

EDI-STAFFBUILDERS INTERNATIONAL, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND ELEAZAR S. GRAN, RESPONDENTS.

G.R. No. 145587. October 26, 2007

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

This Petition for Review on Certiorari[1] seeks to set aside the October 18, 2000 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 56120 which affirmed the January 15, 1999 Decision[3] and September 30, 1999 Resolution[4] rendered by the National Labor Relations Commission (NLRC) (Third Division) in POEA ADJ (L) 94-06-2194, ordering Expertise Search International (ESI), EDI-Staffbuilders International, Inc. (EDI), and Omar Ahmed Ali Bin Bechr Est. (OAB) jointly and severally to pay Eleazar S. Gran (Gran) the amount of USD 16,150.00 as unpaid salaries.

The Facts

Petitioner EDI is a corporation engaged in recruitment and placement of Overseas Filipino Workers (OFWs).[5] ESI is another recruitment agency which collaborated with EDI to process the documentation and deployment of private respondent to Saudi Arabia.

Private respondent Gran was an OFW recruited by EDI, and deployed by ESI to work for OAB, in Riyadh, Kingdom of Saudi Arabia.[6]

It appears that OAB asked EDI through its October 3, 1993 letter for curricula vitae of qualified applicants for the position of “Computer Specialist.”[7] In a facsimile transmission dated November 29, 1993, OAB informed EDI that, from the applicants’ curricula vitae submitted to it for evaluation, it selected Gran for the position of “Computer Specialist.” The faxed letter also stated that if Gran agrees to the terms and conditions of employment contained in it, one of which was a monthly salary of SR (Saudi Riyal) 2,250.00 (USD 600.00), EDI may arrange for Gran’s immediate dispatch.[8]

After accepting OAB’s offer of employment, Gran signed an employment contract[9] that granted him a monthly salary of USD 850.00 for a period of two years. Gran was then deployed to Riyadh, Kingdom of Saudi Arabia on February 7, 1994.

Upon arrival in Riyadh, Gran questioned the discrepancy in his monthly salary—his employment contract stated USD 850.00; while his Philippine Overseas Employment Agency (POEA) Information Sheet indicated USD 600.00 only. However, through the assistance of the EDI office in Riyadh, OAB agreed to pay Gran USD 850.00 a month.[10]

After Gran had been working for about five months for OAB, his employment was terminated through OAB’s

July 9, 1994 letter,[11] on the following grounds:

- Non-compliance to contract requirements by the recruitment agency primarily on your salary and contract duration.
- Non-compliance to pre-qualification requirements by the recruitment agency[,] vide OAB letter ref. F-5751-93, dated October 3, 1993.[12]
- Insubordination or disobedience to Top Management Order and/or instructions (non-submittal of daily activity reports despite several instructions).

On July 11, 1994, Gran received from OAB the total amount of SR 2,948.00 representing his final pay, and on the same day, he executed a Declaration[13] releasing OAB from any financial obligation or otherwise, towards him.

After his arrival in the Philippines, Gran instituted a complaint, on July 21, 1994, against ESI/EDI, OAB, Country Bankers Insurance Corporation, and Western Guaranty Corporation with the NLRC, National Capital Region, Quezon City, which was docketed as POEA ADJ (L) 94-06-2194 for underpayment of wages/salaries and illegal dismissal.

The Ruling of the Labor Arbiter

In his February 10, 1998 Decision,[14] Labor Arbiter Manuel R. Caday, to whom Gran's case was assigned, ruled that there was neither underpayment nor illegal dismissal.

The Labor Arbiter reasoned that there was no underpayment of salaries since according to the POEA-Overseas Contract Worker (OCW) Information Sheet, Gran's monthly salary was USD 600.00, and in his Confirmation of Appointment as Computer Specialist, his monthly basic salary was fixed at SR 2,500.00, which was equivalent to USD 600.00.

Arbiter Caday also cited the Declaration executed by Gran, to justify that Gran had no claim for unpaid salaries or wages against OAB.

With regard to the issue of illegal dismissal, the Labor Arbiter found that Gran failed to refute EDI's allegations; namely, (1) that Gran did not submit a single activity report of his daily activity as dictated by company policy; (2) that he was not qualified for the job as computer specialist due to his insufficient knowledge in programming and lack of knowledge in ACAD system; (3) that Gran refused to follow management's instruction for him to gain more knowledge of the job to prove his worth as computer specialist; (4) that Gran's employment contract had never been substituted; (5) and that Gran was paid a monthly salary of USD 850.00, and USD 350.00 monthly as food allowance.

Accordingly, the Labor Arbiter decided that Gran was validly dismissed from his work due to insubordination, disobedience, and his failure to submit daily activity reports.

Thus, on February 10, 1998, Arbiter Caday dismissed Gran's complaint for lack of merit.

Dissatisfied, Gran filed an Appeal[15] on April 6, 1998 with the NLRC, Third Division. However, it appears from the records that Gran failed to furnish EDI with a copy of his Appeal Memorandum.

