

MILMAR CREWING, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND ROLITO O. REGUOSA, RESPONDENTS.

Ponente: INTING, S.B., J.

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INTING, S.B., J.:

This is a Petition for Certiorari[1] under Rule 65 of the 1997 Rules of Civil Procedure filed by the Petitioner which seeks to nullify and set aside the May 15, 2013 Resolution[2] and April 10, 2013 Decision[3] of the National Labor Relations Commission in NLRC LAC NO. 01-000033-13 NLRC NCR-OFW-03-04913-11 which affirmed the September 28, 2012 Decision[4] of the Labor Arbiter which ruled that the Private respondent was constructively dismissed.

Petitioner Milmar Crewing, Inc. (Petitioner) is a Philippine Manning Agency which assumed[5] the full responsibility for all the contractual liabilities and obligations involving seafarers originally recruited and/or employed by Crewtech Ship Management Phils., Inc. ("Crewtech"). Crewtech is also a Philippine Manning Agency which recruited and employed Private respondent Rolito O. Reguosa.

The facts:

The facts as appearing in the records of the case are as follows:

The case stems from a Complaint filed with the National Labor Relations Commission (NLRC) for money claims, as follows: (1) payment of salary for the unexpired portion of the contract, vacation leave pay and hazard pay; and (2) payment of moral and exemplary damages and attorney's fees by the Private respondent against Crewtech , Maran Maritime, Inc. and Victorina C. Hernaez in her official capacity as President/Manager of Crewtech.

On June 8, 2011, a Motion for Substitution[6] of Crewtech was filed by herein Petitioner Milmar Crewing, Inc. On August 22, 2011, the Labor Arbiter denied[7] the said Motion for Substitution but included herein Petitioner as a respondent in the case.

Petitioner Company, in its Position Paper[8], alleges: that on November 23, 2010, Private respondent entered into a standard POEA Employment Contract[9] with Crewtech as an able-bodied seaman for a period of employment of ten (10) months; that on December 6, 2010, Private respondent departed from Manila to join the vessel M/T Dominia and subsequently served as an able-bodied seaman; that on January 11, 2011, while M/T Dominia was in Lagos, Nigeria, heavily-armed pirates boarded and attacked the vessel; that as a consequence of the invasion by the pirates, Private respondent sustained injuries; that on January 28, 2011, Private respondent voluntarily pre-terminated his employment contract and was thereafter repatriated on January 30, 2011; that Private respondent was not illegally terminated from employment and is therefore not entitled to his monetary claims; that Private respondent's repatriation was due to a fortuitous event or force majeure that is beyond the control of the Petitioner and which exempts it from any liability.

Private respondent, on the other hand, alleges in his Position Paper[10], that he entered into a contract of

employment, through Crewtech, with Maran Maritime, Inc., his foreign employer, to work on board the vessel "MT Dominia" for the position of able-bodied seaman for a period of ten (10) months for a monthly salary of US\$ 645.00; that on December 6, 2010, Private respondent joined the vessel M/T Dominia which sailed to Rotterdam, Netherlands and subsequently to Ghent, Belgium; that on January 11, 2011, during the first night of anchorage, heavily-armed pirates attacked and boarded M/T Dominia to loot the vessel, including the personal effects of the crew; that Private respondent was tortured, punched on the face and hit with body blows when he was made to confess where the captain of the vessel was; that after the incident, Private respondent's foreign employer at first instructed the crew to continue with their contracts but thereafter it withdrew its advice and told all the crew to go home instead; that the foreign employer, through its Crew Manager, Antonis Liappis sent an email to Captain Lubrano informing him that those members of the crew who will choose to take a vacation leave shall thereafter be reinstated to active duty within sixty (60) days from disembarkation provided they still have more than thirty (30) days remaining for contract fulfillment ; that due to the injuries sustained by the Private respondent, he was sent to the hospital of Lagos, Nigeria; that unfortunately, due to the inadequate medical supplies of the hospital, Private respondent's wounds were not treated; that thereafter, nineteen (19) crew members were repatriated including Private respondent; that upon arrival in the Philippines, Private respondent took a rest to recover from the injuries he sustained; that subsequently, when he reported to Crewtech's office to inquire about his next deployment pursuant to the instructions previously made by Crewtech's Crew Manager, he was told to wait for his foreign employer's advice; that despite returning to Crewtech's office several times, Private respondent was not given any advice regarding his next deployment ; that Crewtech and the foreign employer did not fulfill its promise to reinstate the crew members, including Private respondent, within sixty (60) days from the time of their disembarkation; that Private respondent was constructively dismissed from his employment and is therefore entitled to the payment of his salary for the unexpired portion of his contract of employment and to his other monetary claims.

