

## SECOND DIVISION

[G.R. No. 109717. February 9, 1996]

**WESTERN SHIPPING AGENCY, INC., YEH SHIPPING CO. LTD. and PHIL. BRITISH ASSURANCE CO., INC., *petitioners*, vs. NATIONAL LABOR RELATIONS COMMISSION and ALEXANDER S. BAO, *respondents*.**

### DECISION

**MENDOZA, J.:**

This is a petition for certiorari to annul the decision of the National Labor Relations Commission (First Division) in NLRC-NCR CA No. 000650-90, affirming with modification the decision of the Philippine Overseas Employment Administration, and its resolution denying reconsideration of its aforesaid decision.

The facts are as follows:

Petitioner Western Shipping Agency, Inc. is the manning agent of petitioner Yeh Shipping Co., Ltd., the owner of the vessel *M/V Sea Wealth*, while petitioner Philippine British Assurance Company is the surety of Western Shipping Agency, Inc.

Private respondent was master of the *M/V Sea Wealth*, having been hired by Western Shipping in 1988 at a monthly salary of US\$1,323.00 with a fixed monthly overtime pay of US\$287.00. His contract was for one year, starting April 21, 1988.

On January 14, 1989, private respondent was notified of his discharge. In the disembarkation order<sup>[1]</sup> given to him on January 17, 1989, Western Shipping justified the discharge of private respondent on the following ground:

At this juncture, our Offices would like to let you feel and understand that they Were unhappy about the way you conducted and executed your official duties and responsibilities as Master of the vessel, particularly when it was at the port of Davao and when it arrived at (the) Port of Manila. As you have admitted thru the telephone, you failed to notify or gave advice to our offices about your actual arrival in Manila because you were busy coordinating matters including your intention to take the Pilot Examinations in Batangas. Had it not for our initiative when we tried to go to South Harbor on Monday - January 9th - and verified, we would have not known that you were already in Manila.

Indeed, we understand your failure to communicate with us upon your arrival in Manila, when we went on board the ship and discovered that you allowed the accommodation and transport of people who should not be on board during the vessels navigation from Davao to Manila, without even trying to secure the necessary approval from our offices, aware of the risks and knowing the limited safety equipment and accommodation on board.

On March 1, 1989, private respondent filed a complaint with the POEA alleging illegal

dismissal, underpayment of salary and fixed overtime pay and non-payment of wages and other emoluments corresponding to the unexpired portion of his employment contract.

Petitioners denied private respondents allegations. They averred that the private respondent was dismissed because of loss of trust and confidence for having allowed fifteen (15) persons to sail with him from Davao to Manila without authority and without regard to the safety of the passengers and the cargo.

In their position paper petitioners claimed that, in violation of company rules, private respondent failed to notify them of the vessels arrival in Manila on January 8, 1989 and to provide life-saving equipment for the passengers he had allowed to board, as required by Sec. 1019 of the Philippine Merchant Marine Rules and Regulation.

Petitioners submitted the affidavit of Noimi Zabala, president of Western Shipping, stating as further ground for the employers loss of trust and confidence in private respondent, the fact that the latter allegedly collected US\$7,000.00 in foreign currency from Western Shipping in violation of a Central Bank regulation prohibiting manning agencies from withdrawing foreign remittances in dollars and falsely accused Western Shipping of underpayment.

Private respondent did not deny that he had taken passengers on board the vessel on its trip from Davao to Manila. He claimed, however, that Mr. Zabala had been notified of this fact in a telephone conversation but he did not object and that the additional passengers were wives and children of the complement of the vessel. Private respondent alleged that the shipowners agent in Davao, the World Mariner Philippines, Inc., did not object to the taking of additional passengers but on the contrary secured permit from the Collector of Customs for them to board the vessel. Lastly, it was alleged, the Coast Guard, after inspecting the vessel with the additional passengers on board, issued a clearance for the vessel to sail.

Private respondent denied that he did not notify Western Shipping of the vessels arrival. He claimed he had sent a telex message on January 5, 1989, informing Western Shipping of the expected time of arrival of the vessel on January 8, 1989, at 0600 Hrs, and that Western Shipping sent a message, also by telex, welcoming the arrival of the vessel. He alleged that the vessel was equipped with two life boats and rafts which could accommodate all persons aboard in case of emergency.

