

PHILIPPINE NATIONAL CONSTRUCTION CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION) AND NICOLAS SACEDA, RESPONDENTS.

G.R. No. 81551. April 27, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

Assailed in this petition for certiorari is the resolution promulgated on November 16, 1987 by the NLRC in POEA CASE NO. (L) 84-07-660 affirming the decision of the POEA Officer-In-Charge, Honesto Cueva, who granted private respondent Nicolas Saceda's claims for stand-by pay and withheld allotments. The following undisputed facts were lifted from the Solicitor General's Comment on the petition:

"1. In the first week of December, 1981, petitioner Philippine National Construction Corporation (hereinafter called PNCC), a duly registered construction company, through its predecessor-in-interest Construction and Development Corporation of the Philippines (CDCP), hired private respondent Nicolas L. Saceda as HT Driver I (Actg. Scraper Operator) for its Suyallil North Port road project in the Kingdom of Saudi Arabia. Respondent Saceda was hired at an hourly rate of US\$1.55 for 24 months contract period to be effective upon his departure. He left the Philippines on January 8, 1982.

"2. On January 8, 1984, private respondent Saceda completed his two (2) years overseas contract. However, it was extended by petitioner up to January 27, 1984.

"3. On February 9, 1984, private respondent was dispatched to Jeddah, Saudi Arabia for immediate repatriation to the Philippines. He was first booked for departure on February 21, 1984.

"4. However private respondent refused to depart because he wanted to await the final disposition of the complaint he filed against petitioner PNCC for payment of his completion bonus, unused vacation/sick leave and unpaid wages from December 1, 1983 up to January 27, 1984. The decision of the Saudi labor authorities which was favorable to private respondent was rendered on March 24, 1984. Private respondent agreed to be repatriated on March 27, 1984, after petitioner PNCC paid him the award granted by the Saudi labor authorities.

"5. Upon his arrival in the Philippines, private respondent Saceda found out that the allotment representing 70% of his salary for the period November 16, 1983 to January 15, 1984, amounting to \$408.00 was not paid by petitioner PNCC to his designated beneficiary in the Philippines. Despite repeated demands, petitioner failed to pay said claim without justifiable reason.

"6. On August 16, 1984, private respondent Saceda filed a complaint with the Workers Adjudication and Assistance Office, Philippine Overseas Employment Administration (POEA), docketed as POEA Case No. L-84-07-660, for non-payment of withheld salary/allotment and stand-by pay corresponding to the period January 27, 1984 to March 27, 1984 in the sum of US\$744.00. He claimed that he was not repatriated soon upon the termination of his contract but was made to wait and remain idle for two months." (pp. 27-29, Rollo.)

On April 30, 1986, Honesto Cueva, officer-in-charge of the POEA, rendered a decision, the dispositive portion of which reads as follows:

"WHEREFORE, in view of the foregoing considerations, this Office hereby ordered herein respondent Philippine National Construction Corporation (PNCC) to pay herein complainant Nicolas Saceda the peso equivalent based on the prevailing exchange rate at the time of actual payment of the following amounts:

"1. US\$206.40 representing stand-by pay for the period covered from January 27, 1984 to February 21, 1984;

"2. US\$408.00 representing the withheld allotment within ten (10) calendar days upon receipt of this DECISION." (Annex A, pp. 8, 13, Rollo.)

As mentioned earlier, the NLRC affirmed the above decision of the POEA in toto.

In its petition for certiorari, the petitioner questions only the award of stand-by pay to Saceda for being allegedly devoid of legal basis.

The petition has no merit.

The legal basis of the NLRC's award of "stand-by" pay to Saceda during the period that he was made to wait while his employer worked for the ticketing, booking and processing of his exit visa and travel documents for his return trip to the Philippines, is the employment contract. Under the contract, the PNCC was obliged to notify the employee "two months before the end of the term of the contract" whether his contract would be extended or he would be repatriated. Within that two-month period, the employer, which keeps in its possession the employee's passport and travel documents for the duration of his employment, is supposed to work for the ticketing and processing of the employee's travel documents so that he may immediately return to the Philippines upon the expiration of his contract.

Petitioner alleged that it takes at least one month to have travel papers processed by the Saudi Arabian authorities. Clearly, the two-month period stipulated in the contract is more than enough for the purpose. Hence, petitioner alone is to blame for its failure to obtain Saceda's travel papers within the two-month period before his contract came to an end. Since it was through its fault that Saceda's departure was delayed, it must give him stand-by pay.

The stand-by compensation which the employer is required to pay the employee while the latter waits for his travel papers, is actually the damages caused to him by the employer's delay in getting his travel papers ready. As correctly pointed out by the Solicitor General in his Comment, the basis of the employer's liability for such damages is Article 1170 of the Civil Code which provides:

"Art. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages."

As it was the petitioners obligation to get Saceda's travel documents ready for his repatriation to the Philippines upon the termination of his overseas contract, the petitioner must answer in damages for the delay in Saceda's departure which compelled him to "stand-by," idle and jobless in a foreign land, while waiting for his employer to hand him his ticket and travel papers for his trip home. The measure of those damages is the income he could have earned if he were repatriated promptly in order that he could work again in his own country.

The fact that Saceda refused to depart on February 21, 1984 because he wanted to wait for the outcome of the complaint which he filed against petitioner for the payment of his completion bonus, unused vacation/sick leaves, and unpaid wages from December 1, 1983 up to January 27, 1984 (when his extended contract of employment expired) does not shift to him the blame for his delayed departure, for, as it turned out, his suit was justified. The decision promulgated by the Saudi Labor Authorities on March 24, 1984 upheld his claims.

Since Saceda was compelled to litigate by reason of the petitioner's unjust refusal to pay his valid and demandable claims, the petitioner is answerable for the damages he suffered by having to stay on to see his case through. The petitioner should, therefore, pay him stand-by compensation from January 28, 1984 up to March 27, 1984 when he was repatriated after the petitioner paid the judgment in his favor.

WHEREFORE, the petition is dismissed. As above modified, We affirm the decision of the NLRC in POEA Case No. (L) 84-07-660, with costs against the petitioner.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Medialdea, JJ., concur.
Gancayco, J., on leave.

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