

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**PCL SHIPPING PHILIPPINES, INC.
and/or PACIFIC CARRIERS, LTD.,
*Petitioners,***

-versus-

**G.R. No. 148418
July 28, 2005**

**NATIONAL LABOR RELATIONS
COMMISSION and ERNESTO B.
LAMIQUE,
*Respondents.***

X-----X

DECISION

CHICO-NAZARIO, J.:

Before Us is an Appeal by *Certiorari* under Rule 45 of the Rules of Court which seeks to set aside the decision of the Court of Appeals dated 01 December 2000 which ordered the reinstatement of the decision of the Labor Arbiter dated 14 August 1998 requiring petitioners to pay jointly and severally private respondent the amount of \$5,073.00 or its equivalent in Philippine Currency, as well as the granting of indemnity award in the amount of P10,000.00, and its Resolution dated 18 May 2001 denying petitioners' motion for reconsideration.

As culled from the record, the facts are as follows:

On 11 August 1995, Ernesto B. Lamique was contracted by PCL Shipping Phils., Inc. (PCL), for and in behalf of its principal, Pacific Carriers, Ltd., as a Second Officer on board MV “Alam Acapulco” for a contract period of nine (9) months plus one (1) month, with a basic monthly salary of US\$1,280.00, a vacation leave pay of US\$341.00 and a monthly bonus pay of US\$107.00.

On 18 August 1995, Lamique joined the vessel MV “Alam Acapulco” in New Orleans, USA. During the course of his employment, he experienced difficulties in his relations with the vessel’s Chief Officer Brosnilan Saktura who was abusive, cruel and discriminatory towards Filipino seamen. On two separate incidents, he disclosed that he was castigated by Saktura for unfounded reasons. On 16 January 1996, he was surprised to learn that his services were no longer needed and that he was to be discharged.

On 18 January 1996, Lamique was repatriated.^[1] On 28 October 1997, he filed before the Labor Arbiter a complaint for illegal dismissal with recovery of the unexpired portion of his employment contract, damages and attorney’s fees.^[2]

On the other hand, PCL narrated that on 19 October 1995, while the vessel was at Progreso, Mexico, Lamique left it without permission and did not return to work on time. Again, on 15 January 1996, Lamique refused to continue his work on board although he agreed to be paid all his remaining earnings including leave pay before signing off the vessel. The following day, however, 16 January 1996, Lamique had a change of mind and refused to sign off and to work forcing the Master of the vessel to serve his notice of termination. Lamique was advised of its contents but refused to sign its acknowledgment, thus he was signed off from the vessel and was thereafter repatriated to the Philippines.^[3]

In a Decision^[4] of the Labor Arbiter^[5] dated 14 August 1998, it was held:

WHEREFORE, premises considered, the respondent PCL Shipping Philippines, Inc. and/or Pacific Carriers Limited are

hereby ordered to pay, jointly and severally complainant Ernesto B. Lamique the amount of FIVE THOUSAND SEVENTY-THREE US DOLLARS (US\$5,073.00) or its equivalent in Philippine currency at the prevailing rate of exchange at the time of payment, representing his salaries for the unexpired portion of his contract.

All other claims are DISMISSED for lack of merit.

PCL appealed to the National Labor Relations Commission (NLRC) which affirmed the award of salaries for the unexpired portion of Lamique's contract finding that he was deprived thereof due to the unlawful termination of his employment. Additionally, the NLRC awarded indemnity, finding that Lamique was dismissed without due process. In a decision dated 20 November 1999,^[6] the NLRC held:

WHEREFORE, the appealed decision is hereby modified. Dismissing respondents' appeal for being without merit, the decision dated August 14, 1998 is however modified in that the respondents are hereby ordered to pay to the complainant indemnity award in the amount of P10,000.00.^[7]

PCL filed a Motion for Reconsideration^[8] which was denied in a resolution dated 28 March 2000.^[9]

PCL elevated the case to the Court of Appeals via a Petition for Certiorari^[10] under Rule 65.^[11] In a Decision^[12] dated 01 December 2000, the Court of Appeals held:

WHEREFORE, foregoing considered, the present petition is DENIED for lack of merit. The decision of the Labor Arbiter dated August 14, 1998 is hereby REINSTATED plus an indemnity award in the amount of P10,000.00 rendered by the NLRC in its decision dated November 20, 1999.

A Motion for Reconsideration filed by PCL was denied by the Court of Appeals in a resolution dated 18 May 2001.^[13]

Hence, this Petition for Review on Certiorari under Rule 45 of the Rules of Court. For resolution are the following issues raised by the herein Petitioner PCL.

