

## SECOND DIVISION

[ G.R. No. 204555, July 06, 2020 ]

**PEDRITO R. PARAYDAY AND JAIME REBOSO, PETITIONERS, VS.  
SHOGUN SHIPPING CO., INC.,<sup>[1]</sup> RESPONDENT.**

### DECISION

**HERNANDO, J.:**

This Petition for Review on *Certiorari*<sup>[2]</sup> assails the May 11, 2012 Decision<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 112075, which set aside the August 28, 2009 Decision<sup>[4]</sup> and October 27, 2009 Resolution<sup>[5]</sup> of the National Labor Relations Commission (NLRC) declaring herein petitioners Pedrito R. Parayday (Parayday) and Jaime Reboso (Reboso) to have been illegally dismissed from employment. In a November 19, 2012 Resolution,<sup>[6]</sup> the CA refused to reconsider its earlier Decision.

#### **Antecedent Facts**

This case stemmed from a complaint<sup>[7]</sup> for illegal dismissal and regularization, underpayment of wages, overtime pay, rest day pay, holiday pay, holiday premium, service incentive leave (SIL), thirteenth (13<sup>th</sup>) month pay, and night shift differential pay, and claims for moral and exemplary damages, and attorney's fees filed by Parayday and Reboso against respondent Shogun Shipping Co., Inc.<sup>[8]</sup> (Shogun Ships), and Vicente R. Cordero (Cordero) and Antonio "Nonie" C. Raymundo (Raymundo), President and Vice-President, respectively, of Shogun Ships.

Petitioners Parayday and Reboso alleged that they were employed sometime in October 1996 and March 1997, respectively, as fitters/welders by Oceanview/VRC Lighterage Co., Inc., and VRC/Oceanview Shipbuilders Co., Inc. (collectively referred to as "Oceanview"), corporations engaged in the business of ship building. As fitters/welders, petitioners' duties and responsibilities included, among others, assembling, welding, fitting, and installing materials or components using electrical welding equipment, and/or repairing and securing parts and assemblies of Oceanview barges.<sup>[9]</sup> In support of their allegation that they were employees of Oceanview, petitioners presented a copy of Parayday's Oceanview Identification Card (ID),<sup>[10]</sup> and Certificate of Employment (COE) dated February 5, 2001.<sup>[11]</sup>

Sometime in 2003, Oceanview changed its corporate name to "Shogun Ships Inc.," herein respondent. Shogun Ships maintained the same line of business, and retained in its employ Oceanview employees, such as petitioners.

In the course of their employment with Oceanview and later with Shogun Ships, petitioners worked for seven days every week, and were paid a daily salary of Three

Hundred Fifty Pesos (P350.00) until their separation from employment with Shogun Ships sometime in May 2008. Petitioners alleged that Shogun Ships furnished to them handwritten payslips or Time Keeper's Reports which indicated their names, the hours and days worked, and the amount of compensation received by them in a given workweek.<sup>[12]</sup> Petitioners further alleged that Shogun Ships failed to pay them their overtime pay, holiday pay, and premium pay despite having rendered work during holidays, Sundays, and rest days. Shogun Ships likewise did not pay petitioners their SIL and 13<sup>th</sup> month pay.

Sometime in May 2006, petitioners were assigned to Lamao, Limay, Bataan to do a welding job on one of the barges of Shogun Ships, M/T Daniela Natividad. On May 11, 2006, an explosion occurred which caused petitioners to sustain third degree burns on certain parts of their bodies. Petitioners were then hospitalized from May 11, 2006 until June 6, 2006. Although medical expenses were borne by Shogun Ships, petitioners were not paid their salaries while on hospital confinement. It was only on June 7, 2006, or after petitioners were discharged from the hospital, that Shogun Ships resumed payment of their salaries until the first week of August 2006. Thereafter, Shogun Ships discontinued providing petitioners financial assistance for payment of their medical expenses.

Petitioners alleged that subsequently the management of Shogun Ships verbally dismissed them from service effective May 1, 2008 due to lack of work as fitters/welders.

