

ALL OCEANS MARITIME AGENCY, INC., AND GOLDEN PEAK MARITIME AGENCY, LTD., PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION, AND...*G.R. No. 78700. September 03, 1991*

Ponente: NARVASA, J.

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All Oceans Maritime Agency, Inc. engaged the services of Regulo Bongoyan as master of the vessel Sarpindo Pribumi[1] for a period of twelve (12) months at a monthly salary of US \$1,430.00. Bongoyan took command of the ship on November 4, 1980 and disembarked on December 8, 1981 after serving out the stipulated term of service.

Some eight months later, in August, 1982, Bongoyan filed with the Philippine Overseas Employment Administration (POEA) a complaint seeking recovery from All Oceans Maritime Agency, Inc. (hereafter, simply All Oceans) of US \$3,749.65, allegedly representing his unpaid salaries, overtime pay, annual leave pay and home leave pay. In defense, All Oceans asserted that Bongoyan, while serving as master of the Sarpindo Pribumi, had made unauthorized drawings on the funds intended for crew provisions then under his control, in the aggregate sum of US \$6,107.59. It averred that on these overdrawings, Bongoyan had subsequently made a partial payment of US \$1,250.00; that adding to this amount Bongoyan's claim of US \$3,749.65 and setting off the aggregate sum (of \$4,999.65) against his unauthorized drawings of US \$6,107.59, there was still a balance due and owing from him in the amount of US \$1,107.94.

In its Decision, the POEA declared that Bongoyan had indeed made unauthorized drawings, but ruled that All Oceans was estopped from holding him responsible therefor since it had acquiesced to those drawings, its acquiescence being implicit from the fact that with knowledge thereof, it had allowed the overdrawings to go on for months without objection. The POEA thus ordered All Oceans to pay to Bongoyan the amount claimed, US \$3,749.65,[2] or its peso equivalent at current rate of exchange.

All Oceans appealed to the National Labor Relations Commission. The latter affirmed the POEA decision. While declining to sustain the latter's conclusion that estoppel lay against All Oceans because the evidence showed that it had in fact questioned the advances made by Bongoyan to himself against the funds for crew provisions, it nevertheless held that Bongoyan could not be made accountable therefor because "there is doubt as to the actual liability * * * for overpayment * * * " arising from the fact that Bongoyan had not charged for crew provisions June, 1981; that Bongoyan had turned over to his successor, Capt. Choco, the sum of US \$523.86 representing the balance of the fund for provisions for December, 1981; and that when Bongoyan had taken over the vessel in November, 1980, the provisions for that month had already been consumed by the master preceding him. On these premises, the Commission refused to set-off the conflicting claims since, according to it, under Article 1279 of the Civil Code, such a set-off or compensation could take place only when the debts involved were demandable and

liquidated or certain.

All Oceans claims that in so ruling, the Commission had gravely abused its discretion for which reason it now asks this Court to nullify that ruling.

As established by the evidence, the shipmaster of the Sarpindo Pribumi had the function, among others, of providing the crew with monthly food provisions or meal allowances, and that for this purpose, the practice was for the shipmaster to draw funds every month from banks in several ports in which accounts were maintained by All Oceans or its principal.[3] And at the end of each month, it was the shipmaster's duty to submit to All Oceans' Manila Office a statement of account containing a breakdown of the disposition of the funds thus drawn for the crew's individual meal allowances corresponding to said month.

Now, when Bongoyan assumed command of the Sarpindo Pribumi on November 4, 1980, he discovered that the crew provisions for the crew's meal allowances for November had already been consumed. To provide for the individual meal allowances of the crew for that month of November, what Bongoyan did was to apply to that purpose the funds for meal allowances that should otherwise have corresponded to the succeeding month of December. To provide crew meal allowances for December, he drew against the funds for January; to provide meal allowances for January, he drew against the funds for February. In other words, in view of the absence of provisions for November, 1980, Bongoyan adopted what may be called the "advance-payment" mode of providing crew meal allowances instead of the orthodox "current month" system. This pattern of "advance-payment" drawing against the succeeding month's provisions went on until March, 1981. In April, 1981, Bongoyan withdrew funds corresponding to the months of May and June, 1981, but (as observed by the NLRC, supra) made no payment for provisions in June, 1981. In July, 1981, Bongoyan erroneously labeled his payment of provisions therefor as for "AUGUST 1981," but later corrected this in his August report to read "JULY." In the succeeding months, however, he shifted back to the "advance-payment method." Thus, at the end of his term of service in December, 1981, his report showed advance payment for "JANUARY 1982" with the following footnote: "Advance provision allowance one (1) month provision shortage when I took over command from previous master. This was reported in my letter dated 6 Nov. 1980." [4]

All Oceans claims there was misappropriation on the part of Bongoyan in that —

- 1) he drew funds for crew provisions twice for the month of June, 1981; and
- 2) he collected the whole allocation for the month of December, 1981 despite the fact that he served as ship master only up to 8th of that month,

and as a result, it had suffered prejudice in the total amount of US \$6,107.59.

