

CARLOS A. GOTHONG LINES, INC., AND CLEMENT L. GOTHONG, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, AND PRISCILLANO OSORIO, RESPONDENTS.

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

THE CASE

Before this Court is a Petition for Certiorari[1] under Rule 65 of the Rules of Court seeking to set aside the Decision[2] of the public respondent National Labor Relations Commission (NLRC) in NLRC Case No. VAC-04-000262-2013 (RAB Case No. RAB VII-09-1326-12) dated May 31, 2013.

THE PARTIES

Petitioner Carlos A. Gothong Lines, Inc. (CAGLI) is corporation engaged in the shipping business, operating inter-island vessels that transport passengers and/or cargoes to different ports in the Philippines.[3] CAGLI is duly organized and existing by virtue of the laws of the Philippines, with office address at Gothong Building, Reclamation Area, Cebu City.

Petitioner Clement L. Gothong on the other hand is the Chief Operating Officer of CAGLI.[4]

Private Respondent Priscillano Osorio is CAGLI's former 2nd Engineer[5] and is the complainant in RAB Case No. RAB VII-09-1326-12.[6]

The National Labor Relations Commission is the public respondent in the herein proceeding and is impleaded in its nominal capacity.

THE ANTECEDENTS

On December 4, 2010, private respondent Priscillano Osorio was hired by CAGLI as its 3rd Engineer. His duty was to serve as the reliever of the 2nd Engineer. Eventually, Osorio was officially designated as the 2nd Engineer and was assigned to the Manila Bay I. The cargo vessel plies the routes of Cebu-Cagayan de Oro-Ozamis-Nasipit-Manila.

Osorio's primary duties consisted of monitoring, maintaining, troubleshooting and/or fixing the main engines of his assigned vessel. He worked daily without any rest days for eight (8) hours a day. For his services, public respondent was paid a basic salary of P23,000.00 per month. He was likewise given a monthly allowance of P5,000.00. However, his salary did not include payment for holiday pay and premium pay for holiday and special days.[7]

On June 28, 2012, at around 3:45 p.m., seven (7) sets of completely reconditioned and assembled exhaust valves were found missing and presumed stolen from the engine room of Manila Bay I. The theft was discovered by Osorio and a certain oiler named Carlos Ondit while conducting a routine inspection prior to assuming their next regular duty starting at 4:00 p.m. until 8:00 p.m.[8]

On June 30, 2012, an Inter-Office Communication(s)[9] was issued to Osorio directing the latter to show cause concerning the reported lost/ stolen exhaust valves. In the said memorandum, the HRD Head/Counsel Atty. Francisco V. Mijares, Jr. wrote:

“xxx These items weighing around forty (40) kilos each, could not have just disappeared without the knowledge of all engine personnel, considering that due to its size, the same could not easily pass the engine room nor could it be carried alone by one person without being noticed. Xxx”

On July 6, 2012, while Manila Bay I was sailing from Cebu to Manila, four (4) more exhaust valves were stolen. One of the apprentice of the vessel, John Carlo C. Lanoy allegedly saw the thief coming out of the engine room carrying a sack. When the thief noticed the apprentice, he jumped into the water and disappeared.

The incident caused Osorio and Lanoy to immediately report the matter to Chief Supervisor Undo Sanjorjo and Chief Engineer Marcos dela Torre. On the same day, Osorio and Lanoy likewise reported the theft to the Port Police Division of the Philippine Ports Authority.[10]

On July 23, 2012, Osorio submitted his letter[11] of resignation effective August 15, 2012. Private Respondent justified his leaving the company “to seek for greener pasture”.

On July 27, 2012, another Inter-Office Communication(s) was issued by CAGLI. In the said memorandum, it recounted:

“On June 30, 2012, a memorandum was sent to all concerned to show cause why the items should not be charged to the entire engine officers and engine crew for the loss of the items and demanding further to show cause why no action should be taken against them.”

