

**JUANITO TALIDANO, PETITIONER, VS. FALCON MARITIME &
ALLIED SERVICES, INC., SPECIAL EIGHTH DIVISION OF THE COURT
OF APPEALS, AND LABOR ARBITER ERMITA C. CUYUGA,
RESPONDENTS.**

G.R. No. 172031. July 14, 2008

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TINGA, J.:

This Petition for Certiorari[1] under Rule 65 of the Rules of Court seeks to annul the Decision[2] and Resolution[3] of the Court of Appeals, dated 16 November 2005 and 2 February 2006, respectively, which upheld the validity of the dismissal of Juanito Talidano (petitioner). The challenged decision reversed and set aside the Decision[4] of the National Labor Relations Commission (NLRC) and reinstated that of the Labor Arbiter.[5]

Petitioner was employed as a second marine officer by Falcon Maritime and Allied Services, Inc. (private respondent) and was assigned to M/V Phoenix Seven, a vessel owned and operated by Hansu Corporation (Hansu) which is based in Korea. His one (1)-year contract of employment commenced on 15 October 1996 and stipulated the monthly wage at \$900.00 with a fixed overtime pay of \$270.00 and leave pay of \$75.00.[6]

Petitioner claimed that his chief officer, a Korean, always discriminated against and maltreated the vessel's Filipino crew. This prompted him to send a letter-complaint to the officer-in-charge of the International Transport Federation (ITF) in London, a measure that allegedly was resented by the chief officer. Consequently, petitioner was dismissed on 21 January 1997. He filed a complaint for illegal dismissal on 27 October 1999.[7]

Private respondent countered that petitioner had voluntarily disembarked the vessel after having been warned several times of dismissal from service for his incompetence, insubordination, disrespect and insulting attitude toward his superiors. It cited an incident involving petitioner's incompetence wherein the vessel invaded a different route at the Osaka Port in Japan due to the absence of petitioner who was then supposed to be on watch duty. As proof, it presented a copy of a fax message, sent to it on the date of incident, reporting the vessel's deviation from its course due to petitioner's neglect of duty at the bridge,[8] as well as a copy of the report of crew discharge issued by the master of M/V Phoenix Seven two days after the incident.[9]

Private respondent stated that since petitioner lodged the complaint before the Labor Arbiter two (2) years and nine (9) months after his repatriation, prescription had already set in by virtue of Revised POEA Memorandum Circular No. 55, series of 1996 which provides for a one-year prescriptive period for the institution of seafarers' claims arising from employment contract.[10]

On 5 November 2001, the Labor Arbiter rendered judgment dismissing petitioner's complaint, holding that he was validly dismissed for gross neglect of duties. The Labor Arbiter relied on the fax messages presented by private respondent to prove petitioner's neglect of his duties, thus:

x x x The fax message said that the Master of M/V Phoenix Seven received an emergency warning call from Japan Sisan Sebo Naika Radio Authority calling attention to the Master of the vessel M/V Phoenix Seven that

his vessel is invading other route [sic]. When the Master checked the Bridge, he found out that the Second Officer (complainant) did not carry out his duty watch. There was a confrontation between the Master and the Complainant but the latter insisted that he was right. The argument of the Complainant asserting that he was right cannot be sustained by this Arbitration Branch. The fact that there was an emergency call from the Japanese port authority that M/V Phoenix Seven was invading other route simply means that Complainant neglected his duty. The fax message stating that Complainant was not at the bridge at the time of the emergency call was likewise not denied nor refuted by the Complainant. Under our jurisprudence, any material allegation and/or document which is not denied specifically is deemed admitted. If not of the timely call [sic] from the port authority that M/V Phoenix Seven invaded other route, the safety of the vessel, her crew and cargo may be endangered. She could have collided with other vessels because of complainant's failure to render watch duty.[11]

On appeal, the NLRC reversed the ruling of the Labor Arbiter and declared the dismissal as illegal. The dispositive portion of the NLRC's decision reads:

WHEREFORE, premises considered, the decision appealed from is hereby reversed and set aside and a new one entered declaring the dismissal of the complainant as illegal. Respondents Falcon Maritime & Allied Services, Inc. and Hansu Corporation are hereby ordered to jointly and severally pay complainant the amount equivalent to his three (3) months salary as a result thereof.[12]

