

ROLANDO BAUTISTA AND ANTHONY FERIDO, PETITIONERS, VS. NATIONAL SEAMEN BOARD, WALLEM PHILIPPINES SHIPPING, INC., AND GREG NACIONAL, RESPONDENTS.

G.R. No. L-48196. November 02, 1982

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The petitioners allege that the respondent National Seamen Board acted with grave abuse of discretion when it dismissed their complaint for backwages and other monetary benefits which they claimed had accrued from the time of the allegedly illegal termination of their employment up to the expiration dates of their contracts.

The background facts and the basis of the petitioners' complaint are summarized in the May 30, 1977 decision of the secretariat of the National Seamen Board as follows:

"x x x Complainant Ferido was contracted by the respondent on 21 August 1975 as a carpenter on board vessel M.V. Mosfield for a period of fifteen (15) months to take effect from date of departure in Manila with a monthly salary of US\$278.00 including 26 hours as stipulated in Clause B and in excess of 26 hours per month overtime will be paid at the rate of US\$1.70 (Exh. D; Exh. 1). Complainant Ferido actually left the Philippines on August 29, 1975. On the other hand, complainant Rolando Bautista was contracted by the respondent on 9 December 1974 as a greaser on board the vessel M.V. Mosfield for a period of fifteen (15) months to commence from date of departure in Manila with a monthly salary of US\$180.00, including 26 hours overtime per month and for work in excess of the working hours as stipulated in Clause B, and in excess of 26 hours per month overtime will be paid at the rate of US\$1.13. Complainant Bautista actually left the Philippines on December 17, 1974 (Exh. A); complaint, (Exh. 2) respondent. The complainants were signed off on October 21, 1975 at the Port of Rotterdam due to expiration of dispensation to sail with Filipino crew (Exh. F, Exh. I).

"Upon arrival of the complainants in the Philippines, they instituted the instant complaint alleging among others that on October 21, 1975, while the ship Board Employment contract was still in force and effective they were illegally and unceremoniously terminated with still five (5) months and thirteen (13) months of their contract still to be served allegedly due to the expiration of the Norwegian Shipping Office Crew Complementation Dispensation, that the complainants in case of termination of ship Board Employment Contract are entitled to a reasonable notice of termination of employment which were not afforded to them; that the grounds given in terminating the complainants' ship Board Employment Contract is not the (sic) one of those grounds listed in paragraph X thereof which shall constitute sufficient cause to terminate the same; that as a consequence of their illegal dismissal they encountered great difficulties and hardship in order to reach the Philippines and also had to spend their personal money; that complainants had some wage account due from respondent which they refused to give to them; that complainants are entitled to a daily subsistence allowance of US\$8.14 each as well as food-allowance of US\$2.50 and overtime pay which they failed to receive due to their illegal dismissal as a result of the breach of their contract of employment; that the acts of respondents in illegally terminating the complainants are violative of our laws as well as the provision of the New Constitution; that complainants be granted their salary from the date of their illegal termination as a

result of the breach of their contract of employment and all the concomitant monetary benefits pertinent thereto and such other relief that is just and equitable under the premises."

xxx xxx xxx

The decision of the secretariat which dismissed the complaint for lack of merit was raised to the respondent Board. On September 1, 1977, the Board affirmed the decision of the secretariat and dismissed the appeal. The petitioners now contend that the above decision was an act of grave abuse of discretion.

Whether or not the Norwegian principals of the private respondent suddenly, arbitrarily, and unlawfully terminated the petitioners' services prior to the expiration of the stipulated period depends upon the interpretation to be given Clause E of Paragraph 5 of the Shipboard Employment Contract (Annex G) governing the petitioners' employment. The clause reads:

"5) Clauses mentioned below will also make part of the present agreement: -

xxx xxx xxx

"E) After commencement of wages, should the Employer, through unforeseen circumstances not require the services of all or any of the undersigned ratings, the Employer may terminate the services of all or any individual with 24 hours' notice, however, wages must be paid up to date of arrival back in Manila."

A careful consideration of the records of this petition shows that it has no merit. The questioned decision was based on substantial evidence and the conclusions of the Board and its secretariat are not contrary to law or jurisprudence.

As pointed out by public respondents, the petitioners were aware when they entered into the employment contracts that as a general rule under Norwegian law, the hiring of Asians to complement Norwegian vessels was not allowed. The employment of the petitioners on the M/V Mosfield Kristiansand was made possible only because the Norwegian Shipping Federation was able to enter into an agreement with the Norwegian Seamen's Union that Asians may be hired on a provisional basis to complement the crew of Norwegian vessels but subject to certain terms and conditions, among them being:

"This agreement comprises Norwegian ships manned with only East-Asian/native ratings, in the trading areas China - Australia - Persian Gulf - Japan - East Africa with intermediate ports, and for occasional trips that ships in this trade must make to Europe/North-America/South America.

It is presupposed that the ships have obtained dispensation to employ such ratings, and that there is no difficulty in finding employment for Norwegian sailors."

In addition to the shipboard employment contracts between each of the petitioners and the Wallem Philip-pines Shipping, Inc., recruiting agent for Mosvold Shipping Co. of Norway, the two petitioners also signed a contract authenticated by the Norwegian Consul General (Annex C) which contained at Item 32 entitled Special Conditions the following understanding:

"This seaman was signed on according to agreement reached between the Norwegian Shipping Federation and Norwegian Seamen's Union with wages US\$180.00 per month. 0/TUS\$1.13 per hour."

The agreement between the Norwegian Shipping Federation and the Norwegian Seamen's Union, therefore, formed part of the petitioners' employment contracts. The petitioners were able to find work on a Norwegian vessel only because of the dispensation given to M/V Mosfield to employ Asians to complement the Norwegian crew and on the basis of a finding that Norwegian sailors had no difficulty in locating employment for themselves.

Sometime before October 21, 1975, the dispensation to hire Asian crewmen was withdrawn because of a surplus of unemployed Norwegian seamen who were fighting for the change of crew from Filipino to Norwegian. In fact, while the petitioners were on board the vessel on October 2, 1975 they were given memorandums by the ship captain which read:

""Due to the expiration of the Norwegian Shipping Office's Crew Com-plementation Dispensation, you are hereby given notice of discharge from the M/V 'Mosfield' upon arrival Rotterdam on or about October 20th, 1975.""

When the vessel reached Rotterdam in the Netherlands and the petitioners were dismissed from their employment, it cannot be said that their dismissal was illegal ins-pite of the fact that Rolando Bautista's contract had 5 months while Anthony Ferido's contract had 13 months to go.

It was not grave abuse of discretion for the public respondents to conclude that the unforeseen cir-cumstances in Clause E, Paragraph 5 of the Shipboard Employment Contract, which would justify termination of services upon 24 hours' notice subject, of course, to the payment of wages up to the date of arrival in Manila, may include withdrawal of the dispensation that allowed non-Norwegians or Asians to complement the Norwegian crews of Norwegian vessels. The hiring of Messrs' Bautista and Ferido, while for a period of 15 months, was subject to a condition or rider. When the condition happened, the employment was validly terminated.

WHEREFORE , the petition for certiorari is hereby dismissed for lack of merit.

SO ORDERED.

Melencio-Herrera, Plana, Vasquez, and Relova, JJ., concur.

Teehankee, (Chairman), on official leave.

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