

## THIRD DIVISION

[ G.R. No. 138193, March 05, 2003 ]

**OSM SHIPPING PHILIPPINES, INC., PETITIONER, VS. NATIONAL  
LABOR RELATIONS COMMISSION (THIRD DIVISION) AND  
FERMIN F. GUERRERO, RESPONDENTS.**

### D E C I S I O N

**PANGANIBAN, J.:**

The Rules of Court do not require that all supporting papers and documents accompanying a petition for certiorari should be duplicate originals or certified true copies. Furthermore, unilateral decisions to alter the use of a vessel from overseas service to coastwise shipping will not affect the validity of an existing employment contract validly executed. Workers should not be prejudiced by actions done solely by employers without the former's consent or participation.

#### The Case

Before us is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court, seeking to set aside the February 11, 1999 and the March 26, 1999 Resolutions of the Court of Appeals (CA) in CA-GR SP No. 50667. The assailed Resolutions dismissed a Petition filed in the CA, challenging an adverse ruling of the National Labor Relations Commission (NLRC). The first Resolution disposed as follows:

"We resolve to OUTRIGHTLY DISMISS the petition."<sup>[2]</sup>

The second Resolution<sup>[3]</sup> denied petitioners' Motion for Reconsideration.

On the other hand, the NLRC Decision disposed in this wise:

"WHEREFORE, premises considered, the Decision appealed from is hereby MODIFIED in that respondents OSM Shipping Phils. Inc. and its principal, Philippine Carrier Shipping Agency Services Co. are jointly and severally ordered to pay complainant the sum of ELEVEN THOUSAND THREE HUNDRED FIFTY NINE and 65/100 [US dollars] (US\$11,359.65) or its peso equivalent at the time of payment representing complainant's unpaid salaries, accrued fixed overtime pay, allowance, vacation leave pay and termination pay."<sup>[4]</sup>

#### The Facts

This case originated from a Complaint filed by Fermin F. Guerrero against OSM Shipping Philippines, Inc.; and its principal, Philippine Carrier Shipping Agency Services Co. The Complaint was for illegal dismissal and non-payment of salaries,

overtime pay and vacation pay. The facts are summarized in the NLRC Decision as follows:

"[Private respondent] was hired by [Petitioner] OSM for and in behalf of its principal, Phil Carrier Shipping Agency Services Co. (PC-SLC) to board its vessel M/V '[Princess] Hoa' as a Master Mariner for a contract period of ten (10) months. Under the said contract, his basic monthly salary is US\$1,070.00, US\$220.00 allowance, US\$321.00 fixed overtime, US\$89 vacation leave pay per month for x x x 44 hours f] work per week. He boarded the vessel on July 21, 1994 and complied faithfully with the duties assigned to him.

"[Private respondent] alleged that from the start of his work with M/V 'Princess Hoa', he was not paid any compensation at all and was forced to disembark the vessel sometime in January 1995 because he cannot even buy his basic personal necessities. For almost seven (7) months, i.e. from July 1994 to January 1995, despite the services he rendered, no compensation or remuneration was ever paid to him. Hence, this case for illegal dismissal, [non-payment] of salaries, overtime pay and vacation pay.

"[Petitioner] OSM, for its part, alleged that on July 26, 1994, Concorde Pacific, an American company which owns M/V 'Princess Hoa', then a foreign registered vessel, appointed x x x Philippine Carrier Shipping Agency Services Co. (PC-SASCO) as ship manager particularly to negotiate, transact and deal with any third persons, entities or corporations in the planning of crewing selection or determination of qualifications of Filipino Seamen. On the same date, [Petitioner] OSM entered into a Crew Agreement with x x x PC-SASCO for the purpose of processing the documents of crew members of M/V 'Princess Hoa'. The initial plan of the [s]hip-owner was to use the vessel in the overseas trade, particularly the East Asian Growth Area. Thereafter, the contract of [private respondent] was processed before the POEA on September 20, 1994.

"OSM alleged further that the shipowner changed its plans on the use of the vessel. Instead of using it for overseas trade, it decided to use it in the coastwise trade, thus, the crewmembers hired never left the Philippines and were merely used by the shipowner in the coastwise trade. Considering that the M/V 'Princess Hoa' was a foreign registered vessel and could not be used in the coastwise trade, the shipowner converted the vessel to Philippine registry on September 28, 1994 by way of bareboat chartering it out to another entity named Philippine Carrier Shipping Lines Co. (PCSLC). To do this, the shipowner through Conrado V. Tendido had to terminate its management agreement with x x x PC-SASCO on September 28, 1994 by a letter of termination dated September 20, 1994. In the same letter of termination, the ship owner stated that it has bareboat chartered out the vessel to said [PCSLC] and converted it into Philippine registry. Consequently, x x x PC-SASCO terminated its crew agreement with OSM in a letter dated December 5, 1994. Because of the bareboat charter of the vessel to PCSLC and its subsequent conversion to Philippine registry and use in coastwise trade

as well as to the termination of the management agreement and crew agency agreement, a termination of contract ensued whereby PCSLC, the bareboat charterer, became the disponent owner/employer of the crew.