In conclusion to the account of the incident, petitioner CAGLI resolved that the missing items were requested and received by the entire engine personnel of the vessel. Thus, the company is left without option but to require all engine officers and crew to reimburse the value of the items lost. The total value of the items lost amounting to P400,000.00 was to be reimbursed by the employees pro rata depending on their responsibility and salary received.[12]

On August 17, 2012, MV Manila Bay I docked at the Cebu port. Osorio proceeded to the office of CAGLI. There, Osorio informed Clement Gothong that his earlier tendered resignation took effect on August 15, 2012. Pursuant thereto, private respondent requested that he be issued a Clearance and Certificate of Employment/Service. However, Gothong denied the request considering Osorio still had unpaid obligation to CAGLI for the loss of the exhaust valves. Further, Gothong disclosed to private respondent that he shall no longer receive his last salary, monthly allowance and 13[th] month pay in order to settle his payables/ accountabilities.[13]

On August 18, 2012 another Inter-Office Communication(s)[14] was issued to private respondent by CAGLI to show cause and explain in writing why he shall not be meted with “drastic action” for abandonment of position, having disembarked from the vessel M/V Manila Bay I, when the same left the port of Cebu bound for Ozamis City, without the required Disembarkation Order from the office.[15]

The events that transpired led private respondent to file a Complaint[16] before the Regional Arbitration Branch (RAB).

On February 15, 2013, the Labor Arbiter dismissed private respondent's complaint. In resolving the same, the Labor Arbiter found Osorio to have been validly dismissed for just cause. Further, it found CAGLI to have complied with procedural requirements. However, petitioner's decision to terminate Osorio's employment was overtaken by the latter's resignation.[17]

Private Respondent then filed an appeal before the NLRC posing the following issues:

- Whether or not the complainant was dismissed;
- Whether or not the respondents can be compelled to issue a Clearance and Certificate of Employment; and
- Whether or not the complainant is entitled to his money claims.[18]

In resolving the issues raised, the NLRC declared that even if Osorio disembarked without the necessary documents authorizing him to do so, it is clear that the complainant submitted a resignation letter and disembarked on the day of the effectivity thereof. Hence, complainant was not dismissed, he voluntarily resigned.

On the issue pertaining to the issuance of a Clearance and Certificate of Employment, the NLRC ruled that petitioner may not compel CAGLI to issue the same. In doing so, the public respondent ratiocinated that there is no law which obligates employers to issue certificates of employment.

On the third issue, the NLRC ruled, if proven, the petitioners ought to pay Osorio his money claims. The compensation or off-setting of his alleged liabilities is unlawful as the alleged liabilities of Osorio arose from a delict or a crime. Thus, jurisdiction falls under that of the regular courts.[19]

Finally, the NLRC resolved Osorio's money claims as follows:

For failure of the respondent to prove payment, thereof, the complainants should be paid his unpaid one month salary, for the month of July to August 2012, proportionate 13[th] moth pay for 2012, Service Incentive Leave, Monthly Allowance of P5,000.00 for December 2011 and 2012, and Holiday Pay, computed as follows:

a) Unpaid Salary

1 month salary

P 23,000.00

b) Proportionate 13[th] Month Pay

01/01/12 – 08/17/12

7 mos. & 16 days = 7.62 mos.

P23,000.00/mo x 7.62 mos.

12 mos. =

14,605.00

c) SILP

12/04/10-08/17/12

1 yr., 8 mos. & 13 days = 8.54 days

P23,000.00/mo./26 days x 8.54 days =

7,554.62

d) Monthly Allowance

12/2011-08/17/12

8 mos. & 17 days= 8.65 mos.

P5,000.00/mo. x8.65 mos. =

43,250.00

e) Holiday Pay

12/04/10- 8/17/12= 19 holidays

P23,000.00/mo./26 days x 100% x 19 holidays =

16,807.78

Total Award

P105,217.40

However, for failure to prove that the complainant actually rendered overtime and work during his rest days, his claims for overtime pay and rest day pay must fail.[20] xxx

Thus, NLRC held:

“WHEREFORE, premises considered, the decision of the Labor Arbiter is, hereby, SET ASIDE, and a NEW ONE entered, ordering the respondents to pay the complainant the total amount of PESOS: One Hundred Five Thousand Two Hundred Seventeen (P105,217.00).

