

SIXTEENTH DIVISION

[CA-G.R. SP NO. 131483, November 19, 2014]

**SARA INTERNATIONAL MANPOWER SERVICES, INC.,
PETITIONER, VS. DEPARTMENT OF LABOR AND EMPLOYMENT
(OFFICE OF THE SECRETARY) AND ANGELITO R. VERZON,
RESPONDENTS.**

DECISION

BATO, JR., J.:

Before this Court is a Petition for Certiorari^[1] under Rule 65 of the Rules of Court, seeking to set aside the 15 October 2012 Order^[2] and 21 June 2013 Resolution^[3] of Undersecretary Danilo P. Cruz of the Department of Labor and Employment (DOLE), in OS-POEA-0271-0929-2011.

On 14 May 2009, private respondent Angelito R. Verzon (Verzon) filed a Sworn Statement^[4] before the Philippine Overseas Employment Administration (POEA) against petitioner Sara International Manpower Services Inc. for Violation of Sections 2(b),(d),^[5] (e)^[6] and (ee)^[7] of Rule I, Part VI of the 2002 POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers.

Verzon alleged that sometime in August 2006, he applied as a Machine Operator with the petitioner and was assured a job in Saudi Arabia. He was required to pay SR2,000.00 as placement fee, to be deducted from his salary. Petitioner made him sign an employment contract,^[8] wherein he was to work for two (2) years as a "P.E. Extruder M/C Operator" for Al Tayar Plastic & Rubber Mfg. Co. Ltd. in Jeddah, Saudi Arabia with a monthly salary of SR1,100.00. He left for Saudi Arabia on 31 December 2006 and returned to the Philippines on 29 March 2009. In Saudi Arabia, he worked as a Machine Operator but his agreed salary of SR1,100.00 was changed to SR900.00. Upon his return to the Philippines, he discovered that the contract that he signed, wherein his position was that of a "P.E. Extruder M/C Operator", was not the one submitted by the petitioner before the POEA for approval and processing. What the petitioner submitted for processing and subsequently approved by the POEA was a different contract, whereby his position was that of a "Turner" with a monthly salary of SR900.00.

In its Answer,^[9] petitioner averred that Verzon applied for the position of a Turner as can be gleaned from his duly signed application form. He voluntarily signed the employment contract wherein his position was that of a Turner, which was processed and approved by the POEA. His POEA OFW Information Sheet likewise indicates that his position would be that of a Turner with a monthly salary of SR900.00. Thus, it cannot be held guilty of misrepresentation since Verzon knew that he was hired, documented and processed with the POEA as a Turner. Petitioner further averred

that Verzon was not charged of any placement fee since it was his foreign employer, Al Tayar Plastic and Rubber Mfg. Co. Ltd., that shouldered all the costs as part of the service fee.

By way of a Reply,^[10] Verzon countered that it is not true that he applied as a Turner. His résumé would prove that he is a P.E. Extruder Machine Operator. When he arrived in Saudi Arabia, he worked as a Machine Operator under the Production Department of Al Tayar Plastic and Rubber Mfg. Co. Ltd.

In its Order^[11] dated 23 August 2011, the POEA found petitioner liable for misrepresentation under Section 2(e) of Rule I, Part VI of the 2002 POEA Rules, but found no sufficient evidence to hold it liable for the other charges. More particularly, the POEA ruled:

"Misrepresentation was committed by the respondent agency by falsely documenting the complainant with this Administration as Turner, a position he did not apply for. The complainant cannot apply as a Turner because he never worked as Turner before. His resume shows that his experience is that of an Extruder Operator. Moreover, he applied to the respondent as a Machine Operator and signed an employment contract for the position of P.E. Extruder M/C Operator which is very much logical considering his qualification. However, the contract that he signed was not the one submitted by the respondent agency before this Administration for approval and processing but the contract for Turner with a monthly salary of SR900.00, the salary he actually received at the jobsite. This shows that it furnished false and deceptive information and documents not only to the complainant but to this Administration as well in connection with his recruitment and employment. This is bolstered by the employment contract that the complainant signed at the respondent's office that the respondent gave to the complainant but was not endorsed to the Administration, the employer's employment certification for the complainant, and the complainant's application for vacation and for a loan with his employer, showing that he worked with his employer as Machine Operator/M/C Extruder Operator. Thus, we find therefore the respondent agency liable for violation of the aforesaid Rule.

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WHEREFORE, premises considered, for the established violation of Section 2(e) of Rule I, Part VI of the Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers, the penalty of suspension of its license for four (4) months or fine of Php40,000.00 is hereby imposed against respondent Sara International Manpower Services, Inc.

The charges for violation of Section (b), (d) and (ee) of Rule I, Part VI of the same Rules are hereby dismissed for lack of merit.

SO ORDERED."^[12]

Aggrieved, petitioner filed a Partial Appeal^[13] with the Secretary of Labor (SLE). It posited that it cannot be held liable for misrepresentation since Verizon knew all along that his job in Saudi Arabia would be that of a Turner. The fact that he worked as a Machine Operator in Saudi Arabia is not an issue since the job of a turner falls in the general category of a machine operator. Elsewise stated, a turner is in reality a machine operator.

On 15 October 2012, the SLE, through Undersecretary Danilo P. Cruz, issued the assailed Order^[14] which denied petitioner's partial appeal. He ruled that petitioner indeed committed misrepresentation by documenting Verizon as a Turner, when the records clearly show that his actual work in Saudi Arabia was that of a machine operator. The dispositive portion of said Order reads:

"WHEREFORE, premises considered, the petition filed by Sara International Manpower Services is hereby DISMISSED for lack of merit. Accordingly, the challenged Order of the POEA Administrator dated 23 August 2011 is AFFIRMED.

SO ORDERED."

Petitioner moved for a reconsideration, reiterating that a turner is in reality a machine operator.

However, the SLE, through Undersecretary Cruz, denied petitioner's motion for reconsideration *via* the assailed Resolution^[15] dated 21 June 2013.

Hence, the instant petition wherein petitioner argues that the Department of Labor and Employment (DOLE) committed grave abuse of discretion amounting to lack or in excess of jurisdiction, to wit:

"A. THE RESPONDENT DOLE SHOULD HAVE REVERSED THE ORDER OF THE POEA ADMINISTRATOR IN FINDING THAT PETITIONER IS LIABLE FOR VIOLATION OF SECTION 2(e) SINCE THERE IS NO CLEAR AND CONVINCING PROOF THAT PETITIONER COMMITTED MISREPRESENTATION.

B. THE RESPONDENT DOLE AND THE POEA ADMINISTRATOR SERIOUSLY ERRED IN RULING THAT THE PRIVATE RESPONDENT WAS PROCESSED FOR A POSITION DIFFERENT FROM THAT WHICH HE APPLIED FOR.

C. THE RESPONDENT DOLE ERRED IN FAILING TO CONSIDER THAT THE POSITION OF A TURNER IS LIKEWISE A MACHINE OPERATOR.

D. THE RESPONDENT DOLE FAILED TO CONSIDER THE FACT THAT A POSITION OF TURNER FALLS IN THE GENERAL CATEGORY OF A MACHINE OPERATOR.