Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

PRINCESS TALENT CENTER PRODUCTION, INC., AND/OR LUCHI SINGH MOLDES,
Petitioners,

- *versus* -

DESIREE T. MASAGCA,
Respondent.

G.R. No. 191310

Present:

SERENO,* *CJ.*,
LEONARDO-DE CASTRO,** *J.*,
Acting Chairperson,
DEL CASTILLO,*
JARDELEZA, and
TIJAM, *JJ.*

Promulgated:
APR 11 2018

x- -x

DECISION

LEONARDO-DE CASTRO, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court filed by petitioners Princess Talent Center Production, Inc. (PTCPI) and Luchi Singh Moldes (Moldes) assailing: (1) the Decision[1] dated November 27, 2009 of the Court of Appeals in CA-G.R. SP No. 110277, which annulled and set aside the Resolutions dated November 11, 2008[2] and January 30, 2009[3] of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 049990-06, and ordered petitioners and their foreign principal, Saem Entertainment Company, Ltd. (SAENCO), to jointly and severally pay respondent Desiree T. Masagca her unpaid salaries for one year, plus attorney's fees; and (2) the Resolution[4] dated February 16, 2010 of the appellate court in the same case, which denied the Motion for Reconsideration of petitioners and SAENCO.

---

* On leave.

** Per Special Order No. 2540 dated February 28, 2018.

* On leave.

1 CA *rollo*, pp. 420-438; penned by Associate Justice Ramon R. Garcia with Associate Justices Portia Aliño-Hormachuelos and Fernanda Lampas Peralta concurring.

2 Id. at 242-247; penned by Presiding Commissioner Gerardo C. Nograles with Commissioners Perlita B. Velasco and Romeo L. Go concurring.

3 Id. at 285-286.

4 Id. at 451-452.

I
FACTUAL ANTECEDENTS

Sometime in November 2002, respondent auditioned for a singing contest at ABC-Channel 5 in Novaliches, Quezon City when a talent manager approached her to discuss her show business potential. Enticed by thoughts of a future in the entertainment industry, respondent went to the office of petitioner PTCPI, a domestic corporation engaged in the business of training and development of actors, singers, dancers, and musicians in the movie and entertainment industry.[5] At the office, respondent met petitioner Moldes, President of petitioner PTCPI, who persuaded respondent to apply for a job as a singer/entertainer in South Korea.

A Model Employment Contract for Filipino Overseas Performing Artists (OPAS) To Korea[6] (Employment Contract) was executed on February 3, 2003 between respondent and petitioner PTCPI as the Philippine agent of SAENCO, the Korean principal/promoter. Important provisions of the Employment Contract are reproduced below:

> 1. DURATION AND PERIOD OF EFFECTIVITY OF THE CONTRACT
>
> 1.1 Duration: This contract shall be enforced for the period of six months, Extendible by another six months by mutual agreement of the parties.
> Affectivity (sic): The contract shall commence upon the Talent's departure from The Philippines (Date 6) and shall remain in force as Stipulated in the duration, unless sooner terminated by the mutual consent of The parties or due to circumstances beyond their control. Booking of Talent Shall be effected within three (3) days upon arrival in Korea, But only after Undergoing Mandatory Post-Arrival Briefing at the Philippine Embassy Overseas Labor Office (POLO), Philippine Embassy in Seoul.
>
> 2. NAME OF PERFORMANCE VENUE:
> *Siheung Tourist Hotel Night Club*
> NAME OF OWNER:
> *Cho Kang Hyung*
> ADDRESS:
> *1622-6 (B2) Jung Wang Dong Siheung Kyung Ki Do*
>
> x x x x
>
> (Subject to ocular inspection, Verification, and approval by the POLO)
>
> 3. COMPENSATION: The Talent shall receive a monthly compensation of a Minimum of U.S.D. $600, (Ranging from U.S.D. 500 to 800 based on The categories of the ARB, skill and

---

5 Id. at 82.
6 Id. at 120-124.

experience of the Talent, and of the Performance Venue) which shall accrue beginning on the day of the Talent's Departure from the Philippines and shall be paid every end of the month directly To The Talent. By the Employer, minus the authorized fees of the Philippine Agent and The Talent Manager, which shall be deducted at a maximum monthly Rates of U.S. $ 100 and U.S. $ 100 for the Philippine Agent and Talent Manager, respectively. *Deductions of $200/month is good for three (3) months only.*

4. HOURS OF WORK, RESTDAY AND OVERTIME PAY

4.1 Hours of work: Maximum of Five (5) hours per day.
4.2 Rest day: One (1) day a week
4.3 Overtime Rate: (100) percent of regular rate or the prevailing rate in Korea as Required by the Labor Standard Act.

x x x x

9. The services of the Talents as provided in this contract shall only be rendered at the Performance Venue identified in this contract. Should there be a need and mutual agreement of the parties for the talent to transfer to another Performance Venue There shall be executed a new contract. The new contract shall be subject of Verification requirement of the Philippine Overseas Labor Office, Philippine Embassy.

x x x x

12. TERMINATION:

A. Termination by the Employer: The Employer may terminate the Contract of Employment for any of the following just causes: serious misconduct or Willful disobedience of the lawful orders of the employer, gross or habitual Neglect of duties, violation of the laws of the host country. When the Termination of the contract is due to the foregoing causes, the Talent shall Bear the cost of repatriation. In addition, the Talent may be liable to Blacklisting and/or other penalties in case of serious offense.

B. Termination by the Talent: The Talent may terminate the contract for any of The following just causes: when the Talent is maltreated by the Employer or Any of his/her associates, or when the employer commits of (sic) the following – Non-payment of Talent salary, underpayment of salary in violation of this Contract, non-booking of the Talent, physical molestation, assault or Subjecting the talent to inhumane treatment or shame. Inhumane treatment Shall be understood to include forcing or letting the talent to be used in Indecent performance or in prostitution. In any of the foregoing case, the Employer shall pay the cost of repatriation and be liable to garnishment of The escrow deposit, aside from other penalties that may arise from a case.

> C. Termination due to illness: Any of the parties may terminate the contract on The ground of illness, disease, or injury suffered by the Talent, where the Latter's continuing employment is prohibited by law or prejudicial to his/her Health, or to the health of the employer, or to others. The cost of the Repatriation of the Talent for any of the foregoing reasons shall be for the Account of the employer.[7]

Respondent left for South Korea on September 6, 2003 and worked there as a singer for nine months, until her repatriation to the Philippines sometime in June 2004. Believing that the termination of her contract was unlawful and premature, respondent filed a complaint against petitioners and SAENCO with the NLRC.

Respondent's Allegations

Respondent alleged that she was made to sign two Employment Contracts but she was not given the chance to read any of them despite her requests. Respondent had to rely on petitioner Moldes's representations that: (a) her visa was valid for one year with an option to renew; (b) SAENCO would be her employer; (c) she would be singing in a group with four other Filipinas[8] at Seaman's Seven Pub at 82-8 Okkyo-Dong, Jung-Gu, Ulsan, South Korea; (d) her Employment Contract had a minimum term of one year, which was extendible for two years; and (e) she would be paid a monthly salary of US$400.00, less US$100.00 as monthly commission of petitioners. Petitioner Moldes also made respondent sign several spurious loan documents by threatening the latter that she would not be deployed if she refused to do so.

