

## SECOND DIVISION

[G.R. No. 107723. July 24, 1997]

**EMS MANPOWER AND PLACEMENT SERVICES, *petitioner*, vs. NATIONAL LABOR RELATIONS COMMISSION and LUISA G. MANUEL, *respondents*.****DECISION****ROMERO, J.:**

This petition for *certiorari* with prayer for the issuance of a writ of preliminary injunction and/or a temporary restraining order seeks the nullification of the decision of public respondent National Labor Relations Commission (NLRC) dated November 29, 1991, awarding private respondent her salary for the unexpired portion of her employment contract and attorneys fees, as well as its resolution of October 28, 1992, denying her motion for reconsideration of said decision.

Private respondent Luisa G. Manuel was hired as a domestic helper in Hong Kong by Deborah Li Siu Yee on April 13, 1989, for a period of two years from the time of her arrival. Under her employment contract,<sup>[1]</sup> secured through the efforts of petitioner placement agency (EMS), she would receive HK\$2,500.00 per month during the term of her contract. Luisa worked for her Chinese employer in Hong Kong from August 2, 1989, until October 1, 1989, when she was dismissed and repatriated to the Philippines after she made repeated demands for her weekly rest day, of which she was denied from the start of her service, in violation of Clause 6(a) of the employment contract.<sup>[2]</sup> She also complained that she was not allowed to meet or see fellow Filipinos. By the time she left, she had only received a separation pay of HK\$2,500.00 and her return flight ticket.

On October 23, 1989, Luisa filed a complaint before the Adjudication Department of the Philippine Overseas Employment Administration (POEA) for illegal dismissal and illegal exaction against Yee, EMS and its surety, Paramount Insurance Corporation. In a decision dated February 18, 1991,<sup>[3]</sup> POEA Administrator Jose N. Sarmiento dismissed the complaint for lack of merit. The only reasons he advanced were that Luisa was given her separation pay in lieu of notice of her termination in compliance with clause 12(a)<sup>[4]</sup> of the employment contract, and Yee actually paid her repatriation expenses as provided in clause 12(e)<sup>[5]</sup> of said contract and as required by POEA Rules and Regulations. Thus, he concluded that under the circumstances, respondent (Yee) has complied with the law and with complainants contract of employment and her consequential repatriation cannot be termed illegal. In this regard, complainant cannot lay claim over the salaries for the unexpired portion of her contract nor can this Office award the same.

On appeal, the NLRC reversed<sup>[1]</sup> and set aside POEA Administrator Sarmientos decision after finding no evidence clear and convincing enough to support the POEAs finding that Luisa was not illegally dismissed, and after concluding that there was no just cause for her dismissal. Hence, on November 29, 1991, it rendered its assailed decision,<sup>[6]</sup> the dispositive portion of which reads as follows:

WHEREFORE, premises considered, the DECISION appealed from is reversed and set aside, and another one is hereby rendered ordering respondent EMS Manpower and Placement Services to

pay complainant the peso equivalent at the time of actual payment of the following:

1. FIFTY-FIVE THOUSAND HONG KONG DOLLARS (HK\$55,000.00) as her salaries for the unexpired portion of her contract;
2. Five (5%) per centum of the total award, as and by way of attorneys fees.

The claims for moral and exemplary damages are hereby dismissed for insufficiency of evidence.

SO ORDERED.

Petitioners motion for reconsideration having been denied in the resolution of October 26, 1992, the instant petition was filed.

The lone issue for resolution is whether Luisa Manuel was illegally dismissed or if her termination was for a just and valid cause.

We see no reason to depart from the NLRCs decision. Not only is it supported by the facts and the law, but there is also no showing that it was rendered with grave abuse of discretion. The assailed judgment must be affirmed and the petition, consequently, dismissed.

