SUPREME COURT
SECOND DIVISION

P.I. MANPOWER PLACEMENTS, INC.,
***Petitioner*,**

-versus-

G.R. No. 97369
July 31, 1997

NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION) and NORBERTO CUENTA, SR.,
***Respondents*.**
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D E C I S I O N

MENDOZA, *J.*:

This is a Petition for *Certiorari* and Prohibition to set aside the Decision of the NLRC, affirming the decision of the POEA dated April 20, 1990 which held petitioner P.I. Manpower Placements Inc., LPJ Enterprises Inc. (now ADDISC Enterprises Inc.) and foreign employer Al Jindan Contracting and Trading Establishment jointly and solidarily liable to private respondent Norberto Cuenta, Sr., for the sum of US$10,560.00 representing his unpaid salaries and the unexpired portion of his contract, as well as the resolution of the NLRC denying reconsideration.

The facts of the case, as found by the NLRC, are as follows:

On September 29, 1988, private respondent Norberto Cuenta, Sr., applied to petitioner P.I. Manpower Placements Inc. (P.I. Manpower) for overseas employment as trailer driver. Danny Alonzo, representing himself as an agent of petitioner, accompanied Cuenta to the office of Teresita Rivera, Operations Manager of petitioner. Cuenta was asked to submit his BLT certificate, secure a valid passport, undergo medical examination and pay a placement fee of P10,800.00. Teresita Rivera wrote the Bureau of Land Transportation in behalf of Cuenta to facilitate issuance of the BLT certificate.

When the requirements were almost complete, Rivera, in an urgent letter dated October 27, 1988, told Cuenta to come to her office as soon as possible. For lack of funds, private respondent reported only on November 5, 1988 and made a partial payment of P3,000.00. Rivera allowed Cuenta to pay the balance of P7,800.00 later. Thereafter, she issued a receipt and made Cuenta sign in blank the Agency-Worker Agreement, assuring Cuenta that the terms and conditions of his employment as agreed would be stated in the contract, particularly Cuenta's salary at $440.00 a month.

On November 20, 1988, private respondent was advised of his flight to Dharan, Saudi Arabia. Accordingly, on November 23, 1988, he paid the balance of P7,800.00, although no receipt was issued to him even after he had left. It was when he was already on the plane that he was able to read his employment papers as the same were handed to him by Rivera only before he boarded the plane. To his surprise, Cuenta found out that his deploying agent was LPJ Enterprises, not P.I. Manpower, and that his monthly salary was SR960.00, and not $440.00, which was less than what he and Teresita Rivera had agreed.

Upon arriving in Dharan, Saudi Arabia, Cuenta was assigned by Al Jindan Contracting and Trading Establishment (Al Jindan) to drive a trailer. He was later informed that he would receive an allowance SR200.00 for the first two months but none in the third, because he was on probation. On March 23, 1989, without prior notice and investigation Cuenta was dismissed and told to pack up and surrender his working permit (Iguama).

After arriving home in the Philippines, he immediately saw a certain Mr. Depsi, owner of P.I. Manpower. Cuenta was told, however, that nothing could be done by P.I. Manpower because the obligation of the agency was only to deploy workers, like Cuenta.

In July 1989, private respondent Cuenta filed a complaint in the POEA for illegal dismissal, non-payment of wages and recruitment violations against P.I. Manpower Placements Inc., LPJ Enterprises Inc., and Al Jindan Contracting and Trading Establishment and their respective bonding companies. In addition, he filed criminal charges against Teresita Rivera, Issan El Debs, General Manager of P.I. Manpower, and Danny Alonzo for estafa and illegal recruitment, but the cases were dismissed after the fiscal found no deceit and misrepresentation on the part of the accused.[1]

On April 20, 1990, the POEA, rendered a decision, the dispositive portion of which reads:[2]

> WHEREFORE, respondents P.I. Manpower Placement Inc., and LPG Enterprises, Inc., (Addisc Enterprises) and Al Jindan Cont. and Trading Est. are hereby held jointly and severally liable to pay complainant Norberto Cuenta the following:
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> 1. US$8,800.00 — representing salaries for the unexpired portion of the contract; and
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> 2. US$1,760.00 — representing his unpaid salaries for 4 months of actual service.
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> Or the total amount of $10,560.00 or its peso equivalent at the time of actual payment.

