

THIRD DIVISION

[G.R. NO. 158000, March 31, 2005]

ASSOCIATION OF INTERNATIONAL SHIPPING LINES, INC., IN ITS OWN BEHALF AND IN REPRESENTATION OF ITS MEMBERS, APL CO. PTE LTD., CONSHIP CONTAINER LINES, LTD., AUSTRAL ASIA LINE, AUSTRALIAN NATIONAL LINE, CHENG LIE NAVIGATION CO., LTD., CHINA OCEAN SHIPPING CO., CHINA SHIPPING CONTAINER LINES CO., LTD., NEW ECON LINES, CMA-CGM S.A. DSR-SENATOR LINE, GMBH, DONGNAMA SHIPPING CO., LTD., EASTERN SHIPPING LINES, INC., EVERETT ORIENT LINE, HANJIN SHIPPING COMPANY, LTD., FAR EASTERN SHIPPING CO., HAPAG-LLOYD LINIE GMBH, HEUNG-A SHIPPING COMPANY, HUB MARINE PTE., LTD., HYUNDAI MERCHANT MARINE, KAMBARA KISEN CO., LTD., KAWASAKI KISEN KAISHA, KOREA MARINE TRANSPORT CO., LTD., KYOWA LINE, SAFMARINE CONTAINER LINES, MAERSK SEALAND MALAYSIA INTERNATIONAL SHIPPING CORP., MING TAT NAVIGATION, LTD., MITSUI O.S.K. LINES (PHILS.), INC., NANTAI LINE CO., LTD., NEPTUNE ORIENT LINE, NIPPON YUSEN KAISHA, NORASIA CONTAINER LINE, LTD., ORIENT OVERSEAS CONTAINER LINE, P&O NEDLLOYD, PACIFIC EAGLE LINES PTE., LTD., PACIFIC INTERNATIONAL LINES PTE., LTD., PHILIPPINE PRESIDENT LINES, LTD., PHILS., MICRONESIA ORIENT NAVIGATION CO., REGIONAL CONTAINER LINES (PTE) LTD., REGNANT ENT. CO., LTD., SINO ASIA LINES, S.A., TASMAN ORIENT TOKYO SENPAKU KAISHA, LTD., TOYOFUJI SHIPPING CO., LTD., UNIGLORY LINE, UNITED ARAB SHIPPING CO., WAN HAI LINES, LTD., WESTWIND LINE, WALENIUS WILHELMSSEN LINES A/S, YANGMING MARINE TRANSPORT CORP., YI-TONG SHIPPING CO., LTD., AND ZIM ISRAEL NAVIGATION CO., LTD., PHILIPPINE SHIP AGENTS ASSOCIATION, IN ITS OWN BEHALF AND IN REPRESENTATION OF ITS MEMBERS, ARKO MARITIME INTEGRATED SERVICES, INC., REYES & LIM COMPANY, ADR SHIPPING SERVICES, INC., FAIR SHIPPING COMPANY, ASKOT SHIP AGENTS, INC., NEW FILIPINO MARITIME AGENCIES, INC., MOF COMPANY, INC., CITADEL LINES, BALIWAG NAVIGATION, INC., FILSOV SHIPPING COMPANY, SMITHBELL SHIPPING, INC., TMS SHIP AGENCIES, INC., VIRGEN SHIPPING, INC., SCAC DELMAS VIELJEUX, INC., UNI-SHIP, INC., GAC SHIPPING & CARGO SYSTEMS, NORTEAM SHIPPING SERVICES, INC., SHARP-ISS PORT AGENCIES, INC., C.F. SHARP CREW MANAGEMENT, INTERSHIP MARINE SERVICES, INC., EVERETT STEAMSHIP CORPORATION, QUEST SHIPPING & PETROLEUM SERVICES, LEONIS NAVIGATION, EL GRECO SHIP MANNING & MANAGEMENT, UNICOL SHIP MANAGEMENT, BEN LINE AGENCIES (PHILIPPINES), INC., EASTGATE MARITIME

