FIRST DIVISION

[G.R. No. 115527. August 18, 1997]

ROSSELINI L. DE LA CRUZ, EDGAR S. NINA, VIRGILIO R. DU, RENATO I. CURIOSO, NOEL T. GALENO, GERONIMO K. MALUBAY, GERARDO D. TORRES, ERWIN G. OYCO, MELENDRES E. AGURO, ALOYSIUS C. CONCEPCION, MANOLO D. ESCANO, VENANCIO B. ACTA, PATROCENIO M. REYES, YOLANDO B. BAUTISTA, JOB M. SAN BUENAVENTURA, and BENJIE D. LIM, *petitioners, vs.* NATIONAL LABOR RELATIONS COMMISSION, PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION, and GRACE MARINE & SHIPPING CORPORATION, *respondents.*

D E C I S I O N

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 29 April 1994 in NLRC-NCR CA No. 00246 entitled Grace Marine & Shipping Corporation *v.* Rosselini L. de la Cruz, *et al*. The NLRC affirmed, with modifications, the decision of the POEA administrator dated 11 December 1991 in POEA Case No. 90-08-920 upholding the legality of petitioners repatriation and dismissing for lack of merit petitioners counterclaim of illegal dismissal and non-payment of their salaries for the unexpired portion of their contract. The POEA held petitioners solidarily liable to pay the sum of US$19,114.83 (or its peso equivalent) to Grace Marine and Shipping Corporation as repatriation expenses and 5% attorneys fees. Petitioners were also suspended by the POEA for overseas employment for a period of one (1) year upon promulgation of its decision and their names were listed under the POEA watch list.

The facts, as established by the parties respective evidence, are as follows:

In October 1989, petitioners, all seamen by profession, were hired by Sinkai Shipping Co., Ltd. (SINKAI) through its local manning agent, private respondent Grace Marine and Shipping Corporation, to form the Filipino complement aboard its vessel, the M/V White Castle. In the course of their employment, petitioners discovered that the shipowners, through the officers of M/V White Castle, were engaged in the practice of double bookkeeping. Petitioners claimed that whenever the vessel was scheduled to call port in the United State or in other countries ports where the International Transport Workers Federation (ITF) maintains its presence, its officers required the Filipino crew members to sign double payrolls.[1]

Petitioners also bewailed that they were not paid overtime pay for work rendered in excess of ninety (90) hours under their POEA-approved contracts; that the shipmaster did not provide adequate victualling for the Filipino crew; and that the shipmaster refused to honor the stipulated holidays in their contract. They brought these complaints to their (Filipino) second officer but the latter allegedly refused to act for fear of reprisal from the shipowners.

When the M/V White Castle dropped anchor at Long Beach, California on 12 June 1990, petitioners brought their complaints before the nearest Center of Seamans Rights (CSR). What happened next was disputed by petitioners and private respondents as both parties pleaded contrasting versions of the incident.

Petitioners averred that the CSR advised them to return to the vessel not because their claims were baseless, but because the CSR needed more documents in order to show cause for interdicting the vessel. When their ITF lawyer confronted the ship captain, the latter assured them that their grievances would be brought to the shipowners and that there would be no retaliatory action for those who sought the assistance of the CSR or ITF. Relying on their captains word, petitioners re-boarded the vessel and returned to their respective posts. The vessel then sailed to Japan and upon arriving thereat on 26 June 1990, petitioners were discharged and repatriated to the Philippines on the ground of abandonment of work and desertion of the M/V White Castle.

Private respondent presented a masters report dated 15 June 1990 prepared by Cpt. Takemoto, master of the M/V White Castle, to traverse petitioners allegations.[2] The report stated that petitioners abandoned their respective posts and disembarked from the vessel without the captains permission in order to seek ITF intervention. In doing so, petitioners not only violated their employment contracts and the general guidelines on board the vessel, but also undermined the safety of the vessel which could not set sail for Japan with an undermanned crew. Consequently, the ships schedule was unnecessarily delayed for more than twenty-four (24) hours, which exposed the shipowners to damage claims of the vessels charterers.

According to Capt. Takemoto, on 12 June 1990 at 1600 hrs., the M/V White Castle had just completed loading its cargo of citrus at Long Beach, California and was scheduled to sail out at 1700hrs. On the same day for Tokyo, Japan when the vessels chief officer informed him that one Filipino crewmember named Gerardo Torres did not return to the vessel since going on shore leave.

