

SECOND DIVISION

[G.R. No. 222939, July 03, 2019]

MECO MANNING & CREWING SERVICES, INC. AND CAPT. IGMEDIO G. SORRERA, PETITIONERS, VS. CONSTANTINO R. CUYOS, RESPONDENT.

DECISION

J. REYES, JR., J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court which seeks to reverse and set aside the Decision^[1] dated May 28, 2015, and the Resolution^[2] dated January 21, 2016, of the Court of Appeals (CA) - Cebu City, in CA-G.R. SP No. 05091, which granted herein respondent Constantino R. Cuyos' (Constantino) petition for *certiorari* and consequently reversed and set aside the Decision^[3] dated September 30, 2009, and the Resolution^[4] dated January 15, 2010, of the National Labor Relations Commission (NLRC) - Cebu City in NLRC OFW No. VAC-05-000033-2009, which in turn affirmed the Decision^[5] dated February 12, 2009 of the Labor Arbiter in NLRC RAB-VII-03-0023-08 OFW, a case for illegal dismissal of a seafarer.

The Facts

On March 10, 2008, Cuyos filed a complaint for illegal dismissal and claims for salaries and other benefits for the unexpired portion of his employment contract, damages, and attorney's fees against International Crew Services, Ltd. (ICS), and petitioners Mecos Manning & Crewing Services, Inc. (MECO) and Captain Igmedio G. Sorrrera (Capt. Sorrrera) before the Regional Arbitration Branch of the NLRC in Cebu City. The petitioners moved for the dismissal of the case, but the same was denied by the Labor Arbiter. Thereafter, the parties were required to submit their respective position papers.

In his Position Paper,^[6] Constantino alleged that on December 11, 2007, MECO, for and on behalf of its principal, ICS, hired him as the Second Marine Engineer of the vessel "M/V Crown Princess." The employment was for a period of eight months commencing on December 10, 2007, under the following terms and conditions:

- 1.1. Duration
of the : Eight months
Contract
- 1.2. Position : Second Engineer
- 1.3. Basic
Monthly : US\$1,239.00 / Seniority Pay
Salary

US\$99.00 / SMB US\$330.00 /
Supplement Bonus US\$464.00

- 1.4. Hours of Work : 44 Hrs. per week
1.5. Overtime: US\$773.00 F.O.T.
1.6. Vacation
Leave with : US\$495.00 Per month
Pay
1.7. POINT OF HIRE : Manila, Philippines.^[7]

On December 12, 2007, Constantino boarded the vessel.

Constantino claimed that the ship's Chief Engineer, Francisco G. Vera, Jr. (Vera), mistreated him during his short stay on board the "M/V Crown Princess." He recounted that on December 13, 2007, Vera started shouting at him whenever he would ask questions concerning the engine operations of the vessel; and that on January 9, 2008, he was attending to the freshwater generator when, all of a sudden, Vera slapped his hand and kept on shouting at him allegedly because he was not doing his work properly.

Finally, on February 14, 2008, Constantino was shocked when the Third Mate of the vessel handed to him an electronic plane ticket and informed him that he must disembark at Cristobal, Panama, where a reliever would take his place. After inquiring for the reason why he was suddenly being relieved, Captain G. Kolidas (Capt. Kolidas), the Master of the Vessel, told him that he would call their head office in Greece. After the said communication, however, Capt. Kolidas told him that it would be better for him to just go home as he did not have a good relation with Vera. Thus, on February 18, 2008, Constantino was made to disembark from the vessel against his will. He arrived in Manila on February 20, 2008.

On February 22, 2008, Constantino met with Capt. Sorrera at the MECO office and sought explanation for his unceremonious and illegal dismissal. Capt. Sorrera informed him that he was dismissed because he challenged Vera to a fight. Constantino denied the allegation and claimed that it was Vera who was very rude to him.

For their part, the petitioners, in their Position Paper,^[8] admitted that they hired Constantino as the Second Engineer on board "M/V Crown Princess" on December 11, 2007. However, they claimed that Constantino's dismissal was valid. They narrated that on January 2, 2008, at approximately 10:30 in the morning, Vera instructed Constantino to collect the engine garbage. Instead of carrying out the order, Constantino openly and strongly protested and was already prepared for a fight. To preserve the peace and avert physical confrontation, Vera no longer insisted on his order and merely reminded Constantino that as the Second Engineer, he (Constantino) could always direct his subordinates to perform these tasks.

