

FIRST DIVISION

[G.R. No. 127896. August 21, 1997]

ADRIANO A. ARELLANO, JR., *petitioner*, vs. THE NATIONAL LABOR RELATIONS COMMISSION, ALL OCEANS MARITIME AGENCY, ORIENT OVERSEAS CONTAINER LINE, LIMITED and COMMONWEALTH INSURANCE COMPANY, *respondents*.

DECISION

PADILLA, J.:

This is a petition for *certiorari* under Rule 65 of the Rules of Court which seeks to annul the decision of the National Labor Relations Commission dated 27 August 1996 in NLRC Case No. 009801-95 entitled Adriano A. Arellano, Jr., v. All Oceans Maritime Agency, *et. al.*

The NLRC decision reversed and set aside the decision dated 17 May 1995 of POEA Administrator Felicisimo Joson holding private respondents guilty of illegal dismissal and solidarity liable to pay petitioners salary for the unexpired portion of his contract. The NLRC held that there was substantial evidence which showed that there was just cause in petitioners repatriation and that private respondents observed due process of law in terminating petitioners employment.

The facts are not in dispute.

Petitioner was hired by private respondent All Oceans Maritime Agency to work as an ordinary seaman (O.S.) aboard the vessel M/V OOCL Envoy for twelve (12) months. He boarded the vessel on 5 August 1993. Over a month later, on 10 September 1993, he was repatriated to the Philippines for his alleged refusal to perform his duties as an ordinary seaman under the terms and conditions of his employment contract.

It appears that on 21 August 1993, while the M/V OOCL Envoy was sailing off the coast of Seattle, Washington, one of the vessels officers ordered petitioner to help the mechanic in cleaning the scavenge space in the engine room of the vessel. Petitioner refused to obey said order, arguing that it was not his job to clean the scavenge space. The officer reminded him about the inter-departmental flexibility system (IDFS) being enforced in the vessel, but petitioner remained defiant. On the same day, the officer reported petitioners insubordination to the master of the M/V OOCL Envoy.

The report^[1] reads as follows:

Date: 21-8-93

M/V OOCL Envoy

To: Master

cc: Chief Engineer Place: Seattle

INTER-DEPARTMENTAL FLEXIBILITY SYSTEM (I.D.F.)

Dear Sir,

This is to report to you that O.S. Arellano Adriano A. on 21-8-93, 0830 HRS refused to clean scavenge space with the mechanic stating that it is the mechanic (sic) job and not his.

On further showing him the company form regarding the inter-departmental flexibility system, his final reply is that he is an O.S. and not a G.P., and would work on deck as an O.S. and does not like to work in the engine room especially cleaning the scavenge space.

SGD. O.S. ARELLANO, ADRIANO A. SGD. BOSUN SIGLOS

Frame R.

SGD. 2/E CHAN YIN HON c/o YAP CHEE KIONG

After evaluating the report, the master wrote an undated handwritten reply^[2] below which read:

Please arrange the mentioned O.S. Repatriation at this calling FE.

Sgd. Master

The records do not show if petitioner was informed of the masters order for his repatriation. On 9 September 1993, while the vessel was anchored in Hongkong, he was discharged from the the M/V OOCL and repatriated to the Philippines the following day.

Aggrieved, petitioner filed a case for illegal dismissal against private respondents before the POEA. In his affidavit, he averred that he was not informed of the IDF system aboard the M/V OOCL and that he was denied due process of law by the officers of the M/V OOCL. He maintained that neither was he informed of the reason for his repatriation nor given an opportunity to explain his side on the 8 August 1993 incident. Upon the other hand, private respondents maintained that petitioners signature on the incident report to the master of the M/V OOCL sufficiently informed him that he was being charged with gross insubordination because of his refusal to obey lawful orders from his officers.

The POEA ruled that petitioner had a right to protest the job being assigned to him which did not fall within his job description. He had a right not to follow the ships IDF system because this agreement had no approval of the POEA. Even assuming *arguendo* that petitioner can lawfully be ordered to work in the engine room, this single incident of insubordination cannot constitute sufficient basis for termination.^[3] The POEA thus held private respondents guilty of illegal dismissal and awarded petitioner his salary for the unexpired portion of his contract, including his leave pay and salary for 1-10 September 1993 which was not paid prior to his dismissal, and 10% attorneys fees.

On appeal, the NLRC reversed and set aside the POEA decision. The NLRC held that petitioner made a false statement under oath when he averred that he was never informed of the reason for his repatriation, when the evidence showed otherwise, *i.e.*, that he personally signed the incident report to the captain which stated his refusal to perform the job being assigned to him. Moreover, petitioners signature on the vessels IDFS form contradicted his assertion that he was never informed of its existence as explained to him by private respondents. In the NLRCs view, the ships IDFS policy contract is valid even without POEA approval because its provisions are not contrary to law, morals and public policy. Petitioner gave his assent thereto, which bound him to obey all its provisions.

On 3 March 1997, we required respondents to file their comment on the petition. Private respondents filed their comment on 4 April 1997^[4] while the Solicitor General filed his comment in behalf of the NLRC on 20 May 1997.^[5]

Private respondent All Oceans maintains that petitioners signature on the incident report to the captain served as sufficient notice that he was being charged with gross insubordination. According to said private respondent, petitioner has a past record of failing to finish his contract for reasons ranging from serious family problems, medical reasons, and by failing to board his ship in Singapore. All these incidents show a pattern of petitioners propensity not to follow orders from his superiors.

