

**RONELLO G. BOLIGAO, PETITIONER, VS. HON. DANILO P. CRUZ,
UNDERSECRETARY OF THE DEPARTMENT OF LABOR AND
EMPLOYMENT, AND STATUS MARITIME CORPORATION,
RESPONDENTS.**

Ponente: LAZARO-JAVIER, A.C., J.

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LAZARO-JAVIER, A.C., J.:

After going over the petition and its attachments, including the assailed issuances, this Court finds and so holds that the Secretary of the Department of Labor and Employment (DOLE) judiciously acted in upholding petitioner's 2-year suspension from participation in the government's overseas employment program.

On April 12, 2010, private respondent Status Maritime Corporation, through its President, Loma B. Aguiman, filed a complaint[1] for disciplinary action against petitioner Ronello Boligao. Private respondent Status Maritime Corporation alleged that petitioner, as Master of its vessel, failed to follow the proper procedure and documentation process in terminating one of its employees, Elias S. Caga, Jr., which led to the latter's filing of an illegal dismissal case against it and consequently, an adverse judgment ordering it to pay Caga US\$12,600.00 representing his salary for the unexpired portion of his contract and transportation expense.

More than two years later and sans any answer having been filed by petitioner, Philippine Overseas Employment Administration (POEA) Administrator Hans Leo J. Cacdac issued Order[2] dated November 16, 2012, finding petitioner liable for violation of Section 1 (B-10), Rule II, Part VI of the 2003 POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers[3], imposing on him a penalty of 2 year suspension from participation in the government's overseas employment program, and ordering his name included in the list of disqualified persons until he shall have served the penalty imposed on him. He ruled that petitioner's failure to afford Caga the procedural process required under Section 17 of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean Going Vessel clearly shows his inefficiency in discharging his duties as master of the vessel, which ultimately resulted in or caused monetary liability on private respondent's part. He also noted petitioner's failure to present any rebutting evidence to show compliance with the required procedure.

Petitioner moved for reconsideration[4] explaining that, upon receipt of the November 16, 2012 Order, he repeatedly tried to reach his former lawyer, but to no avail. Hence, he was constrained to engage the services of another lawyer, Atty. Romulo P. Valmores, to file the motion for reconsideration. He argued: (1) The POEA administrator was not able to hear his side of the case due to his former counsel's failure to file the required Answer and present counter evidence in his behalf. (2) The complaint should be dismissed for private respondent cannot be considered the aggrieved party inasmuch as it was actually privy to Caga's dismissal and repatriation where it was done with their knowledge, consent and approval.

Petitioner subsequently filed a Supplemental Motion for Reconsideration/ Appeal,[5] which Department of Labor and Employment (DOLE) Undersecretary Danilo P. Cruz treated as an appeal, reiterating that his former counsel,

Atty. Michelle LD E. Estor, abandoned his case when she did not file the required answer and counter-evidence resulting in the denial of his right to present his case on the merits. He added: (1) His former counsel, Atty. Michelle LD E. Estor, could no longer be reached and appeared to have practically abandoned him without leaving any word. (2) The gross negligence of his former counsel cannot bind him, otherwise, he would be deprived of his right to due process. (3) Private respondent is already estopped and cannot charge him with incompetence since it was duly informed and consulted about the plan to dismiss Caga and did not object to it, which ultimately led him to believe that such dismissal would be appropriate. (4) After petitioner had sent his report to private respondent and its principal, Protank Management SA, the latter's designated person ashore (DPA), Capt. Lena Isaakidou, boarded the vessel, told petitioner that the kitchen was really dirty and also told private respondent that Caga should really be repatriated. (5) When Capt. Isaakidou boarded the vessel again and confirmed that Protank has decided to repatriate Caga, he strongly believed that private respondent had already made the arrangement to relieve Caga. (6) Private respondent even sustained and tried to justify the legality of Caga's dismissal in its position paper in the illegal dismissal case. (7) The complaint should be dismissed for there is nothing on record showing that Lorna B. Aguiman, private respondent's President, had been authorized by the company's Board of Directors to file the complaint below.

Public respondent DOLE Undersecretary Danilo P. Cruz affirmed[6] POEA's ruling and denied[7] petitioner's subsequent motion[8] for reconsideration.

