

479 Phil. 230

FIRST DIVISION**[G.R. No. 157373, July 27, 2004]****PENTAGON INTERNATIONAL SHIPPING, INC., PETITIONER, VS.
WILLIAM B. ADELANTAR, RESPONDENT.****D E C I S I O N****YNARES-SANTIAGO, J.:**

This is a petition for review on certiorari assailing the decision^[1] of the Court of Appeals dated September 26, 2002 in CA-G.R. SP No. 62839 which modified the decision^[2] of the National Labor Relations Commission (NLRC).

The antecedent facts are as follows:

On August 16, 1997, respondent William B. Adelantar was hired by Dubai Ports Authority of Jebel Ali under an employment contract (first contract) which provided for an unlimited period of employment with a monthly salary of five thousand five hundred dirhams (Dhs 5,500).

On September 3, 1997, Adelantar and petitioner Pentagon International Shipping, Inc. (Pentagon), for and in behalf of Dubai Ports Authority of Jebel Ali, entered into a Philippine Overseas Employment Administration (POEA) standard employment contract (second contract), this time providing for a 12-month period with basic monthly salary of US\$380.00 and fixed overtime pay of US\$152.00.

Upon completion of his probationary period on April 5, 1998, Adelantar's basic salary was increased to five thousand eight hundred ninety dirhams (Dhs 5,890), while his overtime pay was increased to two thousand three hundred fifty-six dirhams (Dhs 2,356) effective April 1, 1998.

On June 11, 1998, however, the management barred Adelantar from entering the port due to a previous dispute with his superior. He was asked to hand in his health and employment card. On the same date, he received a letter from his employer, stating that he was being terminated for assaulting his superior officer, although he was promised employment in another company.

Adelantar was eventually repatriated after nine (9) months and seven (7) days of service. After almost a year of waiting with no work forthcoming, Adelantar filed a complaint for illegal dismissal with money claim against Pentagon International Shipping, Inc. with the NLRC, docketed as NLRC NCR OFW (M) 99-05-0693.

The Labor Arbiter found that the dismissal of Adelantar was illegal. Consequently, he

ordered Pentagon to pay Adelantar the amount of Dhs 24,738.00 representing the latter's three (3) months basic salary inclusive of overtime pay. All other claims were denied for lack of merit.^[3]

Adelantar appealed to the NLRC arguing that the Labor Arbiter erred in granting backwages of only three (3) months and in not granting attorney's fees, moral and exemplary damages and reinstatement.

The NLRC affirmed the Labor Arbiter's decision and held that under Section 10 of R.A. 8042, otherwise known as the **Migrant Workers and Overseas Filipinos Act of 1995**, an illegally dismissed contract worker is entitled to the salaries corresponding to the unexpired portion of his contract, or for three (3) months for every year of the unexpired term, whichever is less. Thus, the NLRC awarded backwages to Adelantar equivalent to three (3) months of his basic salary, but exclusive of overtime pay.^[4]

Aggrieved, Adelantar filed a petition for certiorari with the Court of Appeals.

On September 26, 2002, the Court of Appeals rendered judgment modifying the amounts awarded by the Labor Arbiter and the NLRC. The Court of Appeals awarded full backwages to respondent computed from the time of the dismissal up to the finality of the decision. It ruled that Section 10 of R.A. No 8042 is not applicable in this case because said provision only contemplates a fixed period of employment. Moreover, Article 279 of the Labor Code should apply and not Section 10 of R.A. No. 8042, considering that Adelantar's first contract provided for an unlimited period of employment.

Pentagon International Shipping, Inc. filed the instant petition for review on certiorari raising the following arguments:

I

THE COURT OF APPEALS ERRED IN (a) COMPLETELY IGNORING AND REFUSING TO FOLLOW THE RULING OF THE SUPREME COURT IN THE LANDMARK CASE OF *MILLARES, et al. vs. NLRC, et al.*, G.R. NO. 110524, JULY 29, 2002 AND (b) IN APPLYING PRIMARILY ARTICLES 279 AND 280 OF THE LABOR CODE INSTEAD OF THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (R.A. 8042) AND (c) POEA RULES AND REGULATIONS IN DETERMINING THE LIABILITY OF PETITIONER AND THE EMPLOYMENT STATUS OF RESPONDENT.

