ENRIQUE A. BARROS, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, TRANSORIENT MARITIME SERVICES, INC., DAISHIN SHIPPING CO., LTD. AND DOMINION INSURANCE CORPORATION, RESPO...

G.R. No. 123901. September 22, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This special civil action for certiorari seeks to annul and set aside the Decision[1] of the National Labor Relations Commission (NLRC) dated 27 December 1995, which reversed the decision[2] of the Philippine Overseas Employment Administration (POEA) dated 18 January 1994, for having been rendered with grave abuse of discretion.

On 28 July 1992 petitioner Enrique A. Barros, a licensed Marine Engineer, filed a complaint-affidavit before the POEA Adjudication Office against private respondents Transorient Maritime Services, Inc., (TRANSORIENT) and Daishin Shipping Co., Ltd. (DAISHIN). His claim was for illegal dismissal, recovery of salaries corresponding to the unexpired portion of his employment contract, repatriation expenses, unauthorized deductions and payments, an undetermined amount for discrimination against him for being a Filipino, damages and attorney's fees. Dominion Insurance Corporation was impleaded as party respondent by virtue of a bond it issued for its bonded principal, TRANSORIENT.

Petitioner Barros alleged that on 21 July 1991 he was hired by DAISHIN through its local manning agent TRANSORIENT to work as First Assistant Engineer on board its vessel M.V. Monte Paloma for a period of twelve (12) months with a salary of US $830.00 and overtime pay of US $370.00 a month. He claimed that on 26 November 1991, after almost four (4) months of regular and efficient performance of his duties, he was ordered by his Japanese ship captain to go home without giving him any explanation therefor, and on the same day, was repatriated to the Philippines. Petitioner also imputed discriminatory acts to his Japanese superior, the Chief Engineer, for which he claimed monetary award. He further maintained that all expenses for his return were charged to him. He also alleged that the day after he arrived in the Philippines he went to the office of TRANSORIENT to inquire about his hasty repatriation but was not given any explanation by a certain Captain Viterbo. He was instead assured by Viterbo of another employment.

Private respondents, on the other hand, admitted having deployed petitioner under the circumstances claimed by him but denied having illegally dismissed him. They maintained that petitioner was repatriated upon his own request as reflected in his seaman's book; consequently, the case must be dismissed as they did not commit any illegal termination of employment.

After a careful assessment of he evidence and the arguments of the parties, the POEA in its decision of 18 January 1994 ruled in favor of petitioner. It did not give credence to private respondents' contention that petitioner voluntarily terminated his employment. It held that the entry in petitioner's seaman's book as to the cause of his

discharge was sufficiently rebutted by petitioner's reply-affidavit[3] wherein he stated that it was impossible for him to inform his Master of his father's death as his father died as early as 1971.[4] The POEA likewise noted that if petitioner actually requested his immediate repatriation, he should have executed a resignation letter or a letter-request for repatriation, but private respondents did not present any before the POEA. Accordingly, it declared as illegal the dismissal of petitioner and ordered TRANSORIENT, DAISHIN and Times Surety and Insurance Co.[5] to pay him, jointly and severally, his salary corresponding to the unexpired portion of his contract or US $6,426.66 plus P33,591.40 as repatriation expenses and ten percent (10%) of the total award as attorney's fees. Petitioner's charge of unauthorized deductions, which he failed to prove, was not given due course. His claim for moral and exemplary damages was dismissed by POEA for want of jurisdiction to award them.

On appeal, the NLRC reversed the decision of the POEA. It ruled that contrary to the findings of the POEA, the repatriation of petitioner was voluntary or upon his request as no ill motive could be ascribed to private respondents in terminating his employment. In fact, it emphasized that his performance as entered in the seaman's book was "excellent and very good."[6] Moreover, the NLRC noted that petitioner's seaman's book was with him when he left for the Philippines; thus, petitioner could not feign ignorance of the reason for his repatriation, i.e., that his "father died."[7] The NLRC likewise took into consideration the fact that petitioner filed his complaint seven (7) months after his return to the Philippines.

Petitioner sought reconsideration but NLRC denied his motion. Hence this special civil action raising the basic issue of whether the NLRC acted with grave abuse of discretion in reversing the decision of the POEA which found petitioner to have been illegally dismissed by his employer.

