

# RECENT JURISPRUDENCE ON LABOR LAW\*

## INTRODUCTION

This article showcases select decisions on labor law that were promulgated by the Supreme Court in 2021. It tackles various concepts under the field of labor law, namely serious misconduct, seafarers' compensation and benefits, nature of employment, voluntary resignation, and employer-employee relationships. Part I involves racism as serious misconduct and a just cause for dismissal. Part II tackles a seafarer's fraudulent concealment in their pre-employment medical examination. Part III considers the differences between regular and project employment, and highlights the principles used to determine whether an employee in the construction industry is a regular employee or a project employee. Part IV illustrates the differences between voluntary resignation and constructive dismissal. Finally, Part V demonstrates how to determine whether an employer-employee relationship exists.

## I. RACISM AS SERIOUS MISCONDUCT

### A. *Ocampo v. International Ship Crew Management Phils., Inc.*<sup>1</sup>

Aniceto Ocampo was hired by International Ship Crew Management, Philippines, Inc. ("ISCM") as Master and Captain of MT Golden Ambrosia, an oil and chemical tanker vessel flying under the Singaporean flag. However, Ocampo was later dismissed by management due to his alleged racist attitude towards Myanmar crew members, as well as gross negligence and loss of trust and confidence for the over-discharge of methanol from the vessel he was commanding.

According to Sandra Ross, a representative of the service provider of the Myanmar crew members, the Myanmar crew were "extremely depressed"

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<sup>1</sup> G.R. No. 232062, Apr. 26, 2021.

and did not wish to keep working under Capt. Ocampo. They felt that they had been treated in an inhumane manner ever since he took over the vessel. Ross received reports that Ocampo shouted profound vulgarities at the Myanmar crew, called them “animals,” and instructed that the crew’s drinking water be rationed.

After Ocampo was relieved from duty at a port in Malaysia and repatriated, he filed a complaint for illegal dismissal against ISCM. He argued that his dismissal due to racist behavior was not supported by the record nor was it proven by substantial evidence at the time he was dismissed. He contended that the Myanmar crew members did not offer sworn statements to testify on the charge of racism against him, and only uncorroborated reports by the crew members were offered, which make the allegations hearsay.

The Supreme Court, through Justice Marvic Leonen, affirmed the Decision and Resolution of the Court of Appeals, wherein it found Ocampo’s dismissal valid due to his racist behavior, which constituted serious misconduct. For serious misconduct to be a just cause for dismissal, it is required that: (a) the misconduct must be serious; (b) it must relate to the performance of the employee’s duties showing that the employee has become unfit to continue working for the employer; and (c) it must have been performed with wrongful intent.

Ocampo’s deliberate acts created hostile and inhumane working conditions for the Myanmar crew members. Racist attitudes, according to the Court, have cost numerous lives and livelihoods in the past and present, and they should no longer be tolerated in any way. The State formally made clear its intention to end racial discrimination as early as the 1960s, when the Philippines signed the International Convention on the Elimination of All Forms of Discrimination. Ocampo’s misconduct is considered serious as it is of such a grave and aggravated character and not merely trivial or unimportant.

Ocampo’s position as commander of the entire crew worsened the situation. His ill treatment of his subordinates was inevitably related to the performance of his duties as Master and Captain, and showed his unfitness to continue in such capacity. Thus, his dismissal for serious misconduct was done for a just cause.

## II. SEAFARERS' COMPENSATION AND BENEFITS

### A. *PAL Maritime Corp. v. Dalisay*<sup>2</sup>

Darwin Dalisay applied for shipboard employment with PAL Maritime Corporation (“PAL Maritime”), which directed him to undergo a pre-employment medical examination (“PEME”). During the examination, Dalisay declared that he had no history of any ailment other than a prior “varicocelectomy” operation. Thus, he was declared fit to work and was hired as an able seaman on behalf of PAL Maritime’s foreign principal, Norwest Management Corporation (PTE) LTD. Singapore (Norwest Management). In November 2012, Dalisay was deployed aboard the vessel M/V Ormella.

