621 Phil. 107

SECOND DIVISION

[G.R. No. 169606, November 27, 2009]

BERNARDO B. JOSE, JR., PETITIONER, VS. MICHAELMAR PHILS., INC. AND MICHAELMAR SHIPPING SERVICES, INC., RESPONDENTS.

D E C I S I O N

CARPIO, J.:

The Case

This is a petition[1] for review on certiorari under Rule 45 of the Rules of Court. The petition challenges the 11 May 2005 Decision[2] and 5 August 2005 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 83272. The Court of Appeals set aside the 19 January[4] and 22 March[5] 2004 Resolutions of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 036666-03 and reinstated the 18 June 2003 Decision[6] of the Labor Arbiter in NLRC NCR OFW Case No. (M)02-12-3137-00.

The Facts

Michaelmar Philippines, Inc. (MPI) is the Philippine agent of Michaelmar Shipping Services, Inc. (MSSI). In an undertaking[7] dated 2 July 2002 and an employment contract[8] dated 4 July 2002, MSSI through MPI engaged the services of Bernardo B. Jose, Jr. (Jose, Jr.) as oiler of M/T Limar. The employment contract stated:

> That the employee shall be employed on board under the following terms and conditions:
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> | | |
> |---|---|
> | 1.1 Duration of Contract | EIGHT (8) MONTHS |
> | Position | OILER |
> | Basic Monthly Salary | US$ 450.00 & US$ 39.00 TANKER ALLOWANCE |
> | Hours of Work | 48 HOURS/WEEK |
> | Overtime | US$ 386.00 FIXED OT. 105 HRS/ MOS. |
> | Vacation Leave with Pay | US$ 190.00 & US$ 150 OWNERS BONUS |
> | Point of Hire | MANILA, PHILIPPINES[9] |

In connection with the employment contract, Jose, Jr. signed a declaration[10] dated 10 June 2002 stating that:

> In order to implement the Drug and Alcohol Policy on board the managed vessels the following with [sic] apply:
>
> All alcoholic beverages, banned substances and unprescribed drugs including but not limited to the following: Marijuana Cocaine Phencyclidine Amphetamines Heroin Opiates are banned from Stelmar Tankers (Management) Ltd. managed vessels.
>
> Disciplinary action up to and including dismissal will be taken against any employee found to be in possession of or impaired by the use of any of the above mentioned substances.
>
> A system of random testing for any of the above banned substances will be used to enforce this policy. Any refusal to submit to such tests shall be deemed as a serious breach of the employment contract and shall result to the seaman's dismissal due to his own offense.
>
> Therefore any seaman will be instantly dismissed if:
>
> x x x
>
> They are found to have positive trace of alcohol or any of the banned substances in any random testing sample.

Jose, Jr. began performing his duties on board the M/T Limar on 21 August 2002. On 8 October 2002, a random drug test was conducted on all officers and crew members of M/T Limar at the port of Curacao. Jose, Jr. was found positive for marijuana. Jose, Jr. was informed about the result of his drug test and was asked if he was taking any medication. Jose, Jr. said that he was taking Centrum vitamins.

Jose, Jr. was allowed to continue performing his duties on board the M/T Limar from 8 October to 29 November 2002. In the Sea Going Staff Appraisal Report[11] on Jose Jr.'s work performance for the period of 1 August to 28 November 2002, Jose, Jr. received a 96% total rating and was described as very hardworking, trustworthy, and reliable.

On 29 December 2002, M/T Limar reached the next port after the random drug test and Jose, Jr. was repatriated to the Philippines. When Jose, Jr. arrived in the Philippines, he asked MPI that a drug test be conducted on him. MPI ignored his request. On his own, Jose, Jr. procured drug tests from Manila Doctors Hospital,[12] S.M. Lazo Medical Clinic, Inc.,[13] and Maritime Clinic for International Services, Inc. [14] He was found negative for marijuana.

Jose, Jr. filed with the NLRC a complaint against MPI and MSSI for illegal dismissal with claim for his salaries for the unexpired portion of the employment contract.