For nine months, respondent worked at Seaman's Seven Pub in Ulsan, South Korea – not at Siheung Tourist Hotel Night Club in Siheung, South Korea as stated in her Employment Contract – without receiving any salary from SAENCO. Respondent subsisted on the 20% commission that she received for every lady's drink the customers purchased for her. Worse, respondent had to remit half of her commission to petitioner Moldes for the payment of the fictitious loan. When respondent failed to remit any amount to petitioner Moldes in May 2004, petitioner Moldes demanded that respondent pay the balance of the loan supposedly amounting to US$10,600.00. To dispute the loan, respondent engaged the legal services of Fortun, Narvasa & Salazar, a Philippine law firm, which managed to obtain copies of respondent's Employment Contract and Overseas Filipino Worker Information Sheet. It was only then when respondent discovered that her employment was just for six months and that her monthly compensation was US$600.00, not just US$400.00.

---

7 Id. at 121-123; Quoted portions in italics were handwritten on the Employment Contract.

8 Sheila Marie Tiatco, Carolina Flores, Ma. Cristina Cuba, and Mary Jane Ignacio.

Respondent further narrated that on June 13, 2004, petitioner Moldes went to South Korea and paid the salaries of all the performers, except respondent. Petitioner Moldes personally handed respondent a copy of the loan document for US$10,600.00 and demanded that respondent terminate the services of her legal counsel in the Philippines. When respondent refused to do as petitioner Moldes directed, petitioner Moldes withheld respondent's salary. On June 24, 2004, Park Sun Na (Park), President of SAENCO,[9] went to the club where respondent worked, dragged respondent outside, and brought respondent to his office in Seoul where he tried to intimidate respondent into apologizing to petitioner Moldes and dismissing her counsel in the Philippines. However, respondent did not relent. Subsequently, Park turned respondent over to the South Korean immigration authorities for deportation on the ground of overstaying in South Korea with an expired visa. It was only at that moment when respondent found out that petitioner Moldes did not renew her visa.

Respondent filed the complaint against petitioners and SAENCO praying that a decision be rendered declaring them guilty of illegal dismissal and ordering them to pay her unpaid salaries for one year, inclusive of her salaries for the unexpired portion of her Employment Contract, backwages, moral and exemplary damages, and attorney's fees.

Petitioners' Allegations

Petitioners countered that respondent signed only one Employment Contract, and that respondent read its contents before affixing her signature on the same. Respondent understood that her Employment Contract was only for six months since she underwent the mandatory post-arrival briefing before the Philippine Labor Office in South Korea, during which, the details of her Employment Contract were explained to her. Respondent eventually completed the full term of her Employment Contract, which negated her claim that she was illegally dismissed.

Petitioners additionally contended that respondent, on her own, extended her Employment Contract with SAENCO, and so petitioners' liability should not extend beyond the original six-month term of the Employment Contract because the extension was made without their participation or consent.

Petitioners likewise averred that they received complaints that respondent violated the club policies of SAENCO against wearing skimpy and revealing dresses, dancing in a provocative and immoral manner, and going out with customers after working hours. Respondent was repatriated to the Philippines on account of her illegal or immoral activities. Petitioners also insisted that respondent's salaries were paid in full as evidenced by the

---

9 CA *rollo*, p. 70.

nine cash vouchers[10] dated October 5, 2003 to June 5, 2004. Petitioners submitted the *Magkasamang Sinumpaang Salaysay*[11] of respondent's co-workers, Sheila Marie V. Tiatco (Tiatco) and Carolina Flores (Flores), who confirmed that respondent violated the club policies of SAENCO and that respondent received her salaries.

Petitioners submitted as well the Sworn Statement[12] dated November 9, 2004 of Baltazar D. Fuentes (Baltazar), respondent's husband, to prove that respondent obtained a loan from petitioner PTCPI. Baltazar affirmed that petitioner PTCPI lent them some money which respondent used for her job application, training, and processing of documents so that she could work abroad. A portion of the loan proceeds was also used to pay for their land in Lagrimas Village, Tiaong, Quezon, and respondent's other personal expenses.

Petitioner Moldes, for her part, disavowed personal liability, stating that she merely acted in her capacity as a corporate officer of petitioner PTCPI.

Petitioners thus prayed that the complaint against them be dismissed and that respondent be ordered to pay them moral and exemplary damages for their besmirched reputation, and attorney's fees for they were compelled to litigate and defend their interests against respondent's baseless suit.

Labor Arbiter's Ruling

On May 4, 2006, Labor Arbiter Antonio R. Macam rendered a Decision[13] dismissing respondent's complaint, based on the following findings:

> The facts of the case and the documentary evidence submitted by both parties would show that herein [respondent] was not illegally dismissed. This Office has noted that the POEA approved contract declares that the duration of [respondent's] employment was for six (6) months only. The fact that the duration of [respondent's] employment was for six (6) months only is substantiated by the documentary evidence submitted by both parties. Attached is [respondent's] Position Paper as Annex "D" is a Model Employment Contract for Filipino Overseas Performing Artist to Korea signed by the parties and approved by the POEA. Also attached to the Position Paper of the [petitioners] as Annex "1" is a copy of the Employment Contract signed by the parties and approved by POEA. We readily noted that the common evidence submitted by the parties would prove that [respondent's] employment was for six (6) months only. The deploying agency, Princess Talent Center Production, Inc. processed the [respondent] for a six-month contract only and there is no showing that the deploying agency participated in the

---

10 Id. at 159-167.
11 Id. at 157-158.
12 Id. at 176.
13 Id. at 183-192.

> extension of the contract made by the [respondent] herself. There is likewise no evidence on record which would show that the POEA approved such an extension. As matters now stand, this Office has no choice but to honor the six months duration of the contract as approved by the POEA. The conclusion therefore is that the [respondent] was not illegally dismissed since she was able to finish the duration of the contract as approved by the POEA.
>
> Following the above ruling, the [respondent] is likewise not entitled to the payment of the unexpired portion of the employment contract. This Office could not exactly determine what [respondent] means when she refers to the unexpired portion of the contract. The [respondent] comes to this Office alleging that [petitioners] are still liable to the new extended contract of the employment without however presenting the said contract binding the recruitment agency as jointly and solidarily liable with the principal employer. Such a document is vital as this will prove the participation of the [petitioners] and the latter's assumption of responsibility. Without the presentation of the "extended" contract, the "unexpired portion" could not be determined. [Respondent's] claim therefore for the payment of the unexpired portion of the contract must also fail.
>
> The crux of the present controversy is whether or not [respondent] was paid her salaries during the period she worked in Korea. [Respondent] claims that she was not paid her salaries during the time she worked in Korea. [Petitioners] presented an Affidavit executed by Filipino workers who worked with [respondent] in Korea declaring that they, together with the [respondent], were paid by the foreign employer all their salaries and wages. [Petitioners and SAENCO] likewise presented vouchers showing that the [respondent] received full payment of her salaries during the time that she worked in Korea. In the pleading submitted by the [respondent], she never denied the fact that she indeed signed the vouchers showing full payment of her salaries.
>
> It becomes clear therefore that [respondent] miserably failed to destroy the evidentiary value of the vouchers presented by the [petitioners]. This Office will not dare to declare as void or incompetent the vouchers signed by the [respondent] in the absence of any evidence showing any irregularity so much so that this Office did not fail to notice the inconsistencies in the [respondent's] position paper.
>
> [Respondent's] claim for the payment of overtime pay likewise lacks merit. There was no showing that [respondent] actually rendered overtime work. Mere allegation is not sufficient to establish [respondent's] entitlement to overtime pay. It is [respondent's] obligation to prove that she actually rendered overtime work to entitle her for the payment of overtime pay.[14]

