

SIXTEENTH DIVISION

[CA-G.R. SP No. 130182, May 20, 2014]

TRANSLIFT SHIP MANAGEMENT, INC., PETITIONER, VS. ELMER D. OMONDANG AND NATIONAL LABOR RELATIONS COMMISSION (FIFTH DIVISION), RESPONDENTS.

D E C I S I O N

MACALINO, J:

This is a petition for certiorari^[1] under Rule 65 of the Rules of Court, questioning the March 14, 2013 Resolution^[2] of the National Labor Relations Commission ("NLRC") in NLRC NCR CN. 04-05368-11 [NLRC LAC No. 03-000952-12], which partially granted the Motion for Reconsideration of Translift Ship Management, Inc., modifying the November 23, 2012 Decision^[3] of the NLRC and ordering Translift to reinstate Elmer D. Omondang.

The NLRC arrived at the following factual findings:

"[Elmer D. Omondang] avers that he commenced working for [Translift Ship Management, Inc.] on December 17, 2007 as Second Officer for M/T P. Cara as a probationary employee for six months. On June 18, 2008 he became a regular employee of [Translift] and was given a monthly pay of P38,000.00. Throughout his employment with [Translift] he was not charged of any infraction or violation of company policy that would warrant suspension or dismissal from service. On January 12, 2011 while they were at the port of Batangas, he was told by his superior, Captain Genaro M. Palomares that a certain Antonio Abella, Jr., would take over his position as his services is no longer needed by the company considering his age and health problem. He protested but his plea was unheeded. On January 31, 2011, he went to [Translift's] office to make a counter-report regarding his termination to Marine Superintendent Renato B. Sto. Domingo but the latter likewise ignored him. Consequently, he filed this case on April 1, 2011.

[Translift] on the other hand allege[s] that [Omondang] was not dismissed from service but he is under investigation for an offense while on board the company's vessel. He was advised to wait for the outcome of the investigation while the company conducts inquiries from the concerned personnel. The company later came up with a decision, to give [Omondang] another chance on February 27, 2011. However, he could not be reached through his mobile number. He actually severed his employment with Translift and sought employment elsewhere. In support of their contention, they attached copies of the affidavit of Corazon Reyes, crewing officer of the company and the report dated November 18, 2010 of Capt. Palomares on the alleged obstinacy and willful disobedience on board the vessel of [Omondang].

[Omondang] in his reply reiterated that he was terminated on January 12, 2011 due to his age and health condition and a certain Antonio Abella took over his position on even date. He even waited for several weeks for [Translift] to reconsider their decision. The affidavit of Reyes, purportedly justifying Omondang's termination should be brushed aside as self-serving and fabricated. Granting that there was an investigation of his alleged infraction, he was not informed about it, in violation of his right to notice and hearing. He did not abandon his work. The filing of this case is proof of his desire to return to work.

[Translift] in [its] reply, aver[s] that [Omondang] was merely placed on off-duty following investigation of the complaint against him for his work attitude and acts of disobedience on board M/T Petro Cara. Without waiting for the result of the investigation, [Omondang] filed this case and got employed with another shipping company, precluding his return. As early as March 201[1], the company manifested its willingness to give him new assignment, but [Omondang] could not possibly report for work, as he is on board another company ship.

In a motion to admit, [Translift] submitted the affidavit of Capt. Genaro Palomares stating that on January 12, 2011, [Omondang] was informed that he would be relieved by Antonio Abella in accordance with the office crew movement advice. His disembarkation from the vessel was by reason of the disciplinary process undertaken on the complaint against him for his misbehavior on board which case was discussed in the monthly meeting. He was advised to report to the office to give his statement regarding the matter to the management. He denied having told [Omondang] that his services [are] no longer needed considering his age and health problem.

[Omondang] in his opposition to the motion to admit asserted that he was not aware that he was being placed under disciplinary process as he was not informed or given notice of his alleged infraction and reiterated that his termination was due to his old age and poor health which were the same words he heard from Capt. Palomares.”^[4]

In a ^[5] dated January 24, 2012, the labor arbiter dismissed Omondang's complaint for illegal dismissal. The labor arbiter concluded that there was no illegal dismissal because there was no overt act of dismissal by Translift and Omondang was neither given a notice of dismissal. On appeal, the NLRC reversed the ruling of the labor arbiter and declared Omondang to have been illegally dismissed and Translift was ordered to immediately reinstate the former and pay him backwages. The NLRC declared that Omondang was placed on preventive suspension when he was asked to disembarked on January 12, 2011. However, Omondang was not informed of his suspension as well as of the reasons therefor and he was also not afforded an opportunity to defend himself. Both parties moved for the reconsideration of the NLRC decision. The NLRC, in its March 14, 2013 Resolution modified its decision and declared that there was neither dismissal nor abandonment in the instant case. It ordered Translift to reinstate Omondang without backwages. Unsatisfied, Translift took the present recourse on the sole ground that:

“THE HONORABLE COMMISSION COMMITTED GRAVE AND ABUSE OF DISCRETION IN ORDERING THE REINSTATEMENT OF PRIVATE