After hearing, the POEA rendered a decision, finding private respondent to have been illegally dismissed and accordingly ordering petitioners to pay private respondents monetary claims, as follows:

WHEREFORE, in view of all the foregoing premises, judgment is hereby rendered ordering respondent WESTERN SHIPPING AGENCY INCORPORATED and its principal Yeh Shipping to pay complainant the sum of FIVE THOUSAND SIX HUNDRED FORTY THREE US DOLLARS (*US\$5,643.00*) or its peso equivalent at the time of payment representing complainants salary for the unexpired portion of the contract including his salary differential, the sum of SIX THOUSAND NINE HUNDRED TWENTY PESOS & 01/100 (P6,920.01) representing the underpayment of family allotment and the difference in peso dollar conversion plus ten percent (10%) of the total judgment away by way of and as attorneys fees.

SO ORDERED.

*Petitioners appealed to the NLRC which, on March 20, 1992, rendered a decision modifying the decision of the POEA and ordering petitioners, as follows:*

WHEREFORE, the decision appealed from is hereby MODIFIED in that the award of P6,920.01

representing the alleged salary differentials caused by the erroneous conversion of complainants shipboard pay and allotments is hereby SET ASIDE.

The award of US\$5,643.00 or its equivalent in Philippine currency at the time of payment representing the salaries corresponding to the unexpired portion of complainants contract plus ten percent (10%) thereof as attorneys fees is hereby AFFIRMED with the qualification that: (1) Respondents Western Shipping Agency, Inc. and Yeh Shipping Co. Ltd. are jointly and severally liable therefor, and (2) respondent British Assurance Co., Inc. is likewise liable therefor in its capacity as the bonding company.

SO ORDERED.

Petitioners moved for a reconsideration but their motion was denied by the NLRC in its resolution of March 30, 1993 for lack of merit.

Hence this petition. Petitioners allege that the NLRC gravely abused its discretion in affirming the decision of the POEA, finding private respondent to have been illegally dismissed and awarding US\$5,643.00 to him as salaries corresponding to the unexpired portion of private respondents contract.

We find the petition to be without merit. To begin with, findings of facts of the NLRC, affirming those of the Labor Arbiter, are entitled to great weight and will not be disturbed by this Court if they are supported by substantial evidence.

In this case, both the Labor Arbiter and the POEA found that private respondent had taken on board the vessel the fifteen passengers with the knowledge of Noimi Zabala, the president of Western Shipping. Zabala had been told so by telephone by private respondent but Zabala did not object and only said, Mabuti ka pa pare, pinahihintulutan mo ang mga iyan na makasama sa biyahe. <sup>[2]</sup>

As both the NLRC and the POEA also found, the shipowners agent, World Mariner Phils. Inc., knew of the presence on board the vessel of the passengers who were actually the crews relatives. World Mariner in fact secured a permit for them from the Collector of Customs and the Coast Guard as part of its duty to represent the vessel in that port. <sup>[3]</sup>

Noimi Zabala denied in his affidavit that World Mariner was the ship agent in Davao. His denial, however, cannot prevail over the positive assertion by World Mariner that it was the shipowners (Yeh Shipping Co.s) agent for the duration of the M/V *Sea Wealths* call at Davao from December 23, 1988 to January 20, 1989. <sup>[4]</sup> Indeed, the shipowner, Yeh Shipping Co., never denied the claim of the World Mariner. Western Shippings authority, as manning agent, was only to hire seafarers for the ship.

The clearance to sail issued by the Coast Guard, after the vessel had been inspected by it together with the Collector of Customs, establishes two points:

first, that the Coast Guard and the Collector of Customs approved the application for the boarding of the additional passengers, and second that the safety of the vessel was not endangered by the presence of the additional passengers. This clearance is entitled to much weight as it was issued by an agency of the government charged with the seaworthiness of vessels. <sup>[5]</sup>

Nor is there any basis for petitioners allegation that the vessel did not have life-saving equipment for the additional passengers. It had two life boats and two inflatable life rafts on

board which could accommodate 50 persons and 25 persons, respectively.<sup>[6]</sup> With only 36 persons on board (21 are the vessels complement and 15 passengers), the vessel had adequate life-saving equipment. Petitioners contend that the life boats and rafts were for the crew and passengers under emergency, but there were none for the additional passengers.<sup>[7]</sup> But there were no passengers under emergency during the vessels run from Davao to Manila, so that the lifebuoys intended for the passengers under emergency could have been used by the crews relatives on board if needed. The clearance to sail issued by the Coast Guard is proof of compliance with the requirements of 1019 of the Philippine Merchant Marine Rules and Regulation.

