

EIGHTH DIVISION

[CA - G.R. SP No. 128719, April 28, 2014]

SEA SUNSHINE SHIPPING, INC. AND/OR CAPT. JOVENCIO LOPEZ, PETITIONERS, VS. THE NATIONAL LABOR RELATIONS COMMISSION (6TH DIVISION) AND ARNULFO B. SOLLER, RESPONDENTS.

D E C I S I O N

LOPEZ, J.:

The lone issue raised in this petition for *certiorari* under Rule 65 is whether a local private employment agency may be held liable for breach of contract for failure to deploy a seafarer.

Private respondent Arnulfo B. Soller (Soller) filed a complaint^[1] against petitioners Sea Sunshine Shipping, Inc., the local manning agent of Junco Naviera, S.A., and Sea Sunshine's president, Capt. Jovencio C. Lopez, for breach of contract, reimbursement of expenses, payment of salaries corresponding to the unexpired portion of the contract, damages and attorney's fees. Soller alleged that he was engaged by Sea Sunshine as ordinary seaman for a period of nine (9) months with basic monthly wage of US\$415.00.^[2] He was told to embark on December 12, 2011. On that date, however, Soller was refused to go on board because, according to Sea Sunshine, the principal considered him too old. Sea Sunshine promised Soller that he will be given a new contract to board another vessel, but no new contract was given to him. Soller argued that Sea Sunshine's refusal to let him board the vessel constitutes breach of the employment contract and amounted to constructive dismissal.^[3]

Sea Sunshine denied Soller's allegations. It admitted that Soller applied for the position of ordinary seaman, but he was not recruited and his application was not processed due to his age of 55. Thus, Soller has no cause of action against Sea Sunshine and is not entitled to damages because Sea Sunshine did not breach its duty. As to the payment of attorney's fees, there is no proof that Soller engaged the services of a lawyer. Lastly, Capt. Lopez cannot be held personally liable for the claims of Soller because he has a separate and distinct personality from Sea Sunshine.^[4]

Soller disproved Sea Sunshine's contention that he was not employed, or that his application was not processed. He attached his employment contract^[5] with Sea Sunshine duly approved by the POEA. He maintained that his age of 55 is not beyond the age limit and is not a ground for dismissal, or termination of contract.^[6]

Sea Sunshine, however, claimed that there is no employer-employee relationship because Soller's employment did not commence. It stressed that under Section 2 of

the Standard Employment Contract, an employment contract shall commence upon the actual departure of the seafarer from the airport or seaport in the port of hire. This did not happen.^[7]

In his Decision^[8] dated May 30, 2012, Labor Arbiter Elias H. Salinas ruled for Soller. Sea Sunshine and Capt. Lopez were ordered to jointly and severally pay Soller the sum of US\$3,735.00 corresponding to his unrealized salaries for nine (9) months and ten percent (10%) attorney's fees. On appeal, the NLRC affirmed the Labor Arbiter's Decision.^[9] Failing to secure reconsideration,^[10] Sea Sunshine filed the instant petition for certiorari assailing the NLRC's Decision.

Sea Sunshine cites Section 2^[11] of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels and argues that Soller's employment contract is ineffective because he did not depart from the point of hire. Consequently, there is no employer-employee relationship between Sea Sunshine and Soller. Moreover, Soller's employment contract was not submitted to POEA for processing and no Overseas Employment Certificate (OEC) was issued to him. Since Soller was not deployed overseas, there is no basis for his monetary claims. Anent the award of attorney's fees, Soller failed to prove bad faith on the part of Sea Sunshine.

The petition has no merit.

An employment contract, like any other contract, is perfected when (1) the parties come to agree upon its terms; and (2) concur in the essential elements, to wit: (a) consent of the contracting parties, (b) object certain which is the subject matter of the contract, and (c) cause of the obligation.^[12]

Here, the agreement between Soller and Sea Sunshine was perfected on December 6, 2011 when they signed the employment contract giving their consent to the stipulated terms and conditions. Thus, upon the perfection of the contract, Sea Sunshine is obligated to deploy Soller. While there is no employer-employee relationship yet pending deployment, Soller is entitled to demand performance. We must stress that the commencement of an employer-employee relationship must be treated separately from the perfection of an employment contract.^[13] This was explained in *Santiago v. CF Sharp Crew Management, Inc.*,^[14] the authority of both the Labor Arbiter and the NLRC in ruling for Soller, wherein the Supreme Court recognized the rights of the employee to enforce his employment contract before his actual deployment, thus:

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.