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SECOND DIVISION

[G.R. No. 197309, October 10, 2012]

ACE NAVIGATION CO., INC., VELA INTERNATIONAL MARINE LTD., AND/OR RODOLFO PAMINTUAN, PETITIONERS, VS. TEODORICO FERNANDEZ, ASSISTED BY GLENITA FERNANDEZ, RESPONDENT.

D E C I S I O N

BRION, J.:

For resolution is the petition for review on *certiorari*[1] which seeks to nullify the decision[2] dated September 22, 2010 and the resolution[3] dated May 26, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 112081.

The Antecedents

On October 9, 2008, seaman Teodorico Fernandez (*Fernandez*), assisted by his wife, Glenita Fernandez, filed with the National Labor Relations Commission (*NLRC*) a complaint for disability benefits, with prayer for moral and exemplary damages, plus attorney's fees, against Ace Navigation Co., Inc., Vela International Marine Ltd., and/or Rodolfo Pamintuan (*petitioners*).

The petitioners moved to dismiss the complaint,[4] contending that the labor arbiter had no jurisdiction over the dispute. They argued that exclusive original jurisdiction is with the voluntary arbitrator or panel of voluntary arbitrators, pursuant to Section 29 of the POEA Standard Employment Contract (*POEA-SEC*), since the parties are covered by the AMOSUP-TCC or AMOSUP-VELA (as later cited by the petitioners) collective bargaining agreement (*CBA*). Under Section 14 of the CBA, a dispute between a seafarer and the company shall be settled through the grievance machinery and mandatory voluntary arbitration.

Fernandez opposed the motion.[5] He argued that inasmuch as his complaint involves a money claim, original and exclusive jurisdiction over the case is vested with the labor arbiter.

The Compulsory Arbitration Rulings

On December 9, 2008, Labor Arbiter Romelita N. Rioflorido denied the motion to dismiss, holding that under Section 10 of Republic Act (R.A.) No. 8042, the Migrant Workers and Overseas Filipinos Act of 1995, the labor arbiter has original and exclusive jurisdiction over money claims arising out of an employer-employee relationship or by virtue of any law or contract, notwithstanding any provision of law to the contrary.[6]

The petitioners appealed to the NLRC, but the labor agency denied the appeal. It agreed with the labor arbiter that the case involves a money claim and is within the jurisdiction of the labor arbiter, in accordance with Section 10 of R.A. No. 8042. Additionally, it declared that the denial of the motion to dismiss is an interlocutory order which is not appealable. Accordingly, it remanded the case to the labor arbiter for further proceedings. The petitioners moved for reconsideration, but the NLRC denied the motion, prompting the petitioners to elevate the case to the CA through a petition for *certiorari* under Rule 65 of the Rules of Court.

The CA Decision

Through its decision of September 22, 2010,[7] the CA denied the petition on procedural and substantive grounds.

Procedurally, it found the petitioners to have availed of the wrong remedy when they challenged the labor arbiter's denial of their motion to dismiss by way of an appeal to the NLRC. It stressed that pursuant to the NLRC rules,[8] an order denying a motion to dismiss is interlocutory and is not subject to appeal.

On the merits of the case, the CA believed that the petition cannot also prosper. It rejected the petitioners' submission that the grievance and voluntary arbitration procedure of the parties' CBA has jurisdiction over the case, to the exclusion of the labor arbiter and the NLRC. As the labor arbiter and the NLRC did, it opined that under Section 10 of R.A. No. 8042, the labor arbiter has the original and exclusive jurisdiction to hear Fernandez's money claims.

Further, the CA clarified that while the law[9] allows parties to submit to voluntary arbitration other labor disputes, including matters falling within the original and exclusive jurisdiction of the labor arbiters under Article 217 of the Labor Code as this Court recognized in *Vivero v. Court of Appeals,*[10] the parties' submission agreement must be expressed in unequivocal language. It found no such unequivocal language in the AMOSUP/TCC CBA that the parties agreed to submit money claims or, more specifically, claims for disability benefits to voluntary arbitration.

The CA also took note of the POEA-SEC[11] which provides in its Section 29 that in cases of claims and disputes arising from a Filipino seafarer's employment, the parties covered by a CBA shall submit the claim or dispute to the original and exclusive jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators. The CA explained that the relevant POEA-SEC provisions should likewise be qualified by the ruling in the *Vivero* case, the Labor Code, and other applicable laws and jurisprudence.

