CEBU CITY

EIGHTEENTH DIVISION

[CA-G.R. SP. NO. 07097, December 16, 2014]

ELBURG SHIP MANAGEMENT PHILS., INC., AND AUGUSTEA ATLANTICA S.R.L. PETITIONER/S, VS. NATIONAL LABOR RELATIONS COMMISSION (SEVENTH DIVISION) AND HECTOR PLASABAS, RESPONDENTS.

D E C I S I O N

INGLES, G. T., J.:

THE CASE

This is a petition filed under Rule 65 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[1] dated 30 April 2012 of the National Labor Relations Commission and its Resolution[2] dated 15 June 2012 denying reconsideration in *NLRC Case No. OFW VAC-11-000058-2011.*[*]

The petitioners pray for the issuance of a temporary restraining order and/or writ of preliminary injunction to restrain the execution of the assailed Decision.

THE ANTECEDENTS

Hector Plasabas (private respondent hereinafter) signed a re-engagement contract[3] with Elburg Ship Management Phil., Inc., (petitioner hereinafter) for nine months for the position of Mess Man on board the vessel of Augustea Atlantica S.R. L. with a monthly salary of US$430.00. The private respondent was pronounced "fit to work without restriction". However, after additional medical work-ups, the private respondent was diagnosed with "Liver Parenchymal Disease, Hepatic Schistosomiasis considered." Thus, the "unfit" recommendation by the medical director of the DOH-accredited Sacred Heart Diagnostic Medical Center, Inc.

In the Medical Findings/Advice[4] issued by the medical director of the Sacred Heart Diagnostic Medical Center, Inc., the private respondent was requested "to get a clearance from DOH-Manila to (not legible) patient and if allowed as messman". This, the private respondent did. He had his stool examined for schistosomiasis detection/diagnosis using the Kato-Katz technique[5] and, his blood using the circumoval precipitin test (COPT)[6] at the Diagnostic Parasitology Laboratory of the Department of Parasitology, College of Public Health, University of the Philippines, Manila. Both examinations yielded negative results. On this consideration, the government-owned San Lazaro Hospital issued a medical certificate[7] declaring the private respondent "physically fit for employment".

Failing to be deployed despite the "fit to work" clearance given by the San Lazaro, the private respondent filed a complaint for breach of contract, illegal dismissal and

damages. The parties failed to reach an amicable agreement.

THE RULING[8] OF THE LABOR ARBITER

The decretal portion of the Labor Arbiter's ruling read as follows,

> "WHEREFORE, foregoing premises considered, judgment is finding that the respondent-ELBURG SHIPMANAGEMENT PHILIPPINES, INCORPORATED has breached the employment contract of complainant as respondent is hereby ordered to pay complainant his unexpired portion of the contract plus attorney's fees as follows:
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> |---|---|---|
> | US$ 430 x 8 months | = | US$ 3,440.00 |
> | 10% Attorney's Fees | = | 344.00 |
> | Total | | US$ 3,784.00 |
>
> SO ORDERED."[9]

In arriving at this conclusion, the Labor Arbiter ratiocinated that,

> "As undisputably established from the record, complainant's signing for his deployment as messman through the manning corporation was not his first. Complainant he had been undisputably deployed through respondent corporation as a mess man for its vessels for (5) years and that complainant had been assured of another vessel to board and work as a crew member during his stint with the respondent manning company and that in January 2011, he was again engaged by respondent's company to work for a foreign vessel/principal in Italy for a contract duration of nine (9) months. He was then made to sign a re-engagement contract with respondent company; the Elburg Ship Management Phils., Inc. (formerly Rica Int'l. Manning Agency, Inc.) with a salary of Four Hundred Thirty US Dollars (US$430) per month for a period of nine (9) months. The deployment did not push through because complainant was suddenly found to have suffered an infectious disease, schistosomiasis sometime in and the respondents presented machine copies of the medical findings of the Seaman's Hospital Diagnostic Medical Center Inc. Complainant, on the other hand, was also able to present medical findings of the Department of Health of San Lazaro Hospital, Manila and of the Diagnostic Parasitology Laboratory. Manila stating therein the negative finding/result. We note the proximity of the date of the laboratory result dated on 15 March 2011 wherein complainant was not found positive for the schistosomiasis infection.
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> Was the non-deployment of complainant attributed to his fault?
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> We find in the negative. Both parties presented conflicting documentary evidence supporting their respective stand on the case. The documentary evidence submitted by both parties submitted (sic) are merely machine copies, which were not even authenticated. Much as we want to weigh and consider the evidentiary weight and credence of the documents