The Labor Arbiter's Ruling

In her 18 June 2003 Decision, the Labor Arbiter dismissed the complaint for lack of merit. The Labor Arbiter held that:

> Based from the facts and evidence, this office inclined [sic] to rule in favor of the respondents: we find that complainant's termination from employment was valid and lawful. It is established that complainant, after an unannounced drug test conducted by the respondent principal on the officers and crew on board the vessel, was found positive of marijuana, a prohibited drug. It is a universally known fact the menace that drugs bring on the user as well as to others who may have got on his way. It is noted too that complainant worked on board a tanker vessel which carries toxic materials such as fuels, gasoline and other combustible materials which require delicate and careful handling and being an oiler, complainant is expected to be in a proper disposition. Thus, we agree with respondents that immediate repatriation of complainant is warranted for the safety of the vessel as well as to complainant's co-workers on board. It is therefore a risk that should be avoided at all cost. Moreover, under the POEA Standard Employment Contract as cited by the respondents (supra), violation of the drug and alcohol policy of the company carries with it the penalty of dismissal to be effected by the master of the vessel. It is also noted that complainant was made aware of the results of the drug test as per Drug Test Certificate dated October 29, 2002. He was not dismissed right there and then but it was only on December 29, 2002 that he was repatriated for cause.
>
> As to the complainant's contention that the ship doctor's report can not be relied upon in the absence of other evidence supporting the doctor's findings for the simple reason that the ship doctor is under the control of the principal employer, the same is untenable. On the contrary, the findings of the doctor on board should be given credence as he would not make a false clarification. Dr. A.R.A Heath could not be said to have outrageously contrived the results of the complainant's drug test. We are therefore more inclined to believe the original results of the unannounced drug test as it was officially conducted on board the vessel rather than the subsequent testing procured by complainant on his own initiative. The result of the original drug test is evidence in itself and does not require additional supporting evidence except if it was shown that the drug test was conducted not in accordance with the drug testing procedure which is not obtaining in this particular case. [H]ence, the first test prevails.
>
> We can not also say that respondents were motivated by ill will against the complainant considering that he was appraised to be a good worker. For this reason that respondents would not terminate [sic] the services of complainant were it not for the fact that he violated the drug and alcohol policy of the company. [T]hus, we find that just cause exist [sic] to justify the termination of complainant.[15]

Jose, Jr. appealed the Labor Arbiter's 18 June 2003 Decision to the NLRC. Jose, Jr. claimed that the Labor Arbiter committed grave abuse of discretion in ruling that he was dismissed for just cause.

The NLRC's Ruling

In its 19 January 2004 Resolution, the NLRC set aside the Labor Arbiter's 18 June 2003 Decision. The NLRC held that Jose, Jr.'s dismissal was illegal and ordered MPI and MSSI to pay Jose, Jr. his salaries for the unexpired portion of the employment contract. The NLRC held that:

