

**VENTIS MARITIME CORPORATION AND BELSALLY SHIPPING, S.A.,
PETITIONERS, VS. COURT OF APPEALS, NATIONAL LABOR
RELATIONS COMMISSION AND AGAPITO C. AGONCILLO, JR.,
RESPONDENTS.**

G.R. No. 160338. October 06, 2008

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for review[1] assailing the 30 June 2003 Decision[2] and 9 October 2003 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 64391.

The Antecedent Facts

On 8 January 1998, Ventis Maritime Corporation (Ventis) hired Agapito C. Agoncillo, Jr. (respondent) as a Third Officer for its principal Belsally Shipping, S.A. (Belsally). Respondent was deployed on board MV Orchid Bridge (formerly MV Bangkok Bridge). Under the Employment Contract, respondent was entitled to a basic monthly salary of US\$650, supervisory allowance of US\$228 a month, subsistence allowance of US\$33 a month, guaranteed overtime pay of US\$484 a month, and vacation leave with pay of US\$130. The contract period was for ten months.

On 24 June 1998, MV Orchid Bridge docked in the port of Manila. Respondent asked permission from the vessel's Master to allow him to visit his wife who was confined at the Seaman's Hospital in Manila for an operation. The vessel's Master allowed respondent to leave provided that he would rejoin the vessel when it returns to Singapore and Malaysia on 2 July 1998. Respondent obtained a cash advance of US\$500 prior to his disembarkation. Two days before his scheduled return to the vessel, respondent informed Ventis that he could not leave his wife to rejoin the vessel. He was replaced by one Celino Dio. Respondent's wife was discharged from the hospital on 11 July 1998.

On 24 July 1998, Ventis filed a Complaint for Disciplinary Action against respondent before the Philippine Overseas Employment Agency (POEA). Ventis alleged that respondent committed a serious breach of contract and prayed, among others, for the cancellation of respondent's name from the POEA's Seaman's Book of Registry and for his permanent disqualification from the POEA's Overseas Program.

During the pendency of the case, respondent filed a complaint for illegal dismissal, non-payment of salaries, overtime pay, vacation pay, and other monetary claims before the Labor Arbiter against Ventis and Belsally (petitioners). Petitioners countered that respondent's act violated the Seaman's Oath of Undertaking which requires the employee to serve his employer at least a one-month notice before he terminates his contract.

The Ruling of the Labor Arbiter

In her 15 February 1999 Decision,[4] Labor Arbiter Ermita Abrasaldo- Cuyuca (Labor Arbiter) ruled, as follows:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondent Ventis Maritime Corporation and Belsally Shipping S.A. to pay complainant Agapito C. Agoncillo, Jr. the amount of US\$767.84 representing his unpaid salary and other accrued benefits for the month of June 1998.

Ten percent of the amount awarded as and for attorney's fees.

Other claims are dismissed for lack of merit.

SO ORDERED.[5]

The Labor Arbiter ruled that respondent was not illegally dismissed from employment. The Labor Arbiter ruled that respondent admitted that he failed to finish his contract because he failed to rejoin the vessel as he had agreed with the vessel's Master. The Labor Arbiter ruled that as Third Officer and fourth in command of a vessel, respondent's duties and responsibilities could not just be delegated to any member of the crew. The Labor Arbiter ruled that respondent's separation from service was of his own doing. As such, he was not entitled to payment of his salaries for the unexpired portion of his contract or the three-month salary under Republic Act No. 8042.[6] The Labor Arbiter only awarded respondent's accrued benefits[7] until 24 June 1998.

Respondent appealed from the Labor Arbiter's Decision before the National Labor Relations Commission (NLRC).