**CORPORATION, LACERTA SHIPPING AGENCIES, PHILS., INC.,
BERGESEN D.Y. PHILIPPINES, INC., SCORPIO TRANSPORT &
MANNING SERVICES, INC., EASLAND SHIPPING AND
TRANSPORT AGENCY, BULK HANDLERS, INC., LIONSHIP PHILS.,
INC., GLOMCORE MARITIME & BROKERAGE CORP., BULKFLEET
MARINE CORP., SUPPLY OILFIELD SERVICES, INC., ASIA
PACIFIC CHARTERING PHILS., INC., JARDINE DAVIES
TRANSPORT, INC., TASK AGENCIES, INC., NCCI MARINE, INC.,
CHARVIKA SHIPPING SERVICES, INC., NYK-FIL JAPAN
SHIPPING CORP., COSCO PHILS., NATIONAL MARINE CORP.,
STOLT NIELSEN TRANSPORTATION GROUP, SEACOST MARITIME
CORP., INTERMODAL SHIPPING, INC., INTER-ASIA MARINE
TRANSPORT, INC., MIZZEN SHIPPING ENTERPRISES, INC.,
SELMA SHIPPING PHILS., JBA SHIPPING SERVICES, INC.,
WORLDWIDE MARITIME SERVICES CORP., WALLEM PHILS.
SHIPPING, INC., PHILMAN SHIPPING, INC., SKY
INTERNATIONAL, INC., MARCO ASIA SHIPPING CORP., RCS
SHIPPING AGENCIES, INC., OVERSEAS FREIGHTERS SHIPPING,
INC., PETROBULK MARITIME SERVICES, INC., DONA AND
VIRGINIA MARITIMA CORP., PETITIONERS, VS. PHILIPPINE
PORTS AUTHORITY, INTERNATIONAL CONTAINER TERMINAL
SERVICES, INC. AND ASIAN TERMINALS, INC. RESPONDENTS.**

D E C I S I O N

CARPIO-MORALES, J.:

Being assailed via petition for review on certiorari is the March 31, 2003 Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 69307 which dismissed the petition for certiorari^[2] filed by petitioner Association of International Shipping Lines, Inc. (AISLI) and the petition for intervention^[3] filed by petitioner Philippine Ship Agents Association (PSAA).

Sometime in October 2000, respondent Asian Terminals, Inc. (ATI) and respondent International Container Terminal Services, Inc. (ICTSI) applied with respondent Philippine Ports Authority (PPA) for increases in all stevedoring and arrastre charges including special services for containerized and non-containerized cargoes at South Harbor and Manila International Container Terminal (MICT), respectively.

ATI, exclusive cargo handling operator of South Harbor, requested for a 32% increase while ICTSI, exclusive cargo handler at the MICT, applied for a 30% increase.

Acting on the applications for increase, PPA Acting General Manager Benjamin B. Cecilio directed the Acting Port District Manager of Manila to set and conduct a public hearing thereon on October 27, 2000 to be participated in by concerned port users.^[4]

Upon the request of ATI and ICTSI, the hearing was reset to November 8, 2000 at which representatives of ATI, ICTSI, the PPA, port users (particularly the AISLI, the PSAA, the Port Users Confederation or PUC, the Distributors Management

Association of the Philippines or DMAP and the Philippine Exporters Confederation, Inc. or PEGI and the Philippine Wood Producers Association or PWPA), other concerned government agencies (particularly the Bureau of Customs and the Philippine Shippers' Bureau or PSB) and labor groups were in attendance.^[5]

Meeting on December 19, 2000, the PPA Board Committee (BoardCom) "agreed in principle to grant an increase in the cargo handling rates nationwide (tentatively **10% in February [2001]**, and **another 10% in July [2001]**."^[6]

In its January 11, 2001 meeting, the BoardCom thus adopted Resolution No. 2001-761 providing as follows:

BoardCom Resolution No. 2001-761

"RESOLVED, That on motion duly made and seconded, and taking into consideration the requests of the Philippine Chamber of Arrastre and Stevedoring Operations (PCASO) and other major cargo handling contractors for an across-the-board and nationwide increase in their cargo handling tariff, the same, after public hearings duly conducted for the purpose, be, as it is hereby approved, as follows:

	Arrastre	Stevedoring
Foreign	10%	15%
Domestic	10%	10%

Resolved FURTHER, That the above increases, be made effective 1 February 2001, after the publication of its implementing circular in a newspaper of general circulation,"^[7] (Emphasis supplied)

and on even date, the PPA Board of Directors, during its 264th Regular Meeting, adopted Board Resolution No. 1858^[8] confirming BoardCom Resolution Nos. 2001-758 to 2001-761, "as adopted during the 130th Meeting of the Board Committee, held on 11 January 2001."

