

**ANDRES E. DITAN, PETITIONER, VS. PHILIPPINE OVERSEAS
EMPLOYMENT ADMINISTRATION ADMINISTRATOR, NATIONAL
LABOR RELATIONS COMMISSION, ASIA-WORLD RECRUITMENT,
INC., AND/OR INTRACO S...**

G.R. No. 79560. December 03, 1990

Ponente: CRUZ, J.

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CRUZ, J.:

The petitioner had the rare experience of being taken hostage in 1984, along with a number of his co-workers, by the rebels in Angola. His captivity for more than two months and the events that followed his release are the subject of the present petition.

Andres E. Ditan was recruited by private respondent Intraco Sales Corporation, through its local agent, Asia World, the other private respondent, to work in Angola as a welding supervisor. The contract was for nine months, at a monthly salary of US\$1,100.00 or US\$275.00 weekly, and contained the required standard stipulations for the protection of our overseas workers.

Arriving on November 30, 1984, in Luanda, capital of Angola, the petitioner was assigned as an ordinary welder in the INTRACO central maintenance shop from December 2 to 25, 1984. On December 26, 1984, he was informed, to his distress, that he would be transferred to Kafunfo, some 350 kilometers east of Luanda. This was the place where, earlier that year, the rebels had attacked and kidnaped expatriate workers, killing two Filipinos in the raid. Naturally, Ditan was reluctant to go. However, he was assured by the INTRACO manager that Kafunfo was safe and adequately protected by government troops; moreover - and this was more persuasive - he was told he would be sent home if he refused the new assignment. In the end, with much misgiving, he relented and agreed.

On December 29, 1984, his fears were confirmed. The Unita rebels attacked the diamond mining site where Ditan was working and took him and sixteen other Filipino hostages, along with other foreign workers. The rebels and their captives walked through jungle terrain for 31 days to the Unita stronghold near the Namibian border. They trekked for almost a thousand kilometers. They subsisted on meager fare. Some of them had diarrhea. Their feet were blistered. It was only on March 16, 1985, that the hostages were finally released after the intercession of their governments and the International Red Cross. Six days later, Ditan and the other Filipino hostages were back in the Philippines.[1]

The repatriated workers had been assured by INTRACO that they would be given priority in re-employment abroad, and eventually eleven of them were taken back. Ditan having been excluded, he filed in June 1985 a complaint against the private respondents for breach of contract and various other claims. Specifically, he sought the amount of US\$4,675.00, representing his salaries for the unexpired 17 weeks of his contract; US\$25,000.00 as war risk bonus; US\$2,196.50 as the value of his lost belongings; US\$1,100 for unpaid vacation leave; and moral and exemplary damages in the sum of US\$50,000.00, plus attorney's fees.

All these claims were dismissed by POEA Administrator Tomas D. Achacoso in a decision dated January 27, 1987.[2] This was affirmed in toto by respondent NLRC in a resolution dated July 14, 1987,[3] which is now being challenged in this petition.

Going over the record, we find that the public respondent correctly rejected the petitioner's claim for paid vacation leave. The express stipulation in Clause 5 of the employment contract reads:

Should the Employee enter into a further 9 or 12 months contract at the completion contract, he will be entitled to one month's paid vacation before commencement of his second or subsequent contract.

It appears that the petitioner had not entered into a second contract with the employer after the expiration of the first. Such re-employment was not a matter of right on the part of the petitioner but dependent on the need for his skills in another project the employer might later be undertaking.

As regards the cost of his belongings, the evidence shows that they were not really lost but in fact returned to him by the rebels prior to their release. If he had other properties that were not recovered, there was no proof of their loss that could support his allegations. They were therefore also properly rejected.

We find, though, that the claims for breach of contract and war risk bonus deserve a little more reflection in view of the peculiar circumstances of this case.

The fact that stands out most prominently in the record is the risk to which the petitioner was subjected when he was assigned, after his reluctant consent, to the rebel-infested region of Kafunfo. This was a dangerous area. This same place had earlier been the target of a rebel attack that had resulted in the death of two Filipino workers and the capture of several others. Knowing all this, INTRACO still pressured Ditan into agreeing to be transferred to that place, dismissing his initial objection and, more important, threatening to send him home if he refused.

