G.R. No. 124766

FIRST DIVISION

[G.R. No. 124766, January 30, 1997]

ORIENT EXPRESS PLACEMENT PHILIPPINES AND DOMINADOR BATENGA, JR., PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC), HON. LABOR ARBITER ERNESTO DINOPOL, AND MA. LUISA P. COLLINS, RESPONDENTS.
R E S O L U T I O N

HERMOSISIMA, JR., J.:

With the filing of Comment on the instant petition by both private respondent Ma. Luisa Collins[1] and the Office of the Solicitor General[2] in behalf of public respondent National Labor Relations Commission (NLRC), issues are now joined, and the instant petition is proper for adjudication.

We rule to dismiss the petition.

Petitioner Orient Express Placement Phils. (hereafter, Orient), before it dismissed private respondent on suspicion of charging excessive placement fees from applicants seeking overseas employment, had private respondent on its employ as liaison officer tasked with dealing with the Philippine Overseas Employment Agency (POEA). On November 9, 1993, private respondent was called to the office of petitioner Dominador Batenga, Jr., who is the President and General Manager of petitioner Orient. During that meeting, private respondent was confronted with the charge of exaction of excessive placement fees and was there and then dismissed shortly after explaining herself. Petitioners make no qualms about having terminated private respondent on the same day that the she was accused of demanding and accepting excessive placement fees.

On November 17, 1993 or eight (8) days after her termination, private respondent filed with the Arbitration Branch of the NLRC a complaint[3] for illegal dismissal, various monetary claims, damages and attorney's fees. On both issues of their illegality of the private respondent's dismissal and her entitlement to various monetary claims, damages and attorney's fees, the Labor Arbiter ruled in favor of respondent.[4] Analyzing the documentary and testimonial evidence, the Labor Arbiter pointed out that it was petitioner Dominador Batenga, Jr.'s cousin, Jose Batenga, who acted as officer-in-charge of the ground floor office of petitioner Orient, directed private respondent to charge excessive placement fees and signed receipts therefor. Thus, the Labor Arbiter ruled that the no substantial evidence was proffered to prove the charge leveled against private respondent and accordingly ordered her reinstatement and payment of her backwages. Neither did it escape the Labor Arbiter's keen perception of the undisputed facts that in dismissing private respondent, petitioner Orient failed to comply with the twin requirements of notice and hearing. Therefore, since there was a violation of private respondent's right to due process, not to mention the oppressive and anti-social manner by which private respondent was terminated, the Labor Arbiter also awarded moral and exemplary damages as well as attorney's fees.

Expectedly, petitioners appealed the Labor Arbiter's decision to the NLRC. The NLRC, however, agreed with the Labor Arbiter that "the [petitioner] failed to substantiate [the] charges. Moreover, the record shows that complainant was dismissed without due process. She was not afforded due notice and the chance to be heard."[5] Yet, the NLRC deleted the award of moral and exemplary damages as well as attorney's fees for lack of legal basis. It found no sufficient proof that the questioned dismissal was accompanied by fraud or bad faith.

Both petitioners and private respondent filed tardy motions for reconsideration of the NLRC decision. Petitioners squarely admit this fact in their petition, and private respondent, in her Comment.

The late filing by petitioners of their motion for reconsideration is fatal to the present petition. In the absence of a motion for reconsideration timely filed within the ten-day reglementary period, the assailed order, resolution or decision of the NLRC, becomes final and executory after ten (10) calendar days from receipt thereof.[6]

Private respondent implores this court to restore the award of moral and exemplary damages as well as attorney's fees deleted by the NLRC in its decision; this, notwithstanding categorical admission that private respondent's own motion for reconsideration thereof was likewise filed out of time. To the same extent that the NLRC decision must now be deemed final and executory as regards petitioners, the same decision cannot be otherwise as regards private respondent, hence, we cannot oblige private respondent.

WHEREFORE, premises considered, the petition is **HEREBY DISMISSED.**

Costs against petitioners.
SO ORDERED.

Padilla,(Chairman) Bellosillo, Vitug, and Kapunan, JJ., concur.

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[1] Comment of the Private Respondent, Rollo, pp. 64-74.

[2] Comment of the Solicitor General, Rollo, pp. 86-95.

[3] Docketed as Case No. NLRC-NCR-00-11-07150-93.

[4] Decision of Labor Arbiter Ernesto S. Dinopol dated April 26, 1992, Rollo, pp. 14-22.

[5] Resolution of the NLRC (Third Division), penned by Commissioner Joaquin A. Tanodra and concurred in by Commissioners Lourdes C. Javier and Ireneo B. Bernardo,

p. 4, Rollo, p. 6.

[6] Gonzalo D. Labudahon, etc. v. NLRC, et al., 251 SCRA 129, 132 [1995]; Sec. 14, Rule VII, New Rules of Procedure of the NLRC.
