

814 Phil. 1040

FIRST DIVISION

[G.R. No. 206890, July 31, 2017]

**EVIC HUMAN RESOURCE MANAGEMENT INC., FREE BULKERS S.A.
AND/OR MA. VICTORIA C. NICOLAS, PETITIONERS, V. ROGELIO O.
PANAHO, RESPONDENT.**

DECISION

CAGUIOA, J:

This petition for review on *certiorari*^[1] assails the Decision^[2] dated January 31, 2013 and Resolution^[3] dated April 22, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 123369, which set aside the September 15, 2011 Decision^[4] and November 21, 2011 Resolution^[5] of the National Labor Relations Commission (NLRC); declared illegal respondent's dismissal; and ordered petitioners to pay respondent the unexpired portion of his employment contract and attorney's fees of ten percent (10%) of said award.

Facts

Petitioner Evic Human Resources (EVIC), for and in behalf of its foreign principal, petitioner Free Bulkers S.A. (Free Bulkers), hired respondent Rogelio Panahon as Chief Mate on board the vessel of M/V Free Lady for a period of six (6) months with a basic monthly salary of US\$1,088.00.^[6]

On August 28, 2010, respondent boarded the vessel.^[7] On September 24, 2010, respondent was repatriated to the Philippines without completing the contracted period of employment.^[8]

On September 28, 2010, respondent filed a Complaint for illegal dismissal with claims for moral and exemplary damages and attorney's fees against EVIC, Free Bulkers and Ma. Victoria Nicolas, the owner and President of EVIC (collectively referred as petitioners).^[9]

In his Position Paper,^[10] respondent alleged that he has been a professional seafarer for thirty-one (31) years and Chief Mate for twenty-one (21) years. Since his initial deployment, he has diligently performed all his duties and responsibilities and has never been disciplined or dismissed. In August 2010, he boarded M/V Free Lady and during the voyage, the vessel's Captain Edgar A. Buton (Captain Buton) developed a hostile attitude towards him. Respondent averred that on September 7, 2010, he took a sip from the small flask of whisky given to him by one of the stevedores he dealt with and went to bed; but Captain Buton had him awakened and ordered him to make a report on some damages in the railings of the ship caused by the stevedores. When he

submitted the report to Captain Buton, the latter allegedly smelled a faint odor of whisky and asked respondent if he had been drinking, to which respondent truthfully replied that he drank a little whisky and was willing to take an alcohol test. Respondent claimed that Captain Buton shrugged off his offer to take an alcohol test; but as soon as he left respondent, Captain Buton made a logbook entry dated September 7, 2010, recommending respondent's immediate replacement.^[11]

For their part, petitioners averred that respondent was dismissed for just cause. The Free Lady Crew Behavior Report^[12] (Crew Behavior Report) dated September 8, 2010 prepared by Captain Buton showed that respondent was grossly negligent as he failed to observe the safety precautions during the mooring and unmooring operations; displayed arrogance towards his co-employees on board; and was caught intoxicated, in violation of the company policies, instructions, and stipulations of the Philippine Overseas Employment Administration (POEA) contract. Thus, fearing that the safety of the vessel and/or crew may be at risk with the continued presence of respondent, petitioners were constrained to ask that respondent be relieved invoking Section 33 of the POEA Standard Employment Contract (POEA-SEC).^[13]

The Labor Arbiter's Ruling

In a Decision^[14] dated January 31, 2011, the Labor Arbiter (LA) dismissed respondent's complaint for lack of merit. The LA found that petitioners had discharged the burden to prove the existence of just cause for respondent's termination with the submission of the Crew Behavior Report duly attested by three officers reflecting respondent's unjustified failure to perform his duties and adhere to company policy against intoxication.^[15] The LA also ruled that the petitioners were justified in not furnishing respondent a notice of dismissal considering that there was a clear and existing danger to the safety of the crew and the vessel.^[16]

Aggrieved, respondent appealed to the NLRC. ^[17]

The NLRC Ruling

On September 15, 2011, the NLRC rendered a Decision,^[18] the dispositive portion of which reads:

WHEREFORE, premises considered, the Decision dated December 21, 2010 is **MODIFIED** to the effect that nominal damages is awarded in complainant's favor in the amount of Fifty Thousand Pesos (P50,000.00).

