

SECOND DIVISION

[G.R. No. 142609, November 25, 2004]

**SEASTAR MARINE SERVICES, INC. AND CICERO L. MALUNDA,
PETITIONERS, VS. LUCIO A. BUL-AN, JR., RESPONDENT.**

DECISION

CALLEJO, SR., J.:

This is a petition for review under Rule 45 of the Rules of Civil Procedure, as amended, of the Resolution^[1] of the Court of Appeals (CA) dated April 29, 1999, dismissing the petition for certiorari filed by petitioner Seastar Marine Services, Inc. (Seastar), as well as the Resolution^[2] dated February 29, 2000, denying the motion for reconsideration thereof.

The Antecedents

Respondent Lucio A. Bul-an, Jr. was hired by petitioner Seastar as an Able Seaman for and in behalf of H.S.S. Holland Ship Service, B.V., on board the M/V Blue Topaz. Under the contract of employment which was approved by the Pre-Employment Services Office of the Philippine Overseas Employment Administration (POEA) on April 26, 1995, the respondent was to receive a monthly salary of US\$350.00 for nine (9) months and would be working for 48 hours per week. The said contract was duly signed by the respondent and the President of petitioner Seastar, petitioner Captain Cicero L. Malunda.^[3]

On April 28, 1995, the respondent boarded the M/V Blue Topaz off the coast of Castellon, Spain, with a complement composed mostly of Filipinos.^[4] Shortly thereafter, or on June 16, 1995, Chief Mate Benjamin A. Paruginog mauled the respondent, causing bodily harm and physical injuries to the latter. The respondent immediately reported the incident to Master Captain Stumpe Luitje Jacobus, who assured him that he would settle the matter with Paruginog.

In a Letter^[5] dated June 17, 1995, Captain Jacobus reported to his superiors at the Topaz Seal Shipping Company, Ltd. that the respondent was uncooperative, refused to obey his orders and those of the chief officer, and often pretended to be ill in order to be "free of duty." The Captain expressed his fears of getting into serious trouble in the future with the respondent, and for this reason, wanted to "have this man relieved." A note was inserted below the letter indicating that the respondent had left without permission on "the evening of June 26 at Villanueva, Spain." The letter was countersigned by several crew members, including Paruginog.

Apparently, the respondent had again been maltreated by Paruginog that day. Since the Captain was out on shore, the respondent had decided to immediately leave the boat after the incident. He returned after four (4) days with a priest and Atty.

Rafael de Muller Barbat with the intention of taking up the matter with Captain Jacobus. However, the Captain refused to accept his explanation and sided with Paruginog.^[6]

In a Letter^[7] dated August 20, 1995 addressed to petitioner Malunda, Paruginog reported the respondent's unusual behavior since boarding the ship, and the circumstances leading to the latter's disembarkation. He denied the respondent's allegations that he (Paruginog) made threats to kill the respondent. Thereafter, Captain Jacobus reiterated his complaints on the respondent's work and uncooperative attitude in another Letter^[8] to his superiors dated August 21, 1995. The Captain explained that he was watching out for the respondent for fear that the latter would force the crew "to do something" so that he (the respondent) could get a free ticket home.

Because of the Captain's refusal to take him back as a member of the complement of the ship, the respondent was forced to seek help from the Philippine Embassy at Barcelona, Spain, and executed an Affidavit^[9] on the matter on June 30, 1995. The respondent was left with no other recourse but to return to the Philippines on July 4, 1995.

Thereafter, the respondent filed a complaint for illegal dismissal with prayer for payment of back wages, as well as actual, moral and exemplary damages against the petitioners. The complaint was docketed as OCW Case No. 00-10-00400-95. The complainant alleged that due to the Captain's refusal to accept him upon his return to the ship, he was forced to return to the Philippines. He immediately reported the matter to the petitioners, but instead of receiving assistance, he was even scolded for returning home. Thus, he sent two letters to the petitioners dated July 12, 1995 and August 2, 1995, demanding the payment of his wages from April 26, 1995 to July 5, 1995. Since his demands were not acted upon, he was constrained to file the case for illegal dismissal.

