Plugging of station promo;
   (d) Logging of transmitter reading; and
   (e) In case of power failure, start up generator set to resume program;

3) Acting as Maintenance staff;
   (a) Checking of equipment;
   (b) Warming up of generator;
   (c) Filling of oil, fuel, and water in radiator; and

4) Acting as Cameramen

On 4 August 1999, petitioner received a notice of hearing of the complaint. The following day, petitioner's Engineering Manager, Roy Villacastin, confronted the private respondents about the said complaint.

On 9 August 1999, private respondents were summoned to the office of petitioner's Area Manager, Mrs. Susan Aliño, and they were made to explain why they filed the complaint. The next day, private respondents were barred from entering and reporting for work without any notice stating the reasons therefor.

On 13 August 1999, private respondents, through their counsel, wrote a letter to Mrs. Susan Aliño requesting that they be recalled back to work.

On 23 August 1999, a reply letter from Mr. Bienvenido Bustria, petitioner's head of Personnel and Labor Relations Division, admitted the non-payment of benefits but did not mention the request of private respondents to be allowed to return to work.

On 15 September 1999, private respondents sent another letter to Mr. Bustria reiterating their request to work but the same was totally ignored. On 8 October 1999, private respondents filed an amended complaint raising the following additional issues: 1) Unfair Labor Practice; 2) Illegal dismissal; and 3) Damages and Attorney's fees.

On 23 September 1999, a mandatory conference was set to amicably settle the dispute between the parties, however, the same proved to be futile. As a result, both of them were directed to file their respective position papers.

On 10 November 1999, private respondents filed their position paper and on 2 March 2000, they received a copy of petitioner's position

paper. The following day, the Labor Arbiter issued an order considering the case submitted for decision.[3]

In his Decision dated August 24, 2000, the Labor Arbiter dismissed the complaint of respondents for illegal dismissal and unfair labor practice, but held petitioner liable for 13th month pay. The dispositive portion of the Labor Arbiter's Decision reads:

> WHEREFORE, the foregoing premises considered, judgment is hereby rendered dismissing the complaints for illegal dismissal and unfair labor practice.
>
> Respondents are, however, directed to pay the following complainants their proportionate 13th month pay, to wit:
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> | | |
> |---|---|
> | 1. Kirby Campo | ₱ 7,716.04 |
> | 2. Arnold Lagahit | 7,925.98 |
> | 3. Armand Catubig | 4,233.68 |
> | 4. Carlos Pabriga | 4,388.19 |
> | 5. Geoffrey Arias | 4,562.01 |
> | | ₱28,826.14 |
> | 10% Attorney's fees | 2,882.61 |
> | GRAND TOTAL | ₱31,708.75 |
>
> All other claims are, hereby, dismissed for failure to substantiate the same. [4]

Respondents appealed to the National Labor Relations Commission (NLRC). The NLRC reversed the Decision of the Labor Arbiter, and held thus:

> WHEREFORE, we make the following findings:
>
> a) All complainants are regular employees with respect to the particular activity to which they were assigned, until it ceased to exist. As such, they are entitled to payment of separation pay computed at one (1) month salary for every year of service;
>
> b) They are not entitled to overtime pay and holiday pay; and
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> c) They are entitled to 13th month pay, night shift differential and service incentive leave pay.
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> For purposes of accurate computation, the entire records are REMANDED to the Regional Arbitration Branch of origin which is hereby directed to require from respondent the production of additional documents where necessary.
>
> Respondent is also assessed the attorney's fees of ten percent (10%) of all the above awards.[5]

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3 Id. at 10-12.
4 Id. at 188-189.
5 Id. at 175-176.

Petitioner elevated the case to the Court of Appeals *via* a Petition for *Certiorari*. On September 8, 2006, the appellate court rendered its Decision denying the petition for lack of merit.

Petitioner filed the present Petition for Review on *Certiorari*, based on the following grounds:

I.

THE COURT OF APPEALS GRAVELY ERRED FINDING RESPONDENTS ARE REGULAR EMPLOYEES OF THE PETITIONER AND ARE NOT PROJECT EMPLOYEES.

II.

