

BLUE MARINE INCORPORATED (FORMERLY CEBU MARINE INTEGRATED SERVICES, INC.) AND MA. ELEANOR COMAHIG, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC), REY OMICTIN AND F...

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GALAPATE-LAGUILLES, J:

The instant Petition for Certiorari[1] seeks the annulment and setting aside of the Resolutions dated December 28, 2012[2] and February 14, 2013[3] issued by the National Labor Relations Commission (NLRC) (hereinafter “public respondent”) in NLRC LAC No. 01-000208-12, NLRC NCR-00-02-02269-11 affirming the Labor Arbiter's Decision finding petitioners liable to pay the private respondents separation pay and service incentive leave pay, respectively.

The facts of the case as culled from the records are as follows:

Petitioners are engaged in the business of providing manpower and skilled workers to its varied clients or principals operating boats or superferries. They hired private respondents Rey A. Omictin (Omictin) as a steward from 1996 to 2010[4] and Florida N. Montiadogo (Montiadogo) as a laundrywoman from 2002 to 2009.[5]

Omictin was assigned to different boats or superferries and his job consisted of maintenance of inventory of all housekeeping supplies, preparation of requisition needed for housekeeping supplies, materials and equipment.

In his Position Paper, Omictin alleged that in the performance of his duties during employment, he exceeded expectations. However, on May 19, 2010, he received a Memorandum[6] from the petitioners terminating him from employment for allegedly violating Section 1, No. 2 of the Vessel House Rules which prohibits “drinking of liquor and/or other intoxicating beverages and possession and/or use of illegal substances”. He was earlier found positive for alcohol with a 0.02% rating by the vessel's physician after a previous drinking session with his co-workers outside of the shipyard. He was thereafter forced to sign a Memorandum without the petitioners bothering to explain the contents thereof and its repercussion on his job. He was likewise investigated without the assistance of a counsel as he was not aware of the legal formalities attendant to such investigation. Subsequently, petitioners were able to convince him to sign a Quitclaim and Release[7] in consideration of the sum of P6,822.33 as a token for his long years of service.

On the other hand, Montiadogo's job description states that she was to wash petitioners' superferry uniforms, undershirts, working clothes and over-alls. She alleged that her expenses for food and lodging inside the vessel of Superferry 9 where she was stationed were deducted from her monthly salary. On September 9, 2009, she was informed through a letter that the petitioners are preterminating her contract effective October 9, 2009 due to the cessation of operations of the said vessel.[8] Therafter, she signed a Quitclaim and Release[9] in consideration of the sum of P13,448.66.

Omictin and Montiadogo later on complained that they were illegally dismissed.

Petitioners, on the other hand, admitted that they engaged the services of Montiadogo as a laundrywoman aboard

the Superferry boat for a contract period of six (6) months. After its expiration, her contract was renewed under the same terms and conditions.

Under her new Employment Contract[10], Montigado was ordered to observe rules and regulations in the performance of her duties. Petitioners paid her a daily wage of P250 which included Sundays, rest days and special holidays in accordance with the minimum wage rate applicable to a contractual employee. She was provided with a 5-day service incentive leave and health, safety and welfare benefits. In addition thereto, she was given monthly set of meals at P2,520.00 and board and lodging at P1,000.00.

During the dry-docking of Superferry 9, the vessel where she was assigned, she agreed not to be paid her salaries under the principle of “no work no pay” except when re-assigned to any of its vessels.

On September 9, 2009, Montigado was informed that her Contract of Employment was pre-terminated effective October 9, 2009 due to the sinking of Superferry 9 which led to the cessation of its operations[11]. She had her clearance processed and consequently, she executed a Quitclaim and Release[12] on September 22, 2009 where she acknowledged having received her 13th month pay, service incentive leave pay, and separation pay.

Petitioners also admitted the employment of Omictin with them. They alleged that on February 7, 2010, Superferry 1 was on drydock at the Batangas Pier. At around 7:00 pm, Omictin and his co-workers had a drinking session outside of the shipyard. At around 11:00 pm or after the drinking session, Omictin went to his quarters to sleep. As he was about to sleep, an employee informed him that his drinking buddies had a fight. He got out of his quarters to pacify them and thereafter, he went back to sleep. A few minutes later, his co-workers were fighting again, but his effort to stop them proved futile. Jose Rican Canete, the Security Officer, brought his co-workers for further investigation. In the early morning of the next day, Manuel Diamante and Dr. Carlo Pasco subjected the workers, including Omictin, to alcohol test. Omictin was found positive for alcohol with a 0.02% rating.

