

INTER-ORIENT MARITIME ENTER-PRISES, INC., SEA HORSE SHIP MANAGEMENT, INC. AND TREND A WORLD SHIPPING (MANILA), INC., PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND RIZA...

G.R. No. 115286. August 11, 1994

Ponente: FELICIANO, J.

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FELICIANO, J.:

Private respondent Captain Rizalino Tayong, a licensed Master Mariner with experience in commanding ocean-going vessels, was employed on 6 July 1989 by petitioners Trenda World Shipping (Manila), Inc. and Sea Horse Ship Management, Inc. through petitioner Inter-Orient Maritime Enterprises, Inc. as Master of the vessel M/V Oceanic Mindoro, for a period of one (1) year, as evidenced by an employment contract. On 15 July 1989, Captain Tayong assumed command of petitioners' vessel at the port of Hongkong. His instructions were to replenish bunker and diesel fuel, to sail forthwith to Richard Bay, South Africa, and there to load 120,000 metric tons of coal.

On 16 July 1989, while at the Port of Hongkong and in the process of unloading cargo, Captain Tayong received a weather report that a storm code-named "Gordon" would shortly hit Hongkong. Precautionary measures were taken to secure the safety of the vessel, as well as its crew, considering that the vessel's turbo-charger was leaking and the vessel was fourteen (14) years old.

On 21 July 1989, Captain Tayong followed-up the requisition by the former captain of the Oceanic Mindoro for supplies of oxygen and acetylene, necessary for the welding-repair of the turbo-charger and the economizer.[1] This requisition had been made upon request of the Chief Engineer of the vessel and had been approved by the shipowner.[2]

On 25 July 1989, the vessel sailed from Hong Kong for Singapore. In the Master's sailing message, Captain Tayong reported a water leak from M.E. Turbo Charger No. 2 Exhaust gas casing. He was subsequently instructed to blank off the cooling water and maintain reduced RPM unless authorized by the owners.[3]

On 29 July 1989, while the vessel was en route to Singapore, Captain Tayong reported that the vessel had stopped in mid-ocean for six (6) hours and forty-five (45) minutes due to a leaking economizer. He was instructed to shut down the economizer and use the auxiliary boiler instead.[4]

On 31 July 1989 at 0607 hrs., the vessel arrived at the port of Singapore.[5] The Chief Engineer reminded Captain Tayong that the oxygen and acetylene supplies had not been delivered.[6] Captain Tayong inquired from the ship's agent in Singapore about the supplies. The ship agent stated that these could only be delivered at 0800 hours on August 1, 1989 as the stores had closed.[7]

Captain Tayong called the shipowner, Sea Horse Ship Management, Ltd., in London and informed them that the departure of the vessel for South Africa may be affected because of the delay in the delivery of the supplies.[8]

Sea Horse advised Captain Tayong to contact its Technical Director, Mr. Clark, who was in Tokyo and who could provide a solution for the supply of said oxygen and acetylene.[9]

On the night of 31 July 1989, Mr. Clark received a call from Captain Tayong informing him that the vessel cannot sail without the oxygen and acetylene for safety reasons due to the problems with the turbo charger and economizer. Mr. Clark responded that by shutting off the water to the turbo chargers and using the auxiliary boiler, there should be no further problem. According to Mr. Clark, Captain Tayong agreed with him that the vessel could sail as scheduled on 0100 hours on 1 August 1989 for South Africa.[10]

According to Captain Tayong, however, he communicated to Sea Horse his reservations regarding proceeding to South Africa without the requested supplies,[11] and was advised by Sea Horse to wait for the supplies at 0800 hrs. of 1 August 1989, which Sea Horse had arranged to be delivered on board the Oceanic Mindoro.[12] At 0800 hours on 1 August 1989, the requisitioned supplies were delivered and Captain Tayong immediately sailed for Richard Bay.

