

SECOND DIVISION

[G.R. No. 222939, July 03, 2019]

**MECO MANNING & CREWING SERVICES, INC. AND CAPT.
IGMEDIO G. SORRERA, PETITIONERS, VS. CONSTANTINO R.
CUYOS, RESPONDENT.**

DECISION

J. REYES, JR., J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court which seeks to reverse and set aside the Decision^[1] dated May 28, 2015, and the Resolution^[2] dated January 21, 2016, of the Court of Appeals (CA) - Cebu City, in CA-G.R. SP No. 05091, which granted herein respondent Constantino R. Cuyos' (Constantino) petition for *certiorari* and consequently reversed and set aside the Decision^[3] dated September 30, 2009, and the Resolution^[4] dated January 15, 2010, of the National Labor Relations Commission (NLRC) - Cebu City in NLRC OFW No. VAC-05-000033-2009, which in turn affirmed the Decision^[5] dated February 12, 2009 of the Labor Arbiter in NLRC RAB-VII-03-0023-08 OFW, a case for illegal dismissal of a seafarer.

The Facts

On March 10, 2008, Cuyos filed a complaint for illegal dismissal and claims for salaries and other benefits for the unexpired portion of his employment contract, damages, and attorney's fees against International Crew Services, Ltd. (ICS), and petitioners Mecos Manning & Crewing Services, Inc. (MECO) and Captain Igmadio G. Sorrrera (Capt. Sorrrera) before the Regional Arbitration Branch of the NLRC in Cebu City. The petitioners moved for the dismissal of the case, but the same was denied by the Labor Arbiter. Thereafter, the parties were required to submit their respective position papers.

In his Position Paper,^[6] Constantino alleged that on December 11, 2007, MECO, for and on behalf of its principal, ICS, hired him as the Second Marine Engineer of the vessel "M/V Crown Princess." The employment was for a period of eight months commencing on December 10, 2007, under the following terms and conditions:

- 1.1. Duration
of the : Eight months
Contract
- 1.2. Position : Second Engineer
- 1.3. Basic
Monthly : US\$1,239.00 / Seniority Pay
Salary
US\$99.00 / SMB US\$330.00 /
Supplement Bonus US\$464.00

- 1.4. Hours of : 44 Hrs. per week
Work
- 1.5. : US\$773.00 F.O.T.
Overtime
- 1.6. Vacation
Leave with : US\$495.00 Per month
Pay
- 1.7. POINT : Manila, Philippines.^[7]
OF HIRE

On December 12, 2007, Constantino boarded the vessel.

Constantino claimed that the ship's Chief Engineer, Francisco G. Vera, Jr. (Vera), mistreated him during his short stay on board the "M/V Crown Princess." He recounted that on December 13, 2007, Vera started shouting at him whenever he would ask questions concerning the engine operations of the vessel; and that on January 9, 2008, he was attending to the freshwater generator when, all of a sudden, Vera slapped his hand and kept on shouting at him allegedly because he was not doing his work properly.

Finally, on February 14, 2008, Constantino was shocked when the Third Mate of the vessel handed to him an electronic plane ticket and informed him that he must disembark at Cristobal, Panama, where a reliever would take his place. After inquiring for the reason why he was suddenly being relieved, Captain G. Kolidas (Capt. Kolidas), the Master of the Vessel, told him that he would call their head office in Greece. After the said communication, however, Capt. Kolidas told him that it would be better for him to just go home as he did not have a good relation with Vera. Thus, on February 18, 2008, Constantino was made to disembark from the vessel against his will. He arrived in Manila on February 20, 2008.

On February 22, 2008, Constantino met with Capt. Sorrera at the MECO office and sought explanation for his unceremonious and illegal dismissal. Capt. Sorrera informed him that he was dismissed because he challenged Vera to a fight. Constantino denied the allegation and claimed that it was Vera who was very rude to him.

For their part, the petitioners, in their Position Paper,^[8] admitted that they hired Constantino as the Second Engineer on board "M/V Crown Princess" on December 11, 2007. However, they claimed that Constantino's dismissal was valid. They narrated that on January 2, 2008, at approximately 10:30 in the morning, Vera instructed Constantino to collect the engine garbage. Instead of carrying out the order, Constantino openly and strongly protested and was already prepared for a fight. To preserve the peace and avert physical confrontation, Vera no longer insisted on his order and merely reminded Constantino that as the Second Engineer, he (Constantino) could always direct his subordinates to perform these tasks.

