

BREND O D. MERIN, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, THROUGH ITS THIRD DIVISION, GREAT SOUTHERN MARITIME SERVICES, CORP., AND/OR IMC SHIPPING CO., PTE., LTD., R...

G.R. No. 171790. October 17, 2008

Ponente: TINGA, J.

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TINGA, J.:

The instant petition for review[1] assails the Decision[2] and Resolution[3] of the Court of Appeals dated 30 November 2005 and 3 March 2006 in CA-G.R. SP No. 89646[4] which found just cause for the dismissal/repatriation of Brendo D. Merin (petitioner).

The antecedents, culled from the decision of the labor arbiter,[5] follow.

Sometime in 1999, petitioner was contracted by Great Southern Maritime Services Corporation (GSM) for and in behalf of its foreign principal, IMC Shipping, Co., Pte. Ltd., as an ordinary seaman on board the vessel MT "Selandang Permata" for ten (10) months. Barely three (3) months after he boarded the vessel, petitioner was repatriated by the master of the vessel. Petitioner allegedly refused to receive his termination letter.[6] After his arrival in Manila, he inquired from GSM the reason for his dismissal, but allegedly none was given to him by his local employer.

It appears that petitioner had committed several infractions while on board the vessel.[7] At one time, he allegedly failed to report for work after he drank too much alcohol at a party. He apologized for the incident, and even submitted a letter of apology to the master of the vessel. In another instance, the master of the vessel found petitioner sleeping in the crew's smoke room. When roused from his slumber, the master of the vessel noticed that he had bloodshot eyes and was in fact intoxicated. On the same day, petitioner inquired from the Chief Officer if he would be repatriated due to the incidents. He claimed that he had strong connections with the Philippine Overseas Employment Administration (POEA), warning that should he be repatriated, the ship agent would be held liable.[8] This conversation was recorded in the ship's logbook.

The following day, the master of the vessel received a letter-complaint from the vessel's bosun and petitioner's immediate superior, narrating previous incidents of petitioner's refusal to obey his instructions without justifiable reasons. The bosun also related that petitioner threatened to harm him when he learned of his impending repatriation.[9] Petitioner was repatriated the following day.

Petitioner filed a claim for illegal dismissal before the National Labor Relations Commission (NLRC).[10] The case was raffled to Labor Arbiter Antonio A. Cea who, on 28 August 2003, issued a decision declaring petitioner's repatriation illegal. According to the labor arbiter, it was unfair to hold petitioner liable for his previous infractions, because these offenses had been already condoned or penalized. As for petitioner's alleged bragging about his connections with the POEA, the labor arbiter ruled that while boasting of connections does not sound

pleasing to those who are listening, it is not a valid ground to pre-terminate an employment contract.[11]

On appeal, the NLRC reversed and set aside the labor arbiter's decision. In its decision dated 29 December 2004,[12] the NLRC found substantial evidence that petitioner committed the offenses charged against him. It also took note of the order of the POEA Administrator dated 9 February 2001,[13] as affirmed by the Secretary of the Department of Labor and Employment (DOLE) on 26 July 2002,[14] which suspended petitioner for three (3) years from the POEA Registry of Overseas Filipino Workers. The NLRC also cited the case of *Vir-Jen Shipping and Marine Services, Inc. v. NLRC*,[15] wherein the Court exhorted Filipino seafarers on board foreign-going ships to conduct themselves with utmost propriety and abide strictly with the terms and conditions of their employment contract.[16]

Petitioner sought reconsideration of the decision but his motion was denied for lack of merit by the NLRC.[17] Thereafter, he filed a petition for certiorari before the Court of Appeals, imputing grave abuse of discretion on the part of the NLRC for having reversed the illegal dismissal finding of Labor Arbiter Cea.[18]

The Court of Appeals denied the petition. Relying on the principle of "totality of infractions," the appellate court found that petitioner committed several infractions while employed for a short period of time. Instead of being repentant for the offenses he committed, he even challenged his superior to repatriate him while bragging about his connections with the POEA.[19] Unreasonable behavior and unpleasant deportment in dealing with the people in the workplace are analogous to the other just causes of termination enumerated under the law, the Court of Appeals added.[20] Such attitude of petitioner is unwarranted and uncalled for and demeans not only the Filipino seamen but also the Philippine Government. However, the Court of Appeals ruled that petitioner was not accorded due process, thus he is entitled to the payment of indemnity in the form of nominal damages in the amount of P50,000.00.[21] Thereafter, petitioner's motion for reconsideration,[22] was likewise denied.[23] Hence, this petition.

Petitioner presents the following arguments:

- The dismissal done without observing due process is tantamount to illegal dismissal. Hence, petitioner was not legally dismissed by the respondents for non-compliance therewith;
- The assailed decision is contrary to law for disregarding Section 17 of the POEA Standard Employment Contract, which primarily provides for the procedural due process in the dismissal of Filipino Seafarers;
- The assailed decision is contrary to law for not awarding petitioner's money claims;
- The POEA Standard Employment Contract is primarily intended to protect the rights and privileges of seafarers on board ocean-going vessels. As such, it is not an employment device intended to oppress lowly modern heroes through suppression of their guaranteed rights but in return to acknowledge their great contribution in our country.[24]

The petition is unmeritorious.

