

D. M. CONSUNJI, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, HON. ALCESTIS A. MANGAHAS AND APOLINARIO AGBAYANI, RESPONDENTS.

G.R. No. 71459. July 30, 1986

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review seeking to set aside the June 10, 1985 decision of the respondent National Labor Relations Commission which affirmed the award made by respondent Ma. Alcestis A. Mangahas of the Philippine Overseas Employment Administration.

Sometime in November 1981, private respondent Apolinario Agbayani was employed by petitioner D. M. Consunji, Inc. as Camp Administrator of its New Istana Construction Project in Brunei with a monthly salary of US \$800.00 for a period of two (2) years. As camp administrator, he was responsible for camp security and safety, camp maintenance, employee services, and rest and recreation.

Pursuant to his contract of employment, the private respondent left for Brunei on December 20, 1981. While in Brunei, he bought a car which he used for R and R Postal Services and Taman Puri Camp Maintenance.

On May 24, 1982, respondent Agbayani was required to return to Manila and report to Mr. Jesus Ferrer, the petitioner's president on the details of a sit down strike that occurred in the camp sometime in March and May 1982. The petitioner provided respondent Agbayani with a one-way ticket back to Manila.

On June 1, 1982, after submitting his report, the respondent attempted to confirm his flight back to Brunei but was told that the same had been cancelled. He was likewise informed by the petitioner that a message was received from the Brunei office advising the Manila office to hold Agbayani until further instructions. In that same month, respondent Agbayani, on his own initiative secured a re-entry visa and a return plane ticket back to Brunei.

Back in Manila, respondent Agbayani was detailed with the petitioner company's security department and continued to be paid his overseas salary rate at US \$800.00 monthly.

On June 26, 1982, the petitioner company terminated Agbayani's services. The termination took effect on June 30, 1982.

When the petitioner did not heed Agbayani's demand to pay his salary up to the date of his termination, grant him separation pay, reimburse his re-entry visa fee and plane ticket and ship back to Manila the personal belongings he left in Brunei, including a car he had purchased there, he filed BES Case No. 82-3068 for illegal dismissal with the Philippine Overseas Employment Administration.

On October 25, 1984, Ma. Alcestis A. Mangahas rendered a decision in favor of respondent Agbayani, the dispositive portion of which reads:

"1. To pay to complainant the sum of US\$14,400.00 or its equivalent in Philippine Currency at the time of

payment, as salary corresponding to the unexpired portion of his employment contract;

"2. To pay complainant the sum of B\$27.00 or its equivalent in Philippine Currency at the time of payment as reimbursement of re-entry visa fee; and the sum of B\$430.00 or its equivalent in Philippine Currency at the time of payment, as reimbursement of his return plane fare to Brunei;

"3. To cause to be brought to the Philippines complainant's personal belongings including his car, or at least, payment to complainant of the cash equivalent thereof either in US Dollar or its equivalent in Philippine Currency as of the time of payment; and

"4. To pay to complainant's counsel of record the sum equivalent to 10% of the totality of the judgment award..

"No other pronouncement."

As earlier indicated, the respondent Commission affirmed in toto the said decision on June 10, 1985.

The only issue is whether or not respondent Apolinario Agbayani was justifiably dismissed before the expiration of his two (2) years contract with the petitioner.

The petitioner submits that respondent Agbayani, as a managerial employee, failed to integrate the various facets of his work as camp administrator and considering his failure to come up to the standard requirements of his position, was justifiably dismissed on that ground when he was still in Brunei.

There is no dispute that indeed, respondent Agbayani was a managerial employee. As camp administrator, and later in-charge of the implementation of the rest and recreation program of the petitioner's New Istana Construction Project in Brunei, respondent Agbayani was obviously not a rank-and-file employee. A managerial employee is one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions (*Reynolds Philippine Corporation v. Eslava*, 137 SCRA 259). We agree with the observation of the Solicitor General that:

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"x x x Although he did not himself lay down management policies, the memorandum quoted above shows that he could effectively recommend the adoption of such policies by higher management. And, as one in-charge of specific company operations such as its recreation facilities and other services, it is implicit that he was in a position to effectively recommend the hiring and dismissal of employees in these facilities and services. Respondent Agbayani cannot be classified as a rank-and-file employee. His salary alone at US\$800 per month argues against this proposition."

