

**EASTERN ASSURANCE & SURETY CORPORATION, PETITIONER,
VS. SECRETARY OF LABOR, PHILIPPINE OVERSEAS EMPLOYMENT
ADMINISTRATION, ELVIRA VENTURA, ESTER TRANGUILLAN, ET AL.,
RESPONDENTS.**

G.R. Nos. 79436-50. January 17, 1990

Ponente: NARVASA, J.

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NARVASA, J.:

In connection with the application with the Philippine Overseas Employment Administration (POEA) of J & B Manpower Specialist, Inc. for a license to engage in business as a recruitment agency, a surety bond was filed on January 2, 1985 by the applicant and the Eastern Assurance and Surety Corporation, herein petitioner, in virtue of which they both held themselves —

" ** firmly bound unto (said) Philippine Overseas Employment Administration, Ministry of Labor in the penal sum of PESOS ONE HUNDRED FIFTY THOUSAND ONLY ** (P150,000.00) for the payment of which will and truly to be made, ** (they bound themselves, their) heirs, executors, administrators, successors and assigns, jointly and severally **."

The bond stipulated that:

a) it was "conditioned upon the true and faithful performance and observance of the ** principal (J & B Manpower Specialist, Inc.) of its duties and obligations in accordance with all the rules and regulations promulgated by the Ministry of Labor Philippine Overseas Employment Administration and with the terms and conditions stipulated in the License;"

b) "the liability of the ** Surety (petitioner) shall in no case exceed the sum of PESOS ONE HUNDRED FIFTY THOUSAND (P150,000.00) ONLY, PHILIPPINE CURRENCY;"[1]

c) "notice to the Principal is also a notice to the Surety;" and

d) "LIABILITY of the surety ** shall expire on JANUARY 02, 1986 and this bond shall be automatically cancelled ten (10) days after its expiration and the surety shall not be liable for any claim not discovered and presented to it in writing within said period of *** from expiration and the obligee hereby expressly waives the rights to file any court action against the Surety after termination of said period of *** above cited."[2]

As narrated by respondent Secretary of Labor, the facts are as follows:[3]

"From June 1983 to December 1985 ** thirty-three (33) ** (persons) applied for overseas employment with ** (J & B). In consideration of promised deployment, complainants paid respondent various amounts for various fees. Most of the receipts issued were signed by Mrs. Baby Bundalian, Executive Vice-President of ** (J & B).

Because of non-deployment ** (the applicants) filed separate complaints with the Licensing and Regulation Office of POEA against ** (J & B) for violation of Articles 32 and 34 (a) of the Labor Code between the months of April to October 1985.

Despite summons/notices of hearing, ** (J & B) failed to file Answer nor appear in the hearings conducted.

In its separate Answer, ** EASCO essentially disclaimed liability on the ground that the claims were not expressly covered by the bond, that POEA had no jurisdiction to order forfeiture of the bond, that some of the claims were paid beyond or prior to the period of effectivity of the bond.

On September 8, 1986, the POEA Administrator issued the Order in favor of complainants ruling thus:

'After careful evaluation, we find that the receipts and testimonies of complainants, in the absence of controverting evidence substantially establish that respondent charged and collected fees from them in amounts exceeding what is prescribed by this Administration. Complainants' nondeployment strongly indicates that there was no employment obtained for them. Hence, violation of Articles 32 and 34 (a) of the Labor code, as amended, is established against respondent. The claims of complainants having arose (arisen) out of acts of the principal covered under the surety (bond), the respondent surety is equally liable therefor.

Except for complainants Ramos, Samson, de Leon and Rizada, whose claims were transacted prior to the effectivity of the bond, ** EASCO was declared jointly and severally liable with ** (J & B) to twenty-nine (29) complainants.

(The dispositive portion of the POEA Administrator's Order also contained the following statement and direction, viz.:

'Respondent was suspended on May 23, 1985, June 26, 1985 and January 17, 1986 all for illegal exaction. Considering its track record of illegal exaction activities and considering further the gross violation of recruitment rules and regulations established against it in the instant cases, and the expiration of its license on February 15, 1985, it is hereby forever banned from participation in the overseas employment program. It is ordered to cease and desist from further engaging in recruitment activities otherwise it shall be prosecuted for illegal recruitment.'

(J & B filed a motion for reconsideration). On December 19, 1986, the then deputy Minister of Labor and Employment denied the ** Motion for Reconsideration for lack of merit and affirmed the findings in the Order of the POEA Administrator finding no reversible error therein."

