

SECOND DIVISION

[G.R. No. 95449, August 18, 1997]

**PHILIPPINE-SINGAPORE TRANSPORT SERVICES, INC.,
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION
AND CAPT. WENEFREDO N. ESTRADA, RESPONDENTS.**

D E C I S I O N

TORRES, JR., J.:

The instant case basically revolves around the issue of whether or not private respondent Wenefredo N. Estrada, the complainant in POEA Case No. M-88-02-102 entitled "Capt. Wenefredo N. Estrada vs. Philippine Singapore Transport Services, Inc., et. al.", is validly dismissed from the service on account of his alleged incompetence as the master/captain of the vessel "Sea Carrier I".

It appears that on November 24, 1987, herein petitioner Philippine-Singapore Transport Services, Inc. (PSTS, for brevity), a manning agency, hired private respondent Estrada as master of the vessel Sea Carrier I for its foreign principal, Intra-Oil Supplies Sbn Bhd (Intra-Oil, for brevity). Intra-Oil had a charter agreement, then, with a company which was engaged in a project of oil drilling in the high seas of Bombay, India.

On January 21, 1988 or barely two months following his employment, private respondent Estrada was informed by a representative of Modest Shipping, an agent of Intra-Oil, that he would be relieved from his employment and repatriated back to the Philippines. He was not given any explanation or reason for his relief. On that same day, someone took over as captain of Sea Carrier I, which prompted Estrada to relinquish his post. On account of this unfortunate incident, he decided to return to Manila the following day. Upon his arrival, he readily went to petitioner PSTS to ask about his dismissal from employment and to claim for his unpaid salary and the sum corresponding to his plane fare which was deducted from his salary. Petitioner PSTS informed him that his service was terminated due to his incompetence. It also denied his claim for the sum of money.

On February 10, 1988, private respondent Estrada filed with the POEA Adjudication Department a complaint against PSTS and Intra-Oil for illegal dismissal, docketed as POEA Case No. M-88-02-102. He asked for the reimbursement of his plane fare and payment of his leave pay and of the remaining salaries for the unexpired portion of his six-month contractual period.

In its answer, PSTS alleged that the dismissal of private respondent Estrada was due to a valid cause, which is incompetency. It asserted that his incompetency is evidenced by the telexes of the charterer to PSTS complaining about the private respondent's incompetency in handling the vessel for any tow or even approaching the oil drilling platforms, and informing about its (charterer's) decision to terminate

the services of private respondent as master of the vessel and to off-hire the Sea Carrier I due to private respondent's incompetence. According to PSTS, it had no choice but to give its consent to the dismissal of private respondent by the charterer because the latter was in a best position to determine the qualification of the private respondent.

In his position paper, private respondent revealed that his termination from service was an offshoot of his justified refusal to obey the order of the charterer to tow another of its vessel. He explained that during the voyage from Singapore to Bombay, in the course of maneuvering the charterer's barge, specifically alongside jetties, quays and in navigational channels, all the ropes on board the Sea Carrier I suffered extreme wear and tear, that when the charterer ordered him to tow its barge, he refused to do so since the ropes were worn out and inadequate to maneuver a barge in close water situation and, in his professional opinion, damage would result from using inadequate ropes. This shortage of ropes was made known to Mr. Bala of Essar Shipping, who was asked by the private respondent to supply additional mooring ropes. According to the private respondent, the relationship between him and the charterer degenerated rapidly following this particular incident.

