

PHILGRECIAN MARITIME SERVICES AND TRANS-OCEAN STEAMSHIP AGENCY, INC., PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION, ANTONI...

G.R. No. 65284. October 14, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition for certiorari seeks to annul the decision of the respondent National Labor Relations Commission (NLRC) which affirmed the decision of the Director of Workers Assistance and Adjudication Office, Philippine Overseas Employment Administration (POEA), directing the petitioners to pay the private respondents their unpaid monthly allotments for the months of May and June, 1982 and their respective salaries corresponding to the unexpired portion of their contracts with the petitioners.

Petitioner Trans-Ocean Steamship Agency, Inc. (Trans-ocean) is a New York corporation with head office in New York, U. S. A., and is the operator of the vessel MV "KARIN VATIS" while petitioner Philgrecian Maritime Services (Philgrecian) is its crewing or manning agent.

Private respondents Antonio P. Mallari, Apolonio M. Peren and Elpidio M. Alonzo entered into one-year employment contracts with the petitioners on February 9, 1982, February 12, 1982 and September 16, 1981 respectively. All of them boarded the MV "KARIN VATIS".

Mallari and Peren were among the crew dispatched to board the said vessel upon advise of petitioner Trans-ocean's telex dated March 1, 1982, to wit:

"TKS YRTLX RE FLT DETAILS OF CREW JOINING TOKYO MARCH 2ND RE NEW SALARIES PLS BE ADVISED THAT FINAL PRINTING OF NEW GREEK COLLECTIVE AGREEMENT HAS NOT BEEN RECEIVED BY US THEREFORE PLS DESPATCH CREW WITH OLD SALARIES AND THEY WILL RECEIVE RETROACTIVELY THE DIFFERENCE OLD AND NEW WAGE SCALE. THE NEW SCALE OF WAGES WILL BE MAILED TO YOU ABOUT MARCH 15TH"

The private respondents boarded the vessel on March 2, 1982. On the way to Australia, the respondents demanded from the Master of M/V Karin Vatis, a certain Dinos Chiotis, the payment of the salary differentials due them based on the new Greek collective agreement mentioned in the telex. The respondents had worked on another Trans-ocean vessel before this trip. The differentials were not paid.

On May 9, 1982, the vessel arrived at Geelong, Australia where it anchored offshore for less than a month. While the boat was in Geelong, a Honduran seaman asked permission to go home as he received a letter from his family stating that his wife was very ill. When Captain Chiotis refused the request, the Honduran seaman went ashore and contacted an officer of the local International Transport Federation (ITF) Chapter.

The ITF officials called the ship captain and through ITF intervention, the Honduran was allowed to go home.

The records do not state what transpired during the meeting on the Honduran seaman's case but on that same day, Captain Chiotis called the private respondents and had them taken to the ITF office where a conference took place. During the conference, the master of the vessel, in behalf of petitioner Trans-ocean, agreed to the payment of the claimed salary differentials. The private respondents were paid.

A week later, the master of the vessel demanded from the private respondents the return of the money that he had given them with a threat that if they refused, he would terminate their employment contracts and have them repatriated to the Philippines.

Private respondents refused to return the money. On June 30, 1982, when the vessel reached the port of Suez Canal, Egypt, they were disembarked and repatriated to Manila by the master of the vessel.

A day after arriving in Manila, the private respondents reported at the office of petitioner Philgrecean and demanded the payment of their allotments for May and June, 1982 which their allottees had not received.

On August 11, 1982, the private respondents filed a complaint with the POEA asking that the petitioners be ordered to — (1) pay their salaries and other benefits equivalent to the unexpired portion of their employment contracts based on the New Greek Collective Agreement, and (2) pay the allotments equivalent to 70% of their monthly salaries for the months of May and June, 1982.

In their answer, the petitioners denied the allegations of the respondents and averred that their dismissal from employment was due to their unwillingness to do their job, and the refusal to follow instructions of superiors and to abide by their contracts.

