

**ABACAST SHIPPING AND MANAGEMENT AGENCY, INC., PETITIONER,
VS. NATIONAL LABOR RELATIONS COMMISSION, PHILIPPINE
OVERSEAS EMPLOYMENT ADMINISTRATION (POEA), NELSON T.
MODELO & ROGEL...**

G.R. Nos. 81124-26. June 23, 1988

Ponente: CRUZ, J.

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CRUZ, J.:

The petitioner is challenging the decision of the National Labor Relations Commission sustaining the Philippine Overseas Employment Administration for holding that the private respondents have been illegally dismissed and are, therefore, entitled to damages.[1] The petitioner claims that in not considering the evidence submitted by it to justify the private respondents' dismissal, the public respondents committed grave abuse of discretion amounting to lack or excess of jurisdiction.

Private respondents Nelson T. Modelo and Rogelio M. Rapadas were employed as third engineer and chief cook, respectively, on July 8, 1984; by the Dowa Line Co., Ltd. of New York, through herein petitioner, a licensed manning agency.[2] On March 14, 1985, before the expiration of their one-year contract, they were summarily dismissed and repatriated to the Philippines.[3]

It appears that they made representations with the petitioner for the payment of their earned salaries and other benefits due them but these claims were rejected by the petitioner.[4] Instead, the petitioner filed a complaint with the POEA for disciplinary action against them on March 1, 1986, on the grounds of drunkenness and creating trouble on board and outside the vessel where they were employed.[5]

The private respondents themselves filed their own complaint for collection of their claims,[6] which complaint was consolidated with the first case. Deciding the two cases together on September 18, 1986, the POEA ruled in favor of the private respondents on the ground of the insufficiency of the evidence to support the petitioner's allegation that they had been validly dismissed.[7] This decision was appealed to the NLRC, which affirmed it in toto.[8]

In questioning the decision of the public respondents, the petitioner contends that they should not have disregarded the shipmaster's report submitted by it in evidence[9] to show that the private respondents had committed the offense imputed to them. This report detailed the various acts of intoxication and trouble-making committed by the private respondents that rendered them unfit for continued service in the vessel. The petitioner also argues that drunkenness and creating trouble on board and outside the vessel are included in the standard table of offenses of the POEA which are considered valid grounds for dismissal. Moreover, the shipmaster's report was a collation of excerpts from the log book which, as held in *Haverton Shipping, Ltd. v. NLRC*[10] should have been accorded the highest respect in ascertaining whether or not the action taken against the employees was valid. This report, according to the petitioner, was strong evidence of the troublesome nature of the two private respondents that justified the termination of their services even before the expiration of their

contracts.

For their part, the private respondents argue that the petitioner failed to substantiate their allegation that there was a valid ground to justify their removal. The shipmaster's report, they submit, is clearly biased, self-serving and, therefore, unreliable.

We agree.

The log book is a respectable record that can be relied upon to authenticate the charges filed and the procedure taken against the employees prior to their dismissal. Curiously, however, no entry from such log book was presented at all in this case. What was offered instead was the shipmaster's report, which was later claimed to be a collation of excerpts from such book.

It would have been a simple matter, considering the ease of reproducing the same, to make photocopies of the pertinent pages of the log book to substantiate the petitioner's contention. Why this was not done is something that reasonably arouses the curiosity of this Court and suggests that there probably were no entries in the log book at all that could have proved the alleged offenses of the private respondents.

At that, even if the shipmaster's report were to be admitted and considered, a close reading thereof will show that the private respondents have not committed any act that would justify the termination of their services before the expiration of the contracts. All the shipmaster says in his report is that he considered Nelson Modelo to be hot-tempered and he was apprehensive the seaman might get into trouble.[11] Such apprehension is, of course, not a ground for dismissal. Moreover, it contradicts his own statement that as shipmaster he could easily resolve differences between crew members on board the vessel.[12] As for Rogelio Rapadas, the report merely says that he often drank liquor with Modelo and when intoxicated the two would go ashore together; but surely that is not an offense either.[13] At any rate, there is no statement in the report that the two of them ever got into any serious trouble at any time in the course of their aborted employment.

The Haverton case is not applicable here because the evidence submitted and admitted there consisted of entries from the log book itself. In the present case, the log book was not invoked and all that was presented was a supposed collation of entries from the said book.

After considering the issues and arguments submitted by the parties, the Court feels that there is no justification to disturb the findings of the public respondents. As it has not been sufficiently shown by the petitioner through its evidence that the private respondents have been validly dismissed, the Court will affirm the findings of the public respondents, including the award of damages.

WHEREFORE, the petition is DISMISSED with costs against the petitioner. Our temporary restraining order dated February 17, 1988, is hereby lifted.

SO ORDERED.

Narvasa (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, pp. 15-23 [Nelson T. Modelo, P-7,292.00 representing unpaid allotment, U.S.\$2,513.90 for 3 Vz months wages, leave pay, and unpaid wages from March 1-14, P729.20 and U.S.\$251.30 for attorney's fees; Rogelio M. Rapadas, P3.972.00 representing unpaid allotment for February 1985, U.S.\$1,426.13 for unpaid salaries for March 1985, wages for 3 Vi months and leave pay for 20 days for a total of PI 1,993.20 and U.S.\$4,191.33 or the equivalent in Philippine Currency of the dollar amounts at the time of payment to be tendered thru the office (POEA), ten (10) days from receipt of this decision].

[2] Ibid., p. 16.

[3] id., pp. 53-54.

[4] Id., p. 54.

[5] Id.

[6] Id.

[7] Id., pp. 15-18.

[8] Id., pp. 20-23.

[9] Id., pp. 10-11.

[10] 135 SCRA 685.

[11] Annex "C" of Petition (Rollo, pp. 24-25); Rollo, pp. 58-59.

[12] Rollo, p. 59.

[13] Ibid.

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