PHILIPPINE TRANSMARINE CARRIERS, INC., PETITIONER, VS. FELICISIMO CARILLA, RESPONDENT.

G.R. NO. 157975. June 26, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a Petition for Review on Certiorari filed by Philippine Transmarine Carriers, Inc. (petitioner) seeking to annul and set aside the Decision[1] of the Court of Appeals (CA) dated November 26, 2002 and its Resolution[2] dated April 10, 2003 in CA-G.R. SP No. 67220.

On November 18, 1993, Felicisimo Carilla (respondent) was hired by petitioner, a manning agent, in behalf of its principal, Anglo-Eastern Shipmanagement Ltd., to work as Master on board MV Handy-Cam Azobe for twelve months. Their approved POEA contract provided that respondent would get a basic monthly pay of US$1700.00, fixed monthly overtime of US$765.00, master's allowance of US$170.00 and leave with pay of six days per month or US$340.00 or a total of US$2,975.00 a month.

On November 29, 1993, respondent boarded the vessel in Abidjan, Ivory Coast, Africa. On June 6, 1994, while the vessel was in Bombay, India, respondent was dismissed and repatriated to the Philippines.

On August 25, 1994, respondent filed with the Philippine Overseas and Employment Agency (POEA) a complaint[3] for illegal dismissal with claims for salaries and other benefits for the unexpired portion of his contract as well as unremitted allotments and damages. He alleged that: he was dismissed without notice and hearing and without any valid reason; petitioner's unlawful act deprived him of his expected monthly benefits for the unexpired portion of his contract which totaled to US$16,660.00 i.e., US$2975.00 x 5 months and 18 days; petitioner withheld his allotment for the entire month of May 1994 in the sum of US$1,700 and from June 1 to 7 in the amount of US$396.67 or a total of US$2,096.67, as well as his accrued leave pay for the entire time respondent served on the vessel in the amount of US$2,119.33. Respondent prayed for payment of these amounts, attorney's fees and damages.

Petitioner filed its Answer[4] contending that: respondent's termination was for cause; he failed to take the necessary steps to ensure the safety of the vessel and its cargo while plying the waters of South Korea and Keelung port causing petitioner to incur a huge amount of damages on cargo claims and vessel repairs; respondent's incompetence is therefore penalized with dismissal; despite the fact that respondent was warned of his lapses, he had not shown any improvement which forced petitioner to dismiss and replace him with a competent one; thus, cost had to be incurred. Petitioner asked for moral and exemplary damages and attorneys fees as its counterclaim.

The parties submitted their respective position papers. The case was subsequently transferred to the Arbitration Branch of the National Labor Relations Commission (NLRC) pursuant to Republic Act (RA) No. 8042, otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995."[5]

On December 1, 1999, the Labor Arbiter (LA) rendered a decision[6] in favor of respondent, the dispositive portion of which reads:

> WHEREFORE, premises all considered, judgment is hereby rendered finding complainant's dismissal illegal and ordering the respondent to pay complainant the unexpired portion of the contract equivalent to US$16,660.00; unremitted amount of US$2,096.67; as well as leave pay equivalent to US$ 2,119.33.[7]

The LA found that respondent's long experience as a seaman and his various recommendations from his previous employers contradicted any finding of incompetence; that the unauthenticated logbook extract submitted by petitioner lacked even an iota of admissibility as the entries appearing therein had been merely copied from the original logbook. The LA gave credence to respondent's allegation that he was unceremoniously removed from his job and found that petitioner had not submitted any proof of payment of respondent's claims.

Aggrieved, petitioner filed its appeal with the NLRC. In its Decision[8] dated June 14, 2001, the NLRC dismissed the appeal and affirmed the LA's decision.

The NLRC found that petitioner's evidence which consisted of a document dated June 1, 1994, entitled "Logs of Events During Respondent's Command" and the Senior Officer Evaluation Reports, did not prove anything as these documents, besides being unauthenticated, were self-serving and unreliable.

Petitioner's motion for reconsideration was subsequently denied in a Resolution[9] dated July 17, 2001.

Petitioner filed with the CA a Petition for Certiorari under Rule 65, alleging grave abuse of discretion committed by the NLRC in upholding the LA decision. In a Decision dated November 26, 2002, the CA denied the petition for lack of merit.

