

REYNALDO LAUSA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER, AND NEGROS NAVIGATION COMPANY, INC., RESPONDENTS.*G.R. No. 79731. July 09, 1990*

Ponente: FELICIANO, J.

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Negros Navigation Company, Inc. and its Personnel Officer (petitioners in G.R. No. 80407) and Reynaldo Lausa (petitioner in G.R. No. 79731) both ask us to set aside and nullify the Resolution of the National Labor Relations Commission ("NLRC") in RAB Case No. VI-0030-85 which had affirmed a Decision of the Executive Labor Arbiter requiring Negros Navigation and its Personnel Officer to pay Reynaldo Lausa separation pay amounting to his one-month salary for every year of service, plus ten percent (10%) thereof as attorney's fees.

Reynaldo Lausa had been employed as a messman by Negros Navigation since January 1979. On Christmas day of 1984, Lausa was assigned as messman in Negros Navigation's vessel. M/S "Sta. Maria". The "Sta. Maria" was then berthed at the Muelle Loney wharf in Iloilo City, the vessel's home port, receiving passengers and cargo bound for Manila, the vessel's departure being then scheduled for 7:00 o'clock in the evening. At about 5:30 in the afternoon, messman Lausa arrived at the vessel's lobby, with his authorized uniform tucked out (rather than tucked in) with front unbuttoned thus baring his chest and stomach. He was obviously drunk. Without provocation, and in the presence of some of the vessel's officers including the Chief Mate, Antonio Tendencia, Jr., crew members and passengers, he became very belligerent and in a loud and angry voice challenged everyone present to fight with him. Chief Mate Tendencia sought to pacify him, but he refused to be pacified and instead insulted and challenged the Chief Mate in front of everyone. After sometime, Lausa disembarked from the vessel and while descending the gangplank, continued to shout at and challenge all and sundry on shipboard to come down and fight with him.

The "Sta. Maria" left the port of Iloilo at the scheduled hour. While the vessel was on its way to Manila, the Chief Mate was informed that Lausa was on board the vessel, sleeping off his liquor inside his quarters. Apparently apprehensive that Lausa might cause further trouble, the Chief Mate instructed the Chief Steward, who was Lausa's immediate supervisor, as well as the Boatswain, to see to it that Lausa did not leave his quarters and immediately to report any sign of further trouble. The Chief Mate then prepared a brief report on the behavior of Lausa, with a view to submitting the same to his superiors in Iloilo City.[1]

After receipt and study of the report submitted by Chief Mate Tendencia, Negros Navigation required messman Lausa to submit a written explanation why his services should not be terminated for cause. Lausa denied the material allegations of the report. The following is his version of the Christmas Day incident set out in his letter dated 16 January 1985:

"x x x x x x x x x x

On December 25, 1984, my wife and I had a slight marital argument at the back part of the ship M/S 'Sta.

Maria.' While we were arguing, all of a sudden, I heard someone shouted on my back 'hijo de puta'. Instinctively, I turned around, and told that someone in a moderately mild voice, 'wala ako mahadlok sa imo', not knowing at the time that, that someone was Chief Mate Antonio Tendencia, Jr. who had been listening and prying into our marital argument for a considerable length of time. After that incident, nothing more happened, and we parted ways, probably he realized that it was his fault in interfering with our marital argument and he was the one who provoked me to say those kind of words to him.

The next morning, I met Chief Mate Tendencia, Jr. and we talked to each other. He told me to forget everything that had happened, because it was nobody's fault anyway. Presuming that everything was all right, I continued doing my duties on board M/S 'Sta. Maria' where I am a messman.

x x x x x x x x

I therefore vehemently deny that on December 25, 1984 I insulted and hurled invectives and threats to Chief Mate Tendencia, Jr. and Third Mate Seruelo. In fact Chief Mate Tendencia defamed, slandered, attacked and questioned my reputation in telling me on my back that I am 'Hijo De Puta', and much worse in the presence of my wife. I also deny having reported to work under the heavy influence of liquor, otherwise I could not have performed my duty for that day.

x x x x x x x x."[2]

(Underscoring supplied)

A formal investigation and hearing was conducted by Negros Navigation. Thereafter, convinced that the report of Chief Mate Tendencia was substantially correct, Negros Navigation terminated the services of Reynaldo Lausa effective 18 January 1985 for serious misconduct.[3]

Lausa filed on 1 March 1985 a complaint against Negros Navigation and its Personnel Officer for, among other things, illegal dismissal. Conciliation proceedings were had, but without success. After submission of the parties' respective position papers and supporting documents, the Executive Labor Arbiter issued on 13 June 1986 a decision holding that messman Lausa had been illegally dismissed and required the employer and its Personnel Officer to pay him separation pay. The dispositive portion of this decision read as follows:

