Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **September 28, 2022**, *which reads as follows:*

"G.R. No. 237993 (*YWA Human Resource Corporation v. Bienvenido E. Murillo*). – This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, as amended, assailing the Decision[2] dated August 23, 2017 and the Resolution[3] dated March 1, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 144684.

The assailed issuances reversed and set aside the Decision[4] dated September 30, 2015 and Resolution[5] dated December 29, 2015 issued by the National Labor Relations Commission, First Division, in NLRC LAC No. 04-000280-15 which, in turn, overturned the November 28, 2014 Decision[6] of Labor Arbiter (LA) J. Potenciano F. Napeñas, Jr. (LA Napeñas, Jr.) in NLRC NCR Case No. (L)-NCR-06-09769-14.

In his Decision,[7] LA Napeñas, Jr. found merit in the complaint for illegal dismissal, breach of contract and other monetary claims filed by Bienvenido E. Murillo (respondent) against YWA Human Resource Corporation (petitioner), along with its current chairperson and former president, Hak Nae Roh, and SK Engineering and Construction Co., Ltd. (SK Engineering).

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1 *Rollo*, pp. 24-40.
2 Id. at 8-21. Penned by Associate Justice Ricardo R. Rosario (now a Member of this Court) with Associate Justices Ramon A. Cruz and Pablito A. Perez concurring.
3 Id. at 22.
4 Id. at 60-69. Penned by Commissioner Romeo L. Go with Presiding Commissioner Gerardo C. Nograles and Commissioner Gina F. Cenit-Escoto concurring.
5 Id. at 70-71.
6 Id. at 72-78.
7 Id.

Antecedents

On March 18, 2014, respondent received an Offer Letter of Employment[8] from petitioner in behalf of its principal, SK Engineering, for the position of QC Piping Inspector with a monthly salary of 11,250 Saudi Arabian Riyal (SAR). Under the terms of the offer, respondent was to be deployed at the WASIT Project Site in Al-Khursaniya, Saudi Arabia. To signify his acceptance of the terms and conditions stated in the said document, respondent affixed his signature therein.

On April 12, 2014, respondent was made to sign an Employment Contract[9] with SK Engineering, this time as Inspector QA/QC with a monthly salary of $1,464.08 United States Dollars (USD) for two years. This document bears the approval of the Philippine Overseas Employment Administration (POEA).

Subsequently, on May 13, 2014, respondent was deployed to Saudi Arabia.[10] He began working with SK Engineering on the following day, and until June 4, 2014.[11]

For allegedly failing three job interviews, respondent was terminated from employment. SK Engineering issued him two notices of termination explaining different reasons as to why he was let go from the company.[12]

The pertinent portions of the first notice of termination dated June 1, 2014 read as follows:

> We regret to inform you that your employment contract with Branch of SK E & C in Wasit, Jubail has been terminated while in probationary period due to **"failed in ARAMCO Examination dated June 01, 2014"** with immediate effect. This letter is considered as your one month notice period.
>
> As per your Employment Contract Agreement (while in probationary period) that this agreement can be terminated by the company in the event that the Employer closes, suspends or completes Wasit Gas Project fully or partially or Employee's job mentioned is completed during the employment period, this agreement may be terminated with effect from

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8 Id. at 89.
9 Id. at 90-94.
10 Id. at 48.
11 Id. at 101.
12 Id. at 48-49.

> such notice of closing, suspension or completion of the Project or Employee's job partially or fully. Eventhough the term of agreement remains valid, the Employer is not liable to pay for the remaining valid period of the agreement. As such, we will arrange your immediate repatriation and other relevant formalities. All your dues will be settled accordingly (if any).[13]

Meanwhile, the second notice of termination dated June 3, 2014 states:

> We regret to inform you that your employment contract with Branch of SK Engineering & Construction Co. Ltd., Saudi Arabia has been terminated due to incompetency as well as incapacity to pass in ARAMCO examination as strongly required in this project with immediate effect on 02nd day of July 2014.
>
> As such, we will arrange your early repatriation to your home country as soon as possible with one month payment notice. All your dues will be settled accordingly (if any).[14]

