

THIRD DIVISION

**ORIENTAL SHIPMANAGEMENT
CO., INC.,**

Petitioner,

- versus -

G.R. No. 153750

Present:

Quisumbing, *J.*,
(Chairman),
Carpio,
Carpio Morales, and
Tinga, *JJ.*

**HON. COURT OF APPEALS,
FELICISIMO S. CUESTA and
WILFREDO B. GONZAGA,**
Respondents.

Promulgated:

January 25, 2006

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DECISION

QUISUMBING, J.:

For review on certiorari are (1) the **Decision**^[1] dated January 31, 2002 and (2) the **Resolution**^[2] dated May 29, 2002, of the Court of Appeals in CA-G.R. SP. No. 61073. The Court of Appeals had set aside the **Decision**^[3] dated June 30, 2000, and **Resolution**^[4] dated July 31, 2000 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 021454-99 which affirmed with modification the Labor Arbiter's **Decision**^[5] of August 18, 1999.

The antecedent facts are as follows:

Petitioner Oriental Shipmanagement Co., Inc. (Oriental, for brevity) is a recruitment agency duly licensed by the Philippine Overseas Employment

Administration (POEA) to recruit seafarers for employment on board vessels accredited to it. Kara Seal Shipping Co., Ltd. (Kara Seal, for brevity) is petitioner's foreign-based principal, which owns and manages *M/V Agios Andreas*, a vessel accredited to petitioner.

Respondents Felicisimo Cuesta and Wilfredo Gonzaga were hired in the latter part of 1998 as Third Engineers on board *M/V Agios Andreas* for a one-year contract with a monthly salary of nine hundred US dollars (US\$900). It was through Oriental that Kara Seal hired them.

Cuesta boarded *M/V Agios Andreas* on November 14, 1998, at Durban, South Africa while Gonzaga boarded the ship on January 5, 1999, at the Port of Marseille, France.

On November 27, 1998, Kara Seal and *M/V Agios Andreas*' Shipmaster signed an Agreement with the International Transport Workers Federation (ITF for brevity) increasing the monthly salary of the vessel's employees. Based on said Agreement, respondents were entitled to an increased monthly salary of one thousand nine hundred thirty-six US dollars (US\$1,936).

On January 8, 1999, at the Port of Marseille, an ITF Inspector boarded *M/V Agios Andreas* for a routine check. He discovered that the vessel's crew had not been paid according to the ITF Agreement. The Shipmaster assured the ITF Inspector he would comply as soon as the vessel reached its next port, Piombino in Italy.

However, upon reaching Port Piombino on January 19, 1999, respondents were ordered repatriated to Manila. Before their repatriation, they were made to sign Letters of Indemnity, which we quote:


Letter of Indemnity

TO WHOM IT MAY CONCERN:

This confirm that no disciplinary measures or legal proceedings or other action will be instituteted (sic) against Mr. CUESTA FELICISIMO – concerned (sic) his service aboard of M/v AGIOS ANDREAS – Cyprus Flag – as 3rd Engineer.

This certificate has been signed voluntarily and freely, it will not be withdrawn in any such circumstances; as his consent the International Transport Worker's Federation (I.T.F.) or other Union for the betterment of his employment.

The contract of employment of the above crewmember is terminated by mutual agreement up to 23rd January 1999, in the Port of Piombino (Italy).

The seamen (sic) hereby acknowledge has been received all what is due to him, arising from his employment on board of the mentioned vessel; consequently he declares to have no claim whatever against the Shipowner. 


Letter of Indemnity

TO WHOM IT MAY CONCERN:

This confirm that no disciplinary measures or legal proceedings or other action will be instituteted (sic) against Mr. GONZAGA WILFREDO – concerned (sic) his service aboard of M/v AGIOS ANDREAS – Cyprus Flag – as 3rd Engineer.

This certificate has been signed voluntarily and freely, it will not be withdrawn in any such circumstances; as his consent the International Transport Worker's Federation (I.T.F.) or other Union for the betterment of his employment.

The contract of employment of the above crewmember is terminated by mutual agreement up to 23rd January 1999, in the Port of Piombino (Italy).

