

## FIRST DIVISION

[ G.R. NO. 153031, December 14, 2006 ]

**PCL SHIPPING PHILIPPINES, INC. AND U-MING MARINE  
TRANSPORT CORPORATION, PETITIONERS, VS. NATIONAL  
LABOR RELATIONS COMMISSION AND STEVE RUSEL,  
ESPONDENTS**

### D E C I S I O N

**AUSTRIA-MARTINEZ, J.:**

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision<sup>[1]</sup> of the Court of Appeals (CA) dated December 18, 2001 in CA-G.R. SP No. 59976, which affirmed the Decision of the National Labor Relations Commission (NLRC) dated March 22, 2000 in NLRC NCR CA No. 018120-99; and the Resolution of the CA dated April 10, 2002, denying petitioners' motion for reconsideration.<sup>[2]</sup>

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

In April 1996, Rusel was employed as GP/AB seaman by manning agency, PCL Shipping Philippines, Inc. (PCL Shipping) for and in behalf of its foreign principal, U-Ming Marine Transport Corporation (U-Ming Marine). Rusel thereby joined the vessel MV Cemtex General (MV Cemtex) for the contract period of twelve (12) months with a basic monthly salary of US\$400.00, living allowance of US\$140.00, fixed overtime rate of US\$120.00 per month, vacation leave with pay of US\$40.00 per month and special allowance of US\$175.00.

On July 16, 1996, while Rusel was cleaning the vessel's kitchen, he slipped, and as a consequence thereof, he suffered a broken and/or sprained ankle on his left foot. A request for medical examination was flatly denied by the captain of the vessel. On August 13, 1996, feeling an unbearable pain in his ankle, Rusel jumped off the vessel using a life jacket and swam to shore. He was brought to a hospital where he was confined for eight (8) days.

On August 22, 1996, a vessel's agent fetched Rusel from the hospital and was required to board a plane bound for the Philippines.

On September 26, 1996, Rusel filed a complaint for illegal dismissal, non-payment of wages, overtime pay, claim for medical benefits, sick leave pay and damages against PCL Shipping and U-Ming Marine before the arbitration branch of the NLRC. In their answer, the latter alleged that Rusel deserted his employment by jumping off the vessel.

On July 21, 1998, the labor arbiter rendered his decision, the dispositive portion of which reads as follows:

Wherefore, above premises duly considered we find the respondent liable for unjust repatriation of the complainant.

Accordingly, the following award is hereby adjudged against the respondent:

1. The amount of \$2,625.00 or its peso equivalent at the time of payment representing three (3) months salary of the complainant due to his illegal dismissal.
2. The amount of \$1,600.00 or its peso equivalent, representing sick wage benefits.
3. The amount of \$550.00 or its peso equivalent, representing living allowance, overtime pay and special allowance for two (2) months.
4. The amount of \$641.66 or its peso equivalent, representing unpaid wages from August 11 to 22, 1996.
5. Attorney's fees equivalent to 10% of the total monetary award.

The rest of the claims are dismissed for lack of merit.

SO ORDERED.<sup>[3]</sup>

Aggrieved by the Decision of the Labor Arbiter, herein petitioners appealed to the NLRC. In its Decision dated March 22, 2000, the NLRC affirmed the findings of the Labor Arbiter but modified the appealed Decision, disposing as follows:

WHEREFORE, premises considered, the assailed decision is as it is hereby ordered MODIFIED in that the amount representing three months salary of the complainant due to his illegal dismissal is reduced to US\$1,620.00. Further the award of sick wage benefit is deleted.

All other dispositions are AFFIRMED.

