PAUL V. SANTIAGO, PETITIONER, VS. CF SHARP CREW MANAGEMENT, INC., RESPONDENT.

G.R. No. 162419. July 10, 2007

Ponente: TINGA, J.

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TINGA, J.:

At the heart of this case involving a contract between a seafarer, on one hand, and the manning agent and the foreign principal, on the other, is this erstwhile unsettled legal quandary: whether the seafarer, who was prevented from leaving the port of Manila and refused deployment without valid reason but whose POEA-approved employment contract provides that the employer-employee relationship shall commence only upon the seafarer's actual departure from the port in the point of hire, is entitled to relief?

This treats of the petition for review filed by Paul V. Santiago (petitioner) assailing the Decision and Resolution of the Court of Appeals dated 16 October 2003 and 19 February 2004, respectively, in CA-G.R. SP No. 68404.[1]

Petitioner had been working as a seafarer for Smith Bell Management, Inc. (respondent) for about five (5) years.[2] On 3 February 1998, petitioner signed a new contract of employment with respondent, with the duration of nine (9) months. He was assured of a monthly salary of US$515.00, overtime pay and other benefits. The following day or on 4 February 1998, the contract was approved by the Philippine Overseas Employment Administration (POEA). Petitioner was to be deployed on board the "MSV Seaspread" which was scheduled to leave the port of Manila for Canada on 13 February 1998.

A week before the scheduled date of departure, Capt. Pacifico Fernandez, respondent's Vice President, sent a facsimile message to the captain of "MSV Seaspread," which reads:

> I received a phone call today from the wife of Paul Santiago in Masbate asking me not to send her husband to MSV Seaspread anymore. Other callers who did not reveal their identity gave me some feedbacks that Paul Santiago this time if allowed to depart will jump ship in Canada like his brother Christopher Santiago, O/S who jumped ship from the C.S. Nexus in Kita-kyushu, Japan last December, 1997.
>
> We do not want this to happen again and have the vessel penalized like the C.S. Nexus in Japan.
>
> Forewarned is forearmed like his brother when his brother when he was applying he behaved like a Saint but in his heart he was a serpent. If you agree with me then we will send his replacement.
>
> Kindly advise.[3]

To this message the captain of "MSV Seaspread" replied:

> Many thanks for your advice concerning P. Santiago, A/B. Please cancel plans for him to return to Seaspread.[4]

On 9 February 1998, petitioner was thus told that he would not be leaving for Canada anymore, but he was reassured that he might be considered for deployment at some future date.

Petitioner filed a complaint for illegal dismissal, damages, and attorney's fees against respondent and its foreign principal, Cable and Wireless (Marine) Ltd.[5] The case was raffled to Labor Arbiter Teresita Castillon-Lora, who ruled that the employment contract remained valid but had not commenced since petitioner was not deployed. According to her, respondent violated the rules and regulations governing overseas employment when it did not deploy petitioner, causing petitioner to suffer actual damages representing lost salary income for nine (9) months and fixed overtime fee, all amounting to US$7, 209.00.

The labor arbiter held respondent liable. The dispositive portion of her Decision dated 29 January 1999 reads:

> WHEREFORE, premises considered, respondent is hereby Ordered to pay complainant actual damages in the amount of US$7,209.00 plus 10% attorney's fees, payable in Philippine peso at the rate of exchange prevailing at the time of payment.
>
> All the other claims are hereby DISMISSED for lack of merit.
>
> SO ORDERED.[6]

On appeal by respondent, the National Labor Relations Commission (NLRC) ruled that there is no employer-employee relationship between petitioner and respondent because under the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels (POEA Standard Contract), the employment contract shall commence upon actual departure of the seafarer from the airport or seaport at the point of hire and with a POEA-approved contract. In the absence of an employer-employee relationship between the parties, the claims for illegal dismissal, actual damages, and attorney's fees should be dismissed.[7] On the other hand, the NLRC found respondent's decision not to deploy petitioner to be a valid exercise of its management prerogative.[8] The NLRC disposed of the appeal in this wise:

> WHEREFORE, in the light of the foregoing, the assailed Decision dated January 29, 1999 is hereby AFFIRMED in so far as other claims are concerned and with MODIFICATION by VACATING the award of actual damages and attorney's fees as well as excluding Pacifico Fernandez as party respondent.
>
> SO ORDERED.[9]

Petitioner moved for the reconsideration of the NLRC's Decision but his motion was denied for lack of merit.[10] He elevated the case to the Court of Appeals through a petition for certiorari.

