

SECOND DIVISION

[G.R. No. 180636, March 13, 2013]

**LORENZO T. TANGGA-AN,^{*} PETITIONER, VS. PHILIPPINE
TRANSMARINE CARRIERS, INC., UNIVERSE TANKSHIP
DELAWARE LLC, AND CARLOS C. SALINAS, RESPONDENTS.**

DECISION

DEL CASTILLO, J.:

This Court's labor pronouncements must be read and applied with utmost care and caution, taking to mind that in the very heart of the judicial system, labor cases occupy a special place. More than the State guarantees of protection of labor and security of tenure, labor disputes involve the fundamental survival of the employees and their families, who depend upon the former for all the basic necessities in life.

This Petition for Review on *Certiorari*^[1] seeks a modification of the November 30, 2006 Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 00806. Also assailed is the November 15, 2007 Resolution^[3] denying petitioner's Motion for Reconsideration.

Factual Antecedents

The facts, as found by the CA, are as follows:

This is a case for illegal dismissal with a claim for the payment of salaries corresponding to the unexpired term of the contract, damages and attorney's fees filed by private respondent [Lorenzo T. Tangga-an] against the petitioners [Philippine Transmarine Carriers, Inc., Universe Tankship Delaware LLC, and Carlos C. Salinas^[4] or herein respondents].

In his position paper, [Tangga-an] alleged that on January 31, 2002^[2], he entered into an overseas employment contract with Philippine Transmarine Carriers, Inc. (PTC) for and in behalf of its foreign employer, Universe Tankship Delaware, LLC. Under the employment contract, he was to be employed for a period of six months as chief engineer of the vessel the S.S. "Kure". He was to be paid a basic salary of US\$5,000.00; vacation leave pay equivalent to 15 days a months [sic] or US\$2,500.00 per month and tonnage bonus in the amount of US\$700.00 a month.

On February 11, 2002, [Tangga-an] was deployed. While performing his assigned task, he noticed that while they were loading liquid cargo at Cedros, Mexico, the vessel suddenly listed too much at the bow. At that particular time both the master and the chief mate went on shore leave together, which under maritime standard was prohibited. To avoid any

conflict, he chose to ignore the unbecoming conduct of the senior officers of the vessel.

On or about March 13, 2002, the vessel berthed at a port in Japan to discharge its cargo. Thereafter, it sailed to the U.S.A. While the vessel was still at sea, the master required [Tangga-an] and the rest of the Filipino Engineer Officers to report to his office where they were informed that they would be repatriated on account of the delay in the cargo discharging in Japan, which was principally a duty belonging to the deck officers. He imputed the delay to the non-readiness of the turbo generator and the inoperation of the boom, since the turbo generator had been prepared and synchronized for 3.5 hours or even before the vessel arrived in Japan. Moreover, upon checking the boom, they found the same [sic] operational. Upon verification, they found out that when the vessel berthed in Japan, the cargo hold was not immediately opened and the deck officers concerned did not prepare the stock. Moreover, while cargo discharging was ongoing, both the master and the chief mate again went on shore leave together at 4:00 in the afternoon and returned to the vessel only after midnight. To save face, they harped on the Engine Department for their mistake. [Tangga-an] and the other Engineering [O]fficers were ordered to disembark from the vessel on April 2, 2002 and thereafter repatriated. Thence, the complaint.

[Philippine Transmarine Carriers, Inc., Universe Tankship Delaware LLC, and Carlos C. Salinas] on the other hand, contended that sometime on [sic] March 2002, during a test of the cargo discharging conveyor system, [Tangga-an] and his assistant engineers failed to start the generator that supplied power to the conveyor. They spent 3 hours trying to start the generator but failed. It was only the third assistant engineer who previously served in the same vessel who was able to turn on the generator. When the master tried to call the engine room to find out the problem, [Tangga-an] did not answer and merely hang [sic] up. The master proceeded to the engine room to find out the problem by [sic] [Tangga-an] and his assistant engineers were running around trying to appear [busy].