"In view of the foregoing, we find that respondents' act in dismissing the complainant is arbitrary and does not constitute a just cause for respondent to separate him from work. We believe that the alleged serious misconduct is not attend-ant in the instant case. If ever complainant committed a misconduct it was not serious as to warrant his dismissal. Though we find the termination to be illegal, the remedy of reinstatement in the instant case is not in the best interest of the parties. In lieu thereof, separation pay will be provided as there is a clear rupture or severe breakdown of employer-employee relationship (Mario Libunao vs. Olympia International Inc., NLRC Case No. RB VI-2420, TALA, April 1978, p. 290)

This Executive Labor Arbiter finds the foregoing report and recommendation to be fully substantiated by evidence and hereby adopts the same as his own.

WHEREFORE, premises considered, respondents are hereby ordered to pay complainant separation pay in an amount equivalent to complainant's one month salary for every year of service and 10% attorney's fees of the amount awarded.

Complainant's other causes of actions are hereby dismissed for lack of merit.

SO ORDERED."[4]

Negros Navigation, et al. and messman Lausa appealed separately to the NLRC. Negros Navigation, et al. contended that the Executive Labor Arbiter had seriously erred in giving credence to the uncorroborated version

of Lausa of the relevant events. Reynaldo Lausa, upon the other hand, appealed from the Executive Labor Arbiter's Decision to the extent that it had awarded him separation pay instead of reinstatement with backwages, arguing that his non-reinstatement cum separation pay was inconsistent with the finding that he was not guilty of serious misconduct. In a Resolution dated 16 June 1987,[5] the NLRC dismissed both appeals for lack of merit, and accordingly sustaining, in all its parts, the Decision of the Executive Labor Arbiter.

Both *Negros Navigation, et al.* and Reynaldo Lausa are now before us on certiorari, ascribing grave abuse of discretion to the NLRC in rendering its aforementioned Resolution. *Negros Navigation, et al.*'s principal contentions are two-fold: that the NLRC acted with grave abuse of discretion in, firstly, disregarding the evidence submitted by them while accepting the allegations of Lausa; and secondly, in holding that Lausa had not committed serious misconduct and had not given just cause for termination of his services. Reynaldo Lausa, on the other hand, contends that the NLRC acted with grave abuse of discretion in, firstly, terminating his services and giving him separation pay instead of ordering his reinstatement with backwages after having found that he was not guilty of serious misconduct; and secondly, in not awarding him moral and exemplary damages when there was legal basis therefor.

An examination of the records shows that both the Executive Labor Arbiter and public respondent NLRC had indeed rejected the evidence presented by *Negros Navigation, et al.* in arriving at their respective assailed decisions. In particular, the NLRC, following the conclusions of the Executive Labor Arbiter, disregarded the report dated 26 December 1984[6] and the affidavits dated 21 January 1985 and 30 April 1985,[7] all executed by Chief Mate Tendencia upon the ground that the report and affidavits were inconsistent with each other in their material averments.

We have, however, examined these report and affidavits for ourselves and find no material inconsistencies between them. Unlike the Executive Labor Arbiter, we find no necessary contradiction between the statement in the report of Chief Mate Tendencia of 26 December 1984 that he "immediately apprehended" the complainant upon the latter's drunken and belligerent behavior and the statement in the Chief Mate's affidavit that he "tried to pacify" respondent Lausa since the "apprehension" or restraint of Lausa was precisely intended to "pacify" him. The Executive Labor Arbiter also pointed to the fact that the report dated 26 December 1984 and the affidavit of 21 January 1985 did not set out the "exact utterance of the complainant", while the affidavit dated 30 April 1985, did set out such utterance. The Executive Labor Arbiter apparently concluded that the subsequent affidavit was false or unreliable. We do not believe so. We note that the subsequent affidavit of 30 April 1985 is cast in question-and-answer form and that the affiant, Chief Mate Tendencia, was asked by the administering officer what messman Lausa had stated and that, accordingly, the Chief Mate in response repeated as far as he remembered the language employed by Lausa:

“8-Q : Do you know one Reynaldo Lausa?

A : Yes, sir, he was one of our vessel messmen.

9-Q : Do you recall having seen Mr. Reynaldo Lausa at between 5:00 and 6:00 in the afternoon of December 25, 1984?

A : Yes, sir, I did.

10-Q : On what occasion?

A : I was standing at the vessel lobby together with Third Mate Milo Seruelo and some of our passengers when Mr. Reynaldo Lausa showed up under the influence of liquor.

11-Q : How was he attired then?

A : He was wearing his messman uniform, which was tucked out, with its front being unbuttoned with his chest and stomach bared open.

12-Q : While there, what did Mr. Lausa do if he did something?

A : Without provocation, he suddenly shouted and challenging those present, including myself and Third Mate Milo Seruelo, to a fight.

