

**RAMON PRIETO, PACIFICO CANILLO AND WILFREDO AZUELA,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, AR
AND SONS INTERNATIONAL DEVELOPMENT CORP., SAUDI SERVICES
AND OPERATI...***G.R. No. 93699. September 10, 1993*

Ponente: CRUZ, J.

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The petitioners seek modification of the decision of the National Labor Relations Commission dated May 31, 1990, reversing the decision of the Philippine Overseas Employment Administration dated July 24, 1989. It is averred that the public respondent committed grave abuse of discretion in ruling in favor of the private respondents, contrary to the evidence on record.

This case arose from a complaint filed by Ramon Prieto, Pacifico Canillo and Wilfredo Azuela against AR and Sons International Development Corporation, Saudi Services and Operations Co. Ltd., and Saudi Arabian Morrison.[1] Their claim was for non-payment of wages, illegal dismissal, illegal exaction of placement fees, illegal imposition of performance bond, substitution of contract and deployment of workers to an unaccredited principal.

The complainants alleged they were recruited by AR and Sons International Development Corporation (AR and Sons) for employment for a period of 24 months with Saudi Services and Operating Co., Ltd. (SSOC) in Saudi Arabia. The corresponding Agency Worker Agreements, which were duly approved by the POEA, provided for their respective positions and salaries as follows:

Name

Position

Salary (per month) in US Dollars

Prieto

Mechanic A/C

\$370.00

Azuela

Mechanic A/C

\$370.00

Canillo

Clerk

\$420.00

Later, however, taking advantage of their need for employment, the respondent placement agency coerced them into signing another employment contract with Saudi Arabia Morrison (SAM) without the knowledge and approval of the POEA. The second contract gave all three of them the lower positions of assistant cook with a salary of only SR625.00 per month for a period of three years.[2]

The complainants said that when they reached Jeddah, Saudi Arabia, in November 1987, they were asked to sign still another employment contract by a certain Muhammad Abbas, a representative of SAM, which would further lower their salary to SR250.00 a month. When they refused, they were not assigned any work but were confined in a small room in a villa and given spoiled food for their sustenance. On December 22, 1987, they were summarily dismissed and repatriated to the Philippines.[3]

The respondents denied the charges and said that the complainants entered into separate uniform Agency Worker Agreements where it was stipulated that they would be employed by SSOC for 24 months upon departure from the Philippines. When the petitioners arrived in Jeddah, it was discovered that Prieto and Azuela were not qualified as mechanics and that Canillo was not qualified as clerk, so all three of them were rejected. The complainants then requested SSOC to help them secure employment as assistant cooks with SAM, which at that time was also a foreign principal of AR and Sons. Taking pity on them, SSOC referred them to the latter agency but they also failed to pass the trade tests for assistant cooks. It was for this reason that they were finally repatriated to the Philippines at the expense of the latter agency.

After considering the evidence and arguments of the parties, the POEA held in favor of the complainants. The dispositive portion of its decision decreed as follows:

WHEREFORE, in the light of the foregoing, judgment is hereby rendered ordering AR & SONS INTERNATIONAL DEVELOPMENT CORPORATION and SAUDI ARABIAN MORRISON to pay jointly and severally complainants Ramon Prieto, Pacifico Canillo and Wilfredo Azuela the following amounts to be paid in Philippine Currency at the prevailing rate of exchange at the rate of actual payment:

1. for Ramon Prieto

- a) SIX HUNDRED SIXTEEN US DOLLARS AND 67/100 (US\$616.67) representing his salaries from November 2, 1987 to December 22, 1987;
- b) EIGHT THOUSAND TWO HUNDRED SIXTY THREE US DOLLARS AND 33/100 (US\$8,263.33) representing his salaries for the unexpired portion of his employment contract.

