

UNITED PLACEMENT INTERNATIONAL, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, CESAR VILLARAN, DOMINADOR VIDALLO AND ORLANDO GELLIDO, RESPONDENTS.

G.R. Nos. 102081-83. April 12, 1993

Ponente: MELO, J.

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MELO, J.:

Petitioner United Placement International (UPI) seeks to annul and set aside the Resolution of public respondent National Labor Relations Commission (NLRC) dated August 16, 1991 (Annex A, p. 19, Rollo) and prays for the reversal of the Decision of POEA Administrator Thomas D. Achacoso dated March 1, 1990 (Annex B, p. 26, Rollo) insofar as it ordered petitioner to pay, jointly and solidarily with the foreign employer, Pacific Beverages, the alleged unpaid wages of individual respondents Cesar Villaran, Dominador Vidallo, and Orlando Gellido.

Private respondents are complainants in POEA Cases No. (L) 89-05-246, (L) 89-05-416 and (L) 89-05-428 against petitioner UPI, Pacific Beverages, Inc. (a duly POEA-accredited foreign employer), and Afisco Insurance Corporation, UPI's surety, for alleged illegal dismissal, non-payment of salaries, and recruitment violations.

On March 1, 1991, the POEA Adjudication Office promulgated its Decision which upheld private respondents' claim in the aforementioned cases for unpaid wages. The dispositive portion of the Decision reads:

Wherefore, premises considered, respondent United Placement International and Pacific Beverages are hereby held jointly and solidarily liable for complainants' claim for unpaid wages, and are hereby ordered to pay as follows:

1. Cesar Villaran – US \$173.30 representing his unpaid salaries for 10 days of actual services;
2. Orlando P. Gellido – US \$173.30 representing his unpaid salaries for 10 days of actual services;
3. Dominador Vidallo – US \$173.30 representing his unpaid salaries for 10 days of actual services.

or a total of US\$519.90 or its pesos equivalent at the time of actual payment, plus 5% thereof as and for attorney's fees. (pp. 33-34, Rollo.)

Within the reglementary period, or on March 30, 1991, UPI appealed, limiting the issues on appeal to the following:

I. THE POEA ADMINISTRATOR ERRED IN FINDING APPELLANT UPI LIABLE FOR PAYMENT OF ALLEGED UNPAID WAGES OF COMPLAINANTS BECAUSE IT IS A MERE PLACEMENT AGENCY AND IS NOT THE EMPLOYER OF THE SAID COMPLAINANTS.

II. THE LIABILITY OF AN ACCREDITED PRINCIPAL, IF ANY, MUST NOT BE SHIFTED TO A PLACEMENT AGENCY. THE POEA ACCREDITATION CARRIES WITH IT THE ASSURANCE THAT A FOREIGN PRINCIPAL OR EMPLOYER IS REPUTABLE. CONSEQUENTLY, THE FAILURE OF SUCH AN ENTITY TO COMPLY WITH ITS OBLIGATIONS TO FILIPINO OVERSEAS WORKERS

SHOULD NOT BE MADE AN OBLIGATION OF THE LOCAL PLACEMENT AGENCY. (p. 68, Rollo.)

Respondents did not appeal from the POEA decision. However, in their comment on UPI's appeal, dated February 18, 1991, respondents contended that the POEA erred in deciding that they are entitled only to unpaid wages when they should have been paid their individual claims for the 9 months' and 7 days' unexpired portion of their contract and further, they should have been each refunded US\$269.00 as repatriation expenses (p. 43, Rollo). Respondents, through counsel, thus prayed that the NLRC reverse the decision of the POEA and order petitioner to pay, among other claims, "9 months and 7 days unexpired portion of their contract plus US\$269 repatriation expenses" (p. 45, Rollo). Petitioners also prayed for a writ of preliminary injunction or a temporary restraining order against the execution of the disputed resolution dated August 16, 1991.