SO ORDERED.^[19]

While the NLRC affirmed the existence of just cause in terminating respondent's employment,^[20] it found petitioners remiss in their duty to afford respondent the requisite notice and hearing prior to his dismissal.^[21] According to the NLRC, the issuance of a notice and the observance of a hearing would have been prudent as it was disputable whether respondent posed a clear and imminent danger to the safety of

the crew members.^[22] Thus, for failure to observe the requirement of due process, petitioners were held liable to indemnify respondent nominal damages.^[23]

Both parties filed their respective motions for partial reconsideration, but both were denied by the NLRC in a Resolution dated November 21, 2011.^[24] Unsatisfied, respondent elevated the matter to the CA via petition for certiorari.^[25]

The CA Ruling

In its Decision^[26] dated January 31, 2013, the CA found that the NLRC gravely abused its discretion in holding that there was just cause for respondent's dismissal from employment as the same is not supported by substantial evidence.^[27] According to the CA, the unnotarized Crew Behavior Report, which was the sole basis of the LA and NLRC in holding that respondent was dismissed for just cause cannot be given credence in the absence of any other corroborative evidence.^[28] The CA further held that said report, although signed by four (4) other crew members of the vessel, cannot be considered credible because the charges against respondent were based on acts witnessed only by Captain Buton.^[29]

The CA also noted that the report cited only one case of incompetence and negligence of respondent;^[30] but the rules are explicit that negligence must not only be gross but also habitual to warrant the employee's separation from employment.^[31] The CA further held that petitioners failed to show that the failure of respondent to observe safety precautions during the mooring operations was willful and deliberate and that respondent repeatedly committed mistakes or failed to perform his duties.^[32]

As regards respondent's alleged intoxication, the CA found the same wanting of proof and insufficient to warrant respondent's dismissal.^[33] The CA noted that the Crew Behavior Report indicated that respondent was caught drinking after his duty; Section 33(6), however, requires drunkenness to be committed while on duty to warrant the dismissal of an employee.^[34]

Lastly, the CA ruled that the award of attorney's fees of ten percent (10%) of the total award is justified under Article 111 of the Labor Code.^[35] However, the CA found no basis for respondent's claim for moral and exemplary damages as there is absence of clear and convincing proof that his dismissal was attended by fraud or bad faith.^[36] Thus the dispositive portion of the CA Decision reads:

WHEREFORE, the petition is granted and public respondent NLRC's Decision dated September 15, 2011 and Resolution dated November 21, 2011 are set aside. Petitioner's dismissal from employment is hereby declared illegal, and private respondents are ordered to pay petitioner the unexpired portion of his employment contract and attorney's fees of 10% of said award.

SO ORDERED.^[37]

Petitioners filed a Motion for Reconsideration,^[38] but the same was denied by the CA in a Resolution^[39] dated April 22, 2013.

Hence, the instant petition which raises the following issues:

The Issues

A. Whether the CA erred in ruling that there was no just cause in respondent's dismissal.

B. Whether respondent is entitled to attorney's fees.^[40]

The Court's Ruling

The petition lacks merit. The Court affirms the CA Decision with modification only as to the monetary award.

It is a settled rule in labor cases that the employer has the burden of proving that the dismissal of an employee was for a just or authorized cause, and failure to show this would necessarily mean that the dismissal was unjustified and, therefore, illegal.^[41] Furthermore, not only must the dismissal be for a cause provided by law, it should also comply with the rudimentary requirements of due process, that is, the opportunity to be heard and to defend one's self.^[42] Hence, for dismissal to be valid, the employer must show through substantial evidence or such amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion - that (1) the dismissal was for a just or authorized cause; and (2) the dismissed employee was afforded due process of law.^[43]

Petitioners failed to prove just cause.