Petitioners continued that on January 5, 2008, Vera instructed Constantino to dismantle the ship's freshwater generator ejector pump. Vera, however, noticed that Constantino was not dismantling the pump properly. Thus, in order to prevent damage on the

pump, Vera ordered Constantino to stop. Vera then proceeded to show him the proper manner of dismantling the pump. However, Constantino turned ballistic, hurling invectives at Vera and threatened and attempted to harm him with a spanner. Fortunately, cooler heads intervened and prevented Constantino from physically hurting Vera.

Finally, on January 17, 2008, at around 1:00 p.m. in the afternoon, Vera directed Constantino to clean the scavenge areas of the engine room. However, Constantino protested vehemently. In order to avoid more trouble, Vera chose to report the incident to Capt. Kolidas.

Petitioners claimed that Constantino's dismissal was necessitated by reason of his unsatisfactory performance evaluation, violation of his contract of employment as he violated the provisions on insubordination and inefficiency, his angry and provocative utterances and his attempt to physically assault his superior. Thus, Constantino's dismissal was for a just cause and was resorted to in order to protect and maintain the peace of the vessel and the safety of its crew.

In support of their allegations, the petitioners attached a facsimile message dated February 1, 2008 (Annex "2"),^[9] purportedly signed by Capt. Kolidas; an unsigned facsimile message dated February 9, 2008 (Annex "2-A"),^[10] with an attached "decklog extract" dated February 9, 2008 (Annex "2-B");^[11] and a letter dated January 6, 2008 (Annex "3"),^[12] signed by Vera and attested to by two witnesses, namely, Edgar Villanueva, sthe vessel's Third Engineer, and Rigor Buenaventura, the vessel's Electrician.

Ruling of the Labor Arbiter

In its assailed Decision dated February 12, 2009, the Labor Arbiter dismissed the complaint for lack of merit. It ratiocinated that the pieces of evidence presented by the petitioners clearly showed that Constantino defied the lawful orders of his superior officer. This, according to the Labor Arbiter, constituted serious misconduct and willful disobedience which are legal causes for termination of an employee. Further, considering that his termination was valid, the Labor Arbiter ruled that Constantino was not entitled to his money claims. The dispositive portion of the decision states:

WHEREFORE, premises considered, judgment is hereby rendered
DISMISSING the instant case for lack of merit.^[13]

Aggrieved, Constantino elevated an appeal to the NLRC. Constantino later submitted an Affidavit^[14] dated April 3, 2009 as an addendum to his appeal memorandum. In the said affidavit, he specifically denied the allegations against him by the petitioners.

Ruling of the NLRC

In its Decision dated September 30, 2009, the NLRC affirmed the February 12, 2009 Labor Arbiter's Decision. The NLRC concurred with the Labor Arbiter's observation that Constantino committed serious misconduct and willful disobedience when he disobeyed

the lawful orders of his superior officer, when he challenged his superior officer to a fistfight, and when he attempted to assault his superior officer. Thus, the petitioners have the right to terminate his employment. The dispositive portion of the decision provides:

WHEREFORE, premises considered, the decision of the Labor Arbiter dated 12 February 2009 is hereby **AFFIRMED**.^[15]

Constantino moved for reconsideration, but the same was denied by the NLRC in its Resolution dated January 15, 2010.

Undaunted, Constantino filed a petition for *certiorari* before the CA.

The Ruling of the CA

In its Decision dated May 28, 2015, the CA reversed and set aside the September 30, 2009 Decision and the January 15, 2010 Resolution of the NLRC. The appellate court did not share the conclusions reached by the Labor Arbiter and the NLRC. Instead, it ruled that the petitioners failed to present substantial evidence to prove that Constantino's dismissal was made for a valid and justifiable cause.

It opined that the documents presented by the petitioners, constituting of the facsimile messages and Vera's letter, are insufficient to prove the alleged insubordination and defiance by Constantino. It stressed that the rule that the entries in the ship's logbook are *prima facie* evidence of the incident in question is true only if the logbook itself containing such entries or photocopies of the pertinent pages thereof were presented in evidence. It noted that in this case, what the petitioners presented are only facsimile messages purportedly containing typewritten excerpts from the ship's logbook. Thus, they could not be considered as *prima facie* evidence of the incidents in question.

