

DUMEZ COMPANY OF FRANCE, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND FLORANTE JOSE, RESPONDENTS.*G.R. No. 82340. August 12, 1991*

Ponente: FELICIANO, J.

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Petitioner Dumez Company of France ("Dumez") is a French corporation which hires Filipino workers through Eastern Construction Company, Inc. ("ECCOI"), a corporation existing under the laws of and domiciled in the Philippines. Sometime in 1984, Dumez needed additional manpower, including four (4) Senior Draftsmen at a proposed wage of US\$600.00 per month for its Medical City project in Riyadh, Saudi Arabia. Upon approval by the Philippine Overseas Employment Administration ("POEA") of its corresponding request, petitioner alleges, ECCOI summoned these draftsmen and gave each of them copy of their respective Manpower Requisition Slip which indicated their name, category ("Senior Draftsmen") and monthly basic salary (US\$600.00). Among the draftsmen hired was private respondent Florante Jose. Consequently, ECCOI and the draftsmen entered into an overseas employment agreement.

Since ECCOI has no personality in Saudi Arabia, the draftsmen signed another set of overseas employment agreements with Dumez. Private respondent signed his agreement on 16 January 1985. The monthly salary under Section 3 (j) of that agreement is based on eight (8) hours per day for six (6) working days and one (1) paid rest day per week or a total of 240 hours per month. Though the employment agreements of the other three (3) Senior Draftsmen reflected the amount of US\$600.00 as the monthly base salary and US\$2.50 as the normal hourly rate, that of private respondent, however, showed the amount of US\$680.00 monthly base salary but with the same hourly rate of US\$2.50.

On 23 January 1985, private respondent commenced working at Medical City, Riyadh, Saudi Arabia. Petitioner avers that it discovered the discrepancy in respondent's monthly base salary when the site management in Saudi Arabia prepared the papers relating to respondent's first month's salary. This was subsequently communicated to the Philippine office. Mrs. Carmen Francisco of ECCOI explained in her affidavit that the discrepancy was due to a typographical error, further alleging that private respondent was given a copy of the Manpower Requisition Slip prior to his signing of the employment agreement with Dumez. Petitioner also claims that Florante Jose was subsequently informed that the necessary correction would have to be made on his salary and was requested to sign new contract papers showing his monthly basic salary as US\$600.00 with an hourly rate of US\$2.50, but that Jose insisted on being paid US\$680.00 a month. Petitioner eventually acceded by paying US\$680.00 for services rendered in the first month of his employment subject, however, to the condition that Mr. Jose would be transferred to a new job classification that would match his desired salary scale. Petitioner found that no job with a higher classification was at that particular time available. On 9 February 1985, Mr. Jose's services were terminated on the ground of "surplus employee, excess of manpower and retrenchment." On 28 February 1985, private respondent was repatriated to the Philippines with petitioner shouldering his return fare expenses.

On 13 September 1985, private respondent filed a complaint for illegal dismissal before the POEA, raising the

issue of whether or not there had been a breach of contract of employment on the part of Dumez.

The POEA in its decision dated 9 April 1987 dismissed the complaint for lack of merit, holding that the termination of private respondent's services was for a just cause in accordance with Article 284 of the Labor Code and that the requirement of notice was duly complied with. The POEA also ruled that there was no breach of contract on Dumez' part for the reason that private respondent had previous knowledge that the monthly salary was in truth US\$600.00 since he was given a copy of the Manpower Requisition Slip. It likewise noted that computation of the monthly base salary at US\$2.50 per hour for 240 hours per month results in US\$600.00.

On appeal, the National Labor Relations Commission ("NLRC") in its decision dated 20 January 1988 reversed the POEA, and ordered petitioner Dumez to pay private respondent's salary corresponding to the unexpired portion of his contract term of one (1) year in the amount of US\$680.00 per month at the peso equivalent thereof at the time of payment. It held that the dismissal was not due to "surplus employee, excess of manpower and retrenchment" but rather to "wage distortion" which is not one of the valid grounds for termination of employment under the Labor Code. The Commission also ruled that private respondent was not a "surplus employee" because he was hired for a one year contract and he only worked for one month and that if there had not been a dispute regarding his salary, respondent would not have been dismissed. Public respondent found the allegation of retrenchment as unavailing considering that a valid retrenchment measure must be based on actual and substantial economic losses which had not been duly supported by petitioner's evidence.

In the instant Petition, petitioner Dumez argues that there was no illegal dismissal considering that the contract of employment was inexistent as there was no meeting of the minds concerning the offer and acceptance. Even assuming arguendo, petitioner continues, that there existed a contract of employment, private respondent's refusal to accept the actual salary of US\$600.00 constituted serious misconduct, fraud or an analogous case under Article 283 (a), (c) and (d) of the Labor Code.

