

SECOND DIVISION

[G.R. NO. 162419, July 10, 2007]

**PAUL V. SANTIAGO, PETITIONER, VS. CF SHARP CREW
MANAGEMENT, INC., RESPONDENT.**

DECISION

TINGA, J.:

At the heart of this case involving a contract between a seafarer, on one hand, and the manning agent and the foreign principal, on the other, is this erstwhile unsettled legal quandary: whether the seafarer, who was prevented from leaving the port of Manila and refused deployment without valid reason but whose POEA-approved employment contract provides that the employer-employee relationship shall commence only upon the seafarer's actual departure from the port in the point of hire, is entitled to relief?

This treats of the petition for review filed by Paul V. Santiago (petitioner) assailing the Decision and Resolution of the Court of Appeals dated 16 October 2003 and 19 February 2004, respectively, in CA-G.R. SP No. 68404.^[1]

Petitioner had been working as a seafarer for Smith Bell Management, Inc. (respondent) for about five (5) years.^[2] On 3 February 1998, petitioner signed a new contract of employment with respondent, with the duration of nine (9) months. He was assured of a monthly salary of US\$515.00, overtime pay and other benefits. The following day or on 4 February 1998, the contract was approved by the Philippine Overseas Employment Administration (POEA). Petitioner was to be deployed on board the "MSV Seaspread" which was scheduled to leave the port of Manila for Canada on 13 February 1998.

A week before the scheduled date of departure, Capt. Pacifico Fernandez, respondent's Vice President, sent a facsimile message to the captain of "MSV Seaspread," which reads:

I received a phone call today from the wife of Paul Santiago in Masbate asking me not to send her husband to MSV Seaspread anymore. Other callers who did not reveal their identity gave me some feedbacks that Paul Santiago this time if allowed to depart will jump ship in Canada like his brother Christopher Santiago, O/S who jumped ship from the C.S. Nexus in Kita-kyushu, Japan last December, 1997.

We do not want this to happen again and have the vessel penalized like the C.S. Nexus in Japan.

Forewarned is forearmed like his brother when his brother when he was applying he behaved like a Saint but in his heart he was a serpent. If you

agree with me then we will send his replacement.

Kindly advise.^[3]

To this message the captain of "MSV Seaspread" replied:

Many thanks for your advice concerning P. Santiago, A/B. Please cancel plans for him to return to Seaspread.^[4]

On 9 February 1998, petitioner was thus told that he would not be leaving for Canada anymore, but he was reassured that he might be considered for deployment at some future date.

Petitioner filed a complaint for illegal dismissal, damages, and attorney's fees against respondent and its foreign principal, Cable and Wireless (Marine) Ltd.^[5] The case was raffled to Labor Arbiter Teresita Castillon-Lora, who ruled that the employment contract remained valid but had not commenced since petitioner was not deployed. According to her, respondent violated the rules and regulations governing overseas employment when it did not deploy petitioner, causing petitioner to suffer actual damages representing lost salary income for nine (9) months and fixed overtime fee, all amounting to US\$7, 209.00.

The labor arbiter held respondent liable. The dispositive portion of her Decision dated 29 January 1999 reads:

WHEREFORE, premises considered, respondent is hereby Ordered to pay complainant actual damages in the amount of US\$7,209.00 plus 10% attorney's fees, payable in Philippine peso at the rate of exchange prevailing at the time of payment.

All the other claims are hereby DISMISSED for lack of merit.

SO ORDERED.^[6]

On appeal by respondent, the National Labor Relations Commission (NLRC) ruled that there is no employer-employee relationship between petitioner and respondent because under the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels (POEA Standard Contract), the employment contract shall commence upon actual departure of the seafarer from the airport or seaport at the point of hire and with a POEA-approved contract. In the absence of an employer-employee relationship between the parties, the claims for illegal dismissal, actual damages, and attorney's fees should be dismissed.^[7] On the other hand, the NLRC found respondent's decision not to deploy petitioner to be a valid exercise of its management prerogative.^[8] The NLRC disposed of the appeal in this wise:

WHEREFORE, in the light of the foregoing, the assailed Decision dated January 29, 1999 is hereby AFFIRMED in so far as other claims are concerned and with MODIFICATION by VACATING the award of actual damages and attorney's fees as well as excluding Pacifico Fernandez as party respondent.

SO ORDERED.^[9]

Petitioner moved for the reconsideration of the NLRC's Decision but his motion was denied for lack of merit.^[10] He elevated the case to the Court of Appeals through a petition for certiorari.