The appellate court also found the facsimile message dated February 1, 2008 to be dubious and unreliable. In this facsimile message, Capt. Kolidas stated that Constantino started creating problems against Vera since he boarded the vessel and that Constantino even challenged Vera to a fight. For these reasons, he stated that he was of the opinion that Constantino must be replaced as the Second Engineer as soon as possible. However, the appellate court noted that this facsimile message was sent only on February 20, 2008 as could be shown by the electronic annotation "20/02/2008 14:41" appearing on the upper right corner of the message. This, according to the appellate court, is inconsistent with the facts of the case considering that Constantino was already informed of his dismissal on February 14, 2008, and that he already disembarked from the vessel on February 18, 2008. The appellate court further ruled that Vera's January 6, 2008 letter is self-serving and uncorroborated by any evidence. As such, it cannot be given any weight and credit.

The appellate court further ruled that the petitioners failed to afford Constantino due process. It observed that the petitioners failed to comply with the two-notice requirement prior to the termination of the employment of an employee. In sum, the appellate court ruled that Constantino was dismissed without just cause and without due process. The dispositive portion of the CA Decision states:

WHEREFORE, premises considered, the instant Petition for *Certiorari* is GRANTED. The Decision dated September 30, 2009 and the Resolution dated January 15, 2010 of the National Labor Relations Commission, Seventh Division, Cebu City, in NLRC OFW No. VAC-05-000033-2009, are REVERSED and SET ASIDE. A new decision is rendered declaring petitioner Constantino R. Cuyos to have been illegally terminated from employment. Accordingly, private respondents Mecos Manning & Crewing Services, Inc., International Crew Services, Ltd. and Captain Igmedio G. Sorra are ordered to pay, jointly and severally, [Cuyos]: (1) his salaries corresponding to the unexpired portion of his employment contract, at the rate of US\$1,239.00 per month, or its peso equivalent at the exchange rate at the time of actual payment; (2) his placement fee with 12% interest per annum, pursuant to Section 10 of Republic Act No. 8042; and (3) attorney's fees of 10% of the aggregate monetary award.

Let this case be remanded to the Labor Arbiter for proper computation of [Cuyos's] monetary awards in accordance with this decision.

SO ORDERED.^[16]

The petitioners moved for reconsideration, but the same was denied by the CA in its Resolution dated January 21, 2016.

Hence, this petition.

The Issue

WHETHER THE COURT OF APPEALS ERRED WHEN IT RULED THAT CONSTANTINO R. CUYOS WAS ILLEGALLY DISMISSED FROM EMPLOYMENT.

The petitioners insist that the CA erred in reversing the Labor Arbiter's and NLRC's decisions. They argue that the logbook entries, as extracted by the master of the vessel, sufficiently established that Constantino committed serious misconduct and willful disobedience. Further, they posit that the existence of a logbook does not preclude the admission and consideration of other accounts relating to the incident on board the vessel. Thus, the Labor Arbiter and the NLRC correctly ruled that Constantino was validly dismissed as satisfactorily shown in Vera's letter and the report by Capt. Kolidas, as contained in his facsimile transmissions. They further claim that Constantino never controverted the contents of Vera's letter and the facsimile messages during the hearing of the case before the Labor Arbiter.

The petitioners also maintain that the CA erred when it ruled that Constantino was not afforded due process. They contend that under Section 17(D) of the 2000 Standard Terms and Conditions Governing the Employment of Filipino Seafarer On-Board Ocean-Going Vessels (POEA-SEC), dismissal for just cause may be effected 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.

For his part, Constantino, in his Comment^[17] dated July 18, 2016 and Expanded

Discussion^[18] dated July 28, 2016, counters that the CA did not err when it reversed the Labor Arbiter's and NLRC's decisions. He also insists that he vehemently disputed the allegations of gross misconduct and willfull disobedience, contrary to the assertions by the petitioners. Moreover, he maintains that the petitioners failed to afford him due process when they decided to suddenly terminate his employment. He points out that in their position paper, the petitioners themselves admitted that they did not provide him with written notices of the charges against him and of his dismissal. In sum, Constantino contends that the CA correctly ruled that the petitioners failed to prove by substantial evidence the charges of insubordination, serious misconduct, and willfull disobedience.

The Court's Ruling

The petition lacks merit.

