

BAHIA SHIPPING SERVICES, INC., PETITIONER, VS. REYNALDO CHUA, RESPONDENT.

G.R. No. 162195. April 08, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court wherein Bahia Shipping Services, Inc. (petitioner) assails the August 28, 2003 Decision[1] of the Court of Appeals (CA), affirming the December 23, 1998 Decision and February 15, 1999 Resolution of the National Labor Relations Commission (NLRC); and the February 19, 2004 CA Resolution,[2] denying its Motion for Reconsideration.

Petitioner adopted the following findings of fact of the CA:

Private respondent Reynaldo Chua was hired by the petitioner shipping company, Bahia Shipping Services, Inc., as a restaurant waiter on board a luxury cruise ship liner M/S Black Watch pursuant to a Philippine Overseas Employment Administration (POEA) approved employment contract dated October 9, 1996 for a period of nine (9) months from October 18, 1996 to July 17, 1997. On October 18, 1996, the private respondent left Manila for Heathrow, England to board the said sea vessel where he will be assigned to work.

On February 15, 1997, the private respondent reported for his working station one and one-half (1½) hours late. On February 17, 1997, the master of the vessel served to the private respondent an official warning-termination form pertaining to the said incident. On March 8, 1997, the vessel's master, ship captain Thor Fleten conducted an inquisitorial hearing to investigate the said incident. Thereafter, on March 9, 1997, private respondent was dismissed from the service on the strength of an unsigned and undated notice of dismissal. An alleged record or minutes of the said investigation was attached to the said dismissal notice.

On March 24, 1997, the private respondent filed a complaint for illegal dismissal and other monetary claims, which case was assigned to Labor Arbiter Manuel M. Manansala.

The private respondent alleged that he was paid only US\$300.00 per month as monthly salary for five (5) months instead of US\$410.00 as stipulated in his employment contract. Thus, he claimed that he was underpaid in the amount of US\$110.00 per month for that same period of five (5) months. He further asserted that his salaries were also deducted US\$20.00 per month by the petitioner for alleged union dues. Private respondent argued that it was his first offense committed on board the vessel. He adverted further that the petitioner has no proof of being a member of the AMOSUP or the ITF to justify its claim to deduct the said union dues [from] his monthly salary.

The petitioner disputed the said allegations of the private respondent by arguing that it received a copy of an addendum to the collective bargaining agreement (CBA) from the petitioner's principal, Blackfriars Shipping Company, Ltd. Consequently, the petitioner requested permission from the POEA through a letter dated March 17, 1997 to amend the salary scale of the private respondent to US\$300.00 per month. The petitioner justified its monthly deduction made for union dues against the private respondent's salary in view of an alleged existing CBA between the Norwegian Seaman's Union (NSU, for brevity) and the petitioner's principal,

Blackfriars Shipping Co., Ltd. The petitioner further asseverated that the private respondent has violated the terms and conditions of his contract as manifested in the said official warning-termination form by always coming late when reporting for duty even prior to the February 15, 1997 incident.[3]

The Labor Arbiter rendered a Decision dated March 5, 1998, holding petitioner liable to respondent for illegal dismissal and unauthorized deductions, viz:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Declaring [petitioner] Bahia Shipping Services, Inc. (BSSI) and its foreign principal Blackfriars Shipping Co., Ltd. (BSCL) guilty of illegal dismissal. Accordingly, the aforementioned [petitioner] BSSI and its foreign principal BSCL are hereby directed to pay jointly and severally, [private respondent] Reynaldo Chua the sum of US\$1,230.00 as earlier computed, representing his salary for the unexpired portion of the contract of employment limited to three (3) months under Republic Act 8042, and convertible to Philippine currency upon actual payment.
2. Directing the aforementioned [petitioner] BSSI and its foreign principal BSCL to pay, jointly and severally, [private respondent] Reynaldo Chua the following money claims as earlier computed:

Reimbursement/Refund of Plane Fare

US\$ 638.99

Illegal Deductions ("Union Dues")

100.00

Differential Pay (Underpayment of Wages)

550.00

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US\$1,288.99

convertible to Philippine currency upon actual payment.

