

SECOND DIVISION

[G.R. No. 97369, July 31, 1997]

**P.I. MANPOWER PLACEMENTS INC., PETITIONER, VS. NATIONAL
LABOR RELATIONS COMMISSION (SECOND DIVISION), AND
NORBERTO CUENTA, SR., RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This is a petition for certiorari and prohibition to set aside the decision of the NLRC, affirming the decision of the POEA dated April 20, 1990 which held petitioner P.I. Manpower Placements Inc., LPJ Enterprises Inc. (now ADDISC Enterprises Inc.) and foreign employer Al Jindan Contracting and Trading Establishment jointly and solidarily liable to private respondent Norberto Cuenta, Sr., for the sum of US\$10,560.00 representing his unpaid salaries and the unexpired portion of his contract, as well as the resolution of the NLRC denying reconsideration.

The facts of the case, as found by the NLRC, are as follows:

On September 29, 1988, private respondent Norberto Cuenta, Sr., applied to petitioner P.I. Manpower Placements Inc. (P.I. Manpower) for overseas employment as trailer driver. Danny Alonzo, representing himself as an agent of petitioner, accompanied Cuenta to the office of Teresita Rivera, Operations Manager of petitioner. Cuenta was asked to submit his BLT certificate, secure a valid passport, undergo medical examination and pay a placement fee of P10,800.00. Teresita Rivera wrote the Bureau of Land Transportation in behalf of Cuenta to facilitate issuance of the BLT certificate.

When the requirements were almost complete, Rivera, in an urgent letter dated October 27, 1988, told Cuenta to come to her office as soon as possible. For lack of funds, private respondent reported only on November 5, 1988 and made a partial payment of P3,000.00. Rivera allowed Cuenta to pay the balance of P7,800.00 later. Thereafter, she issued a receipt and made Cuenta sign in blank the Agency-Worker Agreement, assuring Cuenta that the terms and conditions of his employment as agreed would be stated in the contract, particularly Cuenta's salary at \$440.00 a month.

On November 20, 1988, private respondent was advised of his flight to Dharan, Saudi Arabia. Accordingly, on November 23, 1988, he paid the balance of P7,800.00, although no receipt was issued to him even after he had left. It was when he was already on the plane that he was able to read his employment papers as the same were handed to him by Rivera only before he boarded the plane. To his surprise, Cuenta found out that his deploying agent was LPJ Enterprises, not P.I. Manpower, and that his monthly salary was SR960.00, and not \$440.00, which was less than what he and Teresita Rivera had agreed.

Upon arriving in Dharan, Saudi Arabia, Cuenta was assigned by Al Jindan Contracting and Trading Establishment (Al Jindan) to drive a trailer. He was later informed that he would receive an allowance of SR200.00 for the first two months but none in the third, because he was on probation. On March 23, 1989, without prior notice and investigation Cuenta was dismissed and told to pack up and surrender his working permit (Iguama).

After arriving home in the Philippines, he immediately saw a certain Mr. Depsi, owner of P.I. Manpower. Cuenta was told, however, that nothing could be done by P.I. Manpower because the obligation of the agency was only to deploy workers, like Cuenta.

In July 1989, private respondent Cuenta filed a complaint in the POEA for illegal dismissal, non-payment of wages and recruitment violations against P.I. Manpower Placements Inc., LPJ Enterprises Inc., and Al Jindan Contracting and Trading Establishment and their respective bonding companies. In addition, he filed criminal charges against Teresita Rivera, Issan El Debs, General Manager of P.I. Manpower, and Danny Alonzo for estafa and illegal recruitment, but the cases were dismissed after the fiscal found no deceit and misrepresentation on the part of the accused.^[1]

On April 20, 1990, the POEA, rendered a decision, the dispositive portion of which reads:^[2]

WHEREFORE, respondents P.I. Manpower Placement Inc., and LPG Enterprises, Inc., (Addisc Enterprises) and Al Jindan Cont. and Trading Est. are hereby held jointly and severally liable to pay complainant Norberto Cuenta the following:

1. US\$8,800.00 - representing salaries for the unexpired portion of the contract; and
2. US\$1,760.00 - representing his unpaid salaries for 4 months of actual service.

or the total amount of \$10,560.00 or its peso equivalent at the time of actual payment.