In sum, the CA stressed that the jurisdiction of voluntary arbitrators is limited to the seafarers' claims which do not fall within the labor arbiter's original and exclusive jurisdiction or even in cases where the labor arbiter has jurisdiction, the parties have agreed in unmistakable terms (through their CBA) to submit the case to voluntary arbitration.

The petitioners moved for reconsideration of the CA decision, but the appellate court denied the motion, reiterating its earlier pronouncement that on the ground alone of the petitioners' wrong choice of remedy, the petition must fail.

The Petition

The petitioners are now before this Court praying for a reversal of the CA judgment on the following grounds:

1. The CA committed a reversible error in disregarding the Omnibus Implementing Rules and Regulations (*IRR*) of the Migrant Workers and Overseas Filipinos Act of 1995, [12] as amended by R.A. No. 10022,[13] mandating that "For OFWs with collective bargaining agreements, the case shall be submitted for voluntary arbitration in accordance with Articles 261 and 262 of the Labor Code."[14]

The petitioners bewail the CA's rejection of the above argument for the reason that the remedy they pursued was inconsistent with the 2005 Revised Rules of Procedure of the NLRC. Citing *Municipality of Sta. Fe v. Municipality of Aritao*,[15] they argue that the "dismissal of a case for lack of jurisdiction may be raised at any stage of the proceedings."

In any event, they posit that the IRR of R.A. No. 10022 is in the nature of an adjective or procedural law which must be given retroactive effect and which should have been applied by the CA in resolving the present case.

2. The CA committed a reversible error in ruling that the AMOSUP-VELA CBA does not contain unequivocal wordings for the mandatory referral of Fernandez's claim to voluntary arbitration.

The petitioners assail the CA's failure to explain the basis "for ruling that no explicit or unequivocal wordings appeared on said CBA for the mandatory referral of the disability claim to arbitration."[16] They surmise that the CA construed the phrase "either party **may** refer the case to a MANDATORY ARBITRATION COMMITTEE" under Section 14.7(a) of the CBA as merely permissive and not mandatory because of the use of the word "**may**." They contend that notwithstanding the use of the word "**may**," the parties unequivocally and unmistakably agreed to refer the present disability claim to mandatory arbitration.

3. The CA committed a reversible error in disregarding the NLRC memorandum prescribing the appropriate action for complaints and/or proceedings which were initially processed in the grievance machinery of existing CBAs. In their motion for reconsideration with the CA, the petitioners manifested that the appellate court's assailed decision had been modified by the following directive of the NLRC:

> As one of the measures being adopted by our agency in response to the Platform and Policy Pronouncements on Labor Employment, you are hereby directed to immediately dismiss the complaint and/or terminate proceedings

which were initially processed in the grievance machinery as provided in the existing Collective Bargaining Agreements (CBAs) between parties, through the issuance of an Order of Dismissal and referral of the disputes to the National Conciliation Mediation Board (NCMB) for voluntary arbitration.

FOR STRICT COMPLIANCE.[17]

4. On July 31, 2012,[18] the petitioners manifested before the Court that on June 13, 2012, the Court's Second Division issued a ruling in G.R. No. 172642, entitled *Estate of Nelson R. Dulay, represented by his wife Merridy Jane P. Dulay v. Aboitiz Jebsen Maritime, Inc.*, and *General Charterers, Inc.*, upholding the jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators over a seafarer's money claim. They implore the Court that since the factual backdrop and the issues involved in the case are similar to the present dispute, the *Dulay* ruling should be applied to this case and which should accordingly be referred to the National Conciliation and Mediation Board for voluntary arbitration.

The Case for Fernandez

In compliance with the Court's directive,[19] Fernandez filed on October 7, 2011 his Comment[20] (on the Petition) with the plea that the petition be dismissed for lack of merit. Fernandez presents the following arguments:

1. The IRR of the Migrant Workers and Overseas Filipinos Act of 1995 (R.A. No. 8042), as amended by R.A. No. 10022,[21] did not divest the labor arbiters of their original and exclusive jurisdiction over money claims arising from employment, for nowhere in said IRR is there such a divestment.

2. The voluntary arbitrators do not have jurisdiction over the present controversy as can be deduced from Articles 261 and 262 of the Labor Code.

