

SARA INTERNATIONAL MANPOWER SERVICES, INC., PETITIONER, VS. DEPARTMENT OF LABOR AND EMPLOYMENT (OFFICE OF THE SECRETARY) AND ANGELITO R. VERZON, RESPONDENTS.

Ponente: BATO, JR., J.

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BATO, JR., J.:

Before this Court is a Petition for Certiorari[1] under Rule 65 of the Rules of Court, seeking to set aside the 15 October 2012 Order[2] and 21 June 2013 Resolution[3] of Undersecretary Danilo P. Cruz of the Department of Labor and Employment (DOLE), in OS-POEA-0271-0929-2011.

On 14 May 2009, private respondent Angelito R. Verzon (Verzon) filed a Sworn Statement[4] before the Philippine Overseas Employment Administration (POEA) against petitioner Sara International Manpower Services Inc. for Violation of Sections 2(b),(d),[5] (e)[6] and (ee)[7] of Rule I, Part VI of the 2002 POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers.

Verzon alleged that sometime in August 2006, he applied as a Machine Operator with the petitioner and was assured a job in Saudi Arabia. He was required to pay SR2,000.00 as placement fee, to be deducted from his salary. Petitioner made him sign an employment contract,[8] wherein he was to work for two (2) years as a "P.E. Extruder M/C Operator" for Al Tayar Plastic & Rubber Mfg. Co. Ltd. in Jeddah, Saudi Arabia with a monthly salary of SR1,100.00. He left for Saudi Arabia on 31 December 2006 and returned to the Philippines on 29 March 2009. In Saudi Arabia, he worked as a Machine Operator but his agreed salary of SR1,100.00 was changed to SR900.00. Upon his return to the Philippines, he discovered that the contract that he signed, wherein his position was that of a "P.E. Extruder M/C Operator", was not the one submitted by the petitioner before the POEA for approval and processing. What the petitioner submitted for processing and subsequently approved by the POEA was a different contract, whereby his position was that of a "Turner" with a monthly salary of SR900.00.

In its Answer,[9] petitioner averred that Verzon applied for the position of a Turner as can be gleaned from his duly signed application form. He voluntarily signed the employment contract wherein his position was that of a Turner, which was processed and approved by the POEA. His POEA OFW Information Sheet likewise indicates that his position would be that of a Turner with a monthly salary of SR900.00. Thus, it cannot be held guilty of misrepresentation since Verzon knew that he was hired, documented and processed with the POEA as a Turner. Petitioner further averred that Verzon was not charged of any placement fee since it was his foreign employer, Al Tayar Plastic and Rubber Mfg. Co. Ltd., that shouldered all the costs as part of the service fee.

By way of a Reply,[10] Verzon countered that it is not true that he applied as a Turner. His résumé would prove that he is a P.E. Extruder Machine Operator. When he arrived in Saudi Arabia, he worked as a Machine Operator under the Production Department of Al Tayar Plastic and Rubber Mfg. Co. Ltd.

In its Order[11] dated 23 August 2011, the POEA found petitioner liable for misrepresentation under Section 2(e) of Rule I, Part VI of the 2002 POEA Rules, but found no sufficient evidence to hold it liable for the other charges. More particularly, the POEA ruled:

"Misrepresentation was committed by the respondent agency by falsely documenting the complainant with this Administration as Turner, a position he did not apply for. The complainant cannot apply as a Turner because he never worked as Turner before. His resume shows that his experience is that of an Extruder Operator. Moreover, he applied to the respondent as a Machine Operator and signed an employment contract for the position of P.E. Extruder M/C Operator which is very much logical considering his qualification. However, the contract that he signed was not the one submitted by the respondent agency before this Administration for approval and processing but the contract for Turner with a monthly salary of SR900.00, the salary he actually received at the jobsite. This shows that it furnished false and deceptive information and documents not only to the complainant but to this Administration as well in connection with his recruitment and employment. This is bolstered by the employment contract that the complainant signed at the respondent's office that the respondent gave to the complainant but was not endorsed to the Administration, the employer's employment certification for the complainant, and the complainant's application for vacation and for a loan with his employer, showing that he worked with his employer as Machine Operator/M/C Extruder Operator. Thus, we find therefore the respondent agency liable for violation of the aforesaid Rule.

x x x x x x x x

WHEREFORE, premises considered, for the established violation of Section 2(e) of Rule I, Part VI of the Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers, the penalty of suspension of its license for four (4) months or fine of Php40,000.00 is hereby imposed against respondent Sara International Manpower Services, Inc.