Thereafter, Dalisay requested for medical attention after experiencing sharp and intense pain on his lower back while lifting heavy provisions. Dalisay was then detected to be suffering from “degeneration of spur lumbar verbae/increase of liver enzymes.” In December 2012, Dalisay was repatriated to the Philippines and PAL Maritime’s company-designated physician diagnosed him with “low back pain secondary to Disc Protusion L4-L5 and L5-S1.” Dalisay then underwent physical therapy for over three months.

Subsequently, PAL Maritime discovered that Dalisay previously filed a claim for permanent and total disability benefits for his low back pain against his former employer, Phil Transmarine Carriers, Inc. (Phil Transmarine), and was awarded the amount of USD 60,000 or PHP 3,127,278. Thus, PAL Maritime discontinued Dalisay’s medical treatment on the ground of malicious concealment of a pre-existing illness.

Aggrieved, Dalisay filed a complaint against PAL Maritime and Norwest Management for permanent and total disability benefits, sickness allowance, damages, and attorney’s fees before the Labor Arbiter, arguing that his illness is work-related and work-aggravated. Meanwhile, PAL Maritime countered that Dalisay’s fraudulent concealment of a previous ailment disqualified him from claiming any benefits. In response, Dalisay denied any willful concealment, and argued that he was not expected to know the classification of his illness during the PEME.

The Supreme Court, through Justice Mario Lopez, ruled that a seafarer who is guilty of fraudulent concealment in the PEME is disqualified from claiming any compensation and benefits, including sickness allowance. Section 20(E) of the 2010 Philippine Overseas Employment Administration

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<sup>2</sup> G.R. No. 218115, Jan. 27, 2021.

Standard Employment Contract (POEA-SEC) explicitly states that a seafarer who “knowingly conceals a pre-existing illness or condition” in the PEME shall be disqualified from claiming “any compensation and benefits.” The rule seeks to penalize seafarers who conceal material information in order to pass the PEME and even makes such misrepresentation a just cause for termination of employment.

Citing the POEA-SEC, the Court stated that an illness shall be considered pre-existing if prior to the processing of the POEA contract, any of the following conditions are present: (a) the advice of a medical doctor on treatment was given for such continuing illness or condition; or (b) the seafarer had been diagnosed and has knowledge of such an illness or condition, but failed to disclose it during the PEME, and the same cannot be diagnosed during the examination.

Ultimately, the Supreme Court reiterated that the constitutional policy to provide full protection to labor is not meant to be a sword to oppress employers. Justice is for the deserving and must be dispensed within the light of established facts, the applicable law, and existing jurisprudence. The Court’s commitment to the cause of labor is not a lopsided undertaking. It cannot and does not prevent the Court from sustaining the employer when it is in the right.

### **B. *Blue Manila, Inc. v. Jamias*<sup>3</sup>**

Petitioners Blue Manila, Inc. (Blue Manila) and/or Oceanwide Crew Manila, Inc. are the manning agents of Wagenborg Crewmanagement BV/The Netherlands (Wagenborg), owner of the vessel M/V Kwintebank. Seafarer Antonio Jamias (Jamias) worked for the petitioners since 1998.

In February 2011, Jamias was rehired as Cook AB by Blue Manila under a six-month contract, which was covered by the Collective Bargaining Agreement (CBA) between Wagenborg and the Associated Marine Officers’ and Seamen’s Union of the Philippines. After passing the mandatory PEME, Jamias boarded M/V Kwintebank.

In August 2011, while doing his usual work on board the vessel, Jamias claimed that he had a bout of coughing. Then, as he was lifting sacks of potatoes, he felt excruciating pain—as if something had snapped in his waist area. A few days later, Jamias complained of abdominal pain in the umbilical area, with the pain extending to his left side. The ship captain

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<sup>3</sup> G.R. No. 230919, Jan. 20, 2021.

ordered that he be brought to Telemark Hospital in Norway, where he was diagnosed with constipation and umbilical hernia. Upon recommendation of the offshore doctor, Jamias was signed off the vessel. He was subsequently repatriated to Manila and admitted at the Manila Doctor's Hospital. Soon after, Jamias had surgery for his umbilical hernia, which cleared up his abdominal pain. Despite this, he claimed that his lower back pain persisted. The company-designated physician dismissed this as something attributable to aging and declared him fit-to-work as of November 12, 2011.

