

ROYAL CROWN INTERNATIONALE, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND VIRGILIO P. NACIONALES, RESPONDENTS.

G.R. No. 78085. October 16, 1989

Ponente: CORTES, J.

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CORTES, J.:

Petitioner Royal Crown Internationale seeks the nullification of a resolution of the National Labor Relations Commission (NLRC) which affirmed a decision of the Philippine Overseas Employment Administration (POEA) holding it liable to pay, jointly and severally with Zamel-Turbag Engineering and Architectural Consultant (ZAMEL), private respondent Virgilio P. Naciones' salary and vacation pay corresponding to the unexpired portion of his employment contract with ZAMEL.

In 1983, petitioner, a duly licensed private employment agency, recruited and deployed private respondent for employment with ZAMEL as an architectural draftsman in Saudi Arabia. On May 25, 1983, a service agreement was executed by private respondent and ZAMEL whereby the former was to receive per month a salary of US\$500.00 plus US\$100.00 as allowances for a period of one (1) year commencing from the date of his arrival in Saudi Arabia. Private respondent departed for Saudi Arabia on June 28, 1983.

On February 13, 1984, ZAMEL terminated the employment of private respondent on the ground that his performance was below par. For three (3) successive days thereafter, he was detained at his quarters and was not allowed to report to work until his exit papers were ready. On February 16, 1984, he was made to board a plane bound for the Philippines.

Private respondent then filed on April 23, 1984 a complaint for illegal termination against petitioner and ZAMEL with the POEA, docketed as POEA Case No. (L) 84-04-401.

Based on a finding that petitioner and ZAMEL failed to establish that private respondent was terminated for just and valid cause, the Workers' Assistance and Adjudication Office of the POEA issued a decision dated June 23, 1986 signed by Deputy Administrator and Officer-in-Charge Crescencio M. Siddayao, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the complainant and against respondents, ordering the latter to pay, jointly and severally, to complainant the following amounts:

1. TWO THOUSAND SIX HUNDRED FORTY US DOLLARS (US\$2,640.00) or its equivalent in Philippine currency at the time of payment, representing the salaries corresponding to the unexpired portion of complainant's contract;
2. SIX HUNDRED US DOLLARS (US\$600.00) less partial payment of FIVE HUNDRED FIFTY-EIGHT SAUDI RIYALS (SR 558), or its equivalent in Philippine currency at the time of actual payment, representing the unpaid balance of complainant's vacation pay;

3. THREE HUNDRED FIFTY US DOLLARS (US\$350.00) or its equivalent in Philippine currency at the time of actual payment representing reimbursement of salary deductions for return travel fund;

4. Ten percent (10%) of the above-stated amounts, as and for attorney's fees.

Complainant's claim for legal and transportation expenses are hereby DISMISSED for lack of merit.

SO ORDERED.

[POEA Decision, p. 5; Rollo, p. 34.]

On July 18, 1986, petitioner filed thru its new counsel a motion for reconsideration which was treated as an appeal to the NLRC by the POEA. Petitioner alleged that the POEA erred in holding it solidarily liable for ZAMEL's violation of private respondent's service agreement even if it was not a party to the agreement.

In a resolution promulgated on December 11, 1986, the NLRC affirmed the POEA decision, holding that, as a duly licensed private employment agency, petitioner is jointly and severally liable with its foreign principal ZAMEL for all claims and liabilities which may arise in connection with the implementation of the employment contract or service agreement [NLRC Decision, pp. 3-4; Rollo, pp. 26-27.]

On March 30, 1987, the NLRC denied for lack of merit petitioner's motion for reconsideration.

Hence, petitioner filed the present petition captioned as "Petition for Review".

At this point, it is not amiss to note that the filing of a "Petition for Review" under Rule 45 of the Rules of Court is not the proper means by which NLRC decisions are appealed to the Supreme Court. It is only through a petition for certiorari under Rule 65 that NLRC decisions may be reviewed and nullified on the grounds of lack of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Nevertheless, in the interest of justice, this Court opted to treat the instant petition as if it were a petition for certiorari. Thus, after the filing of respondents' comments, petitioner's joint reply thereto, and respondents' rejoinders, the Court resolved to consider the issues joined and the case submitted for decision.

