SUPREME COURT
FIRST DIVISION

ATHENNA[*] INTERNATIONAL MANPOWER SERVICES, INC.,
Petitioner,

-versus-

G.R. No. 151303
April 15, 2005

NONITO VILLANOS,
Respondent.
x----------x

D E C I S I O N

QUISUMBING, *J.*:

For Review on Certiorari are the Decision[1] dated May 23, 2001 and Resolution[2] dated November 23, 2001, of the Court of Appeals in CA-G.R. SP No. 59594. The Court of Appeals reversed the Resolutions[3] of the National Labor Relations Commission and reinstated the Labor Arbiter's Decision[4] in NLRC Case No. Sub-RAB-09-OFW-(LB)-02-00002-99.

The antecedent facts, as summarized by the Court of Appeals, are as follows:

> Petitioner Athenna International Manpower Services, Inc. is a domestic corporation engaged in recruitment and placement of

workers for overseas employment. Respondent Nonito Villanos is a contract worker recruited by petitioner to work as a caretaker in Taiwan.

Respondent applied to work overseas thru petitioner sometime in February 1998. He alleged that he was assessed ₱100,000 placement fee by petitioner. As he had only ₱30,000 to pay petitioner, respondent begged for a reduced fee. Petitioner agreed and the placement fee was reduced to ₱94,000 only, on the condition that the remaining balance of ₱64,000 shall be paid through salary deductions upon his deployment. Respondent received no receipt for the ₱30,000 cash that he advanced as partial placement fee. Instead, petitioner gave him a schedule of his monthly salary deduction payments for one year for his balance, which included interest and other charges, amounting to ₱90,725.

In October 1998, respondent's Contract of Employment with a certain Wei Yu Hsien arrived. Under this contract, he was to work as caretaker for one year, ten months and twenty-eight days with a monthly pay of New Taiwan Dollars (NT$) 15,840.

On October 15, 1998, he flew to Taiwan. Respondent alleged that upon his arrival in Taiwan, he was assigned to a mechanical shop, owned by Hsien, as a hydraulic installer/repairer for car lifters, instead of the job for which he was hired. He found out that Hsien was actually engaged in the installation and repair of hydraulic machines for gasoline stations and other mechanical shops. Since then, he traveled from one place to another, even during nighttime as hydraulic installer/repair man for car lifters, as required by his employer. He did not, however, complain because he needed money to pay for the debts he incurred back home.

Barely a month after his placement, he was terminated by Hsien. On November 14, 1998, respondent was made to sign a document stating that he was not qualified for the position. He did not, however, sign the document. At dawn of November 16, 1998,[5] respondent was handed his salary, with the accompanying computation and instruction for his departure to the Philippines.

Upon his arrival in the Philippines, he immediately went to petitioner's office and confronted its representative, Lorenza Ching, about the assignment given to him and demanded that he be reimbursed the ₱30,000 he paid as downpayment. Instead of returning the said amount, petitioner gave him a summary of expenses amounting to ₱30,493, which it allegedly incurred for his deployment abroad.

Aggrieved, respondent filed a complaint docketed as POEA Case No. RV98-12-1586, before the Adjudication Office of the Philippine Overseas Employment Administration (POEA).

However, because of financial constraints, he had to go home to Polanco, Zamboanga del Norte where, on February 17, 1999, he filed a complaint against petitioner for illegal dismissal, violation of contract, and recovery of unpaid salaries and other benefits before the NLRC Sub-Regional Arbitration Branch No. 9, Dipolog City.

In its defense, petitioner alleged that it hired respondent to work in Taiwan for one year and that for his deployment, he was charged a placement fee of merely ₱15,840 plus ₱5,050 for documentation expenses. Petitioner further claimed that under the employment contract, respondent was to undergo a probationary period of forty (40) days. However, at the job site, respondent was found to be unfit for his work, thus he resigned from his employment and requested for his repatriation signing a statement to that effect.

