

**ALEJANDRO J. CUADRA, MAXIMO D. SOSA, MAGNO BALATBAT,
ANTONIO AGOLAN, AND PABLITO IRLANDA[] (REPRESENTED BY HIS
SPOUSE, CELESTINA IRLANDA), PETITIONERS, VS. NATIONAL LABOR
RELATI...**

G.R. No. 98030. March 17, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

The petitioners seek modification of the decision of the National Labor Relations Commission dated November 20, 1990,[1] affirming the decision of the Philippine Overseas Employment Administration dated June 8, 1990, except as to the award of salary differentials.

It is averred that the public respondent committed grave abuse of discretion in reducing the award of salary differentials to Maximo D. Sosa, rejecting the petitioners' claim for overtime pay and meal allowance, and disallowing attorney's fees.

As found by the POEA, the petitioners were recruited by Majal Development Corporation (through its President, Ahmed Bondagjy, the other private respondent) for employment in Saudi Arabia for a period of 24 months. The corresponding Agency Worker Agreements,[2] which were duly submitted to and approved by the POEA, provided for the respective positions and salaries of the petitioners as follows:

Name Position Salary (Per Mo. in US Dollars)

CUADRA aluminum worker \$320.00

SOSA sewage plant operator 550.00

BALATBAT fab. steel cutting grinder 320.00

AGOLAN cabinet maker 320.00

Before their departure, the petitioners were required by Majal to sign uniform documents captioned "Contract for Purchase of Services" providing for each of them a salary of 800 Saudi riyals, or about \$213 at the prevailing exchange rate. The petitioners were reluctant to sign but were assured they would be paid in accordance with the Agency Worker Agreements.

This assurance was not honored by the foreign employer for the petitioners were each paid only 800 Saudi riyals and their food allowance was reduced from 300 to 200 Saudi riyals. Nevertheless, they continued working until the expiration of their contracts, following which they returned to the Philippines and filed their complaint.

After considering the position papers and evidence of the parties, the POEA awarded the petitioners differential pay in the uniform amount of US\$361.60 except for Sosa, who was awarded \$7,881.60, his basic pay being higher. Their claim for overtime pay was denied for lack of evidentiary basis. No mention was made of their

claim for unpaid food allowance and attorney's fees.[3]

This decision was appealed to and affirmed by the NLRC, except that the salary differential for all the five petitioners was made uniform in the amount of US\$2,568.00. The result was a reduction for Sosa and an increase for the other petitioners in their respective salary differentials.[4]

The petitioners are now before this Court and ask for reversal of the decision of the NLRC for being tainted with grave abuse of discretion. Sosa claims a higher differential pay and, with the other petitioners, insist on the award of their overtime pay and unpaid meal allowance, plus attorney's fees.

It is immediately clear from a study of the record that the reduction of Sosa's salary differential is unwarranted. The obvious reason is that he was promised a higher salary than that of the other petitioners, who were all entitled to be paid at the uniform rate of US\$320.00 per month. Sosa's stipulated monthly salary was US\$550.00. Consequently, his salary differential, based on his higher salary, should also be higher than that due the other petitioners.

In its decision, the NLRC observed that -

..... as regards the amount of salary differentials due to the complainants, there is merit to the contention of the complainants in its Motion for Reconsideration that the correct computation should be the exchange rate actually prevailing at the time that complainants were employed in Saudi Arabia from 1987 to 1989 which as US\$1 : SR3.76 and not US\$1 : SR3.61 as computed by the Administrator. The correct equivalent therefore of SR800 should be US\$213.00 and not US\$221.00.

Applying that rate, we find that Sosa, who received a salary of only US\$213.00 per month during the two years of his employment, is entitled to a salary differential of US\$337.00 per month, or a total of US\$8,088.00 for 24 months.

Regarding the claim for overtime pay, we do not agree that it should have been disallowed because of the failure of the petitioners to substantiate it. The petitioners complained in separate but identical affidavits[5] that "we were frequently made to work overtime at the King Faisal Military Academy but we were not paid the corresponding overtime pay despite our repeated demands." They also submitted a document in Arabic, with an English translation thereof, in which Cuadra authorized one Abdal Gan Orink to collect his overtime pay for him, but which the agent returned to Cuadra because such overtime pay had not been collected.[6] The NLRC found this evidence inadequate, but we think it was, under the circumstances of this case.

The claim of our overseas workers against their foreign employers should not be subjected to the rules of evidence and procedure that we usually apply to other complainants who have more facility in obtaining the required evidence to prove their demands.

The petitioners did not have access to the records of the foreign employer, which was no less than the Saudi Arabia Armed Forces. They were working in a military camp which, if only for security reasons, could not be expected to make their records available to just any person desiring to examine and copy them. Much less would they have been accessible to the petitioners, who were foreigners and adverse claimants to boot.

The Court feels that in this situation, the public respondent should have given credence to the petitioners rather than the private respondents, which merely denied the claim without submitting their own evidence to refute it. It is so easy to say that the petitioners' evidence was insufficient to support their claims without taking into account that more convincing evidence could not have been obtained by them in any case, in view of their particular predicament. Let it be repeated for emphasis that they were mere laborers in a foreign land, with adverse claims against no less than its government itself.

