

SECOND DIVISION

[G.R. No. 109390, March 07, 1996]

**JGB AND ASSOCIATES, INC., PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION AND ARTURO C. ARROJADO,
RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This is a petition for certiorari to annul the decision and the resolution of the National Labor Relations Commission in NLRC NCR CA No. 002149-91, finding petitioner and its principal, Tariq Hajj Architects, guilty of having illegally dismissed private respondent and, for this reason, ordering them to pay his salaries corresponding to the unexpired portion of his employment contract, salary differentials and reimbursement of the amount withheld for telephone bills. The decision reverses the contrary decision of the Philippine Overseas Employment Administration, dismissing the complaint filed by private respondent.

The facts are as follow:

Private respondent Arturo C. Arrojado was hired by petitioner JGB and Associates, Inc. for its principal, Tariq Hajj Architects, to work as draftsman in Saudi Arabia. The contract of employment was for two years, commencing May 27, 1989. The salary was US\$500.00 a month, although private respondent's Travel Exit Pass (TEP) showed that his monthly salary was US\$525.00.

On February 25, 1990, before the expiration of his contract of employment, private respondent was given notice by his employer that his employment was terminated for the reason that his performance both in productivity and efficiency was below average. The termination of his employment took effect on the same day. He was immediately scheduled to depart Saudi Arabia and on February 28, 1990, three days after his dismissal, he found himself already in the Philippines.

On March 12, 1990, private respondent filed with the POEA a complaint against JGB and Associates, Inc., Tariq Hajj Architects and Country Bankers Insurance Corporation, alleging illegal dismissal and seeking payment of salaries corresponding to the unexpired portion of his employment contract, salary differential, refund of S.R. 1,000 which was withheld from him for telephone bills, moral damages and attorney's fees.

Private respondent alleged that he did his job conscientiously and that he was even asked to make scale models, in addition to his regular duties. He claimed that he was never reprimanded nor informed of his alleged negligence and incompetence either by his immediate supervisor or by his employer. He also complained that he was denied due process because his dismissal took effect on the same day he was

given notice and claimed that, because he was immediately repatriated, he had no opportunity to challenge his arbitrary dismissal. Private respondent admitted that he signed a waiver of claims but alleged that he did so under compulsion and that, in any event, he was not precluded from questioning the legality of his dismissal and from recovering monetary claims due him.

On the other hand, petitioner averred that private respondent was dismissed for neglect of duties and performance below par. Petitioner also alleged that although no prior notice of dismissal was given to private respondent, he was given in lieu thereof a "notice pay" equivalent to one month salary. Petitioner denied liability for salary differential on the ground that the employment contract stipulated that his monthly salary was US\$500.00. Petitioner invoked a quitclaim signed by private respondent as evidence that he had been paid all the monetary claims due him.

The POEA dismissed private respondent's complaint for illegal dismissal but ordered as follows:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondents to pay complainant jointly and severally the peso equivalent at the time of actual payment the amount of SR1,000 representing the refund of the telephone bills deducted from the latter.

Ten percent (10%) of the total refund as and for attorney's fees to be paid by complainant.

All other claims are dismissed for lack of merit.

SO ORDERED.

Private respondent timely appealed to the NLRC, which found private respondent's dismissal illegal and ordered petitioner as follows:

WHEREFORE, premises considered, the assailed decision is hereby set-aside and a new one is entered declaring complainant's dismissal from employment illegal.

Hence, respondents are hereby ordered to pay complainant jointly and severally the peso equivalent at the time of payment of the following amount:

1. US Dollars Seven Thousand Eight Hundred Seventy Five (US\$7,875.00 or its peso equivalent, representing the unexpired portion of the contract.
2. US Dollars Two Hundred Twenty Five (US\$225.00) representing salary differential for nine (9) months
3. Saudi Riyals One Thousand (S.R. 1,000.00) representing refund for telephone bill.

SO ORDERED.

Petitioner filed a motion for reconsideration but the same was dismissed by the NLRC in a resolution dated January 27, 1993, for lack of merit. Hence this petition.

Petitioner alleges that the NLRC committed grave abuse of discretion.

The issue in this case is whether the NLRC gravely abused its discretion in reversing the decision of the POEA and ruling that private respondent was illegally dismissed.

We find that petitioner failed to prove that the NLRC committed grave abuse of discretion in holding that private respondent was illegally dismissed. In termination cases, the burden of proving just cause for dismissal is on the employer. In this case, the grounds for the dismissal of private respondent were stated in two documents presented by petitioner before the POEA: (1) the notice of termination given to private respondent on February 20, 1990; and (2) the letter of the principal, Tariq Hajj on August 1, 1990. In the termination letter, the foreign employer stated that private respondent's performance was below average. In its August 1, 1990 letter, the foreign employer stated that:

ever since the early days of Mr. Arrojado with us (,) we were not fully satisfied with his performance and our expectations from him were much higher than we saw him actually producing. Nevertheless (,) to be very fare [sic] with Mr. Arrojado(,) we gave him a lot of time to develop and to get acquainted with our work, system, environment and standards. However and for more than eight (8) months he spent with us(,) we have not witnessed any development in skills or abilities. Moreover, we noticed a very evident neglect by Mr. Arrojado of the duties assigned to him. This combined with a very thorough evaluation of his performance which resulted from his continuous and repeated neglect throughout the period he spent with us, our decision was very natural. We felt that Mr. Arrojado was causing our firm tangible financial lose [sic] and considerable technical difficulties due to his incompetent performance.^[1]
(Italics added)

The contract of employment between the parties provided in pertinent part:

D. Termination by Employer. An Employer may terminate the contract of employment for any of the following causes:

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(c) Gross and habitual neglect by the employee of his duties

(d) Fraud or willful neglect by the employee of his duties

Gross negligence connotes want of care in the performance of one's duties.^[2] Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. On the other hand, fraud and willful neglect of duties imply bad faith on the part of the employee in failing to perform his job to the detriment of the employer and the latter's business.

None of these causes is stated in the two letters of the employer as reasons for dismissing private respondent. None of the reasons there stated even approximates any of the causes provided in the contract of employment for the termination of employment by the employer.

Indeed, the grounds given for private respondent's dismissal are nothing but