

## SECOND DIVISION

[ G.R. No. 108433, October 15, 1996 ]

**WALLEM MARITIME SERVICES, INC. AND WALLEM SHIPMANAGEMENT LTD., PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND JOSELITO V. MACATUNO, RESPONDENTS.**

### DECISION

**ROMERO, J.:**

This petition for certiorari seeks to annul and set aside the Resolution<sup>[1]</sup> of the National Labor Relations Commission (NLRC) affirming the Decision<sup>[2]</sup> of the Philippine Overseas Employment Administration (POEA) which disposed of POEA Case No. (M)89-09-865 as follows:

"WHEREFORE, in view of the foregoing, respondents Wallem Maritime Services, Inc. and Wallem Shipmanagement Ltd. are hereby ordered jointly and severally, to pay complainant the following in Philippine currency at the prevailing rate of exchange at the time of payment:

- a) THREE HUNDRED THREE US DOLLARS  
(US\$303.00) - representing salary for the month of June 1989;
- b) THREE THOUSAND FIFTY FOUR US DOLLARS  
(US\$3,054.00) - representing salaries for the unexpired portion of the contract (July-December 1989); and
- c) ONE HUNDRED SIX & 50/100 US DOLLARS  
(US\$106.50) - or five percent (5%) of the total award as and by way of attorney's fees.

The claim against Prudential Guarantee and Assurance Inc. is dismissed for lack of merit.

SO ORDERED."

Private respondent Joselito V. Macatuno was hired by Wallem Shipmanagement Limited thru its local manning agent, Wallem Maritime Services, Inc., as an able-bodied seaman on board the M/T Fortuna, a vessel of Liberian registry. Pursuant to the contract of employment, private respondent was employed for ten (10) months covering the period February 26, 1989 until December 26, 1989 with a monthly salary of two hundred seventy-six US dollars (US \$276); hourly overtime rate of one dollar and seventy-two cents (US \$1.72), and a monthly tanker allowance of one hundred twenty-seven dollars and sixty cents (US \$127.60), with six (6) days leave with pay for each month.

On June 24, 1989, while the vessel was berthed at the port of Kawasaki, Japan, an altercation took place between private respondent and fellow Filipino crew member, Julius E. Gurimbao, on the one hand, and a cadet/apprentice officer of the same nationality as the captain of the vessel on the other hand. The master entered the incident in the tanker's logbook.

As a consequence, private respondent and Gurimbao were repatriated to the Philippines where they lost no time in lodging separate complaints for illegal dismissal with the POEA.<sup>[3]</sup> According to the affidavit private respondent executed before a POEA administering officer, the following facts led to the filing of the complaint.

At about 5:50 a.m. of June 24, 1989, private respondent was on duty along with Gurimbao, checking the manifold of the vessel and looking for oil leakages, when a cadet/apprentice who was of the same nationality as the vessel's captain (Singh), approached them. He ordered Gurimbao to use a shovel in draining the water which, mixed with oil and dirt, had accumulated at the rear portion of the upper deck of the vessel.

Gurimbao explained to the cadet/apprentice that throwing dirty and oily water overboard was prohibited by the laws of Japan; in fact, port authorities were roaming and checking the sanitary conditions of the port. The cadet/apprentice got mad and, shouting, ordered Gurimbao to get a hose and siphon off the water. To avoid trouble, Gurimbao used a shovel in throwing the dirty water into the sea.

Having finished his job, Gurimbao complained to private respondent about the "improper and unauthorized act" of the cadet/apprentice. The two went to the cadet/apprentice who was idly standing in a corner. They reminded him that as a mere apprentice and not an officer of the vessel, he had no right whatsoever to order around any member of the crew. However, the cadet/apprentice reacted violently - shouting invectives and gesturing "as if challenging" the two to a fight. To prevent him from "intimidating" them, private respondent pushed twice the cadet/apprentice's chest while Gurimbao "mildly hit" his arm. Frantic and shouting, the cadet/apprentice ran to the captain "who happened to witness the incident" from the cabin's window.

The captain summoned private respondent and Gurimbao. With their bosun (head of the deck crew), they went to the captain's cabin. The captain told them to pack up their things as their services were being terminated. They would disembark at the next port, the Port of Ube, from where they would be flown home to the Philippines, the repatriation expenses to be shouldered by them. The two attempted to explain their side of the incident but the captain ignored them and firmly told them to go home.

Before disembarking, they were entrusted by the bosun with a letter of their fellow crew members, addressed to Capt. Diño, attesting to their innocence. At the Port of Ube, an agent of the company handed them their plane tickets and accompanied them the following day to the Fukoka Airport where they boarded a Cathay Pacific airplane bound for Manila.

