

**AURELIO M. DE VERA, PETITIONER, VS. C. F. SHARP & CO., INC.,
AGENCIA MARITIMA ARTIACH AND HON. NATIONAL LABOR
RELATIONS COMMISSION, SECOND DIVISION, DEPARTMENT OF
LABOR & EMPLOY...**

G.R. No. 79891. September 26, 1988

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

A special civil action for Certiorari seeking a reversal of the Decision of respondent National Labor Relations Commission (NLRC),[1] which set aside the 9 February 1987 Decision of the POEA[2] and ordered the dismissal of petitioner's Complaint for Illegal Dismissal in POEA Case No. (M) 86-03-227 entitled "Aurelio M. de Vera vs. C. F. Sharp & Co., Inc., et al."

On 9 December 1985, petitioner was hired by Agencia Maritima Artiach (AMAZSA) through its local manning agent, respondent C. F. Sharp & Co., Inc., to work as Second Engineer on board the vessel "MV Holstensailor", a ship of Panamanian Registry, for ten (10) months, commencing on 16 December 1985, with a monthly salary of U.S. \$704.00 plus overtime pay and other benefits.

On 5 February 1986, when the vessel returned to the port of New York after a 53-day cruise to and from South America, the Filipino complement of the vessel was ordered discharged and replaced by a waiting German crew by reason of the change of the registry of the vessel from Panamanian to German and as required by German shipping authorities.

Petitioner was given by AMAZSA an airplane ticket, dated 27 January 1986, for his repatriation to the Philippines, effected on 7 February 1986, but the amount of US\$1,000.00 was deducted from his earned salary to defray the cost of repatriation.

Aggrieved, petitioner filed, on 20 March 1986, a Complaint against private respondents before the Philippine Overseas Employment Administration (POEA) for Illegal Dismissal, seeking recovery of his salaries corresponding to the unexpired portion of his employment contract, repatriation expenses, damages and attorney's fees.

On 9 February 1987, the POEA ruled that petitioner was illegally dismissed and accordingly ordered private respondents to pay him, jointly and severally, his salary corresponding to the unexpired portion of his contract or U.S. \$5,984.00, plus U.S. \$1,000.00 as repatriation expenses. Petitioner's claim for damages was dismissed.

On appeal, the NLRC reversed the POEA and dismissed petitioner's Complaint on the ground that petitioner was being retained but refused employment without a salary increase as shown by the exchange of telexes between AMAZSA and C. F. Sharp.

Hence, this recourse by petitioner.

The basic issue is whether or not petitioner was validly dismissed by private respondents which, in turn, hinges on the real and actual cause of dismissal. Petitioner claims that the cause was the change of registry of the Vessel. Private respondents contend, on the other hand, that it was because of petitioner's refusal to work unless for a higher salary contrary to the terms of his employment contract.

Required to comment on the Petition, the Solicitor General endorses the POEA Decision as against that of the NLRC. For its part, the NLRC maintains that it committed no grave abuse of discretion in reversing the POEA considering the exchange of telexes between principal and agent showing petitioner's refusal to work unless his salary was increased.

We resolved to give due course and to reverse the NLRC Decision, premised upon our finding that the cause of petitioner's termination was not petitioner's refusal to work but the change in the flag registry of the Vessel, which is not a valid cause for dismissal. This conclusion is predicated on the following considerations:

1)

On 23 January 1986, AMAZSA informed its local agent, respondent C. F. Sharp, by telex, that it was sending home the Filipino crewmembers because of the requirement of German authorities (Respondents' Motion for Reconsideration, pp. 73-75, Rollo).

2)

On 5 February 1986, upon return of the vessel to the port of New York from a 53-day voyage to and from South America, the Filipino complement was replaced by the German crew.

3)

Upon his arrival in New York, petitioner was handed his PAL ticket for repatriation to the Philippines, which ticket was dated 27 January 1986.

4)

Indicated as the "cause of discharge" on petitioner's Seaman's Continuous Discharge Book and in the Monthly Income Report for 1 to 7 February 1986 was "changed flag."

Private respondents' contention, to which the NLRC gave credence, that petitioner was requested to remain on board the vessel but refused to do so unless his salary was increased, has not been established by conclusive evidence. The exchange of telex messages between AMAZSA and C.F. Sharp, dated 28, 29, and 30 January 1986, respectively, in support of private respondents' contention that petitioner was asked to remain on board on the same salary, are self-serving, besides the fact that it was an exchange of communication only as between them (Respondents' Motion for Reconsideration, pp. 73-75, Rollo) and did not involve petitioner directly.

No evidence has been presented proving that petitioner was notified of the retention of his services, or that the German shipping authorities had approved the retention of a non-German national in the complement of the Vessel. Nor is there convincing evidence that petitioner had demanded an increase in salary as the pre-condition for his retention. Petitioner denies it emphatically and the uncontroverted fact is that on the dates that the telexes were exchanged, petitioner was still on board the vessel on its cruise to South America and arrived in New York only on 5 February 1986. Private respondents have presented no evidence to show that any communication was

sent to petitioner himself directly while the latter was on board or, if it had been sent, that petitioner had received the same. Of note also is the fact that the PAL ticket handed to petitioner was dated as early as 27 January 1986.

In the final analysis, the Seaman's Continuous Discharge Book (SCDB), which serves as the "primary basis of future employment" by all seamen, containing the notation that the cause of discharge was "changed flag" is the best evidence of that cause. That was a factual evidence which the NLRC had misappreciated and which affects materially the result of the case. Hence the need to review the NLRC findings, which are ordinarily binding on this Court. The allegation that such notation was placed in the book "for humanitarian consideration and pure leniency in order not to destroy complainant's career as seaman" (Motion for Reconsideration, p. 72, Rollo) is bereft of factual basis, specially considered in the light of other obtaining circumstances herein.

ACCORDINGLY, Certiorari is granted. The Decision of the National Labor Relations Commission is set aside, and the Decision of the Philippine Overseas Employment Administration is hereby reinstated.

SO ORDERED.

Paras, Padilla, Sarmiento, and Regalado, JJ., concur.

[1] Penned by Commissioner Domingo H. Zapanta and concurred in by Presiding Commissioner Daniel M. Lucas, Jr. and Commissioner Oscar N. Abella.

[2] Per Administrator Tomas D. Achacoso.

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