At another time, during a cargo discharging operation requiring the use of a generator system and the conveyor boom, [Tangga-an] was nowhere to be found. Apparently, he went on shore leave resulting in a delay of 2 hours because the machine could not be operated well. Both incidents were recorded in the official logbook. Due to the delay, protests were filed by the charter [sic]. The master required [Tangga-an] to submit a written explanation to which he did but blamed the captain and the chief officer. He failed to explain why he did not personally supervise the operation of the generator system and the conveyor boom during the cargo discharging operations. His explanation not having been found satisfactory, [respondents] decided to terminate [Tangga-an's] services. Thus, a notice of dismissal was issued against [Tangga-an]. He arrived in the Philippines on April 4, 2002.^[5]

Tangga-an filed a Complaint^[6] for illegal dismissal with prayer for payment of

salaries for the unexpired portion of his contract, leave pay, exemplary and moral damages, attorney's fees and interest.

On January 27, 2004, Labor Arbiter Jose G. Gutierrez rendered a Decision^[7] finding petitioner to have been illegally dismissed. The Labor Arbiter noted that in petitioner's letter to respondent Universe Tankship Delaware, LLC dated April 1, 2002^[8] he categorically denied any negligence on his part relative to the delay in the discharge of the cargo while the vessel was berthed in Japan. In view thereof, the Labor Arbiter opined that an investigation should have been conducted in order to ferret out the truth instead of dismissing petitioner outright. Consequently, petitioner's dismissal was illegal for lack of just cause and for failure to comply with the twin requirements of notice and hearing.^[9]

As regards petitioner's claim for back salaries, the Labor Arbiter found petitioner entitled not to four months which is equivalent to the unexpired portion of his contract, but only to three months, inclusive of vacation leave pay and tonnage bonus (or US\$8,200 x 3 months = US\$24,600) pursuant to Section 10 of Republic Act (RA) No. 8042 or The Migrant Workers and Overseas Filipinos Act of 2005.

Regarding petitioner's claim for damages, the same was denied for failure to prove bad faith on the part of the respondents. However, attorney's fees equivalent to 10% of the total back salaries was awarded because petitioner was constrained to litigate.

The dispositive portion of the Labor Arbiter's Decision, reads:

WHEREFORE, the foregoing premises considered, judgment is hereby rendered finding [Tangga-an] illegally dismissed from his employment and directing the respondent Phil. Transmarine Carriers, Inc. to pay [Tangga-an] the amount of **US\$24,600.00 PLUS US\$2,460.00** attorney's fees or a total aggregate amount of **US Dollars: TWENTY SEVEN THOUSAND SIXTY (US\$27,060.00)** or its peso equivalent at the exchange rate prevailing at the time of payment.

SO ORDERED.^[10]

Ruling of the National Labor Relations Commission

Respondents appealed to the National Labor Relations Commission (NLRC). They claimed that the Labor Arbiter committed grave abuse of discretion in finding that petitioner was illegally dismissed; in awarding unearned vacation leave pay and tonnage bonus when the law and jurisprudence limit recovery to the employee's basic salary; and in awarding attorney's fees despite the absence of proof of bad faith on their part.

On August 25, 2004, the NLRC issued its Decision,^[11] the dispositive portion of which reads:

WHEREFORE, the Decision dated January 27, 2004 of the Labor Arbiter is **AFFIRMED**.

Respondents-appellants['] Memorandum of Appeal, dated 23 March 2004 is **DISMISSED** for lack of merit.

SO ORDERED.^[12]

The NLRC affirmed the finding of illegal dismissal. It held that no notice of hearing was served upon petitioner, and no hearing whatsoever was conducted on the charges against him. It ruled that respondents could not dispense with the twin requirements of notice and hearing, which are essential elements of procedural due process. For this reason, no valid cause for termination has been shown. The NLRC likewise found respondents guilty of bad faith in illegally dismissing petitioner's services.

On the issue covering the award of unearned vacation leave pay and tonnage bonus, the NLRC struck down respondents' arguments and held that in illegal dismissal cases, the employee is entitled to all the salaries, allowances and other benefits or their monetary equivalents from the time his compensation is withheld from him until he is actually reinstated, in effect citing Article 279^[13] of the Labor Code. It held that vacation leave pay and tonnage bonus are provided in petitioner's employment contract, which thus entitles the latter to the same in the event of illegal dismissal.

Finally, on the issue of attorney's fees, the NLRC held that since respondents were found to be in bad faith for the illegal dismissal and petitioner was constrained to litigate with counsel, the award of attorney's fees is proper.

Respondents moved for reconsideration which was denied by the NLRC in its March 18, 2005 Resolution.^[14]

Ruling of the Court of Appeals

Respondents went up to the CA by Petition for Certiorari,^[15] seeking to annul the Decision of the NLRC, raising essentially the same issues taken up in the NLRC.

On November 30, 2006, the CA rendered the assailed Decision, the dispositive portion of which reads, as follows:

WHEREFORE, premises considered, the instant petition is **PARTIALLY GRANTED**. The Decision of public respondent is **MODIFIED** in the following manner:

- a. [Tangga-an] is entitled to three (3) months salary representing the unexpired portion of his contract in the total amount of US\$15,000.00 or its peso equivalent at the exchange rate prevailing at the time of payment;
- b. [Tangga-an's] placement fee should be reimbursed with 12% interest

per annum;

c. [T]he award of attorney's fees is deleted.

SO ORDERED.^[16]

The CA adhered to the finding of illegal dismissal. But on the subject of monetary awards, the CA considered only petitioner's monthly US\$5,000.00 basic salary and disregarded his monthly US\$2,500.00 vacation leave pay and US\$700.00 tonnage bonus. It likewise held that petitioner's "unexpired portion of contract" for which he is entitled to back salaries should only be three months pursuant to Section 10^[17] of RA 8042. In addition, petitioner should be paid back his placement fee with interest at the rate of twelve per cent (12%) per annum.

As to attorney's fees, the CA did not agree with the NLRC's finding that bad faith on the part of respondents was present to justify the award of attorney's fees. It held that there is nothing from the facts and proceedings to suggest that respondents acted with dishonesty, moral obliquity or conscious doing of wrong in terminating petitioner's services.

Petitioner filed a Motion for (Partial) Reconsideration,^[18] which was denied in the assailed November 15, 2007 Resolution. Thus, he filed the instant Petition.

Issues

In this Petition, Tangga-an seeks a modification of the CA Decision and the reinstatement of the monetary awards as decreed in the Labor Arbiter's January 27, 2004 Decision, or in the alternative, the grant of back salaries equivalent to four months which corresponds to the unexpired portion of the contract, inclusive of vacation leave pay and tonnage bonus, plus 10% thereof as attorney's fees.^[19]

Petitioner submits the following issues for resolution:

I. Whether x x x the CA's issuance of the writ of certiorari reversing the NLRC decision is in accordance with law[;]

II. Whether x x x the indemnity provided in Section 10, R. A. 8042 x x x be limited only to the seafarer's basic monthly salary or x x x include, based on civil law concept of damages as well as Labor Code concept of backwages, allowances/benefits or their monetary equivalent as a further relief to restore the seafarer's income that was lost by reason of his unlawful dismissal[;]

III. Whether x x x the indemnity awarded by the CA in petitioner's favor consisting only of 3 months' basic salaries [conform] with the proper interpretation of Section 10 R. A. 8042 and with the ruling in *Skippers Pacific, Inc. v. Mira, et al.*, G.R. No. 144314, November 21, 2002 and related cases or is petitioner entitled to at least 4 months salaries being the unexpired portion of his contract[; and]