

G & P MANPOWER SERVICES, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, ORLANDO S. JIMENEZ AND ARMANDO S. JIMENEZ, RESPONDENTS.

G.R. No. 87644. April 20, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for certiorari seeking reversal of the decision of public respondent National Labor Relations Commission dated December 22, 1988, which held petitioner G & P Manpower Services and Shibh Al--Jazira Contracting Establishment jointly and solidarily liable to private respondents Orlando S. Jimenez and Armando S. Jimenez; and its resolution dated February 21, 1989, which denied the motion for reconsideration for lack of merit.

The antecedent facts are, as follows:

On August 11, 1986, private respondents Orlando S. Jimenez and Armando S. Jimenez filed a complaint for breach of contract, reduction and delayed payment of salaries, and damages (Case No. L-86-05-432-A); also for refund of placement fee and cost of plane fare (Case No. L-86-05-432-B) against petitioner G & P Manpower Services and Shibh Al-Jazira Contracting Establishment before the Philippine Overseas Employment Administration. They alleged therein that they were hired as Road Foreman with a monthly salary of U.S. \$300.00 (Orlando Jimenez) and as Paver Operator with a monthly salary of U.S. \$240.00 (Armando Jimenez) starting sometime in December, 1985; that they were made to sign another contract upon arrival in Saudi Arabia with reduced salaries in Saudi Rial currency by their foreign employer, Shibh Al-Jazira; and that due to the poor working conditions, long hours of work, and delay in payment of salaries, they left their work at Qassim Road Project in Saudi Arabia and were repatriated to the Philippines on April 31, 1986 at their own expenses, thus, they were unable to complete their two-year contracts. They claimed salary (short--change) differentials in the sum of \$112.00 (Orlando Jimenez) and \$96.00 (Armando Jimenez) for a period of eight months; salaries corresponding to the unexpired portion of their employment contracts; refund of excess placement fees in the sum of P7,000.00 each; and reimbursement of plane fares from Saudi Arabia to the Philippines in the sum of P11,140.00 each.

Petitioner contended, among other things, that the Qassim Road Project, a Saudi Arabian operation and maintenance project, was financed by the government and payment of the salaries of the workers was released by the government, through the sub-contractor, Shibh Al--Jazira Contracting Establishment and therefore if ever there was occasional delay of salary payments, it was beyond its control; that the contract workers (including private respondents) at the project were provided with air-conditioned port-a-cabins but as the project progressed, the workers' camp had to be transferred from one location to another; that medical facilities were provided to the workers in the Saudi Arabian government hospital indiscriminately; and that private respondents are the ones guilty of breach of contract for having suddenly resigned allegedly due to personal problems, thus, they did not complete their periods of employment.

The records show that apart from the filing of this case with the POEA Adjudication Department, private respondents also filed a formal complaint with the POEA Recruitment Regulation Division charging petitioner and Shibh Al-Jazira Contracting Establishment with violation of Article 34 (a) and (b) of the Labor Code, as amended, invoking practically the same causes of action as contained in this case, specifically, alleged falsified travel documents, contract substitution which includes demotion in rank and salary, refund of excess placement fee and for disciplinary and/or administrative action against petitioner. The formal complaint was docketed as LRO/RRD Case No. 86-07-643 HT. In an order dated February 23, 1987, the POEA Administrator directed petitioner to refund P7,000.00 each to private respondents representing excess placement fee and suspension of its license for a period of six (6) months or a fine of P40,000.00 until full satisfaction of private respondents' claims. Not satisfied with this ruling, private respondents filed a motion for reconsideration on March 4, 1987, contending that petitioner should be meted the penalty of cancellation of license instead of only suspension but said motion was denied for lack of merit in an order dated April 10, 1987. Thus, with respect to the charges of excessive placement fees, contract substitution, and other prohibited labor practices under Article 34 (a) and (b) of the Labor Code, these have been adjudicated in the order dated February 23, 1987.

The remaining issues then to be resolved by the POEA are whether petitioner and Shibh Al-Jazira Contracting Establishment are liable for breach of contract, short-changing of salary and refund of plane fare.

