

THIRD DIVISION

[G.R. No. 177948, March 14, 2008]

**FLOURISH MARITIME SHIPPING and LOLITA UY, Petitioners, vs.
DONATO A. ALMANZOR, Respondent.**

DECISION

NACHURA, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision^[1] of the Court of Appeals dated February 27, 2007 and its Resolution^[2] dated May 18, 2007 in CA-G.R. SP No. 95056. The assailed Decision affirmed with modification the Decision^[3] of the National Labor Relations Commission (NLRC) dated April 28, 2006 in NLRC NCR CA NO. 046596-05 which, in turn, affirmed the Decision^[4] of Labor Arbiter Lutricia F. Quitevis-Alconcel, dated October 7, 2005 in OFW NLRC CASE NO. (M) 05-01-0243-00.

The facts of the case are as follows:

Respondent Donato A. Almanzor entered into a two-year employment contract with Flourish Maritime Shipping as fisherman, with a monthly salary of NT15,840.00 with free meals every day. It was, likewise, agreed that respondent would be provided with suitable accommodations.^[5]

On October 1, 2004, respondent was deployed to Taipei, Taiwan as part of the crew of a fishing vessel known as FV Tsang Cheng 66. Respondent was surprised to learn that there were only five (5) crew members on board and he had to buy his own food, contrary to the agreed stipulation of free food and accommodation.^[6]

While on board, the master of the vessel gave respondent orders which he could not understand; thus, he failed to obey him. Consequently, enraged at not being obeyed, the master struck him, hitting the right dorsal part of his body. He then requested medical assistance, but the master refused.^[7] Hence, he sought the help of petitioner Lolita Uy (the manning agency owner), who then talked to the master of the vessel.

While the vessel was docked at the Taipei port, respondent was informed that he would be repatriated. Upon his arrival in the Philippines, he reported to petitioners and sought medical assistance after which he was declared "fit to work." Petitioners promised that he would be redeployed, but it turned out that it was no longer possible because of his age, for then he was already 49 years old.

Thus, respondent filed a complaint for illegal dismissal, payment for the unexpired portion of his employment contract, earned wages, moral and exemplary damages plus attorney's fees.

Petitioners countered that respondent voluntarily resigned^[8] from his employment and returned to the Philippines on the same day. They, likewise, sought the dismissal of the complaint for failure of respondent to comply with the grievance machinery and arbitration clause embodied in the contract of employment. Lastly, they insisted that respondent failed to discharge the burden to prove that he was illegally dismissed.^[9]

On October 7, 2005, the Labor Arbiter rendered a Decision in favor of respondent, the dispositive portion of which reads:

WHEREFORE, viewed from the foregoing, judgment is hereby rendered declaring respondents guilty of illegal dismissal.

Respondents Flourish Maritime Shipping and Wang Yung Chin are hereby ordered to jointly and solidarily pay complainant Donato A. Almanzor the amount of NT15,840.00 times six (6) months or a total of NT Ninety-Five Thousand Forty (NT95,040.00). Respondents shall pay the total amount in its peso equivalent at the time of actual payment plus legal interest.

All other claims herein sought and prayed for are hereby denied for lack of legal and factual bases.

SO ORDERED.^[10]

On appeal to the NLRC, the Commission affirmed *in toto* the Labor Arbiter's findings.

Unsatisfied, petitioners elevated the matter to the Court of Appeals on petition for *certiorari*.^[11] The appellate court agreed with the Labor Arbiter's conclusion (as affirmed by the NLRC) that respondent was illegally dismissed from employment. It, however, modified the NLRC decision by increasing the monetary award due respondent in accordance with its interpretation of Section 10 of Republic Act (R.A.) 8042.^[12]

Both the Labor Arbiter and the NLRC Board of Commissioners awarded such amount equivalent to respondent's salary for six (6) months (3 months for every year of the unexpired term) considering that respondent's employment contract covered a two-year period and he was dismissed from employment after only 26 days of actual work. The CA, however, disagreed with such interpretation. According to the CA, since respondent actually worked for 26 days and was thereafter dismissed from employment, the unexpired portion of the contract is one (1) year, eleven (11) months and four (4) days. For the unexpired one (second) whole year, the court awarded three months' salary. As to the 11 months and 4 days of the first year, the appellate court refused to apply the three-month rule. Instead, in addition to three months (for the unexpired second year), it awarded full compensation corresponding to the whole unexpired term of 11 months and 4 days. Thus, the CA deemed it proper to award a total amount equivalent to the respondent's salary for 14 months and 4 days.^[13]