As a disponent owner/employer, PCSLC is now responsible for the payment of complainant's wages. x x x. [5]

Labor Arbiter (LA) Manuel R. Caday rendered a Decision<sup>[6]</sup> in favor of Private Respondent Guerrero. Petitioner and its principal, Philippine Carrier Shipping Agency Services, Co. (PC-SASCO), were ordered to jointly and severally pay Guerrero his unpaid salaries and allowances, accrued fixed overtime pay, vacation leave pay and termination pay. The Decision held that there was a constructive dismissal of private respondent, since he had not been paid his salary for seven months. It also dismissed petitioner's contention that there was a novation of the employment contract.

On appeal, the NLRC (Third Division) affirmed the LA's Decision, with a modification as to the amount of liability. On January 28, 1999, petitioner filed with the CA a Petition<sup>[7]</sup> to set aside the NLRC judgment. The petition was dismissed, because petitioner had allegedly failed to comply with the requirements of Section 3 of Rule 46 of the Rules of Court. Specifically, petitioner had attached to its Petition, not a duplicate original or a certified true copy of the LA's Decision, but a mere machine copy thereof. Further, it had not indicated the actual address of Private Respondent Fermin F. Guerrero.<sup>[8]</sup>

Hence, this Petition.<sup>[9]</sup>

### **The Issues**

In its Memorandum, petitioner raises the following issues for the Court's consideration:

"1. Did not the Court of Appeals err in interpreting and applying the 1997 Rules when it required as attachment to the Petition for Certiorari the duplicate original of another Decision which is not-the subject of the said Petition?

"2. Did not the Court of Appeals err in interpreting and applying the 1997 Rules when it disregarded the subsequent compliance made by petitioner?

"3. Did not the Court of Appeals err in interpreting and applying the 1997 Rules when it did not consider the Notice to private respondent Guerrero through his counsel as Notice to Guerrero himself?"<sup>[10]</sup>

The foregoing issues all refer to the question of whether, procedurally, petitioner has complied with Section 3 of Rule 46 of the Rules of Court. Additionally and in the interest of speedy justice, this Court will also resolve the substantive issue brought before the CA: did the NLRC commit grave abuse of discretion in ruling in favor of private respondent?

## **The Court's Ruling**

While petitioner is procedurally correct, the case should nonetheless be decided on the merits in favor of private respondent.

### **Procedural Issue:** **Compliance with the Rules of Court**

Petitioner puts at issue the proper interpretation of Section 3 of Rule 46 of the Rules of Court.<sup>[11]</sup> Specifically, was petitioner required to attach a certified true copy of the LA's Decision to its Petition for *Certiorari* challenging the NLRC judgment?

Section 3 of Rule 46 does not require that all supporting papers and documents accompanying a petition be duplicate originals or certified true copies. Even under Rule 65 on certiorari and prohibition, petitions need to be accompanied only by duplicate originals or certified true copies of the *questioned* judgment, order or resolution. Other relevant documents and pleadings attached to it may be mere machine copies thereof.<sup>[12]</sup> Numerous decisions issued by this Court emphasize that in appeals under Rule 45 and in original civil actions for certiorari under Rule 65 in relation to Rules 46 and 56, what is required to be certified is the copy of the *questioned* judgment, final order or resolution.<sup>[13]</sup> Since the LA's Decision was not the questioned ruling, it did not have to be certified. What had to be certified was the NLRC Decision. And indeed it was.

As to the alleged missing address of private respondent, the indication by petitioner that Guerrero could be served with process care of his counsel was substantial compliance with the Rules.

This Court has held that the sending of pleadings to a party is not required, provided that the party is represented by counsel.<sup>[14]</sup> This rule is founded on considerations of fair play, inasmuch as an attorney of record is engaged precisely because a party does not feel competent to deal with the intricacies of law and procedure.<sup>[15]</sup> Both jurisprudence<sup>[16]</sup> and the basics of procedure<sup>[17]</sup> provide that when a party has appeared through counsel, service is to be made upon the latter, unless the court specifically orders that it be upon the party.

We also note that from the inception of the case at the LA's office, all pleadings addressed to private respondent had always been sent to his counsel, Atty. Danilo G. Macalino. Note that private respondent, who was employed as a seaman, was often out of his home. The service of pleadings and other court processes upon him personally would have been futile, as he would not have been around to receive them.

This Court has repeatedly held that while courts should meticulously observe the Rules, they should not be overly strict about procedural lapses that do not impair the proper administration of justice.<sup>[18]</sup> Rather, procedural rules should be liberally construed to secure the just, speedy and inexpensive disposition of every action and proceeding.<sup>[19]</sup>