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SECOND DIVISION

[G.R. No. 145587, October 26, 2007]

EDI-STAFFBUILDERS INTERNATIONAL, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND ELEAZAR S. GRAN, RESPONDENTS.

D E C I S I O N

VELASCO JR., J.:

The Case

This Petition for Review on Certiorari[1] seeks to set aside the October 18, 2000 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 56120 which affirmed the January 15, 1999 Decision[3] and September 30, 1999 Resolution[4] rendered by the National Labor Relations Commission (NLRC) (Third Division) in POEA ADJ (L) 94-06-2194, ordering Expertise Search International (ESI), EDI-Staffbuilders International, Inc. (EDI), and Omar Ahmed Ali Bin Bechr Est. (OAB) jointly and severally to pay Eleazar S. Gran (Gran) the amount of USD 16,150.00 as unpaid salaries.

The Facts

Petitioner EDI is a corporation engaged in recruitment and placement of Overseas Filipino Workers (OFWs).[5] ESI is another recruitment agency which collaborated with EDI to process the documentation and deployment of private respondent to Saudi Arabia.

Private respondent Gran was an OFW recruited by EDI, and deployed by ESI to work for OAB, in Riyadh, Kingdom of Saudi Arabia.[6]

It appears that OAB asked EDI through its October 3, 1993 letter for *curricula vitae* of qualified applicants for the position of "Computer Specialist."[7] In a facsimile transmission dated November 29, 1993, OAB informed EDI that, from the applicants' *curricula vitae* submitted to it for evaluation, it selected Gran for the position of "Computer Specialist." The faxed letter also stated that if Gran agrees to the terms and conditions of employment contained in it, one of which was a monthly salary of SR (Saudi Riyal) 2,250.00 (USD 600.00), EDI may arrange for Gran's immediate dispatch.[8]

After accepting OAB's offer of employment, Gran signed an employment contract[9] that granted him a monthly salary of USD 850.00 for a period of two years. Gran was then deployed to Riyadh, Kingdom of Saudi Arabia on February 7, 1994.

Upon arrival in Riyadh, Gran questioned the discrepancy in his monthly salary—his employment contract stated USD 850.00; while his Philippine Overseas Employment Agency (POEA) Information Sheet indicated USD 600.00 only. However, through the assistance of the EDI office in Riyadh, OAB agreed to pay Gran USD 850.00 a month.[10]

After Gran had been working for about five months for OAB, his employment was terminated through OAB's July 9, 1994 letter,[11] on the following grounds:

1. Non-compliance to contract requirements by the recruitment agency primarily on your salary and contract duration.

2. Non-compliance to pre-qualification requirements by the recruitment agency[,] vide OAB letter ref. F-5751-93, dated October 3, 1993.[12]

3. Insubordination or disobedience to Top Management Order and/or instructions (non-submittal of daily activity reports despite several instructions).

On July 11, 1994, Gran received from OAB the total amount of SR 2,948.00 representing his final pay, and on the same day, he executed a Declaration[13] releasing OAB from any financial obligation or otherwise, towards him.

After his arrival in the Philippines, Gran instituted a complaint, on July 21, 1994, against ESI/EDI, OAB, Country Bankers Insurance Corporation, and Western Guaranty Corporation with the NLRC, National Capital Region, Quezon City, which was docketed as POEA ADJ (L) 94-06-2194 for underpayment of wages/salaries and illegal dismissal.

The Ruling of the Labor Arbiter

In his February 10, 1998 Decision,[14] Labor Arbiter Manuel R. Caday, to whom Gran's case was assigned, ruled that there was neither underpayment nor illegal dismissal.

The Labor Arbiter reasoned that there was no underpayment of salaries since according to the POEA-Overseas Contract Worker (OCW) Information Sheet, Gran's monthly salary was USD 600.00, and in his Confirmation of Appointment as Computer Specialist, his monthly basic salary was fixed at SR 2,500.00, which was equivalent to USD 600.00.