> Here, a copy of the purported drug test result for Complainant indicates, among others, the following typewritten words "Hoofd: Drs. R.R.L. Petronia Apotheker" and "THC-COOH POS."; the handwritten word "Marihuana"; and the stamped words "Dr. A.R.A. Heath, MD", "SHIP'S DOCTOR" and "29 OKT. 2002." However, said test result does not contain any signature, much less the signature of any of the doctors whose names were printed therein (Page 45, Records). Verily, the veracity of this purported drug test result is questionable, hence, it cannot be deemed as substantial proof that Complainant violated his employer's "no alcohol, no drug" policy. In fact, in his November 14, 2002 message to Stelmar Tanker Group, the Master of the vessel where Complainant worked, suggested that another drug test for complainant should be taken when the vessel arrived [sic] in Curacao next call for final findings (Page 33, Records), which is an indication that the Master, himself, was in doubt with the purported drug test result. Indeed there is reason for the Master of the vessel to doubt that Complainant was taking in the prohibited drug "marihuana." The Sea Going Staff Appraisal Report signed by Appraiser David A. Amaro, Jr. and reviewed by the Master of the vessel himself on complainant's work performance as Wiper from August 1, 2002 to November 28, 2002 which included a two-month period after the purported drug test, indicates that out of a total score of 100% on Safety Consciousness (30%), Ability (30%), Reliability (20%) and Behavior & Attitude (20%), Complainant was assessed a score of 96% (Pages 30-31, Records). Truly, a worker who had been taking in prohibited drug could not have given such an excellent job performance. Significantly, under the category "Behavior & Attitude (20%)," referring to his personal relationship and his interactions with the rest of the ship's staff and his attitude towards his job and how the rest of the crew regard him, Complainant was assessed the full score of 20% (Page 31, Records), which belies Respondents' insinuation that his alleged offense directly affected the safety of the vessel, its officers and crew members. Indeed, if Complainant had been a threat to the safety of the vessel, officers and crew members, he would not be been [sic] allowed to continue working almost three (3) months after his alleged offense until his repatriation on December 29, 2002. Clearly, Respondents failed to present substantial proof that Complainant's dismissal was with just or authorized cause.
>
> Moreover, Respondents failed to accord Complainant due process prior to his dismissal. There is no showing that Complainant's employer furnished him with a written notice apprising him of the particular act or omission for which his dismissal was sought and a subsequent written notice informing him of the decision to dismiss him, much less any proof that Complainant was given an opportunity to answer and rebut the charges against him prior to his dismissal. Worse, Respondents' invoke the provision in the employment contract which allows summary dismissal for cases provided therein. Consequently, Respondents argue that there was

> no need for him to be notified of his dismissal. Such blatant violation of basic labor law principles cannot be permitted by this Office. Although a contract is law between the parties, the provisions of positive law which regulate such contracts are deemed included and shall limit and govern the relations between the parties (Asia World Recruitment, Inc. vs. NLRC, G.R. No. 113363, August 24, 1999).
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> Relative thereto, it is worth noting Section 10 of Republic Act No. 8042, which provides that "In cases of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee with interest of 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."[16]

MPI and MSSI filed a motion for reconsideration. In its 22 March 2004 Resolution, the NLRC denied the motion for lack of merit. MPI and MSSI filed with the Court of Appeals a petition[17] for certiorari under Rule 65 of the Rules of Court. MPI and MSSI claimed that the NLRC gravely abused its discretion when it (1) reversed the Labor Arbiter's factual finding that Jose, Jr. was legally dismissed; (2) awarded Jose, Jr. his salaries for the unexpired portion of the employment contract; (3) awarded Jose, Jr. $386 overtime pay; and (4) ruled that Jose, Jr. perfected his appeal within the reglementary period.

The Court of Appeals' Ruling

In its 11 May 2005 Decision, the Court of Appeals set aside the 19 January and 22 March 2004 Resolutions of the NLRC and reinstated the 18 June 2003 Decision of the Labor Arbiter. The Court of Appeals held that:

> The POEA standard employment contract adverted to in the labor arbiter's decision to which all seamen's contracts must adhere explicitly provides that the failure of a seaman to obey the policy warrants a penalty of dismissal which may be carried out by the master even without a notice of dismissal if there is a clear and existing danger to the safety of the vessel or the crew. That the petitioners were implementing a *no-alcohol, no drug* policy that was communicated to the respondent when he embarked is not in question. He had signed a document entitled *Drug and Alcohol Declaration* in which he acknowledged that alcohol beverages and unprescribed drugs such as marijuana were banned on the vessel and that any employee found possessing or using these substances would be subject to instant dismissal. He undertook to comply with the policy and abide by all the relevant rules and guidelines, including the system of random testing that would be employed to enforce it.
>
> We can hardly belabor the reasons and justification for this policy. The safety of the vessel on the high seas is a matter of supreme and unavoidable concern to all -- the owners, the crew and the riding public. In the ultimate analysis, a vessel is only as seaworthy as the men who sail it, so that it is necessary to maintain at every moment the efficiency