[Syllabus]

SECOND DIVISION

[G.R. No. 108433. October 15, 1996]

WALLEM MARITIME SERVICES, INC. and WALLEM SHIPMANAGEMENT LTD., *petitioners, vs.* NATIONAL LABOR RELATIONS COMMISSION and JOSELITO V. MACATUNO, *respondents.*

D E C I S I O N

ROMERO, *J.*:

This petition for *certiorari* seeks to annul and set aside the Resolution[1] of the National Labor Relations Commission (NLRC) affirming the Decision[2] of the Philippine Overseas Employment Administration (POEA) which disposed of POEA Case No. (M)89-09-865 as follows:

WHEREFORE, in view of the foregoing, respondents Wallem Maritime Services, Inc. and Wallem Shipmanagement Ltd. are hereby ordered jointly and severally, to pay complainant the following in Philippine currency at the prevailing rate of exchange at the time of payment:

a) THREE HUNDRED THREE US DOLLARS

(US$303.00) representing salary for the month of June 1989;

b) THREE THOUSAND FIFTY FOUR US DOLLARS

(US$3,054.00) representing salaries for the unexpired portion of the contract (July-December 1989); and

c) ONE HUNDRED SIX & 50/100 US DOLLARS

(US$106.50) or five percent (5%) of the total award as and by way of attorneys fees.

The claim against Prudential Guarantee and Assurance Inc. is dismissed for lack of merit.

SO ORDERED.

Private respondent Joselito V. Macatuno was hired by Wallem Shipmanagement Limited thru its local manning agent, Wallem Maritime Services, Inc., as an able-bodied seaman on board the M/T Fortuna, a vessel of Liberian registry. Pursuant to the contract of employment, private respondent was employed for ten (10) months covering the period February 26, 1989 until December 26, 1989 with a monthly salary of two hundred seventy-six US dollars (US $276); hourly overtime rate of one dollar and seventy-two cents (US $1.72), and a monthly tanker allowance of one hundred twenty-seven dollars and sixty cents (US $127.60), with six

(6) days leave with pay for each month.

On June 24, 1989, while the vessel was berthed at the port of Kawasaki, Japan, an altercation took place between private respondent and fellow Filipino crew member, Julius E. Gurimbao, on the one hand, and a cadet/apprentice officer of the same nationality as the captain of the vessel on the other hand. The master entered the incident in the tankers logbook.

As a consequence, private respondent and Gurimbao were repatriated to the Philippines where they lost no time in lodging separate complaints for illegal dismissal with the POEA.[3] According to the affidavit private respondent executed before a POEA administering officer, the following facts led to the filing of the complaint.

At about 5:50 a.m. of June 24, 1989, private respondent was on duty along with Gurimbao, checking the manifold of the vessel and looking for oil leakages, when a cadet/apprentice who was of the same nationality as the vessels captain (Singh), approached them. He ordered Gurimbao to use a shovel in draining the water which, mixed with oil and dirt, had accumulated at the rear portion of the upper deck of the vessel.

Gurimbao explained to the cadet/apprentice that throwing dirty and oily water overboard was prohibited by the laws of Japan; in fact, port authorities were roaming and checking the sanitary conditions of the port. The cadet/apprentice got mad and, shouting, ordered Gurimbao to get a hose and siphon off the water. To avoid trouble, Gurimbao used a shovel in throwing the dirty water into the sea.

Having finished his job, Gurimbao complained to private respondent about the improper and unauthorized act of the cadet/apprentice. The two went to the cadet/apprentice who was idly standing in a corner. They reminded him that as a mere apprentice and not an officer of the vessel, he had no right whatsoever to order around any member of the crew. However, the cadet/apprentice reacted violently - shouting invectives and gesturing as if challenging the two to a fight. To prevent him from intimidating them, private respondent pushed twice the cadet/apprentices chest while Gurimbao mildly hit his arm. Frantic and shouting, the cadet/apprentice ran to the captain who happened to witness the incident from the cabins window.

