

ROMULO B. DELA ROSA, PETITIONER, VS. MICHAELMAR PHILIPPINES, INC., SUBSTITUTED BY OSG SHIPMANAGEMENT MANILA, INC., AND/OR MICHAELMAR SHIPPING SERVICES, INC., RESPONDENTS.

G.R. No. 182262. April 13, 2011

Ponente: NACHURA, J.

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NACHURA, J.:

Petitioner Romulo B. dela Rosa (Dela Rosa) appeals by certiorari under Rule 45 of the Rules of Court the August 22, 2007 Amended Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 93115, and the March 18, 2008 Resolution[2] denying its reconsideration.

The antecedents -

Dela Rosa was hired by respondent Michaelmar Philippines, Inc., for and on behalf of its principal Michaelmar Shipping Services, Inc. (respondent), as 3rd Engineer on board the vessel MT “Goldmar” for a period of nine months.[3] He boarded MT “Goldmar” on February 15, 2003. However, on April 14, 2003, he was discharged for his alleged poor performance, and was repatriated to the Philippines.

Claiming termination without just cause and due process, Dela Rosa filed a complaint[4] for illegal dismissal, nonpayment of salaries/wages, payment of moral and exemplary damages and attorney’s fees with the Labor Arbiter (LA), against respondents.

Traversing the complaint, respondents alleged that Dela Rosa was validly terminated. They averred that Dela Rosa’s work performance was unsatisfactory, and that despite the advice given to him by his superiors, Dela Rosa’s job performance did not improve; he continued to be incompetent and inefficient. On March 16, 2003, Chief Engineer Stephen B. Huevas (Engr. Huevas) issued a warning letter to Dela Rosa, but he refused to receive the same. Worse, on April 9, 2003, Dela Rosa simply stopped working. Left with no recourse, Engr. Huevas sent a letter dated April 9, 2003 to the principal, communicating his intention to disembark Dela Rosa. On April 14, 2003, Dela Rosa was repatriated upon payment of all the benefits due him. Respondents, therefore, prayed for the dismissal of the complaint.[5]

On March 31, 2004, the LA rendered a decision[6] dismissing the complaint. In so ruling, the LA made much of Dela Rosa’s failure to deny or rebut respondents’ allegations that he refused to receive the warning letter on March 16, 2003, and then stopped working on April 9, 2003, without any valid reason. Dela Rosa’s failure to rebut these serious allegations, the LA held, gave rise to an inference that the same were true. The LA further lent credence to the entries in the logbook and further declared that Dela Rosa already waived his right to contest the said entries because he refused to receive the warning letter addressed to him. The LA disposed, thus:

WHEREFORE, a Decision is hereby rendered DISMISSING the case for lack of merit.[7]

Dela Rosa appealed to the National Labor Relations Commission (NLRC). On July 29, 2005, the NLRC issued a Resolution[8] dismissing the appeal and affirming the LA. In so ruling, the NLRC sustained respondents' claim that Dela Rosa neglected his duty as 3rd Engineer and abandoned his job, justifying the termination of his employment.

Dela Rosa filed a motion for reconsideration,[9] but the NLRC denied it on November 24, 2005.[10]

Dela Rosa then went to the CA via certiorari. On January 31, 2007, the CA rendered a Decision[11] reversing the NLRC. It held that respondents failed to allege and prove with particularity the charges against Dela Rosa. The particular acts which would indicate Dela Rosa's unsatisfactory performance were neither specified nor described in the warning letter and were never entered in the ship's logbook. It declared respondents' pieces of evidence as self-serving, which could not support the findings of lawful termination. The CA added that Dela Rosa's alleged incompetence, disobedience, and refusal to work while on board MT "Goldmar" did not constitute a clear case of insubordination and abandonment of work that would warrant his termination.

The CA decreed that:

WHEREFORE, the foregoing considered, the Petition is GRANTED and the assailed Resolutions are ANNULLED and SET ASIDE. Accordingly, Petitioner Romulo B. dela Rosa is hereby declared to have been illegally dismissed from employment and private respondents are therefore ordered to pay him his salaries corresponding to the unexpired portion of his employment contract. No costs.

