

SECOND DIVISION

[G.R. No. 95449. August 18, 1997]

**PHILIPPINE-SINGAPORE TRANSPORT SERVICES, INC., *petitioner*, vs.
NATIONAL LABOR RELATIONS COMMISSION and Capt. WENEFREDO
N. ESTRADA, *respondents*.**

DECISION

TORRES, JR., J.:

The instant case basically revolves around the issue of whether or not private respondent Wenefredo N. Estrada, the complainant in POEA Case No. M-88-02-102 entitled Capt. Wenefredo N. Estrada vs. Philippine Singapore Transport Services, Inc., et. al., is validly dismissed from the service on account of his alleged incompetence as the master/captain of the vessel Sea Carrier I.

It appears that on November 24, 1987, herein petitioner Philippine-Singapore Transport Services, Inc. (PSTS, for brevity), a manning agency, hired private respondent Estrada as master of the vessel Sea Carrier I for its foreign principal, Intra-Oil Supplies Sbn Bhd (Intra-Oil, for brevity). Intra-Oil had a charter agreement, then, with a company which was engaged in a project of oil drilling in the high seas of Bombay, India.

On January 21, 1988 or barely two months following his employment, private respondent Estrada was informed by a representative of Modest Shipping, an agent of Intra-Oil, that he would be relieved from his employment and repatriated back to the Philippines. He was not given any explanation or reason for his relief. On that same day, someone took over as captain of Sea Carrier I, which prompted Estrada to relinquish his post. On account of this unfortunate incident, he decided to return to Manila the following day. Upon his arrival, he readily went to petitioner PSTS to ask about his dismissal from employment and to claim for his unpaid salary and the sum corresponding to his plane fare which was deducted from his salary. Petitioner PSTS informed him that his service was terminated due to his incompetence. It also denied his claim for the sum of money.

On February 10, 1988, private respondent Estrada filed with the POEA Adjudication Department a complaint against PSTS and Intra-Oil for illegal dismissal, docketed as POEA Case No. M-88-02-102. He asked for the reimbursement of his plane fare and payment of his leave pay and of the remaining salaries for the unexpired portion of his six-month contractual period.

In its answer, PSTS alleged that the dismissal of private respondent Estrada was due to a valid cause, which is incompetency. It asserted that his incompetency is evidenced by the telexes of the charterer to PSTS complaining about the private respondents incompetency in handling the vessel for any tow or even approaching the oil drilling platforms, and informing about its (charterers) decision to terminate the services of private respondent as master of the vessel and to off-hire the Sea Carrier I due to private respondents incompetency. According to PSTS, it had no choice but to give its consent to the dismissal of private respondent by the charterer because the latter was in a best position to determine the qualification of the private respondent.

In his position paper, private respondent revealed that his termination from service was an

offshoot of his justified refusal to obey the order of the charterer to tow another of its vessel. He explained that during the voyage from Singapore to Bombay, in the course of maneuvering the charterers barge, specifically alongside jetties, quays and in navigational channels, all the ropes on board the Sea Carrier I suffered extreme wear and tear, that when the charterer ordered him to tow its barge, he refused to do so since the ropes were worn out and inadequate to maneuver a barge in close water situation and, in his professional opinion, damage would result from using inadequate ropes. This shortage of ropes was made known to Mr. Bala of Essar Shipping, who was asked by the private respondent to supply additional mooring ropes. According to the private respondent, the relationship between him and the charterer degenerated rapidly following this particular incident.

On June 7, 1989, the POEA Adjudication Department ruled in favor of the private respondent by holding that his dismissal from service was illegal, the dispositive portion of its decision states:

WHEREFORE, in view of all the foregoing circumstances, judgment is hereby rendered ordering respondent Philippine-Singapore Transport Services, its principal Intra Oil Supplies SBN BND and Fortune Life and General Insurance Co., Inc. (PSTSI's surety) to pay complainant (Estrada) jointly and severally the sum of THIRTEEN THOUSAND FIVE HUNDRED THIRTY MALAYSIAN DOLLARS (M\$13,530.00) or its peso equivalent at the time of payment (representing Estrada's salaries covering the unexpired portion of his contract of employment) plus the sum of TEN THOUSAND PESOS (P10,000.00) as refund of airplane expenses.^[1]

Dissatisfied, PSTS appealed to the NLRC on July 12, 1989. The NLRC, however, through its questioned Resolution dated August 17, 1990,^[2] held that the charge of private respondents incompetency was unmeritorious. The real reason for private respondents repatriation was not due to his incompetence but due to his refusal to tow another barge belonging to the charterer and which refusal had been shown to be justified and fully explained by the private respondent. Thus, the NLRC affirmed the decision of the POEA and dismissed the appeal of petitioner for lack of merit.

