

SEA SUNSHINE SHIPPING, INC. AND/OR CAPT. JOVENCIO LOPEZ, PETITIONERS, VS. THE NATIONAL LABOR RELATIONS COMMISSION (6TH DIVISION) AND ARNULFO B. SOLLER, RESPONDENTS.

Ponente: LOPEZ, J.

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LOPEZ, J.:

The lone issue raised in this petition for certiorari under Rule 65 is whether a local private employment agency may be held liable for breach of contract for failure to deploy a seafarer.

Private respondent Arnulfo B. Soller (Soller) filed a complaint^[1] against petitioners Sea Sunshine Shipping, Inc., the local manning agent of Junco Naviera, S.A., and Sea Sunshine's president, Capt. Jovencio C. Lopez, for breach of contract, reimbursement of expenses, payment of salaries corresponding to the unexpired portion of the contract, damages and attorney's fees. Soller alleged that he was engaged by Sea Sunshine as ordinary seaman for a period of nine (9) months with basic monthly wage of US\$415.00.^[2] He was told to embark on December 12, 2011. On that date, however, Soller was refused to go on board because, according to Sea Sunshine, the principal considered him too old. Sea Sunshine promised Soller that he will be given a new contract to board another vessel, but no new contract was given to him. Soller argued that Sea Sunshine's refusal to let him board the vessel constitutes breach of the employment contract and amounted to constructive dismissal.^[3]

Sea Sunshine denied Soller's allegations. It admitted that Soller applied for the position of ordinary seaman, but he was not recruited and his application was not processed due to his age of 55. Thus, Soller has no cause of action against Sea Sunshine and is not entitled to damages because Sea Sunshine did not breach its duty. As to the payment of attorney's fees, there is no proof that Soller engaged the services of a lawyer. Lastly, Capt. Lopez cannot be held personally liable for the claims of Soller because he has a separate and distinct personality from Sea Sunshine.^[4]

Soller disproved Sea Sunshine's contention that he was not employed, or that his application was not processed. He attached his employment contract^[5] with Sea Sunshine duly approved by the POEA. He maintained that his age of 55 is not beyond the age limit and is not a ground for dismissal, or termination of contract.^[6]

Sea Sunshine, however, claimed that there is no employer-employee relationship because Soller's employment did not commence. It stressed that under Section 2 of the Standard Employment Contract, an employment contract shall commence upon the actual departure of the seafarer from the airport or seaport in the port of hire. This did not happen.^[7]

In his Decision^[8] dated May 30, 2012, Labor Arbiter Elias H. Salinas ruled for Soller. Sea Sunshine and Capt. Lopez were ordered to jointly and severally pay Soller the sum of US\$3,735.00 corresponding to his unrealized salaries for nine (9) months and ten percent (10%) attorney's fees. On appeal, the NLRC affirmed the Labor Arbiter's Decision.^[9] Failing to secure reconsideration,^[10] Sea Sunshine filed the instant petition for certiorari assailing the NLRC's Decision.

Sea Sunshine cites Section 2[11] of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels and argues that Soller's employment contract is ineffective because he did not depart from the point of hire. Consequently, there is no employer-employee relationship between Sea Sunshine and Soller. Moreover, Soller's employment contract was not submitted to POEA for processing and no Overseas Employment Certificate (OEC) was issued to him. Since Soller was not deployed overseas, there is no basis for his monetary claims. Anent the award of attorney's fees, Soller failed to prove bad faith on the part of Sea Sunshine.

The petition has no merit.

An employment contract, like any other contract, is perfected when (1) the parties come to agree upon its terms; and (2) concur in the essential elements, to wit: (a) consent of the contracting parties, (b) object certain which is the subject matter of the contract, and (c) cause of the obligation.[12]

Here, the agreement between Soller and Sea Sunshine was perfected on December 6, 2011 when they signed the employment contract giving their consent to the stipulated terms and conditions. Thus, upon the perfection of the contract, Sea Sunshine is obligated to deploy Soller. While there is no employer-employee relationship yet pending deployment, Soller is entitled to demand performance. We must stress that the commencement of an employer-employee relationship must be treated separately from the perfection of an employment contract.[13] This was explained in *Santiago v. CF Sharp Crew Management, Inc.*,[14] the authority of both the Labor Arbiter and the NLRC in ruling for Soller, wherein the Supreme Court recognized the rights of the employee to enforce his employment contract before his actual deployment, thus:

The perfection of the contract, which in this case coincided with the date of execution thereof, occurred when petitioner and respondent agreed on the object and the cause, as well as the rest of the terms and conditions therein. The commencement of the employer-employee relationship, as earlier discussed, would have taken place had petitioner been actually deployed from the point of hire. Thus, even before the start of any employer-employee relationship, contemporaneous with the perfection of the employment contract was the birth of certain rights and obligations, the breach of which may give rise to a cause of action against the erring party.