In disposing of the appeal, public respondent sustained the finding of the POEA that private respondents' services were terminated without prior notice and that both UPI and Pacific Beverages are jointly and solidarily liable for private respondents unpaid wages. Moreover, the NLRC ruled on respondents' non-appealed claim for payment of their unexpired portion of the contract, as follows:

For those reasons, the complainants whose contracts of employment are for a period of 12 months are entitled to be paid for 9 months and 7 days representing the unexpired portion of their contract, as well as the refund of plane tickets in the amount of US \$269.00 each, and excess payment of placement fees in the amount of P14,500.00 each, as correctly pointed out in their comment to the appeal. There is, as in this case substantial albeit reversible error committed in ordering the dismissal of those money claims so earnestly sought by the complainants, hence we proceed to correct/amend the error to avoid a miscarriage of labor justice under Article 218 (c) of the Labor Code, as amended.

WHEREFORE, subject to the modification as above indicated, let the decision appealed from be, as it is hereby, AFFIRMED. (p. 24, Rollo.)

Hence, this petition on the ground that public respondent NLRC acted in excess of jurisdiction and with grave abuse of discretion when it resolved issues not raised by petitioner in its appeal but in private respondents' "Comment" to the appeal.

We issued a temporary restraining order on November 11, 1991.

On the issue of joint and solidary liability of UPI with Pacific Beverages for payment of unpaid wages of respondents, this is no longer a disputable matter. Pursuant to Section 10, Rule V of the Implementing Rules of Book I of the Labor Code:

Before recruiting any worker, the private employment agency shall submit the following documents: x x x (2) Power of the agency to sue and be sued jointly and solidarily with the principal or foreign-based employer for any of the violations of the recruitment agreement, and the contracts of employment. (Emphasis ours.)

Thus, it has been ruled that a recruitment agency was solidarily liable for the unpaid salaries of a worker it recruited for employment in Saudi Arabia (*Ambreque International Placement and Services vs. NLRC, et al.*, 157 SCRA 431 [1988]; *Catan vs. NLRC*, 160 SCRA 69 [1988]).

As the Solicitor General correctly points out, Rule II, Section 1-d(3) requires every applicant for license to operate a private employment agency for overseas recruitment and placement to undertake "joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the contract of employment", thus:

Section 1. Requirements for Issuance: License and Authority. Every applicant for license or authority to operate a

private employment agency, private recruitment entity or manning agency shall submit a written application together with the following requirements:

x x x

x x x

x x x

(d) A verified undertaking stating that the applicant:

x x x

x x x

x x x

(3) Shall assume joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the contract of employment. (p. 71, Rollo; underscoring supplied.)

The POEA, therefore, did not err in declaring UPI and Pacific Beverages jointly and solidarily liable for the unpaid wages of respondents.

With respect to NLRC's cognizance of respondents' non-appealed claims for payment of their unexpired portion of their contract and for refund of repatriation expenses, we agree with the Solicitor General and petitioner that respondent Commission committed grave abuse of discretion when it resolved these issues which were raised only by way of comment to the appeal, not in an appeal interposed by private respondents themselves.

Rule VI, Section 3-C of the New (1990) Rules of Procedure of the NLRC limits the review powers of the NLRC in cases of perfected appeals, to those issues raised on appeal, thus:

RULE VI

APPEALS

x x x x x x x x

Section 3. Requisites for Perfection of Appeal. x x x

(c) Subject to the provisions of Article 218, once the appeal is perfected in accordance with these rules, the Commission may limit itself to reviewing and deciding specific issues that were elevated on appeal.

In the present case, since only petitioners interposed a timely appeal from the POEA decision, respondents' non?appealed claims on those not raised on appeal may thus no longer be taken up and discussed by public respondent NLRC.

In the case of *Del Monte Philippines, Inc. vs. NLRC* (188 SCRA 370 [1990]), we emphasized:

When petitioner limited the issue on appeal, necessarily the NLRC may review only that issue raised. All other matters, including the issue of the validity of private respondent's dismissal, are final. If private respondent wanted to challenge the finding of a valid dismissal, he should have appealed his case seasonably to the NLRC. By raising new issues in the reply to appeal, private respondent is in effect appealing his case although he has, in fact, allowed his case to become final by not appealing within the reglementary period. A reply/opposition to appeal cannot take the place of an appeal. Therefore, in this case, the dismissal of the complaint for illegal

dismissal and the denial of the prayer for reinstatement, having become final, can no longer be reviewed. (at p. 374.)