On its part, respondent denied outright that petitioners were engaged by Shogun Ships as regular employees. In support of its claim that no employer-employee relationship existed between Shogun Ships and petitioners, respondent pointed out that Shogun Ships, which is a corporation engaged in the business of domestic cargo shipping, was only incorporated sometime in November 2002,<sup>[13]</sup> several years after petitioners were engaged by Oceanview as its fitters/welders in 1996/1997. Anent petitioners' allegation of change of corporate name of Oceanview to Shogun Ships, respondent maintained that there was no such change of corporate name and that Oceanview was a separate and distinct entity from Shogun Ships.

Respondent alleged that, at best, petitioners were helpers brought in by regular employees of Shogun Ships on certain occasions when repairs were needed to be done on its barges. Respondent clarified that the regular employees of Shogun Ships occasionally called in their friends and nearby neighbors, such as petitioners, who were seeking temporary work as helpers until such time the needed repairs on the barges were carried out or completed. Shogun Ships compensated them for services rendered since the work done by these helpers were for the necessary repairs of its barges. Shogun Ships, however, did not engage them on a regular basis since their work on the barges was merely temporary or occasional. Moreover, Shogun Ships already had in its employ regular employees for its technical, mechanical, and electrical needs. Concomitantly, helpers were free to seek employment elsewhere at any given time.

To lend credence to respondent's claim that petitioners were merely occasionally engaged by employees of Shogun Ships with the view of helping petitioners earn additional income, respondent presented the sworn statements and affidavits<sup>[14]</sup> of

Lito C. Pano and Virgilio Soriano, Jr., Shogun Ships' Vessel Materials Coordinator and Warehouseman, respectively.

Sometime in 2008, the regular employees of Shogun Ships ceased calling helpers to work on the repairs of the barges since they could already be completed without the helpers' assistance. It was during this time that petitioners started demanding work from Shogun Ships, which the latter could not provide as there was no work to be done on the barges.

### **Ruling of the Labor Arbiter**

On April 27, 2009, Labor Arbiter Eduardo G. Magno promulgated a Decision,<sup>[15]</sup> the dispositive portion of which states:

**WHEREFORE,** Respondent Shogun Ships Co., Inc. is hereby ordered to reinstate complainants Pedrito R. Parayday and Jaime Reboso to their former position without loss of seniority rights with full backwages from time of dismissal until fully reinstated.

The computation of backwages from date of dismissal until date of this decision is as follows:

PEDRITO R. PARAYDAY	-	P108,150.00 and
JAIME REBOSO	-	P108,150.00

The claims for underpayment of wages and benefit are hereby denied for lack of factual basis.

The claim for damages and attorney's fees are likewise denied for lack of factual basis.

**SO ORDERED.**<sup>[16]</sup>

The Labor Arbiter held that petitioners were regular employees of Shogun Ships considering that they: (1) performed tasks necessary and desirable to its business; and (2) rendered more than one year of service at the time of their dismissal from employment. On the issue of illegal dismissal, the Labor Arbiter ruled in favor of petitioners and held that respondent failed to prove that petitioners were dismissed for just or authorized cause and that they were afforded procedural due process. In computing the amount of petitioners' backwages, the Labor Arbiter took into consideration petitioners' years of service not only with Shogun Ships, but also with its predecessor, Oceanview.

### **Ruling of the National Labor Relations Commission**

In its appeal<sup>[17]</sup> to the NLRC, respondent averred that the Labor Arbiter committed

serious error amounting to grave abuse of discretion in finding that petitioners were regular employees of Shogun Ships, and that petitioners were illegally dismissed from employment. Respondent mainly contended that using the four-fold test, petitioners cannot be considered as employees of Shogun Ships. Respondent also argued that the Labor Arbiter erred in ruling that Shogun Ships is one and the same entity as Oceanview, since Shogun Ships, unlike Oceanview which is engaged in ship building, is engaged in the business of domestic cargo shipping. Respondent added that the petitioners' functions as fitters/welders cannot be regarded as necessary and desirable to the business of cargo shipping as its barges are not consistently in a state of disrepair. As petitioners are not employees of Shogun Ships, respondent insisted that no dismissal ever took place, much more any illegal dismissal.

