

FIL-PRIDE SHIPPING CO., INC. AND SMIT TAK TOWAGE AND SALVAGE PTE LTD., PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION AND LI...

G.R. No. 97068. March 05, 1993

Ponente: NOCON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-97068/>

NOCON, J.:

The petitioners in the instant case challenge the resolution[1] of the National Labor Relations Commission (NLRC) in POEA Case No. (M)89-02-098 entitled "Lito Ocap v. Fil-Pride Shipping Co., Inc. and Smit Tak Towage and Salvage, PTE, Ltd., Afisco Insurance Corp." sustaining the Philippine Overseas Employment Administration (POEA) for holding that private respondent has been illegally dismissed and is therefore, entitled to his salaries for the unexpired portion of the employment contract. Petitioners fault public respondents in not considering the evidence submitted by it to justify the private respondent's dismissal, claiming that their refusal constitutes grave abuse of discretion amounting to lack or excess of jurisdiction.

Private respondent Lito Ocap was contracted by petitioner Fil-Pride Shipping Co., Inc., for and in behalf of its foreign principal Smit Tak and Towage on September 28, 1988, to work as 2nd Engineer on board Smit Lloyd (SL)43 for a period of six (6) months. Among others, the employment contract provided for a monthly salary of Singapore \$2,120.00; 3 days leave with pay per month, a towing mileage allowance of S\$30/mile, station allowance of 11% of basic pay and salvage bonus.

Private respondent boarded the vessel on October 26, 1988 and worked thereon until he was dismissed and repatriated to the Philippines on December 14, 1988.

Claiming that he was dismissed without just cause, private respondent filed a complaint on January 26, 1989 with public respondent POEA for illegal dismissal and recovery of salaries for the unexpired portion of the contract; towing mileage allowance; station allowance; damages and attorney's fees.

Petitioners denied private respondent's claim declaring that on the contrary, his dismissal was by reason of his incompetence and inefficiency as a 2nd Engineer as shown by the report of the 1st Engineer attesting to said grounds, which We quote:

"x x x. the man has not been willing to any effort whatsoever to try and learn what was going on and got satisfied with studying only some 'tricks' for which reason I found him incapable to properly cope with changes or eventual breakdowns in the engine room. Even I would not dare to leave transfer pumping of water, fuel oil or lub oil to such a person, when you are not around yourself, because he simply does not know what he is doing.

'Some more example, explanation on how to put some generator to and from the main switchboard was done and showed several times, but only little attention was paid and suggesting as if all of it was just a piece of

cake for him. First time, the best you leave it to him, the generator trips on one of its safety devices, and would this not have been working it surely would have become dark and damage would have sustained as well.

'The fact that he has been throwing his cigarette butts under the floor plates and on the (double bottom) tank top, made me really mad and gave me the final reason to send him away.

'In view of the fact that always fuel oil and lub oil can be found on the tank top, this was causing danger for fire and loss of life.

'After being reminded several times of this more than dangerous habit, he continue to do so, as consequence of which I asked for relieve.'

x x x x"[2]

On October 26, 1989, the POEA Adjudication Office rendered a decision finding private respondent's dismissal illegal. No credence was given to the report of the 1st Engineer attesting to private respondent's undesirable and negative conduct on the ground that the same was prepared only on March 20, 1989 after the lapse of one (1) month and fourteen (14) days from the filing of the complaint and after three (3) months and eight (8) days from private respondent's dismissal. It noted that there were no detailed accounts of respondent's specific acts of incompetence recorded in the ship's logbook, which being the repository of the day to day transactions and occurrences on board the vessel should have contained the same. The dispositive portion of the decision is herein quoted as follows:

"WHEREFORE, premises considered, respondents are hereby held jointly and severally liable for complainant's duly adjudicated claims, and are hereby ordered to pay him the following:

"1. S\$7,914.52 - representing salaries for the unexpired portion of the employment contract

"2. US\$83.15 - representing his salary differentials for 38 days of actual service.

or the Peso equivalent at the time of actual payment of the total of the amounts above-stated, plus 5% thereof, as and for attorney's fees.

"All other claims are dismissed.

"All counter-claims are also dismissed.

"SO ORDERED."[3]

On December 14, 1989, petitioners appealed the decision to public respondent NLRC but the questioned decision was affirmed insofar as it held the dismissal of private respondent illegal but modified the award of salaries for the unexpired portion of the employment contract from S\$7,914.52 to S\$9,327.12 in view of the motion for reconsideration interposed by private respondent on the erroneous computation.

On June 6, 1990, petitioners filed a motion for reconsideration of the aforesaid decision. However, the said motion was denied in the resolution of January 18, 1991. Hence, the filing of the instant petition.

In questioning the decision of public respondent POEA, the petitioners contend that the Chief Engineer's report dated March 20, 1989 should not have been disregarded as it adequately showed that private respondent exhibited poor work performance on board the vessel Smit Lloyd 43 and jeopardized its safety by being careless with his cigarette smoking. In the absence of any showing that bias or prejudice motivated the preparation of said report, petitioners contend that it should have been given a certain degree of credibility considering further that private respondent did not refute the allegations about him.

The petitioners further argue that it is immaterial that said report was only made one (1) month and fourteen (14) days after the case for illegal dismissal was filed because the same was nevertheless based on the entry of December 15, 1988 in the Chief Officer's logbook which states:

"thursday 15th December 1988 still w/ side Cristobal Port stdy, 05:00, 2nd Engr. Lito Ocap going (to) home because of inferior insufficient performance, is not willing to cooperate..."[4]

The petitioners conclude that since the vessel's logbook is an official record, the entries made by a person in the performance of a duty required by law are prima facie evidence of the facts stated therein in accordance with Section 38, Rule 138 of the Rules of Court.

