FIRST DIVISION

[G.R. No. 122240. November 18, 1999]

CRISTONICO B. LEGAHI, *petitioner, vs*. NATIONAL LABOR RELATIONS COMMISSION and UNITED PHILIPPINE LINES, INC., NORTHSOUTH SHIP MGT., (PTE), LTD., SINGAPORE, GREGORIO V. DE LIMA, JR., TOR KARLSEN and PIONEER INSURANCE & SURETY CORP., *respondents*.

D E C I S I O N

KAPUNAN, *J.:*

At issue is the validity of petitioners dismissal from his employment.

In a complaint filed with the Philippine Overseas Employment Administration (POEA), Cristonico B. Legahi alleged that he was hired as Chief Cook aboard M/V Federal Nord by the Northsouth Ship Management (PTE), Ltd., Singapore and represented by its local agent United Philippine Lines, Inc. (UPLI).

The contract of employment stipulated that his term of employment was for ten months beginning October 9, 1992 with a basic monthly salary of US$450.00 with 44 hours weekly as minimum number of hours worked with a fixed overtime pay (OT) of $185.00 and three (3) days leave with pay every month.

Sometime in November, 1992 petitioner was asked by the Shipmaster to prepare a victualling cost statement for the month of October, 1992. After learning that such preparation involves mathematical skills, as it would require estimation of food cost, value of stocks, etc. he intimated that he did not know how to do such work as it was not part of the duties of a chief cook. He was told that it was not a difficult job and that he only needed to copy the previous forms. After much reluctance, petitioner nonetheless prepared the statement in deference to the Shipmaster.

In December, petitioner was requested again to prepare the victualling cost statement for the month of November. He obeyed since he was afraid he would earn the ire of his superiors if he refused.

Sometime in January, 1993, the Shipmaster asked petitioner to do the victualling cost statement for December which he complied. On January 6, 1993, the Shipmaster requested the petitioner to prepare a corrected victualling statement for the same month of December. Petitioner asked the Shipmaster if he could defer the correction as he was busy doing his chores. The response certainly did not sit well with the Shipmaster so he was called for a meeting which petitioner did not attend.

On January 14, 1993, a committee was formed headed by the Shipmaster himself with the Chief Officer, Chief Engineer and Bosun as members.

In this meeting, the Shipmaster read to him the offenses he committed on board. He was asked to answer the charges but petitioner opted to remain silent. Thereafter, petitioner was informed that he was dismissed.

The next day, petitioner was repatriated to the Philippine through the assistance of the Philippine Consulate.

Upon arrival or on February 16, 1993, petitioner filed with the POEA a complaint for illegal dismissal against private respondents. He sought the payment of his salary corresponding to the unexpired portion of his contract, unpaid overtime pay, leave pay, salary differential and damages.

In answer to the complaint, private respondent stated that prior to petitioners deployment, he was asked if he knew how to prepare the victualling cost statement which he answered yes. On January 6, 1993, petitioner was asked to prepare the statement. He refused and even arrogantly replied that the Shipmaster should let some other officer do the job since he only came to the ship to cook. On January 13, 1993, petitioner left the vessel without permission and did not perform his job that day. On January 14, 1993, a committee was formed to hear the case of petitioner. Petitioner remained silent so the committee decided to send him home. Contrary to petitioners allegation, it was not the Philippine Consulate, but the shipowners agent, Navios Ship Agencies, which arranged his repatriation. The respondent noticed petitioner to be very homesick and surmised that he deliberately committed the offenses just so he could be sent home. Upon his return, petitioner did not even report to the local representative UPLI implying that he had no cause of action against them. Petitioner was terminated for just cause and must, therefore, reimburse private respondent for the cost of repatriation.

On April 6, 1994, the POEA promulgated a decision finding that there was just cause for petitioners dismissal.

On appeal to the National Labor Relations Commission (NLRC), the Commission affirmed *in toto* the POEA decision.

Hence, this petition.

To constitute a valid dismissal from employment, two (2) requisites must concur: (a) the dismissal must be for any of the causes provided in Article 282 of the Labor Code, and (b) the employee must be accorded due process, the elements of which are notice and the opportunity to be heard and to defend himself.i[1]

Procedural due process requires that the employee must be apprised of the charges against him. He must be given reasonable time to answer the charges, allowed ample opportunity to be heard and defend himself, and assisted by a representative if the employee so desires.ii[2] Two written notices are required before termination of employment can be legally effected. They are: (1) notice which apprises the employee of the particular acts or omissions for which his dismissal is sought, and (2) the subsequent notice which informs the employee of the employers decision to

dismiss him;[iii][3] not to mention the opportunity to answer and rebut the charges against him, in between such notices.[iv][4]

In the case at bar, the evidence on record belies private respondents claim that petitioner was afforded due process. The abstract of the logbook states:

M/V FEDERAL NORD

ABSTRACT FROM DECK LOG BOOK RE: CH/COOK LEGAHI CRISTONICO B.