SO ORDERED.[12]

Dela Rosa's victory, however, was only fleeting because on a motion for reconsideration, the CA rendered an Amended Decision, viz.:

After a careful study of the grounds relied upon by [respondents], this court finds the instant motion meritorious, considering that the 24 November 2005 Resolution of the National Labor Relations Commission has already become final and executory on February 28, 2006 and the corresponding entry of judgment thereon issued on June 15, 2006. Jurisprudence dictates that once a judgment becomes final, all the issues between the parties are deemed resolved and laid to rest. Litigation must end and terminate sometime and somewhere, and it is essential to an effective and efficient administration of justice that once a judgment has become final the winning party be not be deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that result. Constituted as they are to put an end controversies, courts should frown upon any attempt to prolong them. As such, it becomes immutable and unalterable, and may no longer be modified in any respect except only to correct clerical errors or mistake. WHEREFORE, the foregoing considered, the Motion for Reconsideration is hereby GRANTED and Our assailed decision considered academic.

SO ORDERED.[13]

Dela Rosa filed a motion for reconsideration on September 30, 2007. Pending resolution of petitioner's motion, respondent Michaelmar Philippines, Inc. filed a Manifestation/Motion to Substitute Michaelmar Phils.,[14] Inc. with OSG Shipmanagement Manila, Inc. (OSG Shipmanagement). It alleged that OSG Shipmanagement is the new manning agent in the Philippines of Michaelmar Shipping Services, Inc., and it assumes the full responsibility for all contractual obligations to seafarers originally recruited and processed by Michaelmar Philippines, Inc.[15]

The CA noted and granted the motion in its Resolution[16] dated November 12, 2007, and accordingly ordered the impleading of OSG Shipmanagement as respondent, in substitution of Michaelmar Philippines, Inc.

On March 18, 2008, the CA issued a Resolution[17] denying Dela Rosa's motion for reconsideration.

Hence, this appeal by Dela Rosa, arguing that:

I THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN PROMULGATING THE AMENDED DECISION OF 22 AUGUST 2007 REVERSING AND SETTING THE EARLIER DECISION DATED 31 JANUARY 2007 ON THE GROUND THAT THE CASE HAS ALREADY BECOME MOOT AND ACADEMIC. II THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN ERRONEOUSLY APPLYING THE JURISPRUDENCE LAID DOWN IN THE CASE OF SALVA VS. CA, 304 SCRA 632. III THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN ERRONEOUSLY APPRECIATING THE ENTRY OF JUDGMENT ISSUED BY THE NATIONAL LABOR RELATIONS COMMISSION ON JUNE 15, 2006 THEREBY GIVING THE EFFECT OF DISMANTLING THE RIGHT OF THE PETITIONER TO REMEDIAL MEASURES IN PROTECTION OF HIS RIGHTS AS SET FORTH BY LAW.[18]

The CA dismissed Dela Rosa's petition on ground of mootness. It considered the November 24, 2005 NLRC Resolution sustaining Dela Rosa's dismissal as final and executory. As such, the resolution became immutable and unalterable.

The CA was wrong.

A decision issued by a court becomes final and executory when such decision disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court, such as when after the lapse of the reglementary period to appeal, no appeal has been perfected.[19]

The period or manner of appeal from the NLRC to the CA is governed by Rule 65, pursuant to the ruling of this Court in *St. Martin Funeral Home v. National Labor Relations Commission*. [20] Section 4 of Rule 65, as amended, states that the petition may be filed not later than sixty (60) days from notice of the judgment, or resolution sought to be assailed.

Record shows that Dela Rosa received a copy of the November 24, 2005 Resolution of the NLRC, denying his motion for reconsideration on December 8, 2005. [21] He had sixty (60) days, or until February 6, 2006, to file his petition for certiorari. February 6, 2006, however, was a Sunday. Thus, Dela Rosa filed his petition the next working day, or on February 7, 2006. Undoubtedly, Dela Rosa's petition was timely filed.

