

## SECOND DIVISION

[ G.R. No. 112574, October 08, 1998 ]

**MERCIDAR FISHING CORPORATION REPRESENTED BY ITS  
PRESIDENT DOMINGO B. NAVAL, PETITIONER, VS. NATIONAL  
LABOR RELATIONS COMMISSION AND FERMIN AGAO, JR.,  
RESPONDENTS.**

### D E C I S I O N

**MENDOZA, J.:**

This is a petition for certiorari to set aside the decision, dated August 30, 1993, of the National Labor Relations Commission dismissing the appeal of petitioner Mercidar Fishing Corporation from the decision of the Labor Arbiter in NLRC NCR Case No. 09-05084-90, as well as the resolution dated October 25, 1993, of the NLRC denying reconsideration.

This case originated from a complaint filed on September 20, 1990 by private respondent Fermin Agao, Jr. against petitioner for illegal dismissal, violation of P.D. No. 851, and non-payment of five days service incentive leave for 1990. Private respondent had been employed as a "bodegero" or ship's quartermaster on February 12, 1988. He complained that he had been constructively dismissed by petitioner when the latter refused him assignments aboard its boats after he had reported to work on May 28, 1990.<sup>[1]</sup>

Private respondent alleged that he had been sick and thus allowed to go on leave without pay for one month from April 28, 1990 but that when he reported to work at the end of such period with a health clearance, he was told to come back another time as he could not be reinstated immediately. Thereafter, petitioner refused to give him work. For this reason, private respondent asked for a certificate of employment from petitioner on September 6, 1990. However, when he came back for the certificate on September 10, petitioner refused to issue the certificate unless he submitted his resignation. Since private respondent refused to submit such letter unless he was given separation pay, petitioner prevented him from entering the premises.<sup>[2]</sup>

Petitioner, on the other hand, alleged that it was private respondent who actually abandoned his work. It claimed that the latter failed to report for work after his leave had expired and was, in fact, absent without leave for three months until August 28, 1990. Petitioner further claims that, nonetheless, it assigned private respondent to another vessel, but the latter was left behind on September 1, 1990. Thereafter, private respondent asked for a certificate of employment on September 6 on the pretext that he was applying to another fishing company. On September 10, 1990, he refused to get the certificate and resign unless he was given separation pay.<sup>[3]</sup>

On February 18, 1992, Labor Arbiter Arthur L. Amansec rendered a decision disposing of the case as follows:

ACCORDINGLY, respondents are ordered to reinstate complainant with backwages, pay him his 13th month pay and incentive leave pay for 1990.

All other claims are dismissed.

SO ORDERED.

Petitioner appealed to the NLRC which, on August 30, 1993, dismissed the appeal for lack of merit. The NLRC dismissed petitioner's claim that it cannot be held liable for service incentive leave pay by fishermen in its employ as the latter supposedly are "field personnel" and thus not entitled to such pay under the Labor Code.<sup>[4]</sup>

The NLRC likewise denied petitioner's motion for reconsideration of its decision in its order dated October 25, 1993.

Hence, this petition. Petitioner contends:

I

THE RESPONDENT COMMISSION PALPABLY ERRED IN RULING AND SUSTAINING THE VIEW THAT FISHING CREW MEMBERS, LIKE FERMIN AGAO, JR., CANNOT BE CLASSIFIED AS FIELD PERSONNEL UNDER ARTICLE 82 OF THE LABOR CODE.

II

THE RESPONDENT COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT UPHELD THE FINDINGS OF THE LABOR ARBITER THAT HEREIN PETITIONER HAD CONSTRUCTIVELY DISMISSED FERMIN AGAO, JR., FROM EMPLOYMENT.

The petition has no merit.

Art. 82 of the Labor Code provides:

ART. 82. Coverage. - The provisions of this Title [Working Conditions and Rest Periods] shall apply to employees in all establishments and undertakings whether for profit or not, but not to government employees, field personnel, members of the family of the employer who are dependent on him for support, domestic helpers, persons in the personal service of another, and workers who are paid by results as determined by the Secretary of Labor in appropriate regulations.

.....

"Field personnel" shall refer to non-agricultural employees who regularly perform their duties away from the principal place of business or branch