

KLAVENESS MARITIME AGENCY, INC. AND DENHOLM SHIP MANAGEMENT (HK), LTD, PETITIONERS, VS. JOSE MARIUS F. PALMOS AND NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

G.R. Nos. 102310-12. May 20, 1994

Ponente: FELICIANO, J.

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FELICIANO, J.:

Private respondents Jose Marius F. Palmos ("Palmos") and Alexander C. Sevilla ("Sevilla") were employees of petitioner Denholm Ship Management (HK), Ltd. ("Denholm"). They were hired as Able Seamen ("AB") for the M.V. African Camellia by a local manning agent, co-petitioner Klaveness Maritime Agency, Inc. ("Klaveness").[1] The manning contract of Palmos and Sevilla stipulated a period of employment of twelve (12) months effective 23 March 1989, with a monthly salary of US\$280, plus a fixed overtime pay of US\$84 per month. However, on 7 July 1989, Palmos and Sevilla were repatriated to the Philippines from the Port of Santos, Brazil. Klaveness advanced the cost of the repatriation.

As a result of their untimely repatriation, Palmos and Sevilla each filed a complaint for illegal dismissal, as well as non-payment and underpayment of wages (POEA Cases Nos. [M] 89-07-639 and [M] 89-08-867), against petitioners Denholm and Klaveness with the Philippine Overseas Employment Administration ("POEA"). In response, petitioners Denholm and Klaveness jointly filed a complaint against Palmos and Sevilla for disciplinary action and reimbursement of repatriation expenses (POEA Case No. [M] 89-08-742). On motion of Klaveness and Denholm, the three (3) cases were consolidated.

Petitioners Klaveness and Denholm claim that on 1 July 1989, while the M.V. African Camellia was docked at the Port of Santos, Brazil, Palmos and Sevilla, who were then returning from their shore leave in a state of intoxication, and acting in concert with each other, with Palmos wielding a knife, assaulted the vessel's Chief Officer Romeo Paredes, without any provocation from the latter.[2] After an alleged investigation conducted by the vessel's captain, Mr. H.R. Mogul, Palmos and Sevilla were "signed off" from the vessel and repatriated to Manila.

Upon the other hand, private respondents Palmos and Sevilla state[3] that on 1 July 1989 at around 7:00 p.m. while they and other crew members were returning to the vessel from shore leave and entering the passageway of the vessel, Chief Officer Romeo Paredes, for reasons not known to private respondents, angrily scolded Palmos and Sevilla using offensive ("unconscionable" [sic]) words[4] for being late. At around 11:00 p.m. on the same day, Palmos and Sevilla were required by representatives of Denholm and the local police to disembark from the vessel and were subsequently repatriated to Manila. In Manila, Klaveness confirmed the termination of the services of Palmos and Sevilla and the withdrawal of Palmos' salary for the month of June 1989. Palmos and Sevilla vigorously deny the claims of the petitioners that: (a) Chief Officer Paredes had offered no provocation; (b) Palmos and Sevilla had been drunk while returning to the vessel from shore leave; (c) they had assaulted the

Chief Officer with a knife; and (d) they were late in returning from shore leave. Private respondents claim, finally, that they had been denied their right to due process before dismissal.

In time, the POEA rendered a decision in the three (3) consolidated cases before it, in favor of Pamos and Sevilla. The POEA's decision was affirmed by the National Labor Relations Commission ("NLRC") on appeal by petitioners. Both the POEA and the NLRC held that petitioner companies had failed to discharge their burden of establishing the existence of a just or authorized cause for the dismissal of private respondents, who were accordingly considered as illegally dismissed and as entitled to an award of salaries corresponding to the unexpired portion of their contracts of employment as seamen and unpaid and underpaid salaries. Petitioner companies were held solidarily liable for the amount found to be due to Pamos and Sevilla. Upon the other hand, petitioners' complaint for disciplinary action and reimbursement of repatriation expenses was dismissed for lack of merit.

In the present Petition for Certiorari, Denholm and Klaveness claim that the NLRC had committed grave abuse of discretion in disregarding the evidence which petitioners had submitted to prove their case, and in failing to find that petitioners had terminated the services of Pamos and Sevilla for a just or authorized cause and with due process. The Supreme Court granted petitioners' prayer for a temporary restraining order enjoining the NLRC from executing its Decision dated 11 October 1991, in order to prevent the present Petition becoming in effect moot and academic.

First, a procedural point. Pamos and Sevilla ask the Court to dismiss the present Petition for having been prematurely filed, petitioners having failed to file a motion for reconsideration with the NLRC before instituting the present Petition for Certiorari.

