

## THIRD DIVISION

[ G.R. No. 177576, July 21, 2008 ]

**UNIVERSAL STAFFING SERVICES, INC., PETITIONER, VS.  
NATIONAL LABOR RELATIONS COMMISSION AND GRACE M.  
MORALES,\* RESPONDENTS.**

### DECISION

**NACHURA, J.:**

At bar is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by Universal Staffing Services, Inc. challenging the February 12, 2007 Decision<sup>[1]</sup> and the May 3, 2007 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 93352.

The facts.

Respondent Grace M. Morales (Morales) applied for and was hired as receptionist by petitioner Universal Staffing Services, Inc. (USSI) in behalf of its principal Jin Xiang International Labour Supply of United Arab Emirates (U.A.E.). The contract duly approved by the Philippine Overseas Employment Administration (POEA), provided for an employment term of two (2) years with a monthly salary of Dhs1,100.00.<sup>[3]</sup>

On February 2, 2002, Morales left for Abu Dhabi, U.A.E. and upon arrival, worked as receptionist at Al Sandos Suites (Al Sandos). Ten (10) months later, or on December 13, 2002, Morales' employment was terminated allegedly due to her poor work performance. Morales received Dhs1,300.00 as full and final settlement of all her claims on January 1, 2003, and was repatriated on January 7, 2003.

Claiming that she was illegally terminated, Morales filed a complaint<sup>[4]</sup> for illegal dismissal and non-payment of overtime and vacation pay against USSI and Al Sandos Hotel Management with the Labor Arbiter, docketed as OFW Case No. 03-04-0973-00.

Traversing the complaint, USSI asserted that Morales was dismissed for just cause and with due process. It averred that Morales' performance as receptionist was unsatisfactory, and that despite the chance given her, Morales' job performance did not improve; thus, Al Sandos was prompted to pre-terminate Morales' employment contract upon payment of all the benefits due her. USSI prayed for the dismissal of the complaint.

On April 2, 2004, the Labor Arbiter rendered a Decision,<sup>[5]</sup> viz.:

[W]e are not convinced that [Morales] was illegally dismissed.

Firstly, [Morales] was informed that she is being charged with poor performance and grave misconduct for leaking passport copies of guests to competitors thereby greatly prejudicing the profitability of the operation of the hotel which is here (sic) foreign employer. While the charge of leaking confidential information to competitors has not been established clearly, [Morales'] foreign employer should be afforded a leeway to determine what acts as (sic) detrimental to the sound operation of its business. To substantiate our judgment to the sound discretion of the employer would be a transgression that the government should allow a business to freely operate on its own in consonance with a domestic free enterprise. Besides, [Al Sandos] has no motive or malice to impute upon [Morales] the grievous act of revealing confidential information if it did not have sufficient basis to support its suspicion. If indeed [Morales] has served her foreign employer faithfully and with utmost fidelity, her employer would [not have] decided to terminate her services for grave misconduct and poor performance because by doing so, it would entail additional expenses in looking for a replacement of [Morales].

Secondly, [the] letter of termination (Annex C), certification letter of [Morales'] termination dated July 29, 2003 (Annex B), Final Settlement (Annex D), and exit clearance (Annex E) were all authenticated and noted by the Labour Attaché of the Philippine Embassy in Dubai, U.A.E. In other words, all the acts of [Al Sandos] were transparent and made known to the Labour Attaché who has he (sic) right to object to the dismissal if it were (sic) attended by malice or fraud.

Finally, the Final Settlement and Quitclaim and Release signed and executed by [Morales] should be given great weight and probative value in the absence of showing that the same was executed through threat and intimidation. While [Morales] claims that the execution thereof was attended by duress, [Morales] failed to specify the acts constitutive of duress.

With respect to the second issue, the same is laid to rest with [Morales] executing a Final Settlement (Annex D) and Bank Payment Voucher in the sum of 1,300 dinars to answer for the monetary claims of [Morales]. It is worthy to note that the aforementioned documents were authenticated and duly noted by the Labour Attache. If, indeed, there was deficiency, the same should have been received under protest or that deficiency was made known to the Labour Attache who can demand from the foreign employer that then deficiency should be paid.

Considering that the complaint for illegal dismissal did not prosper, the claim for moral and exemplary damages must perforce fail.<sup>[6]</sup>

On appeal by Morales, the National Labor Relations Commission (NLRC) reversed the Labor Arbiter. The NLRC found that no substantial evidence supports a valid dismissal. Accordingly, it ordered USSI to pay Morales Dhs3,300.00, or its peso equivalent, for the unexpired portion of her contract, pursuant to Section 10 of Republic Act (R.A.) No. 8042, or the *Migrant Workers and Overseas Filipinos Act of 1995*. The NLRC, however, affirmed the denial of Morales' claim for overtime pay

and holiday pay for lack of basis.

Thus, the NLRC disposed:

WHEREFORE, the decision appealed from is hereby MODIFIED.

