

MERCEDITA G. KJAER, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FIFTH DIVISION), KITA TALENT MANAGEMENT PROMOTION, BENJAMIN DE LARA, AND ROSALINDA SANTOS-BONQUIN, RESPO...

Ponente: VILLON, J.

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VILLON, J.:

This is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, assailing, on grounds of grave abuse of discretion amounting to lack or excess of jurisdiction, the decision dated June 27, 2011[1] and decision dated April 27, 2012[2] of public respondent National Labor Relations Commission (NLRC), Fifth Division, in NLRC LAC No. 05-000392-10. Said issuances reversed the March 23, 2010 decision[3] of Labor Arbiter (LA) Lutricia F. Quitevis-Alconcel in NLRC NCR Case No. OFW (L) 06-08748-08 for salaries/wages for the unexpired portion of the contract, nonpayment of salaries, refund of transportation fare and other money claims.

Petitioner Mercedita G. Kjaer's allegations in her position paper[4] dated October 14, 2008, as summarized by the LA, are as follows:

“Complainant's cause of action are the following:

- Payment of her full salary for the two [2] years of her employment contract;
- Reimbursement of her P7,500.00 plane fare;
- Reimbursement of recruitment fees collected illegally, in the amount of P12,300.00;
- Moral and exemplary damages in the amount of P250,000.00 taking into account the anomalous deployment of the complainant and the agony and sufferings at the hands of foreign employers;
- The amount representing ten percent [10%] of the benefits awarded, as attorney's fees.

"The following are party-respondents as complainant essentially alleges their 'participation', so to speak, in her overseas employment:

- KITA TALENT & PROMOTION SERVICES, INC. – the local recruitment agency, owned and operated by individual respondent Benjamin T. De Lara, who facilitated her employment and deployment to Dubai, United Arab Emirates [UAE].
- ROSALINDA SANTOS-BONQUIN and SARAH SANTOS – they contacted complainant through a common relative and instructed her to proceed to KITA's Office. While there, Rosalinda gave complainant an application form to fill-up; also told her to bring along fifty [50] more persons for various overseas employment; they told complainant to revise her bio-data to 'single' status and 'with no child' as this would facilitate her foreign employment because foreign employers prefer 'unmarried and childless helpers'.

"Rosalinda and Sarah also charged complainant, among others, with Four Thousand Five Hundred Pesos

[P4,500.00] allegedly for medical expenses. Complainant was not issued a receipt therefor. When complainant asked them about her PDOS [Pre-Departure Orientation Seminar], Sarah told her this would be taken care of by them. Even without actually attending one, complainant was issued a PDOS Certificate issued by Fil-Imus Foundation, Inc.

- SILVERKIND INTERNATIONAL PLACEMENT SERVICES – the local recruitment agency appearing in complainant's Employment Contract. It is her 'sponsoring agency'.

- ALAIN GREEN TRAVEL SERVICES – the 'would-be' foreign agency which replaced NOOF MANPOWER SUPPLYING, the U.A.E. Agent named in the Employment Contract.

- ADEL KHALFAN AL-ZAABI – complainant's first foreign employer [but not the one mentioned in her Employment Contract]

- MARIA VIDA JAEUBE – a staff of SILVERKIND. She explained to complainant while at the Ninoy Aquino International Airport [NAIA] that Benjamin De Lara and Evelyn Villarta are 'business partners' and the two agencies facilitated her overseas employment documents and deployment.

- EVELYN C. VILLARTA – President of SILVERKIND International Placement Services.

"Complainant further alleges that it was only when she was already at the NAIA that respondent Jaeobe explained SILVERKIND's 'role' in her deployment. She also 'threatened' complainant that if she should back out of her employment, it would embarrass her 'Tio Benny' [respondent Benjamin De Lara] considering that much money had already been spent for her deployment by the two [2] agencies. At the NAIA, complainant saw there were three [3] other contract workers who were processed by KITA and Silverkind.

"Upon arrival in Dubai, complainant was assigned to respondent Adel Khalfan Al-Zaabi, who became her employer, although his name does not appear in the employment contract. Al-Zaabi had a family of eight [8], living in a big three storey residential house. Complainant worked up to midnight, hardly no time to rest and the food she ate were left overs (sic) which she was allowed to indulge only once a day. Much as complainant wanted to take the hardships of her work, she found it very difficult to swallow the harsh treatment of her lady employer. Complainant then requested her employer to take her back to the agency.

"Complainant's second employer made her do chores beyond her physical endurance. She suffered continued nose bleeding. She was eventually returned to the agency.