We feel that in failing to provide for the safety of the petitioner, the private respondents were clearly remiss in the discharge of one of the primary duties of the employer. Worse, they not only neglected that duty but indeed deliberately violated it by actually subjecting and exposing Ditan to a real and demonstrated danger. It does not help to argue that he was not forced to go to Kafunfo and had the option of coming home. That was a cruel choice, to say the least. The petitioner had gone to that foreign land in search of a better life that he could share with his loved ones after his stint abroad. That choice would have required him to come home empty-handed to the disappointment of an expectant family.

It is not explained why the petitioner was not paid for the unexpired portion of his contract which had 17 more weeks to go. The hostages were immediately repatriated after their release, presumably so they could recover from their ordeal. The promise of INTRACO was that they would be given priority in re-employment should their services be needed. In the particular case of the petitioner, the promise was not fulfilled. It would seem that his work was terminated, and not again required, because it was really intended all along to assign him only to Kafunfo.

The private respondents stress that the contract Ditan entered into called for his employment in Angola, without indication of any particular place of assignment in the country. This meant he agreed to be assigned to work anywhere in that country, including Kafunfo. When INTRACO assigned Ditan to that place in the regular course of its business, it was merely exercising its rights under the employment contract that Ditan had freely entered into. Hence, it is argued, he cannot now complain that there was a breach of that contract for which he is entitled to monetary redress.

The private respondents also reject the claim for war risk bonus and point out that POEA Memorandum Circular No. 4, issued pursuant to the mandatory war risk coverage provision in Section 2, Rule VI, of the POEA Rules

and Regulations on Overseas Employment, categorizing Angola as a war risk took effect only on February 6, 1985, "after the petitioner's deployment to Angola on November 27, 1984." Consequently, the stipulation could not be applied to the petitioner as it was not supposed to have a retroactive effect.

A strict interpretation of the cold facts before us might support the position taken by the respondents. However, we are dealing here not with an ordinary transaction but with a labor contract which deserves special treatment and a liberal interpretation in favor of the worker. As the Solicitor General observes in his Comment supporting the petitioner, the Constitution mandates the protection of labor and the sympathetic concern of the State for the working class conformably to the social justice policy. This is a command we cannot disregard in the resolution of the case before us.

The paramount duty of this Court is to render justice through law. The law in this case allows two opposite interpretations, one strictly in favor of the employers and the other liberally in favor of the worker. The choice is obvious. We find, considering the totality of the circumstances attending this case, that the petitioner is entitled to relief.

The petitioner went to Angola prepared to work as he had promised in accordance with the employment contract he had entered into in good faith with the private respondents. Over his objection, he was sent to a dangerous assignment and as he feared was taken hostage in a rebel attack that prevented him from fulfilling his contract while in captivity. Upon his release, he was immediately sent home and was not paid the salary corresponding to the unexpired portion of his contract. He was immediately repatriated with the promise that he would be given priority in re-employment, which never came. To rub salt on the wound, many of his co-hostages were re-employed as promised. The petitioner was left only with a bleak experience and nothing to show for it except dashed hopes and a sense of rejection.

In these circumstances, the Court feels that the petitioner should be paid the salary corresponding to the 17 unserved weeks of his contract, which was terminated by the private respondents despite his willingness to work out the balance of his term. In addition, to assuage the ordeal he underwent while in captivity by the rebels, the Court has also decided in its discretion to award him nominal damages in the sum of P20,000.00. This is not payment of the war risk claim which, as earlier noted, was not provided for in the employment contract in question, or indemnification for any loss suffered by him. This is but a token of the tenderness of the law towards the petitioning workman vis-a-vis the private respondents and their more comfortable resources.

Under the policy of social justice, the law bends over backward to accommodate the interests of the working class on the humane justification that those with less privileges in life should have more privileges in law. That is why our judgment today must be for the petitioner.

WHEREFORE, the challenged resolution of the NLRC is hereby MODIFIED. The private respondents are hereby DIRECTED jointly and severally to pay the petitioner: a) the current equivalent in Philippine pesos of US\$4,675.00, representing his unpaid salaries for the balance of the contract term; b) nominal damages in the amount of P20,000.00; and c) 10% attorney's fees. No costs.

SO ORDERED.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, p. 47.

[2] Ibid., pp. 46-54.

[3] Id., pp. 65-69.

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