On appeal by EASCO — J & B having as aforesated taken no part in the proceeding despite due service of summons — the judgment was modified by the Secretary of Labor, by Order dated July 1, 1987, disposing as follows:[4]

"WHEREFORE, in view of the foregoing, the Resolution of the then Deputy Minister of Labor dated December 19, 1986 affirming the Order of the POEA Administrator dated September 8, 1986 is hereby MODIFIED. Respondent J & B Manpower Specialist is directed to refund all thirty-three (33) complainants as listed in the Order of September 8, 1986 in the amounts listed thereto with the modification that complainants Lucena Cabasal and Felix Rivero are both entitled only to P15,980 and not P15,980 each. Respondent Eastern Assurance and surety Corporation is hereby found jointly and severally liable with respondent J & B Manpower Specialist to refund nineteen (19) complainants in the modified amounts *** (particularly specified).

The other findings in the Order of the POEA Administrator dated September 8, 1986 affirmed in the Resolution of the then Deputy Minister ** are also hereby AFFIRMED. This Order is FINAL. No further Motion for Reconsideration hereof shall be entertained."

It is noteworthy that EASCO's liability for the refund, jointly and severally with its principal, was limited to 19 named complainants (in contrast to the verdicts of the POEA and the Deputy Minister which both ordered payment to no less than 33 complainants) and was correspondingly reduced from P308,751.75 and US\$400.00[5]

to the aggregate amount of P140,817.75.[6]

The special civil action of certiorari at bar was thereafter instituted by EASCO[7] praying for the nullification of the POEA Administrator's Order of September 8, 1986, the Resolution of the Deputy Minister of Labor of December 19, 1986, and the Order of the Secretary of Labor of July 1, 1987. It theorizes that:

- 1) the POEA had no jurisdiction over the claims for refund filed by non-employees;
- 2) neither did the Secretary of Labor have jurisdiction of the claims;
- 3) assuming they had jurisdiction, both the POEA and Secretary of Labor also committed legal errors and acted with grave abuse of discretion when they ruled that petitioner is liable on the claims.

EASCO contends that the POEA had no "adjudicatory jurisdiction" over the monetary claims in question because the same "did not arise from employer-employee relations." Invoked in support of the argument is Section 4 (a) of EO 797 providing in part[8] that the POEA has —

" ** original and exclusive jurisdiction over all cases, including money claims, involving employer-employee relations arising out of or by virtue of any law or contract involving Filipino workers for overseas employment, including seamen. ** ."

The complaints are however for violation of Articles 32 and 34 (a) of the Labor Code. Article 32 and paragraph (a) of Article 34 read as follows:

"ART. 32. Fees to be paid by workers. - Any person applying with private fee-charging employment agency for employment assistance shall not be charged any fee until he has obtained employment through its efforts or has actually commenced employment. Such fee shall be always covered with the approved receipt clearly showing the amount paid. The Secretary of Labor shall promulgate a schedule of allowable fees."

"ART. 34. Prohibited practices. - It shall be unlawful for any individual, entity, licensee, or holder of authority:

- a) To charge or accept, directly or indirectly, any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor, or to make a worker pay any amount greater than actually received by him as a loan or advance; **."

The penalties of suspension and cancellation of license or authority are prescribed for violations of the above quoted provisions, among others. And the Secretary of Labor has the power under Section 35 of the law to apply these sanctions, as well as the authority, conferred by Section 36, not only to "restrict and regulate the recruitment and placement activities of all agencies," but also to "promulgate rules and regulations to carry out the objectives and implement the provisions" governing said activities. Pursuant to this rule-making power thus granted, the Secretary of Labor gave the POEA,[9] "on its own initiative or upon filing of a complaint or report or upon request for investigation by any aggrieved person, ** (authority to) conduct the necessary proceedings for the suspension or cancellation of the license or authority of any agency or entity" for certain enumerated offenses including —

- 1) the imposition or acceptance, directly or indirectly, of any amount of money, goods or services, or any fee or bond in excess of what is prescribed by the Administration, and
- 2) any other violation of pertinent provisions of the Labor Code and other relevant laws, rules and regulations.[10]

The Administrator was also given the power to "order the dismissal of the case or the suspension of the license or authority of the respondent agency or contractor or recommend to the Minister the cancellation thereof." [11]

Implicit in these powers is the award of appropriate relief to the victims of the offenses committed by the

respondent agency or contractor, specially the refund or reimbursement of such fees as may have been fraudulently or otherwise illegally collected, or such money, goods or services imposed and accepted in excess of what is licitly prescribed. It would be illogical and absurd to limit the sanction on an offending recruitment agency or contractor to suspension or cancellation of its license, without the concomitant obligation to repair the injury caused to its victims. It would result either in rewarding unlawful acts, as it would leave the victims without recourse, or in compelling the latter to litigate in another forum, giving rise to that multiplicity of actions or proceedings which the law abhors.