Arbiter Caday also cited the Declaration executed by Gran, to justify that Gran had no claim for unpaid salaries or wages against OAB.

With regard to the issue of illegal dismissal, the Labor Arbiter found that Gran failed to refute EDI's allegations; namely, (1) that Gran did not submit a single activity report of his daily activity as dictated by company policy; (2) that he was not qualified for the job as computer specialist due to his insufficient knowledge in programming and lack of knowledge in ACAD system; (3) that Gran refused to follow management's instruction for him to gain more knowledge of the job to prove his worth as computer specialist; (4) that Gran's employment contract had never been substituted; (5) and that Gran was paid a monthly salary of USD 850.00, and USD 350.00 monthly as food allowance.

Accordingly, the Labor Arbiter decided that Gran was validly dismissed from his work due to insubordination, disobedience, and his failure to submit daily activity reports.

Thus, on February 10, 1998, Arbiter Caday dismissed Gran's complaint for lack of merit.

Dissatisfied, Gran filed an Appeal[15] on April 6, 1998 with the NLRC, Third Division. However, it appears from the records that Gran failed to furnish EDI with a copy of his Appeal Memorandum.

The Ruling of the NLRC

The NLRC held that EDI's seemingly harmless transfer of Gran's contract to ESI is actually "reprocessing," which is a prohibited transaction under Article 34 (b) of the Labor Code. This scheme constituted misrepresentation through the conspiracy between EDI and ESI in misleading Gran and even POEA of the actual terms and conditions of the OFW's employment. In addition, it was found that Gran did not commit any act that constituted a legal ground for dismissal. The alleged non-compliance with contractual stipulations relating to Gran's salary and contract duration, and the absence of pre-qualification requirements cannot be attributed to Gran but to EDI, which dealt directly with OAB. In addition, the charge of insubordination was not substantiated, and Gran was not even afforded the required notice and investigation on his alleged offenses.

Thus, the NLRC reversed the Labor Arbiter's Decision and rendered a new one, the dispositive portion of which reads:

> WHEREFORE, the assailed decision is SET ASIDE. Respondents Expertise Search International, Inc., EDI Staffbuilders Int'l., Inc. and Omar Ahmed Ali Bin Bechr Est. (OAB) are hereby ordered jointly and severally liable to pay the complainant Eleazar Gran the Philippine peso equivalent at the time of actual payment of SIXTEEN THOUSAND ONE

HUNDRED FIFTY US DOLLARS (US$16,150.00) representing his salaries for the unexpired portion of his contract.

SO ORDERED.[16]

Gran then filed a Motion for Execution of Judgment[17] on March 29, 1999 with the NLRC and petitioner receiving a copy of this motion on the same date.[18]

To prevent the execution, petitioner filed an Opposition[19] to Gran's motion arguing that the Writ of Execution cannot issue because it was not notified of the appellate proceedings before the NLRC and was not given a copy of the memorandum of appeal nor any opportunity to participate in the appeal.

Seeing that the NLRC did not act on Gran's motion after EDI had filed its Opposition, petitioner filed, on August 26, 1999, a Motion for Reconsideration of the NLRC Decision after receiving a copy of the Decision on August 16, 1999.[20]

The NLRC then issued a Resolution[21] denying petitioner's Motion for Reconsideration, ratiocinating that the issues and arguments raised in the motion "had already been amply discussed, considered, and ruled upon" in the Decision, and that there was "no cogent reason or patent or palpable error that warrant any disturbance thereof."

Unconvinced of the NLRC's reasoning, EDI filed a Petition for Certiorari before the CA. Petitioner claimed in its petition that the NLRC committed grave abuse of discretion in giving due course to the appeal despite Gran's failure to perfect the appeal.

The Ruling of the Court of Appeals

The CA subsequently ruled on the procedural and substantive issues of EDI's petition.

