SUPREME COURT
SECOND DIVISION

ASIA WORLD RECRUITMENT INC.,
***Petitioner*,**

-versus-

G.R. No. 113363
August 24, 1999

NATIONAL LABOR RELATIONS COMMISSION (2nd DIVISION), PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA) and PHILIP MEDEL, JR,
***Respondents*.**
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D E C I S I O N

QUISUMBING, *J.*:

This is a Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court assailing (a) the Decision[1] dated September 13, 1993 of the National Labor Relations Commission (NLRC), Second Division, in NLRC-NCR CA No. 001637-91, which affirmed with modification the decision of the Philippine Overseas Employment Administration (POEA)[2] in POEA Case No. 89-10-1002 finding petitioner liable, among others, for illegal dismissal of private respondent, and (b) the Resolution[3] of the NLRC, dated December 15, 1993, denying reconsideration.

Petitioner Asia World Recruitment is a domestic corporation with authority granted by the POEA to recruit and deploy Filipino overseas contract workers abroad. Petitioner's principal is Roan Selection Trust International Ltd., a diamond and gold mining company in Angola, Africa, owned by one Christian Rudolf G. Hellinger.

Private respondent Philip Medel, Jr., is a Filipino who entered into an employment contract[4] with petitioner to work as a Security Officer in its diamond mine in Cafunfo, Angola, for a period of twelve (12) months commencing upon his departure from the Philippines, with a salary rate of US $800.00 a month, plus 50% of the salary by way of bonus or a total of US$1,200.00 a month.[5] The parties also agreed that private respondent would work for six (6) hours a day, with one rest day every week and that he would be entitled to overtime pay for work in excess of six (6) hours at the rate of $5.00 per hour.[6] Private respondent arrived in Angola sometime in December, 1988. In addition to being a Security Officer, he was made to work as a Dispatcher and Metallurgy Inspector in the diamond mine. During his employment, private respondent elevated the grievances of his Filipino co-workers to the management,[7] which apparently strained relations between him and management.

On March 10, 1989, private respondent received a Letter of Termination[8] dated March 1, 1989 signed by General Manager A.J. Smith, who informed him that the company was not satisfied with his performance within the three-month trial period, and that his employment with the company would be terminated on March 13, 1989. The records show, however, that private respondent was repatriated to the Philippines on March 12, 1989, barely two (2) days after he received the notice of termination.

Aggrieved by his precipitate termination, private respondent filed on October 18, 1989, a Complaint[9] for illegal dismissal, cancellation of petitioner's license, refund of placement fee plus interest, payment of salary differentials, reimbursement of amounts illegally deducted from his monthly salary, payment of salaries for the unexpired portion of the contract, damages and attorney's fees against petitioner and its principal, Roan Selection Trust International Ltd.

On March 12, 1991, the POEA Adjudication Office rendered a Decision[10] finding petitioner (with his co-respondents therein) solidarily liable for illegal dismissal, and ordering them to pay herein private respondent the sum of seven thousand two hundred ($7,200.00) dollars representing salaries for the unexpired portion of the contract, but disallowing private respondent's other monetary claims. [11]

On April 1, 1991, petitioner and private respondent elevated their respective appeals to the NLRC. Petitioner sought the reversal of the POEA decision, while private respondent filed an Urgent Motion for the Partial Reconsideration of the POEA decision denying his other monetary claims.

