

SECOND DIVISION

[G.R. No. 120276. July 24, 1997]

SINGA SHIP MANAGEMENT PHILS., INC., *petitioner*, vs. NATIONAL LABOR RELATIONS COMMISSION and WINEFREDO Z. SUA, *respondents*.**D E C I S I O N****PUNO, J.:**

Petitioner Singa Ship Management Phils., Inc. seeks to annul or modify the decision of respondent National Labor Relations Commission in NLRC NCR CA No. 002446-91 ordering petitioner to pay respondent Winefredo Z. Sua U.S.\$3,232.00 for the cost of his repatriation.

Petitioner is the local manning agent of Singa Ship Management Pte., Ltd., a company based in Singapore. Private respondent was employed by petitioner as radio officer on board the vessel M/V Singa Wilstream from November 28, 1988 to September 1989 with a monthly salary of U.S.\$850.00.

On December 20, 1989, petitioner filed a complaint against private respondent before the Philippine Overseas Employment Agency (POEA) Adjudication Office for desertion, insubordination, and grave abuse of authority.^[1] Petitioner alleged that on July 27, 1989, when the M/V Singa Wilstream was anchored in Los Angeles, California, private respondent and some members of the crew, went on shore leave. By the end of the day, the group missed the last boat and hired a service boat to take them to the ship. They arrived on the ship at 8:30 in the evening. The ship captain and master, Bryan Pereira, together with some officers were at the bridge. The captain reprimanded them for returning late^[2] and admonished private respondent in particular, being the highest-ranking member in the group. Private respondent who was drunk shouted: "Fuck your ass, captain! I don't want to sail with you!" Bosun^[3] Rodolfo Sarmiento, who was nearby, was ordered to take private respondent to his cabin. Private respondent, however, cried out: "Fuck you two, two of you!" and hurled invectives at the captain and the bosun. Eventually, the other crew members pacified private respondent and brought him down to his cabin.

The bosun proceeded to the mess hall where five (5) crew members were watching television. He took a seat beside them. Out of nowhere, private respondent appeared and went to the bosun saying "Why you want to challenge me?" The bosun replied "Why, spark?"^[4] Suddenly, private respondent grabbed an air pistol from his waist and with the pistol's handle struck the bosun hitting his nape and forehead. The bosun stood up but was prevented by the others from fighting back. The crew separated the two. The bosun's head bled profusely and had to be given first aid treatment.

Later, at about 1:00 in the morning, Chief Officer Rakesh Nanda went down to inspect the bunker. He saw private respondent lowering his bag to the bunker barge. The chief officer tried to dissuade private respondent from leaving the ship. The latter refused saying: "Sorry, but I don't want to sail with the captain!" Private respondent boarded the barge and left the ship.

The chief officer reported to the captain who informed the Coast Guard of private respondent's desertion. The ship was left without a radio officer and was not allowed to leave Los Angeles. The ship was placed on "off-hire" for two (2) days until a replacement arrived. Petitioner prayed for the imposition against private respondent of the appropriate sanctions under the POEA Standard Contract of Employment and for reimbursement of the following sums

of money:

- "1. U.S.\$3,232.00 or its peso equivalent at the time of payment representing agency and replacement cost;
2. U.S.\$18,287.14 or its peso equivalent at the time of payment representing off-hire expenses;
3. Ten per cent (10%) of the total award as and for attorney's fees."^[5]

Private respondent filed an "Answer with Compulsory Counterclaim" and alleged that it was the ship captain who abused his authority and violated the terms of the employment contract; that the master himself, contrary to ship rules and regulations, compelled private respondent to operate the radio equipment for his (the master's) personal whims and caprices; that the captain malversed the ship's funds and slashed the food budget starving the entire crew for several days in the high seas; that he also eliminated their transportation fees to and from the shore and such other privileges; that the master harbored ill-feelings against private respondent after the latter led his crewmates in informing him of their sentiments; and that after private respondent left the ship, he refused to return his clothes and pay his salary and leave pay. By way of counterclaim, private respondent prayed for:

- "1) U.S.\$1,354.33 representing unpaid leave pay;
- 2) U.S.\$612.00 representing unpaid allotment for July 1989;
- 3) U.S.\$497.25 representing unpaid shipboard pay for July 1989;
- 4) Unexpired portion of his contract equivalent to two (2) months, more or less (August and September 1989);
- 5) Moral and exemplary damages in such amount as this Honorable Office may deem appropriate, and
- 6) Attorney's fees in such amount as this Office may fix."^[6]

The POEA rendered a decision on October 24, 1991 finding that private respondent voluntarily resigned from his employment and was awarded U.S.\$2,463.58 for unpaid leave, allotment and shipboard pay. At the same time, the POEA awarded petitioner U.S.\$3,232.00 as reimbursement for replacement costs. The POEA ordered that:

"WHEREFORE, premises considered, respondent WINEFREDO Z. SUA is hereby ordered to pay to complainant SINGA SHIP MANAGEMENT PHILIPPINES the amount of THREE THOUSAND TWO HUNDRED THIRTY TWO U.S. DOLLARS (U.S.\$3,232.00) representing costs of his repatriation or its peso equivalent at the time of payment.