In his comment, the Solicitor General agrees with the NLRC that the affidavit executed by petitioner to support his claim of illegal dismissal should be entirely discredited under the doctrine of *falsus in uno, falsus in omnibus*. The Solicitor General contends that petitioner did not question the authenticity and genuineness of his signature on the IDF system form and on the incident report to the captain which palpably contradicts all the allegations in his affidavit.

The Solicitor General further argues in favor of the validity of private respondents IDF system, citing Book V Rule 2 Sections 2 and 3 of the Rules and Regulations Governing Overseas Employment which state that the Standard Employment Contract for seamen only provides the minimum terms and conditions of employment and does not obviate the fixing of additional terms and conditions that may be deemed reasonable under the circumstances. However, the Solicitor General observes that private respondents did not fully observe the twin requirements of procedural due process as there is no evidence that petitioner received a subsequent notice of judgment after due hearing, which sufficiently informed him of the employers decision to dismiss him. Pursuan to the *WhenPhil* doctrine, the Solicitor General recommends that private respondent should be made to pay the amount of One Thousand Pesos (P1,000.00) as indemnity to petitioner.

The petition is bereft of merit.

There is no dispute that petitioner openly defied the lawful orders of his superiors when he refused to help the vessels mechanic in cleaning the scavenge space located in the vessels engine room. Whatever reasons he had at that time to justify his obstinacy cannot be deduced from the evidence presented by both parties. Petitioner had barely been aboard the vessel for three (3) weeks, and yet he was determined to challenge his immediate superiors when he affixed his signature on the incident report to the ship captain to protest the job being assigned to him. In his mind, he would only work on deck and not in the vessels engine room.

We hold that the NLRC did not commit any grave abuse of discretion in overturning the decision of the POEA. However, the Court does not see the applicability of the *falsu in uno, falsus in omnibus* doctrine in resolving a simple issue of whether or not there was a just cause for private respondents to terminate petitioners employment. While petitioners affidavit^[6] took the place of his direct testimony in the proceeding before the POEA, we cannot fully ascertain from this single piece of evidence if it was given with an intention to deceive when petitioner claimed that he was unaware of the vessels IDF system and that he was repatriated without due process of law.

The material provision in the vessels IDF system is paragraph 3 which reads:

The working system for all OOCL vessels is under inter-departmental flexibility system (I.D.F.S.). Therefore new members are implored to do all-around job on board the ship regardless of their actual position/rank whether he is assigned as deck hand or engine hand.

We have examined the rest of the documents marked as Annex B^[7] in petitioners position paper filed before the NLRC and it appears that the provisions therein pertain to the rules and regulations to be observed aboard the vessel rather that a separate contract aside from the POEA approved contract of employment signed by petitioner. The Court, as a rule, will not interfere with an employers prerogative to regulate all aspects of employment which includes among others, work assignments, working methods, and place and manner of work. As long as

the standards of good faith and reasonableness are met, an employer is given free reign on how to run his business.

The vessels IDF system, where new members are implored to do an all-around job on board the ship, presumes a situation wherein the vessels officers exercise their discretion to order a seaman, whether a deck hand or engine hand, to do a particular job when the situation so requires. In petitioners case, he was ordered to clean the vessels scavenge space in the engine room together with the mechanic.

The Court cannot find anything so technical or so difficult in cleaning a scavenge space which could otherwise give a rational basis for petitioners intransigence. Petitioner is estopped from asserting his unawareness of the IDF system because the evidence show that he was sufficiently informed beforehand of said policy as attested by his signature therein.

However, while his signature on the incident report to the captain can be viewed as sufficient notice that he was being charged with gross insubordination, we agree with the Solicitor Generals observation that petitioner was not given an opportunity to explain his side before he was notified of the captains decision to have him repatriated to the Philippines. The captains handwritten decision below the incident report to arrange petitioners repatriation violated the procedure in our labor laws on termination of employment which must be done in the natural sequence of notice of charges, hearing and notice of judgment. While there was just cause for petitioners repatriation, private respondents actions fell short of giving petitioner an ample opportunity to explain and defend himself. Accordingly, the Court applies the doctrine it laid down in *WenPhil Corporation v. NLRC*, G.R. 80597, February 8, 1989 which imposed a sanction on the employer who failed to give due process to his erring employee. We thus held that the sanction would depend on the facts of each case and the gravity of the omission.

In the case at bar, the Court deems it fair to impose a sanction on private respondents which should be made to pay the amount of Five Thousand Pesos (P5,000.00) to petitioner for failure to fully comply with the requirements of procedural due process before repatriating petitioner to the Philippines.

WHEREFORE, the decision of the NLRC is hereby **AFFIRMED** with modification. Private respondents are hereby ordered, jointly and severally, to pay petitioners salary from 1-10 September 1993 and the amount of Five Thousand Pesos (P5,000.00) for failure to observe fully the requirements of due process of law in effecting petitioners repatriation.

SO ORDERED.

Bellosillo, Vitug, Kapunan, and Hermosisima, Jr. JJ., concur.

[1] *Rollo*, p. 60.

[2] *Ibid.*

[3] Citing *Fil Pride Shipping v. NLRC*, G.R. No. 97068, March 5, 1993.

[4] *Rollo*, pp. 73-76.

[5] *Rollo*, pp. 85-98.

[6] Annex J, *Rollo*, p. 68.

[7] *Rollo*, p. 59.