

FINMAN GENERAL ASSURANCE CORP., PETITIONER, VS. WILLIAM INOCENCIO, ET AL., AND EDWIN CARDONES, THE ADMINISTRATOR, PHILIPPINE OVERSEAS AND EMPLOYMENT ADMINISTRATION, THE SECRETAR...

G.R. Nos. 90273-75. November 15, 1989

Ponente: FELICIANO, J.

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FELICIANO, J.:

Pan Pacific Overseas Recruiting Services, Inc. ("Pan Pacific") is a private, fee-charging, recruitment and employment agency. In accordance with the requirements of Section 4, Rule II, Book II of the Rules and Regulation of the Philippine Overseas Employment Administration (POEA), Pan Pacific posted a surety bond issued by petitioner Finman General Assurance Corporation ("Finman") and was granted a license to operate by the POEA.

Private respondents William Inocencio, Perfecto Palero, Jr., Edwin Cardones and one Edwin Hernandez filed with the POEA separate complaints against Pan Pacific for violation of Articles 32 and 34 (a) of the Labor Code, as amended and for refund of placement fees paid to Pan Pacific. The complainants alleged that Pan Pacific charged and collected such fees from them but did not secure employment for them.

Acting on the complaints, the POEA Administrator *motu proprio* impleaded petitioner Finman as party respondent in its capacity as surety for Pan Pacific. Separate summonses were served upon Finman and Pan Pacific. The return of the summons served on Pan Pacific at its official address registered in the POEA records, showed that Pan Pacific had moved out therefrom; no prior notice of transfer or change of address was furnished by Pan Pacific to the POEA as required under POEA rules. The POEA considered that constructive service of the complaints had been effected upon Pan Pacific and proceeded accordingly.

For its part, petitioner Finman filed an answer denying liability and pleading, by way of special and affirmative defenses, that: (1) the POEA had no "jurisdiction over surety bonds," that jurisdiction being vested in the Insurance Commission or the regular courts; (2) it (Finman) had not violated Articles 32 and 34 (a) of the Labor Code and complainants' claims had accrued during the suspension of the principal obligor, Pan Pacific; (3) complainants had no cause of action against Finman, since it was not privy to the transactions between them and Pan Pacific and had not received any moneys from them; and (4) the amounts claimed by complainants had been paid by them as deposits and not as placement fees.

A hearing was held by the POEA on 14 April 1988, at which time complainants presented their evidence. Petitioner Finman, though notified of this hearing, did not appear.

On 30 May 1989, the POEA Administrator issued an Order which, in its dispositive portion, said:

"WHEREFORE, premises considered, respondents are hereby ordered to pay jointly and severally complainants' claims as follows:

1. William Inocencio

P6,000.00

2. Perfecto Palero, Sr.

P5,500.00

3. Edwin Cardones

P2,000.00

Respondent agency is ordered to release Cardones' passport, the expenses of obtaining the same of which (sic) shall be deducted from the amount of P2,000.00 as it appears that it was respondent agency who applied for the processing thereof. The claim of Edwin Hernandez is dismissed without prejudice.

"For the established violations respondent agency is hereby imposed a penalty fine in the amount of P60,000.00. Further, the ban earlier imposed upon it is herein reiterated.

"SO ORDERED."

Petitioner Finman went on appeal to the Secretary of Labor insisting that: (1) the POEA had no authority to implead petitioner as party respondent in the proceedings before the POEA; and that (2) the POEA had no authority to enforce directly the surety bond against petitioner. In an Order dated 3 August 1989, the Secretary of Labor upheld the POEA Order appealed from and denied the appeal for lack of merit.

Petitioner Finman now comes before this Court on a Petition for Certiorari with prayer for preliminary injunction or temporary restraining order, raising much the same issues it had already ventilated before the POEA and the Secretary of Labor. It is contended once again by petitioner Finman that the POEA had no authority to implead petitioner in the proceedings commenced by private respondents; and that the POEA was not authorized to require, in those same proceedings, petitioner to pay private respondents' claims for refund against Pan Pacific on the basis of the surety bond issued by petitioner.

Petitioner's contentions are interrelated and will be dealt with together. They are, however, quite bereft of merit and must be rejected.

