

B. STA RITA & COMPANY, INC., PETITIONER, VS. LEDIO ARROYO AND THE NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

G.R. No. 80452, December 20, 1988

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review filed by B. Sta Rita & Company, Inc. of the Decision of the National Labor Relations commission dismissing for lack of merit the company appeal from the Philippine Overseas Employment Administration (POEA) Administrator's judgment ordering respondent company to pay complainant the sum of US\$6,738.26 or its equivalent to Philippine Currency at the time of payment.

The facts as summarized by the Solicitor General in his COMMENT are as follows:

"Petitioner B. Sta. Rita & Company, Inc., is a duly licensed manning agency in the business of recruiting applicants for employment on foreign ocean vessels. Private respondent Ledio Arroyo was hired by petitioner company to work as electrician aboard a foreign vessel for a period of one year with a basic monthly salary of US\$650.00. Arroyo joined the vessel 'MV Shun Sang No. 3' Hongkong on August 1, 1985, and was dismissed by the vessel's Chief Engineer on the ground of incompetence and sent home on September 19, 1985.

"Claiming to have been illegally dismissed, Arroyo filed with the Philippine Overseas Employment Administration (POEA) a complaint against the B. Sta. Rita & Co., Inc. to recover his salaries corresponding to the unexpired portion of his contract with therein respondent company. In support of his claim that he was dismissed arbitrarily; complainant gave the following narration of the events which transpired in the vessel prior to his dismissal:

'... I joined the ship August 1, 1985, the vessel arrived August 3, 1985 in Saigon and Captain Maligsay invited all officials, to go with him in the Seaman's Club to dance. While in the Club, there was a dance competition among us seamen. And I was one of the good dancers. Many of my co-workers believed in my dancing ability. But the two close friends, Mr. George Ting and Mr. Buenafe don't know how to dance.

'The following morning, when I went to work, the Chief Engineer did not allow me to operate the reefer engine which was one of my duties. I asked my Chief why he did not allow me to work in the reefer engine. He told me: 'Arroyo, from now on, you work on all the electrical works in the ship, but do not touch the reefer engine. I am responsible for it.' I answered him, 'Why you get angry Chief?' He said, 'No problem and it's okay. 'Then I just kept quiet and returned to my work.

'On September 14, 1985, we arrived in Hongkong. I heard a news from the office in Hongkong mentioning Arroyo to prepare to leave for Manila on September 19, 1985. I was shocked and so sad this happened to me. The captain told me this was not his order. I arrived in Manila September 19, 1985...' (pp. 1-2, Decision, Annex "L-1" of Petition)

Complainant also averred that he passed the trade test given by respondent Company.

"On the other hand, respondent Company contended that complainant was terminated due to incompetence and, in support thereof, submitted in evidence an alleged telex of its principal dated August 20, 1985 stating that:

'S.S. 3 Chief Engr. reports relieving electrician Arroyo useless on electronics and reefers, please propose others...'

Respondent, also submitted in evidence an alleged report of Chief Engineer George Ting dated May 21, 1986 wherein it is stated that Arroyo was found 'to be incompetent, useless and a very dangerous person to be employed as electrician on ocean-going vessel'; that, 'after a few days at sea subject was found to be very poor in eyesight and having very poor knowledge of electrical work as refrigeration was out of question. Subject was told to lay off refrigeration and concentrate on electrical work only.' The letter-report further stated that there were instances when Arroyo used television aerial as electrical lines and he did not know whether to use an A.C. or O.C. tester in checking a 24 volts battery. Finally, the Chief Engineer accused Arroyo of socializing and dancing ashore. Respondent denied giving complainant a trade test; that it hired him on the basis of the documentary certifications he submitted.

"Finding respondent's evidence inadmissible and unreliable the POEA Administrator rendered judgment ordering respondent company to pay complainant the sum of US\$6,738.26 or its equivalent in Philippine Currency at the time of payment, representing complainant's salaries corresponding to the unexpired portion of his contract.

"Not satisfied with the aforementioned judgment, respondent company appealed to the National Labor Relations Commission (NLRC). In a resolution dated October 13, 1985, the NLRC (Second Division) dismissed the appeal for lack of merit.

"Hence, the instant petition for review filed by B. Sta. Rita and Company, Inc." (Rollo, pp. 52-56)

The POEA Administrator correctly found the evidence submitted by B. Sta. Rita & Company as inadmissible. The Master's statement is not based on his own knowledge and information as to what transpired in the vessel, but is based merely on what the Chief Engineer told him. It is clearly hearsay. On the other hand, the Chief Engineer's statement was made long after the complainant was dismissed and only upon the institution of this case. Under these circumstances, the veracity of such documents is questionable. The telex of its principal cannot be given much evidentiary value since it can easily be fabricated. In addition, all of these documents have not been properly identified. (Annex "L-1," p. 3, Rollo)

Petitioner company should have presented as witnesses its Master and Chief Engineer. Instead, it presented documents which are clearly inadmissible as evidence. The POEA Administrator, therefore, did not have a choice but to grant Ledio's prayer for a sum of money on the ground of illegal dismissal.

Another issue pointed out by petitioner company is that it was denied due process since the POEA Administrator "expounded on technicalities and evaluation of evidence - without having permitted the parties to properly present them (their evidence) in a proper hearing." (Petition, p. 5) Petitioner argues that it was denied due process of law when the Hearing Officer resolved the factual issues involved in the case through the position papers and enclosures submitted by the parties without calling the parties to a formal hearing to prove their respective claims. Precisely, petitioner employer should have insisted on a hearing to present the Chief Engineer and for him to testify on his report. In such case, the Hearing Officer would have been in a position to ascertain the truth of said report. Having failed to ask for such a hearing, petitioner company cannot now claim lack of due process. As what We held in *Tajonera v. Lamoroza*, 110 SCRA 438:

"What the law prohibits is not the absence of previous notice but the absolute absence thereof and lack of opportunity to be heard. Petitioners have no reason to impute lack of due process because they were heard on

their memorandum appeal and motion for reconsideration. They, therefore, had sufficient opportunity for them to inform the tribunal concerned of their side of the controversy. What due process contemplates is freedom from arbitrariness, and what it requires is fairness or justice, the substance rather than the form being paramount.

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"Although there was no actual hearing conducted, petitioners were afforded time to explain their side. There were no refutations made nor was there any hint on the record that they can present any meritorious defense which would warrant a reversal of the questioned orders." (p. 80, Rollo)

WHEREFORE, premises considered, the petition is DISMISSED for lack of merit.

SO ORDERED.

Melencio-Herrera, (Chairperson), Padilla, and Regalado, JJ., concur.
Sarmiento, J., on leave.

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