Private respondent may be presumed to be as much concerned with the safety of those on board as were petitioners. After all the additional passengers were not Ordinary passengers but the wives and children of the vessels complement, including private respondents own wife. If the presence of these relatives endangered the safety of the vessel as a whole, private respondent, who had 15 years of maritime experience behind him, would in all likelihood have been the first one to disallow them.

The fact is that when the M/V *Sea Wealth* was in Lhokseumawe, Indonesia, it was loaded with 17,171.443 metric tons of urea. When it reached Davao, it unloaded 8,021.713 metric tons of its cargo, so that on its voyage to Manila, the vessels load was much lighter. The boarding of the complements family did not make the vessels load heavier than when it left Indonesia. If the vessel was seaworthy then, with more reason it was seaworthy when it sailed from Davao with a lighter load. It appears that of the fifteen additional passengers, 12 were adults, two were teenagers and one was an infant.<sup>[8]</sup>

Petitioners further contend that private respondent did not notify Western Shipping of the actual arrival of the vessel in Manila despite the fact that the vessel was equipped with communication facilities which made it possible for private respondent to contact any telephone on shore. It appears that private respondent did inform petitioners of the vessels Expected Time of Arrival (ETA) in Manila. If he failed to confirm its arrival later, it was because the vessel arrived in Manila on January 8, 1989, which was a Sunday, when offices were closed. Petitioners claim that it is engaged in maritime business and that it operates on a 24-hour a day basis. Petitioners might be in operation 24 hours a day plying their vessels. But there is no evidence to show that its offices were open 24 hours a day, seven days a week, so that even if the vessel arrived on a Sunday, there were employees of Western Shipping who could have attended to the vessel upon its arrival.

Furthermore, the vessel arrived only an hour behind its ETA as given to petitioners, but petitioners agents were not on hand to meet it when the vessel arrived. Private respondent had reason to believe that the Western Shipping knew that vessel was arriving on January 8, 1989 because the latter had in fact issued a telex message welcoming the arrival of the vessel.

Indeed, had it been private respondents intention to hide the presence of the 15 passengers on board the vessel, as petitioners claim, private respondent could have asked the passengers to disembark from the vessel immediately after its arrival on January 8, 1989 instead of allowing them to stay until the next morning when officers of Western Shipping came.

Loss of confidence is a valid ground for the dismissal of managerial employees like petitioner herein, who was the master of a vessel. But even managerial employees enjoy security of tenure, fair standards of employment and protection of labor laws<sup>[9]</sup> and, as such,

they can only be dismissed after cause is shown in an appropriate proceeding.<sup>[10]</sup> The loss of confidence must be substantiated by evidence. The burden of proof is on the employer to show grounds justifying the loss of confidence. Petitioners failed to discharge this burden, as the POEA and the NLRC found.

As private respondent was illegally dismissed, he is entitled to the payment of salary corresponding to the unexpired portion of his contract of employment.<sup>[11]</sup>

**WHEREFORE**, the petition is DISMISSED.

**SO ORDERED.**

*Regalado (Chairman), Romero and Puno, JJ., concur.*

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<sup>[1]</sup> *Rollo*, p. 88.

<sup>[2]</sup> Private Respondents Comment, p. 12, *Rollo*, p. 190.

<sup>[3]</sup> See Code of Commerce, Art. 586.

<sup>[4]</sup> Certification, *Rollo*, p. 63.

<sup>[5]</sup> P.D.No. 601,5(b).

<sup>[6]</sup> POEA Decision, Annex C, petition. *Rollo*, p.41.

<sup>[7]</sup> Petition,p. 14, *Rollo*, p. 15.

<sup>[8]</sup> Respondents Comment, pp. 5-6, *Rollo*, pp. 183-184.

<sup>[9]</sup> *Cruzv. Medina*, 177 SCRA 565 (1989).

<sup>[10]</sup> *Inter-Orjent Maritime Enterprises v. NLRC*, 235 SCRA 268(1994); *Lawrence V. NLRC*, 205 SCRA 737(1992).

<sup>[11]</sup> *Anderson v. NLRC*, G.R. No. 111212, January 22, 1996.