

SECOND DIVISION

[G.R. No. 109156. July 11, 1996]

STOLT-NIELSEN MARINE SERVICES (PHILS.) INC., *petitioner*, vs. NATIONAL LABOR RELATIONS COMMISSION, PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION and MEYNARDO J. HERNANDEZ, *respondent*.

DECISION

ROMERO, J.:

Private respondent Meynardo J. Hernandez was hired by petitioner Stolt-Nielsen Marine Services (Phils.) Inc. (STOLT-NIELSEN, for short) as radio officer on board M/T Stolt Condor for a period of ten months. He boarded the vessel on January 20, 1990.

On April 26, 1990, the ship captain ordered private respondent to carry the baggage of crew member Lito Loveria who was being repatriated. He refused to obey the order out of fear in view of the utterance of said crew member "makakasaksak ako" and also because he did not perceive such task as one of his duties as radio officer. As a result of such refusal, private respondent was ordered to disembark on April 30, 1990 and was himself repatriated on May 15, 1990. He was paid his salaries and wages only up to May 16, 1990.

On June 21, 1990, private respondent filed before public respondent POEA a complaint for illegal dismissal and breach of contract praying for, among other things, payment of salaries, wages, overtime and other benefits due him for the unexpired portion of the contract which was six (6) months and three (3) days.

Petitioner STOLT-NIELSEN in its answer alleged that on April 26, 1990, private respondent refused to follow the "request" of the master of the vessel to explain to Lolito Loveria the reason for the latter's repatriation and to assist him in carrying his baggage, all in violation of Article XXIV, Section 1 of the Collective Bargaining Agreement (CBA) and the POEA Standard Contract. Hence, private respondent, after being afforded the opportunity to explain his side, was dismissed for gross insubordination and serious misconduct.

In reply, he denied that the master of the vessel requested him to explain to Loveria the reason for the latter's repatriation.

Thereafter, POEA Administrator Jose N. Sarmiento rendered an award in favor of private respondent, as follows:

"The issue to be resolved is whether or not complainant was illegally dismissed.

We rule in the affirmative.

Record shows that on April 26, 1990, complainant was directed by the master of the vessel to carry the luggage of an outgoing seaman offshore. Complainant, however, refused to obey the said order, hence, his dismissal from his employment.

Evaluating the reason for complainant's dismissal, we find the penalty imposed too severe considering the violation committed. To our mind, a warning would have been sufficient since this was the first offense committed. Moreover, as a radio officer, it is not one of his official duties to carry the luggage of outgoing seaman.

In the light of the foregoing, we hold that complainant's dismissal due to the aforesaid incident arbitrary, whimsical and contrary to human nature and experience, hence, not justified. Accordingly, he is entitled to his salaries for the unexpired portion of his contract computed as follows:

1. Remaining portion of his contract - 6 months & 3 days

2. Basic salary - US\$1,024.00

3. Fixed Overtime - 420.00^[1]

Total US\$1,434.00

4. Salary/day = (\$1,434/30 days) = US\$47.8/day

5. Salary for 3 days - (\$47.8 x 3) = US\$143.4

6. Salary for 6 months - (\$1,434 x 6) = US\$8,604.00

7. Salary for the unexpired portion of his contract
(basic salary + fixed O.T.)
for 6 months and 3 days
(US\$8,604 + 143.4) = US\$8,747.40

Complainant's claim for day's leave with pay for the unexpired portion of the contract is hereby denied since the same is only given during actual service.

The claim for damages is hereby denied for want of jurisdiction.

Complainant is however entitled to five (5%) percent of the total award as and by way of attorney's fees.

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered ordering respondent to pay complainant the following or its peso equivalent at the time of payment:

1. EIGHT THOUSAND SEVEN HUNDRED FORTY SEVEN & 40/100 US DOLLARS (US\$8,747.40) or its peso equivalent at the time of payment, as salaries for the unexpired portion of his contract.

2. Five percent (5%) of the total award as and by way of attorney's fees.

All other claims are hereby DENIED for lack of merit.

SO ORDERED."^[2]

Aggrieved, petitioner Stolt-Nielsen appealed to the National Labor Relations Commission (NLRC).

The NLRC, in a resolution^[3] dated November 27, 1992, concurred with the POEA Administrator in ruling that private respondent, having been illegally dismissed, was, therefore, entitled to the monetary award. It further stated that private respondent's duty as a radio officer or radio operator does not include the carrying of the luggage of any seaman or explaining to said seaman the reason for his repatriation. Thus, concluded the NLRC, his termination on this

ground was not proper and, therefore, he had every right to the monetary award. The NLRC likewise granted private respondent's claim for fixed overtime pay and attorney's fees.

Petitioner, having moved for reconsideration without success, is before this Court on *certiorari*.

The issues posed for resolution in this case are: (a) whether private respondent was legally dismissed on the ground of gross insubordination and serious misconduct; and (b) whether private respondent was entitled to the award of overtime pay.

With respect to the first issue, petitioner Stolt-Nielsen emphasizes how "(e)mployment on board ocean-going vessels is totally different from land-based ones in that in the former strict and faithful compliance of all lawful commands and orders of the master or captain of the vessel is of paramount and crucial importance." Petitioner then cites Part I, Section A (2) of the POEA Standard Employment Contract which provides:

"2. The seaman binds himself to the following:

'a. To faithfully comply with and observe the terms and conditions of this contract, violation of which shall be subject to disciplinary action pursuant to appendix 2 of this crew contract.

XXX XXX XXX

d. To be obedient to the lawful commands of the master or any person who shall succeed him."