II

THE COURT OF APPEALS ERRED IN RULING THAT THE CONTRACT EXECUTED EXCLUSIVELY BETWEEN RESPONDENT ADELANTAR AND DUBAI PORTS AUTHORITY UNDER FOREIGN LABOR LAWS WITHOUT THE APPROVAL OF POEA AND PARTICIPATION OF PENTAGON IS THE VALID AND BINDING CONTRACT CONTRARY TO THE PRINCIPLE OF *FORUM NON CONVENIENS*

AND *LEX LOCI CONTRACTUS*.

III

THE COURT OF APPEALS ERRED WHEN IT GRANTED THE AWARD OF ATTORNEY'S FEES EVEN WHEN THERE WAS NO BASIS THEREFOR AND OVER AND BEYOND WHAT WAS CONSISTENTLY AND ORIGINALLY PRAYED FOR BY THE RESPONDENT.^[5]

The petition is meritorious.

The August 16, 1997 contract, *i.e.*, the first contract, provided for an unspecified period of employment with Adelantar, as Tug Master, receiving a monthly salary, after his probationary period, of Dhs 5,890.00. This figure in Dirhams was used by the Labor Arbiter in computing the award equivalent to three months salary or the amount of Dhs 24,738.00 inclusive of fixed overtime. This was also used by the NLRC when it affirmed the award equivalent to three months, albeit, excluding the fixed overtime.

The Court of Appeals likewise used the salary stated in Adelantar's first contract in adjudging Pentagon's liability but it did not limit the award to three months only. In interpreting the above provision, the Court of Appeals, citing *Marsaman Manning Agency, Inc. v. NLRC*,^[6] held:

x x x. A plain reading of Sec. 10 clearly reveals that the choice of which amount to award an illegally dismissed overseas contract worker, *i.e.*, whether his salaries for the unexpired portion of his employment contract or three (3) months' salary for every year of the unexpired term, whichever is less, comes into play only when the employment contract concerned has a term of at least one (1) year or more. This is evident from the words "for every year of the unexpired term" which follows the words "salaries x x x for three months." x x x.

Proceeding from the premise that the first contract, providing for an unlimited period of employment, is the applicable contract rather than the POEA-sanctioned second contract, the Court of Appeals concluded that Section 10 of R.A. No. 8042 is not applicable because "there will be no basis by which to determine the number of years within which the grant of salaries will be based."^[7] Stated differently, Section 10 of R.A. No. 8042, or **The Migrant Workers and Overseas Filipinos Act of 1995**, is not applicable in this case because said provision only contemplates a fixed period of employment while the first contract provides for an unlimited period of employment. Section 10 of R.A. No. 8042 provides:

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee with interest at twelve percent (12%) per annum, *plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.* (Italics ours)

In this respect, the Court of Appeals applied Article 279 of the Labor Code^[8] using principles of statutory construction to supplement the omission in R.A. No. 8042 regarding the unlimited period of employment. It ratiocinated that the Labor Code and R.A. No. 8042 are statutes in *pari materia*.

The issue, therefore, is whether the Court of Appeals properly used as basis Article 279 of the Labor Code in its award for backwages to Adelantar.

As early as the case of *Coyoca v. NLRC*,^[9] we held that Filipino seamen are governed by the Rules and Regulations of the POEA. The Standard Employment Contract governing the Employment of All Filipino Seamen on Board Ocean-Going Vessels of the POEA, particularly in Part I, Sec. C specifically provides that the contract of seamen shall be for a fixed period. In no case should the contract of seamen be longer than 12 months. It reads:

Section C. Duration of Contract.

