

**GLOBAL RESOURCE FOR OUTSOURCED WORKERS (GROW), INC.
AND MS RETAIL KSC/MS RETAIL CENTRAL MARKETING CO. AND
MR. EUSEBIO H. TANCO, PETITIONERS, VS. ABRAHAM C. VELASCO
AND NANETTE T...**

G.R. No. 196883. August 15, 2012

Ponente: PERLAS-BERNABE, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-196883/>

PERLAS-BERNABE, J.:

The power to dismiss an employee is a recognized prerogative inherent in the employer's right to freely manage and regulate his business.[1] However, this power is never unbridled and the exercise thereof should unfailingly comply with both substantive and procedural requirements of the law.

This is an appeal under Rule 45 of the Revised Rules of Court which seeks to reverse the January 31, 2011 Decision[2] and May 13, 2011 Resolution[3] of the Court of Appeals holding the petitioners liable for overtime pay, nominal damages and attorney's fees.

The Facts

Petitioner Global Resource for Outsourced Workers (GROW), Inc. is a domestic corporation engaged in the placement of workers for overseas deployment, with petitioner Eusebio Tanco as its President.[4]

Sometime in January 2008, respondents Abraham Velasco and Nanette Velasco (collectively respondents) -were hired by petitioners MS Retail KSC/MS Retail Central Marketing Co. (MS Retail),[5] through GROW, as Circus Performer and Circus Performer-Assistant, respectively, at MS Retail's Store located in Kuwait.

Based on their employment contracts, respondents Abraham and Nanette were entitled to monthly salaries of KD 650 or USD 2,303.92 and KD 150 or USD 531.87, respectively,[6] under the following work schedule:[7]

No. of shows per day: 4 shows/day

No. of work days per week: 6 days/wk.

No. of work hours per month-: 48 hrs/mo.

It was also stipulated that MS Retail may determine the hours of work assigned to respondents "from time to time in accordance with the general and particular requirements of the operation" of MS Retail.[8] Moreover, when respondents are not actually performing shows, they may be asked to carry out duties as the business may require.[9]

Respondents arrived in Kuwait on February 22, 2008 and were made to perform shows after a brief orientation. In a meeting with the store manager of MS Retail, they brought up their work hours and show schedules as provided for in their employment contract. They were, however, informed that the work hours of "48 hrs/mo" as appearing in the contract, was a typographical error as the correct number of their working hours was 48 hours per week, to which they complied.

On August 26, 2008, respondents went to Thailand on approved vacation leave. On September 2, 2008, respondent Abraham sent an electronic mail (email) to Mr. Joseph San Juan, the Human Resources Coordinator of MS Retail, advising him of their inability to return for work on September 3, 2008 because of the political protests in Thailand and that they had rebooked their return flight to Kuwait on September 10, 2008.[10] However, contrary to their representation, the respondents proceeded to the Philippines on September 9, 2008.[11]

On September 17, 2008, Mr. San Juan emailed respondents asking for their definite date of return to Kuwait and warning them that if they do not immediately return to work before the end of the month, they will be dismissed from employment for cause.[12]

The respondents ignored the said email. Thus, on September 23, 2008, MS Retail terminated their employment through email, which reads:[13]

Please be informed that we are terminating your employment contract with MS Retail effective today, 23rd September 2008. Due to Kuwait Private Labour Law Article 55. "The employer has the right to terminate the labourer without notice and indemnity in the following cases:

c) If he has been absent from duty for more that [sic] seven consecutive days without any legal reason."

Therefore, company decided to terminate your employment contract and blacklist both of you in entering Kuwait.

Consider this email as your official termination letter.