In *Leonis Navigation Co., Inc. v. Villamater*, [22] we explained:

[J]udicial review of decisions of the NLRC is sought via a petition for certiorari under Rule 65 of the Rules of Court, and the petition should be filed before the CA, following the strict observance of the hierarchy of courts. Under Rule 65, Section 4, petitioners are allowed sixty (60) days from notice of the assailed order or resolution within which to file the petition. Thus, although the petition was not filed within the 10-day period, petitioners reasonably filed their petition for certiorari before the CA within the 60-day reglementary period under Rule 65.

Further, a petition for certiorari does not normally include an inquiry into the correctness of its evaluation of the evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for certiorari, which is merely confined to issues of jurisdiction or grave abuse of discretion. It is, thus, incumbent upon petitioners to satisfactorily establish that the NLRC acted capriciously and whimsically in order that the extraordinary writ of certiorari will lie. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically.

The CA, therefore, could grant the petition for certiorari if it finds that the NLRC, in its assailed decision or resolution, committed grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence that is material to or decisive of the controversy; and it cannot make this determination without looking into the evidence of the parties. Necessarily, the appellate court can only evaluate the materiality or significance of the evidence, which is alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC, in relation to all other evidence on record. Notably, if the CA grants the petition and nullifies the decision or resolution of the NLRC on the ground of grave abuse of discretion amounting to excess or lack of jurisdiction, the decision or resolution of the NLRC is, in contemplation of law, null and void ab initio; hence, the decision or resolution never became final and executory.[23]

Indubitably, the issuance of an entry of judgment by the NLRC cannot render Dela Rosa's petition for certiorari as moot and academic. Thus, the CA erred for ruling otherwise.

On the merits of the case, Dela Rosa insists that he was illegally terminated. Respondents, on the other hand, maintain that Dela Rosa's dismissal was based on a valid and legal ground.

We sustain Dela Rosa's argument.

Dela Rosa was dismissed for his alleged poor performance. In *Eastern Overseas Employment Center, Inc. v. Bea*, [24] we explained poor performance as a ground for termination of employment, viz.:

As a general concept, "poor performance" is equivalent to inefficiency and incompetence in the performance of official duties. Under Article 282 of the Labor Code, an unsatisfactory rating can be a just cause for dismissal only if it amounts to gross and habitual neglect of duties. [Thus,] the fact that an employee's performance is found to be poor or unsatisfactory does not necessarily mean that the employee is grossly and habitually negligent of his duties. Gross negligence implies a want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[25]

We review the records of the case and we agree with the earlier finding of the CA that no substantial evidence was presented to substantiate the cause of Dela Rosa's dismissal. The letter warning [26] dated March 16, 2003 and the following entries [27] in the ship's logbook:

WARNING LETTER WAS PRESENTED TO THIRD ENGINEER R. DELA ROSA CONCERNING HIS PERFORMANCE AS THIRD ENGINEER ON BOARD MT GOLDMAR. HOWEVER, HE REFUSED TO AFFIX HIS SIGNATURE OR ACKNOWLEDGE SAID WARNING LETTER, IN SHORT, HE HAS NO INTENTION OR WHATSOEVER TO IMPROVE.[28]

@0800HRS 09 APRIL '03 THIRD ENG'R R. DELA ROSA CEASES TO WORK WITHOUT MY KNOWLEDGE AND INSTRUCTION, AS WELL AS A VALID REASON NOT TO BE IN THE ENGINE ROOM TO CARRY OUT HIS ROUTINE DUTY/RESPONSIBILITIES.[29]

are insufficient to establish respondents' claim of valid dismissal. In *Talidano v. Falcon Maritime & Allied Services, Inc.* [30] and *Abacast Shipping & Management Agency, Inc. v. NLRC*, [31] we held that a ship's logbook is a respectable record that can be relied upon to authenticate the charges filed and the procedure taken against employees prior to their dismissal. In this case, however, respondents did not present the other entries in the logbook that could substantiate Dela Rosa's unsatisfactory performance.

The letter [32] dated April 14, 2003 of Engr. Huevas to Michaelmar Philippines, Inc. cited the particular acts constituting Dela Rosa's want of capacity and unsatisfactory conduct. Curiously, these acts were not entered in the ship's logbook or stated in the warning letter [33] allegedly given to Dela Rosa.