Fernandez explains that his complaint does not involve any "unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement [nor] from the interpretation or enforcement of company personnel policies[.]"[22] As he never referred his claim to the grievance machinery, there is no "unresolved grievance" to speak of. His complaint involves a claim for compensation and damages which is outside the voluntary arbitrator's jurisdiction under Article 261. Further, only disputes involving the union and the company shall be referred to the grievance machinery and to voluntary arbitration, as the Court held in *Sanyo Philippines Workers Union-PSSLU v. Cañizares*[23] and *Silva v. CA*.[24]

3. The CA correctly ruled that no unequivocal wordings appear in the CBA for the mandatory referral of Fernandez's disability claim to a voluntary arbitrator.

The Court's Ruling

We first rule on the procedural question arising from the labor arbiter's denial of the petitioners' motion to dismiss the complaint. On this point, Section 6, Rule V of The 2005 Revised Rules of Procedure of the NLRC provides:

> On or before the date set for the mandatory conciliation and mediation conference, the respondent may file a motion to dismiss. Any motion to dismiss on the ground of lack of jurisdiction, improper venue, or that the cause of action is barred by prior judgment, prescription, or forum shopping, shall be immediately resolved by the Labor Arbiter through a written order. An order denying the motion to dismiss, or suspending its resolution until the final determination of the case, is not appealable. [underscoring ours]

Corollarily, Section 10, Rule VI of the same Rules states:

> *Frivolous or Dilatory Appeals.* – No appeal from an interlocutory order shall be entertained. To discourage frivolous or dilatory appeals, including those taken from interlocutory orders, the Commission may censure or cite in contempt the erring parties and their counsels, or subject them to reasonable fine or penalty.

In *Indiana Aerospace University v. Comm. on Higher Educ.*,[25] the Court declared that "[a]n order denying a motion to dismiss is interlocutory"; the proper remedy in this situation is to appeal after a decision has been rendered. Clearly, the denial of the petitioners' motion to dismiss in the present case was an interlocutory order and, therefore, not subject to appeal as the CA aptly noted.

The petition's procedural lapse notwithstanding, the CA proceeded to review the merits of the case and adjudged the petition unmeritorious. We find the CA's action in order. The Labor Code itself declares that "it is the spirit and intention of this Code that the Commission and its members 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."[26]

We now address the focal question of who has the original and exclusive jurisdiction over Fernandez's disability claim — the labor arbiter under Section 10 of R.A. No. 8042, as amended, or the voluntary arbitration mechanism as prescribed in the parties' CBA and the POEA-SEC?

The answer lies in the State's labor relations policy laid down in the Constitution and fleshed out in the enabling statute, the Labor Code. Section 3, Article XIII (on Social Justice and Human Rights) of the Constitution declares:

x x x x

> The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

Article 260 of the Labor Code (Grievance machinery and voluntary arbitration) states:

> The parties to a Collective Bargaining Agreement shall include therein provisions that will ensure the mutual observance of its terms and conditions. They shall establish a machinery for the adjustment and resolution of grievances arising from the interpretation or implementation of their Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies.

Article 261 of the Labor Code (Jurisdiction of Voluntary Arbitrators or panel of Voluntary Arbitrators), on the other hand, reads in part:

> The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies[.]

Article 262 of the Labor Code (Jurisdiction over other labor disputes) declares:

> The Voluntary Arbitrator or panel of Voluntary Arbitrators, upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks.

Further, the POEA-SEC, which governs the employment of Filipino seafarers, provides in its Section 29 on Dispute Settlement Procedures:

> **In cases of claims and disputes arising from this employment, the parties covered by a collective bargaining agreement shall submit the claim or dispute to the original and exclusive jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators**. If the parties are not covered by a collective bargaining agreement, the parties may at their option submit the claim or dispute to either the original and exclusive jurisdiction of the National Labor Relations Commission (NLRC), pursuant to Republic Act (RA) 8042 otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995 or to the original and exclusive jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators. If there is no

provision as to the voluntary arbitrators to be appointed by the parties, the same shall be appointed from the accredited voluntary arbitrators of the National Conciliation and Mediation Board of the Department of Labor and Employment. [emphasis ours]

We find merit in the petition.