The NLRC held that the fax messages in support of the alleged misbehavior and neglect of duty by petitioner have no probative value and are self-serving. It added that the ship's logbook should have been submitted in evidence as it is the repository of all the activities on board the vessel, especially those affecting the performance or attitude of the officers and crew members, and, more importantly, the procedures preparatory to the discharge of a crew member. The NLRC also noted that private respondent failed to comply with due process in terminating petitioner's employment.[13]

Private respondent moved for reconsideration,[14] claiming that the complaint was filed beyond the one-year prescriptive period. The NLRC, however, denied reconsideration in a Resolution dated 30 August 2002.[15] Rejecting the argument that the complaint had already prescribed, it ruled:

Records show that respondent in this case had filed a motion to dismiss on the ground of prescription before the Labor Arbiter a quo who denied the same in an Order dated August 1, 2000. Such an Order being unappealable, the said issue of prescription cannot be raised anew specially in a motion for reconsideration. (Citations omitted)[16]

It appears that respondent received a copy of the NLRC Resolution[17] on 24 September 2002 and that said resolution became final and executory on 7 October 2002.[18]

Private respondent brought the case to the Court of Appeals via a Petition for Certiorari[19] on 8 October 2002. The petition, docketed as CA-G.R. Sp. No. 73521, was dismissed on technicality in a Resolution dated 29 October 2002. The pertinent portion of the resolution reads:

(1)

[T]he VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING was signed by one Florida Z. Jose, President of petitioner Falcon Maritime and Allied Services, Inc., without proof that she is the duly authorized representative of petitioner-corporation;

(2)

[T]here is no affidavit of service of the petition to the National Labor Relations Commission and to the adverse party;

(3)

[T]here is no explanation to justify service by mail in lieu of the required personal service. (Citations omitted)[20]

An entry of judgment was issued by the clerk of court on 23 November 2002 stating that the 29 October 2002 Resolution had already become final and executory.[21] Meanwhile, on 12 November 2002, private respondent filed another petition before the Court of Appeals,[22] docketed as CA G.R. SP No. 73790. This is the subject of the present petition.

Petitioner dispensed with the filing of a comment.[23] In his Memorandum,[24] however, he argued that an entry of judgment having been issued in CA-G.R. SP No. 73521, the filing of the second petition hinging on the same cause of action after the first petition had been dismissed violates not only the rule on forum shopping but also the principle of *res judicata*. He highlighted the fact that the decision subject of the second petition before the Court of Appeals had twice become final and executory, with entries of judgment made first by the NLRC and then by the Court of Appeals.

The appellate court ultimately settled the issue of prescription, categorically declaring that the one-year prescriptive period applies only to employment contracts entered into as of 1 January 1997 and not those entered prior thereto, thus:

x x x The question of prescription is untenable. Admittedly, POEA Memorandum Circular [No.] 55 prescribing the standard terms of an employment contract of a seafarer was in effect when the respondent was repatriated on January 21, 1997. This administrative issuance was released in accordance with Department Order [No.] 33 of the Secretary of Labor directing the revision of the existing Standard Employment Contract to be effective by January 1, 1997. Section 28 of this revised contract states: all claims arising therefrom shall be made within one year from the date of the seafarer's return to the point of hire.

It is crystal clear that the one-year period of prescription of claims in the revised standard contract applies only to employment contracts entered into as of January 1, 1997. If there is still any doubt about this, it should be removed by the provision of Circular [No.] 55 which says that the new schedule of benefits to be embodied in the standard contract will apply to any Filipino seafarer that will be deployed on or after the effectivity of the circular.

The respondent was deployed before January 1, 1997. As acknowledged by the petitioners, the rule prior to Circular [No.] 55 provided for a prescriptive period of three years. We cannot avoid the ineluctable conclusion that the claim of the respondent was filed within the prescriptive period.[25]

Despite ruling that prescription had not set in, the appellate court nonetheless declared petitioner's dismissal from employment as valid and reinstated the Labor Arbiter's decision.

The appellate court relied on the fax messages issued by the ship master shortly after petitioner had committed a serious neglect of his duties. It noted that the said fax messages constitute the *res gestae*. In defending the non-presentation of the logbook, it stated that three years had already passed since the incident and Hansu was no longer the principal of private respondent.

Petitioner's motion for reconsideration was denied. Hence he filed this instant petition.