When the vessel arrived at the port of Richard Bay, South Africa on 16 August 1989, Captain Tayong was instructed to turn-over his post to the new captain. He was thereafter repatriated to the Philippines, after serving petitioners for a little more than two weeks.[13] He was not informed of the charges against him.[14]

On 5 October 1989, Captain Tayong instituted a complaint for illegal dismissal before the Philippine Overseas Employment Administration ("POEA"), claiming his unpaid salary for the unexpired portion of the written employment contract, plus attorney's fees.

Petitioners, in their answer to the complainant, denied that they had illegally dismissed Captain Tayong. Petitioners alleged that he had refused to sail immediately to South Africa to the prejudice and damage of petitioners. According to petitioners, as a direct result of Captain Tayong's delay, petitioners' vessel was placed "off-hire" by the charterer for twelve (12) hours. This meant that the charterers refused to pay the charter hire or compensation corresponding to twelve (12) hours, amounting to US\$15,500.00, due to time lost in the voyage. They stated that they had dismissed private respondent for loss of trust and confidence.

The POEA dismissed Captain Tayong's complaint and held that there was valid cause for his untimely repatriation. The decision of the POEA placed considerable weight on petitioners' assertion that all the time lost as a result of the delay was caused by Captain Tayong and that his concern for the oxygen and acetylene was not legitimate as these supplies were not necessary or indispensable for running the vessel. The POEA believed that the Captain had unreasonably refused to follow the instructions of petitioners and their representative, despite petitioners' firm assurances that the vessel was seaworthy for the voyage to South Africa.

On appeal, the National Labor Relations Commission ("NLRC") reversed and set aside the decision of the POEA. The NLRC found that Captain Tayong had not been afforded an opportunity to be heard and that no substantial evidence was adduced to establish the basis for petitioners' loss of trust or confidence in the Captain. The NLRC declared that he had only acted in accordance with his duties to maintain the seaworthiness of the vessel and to insure the safety of the ship and the crew. The NLRC directed petitioners to pay the Captain (a) his salary for the unexpired portion of the contract at US\$1,900.00 a month, plus one (1) month leave benefit; and (b) attorney's fees equivalent to ten percent (10%) of the total award due.

Petitioners, before this Court, claim that the NLRC had acted with grave abuse of discretion. Petitioners allege that they had adduced sufficient evidence to establish the basis for private respondent's discharge, contrary to the conclusion reached by the NLRC. Petitioners insist that Captain Tayong, who must protect the interest of petitioners, had caused them unnecessary damage, and that they, as owners of the vessel, cannot be compelled to

keep in their employ a captain of a vessel in whom they have lost their trust and confidence. Petitioners finally contend that the award to the Captain of his salary corresponding to the unexpired portion of the contract and one (1) month leave pay, including attorney's fees, also constituted grave abuse of discretion.

The petition must fail.

We note preliminarily that petitioners failed to attach a clearly legible, properly certified, true copy of the decision of the NLRC dated 23 April 1994, in violation of requirement no. 3 of Revised Circular No. 1-88. On this ground alone, the petition could have been dismissed. But the Court chose not to do so, in view of the nature of question here raised and instead required private respondent to file a comment on the petition. Captain Tayong submitted his comment. The Office of the Solicitor General asked for an extension of thirty (30) days to file its comment on behalf of the NLRC. We consider that the Solicitor General's comment may be dispensed with in this case.

It is well settled in this jurisdiction that confidential and managerial employees cannot be arbitrarily dismissed at any time, and without cause as reasonably established in an appropriate investigation.[15] Such employees, too, are entitled to security of tenure, fair standards of employment and the protection of labor laws.

