

FIFTH DIVISION

[CA-G.R. SP NO. 62883, June 16, 2006]

**NARCAN SHIPPING AND PLACEMENT AGENCY, INC.,
LEONARDOCANDAVA AND KALBA MARINE MARINE SERVICES,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION
AND SULPICIO AGUIRRE, RESPONDENTS.**

DECISION

BARRIOS, J.:

The petitioners Narcan Shipping and Placement Agency, Inc., Leonardo Candava, and Kalba Marine Services (or the petitioners unless individualized as Narcan Agency, Candava or Kalba Marine) by this petition for certiorari, assail the Resolution dated September 29, 2000 of the respondent National Labor Relations Commission (or NLRC) dismissing their appeal from the Decision of the Labor Arbiter Teresita Castillon-Lora (or the Labor Arbiter), as well as the Resolution dated November 29, 2000 denying its reconsideration.

The dismissed appeal is from NCR-OFW-(M) Case No. 98-08-0842 filed by the respondent Sulpicio Aguirre (or Aguirre) on August 3, 1998 against the petitioners for illegal dismissal, payment of salaries for the unexpired portion of the contract, moral and exemplary damages and attorney's fees.

Aguirre alleged that he was hired by Narcan Agency to work for its principal Kalba Marine in Dubai, United Arab Emirates (or UAE). While his application was being processed, he was made to sign a blank employment contract by Candava, and when he asked why certain portions of the contract were in blank, Candava replied that these will be filled up eventually with the position and salary that he applied for. According to Aguirre he signed another employment contract where it was stipulated that he will be employed as a Chief Engineer with a monthly salary of US\$1,500.00 and for a term of one (1) year. While at the airport prior to his departure, a representative of Narcan Agency handed to him a copy of his employment contract where it was stipulated that he will be employed as an Oiler instead of Chief Engineer, and with a salary of only US\$335.00. He called immediately Narcan Agency and demanded an explanation. He was told that the contract is merely for formality and he was assured of his position as Chief Engineer once he arrived in Dubai, UAE.

When he arrived in Dubai, he was immediately brought to the vessel Dubai Moon where he started performing the work of a Chief Engineer. On his fourth day at work, he was called for an interview by a British representative of the charterer of the vessel and he was asked whether he had any experience in anchor handling, to which Aguirre replied in the negative. The next day when the vessel was about to sail, a representative from Kalba Marine told him to stay behind because he will be sent back to the Philippines. He was unceremoniously repatriated on June 22, 1998.

In their traverse, the petitioners denied the charge of illegal dismissal and alleged that Aguirre was found to be incapable of performing the tasks for the position of Chief Engineer. He misrepresented to them that he is qualified for the position but it was later found out that he was unfamiliar with the vessel's engine and totally incompetent of operating it. He was also found to be wanting in basic communication skills. The petitioners further contended that Aguirre was terminated and repatriated because he failed to pass his probationary period provided in his employment contract.

On September 30, 1999, the Labor Arbiter rendered a Decision in favor of Aguirre, disposing that:

WHEREFORE, premises considered respondents are hereby declared to have illegally dismissed complainant, and are hereby Ordered to pay complainant the following in Philippine Peso at the rate of exchange prevailing at the time of payment.

3 months salary - US\$4,500

10% of attorney's fees - 450

Total - US\$4,950

The claim for damages is hereby dismissed for lack of merit.

SO ORDERED. (p. 30, rollo)

The petitioners appealed this to the NLRC which rendered the assailed Resolution dismissing the appeal for failure to post a bond in the amount equivalent to the award, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, respondents' appeal is hereby DISMISSED for failure to post bond equivalent to the award as mandated by law.

SO ORDERED. (p. 55, rollo)

As said, the motion for its reconsideration was denied.

Hence, this petition for certiorari where the petitioners raise the following issues for consideration:

I

WHETHER OR NOT PRIVATE RESPONDENT'S DISMISSAL WAS WITH CAUSE.

II

WHETHER OR NOT PRIVATE RESPONDENT IS ENTITLED TO THREE (3) MONTHS SALARY AND ATTORNEY'S FEES.