

## THIRD DIVISION

[ G.R. No. 232062, April 26, 2021 ]

**ANICETO B. OCAMPO, JR., PETITIONER, VS. INTERNATIONAL SHIP CREW MANAGEMENT PHILS. INC. (CURRENTLY: D' AMICO SHIP ISHIMA PHILS. INC.), ISHIMA PTE. LTD., NORA B. GINETE, AND VICTOR C. VELONZA, RESPONDENTS.**

### D E C I S I O N

**LEONEN, J.:**

A vessel's Master and Captain who discriminates against crew members on the basis of their national and ethnic origin may be validly dismissed on the ground of serious misconduct.

This Court resolves a Petition for Review seeking to set aside the Court of Appeals Decision<sup>[1]</sup> and Resolution<sup>[2]</sup> dismissing the petition for certiorari filed by Aniceto Ocampo, Jr. (Ocampo). Ocampo sought to annul the National Labor Relations Commission's Decision<sup>[3]</sup> and Resolution<sup>[4]</sup> which affirmed the Labor Arbiter's Decision dismissing his complaint for illegal dismissal and denying his claim for damages.<sup>[5]</sup>

Ocampo was hired by International Ship Crew Management, Philippines, Inc. (International Ship Crew Management), now called D'Amico Ship Ishima Philippines, Inc., as Master and Captain of MT Golden Ambrosia, an oil and chemical tanker vessel flying under the Singaporean flag. He was engaged for six months with a monthly salary of US\$12,900.00.<sup>[6]</sup>

On July 25, 2012, International Ship Crew Management deployed Ocampo to Singapore to join the crew of MT Golden Ambrosia. He boarded the vessel on July 29, 2012 and took command of it upon their arrival in Singapore on August 8, 2012. As Master, Ocampo found infirmities which were left unattended by the vessel's previous captain. Thus, the Ship Management Team, composed of Ocampo, the Chief Officer, and the Chief Engineer prepared a defect list and submitted it to International Ship Crew Management's office in Singapore.<sup>[7]</sup>

When the vessel arrived at a port in China, the crew—led by the Chief Officer—started unloading its chemical cargo, methanol.<sup>[8]</sup> However, the operation was interrupted when the person-on-duty at the unloading port frantically called for the Chief Officer to stop because there was an apparent over-discharge of methanol. It was soon found out that the Chief Officer had a miscalculation. He informed Ocampo of the situation, who then made arrangements to pump the excess methanol back into the vessel.<sup>[9]</sup>

A week later, Ocampo received an e-mail from Captain Saverio Leboffe (Captain Leboffe), his principal's Marine Safety and Crewing Director, raising several issues

such as the over-discharge of methanol. Captain Leboffe also raised Ocampo's alleged racist attitude towards Myanmar<sup>[10]</sup> crew members, based on the report of Sandra Ross (Ross), representative of the service provider of the Myanmar crew members.<sup>[11]</sup>

According to Ross, these crew members were "extremely depressed and they [did] not wish to keep on working."<sup>[12]</sup> Moreover, Ross stated that "[t]he Myanmar crew felt that they have been treated very poorly and in [an inhumane manner] ever since Capt. Aniceto Ocampo took over the vessel."<sup>[13]</sup> She further narrated hearing Ocampo shout "profound vulgarities"<sup>[14]</sup> at the crew. She also received reports that Ocampo called the Myanmar crew "animals."<sup>[15]</sup> Moreover, when she went to the vessel with Captain Leboffe to investigate, they were shocked to discover that drinking water was not initially provided, and when it was, Ocampo instructed that the drinking water for the Myanmar crew members be rationed.<sup>[16]</sup>

On September 6, 2012, Ocampo was relieved from his duty at a port in Malaysia. When he did not reply to the e-mail, Ocampo again received a follow-up e-mail the next day from Leslie Wharmby, the crewing director, giving him the "opportunity to defend [his] position as a Master[,]" and to offer an explanation for the issues in which he was involved.<sup>[17]</sup>

After Ocampo was repatriated on September 11, 2012, he filed a Complaint for illegal dismissal against International Ship Crew Management, its Director Nora B. Ginete (Ginete), its former President Victor C. Velonza (Velonza), and its principal Ishima Pte., Ltd. (Ishima) before the Labor Arbiter.<sup>[18]</sup> In his Position Paper, Ocampo argued that he was not afforded procedural due process when he was terminated from his employment. He also claimed salaries for the unexpired portion of his six-month contract as well as damages and attorney's fees.<sup>[19]</sup>