The Ruling of the NLRC

The NLRC held that EDI's seemingly harmless transfer of Gran's contract to ESI is actually "reprocessing," which is a prohibited transaction under Article 34 (b) of the Labor Code. This scheme constituted misrepresentation through the conspiracy between EDI and ESI in misleading Gran and even POEA of the actual

terms and conditions of the OFW's employment. In addition, it was found that Gran did not commit any act that constituted a legal ground for dismissal. The alleged non-compliance with contractual stipulations relating to Gran's salary and contract duration, and the absence of pre-qualification requirements cannot be attributed to Gran but to EDI, which dealt directly with OAB. In addition, the charge of insubordination was not substantiated, and Gran was not even afforded the required notice and investigation on his alleged offenses.

Thus, the NLRC reversed the Labor Arbiter's Decision and rendered a new one, the dispositive portion of which reads:

WHEREFORE, the assailed decision is SET ASIDE. Respondents Expertise Search International, Inc., EDI Staffbuilders Int'l., Inc. and Omar Ahmed Ali Bin Bechr Est. (OAB) are hereby ordered jointly and severally liable to pay the complainant Eleazar Gran the Philippine peso equivalent at the time of actual payment of SIXTEEN THOUSAND ONE HUNDRED FIFTY US DOLLARS (US\$16,150.00) representing his salaries for the unexpired portion of his contract.

SO ORDERED.[16]

Gran then filed a Motion for Execution of Judgment[17] on March 29, 1999 with the NLRC and petitioner receiving a copy of this motion on the same date.[18]

To prevent the execution, petitioner filed an Opposition[19] to Gran's motion arguing that the Writ of Execution cannot issue because it was not notified of the appellate proceedings before the NLRC and was not given a copy of the memorandum of appeal nor any opportunity to participate in the appeal.

Seeing that the NLRC did not act on Gran's motion after EDI had filed its Opposition, petitioner filed, on August 26, 1999, a Motion for Reconsideration of the NLRC Decision after receiving a copy of the Decision on August 16, 1999.[20]

The NLRC then issued a Resolution[21] denying petitioner's Motion for Reconsideration, ratiocinating that the issues and arguments raised in the motion "had already been amply discussed, considered, and ruled upon" in the Decision, and that there was "no cogent reason or patent or palpable error that warrant any disturbance thereof."

Unconvinced of the NLRC's reasoning, EDI filed a Petition for Certiorari before the CA. Petitioner claimed in its petition that the NLRC committed grave abuse of discretion in giving due course to the appeal despite Gran's failure to perfect the appeal.

The Ruling of the Court of Appeals

The CA subsequently ruled on the procedural and substantive issues of EDI's petition.

On the procedural issue, the appellate court held that "Gran's failure to furnish a copy of his appeal memorandum [to EDI was] a mere formal lapse, an excusable neglect and not a jurisdictional defect which would justify the dismissal of his appeal." [22] The court also held that petitioner EDI failed to prove that private respondent was terminated for a valid cause and in accordance with due process; and that Gran's Declaration releasing OAB from any monetary obligation had no force and effect. The appellate court ratiocinated that EDI had the burden of proving Gran's incompetence; however, other than the termination letter, no evidence was presented to show how and why Gran was considered to be incompetent. The court held that since the law requires the recruitment agencies to subject OFWs to trade tests before deployment, Gran must have been competent and qualified; otherwise, he would not have been hired and deployed abroad.

As for the charge of insubordination and disobedience due to Gran's failure to submit a "Daily Activity Report," the appellate court found that EDI failed to show that the submission of the "Daily Activity Report" was a part of

Gran's duty or the company's policy. The court also held that even if Gran was guilty of insubordination, he should have just been suspended or reprimanded, but not dismissed.

The CA also held that Gran was not afforded due process, given that OAB did not abide by the twin notice requirement. The court found that Gran was terminated on the same day he received the termination letter, without having been apprised of the bases of his dismissal or afforded an opportunity to explain his side.

Finally, the CA held that the Declaration signed by Gran did not bar him from demanding benefits to which he was entitled. The appellate court found that the Declaration was in the form of a quitclaim, and as such is frowned upon as contrary to public policy especially where the monetary consideration given in the Declaration was very much less than what he was legally entitled to—his backwages amounting to USD 16,150.00.

As a result of these findings, on October 18, 2000, the appellate court denied the petition to set aside the NLRC Decision.

Hence, this instant petition is before the Court.

The Issues

Petitioner raises the following issues for our consideration:

- WHETHER THE FAILURE OF GRAN TO FURNISH A COPY OF HIS APPEAL MEMORANDUM TO PETITIONER EDI WOULD CONSTITUTE A JURISDICTIONAL DEFECT AND A DEPRIVATION OF PETITIONER EDI'S RIGHT TO DUE PROCESS AS WOULD JUSTIFY THE DISMISSAL OF GRAN'S APPEAL.
- WHETHER PETITIONER EDI HAS ESTABLISHED BY WAY OF SUBSTANTIAL EVIDENCE THAT GRAN'S TERMINATION WAS JUSTIFIABLE BY REASON OF INCOMPETENCE. COROLLARY HERETO, WHETHER THE PRIETO VS. NLRC RULING, AS APPLIED BY THE COURT OF APPEALS, IS APPLICABLE IN THE INSTANT CASE.
- WHETHER PETITIONER HAS ESTABLISHED BY WAY OF SUBSTANTIAL EVIDENCE THAT GRAN'S TERMINATION WAS JUSTIFIABLE BY REASON OF INSUBORDINATION AND DISOBEDIENCE.
- WHETHER GRAN WAS AFFORDED DUE PROCESS PRIOR TO TERMINATION.
- WHETHER GRAN IS ENTITLED TO BACKWAGES FOR THE UNEXPIRED PORTION OF HIS CONTRACT.[23]

The Court's Ruling

The petition lacks merit except with respect to Gran's failure to furnish EDI with his Appeal Memorandum filed with the NLRC.

