

**ROMEO R. MANZANO, PETITIONER, V. NATIONAL LABOR
RELATIONS COMMISSION, SECOND DIVISION, GLORIA MARITIME
&AGENCY INC., AND/OR SEJIN MARINE AND/OR MR. ROLLY
ALINAG, RESPONDENTS.**

Ponente: TIJAM, J.

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TIJAM, J.:

This is a Petition for Certiorari seeking to reverse and nullify the Decision[1] dated April 14, 2010 of the National Labor Relations Commission (NLRC), Second Division which set aside the Decision[2] of the Labor Arbiter dated June 26, 2009 finding the Petitioner to have been illegally dismissed from employment and awarding him the amounts of US\$3,435.00 as salaries for the unexpired portion of his contract and US\$1,260.00 as unpaid leave pay, plus ten percent (10%) of the total award as attorney's fees. Also subject to be reversed and modified is the Decision[3] dated May 28, 2010 which denied Petitioner's Motion for Reconsideration.

The antecedent facts are as follows:

On November 24, 2008, Petitioner filed before the Arbitration Branch of the NLRC a Complaint for illegal dismissal, underpayment of sick leave pay, discrimination, payment of salaries from November 1 to 12, 2008, salaries for the unexpired portion of his contract, damages and attorney's fees against Gloria Maritime and Agency, Inc. and Sejin Marine Co. Ltd.

In his Position Paper,[4] Petitioner Romeo R. Manzano alleged that on April 24, 2008, he was deployed as an Oiler and joined MV "Fairwind" in Japan pursuant to an employment contract with Private Respondent Gloria Maritime and Agency, Inc., for and in behalf of Sejin Marine Co. Ltd., for a duration of nine (9) months and with a monthly salary of US\$1,374.00 inclusive of fixed overtime pay and leave pay.

On October 21, 2008, while MV "Fairwind" was at Praia Mole Anchorage in Brazil, the engine crew was tasked to work on the main engine piston assembly of the vessel. In the course of their work, the First Engineer directed the Petitioner to hold and tighten the piston with a rope. When Petitioner was pulling the rope, Chief Engineer Onofre T. Latupan was accidentally hit by the rope. Chief Engr. Latupan then uttered demeaning and foul words against the Petitioner which developed into a heated argument. This led Engr. Latupan to angrily choke the Petitioner with a grip on his neck. Petitioner then gave out a punch that hit Engr. Latupan on his mouth. Engr. Latupan retaliated and hit the knees of the Petitioner with a piston ring puller tool which caused him to instantaneously fall down. Thereafter, Petitioner was taken to a physician and he was diagnosed of minor knee injuries.

On November 12, 2008, Petitioner was repatriated to the Philippines. Thereafter, he reported to Private Respondent Gloria Maritime and Agency, Inc. and demanded payment of his salaries for the unexpired portion of his contract and leave pay, but to no avail.

In support of his complaint, Petitioner presented an undated handwritten letter[5] which he executed, narrating

therein the details of what transpired on October 21, 2008. The said letter was signed by 1[st] Engineer Raul V. Docto, 2[nd] Engineer Annelio A. Ondoy, 3rd Engineer Alex Cayetano V. Ecube, No. 2 Oiler Bonifacio C. Lusat and Wiper Felizando B. Lili, Jr., as witnesses.

In their Position Paper,[6] Private Respondents claimed that during the maintenance operation of the piston assembly, Chief Engineer Onofre T. Latupan ordered the Petitioner to heave the rigging rope to prevent the piston from swinging. Petitioner responded in an undesirable attitude by causing the rope and the cable of the remote control in the possession of Engr. Latupan to entangle, which scraped the hand of the latter. Engr. Latupan shouted at the Petitioner telling him to work easily and reprimanded him for his undesirable attitude. After the Petitioner shouted back at Engr. Latupan, the latter pushed the former and told him to follow orders. The Petitioner suddenly hit Engr. Latupan with an open range tool on the head. Hence, Engr. Latupan asked for help and Captain Julito R. Garcia, Master of the vessel, responded and settled the trouble.

