

THIRD DIVISION

[G.R. No. 180719, August 22, 2008]

CENTENNIAL TRANSMARINE, INC., CENTENNIAL MARITIME SERVICES CORPORATION AND/OR B+H EQUIMAR SINGAPORE, PTE. LTD., PETITIONERS, VS. RUBEN G. DELA CRUZ, RESPONDENT.

DECISION

YNARES-SATIAGO, J.:

This petition for review on certiorari assails the August 31, 2007 Decision^[1] of the Court of Appeals in CA-G.R. SP No. 91054 reversing the Decision of the National Labor Relations Commission and finding that respondent Ruben G. Dela Cruz was illegally dismissed from service, as well as the November 16, 2007 Resolution^[2] denying the motion for reconsideration.

On May 9, 2000, petitioner Centennial Transmarine, Inc., for and in behalf of its foreign principal, petitioner Centennial Maritime Services, Corp., hired respondent Dela Cruz as Chief Officer of the oil tanker vessel "MT Aquidneck," owned by petitioner B+H Equimar, Singapore, Pte. Ltd., for a period of nine months.

On May 15, 2000, respondent boarded "MT Aquidneck" and performed his functions as Chief Officer. However, on September 14, 2000, respondent was relieved of his duties and repatriated to the Philippines. Failing to get a satisfactory explanation from petitioners for his relief, respondent filed a complaint for illegal dismissal with prayer for payment of his salaries for the unexpired portion of contract, moral and exemplary damages and attorney's fees on October 7, 2000.

Respondent alleged that while the vessel was docked in Lake Charles in the United States, another Chief Officer boarded the vessel. He inquired from the master of the vessel, Captain Kowalewski, why he had a reliever, however the latter disclaimed any knowledge. At the same time, he showed respondent an electronic mail (e-mail) from petitioner B+H Equimar Singapore, Pte. Ltd. stating that there was an incoming Chief Officer who was to take over the operations upon boarding.

On September 19, 2000, Captain Kowalewski gave respondent his flight schedule. He was subsequently repatriated on September 22, 2000.^[3]

Upon arrival in Manila, respondent inquired from Mr. Eduardo Jabla, President of petitioner Centennial Transmarine, Inc., why he was relieved. However, Jabla could only surmise that his relief was possibly due to the arguments he had with Capt. P. Bajaj, a company superintendent who came on board in August 2000 while the vessel was berthed in Los Angeles,^[4] regarding deck operations and deck work, and documentation and safety procedures in the cargo control room.^[5]

On the other hand, petitioner alleged that respondent was relieved of his functions as Chief Officer due to his inefficiency and lack of job knowledge. Capt. Kowalewski allegedly informed them of respondent's lack of experience in tanker operations which exposed the vessel and its crew to danger and caused additional expenses. Petitioners allegedly advised respondent to take a refresher course in order to facilitate his deployment to another vessel. However, instead of taking a refresher course, respondent filed a case for illegal dismissal.

On April 23, 2001,^[6] Labor Arbiter Francisco A. Robles rendered a Decision dismissing respondent's complaint. He found that respondent was validly dismissed because he committed acts in violation of his duties as Chief Officer, amounting to breach of trust and confidence. He noted that on September 6, 2000, Capt. Kowalewski wrote in the official log book of the vessel that respondent failed to follow entry procedures in loading oil tanks while the vessel was navigating to Aruba; that the Safety Officer of the vessel also submitted a report on the violations committed by respondent regarding safety rules on entry procedures; that respondent admitted his inadequacy or lack of knowledge in tanker operations; and that respondent was properly apprised of his violations and was given ample opportunity to be heard.

Respondent appealed to the National Labor Relations Commission which rendered its Decision^[7] on November 24, 2003 dismissing respondent's appeal for lack of merit.

Respondent filed a motion for reconsideration but it was denied.^[8] Hence, he filed a petition for certiorari before the Court of Appeals which rendered the herein assailed Decision on August 31, 2007 disposing thus:

WHEREFORE, the petition is granted and the Decision dated November 24, 2003 and Resolution dated April 20, 2005 of public respondent NLRC are reversed and set aside.

