

## SECOND DIVISION

[ G.R. No. 226578, January 28, 2019 ]

**AUGUSTIN INTERNATIONAL CENTER, INC., PETITIONER, V.  
ELFRENITO B. BARTOLOME AND RUMBY L. YAMAT,  
RESPONDENTS.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> are the Decision<sup>[2]</sup> dated November 11, 2015 and the Resolution<sup>[3]</sup> dated August 19, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 131582 denying the petition for review filed by petitioner Augustin International Center, Inc. (AICI) questioning the Resolution<sup>[4]</sup> dated March 15, 2013 and the Decision<sup>[5]</sup> dated June 27, 2013 of the National Labor Relations Commission (NLRC), which affirmed the Labor Arbiter's (LA) finding that respondents Elfrenito B. Bartolome (Bartolome) and Rumby L. Yamat (Yamat; collectively, respondents) were illegally dismissed from employment.

#### **The Facts**

In 2010, Bartolome and Yamat applied as carpenter and tile setter, respectively, with AICI, an employment agency providing manpower to foreign corporations. They were eventually engaged by Golden Arrow Company, Ltd. (Golden Arrow), which had its office in Khartoum, Republic of Sudan. Thereafter, they signed their respective employment contracts stating that they would render services for a period not less than twenty-four (24) months.<sup>[6]</sup> In their contracts, there was a provision on dispute settlement that reads:

14. Settlement of disputes: All claims and complaints relative to the employment contract of the employee shall be settled in accordance with Company policies, rules[,] and regulations. In case the Employee contests the decision of the employer, the matter shall be settled amicably **with [the] participation of the Labour Attaché or any authorised representative of the Philippines Embassy nearest the site of employment.** x x x<sup>[7]</sup> (Emphasis and underscoring supplied)

Upon their arrival in Sudan sometime in March and April 2011, Golden Arrow transferred their employment to its sister company, Al Mamoun Trading and Investment Company (Al Mamoun). A year later, or on May 2, 2012, Al Mamoun served Notices of Termination of Service<sup>[8]</sup> to respondents, causing them to return to the Philippines. On May 22, 2012, they filed their complaint<sup>[9]</sup> before the NLRC seeking that AICI and Al Mamoun be held liable for illegal dismissal, breach of contract, and payment of the unexpired portion of the contract.<sup>[10]</sup>

For their part, AICI and Al Mamoun claimed that respondents abandoned their duties by mid-2012, based on the e-mail message<sup>[11]</sup> from Golden Arrow to that effect, viz.:

2. Illegal Termination – I understand Mr[.] [Yamat] and Mr[.] Bartolome refused to work resulting in the work they were designated to complete remaining pending. It is our policy that should a member of staff refuse to carry out their normal duties without a satisfactory and timely explanation then we believe they have terminated their employment themselves.<sup>[12]</sup>

### **The LA's Ruling**

In a Decision<sup>[13]</sup> dated August 31, 2012, the LA held that respondents were illegally dismissed, and accordingly, ordered AICI and Al Mamoun to pay the former P69,300.00 each, representing their salaries for the unexpired portion of their contract.<sup>[14]</sup> The LA explained that AICI and Al Mamoun failed to overcome their burden to prove that the dismissal was for a just or authorized cause. They likewise failed to show that respondents abandoned their duties.<sup>[15]</sup>

Aggrieved, AICI and Al Mamoun filed an appeal.<sup>[16]</sup>

### **The NLRC's Ruling**

In a Decision<sup>[17]</sup> dated June 27, 2013, the NLRC affirmed the LA's ruling, noting that AICI and Al Mamoun failed to discharge their burden to prove by substantial evidence that the termination of respondents' employment was valid.<sup>[18]</sup>

Undaunted, AICI and Al Mamoun filed a petition for *certiorari*<sup>[19]</sup> before the CA.