First Issue: NLRC's Duty is to Require Respondent to Provide Petitioner a Copy of the Appeal

Petitioner EDI claims that Gran's failure to furnish it a copy of the Appeal Memorandum constitutes a jurisdictional defect and a deprivation of due process that would warrant a rejection of the appeal.

This position is devoid of merit.

In a catena of cases, it was ruled that failure of appellant to furnish a copy of the appeal to the adverse party is not fatal to the appeal.

In *Estrada v. National Labor Relations Commission*,^[24] this Court set aside the order of the NLRC which dismissed an appeal on the sole ground that the appellant did not furnish the appellee a memorandum of appeal contrary to the requirements of Article 223 of the New Labor Code and Section 9, Rule XIII of its Implementing Rules and Regulations.

Also, in *J.D. Magpayo Customs Brokerage Corp. v. NLRC*, the order of dismissal of an appeal to the NLRC based on the ground that “there is no showing whatsoever that a copy of the appeal was served by the appellant on the appellee”^[25] was annulled. The Court ratiocinated as follows:

The failure to give a copy of the appeal to the adverse party was a mere formal lapse, an excusable neglect. Time and again We have acted on petitions to review decisions of the Court of Appeals even in the absence of proof of service of a copy thereof to the Court of Appeals as required by Section 1 of Rule 45, Rules of Court. We act on the petitions and simply require the petitioners to comply with the rule.^[26] (Emphasis supplied.)

The *J.D. Magpayo* ruling was reiterated in *Carnation Philippines Employees Labor Union-FFW v. National Labor Relations Commission*,^[27] *Pagdonsalan v. NLRC*,^[28] and in *Sunrise Manning Agency, Inc. v. NLRC*.^[29]

Thus, the doctrine that evolved from these cases is that failure to furnish the adverse party with a copy of the appeal is treated only as a formal lapse, an excusable neglect, and hence, not a jurisdictional defect. Accordingly, in such a situation, the appeal should not be dismissed; however, it should not be given due course either. As enunciated in *J.D. Magpayo*, the duty that is imposed on the NLRC, in such a case, is to require the appellant to comply with the rule that the opposing party should be provided with a copy of the appeal memorandum.

While Gran’s failure to furnish EDI with a copy of the Appeal Memorandum is excusable, the abject failure of the NLRC to order Gran to furnish EDI with the Appeal Memorandum constitutes grave abuse of discretion.

The records reveal that the NLRC discovered that Gran failed to furnish EDI a copy of the Appeal Memorandum. The NLRC then ordered Gran to present proof of service. In compliance with the order, Gran submitted a copy of Camp Crame Post Office’s list of mail/parcels sent on April 7, 1998.^[30] The post office’s list shows that private respondent Gran sent two pieces of mail on the same date: one addressed to a certain Dan O. de Guzman of Legaspi Village, Makati; and the other appears to be addressed to Neil B. Garcia (or Gran),^[31] of Ermita, Manila—both of whom are not connected with petitioner.

This mailing list, however, is not a conclusive proof that EDI indeed received a copy of the Appeal Memorandum.

Sec. 5 of the NLRC Rules of Procedure (1990) provides for the proof and completeness of service in proceedings before the NLRC:

Section 5.^[32] Proof and completeness of service.—The return is prima facie proof of the facts indicated therein. Service by registered mail is complete upon receipt by the addressee or his agent; but if the addressee fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect after such time. (Emphasis supplied.)

Hence, if the service is done through registered mail, it is only deemed complete when the addressee or his agent received the mail or after five (5) days from the date of first notice of the postmaster. However, the NLRC Rules do not state what would constitute proper proof of service.

Sec. 13, Rule 13 of the Rules of Court, provides for proofs of service:

Section 13. Proof of service.—Proof of personal service shall consist of a written admission of the party served or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the

person mailing of facts showing compliance with section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee (emphasis supplied).

Based on the foregoing provision, it is obvious that the list submitted by Gran is not conclusive proof that he had served a copy of his appeal memorandum to EDI, nor is it conclusive proof that EDI received its copy of the Appeal Memorandum. He should have submitted an affidavit proving that he mailed the Appeal Memorandum together with the registry receipt issued by the post office; afterwards, Gran should have immediately filed the registry return card.

Hence, after seeing that Gran failed to attach the proof of service, the NLRC should not have simply accepted the post office's list of mail and parcels sent; but it should have required Gran to properly furnish the opposing parties with copies of his Appeal Memorandum as prescribed in J.D. Magpayo and the other cases. The NLRC should not have proceeded with the adjudication of the case, as this constitutes grave abuse of discretion.

