

THIRD DIVISION

[G.R. No. 112096, January 30, 1996]

**MARCELINO B. AGOY, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION, EUREKA PERSONNEL MANAGEMENT
SERVICES, INC., ET. AL., RESPONDENTS.**

D E C I S I O N

FRANCISCO, J.:

Initially, this suit was resolved in private respondents' favor with the dismissal of petitioner's complaint for illegal dismissal against the former by the Philippine Overseas Employment Administration (POEA) Adjudication Office [POEA Case No. (L) 90-05-516]. However, upon appeal to the National Labor Relations Commission (NLRC), the decision of the POEA was reversed and judgment was instead rendered in favor of petitioner [NLRC CA No. 001713-91]. Still not satisfied, both parties filed their respective motions for reconsideration. In a resolution dated September 22, 1993,^[1] the NLRC decided both motions against petitioner and in favor of private respondents.

Petitioner is now before this Court through the instant petition for certiorari, assailing the aforementioned Resolution of the NLRC which set aside its previous decision dated December 9, 1992^[2] and reinstated the decision of the POEA dated April 10, 1991^[3] dismissing petitioner's complaint for illegal dismissal. Grave abuse of discretion is imputed to respondent NLRC consequent to the assailed resolution which petitioner maintains was rendered with evident partiality and mental prejudice.

In his complaint filed with the POEA, petitioner Marcelino Agoy alleged that he applied for overseas employment as civil engineer with private respondent Eureka Personnel Management Services, Inc. (EUREKA), and was subsequently accepted to work as "CE/Road Engineer" for private respondent Al-Khodari Establishment (AL-KHODARI) under a two year contract with a basic salary of SR1,750.00 per month and food allowance of SR200.00 with free accommodation.

On January 28, 1990, petitioner was deployed by respondent Eureka to Jubail, Saudi Arabia through Exit Pass No. 2310220 P, mistakenly issued in the name of Belleli Saudi Heavy Industries Ltd. as employer, under the category of "Foreman" at a basic monthly salary of US\$460.00, which terms were allegedly different from the original contract.

Thereafter, petitioner was deployed to Al-Khodari's maintenance project with the Royal Commission in Jubail, Saudi Arabia as "Road Foreman" and not as "CE/Road Engineer" as initially agreed upon. Left with no other choice, petitioner was forced to accept the position and started to work on February 7, 1990.

Petitioner, having been accepted by the Royal Commission to work only as a "Road Foreman", was later asked by respondent Al-Khodari to sign a new contract at a reduced salary rate of SR1,200.00 or suffer termination and repatriation. Complainant's refusal to sign the new contract eventually resulted in his dismissal from employment on March 26, 1990. After being paid the remaining balance of his salary, petitioner executed a Final Settlement^[4] releasing respondent Al-Khodari from all claims and liabilities. On April 5, 1990, petitioner received a letter dated April 2, 1990 with subject "Termination of Services Within the Probation Period"^[5] which he was forced to sign and consent to.

Petitioner was finally repatriated to Manila on April 6, 1990. Thereafter, he filed a complaint for illegal dismissal with claims for payment of salary for the unexpired portion of his contract, salary differential and damages against respondents Eureka and Al-Khodari.

Denying petitioner's claim of illegal dismissal, respondent Eureka alleged that petitioner was actually hired by respondent Al-Khodari only as "Road Foreman" with a monthly salary of SR1,750.00 equivalent to \$460.00 because petitioner failed to qualify as "Road Engineer" during his interview. Moreover, according to respondent Eureka, upon request of petitioner, respondent Al-Khodari gave petitioner two chances to qualify for the position of "Road Engineer", both of which he failed. As petitioner refused to work as a "Road Foreman", Al-Khodari terminated his services in accordance with paragraph 14 of the contract stipulating that the employer has the right to dismiss the employee during the probationary period. Respondent agency maintained that petitioner made no objection to his dismissal as evidenced by the Final Settlement that he executed and the Letter of Termination dated April 2, 1990 to which he affixed his signature.^[6]