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

Petitioners filed a Motion for Reconsideration but the NLRC denied the same in its Decision of May 3, 2000.<sup>[5]</sup>

Petitioners filed a petition for *certiorari* with the CA.<sup>[6]</sup> In its Decision dated December 18, 2001, the CA dismissed the petition and affirmed the NLRC Decision.<sup>[7]</sup>

Petitioners filed a Motion for Reconsideration but it was denied by the CA in its Resolution dated April 10, 2002.<sup>[8]</sup>

Hence, the instant petition with the following assignment of errors:

I. The Court of Appeals erred in ruling that private respondent was illegally dismissed from employment.

x x x x

II. Likewise, the Court of Appeals erred in not upholding petitioners' right to pre-terminate private respondent's employment.

x x x x

III. The private respondent is not entitled to other money claims, particularly as to the award of attorney's fees.<sup>[9]</sup>

As to their first assigned error, petitioners contend that the CA erred in affirming the findings of the NLRC that Rusel's act of jumping ship does not establish any intent on his part to abandon his job and never return. Petitioners argue that Rusel's very act of jumping from the vessel and swimming to shore is evidence of highest degree that he has no intention of returning to his job. Petitioners further contend that if Rusel was indeed suffering from unbearable and unmitigated pain, it is unlikely that he is able to swim two (2) nautical miles, which is the distance between their ship and the shore, considering that he needed to use his limbs in swimming. Petitioners further assert that it is error on the part of the CA to disregard the entries contained in the logbook and in the Marine Note Protest evidencing Rusel's offense of desertion because while these pieces of evidence were belatedly presented, the settled rule is that additional evidence may be admitted on appeal in labor cases. Petitioners also contend that Rusel's act of desertion is a grave and serious offense and considering the nature and situs of employment as well as the nationality of the employer, the twin requirements of notice and hearing before an employee can be validly terminated may be dispensed with.

As to their second assigned error, petitioners contend that assuming, for the sake of argument, that Rusel is not guilty of desertion, they invoked the alternative defense that the termination of his employment was validly made pursuant to petitioners' right to exercise their prerogative to pre-terminate such employment in accordance with Section 19(C) of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels, which provision was incorporated in Rusel's Contract of Employment with petitioners. Petitioners assert that despite the fact that this issue was raised before the CA, the appellate court failed to resolve the same.

Anent the last assigned error, petitioners argue that it is error on the part of the CA to affirm the award of living allowance, overtime pay, vacation pay and special allowance for two months because Rusel failed to submit substantial evidence to prove that he is entitled to these awards. Petitioners further argue that these money claims, particularly the claim for living allowance, should not be granted because they partake of the nature of earned benefits for services rendered by a seafarer. Petitioners also contend that the balance of Rusel's wages from August 11-22, 1996 should be applied for the payment of the costs of his repatriation, considering that under Section 19(E) of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels, when a seafarer is discharged for any just cause, the employer shall have the right to recover the costs of his replacement and repatriation from the seafarer's wages and other earnings.

Lastly, petitioners argue that the award of attorney's fees should be deleted because there is nothing in the decision of the Labor Arbiter or the NLRC which states the reason why attorney's fees are being awarded.

In his Comment, private respondent contends that petitioners are raising issues of fact which have already been resolved by the Labor Arbiter, NLRC and the CA. Private respondent argues that, aside from the fact that the issues raised were already decided by three tribunals against petitioners' favor, it is a settled rule that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. While there are exceptions to this rule, private respondent contends that the instant case does not fall under any of these exceptions. Private respondent asserts that petitioners failed to substantiate their claim that the former is guilty of desertion. Private respondent further contends that the right to due process is available to local and overseas workers alike, pursuant to the provisions of the Constitution on labor and equal protection as well as the declared policy contained in the Labor Code. Private respondent argues that petitioners' act of invoking the provisions of Section 19(C) of the POEA Contract as an alternative defense is misplaced and is inconsistent with their primary defense that private respondent was dismissed on the ground of desertion. As to the award of attorney's fees, private respondent contends that since petitioners' act compelled the former to incur expenses to protect his interest and enforce his lawful claims, and because petitioners acted in gross and evident bad faith in refusing to satisfy private respondent's lawful claims, it is only proper that attorney's fees be awarded in favor of the latter. Anent the other monetary awards, private respondent argues that these awards are all premised on the findings of the Labor Arbiter, NLRC and the CA that private respondent's dismissal was improper and illegal.

The Court finds the petition without merit.