The captain of a vessel is a confidential and managerial employee within the meaning of the above doctrine. A master or captain, for purposes of maritime commerce, is one who has command of a vessel. A captain commonly performs three (3) distinct roles: (1) he is a general agent of the shipowner; (2) he is also commander and technical director of the vessel; and (3) he is a representative of the country under whose flag he navigates.[16] Of these roles, by far the most important is the role performed by the captain as commander of the vessel; for such role (which, to our mind, is analogous to that of "Chief Executive Officer" [CEO] of a present-day corporate enterprise) has to do with the operation and preservation of the vessel during its voyage and the protection of the passengers (if any) and crew and cargo. In his role as general agent of the shipowner, the captain has authority to sign bills of lading, carry goods aboard and deal with the freight earned, agree upon rates and decide whether to take cargo. The ship captain, as agent of the shipowner, has legal authority to enter into contracts with respect to the vessel and the trading of the vessel, subject to applicable limitations established by statute, contract or instructions and regulations of the shipowner.[17] To the captain is committed the governance, care and management of the vessel.[18] Clearly, the captain is vested with both management and fiduciary functions.

It is plain from the records of the present petition that Captain Tayong was denied any opportunity to defend himself. Petitioners curtly dismissed him from his command and summarily ordered his repatriation to the Philippines without informing him of the charge or charges levelled against him, and much less giving him a chance to refute any such charge. In fact, it was only on 26 October 1989 that Captain Tayong received a telegram dated 24 October 1989 from Inter-Orient requiring him to explain why he delayed sailing to South Africa.

We also find that the principal contention of petitioners against the decision of the NLRC pertains to facts, that is, whether or not there was actual and sufficient basis for the alleged loss of trust or confidence. We have consistently held that a question of "fact" is, as a general rule, the concern solely of an administrative body, so long as there is substantial evidence of record to sustain its action.

The record requires us to reject petitioners' claim that the NLRC's conclusions of fact were not supported by substantial evidence. Petitioners rely on self-serving affidavits of their own officers and employees predictably tending to support petitioners' allegation that Captain Tayong had performed acts inimical to petitioners' interests for which, supposedly, he was discharged. The official report of Mr. Clark, petitioners' representative, in fact supports the NLRC's conclusion that private respondent Captain did not arbitrarily and maliciously delay the voyage to South Africa. There had been, Mr. Clark stated, a disruption in the normal functioning of the vessel's turbo-charger[19] and economizer and that had prevented the full or regular operation of the vessel. Thus, Mr.

Clark relayed to Captain Tayong instructions to "maintain reduced RPM" during the voyage to South Africa, instead of waiting in Singapore for the supplies that would permit shipboard repair of the malfunctioning machinery and equipment.

More importantly, a ship's captain must be accorded a reasonable measure of discretionary authority to decide what the safety of the ship and of its crew and cargo specifically requires on a stipulated ocean voyage. The captain is held responsible, and properly so, for such safety. He is right there on the vessel, in command of it and (it must be presumed) knowledgeable as to the specific requirements of seaworthiness and the particular risks and perils of the voyage he is to embark upon. The applicable principle is that the captain has control of all departments of service in the vessel, and reasonable discretion as to its navigation.[20] It is the right and duty of the captain, in the exercise of sound discretion and in good faith, to do all things with respect to the vessel and its equipment and conduct of the voyage which are reasonably necessary for the protection and preservation of the interests under his charge, whether those be of the shipowners, charterers, cargo owners or of underwriters.[21] It is a basic principle of admiralty law that in navigating a merchantman, the master must be left free to exercise his own best judgment. The requirements of safe navigation compel us to reject any suggestion that the judgment and discretion of the captain of a vessel may be confined within a straitjacket, even in this age of electronic communications.[22] Indeed, if the ship captain is convinced, as a reasonably prudent and competent mariner acting in good faith that the shipowner's or ship agent's instructions (insisted upon by radio or telefax from their offices thousands of miles away) will result, in the very specific circumstances facing him, in imposing unacceptable risks of loss or serious danger to ship or crew, he cannot casually seek absolution from his responsibility, if a marine casualty occurs, in such instructions.[23]

