

SEVENTH DIVISION

[CA-G.R. SP No. 130907, November 28, 2014]

MILMAR CREWING, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND ROLITO O. REGUOSA, RESPONDENTS.

DECISION

INTING, S.B., J.:

This is a Petition for Certiorari^[1] under Rule 65 of the 1997 Rules of Civil Procedure filed by the Petitioner which seeks to nullify and set aside the May 15, 2013 Resolution^[2] and April 10, 2013 Decision^[3] of the National Labor Relations Commission in NLRC LAC NO. 01-000033-13 NLRC NCR-OFW-03-04913-11 which affirmed the September 28, 2012 Decision^[4] of the Labor Arbiter which ruled that the Private respondent was constructively dismissed.

Petitioner Milmar Crewing, Inc. (Petitioner) is a Philippine Manning Agency which assumed^[5] the full responsibility for all the contractual liabilities and obligations involving seafarers originally recruited and/or employed by Crewtech Ship Management Phils., Inc. ("Crewtech"). Crewtech is also a Philippine Manning Agency which recruited and employed Private respondent Rolito O. Reguosa.

The facts:

The facts as appearing in the records of the case are as follows:

The case stems from a *Complaint* filed with the National Labor Relations Commission (NLRC) for money claims, as follows: (1) payment of salary for the unexpired portion of the contract, vacation leave pay and hazard pay; and (2) payment of moral and exemplary damages and attorney's fees by the Private respondent against Crewtech, Maran Maritime, Inc. and Victorina C. Hernaez in her official capacity as President/Manager of Crewtech.

On June 8, 2011, a *Motion for Substitution*^[6] of Crewtech was filed by herein Petitioner Milmar Crewing, Inc. On August 22, 2011, the Labor Arbiter *denied*^[7] the said *Motion for Substitution* but included herein Petitioner as a respondent in the case.

Petitioner Company, in its *Position Paper*^[8], alleges: that on November 23, 2010, Private respondent entered into a standard *POEA Employment Contract*^[9] with Crewtech as an able-bodied seaman for a period of employment of ten (10) months; that on December 6, 2010, Private respondent departed from Manila to join the vessel M/T Dominia and subsequently served as an able-bodied seaman; that on January 11, 2011, while M/T Dominia was in Lagos, Nigeria, heavily-armed pirates

boarded and attacked the vessel; that as a consequence of the invasion by the pirates, Private respondent sustained injuries; that on January 28, 2011, Private respondent voluntarily pre-terminated his employment contract and was thereafter repatriated on January 30, 2011; that Private respondent was not illegally terminated from employment and is therefore not entitled to his monetary claims; that Private respondent's repatriation was due to a fortuitous event or force majeure that is beyond the control of the Petitioner and which exempts it from any liability.

Private respondent, on the other hand, alleges in his *Position Paper*^[10], that he entered into a contract of employment, through Crewtech, with Maran Maritime, Inc., his foreign employer, to work on board the vessel "MT Dominia" for the position of able-bodied seaman for a period of ten (10) months for a monthly salary of US\$ 645.00; that on December 6, 2010, Private respondent joined the vessel M/T Dominia which sailed to Rotterdam, Netherlands and subsequently to Ghent, Belgium; that on January 11, 2011, during the first night of anchorage, heavily-armed pirates attacked and boarded M/T Dominia to loot the vessel, including the personal effects of the crew; that Private respondent was tortured, punched on the face and hit with body blows when he was made to confess where the captain of the vessel was; that after the incident, Private respondent's foreign employer at first instructed the crew to continue with their contracts but thereafter it withdrew its advice and told all the crew to go home instead; that the foreign employer, through its Crew Manager, Antonis Liappis sent an email to Captain Lubrano informing him that those members of the crew who will choose to take a vacation leave shall thereafter be reinstated to active duty within sixty (60) days from disembarkation provided they still have more than thirty (30) days remaining for contract fulfillment; that due to the injuries sustained by the Private respondent, he was sent to the hospital of Lagos, Nigeria; that unfortunately, due to the inadequate medical supplies of the hospital, Private respondent's wounds were not treated; that thereafter, nineteen (19) crew members were repatriated including Private respondent; that upon arrival in the Philippines, Private respondent took a rest to recover from the injuries he sustained; that subsequently, when he reported to Crewtech's office to inquire about his next deployment pursuant to the instructions previously made by Crewtech's Crew Manager, he was told to wait for his foreign employer's advice; that despite returning to Crewtech's office several times, Private respondent was not given any advice regarding his next deployment; that Crewtech and the foreign employer did not fulfill its promise to reinstate the crew members, including Private respondent, within sixty (60) days from the time of their disembarkation; that Private respondent was constructively dismissed from his employment and is therefore entitled to the payment of his salary for the unexpired portion of his contract of employment and to his other monetary claims.