Petitioner cannot seriously dispute the direct and solidary nature of its obligations under its own surety bond. Under Section 176 of the Insurance Code, as amended, the liability of a surety in a surety bond is joint and several with the principal obligor. Petitioner's bond was posted by Pan Pacific in compliance with the requirements of Article 31 of the Labor Code, which states that ---

"Art. 31. Bonds. -- All applicants for license or authority shall post such cash and surety bonds as determined by the Secretary of Labor to guarantee compliance with prescribed recruitment procedures, rules and regulations, and terms and conditions of employment as appropriate.

The Secretary of Labor shall have the exclusive power to determine, decide, order or direct payment from, or application of, the cash and surety bond for any claim or injury covered and guaranteed by the bonds."
(Underscoring supplied)

The tenor and scope of petitioner Finman's obligations under the bond it issued are set out in broad ranging terms by Section 4, Rule II, Book 1 of the POEA Rules and Regulations:

"Section 4. Payment of Fees and Posting of Bonds. -- Upon approval of the application by the Minister, the applicant shall pay an annual license fee of P6,000.00. It shall also post a cash bond of P100,000.00 and a surety bond of P150,000.00 from a bonding company acceptable to the Administration duly accredited by the

Office of the Insurance Commission. The bonds shall answer for all valid and legal claims arising from violations of the conditions for the grant and use of the license or authority and contracts of employment. The bonds shall likewise guarantee compliance with the provisions of the Labor Code and its implementing rules and regulations relating to recruitment and placement, the rules of the Administration and relevant issuances of the Ministry and all liabilities which the Administration may impose. The surety bonds shall include the condition that notice of garnishment to the principal is notice to the surety."[1] (Underscoring supplied)

While petitioner Finman has refrained from attaching a copy of the bond it had issued to its Petition for Certiorari, there can be no question that the conditions of the Finman surety bond Pan Pacific had posted with the POEA include the underscored portions of Section 4, Rule II, Book I quoted above. It is settled doctrine that the conditions of a bond specified and required in the provisions of the statute or regulation providing for the submission of the bond, are incorporated or built into all bonds tendered under that statute or regulation, even though not there set out in printer's ink.[2]

In the case at bar, the POEA held, and the Secretary of Labor affirmed, that Pan Pacific had violated Article 32 of the Labor Code, as amended

"Article 32. Fees to be paid by workers. -- Any person applying with a 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." (Underscoring supplied)

as well as Article 34 (a) of the same Code:

"Article 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." (Underscoring supplied)

There is, hence, no question that, both under the Labor Code[3] and the POEA Rules and Regulations,[4] Pan Pacific had violated at least one of the conditions for the grant and continued use of the recruitment license granted to it. There can, similarly, be no question that the POEA Administrator and the Secretary of Labor are authorized to require Pan Pacific to refund the placement fees it had charged private respondents without securing employment for them and to impose the fine of P60,000.00 upon Pan Pacific. Article 36 of the Labor Code authorizes the Secretary of Labor "to restrict and regulate" the recruitment and placement activities of agencies like Pan Pacific and "to issue orders and promulgate rules and regulations to carry out the objectives and implement the provisions of [Title I on "Recruitment and Placement of Workers]," including of course, Article 32 on "Fees to be paid by workers," quoted earlier. Upon the other hand, Section 13 of Rule VI, Book I of the POEA Rules and Regulations expressly authorize the POEA Administrator or the Secretary of Labor to impose fines "in addition to or in lieu of the penalties of suspension or cancellation" of the violator recruitment agency's license.

If Pan Pacific is liable to private respondents for the refunds claimed by them and to the POEA for the fine of P60,000.00, and if petitioner Finman is solidarily liable with Pan Pacific under the operative terms of the bond, it must follow that Finman is liable both to the private respondents and to the POEA. Petitioner Finman asserts, however, that the POEA had no authority to implead it in the proceedings against Pan Pacific.

We are not persuaded by this assertion. Clearly, petitioner Finman is a party-in-interest in, certainly a proper party to, the proceedings private respondents had initiated against Pan Pacific the principal obligor. Since Pan Pacific

had thoughtfully refrained from notifying the POEA of its new address and from responding to the complaints, petitioner Finman may well be regarded as an indispensable party to the proceedings before the POEA. Whether Finman was an indispensable or merely a proper party to the proceedings, we believe and so hold that the POEA could properly implead it as party respondent either upon the request of the private respondents or, as it happened, *motu proprio*. Such is the situation under the Revised Rules of Court[5] and the application thereof, directly or by analogy, by the POEA can certainly not be regarded as arbitrary, oppressive or capricious.