Despite this incident, Captain Takemoto decided to leave behind the missing seaman and sail on schedule. However, at about 1645 hrs., a US Coast Guard marine inspector came along side the vessel and requested permission to board and inspect the same due to reports from the vessels Filipino crew that the vessels equipment, facilities, and accommodation were below the accepted minimum safety standards. The marine inspector inspected the vessel and found it to be seaworthy. Takemoto then surmised that the Filipino crew deliberately made a false report to the US Coast Guard in order to detain the vessel.

Shortly before 1700 hrs., Captain Takemoto was informed by his chief officer that fourteen (14) Filipino crew members (except for the 2nd officer and 3rd officer) had suddenly disembarked from the vessel for no apparent reason. Captain Takemoto went down the ship to verify the report and saw petitioners assembled at the pier. When Takemoto confronted petitioners about their unauthorized disembarkation, he was met by petitioners complaints about alleged unpaid wages, double bookkeeping, and poor working conditions. According to Takemoto, the fourteen (14) Filipino crew then left the pier aboard a bus provided by local ITF investigators.

Unable to secure a clearance from the US Coast Guard because the vessel lacked the minimum safety manning requirements, Captain Takemoto immediately wired the incident to the shipowners to verify the complaints of the Filipino crew members. In their reply, the shipowners informed Captain Takemoto that the Filipino crew members have been paid strictly according to their contracts and under the ITF JSU/AMOSUP CBA wage scales, with the officers and engineers receiving additional pay. The remittances of the home allotment pays of the seamen were also up-to-date. The shipowner then advised the captain that they were dispatching six (6) Japanese crew members to meet the required minimum safety manning requirements. Meanwhile, the Filipino 3rd officer disembarked from the ship to join cause with the fourteen (14) Filipino seamen.

The next day, 13 June 1990 at 1300 hrs., the fifteen (15) Filipino crew members (petitioners) returned to the vessel under the escort of the US local immigration officers who requested Captain Takemoto to accept them back to the ship because of their irregular conduct as per immigration law.[3] While Captain Takemoto knew that the claims of the fifteen (15) Filipino

crewmen were baseless, he was not in a position to ignore the request of the immigration officers. Petitioners, who were accompanied by an ITF lawyer, then demanded that they will only resume work on board the ship if the captain will sign an ITF prepared agreement condoning the incident.

To prevent any further disruptive action by the petitioners and to avert any further damage to the shipowners and charterers, Captain Takemoto decided to swallow their unreasonable demands to save the situation. Eventually, Captain Takemoto signed the agreement[4] and stationed the Filipino crewmen on the ships deck and in the engine room. The M/V White Castle finally left Long Beach at 1715 hrs. on 13 June 1990.

While the M/V White Castle was in transit, Grace Marine and Shipping Corporation received a telex on 14 June 1990 from its foreign principal, SINKAI narrating the Long Beach incident. On the same day, Grace Marine and Shipping Corporation Furnished the POEA a copy of the SINKAI telex and requested the agency to blacklist the fifteen (15) Filipino seamen (petitioners) and to order their suspension due to their grievous offenses which caused not only heavy losses to the shipowners and charterers but also tainted the business name of Sinkai in particular and the reputation of all Filipino seamen in general. On 15 August 1990, Grace Marine filed a formal complaint for disciplinary action against petitioners before the POEA.

In upholding the claim of Grace Marine, the POEA administrator held that

Respondents were not only illegally terminated but were terminated for valid cause when they abandoned their respective posts on board their vessel in gross violation of their POEA approved contract. This fact is sufficiently and clearly established by the evidence presented by the complainant. Even granting that respondents have valid grievances against the officers or shipowners with respect to compensation or working condition, this office cannot countenance respondents act of simply ignoring their employment contract approved by the POEA which provides a sufficient mechanism for redressing whatever grievances they have thru their grievance machinery. x x x.

xxx xxx xxx

Respondents act of seeking the intervention of the ITF/CSR without exhausting first the remedies provided under the Grievance Machinery provision of their duly approved POEA contract constitutes a serious breach of such contract for which penalty of dismissal and suspension is in order. We find respondents allegation that they notify [sic] their second officer of their grievances bereft of truth for we find no sufficient evidence substantiating and corroborating this allegation. In this light, it is but just that respondents reimburse complainant of the sum of US$19,114.83 which the latter incurred for their repatriation and replacement.

