

PHILSA CONSTRUCTION AND TRADING CO., AND ARIEB ENTERPRISES, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND FERNANDO HIPOLITO, RESPONDENTS.

G.R. No. 73349, May 29, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The petitioners question the resolution of the National Labor Relations Commission (NLRC) which affirmed the decision of the Philippine Overseas Employment Administration ordering them to pay monetary benefits to the private respondent. The dispositive portion of the decision reads:

"WHEREFORE, judgment is hereby rendered, ordering respondents PHILSA Construction and Arieb Enterprises liable to pay Fernando D. Hipolito, within ten (10) calendar days from receipt of this order, the peso equi-valent at the time of actual payment of FIVE THOUSAND FOUR HUNDRED NINETY US DOLLARS (US\$5,490.00) representing the monetary equivalent of the unexpired portion of complainant's employment contract, plus ten percent (10%) thereof by way of and as attorney's fees.

"All other claims are hereby dismissed." (p. 15, Rollo)

The respondent's brief filed by the Solicitor General correctly states the facts of this case as follows:

"Sometime in 1982, private res-pondent applied as bridge foreman with petitioner Philsa Construction and Trading Co. (Philsa, for brevity) for deployment in Saudi Arabia under co-petitioner Arieb Enterprises. However, his medical report dated November 12, 1982 noted that he had basal cell carcinoma on his right upper lip which is a form of skin cancer. Thus, Philsa refused to deploy Hipolito since it was aware 'that sickness of that nature is usually aggravated by exposure to the sun and excessive heat' (Philsa position paper dated January 24, 1984).

"On January 7, 1983, Hipolito underwent surgery to remove the skin cancer. Early in February 1983, Hipolito refiled his application for overseas employment with Philsa. Upon examination by Philsa's medical clinic, Hipolito was certified to be 'fit for duty' on March 12, 1983. Four days later, on March 16, 1983, Hipolito was deployed to Arieb Enterprises for a one-year contract as bridge foreman at a basic monthly salary of US \$610.00.

"On May 18, 1983, Hipolito was subjected to a medical examination by the Green Crescent Health Services. It noted that his face has pre?malignant lesions, which are diagnosed as melanoma and seborrheic keratosis, which is a form of skin cancer. The doctor advised him to avoid sun exposure and to use a sun screen (Annex A, peti-tion). Petitioner Arieb Enterprises, upon being apprised of Hipolito's medical condition, decided to terminate his employment effective June 15, 1983. Hipolito was eventually repatriated to the Philippines.

"Sometime in August 1983 Hipolito filed a pro forma complaint for illegal dismissal with the POEA. However, he followed it up with a formal complaint on October 28, 1983. Hipolito and Philsa filed their res-pective position papers on January 17, 1984 and February 2, 1984, respectively. On the basis of these position papers, the POEA Administrator found petitioners guilty of illegal dismissal on September 28, 1984.

On appeal, respondent NLRC affirmed the decision of the POEA on April 30, 1985 (Annex B, petition). A writ of execution was issued on June 11, 1985 and it was partly satisfied in the amount of P50,000 on June 26, 1985. Petitioners filed a petition for relief on July 29, 1985, which was denied in a resolution dated December 16, 1985 (Annex D, petition). x x x." (Rollo, 69; Public Respondent's Brief, pp. 1-4)

The petitioners frame the issue raised in this petition as a grave abuse of discretion by the NLRC when it disregarded Article 285 of the Labor Code as the basis for termination.

The cited article of the Labor Code provides:

"ART. 285. Disease as ground for termination. - An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year."

The petitioners argue that Fernando Hipolito is suffering from cancerous pre-malignant lesions in the face/melanoma and seborrheic keratosis and that continued employment would prejudice his health. They state that when the conditions enumerated in Article 285 of the Labor Code are present, the employer may terminate the services of the employee. The petitioners stress that climatic conditions in Saudi Arabia would specially aggravate Mr. Hipolito's cancerous skin lesions.

The fallacy in the petitioners' reasoning lies in their failure to accept the fact that they brought respondent Hipolito to Saudi Arabia with full knowledge of his skin ailment.

In November, 1982, Philsa refused to deploy Mr. Hipolito to Saudi Arabia because of his basal cell carcinoma on his right upper lip. The respondent underwent skin surgery to excise the cancer on January 7, 1983. He re-applied for employment abroad, was medically examined in the Philsa clinic, was certified fit for duty, and then sent abroad.

The peculiar requirements of employment in the Middle East have led the POEA to mandate specially rigid medical examinations for applicants before they may be shipped abroad to work for the Saudi Arabian principals of the Philippine agents. If an employer or contractor violates this requirement, he has no reason to complain when the full force of the law is later exerted against him and remedies for damages, illegal dismissals, etc., are imposed. In this case, the petitioners were fully aware of Mr. Hipolito's skin condition when they executed the contract of employment with him. He was examined in the petitioners' clinic by their own doctors. There was absolutely no concealment of an ailment by Mr. Hipolito. The disease was not a latent one which suddenly flared up in the Middle East. Being at fault, in the resulting breach of that contract, the petitioners have to accept the consequences.

More important, it is not clear from the records that the essential requirements in Article 285 of the Labor Code have been met. There is no showing that the skin disease is so prejudicial to Mr. Hipolito's health that he had to be repatriated even before the term in his contract had expired. Apparently, Green Crescent Health Services in Saudi Arabia did not consider the ailment so prejudicial as to warrant repatriation. The doctor in Saudi Arabia merely advised the avoidance of sun exposure and the use of a sun screen. The doctor said Hipolito could continue working. All that was needed was to take some simple precautions. We can take judicial notice of the fact that a President of the United States suffers from the same ailment as Mr. Hipolito and underwent similar surgery. There is clearly no plan to have Mr. Ronald Reagan retire from the Presidency or to have his employment summarily terminated for that reason alone.

Instead of exerting efforts to locate suitable employment for the worker whom they had medically examined and

declared fit for employment abroad, the petitioners summarily dismissed him.

WHEREFORE, the petition is hereby DISMISSED. The questioned resolutions of the National Labor Relations Commission are AFFIRMED.

SO ORDERED.

Fernan, (Chairman), Paras, Padilla, Bidin, and Cortes, JJ., concur.

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