Citing grave abuse of discretion on the part of the Court of Appeals, petitioner reiterates his argument that the appellate court should not have accepted the second petition in view of the fact that a corresponding entry of judgment already has been issued. By filing the second petition, petitioner believes that private respondent has engaged in forum shopping.[26]

Private respondent, for its part, defends the appellate court in taking cognizance of the second petition by stressing that there is no law, rule or decision that prohibits the filing of a new petition for certiorari within the reglementary period after the dismissal of the first petition due to technicality.[27] It rebuts petitioner's charge of forum shopping by pointing out that the dismissal of the first petition due to technicality has not ripened into res judicata, which is an essential element of forum shopping.[28]

In determining whether a party has violated the rule against forum shopping, the test to be applied is whether the elements of *litis pendentia* are present or whether a final judgment in one case will amount to res judicata in the other.[29] This issue has been thoroughly and extensively discussed and correctly resolved by the Court of Appeals in this wise:

The respondent's two arguments essay on certain developments in the case after the NLRC rendered its decision. He points out with alacrity that an entry of judgment was issued twice – first by the NLRC with respect to its decision and then by the Ninth Division of the Court of Appeals after it dismissed on technical grounds the first petition for certiorari filed by the petitioner. Neither event, for sure, militates against the institution of a second petition for certiorari. A decision of the NLRC is never final for as long as it is the subject of a petition for certiorari that is pending with a superior court. A contrary view only demeans our certiorari jurisdiction and will never gain currency under our system of appellate court review. It is more to the point to ask if a second petition can stand after the first is dismissed, but under the particular circumstances in which the second was brought, we hold that it can. The theory of res judicata invoked by the respondent to bar the filing of the second petition does not apply. The judgment or final resolution in the first petition must be on the merits for res judicata to inhere, and it will not be on the merits if it is founded on a consideration of only technical or collateral points. Yet this was exactly how the first petition was disposed of. SP 73521 was dismissed as a result of the failure of the petitioner to comply with the procedural requirements of a petition for certiorari. The case never touched base. There was no occasion for the determination of the substantive rights of the parties and, in this sense, the merits of the case were not involved. The petitioner had actually the option of either refilling [sic] the case or seeking reconsideration in the original action. It chose to file SP 73790 after realizing that it still had enough time left of the original period of 60 days under Rule 65 to do so.

Since the dismissal of the first petition did not ripen into res judicata, it may not be said that there was forum shopping with the filing of the second. The accepted test for determining whether a party violated the rule against forum shopping insofar as it is applicable to this setting is whether the judgment or final resolution in the first case amounts to res judicata in the second. Res judicata is central to the idea of forum shopping. Without it, forum shopping is non-existent. The dismissal of the first petition, moreover, if it does not amount to res judicata, need not be mentioned in the certification of non-forum shopping accompanying the second action. The omission will not be fatal to the viability of the second case. (Citations omitted)[30]

Private respondent, in turn, questions the propriety of the instant certiorari petition and avers that the issues raised by petitioner can only be dealt with under Rule 45 of the Rules of Court.[31] Against this thesis, petitioner submits that the acceptance of the petition is addressed to the sound discretion of this Court.[32]

The proper remedy to assail decisions of the Court of Appeals involving final disposition of a case is through a petition for review under Rule 45. In this case, petitioner filed instead a certiorari petition under Rule 65. Notwithstanding this procedural lapse, this Court resolves to rule on the merits of the petition in the interest of substantial justice,[33] the underlying consideration in this petition being the arbitrary dismissal of petitioner from employment.

Petitioner submits that the Court of Appeals erred in relying merely on fax messages to support the validity of his dismissal from employment. He maintains that the first fax message containing the information that the vessel encroached on a different route was a mere personal observation of the ship master and should have thus been

corroborated by evidence, and that these fax messages cannot be considered as *res gestae* because the statement of the ship master embodied therein is just a report. He also contends that he has not caused any immediate danger to the vessel and that if he did commit any wrongdoing, the incident would have been recorded in the logbook. Thus, he posits that the failure to produce the logbook reinforces the theory that the fax messages have been concocted to justify his unceremonious dismissal from employment. Hence, he believes that his dismissal from employment stemmed from his filing of the complaint with the ITF which his superiors resented.[34]

