

NFD INTERNATIONAL MANNING AGENTS AND A/S VULCANUS OSLO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, JOSE I. ILAGAN, JR. AND CONSTANTINO CO, JR., RESPONDENTS.

G.R. No. 165389. October 17, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Assailed in the present Petition for Review on Certiorari under Rule 45 of the Rules of Court is the June 21, 2004 Decision[1] and September 14, 2004 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 78870.

The facts of the case are as follows:

Jose I. Ilagan, Jr. and Constantino Co, Jr. (private respondents) were among 21 Filipino seamen hired by herein petitioner NFD International Manning Agents, Inc. (NFD) to work on board the chemical tanker M/T Lady Helene, a vessel owned and operated by petitioner A/S Vulcanus Oslo (Vulcanus), NFD's foreign principal.

On February 11, 1997, while M/T Lady Helene was at Island View Port, Durban, South Africa, Ship Master Captain Steiner Andersen dismissed the 21 Filipino seamen, including herein private respondents, from their employment. They were subsequently repatriated, arriving in the Philippines on February 15, 1997.

On March 3, 1997, NFD filed before the Adjudication Office of the Philippine Overseas Employment Administration (POEA), a disciplinary complaint against the 21 seamen alleging that they were guilty of mutiny, insubordination, desertion/attempting to desert the vessel and conspiracy. Subsequently, in an Order[3] dated October 12, 1999, the POEA Adjudication Office dismissed the disciplinary complaint filed by NFD, ordering that the names of the 21 seamen be removed from the POEA watchlist.

Meanwhile, on May 6, 1997, private respondents, together with eight (complainants) of the 21 seamen whose employments were terminated, filed with the National Labor Relations Commission (NLRC), National Capital Region in Quezon City, a Complaint[4] for wrongful breach of contract, illegal dismissal and damages against NFD and Vulcanus, contending that: they were summarily dismissed from their employment without just and valid cause and in gross violation of the terms of their employment contracts; they were forcibly disembarked from the vessel; at the time of their discharge, and up to the filing of their complaint, they had not been paid their accrued salaries, guaranteed overtime pay and leave pay; for their summary dismissal, forcible disembarkation and subsequent repatriation, they seek recovery of their unpaid wages and other benefits as well as moral and exemplary damages and attorney's fees.

In their Position Paper,[5] NFD and Vulcanus (petitioners) contended: The complainants were validly and lawfully dismissed from their employment for their acts of "mutiny, insubordination, desertion/attempting to desert the vessel and conspiracy among themselves together with the other Filipino seamen in refusing and or failing to join M/T Lady Helene in its next trip or destination to Mauritius without just and valid cause"; contrary to complainants' claim, they were not forcibly disembarked from the vessel; four out of the ten complainants had

already withdrawn their complaints; out of the remaining six complainants, five were given the option to return to M/T Lady Helene and rejoin it in its next trip to Mauritius; the filing of the complaint was merely an afterthought of the complainants after NFD filed cases for disciplinary action against them; complainants were not entitled to any of the amounts which they sought to recover, instead, they should reimburse NFD for the expenses incurred by the latter in connection with their valid dismissal and subsequent repatriation to the Philippines.

In their Reply to Respondents' Position Paper,[6] complainants averred that no single specific act of insubordination, desertion or attempt to desert the vessel or refusal to sail with the vessel was attributed to them; the Filipino crewman who reportedly instigated the alleged mutiny was among those absolved of any liability by petitioners in exchange for a waiver or quitclaim which he may have had against the latter; the disciplinary cases filed against them was a tactical move resorted to by herein petitioners to preempt complainants from filing a complaint for illegal dismissal; nothing was alleged and no evidence was presented to prove that complainants were accorded the benefit of due process before they were terminated from their employment.

In their Rejoinder,[7] private respondents contended that the Affidavit[8] of Anselmo V. Rodriguez, NFD President and General Manager, contained several attachments proving the illegal acts of the complainants; that it was an act of desperation on the part of complainants to put color to the action of NFD in promptly reporting to the POEA the illegal acts committed by the latter; that, on the contrary, the complaint for illegal dismissal, which was filed three months after their termination from employment took place, was the complainants' belated move to serve as a smokescreen for their illegal acts.

