

FIRST DIVISION

[G.R. NO. 146174, July 12, 2006]

**DR. DANILO T. TING AND MRS. ELENA TING, DOING BUSINESS
UNDER THE NAME AND STYLE OF GST FISHING
ENTERPRISES, PETITIONERS, VS. HON. COURT OF APPEALS AND
PILARDO ISMAEL, RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for Review on *Certiorari* of the Decision^[1] of the Court of Appeals dated 5 June 2000 and Resolution^[2] dated 17 November 2000 in CA-G.R. SP No. 56062, which reversed and set aside the Decision^[3] of the National Labor Relations Commission (NLRC) dated 20 May 1999, and affirmed *in toto* the Decision^[4] of the Executive Labor Arbiter dated 15 February 1999. The Executive Labor Arbiter declared illegal the dismissal of private respondent Pilardo Ismael, and ordered petitioner GST Fishing Enterprises and/or Spouses Dr. Danilo Ting and Elena Ting, as owners thereof, to pay private respondent, inter alia, separation pay, backwages, unpaid wages and commissions.

As culled from the evidence on record, petitioner-spouses Danilo and Elena Ting are engaged in the operation of fishing boats plying the Zamboanga, Jolo, and Basilan seas under the business name and style of GST Fishing Enterprises.^[5] In March 1974, private respondent Pilardo Ismael was employed by petitioner-spouses as laborer. As such, private respondent was initially assigned to work in fishing boat, "F/B Liza I," one of the five fishing boats owned and operated by petitioner-spouses.^[6] In May 1989, private respondent was transferred to "F/B Queen Elena," and designated as the *maestro* thereof. Finally, in January 1992, private respondent was appointed Chiefmate of "F/B Liza III."

On 24 June 1998, private respondent filed a Complaint^[7] with the Regional Arbitration Branch No. IX of the NLRC, Zamboanga City, for illegal dismissal against petitioner-spouses and/or GST Fishing Enterprises, docketed as NLRC Case No. RAB-09-06-00214-98. Private respondent prayed for separation pay and backwages, unpaid wages covering the period of June 1 to 13, 1998, unpaid commission for May 1998, and 13th month differential pay.

In his Position Paper,^[8] dated 5 August 1998, private respondent alleged that at the time of his termination, he had worked for more than 24 years as a regular employee of petitioner-spouses; and that on 13 June 1998, he was verbally dismissed by petitioner-spouses from his employment, in disregard of the security of tenure accorded by law to regular employees. In a subsequent Manifestation,^[9] dated 9 August 1998, and consequently noted by the Labor Arbiter in the Order^[10]

of 18 August 1998, private respondent manifested that the dates, "June 1 to 13, 1998" as specified in his Complaint was erroneously included therein, and the same should read, "13th month pay differentials for 1997, 1996, and 1995."

Refuting the charge of illegal dismissal, petitioner-spouses, in their Position Paper^[11] contended that on 3 September 1993, private respondent was reprimanded for having sold, while on stream, an undetermined number of tubs of fish to two or more pump boats tailing behind the fishing vessel, "F/B Liza III." Petitioner-spouses further averred that on 6 July 1995, private respondent was rehired following his promise to reform, and eventually worked as patron/pilot on special license. Moreover, according to petitioner-spouses, private respondent, on several occasions, abandoned his post as patron of "F/B Liza II," while at sea, and boarded another carrier to take him to land, designating his responsibilities to a person not qualified nor authorized to perform the tasks of a patron.^[12] On 13 May 1997, private respondent disembarked from "F/B Liza III" despite instructions to the contrary, for which reason he was placed on preventive suspension for a period of 15 days. He was similarly warned that another offense will cause his termination.^[13] On 30 March 1998, private respondent, was again placed on preventive suspension for a period of ten days, for disembarking from "F/B Liza-II/35" while the same was operating at the fishing grounds, notwithstanding instruction to the contrary. On 11 June 1998, private respondent abandoned his post as patron of "F/B Liza-V"^[14] while on a fishing expedition at sea, and thereafter, boarded a carrier to take him to land. Due to the foregoing incident, on 16 June 1998, petitioner Elena Ting, as Operations Manager of GST Fishing Enterprises, issued a Memorandum^[15] to private respondent directing him to explain in writing within 48 hours why he should not be meted out the penalty of termination for gross and serious negligence of duty, prejudicing the interest of the company and placing the lives of the crew at the hands of an unqualified and unauthorized person at the high seas.^[16] Petitioner-spouses posited that the Memorandum of 16 June 1998 was served on private respondent, but he refused to sign the same;^[17] and failing to file his explanation in writing, private respondent ceased to report to work, and instead, filed a Complaint for illegal dismissal with the Regional Arbitration Branch No. IX of the NLRC.^[18]