Petitioner now faults DOLE Undersecretary Cruz for finding him incompetent and inefficient for his alleged failure to observe the proper procedure in imposing disciplinary action against seafarer Caga and for sustaining the penalty of 2-year suspension imposed on him. He argues: His dismissal of seafarer Caga is sanctioned under Section 17 (d)[9] of the POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels inasmuch as the summary dismissal of Caga was based on his honest assessment as master of the vessel that Caga may endanger the safety of the crew or the vessel and such dismissal was with the consent and approval of private respondent. By not objecting to his recommendation to summarily dismiss Caga, private respondent led him to believe that such summary dismissal would be appropriate, hence, private respondent is already estopped from claiming that such dismissal amounts to his inefficiency and incompetence. The penalty of 2-year suspension is too harsh in view of Supreme Court decision setting the penalty of P30,000.00 nominal damages against erring employers who failed to observe due process in dismissing an employee.

It is settled that actions of counsel bind the client except when the counsel's act constitutes reckless or gross negligence which deprives the client of due process of law.[10] For petitioner to successfully invoke this exception, there must be no contributory negligence on his part. *Peter Bejarasco, Jr., vs. People of the Philippines*[11] elucidates:

The general rule is that a client is bound by the counsel's acts, including even mistakes in the realm of procedural technique. xxx A recognized exception to the rule is when the reckless or gross negligence of the counsel deprives the client of due process of law. For the exception to apply, however, the gross negligence should not be accompanied by the client's own negligence or malice, considering that the client has the duty to be vigilant in respect of his interests by keeping himself up-to-date on the status of the case. Failing in this duty, the client should suffer whatever adverse judgment is rendered against him.

Here, petitioner, as litigant, has the duty to monitor the status of his case and to keep in constant touch with his counsel so as to be apprised of the progress of his case for no prudent party leaves the fate of his case entirely in the hands of his lawyer.[12] As things stand, petitioner is not entirely blameless for the misfortune that befell him.

First. The case had been pending for 2 years since its filing with POEA. Petitioner did not present any evidence showing that he even exerted effort to inquire from his former counsel about the status of his case or verify with

POEA whether his Answer had already been filed. It was only after receiving POEA's adverse judgment that he tried to communicate with his former counsel. Petitioner's inexplicable failure to monitor the status of his case renders him undeserving of any sympathy from the Court vis-à-vis the alleged negligence of his former counsel.[13]

Second. Petitioner's former counsel filed a Motion for Extension of Time to File Verified Answer on ground that petitioner could not execute the necessary certificate on non-forum shopping because the latter was allegedly on board at that time. Petitioner failed to prove, much less allege, that he had already sent such certificate to his former counsel to warrant a presumption that his Answer had already been filed. Surely, the fact that his former counsel stopped writing him about it should have alerted him. He must have known that his Answer had not yet been filed or the same was not yet forthcoming without him executing and transmitting to his former counsel the required certificate on non-forum shopping. Neither has petitioner shown that he was indeed on board a vessel during the 2-year hiatus which prevented him from executing the certificate and actively participating in the defense of his case. Accordingly, petitioner is bound by and must suffer the consequences of the negligence of his former counsel[14] and his own contributory negligence.

As oft repeated, the essence of due process is the opportunity to be heard.[15] Here, it cannot be said that petitioner was denied due process of law inasmuch as he was given the opportunity to defend his interests in due course,[16] including an opportunity to be heard on a motion for reconsideration[17] or appeal[18]. Petitioner had ample opportunity to present his case. He and his former counsel attended some of the proceedings below. On August 25, 2010, they even sought an extension of time to file an Answer, yet still failed to file it. The POEA rendered its decision in the case only on November 16, 2012 or more than 2 years after the filing of the complaint and petitioner's motion for extension to file answer. Verily, petitioner and his former counsel's failure to file an Answer and take advantage of the opportunity to be heard given them during the 2-year period does not change the fact that they were accorded such opportunity.

In *Victory Liner, Inc., vs. Rosalito Gammad, et al.*,[19] the Supreme Court ruled that where the trial court's decision was based only on the evidence presented by one party and the other party who was not able to present his evidence assails the decision through an appeal, such party cannot be considered to have been deprived of due process. Here, petitioner was able to assail POEA's decision through a motion for reconsideration which DOLE treated as an appeal. Consequently, petitioner cannot rightly claim that he was deprived of due process.

At any rate, Section 17 of the Standard Contract for Seafarers Employed Abroad lays down the disciplinary procedures that the Master of a vessel must follow, viz:

Sec. 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:

- Grounds for the charges as listed in Section 33 of this Contract or analogous act constituting the same;
- 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 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 Philippine 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 other documents in support thereof.