To bolster their claim, Private Respondents presented pieces of documentary evidence, viz: 1) Copy of the e-mail (Re: Master's Incident Report) dated October 22, 2008 sent to Sato Steamship Onomichi/Marine SI Captain Iyu, copy furnished to Gloria Maritime and Agency, Inc.'s officer in Manila; 2) A "STATEMENT OF FACT" dated January 6, 2009 signed by Chief Engr. Latupan, noted by Capt. Garcia and witnessed by 1st Engr. Docto, 2[nd] Engr. Ondoy and 3[rd] Engr. Encube; 3) Minutes of the Meeting of the Grievance Machinery dated October 23, 2008 prepared by Capt. Garcia; 4) Pictures on the head injury of Chief Engr. Latupan; 5) Medical Report of Dr. Jose Mauro Mendes dated November 8, 2008; 6) Copy of page 60 of the vessel's logbook; and 7) Copy of the Release dated November 13, 2008 signed by the Petitioner.

In his Reply,[7] Petitioner contended that he was never informed of any complaint lodged against him, and there was no prior investigation that was conducted where he was given the opportunity to present his side of the incident. He further contended that the termination of his employment was not due to insubordination or misconduct but due to company request. He also argued that he was only forced to sign the Release as a condition for the release of his working papers under the custody of the Private Respondents.

Private Respondents, in their Reply[8] claimed that Petitioner attempted to kill Engr. Latupan when he hit him with an open range tool on the head; such an act is a just cause for termination of his employment under Article 282[9] (a) (d) and (e) of the Labor Code. They also claimed that Petitioner was afforded due process before he was terminated from his work as shown by the Minutes of the Meeting of the Grievance Committee. Private Respondents further averred that Petitioner voluntarily executed a waiver and release which discharged them from any monetary claims or other obligations arising from Petitioner's previous employment with the company. They concluded that since Petitioner was validly terminated, there was no basis for his monetary claims.

On June 26, 2009, the Labor Arbiter rendered a Decision[10] declaring that Petitioner was illegally terminated from employment. The Labor Arbiter ordered the payment of salaries for the unexpired portion of Petitioner's employment contract corresponding to 2 ½ months, in the amount of US\$3,435.00 and leave pay in the amount US\$1,260.00, as well as attorney's fees equivalent to 10% of the total monetary award. The decretal portion of the Decision states:

"WHEREFORE, all the foregoing premises considered, judgment is hereby rendered ordering the respondent to pay complainant the aggregate sum of US\$4,695.00 as salaries for the unexpired portion of the employment contract and cash equivalent of his vacation and sick leaves, plus ten percent (10%) of the award as and for attorney's fees.

All other claims are denied for lack of merit.

SO ORDERED." [11]

Not satisfied with the above disposition, Private Respondents appealed to the NLRC, which in a Decision dated April 14, 2010, dismissed Petitioner's Complaint, thus-

“WHEREFORE, premises considered, it is hereby declared that the appeal has merits; the appealed decision is hereby REVERSED and SET ASIDE, and a new one entered, DISMISSING the complaint.

SO ORDERED.”[12]

Undaunted, Petitioner filed a Motion for Reconsideration[13] of the said decision, but the same was denied by the NLRC in its Decision[14] dated May 28, 2010 for lack of merit.

Hence, this recourse wherein Petitioner raised the following issues:

a) WHETHER OR NOT THE HONORABLE PUBLIC RESPONDENT COMMITTED SERIOUS ERRORS AND WITH GRAVE ABUSE OF DISCRETION IN FINDING THAT THE PETITIONER WAS NOT ILLEGALLY TERMINATED.

b) WHETHER OR NOT THE HONORABLE PUBLIC RESPONDENT COMMITTED SERIOUS ERRORS AND WITH GRAVE ABUSE OF DISCRETION IN DENYING THE PETITIONER'S CLAIMS IN HIS COMPLAINT.

c) WHETHER OR NOT THE HONORABLE PUBLIC RESPONDENT COMMITTED SERIOUS ERRORS AND WITH GRAVE ABUSE OF DISCRETION IN RULING AGAINST THE EARLIER FINDINGS OF THE HONOR[A]BLE LABOR ARBITER THAT THE PRIVATE RESPONDENTS ARE GUILTY OF ILLEGAL[LY] DISMISSAL COMMIT[T]ED AGAINST THE PETITIONER.