6th JANUARY 1993

> AT 0900 HRS. TODAY THE MASTER WAS ASKING THE CH/COOK LAGAHE, CRISTONICO IF HE OR THE R/OFF COULD HELP HIM WITH THE VICT. COST STATEMENT WHICH HE WAS NOT ABLE TO DO HIMSELF CORRECT.
>
> WHEN THE MASTER TOLD HIM TO TAKE TIME AND TRY TO CORRECT HIS REPLY IN A BAD WAY WAS, LET SOME OFFICERS DO THE JOB. I ONLY COME TO THE SHIP TO COOK. HE ALSO REFUSED TO MEET IN THE MASTERS OFFICE TOGETHER WITH THE CH/OFFICER WHEN HE WAS ORDERED TO.
>
> SINCE HE IS REFUSING TO TAKE ORDERS FROM THE MASTER OF THE SHIP HE WILL BE SENT HOME IN FIRST POSSIBLE PORT WERE HE CAN BE RELIEFED (SIC).
>
> 13th JANUARY 1993
>
> AT 0700 HRS. THE CH/COOK LEGAHI CRISTONICO B. LEFT THE VESSEL WITHOUT PERMISSION, HE RETURNED LATER IN THE DAY BUT WAS NOT DOING ANY WORK.
>
> 14th JANUARY 1993
>
> AT 1030 HRS. A HEARING WAS HELD IN THE OWNERS OFFICE REGARDING THE DISMISSAL OF CH/COOK LEGAHI CRISTONICO B. MASTER AS CHAIRMAN AND COMMITTEE CONSISTING OF CH/OFF. PULGO LEONIDES T., CH/ENGR. SERMONINA TOMAS C., AND BOSUN DAMOCLES CAMILO A. THE CASE OF DISMISSAL WAS READ OUT FOR THE CH/COOK LEGAHI ACCORDING TO THE PROCEDURE PARA 16 IN THE SEAMANS ACT. ENTERED IN THE LOGBOOK 6/1-93 AND 13/1-93. AT 1140 THE HEARING WAS ENDED, AND AT 1200 HRS. THE CH/COOK LEGAHI WILL LEAVE THE VESSEL TO BE SENT HOME.[v][5]

Reading between the lines from the entries of the logbook, which by the very nature of things could well be self-serving, it is rather apparent that as early as January 6, 1993, the employer had already decided to dismiss petitioner and sent home for his alleged refusal to obey the orders of his superiors. On January 14, 1993, the committee read to petitioner his alleged offenses which

were his refusal to take orders from his superior on January 6 and his leaving the vessel without permission on January 13. When petitioner remained silent, the committee informed him that he was dismissed. He was sent home that same day. Petitioner was not given reasonable time to answer the charges hurled against him or to defend himself. The notice apprising him of the charges and the notice of dismissal were done in one morning all in the January 14 committee hearing. The submission that the entry in the logbook made on January 6 which stated that for petitioners refusal to take orders from the master of the ship he will be sent home in first possible port was sufficient compliance of the first notice requirement is not well-taken. This is not the kind of notice that satisfies due process contemplated by law. In such a case where there is a failure to comply with the requirements of the law as to the notice and hearing, the dismissal is certainly tainted with illegality.

On the substantive issue, we find no just cause for petitioners dismissal. According to the POEA, petitioner was found guilty for insubordination for his refusal to obey the order of the master to prepare the victual statement on January 6, 1993,vi[6] which was presumably for the month of January.

The NLRC, which simply adopted *in toto* the findings of the POEA, concluded that complainant refused *albeit* in a bad manner the request of the Shipmaster to prepare a correct victualling cost statement for the month of December.

Based on the POEA findings, petitioner was dismissed because of his refusal to prepare the victualling statement for the month of January, 1993. The facts as found by the POEA are all muddled up. The victualling cost statement for the month of January was not yet due when he was asked to prepare the same on January 6 of that month. A victualling cost statement was necessary to show the food expense incurred for the past month, not for the present month. Thus, from the victualling statements submitted for the month of October, November and December, 1992, it can be seen that the period indicated therein began on the first day of each month and ended on the last day of said month. This means that the report for October was made in November, for November in December, and that for December in January. Such being the case, petitioners refusal to prepare the victualling statement of January was justified since the victualling cost for the month of January was not yet due or necessary.

On the other hand, the NLRCs conclusion that petitioner refused to correct the victualling statement for the month of December as ordered to, was also not sufficient basis for his dismissal. There is no doubt that petitioner had complied with his superiors orders to prepare the statement for December. It was only the correction of the December statement that he requested to defer which the Shipmaster took as a downright refusal to make and considered such act as a serious and gross insubordination.

