

BLUE MANILA, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION AND EMMANUEL E. ABELLANEDA, RESPONDENTS.

G.R. NO. 87585. March 27, 1990

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The petition for certiorari alleges a single ground for the allowance of the writ, to wit:

"THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN AFFIRMING IN TOTO THE DECISION OF THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION DESPITE CLEAR AND PATENT CONFLICT BETWEEN THE FINDINGS OF FACT AND LAW AND THE DISPOSITIVE PORTION OF THE DECISION." (p. 11, Rollo.)

The petitioner is the recruitment agent that shipped the private respondent, Emmanuel Abellaneda, to the Middle East to serve for a period of six (6) months as a seaman on the vessel of its foreign principal, the Seatrans Offshore Ltd. After his contract was preterminated, he sued for his unpaid wages. The facts, as alleged in the pleadings and summarized in the decision of the POEA, are as follows:

"The complainant in his complaint-affidavit alleged that sometime in May, 1986, he applied for overseas work with respondent Blue Manila, Inc. On September 16, 1986, he was sent to Bahrain to board the vessel 'GRAY-VANGUARD' as AB/Oiler at the agreed basic salary of US\$335 per month for a period of six (6) months with a further understanding that he will receive a war zone bonus at 100% of his basic salary plus overtime pay. On October 3, 1986, the vessel actually entered the war zone until November 10, 1986. On said date, the principal SEATRANS OFFSHORE LTD. informed the crew that its lease over the vessel had expired, hence, the crewmembers disembarked at Kharg Island, Iran where complainant was offered the same job to work with the vessel MV 'SEATRANS 23' leased by the same principal. Complainant accepted the offer and on November 11, 1986, he embarked and commenced working thereon with the sole purpose of completing the remaining portion of his contract. However, from the time he started working, he was not paid his salary and other benefits due him. This prompted him to get cash advances for his family's sustenance in the Philippines allegedly amounting to \$512.48. For the same reason, complainant voluntarily decided to disembark on January 28, 1987 at Bahrain. While therein, he demanded from the Operations Manager of Seatrans, Mr. Horst Jager, his long overdue salaries and other benefits covering the period from November 11, 1986 to January 28, 1987. However, instead of giving in to complainant's just and valid claims, Mr. Jager charged him for simulated offenses for which complainant was incarcerated from 8:00 P.M. of January 28, 1987 until 10:00 A.M. of the next day. After representation with the Immigration Office in Bahrain, Mr. Jager promised that complainant shall receive his entire salary in Manila giving him a letter dated January 29, 1987 (attached as Annex 'A' of the complaint) addressed to Capt. Mangabat to evidence said promise. However, in Manila, Capt. Mangabat refused to pay said claim for alleging that the money has not been remitted yet. Despite repeated

demands for payment Capt. Mangabat still refused to pay complainant's claim saying that the latter was no longer entitled to receive his claim considering that respondent has paid for his plane fare and his replacement.

"xxx xxx xxx.

"On the other hand, respondent in its answer specifically denied the money claims of complainant asserting that complainant had obtained substantial cash advances and that it had paid the airfare ticket of complainant and his replacement which consequently compensated, satisfied and/or extinguished the same. Respondent, further claimed that if ever there is any balance due the complainant, the same has not been remitted by its foreign principal Seatrans Offshore Co., Ltd." (pp. 46-48, Rollo.)

The POEA ascertained that the amount of \$1,451.22 was the cost of airfare for both complainant and his replacement. Hence, it concluded that complainant's airfare was half of that amount, or \$725.64 (p. 50, Rollo.)

After computing the unpaid wages due Abellaneda as well as the cash advances he had received from his employer, the POEA rendered judgment ordering respondent to pay to complainant the following amounts, to wit:

"1. THREE THOUSAND SEVENTEEN and 54/100 US DOLLARS (US\$3,017.54) or its equivalent in Philippine Currency at the time of payment, representing the balance of unpaid salaries, less cash advances in the total amount of P23,500.00;

"2. SEVEN HUNDRED TWENTY FIVE and 64/100 US DOLLARS (US\$725.64) or its equivalent in Philippine Currency at the time of payment, representing airfare ticket of complainant's replacement;

"3. TEN PERCENT (10%) of the total award as and by way of attorney's fees.