- I. THE COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION WHEN IT ABBREVIATED (SIC), AND IN NOT AFFORDING THE PETITIONERS THE RIGHT TO DUE PROCESS, IN THE CERTIORARI PROCEEDING.
- II. THE COURT OF APPEALS GRAVELY ERRED IN DISREGARDING MATERIAL FACTS AND CIRCUMSTANCES THAT THE PRE-TERMINATION OF PRIVATE RESPONDENT WAS VALID AND FOR LAWFUL CAUSE.
- III. LIKewise, THE COURT OF APPEALS ERRED IN REINSTATING THE JUDGMENT OF THE LABOR ARBITER, AND IN AWARDING INDEMNITY, IN FAVOR OF THE PRIVATE COMPLAINANT.^[14]

The Petition fails to persuade.

It is an opportune time to reiterate the general rule that only questions of law, not questions of fact, may be raised in a Petition for Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended.^[15]

As to the first issue raised, PCL claims that the proceedings were abbreviated owing to the fact that after it filed its petition, the Court of Appeals issued a Resolution^[16] requiring Lamique to file his Comment. Thereafter, with the submission of Lamique's Comment, the case was decided without having received any further notice from the Court of Appeals, in violation of Rule 65, Section 8 of the Rules of Court.

The pertinent rule regarding Petitions for Certiorari before the Court of Appeals is found in Rule 65, Sections 6 and 8 of the Rules of Court.

SEC. 6. Order to comment. – If the petition is sufficient in form and substance to justify such process, the court shall issue an order requiring the respondent or respondents to comment on the petition within ten (10) days from receipt of a copy thereof. Such order shall be served on the respondents in such manner as the court may direct, together with a copy of the petition and any annexes thereto.

In petitions for certiorari before the Supreme Court and the Court of Appeals, the provisions of Section 2, Rule 56, shall be observed. Before giving due course thereto, the court may require the respondents to file their comment to, and not a motion to dismiss, the petition. Thereafter, the court may require the filing of a reply and such other responsive or other pleadings as it may deem necessary and proper.

SEC. 8. Proceedings after comment is filed. – After the comment or other pleadings required by the court are filed, or the time for the filing thereof has expired, the court may hear the case or require the parties to submit memoranda. If after such hearing or submission of memoranda or the expiration of the period for the filing thereof the court finds that the allegations of the petition are true, it shall render judgment for the relief prayed for or to which the petitioner is entitled.

The court, however, may dismiss the petition if it finds the same to be patently without merit, prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration.

Clear from the above provision is the requirement that the filing of other pleadings such as reply and rejoinder subsequent to the Petition and Comment is merely discretionary on the Court of Appeals. After the petition is filed and the respondent has submitted his Comment, the Court of Appeals “may” submit the case for resolution without requiring further pleadings to be filed. The word “may” when used in a statute is permissive only and operates to confer discretion; while the word “shall” is imperative, operating to impose a duty which may be enforced.^[17] In other words, applying Rule 65, Section 8 of the Revised Rules of Court, the Court of Appeals in the exercise of its

sound judgment may or may not require further pleadings and submit the case for resolution after the filing of the Petition and Comment.

As to the validity of Lamique's dismissal, the unflinching rule in illegal dismissal cases is that the employer bears the burden of proof^[18] to show that the dismissal is for just and valid cause and failure to do so would necessarily mean that the dismissal was illegal.^[19] Thus, to effect a completely valid and unassailable dismissal, an employer must show not only a sufficient ground therefore but must also prove that procedural due process has been observed by giving the employee two (2) notices, (1) of the intention to dismiss and (2) the decision to dismiss.^[20]

We agree in the factual findings of both the Labor Arbiter and the NLRC that PCL's allegation of Lamique's dismissal for cause is not substantiated. Thus:

Explanations proffered by the complainant on his unauthorized disembarkation on October 13, 1995 to make an emergency long distance call to his family but leaving instructions to the Third Officer to take charge of his duties in the event he returns late, per se, cannot be held as willful disobedience of the rules, since the reasons therefore was impelled by necessity, hence not whimsical; that complainant had the intention to return immediately; and more particularly, said infraction only occurred once.

On September 6, 1995, when the Chief Officer entered in the deck log book that complainant refused to work because he was found sleeping, neither did the latter commit willful disobedience as he was forced by necessity to rest as he was then suffering from loose bowel movement (LBM) which prevented him to report for work due to his need to relieve himself every now and then.

