

LITONJUA SHIPPING COMPANY INC., PETITIONER, VS. NATIONAL SEAMEN BOARD AND GREGORIO P. CANDONGO, RESPONDENTS.

G.R. No. 51910. August 10, 1989

Ponente: FELICIANO, J.

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FELICIANO, J.:

In this Petition for Certiorari, petitioner Litonjua Shipping Company, Inc. ("Litonjua") seeks to annul and set aside a decision dated 31 May 1979 of the National Seamen Board ("NSB") in NSB Case No. 1331-77 affirming the decision dated 17 February 1977 of the NSB hearing officer which adjudged petitioner Litonjua liable to private respondent for violation of the latter's contract of employment and which ordered petitioner to pay damages.

Petitioner Litonjua is the duly appointed local crewing Managing Office of the Fairwind Shipping Corporation ("Fairwind"). The M/V Dufton Bay is an ocean-going vessel of foreign registry owned by the R.D. Mullion Ship Broking Agency Ltd. ("Mullion"). On 11 September 1976, while the Dufton Bay was in the port of Cebu and while under charter by Fairwind, the vessel's master contracted the services of among others, private respondent Gregorio Candongo to serve as Third Engineer for a period of twelve (12) months with a monthly wage of US\$500.00. This agreement was executed before the Cebu Area Manning Unit of the NSB. Thereafter, private respondent boarded the vessel. On 28 December 1976, before expiration of his contract, private respondent was required to disembark at Port Kelang, Malaysia, and was returned to the Philippines on 5 January 1977. The cause of the discharge was described in his Seaman's Book as 'by owner's arrange'.^[1]

Shortly after returning to the Philippines, private respondent filed a complaint before public respondent NSB, which complaint was docketed as NSB-1331-77, for violation of contract, against Mullion as the shipping company and petitioner Litonjua as agent of the shipowner and of the charterer of the vessel.

At the initial hearing, the NSB hearing officer held a conference with the parties, at which conference petitioner Litonjua was represented by one of its supercargos, Edmond Cruz. Edmond Cruz asked, in writing, that the hearing be postponed for a month upon the ground that the employee of Litonjua in charge of the case was out of town. The hearing officer denied this request and then declared petitioner Litonjua in default. At the hearing, private respondent testified that when he was recruited by the Captain of the Dufton Bay, the latter was accompanied to the NSB Cebu Area Manning Unit by two (2) supercargos sent by petitioner Litonjua to Cebu, and that the two (2) supercargos Edmond Cruz and Renato Litonjua assisted private respondent in the procurement of his National Investigation and Security Agency (NISA) clearance. Messrs. Cruz and Litonjua were also present during private respondent's interview by Captain Ho King Yiu of the Dufton Bay.

On 17 February 1977, the hearing officer of the NSB rendered a judgment by default,^[2] the dispositive portion of which read:

"Wherefore, premises considered, judgment is hereby rendered ordering the respondents R.D. Mullion Shipbrokers Co., Ltd., and Litonjua Shipping Co., Inc., jointly and solidarily to pay the complainant the sum of

four thousand six hundred fifty seven dollars and sixty three cents (\$4,657.63) or its equivalent in the Phil. currency within 10 days from receipt of the copy of this Decision the payment of which to be coursed through the then NSB."

The above conclusion was rationalized in the following terms:

"From the evidence on record it clearly appears that there was no sufficient or valid cause for the respondents to terminate the services of complainant prior to 17 September 1977, which is the expiry date of the contract. For this reason the respondents have violated the conditions of the contract of employment which is a sufficient justification for this Board to render award in favor of the complainant of the unpaid salaries due the latter as damages corresponding to the unexpired portion of the contract including the accrued leave pay computed on the basis of five (5) days pay for every month of service based at \$500.00 monthly salary. Complainant's wages account further show that he has an undrawn wage amounting to US\$13.19 to be paid by the respondents Philippine agency together with his accrued leave pay." [3]

Petitioner Litonjua filed a motion for reconsideration of the hearing officer's decision; the motion was denied. Petitioner next filed an "Appeal and/or Motion for Reconsideration of the Default Judgment dated 9 August 1977" with the central office of the NSB. NSB then suspended its hearing officer's decision and lifted the order of default against petitioner Litonjua, thereby allowing the latter to adduce evidence in its own behalf.

