

TENTH DIVISION

[CA-G.R. SP No. 137066, February 27, 2015]

AVELINO R. GONZALES, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, FOURTH DIVISION, AND CAMOX PHILIPPINES, INC./ GROUP FIVE INTERNATIONAL LTD. / MS. JENNELYN G. DELOS REYES, RESPONDENTS.

DECISION

DIAMANTE, FRANCHITO N., J.:

The instant Petition for *Certiorari* under Rule 65 of the Rules of Court seeks to annul the Decision dated June 23, 2014^[1] of public respondent National Labor Relations Commission, Fourth Division, in NLRC LAC OFW (L) 04-000332-14/NLRC NCR Case No. OFW (L) 06-09195-13.

Considering the Case Management Information System (CMIS) Verification dated January 28, 2015^[2] showed that no Reply Brief has been filed, the petitioner is deemed to have waived the filing thereof and thus, the case at bench is hereby declared submitted for decision sans Reply Brief.

The instant petition traces its root from the complaint filed by petitioner Avelino R. Gonzales and Armando B. Bino against private respondents Group Five International Ltd. (**Group Five**), Camox Philippines, Inc. (**Camox**) and its President Ms. Jennelyn G. Delos Reyes for illegal (constructive) dismissal, payment of various money claims, and maltreatment, docketed as NLRC NCR Case No. 06-09195-13 OFW (L) before the Labor Arbiter.

Petitioner averred that on March 25, 2011, he was deployed for overseas employment by Camox, a duly licensed and accredited private local recruitment agency, for and in behalf of its principal, Group Five. Per the Overseas Filipino Worker (OFW) Information Sheet^[3] issued to him by the Philippine Overseas Employment Agency (POEA), he should receive a monthly salary of **Three Thousand US Dollars (US\$3,000.00)** for a period of twelve (12) months as Electrical Supervisor in the Ashanti Gold Mining CAJV Project in the Republic of Ghana. On the date of his employment, however, he was presented with two (2) Employment Contracts, one with a salary of **Three Thousand US Dollars (US\$3,000.00)** and the other, with a salary of **One Thousand Nine Hundred Twenty US Dollars (US\$1,920.00)**.^[4] As Camox was the one which processed his requirements with the POEA, he no longer bothered about the contract he was made to sign stating a lower salary figure.

On November 11, 2011, petitioner received from Group Five a Letter of International Transfer^[5] terminating his employment in Ghana and transferring him effective November 12, 2011 to another project in the Democratic Republic of Congo, with

the assurance that all terms and conditions of his employment would remain unchanged. He said that for the duration of his contracts, he only received a salary of **US\$1,920.00 per month**, instead of US\$3,000.00 per month, or a difference of **One Thousand Eighty US Dollars (US\$1,080.00)** per month or a total of **Twelve Thousand Nine Hundred Sixty Pesos (US\$12,960.00)** from March 2011 to March 2012.

Sometime in May 2012, petitioner signed another Employment Contract with private respondents where he was deployed for 12 months as E & I Supervisor for a project in the Democratic Republic of Congo with a salary of **Two Thousand Five Hundred US Dollars (US\$2,500.00)** per month.^[6] However, before he could finish the term of his new contract in Congo, he was made to sign another contract sometime in February 2013, where he was going to be deployed as Quality Control Instrument for twelve (12) months for a project in the Republic of Ghana with a salary of **Two Thousand Five Hundred US Dollars (US\$2,500.00)** per OFW Information.^[7]

It was during his new latest stint in Ghana that he noticed that although he held the position of Quality Control Instrument, he was still performing the duties and responsibilities of an E & I Supervisor. He raised this matter to his supervisors but they did not address the same and instead, he was often criticized and verbally abused. Later, he was constrained to resign and to return to the Philippines on May 8, 2013. He then filed a complaint against private respondents for illegal dismissal, alleging that his transfer/reassignment was tantamount to constructive dismissal. He also claimed for underpayment of wages, payment of the unexpired portion of his employment contract and damages.^[8]

Private respondents, meanwhile, refuted petitioner's allegations by holding that the latter had voluntarily resigned from work as evidenced by his e-mail dated April 5, 2013.^[9]

They explained that the basis of the documentation of petitioner with the POEA for his deployment in Ghana on March 5, 2011 was the Job Order of private respondent Group Five dated February 4, 2011^[10] wherein the position of Electrical Supervisor for Ghana specified a monthly salary of **One Thousand Six Hundred US Dollars (US\$1,600.00)** only.

In the course of processing his documentation, they submitted online to the POEA his application for accreditation^[11] and yet, when the POEA issued his OFW Information Sheet,^[12] the latter had mistakenly reflected in said document the amount of US\$3,000.00 as the monthly salary accredited for petitioner. Thus, when petitioner was deployed to Ghana from April 2011 to July 2011, his payroll reflected his correct salary of **One Thousand Nine Hundred Twenty One US Dollars (US\$1,921.00)** per month based on the Employment Contract he signed.

As the project in Ghana was eventually completed, petitioner's papers were re-processed by private respondents for another project in Congo for the same position and salary. Fortunately, he was actually given a monthly salary of **One Thousand Nine Hundred Seventy Two and 23/100 US Dollars (US\$1,972.23)**, or slightly higher than his indicated salary for a period of three months. On May 15, 2012, he was deployed to Congo for the same position but with a higher monthly salary of

US\$2,500.00.

Upon his return to the Philippines in November 2012, he expressed interest in working again for private respondents. Despite their findings that petitioner had a non-infectitious hepatitis B, private respondents still accommodated him for work by waiving his medical condition and spending for his vaccination. He was then deployed to Ghana on February 11, 2013 as Quality Control Instrument with a monthly salary of US\$2,500.00. It was there while serving his contract in Ghana that petitioner had the chance to compare his salary with that of his co-complainant Armando Bino, who received a much higher salary as Electrical Supervisor. After lodging his verbal complaint with Group Five regarding the matter, he was advised that the same would be addressed accordingly. Petitioner grew impatient and tendered his resignation via email on April 5, 2013.

In the Decision dated January 15, 2014,^[13] Labor Arbiter Jenneth B. Napiza dismissed petitioner's complaint for lack of merit. She held that petitioner's previous position as E & I Supervisor wherein he received a monthly salary of US\$2,500.00 per his Employment Contract had nothing to do with his new position as Quality Control Instrument. His act of tendering his resignation which was accepted by private respondents and his act of expressing his gratitude to private respondent Group Five belied his contention that he was constructively dismissed from work. Private respondents were able to duly establish that his salary was indeed US\$1,921.00 based on the Employment Contract he signed on February 8, 2011. The Job Order and print-out of the online application for accreditation of petitioner indicated that the salary of Electrical Supervisors was only US\$1,600.00 per month.

Aggrieved, petitioner appealed the adverse ruling before public respondent NLRC.

On June 20, 2014, the public respondent issued the assailed Decision dismissing his appeal and affirming the Labor Arbiter's January 15, 2014 Decision. Petitioner dispensed with the filing of a Motion for Reconsideration of the assailed Decision and opted to file a petition for *certiorari*.

Hence, this petition alleging that the public respondent NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction:

A.

... IN SIMPLY DISREGARDING THE OFW NOMINATION ISSUED BY THE POEA

B.

... IN FAILING TO FIND THAT PETITIONER WAS CONSTRUCTIVELY DISMISSED.

C.

... IN FAILING TO FIND RESPONDENTS LIABLE FOR DAMAGES.