3. Directing the aforementioned [petitioner] BSSI and its foreign principal BSCL to pay, jointly and severally, the [private respondent] Reynaldo Chua ten (10%) percent attorney's fees based on the total monetary award.

4. Dismissing the other money claims and/or charges of [private respondent] Reynaldo Chua for lack of factual and legal basis.

SO ORDERED.[4]

Petitioner appealed to the NLRC which issued on December 23, 1998 a Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the appealed Decision is hereby MODIFIED in that the award on the unexpired portion of the contract is deducted the amount equivalent to a day's work of complainant. The other findings stand AFFIRMED.

SO ORDERED.[5]

Petitioner filed a Motion for Reconsideration but the NLRC denied the same in a Resolution dated February 15, 1999.[6]

Respondent did not question the foregoing NLRC decision and resolution.

Upon a petition for certiorari filed by petitioner, the CA rendered the August 28, 2003 Decision assailed herein, modifying the NLRC decision, thus:

WHEREFORE, premises considered, the assailed decision dated December 23, 1998, and the resolution dated February 15, 1999, of the public respondent NLRC are hereby AFFIRMED, with the MODIFICATION that the monetary award representing the salary of the petitioner for the unexpired portion of the contract which is limited to three (3) months under Republic Act No. 8042 is DELETED.

SO ORDERED.[7]

The CA denied petitioner's Motion for Reconsideration.

And so, the present petition raising the following issues:

- a) Whether or not the Court of Appeals could grant additional affirmative relief by increasing the award despite the fact that respondent did not appeal the decision of both the Labor Arbiter and the NLRC.
- b) Whether or not reporting for work one and one-half (1½) hours late and abandoning his work are valid grounds for dismissal.
- c) Whether or not respondent is entitled to overtime pay which was incorporated in his award for the unexpired portion of the contract despite the fact that he did not render overtime work, and whether or not, it is proper for the NLRC to award money claims despite the fact that the NLRC decision, and affirmed by the Court of Appeals, did not state clearly the facts and the evidence upon which such conclusions are based.[8]

It is noted that petitioner does not question the monetary awards under Item Nos. 2 and 3 of the dispositive portion of the LA Decision, which were affirmed in toto by the NLRC and CA.

The issues will be resolved jointly.

The LA declared the dismissal of respondent illegal for the reason that the infraction he committed of being tardy by 1½ hour should not have been penalized by petitioner with the ultimate punishment of termination; rather, the commensurate penalty for such single tardiness would have been suspension for one or two weeks. The LA further noted that petitioner meted out on respondent the penalty of dismissal hastily and summarily in that it merely went through the motions of notifying respondent and hearing his side when, all along, it had already decided to dismiss him.[9]

The NLRC sustained the foregoing findings of the LA, noting that the claim of petitioner that respondent's tardiness was not infrequent but habitual is not supported by evidence.[10] However, the NLRC held that, although the penalty of dismissal on respondent was properly lifted, a penalty of deduction of one day's salary, the same to be subtracted from his monetary award, should be imposed on the latter for the tardiness he incurred.[11] The CA held that the NLRC and LA did not commit any grave abuse of discretion in arriving at the factual assessments which are all supported by substantial evidence.[12]

Petitioner assails the ruling of the CA for being based on the faulty premise that respondent incurred tardiness only once when in fact he had done so habitually.[13] Whether respondent had been habitually tardy prior to February 15, 1997 when he reported for work 1½ hours late is purely factual in nature. As such, the Court defers to

the concurrent assessments of the LA and NLRC, as affirmed by the CA, for the evaluation of evidence and the appreciation of the credibility of witnesses fall within their expertise.[14]

As the Court held in *Acebedo Optical v. National Labor Relations Commission*,[15]

Judicial Review of labor cases does not go beyond the evaluation of the sufficiency of the evidence upon which its labor officials' findings rest. As such, the findings of facts and conclusion of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence.[16]

In the present case, petitioner has failed to establish a compelling reason for the Court to depart from this rule. In fact, as pointed out by the CA, petitioner's claim that respondent's tardiness was habitual lacks evidentiary support as "no other documents on record were attached to substantiate that the private respondent was forewarned for the first and second time for any infraction or offense, work-related or not, vis-à-vis the performance of his regular duties and functions." [17]

Such empty claim of petitioner, therefore, cannot persuade the Court to simply disregard three layers of thorough and in-depth assessments on the matter by the CA, NLRC and LA.