The glaring failure of NLRC to ensure that Gran should have furnished petitioner EDI a copy of the Appeal Memorandum before rendering judgment reversing the dismissal of Gran's complaint constitutes an evasion of the pertinent NLRC Rules and established jurisprudence. Worse, this failure deprived EDI of procedural due process guaranteed by the Constitution which can serve as basis for the nullification of proceedings in the appeal before the NLRC. One can only surmise the shock and dismay that OAB, EDI, and ESI experienced when they thought that the dismissal of Gran's complaint became final, only to receive a copy of Gran's Motion for Execution of Judgment which also informed them that Gran had obtained a favorable NLRC Decision. This is not level playing field and absolutely unfair and discriminatory against the employer and the job recruiters. The rights of the employers to procedural due process cannot be cavalierly disregarded for they too have rights assured under the Constitution.

However, instead of annulling the dispositions of the NLRC and remanding the case for further proceedings we will resolve the petition based on the records before us to avoid a protracted litigation.[33]

The second and third issues have a common matter—whether there was just cause for Gran's dismissal—hence, they will be discussed jointly.

Second and Third Issues: Whether Gran's dismissal is justifiable
by reason of incompetence, insubordination, and disobedience

In cases involving OFWs, the rights and obligations among and between the OFW, the local recruiter/agent, and the foreign employer/principal are governed by the employment contract. A contract freely entered into is considered law between the parties; and hence, should be respected. In formulating the contract, the 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.[34]

In the present case, the employment contract signed by Gran specifically states that Saudi Labor Laws will govern matters not provided for in the contract (e.g. specific causes for termination, termination procedures, etc.). Being the law intended by the parties (*lex loci intentiones*) to apply to the contract, Saudi Labor Laws should govern all matters relating to the termination of the employment of Gran.

In international law, the party who wants to have a foreign law applied to a dispute or case has the burden of proving the foreign law. The foreign law is treated as a question of fact to be properly pleaded and proved as the judge or labor arbiter cannot take judicial notice of a foreign law. He is presumed to know only domestic or forum

law.[35]

Unfortunately for petitioner, it did not prove the pertinent Saudi laws on the matter; thus, the International Law doctrine of presumed-identity approach or processual presumption comes into play.[36] Where a foreign law is not pleaded or, even if pleaded, is not proved, the presumption is that foreign law is the same as ours.[37] Thus, we apply Philippine labor laws in determining the issues presented before us.

Petitioner EDI claims that it had proven that Gran was legally dismissed due to incompetence and insubordination or disobedience.

This claim has no merit.

In illegal dismissal cases, it has been established by Philippine law and jurisprudence that the employer should prove that the dismissal of employees or personnel is legal and just.

Section 33 of Article 277 of the Labor Code[38]states that:

Art. 277. MISCELLANEOUS PROVISIONS[39]

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the workers to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. x x x

In many cases, it has been held that in termination disputes or illegal dismissal cases, the employer has the burden of proving that the dismissal is for just and valid causes; and failure to do so would necessarily mean that the dismissal was not justified and therefore illegal.[40] Taking into account the character of the charges and the penalty meted to an employee, the employer is bound to adduce clear, accurate, consistent, and convincing evidence to prove that the dismissal is valid and legal.[41] This is consistent with the principle of security of tenure as guaranteed by the Constitution and reinforced by Article 277 (b) of the Labor Code of the Philippines.[42]

In the instant case, petitioner claims that private respondent Gran was validly dismissed for just cause, due to incompetence and insubordination or disobedience. To prove its allegations, EDI submitted two letters as evidence. The first is the July 9, 1994 termination letter,[43] addressed to Gran, from Andrea E. Nicolaou, Managing Director of OAB. The second is an unsigned April 11, 1995 letter[44] from OAB addressed to EDI and ESI, which outlined the reasons why OAB had terminated Gran's employment.

Petitioner claims that Gran was incompetent for the Computer Specialist position because he had "insufficient knowledge in programming and zero knowledge of [the] ACAD system." [45] Petitioner also claims that Gran was justifiably dismissed due to insubordination or disobedience because he continually failed to submit the required "Daily Activity Reports." [46] However, other than the abovementioned letters, no other evidence was presented to show how and why Gran was considered incompetent, insubordinate, or disobedient. Petitioner EDI had clearly failed to overcome the burden of proving that Gran was validly dismissed.

Petitioner's imputation of incompetence on private respondent due to his "insufficient knowledge in

programming and zero knowledge of the ACAD system” based only on the above mentioned letters, without any other evidence, cannot be given credence.

An allegation of incompetence should have a factual foundation. Incompetence may be shown by weighing it against a standard, benchmark, or criterion. However, EDI failed to establish any such bases to show how petitioner found Gran incompetent.

In addition, the elements that must concur for the charge of insubordination or willful disobedience to prosper were not present.