Under the above-quoted constitutional and legal provisions, the voluntary arbitrator or panel of voluntary arbitrators has original and exclusive jurisdiction over Fernandez's disability claim. There is no dispute that the claim arose out of Fernandez's employment with the petitioners and that their relationship is covered by a CBA — the AMOSUP/TCC or the AMOSUP-VELA CBA. The CBA provides for a grievance procedure for the resolution of grievances or disputes which occur during the employment relationship and, like the grievance machinery created under Article 261 of the Labor Code, it is a two-tiered mechanism, with voluntary arbitration as the last step.

Contrary to the CA's reading of the CBA's Article 14, there is unequivocal or unmistakable language in the agreement which mandatorily requires the parties to submit to the grievance procedure any dispute or cause of action they may have against each other. The relevant provisions of the CBA state:

14.6 Any Dispute, grievance, or misunderstanding concerning any ruling, practice, wages or working conditions in the COMPANY or any breach of the Contract of Employment, or any dispute arising from the meaning or application of the provisions of this Agreement or a claim of violation thereof or any complaint or cause of action that any such Seaman may have against the COMPANY, as well as complaints which the COMPANY may have against such Seaman shall be brought to the attention of the GRIEVANCE RESOLUTION COMMITTEE before either party takes any action, legal or otherwise. Bringing such a dispute to the Grievance Resolution Committee shall be unwaivable prerequisite or condition precedent for bringing any action, legal or otherwise, in any forum and the failure to so refer the dispute shall bar any and all legal or other actions.

14.7a) If by reason of the nature of the Dispute, the parties are unable to amicably settle the dispute, either party may refer the case to a MANDATORY ARBITRATION COMMITTEE. The MANDATORY ARBITRATION COMMITTEE shall consist of one representative to be designated by the UNION, and one representative to be designated by the COMPANY and a third member who shall act as Chairman and shall be nominated by mutual choice of the parties. xxx

h) Referral of all unresolved disputes from the Grievance Resolution Committee to the Mandatory Arbitration

> Committee shall be unwaivable prerequisite or condition precedent for bringing any action, claim, or cause of action, legal or otherwise, before any court, tribunal, or panel in any jurisdiction. The failure by a party or seaman to so refer and avail oneself to the dispute resolution mechanism contained in this action shall bar any legal or other action. All parties expressly agree that the orderly resolution of all claims in the prescribed manner served the interests of reaching settlements or claims in an orderly and uniform manner, as well as preserving peaceful and harmonious labor relations between seaman, the Union, and the Company.[27] (emphases ours)

What might have caused the CA to miss the clear intent of the parties in prescribing a grievance procedure in their CBA is, as the petitioners' have intimated, the use of the auxiliary verb "**may**" in Article 14.7(a) of the CBA which, to reiterate, **provides that "[i]f by reason of the nature of the Dispute, the parties are unable to amicably settle the dispute, either party may refer the case to a MANDATORY ARBITRATION COMMITTEE.**"[28]

While the CA did not qualify its reading of the subject provision of the CBA, it is reasonable to conclude that it viewed as optional the referral of a dispute to the mandatory arbitration committee when the parties are unable to amicably settle the dispute.

We find this a strained interpretation of the CBA provision. The CA read the provision separately, or in isolation of the other sections of Article 14, especially 14.7(h), which, in clear, explicit language, states that **the "referral of all unresolved disputes from the Grievance Resolution Committee to the Mandatory Arbitration Committee shall be unwaivable prerequisite or condition precedent for bringing any action, claim, or cause of action, legal or otherwise, before any court, tribunal, or panel in any jurisdiction"**[29] **and that the failure by a party or seaman to so refer the dispute to the prescribed dispute resolution mechanism shall bar any legal or other action.**

Read in its entirety, the CBA's Article 14 (Grievance Procedure) unmistakably reflects the parties' agreement to submit any unresolved dispute at the grievance resolution stage to mandatory voluntary arbitration under Article 14.7(h) of the CBA. And, it should be added that, in compliance with Section 29 of the POEA-SEC which requires that in cases of claims and disputes arising from a seafarer's employment, the parties covered by a CBA shall submit the claim or dispute to the original and exclusive jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators.

Since the parties used unequivocal language in their CBA for the submission of their disputes to voluntary arbitration (a condition laid down in *Vivero* for the recognition of the submission to voluntary arbitration of matters within the original and exclusive jurisdiction of labor arbiters), we find that the CA committed a reversible error in its ruling; it disregarded the clear mandate of the CBA between the parties and the POEA-

SEC for submission of the present dispute to voluntary arbitration.

