

SPECIAL SEVENTH DIVISION

[CA-G.R. SP NO. 115537, May 15, 2014]

**ROMEO R. MANZANO, PETITIONER, V. NATIONAL LABOR
RELATIONS COMMISSION, SECOND DIVISION, GLORIA
MARITIME & AGENCY INC., AND/OR SEJIN MARINE AND/OR MR.
ROLLY ALINAG, RESPONDENTS.**

D E C I S I O N

TIJAM, J.:

This is a Petition for Certiorari seeking to reverse and nullify the Decision^[1] dated April 14, 2010 of the National Labor Relations Commission (NLRC), Second Division which set aside the Decision^[2] of the Labor Arbiter dated June 26, 2009 finding the Petitioner to have been illegally dismissed from employment and awarding him the amounts of US\$3,435.00 as salaries for the unexpired portion of his contract and US\$1,260.00 as unpaid leave pay, plus ten percent (10%) of the total award as attorney's fees. Also subject to be reversed and modified is the Decision^[3] dated May 28, 2010 which denied Petitioner's Motion for Reconsideration.

The antecedent facts are as follows:

On November 24, 2008, Petitioner filed before the Arbitration Branch of the NLRC a Complaint for illegal dismissal, underpayment of sick leave pay, discrimination, payment of salaries from November 1 to 12, 2008, salaries for the unexpired portion of his contract, damages and attorney's fees against Gloria Maritime and Agency, Inc. and Sejin Marine Co. Ltd.

In his Position Paper,^[4] Petitioner Romeo R. Manzano alleged that on April 24, 2008, he was deployed as an Oiler and joined MV "Fairwind" in Japan pursuant to an employment contract with Private Respondent Gloria Maritime and Agency, Inc., for and in behalf of Sejin Marine Co. Ltd., for a duration of nine (9) months and with a monthly salary of US\$1,374.00 inclusive of fixed overtime pay and leave pay.

On October 21, 2008, while MV "Fairwind" was at Praia Mole Anchorage in Brazil, the engine crew was tasked to work on the main engine piston assembly of the vessel. In the course of their work, the First Engineer directed the Petitioner to hold and tighten the piston with a rope. When Petitioner was pulling the rope, Chief Engineer Onofre T. Latupan was accidentally hit by the rope. Chief Engr. Latupan then uttered demeaning and foul words against the Petitioner which developed into a heated argument. This led Engr. Latupan to angrily choke the Petitioner with a grip on his neck. Petitioner then gave out a punch that hit Engr. Latupan on his mouth. Engr. Latupan retaliated and hit the knees of the Petitioner with a piston ring puller tool which caused him to instantaneously fall down. Thereafter, Petitioner was taken to a physician and he was diagnosed of minor knee injuries.

On November 12, 2008, Petitioner was repatriated to the Philippines. Thereafter, he reported to Private Respondent Gloria Maritime and Agency, Inc. and demanded payment of his salaries for the unexpired portion of his contract and leave pay, but to no avail.

In support of his complaint, Petitioner presented an undated handwritten letter^[5] which he executed, narrating therein the details of what transpired on October 21, 2008. The said letter was signed by 1st Engineer Raul V. Docto, 2nd Engineer Annelio A. Ondoy, 3rd Engineer Alex Cayetano V. Ecube, No. 2 Oiler Bonifacio C. Lusat and Wiper Felizando B. Lili, Jr., as witnesses.

In their Position Paper,^[6] Private Respondents claimed that during the maintenance operation of the piston assembly, Chief Engineer Onofre T. Latupan ordered the Petitioner to heave the rigging rope to prevent the piston from swinging. Petitioner responded in an undesirable attitude by causing the rope and the cable of the remote control in the possession of Engr. Latupan to entangle, which scraped the hand of the latter. Engr. Latupan shouted at the Petitioner telling him to work easily and reprimanded him for his undesirable attitude. After the Petitioner shouted back at Engr. Latupan, the latter pushed the former and told him to follow orders. The Petitioner suddenly hit Engr. Latupan with an open range tool on the head. Hence, Engr. Latupan asked for help and Captain Julito R. Garcia, Master of the vessel, responded and settled the trouble.