Petitioners continued that on January 5, 2008, Vera instructed Constantino to dismantle the ship's freshwater generator ejector pump. Vera, however, noticed that Constantino was not dismantling the pump properly. Thus, in order to prevent damage on the pump, Vera ordered Constantino to stop. Vera then proceeded to show him the proper manner of dismantling the pump. However, Constantino turned ballistic, hurling invectives at Vera and threatened and attempted to harm him with

a spanner. Fortunately, cooler heads intervened and prevented Constantino from physically hurting Vera.

Finally, on January 17, 2008, at around 1:00 p.m. in the afternoon, Vera directed Constantino to clean the scavenge areas of the engine room. However, Constantino protested vehemently. In order to avoid more trouble, Vera chose to report the incident to Capt. Kolidas.

Petitioners claimed that Constantino's dismissal was necessitated by reason of his unsatisfactory performance evaluation, violation of his contract of employment as he violated the provisions on insubordination and inefficiency, his angry and provocative utterances and his attempt to physically assault his superior. Thus, Constantino's dismissal was for a just cause and was resorted to in order to protect and maintain the peace of the vessel and the safety of its crew.

In support of their allegations, the petitioners attached a facsimile message dated February 1, 2008 (Annex "2"),^[9] purportedly signed by Capt. Kolidas; an unsigned facsimile message dated February 9, 2008 (Annex "2-A"),^[10] with an attached "decklog extract" dated February 9, 2008 (Annex "2-B");^[11] and a letter dated January 6, 2008 (Annex "3"),^[12] signed by Vera and attested to by two witnesses, namely, Edgar Villanueva, the vessel's Third Engineer, and Rigor Buenaventura, the vessel's Electrician.

Ruling of the Labor Arbiter

In its assailed Decision dated February 12, 2009, the Labor Arbiter dismissed the complaint for lack of merit. It ratiocinated that the pieces of evidence presented by the petitioners clearly showed that Constantino defied the lawful orders of his superior officer. This, according to the Labor Arbiter, constituted serious misconduct and willful disobedience which are legal causes for termination of an employee. Further, considering that his termination was valid, the Labor Arbiter ruled that Constantino was not entitled to his money claims. The dispositive portion of the decision states:

WHEREFORE, premises considered, judgment is hereby rendered
DISMISSING the instant case for lack of merit.^[13]

Aggrieved, Constantino elevated an appeal to the NLRC. Constantino later submitted an Affidavit^[14] dated April 3, 2009 as an addendum to his appeal memorandum. In the said affidavit, he specifically denied the allegations against him by the petitioners.

Ruling of the NLRC

In its Decision dated September 30, 2009, the NLRC affirmed the February 12, 2009 Labor Arbiter's Decision. The NLRC concurred with the Labor Arbiter's observation that Constantino committed serious misconduct and willful disobedience when he disobeyed the lawful orders of his superior officer, when he challenged his superior officer to a fistfight, and when he attempted to assault his superior officer. Thus, the petitioners have the right to terminate his employment. The dispositive portion of the decision provides:

WHEREFORE, premises considered, the decision of the Labor Arbiter dated 12 February 2009 is hereby **AFFIRMED**.^[15]

Constantino moved for reconsideration, but the same was denied by the NLRC in its Resolution dated January 15, 2010.

Undaunted, Constantino filed a petition for *certiorari* before the CA.

The Ruling of the CA

In its Decision dated May 28, 2015, the CA reversed and set aside the September 30, 2009 Decision and the January 15, 2010 Resolution of the NLRC. The appellate court did not share the conclusions reached by the Labor Arbiter and the NLRC. Instead, it ruled that the petitioners failed to present substantial evidence to prove that Constantino's dismissal was made for a valid and justifiable cause.

It opined that the documents presented by the petitioners, constituting of the facsimile messages and Vera's letter, are insufficient to prove the alleged insubordination and defiance by Constantino. It stressed that the rule that the entries in the ship's logbook are *prima facie* evidence of the incident in question is true only if the logbook itself containing such entries or photocopies of the pertinent pages thereof were presented in evidence. It noted that in this case, what the petitioners presented are only facsimile messages purportedly containing typewritten excerpts from the ship's logbook. Thus, they could not be considered as *prima facie* evidence of the incidents in question.

