

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
THIRD DIVISION**

**OSM SHIPPING PHILIPPINES, INC.,  
*Petitioner,***

***-versus-***

**G.R. No. 138193  
March 5, 2003**

**NATIONAL LABOR RELATIONS  
COMMISSION (Third Division) and  
FERMIN F. GUERRERO,  
*Respondents.***

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**D E C I S I O N**

**PANGANIBAN, J.:**

The Rules of Court do not require that all supporting papers and documents accompanying a petition for certiorari should be duplicate originals or certified true copies. Furthermore, unilateral decisions to alter the use of a vessel from overseas service to coastwise shipping will not affect the validity of an existing employment contract validly executed. Workers should not be prejudiced by actions done solely by employers without the former's consent or participation.

## **The Case**

Before us is a Petition for Review on Certiorari<sup>[1]</sup> under Rule 45 of the Rules of Court, seeking to set aside the February 11, 1999 and the March 26, 1999 Resolutions of the Court of Appeals (CA) in CA-GR SP No. 50667. The assailed Resolutions dismissed a Petition filed in the CA, challenging an adverse ruling of the National Labor Relations Commission (NLRC). The first Resolution disposed as follows:

“We resolve to OUTRIGHTLY DISMISS the petition.”<sup>[2]</sup>

The second Resolution<sup>[3]</sup> denied petitioners’ Motion for Reconsideration.

On the other hand, the NLRC Decision disposed in this wise:

“WHEREFORE, premises considered, the Decision appealed from is hereby MODIFIED in that respondents OSM Shipping Phils. Inc. and its principal, Philippine Carrier Shipping Agency Services Co. are jointly and severally ordered to pay complainant the sum of ELEVEN THOUSAND THREE HUNDRED FIFTY NINE and 65/100 [US dollars] (US\$11,359.65) or its peso equivalent at the time of payment representing complainant’s unpaid salaries, accrued fixed overtime pay, allowance, vacation leave pay and termination pay.”<sup>[4]</sup>

## **The Facts**

This case originated from a Complaint filed by Fermin F. Guerrero against OSM Shipping Philippines, Inc.; and its principal, Philippine Carrier Shipping Agency Services Co. The Complaint was for illegal dismissal and non-payment of salaries, overtime pay and vacation pay. The facts are summarized in the NLRC Decision as follows:

“Private respondent was hired by Petitioner OSM for and in behalf of its principal, Phil Carrier Shipping Agency Services Co. (PC-SLC) to board its vessel MN ‘Princess Hoa’ as a Master Mariner for a contract period of ten (10) months. Under the said contract, his basic monthly salary is US\$1,070.00,

US\$220.00 allowance, US\$321.00 fixed overtime, US\$89 vacation leave pay per month for 44 hours of work per week. He boarded the vessel on July 21, 1994 and complied faithfully with the duties assigned to him.

“Private respondent alleged that from the start of his work with MN ‘Princess Hoa’, he was not paid any compensation at all and was forced to disembark the vessel sometime in January 1995 because he cannot even buy his basic personal necessities. For almost seven (7) months, i.e. from July 1994 to January 1995, despite the services he rendered, no compensation or remuneration was ever paid to him. Hence, this case for illegal dismissal, non-payment of salaries, overtime pay and vacation pay.

“Petitioner OSM, for its part, alleged that on July 26, 1994, Concorde Pacific, an American company which owns MN ‘Princess Hoa’, then a foreign registered vessel, appointed Philippine Carrier Shipping Agency Services Co. (PC-SASCO) as ship manager particularly to negotiate, transact and deal with any third persons, entities or corporations in the planning of crewing selection or determination of qualifications of Filipino Seamen. On the same date, Petitioner OSM entered into a Crew Agreement with PC-SASCO for the purpose of processing the documents of crew members of MN ‘Princess Hoa’. The initial plan of the ship-owner was to use the vessel in the overseas trade, particularly the East Asian Growth Area. Thereafter, the contract of private respondent was processed before the POEA on September 20, 1994.

“OSM alleged further that the ship owner changed its plans on the use of the vessel. Instead of using it for overseas trade, it decided to use it in the coastwise trade, thus, the crewmembers hired never left the Philippines and were merely used by the ship owner in the coastwise trade. Considering that the MN ‘Princess Hoa’ was a foreign registered vessel and could not be used in the coastwise trade, the ship owner converted the vessel to Philippine registry on September 28, 1994 by way of bareboat chartering it out to another entity named Philippine Carrier Shipping Lines Co. (PCSLC). To do this, the ship owner through