THE COURT OF APPEALS GRAVELY ERRED IN AWARDING SEPARATION PAY TO RESPONDENTS ABSENT A FINDING THAT RESPONDENTS WERE ILLEGALLY DISMISSED.

III.

THE COURT OF APPEALS GRAVELY ERRED IN AWARDING NIGHT SHIFT DIFFERENTIAL PAY CONSIDERING THE ABSENCE OF EVIDENCE WHICH WOULD ENTITLE THEM TO SUCH AN AWARD.

IV.

THE COURT OF APPEALS GRAVELY ERRED IN AWARDING ATTORNEY'S FEES TO RESPONDENTS.[6]

The parties having extensively elaborated on their positions in their respective memoranda, we proceed to dispose of the issues raised.

Five Classifications of Employment

At the outset, we should note that the nature of the employment is determined by law, regardless of any contract expressing otherwise. The supremacy of the law over the nomenclature of the contract and the stipulations contained therein is to bring to life the policy enshrined in the Constitution to afford full protection to labor. Labor contracts, being imbued with public interest, are placed on a higher plane than ordinary contracts and are subject to the police power of the State.[7]

Respondents claim that they are *regular* employees of petitioner GMA Network, Inc. The latter, on the other hand, interchangeably characterize

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6 Id. at 42-43.

7 *Leyte Geothermal Power Progressive Employees Union-ALU-TUCP v. Philippine National Oil Company-Energy Development Corporation*, G.R. No. 170351, March 30, 2011, 646 SCRA 658, 665.

respondents' employment as *project* and *fixed period/fixed term* employment. There is thus the need to clarify the foregoing terms.

The terms ***regular employment*** and ***project employment*** are taken from Article 280 of the Labor Code, which also speaks of ***casual*** **and** ***seasonal employment***:

> ARTICLE 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 employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity actually exist.

A fifth classification, that of a ***fixed term employment***, is not expressly mentioned in the Labor Code. Nevertheless, this Court ruled in *Brent School, Inc. v. Zamora*,[8] that such a contract, which specifies that employment will last only for a definite period, is not *per se* illegal or against public policy.

Whether respondents are regular or project employees

Pursuant to the above-quoted Article 280 of the Labor Code, employees performing activities which are usually necessary or desirable in the employer's usual business or trade can either be **regular, project or seasonal employees**, while, as a general rule, those performing activities *not* usually necessary or desirable in the employer's usual business or trade are **casual employees**. The reason for this distinction may not be readily comprehensible to those who have not carefully studied these provisions: only employers who constantly need the specified tasks to be performed can be justifiably charged to uphold the constitutionally protected security of tenure of the corresponding workers. The consequence of the distinction is found in Article 279 of the Labor Code, which provides:

> ARTICLE 279. *Security of tenure*. – In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full

[8] 260 Phil. 747 (1990).

> backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

On the other hand, the activities of project employees **may or may not** be usually necessary or desirable in the usual business or trade of the employer, as we have discussed in *ALU-TUCP v. National Labor Relations Commission*, [9] and recently reiterated in *Leyte Geothermal Power Progressive Employees Union-ALU-TUCP v. Philippine National Oil Company-Energy Development Corporation.*[10] In said cases, we clarified the term "project" in the test for determining whether an employee is a regular or project employee:

> It is evidently important to become clear about the meaning and scope of the term "project" in the present context. The "project" for the carrying out of which "project employees" are hired would ordinarily have some relationship to the usual business of the employer. Exceptionally, the "project" undertaking might not have an ordinary or normal relationship to the usual business of the employer. In this latter case, the determination of the scope and parameters of the "project" becomes fairly easy. It is unusual (but still conceivable) for a company to undertake a project which has absolutely no relationship to the usual business of the company; thus, for instance, it would be an unusual steel-making company which would undertake the breeding and production of fish or the cultivation of vegetables. From the viewpoint, however, of the legal characterization problem here presented to the Court, there should be no difficulty in designating the employees who are retained or hired for the purpose of undertaking fish culture or the production of vegetables as "project employees," as distinguished from ordinary or "regular employees," so long as the duration and scope of the project were determined or specified at the time of engagement of the "project employees." For, as is evident from the provisions of Article 280 of the Labor Code, quoted earlier, **the principal test for determining whether particular employees are properly characterized as "project employees" as distinguished from "regular employees," is *whether or not the "project employees" were assigned to carry out a "specific project or undertaking," the duration (and scope) of which were specified at the time the employees were engaged for that project.***
>
> 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 [distinct] 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

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9 G.R. No. 109902, August 2, 1994, 234 SCRA 678, 684-686.

