SECOND DIVISION

[G.R. No. 226578, January 28, 2019]

AUGUSTIN INTERNATIONAL CENTER, INC., PETITIONER, V. ELFRENITO B. BARTOLOME AND RUMBY L. YAMAT, RESPONDENTS.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated November 11, 2015 and the Resolution[3] dated August 19, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 131582 denying the petition for review filed by petitioner Augustin International Center, Inc. (AICI) questioning the Resolution[4] dated March 15, 2013 and the Decision[5] dated June 27, 2013 of the National Labor Relations Commission (NLRC), which affirmed the Labor Arbiter's (LA) finding that respondents Elfrenito B. Bartolome (Bartolome) and Rumby L. Yamat (Yamat; collectively, respondents) were illegally dismissed from employment.

The Facts

In 2010, Bartolome and Yamat applied as carpenter and tile setter, respectively, with AICI, an employment agency providing manpower to foreign corporations. They were eventually engaged by Golden Arrow Company, Ltd. (Golden Arrow), which had its office in Khartoum, Republic of Sudan. Thereafter, they signed their respective employment contracts stating that they would render services for a period not less than twenty-four (24) months.[6] In their contracts, there was a provision on dispute settlement that reads:

> 14. Settlement of disputes: All claims and complaints relative to the employment contract of the employee shall be settled in accordance with Company policies, rules[,] and regulations. In case the Employee contests the decision of the employer, the matter shall be settled amicably **with [the] participation of the Labour Attaché or any authorised representative of the Philippines Embassy nearest the site of employment**. x x x[7] (Emphasis and underscoring supplied)

Upon their arrival in Sudan sometime in March and April 2011, Golden Arrow transferred their employment to its sister company, Al Mamoun Trading and Investment Company (Al Mamoun). A year later, or on May 2, 2012, Al Mamoun served Notices of Termination of Service[8] to respondents, causing them to return to the Philippines. On May 22, 2012, they filed their complaint[9] before the NLRC seeking that AICI and A1

Mamoun be held liable for illegal dismissal, breach of contract, and payment of the unexpired portion of the contract.[10]

For their part, AICI and Al Mamoun claimed that respondents abandoned their duties by mid-2012, based on the e-mail message[11] from Golden Arrow to that effect, *viz*.:

> 2. Illegal Termination – I understand Mr[.] [Yamat] and Mr[.] Bartolome refused to work resulting in the work they were designated to complete remaining pending. It is our policy that should a member of staff refuse to carry out their normal duties without a satisfactory and timely explanation then we believe they have terminated their employment themselves.[12]

The LA's Ruling

In a Decision[13] dated August 31, 2012, the LA held that respondents were illegally dismissed, and accordingly, ordered AICI and Al Mamoun to pay the former P69,300.00 each, representing their salaries for the unexpired portion of their contract.[14] The LA explained that AICI and Al Mamoun failed to overcome their burden to prove that the dismissal was for a just or authorized cause. They likewise failed to show that respondents abandoned their duties.[15]

Aggrieved, AICI and Al Mamoun filed an appeal.[16]

The NLRC's Ruling

In a Decision[17] dated June 27, 2013, the NLRC affirmed the LA's ruling, noting that AICI and Al Mamoun failed to discharge their burden to prove by substantial evidence that the termination of respondents' employment was valid.[18]

Undaunted, AICI and A1 Mamoun filed a petition for *certiorari*[19] before the CA.

The CA's Ruling

In a Decision[20] dated November 11, 2015, the CA denied the petition.[21] It held that AICI and A1 Mamoun failed to comply with procedural and substantive due process in dismissing respondents from their employment.[22]

AICI and Al Mamoun moved for reconsideration,[23] arguing for the first time that they were denied due process because respondents did not first contest their termination before the "[Labor] Attache or any [authorized] representative of the Philippine[] Embassy nearest the site of employment," as stipulated in the employment contracts, before filing the complaint before the LA.[24]

In a Resolution [25] dated August 19, 2016, the CA denied the said motion.[26] It explained that, as a rule, termination disputes should be brought before the LA, except when the parties agree to submit the dispute to voluntary arbitration pursuant to then Article 262[27] (now Article 275) of the Labor Code, provided that such agreement is stated "in unequivocal language." Citing jurisprudence,[28] the CA added that the

phrase "all disputes" is not sufficient to divest the LA of its jurisdiction over termination disputes. In the same manner, the phrase "all claims and complaints" in respondents' employment contracts does not remove the LA's jurisdiction to decide whether respondents were legally terminated.[29]

Hence, AICI filed this petition.

