

FIRST DIVISION

[G.R. No. 207010, February 18, 2015]

MAERSK-FILIPINAS CREWING, INC., A.P. MOLLER SINGAPORE PTE. LIMITED, AND JESUS AGBAYANI, PETITIONERS, VS. TORIBIO C. AVESTRUZ,* RESPONDENT.

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated January 4, 2013 and the Resolution^[3] dated April 16, 2013 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 125773 which reversed and set aside the Decision^[4] dated April 26, 2012 and the Resolution^[5] dated June 18, 2012 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. (M) 07-10704-11 [NLRC LAC No. (OFW-M)-01-000123-12] dismissing the illegal dismissal complaint filed by respondent Toribio C. Avestruz (Avestruz) and awarding him nominal damages.

The Facts

On April 28, 2011, petitioner Maersk-Filipinas Crewing, Inc. (Maersk), on behalf of its foreign principal, petitioner A.P. Moller Singapore Pte. Ltd. (A.P. Moller), hired Avestruz as Chief Cook on board the vessel *M/V Nedlloyd Drake* for a period of six (6) months, with a basic monthly salary of US\$698.00.^[6] Avestruz boarded the vessel on May 4, 2011.^[7]

On June 22, 2011, in the course of the weekly inspection of the vessel's galley, Captain Charles C. Woodward (Captain Woodward) noticed that the cover of the garbage bin in the kitchen near the washing area was oily. As part of Avestruz's job was to ensure the cleanliness of the galley, Captain Woodward called Avestruz and asked him to stand near the garbage bin where the former took the latter's right hand and swiped it on the oily cover of the garbage bin, telling Avestruz to feel it. Shocked, Avestruz remarked, "*Sir if you are looking for [dirt], you can find it[;] the ship is big. Tell us if you want to clean and we will clean it.*" Captain Woodward replied by shoving Avestruz's chest, to which the latter complained and said, "*Don't touch me,*" causing an argument to ensue between them.^[8]

Later that afternoon, Captain Woodward summoned and required^[9] Avestruz to state in writing what transpired in the galley that morning. Avestruz complied and submitted his written statement^[10] on that same day. Captain Woodward likewise asked Messman Jomilyn P. Kong (Kong) to submit his own written statement regarding the incident, to which the latter immediately complied.^[11] On the very same day, Captain Woodward informed Avestruz that he would be dismissed from service and be disembarked in India. On July 3, 2011, Avestruz was disembarked in

Colombo, Sri Lanka and arrived in the Philippines on July 4, 2011.^[12]

Subsequently, he filed a complaint^[13] for illegal dismissal, payment for the unexpired portion of his contract, damages, and attorney's fees against Maersk, A.P. Moller, and Jesus Agbayani (Agbayani), an officer^[14] of Maersk.^[15] He alleged that no investigation or hearing was conducted nor was he given the chance to defend himself before he was dismissed, and that Captain Woodward failed to observe the provisions under Section 17 of the Philippine Overseas Employment Administration (POEA) Standard Employment Contract (POEA-SEC) on disciplinary procedures. Also, he averred that he was not given any notice stating the ground for his dismissal.^[16] Additionally, he claimed that the cost of his airfare in the amount of US\$606.15 was deducted from his wages.^[17] Furthermore, Avestruz prayed for the award of the following amounts: (a) US\$5,372.00 representing his basic wages, guaranteed overtime, and vacation leave; (b) on board allowance of US\$1,936.00; (c) ship maintenance bonus of US\$292.00; (d) hardship allowance of US\$8,760.00; (e) P300,000.00 as moral damages, (f) P200,000.00 as exemplary damages; and (g) attorney's fees of ten percent (10%) of the total monetary award.^[18]