For its part, petitioner Seastar alleged that the respondent was "psychologically ill" and was dismissed for a justified and lawful cause. It was averred that even only after a few days of boarding the M/V Blue Topaz, the respondent already showed unusual behavior. He not only refused to obey orders from his superior officers; he also refused to work, spending working hours in his cabin, and totally alienated himself from the rest of the complement of the ship, inclusive of its master and officers. Thus:

His actuation or manifestation of himself as the Captain, who is part owner of the vessel, described him, complainant is "**just like he lost his common sense.**"

At the beginning, that is, after about a week on board, he confronted the Master of the vessel and told him "**that the vessel was too small for him and too many work.**" Just the same, he was told by the Master that he "**still have to stay your tour.**" Complainant continuous (sic) to disobey his master and officers and behave indifferently as if he is mentally ill.

On June 26, 1995, while the vessel was anchored at Villanueva, Spain,

complainant abandoned ship and was not found until he was reported to the local authorities who located him at Stella Maris Seaman's Club. He claimed that because of fear to be killed or thrown over board by the Chief Officer who is also a Filipino, he abandoned ship and hide (sic) at said Club.

Due to the troubles and problems being encountered by the Master of the vessel and the crew with complainant, he was dismissed and repatriated.

[10]

On November 19, 1997, the labor arbiter rendered a decision in favor of the respondent. The dispositive portion reads:

IN THE LIGHT OF THE FOREGOING, decision is hereby rendered in favor of the complainant and ordering the respondents to pay complainant:

- a. Eighteen Thousand Two Hundred Pesos (P18,200.00) representing unpaid salaries for the first two (2) months of complainant;
- b. Forty Thousand Nine Hundred Fifty Pesos (P40,950.00) equivalent to three (3) months salary for the unexpired portion of the employment contract;
- c. Ten Thousand Pesos (P10,000.00) as actual damages;
- d. Fifty Thousand Pesos (P50,000.00) as moral damages and Thirty Thousand Pesos (P30,000.00) as exemplary damages; and
- e. Ten percent (10%) of all sums owing to complainant as attorney's fees. [11]

The labor arbiter ruled that the petitioner was dismissed without just cause. According to the labor arbiter, the allegation that the respondent was insane was not proven by the petitioners and, as such, the presumption of sanity in favor of the respondent remained unrebutted. Furthermore, considering that the respondent was not given any notice prior to his dismissal, the petitioners failed to observe the twin requirement of notice and hearing, which constitute the essential elements of due process in cases of employee dismissal. The labor arbiter, likewise, stated that the duration of the respondent's contract with the petitioners was for nine months at \$350.00 (approximately P9,100.00). Since the respondent's services were unjustly terminated only after two (2) months of employment, without his wages having been paid, the labor arbiter ruled that the respondent was entitled to "the full reimbursement of the placement fee with interest at twelve percent (12%) per annum, plus salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less," conformably to Section 10, paragraph 6 of Republic Act No. 8042, otherwise known as the Migrant Worker's Act. Citing *Reta v. NLRC*, [12] the labor arbiter awarded actual damages in favor of the respondent for the petitioners' failure to observe due process. Moral and exemplary damages were also awarded in accordance with the ruling of the Court in *Maglutac v. NLRC*, [13] including attorney's fees.

The labor arbiter also held that petitioner Seastar, as the private employment agency, is jointly and solidarily liable with its foreign principal, conformably to the ruling of the Court in *Catan v. NLRC*. [14]

The petitioners assailed the decision of the labor arbiter before the National Labor Relations Commission (NLRC). The appeal was docketed as NLRC NCR CA Case No. 014485-98.

In a Resolution^[15] dated September 15, 1998, the NLRC ruled in favor of the respondent and dismissed the appeal for lack of merit, holding that under the facts and circumstances obtaining in the case at bar, the respondent could not be said to have abandoned or resigned from his work. As such, the "inescapable conclusion" was that he was illegally dismissed and entitled to receive the money award given by the labor arbiter. It was further stated that the findings of fact of the labor arbiter are entitled to great respect and are generally binding on the Commission, as long as they are substantially supported by the established facts and evidence on record, as well as the applicable law and jurisprudence, and that in this case, the labor arbiter committed no grave abuse of discretion. As such, the appeal must be dismissed. The dispositive portion of the decision reads:

WHEREFORE, the instant appeal is hereby DISMISSED for lack of merit and the appealed decision, dated 19 November 1997 of Labor Arbiter Ariel Cadiente Santos, is AFFIRMED.