The Issues Before the Court

The issues before the Court are whether or not: (*a*) the LA correctly took cognizance of this case; and (*b*) AICI is liable for respondents' illegal dismissal.

The Court's Ruling

Preliminarily, it bears stressing that AICI does not assail the CA's ruling of illegal dismissal but instead, argues that the LA incorrectly took cognizance of the case at the onset. It insists that based on the dispute settlement provision in respondents' employment contracts, the "primary jurisdiction" to decide this case is with the "[Labor] Attache or any [authorized] representative of the Philippine[] Embassy nearest the site of employment" (designated person).[30]

After a judicious review of the case, the Court denies the petition.

Section 10 of Republic Act No. (RA) 8042,[31] as amended by RA 10022,[32] explicitly provides that **LAs have original and exclusive**[33] **jurisdiction over claims arising out of employer-employee relations or by virtue of any law or contract involving Filipino workers for overseas deployment**, as in this case. The relevant portion of the provision reads:

> Section 10. *Money Claims*. – **Notwithstanding any provision of law to the contrary, the Labor Arbiters** of the National Labor Relations Commission (NLRC) **shall have the original and exclusive jurisdiction to hear and decide**, within ninety (90) calendar days after filing of the complaint, **the claims arising out of** an employer-employee relationship or by virtue of any law or **contract involving Filipino workers for overseas deployment** including claims for actual, moral, exemplary and other forms of damages. x x x (Emphases supplied)

Settled is the rule that jurisdiction over the subject matter is conferred by law[34] and cannot be acquired or waived by agreement of the parties.[35] As herein applied, the dispute settlement provision in respondents' employment contracts cannot divest the LA of its jurisdiction over the illegal dismissal case. Hence, it correctly took cognizance of the complaint filed by respondents before it.

Moreover, issues not raised in the previous proceedings cannot be raised for the first time at a late stage. In this case, the Court observes that AICI failed to raise the issue of respondents' supposed non-compliance with the dispute settlement provision before the LA, as well as before the NLRC. In fact, AICI only mentioned this issue for the first time before the CA in its motion for reconsideration. Therefore, such argument or

defense is deemed waived and can no longer be considered on appeal.[36] Hence, the Court rules that the LA properly took cognizance of this case.

However, the Court deems it essential to point out that in resolving whether the LA had jurisdiction over this case, the CA erroneously assumed that the designated person in the dispute settlement provision is a Voluntary Arbitrator under the auspices of the Labor Code, to wit:

> It is true that the Voluntary Arbitrator or a panel of Voluntary Arbitrators can hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks upon agreement of the parties. But if the parties wish to submit termination disputes to voluntary arbitration, such an agreement must be stated "in unequivocal language." In the present case, the agreement of the parties was written in this manner:
>
> x x x x
>
> It is, however, not sufficient to merely say that the parties agree on the principle that "all disputes" should first be submitted to a Voluntary Arbitrator. There is a need for an express stipulation that illegal termination disputes should be resolved by a Voluntary Arbitrator or Panel of Voluntary Arbitrators, since the same fall within a special class of disputes that are generally within the exclusive [and] original jurisdiction of the Labor Arbiters by express provision of law.[37]

To clarify, the Voluntary Arbitrator[38] under the Labor Code is one agreed upon by the parties to resolve certain disputes[39] and is tasked to render an award or decision within twenty (20) calendar days pursuant to Article 276 of the Labor Code.[40] This decision shall be final and executory after ten (10) calendar days from receipt thereof.[41]

In this case, the dispute settlement provision reads:

> 14. Settlement of disputes: All claims and complaints relative to the employment contract of the employee shall be settled in accordance with Company policies, rules[,] and regulations. In case the Employee contests the decision of the employer, the matter shall be settled amicably **with [the] participation of the Labour Attaché or any authorised representative of the Philippines Embassy nearest the site of employment**. x x x[42] (Emphasis and underscoring supplied)