Petitioners thereafter sent Omictin a Notice to Explain[13] for violation of the Vessel's House Rules specifically Section 1, No. 2[14] which prohibits drinking of liquor and/or other intoxicating beverages and possession and/or use of illegal substances. They informed him of the corresponding penalty therefor which is dismissal, and required him to explain why he should not be subjected to disciplinary action, including termination. Administrative hearing thereafter ensued. After deliberation, petitioners decided to terminate his employment. On May 12, 2010, Omictin received a Notice of Decision[15] terminating his services. Thereafter, he had his clearance processed and he received his final pay[16].

On September 24, 2011, the Labor Arbiter rendered his Decision[17], the dispositive portion of which reads:

“WHEREFORE, premised on the foregoing considerations, judgment is hereby rendered ordering the respondents to pay.

1. Complainant Omictin: separation pay equivalent to one (1) month pay for every year of service, with a fraction thereof considered as one (1) year, computed from the time of his employment until the date of his illegal dismissal.
2. Both complainants: Unpaid Five (5) days service incentive leave pay subject to the three (3) year prescriptive period under Article 291 of the Labor Code.
3. Complainant Montigado: Underpaid wages by way of salary differential not exceeding three (3) years.

The computation unit of this Office is hereby directed to compute the monetary award of the complainant which forms part of this decision.

Other claims are DISMISSED.

SO ORDERED.”

Feeling aggrieved, petitioners filed an appeal before the public respondent. On December 28, 2012, the said public respondent issued a Resolution[18] dismissing the appeal for lack of merit and affirming in toto the Labor Arbiter's Decision. Thereafter, petitioners moved for a reconsideration[19] of the foregoing ruling but the same was denied in a Resolution[20] dated February 14, 2013.

Hence, this Petition.

The petitioners argue in the main that the factual findings of the NLRC maybe reviewed by this Court where the finding is grounded purely on speculation, surmise and conjectures and that said findings maybe disturbed where it has plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case; that the public respondent committed grave abuse of discretion as its findings of facts are conclusions without citation of specific evidence; that, in the case of Omictin, what the rule prohibits is the intoxication of the seaman while at his place of work; that even though Omictin was at his quarters when he was invited for a drinking session outside the vessel, he is considered to be at work since the vessel is his workplace; that there was just cause to dismiss Omictin as he violated the company rules prohibiting the drinking of intoxicating beverage whether in or out of the vessel; that his actuation constitutes gross misconduct provided under Article 282 of the Labor Code.

With respect to the case of Montiadogo on the other hand, petitioners contend that the public respondent committed grave abuse of discretion when it lumped-up all her (Montiadogo's) employment contracts and concluded that she had been employed for “at least one year” and thus, shall be entitled to the payment of service incentive leave pay. Petitioners insist that there were reasonable intervals after each contract, hence, she could not be characterized as one who have rendered “at least one year of service” and besides, she was already paid this benefit as shown in the Quitclaim and Release which she previously signed. Lastly, petitioners point out to the fact that both Omictin and Montiadogo should be bound by the Quitclaim and Release that they both signed.[21]

On their part, Omictin and Montiadogo argue that the instant Petition fails to prove grave abuse of discretion on the part of the public respondent as the assailed Resolutions are founded on substantial evidence. They further submit that the Quitclaim and Release that they signed do not bar them from claiming what is rightfully due them; that it is a settled rule that the fact that the

employee has signed a satisfaction receipt does not result in a waiver; that they have worked for the petitioners for a period of fourteen (14) and seven (7) years respectively; that their termination from employment were unjust and illegal as they were not given due process; and that with respect to respondent Montiadogo's salary differentials, the general rule provides that one who pleads payment has the burden of proof and since there was no proof of payment submitted by the petitioners, she is indeed entitled to her salary differentials.[22]

We find the Petition partly meritorious.

Contrary to the position taken by the public respondent, We find that Omictin was indeed validly dismissed by the petitioners as they were able to satisfactorily establish that there was a just cause to terminate his employment. Omictin's act of drinking liquor and/or other intoxicating beverages was clearly a violation of the vessel's house rules specifically Section 1, No. 2[23] thereof, which is known to the said employee. The said provision provides “drinking of liquor and/or other intoxicating beverages and possession and/or use of illegal substances. This offense is punishable by dismissal”.

