

**ENGR. BENJAMIN B. BERNARDO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (SECOND DIV.), POBAR MARINE SERVICES, INC., TRANS OCEAN SERVICES CO., LTD/MV JUNO ISLAND, RESPOND...**

Ponente: CARANDANG, J.

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**CARANDANG, J.:**

This Petition for Certiorari in accordance with Rule 65 of the 1997 Rules of Civil Procedure was instituted by Engr. Benjamin B. Bernardo to assail, on ground of grave abuse of discretion amounting to lack or excess of jurisdiction, the Decision dated September 29, 2004 of the National Labor Relations Commission, Second Division, in NLRC-NCR-CA No. 036163-03/NLRC-NCR-(M)-02-05-1263-00 (Rollo pp. 19-28), which reversed and vacated the April 2, 2003 Decision of NCR Labor Arbiter Daisy G. Cauton-Barcelona holding “that the ground relied upon by the respondent is not yet obtaining when the repatriation took place”, but granting limited monetary award to petitioner, as follows:

WHEREFORE, in consonance with the foregoing discussion, the Decision of the Labor Arbiter dated April 2, 2003 is hereby reversed and set aside. The Complaint for illegal dismissal is dismissed. Respondents are hereby ordered to pay complainant termination pay equivalent to one month salary in the amount of US\$3,723.00 or its PHP equivalent at the time of payment; his unpaid leave pay for the period January 15, 2002 to May 2, 2002 in the amount of US\$1,158.50 or its PHP equivalent at the time of payment; and ten (10%) percent of the total monetary award as and for attorney’s fees.

All other claims are dismissed for lack of merit.

SO ORDERED.

Likewise impugned in the instant Petition for Certiorari is the Resolution dated April 12, 2005, which denied petitioner’s subsequent Motion for Reconsideration for lack of merit. (Rollo pp. 29-32)

The antecedents of the case are as follows:

Herein petitioner Benjamin B. Bernardo (Bernardo) is a marine vessel engineer by profession. Upon the other hand, private respondent Pobar Marine Services Company, Incorporated (Pobar Marine) is a licensed local manning agency principally engaged in the business of providing seafarers and marine officers for Trans-Ocean Service Company Limited/Iino Marine Services Company, Limited (Trans-Ocean/Iino Marine), among other foreign principals. On December 10, 2001, Pobar Marine engaged the professional services of Bernardo to work as Chief Engineer for Trans-Ocean/Iino Marine on board the Panamanian Bulk Carrier M/V Juno Island. Bernardo’s employment contract, which was duly acknowledged before and approved by the POEA, was for a nine-month period, for which Bernardo was entitled to receive a basic monthly salary of US\$3,723.00, which included fixed overtime pay, leave pay, various allowances, and other emoluments (Contract, Salary Scale, Rollo pp. 44, 47). Accordingly, Bernardo boarded the M/V Juno Island on January 15, 2002, and forthwith commenced his tour of duty.

On February 9, 2002, a serious accident at sea resulted to a massive oil spill at the vessel M/V Minerva Island (a sister vessel of M/V Juno Island) in Soma, at the northern portion of Japan. On April 16, 2002, Bernardo received a formal communication through facsimile transmission from Captain Michihisa Moriya to inform him that due to the oil spillage, Moebius Shipping S.A., the owner of both M/V Minerva Island and M/V Juno Island, has decided to change and transfer the manning of their vessel for the positions of Captain and Chief Engineer from Filipino to Korean personnel (Rollo p. 45). The next day, April 17, 2002, Bernardo received another fax message from Captain Moriya to notify him that the owner of M/V Juno Island, through Pobar, is prepared to satisfy the corresponding compensation for his services by reason of the pre-termination of his contract of employment (Rollo p. 46). Eventually, Bernardo's services were officially terminated on April 29, 2002, and he was repatriated to the Philippines on May 2, 2002. It is undisputed, however, that the actual change and transfer of management for M/V Juno Island - from Iino Marine to Seto Ship Management Company, Limited (Seto Ship) - to undertake the manning of M/V Juno Island did not officially happen until June 15, 2002, or some 47 days after Bernardo was discharged from his post as Chief Engineer.