The captain summoned private respondent and Gurimbao. With their bosun (head of the deck crew), they went to the captains cabin. The captain told them to pack up their things as their services were being terminated. They would disembark at the next port, the Port of Ube, from where they would be flown home to the Philippines, the repatriation expenses to be shouldered by them. The two attempted to explain their side of the incident but the captain ignored them and firmly told them to go home.

Before disembarking, they were entrusted by the bosun with a letter of their fellow crew members, addressed to Capt. Dio, attesting to their innocence. At the Port of Ube, an agent of the company handed them their plane tickets and accompanied them the following day to the Fukoka Airport where they boarded a Cathay Pacific airplane bound for Manila.

A few days after their arrival in Manila or on July 1, 1989, the two gave the letter to Capt. Dio and conferred with him and Mr. James Nichols. The latter told private respondent that they could not secure a reimbursement of their repatriation expenses nor could they get their salaries for the month of June. Private respondent, in a letter addressed to Capt. Dio, asked for a reconsideration of their dismissal but the latter did not respond. Frustrated, private respondent sought the assistance of a lawyer who wrote Wallem a demand letter dated August 28, 1989 but the same was ignored.[4]

Petitioners, defending their position, alleged that the incident was not the first infraction committed by the two. As shown by the logbook, on June 19, 1989, while the vessel was docked in Batangas, they left it during working hours without asking permission. For this offense, they were given a warning. On June 27, 1989 (sic), while the vessel was anchored at the Port of Kawasaki, Japan, they assaulted the officer on watch for the day, Mr. V.S. Sason. The three were mustered and it was found that Sason was attacked with a spanner without provacition (sic). The two were severely warned that they will be dealt according to the rules and regulation of their contact of employment (sic). When the vessel was about to sail that day, the two went ashore inspite of the warning given them. They were arrested by Japanese authorities but the vessels departure was delayed for five (5) hours. The agency in Manila was informed that their wages should be settled after deducting recoveries or fines and air fare. Their dismissal from the service was also recommended.[5]

In his aforementioned decision of September 14, 1990 finding private respondents dismissal to be illegal, POEA Deputy Administrator Manuel G. Imson held:

We find complainants dismissal to be without just and valid cause. We cannot give much weight and credence to the certified true copy of the official logbook (Annex 1, answer) because the alleged entries therein were only handpicked and copied from the official logbook of the vessel M/V Fortuna. There is no way of verifying the truth of these entries and whether they actually appear in the log entries for the specific dates mentioned. The pages in the official logbook where these entries appear should have been the ones reproduced to give the same a taint of credence. Moreover, no documentary evidence was submitted to support the alleged official logbook, like the Masters report and the police report or any report by the Japanese authorities by reason of their arrest. Finally, the copy of the alleged official logbook was not properly authenticated. The authentication is necessary specially so since this document is the only piece of evidence submitted by respondents.

Granting that the entries in the logbook are true, a perusal thereof will readily show that complainant was not afforded due process. The warnings allegedly given to complainant were not submitted in evidence. Likewise, no investigation report was presented to prove that complainant was given the opportunity to air his side of the incident.

It is also noteworthy to mention that complainant was able to describe with particularity the circumstances which led to his misunderstanding with the cadet/apprentice and which we believe is not sufficient to warrant his dismissal.[6]

As stated above, the NLRC affirmed the decision of the POEA, adopting as its own the latters findings and conclusions. Hence, the instant petition contending that both the POEA and the NLRC gravely abused their discretion in finding that private respondent was illegally terminated from his employment.

As with G.R. No. 107865, where herein petitioners likewise questioned the NLRC decision affirming that of POEA Case No. (M) 88-11-1078 finding the dismissal from employment of Gurimbao to be illegal,[7] the Court sees no merit in the instant petition.