We find respondents allegation of illegal dismissal and counterclaim for salary for the unexpired portion of the contract without merit.[5]

On appeal, the NLRC deleted the award of $19,114.83 representing repatriation expenses and 5% attorneys fees for being uncalled for[6] but upheld petitioners dismissal based on a separate factual finding which appears to be in conflict with that of the POEA decision, thus

Significantly, the parties, at the inception of the whole controversy were at fault, giving both of them no recourse at law. Indeed, when respondents were allowed to re-embark at Long Beach, California, after allegedly having abandoned their vessel, which however, was truthfully refuted by respondents, a sense of qualm if not mitigation of complainants indiscretion towards the crews grievance, could understandably have been contemplated.

Consequently, for the complainant to renege from their agreement thru its vessels master that no adverse repercussion will be meted on respondents act is tantamount to treahery, thereby leaving respondents in

the quagmire of helplessness.

Further, it would be highly irregular and unfair if only the respondents are made to suffer from fault, the very root of which was not their own doing. Otherwise, discrimination against Filipino seafarers will flourish, an eventuality surely destructive of the countrys good name.

Even respondents dismissal were [sic] in disregard of due process of law. On this basis alone, the complainant cannot be left unadmonished.[7] (emphasis supplied)

In the case at bar, petitioners raise two (2) issues:

I

Whether or not the NLRC acted with grave abuse of discretion amounting to lack of and/or in excess of jurisdiction when it did not annul and set aside the decision of the POEA based on its own conclusion that petitioners did not abandon their work.

II

Whether or not the NLRC acted with grave abuse of discretion amounting to lack of or in excess of jurisdiction in not awarding petitioners counterclaim despite its finding that petitioners dismissal were [sic] in disregard of due process of law.

Petitioners contend that the NLRC dismissed private respondents allegations of abandonment and breach of contract against them for lack of factual basis; meaning, there was no just cause for their dismissal and repatriation. The NLRC also held that they were dismissed without due process of law. Since the POEAs decision justified petitioners suspension and the recovery of repatriation expenses by private respondent based on abandonment of work, then the NLRC should have set aside both orders when it held that the matter of alleged abandonment of the vessel was truthfully refuted by petitioners.

Petitioners further contend that neither the POEA nor the NLRC found evidence of deliberate, unjustified refusal of an employee to resume his employment.[8] The fact that they sought the CSR or ITF intervention cannot be taken as overt acts which unerringly show that the employee does not want to work anymore,[9] but as a legitimate exercise of their freedom of expression to improve the terms and conditions of their employment. Besides, the act of seeking intervention of the ITF or CSR, or any other group is not even an offense under the Table of Offenses and Correspondent Administrative Penalties in the POEA Standard Contract.[10] Therefore, the POEA had no basis to hold that petitioners seriously breached their POEA approved contracts when they failed to follow its grievance machinery provisions. There being a clear case of illegal dismissal, they should be awarded their salaries for the unexpired portion of their contract.

In its memorandum,[11] private respondent argues that both the NLRC and the POEA found substantial evidence which showed that petitioners breached their contracts when they abandoned their respective posts on 12 June 1990 which unnecessarily delayed the schedule of M/V White Castle and caused it to suffer US $19,114.83 in repatriation expenses. However, petitioners have misinterpreted the NLRC decision to mean that private respondent was guilty of illegal dismissal and should be made to pay their salaries corresponding to the unexpired portion of their contracts.

In private respondents view, the NLRCs statement that at the inception of the whole controversy the parties were at fault, giving both of them no recourse at law and that the decision appealed from to some extent must be left unmolested meant that the NLRC upheld the factual findings and the conclusions of the POEA administrator except that it deleted the award of repatriation expenses and 5% attorneys fees for lack of factual and legal bases.

In a separate comment,[12] the Solicitor-General notes that despite the NLRCs finding that the petitioners dismissal were in disregard of due process of law and that there was no abandonment of work committed by petitioners, the NLRC held that both parties were at fault, giving both of them no recourse at law. Whatever the NLRC meant in such a cryptic statement was not explained in its decision. The Solicitor-General surmises that the alleged fault imputed to petitioners was in their act of complaining to the CSR that delayed the scheduled departure of the vessel, since the absence of some of the crew, who were then complaining to the CSR, rendered the vessel unseaworthy and unable to leave as scheduled.[13]

Be that as it may, the Solicitor-General invokes the ruling laid down by this Court in Wallem Philippine Shipping *v.* Minister of Labor (102 SCRA 835 [1981]), Virjen Shipping and Marine Services *v.* NLRC (125 SCRA 577 [1983]), and Susara *v.* Benipayo (176 SCRA 465 [1989]), which held that complaints by seamen to the ITF or similar organizations to protect and uphold their rights are protected activities under the right to freedom of expression and cannot be a just cause for termination of employment.

