681 Phil. 362

THIRD DIVISION

[G.R. No. 165935, February 08, 2012]

BRIGHT MARITIME CORPORATION (BMC)/DESIREE P. TENORIO, PETITIONERS, VS. RICARDO B. FANTONIAL, RESPONDENT.

D E C I S I O N

PERALTA, J.:

This is a petition for review on *certiorari*[1] of the Decision of the Court of Appeals in CA-G.R. SP No. 67571, dated October 25, 2004, reversing and setting aside the Decision of the National Labor Relations Commission (NLRC), and reinstating the Decision of the Labor Arbiter finding that respondent Ricardo B. Fantonial was illegally dismissed, but the Court of Appeals modified the award of damages.

The facts are as follows:

On January 15, 2000, a Contract of Employment[2] was executed by petitioner Bright Maritime Corporation (BMC), a manning agent, and its president, petitioner Desiree P. Tenorio, for and in behalf of their principal, Ranger Marine S.A., and respondent Ricardo B. Fantonial, which contract was verified and approved by the Philippine Overseas Employment Administration (POEA) on January 17, 2000. The employment contract provided that respondent shall be employed as boatswain of the foreign vessel M/V AUK for one year, with a basic monthly salary of US$450, plus an allowance of US$220. The contract also provided for a 90 hours per month of overtime with pay and a vacation leave with pay of US$45 per month.

Respondent was made to undergo a medical examination at the Christian Medical Clinic, which was petitioner's accredited medical clinic. Respondent was issued a Medical Certificate[3] dated January 17, 2000, which certificate had the phrase "FIT TO WORK" stamped on its lower and upper portion.

At about 3:30 p.m. of January 17, 2000, respondent, after having undergone the pre-departure orientation seminar and being equipped with the necessary requirements and documents for travel, went to the Ninoy Aquino International Airport upon instruction of petitioners. Petitioners told respondent that he would be departing on that day, and that a liaison officer would be delivering his plane ticket to him. At about 4:00 p.m., petitioners' liaison officer met respondent at the airport and told him that he could not leave on that day due to some defects in his medical certificate. The liaison officer instructed respondent to return to the Christian Medical Clinic.

Respondent went back to the Christian Medical Clinic the next day, and he was told by

the examining physician, Dr. Lyn dela Cruz-De Leon, that there was nothing wrong or irregular with his medical certificate.

Respondent went to petitioners' office for an explanation, but he was merely told to wait for their call, as he was being lined-up for a flight to the ship's next port of call. However, respondent never got a call from petitioners.

On May 16, 2000, respondent filed a complaint against petitioners for illegal dismissal, payment of salaries for the unexpired portion of the employment contract and for the award of moral, exemplary, and actual damages as well as attorney's fees before the Regional Arbitration Branch No. 7 of the NLRC in Cebu City.[4]

In their Position Paper,[5] petitioners stated that to comply with the standard requirements that only those who meet the standards of medical fitness have to be sent on board the vessel, respondent was referred to their accredited medical clinic, the Christian Medical Clinic, for pre-employment medical examination on January 17, 2000, the same day when respondent was supposed to fly to Germany to join the vessel. Unfortunately, respondent was not declared fit to work on January 17, 2000 due to some medical problems.

Petitioners submitted the Affidavit[6] of Dr. Lyn dela Cruz-De Leon, stating that the said doctor examined respondent on January 17, 2000; that physical and laboratory results were all within normal limits except for the finding, after chest x-ray, of Borderline Heart Size, and that respondent was positive to Hepatitis B on screening; that respondent underwent ECG to check if he had any heart problem, and the result showed left axis deviation. Dr. De Leon stated that she requested for a Hepatitis profile, which was done on January 18, 2000; that on January 20, 2000, the result of the Hepatitis profile showed non-infectious Hepatitis B. Further, Dr. De Leon stated that respondent was declared fit to work only on January 21, 2000; however, the date of the Medical Certificate was January 17, 2000, which was the date when she started to examine the patient per standard operating procedure.

