

## THIRD DIVISION

[ G.R. No. 234296, November 27, 2019 ]

**ERNESTO P. GUTIERREZ, PETITIONER, VS. NAWRAS MANPOWER SERVICES, INC., AL-ADHAMAIN CO. LTD., AND ELIZABETH BAWA, RESPONDENTS.**

### DECISION

#### CARANDANG, J.:

This is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court assailing the Decision<sup>[2]</sup> dated March 20, 2017 and the Resolution<sup>[3]</sup> dated September 14, 2017 of the Court of Appeals (CA) in CA-G.R. SP. No. 143185. The CA affirmed the National Labor Relations Commission's (NLRC) Resolution and the Labor Arbiter's (LA) Decision finding petitioner Ernesto P. Gutierrez entitled to (1) a refund of placement fee; (2) salary for the unexpired portion of petitioner's contract; and (3) 10% attorney's fees. However, the CA modified the awards granted to petitioner by reducing the salary award from 40,250.00 Saudi Arabia Riyal (SR40,250.00) to SR13,800.00, deleting petitioner's entitlement to a refund of the excess airfare paid for his repatriation, and omitting the award of attorney's fees for lack of basis.

#### Factual Antecedents

Petitioner is an Overseas Filipino Worker. He was hired by respondent NAWRAS Manpower Services, Inc. (NAWRAS) to work as respondent Al Adhamain Co. Ltd.'s (Al-Adhamain) "driver vehicle road" in Saudi Arabia for two years.<sup>[4]</sup> Petitioner was offered a monthly salary of SR2,300.00.<sup>[5]</sup> According to petitioner, other perks include SR300.00 food allowance, free accommodation, two hours' worth of daily overtime, and a service vehicle. He was deployed to Saudi Arabia on July 31, 2013.<sup>[6]</sup>

Upon arrival, petitioner claimed that he was initially placed on floating status. He received his first salary only in November 2013 and received two months' worth of salary on December 2, 2013. He received a service vehicle on December 3, 2013 but he had to personally shoulder the gasoline expenses going to Al-Adhamain's asphalt plant. On February 15, 2014, the workshop supervisor informed petitioner that he would be transferred to another site and was made to report to Al-Adhamain's administrator. At the administrator's office, he was only given a clearance form. In a meeting with Al-Adhamain's owner, petitioner was told that his contract would be terminated and he would be repatriated as soon as petitioner completes his clearance. Petitioner then called NAWRAS about the pre-termination of his contract but was refrained from filing a complaint with the Philippine Overseas Labor Office in order to allow NAWRAS to talk to Al-Adhamain. Petitioner thus proceeded to submit the requirements for his clearance in the last week of February 2014. On March 15, 2014, petitioner was given his remaining salary (sans 1-month

salary) and a refund of his two months' salary bond. He was then told to book his own flight back to the Philippines and that he would be reimbursed later on. However, of the SR3,100.00 that he spent for the airfare, Al-Adhamain's owner only reimbursed him for SR2,000.00.<sup>[7]</sup>

Upon repatriation, petitioner filed a complaint for actual illegal dismissal with claims for underpaid overtime pay, unpaid salaries, and transportation expenses, termination pay, damages, and attorney's fees against respondents.<sup>[8]</sup>

Respondents averred that petitioner was validly dismissed because of his poor performance. After petitioner's three-month probationary period, Al-Adhamain informed him of his unsatisfactory performance. Petitioner was thus transferred to a different site to afford him a chance to change his working attitude. They claimed that petitioner was given several chances to change his work attitude to no avail. Despite extending several opportunities for petitioner to improve, petitioner opted to request for his last salary, benefits, termination pay, and return ticket. Lastly, respondents alleged that they complied with the notice and hearing requirement before terminating petitioner's employment.<sup>[9]</sup>

### **Ruling of the Labor Arbiter**

On March 30, 2015, the LA rendered a Decision<sup>[10]</sup> finding petitioner illegally dismissed.