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It is true that as a managerial employee he may be terminated for just cause such as lack of confidence (*Reynolds Philippine Corporation v. Eslava*, supra). An employer has a much wider discretion in terminating the employment relationship of managerial personnel as compared to rank-and-file employees. However, such prerogative of management to dismiss or lay-off an employee must be made without abuse of discretion, for what is at stake is not only the private respondent's position but also his means of livelihood (*Remerco Garments Manufacturing v. Minister of Labor and Employment, et al*, 135 SCRA 167). The matter of determining whether the grounds for loss of confidence are valid and sufficient cannot be left to the sole discretion of the employer. The rules of fairness and due process still apply.

The memorandum dated March 9, 1982, directing respondent Agbayani to give priority to rest and recreation is not evidence of loss of confidence. The memorandum reads:

"The urgency of implementing an adequate R and R Program for the workers and staff can no longer be disregarded. Senior Management's attention must be focused on this need.

"In view of the foregoing, these directives are issued:

"1. Effective immediately, ASA (respondent Agbayani) shall give top priority to and concentrate on R and R activities. As such he shall be expected to do the following:

"a) Formulate a comprehensive R and R Program and submit the same to higher management on or before 17 March for review and approval.

"b) Prepare and submit appropriate budget studies to support the various R and R activities, prior to implementation.

"c) Manage the operations of the Recreational Facilities and the conduct of related activities.

"DO Implement the approved R and R program.

"2. HAC shall provide the necessary direction and supervision to ASA on above subject.

"3. To enable ASA to devote sufficient time to R and R activities he shall temporarily relinquish administrative responsibility over security, safety, camp maintenance, employee services and orientation of incoming personnel to HAC. This arrangement shall remain effective unless subsequently revoked by order of the undersigned. ASA shall however continue to be responsible for barracks assignments and accommodations.

"4. To assist ASA in the implementation of R and R Program, Santiago Martinez shall be assigned to him on a full time basis.

"5. Victorino Paguirigan, who is presently devoting part of his time to R and R activities shall concentrate on camp maintenance and employee services, under Diego Bisuna.

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Formulate a comprehensive R and R Program and submit the same to higher management on or before 17 March for review and approval.

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Prepare and submit appropriate budget studies to support the various R and R activities, prior to implementation.

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Manage the operations of the Recreational Facilities and the conduct of related activities.

"DO Implement the approved R and R program.

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HAC shall provide the necessary direction and supervision to ASA on above subject.

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To enable ASA to devote sufficient time to R and R activities he shall temporarily relinquish administrative responsibility over security, safety, camp maintenance, employee services and orientation of incoming personnel to HAC. This arrangement shall remain effective unless subsequently revoked by order of the undersigned. ASA shall however continue to be responsible for barracks assignments and accommodations.

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To assist ASA in the implementation of R and R Program, Santiago Martinez shall be assigned to him on a full time basis.

"5.

Victorino Paguirigan, who is presently devoting part of his time to R and R activities shall concentrate on camp maintenance and employee services, under Diego Bisuna.

"For information and implementation of all concerned."

Again, we agree with the following observations of the Solicitor General:

"The above is at best equivocal since it makes no specific judgment on respondent Agbayani's overall performance of his duties under the employment contract. True, he had been relieved of some of his responsibilities, but this can be read as the company's realization that his skills were better concentrated in an area of high concern rather than dissipated in unimportant tasks."