On April 29, 1983, the POEA rendered a decision, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered ordering the respondents PHILGRECIAN MARITIME SERVICES AND TRANS-OCEAN STEAMSHIP AGENCY, INC., jointly and severally, to pay, through this Office:

"1. ANTONIO P. MALLARI, the amount of twenty four thousand nine hundred forty-eight Drachmas (D24,948.00) or its equivalent in Philippine currency, representing his unpaid allotments for the months of May and June, 1982, and the amount of one hundred forty-two thousand five hundred sixty Drachmas (D142,560.00) or its equivalent in Philippine currency, representing his salaries corresponding to the unexpired portion of his contract;

"2. APOLONIO M. PEREN, the amount of twenty-three thousand seven hundred sixty-five Drachmas (D23,765.00) or its equivalent in Philippine currency, representing his unpaid allotments for the months of May and June 1982, and the amount of one hundred thirty-five thousand eight hundred Drachmas (D135,800.00) or its equivalent in Philippine currency, representing his salaries corresponding to the unexpired portion of his contract; and

"4. Atty. Romulo L. Galapon, counsel of record for the complainants, the amount of forty thousand one hundred seventy-six Drachmas (D40,176.00) or its equivalent in Philippine currency, as attorney's fees.

"The counterclaim of respondent is hereby ordered dismissed for lack of merit."

On June 17, 1983, the petitioners appealed to the NLRC which, in turn, affirmed the decision of the POEA and dismissed the appeal for lack of merit. Hence, this petition.

On October 18, 1983, we issued a temporary restraining order enjoining the execution of the decision until further orders from this Court.

In this petition, the following issues are raised:

I

Respondent NLRC gravely erred in finding that private respondents 'did not seek the help of ITF in pressing their claim for salary differentials'.

II

Respondent NLRC failed to appreciate the full import of the telex dated March 1, 1982.

III

Respondent NLRC gravely erred in applying the Supreme Court decision in *Wallem Philippines* (102 SCRA 835) and not *Virjen Shipping* (115 SCRA 347) which is a later case.

IV

Respondent NLRC failed to appreciate that the salary differentials sought by private respondents were without the approval of the POEA and therefore illegal.

V

Respondent NLRC erred in holding that private respondents were illegally dismissed.

VI

Respondent NLRC erred in awarding unpaid allotments for May and June 1982 and for the unexpired portion of their contract plus attorney's fees.

The above issues are all based on the petitioners' allegation of ITF intervention which led to an alleged violation of a contract.

The petitioners contend that the respondent NLRC committed grave abuse of discretion in not finding that the private respondents sought the help and interference of ITF in pressing their claims for salary differential. This being the case, they state that respondent NLRC should have applied, not the *Wallem* case but, the case of *Virjen Shipping and Marine Services, Inc. v. NLRC* (115 SCRA 347), where this Court did not sanction the acts of coercion, threats, or intimidation used by the employees in order to force the employer to yield to their demands even at the peril of the employer's irreparable loss. The petitioners further contend that since the private respondents sought ITF intervention, which resulted in their receiving "backwages" and other salary benefits not specified in their contracts, their termination was for a just cause and, therefore, it also follows that said respondents are not entitled to allotments for May and June of 1982 and to salaries for the unexpired portion of their contracts plus attorney's fees.

The records of this case are bereft of any proof or evidence that the private respondents employed threat or intimidation through the ITF in order to force the petitioners to grant their demands. In fact, both the POEA and the NLRC found that the respondents had not solicited the assistance of the ITF regarding their claims for salary differentials. According to the public respondents, it was the master of the vessel who brought the matter to the attention of ITF in Australia on the occasion of the latter's intervention on behalf of a crewmember from the Honduras who was asking to be allowed to return home. This finding may seem illogical but the fact remains that the private respondents did not solicit the assistance of ITF regarding their claims for salary differentials. The claims were made before the vessel arrived in Australia and before the seamen had any opportunity to meet the ITF representative. Captain Chotis called for the respondents in the course of his discussions with Australian ITF officers regarding a Honduran seaman who wanted to cut short his trip. If the ITF representatives decided to ask the vessel's captain about any other problems with the crew, the private respondents had nothing to do with it. There was no duress or unlawful and improper pressure. The petitioners cannot use ITF intervention to justify their allegation that the private respondents employed threats against the ship captain.