Petitioners failed to prove, by substantial evidence, that Constantino's dismissal was grounded on just and valid causes.

It is settled that in termination cases, the burden of proof rests upon the employer to show that the dismissal is for a just and valid cause. Failure to do so would necessarily mean that the dismissal was illegal.^[19] For this purpose, the employer must present substantial evidence to prove the legality of an employee's dismissal.^[20] "Substantial evidence is defined as such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."^[21]

In this case, the Court concurs with the appellate court's conclusion that the petitioners failed to establish the validity of Constantino's dismissal by substantial evidence.

It must be recalled that in their attempt to prove the validity of Constantino's dismissal, one of the documents presented by the petitioners is Capt. Kolidas' facsimile message dated February 1, 2008. As observed by the appellate court, however, the said document is dubious considering that it was transmitted only on February 20, 2008, or 6 days after Constantino was informed of his dismissal.

To this observation by the appellate court, the petitioners' only response was to point out that while the transmission date was indeed on February 20, 2008, it could not be denied that the facsimile message was dated February 1, 2008. They assert that under Section 17(D) of the POEA-SEC, Capt. Kolidas, as the master of the vessel, has the authority to dismiss a seafarer-employee even without furnishing the seafarer with a notice of dismissal if there exists a clear danger to the safety of the crew or vessel, and that the only duty of the master of the vessel is to submit "a complete report to the manning agency after the incident. Thus, it would seem that the petitioners are implying that the February 1, 2008, facsimile message was transmitted only on February 20, 2008, because it constitutes as Capt. Kolidas' report after the fact of dismissal pursuant to Section 17(D) of the POEA-SEC.

The arguments and insinuations by the petitioners are not supported even by their own

evidence. The contents of the February 1, 2008 facsimile message are reproduced as follows:

X X X X

THE 2ND ENGINEER MR. CUYOS CONSTANTINO SINCE HE CAME ON BOARD THE MV CROWN PRINCESS HE STARTED CREATING PROBLEMS AGAINST THE CHIEF ENGINEER OF THE SHIP MR. VERA FRANCISCO.

AS THE CHIEF ENGINEER REPORTED TO ME THE 2nd ENGINEER MR. CUYOS CONSTANTINO WAS NOT AGREEING IN THE CHIEF ENGINEER[']S INSTRUCTIONS AND WHEN THE CHIEF ENGINEER WAS POINTING OUT THE INCIDENT MR. CUYOS [CONSTATINO] STARTED TO LOOK FOR A FIGHT. **BEFORE ARRIVAL IN USA THE CHIEF ENGINEER OF THE SHIP[,] MR. VERAM TALKED WITH HIS AGENCY IN MANILA AND HE HAD EXPLAINED EVERYTHING TO HIS AGENCY AND THEY HAVE AGREED TO CHANGE THE 2ND ENGINEER SOONEST POSSIBLE.** (Emphasis supplied)

MY OPINION IS THE 2ND ENGINEER MR. CUYOS CONSTANTINO TO BE CHANGED THE SOONEST POSSIBLE FOR THE GOOD OF THE SHIP AND TO AVOID THE WORST.^[22]

From the aforesaid transmission, the following could be deduced: *First*, Capt Kolidas' knowledge regarding the incident is completely onesided. He did not conduct any investigation to ascertain the truthfulness and veracity of Vera's accusations against Constantino. He never bothered getting Constantino's side of the story. He reported the incident as relayed to him by Vera. Thus, he could not have reasonably determined if there is indeed clear danger to the crew or to the vessel. *Second*, Capt. Kolidas did not order the dismissal of Constantino. While Capt. Kolidas stated that he was of the opinion that Constantino must be replaced, his opinion on the matter is no longer relevant considering that Constantino's dismissal was already a done deal. From Capt. Kolidas' facsimile transmission, it is evident that the decision to dismiss Constantino was made by Vera and the petitioners. Clearly, the provisions of Section 17(D) of the POEA-SEC are inapplicable in this case.

Likewise, the unsigned facsimile message dated February 9, 2008, and the attached decklog extract bearing the same date are also insufficient to establish the alleged insubordination and gross misconduct by Constantino. The unsigned February 9, 2008 transmission merely states that attached to it is the decklog extract concerning Constantino's behavior on certain dates. On the other hand, the decklog extract contains a short type-written narration of the alleged acts of insubordination and serious misconduct committed by Constantino on January 2, 2008 and January 17, 2008.

