

REYES & LIM COMPANY, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION AND RESTITUTO PABALINAS, JR., RESPONDENTS.

G.R. Nos. 87012-13. September 25, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition for certiorari is directed against the decision (pp. 41-47, Rollo) dated November 11, 1988 of the National Labor Relations Commission (NLRC) dismissing the appeal of herein petitioner Reyes and Lim Company, Incorporated (R & L Co.) from the decision of the Administrator of the Philippine Overseas Employment Administration (POEA).

Restituto N. Pabalinas, Jr. was employed by Maguindanao Navigation, through its manning agency, herein petitioner, R & L Co., as oiler of the tanker M/S Mindanao River, with a salary of US \$300.00 plus 30% fixed overtime pay. The term of employment was for twelve (12) calendar months effective 13 November 1984 to 13 November 1985. The contract was renewed for another twelve (12) months which was set to expire on November 13, 1986.

On August 4, 1986, Pabalinas was dismissed by the vessel's Chief Engineer.

On August 11, 1986, Pabalinas filed a complaint for illegal dismissal with the POEA, docketed as POEA Case No. (M) 86-09-791, against R & L Co., Maguindanao Navigation, Inc. and Oscar Castañeda, Chief Engineer of M/S Mindanao River. The complainant alleged that his dismissal was without just cause and without prior notice and investigation.

On the other hand, R & L Co. filed a report dated August 28, 1986, with the POEA that Pabalinas was disembarked from the vessel M/V Mindanao River 2 for disciplinary reasons. The report alleged that Pabalinas was disembarked because he allegedly committed the following offenses:

- "1. Leaving the vessel without permission from responsible officers during working hours.
- "2. Repeated failure to report and perform his assigned duties due to intoxication.
- "3. Repeated failure to observe regulations on expiration of shore liberty.
- "4. Causing through neglect, damage to the gear casing of the vessel's gear casing of butterfly valve for ballast tank No. 5." (Rollo, p. 28)

Also, on September 1, 1986, R & L Co. filed a complaint (Rollo, pp. 30-31), with the POEA against Pabalinas for absence without leave, drunkenness, violation of company policies and negligence causing damage to property.

The two (2) complaints were consolidated with the complaint of R & L Co. considered as its answer to the

complaint of Pabalinas.

On December 15, 1987, the POEA Administrator rendered a decision declaring that the dismissal of Pabalinas was without just cause and was effected without due process. It ordered the payment to Pabalinas of his salary for the unexpired portion of his contract and attorney's fees. The dispositive portion of the decision of the POEA Administrator states:

"WHEREFORE, judgment is hereby rendered ordering as follows:

"1. Dismissal of the complaint filed against Restituto N. Pabalinas, Jr. for lack of merit; and

"2. Payment by Reyes and Lim Co., Inc. and Maguindanao Navigation, Inc. jointly and severally unto said Pabalinas on the following:

US \$ 1,248.00 — wages from August 5 to November 13, 1986

195.00 — withheld salary for July 16 to August 2, 1986

US \$ 1,443.00 — TOTAL

"3. US \$ 144.30 as and for attorney's fees or the equivalent of the above in Philippine currency at the time of payment to be tendered thru this office ten (10) days from receipt hereof." (Rollo, p. 41)

L & R Co. appealed to the NLRC which rendered a decision (Rollo, pp. 41-47) dated November 11, 1988 affirming the POEA Administrator.

On February 3, 1989, L & R Co. filed this petition for certiorari assailing the decision of the NLRC as having been rendered with grave abuse of discretion. The NLRC allegedly ignored the overwhelming evidence of just causes for dismissing the private respondent, namely: violation of company policies, negligence, absence without official leave and habitual drunkenness.

In termination cases, the burden of proving the just cause of dismissing an employee rests on the employer, and his failure to do so would result in a finding that the dismissal is unjustified (*Starlite Plastic Corp. v. NLRC*, G.R. No. 78491, March 16, 1989, 171 SCRA 315).