The fundamental argument of Finman is that its liability under its own bond must be determined and enforced, not by the POEA or the Secretary of Labor, but rather by the Insurance Commission or by the regular courts. Once more, we are not moved by petitioner's argument.

There appears nothing so special or unique about the determination of a surety's liability under its bond as to restrict that determination to the Office of the Insurance Commissioner and to the regular courts of justice exclusively. The exact opposite is strongly stressed by the second paragraph of Article 31 of the Labor Code:

"Art. 31. Bonds. -- x x x x x x

The Secretary of Labor shall have the exclusive power to determine, decide, order or direct payment from, or application of, the cash or surety bond for any claim or injury covered and guaranteed by the bonds."
(Underscoring supplied)

We believe and so hold that to compel the POEA and private respondents -- the beneficiaries of Finman's bond -- to go to the Insurance Commissioner or to a regular court of law to enforce that bond, would be to collide with the public policy which requires prompt resolution of claims against private recruitment and placement agencies. The Court will take judicial notice of the appalling frequency with which some, perhaps many, of such agencies have cheated workers avid for overseas employment by, e.g., collecting placement fees without securing employment for them at all, extracting exorbitant fees or "kickbacks" from those for whom employment is actually obtained, abandoning hapless and unlettered workers to exploitative foreign principals, and so on. Cash and surety bonds are required by the POEA and its predecessor agencies from recruitment and employment companies precisely as a means of ensuring prompt and effective recourse against such companies when held liable for applicants' or workers' claims. Clearly that public policy will be effectively negated if POEA and the Department of Labor and Employment were held powerless to compel a surety company to make good on its solidary undertaking in the same quasi-judicial proceeding where the liability of the principal obligor, the recruitment or employment agency, is determined and fixed and where the surety is given reasonable opportunity to present any defenses it or the principal obligor may be entitled to set up. Petitioner surety whose liability to private respondents and the POEA is neither more nor less than that of Pan Pacific, is not entitled to another or different procedure for determination or fixing of that liability than that which Pan Pacific is entitled and subject to.

WHEREFORE, the Petition for Certiorari with prayer for preliminary injunction or temporary restraining order is hereby DISMISSED for lack of merit. Costs against petitioner. This Resolution is immediately executory.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] See also Section 4, Rule V, Book I of the Omnibus Rules Implementing the Labor Code.

[2] *Thomas Yang v. Hon. Marcelino Valdez, et al.*, G.R. No. 73317, promulgated August 31, 1989; and *Luzon Surety Company v. Quebral*, 127 SCRA 295 (1984).

[3] Art. 35. Suspension and/or Cancellation of License or authority. -- The Secretary of Labor shall have the power to suspend or cancel any license or authority to recruit employees for overseas employment for violation of

rules and regulations issued by the Minister of Labor, the Overseas Employment Development Board, and the National Seamen Board, or for violations of the provisions of this and other applicable laws. General Orders and Letters of Instructions.

[4] Section 1 (d) (2) and (5), Rule II, Book II:

"Section 1. Requirements for Issuance of 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

(d). A verified undertaking stating that the applicant:

x x x x x x x x

(2) shall assume full and complete responsibility for all claims and liabilities which may arise in connection with the use of license;

x x x x x x x x

(5) shall assume full and complete responsibility for all acts of its officials, employees and representatives done in connection with recruitment and placement."

Also: Section 2, Rule VI, Book II:

"Section 2. Grounds for Suspension, Cancellation or Revocation. -- A license or authority shall be cancelled, suspended or revoked on any of the following grounds, among others:

(a) Imposing or accepting directly or indirectly any amount of money, goods or services, or any fee or bond in excess of what is prescribed by the Administration:

x x x x x x x x

(w) Violation of other pertinent provisions of the Labor Code and other relevant laws, rules and regulations."

[5] See Sections 6, 7, 8 and 11, Rule 3, Revised Rules of Court.

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