On the procedural issue, the appellate court held that "Gran's failure to furnish a copy of his appeal memorandum [to EDI was] a mere formal lapse, an excusable neglect and not a jurisdictional defect which would justify the dismissal of his appeal."[22] The court also held that petitioner EDI failed to prove that private respondent was terminated for a valid cause and in accordance with due process; and that Gran's Declaration releasing OAB from any monetary obligation had no force and effect. The appellate court ratiocinated that EDI had the burden of proving Gran's incompetence; however, other than the termination letter, no evidence was presented to show how and why Gran was considered to be incompetent. The court held that since the law requires the recruitment agencies to subject OFWs to trade tests before deployment, Gran must have been competent and qualified; otherwise, he would not have been hired and deployed abroad.

As for the charge of insubordination and disobedience due to Gran's failure to submit a "Daily Activity Report," the appellate court found that EDI failed to show that the submission of the "Daily Activity Report" was a part of Gran's duty or the company's policy. The court also held that even if Gran was guilty of insubordination, he should have just been suspended or reprimanded, but not dismissed.

The CA also held that Gran was not afforded due process, given that OAB did not abide by the twin notice requirement. The court found that Gran was terminated on the same day he received the termination letter, without having been apprised of the bases of his dismissal or afforded an opportunity to explain his side.

Finally, the CA held that the Declaration signed by Gran did not bar him from demanding benefits to which he was entitled. The appellate court found that the Declaration was in the form of a quitclaim, and as such is frowned upon as contrary to public policy especially where the monetary consideration given in the Declaration was very much less than what he was legally entitled to—his backwages amounting to USD 16,150.00.

As a result of these findings, on October 18, 2000, the appellate court denied the petition to set aside the NLRC Decision.

Hence, this instant petition is before the Court.

The Issues

Petitioner raises the following issues for our consideration:

I. WHETHER THE FAILURE OF GRAN TO FURNISH A COPY OF HIS APPEAL MEMORANDUM TO PETITIONER EDI WOULD CONSTITUTE A JURISDICTIONAL DEFECT AND A DEPRIVATION OF PETITIONER EDI'S RIGHT TO DUE PROCESS AS WOULD JUSTIFY THE DISMISSAL OF GRAN'S APPEAL.

II. WHETHER PETITIONER EDI HAS ESTABLISHED BY WAY OF SUBSTANTIAL EVIDENCE THAT GRAN'S TERMINATION WAS JUSTIFIABLE BY REASON OF INCOMPETENCE. COROLLARY HERETO, WHETHER THE PRIETO VS. NLRC RULING, AS APPLIED BY THE COURT OF APPEALS, IS APPLICABLE IN THE INSTANT CASE.

III. WHETHER PETITIONER HAS ESTABLISHED BY WAY OF SUBSTANTIAL EVIDENCE THAT GRAN'S TERMINATION WAS JUSTIFIABLE BY REASON OF INSUBORDINATION AND DISOBEDIENCE.

IV. WHETHER GRAN WAS AFFORDED DUE PROCESS PRIOR TO TERMINATION.

V. WHETHER GRAN IS ENTITLED TO BACKWAGES FOR THE UNEXPIRED PORTION OF HIS CONTRACT.[23]

The Court's Ruling

The petition lacks merit except with respect to Gran's failure to furnish EDI with his Appeal Memorandum filed with the NLRC.

First Issue: NLRC's Duty is to Require Respondent to Provide Petitioner a Copy of the Appeal

Petitioner EDI claims that Gran's failure to furnish it a copy of the Appeal Memorandum constitutes a jurisdictional defect and a deprivation of due process that would warrant a rejection of the appeal.

This position is devoid of merit.

In a catena of cases, it was ruled that **failure of appellant to furnish a copy of the appeal to the adverse party is not fatal to the appeal**.

In *Estrada v. National Labor Relations Commission*,[24] this Court set aside the order of the NLRC which dismissed an appeal on the sole ground that the appellant did not furnish the appellee a memorandum of appeal contrary to the requirements of Article 223 of the New Labor Code and Section 9, Rule XIII of its Implementing Rules and Regulations.

