

**FILSCANDIA MANPOWER AND RECRUITMENT SERVICES, INC.,
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION,
SEVENTH (7TH)DIVISION, CEBU CITY, ROSENDO Y. DENILA, REO J.
DUGA, MARK ...**

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

This is a Petition for Certiorari under Rule 65 of the Rules of Court assailing the following issuances of public respondent National Labor Relations Commission (NLRC) in NLRC Case No. OFW VAC-11-000039-2012, to wit: (1) Decision[1] dated April 30, 2013 which affirmed with modification the decision of the labor arbiter dated September 20, 2012; and (2) Resolution[2] dated September 30, 2013 which partially granted petitioner's motion for reconsideration.

The Antecedents

Petitioner is a duly licensed recruitment agency in the Philippines. In behalf of its Malaysian principal, Yongnam Engineering SDN BHD (Yongnam), petitioner hired private respondents for a 3-year contract with Yongnam. They were engaged as steel fabrication workers and contracted to receive monthly salaries of either one thousand five hundred Malaysian ringgit (RM 1,500) or two thousand Malaysian ringgit (RM 2,000), depending on their positions.[3] Private respondents' respective employment contracts were approved by the Philippine Overseas Employment Agency (POEA) on December 17, 2009.[4]

When private respondents were already working in Malaysia, they allegedly received only minimal amounts, not the salaries stated in their contracts; and the reduction was more than ½ of their contracted salaries. Private respondents demanded for explanation but none was given to them by Yongnam.

When Hazel Buaron (Buaron), president of petitioner recruitment agency, was made aware of private respondents' complaints regarding their salaries, she communicated with Yongnam through Yusufirashim Sadir Mohammed (Mohammed) about the matter via electronic mail. There were exchanges of communications between Buaron and Mohammed but the concern was never resolved. On different months in 2011, private respondents separately tendered their respective resignation letters[5] and these were accepted by Yongnam.

On March 1, 2012, private respondents filed with the labor arbiter a case against petitioner and Yongnam for underpayment of wages; refund of transportation fee; and damages.[6] Private respondents claimed that petitioner and Yongnam breached their contractual obligations when they did not pay their agreed salaries. By reason thereof, private respondents were prejudiced and they sustained damages. They were likewise compelled to litigate and hire the services of a lawyer to assist them.

In defense, petitioner contended that when private respondents were offered employment by Yongnam, they accepted the terms in the uniformly worded letter-offers which stated in part that their salary rate would be RM 5.00/hour for a period of three years, subject to the approval of their work permits in Malaysia. Private respondents affixed their respective signatures in the letter-offers and thereafter, their respective employment

contracts were executed. Thus, even if private respondents worked eight hours a day, six days per week, their compensation would only be RM 960.00/month. Based on the monthly minimum wages in Malaysia and the Philippines, complainants could not be considered underpaid.

Petitioner further contended that it was not negligent with its legal obligations to private respondents since Buaron exerted all efforts to settle things with Yongnam. However, private respondents chose to terminate their respective employment contracts by tendering their resignation letters which Yongnam accepted. Since it was private respondents who voluntarily severed their employment, petitioner should not be made liable and each party must bear their own loss.

After considering the parties' respective positions, the labor arbiter ruled in private respondents' favor. The dispositive portion of his decision is hereby quoted, viz.:

WHEREFORE, premises considered judgment is hereby rendered:

- FINDING that the respondent committed breach of contract as the complainants were underpaid;
- HOLDING respondent Filscandia Manpower and Recruitment Services Inc. liable to the complainants and ORDERING them to pay complainants Rosendo Y. Denila, Clarence Sugang, Mark Alacapa, Romeo Ong, Jr., Liemer Lachica, Eric Caloyloy, Jacob Savillo, Doyert Faisan, Reo Jay Duga and, Ruel Fuentes the amounts of Php 420,565.62; Php 270,078.14; Php 275,280.15; Php 233,375.82; Php 332,284.14; Php 251,503.04; Php 318,706.57; Php 267,133.61; Php 231,262.10 and Php 216,350.22, respectively, comprising their individual salary differentials (due to underpayment of salaries/wages, moral and exemplary damages (in the amount of Php 20,000.00 each) and ten percent (10%) attorney's fees in the amount of Php 281,649.94).

