

SECOND DIVISION

[G.R. No. 172342, July 13, 2009]

**LWV CONSTRUCTION CORPORATION, PETITIONER, VS.
MARCELO B. DUPO, RESPONDENT.**

D E C I S I O N

QUISUMBING, J.:

Petitioner LWV Construction Corporation appeals the Decision^[1] dated December 6, 2005 of the Court of Appeals in CA-G.R. SP No. 76843 and its Resolution^[2] dated April 12, 2006, denying the motion for reconsideration. The Court of Appeals had ruled that under Article 87 of the Saudi Labor and Workmen Law (Saudi Labor Law), respondent Marcelo Dupo is entitled to a *service award or longevity pay* amounting to US\$12,640.33.

The antecedent facts are as follows:

Petitioner, a domestic corporation which recruits Filipino workers, hired respondent as Civil Structural Superintendent to work in Saudi Arabia for its principal, Mohammad Al-Mojil Group/Establishment (MMG). On February 26, 1992, respondent signed his first overseas employment contract, renewable after one year. It was renewed five times on the following dates: May 10, 1993, November 16, 1994, January 22, 1996, April 14, 1997, and March 26, 1998. All were fixed-period contracts for one year. The sixth and last contract stated that respondent's employment starts upon reporting to work and ends when he leaves the work site. Respondent left Saudi Arabia on April 30, 1999 and arrived in the Philippines on May 1, 1999.

On May 28, 1999, respondent informed MMG, through the petitioner, that he needs to extend his vacation because his son was hospitalized. He also sought a promotion with salary adjustment.^[3] In reply, MMG informed respondent that his promotion is subject to management's review; that his services are still needed; that he was issued a plane ticket for his return flight to Saudi Arabia on May 31, 1999; and that his decision regarding his employment must be made within seven days, otherwise, MMG "will be compelled to cancel [his] slot."^[4]

On July 6, 1999, respondent resigned. In his letter to MMG, he also stated:

x x x x

I am aware that I still have to do a final settlement with the company and hope that during my more than seven (7) [years] services, as the Saudi Law stated, I am entitled for a *long service award*.^[5] (Emphasis supplied.)

x x x x

According to respondent, when he followed up his claim for *long service award* on December 7, 2000, petitioner informed him that MMG did not respond.^[6]

On December 11, 2000, respondent filed a complaint^[7] for payment of *service award* against petitioner before the National Labor Relations Commission (NLRC), Regional Arbitration Branch, Cordillera Administrative Region, Baguio City. In support of his claim, respondent averred in his position paper that:

x x x x

Under the Law of Saudi Arabia, an employee who rendered at least five (5) years in a company within the jurisdiction of Saudi Arabia, is entitled to the so-called *long service award which is known to others as longevity pay* of at least one half month pay for every year of service. In excess of five years an employee is entitled to one month pay for every year of service. In both cases inclusive of all benefits and allowances.

This benefit was offered to complainant before he went on vacation, hence, this was engrained in his mind. He reconstructed the computation of his long service award or longevity pay and he arrived at the following computation exactly the same with the amount he was previously offered [which is US\$12,640.33].^[8] (Emphasis supplied.)

x x x x

Respondent said that he did not grab the offer for he intended to return after his vacation.

For its part, petitioner offered payment and prescription as defenses. Petitioner maintained that MMG "pays its workers their *Service Award or Severance Pay* every conclusion of their Labor Contracts pursuant to Article 87 of the [Saudi Labor Law]." Under Article 87, "payment of the award is at the end or termination of the Labor Contract concluded for a specific period." Based on the payroll,^[9] respondent was already paid his *service award or severance pay* for his latest (sixth) employment contract.

Petitioner added that under Article 13^[10] of the Saudi Labor Law, the action to enforce payment of the *service award* must be filed within one year from the termination of a labor contract for a specific period. Respondent's six contracts ended when he left Saudi Arabia on the following dates: April 15, 1993, June 8, 1994, December 18, 1995, March 21, 1997, March 16, 1998 and April 30, 1999. Petitioner concluded that the one-year prescriptive period had lapsed because respondent filed his complaint on December 11, 2000 or one year and seven months after his sixth contract ended.^[11]

In his June 18, 2001 Decision,^[12] the Labor Arbiter ordered petitioner to pay respondent *longevity pay* of US\$12,640.33 or P648,562.69 and attorney's fees of P64,856.27 or a total of P713,418.96.^[13]

The Labor Arbiter ruled that respondent's seven-year employment with MMG had sufficiently oriented him on the benefits given to workers; that petitioner was unable to convincingly refute respondent's claim that MMG offered him *longevity pay* before he went on vacation on May 1, 1999; and that respondent's claim was not barred by prescription since his claim on July 6, 1999, made a month after his cause of action accrued, interrupted the prescriptive period under the Saudi Labor Law until his claim was categorically denied.

Petitioner appealed. However, the NLRC dismissed the appeal and affirmed the Labor Arbiter's decision.^[14] The NLRC ruled that respondent is entitled to *longevity pay which is different from severance pay*.

Aggrieved, petitioner brought the case to the Court of Appeals through a petition for certiorari under Rule 65 of the Rules of Court. The Court of Appeals denied the petition and affirmed the NLRC. The Court of Appeals ruled that *service award is the same as longevity pay*, and that the *severance pay* received by respondent *cannot be equated with service award*. The dispositive portion of the Court of Appeals decision reads:

WHEREFORE, finding no grave abuse of discretion amounting to lack or in (sic) excess of jurisdiction on the part of public respondent NLRC, the petition is denied. The NLRC decision dated November 29, 2002 as well as and (sic) its January 31, 2003 *Resolution* are hereby **AFFIRMED in toto**.

SO ORDERED.^[15]

After its motion for reconsideration was denied, petitioner filed the instant petition raising the following issues:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN FINDING NO GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION ON THE PART OF PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THE SERVICE AWARD OF THE RESPONDENT [HAS] NOT PRESCRIBED WHEN HIS COMPLAINT WAS FILED ON DECEMBER 11,

2000.

III.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN APPLYING IN THE CASE AT BAR [ARTICLE 1155 OF THE CIVIL CODE].

IV.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN APPLYING ARTICLE NO. 7 OF THE SAUDI LABOR AND WORKMEN LAW TO SUPPORT ITS FINDING THAT THE BASIS OF THE SERVICE AWARD IS LONGEVITY [PAY] OR LENGTH OF SERVICE RENDERED BY AN EMPLOYEE.

[16]

Essentially, the issue is whether the Court of Appeals erred in ruling that respondent is entitled to a *service award or longevity pay* of US\$12,640.33 under the provisions of the Saudi Labor Law. Related to this issue are petitioner's defenses of payment and prescription.

Petitioner points out that the Labor Arbiter awarded *longevity pay* although the Saudi Labor Law grants no such benefit, and the NLRC confused *longevity pay and service award*. Petitioner maintains that the benefit granted by Article 87 of the Saudi Labor Law is *service award* which was already paid by MMG each time respondent's contract ended.

Petitioner insists that prescription barred respondent's claim for *service award* as the complaint was filed one year and seven months after the sixth contract ended. Petitioner alleges that the Court of Appeals erred in ruling that respondent's July 6, 1999 claim interrupted the running of the prescriptive period. Such ruling is contrary to Article 13 of the Saudi Labor Law which provides that no case or claim relating to any of the rights provided for under said law shall be heard after the lapse of 12 months from the date of the termination of the contract.

Respondent counters that he is entitled to *longevity pay* under the provisions of the Saudi Labor Law and quotes extensively the decision of the Court of Appeals. He points out that petitioner has not refuted the Labor Arbiter's finding that MMG offered him *longevity pay* of US\$12,640.33 before his one-month vacation in the Philippines in 1999. Thus, he "submits that such offer indeed exists" as he sees no reason for MMG to offer the benefit if no law grants it.

After a careful study of the case, we are constrained to reverse the Court of Appeals. We find that respondent's *service award* under Article 87 of the Saudi Labor Law has already been paid. Our computation will show that the *severance pay* received by respondent was his *service award*.

Article 87 clearly grants a **service award**. It reads:

Article 87

Where the term of a labor contract concluded for a specified period comes to an end or where the employer cancels a contract of unspecified period, **the employer shall pay to the workman an award for the period of his service** to be computed on the basis of half a month's pay for each of the first five years and one month's pay for each of the subsequent years. The last rate of pay shall be taken as basis for the computation of the award. For fractions of a year, the workman shall be entitled to an award which is proportionate to his service period during that year. Furthermore, the workman shall be entitled to the service award provided for at the beginning of this article in the following cases:

- A. If he is called to military service.
- B. If a workman resigns because of marriage or childbirth.
- C. If the workman is leaving the work as a result of a force majeure beyond his control.^[17] (Emphasis supplied.)

Respondent, however, has called the benefit other names such as *long service award* and *longevity pay*. On the other hand, petitioner claimed that the *service award* is the same as *severance pay*. Notably, the Labor Arbiter was unable to specify any law to support his award of *longevity pay*.^[18] He anchored the award on his finding that respondent's allegations were more credible because his seven-year employment at MMG had sufficiently oriented him on the benefits given to workers. To the NLRC, respondent is entitled to *service award or longevity pay* under Article 87 and that *longevity pay is different from severance pay*. The Court of Appeals agreed.

Considering that Article 87 expressly grants a service award, why is it correct to agree with respondent that service award is the same as longevity pay, and wrong to agree with petitioner that service award is the same as severance pay? And why would it be correct to say that service award is severance pay, and wrong to call service award as longevity pay?

We found the answer in the pleadings and evidence presented. Respondent's position paper mentioned how his long service award or longevity pay is computed: half-month's pay per year of service and one-month's pay per year after five years of service. Article 87 has the same formula to compute the service award.

The payroll submitted by petitioner showed that respondent received **severance pay** of SR2,786 for his sixth employment contract covering the period April 21, 1998 to April 29, 1999.^[19] The computation below shows that respondent's **severance pay** of SR2,786 was his **service award** under Article 87.

$$\begin{aligned} \text{Service Award} &= \frac{1}{2} (\text{SR5,438})^{\text{[20]}} + (9 \text{ days}/365 \text{ days})^{\text{[21]}} \times \frac{1}{2} \\ & (\text{SR5,438}) \\ \text{Service Award} &= \underline{\underline{\text{SR2,786.04}}} \end{aligned}$$