The Court does not agree. A prior motion for reconsideration is not indispensable for commencement of certiorari proceedings if the errors sought to be corrected in such proceedings had been duly heard and passed upon, or were similar to the issues already resolved by the tribunal or agency below.^[5] Accordingly, the Court has excused the non-filing of a motion for reconsideration when such a motion would be basically pro forma in nature and content, and where, as in the present Petition, the questions raised are essentially legal in nature. We do not consider that the present Petition was prematurely filed with this Court.^[6]

The basic substantive issue raised here relates to the presence or absence of a just or authorized cause for termination of the services of Pamos and Sevilla. Petitioners seek to raise a second issue, which concerns the compliance or failure of compliance on the part of petitioners with the requirements of due process in terminating the services of Pamos and Sevilla. For reasons that will become clear below, this second issue raised by petitioners is actually a non-issue.

The central issue raised here requires us to look at the relevant facts more closely. In doing so, the Court has examined the entire record of the consolidated cases. In this connection, we consider that the technical issues sought to be raised by petitioners concerning the evidence submitted by them (e.g., an extract of the logbook of the M.V. African Camellia) and the objections to such evidentiary material articulated by the POEA and the NLRC, do not need prolonged analysis. We believe rather that it is the tenor and intrinsic worth of such material, along with that of the other pieces of evidence offered by petitioners and private respondents, that need to be examined, bearing constantly in mind that in proceedings before the POEA and the NLRC, the strict rules of evidence are not applicable in their full rigor.

We find that the following facts are borne out by the record and not seriously disputed:

On 1 July 1989, while the M.V. African Camellia was at the Port of Santos, Brazil, AB Pamos and Santos along

with other members of the crew, returned to the vessel from shore leave at about 7:00 p.m. Upon entering the passageway of the vessel, Palmos and Sevilla were called or accosted by Chief Officer Romeo C. Paredes. Chief Officer Paredes then and there administered a severe verbal scolding to Palmos and Sevilla, using strong and apparently offensive language in the presence of other (Filipino) crew members. A heated exchange of words followed and a fist-fight almost broke out (but did not actually do so); one of the seamen apparently tried, or threatened, to go to his quarters, to get a knife. But cooler heads among the crew intervened; the incident subsided and the two (2) AB went to their part of the vessel to carry out their regular chores. For his part, Chief Officer Paredes went to his own quarters in the vessel.[7]

Not long afterwards, Chief Officer Paredes went to see the master of the vessel, Mr. H.R. Mogul, and reported his version of the incident which had just taken place. Mr. Paredes informed Captain Mogul that Palmos and Sevilla had come aboard from shore leave "absolutely drunk" and that upon being instructed to secure Hatch No. 2, they had "refused point blank and went to their cabins and came back with a knife to attack him." [8] Captain Mogul thus obtained his information about the incident from Chief Officer Paredes, and reflected, or caused to be reflected, such information in the logbook and his Report to the ship's agent, Denholm. The Chief Officer, professing to be much disturbed by the incident, demanded that the two (2) seamen be compelled to "sign-off" (i.e., be dismissed from the service of the vessel). Captain Mogul at first refused to dismiss the two (2) seamen out of hand and tried to reason with the Chief Officer. Mr. Paredes was, however, unyielding, in effect demanding that the Captain choose between sailing with him (the Chief Officer) or with the two (2) seamen; for his part, Captain Mogul was something less than firm and decisive. The Captain eventually decided that he did not wish to lose Chief Officer Paredes and accordingly appeased him by ordering the two (2) seamen to be "signed-off." The Report of Captain H.R. Mogul, dated 9 July 1989, to petitioner Denholm described his efforts to "reason with (Mr. Paredes)" in the following manner:

"x x x x x x x x x x

(The) Chief Officer took a very rigid stand and refused to sail unless the ABs concerned were signed-off because he felt very insecure about his life. Under no circumstances did I want the vessel to be delayed as we were sailing at 2200 hrs. (10:00 P.M.) on the same day (1 July 1989), so I took the Chief Officer aside to my cabin and tried to reason with him alone but he seemed to be very adamant. (The) Chief Officer is a very conscientious worker and for the interest of the ship I didn't want to lose him, but all my reasoning failed to convince him. I on my part also explained that I would safeguard his life and see that no harm would come to him, but somehow, the incident had shaken him very much, and he seemed to be very badly upset.

x x x x x x x x x x

To avoid delay of sailing since the vessel was ready to sail, my firm decision was to sign-off the ABs and sail with the Chief Officer - I needed to sail with the Chief Officer because of minimum safe manning for Liberian ship regulation x x x

x x x x x x x x x x"[9]

(Underscoring supplied)

