

## **THIRD DIVISION**

**[ G.R. No. 146703, November 18, 2004 ]**

**SUNRISE MANNING AGENCY, INC., PETITIONER, VS. NATIONAL  
LABOR RELATIONS COMMISSION AND RUEL ZARASPE,  
RESPONDENTS.**

### **D E C I S I O N**

**CARPIO MORALES, J.:**

From the Court of Appeals Decision of August 4, 2000 and Resolution of January 11, 2001 denying petitioner's Motion for Reconsideration thereof, the present Petition for Review on Certiorari was lodged.

Private respondent Ruel Zaraspe was hired as Chief Cook of petitioner's vessel M.V. "Nikolaos" commencing on December 18, 1995.

On June 22, 1996, private respondent's services were terminated.

By petitioner's claim, private respondent had, from the start of his employment, showed signs of deviant behavior. Mentioned by petitioner as undesirable acts of private respondent involving "insubordination, inefficiency and neglect of duty," and theft, are as follows:

. . . his abrasive character was the subject of conversation as he would figure in near violent confrontations with his fellow workers; that in January 1996, Chief Mate Berdanilo caught him lying in bed in his cabin at lunch time and told him to get up and make himself busy; that in the presence of twenty (20) other seamen, complainant told to mind his own business and locked himself in his cabin; that when the Chief Mate was informed of the incident, Master Captain Dimos told the Chief Mate to give complainant time to adjust to his work environment; that complainant was caught several times drinking beer even in the presence of the officers; that even his work attitude deteriorated; that in February 1996, Chief Engineer Simiriotis caught him roaming around the vessel and chatting when he was supposed to be cooking for the crew; that when the Chief Engineer came closer to ask him if food was ready, complainant smelled of liquor; that instead of answering, complainant threw a roll of toilet paper at the Chief Engineer's face; that it was learned that complainant had just spent hours in the comfort room vomiting because of heavy drinking; that when the Captain talked to complainant about his work attitude, he retorted that he was the victim of all the incidents and it was the others who should be reprimanded; that complainant left the vessel several times without permission in violation of a strictly enforced rule; that when the Master of the vessel asked complainant why there was no bread for breakfast, complainant retorted that he should look in the refrigerator as he did not feel like

cooking; that complainant was warned by the Master that anymore insubordination will be dealt with severity; that for several weeks, packs of cigarettes were reported missing and complainant who does the inventory of ship supplies reported that the crew were consuming the missing cigarettes by exceeding their consumption list; that during one inspection, the missing cigarettes were found in complainant's cabinet; that when asked on the spot, complainant merely replied that it was a ploy by someone to discredit him but he would not specify; that the Master started an investigation and it was gathered that complainant was responsible for the pilferage; that the captain told complainant that he did not merely violate the rules but committed a crime and was terminated; that complainant was terminated for cause for violation of company rules and regulations, willful disobedience and insubordination and willful breach of trust; that he was accorded due process of law; and that he is not entitled to the unexpired portion of his contract and his other money claims.<sup>[1]</sup>

Petitioner claims that while it was initially lenient toward private respondent, he subsequently committed intolerable offenses, the last of which was theft, thus compelling the captain of the vessel to terminate his services on June 22, 1996.

Aggrieved by his dismissal, private respondent filed an illegal dismissal case with the National Labor Relations Commission (NLRC). The case was assigned to Labor Arbiter Edgardo M. Madriaga who, by decision of June 4, 1998, found the dismissal legal and accordingly dismissed the complaint.

On appeal by private respondent, the NLRC, by Resolution of December 18, 1998, reversed the Labor Arbiter's decision. Petitioner filed a Motion for Reconsideration which only raised the procedural issue of private respondent's failure to serve it a copy of his memorandum of appeal. This motion was denied by Resolution of June 22, 1999.

Petitioner thereupon filed on August 17, 1999 a petition for certiorari with the Court of Appeals seeking to vacate the above-mentioned resolutions of the NLRC. By Decision of August 4, 2000, the Court of Appeals affirmed the resolutions of the NLRC.

On the procedural issue, the appellate court held that private respondent's failure to furnish petitioner a copy of his memorandum of appeal was not a jurisdictional defect that would bar the appeal as to render the Labor Arbiter's decision final and executory. On the merits, the same court held that petitioner failed to satisfy the burden of proving that private respondent was terminated for a valid cause and in accordance with due process:

As already pointed out by the NLRC, petitioner failed to present sufficient evidence to prove that private respondent committed the imputed acts. Neither an affidavit nor any piece of company record was submitted before the NLRC.

Verily, when there is no showing of a clear, valid, and legal cause for the termination of employment, the law considers the matter as a case of illegal dismissal and the burden is on the employer to prove that the

termination was for valid and authorized cause. (Valiant Machinery and Metal Corp. v. National Labor Relations Commission, 252 SCRA 369 [1996])

x x x

To be validly effected, the dismissal must observe the twin requirements of due process – notice and hearing. The employer has the burden of proving that the former has been served with two notices: (1) one to apprise him of the particular acts or omissions for which his dismissal is sought and (2) the other to inform him of his employer's decision to dismiss him. x x x In the case before us, the record is bereft of any showing that formal notice of the charge was given to private respondent prior to his dismissal.<sup>[2]</sup>

Petitioner's Motion for Reconsideration of the appellate court's decision was denied by Resolution of January 11, 2001, hence, the present petition.

In seeking the reversal of the challenged Decision and Resolution of the Court of Appeals, petitioner argues that the NLRC resolutions are null and void, (1) the Labor Arbiter's decision having become final and executory because the reglementary period was not stopped by private respondent's appeal owing to his failure to serve a copy of his memorandum of appeal upon petitioner, and (2) they having been rendered in violation of petitioner's right to due process as it was not given the opportunity to refute private respondent's allegations in his memorandum of appeal.

Public and private respondents do not deny that petitioner was not served a copy of private respondent's memorandum of appeal. What is disputed is the legal consequence thereof.

In support of its position that by private respondent's failure to serve a copy of his memorandum upon petitioner, the running of the reglementary period to appeal was not tolled, petitioner cites Section 3(a), Rule VI of the NLRC Rules of Procedure, viz:

*Requisites for Perfection of Appeal.* – (a) The appeal shall be filed within the reglementary period as provided in Section 1 of this Rule; shall be under oath with proof of payment of the required appeal fee and the posting of a cash or surety bond as provided in Section 5 of this Rule; shall be accompanied by a memorandum of appeal xxx and proof of service on the party of such appeal.

A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period of perfecting an appeal. (Underscoring supplied)

Petitioner's position does not lie. It has long been settled that mere failure to serve a copy of a memorandum of appeal upon the opposing party does not bar the NLRC from entertaining an appeal. In *Pagdonsalan v. NLRC*,<sup>[3]</sup> this Court held:

The first issue raised herein is not of first impression. In *J.D. Magpayo Customs Brokerage v. NLRC* (118 SCRA 646), this Court ruled that the appellant's failure to furnish copy of his memorandum appeal to