Nonetheless, Jamias went to the local manning office to request that his back pain be medically evaluated. When he ultimately received no response from the petitioners, he consulted with Dr. Renato Runas, an orthopedic specialist. Dr. Runas declared that Jamias' lower back pain was due to the presence of a "central broad-based disc herniation," a Grade 8 disability under the POEA-SEC. Since Jamias' job as a cook involved carrying heavy provisions and food supplies, Dr. Runas declared that his impediment rendered him unfit to resume his occupation on board the vessel. Hence, Jamias resorted to Voluntary Arbitration and demanded payment of disability benefit from the petitioners.

The Panel of Voluntary Arbitrators issued an award in favor of Jamias. The main issue before the Supreme Court was whether the seafarer's ailment must be a necessary consequence or directly connected to the cause of medical repatriation to be compensable. The Supreme Court, through Justice Mario Lopez, stated that while Jamias' umbilical hernia was medically resolved by the post-repatriation surgery, the seafarer's back ailment was never attended to by the company-designated doctor. Jamias was indeed medically repatriated due to his umbilical hernia, but this does not mean that the post-employment medical assessment and treatment should be confined to this ailment. There is nothing in Section 20 (A) of the POEA-SEC or the CBA that would suggest, even remotely, that the medical attention to be extended to the seafarer must only pertain to the cause of repatriation.

Any illness complained of and/or diagnosed during the mandatory PEME under Section 20 (A) of the POEA-SEC is deemed existing during the term of the seafarer's employment, and the employer is liable therefor. This is true regardless of whether the existing illness was the immediate cause of a medical repatriation. The Court further stresses that the mandatory PEME under Section 20 (A) is not an empty ritual. Under the POEA-SEC, the company-designated physician is primarily responsible for determining the disability grading or fitness to work of seafarers. Nonetheless, to be conclusive and binding, the medical assessment or report of the company-designated physician must be complete and definite for the purpose of ascertaining the

degree of the seafarer's disability benefits. A final and definite disability assessment must truly reflect the extent of the sickness or injuries of the seafarer, and his or her capacity to resume work as such. Failing which, the disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered by the seafarer. In this case, by limiting the medical assessment to Jamias' umbilical hernia, the evaluation made by the company-designated physician fell short of the parameters laid down by law and jurisprudence.

At any rate, the unceremonious issuance of the fit-to-work certification to Jamias is a complete abdication of the company-designated physician's statutory obligation to give a complete and definite medical assessment of the seafarer's medical condition. The law now steps in and considers these lapses as equivalent to a declaration of permanent and total disability in favor of the seafarer. The Panel of Voluntary Arbitrators was correct in ruling that Jamias is rightfully entitled to total and permanent disability benefits amounting to USD 80,000 in accordance with the CBA.

### ***C. Darroca v. Century Maritime Agencies, Inc.***<sup>4</sup>

Efraim Darroca, Jr. was a seafarer for Century Maritime Agencies, Inc. (Century) and Damina Shipping Corporation (Damina), Century's foreign principal. After undergoing a rigorous physical and medical examination, Darroca was declared fit for sea duty.

After a month of working on the vessel MT Dynasty, however, Darroca began experiencing inability to sleep, exhaustion, dizziness from the smell of chemical fumes, and weakness. This prompted him to ask for a medical consultation. When he was declared unfit for sea duty after being diagnosed with "major depression and psychomotor retardation" by a doctor in the United States, he was repatriated back to the Philippines for further treatment.

The company-designated physician found Darroca's illness as not work-related or work-aggravated, and abandoned the treatment after a month. After two years, due to his continued incapacity to work, Darroca consulted with another psychologist and was diagnosed with "major depression with psychotic features." The doctor recommended that Darroca undergo "continuous psychological and psychiatric intervention."

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<sup>4</sup> G.R. No. 234392, Nov. 10, 2021.