All other claims are DENIED for lack of merit.”[21]

Petitioners argue, the deduction of the amount of liability of respondent is allowed by law. Under the Implementing Rules of the Labor Code, specifically Book III, Rule VIII, payment for loss or damaged equipment is deductible from the employees' salary if the four requisites are met, namely:

(a)

That the employee concerned is clearly shown to be responsible for the loss or damage;

(b)

That the employee is given reasonable opportunity to show cause why deduction should not be made;

(c)

That the amount of such deductions is fair and reasonable and shall not exceed the actual loss or damage; and

(d)

That the deduction from the wages of the employee does not exceed 20% of the employee's wages in a week.

Petitioners argue that they have shown compliance of the requisites and conditions set by law. Osorio was informed and was given ample opportunity to show cause why deductions should not be made. Further, the Resolution issued by CAGLI shows that the deductions were fairly distributed to all engine officers and crew pro rated on their salaries. In addition, it is private respondent's duty to receive and keep the spare parts worth P400,000.00.[22]

Secondly, petitioners assert that the public respondent committed grave abuse of discretion when it awarded money claims to Osorio. They insist, the award to Osorio save for the unpaid salary of one month will result in an unfair double compensation.

Petitioners allege, private respondent has already been paid his service incentive leave as it is company policy to pay the same every December of the year.

As to the monthly allowance of five thousand pesos (P5,000.00) received, petitioners dispute that the amount is an allowance for Third Engineers who are being "dispensed with and raised to Second Engineer", in view of the scarcity of 2nd Marine Engineers and avoid a ship being unseaworthy for lack of licensed officers. The amount is only given as incentive for someone acting as a second engineer. Petitioners add, there are instances when third engineers act as such and are not assigned to do the job of second engineers.[23]

Petitioners likewise insist, as a second engineer, Osorio is a managerial employee. Osorio is receiving a salary "way above" the minimum wage. His pay already includes payment for holiday pay.[24]

On February 7, 2014, We required private respondent to file comment to the petition filed.[25] In compliance to this Court's directive, on April 10, 2014, private respondent filed his Comment.[26]

Private Respondent asserts, contrary to petitioners' claims, he does not perform any managerial functions. He regularly received his monthly allowance until June 2012. What he failed to receive was his allowance for the month of August 2012.[27]

Private Respondent asseverates, the theft of the seven (7) exhaust valves were discovered by him and the Oiler prior to their tour of duty.[28]

Contrary, to petitioners' statement that no explanation was ever given to the office, Osorio submitted a written explanation dated July 27, 2012 explaining the circumstances of the theft incidents that took place on June 28, 2012 and July 6, 2012.[29]

Further, contrary to the allegations of abandonment on his part, Osorio filed his resignation letter as early as July 23, 2012. In fact, upon filing, he was able to personally convey his reason for leaving to Gothong; that his former employer wanted to hire him for a foreign posting. To this, Gothong replied that he understood. Thus, he would not hinder his plan to work abroad once again.[30]

Thus, private respondent prays for the instant petition to be dismissed for lack of merit. Also, Osorio prays for the assailed Decision to be affirmed except in so far as it denied his prayer for the issuance of a Certificate of Employment.[31]

ISSUES

I

WHETHER OR NOT THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN DISALLOWING PETITIONER CAGLI FROM DEDUCTING THE CORRESPONDING AMOUNT FOR THE LOSS OF THE ITEMS;

II

WHETHER OR NOT THE COMPLAINANT IS ENTITLED TO HIS MONEY CLAIMS;[32]

III

WHETHER OR NOT THE PETITIONERS MAY BE COMPELLED TO ISSUE A CLEARANCE AND CERTIFICATE OF EMPLOYMENT IN FAVOR OF OSORIO;

OUR RULING

Before an employer may deduct from its employees' wages, it should first be established that the making of deductions from the salaries is authorized by law, or regulations issued by the Secretary of Labor. The employer must seek for the determination by the Secretary of Labor through the issuance of appropriate rules and regulations that the policy the former seeks to implement is necessary or desirable in the conduct of business. It bears stressing that without proof that requiring deposits and effecting deductions are recognized practices, or without securing the Secretary of Labor's determination of the necessity or desirability of the same, the imposition of new policies relative to deductions and deposits can be made subject to abuse by the employers. This is not what the law intends.[33]

The Labor Code of the Philippines provides:

ART. 113. Wage Deduction. – No employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees, except:

xxx

(c) In cases where the employer is authorized by law or regulations issued by the Secretary of Labor.