On September 28, 2012, the Labor Arbiter rendered a Decision[11] in favor of the Private respondent. The pertinent portion of which provides to wit:

"x x x

After a careful review of the facts and evidence on hand, this Office finds that complainant did not voluntarily resign. The tell-tale piece of evidence is the email dated January 17, 2011 x x x to the Captain of MT Dominia, which states:

" x x x

Please note that for the crew that (sic) will choose to go for vacation, and have more than 30 days remaining for contract fulfillment, the company will undertake to put them on vacation and reinstate them to active duty within 60 days from disembarkation unless otherwise stated from the seafarers."

Pursuant to this email, complainant agreed to be repatriated to go on vacation and recover from his injuries under the assurance that respondents would "reinstate [him] to active duty within 60 days from disembarkation." Thus, when he signed the prepared and pro forma document from MT Dominia x x x it was only for the purpose of getting his wages and not to resign from his job as he fully expected to be recalled back to sea duty within the sixty-day period.

It is of no consequence that the said document contains a clause that provides that "the collection of [complainant's] wages terminates [his] contract on MT Dominia effective x x x 28/01/2011." Complainant signed the said document in the aftermath of a vicious and traumatizing pirate attack and he can hardly be expected to scrutinize each and every provision thereof.

x x x

Upon the other hand, this Office finds that complainant was constructively dismissed. He was repatriated on January 28, 2011 but was not "reinstat[e] to active duty within 60 days from disembarkation," or not later than March 29, 2011. Complainant indeed filed the instant complaint on March 24, 2011, but there is nothing on record that shows that respondents have reinstated him by (sic) March 29, 2011. There is also no showing that respondents, have reinstated, much less offered to reinstate, complainant to active duty from the time the instant complaint was filed to the date of this Decision.

In addition, this Office is not persuaded by respondent Milmar's allegation that the failure of complainant to be redeployed was due to his failure to report to respondents for resumption of sea duty. Other than this allegation, there is no clear and convincing evidence that proves its claim. Hence, there can be no gainsaying that complainant was constructively dismissed by respondents.

x x x

WHEREFORE, premises considered, judgment is hereby rendered finding the dismissal of complainant Rolito O. Regurosa illegal.

Pursuant to Republic Act No. 10022, Section 7, respondents Crewtech Ship Management Phils., Inc., Milmar Crewing, Inc., Maran Maritime, Inc. and Victorina C. Hernaez are hereby ordered to jointly and severally pay complainant Rolito O. Regurosa, his salaries for the unexpired portion of his employment contract in the total amount of USD 5,160.00 (USD645.00 x 8 months) and his vacation leave pay for sixty days in the amount of USD 1,290.00 (USD 645.00 x 2 months) or at its peso equivalent at the time of actual payment.

All other claims are dismissed for want of merit.

SO ORDERED."

Consequently, Petitioner filed a Memorandum of Appeal[12] which appeal was dismissed by the NLRC in its Decision[13] dated April 10, 2013, the pertinent portion of which provides, to wit:

"xxx xxx

However, Milmar failed to disprove the hard and very strong evidence which Complainant put up in pursuing his claim.

The evidence is the copy of the e-mailed message dated January 17, 2011 x x x

Respondent-Appellant, in their Reply and rejoinder, never disputed this important piece of evidence, indirectly brushing it aside by declaring Complainant's referral to the promised re-deployment as "untenable" x x x In its appeal, it claims to have "no legal obligation to deploy" complainant x x x, while remaining silent on the existence of and the obligation imposed, in the above described experience.

x x x

As Respondent Crewtech who deployed Complainant did not appear nor file any pleading in this case, in effect, it is deemed to have waived its right to be heard. In effect also, it did not dispute any of the claims of Complainant, and hence, the conclusions in the appealed decision.

