

SECOND DIVISION

[G.R. No. 163252, July 27, 2011]

**ABOSTA SHIPMANAGEMENT CORPORATION, PETITIONER, VS.
NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION)
AND ARNULFO R. FLORES, RESPONDENTS.**

DECISION

BRION, J.:

The petition for review on *certiorari* ^[1] before us seeks the reversal of the resolutions of the Court of Appeals (CA), dated October 20, 2003 ^[2] and April 6, 2004, ^[3] rendered in CA-G.R. SP No. 66806.

The Facts

Respondent Arnulfo R. Flores entered into a 12-month contract of employment, as radio officer, with the petitioner Abosta Shipmanagement Corporation (*agency*) for and in behalf of Panstar Shipping Co. Ltd. (*Panstar*) of Busan, South Korea. Under the contract, Flores was to receive a salary of US\$728.00/month for a 48-hour work week, a guaranteed overtime pay of US\$439.00 a month, a monthly vacation pay of US\$146.00, and a supplemental allowance of US\$33.00 a month.

Flores joined the vessel *M/V Morning Charm* sometime in June 1997. The Master of the vessel, Captain B.H. Mun, and Chief Engineer Gowang Gun Lee are from South Korea. Aside from Flores, there were other Filipino workers on the vessel. On November 29, 1997, Flores was repatriated due to alleged infractions committed while on board the vessel. In reaction, he filed a complaint for illegal dismissal on January 13, 1998 against the agency and Panstar.

The Compulsory Arbitration Proceedings

Before the labor arbiter, Flores alleged that in the course of his employment, he was asked by the Master to coordinate with several crew members who were requesting that they be allowed to resign or pre-terminate their employment contracts due to the alleged mismanagement of the vessel. He acted as coordinator as bidden, but was surprised to learn later that he was one of those whose resignations were accepted. He sought clarification from the Master, only to be told that he was among the crew members who were considered to have resigned; hence, his discharge on November 29, 1997.

Upon his return to Manila, he immediately informed the agency that he had been erroneously included among those who were considered resigned. He was surprised to

learn that he was blamed for having instigated the mass resignation of the Filipino crew. When he tried to explain his side, the agency told him that the action taken by the Master was final and that it was not interested in his story.

For their part, the agency and Panstar argued that Flores, while in their employ, insistently and rudely questioned the crew's working schedule, including the propriety of requiring them to render overtime services. They claimed that Flores instigated the crew to rebel against the authority of the Master, under the guise of questioning social security and income tax deductions. As a result, the crew members became unruly, arrogant, and impolite, and were even violent in expressing their views. They even refused to obey the lawful orders of the Master and the senior officers, thus causing dissension on board the vessel.

The agency alleged that sometime in September 1997, Flores prepared a petition for five Filipino crew members from the engine department, demanding the ouster of 1st Assistant Engineer Rodolfo Escarola, reportedly for incompetence and inefficiency; they threatened mass resignation. To create further unrest and dissatisfaction, Flores induced Sofronio Tibay, Herman Sebuando, Primitivo Ferrer and Raymundo Angel, of the same department, to write a letter to the ship management that they would be taking their emergency leaves, one after the other, in November 1997. They charged the vessel officers of mismanaging the crew. When confronted about the letter, however, they denied most of the letter's contents, pointing to Flores as the author of the letter. At Flores' instigation, the crew members threatened to disembark without waiting for their replacements. The Master asked them to work for a less drastic solution, but they maintained their threat.

In light of the growing unrest on board the ship and Flores' negative work attitude, the Master, Capt. B.H. Mun, asked Flores to explain why he should not be administratively sanctioned for (1) disrespecting his superior officers through his unruly, discourteous, impolite and violent behavior; (2) inciting the crew to commit insubordination and engaging in an activity which tends to create discontent among the crew or to destroy harmonious relations with the principal; and (3) inefficiency and other infractions, specifically: (a) staying at his quarters most of the time while on duty, leaving unattended the messages from the charterer or from the *Panstar* office; (b) revealing confidential messages to the crew without the Master's permission; and (c) insubordination.

According to the agency and Panstar, Flores became enraged after he was informed of the charges, but could only vehemently deny the accusations. The Master then decided to separate Flores from the service as the former was convinced that the charges were well-founded. The agency and Panstar claimed that Flores was paid his overtime pay, salary for November 1997, and accrued vacation leave pay.

