701 Phil. 546

SECOND DIVISION

[G.R. No. 175209, January 16, 2013]

ROLANDO L. CERVANTES, PETITIONER, VS. PAL MARITIME CORPORATION AND/OR WESTERN SHIPPING AGENCIES, PTE., LTD., RESPONDENTS.

D E C I S I O N

PEREZ, J.:

This treats of the petition for rev1ew filed by petitioner Rolando Cervantes assailing the Decision[1] and Resolution or the Court or Appeals dated 14 August 2006 and 26 October 2006, respectively, in CA-G.R. SP No. 76756.

At the center of this controversy is the question whether petitioner resigned or was terminated from his employment.

Petitioner Rolando Cervantes was hired as Master on board the vessel M/V Themistocles by respondent PAL Maritime Corporation, the manning agent of respondent Western Shipping Agencies, PTE., LTD., (Western Shipping) for a 10-month period effective 1 July 1995, with a basic monthly salary of United States (US)$1,600.00, an allowance of US$240.00 per month, a fixed overtime pay of US$640.00, and vacation leave with pay amounting to US$320.00 per month.[2]

On 31 July 1995, a telex message was sent to petitioner enumerating the complaints received from Colonial Shipping, the owner of the vessel, as follows:

1. Poor communications exist among key personnel
2. Vessel's certifications and company procedures were disorganized
3. Has no awareness on purpose of key documents such as ship board oil pollution emergency plan.
4. Has no working knowledge of grain loading calculation procedures
5. Improve operational and maintenance standards x x x.[3]

On the following day, petitioner sent a telex message and imputed ill- motive on the part of the foreign inspectors who were making false accusations against Filipino crew members. In the same message, petitioner addressed all the complaints raised against him.[4]

On 2 August 1995, petitioner sent another telex message informing Western Shipping of the unbearable situation on board. He ended his message with these words:

> ANYHOW TO AVOID REPETITION [ON] MORE HARSH REPORTS TO COME. BETTER ARRANGE MY RELIEVER [AND] C/O BUSTILLO RELIEVER ALSO. UPON ARR NEXT USA LOADING PORT FOR THEIR SATISFACTION.[5]

In response to said message, on 20 September 1995, Western Shipping sent a letter informing petitioner that:

> OWNERS HAVE DECIDED TO RELIEVE YOU UPON PASSING PANAMA CANAL OR NEXT CONVENIENT PORT. WE TRUST THIS PRE-MATURED ENDING OF CONTRACT IS MUTUALLY AGREED AND FOR THE BENEFITS OF ALL PARTIES CONCERNED.[6]

Petitioner replied in this wise:

> HV NO CHOICE BUT TO ACCEPT YR DECISION. TKS ANYHOW FOR RELIEVING ME IN NEXT CONVENIENT PORT WILL EASE THE BURDEN THAT I HV FELT ONBOARD. REST ASSURE VSL WILL BE TURNED OVER PROPERLY TO INCOMING MASTER.[7]

On 13 October 1995, petitioner was repatriated to Manila.

On 25 October 1996, petitioner filed a Complaint for illegal dismissal. He prayed for actual damages in the amount of US$18,480.00 corresponding to his salaries for the unexpired period of his contract; moral damages for an amount not less than P200,000.00; exemplary damages for an amount not less than P100,000.00; and attorney's fees in an amount not less than 10% of the monetary award.[8]

In their Answer, respondents alleged that petitioner voluntarily and freely pre-terminated his own contract.

On 2 July 1999, Labor Arbiter Donato G. Quinto, Jr. found that petitioner was illegally dismissed. The dispositive portion of the Decision reads:

> WHEREFORE, foregoing premises considered, judgment is hereby rendered declaring complainant Rolando L. Cervantes to have been illegally dismissed and ordering respondents PAL Maritime Corporation and Western Shipping Agencies PTE, LTD to pay, jointly and severally, the amount of US$7,440.00, or its peso equivalent at the time of payment, representing his salary for the unexpired portion of his contract, plus 10% thereof as attorney's fees, all as discussed and computed above.
>
> All other claims are hereby dismissed for lack of merit.[9]

The Labor Arbiter focused on two (2) correspondences: 1) the letter- communication dated 20 September 1995 issued by respondent Western Shipping which terminated petitioner's employment, and 2) the subsequent reply of petitioner acceding to

Western Shipping's decision to terminate him. The Labor Arbiter construed these correspondences as involuntary repatriation of petitioner.

