SUPREME COURT
FIRST DIVISION

EDWARD R. RETA,
***Petitioner*,**

-versus-

G.R. No. 112100
May 27, 1994

NATIONAL LABOR RELATIONS COMMISSION and ARPAPHIL SHIPPING CORPORATION, TARPON SHIPPING CO. and LUZON SURETY CO., INC.,
***Respondents*.**
x----------x

D E C I S I O N

QUIASON, *J.*:

This is a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court to annul the Resolution dated March 31, 1993 of the National Labor Relations Commission (NLRC) in NLRC Case No. 003657-92, which affirmed the decision of the Philippine Overseas Employment Administration (POEA) dated March 11, 1992, dismissing petitioner's complaint against private respondents for illegal dismissal.

I

Petitioner was hired as Second Officer on board the M.V. "Bulk Tupaz" by respondent Arpaphil Shipping Corp. (ARPAPHIL), the manning agent of respondent Tarpon Shipping Company. His employment was for a 12-month period effective December 3, 1990 with a monthly salary of U$825.00 and an overtime pay at the rate of $2.10 per hour.

On December 11, 1990, while on duty on board the ship, petitioner was caught watching television at the smoking room instead of being at his post. On December 12, he failed to take proper positions of the vessel, rendering his observations unreliable. On December 18, he forgot to take sun observation and to keep track of the vessel's proper position. Thereafter, he made a wrong entry in the logbook. On December 26, petitioner was required to work overtime, but he refused.

The worst infractions committed by petitioner were: (1) on December 27, when by reason of his faulty maneuvering, the vessel barely missed colliding with another vessel; (2) on January 1, 1991, while he was in charge of loading fuel oil into the holds of the vessel, he left his watch and other duties and went to the dining room; and (3) on January 8, while the ship was going through strong current, he let loose the mooring line of the vessel, so that it moved away from the loading berth. The vessel had to be moored by a tug boat. All the crew, except petitioner, responded to the call for help in mooring the vessel.

In a span of two months, petitioner committed eight infractions, all of which boil down to insubordination, incompetence and inefficiency. Due to these infractions, the master of the vessel discharged petitioner on February 27 while the vessel was docked at Pireau, Greece.

Consequently, On May 8, petitioner filed a complaint for illegal dismissal with the POEA. Finding petitioner's dismissal to be justified, the POEA dismissed his petition. On appeal to the NLRC, the POEA decision was affirmed.

Hence, this petition.

II

The sole issue to be resolved in this case is whether the NLRC committed grave abuse of discretion in affirming the decision of the POEA, which found petitioner's dismissal to have been for legal cause.

The petition is devoid of merit.

Contracts are the law between the contracting parties and, as such, they are expected to abide with good faith in their contractual commitments (Toyota Motor Philippines Corporation vs. Court of Appeals, 216 SCRA 236 [1992]). One of the stipulations in the employment contract of the petitioner provides that:

> "The Master shall have the right to discharge or sign off the seaman.
>
> (a) If the seaman is incompetent; or
>
> (b) If the seaman's conduct shows that his continued presence on board is likely prejudicial to the safety of the vessel or those on board or to the maintenance of good order." (Annex "D", p. 8; Comment of the Solicitor General, p. 6).

In the case at bench, petitioner should have seen his dismissal coming, considering the number and seriousness of the infractions he committed during the two-month period he was on board the vessel. If petitioner does not consider his infractions as just causes for his dismissal, then inefficiency, negligence and insubordination should be removed from the statute books as grounds for dismissal. Both the POEA and the NLRC found petitioner culpable of the infractions charged against him by private respondents. We have no grounds to disturb the findings of fact of these two administrative agencies (Baguio Colleges Foundation vs. National Labor Relations Commission, 222 SCRA 604 [1993]; Five J Taxi vs. National Labor Relations Commission, 212 SCRA 225 [1992]).

However, while his employee had a legal cause to dismiss petitioner, they did not follow the proper procedure for the dismissal.

Article 277 of the Labor Code of the Philippines as amended by Section 33, R.A. No. 6715 (Herrera-Veloso Law), provides:

x x x

> "(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article [283] 285 of this Code, [the clearance to terminate employment shall no longer be necessary. However,] the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the [Ministry] Department of Labor and Employment." (Emphasis supplied).

An employee cannot just be separated from his employment without according him his constitutional right of due process, consisting of the proper notice and hearing. No notice of any form, apprising of the proffered charges, was served on petitioner, much less was a hearing conducted wherein he could have defended himself. The fact that the defense interposed at the hearing would be outlandish or pure nonsense, is not a ground to cut short the procedure for dismissal. As this Court ruled in Seahorse Maritime Corporation, vs. National Labor Relations Commission, 173 SCRA 390 (1989), that before a seaman can be dismissed and discharged from the vessel, it is required that he be given a written notice regarding the charges against him and that he be afforded a formal investigation where he could defend himself personally or through a representative. Fear of any possible trouble that might be caused by the dismissed employee on board the vessel upon being informed of his dismissal is not a reason to dispense with the requirement.

As to the consequence of the failure to observe the requirement of due process in the dismissal of an employee, we ruled in Aurelio vs. National Labor Relations Commission, 221 SCRA 432 (1993):

> "In cases where there was a valid ground to dismiss an employee but there was non-observance of due process, this Court held that only a sanction must be imposed upon the employer for failure to give formal notice and to conduct an investigation required by law before dismissing the employee in consonance with the ruling in Wenphil vs. NLRC, 170 SCRA 69 (1989); Shoemart, Inc. vs. NLRC, supra; and in Pacific Mills, Inc. vs. Zenaida Alonzo, 199 SCRA 617 [1991]). In the Pacific Mills, Inc. and Wenphil cases, this Court merely awarded P1,000.00 as penalty for non-observance of due process" (Emphasis supplied).

Considering that petitioner was given his walking papers and was forced to leave his ship in a foreign port, the penalty to be imposed on his employer for the non-observance of the requirements of due process in dismissing him is higher than that imposed in the cited cases.

WHEREFORE, the Decision of the National Labor Relations Commission is **AFFIRMED** with the **MODIFICATION** that private respondents should pay petitioner P10,000.00 as penalty for failure to comply with the due process requirement.

SO ORDERED.

Davide, Jr., Bellosillo and Kapunan, *JJ.*, concur.
Cruz, *J.*, is on leave.