



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 11 December 2019 which reads as follows:

"G.R. No. 249726 (Datem, Inc., Arnulfo de Asis, Liberito Espiritu, and Rene Olap v. Marlo A. Mostoles, Jr.)

After a judicious study of the case, the Court resolves to **DENY** the instant petition¹ and **AFFIRM** the April 11, 2019 Decision² and the September 25, 2019 Resolution³ of the Court of Appeals (CA) in CA-G.R. SP No. 154938 for failure of petitioners Datem, Inc. (Datem), Arnulfo de Asis, Liberito Espiritu, and Rene Olap (collectively, petitioners) to sufficiently show that the CA committed any reversible error in declaring respondent Marlo A. Mostoles, Jr. (respondent) as a regular employee of Datem.

As correctly ruled by the CA, the National Labor Relations Commission did not gravely abuse its discretion in finding that respondent was a regular employee of Datem, and that he was illegally dismissed from employment. Records reveal that respondent was a regular employee of petitioner, considering that: (a) he was employed by Datem since 2012 and he was repeatedly hired by Datem in its various construction projects; (b) there was an overlapping of respondent's work in Datem's projects; and (d) even if his contract allegedly ended on June 29, 2016, notices were still served to him charging him of absence without official leave on August 31, 2016, thereby belying Datem's claim that respondent was a mere project employee whose project had already finished. Further, petitioners failed to prove that respondent was its project employee since: (a) there was no submission of report of employee's termination to the Department of Labor and Employment (DOLE) each time respondent's employment was terminated due to completion of a project or a phase thereof, except for the completion of the Valero Primeland Project on March 31, 2014; and (b) the Establishment Employment Report submitted by Datem to the DOLE does not bear the name of respondent, making it an inconclusive proof that respondent was a project employee.⁴ Consequently, there being no valid or authorized cause for respondent's termination from employment, he was considered illegally terminated by petitioners. Settled is the rule that an employer can terminate the services of an employee only for valid and just causes,⁵ which petitioners failed to show in this case.

¹ Rollo, pp. 14-45.

² Id. at 51-68. Penned by Associate Justice Rafael Antonio M. Santos with Associate Justices Mariflor P. Punzalan Castillo and Danton Q. Bueser, concurring.

³ Id. at 70-72.

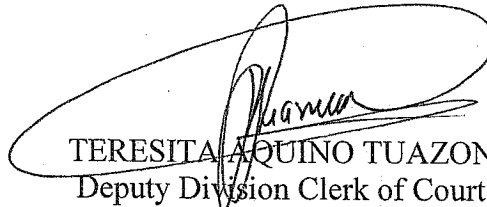
⁴ See id. at 64.

⁵ See *Ting Trucking v. Makilan*, 787 Phil. 651, 661 (2016); See also *Servidad v. National Labor Relations Commission*, 364 Phil. 518, 524 (1999).

With the denial of the instant petition, the petitioner's prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction is necessarily **DENIED**.

SO ORDERED.

Very truly yours,



TERESITA AQUINO TUAZON
Deputy Division Clerk of Court

27 DEC 2019

with 12/26

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NLRC RAB Case No. 11-14074-16)

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