



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

MA. CHARITO C. GADIA,  
ERNESTO M. PEÑAS,  
GEMMABELLE B. REMO,  
LORENA S. QUESEA, MARIE  
JOY FRANCISCO, BEVERLY  
A. CABINGAS, IVEE U.  
BALINGIT, ROMA ANGELICA  
O. BORJA, MARIE JOAN  
RAMOS, KIM GUEVARRA,  
LYNN S. DE LOS SANTOS,  
CAREN C. ENCANTO, EIDEN  
BALDOVINO, JACQUELINE B.  
CASTRENCE, MA. ESTRELLA  
V. LAPUZ, JOSELITO L.  
LORD, RAYMOND G.  
SANTOS, ABIGAIL M.  
VILORIA, ROMMEL C.  
ACOSTA, FRANCIS JAN S.  
BAYLON, ERIC O.  
PADIERNOS, MA. LENELL P.  
AARON, CRISNELL P.  
AARON, and LAWRENCE  
CHRISTOPHER F. PAPA,

Petitioners,

G.R. No. 209499

Present:

SERENO, C.J., Chairperson,  
LEONARDO-DE CASTRO,  
BERSAMIN,  
PEREZ, and  
PERLAS-BERNABE, JJ.

Promulgated:

JAN 28 2015

- versus -

SYKES ASIA, INC./ CHUCK  
SYKES/ MIKE HINDS/  
MICHAEL HENDERSON,

Respondents.

X-----X

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*<sup>1</sup> are the Decision<sup>2</sup> dated April 29, 2013 and the Resolution<sup>3</sup> dated October 3, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 120433, which annulled and set aside the Decision<sup>4</sup> dated November 15, 2010 and the Resolution<sup>5</sup> dated May 10, 2011 of the National Labor Relations Commission (NLRC), in NLRC LAC No. 07-001583-10, and reinstated the Decision<sup>6</sup> dated June 23, 2010 of the Labor Arbiter (LA), holding that herein petitioners Ma. Charito C. Gadia<sup>7</sup> (Gadia), Ernesto M. Peñas,<sup>8</sup> Gemmabelle B. Remo (Remo), Lorena S. Quesea (Quesea), Marie Joy Francisco, Beverly A. Cabingas, Ivey U. Balingit<sup>9</sup> (Balingit), Roma Angelica O. Borja, Marie Joan Ramos, Kim Guevarra, Lynn S. De Los Santos, Caren C. Encanto, Eiden Baldovino, Jacqueline B. Castrence (Castrence), Ma. Estrella V. Lapuz (Lapuz), Joselito L. Lord (Lord), Raymond G. Santos, Abigail M. Vilorio (Viloria), Rommel C. Acosta<sup>10</sup> (Acosta), Francis Jan S. Baylon, Eric O. Padiernos, Ma. Lenell P. Aaron, Crisnell P. Aaron, and Lawrence Christopher F. Papa (petitioners) are project employees of respondent Sykes Asia, Inc. (Sykes Asia), and thus, were validly terminated from employment.

### The Facts

Sykes Asia is a corporation engaged in Business Process Outsourcing (BPO) which provides support to its international clients from various sectors (*e.g.*, technology, telecommunications, retail services) by carrying on some of their operations, governed by service contracts that it enters with them.<sup>11</sup> On September 2, 2003,<sup>12</sup> Alltel Communications, Inc. (Alltel), a United States-based telecommunications firm, contracted Sykes Asia's services to accommodate the needs and demands of Alltel clients for its postpaid and prepaid services (Alltel Project). Thus, on different dates, Sykes Asia hired petitioners as customer service representatives, team leaders, and trainers for the Alltel Project.<sup>13</sup>

Services for the said project went on smoothly until Alltel sent two (2) letters to Sykes Asia dated August 7, 2009<sup>14</sup> and September 9, 2009<sup>15</sup> informing the latter that it was terminating all support services provided by

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<sup>1</sup> *Rollo*, pp. 11-30.

<sup>2</sup> *Id.* at 47-58. Penned by Associate Justice Edwin D. Sorongon with Associate Justices Marlene Gonzales Sison and Hakim S. Abdulwahid, concurring.

<sup>3</sup> *Id.* at 60-62.