Public respondent's reliance on Article 218(c) of the Labor Code "to avoid a miscarriage of labor justice" for its action in delving on issues not properly raised was struck down by this Court in *Del Monte*, in this manner:

Justifying its right to review the entire case and not just the sole legal question raised, public respondent relied on Article 218(c) of the Labor Code. In the resolution denying the motion for reconsideration, public respondent quoted that portion which provides that the NLRC may in the exercise of its appellate power "correct, amend or waive any error, defect or irregularity whether in substance or in form."

Such reliance is misplaced.

The Labor Code provision, read in its entirety, states that the NLRC's power to correct errors, whether substantial or formal, may be exercised only in the determination of a question, matter or controversy within its jurisdiction [Art. 218, Labor Code]. Therefore, by considering the arguments and issues in the reply/opposition to appeal which were not properly raised by timely appeal nor comprehended within the scope of the issue raised in petitioner's appeal, public respondent committed grave abuse of discretion amounting to excess of jurisdiction. (*Ibid.*)

To be sure, even in ordinary civil cases, it has been the uniform and long standing doctrine followed in this jurisdiction not to afford or extend any affirmative relief to an appellee who is not himself an appellant.

WHEREFORE, the Resolution of the National Labor Relations Commission dated August 16, 1991 is hereby MODIFIED by DELETING that portion directing payment of wages corresponding to 9 months and 7 days representing the unexpired portion of private respondents' contract, as well as the refund of plane tickets in the amount of US \$269.00 each, and excess payment of placement fees in the amount of P14,500.00 each. Respondent Commission's affirmance of the decision of the Philippine Overseas Employment Administration dated March 1, 1990 ordering petitioner United Placement International to pay jointly and severally with the foreign employer the unpaid wages of respondents is hereby AFFIRMED.

The temporary restraining order issued on November 11, 1991 is hereby LIFTED.

No special pronouncement is made as to costs.

SO ORDERED.

Bidin, Davide, Jr., and Romero, JJ., concur.

Feliciano, J., (Acting Chairman), concurring and dissenting opinion.

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CONCURRING AND DISSENTING OPINION

FELICIANO, J.:

I concur in the Decision penned by my distinguished brother in the Court, Melo, J., in this case, to the extent that that Decision affirms partially the Resolution of the National Labor Relations Commission (NLRC) dated 16 August 1991 concerning the award of earned, but unpaid, wages to private respondents. At the same time, I wish to express with great reluctance, my inability to concur in that portion of the Decision which modifies the NLRC

Resolution by striking down the award of the amounts due and unpaid under the contract of employment of private respondents.

I do not dispute the fact that ordinarily, and as a matter of procedural law, the position taken by the majority is correct. I would respectfully submit, however, that in the case at bar, there are good reasons for refraining from modifying and striking down the award by the NLRC of contract wages as having been rendered with grave abuse of discretion.

The POEA found that private respondent workers had been illegally dismissed. It should follow that private respondents were, as a matter of course, entitled to the payments provided under the contract of employment for the remaining unexpired or unserved period -- nine (9) months and seven (7) days. The POEA, however, failed to include in the dispositive portion of its decision a direction to petitioner and its foreign principal to pay the wages that should have been paid under private respondents' contract during the remaining unserved portion of their contract, as well as their repatriation expenses of US\$269.00 each. The NLRC awarded to private respondents those wages and expenses even though they had failed to appeal from the POEA's decision.

In my view, the NLRC, in doing so, in effect had simply suspended the operation in the instant case of the provisions of Section 3 (c), Rule VI of the New Rules of Procedure of the NLRC to give effect to the requirements of substantial justice. I respectfully submit that, in the case at bar, we should not hold this as constituting a grave abuse of discretion amounting to lack of jurisdiction. To the contrary, to deny to private respondents what is the ordinary measure of damages in a breach of contract of employment may be in effect to sanction the disregard of contract obligations on the part of the foreign principal, to the prejudice of respondent workers.

I vote to dismiss the Petition for Certiorari for lack of merit.

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