On the other hand, respondents contend that at the time of Lito Ocap's dismissal and repatriation to the Philippines on December 14, 1988, there was not even a single report on record regarding his alleged inefficiency and incompetence. Neither was there any disciplinary action taken against him by petitioners concerning his conduct of work.

We agree with respondents. Petitioners have not sufficiently shown through their evidence that private respondent has been validly dismissed.

Time and again, this Court has invariably held that in termination cases, the burden of proving that the dismissal of an employee was for a just cause rests on the employer and his failure to do so would result in a finding that the dismissal is unjustified.[5] The right of an employee to security of tenure is protected by the Constitution which must be respected unless a just cause exists for the termination of employment. The determination of the existence and sufficiency of a just cause must be exercised with fairness and in good faith and after observing due process.[6]

On the claim of incompetency and inefficiency as grounds of private respondent Ocap's dismissal, petitioners presented the report of the 1st Engineer dated March 20, 1989.

Respondent POEA, however, correctly refused to give credence to the report as the same was prepared only on March 20, 1989 or after the lapse of one (1) month and fourteen (14) days from the filing of the instant case and after the lapse of three (3) months and six (6) days from private respondent's dismissal. The report can no longer be a fair and accurate assessment of private respondent's competence and work habits as the same was presented only after the complaint was already filed. Clearly, its execution was motivated solely to justify private respondent's dismissal which had long been effected before the report was made.

To save the situation, petitioners called attention to the fact that the report was based on the entry of December 15, 1988 in the Chief Officer's logbook where it was recorded that private respondent was going home because of inferior/insufficient performance and is not willing to cooperate. Indeed, this Court has held that a logbook is a respectable record that can be relied upon to authenticate the charges filed and the procedure taken against employees prior to their dismissal.[7]

In the case at bar, the entry in the logbook cannot similarly be accorded respect. Firstly, said entry was made a day after private respondent was sent home. Hence, We agree with both private and public respondents that at the time of private respondent's dismissal and repatriation to the Philippines on December 14, 1988, there was not even a single report on record regarding his alleged inefficiency and incompetence. Secondly, there was no elaboration in the said entry about his alleged inferior and insufficient performance nor about his alleged unwillingness to cooperate. In *Ambraque v. NLRC*,[8] this Court held as illegal the dismissal of a worker on a charge that was not elaborated upon, to wit:

"The allegation that the private respondent exhibited disagreeable conduct when he was abroad thus paving the

way for his dismissal is a sweeping statement. The allegation is not even accompanied by any elaboration on the matter. If the said allegation were true, then the petitioner would have discussed in detail the circumstances surrounding such disagreeable conduct in order to support its stand. The absence of such information casts suspicion on the veracity of the allegation of the petitioner."

Since the entry in the logbook did not contain any discussion in detail of the circumstances surrounding private respondent's alleged unwillingness to cooperate nor did it state why his performance was considered inferior or insufficient, We hold that said entry cannot constitute as a valid justification to terminate him.

Even if We were to admit in evidence the 1st Engineer's report, it cannot likewise justify the termination of private respondent. A close reading thereof will show that the allegations about private respondent's incompetence and the fact that he cannot cope with changes or eventual breakdown in the engine room, are mere conclusions of the 1st Engineer bereft of any factual support. The fact that when private respondent activated the generator for the first time, and it tripped on one of its safety devices can very well be accidental. And even if the same were to be considered an example of incompetence, We believe that a single incident of tripping cannot constitute a sufficient basis for termination.

A conclusive argument in support of private respondent's avowal of illegal dismissal is the fact that the master of the vessel wherein private respondent served as 2nd Engineer rated the latter's conduct and ability as "Very Good" on his seaman's book. Thus, instead of corroborating the 1st Engineer's claim of incompetence and stubbornness of the private respondent, the rating of the Master of the vessel is at war with the former's opinion. The arbitrariness and lack of legal justification of private respondent's dismissal is thus clearly evident from these conflicting assessment of his competence. Aside from the favorable rating of the Master of the vessel that signed him off, private respondent also laid before the POEA the "Very Good" remarks he received as 2nd Engineer from various employers since 1980 thereby engendering the belief in the falsehood of the imputation against him of inefficiency.

In conclusion, We hold that there is no compelling reason to disturb the findings of the public respondents adjudging petitioners culpable of illegal dismissal.

WHEREFORE, the petition is DISMISSED with costs against petitioners.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Campos, Jr., JJ., concur.

[1] Penned by Commissioner Romeo B. Putong and concurred in by Presiding Commissioner Bartolome S. Carale and Commissioner Vicente S.E. Veloso III.

[2] Rollo, pp. 6-7.

[3] Rollo, p. 23

[4] Rollo, p. 101.

[5] *Polymedic General Hospital v. NLRC*, G.R. No. 64190, 134 SCRA 420 (1983); *Egyptair v. NLRC*, G.R. No. 63185, 148 SCRA 125 (1987); *Asphalt and Cement Powers, Inc. v. Leogardo*, G.R. No. 74563, 162 SCRA 312 (1988); *Starlite Plastic Industrial Corporation v. NLRC*, G.R. No. 78491, 171 SCRA 315 (1989); *Gubac v. NLRC*, G.R. No. 81946, 187 SCRA 412 (1990).

[6] *Mary Johnston Hospital v. NLRC*, G.R. No. 73839, 165 SCRA 110 (1988).

[7] Abacast Shipping and Management Agency, Inc. vs. NLRC, G.R. Nos. 81124-26, 162 SCRA 541 (1988).

[8] G.R. No. 77970, 157 SCRA 431 (1988).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.