In the end, the Labor Arbiter dismissed for lack of merit respondent's complaint, as well as all other claims of the parties.[15]

---

14 Id. at 189-192.

15 Id. at 192.

Ruling of the NLRC

Respondent appealed the Labor Arbiter's Decision before the NLRC.[16] In a Decision[17] dated May 22, 2008, the NLRC ruled in respondent's favor, reasoning that:

> There is sufficient evidence to establish the fact that [respondent] was not paid her regular salaries. A scrutiny of the vouchers presented shows that it bears the peso sign when in fact the salaries of [respondent] were to be received in Korea. Furthermore, it appears that the vouchers were signed in one instance due to similarities as to how they were written.
>
> Despite the fact that We find the vouchers questionable, they prove that [respondent] was allowed to work beyond the effectivity of her visa. [Petitioners], wanting to prove that they paid [respondent's] salary, presented vouchers for the period starting October 2003 up to June 2004. It covers nine (9) months which implies that, despite having a visa good for six months, they consented to [respondent] working up to nine months. Otherwise, if they were against [respondent's] overstaying in Korea, they could have asked for her deportation earlier. Also, if [respondent] was misbehaving and went against their policy, they could have taken disciplinary action against her earlier.
>
> The "Magkasamang Sinumpaang Salaysay" of Ms. Tiatco and Ms. Flores, which was presented by [petitioners] to prove the alleged immoral acts of [respondent] and that they received their salaries on time, is self-serving and deserves scant weight as the affiants are beholden to [petitioners and SAENCO] from whom they depended their employment.
>
> We find as more credible [respondent's] allegations that she was made to believe that her contract was for one year and that her overstaying in Korea was with the consent of [petitioners and SAENCO], and that when she refused to surrender the 50% of her commission, that was the only time they questioned her stay and alleged that she committed immoral and illegal acts.
>
> Further, the zealousness of [respondent] in filing a case against [petitioners and SAENCO] in different government agencies for different causes of action manifests the intensity of her desire to seek justice for the sufferings she experienced.
>
> There is sufficient evidence to establish that [petitioners and SAENCO] misrepresented to [respondent] the details of her employment and that she was not paid her salaries. Hence, she is entitled to be paid her salaries for one year at the rate of $600 per month as this was what [petitioners and SAENCO] represented to her.
>
> For lack of proof, however, [respondent] is not entitled to her claim for overtime pay.[18]

---

16 Id. at 193-202; Memorandum on Appeal.

17 Id. at 203-208; penned by Presiding Commissioner Gerardo C. Nograles with Commissioners Perlita B. Velasco and Romeo L. Go concurring.

18 Id. at 206-207.

Based on the foregoing, the NLRC ruled:

> WHEREFORE, premises considered, the Decision of Labor Arbiter Antonio R. Macam dated 4 May 2006 is hereby REVERSED and SET ASIDE and a NEW ONE entered ordering [petitioners and SAENCO] to jointly and severally pay [respondent] her salaries for one year at a rate of $600 per month, or a total of US$7,200. The claim for overtime pay is DENIED for lack of sufficient basis.[19]

Acting on the Motion for Reconsideration[20] of petitioners, however, the NLRC issued a Resolution[21] on November 11, 2008, reversing its previous Decision. According to the NLRC, respondent's appeal was dismissible for several fatal procedural defects, to wit:

> Perusal of the records show that [respondent's] new counsel filed on May 31, 2006 a Motion for Extension of Time to File a Motion for Reconsideration due to lack of material time in preparing a Motion for Reconsideration. However, [respondent's] counsel filed a Memorandum of Appeal through registered mail on June 1, 2006 x x x and paid the appeal fee on July 17, 2006 x x x.
>
> Rule VI, Section 4 of the 2005 Revised Rules and Procedures of the National Labor Relations Commission provides that:
>
> > Section 4, requisites for Perfection of Appeal. – a) The appeal shall be: 1) filed within the reglementary period provided in Section 1 of this Rule; 2) verified by the appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, as amended; 3) in the form of a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date the appellant received the appealed decision, resolution or order; 4) in three (3) legibly typewritten or printed copies; and 5) accompanied by i) proof of payment of the required appeal fee, ii) posting of a cash or surety bond as provided in Section 6 of this Rule; iii) a certificate of non-forum shopping; and iv) proof of service upon the other parties.
>
> The above-quoted Rules explicitly provides for the requisites for perfecting an appeal, which [respondent] miserably failed to comply. [Respondent's] Memorandum of Appeal contains no averments as to the date [respondent] or her counsel received the Decision of the Labor Arbiter. The appeal is unverified. No certificate of non-forum shopping was attached to the appeal. The appeal fee was paid only on July 17, 2006, or after more than forty-six (46) days from the filing of the Memorandum of Appeal on June 1, 2006. Lacking these mandatory requirements, [respondent's] appeal is fatally defective, and no appeal was perfected within the reglementary period. Consequently, the Decision of the Labor Arbiter had become final and executory. The belated filing of the

---

19 Id. at 207-208.
20 Id. at 209-228.
21 Id. at 242-247.

> verification and certification on non-forum shopping will not cure its defect and it only proves that indeed [respondent's] appeal was not perfected at all.[22]

Nonetheless, the NLRC set technicalities aside and still proceeded to resolve the case on the merits, ultimately finding that respondent failed to present evidence to prove she had been illegally dismissed:

> We cannot subscribe to [respondent's] contention that she was illegally dismissed from her employment. Records show that the Model Employment Contract presented as evidence by both [respondent] and [petitioners and SAENCO] would prove that [respondent's] employment was for a period of six (6) months only. Aside from [respondent's] allegation that [petitioners and SAENCO] misrepresented to her that her contract is for a period of one (1) year, there is no other evidence on record which will corroborate and strengthen such allegation. We took note of the fact that [respondent's] Model Employment Contract was verified by the Labor Attache of the Philippine Embassy in Korea and duly approved by the Philippines Overseas Employment Administration (POEA). There is no showing that her contract was extended by [petitioners and SAENCO], or that an extension was approved by the POEA. All the pieces of documentary evidence on record prove otherwise.
>
> We agree with [petitioners and SAENCO's] argument that [respondent] was given a copy of her employment contract prior to her departure for Korea because [respondent] was required to submit a copy thereof to the Philippine Labor Office upon her arrival in Korea. We are also convinced that [respondent] read and understood the terms and conditions of her Model Employment Contract because of the following reasons: First, [respondent] was informed thereof when a post arrival briefing was conducted at the Philippine Embassy Overseas Labor Office. This procedure is mandatory, and the booking of the talent shall be effective only within three (3) days after her arrival in Korea. Second, [respondent's] passport shows that her visa is valid only for six (6) months x x x. Third, the Model Employment Contract has been signed by [respondent] on the left hand margin on each and every page and on the bottom of the last page thereof x x x. Fourth, [respondent's] claim that [petitioners and SAENCO] forced her in signing two (2) employment contracts appears to be doubtful considering that she avers that she was not able to read the terms and conditions of her employment contract. It is amazing how she was able to differentiate the contents of the two (2) contracts she allegedly signed without first reading it.
>
> On the basis of the foregoing, [respondent's] contention that she did not know the terms and conditions of her Model Employment Contract, in particular the provision which states that her contract and her visa is valid only for six (6) months, lacks credence. Thus, it can be concluded that she was not dismissed at all by [petitioners and SAENCO] as her employment contract merely expired.
>
> As to [respondent's] allegation that she was not paid her salaries during her stay in Korea, [petitioners and SAENCO] presented cash vouchers and affidavits of co-employees showing that [respondent] was

