

## FIFTEENTH DIVISION

[ CA-G.R. SP NO. 128621, May 05, 2014 ]

### **BRIGHT INTERNATIONAL MANPOWER SERVICES, INC., MOND AND BASIM S/O YASSEN M. AL GHADEER, AND FATIMA A. SANTILLANA, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND CALEXTO M. REYES, RESPONDENTS.**

#### **D E C I S I O N**

##### **LAZARO-JAVIER, A.C., J.:**

This petition for *certiorari*<sup>[1]</sup> assails the following issuances of the National Labor Relations Commission (NLRC)<sup>[2]</sup> in NLRC NCR (OFW-L) Case No. 10-15515-11 (NLRC LAC: OFW-L No. 05-000434-12), viz:

- 1) Decision dated July 31, 2012, ordering petitioners to pay Reyes' salary differentials, unexpired portion of his contract, and attorney's fees.
- 2) Resolution dated November 29, 2012, modifying its previous decision and only deleting the award of the salaries for the unexpired portion of Reyes' contract.

Private respondent Calexto M. Reyes averred:<sup>[3]</sup> Petitioners hired him as a Technician/Electrician to work in the Kingdom of Saudi Arabia. He signed up a 2 year contract with monthly salary of US\$420.00. He worked daily for more than 8 hours, albeit he only received a month salary of US\$200.00. During his 14<sup>th</sup> month, he was repatriated due to his incessant demand for salary differentials. He filed an illegal dismissal complaint against petitioners. He demanded payment of the following: salary differentials, unexpired portion of his contract (10 months), overtime pay, moral and exemplary damages, attorney's fees, and refund of his placement fee.

In their Position Paper dated November 29, 2011,<sup>[4]</sup> petitioners Bright International Services, Inc., et al. countered:

(1) Bright International Services, Inc. was a domestic corporation duly licensed by the Philippine Overseas Employment Administration (POEA) to engage in the recruitment and placement of Filipino workers abroad. It hired private respondent Calexto M. Reyes as Technician/Electrician, in behalf of its foreign principal Mond and Basim S/O Yassen M. Al Ghadeer and trading partners Trading and Industrial Company. Reyes agreed and signed the employment contract. Reyes' employment contract was for a period of 24.73 months and for a monthly salary of US\$420.00.

(2) On May 25, 2009, Reyes left for the Kingdom of Saudi Arabia (KSA). Upon his arrival in Saudi Arabia, they discovered that Reyes was totally unqualified for the position he applied for. He was given the opportunity to prove he was qualified for other technical positions, but was later found to be unfit. Reyes, then, negotiated and offered to work as helper in Jareh Mahboba printing department. He got

accepted and was earning US\$200.00 monthly. In addition, he was entitled to other benefits, *i.e.* overtime pay, free board, and lodging.

(3) Prior to the completion of his 2 year employment contract, Reyes resigned due to serious family problems and his foreign employer accepted his resignation. He signed an Avowal and Quitclaim and received his corresponding salary and benefits. On July 25, 2010, he was repatriated to the Philippines. On October 11, 2011 or more than a year after his repatriation, Reyes filed an illegal dismissal complaint against them. Their company president Fatima A. Santillana, along with foreign principal, Mond and Basim S/O Yassen M. Al Ghadeer was also impleaded as co-respondents.

By Decision dated March 22, 2012,<sup>[5]</sup> Labor Arbiter Michelle P. Pagtalunan decreed: (1) Reyes was not illegally dismissed. As a matter of fact, Reyes never raised the issue of constructive dismissal with the Arbitration Office and the latter cannot pass upon it on the merits for lack of jurisdiction. More, Reyes' complaint was filed 1 year beyond the reglementary period. (2) He failed to substantiate his monetary claims. (3) The Avowal and Quitclaim signed was valid and binding between Reyes and his foreign employer.

