

## FIRST DIVISION

[ G.R. No. 205953, June 06, 2018 ]

**DIONELLA A. GOPIO, DOING BUSINESS UNDER THE NAME AND STYLE, JOB ASIA MANAGEMENT SERVICES, PETITIONER, VS. SALVADOR B. BAUTISTA, RESPONDENTS.**

### D E C I S I O N

**JARDELEZA, J.:**

This is a petition for review on *certiorari*<sup>[1]</sup> seeking the reversal of the August 31, 2012 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 116450 which annulled the Decision<sup>[3]</sup> and Resolution<sup>[4]</sup> issued by the National Labor Relations Commission (NLRC) and reinstated the Decision<sup>[5]</sup> rendered by the Labor Arbiter, and the February 22, 2013 CA Resolution<sup>[6]</sup> denying petitioner's motion for reconsideration of the assailed Decision.

On September 26, 2008, respondent Salvador A. Bautista (Bautista) was hired as a Project Manager for Shorncliffe (PNG) Limited (Shorncliffe) in Papua New Guinea through Job Asia Management Services (Job Asia), a single proprietorship owned by petitioner Dionella A. Gopio (Gopio), which is engaged in the business of recruitment, processing, and deployment of land-based manpower for overseas work. Bautista's contract stated that his employment shall be valid and effective for 31 months with a net monthly salary of P40,000.00. On October 4, 2008, he arrived at his workplace in Papua New Guinea.<sup>[7]</sup>

On July 6, 2009, or just nine months after his deployment in Papua New Guinea, Bautista was served a notice of termination effective July 10, 2009 on the alleged grounds of unsatisfactory performance and failure to meet the standards of the company. He was paid his salary for the period July 1 to 10, 2009, annual leave credits, and one-month pay net of taxes. Thereafter, he was repatriated on July 11, 2009.<sup>[8]</sup>

On July 27, 2009, Bautista lodged a complaint with the arbitration branch of the NLRC against Job Asia, Gopio, and Shorncliffe for illegal dismissal and monetary claims. He claimed that he was terminated without just cause since there had been no job evaluation conducted prior to Shorncliffe's decision to dismiss him from employment. As a result, he is entitled to the payment of his salaries for the unexpired portion of his contract, or for 22 months. He alleged that while his contract contained an understated monthly income of P40,000.00, he was actually being paid the amount of P115,850.00 a month. Other than salaries, Bautista also claimed unrealized employment benefits, nine days sick leave pay, four weeks recreation leave pay, moral and exemplary damages, as well as attorney's fees.<sup>[9]</sup>

Job Asia, Gopio, and Shorncliffe, for their part, argued that Bautista's employment

was terminated because he failed to meet Shorncliffe's standards. To buttress their claim, they submitted in evidence the work performance evaluation report on Bautista which listed the following observations:

1. He is not capable of performing the duties of a Project Manager.
2. He was unable to control or direct his workforce, equipment and materials.
3. He is incompetent in the handling of his daily tasks.
4. [He] failed to provide any monthly reports both verbal and written on the progress of his projects as a company requirement.
5. He has never submitted any monthly progress claims as a company requirement.
6. He demonstrated that he was technically incompetent and hides himself when there is a problem.
7. He was not capable of running project site meetings with the management and his staff.
8. He is a lazy person, incompetent in his decision making and has poor communication skills.
9. He was unable to pass his knowledge to young PNG Engineers, in fact they were teaching him instead.<sup>[10]</sup>

On January 7, 2010, the Labor Arbiter rendered his Decision finding Bautista to have been illegally dismissed as the dismissal was not proven to be for a just cause and Shorncliffe failed to observe due process. The Labor Arbiter held that the work performance evaluation allegedly showing Bautista's inefficiency and shortcomings in the performance of his job was made only on August 22, 2009, or more than one month after Bautista's dismissal. Thus, the findings therein are mere conclusions of fact, at best self-serving and merits no consideration.<sup>[11]</sup> Moreover, Shorncliffe failed to observe due process by not giving Bautista the twin notices required by law. The latter was not notified of the intention to dismiss him or the acts or omissions complained of. Neither was he notified of the decision to dismiss him and given an opportunity to answer and rebut the charges against him in between notices.<sup>[12]</sup>

