

ANSCOR SWIRE SHIP MANAGEMENT CORP., SWIRE PACIFIC SHIP MANAGEMENT LTD., PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (FIFTH DIVISION) AND FRANCIS HINA-UT, RESPONDENTS.

Ponente: DIAMANTE, FRANCHITO N., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/783e07567a76/>

DIAMANTE, FRANCHITO N., J.:

This Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure seeks to annul and set aside the Decision dated August 30, 2013[1] of the public respondent National Labor Relations Commission (NLRC), Fifth Division, in NLRC Case No. (M) 07-10271-12/ NLRC LAC (OFW-M) No. 01-000113-13.

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

“xxx xxx

Respondent Anscor Swire Ship Management Corporation (Anscor) is a domestic corporation engaged in the business of recruiting and employing Filipino seafarers for its foreign principals, with Eduardo P. Pertierra (Pertierra) as its responsible officer. One of its foreign principals is co-respondent Swire Pacific Shipmanagement Ltd. (Swire), operator of the vessel, M/V Pacific Tenacity” (the vessel).

On January 12, 2012, Anscor, in behalf of Swire, entered into a contract of employment with complainant Francis D. Hina-ut (Hina-ut), a seafarer by profession, under the following terms and conditions:

“1.1 Duration of Contract: 5 MONTH(S)

1.2 Position: GENERAL PURPOSE II/DECK

1.3 Average Monthly Salary: USD 757.00

xxx

1.7 Point of Hire: MANILA, PHILIPPINES”

On February 29, 2012, complainant departed from the point of hire to join the vessel. After four (4) months, complainant was repatriated. On July 6, 2012, Hina-ut filed a complaint for constructive dismissal, non-payment of salaries, moral and exemplary damages, and attorney's fees against respondents.

Complainant averred that in the course of his employment on board the vessel, it had to transport exploration materials to Basrah, Iraq for its client Shell Ali. While in Iraq, he and the other crewmembers of the ship were prohibited from leaving the vessel because Iraq then was a danger zone. Even from afar, they could hear gunfire and bombings. They then returned to Sharjah, United Arab Emirates (UAE) to reload exploration materials for another delivery to Iraq.

Fearing that his life would be endangered anew upon his return to Iraq, complainant requested for his repatriation with the master of the vessel, Alberto Alferan (Alferan). When Alferan conveyed the request of complainant to

the principal office of Swire, the latter rejected his request. Instead, he was told that if he would return home, he would bear the cost of his and his reliever's transportation.

It was, then, when complainant sought the assistance of the Philippine Consulate in Dubai where the principal office of Swire is located. Officers in the consulate told complainant that they would talk to the principal's representative in Dubai.

On June 10, 2012, complainant was repatriated.

Believing that his assignment in then war-torn Iraq was tantamount to his constructive dismissal, he filed the complaint.

For their part, respondents narrated that on April 27, 2012, the Philippine Overseas Employment Administration (POEA) issued Memorandum Circular No. 4, series of 2012 banning the deployment of Filipino overseas workers to Iraq except in the province of Kurdistan. On two (2) occasions, Anscor sought exemption from the ban. They requested that their barges, manned by Filipino sailors, be permitted to deliver to the port of Iraq reasoning that offshore terminals were relatively safe.

On June 1, 2012, POEA considered Anscor's request but directed respondents to increase security measures to ensure the safety of the crew. POEA also conditioned the grant on the undertaking of the master of the vessel not to allow its crewmembers to be on shore leave while in Iraq.

Before complainant left the Philippines, he attended the pre-deployment orientation seminar (PDOS). During the seminar, he was made aware that his vessel might transit in Iraqi waters.

As it was, complainant sought for his immediate repatriation after an assignment on Iraqi shores. He represented that he heard gunshots and bomb explosions during his brief stay in an Iraqi port.

Respondents argue that since it was complainant who requested for the pre-termination of his contract, he cannot validly claim for his salaries equivalent to the the unexpired portion of his term. He should also bear the cost of his repatriation.”[2]

On October 19, 2012, Labor Arbiter Jose Antonio Ferrer rendered a Decision,[3] the dispositive portion of which provides:

“WHEREFORE, premises considered, judgment is hereby rendered finding respondents to have constructively dismissed the complainant. Consequently, respondents are ordered, jointly and severally, to pay the complainant: a) the sum of US\$985.00 representing his salary for the unexpired portion of the contract or its equivalent in Philippine Peso at the time of payment; b) Php100,000.00 as moral damages; c) Php100,000.00 as exemplary damages; and, d) attorney's fees equivalent to ten (10%) of the monetary award.