In justifying respondent's dismissal, the only evidence relied upon by petitioners is the Crew Behavior Report prepared by Captain Buton, which petitioners claim plainly demonstrated respondent's inefficiency, incompetence and gross negligence in the performance of his duties. The Crew Behavior Report states:

x x x **C/O Rogelio O. Panahon** - You know this guy was signed on in Singapore last August 28, 2010 so he just stayed onboard for about 11 days. In eleven days I have a lot of observations and as far as my observations are concerned he could not perform his job safely besides he is too old and I observed his attitude who is very arrogant and according to my third officer and some crew who knew him he is well noted to be a man with great arrogance and he is very negligent. Why he is negligent? He is very negligent because first mooring operation onboard after he signed on one O/S crew injured. The cause of the accident was he failed to observe safety cautions during mooring and unmooring operation. According to the bosun there is no safety forward during mooring and unmooring operation in fact the bosun also hit by the rope and was knocked down. You know, at the time when the O/S injured he was the one operated the winch and he ordered the bosun and the O/S to transfer the rope from the drum to the bits which was so very tight without slacking a little bit the rope using gear.

So, if he is a safety cautious he knows in advance what will be the consequences. You know I was surprised of his expressions after the O/S injured it seems nothing happened.

Secondly, I observed him that he did not obey the company policies and instructions and also the stipulations stated in POEA contract. You know last September 07, 2010 at 2300, I caught him drinking alcohol onboard. On September 07, 2010 while vessel discharging in Vizag when the third officer called him because there was a ship's damage caused by the stevedore when he arrived in the damaged area he started to argue to the foreman and the agent. The agent informed me that they could not deal the chief officer properly because he intoxicated. When I called the Chief Officer in my office together with the agent he came up in my office barefooted. I asked him if he is intoxicated and he confirmed that truly he is intoxicated. You know I did to discuss the company policies all the time when there is new on signers onboard but it seems he did not adhere the company policy so since he did not follow the company policy therefore he is breaching the POEA contract that he is binding for.

So, I recommend him to be repatriated soonest as possible because if this guy will stay onboard the safety of the crew specially those assigned forward will be compromised to avoid problems in the future.

xxxx

(Sgd.)
Prepared by: Capt. Edgar
A. Buton
Master M.V
Free Lady

Testified by: (Sgd.) 3/O Joelon C. Grotta (Sgd.) Bsn Jose C. Rizo

(Sgd.) A/B Jeffrey O. Minoza (Sgd.) A/B John Carlo Sablas^[44]

The Court finds the foregoing Crew Behavior Report sorely inadequate in meeting the required quantum of proof to discharge petitioners' burden. For one, the statements contained therein were uncorroborated and self-serving. No other evidence was presented to support the statements of the Captain. In *Skippers United Pacific, Inc. v. NLRC*,^[45] the Court did not give weight and credence to the uncorroborated Chief Engineer's Report which purportedly specified the causes for the seafarer's dismissal. In *Maersk-Filipinas Crewing, Inc. v. Avestruz*,^[46] the Court likewise disregarded the uncorroborated and self-serving electronic mails of the ship captain as proof of the seafarer's supposed neglect of duty and perverse and wrongful attitude.^[47]

Notably, in this case, while the report was signed by four (4) crew members, the statements contained therein were, as correctly observed by the CA, based on acts witnessed only by Captain Buton. According to Captain Buton, a crew was injured when respondent failed to observe safety precautions in the mooring and unmooring operations. He also mentioned that an agent informed him that respondent was hard to deal with because of intoxication. Considering however that there were no affidavits submitted of either the injured seaman or the concerned agent to corroborate the Captain's statements, there can be no basis for the Court to conclude that there was truth to Captain Buton's accusations.

The Court further finds that there exists no just or valid cause for respondent's dismissal. Incompetence or inefficiency, as a ground for dismissal, is understood to mean the failure to attain work goals or work quotas, either by failing to complete the same within the allotted reasonable period, or by producing unsatisfactory results.^[48] Neglect of duty, on the other hand, must be both gross and habitual.^[49] Gross negligence implies a lack of or failure to exercise slight care or diligence, or the total absence of care in the performance of duties,^[50] not inadvertently but willfully and intentionally, with conscious indifference insofar as other persons may be affected.^[51] 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.^[52]

As again aptly observed by the CA, petitioners failed to show that respondent willfully or deliberately caused the alleged accident during the mooring operations or that respondent repeatedly committed mistakes or repeatedly failed to perform his duties.^[53] The single unverified incident on respondent's supposed negligence is surely insufficient to warrant a finding of just cause for termination.