<sup>4</sup> *Id.* at 108-B-125. Penned by Presiding Commissioner Gerardo C. Nograles with Commissioners Perlita B. Velasco and Romeo L. Go, concurring.

<sup>5</sup> *Id.* at 127-129.

<sup>6</sup> *Id.* at 416-425. Penned by Labor Arbiter Romelita N. Rioflorido.

<sup>7</sup> "Charito Cabrera" in some parts of the records.

<sup>8</sup> "Ernesto M. Penas" in some parts of the records.

<sup>9</sup> "Ivey Untalan" in some parts of the records.

<sup>10</sup> "Rommel C. Acosta" in some parts of the records.

<sup>11</sup> *Rollo*, p. 48.

<sup>12</sup> September 3, 2002 in some parts of the records.

<sup>13</sup> *Rollo*, pp. 48-49.

<sup>14</sup> *Id.* at 194.

<sup>15</sup> *Id.* at 195.

Sykes Asia related to the Alltel Project. In view of this development, Sykes Asia sent each of the petitioners end-of-life notices,<sup>16</sup> informing them of their dismissal from employment due to the termination of the Alltel Project. Aggrieved, petitioners filed separate complaints<sup>17</sup> for illegal dismissal against respondents Sykes Asia, Chuck Sykes, the President and Chief Operating Officer of Sykes Enterprise, Inc., and Mike Hinds and Michael Henderson, the President and Operations Director, respectively, of Sykes Asia (respondents), praying for reinstatement, backwages, 13<sup>th</sup> month pay, service incentive leave pay, night shift differential, moral and exemplary damages, and attorney's fees. In their complaints, petitioners alleged that their dismissal from service was unjust as the same was effected without substantive and procedural due process.<sup>18</sup>

In their defense,<sup>19</sup> respondents averred that petitioners were not regular employees but merely project-based employees, and as such, the termination of the Alltel Project served as a valid ground for their dismissal.<sup>20</sup> In support of their position, respondents noted that it was expressly indicated in petitioners' respective employment contracts that their positions are "project-based" and thus, "co-terminus to the project."<sup>21</sup> Respondents further maintained that they complied with the requirements of procedural due process in dismissing petitioners by furnishing each of them their notices of termination at least thirty (30) days prior to their respective dates of dismissal.<sup>22</sup>

### **The LA Ruling**

In a Decision<sup>23</sup> dated June 23, 2010 the LA ruled in favor of respondents, and accordingly, dismissed petitioners' complaints for lack of merit.<sup>24</sup> It found that petitioners are merely project-based employees, as their respective employment contracts indubitably provided for the duration and term of their employment, as well as the specific project to which they were assigned, *i.e.*, the Alltel Project.<sup>25</sup> Hence, the LA concluded that the cessation of the Alltel Project naturally resulted in the termination of petitioners' employment in Sykes Asia.<sup>26</sup>

Dissatisfied, petitioners appealed<sup>27</sup> to the NLRC.

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<sup>16</sup> See *id.* at 270-300.

<sup>17</sup> Not attached to the records of the case.

<sup>18</sup> *Id.* at 49.

<sup>19</sup> See Position Paper dated February 24, 2010; *id.* at 157-183.

<sup>20</sup> See *id.* at 169-173.

<sup>21</sup> See Employment Contracts; *id.* at 196-259. See also *id.* at 171.

<sup>22</sup> *Id.* at 49 and 173-174.

<sup>23</sup> *Id.* at 416-425.

<sup>24</sup> *Id.* at 425.

<sup>25</sup> *Id.* at 420.

<sup>26</sup> *Id.* at 424.

<sup>27</sup> See Memorandum of Appeal dated July 12, 2010; *id.* at 426-437.