The NSB hearing officer, on 26 April 1978, made the following findings:

"While it appears that in the preparation of the employment papers of the complainant, what was indicated therein was R.D. Mullion Co. (HK) Ltd. referring to Exhibit "B" (Standard Format of a Service Agreement) and Exhibit "C" (Affidavit of Undertaking), as the company whom Captain Ho King Yiu, the Master of the vessel Dufton Bay, was representing to be the shipowner, the fact remains that at the time of the recruitment of the complainant, as duly verified by the National Seamen Board, Cebu Area Manning Unit, the Litonjua Shipping Company was the authorized agent of the vessel's charterer, the Fairwind Shipping Corporation, and that in the recruitment process, the Litonjua Shipping Company through its supercargos in the persons of Edmund Cruz and Renato Litonjua, had knowledge thereof and in fact assisted in the interviews conducted by the Master of the crew applicants as admitted by Renato Litonjua including the acts of facilitating the crew's NISA clearances as testified to by complainant. Moreover, the participation of the Litonjua Shipping Corporation in the recruitment of complainant, together with the other crewmembers, in Cebu in September 1976 can be traced to the contents of the letter of April 5, 1976 by the Fairwind Shipping Limited, thru its Director David H.L. Wu addressed to the National Seamen Board, copy of which is on file with Contracts and Licensing Division, quote:

'This is to certify that Messrs. Litonjua Shipping, Inc. is duly appointed local crewing Managing Office to attend on our Crew requirements as well as attend to our ship's requirements when in Philippine ports.

We further authorized Litonjua Shipping co., Inc. to act as local representative who can sue and be sued, and to bind and sign contracts for our behalf.'" [4]

The NSB then lifted the suspension of the hearing officer's 17 February 1977 decision.

Petitioner Litonjua once more moved for reconsideration. On 31 May 1979, public respondent NSB rendered a decision [5] which affirmed its hearing officer's decision of 17 February 1977 and which read in part as follows:

"It is clear that respondent Litonjua Shipping Co., Inc. is the authorized Philippine agent of Fairwind Shipping Corporation, charterer of the vessel 'Dufton Bay', wherein complainant served as 3rd Engineer from 17 September until disembarkation on December 28, 1976. It is also clear from the complainant's wages account bearing the heading 'Fairwind Shipping Corporation', signed by the Master of the vessel that the Philippine agency referred to herein directed to pay the said withdrawn wages of \$13.19 is no other than Litonjua

Shipping Company, Inc.

From this observation, it can be reasonably inferred that the master of the vessel acted for and in behalf of Fairwind Shipping Corporation who had the obligation to pay the salary of the complainant. It necessarily follows that Fairwind Shipping Corporation is the employer of said complainant. Moreover, it had been established by complainant that Litonjua Shipping Company, Inc., had knowledge of and participated, through its employee, in the recruitment of herein complainant.

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In view of the foregoing, and pursuant to Art. 3 of the New Labor Code of the Philippines, which provides that, 'The state shall afford protection to labor x x x' as well as the provisions of Art 4 thereof, that 'all doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor', it is our conclusion, that the decision dated February 17, 1977, is based on evidence formally offered and presented during the hearing and that there was no grave abuse of discretion committed by the hearing officer in finding respondent Litonjua Shipping Company, Inc., liable to complainant." (Underscoring supplied)

In the instant Petition for Certiorari, petitioner Litonjua assails the decision of public respondent NSB declaring the charterer Fairwind as employer of private respondent, and for whose liability petitioner was made responsible, as constituting a grave abuse of discretion amounting to lack of jurisdiction. The principal if not the sole issue to be resolved here is whether or not the charterer Fairwind was properly regarded as the employer of private respondent Candongo.

Petitioner Litonjua makes two (2) principal submissions in support of its contention, to wit:

"1) As a general rule, admiralty law as embodied in the Philippine Code of Commerce fastens liability for payment of the crew's wages upon the ship owner, and not the charterer; and

2) The evidence of record is grossly inadequate to shift such liability from the shipowner to the petitioner." [6]

Petitioner Litonjua contends that the shipowner, not the charterer, was the employer of private respondent; and that liability for damages cannot be imposed upon petitioner which was a mere agent of the charterer. It is insisted that private respondent's contract of employment and affidavit of undertaking clearly showed that the party with whom he had contracted was none other than Mullion, the shipowner, represented by the ship's master.[7] Petitioner also argues that its supercargos merely assisted Captain Ho King Yiu of the Dufton Bay in hiring private respondent as Third Engineer. Petitioner also points to the circumstance that the discharge and the repatriation of private respondent was specified in his Seaman's Book as having been "by owner's arrange." Petitioner Litonjua thus argues that being the agent of the charterer and not of the shipowner, it accordingly should not have been held liable on the contract of employment of private respondent.

We are not persuaded by petitioner's argument. We believe that there are two (2) grounds upon which petitioner Litonjua may be held liable to the private respondent on the contract of employment.