---

22 Id. at 243-244.

> paid US$600 per month by her Korean employer. [Respondent] failed to prove that the vouchers were faked, or her signatures appearing thereon were falsified. Hence, [respondent] is not entitled to her claim for unpaid salaries.
>
> On her claim for the payment of her salary for the unexpired portion of her contract, We agree with the findings of the Labor Arbiter that the same lacks merit considering that she was able to finish her six (6) month employment contract.[23]

Consequently, the NLRC granted the Motion for Reconsideration of petitioners and reinstated the Labor Arbiter's Decision dated May 4, 2006 dismissing respondent's complaint against petitioners and SAENCO.[24]

In a subsequent Resolution dated January 30, 2009, the NLRC denied respondent's Motion for Reconsideration[25] as it raised no new matters of substance which would warrant reconsideration of the NLRC Resolution dated November 11, 2008.

Ruling of the Court of Appeals

Respondent sought remedy from the Court of Appeals by filing a Petition for *Certiorari*,[26] alleging that the NLRC acted with grave abuse of discretion amounting to excess or lack of jurisdiction in reinstating the Labor Arbiter's Decision.

The Court of Appeals, in its Decision dated November 27, 2009, took a liberal approach by excusing the technical lapses of respondent's appeal before the NLRC for the sake of substantial justice:

> The requisites for perfecting an appeal before the NLRC are laid down in Rule VI of the 2005 Revised Rules of Procedure of the NLRC. Section 4 of the said Rule requires that the appeal shall be verified by the appellant, accompanied by a certification of non-forum shopping and with proof of payment of appeal fee. As a general rule, these requirements are mandatory and non-compliance therewith would render the appealed judgment final and executory. Be that as it may, jurisprudence is replete that courts have adopted a relaxed and liberal interpretation of the rules on perfection of appeal so as to give way to the more prudent policy of deciding cases on their merits and not on technicality, especially if there was substantial compliance with the rules.
>
> In the case of ***Manila Downtown YMCA vs. Remington Steel Corp.***, the Supreme Court held that non-compliance with [the] verification does not necessarily render the pleading fatally defective, hence, the court may order its correction if verification is lacking, or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the Rules may be dispensed with in order that the

---

23 Id. at 245-246.
24 Id. at 246.
25 Id. at 248-258.
26 Id. at 2-34.

ends of justice may thereby served. Moreover, in ***Roadway Express, Inc. vs. CA***, the High Court allowed the filing of the certification against forum shopping fourteen (14) days before the dismissal of the petition. In ***Uy v. LandBank***, the petition was reinstated on the ground of substantial compliance even though the verification and certification were submitted only after the petition had already been originally dismissed.

Here, the records show that [respondent] had no intent to delay or prolong the proceedings before the NLRC. In fact, the NLRC, in its Resolution dated November 11, 2008 took note that [respondent] belatedly filed her verification and certification on non-forum shopping. Such belated filing should be considered as substantial compliance with the requirements of the law for perfecting her appeal to the NLRC. Moreover, the appeal fee was eventually paid on July 17, 2006. Clearly, [respondent] had demonstrated willingness to comply with the requirements set by the rules. Besides, in its earlier Decision dated May 22, 2008, the First Division of the NLRC brushed aside these technicalities and gave due course to [respondent's] appeal.

Verily, We deem it prudent to give a liberal interpretation of the technical rules on appeal, taking into account the merits of [respondent's] case. After all, technical rules of procedure in labor cases are not to be strictly applied in order to serve the demands of substantial justice.[27] (Citations omitted.)

The appellate court then held that respondent was dismissed from employment without just cause and without procedural due process, and that petitioners and SAENCO were solidarily liable to pay respondent her unpaid salaries for one year and attorney's fees:

Time and again, it has been ruled that the *onus probandi* to prove the lawfulness of the dismissal rests with the employer. In termination cases, the burden of proof rests upon the employer to show that the dismissal was for just and valid cause. Failure to do so would necessarily mean that the dismissal was not justified and, therefore, was illegal. In ***Royal Crown Internationale vs. National Labor Relations Commission and Nacionales***, the Supreme Court held that where termination cases involve a Filipino worker recruited and deployed for overseas employment, the burden to show the validity of the dismissal naturally devolves upon both the foreign-based employer and the employment agency or recruitment entity which recruited the worker, for the latter is not only the agent of the former, but is also solidarily liable with its foreign principal for any claims or liabilities arising from the dismissal of the worker.

In the case at bar, [petitioners] failed to discharge the burden of proving that [respondent] was terminated from employment for a just and valid cause.

[Petitioners'] claim that [respondent] was deported because her employment contract has already expired, was without any basis. Before being deployed to South Korea, [petitioners] made [respondent] believe that her contract of employment was for one (1) year. [Respondent] relied

---

27 Id. at 429-431.

on such misrepresentation and continuously worked from September 11, 2003 up [to] June 24, 2004 or for more than nine (9) months. [Petitioners] never questioned her stay beyond the six-month period. If [petitioners] were really against her overstaying in Korea, they could have easily asked their principal, [SAENCO], to facilitate her immediate deportation. Even when [petitioner] Moldes sent the demand letter to [respondent] in May 2004 or when she came to Korea to pay the salaries of the performers in June 2004, she never mentioned that [respondent's] contract has already expired.

Moreover, in the *Model Employment Contract for Filipino Overseas Performing Artists (OPAS)* to Korea filed with the POEA which was entered into between [respondent] and [petitioners], it was categorically stated therein that the name of her performance venue was *Si Heung Tourist Hotel Night Club*, owned by Cho Kang Hyung and with address at Jung Wang Dong Siheung Kuyng Ki Do. However, [respondent] was made to work at Seaman's Seven Pub located at Ulsan, South Korea owned by a certain Lee Young-Gun. [Respondent's] employment contract also states that she should be receiving a monthly salary of US$600.00 and not US$400.00 as represented to her by [petitioner] Moldes.

The Court cannot likewise adhere to [petitioners'] claim that [respondent] committed serious misconduct and willful disobedience to the lawful orders of her employer when she allegedly danced in an immoral manner, wore skimpy costumes, and went out with clients. This Court is convinced from the records and pictures submitted by [respondent] that her Korean employer, Lee Young-Gun, ordered them to wear provocative skirts while dancing and singing to make the pub more attractive to their customers. Even the Seaman's Seven Pub poster itself was advertising its singers and dancers wearing provocative dresses. [Respondent] was not even hired as a dancer, but only as a singer as shown by her Overseas Filipino Worker Information. Besides, if [respondent] was misbehaving offensively as early as September 2003, her employer could have likewise terminated her employment at the earliest opportunity to protect its interest. Instead, [respondent] was allowed to work even beyond the period of her contract. Thus, [petitioners'] defenses appear to be more of an afterthought which could not be given any weight.

Furthermore, [respondent] was not afforded her right to procedural due process of notice and hearing before she was terminated. In the same case of ***Royal Crown Internationale vs. National Labor Relations Commission and Nacionales***, the Supreme Court ruled that all Filipino workers, whether employed locally or overseas, enjoy the protective mantle of Philippine labor and social legislation, contract stipulations to the contrary notwithstanding. This pronouncement is in keeping with the basic policy of the State to afford full protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers.