10 Supra note 7 at 668-669.

> 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.
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> **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. x x x.[11] (Emphases supplied, citation omitted.)

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.

Brief examples of what may or may not be considered identifiably distinct from the business of the employer are in order. In *Philippine Long Distance Telephone Company v. Ylagan*,[12] this Court held that accounting duties were not shown as distinct, separate and identifiable from the usual undertakings of therein petitioner PLDT. Although essentially a telephone company, PLDT maintains its own accounting department to which respondent was assigned. This was one of the reasons why the Court held that respondent in said case was not a project employee. On the other hand, in *San Miguel Corporation v. National Labor Relations Commission*,[13] respondent was hired to repair furnaces, which are needed by San Miguel Corporation to manufacture glass, an integral component of its packaging and manufacturing business. The Court, finding that respondent is a project employee, explained that San Miguel Corporation is not engaged in the business of repairing furnaces. Although the activity was necessary to enable petitioner to continue manufacturing glass, the necessity for such

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11 *ALU-TUCP v. National Labor Relations Commission*, supra note 9 at 684-685.
12 537 Phil. 840 (2006).
13 357 Phil. 954 (1998).

repairs arose only when a particular furnace reached the end of its life or operating cycle. Respondent therein was therefore considered a project employee.

In the case at bar, as discussed in the statement of facts, respondents were assigned to the following tasks:

> 1) Manning of Technical Operations Center:
> (a) Responsible for the airing of local commercials; and
> (b) Logging/monitoring of national commercials (satellite)
>
> 2) Acting as Transmitter/VTR men:
> (a) Prepare tapes for local airing;
> (b) Actual airing of commercials;
> (c) Plugging of station promo;
> (d) Logging of transmitter reading; and
> (e) In case of power failure, start up generator set to resume program;
>
> 3) Acting as Maintenance staff;
> (a) Checking of equipment;
> (b) Warming up of generator;
> (c) Filling of oil, fuel, and water in radiator; and
>
> 4) Acting as Cameramen[14]

These jobs and undertakings are clearly within the regular or usual business of the employer company *and* are not identifiably distinct or separate from the other undertakings of the company. There is no denying that the manning of the operations center to air commercials, acting as transmitter/VTR men, maintaining the equipment, and acting as cameramen are not undertakings separate or distinct from the business of a broadcasting company.

Petitioner's allegation that respondents were merely substitutes or what they call pinch-hitters (which means that they were employed to take the place of regular employees of petitioner who were absent or on leave) does not change the fact that their jobs cannot be considered projects within the purview of the law. Every industry, even public offices, has to deal with securing substitutes for employees who are absent or on leave. Such tasks, whether performed by the usual employee or by a substitute, cannot be considered separate and distinct from the other undertakings of the company. While it is management's prerogative to device a method to deal with this issue, such prerogative is not absolute and is limited to systems wherein employees are not ingeniously and methodically deprived of their constitutionally protected right to security of tenure. We are not convinced that a big corporation such as petitioner cannot device a system wherein a sufficient number of technicians can be hired with a regular status who can take over when their colleagues are absent or on leave, especially when it

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14 *Rollo*, pp. 10-11.

appears from the records that petitioner hires so-called pinch-hitters regularly every month.

In affirming the Decision of the NLRC, the Court of Appeals furthermore noted that if respondents were indeed project employees, petitioner should have reported the completion of its projects and the dismissal of respondents in its finished projects:

> There is another reason why we should rule in favor of private respondents. Nowhere in the records is there any showing that petitioner reported the completion of its projects and the dismissal of private respondents in its finished projects to the nearest Public Employment Office as per Policy Instruction No. 20[15] of the Department of Labor and Employment [DOLE]. Jurisprudence abounds with the consistent rule that the failure of an employer to report to the nearest Public Employment Office the termination of its workers' services everytime a project or a phase thereof is completed indicates that said workers are not project employees.
>
> In the extant case, petitioner should have filed as many reports of termination as there were projects actually finished if private respondents were indeed project employees, considering that the latter were hired and again rehired from 1996 up to 1999. Its failure to submit reports of termination cannot but sufficiently convince us further that private respondents are truly regular employees. Important to note is the fact that private respondents had rendered more than one (1) year of service at the time of their dismissal which overturns petitioner's allegations that private respondents were hired for a specific or fixed undertaking for a limited period of time.[16] (Citations omitted.)