Hence, Darroca filed a complaint against Century and/or Damina for the payment of his permanent and total disability benefits, sickness allowance, medical expenses, and damages. The Labor Arbiter (LA) dismissed Darroca's complaint, and this was affirmed by the National Labor Relations Commission (NLRC). The Court of Appeals (CA) then denied Darroca's petition for *certiorari* against the NLRC.

Before the Supreme Court, the core of the controversy was whether Darroca's illness was work-related and therefore compensable. Under the POEA-SEC, two elements must concur for disability to be compensable: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. It is not sufficient to establish that the seafarer's illness or injury has rendered him or her permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he or she had been contracted.

For the occupational diseases listed under Section 32 of the POEA-SEC, a seafarer must show compliance with the conditions under Section 32-A<sup>5</sup> for the illness to be compensable. For illnesses not mentioned under Section 32, the POEA-SEC creates a disputable presumption in favor of the seafarer that these illnesses are work-related. Given such legal presumption in favor of the seafarer, he or she may rely on and invoke such legal presumption to establish a fact in issue, which may only be overturned when the employer proves otherwise by substantial evidence. However, it bears stressing that such legal presumption only covers work-relatedness, and not compensability.

In this case, Darroca failed to establish his illness' work-relatedness and compensability. While he was diagnosed with depression in the United States and in the Philippines by his physician of choice, he should have shown that his illness was a result of or aggravated by his work conditions in order to prove that his illness is work-related. However, Darroca failed to do the same.

Moreover, work-related illnesses refer to the diseases listed under Section 32 of the POEA-SEC. On the other hand, non-listed illnesses have a

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<sup>5</sup> For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied: 1. The seafarer's work must involve the risks described herein; 2. The disease was contracted as a result of the seafarer's exposure to the described risks; 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and 4. There was no notorious negligence on the part of the seafarer.

legal presumption of work-relatedness. In this case, Century was able to overturn the legal presumption of work-relatedness by presenting an affidavit that states that Darroca did not suffer any injury which caused his inability to sleep, he was not maltreated, and he worked under fair working conditions.

However, the Supreme Court clarified the CA's ruling that a traumatic head injury must be the cause of a mental disease in order to be compensable. The Court held that work-related mental illnesses, to be compensable, are not limited to reasons of physical damage, but also include mental or emotional damage. In so ruling, the Court cited *Career Philippines Shipmanagement, Inc. v. Godinez*,<sup>6</sup> which provides that the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels do not specifically state that traumatic head injuries contemplate accidents involving physical or head contacts. In fact, "traumatic head injury" does not only involve physical damage, but mental or emotional damage as well.

### III. NATURE OF EMPLOYMENT: REGULAR OR PROJECT EMPLOYEES

#### A. *Carpio v. Modair Manila Co. Ltd., Inc.*<sup>7</sup>

Pursuant to a Certificate of Employment issued by Modair Manila Co. Ltd., Inc. (Modair), Ruben Carpio had been employed as a "contractor's employee (per project basis)" and designated as "Electrician 3" from 1998 to 2013. From 2008 to 2013, after completion of the projects in which Carpio was assigned, he would receive Memoranda stating that his services will be terminated by reason of project completion and that he will be notified if his services will again be needed. Carpio executed Affidavits of Release and Quitclaim acknowledging that his project employment ceased upon termination of the projects, confirming full payment of everything due him, and stating that he had no claims against Modair.

Despite the execution of the Affidavits of Release and Quitclaim, Carpio filed a complaint for illegal dismissal and regularization before the NLRC. He argued that he had attained regular status owing to his repeated re-hiring by Modair for various construction projects; and that he was illegally dismissed since, despite other available projects, he was not given any work following completion of his last project in 2013. He prayed for regularization, a finding of illegal dismissal, reinstatement with backwages, damages, and

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<sup>6</sup> G.R. No. 206826, 841 SCRA 389, Oct. 2, 2017.

<sup>7</sup> G.R. No. 239622, June 21, 2021.



attorney's fees. The main issue the Supreme Court had to resolve was whether Carpio was a project-based or regular employee of Modair.

