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SECOND DIVISION

[G.R. No. 175209, January 16, 2013]

ROLANDO L. CERVANTES, PETITIONER, VS. PAL MARITIME CORPORATION AND/OR WESTERN SHIPPING AGENCIES, PTE., LTD., RESPONDENTS.

D E C I S I O N

PEREZ, J.:

This treats of the petition for rev1ew filed by petitioner Rolando Cervantes assailing the Decision[1] and Resolution or the Court or Appeals dated 14 August 2006 and 26 October 2006, respectively, in CA-G.R. SP No. 76756.

At the center of this controversy is the question whether petitioner resigned or was terminated from his employment.

Petitioner Rolando Cervantes was hired as Master on board the vessel M/V Themistocles by respondent PAL Maritime Corporation, the manning agent of respondent Western Shipping Agencies, PTE., LTD., (Western Shipping) for a 10-month period effective 1 July 1995, with a basic monthly salary of United States (US)$1,600.00, an allowance of US$240.00 per month, a fixed overtime pay of US$640.00, and vacation leave with pay amounting to US$320.00 per month.[2]

On 31 July 1995, a telex message was sent to petitioner enumerating the complaints received from Colonial Shipping, the owner of the vessel, as follows:

1. Poor communications exist among key personnel
2. Vessel's certifications and company procedures were disorganized
3. Has no awareness on purpose of key documents such as ship board oil pollution emergency plan.
4. Has no working knowledge of grain loading calculation procedures
5. Improve operational and maintenance standards x x x.[3]

On the following day, petitioner sent a telex message and imputed ill- motive on the part of the foreign inspectors who were making false accusations against Filipino crew members. In the same message, petitioner addressed all the complaints raised against him.[4]

On 2 August 1995, petitioner sent another telex message informing Western Shipping

of the unbearable situation on board. He ended his message with these words:

> ANYHOW TO AVOID REPETITION [ON] MORE HARSH REPORTS TO COME. BETTER ARRANGE MY RELIEVER [AND] C/O BUSTILLO RELIEVER ALSO. UPON ARR NEXT USA LOADING PORT FOR THEIR SATISFACTION.[5]

In response to said message, on 20 September 1995, Western Shipping sent a letter informing petitioner that:

> OWNERS HAVE DECIDED TO RELIEVE YOU UPON PASSING PANAMA CANAL OR NEXT CONVENIENT PORT. WE TRUST THIS PRE-MATURED ENDING OF CONTRACT IS MUTUALLY AGREED AND FOR THE BENEFITS OF ALL PARTIES CONCERNED.[6]

Petitioner replied in this wise:

> HV NO CHOICE BUT TO ACCEPT YR DECISION. TKS ANYHOW FOR RELIEVING ME IN NEXT CONVENIENT PORT WILL EASE THE BURDEN THAT I HV FELT ONBOARD. REST ASSURE VSL WILL BE TURNED OVER PROPERLY TO INCOMING MASTER.[7]

On 13 October 1995, petitioner was repatriated to Manila.

On 25 October 1996, petitioner filed a Complaint for illegal dismissal. He prayed for actual damages in the amount of US$18,480.00 corresponding to his salaries for the unexpired period of his contract; moral damages for an amount not less than P200,000.00; exemplary damages for an amount not less than P100,000.00; and attorney's fees in an amount not less than 10% of the monetary award.[8]

In their Answer, respondents alleged that petitioner voluntarily and freely pre-terminated his own contract.

On 2 July 1999, Labor Arbiter Donato G. Quinto, Jr. found that petitioner was illegally dismissed. The dispositive portion of the Decision reads:

> WHEREFORE, foregoing premises considered, judgment is hereby rendered declaring complainant Rolando L. Cervantes to have been illegally dismissed and ordering respondents PAL Maritime Corporation and Western Shipping Agencies PTE, LTD to pay, jointly and severally, the amount of US$7,440.00, or its peso equivalent at the time of payment, representing his salary for the unexpired portion of his contract, plus 10% thereof as attorney's fees, all as discussed and computed above.