It being settled that the dismissal of respondent was illegal, it follows that the latter is entitled to payment of his salary for the unexpired portion of his contract, as provided under Republic Act (R.A.) No. 8042, considering that his employment was pre-terminated on March 9, 1997 or four months prior to the expiration of his employment contract on July 17, 1997.

However, the LA limited the award to an amount equivalent to respondent's salary for three months. The NLRC affirmed said award but deducted therefrom his salary for one day as penalty for the tardiness incurred. The CA affirmed the one-day salary deduction imposed by the NLRC but removed the three months - salary cap imposed by the LA. In effect, as this particular monetary award now stands, it is to be computed based on the salary of respondent covering the period March 9, 1997 to July 17, 1997, less his salary for one day.

Petitioner questions the CA for lifting the three-month salary cap, pointing out that the LA and NLRC decisions which imposed the cap can no longer be altered as said decisions were not questioned by respondent.[18]

Indeed, a party who has failed to appeal from a judgment is deemed to have acquiesced to it and can no longer obtain from the appellate court any affirmative relief other than what was already granted under said judgment.[19] However, when strict adherence to such technical rule will impair a substantive right, such as that of an illegally dismissed employee to monetary compensation as provided by law, then equity dictates that the Court set aside the rule to pave the way for a full and just adjudication of the case. As the Court held in *St. Michael's Institute v. Santos*: [20]

On the matter of the award of backwages, petitioners advance the view that by awarding backwages, the appellate court "unwittingly reversed a time-honored doctrine that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision." We do not agree.

The fact that the NLRC did not award backwages to the respondents or that the respondents themselves did not appeal the NLRC decision does not bar the Court of Appeals from awarding backwages. While as a general rule, a party who has not appealed is not entitled to affirmative relief other than the ones granted in the decision of the court below, the Court of Appeals is imbued with sufficient authority and discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice.

Article 279 of the Labor Code, as amended, mandates that an illegally dismissed employee is entitled to the twin reliefs of (a) either reinstatement or separation pay, if reinstatement is no longer viable, and (b) backwages. Both are distinct reliefs given to alleviate the economic damage suffered by an illegally dismissed employee and, thus, the award of one does not bar the other. Both reliefs are rights granted by substantive law which cannot be defeated by mere procedural lapses. Substantive rights like the award of backwages resulting from illegal dismissal must not be prejudiced by a rigid and technical application of the rules. The order of the Court of Appeals to award backwages being a mere legal consequence of the finding that respondents were illegally dismissed by petitioners, there was no error in awarding the same.[21] (Emphasis supplied)

The Court has consistently applied the foregoing exception to the general rule. It does so yet again in the present case.

Section 10 of R.A. No. 8042,[22] entitles an overseas worker who has been illegally dismissed to “his salaries for the unexpired portion of the employment contract or for three (3) months for every year of the unexpired term, whichever is less.”[23]

The CA correctly applied the interpretation of the Court in *Marsaman Manning Agency, Inc. v. National Labor Relations Commission*[24] that the second option which imposes a three months – salary cap applies only when the term of the overseas contract is fixed at one year or longer; otherwise, the first option applies in that the overseas worker shall be entitled payment of all his salaries for the entire unexpired period of his contract.

In *Skippers Pacific, Inc. v. Mira*,[25] wherein the overseas contract involved was only for six months, the Court held that it is the first option provided under Section 10 of R.A. No. 8042 which is applicable in that the overseas worker who was illegally dismissed is entitled to payment of all his salaries covering the entire unexpired period of his contract. The CA committed no error in adhering to the prevailing interpretation of Section 10 of R.A. No. 8042.

