

UNIVERSAL STAFFING SERVICES, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND GRACE M. MORALES, RESPONDENTS.

G.R. No. 177576. July 21, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

At bar is a petition for review on certiorari under Rule 45 of the Rules of Court filed by Universal Staffing Services, Inc. challenging the February 12, 2007 Decision[1] and the May 3, 2007 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 93352.

The facts.

Respondent Grace M. Morales (Morales) applied for and was hired as receptionist by petitioner Universal Staffing Services, Inc. (USSI) in behalf of its principal Jin Xiang International Labour Supply of United Arab Emirates (U.A.E.). The contract duly approved by the Philippine Overseas Employment Administration (POEA), provided for an employment term of two (2) years with a monthly salary of Dhs1,100.00.[3]

On February 2, 2002, Morales left for Abu Dhabi, U.A.E. and upon arrival, worked as receptionist at Al Sandos Suites (Al Sandos). Ten (10) months later, or on December 13, 2002, Morales' employment was terminated allegedly due to her poor work performance. Morales received Dhs1,300.00 as full and final settlement of all her claims on January 1, 2003, and was repatriated on January 7, 2003.

Claiming that she was illegally terminated, Morales filed a complaint[4] for illegal dismissal and non-payment of overtime and vacation pay against USSI and Al Sandos Hotel Management with the Labor Arbiter, docketed as OFW Case No. 03-04-0973-00.

Traversing the complaint, USSI asserted that Morales was dismissed for just cause and with due process. It averred that Morales' performance as receptionist was unsatisfactory, and that despite the chance given her, Morales' job performance did not improve; thus, Al Sandos was prompted to pre-terminate Morales' employment contract upon payment of all the benefits due her. USSI prayed for the dismissal of the complaint.

On April 2, 2004, the Labor Arbiter rendered a Decision,[5] viz.:

[W]e are not convinced that [Morales] was illegally dismissed.

Firstly, [Morales] was informed that she is being charged with poor performance and grave misconduct for leaking passport copies of guests to competitors thereby greatly prejudicing the profitability of the operation of the hotel which is here (sic) foreign employer. While the charge of leaking confidential information to competitors has not been established clearly, [Morales'] foreign employer should be afforded a leeway to determine what acts as (sic) detrimental to the sound operation of its business. To substantiate our judgment to the sound discretion of the employer would be a transgression that the government should allow a business to freely operate on its own in consonance with a domestic free enterprise. Besides, [Al Sandos] has no motive or

malice to impute upon [Morales] the grievous act of revealing confidential information if it did not have sufficient basis to support its suspicion. If indeed [Morales] has served her foreign employer faithfully and with utmost fidelity, her employer would [not have] decided to terminate her services for grave misconduct and poor performance because by doing so, it would entail additional expenses in looking for a replacement of [Morales].

Secondly, [the] letter of termination (Annex C), certification letter of [Morales'] termination dated July 29, 2003 (Annex B), Final Settlement (Annex D), and exit clearance (Annex E) were all authenticated and noted by the Labour Attaché of the Philippine Embassy in Dubai, U.A.E. In other words, all the acts of [Al Sandos] were transparent and made known to the Labour Attaché who has he (sic) right to object to the dismissal if it were (sic) attended by malice or fraud.

Finally, the Final Settlement and Quitclaim and Release signed and executed by [Morales] should be given great weight and probative value in the absence of showing that the same was executed through threat and intimidation. While [Morales] claims that the execution thereof was attended by duress, [Morales] failed to specify the acts constitutive of duress.

With respect to the second issue, the same is laid to rest with [Morales] executing a Final Settlement (Annex D) and Bank Payment Voucher in the sum of 1,300 dinars to answer for the monetary claims of [Morales]. It is worthy to note that the aforementioned documents were authenticated and duly noted by the Labour Attache. If, indeed, there was deficiency, the same should have been received under protest or that deficiency was made known to the Labour Attache who can demand from the foreign employer that then deficiency should be paid.

