

SEA POWER SHIPPING ENTERPRISES, INC., AVIN INTERNATIONAL, S.A. AND/OR MS. VIRGINIA T. DE ASIS, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION), ALAIN ALEX...

Ponente: ABDULWAHID, J.

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ABDULWAHID, J.:

This is a petition for certiorari[1] filed under Rule 65 of the 1997 Rules of Civil Procedure by petitioners Sea Power Shipping Enterprises, Inc., Avin International, S.A. and/or Ms. Virginia T. De Asis, seeking to annul and set aside the following decision and resolution rendered by public respondent National Labor Relation Commission (NLRC), in NLRC NCR Case No. (M) 06-08880-13 (NLRC LAC No. OFW [M] 01-000132-14): (1) Decision[2] promulgated on June 2, 2014, finding petitioners liable for illegal dismissal, and ordering them to jointly and severally pay private respondent Alain Alexis Cruz Viado the unexpired portion of his contract; and (2) Resolution[3] promulgated on June 30, 2014, denying the motion for reconsideration thereof for lack of merit.

Petitioner Sea Power Shipping Enterprises, Inc. is a corporation duly organized and existing under Philippine laws, while petitioner Avin International S.A. is an accredited principal of the former and owner of the vessel M/T Loutro. Petitioners employed private respondent Alain Alexis Viado as a cook steward of the vessel M/T Loutro for a period of nine months plus three months with the consent of both parties, with basic a salary of US\$ 550.00 and allowance of US\$ 512.00. On May 1, 2013, private respondent commenced his duties on board the vessel. However, few days after his embarkation, private respondent tendered his resignation due to personal reasons.[4]

Private respondent, in his Memorandum,[5] alleged that on June 10, 2013, he was informed by the captain of the vessel that he would be replaced by another cook and will be repatriated on June 16, 2013, without any reason. Two days before the scheduled repatriation, private respondent was surprised to receive a falsified repatriation letter, which contained his alleged signature. At the time of his repatriation on June 16, 2013, private respondent had served only one month and fifteen days of his contract, leaving an unexpired portion of seven months and fifteen days. Thus, upon his arrival, private respondent immediately filed a complaint for illegal dismissal against petitioners, praying for the salary corresponding to the unexpired portion of his employment contract plus moral and exemplary damages and attorney's fees.

On December 12, 2013, the Labor Arbiter rendered a Decision,[6] dismissing private respondent's complaint for lack of merit. The Labor Arbiter declared that private respondent pre-terminated his term of employment with his voluntary resignation per his letter request dated May 10, 2013.

On appeal, public respondent NLRC, in the assailed Decision[7] promulgated on June 2, 2014, reversed and set aside the decision of the Labor Arbiter. Public respondent declared that there can be no voluntary resignation when the alleged request for repatriation is certainly disputed for being falsified. Further, it is highly suspicious how petitioners' officers could easily accept a request for repatriation for a vague personal reason, immediately on the same day it was requested.

Petitioners filed a motion for reconsideration, but public respondent, in the assailed Resolution[8] promulgated on

June 30, 2014, denied the same for lack of merit.

Aggrieved, petitioners filed this petition for certiorari, raising the following issues, to wit:[9]

I. WHETHER OR NOT PUBLIC RESPONDENT FOURTH DIVISION OF THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GIVING DUE COURSE TO THE APPEAL FILED BY PRIVATE RESPONDENT VIADO AND REVERSING THE DECISION DATED 12 DECEMBER 2013 OF HONORABLE LABOR ARBITER RENALDO O. HERNANDEZ;

II. WHETHER OR NOT PUBLIC RESPONDENT FOURTH DIVISION OF THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT PRIVATE RESPONDENT WAS ILLEGALLY DISMISSED; and

III. WHETHER OR NOT PUBLIC RESPONDENT FOURTH DIVISION OF THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT PRIVATE RESPONDENT IS ENTITLED TO HIS SALARIES FOR THE UNEXPIRED PORTION OF HIS CONTRACT, AS WELL AS ATTORNEY'S FEES. (Emphasis ours)

The petition is not meritorious.

Resignation is the formal pronouncement or relinquishment of an office.[10] It is the voluntary act of an employee who finds himself in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service, such that he has no other choice but to disassociate himself from his employment.[11] The overt act of relinquishment should be coupled with an intent to relinquish, which intent could be inferred from the acts of the employee before and after the alleged resignation.[12]

Fundamental is the rule that in illegal dismissal cases, when an employer interposes the defense of resignation, on him necessarily rests the burden to prove that the employee indeed voluntarily resigned.[13]

Guided by the foregoing rule, we agree with public respondent that petitioners failed to discharge such burden. Petitioners failed to adduce convincing evidence to establish and substantiate their claim that private respondent's request for repatriation is tantamount to resignation, more so, that it was voluntary. The alleged affidavits of petitioners' senior officers, supporting the veracity of the request for repatriation are not affidavits in the legal sense, since, it was not notarized. Further, there can be no voluntary resignation when the alleged typewritten request for repatriation is disputed for being falsified, i.e. (1) the contents of which were not encoded by private respondent; and (2) the signature attributed to private respondent was firmly denied for being forged.