In *Abacast Shipping and Management Agency, Inc. v. National Labor Relations Commission (Abacast)*,^[23] the Court stressed that the ship's logbook is a respectable record that can be relied upon to determine the veracity of the charges filed and the

procedure taken against the employees prior to their dismissal. In the said case, the Court rejected a shipmaster's report which allegedly contained a collation of excerpts from the ship's logbook. The Court further opined that the failure to produce the logbook or at least make photocopies of the pertinent pages thereof would reasonably suggest that there were no entries in the logbook that could have established the acts and offenses allegedly committed by the seafarer-employee.^[24]

A similar observation obtains in this case. The decklog extract presented by the petitioners is a mere collation of the supposed contents of the ship's logbook. The petitioners did not present the logbook itself or even photocopies of the relevant pages thereof. Their only excuse is that the captain of the ship is obliged by law to keep the logbook. Hence, they could not present it before the labor tribunals. However, this does not explain why they failed to present even photocopies of the pertinent pages of the logbook. Thus, as aptly observed by the appellate court, the non-presentation of the ship's logbook or copies of the pertinent pages thereof raises doubts as to the occurrence of Constantino's alleged infractions.

Interestingly, the petitioners also invoked *Abacast* in support of their cause. In the present petition for review, the petitioners even correctly argued that what the Court did in *Abacast* was to reject a typewritten collation of excerpts of what could be the logbook and rule that what should have been submitted in evidence was the logbook itself or authenticated copies of the pertinent pages thereof. Unfortunately, it would seem that the petitioners failed to comprehend that the typewritten decklog extract they submitted is similar to the typewritten collation of excerpts which has been rejected by the Court in *Abacast*. As such, the decklog extract does not deserve any consideration.

The appellate court also properly disregarded Vera's January 6, 2008 letter-report as self-serving. As correctly pointed out by the appellate court, the letter was unsubstantiated by any other evidence. Moreover, the letter-report is inconsistent with all the other pieces of evidence presented by the petitioners.

It must be noted that among the accusations hurled against Constantino, the incident which allegedly transpired on January 5, 2008, and which is the subject of the January 6, 2008 letter-report could be considered as the gravest. Indeed, in the said letter-report, there is an allegation of an attempt on the part of Constantino to inflict bodily harm against his superior officer with the use of a tool.

Curiously, however, Capt. Kolidas made no mention of this incident in his facsimile messages. In particular, while the facsimile messages and decklog extract mentioned the incidents on January 2, 2008, and January 17, 2008, no reference was made to Constantino's alleged threats and attempts to harm Vera on January 5, 2008. This is significant because if the facsimile messages and the decklog extract indeed contain the true reproduction of the relevant entries in the ship's logbook regarding Constantino's offenses, which is what the petitioners would want the Court to believe, then it only follows that the reason the January 5, 2008 incident was not mentioned in the decklog extract, is because no entry regarding such incident exists in the ship's logbook. The lack of any entry relating to the January 5, 2008 incident consequently creates doubt

that the January 6, 2008 letter-report was merely executed to manufacture or supply events which did not occur.

In fine, the pieces of evidence presented by the petitioners to establish the validity of the dismissal are either unreliable or plainly insufficient to prove that Constantino is guilty of insubordination and serious misconduct. Thus, the appellate court correctly reversed the NLRC's and Labor Arbiter's decisions considering that they were not duly supported by substantial evidence.

Petitioners violated Constantino's right to procedural due process.

In termination proceedings, it is settled that for the manner of dismissal to be valid, the employer must comply with the employee's right to procedural due process by furnishing him with two written notices before the termination of his employment. The first notice appraises the employee of the particular acts or omissions for which his dismissal is sought, while the second informs the employee of the employer's decision to dismiss him.^[25]

In this case, the petitioners admit that they did not furnish Constantino with any written notice prior to his dismissal. They maintain, however, that this is justified under Section 17(D) of the POEA-SEC.

The contention is misplaced. Section 17 of the POEA-SEC provides for the disciplinary procedures against erring seafarers, to wit:

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.

