

## FIRST DIVISION

[ G.R. No. 140364, August 15, 2000 ]

**ACE NAVIGATION CO., INC. AND/OR CONNING SHIPPING LTD.,  
PETITIONERS, VS. COURT OF APPEALS (THIRTEENTH  
DIVISION), NATIONAL LABOR RELATIONS COMMISSION (FIRST  
DIVISION) AND ORLANDO ALONSAGAY, RESPONDENTS.**

### D E C I S I O N

**PUNO, J.:**

This is a petition for review of the resolutions<sup>[1]</sup> of the Court of Appeals<sup>[2]</sup> that dismissed the petition for certiorari filed by petitioners and which denied their motion for reconsideration, respectively.

First, the facts.

In June 1994, Ace Navigation Co., Inc. (Ace Nav) recruited private respondent Orlando Alonsagay to work as a bartender on board the vessel M/V "Orient Express" owned by its principal, Conning Shipping Ltd. (Conning). Under their POEA approved contract of employment, Orlando shall receive a monthly basic salary of four hundred fifty U.S. dollars (U.S. \$450.00), flat rate, including overtime pay for 12 hours of work daily plus tips of two U.S. dollars (U.S. \$2.00) per passenger per day. He, was also entitled to 2.5 days of vacation leave with pay each month. The contract was to last for one (1) year.

Petitioners alleged that on June 13, 1994, Orlando was deployed and boarded M/V "Orient Express" at the seaport of Hong Kong. After the expiration of the contract on June 13, 1995, Orlando returned to the Philippines and demanded from Ace Nav his vacation leave pay. Ace Nav did not pay him immediately. It told him that he should have been paid prior to his disembarkation and repatriation to the Philippines. Moreover, Conning did not remit any amount for his vacation leave pay. Ace Nav, however, promised to verify the matter and asked Orlando to return after a few days. Orlando never returned.

On November 25, 1995, Orlando filed a complaint<sup>[3]</sup> before the labor arbiter for vacation leave pay of four hundred fifty U.S. dollars (U.S. \$450.00) and unpaid tips amounting to thirty six, thousand U.S. dollars (U.S. \$36,000.00).<sup>[4]</sup> On November 15, 1996, Labor Arbiter Felipe P. Pati ordered Ace Nav and Conning to pay jointly and severally Orlando his vacation leave pay of US\$450.00. The claim for tips of Orlando was dismissed for lack of merit.<sup>[5]</sup>

Orlando appealed<sup>[6]</sup> to the National Labor Relations Commission (NLRC) on February 3, 1997. In a decision<sup>[7]</sup> promulgated on November 26, 1997, the NLRC ordered Ace Nav and Conning to pay the unpaid tips of Orlando which amounted to US\$36,000.00 in addition to his vacation leave pay. Ace Nav and Conning filed a

motion for reconsideration on February 2, 1998 which was denied on May 20, 1999.  
[8]

On July 2, 1999, Ace Nav and Conning filed a petition for certiorari before the Court of Appeals to annul the decision of the NLRC. On July 28, 1999, the Court of Appeals promulgated a three-page resolution<sup>[9]</sup> dismissing the petition. Their motion for reconsideration filed on September 8, 1999 was denied on October 8, 1999. Hence this appeal.

In assailing the dismissal of their petition on technical grounds, petitioners argued that the Court of Appeals erred in rigidly and technically applying Section 13, Rule 13<sup>[10]</sup> and Section 1, Rule 65<sup>[11]</sup> of the 1997 Rules of Civil Procedure.<sup>[12]</sup> They also contend that the respondent court erred in ruling that they are the ones liable to pay tips to Orlando. They point out that if tips will be considered as part of the salary of Orlando, it will make him the highest paid employee on M/V "Orient Express." The ship captain, the highest ranking officer, receives U.S.\$3,000.00 per month without tips. Orlando, who is a bartender, will receive U.S.\$3,450.00 per month. Allegedly, this will compel foreign ship owners to desist from hiring Filipino bartenders. It will create an unfavorable precedent detrimental to the future recruitment, hiring and deployment of Filipino overseas workers specially in service oriented businesses. It will also be a case of double compensation that will unjustly enrich Orlando at the expense of petitioners. They also stress that Orlando never complained that they should pay him the said tips.

