

**POLICARPIO Y. FAUSTO, PETITIONER, VS. VICENTE LEOGARDO, JR.,
AS DEPUTY MINISTER, MINISTRY OF LABOR AND EMPLOYMENT
AND MCDERMOTT DUBAI/OCEANIC CONTRACTORS, INC.,
RESPONDENTS.**

G.R. NO. 69816. April 17, 1990

Ponente: NARVASA, J.

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NARVASA, J.:

Policarpio Y. Fausto filed a complaint with the National Capital Region of the Ministry of Labor accusing McDermott Dubai/Oceanic Contractors, Inc. (hereafter simply, McDermott) of illegal termination of his employment.[1] According to Fausto:

- 1) he signed an employment contract with McDermott on October 23, 1979 undertaking to work as clerk-typist in Saudi Arabia at an agreed monthly salary of \$555.00, based on a guaranteed 48 hours of straight time and 12 hours overtime per week;
- 2) that barely 2 months after he had commenced work, he received an inter-office communication from his employer dated December 17, 1979 (a) enclosing an addendum embodying amendments to his employment contract to be effective January 1, 1980; (b) advising that the amendments were meant to “clarify how overtime payments are calculated, and increasing his salary “to about 2% in most cases based on working 10 hours per day, 6 days per week; and (c) advising that should he not wish to sign the addendum, he would “be given early contract completion on or about January 1, 1980,” the letter serving as “official 15 day notice of separation;”
- 3) that because he refused to sign the addendum, believing it would be prejudicial to him, McDermott terminated his services on January 1, 1980.[2]

Answer having been duly filed by McDermott, and evidence thereafter adduced by the parties, Regional Director Francisco L. Estrella resolved the case on the merits by Order dated September 26, 1980 finding that Fausto’s employment had indeed been illegally terminated, and sentencing McDermott “to reinstate *** (him) to his former position with full back wages to be computed at \$555.00 a month from the time his contract of employment was illegally terminated up to his actual reinstatement.”[3]

McDermott filed a motion for reconsideration, contending that the Regional Director had no jurisdiction over the case, exclusive jurisdiction over it being vested in the Bureau of Employment Services, and said Director had gravely erred in disregarding the addendum to complainant’s contract duly approved by the Overseas Employment and Development Board and which said complainant had unwarrantedly declined to sign. The motion was treated as an appeal from the Order of September 26, 1980 and was referred to and passed upon in due course by respondent Deputy Minister of Labor and Employment.

The Deputy Minister’s verdict was embodied in an Order dated January 7, 1985, promulgated “by authority of the Minister.”[4] He ruled McDermott’s contention of lack of jurisdiction of the Regional Director to be without

merit, it having appeared and participated in all proceedings and prayed for affirmative relief without at any time impugning the Director's competence and consequently thereby becoming estopped by laches from raising that issue upon receiving adverse judgment.[5] The Deputy Minister however ruled that Fausto had in fact "opted for an early contract completion when given the choice between such termination and to work under the amended contract as per the addendum required for him to sign." Said the Deputy Minister:

" *** This addendum bears approval of the Overseas Employment Development Board, the agency specifically tasked to secure the best possible terms and conditions of employment for Filipino overseas contract workers. Being so, its implementation by respondent is a matter of course which must be given sanction by this office, more so as there was no showing that complainant would be prejudiced thereby economically or otherwise. As in fact, to insulate the workers for possible negative effect in its implementation, the respondents even went on to provide salary adjustment to the workers. Thus, complainant would have no valid reason to refuse the terms and conditions of his employment had he wanted to maintain his relationship with respondent. In other words, even if we assume that the termination of the employment of complainant with the respondents as dismissal at the instance of respondents, the same was for cause by complainant's refusal to accept the addendum which respondent had all the right to implement."

Accordingly, the Deputy Minister reversed the appealed order and entered a new judgment dismissing Fausto's complaint for lack of merit.[6]

Fausto has come to this Court praying that the Deputy Minister's Order be set aside. He has not however succeeded in showing that that Order was rendered without or in excess of jurisdiction, or with grave abuse of discretion,[7] which is the only way by which this Court might properly nullify and set aside said Order.[8]

The Deputy Minister disposed of the jurisdictional issue raised before him by McDermott on the authority of what he took to be the applicable case law. It is an issue that in any event is understandably not now raised by Fausto.

The issue of the propriety of the termination of Fausto's employment was resolved on the strength of the official approval by the Overseas Employment Development Board of the addendum to Fausto's original contract, and on the absence of showing by Fausto that he "would be prejudiced thereby economically or otherwise," upon which premises the Deputy Minister concluded that Fausto had "no valid reason to refuse the terms and conditions *** (of the addendum) had he wanted to maintain his relationship with respondent (company)." The Solicitor General points out that the addendum "actually secured a 2% salary increase for petitioner" and thus "could not have impaired the obligations of his 'Employment Contract' *** since the prohibition to impair the obligation of contracts signifies unreasonable impairment only ***, and not as in this case, where petitioner's employment has been enhanced." [9]

WHEREFORE, the petition is DISMISSED, and the challenged Order of January 7, 1985 is AFFIRMED. No costs.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] This was in early 1980. In this connection, the Solicitor General observes that the case should have been filed with the OEDB (Overseas Employment Development Board), involving as it does the contract of a Filipino overseas worker who is not a seaman and, failing conciliation, the case should have been decided on the merits by the Bureau of Employment Services (Labor Code, Article 15 [8-b]), with appeal from the latter's decision to the Ministry of Labor & Employment being provided for (Rollo, p. 99).

[2] Rollo, p.23

[3] Rollo, pp. 23, 25; 5, 7

[4] Id., pp. 29-31

[5] Citing Quimpo v. de la Victoria, 46 SCRA 139; Ching v. Ramolete, 51 SCRA 13; Zulueta v. Pan American World Airways, Inc., 49 SCRA 1 (Rollo, p. 30)

[6] Rollo, p. 31

[7] Rule 65, Rules of Court

[8] Appeal therefrom to this Court under Rule 45 not being possible under the law in force at the time.

[9] Rollo, p. 96

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