Considering that the complaint for illegal dismissal did not prosper, the claim for moral and exemplary damages must perforce fail.[6]

On appeal by Morales, the National Labor Relations Commission (NLRC) reversed the Labor Arbiter. The NLRC found that no substantial evidence supports a valid dismissal. Accordingly, it ordered USSI to pay Morales Dhs3,300.00, or its peso equivalent, for the unexpired portion of her contract, pursuant to Section 10 of Republic Act (R.A.) No. 8042, or the Migrant Workers and Overseas Filipinos Act of 1995. The NLRC, however, affirmed the denial of Morales' claim for overtime pay and holiday pay for lack of basis.

Thus, the NLRC disposed:

WHEREFORE, the decision appealed from is hereby MODIFIED.

The finding that there was no illegal dismissal is hereby REVERSED. Consequently, [USSI] is hereby ordered to immediately pay [Morales] the Philippine peso equivalent at the time of actual payment of DHS3,300 representing her salaries for three (3) months.

The finding that overtime pay and holiday pay are not recoverable is hereby AFFIRMED.

SO ORDERED.[7]

Only USSI went up to the Court of Appeals via certiorari. On February 12, 2007, the CA rendered a Decision[8] modifying the resolutions of the NLRC. The CA sustained the NLRC's finding of unlawful termination, but modified, by increasing, the awards granted to Morales. The dispositive portion of the Decision reads:

WHEREFORE, the foregoing considered, the assailed Decision is MODIFIED in that [USSI] is ordered to pay [Morales] her salaries equivalent to six (6) months, overtime pay and holiday pay as well as ten [percent] (10%) of the total monetary award as attorney's fees. The rest of the Decision is AFFIRMED.

Let the records of this case be REMANDED to the Labor Arbiter for the computation of the said award.

SO ORDERED.[9]

USSI filed a motion for reconsideration, but the CA denied it on May 3, 2007.[10]

Hence, this appeal by USSI positing these:

- THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION BY RULING THAT PRIVATE RESPONDENT WAS ILLEGALLY DISMISSED AND BY AWARDING HER SALARIES EQUIVALENT TO SIX (6) MONTHS SALARY FOR THE UNEXPIRED PORTION OF HER CONTRACT, OVERTIME PAY, AND HOLIDAY PAY AND ATTORNEY'S FEE DESPITE EVIDENCE AND RULING TO THE CONTRARY ADDUCED AND ADJUDICATED BEFORE THE LABOR ARBITER AND NATIONAL LABOR RELATIONS COMMISSION.

- WITH DUE RESPECT, REVERSIBLE ERROR WAS COMMITTED BY THE HONORABLE COURT OF APPEALS WITH RESPECT TO THE AWARD OF SALARIES TO PRIVATE RESPONDENT CONTRARY TO THE PROVISIONS OF REPUBLIC ACT NO. 8042 OTHERWISE KNOWN AS MIGRANT WORKERS ACT. THUS, A QUESTION OF LAW IS INVOLVED.[11]

USSI insists that Morales' dismissal was based on a valid and legal ground. The Labor Arbiter lent credence to USSI's posture and dismissed Morales' complaint, but the NLRC and the CA reversed the Arbiter's findings. Before us, USSI contends that the CA committed grave abuse of discretion and serious reversible error when it adhered to the patently erroneous finding of illegal dismissal by the NLRC.

There is no denying that it is within the NLRC's competence, as an appellate administrative agency reviewing decisions of Labor Arbiters, to disagree with and set aside the latter's findings. But it stands to reason that the NLRC should state an acceptable cause therefor; otherwise it would be a whimsical, capricious, oppressive, illogical, and unreasonable exercise of quasi-judicial prerogative. Thus, the key issue for our resolution is whether the reversal by the NLRC of the Labor Arbiter's decision, as well as the affirmance by the CA of the NLRC finding, was in order.