As regards the charge of intoxication, Section 33(6) of the POEA SEC provides that drunkenness must be committed while on duty to merit dismissal from employment. Here, respondent was admittedly off duty when he was allegedly caught by the master drinking on board.^[54] The penalty of dismissal from employment was therefore unwarranted.

Respondent was not accorded due process.

The lack of just or valid cause of respondent's dismissal was further exacerbated by petitioners' failure to afford respondent procedural due process. Section 17 of the POEA-SEC provides:

Section 17. DISCIPLINARY PROCEDURES

The Master shall comply with the following disciplinary procedures against an erring seafarer:

A The Master shall furnish the seafarer with a written notice containing the following:

1. Grounds for the charges as listed in Section 31 of this Contract.

2. Date, time and place for a formal investigation of the charges against the seafarer concerned.

B. The Master or his authorized representative shall conduct the investigation or hearing, giving the seafarer the opportunity to explain or defend himself against the charges. An entry on the investigation shall be entered into the ship's logbook.

C. If, after the investigation or hearing, the Master is convinced that imposition of a penalty is justified, the Master shall issue a written notice of penalty and the reasons for it to the seafarer, with copies furnished to the Philippine agent.

D. Dismissal for just cause may be effected by the Master without furnishing the seafarer with a notice of dismissal if doing so will prejudice the safety of the crew or the vessel. This information shall be entered in the ship's logbook. The Master shall send a complete report to the manning agency substantiated by witnesses, testimonies and any other documents in support thereof.^[55]

Explaining the foregoing rules, the Court in *Skippers Pacific, Inc. v. Mira*,^[56] held:

Note that under Section 17 of what is termed the Standard Format, the "**two - notice rule**" is indicated. An erring seaman is given a written notice of the charge against him and is afforded an opportunity to explain or defend himself. Should sanctions be imposed, then a written notice of penalty and the reasons for it shall be furnished the erring seafarer. **It is only in the exceptional case of clear and existing danger to the safety of the crew or vessel that the required notices are dispensed with;** but just the same, a complete report should be sent to the manning agency, supported by substantial evidence of the findings.^[57]

In the case at bar, the records are bereft of any evidence showing that respondent was given a written notice of the charges against him, or that he was given an opportunity to explain or defend himself. Neither is there proof that respondent was furnished with a written notice of the penalty imposed against him and the reasons for its imposition. Indeed, petitioners admit that these required notices were dispensed with because, according to them, there was a clear and existing danger to the safety of the crew or vessel. Unfortunately for petitioners, however, there is, again, no evidence that was presented to prove such was the situation when respondent was terminated.^[58]

Respondent's monetary award

In the assailed Decision, the CA, after declaring respondent's dismissal to be illegal, ordered petitioners to pay the unexpired portion of his employment contract and attorney's fees of 10% of the award. The Court finds the necessity to modify the award rendered by the CA to conform with Section 10 of Republic Act (RA) No. 8042,^[59] as amended by RA No. 10022,^[60] which took effect on March 8, 2010, since respondent was terminated on September 24, 2010. Said provision, as modified by the Court in

Serrano v. Gallant Maritime Services, Inc.,^[61] which held that the clause "or for three months for every year of unexpired term, whichever is less" is unconstitutional, reads:

Section 10. *Money claims.*- x x x

x x x x

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement of his placement fee and the deductions made with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.^[62]

Finally, the Court affirms the grant of attorney's fees of ten percent (10%) of the total award pursuant to Article 111 of the Labor Code.^[63]

WHEREFORE, the petition is **DENIED**. The Decision dated January 31, 2013 and the Resolution dated April 22, 2013 rendered by the Court of Appeals in CA-G.R. SP No. 123369 are hereby **AFFIRMED with MODIFICATION** in that petitioners are ordered to pay respondent (1) his placement fee and the deductions made, with interest at 12% per annum, (2) his salaries for the unexpired portion of his employment contract, and (3) attorney's fees of 10% of said award.

SO ORDERED.

Sereno, C.J., (Chairperson), Leonardo-Castro, Del Castillo, and Perlas-Bernabe, JJ., concur.

[1] *Rollo*, pp. 9-26.

[2] *Id.* at 28-46. Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Francisco P. Acosta and Angelita A. Gacutan concurring.