Respondent filed a two-page comment to the petition adopting the resolution of the Court of Appeals dated July 28, 1999.

We find merit in the petition.

Rules of procedure are used to help secure and not override substantial justice.<sup>[13]</sup> Even the Rules of Court mandates a liberal construction in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.<sup>[14]</sup> Since rules of procedure are mere tools designed to facilitate the attainment of justice, their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided.<sup>[15]</sup> Thus, the dismissal of an appeal on purely technical ground is frowned upon especially if it will result to unfairness.

We apply these sound rules in the case at bar. Petitioners' petition for certiorari before the Court of Appeals contained the certified true copy of the NLRC's decision dated November 26, 1997,<sup>[16]</sup> its order dated May 2, 1999<sup>[17]</sup> and the sworn certification of non-forum shopping.<sup>[18]</sup> Petitioners also explained that their counsel executed an affidavit of proof of service and explanation in the afternoon of July 1, 1999. However, he forgot to attach it when he filed their petition the following day because of the volume and pressure of work and lack of office personnel. However, the Registry Receipt,<sup>[19]</sup> which is the proof of mailing to Orlando's counsel, issued by the Central Post Office was attached on the original petition they filed with the respondent court. It was also stamped<sup>[20]</sup> by the NLRC which is proof of receipt of the petition by the latter. The affidavit of service, which was originally omitted, was attached on their motion for reconsideration.<sup>[21]</sup> Significantly, it was dated July 1,

1999. In view of the surrounding circumstances, the subsequent filing of the affidavit of service may be considered as substantial compliance with the rules.

We now come to the merits of the case. The issue is whether petitioners are liable to pay the tips to Orlando.

The word ["tip"] has several meanings, with origins more or less obscure, connected with "tap" and with "top." In the sense of a sum of money given for good service, other languages are more specific, e.g., Fr. *pourboire*, for drink. It is suggested that [the word] is formed from the practice, in early 18th c. London coffeehouses, of having a box in which persons in a hurry would drop a small coin, to gain immediate attention. The box was labelled To Insure Promptness; then just with the initials T.I.P.<sup>[22]</sup>

It is more frequently used to indicate additional compensation, and in this sense "tip" is defined as meaning a gratuity; a gift; a present; a fee; money given, as to a servant to secure better or more prompt service. A tip may range from pure gift out of benevolence or friendship, to a compensation for a service measured by its supposed value but not fixed by an agreement, although usually the word is applied to what is paid to a servant in addition to the regular compensation for his service in order to secure better service or in recognition of it. It has been said that a tip denotes a voluntary act, but it also has been said that from the very beginning of the practice of tipping it was evident that, whether considered from the standpoint of the giver or the recipient, a tip lacked the essential element of a gift, namely, the free bestowing of a gratuity without a consideration, and that, despite its apparent voluntariness, there is an element of compulsion in tipping.<sup>[23]</sup>

Tipping is done to get the attention and secure the immediate services of a waiter, porter or others for their services. Since a tip is considered a pure gift out of benevolence or friendship, it can not be demanded from the customer. Whether or not tips will be given is dependent on the will and generosity of the giver. Although a customer may give a tip as a consideration for services rendered, its value still depends on the giver. They are given in addition to the compensation by the employer. A gratuity given by an employer in order to inspire the employee to exert more effort in his work is more appropriately called a bonus.

The NLRC and the Court of Appeals held that petitioners were liable to pay tips to Orlando because of the contract of employment. Thus:

"The contract of employment entered into by and between the complainant and Ace Navigation Co., Inc. (p. 82, Record) clearly provides xxx:

'That the employee shall be employed on board under the following terms and conditions:

1.1 Duration of Contract: (12 months) 10 months  
remaining duration of contract

1.2 Position: Bartender

1.3 Basic Monthly Salary: U.S.\$450.00 Flat rate  
including overtime pay for