Republic of the Philippines
Supreme Court
Manila

**FIRST DIVISION**

**OMNI HAULING SERVICES, INC., LOLITA FRANCO, and ANICETO FRANCO,**
Petitioners,

- versus -

**BERNARDO BON, ROBERTO TORTOLES, ROMEO TORRES, RODELLO[*] RAMOS, RICARDO DELOS SANTOS, JUANITO BON, ELENCIO ARTASTE,[**] CARLITO VOLOSO, ROMEL TORRES, ROBERT AVILA, EDUARDO BAUTISTA, MARTY VOLOSO, OSCAR JABEL, RICKY AMORANTO, BERNARD OSINAGA, EDUARDO BON, JERRY EDUARCE, and FEDERICO BRAZIL,**
Respondents.

**G.R. No. 199388**

Present:

VELASCO, JR.,[**]
LEONARDO-DE CASTRO,
Acting Chairperson,[***]
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:

SEP 03 2014

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## DECISION

**PERLAS-BERNABE, *J.*:**

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated May 27, 2011 and the Resolution[3] dated November 11, 2011 of the

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* "Rodelio" in some parts of the records.
** "Artiste" in some parts of the records.
** Designated Acting Member per Special Order No. 1772 dated August 28, 2014.
*** Per Special Order No. 1771 dated August 28, 2014.
1 *Rollo*, pp. 8-32.
2 Id. at 263-274. Penned by Associate Justice Edwin D. Sorongon with Associate Justices Rosalinda Asuncion-Vicente and Romeo F. Barza, concurring.
3 Id. at 286-288.

Court of Appeals (CA) in CA-G.R. SP. No. 111413 which reversed and set aside the Decision[4] dated May 18, 2009 and the Resolution[5] dated August 28, 2009 of the National Labor Relations Commission (NLRC) in NLRC CA No. 043217-05 and NLRC NCR Case Nos. 00-11-12889-03, 00-03-03935-04, and 00-11-13591-03, declaring the dismissal of respondents Bernardo Bon, Roberto Tortoles, Romeo Torres, Rodello Ramos, Ricardo Delos Santos, Juanito Bon, Elencio Artaste, Carlito Voloso, Romel Torres, Robert Avila, Eduardo Bautista, Marty Voloso, Oscar Jabel, Ricky Amoranto, Bernard Osinaga, Eduardo Bon, Jerry Eduarce, and Federico Brazil (respondents) illegal.

## The Facts

Petitioner Omni Hauling Services, Inc. (Omni), a company owned by petitioners Lolita and Aniceto Franco (petitioners), was awarded a one (1) year service contract[6] by the local government of Quezon City to provide garbage hauling services for the period July 1, 2002 to June 30, 2003. For this purpose, Omni hired respondents as garbage truck drivers and *paleros* who were then paid on a per trip basis.[7]

When the service contract was renewed for another year,[8] or for the period July 1, 2003 to June 30, 2004, petitioners required each of the respondents to sign employment contracts which provided that they will be "re-hired" only for the duration of the same period. However, respondents refused to sign the employment contracts, claiming that they were regular employees since they were engaged to perform activities which were necessary and desirable to Omni's usual business or trade.[9] For this reason, Omni terminated the employment of respondents which, in turn, resulted in the filing of cases[10] for illegal dismissal, nonpayment of Emergency Cost of Living Allowance (ECOLA) and 13th month pay, and actual, moral, and exemplary damages. During the mandatory conference before the Labor Arbiter (LA), Omni offered to re-employ respondents on the condition that they sign the employment contracts but respondents refused such offer.[11]

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4 Id. at 151-157. Penned by Commissioner Perlita B. Velasco with Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go, concurring.

5 Id. at 165-167.

6 See Contract of Service dated September 30, 2002. (Id. at 38-45.)

7 Id. at 264.

8 See Agreement for Extension of Service Contract dated August 14, 2003; id. at 46-47.

9 Id. at 264.

10 See Complaints filed by: (*a*) respondents Bernardo Bon, Roberto Tortoles, Ricardo Delos Santos, Elencio Artaste, Romeo Torres, Rodelio Ramos, Romel Torres, Carlito Voloso, and Juanito Bon docketed as NLRC-NCR North Section Case No. 00-11-12889-03 (id. at 83-84); (*b*) respondents Marty Voloso, Ricky Amoranto, Bernard Osinaga, Eduardo Bautista, Robert Avila, and Oscar Jabel docketed as NLRC-NCR North Section Case No. 00-11-13591-03 (id. at 85-86); and (*c*) respondents Eduardo Bon, Jerry Eduarce, and Federico Brazil docketed as NLRC-NCR North Section Case No. 00-03-03935-04 (id. at 87-88).

11 Id. at 264-265.

**The LA Ruling**

In a Decision[12] dated December 29, 2004, the LA ruled in favor of petitioners, finding that respondents were not illegally dismissed.

