

DIONY RAPIZ, NELSON GESTOPA & ANATALIO ONA, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND MODERN ASIA SHIPPING CORPORATION, RESPONDENTS.

G.R. No. 91122, March 16, 1992

Ponente: PARAS, J.

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PARAS, J.:

Petitioners are seamen who are seeking the reinstatement of the Philippine Overseas Employment Administration decision dated April 4, 1988, which was reversed by the National Labor Relations Commission's split resolution* dated September 29, 1989.

The facts of the case are as follows:

Sometime in June of 1983, a giant corporation - Modern Asia Corporation, hired some thirteen (13) Filipino seamen (among them, herein petitioners), who boarded the vessel named M/V Mighty Sea which is of Panamanian registry. However, on March 15, 1984, in an emergency letter they wrote the Minister of National Defense, Philippines, for help as they were stranded for months without food and light despite filing of a case in Greece courts, thus:

"That, we arrived here in the port of Thessaloniki, Greece last October 12, 1983 loading for flour (sic). Our contract was (sic) expired last November 6, 1983 and we want to be repatriated at the most convenient port upon the completion of our contract. That our salaries for six months since June 1983 up to November 1983 was (sic) not given to us, so we are claiming for it (sic). Until the loading of cargo was finished, still the company did not give our salaries (sic). So we filed a complaint to a seaman's lawyer so that he can help us to solve our problems (sic).

"That, we already appeal in the court for two times, but still no action was granted to help us (sic). Now, we are already stranded herein the said port for almost six months, without foods and lights (sic). Up to the present, we are claiming our ten months salaries (sic).

"So in this situation, we are begging for your help, just to solve our problems (sic)." (p. 42, Records) (p. 39, Rollo)

A second letter to the Philippines, addressed to the Foreign Exchange Department of the National Seamen Board on May 2, 1984 from, now, only eleven (11) seamen, came desperately seeking assistance in their continuing problems with their work like non-payment of salaries with request after mentioning possible deductions from their salaries, that they will then be unable to remit the full amount of foreign currency required of overseas worker in their situation because of the dilemma they were presently in, thus: -

"We the undersigned 11 (eleven) Filipino crew, on board the vessel, M/V MIGHTY SEA Panamanian registry, under the management of M.A. Hambury Company Limited, with the office address in 41 Akti Miaouli Street, Piraeus, Greece (sic). Our local agency is Modern Asia Shipping Corporation, with the address in Suite 32, Ground Floor Midland Plaza-Arcade, M. Adriatico Street, Ermita, Metro Manila, Philippines. (sic)

"We were stranded here in the Port of Thessaloniki, Greece, claiming our salary 10 (ten) months (sic). We get our lawyer to depend us, get our salary (sic). We have an agreement to our lawyer and also to the charterers, to give 15% each of them from our salary (sic). So, the total deduction from our salary is 30%. In this connection we are unable to remit the full amount of foreign currency. Please consider our case and give at least 30% concession regarding to our situation (sic)." (pp. 39-40, Rollo)

Due to the cases filed against the foreign owner of the vessel as aforementioned in the seamen's first letter dated March 15, 1984, said owner was imprisoned for 3 years and 8 months (comment of Solicitor General on the petition, p. 50, Rollo and memorandum for the petitioners, p. 109, Rollo). Hence, upon repatriation on July 19, 1984 the eleven seamen executed a joint affidavit complaint against the corporation which hired them, herein private respondent (Modern Asia Shipping Corporation) for breach of contract, to quote: -

"1. That we are formally charging with breach of contract our employer the MODERN ASIA SHIPPING CORPORATION, with offices at 2nd Floor, 491 Dona Tesoras Building, corner A. Mabini and Pedro Gil Sts., Ermita, Manila, upon the following recital of facts as hereunder set forth:

"4. That we left the Philippines under this contract of one-year with the respondent sometime June, 1983 and arrived at Greece on October, 1983;

"5. That, since the period of our departure to the time of our being repatriated to the Philippines sometime May, 1984, we never received any amount under our contract of engagement or employment by the said respondent;

"6. That we never received any tangible amount as would amount to our entitlements by way of allowances, food and other provisions from the company; and, that we survived our being stranded at the port of Thessaloniki, Greece as objects of charity, until our charterer, through our pleadings, decided to send us home at their expense;