We are not unaware of the decisions of the Court in *Philippine Long Distance Telephone Company v. Ylagan*[17] and *ABS-CBN Broadcasting Corporation v. Nazareno*[18] which held that the employer's failure to report the termination of employees upon project completion to the DOLE Regional Office having jurisdiction over the workplace within the period prescribed militates against the employer's claim of project employment, even outside the construction industry. We have also previously stated in another case that the Court should not allow circumvention of labor laws in industries not falling within the ambit of Policy Instruction No. 20/Department Order No. 19, thereby allowing the prevention of acquisition of tenurial security by project employees who have already gained the status of regular employees by the employer's conduct.[19]

While it may not be proper to revisit such past pronouncements in this case, we nonetheless find that petitioner's theory of project employment fails

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15 This has been superseded by Department Order No. 19, series of 1993, which likewise imposed on the employer a duty to report terminations of project employment in the construction industry to the DOLE.

16 *Rollo*, p. 17.

17 Supra note 12.

18 534 Phil. 306 (2006).

19 *Maraguinot, Jr. v. National Labor Relations Commission*, 348 Phil. 580, 606 (1998).

the principal test of demonstrating that the alleged project employee was assigned to carry out a specific project or undertaking, the duration and scope of which were specified at the time the employee is engaged for the project.[20]

The Court of Appeals also ruled that even if it is assumed that respondents are project employees, they would nevertheless have attained regular employment status because of their continuous rehiring:

> Be that as it may, a project employee may also attain the status of a regular employee if there is a continuous rehiring of project employees after the stoppage of a project; and the activities performed are usual [and] customary to the business or trade of the employer. The Supreme Court ruled that a project employee or a member of a work pool may acquire the status of a regular employee when the following concur:
>
> 1) There is a continuous rehiring of project employees even after cessation of a project; and
>
> 2) The tasks performed by the alleged project employee are vital, necessary and indispensable to the usual business or trade of the employer.
>
> The circumstances set forth by law and the jurisprudence is present in this case. In fine, even if private respondents are to be considered as project employees, they attained regular employment status, just the same.[21] (Citation omitted.)

Anent this issue of attainment of regular status due to continuous rehiring, petitioner advert to the fixed period allegedly designated in employment contracts and reflected in vouchers. Petitioner cites our pronouncements in *Brent, St. Theresa's School of Novaliches Foundation v. National Labor Relations Commission,*[22] and *Fabela v. San Miguel Corporation,*[23] and argues that respondents were fully aware and freely entered into agreements to undertake a particular activity for a specific length of time.[24] Petitioner apparently confuses project employment from fixed term employment. The discussions cited by petitioner in *Brent, St. Theresa's* and *Fabela* all refer to fixed term employment, which is subject to a different set of requirements.

Whether the requisites of a valid fixed term employment are met

As stated above, petitioner interchangeably characterizes respondents' service as *project* and *fixed term* employment. These types of employment, however, are not the same. While the former requires a *project* as restrictively defined above, the duration of a fixed-term employment agreed

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20 *Pasos v. Philippine National Construction Corporation*, G.R. No. 192394, July 3, 2013.
21 *Rollo*, pp. 17-18.
22 351 Phil. 1038 (1998).
23 544 Phil. 223 (2007).
24 *Rollo*, pp. 378-382.

upon by the parties may be any *day certain*, which is understood to be "that which must necessarily come although it may not be known when."[25] The decisive determinant in fixed-term employment is not the activity that the employee is called upon to perform but the day certain agreed upon by the parties for the commencement and termination of the employment relationship.[26]

Cognizant of the possibility of abuse in the utilization of fixed-term employment contracts, we emphasized in *Brent* that where from the circumstances it is apparent that the periods have been imposed to preclude acquisition of tenurial security by the employee, they should be struck down as contrary to public policy or morals.[27] We thus laid down indications or criteria under which "term employment" cannot be said to be in circumvention of the law on security of tenure, namely:

> 1) The fixed period of employment was knowingly and voluntarily agreed upon by the parties without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or
>
> 2) It satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no moral dominance exercised by the former or the latter. [28] (Citation omitted.)

