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THIRD DIVISION

[G. R. NO. 151849, June 23, 2005]

G & M (PHIL.), INC., PETITIONER, VS. WILLIE BATOMALAQUE, RESPONDENT.

D E C I S I O N

CARPIO MORALES, J.:

Culled from the records of the case are the following facts material to the appeal of petitioner.

Sometime in February 1992, Abdul Aziz Abdullah Al Muhaimid Najad Car Maintenance Association (Abdul Aziz), a Saudi Arabian entity based in Riyadh, hired respondent, Willie Batomalaque, as a car painter at a monthly salary of US$370.00[1] for a two-year period[2] through its agent, petitioner G&M (Phil.), Inc.

In accordance with the employment contract, respondent started working for Abdul Aziz on March 10, 1992[3] at a monthly salary of US$370.00[4] which according to him was equivalent to 1,200 Saudi riyals.[5]

On June 7, 1994[6] respondent was repatriated and on January 3, 1995 he filed a complaint[7] against petitioner, Abdul Aziz, and Country Empire Insurance Company with the Philippine Overseas Employment Administration[8] for non-payment and underpayment of salaries and damages.

In his Complaint-Affidavit respondent claimed that for the first four months of employment, he received a monthly salary of 900 Saudi riyals,[9] and for the fifth month (July 1992) up to the end of the 12th month (February 1993), he received a monthly salary of 700 Saudi riyals;[10] that after a one-year stint with Abdul Aziz, the workshop where he was working was sold but the new owner did not hire him;[11] that for eleven months he was jobless;[12] that Abdul Aziz hired him again and started working for it in February 1994 for which he was paid 1,200 Saudi riyals;[13] and that he resigned in May 1994 since he was not paid his salary for the months of March and April 1994,[14] which 2-month salary, was, however, used to purchase his airline ticket on his repatriation to the Philippines.

Respondent thus prayed in his Complaint-Affidavit for the award to him of damages arising from the following:

a. Non-payment of wages for 11 months from April 1993 to January 1994;

b. Non-payment of salaries for the months of March and April 1994;

c. Non-payment of salary differentials int (sic) the amount of SR500 per month for seven months deducted from his salary starting the 5th month of his work or July 1992 up to February 1993 or the totla (sic) amount of SR3,500;

d. moral and exemplary damages of P50,000.00;

e. other just and equitable remedies are prayed for.[15] (Emphasis and underscoring supplied)

Among other claims, petitioner denied respondent's claim that he was underpaid, it maintaining that he was paid his salaries in full.[16]

By Decision[17] of July 22, 1996, Labor Arbiter Fatima Jambaro-Franco credited respondent's complaint for underpayment of salaries during the first year of his contract but denied his other claims in this wise:

After due consideration, this Office finds the complaint for underpayment of salaries and wages meritorious.

Well-settled is the rule that in cases of non-payment and underpayment of salaries and wages, the employer has the burden of proof to show that the worker/employee has been paid all his salaries and wages since it has in its possession the proof of payment such as payrolls and/or vouchers (Sambalonay vs. Jose Cuevas, NLRC No. RB IV – 186447, February 13, 1980) and in the absence of proof to the contrary, it is deemed that no payment has been made.

In the case at bar, except for their bare allegation that complainant's salaries was not underpaid, no evidence was adduced to show that complainant's salaries and wages were fully paid constraining the undersigned to grant the claim of the complainant as shown in the computation below, to wit:

Agreed Salary – SR1,200

Salary Received – SR900 for 5 months

– SR700 for 8 months

Salary differential

SR1,200 – SR900 = SR300 x 5 mos. = SR1,500

SR1,200 – SR 700 = SR500 x 8 mos. = SR4,000

SR5,500

The claim for the non-payment of salaries for eleven (11) months (April 1993 to January 1994) is, however, untenable. The records show that complainant was repatriated on June 7, 1994, more than two (2) years from his deployment on March 9, 1992. While he claims for underpayment of salaries and wages for thirteen (13) months, he did not claim for illegal dismissal, although he claims for the payment of salaries from April 1993 to January 1994.[18] This Office is in a quandary why

complainant stayed at the jobsite for eleven (11) months, without work, yet there was no complaint lodged in the Labor/Consulate Office in Saudi Arabia. The undersigned opines that if complainant really felt aggrieved, then he could have easily filed a complaint at the jobsite. However, complainant did nothing to vindicate his right, in fact, he stayed on until June 1994. Under these circumstances, this Office gives more credence to the respondents' assertion that complainant completed his 2 years (sic) contract and even extended for another 2 months before his repatriation. It is worthy to note that complainant never claimed that he was constructively dismissed rendering his claim for payment of the unexpired portion of the contract untenable.