In *Micro Sales Operation Network v. NLRC*, we held that:

For willful disobedience to be a valid cause for dismissal, the following twin elements must concur: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.[47]

EDI failed to discharge the burden of proving Gran's insubordination or willful disobedience. As indicated by the second requirement provided for in *Micro Sales Operation Network*, in order to justify willful disobedience, we must determine whether the order violated by the employee is reasonable, lawful, made known to the employee, and pertains to the duties which he had been engaged to discharge. In the case at bar, petitioner failed to show that the order of the company which was violated—the submission of “Daily Activity Reports”—was part of Gran's duties as a Computer Specialist. Before the Labor Arbiter, EDI should have provided a copy of the company policy, Gran's job description, or any other document that would show that the “Daily Activity Reports” were required for submission by the employees, more particularly by a Computer Specialist.

Even though EDI and/or ESI were merely the local employment or recruitment agencies and not the foreign employer, they should have adduced additional evidence to convincingly show that Gran's employment was validly and legally terminated. The burden devolves not only upon the foreign-based employer but also on the employment or recruitment agency for the latter is not only an agent of the former, but is also solidarily liable with the foreign principal for any claims or liabilities arising from the dismissal of the worker.[48]

Thus, petitioner failed to prove that Gran was justifiably dismissed due to incompetence, insubordination, or willful disobedience.

Petitioner also raised the issue that *Prieto v. NLRC*,[49] as used by the CA in its Decision, is not applicable to the present case.

In *Prieto*, this Court ruled that “[i]t is presumed that before their deployment, the petitioners were subjected to trade tests required by law to be conducted by the recruiting agency to insure employment of only technically qualified workers for the foreign principal.”[50] The CA, using the ruling in the said case, ruled that Gran must have passed the test; otherwise, he would not have been hired. Therefore, EDI was at fault when it deployed Gran who was allegedly “incompetent” for the job.

According to petitioner, the *Prieto* ruling is not applicable because in the case at hand, Gran misrepresented himself in his curriculum vitae as a Computer Specialist; thus, he was not qualified for the job for which he was hired.

We disagree.

The CA is correct in applying *Prieto*. The purpose of the required trade test is to weed out incompetent applicants from the pool of available workers. It is supposed to reveal applicants with false educational backgrounds, and

expose bogus qualifications. Since EDI deployed Gran to Riyadh, it can be presumed that Gran had passed the required trade test and that Gran is qualified for the job. Even if there was no objective trade test done by EDI, it was still EDI's responsibility to subject Gran to a trade test; and its failure to do so only weakened its position but should not in any way prejudice Gran. In any case, the issue is rendered moot and academic because Gran's incompetency is unproved.

Fourth Issue: Gran was not Afforded Due Process

As discussed earlier, in the absence of proof of Saudi laws, Philippine Labor laws and regulations shall govern the relationship between Gran and EDI. Thus, our laws and rules on the requisites of due process relating to termination of employment shall apply.

Petitioner EDI claims that private respondent Gran was afforded due process, since he was allowed to work and improve his capabilities for five months prior to his termination.[51] EDI also claims that the requirements of due process, as enunciated in *Santos, Jr. v. NLRC*,^[52] and *Malaya Shipping Services, Inc. v. NLRC*,^[53] cited by the CA in its Decision, were properly observed in the present case.

This position is untenable.

In *Agabon v. NLRC*,^[54] this Court held that:

Procedurally, (1) if the dismissal is based on a just cause under Article 282, the employer must give the employee two written notices and a hearing or opportunity to be heard if requested by the employee before terminating the employment: a notice specifying the grounds for which dismissal is sought a hearing or an opportunity to be heard and after hearing or opportunity to be heard, a notice of the decision to dismiss; and (2) if the dismissal is based on authorized causes under Articles 283 and 284, the employer must give the employee and the Department of Labor and Employment written notices 30 days prior to the effectivity of his separation.

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 notice, the employees should be given a hearing or opportunity to defend themselves personally or by counsel of their choice.^[55]

A careful examination of the records revealed that, indeed, OAB's manner of dismissing Gran fell short of the two notice requirement. While it furnished Gran the written notice informing him of his dismissal, it failed to furnish Gran the written notice apprising him of the charges against him, as prescribed by the Labor Code.^[56] Consequently, he was denied the opportunity to respond to said notice. In addition, OAB did not schedule a hearing or conference with Gran to defend himself and adduce evidence in support of his defenses. Moreover, the July 9, 1994 termination letter was effective on the same day. This shows that OAB had already condemned Gran to dismissal, even before Gran was furnished the termination letter. It should also be pointed out that OAB failed to give Gran the chance to be heard and to defend himself with the assistance of a representative in accordance with Article 277 of the Labor Code. Clearly, there was no intention to provide Gran with due process. Summing up, Gran was notified and his employment arbitrarily terminated on the same day, through the same letter, and for unjustified grounds. Obviously, Gran was not afforded due process.

Pursuant to the doctrine laid down in *Agabon*,^[57] an employer is liable to pay nominal damages as indemnity for violating the employee's right to statutory due process. Since OAB was in breach of the due process requirements under the Labor Code and its regulations, OAB, ESI, and EDI, jointly and solidarily, are liable to Gran in the amount of PhP 30,000.00 as indemnity.