Conrado V. Tendido had to terminate its management agreement with PC-SASCO on September 28, 1994 by a letter of termination dated September 20, 1994. In the same letter of termination, the ship owner stated that it has bareboat chartered out the vessel to said PCSLC and converted it into Philippine registry. Consequently, PC-SASCO terminated its crew agreement with OSM in a letter dated December 5, 1994. Because of the bareboat charter of the vessel to PCSLC and its subsequent conversion to Philippine registry and use in coastwise trade as well as to the termination of the management agreement and crew agency agreement, a termination of contract ensued whereby PCSLC, the bareboat charterer, became the disponent owner/employer of the crew. As a disponent owner/employer, PCSLC is now responsible for the payment of complainant's wages. [5]

Labor Arbiter (LA) Manuel R. Caday rendered a Decision<sup>[6]</sup> in favor of Private Respondent Guerrero. Petitioner and its principal, Philippine Carrier Shipping Agency Services, Co. (PC-SASCO), were ordered to jointly and severally pay Guerrero his unpaid salaries and allowances, accrued fixed overtime pay, vacation leave pay and termination pay. The Decision held that there was a constructive dismissal of private respondent, since he had not been paid his salary for seven months. It also dismissed petitioner's contention that there was a novation of the employment contract.

On appeal, the NLRC (Third Division) affirmed the LA's Decision, with a modification as to the amount of liability. On January 28, 1999, petitioner filed with the CA a Petition<sup>[7]</sup> to set aside the NLRC judgment. The petition was dismissed, because petitioner had allegedly failed to comply with the requirements of Section 3 of Rule 46 of the Rules of Court. Specifically, petitioner had attached to its Petition, not a duplicate original or a certified true copy of the LA's Decision, but a mere machine copy thereof. Further, it had not indicated the actual address of Private Respondent Fermin F. Guerrero.<sup>[8]</sup>

Hence, this Petition.<sup>[9]</sup>

## **The Issues**

In its Memorandum, petitioner raises the following issues for the Court's consideration:

- “1. Did not the Court of Appeals err in interpreting and applying the 1997 Rules when it required as attachment to the Petition for Certiorari the duplicate original of another Decision which is not the subject of the said Petition?
- “2. Did not the Court of Appeals err in interpreting and applying the 1997 Rules when it disregarded the subsequent compliance made by petitioner?
- “3. Did not the Court of Appeals err in interpreting and applying the 1997 Rules when it did not consider the Notice to private respondent Guerrero through his counsel as Notice to Guerrero himself?”<sup>[10]</sup>

The foregoing issues all refer to the question of whether, procedurally, petitioner has complied with Section 3 of Rule 46 of the Rules of Court. Additionally and in the interest of speedy justice, this Court will also resolve the substantive issue brought before the CA: did the NLRC commit grave abuse of discretion in ruling in favor of private respondent?

## **The Court's Ruling**

While petitioner is procedurally correct, the case should nonetheless be decided on the merits in favor of private respondent.

### ***Procedural Issue:***

#### **Compliance with the Rules of Court**

Petitioner puts at issue the proper interpretation of Section 3 of Rule 46 of the Rules of Court.<sup>[11]</sup> Specifically, was petitioner required to attach a certified true copy of the LA's Decision to its Petition for Certiorari challenging the NLRC judgment?

Section 3 of Rule 46 does not require that all supporting papers and documents accompanying a petition be duplicate originals or certified true copies. Even under Rule 65 on certiorari and prohibition, petitions need to be accompanied only by duplicate originals or certified true copies of the questioned judgment, order or resolution. Other relevant documents and pleadings attached to it may be mere machine copies thereof.<sup>[12]</sup> Numerous decisions issued by this Court emphasize that in appeals under Rule 45 and in original civil actions for certiorari under Rule 65 in relation to Rules 46 and 56, what is required to be certified is the copy of the questioned judgment, final order or resolution.<sup>[13]</sup> Since the LA's Decision was not the questioned ruling, it did not have to be certified. What had to be certified was the NLRC Decision. And indeed it was.

As to the alleged missing address of private respondent, the indication by petitioner that Guerrero could be served with process care of his counsel was substantial compliance with the Rules.

This Court has held that the sending of pleadings to a party is not required, provided that the party is represented by counsel.<sup>[14]</sup> This rule is founded on considerations of fair play, inasmuch as an attorney of record is engaged precisely because a party does not feel competent to deal with the intricacies of law and procedure.<sup>[15]</sup> Both jurisprudence<sup>[16]</sup> and the basics of procedure<sup>[17]</sup> provide that when a party has appeared through counsel, service is to be made upon the latter, unless the court specifically orders that it be upon the party.

We also note that from the inception of the case at the LA's office, all pleadings addressed to private respondent had always been sent to his counsel, Atty. Danilo G. Macalino. Note that private respondent, who was employed as a seaman, was often out of his home. The service of pleadings and other court processes upon him personally would have been futile, as he would not have been around to receive them.