SO ORDERED.”

Aggrieved, petitioners appealed to the NLRC. The NLRC (5th Division), however, dismissed petitioners' Appeal due to non-perfection for failure to comply with all of the requirements of appeal under the NLRC Rules.[4]

Petitioners subsequently filed a Motion for Reconsideration of the above decision.[5] On August 30, 2013, the NLRC, Fifth Division, issued a Resolution granting petitioner's Motion for Reconsideration but denying the Appeal and affirming the decision dated October 19, 2012 of the Labor Arbiter, thus:

“WHEREFORE, premises considered, judgment is hereby rendered:

- GRANTING the Motion for Reconsideration of respondents; and

- DENYING their Appeal. The Decision of Labor Arbiter Jose Antonio C. Ferrer dated October 19, 2012 is AFFIRMED.

SO ORDERED.”[6]

Thus, petitioners filed before this Court a Petition for Certiorari under Rule 65 on November 12, 2013.[7]

In their petition, petitioners assigned the following errors:

i.
PUBLIC RESPONDENT NLRC GRAVELY ERRED AND ABUSED ITS DISCRETION WHEN IT FAILED TO CONSIDER THAT RESPONDENT WAS NOT CONSTRUCTIVELY DISMISSED IN THIS CASE.

ii
PUBLIC RESPONDENT NLRC HAS CLEARLY ABUSED ITS DISCRETION WHEN IT ALLOWED PRIVATE RESPONDENT TO CLAIM DAMAGES AND ATTORNEY'S FEES.[8]

In affirming the findings of the Labor Arbiter, the public respondent NLRC held that the present case passed the test of constructive dismissal.[9] The danger in Iraq then was clear and present when petitioners still allowed the vessel of private respondent to stop in Iraq for almost a month amidst the terrorist threats. It, therefore, rendered the continued employment of private respondent impossible and unreasonable.[10] Private respondent's deployment to Iraq contrary to government policy of total deployment ban in that country likewise entitled him to recover moral damages and attorney's fees.[11]

Petitioners, however, stressed that private respondent was not constructively dismissed as his resignation or pre-termination of contract was brought about by his own independent judgment and free will.[12] Also, private respondent was made aware of his transit in Iraq, for which he failed to protest in the beginning, and that it was private respondent, who later on, volunteered to pre-terminate his contract.[13]

The petition is unmeritorious.

It is well-settled in this jurisdiction that factual findings of the NLRC, particularly when they coincide with those of the Labor Arbiter, are accorded respect, even finality, and will not be disturbed for as long as such findings are supported by substantial evidence.[14]

Upon a judicious examination of the records, We find no cogent reason to modify or reverse the factual findings of public respondent NLRC which to Our mind were supported by substantial evidence.[15]

In a plethora of cases, the High Court has defined constructive dismissal as a cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or diminution in pay or both; or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee.[16]

The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances. It is an act amounting to dismissal but made to appear as if it were not. Constructive dismissal is, therefore, a dismissal in disguise.[17] The employer is, concededly, charged with the burden of proving that its conduct and action were for valid and legitimate grounds.[18]

In the case at bench, We are one with the lower tribunals in finding that petitioners' actions constituted constructive dismissal. True, private respondent asked for his repatriation but it cannot be denied that he did so only because he feared for his life. Given the unsafe and hazardous working conditions, private respondent may have felt compelled to give up his employment. His decision to leave the vessel, was, therefore, not voluntary as it

was brought about by his instinct of self-preservation and his concern for his safety.

Moreover, there can be no question that private respondent's fear was well-founded. As aptly found by public respondent NLRC, the danger in Iraq was clear and present but petitioners still allowed the vessel of private respondent to stop in Iraq for almost a month amidst the terrorist threats.[19] With the said factual circumstance, it is clear that private respondent was placed in a risky and unsafe situation created by the petitioners. There is, therefore, a sufficient basis for Us to conclude that private respondent had not left the vessel out of his own free will and volition, but due to a real threat to his life.

