

## SECOND DIVISION

[ G.R. No. 221227, February 19, 2020 ]

**LOADSTAR INTERNATIONAL SHIPPING, INC. AND TEODORO G. BERNARDINO, PETITIONERS, VS. PABLO P. ERISPE, JR., RESPONDENT.**

### DECISION

**REYES, A., JR., J.:**

This is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court assailing the December 3, 2014 Decision<sup>[2]</sup> and October 21, 2015 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. SP Nos. 119213 and 119779.

#### The Facts

Petitioner Loadstar International Shipping, Incorporated (Loadstar) hired respondent Pablo P. Erispe, Jr. (Erispe) as cook on board its vessel M/V Foxhound on May 3, 2007 to May 3, 2008.<sup>[4]</sup> Pertinent portion of Erispe's previous contracts of employment<sup>[5]</sup> provides:

- 1.1. Duration of the Contract: : **10 MONTHS**
- 1.2. Position : **COOK**
- 1.3. Basic Monthly Salary : **S332.00**
- 1.4. Hours of Work : **48 HOURS PER WEEK**
- 1.5. Overtime : **FIXED \$166.00 OR EQUIVALENT TO 105 HOURS**
- 1.6. Vacation Leave with Pay : **3 DAYS PER MONTH**
- 1.7. Point of Hire : **MANILA, PHILIPPINES**

In his Position Paper,<sup>[6]</sup> Erispe claimed that he was not furnished copies of these contracts.<sup>[7]</sup> He also averred that on May 3, 2007, after being declared fit to work, he was re-employed by Loadstar as chief cook under the same period and terms as his previous employment contracts. After expiration of the latest contract, he continued working aboard M/V Foxhound until January 24, 2010 when the vessel arrived in the port of Manila and Erispe was ordered by Loadstar to disembark without justifiable reason. On that same night, Erispe was rushed to Bernardino Hospital in Novaliches, Quezon City due to difficulty in urinating where he was immediately given treatment.

He was later diagnosed with prostate enlargement.<sup>[8]</sup>

On January 27, 2010, Erispe allegedly replied his condition to Loadstar and submitted his seaman's book for proper documentation, galley inventory, and requested his clearance be issued by the ship master. Instead of referring him to the company's doctor, Erispe was made to sign a resignation letter which shows that he requested to disembark for personal reasons. He was also made to sign an off-signing clearance indicating that Erispe will just take a vacation. He signed these documents believing that his remaining wages and accrued benefits will be immediately released by Loadstar.<sup>[9]</sup> But Loadstar did not pay him.

On January 31, 2010, Erispe was admitted at the Veterans Memorial Medical Center where he underwent a prostate surgery on February 1, 2010.<sup>[10]</sup> Before he was discharged, Erispe asked Loadstar for sickness allowance and reimbursement of his medical expenses but was denied.<sup>[11]</sup> On February 5, 2010, he was discharged from the hospital.<sup>[12]</sup> He claimed he suffered incontinence after surgery and was rendered unfit to work for more than 120 days.<sup>[13]</sup>

On February 17, 2010, Erispe was made to sign a quitclaim and release for the sum of P6,381.60 representing his remaining salaries and other benefits before the Labor Arbiter (LA). The LA, however, declined to ratify the quitclaim and release because Erispe confirmed that he signed the same out of necessity.<sup>[14]</sup>

On February 23, 2010, Erispe filed a Complaint before the NLRC for actual illegal dismissal; underpayment of salary/wages, overtime pay; and non-payment of vacation leave pay, sick leave pay, and medical expenses (hospitalization).<sup>[15]</sup>

For its part, Loadstar denied that Erispe was dismissed. It maintained that Erispe disembarked because he had to renew his seafarer's registration certificate and passport which would respectively expire on August 16 and 28, 2010. It further claimed that when Erispe disembarked, he did so on a finished contract. Loadstar also denied petitioner's entitlement to his monetary claims.<sup>[16]</sup>

### **The LA Ruling**

In a Decision<sup>[17]</sup> dated September 17, 2010, the LA ruled that Erispe was illegally dismissed. The LA took note of Loadstar's confusion as to the reason for Erispe's disembarkation. Having found to be illegally dismissed, Loadstar was ordered to pay Erispe the amount equivalent to the unexpired portion of his contract. The LA ruled that the original contract was renewed for three (3) consecutive periods of ten (10) months each and the last renewal was set to expire on September 6, 2010. The claims for permanent disability benefits, sickness allowance, and refund of medical expenses were denied because the disembarkation was not due to medical reasons. The dispositive portion of the LA's decision reads:

WHEREFORE, in view of the foregoing, respondent Loadstar International Shipping, Inc. is hereby found liable for illegally dismissing complainant

Pablo P. Erispe, Jr. and it is hereby ordered to pay him the amount of USD2,443.52 or its equivalent in Philippine currency at the time of payment, representing his salaries for the unexpired portion of his contract, plus USD244.35 also in its equivalent in Philippine currency at the time of payment, as and by way of attorney's fees.