2. for Pacifico Canillo

- a) SIX HUNDRED TEN US DOLLARS (US\$610.00) representing his salaries from November 12, 1987 to December 22, 1987;
- b) NINE THOUSAND FOUR HUNDRED SEVENTY US DOLLARS (US\$9,470.00) representing his salaries for the unexpired portion of his employment contract.

3. for Wilfredo Azuela

- a) SIX HUNDRED SIXTEEN US DOLLARS AND 67/100 (US\$616.67) representing his salaries from November 2, 1987 to December 22, 1987;
- b) EIGHT THOUSAND TWO HUNDRED SIXTY THREE US DOLLARS AND 33/100 (US\$8,263.33) representing his salaries for the unexpired portion of his employment contract; and

4. FIVE THOUSAND PESOS (P5,000.00) as and for attorney's fees.

SO ORDERED.

This decision was reversed by the NLRC, which ordered the dismissal of the complaint. The NLRC found that the complainants had misrepresented themselves as mechanics and cooks when they were not qualified for these positions and so had only themselves to blame if they were subsequently rejected by the foreign employer.

The factual findings of administrative bodies are as a rule binding on this Court, but this is true only when they do not come under the established exceptions. One of these is where the findings of the POEA and the NLRC are contrary to each other,[4] as in this case, and there is a necessity to determine which of them should be preferred as more conformable to the established facts.

A study of the two decisions, together with the evidence and the arguments adduced by the parties, inclines the Court in favor of the POEA.

We reject the respondents' argument that the petitioners' services were terminated because they were not qualified either as mechanics or as assistant cooks. It is presumed that before their deployment, the petitioners were subjected to the trade tests required by law to be conducted by the recruiting agency to insure employment of only technically qualified workers for the foreign principal. There was no misrepresentation on the part of the petitioners. They had applied as A/C mechanics and clerk, and we may assume that the trade tests conducted on them were for these positions and not for the position of assistant cook. If they fell short of the employer's expectations, the fault lies not with the petitioners but with the recruiting agency for deploying them even if they did not possess the skills necessary for the positions they were seeking.

As we said in one case:[5]

x x x Moreover, before the private respondents were hired they were lengthily interviewed by a representative of the foreign employer, Modern System. They must have passed, otherwise, they would not have been hired. They must have also been subjected to a trade test because this is one of the requirements for employment abroad. Thirdly, the private respondents were not given sufficient time to prove their fitness for the positions they were hired. Two weeks for this purpose is not enough.

The private respondents point to the petitioners' allegation in their complaint that they were mere assistant cooks and argue that this belies their representation that they did not apply for these positions. The argument has no merit. The petitioners were not assisted by lawyers when they filed their complaint and must have had in mind the positions stipulated in the second contract. In the amended complaint, this statement was rectified. At any rate, the slight error must not be taken against the petitioners. As we held in *Cuadra v. NLRC*,[6] "our overseas workers are mostly ordinary laborers not conversant with legal principles and with the manner they can assert and protect rights. They have no compatriot lawyers to consult and no labor unions to support them in the foreign land. x x x The claims of our overseas workers should therefore be received with sympathy and allowed, if warranted, conformably to the constitutional mandate for the protection of the working class."

We find no basis either for the conclusion of the NLRC that there was no employer-employee relationship between the parties. The record shows that the petitioners became employees of Saudi Services and Operating Company, Ltd., and later of Saudi Arabian Morrison, both entities being represented by AR and Sons International Development Corporation, which admitted in its Comment that the petitioners were "hired and deployed abroad..." This relationship is even more firmly supported by the Agency Worker Agreements between the petitioners and AR and Sons acting for SSOC which were approved by the POEA under Accreditation Certificate No. 8181,[7] and by the second contract under which the petitioners were deployed to SAM, its other

principal, by AR and Sons.[8]

Article 279 of the Labor Code provides:

Article 279. Security of Tenure - In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this title. An employee who was unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and to his backwages computed from the time his compensation was withheld from him up to the time of reinstatement.