Private respondent insists that the appellate court is correct in considering the fax messages as *res gestae* statements. It likewise emphasizes that non-presentment of the logbook is justified as the same could no longer be retrieved because Hansu has already ceased to be its principal. Furthermore, it refutes the allegation of petitioner that he was dismissed because he filed a complaint with the ITF in behalf of his fellow crew members. It claims that petitioner's allegation is a hoax because there is no showing that the alleged complaint has been received by the ITF and that no action thereon was ever taken by the ITF.[35]

Private respondent also asserts that petitioner was not dismissed but that he voluntarily asked for his repatriation. This assertion, however, deserves scant consideration. It is highly illogical for an employee to voluntarily request for repatriation and then file a suit for illegal dismissal. As voluntary repatriation is synonymous to resignation, it is proper to conclude that repatriation is inconsistent with the filing of a complaint for illegal dismissal.[36]

The paramount issue therefore boils down to the validity of petitioner's dismissal, the determination of which generally involves a question of fact. It is not the function of this Court to assess and evaluate the facts and the evidence again, our jurisdiction being generally limited to reviewing errors of law that might have been committed by the trial court or administrative agency. Nevertheless, since the factual findings of the Court of Appeals and the Labor Arbiter are at variance with those of the NLRC, we resolve to evaluate the records and the evidence presented by the parties.[37]

The validity of an employee's dismissal hinges on the satisfaction of two substantive requirements, to wit: (1) the dismissal must be for any of the causes provided for in Article 282 of the Labor Code; and (2) the employee was accorded due process, basic of which is the opportunity to be heard and to defend himself.[38]

The Labor Arbiter held that petitioner's absence during his watch duty when an emergency call was received from the Japanese port authority that M/V Phoenix Seven was "invading other route" constituted neglect of duty, a just cause for terminating an employee. Records reveal that this information was related to private respondent via two fax messages sent by the captain of M/V Phoenix Seven. The first fax message dated 18 January 1997 is reproduced below:

JUST RECEIVED PHONE CALL FROM MASTER N C/OFFICER THAT THEY DECIDED TO DISCHARGE 2/OFFICER AT OSAKA PORT.

DUE TO MIS-BEHAVIOUR N RESEST [SIC] TO OFFICIAL ORDER.

CAPT. HAD RECEIVED EMERGENCY WARNING CALL FROM JAPAN BIKAN SETO NAIKAI RADIO AUTHORITY THAT SHIP IS INVADING OTHER ROUTE.

SO, HE WAS SURPRISED N CAME TO BRIDGE N FOUND 2/O NOT CARRY OUT HIS WATCH DUTY.

MASTER SCOLD HIM ABOUT THIS N CORRECT HIS ERROR BUT HE RESIST [SIC] THAT HE IS RIGHT AND THEN SAID THAT HE WILL COME BACK HOME.

FURTHER MORE HE ASKED MASTER TO PAY HIM I.T.F. WAGE SCALE.

MASTER N/CIO STRONGLY ASKED US HIS REPATRIATION WITH I.E.U.

PLS. CONFIRM YOUR OPINION ON THIS HAPPENING.[39]

The second fax message dated 20 January 1997 pertained to a report of crew discharge essentially containing the same information as the first fax message. The Court of Appeals treated these fax messages as part of the *res gestae* proving neglect of duty on the part of petitioner.

Section 42 of Rule 130[40] of the Rules of Court mentions two acts which form part of the *res gestae*, namely: spontaneous statements and verbal acts. In spontaneous exclamations, the *res gestae* is the startling occurrence, whereas in verbal acts, the *res gestae* are the statements accompanying the equivocal act.[41] We find that the fax messages cannot be deemed part of the *res gestae*.

To be admissible under the first class of *res gestae*, it is required that: (1) the principal act be a startling occurrence; (2) the statements were made before the declarant had the time to contrive or devise a falsehood; and (3) that the statements must concern the occurrence in question and its immediate attending circumstances.[42]

Assuming that petitioner's negligence—which allegedly caused the ship to deviate from its course—is the startling occurrence, there is no showing that the statements contained in the fax messages were made immediately after the alleged incident. In addition, no dates have been mentioned to determine if these utterances were made spontaneously or with careful deliberation. Absent the critical element of spontaneity, the fax messages cannot be admitted as part of the *res gestae* of the first kind.