Petitioners argued that since respondent was declared fit to work only on January 21, 2000, he could not join the vessel anymore as it had left the port in Germany. Respondent was advised to wait for the next vacancy for boatswain, but he failed to report to petitioners' office, and he gave them an incorrect telephone number. During the mandatory conference/conciliation stage of this case, petitioners offered respondent to join one of their vessels, but he refused.

Petitioners further argued that they cannot be held liable for illegal dismissal as the contract of employment had not yet commenced based on Section 2 of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels (POEA Memorandum Circular No. 055-96), which states:

SEC 2. COMMENCEMENT/DURATION OF CONTRACT

A. The employment contract between the employer and the seafarer shall commence upon actual departure of the seafarer from the airport or seaport in the point of hire and with a POEA approved contract. It shall be effective until the seafarer's date of arrival at the point of hire upon termination of his employment pursuant to Section 18 of this Contract.

Petitioners asserted that since respondent was not yet declared fit to work on January 17, 2000, he was not able to leave on the scheduled date of his flight to Germany to join the vessel. With his non-departure, the employment contract was not commenced; hence, there is no illegal dismissal to speak of. Petitioners prayed for the dismissal of the complaint.

On September 25, 2000, Labor Arbiter Ernesto F. Carreon rendered a Decision[7] in favor of respondent. The pertinent portion of the decision reads:

> Unarguably, the complainant and respondents have already executed a contract of employment which was duly approved by the POEA. There is nothing left for the validity and enforceability of the contract except compliance with what are agreed upon therein and to all their consequences. Under the contract of employment, the respondents are under obligation to employ the complainant on board M/V AUK for twelve months with a monthly salary of 450 US$ and 220 US$ allowance. The respondents failed to present plausible reason why they have to desist from complying with their obligation under the contract. The allegation of the respondents that the complainant was unfit to work is ludicrous. Firstly, the respondents' accredited medical clinic had issued a medical certificate showing that the complainant was fit to work. Secondly, if the complainant was not fit to work, a contract of employment would not have been executed and approved by the POEA.
>
> We are not also swayed by the argument of the respondents that since the complainant did not actually depart from Manila his contract of employment can be withdrawn because he has not yet commenced his employment. The commencement of the employment is not one of those requirements in order to make the contract of employment consummated and enforceable between the parties, but only as a gauge for the payment of salary. In this case, while it is true that the complainant is not yet entitled to the payment of wages because then his employment has not yet commenced, nevertheless, the same did not relieve the respondents from fulfilling their obligation by unilaterally revoking the contract as the same amounted to pre-termination of the contract without just or authorized cause perforce, we rule to be constitutive of illegal dismissal.
>
> Anent our finding of illegal dismissal, we condemn the respondent corporation to pay the complainant three (3) months salary and the refund of his placement fee, including documentation and other actual expenses,

which we fixed at one month pay.

The granted claims are computed as follows:

US$670 x 4 months	US$ 2,680.00

WHEREFORE, premises considered, judgment is hereby rendered ordering the respondent Bright Maritime Corporation to pay the complainant Ricardo Fantonial the peso equivalent at the time of actual payment of US$ 2,680.00.

The other claims and the case against respondent Desiree P. Tenorio are dismissed for lack of merit.[8]

Petitioners appealed the decision of the Labor Arbiter to the NLRC.

On May 31, 2001, the NLRC, Fourth Division, rendered a Decision[9] reversing the decision of the Labor Arbiter. The dispositive portion of the NLRC decision reads:

WHEREFORE, premises considered, the decision of Labor Arbiter Ernesto F. Carreon, dated 25 September 2000, is SET ASIDE and a new one is entered DISMISSING the complaint of the complainant for lack of merit.

SO ORDERED.[10]

The NLRC held that the affidavit of Dr. Lyn dela Cruz-De Leon proved that respondent was declared fit to work only on January 21, 2000, when the vessel was no longer at the port of Germany. Hence, respondent's failure to depart on January 17, 2000 to join the vessel M/V AUK in Germany was due to respondent's health. The NLRC stated that as a recruitment agency, petitioner BMC has to protect its name and goodwill, so that it must ensure that an applicant for employment abroad is both technically equipped and physically fit because a labor contract affects public interest.