In their defense,^[19] Maersk, A.P. Moller, and Agbayani (petitioners) claimed that during his stint on the vessel, Avestruz failed to attend to his tasks, specifically to maintain the cleanliness of the galley, which prompted Captain Woodward to issue weekly reminders.^[20] Unfortunately, despite the reminders, Avestruz still failed to perform his duties properly.^[21] On June 22, 2011, when again asked to comply with the aforesaid duty, Avestruz became angry and snapped, retorting that he did not have time to do all the tasks required of him. As a result, Captain Woodward initiated disciplinary proceedings and informed Avestruz during the hearing of the offenses he committed, i.e., his repeated failure to follow directives pertaining to his duty to maintain the cleanliness of the galley, as well as his act of insulting an officer.^[22] Thereafter, he was informed of his dismissal from service due to insubordination.^[23] Relative thereto, Captain Woodward sent two (2) electronic mail messages^[24] (e-mails) to Maersk explaining the decision to terminate Avestruz's employment and requesting for Avestruz's replacement. Avestruz was discharged from the vessel and arrived in the Philippines on July 4, 2011.^[25]

Petitioners maintained that Avestruz was dismissed for a just and valid cause and is, therefore, not entitled to recover his salary for the unexpired portion of his contract.^[26] They likewise claimed that they were justified in deducting his airfare from his salary, and that the latter was not entitled to moral and exemplary damages and attorney's fees.^[27] Hence, they prayed that the complaint be dismissed for lack of merit.^[28]

The LA Ruling

In a Decision^[29] dated November 29, 2011, the Labor Arbiter (LA) dismissed Avestruz's complaint for lack of merit. The LA found that he failed to perform his duty of maintaining cleanliness in the galley, and that he also repeatedly failed to obey the directives of his superior, which was tantamount to insubordination.^[30] In support of its finding, the LA cited the Collective Bargaining Agreement^[31] (CBA)

between the parties which considers the act of insulting a superior officer by words or deed as an act of insubordination.^[32]

Aggrieved, Avestruz appealed^[33] to the NLRC.

The NLRC Ruling

In a Decision^[34] dated April 26, 2012, the NLRC sustained the validity of Avestruz's dismissal but found that petitioners failed to observe the procedures laid down in Section 17 of the POEA-SEC,^[35] which states:

SECTION 17. DISCIPLINARY PROCEDURES.

The Master shall comply with the following disciplinary procedures against an erring seafarer:

- A. The Master shall furnish the seafarer with a **written notice** containing the following:
 1. **Grounds for the charges** as listed in Section 33 of this Contract or analogous act constituting the same.
 2. **Date, time and place for a formal investigation** of the charges against the seafarer concerned.
- B. **The Master or his authorized representative shall conduct the investigation or hearing, giving the seafarer the opportunity to explain or defend himself against the charges. These procedures must be duly documented and entered into the ship's logbook.**
- C. If after the investigation or hearing, the Master is convinced that imposition of a penalty is justified, the Master shall issue **a written notice of penalty and the reasons for it to the seafarer, with copies furnished to the Philippine agent.**
- D. 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. The Master shall send a complete report to the manning agency substantiated by witnesses, testimonies and any other documents in support thereof. (Emphases supplied)

As the records are bereft of evidence showing compliance with the foregoing rules, the NLRC held petitioners jointly and severally liable to pay Avestruz the amount of P30,000.00 by way of nominal damages.^[36]

Avestruz moved for reconsideration^[37] of the aforesaid Decision, which was denied in the Resolution^[38] dated June 18, 2012. Dissatisfied, he elevated the matter to

the CA *via* petition for *certiorari*.^[39]

The CA Ruling

In a Decision^[40] dated January 4, 2013, the CA reversed and set aside the rulings of the NLRC and instead, found Avestruz to have been illegally dismissed. Consequently, it directed petitioners to pay him, jointly and severally, the full amount of his placement fee and deductions made, with interest at twelve percent (12%) per annum, as well as his salaries for the unexpired portion of his contract, and attorney's fees of ten percent (10%) of the total award. All other money claims were denied for lack of merit.^[41]