In *Skippers Pacific, Inc. v. Mira*,^[20] the Supreme Court explained the notice requirement under Section 17, viz:

. . . under Section 17 of what is termed the Standard Format, the "two-notice rule" is indicated. An erring seaman is given a written notice of the charge against him and is afforded an opportunity to explain or defend himself. Should sanctions be imposed, then a written notice of penalty and the reasons for it shall be furnished the erring seafarer. It is only in the exceptional case of clear and existing danger to the safety of the crew or vessel that the required notices are dispensed with; but just the same, a complete report should be sent to the manning agency, supported by substantial evidence of the findings.

Here, there was no showing that petitioner complied with the foregoing disciplinary procedures in terminating Caga's employment. There were no written notices given to Caga, nor a formal investigation of the charges against him. Petitioner's report to the manning agency was incomplete, bereft of any factual details, and unsubstantiated by any evidence. Apart from his self-serving allegations, petitioner did not show any proof of Caga's alleged utterance of profane words, insubordination, and disobedience with rebellious character. He did not even bother to specify the profane words allegedly uttered by Caga and the latter's purported acts of insubordination, disobedience, and rebellion.

Petitioner, nonetheless, tries to justify his non-compliance with the notice requirement by invoking the exception under Section 17(D) of the POEA Standard Employment Contract. This exception, however, may be availed of only if giving the requisite notice will prejudice the safety of the crew and the vessel.^[21] Even then, the Master is still required to enter in the ship's logbook his decision to dismiss a seafarer and submit to the manning agency a complete report supported by substantial evidence of his findings.^[22] *NFD International Manning Agents vs. NLRC*^[23] is apropos:

However, in the instant case, petitioners failed to establish that private respondents and their companions were guilty of mutiny or that, in any other manner, they posed a clear and present danger to the vessel and its crew which would have justified the Ship Master in dispensing with the required notices. Even if the Ship Master was justified in dispensing with the notice requirements, still, it was essential that his decision to dismiss the Filipino seamen should have been entered in the ship's logbook; and that a complete report, substantiated by witnesses, testimonies and any other documents in support thereof, duly sent to the manning agency. The record of this case is bereft of any such entry in the ship's logbook or journal and of any report and supporting documents. Instead, respondents and the other Filipino seamen were verbally ordered to disembark from the vessel and were repatriated to the Philippines without being given written notice of the reasons why.

Here, there is no showing, as none was shown, that furnishing Caga a notice of dismissal will pose a clear and present danger to the vessel and its crew. Caga was not shown to be a dangerous or menacing individual who would compromise the safety of the crew or the seaworthiness of the vessel just so he could get his way. There were no corroborative statements of other officers or crew on board attesting that Caga indeed displayed such behavior or any proof that he committed any threat, or any serious misconduct, or that he posed a serious or substantial danger to the vessel and its crew which would have justified his summary dismissal, sans the required notices.

Too, petitioner did not prove nor allege that he ever entered in the ship's logbook his decision to dismiss Caga and the incidents that impelled him to make such decision. A ship's logbook is the official record of a ship's voyage which its captain is obligated by law to keep and record the decisions he has adopted, a summary of the

performance of the vessel, and other daily events.[24] In *Skippers United Pacific, Inc. vs. Jerry Magaud*,[25] the Supreme Court ruled that it was irregular for the acts showing an erring seafarer's infractions not to be stated with particularity in the logbook. If Caga, indeed, committed the alleged infractions, surely, the same should have been entered in the ship's logbook and petitioner should have presented it in his defense. Petitioner's failure to present the ship's logbook makes his actions more suspect.

Indeed, petitioner, as master of the vessel, is expected to know and observe the proper and simple procedures in disciplining erring seafarers, more so, before recommending termination of employment. Petitioner's failure to follow the proper procedures in terminating Caga's employment clearly constitute incompetence and inefficiency. The fact that private respondent acquiesced to and sanctioned petitioner's act of terminating Caga without due process does not negate petitioner's liability under Section 1 (B-10), Rule II, Part VI of the 2003 POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers[26]. Petitioner's liability as master of the vessel did not arise simply because a case against him was initiated by his employer. His liability was based on the 2003 POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers which has the force and effect of law. And, even without his employer initiating the complaint, the POEA may *motu proprio* conduct disciplinary proceedings against him[27] and, if warranted, impose corresponding sanctions.

At any rate, if truly, private respondent is equally guilty with petitioner in dismissing Caga without due process, appropriate action may be taken by the POEA against private respondent and the latter's foreign principal.[28] But such shared liability, if at all, does not diminish the liability of the master of the vessel, herein petitioner, for incipently causing Caga's illegal dismissal.