Fifth and Last Issue: Gran is Entitled to Backwages

We reiterate the rule that with regard to employees hired for a fixed period of employment, in cases arising before the effectivity of R.A. No. 8042 [58] (Migrant Workers and Overseas Filipinos Act) on August 25, 1995, that when the contract is for a fixed term and the employees are dismissed without just cause, they are entitled to the payment of their salaries corresponding to the unexpired portion of their contract.[59] On the other hand, for cases arising after the effectivity of R.A. No. 8042, when the termination of employment is without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee with interest of 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.[60]

In the present case, the employment contract provides that the employment contract shall be valid for a period of two (2) years from the date the employee starts to work with the employer.[61] Gran arrived in Riyadh, Saudi Arabia and started to work on February 7, 1994;[62] hence, his employment contract is until February 7, 1996. Since he was illegally dismissed on July 9, 1994, before the effectivity of R.A. No. 8042, he is therefore entitled to backwages corresponding to the unexpired portion of his contract, which was equivalent to USD 16,150.

Petitioner EDI questions the legality of the award of backwages and mainly relies on the Declaration which is claimed to have been freely and voluntarily executed by Gran. The relevant portions of the Declaration are as follows:

I, ELEAZAR GRAN (COMPUTER SPECIALIST) AFTER RECEIVING MY FINAL SETTLEMENT ON THIS DATE THE AMOUNT OF:

S.R. 2,948.00

(SAUDI RIYALS TWO THOUSAND NINE HUNDRED FORTY EIGHT ONLY)

REPRESENTING COMPLETE PAYMENT (COMPENSATION) FOR THE SERVICES I RENDERED TO OAB ESTABLISHMENT.

I HEREBY DECLARE THAT OAB EST. HAS NO FINANCIAL OBLIGATION IN MY FAVOUR AFTER RECEIVING THE ABOVE MENTIONED AMOUNT IN CASH.

I STATE FURTHER THAT OAB EST. HAS NO OBLIGATION TOWARDS ME IN WHATEVER FORM.

I ATTEST TO THE TRUTHFULNESS OF THIS STATEMENT BY AFFIXING MY SIGNATURE VOLUNTARILY.

SIGNED.

ELEAZAR GRAN

Courts must undertake a meticulous and rigorous review of quitclaims or waivers, more particularly those executed by employees. This requirement was clearly articulated by Chief Justice Artemio V. Panganiban in *Land and Housing Development Corporation v. Esquillo*:

Quitclaims, releases and other waivers of benefits granted by laws or contracts in favor of workers should be strictly scrutinized to protect the weak and the disadvantaged. The waivers should be carefully examined, in regard not only to the words and terms used, but also the factual circumstances under which they have been executed.[63] (Emphasis supplied.)

This Court had also outlined in *Land and Housing Development Corporation*, citing *Periquet v. NLRC*,[64] the parameters for valid compromise agreements, waivers, and quitclaims:

Not all waivers and quitclaims are invalid as against public policy. If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned simply because of a change of mind. It is only where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or the terms of settlement are unconscionable on its face, that the law will step in to annul the questionable transaction. But where it is shown that the person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking. (Emphasis supplied.)

Is the waiver and quitclaim labeled a Declaration valid? It is not.

The Court finds the waiver and quitclaim null and void for the following reasons:

- The salary paid to Gran upon his termination, in the amount of SR 2,948.00, is unreasonably low. As correctly pointed out by the court a quo, the payment of SR 2,948.00 is even lower than his monthly salary of SR 3,190.00 (USD 850.00). In addition, it is also very much less than the USD 16,150.00 which is the amount Gran is legally entitled to get from petitioner EDI as backwages.
- The Declaration reveals that the payment of SR 2,948.00 is actually the payment for Gran's salary for the services he rendered to OAB as Computer Specialist. If the Declaration is a quitclaim, then the consideration should be much much more than the monthly salary of SR 3,190.00 (USD 850.00)—although possibly less than the estimated Gran's salaries for the remaining duration of his contract and other benefits as employee of OAB. A quitclaim will understandably be lower than the sum total of the amounts and benefits that can possibly be awarded to employees or to be earned for the remainder of the contract period since it is a compromise where the employees will have to forfeit a certain portion of the amounts they are claiming in exchange for the early payment of a compromise amount. The court may however step in when such amount is unconscionably low or unreasonable although the employee voluntarily agreed to it. In the case of the Declaration, the amount is unreasonably small compared to the future wages of Gran.
- The factual circumstances surrounding the execution of the Declaration would show that Gran did not voluntarily and freely execute the document. Consider the following chronology of events:
 - On July 9, 1994, Gran received a copy of his letter of termination;
 - On July 10, 1994, Gran was instructed to depart Saudi Arabia and required to pay his plane ticket;^[65]
 - On July 11, 1994, he signed the Declaration;
 - On July 12, 1994, Gran departed from Riyadh, Saudi Arabia; and
 - On July 21, 1994, Gran filed the Complaint before the NLRC.

The foregoing events readily reveal that Gran was "forced" to sign the Declaration and constrained to receive the amount of SR 2,948.00 even if it was against his will—since he was told on July 10, 1994 to leave Riyadh on July 12, 1994. He had no other choice but to sign the Declaration as he needed the amount of SR 2,948.00 for the payment of his ticket. He could have entertained some apprehensions as to the status of his stay or safety in Saudi Arabia if he would not sign the quitclaim.

