SUPREME COURT
SECOND DIVISION

TRANS-ORIENT OVERSEAS CONTRACTORS, INC. and JOINT VENTURE YIT-VESIPEKKA,
***Petitioners*,**

-versus-

G.R. No. 75602
December 29, 1989

NATIONAL LABOR RELATIONS COMMISSION, HON. ELMOR D. JURIDICO and DISDADO P. VILLARAMA, JR.,
***Respondents*.**
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D E C I S I O N

PADILLA, *J.*:

This is a Petition for Review (treated as a Petition for *Certiorari*) of the majority Resolution[1] of the National Labor Relations Commission (NLRC), Third Division, affirming in toto the Decision[2] of respondent Director Elmor D. Juridico of the Philippine Overseas Employment Administration (POEA), the decretal portion of which reads as follows:

"WHEREFORE, respondents Trans-Orient Overseas Contractors, Inc. and Joint Venture YV YIT-VESIPEKKA are hereby ordered to pay jointly and severally the complainant the following sums:

1. US $15,839.99 or its Peso equivalent representing salaries for the remaining period of nine months and twenty seven days considering that complainant was illegally terminated.

2. US $929.67 as reimbursement of travel expenses.

Insofar as complainant's other claims, this Office cannot award the same for lack of merit and without basis.

SO ORDERED."

The facts, as stated in the comment of the Solicitor General, are as follows:

"On June 12, 1981, petitioners hired private respondent Diosdado Villarama, Jr. as camp physician at their Taijat Island Resort or YIT-VESIPEKKA jobsite in Baghdad, Iraq at a monthly salary of US $1,600.00 for a period of twelve (12) months commencing from the date he would leave Manila.

On August 18, 1981, private respondent departed from Manila, subject to a probation period of ninety (90) days, to commence from the actual date of work at the jobsite. The contract of employment pertinently stated:

'3. Probation Period

The employee shall be under probation for a period of 90 days commencing from the actual starting date of the Employee's work in the work location. If the employee fails to meet the requirement as to the skill and willingness to work or fails to adjust himself to the rules and regulations for the camp and the working conditions, or if he in any way gets in conflict, with the

local laws and regulations', he will immediately be sent back to the country of recruitment.'

On August 22, 1981, respondent Villarama immediately attended to emergency consultations. During the following days, the work operations being twenty four (24) hours a day, he attended to consultations and treatment of workers from 5:30 a.m. to 11:00 p.m. or 12:00 midnight.

On September 3, 1981, he wrote Seppo Havia, the Personnel Manager, about the availability for use of a service coaster in emergency cases for transporting patients to the hospitals. He added that although Havia had assured him the availability of a service coaster for ambulance use, he had yet to obtain permission from the Finnish supervisor whenever the need arose.

On September 7, 1981, he again wrote Havia about the need to provide workers with safety boots and heavy duty hand gloves to minimize, if not prevent, the widespread incidence of punctured wounds of the feet as well as lacerations and crushing injuries of the hands of workers. He also wrote Borja, officer-in-charge of the Filipino camp area, on the cleanliness and sanitation of the camp. He requested receptacles with covers for waste matter so as to eliminate the sticky pungy smell of the place.

On September 12, 1981, he wrote again to Havia regarding the quality and variety of food being served on Filipino workers. This complaint was answered. A letter was written to the concessionaire, warning on the problems of food served to workers.

On September 26, 1981, he wrote another letter suggesting that immediate action be taken to correct the continued serving of spoiled food which had caused diarrhea and loose bowel movement among the workers. Instead of taking immediate action on the complaint, Havia took samples of the food and sent them to a laboratory to test whether the food was spoiled or not.

> On October 16, 1981, respondent Villarama's employment contract was terminated by Havia.
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> Upon receipt of the letter of termination, he verbally protested the same, but to no avail. He also demanded payment of his salaries and overtime pay but was told that the amount would be sent to him in Manila.
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> In Manila, after pressing for payment, he was paid first P10,000.00, then after filing a complaint, later amended, P23,853.09 for salaries up to October 15, 1981.
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> On February 23, 1982, he filed an amended complaint alleging among others, that he was prematurely and unlawfully terminated.
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> On February 7, 1983, after the parties had filed their respective position papers and other pleadings, respondent Director Juridico rendered the questioned decision."[3]

The motions for reconsideration filed by both parties were initially dismissed by the NLRC on 29 February 1984 for their failure to comply substantially with the jurisdictional requirements of appeal. However, on 25 June 1986, the NLRC reconsidered its resolution and gave the appeals due course. On 25 June 1986, the NLRC, through a majority of two (2) commissioners, with one (1) commissioner dissenting, issued the now assailed resolution dismissing the appeals of both parties for lack of merit, and affirming the decision of the POEA.[4]

Hence, this petition.

