

## THIRD DIVISION

[ G.R. No. 118943, September 10, 2001 ]

**MARIO HORNALES, PETITIONER, VS. THE NATIONAL LABOR  
RELATIONS COMMISSION, JOSE CAYANAN AND JEAC  
INTERNATIONAL MANAGEMENT CONTRACTOR SERVICES,  
RESPONDENTS.**

### D E C I S I O N

**SANDOVAL-GUTIERREZ, J.:**

It is sad enough that poverty has impelled many of our countrymen to seek greener pastures in foreign lands. But what is more lamentable is when a Filipino recruiter, after sending his unlettered countrymen to a foreign land and letting them suffer inhuman treatment in the hands of an abusive employer, connives with the foreign employer in denying them their rightful compensation. Surely, there shall be a day of reckoning for such a recruiter whose insatiable love for money made him a tyrant to his own race.

At bench is a petition for *certiorari* seeking to annul and set aside the **(a)** Decision<sup>[1]</sup> dated July 28, 1994 of the National Labor Relations Commission (NLRC) reversing the Decision<sup>[2]</sup> of the Philippine Overseas Employment Administration (POEA) in POEA Case No. (L) 92-07-939,<sup>[3]</sup> and **(b)** Resolution<sup>[4]</sup> dated October 6, 1994 denying petitioner's motion for reconsideration.

The facts as shown by the records are:

On July 15, 1992, Mario Hornales (*herein petitioner*) filed with the POEA a complaint<sup>[5]</sup> for non-payment of wages and recovery of damages against JEAC International Management & Contractor Services (JEAC) and its owner, Jose Cayanana (*herein private respondents*). As private respondents' surety, Country Bankers Insurance Corporation (Country Bankers) was later on impleaded by petitioner. The complaint alleged that on October 8, 1991, private respondents sent petitioner, together with other Filipinos, to Singapore. At their departure, they were advised that someone would meet them in Singapore. True enough, they were welcomed by Victor Lim, the owner of Step-Up Employment Agency (Step-Up Agency).<sup>[6]</sup> He informed them that they would be working as fishermen with a monthly salary of US \$200.00 each. Thereafter, they boarded Ruey Horn #3, a vessel owned by Min Fu Fishery Co. Ltd. of Taiwan.

On board the vessel, petitioner was subjected to inhumane work conditions, like inadequate supply of food and water, maltreatment by the ship captain, and lack of medical attendance. He was also required to work for twenty-two hours a day without pay. Unable to bear his situation any longer, he joined the other Filipino workers in leaving the vessel while it was docked at Mauritius Islands on July 15,

1992.

Upon his return to the Philippines, petitioner asked private respondents to pay his salaries. Instead of doing so, they required him to surrender his passport promising that they would procure another job for him. Later, private respondents gave him the amount of five hundred pesos (P500.00).

Private respondents filed an answer<sup>[7]</sup> claiming that, *petitioner, Victor Lim and Min Fee Fishery Co. Ltd* are all "total strangers" to them. To bolster the claim, they offered in evidence the **Joint Affidavit**<sup>[8]</sup> of Efren B. Balucas and Alexander C. Natura, petitioner's co-workers in Singapore, stating that while they were in Singapore, petitioner admitted to them that he did not apply in any agency in the Philippines; that he came to Singapore merely as a tourist; and that, he applied directly and personally with Step-Up Agency. These statements were corroborated by the **"Certification"**<sup>[9]</sup> issued by Step-Up Agency.

On January 23, 1993, petitioner filed a *Supplemental Affidavit*<sup>[10]</sup> claiming that he was not a "total stranger" to private respondents, and that, as a matter of fact, he knew respondent Cayanan since 1990, when they used to go to the San Lazaro Hippodrome to watch horse races. He also averred that while the vessel was docked at Mauritius Islands on June 1992, respondent Cayanan reminded him and his co-workers of their loan obligations by sending them photocopies of the **PNB checks** he (respondent Cayanan) issued in favor of their relatives, and the **agreements** whereby they authorized Victor Lim to deduct from their salaries the amount of their loan obligations.

On January 5, 1994, the POEA rendered a decision in favor of petitioner, the dispositive portion of which reads:

"WHEREFORE, premises considered, respondents JEAC International Management and Contractor Services, Jose E. Cayanan and Travellers Insurance Corp. are hereby ordered, jointly and severally to pay complainant the amount of US DOLLARS: ONE THOUSAND SIX HUNDRED FORTY SIX AND 66/100 (US\$1,646.66) representing his unpaid salaries and US\$164.66 as and by way of attorney's fees. Payment shall be made in Philippine Currency at the prevailing rate of exchange at the time of payment.

For want of jurisdiction, the claim for moral and exemplary damages is denied.

All other claims and counterclaims are denied.

SO ORDERED."<sup>[11]</sup>

Incidentally, the POEA dismissed petitioner's claim against Country Bankers on the ground that the surety bond which was effective at the time of petitioner's deployment was that of Travelers Insurance Corporation.

On appeal, respondent NLRC vacated the decision of the POEA and dismissed petitioner's complaint mainly on the ground that there was no employer-employee relationship between the parties. The NLRC ratiocinated as follows:

"At the outset, we note that the record is bereft of any showing that complainant applied with the respondent agency as a job applicant and subsequently entered into an overseas contract with the latter which was later processed and approved by the POEA. X x x What appears is that complainant used the agency as a stepping stone to enter Singapore as a tourist and obtain employment thereat on his own. This is evidenced by Annexes "A-1" to "H" of Complainant's Reply (See pp. 65-72, record) which purports to show that the batch of complainant was obligated to pay back respondent Jose Cayanan the expenses for their deployment. No less than the POEA noted that the respondent agency "is a service contractor and is not authorized to deploy fishermen." Based on this fact, the respondent agency could not have deployed complainant as an overseas contract worker. What is apparent is that it obtained a tourist passport and plane ticket for complainant as a travel agent on a clearly "fly now pay later" plan.

We cannot rely on the employment agreements and checks (See pp. 66-67, record) presented by complainant to show proof of employment relations considering that his name does not appear in any of the documents, hence they are merely hearsay."<sup>[12]</sup>

In reversing the POEA's finding, respondent NLRC gave considerable weight to the *Joint Affidavit* of Natura and Balucas.

Unsatisfied, petitioner filed a motion for reconsideration but was denied.

Petitioner now comes to this Court *via* a petition for certiorari, imputing grave abuse of discretion to public respondent NLRC. He asserts that private respondents were the ones who deployed him to Singapore to work as fisherman; and that, respondent NLRC's conclusion that respondent JEAC was a mere "travel agency" and petitioner, a mere tourist, has no basis in fact and in law.

For their part, private respondents maintain that respondent NLRC did not commit grave abuse of discretion when it set aside the decision of the POEA, since petitioner failed to show any POEA record or document to prove that they deployed him to work in Singapore. Neither did he present a *Special Power of Attorney* to prove that Step-Up Agency authorized private respondents to recruit and deploy contract workers in its behalf nor an *Affidavit of Responsibility* to show that they (private respondents and Step-Up Agency) assumed solidary liability to petitioner.<sup>[13]</sup> Private respondents likewise insist that the photocopies of the **PNB checks** and **agreements** are hearsay and inadmissible in evidence.

The Solicitor General, in his comment,<sup>[14]</sup> joins petitioner in assailing the decision of respondent NLRC as "baseless and erroneous." According to him, the conclusion of respondent NLRC directly contradicts private respondents' defense that petitioner was a "total stranger." Further, he contends that the **Joint Affidavit** of Balucas and

Natura are hearsay.

The cardinal issue in this case hinges on the question - *Are private respondents responsible for petitioner's recruitment and deployment to Singapore?*

Let us take a closer look at the scale of evidence.

On one arm of the scale are petitioner's evidence consisting of photocopies of the **PNB checks** and **agreements** which were intended to disprove private respondents' claim that petitioner, Victor Lim and Step-Up Agency are "total strangers." The **PNB checks** represent the payments made by respondent Cayanan to the relatives of petitioner's co-workers (including Balucas and Natura). The checks show the name of **LIM Chang Koo &/or Jose Cayanan**, as drawers. While the **agreements**, denominated "*For Fisherman Deployed For Work To Singapore*," constitute authorization to Victor Lim to deduct from the monthly salaries of the workers the amounts of their obligations to private respondents. Petitioner's own undertaking to private respondents reads:

"I hereby certify that my expenses abroad in going to Singapore as fisherman amounting to SIXTEEN THOUSAND PESOS (P16,000.00) shall be temporarily shouldered by **JEAC INT'L MGT & CONT. SERVICES** and as soon as I arrive in Singapore, said amount will be charged by **MR. VICTOR LIM** and will be remitted to **Eng. Jose E. Cayanan**."

