MARIO HORNALES, PETITIONER, VS. THE NATIONAL LABOR RELATIONS COMMISSION, JOSE CAYANAN AND JEAC INTERNATIONAL MANAGEMENT CONTRACTOR SERVICES, RESPONDENTS.

G.R. No. 118943. September 10, 2001

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

It is sad enough that poverty has impelled many of our countrymen to seek greener pastures in foreign lands. But what is more lamentable is when a Filipino recruiter, after sending his unlettered countrymen to a foreign land and letting them suffer inhuman treatment in the hands of an abusive employer, connives with the foreign employer in denying them their rightful compensation. Surely, there shall be a day of reckoning for such a recruiter whose insatiable love for money made him a tyrant to his own race.

At bench is a petition for certiorari seeking to annul and set aside the (a) Decision[1] dated July 28, 1994 of the National Labor Relations Commission (NLRC) reversing the Decision[2] of the Philippine Overseas Employment Administration (POEA) in POEA Case No. (L) 92-07-939,[3] and (b) Resolution[4] dated October 6, 1994 denying petitioner's motion for reconsideration.

The facts as shown by the records are:

On July 15, 1992, Mario Hornales (herein petitioner) filed with the POEA a complaint[5] for non-payment of wages and recovery of damages against JEAC International Management & Contractor Services (JEAC) and its owner, Jose Cayanan (herein private respondents). As private respondents' surety, Country Bankers Insurance Corporation (Country Bankers) was later on impleaded by petitioner. The complaint alleged that on October 8, 1991, private respondents sent petitioner, together with other Filipinos, to Singapore. At their departure, they were advised that someone would meet them in Singapore. True enough, they were welcomed by Victor Lim, the owner of Step-Up Employment Agency (Step-Up Agency).[6] He informed them that they would be working as fishermen with a monthly salary of US $200.00 each. Thereafter, they boarded Ruey Horn #3, a vessel owned by Min Fu Fishery Co. Ltd. of Taiwan.

On board the vessel, petitioner was subjected to inhumane work conditions, like inadequate supply of food and water, maltreatment by the ship captain, and lack of medical attendance. He was also required to work for twenty-two hours a day without pay. Unable to bear his situation any longer, he joined the other Filipino workers in leaving the vessel while it was docked at Mauritius Islands on July 15, 1992.

Upon his return to the Philippines, petitioner asked private respondents to pay his salaries. Instead of doing so, they required him to surrender his passport promising that they would procure another job for him. Later, private respondents gave him the amount of five hundred pesos (P500.00).

Private respondents filed an answer[7] claiming that, petitioner, Victor Lim and Min Fee Fishery Co. Ltd are all

"total strangers" to them. To bolster the claim, they offered in evidence the Joint Affidavit[8] of Efren B. Balucas and Alexander C. Natura, petitioner's co-workers in Singapore, stating that while they were in Singapore, petitioner admitted to them that he did not apply in any agency in the Philippines; that he came to Singapore merely as a tourist; and that, he applied directly and personally with Step-Up Agency. These statements were corroborated by the "Certification"[9] issued by Step-Up Agency.

On January 23, 1993, petitioner filed a Supplemental Affidavit[10] claiming that he was not a "total stranger" to private respondents, and that, as a matter of fact, he knew respondent Cayanan since 1990, when they used to go to the San Lazaro Hippodrome to watch horse races. He also averred that while the vessel was docked at Mauritius Islands on June 1992, respondent Cayanan reminded him and his co-workers of their loan obligations by sending them photocopies of the PNB checks he (respondent Cayanan) issued in favor of their relatives, and the agreements whereby they authorized Victor Lim to deduct from their salaries the amount of their loan obligations.

On January 5, 1994, the POEA rendered a decision in favor of petitioner, the dispositive portion of which reads:

> "WHEREFORE, premises considered, respondents JEAC International Management and Contractor Services, Jose E. Cayanan and Travellers Insurance Corp. are hereby ordered, jointly and severally to pay complainant the amount of US DOLLARS: ONE THOUSAND SIX HUNDRED FORTY SIX AND 66/100 (US$1,646.66) representing his unpaid salaries and US$164.66 as and by way of attorney's fees. Payment shall be made in Philippine Currency at the prevailing rate of exchange at the time of payment.
>
> For want of jurisdiction, the claim for moral and exemplary damages is denied.
>
> All other claims and counterclaims are denied.
>
> SO ORDERED."[11]

Incidentally, the POEA dismissed petitioner's claim against Country Bankers on the ground that the surety bond which was effective at the time of petitioner's deployment was that of Travelers Insurance Corporation.

