

SECOND DIVISION

[G.R. No. 131656. October 12, 1998]

ASIAN CENTER FOR CAREER AND EMPLOYMENT SYSTEM AND SERVICES, INC. (ACCESS), *petitioner*, vs. NATIONAL LABOR RELATIONS COMMISSION and IBNO MEDIALES, *respondents*.

DECISION

PUNO, J.:

In this petition for *certiorari*, petitioner **ASIAN CENTER FOR CAREER & EMPLOYMENT SYSTEM & SERVICES, INC. (ACCESS)** seeks to modify the monetary awards against it in the Decision of respondent National Labor Relations Commission (NLRC), dated October 14, 1997, a case for illegal dismissal.

The records disclose that petitioner hired respondent **IBNO MEDIALES** to work as a mason in Jeddah, Saudi Arabia, with a **monthly salary of 1,200 Saudi Riyals (SR)**. The term of his contract was two (2) years, **from February 28, 1995 until February 28, 1997**.

On **May 26, 1996**, respondent applied with petitioner for vacation leave with pay which he earned after working for more than a year. His application for leave was granted. While en route to the Philippines, his co-workers informed him that he has been dismissed from service. The information turned out to be true.

On June 17, 1996, respondent filed a complaint with the labor arbiter for illegal dismissal, non-payment of overtime pay, refund of transportation fare, illegal deductions, non-payment of 13<sup>th</sup> month pay and salary for the unexpired portion of his employment contract.

On March 17, 1997, the **labor arbiter** found petitioner guilty of illegal dismissal.<sup>i[1]</sup> The **dispositive portion** reads:

IN VIEW OF THE FOREGOING, judgment is hereby rendered declaring the illegality of complainants dismissal and ordering the respondent ACCESS and/or ABDULLAH LELINA to pay the complainant the amount of **SR 13,200 representing complainants payment for the unexpired portion of his contract** and refund of the illegality deducted amount less ₱5,000.00, the legally allowed placement fee.

Respondent are further ordered to pay **attorneys fees equivalent to ten percent (10%) of the judgment award or the amount of SR 1,320**, within ten (10) days from receipt hereof.

All other issues are dismissed for lack of merit.

SO ORDERD. (emphasis supplied)

It is noteworthy, however, that in the **body of his decision**, the labor arbiter applied Section 10 R.A. 8042,ii[2] the law relative to the protection of Filipino overseas-workers, and computed private respondents salary for the unexpired portion of his contract as follows: SR1,200 x 3 months = **SR3,600**.

On appeal by petitioner, the **NLRC affirmed** the factual findings of the labor arbiter but modified the appealed decision by deleting the order of refund of excessive placement fee for lack of jurisdiction.iii[3]

Petitioner moved for reconsideration with respect to the labor arbiters award of **SR13,200** in the dispositive portion of the decision, representing respondents salary for the unexpired portion of his contract. invoking Section 10 R.A. 8042. Petitioner urged that its liability for respondents salary is for only three (3) months. Petitioner claimed that it should pay only **SR 3,600** (SR 1,200 x 3 months) for the unexpired portion of respondents employment **and SR360** (10% of SR3,600) for attorneys fees.iv[4]

The **NLRC** denied petitioners motion. It **ruled that R.A. 8042 does not apply as respondents employment which started in February 1995 occurred prior to its effectivity on July 15, 1995**.v[5]

Hence, this petition for *certiorari*.

In the case at bar, petitioners illegal dismissal from service is no longer disputed. Petitioner merely impugns the monetary awards granted by the NLRC to private respondent. It submits that although the unexpired portion of private respondents employment contract is eight (8) months,vi[6] it is liable to pay respondent only three (3) months of his basic salary, pursuant to Section 10 of R.A. 8042, or SR1,200 (monthly salary) multiplied by 3 months, for a total of SR3,600. Petitioner claims that the NLRC erred in ruling that as private respondents employment started only on February 28, 1995, R.A. 8042, which took effect on July 15, 1995, would not apply to his case. Petitioner argues that it is not the date of employment but the date of dismissal which should be considered in determining the applicability of R.A. 8042. **Petitioner prays that the award in the NLRC Decision dated October 14, 1997, be changed to SR3,600 instead of 13,200 and that the award of attorneys fees be deleted.**

We affirm with modifications.