Compagnie de Commerce v. Hamburg[24] is instructive in this connection. There, this Court recognized the discretionary authority of the master of a vessel and his right to exercise his best judgment, with respect to navigating the vessel he commands. In *Compagnie de Commerce*, a charter party was executed between *Compagnie de Commerce* and the owners of the vessel *Sambia*, under which the former as charterer loaded on board the *Sambia*, at the port of Saigon, certain cargo destined for the Ports of Dunkirk and Hamburg in Europe. The *Sambia*, flying the German flag, could not, in the judgment of its master, reach its ports of destination because war (World War I) had been declared between Germany and France. The master of the *Sambia* decided to deviate from the stipulated voyage and sailed instead for the Port of Manila. *Compagnie de Commerce* sued in the Philippines for damages arising from breach of the charter party and unauthorized sale of the cargo. In affirming the decision of the trial court dismissing the complaint, our Supreme Court held that the master of the *Sambia* had reasonable grounds to apprehend that the vessel was in danger of seizure or capture by the French authorities in Saigon and was justified by necessity to elect the course which he took -- i.e., to flee Saigon for the Port of Manila -- with the result that the shipowner was relieved from liability for the deviation from the stipulated route and from liability for damage to the cargo. The Court said:

"The danger from which the master of the *Sam-bia* fled was a real and not merely an imaginary one as counsel for shipper contends. Seizure at the hands of an 'enemy of the King', though not inevitable, was a possible outcome of a failure to leave the port of Saigon; and we cannot say that under the conditions existing at the time when the master elected to flee from that port, there were no grounds for a 'reasonable apprehension of danger' from seizure by the French authorities, and therefore no necessity for flight.

The word 'necessity' when applied to mercantile affairs, where the judgment must in the nature of things be exercised, cannot, of course, mean an irresistible compelling power. What is meant by it in such cases is the force of circumstances which determine the course a man ought to take. Thus, where by the force of circumstances, a man has the duty cast upon him of taking some action for another, and under that obligation adopts a course which, to the judgment of a wise and prudent man, is apparently the best for the interest of the

persons for whom he acts in a given emergency, it may properly be said of the course so taken that it was in a mercantile sense necessary to take it." [25] (Underscoring supplied)

Compagnie de Commerce contended that the shipowner should, at all events, be held responsible for the deterioration in the value of the cargo incident to its long stay on board the vessel from the date of its arrival in Manila until the cargo was sold. The Supreme Court, in rejecting this contention also, declared that:

"But it is clear that the master could not be required to act on the very day of his arrival; or before he had a reasonable opportunity to ascertain whether he could hope to carry out his contract and earn his freight; and that he should not be held responsible for a reasonable delay incident to an effort to ascertain the wishes of the freighter, and upon failure to secure prompt advice, to decide for himself as to the course which he should adopt to secure the interests of the absent owner of the property aboard the vessel.

The master is entitled to delay for such a period as may be reasonable under the circumstances, before deciding on the course he will adopt. He may claim a fair opportunity of carrying out a contract, and earning the freight, whether by repairing or transhipping. Should the repair of the ship be undertaken, it must be proceeded with diligently; and if so done, the freighter will have no ground of complaint, although the consequent delay be a long one, unless, indeed, the cargo is perishable, and likely to be injured by the delay. Where that is the case, it ought to be forwarded, or sold, or given up, as the case may be, without waiting for repairs.

A shipowner or shipmaster (if communication with the shipowner is impossible), will be allowed a reasonable time in which to decide what course he will adopt in such cases as those under discussion; time must be allowed to him to- ascertain the facts, and to balance the conflicting interests involved, of shipowner, cargo owner, underwriter on ship and freight. But once the time has elapsed, he is bound to act promptly according as he has elected either to repair, or abandon the voyage, or tranship. If he delays, and owing to that delay a perishable cargo suffers damage, the shipowner will be liable for that damage; he cannot escape that obligation by pleading the absence of definite instructions from the owners of the cargo or their underwriters, since he has control of the cargo and is entitled to elect." [26] (Underscoring supplied)

The critical question, therefore, is whether or not Captain Tayong had reasonable grounds to believe that the safety of the vessel and the crew under his command or the possibility of substantial delay at sea required him to wait for the delivery of the supplies needed for the repair of the turbo-charger and the economizer before embarking on the long voyage from Singapore to South Africa.

