MAGRO PLACEMENT AND GENERAL SERVICES, REGISTERED IN THE NAME OF MARINA G. SOBREMESANA, PETITIONER, VS. CRESENCIANO E. HERNANDEZ, RESPONDENT.

G.R. NO. 156964. July 04, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court assailing the Decision[1] dated September 12, 2002 and the Resolution[2] dated January 16, 2003 of the Court of Appeals (CA) in CA-G.R. SP No. 67264.

The factual background of the case is as follows:

Magro Placement and General Services (petitioner) is a duly licensed recruitment agency. It is the local agency of Orbit Recruitment Office of Jeddah, Kingdom of Saudi Arabia (K.S.A.).

On November 6, 1999, Cresenciano E. Hernandez (respondent), then an Aircon Electrical Technician of Toyota Pasong Tamo, Inc.,[3] filed with petitioner an application for employment abroad as Auto Electrician or Air-Conditioning Technician.[4]

After successfully undergoing a battery of interviews and trade tests, respondent was hired as Auto Electrician of Al Yamama Est. (Al Yamama) in Jeddah, K.S.A. for a two-year contract with a basic monthly salary of US$450.00 for 10 hours a day, 6 days a week regular working hours, 15 days vacation leave and 15 days sick leave with full pay per year of service, and free food allowance of US$50.00 a month with free suitable housing.[5] Thus, he resigned from Toyota Pasong Tamo, Inc.

On January 16, 2000, respondent left for Jeddah, K.S.A. Respondent worked at the Al Yamama as an electrician. Because of lack of equipment or tools, the work became harder. After 10 days, his employer took his passport and brought him to Orbit. His employer told the agency that respondent did not know his job as electrician. Respondent explained that since he used to repair Japanese cars only, he needed time to adjust to American cars. Respondent further stated that he was willing to continue his job. When respondent was subjected to a trade test using an American car, he failed.

In a Statement dated January 30, 2000, respondent narrated his day-to-day experience that: he could not perform his job well because the cars being repaired at Al Yamama were American cars and he had experience with Japanese cars only; Al Yamama had no tester for checking car components; he understood a few Arabic words only and could not communicate with this employer because the latter could understand a few English words only; the accommodation had no aircon or electric fan and there were plenty of mosquitoes; respondent's food allowance was only 10 riyals every two days and during lunch the employer bought the food; he did not sign any employment contract in Saudi Arabia; he only signed an employment contract in the Philippines; an electrical job is not easy, even experts need a repair manual and wiring diagrams which Al Yamama did not have; in view

thereof, respondent was no longer willing to continue his job with his employer, Al Yamama, and he was willing to work with other employers.[6]

Respondent executed another Statement dated February 10, 2000 stating that: he could no longer continue his job with Al Yamama; he had no idea about working on American cars, as he had only worked on Japanese cars; he was sent by his agent Orbit for trade test but failed; and he has no complaints against his employer and recruiting agent in the K.S.A.; in fact they provided him full assistance during his stay.[7]

On February 16, 2000, respondent issued another Statement, which was duly witnessed by the Secretary of Orbit and noted by Carlos O. Sta. Ana, Assistant Labor Representative, Consulate General of the Philippines, Jeddah, K.S.A., stating that: he was recruited for Al Yamama as Auto Electrician, but he was not qualified since he had no experience as Auto Electrician; he was allowed to go for a trade test but failed; he was allowed to find a new job, but he was not qualified to work in Budget Rent-A-Car Company & Nissan; he had no complaints against his agent in the K.S.A. or his Philippine agent, herein petitioner; and respondent requested that he be sent back to the Philippines as early as possible.[8]

On March 3, 2000, respondent was repatriated to the Philippines. When he sought financial assistance from petitioner, the latter offered the sum of P2,000.00 only.

On March 16, 2000, respondent filed a Complaint for illegal dismissal against petitioner before the National Labor Relations Commission (NLRC), docketed as NLRC OFW Case No. (L) 00-03-0507-00.[9]

In its Position Paper, petitioner denied that respondent was illegally dismissed. It alleged that: respondent admitted that he could not perform his task with Al Yamama; instead of being dismissed, respondent was allowed to apply with other companies; unfortunately, he failed the trade test and was never accepted; respondent voluntarily asked for the termination of his employment and for his immediate repatriation to the Philippines in a document he signed in the presence of Assistant Labor Representative Carlos O. Sta. Ana; from said statement of respondent, there can be no valid reason to charge petitioner for illegal dismissal; respondent's termination from his employment was due to his inefficiency which is a just cause for his dismissal; and respondent's employer did not initiate any action to terminate his services but allowed him to apply with other companies but he did not qualify.[10]

