

FIRST DIVISION

[G.R. NO. 166363, August 15, 2006]

**SKIPPERS UNITED PACIFIC, INC., AND J.P. SAMARTZSIS
MARITIME ENTERPRISES CO., S.A., PETITIONERS, VS. JERRY
MAGUAD AND PORFERIO CEUDADANO, RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before this Court is a Petition for Review on *Certiorari* seeking to review and set aside the Decision^[1] and Resolution^[2] of the Court of Appeals dated 27 July 2004 and 14 December 2004, respectively, in CA-G.R. SP No. 80651, which declared null and void the Resolutions of the National Labor Relations Commission (NLRC) dated 26 May 2003^[3] and 8 September 2003.^[4]

The antecedent facts of the case are as follows:

Herein petitioners are Skippers United Pacific, Inc., the former manning agency for the vessel MV Hanjin Vancouver, and its foreign principal, J.P. Samartzsis Maritime Enterprises Co., S.A. Herein respondents Jerry Maguad and Porferio Ciudadano were recruited by petitioner Skippers United Pacific, Inc., to work on board the aforementioned vessel as 4th Engineer and Bosun, respectively. Respondents lodged a complaint against petitioners before the NLRC. In their Position Paper,^[5] they alleged, among other things, that:

Sometime in June 1998, complainants [herein respondents] were contracted by respondent [herein petitioner] Skippers [United Pacific, Inc.], to work on board the vessel MV "Hanjin Vancouver," as Fitter for a contract period of nine (9) months plus or minus one (1) month pay [by] mutual consent. In a POEA contract of employment,^[6] complainant had to work under the following terms and conditions:

JERRY P. MAGUAD

POSITION	: 4 th Engineer
BASIC MO. SALARY	: US\$536.00
HOURS OF WORK	: 48 hours/week
FIXED OVERTIME	: US\$160.80
OT AFTER 105/HRS	: US\$3.22
LEAVE PAY	: US\$107.20

PORFERIO L. CIUDADANO

POSITION	: Bosun
BASIC MO. SALARY	: US\$451.00

HOURS OF WORK	:	48 hours/week
FIXED OVERTIME	:	US\$135.30
OT AFTER 105/HRS	:	US\$2.71
LEAVE PAY	:	US\$90.20

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However, [these] contracts were adjusted by respondent Skipper's representative in the person of their General Manager, Ms. Gloria N. Almodiel, and was further noted by the Owner's representative Mr. Filippos Karabatsis. The adjustments made were as follows^[7]:

JERRY P. MAGUAD

BASIC MO. SALARY	:	US\$915.00
FIXED OVERTIME	:	US\$681.00 (105 hrs)
LEAVE PAY	:	US\$214.00
OVERSEAS ALLOWANCE	:	US\$126.00
OT (AFTER 105/HRS)	:	US\$6.61

PORFERIO L. CIUDADANO

BASIC MO. SALARY	:	US\$609.00
FIXED OVERTIME	:	US\$453.00 (105 hrs)
LEAVE PAY	:	US\$142.00
OVERSEAS ALLOWANCE	:	US\$126.00
OT (AFTER 105/HRS)	:	US\$4.40

x x x x

On or about June 14, 1998, complainants joined [their] vessel of assignment at the port of Korea to work thereon in accordance with the aforesaid contract of employment. Thereafter, [they] performed their official functions and duties diligently and efficiently.

However, on July 29, 1998 at the port of Osaka, Japan, [they were] unceremoniously discharged from the aforesaid vessel and immediately repatriated to Manila without being given any notice of the reason for their discharge and without giving [them] an opportunity to be heard. Despite earnest demands, respondents unjustifiably failed and refused to pay complainants' unexpired portion of [their] contract.^[8]

Petitioners, on the other hand, contended that they could not be held liable for illegal dismissal because the respondents were dismissed for cause, that is, for incompetence. The petitioners, in their Position Paper before the NLRC, averred, among other things, that:

On or about 8 June 1998, complainants [herein respondents] Maguad and Ciudadano were both contracted by respondent [herein petitioner] Skippers United Pacific, Inc. (for and in behalf of its principal, J.P. Samartzis Maritime Enterprises Co. S.A.) to serve as 4th Engineer and Bosun, respectively for the vessel MV "Hanjin Vancouver" for a contract

period of nine (9) months plus or minus one (1) month by mutual consent for the following salaries:

JERRY P. MAGUAD

BASIC MO. SALARY	:	US\$536.00
FIXED OVERTIME PAY	:	US\$160.80
OT AFTER 105/HOURS	:	US\$3.22
LEAVE PAY	:	US\$107.20

PORFERIO L. CIUDADANO

BASIC MO. SALARY	:	US\$451.00
FIXED OVERTIME PAY	:	US\$135.30
OT AFTER 105/HOURS	:	US\$2.71
LEAVE PAY	:	US\$90.20

On or about 24 June 1998, complainants boarded the vessel MV Hanjin Vancouver; however, less than one (1) month from their arrival on board said vessel, the vessel's Master reported both complainants' incompetence and the Owners in a telex message dated 21 July 1998 informed herein respondent Skippers United Pacific, Inc. of the urgent need to replace both Maguad and Ciudadano for their incompetence and enormous difficulties produced thereof to the work on board.

On or about 29 July 1998, both complainants were repatriated from Pusan, Korea with herein respondent advancing their repatriation costs.