The LA rejected respondents' claim that petitioner was dismissed for just cause. It noted that respondents failed to produce any evidence supporting their claim. Respondents failed to give any detail on how they measured petitioner's performance to conclude that petitioner's work was unsatisfactory.<sup>[11]</sup>

The LA then granted petitioner's claim for refund of his SR2,300.00 placement fee due to respondents' failure to rebut such claim. On the amount of unpaid salary, the LA awarded petitioner 17.5 months' worth of salary because petitioner was only able to work for six months and two weeks of his two-year contract. Petitioner's request for refund of the excess airfare ticket of SR1,100.00 was likewise granted. Petitioner's claims for overtime pay, moral damages, and exemplary damages were denied for lack of evidence justifying the same.<sup>[12]</sup>

Aggrieved, respondents appealed the LA's decision with the NLRC.

### **Ruling of the National Labor Relations Commission**

In its July 30, 2015 Resolution,<sup>[13]</sup> the NLRC affirmed the LA's Decision *in toto*.

The NLRC found petitioner illegally dismissed because of respondents' unsubstantiated claim of petitioner's poor performance. The NLRC reiterated this Court's ruling that poor performance, equivalent to inefficiency under Article 282<sup>[14]</sup> of the Labor Code, must amount to gross and habitual neglect of duties to be a just cause for dismissal.<sup>[15]</sup> The NLRC clarified that poor performance does not necessarily equate to gross and habitual neglect of duties.<sup>[16]</sup>

Respondents' Motion for Reconsideration<sup>[17]</sup> was denied in a Resolution<sup>[18]</sup> dated September 28, 2015. Unfazed, respondents elevated the matter to the CA *via* a Petition for *Certiorari*<sup>[19]</sup> under Rule 65 of the Rules of Court.

### **Ruling of the Court of Appeals**

On March 20, 2017, the CA affirmed the tribunal's finding of illegal dismissal. The CA also found a dearth of evidence to prove that petitioner's performance equated to gross and habitual neglect. However, the CA modified petitioner's monetary awards in order to conform to paragraph 5, Section 7 of Republic Act No. (R.A.) 10022.<sup>[20]</sup>

Paragraph 5, Section 7 of R.A. 10022 states in part:

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement [of] his placement fee and the deductions made 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.

Thus, the appellate court affirmed petitioner's entitlement to a refund of his placement fee with 12% annual legal interest but reduced the amount of his remaining salary to SR13,800, calculated as follows:

Basic Salary	SR 2,300.00
Multiplied by:	
Factor based	
on	17.5
unexpired term	
(equivalent to	
3 months for	<u>6 months</u>
every year of	
the unexpired	
term)	
Petitioner's	
remaining	<u>SR 13,800.00</u>
salary	

The CA deleted petitioner's award of SR1,100.00 representing the excess airfare for petitioner's repatriation. The CA ruled that petitioner only presented his e-ticket, which did not indicate the amount petitioner paid. Attorney's fees were likewise deleted due to the LA's failure to explain the factual circumstances warranting such award.

Seeking a reinstatement of the LA's decision, petitioner files the instant petition for review. Petitioner avers that Section 7 of R.A. 10022 should not have been applied because it was declared unconstitutional in *Sameer Overseas Placement Agency, Inc. v. Cabiles*.<sup>[21]</sup>

Petitioner prays for the following awards:

1. Reinstatement of the LA's award of
  - a. SR40,250.00 salary for the unexpired portion of the contract;
  - b. SR1,100.00 excess airfare ticket expense; and
  - c. 10% attorney's fees;
2. Petitioner's latest salary for one month;
3. 12% annual interest on his latest salary and on the reimbursement of his placement fee;
4. Moral and exemplary damages; and
5. Legal interest on judgment award.

### **Our Ruling**

The instant petition is partly meritorious. We shall discuss the issues *seriatim*.