Clearly, the mechanism contemplated herein is an amicable settlement whereby the parties can negotiate with each other; it is not a voluntary arbitration under the Labor Code wherein a third party renders a decision to resolve the dispute. The text of the contractual provision shows that the designated person is tasked merely to *participate* in the amicable settlement and not to *decide* the dispute. This participation is in line with the mandate of Filipinos Resource Centers, in which labor attachés are members, to engage in the "conciliation of disputes arising from employer-employee relationship."[43] Hence, the "[Labor] Attaché or any [authorized] representative of the Philippine[]

Embassy nearest the site of employment" was not called upon to act as a Voluntary Arbitrator as contemplated under the Labor Code. It was therefore erroneous for the CA to assume that the contractual provision triggered the voluntary arbitration mechanism under the Labor Code and, on that premise, venture into an inquiry as to whether or not there was an "express stipulation" submitting the termination dispute to such process, which thereby puts the case beyond the ambit of the LA's jurisdiction.

Considering that the parties did not submit the present illegal termination case to the voluntary arbitration mechanism, the dispute remained under the exclusive and original jurisdiction of the LA, which therefore correctly took cognizance of the case. Hence, the Court modifies the CA's ruling on this matter accordingly.

On the second issue, AICI argues in its petition that it cannot be held liable for illegal dismissal because it only recruits employees for foreign employers, and as such, it does not have an employee-employer relationship with the overseas workers.[44]

This argument does not hold water. Section 10 of RA 8042, as amended; expressly provides that a recruitment agency, such as AICI, is solidarily liable with the foreign employer for money claims arising out of the employee-employer relationship between the latter and the overseas Filipino worker.[45] Jurisprudence explains that this solidary liability is meant to assure the aggrieved worker of immediate and sufficient payment of what is due him,[46] as well as to afford overseas workers an additional layer of protection against foreign employers that tend to violate labor laws.[47] In view of the express provision of law, AICI's lack of an employee-employer relationship with respondents cannot exculpate it from its liability to pay the latter's money claims.

Nevertheless, AICI is not left without a remedy. The law does not preclude AICI from going after the foreign employer for reimbursement of any payment it has made to respondents to answer for the money claims against the foreign employer.[48]

WHEREFORE, the petition is **DENIED** for lack of merit. Accordingly, the Decision dated November 11, 2015 and the Resolution dated August 19, 2016 of the Court of Appeals in CA-GR. SP No. 131582 are hereby **AFFIRMED** for the reasons above-discussed.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), Caguioa, J. Reyes, Jr., and *Hernando,*[*] *JJ.*, concur.

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[*] Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.

[1] *Rollo*, pp. 818.

[2] Id. at 20-29. Penned by Associate Justice Zenaida T. Galapate-Laguilles with Associate Justices Mariflor P. Punzalan Castillo and Florito S. Macalino, concurring.

[3] Id. at 30-34.

[4] Records, Vol. I, pp. 210-213. Penned by Commissioner Dolores M. Peralta-Beley with Presiding Commissioner Leonardo L. Leonida and Commissioner Mercedes R. Posada-Lacap, concurring.

[5] Id. at 230-236. Penned by Commissioner Dolores M. Peralta-Beley with Commissioner Mercedes R. Posada-Lacap, concurring.

[6] See Employment Contracts of Bartolome dated November 12, 2010 (*rollo*, pp. 35-38) and Yamat dated October 23, 2010 (id. at 41-44). Based on their contracts, they would render services to Golden Arrow for a period of not less than twenty-four (24) months and for a basic monthly salary of five hundred fifty US dollars ($550.00) (See id. at 21. See also id. at 35 and 41).

[7] Id. at 37 and 43.

[8] Id. at 39 and 45. The notices read:

> This is to inform you that it has been decided to terminate your services with AL MAMOUN CO. LTD Effective 07/05/2012. Please contact the HR department to finalizing (sic) your out process.
>
> Wish Well In Future. (sic)

[9] See Complaint; records, Vol. I, p. 1. See also Single-Entry Approach form dated May 22, 2012; id. at 13.

[10] See *rollo*, p. 22.

[11] See e-mail correspondence dated July 4, 2012; records, Vol. I, p. 35.

[12] Id.

[13] Id. at 91-96. Penned by Labor Arbiter Leandro M. Jose.

[14] See id. at 95-96.

[15] See id. at 94-95.

