

EIGHTH DIVISION

[CA-G.R SP NO. 92769, September 08, 2006]

**MONALIZA PLACEMENT AGENCY, PETITIONER, VS. NATIONAL
LABOR RELATIONS COMMISSION (SECOND DIVISION) AND GIL
B. HERNANDEZ, RESPONDENTS.**

D E C I S I O N

DACUDAO, J.:

Impugned in this petition for certiorari, as tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction, are: (a) The Decision¹ dated July 7, 2005 of the National Labor Relations Commission (NLRC), Second Division, in NLRC NCR CA No. 040804-04, which affirmed with modification the Decision² of Labor Arbiter Nieves Vivar-de Castro in NLRC NCR-OFW-03-11-2858-00; and (b) The public respondent's Resolution,³ dated October 25, 2005, denying petitioner's motion for reconsideration thereon.

On November 6, 2003, the private respondent Gil B. Hernandez, as plaintiff, instituted before the NLRC Arbitration Branch a complaint⁴ for illegal dismissal, payment of salary for the unexpired portion of contract, moral and exemplary damages, and attorney's fees. Named defendants therein were the herein petitioner Monaliza Placement Agency (or simply Monaliza), and Catherine Khaled (the petitioner's president), as well as the Alsadara Office Recruitment Bureau/Sultan Alqahtani Transport Establishment.

After conciliation efforts failed, the Labor Arbiter directed the parties to submit their position papers and their replies on March 1, 2004 and March 8, 2004, respectively, with the stern warning that no extension of time shall be allowed for such submittal.

On March 1, 2004, the therein plaintiff Gil B. Hernandez submitted his Position Paper.⁵ He asserted thereunder that sometime in March 2003, he was recruited by therein defendant Monaliza and therein defendant Catherine Khaled to work as a cargo driver/trailer driver for their foreign principal, the Alsadara Office Recruitment Bureau/Sulatan Alqahtani Transport Establishment, in Dammam, Kingdom of Saudi Arabia; that he paid Catherine Khaled P12,000.00 by way of placement fee, P2,600.00 as medical fees and P1,000.00 for trade test; that under his contract of employment, he was given to understand that he would receive a basic monthly salary of US\$340.00 for a period of two (2) years, plus 150% of his basic salary for overtime work, and 200% of his basic salary for work performed during designated holidays; and that he departed from Manila on March 11, 2003.⁶

He further averred that when he arrived in Dammam, Kingdom of Saudi Arabia (KSA), he was initially assigned as a laborer for one (1) month, and was paid only 900 Saudi Rials, or US\$240.00 for that period; that he was later assigned as trailer

driver in Jeddah, KSA for two (2) months; that thereafter he was sent back to Dammam, KSA, where he was, for the next four (4) months, made to work for 15 hours a day without day-off, at a monthly salary of 900 Saudi Rials; that in October, 2003, he reminded his foreign employer about the terms of his employment contract which were not being followed or observed, but his foreign employer offered no explanation; that on October 15, 2003, without telling him the cause or reason, his foreign employer's representative, one Saeed Alqahtani, told him not to report for work anymore as he would be sent home; and that on October 21, 2003, despite his pleas, he was indeed sent home to the Philippines.⁷

In amplification of his complaint, therein plaintiff submitted his Sworn Statement (Annex "A"), the OFW Information Sheet issued by the POEA (Annex "B"), the Employment Contract issued to him by his foreign employer (Annexes "B-1" to "B-5"), the Accident Insurance Policy (Annex "C"); and the OFW Information issued by the POEA (Annex "D")⁸

On the other hand, instead of submitting their position paper on March 1, 2004, therein defendants filed a Motion for Extension to submit the position paper, praying that they be given an additional period of ten (10) days, or up to March 11, 2004, to do so.

Holding that the parties had been warned that no extension shall be allowed, the Labor Arbiter, via an Order dated March 1, 2004,⁹ denied the motion for extension, and considered the case submitted for decision based on the pleadings and the evidence on record.

Notwithstanding the above Order, however, therein defendants filed their Position Paper (with Annexes)¹⁰ on March 11, 2004.

On March 19, 2004, Labor Arbiter Nieves Vivar-de Castro gave judgment,¹¹ decretally disposing, as follows:

"Wherefore, all Respondents, Catherine Khaled, Monaliza Placement Agency and its corporate officers or directors or partners/owners as the case maybe are hereby adjudged jointly and solidarily liable to pay complainant's salaries for 6 months in the amount of US\$2,040 (\$340 x 6 months), to pay his salary differentials of \$500.00, and unpaid overtime service in the amount of US\$1,483.00; to refund complainant's placement fee of P12,000.00 plus 12% interest per month at the existing exchange rate at the time of payment.

"SO ORDERED.

"19 March 2004.

"(SGD.) HON. NIEVES VIVAR-DE CASTRO

"Labor Arbiter"¹²

The Labor Arbiter ratiocinated:

"Complainant's assertions being undisputed aside from the fact that those are supported by testimonial and documentary

evidence, are deemed well established, from which we can safely infer that complainant was indeed illegally dismissed for reason that he complained about the respondents' non-compliance with the provisions of the contract, vis-a-vis the non-payment of overtime pay for services performed after the regular 8 working hours.