On appeal, the Labor Arbiter's Decision was reversed by the First Division of the National Labor Relations Commission (NLRC). The NLRC initially referred the case to another Labor Arbiter, Thelma M. Concepcion (Labor Arbiter Concepcion) for review and submission of a report pursuant to Article 218 (c)[10] of the Labor Code. Labor Arbiter Concepcion found that petitioner was not dismissed from service but that he opted to be relieved from his post. This finding was adopted by the NLRC. Petitioner filed a motion for reconsideration but it was denied by the NLRC in an Order dated 26 December 2002, prompting him to file a petition before the Court of Appeals.

Finding that petitioner voluntarily resigned, the Court of Appeals, on 14 August 2006, denied the petition and affirmed the decision of the NLRC.

Petitioner elevated the case to this Court via a petition for review on *certiorari* raising the following issues:

> a) Whether the petitioner is entitled to his claims the (sic) under the POEA Employment Contract which arose from his illegal termination and what amount of evidence is required from the petitioner to prove their entitlement thereto.
>
> b) Whether or not an appeal without the joint declaration under oath is considered perfected?[11]

We shall first tackle the procedural issue raised.

Petitioner points out that the failure of respondent to file the required Joint Declaration Under Oath on the appeal bond warrants the dismissal of the appeal for non-perfection. On the other hand, respondents brush aside the late submission of their Joint Declaration Under Oath as a mere technicality.

The pertinent provision of the NLRC Rules of Procedure governing at the time the appeal was made to the NLRC is Rule VI, Section 3.[12] Section 3 enumerates the following requisites for perfection of appeal:

1. The appeal shall be filed within the reglementary period;

2. It shall be under oath with proof of payment of the required appeal fee and the posting of a cash or surety bond; and

3. It shall be accompanied by a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof; the relief prayed for; and a statement of the date when the appellant received the appealed decision, order or award and proof of service on the other party of such appeal.

In relation to the posting of the appeal bond, Section 6 further requires the submission by petitioner and his counsel of a Joint Declaration Under Oath attesting that the surety bond posted is genuine and that it shall be in effect until final disposition of the case.[13]

While the Rule mandates the submission of a joint declaration, this may be liberally construed especially in cases where there is substantial compliance with the Rule. When the NLRC issued an order directing respondents to file their Joint Declaration, the latter immediately complied.

Thus, there was only a late submission of the Joint Declaration. There was substantial compliance when respondents manifested their willingness to comply, and in fact complied with, the directive of the NLRC.

The appeal may have been treated differently had respondents failed to post the appeal bond itself. It bears mention that this Court had in numerous cases granted even the late posting of the appeal bond. In *University Plans Incorporated v. Solano*, [14] the Court ratiocinated:

> After all, the present case falls under those cases where the bond requirement on appeal may be relaxed considering that (1) there was substantial compliance with the Rules; (2) the surrounding facts and circumstances constitute meritorious grounds to reduce the bond; and (3) the petitioner, at the very least, exhibited its willingness and/or good faith by posting a partial bond during the reglementary period. Also, such a procedure would be in keeping with the Labor Code's mandate to 'use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.'[15]

As correctly pointed out by the Court of Appeals, respondents had posted a surety bond equivalent to the monetary award and had filed the notice of appeal and appeal memorandum, all within the reglementary period. All these show substantial compliance with the appeal requirement, considered as they must be, together with late submission of the Joint Declaration.

Further, no less than the Labor Code directs labor officials to use reasonable means to ascertain the facts speedily and objectively, with little regard to technicalities or formalities and Rule VII, Section 10 of the New Rules of Procedure of the NLRC provides that technical rules are not binding. Indeed, the application of technical rules or procedure may be relaxed in labor cases to serve the demand of substantial justice.[16]

On the substantive issue, petitioner insists that he did not resign but was terminated from employment. Petitioner claims that he and the other Filipino crew members were subjects of racial discrimination which resulted from the complaint that they lodged against the vessel's Greek technician, Angelo Fatorous, due to the latter's inefficiency and maltreatment of crew members. Petitioner avers that voluntariness was lacking in his decision to write the letter on 3 August 1995 indicating his desire