Morales was dismissed for her alleged poor performance. As a general concept, "poor performance" is equivalent to inefficiency and incompetence in the performance of official duties. Under Article 282 of the Labor Code, an unsatisfactory rating can be a just cause for dismissal only if it amounts to gross and habitual neglect of duties. Thus, the fact that an employee's performance is found to be poor or unsatisfactory does not necessarily mean that the employee is grossly and habitually negligent of his duties. Gross negligence implies a want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[12]

We reviewed the records of the case and we agree with the NLRC and the CA that no substantial evidence was presented to substantiate the cause of Morales' dismissal. First, USSI failed to cite particular acts or instances that would validate its claim of Morales' poor performance. Second, no convincing proof was offered to substantiate Morales' alleged poor performance.

As the NLRC had taken pains to demonstrate:

[T]he notice of termination and the statement dated July 29, 2002 purportedly executed by Sharath B. Rai, Al Sandos Human Resource and Training Manager stating that Morales was dismissed due to her poor performance and for revealing secret information of potential clients do not constitute substantial evidence.

x x x First, the notice of termination was, apparently never served upon [Morales], since it does not bear her signature. Second, the two pieces of evidence are inconsistent. Based on the notice of termination, which bears an earlier date, [Morales] was dismissed due to poor performance. Third, there is no showing that [Morales] was dismissed on the basis of established facts and not on the basis of a mere suspicion. There is no mention of

what criteria were used in evaluating her performance. Fourth, and most important, the pieces of evidence in question are not sworn to, and the persons who supposedly executed them were not presented in the proceedings conducted by the Labor Arbiter. They, therefore, constitute mere hearsay evidence, which means that they have no evidentiary value.[13]

Besides, even assuming that Morales' performance was unsatisfactory, USSI failed to demonstrate that her alleged poor performance amounted to gross and habitual neglect of duty, which would justify her dismissal.

The principle echoed and reechoed in jurisprudence is that the onus of proving that the employee was dismissed for a just cause rests on the employer,[14] and the latter's failure to discharge that burden would result in a finding that the dismissal is unjustified.[15]

Furthermore, Morales was not accorded due process. Under Article 277(b)[16] of the Labor Code, the employer must send the employee who is about to be terminated, a written notice stating the cause/s for termination and must give the employee the opportunity to be heard and to defend himself. There was no showing that Al Sandos warned Morales of her alleged poor performance. Likewise, Morales was not served the first notice apprising her of the particular acts or omissions on which her dismissal was based together with the opportunity to explain her side. The only notice given to Morales was the letter[17] dated December 14, 2002 informing her that she was already terminated.

Certainly, there can be no other conclusion than that Morales was illegally dismissed and her employment contract was illegally terminated. The CA, therefore, committed no reversible error in sustaining the NLRC on this point.

With this finding, it is imperative that Morales be granted the monetary benefits due her. However, we rule that the CA erred in modifying the amounts awarded by the NLRC.

As shown by the records, Morales did not appeal from the said NLRC decision; hence, the same attained finality as to Morales. The monetary awards, as well as the denial of the holiday and overtime pay, had already been laid to rest. This is in accord with the doctrine that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision.[18]

As we explained in *SMI Fish Industries, Inc. v. National Labor Relations Commission*:[19]

It is a well-settled procedural rule in this jurisdiction, and we see no reason why it should not apply in this case, that an appellee who has not himself appealed cannot obtain from the appellate court any affirmative relief other than those granted in the decision of the court below. The appellee can only advance any argument that he may deem necessary to defeat the appellant's claim or to uphold the decision that is being disputed. He can assign errors on appeal if such is required to strengthen the views expressed by the court a quo. Such assigned errors, in turn, may be considered by the appellate court solely to maintain the appealed decision on other grounds, but not for the purpose of modifying the judgment in the appellee's favor and giving him other affirmative reliefs.