The Ruling of the Labor Arbiter

Following an exchange of pleadings between the parties, the Executive Labor Arbiter rendered a Decision, dated 15 February 1999, finding for private respondent, and holding his dismissal illegal, thus:

WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered in the above-entitled case:

1. Declaring the dismissal of Pilardo Ismael to be illegal, and ordering GST Fishing Enterprises and/or spouses Dr. Danilo Ting and Elena Ting, as owners thereof, to pay said Pilardo Ismael separation and backwages, as well as unpaid wages and commissions, as follows[:]

Separation Pay ----- P 88,800.00

Backwages ----- 32,066.66

Unpaid Wages -----	1,480.00
Unpaid Commissions -----	751.50
TOTAL -----	<u>P123,098.16</u>

2. Dismissing complainant's claims for 13th month pay, and wage differentials, for lack of merit. [19]

The Executive Labor Arbiter held that the Memorandum of 16 June 1998 was issued belatedly as private respondent was dismissed on 13 June 1998.[20] Ruling on the substantive aspect of the dismissal, the Executive Labor Arbiter held that there was no just cause for the dismissal on the basis of private respondent's act of leaving work by disembarking from "F/B Liza II"[21] on 11 June 1998 to go to Zamboanga City for medical attention. The Executive Labor Arbiter ratiocinated in this wise:

Obviously, the complainant was dismissed because he left his lightboat (sic) (F/B "Liza II") and endorsed it to somebody whom the respondents allege was not qualified and authorized to act as "patron" thereof, and went to Zamboanga City, during an ongoing fishing expedition. There is no question about this. But the evidence on records (sic) shows that there was justification for what the complainant did; as already mentioned, he was then suffering from intensifying back and chest pains caused by an upper respiratory infection (Affidavit of Pilardo Ismael, Annex B). Surely, sickness justified an employee's being absent, or leaving his work.

Consequently, there was not (sic) cause for complainant's dismissal on the basis of his leaving work on 11 June 1998 to go to Zamboanga City for medical attention. This, needless to say, renders illegal his dismissal.

Anent [the] two (2) other previous incidents on 13 May 1997 and 30 May 1998 when the complainant also left the fishing boats to which he was assigned, despite instructions of the respondents to the contrary, the complainant had already been punished for these by suspensions. Apparently, his being suspended was proper because there was no explanation for what he did.

But with respect to the latest incident of 11 June 1998, there was reason for him to leave his lightboat. This[,] thus[,] differentiates this incident from the two other previous incidents.[22]

Consequently, the Executive Labor Arbiter awarded to private respondent separation pay in lieu of reinstatement.[23] Moreover, petitioner-spouses were directed to pay private respondent unpaid commissions.[24] However, private respondent's claims for 13th month pay and wage differentials were not granted for lack of basis therefore.[25]

Upon appeal, the NLRC rendered a Decision promulgated on 20 May 1999, declaring that private respondent is not entitled to separation pay and/or backwages, but only to an indemnity of P1,000.00, to be imposed upon petitioner-spouses and/or GST Fishing Enterprises for violating due process of law. The decretal portion thereof reads:

WHEREFORE, subject to the foregoing discussions, the assailed decision is Modified. Respondents are ordered to pay complainant the sums of P1,000.00, as indemnity and P2,231.50 for the unpaid wages and commissions. [26]

In stark contrast to the conclusion of the Executive Labor Arbiter, the NLRC upheld petitioner-spouses' exercise of management prerogative. It held private respondent's repeated infractions as just cause for his termination from employment, but ordered petitioner-spouses to pay indemnity on account of lack of observance of due process. The NLRC rationalized, thus:

It is an undisputed fact that on June 11, 1998, complainant, a "patron" of lightboat Liza II, left the fishing ground known as Duhay Bulod and proceeded to Zamboanga City to seek medical help. While in doing so, complainant likewise designated a person, who was not qualified nor authorized to perform the job of a "patron," to assume complainant's duties and responsibilities.