Neither will the second kind of *res gestae* apply. The requisites for its admissibility are: (1) the principal act to be characterized must be equivocal; (2) the equivocal act must be material to the issue; (3) the statement must accompany the equivocal act; and (4) the statements give a legal significance to the equivocal act.[43]

Petitioner's alleged absence from watch duty is simply an innocuous act or at least proved to be one. Assuming arguendo that such absence was the equivocal act, it is nevertheless not accompanied by any statement more so by the fax statements adverted to as parts of the *res gestae*. No date or time has been mentioned to determine whether the fax messages were made simultaneously with the purported equivocal act.

Furthermore, the material contents of the fax messages are unclear. The matter of route encroachment or invasion is questionable. The ship master, who is the author of the fax messages, did not witness the incident. He obtained such information only from the Japanese port authorities. Verily, the messages can be characterized as double hearsay.

In any event, under Article 282 of the Labor Code,[44] an employer may terminate an employee for gross and habitual neglect of duties. Neglect of duty, to be a ground for dismissal, must be both gross and habitual. Gross negligence connotes want of care in the performance of one's duties. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. A single or isolated act of negligence does not constitute a just cause for the dismissal of the employee.[45]

Petitioner's supposed absence from watch duty in a single isolated instance is neither gross nor habitual negligence. Without question, the alleged lapse did not result in any untoward incident. If there was any serious aftermath, the incident should have been recorded in the ship's logbook and presented by private respondent to substantiate its claim. Instead, private respondent belittled the probative value of the logbook and dismissed it as self-serving. Quite the contrary, the ship's logbook is the repository of all activities and transactions on board a vessel. Had the route invasion been so serious as to merit petitioner's dismissal, then it would have been recorded in the logbook. Private respondent would have then had all the more reason to preserve it considering that vital pieces of information are contained therein.

In *Haverton Shipping Ltd. v. NLRC*,^[46] the Court held that the vessel's logbook is an official record of entries made by a person in the performance of a duty required by law.^[47] In *Abacast Shipping and Management Agency, Inc. v. NLRC*,^[48] a case cited by petitioner, the logbook is a respectable record that can be relied upon to authenticate the charges filed and the procedure taken against the employees prior to their dismissal.^[49] In *Wallem Maritime Services, Inc. v. NLRC*,^[50] the logbook is a vital evidence as Article 612 of the Code of Commerce requires the ship captain to keep a record of the decisions he had adopted as the vessel's head.^[51] Therefore, the non-presentation of the logbook raises serious doubts as to whether the incident did happen at all.

In termination cases, the burden of proving just or valid cause for dismissing an employee rests on the employer.^[52] Private respondent miserably failed to discharge this burden. Consequently, the petitioner's dismissal is illegal.

We also note that private respondent failed to comply with the procedural due process requirement for terminating an employee. Such requirement is not a mere formality that may be dispensed with at will. Its disregard is a matter of serious concern since it constitutes a safeguard of the highest order in response to man's innate sense of justice. The Labor Code does not, of course, require a formal or trial type proceeding before an erring employee may be dismissed. This is especially true in the case of a vessel on the ocean or in a foreign port. 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 of the alleged offense or misconduct, which led to the management's decision to terminate. 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 employer's decision to dismiss him.^[53]

Private respondent's sole reliance on the fax messages in dismissing petitioner is clearly insufficient as these messages were addressed only to itself. No notice was ever given to petitioner apprising him in writing of the particular acts showing neglect of duty. Neither was he informed of his dismissal from employment. Petitioner was never given an opportunity to present his side. The failure to comply with the two-notice rule only aggravated respondent's liability on top of dismissing petitioner without a valid cause.

Pursuant to Section 10 of Republic Act No. 8042^[54] or the Migrant Worker's Act, employees who are unjustly dismissed from work are entitled to an amount representing their three (3) months' salary considering that their employment contract has a term of exactly one (1) year plus a full refund of his placement fee, with interest at 12% per annum.^[55]

IN LIGHT OF THE FOREGOING, the petition is GRANTED. The Decision of the Court of Appeals is REVERSED and SET ASIDE. The Decision of the NLRC is REINSTATED with the MODIFICATION that in addition to the payment of the sum equivalent to petitioner's three (3) months' salary, the full amount of placement fee with 12% legal interest must be refunded.

SO ORDERED.

