

OMAR K. AL-ESAYI AND COMPANY, LTD., PETITIONER, VS. HERMINIO FLORES AND NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

G.R. NOS. 86214-15. March 21, 1990

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

Complaints for illegal dismissal and recruitment violations (imposition of excessive placement fees and substitution of employment contracts) were filed in the Phil. Overseas Employment Administration (POEA) by Herminio Flores (herein private respondent), Rolando Mendoza, Enrique M. De la Cruz and Edgardo R. Reyes against T. C. IGNA OVERSEAS RECRUITMENT CORPORATION (hereafter "IGNA") and its foreign principal, OMAR M. AL-ESAYI & CO., LTD (hereafter "OMACO") docketed as POEA Case No. (L) 86-08-740 and POEA Case No. (L) 86-08-761.

The complainants, Flores, et al., had been hired by IGNA to work as auto inspectors for two years at a monthly salary of SR1,600 in Saudi Arabia after a training course for one month in Singapore. In the Philippines, they signed two (2) contracts: one for their training course in Singapore and another for their employment in Riyadh. However, upon arrival in Riyadh, they were made to sign a third contract of employment which allegedly varied the terms of their second contract. Flores' contract with OMACO was signed on April 29, 1986 (p. 9, Rollo, G.R. Nos. 86214-15).

Mendoza and Reyes began their training course on January 26, 1986. When it ended on February 25, 1986, they were shipped to Riyadh to work in Omaco's Motor Vehicle Periodic Inspection Station (MVPIS).

Flores and De la Cruz underwent training in Singapore from April 13 to May 13, 1986 and promptly proceeded to Riyadh.

In July 1986, reports of auto inspectors accepting bribes from customers desiring to pass the periodic inspection of their motor vehicles, reached the management of OMACO which investigated the reports. Without written notice or formal charges, Flores and Reyes were dismissed and repatriated on July 25, 1986. Mendoza and De la Cruz were likewise sent home on July 28 and July 29, 1986, respectively.

Upon their return to the Philippines, they filed in the POEA complaints against IGNA and OMACO for illegal dismissal.

IGNA and OMACO alleged that the complainants were dismissed for: (1) violation of the laws of the Kingdom of Saudi Arabia and company regulations; and 2) loss of trust and confidence by reason of acts inimical to the interest of the company.

During the pendency of the case, Mendoza and Reyes executed Affidavits of Desistance, Release, Waiver and Quitclaim. Only Flores and De la Cruz prosecuted their complaints, but the POEA Administrator dismissed their complaints on the finding that they were dismissed for cause:

"x x x It must be emphasized that complainants' employer, Omar K. Al-Esayi and Co., Ltd. (OMACO for brevity), is a private corporation whose services were contracted by the government of Saudi Arabia for the testing and inspection of all motor vehicles before their eventual registration. The kind of service rendered by OMACO to the government of Saudi Arabia is of utmost importance not only to the latter but to the people as well because this will ensure their safety on the roads. It is for this reason that OMACO has to maintain an unblemished name through honest and efficient service, thus, its employees, specifically the auto inspectors, must necessarily possess the highest degree of integrity and candor. Taking this into consideration, the manner in which respondents hired complainants is competitive and rigid, although expensive. Complainants had to undergo a month's training course in Singapore and had to pass the examinations at the end of the course before being brought to Saudi Arabia. This Office takes cognizance of the investments made by respondents on the complainants and we believe that they will not capriciously terminate the latter were it not for serious reasons.

"xxx xxx xxx.

"Complainants, though not managerial employees, occupy positions which require trust and confidence. Whatever misdeeds they would commit will gravely affect the company's name.

"Records on file disclose that complainant De la Cruz had been directly implicated by his co-workers in Exhs. '5' and '6' of respondents. Moreover, De la Cruz was likewise issued a written warning for misconduct (Annex 'B'). The written declaration of the Station Manager (Annex 'A') is given due consideration for having been sufficiently substantiated. Complainants are all members of inspection lane team no. 7. Due to organizational procedure of the vehicle inspection test, complainant Flores must also have been either directly involved or must have been aware of the operations of his co-workers. He however chose to remain silent by not reporting the same to management.

"x x x An investigation was conducted by their employer with the participation of the captain of the General Traffic Police on site." (pp. 44-46, Rollo, G.R. Nos. 86214-15.)