The case at bar involves two principal issues, to wit:

- I. Whether or not petitioner as a private employment agency may be held jointly and severally liable with the foreign-based employer for any claim which may arise in connection with the implementation of the employment contracts of the employees recruited and deployed abroad;
- II. Whether or not sufficient evidence was presented by petitioner to establish the termination of private respondent's employment for just and valid cause.

I.

Petitioner contends that there is no provision in the Labor Code, or the omnibus rules implementing the same, which either provides for the "third-party liability" of an employment agency or recruiting entity for violations of an employment agreement performed abroad, or designates it as the agent of the foreign-based employer for purposes of enforcing against the latter claims arising out of an employment agreement. Therefore, petitioner concludes, it cannot be held jointly and severally liable with ZAMEL for violations, if any, of private respondent's service agreement.

Petitioner's conclusion is erroneous. Petitioner conveniently overlooks the fact that it had voluntarily assumed solidary liability under the various contractual undertakings it submitted to the Bureau of Employment Services. In applying for its license to operate a private employment agency for overseas recruitment and placement,

petitioner was required to submit, among others, a document or verified undertaking whereby it assumed all responsibilities for the proper use of its license and the implementation of the contracts of employment with the workers it recruited and deployed for overseas employment [Section 2(e), Rule V, Book I, Rules to Implement the Labor Code (1976).] It was also required to file with the Bureau a formal appointment or agency contract executed by the foreign-based employer in its favor to recruit and hire personnel for the former, which contained a provision empowering it to sue and be sued jointly 'and solidarily with the foreign principal for any of the violations of the recruitment agreement and the contracts' of employment [Section 10 (a) (2), Rule V, Book I of the Rules to Implement the Labor Code (1976).] Petitioner was required as well to post such cash and surety bonds as determined by the Secretary of Labor to guarantee compliance with prescribed recruitment procedures, rules and regulations, and terms and conditions of employment as appropriate [Section 1 of Pres. Dec. 1412 (1978) amending Article 31 of the Labor Code.]

These contractual undertakings constitute the legal basis for holding petitioner, and other private employment or recruitment agencies, liable jointly and severally with its principal, the foreign-based employer, for all claims filed by recruited workers which may arise in connection with the implementation of the service agreements or employment contracts [See *Ambraque International Placement and Services v. NLRC*, G.R. No. 77970, January 28, 1988, 157 SCRA 431; *Catan v. NLRC*, G.R. No. 77279, April 15, 1988, 160 SCRA 691; *Alga Moher International Placement Services v. Atienza*, G.R. No. 74610, September 30, 1988.]

In a belated attempt to bolster its position, petitioner contends in its joint reply that the omnibus rules implementing the Labor Code are invalid for not having been published in the Official Gazette pursuant to the Court's pronouncements in the cases of *Tanada v. Tuvera* [G.R. No. 63915, April 25, 1985, 136 SCRA 27; December 29, 1986, 146 SCRA 446.] Petitioner further contends that the 1985 POEA Rules and Regulations, in particular Section 1, Rule I of Book VII* quoted in the NLRC decision, should not have been retroactively applied to the case at bar.

But these contentions are irrelevant to the issues at bar. They proceed from a misapprehension of the legal basis of petitioner's liabilities as a duly licensed private employment agency. It bears repeating that the basis for holding petitioner jointly and severally liable with the foreign-based employer ZAMEL is the contractual undertakings described above which it had submitted to the Bureau of Employment Services. The sections of the omnibus rules implementing the Labor Code cited by this Court merely enumerate the various documents or undertakings which were submitted by petitioner as applicant for the license to operate a private employment agency for overseas recruitment and placement. These sections do not create the obligations and liabilities of a private employment agency to an employee it had recruited and deployed for work overseas. It must be emphasized again that petitioner assumed the obligations and liabilities of a private employment agency by contract. Thus, whether or not the omnibus rules are effective in accordance with *Tanada v. Tuvera* is an issue the resolution of which does not at all render nugatory the binding effect upon petitioner of its own contractual undertakings.