On May 14, 1999, the Labor Arbiter rendered a Decision holding petitioner and Wei Yu Hsien solidarily liable for the wages representing the unserved portion of the employment contract, the amount unlawfully deducted from respondent's monthly wage, moral damages, exemplary damages and attorney's fees. For the remittance of illegal placement fee in the amount of ₱99,110, petitioner was held solely liable. The dispositive portion of the decision reads:

WHEREFORE, couched in the foregoing premises, judgment is hereby rendered:

(1) declaring that the respondents' act for having severed complainant's employment, after service of one (1) month founded on unjustifiable grounds and encroaching against the safeguard of fundamental due process and security of tenure clauses as well as for being in contradiction to the well engendered basic policy of the state to grant ample protection to labor, to be illegal. Thus, in effect hereof, on the basis of established jurisprudence and mandate of the law, complainant Nonito Villanos, as a contractual employee, is entitled to be paid of the supposed wages which he could have received throughout the period of employment manifested in the contract, had not because of the unceremonious, abnormal and unlawful act of respondents in having put his employment to an end after about one (1) month services, which entitlement shall be paid jointly and severally by respondents Athena International Manpower Services, Inc., [r]epresented by Lorenza Ching and/or Wei Yu Hsien, 1-11 Hsia Yuan Rd. Tali City, Taichung Country, Taiwan, ROC, [which] specific amount is reflected in paragraph "6" hereof.

(2) declaring further that the deductions made by respondent Wei Yu Hsien, from the monthly wage of complainant, to be illegal, since the act is incidental to the unlawful scheme of having terminated complainant's employment untimely in the guise of inefficiency in the performance of work wrongly assigned to him and in breach of the provisions of the valid contract of employment having been entered into by the parties. For this reason, respondents are hereby jointly and severally directed to remit the exact amount of complainant's salary withheld, which amount is specifically found in paragraph "6".

(3) holding that the imposition of the placement fee of P120,000.00 against complainant as illegal, which in effect making respondent Athena International Manpower Services, Inc., [r]epresented by Lorenza Ching individually to pay complainant the exact amount which is likewise found in paragraph "6" hereof.

(4) imposing moral and exemplary damages arising from breach of contract and bad faith of respondents, which shall be paid by respondents in solidum, and which amounts are specifically reflected in paragraph "6".

(5) establishing liability upon respondents severally to pay attorney's fees equivalent to ten percent (10%) of the aggregate amount payable to complainant by respondents.

(6) And, specifically ordering respondents to pay complainant the following, as based on the preceding paragraphs:

A.) JOINT AND SEVERALLY LIABILITIES OF RESPON-DENTS IN THIS CASE:

a.) Supposed wages of the unserved portion of complainant's duration of employment ..... NT$ 348,480.00; *(subject to proper future conversion to Philippine Peso)*

b.) Amount unlawfully deducted from complainant's monthly wage ..... NT$ 11, 114.00; *(subject to proper future conversion to Philippine Currency)*

c.) Moral damages ..... P 50,000.00;

d.) Exemplary damages ..... P 30,000.00; and

e.) Attorney's fees ..... Ten Percent (10%) of the aggregate amount of liabilities of respondents, whether joint or several, or individual liabilities.

B.) INDIVIDUAL OR PERSONAL LIABILITY OF RESPONDENT ATHENA INTERNATIONAL MANPOWER SERVICES, INC., REPRESENTED BY LORENZA CHING;

a.) Remittance of illegal placement fee ..... P 99,110.00.

SO ORDERED.[6]

On appeal, the NLRC reversed the Labor Arbiter and dismissed the complaint for lack of merit. It found that respondent was not at all dismissed, much less illegally. Respondent seasonably filed a motion for reconsideration, which the NLRC denied in its second resolution. Undaunted, respondent appealed to the Court of Appeals ascribing grave abuse of discretion to the NLRC in its ruling that there was no violation of the contract of employment by petitioner and in holding that respondent was not illegally dismissed.