Meanwhile, respondent is hereby given a stern warning not to commit the same offense, otherwise, the corresponding disciplinary action will be imposed against him.

On the other hand, SINGA SHIP MANAGEMENT PHILIPPINES is hereby ordered to pay WINEFREDO Z. SUA the amount of TWO THOUSAND FOUR HUNDRED SIXTY THREE U.S. DOLLARS and 58/100 (U.S.\$2,463.58) representing unpaid shipboard pay, unpaid allotment to the month of July 1989 inclusive of peave pay or its peso equivalent at the time of payment.

Considering further that Singa Ship Management Philippines is awarded the amount of U.S.\$3,232.00 and Winefredo A. Sua the amount of U.S.\$2,463.58 said amount shall be offset. Hence WINEFREDO Z. SUA is ordered and directed to pay the SINGA SHIP MANAGEMENT PHILIPPINES the amount of U.S.\$768.42 or its peso equivalent at the time of payment representing the difference of the offset amount in favor of Singa.

All other claims of both parties are dismissed for lack of merit."^[7]

Private respondent appealed to the National Labor Relations Commission. On March 9, 1995, the Commission modified the decision of the POEA Administrator after finding that private respondent did not voluntarily resign but was dismissed by the ship captain. It deleted the award of U.S.\$3,232.00 in favor of petitioner and affirmed the award of U.S.\$2,463.58 in favor of private respondent, *viz*:

"WHEREFORE, premises considered, the assailed decision is affirmed with the modification that the order to respondent to pay complainant the amount of U.S.\$3,232.00 representing repatriation expenses is deleted for being without valid basis."^[8]

Hence this petition.

Petitioner claims that:

"1. Respondent NLRC gravely abused its discretion when it reversed the POEA's decision by misconstruing and making a wrong interpretation of the act of "desertion;"

2. Respondent NLRC gravely abused its discretion when it affirmed the POEA's decision by not applying the corresponding administrative penalty as provided in the POEA standard format Contract of Employment;

3. Respondent NLRC gravely abused its discretion when it modified the POEA's decision by deleting the award in favor of petitioner inspite of substantial and convincing evidence in support thereof;

4. Respondent NLRC gravely abused its discretion when it disregarded the time-honored principle that a person is liable for all the logical consequences of his act."^[9]

We affirm.

"Desertion," in maritime law, is defined as:

"The act by which a seaman deserts and abandons a ship or vessel, in which he had engaged to perform a voyage, before the expiration of his time, and without leave. By desertion, in maritime law, is meant, not a mere unauthorized absence from the ship, without leave, but an unauthorized absence from the ship with an intention not to return to her service; or as it is often expressed, *animo non revertendi*, that is, with an intention to desert."^[10]

Desertion has been defined as (1) a seaman's abandonment of duty by quitting ship, not only without leave or permission, but without justifiable cause, before termination of engagement; and (2) with the intent of not returning to the ship's duty.^[11] It is essential that there be an *animo non revertendi*, an intention not to return.^[12] Once the facts constituting the abandonment and intent not to return are proven, the seaman may be dismissed by the master, or he may be suspended by the POEA for three years as minimum penalty or delisted from the POEA registry as maximum penalty.^[13]

In the case at bar, private respondent's act of leaving the vessel was precipitated by a heated argument between him and the ship captain. Respondent arrived late from shore leave. The master reprimanded him and refused to pay for their service boat. So he shouted at the master "Fuck your ass captain! I don't want to sail with you!" Later, he appeared at the crew mess hall and overheard the bosun talking about him.^[14] This made him angry and he struck the bosun with his pistol. A while later, private respondent was seen with baggage in hand leaving the ship and uttering the words: "Sorry, but I don't want to sail with the captain!"

Contrary to petitioner's allegations, the words private respondent uttered do not indicate the firm intention to leave and not to return to his job. At best, the words can be interpreted as expressing what private respondent felt towards his master. They do not unequivocally establish the intent to abandon his job, never to return. Neither do his acts reinforce this intent to abandon.

After hurling invectives at the master, private respondent calmed down and returned to his cabin. The record is silent as to the events that occurred after he struck the bosun. In fine the totality of the circumstances of the case does not show *animo non revertendi* and private respondent cannot be deemed to have deserted the vessel.

We agree with the finding of the respondent Commission that private respondent was, at the height of their argument, ordered by the captain to disembark from the vessel.^[15] To the mind of private respondent, the order to disembark was an order of dismissal from his job especially after he had assaulted the bosun. This explains why after the incident he did not report to petitioner's office in Manila nor did he file a complaint with the POEA. Moreover, being a seaman and radio officer was private respondent's means of livelihood. It is hard to believe that he, simply because of a conflict with the ship captain, would decide to abandon his work and not return to it. As noted by the Solicitor General, private respondent would not intentionally get himself stranded in a foreign land without means of support if he was not dismissed.^[16] The fact that he did not voluntarily resign but was dismissed from his employment is more in keeping with the ordinary experience of mankind.

