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SECOND DIVISION

[G.R. No. 199931, September 07, 2015]

INC SHIPMANAGEMENT, INC., INTERORIENT NAVIGATION COMPANY LTD. AND REYNALDO RAMIREZ, PETITIONERS, VS. RANULFO CAMPOREDONDO, RESPONDENT.

D E C I S I O N

DEL CASTILLO, J .:

This Petition for Review on *Certiorari*[1] assails the July 29, 2011 Decision[2] of the Court of Appeals (CA) in CA-GR. SP No. 112079 which annulled and set aside the July 31, 2009 Decision[3] and October 23, 2009 Resolution[4] of the National Labor Relations Commission (NLRC) and reinstated the April 27, 2009 Decision[5] of Labor Arbiter (LA) Thelma M. Concepcion in OFW (M) 08-12020-08 (LAC No. 06-000303-09). Likewise assailed is the January 2, 2012 Resolution[6] of the CA which denied petitioners' Motion for Reconsideration.[7]

Factual Antecedents

On July 19, 2007, INC Shipmanagement, Inc. (INC), for and in behalf of Interorient Navigation Company Ltd. (Interorient), hired respondent Ranulfo Camporedondo (respondent) as chief cook on board the vessel M/V Fortunia for a period of 10 months with a monthly salary of US$578.50 and allowance of US$80.00.[8] On July 25, 2007, respondent boarded the vessel.[9]

As chief cook, respondent's tasks included food preparation and meals of the ship crew, custody, inventory, and budgeting of food supplies of the vessel.[10] Allegedly, keeping in mind his duties, respondent inquired from the captain the budget for the vessel; he also reported to the latter the insufficiency and poor quality of some of the supplies. These inquiries enraged the captain. As a result, he reprimanded respondent on a daily basis.[11]

Furthermore, respondent stated that on September 11, 2007, the captain gave him a return ticket to the Philippines to take a vacation. He was purportedly promised to be transferred to another vessel.[12] On September 12, 2007 or about a month and a half into his contract, respondent was given a report[13] of dismissal, which he refused to accept.[14]

On August 27, 2008, respondent filed a Complaint[15] for illegal dismissal, non-

payment of overtime pay and attorney's fees against INC, Interorient and Reynaldo Elamirez, corporate officer of INC[16] (collectively referred hereunder as petitioners).

In his Position Paper,[17] respondent alleged that he began working as seafarer in August 2001. From 2001 to 2005, he worked for other employers and finished his contracts with them in good standing. In August 2005, he started working for INC and prior to his July 19, 2007 contract, he completed two contracts with INC without issue. He stated that petitioners were claiming that he was dismissed due to his stiff arm. However, he contended that he passed the medical and physical examination and despite his condition, petitioners engaged his services. Furthermore, he asserted that he was made to sign a report that terminated his contract without giving him the opportunity to explain or defend himself.

For their part, petitioners stated in their Position Paper[18] that respondent joined the vessel on July 25, 2007 but was repatriated on December 12, 2007.

They contended that the captain complained about his incompetence and/or poor performance. In particular, due to his stiff right hand, respondent was allegedly unable to serve meals and maintain the cleanliness of the kitchen, store room and mess room. They averred that eventually the captain served upon him the above-cited Report entitled as "Report of incompetent action/insubordination/ indiscipline" which he refused to receive.

In addition, petitioners stated that the previous ship captain, under whom respondent was deployed, likewise complained about his poor performance. They asserted that because they wanted to give respondent another chance, they deployed him to M/V Fortunia. Allegedly, respondent was allowed to re-apply for assignment in another vessel and he readily agreed to be repatriated.

Petitioners argued that respondent admitted his faults as he did not outrightly file a case; he even followed up his re-deployment with their fleet personnel officer. They also emphasized that the complaint against them was barred by respondent's voluntary execution of a quitclaim;[19] and that respondent's complaint was "absolutely malicious and an afterthought on his part because if he was truly aggrieved by his repatriation, he should not have executed such quitclaim."[20]

Riding of the Labor Arbiter

On April 27, 2009, the LA rendered a Decision declaring that petitioners illegally dismissed respondent, the decretal portion of which reads:

> WHEREFORE, foregoing premises considered, we find the complaint against respondents impressed with merit. Accordingly the latter is held liable to pay complainant the salaries equivalent to eight months unexpired portion of the ten[-]month employment contract. Further awarded is ten percent of the total judgment award as attorney's fees, the computation of which is shown in Annex 'A' and made an integral part hereof.

