SKIPPERS UNITED PACIFIC, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, GERVACIO ROSAROSO, AND COURT OF APPEALS,

G.R. NO. 148893. July 12, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Respondent Gervacio Rosaroso[*] was signed up as a Third Engineer with Nicolakis Shipping, S.A., a foreign firm, through its recruitment and manning agency, herein petitioner Skippers United Pacific, Inc. The term of the contract was for one year, starting July 10, 1997 to July 8, 1998, and with a salary of US$800.00 and other benefits. Barely a month after boarding the vessel M/V Naval Gent on July 15, 1997, respondent was ordered to disembark in Varna, Bulgaria, on August 7, 1997, and repatriated to the Philippines. Immediately after arriving in the Philippines, respondent filed a complaint for illegal dismissal and monetary claims on August 18, 1997.[1]

In a Decision dated August 11, 1998, the Labor Arbiter found that respondent was illegally dismissed:

> WHEREFORE, in the light of the foregoing, judgment is rendered finding the dismissal of complainant illegal. An order is issued directing the respondents to pay complainant the amount of US$2,400.00 or its Philippine peso equivalent of P100,000.00 as separation pay plus the amount of US$186.69 representing complainant's unpaid salary for seven (7) days or in the Philippine peso equivalent of P7,840.98 or the total amount of P108,640.98. On top of said amount, attorney's fees of P5,000.00 is also awarded.
>
> SO ORDERED.[2]

On appeal, the National Labor Relations Commission (NLRC) affirmed the Labor Arbiter's Decision and dismissed petitioner's appeal per its Decision dated February 26, 1999.[3] Petitioner sought reconsideration thereof but its motion was denied by the NLRC in its Resolution dated May 27, 1999.[4]

Thus, petitioner filed with the Court of Appeals (CA) a special civil action for certiorari under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 53490.

On May 7, 2001, the CA[5] dismissed the petition and affirmed in toto the NLRC Decision dated February 26, 1999.[6] Petitioner filed a motion for reconsideration which was denied by the CA in its Resolution dated July 3, 2001.[7]

Hence, the present petition for review under Rule 45 of the Rules of Court with the following assignment of errors:

> FIRST ASSIGNMENT OF ERROR

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT PETITIONER ILLEGALLY DISMISSED THE PRIVATE RESPONDENT.

SECOND ASSIGNMENT OF ERROR

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN AWARDING PRIVATE RESPONDENT BACKWAGES EQUIVALENT TO HIS THREE (3) MONTHS SALARY.[8]

Petitioner's main contention is that the CA, the NLRC and the Labor Arbiter erred in not giving "full evidentiary value" to the telexed Chief Engineer's Report dated September 10, 1997, which specified the causes of respondent's dismissal, quoted as follows:

> TO: SKIPPERS MNL
> CC: SKIPPERS PIRAEUS
> FM: MV NAVAL GENT
> DT: SEPT. 10, 1997
>
> DURING SHIP REPAIR AT PERAMA DD. 18/07-31/07/97 OUR ATTENDING SUPT. ENGINEERS CONSTANTLY OBSERVING ALL PERSONNELS ABILITY AND ATTITUDE WITH REGARDS TO OUR TECHNICAL CAPABILITY AND BEHAVIOURS WITH EMPHASY [SIC] ON DISCIPLINE. IT IS ONLY UNFORTUNATE THAT THEY NOTICED 3/E G. ROSAROSO AS BEING SLACK AND NOT CARING OF HIS JOB AND DUTIES BEING HIRED AS THIRD ENGR OFFICER, TO THE FULLEST BEYOND THEIR EXPECTATION. AFTER TOO MUCH OF CONSIDERATION AND DELIBERATION HAVING HIM CONSTANTLY ADVISED BY 2/E F. DIAMOS ASKING FOR HIS COOPERATION TO WORK AND HELP IN THE ONGOING ENORMOUS REPAIRS. BUT FAILED TO HEED AND REFUSED TO BE MOTIVATED. WE HAVE SEEKED [SIC] ADVISE FROM YOUR OFFICE VIA PHONE, SKIPPERS PIRAEUS THRU CAPT. KAMPANIS AND THE PORT CAPT OF NICOLAKIS SHIPPING CAPT. PAPASTILIANOS, OF WHAT TO BE DONE. THE OWNERS RECOMMENDATION WAS TO REPLACED [SIC] HIM ON THE FOLLOWING REASONS:
>
> 1) LACK OF DISCIPLINE – HE RESENTED DISCIPLINE. HE IS SEEN BY SUPT. ENGRS. ON SEVERAL OCCASION DURING WORKING HOURS STAYING ON PORTSIDE DECK SMOKING AND HAVING SNACKS. MANY TIMES HE IS INSIDE THE GALLEY CHATTING WITH CHIEF COOK DURING WORKING HOURS AND HAVING SNACKS. HE TENDS TO BE FREQUENTLY LATE FOR DUTY/WORK AND IS GENERALLY UNRELIABLE.
>
> 2) IRRESPONSIBLE - HE HAS NOT SHOWN A HIGH SENSE OF RESPONSIBILITY AS 3/ENGR. HE IS CAREFREE IN DISCHARGING HIS DUTIES IN MAINTAINING THE ASSIGNED MACHINERIES, SUCH AS BOILER, DIESEL GENERATORS, STARTING AIR COMPRESSORS AND VARIOUS PUMPS. HE CANNOT BE TRUSTED TO DO HIS JOB UNLESS SUPERVISED PERPETUALLY.
>
> 3) LACK OF DILIGENCE - HE REQUIRES CONSTANT PUSHING AND HAS TO BE WATCHED MOST OF THE TIME. LACK OF INITIATIVE REGARDLESS OF CONSTANT MOTIVATION.
>
> SGD. JEROME A. RETARDO
>
> CHIEF ENGR[9]

According to petitioner, the foregoing Report established that respondent was dismissed for just cause. The CA, the NLRC, and the Labor Arbiter, however, refused to give credence to the Report. They are one in ruling that the Report cannot be given any probative value as it is uncorroborated by other evidence and that it is merely hearsay, having come from a source, the Chief Engineer, who did not have any personal knowledge of the events reported therein.

The Labor Arbiter ruled that the charges against respondent are bare allegations, unsupported by corroborating evidence. The Labor Arbiter stated that if respondent indeed committed the alleged infractions, then these should

have, at the very least, been entered into the seaman's book, or that a copy of the vessel's logbook presented to prove the same.[10] The Labor Arbiter's findings were sustained by the NLRC.[11]

The CA upheld these findings, succinctly stating as follows:

> Verily, the report of Chief Engineer Retardo is utterly bereft of probative value. It is not verified by an oath and, therefore, lacks any guarantee of trustworthiness. It is furthermore and this is crucial – not sourced from the personal knowledge of Chief Engineer Retardo. It is rather based on the perception of "ATTENDING SUPT. ENGINEERS CONSTANTLY OBSERVING ALL PERSONNELS ABILITY AND ATTITUDE WITH REGARDS TO OUR TECHNICAL CAPABILITY AND BEHAVIOURS WITH EMPHASY (sic) ON DISCIPLINE" who "NOTICED 3/E ROSAROSO AS BEING SLACK AND NOT CARING OF HIS JOB AND DUTIES X X X ." Accordingly, the report is plain hearsay. It is not backed up by the affidavit of any of the "Supt." Engineers who purportedly had first-hand knowledge of private respondent's supposed "lack of discipline," "irresponsibility" and "lack of diligence" which caused him to lose his job. x x x [12]

The Court finds no reason to reverse the foregoing findings.