In settling this controversy, the Court, citing Article 295 of the Labor Code, explained that regular employment exists when the employee is: (a) engaged to perform activities that are usually necessary or desirable in the usual business or trade of the employer; or (b) a casual employee whose activities are not usually necessary or desirable in the employer's usual business or trade, and has rendered at least one year of service, whether continuous or broken, with respect to the activity in which he or she is employed. On the other hand, project employment exists when the employee is hired under a contract which specifies that the employment will last only for a specific project or undertaking, the completion or termination of which is determined at the time of engagement.

As regards *security of tenure*, regular employment may be terminated for just or authorized causes; whereas, for project employment, lawful dismissal is brought about by the completion of the project or contract for which the employee was engaged, unless terminated during the life of the project, in which case, only just or authorized causes may be invoked.

Regarding *payment of backwages* in cases of illegal dismissal, for regular employment, backwages are computed from the time of dismissal until reinstatement, if such is ordered, or until finality of the decision ordering separation pay, if reinstatement is infeasible; while for project employment, backwages are computed from the date of the termination of employment until the actual completion of the work. The burden of proof to establish project employment lies upon the employer who has to show that: (1) the employee was assigned to carry out a specific project or undertaking; and (2) the duration and scope of which were specified at the time the employee was engaged for such project. Moreover, the employer must also prove that there was indeed a project undertaken. Failing these, the worker will be presumed a regular employee.

Significant in this decision penned by Justice Jhosep Lopez is the articulation of five guiding principles to determine similar controversies in the construction industry. The first principle lays down the presumption of regular employment, unless the employer establishes that: (1) the employee was hired under a contract specifying that the employment will last only for a specific undertaking, the termination of which is determined at the time of engagement; (2) there was indeed a project undertaken; and (3) the parties bargained on equal terms, with no vices of consent.

The second principle provides that security of tenure already attaches if the worker is considered a regular employee at the outset, with subsequent execution of project employment contracts being treated as mere continuation in the regular engagement of such employee.

Next, the third principle sets the rule that project employment may ripen into regular employment if the following elements 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. No such “ripening” will take place, however, if the construction worker was truly engaged as a project-based employee, and between each successive project, the employer made no manifestations of any intent to treat the worker as a continuing resource for the main business. On the other hand, there may be instances when workers may be deemed regular employees from the beginning, irrespective of an employer’s claims of project-based employment. This applies when: (a) despite the execution of employment contracts for certain projects, the workers were actually engaged to work inhouse, for services vital and necessary to the employer’s usual trade or business; or (b) the employer failed to substantiate the allegations of project-based employment, even if for just a fraction of the employee’s service.

The fourth principle states that regularized construction workers are subject to the “no work, no pay” principle, such that the employer is not obligated to pay them a salary when on leave.

Finally, the fifth principle provides that the submission of termination reports to the Department of Labor and Employment (DOLE) Field Office may be considered as mere indicators of project employment; conversely, non-submission does not automatically grant regular status. These circumstances do not, by themselves, determine the nature of employment.

In applying the above principles, the Court determined that Carpio was a regular employee of Modair from his engagement in 1998 until 2013. The decision primarily rested on his successive service as “Electrician 3” in numerous construction projects, which manifested the vitality and indispensability of his work to the construction business of Modair. The language used in the Memoranda, which state that Carpio will be “notified accordingly for re-contract if [his] services will again be needed,” reveals that Modair continuously relied on Carpio’s services. In sum, his engagement, if it were at all project-based at the outset, had already ripened to regular status.

**B. *Toyo Seat Philippines Corp. v. Velasco***<sup>8</sup>

Toyo Seat Philippines Corporation (“TSPC”) hired respondents Annabelle Velasco, Renato Natividad, Florante Bilasa, and Mary Ann Benigla as sewers for Project J68C, which involved the manufacturing of seats for the 2008 Mazda 3 vehicle. The project started in August 2008 and was estimated to be completed in September 2012. However, due to the low volume of orders of the 2008 Mazda 3, Project J68C was terminated earlier than expected. Instead, TSPC was contracted to manufacture car seats for the 2011 Mazda 3 model under Project J68N. The respondents agreed to be employed under said project from June 8, 2011 until December 20, 2012, as provided under a separate project employment contract. The contract explicitly stated that the respondents were being employed as project employees as well as the duration of the project.

