

FIRST PLYWOOD CORPORATION, PETITIONER, VS. COURT OF APPEALS AND PHILIPPINES PORTS AUTHORITY, RESPONDENTS.

G.R. No. 84460. November 13, 1992

Ponente: MELO, J.

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MELO, J.:

Petitioner First Plywood Corporation (FPC) was impleaded as defendant in a complaint filed on March 21, 1984 by herein private respondent Philippine Ports Authority (PPA) before the Regional Trial Court of Zamboanga City. Sought to be collected by PPA were arrastre service charges it had rendered for FPC, then amounting to P154,445.62, exclusive of interest (p. 2, Record).

PPA's demand was anchored on Paragraph B2 (1) of PPA Administrative Orders No. 02-80 and 05-81 which provides:

"2. The following rates for other miscellaneous services rendered in the handling and custody of cargoes in the Port of Zamboanga are hereby prescribed and should be collected as follows:

(1) General cargo which requires greater work than hooking the net or sling [emphasis supplied] containing cargo from the carrying truck to the ship's tackle, per ton of 40 cu. ft. or 1,000 kilos - P5.36* and P6.20.**

Petitioner FPC, for its part, refused to pay the rates under the aforequoted sub-paragraph and instead claimed that the services rendered by PPA on the handling of petitioner's cargo fall under Paragraph B in relation to sub-paragraphs (1) and (3), which we quote hereunder:

"B. MERCHANDISE/ARTICLES FOR EXPORT-- For handling of merchandise, articles for export from consignor's transportation upon the piers or wharves to the sling of the exporting vessel:

(1) General cargo, except as specifically mentioned hereunder per ton of 40 cubic feet or 1,500 kilos - P0.58 [Adm. Order No. 02-80] P0.67 [Adm. Order No. 05-81].

(3) Provided, that the service shall consist only of the labor in hooking the net or sling containing the cargo from the carrying truck to the ship's tackle." (Underscoring supplied.)

PPA was initially unsuccessful in its bid to charge the higher rates but upon appeal to the Court of Appeals, the judgment of the Zamboanga regional trial court was reversed in a decision (CA-G.R. CV No. 07907, March 4, 1988) of the appellate court's Thirteenth Division (Purísima [P], Chua, La Peña, JJ), the dispositive portion of which reads:

"WHEREFORE, the judgment appealed from is hereby REVERSED; and instead, defendant-appellee is hereby ordered to pay plaintiff-appellant the sum of P79,582.45 plus legal interest thereon at six (6%) percent per annum from date of commencement of litigation on March 21, 1984. For lack of merit, the counterclaim of defendant-appellee is hereby DISMISSED."

Upon, the appellate court declining to favorably act on FPC's motion for reconsideration, the instant petition was

filed on August 18, 1988, but notwithstanding the seemingly propitiousness of the date of filing with its abundance of the number 8, a lucky number under Chinese zodiac, such benignancy, after a study of the petition, has proven false.

The issue presented is simple enough: Is the service performed by PPA limited only to "the labor in hooking the net or sling" or is such service, as the administrative orders call it, "greater work than hooking"? If it be the latter case, then PPA has the authority to charge the higher rates; but if it be otherwise, then reversal of the decision of respondent court would follow as a matter of course.

As the administrative orders issued by PPA, as well as the particular provisions of the Revised Tariff and Customs Code from which the administrative orders were lifted, do we define the terms "labor in hooking" and "greater work than hooking", the rule of construction that should be applied is that the terms must be understood in their literal meaning.

Thus, "labor in hooking" can consist only of attaching the hook of the derrick's boom to the sling or net holding a cargo in order that said cargo may be lifted into the carrying vessel. The "labor in hooking" could then conceivably require the services of one person to do the attaching of the hook to the net or sling.

Notwithstanding the protestations of petitioner FPC that the other "additional works" performed by PPA in loading FPC's cargo are merely minor requisite acts to complete the work of hooking or are component parts in the labor of hooking, we believe that it has been amply shown that indeed, the work performed by PPA is "greater work than hooking". The findings of the respondent court on this point are well-taken and we quote the same, to wit:

"There is on record preponderance of proof abundantly showing that such arrastre services rendered by appellant to appellee were not limited to just hooking but involved much greater work and labor. For instance, Bonifacio Ubunga, Jr., the knowledgeable foreman of Zamboanga Port Services so succinctly declared:

"x x x that the moment the shipment of the defendant arrives at the wharfsides, the head checker received the cargoes alongside the vessel and will jot down in their tally sheet, the freight number and the destination and after that, the dock workers will signal the truck driver to position the truck in a manner that the cargo would be perpendicular to the cargo hood of the vessel before slinging; in that position, the plaintiff's dock workers would place the sling around the net of the freight, while the cargo is still on the truck; that this job of slinging the cargo while on the truck can be handled by two or three workers of the plaintiff; that after the two or three dock workers, have completed the slinging of the shipment, the dock workers will make a signal to somebody on board the vessel that the cargo is ready, and after which he goes down the truck and the cargo is hoisted on board the vessel; and thereon, the job of lowering the cargo into the ship hull and arranging thereat belong to another stevedoring outfit not under the services of the plaintiff and even the signal man on board the vessel also belonged to the other stevedoring unit; that the hatch checker who does the tallying of the freight number and the destination of the cargo is the employee of the plaintiff; the said process continues until the loading (operation) of the shipment is over and then as foreman he made his report to the Port Manager and accordingly billed the defendant; that in one shipment, the plaintiff employed one supervisor, one foreman, one assistant foreman, one head checker, bill man, and two hooking men; that prior to the loading of the cargo, they must see to it that everything is well-fixed, the slinging, the steel plates, the nails are being looked upon by the carpenter; that the work plaintiff performed to defendant is more than hooking." (pp. 14-23, tsn., March 14, 1985.)

Then, too, is the following narration by Mr. Alvin Fernandez, Supervisor of the Zamboanga Port Arrastre Services:

'that the services rendered by plaintiff to defendant consisted of the following: a) Checking services - that is when

the cargo comes in from the wharf, the head checker gets the freight number, the quantity and the tons (weight) of the cargoes that are supposed to be loaded on a particular hatch of the vessel to know whether the said exporter has not over loaded or undershipped his shipment; slinging of the cargo to be hoisted to the vessel - here the dock workers will go up the truck to place the sling underneath the crates that are to be loaded and after that the signal man will signal the other signal man of the stevedoring outfit, that the cargo is ready to be hoisted; slinging of the forklift to be used by the stevedoring on board the vessel; handling of the dunnage or putting of form lumber also to be used by the stevedoring on board the vessel; (pp. 6 to 15, tsn., May 17, 1985). On cross-examination, he testified that for all the services that plaintiff rendered to the defendant, the latter's payment is not enough (p. 18, tsn., May 17, 1985).'

On the strength of such competent and trustworthy evidence adduced, We are of the irresistible conclusion and so find, that the arrastre services rendered by the plaintiff-appellant to defendant-appellee with respect to subject export cargoes did not consist merely of hooking which would require just one person to perform the routinary task of attaching the sling holding the cargo to a hook attached to a cable that would lift the cargo to the vessel, but something more than hooking. As well explained by the appellant, in a situation where only hooking is called for, the cargo to be lifted is already well prepared for lifting without necessitating any extra work on the part of the person tasked to attach the sling to the hook; but it was not so in the case under consideration. It can be gathered unerringly from the evidence at hand that hooking was not the only service rendered by appellant to the cargoes of appellees referred to. The arrastre services rendered by the former for the latter required at least three dock worker to do the actual hooking and slinging of the cargo and involved also during the loading thereof, the presence of a supervisor, head checker, and bill man (pp. 16, 20, 21, tsn., March 14, 1985); such that appellant is right in charging for such services P6.20 per metric ton or 1,000 kilos. Evidently, the rate of 0.67 per metric ton used by appellee is not commensurate with the nature and extent of services rendered and manpower utilized by the appellant. Equally well substantiated is the additional service done by appellant's workers in doing the dunnage for subject cargoes of appellee (page 14, tsn., May 17, 1985). As was elaborated upon by appellant's knowledgeable witnesses, dunnage is not part of hooking. It related to the placing of lumber under the cargo to protect the same from the water coming into the hold of the vessel or in between the different parcels of cargo to prevent them from injuring each other (13 Words and Phrases, 631; PPA Order No. 13-77, Sec 2 [ff]).

Indeed, from the established facts and circumstances which the trial court overlooked or misappreciated, it is decisively clear that the arrastre services in question, which appellant rendered and appellee availed of for the said export cargoes, consisted of a larger volume of work than mere hooking; and the arrastre charges therefor have to be assessed under the pertinent provision of B 2. (1), instead of paragraph 3, sub paragraph (1) and (3) of the Administrative Order invoked by the parties. In other words, appellant is entitled to be paid by appellee for the arrastre services litigated upon at P6.20 per metric ton; not at P0.67, as erroneously computed below."

Verily, it would be specious for FPC to argue that all the acts enumerated by the Court of Appeals are but component parts of the attachment of the hook to the sling or net. If this were so, then the administrative orders should and would have so stated. As it is, however, it is not feasible and certainly it is far from logical to tack each and every act preparatory and posterior to the actual hooking as part of the hooking procedure. Indeed, these other acts could but be those referred to as "greater work than hooking".

WHEREFORE, the petition is hereby dismissed and the decision under review affirmed, without special pronouncement as to costs.

SO ORDERED.

Gutierrez, Jr., Acting C.J., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

* Per PPA Adm. Order No. 02-80.

** Per PPA Adm. Order No. 05-81.

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