

**PHILIPPINE NATIONAL CONSTRUCTION CORPORATION (PNCC),
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION,
PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION,
BONIFACIO M. ROQUERO, ...**

G.R. No. 112629. July 07, 1995

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Petitioner Philippine National Construction Corporation (PNCC) asks that we set aside the resolution[1] of public respondent National Labor Relations Commission (NLRC) in NLRC NCR CA No. 003767-92 dismissing for lack of merit the appeal from the decision[2] of the Philippine Overseas and Employment Administration (POEA) in POEA Case No. 90-10-1183 entitled "Alfredo Davila and Bonifacio Roquero vs. Philippine National Construction Corporation (PNCC), et al.."

In the complaint filed with the POEA, private respondents Alfredo Davila and Bonifacio Roquero sought to recover from the petitioner salary, overtime pay, vacation and sick leave, and completion bonus differentials; Davila further asked for payment of his salary corresponding to the unexpired portion of his contract. They therein alleged that they had been working as security guards of PNCC since 1980. Having passed the criteria set by PNCC for overseas workers, they were assigned as company security guards at PNCC Iraq Expressway Project with a salary of US\$350.00 a month each. Their contracts are evidenced by master employment contracts approved by the POEA which explicitly state:

This is to confirm your employment with the Philippine National Construction Corporation-Iraq Expressway Project (Employer/Principal) x x x other relevant data are as follows.

Position: Company Guard
Salary : US\$350.00/month
Jobsite : Samawah, Iraq
Commencement of contract: Upon Departure

They departed for Iraq on 14 May 1985; however, before they left they were made to sign printed forms in blank. The necessary papers for their overseas assignment were not given to them not until they were already at the Manila International Airport. They found out to their disgust that contrary to the master employment plan, the printed forms they had earlier signed in blank already contain an entry that their salary rate is US\$260.00 a month. Thus, private respondent Roquero received only US\$260.00 as monthly salary during his entire two-year assignment in Iraq and three-week extended period of assignment therein. Private respondent Davila received the same salary until he was repatriated prior to the expiration of his contract due to a reduction of work force. For their four-hour daily overtime work, they were paid only two-hour overtime pay at the rate of US\$260.00 per month.

The PNCC resisted the complaint by claiming that the so-called Master Employment Contracts relied upon by the

private respondents were but notices or offers for overseas employment, and mere offers without acceptance by them do not constitute contracts of employment. The contracts which bound them were those providing for a salary of US\$260.00 per month.

After appropriate proceedings, the POEA rendered on 14 July 1992 a decision in favor of the private respondents granting the demands for salary, sick and vacation leave, overtime pay, and completion bonus differentials, and further awarding Davila an additional sum representing his salary for the unexpired portion of his contract, thus:

WHEREFORE, in view of the foregoing, the respondent is hereby ordered to pay complainant Bonifacio M. Roquero the amount of US\$2,353.80 US Dollar or its equivalent at the time of actual payment and to pay complainant Alfredo I. Davila the amount of US\$4,362.90 US Dollars or its peso equivalent at the time of actual payment plus 5% of the total amounts above-mentioned as attorney's fees.

All other claims are dismissed for lack of merit.

SO ORDERED.[3]

The POEA's disquisitions in support of its conclusion read as follows:

After a thorough study and examination of the evidence and arguments of the parties, this Office finds the answer to the first issue in the affirmative. There exists Master Employment Contracts between the complainants and the respondent PNCC which were approved by the POEA, as evidenced by the Travel Exit Pass of Alfredo Davila marked as Annex "A" which provides for his salary of US\$350 per month and the confirmation letter of appointment of Bonifacio M. Roquero signed by Susan M. Solis, the authorized officer of the respondent herein attached as Annex "A" which also provides among others complainant's salary at US\$350/mo. The respondent cannot just say that there is no Master Employment Contract to speak of for the letter of confirmation of appointment of the complainants which provide for a salary rate of US\$350.00 per month are mere notice or offer for employment and not being accepted by the complainants, there is no contract to speak of. Under Article 1320 of the New Civil Code on the Essential Requisites of Contracts, it provides: Art. 1320. An acceptance maybe express or implied. The act of complainants in assenting to be assigned to work in Iraq, after they were offered the assignment with the corresponding offer of salary of US\$350.00 is considered an implied acceptance. They should not have consented to work [in] Iraq had they not been offered that salary from the beginning. Besides the respondent submitted the same to the POEA for approval and was in fact approved by the POEA. The Travel Exit Pass of complainant Alfredo I. Davila attached as Annex "A" provides among others his salary at US\$350.00 per month. The act of the respondent in executing a subsequent contract providing for a lower salary of US\$260/mo. although the amount is allowed by the POEA is a violation of Art. 34 par. i of the Labor Code. The respondent cannot say that the contract has the force and effect of law between the parties and must be complied with in good faith, for the second contract between the complainants and the PNCC was entered into with fraud, for the complainants were made to sign printed forms and were only given the completed contract when they were already at the airport, minutes before they depart, and where respondent failed to rebut. It further failed to have alleged the exact date when the subsequent contract was entered into implying the truth that the completed contracts were furnished the complainants lately in the airport. Moreover, the subsequent employment contracts were not approved by the POEA.