Private respondents are ordered to pay petitioner the amount of unpaid salaries from the time of his dismissal on September 22, 2000 up to the expiration of the term of his employment contract, plus moral damages of P50,000.00, exemplary damages of P50,000.00 and attorney's fees of 10% of the aggregate monetary reward.

SO ORDERED.^[9]

According to the Court of Appeals, petitioners, as employers, have the burden of proof to show by substantial evidence that respondent's employment was validly terminated; that for a dismissal based on loss of trust and confidence, it is incumbent to establish that the employee holds a managerial position; that petitioners failed to adduce evidence showing that respondent was a managerial employee; that the log book entries of Capt. Kowalewski and the letter dated September 1, 2000 should be disregarded for being self-serving; that respondent was not apprised of the cause for his dismissal; that petitioners failed to observe the two-notice rule hence the dismissal was illegal; consequently, respondent is entitled to his salaries for the unexpired portion of the employment contract, full reimbursement of placement fee, moral and exemplary damages and attorney's fees.

Petitioners filed a motion for reconsideration but it was denied by the appellate court on November 16, 2007.

Hence, the instant petition raising the following issues:[10]

I

WHETHER OR NOT THIS CASE FALLS WITHIN THE EXCEPTION TO THE RULE THAT ONLY QUESTIONS OF LAW MAY BE RAISED ON APPEAL TO THIS HONORABLE COURT

II

WHETHER OR NOT THE POSITION OF CHIEF OFFICER OF AN OCEAN GOING VESSEL IS A MANAGERIAL POSITION OR ONE OF TRUST AND CONFIDENCE

III

WHETHER OR NOT ENTRIES IN THE OFFICIAL LOGBOOK OF A VESSEL SHOULD NOT BE GIVEN WEIGHT FOR BEING SELF-SERVING

IV

WHETHER OR NOT LACK OF SKILL OR INCOMPETENCE IN HANDLING AN OIL TANKER VESSEL MAY BE CONSIDERED AS AN ANALOGOUS CAUSE FOR A VALID TERMINATION OF EMPLOYMENT OF A CHIEF OFFICER

V

WHETHER OR NOT A CHIEF OFFICER OF AN OIL TANKER VESSEL REQUIRED TO EXPLAIN WHY HE SHOULD NOT BE RELIEVED FOR BEING INCOMPETENT WAS DEPRIVED OF DUE PROCESS OF LAW

VI

WHETHER OR NOT MORAL DAMAGES AND ATTORNEYS FEES MAY BE AWARDED WITHOUT A CLEAR SHOWING THAT THE DISMISSAL OF AN EMPLOYEE WAS ATTENDED WITH BAD FAITH

The petition lacks merit.

Petitioners allege loss of trust and confidence due to incompetence as the ground for respondent's dismissal.[11] Loss of trust and confidence is premised on the fact that the employee holds a position whose functions may only be performed by someone who has the confidence of management.[12] Such employee may be managerial or rank-and-file, but the nature of his position determines the requirements for a valid dismissal.

With respect to a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his

dismissal. Proof beyond reasonable doubt is not required, only substantial evidence which must establish clearly and convincingly the facts on which the loss of confidence rests.^[13]

Article 627 of the Code of Commerce defines the Chief Mate, also called Chief Officer or Sailing Mate, as "the second chief of the vessel, and unless the agent orders otherwise, shall take the place of the captain in cases of absence, sickness, or death, and shall then assume all his powers, duties, and responsibilities." A Chief Officer, therefore, is second in command, next only to the captain of the vessel.

Moreover, the Standards of Training, Certification and Watchkeeping for Seafarers 1978 (STCW '78), to which the Philippines is a signatory, defines a Chief Mate as "the deck officer next in rank to the master and upon whom the command of the ship will fall in the event of incapacity of the master."

