

## **AL FATIH MANPOWER SERVICES / FATIMA OLIMPO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND MAUREEN ALUDA, RESPONDENTS.**

Ponente: BARRIOS, J.

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### **BARRIOS, J.:**

In this petition for certiorari, the petitioners Al Fatih Manpower Services (or Al Fatih for brevity) and Fatima Olimpo (or Olimpo) assail the Decision dated January 31, 2003, and the Order dated May 7, 2003 issued by the National Labor Relations Commission (or NLRC) in favor of the respondent Maureen Aluda (or Aluda) for having been issued with grave abuse of discretion.

In a complaint for salary differentials, damages and attorney's fees before the Labor Arbiter, Aluda claimed that she was recruited by Al Fatih to work as a domestic helper in the household of Abdul Aziz Mohamad Ahmad (or Ahmad) in Kuwait for a period of two (2) years with a monthly salary of Ninety Kuwaiti Dinars (KD90.00). On June 8, 1998, she and her foreign employer Ahmad represented by D'Jure Manpower International Services (or D'Jure), signed an employment contract in the presence of Al Fatih. But Al Fatih had no signature in the employment contract because at the time it was not yet an accredited recruitment agency.

After the completion of her papers and full payment of the placement fee, Aluda departed for Kuwait on June 17, 1998 and on arrival commenced work. Ahmad volunteered to remit her monthly salary to her family in the Philippines. Aluda however discovered later that she was being paid only KD45.00 instead of the KD90.00 agreed upon by them in their contract. She brought the matter up with Ahmad but this was ignored and he continued to pay her KD45.00 until her contract expired. She was on her way back to the Philippines when Aluda realized that she had left her brand new radio tape in the house of Ahmad. She tried to retrieve this through her daughter in Kuwait but failed. On the bases of these, Aluda sued Al Fatih, Ahmad and D'Jure for the payment of salary differentials, damages and attorney's fees.

In its traverse, D'Jure contended that Aluda has no cause of action against it because on June 10, 1999 Olimpo as the president of Al Fatih, executed an Affidavit of Assumption of Responsibility where she assumed full responsibility for all contractual obligations of its foreign principal to all workers recruited by D'Jure.

For its part, Al Fatih claimed that it did not participate in the recruitment and deployment abroad of Aluda because the company was established only on March 1999 while Aluda was recruited sometime in June 1998. Al Fatih also maintained that there is no basis for Aluda's claim that she was underpaid because her employment contract with Ahmad indicated that her monthly salary was KD45.00.

On April 4, 2001, the Labor Arbiter rendered a Decision, disposing that:

WHEREFORE, the respondent Al Fatih Manpower Services is hereby ordered to immediately pay complainant the following:

Salary differentials:

(KD95.00 - KD45.00 x 25 mos. X P155.60)

P194,500.00

Brand new radio tape:

(KD11.00 x P155.60)

1,711.60

Add: 10% of the award as attorney's fees

19,621.16

TOTAL

P215,832.76

SO ORDERED. (p. 31, rollo)

Al Fatih appealed this to the NLRC which rendered the assailed Decision dated January 31, 2003, holding that:

WHEREFORE, the appeal of respondent Al Fatih Manpower Services is dismissed. Let the entire record of this case be returned to the office of origin for execution.

SO ORDERED. (p. 26, rollo)

A motion for reconsideration was filed by Al Fatih but this was denied by the NLRC in its Order dated May 7, 2003.

Hence, Al Fatih sought relief through this petition raising the following issues for consideration:

I

THE PUBLIC RESPONDENT NLRC COMMITTED A REVERSIBLE ERROR IN HOLDING THE PETITIONER LIABLE TO THE MONETARY CLAIMS OF THE PRIVATE RESPONDENT DESPITE OF THE FACT THAT THE PARTIES HAVE NO RELATIONSHIP WHATSOEVER.

II

THE PUBLIC RESPONDENT NLRC COMMITTED A REVERSIBLE ERROR IN RENDERING THE QUESTIONED DECISION WITHOUT FIRST FURNISHING THE HEREIN PETITIONER A COPY OF THE SUPPOSED AFFIDAVIT OF ASSUMPTION OF RESPONSIBILITY SUPPOSEDLY EXECUTED BY THE PETITIONER IN VIOLATION OF DUE PROCESS OF LAW.

III

THE PUBLIC RESPONDENT NLRC COMMITTED A REVERSIBLE ERROR IN FINDING THAT THE APPEAL FILED BY THE PETITIONER WAS NOT PERFECTED. (pp. 5-6, rollo)

We deny the petition.