"There is no other pronouncement." (p. 51, Rollo.)

It may be observed that in computing the amount due Abellaneda, the POEA failed to deduct the airfare of US\$725.64 which his employer paid for his return trip to Manila. Instead, the POEA erroneously ordered the petitioner to pay him the airfare (US\$725.64) of his replacement, as if Abellaneda (instead of the petitioner) had advanced the cost of said airline ticket.

In its appeal to the NLRC, the petitioner failed to notice this error in the decision (p. 46, Rollo). It assailed only that part of the decision holding it solidarily liable with its foreign principal for the money judgment in favor of Abellaneda. It argued that:

"1. Respondent Blue Manila, Inc. (now petitioner) is merely an agent of a disclosed principal and it has not waived its right to non-liability nor acted beyond its authority; and

"2. It is error to state that the joint and solidary liability of the local agent and the foreign principal is well-settled in this jurisdiction." (p. 53, Rollo.)

Upon the affirmance in toto of the POEA decision by the NLRC (p. 65, Rollo), the petitioner filed this petition for certiorari pointing out the inconsistency between paragraph 2 of the dispositive portion of the POEA decision and the finding in the body of the decision that since "complainant (Abellaneda*) out of his volition unilaterally preterminated his contract of employment, x x x, it is only equitable that respondent (now petitioner*) deduct the repatriation expenses from the complainant's salary. However, it is unfounded to deduct the airfare ticket of complainant's replacement from his salary" in accordance with Sec. H (4), Part II of the Standard Format which provides that "the seaman when discharged shall not be liable for the transportation cost of his replacement." (pp. 48-49, Rollo.)

The Solicitor General in his comment on the petition admits an error in the dispositive portion of the POEA's decision. He says:

"x x x petitioner should not have been ordered to pay private respondent the sum of \$725.64 since the latter did not spend for the transportation of his replacement nor was the amount reflected as a deduction from his gross salary receivable. In the same manner, the cost of the ticket for private respondent himself was not reflected as a deduction from his salary receivable. Since petitioner spent for the return ticket of private respondent, the amount must be allowed as additional deduction from private respondent's unpaid salary so that petitioner may be refunded of the amount spent for the return ticket of private respondent as ruled by the POEA." (pp. 97-98, Rollo.)

He argues, however, that since the error was not raised by the petitioner in its appeal to the NLRC, the error is deemed waived. Errors of judgment may not be reviewed in a petition for certiorari under Rule 65 (*Hermogenes vs. Amores*, 111 SCRA 658). Appeal is the proper remedy.

While the rule is that - "No error which does not affect the jurisdiction over the subject matter will be considered unless stated in the assignment of errors and properly argued in the brief," the exception to the rule is: "save as the court, at its option, may notice plain errors not specified, and also clerical errors" (Sec. 7, Rule 51, Rules of Court).

The mathematical error in the POEA decision is a plain error which this Court may correct (Sec. 7, Rule 51, Rules of Court). To overlook it would be inconsistent with substantial justice, for it would permit a party to unjustly profit from a mistake or inadvertence of another or others, the POEA and the petitioner in this case. It would also put a premium on a technicality contrary to the spirit and purpose of the Labor Code (Art. 221, Labor Code).

WHEREFORE, the petition for certiorari is granted. The dispositive part of the decision of the POEA and the NLRC in Case No. M-87-06-525 is hereby modified as follows:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondent Blue Manila Inc. to pay to complainant Emmanuel E. Abellaneda the following amounts, to wit:

1. THREE THOUSAND SEVENTEEN and 54/100 US DOLLARS (US\$3,017.54) or its equivalent in Philippine Currency at the time of payment, representing the balance of unpaid salaries, less cash advances in the total of P23,500.00 and the sum of SEVEN HUNDRED TWENTY FIVE and 64/100 US DOLLARS (US\$725.64) or its equivalent in Philippine Currency at the time of payment, representing the airfare ticket for the repatriation of the complainant; and
2. TEN PERCENT (10%) of the total award as and by way of attorney's fees.

SO ORDERED.

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

* Words in parenthesis supplied.

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