The risky and unsafe situation brought about by the petitioners was further bolstered by the fact that the former openly defied the government ban on deployment of workers in Iraq.[20] It is well to note that Governing Board Resolution No. 3 and Advisory No. 6, Series of 2012, issued by the POEA imposed total employment ban in Iraq, except in the Iraqi Kurdistan Region, until such time that it has been determined that the security condition has normalized, after due consultation with the Department of Foreign Affairs.[21] On this score, records of the case would indicate that as early as November 8, 2011, petitioners sought approval from POEA for offshore vessel's towing trip to Iraq.[22] On May 17, 2012, petitioners made a follow-up to the said request reiterating that seafarers on board its vessels be exempted from the ban as the offshore terminals are relatively safe.[23] It was only on June 1, 2012 when the OIC Director IV of the POEA issued a letter allowing petitioners to deploy workers to other parts of Iraq.[24]

But it is important to stress that private respondent was deployed on February 29, 2012, and stayed in Iraq from March 29, 2012 to April 27, 2012 and from May to June 1, 2012.[25] Thus, it would only mean that petitioners had deployed private respondent to Iraq even prior to the issuance of the June 1, 2012 letter or even before petitioners were allowed to deploy workers to other parts of Iraq. Records of the case further revealed that petitioners were found administratively liable by POEA for violating the deployment ban, in POEA Case No. RV 12-07-0912. It would also appear that in the said case, petitioners were found liable for misrepresentation not only with the private respondent but also to the POEA as the petitioners never informed the administration that it had already deployed seafarers to vessels that sail for Iraq.[26] For all these reasons, We are convinced that petitioners' blatant disregard of the POEA rules demonstrated a clear manifestation of bad faith which amounted to the eventual constructive dismissal of private respondent.

That private respondent was made aware that the vessel, to which he was deployed, may be in transit within the waters of Iraq and that he failed to protest in the beginning[27] are also not a justification to absolve petitioners of their liabilities. This flimsy excuse certainly deserves scant consideration. As correctly found by the public respondent NLRC, it is sufficient that in the course of his employment, private respondent found his continued stay in the vessel impossible due to petitioners' acts of deploying him to Iraq for almost a month and because of the prospect that petitioners would re-deploy them there.[28] It must be borne in mind that the essence of constructive dismissal is the act of quitting because continued employment is rendered impossible, unreasonable or unlikely.[29] There may be constructive dismissal if an act of [clear discrimination, insensibility, or disdain] by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment.[30] It is, therefore, immaterial that private respondent was made aware that his vessel would traverse the waters of Iraq.

Petitioners further asserted that private respondent was never deployed to Iraq as his vessel was merely in transit or passing through Iraqi waters.[31] Again, petitioners' claim is simply too preposterous. This nonsensical insinuation of petitioners is negated by the fact that private respondent and his colleagues were in Iraq for almost a month.[32] To reiterate, the Governing Board Resolution No. 3 categorically provided that the Department of Foreign Affairs had raised to Alert Level Three (3) the alert level in Iraq, with the exception of Iraqi Kurdistan

Region.[33] But despite this prohibition, private respondent was deployed to and his vessel docked at Basrah, Iraq, wherein the vessel took several trips thereto from March 29, 2012 to April 27, 2012 and from May to June 1, 2012.[34] Verily, petitioners' attempt to thwart the meaning of "deployment" cannot be countenanced by this Court.

Anent the amount of the award due private respondent, Section 10 of R.A. 8042 provides:

SECTION 10. Money Claims. —

xxx xxx In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.

xxx xxx [Emphasis supplied][35]

On the basis of the foregoing legal provision, We agree with the lower tribunals in finding that private respondent is entitled to US\$985 which corresponds to his salary for the unexpired one-month of his contract.

With respect to the award of Php100,000.00 as moral damages, Php100,000.00 as exemplary damages and attorney's fees equivalent to ten (10%) of the monetary award, the lower tribunals committed no grave abuse of discretion in awarding the same to private respondent.