[16] Dated October 25, 2012. Id. at 102-105. The appeal was initially denied in a Resolution dated March 15, 2013 (id. at 210-213) due to non-perfection but was later reinstated in the Decision dated June 27, 2013 (id. at 230-236), after AICI and Al Mamoun filed their motion for reconsideration dated April 19, 2013 (id. at 215-216).

[17] Id. at 230-236.

[18] See id. at 234-235.

[19] See Petition dated September 3, 2013 (records, Vol. II, pp. 1-8) and Amended Petition (id. at 246-253).

[20] *Rollo*, pp. 20-29.

[21] Id. at 29.

[22] Anent procedural due process, the CA found that respondents were neither served with notices recounting acts and/or omissions to justify their dismissal nor given the opportunity to explain their side. Instead, they were merely sent the Notices of Termination of Service briefly informing them of the management's decision to prematurely conclude their services. As regards substantive due process, the CA held that AICI and Al Mamoun's defense of abandonment of duties to justify respondents' dismissal were unsubstantiated. It stressed that the burden of proof to show that the dismissal was for a just or authorized cause rests with the employer and its failure to do so would mean that the dismissal was illegal, as in this case. (See id. at 24-28.)

[23] Motion for reconsideration is not attached to the records.

[24] *Rollo*, pp. 30-31.

[25] Id. at 30-33.

[26] Id. at 33.

[27] See Article 275 (formerly 262) of the Labor Code, as renumbered pursuant to Section 5 of Republic Act No. (RA) 10151, entitled "AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS, THEREBY REPEALING ARTICLES 130 AND 131 OF PRESIDENTIAL DECREE NUMBER FOUR HUNDRED FORTY-TWO, As AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES," approved on June 21, 2011. See also Department Advisory No. 01, Series of 2015 of the Department of Labor and Employment entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED."

[28] See *Vivero v. Court of Appeals*, 398 Phil. 158 (2000); and *Negros Metal Corporation v. Lamayo*, 643 Phil. 675 (2010).

[29] See *rollo*, pp. 31-32.

[30] See *rollo*, p. 10.

[31] Entitled "AN ACT TO INSTITUTE THE POLICIES OF OVERSEAS EMPLOYMENT AND ESTABLISH A HIGHER STANDARD OF PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES," approved on June 7, 1995.

[32] See Section 7 of RA 10022, entitled "AN ACT AMENDING REPUBLIC ACT No. 8042, OTHERWISE KNOWN AS THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995, AS AMENDED, FURTHER IMPROVING THE STANDARD OF PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES," approved on March 8, 2010.

[33] See *Cubero v. Laguna West Multi-Purpose Cooperative, Inc.*, 538 Phil. 899, 905 (2006) wherein the Court stated that original jurisdiction refers to the power "to take cognizance of a cause at its inception, try it and pass judgment upon the law and facts" while exclusive jurisdiction means that such power is "possessed to the exclusion of others."

[34] See *Spouses Santiago v. Northbay Knitting, Inc.,* G.R. No. 217296, October 11, 2017. See also *Metromedia Times Corporation v. Pastorin*, 503 Phil. 288, 304 (2005) citing *Lozon v. NLRC*, 310 Phil. 1, 13 (1995), wherein the Court stated thus: " [Jurisdiction over the subject matter] is conferred by law and not within the courts, let alone the parties; to themselves determine or conveniently set aside. x x x"

[35] See *Office of the Court Administrator v. CA*, 428 Phil. 696 (2002). The Court held thus: "[t]he well-entrenched rule is that jurisdiction over the subject matter is determined exclusively by the Constitution and the law. It cannot be conferred by the voluntary act or agreement of the parties; it cannot be acquired through, or waived or enlarged or diminished by, their act or omission; neither is it conferred by acquiescence of the court. x x x" (Id. at 701-702.)

[36] Section 1, Rule 9 of the Rules of Court provides that "[d]efenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. x x x." See also *Maxicare PCIB Cigna Healthcare v. Contreras*, 702 Phil. 688, 696 (2013) wherein the Court held that "[a]s a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court, will not be permitted to change theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court. x x x"

[37] *Rollo*, pp. 31-32.