Private respondent Jose, on the other hand, contends that there was constituted a valid and subsisting contract of employment but that petitioner Dumez reneged on its undertaking. The Solicitor General in its Comment suggests that the contract in controversy was voidable by reason of vitiated consent.

It is clear from the facts here that the amount of the monthly salary base was a prime or essential consideration of the parties in signing the employment contract. Mutual mistake, however, prevented the proposed contract from arising. Each of the parties signed the employment agreement bearing a different salary rate in mind. While private respondent insists that he entered the employment agreement on the belief that he would be receiving the amount of US\$680.00 as his monthly basic salary as stated in the employment agreement, Dumez was able to prove that said amount of US\$680.00 was the result of a clerical error and that it had always intended to give only the amount of US\$600.00 for the services of private respondent.

The evidence of both parties corroborate petitioner's claim. The employment agreements signed by the other Senior Draftsmen with petitioner and the Manpower Requisition Slips of each of them duly show the amount of US\$600.00 as the monthly salary base. The POEA itself mentioned in its decision that it had approved the proposed wage schedule of four (4) Senior Draftsmen at US\$600.00 per month per draftsman. Although the employment agreement between private respondent and Dumez showed the amount of US\$680.00 as the monthly base salary, this amount is contradicted by the normal hourly rate of US\$2.50 inscribed thereon. Using the base salary at US\$2.50 per hour, we arrive at the amount of US\$600.00 as the monthly base salary as follows:

US\$ 2.50 -- normal hourly rate per employment contract

x 240 -- number of hours worked 6 days a week in a month plus paid rest days per employment agreement
Section 3(J)

US\$600.00 -- monthly base salary

The discrepancy was moreover adequately explained by the ECCOI employee, Mrs. Francisco, as the result of a typing error overlooked because of the volume of paperwork involved in documenting the persons recruited and hired. She likewise stated that Mr. Jose had been provided with a copy of his Manpower Requisition Slip, which allegation the pleadings filed by private respondent did not controvert. Private respondent did not prove any special qualification or circumstance that might have warranted a US\$80.00 monthly differential from the salary rate of the other Senior Draftsmen.

The mutual mistake here present should be distinguished from mistake which vitiates consent in a voidable contract. The latter case pre-supposes a valid and existing contract with all the essential requisites present, with the element of consent, however, being vitiated. In the case at bar, the element of consent was not present at all. There was no concurrence of the offer and acceptance upon the subject matter and the cause which are to constitute the contract.[1] Petitioner was willing to offer only the amount of US\$600.00 for the kind of services expected of private respondent, while private respondent would accept employment with petitioner only at a monthly salary base of US\$680.00. The correct monthly base salary figure was an essential consideration as far as each was concerned. In a situation wherein one or both parties consider that certain matters or specifics, in addition to the subject matter and the causa should be stipulated and agreed upon, the area of agreement must extend to all points that the parties deem material or there is no contract.[2]

Petitioner cannot escape the fact, however, that it was due to its own error or negligence in the clerical processing of the employment papers that mutual mistake attended the execution of the contract. Negligence causing damage to another may generate liability though both parties may be innocent of any deliberate fraud. Thus, it has been held by this Court that as between two (2) innocent persons, he whose negligence has enabled a third party to cause the damage shall bear the loss.[3] Though petitioner in the case at bar was clearly innocent of deliberate wrong doing, the failure of the administrative systems of petitioner created some basis for private respondent's belief (or hope) that he was accepting a US\$680.00 monthly salary and thus generated a mutual mistake which occasioned some damage or loss on the part of private respondent. On general principles of equity, petitioner should compensate private respondent. We believe that an amount equivalent to two-month's salary under the putative employment agreement, at US\$600.00 a month or its peso equivalent at the time of payment, would be sufficient recompense for what might be designated as frustration of expectations not without basis on the part of private respondent that he had landed a job.

ACCORDINGLY, the Court Resolved to GRANT the Petition and to SET ASIDE and NULLIFY the Decision of the National Labor Relations Commission dated 20 January 1988. The Court also Resolved to REINSTATE the Decision of the Philippine Overseas Employment Administration in POEA Case No. 85-09-0689 with modification that private respondent Florante Jose shall be awarded the amount of US\$1,200.00 or its peso equivalent at the time of payment. No costs.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Davide, Jr., JJ., concur.

[1] Article 1319, Civil Code.

[2] A. Magsaysay, Inc. v. Cebu Portland Cement Co., 100 Phil. 351 (1956).

[3] Penullar vs. Philippine National Bank, 120 SCRA 171 (1983).

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