In this connection, it is specially relevant to recall that, according to the report of Mr. Robert Clark, Technical Director of petitioner Sea Horse Ship Management, Inc., the Oceanic Mindoro had stopped in mid-ocean for six (6) hours and forty-five (45) minutes on its way to Singapore because of its leaking economizer. [27] Equally relevant is the telex dated 2 August 1989 sent by Captain Tayong to Sea Horse after Oceanic Mindoro had left Singapore and was en route to South Africa. In this telex, Captain Tayong explained his decision to Sea Horse in the following terms:

"I CAPT R.D. TAYONG RE: UR PROBLEM IN SPORE (SINGAPORE) I EXPLAIN AGN TO YOU THAT WE ARE INSECURITY/DANGER TO SAIL IN SPORE W/OUT HAVING SUPPLY OF OXY/ACET. PLS UNDERSTAND HV PLENTY TO BE DONE REPAIR FM MAIN ENGINE LIKE TURBO CHARGER PIPELINE, ECONOMIZER LEAKAGE N ETC WE COULD NOT FIX IT W/OUT OXY/ACET ONBOARD. I AND MR. CLARK WE CONTACTED EACH OTHER BY PHONE IN PAPAN N HE ADVSED US TO SAIL TO RBAY N WILL SUPPLY OXY/ACET UPON ARRIVAL RBAY HE ALSO EXPLAINED TO MY C/E HOW TO FIND THE REMEDY W/OUT OXY/ACET BUT C/E HE DISAGREED MR. CLARK IDEA, THAT IS WHY WE URG REQUEST[ED] YR KIND OFFICE TO ARRANGE SUPPLY OXY/ACET BEFORE SAILING TO AVOID RISK/DANGER OR DELAY AT SEA N WE TOOK PRECAUTION UR TRIP FOR 16 DAYS FM SPORE TO RBAY. PLS. UNDERSTAND UR SITUATION." [28] (Underscoring partly in source and partly supplied)

Under all the circumstances of this case, we, along with the NLRC, are unable to hold that Captain Tayong's decision (arrived at after consultation with the vessel's Chief Engineer) to wait seven (7) hours in Singapore for the delivery on board the Oceanic Mindoro of the requisitioned supplies needed for the welding-repair, on board the ship, of the turbo-charger and the economizer equipment of the vessel, constituted merely arbitrary, capricious or grossly insubordinate behavior on his part. In the view of the NLRC, that decision of Captain Tayong did not constitute a legal basis for the summary dismissal of Captain Tayong and for termination of his contract with petitioners prior to the expiration of the term thereof. We cannot hold this conclusion of the NLRC to be a grave abuse of discretion amounting to an excess or loss of jurisdiction; indeed, we share that conclusion and make it our own.

Clearly, petitioners were angered at Captain Tayong's decision to wait for delivery of the needed supplies before sailing from Singapore, and may have changed their estimate of their ability to work with him and of his capabilities as a ship captain. Assuming that to be petitioners' management prerogative, that prerogative is nevertheless not to be exercised, in the case at bar, at the cost of loss of Captain Tayong's rights under his contract with petitioners and under Philippine law.

ACCORDINGLY, petitioners having failed to show grave abuse of discretion amounting to loss or excess of jurisdiction on the part of the NLRC in rendering its assailed decision, the Petition for Certiorari is hereby DISMISSED, for lack of merit. Costs against petitioners.

SO ORDERED.

Bidin, Romero, Melo, and Vitug, JJ., concur.

[1] A "turbo-charger" is a centrifugal blower driven by exhaust gas turbines and used to supercharge an engine, or to supply a charge to the intake of an internal-combustion engine at a pressure higher than that of the surrounding atmosphere (Webster's New World Dictionary (1974), p. 1532.