Petitioner insists that the documentary evidence it presented supports its claim that the dismissal of Pabalinas was for just causes, emphasizing on the probative value of the entries in the vessel's logbook, to wit:

- Entry on page 320 of the vessel's logbook for Voyage No. YS-15 on 06 October 1985 from Port Hedland, W.A. to Villanueva, R.P. signed by Chief Engineer Oscar Castaneda, private respondent's supervisor, to wit —

"NOTE: OILER R. PABALINAS WAS NOT ABLE TO REPORT ON DUTY FROM 1600 HRS TO 2000 HRS DUE TO DRUNKENNESS." (Annex 'F') (Rollo, p. 23)

- Entry on vessel's logbook of 05 April 1986, signed by Engr. Castaneda while vessel lay at Port Walcott, W.A., to wit —

"NOTE: OILER R. PABALINAS WAS NOT ABLE TO STAND HIS WATCH 1600 HRS TO 2000 HRS DUE TO DRUNKENNESS." (Annex 'E') (Rollo, p. 23)

- Entry on page 241 of the vessel's logbook for 17 July 1986 while vessel lay at Villanueva, Philippines, signed by Chief Engr. Oscar Castaneda, to wit —

"OILER R. PABALINAS TAKES HIS LIBERTY (SHORE LEAVE) AT 0800 HRS ON JULY 16, 1986 AND COMES BACK ON BOARD TO 0800 HRS OF JULY 17, 1986. CONSEQUENTLY, HE FAILED TO STAND WATCH." (Annex 'G') (Rollo, p. 25)

Basic is the rule that judicial review by this Court in labor cases does not go insofar as to evaluate the sufficiency of the evidence upon which the labor officials or office based his or its determination, but are limited to issues of jurisdiction or grave abuse of discretion (*A. M. Oreta & Co., Inc., v. NLRC, et al.*, G.R. No. 74004, Aug. 10, 1989, *Special Events & Central Shipping Office Workers Union v. San Miguel Corp., et al.*, G.R. Nos. 51002-06, May 30, 1983, 122 SCRA 557, *PLDT v. Montemayor*, G.R. No. 88626, Oct. 12, 1990, 190 SCRA 427). Factual findings of the NLRC are accorded not only respect but also finality if supported by substantial evidence. The record reveals that indeed, petitioner's claim of just causes for the dismissal of private respondent was not adequately supported by evidence.

Respondent NLRC, commenting on the dismissal of private respondent, stated:

"Respondents (petitioner) insist that there were valid grounds to warrant the dismissal of complainant. They enumerate said grounds as appearing in the ship's log book. It may be so. But what surfaces very clearly is that 'there is no clear and concrete evidence to show that subject seaman was ever warned at one time or another of his alleged infractions of company rules and regulations, nor his attention called to the charges imputed against him x x x' (POEA decision, supra). Indeed, while the Second Engineer recommended disciplinary action against complainant on July 17, 1986, nothing on the records reveal that such recommendation was ever looked into by respondents.

"On the contrary, as found by the POEA Administrator, 'the favorable entries made by the master on p. 19 of Pabalinas' SCDB, as regards his conduct and ability, bring us to the conclusion that he did not commit any of the accusations labelled (sic) against him.'" (POEA decision, supra) (Rollo, p. 46)

It is true that as held in the case of *Haverton Shipping, Ltd. v. NLRC*, G.R. No. 65442, April 15, 1985, 135 SCRA 685, entries made in the vessel's logbook, when made by a person in the performance of a duty required by law are prima facie evidence of the facts stated therein. The law requires that the entries be made in the regular performance of duty. It should be noted however, that what was presented in this case was not the vessel's logbook which is kept by the master or captain of the vessel who has supervision and control of the members of his crew. The logbook presented was that kept by the engineer of the vessel, or what is referred to in Article 612 (3) of the Code of Commerce as the "steam of engine book kept by the engineer," which in the ordinary course of things contains entries pertaining to the condition of the vessel's engine. If, as claimed by petitioner, it is true that the private respondent committed the charges against him, this fact should have been made known to the captain and entered in his logbook, in which case, such entry would have greater probative value.

Assuming that such entries are indeed prima facie evidence of the facts stated therein, the same was rebutted by the entry on page 9 of Pabalinas' SCBD (Seaman's Book) dated August 4, 1986 and signed by the vessel's captain, Romeo Pareñas, showing that his conduct on board the vessel was 'V.G' (Very Good) and his aptitude was 'Hard Working and Cooperative.' The duty of weighing the respective values of the evidence presented by both parties

reside in the POEA Administrator at the first instance and the respondent NLRC, on appeal. In the absence of any clear showing of grave abuse of discretion or lack of jurisdiction, We affirm the findings of the NLRC.