The finding that there was no illegal dismissal is hereby REVERSED. Consequently, [USSI] is hereby ordered to immediately pay [Morales] the Philippine peso equivalent at the time of actual payment of DHS3,300 representing her salaries for three (3) months.

The finding that overtime pay and holiday pay are not recoverable is hereby AFFIRMED.

SO ORDERED.<sup>[7]</sup>

Only USSI went up to the Court of Appeals via *certiorari*. On February 12, 2007, the CA rendered a Decision<sup>[8]</sup> modifying the resolutions of the NLRC. The CA sustained the NLRC's finding of unlawful termination, but modified, by increasing, the awards granted to Morales. The dispositive portion of the Decision reads:

**WHEREFORE**, the foregoing considered, the assailed Decision is **MODIFIED** in that [USSI] is ordered to pay [Morales] her salaries equivalent to six (6) months, overtime pay and holiday pay as well as ten [percent] (10%) of the total monetary award as attorney's fees. The rest of the Decision is **AFFIRMED**.

Let the records of this case be **REMANDED** to the Labor Arbiter for the computation of the said award.

**SO ORDERED.**<sup>[9]</sup>

USSI filed a motion for reconsideration, but the CA denied it on May 3, 2007.<sup>[10]</sup>

Hence, this appeal by USSI positing these:

1. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION BY RULING THAT PRIVATE RESPONDENT WAS ILLEGALLY DISMISSED AND BY AWARDING HER SALARIES EQUIVALENT TO SIX (6) MONTHS SALARY FOR THE UNEXPIRED PORTION OF HER CONTRACT, OVERTIME PAY, AND HOLIDAY PAY AND ATTORNEY'S FEE DESPITE EVIDENCE AND RULING TO THE CONTRARY ADDUCED AND ADJUDICATED BEFORE THE LABOR ARBITER AND NATIONAL LABOR RELATIONS COMMISSION.
2. WITH DUE RESPECT, REVERSIBLE ERROR WAS COMMITTED BY THE HONORABLE COURT OF APPEALS WITH RESPECT TO THE AWARD OF SALARIES TO PRIVATE RESPONDENT CONTRARY TO THE PROVISIONS OF REPUBLIC ACT NO. 8042 OTHERWISE KNOWN AS MIGRANT WORKERS ACT. THUS, A QUESTION OF LAW IS INVOLVED.<sup>[11]</sup>

USSI insists that Morales' dismissal was based on a valid and legal ground. The Labor Arbiter lent credence to USSI's posture and dismissed Morales' complaint, but the NLRC and the CA reversed the Arbiter's findings. Before us, USSI contends that the CA committed grave abuse of discretion and serious reversible error when it adhered to the patently erroneous finding of illegal dismissal by the NLRC.

There is no denying that it is within the NLRC's competence, as an appellate administrative agency reviewing decisions of Labor Arbiters, to disagree with and set aside the latter's findings. But it stands to reason that the NLRC should state an acceptable cause therefor; otherwise it would be a whimsical, capricious, oppressive, illogical, and unreasonable exercise of quasi-judicial prerogative. Thus, the key issue for our resolution is whether the reversal by the NLRC of the Labor Arbiter's decision, as well as the affirmance by the CA of the NLRC finding, was in order.

Morales was dismissed for her alleged poor performance. As a general concept, "poor performance" is equivalent to inefficiency and incompetence in the performance of official duties. Under Article 282 of the Labor Code, an unsatisfactory rating can be a just cause for dismissal only if it amounts to gross and habitual neglect of duties. Thus, the fact that an employee's performance is found to be poor or unsatisfactory does not necessarily mean that the employee is grossly and habitually negligent of his duties. Gross negligence implies a want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.<sup>[12]</sup>

We reviewed the records of the case and we agree with the NLRC and the CA that no substantial evidence was presented to substantiate the cause of Morales' dismissal. First, USSI failed to cite particular acts or instances that would validate its claim of Morales' poor performance. Second, no convincing proof was offered to substantiate Morales' alleged poor performance.

As the NLRC had taken pains to demonstrate:

[T]he notice of termination and the statement dated July 29, 2002 purportedly executed by Sharath B. Rai, Al Sandos Human Resource and Training Manager stating that Morales was dismissed due to her poor performance and for revealing secret information of potential clients do not constitute substantial evidence.

x x x First, the notice of termination was, apparently never served upon [Morales], since it does not bear her signature. Second, the two pieces of evidence are inconsistent. Based on the notice of termination, which bears an earlier date, [Morales] was dismissed due to poor performance. Third, there is no showing that [Morales] was dismissed on the basis of established facts and not on the basis of a mere suspicion. There is no mention of what criteria were used in evaluating her performance. Fourth, and most important, the pieces of evidence in question are not sworn to, and the persons who supposedly executed them were not presented in the proceedings conducted by the Labor Arbiter. They, therefore, constitute mere hearsay evidence, which means that they have no evidentiary value.<sup>[13]</sup>