To bolster their claim, Private Respondents presented pieces of documentary evidence, viz: 1) Copy of the e-mail (Re: Master's Incident Report) dated October 22, 2008 sent to Sato Steamship Onomichi/Marine SI Captain Iyu, copy furnished to Gloria Maritime and Agency, Inc.'s officer in Manila; 2) A "STATEMENT OF FACT" dated January 6, 2009 signed by Chief Engr. Latupan, noted by Capt. Garcia and witnessed by 1st Engr. Docto, 2nd Engr. Ondoy and 3rd Engr. Encube; 3) Minutes of the Meeting of the Grievance Machinery dated October 23, 2008 prepared by Capt. Garcia; 4) Pictures on the head injury of Chief Engr. Latupan; 5) Medical Report of Dr. Jose Mauro Mendes dated November 8, 2008; 6) Copy of page 60 of the vessel's logbook; and 7) Copy of the Release dated November 13, 2008 signed by the Petitioner.

In his Reply,^[7] Petitioner contended that he was never informed of any complaint lodged against him, and there was no prior investigation that was conducted where he was given the opportunity to present his side of the incident. He further contended that the termination of his employment was not due to insubordination or misconduct but due to company request. He also argued that he was only forced to sign the Release as a condition for the release of his working papers under the custody of the Private Respondents.

Private Respondents, in their Reply^[8] claimed that Petitioner attempted to kill Engr. Latupan when he hit him with an open range tool on the head; such an act is a just cause for termination of his employment under Article 282^[9] (a) (d) and (e) of the Labor Code. They also claimed that Petitioner was afforded due process before he was terminated from his work as shown by the Minutes of the Meeting of the Grievance Committee. Private Respondents further averred that Petitioner voluntarily executed a waiver and release which discharged them from any monetary claims or other obligations arising from Petitioner's previous employment

with the company. They concluded that since Petitioner was validly terminated, there was no basis for his monetary claims.

On June 26, 2009, the Labor Arbiter rendered a Decision^[10] declaring that Petitioner was illegally terminated from employment. The Labor Arbiter ordered the payment of salaries for the unexpired portion of Petitioner's employment contract corresponding to 2 ½ months, in the amount of US\$3,435.00 and leave pay in the amount US\$1,260.00, as well as attorney's fees equivalent to 10% of the total monetary award. The decretal portion of the Decision states:

"WHEREFORE, all the foregoing premises considered, judgment is hereby rendered ordering the respondent to pay complainant the aggregate sum of US\$4,695.00 as salaries for the unexpired portion of the employment contract and cash equivalent of his vacation and sick leaves, plus ten percent (10%) of the award as and for attorney's fees.

All other claims are denied for lack of merit.

SO ORDERED."^[11]

Not satisfied with the above disposition, Private Respondents appealed to the NLRC, which in a Decision dated April 14, 2010, dismissed Petitioner's Complaint, thus-

"WHEREFORE, premises considered, it is hereby declared that the appeal has merits; the appealed decision is hereby REVERSED and SET ASIDE, and a new one entered, DISMISSING the complaint.

SO ORDERED."^[12]

Undaunted, Petitioner filed a Motion for Reconsideration^[13] of the said decision, but the same was denied by the NLRC in its Decision^[14] dated May 28, 2010 for lack of merit.

