

EN BANC

[G.R. No. 167614, March 24, 2009]

ANTONIO M. SERRANO, PETITIONER, VS. GALLANT MARITIME SERVICES, INC. AND MARLOW NAVIGATION CO., INC., RESPONDENTS.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

For decades, the toil of solitary migrants has helped lift entire families and communities out of poverty. Their earnings have built houses, provided health care, equipped schools and planted the seeds of businesses. They have woven together the world by transmitting ideas and knowledge from country to country. They have provided the dynamic human link between cultures, societies and economies. ***Yet, only recently have we begun to understand not only how much international migration impacts development, but how smart public policies can magnify this effect.***

United Nations Secretary-General Ban Ki-Moon Global Forum on Migration and Development Brussels, July 10, 2007^[1]

For Antonio Serrano (petitioner), a Filipino seafarer, the last clause in the 5th paragraph of Section 10, Republic Act (R.A.) No. 8042,^[2] to wit:

Sec. 10. *Money Claims.* - x x x In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the workers shall be entitled to the full reimbursement of his placement fee with interest of 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.**

x x x x (Emphasis and underscoring supplied)

does not magnify the contributions of overseas Filipino workers (OFWs) to national development, but exacerbates the hardships borne by them by unduly limiting their entitlement in case of illegal dismissal to their lump-sum salary either for the unexpired portion of their employment contract "or for three months for every year of the unexpired term, whichever is less" (subject clause). Petitioner claims that the last clause violates the OFWs' constitutional rights in that it impairs the terms of their contract, deprives them of equal protection and denies them due process.

By way of Petition for Review under Rule 45 of the Rules of Court, petitioner assails the December 8, 2004 Decision^[3] and April 1, 2005 Resolution^[4] of the Court of

Appeals (CA), which applied the subject clause, entreating this Court to declare the subject clause unconstitutional.

Petitioner was hired by Gallant Maritime Services, Inc. and Marlow Navigation Co., Ltd. (respondents) under a Philippine Overseas Employment Administration (POEA)-approved Contract of Employment with the following terms and conditions:

Duration of contract	12 months
Position	Chief Officer
Basic monthly salary	US\$1,400.00
Hours of work	48.0 hours per week
Overtime	US\$700.00 per month
Vacation leave with pay	7.00 days per month ^[5]

On March 19, 1998, the date of his departure, petitioner was constrained to accept a downgraded employment contract for the position of Second Officer with a monthly salary of US\$1,000.00, upon the assurance and representation of respondents that he would be made Chief Officer by the end of April 1998.^[6]

Respondents did not deliver on their promise to make petitioner Chief Officer.^[7] Hence, petitioner refused to stay on as Second Officer and was repatriated to the Philippines on May 26, 1998.^[8]

Petitioner's employment contract was for a period of 12 months or from March 19, 1998 up to March 19, 1999, but at the time of his repatriation on May 26, 1998, he had served only two (2) months and seven (7) days of his contract, leaving an unexpired portion of nine (9) months and twenty-three (23) days.

Petitioner filed with the Labor Arbiter (LA) a Complaint^[9] against respondents for constructive dismissal and for payment of his money claims in the total amount of US\$26,442.73, broken down as follows:

May 27/31, 1998 (5 days) incl.	US\$ 413.90
Leave pay	
June 01/30, 1998	2,590.00
July 01/31, 1998	2,590.00
August 01/31, 1998	2,590.00
Sept. 01/30, 1998	2,590.00
Oct. 01/31, 1998	2,590.00
Nov. 01/30, 1998	2,590.00
Dec. 01/31, 1998	2,590.00
Jan. 01/31, 1999	2,590.00
Feb. 01/28, 1999	2,590.00
Mar. 1/19, 1999 (19 days) incl.	<u>1,640.00</u>
leave pay	
	25,382.23
Amount adjusted to chief mate's salary	
(March 19/31, 1998 to April 1/30, 1998) +	<u>1,060.50</u> ^[10]
TOTAL CLAIM	US\$ 26,442.73 ^[11]

as well as moral and exemplary damages and attorney's fees.

The LA rendered a Decision dated July 15, 1999, declaring the dismissal of petitioner illegal and awarding him monetary benefits, to wit:

WHEREFORE, premises considered, judgment is hereby rendered declaring that the dismissal of the complainant (petitioner) by the respondents in the above-entitled case was illegal and the respondents are hereby ordered to pay the complainant [petitioner], jointly and severally, in Philippine Currency, based on the rate of exchange prevailing at the time of payment, the amount of ***EIGHT THOUSAND SEVEN HUNDRED SEVENTY U.S. DOLLARS (US \$8,770.00), representing the complainant's salary for three (3) months of the unexpired portion of the aforesaid contract of employment.***

The respondents are likewise ordered to pay the complainant [petitioner], jointly and severally, in Philippine Currency, based on the rate of exchange prevailing at the time of payment, the amount of FORTY FIVE U.S. DOLLARS (US\$ 45.00),^[12] representing the complainant's claim for a salary differential. In addition, the respondents are hereby ordered to pay the complainant, jointly and severally, in Philippine Currency, at the exchange rate prevailing at the time of payment, the complainant's (petitioner's) claim for attorney's fees equivalent to ten percent (10%) of the total amount awarded to the aforesaid employee under this Decision.

The claims of the complainant for moral and exemplary damages are hereby DISMISSED for lack of merit.

All other claims are hereby DISMISSED.