- The court a quo is correct in its finding that the Declaration is a contract of adhesion which should be construed against the employer, OAB. An adhesion contract is contrary to public policy as it leaves the weaker party—the employee—in a "take-it-or-leave-it" situation. Certainly, the employer is being unjust to the employee as there is no meaningful choice on the part of the employee while the terms are unreasonably favorable to the employer.^[66]

Thus, the Declaration purporting to be a quitclaim and waiver is unenforceable under Philippine laws in the

absence of proof of the applicable law of Saudi Arabia.

In order to prevent disputes on the validity and enforceability of quitclaims and waivers of employees under Philippine laws, said agreements should contain the following:

- A fixed amount as full and final compromise settlement;
- The benefits of the employees if possible with the corresponding amounts, which the employees are giving up in consideration of the fixed compromise amount;
- 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
- 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.[67] This compromise settlement becomes final and binding under Article 227 of the Labor Code which provides that:

[A]ny 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.

It is made clear 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. Otherwise, the foreign laws shall apply.

WHEREFORE, the petition is DENIED. The October 18, 2000 Decision in CA-G.R. SP No. 56120 of the Court of Appeals affirming the January 15, 1999 Decision and September 30, 1999 Resolution of the NLRC is AFFIRMED with the MODIFICATION that petitioner EDI-Staffbuilders International, Inc. shall pay the amount of PhP 30,000.00 to respondent Gran as nominal damages for non-compliance with statutory due process.

No costs.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Nachura, JJ., concur.

* As per October 17, 2007 raffle.

[1] Rollo, pp. 9-39.

[2] Id. at 140-148. The Decision was penned by Associate Justice Conchita Carpio Morales (now a Member of this Court) and concurred in by Associate Justices Candido V. Rivera and Elvi John S. Asuncion.

[3] Id. at 86-99. The Decision was penned by NLRC Commissioner Ireneo B. Bernardo and concurred in by Commissioners Lourdes C. Javier and Tito F. Genilo.

[4] Id. at 106-107.

[5] Id. at 140.

[6] Id. at 140-141.

[7] Id. at 40.

[8] Id. at 41.

[9] Signed by Eleazar S. Gran (second party) and Mrs. Andrea Nicolaus (first party) representing Omar Ahmed Ali Bin Bechr Est., dated January 20, 1994; id. at 42-50.

[10] Id. at 141.

[11] Id. at 51.

[12] Supra note 7.

[13] Rollo, p. 73.

[14] Id. at 75.

[15] CA rollo, pp. 108-113.

[16] Supra note 3, at 98.

[17] Rollo, p. 80.

[18] Id. at 100 & 224.

[19] Id. at 100-105.

[20] Id. at 219.

[21] Supra note 4, at 106.

[22] Supra note 2, at 145; citing *Carnation Phil. Employees Labor Union-FFW v. NLRC*, G.R. No. L-64397, October 11, 1983, 125 SCRA 42 and *Flexo Manufacturing Corporation v. NLRC*, G.R. No. 164857, April 18, 1997, 135 SCRA 145.

[23] Rollo, p. 220.

[24] G.R. No. L-57735, March 19, 1982, 112 SCRA 688, 691.

[25] G.R. No. L-60950, November 19, 1982, 118 SCRA 645, 646.

[26] Id.

[27] Supra note 22.

[28] G.R. No. L-63701, January 31, 1980, 127 SCRA 463.

[29] G.R. No. 146703, November 18, 2004, 443 SCRA 35.

[30] Rollo, pp. 84-85.

[31] Id. The handwriting is illegible.

[32] Now Sec. 7 of NEW NLRC RULES OF PROCEDURE.

[33] *Marlene Crisostomo v. Florito M. Garcia, Jr.*, G.R. No. 164787, January 31, 2006, 481 SCRA 402; *Bunao v. Social Security Sytem*, G.R. No. 156652, December 13, 2005, 477 SCRA 564, citing *Vallejo v. Court of Appeals*, G.R. No. 156413, April 14, 2004, 427 SCRA 658, 669; and *San Luis v. Court of Appeals*, G.R. No. 142649, September 13, 2001, 417 Phil. 598, 605; *Cadalin v. POEA Administrator*, G.R. Nos. 104776, 104911, 105029-32, December 5, 1994, 238 SCRA 721; *Pagdonsalan v. National Labor Relations Commission*, G.R. No. L-63701, January 31, 1984, 127 SCRA 463.

[34] CIVIL CODE, Art. 1306.

[35] Id. Loquia and Pangalanan, p. 144.

[36] J.R. Coquia & E.A. Pangalangan, *CONFLICT OF LAWS* 157 (1995); citing Cramton, Currie, Kay, *CONFLICT OF LAWS CASES AND COMMENTARIES* 56.

[37] *Philippine Export and Loan Guarantee Corporation v. V.P. Eusebio Construction Inc., et al.*, G.R. No. 140047, July 14, 2004, 434 SCRA 202, 215.

[38] See Presidential Decree No. 442, "A Decree Instituting a Labor Code, Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Ensure Industrial Peace Based on Social Justice."