To begin with, the question of whether respondent was dismissed for just cause is a question of fact which is beyond the province of a petition for review on certiorari. It is fundamental that the scope of the Supreme Court's judicial review under Rule 45 of the Rules of Court is confined only to errors of law. It does not extend to questions of fact. More so in labor cases where the doctrine applies with greater force.[13]

The Labor Arbiter and the NLRC have already determined the factual issues, and these were affirmed by the CA. Thus, they are accorded not only great respect but also finality,[14] and are deemed binding upon this Court so long as they are supported by substantial evidence.[15] A heavy burden rests upon petitioner to convince the Court that it should take exception from such a settled rule.[16]

More importantly, the finding that respondent was illegally dismissed is supported, not only by the evidence on record, but by jurisprudence as well.

The rule in labor cases is that the employer has the burden of proving that the dismissal was for a just cause; failure to show this would necessarily mean that the dismissal was unjustified and, therefore, illegal.[17] The two-fold requirements for a valid dismissal are as follows: (1) dismissal must be for a cause provided for in the Labor Code, which is substantive; and (2) the observance of notice and hearing prior to the employee's dismissal, which is procedural.[18]

The only evidence relied upon by petitioner in justifying respondent's dismissal is the Chief Engineer's Report dated September 10, 1997. The question that arises, therefore, is whether the Report constitutes substantial evidence proving that respondent's dismissal was for cause.

Substantial evidence is defined as that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[19] As all three tribunals found, the Report cannot be given any weight or credibility because it is uncorroborated, based purely on hearsay, and obviously merely an afterthought. While rules of evidence are not strictly observed in proceedings before administrative bodies,[20] petitioner should have offered additional proof to corroborate the statements described therein. Thus, in Ranises v. National Labor Relations Commission,[21] involving a seafarer who was repatriated to the Philippines for allegedly committing illegal acts amounting to a breach of trust, as based on a telex dispatch by the Master of the M/V Southern Laurel, the Court rejected the weight given by the NLRC on the telex, to wit:

> Unfortunately, the veracity of the allegations contained in the aforecited telex was never proven by respondent employer. Neither was it shown that respondent employer exerted any effort to even verify the truthfulness of

> Capt. Sonoda's report and establish petitioner's culpability for his alleged illegal acts. Worse, no other evidence was submitted to corroborate the charges against petitioner.

Similarly in this case, petitioner should have presented other evidence to corroborate its claim that respondent's acts or omissions aboard the vessel M/V Naval Gent warrant his immediate repatriation. Moreover, the fact that the Report was accomplished on September 10, 1999, or more than a month after respondent was repatriated, makes it all the more suspect, and was obviously made to make it appear that there were valid reasons for respondent's dismissal.

Another analogous case worth citing is Pacific Maritime Services, Inc. v. Ranay.[22] This case involved two seafarers repatriated to the Philippines for committing acts on board the vessel M/V Star Princess, which acts amounted to serious misconduct, insubordination, non-observance of proper hours of work and damage to the laundry of the vessel's crew and passengers. In support of its claim that the respondents were validly dismissed, the petitioners presented its lone evidence, a telefax transmission purportedly executed and signed by a certain Armando Villegas, detailing the incidents which prompted the termination of private respondents' services. The Court, however, ruled that the telefax transmission is not sufficient evidence, viz.:

> Petitioners' reliance on the telefax transmission signed by Armando Villegas is woefully inadequate in meeting the required quantum of proof which is substantial evidence. For one thing, the same is uncorroborated. Although substantial evidence is not a function of quantity but rather of quality, the peculiar environmental circumstances of the instant case demand that something more should have been proffered. According to the account of Villegas, it appears that the incidents he was referring to transpired with the knowledge of some crew members. The alleged assault by Gerardo Ranay on Villegas, for instance, was supposedly witnessed by at least four other crew members. Surprisingly, none of them was called upon to testify, either in person or through sworn statements. Worse, Villegas himself who omitted some vital details in his report, such as the time and date of the incidents referred to, was not even presented as witness so that private respondents and the POEA hearing officer could have been given an opportunity to cross-examine and propound clarificatory questions regarding matters averred by him in the telefax transmission. Moreover, although signed, the same was not under oath and, therefore, of dubious veracity and reliability although admissible. Likewise, the motive is suspect and the account of the incidents dangerously susceptible to bias since it came from a person with whom private respondents were at odds. All told, petitioners failed to make up for the weakness of the evidence upon which they confidently anchored the merits of their case.
>
> Likewise, the belated submission of the report by Villegas, long after the incidents referred to had taken place and after the complaint had been lodged by private respondents, weighs heavily against its credibility. Petitioners did not show any convincing reason why said report was only accomplished on September 22, 1989. They merely argued that as in criminal cases, the witness is usually reluctant to report an incident. At any rate, with present technology, a ship out at sea is not so isolated that its captain cannot instantly communicate with its office. It would appear that the report, filed several months later, is but an afterthought.