Also, in *J.D. Magpayo Customs Brokerage Corp. v. NLRC*, the order of dismissal of an appeal to the NLRC based on the ground that "*there is no showing whatsoever that a copy of the appeal was served by the appellant on the appellee*"[25] was annulled. The Court ratiocinated as follows:

> The failure to give a copy of the appeal to the adverse party was a mere formal lapse, an excusable neglect. Time and again We have acted on petitions to review decisions of the Court of Appeals even in the absence of proof of service of a copy thereof to the Court of Appeals as required by Section 1 of Rule 45, Rules of Court. **We act on the petitions and simply require the petitioners to comply with the rule.**[26] (Emphasis supplied.)

The *J.D. Magpayo* ruling was reiterated in *Carnation Philippines Employees Labor Union-FFW v. National Labor Relations Commission*,[27] *Pagdonsalan v. NLRC*,[28] and in *Sunrise Manning Agency,*

Inc. v. NLRC.[29]

Thus, the doctrine that evolved from these cases is that failure to furnish the adverse party with a copy of the appeal is treated only as a formal lapse, an excusable neglect, and hence, *not a jurisdictional defect*. Accordingly, in such a situation, the appeal should not be dismissed; however, it should not be given due course either. As enunciated in *J.D. Magpayo*, **the duty that is imposed on the NLRC, in such a case, is to require the appellant to comply with the rule that the opposing party should be provided with a copy of the appeal memorandum**.

While Gran's failure to furnish EDI with a copy of the Appeal Memorandum is excusable, the abject failure of the NLRC to order Gran to furnish EDI with the Appeal Memorandum constitutes *grave abuse of discretion*.

The records reveal that the NLRC discovered that Gran failed to furnish EDI a copy of the Appeal Memorandum. The NLRC then ordered Gran to present proof of service. In compliance with the order, Gran submitted a copy of Camp Crame Post Office's list of mail/parcels sent on April 7, 1998. [30] The post office's list shows that private respondent Gran sent two pieces of mail on the same date: one addressed to a certain Dan O. de Guzman of Legaspi Village, Makati; and the other appears to be addressed to Neil B. Garcia (or Gran),[31] of Ermita, Manila—both of whom are not connected with petitioner.

This mailing list, however, is not a conclusive proof that EDI indeed received a copy of the Appeal Memorandum.

Sec. 5 of the NLRC Rules of Procedure (1990) provides for the proof and completeness of service in proceedings before the NLRC:

> **Section 5.**[32] *Proof and completeness of service*.—The return is *prima facie* proof of the facts indicated therein. **Service by registered mail is complete upon receipt by the addressee or his agent**; but if the addressee fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect after such time. (Emphasis supplied.)

Hence, if the service is done through registered mail, it is only deemed complete when the addressee or his agent received the mail or after five (5) days from the date of first notice of the postmaster. However, the NLRC Rules do not state what would constitute proper proof of service.

Sec. 13, Rule 13 of the Rules of Court, provides for proofs of service:

> **Section 13.** *Proof of service*.—Proof of personal service shall consist of a written admission of the party served or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with section 7 of this Rule. **If service is made by registered mail, proof shall be made by such affidavit and registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee** (emphasis supplied).

Based on the foregoing provision, it is obvious that the list submitted by Gran is not conclusive proof that he had served a copy of his appeal memorandum to EDI, nor is it conclusive proof that EDI received its copy of the Appeal Memorandum. He should have submitted an affidavit proving that he mailed the Appeal Memorandum together with the registry receipt issued by the post office; afterwards, Gran should have immediately filed the registry return card.

Hence, after seeing that Gran failed to attach the proof of service, the NLRC should not have simply accepted the post office's list of mail and parcels sent; but **it should have required Gran to properly furnish the opposing parties with copies of his Appeal Memorandum as prescribed in *J.D. Magpayo* and the other cases**. The NLRC should not have proceeded with the adjudication of the case, as this constitutes *grave abuse of discretion*.