Just a few months after the commencement of Project J68N, the respondents were not required to report for work everyday due to the low volume of orders. To accommodate the respondents, TSPC assigned them as sewers under Project GS41 for Mitsubishi Lancer. The respondents’ schedule of work was alternating for both Projects J68N and GS41. Project GS41 ended in December 2012, but the respondents’ employment for Project J68N was extended until June 30, 2013.

On the belief that they had already attained the status of regular employees, the respondents filed a complaint for regularization on April 18, 2013. TSPC later issued a letter informing the respondents that their project employment with the company had ceased effectively on July 1, 2013.

The respondents argued that they had attained the status of regular employees because they performed activities for almost four years as sewers, which are usually necessary and desirable to TSPC’s usual business. Meanwhile, TSPC countered that it validly engaged the respondents as project employees pursuant to the separate and distinct projects entered into by the company with various clients. Furthermore, it argued that the repeated and successive rehiring of project employees does not qualify the respondents as regular employees. Length of service is not the controlling determinant of the employment tenure of a project employee, but whether the employment has been fixed for a specific project or undertaking, and its completion has been determined at the time of the engagement of the employee.

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<sup>8</sup> G.R. No. 240774, Mar. 3, 2021.

The Supreme Court ruled in favor of TSPC and held that the respondents were validly employed as project employees. Pursuant to Article 295 of the Labor Code, there are two determinative factors for the existence of regular employment: 1) the nature of the work performed by the employee; and 2) the length of service rendered. Even if the employment agreement states otherwise, the law considers an employee as a regular employee if the employee performs functions which are usually necessary or desirable in the employer's usual business or trade, or if a casual employee has rendered at least one year of service. However, this general rule does not apply if the worker was employed for a specific project or if the work or service performed is seasonal in nature. Project employees are defined in Article 295 as workers whose employment "has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of their engagement."

The Court emphasized that workers may be considered project employees regardless of the nature of the work they perform, as long as the essential elements of project employment are alleged and proven. Specifically, (1) that they were hired for a specific project or undertaking; and (2) the completion or termination of the project or undertaking for which they were hired has been determined at the time of their engagement. Project employment is further regulated by Section 2.2 of DOLE Department Order No. 19, Series of 1993 which provides a list of indicators of project employment.

Despite the fact that the actual duration of Projects J68C and J68N did not perfectly correspond to the periods set out in the employment contracts, but were either shortened or extended according to the economic forces of supply and demand, the Court ruled that the completion periods of the projects for which the respondents were employed were still certain. The Court took into consideration the fact that the respondents' employment contracts clearly stated that their employment was coterminous with the actual duration of the project, and as such, their engagement may be terminated at an earlier date if the project is finished ahead of schedule. TSPC also issued notices of extension clearly indicating the new end dates of the project.

As to the respondents' simultaneous engagement in Projects J68N and GS41, the Court ruled that there was substantial evidence to conclude that the respondents' engagement in Project GS41 was a mere contingency measure meant to optimize manpower utilization and allow the respondents to continue working while Project J68N remained idle. The facts show that TSPC entered into separate contracts for each of the projects for which the respondents were engaged. The Supreme Court also held that TSPC's

business model was based on projects that were discrete and separate, based on work contracts from automobile makers, bus manufacturers, and the like. Consequently, TSPC may hire project employees to cope with the demands of its current projects. The Court reiterated that the essence of the distinction between project and regular employment lies not in the nature of the activity performed, but in the engagement for a specific undertaking with a reasonably determinable time frame which is determined at the time of hiring and communicated to the employee.

Finally, in relation to TSPC's non-filing of termination reports, which the Court of Appeals considered an indicator that the respondents were not project employees, the Supreme Court ruled that the submission of termination reports is only *one* of several indicators of project employment. Although DO 19-1993 was originally meant to apply only to project employment in the construction industry, its rules and principles have nevertheless been applied to other industries where project employment is practiced. Thus, the submission of termination reports should now be considered an indicator of project employment in similarly situated industries where works are conducted on a project basis and which hire project employees as a matter of common practice.