In a decision dated August 20, 1999, [4] Labor Arbiter Adolfo C. Babiano dismissed the complaint for lack of merit. He found that the evidence the agency and Panstar presented were convincing enough to prove that Flores was a serious threat to the safety of the vessel and its crew. He noted that Flores failed to refute the agency's and Panstar's allegations that he incited the crew to rebel against the authority of the

Master and the vessel's senior officers. He also found Flores to have been paid all his monetary entitlements.

On appeal by Flores, the National Labor Relations Commission (NLRC), in its decision of December 29, 2000, [5] reversed the labor arbiter's ruling. The NLRC found that the agency and Panstar failed to prove (1) that Flores' termination of employment was for a just or authorized cause and (2) that he was accorded due process. It opined that the main basis for the dismissal action against Flores was the accusation that he agitated the crew to rebel against the authorities of *M/V Morning Charm*, as reported by the Chief Officer (Chief Mate) and the 1st Assistant Engineer. The reports, the NLRC believe, did not constitute proof of the validity of the dismissal.

Moreover, the NLRC noted that Flores was dismissed immediately after the Master conducted his inquiry on November 17, 1997. It stressed that the Master's so called administrative inquiry did not satisfy the due process requirements, as Flores was not given an adequate time for his defense.

Accordingly, the NLRC declared Flores to have been illegally dismissed. It directed the agency and *Panstar* to pay Flores, jointly and severally, US\$2,184.00 as salary for the unexpired portion of his contract, P50,000.00 in moral damages, and P25,000.00 in exemplary damages, plus 10% attorney's fees. The agency moved for reconsideration, but the NLRC denied the motion in its order of July 18, 2001. [6] The agency then sought relief from the CA, through a petition for *certiorari* under Rule 65 of the Rules of Court.

The CA Ruling

In its first assailed resolution (dated October 20, 2003), [7] the CA dismissed the petition due to insufficiency in substance, [8] as the petitioner failed to show that the NLRC committed grave abuse of discretion in reversing the labor arbiter's decision finding Flores' dismissal legal. It sustained the NLRC's conclusion that the dismissal was without a valid cause and that Flores was denied due process.

The second assailed CA resolution [9] denied the agency's motion for reconsideration, prompting the agency's present appeal [10] to this Court.

The Petitioner's Case

Through its submissions -- the petition itself, [11] the reply to Flores' comment [12] and the memorandum [13] -- the agency contends that in affirming the NLRC ruling, the CA deviated from the "substantial evidence rule" in *quasi-judicial* proceedings. It argues that Flores' employer, *Panstar*, met this standard of evidence through the affirmative declarations (reports) of Capt. B.H. Mun, Chief Officer Alfredo R. de Luna and 1st Assistant Engineer Rodolfo Escarola that Flores committed the infractions which led to his dismissal. In the face of these positive statements, the agency points out that Flores could only offer bare and self-serving denials. It stresses too that, contrary to the impression of the NLRC and the CA, Flores' dismissal was not only for inciting

members of the crew to rebel against the ship officers, but also for other causes such as inefficiency and insubordination or disobedience to the lawful orders of a superior officer, all prejudicial to the interests of the employer.

The agency insists that Flores' contumacious acts, while on board the vessel, constituted a serious and grave offense which posed a threat to the safety of the crew and the vessel. It adds that they also reflected Flores' arrogance and disobedience to lawful orders/directives of his superiors, punishable by dismissal pursuant to Section 31 of the Philippine Overseas Employment Administration Standard Employment Contract.

The agency posits that the CA erred in brushing aside the findings of the labor arbiter. It calls attention to the labor arbiter's observation that Flores failed to refute the agency's allegation that he incited the crew to rebel against the authority of the Master and the senior officers of the vessel. Flores did not also refute the charge that to pressure the principal, he induced some members of the crew to take their emergency leaves one by one and to threaten the principal to an early sign-off.

