



Republic of the Philippines
 Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

**DIONELLA A. GOPIO, doing
 business under the name and style,
 JOB ASIA MANAGEMENT
 SERVICES,**

Petitioner,

-versus-

SALVADOR B. BAUTISTA,

Respondents.

G.R. No. 205953

Present:

LEONARDO-DE CASTRO,
*Acting Chairperson,**
 DEL CASTILLO
 JARDELEZA,
 CAGUIOA,** and
 GESMUNDO,*** JJ.

Promulgated:

JUN 06 2018

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DECISION

JARDELEZA, J.:

This is a petition for review on *certiorari*¹ seeking the reversal of the August 31, 2012 Decision² of the Court of Appeals (CA) in CA-G.R. SP No. 116450 which annulled the Decision³ and Resolution⁴ issued by the National Labor Relations Commission (NLRC) and reinstated the Decision⁵ rendered by the Labor Arbiter, and the February 22, 2013 CA Resolution⁶ denying petitioner's motion for reconsideration of the assailed Decision.

On September 26, 2008, respondent Salvador A. Bautista (Bautista) was hired as a Project Manager for Shorncliffe (PNG) Limited (Shorncliffe) in Papua New Guinea through Job Asia Management Services (Job Asia), a single proprietorship owned by petitioner Dionella A. Gopio (Gopio), which is engaged in the business of recruitment, processing, and deployment of land-based manpower for overseas work. Bautista's contract stated that his

* Designated as Acting Chairperson of the First Division per Special Order No. 2559 dated May 11, 2018.

** Designated as additional Member per Raffle dated June 4, 2018.

*** Designated as Acting Member of the First Division per Special Order No. 2560 dated May 11, 2018.

¹ *Rollo*, pp. 23-42.

² *Id.* at 8-21. Penned by Associate Justice Romeo F. Barza, with Associate Justices Noel G. Tijam (now a Member of this Court) and Ramon A. Cruz concurring.

³ *Id.* at 70-77.

⁴ *Id.* at 78-79.

⁵ *Id.* at 59-69.

⁶ *Id.* at 57-58.

employment shall be valid and effective for 31 months with a net monthly salary of ₱40,000.00. On October 4, 2008, he arrived at his workplace in Papua New Guinea.⁷

On July 6, 2009, or just nine months after his deployment in Papua New Guinea, Bautista was served a notice of termination effective July 10, 2009 on the alleged grounds of unsatisfactory performance and failure to meet the standards of the company. He was paid his salary for the period July 1 to 10, 2009, annual leave credits, and one-month pay net of taxes. Thereafter, he was repatriated on July 11, 2009.⁸

On July 27, 2009, Bautista lodged a complaint with the arbitration branch of the NLRC against Job Asia, Gopio, and Shorncliffe for illegal dismissal and monetary claims. He claimed that he was terminated without just cause since there had been no job evaluation conducted prior to Shorncliffe's decision to dismiss him from employment. As a result, he is entitled to the payment of his salaries for the unexpired portion of his contract, or for 22 months. He alleged that while his contract contained an understated monthly income of ₱40,000.00, he was actually being paid the amount of ₱115,850.00 a month. Other than salaries, Bautista also claimed unrealized employment benefits, nine days sick leave pay, four weeks recreation leave pay, moral and exemplary damages, as well as attorney's fees.⁹

Job Asia, Gopio, and Shorncliffe, for their part, argued that Bautista's employment was terminated because he failed to meet Shorncliffe's standards. To buttress their claim, they submitted in evidence the work performance evaluation report on Bautista which listed the following observations:

1. He is not capable of performing the duties of a Project Manager.
2. He was unable to control or direct his workforce, equipment and materials.
3. He is incompetent in the handling of his daily tasks.
4. [He] failed to provide any monthly reports both verbal and written on the progress of his projects as a company requirement.
5. He has never submitted any monthly progress claims as a company requirement.
6. He demonstrated that he was technically incompetent and hides himself when there is a problem.
7. He was not capable of running project site meetings with the management and his staff.
8. He is a lazy person, incompetent in his decision making and has poor communication skills.

⁷ *Id.* at 44

⁸ *Id.*

⁹ *Rollo*, pp. 44-45.

9. He was unable to pass his knowledge to young PNG Engineers, in fact they were teaching him instead.¹⁰

On January 7, 2010, the Labor Arbiter rendered his Decision finding Bautista to have been illegally dismissed as the dismissal was not proven to be for a just cause and Shorncliffe failed to observe due process. The Labor Arbiter held that the work performance evaluation allegedly showing Bautista's inefficiency and shortcomings in the performance of his job was made only on August 22, 2009, or more than one month after Bautista's dismissal. Thus, the findings therein are mere conclusions of fact, at best self-serving and merits no consideration.¹¹ Moreover, Shorncliffe failed to observe due process by not giving Bautista the twin notices required by law. The latter was not notified of the intention to dismiss him or the acts or omissions complained of. Neither was he notified of the decision to dismiss him and given an opportunity to answer and rebut the charges against him in between notices.¹²

The Labor Arbiter also rejected the argument that Bautista's employment was terminated on the basis of Article 4.3 of the employment contract by giving him one-month salary in lieu of one month's written notice.¹³ The said provision states:

- 4.3 The Employer or Employee may terminate this contract on other grounds. The Employer should give one month's written notice of his intention to terminate or in lieu thereof pay the Employee a sum equivalent to one month's salary. The Employee may likewise terminate this Contract by giving three months' notice to the Employer.¹⁴

The Labor Arbiter held that the stipulation providing for payment of one-month salary in lieu of serving one month's notice of the employer's intention to terminate Bautista's employment is contrary to our laws which uphold the sanctity of workers' security of tenure. It also considered the employment contract as a contract of adhesion which cannot militate against the rights of Bautista.¹⁵ He thus ordered Job Asia, Gopio, and Shorncliffe to jointly and severally pay Bautista his salaries for the unexpired portion of his contract of employment in the amount of ₱2,548,700.00,¹⁶ moral and exemplary damages in the amount of ₱300,000.00, and attorney's fees at ₱254,870.00.¹⁷

¹⁰ *Id.* at 45-46.

¹¹ *Id.* at 64.

¹² *Id.* at 63, citing *MGG Marine Services, Inc. v. NLRC*, G.R. No. 114313, July 29, 1996, 259 SCRA 664.

¹³ *Id.* at 64-66.

¹⁴ *Id.* at 101.

¹⁵ *Id.* at 64-68.

¹⁶ ₱115,850.00 x 22 months, *id.* at 68.

¹⁷ *Id.* at 69.

Undaunted, Job Asia, Gopio, and Shorncliffe filed an appeal with the NLRC. On May 17, 2010, the NLRC issued its Decision setting aside the Decision of the Labor Arbiter and dismissing the complaint for illegal dismissal and monetary claims for lack of merit. Nevertheless, it ordered that Bautista be indemnified nominal damages in the amount of ₱40,000.00.¹⁸

The NLRC held that the parties were bound by the terms and conditions of the employment contract that bore the stamp of approval of the Philippine Overseas Employment Administration (POEA). Consequently, it found that Bautista's contract was pre-terminated in accordance with Article 4.3 thereof. Contrary to the Labor Arbiter's finding, the NLRC upheld the reports of Shorncliffe's officers pertaining to his unsatisfactory performance and incompetence, and thus declared Bautista's employment to have been terminated for a just cause. It, however, held that Bautista was not afforded due process, for which he should be awarded indemnity pegged at the rate of his basic salary for one month as stated in his employment contract, or ₱40,000.00. The NLRC found no bad faith or malice on the part of Job Asia, Gopio, or Shorncliffe that would have been the basis for an award of moral and exemplary damages and attorney's fees.¹⁹

Bautista filed a motion for reconsideration of the NLRC Decision, but it was denied through a Resolution dated July 30, 2010. Hence, he filed a petition for *certiorari* with the CA.

On August 31, 2012, the CA rendered its Decision annulling and setting aside the NLRC Decision and reinstating that of the Labor Arbiter. It held that Article 4.3 of the employment contract violates the provisions of the Labor Code on security of tenure since it gives the employer the option to do away with the notice requirement as long as he grants one-month salary to the employee in lieu thereof. The provision deprives the employee of due process and violates his right to be apprised of the grounds for his termination without giving him an opportunity to defend himself and refute the charges against him. Moreover, the term "other grounds" is all-encompassing and makes the employee susceptible to arbitrary dismissal.²⁰

The CA also held that Job Asia, Gopio, and Shorncliffe failed to substantiate their claim that Bautista was discharged for just cause. Their claim that the latter was dismissed for performing below standards was not backed by any proof. Further, Bautista was notified of his termination only four days prior to the intended date of dismissal without evidence of an assessment of his performance and the results thereof. Neither was he served a notice of any wrongdoing prior to the service of the notice of his termination. The CA noted that the declarations of Anthony B. Ponnampalam and Paul Thompson, officers of Shorncliffe, were executed on October 31, 2009 and October 1, 2009, respectively, or more than two months after the termination

¹⁸ *Id.* at 76-77.

¹⁹ *Id.* at 74-76.

²⁰ *Id.* at 16.

of Bautista's employment on July 10, 2009. Further, the evaluation report made by Robert Aup, another Shorncliffe official, was made only on August 22, 2009, and hence obviously an afterthought. Thus, there being no sufficient cause to terminate Bautista's employment, his dismissal is illegal. The CA thus upheld the Labor Arbiter's Decision and additionally awarded Bautista full reimbursement of his placement fee with interest of 12% *per annum*.²¹

Thus, this petition where the Court is called upon to ultimately resolve two issues that have been beleaguering the parties for more than eight years, to wit: whether or not Bautista was illegally dismissed from employment, and whether or not he is entitled to his monetary claims.

We uphold with modification the Decision of the CA.

I.

In 1995, Republic Act (R.A.) No. 8042, otherwise known as an "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" was passed. More popularly known as the Migrant Workers and Overseas Filipinos Act of 1995, this law echoes the provision in the 1987 Constitution²² on protection of labor. Thus, Section 2(b) thereof under "Declaration of Policies," states:

(b) The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. Towards this end, the State shall provide adequate and timely social, economic and legal services to Filipino migrant workers.

Moreover, Section 2(c) thereof provides:

(c) x x x The existence of the overseas employment program rests solely on the assurance that the dignity and fundamental human rights and freedoms of the Filipino citizens shall not, at any time, be compromised or violated.
x x x

Accordingly, regulatory provisions may be read all throughout R.A. No. 8042 that carry out the policy of the State to protect and promote the rights of Filipino migrant workers. Employment agreements are verily more than contractual in nature in the Philippines. The Philippine Constitution and laws

²¹ *Id.* at 17-19.

²² CONSTITUTION, Art. XIII, Sec. 3 states:

The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. x x x

guarantee special protection to workers here and abroad.²³ Thus, even if a Filipino is employed abroad, he or she is entitled to security of tenure, among other constitutional rights.²⁴

In termination disputes or illegal dismissal cases, it has been established by Philippine law and jurisprudence that the employer has the burden of proving that the dismissal is for just and valid causes; and failure to do so would necessarily mean that the dismissal was not justified and is, therefore, illegal.²⁵ Taking into account the character of the charges and the penalty meted to an employee, the employer is bound to adduce clear, accurate, consistent, and convincing evidence to prove that the dismissal is valid and legal.²⁶ This is consistent with the principle of security of tenure as guaranteed by the Constitution and reinforced by Article 292(b)²⁷ of the Labor Code of the Philippines,²⁸ which provides:

Art. 292. Miscellaneous Provisions – x x x

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article [298] of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. x x x²⁹

Here, petitioner argues that there was justifiable cause for the termination of Bautista's employment since the latter has fallen short of Shorncliffe's employment and work standards. She cited the report of Shorncliffe's Chief Executive Officer and Project Team Leader, Robert Aup, which detailed Bautista's shortcomings, as well as the report of Paul Thompson, Supervising Engineer of the Project to which Bautista was

²³ *Sameer Overseas Placement Agency, Inc. v. Cabiles*, G.R. No. 170139, August 5, 2014, 732 SCRA 22, 42-44.

²⁴ *Dagasdas v. Grand Placement and General Services Corporation*, G.R. No. 205727, January 18, 2017, 814 SCRA 529, 541.

²⁵ See *Ting v. Court of Appeals*, G.R. No. 146174, July 12, 2006, 494 SCRA 610, 620-623.

²⁶ *Bank of the Philippine Islands v. Uy*, G.R. No. 156994, August 31, 2005, 468 SCRA 633, 646.

²⁷ As renumbered in DOLE Department Advisory No. 1, Series of 2015. Formerly Article 277.

²⁸ *EDI-Staffbuilders International, Inc. v. NLR*, G.R. No. 145587, October 26, 2007, 537 SCRA 409, 432.

²⁹ As amended by R.A. No. 6715, Sec. 33.

assigned, which mentioned the latter's incompetence.³⁰ Maintaining that the rights and obligations among the Overseas Filipino Worker (OFW), the local recruiter or agent, and the foreign employer or principal is governed by the employment contract which is the law among them, petitioner also claims that Bautista's employment was validly terminated even without notice as he was given the equivalent of one-month salary in lieu thereof.³¹

The Court is not convinced.

As observed by the CA, the evaluation report of Robert Aup was made only on August 22, 2009, and the declaration of Paul Thompson was executed only on October 1, 2009, which dates are beyond the date of termination of Bautista's employment on July 10, 2009. The CA correctly concluded that these were made as an afterthought in order to lend credence to the claim that the termination of Bautista's employment was for a valid reason.³² In *Skippers United Pacific, Inc. v. Maguad*,³³ we held that the Master's Statement Report presented by therein petitioners to corroborate their claim that the dismissal of therein respondents was for just cause, *i.e.*, incompetence, was issued 78 days³⁴ after therein respondents were repatriated to Manila and two months after the latter instituted a complaint for illegal dismissal before the NLRC. Such report can no longer be a fair and accurate assessment of therein respondents' competence as the same was presented only after the complaint was filed. Its execution was a mere afterthought in order to justify the dismissal of therein respondents which had long been effected before the report was made; hence, such report is a self-serving one.³⁵

The Court thus finds that Bautista's incompetence as the alleged just cause for his dismissal was not proven by substantial evidence.

II.

In addition, Bautista was not accorded due process. Consequently, the Court is not convinced that he was legally dismissed.

The due process requirement is not a mere formality that may be dispensed with at will. Its disregard is a matter of serious concern since it constitutes a safeguard of the highest order in response to man's innate sense of justice. To meet the requirements of due process, the employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected, *i.e.*: (1) a notice which appries the employee of the particular acts or omissions for which his dismissal is sought;

³⁰ *Rollo*, pp. 33-34.

³¹ *Id.* at 29-30, 36.

³² *Id.* at 17-18.

³³ G.R. No. 166363, August 15, 2006, 498 SCRA 639.

³⁴ This is the correct number of days based on the pertinent dates as indicated in the case. See *id.* at 649.

³⁵ *Id.* at 662.

and (2) the subsequent notice after due hearing which informs the employee of the employer's decision to dismiss him.³⁶

Here, Bautista was dismissed under Article 4.3 of the employment contract which allegedly permits his employer, Shorncliffe, to terminate the contract on unspecified "other grounds" by giving one month's written notice of its intention to terminate, or in lieu thereof, to pay the employee a sum equivalent to one month's salary.

Bautista was notified on July 6, 2009 that his services will be terminated effective on the close of business hours on July 10, 2009, allegedly because his performance was "unsatisfactory and did not meet the standards of the Company."³⁷ He was also paid one-month salary in lieu of one month's notice of the termination of his employment.³⁸ Surely, this cannot be considered compliance with the two-notice requirement mandated by the Labor Code in effecting a valid dismissal. The Labor Code requires both notice and hearing; notice alone will not suffice. The requirement of notice is intended to inform the employee concerned of the employer's intent to dismiss him and the reason for the proposed dismissal. On the other hand, the requirement of hearing affords the employee an opportunity to answer his employer's charges against him and accordingly defend himself therefrom before dismissal is effected.³⁹ In this case, Bautista was not given a chance to defend himself. Five days after the notice was served, he was repatriated. Clearly, he was denied his right to due process.

The CA aptly observed that Article 4.3 deprives the employee of his right to due process of law as it gives the employer the option to do away with the notice requirement provided that it grants one-month salary to the employee in lieu thereof. It denies the employee of the right to be apprised of the grounds for the termination of his employment without giving him an opportunity to defend himself and refute the charges against him. Moreover, the term "other grounds" is all-encompassing. It makes the employee susceptible to arbitrary dismissal. The employee may be terminated not only for just or authorized causes but also for anything under the sun that may suit his employer. Thus, the employee is left unprotected and at the mercy of his employer, subjected to the latter's whims.⁴⁰

We cannot sustain the validity of Article 4.3 of the employment contract as it contravenes the constitutionally-protected right of every worker to security of tenure.⁴¹

³⁶ *Id.* at 663.

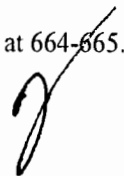
³⁷ *Rollo*, p. 96.

³⁸ *Id.* at 65-66.

³⁹ *Skippers United Pacific, Inc. v. Maguad*, *supra* note 33 at 664-665.

⁴⁰ *Rollo*, p. 16.

⁴¹ CONSTITUTION, Art. XIII, Sec. 3. See Footnote No. 22.



Bautista's employment was for a fixed period of 31 months.⁴² Article 4.3 took back this period from him by rendering it in effect a facultative one at the option of Shorncliffe, which may shorten that term at any time and for any cause satisfactory to itself, to a one-month period or even less, by simply paying Bautista a month's salary. The net effect of Article 4.3 is to render Bautista's employment basically employment at the pleasure of Shorncliffe. The Court considers that the provision is intended to prevent any security of tenure from accruing in favor of Bautista even during the limited period of 31 months.⁴³

To emphasize, overseas workers, regardless of their classification, are entitled to security of tenure, at least for the period agreed upon in their contracts. This means that they cannot be dismissed before the end of their contract terms without due process.⁴⁴ The law recognizes the right of an employer to dismiss employees in warranted cases, but it frowns upon the arbitrary and whimsical exercise of that right when employees are not accorded due process.⁴⁵ If they were illegally dismissed, the workers' right to security of tenure is violated.⁴⁶

The law and jurisprudence guarantee to every employee security of tenure. This textual and the ensuing jurisprudential commitment to the cause and welfare of the working class proceed from the social justice principles of the Constitution that the Court zealously implements out of its concern for those with less in life. Thus, the Court will not hesitate to strike down as invalid any employer act that attempts to undermine workers' tenorial security.⁴⁷

Indeed, while our Civil Code recognizes that parties may stipulate in their contracts such terms and conditions as they may deem convenient, these terms and conditions must not be contrary to law, morals, good customs, public order or policy.⁴⁸ The employment contract between Shorncliffe and Bautista is governed by Philippine labor laws. Hence, the stipulations, clauses, and terms and conditions of the contract must not contravene our labor law provisions.

Time and again, we have held that a contract of employment is imbued with public interest. The parties are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply contracting with each other. Also, while a contract is the law between the

⁴² *Roilo*, p. 98.

⁴³ See *Pakistan International Airlines Corporation v. Ople*, G.R. No. 61594, September 28, 1990, 190 SCRA 90.


⁴⁴ *Sameer Overseas Placement Agency, Inc. v. Cabiles*, *supra* note 23 at 60.

⁴⁵ *Tan, Jr. v. NLRC*, G.R. No. 85919, March 23, 1990, 183 SCRA 651, 657.

⁴⁶ *Sameer Overseas Placement Agency, Inc. v. Cabiles*, *supra* note 23 at 60.

⁴⁷ *Imasen Philippine Manufacturing Corporation v. Alcon*, G.R. No. 194884, October 22, 2014, 739 SCRA 186, 194.

⁴⁸ CIVIL CODE, Art. 1306.



parties, the provisions of positive law that regulate such contracts are deemed included and shall limit and govern the relations between the parties.⁴⁹

In sum, there being no showing of any clear, valid, and legal cause for the termination of Bautista's employment and that he was not afforded due process, the law considers the matter a case of illegal dismissal for which Bautista is entitled to indemnity. We uphold the Labor Arbiter's award of indemnity equivalent to Bautista's salaries for the unexpired term of his employment contract, and damages.

III.

Section 10 of R.A. No. 8042 provides that in case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the workers shall be entitled to the full reimbursement of his placement fee with interest of 12% *per annum*, plus his salaries for the unexpired portion of his employment contract or for three months for every year of the unexpired term, whichever is less.

We declared the clause "or for three months for every year of the unexpired term, whichever is less" unconstitutional in the 2009 case of *Serrano v. Gallant Maritime Services, Inc.*,⁵⁰ and again in the 2014 case of *Sameer Overseas Placement Agency, Inc. v. Cabiles*,⁵¹ after the provision found its way again in R.A. No. 10022⁵² which took effect in 2010. We held that the clause 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.⁵³ Thus, we held that the proper indemnity in illegal dismissal cases should be the amount equivalent to the unexpired term of the employment contract. In this case, it is Bautista's monthly salary of ₱115,850.00⁵⁴ multiplied by 22 months, the remaining term of his employment contract, or a total amount of ₱2,548,700.00.

We also upheld the Labor Arbiter's award of moral and exemplary damages to Bautista on the ground that his dismissal was without just and authorized cause, in complete disregard of his right to due process of law, and done in bad faith, in addition to being anti-Filipino and capricious.⁵⁵ Likewise, we find the award of attorney's fees proper. It is settled that when an action is instituted for the recovery of wages, or when employees are forced to litigate

⁴⁹ *Philippine National Bank v. Cabansag*, G.R. No. 157010, June 21, 2005, 460 SCRA 514, 533-534.

⁵⁰ G.R. No. 167614, March 24, 2009, 582 SCRA 254.

⁵¹ *Supra* note 23.

⁵² 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.

⁵³ *Sameer Overseas Placement Agency, Inc. v. Cabiles*, *supra* note 23 at 57-60.

⁵⁴ *Rollo*, p. 97.

⁵⁵ *Id.* at 68.

and consequently incur expenses to protect their rights and interests, the grant of attorney's fees is legally justifiable.⁵⁶

Petitioner's argument that she should not be held jointly and severally liable with Shorncliffe for the payment of monetary awards to Bautista as she had no control over the manner of implementation of the employment contract, she had no hand whatsoever in Bautista's dismissal, and that her agency was extinguished as soon as the employee was deployed to and have worked in Shorncliffe's construction project in Papua New Guinea,⁵⁷ has no merit.

In the first place, such joint and solidary liability is required prior to the issuance of a license to petitioner to operate a recruitment agency. Thus, Section 1(f)(3), Rule II, Part II of the 2002 POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers provides:

RULE II
ISSUANCE OF LICENSE

Sec. 1. *Requirements for Licensing.* Every applicant for license to operate a private employment agency shall submit a written application together with the following requirements:

x x x x

f. A verified undertaking stating that the applicant:

x x x x

3) Shall assume joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the contract, including but not limited to payment of wages, death and disability compensation and repatriations[.] (Emphasis supplied.)

Furthermore, Section 10 of R.A. No. 8042 provides:

Sec. 10. *Money Claims.* 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

⁵⁶ *Philippine National Bank v. Cabansag*, *supra* note 49 at 536.

⁵⁷ *Rollo*, pp. 38-39, 122.

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. (Emphasis supplied.)

Consistent with the law and the POEA Rules, petitioner's joint and several liability is incorporated in Bautista's employment contract with Shorncliffe, which states:

Article 1: This Employment Contract is executed and entered into by and between:

A. EMPLOYER:

SHORNCLIFFE (PNG) LIMITED

(Name of Establishment)

x x x x

Represented in the Philippines:

JOB ASIA MANAGEMENT SERVICES

By: Mr. JAIME M. ARREO

(Managing Consultant)

and persons authorized by Agent Company who will be jointly and severally responsible to [sic] compliance herewith:

and

B. EMPLOYEE: SALVADOR BUSTILLO BAUTISTA⁵⁸
(Emphasis supplied.)

x x x x

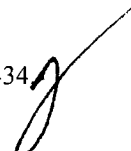
Petitioner thus cannot evade liability by claiming that she did not have any control over the foreign employer and had nothing to do with Bautista's dismissal, because her liability is defined by law and contract.

We have held that the burden devolves not only upon the foreign-based employer but also on the employment or recruitment agency to adduce evidence to convincingly show that the worker's employment was validly and legally terminated. This is because the latter is not only an agent of the former, but is also solidarily liable with the foreign principal for any claims or liabilities arising from the dismissal of the worker.⁵⁹

R.A. No. 8042 is a police power measure intended to regulate the recruitment and deployment of OFWs. It aims to curb, if not eliminate, the

⁵⁸ *Id.* at 98.

⁵⁹ *EDI-Staffbuilders International, Inc. v. NLRC*, *supra* note 28 at 434.



injustices and abuses suffered by numerous OFWs seeking to work abroad.⁶⁰ In *Sameer*, we explained that the provision on joint and several liability in R.A. No. 8042 is in line with the state's policy of affording protection to labor and alleviating workers' plight. It assures overseas workers that their rights will not be frustrated by difficulties in filing money claims against foreign employers. 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—at the very least, the foreign employer's local agent—may be made to answer for violations that the foreign employer may have committed. By providing that the liability of the foreign employer may be "enforced to the full extent" against the local agent, the overseas worker is assured of immediate and sufficient payment of what is due them. The local agency that is held to answer for the overseas worker's money claims, however, is not left without remedy. The law does not preclude it from going after the foreign employer for reimbursement of whatever payment it has made to the employee to answer for the money claims against the foreign employer.⁶¹

WHEREFORE, the petition is **DENIED**. Petitioner is ordered to pay respondent:

1. Reimbursement of respondent's placement fee with interest at the rate of 12% *per annum*;
2. Two Million Five Hundred Forty-Eight Thousand Seven Hundred Pesos (₱2,548,700.00) representing Bautista's salaries for the unexpired portion of his contract;
3. Moral damages in the amount of One Hundred Fifty Thousand Pesos (₱150,000.00);
4. Exemplary damages in the amount of One Hundred Fifty Thousand Pesos (₱150,000.00); and
5. Attorney's fees at the rate of 10% of the monetary award exclusive of damages and reimbursement of placement fee in the amount of Two Hundred Fifty-Four Thousand Eight Hundred Seventy Pesos (₱254,870.00).

All monetary awards and damages (except reimbursement of placement fee) shall earn 6% interest from finality of this judgment until fully paid.

SO ORDERED.


FRANCIS H. JARDELEZA
Associate Justice

⁶⁰ *Sto. Tomas v. Salac*, G.R. No. 152542, November 13, 2012, 685 SCRA 245, 262.

⁶¹ *Sameer Overseas Placement Agency, Inc. v. Cabiles*, *supra* note 23 at 68-70.

WE CONCUR:

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

Mariano C. Del Castillo
MARIANO C. DEL CASTILLO
Associate Justice

Alfredo Benjamin S. Caguioa
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

Alexander G. Gesmundo
ALEXANDER G. GESMUNDO
Associate Justice

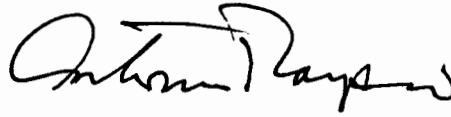
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

**ANTONIO T. CARPIO***Senior Associate Justice*****

**** Per Sec. 12 of Republic Act No. 296, The Judiciary Act of 1948, as amended.