

747 Phil. 762

**FIRST DIVISION****[ G.R. No. 195792, November 24, 2014 ]****ABOSTA SHIP MANAGEMENT AND/OR ARTEMIO CORBILLA,  
PETITIONERS, VS. WILHILM M. HILARIO, RESPONDENT.****D E C I S I O N****SERENO, C.J.:**

Abosta Ship Management Corporation (petitioner) filed a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the 1997 Rules of Civil Procedure assailing the Court of Appeals (CA) Decision<sup>[2]</sup> dated 3 December 2010 and Resolution<sup>[3]</sup> dated 11 February 2011 in CA-G.R. SP No. 110745.

The antecedents of this case are as follows:

On 24 October 2002, an employment contract was executed by petitioner, on behalf of its foreign principal Panstar Shipping Co., Ltd., and respondent. In this contract, the latter was hired as a bosun (boatswain) of the foreign vessel *Grand Mark* for a period of nine months, with a monthly salary of USD566.<sup>[4]</sup> The contract was duly approved by the Philippine Overseas Employment Agency (POEA) on 25 October 2002.<sup>[5]</sup>

On 27 November 2002, upon reporting to the office of petitioner, respondent was informed that the latter's deployment had been postponed due to shifting demands of the foreign principal. It appears, though, that the foreign principal decided to promote an able seaman on board the vessel instead of hiring respondent. Petitioner thus requested respondent to wait for another two to three months for a vacancy to occur.<sup>[6]</sup> In the meantime, respondent was allowed to make cash advances<sup>[7]</sup> as financial assistance.

Eventually, on 28 January 2003, respondent filed a Complaint with the POEA against petitioner for violation of Section 2(r), Rule I, Part VI of the 2002 POEA Rules by failing to deploy respondent within the prescribed period without any valid reason. Respondent likewise filed a Complaint with the Labor Arbiter on 6 February 2003 based on the same ground and sought actual, moral and exemplary damages and attorney's fees.

Petitioner moved for the dismissal of the Complaint, alleging that the Labor Arbiter had no jurisdiction over the matter, as jurisdiction was supposedly lodged with the POEA. However, the Labor Arbiter denied the motion, stating that the action for

damages arising from employment relations was clearly within its jurisdiction.

On 13 February 2004, the National Labor Relations Commission (NLRC) granted petitioner's appeal and reversed the Labor Arbiter's Order. The NLRC held that considering no employer-employee relationship existed between the parties, the POEA had jurisdiction over the case. The claim for non-deployment was administrative in character, and sanctions may be imposed by the POEA.<sup>[8]</sup>

Respondent consequently filed a Petition for Certiorari with the CA questioning the ruling of the NLRC.

On 17 March 2006, the CA granted the Petition. It pointed out that Section 10 of the Labor Code provides that the jurisdiction of the Labor Arbiter includes claims arising by virtue of any law or contract involving Filipino workers for overseas deployment, including claims for actual, moral, exemplary and other forms of damages. Meanwhile, the POEA has jurisdiction over pre-employment cases that are administrative in character. Thus, respondent's Complaint was reinstated.<sup>[9]</sup>

After the parties submitted their respective Position Papers, the Labor Arbiter ordered petitioner to pay respondent his salary for nine months in the amount of USD 10,071. The Labor Arbiter found that the contract executed between the parties and the non-fulfillment thereof entitled respondent to his salary for the whole duration of the contract. However, the arbiter did not find bad faith, which would have merited the award of moral damages.<sup>[10]</sup>

This Decision prompted petitioner to appeal to the NLRC. On 11 March 2009, it held that respondent's non-deployment was due to a valid exercise of the foreign principal's management prerogative, which should be given due respect. Thus, the NLRC dismissed the Complaint, but ordered petitioner "to comply with our directive to deploy respondent as soon as possible or face the inevitable consequences."<sup>[11]</sup>

Dissatisfied with the NLRC's ruling, respondent filed a Petition for Certiorari with the CA. On 3 December 2010, it granted the Petition and held that the NLRC committed grave abuse of discretion by holding that the able seaman's promotion was a valid management prerogative. The CA further ruled that since respondent had already been hired for the same position, then there was no longer any vacant position to which to promote the able seaman. Moreover, under the POEA Rules, petitioner assumed joint and solidary liability with its foreign principal, and was thus liable to respondent. It thus found the NLRC's Decision to be contrary to law and prevailing jurisprudence. Finally, the CA ruled that NLRC's Order for petitioner "to deploy respondent as soon as possible or face inevitable consequences" was "nonsensical" considering that the controversy arose from way back in 2002, and that the assailed Order was issued in 2009.<sup>[12]</sup>

The CA likewise denied the Motion for Reconsideration filed by petitioner. Hence, this Petition.