The period of employment shall be for a fixed period *but in no case to exceed 12 months* and shall be stated in the Crew contract. Any extension of the Contract period shall be subject to the mutual consent of the parties.

Under the circumstances, the Court of Appeals erred in resolving the issue of backwages based on the first contract which provided for an unlimited period of employment as this violated the explicit provision of the Rules and Regulations of the POEA. While we recognize that Adelantar executed a contract with Dubai Ports Authority of Ali Jebel and might even have applied said contract in his overseas station, this contract was not sanctioned by the POEA. We agree with the NLRC when it observed thus:

It should be stressed that whatever status of employment or increased benefits that the complainant may have gained while under the employ of Dubai Ports Authority, the undisputed fact remains that prior to his deployment, he agreed to be hired under a 12-month POEA contract, the duration of which is the basis for the determination of the extent of the respondent's liability.^[10]

The Court of Appeals erred when it adjudged the first contract as the basis for Pentagon's liability instead of the second contract, which is in conformity with the POEA's Standard Employment Contract. As such, there would have been no need to resort to statutory construction where the rules and jurisprudence are clear.

Besides, in *Millares v. NLRC*,^[11] we held that:

. . . [I]t is clear that seafarers are considered contractual employees. They can not be considered as regular employees under Article 280 of the Labor Code. Their employment is governed by the contracts they sign every time they are rehired and their employment is terminated when the contract expires. Their employment is contractually fixed for a certain period of time. They fall under the exception of Article 280 whose employment has

been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

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Moreover, it is an accepted maritime industry practice that employment of seafarers are for a fixed period only. Constrained by the nature of their employment which is quite peculiar and unique in itself, it is for the mutual interest of both the seafarer and the employer why the employment status must be contractual only or for a certain period of time. Seafarers spend most of their time at sea and understandably, they can not stay for a long and an indefinite period of time at sea. Limited access to shore society during the employment will have an adverse impact on the seafarer. The national, cultural and lingual diversity among the crew during the COE is a reality that necessitates the limitation of its period.

Therefore, Adelantar, a seafarer, is not a regular employee as defined in Article 280 of the Labor Code. Hence, he is not entitled to full backwages and separation pay in lieu of reinstatement as provided in Article 279 of the Labor Code. As we held in *Millares*, Adelantar is a contractual employee whose rights and obligations are governed primarily by Rules and Regulations of the POEA and, more importantly, by R.A. 8042, or the **Migrant Workers and Overseas Filipinos Act of 1995**.

We find, however, that the Court of Appeals correctly awarded ten percent (10%) of the monetary award in Adelantar's favor as attorney's fees, as he was forced to litigate and hence incurred expenses to protect his rights and interest.^[12]

WHEREFORE, in view of the foregoing, the petition is partly GRANTED and the decision of the Court of Appeals in CA-G.R. SP No. 62839 is REVERSED and SET ASIDE. Petitioner Pentagon International Shipping, Inc. is ORDERED to pay private respondent William B. Adelantar the amount equivalent to the unexpired portion of the September 3, 1997 POEA Standard Contract of Employment plus ten percent (10%) of the award as attorney's fees.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Carpio, and Azcuna, JJ., concur.

^[1] Penned by Associate Justice Candido V. Rivera and concurred in by Associate Justices Godardo A. Jacinto and Mariano C. Del Castillo.

^[2] CA Rollo, p. 25.

^[3] *Id.*, p. 38.

[4] *Id.*, p. 29.

[5] Rollo, pp. 47-48.

[6] G.R. No. 127195, 25 August 1999, 313 SCRA 88, 101-102.

[7] Decision of the Court of Appeals, Rollo, p. 22.

[8] **Art. 279. *Security of Tenure.*** — In 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. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[9] G.R. No. 113658, 31 March 1995, 243 SCRA 190, 194.

[10] Decision of the NLRC, CA Rollo, p. 29.

[11] G.R. No. 110524, 29 July 2002, 385 SCRA 306, 318-319.

[12] Article 2208, par. 2 of the Civil Code.



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