On appeal, respondent NLRC vacated the decision of the POEA and dismissed petitioner's complaint mainly on the ground that there was no employer-employee relationship between the parties. The NLRC ratiocinated as follows:

> "At the outset, we note that the record is bereft of any showing that complainant applied with the respondent agency as a job applicant and subsequently entered into an overseas contract with the latter which was later processed and approved by the POEA. X x x What appears is that complainant used the agency as a stepping stone to enter Singapore as a tourist and obtain employment thereat on his own. This is evidenced by Annexes "A-1" to "H" of Complainant's Reply (See pp. 65-72, record) which purports to show that the batch of complainant was obligated to pay back respondent Jose Cayanan the expenses for their deployment. No less than the POEA noted that the respondent agency "is a service contractor and is not authorized to deploy fishermen." Based on this fact, the respondent agency could not have deployed complainant as an overseas contract worker. What is apparent is that it obtained a tourist passport and plane ticket for complainant as a travel agent on a clearly "fly now pay later" plan.
>
> We cannot rely on the employment agreements and checks (See pp. 66-67, record) presented by complainant to show proof of employment relations considering that his name does not appear in any of the documents, hence they are merely hearsay."[12]

In reversing the POEA's finding, respondent NLRC gave considerable weight to the Joint Affidavit of Natura and Balucas.

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Unsatisfied, petitioner filed a motion for reconsideration but was denied.

Petitioner now comes to this Court via a petition for certiorari, imputing grave abuse of discretion to public respondent NLRC. He asserts that private respondents were the ones who deployed him to Singapore to work as fisherman; and that, respondent NLRC's conclusion that respondent JEAC was a mere "travel agency" and petitioner, a mere tourist, has no basis in fact and in law.

For their part, private respondents maintain that respondent NLRC did not commit grave abuse of discretion when it set aside the decision of the POEA, since petitioner failed to show any POEA record or document to prove that they deployed him to work in Singapore. Neither did he present a Special Power of Attorney to prove that Step-Up Agency authorized private respondents to recruit and deploy contract workers in its behalf nor an Affidavit of Responsibility to show that they (private respondents and Step-Up Agency) assumed solidary liability to petitioner.[13] Private respondents likewise insist that the photocopies of the PNB checks and agreements are hearsay and inadmissible in evidence.

The Solicitor General, in his comment,[14] joins petitioner in assailing the decision of respondent NLRC as "baseless and erroneous." According to him, the conclusion of respondent NLRC directly contradicts private respondents' defense that petitioner was a "total stranger." Further, he contends that the Joint Affidavit of Balucas and Natura are hearsay.

The cardinal issue in this case hinges on the question - Are private respondents responsible for petitioner's recruitment and deployment to Singapore?

Let us take a closer look at the scale of evidence.

On one arm of the scale are petitioner's evidence consisting of photocopies of the PNB checks and agreements which were intended to disprove private respondents' claim that petitioner, Victor Lim and Step-Up Agency are "total strangers." The PNB checks represent the payments made by respondent Cayanan to the relatives of petitioner's co-workers (including Balucas and Natura). The checks show the name of LIM Chang Koo &/or Jose Cayanan, as drawers. While the agreements, denominated "For Fisherman Deployed For Work To Singapore," constitute authorization to Victor Lim to deduct from the monthly salaries of the workers the amounts of their obligations to private respondents. Petitioner's own undertaking to private respondents reads:

> "I hereby certify that my expenses abroad in going to Singapore as fisherman amounting to SIXTEEN THOUSAND PESOS (P16,000.00) shall be temporarily shouldered by JEAC INT'L MGT & CONT. SERVICES and as soon as I arrive in Singapore, said amount will be charged by MR. VICTOR LIM and will be remitted to Eng. Jose E. Cayanan.
>
> (Sgd.) Mario Hornales
> F. CREW"[15]

On the other side of the scale are the Joint Affidavit secured by private respondents from petitioner's co-workers, Balucas and Natura, and a Certification issued by Step-Up Agency. These evidence were intended to prove the alleged admission of petitioner to Balucas and Natura that he went as a tourist to Singapore and that he applied directly with Step-Up Agency. The Certification of Step-Up Agency re-echoes the allegations in the Joint Affidavit.

The scale of evidence must tilt in favor of petitioner.