In *Association of Marine Officers and Seamen of Reyes and Lim Co. v. Laguesma*,^[14] the Court held that the Chief Mate is a managerial employee because the said officer performed the functions of an executive officer next in command to the captain; that in the performance of such functions, he is vested with powers or prerogatives to lay down and execute management policies.

The exercise of discretion and judgment in directing a ship's course is as much managerial in nature as decisions arrived at in the confines of the more conventional board room or executive office. Important functions pertaining to the navigation of the vessel like assessing risks and evaluating the vessel's situation are managerial in nature.^[15]

Thus, respondent, as Chief Officer, is a managerial employee; hence, petitioners need to show by substantial evidence the basis for their claim that respondent has breached their trust and confidence.

Petitioners' basis for dismissing respondent was the alleged entry by Captain Kowalewski in the ship's logbook regarding respondent's inexperience and inefficiency. A ship's log/logbook is the official record of a ship's voyage which its captain is obligated by law to keep wherein he records the decisions he has adopted, a summary of the performance of the vessel, and other daily events. A logbook is a respectable record that can be relied upon when the entries therein are presented in evidence.

In the instant case, however, respondent correctly pointed out that the issue is not whether an official logbook entry is acceptable in evidence, but whether a document purporting to be a copy of a logbook entry has been duly established to be authentic and not spurious.^[16]

The document dated September 6, 2000 (Annex E) purports to be a copy of an entry in the official logbook which reads:

Name of the ship: Aquidneck
Port of registry: Nassau, Bahamas
Official Number: 706596
Gross tonnage: 23709

Register (net) tonnage: 8517

Page: OFFICIAL LOG of the m/t Aquidneck

Entries required by Regulations made under Section 143 of the Merchant Shipping Act 1976

Date of the occurrence: 06.09.00. Pace: At Sea. Date of entry: 06.09.00

It was found today on the 06th September 2000 that C/O Mr. Ruben dela Cruz has breached all international safety rules regarding tank entry procedures. In spite of tank entry form properly filled, non-of safety precautions were implemented. Crew was working in cargo tanks without any supervision and without safety arrangement. Emergency rescue equipment was not readied on the scene. By this neglect safety and lives of working personnel in cargo tanks were put in potential hazard. As the senior officer responsible for the safety of his personnel he should be relieved from his duties as the Chief Officer.

Signed: S. Kowalewski, Master^[17]

In *Wallem Maritime Services, Inc. v. National Labor Relations Commission*,^[18] citing *Haverton Shipping Ltd. v. National Labor Relations Commission*,^[19] the Court ruled that a **copy** of an official entry in the logbook is legally binding and serves as an exception to the hearsay rule. In the said case, however, there was no controversy as to the genuineness of the said entry and the authenticity of the copy presented in evidence.

In the instant case, respondent has consistently assailed the genuineness of the purported entry and the authenticity of such copy. He alleged that before his repatriation, there was no entry in the ship's official logbook regarding any incident that might have caused his relief;^[20] that Captain Kowalewski's signature in such purported entry was forged.^[21] In support of his allegations, respondent submitted three official documents^[22] bearing the signature of Capt. Szczepan Kowalewski which is different from the one appearing in Annex E. Thus, it was incumbent upon petitioners to prove the authenticity of Annex E, which they failed to do. Likewise, the purported report of Capt. Kowalewski dated September 1, 2000 (Annex D),^[23] and the statements of Safety Officer Khaldun Nacem Faridi and Chief Officer Josip Milin (Annexes G^[24] and H^[25]) also cannot be given weight for lack of authentication.

Although technical rules of evidence do not strictly apply to labor proceedings, however, in the instant case, authentication of the above-mentioned documents is necessary because their genuineness is being assailed, and since petitioners offered no corroborating evidence. These documents and their contents have to be duly identified and authenticated lest an injustice would result from a blind adoption of such contents.^[26] Thus, the unauthenticated documents relied upon by petitioners are mere self-serving statements of their own officers and were correctly disregarded by the Court of Appeals.

This Court notes that during the initial proceedings of the case, petitioners contend