Certainly, the CA can no longer modify the awards by the NLRC. Thus, USSI can only be held liable for the payment of the monetary award granted by the NLRC, that is, the payment of Morales' three (3) months' salary.

USSI cannot take refuge in the final settlement signed by Morales on January 1, 2003 to escape liability. Generally, deeds of release, waivers, or quitclaims cannot bar employees from demanding benefits to which they are legally entitled or from contesting the legality of their dismissal, since quitclaims are looked upon with disfavor and are frowned upon as contrary to public policy. Where, however, the person making the waiver has done so voluntarily, with a full understanding thereof, and the consideration for the quitclaim is credible and

reasonable, the transaction must be recognized as a valid and binding undertaking.[20] The burden of proving that the quitclaim or waiver was voluntarily entered into rests on the employer.[21]

Unfortunately for USSI, it again failed to discharge this burden. Other than its barefaced assertion, no evidence was presented to establish that Morales voluntarily signed the final settlement. The mere fact that Morales was not physically coerced or intimidated does not necessarily imply that she freely and voluntarily consented to the terms of the final settlement.

We also note that the payment of Dhs1,300.00 is not a consideration for the execution of the quitclaim, but is actually the payment for Morales' salary as of December 13, 2002.[22] Thus, this final settlement purporting to be a quitclaim or waiver, cannot absolve USSI from liability arising from the employment contract.

WHEREFORE, the petition is **PARTIALLY GRANTED**. Grace M. Morales is declared illegally dismissed. Petitioner Universal Staffing Services, Inc. is ordered to pay Morales' three (3) months' salary or Dhs3,300.00, or its peso equivalent. The awards of overtime and holiday pay, as well as attorney's fees, are **DELETED**. No pronouncement as to costs.

SO ORDERED.

Quisumbing, Ynares-Santiago, Austria-Martinez, and Reyes, JJ., concur.

[*] The present petition impleaded the Court of Appeals, as respondent. However, Section 4, Rule 45 of the Revised Rules of Court provides that the petition shall not implead the lower courts and judges thereof as petitioners or respondents. Hence, the deletion of the Court of Appeals from the title.

[**] In lieu of Associate Justice Minita V. Chico-Nazario, per Special Order No. 508 dated June 25, 2008.

[1] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Vicente Q. Roxas and Ramon R. Garcia, concurring; rollo, pp. 158-169.

[2] Id. at 185-187.

[3] Rollo, pp. 31-32.

[4] Id. at 33.

[5] Id. at 57-62.

[6] Id. at 60-62.

[7] Id. at 95.

[8] Id. at 158-170.

[9] Id. at 169.

[10] Id. at 185-187.

[11] Id. at 17.

[12] *Eastern Overseas Employment Center, Inc. v. Bea*, G.R. No. 143023, November 29, 2005, 476 SCRA 384, 393-394.

[13] Rollo, p. 94.

[14] See *De Jesus v. National Labor Relations Commission*, G.R. No. 151158, August 17, 2007, 530 SCRA 489, 498.

[15] *Eastern Overseas Employment Center v. Bea*, *supra* note 11, at 394.

[16] ART. 277. MISCELLANEOUS PROVISIONS:

x x x x

Subject to the constitutional right of the workers to security of tenure and their right to be protected against dismissal except for a just and valid 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 defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to the 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.

[17] *Rollo*, p. 51.

[18] *Filflex Industrial & Manufacturing Corporation v. National Labor Relations Commission*, G.R. No. 115395, February 12, 1998, 286 SCRA 245, 256.

[19] G.R. No. 96952-56, September 2, 1992, 213 SCRA 444, 449.

[20] *Heirs of the Late Panfilo V. Pajarillo v. Court of Appeals*, G.R. Nos. 155056-57, October 19, 2007, 137 SCRA 96, 408 Phil.

[21] *EMCO Plywood Corporation v. Abelgas*, G. R. No. 148532, April 14, 2001, 427 SCRA 496, 514.

[22] *Rollo*, p. 53.

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