Petitioner's motion for reconsideration was denied in a Resolution dated April 10, 2003.

Hence, the instant petition for review on certiorari on the following grounds:

> (1) The Court of Appeals committed a mistake of law when it upheld the ruling of the NLRC that the documentary evidence presented by petitioner herein are "self-serving and unreliable."
>
> (2) It was not in accord with law and jurisprudence for the Court of Appeals to uphold the decision of the NLRC that respondent herein was illegally dismissed and was thus entitled to the monetary value of the unserved portion of his employment contract including pay for unserved overtime and pay for unearned leave credits.[10]

Petitioner argues that respondent's dismissal could have been completely justified if only the LA, NLRC and the CA accorded merit to its documentary evidence; that when the LA and the NLRC found petitioner's evidence as self-serving and unreliable, it was made clear that only the vessel logbook was the acceptable evidence; that the vessel logbook was prepared by the ship master who happened to be the respondent himself who could not be expected to reflect any derogatory reports on his own performance; that respondent's incompetence and negligence resulted in costly damage to the shipowners which warranted his termination from service; that the evaluation reports of the vessel's Chief Officer and Chief Engineer showed that respondent failed to meet the standards required by his job, which evaluation was largely based on the events that led to monetary losses; that petitioner has a wider latitude of discretion in terminating respondent, being a managerial employee.

Petitioner further avers that the LA discredited its documents based on the sheer length of respondent's experience as seafarer; that one's previous experience cannot attest to the fact of respondent's actual performance at the present time, since every shipboard service is a unique experience which entails varying problems and circumstances; that petitioner would not dismiss respondent without valid cause considering the costs and

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inconvenience of replacing a captain/master mariner.

Petitioner further claims that it was error to award the full value of the unserved portion of the contract; that the LA awarded a total amount of US$20,876.00 without a detailed computation; that under the "no work no pay" principle, overtime and unearned leave credits shall not be paid, thus the award for approximately US$7,140.00 in overtime pay and leave pay was unwarranted; that R.A. No. 8042[11] limits the award to three months of the seafarer's basic pay; thus, US$1,700.00 x 3 months is equal to US$5,100.00.

In his Comment, respondent contends that petitioner raises pure questions of fact which may not be raised in a petition for review on certiorari; that the CA did not err in upholding the NLRC findings; that R.A. No. 8042 is not applicable since it took effect only on July 15, 1995 after the instant complaint was filed on August 30, 1994.

Petitioner filed a Reply wherein it alleges that the issues raised are not merely questions of fact but of law; that the bone of contention is whether or not the disqualification of its documentary evidence was proper.

The parties subsequently filed their respective Memoranda as required in our Resolution[12] dated June 1, 2005.

We find no merit in the petition.

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 our judicial review under Rule 45 of the Rules of Court is confined only to errors of law and does not extend to questions of fact. More so, in labor cases where the doctrine applies with greater force. [13] The LA and the NLRC have ruled on 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 us so long as they are supported by substantial evidence.[15]

In termination cases, the burden of proof rests upon the employer to show that the dismissal of the employee is for just cause [16]and failure to do so would mean that the dismissal is not justified. A dismissed employee is not required to prove his innocence of the charges leveled against him by his employer.[17] The determination of the existence and sufficiency of a just cause must be exercised with fairness and in good faith and after observing due process.[18]

Respondent was dismissed because of his alleged incompetence. To prove respondent's incompetence while on board the vessel, petitioner presented a piece of paper dated June 1, 1994 entitled "Logs of Events During Capt Carilla (sic) Command,"[19] enumerating therein the alleged incidents where damages to timber products and on the vessel occurred; and the Senior Officer Evaluation Reports[20] showing respondent's unsatisfactory performance, prepared by Chief Officer R. Miu and Chief Engineer N.K. Jaggi, who allegedly had served with respondent and had seen his work on board the vessel.