On January 30, 1998, the Labor Arbiter (LA) rendered judgment dismissing the Complaint on the ground that the complainants were lawfully dismissed for just cause.[9]

Complainants filed an appeal with the NLRC.[10]

On August 30, 2001, the NLRC promulgated a Decision,[11] the dispositive portion of which reads as follows:

WHEREFORE, the assailed decision is set aside. The respondents [herein petitioners] are directed to jointly and severally pay the appellants complainants[herein private respondents and their companions] their wages for the payment of the unexpired portion of their respective contracts, and unpaid wages including moral and exemplary damages of P50,000.00 each and ten percent (10%) attorney's fees of the total amount awarded. The complaint of Alcesar Baylosis is hereby dismissed in view of the settlement of the monetary claims effected on July 17, 1997.

SO ORDERED.[12]

Herein petitioners then filed a Motion for Reconsideration.[13] On April 9, 2002, the NLRC came up with the herein assailed Resolution[14] which granted petitioners' motion and reinstated the Decision dated January 30, 1998 of the LA in their favor.

Complainants filed a Motion for Reconsideration[15] but it was denied by the NLRC in its Order[16] promulgated on June 16, 2003.

Thereafter, five out of the ten original complainants, to wit: Jose I. Ilagan, Jr. (herein private respondent), Reynaldo G. Digma, Francisco C. Octavio, Constantino D. Co, Jr. (herein private respondent) and Jesus G. Domingo filed a special civil action for certiorari with the CA assailing the April 9, 2002 Resolution and the June 16, 2003 Order of the NLRC.[17]

On September 17, 2003, the CA issued a Resolution[18] denying due course to and dismissing the petition for certiorari on the ground that only one out of the five petitioners therein signed the verification and certificate

against forum-shopping attached to the petition without any showing that such petitioner was duly authorized to sign for and in behalf of the other petitioners.

On October 3, 2002, herein private respondents filed a Motion for Reconsideration with Motion to Exclude Reynaldo G. Digma, Francisco C. Octavio and Jesus G. Domingo as petitioners on the ground that the above-named seamen were still abroad by reason of their employment.[19]

In a Resolution[20] dated October 16, 2003, the CA reinstated the petition insofar as herein private respondents were concerned.

On June 21, 2004, the CA promulgated the presently assailed Decision in favor of private respondents, the dispositive portion of which reads:

WHEREFORE, premises considered, the petition is GRANTED. The resolution and order dated April 9, 2002 and June 16, 2003 of the NLRC are hereby ANNULLED and SET ASIDE. The NLRC decision dated August 30, 2001 is hereby REINSTATED.

SO ORDERED.[21] (Underscoring supplied)

Herein petitioners filed a Motion for Reconsideration[22] but the CA denied it in its Resolution of September 14, 2004.

Hence, the present petition with the following assignment of errors:

I.

THE COURT OF APPEALS COMMITTED GRAVE ERROR IN DISREGARDING THE FINDINGS OF THE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION, WHICH FINDINGS ARE SUPPORTED BY SUBSTANTIAL EVIDENCE.

II.

THE COURT OF APPEALS COMMITTED GRAVE ERROR IN HOLDING THAT PETITIONERS FAILED TO PRESENT SUBSTANTIAL EVIDENCE PROVING THAT RESPONDENTS WERE DISMISSED FOR JUST AND VALID CAUSE.

THE EVIDENCE ON RECORD PROVES THAT RESPONDENTS WERE GUILTY OF MUTINY, INSUBORDINATION, DESERTION/ATTEMPTING TO DESERT THE VESSEL AND CONSPIRACY WITH THE OTHER FILIPINO SEAFARERS IN REFUSING AND/OR FAILING TO JOIN M/T LADY HELENE IN ITS NEXT TRIP OR DESTINATION.

III.

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT [RESPONDENTS'] TERMINATION WAS EFFECTED WITHOUT DUE PROCESS OF LAW.

IV.

