

**VAR-ORIENT SHIPPING CO., INC. AND COMNINOS BROS.,
PETITIONERS, VS. TOMAS D. ACHACOSO, IN HIS CAPACITY AS
ADMINISTRATOR OF PHILIPPINE OVERSEAS EMPLOYMENT
ADMINISTRATION (POEA), E...**

G.R. No. 81805. May 31, 1988

Ponente: GRIÑO-AQUINO. J.

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GRIÑO-AQUINO. J.

Imputing grave abuse of discretion to the public respondent, the petitioners ask that the public respondent's decision dated September 9, 1987 in POE CASE No. (M) 86-11-1080 entitled "VAR-ORIENT SHIPPING CO., INC. and COMNINOS BROS. vs. EDUARDO H. ARSOLON, ET AL.," be annulled for having been rendered without due process of law, and that the writ of execution issued by the POEA Administrator be set aside for being premature because the decision is not yet final and executory as no copy of it had been received by petitioner's counsel. A temporary restraining order was issued by this Court to enjoin the execution of the decision complained of pending the determination of the merits of the petition.

The petitioners filed a complaint with the Workers' Assistance and Adjudication Office, Philippine Overseas Employment Administration (POEA) against the private respondents Edgar T. Bunyog, Vedasto Navarro, Eugenio Capalad, Raul Tumas, Antonio Tanio-an, Celestino Cason, Danilo Manela and Roberto Genesis, crew members of the MPV "Silver Reefer", for having allegedly violated their Contracts of Employment with the petitioners which supposedly resulted in damages arising from the interdiction of the vessel by the International Transport Workers' Federation (ITF) at Kiel Canal, Germany, in March 1986.

After joinder of the issues, the case was heard on March 4, 1987 where the parties agreed to submit their respective position papers and thereafter the case would be submitted for decision. Only the private respondents submitted a position paper.

On the basis of the pleadings and memoranda (Annexes A, B, C, D, E & F) the public respondent rendered a decision on September 9, 1987 (Annex G), the dispositive part of which reads as follows:

“WHEREFORE, premises considered, judgment is hereby rendered ordering as follows:

- Dismissal of the instant case with a reprimand and warning respondents Vedasto Navarro, Eugenio Capalad, Raul Tumas, Antonio Tanio-an, Celestino Cason, Danilo Manela and Roberto Genesis, against the commission of the same or similar offense otherwise it shall be dealt with more severe penalty;
- Exclusion of Ricardo Llanes from this case;
- Reprimanding complainant Var-Orient Shipping Co. for failure to comply with its obligations pursuant to POEA rules and regulations and warning against committing the same or a similar offense otherwise it shall be dealt with more severely;

- That the case insofar as respondents Eduardo H. Arsolon, Apolinario dela Cruz, Levy Montero and Danilo N. dela Cruz are concerned, be archived, while their names shall be included in the POEA watchlist until they shall have voluntarily submitted themselves to the jurisdiction of this office;
- Payment by the complainants jointly and severally, unto Vedasto Navarro, Eugenio Capalad, Raul Tumas, Antonio Tanio-an, Celestino Cason, Danilo Manela and Roberto Genesis the amount of P1,550.59 each, representing deductions from allotments, plus P1,000.00 as and for attorney's fees; and
- Payment by the complainants jointly and severally unto respondent Edgar T. Bunyog the amount of US\$4,680.00 or its peso equivalent at the time of payment representing his salaries for the unserved portion of his employment contract plus P4,000.00 as and for attorney's fees

to be tendered thru this Office, ten (10) days from receipt of this decision."

A copy of the decision was sent by registered mail and delivered by the postman to the petitioners' counsel, then Attorney Francisco B. Figura, at his address on the 4th Floor, TRC Building, Sen. Gil Puyat Avenue, Makati, Metro Manila, through the receptionist, Marlyn Aquino, on the groundfloor of said building on September 21, 1987. According to Attorney Figura, he did not receive the envelope containing the decision (p. 66, Rollo).

Petitioners allegedly learned about the decision only when the writ of execution was served on them on November 20, 1987 by NLRC Deputy Sheriff Rene Masilungan and Attorney Wilfredo Ong. On November 23, 1987, petitioners, through new counsel, Atty. Quintin Aseron, Jr., filed an "Urgent Motion to Recall Writ of Execution" on the ground that the decision had not been received by the petitioners, hence, it was not yet final and executory.

On January 19, 1988, the public respondent denied the motion. In due time, this petition was filed wherein the petitioners allege that:

- (1) they were denied due process of law because the respondent Administrator resolved the case without any formal hearing;
- (2) the respondent Administrator gravely abused his discretion in denying petitioners' right to appeal, and
- (3) in awarding to the private respondents damages which are not only excessive but unfounded.

The petition is not meritorious.

The petitioners' allegation that the issuance of the writ of execution was premature because the decision had not been received by their counsel is unconvincing. Atty. Figura's affidavit on the matter is self-serving. Petitioners failed to submit an affidavit of the receptionist Marlyn Aquino explaining what she did with the decision which she received for Atty. Figura. Under the circumstances, the respondent Administrator's ruling that the decision had been properly served on petitioners' counsel and that it is now final and unappealable, should be sustained.

Equally unmeritorious is the petitioners' allegation that they were denied due process because the decision was rendered without a formal hearing. The essence of due process is simply an opportunity to be heard (*Bermejo vs. Barrios*, 31 SCRA 764), or, as applied to administrative proceedings, an opportunity to explain one's side (*Tajonera vs. Lamaroza*, 110 SCRA 438; *Gas Corporation of the Phil. vs. Hon. Inciong*, 93 SCRA 653; *Cebu Institute of Technology vs. Minister of Labor*, 113 SCRA 257), or an opportunity to seek a reconsideration of the action or ruling complained of (*Dormitorio vs. Fernandez*, 72 SCRA 388).

The fact is that at the hearing of the case on March 4, 1987, it was agreed by the parties that they would file their respective memoranda and thereafter consider the case submitted for decision (Annex 7 of Bunyog's Comment). This procedure is authorized by law to expedite the settlement of labor disputes. However, only the private respondents submitted memoranda. The petitioners did not. On June 10, 1987, the respondents filed a motion to

resolve (Annex 7, Bunyog's Comment). The petitioners' counsel did not oppose either the "Motion to Resolve" or the respondents' "Motion for Execution of Decision" dated October 19, 1987 (Annex 10), both of which were furnished them through counsel. If it were true, as they now contend, that they had been denied due process in the form of a formal hearing, they should have opposed both motions.

Furthermore, the petition for review does not allege that the petitioners are in possession of evidence, other than those which they had attached to their pleadings, which if produced would have altered the outcome of the case.

The Administrator did not abuse his discretion in ordering the petitioners to pay respondent Edgar Bunyog's salaries for the unserved portion of his contract plus attorney's fees, in view of the Administrator's finding that Bunyog did not sign the letter of the other defendants to ITF, hence, "he is deemed not to have committed any offense or act to warrant his dismissal".

WHEREFORE, the petition for certiorari is denied for lack of merit. The temporary restraining order which We issued is hereby set aside.

SO ORDERED.

Narvasa, Cruz, Gancayco and Medialdea, JJ., concur.

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