

**ARAB PENINSULA MANPOWER SERVICES CORPORATION,
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND
EVARISTO P. GUIAO, JR. (NOW DECEASED SUBSTITUTED BY HIS
WIFE DR. NIDA ACAYL...**

Ponente: BARRIOS, J.

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BARRIOS, J.:

In this suit for certiorari, Arab Peninsula Manpower Services Corporation (or hereafter Arab Peninsula) pleads for the reversal and setting aside of the Decision and Resolution of the National Labor Relations Commission (or NLRC) promulgated on May 16, 2002 and August 8, 2002, on the allegation that these were issued with grave abuse of discretion. The assailed Decision affirmed the Decision of April 18, 2001 issued by Labor Arbiter Fedriel Panganiban, while the assailed Resolution denied the motion for its reconsideration.

Dr. Evaristo P. Guiao Jr. (or Dr. Guiao) applied for and was hired as Emergency Physician by Arab Peninsula in behalf of its principal I-MAN CO Agencies Commerce and Contracting (or I-MAN-CO) of the Kingdom of Saudi Arabia (or KSA). The contract that he signed stated that his employment was for two (2) years with a monthly salary of SR3000, while the Overseas Employment Certificate issued by the Philippine Overseas Employment Administration (or POEA) provided for a different employment term of twelve (12) months and a monthly salary of US\$950.

On July 11, 1998 Dr. Guiao left for the KSA and upon arrival started his work as Emergency Resident Physician in King Fahad Hospital. On July 20, 1998 Dr. Guiao received a letter via fax from Arab Peninsula informing him that he would be repatriated if his pediatrician wife Dr. Nida Acaylar-Guiao (or Dr. Nida) would not follow him to the KSA. Earlier Dr. Nida was also hired as a physician but she later decided to not push through with this employment abroad to stay and take care of their children, and so gave notice that she cannot come to work. Dr. Guiao found out that King Fahad Hospital was in dire need of a pediatrician and Arab Peninsula already obtained a visa for Dr. Nida.

Since then, the officials of King Fahad Hospital and I-MAN-CO became unfriendly to Dr. Guiao. They also withheld his salaries, and finally on September 22, 1998 his employment was summarily terminated. Dr. Guiao went to the Philippine Embassy in Riyadh to seek assistance but failed to secure one, and instead he was compelled to sign a waiver.

Claiming that he was illegally terminated, upon his arrival in the Philippines Dr. Guiao filed against Arab Peninsula and its principal I-MAN-CO a complaint for illegal dismissal, non-payment of salaries and damages. The case was docketed as NLRC NCR OFW Case No. (L) 00-08-1371-00.

In its traverse, Arab Peninsula averred that Dr. Guiao's performance as physician was below the standards set by Ministry of Health of the KSA. Despite the chance given him, Dr. Guiao's job performance did not improve, and so the employer was prompted to pre-terminate the employment contract upon payment of all the benefits due him. The waiver he executed on October 4, 1998 proves this. Arab Peninsula prayed for the dismissal of the

complaint.

On April 18, 2001, the Labor Arbiter rendered a Decision, disposing that:

WHEREFORE, foregoing premises considered, judgment is hereby rendered ordering Arab Peninsula Manpower Services and I-Man Co Agencies Commerce and Contracting jointly and severally to pay complainant FIVE THOUSAND TWO HUNDRED TWENTY-FIVE US DOLLARS (US\$5,225.00) or its equivalent in Philippine Currency at the time of payment plus ten percent (10%) thereof as attorney's fees.

All other claims are dismissed for lack of merit.

SO ORDERED. (pp. 107-108, rollo)

Arab Peninsula appealed to the NLRC imputing grave abuse of discretion and serious error. But on May 16, 2002 the NLRC upheld the Labor Arbiter and ruled that:

WHEREFORE, the appeal is dismissed and the judgment appealed from is affirmed en toto.

SO ORDERED. (p. 33, rollo)

A Motion for Reconsideration was filed but this too was defeated in the Resolution dated August 8, 2002.

Twice beaten, Arab Peninsula seeks relief through this Petition for Certiorari, advancing this ground for its allowance:

The Honorable Public Respondent NLRC gravely erred, misappreciated the evidence and committed grave abuse of discretion amounting to lack or excess of jurisdiction:

- 1) In affirming the decision of the Labor Arbiter of the illegality of the alleged dismissal of the private respondent, despite the lack of substantial evidence to support such finding;
- 2) In affirming the award of money claims to the private respondent, despite that he was not illegally dismissed and despite the waiver that he executed before the Labor Attache in Saudi Arabia;
- 3) In affirming the award of attorney's fees despite lack of substantial evidence that herein petitioner acted in bad faith or in an oppressive manner to the private respondent. (pp. 15-16, rollo)

Arab Peninsula insists that Dr. Guiao's dismissal was based on a valid and legal ground. But to be lawful, the dismissal must meet both substantive and procedural requirements; in fine, the dismissal must be for a just or authorized cause and must comply with the rudimentary due process of notice and hearing (Paguio vs. National Labor Relations Commission, G. R. No. 147816, May 9, 2003).