The first basis is the charter party which existed between Mullion, the shipowner, and Fairwind, the charterer. In modern maritime law and usage, there are three (3) distinguishable types of charter parties: (a) the "bareboat" or "demise" charter; (b) the "time" charter; and (c) the "voyage" or "trip" charter. A bareboat or demise charter is a demise of a vessel, much as a lease of an unfurnished house is a demise of real property. The shipowner turns over possession of his vessel to the charterer, who then undertakes to provide a crew and victuals and supplies and fuel for her during the term of the charter. The shipowner is not normally required by the terms of a demise charter to provide a crew, and so the charterer gets the "bare boat", i.e., without a crew.[8] Sometimes, of course, the demise charter might provide that the shipowner is to furnish a master and crew to man the vessel under the

charterer's direction, such that the master and crew provided by the shipowner become the agents and servants or employees of the charterer, and the charterer (and not the owner) through the agency of the master, has possession and control of the vessel during the charter period. A time charter, upon the other hand, like a demise charter, is a contract for the use of a vessel for a specified period of time or for the duration of one or more specified voyages. In this case, however, the owner of a time-chartered vessel (unlike the owner of a vessel under a demise or bare-boat charter), retains possession and control through the master and crew who remain his employees. What the time charterer acquires is the right to utilize the carrying capacity and facilities of the vessel and to designate her destinations during the term of the charter. A voyage charter, or trip charter, is simply a contract of affreightment, that is, a contract for the carriage of goods, from one or more ports of loading to one or more ports of unloading, on one or on a series of voyages. In a voyage charter, master and crew remain in the employ of the owner of the vessel.[9]

It is well settled that in a demise or bare boat charter, the charterer is treated as owner pro hac vice of the vessel, the charterer assuming in large measure the customary rights and liabilities of the shipowner in relation to third persons who have dealt with him or with the vessel.[10] In such case, the Master of the vessel is the agent of the charterer and not of the shipowner.[11] The charterer or owner pro hac vice, and not the general owner of the vessel, is held liable for the expenses of the voyage including the wages of the seamen.[12]

It is important to note that petitioner Litonjua did not place into the record of this case a copy of the charter party covering the M/V Dufton Bay. We must assume that petitioner Litonjua was aware of the nature of a bareboat or demise charter and that if petitioner did not see fit to include in the record a copy of the charter party, which had been entered into by its principal, it was because the charter party and the provisions thereof were not supportive of the position adopted by petitioner Litonjua in the present case, a position diametrically opposed to the legal consequence of a bareboat charter.[13] Treating Fairwind as owner pro hac vice, petitioner Litonjua having failed to show that it was not such, we believe and so hold that petitioner Litonjua, as Philippine agent of the charterer, may be held liable on the contract of employment between the ship captain and the private respondent.

There is a second and ethically more compelling basis for holding petitioner Litonjua liable on the contract of employment of private respondent. The charterer of the vessel, Fairwind, clearly benefitted from the employment of private respondent as Third Engineer of the Dufton Bay, along with the ten (10) other Filipino crewmembers recruited by Captain Ho in Cebu at the same occasion.[14] If private respondent had not agreed to serve as such Third Engineer, the ship would not have been able to proceed with its voyage. The equitable consequence of this benefit to the charterer, is moreover, reinforced by convergence of other circumstances of which the Court must take account. There is the circumstance that only the charterer, through the petitioner, was present in the Philippines. Secondly, the scope of authority or the responsibility of petitioner Litonjua was not clearly delimited. Petitioner as noted, took the position that its commission was limited to taking care of vessels owned by Fairwind. But the documentary authorization read into the record of this case does not make that clear at all. The words - "our ships" may well be read to refer both to vessels registered in the name of Fairwind and vessels owned by others but chartered by Fairwind. Indeed the commercial, operating requirements of a vessel for crew members and for supplies and provisions have no relationship to the technical character-ization of the vessel as owned by or as merely chartered by Fairwind. In any case, it is not clear from the authori-zation given by Fairwind to petitioner Litonjua that vessels chartered by Fairwind (and owned by some other companies) were not to be taken care of by petitioner Litonjua should such vessels put into a Philippine port. The statement of account which the Dufton Bay's Master had signed and which pertained to the salary of private respondent had referred to a Philippine agency which would take care of disbursing or paying such account. There is no question that that, Philippine agency was the Philippine agent of the charterer Fairwind. Moreover, there is also no question that petitioner Litonjua did assist the Master of the vessel in locating and recruiting private respondent as Third

Engineer of the vessel as well as ten (10) other Filipino seamen as crew members. In so doing, petitioner Litonjua certainly in effect represented that it was taking care of the crewing and other requirements of a vessel chartered by its principal, Fairwind.[15]