Neither *Wallem Phil. Shipping, Inc. v. Minister of Labor* (102 SCRA 835) nor *Virjen Shipping and Marine*

Services, Inc. v. NLRC, both the original decision (115 SCRA 347) and the resolution of the motion for reconsideration, (125 SCRA 577) is applicable.

The respondent seamen were not asking for anything unreasonable. The salary differentials were based on agreements made in Greece and in whose execution they had no part. When they boarded the vessel on March 2, 1982, the telex from Trans-ocean informed them that it was only the printing of the "New Greek Collective Agreement" which was delayed and that the crew would "receive retroactively the difference between old and new wage scale" even as they were dispatched under their old salaries.

Consequently, the petitioners cannot argue that the dismissal of the respondents was for a just cause thereby depriving their families of the allotments due them for the months of May and June of 1982.

The petitioners further maintain that as a result of ITF intervention, the private respondents received backwages even for previous contracts which have already expired and other salary benefits not specified in the POEA approved contracts and which are contrary to the telex message of petitioner Trans-ocean which only provided for the new wage scale of the new contract.

The contentions are without merit.

The claims of the respondent seamen considered by POEA and NLRC highlight problems of thousands of poor Filipino seamen forced by the sad lack of employment opportunities in the Philippines to brave various perils and difficulties on board foreign vessels or ships with flags of convenience and to endure lengthy separations from loved ones to earn an honest living.

To the credit of the public respondents, they acted correctly and properly on the seamen's claims. It is, however, an expression of despair that the private respondents did not initially contact the relevant agencies of the government. Unceremoniously kicked out at a distant port for merely trying to get what their employer's telex had promised, the respondent seamen directed their letter complaint to a media man, Mr. Roberto Guanzon of City 2 Balita, not to the Ministry of Labor and Employment.

The letter, indorsed by the television and radio station to the National Seamen Board, states:

"We would like to seek your kind assistance against the Philgrecian Maritime Services, owned and operated by Mrs. Aurora Xoudroglou, because of injustices they are doing to every Filipino seaman they hired in joining the vessel.

"Every time we joined the ship, the Philgrecian forcibly deducted a so-called Bond from the first allotment and further deductions was made automatically on the second-month which serves as payments for the following:

- Medical examination
- Tax exemption
- Contract of employment
- Insurance — in which until now there was no policy contract, and
- Other services

"Based on the Captain's letter, the 2-month allotments (May-June, 1982) was already sent through Philgrecian, but our allottee haven't received the said allotments until now.

"That the company is not following the salary wage based on the contract of employment as approved by the National Seamen's Board, and the Philgrecian is requesting us to return back the backwages and differentials we

received, otherwise they will take action against us and will request the NSB to blacklist us from the list of registered seamen to all shipping companies.

"Your favorable and immediate action on this matter is highly appreciated."

It is clear from the questioned decision itself that the NLRC considered the following claims:

xxx xxx xxx

"x x x (1) payment of their salaries and all other benefits under the Shipboard Employment Contract based on the new Greek Collective Agreement corresponding to the unexpired period of their contract from the date of their illegal dismissal on June 30, 1982; (2) payment of their allotment equivalent to 70% of their monthly salaries for the months of May and June 1982; (3) refund of unauthorized deductions from their salaries which served as payments for medical examination, Tax exemption, contract of employment, premiums for insurance for which no insurance policy was issued; and (4) recovery of what seemingly appear in respondents' vouchers as 'CASH ADVANCE' given to the complainants but was never received as the same are nothing but what is commonly called as 'kick-back' or illegal exaction made upon poor Filipino seamen seeking employment."

xxx xxx xxx

The award, however, was only for the unpaid allotments for the two months when the seamen were working overseas and the salaries for the unexpired portion of the contracts of employment. Under the circumstances of this case, the NLRC decision appears fair.

Respondent NLRC did not commit any grave abuse of discretion in holding that the private respondents were not guilty of breach of contract and that their dismissal from employment was without just cause.

WHEREFORE, the petition is DISMISSED for lack of merit and the temporary restraining order issued by this Court is hereby DISSOLVED. Costs against the petitioners.

SO ORDERED.

Melencio-Herrera, Plana, De la Fuente, and Patajo, JJ., concur.

Teehankee, J., (Chairman), no part.

Relova, J., on leave.

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