This Court notes also that while the petitioners presented several communications between its officials and the officials of the vessel regarding the wrongdoings of Pabalinas, they failed to inform him, even in a single instance, of the charges against him and accordingly, failed to give him an opportunity to present his side. As observed by the Administrator of the POEA;

"There is no clear and concrete evidence to show that subject seaman was ever warned at one time or another of his alleged infractions of company rules and regulations, nor his attention called to the charges imputed against him after having committed same or any one of them. Not one of the voluminous documents presented by Reyes & Lim Co., Inc. shows that subject crew was ever confronted nor shown any of them. In cases of this nature, the erring employee is normally warned thru a letter or memorandum receipt of which should be recorded. Any investigations require the presence of the persons investigated. In the case at bar, the investigation report fails to show that said crew was present when the same was made, nor does said report show his signature if only to prove he was aware of said report. The foregoing, as well as the favorable entries made by the master on page 19 of Pabalinas' SCDB, as regards his conduct and ability, bring us to the conclusion that he did not commit any of the accusations labelled (sic) against him. It appearing that his alleged violations were not made known to him, nor was he notified thereof, renders his dismissal unlawful for want of due process. Hence, the case for disciplinary action filed against him should be dismissed for lack of merit." (Rollo, pp. 44-45)

In the case of *Tingson, Jr. v. NLRC*, G.R. No. 84702, May 18, 1990, 185 SCRA 498, 501-502, We held:

"X X X. We have held that prior to dismissal, the employer is obliged to observe the procedure laid down by the Labor Code. Thus:

"X X X SUBJECT TO THE CONSTITUTIONAL RIGHT OF WORKERS TO SECURITY OF TENURE AND THEIR RIGHT TO BE PROTECTED AGAINST DISMISSAL EXCEPT FOR A JUST OR AUTHORIZED CAUSE AND WITHOUT PREJUDICE TO THE REQUIREMENT OF NOTICE UNDER ARTICLE 284 OF THIS CODE, THE CLEARANCE TO TERMINATE EMPLOYMENT SHALL NO LONGER BE NECESSARY."

"HOWEVER, THE EMPLOYER SHALL FURNISH THE WORKER WHOSE EMPLOYMENT IS SOUGHT TO BE TERMINATED A WRITTEN NOTICE CONTAINING A STATEMENT OF THE CAUSES FOR TERMINATION AND SHALL AFFORD THE LATTER AMPLE OPPORTUNITY TO BE HEARD AND TO DEFEND HIMSELF WITH THE ASSISTANCE OF HIS REPRESENTATIVE IF HE SO DESIRES IN ACCORDANCE WITH COMPANY RULES AND REGULATIONS PROMULGATED PURSUANT TO GUIDELINES SET BY THE MINISTRY OF LABOR AND EMPLOYMENT ANY DECISION TAKEN BY THE EMPLOYER SHALL BE WITHOUT PREJUDICE TO THE RIGHT OF THE WORKER TO CONTEST THE VALIDITY OR LEGALITY OF HIS DISMISSAL BY FILING A COMPLAINT X X X. "

"X X X X X X X X X X"

"That there was evidence to justify termination is of no moment. For one thing, the Solicitor General himself says that insofar as the petitioners Oblefias and Molino are concerned, the proofs submitted against them were hearsay in character. For another, even if this were the case — that there was sufficient evidence against the petitioners — it does not justify the private respondents from unceremoniously dumping them, the petitioners, in strange shores without hearing them. x x x."

The cases of *Seahorse Maritime Corporation v. NLRC*, G.R. No. 84712, May 12, 1989, 173 SCRA 390 and *Wenphil Corp. v. NLRC*, G.R. No. 80587, February 8, 1989, relied upon by petitioner, cannot be applied to the

instant case. In the said cases, the presence of a just cause for the dismissal of the employee was indubitable. They were no doubt possessed of behavior inimical to a healthy working relationship with their superiors and colleagues. In *Seahorse*, the charges against Singgian, the employee, were not denied by him. Moreover, his companions signed an affidavit attesting to the truth of the charges hurled against him by the master of the ship. The entries in the vessel's logbook showed that he was given to drunkenness and violent temper. He was also found guilty of insubordination when confronted by the ship's master. In the *Wenphil* case, the employee was found to be of violent temper, a troublemaker and disrespectful towards his superiors who tried to pacify him during the incident which caused his dismissal. In this case, the remarks of the ship's captain noted on Pabalinas' Seaman's book that his conduct was very good and his aptitude hardworking and cooperative casts doubts on his alleged habitual drunkenness, negligence, etc.

ACCORDINGLY, the petition is DISMISSED. The decision of respondent NLRC dated November 11, 1988 is AFFIRMED.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Grino-Aquino, JJ., concur.

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