"Premises considered, complainant is indeed entitled not only to his claim for overtime pay but also to salary differentials, having been suffered to work 15 hours a day for four months but was only paid 900 Saudi Rials a month, computed as follows:

"US\$340-\$240 (900 Saudi Rials) = \$100 x 4 mos.

"=\$400.00 underpayment on basic pay for 4 months

"+\$100.00 for the 1st mo.

"\$340/26 days/8 hours =\$1.63 per hour x 7 hours overtime/day + 25%

"=\$11.41 + \$2.85

"=\$14.26 unpaid overtime per day x 26 days x 4 months

"=\$14.26 unpaid overtime per day x 26 days x 4 months

"=\$1,483.00 unpaid overtime for 4 months

"Total US\$500.00 salary differentials +
US\$1,483.04 o.t. for the last 4 months

"US\$1,933.04

"Regarding the illegal dismissal, it is beyond doubt that complainant was dismissed for no just or authorized cause at all, and without due process, henceforth he is entitled to the unexpired portion of his 2 years contract or to a maximum of 6 months salary as provided for under Section 10, Migrant Workers and Overseas Filipinos Act of 1995 (R.A. 8042), viz:

'Section 10. Money claims – Notwithstanding any provision of law to the contrary, the Labor Arbiter of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of complaint, the claims arising out of the employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.

'The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in all the contracts of overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the

recruitment/placement agency, as provided for by law, shall be answerable for all the money claims or damages that may be awarded to the workers. If the recruitment or placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.

'Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment, or modification made locally or in a foreign country of the said contract.

'Any compromise/amicable settlement or voluntary agreement on money claims inclusive of damages under this Section shall be paid within four (4) months from the approval of the settlement by the appropriate authority.

'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 of 12% per annum, plus his salaries for the unexpired portion of his contract or for three months for every year of the unexpired term, whichever is less.'

"Where the law is clear, there is nothing more left but application thereof without any attempted or strained interpretation. Complainant is entitled to nothing less than payment of salaries for the unexpired portion, and refund of placement fees plus 12% interest per annum."¹³

From this judgment, the therein defendants appealed¹⁴ to the public respondent NLRC, thereunder arguing that: "(1) The Honorable Labor Arbiter committed serious error amounting to lack or excess of jurisdiction in disregarding the uncontroverted documentary evidence submitted by them; and (2) The Honorable Labor Arbiter committed serious error, amounting to lack or excess of jurisdiction, in holding them liable as charged."¹⁵

But via a Decision dated July 7, 2005,¹⁶ the NLRC dismissed the appeal and affirmed with modification the judgment of the Labor Arbiter, thus:

"In respondents-appellants' appeal, they charged the Labor Arbiter with committing serious errors when she disregarded the former's documentary evidence and holding respondents liable for money claims.

"From the records, it plainly appears that the Labor Arbiter a quo never considered the evidences of respondents-appellants in their position paper with annexes for having been filed late, as it was forwarded to the Labor Arbiter's office way beyond the deadline set for the filing thereof.

"Pursuant to our authority and in order not to cause any further delay in the disposition of the issues in this case, We shall take cognizance of respondents' arguments and evidence.

"As stated in Bristol Laboratories Employees Association vs. NLRC (187 SCRA 118), 'no grave abuse of discretion may be attributed to the NLRC for having considered additional documentary evidence on appeal to prove breach of trust and confidence as bases for the dismissal of the Petitioner.'

"Respondents asseverate that the Labor Arbiter disregarded the contents

of their position paper and the documentary evidence appended thereto which are as follows:

"a) that the complainant voluntarily requested for the repatriation because he felt homesick; and

"(b) that complainant has no any monetary claims against the respondents as he had categorically stated to have received, all his claims from the establishment until October 18, 2003. Under the Financial Statement (Annex 'A' of respondents' position paper) complainant received the following:

"Monthly salary	-	450.00
"Vacation Leave	-	533.00
"Service Award	-	266.00
"Additional Fee	-	485.00
"TOTAL		P1,734.00 SR

"Deductions	-	
"Penalty	-	100.00
"Total Deductions	-	2,000.00

"Complainant also received a check of SR1000 for IQAMAH NO. 2192784441 (Annex 'B', *ibid.*).

"Complainant's signing of the Financial Statement was affirmed by Felimon M. Salinas (Annex 'C', *ibid.*).

"The cause of undue repatriation had not been settled by the signing of the Financial Statement. The alleged claim of homesickness of complainant is not in accordance with human experience. For homesickness occurs only during the initial months of one's sojourn away from his loved ones. Thereafter this feeling is overcome by the primordial desire to earn some money to be sent to his loved ones who were left behind, with the end in view of uplifting their economic plight.

"And it has to be pointed out that this is the paramount resolve of an OFW who leaves the Philippines to work in a foreign land.

"The respondents failed to rebut the claim of complainant that his foreign employer was not living up to its undertaking to pay his salary as specified in his contract. SR900.00 is not equivalent to US\$340.00 for it is only about US\$240.00.

"And when complainant insisted that he be paid in accordance with the stipulated pay, the foreign employer got irked and thus caused complainant's undue repatriation. xxx.

"xxx, [i]t was not complainant who sought his repatriation but it was the foreign employer because of complainant's nagging that he be paid the correct amount of salary as stipulated in his contract. And so We adopt the Labor Arbiter's discussion when she said:

'Complainant's assertions being undisputed aside from the fact that those are supported by testimonial and