[38] Article 219 (formerly 212) (n) of the Labor Code reads:

> Article 219. [212] *Definitions*. - x x x x
>
> (n) "*Voluntary Arbitrator*" means any person accredited by the Board as such, or any person named or designated in the Collective Bargaining Agreement by the parties to act as their Voluntary Arbitrator, or one chosen with or without the assistance of the National Conciliation and Mediation Board, pursuant to a selection procedure agreed upon in the Collective Bargaining Agreement, or any official that may be authorized by the Secretary of Labor and Employment to act as Voluntary Arbitrator upon the written request and agreement of the parties to a labor dispute."

[39] The jurisdiction of the Voluntary Arbitrator is contained in Articles 274 and 275 (formerly 261 and 262) of the Labor Code, to wit:

> Article 274. [261] *Jurisdiction of Voluntary Arbitrators and Panel of Voluntary Arbitrators.* – The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding article. x x x
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> Article 275. [262] *Jurisdiction over Other Labor Disputes*. – The Voluntary Arbitrator or panel of Voluntary Arbitrators, upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks.

[40] See the third paragraph of Article 276 (formerly 262-A), which reads:

> Article 276. [262-A] *Procedures*. – x x x x
>
> Unless the parties agree otherwise, it shall be mandatory for the Voluntary Arbitrator or panel of Voluntary Arbitrators to **render an award or decision** within twenty (20) calendar days from the date of submission of the dispute to voluntary arbitration. x x x x (Emphasis supplied)

[41] See the fourth paragraph of Article 276 (formerly 262-A), which reads:

> Article 276. [262-A] *Procedures*. – x x x x
>
> The award or decision of the Voluntary Abitrator or panel of Voluntary Arbitrators shall contain the facts and the law on which it is based. It shall be **final and executory** after ten (10) calendar days from receipt of the copy of the award or decision by the parties. x x x x (Emphasis supplied)

[42] *Rollo*, pp. 37 and 43.

[43] Previously, labor attaches were tasked "to provide all Filipino workers within their jurisdiction assistance on all matters arising out of employment" pursuant to Article 21 of the Labor Code. However, said provision had been superseded by RA 8042 which defined the roles and responsibilities of different government agencies involved in the protection of migrant workers. Nevertheless, under RA 8042, labor attaches remain active in protecting migrant workers as a member of the Filipinos Resources Center. (See Section 19 of RA 8042 in relation to Sections 46 and 47 of the Implementing Rules and Regulations-RA 8042, entitled "OMNIBUS RULES AND REGULATIONS IMPLEMENTING THE MIGRANT WORKERS AND OVERSEAS FILIPINO ACT OF 1995" [February 29, 1996]).

[44] See *rollo*, pp. 13-14.

[45] The second and third paragraphs of Section 10 of RA 8042, as amended by RA 10022, read:

> Section 10. Money Claims. — x x x x

> **The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several.** This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.
>
> Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract. x x x (Emphasis supplied)

[46] See *Sameer Overseas Placement Agency, Inc. v. Cabiles*, 740 Phil. 403, 445 (2014), wherein the Court elucidated on this point further, to wit: "[i]n overseas employment, the filing of money claims against the foreign employer is attended by practical and legal complications. The distance of the foreign employer alone makes it difficult for an overseas worker to reach it and make it liable for violations of the Labor Code. There are also possible conflict of laws, jurisdictional issues, and procedural rules that may be raised to frustrate an overseas worker's attempt to advance his or her claims. x x x x The fundamental effect of joint and several liability is that 'each of the debtors is liable for the entire obligation.' A final determination may, therefore, be achieved even. if only one of the joint and several debtors are impleaded in an action. Hence, in the case of overseas employment, either the local agency or the foreign employer may be sued for all claims arising from the foreign employer's labor law violations. This way, the overseas workers are assured that someone – the foreign employer's local agent – may be made to answer for violations that the foreign employer may have committed." See also *ATCI Overseas Corporation v. Echin*, 647 Phil. 43 (2010); and *Sevillana v. I.T. (International) Corp*., 408 Phil. 570 (2001).

[47] See *Sameer Overseas Placement Agency, Inc. v. Cabiles*, id. at 446, wherein the Court held thus: "[a] further implication of making local agencies jointly and severally liable with the foreign employer is that an additional layer of protection is afforded to overseas workers. Local agencies, which are businesses by nature, are inoculated with interest in being always on the lookout against foreign employers that tend to violate labor law. Lest they risk their reputation or finances, local agencies must already have mechanisms for guarding against unscrupulous foreign employers even at the level prior to overseas employment applications."

[48] See id.