THIRD DIVISION

[G.R. No. 119320. March 13, 1998]

OCEAN EAST AGENCY CORP., EUROPEAN NAVIGATION, INC. & STANDARD INSURANCE CO., INC., *petitioners,vs.* THE NATIONAL LABOR RELATIONS COMMISSION (NLRC-FIRST DIVISION), and CAPT. PEPITO M. GUCOR, *respondents*.

D E C I S I O N

ROMERO, *J.*:

On September 28, 1991, respondent Capt. Pepito M. Gucor was hired by petitioner Ocean East Agency Corp. (Ocean East), the manning agent of herein co-petitioner European Navigation, Inc. (ENI), as master of M/V Alpine for a period of one (1) year with a monthly salary of US$840.00. Sometime in February 1992, while the M/V Alpine was anchored at the Port of Havana, Cuba, respondent was informed of his repatriation for his subsequent transfer to another vessel.

Perceiving the transfer as an insult to his professional competence, Capt. Gucor signified that, unless his full benefits are accorded him, he shall refuse to leave the vessel knowing the cause for his repatriation to be unreasonable. In an effort to assuage his fears, petitioners Ocean East and ENI advised him that his services were not terminated at all, the repatriation being solely for documentation purposes. On February 29, 1992, after his demands were fully settled, respondent agreed to be repatriated. Petitioner alleged that in view of respondents earlier refusal to be repatriated and to man the newly-acquired MV Havre de Grace, it was compelled to assign another master to the said vessel. Thereafter, the company decided to assign him to MV Eleptheria-K, whose master was going on leave on February 27, which, however, respondent likewise missed for failure to disembark when ordered to do so.

On the ground of serious misconduct or willful disobedience, petitioner terminated the services of respondent. In a complaint for illegal dismissal, on December 1, 1993, Philippine Overseas Employment Administration (POEA), through Administrator Felicisimo O. Joson, dismissed the said complaint for lack of merit finding respondents apprehension as premature and that petitioners were merely acting in the exercise of their management prerogative.

On appeal, this decision was reversed by the National Labor Relations Commission (NLRC) in its decision dated November 29, 1994, the dispositive portion of which reads:

WHEREFORE, the appealed decision is hereby set aside. The respondents are hereby directed to jointly and severally pay complainant his salary, overtime pay, vacation leave and other benefits corresponding to the unexpired portion of his contract.

SO ORDERED.i[1]

Its motion for reconsideration having been denied, petitioners filed the instant petition.

The principal issue in this case is whether or not the transfer clause of the Standard Employment Contract (SEC)[ii][2] is violative of Article 34(i) of the Labor Code.

Said clause provides that:

The CREWMEMBER agrees to be transferred at any port to any vessel owned or operated, manned or managed by the same employer provided it is accredited to the same manning agent and provided further that the rating of the crewmember and the rate of his wages and terms of service are in no way inferior and the total period of employment shall not exceed that originally agreed upon.

Article 34(i) of the Labor Code, on the other hand, reads:

(i) It shall be unlawful for any individual, entity, licensee or holder of authority to substitute or alter employment contract approved and verified by the Department of Labor from the time of actual signing thereof by the parties up to and including the periods of expiration of the same without the approval of the Secretary of Labor.

The NLRC, in setting aside the decision of the POEA, ruled that the intended transfer of Capt. Gucor to another vessel was in effect an alteration of his original contract which could not be done without the approval of the Secretary of Labor.

The NLRCs ruling does not persuade.

It must be noted that the standard employment contract was adopted and approved conformably with Section 3, Rule II, Book V of the POEA Rules and Regulations which reads as follows:

Section 3. - Standard Employment Contract. The Administration shall undertake development and/or periodic review of region, country and skills specific employment contracts for landbased workers and conduct regular review of standard employment contracts (SEC) for seafarers. These contracts shall provide for minimum employment standards herein enumerated under Section 2[iii][3] of this Rule and shall recognize the prevailing labor and social legislations at the site of employment and international conventions. The SEC shall set the minimum terms and conditions of employment. All employers and principals shall adopt the SEC in connection with the hiring of workers without prejudice to their adoption of other terms and conditions of employment over and above the minimum standards of the Administration.