Although complainant's acts (sic) of going back to Zamboanga City due to upper respiratory infections (sic) do not warrant the assailed termination of employment, We cannot however go against the principle of management prerogative after taking into account the attendant facts and circumstances.

Complainant has a history of infractions for which corresponding penalties were meted out. Thus on account of the reported habit of complainant in leaving the workplace without the consent, knowledge and authority of respondents, the line was drawn. On June 11, 1998, complainant left the boat he was assigned to, without informing respondents. Worse, the lives of the crew members were left to an unqualified person designated by complainant. And while at Zamboanga City, complainant did not even inform respondents that the lightboat was manned by another person. Thus, complainant's lack of diligence and care for the lives of the crew left at sea does not deserve commendation.

As clearly pointed out in evidence, complainant was verbally terminated from employment on June 13, 1998, while the memorandum requiring an explanation was made on June 16, 1998. This memorandum however did not cure the defect of lack of due process, but, considering the circumstances which led to the termination of employer-employee relationship, which causes are attributed to complainant, We cannot, under the principle of management prerogative, substitute respondents' freedom to administer the affairs of their business enterprise (Chu vs. NLRC, 232 SCRA 764), under the guise of protection of labor, which at the very instance violated the law on life and limb. All said, complainant

is not therefore entitled to separation pay and/or backwages, but only to an indemnity of P1,000.00 to be imposed upon the respondents for violating the (sic) due process of law in accordance with the Wenphil ruling of the Supreme Court.^[27]

Private respondent's Motion for Reconsideration^[28] thereon was denied by the NLRC in the Resolution^[29] dated 31 August 1999, for lack of merit. Hence, private respondent filed a Petition for *Certiorari*^[30] with the Court of Appeals, imputing grave abuse of discretion amounting to lack or excess of jurisdiction to the NLRC, when it modified the decision of the Executive Labor Arbiter, and declared private respondent validly terminated from employment.

The Ruling of the Court of Appeals

The Court of Appeals found that private respondent's dismissal on 13 June 1998 was caused verbally and immediately, without observance of due process of law.^[31] The appellate court opined that the Memorandum of 16 June 1998, directing private respondent to explain in writing within 48 hours why he should not be terminated, was an afterthought to justify the illegal dismissal. Moreover, the Court of Appeals was not persuaded by petitioner-spouses' reliance on management prerogative in the dismissal of private respondent, ratiocinating that the latter had been duly sanctioned for his past offenses. According to the appellate court, when private respondent left "F/B Liza V" to seek emergency medical help, he cannot be punished for considering his life as primordial over all others.^[32] The *fallo* of the assailed Decision states, thus:

WHEREFORE, foregoing premises considered, the Petition is hereby GIVEN DUE COURSE, and the assailed judgment of the Public Respondent National Labor Relations Commission (Fifth Division, Cagayan de Oro City) REVERSED and SET ASIDE, and the decision of the Executive Labor Arbiter hereby AFFIRMED IN TOTO. ^[33]

The Court of Appeals rendered a Resolution dated 17 November 2000, denying petitioner-spouses' Motion for Reconsideration of the 5 June 2000 Decision.

Undaunted, petitioner-spouses come to us through the instant Petition for *Certiorari*, relying on management prerogative as a justification for private respondent's dismissal.

The Issue

The instant case brings to the fore the question of the legitimacy of an employee's dismissal. We are, thus, tasked to settle the sole issue of whether private respondent was illegally dismissed.

The Court's Ruling

To effectuate a valid dismissal from employment by the employer, the Labor Code has set twin requirements, namely: (1) the dismissal must be for any of the causes provided in Article 282^[34] of the Labor Code; and (2) the employee must be given an opportunity to be heard and defend himself.^[35] The first requisite is referred to