For their part, International Ship Crew Management, Ginete, Velonza, and Ishima contended that Ocampo was not entitled to damages and attorney's fees as he was "dismissed for a just and valid cause and that he was afforded due process since he was informed of the acts or omissions constituting the grounds for termination."<sup>[20]</sup>

Labor Arbiter Edgardo M. Madriaga dismissed the complaint as he found that Ocampo was validly terminated from his employment.<sup>[21]</sup>

On appeal to the National Labor Relations Commission, its Third Division affirmed the Labor Arbiter's finding of valid dismissal, but ruled that there was failure to observe procedural due process. Thus, it awarded nominal damages.<sup>[22]</sup> The dispositive portion of the Decision read:

WHEREFORE, the appeal is partly granted. We affirm the valid dismissal of complainant subject to the payment of nominal damages in the sum of P40,000.00.

SO ORDERED.<sup>[23]</sup>

Aggrieved, Ocampo filed a Petition for Certiorari before the Court of Appeals, claiming grave abuse of discretion on the part of the National Labor Relations Commission for affirming his dismissal.

The Court of Appeals upheld the National Labor Relations Commission's Decision. It found Ocampo's dismissal valid due to his racist behavior, which constituted serious misconduct.<sup>[24]</sup> Moreover, it found Ocampo grossly negligent for the over-discharge of methanol.<sup>[25]</sup> The Court of Appeals held that Ocampo was validly dismissed as his employer lost trust and confidence in him due to the same incident.<sup>[26]</sup>

The Court of Appeals dismissed the petition finding it bereft of merit:

**PREMISES CONSIDERED**, the *Petition for Certiorari* is **DISMISSED** for lack of merit.

**SO ORDERED.**<sup>[27]</sup> (Emphasis in the original)

Ocampo moved for reconsideration, but his motion was likewise denied by the Court of Appeals in a Resolution.<sup>[28]</sup>

Hence, this Petition.

Petitioner argues that his dismissal due to racist behavior towards Myanmar crew members was not supported by the record nor was it proven by substantial evidence at the time he was dismissed.<sup>[29]</sup> He contends that the Myanmar crew members did not offer sworn statements to testify on the charge of racism against him and only uncorroborated reports by the crew members were offered, which make the allegations hearsay.<sup>[30]</sup>

Further, petitioner claims that even if respondents were able to prove the charges by substantial evidence, he was dismissed prematurely even before he could respond. He then offers his own version of the facts, saying that the charge of racism were "categorically disavowed" by the people who initially raised it.<sup>[31]</sup> He also maintains that the report on which the charge was based did not exist at the time he was dismissed and only surfaced in respondents' Position Paper before the Labor Arbiter.<sup>[32]</sup>

Moreover, petitioner denies withholding drinking water from the Myanmar crew members, claiming he purchased cartons of bottled water for the crew.<sup>[33]</sup> He also asserts that the crew members were properly compensated for the overtime work they rendered.<sup>[34]</sup>

Petitioner also rejects the charge of gross negligence for the over-discharge of methanol. He argues that the mistake was due to the vessel's Chief Officer, which he cannot be faulted for.<sup>[35]</sup> He also asserts that the Chief Officer, being the next-in-rank to the Master, exercises prerogative independently of the Master, and that the Master's duties are distinct from that of the Chief Officer's. Specifically, he claims that the tasks related to the loading and unloading of cargo are unique and exclusive to the Chief Officer, and not to him as the vessel's Master. He then concludes that he should not be held liable for the acts and omissions of his subordinate.<sup>[36]</sup>

Moreover, petitioner argues that the over-discharging of methanol was only a singular event. To be a ground for dismissal, the negligence must be both gross and habitual—more particularly, a repeated failure to perform one's duties for a period of

time. "A singular or isolated act of negligence does not constitute a just cause for the dismissal of the employee."<sup>[37]</sup>

Finally, petitioner insists that his dismissal on the ground of loss of trust and confidence was erroneous. According to him, the evidence on record does not support the finding of loss of trust and confidence. Moreover, to be a ground for dismissal, such breach of trust must be willful.<sup>[38]</sup> He claims that the arbitrary exercise of the prerogative to dismiss an employee on such ground should not be countenanced.<sup>[39]</sup>

In their Comment,<sup>[40]</sup> respondents reiterate the Court of Appeals' finding of substantial evidence to conclude that petitioner committed serious misconduct, which is a ground for dismissal, against the Myanmar crew members because of his racist behavior.<sup>[41]</sup> They claim that the Labor Arbiter, National Labor Relations Commission, and the Court of Appeals all uniformly found that petitioner "fell short of satisfactorily performing his duties and responsibilities as Master of the. . . vessel, which is the responsibility of maintaining a harmonious and congenial atmosphere on board the said vessel."<sup>[42]</sup>