On the other hand, elucidating the rationale behind Article 34 (i), this Court held in *Seagull Maritime Corp., et al. v. Balatongan, et al.*,[iv][4] thus:

The reason why the law requires that the POEA should approve and verify a contract under Article 34(i) of the Labor Code is to insure that the employee shall not thereby be placed in a disadvantageous position and that the same are within the minimum standards of the terms and conditions of such employment contract set by the POEA. This is why a standard format for employment contracts has been adopted by the Department of Labor. (Underscoring supplied)

Apparently, there is no inconsistency between Article 34(i) of the Labor Code and the transfer clause under the SEC. On the contrary, the latter even complements the other by way of resolving the complex demands of seafarers whose services may entail occasional transfer from one vessel to another. Obviously, the transfer clause is not without limitations. Thus, a transfer is sanctioned only if it is to any vessel owned or operated, manned or managed by the same employer provided it is accredited to the same manning agent and that the rating of the crewmember, his wages and terms of service are in no way inferior and the total period of employment shall not exceed that originally agreed upon. In the instant case, respondents assignment to another vessel owned by European Navigation and accredited to the same manning agent, therefore, under no circumstance, violated Article 34(i) of the Labor Code. The transfer clause is deemed incorporated into the original contract; hence, the approval of the Secretary of Labor is no longer necessary.

Accordingly, we conclude that petitioners merely availed of what the employment contract allows. Indeed, it was nothing more than an application of the subject provision.

With regard to the finding of illegal dismissal, the pertinent provision of the Labor Code states:

Art. 282. Termination by employer.

An employer may terminate an employment for any of the following causes:

a. Serious misconduct or wilful disobedience by the employer of the lawful orders of his employer or representative in connection with his work;

x x x x x x x x x.

In *AHS Philippines, Inc. v. Court of Appeals*,**v[5]** we held that in order that an employer may terminate an employee on the ground of willful disobedience to the formers order, regulations or instructions, it must be established that the said orders, regulation or instructions are (a) reasonable and lawful, (b) sufficiently known to the employee, and (c) in connection with the duties which the employee has been engaged to discharge.

In the instant case, petitioners have conscientiously apprised respondent that his repatriation was solely for documentation purposes preliminary to his transfer to another vessel which the management believes him to be more familiar with. Respondents defiance of a lawful order posed serious and considerable prejudice to the business of the employer. This Court finds that petitioners order was made within the sphere of its management prerogative. The exercise of an employer to regulate all aspects of employment must be in keeping with good faith and not be used as a pretext for defeating the rights of employees under the laws and applicable contracts.**vi[6]** A perusal of the records shows a clear, valid and legal cause for the termination of respondents employment. As correctly viewed by the Solicitor General:

Capt. Gucors refusal to disembark and turn over command of his vessel to its new master when instructed to do so caused great pecuniary damage to his employer. The vessel was at anchorage for a long time disrupting its schedule. Not only that. He was not able to take command of the

M/V Havre de Grace, forcing European Navigation to make the arrangements and assign a new master to it. European Navigation, exercising maximum tolerance in spite of Capt. Gucors insubordination, even went as far as assigning him to the M/V Eleptheria-K after he missed the M/V Havre de Grace. He likewise missed this assignment. All this because he believed that his transfer was an insult to his personal and professional capacity.

Capt. Gucor willfully disobeyed a lawful order of his employer. This act of insubordination is a valid ground for dismissal.[vii][7]

WHEREFORE, the instant petition is hereby GRANTED. The decision of the National Labor Relations Commission dated November 29, 1994 is vacated and the resolution of the POEA Administrator is REINSTATED. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Kapunan and Purisima, JJ., concur.

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[i][1] *Rollo*, p. 16.

[ii][2] Governing Filipino Seamen on Board Ocean-Going Vessels.

[iii][3] Section 2. Minimum Provisions for Contract. The following shall be considered the minimum requirements for contract of employment:

a. Guaranteed wages for regular working hours and overtime pay for services rendered beyond regular working hours in accordance with the standards established by the Administration;

b. Free transportation from point of hire to site of employment and return;

c. Free emergency medical and dental treatment and facilities;

d. Just causes for the termination of the contract or of the services of the workers;

e. Workmens compensation benefits and war hazard protection;

f. Repatriation of workers remains and properties in case of death to the point of hire, or if this is not possible under the circumstances, the proper disposition thereof, upon prior arrangement with the workers next-of-kin and the nearest Philippine Embassy or Consulate through the Office of the Labor Attache;

g. Assistance on remittance of workers salaries, allowances or allotments to his beneficiaries; and

h. Free and adequate board and lodging facilities or compensatory food allowance at prevailing cost of living standards at the jobsite.

iv[4] 170 SCRA 813 (1987).

v[5] 257 SCRA 319 (1996), citing Maebo *v.* NLRC, 229 SCRA 240 (1994).

vi[6] Tierra International Construction Corporation *v.* NLRC, 256 SCRA 36 (1996).

vii[7] *Rollo*, p. 79.