These indications, which must be read together, make the *Brent* doctrine applicable only in a few special cases wherein the employer and employee are on more or less in equal footing in entering into the contract. The reason for this is evident: when a prospective employee, on account of special skills or market forces, is in a position to make demands upon the prospective employer, such prospective employee needs less protection than the ordinary worker. Lesser limitations on the parties' freedom of contract are thus required for the protection of the employee. These indications were applied in *Pure Foods Corporation v. National Labor Relations Commission*, [29] where we discussed the patent inequality between the employer and employees therein:

> [I]t could not be supposed that private respondents and all other so-called "casual" workers of [the petitioner] KNOWINGLY and VOLUNTARILY agreed to the 5-month employment contract. Cannery workers are never on equal terms with their employers. Almost always, they agree to any terms of an employment contract just to get employed considering that it is difficult to find work given their ordinary qualifications. Their freedom to contract is empty and hollow because theirs is the freedom to starve if they refuse to work as casual or contractual workers. Indeed, to the unemployed, security of tenure has no value. It could not then be said that

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25 *Brent School, Inc. v. Zamora*, supra note 8 at 757.

26 *Philips Semiconductors (Phils.), Inc. v. Fadriquela*, 471 Phil. 355, 372 (2004).

27 Id.

28 *Romares v. National Labor Relations Commission*, 355 Phil. 835, 847 (1998); *Philips Semiconductors (Phils.), Inc. v. Fadriquela*, id. at 372-373.

29 347 Phil. 434, 444 (1997).

> petitioner and private respondents "dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter.

To recall, it is doctrinally entrenched that in illegal dismissal cases, the employer has the burden of proving with clear, accurate, consistent, and convincing evidence that the dismissal was valid.[30] It is therefore the employer which must satisfactorily show that it was not in a dominant position of advantage in dealing with its prospective employee. Thus, in *Philips Semiconductors (Phils.), Inc. v. Fadriquela*,[31] this Court rejected the employer's insistence on the application of the *Brent* doctrine when the sole justification of the fixed terms is to respond to temporary albeit frequent need of such workers:

> We reject the petitioner's submission that it resorted to hiring employees for fixed terms to augment or supplement its regular employment "for the duration of peak loads" during short-term surges to respond to cyclical demands; hence, it may hire and retire workers on fixed terms, *ad infinitum*, depending upon the needs of its customers, domestic and international. Under the petitioner's submission, any worker hired by it for fixed terms of months or years can never attain regular employment status. x x x.

Similarly, in the case at bar, we find it unjustifiable to allow petitioner to hire and rehire workers on fixed terms, *ad infinitum*, depending upon its needs, never attaining regular employment status. To recall, respondents were repeatedly rehired in several fixed term contracts from 1996 to 1999. To prove the alleged contracts, petitioner presented cash disbursement vouchers signed by respondents, stating that they were merely hired as pinch-hitters. It is apparent that respondents were in no position to refuse to sign these vouchers, as such refusal would entail not getting paid for their services. Plainly, respondents as "pinch-hitters" cannot be considered to be in equal footing as petitioner corporation in the negotiation of their employment contract.

In sum, we affirm the findings of the NLRC and the Court of Appeals that respondents are regular employees of petitioner. As regular employees, they are entitled to security of tenure and therefore their services may be terminated only for just or authorized causes. Since petitioner failed to prove any just or authorized cause for their termination, we are constrained to affirm the findings of the NLRC and the Court of Appeals that they were illegally dismissed.

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30 *Dacuital v. L.M. Camus Engineering Corporation*, G.R. No. 176748, September 1, 2010, 629 SCRA 702, 716.