"7. That, we have claim for 11 months of pay against the respondent, at the respective rates that is provided under the terms and conditions of our contract of employment;

"10. That we voluntarily and freely execute this document as the basis for our legal action on the premises, without malice, but only as due and entitled us under existing and applicable law as meriting our cause of action." (Underscoring supplied) (pp. 40-41, Rollo)

The private respondent tried to pacify the eleven (11) seamen (including the 3 petitioners) but after a little over two (2) years, the seamen's salaries, still unpaid, and their grievances still unacted upon, they (only 9 seamen this time) finally filed a formal complaint against private respondent, the local manning agency of N.A. Hambury Company Ltd. Citing as reason why the formal complaint was filed with the POEA only after 2 years, petitioners stated in their position paper/affidavit dated March 18, 1987:

"Complainants were not able to file this case immediately because the shipping agency promised us that we would be re-hired, but it did not comply with its promise. On the contrary it was the herein respondent who acted in bad faith by giving us false promises and false hopes. Nevertheless as early as July 19, 1984, we have already executed the Affidavit of Complaint, Annex A, hereof, for we were decided to file the case." (p. 108, Rollo).

This complaint sought to recover unpaid wages, unpaid 11 months' salaries of petitioners Nelson Gestopa - US\$450.00/month; Diony Rapiz - US\$160.00/month; and Anatalio Ona, US\$160.00/month, plus payment of food supplies and other expenses for daily living like soaps, etc., for payment of a Greece lawyer and also for moral and exemplary damages.

On October 20, 1986, summons was issued to the private respondent and pre-trial conference as well as many

hearings were cancelled and postponed to give all available opportunities for the private respondent to prepare its defense:

"x x x for the reason that the necessary documents and/or papers needed in support of its defenses will come from abroad." (p. 9-10, Records of POEA Case No. (M) 86-10-933)

Complainants-petitioners, in their sincere quest for justice and knowing all the while that they were defenseless against a giant corporation as their opponent, never objected to the aforestated cancellations and postponements.

Finally, on April 4, 1988, the Philippines Overseas Administration, handed its decision, disallowing payments of withheld food supplies, daily crew maintenance expenses, ruling that the complainants - petitioners should not also be given expenses for the Greek lawyer and Philippines lawyers, and likewise no award for moral and exemplary damages. However, the salaries of the complainants-petitioners for eleven (11) months were awarded.

From this POEA's niggardly decision, private respondent corporation still appealed to the National Labor Relations Commission, Second Division, on April 20, 1988, questioning the seamen's payment of their salaries citing the letter dated May 2, 1984, as its alleged proof that the seamen were already paid their 11-month-salaries. Private respondent was not able to secure any evidence or receipt of alleged payment of salaries involved, and no proof whatsoever from the lawyer allegedly hired by the seamen. The seamen on their part contended that since the truth was that they were not yet really paid their 11-month-salaries aboard the foreign vessel, no receipt or proof to this effect can be produced by private respondent.

The NLRC, Second Division, reversed the POEA decision in its resolution dated September 29, 1989 thus -

"We find the appeal impressed with merit.

"In the consideration of the merits of this case the Administrator failed to consider the letter written by herein complainants to the Foreign Exchange Department of the National Seaman Board asking for 30% percent concession in the remittance of their salary. Pertinent portion of the letter is quoted hereunder:

"We are stranded in the Port of Thessaloniki, Greece, claiming our salary for ten (10) months, we got our lawyer to depend us (sic), got our salary, we have agreement to our lawyer and also to the charterer, give 15% each of them from our salary (sic). So, the total deduction from our salary is 30%. In this connection we are unable to remit the full amount of foreign currency. Please consider our case and give at least 30% concession regarding to our situation (sic).

"Said letter is a clear indication that herein complainants were able to get payment of their salaries after hiring the services of a lawyer. The said letter was attested to by the Master of the Vessel, the Greek lawyer and the charterer of the Vessel." (p. 17, Rollo)

There was a dissenting statement of its Presiding Commissioner Daniel M. Lucas, Jr.:

"I am for the affirmance of the POEA Decision."

A motion for reconsideration was filed by the petitioners which motion was denied on November 10, 1989, again with the divided voting:

"I reiterate my dissenting opinion."

“(Sgd) DANIEL M. LUCAS, JR.

