

THIRD DIVISION

[G.R. No. 149273, June 05, 2009]

**BIENVENIDO C. GILLES, PETITIONER, VS. COURT OF APPEALS,
SCHEMA KONSULT, AND EDGARDO ABORES, RESPONDENTS.**

DECISION

NACHURA, J.:

Before the Court is a petition for *certiorari* under Rule 65 of the Rules of Court assailing the Decision^[1] dated January 29, 2001 and the Resolution dated June 14, 2001 of the Court of Appeals (CA) in CA-G.R. SP No. 58467.

The Facts

The antecedents of the case are as follows:

Respondent Schema Konsult, Inc. (SKI) is a company engaged in all phases of project consulting, management, and supervision of services, including investment studies, feasibility studies, micro-processing analysis, and detailed scheme formulation, for all types of industrial plants, and installation, infrastructure, and development projects.^[2] Respondent Edgardo C. Abores (Abores) was the President of SKI at the time material to the case.^[3] On the other hand, petitioner Bienvenido C. Gilles (Gilles) was an incorporator, stockholder, and member of the Board of Directors from 1987 to March 1993, Vice-President for Finance and Administration from 1992 to 1993 and Principal Engineer of SKI from 1987 to March 1993.^[4]

In 1993, SKI entered into an Agreement Regarding Staff Provision^[5] (Agreement) with Carl Bro International (CBI), a corporation organized under the laws of Denmark. CBI entered into a joint venture with Aquatic Farms, Ltd., a foreign corporation under contract with the government of India for the provision of consultancy assistance on the "Shrimp and Fish Culture Project" (Project).^[6] The Project involved the development of shrimp farms in different parts of India, funded from a loan extended to the Government of India, particularly its Ministry of Agriculture, by the International Bank for Reconstruction and Development.^[7] The Ministry of Agriculture signed a contract with Aquatic Farms, Ltd., in association with CBI, for provision of consultancy assistance to the Project. CBI contracted SKI to provide a qualified aquaculture engineer for the Project.^[8]

Gilles applied for, and was accepted as, Water Systems/Irrigation Engineer of the Project for a period of two (2) years, commencing on January 24, 1993.^[9] The Agreement provided that: (1) CBI would pay SKI a monthly fee of US\$4,000.00; (2) Gilles' basic salary of US\$2,500.00 would be taken from the said fee; and (3) during Gilles' first sixty (60) days in India, he would receive a subsistence allowance of

US\$87.00 per calendar day to defray his expenses for accommodation, board and lodging, and hotel room accommodation during project travels away from the duty station.^[10] For the duration of Gilles' assignment in India, he would be considered as a regular employee of SKI, but all the conditions in the Agreement between SKI and CBI would apply.^[11]

In January 1993, prior to Gilles' departure for India, he received US\$5,000.00 from SKI as an advance of his subsistence allowance to sustain him during his initial months in India.^[12] While in India, he twice received 43,000 Indian Rupees (INR), equivalent to Php43,000.00, to cover his expenses from April 1-30, 1993 and from May 1-15, 1993.^[13]

On May 10, 1993, Gilles tendered his Resignation Letter^[14] to Mr. Torben R. Schou (Schou) of CBI. The pertinent portions of the letter read:

For the past several weeks, I have been burdened by serious personal and financial problems. I have tried to put these problems out of my mind but they still keep on bothering me that my physical condition and capacity to concentrate with my work are affected. Because of these, I have decided to go back to the Philippines and face these problems.

It is, therefore, with deep regret that I should tender my irrevocable resignation effective 15 May 1993.

Thank you for giving me the opportunity to work with a great team.

On May 11, 1993, Gilles left India.^[15]

On May 14, 1993, Schou faxed a Letter^[16] to Abores, informing him of the abrupt departure of Gilles from the Project and its attendant consequences. The letter reads:

We have on 10 May 1993 received Mr. Gilles' resignation, dated 5 May 1993, which was incorrectly addressed to us, and we understand that he left India on 11 May 1993. We regret that his personal problems caused this to happen.

His decision has resulted in a very serious and critical situation as regards our contractual obligations towards the Min. of Agric. in India, and Aquatic Farms Ltd. (AFL) has informed that Bien's work has been very unsatisfactory for several weeks before his departure. In order to ensure that we meet the deadlines for design, AFL has brought in a temporary substitute for Bien, but this substitute is not billable to the project.

You are kindly requested to inform what actions you propose to take regarding replacement of Bien.

An Inter-Office Memorandum,^[17] dated May 18, 1993, was sent to Gilles requesting him to attend the Board of Directors meeting scheduled on May 19, 1993 at 2:00 p.m., at which the matter of his resignation would be discussed.

At the board meeting on May 19, 1993, Abores explained that the meeting was called precisely to discuss the resignation of Gilles from his assignment in India. Abores read before the Members of the Board the Letter^[18] of Gilles dated May 15, 1993, pertinent portions of which state:

Resigning from my assignment in India as a Carl Bro employee was one of the most difficult and painful decisions I made in my life. I did not only give up the chance to be better off financially but most of all end my career as a consultant.

The following has created a very discouraging and depressing working environment for me in India which pushed me to make such decision.

- 1) In our contract with Carl Bro (page 3/6, Annex 1 which is the same Annex in the contract between Aquatic Farms and the Indian Government), it is stated that design works for the 13 proposed prawn farms are to be undertaken from the 5th month (May 1993) to the 27th month. The attached memorandum of Mr. Clyde Simon supported the aforementioned schedule by recommending that construction of only three farms be started this year. In this memorandum, Mr. Clyde emphasized that quality of work should never be compromised.