Moreover, the NLRC stated that the Labor Arbiter's decision ordering petitioners to refund respondent's placement fee and other actual expenses, which was fixed at one month pay in the amount of US$670.00, does not have any bases in law, because in the deployment of seafarers, the manning agency does not ask the applicant for a placement fee. Hence, respondent is not entitled to the said amount.

Respondent filed a motion for reconsideration of the NLRC decision, which motion was denied in a Resolution[11] dated July 23, 2001.

Respondent filed a petition for *certiorari* before the Court of Appeals, alleging that the NLRC committed grave abuse of discretion in rendering the Decision dated May 31, 2001and the Resolution dated July 23, 2001.

On March 12, 2002, respondent's counsel filed a Manifestation with Motion for Substitution of Parties due to the death of respondent on November 15, 2001, which motion was granted by the Court of Appeals.

On October 25, 2004, the Court of Appeals rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us REVERSING and SETTING ASIDE the May 31, 2001 Decision and the July 23, 2001 Resolution of the NLRC, Fourth Division, and REINSTATING the September 25, 2000 Decision of the Labor Arbiter with the modification that the placement fee and other expenses equivalent to one (1) month salary is deleted and that the private respondent Bright Maritime Corporation must also pay the amounts of P30,000.00 and P10,000.00 as moral and exemplary damages, respectively, to the petitioner.[12]

The Court of Appeals held that the NLRC, Fourth Division, acted with grave abuse of discretion in reversing the decision of the Labor Arbiter who found that respondent was illegally dismissed. It agreed with the Labor Arbiter that the unilateral revocation of the employment contract by petitioners amounted to pre-termination of the said contract without just or authorized cause.

The Court of Appeals held that the contract of employment between petitioners and respondent had already been perfected and even approved by the POEA. There was no valid and justifiable reason for petitioners to withhold the departure of respondent on January 17, 2000. It found petitioners' argument that respondent was not fit to work on the said date as preposterous, since the medical certificate issued by petitioners' accredited medical clinic showed that respondent was already fit to work on the said date. The Court of Appeals stated, thus:

> Private respondent's contention, which was contained in the affidavit of Dr. Lyn dela Cruz-De Leon, that the Hepatitis profile was done only on January 18, 2000 and was concluded on January 20, 2000, is of dubious merit. For how could the said examining doctor place in the medical certificate dated January 17, 2000 the words "CLASS-B NON-Infectious Hepatitis" *(Rollo, p.* 17) if she had not conducted the hepatitis profile? Would the private respondent have us believe that its accredited physician would fabricate medical findings?
>
> It is obvious, therefore, that the petitioner had been fit to work on January 17, 2000 and he should have been able to leave for Germany to meet with the vessel M/V AUK, had it not been for the unilateral act by private respondent of preventing him from leaving. The private respondent was merely grasping at straws in attacking the medical condition of the petitioner just so it can justify its act in preventing petitioner from leaving for abroad. [13]

The Court of Appeals held that petitioners' act of preventing respondent from leaving for Germany was tainted with bad faith, and that petitioners were also liable to respondent for moral and exemplary damages.

Thereafter, petitioners filed this petition raising the following issues:

I

WHETHER OR NOT THE HONORABLE APPELLATE COURT COMMITTED A SERIOUS ERROR AND GRAVE ABUSE OF DISCRETION WHEN IT HELD THE PETITIONERS LIABLE FOR ILLEGALLY TERMINATING THE PRIVATE RESPONDENT FROM HIS EMPLOYMENT.

II

WHETHER OR NOT THE HONORABLE APPELLATE COURT COMMITTED SERIOUS ERROR AND GRAVE ABUSE OF DISCRETION IN SETTING ASIDE THE OVERWHELMING EVIDENCE SHOWING THAT THE PRIVATE RESPONDENT FAILED TO COMPLY WITH THE REQUIREMENTS SET BY THE POEA RULES REGARDING FITNESS FOR WORK.