The Court of Appeals held that Wei Yu Hsien violated the contract of employment when respondent was made to work as hydraulic installer/repairer, not as caretaker. The appellate court concluded that the supposed voluntary resignation of respondent was inconsistent with his immediate demand for refund of the placement fee upon his arrival in the Philippines; his filing of an administrative case before the POEA Adjudication Office; and his subsequent filing of the complaint with the Labor Arbiter. The Court of Appeals decreed:

> WHEREFORE, the petition is hereby GRANTED reversing the questioned resolutions of the National Labor Relations Commission, Fifth Division, Cagayan de Oro City and REINSTATING the decision of the Labor Arbiter in NLRC Case No. Sub-RAB-09-OFW-(LB)-02-00002-99.
>
> SO ORDERED.[7]

Hence, the instant appeal, raising the following issues:

1. Did the respondent voluntarily resign or was he illegally dismissed?

2. Assuming that the respondent was illegally dismissed, was it proper for the Court of Appeals to affirm *in toto* the monetary awards in the Decision of the Labor Arbiter, especially: (a) the award of his supposed salaries for the entire unexpired portion of his employment contract, i.e., NT$348,480.00 and (b) the award of "remittance of placement fee" in the amount of P99,110.00?[8]

Anent the first issue, petitioner insists that respondent was not illegally dismissed but voluntarily resigned; that respondent failed to prove that he was made to work as hydraulic installer/repairer instead of a caretaker; and that the documents he adduced were self-serving and immaterial.

Petitioner further contends that although the resignation of respondent was in a pre-printed form, it did not mean his resignation was involuntary. The requirement that the employer has the burden of proof that the employee was illegally dismissed is, says petitioner, applicable only when the fact of dismissal is established. Petitioner submits that, in this case, respondent bore the burden of proving that his resignation was involuntary.

For his part, respondent avers that he did not resign voluntarily but, he was asked to sign a letter of resignation. Furthermore, he avers that petitioner did not explain why he was unqualified. Neither was he informed of any qualifications needed for the job prior to his deployment, as mandated by Article 281[9] of the Labor Code.

Respondent points out that the allegation he resigned voluntarily is belied by petitioner's own admission in its position paper that he was, in fact, found unfit for the job. He maintains that his purported resignation was obviously inconsistent with his filing a complaint for illegal dismissal against petitioner.

After a thorough consideration of the submissions of the parties, we find no persuasive grounds nor substantial basis to reverse the decision and the resolution of the appellate court.

An employee voluntarily resigns when he finds himself in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service; thus, he has no other choice but to disassociate himself from his employment. *(Alfaro vs. Court of Appeals, G.R. No. 140812, August 28, 2001, 363 SCRA 799, 808).* [10]

Records show that upon his repatriation from Taiwan, respondent immediately went to petitioner's office and confronted its representative, Lorenza Ching, about the assignment given to him which was contrary to the agreed position of caretaker, for which he specifically applied. He demanded that he be reimbursed the ₱30,000 he paid as downpayment. When refused, he lodged a complaint with the POEA. He also immediately filed a complaint for illegal dismissal before Labor Arbiter Cresencio R. Iniego, upon his arrival in his hometown, indicating that respondent did not voluntarily resign, but was forced to resign, which was tantamount to a dismissal.[11] Petitioner did not refute respondent's contentions regarding these incidents. Further, it failed to prove the legality of the dismissal, despite the fact that the burden of proof lies on the employment and recruitment agency. Thus, the presumption stands to the effect that respondent was illegally dismissed by his employer.

Even assuming respondent was a mere probationary employee as claimed by petitioner, respondent could only be terminated for a pertinent and just cause, such as when he fails to qualify as a regular employee in accordance with reasonable standards of employment made known to him by his employer at the time of his engagement.[12] Here, it appears that the petitioner failed to prove that, at the time of respondent's engagement, the employer's

reasonable standards for the job were made known to respondent. Moreover, in this case, respondent was assigned to a job different from the one he applied and was hired for.

On the *second* issue. Petitioner claims that Section 10 of Republic Act No. 8042,[13] entitles respondent only to six months worth of the unserved portion of his employment contract; and that the order to refund the amount of ₱99,110 as placement fee has no factual basis because respondent himself admitted he only paid ₱30,000 as placement fee, albeit, he was assessed the amount of ₱94,000.