THE HONORABLE COURT COMMITTED GRAVE ERROR IN HOLDING THAT [RESPONDENTS'] TERMINATION WAS ATTENDED BY BAD FAITH OR DONE CONTRARY TO MORALS, GOOD CUSTOMS OR PUBLIC POLICY.[23]

The petition has no merit.

The basic issue to be resolved in the instant case is whether private respondents' termination from their employment was valid.

There are two requisites which must be complied with by an employer for a valid dismissal of employees, to wit: (1) the dismissal must be for a just or authorized cause; and (2) the employee must be afforded due process, i.e., he must be given opportunity to be heard and to defend himself.[24]

Anent the first requisite, it is a basic principle that in the dismissal of employees, the burden of proof rests upon the employer to show that the dismissal is for a just and valid cause and failure to do so would necessarily mean that the dismissal is not justified.[25] This is in consonance with the guarantee of security of tenure in the Constitution and in the Labor Code. A dismissed employee is not required to prove his innocence of the charges leveled against him by his employer.[26] 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.[27]

The Court is not persuaded by petitioners' contentions in its first and second assigned errors that the CA should have accorded respect and finality to the findings of fact and conclusions of the LA as these are supported by substantial evidence; that petitioners, in fact, were able to present substantial evidence to prove that private respondents were guilty of mutiny, insubordination, desertion/attempt to desert their vessel and conspiracy with the other Filipino seamen in refusing to join said vessel in its next trip.

Factual findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality. However, the rule is not without exceptions, one of which is when the findings of fact of the labor officials on which the conclusion is based are not supported by substantial evidence.[28] Another exception is when it is perceived that far too much is concluded, inferred or deduced from bare facts adduced in evidence.[29] Moreover, when the findings of the LA and the NLRC are inconsistent with that of the CA, as in the instant case, there is a need to review the records to determine which of them should be preferred as more conformable to evidentiary facts.[30] The Court finds that the present case falls under the above-mentioned exceptions.

After a review of the arguments and evidence of the parties, the Court sustains the findings and conclusions of the CA, the same being in accord with the facts and law of the case.

The Court agrees with the following findings and conclusion of the CA, to wit:

[Herein petitioners] charged [herein private respondents] for mutiny, insubordination, desertion and conspiracy in refusing to join the vessel in its next trip. However, except for the disagreement between Capt. Andersen and Engine Fitter Castillo, when the latter refused to resume his work in the Engine Room wherein the other Filipino crew sided with Castillo, there is no proof showing the alleged mutinous and concerted actions of the [private respondents] against Capt. Andersen. There is also the glaring absence of corroborative statements of other officers or crew on board attesting that [private respondents] participated directly or indirectly to any wrong doing, or even intervened in the quarrel between Andersen and Castillo. The records fail to establish clearly the commission of any threat, or any serious misconduct which would justify [private respondents'] dismissal.[31]

which affirmed the earlier finding of the NLRC in its August 30, 2001 Decision, thus:

We also noted that [herein petitioners'] various charges against the [private respondents] were bereft of factual details showing the alleged mutinous and concerted actions of herein [private respondents] against the ship captain. The absence of competent evidence or corroborative statements of other officers or crew on board attesting to the fact that complainants have participated directly or indirectly, to any wrongdoing or intervened in the quarrel of the Ship Captain with Fitter Bautista[32] deters us in considering the said charges with probity.[33]

Moreover, the above-quoted findings of the CA and the NLRC are consistent with the findings of the POEA in its

October 12, 1999 Order dismissing the disciplinary complaint filed by NFD against herein private respondents and their companions. Pertinent portions of the POEA Order reads:

Aside from telexes and telefax messages exchanged between complainant NFD International Manning Agents, Inc. and its principal AS Vulcanus which are all self-serving in nature, no other proof, such as official logbook extracts, was adduced in support of the complaint. Had respondents committed the offense charged, this should at least deserve attention, entry and/or proper documentation in the vessel's logbook/journal.