We agree with the LA, NLRC and the CA in their finding that petitioner's documents were not authenticated and, hence, were self-serving and unreliable. It appears from the "Logs of Events During Capt. Carilla Command" that it is merely a typewritten enumeration of several alleged incidents of damages to the cargoes and to the vessel, but it does not state the source and who prepared the same. While petitioner claims that it was prepared by the vessel's technical superintendent, he was not identified at all. The log of events did not also provide a detailed account of respondent's act of incompetence which caused those alleged incidents. There is no way of verifying the truth of these entries, and if they were actually recorded in the vessel logbook on the dates the alleged incidents took place. In its Memorandum of Appeal filed with the NLRC, petitioner claims that the original copies were not available, as they were on file with the vessel at that time. Be that as it may, it was still petitioner's duty to secure the same to prove the validity of respondent's dismissal.

In Wallem Maritime Services, Inc. v. National Labor Relations Commission,[21] we rejected a typewritten collation of excerpts from what could be the logbook and found that what should have been submitted as evidence was the logbook itself or even authenticated copies of pertinent pages thereof, which could have been easily xeroxed or photocopied, considering the present technology on reproduction of documents.

In Abacast Shipping and Management Agency, Inc. v. National Labor Relations Commission,[22] we held:

> The log book is a respectable record that can be relied upon to authenticate the charges filed and the procedure taken against the employees prior to their dismissal. Curiously, however, no entry from such log book was presented at all in this case. What was offered instead was the shipmasters report, which was later claimed to be a collation of excerpts from such book.
>
> It would have been a simple matter, considering the ease of reproducing the same, to make photocopies of the pertinent pages of the log book to substantiate the petitioner's contention. Why this was not done is something that reasonably arouses the curiosity of this Court and suggests that there probably were no entries in the log book at all that could have proved the alleged offenses of the private respondents. "

.Petitioner's arguments are that respondent, being the person responsible for accomplishing the vessel logbook by writing entries on the day-to-day events on board, could not be expected to reflect any derogatory reports about his own performance; and that the officers next in rank, who are the technical superintendent and the chief engineer are the only ones who could check on respondent's performance. These arguments are not sufficient to disturb the findings of the CA.

Assuming the vessel logbook kept by respondent did not reflect the different untoward incidents that occurred in the vessel, petitioner should have presented other evidence to substantiate these incidents. Petitioner's log of events purports to show that the timber products on the vessel were damaged, and that the vessel was towed to a port for repair. It was also alleged in petitioner's pleadings that it had incurred huge amounts for damages on cargo claims. However, petitioner failed to present these cargo claims from the shipper/consignees, and petitioner's payment thereof as well as its expenses for the cost of the repair of the vessel.

Moreover, the two sets of Senior Officer Evaluation Reports allegedly prepared by the officers next in rank to respondent did not help to justify respondent's dismissal for incompetency. While the reports showed that respondent was given an unsatisfactory performance rating and a recommendation for his replacement, they failed to show the exact designations of the persons who prepared the same, and neither do their signatures appear over the typewritten names. In fact, these alleged officers did not even execute an affidavit to attest to the truth of those reports. Thus, we agree with the LA and the NLRC that these documents, being unauthenticated, have no probative value.

Respondent was terminated without having been given the opportunity to defend himself. He was summarily dismissed and repatriated to the Philippines without being informed of the charges against him; nor was he given the chance to refute the charges.

Petitioner's claim that it has a wider latitude of discretion in terminating respondent, since the latter was a managerial employee, is not plausible. 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.[23] Such employees, too, are entitled to security of tenure, fair standards of employment and the protection of labor laws.[24] Managerial employees, no less than rank-and-file laborers, are entitled to due process.[25] The captain of a vessel is a confidential and managerial employee within the meaning of this doctrine.[26] Thus, respondent was illegally dismissed as he was not accorded a fair investigation as required by law and the ground invoked for his dismissal was not proven.

In cases regarding contract workers who were dismissed without just cause which arose before the effectivity[27] of R.A. No. 8042, it is settled that if "the contract is for a fixed term and the employee is dismissed without just cause, he is entitled to the payment of his salaries corresponding to the

unexpired portion of his contract.[28] In this case, respondent's contract was until November 18, 1994, but he was dismissed and repatriated to the Philippines on June 6, 1994, not for a just cause; thus, respondent is entitled to be paid his salary corresponding to the unexpired portion of his contract.

The LA awarded the amount of US$16,660.00 as prayed for by respondent in his complaint based on his monthly salary and allowances multiplied by the unexpired portion of the contract equivalent to 5 months and 18 days. Based on such computation, overtime pay and leave pay were included. Petitioner contends that the same should be deleted.