Thereafter, respondent was repatriated to the Philippines on June 23, 2014. On August 6, 2014, he instituted the instant case before the arbitration branch of the NLRC against petitioner, SK Engineering, and petitioner's then president, Hak Nae Roh.[15]

In his Position Paper,[16] respondent asseverated that before he was given the Offer Letter of Employment by petitioner, he was called for a final interview which he passed with flying colors; that the alleged job interviews that he was required to attend in Saudi Arabia were just a subterfuge for SK Engineering to haggle him into agreeing to lower his wages; and that when he refused to agree to a much lower salary than the one stated in his employment contract, he was informed that he had failed the job interviews and was subsequently terminated from employment.[17] Respondent further averred that he was forced to sign various documents including a Declaration of Awareness and Consent[18] which stated that his monthly salary as Piping Inspector was 11,250 SAR. He also alleged that was forced to sign the June 1, 2014 Termination Notice on the threat that he would be "left astray"[19] in Saudi Arabia if he did not do so.

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13 Id. at 124.
14 Id. at 123.
15 Id. at 11.
16 Id. at 103-109.
17 Id. at 104-105.
18 Id. at 122.
19 Id. at 105.

Countermanding respondent's claims, petitioner, in its Reply[20] expounded that the Offer Letter of Employment explicitly states that the final approval of respondent's employment was subject to a final interview by SK Engineering, which he failed; that after failing his first interview in Saudi Arabia, respondent was given another chance but still failed the same; that respondent was offered a different position which did not require him to pass an interview, but turned it down, leading to his repatriation;[21] and that by signing a Statement of Final Settlement[22] dated June 22, 2014, respondent, after being paid the amount of US$1,557.00, had already waived any and all claims related to his employment with SK Engineering.[23]

The LA Ruling

On November 28, 2014, LA Napeñas, Jr. issued a Decision[24] in favor of respondent. He found that there was already a perfected contract of employment, notwithstanding the requirement on the Offer Letter of Employment that respondent must pass a final interview with SK Engineering.

The LA concluded that the Offer Letter of Employment is of doubtful validity because it is a contract of adhesion the terms of which are contradictory.[25] The LA highlighted the following paragraphs in the said document:

> With reference to your application, we are pleased to inform that you have been selected and we offer you the employment with us on the following terms and conditions.
>
> x x x x
>
> Note: The above selection is subject to Saudi Aramco Approval. The Employment of the candidate is not confirmed until final interview with Saudi Aramco's representative either telephonic/video conferencing/face to face interview in Saudi Arabia.[26]

While it appears that respondent's employment with SK Engineering was contingent upon him passing a final interview, the fact remains that he was immediately offered an Employment Contract which he signed on April 12, 2014. The LA reasoned:

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20 Id. at 127-132.
21 Id. at 127-128.
22 Id. at 101.
23 Id. at 130.
24 Id. at 72-78.
25 Id. at 75-76.
26 Id. at 89.

> For one, [petitioners], in such "Offer Letter of Employment", explicitly offered [respondent] enjoyment on this wise: "we are please [sic] to inform that you have been selected and we offer you the employment with us on the following terms and conditions", which complainant accepted as shown by his signature at the bottom of the said agreement. Thus, having the offer of employment, in one hand, and acceptance, on the other met, there is therefore gainsaying that an employment contract has been perfected. And this was affirmed by the fact that [respondent] was subsequently required to sign an Employment Contract; containing the terms and conditions of his employment. Not only that [respondent] was thereafter deployed to Saudi Arabia pursuant to the signed employment contract, and indeed commenced his work thereat and admittedly received his corresponding salaries.
>
> The foregoing, taken all together, the inevitable conclusion being that there was a perfected contract of employment between [petitioner and SK Engineering] and [respondent], notwithstanding the said notation to the contrary. This must be so otherwise, respondents should not have required [respondent] to sign "employment contract", much less deployed him in Saudi Arabia and commenced his work. Clearly, the apparent doubts/inconsistencies on the stand of the [petitioner and SK Engineering], particularly in the "Offer Letter of Employment" should be construed against [them], having been the ones who caused the same.[27]

Ultimately, LA Napeñas, Jr. disposed:

> **WHEREFORE**, premises considered, judgment is hereby rendered finding [respondent] to have been illegally dismissed. Accordingly, [petitioner, SK Engineering, and Hak Nae Roh] are hereby ordered to pay [respondent] his salary for the unexpired portion of his contract, computed as follows:
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> | | | |
> |---|---|---|
> | SAR 11,250 x 23 mos = | SAR 258,750.00 | |
> | LESS: | SAR 6,386.00 | (earlier received) |
> | TOTAL | **SAR252,364.00** | |
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> plus 10% of the total monetary award as Attorney's Fees.
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> All other claims are dismissed for lack of merit.
> **SO ORDERED**.[28]

Aggrieved, petitioner interposed an appeal[29] with the NLRC.

