

FIRST DIVISION

[G.R. No. 160338, October 06, 2008]

**VENTIS MARITIME CORPORATION AND BELSALLY SHIPPING,
S.A., PETITIONERS, VS. COURT OF APPEALS, NATIONAL LABOR
RELATIONS COMMISSION AND AGAPITO C. AGONCILLO, JR.,
RESPONDENTS.**

D E C I S I O N

CARPIO, J.:

The Case

Before the Court is a petition for review^[1] assailing the 30 June 2003 Decision^[2] and 9 October 2003 Resolution^[3] of the Court of Appeals in CA-G.R. SP No. 64391.

The Antecedent Facts

On 8 January 1998, Ventis Maritime Corporation (Ventis) hired Agapito C. Agoncillo, Jr. (respondent) as a Third Officer for its principal Belsally Shipping, S.A. (Belsally). Respondent was deployed on board MV Orchid Bridge (formerly MV Bangkok Bridge). Under the Employment Contract, respondent was entitled to a basic monthly salary of US\$650, supervisory allowance of US\$228 a month, subsistence allowance of US\$33 a month, guaranteed overtime pay of US\$484 a month, and vacation leave with pay of US\$130. The contract period was for ten months.

On 24 June 1998, MV Orchid Bridge docked in the port of Manila. Respondent asked permission from the vessel's Master to allow him to visit his wife who was confined at the Seaman's Hospital in Manila for an operation. The vessel's Master allowed respondent to leave provided that he would rejoin the vessel when it returns to Singapore and Malaysia on 2 July 1998. Respondent obtained a cash advance of US\$500 prior to his disembarkation. Two days before his scheduled return to the vessel, respondent informed Ventis that he could not leave his wife to rejoin the vessel. He was replaced by one Celino Dio. Respondent's wife was discharged from the hospital on 11 July 1998.

On 24 July 1998, Ventis filed a Complaint for Disciplinary Action against respondent before the Philippine Overseas Employment Agency (POEA). Ventis alleged that respondent committed a serious breach of contract and prayed, among others, for the cancellation of respondent's name from the POEA's Seaman's Book of Registry and for his permanent disqualification from the POEA's Overseas Program.

During the pendency of the case, respondent filed a complaint for illegal dismissal, non-payment of salaries, overtime pay, vacation pay, and other monetary claims before the Labor Arbiter against Ventis and Belsally (petitioners). Petitioners countered that respondent's act violated the Seaman's Oath of Undertaking which

requires the employee to serve his employer at least a one-month notice before he terminates his contract.

The Ruling of the Labor Arbiter

In her 15 February 1999 Decision,^[4] Labor Arbiter Ermita Abrasaldo- Cuyuca (Labor Arbiter) ruled, as follows:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondent Ventis Maritime Corporation and Belsally Shipping S.A. to pay complainant Agapito C. Agoncillo, Jr. the amount of US\$767.84 representing his unpaid salary and other accrued benefits for the month of June 1998.

Ten percent of the amount awarded as and for attorney's fees.

Other claims are dismissed for lack of merit.

SO ORDERED.^[5]

The Labor Arbiter ruled that respondent was not illegally dismissed from employment. The Labor Arbiter ruled that respondent admitted that he failed to finish his contract because he failed to rejoin the vessel as he had agreed with the vessel's Master. The Labor Arbiter ruled that as Third Officer and fourth in command of a vessel, respondent's duties and responsibilities could not just be delegated to any member of the crew. The Labor Arbiter ruled that respondent's separation from service was of his own doing. As such, he was not entitled to payment of his salaries for the unexpired portion of his contract or the three-month salary under Republic Act No. 8042.^[6] The Labor Arbiter only awarded respondent's accrued benefits^[7] until 24 June 1998.

Respondent appealed from the Labor Arbiter's Decision before the National Labor Relations Commission (NLRC).

The Ruling of the NLRC

In its 21 June 2000 Decision,^[8] the NLRC set aside the Labor Arbiter's Decision. The NLRC ruled that respondent did not abandon his work but sought the permission of the vessel's Master before disembarking. The NLRC ruled that respondent's acts were justified under the circumstances. The NLRC ruled that under the Collective Bargaining Agreement (CBA) between All Japan Seamen's Union/Associated Marine Officers and Seamen's Union of the Philippines and Taiyo Kabushi Kaisha represented by Ventis, respondent may take a leave of absence during his spouse's illness. The NLRC ruled that respondent's absence from 2 July 1998 until 11 July 1998 hardly constituted abandonment as to warrant his dismissal from the service. The NLRC ruled that before the vessel's departure on 2 July 1998, respondent already sent a message to the Master that he could not rejoin the vessel and recommended someone to take his place. The NLRC noted that respondent's clearance, given by the Japan Maritime Safety Agency and acknowledged by the ship's Master, stated that respondent would disembark for humanitarian reasons. The NLRC stated that respondent should also be allowed to extend his leave for

humanitarian reasons. Finally, the NLRC ruled that respondent's dismissal was tainted with bad faith.

The dispositive portion of the NLRC's Decision reads:

WHEREFORE, the appealed decision is set aside. Judgment is hereby rendered ordering respondents to jointly and severally pay:

1. complainant his salaries equivalent to the unexpired portion of his contract;
2. P50,000.00 as moral damages; and
3. Attorney's fee of 10% of the total award hereof.

The claim for exemplary damages is dismissed for lack of sufficient basis.

The claim for reinstatement or payment of separation pay is denied because based on the records, complainant is a contract worker with a fixed period of employment of ten (10) months.

SO ORDERED.^[9]

Petitioners moved for reconsideration of the NLRC's Decision. In its 29 November 2000 Order,^[10] the NLRC denied their motion.

Petitioners filed a petition for certiorari before the Court of Appeals.

The Ruling of the Court of Appeals

In its 30 June 2003 Decision, the Court of Appeals affirmed the NLRC's Decision. The Court of Appeals ruled that for a dismissal to be valid, two requirements must be met: the employee must be afforded due process, and the dismissal must be for a valid cause. The Court of Appeals sustained the NLRC's finding that respondent was dismissed without being informed of the cause of his dismissal and without being afforded the opportunity to present his side. The Court of Appeals likewise rejected petitioners' claim that respondent abandoned his post as Third Officer when he failed to return to the vessel on the agreed date. The Court of Appeals sustained the NLRC's finding that two days before he was expected to join the vessel, respondent informed the ship's Master that he could not rejoin the vessel and he recommended someone to take his place. The Court of Appeals further sustained the NLRC that petitioners should have allowed respondent to extend his leave for humanitarian reasons.

The dispositive portion of the Court of Appeals' Decision reads:

WHEREFORE, this instant Petition for Certiorari with prayer for the issuance of a Writ of Preliminary Injunction and/or a Temporary Restraining Order is hereby DENIED. The Decision of the National Labor Relations Commission dated June 21, 2000 in NLRC NCR CA No. 09699-99, is hereby AFFIRMED. Additionally, petitioners Ventis Maritime Corporation and Bel Sally Shipping, S.A. are directed to reimburse private respondent Agapito Agoncillo his placement fee with twelve percent (12%) interest per annum conformably with Sec. 10 of RA 8042.