## ASSIGNMENT OF ERRORS

Petitioner raises the following errors allegedly committed by the CA:

The Honorable Court of Appeals committed grave reversible error when it ruled that complainant is entitled to actual damages in the light of *Paul v. Santiago* case, the doctrine of stare decisis [sic] being inapplicable in the instant case as to the issue of award of actual damages.

The Honorable NLRC did not commit grave abuse of discretion when it ruled differently from *Santiago* case [on] the issue of actual damages contrary to erroneous decision of the Court of Appeals that NLRC committed grave abuse of discretion in disregarding *Santiago* case on the issue of actual damages.

The Honorable Court of Appeals committed reversible error when it disregarded the factual findings of the NLRC, that, if properly considered, would justify petitioner's use of management prerogative.

The Honorable Court of Appeals committed reversible error in reinstating the award of actual damages despite the want of any factual and legal basis and again in missapplying [sic] *Datuman* case in the instant case.<sup>[13]</sup>

## The Court's Ruling

The issue boils down to whether the CA committed serious errors of law.

We rule in the negative.

There is no dispute that the parties entered into a contract of employment on 24 October 2002, and that petitioner failed to deploy respondent. The controversy arose from the act of the foreign principal in promoting another person, an act that effectively disregarded the contract dated 24 October 2002 entered into between petitioner, on behalf of its foreign principal, and respondent. There was a clear breach of contract when petitioner failed to deploy respondent in accordance with the POEA-approved contract.

The Court is left with the issue of whether such breach would entitle respondent to the payment of actual damages for the failure of petitioner to comply with the latter's obligations in accordance with the employment contract.

It is the contention of petitioner that respondent's non-deployment was due to the foreign principal's management prerogative to promote an able seaman. Supposedly, this exercise of management prerogative is a valid and justifiable reason that would negate any liability for damages.

We do not agree.

Based on a communication sent by a certain M.K. Jin dated 10 October 2002,<sup>[14]</sup> the foreign principal had already chosen respondent from among the other candidates as BSN (bosun or boatswain). Pursuant to this communication, petitioner entered into an employment contract and hired respondent on 24 October 2002. Subsequent communications, though, show that the foreign principal approved a different candidate for the position of BSN.<sup>[15]</sup> Thus, petitioner did not deploy respondent.

There was an apparent violation of the contract at the time that the foreign principal decided to promote another person as expressed in its communications dated 10 November 2002 and 14 November 2002. The vacancy for the position of boatswain ceased to exist upon the execution of the contract between petitioner and respondent on 24 October 2002, a contract subsequently approved by the POEA on 25 October 2002. Clearly, there was no vacancy when the foreign principal changed its mind, since the position of boatswain had already been filled up by respondent.

The contract was already perfected on the date of its execution, which occurred when petitioner and respondent agreed on the object and the cause, as well as on the rest of the terms and conditions therein. Naturally, contemporaneous with the perfection of the employment contract was the birth of certain rights and obligations, a breach of which may give rise to a cause of action against the erring party.<sup>[16]</sup> Also, the POEA Standard Contract must be recognized and respected. Thus, neither the manning agent nor the employer can simply prevent a seafarer from being deployed without a valid reason.<sup>[17]</sup>

True, the promotion and choice of personnel is an exercise of management prerogative. In fact, this Court has upheld management prerogatives, so long as they are exercised in good faith for the advancement of the employer's interest, and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements.<sup>[18]</sup> However, there are limitations on the exercise of management prerogatives, such as existing laws and the principle of equity and substantial justice.<sup>[19]</sup>

Under the principle of equity and substantial justice, change of mind was not a valid reason for the non-deployment of respondent. He lost the opportunity to apply for other positions in other agencies when he signed the contract of employment with petitioner. Simply put, that contract was binding on the parties and may not later be disowned simply because of a change of mind of either one of them.