The charges for violation of Section (b), (d) and (ee) of Rule I, Part VI of the same Rules are hereby dismissed for lack of merit.

SO ORDERED."[12]

Aggrieved, petitioner filed a Partial Appeal[13] with the Secretary of Labor (SLE). It posited that it cannot be held liable for misrepresentation since Verzon knew all along that his job in Saudi Arabia would be that of a Turner. The fact that he worked as a Machine Operator in Saudi Arabia is not an issue since the job of a turner falls in the general category of a machine operator. Elsewise stated, a turner is in reality a machine operator.

On 15 October 2012, the SLE, through Undersecretary Danilo P. Cruz, issued the assailed Order[14] which denied petitioner's partial appeal. He ruled that petitioner indeed committed misrepresentation by documenting Verzon as a Turner, when the records clearly show that his actual work in Saudi Arabia was that of a machine operator. The dispositive portion of said Order reads:

"WHEREFORE, premises considered, the petition filed by Sara International Manpower Services is hereby DISMISSED for lack of merit. Accordingly, the challenged Order of the POEA Administrator dated 23 August 2011 is AFFIRMED.

SO ORDERED."

Petitioner moved for a reconsideration, reiterating that a turner is in reality a machine operator.

However, the SLE, through Undersecretary Cruz, denied petitioner's motion for reconsideration via the assailed Resolution[15] dated 21 June 2013.

Hence, the instant petition wherein petitioner argues that the Department of Labor and Employment (DOLE) committed grave abuse of discretion amounting to lack or in excess of jurisdiction, to wit:

"A.

THE RESPONDENT DOLE SHOULD HAVE REVERSED THE ORDER OF THE POEA

ADMINISTRATOR IN FINDING THAT PETITIONER IS LIABLE FOR VIOLATION OF SECTION 2(e) SINCE THERE IS NO CLEAR AND CONVINCING PROOF THAT PETITIONER COMMITTED MISREPRESENTATION.

B.

THE RESPONDENT DOLE AND THE POEA ADMINISTRATOR SERIOUSLY ERRED IN RULING THAT THE PRIVATE RESPONDENT WAS PROCESSED FOR A POSITION DIFFERENT FROM THAT WHICH HE APPLIED FOR.

C.

THE RESPONDENT DOLE ERRED IN FAILING TO CONSIDER THAT THE POSITION OF A TURNER IS LIKEWISE A MACHINE OPERATOR.

D.

THE RESPONDENT DOLE FAILED TO CONSIDER THE FACT THAT A POSITION OF TURNER FALLS IN THE GENERAL CATEGORY OF A MACHINE OPERATOR.

E.

THE RESPONDENT DOLE AND THE POEA ADMINISTRATOR COMMITTED SERIOUS ERROR WHEN THEY FAILED TO CONSIDER THE FACT THAT THE PRIVATE RESPONDENT IN HIS APPLICATION SUBMITTED TO THE PETITIONER SPECIFIED TURNER/MACHINE OPERATOR AS THE DESIRED POSITION."[16]

Petitioner reiterates that it should not be held liable for misrepresentation under Section 2(e) of Rule I, Part VI of the 2002 POEA Rules. Verzon applied for the position of a Turner/Machine Operator. Hence, he was processed as a Turner. Assuming arguendo that Verzon's actual job in Saudi Arabia was that of a machine operator, there is really no problem since a turner is in reality a machine operator.

In this Court's Resolution[17] dated 24 October 2013, Verzon was ordered to file his comment to the petition for certiorari within ten (10) days from receipt thereof. However, Verzon failed to file any comment. Hence, this petition was submitted for decision sans any comment from Verzon.

Grave abuse of discretion means such capricious and arbitrary exercise of judgment as is equivalent, in the eyes of the law, to lack of jurisdiction.[18] There is grave abuse of discretion where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility amounting to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[19] Through time, the meaning of grave abuse of discretion has been expanded to include any action done contrary to the constitution, the law or jurisprudence.[20]

Premised on the foregoing, the Petition must fail.