This Court has repeatedly held that while courts should meticulously observe the Rules, they should not be overly strict about procedural lapses that do not impair the proper administration of justice.<sup>[18]</sup> Rather, procedural rules should be liberally construed to secure the

just, speedy and inexpensive disposition of every action and proceeding.<sup>[19]</sup>

***Substantive Issue:***

**Liability of Petitioner for Unpaid Salaries**

It is worthwhile to note that what is involved in this case is the recovery of unpaid salaries and other monetary benefits. The Court is mindful of the plight of private respondent and, indeed, of workers in general who are seeking to recover wages that are being unlawfully withheld from them. Such recovery should not be needlessly delayed at the expense of their survival. This case is now on its ninth year since its inception at the LA's office. Its remand to the CA will only unduly delay its disposition. In the interest of substantial justice,<sup>[20]</sup> this Court will decide the case on the merits based upon the records of the case, particularly those relating to the OSM Shipping Philippines' Petition before the CA.

On behalf of its principal, PC-SASCO, petitioner does not deny hiring Private Respondent Guerrero as master mariner. However, it argues that since he was not deployed overseas, his employment contract became ineffective, because its object was allegedly absent. Petitioner contends that using the vessel in coastwise trade and subsequently chartering it to another principal had the effect of novating the employment contract. We are not persuaded.

As approved by the Philippine Overseas Employment Agency (POEA), petitioner was the legitimate manning agent of PC-SASCO.<sup>[21]</sup> As such, it was allowed to select, recruit, hire and deploy seamen on board the vessel M/V Princess Hoa, which was managed by its principal, PC-SASCO.<sup>[22]</sup> It was in this capacity that petitioner hired private respondent as master mariner. They then executed and agreed upon an employment contract.

An employment contract, like any other contract, is perfected at the moment (1) the parties come to agree upon its terms; and (2) concur in the essential elements thereof: (a) consent of the contracting parties, (b) object certain which is the subject matter of the contract and (c) cause of the obligation.<sup>[23]</sup> Based on the perfected contract,

Private Respondent Guerrero complied with his obligations thereunder and rendered his services on board the vessel. Contrary to petitioner's contention, the contract had an object, which was the rendition of service by private respondent on board the vessel. The non-deployment of the ship overseas did not affect the validity of the perfected employment contract. After all, the decision to use the vessel for coastwise shipping was made by petitioner only and did not bear the written conformity of private respondent. A contract cannot be novated by the will of only one party.<sup>[24]</sup> The claim of petitioner that it processed the contract of private respondent with the POEA only after he had started working is also without merit. Petitioner cannot use its own misfeasance to defeat his claim.

Petitioner, as manning agent, is jointly and severally liable with its principal,<sup>[25]</sup> PC-SASCO, for private respondent's claim. This conclusion is in accordance with Section 1 of Rule II of the POEA Rules and Regulations.<sup>[26]</sup> Joint and solidary liability is meant to assure aggrieved workers of immediate and sufficient payment of what is due them.<sup>[27]</sup> The fact that petitioner and its principal have already terminated their agency agreement does not relieve the former of its liability. The reason for this ruling was given by this Court in *Catan vs. National Labor Relations Commission*,<sup>[28]</sup> which we reproduce in part as follows:

“This must be so, because the obligations covenanted in the manning agreement between the local agent and its foreign principal are not coterminus with the term of such agreement so that if either or both of the parties decide to end the agreement, the responsibilities of such parties towards the contracted employees under the agreement do not at all end, but the same extends up to and until the expiration of the employment contracts of the employees recruited and employed pursuant to the said recruitment agreement. Otherwise, this will render nugatory the very purpose for which the law governing the employment of workers for foreign jobs abroad was enacted.”<sup>[29]</sup>

**WHEREFORE**, the assailed Resolutions are hereby **SET ASIDE**, and the September 10, 1998 NLRC Decision **REINSTATED** and **AFFIRMED**. Costs against petitioner.



## **SO ORDERED.**

**Puno, Sandoval-Gutierrez and Carpio Morales, JJ., concur.  
Corona, J., is on leave.**

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[1] Rollo, Vol. I, pp. 14-23.

[2] *Id.*, p. 89. Written by Justice Renato C. Dacudao, member of the Special Tenth Division; concurred in by Justice Ma. Alicia Austria-Martinez (now SC justice and Division chairman) and Justice Rodrigo V. Cosico (acting member).

[3] *Id.*, p. 104. Written by Justice Renato C. Dacudao, member of the former Special Tenth Division; concurred in by Justices Rodrigo V. Cosico and Eloy R. Bello Jr., members.

[4] NLRC Decision, p. 17; rollo, Vol. I, p. 78. Written by Commissioner Tito F. Genilo and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Ireneo B. Bernardo.

[5] *Id.*, pp. 3-6 and 65-68.

[6] Rollo, Vol. I, pp. 53-61.