Therefore, the CA was correct in affirming the findings and conclusions of both the Labor Arbiter and the NLRC.

Petitioner maintains that it complied with the requisites of procedural due process. According to petitioner, respondent was constantly reprimanded and rebuked for his acts. Petitioner also contends that the ship's Master is allowed to dismiss an erring seafarer without hearing under Section 17, paragraph D of the Philippine Overseas Employment Administration (POEA) Standard Employment Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels. Paragraph D, Section 17, however, is not applicable in respondent's case.

Section 17 sets forth the disciplinary procedures against erring seafarers, to wit:

> Section 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:
>
> 1. Grounds for the charges as listed in Section 31 of this Contract.
>
> 2. 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. An entry on the investigation shall be entered into the ship's logbook.
>
> C. If, after the 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 doing so will prejudice the safety of the crew or the vessel. This information shall be entered in the ship's logbook. The Master shall send a complete report to the manning agency substantiated by witnesses, testimonies and any other documents in support thereof.

The foregoing provision was explained in Skippers Pacific, Inc. v. Mira,[23] as follows:

> Note that 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. (Emphasis supplied)

There is nothing on record that shows that furnishing respondent with a notice of dismissal will pose a clear and present danger to the vessel and its crew. And even if the Master was justified in dispensing with the required notice, still, it was essential that a complete report, substantiated by witnesses, testimonies and any other documents in support thereof, was sent to the manning agency. The record of this case is bereft of any such report and supporting documents. Instead, respondent was verbally ordered to disembark the vessel and repatriated to the Philippines without being told of the reasons why.[24] Clearly, respondent was not accorded due process.

Finally, petitioner laments the award of backwages equivalent to three months salary in favor of respondent. Petitioner argues that there is no basis for such award. The Court is not persuaded.

A seafarer is not a regular employee as defined in Article 280 of the Labor Code. Hence, he is not entitled to full backwages and separation pay in lieu of reinstatement as provided in Article 279 of the Labor Code.[25] Seafarers are contractual employees whose rights and obligations are governed primarily by the POEA Standard Employment Contract for Filipino Seamen, the Rules and Regulations Governing Overseas Employment, and, more importantly, by Republic Act (R.A.) No. 8042, or the Migrant Workers and Overseas Filipinos Act of 1995.[26] While the POEA Standard Employment Contract for Filipino Seamen and the Rules and Regulations Governing Overseas Employment do not provide for the award of separation or termination pay,[27] Section 10 of R.A. 8042 provides for the award of money claims in cases of illegal dismissals, thus:

> Section 10. Money Claims. – x x x
>
> x x x

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> 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 the full reimbursement of his placement fee with interest at twelve percent (12%) per annum, plus 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.
>
> x x x

The award of salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less, is not an award of backwages or separation pay, but a form of indemnity for the worker who was illegally dismissed. The Labor Arbiter may have mislabeled it as separation pay, nonetheless, the award was made in conformity with law.