On September 13, 1993, the NLRC, through its Second Division, rendered the assailed decision dismissing petitioner's appeal and granting private respondent's Partial Motion for Reconsideration as regards his claims for illegal deductions, salary differentials and overtime pay, finding as follows:

> "As established from the records, the parties agreed that complainant's basic monthly salary was US $800.00 plus 50% of such salary as bonus or a total of $1,200.00 a month. The bonus represents complainant's hazard pay. For according to respondents there is a war going on in Angola.
>
> The POEA by denying the complainant's claim for illegal deduction and/or salary differential held that the respondents has proven that complainant has already been paid were it not for the legal deductions made against his salaries representing the damages caused to company vehicle by complainant. A careful study of the record reveals that said deductions on the complainant's salary is not justified considering that complainant in his position paper was able to establish the fact that he was not negligent in driving his assigned vehicle but was the subject of sabotage as an attempt to silence him for seeking redress and elevating the grievances of his co-Filipino workers to the management. It can thus be said that respondent made it appear that complainant committed a misdemeanor by issuing

> complainant the misdemeanor application note wherein he was made to pay for the cost of the repair of vehicle (Record, p. 32)."

Furthermore, there is no showing that an investigation was made to establish the liability of complainant regarding the alleged vehicular accident. Neither was there proof showing that deductions be made from the salary of the complainant. No less than the Labor Code, Article 116 thereof, provides that "it shall be unlawful for any person, directly or indirectly withhold any amount from the wages of a worker without the worker's consent."

As shown by the bank records, respondent employer transmitted to complainant's bank account in the Philippines the total amount of US $2,190.77 (See Records, p. 242) representing complainant's salary during his entire period of employment. Based on complainant's US $1,200.00 a month salary ($800.00 monthly salary plus 50% thereof as bonus), complainant is supposed to receive $3,600.00. Complainant is therefore entitled to receive the difference of $1,409.23, as his salary differential.

Anent the claim for overtime pay, the same should have been allowed by the POEA in the light of the evidences/document submitted to wit: Forecast of Duties for February 1989 and March 1989 (Records, pp. 70-71) and the Legend of Forecast of Duties (Records, p. 38). As borne by these documents, complainant, like other security officers had render (sic) twelve (12) hours of duty per shifting. In the summary of complainant's Tour of Duties (Records, pp. 116 to 119) it was established that complainant had rendered work for a total of fifty six (56) days. Considering that he worked for twelve (12) hours each day, complainant has rendered an excess of six (6) hours of overtime work per day or a total of 336 hours. Based on the prevailing hourly rate for the overtime work which is $5 per hours, complainant is entitled to US $1,680.00. Under the circumstances, the documents submitted by complainant in support of his claim for overtime pay are adequate enough to establish the fact of his overtime work and should have been given credence rather than respondents' which merely denied the claim without submitting their own evidence to refute. As held by the Supreme Court in the case of Cuadra vs. NLRC, G.R. No. 98030, March 17, 1992, to wit:

> "Regarding the claim for overtime pay, we do not agree that it should have been disallowed because of the failure of the petitioner to substantiate it.
>
> "The claim of our overseas workers against their foreign employers should have not (sic) subjected to the rules of evidence and procedure that we usually apply to other complainants who have facility in obtaining the required evidence to prove their demands."

Records show that complainant has engaged the professional services of two (2) lawyers. Pursuant to Article 211 of the Labor Code and Rule VIII Section II Book III of the Rules Implementing the Labor Code, complainant is entitled to his claim for attorney's fees."

The NLRC then modified the POEA decision, to wit:

> "WHEREFORE, the decision of the POEA dated March 12, 1991 is hereby modified as follows:
>
> > Respondents are hereby held solidarily liable to pay complainant:
> >
> > 1. The sum of Seven Thousand Two Hundred US Dollars (US$7,200) representing his salaries for the unexpired portion of his contract.
> >
> > 2. US Dollars One Thousand Six Hundred Eighty (US$1,680.00) as and for complainant's overtime pay.
> >
> > 3. US Dollars One Thousand Four Hundred Nine and Twenty-Three (US$1,409.23) as salary differential.
> >
> > 4. Attorney's fees, representing 10% of the totality of the amount of the award."

Thereafter, the NLRC, acting on private respondent's Motion for Clarificatory Judgment and/or Motion for Reconsideration, rendered

a Decision dated October 29, 1993, clarifying that the aforesaid amounts should be paid at their prevailing peso equivalent at the time of payment.[12] Petitioner's Motion for Reconsideration of the aforesaid Decision was likewise denied by the NLRC for lack of merit.