We agree. Respondent's overtime and leave pays should not be included in the computation of the unexpired portion, since he was no longer rendering services during that period of time, as he had already been repatriated. In Legahi v. National Labor Relations Commission,[29] we held:

> Petitioner's dismissal without a valid cause constitute a breach of contract. Consequently, he should only be paid the unexpired portion of his employment contract. However, the payment of the overtime pay should be disallowed in the light of our ruling in the case of Cagampan v. NLRC, where we held that:
> Petitioners have conveniently adopted the view that the "guaranteed or fixed overtime pay of 30% of the basic salary per month" embodied in their employment contract should be awarded to them as part of a "package benefit." They have theorized that even without sufficient evidence of actual rendition of overtime work, they would automatically be entitled to overtime pay. Their thinking is erroneous for being illogical and unrealistic. Their thinking even runs counter to the intention behind the provision. The contract provision means that the fixed overtime pay of 30% would be the basis for computing the overtime pay if and when overtime work would be rendered. Simply stated, the rendition of overtime work and the submission of sufficient proof that said work was actually performed are conditions to be satisfied before a seaman could be entitled to overtime pay which should be computed on the basis of 30% of the basic monthly salary. In short, the contract provision guarantees the right to overtime pay but the entitlement to such benefit must first be established. Realistically speaking, a seaman, by the very nature of his job, stays on board a ship or vessel beyond the regular eight-hour work schedule. For the employer to give him overtime pay for the extra hours when he might be sleeping or attending to his personal chores or even just lulling away his time would be extremely unfair and unreasonable.
>
> We already resolved the question of overtime pay of worker aboard a vessel in the case of National Shipyards and Steel Corporation v. CIR (3 SCRA 890). We ruled:
> We can not agree with the Court below that respondent Malondras should be paid overtime compensation for every hour in excess of the regular working hours that he was on board his vessel or barge each day, irrespective of whether or not he actually put in work during those hours. Seamen are required to stay on board their vessels by the very nature of their duties, and it is for this reason that, in addition to their regular compensation, they are given free living quarters and subsistence allowances when required to be on board. It could not have been the purpose of our law to require their employers to pay them overtime even when they are not actually working; otherwise, every sailor on board a vessel would be entitled to overtime for sixteen hours each a day, even if he spent all those hours resting or sleeping in his bunk, after his regular tour of duty. The correct criterion in determining whether or not sailors are entitled to overtime pay is not, therefore, whether they were on board and can not leave ship beyond the regular eight working hours a day, but whether they actually rendered service in excess of said number of hours. (Emphasis supplied)

In the same vein, the claim for day's leave pay for the unexpired portion of the contract is unwarranted since the same is given during the actual service of the seaman.[30]

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Notably, the LA also made a separate award of leave pay in the amount of US$2,119.33 based on respondent's allegation in his complaint that his leave pay had been illegally withheld for the entire time he served on the vessel. Petitioner failed to refute such allegation and had not presented any evidence to prove otherwise. The burden of proving that payment has been made rests upon petitioner as respondent's employer. The ruling of the Court in Seaborne Carriers Corporation v. National Labor Relations Commission,[31] to wit:

> The private respondent's allegation of non-payment of these benefits, to which he is by law entitled, is a negative allegation which need not be supported by evidence unless it is an essential part of the cause of action. It must be noted that the main cause of action of the private respondent is his illegal dismissal, and the claim for the monetary benefits is but an incident of the protest against such dismissal. Thus, the burden of proving that payment of said benefits has been made rests upon the party who will suffer if no evidence at all is presented by either party, that is, the petitioners as private respondent's employer.[32]

may be applied by analogy.

WHEREFORE, the petition is PARTLY GRANTED. The Decision of the Court of Appeals dated November 26, 2002 and its Resolution dated April 10, 2003 are AFFIRMED with MODIFICATION that the monthly overtime as well as leave pay included in the computation of the unexpired portion of the contract should be deducted from the awarded amount of US$16,660.00.

No costs.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Nachura, JJ., concur.

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[1] Penned by Justice Juan Q. Enriquez, Jr. and concurred in by Justices Bernardo P. Abesamis and Edgardo F. Sundiam; CA rollo, pp. 135-139.

