

SECOND DIVISION

[G.R. No. 111002. July 21, 1997]

**PACIFIC MARITIME SERVICES, INC., MALAYAN INSURANCE CORPORATION
and CROWN SHIPMANAGEMENT, INC., *petitioners*, vs. NICANOR
RANAY, and NATIONAL LABOR RELATIONS COMMISSION,
respondents.**

D E C I S I O N

ROMERO, J.:

That a mans job is a property right within the ambit of Constitutional protection has been long recognized and accepted in law; hence, we are circumspect and vigilant whenever a worker comes to this Court complaining of illegal dismissal. In each such case, we require the employer to prove by substantial evidence the facts constituting the ground for dismissal,^[1] and that termination has been effected with strict observance of both procedural and substantive due process. It is by these standards that the Court has judged the instant petition.

Petitioner Pacific Maritime Services, Inc. (Pacific, for brevity), is a duly licensed manning agency while its co-petitioners, Malayan Insurance Corporation and Crown Ship Management, Inc., are the formers bonding company and principal, respectively. On February 1, 1989, Pacific engaged the services of private respondents Nicanor Ranay and Gerardo Ranay as laundrymen. Their employment contracts, both dated February 1, 1989, and duly approved by the Philippine Overseas Employment Agency (POEA), provided for the following uniform compensation package: (1) basic monthly salary of US\$300.00; (2) additional fixed overtime pay in the amount of US\$150.00; and (3) leave pay equivalent to six days wages. These contracts were supposed to be effective for ten months from the date of hiring.

On February 14, 1989, private respondents boarded the vessel M/V Star Princess, where they were assigned to work, and which immediately left the Philippines. After working for only three months and thirteen days, however, private respondents were ordered to disembark. They were subsequently repatriated to the Philippines on May 27, 1989.

Because of their dismissal, private respondents filed on August 14, 1989, a complaint against petitioners before the POEA, challenging the legality of their dismissal on the ground that the same was effected without prior notice and without just cause. Consequently, they prayed for recovery of all unpaid salaries, overtime pay and leave pay which had accrued and could have accrued were it not for the pretermination of their contracts.

Pacific opposed the complaint, contending that the dismissal of private respondents was validly made. It argued that private respondents employment was terminated due to serious misconduct, insubordination, non-observance of proper hours of work and damage to the laundry of the vessels crew and passengers. To support these allegations, petitioners presented a telefax transmission,^[2] its lone evidence, purportedly executed and signed by a certain Armando Villegas. Said document made an account of the incidents which allegedly prompted Pacific to terminate private respondents services, among which were: (1) the assault on the person of Armando Villegas himself by Gerardo Ranay coupled with the latters utterance of the words Putang-ina mo! in the presence of at least four other crew members; (2) Gerardo Ranays failure to report for work for three consecutive days; (3) Nicanor Ranays tardiness in going to his

working area and having a drinking spree with his brother Gerardo; and (4) failure of private respondents to adjust to their working environment. The records, however, do not reveal that petitioners ever presented any corroborative or additional evidence to buttress this allegation other than photocopies of two Rizal Commercial Banking Corporation checks both for P1,919.85 and both dated October 3, 1989, allegedly paid to private respondents by Pacific, and computations of private respondents wages, overtime pay and leave pay.^[3]

On the basis of the parties submission, then POEA Administrator Jose N. Sarmiento rendered a decision^[4] dated November 6, 1990, which ruled that private respondents dismissal was illegal for failure of petitioners to prove the legality thereof and to afford them due process. He refused to give credence to the report made by Armando Villegas which was prepared long after the events referred to therein had taken place. Accordingly, he ordered petitioners to pay private respondents each in the amount of US\$2,925.00 corresponding to their salaries for the unexpired 6 and 1/2-month portion of their employment contracts; P15,566.85 each for their unpaid salaries, overtime pay and leave pay; and plane fare for the return trip to the Philippines. Furthermore, he found merit in private respondents claim that they were not paid their salaries, overtime and vacation leave pay up to May 29, 1989, since the vouchers failed to show that the checks intended to cover the amounts for the private respondents were duly acknowledged and received by them. He pointed out that the columns for Received by and "Date were all in blank and that, at any rate, the amount of P1,919.85 covered by each check was insufficient to pay for what would be rightfully due to private respondents.

Aggrieved, petitioners appealed to the NLRC. On April 19, 1993, the Commission dismissed said appeal and affirmed the decision of the POEA.^[5] Hence, this petition.

As stated at the outset, the merit of this petition depends on petitioners strict compliance with the requirements of both procedural and substantive due process, as well as their observance of the principle that it is the employer who bears the burden of establishing by substantial evidence the facts supporting a valid dismissal. Upon careful and meticulous scrutiny of the records, however, the Court finds that the petition falls short of these standards. We are, therefore, constrained to deny it and uphold the decision of the POEA and the NLRC.

The Court concedes that assault, invectives, obscene insult or offensive words against a superior and imbibing intoxicating drinks during work may constitute serious misconduct which would justify the dismissal of an employee found guilty thereof. We likewise agree that gross neglect of duties as shown by tardiness and absenteeism, as well as willful disobedience and insubordination, equally deserve the same penalty. These grounds are in fact well-supported by jurisprudence.^[6] These are not, however, the real and crucial issues. Before even determining whether the acts of constitutes serious misconducts, insubordination, tardiness or absenteeism, it is necessary to determine if, in the first place, the petitioners sufficiently established these acts by substantial evidence. On this point, the Court rules that petitioners failed to do so.