The Ruling of the NLRC

In its 21 June 2000 Decision,[8] the NLRC set aside the Labor Arbiter's Decision. The NLRC ruled that respondent did not abandon his work but sought the permission of the vessel's Master before disembarking. The NLRC ruled that respondent's acts were justified under the circumstances. The NLRC ruled that under the Collective Bargaining Agreement (CBA) between All Japan Seamen's Union/Associated Marine Officers and Seamen's Union of the Philippines and Taiyo Kabushi Kaisha represented by Ventis, respondent may take a leave of absence during his spouse's illness. The NLRC ruled that respondent's absence from 2 July 1998 until 11 July 1998 hardly constituted abandonment as to warrant his dismissal from the service. The NLRC ruled that before the vessel's departure on 2 July 1998, respondent already sent a message to the Master that he could not rejoin the vessel and recommended someone to take his place. The NLRC noted that respondent's clearance, given by the Japan Maritime Safety Agency and acknowledged by the ship's Master, stated that respondent would disembark for humanitarian reasons. The NLRC stated that respondent should also be allowed to extend his leave for humanitarian reasons. Finally, the NLRC ruled that respondent's dismissal was tainted with bad faith.

The dispositive portion of the NLRC's Decision reads:

WHEREFORE, the appealed decision is set aside. Judgment is hereby rendered ordering respondents to jointly and severally pay:

- complainant his salaries equivalent to the unexpired portion of his contract;
- P50,000.00 as moral damages; and
- Attorney's fee of 10% of the total award hereof.

The claim for exemplary damages is dismissed for lack of sufficient basis.

The claim for reinstatement or payment of separation pay is denied because based on the records, complainant is a contract worker with a fixed period of employment of ten (10) months.

SO ORDERED.[9]

Petitioners moved for reconsideration of the NLRC's Decision. In its 29 November 2000 Order,[10] the NLRC denied their motion.

Petitioners filed a petition for certiorari before the Court of Appeals.

The Ruling of the Court of Appeals

In its 30 June 2003 Decision, the Court of Appeals affirmed the NLRC's Decision. The Court of Appeals ruled that for a dismissal to be valid, two requirements must be met: the employee must be afforded due process, and the dismissal must be for a valid cause. The Court of Appeals sustained the NLRC's finding that respondent was dismissed without being informed of the cause of his dismissal and without being afforded the opportunity to present his side. The Court of Appeals likewise rejected petitioners' claim that respondent abandoned his post as Third Officer when he failed to return to the vessel on the agreed date. The Court of Appeals sustained the NLRC's finding that two days before he was expected to join the vessel, respondent informed the ship's Master that he could not rejoin the vessel and he recommended someone to take his place. The Court of Appeals further sustained the NLRC that petitioners should have allowed respondent to extend his leave for humanitarian reasons.

The dispositive portion of the Court of Appeals' Decision reads:

WHEREFORE, this instant Petition for Certiorari with prayer for the issuance of a Writ of Preliminary Injunction and/or a Temporary Restraining Order is hereby DENIED. The Decision of the National Labor Relations Commission dated June 21, 2000 in NLRC NCR CA No. 09699-99, is hereby AFFIRMED. Additionally, petitioners Ventis Maritime Corporation and Bel Sally Shipping, S.A. are directed to reimburse private respondent Agapito Agoncillo his placement fee with twelve percent (12%) interest per annum conformably with Sec. 10 of RA 8042.

SO ORDERED.[11]

Petitioners filed a motion for reconsideration. In its 9 October 2003 Resolution, the Court of Appeals denied their motion.

Hence, the petition before this Court on the ground that the Court of Appeals committed a reversible error in disregarding the findings of the Labor Arbiter that respondent abandoned his post.

The Issue

The sole issue in this case is whether petitioners illegally dismissed respondent from employment.

The Ruling of this Court

The petition has merit.

Factual issues may be considered by this Court when the findings of fact and conclusions of law of the Labor Arbiter are inconsistent with those of the NLRC and the Court of Appeals.[12] The general rule is that factual findings of the labor officials are conclusive and binding when supported by substantial evidence. Substantial evidence means that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[13] This Court will not uphold erroneous conclusions as when it finds insufficient or insubstantial evidence on record to support the factual findings, or when it is perceived that far too much is concluded, inferred, or deduced from the bare or incomplete facts appearing of record.[14]

The Labor Arbiter ruled that respondent was not illegally dismissed from employment. Instead, he failed to rejoin the vessel as per his agreement with the vessel's Master. The NLRC ruled otherwise, finding petitioners guilty of

illegal dismissal. The Court of Appeals sustained the NLRC. We find that the findings of the Labor Arbiter are more in accord with the records of the case.