[39] As amended by Sec. 33, R.A. 6715, "An Act to Extend Protection to Labor, Strengthen the Constitutional Rights of Workers to Self-Organization, Collective Bargaining and Peaceful Concerted Activities, Foster Industrial Peace and Harmony, Promote the Preferential Use of Voluntary Modes of Settling Labor Disputes, and Reorganize the National Labor Relations Commission, Amending for these Purposes Certain Provisions of Presidential Decree No. 442, as amended, Otherwise Known as The Labor Code of the Philippines, Appropriating Funds Therefore and for Other Purposes," approved on March 2, 1989.

[40] *Ting v. Court of Appeals*, G.R. No. 146174, July 12, 2006, 494 SCRA 610.

[41] *Bank of the Philippine Islands v. Uy*, G.R. No. 156994, August 31, 2005, 468 SCRA 633.

[42] I Alcantara, *PHILIPPINE LABOR AND SOCIAL LEGISLATION* 1052 (1999).

[43] *Supra* note 11.

[44] *Rollo*, pp. 155-156.

[45] *Supra* note 1, at 25.

[46] Id. at 29.

[47] G.R. No. 155279, October 11, 2005, 472 SCRA 328, 335-336.

[48] *Royal Crown Internationale v. NLRC*, G.R. No. 78085, October 16, 1989, 178 SCRA 569; see also *G & M (Phil.), Inc. v. Willie Batomalaque*, G.R. No. 151849, June 23, 2005, 461 SCRA 111.

[49] G.R. No. 93699, September 10, 1993, 266 SCRA 232.

[50] Id. at 237.

[51] *Rollo*, p. 235.

[52] G.R. No. 115795, March 6, 1998, 287 SCRA 117.

[53] G.R. No. 121698, March 26, 1998, 228 SCRA 181.

[54] G.R. No. 158693, November 17, 2004, 442 SCRA 573, 608.

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

[56] See Article 277 (b) of the Labor Code; Sec. 2 (I) (a) Rule XXIII Rules Implementing Book V of the Labor Code; and Sec. 2 (d) (i) Rule I, Rules Implementing Book VI of the Labor Code.

[57] *Supra* note 54.

[58] Took effect on July 15, 1995, R.A. No. 8042 is “An Act to Institute the Policies of Overseas Employment and Establish a Higher Standard of Protection and Promotion of the Welfare of Migrant Workers their Families and Overseas Filipinos in Distress, and for Other Purposes.”

[59] *Land and Housing Development Corporation v. Esquillo*, G.R. No. 152012, September 30, 2005, 471 SCRA 488, 490.

[60] *Supra* note 58, Sec. 10.

[61] *Rollo*, p. 45.

[62] *Id.* at 70, OAB’s Final Account of Gran’s salaries receivable.

[63] *Supra* note 59.

[64] G.R. No. 91298, June 22 1990, 186 SCRA 724, 730.

[65] *Supra* note 14, at 76.

[66] *Chretien v. Donald L. Bren Co.* (1984) 151 [185 Cal. App. 3d 450].

[67] A form copy of the Quitclaim and Release used by the NLRC is reproduced below for the guidance of management and labor:

Republic of the Philippines
Department of Labor and Employment
NATIONAL LABOR RELATIONS COMMISSION
Quezon City

CONCILIATION AND MEDIATION

QUITCLAIM AND RELEASE

PAGTALIKOD AT PAGPAPAWALANG-SAYSAY

I (Ako), _____ of legal age (may sapat na gulang) residing at (nakatira sa) _____ for and in consideration of the amount of (bilang konsiderasyon sa halagang) _____ pesos (piso) given to me by (na ibinigay sa akin ng) _____, do hereby release and discharge (ay aking pinawawalang-saysay at tinatalikuran) aforesaid company/corporation and its officers, person/s (ang nabanggit na kompanya/korporasyon at ang mga tauhan nito) from any money claims (mula sa anumang paghahabol na nauukol sa pananalapi) by way of unpaid wages (sa pamamagitan ng di nabayaranang sahod), separation pay, overtime pay otherwise (o anupaman), as may be due to me (na karapat-dapat para sa akin) in officers/person/s (na may kaugnayan sa aking

huling pinapasukang kompanya o korporasyon at sa mga opisyaes o tauhan nito).

I am executing this quitclaim and release (Isinasagawa ko ang pagtalikod o pagpapawalang-saysay na ito), freely and voluntary (ng may kalayaan at kusang-loob) before this Honorable Office (sa harapan ng marangal na tanggapanang ito) without any force or duress (ng walang pamimilit o pamumuwersa) and as part of the compromise agreement reached during the preventive conciliation and mediation process conducted in the NLRC (at bilang bahagi ng napagkasunduan buhat sa proseso ng “preventive conciliation at mediation” dito sa NLRC).

IN VIEW WHEREOF (DAHIL DITO), I hereunto set my hand this (ako’y lumagda ngayong) _____ day of (araw ng) _____, 200__, in Quezon City (sa Lungsod ng Quezon).

Signature of the Requesting Party

(Lagda ng Partidong Humiling ng Com-Med Conference)

Signed in presence of (Nilagdaan sa harapan ni):

Name in Print below Signature

(Limbagin ang pangalan sa ilalim ng lagda)

SUBSCRIBED AND SWORN TO before me this ____ day of _____ 200__ in Quezon City, Philippines.

Labor Arbiter

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