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Respondent's act of preventing petitioner from departing the port of Manila and boarding "MSV Seaspread" constitutes a breach of contract, giving rise to petitioner's cause of action. Respondent unilaterally and unreasonably reneged on its obligation to deploy petitioner and must therefore answer for the actual damages he suffered.

We take exception to the Court of Appeals' conclusion that damages are not recoverable by a worker who was not deployed by his agency. The fact that the POEA Rules are silent as to the payment of damages to the affected seafarer does not mean that the seafarer is precluded from claiming the same. The sanctions provided for non-deployment do not end with the suspension or cancellation of license or fine and the return of all documents at no cost to the worker. They do not forbid a seafarer from instituting an action for damages against the employer or agency which has failed to deploy him.

Consistent with this jurisprudence, We agree with the findings of the NLRC, thus:

The Labor Arbiter cited the Decision of the Supreme Court in the case of *Paul V. Santiago vs. CF Sharp Crew Management, Inc.* xxx which were not disputed by the respondents on Appeal, the facts of which are similar in the instant case. While the Supreme Court recognized that no employer-employee relationship was created between the parties as the employment contract did not commence due to the fact that the Complainant was not able to depart from the airport in the point of hire, the Court made a distinction between the perfection of the

employment contract and the commencement of the employer-employee relationship, thus: xxx

Despite the absence of an employer-employee relationship between the parties, the Supreme Court, in the afore-cited case ruled that the NLRC has jurisdiction over the complaint. The jurisdiction of the Labor Arbiter is not limited to claims arising from employer-employee relationship, but under Section 10 of RA 8042 (Migrant Worker's [A]ct) but also by virtue of any law or contract involving Filipino workers for overseas employment. Conclusively therefore, since the present complaint involves the employment contract entered into by and between Complainant-Soller and the Respondent-Sea Sunshine for overseas deployment, the Complainant's claims are cognizable by the Labor Arbiter of this Commission.

The award of attorney's fee is warranted under the circumstances obtaining, likewise, based on specific provisions of the Civil Code (Article 2208), and consistent with the current jurisprudence in labor cases. xxx

In fine, the findings of the Labor Arbiter are in accordance with the evidence on record, the current jurisprudence, and the law on the matter, the same should not be disturbed.[15]

Accordingly, We find no reason to reverse the findings of the NLRC, which are supported by facts and jurisprudence. We also find appropriate the award of attorney's fees. It is settled that in actions for recovery of wages or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable.[16] Sea Sunshine's failure to deploy Soller based on an unjustified ground forced him to file this case, warranting the award of attorney's fees equivalent to ten percent (10%) of the recoverable amount.[17]

FOR THESE REASONS, the petition is DISMISSED.

SO ORDERED.

Reyes, JR., J.C., (Chairperson) and Inting, JJ., concur.

[1] Rollo, pp. 99-100.

[2] Id., p. 56

[3] Id., pp. 47-54. Position Paper for the Complainant with Motion to Release Passport and Seaman's Book of Complainant. Contract of Employment.

[4] Id., pp. 36-46. Position Paper (for the Respondents) with Motion to Dismiss.

[5] Id., pp. 56-57.

[6] Id., pp. 68-71.

[7] Id., pp. 63-67.

[8] Id., pp. 20-25.

[9] Id., pp. 26-31. Decision promulgated on October 22, 2012. The dispositive portion of the Decision states: "WHEREFORE, the Respondent's Appeal is DENIED and the Decision dated 30 May 2012 is AFFIRMED."

[10] Id., pp. 33-34. Resolution dated November 29, 2012.

[11] SECTION 2. COMMENCEMENT/DURATION OF CONTRACT.

A. The employment contract between the employer and the seafarer shall commence upon actual departure of the seafarer from the Philippine airport or seaport in the point of hire and with a POEA approved contract. It shall be effective until the seafarer's date of arrival at the point of hire upon termination of his employment pursuant to Section 18 of this Contract.

[12] Bright Maritime Corporation (BMC)/Desiree Tenorio v. Ricardo B. Fantonial, G.R. No. 165935, February 8, 2012.

[13] C.F. Sharp & Co. Inc. and John J. Rocha v. Pioneer Insurance & Surety Corporation, et al., G.R. No. 179469, February 15, 2012.

[14] G.R. No. 162419, July 10, 2007, cited in C.F. Sharp & Co. Inc. and John J. Rocha v. Pioneer Insurance & Surety Corporation, et al., *supra*.

[15] Rollo, pp. 29-31.

[16] Exodus International Construction Corporation and Antonio P. Javalera v. Guillermo Biscocho, et al., G.R. No. 166109, February 23, 2011 citing Rutaquio v. National Labor Relations Commission, 375 Phil. 405, 418.

[17] See Bright Maritime Corporation (BMC)/Desiree Tenorio v. Ricardo B. Fantonial, *supra*.

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