The issue is whether Petitioner was illegally dismissed from employment, and if so, whether he is entitled to his monetary claims.

The Petition is meritorious.

To justify fully the dismissal of an employee, the employer must, as a rule, prove that the dismissal was for a just cause and that the employee was afforded due process prior to dismissal. As a complementary principle, the employer bears the onus of proving with clear, accurate, consistent and convincing evidence the validity of the dismissal.[15]

Contrary to the pronouncement of the NLRC, We find that Petitioner was illegally dismissed from employment when he was sent back to the Philippines on November 12, 2008. Private Respondents were not able to show by substantial evidence that the termination and repatriation of Petitioner were based on a just and valid cause and with the observance of due process.

It is beyond question that the cause of Petitioner's repatriation was his act of engaging in a fight with the Chief Engineer of MV “Fair Wind” whereby he was found to have committed an act of Insubordination. However, the totality of the documentary evidence presented by the Private Respondents do not support Petitioner's dismissal from employment while on board MV “Fair Wind”.

The Master's Incident Report[16] of Captain Julito R. Garcia dated October 22, 2008 relied upon by the NLRC was a mere narration of the incident that happened on October 21, 2008 as per declaration of Chief Engr. Latupan. Petitioner's version of the incident was not stated in the Report. There was even no express finding that it was the Petitioner who instigated the fight with Chief Engr. Latupan or that the incident was solely attributable to Petitioner's own fault. In fact, in the said Report, Captain Garcia was uncertain as to who between the Petitioner and the Chief Engineer should be repatriated, when he simply stated therein - “With regard[s] to the above[d] incidents and to avoid any big trouble that may cause grave danger to one of them. I suggest to have a repatriation

to one of them.”[17]

Moreover, in the Minutes of the Meeting[18] dated October 23, 2008, prepared by Captain Garcia, the Grievance Committee decided to disembark the Petitioner from MV “Fair Wind” in order “to protect the interest of the vessel/owner and to further eliminate his intention to jeopardize safe operation of the vessel”. We find this as a mere speculation as the Minutes of the Meeting did not state the specific reason/s why Petitioner should be considered as having the intention to jeopardize the safe operation of the vessel. The Grievance Machinery simply sided with Chief Engr. Latupan who was present during the meeting. It concluded that the trouble was created by the Petitioner and his actuations constitute Insubordination under the POEA Rules and Regulations.

Indeed, one of the attachments mentioned in the Minutes of the Meeting was the “Statement of Fact”[19] of Chief Engr. Latupan. However, the records would show that this was executed only on January 6, 2009 and the Minutes of the Meeting was issued on October 23, 2008. The belated execution thereof, or more than 2 months from the issuance of the Master's Incident Report and the Minutes of the Meeting of the Grievance Committee, and even after the repatriation of the Petitioner, casts a doubt on its credibility. By examination of the said “Statement of Fact”, to Our mind, was an afterthought as it was prepared in order to make it appear that Petitioner's dismissal was for a just and valid cause. Furthermore, the “Statement of Fact” of Chief Engr. Latupan, although attested to by the 1[st], 2[nd] and 3[rd] Engineers of MV “Fair Wind”, cannot be given probative value lest it is shown that Petitioner's version of the October 21, 2008 incident was likewise confirmed by the said engineers, together with other two crew members, Bonifacio C. Lusat and Felizando B. Lili, Jr. As declared in the “Statement of Fact”, the additional reason for the repatriation of the Petitioner was the alleged previous study of Petitioner's employment with other vessels where he engaged in a fight with the 3[rd] Engineer and Wiper of the vessels. We note that Private Respondents did not present any evidence to prove that these incidents actually occurred or that Petitioner was at fault for which he was repatriated. Granting the same to be true, said study cannot be utilized as an additional reason for his disembarkation on the incident that took place on October 21, 2008.