For willful disobedience to be considered as just cause for dismissal, the employees conduct must be willful or intentional, the willfulness being characterized by a wrongful and perverse attitude and the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he has been engaged to discharge.vii[7]

In the instant case, it was actually not petitioners duty to prepare the victualling statement. The allegation that this was part of his duty as chief cook and the fact that he was aware of such duty when he was interviewed for the post is only self-serving and without basis. The employment contract does not mention anything that this was part of his duty as chief cook.viii[8] A perusal of the victualling cost statement form meanwhile reveals that only the signatures of a Relieving Chief Steward and the Chief Master were required.ix[9] Nowhere does it contain that the signature of the chief cook was necessary. Even assuming that petitioner refused to obey the order of his superior to prepare a corrected victualling cost statement for December, although he maintained that he just asked for time to do it, as he was then busy performing his usual duty, which we believe to be the case, his refusal cannot be considered as one being characterized by a wrongful and perverse attitude. From the beginning, petitioner already intimated that he did not know how to accomplish the victual cost statement since it entailed some mathematical skills which he admittedly did not have. Indeed, to use his own words, he came aboard only to cook. His capability on manual skill was limited to cooking and nothing more and for which reason he applied for the job as chief cook and was eventually hired as such. The fact that he was able to do the victualling cost statements for the past three months was an extra work on his part. His failure or alleged refusal to go on with the work did not merit the severest penalty of dismissal from the service and his immediate repatriation without even affording him due process of law.x[10]

Petitioners dismissal without a valid cause constitute a breach of contract. Consequently, he should only be paid the unexpired portion of his employment contract. However, the payment of the overtime pay should be disallowed in the light of our ruling in the case of *Cagampan v. NLRC*,xi[11] where we held that:

Petitioners have conveniently adopted the view that the guaranteed or fixed overtime pay of 30% of the basic salary per month embodied in their employment contract should be awarded to them as part of a package benefit. They have theorized that even without sufficient evidence of actual rendition of overtime work, they would automatically be entitled to overtime pay. Their thinking is erroneous for being illogical and unrealistic. Their thinking even runs counter to the intention behind the provision. The contract provision means that the fixed overtime pay of 30% would be the *basis for computing* the overtime pay if and when overtime work would be rendered. Simply, stated, the rendition of overtime work and the submission of sufficient proof that said was actually performed are conditions to be satisfied before a seaman could be entitled to overtime pay which should be computed on the basis of 30% of the basic monthly salary. In short , the contract provision guarantees the right to overtime pay but the entitlement to such benefit must first be established. Realistically speaking, a seaman, by the very nature of his job, stays on board a ship or of vessel beyond the regular eight-hour work schedule. For the employer to give him overtime pay for the extra hours when he might be sleeping or attending to his personal chores or even just lulling away his time would be extremely unfair and unreasonable.

We already resolved the question of overtime pay of worker aboard a vessel in the case of National Shipyards and Steel Corporation *v.* CIR (3 SCRA 890). We ruled:

We can not agree with the Court below that respondent Malondras should be paid overtime compensation for every hour in excess of the regular working hours that he was on board his

vessel or barge each day, irrespective of whether or not he actually put in work during those hours. Seamen are required to stay on board their vessels by the very nature of their duties, and it is for this reason that, in addition to their regular compensation, they are given free living quarters and subsistence allowances when required to be on board. It could not have been the purpose of our law to require their employers to pay them overtime even when they are not actually working; otherwise, every sailor on board a vessel would be entitled to overtime for sixteen hours each a day, even if he spent all those hours resting or sleeping in his bunk, after his regular tour of duty. *The correct criterion in determining whether or not sailors are entitled to overtime pay is not, therefore, whether they were on board and can not leave ship beyond the regular eight working hours a day, but whether they actually rendered service in excess of said number of hours.* (Italics supplied)

In the same vein, the claim for the days leave pay for the unexpired portion of the contract is unwarranted since the same is given during the actual service of the seamen.xii[12]

The claim for moral and exemplary damages are deleted for lack of sufficient basis. Considering that petitioner was forced to litigate, we hold that the amount of ₱10,000.00 is a reasonable and fair compensation for the legal services rendered by counsel.

WHEREFORE, the petition is GRANTED. The decision of the NLRC is SET ASIDE. Private respondent is hereby ORDERED to pay only the petitioner his salary equivalent to seven (7) months corresponding to the unexpired portion of the contract plus attorneys fees of ₱10,000.00.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

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i[1] Molato *v*. NLRC, 266 SCRA 42 (1997); Mirano *v*. NLRC, 270 SCRA 96 (1997).

ii[2] Waterous Drug Corp. *v*. NLRC, 280 SCRA 735 (1997).

iii[3] NATH *v*. NLRC, 274 SCRA 379 (1997).

iv[4] MGG Marine Services, Inc. *v*. NLRC, 259 SCRA 664 (1996).

v[5] Annex 3, *Rollo*, p. 133.

vi[6] *Rollo*, p. 26.

vii[7] Gold City Integrated Port Services, Inc. *v*. NLRC, 189 SCRA 811 (1990).

viii[8] See *Rollo*, p. 39.

ix[9] *Rollo*, pp. 40, 41, 50, 60.

x[10] Brew Master Int., Inc. *v*. National Federation of Labor Unions (NAFLU), 271 SCRA 275 (1997); Stolt-Nielsen Marine Services (Phils.), Inc. *v*. NLRC, 258 SCRA 643 (1996).

xi[11] 195 SCRA 533 (1991).

xii[12] See Stolt-Neilsen Marine Services (Phils.), Inc. *v*. NLRC, *supra*.