Article 282 (a) (now Article 288) of the Labor Code[24] provides that an employer may terminate an employment because of an employee's serious misconduct. Misconduct is defined as the “transgression of some established

and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment.” For serious misconduct to justify dismissal, the following requisites must be present: (a) it must be serious; (b) it must relate to the performance of the employee's duties; and (c) it must show that the employee has become unfit to continue working for the employer.[25]

Although Omictin was off-duty and was outside of the shipyard when he had a drinking session with his co-workers, this does not negate the fact that he committed an infraction that is tantamount to misconduct. Omictin's job as a steward requires him to be at the vessel whether he is on duty or off-duty. His constant presence thereat requires him to follow the vessel's rules and regulations. The prohibition against intoxication for any seafarer while at his place of work is not difficult to understand. Regardless of whether Omictin was on duty or off-duty, it is required of him to be sober at all times while he is on board the vessel for the same may sail at any given time. Verily, Omictin, while at sea, is expected to be alert, ready and well-prepared against any sea-related dangers or disasters that may transpire. In other words, he must always have the composure and presence of mind in responding to such dangers or disasters, a condition which is almost impossible if he is in an intoxicated state.

That being the case, the award of separation pay is unwarranted. The law is clear. Separation pay is to be awarded only when the cause for termination is not attributable to the employee's fault, such as those provided in Articles 283 and 284 (now Articles 289 and 290) of the Labor Code, as well as in cases of illegal dismissal in which reinstatement is no longer feasible. It is not allowed when an employee is dismissed for just cause, such as serious misconduct.[26]

As a general rule, an employee who has been dismissed for any of the just causes enumerated under Article 282 (now Article 288) of the Labor Code is not entitled to a separation pay. Section 7, Rule I, Book VI of the Omnibus Rules Implementing the Labor Code provides:

“Sec. 7. Termination of employment by employer. — The just causes for terminating the services of an employee shall be those provided in Article 282 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code, without prejudice, however, to whatever rights, benefits and privileges he may have under the applicable individual or collective agreement with the employer or voluntary employer policy or practice.

In exceptional cases, however, the Court has granted separation pay to a legally dismissed employee as an act of "social justice" or on "equitable grounds." In both instances, it is required that the dismissal (1) was not for serious misconduct; and (2) did not reflect on the moral character of the employee.[27] As Omictin was validly dismissed for a serious misconduct, he cannot be given, as a consequence, said separation pay as an act of “social justice” or on “equitable grounds.” It bears emphasis that the constitutional policy to provide full protection to labor is not meant to be a sword to oppress employers. The commitment of this Court to the cause of labor does not prevent us from sustaining the employer when it is in the right, as in this case. We should always be mindful that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.[28]

As to the issue of whether or not the court a quo gravely erred in awarding five (5) days service incentive leave pay in favor of Montigado, We affirm the public respondent's ruling thereon.

The clear policy of the Labor Code is to grant service incentive leave pay to workers in all establishments, subject to a few exceptions. Section 2, Rule V, Book III of the Implementing Rules and Regulations provides that “[e]very employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay.” Service incentive leave is a right which accrues to every employee who has served

within 12 months, whether continuous or broken reckoned from the date the employee started working, including authorized absences and paid regular holidays unless the working days in the establishment as a matter of practice or policy, or that provided in the employment contracts, is less than 12 months, in which case said period shall be considered as one year. It is also “commutable to its money equivalent if not used or exhausted at the end of the year.” In other words, an employee who has served for one year is entitled to it. He may use it as leave days or he may collect its monetary value.[29]

Here, Montiagodo worked for the petitioners for a continuous period of almost seven years at the time of her dismissal. While there appears to be separate employment contracts for Montiagodo, it did not escape Our attention that the periods reflected thereon are so close to each other that whatever interval that may have taken place is negligible. Besides, payment of this benefit is clearly demandable after one year of service — whether continuous or broken. We also note that the petitioners themselves have issued a Certificate of Employment[30] that they contracted Montiagodo as a “laundrywoman” from December 22, 2002 to October 22, 2009.