[9]

Consequently, upon repatriation, respondents filed a Complaint for Illegal Dismissal on 14 August 1998 before the Arbitration Branch of the NLRC with prayer for payment of salaries for the unexpired portion of their contract, moral and exemplary damages, and attorney's fees. The Labor Arbiter issued a Decision^[10] on 20 September 1999 finding respondents to have been illegally dismissed. The dispositive portion of which reads, thus;

WHEREFORE, premises considered, judgment is hereby rendered declaring that complainants [herein respondents] have indeed been illegally dismissed from their employment. Accordingly, respondents [herein petitioners] are hereby directed to pay [herein respondents] their respective three (3) months' salaries, as follows:

(a) For Jerry P. Maguad – US\$5,808.00

(b) Porferio L. Ciudadano – US\$3,990.00

On appeal by petitioners, the NLRC en banc in its Resolution^[11] dated 31 May 2001, remanded the case to the Arbitration Branch of origin for immediate further proceedings for failure of the Labor Arbiter to appreciate material evidence such as: (1) the logbook extracts submitted by petitioners to corroborate its defense that respondents were dismissed for incompetence and (2) the confirmation letters presented by the respondents showing that they were signed off to transfer to another vessel due to crew reduction per Administration's status and Owner's

Orders. Both parties had questioned the authenticity and veracity of the documentary evidence presented by the opposing party.

To conform to the Resolution of the NLRC dated 31 May 2001, the Labor Arbiter conducted further proceedings. The Labor Arbiter rendered a Decision^[12] on 13 February 2002 dismissing the respondents for being unfit and incompetent to perform their respective functions, overturning his previous Decision of 20 September 1999. The dispositive portion reads, thus:

WHEREFORE, in the light of the foregoing premises, the above-entitled case is hereby DISMISSED for being devoid of legal merit.

To justify his findings, the Labor Arbiter made the following discussions, thus:

After a careful re-evaluation of the evidence on record, this Office finds that it indeed overlooked the fact that there are pieces of evidence for the respondents other than the telex mentioned in the subject Decision. That contrary to its findings in the questioned Decision dated 20 September 1999 that respondents' evidence in support of their defense in this case consists solely of an "uncorroborated telex message," respondents actually have adduced other pertinent evidence such as logbook extracts and the Master's Statement supporting such logbook entries. Be it emphasized at this juncture that in our jurisdiction, it is settled and recognized that logbook entries constitute *prima facie* evidence of the facts contained therein and have enjoy the stamp of presumption of regularity.^[13]

Aggrieved, it was the respondents' turn to interpose an appeal before the NLRC *en banc*. The NLRC rendered a Resolution^[14] on 26 May 2003 affirming the afore-quoted findings of the Labor Arbiter, thus:

WHEREFORE, premises considered, the assailed decision is hereby affirmed. Complainant's appeal is dismissed for lack of merit.

Respondents moved for the reconsideration of the foregoing decision of the NLRC. However, said Motion for Reconsideration was denied through a Resolution^[15] issued by the NLRC on 8 September 2003. Consequently, respondents filed a Petition for *Certiorari* before the Court of Appeals docketed as CA-G.R. SP No. 80651.

The Court of Appeals rendered a Decision^[16] on 27 July 2004 granting the petition and declaring null and void the Resolutions of the NLRC dated 26 May 2003 and 8 September 2003, and reinstating the Decision^[17] of the Labor Arbiter dated 20 September 1999, to wit:

WHEREFORE, in consideration of the foregoing, the petition for certiorari is perforce granted. Accordingly, the Resolutions of the public respondent NLRC dated 26 May 2003 and 8 September 2003 are hereby declared null and void. Accordingly, the Decision of the Honorable Labor Arbiter dated 20 September 1999 is hereby reinstated.

On 26 August 2004, petitioners filed a Motion for Reconsideration of the 27 July 2004 Decision of the Court of Appeals alleging that Skippers United Pacific, Inc.,

should not be made liable because: (1) it is no longer the manning agency responsible since Sea Power Shipping Enterprises, Inc., and Evic Human Resources Management, Inc., had executed Affidavits of Assumption of Responsibility, and (2) it has complied with the legal requirements for the dismissal of an employee.

The Court of Appeals denied the Motion for Reconsideration in its Resolution dated 14 December 2004 because the grounds and arguments relied upon by the petitioners were already heard and considered by the Court of Appeals in their Decision promulgated on 27 July 2004.

Hence, this Petition.

Petitioners submit that the Court of Appeals committed a reversible error in rendering its Decision and Resolution dated 27 July 2004 and 14 December 2004, respectively, for they are contrary to law and existing jurisprudence. Hence, petitioners presented before this Court the following issues:

- I. Whether or not the warning notices given to respondents substantially [complied] with the requirements of the Labor Code in effecting a valid dismissal.
- II. Whether or not the Court of Appeals may reinstate a Decision of the Labor Arbiter, which the latter himself reversed and considered flawed.^[18]

In the Memorandum^[19] filed by petitioners, they maintain that there was just and valid cause for the dismissal of the respondents. Thus, petitioners posit that the only issue relevant to the dismissal of the respondents in this Petition is the question on compliance with the two- notice requirement mandated by the Labor Code, as amended.^[20]

The petitioners argue that the Court of Appeals seriously erred in not considering the warning notices issued to respondents as substantial compliance with the requirements laid down in the Labor Code, as amended, in effecting a valid dismissal. According to petitioners, such notices were issued days before respondents were signed-off on 29 July 1998, so that ample opportunity was given to the respondents to defend themselves and refute the accusations against them. Thus, petitioners stand firm on their position that the dismissal of the respondents was with cause and there was compliance with the requirement of due process in effecting a valid dismissal.

Petitioners further claim that it was reversible error on the part of the Court of Appeals to reinstate a Decision of the Labor Arbiter, which the latter himself reversed and considered flawed for his failure to consider other pieces of evidence which were presented by both parties.

In contrast, the respondents raise before this Court the following issues:

- I. Whether or not Rule 45 is proper in the instant case.
- II. Whether or not the decision of the Court of Appeals is erroneous.