

SECOND DIVISION

[G.R. NO. 158324, March 14, 2005]

**ROBERTO RAVAGO, PETITIONER, VS. ESSO EASTERN MARINE,
LTD. AND TRANS-GLOBAL MARITIME AGENCY, INC.,
RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

Before us is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Court, as amended, of the Decision^[1] of the Court of Appeals (CA) as well as its Resolution in CA-G.R. SP No. 66234 which denied the motion for reconsideration thereof.

The Factual Antecedents

The Esso Eastern Marine Ltd. (EEM), now the Petroleum Shipping Ltd., is a foreign company based in Singapore and engaged in maritime commerce. It is represented in the Philippines by its manning agent and co-respondent Trans-Global Maritime Agency, Inc. (Trans-Global), a corporation organized under the Philippine laws.

Roberto Ravago was hired by Trans-Global to work as a seaman on board various Esso vessels. On February 13, 1970, Ravago commenced his duty as S/N wiper on board the Esso Bataan under a contract that lasted until February 10, 1971. Thereafter, he was assigned to work in different Esso vessels where he was designated diverse tasks, such as oiler, then assistant engineer. He was employed under a total of 34 separate and unconnected contracts, each for a fixed period, by three different companies, namely, Esso Tankers, Inc. (ETI), EEM and Esso International Shipping (Bahamas) Co., Ltd. (EIS), Singapore Branch. Ravago worked with Esso vessels until August 22, 1992, a period spanning more than 22 years, thus:

CONTRACT FROM	DURATION TO	POSITION	VESSEL	COMPANY
13 Feb 70	10 Feb 71	SN/Wiper	Esso Bataan	ETI ^[2]
07 May 71	27 May 72	Wiper	Esso Yokohama	EEM ^[3]
07 Aug 72	02 Jul 73	Oiler	Esso Kure	EEM
03 Oct 73	30 Jun 74	Oiler		
18 Sep 74	26 July 75	Oiler	Esso Yokohama	EEM
23 Oct 75	22 Jun 76	Oiler	Esso Port Dickson	EEM

10 Sep 76	26 Dec 76	Oiler	Esso Bangkok	ETI
27 Dec 76	29 Apr 77	Temporary Jr. 3AE	Esso Bangkok	ETI
08 Jul 77	15 Mar 78	Jr. 3AE	Esso Bombay	ETI
03 Jun 78	03 Feb 79	Temporary Jr. 3AE	Esso Hongkong	ETI
04 Apr 79	24 Jun 79	3AE	Esso Orient	EEM
25 Jun 79	16 Jul 79	3AE	Esso Yokohama	EEM
17 Jul 79	05 Dec 79	3AE	Esso Orient	EEM
10 Feb 80	25 Oct 80	3AE	Esso Orient	EEM
19 Jan 81	03 Jun 81	3AE	Esso Port Dickson	EEM
04 Jun 81	11 Sep 81	3AE	Esso Orient	EEM
06 Dec 81	20 Apr 82	3AE	Esso Chawan	EEM
21 Apr 82	01 Aug 82	Temporary 2AE	Esso Chawan	EEM*
03 Nov 82	06 Feb 83	2AE	Esso Jurong	EEM
07 Feb 83	10 Jul 83	2AE	Esso Yokohama	EEM
31 Aug 83	13 Mar 84	2AE	Esso Tumasik	EEM
04 May 84	08 Jan 85	2AE	Esso Port Dickson	EEM
13 Mar 85	31 Oct 85	2AE	Esso Castellon	EEM
29 Dec 85	22 Jul 86	2AE	Esso Jurong	EIS ^[4]
13 Sep 86	09 Jan 87	2AE	Esso Orient	EIS
21 Mar 87	15 Oct 87	2AE	Esso Port Dickson	EIS
20 Nov 87	18 Dec 87	1AE	Esso Chawan	EIS
19 Dec 87	25 Jun 88	2AE	Esso Melbourne	EIS
04 Aug 88	19 Mar 89	Temporary 1AE	Esso Port Dickson	EIS
20 Mar 89	19 May 89	1AE	Esso Port Dickson	EIS*
28 Jul 89	17 Feb 90	1AE	Esso Melbourne	EIS
16 Apr 90	11 Dec 90	1AE	Esso Orient	EIS