The seamen (sic) hereby acknowledge has been received all what is due to him, arising from his employment on board of the mentioned vessel; consequently he declares to have no claim whatever against the Shipowner. 

On January 23, 1999, respondents received from Kara Seal the following payments for their services:

For respondent Cuesta: (Payment in US\$)

From November 13, 1998 to November 26, 1998 (14 days)

Wages:	(900 divided by 30 x 14) =	420
Vacation Leave Pay:	(75 divided by 30 x 14) =	35
Overtime Pay:	(270 divided by 30 x 14) =	126
Extra Overtime:		47.52

From November 27, 1998 to December 31, 1998 (34 days)

New Wages:	(1,936 divided by 30 x 34) =	2,194.13
Extra Overtime:	(27 x 6.61) =	178.47

From January 1, 1999 to January 24, 1999 (24 days)

New Wages:	(1,936 divided by 30 x 24) =	1,548 ^(a)
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For respondent Gonzaga: (Payment in US\$)

From January 5, 1999 to January 6, 1999 (1 day)

Wages:	(900 divided by 30 x 1) =	30
Vacation Leave Pay:	(75 divided by 30 x 1) =	2.50

From January 7, 1999 to January 24, 1999 (18 days)

New Wages:	(1,936 divided by 30 x 18) =	1,161.59 ^(a)
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Thus, on April 19, 1999, respondents filed a **Complaint⁽¹⁰⁾** against Oriental and Kara Seal for illegal dismissal. They prayed that judgment be rendered ordering Oriental and Kara Seal to pay:

- a) US\$7,470.00 or US\$3,735.00, each, representing three (3) months salaries of complainants for the unexpired portion of their contracts;
- b) US\$175.00, as and by way of unpaid vacation leave pay of complainant Cuesta;

- c) P200,000.00, as moral damages;
- d) P100,000.00, representing exemplary damages;
- e) Attorney's fees of not less than 10% of the total claims plus litigation expenses and costs of suit.¹¹¹

Respondents averred that Kara Seal repeatedly failed to pay their wages according to the ITF Agreement. They also claimed that they did not voluntarily resign, but were forced to sign the Letters of Indemnity under threat of possible disciplinary actions. They added that prior to their termination, they had demanded from the Shipmaster the payment of their unpaid wages. They also protested, before they were dismissed, the lack of adequate provisions such as medicine, winter jacket, and safety gears as well as the lack of a washing machine and air conditioning units at the vessel's control room and crew's cabin.

In defense, Oriental and Kara Seal alleged that respondents voluntarily resigned, as evidenced by the Letters of Indemnity bearing their signatures. They added that respondents were duly paid their full wages.

In its three-page Decision, the Labor Arbiter dismissed the complaint thus:

The validity of the resignation and repatriation of the complainants must be acknowledged. The voluntariness of their resignation is confirmed and reflected from the Letter of Indemnity they executed. They were executed in the presence and with the participation of the ITF. ITF acts as the protector of seamen's rights against any abuse or shortcomings of ship owners. They will not allow such eventuality had the complainants been under duress. Besides, there is really no evidence of threat or intimidation to the complainant's resignation. Accordingly, the validity of their resignation and repatriation must be upheld.

On the other hand, complainant Cuesta must be paid the sum of \$175.00 as payment for vacation leave of which he has not been paid and this claim was not at all disputed by the respondents.

WHEREFORE, the complaint for illegal dismissal is dismissed for lack of merit. However, the respondents are hereby ordered to pay complainant Cuesta the sum of \$175.00 as payment for vacation leave.

SO ORDERED.^[12]

On appeal, the NLRC affirmed the Labor Arbiter's Decision with modification. It reduced the vacation leave pay awarded to Cuesta from US\$175 to US\$75. Thus:

We sustain the Labor Arbiter's conclusion that the Letters of Indemnity were valid. Even complainants admit that said letter of indemnity were confirmed by representative of ITF. Hence, the presumption of regularity of the Letter of Indemnity must be considered in respondent's favor.

