SUPREME COURT
SECOND DIVISION

SKIPPERS PACIFIC, INC., and SKIPPERS MARITIME SERVICES, LTD.,
***Petitioners*,**

-versus-

G.R. No. 144314[*]
November 1, 2002

MANUEL V. MIRA (deceased), substituted by DELFA F. MIRA and ANNE MARIE F. MIRA,[**] **and THE COURT OF APPEALS,**
***Respondents*.**
x----------x

D E C I S I O N

QUISUMBING, *J.*:

This is a Petition for Review of the Decision[1] of the Court of Appeals, dated June 29, 2000, in CA-G.R. SP No. 53079, which affirmed the Resolution[2] of the National Labor Relations Commission (NLRC), promulgated on March 15, 1999, in NLRC CA No. 016616-98 (NLRC OCW Case No. M-97-084057). The NLRC affirmed the decision of the Labor Arbiter holding that private respondent's dismissal from employment was illegal. Also assailed is the appellate court's

Resolution[3] of August 3, 2000, which denied petitioners' motion for reconsideration for lack of merit.

Petitioner Skippers Maritime Services Ltd., (SMS) is a foreign corporation based in Athens, Greece and is the owner of the ship M/V Rita V, a Panama-registered vessel of 5,262 gross registered tons. Petitioner Skippers United Pacific, Inc, (SUPI) is the local crewing/manning agent of SMS for said vessel.

Private respondent Manuel V. Mira was the captain of M/V Rita V. During the pendency of this case, private respondent died of cardiovascular disease.[4] In our Resolutions[5] of June 18, 2001, we granted the motion to substitute the deceased private respondent with his surviving spouse, Delfa F. Mira, and sole child, Anne Marie F. Mira.

The facts of this case are not in dispute:

On March 20, 1997, private respondent was hired by SUPI for and on behalf of its principal, SMS, to serve as Master of the latter's vessel, the M/V Rita V. Private respondent's contract was for a period of six (6) months. During said period of employment, he was to receive a basic salary of US$1,900.00, an owner's bonus of US$200.00, overseas allowance of US$442.00 and vacation leave with pay of US$158.00, all on a monthly basis.

On March 22, 1997, private respondent took command of the M/V Rita V in Singapore. Barely in his second month of service, he received two telex messages dated May 14, 1997[6] and May 16, 1997,[7] ordering him to turn over command of the ship to its former Master, Capt. Achilles Puaben, and advising him that he would be transferred to another vessel on June 10, 1997.

On May 22, 1997, private respondent was repatriated back to the Philippines. Shortly thereafter, he inquired from SUPI about the details of his transfer to another vessel. SUPI and the SMS representative in the Philippines, Filippo Karabatsis, assured him that he would be redeployed on June 10, 1997.

June 10, 1997 came and went, but private respondent remained without assignment. Every time he would follow up his transfer, he was just told to sit tight and wait. Private respondent then formally wrote Karabatsis and Gloria Almodiel, SUPI General Manager, on July 25, 1997 and again on July 28, 1997, about his transfer to another ship, but nothing resulted.

On August 15, 1998, private respondent filed a complaint for illegal dismissal and non-payment of the salaries and allowances owing on the unexpired portion of his contract. In his sworn complaint, docketed as NLRC NCR Case No. M-97-08-4057, private respondent averred that he was dismissed without just cause nor due process.

Petitioners countered that private respondent was dismissed for cause in accordance with Philippine Overseas Employment Administration Memorandum Circular No. 55, series of 1996. Petitioners averred that on April 27, 1997, they received a letter-petition from several crew members of M/V Rita V stating that: (1) private respondent had been causing discontent among the crew; (2) he altered official receipts by increasing the amounts indicated therein so he could collect from SMS the excess of the real cost of the goods brought for the vessel's provisions; (3) he declared as lost the ship's funds amounting to US$4,000.00 but then shortly afterwards sent money to his wife in the Philippines; and (4) he planned to repatriate several members of the engine crew to the Philippines. Petitioners alleged that private respondent was dismissed due to these charges.

Private respondent denied any knowledge of said letter-petition, saying it was the first time he had heard of it. Petitioners failed to present the original of the letter-petition in question before the Labor Arbiter.

On July 30, 1998, the Labor Arbiter decided NLRC NCR Case No. M-97-08-4057 in this wise:

> WHEREFORE, as we sustain the illegality of complainant's dismissal, we order respondent Skippers United Pacific, Inc., both in its personal capacity and as agent of the foreign principal to pay complainant his salary for the unexpired

> portion of his contract but limited to three months pursuant to Section 10 of R.A. 8042, in the amount of US$5,700.00 (US$1,900 x 3) plus the sum of US$570.00 by way of 10% attorney's fees since compelled to litigate, complainant had to engage the services of counsel, payments to be made in their peso equivalent at the rate of payment.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[8]

Petitioners appealed the Labor Arbiter's decision on the ground that it was devoid of factual and legal bases. The appeal was docketed as NLRC CA No. 016616-98.

On March 15, 1999, the Third Division of the NLRC dismissed petitioners' appeal, thus:

> WHEREFORE, consistent with the foregoing, the instant appeal is dismissed for lack of merit and the assailed decision affirmed en toto.
>
> SO ORDERED.[9]

Petitioners moved for reconsideration on the ground that the NLRC failed to appreciate loss of trust and confidence as a basis for terminating the services of the private respondent. On May 12, 1999, the NLRC denied petitioners' motion for reconsideration for want of merit.[10]

Petitioners then filed a special civil action for certiorari with the Court of Appeals, docketed as CA-GR SP No. 53079, contending that the NLRC acted with grave abuse of discretion amounting to want or excess of jurisdiction in affirming the judgment of the Labor Arbiter.