Respondents Filscandia Manpower and Recruitment Services and Hazel Buaron are hereby held liable to pay complainants in the afore-quoted amounts with a grand total of THREE MILLION NINETY EIGHT THOUSAND ONE HUNDRED FORTY NINE PESOS AND THIRTY FIVE CENTAVOS (Php 3,098,149.35) and they are directed to deposit the said amount to the Cashier of this Sub-Arbitration Branch within ten (10) days from receipt of this Decision.

All other claims are denied for complainant's failure to adduce substantive evidence therefor and/or for lack of merit.

SO ORDERED.[7]

Petitioner appealed to the NLRC. The NLRC, however, affirmed the ruling of the labor arbiter, except that it declared Buaron to be without liability due to lack of bad faith on her part. The dispositive portion of the NLRC's decision reads, viz.:

WHEREFORE, premises considered respondent's appeal is PARTIALLY GRANTED. The 20 September 2012 Decision of Labor Arbiter Rodrigo P. Camacho is AFFIRMED WITH MODIFICATION in the following manner:

1. AFFIRM that Filscandia Manpower and Recruitment Services Inc. committed breach of contract as complainants were underpaid;
2. AFFIRM that Filscandia Manpower and Recruitment Services Inc. is liable to complainants and it is ordered to pay complainants Rosendo Y. Denila, Clarence Sugang, Mark Alacapa, Romeo Ong, Jr., Liemer Lachica, Eric Caloyloy, Jacob Savillo, Doyert Faisan, Reo Jay Duga and, Ruel Fuentes the amounts of P400,565.62, P250,078.14, P255,280.15, P213,335.82, P312,284.14, P231,503.04, P298,706.57, P247,133.61, P211,262.10 and P196,350.22, respectively, comprising their individual salary differentials;
3. AFFIRM the award of moral and exemplary damages of P20,000.00 for each of the complainant and the

consequent attorney's fees of P281,649.94;

4. AFFIRM the denial of other claims; and

5. DELETE any liability of Ms. Hazel Buaron for complainant's money claims.

In sum, complainants are entitled to an aggregate amount of PESOS: THREE MILLION NINETY-EIGHT THOUSAND ONE HUNDRED FORTY-NINE & 35/100 (P3,098, 149.35).

SO ORDERED.[8]

Petitioner moved for reconsideration. The NLRC stood pat on its position that there was breach of contract since private respondents' salaries were short of what they were supposed to receive. It also maintained that petitioner was liable to pay salary differentials, damages and attorney's fees to private respondents. The NLRC, however, clarified that although it intended to hold Yongnam liable, it advertently omitted the said foreign principal in the dispositive portion of its earlier decision. Hence, in the Resolution of petitioner's motion for reconsideration, the NLRC held, thus:

WHEREFORE, premises considered, the Motion for Reconsideration filed by respondent Filscandia Manpower and Recruitment Services, Inc. is PARTIALLY GRANTED. Our Decision, promulgated on 30 April 2013, STANDS WITH MODIFICATION only with respect to the declaration that YONGNAM ENGINEERING SDN BHD is jointly and solidarily liable with Filscandia Manpower and Recruitment Services, Inc.

SO ORDERED.[9]

Left with no other recourse, petitioner brought this petition and advanced the following grounds,[10] viz.:

I. THE NATIONAL LABOR RELATIONS COMMISSION SEVENTH DIVISION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF ITS JURISDICTION WHEN IT FOUND THAT THE PETITIONER WAS LIABLE FOR BREACH OF CONTRACT.

II. THE NATIONAL LABOR RELATIONS COMMISSION SEVENTH DIVISION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF ITS JURISDICTION WHEN IT FOUND THAT THE PETITIONER WAS LIABLE FOR SALARY DIFFERENTIALS IN FAVOR OF THE PRIVATE RESPONDENTS.

III. THE NATIONAL LABOR RELATIONS COMMISSION SEVENTH DIVISION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF ITS JURISDICTION WHEN IT FOUND THAT THE PETITIONER WAS LIABLE FOR MORAL AND EXEMPLARY DAMAGES [TO] EACH PRIVATE RESPONDENT.

IV. THE NATIONAL LABOR RELATIONS COMMISSION SEVENTH DIVISION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF ITS JURISDICTION WHEN IT FOUND THAT THE PETITIONER WAS LIABLE FOR ATTORNEY'S FEES.

This Court's Ruling

The petition is partly meritorious.