On appeal by the complainants to the NLRC, the Commission affirmed the findings of the POEA concerning De la Cruz "for the evidence established beyond cavil that he was involved in the anomaly of receiving tips from customers to facilitate vehicle inspection" (p. 26, Rollo, G.R. Nos. 86214-15). However, it reversed the POEA decision with respect to Flores on the ground that his dismissal "was based on conjecture and without notice" (p. 26, Rollo, G.R. Nos. 86214-15) as demonstrated by the declaration of OMACO's station manager, Hans H. Kluever, that:

"Due to the organizational procedure of the vehicle inspection test, Mssrs. Herminio Flores and Edgardo Reyes must also have been either directly involved or they must have known about the manipulation of their colleagues [sic] of the same lane team without informing the station management." (p. 26, Rollo, G.R. Nos. 86214-15.)

The NLRC further noted that "an examination of the letters of their co-employees implicating complainant-appellant Enrique De la Cruz do not mention the name of complainant-appellant Herminio Flores" (p. 27, Rollo, G.R. Nos. 86214-15). But Flores' profession of lack of knowledge and non-involvement in the bribery reports was considered by OMACO as non--cooperation and insubordination - sufficient cause to boot him out too.

The NLRC directed the appellees "to pay jointly and severally complainant-appellant Herminio Flores his salary for the unexpired portion of his contract from July 25, 1986 to May 13, 1988 x x x" (pp. 27-28, Rollo, G.R. Nos. 86214-15) in the sum of SR34,560, plus the salaries withheld from him.

The petitions for review separately filed by IGNA (G.R. Nos. 86224-25) and by OMACO (G.R. Nos. 86214-15) in this Court were consolidated.

The petitioners allege that the NLRC gravely abused its discretion in ordering them to pay Flores' salaries for the unexpired portion of his contract, because by the terms of said contract, being still a probationary employee, he could be dismissed at any time without prior notice and without compensation. His contract with OMACO expressly provided as follows:

"(3) 2nd Party shall be under probationary period in the 1st three months during which the 1st party can cancel this Contract without giving prior notice. In this case the 2nd party has no right to ask for any compensation. (Par. 3, page 2, Contract of Employment, Annex 'C').

"(14) The 1st Party has the right to terminate this Contract without prior notice, termination award or indemnity in case the 2nd Party committed any of the violations stated in Article No. (83) of the Saudi Labour Law. (Par. 14, page 6, Contract of Employment, Annex 'C')." (Underlining supplied, p. 8, Rollo, G.R. Nos. 86214- 15.)

The petition for certiorari has no merit.

Even if Flores was still a probationary employee when he was dismissed (his employment commenced on May 13, 1986 and he was dismissed on July 23, 1986 or before his 3-month probation ended), he may not be dismissed without prior notice and without just cause (*Manila Hotel vs. NLRC*, 141 SCRA 169).

"ART. 281. Probationary Employment. -Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee." (Labor Code of the Phils.)

The third contract which he signed with OMACO in Riyadh, altering some of the terms of the second contract which he signed in the Philippines, is invalid, it having been executed in violation of the law prohibiting contract substitution (Art. 34, Subpar. [i], Labor Code) and of the employee's right to due process and security of tenure.

On October 29, 1987, the POEA suspended IGNA's license for two (2) months, or, in lieu thereof, ordered it to pay a fine for contract substitution and overcharging of placement fees. It was also ordered to refund to Flores and De la Cruz the excess placement fee collected from them (p. 89, Rollo, G.R. No. 86214-15). This circumstance confirms the nullity of the substitute contract on which OMACO based its decision to terminate Flores' employment.

The finding of the NLRC that Flores was illegally dismissed without prior notice and without just cause, being supported by substantial evidence, must be accorded respect and finality by this Court. A factual finding of the NLRC may not be reviewed by this Court in a special civil action for certiorari under Rule 65 of the Rules of Court, where the only issue for determination is whether or not the NLRC acted without jurisdiction or with grave abuse of discretion in rendering its decision. For failure of the petitioners to sustain that charge, We are constrained to dismiss the petitions for certiorari, the decision of the NLRC being correct and in accordance with the applicable laws.

WHEREFORE, the two petitions for certiorari filed by T. C. Igna Overseas Recruitment Corporation (G.R. No. 86224-25) and Omar K. Al-Esayi and Co., Ltd. (G.R. No. 86214-15) are dismissed for lack of merit. Costs against the petitioners.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Gancayco, JJ., concur.

Medialdea, on leave.

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