Inciting mutiny, being a serious offense, and punishable under the "Table of Offense and Corresponding Administrative Penalties of the Standard Employment Contract Governing Employment of All Filipino Seamen on Board Ocean Going Vessels" for two to three year suspension, must be established by clear, strong, and incontrovertible pieces of evidence. In the absence of substantial evidence, such as in the instant case, the charge of inciting mutiny/refusal to sail cannot be given credence.[34]

Indeed, there is no record in the logbook or journal of the ship to indicate that the 21 Filipino seamen, including herein private respondents who were terminated from their employment, threatened to cease and desist from working and to abandon their vessel as a result of the misunderstanding that happened between the Ship Master and a Filipino crew member.

Petitioners' claim that private respondents and their fellow Filipino seamen were guilty of conspiracy in committing mutiny, insubordination, attempting to desert their vessel and refusing to sail with the vessel is not supported by substantial evidence. Aside from the communications, through telex messages, sent by representatives of petitioner Vulcanus and the President and General Manager of NFD, no competent documentary proof was presented to substantiate the charges against private respondents and the other Filipino seamen. No record of any hearing or investigation was presented. Moreover, petitioners did not present the Ship Master or any member of the ship's crew in order to validate or verify the truth regarding the charge against the 21 Filipino seamen. All that were presented by petitioners were allegations which they claimed to have gathered from information provided by the Ship Master that herein private respondents and their fellow Filipino seamen were guilty of the various acts of which they were accused to have committed.

Petitioners insist that the findings and conclusions of the LA should be respected. However, the Court finds that the LA failed to cite substantial evidence to support his conclusions. It is not enough for the LA to declare in his Decision that "the established facts of the case, however, reveal that complainant[s] were lawfully dismissed for just cause"; or that "records show that complainants were discharged from their employment for committing acts of mutiny, insubordination and desertion and/or attempting to desert the vessel as well as conspiracy among themselves in refusing to join M/T Lady Helene in its next trip to Mauritius without just and valid cause x x x" without specifying the evidence upon which he derived his conclusions.

It is true that the LA cited documents consisting of the following: (1) telex message, dated February 11, 1997, sent by a certain Marianne D. Hovland whose connection with or position at Vulcanus was not indicated, informing NFD that there had been no solution to their problems; and that a Filipino crewman named Castillo has not left the vessel; and that "some other crew" have communicated their intention to leave if Castillo would leave;[35] (2) telex message, dated February 11, 1997, from the NFD President and General Manager addressed to all NFD officers and crew warning them of the possible consequences, should they decide to leave their vessel to accompany Castillo, and advising them to refrain from refusing to work and to treat their problem intelligently and not to involve others;[36](3) telex message, dated February 12, 1997, from a Captain Helge Grotle whose position at Vulcanus was also not indicated, informing NFD that the Ship Master of M/T Lady Helene decided to dismiss its crew for refusal to go to sea with the vessel, and that according to Grotle, the act of the crew constituted mutiny;[37] (4) telex message, dated February 12, 1997, from Captain Andersen informing NFD of his

decision to give 14 of the Filipino seamen, which included herein petitioners, the option to return to the vessel on the ground that these seamen were not involved in the alleged mutiny;[38] (5) letter from the NFD President and General Manager, dated February 28, 1997, informing the POEA about the dismissal of the 21 Filipino seamen on grounds of mutiny and conspiracy for their concerted refusal to work and join the vessel in going to its next destination.[39]

However, these documents, standing alone and uncorroborated by any other competent evidence, do not constitute substantial proof that herein private respondents are indeed guilty of mutiny. On the contrary, it proves their innocence. First, the evidence consisting of the telex messages from supposed representatives of Vulcanus and NFD are hearsay because they did not come directly from the Ship Master or officer of M/T Lady Helene. The information contained in these communications were merely based on the alleged report or message which came from the Ship Master. However, petitioners failed to present any telex message, testimony or even an affidavit of the Ship Master or any other crew member or officer of the subject vessel to prove that private respondents and their companions were guilty of the acts with which they were charged. Second, the telex message dated February 12, 1997 which came from the Ship Master himself established that private respondents and 12 of their companions were not guilty of mutiny as, in fact, they were given the option to return to the vessel if they wished to. Third, the letter-complaint filed by NFD with the POEA was later found baseless as the POEA, in its Order dated October 12, 1999, dismissed the complaint of NFD.