> The rest of complainant's monetary claims are dismissed for lack of merit including respondents' counterclaim against the complainant.
>
> SO ORDERED.[21]

Ruling of the National Labor Relations Commission

In its Decision dated July 31, 2009, the NLRC set aside the Decision of the LA and dismissed the case for lack of merit.

The NLRC was convinced that respondent's performance as chief cook was below the company's standard. It declared that the delay in filing the case proved the weakness of respondent's claim. It likewise held against respondent his execution of a quitclaim discharging petitioners from any liability in his favor.

The NLRC also denied respondent's Motion for Reconsideration[22] in a Resolution dated October 23, 2009.

Respondent thus filed a Petition for *Certiorari*[23] before the CA ascribing grave abuse of discretion on the part of the NLRC in finding that he was legally dismissed and was afforded due process of law.

Ruling of the Court of Appeals

On July 29, 2011, the CA rendered the assailed Decision, the dispositive portion of which reads:

> FOR THESE REASONS, the petition is GRANTED. The NLRC Decision and Resolution dated July 31, 2009 and October 23, 2009, respectively, are ANNULLED and SET ASIDE. The Decision of Labor Arbiter Thelma M. Concepcion dated April 27, 2009 is REINSTATED.
>
> SO ORDERED.[24]

The CA noted that petitioners dismissed respondent because of his alleged incompetence and/or poor performance, as indicated in the Report of incompetent action/insubordination/indiscipline. The CA, however, found that this Report was neither authenticated nor supported by credible evidence. It also found that the Report did not explain or give details as regards the circumstances surrounding the supposed incompetence and poor performance of respondent.

The CA further emphasized that electronic evidence, such as electronic mails (e-mails), must first be proved and authenticated before they are received in evidence. It also held that even if such e-mails were admitted in evidence, they could not support respondent's dismissal as they were based upon the self-serving statements of the officers of petitioners.

The CA likewise held that the subject quitclaim did not preclude the filing of an illegal dismissal case against petitioners. It also held that while respondent executed a

quitclaim, the same was invalid for want of fair and credible consideration.

In the assailed Resolution dated January 2, 2012, the CA denied petitioners' Motion for Reconsideration.[25]

Hence, petitioners filed this Petition raising the following issues:

Issues

1. WHETHER xxx THE RESPONDENT IS ESTOPPED OR BARRED BY LACHES FROM CLAIMING THAT HE WAS ILLEGALLY DISMISSED SINCE IT TOOK HIM ALMOST TWO (2) YEARS TO MAKE SUCH CLAIM AGAINST THE PETITIONERS.

2. WHETHER xxx RESPONDENT'S CLAIMED ILLEGAL DISMISSAL IS NEGATED BY HIS ACT OF APPLYING FOR RE-DEPLOYMENT WITH THE PETITIONERS AND WHICH HE EVEN ARBITRARILY DECLINED WHEN HE WAS SO SCHEDULED TO JOIN THE CROWLEY VESSEL.

3. WHETHER xxx RESPONDENT'S CLAIMED ILLEGAL DISMISSAL IS NEGATED BY HIS VOLUNTARILY EXECUTED QUITCLAIM AFTER HIS REPATRIATION AND IN FAVOR OF THE PETITIONERS.

4. WHETHER xxx PETITIONERS' ADDUCED EVIDENCE WOULD NOT CONSTITUTE AS SUBSTANTIAL EVIDENCE TO PROVE THE RESPONDENT'S INCOMPETENCE AND POOR PERFORMANCE AND xxx JUSTIFIED HIS DISMISSAL FROM EMPLOYMENT.[26]

Petitioners maintain that respondent was aware of the reason for his repatriation and accepted the cause thereof as shown by his failure to immediately file a claim against them. Besides, he repeatedly followed up his possible redeployment with them. He was in fact scheduled for deployment in January 2008, but declined it.

Petitioners also contend that respondent voluntarily executed a quitclaim. This quitclaim was based on sufficient consideration because they paid him his accrued benefits.

Petitioners likewise posit that respondent's incompetence and poor performance were supported by substantial evidence; that even in his Position Paper respondent admitted that his work performance did not sit well with the captain; that if it were not for his poor work performance then the captain would have no reason to reprimand him everyday; and that respondent could not deny that he was hampered by his stiff right arm in performing his duties. Petitioners assert that they informed respondent of his poor performance through the aforesaid Report which he declined to receive. They likewise argue that the entries in the Report were based on entries in the vessel's logbook that deserve consideration.

Petitioners moreover argue that the captain of the previous vessel where respondent was deployed also complained about his poor performance.

Respondent counters that petitioners illegally dismissed him on September 12, 2007 and he filed a Complaint against them on August 27, 2008 and that in the intervening dates he claimed from petitioners what was rightfully his but to no avail; and that the filing of this case against petitioners after more than one year from his repatriation did not prove that his action was weak.