Consistent with this finding, Fernandez's contention — that his complaint for disability benefits is a money claim that falls within the original and exclusive jurisdiction of the labor arbiter under Section 10 of R.A. No. 8042 — is untenable. We likewise reject his argument that he never referred his claim to the grievance machinery (so that no unresolved grievance exists as required under Article 261 of the Labor Code), and that the parties to the case are not the union and the employer.[30] Needless to state, no such distinction exists in the parties' CBA and the POEA-SEC.

It bears stressing at this point that we are upholding the jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators over the present dispute, not only because of the clear language of the parties' CBA on the matter; more importantly, we so uphold the voluntary arbitrator's jurisdiction, in recognition of the State's express preference for voluntary modes of dispute settlement, such as conciliation and voluntary arbitration as expressed in the Constitution, the law and the rules.

In this light, we see no need to further consider the petitioners' submission regarding the IRR of the Migrant Workers and Overseas Filipinos Act of 1995, as amended by R.A. No. 10022, except to note that the IRR lends further support to our ruling.

In closing, we quote with approval a most recent Court pronouncement on the same issue, thus –

> **It is settled that when the parties have validly agreed on a procedure for resolving grievances and to submit a dispute to voluntary arbitration then that procedure should be strictly observed**.[31] (emphasis ours)

WHEREFORE, premises considered, the petition is **GRANTED**. The assailed decision and resolution of the Court of Appeals are **SET ASIDE**. Teodorico Fernandez's disability claim is **REFERRED** to the Grievance Resolution Committee of the parties' collective bargaining agreement and/or the Mandatory Arbitration Committee, if warranted.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, Perez, and *Perlas-Bernabe, JJ*., concur.

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[1] *Rollo*, pp. 33-52; filed pursuant to Rule 45 of the Rules of Court.

[2] *Id.* at 61-73; penned by Associate Justice Mariflor P. Punzalan-Castillo, and concurred in by Associates Justices Josefina Guevara-Salonga and Franchito N. Diamante.

[3] *Id.* at 75-77.

[4] CA *rollo,* pp. 58-66.

[5] *Id.* at 102-111.

[6] *Id*. at 56; Order issued by Labor Arbiter Rioflorido.

[7] *Supra* note 2.

[8] The 2005 Revised Rules of Procedure of the NLRC, Rule VI, Section 10.

[9] LABOR CODE, Article 262.

[10] 398 Phil. 158, 169 (2000).

[11] *Rollo*, pp. 90-138; Department Order No. 4, s. of 2000; and the Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels.

[12] R.A. No. 8042.

[13] An Act Amending Republic Act No. 8042, Otherwise Known as the Migrant Workers and Overseas Filipinos Act of 1995, As Amended, Further Improving the Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress, and For Other Purposes.

[14] *Rollo*, p. 109.

[15] G.R. No. 140474, September 21, 2007, 533 SCRA 586, 599.

[16] *Supra* note 1, at 47.

[17] Id. at 51.

[18] *Rollo*, pp. 185-190.

[19] *Rollo,* pp. 167-168; Resolution dated August 15, 2011.

[20] *Id*. at 173-183.

[21] Supra note 13.

[22] *Rollo*, p. 175.

[23] G.R. No. 101619, July 8, 1992, 211 SCRA 361, 373.

[24] G.R. No. 110226, June 19, 1997, 274 SCRA 159, 170.

[25] 408 Phil. 483, 501 (2001); see also *Locsin v. Nissan Lease Phils., Inc.*, G.R. No. 185567, October 20, 2010, 634 SCRA 392, 403-404.

[26] LABOR CODE, Article 221.

[27] *Rollo*, pp. 159-160.

[28] *Id.* at 160; emphasis ours.

[29] *Ibid*; emphasis ours.

[30] *Sanyo Philippines Workers Union-PSSLU v. Cañizares, supra* note 23, at 373; and *Silva v. CA, supra* note 24 at 170.

[31] *Estate of Nelson R. Dulay, represented by his wife Merridy Jane P. Dulay v. Aboitiz Jebsen Maritime, Inc. and General Charterer, Inc.*, G.R. No. 172642, June 13, 2012, citing *Vivero v. Court of Appeals, supra* note 10.