On August 3, 1987, the POEA dismissed the case for lack of merit. The counterclaim was likewise dismissed (p. 35, Rollo). On appeal by private respondents, public respondent National Labor Relations Commission ruled in their favor. It rationalized that (pp. 25-27, Rollo):

"A perusal of the records shows that the position paper with annexes '1' to '8' submitted by the respondent-appellee was not at all verified by any of its officers, hence, the POEA should not have entertained the same for being a mere scrap of paper as correctly urged by the herein complainants-appellants in their Reply to Position Paper (Rollo, pp. 158-159).

"x x x.

"Consequently, the POEA committed a reversible error in according undue consideration to the unverified position paper of the respondents-appellees.

"While it is true that under Article 221 of the Labor Code, as amended, We are not bound by the technical rules on evidence, We cannot close our eyes to the mandatory requirement provided by the aforecited rule which is not only procedural but also jurisdictional.

"x x x.

"x x x. We give credence to complainants-appellants' claims that they were forced to terminate their employment contract by reason of inhuman and unbearable treatment accorded the employees by the employer or his representative. (Ibid, p. 94), and respondents-appellees failed to refute the same by any admissible evidence. x x x."

The dispositive portion of its decision, reads (p. 28, Rollo):

"WHEREFORE, the appealed decision is hereby SET ASIDE and a new one entered ordering the respondents-appellees jointly and solidarily to pay the following:

"1. The salaries corresponding to the unexpired portion of the employment contract of complainant Orlando S. Jimenez at U.S. \$300.00 per month or its peso equivalent at the current rate of exchange plus the refund of his airplane ticket to the Philippines from Saudi Arabia;

"2. The salary corresponding to the unexpired portion of the contract of employment of complainant Armando

S. Jimenez at U.S. \$240.00 per month or its peso equivalent at the current rate of exchange plus the refund of his airplane ticket to the Philippines from Saudi Arabia;

"3. Plus, ten (10%) per cent of the total monetary award as and for attorney's fees.

"No other pronouncement.

"SO ORDERED."

On February 21, 1989, the motion for reconsideration was denied for lack of merit. Hence, the present petition filed solely by petitioner G & P Manpower Services.

On April 17, 1989, We issued a temporary restraining order enjoining the NLRC from enforcing, implementing or otherwise executing its decision dated December 22, 1988 (pp. 68-69, Rollo).

Petitioner imputes grave abuse of discretion on the part of the NLRC in reversing the decision of tile POEA on the flimsy pretext that its position paper filed with the latter was not verified and consequently, in finding it liable to private respondents.

Petitioner asseverates that the NLRC erroneously anchored its ruling on Section 2, Rule VII of its Revised Rules. A perusal of this provision shows that the requirement of a verified position paper is applicable only in proceedings before the Labor Arbiters. On the other hand, Sections 2 and 5, Rule III, Book VI of the POEA Rules and Regulations do not require verification of position papers. The requirement of verification applies only to an answer. The filing of a verified answer by petitioner before the POEA is a matter of record. Granting arquando that it was still necessary for petitioner to verify its defenses and allegations in the position paper, the verified answer was in substantial compliance with Section 2, Rule VII of the Revised Rules of the NLRC. After all, the averments and defenses raised in its position paper are mere clarifications of averments and defenses in the answer. The evidence presented by it before the POEA consists of, among other things, the resignation letters of private respondents attesting to the fact that they resigned voluntarily from their employment due to family problems and wherein they manifested their willingness to shoulder the expenses of their trip back to the Philippines (pp. 55-56, Rollo). It is worthy to stress that private respondents, in the proceedings before the POEA and the NLRC, failed to controvert the due execution and existence of their resignation letters. Furthermore, the co-workers of private respondents who were similarly deployed by Shibh Al-Jazira Contracting Establishment executed joint statements to the effect that they were satisfied with the terms and conditions of their employment in Saudi Arabia, thereby negating private respondents' claim of "inhuman and unbearable treatment."

Petitioner correctly invokes the applicability in this case of Sections 2 and 5, Rule III, Book VI of the POEA Rules and Regulations, which provide:

"Section 2. Filing of Answer. Within the period indicated in paragraph 1 of Section 1 hereof, the respondent shall file a verified answer, not a motion to dismiss, incorporating therein all pertinent documents in support of his defense.

"x x x.

