

## THIRD DIVISION

[ G.R. No. 162195, April 08, 2008 ]

**BAHIA SHIPPING SERVICES, INC., PETITIONER, VS. REYNALDO CHUA, RESPONDENT.**

### DECISION

**AUSTRIA-MARTINEZ, J.:**

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court wherein Bahia Shipping Services, Inc. (petitioner) assails the August 28, 2003 Decision<sup>[1]</sup> of the Court of Appeals (CA), affirming the December 23, 1998 Decision and February 15, 1999 Resolution of the National Labor Relations Commission (NLRC); and the February 19, 2004 CA Resolution,<sup>[2]</sup> denying its Motion for Reconsideration.

Petitioner adopted the following findings of fact of the CA:

Private respondent Reynaldo Chua was hired by the petitioner shipping company, Bahia Shipping Services, Inc., as a restaurant waiter on board a luxury cruise ship liner M/S Black Watch pursuant to a Philippine Overseas Employment Administration (POEA) approved employment contract dated October 9, 1996 for a period of nine (9) months from October 18, 1996 to July 17, 1997. On October 18, 1996, the private respondent left Manila for Heathrow, England to board the said sea vessel where he will be assigned to work.

On February 15, 1997, the private respondent reported for his working station one and one-half (1½) hours late. On February 17, 1997, the master of the vessel served to the private respondent an official warning-termination form pertaining to the said incident. On March 8, 1997, the vessel's master, ship captain Thor Fleten conducted an inquisitorial hearing to investigate the said incident. Thereafter, on March 9, 1997, private respondent was dismissed from the service on the strength of an unsigned and undated notice of dismissal. An alleged record or minutes of the said investigation was attached to the said dismissal notice.

On March 24, 1997, the private respondent filed a complaint for illegal dismissal and other monetary claims, which case was assigned to Labor Arbiter Manuel M. Manansala.

The private respondent alleged that he was paid only US\$300.00 per month as monthly salary for five (5) months instead of US\$410.00 as stipulated in his employment contract. Thus, he claimed that he was underpaid in the amount of US\$110.00 per month for that same period of five (5) months. He further asserted that his salaries were also deducted

US\$20.00 per month by the petitioner for alleged union dues. Private respondent argued that it was his first offense committed on board the vessel. He adverted further that the petitioner has no proof of being a member of the AMOSUP or the ITF to justify its claim to deduct the said union dues [from] his monthly salary.

The petitioner disputed the said allegations of the private respondent by arguing that it received a copy of an addendum to the collective bargaining agreement (CBA) from the petitioner's principal, Blackfriars Shipping Company, Ltd. Consequently, the petitioner requested permission from the POEA through a letter dated March 17, 1997 to amend the salary scale of the private respondent to US\$300.00 per month. The petitioner justified its monthly deduction made for union dues against the private respondent's salary in view of an alleged existing CBA between the Norwegian Seaman's Union (NSU, for brevity) and the petitioner's principal, Blackfriars Shipping Co., Ltd. The petitioner further asseverated that the private respondent has violated the terms and conditions of his contract as manifested in the said official warning-termination form by always coming late when reporting for duty even prior to the February 15, 1997 incident.<sup>[3]</sup>

The Labor Arbiter rendered a Decision dated March 5, 1998, holding petitioner liable to respondent for illegal dismissal and unauthorized deductions, *viz*:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Declaring [petitioner] Bahia Shipping Services, Inc. (BSSI) and its foreign principal Blackfriars Shipping Co., Ltd. (BSCL) guilty of illegal dismissal. Accordingly, the aforementioned [petitioner] BSSI and its foreign principal BSCL are hereby directed to pay jointly and severally, [private respondent] Reynaldo Chua the sum of US\$1,230.00 as earlier computed, representing his salary for the unexpired portion of the contract of employment limited to three (3) months under Republic Act 8042, and convertible to Philippine currency upon actual payment.

2. Directing the aforementioned [petitioner] BSSI and its foreign principal BSCL to pay, jointly and severally, [private respondent] Reynaldo Chua the following money claims as earlier computed:

Reimbursement/Refund of Plane Fare	---	US\$ 638.99
Illegal Deductions ("Union Dues")	---	100.00
Differential Pay (Underpayment of Wages)	---	550.00
		=====
		US\$1,288.99

convertible to Philippine currency upon actual payment.