In a catena of labor cases, this Court has consistently held that where the adverse party is deprived of the opportunity to cross-examine the affiants, affidavits are generally rejected for being hearsay, unless the affiant

themselves are placed on the witness stand to testify thereon.[16] Private respondents' Joint Affidavit has no probative value. It suffers from two infirmities, first, petitioner was not given the opportunity to cross-examine the two affiants regarding the contents thereof, and second, the two affiants merely swore as to what petitioner told them but not as to the truth of the statements uttered.[17]

In the same vein, the Certification must not be given weight. Private respondents not only failed to present Victor Lim before the POEA to be cross-examined by petitioner, but the Certification was also not verified or under oath.[18] To our mind, it is just a last-ditch attempt on the part of Step-Up Agency to help private respondents free themselves from liability to petitioner. It bears noting that private respondents, Victor Lim and Step-Up Agency, as shown by petitioner's evidence, acted in concert in his deployment to Singapore. Hence, such certification is, at most, self-serving.

On the other hand, the PNB Checks and the agreements presented by petitioner strongly disprove private respondents' total strangers" theory. It may be observed that, in their attempt to exculpate themselves from monetary liability, private respondents adopted an extreme position, i.e., that they have nothing to do with petitioner, Victor Lim and Step-Up Agency. Such strategy proved to be disastrous to them. The mere presentation of documents bearing private respondents' names and that of Step-Up Agency and Victor Lim is enough to defeat their theory. More so, when the documetary evidence consist of bank checks showing the existence of a joint account, and authorization agreements revealing a contract of agency.

Private respondents' argument that petitioner's evidence are mere photocopies and therefore cannot be considered as the best evidence on the issue does not persuade us. The best evidence rule enshrined in the Revised Rules on Evidence provides that "when the subject of an inquiry is the contents of a document, no evidence shall be admissible other than the original document itself."[19] This rule is not without exception. Some of the exception are when the original has been lost or destroyed; cannot be produced in court without bad faith on the part of the offeror; or when the original is in the custody or under the control of the party against whom the evidence is offered and the latter fails to produce it after reasonable notice.[20] It would be unreasonable to demand from petitioner the presentation of the original PNB Checks considering that it is a banking practice that for a check to be encashed, the same must be surrendered to the bank first. These checks are, therefore, most likely in the possession of the bank. As to the agreements, it is reasonable to conclude that respondent Cayanan was the one in possession of the originals thereof. It maybe recalled that these agreements were executed by the workers for his security and benefit. At any rate, it is worthy to note that private respondents did not disown the PNB checks nor deny the existence of the agreements.

Notwithstanding the foregoing, it must be emphasized that the proceedings before the POEA is non-litigious in nature. The technicalities of law and procedure and the rules obtaining in the courts of law shall not strictly apply thereto and a hearing officer may avail himself of all reasonable means to ascertain the facts of the case.[21] On the applicability of the Rules of Court to labor cases, the Supreme Court has ruled in Shoemart, Inc. v. National Labor Relations Commission[22]:

> "The argument cannot be sustained. Whatever merit it might have in the context of ordinary civil actions, where the rules of evidence apply with more or less strictness, disappears when adduced in connection with proceedings before Labor Arbiters and the National Labor Relations Commission; for in said proceedings, the law is explicit that `the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the (law's) spirit and intention that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process.' Indeed, it is not the Rules of Court enacted by the Supreme Court but rather the regulations promulgated by the National Labor Relations Commission which govern "the hearing and disposition of cases before it and its regional branches**.' The `Revised Rules

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> of Court of the Philippines and prevailing jurisprudence,' the law says, may be applied to labor cases only under quite stringent limits, i.e., `in the absence of any applicable provision (in the Rules of the Commission), and in order to effectuate the objectives of the Labor Code**, in the interest of expeditious labor justice and whenever practicable and convenient, by analogy or in a suppletory character and effect." Under these rules, the proceedings before a Labor Arbiter are `non-litigious in nature' in which, `subject to the requirements of due process, the technicalities of law and procedure and the rules obtaining in the courts of law ** (do not) strictly apply."

Undoutedly, the factual and legal bases of respondent NLRC's conclusions are bereft of substantial evidence - the quantum of proof in labor cases. As aptly said by the Solicitor General, its decision is "baseless and erroneous." Its disposition is manifestly a grave abuse of discretion.[23]

In concluding that respondent JEAC was a mere "travel agency" and petitioner, a mere "tourist," respondent NLRC came up with a new theory which find no support even from the evidence of private respondents, the party in whose favor the decision was rendered. First, there is nothing in the record which shows that respondent JEAC is a mere travel agency. Even private respondents consistently plead that respondent JEAC is a "licensed recruitment agency authorized to recruit and deploy overseas Filipino contract workers."