On August 16, 2000, Labor Arbiter Melquiades Sol D. Del Rosario rendered a Decision,[11] the dispositive portion of which reads:

> CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered dismissing the complaint for lack of merit.
>
> Respondents, in solidum are however, ordered to pay complainant's one half month salary in the sum of US$185.00 or its peso equivalent.
>
> SO ORDERED.[12]

The Labor Arbiter held that there was no illegal dismissal; respondent was ill-equipped to work as an Auto Electrician for American cars, per his revelation and admission, since he had only worked on Japanese model cars in his previous employment at Toyota Pasong Tamo, Inc.; since he was not equal to the challenge of the work, respondent himself asked to be repatriated, without any complaint against his foreign employer or agency.

The Labor Arbiter, however, ordered petitioner to pay respondent US$185.00, or its peso equivalent, for the 15-day period (January 16 to 30, 2000) when he worked with Al Yamama.

Dissatisfied, respondent appealed to the NLRC, docketed as NLRC OFW Case No.

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L-03-0507-2000.[13] On June 25, 2001, the NLRC rendered a Decision[14] affirming the findings of the Labor Arbiter.

On July 9, 2001, respondent filed a Motion for Reconsideration[15] but it was denied by the NLRC in a Resolution dated July 17, 2001.[16]

Respondent then filed a Petition for Certiorari with the the CA.[17] On September 12, 2002, the CA rendered herein assailed Decision,[18] the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, the petition is partially GRANTED and the assailed Decision dated June 25, 2001 issued by public respondent National Labor Relations Commission (NLRC) as well as the Resolution dated July 17, 2001 in NLRC CA 026624-00 are hereby MODIFIED by ordering private respondents to pay petitioner separation pay equivalent to one (1) month pay for every year of service, his unpaid salary, and his proportionate 13[th] month pay and, in addition, full backwages from the time his employment was terminated on January 30, 2002 until the expiration of his two-year contract of employment when the decision herein becomes final.
>
> SO ORDERED.[19]

While the CA held that there was just cause to effect respondent's dismissal, it found that the dismissal was ineffectual, since it did not comply with the due process requirements. It held petitioner liable for backwages from the time respondent was terminated until it is determined that said termination is for just cause, in accordance with Serrano v. National Labor Relations Commission.[20]

Petitioner filed a Motion for Reconsideration[21] but it was denied by the CA in a Resolution[22] dated January 16, 2003.

The sole issue for resolution in the present petition is: whether respondent was accorded procedural due process before his separation from work.[23]

The answer is in the negative.

In dismissing an employee, the employer has the burden of proving that the dismissed worker has been served two notices: (1) the first to inform the employee of the particular acts or omissions for which the employer seeks his dismissal; and (2) the second to inform the employee of his employer's decision to terminate him.[24] The first notice must state that the employer seeks dismissal for the act or omission charged against the employee, otherwise, the notice does not comply with the rules.[25]

In Maquiling v. Philippine Tuberculosis Society, Inc.,[26]the Court held that the first notice must inform the employee outright that an investigation will be conducted on the charges specified in such notice which, if proven, will result in the employee's dismissal. The Court explained the rationale for this rule, thus:

> This notice will afford the employee an opportunity to avail all defenses and exhaust all remedies to refute the allegations hurled against him for what is at stake is his very life and limb his employment. Otherwise, the employee may just disregard the notice as a warning without any disastrous consequence to be anticipated. Absent such statement, the first notice falls short of the requirement of due process. One's work is everything, thus, it is not too exacting to impose this strict requirement on the part of the employer before the dismissal process be validly effected. This is in consonance with the rule that all doubts in the implementation and interpretation of the provisions of the Labor Code, including its implementing rules and regulations, shall be resolved in favor of labor.[27]

In the present case, petitioner argues that the purpose of the written notice requirement was achieved when respondent issued the three statements where he was given the chance to air his side before his termination.

The Court disagrees.

Al Yamama failed to satisfy the two-notice requirement. Without prior notice or explanation, Al Yamama took respondent's passport and simply brought him to petitioner's foreign principal, Orbit, and told the latter that respondent did not know his job as electrician. Respondent heard his employer's complaint against him at that instance only.