In the instant case, the records show that [respondent] was publicly accosted and humiliated by one Park Sun Na, the President of [SAENCO], and was brought to its office in Seoul, Korea, which was a six (6) hour drive from the pub. Such acts were witnessed and narrated by Wolfgang Pelzer, a Professor in the School of English, University of Ulsan, South Korea and a frequent client of Seaman's Seven Pub, in his Affidavit dated

> August 16, 2004. When it became apparent that [respondent] would not be apologizing to [petitioner] Moldes nor would she dismiss her lawyer in the Philippines, Park Sun Na turned her over to the local authorities of South Korea. [Respondent] was then deported to the Philippines allegedly for expiration of her visa. Worst, she was not allowed to get her personal belongings which she left at the pub.
>
> It may also be noted that [respondent] went to all the trouble of filing cases against [petitioners] in different government agencies for different causes of action. Such zealousness of [respondent] manifests the intensity of her desire to seek justice for the wrong done to her.[28] (Citations omitted.)

The Court of Appeals determined the respective liabilities of petitioners and SAENCO for respondent's illegal dismissal to be as follows:

> For being illegally dismissed, [respondent] is rightfully entitled to her unpaid salaries for one (1) year at the rate of US$600.00 per month or a total of US$7,200.00. The US$600.00 per month was based on the rate indicated in her contract [of] employment filed with the POEA. [Petitioners] also failed to present convincing evidence that [respondent's] salaries were actually paid. The cash vouchers presented by [petitioners] were of doubtful character considering that they do not bear [SAENCO's] name and tax identification numbers. The vouchers also appear to have been signed in one instance due to the similarities as to how they were written.
>
> [Petitioner PTCPI and SAENCO] should be held solidarily liable for the payment of [respondent's] salaries. In ***Datuman vs. First Cosmopolitan Manpower and Promotion Services, Inc.***, the Supreme Court ruled that private employment agencies are held jointly and severally liable with the foreign-based employer for any violation of the recruitment agreement or contract of employment. This joint and solidary liability imposed by law against recruitment agencies and foreign employers is meant to assure the aggrieved worker of immediate and sufficient payment of what is due him. This is in line with the policy of the state to protect and alleviate the plight of the working class.
>
> We likewise rule that [petitioner] Moldes should be held solidarily liable with [petitioner PTCPI and SAENCO] for [respondent's] unpaid salaries for one year. Well settled is the rule that officers of the company are solidarily liable with the corporation for the termination of employees if they acted with malice or bad faith. Here, [petitioner] Moldes was privy to [respondent's] contract of employment by taking an active part in the latter's recruitment and deployment abroad. [Petitioner] Moldes also denied [respondent's] salary for a considerable period of time and misrepresented to her the duration of her contract of employment.
>
> [Respondent] should also be awarded attorney's fees equivalent to ten percent (10%) of the total monetary awards. In ***Asian International Manpower Services, Inc., (AIMS) vs. Court of Appeals and Lacerna***, the Supreme Court held that in actions for recovery of wages or where an employee was forced to litigate and thus incurred expenses to protect his rights and interests, a maximum of ten percent (10%) of the total monetary

---

28 Id. at 432-435.

> award by way of attorney's fees is justified under Article 111 of the Labor Code, Section 8, Rule VIII, Book III of its Implementing Rules, and paragraph 7, Article 2208 of the Civil Code.[29] (Citations omitted.)

The dispositive portion of the judgment of the appellate court reads:

> **WHEREFORE**, premises considered, the instant petition for *certiorari* is hereby **GRANTED**. The assailed Resolutions of public respondent NLRC, First Division, dated November 11, 2008 and January 30, 2009 are **ANNULLED AND SET ASIDE**. Accordingly, [petitioner PTCPI, SAENCO, and petitioner Moldes] are **ORDERED** to jointly and severally pay [respondent's] unpaid salaries for one (1) year at a rate of US$600.00 *per* month or a total of US$7,200.00. In addition, [petitioners and SAENCO] are ORDERED to jointly and severally pay [respondent] attorney's fees equivalent to ten percent (10%) of the total monetary award.[30]

The Motion for Reconsideration[31] of petitioners was denied by the Court of Appeals in a Resolution dated February 16, 2010 because the issues raised therein were already judiciously evaluated and passed upon by the appellate court in its previous Decision, and there was no compelling reason to modify or reverse the same.

II
THE RULING OF THE COURT

Petitioners filed the instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assigning a sole error on the part of the Court of Appeals:

> The Honorable Court of Appeals erred and abused its action when it ruled that private respondent is entitled to recover from the petitioners her alleged unpaid salaries during her employment in South Korea despite of (sic) the abundance of proof that she was fully paid of (sic) her salaries while working as [an] overseas contract worker in South Korea.[32]

Petitioners maintain that respondent initially worked at Siheung Tourist Hotel Night Club (Siheung Night Club). After completing her six-month employment contract in Siheung Night Club, respondent decided to continue working at Ulsan Seaman's Seven Pub without the consent of petitioners. Throughout her employment in South Korea, respondent's salaries were paid as evidenced by the cash vouchers and Entertainer Wage Roster,[33] which were signed by respondent and attached to the "Reply"[34] dated January 11, 2010 of Park, Chief Executive Officer (CEO) of SAENCO, duly notarized per the Certificate of Authentication[35] dated

---

29 Id. at 435-437.
30 Id. at 437-438.
31 Id. at 439-444.
32 *Rollo*, p. 24.
33 Id. at 37-42.
34 Id. at 34-36.
35 Id. at 32.

January 25, 2010 issued by Consul General Sylvia M. Marasigan of the Philippine Embassy in Seoul, South Korea and the Notarial Certificate of Sang Rock Law and Notary Office, Inc.[36]

Petitioners contend that respondent totally failed to discharge the burden of proving nonpayment of her salaries, yet, the Court of Appeals still ordered petitioners to pay the same on the basis of respondent's bare allegations.

Petitioners also argue that SAENCO would not risk its status as a reputable entertainment and promotional entity by violating South Korean labor law. Petitioners assert that in the absence of any showing that SAENCO was at anytime charged with nonpayment of its employee's salaries before the Labor Ministry of South Korea, petitioners could not be deemed to have breached the Employment Contract with respondent. Petitioners describe respondent's complaint as plain harassment.

Thus, petitioners pray that the Court nullify the Decision dated November 27, 2009 and Resolution dated February 16, 2010 of the Court of Appeals.

The Petition is partly meritorious.

Questions of Fact

It is apparent from a perusal of the Petition at bar that it essentially raises questions of fact. Petitioners assail the findings of the Court of Appeals on the ground that the evidence on record does not support respondent's claims of illegal dismissal and nonpayment of salaries. In effect, petitioners would have the Court sift through, calibrate, and re-examine the credibility and probative value of the evidence on record so as to ultimately decide whether or not there is sufficient basis to hold petitioners liable for the payment of respondent's salaries for one year, plus attorney's fees.[37]

Normally, it is not the task of the Court to re-examine the facts and weigh the evidence on record, for basic is the rule that the Court is not a trier of facts, and this rule applies with greater force in labor cases. Questions of fact are for the labor tribunals to resolve. It is elementary that the scope of this Court's judicial review under Rule 45 of the Rules of Court is confined only to errors of law and does not extend to questions of fact. However, the present case falls under one of the recognized exceptions to the rule, *i.e.*, when the findings of the Labor Arbiter, the NLRC, and/or the Court of Appeals are in conflict with one another. The conflicting findings of the Labor Arbiter, the NLRC, and the Court of Appeals pave the way for this

---

36 Id. at 33.

37 *Quintanar v. Coca-Cola Bottlers, Philippines, Inc.*, G.R. No. 210565, June 28, 2016, 794 SCRA 654, 667-668.