However, the award of vacation pay must be corrected. The contract show that Cuesta is only entitled to \$75.00 vacation pay and not \$175.00 as awarded.... Respondent's prayer for attorney's fees and litigation expenses must fail in view of lack of evidence showing bad faith on part of complainants.

WHEREFORE, the appealed Decision is hereby MODIFIED in that the award of vacation leave in favor of complainant Cuesta must be reduced to seventy five dollars only (\$75).

SO ORDERED.^[13]

Aggrieved, respondents filed a motion for reconsideration, which the NLRC denied for lack of merit. Thus, respondents filed with the Court of Appeals a special civil action for certiorari, alleging that grave abuse of discretion was committed by the NLRC.

In its assailed Decision, the Court of Appeals set aside the questioned Decision and Resolution of the NLRC. The dispositive part of the appellate court's Decision reads:

WHEREFORE, the petition is GRANTED. The assailed Decision of the Labor Arbiter, dated August 18, 1999 and the Decision and Resolution of the National Labor Relations Commission, respectively dated June 30, 2000 and July 31, 2000, are hereby ANNULLED and SET ASIDE. A new judgment is hereby entered DECLARING the subject "Letters of Indemnity", dated January 23, 1999, to be VOID AND WITHOUT ANY LEGAL EFFECT. Petitioners, FELICISIMO S. CUESTA and WILFREDO B. GONZAGA, are furthermore DECLARED to

have been illegally dismissed from employment and private respondents, KARA SEAL SHIPPING CO., LTD and ORIENTAL SHIP MANAGEMENT CO., INC. are, therefore, ORDERED to solidarily PAY CUESTA and GONZAGA, as follows:

- a. Five thousand eight hundred eight US dollars (US\$5,808.00), each, representing their three-month salaries for the unexpired portion of their contracts;
- b. US\$142.50, as and by way of unpaid vacation leave pay for petitioner CUESTA;
- c. Ten thousand pesos (P10,000.00), each, as moral damages;
- d. Five thousand pesos (P5,000.00), each, as exemplary damages;
- e. Attorneys' fees equivalent to ten percent (10%) of five thousand eight hundred eight US dollars (US\$5,808.00), the amount of wages recovered; and the costs of suit.

SO ORDERED.^[14]

Oriental and Kara Seal filed a Motion for Reconsideration, which the Court of Appeals denied in its assailed Resolution.

Hence, the instant petition anchored on the sole ground that:

The Court of Appeals erred in setting aside the Labor Arbiter's and National Labor Relations Commissions' findings that private respondents voluntarily resigned from employment as shown by the Letters of Indemnity they executed as the said findings were based on substantial evidence and law and rendered without any grave abuse of discretion.^[15]

Petitioner contends that respondents voluntarily executed the Letters of Indemnity in the presence of an ITF representative who also signed it. It adds that respondents failed to substantiate claims of threat and intimidation allegedly exerted by petitioner. In any case, Oriental stresses it could not have threatened or intimidated respondents as the latter were abroad, while petitioner is based in Manila.

Further, petitioner points out that a seaman who requests for early termination of his contract is liable for his repatriation cost as well as the transportation cost of his replacement, deductible from the seafarer's balance of wages. Relatedly, petitioner claims that the repatriation money it extended to respondents constituted sufficient consideration for the latter's quitclaims.

For their part, respondents counter that the petition should be denied outright for raising a factual question. They point out that the sole issue in this case is whether or not the Letters of Indemnity were voluntarily executed by respondents, which according to respondents is clearly a factual issue.

At any rate, respondents maintain that the Court of Appeals correctly ruled that the dismissal was illegal. They insist they are entitled to security of tenure until the expiration of the term of their respective contracts. Thus, their employment may only be terminated for valid cause and after notice and hearing.

On the Letters of Indemnity, respondents argue that these should be strictly construed against petitioner as the one who prepared it, and respondents' participation was limited to merely affixing their signatures on it. Respondents claim that the Letters of Indemnity, far from signifying their resignation, merely express an undertaking on the part of petitioner and Kara Seal not to file any disciplinary action against respondents. Respondents posit that petitioner and Kara Seal used said undertaking as leverage to obtain their signature.