Respondents also dispute petitioner's claim that the accusations of racism are based on hearsay. According to them, Captain Leboffe had personal knowledge of the Myanmar crew members' complaints, as he personally talked to the crew when he boarded the vessel, including petitioner who never denied the allegations.<sup>[43]</sup> Aside from this, respondents claim that petitioner was also given another chance to explain his side when Captain Leboffe sent him an e-mail requiring him to explain, to which he did not respond to.<sup>[44]</sup>

Moreover, respondents reiterate the Court of Appeals' findings of gross negligence and loss of trust and confidence because of the incident involving the over-discharge of methanol.<sup>[45]</sup> Citing the SQE Management System Procedure on Shipboard Organization, respondents assert that it was petitioner's responsibility as Master to "safely deliver [the] cargo without loss or damage."<sup>[46]</sup> Petitioner also has the "over-all responsibility for the entire operation and for the economic running of the ship and for ensuring that Officers of all departments efficiently discharge their duties."<sup>[47]</sup> Respondents argue that because of petitioner's "incompetence, ineptitude[,], and inadequacy[,]" they suffered losses due to resulting delays.<sup>[48]</sup>

Respondents also insist that petitioner, as Master and Captain, occupied a confidential and managerial position.<sup>[49]</sup> Thus, he can be removed on the ground of loss of trust and confidence.<sup>[50]</sup>

As to the finding that procedural due process was not observed, respondents claim that there were multiple opportunities given to petitioner to present his side. They aver that on September 7, 2012, Leslie Wharmby, the crewing director, sent petitioner a letter asking his side regarding charges of abysmal conduct and behavior towards his crew.<sup>[51]</sup> He also underwent investigation for negligence and serious misconduct due to his racist behavior towards the Myanmar crew members while he was still the Master of MT Golden Ambrosia.<sup>[52]</sup> Finally, they point out that petitioner was given notice of his termination from employment.<sup>[53]</sup>

In his Reply,<sup>[54]</sup> petitioner insists that substantial evidence did not exist at the time of his dismissal to support it.<sup>[55]</sup> He also maintains that he was not given procedural due process, as affirmed by the National Labor Relations Commissions, which decision was not appealed by respondents.<sup>[56]</sup> He reiterates his argument that his dismissal on the ground of serious misconduct is invalid, citing the alleged insufficiency of the letters and messages sent to him.<sup>[57]</sup> He also claims that Ross' report is mere hearsay.<sup>[58]</sup> Finally, petitioner disagrees with the finding of gross negligence and loss of trust and confidence, saying that the responsibility for over-discharging the chemical cargo should fall on the Chief Officer and not on him.<sup>[59]</sup> He also denies having willfully breached the trust of his employer.<sup>[60]</sup>

The issue in this case is whether or not the Court of Appeals erred in upholding petitioner's dismissal from service on the grounds of serious misconduct due to his racist behavior, as well as gross negligence and loss of trust and confidence for the over-discharge of methanol from the vessel he was commanding.

## I

Before inquiring into the substantive issue, it must be noted that the petition's grounds for assailing the Court of Appeals Decision and Resolution are largely based on disputing the lower tribunals' findings of fact. As petitioner himself admits,<sup>[61]</sup> this is not allowed in a Petition for Review under Rule 45.

Rule 45, Section I provides that a petition shall raise only questions of law. This rule has been reiterated by this Court in *Pascual v. Burgos*:<sup>[62]</sup>

The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45. This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt" when supported by substantial evidence. Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.<sup>[63]</sup>  
(Citations omitted)

Petitioner prays for this Court to deviate from this rule and reverse the lower tribunals' factual findings because they are allegedly unsupported by substantial evidence, or have arisen from a misappreciation of facts. However, *Pascual* instructs that "[m]ere assertion and claim that the case falls under the exceptions do not suffice."<sup>[64]</sup> Petitioner must show and prove that the case clearly falls under any of the recognized exceptions. Petitioner has not discharged this burden. Thus, the Petition is procedurally infirm.

## II

On the substantive aspect, the Petition likewise fails.

Serious misconduct is a just cause for dismissal.<sup>[65]</sup> It requires that:

. . . (a) the misconduct must be serious; (b) it must relate to the performance of the employee's duties showing that the employee has become unfit to continue working for the employer; and (c) it must have been performed with wrongful intent.<sup>[66]</sup>