Hence, the instant petition for *certiorari*, which was given due course by this Court after the private respondent, and public respondents, through the Office of the Solicitor General, filed their respective Comments, and private respondent filed his Reply thereto. The parties thereafter submitted their respective Memoranda.

The issue raised in this petition is whether or not public respondent NLRC committed grave abuse of discretion when it affirmed the decision of the POEA finding that private respondent was illegally dismissed with the modification that salary differential, overtime pay and attorney's fees should be allowed.[13]

During the pendency of the case, by virtue of a writ of execution issued by the NLRC, petitioner made substantial payments to private respondent in partial satisfaction of the NLRC Decision thus prompting private respondent to file a Motion to Dismiss dated April 20, 1996 and a subsequent Supplemental Motion to Dismiss dated September 19, 1996, stating that:

> "a. that on October 23, 1993, the NLRC resolution (sic) modified its DECISION (dated September 13, 1993), by ordering the petitioner Asiaworld to pay him the following:
>
> 1. The sum of Seven Thousand Two Hundred US Dollars (US$7,200.00) or its prevailing peso equivalent at the time of payment representing his salaries for the unexpired portion of his contract.
>
> 2. US Dollars One Thousand Six Hundred Eighty (US$1,680.00) or its prevailing peso equivalent at the time of payment as and for complainant's overtime pay.

3. US Dollars One Thousand Four Hundred Nine and Twenty-Three (US$1,409.23) or its prevailing peso equivalent at the time of payment as salary differential.

4. Attorney's fees, representing 10% of the totality of the amount of the award."

The total award, including attorney's fees, is US$11,318.13.

b. that on April 20, 1996, he filed a MOTION TO DISMISS because of partial payment made by Asiaworld Recruitment, in the sum of P201,564.13;

c. that on July 26, 1996, the petitioner Asia World Recruitment Inc paid him the additional sum of US2,881.69, subject to his reservation to demand for the balance or the correct computation of the award, per NLRC Resolution dated 29 October 1993.

d. the prevailing peso equivalent at the time of payment, as of July 26, 1996, was P26.19 x US$1.00. Using the stated peso-dollar conversion rate, he (Medel) is still entitled to the balance of US$741.98.

Computation:

P201,564.13 is equivalent to US$7,694.46, leaving a; balance of US$3,623.67 (US US$11,318.13 – US$7,694.46); US$3,623.67 - US$2,881.69 = US$741.98.

WHEREFORE, in supplement of his motion to dismiss (dated April 20, 1996), the complainant prays that the above-entitled petition of the Asia World Recruitment Inc. be DISMISSED."

Private respondent's Motion to Dismiss and Supplemental Motion to Dismiss are akin to a partial quitclaim as to the amounts awarded by the NLRC. Nevertheless, we are mindful of the rule that "a deed of release or quitclaim cannot always bar an employee from demanding what is legally due him."[14] Hence, notwithstanding the substantial

satisfaction of the amounts prayed for, the basic issue in this case remains for the Court's resolution.

At the outset, except for serious lapses, we are not at liberty to overturn the findings of both the NLRC and the POEA Administrator on the circumstances concerning the dismissal of private respondent. These are essentially factual matters which are within the competence of the administrative agencies to determine. Their findings are accorded by this Court respect and finality if, as in this case, they are supported by substantial evidence.[15]