Article 114. Deposits for loss or damage. – No employer shall require his worker to make deposits from which deductions shall be made for the reimbursement of loss of or damage to tools, materials, or equipment supplied by the employer, except when the employer is engaged in such trades, occupations or business where the practice of making deposits is a recognized one, or is necessary or desirable as determined by the Secretary of Labor in appropriate rules and regulations. (Underscoring Supplied)

Petitioners argue, in executing the deductions for loss, they have complied with the requirements provided by law. We disagree. At the outset, We note, in citing the pertinent rule on payment for loss or damaged equipment deductible from an employee's salary, petitioner failed to entirely quote the provision. In doing so, petitioner has attempted to mislead this Court.

For purposes of clarity, We shall quote the subject provision in its entirety:

Sec. 14. Deductions for loss or damages. – Where the employer is engaged in a trade, occupation or business where the practice of making deductions or requiring deposits is recognized, to answer for the reimbursement of loss or damage to tools, materials, or equipment supplied by the employer to the employee, the employer may make wage deductions or require the employees to make deposits from which deductions shall be made, subject to the following conditions:

(a)

That the employee concerned is clearly shown to be responsible for the loss or damage;

(b)

That the employee is given reasonable opportunity to show cause why deduction should not be made;

(c)

That the amount of such deductions is fair and reasonable and shall not exceed the actual loss or damage; and

(d)

That the deduction from the wages of the employee does not exceed 20% of the employee's wages in a week.

A reading of the quoted provision would reveal that petitioner left out the preceding text prior to enumerated conditions. From the cited text, the conditions will only apply when the “employer is engaged in a trade, occupation or business where the practice of making deductions or requiring deposits is recognized, to answer for the reimbursement of loss or damage to tools, materials, or equipment supplied by the employer to the employee”.

In the case at bar, petitioner failed to show that it is engaged in a business where making deductions for loss of an equipment is a recognized practice. Neither would it appear that the circumstances in the instant case meet the conditions prescribed.

Petitioners failed to prove that private respondent is clearly shown to be responsible for the loss. What may be gleaned from the inter-office communication(s) dated June 30, 2012 issued to private respondent memorandum is a directive for private respondent to show cause and explain in writing why he should not be meted with payment of lost items, drastic action/dismissal, filing of criminal charges for qualified theft, and recommendation for revocation of SIRB.

On the other hand, in the inter-office communication(s) dated July 27, 2012 resolving the incidents, petitioner even expressed uncertainty of private respondent's culpability.

“Until today, the loss remained a mystery... This is without prejudice to the filing of a criminal case against the perpetrators of the loss of the items once the evidence shall pinpoint to such commission of theft.”

In justifying the deduction imposed on private respondents and the crew on board, CAGLI'S Counsel Atty. Francisco V. Mijares, Jr. wrote:

“At any rate, the fact remains that these items were requested and received by the entire engine personnel of the vessel... In view of this, the company is left with no option but to require all engine officers and crew to reimburse the value of the items lost.”[34]

From the foregoing, We find the reimbursement of the value of the lost exhaust valves to be arbitrary. Since petitioner CAGLI could not find the person responsible for the thefts, it has unilaterally imposed the liability on every employee on board the vessel.

Based on the Certification[35] issued by the Philippine Ports Authority, Port Police Division, the theft that occurred on July 6, 2012 had an unknown suspect. In contrast thereto, private respondent was even identified as one of the complainants of the said incident.

Thus, there is no showing that private respondent is conclusively responsible for the missing exhaust valves. Consequently, petitioner CAGLI may not make private respondent Osorio assume liability for its value.

The imposition of a sanction of reimbursement likewise violates the third and fourth conditions enumerated. The third condition requires that the amount of such deductions is fair and reasonable and shall not exceed the actual loss or damage. A perusal of the records however show that the value for each exhaust valve was merely alleged by petitioner. No receipts were attached to prove the actual price of the subject exhaust valves. Hence, the amount for the actual loss may not be determined.