As a general rule, the factual findings and conclusions drawn by the NLRC are accorded great weight and respect upon appeal, and even finality, as long as they are supported by substantial evidence.[8] However, where the findings of the POEA and the NLRC contradict each other, this Court must examine the records of the case and the evidence presented to determine which of them should be preferred as more conformable with the established facts.[9]

In the instant case, there is no dispute that petitioner was repatriated by private respondents prior to the expiration of his contract of employment. Thus, it is incumbent upon private respondents to prove by the quantum of evidence required by law that petitioner was not dismissed, or if dismissed, that the dismissal was not illegal; otherwise, the dismissal would be unjustified.[10]

In reversing the POEA, the NLRC relied on the claim of private respondents that petitioner could not have been dismissed because his seaman's book bore the remarks that he was an excellent and very good employee and that he was discharged by reason of his father's death.[11] The NLRC appears to have been clearly misguided, as it is obvious that petitioner's seaman's book was the only basis for private respondents' claim of voluntary repatriation. In fact when private respondents were faced with the reply-affidavit of petitioner stating that he could not have informed the ship captain of his father's death since his father had long been dead, or for more than twenty (20) years, private respondents countered that petitioner must have lied to the captain. They even stated in their comment that "it is not uncommon for some seamen like herein petitioner to concoct excuses, like sickness or death of relatives, even if not true, to secure repatriation before the expiry of their contract."[12]

We note with emphasis Sec. 5, rule 133, of the Rules of Court which provides: "In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." The entries in the seaman's book of petitioner cannot, by any stretch of the imagination, be

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considered as substantial evidence to prove voluntary repatriation and lawful dismissal. We cannot rule otherwise for to do so may prove dangerous as all employers of seafarers will now be complacent in perpetrating indiscriminate acts of termination with the seaman's book as their shield against culpability.

Neither do we subscribe to the conclusion of the NLRC that the complaint must be dismissed as petitioner asserted his rights for the first time only after seven (7) months from his repatriation. It bears underscoring that petitioner reported to the office of private respondents to ask about his precipitate repatriation the day after his arrival in the Philippines and private respondents failed to dispute this allegation contained in petitioner's complaint-affidavit. Moreover, it is significant to note that the complaint-affidavit was filed within the prescriptive period provided under the law. At any rate, the seven (7)-month interval between his repatriation and his actual filing of the complaint may be attributed to the fact that petitioner, aside from being a mere seafarer who is not equipped with the necessary legal knowledge to assert his rights, was promised another employment by private respondents upon his return to the Philippines. Thus, it can fairly be stated that when private respondents finally failed to fulfill their promise after a long while, petitioner had no choice but to pursue his rights to which he is entitled under the law.

In sum, private respondents failed to substantiate their claim of voluntary repatriation. Thus, petitioner was discharged without cause, thereby rendering the dismissal illegal. As a result, the NLRC committed grave abuse of discretion in reversing the decision of the POEA and consequently upholding petitioner's dismissal.

WHEREFORE, the petition for certiorari is GRANTED. The assailed Decision of public respondent National Labor Relations Commission dated 27 December 1995 is SET ASIDE while that of the Philippine Overseas Employment Administration dated 18 January 1994 declaring the dismissal of petitioner as illegal and ordering private respondents TRANSORIENT Maritime Services Inc., DAISHIN Shipping Co., Ltd., and Times Surety and Insurance Co. to pay him, jointly and severally, his salary corresponding to the unexpired portion of his contract or US$6,426.66 plus P33,591.40 as repatriation expenses and ten percent (10%) of the total award as attorney's fees, is REINSTATED and AFFIRMED.

SO ORDERED.

Mendoza, Quisumbing, and Buena, JJ., concur.

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[1] Decision penned by Commissioner Victoriano R. Calaycay, concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Rogelio I. Rayala, National Labor Relations Commission.

[2] Decision penned by Administrator Felecisimo O. Joson, Philippine Overseas Employment Administration; Rollo, pp. 13-16.

[3] Rollo, p. 63.

[4] Certificate of Death; POEA Records, Annex "B."

[5] Times Surety Insurance Co. was the proper party declared liable under Bond No. 17790 – 0756 (10) 08004, instead of Dominion Insurance Corporation, the party impleaded in the complaint by virtue of the bond it issued in favor of its bonded principal TRANSORIENT as the surety bond it issued was not in force and effect at the time of petitioner's deployment.

[6] POEA Records, Annex "E."

[7] Ibid.

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[8] Ranises v. NLRC, G.R. No. 111914, 24 September 1996, 262 SCRA 371, citing Philippine National Construction Corp. v. NLRC, G.R. No. 112629, 7 July 1995, 245 SCRA 668; Cabalan Pastulan Negrito Labor Association v. NLRC, G.R. No. 106108, 23 February 1995, 241 SCRA 643; Tiu v. NLRC, G.R. No. 83433, 12 November 1992, 215 SCRA 540; San Miguel Corporation v. Javate Jr., G.R. No. 54244, 27 January 1992, 205 SCRA 469.

[9] Ibid.

[10] Fil-Pride Shipping Co., Inc. v. NLRC, G.R. No. 97068, 5 March 1993, 219 SCRA 576; Reyes v. Lim Co., Inc. v. NLRC, G.R. Nos. 87012-13, 25 September 1991, 201 SCRA 772, citing Starlite Plastic Corp. v. NLRC, G.R. No. 78491, 16 March 1989, 171 SCRA 315.

[11] See Note 6.

[12] Rollo, p. 39.

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