### The NLRC Ruling

In a Decision<sup>28</sup> dated November 15, 2010, the NLRC modified the LA Decision, ruling that petitioners are regular employees but were validly terminated due to redundancy.<sup>29</sup> Accordingly, petitioners, except Vilorio and Acosta whose complaints were dismissed without prejudice for failure to prosecute,<sup>30</sup> were awarded their separation pay with interest of 12% per annum reckoned from the date of their actual dismissal until full payment, plus attorney's fees amounting to 10% of the total monetary award. In addition, the NLRC awarded nominal damages in the amount of ₱10,000.00 each to petitioners Gadia, Remo, Quesea, Balingit, Castrence, Lapuz, and Lord for respondents' failure to furnish them the required written notice of termination within the prescribed period.<sup>31</sup>

Contrary to the LA's finding, the NLRC found that petitioners could not be properly characterized as project-based employees, ratiocinating that while it was made known to petitioners that their employment would be co-terminus to the Alltel Project, it was neither determined nor made known to petitioners, at the time of hiring, when the said project would end, be terminated, or be completed.<sup>32</sup> In this relation, the NLRC concluded that inasmuch as petitioners had been engaged to perform activities which are necessary or desirable in respondents' usual business or trade of BPO, petitioners should be deemed regular employees of Sykes Asia.<sup>33</sup> This notwithstanding, and in view of the cessation of the Alltel Project, the NLRC found petitioners' employment with Sykes Asia to be redundant; hence, declared that they were legally dismissed from service and were only entitled to receive their respective separation pay.<sup>34</sup>

Respondents moved for reconsideration,<sup>35</sup> which was, however, denied in a Resolution<sup>36</sup> dated May 10, 2011. Unconvinced, Sykes Asia<sup>37</sup> elevated the case to the CA on *certiorari*.<sup>38</sup>

### The CA Ruling

In a Decision<sup>39</sup> dated April 29, 2013, the CA annulled and set aside the ruling of the NLRC, and accordingly, reinstated that of the LA.<sup>40</sup> It held

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<sup>28</sup> Id. at 108-B-125.

<sup>29</sup> Id. at 122.

<sup>30</sup> See id. at 114.

<sup>31</sup> Id. at 121 and 123-124.

<sup>32</sup> Id. at 116.

<sup>33</sup> See id. at 116-117.

<sup>34</sup> See id. at 121-122.

<sup>35</sup> See Motion for Reconsideration dated December 6, 2010; id. at 130-153.

<sup>36</sup> Id. at 127-129.

<sup>37</sup> Only Sykes Asia appealed to the CA.

<sup>38</sup> Id. at 63-104.

<sup>39</sup> Id. at 47-58.

<sup>40</sup> Id. at 57.

that a perusal of petitioners' respective employment contracts readily shows that they were hired exclusively for the Alltel Project and that it was specifically stated therein that their employment would be project-based.<sup>41</sup> The CA further held that petitioners' employment contracts need not state an actual date as to when their employment would end, opining that it is enough that such date is determinable.<sup>42</sup>

Petitioners moved for reconsideration,<sup>43</sup> which was, however, denied in a Resolution<sup>44</sup> dated October 3, 2013, hence, this petition.

### **The Issue Before the Court**

The primordial issue for the Court's resolution is whether or not the CA correctly granted respondents' petition for *certiorari*, thereby setting aside the NLRC's decision holding that petitioners were regular employees and reinstating the LA ruling that petitioners were merely project-based employees, and thus, validly dismissed from service.

### **The Court's Ruling**

The petition is without merit.

At the outset, it must be stressed that 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 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.<sup>45</sup>

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. This requirement of substantial evidence is clearly expressed in Section 5, Rule 133 of the Rules of Court which provides that "in 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."<sup>46</sup>

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<sup>41</sup> Id. at 55.

<sup>42</sup> See id. at 56.

<sup>43</sup> See Motion for Reconsideration dated May 23, 2013; id. at 657-660.

<sup>44</sup> Id. at 60-62.

<sup>45</sup> See *Omni Hauling Services, Inc. v. Bon*, G.R. No. 199388, September 3, 2014; citation omitted.

<sup>46</sup> Id.

Tested against these considerations, the Court finds that the CA correctly granted respondents' *certiorari* petition before it, since the NLRC gravely abused its discretion in ruling that petitioners were regular employees of Sykes Asia when the latter had established by substantial evidence that they were merely project-based.