We rule for the respondents.

Pacta privata juri publico derogare non possunt. Private agreements between parties cannot derogate from public right.

The law is solicitous of the welfare of employees because they stand on unequal footing with their employers and are usually left at the mercy of the latter. This is especially true of Filipino migrant workers who, alone in a foreign country, might have no adequate alternative resources even for their own personal daily needs.

Hence, quitclaims signed by our migrant workers, such as the Letters of Indemnity in the instant case, are viewed with strong disfavor. Public policy dictates that they be presumed to have been executed at the behest of the employer. It is the employer's duty to prove that such quitclaims were voluntary.^[16] The employee's acknowledgment of his termination with nary a protest or objection is not enough to satisfy the requirement of voluntariness on his part.^[17]

Resignation is defined as the voluntary act of an employee who finds himself in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and he has no other choice but to disassociate himself from his employment.^[18]

It would have been illogical for respondents to resign and then claim that they were illegally terminated. Well-entrenched is the rule that resignation is inconsistent with the filing of a complaint for illegal dismissal.

We note that respondents Cuesta and Gonzaga, when repatriated to Manila, had each been employed for only a little over two (2) months and less than one (1) month, respectively. Prior to their repatriation, their monthly salaries were even increased from US\$900 to US\$1,936. Hence, it is rather strange that they would suddenly resign after barely beginning service of their twelve (12)-month contract.

Prior to their dismissal, respondents demanded payment of their unpaid wages and protested the substandard conditions of their employment. The Letters of Indemnity *supra* contained a waiver by petitioner and Kara Seal of the right to institute disciplinary action against respondents. Hence, respondents were under the impression that they would be disciplinarily dealt with if they would not sign the waiver.

Based on the foregoing disquisition, we are convinced that respondents were forced to sign the Letters of Indemnity. Thus, said Letters of Indemnity must be deemed void. The stamp and signature of the ITF representative thereon add nothing to render the letters of any legal effect, but instead add to the impression of pressure exerted by ITF on the individual Filipino seamen.

Having ruled out voluntary resignation, we now ascertain whether respondents were illegally dismissed. Try hard as we may, no clear showing could be found in this case of any valid and legal cause which justifies respondents' removal from employment. Instead we find that Oriental and/or Kara Seal did not serve two written notices to respondents prior to their termination from employment as required by the Labor Code.^[19] Plainly, there was no due process in their dismissal, and we have here a clear case of illegal dismissal.

In this connection, paragraph 5, Section 10 of Republic Act No. 8042^[20] provides:

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee with interest at twelve percent (12%) *per annum*, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.

Following the provisions of our law abovesited, each of the respondents is entitled to an amount equivalent to the salaries for three (3) months, representing the unexpired portion of their respective twelve (12)-month contracts, computed as follows:

$$\text{US\$1,936} \times 3 = \text{US\$5,808}$$

We note that there is no evidence on record of payment of placement fee. Hence, we are unable to award reimbursement of the same.

Anent the vacation leave pay owing to respondent Cuesta, records show that he only received an amount corresponding to the period November 13, 1998 – November 26, 1998, but none for the period November 27, 1998 – January 24, 1999. Since his Contract of Employment^[21] guarantees vacation leave pay of US\$75 monthly, he is entitled to unpaid vacation leave pay computed as follows:

$$\text{US\$75 divided by } 30 \times (34 + 24) = \text{US\$145}.$$

Pursuant to his Contract of Employment,^[22] respondent Gonzaga is also entitled to unpaid vacation leave pay for the period January 7, 1999 – January 24, 1999, computed as follows:

$$\text{US\$75 divided by } 30 \times 18 = \text{US\$45}.$$

We also noticed that the salary received by respondent Gonzaga for the period January 5, 1999 – January 6, 1999 did not reflect the increased wages based on the November 27, 1998 ITF Agreement. He is entitled to the differential computed thus:

$$\text{US\$1,936 divided by } 30 \times 1 = \text{US\$64.53}$$

US\$64.53 – US\$2.50 = US\$62.03.