**Petitioner is entitled to salary equivalent to the unexpired portion of the contract**

The CA incorrectly reduced the award for petitioner's salary to SR13,800.00. In *Sameer*,<sup>[22]</sup> this Court struck down the phrase "or for three (3) months for every year of the unexpired term, whichever is less"<sup>[23]</sup> under Section 7 of R.A. 10022 because the same phrase was already declared unconstitutional in R.A. 8042 or the Migrant Workers and Overseas Filipinos Act of 1995.<sup>[24]</sup> Petitioner is, thus, entitled to "his salaries for the unexpired portion of his employment contract" - the operative clause of Section 7. As such, the LA's computation of SR40,250.00 shall be reinstated.

**Petitioner is entitled to SR1,100.00 as reimbursement for his airfare ticket**

Petitioner claimed that he paid SR3,100.00 as airfare to the Philippines but was only reimbursed SR2,000.00 by Al-Adhamain.<sup>[25]</sup> Respondents countered that it was Al-Adhamain that purchased petitioner's airplane ticket.<sup>[26]</sup> The LA ordered respondents to reimburse petitioner the unpaid airfare of SR1,100.00 for failure of respondents to present any evidence proving their claim.<sup>[27]</sup> On appeal, the NLRC affirmed the LA's findings because of petitioner's attachment of his ticket receipt showing petitioner's payment of the airplane ticket. The NLRC also noted that respondents "opted not to comment on the [petitioner's] plane ticket."<sup>[28]</sup> However, the CA reversed such findings because petitioner's only evidence was an e-ticket absent any indication of how much was paid.<sup>[29]</sup>

This Court is more inclined to believe that petitioner was able to substantiate his claim of paying SR3,100.00 for his airplane ticket. Aside from the fact that respondents kept silent on the matter in their appeal before the NLRC, the NLRC pointed out that petitioner presented a ticket receipt as proof that petitioner paid for the airplane ticket. This is bolstered by the LA's findings that respondents failed to present any proof of payment for the ticket. A reading of the CA's decision, likewise, reveals that respondents failed to present any proof to substantiate their claim that they paid for petitioner's ticket. As such, it is proper to reinstate the LA and NLRC's order for respondents to reimburse petitioner the excess SR1,100.00 payment.

**Petitioner is entitled to 10% attorney's fees**

In *Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa MWC-East Zone Union v. Manila Water Co., Inc.*,<sup>[30]</sup> this Court differentiated the ordinary and extraordinary concepts of attorney's fees. Attorney's fees under the extraordinary concept refer to those awarded by the Court to the losing party.<sup>[31]</sup> These may be awarded in specific instances enumerated under Article 2208 of the Civil Code. Under paragraph 7 of Article 2208, attorney's fees may be recovered "[i]n actions for recovery of wages x x x."

In actions for recovery of wages, such as the instant case, a specific provision under the Labor Code governs. Article 111 (a) of the Labor Code provides:

Art. 111. *Attorney's Fees.* - (a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

x x x x

We construed Article 111 of the Labor Code as an exception to the general rule<sup>[32]</sup> of strict construction in the award of attorney's fees. In *Kaisahan*, We held that "[a]lthough an express finding of facts and law is still necessary to prove the merit of the award, there need not be any showing that the employer acted maliciously or in bad faith when it withheld wages."<sup>[33]</sup> The findings of fact required to prove entitlement to attorney's fees in labor cases refer to the unjustified withholding of lawful wages.<sup>[34]</sup>

Here, it is undisputed that petitioner was not paid lawful wages corresponding to the unexpired portion of the contract. Therefore, petitioner is entitled to attorney's fees.

**Petitioner is entitled to repayment of his last salary**

Petitioner was not given his November 2013 salary because Al Adhamain withheld it "as [petitioner's] placement fee."<sup>[35]</sup> The said salary deduction was improper because an illegally dismissed migrant worker is entitled to a full reimbursement of his/her placement fee. The LA's directive to refund petitioner's placement fee is really one for the repayment of petitioner's November 2013 salary because