In our initial review of the design undertaken by CICEF on all 13 proposed farms (the design costs the Indian Government approximately 8.0 million Rupees), we found that major changes on the design criteria should be made (pages 12 to 18 of the Inception Report). Although these changes necessitate redesign for all proposed farms, the original work schedule can still be made applicable with only slight modifications.

However, on April 1 during a meeting in Delhi attended by our Project Advisor, he committed the completion of the design (including construction drawings, cost estimates, feasibility and design reports, technical specifications and other documents necessary for tendering) of three proposed farms by the end of May and the completion of the design for the other 10 sites by the end of 1993. This means that we have to finish the design for 1.5 sites per month (the farm area ranges from 52 to 1,671 ha.) This commitment was made by our Senior Project Advisor to the World Bank, India's Central Government and State Officials.

Since I was the water systems engineer in the group, much of the pressure of keeping up with our Senior Project Advisor's commitment was passed on to me. I had to work 18 hours on the average every day seven days a week.

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- 4) I was made to expect when I left for this assignment that I will be better off financially. However, for the last three and a half months now, Carl Bro has not paid my salary (3.5 months) and my subsistence allowance for my first 60 days stay in Bangalore. How could I be expected to fulfill my

financial obligations here in the Philippines? I have an 80-year old mother to support, loans to amortize, relatives to help with their medical expenses, etc. Although, SCHEMA was kind to have given me an advance of US\$5,000. During my first sixty days in Bangalore, as consultants, we were made to stay in five star hotel. I spent on the average US\$70 per day for a total of US\$4,200 in 60 days.

Several times I have made personal long distance calls to SCHEMA to follow-up on my salary and to talk to management about the other items mentioned above. RMS, EEA and EAV were so kind to listen to my problems as well as do something within the limits of their positions. However, the person who could have helped me most refused to talk to me. I felt that I was abandoned by SCHEMA management.

I was already in a very discouraged, depressed, exhausted and dejected state hence, I decided to leave Bangalore before my replacement was found.

I wrote this letter to explain the reasons why I left my post in India before my replacement was found. This is not intended to ask management for reconsideration on its decision of terminating my services with SCHEMA. My request to management is to be kind enough to grant me separation benefits of one month per year of service and other benefits normally given to leaving employees. I am also requesting management to facilitate the payment of my 3.5 months salary by Carl Bro. I can claim, with a clear conscience, that I have earned, up to the last cent, my wage in India.

As I have already mentioned in the earlier part of this letter that my resignation from my assignment in India has ended my career as a consultant. Hence, the granting of my aforementioned request would help me in venturing into new sources of livelihood.

Abores explained that the management was unaware of the difficulties encountered by Gilles in India, as no communication, official or otherwise, was received from Gilles. He said that Gilles never submitted any written progress report on the Project, contrary to the company's standard operating procedures.^[19] The Board of Directors then decided to terminate the services of Gilles effective June 7, 1993,^[20] and a notice of termination was sent to him.^[21]

On September 6, 1993, Gilles filed a complaint for illegal dismissal against respondents, seeking reinstatement, moral damages, and other monetary claims.^[22]

Gilles alleged that there was a deliberate scheme to ease him out of the Project and ultimately out of SKI. He believed that Abores was behind it. He said that while he was in India, his salary from the Project was not given to him on time. He claimed that he tried to communicate with SKI representatives, particularly with Abores, relative to the difficulties he encountered in India, but his calls were ignored. Moreover, the March 20, 1993 election of officers of SKI was not relayed to him on time, which resulted in his failure to attend the meeting or to send a proxy and,

thus, was not elected officer of the company, a position that he consistently held in the past.^[23] He also challenged the May 19, 1993 Board of Directors meeting as a hoax. He alleged that the meeting did not take place. He claimed that he talked to two (2) or three (3) members of the Board of Directors and they confirmed to him that his termination from employment was not the subject of the said meeting. However, to his disbelief, Abores was able to produce minutes of the alleged meeting where his termination by the Board was the principal item in the agenda.^[24]

On the other hand, SKI dismissed the allegations of Gilles as mere fabrication. SKI averred that Gilles was well provided in India; that his resignation from CBI and his departure from India were not known nor approved by SKI; that the May 19, 1993 board meeting was real and Gilles was informed of such meeting at which his side was heard, but he was asked to step out of the meeting for displaying a temper; that the proceedings were properly recorded in the minutes; that the Board of Directors decided to terminate Gilles' services effective June 7, 1993; and that SKI paid Gilles what was due him from the Project in India even if CBI had yet to pay the consultancy fees.^[25]

On July 10, 1997, the Labor Arbiter rendered a Decision,^[26] the dispositive portion of which reads:

WHEREFORE, the respondents are hereby ordered, jointly and severally:

1.) To reinstate the complainant to his former position as Vice-President for Finance/Administration, with full backwages from the date his salary was withheld until he is actually reinstated which as of date has reached P1,274,000.00. If reinstatement should become improbable, then, the complainant should be paid separation pay equivalent to one-half month salary for every year of service rendered in addition to the grant of backwages; [and]

2.) To pay the complainant the sum of P500,000.00 as moral damages.

The respondents are, likewise, assessed the sum of P127,400.00 representing 10% of the benefits awarded as attorney's fees.

SO ORDERED.^[27]

On appeal, the National Labor Relations Commission (NLRC) affirmed the decision of the Labor Arbiter with modification in a Resolution^[28] dated November 29, 1999. The *fallo* of the resolution reads:

WHEREFORE, the decision appealed from is AFFIRMED, with modification deleting the award of attorney's fee and reducing the award of moral damages to P100,000.00.

SO ORDERED.^[29]

SKI moved for reconsideration. The motion was denied in a Resolution dated January 31, 2000.^[30] Unsatisfied, SKI filed a petition for *certiorari* and prohibition under Rule 65 of the Rules of Court before the CA, raising the following issues: (a)