The records clearly show that private respondent was an employee with a fixed period of twelve (12) months. Private respondent, therefore, was an employee hired for a fixed term whose employment was to end only at the expiration of the period stipulated in his contract.[16] Thus, this is not a simple case of illegal dismissal of an employee whose employment is without a definite period, rather, we find that the principal cause of action in private respondent's complaint is breach of contract of employment for a definite period.[17] As a party to this contract, he enjoys security of tenure, for the period of time his contract is in effect.[18] Petitioner contends that private respondent was only a probationary employee for a period of three (3) months. Even if granted, for the sake of argument, that this were true, as a probationary employee, he is nonetheless entitled to constitutional protection of security of tenure that no worker shall be dismissed except for cause provided by law and after due process.[19] Security of tenure is a right of paramount value guaranteed by the Constitution and should not be denied on mere speculation.[20] Furthermore, the right of an employer to freely select or discharge his employees is regulated by the State, considering that the preservation of the lives of the citizens is a duty of the State, more basic than the preservation of business profit.[21]

The burden is on the employer to prove that the termination was after due process, and for a valid or authorized cause.[22] For the two requisites in our jurisdiction to constitute a valid dismissal are: (a) the existence of a cause expressly stated in Article 282 of the Labor Code; and (b) the observance of due process, including the opportunity given the employee to be heard and defend himself.[23] As

correctly found by the NLRC, there was no valid cause for dismissal of private respondent. Thus —

> "As in the instant case respondent claim that complainant was terminated due to incompetence. The burden of proof to [establish] such incompetence rests on respondents. The evidence adduced by them were insufficient to prove the alleged incompetence of complainant. Even the 'termination letter' itself does not state the how and why complainant was considered incompetent. It merely stated that the company 'is not satisfied' with his performance during the probationary period. Respondent even failed to attach to said letter the rating sheets of complainant for his information as that he may present his side."[24]

Worse, in the petition for *certiorari*, petitioner invoked the provision in the employment contract which allows summary dismissal for cases provided therein.[25] Consequently, petitioner argues that written notice to the private respondent was no longer an indispensable procedural requirement to satisfy the dictates of due process but was merely a formality in the course of effecting severance of employment.[26] Such blatant violation of basic labor law principles cannot be permitted by this Court. Although a contract is law between the parties, the provisions of positive law which regulate such contracts are deemed included and shall limit and govern the relations between the parties."[27] Petitioner, in our view, failed to rebut the following findings of the respondent NLRC —

> "Records also show that the letter of termination dated March 1, 1989 was received by complainant on March 10, 1989 when he was terminated. He was repatriated on March 12, 1989. Taking into consideration the effectivity date of his termination, and the span of time the letter was received and his date of repatriation, we cannot consider that such is the notice required for a valid termination of employment."[28]

Jurisprudence abounds on the twin requirements of due process, substantive and procedural, which must be complied with, before a valid dismissal exists.[29] The twin requirements of notice and hearing constitute the essential elements of due process. Simply put, the

employer shall afford the worker ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires. As held in the case of International Pharmaceuticals, Inc. vs. National Labor Relations Commission, 287 SCRA 213, 227 (1998):

> "The law requires that the employer must furnish the worker sought to be dismissed with two written notices before termination of employee can be legally effected: (1) notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice which informs the employee of the employer's decision to dismiss him. (Sec. 13, BP 130; Sections 2-6, Rule XIV, Book V, Rules and Regulations Implementing the Labor Code as amended). Failure to comply with the requirements taints the dismissal with illegality [Citing Aurora Land Projects Corp. vs. NLRC; 266 SCRA 48 (1997); Tingson, Jr. vs. NLRC, 185 SCRA 498 (1990); National Service Corporation vs. NLRC, 168 SCRA 122 (1988); Ruffy vs. NLRC, 182 SCRA 365 (1990).]"

Applying the above legal criteria, we find that private respondent herein was indeed dismissed without cause and without due process.

Although the Labor Code is silent on the liability of an employer for damages in case the termination is declared to be unjust, we have ruled,[30] however, that the employer may be so liable if, in terminating the employment, it also committed an antisocial and oppressive abuse of its right to investigate and dismiss its employee in violation of Article 1701 of the Civil Code.[31] Further, in CLLC E.G. Gochangco Workers Union vs. NLRC, 161 SCRA 655, 671 (1988), we already stated:

> "As for moral damages, we hold the said respondent liable therefor under the provisions of Article 2220 of the Civil Code providing for damages for 'breaches of contract where the defendant acted fraudulently or in bad faith."

