

WALLEM PHILIPPINES SHIPPING, INC., PETITIONER, VS. THE HON. MINISTER OF LABOR, IN HIS CAPACITY AS CHAIRMAN OF THE NATIONAL SEAMEN BOARD PROPER, JAIME CAUNCA, ANTONIO CABRERA, EF...

G.R. Nos. 50734-37. February 20, 1981

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Petition for certiorari with preliminary injunction with prayer that the Orders dated December 19, 1977 and April 3, 1979 of the National Seamen Board (NSB) be declared null and void.

Private respondents were hired by petitioner sometime in May 1975 to work as seamen for a period of ten months on board the M/V Woermann Sanaga, a Dutch vessel owned and operated by petitioner's European principals. While their employment contracts were still in force, private respondents were dismissed by their employer, petitioner herein, and were discharged from the ship on charges that they instigated the International Transport Federation (ITF) to demand the application of worldwide ITF seamen's rates to their crew. Private respondents were repatriated to the Philippines on October 27, 1975 and upon their arrival in Manila, they instituted a complaint against petitioner for illegal dismissal and recovery of wages and other benefits corresponding to the five months' unexpired period of their shipboard employment contract.

In support of their complaint, private respondents submitted a Joint Affidavit^[1] stating the circumstances surrounding their employment and subsequent repatriation to the Philippines, material averments of which are herein below reproduced:

"JOINT AFFIDAVIT

....

"5. That aside from our basic monthly salary, we are entitled to two (2) months vacation leave, daily subsistence allowance of US\$ 8.14 each, daily food allowance of US\$ 2.50, as well as overtime pay which we failed to receive because our Shipboard Employment Contract was illegally terminated;

6. That while we were in Rotterdam, on or about July 9, 1975, representative of the ITF boarded our vessel and talked with the Ship's Captain;

7. That the following day, the representatives of the ITF returned and was followed by Mr. M.S.K. Ogle who is the Company's Administrative Manager, again went to see the Captain;

8. That at around 7:00 in the evening all the crew members were called in the Mess Hall, where the ITF representatives informed us that they have just entered into a "Special Agreement" with the Wallem Shipping Management, Ltd., represented by Mr. M.S.K. Ogle, Administrative Manager, wherein new salary rates was agreed upon and that we were going to be paid our salary differentials in view of the new rates;

9. That in the same meeting, Mr, M.S.K. OGLE also spoke where he told that a Special Agreement has been signed and that we will be receiving new pay rate and enjoined us to work hard and be good boys;

10. That the same evening we received our salary differentials based on the new rates negotiated for us by the ITF;

11. That while we were in the Port Dubai, Saudi Arabia, we were not receiving our pay, since the Ship's Captain refused to implement the worldwide rates and insisted on paying us the Far East Rate;

12. That the Port Dubai is one that is within the Worldwide rates sphere;

13. That on October 22, 1975, Mr. Greg Nacional, Operation Manager of respondent corporation, arrived in Dubai, Saudi Arabia and boarded our ship;

14. That on October 23, 1975, Mr. Nacional called all the crew members, including us to a meeting at the Mess Hall and there he explained that the Company cannot accept the worldwide rate. The Special Agreement signed by Mr. Ogle in behalf of the Company is nothing but a scrap of paper. Mr. Jaime Caunca then asked Mr. Nacional, in view of what he was saying, whether the Company will honor the Special Agreement and Mr. Nacional answered "Yes". That we must accept the Far East Rates which was put to a vote. Only two voted for accepting the Far East Rates;

15. That immediately thereafter Mr. Nacional left us;

16. That same evening, Mr. Nacional returned and threatened that he has received a cable from the Home Office that if we do not accept the Far East Rate, our services will be terminated and there will be a change in crew;

17. That when Mr. Nacional left, we talked amongst ourselves and decided to accept the Far East Rates;

18. That in the meeting that evening because of the threat we informed Mr. Nacional we were accepting the Far East Rate and he made us sign a document to that effect;

19. That we the complainants with the exception of Leopoldo Mamaril and Efren Garcia, were not able to sign as we were at the time on work schedules, and Mr. Nacional did not bother anymore if we signed or not;

20. That after the meeting Mr. Nacional cabled the Home Office, informing them that we the complainants with the exception of Messrs. Mamaril and Garcia were not accepting the Far East Rates;

