

FIRST DIVISION

[G.R. No. 157373, July 27, 2004]

**PENTAGON INTERNATIONAL SHIPPING, INC., PETITIONER, VS.
WILLIAM B. ADELANTAR, RESPONDENT.**

DECISION

YNARES-SANTIAGO, J.:

This is a petition for review on certiorari assailing the decision^[1] of the Court of Appeals dated September 26, 2002 in CA-G.R. SP No. 62839 which modified the decision^[2] of the National Labor Relations Commission (NLRC).

The antecedent facts are as follows:

On August 16, 1997, respondent William B. Adelantar was hired by Dubai Ports Authority of Jebel Ali under an employment contract (first contract) which provided for an unlimited period of employment with a monthly salary of five thousand five hundred dirhams (Dhs 5,500).

On September 3, 1997, Adelantar and petitioner Pentagon International Shipping, Inc. (Pentagon), for and in behalf of Dubai Ports Authority of Jebel Ali, entered into a Philippine Overseas Employment Administration (POEA) standard employment contract (second contract), this time providing for a 12-month period with basic monthly salary of US\$380.00 and fixed overtime pay of US\$152.00.

Upon completion of his probationary period on April 5, 1998, Adelantar's basic salary was increased to five thousand eight hundred ninety dirhams (Dhs 5,890), while his overtime pay was increased to two thousand three hundred fifty-six dirhams (Dhs 2,356) effective April 1, 1998.

On June 11, 1998, however, the management barred Adelantar from entering the port due to a previous dispute with his superior. He was asked to hand in his health and employment card. On the same date, he received a letter from his employer, stating that he was being terminated for assaulting his superior officer, although he was promised employment in another company.

Adelantar was eventually repatriated after nine (9) months and seven (7) days of service. After almost a year of waiting with no work forthcoming, Adelantar filed a complaint for illegal dismissal with money claim against Pentagon International Shipping, Inc. with the NLRC, docketed as NLRC NCR OFW (M) 99-05-0693.

The Labor Arbiter found that the dismissal of Adelantar was illegal. Consequently, he ordered Pentagon to pay Adelantar the amount of Dhs 24,738.00 representing the latter's three (3) months basic salary inclusive of overtime pay. All other claims were denied for lack of merit.^[3]

Adelantar appealed to the NLRC arguing that the Labor Arbiter erred in granting backwages of only three (3) months and in not granting attorney's fees, moral and exemplary damages and reinstatement.

The NLRC affirmed the Labor Arbiter's decision and held that under Section 10 of R.A. 8042, otherwise known as the **Migrant Workers and Overseas Filipinos Act of 1995**, an illegally dismissed contract worker is entitled to the salaries corresponding to the unexpired portion of his contract, or for three (3) months for every year of the unexpired term, whichever is less. Thus, the NLRC awarded backwages to Adelantar equivalent to three (3) months of his basic salary, but exclusive of overtime pay.^[4]

Aggrieved, Adelantar filed a petition for certiorari with the Court of Appeals.

On September 26, 2002, the Court of Appeals rendered judgment modifying the amounts awarded by the Labor Arbiter and the NLRC. The Court of Appeals awarded full backwages to respondent computed from the time of the dismissal up to the finality of the decision. It ruled that Section 10 of R.A. No 8042 is not applicable in this case because said provision only contemplates a fixed period of employment. Moreover, Article 279 of the Labor Code should apply and not Section 10 of R.A. No. 8042, considering that Adelantar's first contract provided for an unlimited period of employment.

Pentagon International Shipping, Inc. filed the instant petition for review on certiorari raising the following arguments:

I

THE COURT OF APPEALS ERRED IN (a) COMPLETELY IGNORING AND REFUSING TO FOLLOW THE RULING OF THE SUPREME COURT IN THE LANDMARK CASE OF *MILLARES, et al. vs. NLRC, et al.*, G.R. NO. 110524, JULY 29, 2002 AND (b) IN APPLYING PRIMARILY ARTICLES 279 AND 280 OF THE LABOR CODE INSTEAD OF THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (R.A. 8042) AND (c) POEA RULES AND REGULATIONS IN DETERMINING THE LIABILITY OF PETITIONER AND THE EMPLOYMENT STATUS OF RESPONDENT.

II

THE COURT OF APPEALS ERRED IN RULING THAT THE CONTRACT EXECUTED EXCLUSIVELY BETWEEN RESPONDENT ADELANTAR AND DUBAI PORTS AUTHORITY UNDER FOREIGN LABOR LAWS WITHOUT THE APPROVAL OF POEA AND PARTICIPATION OF PENTAGON IS THE VALID AND BINDING CONTRACT CONTRARY TO THE PRINCIPLE OF *FORUM NON CONVENIENS* AND *LEX LOCI CONTRACTUS*.

III

THE COURT OF APPEALS ERRED WHEN IT GRANTED THE AWARD OF ATTORNEY'S FEES EVEN WHEN THERE WAS NO BASIS THEREFOR AND

OVER AND BEYOND WHAT WAS CONSISTENTLY AND ORIGINALLY PRAYED FOR BY THE RESPONDENT.^[5]

The petition is meritorious.

The August 16, 1997 contract, *i.e.*, the first contract, provided for an unspecified period of employment with Adelantar, as Tug Master, receiving a monthly salary, after his probationary period, of Dhs 5,890.00. This figure in Dirhams was used by the Labor Arbiter in computing the award equivalent to three months salary or the amount of Dhs 24,738.00 inclusive of fixed overtime. This was also used by the NLRC when it affirmed the award equivalent to three months, albeit, excluding the fixed overtime.

The Court of Appeals likewise used the salary stated in Adelantar's first contract in adjudging Pentagon's liability but it did not limit the award to three months only. In interpreting the above provision, the Court of Appeals, citing *Marsaman Manning Agency, Inc. v. NLRC*,^[6] held:

x x x. A plain reading of Sec. 10 clearly reveals that the choice of which amount to award an illegally dismissed overseas contract worker, *i.e.*, whether his salaries for the unexpired portion of his employment contract or three (3) months' salary for every year of the unexpired term, whichever is less, comes into play only when the employment contract concerned has a term of at least one (1) year or more. This is evident from the words "for every year of the unexpired term" which follows the words "salaries x x x for three months." x x x.

Proceeding from the premise that the first contract, providing for an unlimited period of employment, is the applicable contract rather than the POEA-sanctioned second contract, the Court of Appeals concluded that Section 10 of R.A. No. 8042 is not applicable because "there will be no basis by which to determine the number of years within which the grant of salaries will be based."^[7] Stated differently, Section 10 of R.A. No. 8042, or **The Migrant Workers and Overseas Filipinos Act of 1995**, is not applicable in this case because said provision only contemplates a fixed period of employment while the first contract provides for an unlimited period of employment. Section 10 of R.A. No. 8042 provides:

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee with interest at twelve percent (12%) per annum, *plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.* (Italics ours)

In this respect, the Court of Appeals applied Article 279 of the Labor Code^[8] using principles of statutory construction to supplement the omission in R.A. No. 8042 regarding the unlimited period of employment. It ratiocinated that the Labor Code and R.A. No. 8042 are statutes in *pari materia*.

The issue, therefore, is whether the Court of Appeals properly used as basis Article 279 of the Labor Code in its award for backwages to Adelantar.