Petitioners reliance on the telefax transmission signed by Armando Villegas is woefully inadequate in meeting the required quantum of proof which is substantial evidence. For one thing, the same is uncorroborated. Although substantial evidence is not a function of quantity but rather of quality, the peculiar environmental circumstances of the instant case demand that something more should have been proffered. According to the account of Villegas, it appears that the incidents he was referring to transpired with the knowledge of some crew members. The alleged assault by Gerardo Ranay on Villegas, for instance, was supposedly witnessed by at least four other crew members. Surprisingly, none of them was called upon to testify, either in person or through sworn statements. Worse, Villegas himself who omitted some vital details in his report, such as the time and date of the incidents referred to, was not even presented as witness so that private respondents and the POEA hearing officer could have been given an opportunity to cross-examine and propound clarificatory questions regarding matters averred by him in the telefax transmission.^[7] Moreover, although signed, the same was not under oath and,

therefore, of dubious veracity and reliability although admissible.^[8] Likewise, the motive is suspect and the account of the incidents dangerously susceptible to bias since it came from a person with whom private respondents were at odds. All told, petitioners failed to make up for the weakness of the evidence upon which they confidently anchored the merits of their case.

Likewise, the belated submission of the report by Villegas, long after the incidents referred to had taken place and after the complaint had been lodged by private respondents, weighs heavily against its credibility. Petitioners did not show any convincing reason why said report was only accomplished on September 22, 1989. They merely argued that as in criminal cases, the witness is usually reluctant to report an incident. At any rate, with present technology, a ship out at sea is not so isolated that its captain cannot instantly communicate with its office. It would appear that the report, filed several months later, is but an afterthought.

Aside from petitioners failure to establish the facts constituting the grounds for dismissing private respondents, the Court also takes into account against petitioners their glaring omission to afford private respondents procedural due process, the indispensable elements of which are notice and hearing. We observe that the records are devoid of any proof indicating that the required notices were sent to respondents and a reasonable opportunity accorded them to be heard. The POEA and the NLRC similarly failed to find any, leading to the inescapable conclusion that the dismissal of private respondents was even tainted with procedural infirmity.

The Court, however, notwithstanding the employers breach of procedural due process, is disinclined to award damages in line with recent jurisprudence.^[9]

As regards petitioners contention that both the POEA and the NLRC overlooked the alleged payments they made to private respondents, we rule that the same deserves little consideration. The mere presentation of photocopies of two (2) RCBC checks^[10] and two vouchers^[11] containing the computation of private respondents remuneration does not conclusively establish payment. In this regard, we call attention to our latest ruling in Jimenez v. National Labor Relations Commission,^[12] thus:

As a general rule, one who pleads payment has the burden of proving it. Even where the plaintiff must allege non-payment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment. The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.

When the existence of a debt is fully established by the evidence contained in the record, the burden of proving that it has been extinguished by payment devolves upon the debtor who offers such a defense to the claim of the creditor. xxx.

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The positive testimony of a creditor may be sufficient of itself to show non-payment, even when met by indefinite testimony of the debtor. Similarly, the testimony of the debtor may also be sufficient to show payment, but, where his testimony is contradicted by the other party or by a disinterested witness, the issue may be determined against the debtor since he has the burden of proof. The testimony of the debtor creating merely an inference of payment will not be regarded as conclusive on that issue. (Underscoring supplied, citations omitted).

The existence of the checks and the supporting vouchers simply establishes the fact that petitioners admit their monetary liability to private respondents and their intention to pay the latters unpaid salaries, overtime pay and leave pay. To reiterate, these documents, standing alone, do not evidence payment. There is no certainty that these were ever delivered to, much less encashed by, private respondents. Absent any evidence to that effect, petitioners are deemed to have failed discharge their burden of proving their affirmative allegation of prior

payment in the amount of ₱1,919.85 each to private respondents in spite of the latter's mere denial of said payment.

WHEREFORE, the instant petition is hereby **DISMISSED** for lack of merit. The April 19, 1993, decision of respondent National Labor Relations Commission is hereby **AFFIRMED**.

SO ORDERED.

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

[1] Molave Tours Corporation v. National Labor Relations Commission, 250 SCRA 325 (1995).

[2] *Rollo*, pp. 34-36.

[3] *Ibid.*, pp. 68-71.

[4] *Id.*, pp. 28-33.

[5] *Id.*, pp. 18-26.

[6] Dela Cruz v. National Labor Relations Commission, 177 SCRA 626 (1989); Asian Design and Manufacturing Corporation v. Hon. Deputy Minister of Labor, 142 SCRA 79 (1986); Haverlon Shipping Ltd. v. National Labor Relations Commission, 135 SCRA 685 (1985); Reta v. National Labor Relations Commission, 232 SCRA 613 (1994); Zenco Sales, Inc. v. National Labor Relations Commission, 234 SCRA 689 (1994).

[7] Sections 5 and 6, Rule III, Book VII of the POEA Rules and Regulations provide in part:

SEC. 5. Clarifying Questions. In cases where the Hearing Officer finds that there are complicated factual issues involved that cannot be resolved through position paper or memorandum, he may direct the parties and their witnesses to appear before him to answer clarifying questions. (Underscoring supplied)

SEC. 6. Nature of Proceedings.

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The Hearing Officer may avail himself of all reasonable means to ascertain the facts of the case, including ocular inspection, where appropriate, and examination of informed persons. (Underscoring supplied)

[8] Com Savings Bank v. National Labor Relations Commission, 257 SCRA 307 (1996).

[9] MGG Marine Services, Inc. and/or Doroteo C. Garlan and Cesar Rotilo v. National Labor Relations Commission and Elizabeth A. Molina, G.R. No. 114313, July 29, 1996.

[10] Check Nos. 952587 and 952586.

[11] Voucher Nos. 9283 and 9282.

[12] 256 SCRA 84 (1996).