Findings of fact of quasi-judicial bodies are generally accorded not only respect, but even finality, and bind this Court when supported by substantial evidence, mainly because these agencies have acquired the requisite expertise, their jurisdiction being confined to specific matters. We see no reason to deviate from this rule, more so in this case where the labor arbiter, the NLRC, and the Court of Appeals found that petitioner committed all the infractions complained of by his employer. We also give due weight and consideration to the findings of the POEA contained in its Order dated 9 February 2001,[25] and of the DOLE in its decision dated 26 July 2002,[26] which both found petitioner liable for misbehavior and disorderly conduct unbecoming of a mariner, and ordered his suspension from the POEA Registry for three (3) years.[27]

The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee. The offenses committed by petitioner should not be taken singly and separately. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct and ability separate and independent of each other.[28] While it may be true that petitioner was penalized for his previous infractions, this does not and should not mean that his employment record would be wiped clean of his infractions. After all, the record of an employee is a relevant consideration in determining the penalty that should be meted out since an employee's past misconduct and present behavior must be taken together in determining the proper imposable penalty[29] Despite the sanctions imposed upon petitioner, he continued to commit misconduct and exhibit undesirable behavior on board. Indeed, the employer cannot be compelled to retain a misbehaving employee, or one who is guilty of acts inimical to its interests. It has the right to dismiss such an employee if only as a measure of self-protection.[30] We find just cause in petitioner's termination.

The manner of his dismissal, however, is another matter. Records show that petitioner's employer failed to observe the procedure prescribed in the POEA Standard Employment Contract, which requires for a written notice of the charges and the time and place for a formal investigation, a hearing of the charges, and a written notice of the penalty. Petitioner was repatriated without the requisite notices and hearing.[31] Such failure, however, does not affect the propriety of his dismissal. In *Agabon v. NLRC*,[32] we ruled that when the dismissal is for just cause, the lack of statutory due process should not nullify the dismissal, or render it illegal, or ineffectual. However, it warrants the payment of indemnity in the form of nominal damages. The award of P50,000.00 by the Court of Appeals, however, is excessive, since, conformably with the *Agabon* case, the proper amount for nominal damages would be of P30,000.00.

Neither are we inclined to grant petitioner's prayer for the payment of his money claims. Save for his bare allegations, he failed to adduce evidence to prove nonpayment of his money claims. On the other hand, his employer was able to show that he was paid what was due him before his repatriation.[33]

WHEREFORE, the petition is DENIED. The decision and resolution of the Court of Appeals dated 30 November 2005 and 6 March 2006 in CA-G.R. SP NO. 89646 are AFFIRMED with the MODIFICATION that Great Southern Maritime Services Corporation is ordered to pay petitioner the amount of Thirty Thousand Pesos (P30,000.00) as nominal damages for non-compliance with statutory due process.

Costs against respondents.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Velasco, Jr., and Brion, JJ., Concur.

[1] Rollo, pp. 3-20.

[2] Id. at 21-31.

[3] Id. at 32.

[4] Entitled *Brendo D. Merin v. National Labor Relations Commission, Through its Third Division, Great Southern Maritime Services, Corp., and/or IMC Shipping Co., Pte. Ltd.*, penned by Associate Justice Andres B. Reyes, with Associate Justices Rosmari D. Carandang and Monina-Arevalo-Zenarosa, concurring.

[5] CA rollo, pp. 110-120.

- [6] Id. at 110-111.
- [7] Said infractions were also written down in the ship's logbook.
- [8] Id. at 111-112.
- [9] Id. at 115.
- [10] Id. at 46-47.
- [11] Id. at 117..
- [12] Id. at 25-34.
- [13] Id. at 158-162.
- [14] Id. at 166-168.
- [15] No. L-58011-12, 20 July 1982, 115 SCRA 347.
- [16] Id. at 35-45.
- [17] Id. at 33-34.
- [18] Id. at 2-24.
- [19] Rollo, p. 28.
- [20] Id. at 29, citing Cathedral School of Technology v. NLRC, G.R. No. 101438, 13 October 1992.
- [21] Id. at 31.
- [22] Id. at 33-43.
- [23] Supra note 3.
- [24] Id. at 10-16.
- [25] Supra note 13.
- [26] Supra note 14. Resolution on the appeal by petitioner.
- [27] The offenses complained of before the POEA are the same infractions for which petitioner was dismissed.
- [28] Valiao v. Court of Appeals, G.R. No. 146621, 30 July 2004, 435 SCRA 543, 552-553.
- [29] Challenge Socks Corporation v. Court of Appeals, G.R. No. 165268, 8 November 2005, 474 SCRA 356.
- [30] MGG Marine Services, Inc. v. NLRC, 328 Phil. 1046, 1067 (1996).
- [31] POEA Standard Employment Contract, Sec. 17.
- [32] G.R. No. 158693, 17 November 2004, 442 SCRA 573.
- [33] CA rollo, p. 119.

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