On September 28, 2012, the Labor Arbiter rendered a Decision^[11] in favor of the Private respondent. The pertinent portion of which provides to wit:

"x x x

After a careful review of the facts and evidence on hand, this Office finds that complainant did not voluntarily resign. The tell-tale piece of evidence is the email dated January 17, 2011 x x x to the Captain of MT Dominia,

which states:

" x x x

Please note that for the crew that (sic) will choose to go for vacation, and have more than 30 days remaining for contract fulfillment, the company will undertake to put them on vacation and reinstate them to active duty within 60 days from disembarkation unless otherwise stated from the seafarers."

Pursuant to this email, complainant agreed to be repatriated to go on vacation and recover from his injuries under the assurance that respondents would "reinstate [him] to active duty within 60 days from disembarkation." Thus, when he signed the prepared and pro forma document from MT Dominia x x x it was only for the purpose of getting his wages and not to resign from his job as he fully expected to be recalled back to sea duty within the sixty-day period.

It is of no consequence that the said document contains a clause that provides that "the collection of [complainant's] wages terminates [his] contract on MT Dominia effective x x x 28/01/2011." Complainant signed the said document in the aftermath of a vicious and traumatizing pirate attack and he can hardly be expected to scrutinize each and every provision thereof.

x x x

Upon the other hand, this Office finds that complainant was constructively dismissed. He was repatriated on January 28, 2011 but was not "reinstate[d] to active duty within 60 days from disembarkation," or not later than March 29, 2011. Complainant indeed filed the instant complaint on March 24, 2011, but there is nothing on record that shows that respondents have reinstated him by (sic) March 29, 2011. There is also no showing that respondents, have reinstated, much less offered to reinstate, complainant to active duty from the time the instant complaint was filed to the date of this Decision.

In addition, this Office is not persuaded by respondent Milmar's allegation that the failure of complainant to be redeployed was due to his failure to report to respondents for resumption of sea duty. Other than this allegation, there is no clear and convincing evidence that proves its claim. Hence, there can be no gainsaying that complainant was constructively dismissed by respondents.

x x x

WHEREFORE, premises considered, judgment is hereby rendered finding the dismissal of complainant Rolito O. Regurosa illegal.

Pursuant to Republic Act No. 10022, Section 7, respondents Crewtech Ship Management Phils., Inc., Milmar Crewing, Inc., Maran Maritime, Inc. and Victorina C. Hernaez are hereby ordered to jointly and severally pay complainant Rolito O. Regurosa, his salaries for the unexpired portion of his employment contract in the total amount of USD 5,160.00 (USD645.00 x 8 months) and his vacation leave pay for sixty days in the amount of USD 1,290.00 (USD 645.00 x 2 months) or at its peso equivalent at the time of actual payment.

All other claims are dismissed for want of merit.

SO ORDERED."

Consequently, Petitioner filed a *Memorandum of Appeal*^[12] which appeal was dismissed by the NLRC in its *Decision*^[13] dated April 10, 2013, the pertinent portion of which provides, to wit:

"xxx xxx

However, Milmar failed to disprove the hard and very strong evidence which Complainant put up in pursuing his claim.

The evidence is the copy of the e-mailed message dated January 17,2011 x x x

Respondent-Appellant, in their Reply and rejoinder, never disputed this important piece of evidence, indirectly brushing it aside by declaring Complainant's referral to the promised re-deployment as "untenable" x x x In its appeal, it claims to have "no legal obligation to deploy" complainant x x x, while remaining silent on the existence of and the obligation imposed, in the above described experience.

x x x

As Respondent Crewtech who deployed Complainant did not appear nor file any pleading in this case, in effect, it is deemed to have waived its right to be heard. In effect also, it did not dispute any of the claims of Complainant, and hence, the conclusions in the appealed decision.

There is no valid reason, therefore, to disturb the appealed decision.

Respondent-appellant Milmar who is not the one primarily responsible to Complainant under R.A. No. 8042 as amended by R.A. No. 10022, becomes jointly and severally liable with Respondent Crewtech by its own submissions.

WHEREFORE, premises considered, the instant appeal is hereby **DISMISSED** for lack of merit the (sic) appealed decision of Labor Arbiter Jenneth B. Napiza is hereby **AFFIRMED**.