All other claims are denied.

SO ORDERED.<sup>[18]</sup>

Dissatisfied, Erispe filed an appeal before the National Labor Relations Commission (NLRC).<sup>[19]</sup>

### The NLRC Ruling

On February 21, 2011, the NLRC granted the appeal and modified the LA Decision by directing payment of additional monetary awards.<sup>[20]</sup> The NLRC ruled that since Erispe's employment is contractual in nature, the terms and conditions of his service should be based on what is stated in the contract which provides for a fixed amount of overtime pay, as well as three days vacation leave pay per month. The NLRC, however, denied the disability claim because no evidence was presented that Erispe was signed off due to medical reasons nor that he complied with the requirements for disability claims. Notwithstanding, the NLRC found the illness to be work-related and awarded a refund of medical expenses taking into consideration the proximity of Erispe's hospitalization from his sign-off. The NLRC disposed, thus:

**WHEREFORE**, premises considered, judgment is hereby rendered finding the appeal impressed with merit. Respondents-appellees are hereby ordered to pay complainant-appellant, in addition to the award made in the assailed Decision, the following:

1. Overtime pay and vacation leave with pay amounting to US\$7,856.91 or its equivalent amount in Philippine Peso at the time of payment; and
2. Refund of his medical expenses amounting to P20,889.10. Accordingly, the Decision of the Labor Arbiter dated September 17, 2010 is hereby MODIFIED. All other dispositions not otherwise herein modified, STANDS.

**SO ORDERED.**<sup>[21]</sup> (Emphasis in the original)

Both parties filed their respective motions for reconsideration<sup>[22]</sup> but were both denied by the NLRC in a Resolution<sup>[23]</sup> dated April 07, 2011.

Ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC, both parties elevated the case to the CA via Petitions<sup>[24]</sup> for *Certiorari* under Rule 65 of the 1997 Rules of Civil Procedure.<sup>[25]</sup>

### The Decision of the CA

On December 3, 2014, the CA did not find any valid reason to disturb the ruling of the NLRC, hence, it denied the petition.<sup>[26]</sup> Petitioner moved for reconsideration but was also denied by the CA in its Resolution<sup>[27]</sup> dated October 21, 2015.

Hence, the instant recourse anchored on the following ground:

THE COURT OF APPEALS RENDERED JUDGMENT NOT IN ACCORDANCE WITH LAW AND PREVAILING JURISPRUDENCE AND THE DOCUMENTARY EVIDENCE ON RECORD WHEN IT AFFIRMED THE DECISION DATED FEBRUARY 21, 2011 AND RESOLUTION DATED APRIL 7, 2011 OF THE NLRC AWARDING OVERTIME PAY, SICK AND VACATION LEAVE BENEFITS AND REFUND OF MEDICAL EXPENSES TO PRIVATE RESPONDENT PABLO P. ERISPE, JR.<sup>[28]</sup>

### **The Court's Ruling**

As can be gleaned from the foregoing, Loadstar is no longer putting in issue the illegality of Erispe's dismissal. There being no issue regarding illegal dismissal in spite of the consistent finding below that Erispe was illegally dismissed, all pronouncements on the matter is now final.

The Court is left to resolve the factual issue of whether or not the CA correctly sustained the NLRC's award of vacation leave benefits, overtime pay, and refund of medical expenses.

It must be stressed that issues of facts may not be raised under Rule 45 of the Rules of Court because this Court is not a trier of facts. It is not to re examine and assess the evidence on record, whether testimonial and documentary.<sup>[29]</sup> There are, however, recognized exceptions, such as the instant case, where the findings of the NLRC and the CA are inconsistent with that of the Labor Arbiter.

The Court resolves to modify.

As to the issue of vacation leave benefits, Loadstar averred that its company policy on the payment of accrued vacation leave is for the seafarer to disembark after the expiration of his contract, go on vacation for a short interval of complete rest with the benefit of full pay and then re-embark on another contract of employment. Only after satisfaction of the said company policy that vacation leaves may be commuted and granted to the seafarer. In this case, Erispe is deemed to have waived his right to vacation leave benefits when he failed to demand the same before the expiration of his original contract.<sup>[30]</sup>

We agree.