Anent the second issue, as the Master Contract provides for the salary rate of US\$350.00 per month, and they were paid only US\$260/per month and their benefits were based on the latter amount, it follows that the complainants are entitled to be paid their salary differential, overtime differentials, sick leave differential and vacation leave differential.

As to their two (2) hours unpaid overtime, the same must be granted. The complainants rendered four (4) hours actual daily overtime work and they were paid only 2 hours overtime based on the rate of US\$260 per month. The respondent cannot invoke Item 6 (b) of the overseas employment contract Annex "1" which provides:

"Overtime work shall be authorized by prior written instructions, otherwise, no claim for overtime pay shall be considered whatsoever."

by saying that "the records of complainants do not show any such written instructions to render overtime for four (4) hours a day." While the records of the complainants do not show any instruction to render (4) hours daily overtime, they neither show they have to render (2) hours daily overtime. But why are they paid 2 hours daily overtime work? It only shows that the rendition of daily overtime work is recognized by the respondent. The respondent is now estopped to deny that there was no instruction to render daily overtime.

With regard to the claim of Alfredo I. Davila for the payment of the unexpired portion of the contract, the same must be granted, for he was wrongfully dismissed. While his termination notice provides that he was terminated due to the reduction of work force, yet the respondent hired an Iraqi to replace him which the respondent never attempted to refute. As the complainant is placed in a disadvantaged position, the spirit and intent of the law in providing protection to labor requires that the burden is upon the respondent to prove that the complainant was lawfully dismissed. In this regard the respondent failed. The complainant must be paid the unexpired portion of his contract at the rate of US\$350/mo. as stated in the Master Employment Contract not US\$260/mo.[4]

The PNCC appealed to the NLRC and raised the following issues:

(1)

The POEA committed a glaring and reversible error in holding that the contract entered into by and between complainants and PNCC providing for a salary rate of US\$260/mo. is a violation of Art. 34(i) of the Labor Code, as amended;

(2)

The POEA committed grave abuse of discretion amounting to lack of jurisdiction in ruling that complainants-appellees were entitled to their claims.[5]

In its resolution of 30 September 1993, the NLRC dismissed the appeal and cited three settled rules to support such dismissal, viz.:

Firstly, we are "not a trier of facts. As such, we "defer to the superior opportunity" of the Arbiter below, "to test the credibility of the witnesses and examine the authenticity of the documentary evidence directly before" him. His conclusions are, therefore, "binding on us in the absence of any of the established exceptions" that would serve as basis with which we may validly ignore the same. [Dagupan Bus Company, Inc. vs. NLRC (3rd Div.), et al., G.R. No. 94291, November 9, 1990, 1st Div., Cruz, J.]

Secondly, "(W)hen confronted with conflicting versions of factual matters", the Labor Arbiter "has the discretion to determine which party deserves credence on the basis of evidence received". [Gelmart Industries (Phils.), Inc. vs. Leogardo, 155 SCRA 403, 409, L70544, November 5, 1987. 3rd Div.]

Thirdly, there being substantial evidence supporting the findings of the Arbiter, the said findings "should be respected and left undisturbed" [Union of Filipino Workers (UFW) vs. NLRC, et al., G.R. No. 98111, April 7, 1993, 2nd Div., Nocon, J.][6]

The NLRC further stated that it could not give credence to PNCC's allegation that the salary rate it contracted

with the complainants was only US\$260.00 a month, since the evidence, such as Davila's Travel Exit Pass, show that the contracted rate of pay was US\$350.00 a month.[7]

Unsatisfied with the said resolution, the petitioner instituted the instant special civil action for certiorari under Rule 65 of the Rules of Court on the following grounds: (1) the POEA and the NLRC committed manifest errors in applying Article 34(i) of the Labor Code, as amended, and grave abuse of discretion amounting to lack of jurisdiction in holding that the private respondents are entitled to their claims; (2) the questioned resolution is not supported by evidence, applicable laws, and jurisprudence; and (3) the private respondents' claims are barred by laches.