Last, but certainly not least, there is the circumstance that extreme hardship would result for the private respondent if petitioner Litonjua, as Philippine agent of the charterer, is not held liable to private respondent upon the contract of employment. Clearly, the private respondent, and the other Filipino crew members of the vessel, would be defenseless against a breach of their respective contracts. While wages of crew members constitute a maritime lien upon the vessel, private respondent is in no position to enforce that lien, if only because the vessel, being one of foreign registry and not ordinarily doing business in the Philippines or making regular calls on Philippine ports cannot be effectively held to answer for such claims in a Philippine forum. Upon the other hand, it seems quite clear that petitioner Litonjua, should it be held liable to private respondent for the latter's claims, would be better placed to secure reimbursement from its principal Fairwind. In turn, Fairwind would be in an infinitely better position (than private respondent) to seek and obtain recourse from Mullion, the foreign shipowner, should Fairwind feel entitled to reimbursement of the amounts paid to private respondent through petitioner Litonjua.

We conclude that private respondent was properly regarded as an employee of the charterer Fairwind and that petitioner Litonjua may be held to answer to private respondent for the latter's claims as the agent in the Philippines of Fairwind. We think this result, which public respondent reached, far from constituting a grave abuse of discretion, is compelled by equitable principles and by the demands of substantial justice. To hold otherwise would be to leave private respondent (and others who may find themselves in his position) without any effective recourse for the unjust dismissal and for the breach of his contract of employment.

WHEREFORE, the Petition for Certiorari is DISMISSED and the Decision of the then National Seamen Board dated 31 May 1979 is hereby AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] Annex "D" of Petition, Rollo, p. 25.

[2] Id., pp. 24-26.

[3] Id., p. 25.

[4] Annex "C" of Petition, Rollo, pp. 38-39.

[5] Annex "I" of Petition, Rollo, pp. 50-52.

[6] Petition, Rollo, p. 11.

[7] Id., p. 14.

[8] Scrutton on Charter Parties, Section 4, p. 45 (18th ed., 1974).

[9] See, generally, Healy and Sharpe, Cases and Materials on Admiralty (2nd ed., 1986), pp. 262-263.

[10] Reed v. The Yaka, 373 U.S. 410, 10 L. Ed. 2d 448 (1963); U.S. v. Shea, 152 U.S. 178, 38 L. Ed. 403 (1893).

[11] Aird v. Weyerhaeuser S.S. Co. 169 Fed (2d) 606 (1948).

[12] A standard text sets forth the following explanation:

"Concerning liability to third parties, a basic distinction is whether the charter is a demise or bareboat charter, on the one hand, or a time or voyage charter, on the other. The vital distinction between a demise and other charter parties is whether the charterer is given the exclusive control of the vessel. In a demise, in contrast to other charters, the charterer is considered the owner pro hac vice. The charterer is accordingly liable in personam for all liabilities arising out of the operation of the vessel; he is responsible for the actions of the master and crew. The shipowner is generally not liable in personam, although the ship may be liable in rem. Even in this case, the charterer is obliged to indemnify the owner against liability suffered by the vessel as a consequence of the charterer's negligence. The shipowner may be liable, however, where liability or injury results from unseaworthiness or negligence which existed prior to delivery of the vessel to the demise charterer." (Schoenbaum, Admiralty and Maritime Law, pp. 402-403 [1987]; citations omitted)

[13] Section 5 (e), Rule 131, Revised Rules of Court.

[14] Resolution of NSB hearing officer, dated 26 April 1978; Rollo, p. 38.

[15] In its decision dated 31 May 1979, the NSB made the following findings of fact:

"1. When the vessel 'Dufton Bay', reached port in Cebu sometime in 1976, Litonjua Shipping Company sent and assigned its employee, Edmund Cruz, to Cebu as its supercargo to supervise the servicing and loading operation of the vessel; Renato Litonjua of the same company was also sent to Cebu to assist Edmund Cruz;

2. In view of the need of the Master of the vessel to hire new crew members, Edmund Cruz accompanied him to the Officer-in-Charge of the Cebu Area Manning Unit of the National Seamen Board, for the purpose;

3. In the recruitment process, Litonjua Shipping Co., Inc., through its super cargo, Edmund Cruz and Renato Litonjua, had knowledge thereof and in fact were present in the hotel where the applicants were interviewed by the Master of the vessel; both parties performed their duties as super cargo only for one day, but stayed in Cebu for 15 days; and it was Mr. Cruz who gave the complainant the forms for his NISA clearance and his seamen's continuous discharge book (SCDB);

4. The participation of Litonjua Shipping Company, Inc., through its employees, can be traced from the fact that said company is the duly appointed local crewing manning officer of Fairwind Shipping Corporation with powers to act as the latter's local representative who can sue and be sued and to bind and sign contracts for and in behalf of said Fairwind Shipping Corporation." (Rollo, p. 51)

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