SO ORDERED.^[16]

The motion for reconsideration of the petitioners was, likewise, denied by the NLRC for lack of merit in a Resolution^[17] dated January 12, 1999.

On April 14, 2000, the petitioners filed a petition for review on certiorari under Rule 65 of the Rules of Court, as amended, before the Court of Appeals. However, the petitioners failed to allege the date when they filed their motion for reconsideration of the resolution of the NLRC dismissing their petition. Thus, in a Resolution^[18] dated April 29, 1999, the appellate court dismissed the petition on such ground, ruling that it had no other way of determining the timeliness of the filing of the petition, conformably to Sections 3 and 5, Rule 46 of the 1997 Rules of Civil Procedure.

The petitioners then filed a Motion for Reconsideration with Prayer for Leave to Admit Amended Petition on June 2, 1999, which the appellate court, likewise, denied on February 29, 2000.

The petitioners now come to this Court via a petition for review, alleging that the appellate court erred as follows:

THE COURT OF APPEALS ERRED IN ISSUING THE FIRST CHALLENGED ORDER DATED 29 APRIL 1999 DISMISSING THE PETITION FOR CERTIORARI FILED BY PETITIONERS IN CA-G.R. SP. NO. 52270 AND IN DENYING PETITIONERS' MOTION FOR RECONSIDERATION WITH PRAYER FOR LEAVE TO ADMIT AMENDED PETITION IN THE SECOND CHALLENGED ORDER DATED 29 FEBRUARY 2000 CONSIDERING THAT:

A. PETITIONERS SUBSTANTIALLY COMPLIED WITH THE REQUIREMENTS OF SECTIONS 3 AND 5, RULE 46 OF THE 1997

RULES OF CIVIL PROCEDURE.

- B. IN ANY CASE, THE TIMELINESS OF THE FILING OF THE PETITION FOR CERTIORARI SHOULD BE RECKONED FROM DATE OF PETITIONERS' OFFICIAL RECEIPT OF THE NLRC RESOLUTION DATED 12 JANUARY 1999 ON 28 APRIL 1999.
- C. THE COURT OF APPEALS SERIOUSLY ERRED IN NOT REVERSING THE NLRC AND FINDING THAT PRIVATE RESPONDENT WAS DISMISSED FOR JUST AND VALID CAUSE NOTWITHSTANDING THAT:
- i) THE PRIVATE RESPONDENT BUL-AN WAS DISMISSED FOR A JUST AND VALID CAUSE AND WITH DUE PROCESS BY PETITIONERS.
 - ii) THE LABOR ARBITER FAILED TO CONDUCT TRIAL ON THE MERITS ALTHOUGH THE FACTS AND ISSUES INVOLVED WARRANT SUCH TRIAL.
 - iii) THE PRIVATE RESPONDENT IS NOT ENTITLED TO ANY OF HIS PECUNIARY CLAIMS.
 - iv) IN ANY CASE, PETITIONER MALUNDA CANNOT BE HELD PERSONALLY AND SOLIDARILY LIABLE WITH PETITIONER CORPORATION SEASTAR.^[19]

The Present Petition

The petitioners beg the Court's indulgence, and seek the nullification of the resolution of the CA dismissing the petition on purely technical grounds. The petitioners stress that they begged for leave to file an amended petition indicating the date of the filing of their motion for reconsideration. The petitioners allege that they substantially complied with the requirements of Sections 3 and 5, Rule 46 of the 1997 Rules of Civil Procedure, considering that the motion for reconsideration of the NLRC decision was attached to the petition as Annex "B" thereof, where the date of the denial of the said motion for reconsideration was indicated.^[20] Citing the ruling of the Court in *Evangelista v. Mendoza*,^[21] the petitioners contend that annexes which are attached to the pleading are to be read and considered as a part thereof, and as such, the petitioners insist that the timeliness of the filing of the petition for certiorari may easily be determined from the petition itself. The petitioners claim that, in any case, the timeliness of the filing of the petition should be reckoned from the date of official receipt of a copy of the resolution of the NLRC denying their motion for reconsideration, or on April 28, 1999.

The petitioners further contend that the respondent was validly dismissed on the ground of willful disobedience of the lawful orders of the representatives of his employers, and gross and habitual neglect of his duties, as provided for under Article 282, paragraphs (a) and (b) of the Labor Code. They assert that adequate and sufficient proof was presented to prove the respondent's gross insubordination and habitual neglect.