We jointly address the first two grounds for being interrelated.

Petitioner insisted that it could not be held guilty of breach of contract since it was private respondents who terminated their employments by tendering their voluntarily resignations. There was, therefore, no basis for the award of salary differentials considering that there was no illegal dismissal, which is a condition precedent for the award of money claims in favor of illegally dismissed overseas foreign workers (OFWs). Moreover, per the

letter-offers that they signed, private respondents were fully aware before their deployment that their compensation would be RM 5.00/hour. They could not, thus, after accepting the letter-offers, negate full awareness of their compensation and other benefits. Besides, per Malaysian labor standards and under the required minimum employment standards for land-based workers under the POEA Rules, private respondents could not be considered as underpaid. Hence, there was no basis for the award of salary differentials.

Petitioner's contentions are unpersuasive.

No grave abuse of discretion could be attributed to the NLRC for affirming the labor arbiter's findings that there was breach of contract. Private respondents' POEA-approved employment contracts reflected that their monthly salaries would be RM 1,500.00 or RM 2,000.00, depending on their positions. Private respondents, however, never received the salaries promised to them; and this circumstance was documented by the communications between Buaron and Mohammed, one of which had the following contents, thus:

Dear Yusuf,

How are you my dear friend? Would like to let you know that I received some complaints from the 1[st] batch of workers regarding their salary xxx. I think it is right to follow as [sic] what [was] stipulated in the contract[s] regarding their salary; otherwise we will be facing a big problem in the Labor Office in Kuala Lumpur as well here in POEA.[11]

xxx xxx xxx

Thank you and best regards,

Hazel D. Buaron

In cases involving OFWs, the rights and obligations among and between the OFW, the local recruiter/agent, and the foreign employer/principal are governed by the employment contract.[12] Yongnam was bound to pay RM 1,500.00 to RM 2,000.00 to private respondents, as these were the amounts stated in their contracts. Consequently, when private respondents received salaries lower than what was agreed, breach of contract was committed; and petitioner and Yongnam were liable for salary differentials to private respondents.

The letter-offers, which were side agreements signed by private respondents stipulating for a different salary amount, could not defeat private respondents' claims. Such unauthorized alteration in private respondents' employment contracts, particularly the diminution in their salaries, is void for violating their POEA-approved contract which set the minimum standards, terms, and conditions of their employment.[13] Such side agreements were void for being against our existing laws, morals and public policy; and the same could not supersede the terms of the standard employment contract approved by the POEA.

Even private respondents' resignations do not extricate petitioner and Yongnam from the breach of their contractual obligations. The resignations, obviously, were not voluntary as private respondents were constrained to give up their jobs when they did not receive the salaries promised. Notwithstanding the purported contents of private respondents' resignation letters, the true reason for their resignations was categorically disclosed by the following communication between Buaron and Mohammed, viz.:

Dear Yusuf,

xxx xxx xxx

I just received a call from Atty. Chuan of the Labour Attache Welfare office, telling me that our workers in Yongnam called the office complainaing of their low salary condition in Yongnam.

I already referred to you the salary problem of the workers months ago, please resolve this problem as soon as possible for they want to leave their job if their salary condition did not increase.[14]

In the case of *JSS Indochina Corporation v. Ferrer*,^[15] the recruitment agency and its foreign principal were adjudged jointly and severally liable for the claims of therein OFWs despite the fact that the foreign workers were the ones who pre-terminated their employment contracts. The Supreme Court held, thus:

There is no question that petitioner violated its contract with respondents. As found by the Labor Arbiter, the NLRC and the Appellate Court, petitioner did not assign them as construction workers for Formosa Plastics Corporation. Instead, they were directed to work as cable tray/pipe tract workers at Shin Kwan Enterprise Co., Ltd.

The Labor Arbiter found that respondents' "decision to resign from their employment were made by force of circumstances not attributable to their own fault," and "it was not their fault that they were left out from among those workers who were considered for employment by the foreign employer." Likewise, the NLRC held that respondents' "decision to go home to the Philippines was justified in view of the evident breach of contract" by petitioner, as "it clearly appeared that upon their arrival at the jobsite, there was no employer on hand." Clearly, both labor tribunals correctly concluded, as affirmed by the Court of Appeals, that they were forced to resign and to pre-terminate their employment contracts in view of petitioner's breach of their provisions. [Emphasis and underscoring supplied.]