Hence, we now hold that private respondent is entitled to moral damages amounting. to TWENTY-FIVE THOUSAND PESOS (P25,000.00), considering that his dismissal was marked by precipitate dispatch and utter disregard of due process.

One final note. The need for strict enforcement of the law as well as rules and regulations governing Filipino Contract workers cannot be over emphasized. Many hapless citizens of this country have sought employment abroad to earn a few dollars in order to improve their lot, and provide proper education and a decent future for their children, but have found themselves exploited by foreign employers or recruiters who harass or abuse them. They are deprived of their jobs without cause or at the slightest pretense. Hence, Filipino recruiting agencies must not only faithfully comply with Government-prescribed responsibilities; they must also impose upon themselves the duty, borne out of a social conscience, to properly help fellow citizens sent abroad to work for foreign principals. They must keep in mind that this country is not exporting slaves but human beings, and, above all, fellow Filipinos seeking merely to improve their lives.[32]

WHEREFORE, finding no grave abuse of discretion committed by public respondent NLRC, the assailed Decision dated September 13, 1993 and Resolution dated October 29, 1993 are hereby **AFFIRMED**, with the **MODIFICATION** that, it appearing that petitioner already partially satisfied the NLRC judgment except for a balance of US $741.98, petitioner is hereby ordered to pay private respondent said amount or its prevailing peso equivalent at the time of payment.[33] The Court also finds it proper to award private respondent moral damages, and hereby **ORDERS** petitioner to pay P25,000.00 as moral damages. Costs against petitioner.

SO ORDERED.

Bellosillo, Mendoza and Buena, *JJ.*, concur.

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[1] Penned by Commissioner D.H. Zapanta of the Second Division of the National Labor Relations Commission with Presiding Commissioner Edna Bonto-Perez and Commissioner Rogelio Rayala, concurring; Annex “A”, Petition, Rollo; p. 36.
[2] Decided by POEA Administrator Jose N. Sarmiento.
[3] Rollo, p. 49.
[4] Rollo, pp. 66 and 76.
[5] Rollo, p. 38.
[6] Ibid.

[7] Rollo, p. 40. "Complainant also alleged that majority of the Filipino contract workers suffered deep humiliation, wounded feeling, mental anguish and racial discriminations; that there are cases of sex (homosexual) harassment perpetrated by some homosexual Caucasians against some Filipino workers (Records, p. 86); that Mr. Hellinger caused the reduction of the salaries without the approval of the POEA; that the Filipino workers assigned in the diamond and gold minesites were over-exposed and endangered by the intense x-ray ultra-violet radiation during the physical searches and inspection which were conducted twice daily; that complainant even as security officer was likewise compelled to undergo the inspection; that the Filipino contract workers were being fed with food rations such that they were forced to buy food through salary deduction (Record, p. 68); that the food and beverages were not only expired but also unfit for human consumption; that this was violation of the agreement that the foreign employer should provide food, board, and lodging; that the Filipinos upon order of Mr. Hellinger were deprived from exercising their religious faith, such as hearing mass during Sundays; that to seek redress, complainant together with his co-security officer Col. Jesus Baldonado, elevated the grievance of the Filipino workers to the management but were not acted upon by management (See Records, pp. 66-67, 80-81); that to silence complainant and Baldonado attempts against their life were made to wit: sabotaged complainant's vehicle (Toyota Hi-Lux Pick-Up) to make it appear that he died in a vehicular accident and that were it not for his presence of mind, complainant could have died. To cover up, respondents made it appear that complainant committed misdemeanor (offense for having been driving a motor vehicle in such a manner as to cause a traffic accident (See Records, p. 32). Complainant also claimed that due to the unsanitary state of the working condition in Angola complainant was infected of (sic) malaria (See Records, pp. 57-58). On March 10, 1989 complainant received his letter of termination which was dated March 1, 1989 and was sent home to the Philippines on March 12, 1989."