We do not agree with petitioners' contention that Montiagodo was already paid this legally mandated benefit as the petitioners failed to provide convincing proof, aside from the Quitclaim and Release which the former signed, that it already did so. As aptly pointed out by the Labor Arbiter, “[e]lementary is the rule that in labor standard cases, the only defense available to the employer is that of payment and the best evidence thereof are the official payrolls of the company and/or any other proof of such payment.”[31] Furthermore, well-settled also is the rule that once the employee has set out with particularity in his complaint, position paper, affidavits and other documents the labor standard benefits he is entitled to, and which he alleged that the employer failed to pay him, it becomes the employer’s burden to prove that it has paid these money claims. One who pleads payment has the burden of proving it, and even where the employees must allege non-payment, the general rule is that the burden rests on the employer to prove payment, rather than on the employees to prove non-payment. The reason for the rule is that the pertinent personnel files, payrolls, records, remittances, and other similar documents — which will show that overtime, differentials, service incentive leave, and other claims of the worker have been paid — are not in the possession of the worker but in the custody and absolute control of the employer.[32]

We are not likewise convinced of petitioners' stance that the Quitclaim and Release signed by Montiagodo should have a binding effect and that the same should be upheld. The fact that employees have signed a release and/or quitclaim does not necessarily result in the waiver of their claims. The law strictly scrutinizes agreements in which workers agree to receive less compensation than what they are legally entitled to. That document does not always bar them from demanding benefits to which they are legally entitled.[33] The reason for this policy was explained in the case of *Land and Housing Development Corp., et al. v. Esquillo*[34] citing *Marcos v. National Labor Relations Commission*[35], to wit:

“We have heretofore explained that the reason why quitclaims are commonly frowned upon as contrary to public policy, and why they are held to be ineffective to bar claims for the full measure of the workers’ legal rights, is the fact that the employer and the employee obviously do not stand on the same footing. The employer drove the employee to the wall. The latter must have to get hold of money. Because, out of a job, he had to face the harsh necessities of life. He thus found himself in no position to resist money proffered. His, then, is a case of adherence, not of choice. One thing sure, however, is that petitioners did not relent on their claim. They pressed it. They are deemed not [to] have waived any of their rights. *Renuntiatio non praesumitur*.

Along this line, we have more trenchantly declared that quitclaims and/or complete releases executed by the employees do not estop them from pursuing their claims arising from unfair labor practices of the employer. The basic reason for this is that such quitclaims and/or complete releases are against public policy and, therefore, null and void. The acceptance of termination does not divest a laborer of the right to prosecute his employer for unfair labor practice acts. While there may be possible exceptions to this holding, we do not

perceive any in the case at bar.”

WHEREFORE, the instant Petition is partly GRANTED. The assailed Resolutions dated December 28, 2012 and February 14, 2013 of the public respondent are MODIFIED in that private respondent Omictin is declared to have been validly dismissed for cause, hence, not entitled to separation pay. In this regard, he is hereby DIRECTED to restitute or reimburse whatever amount the petitioners may have paid him by way of separation pay in the event that the Resolutions of the public respondent on this point have already been executed.

As to private respondent Montiagodo, the public respondent's ruling declaring her to be entitled to receive five (5) days service incentive leave pay is AFFIRMED.

SO ORDERED.

Librea-Leagogo, C.C., Chairperson and Lazaro-Javier, A.C., JJ., concur.

[1] Rollo, pp. 3-26.

[2] Id., pp. 33-43.

[3] Id., pp. 45-47.

[4] Id., p. 111.

[5] Id., pp. 153-154.

[6] Id., p. 73.

[7] Id., p.152.

[8] Id., p. 96.

[9] Id., p. 98.

[10] Id., pp. 92-93.

[11] Supra note at 8.

[12] Supra note at 9.

[13] Rollo, p. 63.

[14] Id.

[15] Id., p. 70.

[16] Id., pp. 74-76.

[17] Id., pp. 176-190.

[18] Supra note at 2.

[19] Rollo, pp. 213-218.

[20] Supra note at 3.

[21] Rollo, pp. 281-291.

[22] Id., pp. 297-305.

[23] Supra note at 14.

[24] Art. 288. Termination by Employer. - An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

x x x x.

[25] Yabut v. Manila Electric Co., et al., G.R. No. 190436, January 16, 2012.

[26] Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa (NLM) - KATIPUNAN, G.R. No. 164016, March 15, 2010.

[27] Unilever Philippines, Inc. v. Rivera, G.R. No. 201701, June 3, 2013.

[28] See Magsaysay Maritime Corporation, et al. v. NLRC, et al., G.R. No. 186180, March 22, 2010.

[29] Auto Bus Transport Transport Systems, Inc. v. Bautista, G.R. No. 156367, May 16, 2005.

[30] Rollo, p. 154.

[3] Decision dated September 24, 2011, Supra note at 17.

[32] Heirs of Manuel H. Ridad, et al. v. Gregorio Araneta University Foundation, G.R. No. 188659, February 13, 2013.

[33] Land and Housing Development Corp., et al. v. Esquillo, G.R. No. 152012, September 30, 2005.

[34] Id.

[35] G.R. No. 111744, September 8, 1995.

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