In its Decision^[11] dated 16 October 2003, the Court of Appeals noted that there is an ambiguity in the NLRC's Decision when it affirmed with modification the labor arbiter's Decision, because by the very modification introduced by the Commission (vacating the award of actual damages and attorney's fees), there is nothing more left in the labor arbiter's Decision to affirm.^[12]

According to the appellate court, petitioner is not entitled to actual damages because damages are not recoverable by a worker who was not deployed by his agency within the period prescribed in the POEA Rules.^[13] It agreed with the NLRC's finding that petitioner's non-deployment was a valid exercise of respondent's management prerogative.^[14] It added that since petitioner had not departed from the Port of Manila, no employer-employee relationship between the parties arose and any claim for damages against the so-called employer could have no leg to stand on.^[15]

Petitioner's subsequent motion for reconsideration was denied on 19 February 2004.^[16]

The present petition is anchored on two grounds, to wit:

- A. The Honorable Court of Appeals committed a serious error of law when it ignored [S]ection 10 of Republic Act [R.A.] No. 8042 otherwise known as the Migrant Worker's Act of 1995 as well as Section 29 of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels (which is deemed incorporated under the petitioner's POEA approved Employment Contract) that the claims or disputes of the Overseas Filipino Worker by virtue of a contract fall within the jurisdiction of the Labor Arbiter of the NLRC.
- B. The Honorable Court of Appeals committed a serious error when it disregarded the required quantum of proof in labor cases, which is substantial evidence, thus a total departure from established jurisprudence on the matter.^[17]

Petitioner maintains that respondent violated the Migrant Workers Act and the POEA Rules when it failed to deploy him within thirty (30) calendar days without a valid reason. In doing so, it had unilaterally and arbitrarily prevented the consummation of the POEA- approved contract. Since it prevented his deployment without valid basis, said deployment being a condition to the consummation of the POEA contract, the contract is deemed consummated, and therefore he should be awarded actual damages, consisting of the stipulated salary and fixed overtime pay.^[18] Petitioner adds that since the contract is deemed consummated, he should be considered an employee for all intents and purposes, and thus the labor arbiter and/or the NLRC

has jurisdiction to take cognizance of his claims.^[19]

Petitioner additionally claims that he should be considered a regular employee, having worked for five (5) years on board the same vessel owned by the same principal and manned by the same local agent. He argues that respondent's act of not deploying him was a scheme designed to prevent him from attaining the status of a regular employee.^[20]

Petitioner submits that respondent had no valid and sufficient cause to abandon the employment contract, as it merely relied upon alleged phone calls from his wife and other unnamed callers in arriving at the conclusion that he would jump ship like his brother. He points out that his wife had executed an affidavit^[21] strongly denying having called respondent, and that the other alleged callers did not even disclose their identities to respondent.^[22] Thus, it was error for the Court of Appeals to adopt the unfounded conclusion of the NLRC, as the same was not based on substantial evidence.^[23]

On the other hand, respondent argues that the Labor Arbiter has no jurisdiction to award petitioner's monetary claims. His employment with respondent did not commence because his deployment was withheld for a valid reason. Consequently, the labor arbiter and/or the NLRC cannot entertain adjudication of petitioner's case much less award damages to him. The controversy involves a breach of contractual obligations and as such is cognizable by civil courts.^[24] On another matter, respondent claims that the second issue posed by petitioner involves a recalibration of facts which is outside the jurisdiction of this Court.^[25]

There is some merit in the petition.

There is no question that the parties entered into an employment contract on 3 February 1998, whereby petitioner was contracted by respondent to render services on board "MSV Seaspread" for the consideration of US\$515.00 per month for nine (9) months, plus overtime pay. However, respondent failed to deploy petitioner from the port of Manila to Canada. Considering that petitioner was not able to depart from the airport or seaport in the point of hire, the employment contract did not commence, and no employer-employee relationship was created between the parties.^[26]

However, a distinction must be made between the perfection of the employment contract and the commencement of the employer-employee relationship. The perfection of the contract, which in this case coincided with the date of execution thereof, occurred when petitioner and respondent agreed on the object and the cause, as well as the rest of the terms and conditions therein. The commencement of the employer-employee relationship, as earlier discussed, would have taken place had petitioner been actually deployed from the point of hire. Thus, even before the start of any employer-employee relationship, contemporaneous with the perfection of the employment contract was the birth of certain rights and obligations, the breach of which may give rise to a cause of action against the erring party. Thus, if the reverse had happened, that is the seafarer failed or refused to be deployed as agreed upon, he would be liable for damages.