III

WHETHER OR NOT THE HONORABLE APPELLATE COURT SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT AWARDED MONETARY BENEFITS TO THE PRIVATE RESPONDENT DESPITE THE PROVISION OF THE POEA [STANDARD EMPLOYMENT CONTRACT] TO THE CONTRARY.

IV

WHETHER OR NOT THE HONORABLE APPELLATE COURT COMMITTED SERIOUS ERROR WITH REGARD TO ITS FINDINGS OF FACTS, WHICH, IF NOT CORRECTED, WOULD CERTAINLY CAUSE GRAVE OR IRREPARABLE DAMAGE OR INJURY TO THE PETITIONERS.[14]

The general rule that petitions for review only allow the review of errors of law by this Court is not ironclad.[15] Where the issue is shrouded by a conflict of factual perceptions by the lower court or the lower administrative body, such as the NLRC in this case, this Court is constrained to review the factual findings of the Court of Appeals.[16]

Petitioners contend that the Court of Appeals erred in doubting the Affidavit of Dr. Lyn dela Cruz-De Leon, which affidavit stated that the Hepatitis profile of respondent was done only on January 18, 2000 and was concluded on January 20, 2000. Petitioners

stated that they had no intention to fabricate or mislead the appellate court and the Labor Arbiter, but they had to explain the circumstances that transpired in the conduct of the medical examination. Petitioners reiterated that the medical examination was conducted on January 17, 2000 and the result was released on January 20, 2000. As explained by Dr. Lyn dela Cruz-De Leon, the date "January 17, 2000" was written on the medical examination certificate because it was the day when respondent was referred and initially examined by her. The medical examination certificate was dated January 17, 2000 not for any reason, but in accordance with a generally accepted medical practice, which was not controverted by respondent.

Petitioners assert that respondent's failure to join the vessel on January 17, 2000 should not be attributed to it for it was a direct consequence of the delay in the release of the medical report. Respondent was not yet declared fit to work at the time when he was supposed to be deployed on January 17, 2000, as instructed by petitioners' principal. Respondent's fitness to work is a condition *sine qua non* for purposes of deploying an overseas contract worker. Since respondent failed to qualify on the date designated by the principal for his deployment, petitioners had to find a qualified replacement considering the nature of the shipping business where delay in the departure of the vessel is synonymous to demurrage/damages on the part of the principal and on the vessel's charterer. Without a clean bill of health, the contract of employment cannot be considered to have been perfected as it is wanting of an important requisite.

Based on the foregoing argument of petitioners, the first issue to be resolved is whether petitioners' reason for preventing respondent from leaving Manila and joining the vessel M/V AUK in Germany on January 17, 2000 is valid.

The Court rules in the negative.

The Court has carefully reviewed the records of the case, and agrees with the Court of Appeals that respondent's Medical Certificate[17] dated January 17, 2000, stamped with the words "FIT TO WORK," proves that respondent was medically fit to leave Manila on January 17, 2000 to join the vessel M/V AUK in Germany. The Affidavit of Dr. Lyn dela Cruz-De Leon that respondent was declared fit to work only on January 21, 2000 cannot overcome the evidence in the Medical Certificate dated January 17, 2000, which already stated that respondent had "Class-B Non-Infectious Hepatitis-B," and that he was fit to work. The explanation given by Dr. Lyn dela Cruz-De Leon in her affidavit that the Medical Certificate was dated January 17, 2000, since it carries the date when they started to examine the patient per standard operating procedure, does not persuade as it goes against logic and the chronological recording of medical procedures. The Medical Certificate submitted as documentary evidence[18] is proof of its contents, including the date thereof which states that respondent was already declared fit to work on January 17, 2000, the date of his scheduled deployment.