Second, the evidence upon which respondent NLRC based its findings consist of agreements authorizing Victor Lim to deduct from the salaries of petitioner and his co-workers the amount of their obligations to respondent Cayanan. It would be too much of a coincidence to say that petitioner and his co-workers are all mere tourists who allowed a certain Victor Lim to deduct from their salaries the amount of their obligations to respondent Cayanan. What is evident here is that there is an internal arrangement between respondent Cayanan and Victor Lim brought about by the fact that the former deployed these workers to serve the latter. As correctly pointed out by the POEA, there must be a "previous arrangement" between private respondents and Victor Lim.

Significantly, from these pieces of evidence respondent NLRC could already see the falsity in private respondents' "total strangers" theory. How could there be an arrangement between two persons who do not know each other? Note how respondent NLRC conveniently closed its eye to the name of Victor Lim, as mentioned in the agreements, when it ruled that Victor Lim and Step-Up Agency are indeed "total strangers" to private respondents. We sustain the findings of the POEA, being more convincing and supported by substantial evidence, thus:

> "[C]omplainant applied at the office of respondent agency and was able to seek employment in Singapore through Engineer Jose Cayanan, owner of respondent agency. Complainant's allegations are supported by the Annexes he attached to his Reply (Annexes "A" to "H"). These documents readily show that it was not only complainant who was recruited by respondent agency through Engr. Cayanan and as agreed upon, the expenses in going to Singapore shall be advanced by respondents. Thus their loans payable to Engr. Cayanan and charged against their salaries. The checks representing the salaries of the complainant and his co-workers show that they are drawn from the account of Lim Chang Khoo and/or Jose Cayanan. From the foregoing, it is properly noted that complainant's salaries were taken from the funds of respondents which means that the latter had a hand or participated in his recruitment and deployment.
>
> We cannot give credence to respondents' contentions that complainant is a total stranger to them and that MIN Fee Fishery Co. Ltd. is not its principal, neither do we believe that respondents do not know Mr. Victor Lim who met complainant in Singapore. Annex "B" in respondents' position paper belies respondents' contentions. How could respondents write to a certain Step Up Employment Agency in Singapore, complainant's employer, when the latter is not even mentioned in his complaint? We wonder where respondents got the name of this employer if the same is really not known to them.
>
> It is very unlikely for complainant to proceed to Singapore as a tourist without knowing anybody at the site and

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> just to apply for work. Had there not been previous arrangements with respondents, it is not all possible for complainant to land on a job in Singapore because he is only a tourist.
>
> Respondents had to resort to this misrepresentation of allowing its recruits to leave as tourist because it is a service contractor and it is not authorized to deploy fishermen."[24]

Private respondents further argue that they cannot be held liable by petitioner because no employment contract between him and Step-Up Agency had been approved by the POEA.They also claim that the absence of a Special Power of Attorney and an Affidavit of Responsibility, as required under Sections 1 and 2, Rule 1, Book III of the POEA Rules and Regulations[25] only proves that they did not deploy petitioner to Singapore.

Their argument is far from persuasive. Surely, they cannot expect us to utilize their non-compliance with the POEA Rules and Regulations as a basis in absolving them. To do so would be tantamount to giving premium to acts done in violation of established rules. At most, private respondents' act of deploying petitioner to Singapore without complying with the POEA requirements only made them susceptible to cancellation or suspension of license as provided by Section 2, Rule I, Book VI of POEA Rules and Regulations:

> SEC. 2. Grounds for suspension/cancellation of license.
>
> m. Deploying workers whose employment and travel documents were not processed by the Administration;
>
> n. Deploying workers workers or seafarers to vessels or principals not accredited by the Administration;

But of course, such violations should be threshed out in a proper administrative proceeding for suspension or cancellation of license.

Meantime, we just uphold POEA's Decision holding private respondents and Travelers Insurance Corporation jointly and severally liable to petitioner. Section 2 (e), Rule V, Book I of the Omnibus Rules Implementing the Labor Code requires a private employment agency to assume all responsibilities for the implementation of the contract of employment of an overseas worker.[26] This provision is substantially reiterated in Section 1 (f) (3) of Rule II, Book II of the POEA Rules and Regulations which provides:

> "Section 1. Requirements for Issuance of License - Every applicant for license to operate a private employment agency or manning agency shall submit a written application together with the following requirements:
>
> x x x x x x
> f) a verified undertaking stating that the applicant:
>
> x x x
>
> (3) shall assume joint and solidary liability with the employer which may arise in connection with the implementation of the contract, including but not limited to payment of wages, health and disability compensation and repatriation.