[7] *Id.*, pp. 27-35.

[8] Assailed CA Resolution, p. 1; rollo, Vol. I, p. 88.

[9] This case was deemed submitted for decision on July 2, 2002, upon the Court's receipt of private respondent's Reply to petitioner's Memorandum, and signed by Atty. Danilo G. Macalino of D.G. Macalino & Associates. Public respondent's Memorandum, filed on April 16, 2001, was signed by Assistant Solicitor General Carlos N. Ortega, Assistant Solicitor General Roman G. del Rosario and Associate Solicitor Beatrice A. Caunan-Medina of the Office of the Solicitor General. Petitioner's Memorandum, filed on March 14, 2001, was signed by Atty. Victor B. Roque.

[10] Petitioner's Memorandum, p. 4; rollo, Vol. II, p. 79. Original in upper case.

[11] "SEC. 3. Contents and filing of petition; effect of non-compliance with requirements. — The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

"In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.

"It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the

record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.

“The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

“The petitioner shall pay the corresponding docket and other lawful fees to the clerk of court and deposit the amount of P500.00 for costs at the time of the filing of the petition.

“The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.”

[12] §1 and §2, Rule 65 of the Rules of Court.

[13] Cadayona vs. Court of Appeals, 324 SCRA 619, February 3, 2000, citing the following cases: Martinez vs. Magallanes, GR No. 133766, January 13, 1999; Borja vs. Judge Hontanosas Jr., G.R. No. 134748, January 13, 1999; Regalado et al. vs. NLRC, G.R. No. 134671, January 13, 1999; G and M [Phils.], Inc. vs. NLRC, G.R. No. 133836, January 13, 1999; Dimalanta vs. People, G.R. No. 134798, November 9, 1998.

[14] Zoleta vs. Drilon, 166 SCRA 548, October 18, 1988.

[15] Id., p. 554, citing JM Javier Looming Corporation vs. Mardo, 24 SCRA 776, August 27, 1968.

[16] Ramos vs. Court of Appeals, 321 SCRA 584, December 29, 1999; Galang vs. Court of Appeals, 199 SCRA 683, July 29, 1991; Salen vs. Dinglasan, 198 SCRA 623, June 28, 1991.

[17] §2, Rule 13 of the 1997 Rules of Court.

[18] Director of Lands vs. Court of Appeals, 303 SCRA 495, February 23, 1999; Uy Jr. vs. Court of Appeals, 191 SCRA 275, November 9, 1990; Rinconada Telephone Company, Inc. vs. Buenviaje, 184 SCRA 701, April 27, 1990; Serriña vs. Court of Appeals, 170 SCRA 421, February 21, 1989.

[19] §6, Rule 1 of the 1997 Rules of Court.

[20] Basco vs. Court of Appeals, 326 SCRA 768, February 29, 2000; Beutifont Inc., vs. Court of Appeals, 157 SCRA 481, January 29, 1988; Lianga Bay Logging Co., Inc. vs. Court of Appeals, 157 SCRA 357, January 28, 1988; Francisco vs. City of Davao, 12 SCRA 628, December 24, 1964; Magno Adamos vs. Bagasao, 162 SCRA 747, June 28, 1988.

[21] NLRC Decision, p. 7; rollo, Vol. I, p. 69.

- [22] Crew Agency Agreement, pp. 1-3; rollo, pp. 42-44.
- [23] Limketkai Sons Milling, Inc. vs. Court of Appeals, 250 SCRA 523, December 1, 1995; Ang Yu Asuncion vs. Court of Appeals, 238 SCRA 602, December 2, 1994.
- [24] Security Bank and Trust Company, Inc. vs. Cuenca, 341 SCRA 781, October 3, 2000; Cruz vs. Court of Appeals, 293 SCRA 239, July 27, 1998; Tiu Siuco vs. Habana, 45 Phil. 707, February 21, 1924.
- [25] Philippine Integrated Labor Assistance Corporation vs. NLRC, 264 SCRA 418, November 19, 1996; Chavez vs. Bonto-Perez, 242 SCRA 73, March 1, 1995; Teknika Skills and Trade Services, Inc. vs. NLRC, 212 SCRA 132, August 4, 1992.
- [26] “SEC. 1. Requirements for Issuance of License. — Every applicant for license to operate a private employment agency or manning agency shall submit a written application together with the following requirements:
- x x x
- f. A verified undertaking stating that the applicant:
- x x x
- (3) Shall assume joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the contract; including but not limited to payment of wages, health and disability compensation and reparation.
- [27] PI Manpower Placements, Inc. vs. NLRC (Second Division), 276 SCRA 451, July 31, 1997.
- [28] 160 SCRA 691, April 15, 1988.
- [29] Id., p. 695, citing NLRC Resolution in the same case, per Cortes, J.