The job position for which Verzon was deployed for was that of a Turner, as evidenced by his Employment Contract[21] and Overseas Filipino Worker (OFW) Information Sheet.[22] But the actual work performed by Verzon in Saudi Arabia was that of a machine operator, as gleaned by an Employment Certification[23] issued by Mohamed S. Al-Mehmadi, HR Manager of Al Tayar Plastic and Rubber Mfg. Co. Ltd., stating that Verzon is working as a Machine Operator with a monthly salary of SR900.00. Verzon's duly approved Application for Vacation[24] and Loan Application[25] likewise state that his position was that of a Machine Operator. Thus, petitioner indeed misrepresented the true nature of Verzon's deployment.

It is futile for the petitioner to insist that a turner is in reality a machine operator. Settled in the rule that if the

terms of the contract are clear and unambiguous, they must be taken and understood in their plain, ordinary and popular sense.[26] Here, had the petitioner intended to treat the position of a turner the same with that of a machine operator, then it should not have let Verzon sign two different employment contracts, one for the position of a Turner with a monthly salary of SR900.00 and another for the position of a Machine Operator with a monthly salary of SR1,100.00.

Moreover, this Court is in accord with the ruling of the SLE in the assailed 21 June 2013 Resolution that the roles and responsibilities of a turner are not the same as that of machine operator. A turner generally works in steel manufacturing and metal production companies. A turner measures and grinds the metal when it comes off the rollers and repeats the process until the steel is just the right thickness.[27] On the other hand, a machine operator, also known as a machinist, works with heavy machinery from setup to operation. Machine operators make sure that their machines are working at full capacity, are stocked with needed materials, well-maintained and perform periodic checks on output.[28]

In sum, the instant petition has utterly failed to show any grave abuse of discretion on the part of the DOLE.

WHEREFORE, the instant petition is hereby DENIED for lack of merit.

SO ORDERED.

Zalameda, and Diy, JJ., concur.

[1] Rollo, pp. 3-16.

[2] Rollo, pp. 21-25.

[3] Rollo, pp. 27-28.

[4] Rollo, pp. 29-30.

[5] Collecting any fee from a worker without issuing the appropriate receipt clearly showing the amount paid and the purpose for which payment was made.

[6] Engaging in act/s of misrepresentation in connection with recruitment and placement of workers, such as furnishing or publishing any false notice, information or document in relation to recruitment or employment.

[7] Violation of other pertinent provisions of the Code and other relevant laws, rules and regulations, guidelines and other issuances on recruitment and placement of workers for overseas employment and the protection of their welfare.

[8] Rollo, pp. 49-50.

[9] Rollo, pp. 32-37.

[10] As quoted in the 23 August 2011 POEA Order, p. 4; Rollo, p. 78.

[11] Rollo, pp. 75-82.

[12] 23 August 2011 POEA Order, pp. 7-8; Rollo, pp. 81-82.

[13] Rollo, pp. 85-96.

[14] Supra, at Note 2.

[15] Supra, at Note 3.

[16] Petition, pp. 8-9; Rollo, pp. 10-11.

[17] Rollo, p. 112.

[18] Vda. De Bacaling vs. Laguna, 54 SCRA 243, p. 251 [1973]; Bacelonia vs. CA, 397 SCRA 286, p. 291 [2003].

[19] Cuison vs. CA, 289 SCRA 159, p. 171 [1998]; Benito vs. COMELEC, 349 SCRA 705, p. 712 [2001].

[20] Republic vs. Cocofed, 372 SCRA 462, p. 493 [2001].

[21] Rollo, pp. 57-65.

[22] Rollo, p. 44.

[23] Rollo, p. 51.

[24] Rollo, p. 53.

[25] Rollo, p. 54.

[26] Alpha Insurance Surety vs. Castor, G.R. No. 198174, September 2, 2013.

[27]

<http://www.apprenticesearch.com/AboutTrades/GetTradeDetails?tradeId=108&TradeName=roll-grinder-turner;>
last viewed on 25 October 2014.

[28] [http://www.snagajob.com/job-descriptions/machine-operator/;](http://www.snagajob.com/job-descriptions/machine-operator/) last viewed on 25 October 2014.

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