A motion for reconsideration dated September 14, 1990 was filed by petitioner, but the same was denied in a Resolution dated September 25, 1990.^[3]

Hence, this petition.^[4]

Petitioner argued that the private respondents inability to foresee and anticipate the quantity of ropes to be used during the voyage could only be attributed to his incompetency. As master of the vessel, he was required to see to it that the ship was fitted with all the things necessary for its smooth operation. The fact that the shortage of ropes was made known by private respondent to Mr. Bala did not cure his incompetency. The request for fresh ropes should have been directed to his principal, and not to a third person (Mr. Bala) who was not even connected with the petitioner nor with its principal.

Petitioner likewise asserted that in defying the charterers request to tow its barge, the private respondent failed to comply with his duty to maintain good relationship and cooperate with the charterer as laid down on his employment contract, an incident which led to the off-hiring of Sea Carrier I and the consequent cancellation of the charter agreement. And the cancellation of the charter agreement carried with it the dismissal from service of private respondent because he was a project employee whose employment was coterminous with the charter of Sea Carrier I. It could not therefore be said that the dismissal was not valid.

As to the procedural aspect of private respondents dismissal, petitioner alleged that his termination was done pursuant to the terms of the employment contract, hence, with due regard to due process of law.

We are not persuaded by the foregoing arguments of petitioner.

It is noteworthy to state that an employer is free to manage and regulate, according to his own discretion and judgment, all phases of employment, which includes hiring, work assignments, working methods, time, place and manner of work, supervision of workers, working regulations, transfer of employees, lay-off of workers, and the discipline, dismissal and recall of work.^[5] While the law recognizes^[6] and safeguards^[7] this right of an employer to exercise what are clearly management prerogatives, such right should not be abused and used as a tool of oppression against labor. The companys prerogatives must be exercised in good faith and with due regard to the rights of labor. A priori, they are not absolute prerogatives but are subject to legal limits, collective bargaining agreements and the general principles of fair play and justice.^[8]

The power to dismiss an employee is a recognized prerogative that is inherent in the employers right to freely manage and regulate his business. Corollarily, an employer can not rationally be expected to retain the employment of a person whose lack of morals, respect and loyalty to his employer, regard for his employers rules and appreciation of the dignity and responsibility of his office, has so plainly and completely been bared.^[9] He may not be compelled to continue to employ such person whose continuance in the service will patently be inimical to his employers interest.^[10] The right of the company to dismiss an employee is a measure of self-protection.^[11] Such right, however, is subject to regulation by the State, basically in the exercise of its paramount police power.^[12] Thus, the dismissal of employees must be made within the parameters of the law and pursuant to the basic tenets of equity, justice and fairplay. It must not be done arbitrarily and without just cause.^[13]

Due process must be observed because the dismissal affects not only the employees position but also his means of livelihood. Truly, unemployment brings untold misery and hardship not only to the workingmen but also to those who are dependent on the wage earners. When a person has no property, his job may possibly be his only possession or means of livelihood. Therefore he should be protected against arbitrary deprivation of his job.^[14]

No less than the Constitution recognizes and guarantees the labors right to security of tenure.^[15] Under the Labor Code of the Philippines, as amended, specifically, Article 279 of the said Code, the security of tenure has been construed to mean as that the employer shall not terminate the services of an employee except for a just cause or when authorized by the Code.^[16] The two facets of this legal provision are: (a) the legality of the act of dismissal; and (b) the legality in the manner of dismissal. The illegality of the act of dismissal constitutes discharge without just cause, while illegality in the manner of dismissal is dismissal without due process.^[17] If an employee is dismissed without just cause, he is entitled to reinstatement with backwages up to the time of his actual reinstatement, if the contract of employment is not for a definite period; or to the payment of his salaries corresponding to the unexpired portion of the employment contract, if the contract is for the definite period. If the dismissal is for a just cause but it was made without due process, the employee is entitled to the payment of an indemnity.^[18]