In its decision dated April 10, 1991, the POEA dismissed petitioner's complaint after finding that the evidence on record clearly indicated that petitioner himself voluntarily consented to his termination and repatriation. It also found as self-serving and hardly credible petitioner's allegation that he was merely forced by his employer to indicate "agreed" to his notice of termination, absent any clear and convincing proof to corroborate the same. Moreover, the POEA upheld respondent employer's right to dismiss petitioner within the probationary period on the ground that he failed to meet its performance standard.^[7]

Petitioner appealed to the NLRC which reversed the decision of the POEA and held private respondents liable for illegal dismissal. According to the NLRC, petitioner's termination from service during the probationary period has no factual and legal basis on account of the following:

" x x x In the first place, it was not proven what are the standards being used to determine the performance of the complainant as not satisfactory. Secondly, there is a presumption that complainant is qualified to the position since he was hired by Eureka and interviewed by a representative of Al-Khodari. Thirdly, complainant should have passed the necessary trade test, or else, he will not be hired. All these show that complainant possessed all the qualifications to the job and in the absence of showing how he really failed to the standards required to the position, the act of relegating him to a lower position with a lower salary other than what is provided for in the contract is considered already as illegal dismissal."^[8]

The NLRC also ruled that contrary to the findings of the POEA, petitioner was forced to resign and execute all the necessary documents for his repatriation as he was helpless in a foreign land because of threats to his freedom or life in case he disagreed with his employer. Thus, the NLRC declared as a nullity all documents releasing respondents from all liabilities and claims for not having been voluntarily executed by petitioner, and held respondents liable for the sum of SR39,674.00 representing petitioner's unpaid salaries under his contract.^[9]

As earlier mentioned, both parties filed their respective Motions for Reconsideration with private respondents assailing the reversal of the POEA's decision, while petitioner, not content with the monetary award granted by the NLRC, further claimed salary differentials, overtime pay, moral damages, temperate damages, exemplary damages, nominal damages, refund of placement fees, attorney's fees, cost of suit, fines for alleged illegal exaction, misrepresentation and other recruitment violations.

Resolving both motions, the NLRC set aside its decision and held in favor of private respondents. The NLRC backtracked on its conclusion that petitioner was presumed competent on the basis of a trade test and declared that the same was without factual basis. After reviewing the records, the NLRC found that no trade test was ever administered to petitioner because he was hired as a licensed professional engineer and not as an ordinary skilled worker to whom the trade test is normally applied. Thus, it was ruled that petitioner's competence could be determined only during the probationary period, and as it turned out, petitioner failed to meet respondent employer's standard during the said period thereby leading to his dismissal.^[10]

The NLRC also discarded petitioner's allegation that he was merely forced to agree to his dismissal as the record is bereft of any evidence of force and intimidation perpetrated by respondent employer. According to the NLRC, petitioner failed to raise any objection to his dismissal despite being given the opportunity to do so in the letter of termination dated April 2, 1990, and instead simply acknowledged receipt of the same and affixed his signature thereto. The NLRC found merit in private respondents' claim that as a civil engineer with outstanding credentials, it was doubtful that petitioner would be intimidated and forced to sign his notice of termination without making any objections. In arriving at this conclusion, the NLRC took into account the additional documentary evidence submitted by petitioner attesting to his claim of professional excellence which should entitle him to the additional monetary awards prayed for in his motion for reconsideration.^[11]

In assailing the NLRC resolution reversing its earlier decision in his favor, petitioner asserts that its conclusion with respect to his competence is clearly the result of a "biased negative emotional conception of the totality of the facts."^[12]

This Court has consistently adhered to the rule that in reviewing administrative decisions such as those rendered by the NLRC, the findings of fact made therein are to be accorded not only great weight and respect, but even finality, for as long as they are supported by substantial evidence.^[13] It is not the function of the Court to once again review and weigh the conflicting evidence, determine the credibility of the witnesses or otherwise substitute its own judgment for that of the administrative