From these facts, it is clear that respondent's dismissal was effected without the notice required by law. Article 277 of the Labor Code explicitly provides:

> ART. 277. Miscellaneous provisions.
>
> x x x (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. x x x

Section 2, Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code, provides:

> Section 2. Standards of due process: requirements of notice. - In all cases of termination of employment, the following standards of due process shall be substantially observed:
>
> I. For termination of employment based on just causes as defined in Article 282 of the Code:
>
> (a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;
>
> (b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and
>
> (c) A written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.
>
> x x x x

The Serrano doctrine[28] which awarded full backwages in "ineffectual dismissal cases" where an employee dismissed for cause was denied due process, which was applied by the CA, has been abandoned by the Court's ruling in Agabon v. National Labor Relations Commission.[29] In that case, the Court held that if the dismissal was for a cause, the lack of statutory due process should not nullify the dismissal, or render it illegal or ineffectual. However, the employer's violation of the employee's right to statutory due process warrants the payment of indemnity[30]in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the Court, taking into account the relevant circumstances.[31]The Court ruled in said Agabon case that it was abandoning the Serrano doctrine in this wise:

> After carefully analyzing the consequences of the divergent doctrines in the law on employment termination, we believe that in cases involving dismissals for cause but without observance of the twin requirements of notice and hearing, the better rule is to abandon the Serrano doctrine and to follow Wenphil by holding that the dismissal was for just cause but imposing sanctions on the employer. Such sanctions, however, must be stiffer than that imposed in Wenphil. By doing so, this Court would be able to achieve a fair result by dispensing justice not just to employees, but to employers as well.[32]

Considering the foregoing, the Court deems the amount of P30,000.00 as sufficient nominal damages, pursuant to prevailing jurisprudence,[33] to vindicate or recognize respondent's right to procedural due process which was violated by his employer, Al Yamama.

WHEREFORE, the present petition is PARTLY GRANTED. The Decision dated September 12, 2002 and the Resolution dated January 16, 2003 of the Court of Appeals in CA-G.R. SP No. 67264 are AFFIRMED with MODIFICATION in that petitioner Magro Placement and General Services is ORDERED to pay respondent Cresenciano E. Hernandez the amount of P30,000.00 as nominal damages for failure to comply fully with the notice requirement as part of due process, in addition to payment of respondent's one half month salary in the sum of US$185.00 or its peso equivalent. No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago,(Chairperson), Chico-Nazario, and Nachura, JJ., concur.

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[1]Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Regalado E. Maambong, CA rollo, p. 147.

[2] Id. at 205.

[3] Id. at 36.

[4]Id. at 35.

[5] Id. at 38.

[6] Id. at 52.

[7]Id. at 53.

[8] Id. at 54.

[9]Id. at 40.

[10] Id. at 44.

[11]Id. at 27.

[12] Id. at 34.

[13] Id. at 59 (also NLRC OFW Case No. (L) 00-03-0507-00 in some parts of the record).

[14] Penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul T. Aquino and Angelita A. Gacutan, id. at 18.

[15] Id. at 91.

[16]Id. at 25.

[17]Id. at 2.

[18] Id. at 147.

[19]Id. at 157.

[20] 387 Phil. 345, 356 (2000).

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[21] CA rollo, p. 177.

[22] Id. at 205.

[23] Rollo, p. 218.

[24]Challenge Socks Corporation v. Court of Appeals, G.R. No. 165268, November 8, 2005, 474 SCRA 356, 363-364; Manly Express, Inc. v. Payong, Jr., G.R. No. 167462, October 25, 2005, 474 SCRA 323, 330.

[25] Manly Express, Inc. v. Payong, Jr., id.; Electro System Industries Corporation v. National Labor Relations Commission, G.R. No. 165282, October 5, 2005, 472 SCRA 199, 203; Tan v. National Labor Relations Commission, 359 Phil. 499, 516 (1998).

[26]G.R. No. 143384, February 4, 2005, 450 SCRA 465.

[27]Id. at 477.

[28] Supra note 20.

[29] G.R. No. 158693, November 17, 2004, 442 SCRA 573, 610-611.

[30] See Garcia v. National Labor Relations Commission, 327 Phil. 648, 652 (1996).

[31] Agabon v. National Labor Relations Commission, supra note 29, at 617.

[32]Id. at 613-614.

[33]Philemploy Services and Resources, Inc. v. Rodriguez, G.R. No. 152616, March 31, 2006, 486 SCRA 302, 318; Durban Apartments Corporation v. Catacutan, G.R. No. 167136, December 14, 2005, 477 SCRA 801, 811, Amadeo Fishing Corporation v. Nierra, G.R. No. 163099, October 4, 2005, 472 SCRA 13, 35; Central Luzon Conference Corporation of Seventh-Day Adventist Church, Inc. v. Court of Appeals, G.R. No. 161976, August 12, 2005, 466 SCRA 711, 713; Caingat v. National Labor Relations Commission, G.R. No. 154308, March 10, 2005, 453 SCRA 142, 155.

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