Respondent also argues that the allegation that he repeatedly followed up his possible re-deployment was petitioners' very own uncorroborated assertion; and that what he actually followed up with petitioners was his monetary claim for benefits unjustifiably withheld; that even assuming that he did follow up his possible re-deployment, that does not amount to a waiver of his right to contest his illegal termination.

More than that, respondent avers that the sum he received pursuant to the quitclaim was much less than what was due him; that he still had at least eight months of salary and allowance due him amounting to more than US$5,200.00; and that the settlement of only P32,693.63 was way below the amount he deserved to receive from them.

Respondent takes issue with petitioners' claim that there was substantial evidence to support petitioners' allegation of his incompetence and poor performance; that the above-cited Report was not credible evidence because the same was not authenticated; and that for the same reason, the unsigned e-mails relied upon by petitioners were not credible as these were also unauthenticated.

Our Ruling

It is axiomatic that this Court is not a trier of facts; it reviews only questions of law. As such, in petitions for review on *certiorari*, only questions of law may be raised. This rule, nevertheless, admits of exceptions, as in this case where the factual findings of the LA and the CA, on one hand, and the NLRC, on the other, are at odds. There being contradictory findings of facts, the Court deigns it right to evaluate the pieces of evidence adduced by the parties and draw conclusions from them.[27]

It is settled that the employer has the burden to prove that the dismissal of an employee is based on a valid cause. To discharge this burden, the employer must present substantial evidence - or such amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion - that the cause of the employee's dismissal was valid.[28] Specifically, the employer must comply with the following requisites: (1) the dismissal must be for a just or authorized cause, and (2) the employee to be dismissed must have been afforded due process of law.[29]

In this case, petitioners failed to discharge this burden.

Petitioners failed to prove just or authorized cause.

First off, we hold that the due execution of the Report of incompetent action/insubordination/indiscipline was established considering that both parties adduced it to support their respective positions. On one hand, petitioners relied on this

Report to prove that respondent was validly dismissed. On the other hand, respondent admitted that he was furnished a copy of this Report but he declined to receive it. Thus, as regards the existence of the subject Report, We find that the same was duly proved here.

However, the contents of this Report were insufficient bases to dismiss respondent. As stated therein, respondent was dismissed for the following reasons:

> DISMISSAL (Brief Details):
> HE HAS AN OBVIOUS HANDICAP WHICH IS A STIFF RIGHT ARM. THIS HANDICAP ALLOWS HIM TO COOK, BUT [REGRETABLY] IT MAKES MR. CAMPOREDONO [sic] UNABLE TO ALSO SERVE THE MEALS AND CLEAN THE KITCHEN, MESSROOMS, STORES RESPECTABLE [sic]. WITH ASSISTENCE [sic] OF A MESSMAN HE CAN DO HIS JOB RESPECTIVE [sic].[30]

As found by the CA, the Report provided no detailed explanation as regards respondent's supposed incompetence and poor performance. The CA observed that the Report "did not particularly describe such inability that would lead to the conclusion that he was incompetent."[31] With this observation of the CA, we fully agree.

As a general concept, poor performance is tantamount to inefficiency and incompetence in the performance of official duties. An unsatisfactory rating can be a just cause for dismissal only if it amounts to gross and habitual neglect of duties. Poor or unsatisfactory performance of an employee does not necessarily mean that he is guilty of gross and habitual neglect of duties.[32]

To ascribe gross neglect, there must be lack of or failure to exercise slight care or diligence, or the total absence of care in the performance of duties. In other words, there is gross neglect when the employee exhibits thoughtless disregard of consequences without exerting effort to avoid them.[33] On the other hand, habitual neglect involves repeated failure to perform duties for a certain period of time, depending upon the circumstances, and not mere failure to perform duties in a single or isolated instance.[34]

As above-discussed, the Report of incompetent action/insubordination/indiscipline against respondent did not describe the specific acts that would establish his alleged poor performance, or his want of even slight care in the performance of his official tasks as chief cook for a certain period of time; hence, even assuming that respondent's performance was unsatisfactory, petitioners failed to show that his poor performance amounted to gross and habitual neglect of duties.

Moreover, as correctly pointed out by the CA, no credence can be given to the e-mails presented by petitioners to support respondent's purported incompetence because these e-mails were unauthenticated. In addition, they pertained to the previous contract of respondent, which is unrelated to this present case.

Petitioners did not comply with the two-notice rule required in dismissing an employee.