As to the first issue raised, Al Fatih asseverates that it had no participation whatsoever in the recruitment, hiring and deployment abroad of Aluda. It was D'Jure who recruited Aluda to work for its foreign principal in Kuwait. Proof of this is that Al Fatih was established only in March 1999, while Aluda was hired for deployment abroad sometime in June 1998 yet. Al Fatih further maintains that the foreign employer Ahmad cannot be held liable for salary differentials because he hired Aluda as a domestic helper with an agreed monthly salary of KD45.00 and it was D'Jure which falsely made it appear in the employment contract of Aluda submitted to the POEA, that her

monthly salary is KD90.00.

There is no reversible error in the factual findings of the Labor Arbiter holding that Al Fatih is liable for Aluda's salary differentials, The Labor Arbiter stated that:

The employment contract (Record, p. 21) shows that complainant was deployed by the respondent D'Jure Manpower International Services to work as domestic helper for its foreign employer Abdul Aziz Mohamad Ahmad with a basic monthly salary of Ninety Kuwaiti Dinars.

Complainant was recruited by respondent Al Fatih Manpower Services to work for overseas employment. However, the latter did not participate in the signing of the employment contract because during the date of signing on June 8, 1998, it was not registered yet as a recruitment agency. Thus, the contract was facilitated and signed by the respondent D'Jure Manpower International Services.

However, on June 10, 1999, the respondent Al-Fatih Manpower Services through its President, Fatima F. Olimpo executed an affidavit of assumption of responsibilities, which states in part:

"That as agent in the Philippines of the above principal, our company assumes full and complete responsibility for all contractual obligation of the principal to its workers originally recruited and processed by D'Jure Manpower International Services;" (No. 3, Record, p. 34)

Clearly, respondent Al Fatih Manpower Services assumed the responsibility for overseas contract workers including herein complainant originally processed and/or facilitated by the respondent D'Jure Manpower International Services. It cannot now deny such responsibility. x x x

The Al Fatih Manpower Services failed to submit payrolls or any proof that complainant's salaries were indeed fully paid. Settled is the rule that the burden of proof that labor standards have been complied with lies with the employer (Global vs. Atienza, 143 SCRA 69). (pp. 30-31, rollo)

We find these findings supported by substantial evidence and there is no showing of grave abuse of discretion in arriving at it.

On the second issue raised, Al Fatih decries that it was not given the opportunity to examine the authenticity of the supposed

Affidavit of Assumption of Responsibility and its right to due process of law was violated.

Al Fatih was afforded ample opportunity to present its evidence and confute the allegations in the complaint of Aluda. The records show that Al Fatih was able to submit its Position Paper as required by the Labor Arbiter, present its Memorandum on Appeal, and file a Motion for Reconsideration of the Decision of the NLRC. It must also be pointed out that the Affidavit of Assumption of Responsibility was submitted by D'Jure, its co-respondent in the case before the Labor Arbiter. It has been consistently held that the essence of due process is simply an opportunity to be heard, or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek for a reconsideration of the action or ruling complained of (Mariveles Shipyard Corp. vs. Court of Appeals, 415 SCRA 573). These were all afforded to Al Fatih.

Finally, it must be emphasized that the Decision of the Labor Arbiter had already become final and executory for the failure of Al Fatih to perfect its appeal within the reglementary period, or rather for its failure to seasonably post the required cash or surety bond. The posting of a cash or suety bond is mandatory. It should be stressed that the intention of lawmakers to make the bond an indispensable requisite for the perfection of an appeal by the employer is

underscored by the provision that an appeal by the employer may be perfected only upon the posting of a cash or

surety bond; the word "only" makes it perfectly clear, that the lawmakers intended the posting of a cash or surety bond by the employer to be the exclusive means by which an employer's appeal may be perfected (Catubay vs. NLRC, 330 SCRA 440). Thus, the Decision of the Labor Arbiter in the recovery of salary differential case is immutable and cannot be modified anymore as it had become final and executory by Al Fatih's failure to take a timely recourse to question the monetary award before the NLRC. The perfection of an appeal within the reglementary period and in the manner prescribed by law is jurisdictional, and noncompliance with such legal requirement is fatal and has the effect of rendering the judgment final and executory. Such requirement cannot be trifled with (Navarro vs. NLRC, 327 SCRA 22).

In fine, it bears stressing that the remedy of certiorari under Rule 65 of the Rules of Court is extraordinary and its use is restricted to truly extraordinary cases. We do not find a justification, reason or cause for its issuance in the present case.

WHEREFORE, the petition is DENIED DUE COURSE and DISMISSED.

**SO ORDERED.**

Lampas Peralta and Romilla-Lontok, JJ., concur.

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