31 Supra note 25 at 373.

Separation Pay, Night Shift Differential and Attorney's Fees

Petitioner admits that respondents were not given separation pay and night shift differential. Petitioner, however, claims that respondents were not illegally dismissed and were therefore not entitled to separation pay. As regards night shift differential, petitioner claims that its admission in its August 23, 1999 letter as to the nonpayment thereof is qualified by its allegation that respondents are not entitled thereto. Petitioner points out that respondents failed to specify the period when such benefits are due, and did not present additional evidence before the NLRC and the Court of Appeals.[32]

In light, however, of our ruling that respondents were illegally dismissed, we affirm the findings of the NLRC and the Court of Appeals that respondents are entitled to separation pay in lieu of reinstatement. We quote with approval the discussion of the Court of Appeals:

> However, since petitioner refused to accept private respondents back to work, reinstatement is no longer practicable. Allowing private respondents to return to their work might only subject them to further embarrassment, humiliation, or even harassment.
>
> Thus, in lieu of reinstatement, the grant of separation pay equivalent to one (1) month pay for every year of service is proper which public respondent actually did. Where the relationship between private respondents and petitioner has been severely strained by reason of their respective imputations of accusations against each other, to order reinstatement would no longer serve any purpose. In such situation, payment of separation pay instead of reinstatement is in order.[33] (Citations omitted.)

As regards night shift differential, the Labor Code provides that every employee shall be paid not less than ten percent (10%) of his regular wage for each hour of work performed between ten o'clock in the evening and six o'clock in the morning.[34] As employees of petitioner, respondents are entitled to the payment of this benefit in accordance with the number of hours they worked from 10:00 p.m. to 6:00 a.m., if any. In the Decision of the NLRC affirmed by the Court of Appeals, the records were remanded to the Regional Arbitration Branch of origin for the computation of the night shift differential and the separation pay. The Regional Arbitration Branch of origin was likewise directed to require herein petitioner to produce additional documents where necessary. Therefore, while we are affirming that respondents are entitled to night shift differential in accordance with the number of hours they worked from 10:00 p.m. to 6:00 a.m., it is the Regional Arbitration Branch of origin which should determine the computation thereof for each of the respondents, and award no night shift differential to those of them who never worked from 10:00 p.m. to 6:00 a.m.

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32 *Rollo*, pp. 384-387.

33 Id. at 20.

34 LABOR CODE, Article 86.

It is also worthwhile to note that in the NLRC Decision, it was herein petitioner GMA Network, Inc. (respondent therein) which was tasked to produce additional documents necessary for the computation of the night shift differential. This is in accordance with our ruling in *Dansart Security Force & Allied Services Company v. Bagoy*,[35] where we held that it is entirely within the employer's power to present such employment records that should necessarily be in their possession, and that failure to present such evidence must be taken against them.

Petitioner, however, is correct that the award of attorney's fees is contrary to jurisprudence. In *De los Santos v. Jebsen Maritime, Inc.*,[36] we held:

> Likewise legally correct is the deletion of the award of attorney's fees, the NLRC having failed to explain petitioner's entitlement thereto. As a matter of sound policy, an award of attorney's fees remains the exception rather than the rule. It must be stressed, as aptly observed by the appellate court, that it is necessary for the trial court, the NLRC in this case, to make express findings of facts and law that would bring the case within the exception. In fine, the factual, legal or equitable justification for the award must be set forth in the text of the decision. The matter of attorney's fees cannot be touched once and only in the *fallo* of the decision, else, the award should be thrown out for being speculative and conjectural. In the absence of a stipulation, attorney's fees are ordinarily not recoverable; otherwise a premium shall be placed on the right to litigate. They are not awarded every time a party wins a suit. (Citations omitted.)

In the case at bar, the factual basis for the award of attorney's fees was not discussed in the text of NLRC Decision. We are therefore constrained to delete the same.

WHEREFORE, the Decision of the Court of Appeals dated September 8, 2006 and the subsequent Resolution denying reconsideration dated January 22, 2007 in CA-G.R. SP No. 73652, are hereby **AFFIRMED**, with the **MODIFICATION** that the award of attorney's fees in the affirmed Decision of the National Labor Relations Commission is hereby **DELETED**.

SO ORDERED.

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

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35 G.R. No. 168495, July 2, 2010, 622 SCRA 694.
36 512 Phil. 301, 315-316 (2005).

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
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