

EDUARDO M. AGUSTIN, JR., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION – 5TH DIVISION – CAGAYAN DE ORO CITY, AND AQUIM INTERNATIONAL, INC., /PRES. ROGER E. ROARING, RESPON...

Ponente: SINGH, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/56f115ef0b75/>

SINGH, J.:

Before Us is private respondents' Motion for Reconsideration[1] of this Court's Decision dated August 13, 2014,[2] finding petitioner to have been illegally dismissed and ordering private respondents Aquim International, Inc. and Rajeh H. Al-Marri & Sons Company jointly and severally liable to pay petitioner the total amount of SR[3] 27,610 representing back wages and attorney's fees.

In their motion, private respondents argue that petitioner was not only dismissed for just cause and with due process, but that he is likewise not entitled to food allowance, leave pay, overtime pay, and attorney's fees.

Petitioner was dismissed
without valid cause and due
process.

Private respondents alleged that the Memorandum dated August 15, 2010,[4] signed by Charles Guzman, Human Resource Manager of Rajeh H. Al-Marri & Sons Company, is valid and substantial evidence of petitioner's poor performance or gross neglect of duties. Such allegation still fails to convince this Court.

"Poor performance" is equivalent to inefficiency and incompetence in the performance of official duties. Under Article 282 of the Labor Code, an unsatisfactory rating can be a just cause for dismissal only if it amounts to gross and habitual neglect of duties.[5] "Gross neglect of duty" or "gross negligence" refers to negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected.[6]

To reiterate, repairing machines and engines was not part of petitioner's job description as a workshop engineer. Hence, he cannot be charged with poor performance or gross neglect of this particular duty which is not covered by his scope of work. Even assuming for the sake of argument that it was his duty, failure to repair a couple of machines cannot be considered gross or habitual neglect of duty. With the foregoing, and the absence of bases or criteria showing how petitioner was found to be incompetent, the alleged memorandum clearly falls short of "substantial evidence" of poor performance.

As to the due process requirement of valid termination, private respondents failed to allege, much less prove, their compliance with the "first notice" under the twin notice requirement of due process in the termination of employees.

We maintain that the petitioner was dismissed without valid cause and without due process.

Petitioner is entitled to his salaries for the unexpired portion of his employment contract.

In the Decision dated August 13, 2014, this Court awarded petitioner's salaries for three months for every year of the unexpired term of his employment contract in accordance with Republic Act (R.A.) No. 10022, which amended R.A. No. 8042 (Migrant Workers and Overseas Filipinos Act of 1995), which took effect on March 28, 2010, thus:

"Section 7. Section 10 of Republic Act No. 8042, as amended, is hereby amended to read as follows:

"SEC. 10. Money Claims. -xxx

"In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement if his placement fee and the deductions made with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less." (emphasis supplied)

The Supreme Court, however, recently in the case of *Sameer Overseas, Placement Agency, Inc. v. Joy Cabiles*, G.R. No. 170139, August 5, 2014, declared the clause "or three (3) months for every year of the unexpired term, whichever is less" as unconstitutional, to wit:

"In *Serrano v. Gallant Maritime Services, Inc. and Marlow Navigation Co., Inc.*, this court ruled that the clause "or for three (3) months for every year of the unexpired term, whichever is less" is unconstitutional for violating the equal protection clause and substantive due process.

A statute or provision which was declared unconstitutional is not a law. It "confers no rights; it imposes no duties; it affords no protection; it creates no office; it is inoperative as if it has not been passed at all."

We are aware that the clause "or for three (3) months for every year of the unexpired term, whichever is less" was reinstated in Republic Act No. 8042 upon promulgation of Republic Act No. 10022 in 2010.

x x x

The law passed incorporates the exact clause already declared as unconstitutional, without any perceived substantial change in the circumstances

x x x

We observe that the reinstated clause, this time as provided in Republic Act. No. 10022, violates the constitutional rights to equal protection and due process.

x x x

We reiterate our finding in *Serrano v. Gallant Maritime* that limiting wages that should be recovered by an illegally dismissed overseas worker to three months is both a violation of due process and the equal protection clauses of the Constitution.

x x x

Along the same line, we held that the reinstated clause violates due process rights. It is arbitrary as it deprives overseas workers of their monetary claims without any discernable valid purpose. Respondent Joy Cabiles is entitled to her salary for the unexpired portion of her contract, in accordance with Section 10 of Republic Act

No. 8042. The award of the three-month equivalence of respondent's salary must be modified accordingly."
(emphasis supplied).

In view of the foregoing, this Court's award of back wages in favor of the petitioner is hereby modified.