Article 294<sup>47</sup> of the Labor Code,<sup>48</sup> as amended, distinguishes a project-based employee from a regular employee as follows:

Art. 294. *Regular and casual employment.*—The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, **except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee** or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

x x x x (Emphasis and underscoring supplied)

In *Omni Hauling Services, Inc. v. Bon*,<sup>49</sup> the Court extensively discussed how to determine whether an employee may be properly deemed project-based or regular, to wit:

**A project employee is assigned to a project which begins and ends at determined or determinable times.** 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[-based] employees” may be lawfully terminated at the completion of the project.**

According to jurisprudence, **the principal test for determining whether particular employees are properly characterised as “project[-based] 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

<sup>47</sup> Formerly Article 280. As renumbered pursuant to Section 5 of Republic Act No. 10151, entitled “AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS, THEREBY REPEALING ARTICLES 130 AND 131 OF PRESIDENTIAL DECREE NUMBER FOUR HUNDRED FORTY-TWO, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES” (July 26 2010).

<sup>48</sup> Presidential Decree No. 442 entitled “A DECREE INSTITUTING A LABOR CODE THEREBY REVISING AND CONSOLIDATING LABOR AND SOCIAL LAWS TO AFFORD PROTECTION TO LABOR, PROMOTE EMPLOYMENT AND HUMAN RESOURCES DEVELOPMENT AND INSURE INDUSTRIAL PEACE BASED ON SOCIAL JUSTICE” (May 1, 1974).

<sup>49</sup> Supra note 45.

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[-based] 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.<sup>50</sup> (Emphases and underscoring supplied)

Verily, for an employee to be considered project-based, 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.

In this case, records reveal that Sykes Asia adequately informed petitioners of their employment status at the time of their engagement, as evidenced by the latter’s employment contracts which similarly provide that they were hired in connection with the Alltel Project, and that their positions were “project-based and as such is co-terminus to the project.” In this light, the CA correctly ruled that petitioners were indeed project-based employees, considering that: (a) they were hired to carry out a specific undertaking, *i.e.*, the Alltel Project; and (b) the duration and scope of such project were made known to them at the time of their engagement, *i.e.*, “co-terminus with the project.”

As regards the second requisite, the CA correctly stressed that “[t]he law and jurisprudence dictate that ‘the duration of the undertaking begins and ends at determined or determinable times’” while clarifying that “[t]he phrase ‘determinable times’ simply means capable of being determined or fixed.”<sup>51</sup> In this case, Sykes Asia substantially complied with this requisite when it expressly indicated in petitioners’ employment contracts that their positions were “co-terminus with the project.” To the mind of the Court, this caveat sufficiently apprised petitioners that their security of tenure with Sykes Asia would only last as long as the Alltel Project was subsisting. In other words, when the Alltel Project was terminated, petitioners no longer had any project to work on, and hence, Sykes Asia may validly terminate them from employment.

Further, the Court likewise notes the fact that Sykes Asia duly submitted an Establishment Employment Report<sup>52</sup> and an Establishment Termination Report<sup>53</sup> to the Department of Labor and Employment Makati-

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<sup>50</sup> Id.; citations omitted.

<sup>51</sup> *Rollo*, p. 56.

<sup>52</sup> Id. at 260-269.


<sup>53</sup> Id. at 301-307.

Pasay Field Office regarding the cessation of the Alltel Project and the list of employees that would be affected by such cessation. As correctly pointed out by the CA, case law deems such submission as an indication that the employment was indeed project-based.<sup>54</sup>

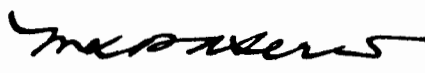
In sum, respondents have shown by substantial evidence that petitioners were merely project-based employees, and as such, their services were lawfully terminated upon the cessation of the Alltel Project.

**WHEREFORE**, the petition is **DENIED**. Accordingly, the Decision dated April 29, 2013 and the Resolution dated October 3, 2013 of the Court of Appeals in CA-G.R. SP No. 120433 are hereby **AFFIRMED**.


**SO ORDERED.**

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

**WE CONCUR:**

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson

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

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

<sup>54</sup> See *Goma v. Pamplona Plantation Incorporated*, 579 Phil. 402, 413 (2008); *Filsystems, Inc. v. Puente*, 493 Phil. 923, 932 (2005); *Association of Trade Unions v. Hon. Abella*, 380 Phil. 6, 20 (2000).



**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