The two (2) seamen, upon being required to sign-off and disembark from the vessel, protested the Captain's decision and objected to being summarily repatriated. Captain Mogul thereupon called on the security officers of the Port of Santos to compel the two (2) seamen to disembark from the vessel.[10] The port security personnel were, however, apparently convinced by Mr. Palmos and Mr. Sevilla that the dispute related to internal affairs of the vessel and required no intervention on the part of the port security personnel. Meantime, the news of the two (2) seamen being required to "sign-off" at the Port of Santos spread quickly throughout the rest of the crew of the

African Camellia. The rest of the crew then asked to "sign-off" along with the two (2) seamen and apparently intimidated to Captain Mogul that if Palmos and Sevilla were forced off the vessel at the Port of Santos and repatriated, while Chief Officer Paredes remained on board, the life of the latter could be in some peril.[11]

Captain Mogul, at this point, contacted the vessel's agents once again, and after discussion with them, required Chief Officer Paredes to "sign-off" also at the Port of Santos. With both seamen Palmos and Sevilla and the Chief Officer put on shore preparatory to repatriation to Manila, the vessel proceeded on its voyage without any further incident.[12]

Examining the above facts, we consider that the proximate cause of the dismissal of seamen Palmos and Sevilla was not the alleged drunken behavior and physical assault upon the person of the Chief Officer, which behavior and assault were vigorously denied by private respondents and controverted by substantial evidence submitted by them[13] and which, accordingly, cannot be regarded as adequately established. The incident at the passageway had run its course and no actual physical violence had occurred. There had, true enough, been a verbal altercation between the Chief Officer upon the one hand, and the two (2) seamen upon the other. Angry words and probably epithets were exchanged. But the incident had subsided and things had quieted down several hours before the two (2) seamen were actually ordered to "sign-off." In fact, the two (2) seamen had tried to "patch things up" with the Chief Officer; no doubt they were keenly aware that Mr. Paredes was their superior officer. At the time that the two (2) seamen were actually dismissed, there was no danger to life or limb of anyone on board the vessel; neither was there any peril to the security of the vessel or its cargo. Moreover, the incident clearly involved provocative behavior on the part of the Chief Officer.

The real proximate cause of the dismissal of the two (2) seamen was, rather, the insistent demand of Chief Officer Paredes that Captain Mogul dismiss the two (2) AB; the Chief Officer refused to sail on the same vessel with the two (2) seamen. As earlier noted, Captain Mogul was not a particularly forceful shipmaster nor a skillful handler of men; he was unable to control Chief Officer Paredes, or to make him see reason. Captain Mogul evidently decided that the Chief Officer was more important to him and the vessel than the two (2) AB; he placated Paredes by forthwith ordering the dismissal of the two (2) seamen.

We consider further that the true proximate cause of the dismissal of Palmos and Sevilla was not a just or authorized cause. That cause related basically not to the actual behavior of the two (2) seamen, nor to an actual threat to the internal peace and order of the vessel posed by such behavior (indeed, as noted, there was no substantial threat to the internal order of the vessel). The dismissal of Palmos and Sevilla rested rather on the need, felt by Captain Mogul, to satisfy the demand of Chief Officer Paredes. But that demand was not in itself a lawful or reasonable demand. Firstly, Paredes demanded that the two (2) seamen be dismissed summarily without any effort to give them due process by first hearing their side of the incident. Secondly, the verbal altercation which notably had been precipitated by Mr. Paredes' own high-handed, Prussian-like behavior at the vessel's passageway, had ended approximately four (4) hours earlier. Thirdly, that incident, in itself, could scarcely be regarded as sufficient ground for dismissal. Captain Mogul himself obviously did not think so when he tried to reason with Chief Officer Paredes, to no avail.

We turn to the second substantial issue sought to be raised by petitioners, that of due process. The Labor Code does not, of course, require a formal trial-type proceeding before an erring employee may be dismissed. This is specially true in the case of a vessel on the ocean or in a foreign port. The minimum requirement of due process in termination proceedings -- which must be complied with even in respect of seamen on board a vessel -- consists of notice to the employees intended to be dismissed and the grant to them of an opportunity to present their own side of the alleged offense or misconduct which led to the management decision to terminate. In the case at bar, however, as already pointed out, the true proximate cause of the dismissal of Palmos and Sevilla was not any

alleged act or misconduct on the part of the two (2) seamen, but rather the emotional needs of Chief Officer Paredes which Captain Mogul decided to satisfy. The need to accord due process to the dismissed employee is, of course, quite immaterial where, as in the case at bar, the efficient cause of the dismissal was not an act or acts on the part of the dismissed employee.