"Her third employer was on a part-time basis. She worked for a month but like with her first and second employers, she was not paid for services rendered.

"The fourth employer was a policeman; they were kind to her. But her employment with them was short-lived. Her agency took her back when it learned that her employer would go elsewhere. She did not receive her salaries.

"At her agency's place, complainant discovered that her agency had collected the equivalent of three [3] months salary from every one of the employers she had worked for. She also came to know that the agency was closing its business and had no plan how to dispose of her. She then requested to be entrusted to the Philippine Embassy in Dubai.

"While waiting to be repatriated at the Philippine Embassy, complainant was assisted by the Philippine Embassy staff and got her part-time jobs to earn her airfare back to Manila. She arrived in the Philippines on August 12, 2007." [5]

On June 19, 2008, petitioner instituted the instant case before the arbitration branch of the NLRC.[6] Private respondents denied any liability, alleging lack of personal knowledge of all the circumstances pertaining to the controversy at bar. On March 23, 2010, the LA rendered judgment in favor of petitioner, disposing as follows:

"While respondent De Lara attempts to escape liability by denying having 'no personal knowledge' of herein complainant and of the other herein respondents, this fails to convince. De Lara claims he has not been in the 'business' [of recruitment] since October 2006 and he submitted a copy of an Order dated issued (sic) by the ten POEA Administrator Linda D. Baldoz to this effect. This is not of any help to exonerate De Lara for it only shows to weaken, so to speak, his stand or position. And why did he not submit pages 2 to 11 of the said order? Why only the first and last pages of the said Order? This is indeed suspect and telling.

"As for the denial of having personal knowledge of complainant and the other party-respondents, the sworn statement of the complainant is given more weight than De Lara's bare allegations.

"As far as respondent Santos-Bonquin's similar defense [as De Lara's] is concerned – 'no personal knowledge' of complainant, this also cannot prevail over the latter's sworn statement. Although there is nothing in the employment contract or in the OFW Information to show that said respondent has any direct involvement in the hiring, processing and overseas deployment of complainant, she can still be held liable as an 'illegal recruiter' under Section 9, VI on the definition of 'Illegal Recruitment' of the Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1993 or Republic Act No. 8042 which provides:

'Section 9. Definition. – For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, whether for profit or not, when undertaken by a non-license or non-holder of authority contemplated under Article 13 [f] of the Labor Code of the Philippines.

Provided, that any such non-license or non-holder, who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged.

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"It is under this legal definition that respondents De Lara and Rosalinda Santos-Bonquin are deemed to be engaged in illegal recruitment. The established facts clearly show that both respondents are guilty thereof.

"As to the other respondents, the records are bereft of any evidence that this tribunal had acquired jurisdiction over them.

"Complainant is deemed to have been illegally dismissed. From what she had actually experienced in her overseas employment of having several employers who did not only pay her services but made her suffer physical and mental anguish, she was thus forced to ask her last employer to turn her over to her agency who in turn referred her to the Philippine Embassy in Dubai. It cannot be considered that she had voluntarily pre-terminated her employment contract.

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"WHEREFORE, in light of the foregoing, judgment is hereby rendered declaring respondents Rosalinda Santos-Bonquin and Benjamin De Lara, in his capacity as president of KITA Talent Management Promotion guilty of illegal dismissal.

"Both respondents Rosalinda Santos-Bonquin and Benjamin De Lara are hereby ordered to jointly and solidarily pay complainant Mercedita G. Kjaer, as follows:

- Three [3] months of the less than one [1] year unexpired portion of her contract [US\$200.00 x 3] or US Dollars Six Hundred [US\$600.00];
- Nineteen [19] months unpaid salaries [from February 21, 2008 to August 13, 2007] or US\$200.00 x 19 = [US\$3,800.00];

- Moral damages in the amount of Fifty Thousand Pesos [P50,000.00];
- Exemplary damages in the amount of Twenty Thousand Pesos [P20,000.00].

"Plus ten percent [10%] of the total awards of item numbers 1 and 2 as attorney's fees in the total amount of US Dollars Four Hundred Forty [US\$440.00].

"All other claims herein sought and prayed for are hereby denied for lack of legal and factual bases.

"The counter claims (sic) against herein complainant are hereby DISMISSED for lack of legal and factual bases.