To amount to a valid dismissal, an erring seafarer must be handed a written notice of the charge against him and must be given the opportunity to explain himself unless of course there is a clear and existing danger against the safety of, the crew or the vessel in which case notice may be dispensed with.[35] Needless to say, this is not the situation here.

Section 17 of the Philippine Overseas Employment Administration-Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels (Disciplinary Measures) specifically provides that before an erring seafarer can be validly dismissed, he must be given by the master of the vessel a written notice stating the charge or charges against him; and, the date, time and place for a formal investigation of such charge. Thereafter, an investigation or hearing, duly documented and entered in the ship's logbook, must be conducted to give the seaman the opportunity to explain or defend himself. If found guilty, the seaman shall be given a written notice of the penalty meted out against him. with the specific reasons for the penalty so imposed. "Dismissal for just cause may be affected by the Master without furnishing the seafarer with a notice of dismissal if there is a clear and existing danger to the safety of the crew or the vessel."[36]

In this case, no hearing was conducted respecting respondent's alleged incompetence and poor performance, and granting him opportunity to present countervailing evidence to disprove the charge against him. There was also no showing of imminent danger to the crew or the vessel, so that the required notice may be dispensed with. True, as stated elsewhere, the above-mentioned Report could somehow pass as a notice of respondent's dismissal. Nevertheless, as earlier discussed, the allegations in this Report do not permit the conclusion that respondent was guilty of poor performance and incompetence that would amount to gross and habitual neglect of duties.

Lastly, the quitclaim that respondent executed did not bar him from filing a complaint for illegal dismissal against petitioners. Said quitclaim was invalid because it did not fully or completely give or grant respondent what was due him as a matter of law and justice. It only covered respondent's accrued leave credits and his 3-day travel pay. Such payment involved only a part or portion of the amount of money actually and justly due him under the law; it was not a full and complete satisfaction of what is due him under the law.[37]

In view thereof, we find that the CA did not err in setting aside the Decision of the NLRC and in reinstating that of the LA, which found respondent to have been illegally dismissed and entitled to his salaries for the unexpired portion of his employment contract and to attorney's fees of 10% of the total award.[38]

WHEREFORE, the Petition is **DENIED**. Accordingly, the Decision dated July 29, 2011 and Resolution dated January 2, 2012 of the Court of Appeals in CA-G.R. SP No. 112079 are **AFFIRMED**.

SO ORDERED.

Carpio, (Chairperson), Brion, Mendoza, and *Leonen, JJ.*, concur.

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[1] *Rollo*, pp. 8-24.

[2] CA *rollo*, pp. 156-166; penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Magdangal M. de Leon and Socorro B. Inting.

[3] Id. at. 17-25; penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioner Angelita A. Gacutan.

[4] Id. at 26-27.

[5] Id. at 62-68.

[6] Id. at 190-193.

[7] Id. at 170-180.

[8] Id at 49.

[9] Id. at 29, 40.

[10] Id. at 29.

[11] Id. at 29-30.

[12] Id. at 30.

[13] Id. at 51.

[14] Id. at 30.

[15] Records, pp. 1-2.

[16] CA *rollo*, p. 45.

[17] Id. at 28-34.

[18] Id. at 40-48.

[19] Id. at 54.

[20] Id. at 44.

[21] Id. at 67.

[22] Records, pp. 191-197.

[23] CA *rollo*, pp. 3-15.

[24] Id. at 165.

[25] Id. at 170-180.

[26] *Rollo*, pp. 14-15.

[27] *Maersk-Filipinas Crewing, Inc. v. Aveslruz*, G.R. No. 207010, February 18, 2015.

[28] Id.

[29] *NFD International Manning Agents v. National Labor Relations Commission*, 590 Phil. 436, 445 (2008).

[30] CA *rollo*, p. 51.

[31] Id. at 161.

[32] *Universal Staffing Services, Inc. v. National Labor Relations Commission*, 581 Phil. 199, 206 (2008).

[33] Id at 207.

[34] *Talidano v. Falcon Maritime & Allied Services, Inc.*, 580 Phil. 256, 272 (2008).

[35] *Maersk-Filipinas Crewing, Inc. v. Avestruz*, supra note 27, citing *Skippers Pacific, Inc. v. Skippers Maritime Services, Ltd*., 440 Phil. 906, 917 (2002).

[36] Section 17(d), Philippine Overseas Employment Administration - Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board, Ocean-Going Vessels.

[37] *Philippine Spring Water Resources, Inc. v. Court of Appeals*, G.R. No. 205278, June 11, 2014.

[38] *Maersk-Filipinas Crewing, Inc. v. Avestruz*, supra note 27.