The appellate court also found the facsimile message dated February 1, 2008 to be dubious and unreliable. In this facsimile message, Capt. Kolidas stated that Constantino started creating problems against Vera since he boarded the vessel and that Constantino even challenged Vera to a fight. For these reasons, he stated that he was of the opinion that Constantino must be replaced as the Second Engineer as soon as possible. However, the appellate court noted that this facsimile message was sent only on February 20, 2008 as could be shown by the electronic annotation "20/02/2008 14:41" appearing on the upper right corner of the message. This, according to the appellate court, is inconsistent with the facts of the case considering that Constantino was already informed of his dismissal on February 14, 2008, and that he already disembarked from the vessel on February 18, 2008. The appellate court further ruled that Vera's January 6, 2008 letter is self-serving and uncorroborated by any evidence. As such, it cannot be given any weight and credit.

The appellate court further ruled that the petitioners failed to afford Constantino due process. It observed that the petitioners failed to comply with the two-notice requirement prior to the termination of the employment of an employee. In sum, the appellate court ruled that Constantino was dismissed without just cause and without due process. The dispositive portion of the CA Decision states:

WHEREFORE, premises considered, the instant Petition for *Certiorari* is GRANTED. The Decision dated September 30, 2009 and the Resolution dated January 15, 2010 of the National Labor Relations Commission, Seventh Division, Cebu City, in NLRC OFW No. VAC-05-000033-2009, are REVERSED and SET ASIDE. A new decision is rendered declaring petitioner Constantino R. Cuyos to have been illegally terminated from

employment. Accordingly, private respondents Meco Manning & Crewing Services, Inc., International Crew Services, Ltd. and Captain Igmedio G. Sorra are ordered to pay, jointly and severally, [Cuyos]: (1) his salaries corresponding to the unexpired portion of his employment contract, at the rate of US\$1,239.00 per month, or its peso equivalent at the exchange rate at the time of actual payment; (2) his placement fee with 12% interest per annum, pursuant to Section 10 of Republic Act No. 8042; and (3) attorney's fees of 10% of the aggregate monetary award.

Let this case be remanded to the Labor Arbiter for proper computation of [Cuyos's] monetary awards in accordance with this decision.

SO ORDERED.^[16]

The petitioners moved for reconsideration, but the same was denied by the CA in its Resolution dated January 21, 2016.

Hence, this petition.

The Issue

WHETHER THE COURT OF APPEALS ERRED WHEN IT RULED THAT CONSTANTINO R. CUYOS WAS ILLEGALLY DISMISSED FROM EMPLOYMENT.

The petitioners insist that the CA erred in reversing the Labor Arbiter's and NLRC's decisions. They argue that the logbook entries, as extracted by the master of the vessel, sufficiently established that Constantino committed serious misconduct and willful disobedience. Further, they posit that the existence of a logbook does not preclude the admission and consideration of other accounts relating to the incident on board the vessel. Thus, the Labor Arbiter and the NLRC correctly ruled that Constantino was validly dismissed as satisfactorily shown in Vera's letter and the report by Capt. Kolidas, as contained in his facsimile transmissions. They further claim that Constantino never controverted the contents of Vera's letter and the facsimile messages during the hearing of the case before the Labor Arbiter.

The petitioners also maintain that the CA erred when it ruled that Constantino was not afforded due process. They contend that under Section 17(D) of the 2000 Standard Terms and Conditions Governing the Employment of Filipino Seafarer On-Board Ocean-Going Vessels (POEA-SEC), dismissal for just cause may be effected by the Master without furnishing the seafarer with a notice of dismissal if there is a clear and existing danger to the safety of the crew or the vessel.

For his part, Constantino, in his Comment^[17] dated July 18, 2016 and Expanded Discussion^[18] dated July 28, 2016, counters that the CA did not err when it reversed the Labor Arbiter's and NLRC's decisions. He also insists that he vehemently disputed the allegations of gross misconduct and willful disobedience, contrary to the assertions by the petitioners. Moreover, he maintains that the petitioners failed to afford him due process when they decided to suddenly terminate his employment. He points out that in their position paper, the petitioners themselves admitted that they did not provide him with written notices of the charges against him and of his dismissal. In sum, Constantino contends that the CA