Petitioners' joint and solidary liability with Yongnam for private respondents' salary differentials is beyond contest. The Supreme Court has, time and again, ruled that private employment agencies are held jointly and severally liable with the foreign-based employer for any violation of the recruitment agreement or contract of employment. The basis for such solidary liability is found in Section 1 (f), Rule II, Book II, of the Rules and Regulations Governing Overseas Employment which requires the private employment agency to submit an undertaking under oath stating, among others, that it shall assume joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the contract. This joint and solidary liability imposed by law against recruitment agencies and foreign employers is meant to assure the aggrieved worker of immediate and sufficient payment of what is due him; and is in line with the policy of the state to protect and alleviate the plight of the working class.^[16]

Going now to the third ground which covered the issue on petitioner's liability for moral and exemplary damages, this Court finds that the evidence on record does not support the grant of such awards. The award for moral damages in labor cases is usually based on Article 2220 of the Civil Code which provides for such damages in cases of breaches of contract where the defendant acted fraudulently or in bad faith. In this case, the Court does not find petitioner to have acted in bad faith. The communications between Buaron and Mohammed show that petitioner exerted its best efforts to communicate with Yongnam about private respondents' gripe. Through Buaron, petitioner persistently urged Yongnam to comply with the stipulations in private respondents' contracts. Unfortunately, Yongnam refused and insisted that it was already paying more than enough to private respondents. Yongnam's obstinate position was already beyond petitioner's control. Hence, although petitioner was legally liable for the salary differentials of private respondents, it would be improper to hold it liable for moral damages since it was evidently not guilty of bad faith.

With the deletion of the award for moral damages, there would also be no basis for the grant of exemplary damages. To justify the award, it must be shown that the party acted in a wanton, oppressive or malevolent manner, which circumstance does not obtain in this case. Furthermore, this specie of damages is allowed only in addition to moral damages such that no exemplary damages can be awarded unless the claimant first establishes his clear right to moral damages.^[17]

Finally, regarding the award of attorney's fees, the Court finds the same to be legally justified. In actions for recovery of wages or where an employee is compelled to litigate and thus incur expenses to protect his rights and interests, an award of attorney's fees equivalent to ten percent (10%) of the total award is legally and morally justifiable.¹⁸ The amount of the award, however, has to be modified in accordance with the remaining monetary awards.

WHEREFORE, the Petition is PARTLY GRANTED. The Decision dated April 30, 2013 and Resolution dated September 30, 2013 issued by the National Labor Relations Commission in NLRC Case No. OFW VAC-11-000039-2012 are hereby AFFIRMED, but with MODIFICATIONS in that:

- The awards for moral and exemplary damages are DELETED; and
- The total of the ten percent (10%) attorney's fees is ADJUSTED commensurate to the remaining monetary awards;

SO ORDERED.

Delos Santos, Chairperson and Azcarraga-Jacob, JJ., concur.

[1] Rollo, pp. 32-45.

[2] Rollo, pp. 47-51.

[3] See table reflecting the names, positions, salary rates and duration of contracts, rollo, p. 34.

[4] See p. 3 of NLRC decision, rollo, p. 34.

[5] Rollo, pp. 57-62.

[6] See allegation in petition under the heading Summary of Proceedings, rollo, pp. 9-10.

[7] As quoted in the Decision of the NLRC, see rollo, p. 32-33.

[8] Rollo, p. 43-44.

[9] Rollo, p. 50.

[10] Ground # 5 pertaining to petitioner's claim of being entitled to a preliminary injunctive relief is omitted as the same was already resolved in the Resolution dated July 30, 2014, rollo, pp. 256-261.

[11] See E-mail sent on April 21, 2010, rollo, p. 52.

[12] EDI-Staffbuilders International, Inc., v. NLRC, G.R. No. 145587. October 26, 2007.

[13] See Placewell International Services Corporation v. Camote, G.R. No. 169973. June 26, 2006.

[14] Rollo, p. 55.

[15] See G.R. No. 156381. October 14, 2005.

[16] See Datuman v. First Cosmopolitan Manpower and Promotion Services, Inc., G.R. No. 156029. November 14, 2008.

[17] See Mahinay v. Velasquez, Jr., G.R. No. 152753. January 13, 2004.

[18] See ATCI Overseas Corporation v. Court of Appeals, G.R. No. 143949. August 9, 2001.

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