In its separate comment,[14] the NLRC contends otherwise. The NLRC argues that the filing of the petition for certiorari by petitioners was premature since petitioners did not file a motion for reconsideration of the NLRC decision. And even assuming *arguendo* that petitioners can properly file a petition for certiorari under Rule 65, the same should be dismissed because petitioners have raised only factual issues in their petition.

The petition is impressed with merit.

Under Art. 282 of the Labor Code, an employer may terminate an employment for any of the following causes:

(a) serious misconduct or wilfull disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) gross and habitual neglect by the employee of his duties;

(c) fraud or wilfull breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative;

(e) other causes analogous to the foregoing.

In termination cases, the employer has the burden of proof to establish the existence of a valid cause in order to effect a valid dismissal. A valid dismissal, in turn, presupposes not only the validity of its cause, but also the validity of the manner by which the dismissal is done.

The POEA held that petitioners sought the intervention of the ITF/CSR without prior resort to the grievance machinery provision in their seamans contract and this action constitutes a serious breach of such contract for which a penalty of dismissal is in order. However, the masters report prepared by Capt. Takemoto disclosed that petitioners expressed their intentions to resume work aboard the M/V white Castle provided the captain would sign an ITF prepared agreement condoning the incident; that is in seeking the CSR intervention shortly before the vessels departure for Tokyo, Japan. The captain reported that he finally decided to swallow their (petitioners) unreasonable demands to save the situation, which seems to imply that the fate of the vessel was at the mercy of petitioners. Upon the other hand, the statement also lends credence to petitioners claim that the captain assured them that the incident would have no adverse effect on their employment. Unknown to petitioners, the captain reneged on their agreement and requested the shipowners that petitioners be replaced upon the vessels arrival in

Tokyo, Japan.

The issue is really whether or not the act of petitioners in seeking CSR (or ITF) intervention, and the alleged manner in which it was carried out, constitute a just cause for terminating their employment under Art. 282 of the Labor Code, and whether or not petitioners were given due process before they were repatriated to the Philippines.

The report of Capt. Takemoto clearly stated that petitioners complained about alleged unpaid wages, double bookkeeping and poor working conditions before they boarded a bus provided by local ITF investigators. This circumstances presupposes that the local CSR otr ITF had been sought earlier by the petitioners which explains the presence of the bus on the pier. Needless to sa, some of the petitioners have gone earlier to the CSR or ITF to ask for help even before their disembarkation shortly before 1700 hrs. on 12 June 1990. And in doing so, there is no evidence that they used force, violence, intimidation, or any illegal means in order to bring their alleged plight to the attention of the CSR.

In Suzara *v.* Benipayo, the Court took judicial notice of the worldwide militancy of the ITF in interdicting foreign vessels and in demanding wage increases for third world seamen. Interdiction is nothing more than a refusal of ITF members to render service for the ship, such as to load or unload its cargo, to provision it or to perform such other chores ordinarily incident to the docking of the ship at a certain point.[15] That in most cases, there was even no need for Filipino or other seamen to seek ITF intervention because the ITF acts on its own volition in all ITF controlled ports not out of pure altruism but in protecting the interest of its own members.[16]

Thus, when petitioners brought their complaints to the CSR-ITF, the captain cannot be unaware of the possibility of interdiction which might further complicate the vessels delay in schedule. If it were indeed true that petitioners claims were entirely baseless, how could petitioners ITF lawyer even force the ship captain to sign the agreement condoning the incident? Whatever the case, Capt, Takemoto agreed to petitioners demand that no retaliatory action would befall those who sought the CSR-ITFs help. Apparently, the captain brached the agreement when he recommended to the shipowners petitioners repatriation. The shipowners sent a telex to its local manning agent Grace Marine and Shipping Corporation as early as 14 June 1990 which in turn furnished the POEA on the same day with a copy of said telex with a prayer to blacklist petitioners.