Respondent counters that he worked for only a month because he was hastily and unceremoniously terminated; and that he was entitled to his salary corresponding to the remaining portion of the employment contract. Further, he demands full reimbursement of the ₱30,000 he paid as placement fee.

Pertinent to this issue is Section 10 of Rep. Act No. 8042

SEC. 10. *Money Claims*. -

> In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee with interest at twelve percent (12%) *per annum*, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.

Thus, for the computation of the lump-sum salary due an illegally dismissed overseas employee, there are two clauses as points of reckoning: first is the cumulative salary for the unexpired portion of his employment; and the other is the grant of three months salary for every year of the unexpired term, whichever is lesser.

Since respondent was dismissed after only one month of service, the unexpired portion of his contract is admittedly one year, nine months and twenty-eight days. But the applicable clause is not the first but the second: three months salary for every year of the unexpired term, as the lesser amount, hence it is what is due the respondent.

Note that the fraction of nine months and twenty-eight days is considered as one whole year following the Labor Code. Thus, respondent's lump-sum salary should be computed as follows:

3 months x 2 (years)	=	6 months worth of salary
6 months x (NT$) 15,840	=	NT$95,040, subject to proper conversion to Philippine currency by Labor Arbiter Cresencio Iniego.

Under the aforequoted provision, an illegally dismissed overseas worker is also entitled to the full reimbursement of his placement fee with interest at twelve percent (12%) *per annum*.

We note that while respondent was assessed ₱94,000 in placement fee, he paid only ₱30,000 on the agreement that the balance of ₱64,000 would be paid on a monthly salary deduction upon his deployment. Hence, we cannot grant respondent reimbursement of the entire assessed amount of ₱94,000. He is only entitled to the reimbursement of the amount of placement fee he actually paid, which is the ₱30,000 he gave as downpayment plus interest at twelve percent (12%) *per annum*.

Lastly, because of the breach of contract and bad faith alleged against the employer and the petitioner, we must sustain the award of ₱50,000 in moral damages and ₱50,000 as exemplary damages, in addition to attorney's fees of ten percent (10%) of the aggregate monetary awards.

WHEREFORE, the petition is **DENIED**. The assailed Decision dated May 23, 2001, and Resolution dated November 23, 2001, of the Court of Appeals are **AFFIRMED** with **MODIFICATION**. Petitioner Athenna International Manpower Services, Inc. is hereby **DECLARED** solidarily liable with Wei Yu Hsien to pay respondent NONITO VILLANOS the amount of NT$95,040.00, subject to proper conversion to Philippine currency, as unpaid salary of respondent equivalent to six months service under Rep. Act No. 8042, Section 10 as well as ₱50,000.00 in moral damages, and ₱50,000.00 as exemplary damages suffered by respondent; and ten percent (10%) of

the aggregate monetary awards as attorney's fees, pursuant to law and jurisprudence. Petitioner herein is also ordered to pay respondent the amount of ₱30,000.00 as reimbursement of the placement fee, with 12% interest *per annum* until fully paid.

SO ORDERED.

DAVIDE, JR., *C.J., (Chairman)*, YNARES-SANTIAGO, CARPIO, AZCUNA, JJ., concur.

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* Also referred to as "Athena" in some parts of the records.

[1] Rollo, pp. 99-107. Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Cancio C. Garcia (now a member of this Court), and Oswaldo D. Agcaoili concurring.

[2] Id. at 121.

[3] Id. at 70-77, 79-80.

[4] Id. at 39-54.

[5] Sometimes November 17, 1998 in some parts of the records.

[6] Rollo, pp. 51-54.

[7] Id. at 106.

[8] Id. at 171.

[9] ART. 281. Probationary employment. – Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

[10] See Alfaro vs. Court of Appeals, G.R. No. 140812, August 28, 2001, 363 SCRA 799, 808.

[11] See Pascua vs. NLRC (Third Division), G.R. No. 123518, 13 March 1998, 287 SCRA 554, 570.

[12] Supra, note 9.

[13] Otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995."