Aggrieved by the manner by which he was terminated from work, Bernardo instituted a Complaint for Illegal Dismissal against Pobar Marine and its foreign principals Trans-Ocean and Iino Marine before the NCR Arbitration Branch of the NLRC (Rollo pp. 33).

On April 2, 2003, after both parties shall have submitted their respective Position Papers and documentary evidence in support of their claims and defenses, the NCR Arbitration Branch of the NLRC, through Labor Arbiter Daisy G. Cauton-Barcelona, rendered a Decision in favor of Bernardo, disposing as follows:

WHEREFORE, as above discussed, the respondents are hereby ordered to pay the complainant his salaries for the unexpired portion of his contract in the amount of US\$20,288.00 or its PHP equivalent at the time of payment; his unpaid leave pay for the period January 15, 2002 to May 2, 2002 in the amount of US\$1,158.50 or its PHP equivalent at the time of payment.

Ten (10%) percent of the total monetary awards as and for attorney's fees.

The rest of claims are dismissed for lack of factual and legal basis.

SO ORDERED. (Rollo pp. 73-78)

In disagreement with the ruling of the NCR Labor Arbiter, Pobar Marine, Trans-Ocean and Iino Marine interposed an appeal before the NLRC. On September 29, 2004, after due deliberation, the Second Division of the NLRC promulgated the herein assailed Decision in favor of appellants, thereby reversing the April 2, 2003 Decision of the Labor Arbiter (Rollo pp. 19-28).

Bernardo thereafter lodged a Motion for Reconsideration on October 27, 2004 (Rollo pp. 105-113), but the same was denied by the NLRC via the impugned Resolution that it issued on April 12, 2005 (Rollo pp. 30-32).

Hence, Bernardo instituted the instant Petition for Certiorari under Rule 65, predicated on the sole ground that-

The Public Respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in finding that petitioner was legally dismissed based on the private respondent's argument that there was a change of principal.

We affirm the NLRC, but with a modification with respect to the monetary aspect of its ruling.

The main thrust of this Petition deals with the propriety of the pre-termination of Bernardo's contract of employment by reason of the designation of a new captain and Chief Engineer for the marine vessel to which he was employed to work as Chief Engineer. Under the circumstances, the change and transfer of principal to

undertake the stewardship of a marine vessel is a valid ground for the discharge of a seafarer pursuant to Section 26 of the contract that outlines the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, which provides thus:

Section 26. Change of Principal. – (A) Where there is a change of principal necessitating the termination of employment of the seafarer before the date indicated in the Contract, the seafarer shall be entitled to earned wages, repatriation at employer's expense and one month basic pay as termination pay.

As borne by the records of the case, Bernardo was terminated from his position as Chief Engineer of M/V Juno Island on ground of change of principal on April 29, 2002. Upon the other hand, the actual change and official transfer of the manning principal and stewardship of the vessel from Iino Marine to Seto Ship was not effected until June 15, 2002, or after a lapse of 47 days to the date when Bernardo was discharged from his position.

We agree with private respondents that there is a justifiable cause to warrant the severance of Bernardo's employment, it being clear that the principal handling the management and stewardship of M/V Juno Island was indeed removed and changed, thus bringing forth in operation the provision of Section 26. The intervening period between Bernardo's termination and the official change of principal notwithstanding, We hold that Bernardo was removed for a just cause that is definite to happen, though the same was still forthcoming when Bernardo was terminated. Verily, the change of principal for M/V Juno Island was already certain as early as Bernardo's receipt of the April 15, 2002 facsimile communication from Captain Moriya, and true enough the vessel's principal was indeed changed from Filipino to Korean on April 15, 2002, which is demonstrative of the fact Bernardo's removal was not based on a mere fictitious, simulated, or inexistent cause. After a close perusal of the records, We conclude that the change of the vessel's principal is definite, albeit the actual and official effectivity thereof was then still uncertain. Such being the case, Bernardo was removed for just cause, but nonetheless, his termination must be not be reckoned on April 29, 2002, i.e., his actual discharge, but instead on June 15, 2002, which is the date when the just cause for his termination actually assumed its effectivity. As such, Bernardo must be paid his salary for the period covering April 29, 2002 to June 15, 2002, or for a total of 47 days. At the time of his termination, Bernardo was receiving a monthly salary in the aggregate amount of US\$3,723.00, inclusive of guaranteed overtime pay, leave pay, and other fixed allowances per the Salary Scale for M/V Juno Island personnel, which took effect on January 1, 2002. Computing Bernardo's compensation for this period (47 days or 1 ½ months, and two days), Bernardo is entitled to receive the amount of US\$5,832.70, representing his salary for 47 days during which he was improperly considered terminated.