> All other claims are hereby dismissed for lack of merit.[9]

The Labor Arbiter focused on two (2) correspondences: 1) the letter- communication dated 20 September 1995 issued by respondent Western Shipping which terminated petitioner's employment, and 2) the subsequent reply of petitioner acceding to Western Shipping's decision to terminate him. The Labor Arbiter construed these correspondences as involuntary repatriation of petitioner.

On appeal, the Labor Arbiter's Decision was reversed by the First Division of the National Labor Relations Commission (NLRC). The NLRC initially referred the case to another Labor Arbiter, Thelma M. Concepcion (Labor Arbiter Concepcion) for review and submission of a report pursuant to Article 218 (c)[10] of the Labor Code. Labor Arbiter Concepcion found that petitioner was not dismissed from service but that he opted to be relieved from his post. This finding was adopted by the NLRC. Petitioner filed a motion for reconsideration but it was denied by the NLRC in an Order dated 26 December 2002, prompting him to file a petition before the Court of Appeals.

Finding that petitioner voluntarily resigned, the Court of Appeals, on 14 August 2006, denied the petition and affirmed the decision of the NLRC.

Petitioner elevated the case to this Court via a petition for review on *certiorari* raising the following issues:

> a) Whether the petitioner is entitled to his claims the (sic) under the POEA Employment Contract which arose from his illegal termination and what amount of evidence is required from the petitioner to prove their entitlement thereto.
>
> b) Whether or not an appeal without the joint declaration under oath is considered perfected?[11]

We shall first tackle the procedural issue raised.

Petitioner points out that the failure of respondent to file the required Joint Declaration Under Oath on the appeal bond warrants the dismissal of the appeal for non-perfection. On the other hand, respondents brush aside the late submission of their Joint Declaration Under Oath as a mere technicality.

The pertinent provision of the NLRC Rules of Procedure governing at the time the appeal was made to the NLRC is Rule VI, Section 3.[12] Section 3 enumerates the following requisites for perfection of appeal:

1. The appeal shall be filed within the reglementary period;

2. It shall be under oath with proof of payment of the required appeal fee and the posting of a cash or surety bond; and

3. It shall be accompanied by a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof; the relief prayed for; and a statement of the date when the appellant received the appealed decision, order or award and proof of service on the other party of such appeal.

In relation to the posting of the appeal bond, Section 6 further requires the submission by petitioner and his counsel of a Joint Declaration Under Oath attesting that the surety bond posted is genuine and that it shall be in effect until final disposition of the case. [13]

While the Rule mandates the submission of a joint declaration, this may be liberally construed especially in cases where there is substantial compliance with the Rule. When the NLRC issued an order directing respondents to file their Joint Declaration, the latter immediately complied.

Thus, there was only a late submission of the Joint Declaration. There was substantial compliance when respondents manifested their willingness to comply, and in fact complied with, the directive of the NLRC.

The appeal may have been treated differently had respondents failed to post the appeal bond itself. It bears mention that this Court had in numerous cases granted even the late posting of the appeal bond. In *University Plans Incorporated v. Solano*,[14] the Court ratiocinated:

> After all, the present case falls under those cases where the bond requirement on appeal may be relaxed considering that (1) there was substantial compliance with the Rules; (2) the surrounding facts and circumstances constitute meritorious grounds to reduce the bond; and (3) the petitioner, at the very least, exhibited its willingness and/or good faith by posting a partial bond during the reglementary period. Also, such a procedure would be in keeping with the Labor Code's mandate to 'use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.'[15]

As correctly pointed out by the Court of Appeals, respondents had posted a surety bond equivalent to the monetary award and had filed the notice of appeal and appeal memorandum, all within the reglementary period. All these show substantial compliance with the appeal requirement, considered as they must be, together with late submission of the Joint Declaration.