An employer may dismiss or lay off an employee only for just and authorized causes enumerated in Articles 282 and 283 of the Labor Code. However, this basic and normal prerogative of an employer is subject to regulation by the State in the exercise of its paramount police power inasmuch as the preservation of lives of citizens, as well as their means of livelihood, is a basic duty of the State more vital them the preservation of corporate profits.[8] Ones employment, profession, trade or calling is a property right within the protection of the

constitutional guaranty of due process of law.[9]

We agree with petitioners that the ship captains logbook is a vital evidence as Article 612 of the Code of Commerce requires him to keep a record of the decisions he had adopted as the vessels head. Thus, in Haverton Shipping Ltd. v. NLRC,[10] the Court held that a copy of an official entry in the logbook is legally binding and serves as an exception to the hearsay rule.

However, the Haverton Shipping ruling does not find unqualified application in the case at bar. In said case, an investigation of the incident which led to the seamans dismissal was conducted before he was dismissed.[11] Consequently, the facts appearing in the logbook were supported by the facts gathered at the investigation. In this case, because no investigation was conducted by the ship captain before repatriating private respondent, the contents of the logbook have to be duly identified and authenticated lest an injustice result from a blind adoption of such contents which merely serve as *prima facie* evidence of the incident in question.[12]

Moreover, what was presented in the Haverton Shipping case was a copy of the official entry from the logbook itself. In this case, petitioners did not submit as evidence to the POEA the logbook itself, or even authenticated copies of pertinent pages thereof, which could have been easily xeroxed or photocopied considering the present technology on reproduction of documents.[13] What was offered in evidence was merely a typewritten collation of excerpts from what could be the logbook[14] because by their format, they could have been lifted from other records kept in the vessel in accordance with Article 612 of the Code of Commerce.[15]

Furthermore, the alleged entry in the logbook states, as regards the June 27, 1989 (sic) incident, as follows:

> KAWASAKI KAWASAKI This is to place on record that at the time, date 27.6.89 and place mentioned Mr. J.V. MACATUNO (Sr. No. 147) and Mr. J.E. GURIMBAO (Sr No. 156) attacked and assaulted apprentice officer Mr. V.S. SASON while on duty. All three were mustered and it was found that Mr. SASON was attacked with a spanner without provacition (sic). Both the seaman (sic) have been severely warned that they will be dealt according to the rules and regulation of their contract of employment.[16]

Under the Table of Offenses and Corresponding Administrative Penalties appended to the contract of employment entered into by petitioners and private respondent, the offense described by the logbook entry may well fall under insubordination and may constitute assaulting a superior officer with the use of deadly weapon punishable with dismissal[17] if the victim is indeed a superior officer. However, an apprentice officer cannot be considered a superior officer. An apprentice is a person bound in the form of law to a master, to learn from him his art, trade, or business, and to serve him during the time of his apprenticeship.[18] In

other words, Mr. V.S. Sason was merely a learner or a trainee and not a regular officer on board M/T Fortuna.

In this regard, it should be clarified that this Court does not tolerate nor sanction assault in any form. Physical violence against anyone at any time and any place is reprehensible. However, in cases such as this, where a persons livelihood is at stake, strict interpretation of the contract of employment in favor of the worker must be observed to affirm the constitutional provision on protection to labor.

Moreover, the aforequoted entry in the logbook is so sketchy that, unsupported by other evidence, it leaves so many questions unanswered. Although private respondent candidly admitted in his affidavit having hit Sason on the chest twice, he did not admit using a spanner. The conflicting versions of the incident rendered it impossible to determine whether it was private respondent or Gurimbao who wielded said tool. In the absence of a more detailed narration in the logbook entry of the circumstances surrounding the alleged assault, the same cannot constitute a valid justification to terminate private respondents employment.[19]

Hence, as the typewritten excerpts from the logbook were the only pieces of evidence presented by petitioners to support the dismissal of private respondent, have no probative value at all, petitioners cause must fail. Their failure to discharge the *onus probandi* properly may have no other result than a finding that the dismissal of private respondent is unjustified.[20]

