

## FIRST DIVISION

[ G.R. NO. 148893, July 12, 2006 ]

**SKIPPERS UNITED PACIFIC, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, GERVACIO ROSAROSO, AND COURT OF APPEALS,**

### D E C I S I O N

**AUSTRIA-MARTINEZ, J.:**

Respondent Gervacio Rosaroso\* was signed up as a Third Engineer with Nicolakis Shipping, S.A., a foreign firm, through its recruitment and manning agency, herein petitioner Skippers United Pacific, Inc. The term of the contract was for one year, starting July 10, 1997 to July 8, 1998, and with a salary of US\$800.00 and other benefits. Barely a month after boarding the vessel M/V Naval Gent on July 15, 1997, respondent was ordered to disembark in Varna, Bulgaria, on August 7, 1997, and repatriated to the Philippines. Immediately after arriving in the Philippines, respondent filed a complaint for illegal dismissal and monetary claims on August 18, 1997.<sup>[1]</sup>

In a Decision dated August 11, 1998, the Labor Arbiter found that respondent was illegally dismissed:

WHEREFORE, in the light of the foregoing, judgment is rendered finding the dismissal of complainant illegal. An order is issued directing the respondents to pay complainant the amount of US\$2,400.00 or its Philippine peso equivalent of P100,000.00 as separation pay plus the amount of US\$186.69 representing complainant's unpaid salary for seven (7) days or in the Philippine peso equivalent of P7,840.98 or the total amount of P108,640.98. On top of said amount, attorney's fees of P5,000.00 is also awarded.

SO ORDERED.<sup>[2]</sup>

On appeal, the National Labor Relations Commission (NLRC) affirmed the Labor Arbiter's Decision and dismissed petitioner's appeal per its Decision dated February 26, 1999.<sup>[3]</sup> Petitioner sought reconsideration thereof but its motion was denied by the NLRC in its Resolution dated May 27, 1999.<sup>[4]</sup>

Thus, petitioner filed with the Court of Appeals (CA) a special civil action for certiorari under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 53490.

On May 7, 2001, the CA<sup>[5]</sup> dismissed the petition and affirmed in toto the NLRC Decision dated February 26, 1999.<sup>[6]</sup> Petitioner filed a motion for reconsideration which was denied by the CA in its Resolution dated July 3, 2001.<sup>[7]</sup>

Hence, the present petition for review under Rule 45 of the Rules of Court with the following assignment of errors:

FIRST ASSIGNMENT OF ERROR

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT PETITIONER ILLEGALLY DISMISSED THE PRIVATE RESPONDENT.

SECOND ASSIGNMENT OF ERROR

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN AWARDING PRIVATE RESPONDENT BACKWAGES EQUIVALENT TO HIS THREE (3) MONTHS SALARY.<sup>[8]</sup>

Petitioner's main contention is that the CA, the NLRC and the Labor Arbiter erred in not giving "full evidentiary value" to the telexed Chief Engineer's Report dated September 10, 1997, which specified the causes of respondent's dismissal, quoted as follows:

TO: SKIPPERS MNL  
CC: SKIPPERS PIRAEUS  
FM: MV NAVAL GENT  
DT: SEPT. 10, 1997

DURING SHIP REPAIR AT PERAMA DD. 18/07-31/07/97 OUR ATTENDING SUPT. ENGINEERS CONSTANTLY OBSERVING ALL PERSONNELS ABILITY AND ATTITUDE WITH REGARDS TO OUR TECHNICAL CAPABILITY AND BEHAVIOURS WITH EMPHASY [SIC] ON DISCIPLINE. IT IS ONLY UNFORTUNATE THAT THEY NOTICED 3/E G. ROSAROSO AS BEING SLACK AND NOT CARING OF HIS JOB AND DUTIES BEING HIRED AS THIRD ENGR OFFICER, TO THE FULLEST BEYOND THEIR EXPECTATION. AFTER TOO MUCH OF CONSIDERATION AND DELIBERATION HAVING HIM CONSTANTLY ADVISED BY 2/E F. DIAMOS ASKING FOR HIS COOPERATION TO WORK AND HELP IN THE ONGOING ENORMOUS REPAIRS. BUT FAILED TO HEED AND REFUSED TO BE MOTIVATED. WE HAVE SEEKED [SIC] ADVISE FROM YOUR OFFICE VIA PHONE, SKIPPERS PIRAEUS THRU CAPT. KAMPANIS AND THE PORT CAPT OF NICOLAKIS SHIPPING CAPT. PAPASTILIANOS, OF WHAT TO BE DONE. THE OWNERS RECOMMENDATION WAS TO REPLACED [SIC] HIM ON THE FOLLOWING REASONS:

1) LACK OF DISCIPLINE - HE RESENTED DISCIPLINE. HE IS SEEN BY SUPT. ENGRS. ON SEVERAL OCCASION DURING WORKING HOURS STAYING ON PORTSIDE DECK SMOKING AND HAVING SNACKS. MANY TIMES HE IS INSIDE THE GALLEY CHATTING WITH CHIEF COOK DURING WORKING HOURS AND HAVING SNACKS. HE TENDS TO BE FREQUENTLY LATE FOR DUTY/WORK AND IS GENERALLY UNRELIABLE.

2) IRRESPONSIBLE - HE HAS NOT SHOWN A HIGH SENSE OF RESPONSIBILITY AS 3/ENGR. HE IS CAREFREE IN DISCHARGING HIS DUTIES IN MAINTAINING THE ASSIGNED MACHINERIES, SUCH AS BOILER, DIESEL GENERATORS, STARTING AIR COMPRESSORS AND

VARIOUS PUMPS. HE CANNOT BE TRUSTED TO DO HIS JOB UNLESS SUPERVISED PERPETUALLY.

3) LACK OF DILIGENCE - HE REQUIRES CONSTANT PUSHING AND HAS TO BE WATCHED MOST OF THE TIME. LACK OF INITIATIVE REGARDLESS OF CONSTANT MOTIVATION.

SGD. JEROME A. RETARDO

CHIEF ENGR<sup>[9]</sup>

According to petitioner, the foregoing Report established that respondent was dismissed for just cause. The CA, the NLRC, and the Labor Arbiter, however, refused to give credence to the Report. They are one in ruling that the Report cannot be given any probative value as it is uncorroborated by other evidence and that it is merely hearsay, having come from a source, the Chief Engineer, who did not have any personal knowledge of the events reported therein.

The Labor Arbiter ruled that the charges against respondent are bare allegations, unsupported by corroborating evidence. The Labor Arbiter stated that if respondent indeed committed the alleged infractions, then these should have, at the very least, been entered into the seaman's book, or that a copy of the vessel's logbook presented to prove the same.<sup>[10]</sup> The Labor Arbiter's findings were sustained by the NLRC.<sup>[11]</sup>

The CA upheld these findings, succinctly stating as follows:

Verily, the report of Chief Engineer Retardo is utterly bereft of probative value. It is not verified by an oath and, therefore, lacks any guarantee of trustworthiness. It is furthermore and this is crucial – not sourced from the personal knowledge of Chief Engineer Retardo. It is rather based on the perception of "ATTENDING SUPT. ENGINEERS CONSTANTLY OBSERVING ALL PERSONNELS ABILITY AND ATTITUDE WITH REGARDS TO OUR TECHNICAL CAPABILITY AND BEHAVIOURS WITH EMPHASY (sic) ON DISCIPLINE" who "NOTICED 3/E ROSAROSO AS BEING SLACK AND NOT CARING OF HIS JOB AND DUTIES X X X ." Accordingly, the report is plain hearsay. It is not backed up by the affidavit of any of the "Supt." Engineers who purportedly had first-hand knowledge of private respondent's supposed "lack of discipline," "irresponsibility" and "lack of diligence" which caused him to lose his job. x x x <sup>[12]</sup>

The Court finds no reason to reverse the foregoing findings.

To begin with, the question of whether respondent was dismissed for just cause is a question of fact which is beyond the province of a petition for review on certiorari. It is fundamental that the scope of the Supreme Court's judicial review under Rule 45 of the Rules of Court is confined only to errors of law. It does not extend to questions of fact. More so in labor cases where the doctrine applies with greater force.<sup>[13]</sup>

The Labor Arbiter and the NLRC have already determined the factual issues, and

these were affirmed by the CA. Thus, they are accorded not only great respect but also finality,<sup>[14]</sup> and are deemed binding upon this Court so long as they are supported by substantial evidence.<sup>[15]</sup> A heavy burden rests upon petitioner to convince the Court that it should take exception from such a settled rule.<sup>[16]</sup>

More importantly, the finding that respondent was illegally dismissed is supported, not only by the evidence on record, but by jurisprudence as well.