Unknown to MS Retail, the respondents had already filed a labor case for constructive dismissal, breach of contract, and payment of the remaining portion of their contracts, damages and attorney's fees on September 15, 2008.[14] They claimed that, contrary to the terms of their employment contracts, they were made to work for at least eight (8) hours a day or 48 hours per week, without overtime pay. Moreover, they were assigned work not related to their task as circus performers. Hence, they were deemed to have been constructively dismissed, warranting the payment of the unexpired portion of their contract, damages and attorney's fees.[15]

Labor Arbiter's Ruling

The Labor Arbiter (LA) granted respondents' claim in her April 8, 2009 Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering GLOBAL RESOURCES FOR OUTSOURCED WORKERS AND MS RETAIL KSC jointly and severally liable to pay complainants Abraham C. Velasco and Nannette T. Velasco their salaries for the unexpired portion of their employment contract for six (6) months:

1.) Abraham Velasco

(US\$ 2,303.92 x 6 mos.) = US\$ 13,823.52

2.) Nannette Velasco

(US\$.531.87 x 6 mos.) = US\$43,191.22[*]

TOTAL US\$57,014.74[**]

3.) Ten (10%) percent Atty.'s fees- US\$ 5,701.47[***]

All other claims are dismissed for want of basis.

SO ORDERED.[16]

The LA found respondents to have been constructively dismissed from service without just cause, debunking petitioners' defense that respondents abandoned their work as-shown by the immediate filing of the complaint for illegal dismissal.[17]

Respondents' claim for overtime pay was, however, denied for the reason that indeed a typographical error was committed in providing the number of working hours as 48 hours per month instead of 48 hours per week. The LA made the observation that "it is a known practice that employees work for a regular eight (8) hours a day and 48 hours for 6 days work." [18]

Only petitioners filed an appeal before the National Labor Relations Commission (NLRC). The respondents did not appeal the denial of their claim for overtime pay.

Ruling of NLRC

On October 30, 2009, the NLRC Second Division rendered its Decision[19] dismissing the complaint for constructive/illegal dismissal on the ground of abandonment.[20]

The NLRC found no basis to sustain, the charge of constructive dismissal premised on petitioners' act of imposing a greater number of working hours different from that stipulated in the employment contract. It affirmed the standard practice of other employees working as party entertainers in the store of MS Retail of rendering an average of eight (8) hours a day or forty-eight (48) hours work for one (1) week, as well as the LA's finding of typographical error in the working hours provided for under respondents' contract.[21]

In contrast to the findings of the LA, the NLRC gave credence to petitioners' claim of abandonment, holding that the respondents' "continuing absence from work without any justifiable reason, notwithstanding notice with warning for them to return to work, coupled with their actual flight back to Philippines, indicated an animus to no longer go back to their work in Kuwait." [22] Respondents' Motion for Reconsideration[23] was denied in the NLRC Resolution dated January 25, 2010, prompting the filing of a petition for certiorari before the Court of Appeals.

Ruling of the Court of Appeals

On January 31, 2011, the CA rendered the assailed Decision[24] holding that while respondents were validly terminated, the petitioners failed to comply with the twin-notice rule, to wit: first informing the respondents of the charge and affording them an opportunity to be heard, then subsequently advising them of their termination. Petitioners were then held liable for nominal damages and attorney's fees. Finally, the CA found respondents entitled to overtime pay for work rendered in excess of 48 hours per month.

The dispositive portion of the assailed Decision reads:

WHEREFORE, premises considered, the Petition for Certiorari is hereby PARTLY GRANTED. Accordingly, the assailed Decision dated October 30, 2009 and Resolution January 25, 2010 of the NLRC are AFFIRMED with MODIFICATION. MS Retail is hereby ordered to pay petitioners the following:

1. PhP 30,000.00 each for non-compliance with statutory due process; and
2. Overtime pay for work rendered in excess of the forty eight (48) hours work per month.

The case is hereby REMANDED to the Labor Arbiter for proper computation of the money claims.

SO ORDERED.

Issues Presented Before the Court

In the present petition for review, the validity of the dismissal of the respondents was not assailed. The only issues raised are:

- (1) Whether or not the CA erred in granting the respondents overtime pay considering that its denial by the LA was not appealed by the respondents.
- (2) Whether or not the CA erred in awarding nominal damages and attorney's fees to the respondents.