However, the Court reiterated that the submission of termination reports is only one of several indicators of project employment. Section 2.2 of DO 19-1993 clearly states that “[e]ither one or more of the following circumstances, among others, may be considered as indicators that an employee is a project employee.” In determining the existence of a valid project employment, the essential test remains as laid down by Article 295 of the Labor Code, with the indicators in DO 19-1993 applying suppletorily.

Applied to the case at hand, despite TSPC's non-submission of the termination reports, the Supreme Court concluded that there was substantial evidence on record to prove that the requisites of a valid project employment under Article 295 were indeed met.

#### IV. VOLUNTARY RESIGNATION VS. CONSTRUCTIVE DISMISSAL

##### A. *Tacis v. Shields Security Services, Inc.*<sup>9</sup>

Renato Tacis and Dionicio Lamis III were hired in 2004 and 2012, respectively, by Shield Security Services, Inc. (Shield Security) as security

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<sup>9</sup> G.R. No. 234575, July 7, 2021.

guards. They were both assigned at Texas Instruments, Inc. (Texas Instruments).

In November 2013, Tacis and Lamis were instructed to train 15 newly-deployed security guards at Texas Instruments. Within the same month, however, they were informed that they would be relieved and terminated from service and that the 15 new hirees would replace them pursuant to the request of the client. When they communicated their objection, Shield Security's General Manager allegedly promised that they would be transferred to Soliman Security Services (Soliman Security), a sister company of Shield Security. Relying on this commitment, Tacis and Lamis submitted their resignation letters and quitclaims. After later being informed that Soliman Security had no vacancy, however, they filed a complaint for illegal dismissal.

Shield Security claimed that Tacis and Lamis voluntarily resigned, as evidenced by their handwritten resignation letters, which were duly accepted by the company; that they were already paid separation benefits; and that they had executed a Quitclaim, Release, and Waiver.

In resolving the issue of whether Tacis and Lamis were illegally dismissed by way of constructive dismissal, the Supreme Court, through Justice Ramon Paul Hernando, contrasted the concepts of constructive dismissal and resignation.

Constructive dismissal is an involuntary resignation resorted to when continued employment is rendered impossible, unreasonable, or unlikely; or when there is a demotion in rank and/or a diminution in pay. It exists when there is a clear act of discrimination, insensibility, or disdain by an employer, which makes it unbearable for the employee to continue his or her employment. In cases of constructive dismissal, the impossibility, unreasonableness, or unlikelihood of continued employment leaves an employee with no other viable recourse but to terminate his or her employment.

On the other hand, resignation is the formal pronouncement or relinquishment of a position or office. It is the voluntary act of an employee who is in a situation where he or she believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and he or she has no other choice but to disassociate from employment. The intent to relinquish must concur with the overt act of relinquishment; hence, the acts of the employee before and after the alleged resignation must be considered in determining whether he or she in fact intended to terminate his or her employment.

In illegal dismissal cases, it is a fundamental rule that when an employer interposes the defense of resignation, the burden to prove that the employee indeed voluntarily resigned necessarily rests on the employer.

In the present case, the totality of evidence points to the conclusion that Tacis and Lamis voluntarily resigned. First, they submitted handwritten resignation letters which lacked any indication of undue influence or coercion. On the contrary, it contained words of appreciation and gratitude which negated the notion that they were forced and coerced to resign.<sup>10</sup> Second, they accepted the separation benefits; processed documents required of resigning employees; and executed a Quitclaim, Release and Waiver, which is a valid and binding agreement, provided that it constitutes a credible and reasonable settlement, and that the one accomplishing it has done so voluntarily and with a full understanding of its import.<sup>11</sup> There was no showing that said quitclaims were procured through fraud or deceit, or with force or duress. Third, if the petitioners were indeed promised a transfer to the sister security company, they would not have needed to file a resignation letter, nor would Shield Security pay them retirement and other monetary benefits. It makes no sense for an employee to file a resignation letter solely based on an alleged promise that said employee would be later reinstated by the company, especially if his only proof of said arrangement is the conversation he had with management, which is supported by nothing but his bare testimony.<sup>12</sup> In sum, in the absence of any proof that the resignation letters were tainted with deceit and bad faith, there could be no finding of constructive dismissal.