Further, no less than the Labor Code directs labor officials to use reasonable means to ascertain the facts speedily and objectively, with little regard to technicalities or

formalities and Rule VII, Section 10 of the New Rules of Procedure of the NLRC provides that technical rules are not binding. Indeed, the application of technical rules or procedure may be relaxed in labor cases to serve the demand of substantial justice. [16]

On the substantive issue, petitioner insists that he did not resign but was terminated from employment. Petitioner claims that he and the other Filipino crew members were subjects of racial discrimination which resulted from the complaint that they lodged against the vessel's Greek technician, Angelo Fatorous, due to the latter's inefficiency and maltreatment of crew members. Petitioner avers that voluntariness was lacking in his decision to write the letter on 3 August 1995 indicating his desire to be relieved from the post, because he was compelled by extreme pressure to prevent the happening of any untoward incident on the vessel.[17]

In their Comment, respondents argue that they and the owners of the vessel never initiated the repatriation to Manila of petitioner. All the owners of the vessel did was to advise respondents of their findings on petitioner's incompetence, negligence, and inability to render satisfactory service, and give petitioner one month to take corrective actions on board the vessel. Respondents, on the other hand, merely relayed to petitioner, through a telex message, said findings and the message of the owners of the vessel.

Resignation is 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, such that he has no other choice but to disassociate himself from his employment.[18] This is precisely what obtained in this case.

The tenor of petitioner's telex message was an unmistakeable demand that he be relieved of his assignment:

> ANYHOW TO AVOID REPETITION [ON] MORE HARSH REPORTS TO COME. BETTER ARRANGE MY RELIEVER [AND] C/O BUSTILLO RELIEVER ALSO. UPON ARR NEXT USA LOADING PORT FOR THEIR SATISFACTION.

Respondents met the challenge and accepted petitioner's resignation. Petitioner even appeared resigned to his fate by stating:

> HV NO CHOICE BUT TO ACCEPT YR DECISION. TKS ANYHOW FOR RELIEVING ME IN NEXT CONVENIENT PORT WILL EASE THE BURDEN THAT I HV FELT ONBOARD. REST ASSURE VSL WILL BE TURNED OVER PROPERLY TO INCOMING MASTER.

The statements of petitioner were simple and straightforward. There is no merit to his claim that he was forced to resign due to extreme pressure. Only two (2) days had elapsed from the time petitioner received a copy of the complaint from the owners of

the vessel until his letter demanding his relief. The telex message outlining numerous complaints against petitioner probably bruised his ego, causing petitioner to react impulsively by resigning.

Petitioner failed to substantiate his claim that he and the Filipino crew members were being subjected to racial discrimination on board. Petitioner presented a letter-petition against a Greek technician who allegedly maltreated Filipino crew members. However, there was no showing that the Greek technician spearheaded nor had any participation in the complaint of Colonial Shipping against petitioner.

Labor Arbiter Concepcion's finding of resignation was best explained in the NLRC Decision, to wit:

> The records show that in a telefax message dated July 28, 1995, the shipowner, Colonial Navigation Co. Inc. has made a complaint to Mr. Rodney Lim, which the latter forwarded to the respondent PAL Maritime, regarding poor work performance of the complainant as Master of the Vessel. The complainant's deficiencies were enumerated as follows:
>
> a) Poor communication exist among the by[sic] personnel;
> b) The vessels' certificates and company procedures were disorganized;
> c) The Master did not have an awareness of the purpose of the key documents, such as the ship board oil pollution emergency plan;
> d) The Master despite on board for one month did not have any awareness of the safety procedures that the company has set out in its Manuals.
>
> In connection with the aforementioned deficiencies, the complainant was given by the owner one month to take corrective measures to improve the operational and maintenance standards on board the vessel. x x x. Thereafter, the complainant was informed of the aforesaid complaint by the respondent as shown in the telefax message dated July 31, 1995 x x x. While the complainant denied the accusations of the owners he made a counter charge that the owners are racists x x x. In response thereto, the owners were surprised with the accusation of the complainant considering that they have been a principal of respondent PAL Maritime for more than four years and have employed several Filipino seamen x x x. Instead of complying with the request of the shipowners, the complainant opted to be relieved from his post. His telefax message in part reads:
>
> x x x Anyhow to avoid repetition [on] more harsh reports to come, better arranges my reliever [and] c/o Bustillo reliever also. Upon ARR next USA loading port for their satisfaction x x x.
>
> The foregoing exchange of communications clearly shows that complainant was not dismissed from the service but he opted to be relieved from his post

