

BRIGHT INTERNATIONAL MANPOWER SERVICES, INC., MOND AND BASIM S/O YASSEN M. AL GHADEER, AND FATIMA A. SANTILLANA, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND CALEXTO...

Ponente: LAZARO-JAVIER, A.C., J.

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LAZARO-JAVIER, A.C., J.:

This petition for certiorari[1] assails the following issuances of the National Labor Relations Commission (NLRC)[2] in NLRC NCR (OFW-L) Case No. 10-15515-11 (NLRC LAC: OFW-L No. 05-000434-12), viz:

- 1) Decision dated July 31, 2012, ordering petitioners to pay Reyes' salary differentials, unexpired portion of his contract, and attorney's fees.
- 2) Resolution dated November 29, 2012, modifying its previous decision and only deleting the award of the salaries for the unexpired portion of Reyes' contract.

Private respondent Calexto M. Reyes averred:[3] Petitioners hired him as a Technician/Electrician to work in the Kingdom of Saudi Arabia. He signed up a 2 year contract with monthly salary of US\$420.00. He worked daily for more than 8 hours, albeit he only received a month salary of US\$200.00. During his 14[th] month, he was repatriated due to his incessant demand for salary differentials. He filed an illegal dismissal complaint against petitioners. He demanded payment of the following: salary differentials, unexpired portion of his contract (10 months), overtime pay, moral and exemplary damages, attorney's fees, and refund of his placement fee.

In their Position Paper dated November 29, 2011,[4] petitioners Bright International Services, Inc., et al. countered:

(1) Bright International Services, Inc. was a domestic corporation duly licensed by the Philippine Overseas Employment Administration (POEA) to engage in the recruitment and placement of Filipino workers abroad. It hired private respondent Calexto M. Reyes as Technican/Electrician, in behalf of its foreign principal Mond and Basim S/O Yassen M. Al Ghadeer and trading partners Trading and Industrial Company. Reyes agreed and signed the employment contract. Reyes' employment contract was for a period of 24.73 months and for a monthly salary of US\$420.00.

(2) On May 25, 2009, Reyes left for the Kingdom of Saudi Arabia (KSA). Upon his arrival in Saudi Arabia, they discovered that Reyes was totally unqualified for the position he applied for. He was given the opportunity to prove he was qualified for other technical positions, but was later found to be unfit. Reyes, then, negotiated and offered to work as helper in Jareh Mahboba printing department. He got accepted and was earning US\$200.00 monthly. In addition, he was entitled to other benefits, i.e. overtime pay, free board, and lodging.

(3) Prior to the completion of his 2 year employment contract, Reyes resigned due to serious family problems and his foreign employer accepted his resignation. He signed an Avowal and Quitclaim and received his corresponding salary and benefits. On July 25, 2010, he was repatriated to the Philippines. On October 11, 2011

or more than a year after his repatriation, Reyes filed an illegal dismissal complaint against them. Their company president Fatima A. Santillana, along with foreign principal, Mond and Basim S/O Yassen M. Al Ghadeer was also impleaded as co-respondents.

By Decision dated March 22, 2012,[5] Labor Arbiter Michelle P. Pagtalunan decreed: (1) Reyes was not illegally dismissed. As a matter of fact, Reyes never raised the issue of constructive dismissal with the Arbitration Office and the latter cannot pass upon it on the merits for lack of jurisdiction. More, Reyes' complaint was filed 1 year beyond the reglementary period. (2) He failed to substantiate his monetary claims. (3) The Avowal and Quitclaim signed was valid and binding between Reyes and his foreign employer.

On appeal, the NLRC reversed. On petitioners' subsequent motion for reconsideration,[6] the NLRC affirmed with modification, deleting the award of 10 month salary to Reyes corresponding to the unexpired portion of the employment contract.[7]

Petitioner now faults the NLRC with grave abuse of discretion, amounting to lack or excess of jurisdiction for retaining the award of salary differentials and attorney's fees to Reyes. Petitioners argue that Reyes is not entitled to salary differentials because: (1) He signed an Avowal and Quitclaim and received all what was due him such as his salaries, overtime pay, and other benefits. The Labor Arbiter upheld that the quitclaim was valid and binding on Reyes since it was recognized as an official legal document prescribed under Saudi Arabia laws. (2) Reyes was guilty of dishonesty when he falsified his credentials that he was qualified as Technician/ Electrician, when in fact, he was not. Although Reyes had a Trade Test certification, petitioner had no means to verify its authenticity, but was impelled to rely on Reyes' honesty. (3) As penalty for Reyes' dishonesty, he was demoted and received a monthly salary of \$200.00, the fixed minimum salary rate given to Overseas Filipino Workers (OFW) in Saudi Arabia. Further, Reyes never refuted his demotion during the arbitration proceedings.[8]

Petitioner further faults the NLRC for fixing the amount of US\$420.00 as Reyes' salary rate, a rate given only to Technician/Electrician, a position which Reyes was allegedly unqualified to perform.