The Court, consequently, finds it unnecessary to pass upon both the implications of *Tanada v. Tuvera* on the omnibus rules implementing the Labor Code as well as the applicability of the 1985 POEA Rules and Regulations.

Petitioner further argues that it cannot be held solidarily liable with ZAMEL since public respondent had not acquired jurisdiction over ZAMEL through extra-territorial service of summons as mandated by Section 17, Rule 14 of the Rules of Court.

This argument is untenable. It is well-settled that service upon any agent of a foreign corporation, whether or not engaged in business in the Philippines, constitutes personal service upon that corporation, and accordingly,

judgment may be rendered against said foreign corporation [Facilities Management Corporation v. De la Osa, G.R. No. L-38649, March 26, 1979, 89 SCRA 131.] In the case at bar, it cannot be denied that petitioner is an agent of ZAMEL. The service agreement was executed in the Philippines between private respondent and Milagros G. Fausto, the General Manager of petitioner, for and in behalf of ZAMEL [Annex "D" of Petition, p. 3; Rollo, p. 37.] Moreover, one of the documents presented by petitioner as evidence, i.e. the counter-affidavit of its General Manager Ms. Fausto, contains an admission that it is the representative and agent of ZAMEL [See Paragraph No. 1 of Annex "H" of Petition; Rollo, p. 43.]

Considering the foregoing, the Court holds that the NLRC committed no grave abuse of discretion amounting to lack or excess of jurisdiction in declaring petitioner jointly and severally liable with its foreign principal ZAMEL for all claims which have arisen in connection with the implementation of private respondent's employment contract.

II.

Petitioner asserts that the NLRC failed to consider the overwhelming evidence it had presented before the POEA which establishes the fact that private respondent was terminated for just and valid cause in accordance with his service agreement with ZAMEL.

This assertion is without merit. The NLRC upheld the POEA finding that petitioner's evidence was insufficient to prove termination from employment for just and valid cause. And a careful study of the evidence thus far presented by petitioner reveals to this Court that there is legal basis for public respondent's conclusion.

It must be borne in mind that the basic principle in termination cases is that the burden of proof rests upon the employer to show that the dismissal for just and valid cause, and failure to do so would necessarily mean that the dismissal was not justified and, therefore, was illegal [Polymedic General Hospital v. NLRC, G.R. No. 64190, January 31, 1985, 134 SCRA 420; and also Article 277 of the Labor Code.] And where the termination cases involve a Filipino worker recruited and deployed for overseas employment, the burden naturally devolves upon both the foreign-based employer and the employment agency or recruitment entity which recruited the worker, for the latter is not only the agent of the former, but is also solidarily liable with its foreign principal for any claims or liabilities arising from the dismissal of the worker.

In the case at bar, petitioner had indeed failed to discharge the burden of proving that private respondent was terminated from employment for just and valid cause. Petitioner's evidence consisted only of the following documents:

- (1) A letter dated May 15, 1984 allegedly written by an official of ZAMEL, stating that a periodic evaluation of the entire staff was conducted; that the personnel concerned were given a chance to improve; that complainant's performance was found below par; and that on February 13, 1984, at about 8:30 AM, complainant was caught on the way out of the office to look for another job during office hours without the permission of his supervisor;
- (2) A telex message allegedly sent by employees of ZAMEL, stating that they have not experienced maltreatment, and that the working conditions (in ZAMEL) are good;
- (3) The signatures of fifteen (15) persons who allegedly sent the telex message;
- (4) A receipt dated February 16, 1984 signed by complainant, stating that he was paid SR915 representing his salary and SR558, representing vacation pay for the month of February 1984;
- (5) The counter-affidavit of Milagros G. Fausto, the General Manager of Royal Crown, stating that

complainant was dismissed because of poor performance, acts of dishonesty and misconduct, and denying complainant's claim that his salary and leave pay were not paid, and that he was maltreated [See POEA Decision, p. 3; Rollo, p. 32. See also Annexes "E", "F", "F-1", "G" and "H" of Petition; Rollo, pp. 38-43.]

