

SECOND DIVISION

[G.R. No. 109717, February 09, 1996]

**WESTERN SHIPPING AGENCY, INC., YEH SHIPPING CO. LTD.
AND PHIL. BRITISH ASSURANCE CO., INC., PETITIONERS, VS.
NATIONAL LABOR RELATIONS COMMISSION AND ALEXANDER S.
BAO, RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This is a petition for certiorari to annul the decision of the National Labor Relations Commission (First Division) in NLRC-NCR CA No. 000650-90, affirming with modification the decision of the Philippine Overseas Employment Administration, and its resolution denying reconsideration of its aforesaid decision.

The facts are as follows:

Petitioner Western Shipping Agency, Inc. is the manning agent of petitioner Yeh Shipping Co., Ltd., the owner of the vessel M/V Sea Wealth, while petitioner Philippine British Assurance Company is the surety of Western Shipping Agency, Inc.

Private respondent was master of the M/V Sea Wealth, having been hired by Western Shipping in 1988 at a monthly salary of US\$1,323.00 with a fixed monthly overtime pay of US\$287.00. His contract was for one year, starting April 21, 1988.

On January 14, 1989, private respondent was notified of his discharge. In the disembarkation order^[1] given to him on January 17, 1989, Western Shipping justified the discharge of private respondent on the following ground:

At this juncture, our Offices would like to let you feel and understand that they Were unhappy about the way you conducted and executed your official duties and responsibilities as Master of the vessel, particularly when it was at the port of Davao and when it arrived at (the) Port of Manila. As you have admitted thru the telephone, you failed to notify or gave advice to our offices about your actual arrival in Manila because you were busy coordinating matters including your intention to take the Pilot Examinations in Batangas. Had it not for our initiative when we tried to go to South Harbor on Monday - January 9th - and verified, we would have not known that you were already in Manila.

Indeed, we understand your failure to communicate with us upon your arrival in Manila, when we went on board the ship and discovered that you allowed the accommodation and transport of people who should not be on board during the vessel's navigation from Davao to Manila, without

even trying to secure the necessary approval from our offices, aware of the risks and knowing the limited safety equipment and accommodation on board.

On March 1, 1989, private respondent filed a complaint with the POEA alleging illegal dismissal, underpayment of salary and fixed overtime pay and non-payment of wages and other emoluments corresponding to the unexpired portion of his employment contract.

Petitioners denied private respondent's allegations. They averred that the private respondent was dismissed because of loss of trust and confidence for having allowed fifteen (15) persons to sail with him from Davao to Manila without authority and without regard to the safety of the passengers and the cargo.

In their position paper petitioners claimed that, in violation of company rules, private respondent failed to notify them of the vessel's arrival in Manila on January 8, 1989 and to provide life-saving equipment for the passengers he had allowed to board, as required by Sec. 1019 of the Philippine Merchant Marine Rules and Regulation.

Petitioners submitted the affidavit of Noimi Zabala, president of Western Shipping, stating as further ground for the employer's loss of trust and confidence in private respondent, the fact that the latter allegedly collected US\$7,000.00 in foreign currency from Western Shipping in violation of a Central Bank regulation prohibiting manning agencies from withdrawing foreign remittances in dollars and falsely accused Western Shipping of underpayment.

Private respondent did not deny that he had taken passengers on board the vessel on its trip from Davao to Manila. He claimed, however, that Mr. Zabala had been notified of this fact in a telephone conversation but he did not object and that the additional passengers were wives and children of the complement of the vessel. Private respondent alleged that the shipowner's agent in Davao, the World Mariner Philippines, Inc., did not object to the taking of additional passengers but on the contrary secured permit from the Collector of Customs for them to board the vessel. Lastly, it was alleged, the Coast Guard, after inspecting the vessel with the additional passengers on board, issued a clearance for the vessel to sail.

Private respondent denied that he did not notify Western Shipping of the vessel's arrival. He claimed he had sent a telex message on January 5, 1989, informing Western Shipping of the expected time of arrival of the vessel on January 8, 1989, at 0600 Hrs, and that Western Shipping sent a message, also by telex, welcoming the arrival of the vessel. He alleged that the vessel was equipped with two life boats and rafts which could accommodate all persons aboard in case of emergency.

After hearing, the POEA rendered a decision, finding private respondent to have been illegally dismissed and accordingly ordering petitioners to pay private respondent's monetary claims, as follows:

WHEREFORE, in view of all the foregoing premises, judgment is hereby rendered ordering respondent WESTERN SHIPPING AGENCY INCORPORATED and its principal Yeh Shipping to pay complainant the sum of FIVE THOUSAND SIX HUNDRED FORTY THREE US DOLLARS (US\$5,643.00) or its peso equivalent at the time of payment representing complainant's salary for the unexpired portion of the contract including his salary differential, the sum of SIX THOUSAND NINE HUNDRED TWENTY PESOS & 01/100 (P6,920.01) representing the underpayment of family allotment and the difference in peso dollar conversion plus ten percent (10%) of the total judgment away by way of and as attorney's fees.

SO ORDERED.

Petitioners appealed to the NLRC which, on March 20, 1992, rendered a decision modifying the decision of the POEA and ordering petitioners, as follows:

WHEREFORE, the decision appealed from is hereby MODIFIED in that the award of P6,920.01 representing the alleged salary differentials caused by the erroneous conversion of complainant's shipboard pay and allotments is hereby SET ASIDE.

The award of US\$5,643.00 or its equivalent in Philippine currency at the time of payment representing the salaries corresponding to the unexpired portion of complainant's contract plus ten percent (10%) thereof as attorney's fees is hereby AFFIRMED with the qualification that: (1) Respondents Western Shipping Agency, Inc. and Yeh Shipping Co. Ltd. are jointly and severally liable therefor, and (2) respondent British Assurance Co., Inc. is likewise liable therefor in its capacity as the bonding company.

SO ORDERED.

Petitioners moved for a reconsideration but their motion was denied by the NLRC in its resolution of March 30, 1993 for lack of merit.

Hence this petition. Petitioners allege that the NLRC gravely abused its discretion in affirming the decision of the POEA, finding private respondent to have been illegally dismissed and awarding US\$5,643.00 to him as salaries corresponding to the unexpired portion of private respondent's contract.

We find the petition to be without merit. To begin with, findings of facts of the NLRC, affirming those of the Labor Arbiter, are entitled to great weight and will not be disturbed by this Court if they are supported by substantial evidence.

In this case, both the Labor Arbiter and the POEA found that private respondent had taken on board the vessel the fifteen passengers with the knowledge of Noimi Zabala, the president of Western Shipping. Zabala had been told so by telephone by