As already discussed, Section 17(D) is inapplicable to this case because the alleged offenses by Constantino have not been established by substantial evidence. Assuming for the sake of argument that the aforesaid infractions have been duly shown, Section 17(D) would still be inapplicable because Capt. Kolidas failed to conduct the required investigation under Section 17(B). Finally, it is clear from Section 17 that it is only the second notice or the notice of dismissal which may be dispensed with under exceptional circumstances - the first written notice could never be dispensed with. The seafarer-employee should always be furnished with the written notice informing him of the charges against him and the date, time, and place of the formal investigation. Very clearly, the petitioners failed to afford Constantino with procedural due process prior to his termination.

Propriety of the monetary awards.

In a plethora of cases, the Court has held that illegally dismissed overseas workers, including seafarers, shall be entitled to salaries corresponding to the unexpired portion of their employment contracts.^[26] This includes the monthly vacation leave pay and all other benefits guaranteed in the employment contract which were not made contingent upon the performance of any task or the fulfilment of any condition.^[27]

In this case, Constantino's employment contract provides that the duration of his employment is eight months, or from December 10, 2007 to August 9, 2008. Unfortunately, he was illegally dismissed from his employment on February 14, 2008 or after serving for just two months. Thus, he is entitled to his salaries corresponding to the unexpired portion of his contract which is six months. Thus, the appellate court correctly awarded Constantino with his salary for the unserved portion of his contract at the rate of US\$1,239.00 per month. Constantino was also properly awarded the full reimbursement of his placement fee and the deductions made with interest at the rate of 12% per annum pursuant to Section 10 of Republic Act (R.A.) No. 8042, as amended by R.A. No. 10022.

Nevertheless, the appellate court erred when it did not include in its award the Seniority Pay at the rate of US\$99.00 per month, the Supplement Bonus at the rate of US\$464.00 per month, and the Vacation Leave Pay at the rate of US\$495.00 per month. The Court notes that Seniority Pay and Supplement Bonus are included under the item for "Basic Monthly Salary" under Constantino's employment contract. Further, they do not appear to be dependent upon any contingency. Thus, they must form part of Constantino's guaranteed benefits. From these considerations, it is clear that Constantino is entitled to backwages in the total amount of US\$13,782.00 computed as follows - $US\$13,782.00 = (US\$1,239.00 + US\$99.00 + US\$464.00 + US\$495.00) \times 6$ months. These money awards are further subject to the payment of interest at the rate of 6% per annum from the finality of the decision.^[28]

The same could not be said with respect to the SMB or Special Maintenance Bonus at the rate of US\$330.00 per month although it is also listed under the Basic Monthly Salary in the employment contract. This is because the aforesaid bonus is contingent upon the performance of certain maintenance duties on board the vessel as provided for under Section 11.2, Article 11 of the Collective Bargaining Agreement^[29] between petitioner MECO and the Associated Marine Officers & Seamen's Union of the Philippines, in which Constantino is a member.

The appellate court is also correct in not awarding the overtime pay provided in the employment contract. It is settled that the correct criterion in determining the propriety of the award of overtime pay is whether the seafarer rendered service in excess of the hours he was required to work under his contract.^[30] In this case, Constantino failed to adduce evidence showing that he rendered service beyond the required forty-four hours per week. Hence, overtime pay could not be awarded.

The appellate court also correctly ruled that Constantino is not entitled to moral and exemplary damages. The award of moral damages is proper where the dismissal was tainted with bad faith or fraud, or where it constituted an act oppressive to labor, and done in a manner contrary to morals, good customs or public policy. On the other hand, exemplary damages are recoverable only if the dismissal was done in a wanton, oppressive, or malevolent manner.^[31] As observed by the appellate court, Constantino failed to prove by substantial evidence that his relief was attended by clear, oppressive, or humiliating acts on the part of the petitioners. Hence, he cannot be awarded with moral and exemplary damages.

As to the attorney's fees, the award thereof was also proper. The Court has repeatedly held that the award of attorney's fees is legally and morally justifiable in actions for recovery of wages and where an employee was forced to litigate and thus, incur expenses to protect his rights and interest.^[32] The propriety of the award of attorney's fees in this case is clear. It could not be denied that Constantino was forced to litigate and retain the services of his counsel thereby incurring expenses as a result of petitioners' act of illegally dismissing him and their refusal to pay him his salaries corresponding to the unexpired portion of his employment contract. Thus, Constantino is entitled to attorney's fees equivalent to 10% of his total monetary award.