In its Decision[11] dated 16 October 2003, the Court of Appeals noted that there is an ambiguity in the NLRC's Decision when it affirmed with modification the labor arbiter's Decision, because by the very modification introduced by the Commission (vacating the award of actual damages and attorney's fees), there is nothing more left in the labor arbiter's Decision to affirm.[12]

According to the appellate court, petitioner is not entitled to actual damages because damages are not recoverable by a worker who was not deployed by his agency within the period prescribed in the POEA Rules.[13] It agreed with the NLRC's finding that petitioner's non-deployment was a valid exercise of respondent's management prerogative.[14] It added that since petitioner had not departed from the Port of Manila, no employer-employee relationship between the parties arose and any claim for damages against the so-called employer could have no leg to stand on.[15]

Petitioner's subsequent motion for reconsideration was denied on 19 February 2004.[16]

The present petition is anchored on two grounds, to wit:

> - The Honorable Court of Appeals committed a serious error of law when it ignored [S]ection 10 of Republic Act [R.A.] No. 8042 otherwise known as the Migrant Worker's Act of 1995 as well as Section 29 of the

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> Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels (which is deemed incorporated under the petitioner's POEA approved Employment Contract) that the claims or disputes of the Overseas Filipino Worker by virtue of a contract fall within the jurisdiction of the Labor Arbiter of the NLRC.
>
> - The Honorable Court of Appeals committed a serious error when it disregarded the required quantum of proof in labor cases, which is substantial evidence, thus a total departure from established jurisprudence on the matter.[17]

Petitioner maintains that respondent violated the Migrant Workers Act and the POEA Rules when it failed to deploy him within thirty (30) calendar days without a valid reason. In doing so, it had unilaterally and arbitrarily prevented the consummation of the POEA- approved contract. Since it prevented his deployment without valid basis, said deployment being a condition to the consummation of the POEA contract, the contract is deemed consummated, and therefore he should be awarded actual damages, consisting of the stipulated salary and fixed overtime pay.[18] Petitioner adds that since the contract is deemed consummated, he should be considered an employee for all intents and purposes, and thus the labor arbiter and/or the NLRC has jurisdiction to take cognizance of his claims.[19]

Petitioner additionally claims that he should be considered a regular employee, having worked for five (5) years on board the same vessel owned by the same principal and manned by the same local agent. He argues that respondent's act of not deploying him was a scheme designed to prevent him from attaining the status of a regular employee.[20]

Petitioner submits that respondent had no valid and sufficient cause to abandon the employment contract, as it merely relied upon alleged phone calls from his wife and other unnamed callers in arriving at the conclusion that he would jump ship like his brother. He points out that his wife had executed an affidavit[21] strongly denying having called respondent, and that the other alleged callers did not even disclose their identities to respondent.[22] Thus, it was error for the Court of Appeals to adopt the unfounded conclusion of the NLRC, as the same was not based on substantial evidence.[23]

On the other hand, respondent argues that the Labor Arbiter has no jurisdiction to award petitioner's monetary claims. His employment with respondent did not commence because his deployment was withheld for a valid reason. Consequently, the labor arbiter and/or the NLRC cannot entertain adjudication of petitioner's case much less award damages to him. The controversy involves a breach of contractual obligations and as such is cognizable by civil courts.[24] On another matter, respondent claims that the second issue posed by petitioner involves a recalibration of facts which is outside the jurisdiction of this Court.[25]

There is some merit in the petition.

There is no question that the parties entered into an employment contract on 3 February 1998, whereby petitioner was contracted by respondent to render services on board "MSV Seaspread" for the consideration of US$515.00 per month for nine (9) months, plus overtime pay. However, respondent failed to deploy petitioner from the port of Manila to Canada. Considering that petitioner was not able to depart from the airport or seaport in the point of hire, the employment contract did not commence, and no employer-employee relationship was created between the parties.[26]

However, a distinction must be made between the perfection of the employment contract and the commencement of the employer-employee relationship. The perfection of the contract, which in this case coincided with the date of execution thereof, occurred when petitioner and respondent agreed on the object and the cause, as well as the rest of the terms and conditions therein. The commencement of the employer-employee relationship, as earlier

discussed, would have taken place had petitioner been actually deployed from the point of hire. Thus, even before the start of any employer-employee relationship, contemporaneous with the perfection of the employment contract was the birth of certain rights and obligations, the breach of which may give rise to a cause of action against the erring party. Thus, if the reverse had happened, that is the seafarer failed or refused to be deployed as agreed upon, he would be liable for damages.