A few days after their arrival in Manila or on July 1, 1989, the two gave the letter to

Capt. Diño and conferred with him and Mr. James Nichols. The latter told private respondent that they could not secure a reimbursement of their repatriation expenses nor could they get their salaries for the month of June. Private respondent, in a letter addressed to Capt. Diño, asked for a reconsideration of their dismissal but the latter did not respond. Frustrated, private respondent sought the assistance of a lawyer who wrote Wallem a demand letter dated August 28, 1989 but the same was ignored.<sup>[4]</sup>

Petitioners, defending their position, alleged that the incident was not the first infraction committed by the two. As shown by the logbook, on June 19, 1989, while the vessel was docked in Batangas, they left it during working hours without asking permission. For this offense, they were given a warning. On June 27, 1989 (sic), while the vessel was anchored at the Port of Kawasaki, Japan, they assaulted the officer on watch for the day, Mr. V.S. Sason. The three were "mustered" and it was found that Sason "was attacked with a spanner without provocation (sic)." The two were "severely warned that they will be dealt according to the rules and regulation of their contract of employment (sic)." When the vessel was about to sail that day, the two went ashore inspite of the warning given them. They were arrested by Japanese authorities but the vessel's departure was delayed for five (5) hours. The agency in Manila was informed that their wages should be settled "after deducting recoveries" or fines and air fare. Their dismissal from the service was also recommended.<sup>[5]</sup>

In his aforementioned decision of September 14, 1990 finding private respondent's dismissal to be illegal, POEA Deputy Administrator Manuel G. Imson held:

"We find complainant's dismissal to be without just and valid cause. We cannot give much weight and credence to the 'certified true copy of the official logbook' (Annex '1', answer) because the alleged entries therein were only handpicked and copied from the official logbook of the vessel M/V 'Fortuna'. There is no way of verifying the truth of these entries and whether they actually appear in the log entries for the specific dates mentioned. The pages in the official logbook where these entries appear should have been the ones reproduced to give the same a taint of credence. Moreover, no documentary evidence was submitted to support the alleged official logbook, like the Master's report and the police report or any report by the Japanese authorities by reason of their arrest. Finally, the copy of the alleged official logbook was not properly authenticated. The authentication is necessary specially so since this document is the only piece of evidence submitted by respondents.

Granting that the entries in the logbook are true, a perusal thereof will readily show that complainant was not afforded due process. The warnings allegedly given to complainant were not submitted in evidence. Likewise, no investigation report was presented to prove that complainant was given the opportunity to air his side of the incident.

It is also noteworthy to mention that complainant was able to describe with particularity the circumstances which led to his misunderstanding with the cadet/apprentice and which we believe is not sufficient to warrant his dismissal."<sup>[6]</sup>

As stated above, the NLRC affirmed the decision of the POEA, adopting as its own the latter's findings and conclusions. Hence, the instant petition contending that both the POEA and the NLRC gravely abused their discretion in finding that private respondent was illegally terminated from his employment.

As with **G.R. No. 107865**, where herein petitioners likewise questioned the NLRC decision affirming that of POEA Case No. (M) 88-11-1078 finding the dismissal from employment of Gurimbao to be illegal,<sup>[7]</sup> the Court sees no merit in the instant petition.

An employer may dismiss or lay off an employee only for just and authorized causes enumerated in Articles 282 and 283 of the Labor Code. However, this basic and normal prerogative of an employer is subject to regulation by the State in the exercise of its paramount police power inasmuch as the preservation of lives of citizens, as well as their means of livelihood, is a basic duty of the State more vital than the preservation of corporate profits.<sup>[8]</sup> One's employment, profession, trade or calling is a property right within the protection of the constitutional guaranty of due process of law.<sup>[9]</sup>

We agree with petitioners that the ship captain's logbook is a vital evidence as Article 612 of the Code of Commerce requires him to keep a record of the decisions he had adopted as the vessel's head. Thus, in Haverton Shipping Ltd. v. NLRC,<sup>[10]</sup> the Court held that a copy of an official entry in the logbook is legally binding and serves as an exception to the hearsay rule.

However, the Haverton Shipping ruling does not find unqualified application in the case at bar. In said case, an investigation of the incident which led to the seaman's dismissal was conducted before he was dismissed.<sup>[11]</sup> Consequently, the facts appearing in the logbook were supported by the facts gathered at the investigation. In this case, because no investigation was conducted by the ship captain before repatriating private respondent, the contents of the logbook have to be duly identified and authenticated lest an injustice result from a blind adoption of such contents which merely serve as prima facie evidence of the incident in question.<sup>[12]</sup>

Moreover, what was presented in the Haverton Shipping case was a copy of the official entry from the logbook itself. In this case, petitioners did not submit as evidence to the POEA the logbook itself, or even authenticated copies of pertinent pages thereof, which could have been easily xeroxed or photocopied considering the present technology on reproduction of documents.<sup>[13]</sup> What was offered in evidence was merely a typewritten collation of excerpts from what could be the logbook<sup>[14]</sup> because by their format, they could have been lifted from other records kept in the vessel in accordance with Article 612 of the Code of Commerce.<sup>[15]</sup>

Furthermore, the alleged entry in the "logbook" states, as regards the June 27, 1989 (sic) incident, as follows:

"KAWASAKI KAWASAKI This is to place on record that at the time, date  
27.6.89 and place mentioned Mr. J.V. MACATUNO  
(Sr. No. 147) and Mr. J.E. GURIMBAO (Sr  
No.