Even so, it may be pointed out that there was clearly no urgent need to "sign-off" Palmos and Sevilla right then and there at the Port of Santos and that an inquiry into the alleged insubordination of Palmos and Sevilla could have been carried out by the Captain before departure of the vessel from Santos, or after the vessel had resumed its voyage. In point of fact, the two (2) seamen tried to present to Captain Mogul their version of the verbal altercation with Chief Officer Paredes. The Report, referred to earlier, of Captain Mogul to Denholm, however, shows that no substantial inquiry into the incident was carried out by the Captain:

"Later, the ABs wanted to explain their point of view. It seems the ABs and the Chief Officer couldn't see eye to eye as they felt the Chief Officer was too matter of fact (sic) and at times used abusive language which I came to know later through the crew members.

As I did not want to take sides I tried to be neutral and explained to the ABs, that since ship work is a team work we should all work only for the safety of our vessel and in the best interest of the ship.

To avoid delay of sailing since the vessel was ready to sail, my firm decision was to sign off the ABs and sail with the Chief Officer -- I needed to sail with the Chief Officer because of minimum safe manning for Liberian ship regulation -- but the ABs refused to sign off and instigated the other crew members to sign off too. x x x"[14] (Underscoring supplied)

Thus, upon the one hand, Captain Mogul apparently did not consider himself as conducting an inquiry or investigation before administering disciplinary sanction to erring seamen. He did not find the seamen guilty of any misconduct, but simply enjoined them that "since ship work is x x x team work, we should all work only for the safety of our vessel and in the best interest of the ship." Upon the other hand, he had clearly already made his "firm decision" to "sign-off" the ABs and to sail with the Chief Officer. Captain Mogul did not make any finding of his own in respect of the supposed insubordination of private respondents; in his Report to Denholm, he merely conveyed the information given to him by Chief Officer Paredes (that the two [2] AB had been "absolutely drunk" and had assaulted him with a knife) which information was, of course, hearsay and self-serving on the part of Mr. Paredes.

We agree, therefore, with the basic conclusion reached by the POEA and the NLRC, that is, that petitioners had not succeeded in showing that the dismissal of Palmos and Sevilla had been due to a just or authorized cause. We must conclude, accordingly, that petitioners have failed to show any grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC, when that agency affirmed in toto the decision of the POEA.

ACCORDINGLY, for all the foregoing, the Petition for Certiorari is hereby DISMISSED for lack of merit. The temporary restraining order previously issued by this Court is hereby LIFTED. Costs against petitioners.

SO ORDERED.

Bidin, Romero, Melo, and Vitug, JJ., concur.

[1] Petition, p. 4; Philippine Overseas Employment Administration Decision dated 24 July 1990 (hereinafter referred to as the "POEA Decision"), p. 2; Rollo, pp. 5 and 57.

[2] Petitioners' Memorandum, p. 2; Rollo, p. 280.

[3] Private respondents' Comment, p. 2; Rollo, p. 149.

[4] POEA Decision, p. 3; Rollo, p. 58.

[5] *Legaspi Oil Co. v. Geronimo*, 76 SCRA 174 (1977); *Bache & Co. v. Ruiz*, 37 SCRA 823 (1971); *Fortich-Celdran v. Celdran*, 19 SCRA 502 (1976); *Pajo v. Ago*, 108 SCRA 905 (1960).

[6] *Eastern Shipping Lines, Inc. v. Philippine Overseas Employment Administration*, 170 SCRA 54 (1989); *Eastern Shipping Lines, Inc. v. Philippine Overseas Employment Administration*, 166 SCRA 553 (1988).

[7] Statement of the thirteen (13) crew members, dated 10 July 1989, Annex "E" to the Petition, Rollo, p. 95; Joint Affidavit, dated 25 September 1989, of Ricardo A. Ramiscal and Sylvestre T. Villaflores, Bosun and Second Engineer, respectively, of the M.V. *African Camellia*, Record, p. 194.

[8] Report of H.R. Mogul, dated 9 July 1989, Record, p. 212; Annex "D" to the Petition, Rollo, p. 90.

[9] Annex "D" to the Petition, Rollo, p. 90.

[10] Report of H.R. Mogul, dated 9 July 1989, Record, p. 212.

[11] The vessel's crew as a whole had resented the attitude previously exhibited by Mr. Paredes vis-a-vis themselves and his refusal to sympathize with the crew in respect of their grievance that they were being made to render excessive overtime work on a regular basis (Telex-Reports, dated 4 July 1989 and 19 July 1989, and Letter of Resignation of the twelve [12] crew members of the M.V. *African Camellia*, Annexes "F" and "G" to the Petition, Rollo, pp. 97-99).

[12] Report of H.R. Mogul, dated 9 July 1989, Record, p. 211; Telex-Report, dated 19 July 1989, Annex "G" to the Petition, Rollo, p. 98.

[13] Joint Affidavit, dated 25 September 1989, of Ricardo A. Ramiscal and Sylvestre T. Villaflores, Bosun and Second Engineer, respectively, of the M.V. *African Camellia*, Record, p. 194.

[14] Record, p. 212.

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