The petition lacks merit. Consider:

One. Record shows that petitioners hired private respondent Reyes as Technician/Electrician. The latter signed an employment contract for a duration of 24.73 months and for a monthly salary of US\$420.00. On May 25, 2009, he left for the Kingdom of Saudi Arabia (KSA). After his 3 month probationary period, he worked as helper for Jareh Mahoba, a foreign printing company, and received a monthly salary of only US\$200.00, less than his contracted salary. During his 14th month, he was repatriated to the Philippines.

Reyes was constructively dismissed when he got demoted as mere helper with a monthly salary of only US\$200.00. In *Mario B. Dimagan v. Dacworks United, Incorporated And/Or Dean A. Cancino*,[9] the Supreme Court ruled:

Constructive dismissal is defined as a quitting because continued employment is rendered impossible, unasonable or unlikely; when there is a demotion in rank or a diminution of pay. The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances. It is an act amounting to dismissal but is made to appear as if it were not. Constructive dismissal is therefore a dismissal in disguise. The law recognizes and resolves this situation in favor of employees in order to protect their rights and interests from the coercive acts of the employer.

As held in the case of *Coca-Cola Bottlers Philippines, Inc. vs. Del Villar*, the burden falls upon the company to prove that the employee's assignment from one position to another was not tantamount to constructive dismissal.[10]

Living in a foreign country away from his family who depended on him, Reyes had no choice but to accept petitioners' unfair terms. Even then, after tirelessly working for 14 straight months and earning a meager salary, he finally mustered the courage to demand payment of his salary differentials in the amount of US\$220.00 per month. But precisely because of his incessant demand, therefor, he got repatriated to the Philippines even against his will. Clearly, resignation was never an option for Reyes. In his Memorandum of Appeal dated April 27, 2012, he admitted that he had no intention to resign or pre-terminate his contract and was determined to finish his 2 year employment contract for his family.[11]

Notably, petitioners failed to discharge the burden of proof that Reyes' assignment from Technician/Electrician to printing office helper did not equate with constructive dismissal. His transfer was not in accordance with the contract he initially executed in the Philippines. He, in fact, was able to produce his payslips as proof that there was diminution of his contracted monthly salary.

Two. Petitioners failed to substantially prove that Reyes falsified his application to justify petitioners' decision to demote him. Also, it was not shown that Reyes was incompetent to perform his tasks as Technician/Electrician. As certified by the Trade Test Center, Reyes had the required technical qualifications for the tasks on hand, and petitioners failed to refute the truth of this certification.

At any rate, before Filipino workers are deployed abroad, they are subjected to trade tests conducted by the recruiting agency itself to ensure that only technically qualified workers for the foreign principal are actually employed.[12] The purpose of the required trade test is to weed out incompetent applicants from the pool of available workers. It is intended to expose applicants with false educational backgrounds and expose bogus qualifications.

Surely, when Reyes was deployed to KSA, he was presumed to have passed the required trade test and found qualified to work abroad. In fact, petitioner Bright International Services, Inc., as the local recruitment agent, was itself responsible in guaranteeing its foreign principal that Reyes was qualified for the job he signed up for. On this score, petitioners' unsubstantiated criticism against the qualification and competence of Reyes for the job of Technician/Electrician lacked credence and did not warrant the latter's demotion.

Three. Reyes was constructively dismissed without due process. Under the twin notice requirement, the employees must be given two (2) notices before their employment could be terminated: (1) a first notice to apprise the employees of their fault, and (2) a second notice to communicate to the employees that their employment is being terminated. In between the first and second notices, the employees should be given a hearing or opportunity to defend themselves personally or by counsel of their choice.[13]

Petitioners failed to adduce substantial evidence showing that Reyes was notified of the purported dishonesty charge imputed against him. There was no company letter written or hearing conducted, informing Reyes of this charge. In fine, Reyes was not given the opportunity to refute petitioners' allegation and defend himself either personally or through counsel. He was simply constructively dismissed without any explanation from petitioners and later repatriated due to his repeated demand for salary differentials. Undeniably, petitioners failed to observe the twin notice rule.

Four. Petitioners committed breach of contract when they unilaterally modified the terms of Reyes' employment contract pertaining to his position and monthly salary. The rights and obligations among and between the OFW, the local recruiter/agent, and the foreign employer/principal are governed by the employment contract.[14] A contract freely entered into is considered the law between the parties, hence, should be respected. In formulating the contract, the parties may establish such stipulations, clauses, and terms as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.[15]

Five. It is settled that a waiver or quitclaim is valid and binding, provided the person making it did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim was credible and reasonable.[16] In *EDI-Staffbuilders International, Inc. v. NLRC et al.*[17] the Supreme Court held that a valid waiver should contain the following:

1. A fixed amount as full and final compromise settlement;
2. The benefits of the employees if possible with the corresponding amounts, which the employees are giving up in consideration of the fixed compromise amount;
3. A statement that the employer has clearly explained to the employee in English, Filipino, or in the dialect known to the employees—that by signing the waiver or quitclaim, they are forfeiting or relinquishing their right to receive the benefits which are due them under the law; and
4. A statement that the employees signed and executed the document voluntarily, and had fully understood the contents of the document and that their consent was freely given without any threat, violence, duress, intimidation, or undue influence exerted on their person.