The LA found that respondents, at the time of their engagement, were informed that their employment will be limited for a specific period of one year and was co-terminus with the service contract with the Quezon City government.[13] Thus, respondents were not regular but merely project employees whose hiring was solely dependent on the aforesaid service contract. As a result, respondents' contracts with Omni expired upon the service contract's expiration on June 30, 2003.[14]

Dissatisfied with the LA's ruling, respondents filed an appeal before the NLRC.[15]

**The NLRC Ruling**

In a Decision[16] dated May 18, 2009, the NLRC affirmed the LA's ruling *in toto*.

It sustained the LA's finding that respondents were only project employees whose employment was co-terminus with Omni's service contract with the Quezon City government. Thus, when respondents refused to sign the employment contracts for the subsequent period, there was no dismissal to speak of, but rather, a mere expiration of respondents' previous contracts.[17]

Unconvinced, respondents filed a motion for reconsideration[18] which was, however, denied in a Resolution[19] dated August 28, 2009, leading them to file a petition for *certiorari*[20] before the CA.

**The CA Ruling**

In a Decision[21] dated May 27, 2011, the CA reversed and set aside the NLRC's earlier pronouncements.

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12 Id. at 130-140. Penned by Labor Arbiter Fedriel S. Panganiban.
13 Id. at 137.
14 See id. at 135-139.
15 Id. at 141-149.
16 Id. at 151-157.
17 Id. at 155-156.
18 Id. at 158-161.
19 Id. at 165-167.
20 Id. at 168-176.
21 Id. at 263-274.

It held that the NLRC failed to consider the glaring fact that no contract of employment exists to support petitioners' allegation that respondents are fixed-term (or properly speaking, project) employees.[22] Petitioners' claim that respondents were properly apprised regarding the fixed period of their employment at the time of their engagement is nothing but a mere allegation which is bereft of substantiation. In view of the fact that no other evidence was offered to prove the supposed project employment, petitioners' failure to present an employment contract puts into serious doubt the allegation that the employees, *i.e.*, respondents, were properly informed at the onset of their employment status as project employees.[23] Besides, the CA pointed out that at the time respondents were asked to sign the employment contracts, they already became regular employees by operation of law. It added that in order to be deemed as project employees, it is not enough that an employee is hired for a specific project or phase of work; there must also be a determination of, or a clear agreement on, the completion or termination of the project at the time the employee was engaged.[24] Accordingly, the CA ruled that respondents were illegally dismissed, and therefore, ordered their reinstatement or the payment of separation pay if such reinstatement is no longer feasible, with full backwages in either case.[25] Further, it remanded the instant case to the Computation and Examination Unit of the NLRC for an updated computation of the above-mentioned monetary awards in accordance with its Decision.[26]

Aggrieved, petitioners filed a motion for reconsideration[27] which was, however, denied by the CA in a Resolution[28] dated November 11, 2011, hence, this petition.

## The Issue Before the Court

The core issue raised in the present petition is whether or not the CA erred in granting respondents' petition for *certiorari*, thereby setting aside the NLRC's Decision holding that respondents were project employees.

## The Court's Ruling

To justify the grant of the extraordinary remedy of *certiorari*, petitioners must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes judgment exercised in a capricious and whimsical manner that is

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22 Id. at 271-272.
23 Id. at 269.
24 Id. at 272.
25 Id. at 273.
26 Id. at 274.
27 Id. at 275-283.
28 Id. at 286-288.

tantamount to lack of jurisdiction. To be considered "grave," discretion must be exercised in a despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[29]

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and the conclusions reached thereby are not supported by substantial evidence.[30] This requirement of substantial evidence is clearly expressed in Section 5, Rule 133 of the Rules of Court which provides that "[i]n cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."

Guided by these considerations, the Court finds that the CA correctly granted respondents' *certiorari* petition since the NLRC gravely abused its discretion when it held that respondents were project employees despite petitioners' failure to establish their project employment status through substantial evidence.

Article 280 of the Labor Code distinguishes a "project employee" from a "regular employee" in this wise:

> Art. 280. **Regular and casual employment**. The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, **except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee** or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.
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> x x x x (Emphasis and underscoring supplied)

A project employee is assigned to a project which begins and ends at determined or determinable times.[31] Unlike regular employees who may only be dismissed for just and/or authorized causes under the Labor Code, the services of employees who are hired as "project employees" may be lawfully terminated at the completion of the project.[32]

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29 *Ramos v. BPI Family Savings Bank, Inc.*, G.R. No. 203186, December 4, 2013.
30 See id.
31 *Goma v. Pamplona Plantation, Incorporated*, 579 Phil. 402, 412 (2008).
32 See *GMA Network, Inc. v. Pabriga*, G.R. No. 176419, November 27, 2013, 710 SCRA 690,703.