Petitioners failure to substantiate the grounds for a valid dismissal was aggravated by the manner by which the employment of private respondent was terminated. It must be borne in mind that the right of an employer to dismiss an employee is to be distinguished from and should not be confused with the manner in which such right is exercised. Dismissal from employment must not be effected abusively and oppressively as it affects ones person and property. Thus, Batas Pambansa Blg. 130, amending paragraph (b) of Article 278 of the Labor Code, imposed as a condition *sine qua non* that any termination of employment under the grounds provided in Article 283 must be done only after notice and formal investigation have been accorded the supposed errant worker.[21]

That the workers involved in the incident were mustered or convened thereafter by the captain is inconsequential. It is insufficient compliance with the law which requires, as a vital component of due process, observance of the twin requirements of notice and hearing before dismissing an employee. As regards the notice requirement, the Court has stated:

> On the issue of due process . . ., the law requires the employer to furnish the worker whose employment is sought to be terminated a written notice containing a statement of the cause or causes for termination and shall afford him ample opportunity to be heard and to defend himself with the assistance of a representative. Specifically, the employer must furnish the worker with two (2) written notices before termination of employment can be legally effected: (a) notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (b) the subsequent notice which informs the employee of the employers decision to dismiss him. (Underscoring supplied.)[22]

Neither is the ship captains having witnessed the altercation an excuse for dispensing with the notice and hearing requirements. Serving notice to private respondent under the circumstances cannot be regarded as an absurdity and superfluity.[23]

ON ALL THE FOREGOING CONSIDERATIONS, the petition at bar is DISMISSED and the Resolution of respondent National Labor Relations Commission is hereby AFFIRMED *in toto.*

SO ORDERED.

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

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[1] Penned by Commissioner Vicente S.E. Veloso and concurred in by Presiding Commissioner Bartolome S. Carale and Commissioner Romeo B. Putong.

[2] Penned by Deputy Administrator and Officer-in-Charge Manuel G. Imson.

[3] Gurimbaos complaint was docketed as POEA Case No. (M) 89-11-1078.

[4] *Rollo*, pp. 31-32.

[5] *Ibid.*, p. 29.

[6] *Ibid.*, pp. 105-106.

[7] The petition in G.R. No. 107865 was dismissed in the Minute Resolution of September 8, 1993.

[8] Manila Electric Company *v.* NLRC, G.R. No. 78763, July 12, 1989, 175 SCRA 277.

[9] Callanta *v.* Carnation Philippines, Inc., G.R. No. L-70615, October 28, 1986, 145 SCRA 268.

[10] G.R. No. L-65442, April 15, 1985, 135 SCRA 685.

[11] *Ibid.*, at p. 690.

[12] *Ibid.*

[13] Abacast Shipping and Management Agency, Inc. *v.* NLRC, G.R. Nos. L-81124-26, June 23, 1988, 162 SCRA 541, 544-545.

[14] Annex D to Petition; *Rollo*, p. 29.

[15] In Reyes & Lim Company, Inc. *v.* NLRC (G.R. Nos. 87012-13, September 25, 1991, 201 SCRA 772), what was passed off as the logbook kept by the master or captain of the vessel who has supervision and control of the members of his crew was actually the steam of engine book (sic) kept by the engineer under Art. 613 (3) of the Code of Commerce.

[16] *Rollo,* p. 27.

[17] *Ibid.,* p. 27.

[18] BOUVIERS LAW DICTIONARY, Third Revision, Vol. I, p. 217.

[19] Fil-Pride Shipping Co., Inc. *v.* NLRC, G.R. No. 97068, March 5, 1993, 219 SCRA 576, 583.

[20] Reyes & Lim Company, Inc. *v.* NLRC, *supra* at p. 775 citing Starlite Plastic Corp. *v.* NLRC, G.R. No. 78491, March 16, 1989, 171 SCRA 315.

[21] Metro Port Services, Inc. *v.* NLRC, G.R. Nos. 71632-33, March 9, 1989, 171 SCRA 190.

[22] Jones *v.* NLRC, G.R. No. 107729, December 6, 1995, 250 SCRA 668, 674.

[23] Petition, p. 10.