The purpose of a vacation leave is to afford a laborer the chance to get a much-needed rest to replenish his worn-out energy and acquire a new vitality to enable him to efficiently perform his duties, and not merely to give him additional salary and bounty.<sup>[31]</sup> This privilege must be demanded in its opportune time and if he allows the years to

go by in silence, he waives it. It becomes a mere concession or act of grace of the employer.<sup>[32]</sup> With Erispe's failure to avail of his vacation leave, he is deemed to have waived entitlement to the unavailed vacation leave benefits from his previous contracts. The CA, therefore, erred in sustaining its award by the NLRC.

However, in view of the finding of illegal dismissal, Erispe is entitled to the monetary equivalent of his vacation leave benefits as to the unexpired portion of his contract. The employer is obliged to pay an illegally dismissed employee or worker the whole amount of the salaries or wages, plus all other benefits and bonuses and general increases, to which he would have been normally entitled had he not been illegally terminated and had not stopped working.<sup>[33]</sup> Thus, Erispe must be awarded his salaries corresponding to the unexpired portion of his employment contract, or equivalent to 7.36 months<sup>[34]</sup> as found by the LA. This includes all his corresponding monthly vacation leave pay which is expressly provided in the employment contracts, which is three days per month.

As regards the propriety to refund Erispe's medical expenses, We rule in the negative. It is basic that the employment of seafarers and its incidents are governed by the contracts they sign every time they are hired or rehired. These contracts have the force of law between the parties as long as their stipulations are not contrary to law, morals, public order or public policy. Every seaman and the vessel owner (directly or represented by a local manning agency) are required to execute the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC) as a condition *sine qua non* to the seafarer's deployment for overseas work. While the relationship between seafarers and their employers are governed by their mutual agreements, "the POEA rules and regulations require that the POEA-SEC, which contains the standard terms and conditions of the seafarers' employment in foreign ocean-going vessels, be integrated in every seafarer's contract."<sup>[35]</sup>

In this case, Section 20-B of the 2000 POEA-SEC, the governing POEA-SEC at the time Erispe was employed in 2007 although extended multiple times until his disembarkation on January 24, 2010, is applicable. It provides:

#### SECTION 20. COMPENSATION AND BENEFITS

x x x x

#### B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract areas follows:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel;
2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging

until the seafarer is declared fit to work or to be repatriated. However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.

5. Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event the seafarer is declared (1) fit for repatriation; or (2) fit to work but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of his Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time.

The foregoing shows that in situations where the seafarer seeks to claim the compensation and benefits that Section 20-B grants to him, the law requires the seafarer to prove that: "(1) he suffered an illness; (2) he suffered this illness during the term of his employment contract; (3) he complied with the procedures prescribed under Section 20-B; (4) his illness is one of the enumerated occupational disease or that his illness or injury is otherwise work-related; and (5) he complied with the four conditions enumerated under Section 32-A for an occupational disease or a disputably-presumed work-related disease to be compensable."<sup>[36]</sup>

It is beyond dispute that Erispe was not repatriated for medical reasons. There was no

record that he contracted illness while onboard. There was no substantial evidence that he complied with the procedures prescribed under Section 20-B of the 2000 POEA-SEC. The allegation that he reported to Loadstar's office and requested for medical treatment on the third day after he was repatriated was unsubstantiated. Bare and unsubstantiated allegations do not constitute substantial evidence and have no probative value.<sup>[37]</sup> Besides, to sustain the refund of medical expense merely because of the proximity of the seafarer's hospitalization on the date that he signed-off puts into disadvantage a seafarer repatriated for medical reasons but denied the benefits under Section 20 of the 2000 POEA-SEC for his failure to comply with the procedural requirements provided therein. Basic is the rule that failure of the seafarer to comply with the mandatory reporting requirements would result in the forfeiture of the right to claim, among others, sickness allowance and reimbursement of medical and transportation expenses.<sup>[38]</sup>

While the Court adheres to the principle of liberality in favor of the seafarer in construing the POEA-SEC, liberal construction is not a license to misapply our laws.<sup>[39]</sup> There are circumstances that warrant favoring labor over the interests of management but the scale should not be so tilted as to result in an injustice because the law, in protecting the rights of labor, authorizes neither oppression nor self-destruction of the management.<sup>[40]</sup>

With respect to the award of overtime pay, "the correct criterion in determining whether or not sailors are entitled to overtime pay is not x x x whether they were on board and cannot leave ship beyond the regular eight working hours a day, but whether they actually rendered service in excess of said number of hours."<sup>[41]</sup>

The rendition of overtime work and the submission of sufficient proof that said work was actually performed are conditions to be satisfied before a seafarer could be entitled to overtime pay. In short, the contract provision guarantees the right to overtime pay but the entitlement to such benefit must first be established.<sup>[42]</sup> No proof was presented by Erispe that he actually performed overtime work while onboard. Thus, there was no basis for the award thereof.