Settled is the rule that quitclaims are ineffective in barring full recovery of the benefits due the employee.^[23] The acceptance of any monetary benefit, such as repatriation expenses and accrued wages in this case, would not divest respondents of the right to fully claim the remainder of what is rightfully due them.

Lastly, for petitioner's breach of contract and bad faith, respondents should be awarded P50,000 in moral damages and another P50,000 as exemplary damages. In addition, they should also be awarded attorney's fees equivalent to ten percent (10%) of the aggregate monetary awards.

WHEREFORE, the petition is **DENIED**. The assailed Decision dated January 31, 2002, and Resolution dated May 29, 2002, of the Court of Appeals in CA-G.R. SP. No. 61073, are **AFFIRMED** with **MODIFICATION**. Petitioner Oriental Shipmanagement Co., Inc. and Kara Seal Shipping Co., Ltd. are **ORDERED** to solidarily **PAY** to each of the respondents, FELICISIMO CUESTA and WILFREDO GONZAGA, as follows:

- a. FIVE THOUSAND EIGHT HUNDRED EIGHT US dollars (US\$5,808.00), representing the three (3)-month salaries for the unexpired portion of their respective contracts;
- b. FIFTY THOUSAND PESOS (P50,000.00) as moral damages;
- c. FIFTY THOUSAND PESOS (P50,000.00) as exemplary damages;
and
- d. FIVE HUNDRED EIGHTY DOLLARS AND EIGHTY CENTS (US\$580.80) as attorney's fees equivalent to ten percent (10%)

of FIVE THOUSAND EIGHT HUNDRED EIGHT US dollars
(US\$5,808.00).

Petitioner Oriental Shipmanagement Co., Inc. and Kara Seal Shipping Co., Ltd. are further **ORDERED** to solidarily **PAY** respondent FELICISIMO CUESTA the amount of ONE HUNDRED FORTY FIVE US dollars (US\$145) as vacation leave pay, and respondent WILFREDO GONZAGA the amounts of FORTY FIVE US dollars (US\$45) and SIXTY TWO US dollars and THREE CENTS (US\$62.03) as vacation leave pay and unpaid salary differential, respectively.

Costs against petitioner.

SO ORDERED.

LEONARDO A. QUISUMBING
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice

CONCHITA CARPIO MORALES
Associate Justice

DANTE O. TINGA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LEONARDO A. QUISUMBING
Associate Justice
Chairman, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ARTEMIO V. PANGANIBAN
Chief Justice

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- [1] Rollo, pp. 36-52. Penned by Associate Justice Eriberto U. Rosario, Jr., with Associate Justices Portia Aliño-Hormachuelos, and Mariano C. Del Castillo concurring.
- [2] *Id.* at 54-55.
- [3] *Id.* at 81-87.
- [4] *Id.* at 89-90.
- [5] *Id.* at 131-133.
- [6] *Id.* at 118.
- [7] *Id.* at 120.
- [8] *Id.* at 109-110, 119.
- [9] *Id.* at 111, 121.
- [10] *Id.* at 91-96.
- [11] *Id.* at 94.
- [12] *Id.* at 133.
- [13] *Id.* at 86-87.
- [14] *Id.* at 51-52.
- [15] *Id.* at 23-24.
- [16] *Salonga v. National Labor Relations Commission*, G.R. No. 118120, 23 February 1996, 254 SCRA 111, 114.
- [17] *Anino v. National Labor Relations Commission*, G.R. No. 123226, 21 May 1998, 290 SCRA 489, 506.
- [18] *Valdez v. National Labor Relations Commission*, G.R. No. 125028, 9 February 1998, 286 SCRA 87, 94.
- [19] *Bolinao Security and Investigation Service, Inc. v. Toston*, G.R. No. 139135, 29 January 2004, 421 SCRA 406, 412-413.
- [20] Otherwise known as the “Migrant Workers and Overseas Filipinos Act of 1995”.
- [21] Rollo, p. 97.
- [22] *Id.* at 98.
- [23] *R&E Transport, Inc. v. Latag*, G.R. No. 155214, 13 February 2004, 422 SCRA 698, 708.