[2] Id. at 156.

[3] Id. at 21-24.

[4] Id. at 27-31.

[5] SEC. 10. Money Claims. -Notwithstanding any provision of the law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual moral, exemplary and other forms of damages.

[6] CA rollo, pp. 18-20; Penned by Labor Arbiter Ramon Valentin C. Reyes ; Docketed as NLRC-POEA 94-06-1717.

[7] Id. at 20.

[8] Id. at 13-17; Penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan; Docketed as NLRC CA No. 024622-2000.

[9] Id. at 12.

[10] Rollo, p. 8.

[11] SEC 10. Money Claims.-

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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 of three (3) months for every year of the unexpired term, whichever is less.

[12] Rollo, pp. 68-69.

[13] Skippers United Pacific, Inc. v. National Labor Relations Commission, G.R. No. 148893, July 12, 2006, 494 SCRA 661, 667 citing 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] PCL Shipping Philippines, Inc. v. National Labor Relations Commission, G.R. No. 153031, December 14, 2006 citing Philippine Long Distance Telephone Company, Inc. v. Tiamson, G.R. Nos. 164684-85, November 11, 2005, 474 SCRA 761, 771.

[17]Starlite Plastic Industrial Corp. v. National Labor Relations Commission, G.R. No. 78491, 16 March 1989, 171 SCRA 315, 323.

[18] Fil Pride Shipping Co., Inc. v. National Labor Relations Commission, G.R. No. 97068, 5 March 1993, 219 SCRA 576, 581.

[19] CA rollo, p. 32.

LOGS OF EVENTS DURING CAPT. CARILLA COMMAND

19 MAR 94 WET DAMAGE TO TIMBER PRODUCTS IN HOLD NO. 1 AT INCHON.

23 MAR 94 OIL CONTAMINATION DAMAGE TO TIMBER PRODUCTS IN HOLD NO. 3 AT KUNSAN.

27 MAR 94 WET DAMAGE TO TIMBER PRODUCTS IN HOLD NOS. 3 & 4 AT BUSAN.

05 APR 94 ENGINE ROOM FLOODED OFF CHEJU DO RESULTING IN TOWAGE TO ULSAN FOR REPAIRS.

19 APR 94 GROUNDED AT BERTH AT KEELUNG SUSTAINING PROPELLER DAMAGE.

22 APR 94 DAMAGE TO STEEL PRODUCT DUE IMPROPER LASHING AT HONGKONG.

[20] Id. at 33-36.

[21] 331 Phil. 476 (1996).

[22] Nos. L-81124-26, June 23, 1988, 162 SCRA 541, 544-545.

[23] Inter-Orient Maritime Enterprises, Inc. v. National Labor Relations Commission, G.R. No. 115286, August 11, 1994, 235 SCRA 268, 275-276 citing Lawrence v. National Labor Relations Commission, G.R. No. 87421, February 4, 1992; Hellenic Philippine Shipping, Inc. v. Siete, G.R. No. 84082, March 13, 1991, 205 SCRA 737, 195 SCRA 179; Anscor Transport & Terminals v. National Labor Relations Commission, G.R. No. 85894,

September 28, 1990, 190 SCRA 147.

[24] Inter-Orient Maritime Enterprises, Inc. v. National Labor Relations Commission, id. at 276.

[25] Hellenic Philippine Shipping, Inc. v. Siete , id. at 185.

[26]Inter-Orient Maritime Enterprises, Inc. v. National Labor Relations Commission, id. at 276.

[27] Took effect on July 15, 1995.

[28] Land and Housing Development Corporation v. Esquillo, G.R. No. 152012, September 30, 2005, 471 SCRA 488, 495 citing Anderson v. National Labor Relations Commission, G.R. No. 111212, January 22, 1996, 252 SCRA 116, 126; See also Teknika Skills and Trade Services v. National Labor Relations Commission, G.R. No. 100399, August 4, 1992, 212 SCRA 132.

[29] 376 Phil. 557 (1999).

[30] Legahi v. National Labor Relations Commission, supra note 30, at 566-567.

[31] G.R. No. 88795, October 4, 1994, 237 SCRA 343.

[32] Id. at 345.

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