SO ORDERED.”[7]

Aggrieved, private respondents interposed an appeal before the NLRC which, in turn, reversed the ruling of the LA in the assailed decision dated June 27, 2011. The NLRC ratiocinated as follows:

“In this case, complainant-appellee consistently alleges that her placement agency was respondent KITA Talent Management Promotions but the employment contract she submitted show (sic) that her agency was respondent Silver Kind Placement Services and her PDOS also states that she was recruited by said respondent Agency. Complainant-appellee's evidence should prevail over her allegations. We note that respondent Silver Kind was complainant's agency in the records of the POEA which approved the employment contract. We note however that summons was not served to respondent Silver Kind and Evelyn Villarta's given address. It appears that said respondent Agency is no longer holding office at the given address. Resultantly, respondents-appellants De Lara and Santos who may have facilitated complainant-appellee's recruitment and who may have misrepresented in dealing with complainant-appellee may be held liable in other forum but not in these money claims of complainant-appellee due to the absence of employer-employee relationship between them and complainant-appellee. While respondent-appellant Santos assails her inclusion as respondent in this case by way of a Motion to include filed by complainant-appellee counsel, the Labor Arbiter has recognized her being impleaded as respondent by causing the service of summons and by her subsequent appearances and submission of pleadings at the proceedings before the Labor Arbiter. Respondent's contention that complainant's counsel cannot sign her complaint the Verification and Certification of non-forum shopping has already been ruled upon by the Labor Arbiter, in her Order dated 18 January 2010 and respondent-appellants did not challenge the ruling on appeal.

"With respect to the charge of illegal dismissal, We agree with respondent (sic) that they are not the proper party to be held responsible because the employment contract was between complainant and respondent Silver kind. It is the latter which is the real-party in interest in the final determination of the cause of action of illegal dismissal. Be that as it may, We note that complainant failed to establish the fact of her dismissal, more so, illegal dismissal.

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"In this case, complainant-appellee admits that after deployment, she had about six [6] assignments with different employers in Dubai whom she could not even identify by their names. She also admits that in her last assignment, she was the one who requested for her return to the agency because the mentally deranged member of the family of her employer struck (sic) her with a blow that she almost lost consciousness. It appears that complainant did not report this incident to the Philippine Embassy where she sought shelter, earned income through part time jobs until she had enough money to pay her fare back to Manila. Complainant's contention therefore that she was illegally dismissed has no factual basis.

"WHEREFORE, premises considered, the appeal is GRANTED and the Decision dated 23 March 2010 is ordered VACATED and SET ASIDE.

"A new one is hereby issued DISMISSING the complaint in so far respondents Kita Talent Management

Promotions, de Lara and Santos are concerned. However, dismissal of this complaint is without prejudice in so far as respondents Silver Kind International Placement Services and Evelyn Villarta are concerned.

SO ORDERED.”[8]

Petitioner sought a reconsideration[9] but it was denied in the assailed decision[10] dated April 27, 2012.

Hence the present recourse, petitioner raising the following issues, to wit:

WITH DUE RESPECT, THE PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AND SERIOUSLY ERRED IN REVERSING THE LABOR ARBITER'S DECISION OF MARCH 23, 2010 BECAUSE –

- IT ARBITRARILY GAVE DUE COURSE TO THE APPEAL OF THE RESPONDENTS LARA AND SANTOS-BONQUIN FROM THE LABOR ARBITER'S DECISION ALTHOUGH IT WAS NEVER PERFECTED PURSUANT TO THE 2005 NLRC RULES OF PROCEDURE.

- IT ARBITRARILY DISREGARDED THE PETITIONER'S SUBSTANTIAL EVIDENCE THAT: [A] SHE WAS DEPLOYED FOR OVERSEAS EMPLOYMENT BY THE RESPONDENTS KITA TALENT, LARA AND SANTOS-BONQUIN AND [B] THAT THE LATTER CLEARLY BREACHED HER EMPLOYMENT CONTRACT GIVEN, AMONG OTHERS, THEIR COMMITTED MISREPRESENTATIONS AND/OR CONTRACT SUBSTITUTION THEREOF, AND/OR HER ILLEGAL DISMISSAL FROM EMPLOYMENT.[11]

Petitioner asserts, inter alia, that: (1) private respondents were never able to perfect their appeal from the decision of the LA to the NLRC because they failed to post the requisite appeal bond within the time allowed by the rules; (2) the appeal documents received by petitioner's counsel were not signed by private respondents' lawyer; and (3) at any rate, the bond that was belatedly posted by private respondents was insufficient to cover the monetary award. The NLRC, citing the policy of liberal construction and relaxation of procedural rules, gave due course to private respondents' appeal despite their failure to post an appeal bond within the proper reglementary period.

We sustain petitioner's contention.

