

ASIAN CONSTRUCTION AND DEVELOPMENT CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND TITO B. BARBO, RESPONDENTS.

G.R. No. 85866. July 24, 1990

Ponente: PARAS, J.

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PARAS, J.:

Petition for certiorari seeking to annul the decision of the National Labor Relations Commission (NLRC, for brevity) which affirmed the decision of the Philippine Overseas Employment Administration (POEA, for brevity) finding private respondent's dismissal illegal and directing the petitioner to pay the private respondent the following amounts:

- "1. US\$2,430.00 representing salaries for the unexpired portion of the Contract;
 - "2. US\$1,128.00 covering unremitted 70% allotment for March, April, May and June, 1986; and
 - "3. US\$540.00 covering complainant's (private respondent's) withheld reserve travel fund."
- (p. 5, Comment; p. 96, Rollo)

On October 4, 1985, the petitioner hired the private respondent as a steel fixer for the third time in its project at Iraq. After about seven months, when the steel fixing works were near completion, the petitioner transferred the private respondent to the waterproofing division. After three days of performing waterproofing works, private respondent was ordered to leave his work without explanation by his German supervisor. The following day, private respondent was informed by the petitioner's project site manager, Mr. Rodito Sunga, that he was being terminated allegedly for insubordination.

Upon learning that his German supervisor was dissatisfied with his waterproofing works, private respondent pleaded that he be reassigned to steel fixing jobs, but was denied. Despite requests for reconsideration of the matter, private respondent was sent back to the Philippines. Allotments from his salaries were withheld by the petitioner and his travel expenses to and from Iraq were charged to him.

Thus, on June 26, 1986, private respondent filed a complaint for illegal dismissal against the petitioner with the POEA.

Traversing, the petitioner claimed that private respondent resented his transfer from steel fixing to waterproofing works and that he was terminated due to insubordination. The petitioner submitted an affidavit of Mr. Rodito Sunga, alleging that on several occasions, private respondent had refused to carry hollowblocks despite orders of his superior. (Annex B)

On July 9, 1987, the POEA rendered a decision finding private respondent's dismissal illegal or without justifiable cause. Said decision was affirmed by the NLRC on appeal.

Hence, the instant petition for certiorari.

We find the petition to be devoid of merit.

The allegation that private respondent was terminated due to insubordination is a sweeping statement. Aside from the self-serving affidavit of its project site manager, the petitioner failed to present evidence to support the said statement.

On the other hand, the finding of illegal dismissal by the POEA Administrator was grounded on the following:

"It is, therefore, safe to surmise that complainant was told to leave his work because his German supervisor had observed that he did not know waterproofing works. There is no showing that he was given instructions or training which he wilfully disobeyed such as to make him liable for insubordination. His non-familiarity with waterproofing can not be gainsaid considering that he was in the job only 3 days and it must have been this lack of experience that impelled Mr. Boswau to order him to leave his work on June 20, 1986. The self-serving statements of Messrs. Rodito Sunga and Lamberto Perez are pure hearsay and do not deserve any consideration."

(pp. 100-101, Rollo)

In affirming this finding, the NLRC further explained:

"We are more inclined to give more credence to the version of complainant-appellee that he worked for three (3) days, was made to leave his work on the third day, and dismissed on the following day. We cannot give weight to the affidavit of Mr. Sunga who is respondent's representative on the site. Moreover, the core of this case is the transfer of complainant from steel fixing to water proofing work. Although the contract of employment allows this transfer, it does not mean that a worker can be transferred outright to a new job, from a technical position which he had been thoroughly familiarized for about three (3) years, without undergoing an actual training commensurate to the latter. As correctly observed by the POEA Administrator, 'His non-familiarization with water-proofing cannot be gainsaid considering that he was in the job only three (3) days and it must have been the lack of experience that impelled Mr. Boswau to order him to leave his work on June 20, 1986.'" (pp. 101-102, Rollo)

Well-settled is the rule that the factual findings of administrative bodies are entitled to great weight and these findings are accorded not only respect but even finality when supported by substantial evidence as in this case.

In *Ambraque International Placement and Services vs. NLRC et al.* (157 SCRA 431), this Court ruled in favor of a Filipino contract worker who was repatriated to the Philippines barely five days after arrival at his jobsite due to alleged misconduct. In said decision, this Court noted the observations of the Solicitor General, to wit:

"It is very unlikely that private respondent would have been guilty of the negative conduct imputed to him by petitioner. x x x one who goes to the Middle East for employment does so at a great sacrifice. In addition to leaving his family, the worker also has to suffer the cultural shock of living in a society with entirely different customary practices, religion and traditions. But the worker is willing to bear all these just so he could earn money to send back to his family. With this primary aim, the worker knows better than doing anything that would jeopardize his contract of work."

In view of the foregoing, We have no doubt that the dismissal of the private respondent is illegal.

WHEREFORE, the petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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