Without doubt, the finding that Petitioner committed Insubordination was not clearly, accurately, consistently and convincingly established by evidence.

Lastly, the Release[20] dated November 13, 2009 stated that Petitioner's termination from employment with Gloria Maritime and Agency, Inc. was “due to Company Request”[21] and not because he was culpable for the alleged illegal acts he committed on October 21, 2008 or he was guilty of Insubordination. More interestingly, the fact that Petitioner obligated himself to waive all his monetary claims against Gloria Maritime and Agency, Inc. and at the same time exempting the said company from any liability with respect to his previous employment,[22] did not necessarily result in the waiver of his claims. Rights may be waived, unless the waiver is contrary to law, public order, public policy, morals or good customs or prejudicial to a third person with a right recognized by law.[23] The Release, in this case, manifestly show that it was intended to unjustly enrich the Private Respondents at the expense of the Petitioner in violation of Article 22[24] of the Civil Code, hence, null and void.

We further find that Petitioner's right to procedural due process was violated. Petitioner was not furnished with a written notice containing the offenses he allegedly committed and there was also no formal investigation conducted by the Master of the vessel whereby he was given the chance to explain or defend himself, in violation of Section 17 of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels, to wit:

“Section 17. DISCIPLINARY PROCEDURES

The Master shall comply with the following disciplinary procedures against an erring seafarer:

A. The Master shall furnish the seafarer with a written notice containing the following:

1. Grounds for the charges as listed in Section 33 of this Contract or analogous act constituting the same.
2. Date, time and place for a formal investigation of the charges against the seafarer concerned.

B. The Master or his authorized representative shall conduct the investigation or hearing, giving the seafarer the opportunity to explain or defend himself against the charges. These procedures must be duly documented and entered into the ship's logbook.

C. If after the investigation or hearing, the Master is convinced that imposition of a penalty is justified, the Master shall issue a written notice of penalty and the reasons for it to the seafarer, with copies furnished to the Philippines agent.

D. Dismissal for just cause may be effected by the Master without furnishing the seafarer with a notice of dismissal if there is a clear and existing danger to the safety of the crew or the vessel. The Master shall send a complete report to the manning agency substantiated by witnesses, testimonies and any other documents in support thereof. [Emphasis supplied].

Contrary to Petitioner's stance, the Minutes of the Meeting of the Grievance Machinery whereby the officers of the vessel were present did not satisfy the above requirements. What is apparent is that the Minutes of the Meeting was a decision to terminate Petitioner's employment and repatriate him to the country. It was not even indicated that Petitioner was served with a copy of the same.

As a consequence of the illegal termination of Petitioner from employment, he is clearly entitled to his salaries for the unexpired portion of his contract of employment consisting of 2 ½ months computed at the rate of US\$1,374.00 per month, or in the total amount of US\$3,435.00.[25]

The claim however, of the Petitioner for unpaid leave pay for 7 months (April to November 2008) in the amount of US\$1,260 (US\$180 per month x 7 months) is without basis. In his pleadings filed before the Labor Arbiter and the NLRC, it was not indicated that his monthly leave pay was US\$180.00. Indeed, Petitioner alleged that his monthly salary was US\$1,374.00 inclusive of fixed overtime and leave pay. Since Petitioner received his salaries from April to November, 2008 when he was still under the employ of Private Respondents, his claim for unpaid leave pay, therefore, is denied.

On the matter of damages, We deem it proper to award moral and exemplary damages in the amount of P10,000.00 and P5,000.00, respectively, which, under the circumstances, are sufficient to assuage the sufferings experienced by the Petitioner and by way of example and correction for the public good.

As a rule, moral damages are recoverable where the dismissal of the employee was attended with bad faith or is done in a manner contrary to good moral, good customs or public policy. Exemplary damages may be awarded if the dismissal is effected in a wanton, oppressive or malevolent manner.[26] The award thereof to Petitioner is warranted by his unjustified and summary dismissal from employment, which act is indicative of bad faith and considered oppressive to labor. What is more, Petitioner was made to execute and sign a Release in such a manner that he was deprived of the salaries and benefits due to him, an act contrary to law.