Finally, the Court comes to the last issue on whether in the computation of the foregoing award, respondent's “guaranteed overtime” pay amounting to US\$197.00 per month should be included as part of his salary. Petitioner contends that there is no factual or legal basis for the inclusion of said amount because, after respondent's repatriation, he could not have rendered any overtime work.[26]

This time, petitioner's contention is well-taken.

The Court had occasion to rule on a similar issue in *Stolt-Nielsen Marine Services (Phils.), Inc. v. National Labor Relations Commission*,[27] where the NLRC was questioned for awarding to an illegally dismissed overseas worker fixed overtime pay equivalent to the unexpired portion of the latter's contract. In resolving the question, the Court, citing *Cagampan v. National Labor Relations Commission*,[28] held that although an overseas employment contract may guarantee the right to overtime pay, entitlement to such benefit must first be established, otherwise the same cannot be allowed.

Hence, it being improbable that respondent rendered overtime work during the unexpired term of his contract, the inclusion of his “guaranteed overtime” pay into his monthly salary as basis in the computation of his salaries for the entire unexpired period of his contract has no factual or legal basis and the same should have been disallowed.

Based on respondent's Position Paper filed with the Labor Arbiter,[29] his basic monthly salary is \$213.00.

WHEREFORE, the petition is PARTLY GRANTED. The assailed August 28, 2003 Decision and February 19, 2004 Resolution of the Court of Appeals are AFFIRMED with MODIFICATION that in the computation of the payment to respondent Reynaldo Chua of his salaries for the entire unexpired portion of his contract, his basic monthly salary of US\$213.00 shall be used as the sole basis.

No costs.

SO ORDERED.

Tinga, Chico-Nazario, Nachura, and Reyes, JJ., concur.

* In lieu of Justice Consuelo Ynares-Santiago, per Special Order No. 497 dated March 14, 2008.

[1] Penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Eloy R. Bello, Jr. and Jose C. Reyes, Jr., rollo, p. 18.

[2] Id. at 29.

[3] Petition, rollo, pp. 6-7.

[4] Rollo, pp. 40-41.

[5] Id. at 49.

[6] CA rollo, p. 54.

[7] Rollo, p. 27.

[8] Petition, id. at 7-8.

[9] LA Decision, rollo, pp. 36-37.

[10] NLRC Decision, id. at 49.

[11] Id.

[12] CA Decision, id. at 22.

[13] Petition, id. at 10.

[14] *Ogalisco v. Holy Trinity College of General Santos City, Inc.*, G.R. No. 172913, August 9, 2007, 529 SCRA 672, 677.

[15] G.R. No. 150171, July 17, 2007, 527 SCRA 655.

[16] Id. at 672.

[17] Rollo, p. 21.

[18] Petition, rollo, pp. 8-9.

[19] *Salazar v. Philippine Duplicators, Inc.*, G.R. No. 154628, December 6, 2006, 510 SCRA 288, 296, citing *Filflex Industrial & Manufacturing Corp. v. National Labor Relations Commission*, 349 Phil. 913, 925 (1998); *Coca-Cola Bottlers Phils., Inc. v. Daniel*, G.R. No. 156893, June 21, 2005, 460 SCRA 494, 506.

[20] 422 Phil. 723 (2001).

[21] Id. at 735-736.

[22] Migrant Workers and Overseas Filipino Workers Act of 1995, effective July 15, 1995.

[23] *Pentagon International Shipping, Inc. v. Adelantar*, G.R. No. 157373, July 27, 2004, 435 SCRA 342, 346.

[24] 371 Phil. 827 (1999).

[25] 440 Phil. 906 (2002).

[26] Petition, rollo, p. 13.

[27] 328 Phil. 161 (1996); see also *PCL Shipping v. National Labor Relations Commission*, G.R. No. 153031, December 14, 2006, 511 SCRA 44.

[28] G.R. Nos. 85122-24, March 22, 1991, 195 SCRA 533.

[29] LA Decision dated March 5, 1998, p. 5.

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