An "economizer" is a device in which water is heated preliminary to entering the boiler proper. The heat which was used in raising the temperature of the water contained in the boiler to boiling point is utilized, instead of being wasted, for the purpose of raising the water in the economizer to a high temperature before it enters the boiler. An increase in the feed water temperature will raise boiler efficiency. (Ithaca Traction Corp. vs. Traveler's Indemnity Co., 177 N.Y.S. 753 [1919])

[2] NLRC Decision, p. 3.

[3] Report of Mr. Robert B. Clark, p. 1; Records, p. 104.

[4] Id., p. 2; Records, p. 103.

[5] Id., p. 1; Records, p. 104.

[6] Memorandum of appeal of Captain Tayong, p. 3; Records, p. 197.

[7] NLRC Decision, p. 3.

[8] Memorandum of appeal of Captain Tayong, p. 3; Records, p. 197.

[9] Id., pp. 3-4; Records, pp. 196-197.

[10] Report of Mr. Clark, p. 1; Records, p. 103.

[11] Memorandum of Appeal, p. 4; Records, p. 196.

[12] Id., p. 4; Records, p. 196.

[13] NLRC Decision, p. 3.

[14] Memorandum of appeal, p. 4; Records, p. 196.

[15] Lawrence vs. National Labor Relations Commission, 205 SCRA 737 (1992); Hellenic Philippine Shipping vs. Siete, 195 SCRA 179 (1991); Anscor Transport & Terminals vs. National Labor Relations Commission, 190 SCRA 147 (1990).

[16] See Hernandez and Penasales, Philippine Admiralty and Maritime Law, p. 388 (1987).

[17] Article 610, Code of Commerce.

[18] See Article 610, Code of Commerce. See Fitz vs. The Galiot Amelie, 73 US 18, 18 L Ed 806 (1867); Steamship Styria vs. Morgan, 186 US 1, 46 L Ed 1027 (1901); McAndrews vs. Thatcher, 70 US 347, 18 L Ed 155 (1865); The Propeller Niagara vs. Cordes, 62 US 7, 16 L Ed 41 (1858).

[19] The official statement of Mr. Clark reported that there was “a water leak from M.E. Turbo-Charger No. 2 Exhaust gas outlet casing.” (Petition, Rollo, p. 6.)

[20] American-Hawaiian S.S. Co. v. Pacific S.S. Co., 41 F 2d 718 (1930); The Princess Sophia, 61 F 2D 339 (1932).

[21] The Styria, 186 US 1, 46 L Ed 1027 (1901); Grays Harbor County vs. Brimanger (1933), 18 P2d 25; Wandtke vs. Anderson, 74 F 2d 381 (1934); The Balsa, 10 F 2d 408 (1926); The Pomare, 92 F Supp 185 (1950); The Vulcan, 60 F Supp 158 (1945); Framlington, 69 F 2d 300 (1934); United British Steamship Company, Ltd. v. Newfoundland Export and Shipping, 292 US 651, 78 L Ed 1500 (1934); The Dampskibsselskabet Atalanta A/S v. US, 31 F 2d 961 (1929); Ralli vs. Troop, 157 US 386 (1894).

[22] E.g., The Lusitania, 251 F 715 (1918).

[23] See, generally, The Dampskibsselskabet Atalanta A/S v. U.S., 31 F. 2d 961 (1929); Ralli v. Troop, 157 US 386 (1894); Johnson v. U.S., 74 F 2d 703 (1935); Palmer v. United States, 85 F Supp 764 (1949); Roberts v. United Fisheries Vessels Co., 141 F 2d 288 (1944).

[24] 36 Phil. 590 (1917).

[25] 36 Phil. at 626-627.

[26] 36 Phil. at 631-632.

[27] *supra*, note 4.

[28] As quoted in the Comment of respondent Rizalino D. Tayong, dated 10 July 1994, p. 4.

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