The unilateral and unreasonable failure to deploy respondent constitutes breach of contract, which gives rise to a liability to pay actual damages. The sanctions provided for non-deployment do not end with the suspension or cancellation of license or the imposition of a fine and the return of all documents at no cost to the worker. They do not forbid a seafarer from instituting an action for damages

against the employer or agency that has failed to deploy him.<sup>[20]</sup>

Considering that it was petitioner who entered into the contract of employment with respondent for and on behalf of the foreign principal, it has the primary obligation to ensure the implementation of that contract. Furthermore, in line with the policy of the state to protect and alleviate the plight of the working class, Section 1, paragraph f (3) of Rule II of the POEA Rules and Regulations,<sup>[21]</sup> clearly provides that the private employment agency shall assume joint and solidary liability with the employer. Indeed, this Court has consistently held that private employment agencies are held jointly and severally liable with the foreign-based employer for any violation of the recruitment agreement or contract of employment.<sup>[22]</sup> This joint and solidary liability imposed by law on recruitment agencies and foreign employers is meant to assure the aggrieved worker of immediate and sufficient payment of what is due him.<sup>[23]</sup>

In sum, the failure to deploy respondent was an exercise of a management prerogative that went beyond its limits and resulted in a breach of contract. In turn, petitioner's breach gave rise to respondent's cause of action to claim actual damages for the pecuniary loss suffered by the latter in the form of the loss of nine months' worth of salary as provided in the POEA-approved contract of employment.

**WHEREFORE**, premises considered, the instant Petition is **DENIED**.

**SO ORDERED**.

*Leonardo-De Castro, Bersamin, \*Villarama, Jr., and Perez, JJ., concur.*

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\* Designated additional member in lieu of Associate Justice Estela M. Perlas-Bernabe per S.O. No. 1885 dated 24 November 2014.

[1] *Rollo*, pp. 10-31.

[2] *Id.* at 36-48; penned by Associate Justice Antonio L. Villamor and concurred in by Associate Justices Jose C. Reyes, Jr. and Samuel H. Gaerlan.

[3] *Id.* at 34-35.

[4] *CA rollo*, pp. 32-35.

[5] *Id.*

[6] *CA Decision, rollo*, p. 37.

[7] *CA rollo*, pp. 68-70.

[8] *Rollo*, pp. 81-84.

[9] *Id.* at 85-98.

[10] *Id.* at 100-106.

[11] *Id.* at 141-150.

[12] *CA Decision, rollo*, pp. 45-47.

[13] *Petition for Review on Certiorari, rollo*, pp. 16-17.

[14] *Id.* at 59.

[15] *Id.* at 60-61.

[16] *Santiago v. CF Sharp Crew Management, Inc.*, 554 Phil. 63 (2007).

[17] *Id.*

[18] *San Miguel Corporation v. Ubaldo*, G.R. No. 92859, 1 February 1993, 218 SCRA 293, 301.

[19] *Peckson v. Robinsons Supermarket Corporation*, G.R. No. 198534, 3 July 2013, 700 SCRA 668.

[20] *Supra* note 16.

[21] Section 1. Requirements for Issuance of License. - Every applicant for license to operate a private employment agency or manning agency shall submit a written application together with the following requirements:

x x x x

f. A verified undertaking stating that the applicant:

x x x x

(3) Shall assume **joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the contract**; including but not limited to payment of wages, death and disability compensation and repatriation.

[22] *Datuman v. First Cosmopolitan Power*, 591 Phil. 662 (2008) citing *Hellenic Philippine Shipping, Inc. v. Siete*, G.R. No. 84082, 13 March 1991, 195 SCRA 179, 186; *Empire Insurance Company v. NLRC*, 355 Phil. 694 (1998).

[23] *Id.* citing *P.I. Manpower Placements, Inc. v. NLRC (Second Division)*, 342 Phil. 414 (1997).



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