In so ruling, the CA found that the conclusion of the NLRC, which affirmed that of the LA, that Avestruz was lawfully dismissed, was not supported by substantial evidence, there being no factual basis for the charge of insubordination which petitioners claimed was the ground for Avestruz's dismissal. It found that petitioners, as employers, were unable to discharge the burden of proof required of them to establish that Avestruz was guilty of insubordination, which necessitates the occurrence of two (2) conditions as a just cause for dismissal: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge. The CA found that, contrary to the rulings of the labor tribunals, there was no evidence on record to bolster petitioners' claims that Avestruz willfully failed to comply with his duties as Chief Cook and that he displayed a perverse and wrongful attitude.^[42]

Moreover, it gave more credence to Avestruz's account of the incident in the galley on June 22, 2011, being supported in part by the statement^[43] of Kong, who witnessed the incident. On the other hand, the e-mails sent by Captain Woodward to Maersk were uncorroborated. On this score, the CA observed the absence of any logbook entries to support petitioners' stance.^[44]

Similarly, the CA found that petitioners failed to accord procedural due process to Avestruz, there being no compliance with the requirements of Section 17 of the POEA-SEC as above-quoted, or the "two-notice rule." It held that the statement^[45] Captain Woodward issued to Avestruz neither contained the grounds for which he was being charged nor the date, time, and place for the conduct of a formal investigation. Likewise, Captain Woodward failed to give Avestruz any notice of penalty and the reasons for its imposition, with copies thereof furnished to the Philippine Agent.^[46]

In arriving at the monetary awards given to Avestruz, the CA considered the provisions of Section 7 of Republic Act No. (RA) 10022,^[47] amending RA 8042,^[48] which grants upon the illegally dismissed overseas worker "the full reimbursement [of] his placement fee and the deductions made with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract." However, with respect to Avestruz's claims for overtime and leave pay, the same were denied for failure to show entitlement thereto. All other monetary claims were likewise denied in the absence of substantial evidence to prove the same.

Finally, the CA awarded attorney's fees of ten percent (10%) of the total monetary award in accordance with Article 111^[49] of the Labor Code.^[50]

Petitioners moved for reconsideration,^[51] which the CA denied in its Resolution^[52] dated April 16, 2013, hence, this petition.

The Issue Before the Court

The sole issue advanced for the Court's resolution is whether or not the CA erred when it reversed and set aside the ruling of the NLRC finding that Avestruz was legally dismissed and accordingly, dismissing the complaint, albeit with payment of nominal damages for violation of procedural due process.

The Court's Ruling

The petition is devoid of merit.

Generally, a re-examination of factual findings cannot be done by the Court acting on a petition for review on *certiorari* because the Court is not a trier of facts but reviews only questions of law.^[53] Thus, in petitions for review on *certiorari*, only questions of law may generally be put into issue. This rule, however, admits of certain exceptions.^[54] In this case, considering that the factual findings of the LA and the NLRC, on the one hand, and the CA, on the other hand, are contradictory, the general rule that only legal issues may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court does not apply,^[55] and the Court retains the authority to pass upon the evidence presented and draw conclusions therefrom.^[56]

It is well-settled that the burden of proving that the termination of an employee was for a just or authorized cause lies with the employer. If the employer fails to meet this burden, the conclusion would be that the dismissal was unjustified and, therefore, illegal.^[57] In order to discharge this burden, the employer must present substantial evidence, which is defined as that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion,^[58] and not based on mere surmises or conjectures.^[59]

After a punctilious examination of the evidence on record, the Court finds that the CA did not err in reversing and setting aside the factual conclusions of the labor tribunals that Avestruz's dismissal was lawful. Instead, the Court finds that there was no just or valid cause for his dismissal, hence, he was illegally dismissed.

Petitioners maintain that Avestruz was dismissed on the ground of insubordination, consisting of his "repeated failure to obey his superior's order to maintain cleanliness in the galley of the vessel" as well as his act of "insulting a superior officer by words or deeds."^[60] In support of this contention, petitioners presented as evidence the e-mails sent by Captain Woodward, both dated June 22, 2011, and time-stamped 10:07 a.m. and 11:40 a.m., respectively, which they claim chronicled the relevant circumstances that eventually led to Avestruz's dismissal.

The Court, however, finds these e-mails to be uncorroborated and self-serving, and