Dela Rosa was consistent in assailing the genuineness of respondents' annexes "B" and "C." He is firm in his

assertion that the purported copy of the entries in the ship's logbook is not genuine. Yet, respondents did not bother to present the logbook itself or an authenticated copy of the entries in the logbook. They relied on mere photocopies. In *Centennial Transmarine, Inc. v. Dela Cruz*,^[34] we declared, viz.:

In *Wallem Maritime Services, Inc. v. National Labor Relations Commission*, citing *Haverton Shipping Ltd. v. National Labor Relations Commission*, the Court ruled that a copy of an official entry in the logbook is legally binding and serves as an exception to the hearsay rule. In the said case, however, there was no controversy as to the genuineness of the said entry and the authenticity of the copy presented in evidence.

In the instant case, respondent has consistently assailed the genuineness of the purported entry and the authenticity of such copy. He alleged that before his repatriation, there was no entry in the ship's official logbook regarding any incident that might have caused his relief; that Captain Kowalewski's signature in such purported entry was forged. In support of his allegations, respondent submitted three official documents bearing the signature of Capt. Szczepan Kowalewski which is different from the one appearing in Annex "E." Thus, it was incumbent upon petitioners to prove the authenticity of Annex "E," which they failed to do. Likewise, the purported report of Capt. Kowalewski dated September 1, 2000 (Annex "D"), and the statements of Safety Officer Khaldun Nacem Faridi and Chief Officer Josip Milin (Annexes "G" and "H") also cannot be given weight for lack of authentication.

Although technical rules of evidence do not strictly apply to labor proceedings, however, in the instant case, authentication of the above-mentioned documents is necessary because their genuineness is being assailed, and since petitioners offered no corroborating evidence. These documents and their contents have to be duly identified and authenticated lest an injustice would result from a blind adoption of such contents. Thus, the unauthenticated documents relied upon by petitioners are mere self-serving statements of their own officers and were correctly disregarded by the Court of Appeals.^[35]

We cannot, therefore, give any probative value to respondents' annexes "C" and "D" for lack of authentication.

Besides, even assuming that Dela Rosa's performance was unsatisfactory, respondents failed to demonstrate that petitioner's alleged poor performance amounted to gross and habitual neglect of duty, which would justify his dismissal.

The principle echoed and reechoed in jurisprudence is that the onus of proving that an employee was dismissed for a just cause rests on the employer,^[36] and the latter's failure to discharge that burden would result in a finding that the dismissal is unjustified.^[37]

Furthermore, Dela Rosa was not accorded due process. Under Article 277(b)^[38] of the Labor Code, the employer must send the employee, who is about to be terminated, a written notice stating the causes for termination, and must give the employee the opportunity to be heard and to defend himself. For officers and crew who are working in foreign vessels involved in overseas shipping, there must be compliance with the applicable laws on overseas employment, as well as with the regulations issued by the Philippine Overseas Employment Administration, such as those embodied in the Standard Contract for Seafarers Employed Abroad (Standard Contract).^[39] Section 17 of the Standard Contract supplies the disciplinary procedure against an erring seafarer:

SEC. 17. DISCIPLINARY PROCEDURES. – The Master shall comply with the following disciplinary procedures against an erring seafarer: A. 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 or analogous act constituting the same.
- Date, time and place for a formal investigation of the charges against the seafarer concerned.

B. 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. These procedures must be duly documented and entered into the ship's logbook.

C. 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, which copies furnished to the Philippine agent.

D. Dismissal for just cause may be affected by the Master without furnishing the seafarer with a notice of dismissal if there is a clear and existing danger to the safety of the crew or the vessel. The Master shall send a complete report to the manning agency substantiated by witnesses, testimonies and any other documents in support thereof.

In this case, there was no showing that respondents complied with the foregoing procedure. Dela Rosa was not served with the notice apprising him of the particular acts or omissions on which his dismissal was based, together with the opportunity to explain his side. The only notice allegedly given to Dela Rosa was a warning letter. Such letter, however, did not cite the particular acts constituting Dela Rosa's alleged poor performance. Likewise, there was no formal investigation of the charges.