According to jurisprudence, the principal test for determining whether particular employees are properly characterized as "project employees" as distinguished from "regular employees," is whether or not the employees were assigned to carry out a "specific project or undertaking," the duration (and scope) of which were specified at the time they were engaged for that project. 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. In order to safeguard the rights of workers against the arbitrary use of the word "project" to prevent employees from attaining a regular status, **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**.[33]

Even though the absence of a written contract does not by itself grant regular status to respondents, such a contract is evidence that respondents were informed of the duration and scope of their work and their status as project employees.[34] As held in *Hanjin Heavy Industries and Construction Co., Ltd. v. Ibañez,*[35] citing numerous precedents on the matter, where no other evidence was offered, the absence of the employment contracts raises a serious question of whether the employees were properly informed of their employment status as project employees at the time of their engagement, *viz.*:

> **While the absence of a written contract does not automatically confer regular status, it has been construed by this Court as a red flag in cases involving the question of whether the workers concerned are regular or project employees**. In *Grandspan Development Corporation v. Bernardo* and *Audion Electric Co., Inc. v. National Labor Relations Commission*, this Court took note of the fact that the employer was unable to present employment contracts signed by the workers, which stated the duration of the project. In another case, *Raycor v. Aircontrol Systems, Inc. v. National Labor Relations Commission*, this Court refused to give any weight to the employment contracts offered by the employers as evidence, which contained the signature of the president and general manager, but not the signatures of the employees. In cases where this Court ruled that construction workers repeatedly rehired retained their status as project employees, the employers were able to produce employment contracts **clearly stipulating** that the workers' employment was coterminous with the project to support their claims that the employees were notified of the scope and duration of the project.
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> Hence, even though the absence of a written contract does not by itself grant regular status to respondents, such a contract is evidence that respondents were **informed** of the duration and scope of their work and their status as project employees. **In this case, where no other evidence**

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33 Id.

34 See *Dacuital v. L.M. Camus Engineering Corp.*, G.R. No. 176748, September 1, 2010, 629 SCRA 702, 714.

35 578 Phil. 497 (2008).

> **was offered, the absence of an employment contract puts into serious question whether the employees were properly informed at the onset of their employment status as project employees**. It is doctrinally entrenched that in illegal dismissal cases, the employer has the burden of proving with clear, accurate, consistent and convincing evidence that a dismissal was valid. x x x.[36] (Emphases supplied; citations omitted)

In this case, records are bereft of any evidence to show that respondents were made to sign employment contracts explicitly stating that they were going to be hired as project employees, with the period of their employment to be co-terminus with the original period of Omni's service contract with the Quezon City government. Neither is petitioners' allegation that respondents were duly apprised of the project-based nature of their employment supported by any other evidentiary proof. Thus, the logical conclusion is that respondents were not clearly and knowingly informed of their employment status as mere project employees, with the duration and scope of the project specified at the time they were engaged. As such, the presumption of regular employment should be accorded in their favor pursuant to Article 280 of the Labor Code which provides that "[employees] who have rendered at least one year of service, whether such service is continuous or broken [– as respondents in this case –] shall be **considered as [regular employees]** with respect to the activity in which [they] are employed and [their] employment shall continue while such activity actually exists." Add to this the obvious fact that respondents have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of Omni, *i.e.*, garbage hauling, thereby confirming the strength of the aforesaid conclusion.

The determination that respondents are regular and not merely project employees resultantly means that their services could not have been validly terminated at the expiration of the project, or, in this case, the service contract of Omni with the Quezon City government. As regular employees, it is incumbent upon petitioners to establish that respondents had been dismissed for a just and/or authorized cause. However, petitioners failed in this respect; hence, respondents were illegally dismissed.

For its contrary ruling left unsupported by any substantial evidence, it then ultimately follows that the NLRC gravely abused its discretion in dismissing respondents' complaints for illegal dismissal. The CA Decision reversing and setting aside the NLRC's ruling on *certiorari* must perforce be made to stand.

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[36] Id. at 512-513.

**WHEREFORE**, the petition is **DENIED**. The Decision dated May 27, 2011 and the Resolution dated November 11, 2011 of the Court of Appeals in CA-G.R. SP. No. 111413 are hereby **AFFIRMED**.

**SO ORDERED.**

**ESTELA M. PERLAS-BERNABE**
Associate Justice

**WE CONCUR:**

**PRESBITERO J. VELASCO, JR.**
Associate Justice

**TERESITA J. LEONARDO-DE CASTRO**
Associate Justice
Acting Chairperson

**LUCAS P. BERSAMIN**
Associate Justice

**JOSE PORTUGAL PEREZ**
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.

**TERESITA J. LEONARDO-DE CASTRO**
Associate Justice
Acting Chairperson, First Division

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting 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.

**ANTONIO T. CARPIO**
Acting Chief Justice