Finally, Section 10 of R.A. No. 8042, as amended by R.A. 10022, provides that if the recruitment or placement agency is a juridical being, its corporate officers, directors, and partners, as the case may be, shall be jointly and solidarily liable with the corporation or partnership for the claims and damages against it. Here, there is no dispute that MECO is a corporation engaged in the recruitment and placement of Filipino seafarers for its foreign principal. It is also not disputed that Capt. Sorrera is MECO's President and General Manager; hence, he is a corporate officer. Thus, the appellate court correctly adjudged Capt. Sorrera as among those who are jointly and solidarily liable to Constantino.

WHEREFORE, the present Petition for Review on *Certiorari* is **DENIED**. The May 28, 2015 Decision and the January 21, 2016 Resolution of the Court of Appeals - Cebu City

in CA-G.R. SP No. 05091 are hereby **AFFIRMED with MODIFICATIONS**. Accordingly, Meco Manning & Crewing Services, Inc., International Crew Services, Ltd., and Captain Igmedio G. Sorra are ordered to pay, jointly and severally, Constantino R. Cuyos, the following: (1) his salaries in the total amount of US\$13,782.00, or its peso equivalent at the exchange rate at the time of actual payment, corresponding to the unexpired portion of his employment contract; (2) his placement fee and deductions made with interest at the rate of 12% per annum, pursuant to Section 10 of Republic Act No. 8042, as amended; and (3) attorney's fees in the amount equivalent to 10% of the total monetary awards. All monetary awards shall earn interest at the rate of six percent (6%) per annum reckoned from the finality of this decision until its full payment.

SO ORDERED.

Carpio, Senior Associate Justice, (Chairperson), Perlas-Bernabe, Caguioa, and Lazaro-Javier, JJ., concur.

[1] Penned by Associate Justice Pamela Ann Abella Maxino, with Associate Justices Marilyn B. Lagura-Yap and Germano Francisco D. Legaspi, concurring; *rollo*, pp. 66-83.

[2] *Id.* at 85-89.

[3] Penned by Commissioner Julie C. Rendoque, with Presiding Commissioner Violeta Ortiz-Bantug and Commissioner Aurelio D. Menzon, concurring; *id.* at 127-136.

[4] *Id.* at 138-139.

[5] Penned by Labor Arbiter Philip B. Montances; *id.* at 353-359.

[6] *Id.* at 140-153

[7] *Id.* at 154.

[8] *Id.* at 155-201.

[9] *Id.* at 206.

[10] *Id.* at 207.

[11] *Id.* at 208.

[12] *Id.* at 209.

[13] *Id.* at 359.

[14] Id. at 405-406.

[15] Id. at 135.

[16] Id. at 82.

[17] Id. at 1027-1037.

[18] Id. at 1039-1051.

[19] *Grande v. Philippine Nautical Training Colleges*, 806 Phil. 601, 617 (2017).

[20] *Faeldonia v. Tong Yak Groceries*, 617 Phil. 894, 902 (2009).

[21] *Travelaire & Tours Corporation v. National Labor Relations Commission*, 355 Phil. 932, 936 (1998).

[22] *Rollo*, p. 206.

[23] 245 Phil. 487 (1988).

[24] Id. at 490.

[25] *Distribution & Control Products, Inc. v. Santos*, G.R. No. 212616, July 10, 2017, 830 SCRA 452, 463.

[26] *Serrano v. Gallant Maritime Services, Inc.*, 601 Phil. 245, 267 (2009); *Yap v. Thenamaris Ship's Management*, 664 Phil. 614, 629 (2011); *Skippers United Pacific, Inc. v. Doza*, 681 Phil. 427, 442 (2012).

[27] *Tangga-an v. Philippine Transmarine Carriers, Inc.*, 706 Phil. 339, 351-352 (2013).

[28] *Nacar vs. Gallery Frames*, 716 Phil. 267, 283 (2013); *Sameer Overseas Placement Agency, Inc. v. Cabiles*, 740 Phil. 403, 448 (2014).

[29] *Rollo*, p. 246.

[30] *PCL Shipping Philippines, Inc. v. National Labor Relations Commission*, 540 Phil. 65, 83-84 (2006).

[31] *Park Hotel v. Soriano*, 694 Phil. 471, 487 (2012).

[32] *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 448 (2014).



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