Next, petitioners contend that respondent's employment contract was not perfected pursuant to the POEA Standard Employment Contract, which provides:

SEC 2. COMMENCEMENT/DURATION OF CONTRACT

A. The **employment contract between the employer and the seafarer shall commence upon actual departure of the seafarer from the airport or seaport in the point of hire and with a POEA approved contract**. It shall be effective until the seafarer's date of arrival at the point of hire upon termination of his employment pursuant to Section 18 of this Contract.[19]

Petitioners argue that, as ruled by the NLRC, since respondent did not actually depart from the Ninoy Aquino International Airport in Manila, no employer-employee relationship existed between respondent and petitioners' principal, Ranger Marine S.A., hence, there is no illegal dismissal to speak of, so that the award of damages must be set aside.

Petitioners assert that they did not conceal any information from respondent related to his contract of employment, from his initial application until the release of the result of his medical examination. They even tried to communicate with respondent for another shipboard assignment even after his failed deployment, which ruled out bad faith. They pray that respondent's complaint be dismissed for lack of merit.

Petitioners' argument is partly meritorious.

An employment contract, like any other contract, is perfected at the moment (1) the parties come to agree upon its terms; and (2) concur in the essential elements thereof: (a) consent of the contracting parties, (b) object certain which is the subject matter of the contract, and (c) cause of the obligation.[20] The object of the contract was the rendition of service by respondent on board the vessel for which service he would be paid the salary agreed upon.

Hence, in this case, **the employment contract was perfected on January 15, 2000** when it was signed by the parties, respondent and petitioners, who entered into the contract in behalf of their principal, Ranger Marine S.A., thereby signifying their consent to the terms and conditions of employment embodied in the contract, and the contract was approved by the POEA on January 17, 2000. However, **the employment contract did not commence**, since petitioners did not allow respondent to leave on January 17, 2000 to embark the vessel M/V AUK in Germany on the ground that he was not yet declared fit to work on the day of departure, although his Medical Certificate dated January 17, 2000 proved that respondent was fit to work.

In ***Santiago v. CF Sharp Crew Management, Inc.***,[21] the Court held that the employment contract did not commence when the petitioner therein, a hired seaman, was not able to depart from the airport or seaport in the point of hire; thus, no employer-employee relationship was created between the parties.

Nevertheless, even before the start of any employer-employee relationship, contemporaneous with the perfection of the employment contract was the birth of

certain rights and obligations, the breach of which may give rise to a cause of action against the erring party.[22] If the reverse happened, that is, the seafarer failed or refused to be deployed as agreed upon, he would be liable for damages.[23]

The Court agrees with the NLRC that a recruitment agency, like petitioner BMC, must ensure that an applicant for employment abroad is technically equipped and physically fit because a labor contract affects public interest. Nevertheless, in this case, petitioners failed to prove with substantial evidence that they had a valid ground to prevent respondent from leaving on the scheduled date of his deployment. While the POEA Standard Contract must be recognized and respected, neither the manning agent nor the employer can simply prevent a seafarer from being deployed without a valid reason.[24]

Petitioners' act of preventing respondent from leaving and complying with his contract of employment constitutes breach of contract for which petitioner BMC is liable for actual damages to respondent for the loss of one-year salary as provided in the contract.[25] The monthly salary stipulated in the contract is US$670, inclusive of allowance.

The Court upholds the award of moral damages in the amount of P30,000.00, as the Court of Appeals correctly found petitioners' act was tainted with bad faith,[26] considering that respondent's Medical Certificate stated that he was fit to work on the day of his scheduled departure, yet he was not allowed to leave allegedly for medical reasons.

Further, the Court agrees with the Court of Appeals that petitioner BMC is liable to respondent for exemplary damages,[27] which are imposed by way of example or correction for the public good in view of petitioner's act of preventing respondent from being deployed on the ground that he was not yet declared fit to work on the date of his departure, despite evidence to the contrary. Such act, if tolerated, would prejudice the employment opportunities of our seafarers who are qualified to be deployed, but prevented to do so by a manning agency for unjustified reasons. Exemplary damages are imposed not to enrich one party or impoverish another, but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions.[28] In this case, petitioner should be held liable to respondent for exemplary damages in the amount of P50,000.00,[29] following the recent case of ***Claudio S. Yap v. Thenamaris Ship's Management, et al.***,[30] instead of P10,000.00