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27 Id. at 76.
28 Id. at 77-78.
29 Id. at 143-155.

The NLRC Ruling

On September 30, 2015, the NLRC granted petitioner's appeal. It ruled that the condition for respondent's employment with SK Engineering was properly explained to him by petitioner prior to his deployment;[30] and having failed his job interviews, he was correctly dismissed on grounds of gross inefficiency.[31] Nevertheless, the NLRC awarded respondent nominal damages because SK Engineering failed to comply with the requirements of procedural due process. Thus:

> **WHEREFORE**, the labor arbiter's Decision dated November 28, 2014 is **REVERSED and SET ASIDE**. A new decision is entered declaring [respondent] was validly dismissed from employment and is not entitled to his monetary claims. However, [respondent] is awarded nominal damages amounting to Thirty Thousand Pesos (Php 30,000.00).
>
> **SO ORDERED**.[32]

Respondent's Motion for Reconsideration[33] was denied by the NLRC in its December 29, 2015 Resolution.[34]

Undaunted, respondent filed a Petition for *Certiorari*,[35] under Rule 65 of the Rules of Court, before the CA.

The CA Ruling

In the herein assailed Decision[36] dated August 23, 2017, the CA granted respondent's petition and ordered petitioner, SK Engineering, and Hak Nae Roh to pay the former his salary equivalent to the unexpired portion of his contract.

The appellate court ruled that the ambiguity in the terms of respondent's employment with SK Engineering was caused entirely by petitioner who prepared all of the documents related thereto; that the terms of respondent's employment as defined in the Offer Letter of Employment dated March 18, 2014, the Employment Contract dated April 12, 2014, and the Termination

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30 Id. at 65.
31 Id. at 66.
32 Id. at 68.
33 Id. at 438-442.
34 Id. at 70-71.
35 Id. at 236-253.
36 Id. at 8-21.

Notice dated June 1, 2014 are so different from each other that they cannot be harmonized; that the provision giving SK Engineering the arbitrary discretion to determine whether respondent had passed his job interview is invalid; that respondent cannot be considered to be a probationary employee whose continued employment was contingent upon passing SK Engineering's job interview; that as a regular employee, respondent was entitled to security of tenure; and that under the circumstances, he was illegally dismissed.[37]

Thus, the CA decreed:

> ***WHEREFORE***, premises considered, the petition is hereby **GRANTED**. The decision of public respondent is hereby SET ASIDE and a new one is entered **ORDERING** private respondents to pay petitioner the amount of US$37,039.95 or its equivalent in Philippine currency.
>
> ***SO ORDERED.***[38]

Petitioner filed a Motion for Reconsideration[39] of the above Decision but the same was denied in the herein assailed Resolution[40] dated March 1, 2018.

Hence, the present recourse.

Arguments

Petitioner obstinately hammers its argument that under the Offer Letter of Employment, respondent's job with SK Engineering was conditioned upon his passing of a final job interview;[41] that respondent's failure to pass his interview and failure to properly communicate with the interviewees was "tantamount or analogous to habitual neglect of duty"[42] as defined in the Labor Code; and that respondent was properly terminated in the exercise of SK Engineering's management prerogative.[43]

In his Comment[44] to the instant petition, respondent reiterated the correctness of the rulings of the CA and LA Napeñas, Jr. He added that as between the Offer Letter of Employment, which he signed on March 18, 2014,

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37 Id. at 15-20.
38 Id. at 21.
39 Id. at 498-511.
40 Id. at 22.
41 Id. at 33.
42 Id. at 35.
43 Id. at 36-37.
44 Id. at 532-547.

and the POEA-approved Employment Contract, signed on April 12, 2014, it is the latter which should govern the terms of his employment with SK Engineering.[45] And because his termination was devoid of any legal basis, he was correctly awarded his salary for the unexpired portion of his contract.[46]

Petitioner, in its Reply,[47] ingeminated the same contentions that it had previously discussed.

Issue

Whether or not the CA erred in granting respondent's petition for *certiorari*.

Ruling of the Court

At the outset, it bears stressing that generally, only questions of law may be raised in a petition for review on *certiorari*[48] as the Court is not a trier of facts.[49] This Court will not review facts, as it is not Our function to analyze or weigh all over again evidence already considered in the proceedings below.[50] Nevertheless, the case at bar falls under one of the recognized exceptions to the rule, that exception being when the findings of the NLRC conflict with those of the Labor Arbiter and the Court of Appeals.[51] Thus, this Court is constrained to determine the facts of the case.[52]

The petition is bereft of merit.

I. A

The relationship between respondent, on one hand, and petitioner and SK Engineering, on the other, is the focal point of two documents: the Offer Letter of Employment and the Employment Contract which were signed on

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45 Id. at 535-539.
46 Id. at 542-544.
47 Id. at 556-563.
48 *Pascual v. Burgos*, 776 Phil. 167, 169 (2016).
49 *Gatan v. Vinarao*, 820 Phil. 257, 265 (2017).
50 *Miro v. Vda. De Erederos*, 721 Phil. 772, 785 (2013).
51 *Raza v. Daikoku Electronics Phils., Inc.*, 765 Phil. 61, 79 (2015).
52 *Concrete Solutions, Inc./Primary Structures Corporation v. Cabusas*, 711 Phil. 477, 487 (2013).

March 18, 2014 and April 12, 2014, respectively. Both documents are contracts of adhesion.

In *Philippine Commercial International Bank v. Court of Appeals*,[53] the Court defined a contract of adhesion in the following manner:

> A contract of adhesion is defined as one in which one of the parties imposes a ready-made form of contract, which the other party may accept or reject, but which the latter cannot modify. One party prepares the stipulation in the contract, while the other party merely affixes his signature or his "adhesion" thereto, giving no room for negotiation and depriving the latter of the opportunity to bargain on equal footing. Nevertheless, these types of contracts have been declared as binding as ordinary contracts, the reason being that the party who adheres to the contract is free to reject it entirely. It is equally important to stress, though, that the Court is not precluded from ruling out blind adherence to their terms if the attendant facts and circumstances show that they should be ignored for being obviously too one-sided.[54] (Citations omitted)

A plain reading of the March 18, 2014 Offer Letter of Employment provides that respondent had already been "selected"[55] by petitioner and was formally offered employment with SK Engineering under the terms stated therein. However, it comes with a *proviso* which, curiously, refers to respondent as a mere candidate whose employment "is not confirmed until final interview with Saudi Aramco's representative either telephonic/video conferencing/face to face interview in Saudi Arabia."[56]

In contrast, the April 12, 2014 Employment Contract refers to respondent as an employee and does not set any condition or qualification for respondent's continued employment. More importantly, it bears the imprimatur of the POEA.[57]

Jurisprudence holds that contracts of adhesion are not invalid *per se* and are not entirely prohibited.[58] Nevertheless, they are construed in favor of the employee in case of ambiguity.[59] This Court has on occasion construed obscurities and ambiguities in the restrictive provisions of contracts of adhesion strictly albeit not unreasonably against the drafter thereof when justified in light of the operative facts and surrounding circumstances.[60] Here,

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53 325 Phil. 588 (1996).
54 Id. at 597.
55 *Rollo*, p. 89.
56 Id.
57 Id. at 93.
58 *Rizal Commercial Banking Corporation v. Court of Appeals*, 364 Phil. 947 (1999).
59 *Apelanio v. Arcanys, Inc.*, 843 Phil. 288 (2018).
60 *Philippine Airlines, Inc. v. Court of Appeals*, 325 Phil. 303, 314 (1996).

We give more weight to the Employment Contract vis-à-vis the Offer Letter of Employment.

It bears stressing that respondent's employment status as defined in the Offer Letter of Employment is patently ambiguous. We cannot reconcile the phrase "we are pleased to inform that you have been selected and we offer you the employment with us"[61] with the *proviso* that "[t]he Employment of the candidate is not confirmed until final interview with Saudi Aramco's representative either telephonic/video conferencing/face to face interview in Saudi Arabia."[62] They are diametrically opposed.

Case law states that between a laborer and his or her employer, doubts reasonably arising from the evidence or interpretation of agreements and writing should be resolved in the former's favor.[63] Thus, the Offer Letter of Employment must be construed in favor of respondent. The construction of the said document must, perforce, lean towards the regular status of respondent's employment, free from the restraints imposed therein.

I. B

The Court rejects the theory that respondent was a mere probationary employee who was terminated because he failed to live up to the standards set by his employer.

There is probationary employment where the employee upon his or her engagement is made to undergo a trial period during which the employer determines his or her fitness to qualify for regular employment based on reasonable standards made known to him or her at the time of engagement.[64] It is indispensable that the employer informs the employee of the reasonable standards that will be used as a basis for his or her regularization at the time of his or her engagement.[65] In the event that the employer fails to comply with this requirement, the employee is deemed as a regular, and not a probationary employee.[66]

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61 *Rollo*, p. 89.
62 Id.
63 *De Castro v. Liberty Broadcasting Network, Inc.*, 643 Phil. 304, 309-310 (2010).
64 *Tamson's Enterprises, Inc. v. Court of Appeals*, 676 Phil. 384, 396 (2011).
65 *Philippine National Oil Co.-Energy Development Corporation v. Buenviaje*, 788 Phil. 508, 529 (2016).
66 *Moral v. Momentum Properties Management Corporation*, G.R. No. 226240, March 6, 2019.

In the present case, the terms of the subject Offer Letter of Employment do not offer any quantifiable and reasonable standard within which to justify respondent's separation from SK Engineering. The *proviso* that respondent's employment can only be confirmed until he undergoes a final interview is a potestative condition, or one which is solely dependent on the will or whim of SK Engineering since the commencement of the employment relations is at the discretion or prerogative of the latter's interviewers.[67] As such, it is void.[68] As aptly reasoned by the CA:

> Given the potestative character of the condition, even if [respondent] would have made quite an impression during the interview, there would be no stopping x x x SK Engineering from declaring that he flunked the interviews, which actually what has transpired. For this reason, the condition – and the offer letter – should be struck down.[69]

Petitioner and SK Engineering having failed to properly inform respondent of the reasonable standards required of him at the time of his engagement, the latter is deemed a regular employee. He is entitled to security of tenure and his services may only be terminated for causes provided by law.[70] More importantly, as an overseas Filipino worker, his employment may only be terminated for a just or authorized cause and after compliance with procedural due process requirements.[71]

II.

Respondent's dismissal on grounds of gross inefficiency which is "tantamount or analogous to habitual neglect of duty,"[72] is completely baseless.

In *Lim v. National Labor Relations Commission*,[73] We defined gross inefficiency in this wise:

> [G]ross inefficiency falls within the purview of "other causes analogous to the foregoing," and constitutes, therefore, just cause to terminate an employee under Article 282 [now Article 297] of the Labor Code. One is analogous to another if it is susceptible of comparison with the latter either in general or in some specific detail; or has a close relationship with the

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67 *Gemudiano, Jr. v. Naess Shipping Philippines, Inc.*, G.R. No. 223825, January 20, 2020.
68 *Naga Telephone Co., Inc. v. Court of Appeals*, 300 Phil. 367 (1994).
69 *Rollo*, p. 16.
70 *Salafranca v. Philamlife (Pamplona) Village Homeowners Association, Inc.*, 360 Phil. 652, 661 (1998).
71 *Sameer Overseas Placement Agency, Inc. v. Cabiles*, 740 Phil. 403, 423 (2014).
72 *Rollo*, p. 35.
73 328 Phil. 843 (1996).

> latter. "Gross inefficiency" is closely related to "gross neglect," for both involve specific acts of omission on the part of the employee resulting in damage to the employer or to his [or her] business. x x x[74] (Citations omitted)

On the other hand, habitual neglect of duty implies repeated failure to perform one's duties for a period of time, depending upon the circumstances.[75] Both gross inefficiency and habitual neglect of duty are just causes to dismiss an employee.[76]

In the case at bar, the allegation of gross inefficiency is based on respondent's alleged poor communication skills which ineluctably led to his failed job interviews. However, there is nothing on record to substantiate this claim. Not an iota of evidence was adduced to prove that respondent's communication skills was so inadequate as would render him unqualified and patently unable to perform his duties.

At this juncture, We quote with affirmation the following ratiocination of the CA:

> [T]here is no evidence at all to support [petitioner and SK Engineering's] claim anent [respondent's] communication skills. It was all allegation. No effort was exerted to establish the claim, such as video or audio recordings of the interviews. Under the circumstance, the inevitable conclusion is that [petitioner and SK Engineering] failed in discharging their burden of proving the ground of dismissal by clear and convincing evidence.
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> On the contrary, there are arguments that would debunk [respondent's] alleged communication difficulties. We note that three interviews had been conducted in Saudi Arabia. For certain, [respondent] was also interviewed by [petitioner] prior to his selection for his purported conditional employment abroad.
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> If indeed [respondent] was ill-equipped in communicating his thoughts, it should not have taken [petitioner and SK Engineering] four instances to establish such shortcoming. At the very first instance, or the interview before [petitioner], [respondent's] poor communication skills should have been noted. However, instead of disapproving his application outright on said ground, the recruitment agency apparently made no notice of such disadvantage, for otherwise it would not have "offered" [respondent] the position.
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> The same is true with the interviewer in Saudi Arabia. During the very first interview, [respondent's] alleged shortcomings should have been noticed. If indeed communication facility is the issue, then there would have

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74 Id. at 858.
75 *St. Luke's Medical Center, Inc. v. Notario*, 648 Phil. 285, 297 (2010).
76 *Telephilippines, Inc. v. Jacolbe*, G.R. No. 233999, February 18, 2019.

> been no need for the succeeding interviews for certainly it could not be expected that a miracle would transpire, and [respondent] would improve his communication skills instantaneously and in time for the next interview.
>
> Moreover, from the certificates submitted in evidence by [respondent], it appears that prior to his employment at [SK Engineering], he had been a seasoned OFW stationed in the Middle East and thus has learned to speak both Arabic and English. From the certifications, there is nothing that would indicate his alleged poor communication skills.
>
> Considering the foregoing disquisitions, We are inclined to believe [respondent] in his claim that the interviews were held only for the purpose of salary haggling. Based on his own account – which [petitioner and SK Engineering] did not refute – there was a rude attempt at contract substitution, an act abhorred and penalized by law. He refused, and only after it was made clear that he would not relent in his stand, that he was given his walking papers and shown the door.[77]

It is axiomatic that in illegal dismissal cases, the employer bears the burden of proving that the termination was for a valid or authorized cause.[78] The failure of the employer to prove that the dismissal was valid, would mean that the dismissal was unjustified, and thus illegal.[79] Petitioner and SK Engineering failed to discharge this burden.

En conséquence, respondent was illegally dismissed.

III. A

Section 10[80] of Republic Act (R.A.) No. 8042,[81] as amended by R.A. No. 10022,[82] provides that 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 or her placement fee and the deductions made with interest of 12% *per annum,* plus his or her

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77 *Rollo*, pp. 19-20.

78 *Atienza v. Saluta*, G.R. No. 233413, June 17, 2019.

79 *San Miguel Corporation v. Gomez*, G.R. No. 200815, August 24, 2020.

80 SEC. 10. *Money Claims.* — x x x

x x x x

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement of his placement fee and the deductions made 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.

81 Otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995.

82 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 (March 8, 2010).

salaries for the unexpired portion of his or her employment contract or for three months for every year of the unexpired term, whichever is less.

In *Sameer Overseas Placement Agency, Inc. v. Cabiles*,[83] We declared the clause "or for three months for every year of the unexpired term, whichever is less"[84] unconstitutional because it violated substantive due process and the equal protection clause of the Constitution in that it generated classifications among workers that do not rest on any real or substantial distinctions that would justify different treatments in terms of the computation of money claims resulting from illegal termination.[85] Thus, the proper indemnity in illegal dismissal cases should be the amount equivalent to the unexpired term of the employment contract.[86]

III. B

The Court modifies the CA's computation of respondent's salary for the unexpired portion of his contract.

It may be recalled that respondent was deployed to Saudi Arabia on May 13, 2014. The duration of his April 12, 2014 Employment Contract is two years, with a monthly salary of US$1,464.08.

Based on the allegation in his Position Paper, and the unsigned payslip[87] dated June 5, 2014 that he presented before LA Napeñas, Jr., respondent was only paid the amount of SAR 6,386.00 for the month of May 2014 which, according to him, was equivalent to one-half of his monthly salary.[88]

On the other hand, petitioner and SK Engineering were not able to prove the claim that respondent was actually paid the amount of US$1,557.00.[89] It is worth emphasizing that the Statement of Final Settlement,[90] which SK Engineering prepared and upon which petitioner relies upon, reflects the amount of SAR 1,557.00, the currency for which was spelled out in words. In fact, the said document makes no reference to the USD currency. Indeed, the rule is that the burden of proving payment of monetary claims rests on the employer, in this case, herein petitioner, it being

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83 Supra note 71.
84 Id. at 427.
85 Id. at 437.
86 *Gopio v. Bautista*, 832 Phil. 411, 427 (2018).
87 *Rollo*, p. 126.
88 Id. at 105.
89 Id. at 130.
90 Id. at 101.

the employment agency or recruitment entity, and agent of the foreign principal, SK Engineering, which recruited respondent.[91]

Accordingly, the Court rules that respondent is entitled to the award of US$35,137.92 representing his salary for the two-year duration of his contract, minus the equivalent of SAR 6,386.00 representing half a month of respondent's salary at the time the latter was paid on June 5, 2014.

In view of Section 10 of R.A. No. 8042, as amended, We uphold the CA's award of attorney's fees in favor of respondent, which is equivalent to 10% of the monetary award. Pursuant to *Nacar v. Gallery Frames*,[92] legal interest at the rate of six percent (6%) *per annum* is likewise imposed on the total monetary award from the time of finality of this judgment until its full satisfaction.

IV.

Lastly, We take this opportunity to emphasize the joint and solidary liability of the corporate officers of petitioner for the judgment award due respondent, in accordance with the second paragraph of Section 10 of R.A. No. 8042, *viz.*:

> SEC. 10. *Money Claims.* — x x x
>
> 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 damage**s. (Emphasis supplied)

Prescinding from the foregoing, joint and solidary liability for the judgment award does not attach solely upon Hak Nae Roh as petitioner's

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91 *G & M (Phils.), Inc. v. Cruz*, 496 Phil. 119, 124-125 (2005).
92 716 Phil. 267 (2013).

former president and current chairperson. Rather, it encompasses all of the other corporate officers[93] of petitioner recruitment agency.

WHEREFORE, the petition is **DENIED** for lack of merit. The Decision dated August 23, 2017 and the Resolution dated March 1, 2018 of the Court of Appeals in CA-G.R. SP No. 144684 are hereby **AFFIRMED** with **MODIFICATION** in that petitioner YWA Human Resource Corporation and its corporate officers, along with SK Engineering and Construction Co., Ltd., are **ORDERED** to pay respondent Bienvenido E. Murillo, jointly and severally, the following:

1. The amount of US$35,137.92 or its peso equivalent at the prevailing rate of exchange at the time of actual payment, representing the unexpired portion of his employment contract, minus the equivalent of 6,386.00 Saudi Arabian Riyal or its peso equivalent, at the prevailing rate of exchange at the time the same was actually paid to respondent on June 5, 2014; and

2. Attorney's fees equivalent to ten percent (10%) of the monetary award.

Interest at the rate of six percent (6%) *per annum* is imposed on the total monetary award, reckoned from the date of finality of this judgment until the same is fully paid.

The case is **REMANDED** to the Labor Arbiter for the proper computation of the total monetary awards due respondent Bienvenido E. Murillo as a result of his illegal dismissal.

SO ORDERED."

By authority of the Court:

MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court JB 2/8/23

93 *Rollo*, pp. 79-80.

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(NLRC NCR Case No. [L]-06-09769-14)

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