In this case, respondent was not ordered to disembark. He was not repatriated. When MV Orchid Bridge docked in Manila, respondent asked for a leave of absence to attend to his wife who was then in the hospital. His disembarkation was out of the contract but it was guaranteed by Capt. Virgilio R. Aris and eventually allowed by the vessel's Master on the condition that he would return to the vessel on 2 July 1998. However, two days before his supposed return to the vessel, respondent informed Ventis that he could not rejoin the vessel because his wife was still in the hospital. In short, it was respondent who failed to return to his work. He was not terminated from his employment.

The Court of Appeals justified its ruling by citing the CBA between All Japan Seamen's Union/Associated Marine Officers and Seamen's Union of the Philippines and Taiyo Kabushi Kaisha which states:

When the spouse or child, or in the case of a single man, a parent, dies or falls dangerously ill (and when the company can confirm it) whil[e] the seafarer is abroad, the company shall make every effort to repatriate the seafarer concerned as quickly as possible and pay for the repatriation if seafarer is repatriated.[15]

The Court of Appeals ruled that the CBA clearly afforded respondent to take a leave of absence during his wife's illness. However, in this case, respondent did not seek to extend his leave of absence. He did not try to use his emergency leave. Instead, he just informed Ventis that he would not be able to rejoin the vessel as scheduled. There was also no evidence on record to show that respondent's wife was dangerously ill that would warrant the application of the CBA. Respondent did not even claim that he had to take an extended leave because his wife was dangerously ill. Thus, the Court of Appeals erred in applying the CBA in this case.

The Court of Appeals ruled that when his services were terminated, respondent immediately filed a complaint for illegal dismissal against petitioners. According to the Court of Appeals, respondent's act is contrary to the allegation of abandonment. The records state otherwise.

The Court notes that on 24 July 1998, 22 days after respondent was supposed to return but failed to join MV Orchid Bridge, Ventis filed a complaint before the POEA against respondent. On the other hand, respondent's complaint for illegal dismissal was filed only on 27 October 1998. Obviously, the filing of the illegal dismissal case was an afterthought on the part of respondent. The records show that the POEA case filed by Ventis was resolved against respondent. The POEA found respondent liable for abandonment of post and imposed upon him the penalty of suspension from participating in its overseas employment program for six months.[16] The POEA decision became final and executory on 12 May 2005.[17] Hence, there is no basis for the finding of the NLRC and the Court of Appeals that respondent did not abandon his work and was instead terminated from employment.

WHEREFORE, we SET ASIDE the 30 June 2003 Decision and 9 October 2003 Resolution of the Court of Appeals in CA-G.R. SP No. 64391 affirming the 21 June 2000 Decision of the NLRC. We REINSTATE the 15 February 1999 Decision of the Labor Arbiter.

SO ORDERED.

Puno, C.J., (Chairperson), Azcuna, Reyes, and Leonardo-De Castro, JJ., concur.

* As replacement of Justice Renato C. Corona who is on official leave per Special Order No. 520.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Rollo, pp. 21-31. Penned by Associate Justice Noel G. Tijam with Associate Justices Martin S. Villarama, Jr. and Edgardo P. Cruz, concurring.

[3] Id. at 33.

[4] CA rollo, pp. 36-42.

[5] Id. at 42.

[6] Migrant Workers and Overseas Filipinos Act of 1995.

[7] Supervisory allowance, subsistence allowance, overtime and vacation leave.

[8] CA rollo, pp. 24-34. Penned by Commissioner Vicente S.E. Veloso with Commissioner Alberto R. Quimpo, concurring.

[9] Id. at 33-34.

[10] Id. at 19-22. Penned by Commissioner Vicente S.E. Veloso with Presiding Commissioner Roy V. Señeres and Commissioner Alberto R. Quimpo, concurring.

[11] Rollo, p. 31.

[12] PCL Shipping Philippines, Inc. v. NLRC, G.R. No. 153031, 14 December 2006, 511 SCRA 44.

[13] Skippers United Pacific, Inc. v. Maguad, G.R. No. 166363, 15 August 2006, 498 SCRA 639.

[14] Id.

[15] Rollo, p. 40.

[16] Id. at 271.

[17] Id.

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