Guided by the foregoing rules and principles, this Court holds that the dismissal of private respondent from service is done without just cause, in apparent violation of Article 279 in relation to Article 282 of the Labor Code of the Philippines, as amended, and without due process, in obvious contravention of Article 277 (b) of the said Code.

Petitioners imputation of incompetence on the part of the private respondent due to his lack of foresight to anticipate the number of mooring ropes to be used is unworthy of being given credence. As explained by private respondent, the Sea Carrier I was sufficiently furnished with mooring ropes prior to the voyage. It so happened that the ropes would later on suffer(ed) extreme wear and tear during its voyage from Singapore to Bombay especially along jetties and quays, and in navigational channels. Faced by such problem, he immediately reported the situation to, and at the same time, requested for new mooring ropes from, Mr. Bala of Essar

Shipping, a person whom the private respondent alleged to be connected with the petitioner and its principal. No new ropes came, however. So, when the charterer ordered private respondent to tow its barge, he explained that the ropes were worn out and, in his professional opinion, inadequate for maneuvering a barge in close water situation, hence, damage would result if towing of the barge would proceed. Evidently, as called for by the circumstances of the situation, the private respondent complied with his responsibility as master of the vessel. To ask for more from him is to require an undertaking that is beyond or in excess of the scope of his duty as master of the vessel. Even the NLRC belied the claim of petitioner that private respondent was incompetent, thus:

To our mind, respondents charge of incompetence is rather sweeping xxx. Complainants refusal to carry out the towing order on the basis of his professional opinion that there was a shortage in towing ropes, a situation which was known to a certain Mr. Bala of Essar Shipping, or that they were inadequate and that it might result in an accident or cause damage certainly does not prove that he was incompetent. On the other hand, it would even show that he was very professional in his job as master, regardless of the intrusions of the charterer into his area of responsibility. It would have been a different story had complainant refused the towing order simply because he didnt know how to, in which case he could be said to be incompetent in that area of expertise.^[19]

The contention of petitioner that Mr. Bala was not in any way connected with it or to its principal deserves scant consideration. Suffice it to say that during the proceedings below, petitioner did not raise this issue. It is only now when petitioner elevated the case to this Court that it is challenging the claim of private respondent that Mr. Bala was connected with the petitioner and its principal. Settled is the rule that issues not raised in the proceedings below can not be ventilated for the first time before this Court.^[20]

Petitioner argued that private respondent is a project employee whose term of service depends upon the charter of Sea Carrier I, hence, the cancellation of the charter agreement carries with it the termination from service of the private respondent. This argument has no leg to stand on because the cancellation of the charter agreement, which was the very basis for terminating the services of the private respondent, was unjustifiable. It must be pointed out that the charter decided to off-hire the Sea Carrier I and eventually canceled the charter agreement because of the alleged incompetence of the master of the vessel. But as discussed earlier, the imputation of incompetence on the part of the private respondent is bereft of any basis. Thus, the alleged incompetence can not be utilized as a valid and justifiable reason to dismiss the private respondent from employment, much less, to cancel the charter agreement. In like manner, the procedural aspect of private respondents termination from employment leaves much to be desired.

Before an employee can be dismissed, the Labor Code, as amended, requires the employer to furnish the employee a written notice containing a statement of the causes for termination and to afford said employee ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires. If the employer decides to terminate the services of the employee, the employer must notify the worker in writing of the decision to dismiss him, stating clearly the reasons therefor.^[21] The record of the instant case clearly shows that the foregoing requirements are not complied with. Private respondent Estrada was caught by surprise when on January 21, 1988 he was told by the agent of the principal that he would be replaced as master of the vessel and would be repatriated to the Philippines. He was not given any explanation or reason for his dismissal. His replacement as master of the vessel came in the afternoon of the same day he was informed of his repatriation. He was thus forced to disembarked from the vessel. Obviously, the dismissal of private respondent was impetuously made without the benefit of the required notice and hearing.