The Case for Flores

In his comment ^[14] and memorandum, ^[15] Flores asks that the petition be dismissed for raising purely questions of fact and not of law. He contends that the appellate court's findings are not to be disturbed as they are binding upon this Court and, although there are certain exceptions to the rule, the petition does not fall within any of the exceptions. ^[16]

Flores further submits that aside from raising only questions of fact, the agency failed to state any special and important reasons to justify the exercise by the Court of its discretionary appellate jurisdiction in the case. ^[17]

The Court's Ruling

The procedural question

We first resolve the procedural issue of whether we should rule on the petition which, as Flores contends, raises only questions of fact and not of law. While it is true that the Court is not a trier of facts, we deem it proper to re-examine the evidence in view of the variance in the factual findings of the labor arbiter, on the one hand, and of the NLRC and the CA, on the other hand.

The substantive issue

After a careful and objective study of the parties' submissions, we find that there is substantial evidence on record supporting Flores' dismissal. "Substantial evidence[, it must be stressed,] is more than a mere scintilla[. It means such] relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise." ^[18]

The agency, to our mind, succeeded in showing, by substantial evidence, that its

principal (*Panstar*) had a valid reason for terminating Flores' employment. The Master, Capt. B.H. Mun, decided to dismiss him not only for agitating the crew to rebel against the authorities of the vessel *M/V Morning Charm* (which the NLRC considered as the main reason for the dismissal), [19] but for several other infractions. As the records show, and as Capt. B.H. Mun stressed in his letter of November 17, 1997 to the agency management, [20] Flores was also charged with inefficiency or neglect of duty, insubordination, insolent and disrespectful behavior, and other actuations which made him unfit for his position and rank.

Capt. B.H. Mun's letter chronicled the bases of the charges lodged against Flores, and its salient points may be summarized as follows:

1. Since Flores came on board, he had been complaining about the deduction of US\$40.00 from the crew's monthly allotment for the Associated Marine Officers' and Seamen's Union of the Philippines (*AMOSUP*) Fund. To Capt. B.H. Mun's knowledge, the crew members were aware of the deduction. Despite this, Flores prepared a letter to the International Transport Workers' Federation (*ITF*) and asked the crew members to sign it. Capt. B.H. Mun asked Flores to explain the contents of the *ITF* letter to the crew to avoid any misunderstanding. Instead of pacifying the crew, he stirred them up and made them even more agitated. Also, despite Capt. B.H. Mun's instructions to the contrary, he prepared letters for the crew containing his own complaints and sentiments against the company rather than those of the crew.
2. He revealed to the crew all outgoing and incoming messages, without informing Capt. B.H. Mun.
3. Contrary to Capt. B.H. Mun's instructions, Flores issued shore-passes to the deck crew without the permission of the chief mate when the vessel made a port call at Maputo during its last voyage. The deck crew members were not supposed to go on shore as cargo was being unloaded at the time. It was a rush operation which had to be supervised and monitored to avoid damage to the cargo and to be on alert for stowaways. Flores went on shore nevertheless, with some of the crew to whom he had issued shore-passes.
4. Flores entered in his overtime sheet 40-50 hours in excess of the monthly 85 hours, despite the captain's instructions to the crew not to go over 85 hours; Flores did this to give the impression that he was doing a lot of work.
5. Flores stayed most of the time at the crew restroom while on duty instead of the radio room, resulting in the failure, at times, of the charterer and the *Panstar* Busan Office to communicate with the vessel by *INMARSAT* phone. This gave rise to several complaints, especially from the charterer who was compelled to use two communication devices -- the facsimile machine and the telex -- to send the same instruction or message to the vessel.

Capt. B.H. Mun considered the foregoing infractions and a few more mentioned in his

letter as indications of Flores' efforts to bypass his authority and to act at cross purposes with him.

It is clear that the letters of Chief Officer De Luna [21] and 1st Assistant Engineer Escarola [22] to Panstar's Capt. Chung, detailing how Flores agitated the crew (with charges of mismanagement of the vessel), and Capt. B.H. Mun's letter to the agency all depict a radio officer who undermined the authority of the shipmaster and the other officers in the guise of raising labor-management issues on board the vessel. Additionally and as an indication of his disrespect for the vessel's management, as well as his low regard for his work, he neglected his duties as radio officer and disobeyed Capt. B.H. Mun's instructions on several occasions. It is no surprise that his record of service [23] yielded a very poor assessment or a "no further employment" assessment.