13-Q : What, in substance, did he utter?

A : At the top of his voice he shouted: 'Sin-o ang nagapangita diri sa akon? Bisan sin-o sa inyo wala ako mahadlok. Sin-o ang maaway sa inyo? Ikaw? Ikaw? Ikaw?' (meaning 'Who of you are looking for me? I am not afraid of anyone of you. Who wants to fight? You? You? You?'))

14-Q : What were his actions as he uttered those?

A : He was pointing to us belligerently.

15-Q : Was there anything you did?

A : Yes, sir, more than anything else my concern was for the passengers who looked apprehensive and afraid, and so I avoided doing any violent act or making provoking statement except to pacify him by saying: 'Daw wala man diri sing may nagapangita sa imo.' (meaning, 'Nobody here seems to be looking for you.')

x x x x x x x x"[8]

The NLRC had also stated that there was some delay in the transmittal of the report of Chief Mate Tendencia to his superiors in the vessel's home port, Iloilo City. We have examined the record in this respect and do not believe that the delay, if delay it was, was material, nor that it affected the credibility of such report concerning the misconduct of respondent Lausa. The sailing schedule of the M/S "Sta. Maria" provides adequate explanation for such delay. The vessel left the port of Iloilo City at 7:00 o'clock p.m. on 25 December 1984 shortly after the incident occurred. The vessel reached Manila on 26 December 1984 and left on 27 December 1984 for Bacolod City, arriving in said City on 28 December 1984. On the same day, 28 December 1984, the vessel departed once again for Manila, arriving there on 29 December 1984. On the following day, 30 December 1984, the M/S "Sta. Maria" left Manila and arrived in Iloilo City on 31 December 1984 at 12:30 p.m.[9] On the same day that the "Sta. Maria" arrived in Iloilo City, Chief Mate Tendencia hand-carried his report to his superiors in the office of petitioner company. Assuming, as the Labor Arbiter stated, that Chief Mate Tendencia might have forwarded his report to the home office earlier than 31 December 1984, we do not understand how the failure to do so could have diminished the intrinsic credibility of the report which was rendered in the ordinary course of business and in the performance of duty on the part of Chief Mate Tendencia.

Finally, the Executive Labor Arbiter sought to justify rejection of the affidavits executed by several crew members of the "Sta. Maria" corroborating and reinforcing the report and affidavits of Chief Mate Tendencia, upon the ground that those affidavits had been executed "by practically [sic] all men under the direct supervision and control of Mr. Tendencia, Jr., except Mr. Codilla who did nothing while the alleged incident was taking place. In fact, if witnesses should undertake to tell all that occurred in precisely the same order, each giving the same incident as the order in precisely the same words, that fact would be itself a suspicious circumstances [sic] (People v. Lopez, L-12704, September 30, 1961)".[10] There is no evidence whatsoever to suggest that Chief Mate Tendencia coerced the affiants -- Messrs. Seruelo, Momboy, Mondadero and Palma -- to perjure themselves. The fact that these crew members may have narrated the Lausa incident giving substantially the same sequence of events and using substantially similar words, is certainly not sufficient basis to exclude such evidence. Firstly, these affidavits were subscribed to on the same date before the same notary public, who very probably drafted

them using substantially similar words in English, after the affiants had described what they had seen of the incident. Secondly, the affiants and Reynaldo Lausa belonged to the same labor union, the Iloilo-Negros Employees and Laborers Union (INELU). There is nothing in the record to explain why affiants would have fabricated out of thin air the whole incident which clearly would lead to imposition of sanctions against a fellow union member.

We are thus compelled to conclude that clearly relevant evidence for Negros Navigation, et al. was, without rational basis, excluded and disregarded by both the Executive Labor Arbiter and the NLRC and that such failure to consider material evidence of record constitutes a grave abuse of discretion.[11]

We turn to the question of whether or not the drunken behavior of respondent Lausa constituted misconduct so serious as reasonably to warrant his dismissal from the service of petitioner corporation. The Executive Labor Arbiter undertook to substitute his own judgment for that of petitioner company in this respect, holding that: "if ever complainant committed a misconduct, it was not [so] serious as to warrant his dismissal".[12] Respondent NLRC simply accepted this substituted judgment on the part of the Executive Labor Arbiter.