Also, in the case of an illegally dismissed overseas worker, entitlement to fixed overtime pay equivalent to the unexpired portion of the latter's contract must first be established, otherwise the same cannot be allowed.<sup>[43]</sup>

The CA therefore erred when it sustained the overtime pay awarded by the NLRC.

**WHEREFORE**, the instant petition is **PARTLY GRANTED**. The December 3, 2014 Decision and October 21, 2015 Resolution of the Court of Appeals in CA-G.R. SP Nos. 119213 and 119779 are **MODIFIED** to the effect that the grant of overtime pay and refund of medical expenses are **DELETED** while the grant of vacation leave benefits is **REDUCED** to cover only the unexpired portion of the contract.

The award for Pablo P. Erispe, Jr.'s salaries for the unexpired portion of the contract plus attorney's fees is hereby **AFFIRMED**.

A legal interest of 6% *per annum* shall be imposed on the total judgment award from the finality of this Decision until its full satisfaction.

**SO ORDERED.**

*Perlas-Bernabe, Senior Associate Justice, (Chairperson), Hernando, Inting, and Delos Santos, JJ., concur.*

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[1] *Rollo*, pp. 24-39.

[2] Penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Rebecca C. De Guia-Salvador (retired) and Leoncia Real-Dimagiba (retired); *id.* at 310-316.

[3] *Id.* at 318-319.

[4] Embarkation Order; *id.* at 76.

[5] *Id.* at 74-75, and 133-134.

[6] *Id.* at 116-126.

[7] *Id.* at 117.

[8] *Id.* at 117-118.

[9] *Id.* at 118.

[10] *Id.* at 123.

[11] *Id.* at 118.

[12] *Id.* at 119.

[13] *Id.* at 123.

[14] *Id.* at 119.

[15] *Id.* at 84-86.

[16] *Id.* at 87-99.

[17] *Id.* at 217-229.



[18] Id. at 229.

[19] Id. at 230-239.

[20] Id. at 59-70.

[21] Id. at 67-68.

[22] Id. at 240-255; 257-261.

[23] Id. at 71-73.

[24] Loadstar filed a petition for review, but was treated by the CA as petition for certiorari; id. at 270; 50.

[25] Id. at 270-291.

[26] Id. at 310-316.

[27] Id. at 318-319.

[28] Id. at 30-31.

[29] *C.F. Sharp Crew Management, Inc. v. Legal Heirs of the Late Godofredo Repiso*, 780 Phil. 645, 665 (2016).

[30] *Rollo*, pp. 33-36.

[31] *PNCC Skyway Traffic Mgm't & Security Div. Workers Org. v. PNCC Skyway Corp. (PSTMSDWO)*, represented by its President, Rene Soriano, 626 Phil. 700, 714 (2010). citing *Cuajao v. Chua Lo Tan. et al.*, 116 Phil. 440, 443 (1962).

[32] *Sobrepeña, Jr. v. Court of Appeals*, 345 Phil. 714, 728 (1997), citing *Cuajao v. Chua Lo Tan, et al.*, 116 Phil. 440, 443 (1962).

[33] *Tangga-An,\* v. Phil. Transmarine Carriers, Inc. Universe Tankship Delaware Llc, and Carlos C. Salinas*, 706 Phil. 339, 352 (2013).

[34] *Rollo*, p. 225.

[35] See *The Late Alberto B. Javier v. Philippine Transmarine Carriers, Inc.*, 738 Phil. 374, 385 (2014).

[36] *Aldaba v. Career Philippines, Ship-Management, Inc.*, 811 Phil. 486, 498 (2017).

- [37] *LNS International Manpower Services, Padua, Jr.*, 628 Phil. 223, 224 (2010).
- [38] See *Loadstar International Shipping, Inc. v. Yamson*, G.R. No. 228470, April 23, 2018, 862 SCRA 467.
- [39] *Jebsen Maritime Inc. v. Ravena*, 743 Phil. 371, 395 (2014).
- [40] *One Shipping Corp. v. Penafiel*, 751 Phil. 204, 217 (2015).
- [41] *Philippine Transmarine Carriers, Inc. v. Carilla*, 552 Phil. 652, 667 (2007), citing *Nat'l Shipyards and Steel Corp. v. Industrial Relations and Malondras*, 113 Phil. 870, 875 (1961).
- [42] *Centennial Transmarine, Inc. v. Dela Cruz*, 585 Phil. 206, 222 (2008). citing *Legahi v. NLRC*, 376 Phil. 557, 566 (1999); *Cagampan v. NLRC*, 272-A Phil. 528, 536 (1991).
- [43] See *Bahia Shipping Services, Inc. v. Chua*, 574 Phil. 56, 67-68 (2008).



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