

SECOND DIVISION

[G.R. No. 109156, July 11, 1996]

**STOLT-NIELSEN MARINE SERVICES (PHILS.) INC., PETITIONER,
VS. NATIONAL LABOR RELATIONS COMMISSION, PHILIPPINE
OVERSEAS EMPLOYMENT ADMINISTRATION AND MEYNARDO J.
HERNANDEZ, RESPONDENT.**

D E C I S I O N

ROMERO, J.:

Private respondent Meynardo J. Hernandez was hired by petitioner Stolt-Nielsen Marine Services (Phils.) Inc. (STOLT-NIELSEN, for short) as radio officer on board M/T Stolt Condor for a period of ten months. He boarded the vessel on January 20, 1990.

On April 26, 1990, the ship captain ordered private respondent to carry the baggage of crew member Lito Loveria who was being repatriated. He refused to obey the order out of fear in view of the utterance of said crew member "makakasaksak ako" and also because he did not perceive such task as one of his duties as radio officer. As a result of such refusal, private respondent was ordered to disembark on April 30, 1990 and was himself repatriated on May 15, 1990. He was paid his salaries and wages only up to May 16, 1990.

On June 21, 1990, private respondent filed before public respondent POEA a complaint for illegal dismissal and breach of contract praying for, among other things, payment of salaries, wages, overtime and other benefits due him for the unexpired portion of the contract which was six (6) months and three (3) days.

Petitioner STOLT-NIELSEN in its answer alleged that on April 26, 1990, private respondent refused to follow the "request" of the master of the vessel to explain to Lolito Loveria the reason for the latter's repatriation and to assist him in carrying his baggage, all in violation of Article XXIV, Section 1 of the Collective Bargaining Agreement (CBA) and the POEA Standard Contract. Hence, private respondent, after being afforded the opportunity to explain his side, was dismissed for gross insubordination and serious misconduct.

In reply, he denied that the master of the vessel requested him to explain to Loveria the reason for the latter's repatriation.

Thereafter, POEA Administrator Jose N. Sarmiento rendered an award in favor of private respondent, as follows:

"The issue to be resolved is whether or not complainant was illegally dismissed.

We rule in the affirmative.

Record shows that on April 26, 1990, complainant was directed by the master of the vessel to carry the luggage of an outgoing seaman offshore. Complainant, however, refused to obey the said order, hence, his dismissal from his employment.

Evaluating the reason for complainant's dismissal, we find the penalty imposed too severe considering the violation committed. To our mind, a warning would have been sufficient since this was the first offense committed. Moreover, as a radio officer, it is not one of his official duties to carry the luggage of outgoing seaman.

In the light of the foregoing, we hold that complainant's dismissal due to the aforesaid incident arbitrary, whimsical and contrary to human nature and experience, hence, not justified. Accordingly, he is entitled to his salaries for the unexpired portion of his contract computed as follows:

1. Remaining portion of his contract -6 months & 3 days

2. Basic salary -US\$1,024.00

3. Fixed Overtime -420.00^[1]

Total US\$1,434.00

4. Salary/day =(\$1,434/30 days) = US\$47.8/day

5. Salary for 3 days - (\$47.8 x 3) = US\$143.4

6. Salary for 6 months - (\$1,434 x 6) = US\$8,604.00

7. Salary for the unexpired portion of his contract
(basic salary + fixed O.T.)
for 6 months and 3 days
(US\$8,604 + 143.4) = US\$8,747.40

Complainant's claim for day's leave with pay for the unexpired portion of the contract is hereby denied since the same is only given during actual service.

The claim for damages is hereby denied for want of jurisdiction.

Complainant is however entitled to five (5%) percent of the total award as and by way of attorney's fees.

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered ordering respondent to pay complainant the following or its peso equivalent at the time of payment:

1. EIGHT THOUSAND SEVEN HUNDRED FORTY SEVEN & 40/100 US DOLLARS (US\$8,747.40) or its peso equivalent at the time of payment, as salaries for the unexpired portion of his contract.

2. Five percent (5%) of the total award as and by way of attorney's fees.

All other claims are hereby DENIED for lack of merit.

SO ORDERED."^[2]

Aggrieved, petitioner Stolt-Nielsen appealed to the National Labor Relations Commission (NLRC).

The NLRC, in a resolution^[3] dated November 27, 1992, concurred with the POEA Administrator in ruling that private respondent, having been illegally dismissed, was, therefore, entitled to the monetary award. It further stated that private respondent's duty as a radio officer or radio operator does not include the carrying of the luggage of any seaman or explaining to said seaman the reason for his repatriation. Thus, concluded the NLRC, his termination on this ground was not proper and, therefore, he had every right to the monetary award. The NLRC likewise granted private respondent's claim for fixed overtime pay and attorney's fees.

Petitioner, having moved for reconsideration without success, is before this Court on certiorari.

The issues posed for resolution in this case are: (a) whether private respondent was legally dismissed on the ground of gross insubordination and serious misconduct; and (b) whether private respondent was entitled to the award of overtime pay.

With respect to the first issue, petitioner Stolt-Nielsen emphasizes how "(e)mployment on board ocean-going vessels is totally different from land-based ones in that in the former strict and faithful compliance of all lawful commands and orders of the master or captain of the vessel is of paramount and crucial importance." Petitioner then cites Part I, Section A (2) of the POEA Standard Employment Contract which provides:

"2. The seaman binds himself to the following:

'a. To faithfully comply with and observe the terms and conditions of this contract, violation of which shall be subject to disciplinary action pursuant to appendix 2 of this crew contract.

xxx xxx xxx

d. To be obedient to the lawful commands of the master or any person who shall succeed him."

It likewise adverts to Article XXIV, Section 1 of the CBA, viz:

"Authority of the Master

Section 1. It is understood and agreed that nothing contained in this is intended or shall be construed so as to restrict in any way the superiority of the Master or prevent the obedience of any member of the crew to any lawful order of any superior officer." (Underscoring ours)