Court to review factual issues even if it is exercising its function of judicial review under Rule 45.[38]

As the Court reviews the evidence on record, it notes at the outset that petitioners are presenting new evidence herein never presented in the previous proceedings, particularly, Park's notarized "Reply" dated January 11, 2010 and the attached Entertainer Wage Roster. The Court is precluded from considering and giving weight to said evidence which are presented for the first time on appeal. Fairness and due process dictate that evidence and issues not presented below cannot be taken up for the first time on appeal.[39]

It is true that the Court had declared in previous cases that strict adherence to the technical rules of procedure is not required in labor cases. However, the Court also highlights that in such cases, it had allowed the submission of evidence for the first time **on appeal with the NLRC** in the interest of substantial justice, and had further required for the liberal application of procedural rules that the party should **adequately explain** the delay in the submission of evidence and should **sufficiently prove** the allegations sought to be proven.[40] In the instant case, petitioners did not submit the evidence during the administrative proceedings before the Labor Arbiter and NLRC or even during the *certiorari* proceedings before the Court of Appeals, and petitioners did not offer any explanation at all as to why they are submitting the evidence only on appeal before this Court. Hence, the Court is not inclined to relax the rules in the present case in petitioners' favor.

Moreover, in its review of the evidence on record, the Court bears in mind the settled rule that in administrative and quasi-judicial proceedings, substantial evidence is considered sufficient. Substantial evidence is more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[41] It is also a basic rule in evidence that each party must prove his/her affirmative allegations. Since the burden of evidence lies with the party who asserts an affirmative allegation, the plaintiff or complainant has to prove his/her affirmative allegation in the complaint and the defendant or the respondent has to prove the affirmative allegations in his/her affirmative defenses and counterclaim.[42]

Petitioner's Illegal Dismissal

The Constitutional guarantee of security of tenure extends to Filipino overseas contract workers as the Court declared in *Sameer Overseas Placement Agency, Inc. v. Cabiles*[43]:

---

38 *Raza v. Daikoku Electronics Phils., Inc.*, 765 Phil. 61, 79 (2015).
39 *Coca-Cola Bottlers, Phils., Inc. v. Daniel*, 499 Phil. 491, 505 (2005).
40 *Loon v. Power Master, Inc.*, 723 Phil. 515, 528 (2013).
41 *Salvador v. Philippine Mining Service Corporation*, 443 Phil. 878, 888-889 (2003).
42 *Jimenez v. National Labor Relations Commission*, 326 Phil. 89, 95 (1996).
43 740 Phil. 403, 421-423 (2014).

Security of tenure for labor is guaranteed by our Constitution.

Employees are not stripped of their security of tenure when they move to work in a different jurisdiction. With respect to the rights of overseas Filipino workers, we follow the principle of *lex loci contractus*.

Thus, in *Triple Eight Integrated Services, Inc. v. NLRC*, this court noted:

> *Petitioner likewise attempts to sidestep the medical certificate requirement by contending that since Osdana was working in Saudi Arabia, her employment was subject to the laws of the host country.* Apparently, petitioner hopes to make it appear that the labor laws of Saudi Arabia do not require any certification by a competent public health authority in the dismissal of employees due to illness.
>
> Again, petitioner's argument is without merit.
>
> First, established is the rule that ***lex loci contractus (the law of the place where the contract is made) governs in this jurisdiction. There is no question that the contract of employment in this case was perfected here in the Philippines. Therefore, the Labor Code, its implementing rules and regulations, and other laws affecting labor apply in this case.*** Furthermore, settled is the rule that the courts of the forum will not enforce any foreign claim obnoxious to the forum's public policy. Here in the Philippines, employment agreements are more than contractual in nature. The Constitution itself, in Article XIII, Section 3, guarantees the special protection of workers, to wit:
>
> > 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. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.
> >
> > x x x x
>
> This public policy should be borne in mind in this case because to allow foreign employers to determine for and by themselves whether an overseas contract worker may be

> dismissed on the ground of illness would encourage illegal or arbitrary pre-termination of employment contracts. x x x.
>
> Even with respect to fundamental procedural rights, this court emphasized in *PCL Shipping Philippines, Inc. v. NLRC*, to wit:
>
> > Petitioners admit that they did not inform private respondent in writing of the charges against him and that they failed to conduct a formal investigation to give him opportunity to air his side. However, petitioners contend that the twin requirements of notice and hearing applies strictly only when the employment is within the Philippines and that these need not be strictly observed in cases of international maritime or overseas employment.
> >
> > The Court does not agree. ***The provisions of the Constitution as well as the Labor Code which afford protection to labor apply to Filipino employees whether working within the Philippines or abroad. Moreover, the principle of lex loci contractus (the law of the place where the contract is made) governs in this jurisdiction.*** In the present case, it is not disputed that the Contract of Employment entered into by and between petitioners and private respondent was executed here in the Philippines with the approval of the Philippine Overseas Employment Administration (POEA). Hence, the Labor Code together with its implementing rules and regulations and other laws affecting labor apply in this case. x x x.
>
> By our laws, overseas Filipino workers (OFWs) may only be terminated for a just or authorized cause and after compliance with procedural due process requirements. (Citations omitted.)

Since respondent's Employment Contract was executed in the Philippines on February 3, 2003, Philippine Constitution and labor laws governed respondent's employment with petitioners and SAENCO. An employee's right to security of tenure, protected by the Constitution and statutes, means that no employee shall be dismissed unless there are just or authorized causes and only after compliance with procedural and substantive due process. A lawful dismissal by an employer must meet both substantive and procedural requirements; in fine, the dismissal must be for a just or authorized cause and must comply with the rudimentary due process of notice and hearing.[44]

It is undisputed that when respondent was dismissed from employment and repatriated to the Philippines in June 2004, her original six-month Employment Contract with SAENCO had already expired.

Per the plain language of respondent's Employment Contract with SAENCO, her employment would be enforced for the period of six months commencing on the date respondent departed from the Philippines, and

---

44 *Venzon v. ZAMECO II Electric Cooperative, Inc.*, G.R. No. 213934, November 9, 2016.

extendible by another six months by mutual agreement of the parties. Since respondent left for South Korea on September 6, 2003, the original six-month period of her Employment Contract ended on March 5, 2004.

Although respondent's employment with SAENCO was good for six months only (*i.e.*, September 6, 2003 to March 5, 2004) as stated in the Employment Contract, the Court is convinced that it was extended under the same terms and conditions for another six months (*i.e.*, March 6, 2004 to September 5, 2004). Respondent and petitioners submitted evidence establishing that respondent continued to work for SAENCO in Ulsan, South Korea even after the original six-month period under respondent's Employment Contract expired on March 5, 2004. Ideally, the extension of respondent's employment should have also been reduced into writing and submitted/reported to the appropriate Philippine labor authorities. Nonetheless, even in the absence of a written contract evidencing the six-month extension of respondent's employment, the same is practically admitted by petitioners, subject only to the defense that there is no proof of their knowledge of or participation in said extension and so they cannot be held liable for the events that transpired between respondent and SAENCO during the extension period. Petitioners presented nine vouchers to prove that respondent received her salaries from SAENCO for nine months. Petitioners also did not deny that petitioner Moldes, President of petitioner PTCPI, went to confront respondent about the latter's outstanding loan at the Seaman's Seven Club in Ulsan, South Korea in June 2004, thus, revealing that petitioners were aware that respondent was still working for SAENCO up to that time.