SO ORDERED.^[13] (Emphasis supplied)

In awarding petitioner a lump-sum salary of US\$8,770.00, the LA based his computation on the salary period of three months only -- rather than the entire unexpired portion of nine months and 23 days of petitioner's employment contract - applying the subject clause. However, the LA applied the salary rate of US\$2,590.00, consisting of petitioner's "[b]asic salary, US\$1,400.00/month + US\$700.00/month, fixed overtime pay, + US\$490.00/month, vacation leave pay = US\$2,590.00/compensation per month."^[14]

Respondents appealed^[15] to the National Labor Relations Commission (NLRC) to question the finding of the LA that petitioner was illegally dismissed.

Petitioner also appealed^[16] to the NLRC on the sole issue that the LA erred in not applying the ruling of the Court in *Triple Integrated Services, Inc. v. National Labor Relations Commission*^[17] that in case of illegal dismissal, OFWs are entitled to their salaries for the unexpired portion of their contracts.^[18]

In a Decision dated June 15, 2000, the NLRC modified the LA Decision, to wit:

WHEREFORE, the Decision dated 15 July 1999 is MODIFIED. Respondents are hereby ordered to pay complainant, jointly and severally, in Philippine currency, at the prevailing rate of exchange at the time of payment the following:

1. Three (3) months salary	
\$1,400 x 3	US\$4,200.00
2. Salary differential	45.00
US\$4,245.00	
3. 10% Attorney's fees	424.50
TOTAL	US\$4,669.50

The other findings are affirmed.

SO ORDERED.^[19]

The NLRC corrected the LA's computation of the lump-sum salary awarded to petitioner by reducing the applicable salary rate from US\$2,590.00 to US\$1,400.00 because R.A. No. 8042 "does not provide for the award of overtime pay, which should be proven to have been actually performed, and for vacation leave pay."^[20]

Petitioner filed a Motion for Partial Reconsideration, but this time he questioned the constitutionality of the subject clause.^[21] The NLRC denied the motion.^[22]

Petitioner filed a Petition for *Certiorari*^[23] with the CA, reiterating the constitutional challenge against the subject clause.^[24] After initially dismissing the petition on a technicality, the CA eventually gave due course to it, as directed by this Court in its Resolution dated August 7, 2003 which granted the petition for *certiorari*, docketed as G.R. No. 151833, filed by petitioner.

In a Decision dated December 8, 2004, the CA affirmed the NLRC ruling on the reduction of the applicable salary rate; however, the CA skirted the constitutional issue raised by petitioner.^[25]

His Motion for Reconsideration^[26] having been denied by the CA,^[27] petitioner brings his cause to this Court on the following grounds:

I

The Court of Appeals and the labor tribunals have decided the case in a way not in accord with applicable decision of the Supreme Court involving similar issue of granting unto the migrant worker back wages equal to the unexpired portion of his contract of employment instead of limiting it to three (3) months

II

In the alternative that the Court of Appeals and the Labor Tribunals were merely applying their interpretation of Section 10 of Republic Act No. 8042, it is submitted that the Court of Appeals gravely erred in law when it failed to discharge its judicial duty to decide questions of substance not

theretofore determined by the Honorable Supreme Court, particularly, the constitutional issues raised by the petitioner on the constitutionality of said law, which unreasonably, unfairly and arbitrarily limits payment of the award for back wages of overseas workers to three (3) months.

III

Even without considering the constitutional limitations [of] Sec. 10 of Republic Act No. 8042, the Court of Appeals gravely erred in law in excluding from petitioner's award the overtime pay and vacation pay provided in his contract since under the contract they form part of his salary.^[28]

On February 26, 2008, petitioner wrote the Court to withdraw his petition as he is already old and sickly, and he intends to make use of the monetary award for his medical treatment and medication.^[29] Required to comment, counsel for petitioner filed a motion, urging the court to allow partial execution of the undisputed monetary award and, at the same time, praying that the constitutional question be resolved.^[30]

Considering that the parties have filed their respective memoranda, the Court now takes up the full merit of the petition mindful of the extreme importance of the constitutional question raised therein.

On the first and second issues

The unanimous finding of the LA, NLRC and CA that the dismissal of petitioner was illegal is not disputed. Likewise not disputed is the salary differential of US\$45.00 awarded to petitioner in all three fora. What remains disputed is only the computation of the lump-sum salary to be awarded to petitioner by reason of his illegal dismissal.

Applying the subject clause, the NLRC and the CA computed the lump-sum salary of petitioner at the monthly rate of US\$1,400.00 covering the period of three months out of the unexpired portion of nine months and 23 days of his employment contract or a total of US\$4,200.00.

Impugning the constitutionality of the subject clause, petitioner contends that, in addition to the US\$4,200.00 awarded by the NLRC and the CA, he is entitled to US\$21,182.23 more or a total of US\$25,382.23, equivalent to his salaries for the entire nine months and 23 days left of his employment contract, computed at the monthly rate of US\$2,590.00.^[31]

The Arguments of Petitioner

Petitioner contends that the subject clause is unconstitutional because it unduly impairs the freedom of OFWs to negotiate for and stipulate in their overseas employment contracts a determinate employment period and a fixed salary package.^[32] It also impinges on the equal protection clause, for it treats OFWs differently from local Filipino workers (local workers) by putting a cap on the amount of lump-sum salary to which OFWs are entitled in case of illegal dismissal, while