The NLRC grossly erred in rejecting the letters as proof of the validity of Flores' dismissal. It misappreciated the contents of the letters, especially that of Capt. B.H. Mun. They did not contain "a mere accusation of wrongdoing." [24] The letters made direct affirmative statements on Flores' transgressions, all of which only elicited angry denials from him. More significantly, he failed to refute the charges in the compulsory arbitration proceedings, as the labor arbiter emphasized in his decision. This aspect of the case should have been given due consideration by the NLRC.

In a different vein, Flores questioned the probative value of Capt. B.H. Mun's statements, contending that they are self-serving. He regarded them as pure hearsay which cannot be considered as evidence. It bears stressing in this regard that under the law, technical rules of evidence are not binding in administrative proceedings, and the NLRC and the labor arbiters "shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process." [25]

Hearsay or not, and by way of reiteration, Capt. B.H. Mun's statements cannot just be ignored, for Flores himself admitted in his position paper, as noted by the labor arbiter, that the shipmaster asked him to be the coordinator or go-between for several crew members who wanted to pre-terminate their contract. [26] It is not disputed that Flores acted as such coordinator between the crew and Capt. B.H. Mun. Thus, Capt. B.H. Mun specifically asked him to explain to the crew the deduction of US\$40.00 from their monthly allotment for the AMOSUP Fund so that they would understand and would not to be agitated; instead of doing this, he stirred up the crew further. In fractured English, Capt. B.H. Mun stated:

Notwithstanding he should if necessary take all his way be persuaded and kindly explained to the crew about misunderstanding ITF contents, but he did has to say nothing of crew persuasion, more excite with big voices and stir up to the crew to mischief. Two anhalf months ago, I asked him that don't be helping to crew to be sent company their letters specially, because his prepared it for crew had writ down his own complaining with unless and

reactive stories thru their letter. He didn't still follow to master instruction that's why help to nice preparing crew letter according to his say. [27]

The fact that Flores acted as coordinator or liaison between the crew and the vessel's officers signifies that Flores did interact with the crew, and had the opportunity to sow discontent among them towards the shipmanagement. Flores' infractions, as mentioned in the letters, could not have been just pigments of the imagination of Capt. B.H. Mun and the other officers as Flores insinuated; they were reporting on Flores' actual transgressions while on board the vessel.

Still on the probative value of the letters, Flores wondered why the agency did not present in evidence the vessel's logbook [28] -- the official records of a ship's voyage that the master is required by law to keep and where he records the decision/s he made during the voyage, including all happenings on board. [29] The existence of a logbook, however, does not at all preclude the admission and consideration of other accounts of what was happening on board the vessel, such as, in this instance, the shipmaster's report. In *Abacast Shipping and Management Agency, Inc. v. NLRC*, [30] the Court explained -

The [logbook] is a respectable record that can be relied upon to authenticate the charges filed and the procedure taken against the employees prior to their dismissal. Curiously, however, no entry from such [logbook] was presented at all in this case. What was offered instead was the shipmaster's report, which was later claimed to be a collation of excerpts from such book.

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At that, **even if the shipmaster's report were to be admitted and considered**, a close reading thereof will show that the private respondents have not committed any act that would justify the termination of their services before the expiration of the contracts.

While the shipmaster's report was not considered in *Abacast Shipping*, the reason behind the rejection was the Court's conclusion that the separated employees had not committed any act that would justify their dismissal, as their dismissal was based on mere apprehension. This situation does not obtain in Flores' case. As mentioned earlier, Capt. B.H. Mun's report made affirmative statements regarding Flores' infractions that led to his dismissal. These infractions involved not only instigating several crew members to rebel against the vessel's authorities and to disrespect their superiors, but also other transgressions that made him unfit to continue in employment.

Even as he assailed the reports of Capt. B.H. Mun and the other officers as hearsay and self-serving, Flores failed to controvert the affirmative statements made in the reports. The reports were submitted on compulsory arbitration. He did not refute the charges, thus leaving them un rebutted. Capt. B.H. Mun's statements, corroborated by the

reports of Chief Officer De Luna and 1st Assistant Engineer Escarola, should have therefore been admitted as sufficient support for the charges.