The only issue to be resolved in the petition is whether or not public respondents gravely abused their discretion in holding that Diosdado P. Villarama was illegally dismissed by petitioners.

It is the contention of petitioners that Villarama, a probationary employee, was terminated for his failure to meet the performance standards set by them for regularization.

Petitioners argue that in terminating Villarama's services, they were merely exercising their reserved prerogative of probationary termination for, after all, the selection of employees is of particular importance to any employer, as it effects the enterprise in no small measure. Probationary termination, according to petitioners, is not the same as dismissal for cause. They maintain that as long as an employer does not abuse his discretion in exercising his reserved prerogative of probationary termination, the dismissal of an employee under probation who fails to qualify for regularization is not illegal. Petitioners assert the public respondents should not have substituted their (respondents') own discretion and judgment in deciding whether an employee is to be terminated or regularized; and since public respondents did substitute their judgment for that of the employer, this was grave abuse of discretion tantamount to lack of jurisdiction.

In further support of their position, petitioners contend that they gave Villarama guidelines for the operation of the clinic, e.g., regular clinic hours; personnel rotation; maintenance of hygiene and sanitation; medical records; etc. They allege that Villarama failed to schedule clinic hours within his eight (8) hour regular work, which resulted in unnecessary overtime work. He likewise failed to comply with company rules on the observance of prior requests and authorizations for medical treatment and established procedures for emergency consultations. Instead, petitioners state, Villarama dismissed these instructions as impossible to comply with, as he was the only camp physician and that he had to treat all medical referrals coming to him as emergency cases. Petitioners further allege that Villarama met with hostility petitioners' reminders to him to keep the first aid kits replenished and the clinic surroundings clean and sanitary.

On the matter of the quality of food served in the camp, petitioners maintain that they tried to find solutions to the complaints of the Filipino workers but, unfortunately, Villarama instead of cooperating with management in finding solutions to the very problems he perceived, accused petitioners of maintaining sub-human conditions in his memorandum to the personnel manager and went so far as to circularize these "Memos" not only inside the job site but even

furnished copies thereof to various Philippine government agencies, including the Office of the President.

Last but not least, petitioners aver that Villarama's performance should reflect not only his skills as a doctor, which they do not question, but also his overall competence in all areas of activity covered by his assigned task as camp physician. As camp physician, they expected Villarama not only to be medically competent but likewise possessed of effective management and administrative skills in order to effectively run and operate the camp clinic. In short, Villarama's performance and willingness to work must be judged, according to petitioners, on his work attitude, relationship with co-employees, adjustment to work and camp conditions, rapport with other site officials and the ability to work as a team.

Petitioners submit that POEA made no express finding that they (petitioners) were guilty of grave abuse of discretion in terminating Villarama but only concluded that Villarama was dismissed mainly to silence him because of his compilation and distribution of letters critical of petitioners' operation which tended to be detrimental to the interest of petitioners.

On the other hand, private respondent contends that work at the jobsite was a 24-hour operation. Being the only camp physician, he had to work beyond the eight (8) regular clinic hours. For this reason, he avers, he found himself attending to consultations and treatment of workers as early as 5:30 a.m. and as late as 11:00 p.m. or 12:00 midnight. He alleges that because he noticed the high incidence of punctured wounds in the feet and lacerations and crushing injuries of the workers' hands, he was prompted to write to the personnel manager suggesting that safety boots and heavy duty hand gloves be provided the workers. Another memo he had to write concerned food being served to Filipino workers. He alleged that spoiled food was served to the Filipino workers with deleterious effect.

Villarama maintains that when he wrote "memos" to the personnel manager, he was merely taking the cudgels for the workers whose health and safety were his concern as the camp physician and to "wake up" management. It was, he adds, a legitimate exercise of freedom of speech and of expression equally important to the cause of

labor in this country and anywhere in the world. He insists that his dismissal is mainly because of his compilation and distribution of letters in which he criticized the operation of JV Yit-Vesipekka and its subcontractors, which petitioners regarded as an intentional action against the employer.

The petition must fail.