The right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law.[12] One who seeks to avail of the right to appeal must strictly comply with the requirements of the rules, and failure to do so leads to the loss of the right to appeal.[13] It is settled that, save for the most persuasive of reasons none of which are obtaining in this case, strict compliance with the rules is enjoined to facilitate the orderly administration of justice.[14]

Appeals to the NLRC, from the decision of the LA involving monetary awards, are perfected only upon compliance with the following mandatory requisites, namely: (1) payment of the appeal fees; (2) filing of the memorandum of appeal; and (3) payment of the required cash or surety bond.[15] The posting of a bond is indispensable to the perfection of an appeal in cases involving monetary awards from the decision of the LA. The intention of the lawmakers to make the bond a mandatory requisite for the perfection of an appeal by the employer is clearly expressed in the provision of the Labor Code[16] that an appeal by the employer may be perfected "only upon the posting of a cash or surety bond." [17] Thus, it behooves the Court to give utmost regard to the legislative and administrative intent to strictly require the employer to post a cash or surety bond securing the full amount of the monetary award within the ten-day reglementary period.[18]

We rule that the NLRC exceeded its jurisdiction when it reversed the Labor Arbiter's decision after it had already attained finality when private respondents failed to file an appeal bond within the reglementary period.[19] The

filing of the bond is not only mandatory but also a jurisdictional requirement that must be complied with in order to confer jurisdiction upon the NLRC. Non-compliance therewith renders the decision of the LA final and executory,[20] as in this case. Hence, because of private respondents' failure to file an appeal bond within the period prescribed by the rules, the LA's March 23, 2010 decision has become "immutable and unalterable, and can no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land." [21] On this score alone, the assailed issuances of the NLRC must be struck down.

In any event, even if We decide the case on its merits, Our position remains unwavering.

Generally, factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, i.e., the amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[22] There are, however, exceptions, among which is when there is a conflict between the factual findings of the NLRC and the Labor Arbiter.[23] Accordingly, this Court must of necessity make an infinitesimal scrutiny and examine the records all over again including the evidence presented by the opposing parties to determine which findings should be preferred as more conformable with evidentiary facts.[24]

Labor officials are enjoined to use reasonable means to ascertain the facts speedily and objectively with little regard to technicalities or formalities but nowhere in the rules are they provided a license to completely discount evidence, or the lack of it. The quantum of proof required, however, must still be satisfied. Hence, "when confronted with conflicting versions on factual matters, it is for them in the exercise of discretion to determine which party deserves credence on the basis of evidence received, subject only to the requirement that their decision must be supported by substantial evidence." [25] Here, We find that the NLRC ignored petitioner's glaring evidence of private respondents' recruitment activities.

It is a basic rule in evidence that the burden of proof is on the part of the party who makes the allegations.[26] In discharging her burden of proving private respondents' involvement in her recruitment, petitioner presented a provisional receipt and a clearance issued by Excelsis Medical and Diagnostic Clinic (or "Excelsis"), both indicating Kita Talent Management Promotion (or "KITA" as petitioner's agency).[27] It bears noting that Excelsis is located at Mabini St., Malate, Manila which is within walking distance from KITA's office at Synagoga St., Malate, Manila. Indeed, a receipt is a written and signed acknowledgment that money has been received or goods have been delivered.[28] Having failed to adduce sufficient rebuttal evidence, private respondents are bound by the contents of the receipt which show their relationship, as recruitment agency, with petitioner. The subject receipts remain to be the primary or best evidence or "that which affords the greatest certainty of the fact in question." [29]

At any rate, it is not necessary that an alleged illegal recruiter be particularly identified or named in an Overseas Filipino Worker's contract. Owing to the illegality of its actions, it is but natural for an illegal recruiter to conceal evidence of its activities. Under our legal precedents, there is recruitment activity when a person: makes a promise[30] or gives the impression of having the ability[31] to send a worker abroad; engages in the act of making referrals, whether for profit or not;[32] or conducts preparatory interviews.[33] It is not even necessary that a person wrongfully represented himself as a licensed recruiter.[34] The High Court had occasion to declare that the absence of documents evidencing recruitment activities only strengthens, not weakens, a person's case against an alleged recruiter.[35] Under these standards, as well as the established facts of the case, We find sufficient proof to hold private respondents liable to petitioner.

Moreover, We cannot sustain the obtuse finding of the NLRC that petitioner was not illegally dismissed.

In *Pert/CPM Manpower Exponent Co., Inc. v. Armando A. Vinuya*,^[36] the Supreme Court held that there is illegal dismissal when an agency and its principal commits flagrant violations of the law on overseas employment, as well as basic norms of decency and fair play in an employment relationship, thereby pushing overseas workers to look for better employment and, ultimately, to resign from their jobs. Such conditions are extant in the instant case. Petitioner was forced to work under inhumane conditions, toiling beyond acceptable working hours, and, in the end, not getting any remuneration for her hard labor. Fearing for her own safety and well-being, she was forced to leave her employment and flee to the Philippine Embassy in Dubai. Based on these facts, petitioner must be deemed illegally dismissed from her employment.