On the other hand, the private respondents could have refuted the assertions of the petitioners by producing the records and logbooks of the foreign employer, which could have been easily obtained by them. As agents of such employer, the private respondents could have submitted these documents to show that their foreign principal had not violated its employment contract with the petitioners and the requirements of our labor laws. For failure to present such evidence, the private respondents defaulted in their defense and in effect admitted the allegations of the petitioners. They are therefore solidarily responsible with their foreign principal for the claims of the overseas workers.

The NLRC, in its own comment, which it filed after the Solicitor General had expressed his support for the petitioners, contends that "before the workers may be entitled to overtime pay, the element of necessity and/or authorization must be present." This argument is unrealistic, to say the least, and legally untenable. Surely, the petitioners were not in a position to prove such necessity nor could they have obtained such authorization from their employer, given its proven attitude toward its foreign employees.

We agree with the Solicitor General that, again applying the exchange rate approved by the NLRC, the petitioners should be granted overtime pay as follows:

For Cuadra, Balatbat and Agolan -

Amount of compensation per hour:

\$320.00 per month = \$ 13.33 per day

24 working days per month

\$13.33 per day = \$ 1.66 per hour

8 hours per day

Total number of hours of overtime:

Hours of overtime per day x number of working days

2 hours/day x 576 working days

= 1152 hours

Total overtime pay:

\$1.66 per hour x 1152 hours = \$1,912.32

For Sosa -

Amount of compensation per hour:

\$550.00 per month = \$ 22.91 per day

24 working days per month

\$22.91 per day = \$ 2.86 per hour

8 hours per day

Total number of hours of overtime:

Hours of overtime per day x number of working days

2 hours/day x 576 working days

= 1152 hours

Total overtime pay:

\$2.86 per hour x 1152 hours = \$ 3,294.72

The petitioners' claim for unpaid food allowance should also have been upheld by the NLRC. On this particular claim, the petitioners were able to submit in evidence a notice issued by the foreign employer, (and written not only in Arabic but also in English, presumably for the benefit of the foreign workers) that the said food allowance had been reduced from 300 to 200 Saudi riyals.[7] That notice alone proved that the original stipulated food allowance was 300 Saudi riyals and had been unilaterally reduced without the consent of the employees. The underpayment has also not been denied by the respondents, who must therefore be also held liable therefor.

As computed by the petitioners without refutation from the respondents, such underpayment is in the total amount of 2,400 riyals for each of the petitioners, at the rate of 100 Saudi riyals per month for 24 months. At the exchange rate found by the NLRC, this would translate to US\$638.32 per petitioner.

Denial of the claim for attorney's fees was also erroneous in view of the clear provision of Article III of the Labor Code reading as follows:

Art. III. Attorney's fees. - (a) In cases of unlawful withholding of wages the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

Such attorney's fees may be assessed in accordance with Rule VIII, Sec. 11, Book III of the Omnibus Rules Implementing the Labor Code, thus:

Sec. 11. Attorney's fees. - Attorney's fees in any judicial or administrative proceedings for the recovery of wages shall not exceed 10% of the amount awarded. The fees may be deducted from the total amount due the winning party.

Our overseas workers are, to begin with, mostly ordinary laborers not conversant with legal principles and with the manner they can assert and protect their rights. They have no compatriot-lawyers to consult and no labor unions to support them in the foreign land. Some of them have complained, not without reason, that the staffs of our own embassies and consulates have not been available or ready to give them assistance. Denied the protection they need, they are easy prey to exploitation by the foreign employers, who are usually able to get away with these abuses because they are, so to speak, in their own territory. 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.

WHEREFORE, the decision of the NLRC is MODIFIED and the following awards are hereby made:

For Maximo Sosa:

Unpaid salaries - - - - - US\$ 8,088.00

Unpaid overtime pay - - - - - US\$ 3,294.72

Unpaid food allowance - - - - -US\$ 638.30;

Total - - - - - US\$12,021.02

For Alejandro Cuadra:

Unpaid salaries - - - - - US\$2,568.00

Unpaid overtime pay - - - - - US\$1,912.32

Unpaid food allowance - - - - US\$ 638.30;

Total - - - - - US\$5,118.62

For Magno Balatbat:

Unpaid salaries - - - - - US\$2,568.00

Unpaid overtime pay - - - - - US\$1,912.32

Unpaid food allowance - - - - US\$ 638.30;

Total - - - - - US\$5,118.62

For Antonio Agolan

Unpaid salaries - - - - - US\$2,568.00

Unpaid overtime pay - - - - - US\$1,912.32

Unpaid food allowance - - - - US\$ 638.30.

Total - - - - - US\$5,118.62

Attorney's fees in the amount of US\$2,737.69, representing 10% of the total award of US\$27,376.88, shall also be paid by the private respondents directly to the petitioners' common counsel.

SO ORDERED.

Narvasa, C.J., (Chairman), Griño-Aquino, and Medialdea, JJ., concur.

Bellosillo, J., no part did not participate in the deliberations.

* The complaint of Pablito Irlanda was dismissed by the POEA because it was not signed by him or by a person duly authorized.

[1] Rollo, p. 140; penned by Presiding Commissioner Edna Bonto-Perez, with Commissioners Domingo M. Zapanta and Rustico L. Diokno, concurring.

[2] Ibid., pp. 36-42.

[3] Id., p. 125.

[4] id., pp. 146-147.

[5] id., pp. 105-113.

[6] id., pp. 155-156.

[7] id., p. 104.

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