Undoubtedly, Villarama's skill as a physician is not questioned by petitioners. They, however, submit that the term "skills" more accurately refers to Villarama's overall competence as a camp physician, which covers possession of effective management and administrative ability in supervising and operating the camp clinic. Furthermore, petitioners accuse Villarama of refusing to cooperate with the site management and actually discrediting petitioners in the public eye.

Admittedly, Villarama was the only doctor in the camp who could attend to the medical cases referred to him. The locale was a construction site on a 24-hour operation. Hence, injuries to the workers could be expected to occur not only during daytime but even at night time. True, guidelines were set regarding clinic hours but, as already stated, injuries and emergency cases could occur at any time. Petitioners, instead of resenting Villarama's suggestion to provide the workers with heavy duty gloves and safety boots, should have welcomed the same, as it would minimize, if not totally avoid the cases of injuries that the doctor had to treat.

The letters/memos written by private respondent, e.g., the serving of spoiled food and the short supply of food to the workers, proved that Villarama was not only concerned with the health of the workers but showed that he was also concerned with the interest of petitioners who in the long run would be spared strikes called by workers complaining about the quality and quantity of food served to them.

The Court agrees with the finding of public respondents that Villarama's letters were constructively written, calling the attention of petitioners to the conditions at the jobsite. The tenor of the letters was informative. We do not discern any intent on the part of private respondent to discredit petitioners. Had petitioners taken more time

to implement the suggestions of Villarama concerning the problems of the workers, a more pleasant and understanding working relationship would have developed to their mutual benefit. But, unfortunately, petitioners opted to dismiss private respondent after only two (2) months, even as they claimed to be working towards a solution to the problems cited by private respondent.

Petitioners cite the case of Grand Motor Parts Corp. vs. Minister of Labor (130 SCRA 436) to justify their dismissal of Villanueva. That case cannot be applied to the case at bar. There, private respondent was hired as manager of a branch store, a position he never held before. On his managerial skills hinged the success and profitability of the business. He was found negligent in submitting reports vital to business operations and lax in implementing company policies.

In the case at bar, private respondent was hired specifically as a camp physician. His skills as a doctor were never questioned by petitioners. He was not found to be ineffective or inept as a physician. There were no complaints from the workers against him. What petitioners allegedly question is the administrative skills of Villarama in running the clinic. But these skills are only corollary to his main work as a camp physician. In truth, petitioners became unhappy at having to pay an "alarming claim" for overtime pay by respondent Villarama. They faulted him with the non-replenishment of the first-aid kits and the dirty state of the clinic premises. These conditions were satisfactorily explained by private respondent.

In fine, petitioners' dismissal of private respondent was not based on any of the grounds provided in the contract of employment entered into between them. We are more inclined to believe and agree with the respondents that Villarama was dismissed because petitioners' personnel manager resented the act of Villarama of writing memos calling the manager's attention to the problems in the camp site and furnishing copies of said memos to government agencies and the Office of the President of the Philippines, which act petitioners perceived as detrimental to their interest.

In the final analysis, petitioners are not raising in the case at bar a question of jurisdiction but only questions of fact. As aptly observed by the Solicitor General, in reality petitioners are claiming that

respondent officials erred in not believing their submission that Villarama had failed to meet the prescribed standards for regularization and in giving credence to Villarama's claim to the contrary. Clearly, this is a factual issue.[5] Factual findings of the NLRC are not correctible by *certiorari*;[6] in fact they are binding on this Court in the absence of any showing that they are completely without any support in the evidence on record.

We do not believe that public respondents acted capriciously and whimsically in their exercise of judgment as to warrant a conclusion that there was, on their part, a grave abuse of discretion.

WHEREFORE, the Decision appealed from is **AFFIRMED**, with costs against the petitioners.

SO ORDERED.

Melencio-Herrera, Paras, Sarmiento and Regalado, *JJ.*, concur.

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[1] Commissioners Guillermo C. Medina and Gabriel M. Gatchalian concurred; Commissioner Miguel B. Valera dissented.
[2] Annex B, pp. 34-45, Rollo.
[3] Rollo, pp. 261-264.
[4] Annex "A", pp. 29-30, ibid.
[5] p. 272, ibid.
[6] Manila Hotel Corp. vs. NLRC, G.R. No. L-53453, January 22 1986, 141 SCRA 169; CCLU vs. NLRC, G.R. Nos. L-35955-56, October 31, 1974, 60 SCRA 450.