Corollarily, as Bernardo was legitimately removed on ground of change of principal, he is likewise entitled to receive the sum of US\$3,723.00, which is an amount equivalent to one month of his basic salary as termination pay in accordance with Section 26 as quoted hereinabove. All in all, therefore, private respondents must be adjudged liable to pay Bernardo the amount of US\$9,555.70, plus the expenses that he incurred when he was repatriated. Accordingly, the monetary aspect of the judgment of the NLRC must be modified along this line.

Finally, private respondents contend that the Certification on Non-Forum-Shopping in the Petition for Certiorari is fatally defective as the same was signed by Atty. Noel V. Neri as petitioner's counsel, which is a violation of the provision of Section 5, Rule 7 of the 1997 Rules of Civil Procedure. This argument is misplaced. In the case of Condo Suite Club Travel, Incorporated vs. NLRC (323 SCRA 679), the High Court pronounced that a certification of non-forum shopping must be executed by the principal party or petitioner and not by counsel, unless the latter is clothed with a special power of attorney to do so. In the instant case, Atty. Noel V. Neri signed the Certification not as a mere counsel for petitioner, but in his capacity as the duly appointed attorney-in-fact for petitioner on the strength of a Special Power of Attorney, the pertinent portions of which are quoted hereunder, thus:

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I, BENJAMIN B. BERNARDO undersigned employee of POBAR MARINE SERVICE INC., UNO MARINE SERVICE CO. LTD./TRANS-OCEAN SERVICE CO. LTD., of legal age, married/single with postal address c/o PRO LABOR LEGAL ASSISTANCE CENTER (PLACE), do hereby named, constituted, appointed and authorized, and by these presents do name, constitute, appoint and authorize PLACE through its representatives, ATTY. REMIGIO D. SALADERO, JR. and ATTY. NOEL NERI, to be my true and lawful Attorney-In-Fact, for and in my name, place and stead, and for my own use and benefit, to do and perform all or any of the following acts and things, namely:

“1. To represent me in “NLRC OFW CASE NO.02-06-1263-00 entitled “Chief Eng’r. Benjamin B. Bernardo vs. POBAR MARINE SERVICES INC. ET.AL.”, which will be filed with the National Labor Relations Commission, via a Complaint/Petition for Relief from Judgment/Appeal, or in any other court or tribunal, and in all proceedings incident thereto, with full power and authority to file an appeal, petition for certiorari, motions or any other pleadings related to the said case, to enter into an amicable settlement, compromise agreement as well as to admit and deny the existence or non-existence of material facts and documents according to his best judgment and decision.”

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Accordingly, predicated upon Atty. Noel V. Neri's designation as an attorney-in-fact for petitioner, it is, by legal contemplation considered that Atty. Noel V. Neri and petitioner are one and the same individual for purposes of the case, thus, justifying the former's act of signing the Certification for and in behalf of the latter.

WHEREFORE, premises considered, the instant Petition for Certiorari is denied, and the herein assailed September 29, 2004 Decision and April 12, 2005 Resolution of the NLRC, Second Division, are affirmed in so far as the NLRC's conclusion that petitioner Bernardo was terminated for cause. Nevertheless, the judgment of the NLRC is hereby modified, and accordingly private respondents are hereby ordered to pay petitioner the following: (a) US\$9,555.70 or its equivalent in peso at the time of payment; (b) petitioner's expenses relative to his repatriation; and (c) ten percent (10%) of the total monetary award as and by way of attorney's fees.

**SO ORDERED.**

Dacudao, and Perlas-Bernabe, JJ., concur.

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