Article 283 of the Labor Code recognizes the right of an employer to terminate the services of an employee where, among other things, such an employee is guilty of "serious misconduct":

"Article 283. Termination by Employer. -- An employer may terminate an employment for any of the following just causes:

(a) serious misconduct or lawful disobedience by the employee of the lawful orders of his employer or representative in connection with his work:

x x x x x x x x"

(Underscoring supplied)

Clearly, the drunken and bellicose behavior of Reynaldo Lausa constituted misconduct on his part. The critical question relates to appreciation of the gravity of such misconduct. In appraising the character of the misconduct committed by messman Lausa, it is important to stress that petitioner corporation is a public carrier, engaged in transporting passengers and cargo across our waters and seas. As a public carrier, petitioner corporation is, "from the nature of [its] business and for reasons of public policy", bound to observe "extraordinary diligence" in the vigilance over the goods and for the safety of passengers transported by it.[13] The standard of care established by the Civil Code -- extraordinary diligence -- is defined rigorously as a duty "to carry passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances." [14] In the context of this duty of extraordinary diligence imposed by law upon petitioner corporation, the drunken and disorderly and pugnacious behavior of respondent Lausa on board the vessel was clearly a serious matter. Such kind of behavior could easily have provoked or triggered off a brawl and mindless panic on board the vessel, and endangered the safety of passengers and crew members and, under certain conditions, the safety of the vessel itself. The fact that, in the case at bar, no violence and terror and panic actually broke out on board the M/S "Sta. Maria", was certainly not due to Reynaldo Lausa. Under these circumstances, we consider that the behavior of respondent Lausa is properly characterized as serious misconduct warranting his dismissal from the service.[15] The statutory duty of Negros Navigation of extraordinary diligence would have justified, indeed required, the Chief Mate and other crew members of the "Sta. Maria" to take reasonable measures to apprehend and restrain Lausa to ensure that no such panic and stampede resulted.

Negros Navigation was moreover justified in taking into account, in dismissing respondent Lausa, the fact that the 25 December 1984 drunken incident was not the first such serious misconduct on the part of respondent Lausa.

The evidence submitted by Negros Navigation, et al. showed that on 27 September 1980, on board the M/S “Doña Florentina” where he was previously assigned, Reynaldo Lausa and other crew members were caught playing cards (Lucky 9) and that under the influence of liquor, and having lost money in the game, he provoked a fight in the course of which he inflicted physical injuries upon one of the card players whom he chased and slashed with a broken bottle.[16] Negros Navigation would have dismissed Lausa back in 1980 had the union not intervened on his behalf and promised that next time, it would not so intervene.

We hold that, in the specific circumstances of this case, respondent NLRC and the Executive Labor Arbiter committed a grave abuse of discretion in substituting their own judgment for that of Negros Navigation who could have been held liable for damages if any of the passengers had been hurt as a result of the drunken misbehavior of Reynaldo Lausa.

Since the dismissal of Reynaldo Lausa was for a just cause, he was not entitled to separation pay,[17] much less to reinstatement and backwages. His claim for moral and exemplary damages is hence devoid of merit.

WHEREFORE, the Petition for Certiorari in G.R. No. 80407 is hereby GRANTED, while the Petition in G.R. No. 79731 is hereby DISMISSED for lack of merit. The Resolution dated 16 June 1987 of public respondent NLRC as well as the Decision dated 13 June 1986 of the Executive Labor Arbiter Celerino Greica II are both hereby NULLIFIED and SET ASIDE. No pronouncement as to costs.

SO ORDERED.

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

[1] Rollo, p. 125, in G.R. No. 80407.

[2] Id., pp. 111-112, Annex '5' of Annex "F" of the Petition.

[3] Id., pp. 114-115, Annex '7' of Annex "F" of the Petition.

[4] Id., pp. 43-54; Annex "B" of the Petition.

[5] Id., pp. 35-42; Annex "A" of the Petition.

[6] Id., p. 126.

[7] Id., pp. 105-108.

[8] Id., pp. 105-106.

[9] Decision of Executive Labor Arbiter, p. 7.

[10] Rollo, pp. 52-53, in G.R. No. 80407.

[11] Padilla v. Commission on Elections, et al., 137 SCRA at 437 (1985).

[12] Rollo, p. 53, in G.R. No. 80407.

[13] Article 1733, Civil Code: Mecenas, et al. v. Court of Appeals, G.R. No. 88052, December 14, 1989.

[14] Article 1755, Civil Code. The standard of “extraordinary diligence” on the care of goods carried by a public carrier is also defined with equal rigor: see Articles 1734, 1735, 1739, 1740, 1742 and 1744, et seq., Civil Code.

[15] Seashore Maritime Corporation & Seashore Shipping Corporation v. National Labor Relations Commission,

et al., G.R. No. 84712, 15 May 1989.

[16] Annex '1' of Annex "F" of the Petition; Rollo, pp. 102-103, in G.R. No. 80407.

[17] Pacaña v. National Labor Relations Commission, G.R. No. 83513, 18 April 1989; Philippine National Construction Corporation v. National Labor Relations Commission, et al., G.R. No. 83320, 9 February 1989; Philippine Long Distance Telephone Company v. National Labor Relations Commission, G.R. No. 80609, 23 August 1988.

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