Both parties appealed to the NLRC which, on November 20, 1990, affirmed the decision of the POEA.

On January 2, 1990, petitioner filed a Motion for Reconsideration but its motion was denied on January 21, 1991.[3] Separate Petitions for *Certiorari* were thereafter filed by petitioner and the LPJ Enterprises, questioning the decision of the NLRC.

On July 15, 1991, this Court's First Division, in a resolution of that date, modified the decision of the NLRC. The dispositive part of the resolution in G.R. No. 97857 reads:[4]

> WHEREFORE, the petition is DISMISSED with costs against petitioner. The challenged decision is AFFIRMED, with the modification that the amount of SR400 or its equivalent in Philippine pesos, representing the food allowance paid to the private respondent for two months, shall be deducted from the total amount awarded to him. The temporary restraining order dated May 6, 1991, is LIFTED.

On December 11, 1991, a writ of execution was served upon the petitioner. In an Urgent Motion for the Issuance of a Temporary Restraining Order[5] filed on January 2, 1992, petitioner sought to enjoin the POEA from enforcing the decision against it in view of the pendency of this petition. Its motion was granted on January 20, 1992.[6]

Petitioner contends that the resolution of the NLRC has no factual and legal basis; that private respondent's dismissal was for a just cause because, as stated in the telegram[7] dated April 5, 1989 of the foreign employer, Cuenta was unwilling to work and was threatening to harm others if he was given other assignments. In any event, it is contended that Cuenta cannot question the termination of his employment because he was on probation and thus can be dismissed for failing to meet the minimum standards required by his employer.

Petitioner also argues that public respondent improperly construed the rules on the joint and solidary liability of the placement agency and the foreign employer for claims and liabilities arising from violations of the terms and conditions of the contract. Petitioner claims that Cuenta was a walk-in applicant whose application was accepted only for "manpooling purposes" and that Rivera only referred Cuenta to her friend Danny Alonzo of LPJ Enterprises because Cuenta was in a hurry to get a job. It denies liability under the contract of employment because the Agency-Worker Agreement and the travel exit pass (TEP) show LPJ Enterprises to be the local deploying agent of private respondent.

Denying it was guilty of misrepresentation, petitioner claims that Cuenta read the documents before he left for abroad.

Petitioner disputes the NLRC's assessment that "reprocessing" of applications was evil and asserts that agencies, like itself, which refer applicants to other agencies for employment, help reduce unemployment in the country. Petitioner maintains that its suspension for four months should be sufficient to answer for its "misrepresentation" or for whatever indiscretions it may have committed in the use of its license.

The petition has no merit. The facts of this case amply support the NLRC's findings that Cuenta was not dismissed for cause and that petitioner was privy to Cuenta's contract of employment by taking an active part in the latter's recruitment, justifying thereby the finding that petitioner is jointly and solidarily liable with LPJ Enterprises and Al-Jindan.

First. In termination cases, the burden of proving just and valid grounds for dismissal rests upon the employer.[8] Considering this rule and the evidence of petitioner, particularly the telegram sent by Cuenta's foreign employer to Danny Alonzo, we find no reason to disturb the NLRC's findings that Cuenta was denied a hearing before he was dismissed from employment. In fact, petitioner does not deny that private respondent was asked to leave his job without any notice and investigation at all. The telegram[9] claimed to have been sent by Mohd Abu Dawood, general manager of Al Jindan, has no probative value to prove just cause for Cuenta's dismissal. There is no proof of its due execution and no concrete evidence to support its contents. It does not prove the charge that Cuenta was a dangerous person who carried deadly weapon to work and who failed to meet the minimum requirements set by his employer. Petitioner failed to adduce substantial evidence to prove its allegations.