Both parties appealed to the NLRC which, on November 20, 1990, affirmed the decision of the POEA.

On January 2, 1990, petitioner filed a motion for reconsideration but its motion was denied on January 21, 1991.^[3] Separate petitions for certiorari were thereafter filed by petitioner and the LPJ Enterprises, questioning the decision of the NLRC.

On July 15, 1991, this Court's First Division, in a resolution of that date, modified the decision of the NLRC. The dispositive part of the resolution in G.R. No. 97857 reads:^[4]

WHEREFORE, the petition is DISMISSED with costs against petitioner. The challenged decision is AFFIRMED, with the modification that the amount of SR400 or its equivalent in Philippine pesos, representing the food allowance paid to the private respondent for two months, shall be

deducted from the total amount awarded to him. The temporary restraining order dated May 6, 1991, is LIFTED.

On December 11, 1991, a writ of execution was served upon the petitioner. In an Urgent Motion for the Issuance of a Temporary Restraining Order^[5] filed on January 2, 1992, petitioner sought to enjoin the POEA from enforcing the decision against it in view of the pendency of this petition. Its motion was granted on January 20, 1992.^[6]

Petitioner contends that the resolution of the NLRC has no factual and legal basis; that private respondent's dismissal was for a just cause because, as stated in the telegram^[7] dated April 5, 1989 of the foreign employer, Cuenta was unwilling to work and was threatening to harm others if he was given other assignments. In any event, it is contended that Cuenta cannot question the termination of his employment because he was on probation and thus can be dismissed for failing to meet the minimum standards required by his employer.

Petitioner also argues that public respondent improperly construed the rules on the joint and solidary liability of the placement agency and the foreign employer for claims and liabilities arising from violations of the terms and conditions of the contract. Petitioner claims that Cuenta was a walk-in applicant whose application was accepted only for "manpooling purposes" and that Rivera only referred Cuenta to her friend Danny Alonzo of LPJ Enterprises because Cuenta was in a hurry to get a job. It denies liability under the contract of employment because the Agency-Worker Agreement and the travel exit pass (TEP) show LPJ Enterprises to be the local deploying agent of private respondent.

Denying it was guilty of misrepresentation, petitioner claims that Cuenta read the documents before he left for abroad.

Petitioner disputes the NLRC's assessment that "reprocessing" of applications was evil and asserts that agencies, like itself, which refer applicants to other agencies for employment, help reduce unemployment in the country. Petitioner maintains that its suspension for four months should be sufficient to answer for its "misrepresentation" or for whatever indiscretions it may have committed in the use of its license.

The petition has no merit. The facts of this case amply support the NLRC's findings that Cuenta was not dismissed for cause and that petitioner was privy to Cuenta's contract of employment by taking an active part in the latter's recruitment, justifying thereby the finding that petitioner is jointly and solidarily liable with LPJ Enterprises and Al-Jindan.

First. In termination cases, the burden of proving just and valid grounds for dismissal rests upon the employer.^[8] Considering this rule and the evidence of petitioner, particularly the telegram sent by Cuenta's foreign employer to Danny Alonzo, we find no reason to disturb the NLRC's findings that Cuenta was denied a hearing before he was dismissed from employment. In fact, petitioner does not deny that private respondent was asked to leave his job without any notice and investigation at all. The telegram^[9] claimed to have been sent by Mohd Abu Dawood, general manager of Al Jindan, has no probative value to prove just cause for Cuenta's dismissal. There is no proof of its due execution and no concrete