The Court also holds that respondent is entitled to attorney's fees in the concept of damages and expenses of litigation.[31] Attorney's fees are recoverable when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest.[32] Petitioners' failure to deploy respondent based on an unjustified ground forced respondent to file this case, warranting the award of attorney's fees equivalent to ten percent (10%) of the recoverable amount.[33]

WHEREFORE, the petition is **DENIED**. The Decision of the Court of Appeals in CA-

G.R. SP No. 67571, dated October 25, 2004, is **AFFIRMED** with modification. Petitioner Bright Maritime Corporation is hereby **ORDERED** to pay respondent Ricardo B. Fantonial actual damages in the amount of the peso equivalent of US$8,040.00, representing his salary for one year under the contract; moral damages in the amount Thirty Thousand Pesos (P30,000.00); exemplary damages that is increased from Ten Thousand Pesos (P10,000.00) to Fifty Thousand Pesos (P50,000.00), and attorney's fees equivalent to ten percent (10%) of the recoverable amount.

Costs against petitioners.

SO ORDERED.

Velasco, Jr., (Chairperson), Abad, Mendoza, and *Perlas-Bernabe, JJ.*, concur.

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[1] Under Rule 45 of the Rules of Court.

[2] Annex "B," records, p. 52.

[3] Annex "A," *id*. at 51.

[4] The case was docketed as NLRC Case No. 7-05-0020-2000 OFW.

[5] Records, p. 17.

[6] Annex "B," *id*. at 24.

[7] *Rollo*, pp. 45-48.

[8] *Id*. at 46-48.

[9] *Id*. at 50-56.

[10] *Id*. at 56.

[11] *Id*. at 59-63.

[12] *Id*. at 43.

[13] *Id*. at 42.

[14] *Id*. at 21.

[15] *Alay sa Kapatid International Foundation, Inc. (AKAP) v. Dominguez*, G.R. No. 164198, June 15, 2007, 524 SCRA 719.

[16] *Id*. See also *Philemploy Services and Resources, Inc. v. Rodriguez*, G.R. No. 152616, March 31, 2006, 486 SCRA 302, 314; *Filipinas Pre-Fabricated Building Systems (Filsystems), Inc. v. Puente*, G.R. No. 153832, March 18, 2005, 453 SCRA 820, 826; *Go v. Court of Appeals*, G.R. No. 158922, May 28, 2004, 430 SCRA 358, 365.

[17] Also referred to as Medical Examination Certificate by petitioners, records, p. 51.

[18] Rules of Court, Rule 130, Sec. 2. *Documentary evidence*. - Documents as evidence consist of writings or any material containing letters, words, numbers, figures, symbols or other modes of written expressions offered as proof of their contents.

[19] Emphasis supplied.

[20] *OSM Shipping Philippines, Inc. v. National Labor Relations Commission*, G.R. No. 138193, March 5, 2003, 398 SCRA 606, 615.

[21] G.R. No. 162419, July 10, 2007, 527 SCRA 165.

[22] *Id*. at 176.

[23] *Id*.

[24] *Id*.

[25] *Id.*

[26] Civil Code, Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. *The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith*. (Emphasis supplied.)

[27] Civil Code, Art. 2229. Exemplary or corrective damages are imposed by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

[28] *German Marine Agencies, Inc. v. National Labor Relations Commission*, G.R. No. 142049, January 30, 2001, 350 SCRA 629, 648.

[29] *Claudio S. Yap v. Thenamaris Ship's Management*, *et al.*, G.R. No. 179532, May 30, 2011.

[30] *Id*.

[31] *Santiago v. CF Sharp Crew Management, Inc.*, *supra* note 21, at 179.

[32] *Id*.

[33] *Claudio S. Yap v. Thenamaris Ship's Management*, *et al.*, *supra* note 29; *Santiago v. CF Sharp Crew Management, Inc.*, *supra* note 21, at 179.