Except for this memorandum, the petitioner did not present any other evidence which satisfactorily shows that respondent Agbayani has been guilty of breach of trust or that it had ample reason to distrust him. If the petitioner had lost its confidence in its manager, it showed a strange and ambiguous way of showing it. A corporation hiring personnel for overseas operations should also be more careful and stringent in testing and qualifying the managers and even employees it recruits for foreign assignments so as to avoid the difficulties incident to summary dismissals.

Loss of confidence in a managerial employee cannot be deemed present where he was given full responsibility in the implementation of the R and R program of the petitioner's New Istana Construction Project in Brunei. In fact, respondent Agbayani was even directed to - (1) formulate a comprehensive Rest and Recreation Program; (2) prepare and submit an appropriate budget studies to support the various R and R activities; and (3) manage the operations of the recreational facilities and the conduct of related activities.

In *General Bank and Trust Co. v. Court of Appeals* (135 SCRA 569), this Court held that:

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"x x x However, loss of confidence should not be simulated. It should not be used as a subterfuge for causes which are improper, illegal, or unjustified. Loss of confidence may not be arbitrarily asserted in the face of overwhelming evidence to the contrary. It must be genuine, not a mere afterthought to justify earlier action taken in bad faith."

The petitioner should have been more forthright in dismissing its camp manager. It should have come up with clearer proof of his failure to come up to the standards required of a manager. Since the petitioner failed to substantiate its claim that Agbayani was validly dismissed, he should be awarded his wages corresponding to the unexpired portion of his contract of employment. Considering that respondent Agbayani started working with the petitioner company on December 20, 1981 and his contract was terminated on June 30, 1982, he is entitled to US \$14,400.00 corresponding to the eighteen (18) months unexpired term of his contract at a monthly salary of US\$800.00. In *J. Walter Thompson Co. (Phil.) v. National Labor Relations Commission* (126 SCRA 458), this

Court awarded the private respondent therein P202,500 (P7.50 x US\$31,000.00 x 2 years) equivalent to his salary for the remaining two (2) years of his contractual service with the petitioner therein less P84,700.00 representing the transportation costs incurred by the petitioner in bringing his family and household effects to the country.

However, the award ordering the petitioner company to pay respondent Agbayani the sum of B\$27.00 as reimbursement of reentry visa fee and the sum of B\$430.00 as reimbursement of his return plane fare to Brunei or their equivalent in Philippine Currency is not justified.

The records show that the petitioner company did not induce, much less, order respondent Agbayani to procure a re-entry visa or a return plane ticket to Brunei. In fact, the petitioner company had nothing to do with these expenses. The records indisputably show that respondent procured a re-entry visa and a return plane ticket back to Brunei on his own initiative.

Likewise, the award ordering the petitioner company to reimburse respondent Agbayani the cost of his car or to pay for its shipment to the Philippines is improper. Respondent Agbayani bought the car on his own initiative without the approval and consent of the petitioner company. In fact, respondent Agbayani did not need the same for company purposes as he was one of five (5) managerial employees of the petitioner company with direct access to and use of company vehicles.

Finally, considering the simple nature of the litigation wherein legal services were rendered, the fact that, the questions involved are neither novel nor difficult, the quantity and character of the services rendered and the length of time the instant case has been pending, the award of 10% of the totality of the judgment as attorney's fees or roughly P28,800.00 is utterly excessive and unreasonable. Art. 111(b) of the Labor Code is more of a limitation on the amount of attorney's fees which a lawyer may recover in any judicial or administrative proceedings for the recovery of wages and does not preclude us from fixing a lower amount when circumstances warrant it. Indeed, the same should be strictly construed. An award therefore of P4,000.00 is more appropriate and commensurate under the circumstances of this petition.

WHEREFORE, the decision appealed from is hereby MODIFIED in that petitioner D. M. Consunji, Inc. should only be liable to pay respondent Apolinario Agbayani the equivalent of US\$14,400.00 in Philippine Currency as salary corresponding to the unexpired portion of his employment contract, and P4,000.00 as attorney's fees. No costs.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Paras, JJ., concur.

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