As for the propriety of the penalty imposed on petitioner, Section 1 (B-10), Rule II, Part VI of the 2003 POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers punishes incompetency and inefficiency with suspension of two to three years for the first offense, and suspension of three years and one day to delisting from POEA Registry, for the second offense. Thus, the two-year suspension imposed on petitioner is far from being harsh, it being the minimum imposable penalty.

ACCORDINGLY, the petition is DENIED DUE COURSE and DISMISSED for utter lack of merit. This is without prejudice to the appropriate action that may be taken by the POEA against private respondent and its foreign principal pertaining to their own violation of the prescribed procedures under the 2003 POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers.

SO ORDERED.

Castillo, (Chairperson) and Galapate-Laguilles, JJ., concur.

[1] Rollo, pp. 48-49.

[2] Order dated November 16, 2012, penned by POEA Administrator Hans Leo J. Cacdac, Rollo, pp. 51-53.

[3] Section 1. Grounds for Disciplinary Action and their Penalties. - Commission by a seafarer of any of the offenses enumerated below or of similar offenses shall be a ground for disciplinary action for which the corresponding penalty shall be imposed:xxx

B. Offenses During Employment

xxx

10. Incompetency and inefficiency

1st Offense: Two years to Three years suspension

2nd Offense: Three years and one day suspension to Delisting from POEA Registry

[4] Motion for Reconsideration dated December 14, 2012, penned by Atty. Romulo P. Valmores, Rollo, pp. 54-58.

[5] Dated February 27, 2013, Rollo, pp. 59-66.

[6] Order dated September 9, 2013, Rollo, pp. 69-77.

[7] Resolution dated December 23, 2013, penned by DOLE Undersecretary Danilo P. Cruz, Rollo, pp. 86-88.

[8] Motion for Reconsideration dated October 29, 2013, Rollo, pp. 78-84.

[9] “xxx 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 other documents in support thereof.”

[10]Ang Mga Kaanib Sa Iglesia Ng Dios Kay Kristo Hesus, H.S.K. sa Bansang Pilipinas, Inc., vs. Iglesia Ng Dios Kay Cristo Jesus, Haligi at Suhay ng Katotohanan, G.R. No. 137592. December 12, 2001.

[11]G.R. No. 159781, February 2, 2011.

[12]Bejarasco, Jr., vs. People of the Philippines, G.R. No. 159781, February 2, 2011; Tan vs. Tan, G.R. No. 133805, June 29, 2004.

[13]Bejarasco, Jr., vs. People of the Philippines, G.R. No. 159781, February 2, 2011.

[14]Villaruel, Jr., vs. Fernando, G.R. No. 136726, September 24, 2003.

[15]Equitable PCI Banking Corporation, et al., vs. RCBC Capital Corporation, G.R. No. 182248, December 18, 2008.

[16]Pasiona, Jr., vs. Court of Appeals, et al., G.R. No. 165471, July 21, 2008; Spouses Barza vs. Spouses Dinglasan, G.R. No. 136350, October 25, 2004.

[17]Salonga vs. Court of Appeals, G.R. No. 111478, March 13, 1997.

[18]Pasiona, Jr., vs. Court Of Appeals, et al., G.R. No. 165471, July 21, 2008; Victory Liner, Inc., vs. Gammad, G.R. No. 159636, November 25, 2004.

[19]G.R. No. 159636, November 25, 2004.

[20] G.R. No. 144314, November 21, 2002, 392 SCRA 371.

[21] NFD International Manning Agents vs. NLRC, G.R. No. 165389. October 17, 2008.

[22] Skippers Pacific, Inc. v. Mira, G.R. No. 144314, November 21, 2002.

[23] G.R. No. 165389. October 17, 2008.

[24]Centennial Transmarine, Inc., vs. Dela Cruz, G.R. No. 180719, August 22, 2008.

[25]G.R. No. 166363, August 15, 2006.

[26]Section 1. Grounds for Disciplinary Action and their Penalties. - Commission by a seafarer of any of the

offenses enumerated below or of similar offenses shall be a ground for disciplinary action for which the corresponding penalty shall be imposed:xxx

B. Offenses During Employment

xxx

10. Incompetency and inefficiency

1st Offense: Two years to Three years suspension

2nd Offense: Three years and one day suspension to Delisting from POEA Registry

[27]Section 2, Rule II, Part VI, 2003 POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers.

[28]Section 2, Rule III, Part VI, 2003 POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers.

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