## V. EMPLOYER-EMPLOYEE RELATIONSHIP

### A. *Dusol v. Lazo*<sup>13</sup>

Since 1993, Pedro Dusol had been working as the sole caretaker and employee of the beach resort originally operated by the parents of Emmarck Lazo. Pedro was initially given an allowance of PHP 100 per week, but this was increased to PHP 239 in 2001. Several years later, Pedro's wife, Maricel Dusol, was employed by Lazo to manage the store in the beach resort. For her services, she was paid PHP 1,000 a month and entitled to 15% commission on the rentals collected from the cottages and rest house. Pedro

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<sup>10</sup> *Bilbao v. Saudi Arabian Airlines*, G.R. No. 183915, 662 SCRA 540, Dec. 14, 2011.

<sup>11</sup> *Iladan v. La Suerte*, G.R. No. 203882, 778 SCRA 664, Jan. 11, 2016.

<sup>12</sup> *Panasonic v. Peckson*, G.R. No. 206316, 897 SCRA 526, Mar. 20, 2019.

<sup>13</sup> G.R. No. 200555, Jan. 20, 2021.

and Maricel worked from 5 a.m. to 9 p.m. every day. Sometime in July 2008, Lazo notified the Dusols that he would be leasing out the beach resort because the business was not profitable. Thus, their services were no longer needed. The Dusols then filed a case for illegal dismissal against Lazo.

Lazo argued that no employer-employee relationship existed between him and the Dusols because the latter were actually his industrial partners. Their receipt of a share in the profits was in their capacity as business partners. He also asserted that he had no power to dismiss the Dusols because the existence of a partnership depends on the viability of the business. Since the beach resort did not produce much profit, it was not practicable nor feasible to hire employees. Lastly, Lazo stressed that he had no control over the Dusols; he did not control or guide them since he left the entire business operation to them.

In resolving the issue, the Supreme Court, through Justice Mario Lopez, distinguished proof of employment from proof of partnership. The existence of a partnership is established when it is shown that: (1) two or more persons bind themselves to contribute money, property, or industry to a common fund; and (2) they intend to divide the profits among themselves.<sup>14</sup> The best evidence to prove the existence of a partnership is the contract or articles of partnership. Nevertheless, in its absence, its existence can be established by circumstantial evidence. Under Article 1769 of the Civil Code, the receipt by a person of a share of the profits of a business is a *prima facie* evidence that he or she is a partner in the business, but no such inference shall be drawn if such profits were received in payment as wages of an employee.

In contrast, to determine whether an employment relationship exists, the following elements are considered: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the employer's power to control the employee's conduct. The most important element is the employer's control of the employee's conduct, not only as to the result of the work to be done, but also as to the means and methods to accomplish it.

In the present case, the Court concluded that the Dusols rendered their services in the beach resort and received compensation sourced from the rentals and sales of the resort. There is no proof that a partnership existed between either of the Dusols and Lazo in relation to the resort. In fact, the Court found that none of the elements of a partnership existed, while all four

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<sup>14</sup> Heirs of Tan Eng Kee v. CA, G.R. No. 126881, 341 SCRA 740, Oct. 3, 2000.



elements of an employer-employee relationship were shown by the facts of the case.

First, the beach resort engaged the services of Pedro as caretaker and Maricel as storekeeper. While Lazo did not personally engage the services of Pedro, he nonetheless retained his services. Second, Lazo paid their wages in the form of allowances and commissions. Third, Lazo terminated their employment when he notified them that he would be leasing the beach resort, and that their services were no longer needed. Finally, and most importantly, Lazo had the power to control their conduct in the performance of their duties. The existence of control is manifestly shown by Lazo's express admission that he left the entire business operation of the resort to the Dusols. While they are, to a large extent, allowed to carry out their respective duties as caretaker and storekeeper on their own, this does not negate the existence of control; it was Lazo himself who gave the Dusols immense flexibility in the performance of their duties.

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