There is no valid reason, therefore, to disturb the appealed decision.

Respondent-appellant Milmar who is not the one primarily responsible to Complainant under R.A. No. 8042 as amended by R.A. No. 10022, becomes jointly and severally liable with Respondent Crewtech by its own

submissions.

WHEREFORE, premises considered, the instant appeal is hereby DISMISSED for lack of merit the (sic) appealed decision of Labor Arbiter Jenneth B. Napiza is hereby AFFIRMED.

SO ORDERED."

Subsequently, Petitioner filed a Motion for Reconsideration[14] which was denied by the NLRC in its Resolution[15] dated May 15, 2013, the dispositive portion of which provides to wit:

"WHEREFORE, the instant Motion for Reconsideration is hereby DENIED for lack of merit.

No further Motion of this nature shall be entertained.

SO ORDERED."

Hence, the instant petition.

The Issues:

- 1) WHETHER OR NOT THE PUBLIC RESPONDENT HAS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT PRIVATE RESPONDENT WAS CONSTRUCTIVELY DISMISSED BY THE PETITIONER COMPANY
- 2) WHETHER OR NOT THE PUBLIC RESPONDENT HAS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ORDERING PETITIONER COMPANY TO PAY PRIVATE RESPONDENT HIS SALARY FOR THE UNEXPIRED PORTION OF HIS CONTRACT OF EMPLOYMENT DESPITE THE QUITCLAIM EXECUTED BY THE PRIVATE RESPONDENT

The Ruling:

The petition is bereft of merit.

A review of the records of the case would clearly show that Private respondent did not voluntarily resign from his employment. Private respondent agreed to go home to the Philippines because he heavily relied on Crewtech's promise, embodied in its e-mail[16] sent by its Crew Manager, that the crew who will choose to go home and take a vacation leave, which included Private respondent, will be reinstated within sixty (60) days from the time of disembarkation provided they still have a period of more than 30 days remaining for contract fulfillment. It was also wise for Private respondent to have decided to take a vacation leave during said period of time so he could rest and recover from the injuries he sustained from the attack of the pirates at the vessel especially since he was not provided with adequate medical attention when he was in Nigeria. Unfortunately, despite their pronouncements, Crewtech and Private respondent's foreign employer reneged on their promise and did not reinstate Private respondent. Such behavior on their part, was clearly tantamount to constructively dismissing Private respondent. The gauge for constructive dismissal is whether a reasonable person in the employee's position would feel compelled to give up his employment under the prevailing circumstances.[17] Considering the afore-mentioned circumstances surrounding Private respondent's situation when he decided to take a vacation leave, it was obvious that he was compelled to give up his employment at that time contrary to Petitioner's claim that he voluntarily resigned from his employment.

Moreover, constructive dismissal exists when there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely. Constructive dismissal is a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not. In constructive dismissal cases, the employer is,

concededly, charged with the burden of proving that its conduct and action were for valid and legitimate grounds.[18] In the present case, the Petitioner failed to discharge the burden of proof to justify Crewtech's and the foreign employer's act of terminating Private respondent and reneging on their promise to reinstate him.

Having been constructively dismissed, NLRC correctly ruled that Private respondent is entitled to the payment of his salary for the unexpired portion of his contract of employment as provided in Sec. 10, par. 5 of R.A. 8042, to wit:

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 x x x 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.

Anent the quitclaim purportedly executed by the Private respondent as alleged by the Petitioner, WE hereby regard it as invalid for failing to comply with the foregoing requisites necessary for its validity, to wit:

In order to prevent disputes on the validity and enforceability of quitclaims and waivers of employees under Philippine laws, said agreements should contain the following:

1. A fixed amount as full and final compromise settlement;
2. The benefits of the employees if possible with the corresponding amounts, which the employees are giving up in consideration of the fixed compromise amount;
3. A statement that the employer has clearly explained to the employee in English, Filipino, or in the dialect known to the employees — that by signing the waiver or quitclaim, they are forfeiting or relinquishing their right to receive the benefits which are due them under the law; and
4. A statement that the employees signed and executed the document voluntarily, and had fully understood the contents of the document and that their consent was freely given without any threat, violence, duress, intimidation, or undue influence exerted on their person.