Petitioner signed his contract on October 12, 2009, which was for two (2) years and he was illegally terminated on June 15, 2010. As such, he had an unexpired term of one (1) year, three (3) months and twenty-seven (27) days at the time of his termination, for which, pursuant to the very recent aforequoted ruling of the Supreme Court, petitioner must receive his full contracted salaries, thus:

Contract Term

Contract Signed On

Termination Date

Unexpired Term

Monthly Salary

Total Claims

2 years

12 Oct. 2009

15 June 2010

1 year,

3 months,

27 days

SR 4,000

SR 63,600

Private respondents are held, jointly and severally, liable to pay petitioner SR 63,600 representing his salaries for the unexpired term of his contract.

Award of food allowance,
leave pay and overtime pay
deleted.

As to the Court's previous award of food allowance, leave pay and fixed overtime pay in favor of petitioner, the same are deleted. As correctly pointed out by private respondent, "fixed overtime" pay could not be awarded since it is improbable for petitioner to have rendered overtime work during the unexpired term of his contract as enunciated in the case of *Bahia Shipping Services, Inc. v. Chua*.^[7] Further, the award of food allowance and leave pay are also deleted considering those are not included in the term "salaries" which must be given to an illegally dismissed migrant worker under Section 10 of R.A. No. 10022.

Petitioner is entitled to the
award of attorney's fees.

Contrary to the allegation of private respondents, the petitioner is entitled to the award of attorney's fees

representing 10% of the total award of money claims considering that petitioner was forced to litigate due to his illegal dismissal which was effected without due process.

"While in Lambert Pawnbrokers and Jewelry Corporation, the Court specifically ruled:

However, the award of attorney's fee is warranted pursuant to Article 111 of the Labor Code. Ten (10%) percent of the total award is usually the reasonable amount of attorney's fees awarded. It is settled that where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable." [8] (emphasis supplied)

Petitioner is entitled to an interest of 6% per annum on his money claims.

With the issuance of Bangko Sentral ng Pilipinas Circular No. 799 of June 21, 2013, which revised the interest rate for loan or forbearance from 12 % to 6% in the absence of stipulation, and the guidelines outlined in the case of Nascar v. Gallery Frames,[9] this Court finds petitioner entitled to an interest of 6% per annum on his money claims from the finality of this judgment.

The foregoing 6% per annum has been declared to be applicable to money claims in R.A. No. 8042 and R.A. No. 10022 in the Sameer Overseas, Placement Agency, Inc. v. Joy Cabiles[10] case, thus:

"The same cannot be said for awards of salary for the unexpired portion of the employment contract under Republic Act No. 8042. These awards are covered by Circular No. 799 because the law does not provide for a specific interest rate that should apply.

In sum, if judgment did not become final and executory before July 1, 2013 and there was no stipulation in the contract providing for a different interest rate, other money claims under Section 10 of Republic Act No. 8042 shall be subject to the 6% interest per annum in accordance with Circular No. 799.

This means that respondent is also entitled to an interest of 6% per annum on her money claims from the finality of this judgment." (emphasis supplied)

WHEREFORE, the Decision dated August 13, 2014 is MODIFIED. The Decision of this Court finding petitioner Eduardo Agustin Jr. to have been illegally dismissed remains unreconsidered. The award of monetary claims in favor of petitioner is hereby modified as follows:

Private respondents Aquim International, Inc. and Rajeh H. Al-Marri & Sons Company are held jointly and severally liable[11] to pay petitioner Eduardo M. Agustin Jr. his salaries for the unexpired portion of his contract of one (1) year, three (3) months and twenty-seven (27) days, which is equivalent to SR 63,600 with interest at the rate of 6% per annum from the finality of this judgment.

Private respondents Aquim International, Inc. and Rajeh H. Al-Marri & Sons Company are likewise ordered to pay petitioner, jointly and severally, attorney's fees representing 10% of the total award in favor of petitioner also with an interest at the rate of 6% per annum from finality of this judgment.

The award of food allowance, service incentive leave, and fixed overtime pay are deleted.

SO ORDERED.

Borja, (Chairperson), and Badelles, JJ., concur.

- [1] Rollo, pp. 245-249.
- [2] Rollo, pp. 233-242.
- [3] Saudi Riyal
- [4] Excerpts in the Resolution dated August 24, 2011. Rollo, pp. 43-44.
- [5] Rollo, p. 238.
- [6] Dr. Rio v. Colegio de Sta. Rosa-Makati, G.R. No. 189629, August 6, 2014.
- [7] G.R. No. 162195, April 8, 2008.
- [8] Aliling v. Feliciano, G.R. No. 185829, April 25, 2012.
- [9] G.R. No. 189871, August 13, 2013.
- [10] G.R. No. 170139, August 5, 2014.
- [11] Republic Act No. 10022. Section 7. Section 10 of Republic Act No. 8042, as amended, is hereby amended to read as follows:

"SEC. 10. Money Claims. -xxx

The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages." (Underscoring supplied).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.