

## SECOND DIVISION

[ G.R. No. 131656, October 12, 1998 ]

**ASIAN CENTER FOR CAREER AND EMPLOYMENT SYSTEM AND SERVICES, INC. (ACCESS), PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND IBNO MEDIALES, RESPONDENTS.**

### DECISION

**PUNO, J.:**

In this petition for certiorari, petitioner **ASIAN CENTER FOR CAREER & EMPLOYMENT SYSTEM & SERVICES, INC. (ACCESS)** seeks to modify the monetary awards against it in the Decision of respondent National Labor Relations Commission (NLRC), dated October 14, 1997, a case for illegal dismissal.

The records disclose that petitioner hired respondent IBNO MEDIALES to work as a mason in Jeddah, Saudi Arabia, with a monthly salary of 1,200 Saudi Riyals (SR). The term of his contract was two (2) years, from February 28, 1995 until February 28, 1997.

On May 26, 1996, respondent applied with petitioner for vacation leave with pay which he earned after working for more than a year. His application for leave was granted. While en route to the Philippines, his co-workers informed him that he has been dismissed from service. The information turned out to be true.

On June 17, 1996, respondent filed a complaint with the labor arbiter for illegal dismissal, non-payment of overtime pay, refund of transportation fare, illegal deductions, non-payment of 13th month pay and salary for the unexpired portion of his employment contract.

On March 17, 1997, the labor arbiter found petitioner guilty of illegal dismissal.<sup>[1]</sup> The dispositive portion reads:

"IN VIEW OF THE FOREGOING, judgment is hereby rendered declaring the illegality of complainant's dismissal and ordering the respondent ACCESS and/or ABDULLAH LELINA to pay the complainant the amount of SR 13,200 representing complainant's payment for the unexpired portion of his contract and refund of the illegality deducted amount less P5,000.00, the legally allowed placement fee.

"Respondent are further ordered to pay attorney's fees equivalent to ten percent (10%) of the judgment award or the amount of SR 1,320, within ten (10) days from receipt hereof.

"All other issues are dismissed for lack of merit.

"SO ORDERD." (emphasis supplied)

It is noteworthy, however, that in the body of his decision, the labor arbiter applied Section 10 R.A. 8042,<sup>[2]</sup> the law relative to the protection of Filipino overseas-workers, and computed private respondent's salary for the unexpired portion of his contract as follows: SR1,200 x 3 months = SR3,600.

On appeal by petitioner, the NLRC affirmed the factual findings of the labor arbiter but modified the appealed decision by deleting the order of refund of excessive placement fee for lack of jurisdiction.<sup>[3]</sup>

Petitioner moved for reconsideration with respect to the labor arbiter's award of SR13,200 in the dispositive portion of the decision, representing respondent's salary for the unexpired portion of his contract. invoking Section 10 R.A. 8042. Petitioner urged that its liability for respondent's salary is for only three (3) months. Petitioner claimed that it should pay only SR 3.600 (SR 1,200 x 3 months) for the unexpired portion of respondent's employment and SR360 (10% of SR3,600) for attorney's fees.<sup>[4]</sup>

The NLRC denied petitioner's motion. It ruled that R.A. 8042 does not apply as respondent's employment which started in February 1995 occurred prior to its effectivity on July 15, 1995.<sup>[5]</sup>

Hence, this petition for certiorari.

In the case at bar, petitioner's illegal dismissal from service is no longer disputed. Petitioner merely impugns the monetary awards granted by the NLRC to private respondent. It submits that although the unexpired portion of private respondent's employment contract is eight (8) months,<sup>[6]</sup> it is liable to pay respondent only three (3) months of his basic salary, pursuant to Section 10 of R.A. 8042, or SR1,200 (monthly salary) multiplied by 3 months, for a total of SR3,600. Petitioner claims that the NLRC erred in ruling that as private respondent's employment started only on February 28, 1995, R.A. 8042, which took effect on July 15, 1995, would not apply to his case. Petitioner argues that it is not the date of employment but the date of dismissal which should be considered in determining the applicability of R.A. 8042. Petitioner prays that the award in the NLRC Decision dated October 14, 1997, be changed to SR3,600 instead of 13,200 and that the award of attorney's fees be deleted.

We affirm with modifications.

As a rule, jurisdiction is determined by the law at the time of the commencement of the action.<sup>[7]</sup> In the case at bar, private respondent's cause of action did not accrue on the date of his date of his employment or on February 28, 1995. His cause of action arose only from the-time he was illegally dismissed by petitioner from service in June 1996, after his vacation leave expired. It is thus clear that R.A. 8042 which took effect a year earlier in July 1995 applies to the case at bar.

Under Section 10 of R.A. 8042, a worker dismissed from overseas employment without just, valid or authorized cause is entitled to his salary for the unexpired