His dismissal was, however, with a valid cause. The master was acting in the performance of his duty when he particularly demanded from the private respondent an explanation for his group's tardiness. Private respondent was the highest ranking employee in the group. But instead of giving an explanation, private respondent shouted at the master and cursed him. This was an act of gross disrespect and insubordination against his superior and the highest official of the vessel.^[17] Worse was private respondent's unprovoked assault on the bosun. This was made in the presence of several people who executed separate statements narrating the incident.^[18] Private respondent did not deny nor refute the statements, much less did he explain his aggressive behavior.

A seaman's assault with a pistol handle upon a member of the ship's crew without sufficient provocation is tantamount to serious misconduct in connection with his work and a just cause for termination of employment.^[19] We have ruled that such misconduct strips him of his right to his salary for the unexpired portion of the employment contract.^[20]

Nevertheless, private respondent's claims for unpaid leave, allotment and shipboard pay cover the month of July 1989 and do not cover the unexpired portion of the contract. The respondent Commission did not err in granting said claims for the reason that private respondent rendered work for July prior to his dismissal.

Petitioner's claim for expenses incurred in hiring a replacement for private respondent cannot be sustained. Section H (5), Part II^[21] of the POEA Standard Employment Contract Governing the Employment of All Filipino Seamen on Board Ocean-Going Vessels^[22] is not applicable. Private respondent did not voluntarily resign. He was dismissed. It was only incumbent upon petitioner to look for his replacement.

IN VIEW WHEREOF, the petition is dismissed. The decision of the National Labor Relations Commission is affirmed. No costs.

SO ORDERED.

Regalado, (Chairman), Romero, and Mendoza, JJ., concur.
Torres, Jr., J., on official leave.

^[1] Complaint, Annex "C" to the Petition, *Rollo*, p. 42.

^[2] Ship rules and regulations on shore leave require them to be back at the ship at 5:00 P.M. (Petition, p. 6, *Rollo*, p. 13.)

^[3] Also referred to as "boatswain" (Webster's Third New International Dictionary, p. 244 [1971]).

- [4] "Spark" is seaman's lingo for radio officer (Petition, p. 8, *Rollo*, p. 15).
- [5] POEA Decision, p. 3, *Rollo*, p. 90.
- [6] Answer with Compulsory Counterclaim, Annex "D", *Rollo*, pp. 70-71.
- [7] POEA Decision, pp. 8-9, *Rollo*, pp. 95-96.
- [8] NLRC Decision, p. 12, *Rollo*, p. 39.
- [9] Petition, pp. 11-12, *Rollo*, pp. 18-19.
- [10] Black's Law Dictionary, Revised Fifth Edition, p. 402 citing *The Cripple Creek*, D.C. Pa, 52 F.Supp. 710, 712 [1943] and *The Youngstown*, C. C.A. La., 110 F. 2d 968, 970 [1940].
- [11] *Flynn v. Waterman*, S.S. Corporation, D.C.N.Y., 44 F.Supp 50, 51 [1942]; *The M.S. Elliot*, 277 F. 800 [1909]; *The Mary C. Conery*, 9 F. 222, 223 [1881]; see also Words and Phrases, "Desertion-- In Maritime Law."
- [12] *The Cripple Creek*, *supra*, at 712.
- [13] Table of Offenses and Corresponding Administrative Penalties, Appendix "2" to the POEA Standard Employment Contract Governing the Employment of All Filipino Seamen on Board Ocean-Going Vessels; *Rollo*, p. 50.
- [14] Annexes "C-5h," "C-5k," to the Petition, *Rollo*, pp. 63, 66.
- [15] NLRC Decision, p. 10, *Rollo*, p. 37; POEA Decision, p. 6, *Rollo*, p. 93.
- [16] Comment of the Public Respondent, p. 11, *Rollo*, p. 152.
- [17] *De la Cruz v. National Labor Relations Commission*, 177 SCRA 626, 627 [1989]; *Asian Design & Mfg. Corporation v. Min. of Labor*, 142 SCRA 79, 80-81 [1986].
- [18] Annexes "C-5f," "C-5g," "C-5h," "C-5i," "C-5j," "C-5k," "C-5l" to the Petition, *Rollo*, pp. 60-66.
- [19] *Haverton Shipping, Ltd. v. National Labor Relations Commission*, 135 SCRA 685, 689, 691 [1985].
- [20] *Id*, at 692.
- [21] Section H (5) reads:
- "A seaman who requests for early termination of his contract shall be liable for his repatriation cost as well as the transportation cost of his replacement."
- [22] *Rollo*, p.47.