A writ of certiorari is an extraordinary prerogative writ that is never demandable as a matter of right. To warrant the issuance thereof, the abuse of discretion must have been so gross or grave, as when there was such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power was done in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility. The abuse must have been committed in a manner so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.^[37] Taking into account all of the circumstances in this case, We find that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the assailed issuances.

WHEREFORE, in light of all the foregoing, the petition is GRANTED. The assailed issuances of public respondent National Labor Relations Commission in NLRC LAC No. 05-000392-10 are hereby ANNULLED and SET ASIDE. The decision dated March 23, 2010 of Labor Arbiter Lutricia F. Quitevis-Alconcel in NLRC NCR Case No. OFW (L) 06-08748-08 is hereby REINSTATED.

SO ORDERED.

Sadang, M.Q.C.,[*] and Corales, P.B., JJ., concur.

[*] Vice Justice Florito S. Macalino per Office Order No. 469-14-ABR dated November 14, 2014

[1] Rollo, pp. 34-46.

[2] Rollo, pp. 49-52.(should have been "resolution")

[3] Rollo, pp. 165-175.

[4] Rollo, pp. 64-75.

[5] Rollo, pp. 166-169.

[6] Rollo, p. 197.

[7] Rollo, pp. 172-175.

[8] Rollo, pp. 44-45.

[9] Rollo, pp. 53-63.

[10] Should have been "resolution"

[11] Rollo, p. 15.

[12] Boardwalk Business Ventures, Inc. v. Elvira A. Villareal, G.R. No. 181182, April 10, 2013.

[13] Augustus Gonzales v. Quirico Pe, G.R. No. 167398, August 9, 2011.

[14] Spouses David Bergonia and Luzviminda Castillo v. Court of Appeals, G.R. No. 189151, January 25, 2012.

[15] Hilario S. Ramirez v. Court of Appeals, G.R. No. 182626, December 4, 2009.

[16] Article 223. Appeal. xxx

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In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from. xxx

[17] University Plans Incorporated v. Belinda P. Solano, G.R. No. 170416, June 22, 2011.

[18] Andrew James McBurnie v. Eulalio Ganzon, G.R. Nos. 178034, 178117, 186984-85, September 18, 2009.

[19] Globe General Services and Security Agency v. NLRC, G.R. No. 106477, October 23, 1995.

[20] Mindanao Times Corporation v. Mitchel R. Confesor, G.R. No. 183417, February 5, 2010.

[21] Heirs of Numeriano Miranda, Sr. v. Pablo R. Miranda, G.R. No. 179638, July 8, 2013.

[22] Prince Transport, Inc. v. Diosdado Garcia, G.R. No. 167291, January 12, 2011.

[23] Rentokil (Initial) Philippines, Inc. v. Leilani D. Sanchez, G.R. No. 176219, December 23, 2008.

[24] Federico M. Ledesma, Jr. v. NLRC, G.R. No. 174585, October 19, 2007.

[25] Bitoy Javier (Danilo P. Javier) v. Fly Ace Corporation/Flordelyn Castillo, G.R. No. 192558, February 15, 2012.

[26] Willi Hahn Enterprises v. Lilia R. Maghuyop, G.R. No. 160348, December 17, 2004.

[27] Rollo, p. 159

[28] Adrian Wilson International Associates, Inc. v. TMX Philippines, Inc., G.R. No. 162608, July 26, 2010.

[29] Town & City Development Corporation v. Court of Appeals, G.R. No. 135043, July 14, 2004.

[30] People of the Philippines v. Elvis Sanchez, G.R. No. 122508, June 26, 1998.

[31] People v. Loma Goce, G.R. No. 113161, August 29, 1995.

[32] People v. Maritess Martinez, G.R. No. 158627, March 5, 2010.

[33] C.F. Sharp Crew Management, Inc. v. Hon. Undersecretary Jose M. Espanol, Jr., G.R. No. 155903, September 14, 2007.

[34] People v. Felicia Cabacang, G.R. No. 113917, July 17, 1995.

[35] People v. Susan Pantaleon, G.R. No. 108107, June 19, 1997.

[36] G.R. No. 197528, September 5, 2012.

[37] Ebrencio F. Indoyon, Jr. v. Court of Appeals, G.R. No. 193706, March 12, 2013.

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