The Labor Arbiter also rejected the argument that Bautista's employment was terminated on the basis of Article 4.3 of the employment contract by giving him one-month salary in lieu of one month's written notice.<sup>[13]</sup> The said provision states:

- 4.3The Employer or Employee may terminate this contract on other grounds. The Employer should give one month's written notice of his intention to terminate or in lieu thereof pay the Employee a sum equivalent to one month's salary. The Employee may likewise terminate this Contract by giving three months' notice to the Employer.<sup>[14]</sup>

The Labor Arbiter held that the stipulation providing for payment of one-month salary in lieu of serving one month's notice of the employer's intention to terminate Bautista's employment is contrary to our laws which uphold the sanctity of workers' security of tenure. It also considered the employment contract as a contract of adhesion which cannot militate against the rights of Bautista.<sup>[15]</sup> He thus ordered Job Asia, Gopio, and Shorncliffe to jointly and severally pay Bautista his salaries for the unexpired portion of his contract of employment in the amount of P2,548,700.00,<sup>[16]</sup> moral and exemplary damages in the amount of P300,000.00, and attorney's fees at P254,870.00.<sup>[17]</sup>

Undaunted, Job Asia, Gopio, and Shorncliffe filed an appeal with the NLRC. On May 17, 2010, the NLRC issued its Decision setting aside the Decision of the Labor Arbiter and dismissing the complaint for illegal dismissal and monetary claims for lack of merit. Nevertheless, it ordered that Bautista be indemnified nominal damages in the amount of P40,000.00.<sup>[18]</sup>

The NLRC held that the parties were bound by the terms and conditions of the employment contract that bore the stamp of approval of the Philippine Overseas Employment Administration (POEA). Consequently, it found that Bautista's contract was pre-terminated in accordance with Article 4.3 thereof. Contrary to the Labor Arbiter's finding, the NLRC upheld the reports of Shorncliffe's officers pertaining to his unsatisfactory performance and incompetence, and thus declared Bautista's employment to have been terminated for a just cause. It, however, held that Bautista was not afforded due process, for which he should be awarded indemnity pegged at the rate of his basic salary for one month as stated in his employment contract, or P40,000.00. The NLRC found no bad faith or malice on the part of Job Asia, Gopio, or Shorncliffe that would have been the basis for an award of moral and exemplary damages and attorney's fees.<sup>[19]</sup>

Bautista filed a motion for reconsideration of the NLRC Decision, but it was denied through a Resolution dated July 30, 2010. Hence, he filed a petition for *certiorari* with the CA.

On August 31, 2012, the CA rendered its Decision annulling and setting aside the NLRC Decision and reinstating that of the Labor Arbiter. It held that Article 4.3 of the employment contract violates the provisions of the Labor Code on security of tenure since it gives the employer the option to do away with the notice requirement as long as he grants one-month salary to the employee in lieu thereof. The provision deprives the employee of due process and violates his right to be apprised of the grounds for his termination without giving him an opportunity to defend himself and refute the charges against him. Moreover, the term "other grounds" is all-encompassing and makes the employee susceptible to arbitrary dismissal.<sup>[20]</sup>

The CA also held that Job Asia, Gopio, and Shorncliffe failed to substantiate their claim that Bautista was discharged for just cause. Their claim that the latter was dismissed for performing below standards was not backed by any proof. Further, Bautista was notified of his termination only four days prior to the intended date of dismissal without evidence of an assessment of his performance and the results thereof. Neither was he served a notice of any wrongdoing prior to the service of the notice of his termination. The CA noted that the declarations of Anthony B. Ponnampalam and Paul Thompson, officers of Shorncliffe, were executed on October

31, 2009 and October 1, 2009, respectively, or more than two months after the termination of Bautista's employment on July 10, 2009. Further, the evaluation report made by Robert Aup, another Shorncliffe official, was made only on August 22, 2009, and hence obviously an afterthought. Thus, there being no sufficient cause to terminate Bautista's employment, his dismissal is illegal. The CA thus upheld the Labor Arbiter's Decision and additionally awarded Bautista full reimbursement of his placement fee with interest of 12% *per annum*.<sup>[21]</sup>

Thus, this petition where the Court is called upon to ultimately resolve two issues that have been beleaguering the parties for more than eight years, to wit: whether or not Bautista was illegally dismissed from employment, and whether or not he is entitled to his monetary claims.