21. That in the meeting of October 25, 1975, Mr. Nacional signed a document whereby he promised to give no priority of first preference in "boarding a vessel and that we are not blacklisted";

22. That in spite of our having accepted the Far East Rate, our services were terminated and advised us that there was a change in crew;

23. That on October 27, 1975, which was our scheduled flight home, nobody attended us, not even our clearance for our group travel and consequently we were not able to board the plane, forcing us to sleep on the floor at the airport in the evening of October 27, 1975;

24. That the following day we went back to the hotel in Dubai which was a two hours ride from the airport, where we were to await another flight for home via Air France;

25. That we were finally able to leave for home on November 2, 1975 arriving here on the 3rd of November;

26. That we paid for all excess baggages;

27. That Mr. Nacional left us stranded, since he went ahead on October 27, 1975;

28. That immediately upon arriving in Manila, we went to respondent Company and saw Mr. Nacional, who informed us that we were not blacklisted, however, Mr. Mckenzie, Administrative Manager did inform us that we were all blacklisted;

29. That we were asking from the respondent Company our leave pay, which they refused to give, if we did not agree to a US\$100.00 deduction;

30. That with the exception of Messrs. Jaime Caunca, Amado Manansala and Antonio Cabrera, we received our leave pay with the US\$100.00 deduction;

31. That in view of the written promise of Mr. Nacional in Dubai last October 23, 1975 to give us priority and preference in boarding a vessel and that we were not blacklisted we have on several occasions approached him regarding his promise, which up to the present he has refused to honor.

...."

Answering the complaint, petitioner countered that when the vessel was in London, private respondents together with the other crew insisted on worldwide ITF rate as per special agreement; that said employees threatened the ship authorities that unless they agreed to the increased wages the vessel would not be able to leave port or would have been picketed and/or boycotted and declared a hot ship by the ITF; that the Master of the ship was left with no alternative but to agree; that upon the vessel's arrival at the Asian port of Dubai, on October 22, 1975, a representative of petitioner went on board the ship and requested the crew together with private respondents to desist from insisting worldwide ITF rate and instead accept the Far East rate; that said respondents refused to accept Far East ITF rates while the rest of the Filipino crew members accepted the Far East rates; that private respondents were replaced at the expense of petitioner and it was prayed that respondents be required to comply with their obligations under the contract by requiring them to pay their repatriation expenses and all other incidental expenses incurred by the master and crew of the vessel.

After the hearing on the merits, the Hearing Officer of the Secretariat rendered a decision[2] on March 14, 1977 finding private respondents to have violated their contract of employment when they accepted salary rates different from their contract verified and approved by the National Seamen Board. As to the issue raised by private respondents that the original contract has been novated, it was held that:

"....

For novation to be a valid defense, it is a legal requirement that all the parties to the contract should give their consent. In the instant case only the complainants and respondents gave their consent. The National Seamen Board had no participation in the alleged novation of the previously approved employment contract. It would have been different if the consent of the National Seamen Board was first secured before the alleged novation of the approved contract was undertaken, hence, the defense of novation is not in order.

..."

The Hearing Officer likewise ruled that petitioner violated the contract when its representative signed the Special Agreement and he signed the same at his own risk and must bear the consequence of such act, and since both parties are in *pari delicto*, the complaint and counterclaim were dismissed for lack of merit but petitioner was ordered to pay respondents Caunca and Cabrera their respective leave pay for the period that they have served M/V Woermann Sanaga plus attorney's fees.

Private respondents filed a motion for reconsideration with the Board which modified the decision of the

Secretariat in an Order[3] of December 19, 1977 and ruled that petitioner is liable for breach of contract when it ordered the dismissal of private respondents and their subsequent repatriation before the expiration of their respective employment contracts. The Chairman of the Board stressed that "where the contract is for a definite period, the captain and the crew members may not be discharged until after the contract shall have been performed" citing the case of *Madrigal Shipping Co., Inc. vs. Ogilvie, et al.* (104 Phil. 748). He directed petitioner to pay private respondents the unexpired portion of their contracts and their leave pay, less the amount they received as differentials by virtue of the special agreements entered in Rotterdam, and ten percent of the total amounts recovered as attorney's fees.