Additionally, the award of attorney's fees equivalent to 10% of the total monetary award is warranted as the withholding of Petitioner's monetary claims was without valid and legal basis. Hence, having been impelled to litigate to protect his interests, Petitioner is entitled to receive attorney's fees.[27]

All told, the NLRC acted with grave abuse of discretion in declaring that the repatriation of the Petitioner was in accordance with the POEA Standard Employment Contract and his money claims has no basis as he had received all that was due to him.

WHEREFORE, the foregoing considered, the Petition is GRANTED. The assailed Decisions of the NLRC dated April 14, 2010 and May 28, 2010 are hereby ANNULLED and SET ASIDE. The Decision of the Labor Arbiter dated June 26, 2009 is AFFIRMED with MODIFICATION in that the award of US\$1,260.00 as unpaid leave pay is deleted. The rest of the Decision stands.

Accordingly, Private Respondents are hereby ordered to pay Petitioner the following:

1)

US\$3,435.00 as salaries for the unexpired portion of his contract, consisting of 2 ½ months, or its peso equivalent at the time of payment;

2)

P10,000.00 as moral damages and P5,000.00 as exemplary damages; and

3)

Attorney's fees equivalent to 10% of the total monetary award.

SO ORDERED.

Baltazar-Padilla and Sorongon,[*] JJ., concur.

[*] Vice J. Agnes Reyes-Carpio, per Office Order No. 200-14-ABR.

[1] Rollo, pp. 40-57.

[2] Id., 71-75.

[3] Id., pp. 59-60.

[4] Id., pp. 76-88.

[5] Id., p. 90.

[6] Id., pp. 98-104.

[7] Id., pp. 91-97.

[8] Id., pp. 114-118.

[9] Article 282.- 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

xxxx xxxx xxxx

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

(e) Other causes analogous to the foregoing.

[10] Id., pp.71-75.

[11] Id., p. 75.

[12] Id., p. 57.

[13] Id., pp. 61-70.

[14] Id., pp. 59-60

[15] Dacuital vs. L.M. Camus Engineering Corporation, G.R. No. 176748, September 1, 2010.

[16] Rollo, pp. 105-106.

[17] Id., p. 106.

[18] Id., p. 110.

[19] Id., p. 107.

[20] Id., p. 113.

[21] “1. I hereby confirm the termination of my employment with GLORIA MARITIME AND AGENCY INC. (Company), agent for SEJIN MARINE CO., LTD., Effective NOV. 11, 2008, due to the Company Request. [T]he start of my employment on APR. 24, 2008 until my last day of service on NOV. 11, 2008, I was assigned on board the vessel MV FAIRWIND of PANAMA (Reg.).”

[22] “ 2. I release, remiss and forever discharge said Company and its principal SEJIN MARINE CO., LTD its stockholders, its officers, directors, agents. or employees from any sum of money, or other obligations arising from all incidents, or my previous employment with the Company.

3. I acknowledge that I have received all amounts that are not or in the future may be due from the Company, I also acknowledge that I am physically fit for work and, therefore, am not suffering from any liability.

4. I acknowledge that I have no cause of action, complaint, case or grievance whatsoever against the Company, its stockholders, its officers, directors, agents or employees in respect of any matter incident to or arising out of my previous employment with the Company or cessation of my employment. I further warrant that I will institute no action against the Company, its stockholders, its officers, directors, agents or employees. I also manifest that the payment to me by the Company of the above sum shall not be taken by me, my heirs or assigns as a confession or an admission of liability on the part of the Company, its stockholders, its officers, directors, agents or employees for any matter, cause, demand or damages I may have against or all of them.”

[23] Article 6, New Civil Code.

[24] Article 22, New Civil Code – Every person who through an act or performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

[25] Serrano vs. Gallant Maritime Services, Inc., et al., G.R. No. 167614, March 24, 2009.

[26] Kay Products, Inc. vs. Court of Appeals , G.R. No. 162472, July 28, 2005.

[27] Tangga-an vs. Phil. Transmarine Carriers, Inc. G.R. No. 180636, March 13, 2013.

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