09 Feb 91	06 Oct 91	1AE	Esso Melbourne	EIS
16 Dec 91	22 Aug 92	1AE	Esso Orient	EIS

* Upgraded/Confirmed on regular rank on board.^[5]

On August 24, 1992, or shortly after completing his latest contract with EIS, Ravago was granted a vacation leave with pay from August 23, 1992 until October 28, 1992. Preparatory to his embarkation under a new contract, he was ordered to report, on September 28, 1992, for a Medical Pre-Employment Examination.^[6] The Pre-Employment Physical Examination Record shows that Ravago passed the medical examination conducted by the O.P. Jacinto Medical Clinic, Inc. on October 6, 1992.^[7] He, likewise, attended a Pre-Departure Orientation Seminar conducted by the Capt. I.P. Estaniel Training Center, a division of Trans-Global, on October 7, 1992.^[8]

On the night of October 12, 1992, a stray bullet hit Ravago on the left leg while he was waiting for a bus ride in Cubao, Quezon City. He fractured his left proximal tibia and was hospitalized at the Philippine Orthopedic Hospital. Ravago's wife, Lolita, informed Trans-Global and EIS of the incident on October 13, 1992 for purposes of availing medical benefits. As a result of his injury, Ravago's doctor opined that he would not be able to cope with the job of a seaman and suggested that he be given a desk job.^[9] Ravago's left leg had become apparently shorter, making him walk with a limp. For this reason, the company physician, Dr. Virginia G. Manzo, found him to have lost his dexterity, making him unfit to work once again as a seaman.^[10] Citing the opinion of Ravago's doctor, Dr. Manzo wrote:

... Because of his unsteady gait, pronounced limp, and loss of normal dexterity of his leg and foot, we doubted whether Mr. Ravago can physically tackle the usual activities of a seaman in the course of his work without any added risk over and above the ordinary or standard risk inherent to his job. These activities include climbing up and down the engine room through a long flight of iron stairs with narrow steps which could be slippery at times due to grease or oil, jumping from an unsteady and floating motor launch or boat to board or alight a tanker through a flight of steps or climbing up and down a pilot ladder, wearing of heavy safety shoes, etc.

Mr. Ravago's doctor replied that, after being informed about the nature of the job, he believes that Mr. Ravago would not be able to cope with these kinds of activities. In effect, the Orthopedic doctor said Mr. Ravago is not fit to go back to his work as a seaman.

We concur with the opinion of the doctor that Mr. Ravago is not fit to go back to his job as a seaman in view of the risk of physical injury to himself as result of the deformity and loss of dexterity of his injured leg.

As a seaman, we consider his inability partial permanent. His injury corresponds to Grade 13 in the Schedule of Disability of the Standard Employment Contract. ...^[11]

Consequently, instead of rehiring Ravago, EIS paid him his Career Employment Incentive Plan (CEIP)^[12] as of March 1, 1993 and his final tax refund for 1992. After deducting his Social Security System and medical contributions from November 1992 to February 1993, EIS remitted the net amount of P162,232.65, following Ravago's execution of a Deed of Quitclaim and/or Release.^[13]

However, on March 22, 1993, Ravago filed a complaint^[14] for illegal dismissal with prayer for reinstatement, backwages, damages and attorney's fees against Trans-Global and EIS with the Philippine Overseas Employment Administration Adjudication Office.

In their Answer dated April 14, 1993, respondents denied that Ravago was dismissed without notice and just cause. Rather, his services were no longer engaged in view of the disability he suffered which rendered him unfit to work as a seafarer. This fact was further validated by the company doctor and Ravago's attending physician. They averred that Ravago was a contractual employee and was hired under 34 separate contracts by different companies.

In his position paper, Ravago insisted that he was fit to resume pre-injury activities as evidenced by the certification^[15] issued by Dr. Marciano Foronda M.D., one of his attending physicians at the Philippine Orthopedic Hospital, that "at present, fracture of tibia has completely healed and patient is fit to resume pre-injury activities anytime."^[16] Ravago, likewise, asserted that he was not a mere contractual employee because the respondents regularly and continuously rehired him for 23 years and, for his continuous service, was awarded a CEIP payment upon his termination from employment.

