

## THIRD DIVISION

[G.R. No. 111914. September 24, 1996]

**JORGE M. RANISES, *petitioner*, vs. NATIONAL LABOR RELATIONS COMMISSION, GRACE MARINE & SHIPPING CORPORATION, ET. AL., *respondents*.**

## D E C I S I O N

## FRANCISCO, J.:

Before us is a petition for *certiorari* under Rule 65 of the Rules of Court seeking to set aside the decision rendered by public respondent National Labor Relations Commission (NLRC) in NLRC NCR Case No. 002020-91 dated September 14, 1992<sup>[1]</sup> and the resolution dated August 20, 1993.<sup>[2]</sup> The assailed decision modified the judgment of the Philippine Overseas Employment Administration (POEA) in POEA Case No. (M) 90-09-1037 and declared that although petitioners dismissal was carried out without due process, the same was however valid and based on a just cause. The resolution in turn denied petitioners motion for reconsideration.

As succinctly summarized by petitioner, the antecedents that led to this suit are as follows:

The Petitioner is a seaman and a holder of a Masters License and SCDB No. 130334. On January 18, 1990, he was hired by Orophil Shipping International Co. Inc. as Chief Mate to board a vessel M/V Southern Laurel, an ocean going vessel owned and operated by its foreign principal Sinkai Shipping Co. Ltd. Sometime on May, 1990, Sinkai Shipping Co. Ltd. changed its manning agent, Orophil Shipping International Co. Inc., and appointed Grace Marine and Shipping Corp. as its new manning agent, who has thereby responsibility for the above mentioned vessel.

On January 25, 1990 the Petitioner departed the Philippines to join the vessel based on his POEA approved employment contract for a twelve (12) month period and with a stipulated wage of US\$1,571.00 per month and 3 days leave pay per month.

Contrary to the agreed wage of US\$1,571.00 per month as per POEA Contract, Petitioner since the time of his engagement on board the vessel has been receiving only the sum of US\$1,387.00 PER MONTH as reflected in his pay slips, which prompted him to make enquiries (sic) and complaints on the under payment (sic) and/or unauthorized deductions by the private respondents. It appears further that prior to and at the time of his engagement, the vessel was under Collective Bargaining Agreement (ITF/JSU CBA) stipulating for US\$1,571.00 per month for the position of Chief Officer, which is the same position that Petitioner occupies in the vessel.

On September 6, 1990, the Petitioner was repatriated to Manila, and feeling aggrieved, he brought lodged (sic) a Complaint at the POEA against the Private Respondents for illegal dismissal, salary differential, non-payment of overtime pay and leave pay.<sup>[3]</sup>

Private respondents denied any liability to petitioner and alleged that although the latters original employment contract provided for a basic monthly salary of US\$1,571 for twelve (12)

months, the same was subsequently revised upon the signing of a Special Agreement on February 26, 1990 between the International Transport Workers Federation (ITF)/and Japan Seamens Union (JSU)/ Associated Marine Officers and Seamens Union of the Philippines (AMOSUP), of which petitioner is a member, and private respondent Sinkai Shipping Co. Ltd. and Orophil Shipping International Co., Inc. The Special Agreement amended their existing Collective Bargaining Agreement and reduced petitioners salary to US\$1,387.00 a month for a period of ten (10) months. It was expressly agreed upon that the Special Agreement shall be retroactive from January 11, 1990, thereby, including petitioner within its coverage. Petitioner refused to sign the new contract and instead requested that he be repatriated as he intended to apply for a higher paying contract. Moreover, private respondents alleged that petitioner failed to exhaust administrative remedies by not ventilating his complaint in accordance with the grievance procedures provided in the POEA approved ITF/JSU/AMOSUP CBA.

On July 2, 1991, judgment was rendered by the POEA in favor of petitioner finding private respondents guilty of illegal dismissal as petitioners repatriation was an offshoot of his demand that he be paid the salary provided in his original contract, and ordered as follows:

WHEREFORE, premises considered, judgment is hereby rendered by ordering respondents to pay complainant, jointly and severally the following:

1. US\$7,226.48 or its peso equivalent at the time of payment, representing the money equivalent of the unexpired portion of the contract;
2. US\$957.63 or its peso equivalent at the time of payment representing salary differentials;
3. Five percent (5%) of the total amount as attorneys fee.

SO ORDERED. [4]

Thereafter, private respondents filed an appeal with the NLRC, which in turn arrived at a different conclusion, modifying the ruling of the POEA, and rendered the assailed decision on September 14, 1992, the dispositive portion of which reads:

WHEREFORE, and in view thereof the appealed decision is hereby SET ASIDE and a new one entered ordering respondent GRACE MARINE to pay complainant the following amounts:

- 1). US\$ 1,375.00 or its peso equivalent as penalty for violation of procedural rules;
- 2). US\$ 957.00 or its peso equivalent representing his leave pay differential which was only computed based on three (3) days leave pay/month.

SO ORDERED. [5]

Although it conceded that petitioners dismissal was effected without due process, respondent NLRC nevertheless upheld petitioners termination from employment and justified the same as a measure of self-protection on private respondent-employers part. Respondent Commission ruled that there was just cause for petitioners dismissal because he committed acts which tended to breed discontent among crew members by advocating and inciting a labor dispute. [6]

Taking exception to the foregoing decision of the NLRC, petitioner filed the instant petition for *certiorari*, assailing the NLRC for having committed grave abuse of discretion in reversing the judgment of the POEA. Petitioner argues that contrary to the conclusion of the NLRC, there was no valid ground to support his dismissal. This fact, coupled with the absence of due process in

carrying out the same, therefore rendered his termination from employment illegal.

As a general rule, the factual findings and conclusions drawn by the NLRC are accorded great weight and respect upon appeal and even finality, as long as it is supported by substantial evidence.<sup>[7]</sup> However, where the findings of POEA and the NLRC are diametrically opposed, it behooves this Court to scrutinize the record of the case and the evidence presented to arrive at the correct conclusion.<sup>[8]</sup>

The two-fold requirements for a valid dismissal are as follows: (1) dismissal must be for a cause provided for in the Labor Code, which is substantive; and (2) the observance of notice and hearing prior to the employees dismissal, which is procedural.<sup>[9]</sup>

In the instant case, there is no dispute that respondent employer failed to comply with the requirements of procedural due process in effecting petitioners dismissal. Both the POEA and the NLRC confirmed this in their respective decisions. The focal point of inquiry therefore is whether or not there was indeed just cause for petitioners dismissal.

It is a basic principle that in the dismissal of employees, the burden of proof rests upon the employer to show that the dismissal is for a just cause and failure to do so would necessarily mean that the dismissal is not justified.<sup>[10]</sup>

In reversing the POEA and upholding petitioners dismissal, respondent NLRC held petitioner liable for breach of trust due to his acts that tended to breed discontent among the crew members of the vessel by advocating and inciting a labor dispute.<sup>[11]</sup>

However, a close scrutiny of the assailed decision revealed that other than this sweeping pronouncement, the finding of breach of trust is bereft of any factual basis. Respondent NLRC failed to even specify the alleged illegal acts committed by petitioner. In fact, respondent NLRC did not even advert to any evidence to support its conclusion that petitioner was indeed guilty of the charges levelled against him.

Apparently, the NLRCs conclusion was premised on the telex sent by Capt. T. Sonoda, Master of the vessel M/V Southern Laurel, recommending petitioners repatriation on account of his alleged unsatisfactory behavior and character, to wit:

TO : SINKAI SHIPPING CO., LTD.

FOR : ATTENTION CAPT. M. WATANABE,  
DIRECTOR

RE : C/M JORGE M. RANISES

I AM VERY MUCH REGRET TO INFORM YOU OF THE CAPTIONED CREWS BEHAVIOR AND ALSO HIS CHARACTER AS FOLLOWS:

HE IS ALWAYS EXPRESSING HIS INTENTION AND DESIRE FOR EARLIER AND/OR SOONEST SIGNING OFF/REPATRIATION TO LOOK FOR HIGHER PAYING MANNING AGENCIES EVEN THOUGH SHOULDERING SUCH EXPENSES FOR HIS OWN ACCOUNTS.

HIS SUCH BEHAVIOR, NOT ONLY LACKING LEADERSHIP AND SEAMANS BASIC MORALE, GIVES VERY BAD INFLUENCE TO THE OTHER FILIPINO CREW MEMBERS AND FURTHERMORE HE IS ATTEMPTING TO INCITE OTHER CREW FOR MAKING SOME TROUBLES AND/OR LABOUR DISPUTE ON BOARD THE VESSEL OVER WHICH HE WOULD LIKE TO TAKE ADVANTAGE.

HIS BEHAVIOR AND CHARACTER BEING TOO DANGEROUS FOR THE VESSEL, I WOULD LIKE TO ADVISE YOU OF HIS SOONEST REPLACEMENT WHICH IS ALSO HIS REAL DESIRE IN ORDER TO ELIMINATE VERY POSSIBLE TROUBLES.

THANKS FOR YOUR SERIOUS ATTENTION AND YOUR SOONEST ACTIONS.

VERY TRULY YOURS,

CAPT. T. SONODA  
MASTER OF THE M/V SOUTHERN  
LAUREL<sup>[12]</sup>          

Unfortunately, the veracity of the allegations contained in the aforecited telex was never proven by respondent employer. Neither was it shown that respondent employer exerted any effort to even verify the truthfulness of Capt. Sonodas report and establish petitioners culpability for his alleged illegal acts. Worse, no other evidence was submitted to corroborate the charges against petitioner.

In contrast, petitioner controverted the charges against him upon denying that he requested for an early repatriation and pointing to the absence of any entry in his Seamans Book with regard to the cause of his discharge. Moreover, petitioners demand that he be paid the salary stipulated in his original contract cannot be construed as baseless and unreasonable considering that the Special Agreement amending the existing CBA which reduced his salary was signed only on February 26, 1990,<sup>[13]</sup>           after he was already deployed in the vessel. Undoubtedly, petitioner had a legitimate concern in questioning the reduction in his salary because this was contrary to his original contract and he was not informed thereof prior to his deployment in the vessel. It was therefore not far-fetched that, as found by the POEA, petitioners persistence in demanding the payment of the salary in his original contract prompted respondent employer to cause his early repatriation and eventual dismissal.<sup>[14]</sup>          

Evidently, in the face of contrary evidence, respondent NLRC committed grave abuse of discretion in opting to rely exclusively on the bare allegations pertaining to petitioners alleged illegal acts as contained in the aforementioned telex, and consequently finding petitioner liable for breach of trust.

While it is true that loss of trust or breach of confidence is a valid ground for dismissing an employee, such loss or breach of trust must have some basis.<sup>[15]</sup>           Unsupported by sufficient proof, loss of confidence is without basis and may not be successfully invoked as a ground for dismissal. Loss of confidence as a ground for dismissal has never been intended to afford an occasion for abuse because of its subjective nature.<sup>[16]</sup>           Thus, there must be an actual breach of duty committed by the employee and the same must be supported by substantial evidence.<sup>[17]</sup>           Consequent therefore to respondent employers failure to discharge the burden of substantiating its charges of breach of trust against petitioner, there is no just cause for the latters dismissal. Hence, his termination from employment is illegal.

With respect however to petitioners claim that he should be paid the salary provided in his original contract in the amount of US\$1,571.00 per month, we agree with respondent NLRC in rejecting the same. As correctly observed by the Office of the Solicitor General and with which we are in complete accord:

It should, however, be noted that NLRC was correct in finding that under the new ITF/JSU/AMOSUP CBA with Sinkai Shipping Co. Ltd., as approved by POEA, which came into effect on January 11, 1990,

petitioners salary should be reduced to US\$1,387.00, and his period of employment to 10 months, in accordance with Article XXXV, of said new CBA -

Article XXXV

CONFLICT WITH CONTRACT  
PROVISIONS

In case of conflict between the provisions of the individual employment contract of the seaman and that of the Collective Bargaining Agreement, the provisions of this Collective Bargaining Agreement shall be upheld and prevail over that of the individual employment contract.

Petitioners employment contract was necessarily amended by said new CBA which was both signed by his union and private respondent Sinkai Shipping Co. Ltd. and later approved by NLRC.<sup>[18]</sup>

Resultingly, petitioner, although herein adjudged as entitled to the award of his salary for the unexpired portion of his contract for having been illegally dismissed, the same must however be computed at the reduced rate of US\$1,387.00 per month in accordance with the new CBA approved by the POEA between respondent employer and petitioners union.

**WHEREFORE**, the petition is hereby GRANTED and the assailed decision of the NLRC dated September 14, 1992 as well as the resolution dated August 20, 1993 are hereby REVERSED and SET ASIDE and a new one is hereby entered ordering private respondents to pay petitioner his salary for the unexpired portion of his contract at the rate of US\$1,387.00 per month and the sum of US\$957.00 or its peso equivalent representing his leave pay differential of six (6) days for every month of service.

**SO ORDERED.**

*Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.*

[1] *Rollo*, pp. 39-54. Per Putong, R., Comm., with Carale, B., Pres. Comm. and Veloso, V., Comm., concurring.

[2] *Rollo*, p. 56. Per Quimpo, A., Comm., with Carale, B., Pres. Comm. and Veloso, V., Comm., Concurring.

[3] *Rollo*, pp. 14-15, *Petition*, pp. 3-4.

[4] *Rollo*, p. 37.

[5] NLRC Decision, p. 15, *Rollo*, p. 53.

[6] NLRC Decision, p. 10, *Rollo*, p. 48.

[7] *Philippine National Construction Corp. vs. NLRC*, 245 SCRA 668 (1995); *Cabalan Pastulan Negrito Labor Association vs. NLRC*, 241 SCRA 643 (1995); *Tiu vs. NLRC*, 215 SCRA 540 (1992); *San Miguel Corp. vs. Javate, Jr.*, 205 SCRA 469 (1992).

[8] *Rapiz vs. NLRC*, 207 SCRA 243 (1992).

[9] *San Miguel Corporation vs. NLRC*, 222 SCRA 818 (1993); *China City Restaurant Corporation vs. NLRC*, 217 SCRA 443 (1993); *Mapalo vs. NLRC*, 233 SCRA 266 (1994)

[10] *Philippine Manpower Services, Inc. vs. NLRC*, 224 SCRA 691 (1993); *Golden Donuts, Inc. vs. NLRC*, 230 SCRA, 153 (1994); *Polymedic General Hospital vs. NLRC*, 134 SCRA 420 (1985).

[11] NLRC Decision, p. 10, *Rollo*, p. 48.

[12] Memorandum, Private Respondent, p. 16.

[13] Annex D, *Rollo*, p. 58.

[14] POEA Decision, p. 6, *Rollo*, p. 36.

[15] [Gubac vs. NLRC](#), 187 SCRA 412 (1990) citing [Galsim vs. Philippine National Bank](#), 29 SCRA 293 (1969); [Piedad vs. Lanao del Norte Electric Cooperative, Inc.](#), 153 SCRA 500 (1987).

[16] [Hernandez vs. NLRC](#), 176 SCRA 269 (1989) citing [Acda vs. Minister of Labor](#) 119 SCRA 306 (1982); [Marina Port Services Inc. vs. NLRC](#), 193 SCRA 420 (1991).

[17] [Anscor Transport and Terminals Inc. vs. NLRC](#), 190 SCRA, 147 (1990); [Commercial Motors Corp. vs. Commissioners](#), 192 SCRA 191 (1990).

[18] [Manifestation](#), pp. 14-15, [Rollo](#), pp. 94-95.