Anent the first assigned error, it is a settled rule that under Rule 45 of the Rules of Court, only questions of law may be raised in this Court.<sup>[10]</sup> Judicial review by this Court does not extend to a re-evaluation of the sufficiency of the evidence upon which the proper labor tribunal has based its determination.<sup>[11]</sup> Firm is the doctrine that this Court is not a trier of facts, and this applies with greater force in labor cases.<sup>[12]</sup> Factual issues may be considered and resolved only when the findings of facts and conclusions of law of the Labor Arbiter are inconsistent with those of the NLRC and the CA.<sup>[13]</sup> The reason for this is that the quasi-judicial agencies, like the Arbitration Board and the NLRC, have acquired a unique expertise because their jurisdiction are confined to specific matters.<sup>[14]</sup> In the present case, the question of whether private respondent is guilty of desertion is factual. The Labor Arbiter, NLRC and the CA are unanimous in their findings that private respondent is not guilty of desertion and that he has been illegally terminated from his employment. After a review of the records of the instant case, this Court finds no cogent reason to depart from the findings of these tribunals.

Petitioners assert that the entries in the logbook of *MV Cemtex General*<sup>[15]</sup> and in the Marine Note Protest<sup>[16]</sup> which they submitted to the NLRC confirm the fact that private respondent abandoned the vessel in which he was assigned. However, the genuineness of the Marine Note Protest as well as the entries in the logbook are put in doubt because aside from the fact that they were presented only during

petitioners' Motion for Reconsideration filed with the NLRC, both the Marine Note Protest and the entry in the logbook which were prepared by the officers of the vessel were neither notarized nor authenticated by the proper authorities. Moreover, a reading of these entries simply shows that private respondent was presumed to have deserted his post on the sole basis that he was found missing while the *MV Cemtex General* was anchored at the port of Takehara, Japan. Hence, without any corroborative evidence, these documents cannot be used as bases for concluding that private respondent was guilty of desertion.

Petitioners also question the findings and conclusion of the Labor Arbiter and the NLRC that what caused private respondent in jumping overboard was the unmitigated pain he was suffering which was compounded by the inattention of the vessel's captain to provide him with the necessary treatment inspite of the fact that the ship was moored for about two weeks at the anchorage of Takehara, Japan; and, that private respondent's act was a desperate move to protect himself and to seek relief for his physical suffering. Petitioners contend that the findings and conclusions of the Labor Arbiter and the NLRC which were affirmed by the CA are based on conjecture because there is no evidence to prove that, at the time he jumped ship, private respondent was really suffering from an ankle injury.

It is true that no substantial evidence was presented to prove that the cause of private respondent's confinement in a hospital in Takehara, Japan was his ankle injury. The Court may not rely on the letter marked as Annex "B" and attached to private respondent's Position Paper because it was unsigned and it was not established who executed the same.<sup>[17]</sup> However, the result of the x-ray examination conducted by the LLN Medical Services, Inc. on August 26, 1996, right after private respondent was repatriated to the Philippines, clearly showed that there is a soft-tissue swelling around his ankle joint.<sup>[18]</sup> This evidence is consistent with private respondent's claim that he was then suffering from an ankle injury which caused him to jump off the ship.

As to petitioners' contention that private respondent could not have traversed the distance between the ship and the shore if he was indeed suffering from unbearable pain by reason of his ankle injury, suffice it to say that private respondent is an able-bodied seaman and that with the full use of both his arms and the help of a life jacket, was able to reach the shore.

As correctly defined by petitioners, desertion, in maritime law is:

The act by which a seaman deserts and abandons a ship or vessel, in which he had engaged to perform a voyage, before the expiration of his time, and without leave. By desertion, in maritime law, is meant, not a mere unauthorized absence from the ship, without leave, but an unauthorized absence from the ship **with an intention not to return to her service**; or as it is often expressed, *animo non revertendi*, that is, with an intention to desert.<sup>[19]</sup> (emphasis supplied)

Hence, for a seaman to be considered as guilty of desertion, it is essential that there be evidence to prove that if he leaves the ship or vessel in which he had engaged to perform a voyage, he has the clear intention of abandoning his duty and of not returning to the ship or vessel. In the present case, however, petitioners failed to present clear and convincing proof to show that when private respondent jumped