Hence, respondent had been working for SAENCO in Ulsan, South Korea, pursuant to her Employment Contract, extended for another six-month period or until September 5, 2004, when she was dismissed and repatriated to the Philippines by SAENCO in June 2004. With this finding, it is unnecessary for the Court to still consider and address respondent's allegations that she had been misled into believing that her Employment Contract and visa was good for one year.

Respondent decries that she was illegally dismissed, while petitioners assert that respondent was validly dismissed because of her expired work visa and her provocative and immoral conduct in violation of the club policies.

The Court finds that respondent was illegally dismissed.

Dismissal from employment has two facets: *first*, the legality of the act of dismissal, which constitutes substantive due process; and, *second*, the legality of the manner of dismissal, which constitutes procedural due process. The burden of proof rests upon the employer to show that the disciplinary action was made for lawful cause or that the termination of employment was valid. Unsubstantiated suspicions, accusations, and

conclusions of the employer do not provide legal justification for dismissing the employee. When in doubt, the case should be resolved in favor of labor pursuant to the social justice policy of our labor laws and the 1987 Constitution.[45]

As previously discussed herein, SAENCO extended respondent's Employment Contract for another six months even after the latter's work visa already expired. Even though it is true that respondent could not legitimately continue to work in South Korea without a work visa, petitioners cannot invoke said reason alone to justify the premature termination of respondent's extended employment. Neither petitioners nor SAENCO can feign ignorance of the expiration of respondent's work visa at the same time as her original six-month employment period as they were the ones who facilitated and processed the requirements for respondent's employment in South Korea. Petitioners and SAENCO should also have been responsible for securing respondent's work visa for the extended period of her employment. Petitioners and SAENCO should not be allowed to escape liability for a wrong they themselves participated in or were responsible for.

Petitioners additionally charge respondent with serious misconduct and willful disobedience, contending that respondent violated club policies by engaging in illegal activities such as wearing skimpy and revealing dresses, dancing in an immoral or provocative manner, and going out with customers after working hours. As evidence of respondent's purported club policy violations, petitioners submitted the joint affidavit of Tiatco and Flores, respondent's co-workers at the club.

The Court, however, is not swayed. Aside from their bare allegations, petitioners failed to present concrete proof of the club policies allegedly violated by respondent. The club policies were not written down. There is no allegation, much less, evidence, that respondent was at least verbally apprised of the said club policies during her employment.

To refute petitioners' assertions against her, respondent submitted a poster promoting the club and pictures[46] of respondent with her co-workers at the said club. Based on said poster and pictures, respondent did not appear to be wearing dresses that were skimpier or more revealing than those of the other women working at the club. Respondent also presented the Affidavit[47] dated August 16, 2004 of Wolfgang Pelzer (Pelzer), a Canadian citizen who was a regular patron of the club. According to Pelzer, respondent was appropriately dressed for the songs she sang, and while respondent was employed as a singer, she was also pressured into dancing onstage and she appeared hesitant and uncomfortable as she danced. As between the allegations of Pelzer, on one hand, and those of Tiatco and

---

45 *Maula v. Ximex Delivery Express, Inc.*, G.R. No. 207838, January 25, 2017.
46 *Rollo*, pp. 243-245.
47 Id. at 195-201.

Flores, on the other hand, as regards respondent's behavior at the club, the Court accords more weight to the former as Pelzer can be deemed a disinterested witness who had no apparent gain in executing his Affidavit, as opposed to Tiatco and Flores who were still employed by SAENCO when they executed their joint affidavit.

Lastly, as the Court of Appeals pertinently observed, if respondent was truly misbehaving as early as September 2003 as petitioners alleged, SAENCO would have terminated her employment at the earliest opportunity to protect its interest. Instead, SAENCO even extended respondent's employment beyond the original six-month period. The Court likewise points out that there is absolutely no showing that SAENCO, at any time during the course of respondent's employment, gave respondent a reminder and/or warning that she was violating club policies.

This leads to another finding of the Court in this case, that petitioners also failed to afford respondent procedural due process.

Article 277(b) of the Labor Code, as amended, mandates that the employer shall furnish the worker whose employment is sought to be terminated a written notice stating the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself/herself with the assistance of his/her representative, if he/she so desires. Per said provision, the employer is actually required to give the employee two notices: the first is the notice which apprises the employee of the particular acts or omissions for which his/her dismissal is being sought along with the opportunity for the employee to air his/her side, while the second is the subsequent notice of the employer's decision to dismiss him/her.[48]

Again, the Court stresses that the burden of proving compliance with the requirements of notice and hearing prior to respondent's dismissal from employment falls on petitioners and SAENCO, but there had been no attempt at all by petitioners and/or SAENCO to submit such proof. Neither petitioners nor SAENCO described the circumstances how respondent was informed of the causes for her dismissal from employment and/or the fact of her dismissal.

In contrast, respondent was able to recount in detail the events which led to her dismissal from employment and subsequent repatriation to the Philippines, corroborated in part by Pelzer. It appears that on June 13, 2004, petitioner Moldes personally went to see respondent in Ulsan, South Korea to demand that respondent pay the loan and dismiss the counsel respondent hired in the Philippines to contest the same; respondent, however, refused. On June 24, 2004, Park confronted respondent while she was working at the club, forcibly took her away from the club in Ulsan, and brought her to his office in Seoul. Park tried to intimidate respondent into agreeing to Moldes's

---

48 *Eastern Overseas Employment Center, Inc. v. Bea*, 512 Phil. 749, 755 (2005).

demands. When his efforts failed, Park surrendered respondent to the South Korean authorities and she was deported back to the Philippines on account of her expired work visa.

To reiterate, respondent could only be dismissed for just and authorized cause, and after affording her notice and hearing prior to her termination. SAENCO had no valid cause to terminate respondent's employment. Neither did SAENCO serve two written notices upon respondent informing her of her alleged club policy violations and of her dismissal from employment, nor afforded her a hearing to defend herself. The lack of valid cause, together with the failure of SAENCO to comply with the twin-notice and hearing requirements, underscored the illegality surrounding respondent's dismissal.[49]

The Liabilities of Petitioners and SAENCO

From its findings herein that (1) respondent's Employment Contract had been extended for another six months, ending on September 5, 2004; and (2) respondent was illegally dismissed and repatriated to the Philippines in June 2004, the Court next proceeds to rule on the liabilities of petitioners and SAENCO to respondent.

Respondent's monetary claims against petitioners and SAENCO is governed by Section 10 of Republic Act No. 8042, otherwise known as The Migrant Workers and Overseas Filipinos Act of 1995, which provides:

> 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 the 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.
>
> **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 monetary 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

---

49 *Jardin v. National Labor Relations Commission,* 383 Phil. 187, 198 (2000).

substitution, amendment or modification made locally or in a foreign country of the said contract.

Any compromise/amicable settlement or voluntary agreement on monetary claims inclusive of damages under this section shall be paid within four (4) months from the approval of the settlement by the appropriate authority.