presented by parties, but we cannot determine with certainty the due execution of the documents. We can only consider them at their face value alongside with the attending circumstances of complainant's employment as messman. Indeed, it would be highly suspicious, to say the least, that complainant would suddenly develop an infectious disease of schistosomiasis with such very short time from the time he was found fit to work prior to the signing of his employment contract with a foreign principal. We note that the complainant was able to present a medical finding and laboratory result to prove in evidence that complainant is fit for sea duty as messman. We rule in favor of the complainant the seeming doubt in the evidence presented by parties. This is [in] line with the doctrine laid down in labor jurisprudence in carrying out and interpreting Labor laws in relation to resolving labor disputes that in case of doubt, the working man's welfare should be the primordial and paramount consideration. This kind of interpretation and resolution gives meaning and substance to the liberal and compassionate spirit of the law as provided in Article 4 of the Labor Code, which is [in] consonance to the avowed policy to give maximum aid and protection to labor.

As advanced by respondent manning company, the complainant was unable to finish with his 9-month employment contract and was told to disembark, the reason for it we find invalid. With these taken into consideration, as the Supreme Court has already spoken in the Serrano case which was reaffirmed in the case *Yap v. Thenamaris Shipmanagement,* G.R. No. 179532, 20 May 2011, we hold that this case should not be treated differently. Hence, our award for salary for the unexpired portion of complainant's contract. We also deem it proper to award attorney's fees equivalent to 10% of the total monetary award, computed as follows:

x x x x"[10]

On appeal,[11] the National Labor Relations Commission seconded the Labor Arbiter's decision, thus,

"WHEREFORE, premises considered, judgment is, hereby, rendered dismissing the instant appeal for lack of merit. The Decision of the Labor Arbiter dated 16 August 2011 is, hereby, AFFIRMED.

SO ORDERED."[12]

The National Labor Relations Commission in affirming the Labor Arbiter's decision reasoned that:

"We find no reversible error in the appealed decision. From the parties' narration of facts in their respective position papers, complainant stated that he was already due for deployment, as his employment documents had, in fact, already been processed by the POEA. However, all of a sudden, respondent decided to put off his deployment on account of his alleged illness, which rendered him unfit for sea service. Respondent, on the other hand, categorically alleged that it had already deployed complainant for a nine-month contract, on January 21, 2011, but he was

asked to disembark due to his medical condition, which rendered him unfit for employment as messman/food handler. We looked into the records but We found no evidence to show complainant's alleged deployment. Hence, We just settled with complainant's factual allegation that after his employment documents were processed by POEA, and his deployment and actual departure for Taiwan, where he was supposed to join his vessel, was scheduled, respondent precipitately put the same on hold due to an alleged illness, which rendered him unfit for sea duty. This is where the core issue in this case revolves.