Even the NLRC, in its subsequent Resolution dated April 9, 2002, subject of herein petition, wherein it set aside its August 30, 2001 Decision and reinstated the LA's Decision, did not cite any specific evidence as basis for adopting the factual findings of the LA.

The Court also finds that in their pleadings before the LA, the NLRC, the CA and this Court, petitioners failed to cite any direct and substantial evidence to support their claim that private respondents and their companions were guilty of mutiny and conspiracy.

Hence, the CA was correct in reinstating the NLRC August 30, 2001 Decision finding that petitioners failed to discharge their burden of proving that the dismissal of private respondents was for a just and valid cause.

The next question is whether there was compliance with the second requisite of a valid dismissal which is due process.

The Court does not agree with petitioners' asseverations in their third assigned error that in dismissing respondents from their employment, the Ship Master simply acted within his management rights in order to protect the safety of the vessel and its crew, which act, according to petitioners, is recognized under the provisions of the POEA Standard Employment Contract.

The minimum requirement of due process in termination proceedings, which must be complied with even with respect to seamen on board a vessel, consists of notice to the employees intended to be dismissed and the grant to them of an opportunity to present their own side on the alleged offense or misconduct, which led to the management's decision to terminate.[40] To meet the requirements of due process, the employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected, i.e., (1) a notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice after due hearing which informs the employee of the employers' decision to dismiss him.[41]

Petitioner maintains that the Ship Master is allowed to dismiss an erring seafarer without notice under Section 17, paragraph D of the Revised Standard Employment Terms and Conditions Governing the Employment of Filipino

Seafarers on Board Ocean-Going Vessels[42] issued by the Philippine Overseas Employment Administration (POEA).

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:

- The Master shall furnish the seafarer with a written notice containing the following:
 - Grounds for the charges as listed in Section 31 of this Contract.
 - Date, time and place for a formal investigation of the charges against the seafarer concerned.
 - 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.
 - 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.
 - 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. (Emphasis supplied)

Under paragraph D, Section 17 of the Revised Standard Employment Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, the Ship Master is excused from furnishing a seafarer with the required notice of dismissal if doing so will prejudice the safety of the crew and the vessel, as in cases of mutiny.

Explaining the notice requirements under Section 17, this Court held in *Skippers Pacific, Inc. v. Mira*,[43] that :

x x x 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.[44] (Emphasis supplied)

However, in the instant case, petitioners failed to establish that private respondents and their companions were guilty of mutiny or that, in any other manner, they posed a clear and present danger to the vessel and its crew which would have justified the Ship Master in dispensing with the required notices. Even if the Ship Master was justified in dispensing with the notice requirements, still, it was essential that his decision to dismiss the Filipino seamen should have been entered in the ship's logbook; and that a complete report, substantiated by witnesses, testimonies and any other documents in support thereof, duly sent to the manning agency. The record of this case is bereft of any such entry in the ship's logbook or journal and of any report and supporting documents. Instead, respondents and the other Filipino seamen were verbally ordered to disembark from the vessel and were repatriated to the Philippines without being given written notice of the reasons why.

There being no mutiny, petitioners should have complied with Section 17A quoted above.

The records reveal that Section 17A was not complied with by the Ship Master. Petitioners failed to present evidence to prove that private respondents and their fellow complainants were served written notices stating the particular acts or omissions constituting the grounds for their termination. Neither was there evidence to show that private respondents and their companions were given opportunity to answer the charges against them.

Thus, the Court sustains the findings of the CA that private respondents and the other complainants were not given the benefit of procedural due process before they were terminated from their employment.