The claim for refund of transportation expenses is likewise, not allowable in the absence of proof that the repatriation cost was actually shouldered by him. (Underscoring supplied)

The labor arbiter thus disposed as follows:

WHEREFORE, in view of the foregoing, respondents G & M (Phils.), Inc., Abdul Aziz Abdullah Al Muhaimid Najad Car Maintenance Association and Country Empire Insurance Company are hereby ordered to pay jointly and severally complainant Willie Batomalaque the amount of FIVE THOUSAND FIVE HUNDRED SAUDI RIYALS (SR5,500) or in Philippine currency at the prevailing rate of exchange as certified to by the Central Bank at the time of payment, representing his underpayment of salaries and wages.

All other claims are dismissed for lack of merit.

SO ORDERED.[19] (Emphasis and underscoring supplied)

Petitioner appealed[20] the labor arbiter's decision to the National Labor Relation Commission (NLRC) which, by Resolution[21] of February 11, 1999, affirmed the same.

Aggrieved, petitioner, via a petition for certiorari[22] under Rule 65, brought the case to the Court of Appeals which docketed it as CA-G.R. No. 52920. By the assailed decision[23] of April 27, 2001, the Court of Appeals dismissed petitioner's petition, it holding that the NLRC committed no error much less any grave abuse of discretion.

Petitioner's motion for reconsideration[24] having been denied by the Court of Appeals, by Resolution[25] of January 8, 2002, it lodged the present petition.[26]

Petitioner maintains that respondent had been paid his salaries in full and it was incumbent upon him to prove otherwise.

Petitioner's claim fails.

It is settled that as a general rule, a party who alleges payment as a defense has the burden of proving it.[27]

Specifically with respect to labor cases, the burden of proving payment of monetary

claims rests on the employer, the rationale being

that the pertinent personnel files, payrolls, records, remittances and other similar documents — which will show that overtime, differentials, service incentive leave and other claims of workers have been paid — are not in the possession of the worker but in the custody and absolute control of the employer.[28]

Aside, however, from its bare allegation that its principal Abdul Aziz had fully paid respondent's salaries, petitioner did not present any evidence, e.g., payroll or payslips, to support its defense of payment. Petitioner thus failed to discharge the onus probandi.

Petitioner, as the recruiter and agent of Abdul Aziz, is thus solidarily liable with the latter for the unpaid wages of respondent. This Court, through Justice Irene Cortes, in Royal Crown Internationale v. NLRC[29] explains the basis thereof:

…Petitioner conveniently overlooks the fact that it had voluntarily assumed solidary liability under the various contractual undertakings it submitted to the Bureau of Employment Services. In applying for its license to operate a private employment agency for overseas recruitment and placement, petitioner was required to submit, among others, a document or verified undertaking whereby it assumed all responsibilities for the proper use of its license and the implementation of the contracts of employment with the workers it recruited and deployed for overseas employment [Section 2(e), Rule V, Book I, Rules to Implement the Labor Code (1976)]. It was also required to file with the Bureau a formal appointment or agency contract executed by the foreign-based employer in its favor to recruit and hire personnel for the former, which contained a provision empowering it to sue and be sued jointly and solidarily with the foreign principal for any of the violations of the recruitment agreement and the contracts of employment [Section 10 (a) (2), Rule V, Book I of the Rules to Implement the Labor Code (1976)]. Petitioner was required as well to post such cash and surety bonds as determined by the Secretary of Labor to guarantee compliance with prescribed recruitment procedures, rules and regulations, and terms and conditions of employment as appropriate [Section 1 of Pres. Dec. 1412 (1978) amending Article 31 of the Labor Code].

These contractual undertakings constitute the legal basis for holding petitioner, and other private employment or recruitment agencies, liable jointly and severally with its principal, the foreign-based employer, for all claims filed by recruited workers which may arise in connection with the implementation of the service agreements or employment contracts [See Ambraque International Placement and Services v. NLRC, G.R. No. 77970, January 28, 1988, 157 SCRA 431; Catan v. NLRC, G.R. No. 77279, April 15, 1988, 160 SCRA 691; Alga Moher International Placement Services v. Atienza, G.R. No. 74610, September 30, 1988][30] (Emphasis and underscoring supplied; italics in the original)

Petitioner argues, however, that the foregoing rule has no application in the case at bar because it applies only to one which raises the issue of non-payment but not one which raises issues of underpayment,[31] hence, the burden was on respondent to show that he was indeed underpaid.[32]

Petitioner does not persuade.