Did respondent breach the employment contract it had entered into with respondent? We rule in the affirmative. The Overseas Filipino Worker (OFW) Information Sheet secured by complainant from the electronic data system of the POEA unmistakably shows that his employment documents were processed and approved by POEA, on January 21, 2011. We can safely assume that prior to or contemporaneous with such processing, complainant's physical fitness for sea service had already been determined since it is one of the prerequisites for processing of a worker's employment documents by the POEA. What is more, We cannot see the logic of respondent agency submitting complainant's employment documents for POEA processing and, necessarily, paying the required fees relative thereto, without first ascertaining that complainant is physically fit for sea duty. Complainant's misgivings on his alleged illness is therefore, expected. The documents adduced by the respondent showing complainant's alleged illness are as follows:

1) Medical examination/Interpretation issued by the Radiology Department of Seamen's Hospital (Intramuros, Manila). Examination date: 2/10/2011.
2) Ultrasound Report from Seaman's Hospital (Mandaue City, Cebu). Date: March 4, 2011.
3) Medical Findings/Advice from Sacred Heard Diagnostic Center, Inc. (Makati City). Date: March 10, 2011; and
4) Medical Certification and History issued by Sacred Heart Diagnostic Medical Center, Inc. (Makati City). Date: July 5, 2011.

On the contrary, complainant submitted the following documents to disprove his alleged illness:

1) Medical Certificate dated March 21, 2011 issued by San Lazaro Hospital;
2) Laboratory Result dated 15 March 2011 from the UP Diagnostic Parasitology Laboratory, Department of Parasitology; and
3) Laboratory Result dated 15 March 2011, from the UP Diagnostic Parasitology Laboratory, Department of Parasitology.

While complainant alleged to have been certified by the Sacred Heart Diagnostic Medical Center as “Physically fit for sea duty without restrictions”, the records of the instant case appear to be wanting of that

certificate. We join the Labor Arbiter below in her observation that the aforementioned documents, coming from both parties, relative to complainant's alleged/disputed illness are all machine copies, hence, they are of little probative value. Nonetheless, granting them to be genuine, We opt to give more credence to the Medical Certificate, dated March 21, 2011 issued by San Lazaro Hospital with the following diagnosis: "Physically fit for employment". The medical documents coming from the Seamen's Hospital, which is a private medical institution, could not take primary over the Medical Certificate issued by the San Lazaro Hospital, which is a DOH accredited hospital, in consonance with Section 8, Rule I, Book VI of the Omnibus Rules Implementing the Labor Code in relation to Article 284 of the Labor Code, stressing the significance of a certification coming from a competent public health authority. We are not unmindful of the existence of the two medical documents coming from the Sacred Heard Diagnostic Medical Center, which is, likewise, accredited by the DOH. However, between the conflicting findings of San Lazaro Hospital (submitted by the complainant) and Sacred Heart Diagnostic and Medical Center (submitted by the respondent). We, like the Labor Arbiter below, are more inclined to resolve the doubt in favor of the complainant. The consistent rule is that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. In the case of *Asuncion v. National Labor Relations Commission,* 414 Phil. 329, 341 (2001), the Supreme Court said:

'x x x x'

On top of all these, the alleged rift between respondent and complainant's brother can hardly escape consideration. This was never denied by the respondent. This, in all probability, was a very significant factor in respondent's decision to halt complainant's decision to halt complainant's deployment. It maybe too presumptuous on Our part to say that respondent was ill-motivated, but it certainly has an axe to grind against the latter. We are, thus, constrained to declare respondent guilty for breach of employment contract. Respondent failed to prove with substantial evidence that they had a valid ground to prevent complainant from leaving on the scheduled date of his deployment. Neither the manning agent nor the employer can simply prevent a seafarer from being deployed without a valid reason. Respondent's act of preventing complainant [petitioner] from departing the port of Manila and boarding M/V Pan Uno ["MSV Seaspread'] constitutes a breach of contract, giving rise to complainant's [petitioner's] cause of action. Respondent unilaterally and unreasonably reneged on its obligation to deploy complainant [petitioner] and must therefor answer for the actual damages he suffered. The recent case of *Bright Maritime Corporation (BMC)/Desiree P. Tenorio vs. Ricardo B. Fantonial* is also instructive on the issue:

'x x x x'"[13]

On reconsideration,[14] the National Labor Relations Commission denied[15] the petitioner's motion.