It is advisable that the stipulations be made in English and Tagalog or in the dialect known to the employee. There should be two (2) witnesses to the execution of the quitclaim who must also sign the quitclaim. The document should be subscribed and sworn to under oath preferably before any administering official of the Department of Labor and Employment or its regional office, the Bureau of Labor Relations, the NLRC or a labor attaché in a foreign country. Such official shall assist the parties regarding the execution of the quitclaim and waiver.

These requirements were all absent in Reyes' Avowal and Quitclaim.[18] First, no amount was indicated as full and final compromise settlement. Second, no specific benefits, nor their corresponding amounts, were mentioned in the document itself. Third, there was no provision explaining the effects of the waiver to Reyes. Fourth, there was no provision stating that Reyes voluntarily signed the waiver and fully understood its contents; in addition, no witnesses were present when Reyes signed the supposed waiver. Finally, the waiver was not subscribed and sworn to before any administering official of the Department of Labor and Employment or its regional office, the Bureau of Labor Relations, the NLRC, or labor attaché in a foreign country.

It bears emphasis that the foregoing rules on quitclaim or waiver shall apply only to labor contracts of OFWs in the absence of proof of the laws of the foreign country agreed upon to govern said contracts.[19] Following the international law doctrine on processional presumption, where a foreign law is not pleaded or, even if pleaded, is not proved, the presumption is that foreign law, as in this case, is the same as ours.[20] Verily, the Philippine labor law, particularly Article 2227[21] applies and declares the Avowal and Quitclaim invalid and not binding on Reyes.

In view of Section 7 of R.A. 10022[22] and current jurisprudence[23], this Court reinstates the award of 10 month salary to Reyes corresponding to the unexpired portion his employment contract.

ACCORDINGLY, the petition is DISMISSED, for lack of merit. The Decision dated July 31, 2012 is AFFIRMED with modification, restoring the award to Calexto M. Reyes of his unpaid salary for 10 months corresponding to the unexpired portion of his employment contract.

SO ORDERED.

Castillo, (Chairperson) and Galapate-Laguilles, JJ., concur.

[1] Under Rule 65 of the Revised Rules of Court.

[2] NLRC 6th Division is composed of Presiding Commissioner Joseph Gerard E. Mabilog, Commissioners Isabel G. Panganiban-Ortiguerra, and Nieves E. Vivar-De Castro.

[3] Rollo, pp. 36-35.

[4] Id., pp. 30-35.

[5] Rollo, pp. 15-20.

[6] Id., pp. 61-65.

[7] Rollo, p. 28.

[8] Id., pp. 61-62.

[9] G.R. No. 191053, November 28, 2011.

[10] Mario B. Dimagan v. Dacworks United, Incorporated And/Or Dean A. Cancino, G.R. No. 191053, November 26, 2011.

[11] Rollo, p. 58.

[12] EDI-Staffbuilders International, Inc. v. National Labor Relations Commission and Eleazar S. Gran, G.R. No. 145587, October 26, 2007, citing Prieto v. NLRC, G.R. No. 93699, September 10, 1993.

[13] King of Kings Transport Inc. v. Mamac, G.R. No. 166208, June 29, 2007.

[14] EDI-Staffbuilders International, Inc. v. National Labor Relations Commission and Eleazar S. Gran, G.R. No. 145587, October 26, 2007.

[15] Article 1306 of the Civil Code provides:

Art. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy. (1255a).

[16] EDI-Staffbuilders International, Inc. v. National Labor Relations Commission and Eleazar S. Gran, G.R. No. 145587, October 26, 2007, citing Land and Housing Development Corporation, G.R. No. 91298, June 22, 1990.

[17] Supra note 14.

[18] Rollo, pp. 34-35.

[19] Supra note 14.

[20] Id.

[21] Article 2227 of the Labor Code provides:

Art. 2227. Any compromise settlement voluntarily agreed upon with the assistance of the Bureau of Labor Relations or the regional office of the DOLE, shall be final and binding upon the parties and the NLRC or any court "shall not assume jurisdiction over issues involved therein except in case of non-compliance thereof or if there is prima facie evidence that the settlement was obtained through fraud, misrepresentation, or coercion.

[22] An Act Amending Republic Act No. 8042, Otherwise Known As The Migrant Workers And Overseas Filipinos Act Of 1995, As Amended, Further Improving The Standard Of Protection And Promotion Of The Welfare Of Migrant Workers, Their Families And Overseas Filipinos In Distress, And For Other Purposes.

Effective on July 8, 2010.

Section 7 of R.A. 100222 provides:

x x x

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

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 of 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.

[23] *Skippers United Pacific, Inc. et al. v. Nathaniel Doza, et al.*, G.R.No.175558, February 8, 2012.

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