In the case of *Dr. Ernesto I. Maquiling vs. Philippine Tuberculosis Society, Inc.*[36] the High Court held that if the dismissal of the employee was attended by bad faith, fraud, or was done in a manner contrary to morals, good customs or public policy, or that the employer committed an act oppressive to labor, said circumstances warrant an award for moral damages. Exemplary damages may likewise be availed of if the dismissal was effected in a wanton, oppressive or malevolent manner. Here, it is evident that private respondent's dismissal was done oppressively and in bad faith. As discussed earlier, petitioners patently disregarded the POEA rules, particularly the policy of total deployment ban in Iraq. Petitioners were also found liable for misrepresentation for their failure to inform the POEA of the deployment of seafarers to Iraq. All these adequately justify the award of moral damages to alleviate the sufferings of private respondent and exemplary damages by way of example or correction for public good.

With respect to the award of attorney's fees, We hold that the award thereof by the public respondent NLRC was likewise proper in line with the ruling in *Alpha Ship Management Corporation/Junel M. Chan and/or Chuo-Kaiun Company, Limited vs. Eleosis V. Calo*,[37] that in the event that an employee is forced to litigate and incur expenses to protect his rights and interest, he is entitled to an award of attorney's fees equivalent to ten percent (10%) of the total award at the time of actual payment. Thus, pursuant to prevailing jurisprudence, private respondent is entitled to attorney's fees of ten percent (10%) of the monetary award.[38]

To end, We reiterate the time-honored principle that the law looks tenderly on the laborer. It must be underscored that no less than our Constitution looks with compassion on the workingman and protects his rights not only under a general statement of a state policy, but under the Article on Social Justice and Human Rights, thus placing labor contracts on a higher place and with greater safeguards.[39] With this in mind, and after careful appreciation of the facts of the case and applicable jurisprudence, We see no reason to depart from the ruling of the public respondent NLRC.

WHEREFORE, the Petition is DENIED. The Decision dated August 30, 2013 of the public respondent National Labor Relations Commission, Fifth Division, in NLRC Case No. (M) 07-10271-12/ NLRC LAC (OFW-M) No. 01-000113-13 is hereby AFFIRMED. Costs against petitioners.

SO ORDERED.

Dimaampao, J. B., Chairperson, and Salandanan Manahan, C., JJ., concur.

[1] Rollo, pp. 27- 37.

[2] Id. at 28-30.

[3] Id. at 105-113.

[4] Id. at 23-25.

[5] Id. at 149-160.

[6] Id. at 36.

[7] Id. at 2-21.

[8] Id. at 8.

[9] Id. at 31.

[10] Rollo, pp. 30-31.

[11] Id. at 35.

[12] Id. at 9.

[13] Id. at 10.

[14] *Autobus Workers' Union (AWU), et al. vs. National Labor Relations Commission, et al.*, G.R. No. 117453, June 26, 1998.

[15] *Reynaldo Madrigalejos vs. Geminilou Trucking Service, et al.*, G.R. No. 179174, December 24, 2008.

[16] *Mcmer Corporation, Inc., et al. vs. National Labor Relations Commission, et al.*, G.R. No. 193421, June 4, 2014.

[17] Id.

[18] *Diamond Taxi and/or Bryan Ong vs. Felipe Llamas, Jr.*, G.R. No. 190724. March 12, 2014.

[19] Rollo, p. 33.

[20] Id. at 111.

[21] Id. at 49-52.

[22] Id. at 68.

[23] Id. at 69.

[24] Rollo, p. 90.

[25] Id.

[26] Id.

[27] Id. at 10.

[28] Id. at 33.

[29] William Endeliseo Barroga vs. Data Center College of the Philippines, et al., G.R. No. 174158, June 27, 2011.

[30] Hyatt Taxi Services Inc. vs. Rustom M. Catino, G.R. No. 143204, June 26, 2001.

[31] Rollo, p. 10.

[32] Rollo, p. 32.

[33] Id. at 49.

[34] Id. at 90-91.

[35] Flourish Maritime Shipping, et al. vs. Donato A. Almanzor, G.R. No. 177948, March 14, 2008.

[36] G.R. No. 143384, February 4, 2005.

[37] G.R. No. 192034, January 13, 2014.

[38] Leopoldo Abante vs. Kjs Fleet Management Manila, et al., G.R. No. 182430, December 4, 2009.

[39] Brew Master International Inc. vs. National Federation Of Labor Unions (NAFLU), et al., G.R. No. 119243, April 17, 1997.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.