

MERCIDAR FISHING CORPORATION REPRESENTED BY ITS PRESIDENT DOMINGO B. NAVAL, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND FERMIN AGAO, JR., RESPONDENTS.

G.R. No. 112574. October 08, 1998

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for certiorari to set aside the decision, dated August 30, 1993, of the National Labor Relations Commission dismissing the appeal of petitioner Mercidar Fishing Corporation from the decision of the Labor Arbiter in NLRC NCR Case No. 09-05084-90, as well as the resolution dated October 25, 1993, of the NLRC denying reconsideration.

This case originated from a complaint filed on September 20, 1990 by private respondent Fermin Agao, Jr. against petitioner for illegal dismissal, violation of P.D. No. 851, and non-payment of five days service incentive leave for 1990. Private respondent had been employed as a "bodegero" or ship's quartermaster on February 12, 1988. He complained that he had been constructively dismissed by petitioner when the latter refused him assignments aboard its boats after he had reported to work on May 28, 1990.[1]

Private respondent alleged that he had been sick and thus allowed to go on leave without pay for one month from April 28, 1990 but that when he reported to work at the end of such period with a health clearance, he was told to come back another time as he could not be reinstated immediately. Thereafter, petitioner refused to give him work. For this reason, private respondent asked for a certificate of employment from petitioner on September 6, 1990. However, when he came back for the certificate on September 10, petitioner refused to issue the certificate unless he submitted his resignation. Since private respondent refused to submit such letter unless he was given separation pay, petitioner prevented him from entering the premises.[2]

Petitioner, on the other hand, alleged that it was private respondent who actually abandoned his work. It claimed that the latter failed to report for work after his leave had expired and was, in fact, absent without leave for three months until August 28, 1990. Petitioner further claims that, nonetheless, it assigned private respondent to another vessel, but the latter was left behind on September 1, 1990. Thereafter, private respondent asked for a certificate of employment on September 6 on the pretext that he was applying to another fishing company. On September 10, 1990, he refused to get the certificate and resign unless he was given separation pay.[3]

On February 18, 1992, Labor Arbiter Arthur L. Amansec rendered a decision disposing of the case as follows:

ACCORDINGLY, respondents are ordered to reinstate complainant with backwages, pay him his 13th month pay and incentive leave pay for 1990.

All other claims are dismissed.

SO ORDERED.

Petitioner appealed to the NLRC which, on August 30, 1993, dismissed the appeal for lack of merit. The NLRC dismissed petitioner's claim that it cannot be held liable for service incentive leave pay by fishermen in its employ as the latter supposedly are "field personnel" and thus not entitled to such pay under the Labor Code.[4]

The NLRC likewise denied petitioner's motion for reconsideration of its decision in its order dated October 25, 1993.

Hence, this petition. Petitioner contends:

I

THE RESPONDENT COMMISSION PALPABLY ERRED IN RULING AND SUSTAINING THE VIEW THAT FISHING CREW MEMBERS, LIKE FERMIN AGAO, JR., CANNOT BE CLASSIFIED AS FIELD PERSONNEL UNDER ARTICLE 82 OF THE LABOR CODE.

II

THE RESPONDENT COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT UPHELD THE FINDINGS OF THE LABOR ARBITER THAT HEREIN PETITIONER HAD CONSTRUCTIVELY DISMISSED FERMIN AGAO, JR., FROM EMPLOYMENT.

The petition has no merit.

Art. 82 of the Labor Code provides:

ART. 82. Coverage. - The provisions of this Title [Working Conditions and Rest Periods] shall apply to employees in all establishments and undertakings whether for profit or not, but not to government employees, field personnel, members of the family of the employer who are dependent on him for support, domestic helpers, persons in the personal service of another, and workers who are paid by results as determined by the Secretary of Labor in appropriate regulations.

.....

"Field personnel" shall refer to non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty.

Petitioner argues essentially that since the work of private respondent is performed away from its principal place of business, it has no way of verifying his actual hours of work on the vessel. It contends that private respondent and other fishermen in its employ should be classified as "field personnel" who have no statutory right to service incentive leave pay.

In the case of *Union of Filipino Employees (UFE) v. Vicar*,^[5] this Court explained the meaning of the phrase "whose actual hours of work in the field cannot be determined with reasonable certainty" in Art. 82 of the Labor Code, as follows:

Moreover, the requirement that "actual hours of work in the field cannot be determined with reasonable certainty" must be read in conjunction with Rule IV, Book III of the Implementing Rules which provides:

Rule IV Holidays with Pay

Section 1. Coverage - This rule shall apply to all employees except:

.....