With respect to private respondents' surety, its liability is founded on Section 4, Rule II, Book II of the POEA Rules and Regulations. Cash and surety bonds are required by the POEA from recruitment and employment companies precisely as a means of ensuring prompt and effective recourse against such companies when held liable for applicant's or worker's claims. The cash and surety bonds shall answer for all valid and legal claims arising from violations of the conditions for the grant and use of the license, and/or accreditations and contracts of employment. The bonds shall likewise guarantee compliance with the provisions of the Code and its implementing rules and regulations relating to recruitment and placement, the POEA Rules and relevant issuances of the Department and all liabilities which the POEA may impose.[27]

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Accordingly, we find it proper to reinstate the Decision dated January 5, 1994 of the POEA subject to the modification that the amount of P16,000, the amount which petitioner admitted to have been advanced by respondent JEAC for his expenses in going to Singapore[28] be deducted from the total amount to be awarded to him which includes a) US$1,646.66 corresponding to his unpaid salaries and b) attorney's fees. The award of attorney's fees amounting to ten percent (10%) of the total award is justified under Article 111 (a) of the Labor Code. The solidary liability of Travelers Insurance Corp., as surety of respondent JEAC, is maintained.

WHEREFORE, the petition is hereby GRANTED and the respondent NLRC's a) Decision dated July 28, 1994, and b) Resolution dated Octobger 6, 1994 are SET ASIDE. The Decision of POEA Administrator Felicisimo O. Joson in POEA Case No. (L) 92-07-939 is REINSTATED with the MODIFICATION that the sum of P16,000.00 be deducted from the total amount to be awarded to petitioner.

Payment should be made in Philippine currency at the prevailing rate of exchange at the time of payment.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

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[1] Rollo, pp. 27-34.

[2] Rollo, pp. 75-80.

[3] Entitled "Mario A. Hornales v. JEAC International Management & Contractor Services, Engr. Jose Cayanan, County Bankers Insurance Corp. and Travellers Insurance Corporation".

[4] Rollo, p. 35.

[5] Annex C of Petition, Rollo, pp. 36-37.

[6] Alternatively referred to as Step-Up Video PTE L.D., Rollo, p. 52.

[7] Annex "E" of the Petition, Rollo, pp. 40-42.

[8] Rollo, p. 54.

[9] Rollo, pp. 52-53

[10] Annex I-1 of Petition, Rollo, pp. 62-63.

[11] Rollo, p. 80.

[12] Rollo, pp. 29-30.

[13] Rollo, pp. 122-127.

[14] Rollo, pp. 114-128.

[15] Petition, Annex "I-9"

[16] Midas Touch Food Corp. v. NLRC, 259 SCRA 652 (1996); JRB Business Corporation v. National Labor Relations Commission, 246 SCRA 445 (1995); Coca-Cola Bottlers Philippines, Inc. v. National Labor Relations Commission 180 SCRA 195 (1989).

[17] Madlos v. National Labor Commission, 254 SCRA 248 (1996); Aboitiz Shipping Corporation v. Pepito, 18 SCRA 1028 (1966)

[18] JRS Business Corporation v. National Labor Relations Commission, ibid.

[19] Rule 130, Section 3, Revised Rules on Evidence

[20] Rule 130, Section 3 (a), (b)., Ibid.

[21] POEA Rules, Book VII, Rule III, Section 6:

[22] 225 SCRA 311 (1993)

[23] Anino v. National Labor Relations Commission, 290 SCRA 489 (1998)

[24] Rollo, pp. 77-78.

[25] "Rule I, Book III of the POEA Rules and Regulations -

" Section 1. Accreditation of Principals and Projects. Only duly licensed agencies may file application for accreditation of their principals or project overseas.

"Section 2. Requirements for Accreditation. An agency applying for accreditation of its principals or projects shall submit the following:

a. For a landbased agency for its principals

- Standard or master employment contract;

- Special power of attorney/service agreement;

- Manpower request from foreign principal indicating skills, wages and the number of workers needed;

- Other documents which the Administrator may find necessary."

[26] Sigma Personnel Services v. National Labor Relations Commission, 224 SCRA 181 (1993)

[27] The surety bonds shall include the condition that notice to the principal in connection with matters falling under POEA's jurisdiction shall be conclusive and binding on the surety.

[28] Rollo, p. 71.

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