Anent the last assigned error. While the Court agrees with petitioners that there is no evidence to prove that force, violence or intimidation was employed to effect the disembarkation of the Filipino seamen, the Court still sustains the finding of the CA that the dismissal of private respondents and their companions was done in bad faith, contrary to morals, good customs or public policy, arbitrary and oppressive to labor, thus entitling them to the award of moral and exemplary damages. Moral damages are recoverable where the dismissal of the employee was attended by bad faith or fraud or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy.[45] On the other hand, exemplary damages are proper when the dismissal was effected in a wanton, oppressive or malevolent manner, and public policy requires that these acts must be suppressed and discouraged.[46] In the instant case, it is undisputed that respondents and the other Filipino seamen were actually engaged in the performance of their assigned tasks aboard M/T Lady Helene and were even rendering overtime work when they were unceremoniously directed to disembark from their vessel. Moreover, the total absence of any prior written notice of the charges against them, the opportunity to defend themselves against such charges and a written notice of the subsequent decision of the Ship Master to terminate their employment establish the arbitrary and oppressive character of the dismissal from employment of private respondents and their companions.

WHEREFORE, the instant Petition is DENIED for lack of merit. The Decision and Resolution of the Court of Appeals dated June 21, 2004 and September 14, 2004 in CA-G.R. SP No. 78870 are AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Carpio-Morales,[*] Chico-Nazario, and Nachura, JJ., concur.

* In lieu of Justice Ruben T. Reyes, per Raffle dated October 6, 2008.

[1] Penned by Justice Eliezer R. de los Santos with the concurrence of Justices Ruben T. Reyes and Arturo D. Brion (now both members of this Court), rollo, p. 72.

[2] CA rollo, p. 341.

[3] CA rollo, p. 151.

[4] Id. at 21-29.

[5] CA rollo, pp. 68-83.

[6] Id. at 84-94.

[7] Id. at 95-97.

[8] Annex "F", rollo, p. 85.

[9] See Labor Arbiter's Decision, CA rollo, pp. 98-113.

- [10] Id. at 114-125.
- [11] Id. at 163-186.
- [12] Id. at 185-186.
- [13] Id. at 188-201.
- [14] Id. at 202-210.
- [15] CA rollo, pp. 211-219.
- [16] Id. at 220-221.
- [17] Id. at 2-20.
- [18] Id. at 224.
- [19] Id. at 225.
- [20] Id. at 233.
- [21] CA rollo, p. 297.
- [22] Id. at 308-318.
- [23] Rollo, pp. 35-36.
- [24] *Skippers United Pacific, Inc. v. Maguad*, G.R. No. 166363, August 15, 2006, 498 SCRA 639, 658.
- [25] *De Jesus v. National Labor Relations Commission*, G.R. No. 151158, August 17, 2007, 530 SCRA 489, 498; *Ranises v. National Labor Relations Commission*, G.R. No. 111914, September 24, 1996, 262 SCRA 371, 376.
- [26] *Philippine Transmarine Carriers, Inc. v. Carilla*, G.R. No. 157975, June 26, 2007, 525 SCRA 586, 594.
- [27] Id.
- [28] *Felix v. National Labor Relations Commission*, G.R. No. 148256, November 17, 2004, 442 SCRA, 465, 477.
- [29] *Felix v. National Labor Relations Commission*, supra note 28, at 477.
- [30] *Portuguez v. GSIS Family Bank (Comsavings Bank)*, G.R. No. 169570, March 2, 2007, 517 SCRA 309, 319; *Macahilig v. National Labor Relations Commission*, G.R. No. 158095, November 23, 2007, 538 SCRA 375, 383.
- [31] CA rollo, p. 296.
- [32] Should be "Castillo" per records.
- [33] Id. at 180.
- [34] CA rollo, pp. 156-157.
- [35] CA rollo, p. 273.
- [36] Id. at 274.
- [37] CA rollo, p. 275.
- [38] Id. at 276.

[39] Id. at 278.

[40] *Skippers United Pacific, Inc. v. Maguad*, supra note 24, at 663.

[41] *Skippers United Pacific, Inc. v. Maguad*, supra note 24, at 663.

[42] POEA Memorandum Circular No. 055-96 made effective on January 1, 1997.

[43] G.R. No. 144314, November 21, 2002, 392 SCRA 371.

[44] Id. at 382.

[45] *De Guzman v. National Labor Relations Commission*, G.R. No. 167701, December 12, 2007, 540 SCRA 21, 37; *Aguilar v. Burger Machine Holdings, Corporation*, G.R. No. 172062, October 30, 2006, 506 SCRA 266, 278.

[46] Id.

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