The fourth requisite mandates that the deduction from the wages of the employee does not exceed 20% of the employee's wages in a week. As a 2nd Engineer, Osorio was receiving a basic salary of P23,000.00. On the other

hand, petitioner CAGLI imposed on private respondent a reimbursement liability of P70,468.00 to be paid in two years in 24 equal monthly installments.[36] Based on the salary Osorio was receiving and the terms of the liability imposed, it would appear that the deductions to be made on private respondent's salary is beyond the 20% per week limit.

As correctly ruled by the public respondent NLRC, Osorio's alleged liability arose from a delict or crime whose jurisdiction falls under that of the regular courts.[37] Thus, no grave abuse of discretion may be ascribed on the NLRC for disallowing the deductions imposed.

With regard to private respondent's money claims, a review of the records fail to show that petitioner Osorio was paid of his salary for the month of August 2012. Neither does it show that private respondent received his proportionate 13th Month pay for the year 2012, Service Incentive Leave and Monthly Allowance for August 2012. Save for petitioners' claim that private respondent has already been paid his Service Incentive Leave, petitioners have not attached any proof to support the same.

However, We note that the computation of the monetary award granted to Osorio's calculated Osorio's P5,000.00 monthly allowance from "12/2011-08/17/12" or for a duration of "8 mos. & 17 days = 8.65 mos."

We find error in the computation arrived at by public respondent. In private respondent's Comment, contrary to the above conclusion, Osorio admitted to have received his monthly allowance for the previous months. We quote:

"Respondent Company were (sic) also giving its employees, including private respondent, a MONTHLY ALLOWANCE of P5,000.00 PER MONTH. Private respondent, in fact, regularly received this monthly allowance up to July 2012 when he filed his resignation letter. However, he was not given this monthly allowance in the month of August 2012." [38]

As clearly shown from private respondent's admission, the monthly allowance that Osorio is entitled to is only for August 2012. Thus, it was error for the public respondent to award the amount of P43,250.00 to Osorio representing his monthly allowance.

From the records, for the month of August 2012, private respondent Osorio merely worked for a period of 17 days. Accordingly, the computation of private respondent's money claims must be adjusted to reflect the period worked for purposes of determining the unpaid salary and monthly allowance for August 2012.

Finally, as regards the issuance of a Clearance and a Certificate of Employment, We are in accord with the ruling of the public respondent NLRC. At present, there is no law which mandates an employer to issue Clearances and/or Certificates of Employment to its former employees. In the absence thereof, there is no vested right that Osorio can invoke in order to compel petitioner CAGLI to issue the same.

WHEREFORE, the Petition for Certiorari is PARTIALLY GRANTED. The Decision of the public respondent NLRC dated May 31, 2013 in NLRC Case No. VAC- 04-000262-2013 is AFFIRMED WITH MODIFICATION in so far the computation for the Unpaid Salary and Monthly Allowance. For this purpose, the records of this case are hereby REMANDED to the Labor Arbiter for proper computation of said awards in view of this Decision.

SO ORDERED.

Lagura-Yap, M.B., and Lopez, J.Y., JJ., concur.

[1] Rollo, page 3.

- [2] Ibid., page 16.
- [3] Id., page 60.
- [4] Id., page 4.
- [5] Id .page 37.
- [6] Id., page 85.
- [7] Id., page 17.
- [8] Id., page 18.
- [9] Id., page 32.
- [10] Supra, Note 8.
- [11] Id., page 33.
- [12] Id., page 35.
- [13] Id., page 19.
- [14] Id., page 86.
- [15] Id.
- [16] Id., page 38.
- [17] Id., page 45.
- [18] Id., page 20.
- [19] Id., page 21.
- [20] Id., page 22.
- [21] Id., page 23.
- [22] Id., page 8.
- [23] Id. page 9.
- [24] Id.
- [25] Id. page 59.
- [26] Id. page 60.
- [27] Id. page 61.
- [28] Id. page 62.
- [29] Id.
- [30] Id., pages 62-63.
- [31] Id., page 75.
- [32] Id., page 20.

[33] *Bluer Than Blue Joint Ventures Company vs. Glyza Esteban*, G.R. No. 192582, April 7, 2014.

[34] *Id.*, page 35.

[35] *Id.*, page 86.

[36] *Supra*, Note 33.

[37] *Id.*, page 21.

[38] *Id.*, page 61.

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