It is advisable that the stipulations be made in English and Tagalog or in the dialect known to the employee. There should be two (2) witnesses to the execution of the quitclaim who must also sign the quitclaim. The document should be subscribed and sworn to under oath preferably before any administering official of the Department of Labor and Employment or its regional office, the Bureau of Labor Relations, the NLRC or a labor attaché in a foreign country. Such official shall assist the parties regarding the execution of the quitclaim and waiver.

WE cannot also permit Private respondent's employers to escape fulfilling their obligations to the Private respondent who, as above discussed, was clearly constructively dismissed from employment based on Petitioner's contention that the piracy attack on the vessel was a fortuitous event and thus, excuses said employers from any liability. To reiterate, Private respondent only agreed to take a vacation leave because of his foreign employer's undertaking that he will be reinstated. Unfortunately, the foreign employer failed to comply with its undertaking. It is not just for Private respondent's employers to simply raise the contention of the existence of fortuitous event in the present case after its failure to reinstate Private respondent as earlier promised.

With regard to Petitioner's contention that the NLRC acted with grave abuse of discretion when it ruled that Crewtech waived its right to be heard since it did not dispute the claims of Private respondent, as correctly cited[19] by the Private respondent, the provisions of Section 10, Rule V of the 2011 NLRC Rules of Procedure is applicable, to wit:

SECTION 10. Non-Appearance of Parties. —

x x x

In case of non-appearance by the respondent during the first scheduled conference, the second conference as scheduled in the summons shall proceed. If the respondent still fails to appear at the second conference despite being duly served with summons, he/she shall be considered to have waived his/her right to file position paper. The Labor Arbiter shall immediately terminate the mandatory conciliation and mediation conference and direct the complainant or petitioner to file a verified position paper and submit evidence in support of his/her causes of action and thereupon render his/her decision on the basis of the evidence on record.

Despite notice, Crewtech failed to appear at the scheduled conferences and neither did it file its position paper before the NLRC. Thus, Petitioner's contention as above-mentioned lacks merit.

Thus, in view of the foregoing, We find that the NLRC did not commit grave abuse of discretion in ruling that Private respondent was constructively dismissed by the Petitioner company and is thus entitled to the payment of his salary pertaining to the unexpired portion of his contract and also to his vacation leave pay.

WHEREFORE, the petition is DISMISSED. The May 15, 2013 Resolution[20] and April 10, 2013 Decision[21] of the National Labor Relations Commission in NLRC LAC NO. 01-000033-13 NLRC NCR-OFW-03-04913-11 are hereby AFFIRMED.

SO ORDERED.

Reyes, Jr., (Chairperson), and Lopez, JJ., concur.

[1] Rollo, pp. 3-17

[2] Rollo, pp. 41-42

[3] Rollo, pp. 23-40

[4] Rollo, pp. 87-101

[5] Rollo, pp. 43

[6] Rollo, pp. 48-49

[7] Rollo, pp. 53-56

[8] Rollo, pp. 78-84

[9] Rollo, pp. 44

[10] Rollo, pp. 57-76

[11] Supra note 4

[12] Rollo, pp. 102-111

[13] Supra note 3

[14] Rollo, pp. 113-123

[15] Supra note 2

[16] Rollo, pp. 37

[17] Siemens Phils., INC. vs. Domingo, G.R. No. 150488. July 28, 2008 Citing New Ever Marketing, Inc. v. Court of Appeals, G.R. No. 140555, July 14, 2005, 463 SCRA 284, 297

[18] Diamond Taxi vs Lllamas, G.R. No. 190724 March 12, 2014 Citing Galang v. Malasugui, G.R. No. 174173, March 7, 2012, 667 SCRA 622

[19] Rollo, pp. 190

[20] Supra note 2

[21] Supra note 3

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