The Court's Ruling

The petition is partly meritorious.

The petitioners contend that the failure of the respondents to appeal the ruling of the LA denying the latter's claim for overtime pay rendered the same final and binding upon them. The contention lacks merit.

In the case of *Bahia Shipping Services, Inc. v. Chua*,^[25] the Court cited an exception to the rule that a party who has not appealed cannot obtain any affirmative relief other than the one granted in the appealed decision. It stated:

Indeed, a party who has failed to appeal from a judgment is deemed to have acquiesced to it and can no longer obtain from the appellate court any affirmative relief other than what was already granted under said judgment. However, when strict adherence to such technical rule will impair a substantive right, such as that of an illegally dismissed employee to monetary compensation as provided by law, then equity dictates that the Court set aside the rule to pave the way for a full and just adjudication of the case.

In the present case, although respondents were found to have been dismissed for cause, depriving them of overtime pay, if rightly due to them, would still amount to an impairment of substantive rights. Thus, following the dictates of equity and as an exception to the general rule, the Court finds it proper for the CA to have passed upon the matter of overtime pay, despite the fact that respondents did not appeal from the LA Decision denying the same claim.

Be that as it may, a perusal of the records disclosed a dearth of evidence to support an award of overtime pay.

As a general rule, the factual findings of the CA when supported by substantial evidence on record are final and conclusive and may not be reviewed on appeal.^[26] This is, however, subject to several exceptions, one of which is when there is a conflict between the factual findings of the CA and the NLRC, as in this case, warranting review by the Court.^[27]

Petitioners argue that the "48 hours per month" work schedule stipulated in the employment contract is a mere typographical error, the true intention of the parties being for the respondents to render work of at least 48 hours per week.

The Court agrees with the petitioners.

Obligations arising from contracts, like an employment contract, have the force of law between the contracting parties and should be complied with in good faith.^[28] When the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of its stipulations governs.^[29] However, when the contract is vague and ambiguous, as in the case at bar, it is the Court's duty to determine the real intention of the contracting parties considering the contemporaneous and subsequent acts of the latter.^[30]

The employment contracts of the respondents provide that their work schedule shall be as follows:^[31]

No. of shows per day: 4 shows/day

No. of work days per week: 6 days/wk.

No. of work hours per month: 48 hrs/mo.

The respondents agreed to render four (4) shows per day with an estimated performance time of thirty (30) minutes. However, it should also be noted that respondents were given time to prepare before each show and time to rest after every performance; thus, respondents would normally consume two (2) hours for each show.[32] If respondents were required to render at least four (4) shows a day, they necessarily had to work for at least eight (8) hours a day. Since the petitioners employed a six-day workweek, it is an inevitable conclusion that respondents were required to work for at least 48 hours per week.

The Court also notes that the respondents were properly apprised of the error in their employment contracts. Despite ample opportunity -- more than half a year -- to air out their misgivings on the matter and ask their employer for overtime pay, if they really believed that the 48 hours work per month was not erroneous, respondents did nothing. Respondents did not complain or assail the implementation of their true number of work hours. Instead, they proceeded to carry out their work under the correct 48-hour week schedule for more than half of the entire duration of their employment contract, without any protest. It was only before the LA that respondents raised their complaint on the matter for the first time. These circumstances indicate that respondents' protest was a mere afterthought. As such, it cannot sway the Court to accept that work for 48 hours per month was the true intention of the parties.

An evaluation of the terms of the employment contracts and the acts of the parties indeed reveal that their true intention was for the respondents to perform work of at least forty eight (48) hours per week, and not 48 hours per month.

It should be emphasized that in case of conflict between the text of a contract and the intent of the parties, it is the latter that prevails,[33] for intention is the soul of a contract, not its wording which is prone to mistakes, inadequacies or ambiguities.[34] To hold otherwise would give life, validity, and precedence to mere typographical errors and defeat the very purpose of agreements.[35]

Accordingly, the CA's award for overtime pay must necessarily be recalled.