3. Directing the aforementioned [petitioner] BSSI and its foreign principal BSCL to pay, jointly and severally, the [private respondent] Reynaldo

Chua ten (10%) percent attorney's fees based on the total monetary award.

4. Dismissing the other money claims and/or charges of [private respondent] Reynaldo Chua for lack of factual and legal basis.

SO ORDERED.<sup>[4]</sup>

Petitioner appealed to the NLRC which issued on December 23, 1998 a Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the appealed Decision is hereby MODIFIED in that the award on the unexpired portion of the contract is deducted the amount equivalent to a day's work of complainant. The other findings stand AFFIRMED.

SO ORDERED.<sup>[5]</sup>

Petitioner filed a Motion for Reconsideration but the NLRC denied the same in a Resolution dated February 15, 1999.<sup>[6]</sup>

Respondent did not question the foregoing NLRC decision and resolution.

Upon a petition for *certiorari* filed by petitioner, the CA rendered the August 28, 2003 Decision assailed herein, modifying the NLRC decision, thus:

WHEREFORE, premises considered, the assailed decision dated December 23, 1998, and the resolution dated February 15, 1999, of the public respondent NLRC are hereby AFFIRMED, with the MODIFICATION that the monetary award representing the salary of the petitioner for the unexpired portion of the contract which is limited to three (3) months under Republic Act No. 8042 is DELETED.

SO ORDERED.<sup>[7]</sup>

The CA denied petitioner's Motion for Reconsideration.

And so, the present petition raising the following issues:

a) Whether or not the Court of Appeals could grant additional affirmative relief by increasing the award despite the fact that respondent did not appeal the decision of both the Labor Arbiter and the NLRC.

b) Whether or not reporting for work one and one-half (1½) hours late and abandoning his work are valid grounds for dismissal.

c) Whether or not respondent is entitled to overtime pay which was incorporated in his award for the unexpired portion of the contract despite the fact that he did not render overtime work, and whether or not, it is proper for the NLRC to award money claims despite the fact that the NLRC decision, and affirmed by the Court of Appeals, did not state

clearly the facts and the evidence upon which such conclusions are based.<sup>[8]</sup>

It is noted that petitioner does not question the monetary awards under Item Nos. 2 and 3 of the dispositive portion of the LA Decision, which were affirmed *in toto* by the NLRC and CA.

The issues will be resolved jointly.

The LA declared the dismissal of respondent illegal for the reason that the infraction he committed of being tardy by 1½ hour should not have been penalized by petitioner with the ultimate punishment of termination; rather, the commensurate penalty for such single tardiness would have been suspension for one or two weeks. The LA further noted that petitioner meted out on respondent the penalty of dismissal hastily and summarily in that it merely went through the motions of notifying respondent and hearing his side when, all along, it had already decided to dismiss him.<sup>[9]</sup>

The NLRC sustained the foregoing findings of the LA, noting that the claim of petitioner that respondent's tardiness was not infrequent but habitual is not supported by evidence.<sup>[10]</sup> However, the NLRC held that, although the penalty of dismissal on respondent was properly lifted, a penalty of deduction of one day's salary, the same to be subtracted from his monetary award, should be imposed on the latter for the tardiness he incurred.<sup>[11]</sup>

The CA held that the NLRC and LA did not commit any grave abuse of discretion in arriving at the factual assessments which are all supported by substantial evidence.<sup>[12]</sup>

Petitioner assails the ruling of the CA for being based on the faulty premise that respondent incurred tardiness only once when in fact he had done so habitually.<sup>[13]</sup> Whether respondent had been habitually tardy prior to February 15, 1997 when he reported for work 1½ hours late is purely factual in nature. As such, the Court defers to the concurrent assessments of the LA and NLRC, as affirmed by the CA, for the evaluation of evidence and the appreciation of the credibility of witnesses fall within their expertise.<sup>[14]</sup>

As the Court held in *Acebedo Optical v . National Labor Relations Commission*,<sup>[15]</sup>

Judicial Review of labor cases does not go beyond the evaluation of the sufficiency of the evidence upon which its labor officials' findings rest. As such, the findings of facts and conclusion of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence.<sup>[16]</sup>

In the present case, petitioner has failed to establish a compelling reason for the Court to depart from this rule. In fact, as pointed out by the CA, petitioner's claim that respondent's tardiness was habitual lacks evidentiary support as "no other documents on record were attached to substantiate that the private respondent was