The petitioner has failed to surmount the usual and common obstacles in cases of this nature.

It is true that the only way by which a labor case may reach this Court is through a petition for certiorari under Rule 65 of the Rules of Court.[8] It must, however, be shown that the NLRC has acted without or in excess of jurisdiction, or with grave abuse of discretion, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law.[9]

Section 14, Rule VII of the New Rules of Procedure of the NLRC allows an aggrieved party to file a motion for the reconsideration of any order, resolution, or decision of the Commission based on palpable or patent errors. Such a motion constitutes a plain, speedy, and adequate remedy which the aggrieved party may avail of.

It is settled that before certiorari may be availed of, the petitioner must have filed a motion for the reconsideration of the order or act complained of to enable the tribunal, board, or office concerned to pass upon and correct its mistakes without the intervention of the higher court.[10] The petitioner has not endeavored to show any justifiable reason why it did not file a motion for reconsideration to give the NLRC an opportunity to re-examine its resolution.

At any rate, at the bottom of the petitioner's grievance is an issue of fact. It is doctrinally entrenched that the factual findings of labor officials are conclusive and binding on this Court when supported by substantial evidence.[11] An examination of the decision of the POEA, which was affirmed by the NLRC, discloses that the findings of facts therein are supported by substantial evidence. Hence, they can no longer be disturbed by this Court.

Besides, in an earlier case brought by the petitioner and involving the same issue but with other employees similarly situated as the private respondents,[12] this Court upheld the resolution of the NLRC affirming the POEA findings as follows:

x x x The only dispute which remains unsolved is whether or not the monthly salary of herein complainants is US\$350.00 a month or US\$260.00.

As correctly invoked by complainants paragraph (i) of Article 34 of the Labor Code prohibits the substitution or alteration of employment contracts approved and verified by the Department of Labor from the time (of) the actual signing thereof by the parties up to and including the period of expiration of the same without the approval of the Department of Labor.

With regard to the first issue in this case the approved contract of employment of the herein complainants with the respondent is US\$350.00 a month. This can be inferred from the POEA approved contract of employment and by the certification issued by respondent's chief recruiting officer. This being so, herein complainants have the right to be paid as monthly salaries the aforementioned amount.

Complainants having been granted voluntarily by the respondent a two-hour daily overtime (Exh. "G", "G--1")

during the durations of their contract, are also entitled to be paid thereto based on the monthly salaries of US\$350.00 and not US\$260.00.

The petitioner's contention that the private respondents' claims are barred by laches do not deserve even a short shrift. That defense was not raised either before the POEA or the NLRC. It cannot be raised for the first time in this petition for certiorari where the jurisdiction of this Court is limited to issues of jurisdiction and grave abuse of discretion.

WHEREFORE, the instant petition is DISMISSED for lack of merit, and the questioned resolution of the National Labor Relations Commission in NLRC NCR CA No. 003767-92 is hereby AFFIRMED. With costs against the petitioner.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Quiason, and Kapunan, JJ., concur.

[1] Annex "A" of Petition; Rollo, 25-32. Per Veloso, V., Comm., with Carale, B., Pres. Comm., and Quimpo A., Comm., concurring.

[2] Annex "C," Id.; Id., 48-58. Per Deputy Administrator Manuel G. Imson.

[3] Rollo, 58.

[4] Rollo, 53-56.

[5] Id., 60.

[6] Rollo, 31.

[7] Id., 31-32.

[8] Royal Crown Internationale vs. NLRC, 178 SCRA 569 [1989]; Pearl S. Buck Foundation, Inc. vs. NLRC, 182 SCRA 446 [1990]; People's Security, Inc. vs. NLRC, 226 SCRA 146 [1993].

[9] Section 1, Rule 65, Rules of Court.

[10] FLORENZ D. REGALADO, Remedial Law Compendium, vol. one, Fifth Revised ed. [1988], 459-460, citing Villa-Rey Transit vs. Bello, L-18957, 23 April 1963.

[11] Aboitiz Shipping Corp. vs. De la Serna, 199 SCRA 568 [1991]; Rabago vs. NLRC, 200 SCRA 158 [1991]; Tiu vs. NLRC, 215 SCRA 540 [1992].

[12] PNCC vs. NLRC, POEA, Raul Abrico, Rodrigo Vassallo, Eduardo A. Sibbaluca, and Benigno M. Manasis, 217 SCRA 455 [1993].

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