We find it unbelievable that after having waited for so long to be deployed with the hope of opportunity to earn a better living within his reach, private respondent would just suddenly decide to abandon his work and go home due to personal reasons. At the very least, private respondent could have specified the reason or elaborated on the details of such an urgent matter so as not to jeopardize his future employment opportunities.[14]

Also, the fact that private respondent filed the complaint immediately gives more credence to his claim that he was illegally dismissed. He arrived in the Philippines on June 16, 2013, and immediately filed his complaint for illegal dismissal three days later, on June 19, 2013. It would have been illogical for private respondent to resign and then claim that he was illegally terminated. Well-entrenched is the rule that resignation is inconsistent with the filing of a complaint for illegal dismissal.[15]

The law is solicitous of the welfare of employees because they stand on unequal footing with their employers and are usually left at the mercy of the latter. This is especially true of Filipino migrant workers who, alone in a foreign country, might have no adequate alternative resources even for their own personal daily needs.[16] Hence, the avowed policy that in case of doubt with respect to the evidence presented by the employer and the employee, the scale of justice should tilt in favor of the latter. The Supreme Court reiterated this pronouncement in *Nicario vs. National Labor Relations Commission*, to wit:[17]

It is a well-settled doctrine, that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. It is a time-honored rule that in controversies between a laborer and his master, doubts reasonably arising from the evidence, or in the interpretation of agreements and writing should be resolved in the former's favor. The policy is to extend the doctrine to a greater number of employees who can avail of the benefits under the law, which is in consonance with the avowed policy of the State to give maximum aid and protection of labor.

Having ruled out voluntary resignation, we now determine whether private respondent was illegally dismissed. A perusal of the records reveal that there was no valid and legal cause which justified private respondent's removal from employment. Instead, we note that petitioners failed to serve two required written notices to private respondent prior to his termination from employment as required by the Labor Code. Briefly, there was no just cause nor due process in private respondent's dismissal, hence, the dismissal is illegal.

Relative to the issue, paragraph 5, Section 10 of Republic Act No. 8042, provides:

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee 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 ours)

Accordingly, private respondent is entitled to an amount equivalent to his salary for seven and a half months, representing the unexpired portion of his nine-month contract, computed as follows:

$$7.5 \times \text{US\$ } 550.00 \text{ (basic salary)} = \text{US\$ } 4,125.00$$

Further, settled is the rule that in actions for recovery of wages, or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interests, a monetary award by way of attorney's fees is justifiable under Article 111 of the Labor Code; Section 8, Rule VIII, Book III of its Implementing Rules; and paragraph 7, Article 2208 of the Civil Code. The award of attorney's fees is proper, and there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. There need only be a showing that the lawful wages were not paid accordingly.[18]

WHEREFORE, the petition for certiorari is DISMISSED for lack of merit. Accordingly, petitioners are jointly and solidarily liable to pay private respondent the unexpired portion of his contract, amounting to US\$ 4,125.00 plus 10% thereof as attorneys fees.

SO ORDERED.

Baltazar-Padilla, P.J., and Inting, S.B., JJ., concur.

[1] Rollo, pp. 3-27.

[2] *Id.* at 35-48.

[3] Id. at 50-52.

[4] Id. at 5-6.

[5] Id. at 167-172.

[6] Id. at 88-97.

[7] See Note 2.

[8] See Note 3.

[9] Id. at 9.

[10] Go v. Court of Appeals, 430 SCRA 358, 367 (2004).

[11] Cervantes vs. Pal Maritime Corporation, G.R. No. 175209, January 16, 2013.

[12] See San Miguel Properties Philippines, Inc. vs. Gucaban, 654 SCRA 18, 28-29 (2011).

[13] Ibid.

[14] See G & M Philippines, Inc., vs. Cuambot, 507 SCRA 552, 569 (2006).

[15] Oriental Shipmanagement Co., Inc., vs. Court of Appeals, 480 SCRA 100, 110 (2006).

[16] Id. at 109.

[17] 295 SCRA 619, 626-627 (1998).

[18] RTG Construction, Inc. vs. Facto, 608 SCRA 615, 625-626 (2009). [Emphasis supplied]

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