Petitioner seeks to justify the absence of the said notice and hearing by invoking a provision

in the contract of employment which authorizes the company to terminate employment without notice. The pertinent provision of the said employment contract reads as follows:

However, in the event of serious misconduct or neglect of duty or breach by you of any rules or regulations imposed by the Company, the Company may without notice or payment in lieu of notice terminated your employment and all expenses for your repatriation will be borne by you.^[22]

The foregoing contractual provision is inapplicable in the situation of private respondent. The said provision applies only when the employee is liable for serious misconduct, neglect of duty or violation of company rules and regulations. Apparently, private respondent Estrada was not found guilty of any of these offenses. The allegation of petitioner that the private respondent committed neglect of duty or serious misconduct for refusing to obey the order of the charterer to tow the barge is unmeritorious. It was the professional opinion of private respondent that the mooring ropes which had been worn out during the vessels voyage were inadequate for maneuvering in close water situations and that an accident might result from using the said ropes. Thus, the private respondent, in refusing to tow the other vessel, wanted to secure the vessel of its safety and to save it from an impending peril. He simply did what a prudent and careful master of the vessel ought to do under the circumstances. By faithfully complying with his duty as master of the vessel, it would not be justified to punish him by terminating his employment for reasons not sanctioned by law and maritime usage.

ACCORDINGLY, the instant petition is hereby DISMISSED for lack of merit. The resolution of the NLRC dated August 17, 1990 and its Resolution dated September 25, 1990 are hereby AFFIRMED.

SO ORDERED.

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

^[1] *Rollo*, p. 14.

^[2] *Rollo*, pp. 14-24.

^[3] *Rollo*, p. 29.

^[4] *Rollo*, pp. 2-11.

^[5] *San Miguel Brewery Sales vs. Ople*, G.R. No. 53615, February 8, 1989.

^[6] *Caltex Refinery Employees Association vs. NLRC, et. al.*, G.R. No. 102993, July 14, 1995, 246 SCRA 271.

^[7] *San Miguel Brewery Sales vs. Ople*, *supra*.

^[8] *Businessday Information System and Services, Inc. vs. NLRC, et. al.*, G.R. No. 103575, April 5, 1993, 221 SCRA 9.

^[9] *Makati Haberdashery, Inc. vs. NLRC, et. al.*, G.R. No. 83380-81, November 15, 1989.

^[10] *GT Printers vs. NLRC, et. al.*, G.R. No. 100749, April 24, 1992, 208 SCRA 321.

^[11] *Reyes vs. Minister of Labor, et. al.*, G.R. No. 48705, February 9, 1989.

^[12] *Manila Electric Company vs. NLRC, et. al.*, G.R. No. 78763, July 12, 1989.

^[13] *Ilocos Sur Electric Cooperative, Inc. vs. NLRC, et. al.*, G.R. No. 106161, February 1, 1995, 241 SCRA 36.

^[14] *Century Textile Mills, Inc. vs. NLRC, et. al.*, G.R. No. 77859, May 25, 1988.

^[15] Section 3, Article XIII.

^[16] *Philippine Geothermal, Inc. vs. NLRC, et. al.*, G.R. No. 82643-67, August 30, 1990, 189 SCRA 211.

[\[17\]](#) Shoemart, Inc. vs. NLRC, *et. al.*, G.R. No. 74225, August 11, 1989.

[\[18\]](#) JGB and Associates, Inc. vs. NLRC, *et. al.*, G.R. No. 109390, March 7, 1996, 254 SCRA 457.

Rollo, pp. 22-23; Resolution dated August 17, 1990, pp. 9-10.[\[19\]](#)

[\[20\]](#) Manila Bay Club Corporation vs. Court of Appeals, *et. al.*, G.R. No. 110015, July 11, 1995, 245 SCRA 715.

[\[21\]](#) Pizza Hut/Progressive Development Corp. vs. NLRC, *et. al.*, G.R. No. 117059, January 29, 1996.

[\[22\]](#) *Rollo* p. 13.