Moreover, while the POEA Standard Contract must be recognized and respected, neither the manning agent nor the employer can simply prevent a seafarer from being deployed without a valid reason.

Respondent's act of preventing petitioner from departing the port of Manila and boarding "MSV Seaspread" constitutes a breach of contract, giving rise to petitioner's cause of action. Respondent unilaterally and unreasonably reneged on its obligation to deploy petitioner and must therefore answer for the actual damages he suffered.

We take exception to the Court of Appeals' conclusion that damages are not recoverable by a worker who was not deployed by his agency. The fact that the POEA Rules[27] are silent as to the payment of damages to the affected seafarer does not mean that the seafarer is precluded from claiming the same. The sanctions provided for non-deployment do not end with the suspension or cancellation of license or fine and the return of all documents at no cost to the worker. They do not forfend a seafarer from instituting an action for damages against the employer or agency which has failed to deploy him.

The POEA Rules only provide sanctions which the POEA can impose on erring agencies. It does not provide for damages and money claims recoverable by aggrieved employees because it is not the POEA, but the NLRC, which has jurisdiction over such matters.

Despite the absence of an employer-employee relationship between petitioner and respondent, the Court rules that the NLRC has jurisdiction over petitioner's complaint. The jurisdiction of labor arbiters is not limited to claims arising from employer-employee relationships. Section 10 of R.A. No. 8042 (Migrant Workers Act), provides that:

> Sec. 10. Money Claims. — Notwithstanding any provision of 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. x x x [Emphasis supplied]

Since the present petition involves the employment contract entered into by petitioner for overseas employment, his claims are cognizable by the labor arbiters of the NLRC.

Article 2199 of the Civil Code provides that one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Respondent is thus liable to pay petitioner actual damages in the form of the loss of nine (9) months' worth of salary as provided in the contract. He is not, however, entitled to overtime pay. While the contract indicated a fixed overtime pay, it is not a guarantee that he would receive said amount regardless of whether or not he rendered overtime work. Even though petitioner was "prevented without valid reason from rendering regular much less overtime service,"[28] the fact remains that there is no certainty that petitioner will perform overtime work had he been allowed to board the vessel. The amount of US$286.00 stipulated in the contract will be paid only if and when the employee rendered overtime work. This has been the tenor of our rulings in the case of Stolt-Nielsen Marine Services (Phils.), Inc. v. National Labor Relations Commission[29] where we discussed the matter in this light:

> 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.[30]

The Court also holds that petitioner is entitled to attorney's fees in the concept of damages and expenses of litigation. Attorney's fees are recoverable when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest.[31] We note that respondent's basis for not deploying petitioner is the belief that he will jump ship just like his brother, a mere suspicion that is based on alleged phone calls of several persons whose identities were not even confirmed. Time and again, this Court has upheld management prerogatives so long as they are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements.[32] Respondent's failure to deploy petitioner is unfounded and unreasonable, forcing petitioner to institute the suit below. The award of attorney's fees is thus warranted.

However, moral damages cannot be awarded in this case. While respondent's failure to deploy petitioner seems baseless and unreasonable, we cannot qualify such action as being tainted with bad faith, or done deliberately to defeat petitioner's rights, as to justify the award of moral damages. At most, respondent was being overzealous in protecting its interest when it became too hasty in making its conclusion that petitioner will jump ship like his brother.

We likewise do not see respondent's failure to deploy petitioner as an act designed to prevent the latter from attaining the status of a regular employee. Even if petitioner was able to depart the port of Manila, he still cannot be considered a regular employee, regardless of his previous contracts of employment with respondent. In Millares v. National Labor Relations Commission,[33] the Court ruled that seafarers are considered contractual employees and cannot be considered as regular employees under the Labor Code. Their employment is governed by the contracts they sign every time they are rehired and their employment is terminated when the contract expires. The exigencies of their work necessitates that they be employed on a contractual basis.[34]

WHEREFORE, petition is GRANTED IN PART. The Decision dated 16 October 2003 and the Resolution dated 19 February 2004 of the Court of Appeals are REVERSED and SET ASIDE. The Decision of Labor Arbiter Teresita D. Castillon-Lora dated 29 January 1999 is REINSTATED with the MODIFICATION that respondent CF Sharp Crew Management, Inc. is ordered to pay actual or compensatory damages in the amount of US$4,635.00 representing salary for nine (9) months as stated in the contract, and attorney's fees at the reasonable rate of 10% of the recoverable amount.