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

[1] Rollo, pp. 3-24.

[2] Penned by Associate Justice Mario L. Guarina, III and concurred in by Associate Justices Roberto A. Barrios

and Mariflor Punzalan Castillo.

[3] Id. at 122.

[4]Id. at 129-133; penned by Commissioner Ireneo B. Bernardo and concurred in by Commissioners Lourdes C. Javier and Tito Genilo; Third Division.

[5] Id. at 54-59; penned by Labor Arbiter Ermita T. Abrasaldo C. Cuyuca.

[6] CA rollo, p. 38.

[7] Rollo, p. 55.

[8]CA rollo, p. 75.

[9] Id. at 76.

[10] Rollo, p. 56.

[11] Id. at 58-59.

[12]Id. at 133.

[13] Id. at 132.

[14] CA rollo, pp. 25-31.

[15] Rollo, pp. 65-67.

[16] Id. at 66.

[17]Id. at 60-64; 31 March 2002, Third Division.

[18] CA rollo, p. 85.

[19]Id. at 87-99.

[20] Rollo, p. 69.

[21] Rollo, p. 70.

[22] CA rollo, pp. 2-18.

[23]CA rollo, p. 79.

[24]Id. at 80-84.

[25] Rollo, p. 30.

[26]Id. at 13.

[27]Id. at 144.

[28]Id.

[29]Sps. Tirona v. Hon. Alejo, 419 Phil. 285, 305 (2001).

[30] Rollo, pp. 28-29.

[31]Id. at 141.

[32]Id. at 153.

[33] Hanjin Engineering & Construction Co., Ltd. v. Court of Appeals, G.R. No. 165910, 10 April 2006, 487 SCRA 78, 96; Capitol Medical Center, Inc. v. Meris, G.R. No. 155098, 16 September 2005, 470 SCRA 125, 134; Pobre v. Court of Appeals, G.R. No. 141805, 8 July 2005, 463 SCRA 50, 59; Caraan v. Court of Appeals, 352 Phil. 417, 421 (1998).

[34] Rollo, pp. 15-20.

[35] Id. at 148.

[36] Oriental Shipmanagement Co., Inc. v. Court of Appeals, G.R. No. 153750, 25 January 2006, 480 SCRA 100, 110.

[37] Philemploy Services and Resources, Inc. v. Rodriguez, G.R. No. 152616, 31 March 2006, 486 SCRA 302, 314-315; Molina v. Pacific Plans, Inc., G.R. No. 165476, 10 March 2006, 484 SCRA 498.

[38] Petron Corporation v. National Labor Relations Commission, G.R. No. 154532, 27 October 2006, 505 SCRA 596, 609.

[39] CA rollo, p. 75.

[40] SEC. 42. Part of the res gestae. —Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the res gestae. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance may be received as part of the res gestae.

[41] FRANCISCO, VICENTE, JR., THE REVISED RULES OF COURT IN THE PHILIPPINES, Vol. VII, Part 1, 1997 Ed., p. 609.

[42] Digital Pool of Accredited Insurance Companies v. Radio Mindanao Network, G.R. No. 147039, 27 January 2006, 480 SCRA 314, 324-325.

[43] REGALADO, FLORENZ, D., REMEDIAL LAW COMPENDIUM, 9[th] Revised Edition, p. 651.

[44] ART. 282. An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative;

(e) Other causes analogous to the foregoing.

[45] Id.

[46]G.R. No. L-65442, 15 April 1985, 135 SCRA 685.

[47] Id. at 690.

[48] G.R. Nos. L-81124-26, 23 June 1988, 162 SCRA 541.

[49]Id. at 544.

[50] 331 Phil. 476 (1996).

[51] Id. at 182.

[52]Dusit Hotel Nikko v. Gatbonton, G.R. No. 161654, 5 May 2006, 489 SCRA 671, 676.

[53] Skippers United Pacific, Inc. v. Maguad, G.R. No. 166363, 15 August 2006, 498 SCRA 639, 663.

[54]Section 10. Money Claims—

x x x

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.

[55] Asian Int'l Manpower Services, Inc. v. Court of Appeals, G.R. No. 169652, 9 October 2006, 504 SCRA 103, 113-114; JSS Indochina Corp. v. Ferrer, G.R. No. 156381, 14 October 2005, 473 SCRA 120, 128.

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