On December 15, 1996, Labor Arbiter Ramon Valentin C. Reyes rendered a decision in favor of Ravago, the complainant. He ruled that Ravago was a regular employee because he was engaged to perform activities which were usually necessary or desirable in the usual trade or business of the employer. The Labor Arbiter noted that Ravago's services were repeatedly contracted; he was even given several promotions and was paid a monthly service experience bonus. This was in keeping with the increasing number of long term careers established with the respondents. Finally, the Labor Arbiter resolved that an employer cannot terminate a worker's employment on the ground of disease unless there is a certification by a competent public health authority that the said disease is of such nature or at such a stage that it cannot be cured within a period of six months even with proper medical treatment. He concluded that Ravago was illegally dismissed. The decretal portion of the Labor Arbiter's decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding the dismissal illegal and ordering respondents to reinstate complainant to his former position without loss of seniority rights and other benefits. Further, the respondents are jointly and severally liable to pay complainant backwages from the time of his dismissal up to the promulgation of this decision. Such backwages is provisionally fixed at US\$96,285.00 less the P162,285.83 (sic) paid to the complainant as Career Employment Incentive Plan. And ordering respondents to pay complainant 10% of the total monetary award as attorney's fees.

All other claims are dismissed for lack of merit.

SO ORDERED.^[17]

Aggrieved, the respondents appealed the decision to the National Labor Relations Commission (NLRC) on July 3, 1997, raising the following grounds:

THE DECISION IS VITIATED BY SERIOUS ERRORS IN THE FINDINGS OF FACT WHICH, IF NOT CORRECTED, WOULD CAUSE GRAVE OR IRREPARABLE DAMAGE OR INJURY TO THE RESPONDENTS. THESE FINDINGS ARE:

- A. THAT COMPLAINANT WAS A REGULAR EMPLOYEE BECAUSE HE WAS HIRED AND REHIRED IN VARIOUS CAPACITIES ON BOARD ESSO VESSELS IN A SPAN OF 23 YEARS;
- B. THAT COMPLAINANT WAS A REGULAR EMPLOYEE BECAUSE HE WAS ENGAGED IN THE SERVICES INDISPENSABLE IN THE OPERATION OF THE VARIOUS VESSELS OF RESPONDENTS;
- C. THAT COMPLAINANT WAS FIT TO RESUME PRE-INJURY ACTIVITIES AND HIS FRACTURE COMPLETELY HEALED NOTWITHSTANDING A CONTRARY MEDICAL OPINION OF COMPLAINANT'S OWN PHYSICIAN AND RESPONDENTS' COMPANY PHYSICIAN; AND
- D. THAT COMPLAINANT WAS ILLEGALLY DISMISSED BY RESPONDENTS.^[18]

On April 26, 2001, the NLRC rendered a decision affirming that of the Labor Arbiter. The NLRC based its decision in the case of *Millares v. National Labor Relations Commission*,^[19] wherein it was held that:

It is, likewise, clear that petitioners had been in the employ of the private respondents for 20 years. The records reveal that petitioners were repeatedly re-hired by private respondents even after the expiration of their respective eight-month contracts. Such repeated re-hiring which continued for 20 years, cannot but be appreciated as sufficient evidence of the necessity and indispensability of petitioners' service to the private respondents' business or trade.

Verily, as petitioners had rendered 20 years of service, performing activities which were necessary and desirable in the business or trade of private respondents, they are, by express provision of Article 280 of the Labor Code, considered regular employees.^[20]

The NLRC, likewise, declared that Ravago was illegally dismissed and that the quitclaim executed by him could not be considered as a waiver of his right to question the validity of his dismissal and seek reinstatement and other reliefs. According to the NLRC, such quitclaim is against public policy, considering the economic disadvantage of the employee and the inevitable pressure brought about by financial capacity.

The respondents filed a motion for reconsideration of the decision, claiming that the