The precipitate haste in which private respondent resolved to have petitioners blacklisted even before the vessels arrival in Japan on 26 June 1990 not only confirms Capt. Takemotos false assurances, but more importantly, these actions show the complete absence of due process in the manner of petitioners repatriation. There is no evidence on record which would established that petitioners were served written notices stating the particular acts or omission constituting the grounds for their repatriation. There is also no evidence to show that petitioners were given an opportunity to answer the charges against them and hear their defenses. The records are also silent if petitioners were furnished written notices of repatriation.

The Court notes that under Article XIII of the General Instructions issued by the shipowners, it is provided that, [I]n case of dismissal, as per AMOSUP request being rather strict, please exercise 2/3 notices to seamen before repatriating such erring crew for settling matters smoothly in Manila. The General Instruction also outlined the procedure to be taken for repatriation of the crew, that is, the master and the 2/0 (second officer, who is a Filipino) shall call a disciplinary meeting and the master shall give a first or second warning depending on the number of times the same mistake is committed, and for the 3rd mistake, the master will recommend the crews replacement.[17]

The Court has gone over the list of violations contained in the General Instructions and nowhere is it stated that the act of seeking ITF intervention is a cause for repatriation. Neither can we view petitioners act of going to the CSR or ITF as serious misconduct or gross and

habitual neglect of duty. They decided to seek outside the intervention when their second officer ignored their grievances. The fact that the Filipino 3rd officer eventually joined their cause gives credence to this allegation.

If it were indeed true, as the POEA held, that petitioners ignored the grievance machinery in by-passing their 2/0, the best evidence to established this fact would have to come from the 2/0 himself who should have executed a specific denial that petitioners never brought their grievances to him.

We agree with the Solicitor-General that the ruling in the cases of *Wallem, Virjen, and Suzara* should be applied in the case at bar. In these cases the Filipino seamen concerned applied effective pressure on their employers by raising the possibility of ITF interdiction should their demands remain unheeded.

In petitioners case, it cannot be said that they acted unreasonably, oppressively or maliciously in going to the ITF-CSR. At that time, they had reasonable grounds to believe that private respondents were involved in double-bookkeeping, unpaid wages and poor working conditions. They cannot be held guilty of abandonment or decision in the absence of substantial evidence that they disembarked from the vessel with the intention never to return to their post.

In sum, we hold that the NLRC gravely abused its discretion when it failed to grant petitioners counterclaim of illegal dismissal after finding that there was no just cause and due process in their repatriation. As we held in *Wallem*, there is a breach of contract when seamen are dismissed without just cause and prior to the expiration of the employment contracts and are entitled to collect from the owners or agent of the vessel their unpaid salaries for the period they were engaged to render the services.[18]

WHEREFORE, the decision of the NLRC is hereby SET ASIDE. The POEAs order of suspension for overseas employment for one year against petitioners is REVOKED and petitioners names are hereby ordered DELISTED in, or removed from the watchlist of the POEA. Private respondent Grace Marine Shipping Corporation is hereby ordered to pay petitioners their respective salaries for the unexpired portion of their employment contracts, the computation of which is referred to the NLRC for proper execution.

SO ORDERED.

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

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[1] Annex B; B-1, *rollo*, pp.31-32.

[2] Annex A, *rollo*, p. 38.

[3] Annex B, Original Records, p. 232. It appears that petitioners conditional landing permits were revoked by the US Immigration on 12 June 1990 as a precaution due to their failure to reboard the vessel on the same day.

[4] Annex C, Original Records. P. 210. The agreement itself was not presented in evidence but was repeatedly mentioned in the masters report and in the telex sent by Sinkai Shipping to private respondent Grace Marine on 14 June 1990.

[5] *Rollo*, pp. 58-60.

[6] *Rollo*, p. 100

[7] *Rollo*, pp. 100-101.

[8] Citing Batangas Laguan Tayabas Co. *v.* NLRC, 212 SCRA 792.

[9] *Supra*.

[10] *Rollo*, p. 12.

[11] *Rollo*, pp. 167-178. (Private respondent adopted its comment on the petition as its memorandum, *Rollo*, p 179)

[12] *Rollo*, pp. 136-145.

[13] *Rollo*, p. 141.

[14] *Rollo*, pp. 200-204.

[15] 176 SCRA 465 (1989) at pp. 474-475.

[16] *Ibid*.

[17] Annex A, *Rollo*, pp. 26-29.

[18] 102 SCRA 835 at p. 842, citing Madrigal *v.* Ogline (104 Phil. 748). Philgrecian Maritime Services *v* NLRC (139 SCRA 285) at p. 294.