### **The CA's Ruling**

In a Decision<sup>[20]</sup> dated November 11, 2015, the CA denied the petition.<sup>[21]</sup> It held that AICI and Al Mamoun failed to comply with procedural and substantive due process in dismissing respondents from their employment.<sup>[22]</sup>

AICI and Al Mamoun moved for reconsideration,<sup>[23]</sup> arguing for the first time that they were denied due process because respondents did not first contest their termination before the "[Labor] Attache or any [authorized] representative of the Philippine[] Embassy nearest the site of employment," as stipulated in the employment contracts, before filing the complaint before the LA.<sup>[24]</sup>

In a Resolution <sup>[25]</sup> dated August 19, 2016, the CA denied the said motion.<sup>[26]</sup> It explained that, as a rule, termination disputes should be brought before the LA, except when the parties agree to submit the dispute to voluntary arbitration pursuant to then Article 262<sup>[27]</sup> (now Article 275) of the Labor Code, provided that such agreement is stated "in unequivocal language." Citing jurisprudence,<sup>[28]</sup> the CA added that the phrase "all disputes" is not sufficient to divest the LA of its jurisdiction over termination disputes. In the same manner, the phrase "all claims and complaints" in respondents' employment contracts does not remove the LA's jurisdiction to decide whether respondents were legally terminated.<sup>[29]</sup>

Hence, AICI filed this petition.

### **The Issues Before the Court**

The issues before the Court are whether or not: (a) the LA correctly took cognizance of this case; and (b) AICI is liable for respondents' illegal dismissal.

### **The Court's Ruling**

Preliminarily, it bears stressing that AICI does not assail the CA's ruling of illegal dismissal but instead, argues that the LA incorrectly took cognizance of the case at the onset. It insists that based on the dispute settlement provision in respondents' employment contracts, the "primary jurisdiction" to decide this case is with the "[Labor] Attache or any [authorized] representative of the Philippine[] Embassy nearest the site of employment" (designated person).<sup>[30]</sup>

After a judicious review of the case, the Court denies the petition.

Section 10 of Republic Act No. (RA) 8042,<sup>[31]</sup> as amended by RA 10022,<sup>[32]</sup> explicitly provides that **LAs have original and exclusive<sup>[33]</sup> jurisdiction over claims arising out of employer-employee relations or by virtue of any law or contract involving Filipino workers for overseas deployment**, as in this case. The relevant portion of the provision reads:

Section 10. *Money Claims.* – **Notwithstanding any provision of law to the contrary, the Labor Arbiters** of the National Labor Relations Commission (NLRC) **shall have the original and exclusive jurisdiction to hear and decide**, within ninety (90) calendar days after filing of the complaint, **the claims arising out of** an employer-employee relationship or by virtue of any law or **contract involving Filipino workers for overseas deployment** including claims for actual, moral, exemplary and other forms of damages. x x x (Emphases supplied)

Settled is the rule that jurisdiction over the subject matter is conferred by law<sup>[34]</sup> and cannot be acquired or waived by agreement of the parties.<sup>[35]</sup> As herein applied, the dispute settlement provision in respondents' employment contracts cannot divest the LA of its jurisdiction over the illegal dismissal case. Hence, it correctly took cognizance of the complaint filed by respondents before it.

Moreover, issues not raised in the previous proceedings cannot be raised for the first time at a late stage. In this case, the Court observes that AICI failed to raise the issue of respondents' supposed non-compliance with the dispute settlement provision before the LA, as well as before the NLRC. In fact, AICI only mentioned this issue for the first time before the CA in its motion for reconsideration. Therefore, such argument or defense is deemed waived and can no longer be considered on appeal.<sup>[36]</sup> Hence, the Court rules that the LA properly took cognizance of this case.

However, the Court deems it essential to point out that in resolving whether the LA had jurisdiction over this case, the CA erroneously assumed that the designated person in the dispute settlement provision is a Voluntary Arbitrator under the auspices of the Labor Code, to wit:

It is true that the Voluntary Arbitrator or a panel of Voluntary Arbitrators can hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks upon agreement of the parties. But if the parties wish to submit termination disputes to voluntary arbitration, such an agreement must be stated "in unequivocal language." In the present case, the agreement of the parties was written in this manner:

x x x x

It is, however, not sufficient to merely say that the parties agree on the principle that "all disputes" should first be submitted to a Voluntary Arbitrator. There is a need for an express stipulation that illegal termination disputes should be resolved by a Voluntary Arbitrator or Panel of Voluntary Arbitrators, since the same fall within a special class of disputes that are generally within the exclusive [and] original jurisdiction of the Labor Arbiters by express provision of law.<sup>[37]</sup>