Unfortunately in this case, it was not shown by Arab Peninsula that I-MAN-CO and King Fahad Hospital have faithfully complied with either of these requirements in terminating the services of Dr. Guiao. As found by the Labor Arbiter:

Complainant's dismissal was based on his alleged incompetency. However, no proof was submitted nor were there document shown to buttress this claim. Aside from the general allegation of incompetency, there were no instances presented how the alleged incompetency was committed by the complainant. (p. 106, rollo)

Needless to stress the evidence adduced by Arab Peninsula failed to justify the dismissal of Dr. Guiao. In termination cases, like the case at bar, the burden of proof rests upon the employer to show that the dismissal is for just and valid cause; failure to do so would necessarily mean that the dismissal is unjustified (Solidbank Corporation vs. Court of Appeals, G. R. No. 151026, August 25, 2003, 409 SCRA 554). We thus see no grave

abuse of discretion on the part of the NLRC in rejecting Arab Peninsula's stance.

The existence of a just cause for termination of employment is ultimately a question of fact. The Labor Arbiter and the NLRC were unanimous in their findings that no just cause exists for Dr. Guiao's dismissal because the alleged inefficiency was not sufficiently established. We have always held that We are bound, in principle by the factual findings of administrative officials, if supported by substantial evidence (*Mac Adams Metal Engineering Workers Union-Independent vs. Mac Adams Metal Engineering*, G. R. No. 141615, October 24, 2003). We find no cogent reason to depart from this rule.

The claim that Dr. Guiao's employment was still in the probationary period and so may be terminated on his failure to satisfactorily perform his job, fails to persuade. Indeed, probationary employees do not enjoy permanent status, but they are accorded the constitutional protection of security of tenure. This means that they may only be terminated for just cause or when they otherwise fail to qualify as regular employee in accordance with reasonable standards made known to them by the employer at the time of their engagement (*Alcira vs. National Labor Relations Commissions*, G.R. No 149859, June 9, 2004). In this case, there was no showing that Arab Peninsula or I-MAN-CO notified Dr. Guiao that he would be subjected to a performance evaluation two (2) weeks after his hiring to determine whether the company is amenable to continue with his employment. Clearly, Dr. Guiao was hired for a definite period of at least one (1) year, to commence upon his arrival at the work place and to terminate at the end of that fix term.

Arab Peninsula cannot take refuge on the Waiver executed by Dr. Guiao on October 4, 1998 (p. 73, rollo) to escape liability. For one, deeds of release and quitclaims or waivers cannot bar employees from demanding benefits to which they are legally entitled or from contesting the legality of his dismissal. Also, Arab Peninsula failed to prove that Dr. Guiao voluntarily executed this (vide: *EMCO Plywood Corporation vs. Abelgas*, G. R. No. 148532, April 14, 2004). Finally, as found by the Labor Arbiter (n)o consideration was received by the complainant (p. 107, rollo).

Arab Peninsula's claim that they paid all the monetary benefits due to Dr. Guiao has to be rejected too. As aptly put by the Labor Arbiter (I)n claims of this nature, such as non payment, it is incumbent upon the respondents to show proof of rightful payment. It is their cause which would be defeated if no evidence was introduced. This being so, herein respondents are clearly liable for non-payment of complainant's salary for 2 ½ months in the sum of US\$2,375.00 (p. 107, rollo).

The award of attorney's fees is also in order. Attorney's fees is awarded when a party is compelled to litigate or incur expenses to protect his interest by reason of an unjustified act of the other party, as in this case (*Terminal Facilities and Services Corporation vs. Philippine Ports Authority*, G. R. Nos. 135639 & 135826, February 27, 2002). The Labor Arbiter and the NLRC cannot thus be considered to have whimsically granted the award.

In fine, a resort to judicial review of the decisions of the NLRC in a special civil action for certiorari under Rule 65 of the Rules of Court, is limited only to the questions of grave abuse of discretion amounting to lack or excess of jurisdiction (*Permex, Inc. vs. NLRC*, G. R. No. 125031, January 24, 2000). By grave abuse of discretion is meant such capricious and whimsical exercise of judgment, or is equated to lack of jurisdiction. It must be shown that the discretion was exercised arbitrarily, or despotically, or whimsically (*Security Bank Corp. vs. Victorio*, G. R. No. 155099, August 31, 2005). In this case, it has not been proven that the assailed Decision and Resolution were issued with grave abuse of discretion.

Considering the foregoing premises –

WHEREFORE, the petition is DENIED DUE COURSE and DISMISSED.

SO ORDERED.

Guariña, III and Romilla-Lontok, JJ., concur.

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