However, in the interest of substantial justice and to avoid further litigation on the matter,[28] it must be stressed that the peso amounts equivalent to the dollar awards of the Labor Arbiter can not be enforced for being contrary to law. The peso equivalent of the monetary award should be computed at the peso to dollar exchange rate prevailing at the time of payment,[29] as provided in Republic Act No. 8183, entitled "An Act Repealing Republic Act Numbered Five Hundred Twenty-Nine, As Amended, Entitled 'An Act to Assure the Uniform Value of Philippine Coin and Currency'," which provides:

> SECTION 1. All monetary obligations shall be settled in the Philippine currency which is legal tender in the Philippines. However, the parties may agree that the obligation or transaction shall be settled in any other currency at the time of payment.

Except for the foregoing clarification, the Court finds no cogent reason to grant this petition.

WHEREFORE, the petition is DENIED. The Decision dated May 7, 2001 and Resolution dated July 3, 2001 rendered by the Court of Appeals in CA-G.R. SP No. 53490 are AFFIRMED with the MODIFICATION that the monetary awards of US$2,400.00 and US$186.69 made by the Labor Arbiter in its Decision dated August 11, 1998, should be payable in its equivalent in Philippine currency computed at the prevailing rate of exchange at the time of payment.

Let the heirs of deceased respondent represented by his surviving wife, Carmen M. Rosaroso, residing at Hills View, Mohon II, Tisa, Cebu City, who are hereby deemed substituted as respondents, be sent a copy of herein Decision.

SO ORDERED.

Panganiban, (Chairman), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur.

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[*] Now deceased, per Notice of Death with Manifestation filed by counsel, p. 59, rollo.

[1] CA rollo, p. 47.

[2] Id. at 39.

[3] Id. at 31.

[4] Id. at 23.

[5] Associate Justice Salvador J. Valdez, Jr., ponente, with Associate Justices Wenceslao I. Agnir, Jr. (retired) and Juan Q. Enriquez, Jr., concurring.

[6] CA rollo, p. 238.

[7] Id. at 259.

[8] Rollo, p. 14.

[9] CA rollo, p. 54.

[10] Id. at 38.

[11] Id. at 24.

[12] Id. at 232.

[13] Philippine National Bank v. Cabansag, G.R. No. 157010, June 21, 2005, 460 SCRA 514, 525.

[14] Laguna Autoparts Manufacturing Corporation v. Office of the Secretary, Department of Labor and Employment, G.R. No. 157146, April 29, 2005, 457 SCRA 730, 739.

[15] Hantex Trading Co., Inc. v. Court of Appeals, 438 Phil. 737, 743 (2002).

[16] Becton Dickinson Phils., Inc. v. National Labor Relations Commission, G.R. Nos. 159969 & 160116, November 15, 2005, 475 SCRA 123, 142.

[17] Pascua v. National Labor Relations Commission, G.R. No. 123518, March 13, 1998, 351 Phil. 48, 62.

[18] Ranises v. National Labor Relations Commission, 330 Phil. 936, 942 (1996).

[19] Barros v. National Labor Relations Commission, 373 Phil. 635, 641 (1999), citing Section 5, Rule 133 of the Rules of Court.

[20] Philippine Long Distance Company, Inc. v. Tiamson, G.R. Nos. 164684-85, November 11, 2005, 474 SCRA 761, 774.

[21] Supra., note 18.

[22] 341 Phil. 716 (1997).

[23] 440 Phil. 906, 919 (2002).

[24] CA rollo, p. 55.

[25] Ravago v. ESSO Eastern Marine, Ltd, G.R. No. 158324, March 14, 2005, 453 SCRA 381, 402; Pentagon International Shipping, Inc. v. Adelantar, G.R. No. 157373, July 27, 2004, 435 SCRA 342, 348.

[26] Ravago v. ESSO Eastern Marine, Ltd., id.

[27] Millares v. National Labor Relations Commission, 434 Phil. 524, 537 (2002).

[28] Fortich v. Corona, 352 Phil. 461, 486 (1998); China Banking Corporation v. Court of Appeals, 337 Phil. 223 (1997); Valderrama v. National Labor Relations Commission, 326 Phil. 477, 488 (1996).

[29] Asia World Recruitment, Inc., v. National Labor Relations Commission, 371 Phil. 745, 759 (1999).

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