To clarify, the Voluntary Arbitrator<sup>[38]</sup> under the Labor Code is one agreed upon by the parties to resolve certain disputes<sup>[39]</sup> and is tasked to render an award or decision within twenty (20) calendar days pursuant to Article 276 of the Labor Code.<sup>[40]</sup> This decision shall be final and executory after ten (10) calendar days from receipt thereof.<sup>[41]</sup>

In this case, the dispute settlement provision reads:

14. Settlement of disputes: All claims and complaints relative to the employment contract of the employee shall be settled in accordance with Company policies, rules[,] and regulations. In case the Employee contests the decision of the employer, the matter shall be settled amicably **with [the] participation of the Labour Attaché or any authorised representative of the Philippines Embassy nearest the site of employment.** x x x<sup>[42]</sup> (Emphasis and underscoring supplied)

Clearly, the mechanism contemplated herein is an amicable settlement whereby the parties can negotiate with each other; it is not a voluntary arbitration under the Labor Code wherein a third party renders a decision to resolve the dispute. The text of the contractual provision shows that the designated person is tasked merely to *participate* in the amicable settlement and not to *decide* the dispute. This participation is in line with the mandate of Filipinos Resource Centers, in which labor attachés are members, to engage in the "conciliation of disputes arising from employer-employee relationship."<sup>[43]</sup> Hence, the "[Labor] Attaché or any [authorized] representative of the Philippine[] Embassy nearest the site of employment" was not called upon to act as a Voluntary Arbitrator as contemplated under the Labor Code. It was therefore erroneous for the CA to assume that the contractual provision triggered the voluntary arbitration mechanism under the Labor Code and, on that premise, venture into an inquiry as to whether or not there was an "express stipulation" submitting the termination dispute to such process, which thereby puts the case beyond the ambit of the LA's jurisdiction.

Considering that the parties did not submit the present illegal termination case to the voluntary arbitration mechanism, the dispute remained under the exclusive and

original jurisdiction of the LA, which therefore correctly took cognizance of the case. Hence, the Court modifies the CA's ruling on this matter accordingly.

On the second issue, AICI argues in its petition that it cannot be held liable for illegal dismissal because it only recruits employees for foreign employers, and as such, it does not have an employee-employer relationship with the overseas workers.<sup>[44]</sup>

This argument does not hold water. Section 10 of RA 8042, as amended; expressly provides that a recruitment agency, such as AICI, is solidarily liable with the foreign employer for money claims arising out of the employee-employer relationship between the latter and the overseas Filipino worker.<sup>[45]</sup> Jurisprudence explains that this solidary liability is meant to assure the aggrieved worker of immediate and sufficient payment of what is due him,<sup>[46]</sup> as well as to afford overseas workers an additional layer of protection against foreign employers that tend to violate labor laws.<sup>[47]</sup> In view of the express provision of law, AICI's lack of an employee-employer relationship with respondents cannot exculpate it from its liability to pay the latter's money claims.

Nevertheless, AICI is not left without a remedy. The law does not preclude AICI from going after the foreign employer for reimbursement of any payment it has made to respondents to answer for the money claims against the foreign employer.<sup>[48]</sup>

**WHEREFORE**, the petition is **DENIED** for lack of merit. Accordingly, the Decision dated November 11, 2015 and the Resolution dated August 19, 2016 of the Court of Appeals in CA-GR. SP No. 131582 are hereby **AFFIRMED** for the reasons above-discussed.

**SO ORDERED.**

*Carpio, Senior Associate Justice (Chairperson), Caguioa, J. Reyes, Jr., and Hernando,<sup>[\*]</sup> JJ., concur.*

---

<sup>[\*]</sup> Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.

<sup>[1]</sup> *Rollo*, pp. 818.

<sup>[2]</sup> *Id.* at 20-29. Penned by Associate Justice Zenaida T. Galapate-Laguilles with Associate Justices Mariflor P. Punzalan Castillo and Florito S. Macalino, concurring.

<sup>[3]</sup> *Id.* at 30-34.

<sup>[4]</sup> *Records*, Vol. I, pp. 210-213. Penned by Commissioner Dolores M. Peralta-Beley with Presiding Commissioner Leonardo L. Leonida and Commissioner Mercedes R. Posada-Lacap, concurring.

<sup>[5]</sup> *Id.* at 230-236. Penned by Commissioner Dolores M. Peralta-Beley with Commissioner Mercedes R. Posada-Lacap, concurring.