Petitioner sought clarification and reconsideration of the said order and asked for a confrontation with private respondents to determine the specific adjudications to be made. A series of conference were conducted by the Board. It was claimed by petitioner that it did not have in its possession the records necessary to determine the exact amount of the judgment since the records were in the sole custody of the captain of the ship and demanded that private respondents produce the needed records. On this score, counsel for respondents manifested that to require the master of the ship to produce the records would result to undue delay in the disposition of the case to the detriment of his clients, some of whom are still unemployed.

Under the circumstances, the Board was left with no alternative native but to issue an Order dated April 3, 1979[4] fixing the amount due private respondents at their three (3) months' salary equivalent without qualifications or deduction. Hence, the instant petition before Us alleging grave abuse of discretion on the part of the respondent official as Chairman of the Board, in issuing said order which allegedly nullified the findings of the Secretariat and premised adjudication on imaginary conditions which were never taken up with full evidence in the course of hearing on the merits.

The whole controversy is centered around the liability of petitioner when it ordered the dismissal of herein private respondents before the expiration of their respective employment contracts.

In its Order of December 19, 1977[5] the Board, thru its Chairman, Minister Blas F. Ople, held that there is no showing that the seamen conspired with the ITF in coercing the ship authorities to grant salary increases, and the Special Agreement was signed only by petitioner and the ITF without any participation from the respondents who, accordingly, may not be charged as they were, by the Secretariat, with violation of their employment contract. The Board likewise stressed that the crew members may not be discharged until after the expiration of the contract which is for a definite period, and where the crew members are discharged without just cause before the contract shall have been performed, they shall be entitled to collect from the owner or agent of the vessel their unpaid salaries for the period they were engaged to render the services, applying the case of *Madrigal Shipping Co., Inc. vs. Jesus Ogilvie, et al.*[6]

The findings and conclusion of the Board should be sustained. As already intimated above, there is no logic in the statement made by the Secretariat's Hearing Officer that the private respondents are liable for breach of their employment contracts for accepting salaries higher than their contracted rates. Said respondents are not signatories to the Special Agreement, nor was there any showing that they instigated the execution thereof. Respondents should not be blamed for accepting higher salaries since it is but human for them to grab every opportunity which would improve their working conditions and earning capacity. It is a basic right of all workingmen to seek greater benefits not only for themselves but for their families as well, and this can be achieved through collective bargaining or with the assistance of trade unions. The Constitution itself guarantees the promotion of social welfare and protection to labor. It is therefore the Hearing Officer that gravely erred in disallowing the payment of the unexpired portion of the seamen's respective contracts of employment.

Petitioner claims that the dismissal of private respondents were justified because the latter threatened the ship authorities in acceding to their demands, and this constitutes serious misconduct as contemplated by the Labor Code. This contention is not well-taken. The records fail to establish clearly the commission of any threat. But even if there had been such a threat, respondents' behavior should not be censured because it is but natural for them to employ some means of pressing their demands for petitioner, who refused to abide with the terms of the Special Agreement, to honor and respect the same. They were only acting in the exercise of their rights, and to deprive them of their freedom of expression is contrary to law and public policy. There is no serious misconduct to speak of in the case at bar which would justify respondents' dismissal just because of their firmness in their demand for the fulfilment by petitioner of its obligation it entered into without any coercion, specially on the part of private respondents.

On the other hand, it is petitioner who is guilty of breach of contract when they dismissed the respondents without just cause and prior to the expiration of the employment contracts. As the records clearly show, petitioner voluntarily entered into the Special Agreement with ITF and by virtue thereof the crew men were actually given their salary differentials in view of the new rates. It cannot be said that it was because of respondent's fault that petitioner made a sudden turn-about and refused to honor the special agreement.

In brief, We declare petitioner guilty of breach of contract and should therefore be made to comply with the directives contained in the disputed Orders of December 19, 1977 and April 3, 1979.

WHEREFORE, premises considered, the decision dated March 14, 1977 of the Hearing Officer is SET ASIDE and the Orders dated December 19, 1977 and April 3, 1979 of the National Seamen Board are AFFIRMED in toto. This decision is immediately executory. Without costs.

SO ORDERED.

Makasiar, Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

Teehankee, J., concurs in the result.

[*] Mr. Justice De Castro was designated to sit with the First Division under Special Order No. 225.

[1] pp. 17-20, Rollo.

[2] pp. 16-26, Rollo.

[3] pp. 28-32, Rollo.

[4] pp. 33-40, Rollo.

[5] Order of December 19, 1977, pp. 29-32, Rollo.

[6] 104 Phil. 748.

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