Certainly, there can be no other conclusion than that Dela Rosa was illegally terminated. He is, therefore, entitled to be paid his salaries for the unexpired portion of his employment contract, pursuant to our ruling in *Serrano v. Gallant Maritime Services, Inc.*[40]

However, the payment of overtime pay, leave pay, and tanker allowance should be disallowed. Overtime is not automatically included in the computation of the monetary award, unless there is evidence that an employee performed work during those periods.[41] The rendition of overtime work and the submission of sufficient proof that the same was actually performed are conditions to be satisfied before a seaman could be entitled to overtime pay. Similarly, the claim for leave pay for the unexpired portion of the contract and for tanker allowance is unwarranted since the same are given during the actual service of a seaman.[42]

Finally, we deny the claim for moral and exemplary damages, and the claim for attorney's fees for lack of basis.

WHEREFORE, the petition is GRANTED. The assailed Amended Decision dated January 31, 2007 and the Resolution dated March 18, 2008 in CA-G.R. SP No. 93115 are REVERSED and SET ASIDE. Romulo B. dela Rosa is declared illegally dismissed. Respondent Michaelmar Shipping Services, Inc. and substitute respondent OSG Shipmanagement Manila, Inc. are ordered to pay, jointly and severally, petitioner Romulo dela Rosa his salaries corresponding to the unexpired portion of his employment contract at the rate of US\$985.00 per month[43] or its peso equivalent at the time of actual payment.[44]

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and Mendoza, JJ., concur.

[*] See CA Resolution dated November 12, 2007; CA rollo, p. 268.

[1] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Vicente Q. Roxas and Ramon R. Garcia, concurring; rollo, pp. 29-30.

[2] Id. at 41-42.

[3] Records, p. 3.

[4] Id. at 2.

- [5] Id. at 27-43.
- [6] Id. at 89-95.
- [7] Id. at 95.
- [8] Id. at 137-140
- [9] Id. at 145-153.
- [10] Id. at 172-174.
- [11] CA rollo, pp. 180-190.
- [12] Id. at 189.
- [13] Supra note 1, at 30.
- [14] CA rollo, pp. 220-222.
- [15] Id. at 223.
- [16] Id. at 268.
- [17] Supra note 2.
- [18] Rollo, pp. 4-5.
- [19] Delima v. Gois, G.R. No. 178352, June 17, 2008, 554 SCRA 731, 738.
- [20] G.R. No. 130866, September 16, 1998, 295 SCRA 494.
- [21] See Registry Return Card; records, p. 179.
- [22] G.R. No. 179169, March 3, 2010, 614 SCRA 182.
- [23] Id. at 191-192.
- [24] 512 Phil. 749 (2005).
- [25] Id. at 758.
- [26] Annexes “B” to “B-1”; records, pp. 46-47.
- [27] Annexes “C” and “D”; id. at 48 and 49, respectively.
- [28] Id. at 48.
- [29] Id. at 49.
- [30] G.R. No. 172031, July 14, 2008, 558 SCRA 279, 297.
- [31] 245 Phil. 487 (1988).
- [32] Annexes “G” to “G-3”; records, pp. 54-57.
- [33] Supra note 26.
- [34] G.R. No. 180719, August 22, 2008, 563 SCRA 210.
- [35] Id. at 218-222. (Citation omitted.)

[36] See *De Jesus v. National Labor Relations Commission*, G.R. No. 151158, August 17, 2007, 530 SCRA 489, 498.

[37] *Eastern Overseas Employment Center, Inc. v. Bea*, supra note 24, at 759.

[38] ART. 277. Miscellaneous provisions.

x x x x

b. Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and valid and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. x x x.

[39] *Centennial Transmarine, Inc. v. Dela Cruz*, supra note 34, at 222-223.

[40] G.R. No. 167614, March 24, 2009, 582 SCRA 254.

[41] *Id.* at 303-304.

[42] See *Centennial Transmarine, Inc. v. Dela Cruz*, supra note 34, at 224; see also *Serrano v. Gallant Maritime Services, Inc.*, supra, at 303-304.

[43] See Annex “A”; records, p. 45.

[44] See *Centennial Transmarine, Inc. v. Dela Cruz*, supra note 34, +at 225.

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