SUPREME COURT
FIRST DIVISION

ORIENT EXPRESS PLACEMENT PHILIPPINES,
***Petitioner*,**

-versus-

G.R. No. 113713
June 11, 1997

NATIONAL LABOR RELATIONS COMMISSION, PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION and ANTONIO F. FLORES,
***Respondents*.**
x----------x

D E C I S I O N

BELLOSILLO, *J.*:

ANTONIO F. FLORES was hired as crane operator with a monthly salary of US$500.00 (SR1,400) for one (1) year, subject to a 3-month probationary period, by Orient Express Placement Philippines (ORIENT EXPRESS) in behalf of its foreign principal Nadrico Saudi Limited (NADRICO). However, after only one (1) month and five (5) days in Saudi Arabia, Flores was repatriated to the Philippines. Consequently, he filed a complaint with the Philippine Overseas Employment Administration (POEA) for having been terminated

from work for no valid reason.[1] ORIENT EXPRESS and NADRICO countered that Flores was terminated for poor job performance as shown in his Performance Evaluation Sheet dated 4 May 1991[2] and for his uncooperative work attitude.[3]

On 14 July 1992 the POEA rendered a decision in favor of complainant holding that when the ground invoked for the dismissal of an employee was incompetency or poor job performance it must be shown that the reasonable standards of work prescribed by the employer were made known to the employee and that the latter failed to conform to such standards. In the case of respondent Flores, it was observed that neither ORIENT EXPRESS nor NADRICO pointed out the reasonable standards of work required of Flores by which his incompetency was adjudged; much less did they specify how the latter failed to live up to such reasonable standards. Hence, his dismissal was unwarranted. As a consequence, ORIENT EXPRESS and NADRICO were ordered jointly and severally to pay respondent Antonio F. Flores the sum of US$5,416.66 or its peso equivalent representing salaries for the unexpired portion of the contract.[4]

The National Labor Relations Commission (NLRC) affirmed the POEA decision on appeal. In addition, it ruled that the designation of Flores as floorman instead of crane operator for which he was hired violated his employment contract. The NLRC concluded that since Flores never worked as crane operator, his foreign employer could not have observed and assessed his performance as such and then come up with a performance evaluation sheet, especially considering his consistent claim that he was made to work as floorman instead.[5] A motion for reconsideration filed by ORIENT EXPRESS and NADRICO was subsequently denied.[6]

ORIENT EXPRESS alone instituted this petition. It imputes grave abuse of discretion against the NLRC in concluding that respondent Flores was never assigned as crane operator and for ruling that poor job performance and uncooperative work attitude did not justify his dismissal.

With respect to the factual issue, we agree with petitioner that the POEA and the NLRC overlooked the fact that private respondent admitted that he was able to work as crane operator as clearly and

indubitably shown in his Affidavit of 1 August 1991.[7] Erroneous conclusions of the NLRC cannot be upheld by this Court.[8] However, we disagree with petitioner's conclusion that private respondent was validly dismissed for poor job performance and uncooperative work attitude. Hence, we deny the petition.

Under Art. 281 of the Labor Code, the services of an employee hired on a probationary basis may be terminated 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. However, the Court cannot sustain his dismissal on this ground because petitioner failed to specify the reasonable standards by which private respondent's alleged poor performance was evaluated, much less to prove that such standards were made known to him at the time of his recruitment in Manila. Neither private respondent's Agency-Worker Agreement[9] with ORIENT EXPRESS nor his Employment Contract[10] with NADRICO ever mentioned that he must first take and pass a Crane Operators' License Examination in Saudi Arabia before he would be allowed to even touch a crane. Neither did he know that he would be assigned as floorman pending release of the results of the examination or in the event that he failed; more importantly, that he would be subjected to a performance evaluation by his superior one (1) month after his hiring to determine whether the company was amenable to continuing with his employment. Hence, respondent Flores could not be faulted for precisely harboring the impression that he was hired as crane operator for a definite period of one (1) year to commence upon his arrival at the work-site and to terminate at the end of one (1) year. No other condition was laid out except that he was to be on probation for three (3) months.

As aforesaid, no standard whatsoever by which such probationary period could be hurdled was specified and made known to him. Due process dictates that an employee be apprised beforehand of the condition of his employment and of the terms of advancement therein. Precisely, implicit in Art. 281 of the Code is the requirement that reasonable standards be previously made known by the employer to the probationary employee at the time of his engagement, as correctly suggested by the POEA. Obviously, such an essential requirement was not met by petitioner, even assuming that Flores'

alleged unsatisfactory performance was true. Besides, unsatisfactory performance is not one of the just causes for dismissal under the Labor Code.[11]

Petitioner also cites private respondent's alleged uncooperative work attitude as another compelling ground for his termination. It contends that private respondent was only willing to do his specific job and refused to help out as floorman when asked to do so.

When it is purely a matter of "helping out" co-employees in urgent need of help, uncooperative work attitude may be worth discussing as possible ground for some kind of disciplinary action against the employee. However, such a discussion would be essentially academic in the case at bench where private respondent was not asked merely to "help out". As borne out by private respondent's allegations, which were not disputed by petitioner, from the moment of his arrival at the work-site in Saudi Arabia he was immediately assigned as floorman and not as crane operator, which was his job specification, on the flimsy excuse that a floorman, not a crane operator, was more needed at the work-site. It was only because private respondent was bold enough to resist and insist on his proper designation that his foreign supervisors grudgingly relented. However in obvious retaliation to such perceived "uncooperative work attitude," private respondent was assigned to work at unholy hours or the so-called "graveyard shift," i.e., from twelve o'clock midnight to twelve o'clock noon. He was not familiarized with nor given helpful instructions in the operation of relatively modern cranes. Instead, after subjecting him to a supposed performance evaluation wherein his performance and work attitude were allegedly found wanting, private respondent was again designated as floorman, albeit with the salary of a crane operator. A few days later he was dismissed and repatriated to the Philippines. Obviously, this Court cannot accept as a justifiable ground for his termination his alleged uncooperative work attitude. On the contrary, we are constrained to sustain the POEA and the NLRC in their unanimous conclusion that private respondent was indeed dismissed illegally.

WHEREFORE, the assailed Decision and Resolution of the National Labor Relations Commission of 29 December 1992 and 26 April 1993, respectively, declaring that private respondent Antonio F. Flores was

illegally dismissed and awarding to him Five Thousand Four Hundred Sixteen Dollars and Sixty-Six Cents (US$5,416.66) or its peso equivalent representing salaries for the unexpired portion of his overseas employment contract, are **AFFIRMED**. Costs against petitioner Orient Express Placement Philippines.

SO ORDERED.

Vitug, Kapunan and Hermosisima, Jr., *JJ.*, concur.
Padilla, *J.*, is on leave.

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[1] POEA Case No. (L) - 91-05-571; Records, pp. 17-18.
[2] Annex "1," Answer to Complaint; Records, p. 37.
[3] Id., pp. 32-33.
[4] Id., pp. 61-66.
[5] Rollo, pp. 25-31.
[6] Id., p. 23.
[7] See Note 1, pp. 28-29.
[8] Chong Guan Trading vs. National Labor Relations Commission, G.R. No. 81471, 26 April 1989, 172 SCRA 831.
[9] Records, p. 48.
[10] Id., pp. 9-10.
[11] A.M. Oreta & Co., Inc. vs. National Labor Relations Commission, G.R. No. 74004,10 August 1989, 176 SCRA 218, 227.