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

The Court finds that respondent had been paid her salaries for the nine months she worked in Ulsan, South Korea, so she is no longer entitled to an award of the same.

It is a settled rule of evidence that the one who pleads payment has the burden of proving it. Even where the plaintiff must allege nonpayment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove nonpayment.[50]

In the case at bar, petitioners submitted nine cash vouchers with respondent's signature. That the nine cash vouchers did not bear the name of SAENCO and its Tax Identification Number is insignificant as there is no legal basis for requiring such. The vouchers clearly state that these were "salary full payment" for the months of October 5, 2003 to June 5, 2004 for US$600.00 to respondent and each of the vouchers was signed received by respondent. After carefully examining respondent's signatures on the nine cash vouchers, and even comparing them to respondent's signatures on all the pages of her Employment Contract, the Court observes that respondent's signatures on all documents appear to be consistently the same. The consistency and similarity of respondent's signatures on all the documents supports the genuineness of said signatures. At this point, the burden of evidence has shifted to respondent to negate payment of her salaries.

Respondent, though, admits that the signatures on the nine cash vouchers are hers but asserts that she really had not received her salaries and was only made to sign said vouchers all in one instance. Respondent further avers that she was made to believe that her salaries would be deposited to her bank account, and she presents as proof the passbook of her bank account showing that no amount equivalent to her salary was ever deposited.

The Court is not persuaded.

---

50 *Audion Electric Co., Inc. v. National Labor Relations Commission*, 367 Phil. 620, 632 (1999).

Absent any corroborating evidence, the Court is left only with respondent's bare allegations on the matter. Pelzer's statements in his Affidavit concerning the nonpayment of respondent's salaries are hearsay, dependent mainly on what respondent confided to him. It makes no sense to the Court that respondent would agree to an extension of her Employment Contract for another six months if she had not been receiving her salaries for the original six-month period. From her own actuations, respondent does not appear to be totally helpless and gullible. Respondent, in fact, was quite zealous in protecting her rights, hiring one of the well-known law firms in the Philippines to represent her against petitioner Moldes who was demanding payment of a loan which respondent insisted was fictitious. Respondent also stood up to and refused to given in to the demands of both petitioner Moldes and Park even during face-to-face confrontations. The Court then cannot believe that respondent would simply sign the nine cash vouchers even when she did not receive the corresponding salaries for the same. Respondent failed to establish that the passbook she submitted was for her bank account for payroll payments from SAENCO; it could very well just be her personal bank account to which she had not made any deposit. The Court, unlike the Court of Appeals, is not ready to jump to the conclusion that the vouchers were all prepared on the same occasion and disregard their evidentiary value simply based on their physical appearance and in the total absence of any corroborating evidence.

Nonetheless, pursuant to the fifth paragraph of Section 10 of Republic Act No. 8042, respondent is entitled to an award of her salaries for the unexpired three months of her extended Employment Contract, *i.e.*, July to September 2004.[51] Given that respondent's monthly salary was US$600.00, petitioners and SAENCO shall pay respondent a total of US$1,800.00 for the remaining three months of her extended Employment Contract. The said amount, similar to backwages, is subject to legal interest of 12% per annum from respondent's illegal dismissal in June 2004 to June 30, 2013 and 6% per annum from July 1, 2013 to the date this Decision becomes final and executory.[52] Respondent also has the right to the reimbursement of her placement fee with interest of 12% per annum from her illegal dismissal in June 2004 to the date this Decision becomes final and executory.[53]

Moreover, the award of attorney's fees to respondent is likewise justified. It is settled that in actions for recovery of wages or where an employee was forced to litigate and incur expenses to protect his/her right

---

51 The clause "or for three months for every year of the unexpired term, whichever is less" in the fifth paragraph of Section 10 of Republic Act No. 8042 was declared unconstitutional in *Serrano v. Gallant Maritime Services, Inc.* (601 Phil. 245, 306 [2009]). The said clause was reinstated only after the promulgation of Republic Act No. 10022 on March 8, 2010 (*Sameer Overseas Placement Agency, Inc. v. Cabiles*, supra note 43 at 434). It will not be applied in this case since respondent's employment and dismissal occurred in the years 2003 to 2004.

52 *Nacar v. Gallery Frames*, 716 Phil. 267, 281 (2013).

53 Fifth paragraph, Section 10 of Republic Act No. 8042.

and interest, he/she is entitled to an award of attorney's fees equivalent to 10% of the award.[54]

Finally, all of the foregoing monetary awards in respondent's favor shall earn legal interest of 6% per annum from the time this Decision becomes final and executory until fully satisfied.[55]

In an attempt to escape any liability to respondent, petitioners assert that only SAENCO should be answerable for respondent's illegal dismissal because petitioners were not privy to the extension of respondent's Employment Contract beyond the original six-month period. Petitioner Moldes additionally argues that she should not be held personally liable as a corporate officer of PTCPI without evidence that she had acted with malice or bad faith.

Petitioners' arguments are untenable considering the explicit language of the second paragraph of Section 10 of Republic Act No. 8042, reproduced below for easier reference:

> 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.

The aforequoted provision is plain and clear, the joint and several liability of the principal/employer, recruitment/placement agency, and the corporate officers of the latter, for the money claims and damages of an overseas Filipino worker is absolute and without qualification. It is intended to give utmost protection to the overseas Filipino worker, who may not have the resources to pursue her money claims and damages against the foreign principal/employer in another country. The overseas Filipino worker is given the right to seek recourse against the only link in the country to the foreign principal/employer, *i.e.*, the recruitment/placement agency and its corporate officers. As a result, the liability of SAENCO, as principal/employer, and petitioner PTCPI, as recruitment/placement agency, for the monetary awards in favor of respondent, an illegally dismissed employee, is joint and several. In turn, since petitioner PTCPI is a juridical entity, petitioner Moldes, as its corporate officer, is herself jointly and solidarily liable with petitioner PTCPI for respondent's monetary awards,

---

54 *Building Care Corporation v. National Labor Relations Commission*, 335 Phil. 1131, 1139 (1997); *United Phil. Lines, Inc. v. Sibug*, 731 Phil. 294, 303 (2014).

55 *Nacar v. Gallery Frames*, supra note 52 at 283.

regardless of whether she acted with malice or bad faith in dealing with respondent.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is **PARTIALLY GRANTED**. The assailed Decision dated November 27, 2009 of the Court of Appeals is **AFFIRMED with MODIFICATIONS**. For the illegal dismissal of respondent Desiree T. Masagca, petitioners Princess Talent Center Production, Inc. and Luchi Singh Moldes, together with Saem Entertainment Company, Ltd., are **ORDERED** to jointly and severally pay respondent the following: (a) US$1,800.00, representing respondent's salaries for the unexpired portion of her extended Employment Contract, subject to legal interest of 12% per annum from June 2004 to June 30, 2013 and 6% per annum from July 1, 2013 to the date that this Decision becomes final and executory; (b) reimbursement of respondent's placement fees with 12% interest per annum from June 2004 to the date that this Decision becomes final and executory; and (c) attorney's fees equivalent to 10% of the total monetary award. The order for payment of respondent's salaries from September 2003 to May 2004 is **DELETED**. All the monetary awards herein to respondent shall earn legal interest of 6% per annum from the date that this Decision becomes final and executory until full satisfaction thereof.

SO ORDERED.

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

WE CONCUR:

On leave
MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

On leave
MARIANO C. DEL CASTILLO
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

ATTESTATION

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

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Acting Chief Justice