SO ORDERED.

Carpio, Carpio-Morales, and Velasco, Jr., JJ., concur.
Quisumbing, (Chairperson), J., on official leave.

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[1] Entitled Paul V. Santiago v. National Labor Relations Commission, et al.

[2] Smith Bell Management, Inc. was substituted by present respondent, CF Sharp Crew Management, Inc. which

had assumed all the contractual obligations of Cable and Wireless (Marine) Ltd. while the case was pending before the Court of Appeals. See respondent's Comment dated 4 April 2002, Records, p. 140. Hence, it should be understood that from that time on, the appellation "respondent" in this Decision refers to CF Sharp Crew Management, Inc. instead of Smith Bell, Management, Inc.

[3] Rollo, pp. 29-30.

[4] Id. at 30.

[5] The caption of the complaint docketed as NCR-OFW-(M) 98-07-0788, reads Paul V. Santiago v. Smith Bell Management, Inc. and/or Cable and Wireless (Marine) Ltd./Mr. Jose Pueio/ Pacifico T. Fernandez. From the inception of the case before the labor arbiter until it reached the Court of Appeals, Smith Bell Management, Inc., the foreign principal Cable and Wireless (Marine) Ltd. and the officers of Smith Bell Management, Inc. were named as respondents. When the case reached this Court, petitioner deleted Smith Bell Management, Inc., Cable and Wireless (Marine) Ltd. and the two officers from the caption of the case in all its pleadings filed with the Court, retaining only C.F. Sharp Crew Management, Inc. as respondent. For its part, CF Sharp Crew Management, Inc. also referred to itself as the only respondent in all his pleadings before the Court.

[6] Rollo, p. at 88.

[7] Id. at 72-73.

[8] Id. at 73.

[9] Id. at 76.

[10] Resolution dated 9 October 2001; id. at 78.

[11] Id. at 27-39.

[12] Id. at 35.

[13] Interpreting Sec. 4, par. (b), Rule II, Book II, POEA Rules and Regulations Governing Overseas Employment; id. at 36.

[14] Id. at 36.

[15] Id. at 38.

[16] Id. at 41.

[17] Id. at 11 and 19.

[18] Id. at 12-14.

[19] Id. at 15-17.

[20] Id. at 17-18.

[21] Attached as an annex to petitioner's Reply to respondent's Position Paper.

[22] Rollo, pp. 19-20.

[23] Id. at 21.

[24] Id. at 230-235.

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[25] Id. at 237.

[26] Sec. 2 of the POEA Standard Contract lays down the rule as to when the employment contract commences, thus:

> - The Employment contract between the employer and the seafarer shall commence upon actual departure of the seafarer from the airport or seaport in the point of hire and with a POEA approved contract. It shall be effective until the seafarer's date of arrival at the point of hire upon termination of his employment pursuant to Section 18 of this Contract. [Emphasis supplied]

[27] Sec. 4, par. (b), Rule II, Book III of the POEA Rules and Regulations Governing Overseas Employment dated 31 May 1999 reads:

> Section 4. Worker's Deployment. — An agency shall deploy its recruits within the deployment period as indicated below:
>
> - One hundred twenty (120) calendar days from the date of signing of employment contract for all landbased workers;
>
> - Thirty (30) calendar days from the date of processing by the administration of the employment contracts of seafarers.
>
> Failure of the agency to deploy a worker within the prescribed period without valid reasons shall be a cause for suspension or cancellation of license or fine. In addition, the agency shall return all documents at no cost to the worker.

[28] Labor Arbiter's Decision; rollo, p. 87.

[29] 328 Phil. 161 (1996).

[30] Id. at 169-170, citing Cagampan v. National Labor Relations Commission, 195 SCRA 533 (1991).

[31] Remigio v. National Labor Relations Commission, G.R. No. 159887, 12 April 2006, 487 SCRA 190, 215.

[32] San Miguel Corporation v. Ubaldo, G.R. No. 92859, 1 Feburary 1993, 218 SCRA 293, 301.

[33] 434 Phil. 524, 537-538.

[34] This ruling was reiterated in Pentagon International Shipping, Inc. v. Adelantar, G.R. No. 157373, 27 July 2004, 435 SCRA 342; Gu-Miro v. Adorable, G.R. No. 160952, 20 August 2004, 437 SCRA 162, 169; and Petroleum Shipping Ltd. v. National Labor Relations Commission, G.R. No. 148130, 16 June 2006, 491 SCRA 35, 42.

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