(e) Field personnel and other employees whose time and performance is unsupervised by the employer xxx

(Italics supplied)

While contending that such rule added another element not found in the law (Rollo, p. 13), the petitioner nevertheless attempted to show that its affected members are not covered by the abovementioned rule. The petitioner asserts that the company's sales personnel are strictly supervised as shown by the SOD (Supervisor of the Day) schedule and the company circular dated March 15, 1984 (Annexes 2 and 3, Rollo, pp. 53-55).

Contrary to the contention of the petitioner, the Court finds that the aforementioned rule did not add another element to the Labor Code definition of field personnel. The clause "whose time and performance is unsupervised by the employer" did not amplify but merely interpreted and expounded the clause "whose actual hours of work in the field cannot be determined with reasonable certainty." The former clause is still within the scope and purview of Article 82 which defines field personnel. Hence, in deciding whether or not an employee's actual working hours in the field can be determined with reasonable certainty, query must be made as to whether or not such employee's time and performance is constantly supervised by the employer.[6]

Accordingly, it was held in the aforementioned case that salesmen of Nestle Philippines, Inc. were field personnel:

It is undisputed that these sales personnel start their field work at 8:00 a.m. after having reported to the office and come back to the office at 4:00 p.m. or 4:30 p.m. if they are Makati-based.

The petitioner maintains that the period between 8:00 a.m. to 4:00 or 4:30 p.m. comprises the sales personnel's working hours which can be determined with reasonable certainty.

The Court does not agree. The law requires that the actual hours of work in the field be reasonably ascertained. The company has no way of determining whether or not these sales personnel, even if they report to the office before 8:00 a.m. prior to field work and come back at 4:30 p.m., really spend the hours in between in actual field work.[7]

In contrast, in the case at bar, during the entire course of their fishing voyage, fishermen employed by petitioner have no choice but to remain on board its vessel. Although they perform non-agricultural work away from petitioner's business offices, the fact remains that throughout the duration of their work they are under the effective control and supervision of petitioner through the vessel's patron or master as the NLRC correctly held.[8]

Neither did petitioner gravely abuse its discretion in ruling that private respondent had constructively been dismissed by petitioner. Such factual finding of both the NLRC and the Labor Arbiter is based not only on the pleadings of the parties but also on a medical certificate of fitness which, contrary to petitioner's claim, private respondent presented when he reported to work on May 28, 1990.[9] As the NLRC held:

Anent grounds (a) and (b) of the appeal, the respondent, in a nutshell, would like us to believe that the Arbiter abused his discretion (or seriously erred in his findings of facts) in giving credence to the factual version of the complainant. But it is settled that "(W)hen confronted with conflicting versions of factual matters," the Labor Arbiter has the "discretion to determine which party deserves credence on the basis of evidence received." [Galmart Industries (Phils.), Inc. vs. Leogardo, 155 SCRA 403, 409, L-70544, November 5, 1987]. And besides, it is settled in this jurisdiction that "to constitute abandonment of position, there must be concurrence of the intention to abandon and some overt acts from which it may be inferred that the employee concerned has no more interest in working" (Dagupan Bus Co., Inc. vs. NLRC, 191 SCRA 328), and that the filing of the complaint which asked for reinstatement plus backwages (Record, p. 20) is inconsistent with respondents' defense of abandonment (Hua Bee Shirt Factory vs. NLRC, 188 SCRA 586).[10]

It is trite to say that the factual findings of quasi-judicial bodies are generally binding as long as they are supported substantially by evidence in the record of the case.[11] This is especially so where, as here, the agency

and its subordinate who heard the case in the first instance are in full agreement as to the facts.[12]

As regards the labor arbiter's award which was affirmed by respondent NLRC, there is no reason to apply the rule that reinstatement may not be ordered if, as a result of the case between the parties, their relation is strained.[13] Even at this late stage of this dispute, petitioner continues to reiterate its offer to reinstate private respondent.[14]

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Regalado, Acting C.J., (Chairman), Melo, Puno, and Martinez, JJ., concur.

[1] Rollo, p. 38.

[2] Id., pp. 22-24.

[3] Id., pp. 16-17.

[4] Rollo, pp. 52-53.

[5] 205 SCRA 200 (1992).

[6] Id., p. 206.

[7] Id., p. 205.

[8] Rollo, pp. 52-53.

[9] Id., p. 32.

[10] Id., p. 52.

[11] International Container Terminal Services, Inc. v. NLRC, 256 SCRA 124 (1996).

[12] Belaunzaran v. NLRC, 265 SCRA 800 (1996).

[13] Hernandez v. NLRC, 176 SCRA 269 (1989).

[14] Rollo, p. 10.

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