On June 7, 1989, the POEA Adjudication Department ruled in favor of the private respondent by holding that his dismissal from service was illegal, the dispositive portion of its decision states:

"WHEREFORE, in view of all the foregoing circumstances, judgment is hereby rendered ordering respondent Philippine-Singapore Transport Services, its principal Intra Oil Supplies SBN BND and Fortune Life and General Insurance Co., Inc. (PSTSI's surety) to pay complainant (Estrada) jointly and severally the sum of THIRTEEN THOUSAND FIVE HUNDRED THIRTY MALAYSIAN DOLLARS (M\$13,530.00) or its peso equivalent at the time of payment (representing Estrada's salaries covering the unexpired portion of his contract of employment) plus the sum of TEN THOUSAND PESOS (P10,000.00) as refund of airplane expenses."^[1]

Dissatisfied, PSTS appealed to the NLRC on July 12, 1989. The NLRC, however, through its questioned Resolution dated August 17, 1990,^[2] held that the charge of private respondent's incompetency was unmeritorious. The real reason for private respondent's repatriation was not due to his incompetence but due to his refusal to tow another barge belonging to the charterer and which refusal had been shown to be justified and fully explained by the private respondent. Thus, the NLRC affirmed the decision of the POEA and dismissed the appeal of petitioner for lack of merit.

A motion for reconsideration dated September 14, 1990 was filed by petitioner, but the same was denied in a Resolution dated September 25, 1990.^[3]

Hence, this petition.^[4]

Petitioner argued that the private respondent's inability to foresee and anticipate the quantity of ropes to be used during the voyage could only be attributed to his incompetency. As master of the vessel, he was required to see to it that the ship was fitted with all the things necessary for its smooth operation. The fact that the shortage of ropes was made known by private respondent to Mr. Bala did not cure

his incompetency. The request for fresh ropes should have been directed to his principal, and not to a third person (Mr. Bala) who was not even connected with the petitioner nor with its principal.

Petitioner likewise asserted that in defying the charterer's request to tow its barge, the private respondent failed to comply with his duty to maintain good relationship and cooperate with the charterer as laid down on his employment contract, an incident which led to the off-hiring of Sea Carrier I and the consequent cancellation of the charter agreement. And the cancellation of the charter agreement carried with it the dismissal from service of private respondent because he was a project employee whose employment was coterminous with the charter of Sea Carrier I. It could not therefore be said that the dismissal was not valid.

As to the procedural aspect of private respondent's dismissal, petitioner alleged that his termination was done pursuant to the terms of the employment contract, hence, with due regard to due process of law.

We are not persuaded by the foregoing arguments of petitioner.

It is noteworthy to state that an employer is free to manage and regulate, according to his own discretion and judgment, all phases of employment, which includes hiring, work assignments, working methods, time, place and manner of work, supervision of workers, working regulations, transfer of employees, lay-off of workers, and the discipline, dismissal and recall of work.^[5] While the law recognizes^[6] and safeguards^[7] this right of an employer to exercise what are clearly management prerogatives, such right should not be abused and used as a tool of oppression against labor. The company's prerogatives must be exercised in good faith and with due regard to the rights of labor. A priori, they are not absolute prerogatives but are subject to legal limits, collective bargaining agreements and the general principles of fair play and justice.^[8]

The power to dismiss an employee is a recognized prerogative that is inherent in the employer's right to freely manage and regulate his business. Corollarily, an employer can not rationally be expected to retain the employment of a person whose lack of morals, respect and loyalty to his employer, regard for his employer's rules and appreciation of the dignity and responsibility of his office, has so plainly and completely been bared.^[9] He may not be compelled to continue to employ such person whose continuance in the service will patently be inimical to his employer's interest.^[10] The right of the company to dismiss an employee is a measure of self-protection.^[11] Such right, however, is subject to regulation by the State, basically in the exercise of its paramount police power.^[12] Thus, the dismissal of employees must be made within the parameters of the law and pursuant to the basic tenets of equity, justice and fairplay. It must not be done arbitrarily and without just cause.^[13]

Due process must be observed because the dismissal affects not only the employee's position but also his means of livelihood. Truly, unemployment brings untold misery and hardship not only to the workingmen but also to those who are dependent on the wage earners. When a person has no property, his job may possibly be his only possession or means of livelihood. Therefore he should be