

## SEVENTH DIVISION

[ CA – G.R. SP No. 131139, November 19, 2014 ]

**FIR INTERNATIONAL SERVICE CORP. AND HYUNDAI HEAVY INDUSTRIES CO. LTD., PETITIONERS, VS. EDUARDO E. BERNARDINO, JR. AND THE NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.**

### DECISION

**LOPEZ, J.:**

On February 9, 2011, Eduardo Bernardino, Jr. was hired, through a local manpower agency Fir International Service Corporation, as a Paralegal (Project Coordinator) by Hyundai Heavy Industries Co., Ltd. in its Al Dur IWPP Project in the Kingdom of Bahrain. His monthly salary is US\$1,800.00. His Appointment Letter states that the contract duration is for one year with a probationary period of three months.<sup>[1]</sup>

Bernardino was deployed to Bahrain on March 28, 2011 and immediately assumed his post. However, on April 16, 2011, he received a letter informing him that his employment was terminated for failing to perform his duties and responsibilities and, therefore, failing to pass the three-month probationary period. Bernardino was repatriated to the Philippines on April 19, 2011.<sup>[2]</sup>

Aggrieved, Bernardino filed a complaint for illegal dismissal, non-payment of salary, overtime pay, vacation and sick leave pay, refund of transportation expenses, damages and attorney's fees. According to Bernardino, he was dismissed without just cause and due process. The employer did not lay down the standards, criteria or guidelines on how he can qualify as a regular employee. Also, it would have been impossible to rate his performance since he worked for a very short period of less than a month. As a consequence of his illegal dismissal, he is entitled to salaries representing the unexpired portion of his employment contract and all his money claims.<sup>[3]</sup>

In response, Fir International and Hyundai claimed that Bernardino was apprised of his duties and functions as paralegal, as well as the expectations and quality of service needed for him to pass his probationary employment. Bernardino exhibited poor performance and failed to meet the standards set by Hyundai. He cannot feign ignorance of the nature and implications of his engagement on a probationary basis, considering that he took up Bachelor of Laws and has a considerable work experience as a paralegal officer. Bernardino accepted his dismissal without protest and even signed the Notice. Consequently, Bernardino has no cause of action for illegal dismissal and is not entitled to his money claims.<sup>[4]</sup>

On June 22, 2012, the Labor Arbiter rendered a decision finding that Bernardino was illegally dismissed, to wit:

It bears underscoring that while respondents assert that complainant failed to perform his duties and responsibilities during his three (3) months probationary employment, the duties and responsibilities that complainant allegedly failed to perform was not specified. Absent any showing of the duties and responsibilities upon which complainants' work was evaluated, complainants' dismissal was not well grounded. Conformably thereto, this Arbitration Office finds complainant to have been illegally dismissed. Hence, he is awarded his salaries for the unexpired portion of his contract to be computed from April 16, 2011 to March 30, 2012.

Respecting complainants' money claims, the same are denied for lack of factual basis.

Finally, equally unavailing is complainant's claim for moral and exemplary damages and attorney's fee for lack of evidence to support its award.

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WHEREFORE, respondents FIR International Service Corporation, Hyundai Heavy Industries Co. Ltd. are hereby ordered to solidarily pay complainant his salaries for the unexpired portion of his contract computed at 7,808.50 Bahrain Dinar or its Philippine Peso equivalent at the time of payment.

SO ORDERED.<sup>[5]</sup>

Fir International and Hyundai filed an appeal but the National Labor Relations Commission (NLRC) affirmed the Labor Arbiter's findings.<sup>[6]</sup> They moved for reconsideration, to no avail.<sup>[7]</sup> Hence, this petition for certiorari under Rule 65 of the Rules of Court on the sole ground that:

THE NLRC COMMITTED SERIOUS ERROR AND GRAVE ABUSE OF DISCRETION IN RULING THAT PRIVATE RESPONDENT WAS ILLEGALLY DISMISSED FROM SERVICE CONSIDERING THAT THE FACTS AND EVIDENCE SHOW THAT HIS CONTRACT WAS VALIDLY TERMINATED FOR FAILURE TO QUALIFY AND PASS THE STANDARDS FOR REGULARIZATION.<sup>[8]</sup>

Petitioners Fir International and Hyundai insist that private respondent Bernardino was advised of the expectations and quality of service needed for him to pass his probationary employment. He cannot feign ignorance of the nature and implications of his employment considering that he took up Bachelor of Laws and has a considerable experience working as a paralegal officer. Besides, private respondent's dismissal is based on a just cause for failing to comply with the standards set for regularization, which is akin to gross inefficiency and/or gross neglect of duties.<sup>[9]</sup>

At the outset, We stress that in the extraordinary writ of certiorari, neither questions of fact nor of law are entertained, but only questions of lack or excess of jurisdiction