

SIXTEENTH DIVISION

[CA-G.R. SP NO. 132319, December 09, 2014]

**AGENSI PEKERJAAN PHILIMORE SDN. BHD., PETITIONER, VS.
THE HON. SECRETARY OF LABOR, ACTING THROUGH
UNDERSECRETARY HON. DANILO P. CRUZ, THE HON.
ADMINISTRATOR OF THE PHILIPPINE OVERSEAS EMPLOYMENT
ADMINISTRATION (POEA); AND CIRILA A. PRIMOR,
RESPONDENTS.**

D E C I S I O N

BATO, JR., J.:

Before the Court is a Petition for Certiorari^[1] under Rule 65 of the Rules of Court, seeking to set aside the 02 May 2013 Order^[2] and 16 July 2013 Resolution^[3] of Undersecretary Danilo P. Cruz of the Department of Labor and Employment (DOLE), by authority of the Secretary of Labor and Employment, in OS-POEA-0148-0725-2012.

Petitioner Agensi Pekerjaan Philimore SDN. BHD. ("Agensi" for brevity) alleged that it is a foreign principal/recruitment agency based in Malaysia and duly accredited by the Philippine Overseas Employment Administration (POEA). Its local recruitment agent in the Philippines is Non-Stop Overseas Employment Corporation ("Non-Stop" for brevity).

On 16 February 2007, private respondent Cirila A. Primor ("Primor" for brevity) executed a Sworn Statement^[4] before the POEA, charging Non-Stop for violation of Sections 2(b) and (e), Rule I, Part VI of the 2002 POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers. Primor alleged that sometime in January 2006, she applied for a job with Non-Stop and was promised a job in Malaysia. She was made to pay a placement fee equivalent to four (4) months of her salary. On 22 May 2006, she signed an employment contract as a domestic helper with a monthly salary of 750RM. She departed for Malaysia on 24 May 2006 using a tourist visa and returned to the Philippines on 18 October 2006.

In its Order^[5] dated 28 May 2009, the POEA dismissed Primor's complaint against Non-Stop for lack of substantial evidence. It ruled that Primor's claim that she used a tourist visa to work in Malaysia is unfounded since her deployment was duly processed and approved by the POEA. It further ruled that as evidenced by the promissory note signed by Primor, she was only required to pay a placement fee equivalent to her one month salary by way of salary deduction. Even assuming that the amount equivalent to her four (4)-month salaries was collected by her employer, she failed to specifically present evidence other than her unsubstantiated averments that Non-Stop benefited from it. The alleged deduction from her salaries may, however, be a ground for disciplinary action against Primor's foreign employer

for the latter's failure to comply with its contractual obligation to a migrant worker. It thus ordered that a complaint be *motu proprio* initiated against Primor's foreign employer for default of its contractual obligation to a migrant worker. Hence, the dispositive portion of the said Order reads:

"WHEREFORE, premises considered, this case is hereby DISMISSED for lack of substantial evidence.

Initiate a disciplinary action against the employer for default in its contractual obligation to the migrant worker.

SO ORDERED."

Pursuant to the above-mentioned Order, a complaint was *motu proprio* initiated by the POEA on 15 June 2009 against Agensi, as the foreign principal of Non-Stop, and Tan Tse Kuan, the direct employer of Primor, for violation of Sections 1(a) and (d) of Rule II, Part VII of the 2002 POEA Rules. Upon the POEA's directive, Primor submitted her *Sinumpaang Salaysay*,^[6] wherein she alleged the following: when she arrived in Malaysia, an employee of Agensi fetched her from the airport and she started her 5-day training the following day; on 30 May 2006, her employer, Tan Tse Kuan fetched her from the office of Agensi and brought her to his house; thereat, she found out the family of Tan Tse Kuan has 14 members including a 3-year-old boy and a 9-month old baby; included in her duties were taking care of the two children, doing the laundry, ironing clothes and cleaning the house; she had to work 18 hours but she was not paid her salaries; on 07 October 2006, Tan Tse Kuan terminated her employment and brought her back to Agensi; she was detained in Agensi's office for eleven (11) days; while at the office of Agensi, she saw a piece of paper signed by Tan Tse Kuan indicating that she had asked to leave and wanted to go back to the Philippines; she was forced to sign an agreement that she will not file any case against Tan Tse Kuan, Agensi and Non-Stop; and on 18 October 2006, she was repatriated back to the Philippines.

For its part, Agensi alleged that when Primor arrived in Malaysia on 24 May 2006, she began to work for Tan Tse Kuan as a Household Service Worker (HSW). After a while, Primor demanded from Tan Tse Kuan that she be permitted to go home because she was homesick. Tan Tse Kuan refused since to allow Primor to return to the Philippines within the duration of their 2-year contract would be a breach thereof. After working for four (4) months, Primor ran away from Tan Tse Kuan's residence and proceeded to the Philippine Embassy. The Philippine Embassy contacted Agensi and the latter, in turn, contacted Non-Stop. Upon arriving at the Embassy, Agensi's representative asked Primor why she ran away and whether she was subjected to ill-treatment. Primor replied that she was never subjected to ill-treatment, the real reason why she ran away was because of her severe homesickness. Due to the persistent demands of Primor that she be sent home to the Philippines, Agensi had no choice but to repatriate her on 18 October 2006.

As for Tan Tse Kuan, the POEA archived the case against him since there was no indication that he received the summons that it had sent to him.

By Order^[7] dated 19 June 2012, the POEA found Agensi guilty of grave misconduct for detaining Primor at its office for eleven (11) days and for forcing her to sign a document to the effect that she will not file a case against her employer, local recruitment agency and its foreign principal. The POEA likewise found that Agensi defaulted on its contractual obligation, premised on the NLRC's finding in a separate case involving the same parties that Agensi should be made liable for not paying the salaries of Primor for four (4) months. The dispositive portion thereof reads:

"WHEREFORE, premises considered, for the established violation of Section 1(a) and (d) of Rule II, Part VII of the Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers, respondent Agensi Pekerjaan Philimore SDN BHD is hereby disqualified to participate in the overseas employment program.

Include the name of respondent Agensi Philimore SDN BHD in the list of foreign principals/employers disqualified from participating in the overseas employment program of this Administration.

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SO ORDERED."

Aggrieved, Agensi elevated the matter to the Secretary of Labor wherein it pointed out that it carried out to the letter its duty to deploy Primor to Malaysia and to a valid employer. It was Primor who could not finish her contract for her own personal reasons.

On 02 May 2013, the Secretary of Labor, through Undersecretary Danilo P. Cruz, issued an Order^[8] affirming the ruling of the POEA in the following manner:

"The respondent-petitioner's liability for grave misconduct is not without basis. The averments made by Primor in her Sinumpaang Salaysay provided a detailed account of the circumstances of her detention in the office of the respondent-petitioner and the purported signing of an agreement not to file any complaint. In addition, as earlier stated, the POEA Administrator considered the decision of the NLRC in finding the respondent-petitioner liable for the unpaid salaries of Primor for four (4) months. All these circumstances, taken together, constitute substantial evidence sufficient to hold the respondent-petitioner liable for grave misconduct and default on its contractual obligation to the worker.

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WHEREFORE, the Appeal with Motion for Reinvestigation, treated as Petition for Review, filed by Agensi Pekerjaan Philimore SDN BHD, is hereby DISMISSED for lack of merit. Accordingly, the Order of the POEA