Certainly, the telex message supposedly by the employees of ZAMEL is not relevant in the determination of the legality of private respondent's dismissal. On the other hand, the receipt signed by private respondent does not prove payment to him of the salary and vacation pay corresponding to the unexpired portion of his contract.

More importantly, except for its allegation that private respondent was caught on February 13, 1984 on his way out of the office compound without permission, petitioner had failed to allege and to prove with particularity its charges against private respondent. The letter dated May 15, 1984 allegedly written by the Actg. Project Architect and the counter-affidavit of petitioner's General Manager merely stated that the grounds for the employee's dismissal were his unsatisfactory performance and various acts of dishonesty, insubordination and misconduct. But the particular acts which would indicate private respondent's incompetence or constitute the above infractions were neither specified nor described therein. In the absence of any other evidence to substantiate the general charges hurled against private respondent, these documents, which comprise petitioner's evidence in chief, contain empty and self-serving statements insufficient to establish just and valid cause for the dismissal of private respondent [See *Euro-Lines, Phils., Inc. v. NLRC*, G.R. No. 75782, December 1, 1987, 156 SCRA 78; *Ambraque International Placement and Services v. NLRC*, supra.]

The Court is aware of the document attached in petitioner's manifestation and joint reply which is purportedly a xerox copy of a statement executed on December 13, 1987 in Saudi Arabia by private respondent claiming that the latter had settled the case with ZAMEL and had "received all [his] benefits that is salary, vacation pay, severance pay and all other bonuses before [he] left the Kingdom of Saudi Arabia on 13 Feb. 1984 and hereby indemnify [ZAMEL] from any claims or liabilities, [he] raised in the Philippine Courts" [Annex "A" of petitioner's Manifestation with Motion to hold in Abeyance; Rollo, p. 82. And also Annex "A" of petitioner's Joint Reply; Rollo, p. 111.]

But the veracity of the contents of the document it precisely disputed by private respondent. He claims that he was made to sign the above statement against his will and under threat of deportation [See Telex of private respondent received by the Supreme Court of the Philippines on January 14, 1988; Rollo, p. 83. And also private respondent's Rejoinder, pp. 1-3; Rollo, pp. 139-141.]

Petitioner finally contends that inasmuch as clause no. 13 of the service agreement provided that the law under which the agreement shall be regulated was the laws of Saudi Arabia [Annex "D" of Petition, p. 2; Rollo, p. 36], public respondent should have taken into account the laws of Saudi Arabia and the stricter concept of morality availing in that jurisdiction for the determination of the legality of private respondent's dismissal.

This contention is patently erroneous. The provisions of the Labor Code of the Philippines, its implementing rules and regulations, and doctrines laid down in jurisprudence dealing with the principle of due process and the basic right of all Filipino workers to security of tenure, provide the standard by which the legality of the exercise by management of its prerogative to dismiss incompetent, dishonest or recalcitrant employees, is to be determined. Whether employed locally or overseas, all Filipino workers enjoy the protective mantle of Philippine labor and social legislation, contract stipulations to the contrary notwithstanding. This pronouncement is in keeping with the basic public policy of the State to afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. For the State assures the basic rights of all workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work [Article 3 of the Labor Code of the Philippines; See also Section 18, Article II and Section 3, Article XIII, 1987 Constitution.] This ruling is likewise rendered imperative by Article 17 of the

Civil Code which states that laws "which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determination or conventions agreed upon in a foreign country."

Needless to say, the laws of Saudi Arabia which were, incidentally, neither pleaded nor proved by petitioner, have absolutely no bearing whatsoever to the case at bar.

The Court holds, therefore, that the NLRC committed no grave abuse of discretion amounting to lack or excess of jurisdiction in upholding the POEA's finding of insufficiency of evidence to prove termination for just and valid cause.

WHEREFORE, the Court Resolved to DISMISS the instant petition.

SO ORDERED.

Fernan, C.J., Feliciano, and Bidin, JJ., concur.

Gutierrez, Jr., J., on leave.

* Section 1. . . . Agencies or entities shall be responsible for the faithful compliance by their foreign principal of all obligations under the employment contract and shall therefore, be liable for any and all violations of the contract. . . .

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