[3] *Id.* at 49-50. Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Angelita A. Gacutan and Victoria Isabel A. Paredes concurring.

[4] *Id.* at 87-99. Penned by Commissioner Napoleon M. Menese, with Presiding Commissioner Raul T. Aquino and Commissioner Teresita D. Castillon-Lora concurring.

[5] *Id.* at 101-102.

[6] *Id.* at 29.

[7] *Id.*

[8] *Id.* at 104-105.

[9] Id. at 29, 32.

[10] Id. at 113-127.

[11] Id. at 114-116.

[12] Id. at 152-153.

[13] Respondents' Position Paper, id. at 133-147.

[14] Id. at 104-110. Penned by Labor Arbiter Veneranda C. Guerrero.

[15] Id. at 108-109.

[16] Id. at 110.

[17] Id. at 172-191.

[18] Id. at 87-99.

[19] Id. at 98-99.

[20] Id. at 95.

[21] Id. at 98.

[22] Id. at 97.

[23] Id. at 98.

[24] Id. at 101-102.

[25] Id. at 51-81.

[26] Id. at 28-46.

[27] Id. at 42.

[28] Id. at 38.

[29] Id. at 39.

[30] Id.

[31] Id. at 40.

[32] Id.

[33] See id.

- [34] Id.
- [35] Id. at 43.
- [36] Id. at 44.
- [37] Id. at 45.
- [38] Id. at 310-316.
- [39] Id. at 49-50.
- [40] Id. at 16 and 20.
- [41] *Skippers United Pacific, Inc. v. NLRC*, 527 Phil. 248, 257 (2006).
- [42] *De la Cruz v. Maersk Filipinas Crewing, Inc.*, 574 Phil. 441, 452 (2008), citing *Pascua v. NLRC* (3rd Div.), 351 Phil. 48, 62-63 (1998).
- [43] *INC Shipmanagement, Inc. v. Camporedondo*, 768 Phil. 600, 610-611 (2015).
- [44] *Rollo*, pp. 152-153.
- [45] *Supra* note 41, at 254, 257-258.
- [46] 754 Phil. 307 (2015).
- [47] Id. at 319.
- [48] *Skippers United Pacific, Inc. v. Maguad*, 530 Phil. 367, 388 (2006).
- [49] *FLP Enterprises Inc. - Francesco Shoes v. Dela Cruz*, 739 Phil. 763, 770 (2014); *Cavite Apparel, Incorporated v. Marquez*, 703 Phil. 46, 54 (2013).
- [50] *INC Shipmanagement, Inc. v. Camporedondo*, *supra* note 43, at 612.
- [51] *Manila Electric Company v. Beltran*, 680 Phil. 417, 427-428 (2012).
- [52] *INC Shipmanagement, Inc. v. Camporedondo*, *supra* note 43, at 612.
- [53] *Rollo*, p. 40.
- [54] Id.
- [55] *Skippers United Pacific, Inc. v. NLRC*, *supra* note 41, at 260.
- [56] 440 Phil. 906 (2002).
- [57] Id. at 919. Emphasis supplied.

[58] See *rollo*, pp. 97-98; see also *Maersk-Filipinas Crewing, Inc. v. Avestruz*, supra note 46, at 321-322.

[59] AN ACT TO INSTITUTE THE POLICIES OF OVERSEAS EMPLOYMENT AND ESTABLISH A HIGHER STANDARD OF PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES, June 7, 1995.

[60] 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, March 8, 2010.

[61] 601 Phil. 245 (2009).

[62] The *Court in Serrano v. Gallant Maritime Services, Inc.* (id. at 306), declared as unconstitutional the clause "or for three months for every year of the unexpired term, whichever is less" provided in the 5th paragraph of Section 10 of RA 8042, for being violative of the equal protection clause of the Constitution. (*Maersk-Filipinas Crewing, Inc. v. Avestruz*, supra note 46, at 322).

[63] See *Maersk-Filipinas Crewing, Inc. v. Avestruz*, id.; *Tangga-an v. Philippine Transmarine Carriers, Inc.*, 706 Phil. 339, 352-354 (2013) and *Skippers United Pacific, Inc. v. Doza*, 681 Phil. 427, 445 (2012).



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