On December 20, 2001, the PPA Board of Directors adopted Board Resolution No. 1897 reading as follows:

RESOLUTION NO. 1897

"RESOLVED, That on motion duly made and seconded, and subject to submission of the Productivity Report to the Board of the cargo handling performance of both Asian Terminals, Inc. (ATI) and the International Container Terminal Services, Inc. (ICTSI), Management, be, as it is hereby advised, to implement the ten (10%) percent rate increase in the cargo handling tariff of ATI and ICTSI as previously approved by the Board [of Directors] on 11 January 2001;

RESOLVED (sic) FURTHER, That the implementation of the said ten (10%) percent rate increase be made effective fifteen (15) days after the

completion of its publication in a newspaper of general circulation.”^[9]
(Underscoring supplied)

Pursuant to above-quoted December 20, 2001 Board of Directors Resolution No. 1897, the PPA issued the following day or on December 21, 2001 Memorandum Circular No. 47-2001, “**Additional Ten Percent (10%) Increase in the Cargo Handling Tariff at South Harbor and MICT**” reading:

Pursuant to PPA Board Resolution No. 1897 dated December 20, 2001, the terminal operators at PMO South Harbor and the Manila International Container Terminal are hereby authorized to implement the additional 10% increase as previously approved by the Board on January 11, 2001 as follows:

	Vessel Charge (Stevedoring)	Cargo Charge (Arrastre)
Containerized and Non-Containerized	10%	10%

This Circular shall take effect fifteen (15) days after the completion of its publication in a newspaper of general circulation.^[10]

Memorandum Circular No. 47-2001, which was published in the Philippine Star and the Manila Standard on December 28, 2001, took effect on January 12, 2002.^[11]

AISLI General Manager Julio C. Garcia, by letter dated January 16, 2002^[12] addressed to PPA General Manager Alfonso G. Cusi (Cusi), soon requested that the implementation of the **additional** 10% increase mandated by Memorandum Circular No. 47-2001 be held in abeyance.

Garcia complained that there was no public hearing conducted for the purpose of discussing the rate increase in the cargo handling tariff and that port users were not given prior notice thereof. He further complained that the grant of additional 10% increase was the decision of the PPA BoardCom, and not of the Board of Directors, hence, null and void, for under P.D. No. 857 (the Revised Charter of the PPA), the agency’s corporate powers are vested exclusively in its Board of Directors.

In fine, Garcia averred that a power vested by law in the PPA Board of Directors cannot be delegated to its BoardCom.

Cusi thus suspended on January 22, 2002 the implementation of the additional 10% increase for fifteen (15) days or until February 5, 2002 “in the spirit of transparency and to be able to give all concerned more time to air and discuss pertinent issues on the matter.”^[13]

By letter dated January 30, 2002,^[14] addressed to the PPA, AISLI ventilated its objections to the additional 10% increase, to wit: there was no Board of Directors Resolution authorizing the additional 10% increase to take effect on January 12, 2002; there was no notice of the additional increase given to port users; and there was no public hearing prior to the imposition thereof.

The PPA thereupon held on February 1, 2002 a meeting which was attended by representatives from AISLI, PSAA and PUC to clarify the issues raised by the parties.
[15]

By letter of February 4, 2002^[16] to AISLI General Manager Garcia, the PPA, addressing Garcia's complaint that there was no Board of Directors Resolution authorizing the additional 10% increase to take effect on January 12, 2002, wrote:

This increase is covered by Board Resolution No. 1897 passed by the PPA Board of Directors on December 20, 2001. Said adjustment is part of the deliberations made as early as December 2000 and January 2001. Although the nationwide increase which was effected last 1 February 2001 was formerly confirmed by a Board Resolution, the second increase, which was limited to Manila (foreign cargoes only) was subject to certain conditions on productivity. Thus, the formal Board resolution [Board of Directors Resolution No. 1897] was adopted on 20 December 2001 when it was discussed by the Board.^[17] (Underscoring supplied)

Respecting Garcia's complaint about lack of notice to port users of the additional cargo handling rate increase, the PPA, denying the same, advised Garcia in the same letter of February 4, 2002 that after due notice to concerned port users, a public hearing was conducted on November 8, 2000 on account of which the Board of Directors decided to implement the increase in two tranches, the second of which being limited to Manila only, "conditioned on the improved productivity by MICT and South Harbor and which was deliberated only last December 2001 (instead of July as originally intended)."

On February 6, 2002, the suspension of the implementation of the additional 10% increase was lifted.^[18]

AISLI was thus prompted to file a petition for *certiorari* under Rule 65 of the Rules of Court before the CA for the declaration of nullity of Memorandum Circular No. 47-2001 and illegality of the additional 10% increase on tariff rates for cargo handling based thereon.

Before the appellate court AISLI insisted that Memorandum Circular 47-2001 was not supported by a proper Board Resolution of the PPA Board of Directors and that there was no public hearing and notice to port users prior to the implementation of the increase.

PSAA filed a Petition for Intervention raising the same issue raised by AISLI and praying for identical reliefs.

By Decision of March 31, 2003, the appellate court dismissed the petition, ratiocinating as follows:

It is quite clear from the minutes [of the BoardCom meeting on January 11, 2001] that the approved tariff increase was of two tranches, one in February and the other one in July, but this last increase was made subject to the reports on productivity improvement. This documentary report showing sufficient productivity to back up the increase slated for