[8] Rollo, p. 364.

[9] Rollo, p. 51.

[10] Id. at 50.

[11] Per the POEA decision, the claims for refund of placement fee and cancellation of the agency's license will be treated in another order.

[12] Pursuant to Philippine-Manpower Services, Inc. et. al. vs. NLRC, 224 SCRA 691, 701 (1993).

[13] Rollo, p. 14.

[14] Sanyo Travel Corp. vs. NLRC, 280 SCRA 129 (1997); Violeta vs. NLRC, 280 SCRA 520 (1997).

[15] International Pharmaceuticals, Inc. vs. NLRC, 287 SCRA 213, 222 (1998); Chua vs. NLRC, 267 SCRA 196 (1997).

[16] Anderson vs. NLRC, 252 SCRA 116 (1996).

[17] Teknika Skills and Trade Services, Inc. vs. NLRC, 212 SCRA 132 (1992).

[18] Labajo vs. Alejandro, 165 SCRA 747, 756 (1988).

[19] P.I. Manpower Placements, Inc. vs. NLRC, 276 SCRA 451, 457 (1997).

[20] Tolentino vs. NLRC, 152 SCRA 717 (1987).
[21] Euro-Linea Phils. Inc., vs. NLRC, 156 SCRA 78 (1987).
[22] Santos, Jr. vs. NLRC, 287 SCRA 117, 125 (1998); Vinta Maritime Co., Inc. vs. NLRC, 284 SCRA 656, 667 (1998); Shopper's Gain Supermart vs. NLRC, 259 SCRA 411, 422 (1996); AHS/Philippines, Inc. vs. Court of Appeals, 257 SCRA 319, 331 (1996); JGB and Associates, Inc. vs. NLRC, 254 SCRA 457, 462-463 (1996), Valiant Machinery and Metal Corporation vs. NLRC, 252 SCRA 369, 377 (1996).
[23] Santos, Jr. vs. NLRC, Ibid.
[24] Rollo, p. 42.
[25] Id., at 21.
[26] Id., at 24.
[27] Tierra International Construction Corp. vs. NLRC, 211 SCRA 73, 80 (1992).
[28] Id., at 43.
[29] Aurora Land Projects Corp. vs. NLRC, 266 SCRA 48, 64 (1997); Nitto Enterprises vs. NLRC, 248 SCRA 654, 662 (1995), citing Century Textile Mills, Inc. vs. NLRC, 161 SCRA 528 (1988); Gold City Integ. Port Services, Inc vs. NLRC, 189 SCRA 811 [1990]; Kwikway Eng. Works vs. NLRC, 195 SCRA 526 (1991).
[30] Pascua vs. NLRC, 287 SCRA 554, 578-579 (1998), citing Philippine Refining Company, Inc. vs. Garcia, 18 SCRA 107 (1966); Nadura vs. Benguet Consolidated, Inc., 5 SCRA 879 (1962).
[31] Ibid., citing Hilario vs. NLRC, 252 SCRA 555, 561 (1996).
[32] Teknika Skills and Trade Services, Inc. vs. NLRC, 212 SCRA 132, 139 (1992).
[33] See Republic Act No. 8183, AN ACT REPEALING REPUBLIC ACT NO. FIVE HUNDRED TWENTY-NINE ENTITLED "AN ACT TO ASSURE THE UNIFORM VALUE OF PHILIPPINE COIN AND CURRENCY." Section 1 thereof provides: "All monetary obligations shall be settled in the Philippine currency which is legal tender in the Philippines. However, the parties may agree that the obligation or transaction shall be settled in any other currency at the time of payment."