> as master. While it is true that his resignation was an offshoot of the complaint of the shipowners but the latter were merely requesting the complainant and the chief officers to improve in their performance. The dismissal aspect was not dismissed at all. It was complainant who brought out the idea and which was accepted by the shipowner as shown in the telefax message dated September 20, 1995 x x X.
>
> This x x x Commission finds the reply dated September 21, 1995 of the complainant misleading. His statement that "HV no choice but to accept yr Decision," is not accurate inasmuch as it was he who opted to be relieved at the next loading port. His request which was favorably acted upon by the respondents certainly negates his claims that he was illegally dismissed. [19]

The rule that filing of a complaint for illegal dismissal is inconsistent with resignation does not hold true in this case. The filing of the complaint one year after his alleged termination, coupled with the clear tenor or his resignation letter should be taken to mean that petitioner's filing or the illegal dismissal case was a mere afterthought.

In fine, we do not find any persuasive or cogent reason to deviate from the findings of the NLRC, as affirmed by the appellate court.

WHEREFORE, the petition is **DENIED**. The 14 August 2006 Decision and the 26 October 2006 Resolution of the Court of Appeals 111 CA-G.R. SP No. 76756 are hereby **AFFIRMED**.

SO ORDERED.

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

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* Per Special Order No. 1408 dated 15 January 2013.

[1] Penned by Associate Justice Myrna Dimaranan Vidal with Associate Justices Eliezer R. De Los Santos and Fernanda Lampas Peralta, concurring. *Rollo*. pp. 24-33.

[2] See Contract of Employment. CA *rollo*, p. 67.

[3] Id. at 206.

[4] Id. at 207.

[5] Id. at 209.

[6] Id. at 210.

[7] Id. at 211.

[8]Id. at 54.

[9] Id. at 156-157.

[10] Art. 218. Powers of the Commission. The Commission shall have the power and authority:

To conduct investigation for the determination of a question, matter or controversy within its jurisdiction, proceed to hear and determine the disputes in the absence of any party thereto who has been summoned or served with notice to appear, conduct its proceedings or any part thereof in public or in private, adjourn its hearings to any time and place, refer technical matters or accounts to an expert and to accept his report as evidence after hearing of the parties upon due notice, direct parties to be joined in or excluded from the proceedings, correct, amend, or waive any error, defect or irregularity whether in substance or in form, give all such directions as it may deem necessary or expedient in the determination of the dispute before it, and dismiss any matter or refrain from further hearing or from determining the dispute or part thereof, where it is trivial or where further proceedings by the Commission are not necessary or desirable;

[11] *Rollo*, p. 16.

[12] Now Rule VI, Section 4 of the 2011 NLRC Rules of Procedure.

[13] SECTION 6. Bond. — In case the decision of a Labor Arbiter, POEA Administrator and

Regional Director or his duly authorized hearing officer involves a monetary award, an appeal by the employer shall be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission or the Supreme Court in an amount equivalent to the monetary award, exclusive of moral and exemplary damages and attorney's fees.

The employer as well as counsel shall submit a joint declaration under oath attesting that the surety bond posted is genuine and that it shall be in effect until final disposition of the case.

[14] G.R. No. 170416, 22 June 2011, 652 SCRA 492 citing *Nicol v. Footjoy Industrial Corporation*, G.R. No. 159372, 27 July 2007, 528 SCRA 300.

[15] *University Plans Incorporated v. Solano,* id. at 505-506 citing *Nicol v. Footjoy Industrial Corporation,* id. at 312.

[16] *Dacuital v. L.M. Camus Engineering Corporation*, G.R. No. 176748, 1 September 2010, 629 SCRA 702, 711-712 citing *Pacquing v. Coca-Cola Philippines*, Inc., G.R. No.

157966, 31 January 2008, 543 SCRA 344, 356-357.

[17] *Rollo*, p. 18.

[18] *Hilton Heavy Equipment Corporation v. Dy*, G.R. No. 164860, 2 February 2010, 611 SCRA 329, 336-337; *Bilbao v. Saudi Arabian Airlines,* G.R. No. 183915, 14 December 2011, 662 SCRA 540, 549.

[19] CA *rollo*, pp. 33-35.