"Section 5. Judgment Based on Position Paper. Whenever summary judgment is not appropriate, the Hearing Officer shall direct the parties to the case to simultaneously submit their position papers and/or memoranda within fifteen (15) calendar days from notice after which the case shall be deemed submitted for decision."

instead of Section 2, Rule VII of the Revised Rules of the NLRC which provides:

"Section 2. Submission of position papers. – During the initial conference/hearing, or immediately thereafter, the Labor Arbiter shall require the parties to simultaneously submit to him their respective verified position

papers, which shall cover only the issues raised in the complaint, accompanied by all supporting documents then available to them and the affidavits of their witnesses which shall take the place of their direct testimony. The parties shall thereafter not be allowed to allege, or present evidence to prove, facts not referred to and any cause or causes of action not included in their complaint or position papers, affidavits and other documents. The parties shall furnish each other with copies of the position papers, together with the supporting affidavits and documents submitted by them."

Sections 2 and 5, Rule III, Book VI of the POEA Rules and Regulations are the governing provisions because this case concerns adjudication proceedings before the POEA, which has the "original and exclusive jurisdiction to hear and decide all cases involving employer-employee relation arising out of or by virtue of x x x (a) contract involving Filipino workers for overseas employment x x x" (Section 1, Rule I, Book VI of the POEA Rules and Regulations). As pointed out by petitioner, verification of the position paper is not required therein; only the answer is required to be verified. Now, the Revised Rules of the NLRC were adopted and promulgated precisely to govern arbitration proceedings before the Labor Arbiters and the NLRC. These are the explicit wordings of the first paragraph of said rules. How could the NLRC have misapplied its own rules?

There is a need to rectify another faux pas of the NLRC, namely, that Section 2, Rule VII of its Revised Rules is "not only procedural but also jurisdictional" (*supra*). Even prior to the questioned decision of the NLRC, We have had an occasion to rule squarely that the lack of verification of the position paper is a formal, rather than a substantial defect. It is not fatal in this case. It could have been easily corrected by requiring an oath. We are referring to the case of *Del Rosario and Sons Logging Enterprises, Inc. v. NLRC, et al.*, G.R. No. 64204, May 31, 1985, 136 SCRA 660. This doctrine was later reiterated in the cases of *Murillo, et al. v. Sun Valley Realty, Inc., et al.*, G.R. No. 67272, June 30, 1988, 163 SCRA 271 and *Precision Electronics Corporation v. NLRC, et al.*, G.R. No. 86657; October 23, 1989, 178 SCRA 667.

We quote with favor the ratiocination of the POEA, inasmuch as it is supported by substantial evidence (pp. 32-33, *Rollo*):

"After a careful scrutiny of the evidence adduced and the arguments presented by both parties, we find that the 'compelling circumstances' referred to by the complainants that allegedly forced them to resign from their jobs and to go back to the Philippines were not clearly substantiated and established. The alleged poor working conditions, lack of medical facilities, and long hours of employment have not been substantiated by further evidence except on the bare allegations of the complainants. Upon the other hand, the same were explained by the respondents to be not really the case as in fact out of the forty four (44) workers deployed to work with the Shibh-Al-Jazira Contracting Establishment, no other complaint had been lodged against respondents similar to what have been allegedly experienced by the complainants, and on this point, the latter failed to refute except the bare allegation that the filing of this case was personal to complainants alone. While complainants claim that their resignation from their job hardly qualify as 'voluntary', we find no concrete evidence to prove the contrary, like testimony from complainants' co-workers or any other evidence to prove that by reason of threats, malice, fraud, or intimidation on the part of the respondents, complainants were forced to resign and to assume payment of their repatriation expenses. Upon the other hand, the hand-written resignations of the complainants, both tendered in the month of March, 1986, show that they were resigning because they have serious family problems that needed their presence and in connection therewith they were willing to shoulder their travel expenses. Respondents also presented in evidence the joint statements of the remaining workers in the project expressing their contentment with their jobs and the regularity of the working conditions, including payment of salaries, in connection therewith, the same marked as Annexes '5' and '6' to respondents' Position Paper."

ACCORDINGLY, the petition is hereby GRANTED. The decision of the National Labor Relations Commission dated December 22, 1988 and its resolution dated February 21, 1989 are SET ASIDE. The decision of the

Philippine Overseas Employment Administration dated August 3, 1987 is REINSTATED. The temporary restraining order issued on April 17, 1989 is made permanent.

SO ORDERED.

Narvasa, C.J., Cruz, and Grino-Aquino, JJ., concur.
Bellosillo, J., on leave.

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