Nor is there any merit in petitioner's claim that private respondent was a probationary employee who could be dismissed any time. Private respondent was an employee hired for a fixed term whose employment was to end only at the expiration of the period stipulated in his contract.[10] But even if he was a probationary employee, he is nonetheless entitled to constitutional protection of security of tenure

that no worker shall be dismissed except for cause provided by law[11] and after due process.[12]

Second. Cuenta was accepted for immediate deployment. This is shown by the following undisputed facts: Rivera wrote a letter to the Bureau of Land Transportation to facilitate the processing of Cuenta's papers, received from the latter the P3,000.00 as partial payment of the required fees, and the P7,080.00 balance thereof, signed the order of payment accepting the partial payment made by him and approving Cuenta's application for processing, and delivered to Cuenta his employment and travel documents at the airport.[13] As pointed out by the Solicitor General, certain circumstances in this case — such as the fact that Rivera sent Cuenta a letter informing him that an employer was asking for his (Cuenta's) employment papers as soon as possible and the issuance by petitioner of the order of payment showing that Cuenta's papers were approved for processing — indicate that Rivera indeed recruited Cuenta within the meaning of the Labor Code, which defines recruitment as "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not."[14]

Petitioner does not question these facts attributed to Rivera. Instead, it avers that Rivera acted in her personal capacity and denies that it received the money paid by private respondent. Petitioner claims that its general manager did not approve the order of payment because no position was available to accommodate private respondent's application.

This is a self serving claim. The mere fact that the order of payment was not signed by petitioner's general manager does not prove that petitioner did not receive the money paid by Cuenta to Rivera or that petitioner had no knowledge and did not consent to the acts of Rivera. The fact is that Rivera was a responsible officer of petitioner. No evidence was adduced to show that the public was properly warned that without the general manager's approval no order of payment was valid. The fact that private respondent was received in the petitioner's business address and that petitioner's name, seal and address were imprinted in the letters sent by Rivera for the processing and

completion of Cuenta's papers sufficiently make petitioner liable for these transactions. That these documents are accessible to any person is immaterial. What is important is that Rivera, as operations manager of petitioner PI Manpower, used them in the course of petitioner's business, i.e., recruitment. Indeed, except for its denial, petitioner has not presented evidence showing that it disowned Rivera's representations to private respondent.

Third. Petitioner's claim that it had no opening and could not have considered Cuenta's application does not negate the fact that petitioner was instrumental in his deployment. As observed by the NLRC, LPJ Enterprises acted as a confederate agency of P.I. Manpower. With Rivera and Alonzo agreeing to send Cuenta abroad as truck driver for Al Jindan (LPJ's foreign principal), it was immaterial that P.I. Manpower did not have a foreign employer for Cuenta. This further explains why the Agency-Worker Agreement and travel exit pass (TEP) indicate LPJ Enterprises and not to P.I. Manpower to be the recruiter. The POEA's approval could not have been obtained had the name of petitioner appeared therein.

The NLRC correctly found petitioner guilty of misrepresentation. Indeed, Cuenta could not have known that LPJ Enterprises was his local employing agent because he had been dealing with petitioner. His employment documents were given to him only when he was about to board the plane, and therefore he had no time to examine them completely. As the NLRC, pointed out:

> The true relationship between the applicant and the agency is usually revealed only when the former is at the airport and is about to depart or is already abroad, at the time and place where no matter how disadvantageous the contract of employment maybe, in terms of salaries and benefits, prudence would deter the applicant from backing out from the contract, what with all the time, effort, and money he had spent for this.