Even more untenable is EASCO's next argument that the recruiter and its victims are in *pari delicto* — the former for having required payment, and the latter for having voluntarily paid, "prohibited recruitment fees" — and therefore, said victims are barred from obtaining relief. The sophistical, if not callous, character of the argument is evident upon the most cursory reading thereof; it merits no consideration whatever.

The Court is intrigued by EASCO's reiteration of its argument that it should not be held liable for claims which accrued prior to or after the effectivity of its bond, considering that the respondent Secretary had conceded the validity of part of said argument, at least. The Secretary ruled that EASCO's "contention that it should not be held liable for claims/payments made to respondent agency before the effectivity of the surety bond on January 2, 1985 is well taken." According to the Secretary:[12]

" ** A close examination of the records reveal(s) that respondent EASCO is not jointly and severally liable with respondent agency to refund complainants Lucena Cabasal/Felix Rivero, Romulo del Rosario, Rogelio Banzuela, Josefina Ogatis, Francisco Sorato, Sonny Quiazon, Josefina Dictado, Mario del Guzman, and Rogelio Mercado (10 in all). These complainants paid respondent agency in 1984, or before the effectivity of the bond on January 2, 1985 as evidenced by their receipts and their testimonies."

The related argument, that it is also not liable for claims filed after the expiry (on January 2, 1986) of the period stipulated in the surety bond for the filing of claims against the bond, must however be rejected, as the Secretary did. The Court discerns no grave abuse of discretion in the Secretary's statement of his reasons for doing so, to wit:

" ** While it may be true that respondent EASCO received notice of their claims after the ten (10) day expiration period from cancellation or after January 12, 1986 as provided in the surety bond, records show that ** EASCO's principal, respondent agency, was notified/summoned prior to the expiration period or before January 12, 1986. Respondent agency received summons on July 24, 1985 with respect to claims of complainants Penarroyo, Dela Cruz and Canti. It also received summons on November 26, 1985 with respect to Giovanni Garbillon's claim. Respondent agency was likewise considered constructively notified of the claims of complainants Calayag, Danuco, Domingo and Campena on October 6, 1985. In this connection, it may be stressed that the surety bond provides that notice to the principal is notice to the surety. Besides, it has been held that the contract of a compensated surety like respondent EASCO is to be interpreted liberally in the interest of the promisees and beneficiaries rather than strictly in favor of the surety (*Acoustics Inc. v. American Surety*, 74 Nev-6, 320 P2d 626, 74 Am. Jur. 2d)."

So, too, EASCO's claim that it had not been properly served with summons as regards a few of the complaints must be rejected, the issue being factual, and the Court having been cited to no grave error invalidating the respondent Secretary's conclusion that summons had indeed been duly served.

Finally, EASCO's half-hearted argument that its liability should be limited to the maximum amount set in its surety bond, i.e., P150,000.00, is palpably without merit, since the aggregate liability imposed on it, P140,817.75, *supra*, does not in fact exceed that limit.

WHEREFORE, the petition is DISMISSED for lack of merit, and this decision is declared to be immediately

executory. Costs against petitioner.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] This limitation is stated no less than three (3) times in the surety bond.

[2] The blanks were not filled up by the parties.

[3] Rollo, pp. 48-49 parenthetical statements supplied.

[4] Italics supplied.

[5] Rollo, pp. 41-42, being pp. 1 and 2 of the Resolution of the Deputy Minister dated Dec. 19, 1986, in which are enumerated the complainants entitled to refund the amounts individually due to them.

[6] The list of complainants entitled to refund and the amounts respectively due them are set forth at pages 10 and 11 of the Order of the respondent Secretary: Rollo, pp. 54-55.

[7] *Id.*, pp. 9-34. The petition is dated September 12, 1987.

[8] Italics supplied.

[9] Sec. 3 of Rule VI, Book II of the New Rules on Overseas Employment.

[10] Sec. 2 (a) and (2), *id.*

[11] Sec. 10, *id.*

[12] Italics in quotation, in original.

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