EMS argues that Yee was justified in pre-terminating Luisas employment due to the fact that the latter apparently hit her employers child, as evidenced by a photocopy of a telex<sup>[7]</sup> allegedly transmitted by the latter herself. This action supposedly constituted serious misconduct under Article 282 of the Labor Code, as amended,<sup>[8]</sup> and misconduct under Clause 12(b-ii)<sup>[9]</sup> of the employment contract. Even assuming *arguendo* that Luisas act does not fall within the ambit of said Clause 12(b-ii), her termination would still be valid in accordance with Clause 12(a).<sup>[10]</sup>

These contentions are not persuasive. As correctly ruled by the NLRC, the telex could hardly be recognized as sufficient, let alone substantial evidence of Luisas purported misconduct. It was a single document, totally uncorroborated and easily concocted or fabricated to suit ones personal interest and purpose. The best supporting evidence would have been a statement from the childs teacher who allegedly witnessed the incident, but none was presented. In the same manner, the affidavit<sup>[11]</sup> of a certain Nestor M. Palomar, to the effect that he used to meet fellow domestic helper Luisa at the Center Square Garden in August 1989, thereby debunking the latters claims that Yee prevented her from congregating with other Filipinos, is at best hearsay evidence because Palomar was not presented to testify at the POEA hearings, even though he was available.

This Court is convinced that Luisa was dismissed from her employment without any valid or just cause, in contravention of her security of tenure, as guaranteed by the Constitution and the Labor Code, as amended. Under Article XIII, Section 3 of the Charter, (t)he State shall afford full protection to labor, local and overseas, and all workers shall be entitled to security of tenure. In basically the same tenor, the Labor Code provides in Article 279 that (i)n cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title (on termination of employment).

Finally, contrary to the claim of EMS that there was no illegal dismissal in the case at bar because Yee adequately complied with the employment contract by paying Luisa a one-month separation pay in lieu of notice and shouldering her repatriation expenses, suffice it to say that said contract is not in conformity with our laws inasmuch as it failed to stipulate the just causes for the termination of the contract or of the service of the workers, as mandated by Section 14(e), Rule V, Book I of the Omnibus Rules Implementing the Labor Code.

**WHEREFORE**, in view of the foregoing, the instant petition is DISMISSED. The assailed decision of November 29, 1991, and resolution of October 28, 1992, of the National Labor Relations Commission are hereby AFFIRMED *in toto*.

Costs against petitioner.

**SO ORDERED.**

*Regalado, (Chairman), Puno, and Mendoza, JJ., concur.*  
*Torres, Jr., J., on leave.*

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[1] Annex A, *Rollo*, pp. 24-28.

[2] It states that, The Helper shall be entitled to at least one rest day in each week. A rest day is a continuous period of not less than twenty four hours. The dates of the weekly rest days will be appointed by the Employer who must, unless the rest days are on a regular basis, notify the Helper before the beginning of each week.

[3] Annex E, *Rollo*, pp. 45-49.

[4] It states that, In the event of either party wishing to terminate this Contract prior to the expiry of this Contract, the initiating party shall give in writing to the other party one months notice or forfeit one months wages in lieu of notice. x x x.

[5] It states that, In case of termination of Contract under Clause 12(b), the Helper shall be repatriated to Manila, Philippines or at the Helpers request sent to her place of origin if such place is nearer to Hong Kong. The Employer shall pay the costs of the return passage supplemented by the travelling allowance stated in Clause 7(c).

[6] *Rollo*, pp. 58-70.

[7] *Ibid.*, p. 39.

[8] Art. 282. Termination by employer. -- An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work; x x x.

[9] It states that, Notwithstanding the provision of Clause 12(a), the Employer may in writing terminate the Contract without notice or payment in lieu of notice if the Helper, in relation to the employment,

(i) x x x;

(ii) commits misconduct, such misconduct being inconsistent with the due and faithful discharge of her duties; x x x.

[10] Fn. 4, *supra*.

[11] Dated June 21, 1990; *Rollo*, p. 40.