On the second issue, it is unassailed that the respondents abandoned their work when they failed without valid reason to resume their duties after their leave of absence expired on September 3, 2008. Thus, the CA correctly ruled that the termination of the respondents' employment on September 23, 2008 was with just cause. Nonetheless, the Court cannot absolve petitioners from liability.

Book V, Rule XIV, of the Omnibus Rules Implementing the Labor Code outlines the procedure for termination of employment, to wit:

Section 1. Security of tenure and due process. — No worker shall be dismissed except for a just or authorized cause provided by law and after due process.

Section 2. Notice of Dismissal. — Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omissions constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address.

xxx

Section 5. Answer and hearing. — The worker may answer the allegations stated against him in the notice of dismissal within a reasonable period from receipt of such notice. The employer shall afford the worker ample opportunity to be heard and to defend himself with the assistance of his representatives, if he so desires.

Section 6. Decision to dismiss. — The employer shall immediately notify a worker in writing of a decision to dismiss him stating clearly the reasons therefor.

To be totally free from liability, the employer must not only show sufficient ground for the termination of employment but it must also comply with procedural due process by giving the employees sought to be dismissed two notices: 1) notice of the intention to dismiss, indicating therein the acts or omissions complained of, coupled with an opportunity for the employees to answer and rebut the charges against them; and 2) notice of the decision to dismiss.[36] MS Retail failed in this respect. While it notified respondents of their dismissal in its letter dated September 23, 2008, it failed to furnish them with a written notice of the charges thus, denying them a reasonable opportunity to explain their side.

The petitioners' failure to observe due process when it terminated respondents' employment for just cause did not invalidate the dismissal but rendered petitioners liable for nominal damages.[37] Under the Civil Code, nominal damages is adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.[38] The amount thereof is addressed to the sound discretion of the court. Considering the prevailing circumstances in the case at bar, the Court deems it proper to award to each of the respondents PhP30,000.00 as nominal damages.[39]

With respect to the attorney's fees, while the CA, in the body of its Decision found respondents entitled to such award, it omitted to include the same in the dispositive portion of its Decision. Such award must, however, be upheld, not only because labor cases take much time to litigate, but also because these require special dedication and expertise on the part of the pro-worker's counsel.[40] Therefore, it is just to award attorney's fees of PhP30,000.00 to each of the respondents.

Finally, a more complete and just resolution of the present case calls for the determination of the nature of the liability of all the petitioners. The Court notes that the CA ordered only MS Retail to pay respondents. However, Section 10 of Republic Act 8042,[41] as amended by Republic Act 10022,[42] provides for the solidary liability of the principal and the recruitment agency, to wit:

SEC. 10. Money Claims. - Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar, days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damage. Consistent with this mandate, the NLRC shall endeavor to update and keep abreast with the developments in the global services industry.

The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarity liable with the corporation or partnership for the aforesaid claims and damages. (Emphasis supplied)

In view of the foregoing, the liability for the monetary awards granted to respondents shall be jointly and severally borne by all the petitioners.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The assailed Decision and Resolution of the Court of Appeals are hereby **MODIFIED** by **DELETING** the award for overtime pay and **ORDERING** petitioners to

jointly and severally pay each of the respondents PhP30,000.00 as nominal damages and PhP30,000.00 as attorney's fees.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Abad, and Mendoza, JJ., concur.

[1] Ancheta v. Destiny Financial Plans, Inc., G.R. No. 179702, February 16, 2010, 612 SCRA 648, 663.

[2] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Ramon M. Bato, Jr. and Florita S. Macalino, concurring, rollo. pp. 52-61.

[3] Id. at 62-63.

[4] Id. at 14.

[5] Id. at 195.

[6] Id. at 53.

[7] Id. at 89-90.

[8] Id. at 79-80, 84-85.

[9] Id. at 89-90.