The rule in labor cases is that the employer has the burden of proving that the dismissal was for a just cause; failure to show this would necessarily mean that the dismissal was unjustified and, therefore, illegal.<sup>[17]</sup> The two-fold requirements for a valid dismissal are as follows: (1) dismissal must be for a cause provided for in the Labor Code, which is substantive; and (2) the observance of notice and hearing prior to the employee's dismissal, which is procedural.<sup>[18]</sup>

The only evidence relied upon by petitioner in justifying respondent's dismissal is the Chief Engineer's Report dated September 10, 1997. The question that arises, therefore, is whether the Report constitutes substantial evidence proving that respondent's dismissal was for cause.

Substantial evidence is defined as that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.<sup>[19]</sup> As all three tribunals found, the Report cannot be given any weight or credibility because it is uncorroborated, based purely on hearsay, and obviously merely an afterthought. While rules of evidence are not strictly observed in proceedings before administrative bodies,<sup>[20]</sup> petitioner should have offered additional proof to corroborate the statements described therein. Thus, in *Ranises v. National Labor Relations Commission*,<sup>[21]</sup> involving a seafarer who was repatriated to the Philippines for allegedly committing illegal acts amounting to a breach of trust, as based on a telex dispatch by the Master of the M/V Southern Laurel, the Court rejected the weight given by the NLRC on the telex, to wit:

Unfortunately, the veracity of the allegations contained in the aforecited telex was never proven by respondent employer. Neither was it shown that respondent employer exerted any effort to even verify the truthfulness of Capt. Sonoda's report and establish petitioner's culpability for his alleged illegal acts. Worse, no other evidence was submitted to corroborate the charges against petitioner.

Similarly in this case, petitioner should have presented other evidence to corroborate its claim that respondent's acts or omissions aboard the vessel M/V Naval Gent warrant his immediate repatriation. Moreover, the fact that the Report was accomplished on September 10, 1999, or more than a month after respondent was repatriated, makes it all the more suspect, and was obviously made to make it appear that there were valid reasons for respondent's dismissal.

Another analogous case worth citing is *Pacific Maritime Services, Inc. v. Ranay*.<sup>[22]</sup> This case involved two seafarers repatriated to the Philippines for committing acts on board the vessel M/V Star Princess, which acts amounted to serious misconduct, insubordination, non-observance of proper hours of work and damage to the laundry of the vessel's crew and passengers. In support of its claim that the respondents

were validly dismissed, the petitioners presented its lone evidence, a telefax transmission purportedly executed and signed by a certain Armando Villegas, detailing the incidents which prompted the termination of private respondents' services. The Court, however, ruled that the telefax transmission is not sufficient evidence, viz.:

Petitioners' reliance on the telefax transmission signed by Armando Villegas is woefully inadequate in meeting the required quantum of proof which is substantial evidence. For one thing, the same is uncorroborated. Although substantial evidence is not a function of quantity but rather of quality, the peculiar environmental circumstances of the instant case demand that something more should have been proffered. According to the account of Villegas, it appears that the incidents he was referring to transpired with the knowledge of some crew members. The alleged assault by Gerardo Ranay on Villegas, for instance, was supposedly witnessed by at least four other crew members. Surprisingly, none of them was called upon to testify, either in person or through sworn statements. Worse, Villegas himself who omitted some vital details in his report, such as the time and date of the incidents referred to, was not even presented as witness so that private respondents and the POEA hearing officer could have been given an opportunity to cross-examine and propound clarificatory questions regarding matters averred by him in the telefax transmission. Moreover, although signed, the same was not under oath and, therefore, of dubious veracity and reliability although admissible. Likewise, the motive is suspect and the account of the incidents dangerously susceptible to bias since it came from a person with whom private respondents were at odds. All told, petitioners failed to make up for the weakness of the evidence upon which they confidently anchored the merits of their case.

Likewise, the belated submission of the report by Villegas, long after the incidents referred to had taken place and after the complaint had been lodged by private respondents, weighs heavily against its credibility. Petitioners did not show any convincing reason why said report was only accomplished on September 22, 1989. They merely argued that as in criminal cases, the witness is usually reluctant to report an incident. At any rate, with present technology, a ship out at sea is not so isolated that its captain cannot instantly communicate with its office. It would appear that the report, filed several months later, is but an afterthought.

Therefore, the CA was correct in affirming the findings and conclusions of both the Labor Arbiter and the NLRC.

Petitioner maintains that it complied with the requisites of procedural due process. According to petitioner, respondent was constantly reprimanded and rebuked for his acts. Petitioner also contends that the ship's Master is allowed to dismiss an erring seafarer without hearing under Section 17, paragraph D of the Philippine Overseas Employment Administration (POEA) Standard Employment Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels. Paragraph D, Section 17, however, is not applicable in respondent's case.

Section 17 sets forth the disciplinary procedures against erring seafarers, to wit: