574 Phil. 441

FIRST DIVISION

[G.R. No. 172038, April 14, 2008]

DANTE D. DE LA CRUZ, Petitioner, vs. MAERSK FILIPINAS CREWING, INC. and ELITE SHIPPING A.S., Respondents.

D E C I S I O N

CORONA, J.:

This petition for review on certiorari[1] seeks to set aside the November 26, 2004 decision[2] and March 9, 2006 resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 74097.

Respondent Elite Shipping A.S. hired petitioner Dante D. de la Cruz as third engineer for the vessel M/S Arktis Morning through its local agency in the Philippines, co-respondent Maersk Filipinas Crewing Inc. The contract of employment was for a period of nine months, starting April 19, 1999, with a monthly basic salary of US$1,004.00 plus other benefits.

Petitioner was deployed to Jebel Ali, United Arab Emirates and boarded M/S Arktis Morning on May 14, 1999.

In a logbook entry dated June 18, 1999, chief engineer Normann Per Nielsen expressed his dissatisfaction over petitioner's performance:

> 3rd Eng. Dante D. de la Cruz has[,] since he signed on[,] not been able to live up to the company's SMS job describtion (*sic*) for 3rd Engineer[.] Today he has been informed that if he do[es] not improve his Job/Working performance within [a] short time he will be signed off according to CBA Article 1 (7).

Said Article 1 (7) of the collective bargaining agreement (CBA) between respondent Elite Shipping A.S. and its employees reads:

> (7) The first sixty (60) days of service is to be considered a probationary period which entitles a shipowner or his representative, i.e.[,] the master of the vessel[,] to terminate the contract by giving fourteen (14) days of written notice.

This entry was followed by another one dated June 26, 1999 which was similar in content.

On June 27, 1999, petitioner was informed of his discharge through a notice captioned "Notice according to CBA Article 1 (7)," to wit:

> To: 3rd engineer Dante D. de la Cruz

> Pls. be informed that you will be discharged according to CBA article 1 (7) in first possible port. Reason for the decision is, as you have been informed by chief engineer Per Nielsen on several occasions, he [does] not find you qualified for the position as 3rd engineer onboard this vessel. The chief engineer has also made 2 entries in the engine logbook, regarding your insufficient job/working, which you are well aware of.

Petitioner was then made to disembark at the port of Houston, Texas and was repatriated to Manila on July 17, 1999.

Petitioner thereafter filed a complaint for illegal dismissal with claims for the monetary equivalent of the unexpired portion of his contract, damages and attorney's fees in the National Labor Relations Commission (NLRC) on September 21, 1999.

The labor arbiter (LA) ruled that petitioner was dismissed without just cause and due process as the logbook entry (which respondents claimed to be the first notice to petitioner) was vague. It failed to expound on or state the details of petitioner's shortcomings or infractions. As such, petitioner was deprived of a real or meaningful opportunity to explain his side. Hence, the LA ruled that petitioner was entitled to a monetary equivalent of salaries for three months, moral and exemplary damages and attorney's fees.

On appeal, the NLRC upheld the LA's finding of illegal dismissal but deleted the award of moral and exemplary damages. Respondents moved for reconsideration. It was denied.

Thereafter, respondents filed a petition for certiorari (under Rule 65) with the CA. It granted the petition. It held that, although the findings of fact of the LA and NLRC were entitled to great respect, this rule was inapplicable because the NLRC committed grave abuse of discretion in upholding the LA's decision. The findings were not only unsupported by substantial evidence but were also based solely on the ground that the logbook entries were vague and without concrete standards.

The CA deemed the logbook entries to be sufficient compliance with the first notice requirement of the law. It was a written appraisal of petitioner's poor job performance coupled with a warning that should he fail to improve his performance, he would be signed off in accordance with the provisions of the CBA. It reasoned that a probationary employee may be dismissed at anytime during the probationary period for failure to live up to the expectations of the employer.

Petitioner filed a motion for reconsideration of the CA decision. It was denied. Hence, this petition.

The main issue raised before us is whether or not petitioner was illegally dismissed by respondents.

Before addressing the merits of the controversy, we need to settle two preliminary issues. *First*, respondents interposed in their comment that the present petition should be dismissed outright as the motion for extension of time to file this petition for review was filed late.

In his petition, petitioner indicated that he received a copy of the CA resolution (dated March 9, 2006) denying his motion for reconsideration on March 24, 2006. He, therefore, had until April 8, 2006 to appeal said resolution to this Court or to file a motion for extension of time to file the petition. However, as April 8, 2006 fell on a Saturday, petitioner deemed it sufficient compliance to file his motion for extension on April 10, 2006, in accordance with Section 1, Rule 22 of the Rules of Court:

> SECTION 1. *How to compute time.* - xxx If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

Respondents countered that A.M. No. 00-2-14-SC dated February 29, 2000 (Re: Computation of Time When the Last Day Falls on Saturday, Sunday or Legal Holiday and a Motion for Extension on Next Working Day is Granted) clarified that the aforementioned rule is applicable only to the filing of pleadings *other than motions for extension of time*, such that when a party seeks an extension to file a desired pleading, the provision no longer applies and the motion should be filed on the due date itself, regardless of the fact that it falls on a Saturday, Sunday or legal holiday.

Respondents' contention is incorrect.

A.M. No. 00-2-14-SC provides:

> xxx
>
> Whereas, the aforecited provision [Section 1, Rule 22 of the Rules of Court] applies in the matter of filing of pleadings in courts when the due date falls on a Saturday, Sunday or legal holiday, in which case, the filing of the said pleading on the next working day is deemed on time;
>
> Whereas, the question has been raised if the period is extended *ipso jure* to the next working day immediately following where the last day of the period is a Saturday, Sunday or legal holiday so that when a motion for extension of time is filed, the period of extension is to be reckoned from the next working day and not from the original expiration of the period.
>
> NOW THEREFORE, the Court Resolves, for the guidance of the Bench and the Bar, to declare that Section 1, Rule 22 speaks only of "the last day of the period" so that when a party seeks an extension and the same is granted, the due date ceases to be the last day and hence, the provision no longer applies. **Any extension of time to file the required pleading should therefore be counted from the expiration of the period regardless of the fact that said due date is a Saturday, Sunday or legal holiday.** (emphasis supplied)

Section 1, Rule 22, as clarified by the circular, is clear. Should a party desire to file any pleading, even a motion for extension of time to file a pleading, and the last day falls on a Saturday, Sunday or a legal holiday, he may do so on the next working day. This is what petitioner did in the case at bar.

However, according to the same circular, the petition for review on certiorari was indeed filed out of time. The provision states that in case a motion for extension is

granted, the due date for the extended period shall be counted from the original due date, not from the next working day on which the motion for extension was filed. In *Luz v. National Amnesty Commission*,[4] we had occasion to expound on the matter. In that case, we held that the extension granted by the court should be tacked to the original period and commences immediately after the expiration of such period.

In the case at bar, although petitioner's filing of the motion for extension was within the period provided by law, the filing of the petition itself was not on time. Petitioner was granted an additional period of 30 days within which to file the petition. Reckoned from the original period, he should have filed it on May 8, 2006. Instead, he did so only on May 11, 2006, that is, 3 days late.

Nevertheless, we will gloss over this technicality and resolve the case on its merits in the exercise of this Court's equity jurisdiction as we have done in a number of cases.[5]

Well settled is the rule that litigations should, as much as possible, be decided on their merits and not on technicalities.[6] In accordance with this legal precept, this Court has ruled that being a few days late in the filing of the petition for review does not automatically warrant the dismissal thereof,[7] specially where strong considerations of substantial justice are manifest in the petition.[8] Such is the case here.

The *second* preliminary issue we need to address is the matter of this Court's jurisdiction in petitions for review on certiorari under Rule 45. It should be noted that our jurisdiction in such cases is limited only to questions of law. It does not extend to questions of fact. This doctrine applies with greater force in labor cases.[9] As such, the findings of fact of the CA are binding and conclusive upon this Court. However, this rule is not absolute but admits of certain exceptions. Factual findings may be reviewed in a case when the findings of fact of the LA and the NLRC are in conflict with those of the CA.[10] In this case, the LA and the NLRC held that respondents did not comply with the notice requirement; the CA found otherwise. Thus, although the instant petition involves a question of fact, that is, whether or not the notice requirement was met, we can still rule on it.

Now, the merits of the instant controversy.

The CA committed an error in holding that petitioner was not illegally dismissed. The contrary findings and conclusions made by the LA and the NLRC were supported by jurisprudence and the evidence on record.

An employer has the burden of proving that an employee's dismissal was for a just cause. Failure to show this necessarily means that the dismissal was unjustified and therefore illegal.[11] Furthermore, not only must the dismissal be for a cause provided by law, it should also comply with the rudimentary requirements of due process, that is, the opportunity to be heard and to defend oneself.[12]

These requirements are of equal application to cases of Filipino seamen recruited to work on board foreign vessels. Procedural due process requires that a seaman must be given a written notice of the charges against him and afforded a formal

investigation where he can defend himself personally or through a representative before he can be dismissed and disembarked from the vessel.[13] The employer is bound to furnish him two notices: (1) the written charge and (2) the written notice of dismissal (in case that is the penalty imposed).[14] This is in accordance with the POEA Revised Standard Employment Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels (POEA Revised Standard Employment Terms and Conditions).

Section 17 of the POEA Revised Standard Employment Terms and Conditions laid down the disciplinary procedures to be taken against erring seafarers:

> Section 17. DISCIPLINARY PROCEDURES
>
> The Master shall comply with the following disciplinary procedures against an erring seafarer:
>
> A. The Master shall furnish the seafarer with a written notice containing the following:
>
> 1. Grounds for the charges as listed in Section 31 of this Contract.
>
> 2. Date, time and place for a formal investigation of the charges against the seafarer concerned.
>
> B. The Master or his authorized representative shall conduct the investigation or hearing, giving the seafarer the opportunity to explain or defend himself against the charges. An entry on the investigation shall be entered into the ship's logbook.
>
> C. If, after the investigation or hearing, the Master is convinced that imposition of a penalty is justified, the Master shall issue a written notice of penalty and the reasons for it to the seafarer, with copies furnished to the Philippine agent.
>
> xxx xxx xxx

Furthermore, the notice must state with particularity the acts or omissions for which his dismissal is being sought.[15]

Contrary to respondents' claim, the logbook entries did not substantially comply with the first notice, or the written notice of charge(s). It did not state the particular acts or omissions for which petitioner was charged. The statement therein that petitioner had "not been able to live up to the company's SMS job description for 3rd Engineer" and that he had "been informed that if he [does] not improve his job/working performance within [a] short time he will have to be signed off according to CBA Article 1 (7)" was couched in terms too general for legal comfort.

The CA held that the logbook entries were sufficient to enable petitioner to explain his side or to contest the negative assessment of his performance and were clearly intended to inform him to improve the same. We cannot fathom how the CA arrived at such a conclusion. The entries did not contain any information *at all* as to why he