The first alleged act of misappropriation by Bongoyan is described by All Oceans' accountant in the following manner:[5]

"1) In his APRIL 1981 Statement of Crew Provisions, he paid out in advance for account of the Principal the months of MAY and JUNE, 1981. Normally, it should be the current month which is the month of APRIL/81 that should be paid-out (debited) in his statement of account. Please note that APRIL/81 Provision was also paid out from his MARCH 1981 statement of accounts. It, therefore, clearly showed that he had paid in advance the months of MAY & JUNE/81. * * *

2) In his MAY, 1981 statement of Accounts, he again paid out the month of JUNE, 1981. Since in his APRIL, 1981 statement he already paid-out the month of JUNE, 1981, he had therefore committed at the expense of his Principal the double payment of Crew Provisions for the month of JUNE, 1981. The Crew Provision for the month of MAY/81 also paid in advance in his APRIL/81 statement automatically applied for this month

(MAY/81). * * *

3) To heed the Owner's advise, he did not paid-out (sic) any Crew Provision in his statement for the month of JUNE/81 thereby off-setting one (1) month from his two months discrepancies. On account of this, he now only have one (1) month overpaid Crew Provisions for JUNE/81 (sic). * * * "

The trouble with this analysis of the accountant is that it fails to take account of the fact, already adverted to, that Bongoyan had made no drawings for crew provisions for November, 1980 and had applied thereto the funds allotted for the succeeding month of December. The accountant acknowledges that Bongoyan could be charged with having only "one (1) month overpaid Crew Provisions." Now, it is a fact that during Bongoyan's stint as ship master, All Oceans had not actually expended any funds to meet the cost of crew provisions for one month — i.e., the provisions for November, 1980, already consumed when Bongoyan took over as ship master in the first days of that month; and Bongoyan had used the funds for December, 1980 to meet the cost of said November provisions. Since it was indisputably All Oceans' responsibility to defray the cost of the November provisions, and that it was not in any sense Bongoyan's obligation to shoulder that cost personally, it follows that Bongoyan cannot be made answerable therefor.

In truth, as a study of Bongoyan's accounts shows, Bongoyan was in command of All Oceans' vessel for exactly fourteen (14) months, and the number of his monthly drawings exactly corresponds thereto, fourteen.

That private respondent drew funds for crew provisions for the full month of December, 1981 despite the fact that he ended his service as ship master on the 8th day of that month, is a matter of record. It was his duty therefore to account for those funds for crew provisions for the entire month, not only for the amount pertinent to December 1 to 8, 1981 but also for what may be deemed the excess amount corresponding to the period from December 9 to 31, 1981 — claimed by All Oceans to be in the sum of HK \$15,088.00 or US\$ 2,506.31 (at HK \$6.02 to one US dollar). Bongoyan does not deny the excess drawings. In fact in his December report, he indicated a balance for crew provisions in the amount of HK \$10,345.91 or US \$1,718.58 (also at HK \$6.02 to one US dollar).

Now, it is also a matter of record that he turned over to his successor, Capt. Choco, provisions worth US \$523.86.[6] Moreover, Bongoyan made two (2) payments to All Oceans against said drawings for crew provisions for December, 1981, to wit: one, personally made by him in the sum of P3,926.72 (or US \$490.84), evidenced by a receipt dated February 19, 1982; and a second, made through his brother-in-law, Capt. Gerardo, in the amount of P10,000.00 (or US \$1,250 at the rate of P8.00 to \$1.00), evidenced by a receipt dated March 2, 1982.[7] The payments thus made by Bongoyan to All Oceans totaled US \$2,264.70. This should be deducted from the claimed deficit of US \$2,506.31, which would leave an amount of US \$241.61, representing Bongoyan's liability to All Oceans for the excess drawings for crew provisions for December, 1981.

On the other hand, the factual finding of the respondent Commission (apparently conceded by All Oceans[8]) is that there is still due to Bongoyan from All Oceans in connection with his services as ship master of the Sarpindo Pribumi, the amount of US \$3,749.65, broken down as follows:

a) Unpaid overtime

US\$ 56.45

b) Annual leave pay

1,492.99

c) Home leave pay

1,709.37

d) Salary (Dec. 1-15, 1981 [net])

490.84

TOTAL

US\$ 3,749.65.

This is the amount in fact that the POEA sentenced All Oceans to pay to Bongoyan, supra.[9] But from this sum of US \$3,749.65 should be deducted the amount of US \$241.61 owing by Bongoyan to All Oceans; and this would leave the amount of US \$3,508.04 still due and payable from the latter to the former, as of March 2, 1982, when said amount became determinate upon the last payment made by Bongoyan to All Oceans.[10] The judgments of the POEA and the NLRC should thus be amended to reflect this resulting and final liability.

WHEREFORE, the decision of the respondent National Labor Relations Commission promulgated on November 7, 1985 is AFFIRMED with the modification that the petitioners' liability to private respondent Regulo Bongoyan is fixed at the peso equivalent of US \$3,508.04 at the time of payment, with interest thereon at the legal rate from March 2, 1982. Costs against petitioners.

SO ORDERED.

Cruz, Griño-Aquino, and Medialdea, JJ., concur.
Gancayco, J., retired as of August 20, 1991.

[1] Owned by petitioner GOLDEN PEAK MARITIME AGENCY, LTD.

[2] SEE footnote 7, post

[3] The meal allowances for a particular month depended on the number of days of the month and the number of crew members, each of the latter being allotted the amount of \$20.50.

[4] Rollo, p. 52

[5] Id., p. 40 (Petitioner's Annex E: "RE PROVISION ACCOUNT DEFICIT'S/PRIBUMI' EX-MASTER CAPT. REGULO C. BONGOYAN")

[6] Rollo, pp. 20-21; p. 78 (letter of Capt. Choco to Port Capt. Gerardo dated May 4, 1982)

[7] Id., pp. 60,61

[8] See page 1, second paragraph, ante

[9] See footnote 2, p. 2 of this opinion, ante

[10] See footnote 6, ante

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