It likewise adverts to Article XXIV, Section 1 of the CBA, *viz*:

"Authority of the Master

Section 1. It is understood and agreed that nothing contained in this is intended or shall be construed so as to restrict in any way the superiority of the Master or prevent the obedience of any member of the crew to any lawful order of any superior officer." (Underscoring ours)

Petitioner contends that since the captain's order to assist the crew member who was being repatriated in carrying his baggage is lawful, private respondent's refusal to obey the command is willful, thus warranting his dismissal.

Article 282 of the Labor Code provides in part:

"Art. 282. Termination by Employer. An employer may terminate an employment for any of the following causes: a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

XXX XXX XXX

Willful disobedience of the employer's lawful orders, as a just cause for the dismissal of an employee, envisages the concurrence of at least two (2) requisites: the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a "wrongful and perverse attitude"; and the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.^[4]

The Court agrees that by virtue of the aforementioned CBA and POEA Standard Contract provisions cited by petitioner, private respondent is indeed bound to obey the lawful commands of the captain of the ship, but only as long as these pertain to his duties. The order to carry the

luggage of a crew member, while being lawful, is not part of the duties of a radio officer. Assuming *arguendo* that lawful commands of a ship captain are supposed to be obeyed by the complement of a ship, private respondent's so-called "act of disobedience" does not warrant the supreme penalty of dismissal.

In Gold City Integrated Port Services, Inc. v. NLRC,^[5] the Court ruled:

"x x x We believe that not every case of insubordination or willful disobedience by an employee of a lawful work-connected order of the employer or its representative is reasonably penalized with dismissal. For one thing, Article 282 (a) refers to "serious misconduct or willful disobedience - - ". There must be reasonable proportionality between, on the one hand, the willful disobedience by the employee and, on the other hand, the penalty imposed therefor. x x x"

In instant case, the POEA found that private respondent's actuation which led to his dismissal was the first and only act of disobedience during his service with the petitioner. Furthermore, examination of the circumstances surrounding private respondent's disobedience shows that the repatriated seaman's utterance of "makakasaksak ako" so instilled fear in private respondent that he was deterred from carrying out the order of the captain. Hence, his act could not be rightfully characterized as one motivated by a "wrongful and perverse attitude." Besides, said incident posed no serious or substantial danger to the well-being of his other co-employees or of the general public doing business with petitioner employer. Neither did such behavior threaten substantial prejudice to the business of his employer.

In light of the foregoing, we agree with the NLRC that termination of the private respondent's services was a disproportionately heavy penalty.

Coming to the second issue involving the award of overtime pay, the NLRC in its assailed resolution states:

"Anent the overtime pay, complainant alleged that he is entitled thereto as the same is a fixed overtime pay. The respondents failed to controvert said allegations. In short, the complainant's claim for overtime pay was undisputed and for this reason, the grant of this claim must be upheld."^[6]

Petitioner, on the other hand, cites this Court's pronouncement in Cagampan v. NLRC,^[7] thus:

"As regards the question of overtime pay, the NLRC cannot be faulted for disallowing the payment of said pay because it merely straightened out the distorted interpretation asserted by petitioners and defined the correct interpretation of the provision on overtime pay embodied in the contract conformably with settled doctrines on the matter. Notably, the NLRC ruling on the disallowance of overtime pay is ably supported by the fact that petitioners never produced any proof of actual performance of overtime work.

Petitioners have conveniently adopted the view that the "guaranteed or fixed overtime pay of 30% of the basic salary per month" embodied in their employment contract should be awarded to them as part of a "package benefit." They have theorized that even without sufficient evidence of actual rendition of overtime work, they would automatically be entitled to overtime pay. Their theory is erroneous for being illogical and unrealistic. Their thinking even runs counter to the intention behind the provision. The contract provision means that the fixed overtime pay of 30% would be the basis for computing the overtime pay if and when overtime work would be rendered. Simply stated, the rendition of overtime work and the submission of sufficient proof that said work was actually performed are conditions to be satisfied before a seaman could be entitled to overtime pay which should be computed on the basis of 30% of the basic monthly salary. In short, the contract provision guarantees the right to overtime pay but

the entitlement to such benefit must first be established. Realistically speaking, a seaman, by the very nature of his job, stays on board a ship or vessel beyond the regular eight-hour work schedule. For the employer to give him overtime pay for the extra hours when he might be sleeping or attending to his personal chores or even just lulling away his time would be extremely unfair and unreasonable."

Petitioner's argument is well taken. A close scrutiny of the computation of the monetary award^[8] shows that the award for overtime was for the remaining six (6) months and three (3) days of private respondent's contract at which time he was no longer rendering services as he had already been repatriated. In light of our aforequoted ruling in *Cagampang v. NLRC*, said award for overtime should be, as it is hereby, disallowed for being unjustified.

WHEREFORE, the decision of the NLRC is hereby **AFFIRMED** with the modification that the award for overtime pay should be **DELETED**.

SO ORDERED.

Regalado (Chairman), Puno, Mendoza, and Torres, Jr., JJ., concur.

^[1] This should be US\$410.00. Private Respondent's Memorandum, *Rollo*, p. 123.

^[2] POEA Decision, Annex "A", Petition, *Rollo*, pp. 27-30.

^[3] Penned by Commissioner Domingo H. Zapanta, with the concurrence of Presiding Commissioner Edna Bonto-Perez and Commissioner Rogelio I. Rayala.

^[4] *Gold City Integrated Port Services, Inc. v. NLRC*, 189 SCRA 811 (1990).

^[5] *Ibid.*

^[6] NLRC Resolution, Annex "B", Petition, *Rollo*, p. 36.

^[7] 195 SCRA 533 (1991).

^[8] POEA Decision, Annex "A", Petition, *Rollo*, p. 29.