Petitioner insists that there was no misrepresentation because Cuenta knew that LPJ Enterprises was his agency. Petitioner alleges that Cuenta read the documents and could not have signed the Agency-Worker agreement in blank form because he is not an illiterate individual who could have been made to do that.

The fact, however, is that private respondent, after arriving in the Philippines, promptly went to P.I. Manpower's office and complained to its owner, Mr. Depsi. If Cuenta knew that LPJ Enterprises was his agency, he would have undoubtedly have gone to the latter's office and not to P.I. Manpower. Moreover, we cannot find any reason why Teresita Rivera should go to all the trouble of making sure that private respondent was deployed, if petitioner had no part in the recruitment of Cuenta. That private respondent is not an illiterate who could be victimized is not a reason for finding that he could not have failed to notice that he was signing up for employment overseas with another agency and not with petitioner. He was assured that everything he and Rivera had agreed could be embodied in the contract and he believed Rivera.

Lastly, the finding of the prosecutor in the criminal case filed by Cuenta that there was no misrepresentation and deceit on the part of Teresita Rivera, Issan Al Debs and Danny Alonzo is not binding on the NLRC. The two cases are separate and distinct and require different quantum of evidence and involve different procedure.[15] Furthermore, the POEA and the NLRC conducted independent means of finding the ultimate facts of this case which serve as basis of their decisions. These factual findings of the NLRC, when supported by substantial evidence, are accorded respect if not finality by courts.[16]

Petitioner's reliance on the ruling in Ilas vs. NLRC[17] is misplaced. Unlike in the case at bar, the agency in that case was exonerated from liability (although it appeared as a party in the contract of employment of the complaining workers) because the agency did not consent nor have knowledge of its involvement in recruiting the workers. The complaining workers there admitted that they knew that the agency was not their recruiter and that it was merely used to enable them to travel and obtain travel exit passes as their actual recruitment agency had no license. It was also found that transactions were not made in the business address of the agency. On the other hand, here petitioner actively took part in recruiting and deploying Cuenta. It allowed its name, business premises, office supplies, and other facilities, including the services of its Operations Manager, to be used for the transaction.

Fourth. While the practice of agencies in referring applicants to other agencies for immediate hiring and deployment, what is referred to by the POEA and petitioner as "reprocessing," is not evil per se, agencies should know that the act of endorsing and referring workers is recruitment as defined by law and, therefore, they can be held liable for the consequences thereof. Recruitment, whether a business activity or otherwise, has economic and social consequences, as its failure or success affects the very livelihood of families and, ultimately, of the nation.

The 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. Hence, petitioner's contention that the four-month suspension of its license is enough punishment is without merit.

WHEREFORE, the Petition is **DISMISSED** and the Temporary Restraining Order issued on January 20, 1990 is **LIFTED**. The Decision of the NLRC, as modified in G.R. No. 97857, must now be executed.

SO ORDERED.

Regalado, Romero and Puno, *JJ.*, concur.
Torres, Jr., *J.*, is on leave.

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[1] Rollo, pp. 52-54.
[2] Id., pp. 49-50.
[3] Id., p. 18.
[4] Id., p. 124.
[5] Id., pp. 111-113.
[6] Id., p. 116.
[7] Id., p. 51.
[8] JGB and Associate, Inc. vs. NLRC, 254 SCRA 457 (1996).
[9] Rollo, p. 51.
[10] See Anderson vs. NLRC, 252 SCRA 116 (1996).
[11] NEW LABOR CODE, Arts. 282-283.

[12] See Labajo vs. Alejandro, 165 SCRA 747 (1988).
[13] Id., p. 37.
[14] LABOR CODE, Art. 13(b).
[15] See Office of the Court Administrator vs. Matas, 247 SCRA 9 (1995).
[16] Militante vs. NLRC, 246 SCRA 365 (1995); Sebuguero vs. NLRC, 248 SCRA 532 (1995).
[17] 193 SCRA 682 (1991).