As a rule, jurisdiction is determined by the law at the time of the commencement of the action.vii[7] In the case at bar, private respondents cause of action did not accrue on the date of his date of his employment or on February 28, 1995. His cause of action arose only from the-time he was illegally dismissed by petitioner from service in June 1996, after his vacation leave expired. **It is thus clear that R.A. 8042 which took effect a year earlier in July 1995 applies to the case at bar.**

Under Section 10 of R.A. 8042, a worker dismissed from overseas employment without just, valid or authorized cause is entitled to his salary for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, **whichever is less.**

In the case at bar, the unexpired portion of private respondents employment contract is eight (8) months. **Private respondent should therefore be paid his basic salary corresponding to three (3) months or a total of SR3,600.**viii[8]

We note that this same computation was made by the labor arbiter in the **body** of his decision.ix[9] Despite said computation in the body of the decision, however, the labor arbiter awarded higher sum (SR13,200) in the **dispositive** portion.

The general rule is that where there is a conflict between the dispositive portion or the *fallo* and the body of the decision, the *fallo* controls. This rule rests on the theory that the *fallo* is the final order while the opinion in the body is merely a statement ordering nothing. However, **where the inevitable conclusion from the body of the decision is so clear as to show that there was a mistake in the dispositive portion, the body of the decision will prevail.**x[10]

We find that the labor arbiters award of a higher amount in the dispositive portion was clearly an error for there is nothing in the text of the decision which support the award of said higher amount. We reiterate that the correct award to private respondent for the unexpired portion of his employment contract is SR3,600.

We come now to the award of attorneys fees in favor of private respondent. Article 2208 of the Civil Code allows attorneys fees to be awarded when its claimant is **compelled to litigate with third persons or to incur expenses to protect his interest** by reason of an unjustified act or omission of the party for whom it is sought. Moreover, attorneys fees are recoverable when there is sufficient showing of **bad faith.**xi[11] The Labor Code,xii[12] on the other hand, fixes the attorneys fees that may be recovered in an amount which should not exceed 10% of the total amount of wages awarded.

In the case at bar, **petitioners bad faith in dismissing private respondent is manifest.** Respondent was made to believe that he would be temporarily leaving Jeddah, Kingdom of Saudi Arabia, for a 30-day vacation leave with pay. However, while on board the plane back to the Philippines, his co-employees told him that he has been dismissed from his job as he was given only a one-way plane ticket by petitioner. True enough, private respondent was not allowed to return to his jobsite in Jeddah after his vacation leave. Thus, **private respondent was compelled to file an action for illegal dismissal with the labor arbiter** and hence entitled to an award of attorneys fees.

**IN VIEW OF THE FOREGOING**, the decision of the public respondent National Labor Relations Commission, dated October 14, 1997, is **AFFIRMED** with modifications: petitioner is ordered to pay private respondent IBNO MEDIALES the **peso equivalent of the amounts of SR3,600** for the unexpired portion of his employment contract, **and SR360** for attorneys fees. No costs.

SO ORDERED.

Regalado,(Chairman), Melo, Mendoza, and Martinez, JJ., concur.

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i[1] Decision, *Rollo*, pp. 11-20.

ii[2] Entitled: Migrant Workers and Overseas Filipinos Act of 1995.

iii[3] NLRC Decision, dated August 18, 1997; *Rollo*, pp. 26-32.

iv[4] Motion for Reconsideration, *Rollo*, pp. 33-35.

v[5] Decision, dated October 14, 1997; *Rollo*, pp. 36-38.

vi[6] Respondent was dismissed from service in June 1996 (after his vacation leave), while his employment contract was supposed to end on February 28, 1997.

vii[7] Erectors, Inc. vs. NLRC, 256 629, 637, [1996], citing Philippine-Singapore Ports. Corp. vs. NLRC, 218 SRA 77 [1993].

viii[8] Computed as follows: monthly salary of SR1,200 x 3 months.

ix[9] *Supra*.

x[10] Olac, vs. Court of Appeals, 213 SCRA 321, 328 [1992], citing Aguirre vs. Aguirre, 58 SCRA 461 [1974] and Magdalena Estate, Inc. vs. Calauag, 11 SCRA 333 [1964].

xi[11] Tumbiga vs. National Labor Relations Commission, 274 SCRA 338, 349 [1997].

xii[12] Article 111, Chapter III, Title II, Book Three.