In its August 28, 2009 Decision,<sup>[18]</sup> the NLRC dismissed the appeal and affirmed the findings of the Labor Arbiter that petitioners were regular employees of Shogun Ships and that they were illegally dismissed from employment. The dispositive of the Decision states, as follows:

**WHEREFORE**, premises considered, the appeal from the Decision dated April 27, 2009 is hereby DISMISSED for lack of merit.

**SO ORDERED.**<sup>[19]</sup>

The NLRC took note of petitioners' allegations that after the May 11, 2006 explosion, they continued to render their services to Shogun Ships and even reported back for work in August 2006, which respondent did not categorically deny in its pleadings. Thus, even when their date of engagement with Shogun Ships was counted from the date of the incident, it would appear that petitioners have already rendered more than one year of service with Shogun Ships when they were purportedly dismissed from employment on May 1, 2008. On this premise, the NLRC held that the repeated and continuing need of petitioners' services as fitters/welders was sufficient evidence of the necessity if not indispensability of their functions, thus making them regular employees of Shogun Ships.

The NLRC also did not lend credence to the affidavits of Lito C. Panao and Virgilio Soriano, Jr. for the reason that they were biased witnesses.

On the issue of illegal dismissal, the NLRC affirmed the findings of the Labor Arbiter and held that respondent failed to prove that petitioners were dismissed for just or authorized cause.

### **Ruling of the Court of Appeals**

Aggrieved, respondent filed a Petition for *Certiorari*<sup>[20]</sup> (with Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order) before the CA ascribing upon the NLRC grave abuse of discretion amounting to lack or in excess of jurisdiction when it held that petitioners were employees of Shogun Ships and that they were illegally dismissed from employment.

In their Comment<sup>[21]</sup> to respondent's Petition for *Certiorari*, petitioners averred that the application of the four-fold test proved that they were employees of Shogun Ships. Petitioners also contended that their employment arrangement with Shogun Ships, *i.e.*, on a "per need" basis, was formulated to prevent them from acquiring regular employment status. Petitioners also harped on the supposed insufficiency of documentary evidence furnished by respondent which merely consisted of a copy of Shogun Ships' Certificate of Incorporation. Petitioners also claimed reinstatement and payment of their backwages and other monetary claims, including damages and attorney's fees.

In compliance with its July 8, 2010 Resolution,<sup>[22]</sup> the parties filed their respective memoranda<sup>[23]</sup> with the CA.

On May 11, 2012, the CA rendered its assailed Decision<sup>[24]</sup> granting respondent's Petition for *Certiorari* and setting aside the August 28, 2009 Decision and October 27, 2009 Resolution of the NLRC. The dispositive portion of the May 11, 2012 Decision reads as follows:

**WHEREFORE**, the petition is GRANTED. [sic] Setting aside the NLRC's Decision elated August 28, 2009 and Resolution dated October 27, 2009, the complaint for illegal dismissal and other money claims is consequently dismissed.

**SO ORDERED.**<sup>[25]</sup>

The CA concluded that petitioners failed to adduce substantial evidence to prove the existence of an employer-employee relationship between them and Shogun Ships. Considering the same, the CA held that there was no dismissal to speak of, much more any illegal dismissal.

While it took note of petitioners' Time Keeper's Reports which supposedly indicated that they have been reporting for work for seven days a week, the CA gave them no credence considering petitioners' failure to establish their genuineness and due execution. The CA also found that the records of the case were bereft of evidence which would prove that petitioners were continuously employed by Shogun Ships.

Additionally, the CA held that petitioners failed to prove that Oceanview were one and the same entity as Shogun Ships. The appellate court explained in this wise, *viz.*:

We have to stress, at this point, that a corporation has a personality separate and distinct from those of its stockholders and other corporations to which it may be connected. We cannot assume that the above-named companies are one and the same. Neither are we prepared to "pierce the veil of corporate fiction" as said doctrine comes into play "only during the trial of the case after the court has already acquired jurisdiction over the corporation," matters which are not present here. Worse, to apply such doctrine, it is important that the obtaining facts be