(Sgd.) Mario Hornales

F. CREW"<sup>[15]</sup>

On the other side of the scale are the **Joint Affidavit** secured by private respondents from petitioner's co-workers, Balucas and Natura, and a **Certification** issued by Step-Up Agency. These evidence were intended to prove the alleged admission of petitioner to Balucas and Natura that he went as a tourist to Singapore and that he applied directly with Step-Up Agency. The **Certification** of Step-Up Agency re-echoes the allegations in the **Joint Affidavit**.

The scale of evidence must tilt in favor of petitioner.

In a catena of labor cases, this Court has consistently held that where the adverse party is deprived of the opportunity to cross-examine the affiants, affidavits are generally rejected for being hearsay, unless the affiant themselves are placed on the witness stand to testify thereon.<sup>[16]</sup> Private respondents' **Joint Affidavit** has no probative value. It suffers from two infirmities, *first*, petitioner was not given the opportunity to cross-examine the two affiants regarding the contents thereof, and *second*, the two affiants merely swore as to what petitioner told them but not as to the truth of the statements uttered.<sup>[17]</sup>

In the same vein, the **Certification** must not be given weight. Private respondents not only failed to present Victor Lim before the POEA to be cross-examined by petitioner, but the **Certification** was also not verified or under oath.<sup>[18]</sup> To our mind, it is just a last-ditch attempt on the part of Step-Up Agency to help private respondents free themselves from liability to petitioner. It bears noting that private

respondents, Victor Lim and Step-Up Agency, as shown by petitioner's evidence, acted in concert in his deployment to Singapore. Hence, such certification is, at most, self-serving.

On the other hand, the **PNB Checks** and the **agreements** presented by petitioner strongly disprove private respondents' total strangers' theory. It may be observed that, in their attempt to exculpate themselves from monetary liability, private respondents adopted an extreme position, i.e., that they have nothing to do with petitioner, Victor Lim and Step-Up Agency. Such strategy proved to be disastrous to them. The mere presentation of documents bearing private respondents' names and that of Step-Up Agency and Victor Lim is enough to defeat their theory. More so, when the documentary evidence consist of bank checks showing the existence of a joint account, and authorization agreements revealing a contract of agency.

Private respondents' argument that petitioner's evidence are mere photocopies and therefore cannot be considered as the best evidence on the issue does not persuade us. The best evidence rule enshrined in the Revised Rules on Evidence provides that "when the subject of an inquiry is the contents of a document, no evidence shall be admissible other than the original document itself."<sup>[19]</sup> This rule is not without exception. Some of the exception are when the original has been lost or destroyed; cannot be produced in court without bad faith on the part of the offeror; or when the original is in the custody or under the control of the party against whom the evidence is offered and the latter fails to produce it after reasonable notice.<sup>[20]</sup> It would be unreasonable to demand from petitioner the presentation of the original **PNB Checks** considering that it is a banking practice that for a check to be encashed, the same must be surrendered to the bank first. These checks are, therefore, most likely in the possession of the bank. As to the **agreements**, it is reasonable to conclude that respondent Cayan was the one in possession of the originals thereof. It maybe recalled that these **agreements** were executed by the workers for his security and benefit. At any rate, it is worthy to note that private respondents did not disown the **PNB checks** nor deny the existence of the **agreements**.

Notwithstanding the foregoing, it must be emphasized that the proceedings before the POEA is non-litigious in nature. The technicalities of law and procedure and the rules obtaining in the courts of law shall not strictly apply thereto and a hearing officer may avail himself of all reasonable means to ascertain the facts of the case.<sup>[21]</sup> On the applicability of the Rules of Court to labor cases, the Supreme Court has ruled in *Shoemart, Inc. v. National Labor Relations Commission*<sup>[22]</sup>:

"The argument cannot be sustained. Whatever merit it might have in the context of ordinary civil actions, where the rules of evidence apply with more or less strictness, disappears when adduced in connection with proceedings before Labor Arbiters and the National Labor Relations Commission; for in said proceedings, the law is explicit that `the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the (law's) spirit and intention that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due