On appeal, the NLRC reversed. On petitioners' subsequent motion for reconsideration,<sup>[6]</sup> the NLRC affirmed with modification, deleting the award of 10 month salary to Reyes corresponding to the unexpired portion of the employment contract.<sup>[7]</sup>

Petitioner now faults the NLRC with grave abuse of discretion, amounting to lack or excess of jurisdiction for retaining the award of salary differentials and attorney's fees to Reyes. Petitioners argue that Reyes is not entitled to salary differentials because: (1) He signed an Avowal and Quitclaim and received all what was due him such as his salaries, overtime pay, and other benefits. The Labor Arbiter upheld that the quitclaim was valid and binding on Reyes since it was recognized as an official legal document prescribed under Saudi Arabia laws. (2) Reyes was guilty of dishonesty when he falsified his credentials that he was qualified as Technician/Electrician, when in fact, he was not. Although Reyes had a Trade Test certification, petitioner had no means to verify its authenticity, but was impelled to rely on Reyes' honesty. (3) As penalty for Reyes' dishonesty, he was demoted and received a monthly salary of \$200.00, the fixed minimum salary rate given to Overseas Filipino Workers (OFW) in Saudi Arabia. Further, Reyes never refuted his demotion during the arbitration proceedings.<sup>[8]</sup>

Petitioner further faults the NLRC for fixing the amount of US\$420.00 as Reyes' salary rate, a rate given only to Technician/Electrician, a position which Reyes was allegedly unqualified to perform.

The petition lacks merit. Consider:

**One.** Record shows that petitioners hired private respondent Reyes as Technician/Electrician. The latter signed an employment contract for a duration of 24.73 months and for a monthly salary of US\$420.00. On May 25, 2009, he left for the Kingdom of Saudi Arabia (KSA). After his 3 month probationary period, he worked as helper for Jareh Mahoba, a foreign printing company, and received a monthly salary of only US\$200.00, less than his contracted salary. During his 14th month, he was repatriated to the Philippines.

Reyes was constructively dismissed when he got demoted as mere helper with a monthly salary of only US\$200.00. In *Mario B. Dimagan v. Dacworks United, Incorporated And/Or Dean A. Cancino*,<sup>[9]</sup> the Supreme Court ruled:

Constructive dismissal is defined as a quitting because continued employment is rendered impossible, unasonable or unlikely; when there is a demotion in rank or a diminution of pay. The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances. It is an act amounting to dismissal but is made to appear as if it were not. Constructive dismissal is therefore a *dismissal in disguise*. The law recognizes and resolves this situation in favor of employees in order to protect their rights and interests from the coercive acts of the employer.

As held in the case of *Coca-Cola Bottlers Philippines, Inc. vs. Del Villar*, the burden falls upon the company to prove that the employee's assignment from one position to another was not tantamount to constructive dismissal.<sup>[10]</sup>

Living in a foreign country away from his family who depended on him, Reyes had no choice but to accept petitioners' unfair terms. Even then, after tirelessly working for 14 straight months and earning a meager salary, he finally mustered the courage to demand payment of his salary differentials in the amount of US\$220.00 per month. But precisely because of his incessant demand, therefor, he got repatriated to the Philippines even against his will. Clearly, resignation was never an option for Reyes. In his Memorandum of Appeal dated April 27, 2012, he admitted that he had no intention to resign or pre-terminate his contract and was determined to finish his 2 year employment contract for his family.<sup>[11]</sup>

Notably, petitioners failed to discharge the burden of proof that Reyes' assignment from Technician/Electrician to printing office helper did not equate with constructive dismissal. His transfer was not in accordance with the contract he initially executed in the Philippines. He, in fact, was able to produce his payslips as proof that there was diminution of his contracted monthly salary.

**Two.** Petitioners failed to substantially prove that Reyes falsified his application to justify petitioners' decision to demote him. Also, it was not shown that Reyes was incompetent to perform his tasks as Technician/Electrician. As certified by the Trade Test Center, Reyes had the required technical qualifications for the tasks on hand, and petitioners failed to refute the truth of this certification.

At any rate, before Filipino workers are deployed abroad, they are subjected to trade tests conducted by the recruiting agency itself to ensure that only technically qualified workers for the foreign principal are actually employed.<sup>[12]</sup> The purpose of the required trade test is to weed out incompetent applicants from the pool of available workers. It is intended to expose applicants with false educational backgrounds and expose bogus qualifications.

Surely, when Reyes was deployed to KSA, he was presumed to have passed the required trade test and found qualified to work abroad. In fact, petitioner Bright International Services, Inc., as the local recruitment agent, was itself responsible in guaranteeing its foreign principal that Reyes was qualified for the job he signed up