Under the availing circumstances, we find the grounds relied upon by the respondents for terminating the complainant trivial and unimportant so as to warrant his dismissal. This is also on account of the fact that we found wanting in factual details especially in the alleged refusal of the complainant to work which had resulted either

to irreparable damage to the respondents or to the disruption of the vessel's smooth operation.^[21]

The Supreme Court is bound in principle by the factual findings of administrative officials if supported by substantial evidence.^[22] The factual findings of labor officials who are deemed to have acquired expertise in matters within their respective jurisdiction are generally accorded not only respect, but even finality, and bind the Supreme Court when supported by substantial evidence.^[23]

Finding the dismissal to be tainted with illegality, the monetary award is justified. The matter of establishing the bases for awards constitutes factual issues. As a rule, the factual findings of the labor tribunals are not disturbed by the Supreme Court particularly where as in this case both the Labor Arbiter and the NLRC are in agreement.^[24]

As to the award of indemnity, indemnity is given to the dismissed employee for failure of the employer to strictly comply with the requirements of due process.^[25] This Court has awarded indemnity in amounts ranging from P1,000.00 to P10,000.00 depending on the particular circumstances of each case.^[26] The award of P10,000.00 to Lamique is reasonable and in accord with prevailing jurisprudence.^[27]

WHEREFORE, premises considered, the Decision dated 01 December 2000 of the Court of Appeals and its Resolution dated 18 May 2001 are hereby **AFFIRMED**. Costs against the Petitioners.

SO ORDERED.

PUNO, J., (Chairman), AUSTRIA-MARTINEZ, CALLEJO, SR., and TINGA, JJ., concur.

[1] Memorandum for the Private Respondent; Rollo, pp. 136-147.

[2] Annex B, Rollo, p. 33.

[3] Memorandum for the Petitioner; Rollo, pp. 149-165.

[4] Annex E, Rollo, pp. 65-69.

[5] Penned by Labor Arbiter Fatima Jambaro-Franco.

[6] Annex F, Rollo, p. 70.

- [7] Rollo, pp. 76-77.
- [8] Annex G, Rollo, p. 78.
- [9] Annex I, Rollo, p. 89.
- [10] CA-G.R. SP No. 59493.
- [11] Revised Rules of Court.
- [12] Penned by Associate Justice Eugenio S. Labitoria with Associate Justices Eloy R. Bello and Eliezer R. De Los Santos concurring; Annex A, Rollo, p. 27.
- [13] Annex A-1, Rollo, p. 32.
- [14] Rollo, p. 152.
- [15] Cosmos Bottling Corporation vs. NLRC, G.R. No. 146397, 01 July 2003, 405 SCRA 258, citing De Rama vs. Court of Appeals, G.R. No. 131136, 28 February 2001, 351 SCRA 94; Linzag vs. Court of Appeals, G.R. No. 122181, 26 June 1998, 291 SCRA 304.
- [16] Rollo, p. 153.
- [17] Bersabal vs. Salvador, G.R. No. L-35910, 21 July 1978, 84 SCRA 176, citing Dizon vs. Encarnacion, G.R. No. L-18615, 24 December 1963, 9 SCRA 714.
- [18] Mendoza vs. NLRC, G.R. No. 131405, 20 July 1999, 310 SCRA 846.
- [19] Solidbank Corporation vs. Court of Appeals, G.R. No. 151026, 25 August 2003, 409 SCRA 554.
- [20] Golden Thread vs. NLRC, G.R. No. 119157, 11 March 1999, 304 SCRA 568.
- [21] Rollo, pp. 74-75.
- [22] Mac Adams Metal Engineering Workers Union-Independent vs. Mac Adams Metal Engineering, G.R. No. 141625, 24 October 2003, 414 SCRA 411.
- [23] Willi Hahn Enterprises vs. Maghuyop, G.R. No. 160348, 17 December 2004, 447 SCRA 349, citing Philippine American Life and General Insurance Co. vs. Gramaje, G.R. No. 156963, 11 November 2004, 442 SCRA 274.
- [24] Shoppers Gain Supermart vs. NLRC, G.R. No. 110731, 26 July 1996, 259 SCRA 411.
- [25] Shoemart, Inc. vs. National Labor Relations Commission, G.R. No. 74229, 11 August 1989, 176 SCRA 385.
- [26] Del Val vs. National Labor Relations Commission, et al., G.R. No. 121806, 25 September 1998, 296 SCRA 283.
- [27] Reta vs. NLRC, 232 SCRA 613 and Alhambra Industries Inc. vs. NLRC, 238 SCRA 232, cited in Magnolia Dairy Products Corp. vs. NLRC, G.R. No. 114952, 29 January 1996, 252 SCRA 483.