[10] Id. at 168. Respondent Abraham's email dated September 2, 2008 is reproduced verbatim below:

"greetings po sir joey, si abe po ito, pasensya na po di pa po kami makakabalik this sept 2 kasi po nagkaron pong problem dito sa bangkok. sobrang gulo po ngayon dito. nakakaron po kasi ng riot at rally everyday kadalasan po walang pasok ang schools at office dahil nga po magulo dahil meron po silang gusting pababain na opisyal sa government, pde nyo yun check sa news sa internet, nagparebook na po kami ng ticket kaya lang ang available flight lang po ng pinakamaaga is sep 10. nag email po ako s& inyo last sunday kaya lang bumalik po sakin kasi mali po ung email address na nasa akin, naianong tanong na lang po ako kaya po ngayon ko lang nacheck yung correct email nyo. pasensya na po xdi. salamai po. "

[11] Id at 54.

[12] Id. at 169; Mr. San Juan's electronic email dated September 17, 2008 states:

"When are you coming back to Kuwait? This extension is not acceptable anymore, all your extended days will be considered as leave without pay and this is our final warning to both of you. If you don't come back to Kuwait before the end of this month, we have no option but to terminate your employment contract and immediately blacklist both of you in Kuwait plus other GCC country. Barou are refunding some money to customers because some of the party they selected involves your show in the package.

Please let us know when you coming back to Kuwait. We need a confirmed date. "

[13] Id. at 170.

[14] Id. at 54.

[15] Id. at 197.

[*] Should be US\$3,191.22.

[**] Should be US\$17,014.74.

[***] Should be US\$1,701.47.

[16] Id. at 204.

[17] Id. at 200.

[18] Id at 202.

[19] Id. at 225-240.

[20] Id. at 239. The dispositive portion of the Decision reads:

"IN LIGHT OF THE FOREGOING we modify the assailed Decision. We affirm that part denying complainants' claims for overtime and damages. However, we REVERSE the finding below of illegal dismissal as well as the award of the salaries of the complainants for the unexpired portion of their contract, including the award of attorney's fees, for being without lawful basis. Accordingly, the complaint below for constructive dismissal/illegal dismissal and money claims is hereby DISMISSED for lack of merit.

SO ORDERED."

[21] Id. at 236-237.

[22] Id. at 239.

[23] Id. at 243-251.

[24] Id. at 52-63.

[25] G.R. No. 162195, April 8, 2008, 550 SCRA 600, 609.

[26] Wensha Spa Center, Inc. v. Yung, GR. No. 185122, August 16, 2010, 628 SCRA 311, 320.

[27] Id.; Sps. Estonina v. Court of Appeals, G.R. No. 111547, January 27, 1997, 266 SCRA 627, 635-636.

[28] Civil Code, Art. 1159.

[29] Civil Code, Art. 1370.

[30] Civil Code, Art. 1371.

[31] Rollo, pp. 89-90.

[32] Id. at 377-378.

[33] Id.

[34] Marquet v. Espejo, G.R. No. 168387, August 25, 2010, 629 SCRA 117, 140, citing Kilosbayan, Inc. v. Guingona, Jr., GR. No. 113375, May 5, 1994, 232 SCRA 110, 143.

[35] Id.

[36] MGG Marine Services, Inc. v. NLRC, G.R. No. 114313, July 29, 1996, 259 SCRA 664, 677.

[37] Agabon v. NLRC, G.R. No. 158693, November 17, 2004, 442 SCRA 573, 617; JAKA Food Processing Corp. v. Pacot, G.R. No. 15372, March 28, 2005, 454 SCRA 119, 125.

[38] Civil Code, Art. 2221.

[39] See note 38.

[40] Coastal Safeway Marine Services, Inc. v. Delgado, G.R. No. 168210, June 17, 2008, 554 SCRA 590, 600.

[41] The Migrant Workers and Overseas Filipinos Act of 1995.

[42] An Act Amending Republic Act No. 8042. Otherwise Known as The Migrant Workers and Overseas Filipinos Act of 1995, as Amended, Further Improving the Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress, and for Other Purposes; it became a law on March 8, 2010 and took effect on May 9, 2010 after satisfying the publication requirement.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.