On the whole, we are convinced that Flores' dismissal was justified on the following grounds:

1. Sowing intrigue and dissension on board the vessel *M/V Morning Charm*; [31]
2. Inefficiency and neglect of duty; [32] and
3. Insubordination or disobedience of the lawful orders of the shipmaster. [33]

The NLRC's rulings, disregarding these grounds, do not only constitute errors in the appreciation of evidence; they were gross errors as they practically disregarded the petitioner's evidence. Hence, the CA erred in not recognizing these errors for what they were -- grossly abusive acts that affected the NLRC's exercise of its jurisdiction.

The procedural due process issue

The records bear out that Flores was not given a reasonable opportunity to present his side vis-à-vis the charges at the time he was dismissed. As the NLRC noted, Flores was immediately dismissed after Capt. B.H. Mun conducted his inquiry on November 17, 1997. Although Flores merely issued a vehement denial, Capt. B.H. Mun should have given him a reasonable time to explain, if necessary, in writing. While this lapse in procedure cannot negate the existence of a valid cause for Flores' dismissal, as discussed above, the violation of his right to procedural due process warrants the payment of indemnity in the form of nominal damages, as we held in *Agabon v. National Labor Relations Commission*. [34] Given the circumstances in the present case, we deem an award of nominal damages to Flores in the amount of P30,000.00 to be appropriate.

In sum, we find the petition meritorious.

WHEREFORE, premises considered, the resolutions dated October 20, 2003 and April 6, 2004 of the Court of Appeals are **SET ASIDE**. We **DECLARE** the dismissal of respondent Arnulfo R. Flores **LEGAL**, but **AWARD** him nominal damages in the amount of P30,000.00 for the violation of his procedural due process rights.

No cost.

SO ORDERED.

Carpio, (Chairperson), Leonardo-De Castro, Peralta,** and Perez, JJ., concur.*

* Designated as Acting Member of the Second Division per Special Order No. 1006 dated June 10, 2011.

** Additional member in lieu of Associate Justice Maria Lourdes P. A. Sereno per Special Order No. 1040 dated July 6, 2011.

[1] *Rollo*, pp. 9-23; filed pursuant to Rule 45 of the Rules of Court.

[2] *Id.* at 31-32; penned by Associate Justice Ruben T. Reyes (now a retired member of this Court), and concurred in by Associate Justice Edgardo P. Cruz and Associate Justice Noel G. Tijam.

[3] *Id.* at 28-29.

[4] *Rollo*, pp. 33-42.

[5] *Id.* at 75-82.

[6] CA *rollo*, pp. 17-18.

[7] *Supra* note 2.

[8] RULES OF COURT, Rule 65, Section 6.

[9] *Supra* note 3.

[10] *Supra* note 1.

[11] *Ibid.*

[12] *Rollo*, pp. 84-90.

[13] *Id.* at 209-224.

[14] *Id.* at 66-71.

[15] *Id.* at 107-119.

[16] RULES OF COURT, Rule 45, Section 1.

[17] *Id.*, Section 6.

[18] *Abel v. Philex Mining Corporation*, G.R. No. 178976, July 31, 2009, 594 SCRA 683, 692-693, citing *Community Rural Bank of San Isidro (N.E.), Inc. v. Paez*, G.R. No. 158707, November 27, 2006, 508 SCRA 245, 257-258.

[19] *Supra* note 5, at 79, par 1.

- [20] *CA rollo*, pp. 47-49; Annex "E."
- [21] *Id.* at 43-44; Annex "D."
- [22] *Id.* at pp. 45-46; Annex "D-1."
- [23] *Id.* at 50; Annex "E-1."
- [24] *Supra* note 5, at 79.
- [25] LABOR CODE, Article 221, par. 1.
- [26] *Supra* note 5, at 33.
- [27] *Supra* note 20, at 47.
- [28] *CA rollo*, p. 146.
- [29] Citing *Haverton Shipping Ltd., et al. v. NLRC, et al.*, 220 Phil. 356 (1985).
- [30] 245 Phil. 487, 490 (1988).
- [31] POEA STANDARD EMPLOYMENT CONTRACT, Sections 33(13) & 15.
- [32] *Id.* at Section 33(10).
- [33] *Id.* at Section 33(5)(a), (e), (g).
- [34] 485 Phil. 248 (2004).



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