Presiding Commissioner”

From this NLRC divided denial of the motion for reconsideration, the petitioners came to Us via a petition for

certiorari, charging the NLRC commissioners with grave abuse of discretion in ignoring the rest of the evidence used by the POEA in weighing the case and coming up with the conclusion that the petitioners had already been paid their salaries.

The instant petition is obviously meritorious. The real issue raised is whether or not petitioners have already received their salaries.

We are tasked to scrutinize the whole record of the case including the evidence presented since the findings of the POEA and the NLRC are contrary to each other (*Quality Tobacco Corporation v. Intermediate Appellate Court*, 187 SCRA 210).

A careful study of this case reveals that the POEA exerted much diligence and came out with an impartial analysis in investigating, hearing and deciding POEA Case No. (M) 86-10-933 (Diony Rapiz, et al., complainants, versus Modern Asia Shipping Corporation, Respondent) resulting in the award of the eleven (11) months' salaries of petitioners Diony Rapiz, Nelson Gestopa and Anatalio Ona, ordered to be paid by private respondent Modern Asia Shipping Corporation within ten (10) calendar days at the exchange rate prevailing at the time of actual payment.

The Presiding Commissioner of the NLRC, Second Division Daniel M. Lucas, Jr. even voted in favor of this POEA decision, siding with the petitioners.

Further, the Solicitor General's Office, after a long and objective scrutiny of the case, could not in its conscience, defend public respondent NLRC, which reversed the POEA decision. Thus, in the Solicitor General's conclusion and recommendation, it is stated:

"Private respondent corporation failed to substantiate clear and convincing evidence its affirmative defense of payment. Hence, the NLRC erred and gravely abused its discretion in reversing and setting aside the POEA Decision dated April 4, 1988.

"WHEREFORE, in view of the foregoing considerations, it is respectfully recommended that the Resolution of the NLRC dated September 29, 1989 be set aside and the POEA Decision dated April 4, 1988 be reinstated and affirmed en toto, with costs.

"This being an adverse Comment, it is respectfully prayed that public respondent NLRC be directed to file its own Comment to the instant Petition, granting it a period of thirty (30) days from notice." (pp. 67-68 Rollo)

Public respondent NLRC however, replied only after almost ten (10) months and after a resolution had been sent by this Court requiring it to show cause why it should not be disciplinarily dealt with or held in contempt for failure to comment on the petition for certiorari as required in its resolution of April 2, 1990.

In its comment, public respondent insists that the petitioners have already received their salaries citing their letter dated May 2, 1984 when they wrote the Foreign Exchange Department of the National Seamen Board. It relies mainly on some past tenses like "got" instead of "will get" used in said letter when the same contains mixed tenses. It is noteworthy that this was written when the seamen were without food and supplies, stranded in the vessel for almost one year, not paid their salaries for ten (10) months (at the time of writing), subjected to all kinds of tensions, hungry, desperate, abandoned in a foreign land, away from their loved ones, and merely barely living. In this miserable condition, what kind of letter can be expected of them? Furthermore, using this May 2, 1984 letter as a defense was not initially resorted to by the private respondent, as it knew that it had to really substantiate its alleged payment. Said substantiation never came - no receipts, no documents.

Public respondent nagged and cajoled the POEA and petitioners no end in requesting for extensions of time to look for proofs that the petitioners had already been paid. From the records we quote:

"On December 29, 1986, respondent filed another urgent motion requesting that ?

'x x x an extension of thirty (30) days to file its answer position papers considering that the necessary papers/documents, needed to prove that Modern Asia Shipping Corp., is not concerned or liable in this case are still in Athens, Greece; that this Honorable Office write a letter of request that the said documents/papers be send(sic) directly to this office, as per telex received from the lawyers; x x x" (p. 20, id.).

"On January 7, 1987, the POEA granted for the last time respondent corporation's motion for the 30-day extension without objection on the part of complainant and reset the hearing to February 10, 1987."

"In a letter dated January 10, 1987 and received on January 12, 1987, counsel for respondent corporation wrote the POEA in this wise -

'Atty. Wong

Chief, Adjudication Dept.

POEA, Mandaluyong, Metro Manila

Dear Atty. Wong:

'This will refer to the telex that we have received from our principal regarding the case that was filed against Modern Asia Shipping Corporation ad POEA Case No. (M)86-10933, we have commu-nicated with them to send us the necessary documents and papers needed in our defense, but the lawyer will only send the said documents and papers, if a letter from your good office is sent to them(sic) directly.'

'May we respectfully request your good office to send the letter to the Greek Lawyer, Atty. Petros. You can prepare the letter and then we will handle the sending of the same in Greece.' (p. 22, id.) (Underscoring supplied)

"On January 22, 1987, the POEA as requested, wrote to the Greek lawyer, thus -

'Atty. Petros Nikalausis

No. 19 Kontauryatau Street

Thesalaniki, Greece

'Dear Atty. Petros,

'This refers to the case filed by seamen Diony Rapiz, Nelson Gestopa, Anatalio Oma (sic) against Modern Asia Shipping Corporation docketed as POEA Case No. (M)86-10-933, pending before this Honorable Office.'

'In connection with the above case and per your instruction respondent Modern Asia Shipping Corporation requested us that we send you directly this letter to ask for the following documents, to wit:

- '1. Copy of the complaint filed by you before the court in Greece;
- '2. Decision of the Court in Greece, duly authenticated;
- '3. Receipt for the full payment of the salary and wages and other benefits received by crew members; and,
- '4. Other documents and papers necessary in the proper disposition of the said case.'

'The seamen named above were the former crews of M/V 'Mighty Sea', owned and operated by M.A. Hambury Company Ltd. of 41 Akti Miaoli Street, Piraeus, Greece. The same seamen have filed a complaint against Modern Asia Shipping Corporation asking for the payment of wages, attorney's fees, refund of food supplies and

for moral and exemplary damages.'

'Expecting that we would receive the above documents/papers at the earliest time possible.'

'Very truly yours,

‘(Sgd) Atty. Potenciano R. Napenas

Hearing Officer.’

(p. 26, id.)

"On February 10, 1987, respondent corporation filed a third urgent motion for another 15-day extension to file its answer. Said motion reads -

'RESPONDENT, through counsel and unto this Honorable Office, most respectfully request that another extension of at least fifteen (15) days from today to file answer/position papers considering (sic) that the letter request of the respondent to this Honorable Office to send a letter request to the Greek Lawyer to send directly to your office the documents/papers was not acted upon by the said Greek Lawyer; that the said documents/papers being (sic) requested from the Greek Lawyer are vital to the defense of the respondents; that with or without documents/paper coming from the Greek lawyer respondent will file its answer with the reservation that as soon as the documents/papers will be received by this Honorable Office it will form part as documentary (sic) evidences of the respondent.' (p. 27, id.) (underscoring ours)

Without objection from complainants, the same motion was granted and the hearing was reset to March 18, 1987.

"On February 27, 1987, respondent corporation filed its position paper/motion to dismiss. It admitted the 12-month employment of the three (3) complainants aboard the vessel M/V Mighty Sea being operated by M.A. Hambury Co. Ltd.. It alleged that complainants had no cause of action against it on grounds of extinguishment of obligation by payment, bar by prior judgment of a foreign court and bad faith on the part of the complainants. Thus, it argued –

'Granting without admitting that the complaint of the complainant sate (sic) cause of action against the respondent, the same was already barred by prior judgment of a foreign court. The complainant in this case has filed an action in the Court of Athens, Greece against the owner of the vessel M.A. Hambury Co., Ltd., in November 1983, for the same cause of action as alleged in their present complaint. That is payment for unpaid wages and salary on board the vessel M/V Mighty Sea, so their present action against the respondent is already paid by the vessel owner. x x x.'

'The respondent served (sic) it right to present the documentary evidences with respect to the above allegation for reason that the documents being requested by this Honorable Office to the complaints Greek Lawyer, Atty. Petros Nikalausis, has not been recieved(sic) by this Honorable Office. The said documents will form part as the respondent documentary evidence.'" (pp. 43-47, Rollo)

WHEREFORE the petition is granted and the resolution of the NLRC dated September 29, 1989 is hereby REVERSED and SET ASIDE and the decision of the POEA dated April 4, 1988 is hereby AFFIRMED and REINSTATED. Costs against private respondent.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Regalado, and Nocon, JJ., concur.

* Penned by NLRC Com. Oscar N. Abella, concurred in by Com. Domingo H. Zapanta but dissented upon by its Division Presiding Commissioner Daniel M. Lucas, Jr. issued in POEA Case No. (M) 86-10-933, Diony Rapiz, et al., complainants versus Modern Asia Shipping Corporation, Respondent.

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