We uphold with modification the Decision of the CA.

## I.

In 1995, Republic Act (R.A.) No. 8042, otherwise known as an "An Act to Institute the Policies of Overseas Employment and Establish a Higher Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress, and for Other Purposes" was passed. More popularly known as the Migrant Workers and Overseas Filipinos Act of 1995, this law echoes the provision in the 1987 Constitution<sup>[22]</sup> on protection of labor. Thus, Section 2(b) thereof under "Declaration of Policies," states:

(b) The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. Towards this end, the State shall provide adequate and timely social, economic and legal services to Filipino migrant workers.

Moreover, Section 2(c) thereof provides:

(c) x x x The existence of the overseas employment program rests solely on the assurance that the dignity and fundamental human rights and freedoms of the Filipino citizens shall not, at any time, be compromised or violated. x x x

Accordingly, regulatory provisions may be read all throughout R.A. No. 8042 that carry out the policy of the State to protect and promote the rights of Filipino migrant workers. Employment agreements are verily more than contractual in nature in the Philippines. The Philippine Constitution and laws guarantee special protection to workers here and abroad.<sup>[23]</sup> Thus, even if a Filipino is employed abroad, he or she is entitled to security of tenure, among other constitutional rights.<sup>[24]</sup>

In termination disputes or illegal dismissal cases, it has been established by Philippine law and jurisprudence that the employer has the burden of proving that the dismissal is for just and valid causes; and failure to do so would necessarily mean that the dismissal was not justified and is, therefore, illegal.<sup>[25]</sup> Taking into account the character of the charges and the penalty meted to an employee, the employer is bound to adduce clear, accurate, consistent, and convincing evidence to prove that the dismissal is valid and legal.<sup>[26]</sup> This is consistent with the principle of

security of tenure as guaranteed by the Constitution and reinforced by Article 292(b)<sup>[27]</sup> of the Labor Code of the Philippines,<sup>[28]</sup> which provides:

Art. 292. Miscellaneous Provisions x x x

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article [298] of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. x x x<sup>[29]</sup>

Here, petitioner argues that there was justifiable cause for the termination of Bautista's employment since the latter has fallen short of Shorncliffe's employment and work standards. She cited the report of Shorncliffe's Chief Executive Officer and Project Team Leader, Robert Aup, which detailed Bautista's shortcomings, as well as the report of Paul Thompson, Supervising Engineer of the Project to which Bautista was assigned, which mentioned the latter's incompetence.<sup>[30]</sup> Maintaining that the rights and obligations among the Overseas Filipino Worker (OFW), the local recruiter or agent, and the foreign employer or principal is governed by the employment contract which is the law among them, petitioner also claims that Bautista's employment was validly terminated even without notice as he was given the equivalent of one-month salary in lieu thereof.<sup>[31]</sup>

The Court is not convinced.

As observed by the CA, the evaluation report of Robert Aup was made only on August 22, 2009, and the declaration of Paul Thompson was executed only on October 1, 2009, which dates are beyond the date of termination of Bautista's employment on July 10, 2009. The CA correctly concluded that these were made as an afterthought in order to lend credence to the claim that the termination of Bautista's employment was for a valid reason.<sup>[32]</sup> In *Skippers United Pacific, Inc. v. Maguad*,<sup>[33]</sup> we held that the Master's Statement Report presented by therein petitioners to corroborate their claim that the dismissal of therein respondents was for just cause, *i.e.*, incompetence, was issued 78 days<sup>[34]</sup> after therein respondents were repatriated to Manila and two months after the latter instituted a complaint for illegal dismissal before the NLRC. Such report can no longer be a fair and accurate assessment of therein respondents' competence as the same was presented only after the complaint was filed. Its execution was a mere afterthought in order to justify the dismissal of therein respondents which had long been effected before the report was made; hence, such report is a self-serving one.<sup>[35]</sup>