Hence, this recourse wherein Petitioner raised the following issues:

a) WHETHER OR NOT THE HONORABLE PUBLIC RESPONDENT COMMITTED SERIOUS ERRORS AND WITH GRAVE ABUSE OF DISCRETION IN FINDING THAT THE PETITIONER WAS NOT ILLEGALLY TERMINATED.

b) WHETHER OR NOT THE HONORABLE PUBLIC RESPONDENT COMMITTED SERIOUS ERRORS AND WITH GRAVE ABUSE OF DISCRETION IN DENYING THE PETITIONER'S CLAIMS IN HIS COMPLAINT.

c) WHETHER OR NOT THE HONORABLE PUBLIC RESPONDENT COMMITTED SERIOUS ERRORS AND WITH GRAVE ABUSE OF DISCRETION IN RULING AGAINST THE EARLIER FINDINGS OF THE HONOR[A]BLE LABOR ARBITER THAT THE PRIVATE RESPONDENTS ARE GUILTY OF ILLEGAL[LY] DISMISSAL COMMIT[T]ED AGAINST THE PETITIONER.

The issue is whether Petitioner was illegally dismissed from employment, and if so, whether he is entitled to his monetary claims.

The Petition is meritorious.

To justify fully the dismissal of an employee, the employer must, as a rule, prove that the dismissal was for a just cause and that the employee was afforded due process prior to dismissal. As a complementary principle, the employer bears the *onus* of proving with clear, accurate, consistent and convincing evidence the validity of the dismissal.^[15]

Contrary to the pronouncement of the NLRC, We find that Petitioner was illegally dismissed from employment when he was sent back to the Philippines on November 12, 2008. Private Respondents were not able to show by substantial evidence that the termination and repatriation of Petitioner were based on a just and valid cause and with the observance of due process.

It is beyond question that the cause of Petitioner's repatriation was his act of engaging in a fight with the Chief Engineer of MV "Fair Wind" whereby he was found to have committed an act of Insubordination. However, the totality of the documentary evidence presented by the Private Respondents do not support Petitioner's dismissal from employment while on board MV "Fair Wind".

The Master's Incident Report^[16] of Captain Julito R. Garcia dated October 22, 2008 relied upon by the NLRC was a mere narration of the incident that happened on October 21, 2008 as per declaration of Chief Engr. Latupan. Petitioner's version of the incident was not stated in the Report. There was even no express finding that it was the Petitioner who instigated the fight with Chief Engr. Latupan or that the incident was solely attributable to Petitioner's own fault. In fact, in the said Report, Captain Garcia was uncertain as to who between the Petitioner and the Chief Engineer should be repatriated, when he simply stated therein - *"With regard[s] to the above[d] incidents and to avoid any big trouble that may cause grave danger to one of them. I suggest to have a repatriation to one of them."*^[17]

Moreover, in the Minutes of the Meeting^[18] dated October 23, 2008, prepared by Captain Garcia, the Grievance Committee decided to disembark the Petitioner from MV "Fair Wind" in order *"to protect the interest of the vessel/owner and to further eliminate his intention to jeopardize safe operation of the vessel"*. We find this as a mere speculation as the Minutes of the Meeting did not state the specific reason/s why Petitioner should be considered as having the intention to jeopardize the safe operation of the vessel. The Grievance Machinery simply sided with Chief Engr. Latupan who was present during the meeting. It concluded that the trouble was created by the Petitioner and his actuations constitute Insubordination under the POEA Rules and Regulations.

Indeed, one of the attachments mentioned in the Minutes of the Meeting was the "Statement of Fact"^[19] of Chief Engr. Latupan. However, the records would show that this was executed only on January 6, 2009 and the Minutes of the Meeting was issued on October 23, 2008. The belated execution thereof, or more than 2 months from the issuance of the Master's Incident Report and the Minutes of the Meeting of the Grievance Committee, and even after the repatriation of the Petitioner, casts a doubt on its credibility. By examination of the said "Statement of Fact", to Our mind, was an afterthought as it was prepared in order to make it appear that Petitioner's dismissal was for a just and valid cause. Furthermore, the "Statement of Fact" of Chief Engr. Latupan, although attested to by the 1st, 2nd and 3rd Engineers of MV