Where the employer-employee relationship has been established, the burden of proof in termination cases lies with the employer.[9] This burden was not discharged by the private respondents. It is clear from the record that the petitioners were hired as mechanics and clerk (or as assistant cooks under the second contract) after presumably having passed the corresponding trade tests conducted by the recruiting agency prior to their deployment. If AR and Sons felt they were not qualified for these positions, it should have rejected their applications outright instead of accepting their recruitment fees just the same and assuring them that their employment had already been approved by the foreign principal. It was the fault of AR and Sons for holding the petitioners to its foreign principal as qualified when they were found later to be deficient. As a result of its negligence, if not its deliberate misrepresentation, the petitioners found themselves stranded in a foreign land, without the employment and income that they hoped would give them a better life.

The principle of “no work, no pay” does not apply in this case for, as correctly pointed out by POEA, the fact that the complainants had not worked at the jobsite was not of their own doing. If they were not able to work at all, it was because they refused to sign the third contract providing for another lowering of their salaries in violation of their first agreement as approved by the POEA. They had a right to insist on the higher salaries agreed upon in the original contract and to reject the subsequent impositions of SAM, which obviously thought the petitioners would have to accept because they had no choice.

Rule V, Book I of the Omnibus Rules Implementing the Labor Code defines the duties and obligations of a duly licensed placement and recruitment agency. Section 2(e) requires a private employment agency to assume all responsibilities for the implementation of the contract of employment of an overseas worker. Section 10(a)(2) provides that a private employment agency can be sued jointly and severally with the principal or foreign-based employer for any violation of the recruitment agreement or the contract of employment.

Book II, Rule II, Section 1(f)(3) of the new Rules and Regulations Governing Overseas Employment promulgated by the Governing Board of the POEA substantially reiterates Rule II of Book II, Section 1(d)(3) of 1985 POEA Rules, which governs this case. It provides that a private employment agency shall assume joint and solidary liability with the employer for all claims and liabilities that may arise in connection with the implementation of the contracts including but not limited to payment of wages, health and disability compensation and repatriation. There is no doubt that, under the facts established in this case, AR and Sons is jointly and solidary liable with overseas employer SAM for the claims of the petitioners.

The Court is not unaware of the many abuses suffered by our overseas workers in the foreign land where they have ventured, usually with heavy hearts, in pursuit of a more fulfilling future. Breach of contract, maltreatment, rape, insufficient nourishment, sub-human lodgings, insults and other forms of debasement, are only a few of the inhumane acts to which they are subjected by their foreign employers, who probably feel they can do as they please in their own country. While these workers may indeed have relatively little defense against exploitation while they are abroad, that disadvantage must not continue to burden them when they return to their own territory to voice their muted complaint. There is no reason why, in their very own land, the protection of our own laws cannot be extended to them in full measure for the redress of their grievances.

WHEREFORE, the challenged decision of the NLRC dated May 31, 1980 is REVERSED and SET ASIDE. The POEA decision dated July 24, 1989 is REINSTATED, with costs against the private respondents.

SO ORDERED.

Griño-Aquino, Davide, Jr., Bellosillo, and Quiason, JJ., concur.

[1] Rollo, pp. 14-21.

[2] Rollo, pp. 25-27.

[3] Rollo, p. 5.

[4] Rapiz, et al. v. Modern Asia Shipping Corporation, 207 SCRA 243.

[5] Alga Moher International Placement Services v. Atienza, 166 SCRA 174.

[6] 207 SCRA 279.

[7] Rollo, pp. 22-24.

[8] Rollo, pp. 25-27.

[9] Reyes and Lim Co., Inc. v. NLRC, 201 SCRA 772; Manggagawa ng Komunikasyon sa Pilipinas v. NLRC, 194 SCRA 573; Samahang Manggagawa ng Rizal Park v. NLRC, 198 SCRA 480; Pan Pacific Industrial Sales, Co., Inc. v. NLRC, 194 SCRA 633.

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