On June 29, 2000, the appellate court decided CA-G.R. SP No. 53079 as follows:

> WHEREFORE, premises considered, the instant petition for certiorari is hereby DENIED DUE COURSE and accordingly

> DISMISSED for lack of merit. The assailed Resolution of public respondent National Labor Relations Commission dated May 12, 1999 is AFFIRMED and REITERATED.
>
> Needless to state, the prayer of petitioners for the issuance of a writ of preliminary injunction and/or temporary restraining order is DENIED for lack of factual and legal bases.
>
> SO ORDERED.[11]

Hence, the instant petition for review anchored on the following issues:

> a. WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT THERE WAS NO JUST CAUSE IN TERMINATING THE SERVICES OF THE PRIVATE RESPONDENT;
>
> b. WHETHER OF NOT THE COURT OF APPEALS ERRED IN RULING THAT SECTION 17[12] OF THE STANDARD FORMAT IS INAPPLICABLE IN THIS CASE.[13]

Petitioners' formulation may be reduced to one issue: Did the Court of Appeals err in affirming the NLRC's decision that private respondent was illegally dismissed?

Petitioners contend that the Court of Appeals erred in ruling that there was no just cause for private respondent's dismissal. Citing the letter-petition allegedly signed by certain officers and crewmembers of M/V Rita V, petitioners insist that the acts of dishonesty and embezzlement of company funds complained of warrant the penalty of dismissal. Moreover, said the petitioners, assuming that these acts of dishonesty were not substantiated, nonetheless private respondent's actions created divisiveness among the crew, and this more than justified the termination of private respondent's employment.

For his part, private respondent points out that at all three levels below — Labor Arbiter, NLRC, and Court of Appeals — petitioners could not produce an original copy of the alleged letter-petition.

Hence, said letter must be deemed spurious or fabricated, especially as it only came out after private respondent had filed a complaint for illegal dismissal. Private respondent further points out that petitioners fail to raise any question of law whatsoever in their petition for review.

The court a quo made the following observations when it sustained the NLRC's findings, that private' respondent was illegally dismissed:

As for the legality of the act of dismissal, We find that there is no just cause for private respondent's termination. Clearly, the allegations contained in the letter-petition do not at all amount to substantial evidence. The acts mentioned therein are based purely on speculations, conjectures, and hearsay. The letter petition is itself clear on this matter. The signatories thereto merely attributed their statements to information they learned through the grapevine or from conclusions reached without adequate basis. For example, the allegation regarding the missing US$4,000.00. It was thereon alleged that private respondent lost the said amount and even tried to put the blame on the crewmembers. Not long after though, private respondent sent an undisclosed amount to his wife in Manila. The signatories thereto are insinuating that private respondent misappropriated the money allegedly lost by sending the same to his wife. Thus, they put one (1) and one (1) together to arrive at a clearly speculative conclusion. Furthermore, the statement concerning the alleged padding of official receipts was not supported by any other evidence except their allegation that somebody leaked said information to those on board M/V Rita V. This is pure hearsay. Not even the chief cook could attest to the truthfulness of such act since he did not see private respondent do such alteration of official receipts to reflect a much higher cost of goods bought nor was he ever told personally of such misdeed.[14]

On the second assigned error, petitioners assail the finding of the Court of Appeals that the manner of effecting petitioners' dismissal was illegal. Petitioners insist that even without furnishing the seafarer with notice of dismissal, it may be effected under Section 17 (D) of what is called the Standard Format in cases where giving a notice will prejudice the safety of the crew and vessel. Petitioners aver that giving notice to private respondent would have been disastrous to

both crew and vessel, as private respondent, being at the time the vessel's Master, could sabotage its operations and sow divisiveness among the crewmembers.

Private respondent submits that Section 17 (D) is inapplicable since the new Master who replaced him failed to comply with its requirements. In short, petitioners' arguments are baseless and unfounded.

As to this matter, the Court of Appeals opined:

> The safety of the crew or the vessel would not be imperiled by the sole act of informing him of the charges against him. Private respondent is not a dangerous or menacing individual. There are no positive indications that he would compromise the safety of his crew or the seaworthiness of the vessel just so he could get his way. Besides, petitioners could have required him to dock the vessel at the nearest port where petitioner principal has a representative or at least where the proper authorities could be notified of any contingency without first informing him of the reason therefore. Then the proper notices and investigation to thresh out the truth regarding the allegations against private respondent could have been effected.[15]

The appellate court concluded that private respondent had been illegally dismissed based on evidence adduced before the Labor Arbiter and later the NLRC. We see no reason to disturb the appellate court's findings, which are amply supported by the evidence. It clearly shows that petitioners relied on sheer surmises and hearsay in dismissing private respondent. An employer can terminate the services of an employee only for valid and just causes, which must be supported by clear and convincing evidence.[16] The employer has the burden of proving that the dismissal was for a valid and just cause.[17] In the present case, petitioners utterly failed to establish by convincing evidence private respondent's culpability. No original of the letter-petition allegedly submitted to them by crewmembers of the vessel was ever produced by petitioners. The acts allegedly complained of therein were not substantiated at all. Failure to discharge this burden of proof substantially means that the dismissal was not justified and therefore, illegal.[18] For dismissal to be valid,

the evidence must be substantial and not arbitrary and must be founded on clearly established facts.[19] A condemnation of dishonesty and disloyalty cannot arise from suspicions spawned by speculative inferences.

Petitioners' submission, that private respondent was dismissed because of loss of trust and confidence, is quite belated. This issue could not be raised for the first time on appeal. Moreover, loss of trust or breach of confidence must have some basis, and without said basis cannot be successfully invoked as a ground for dismissal.[20] Otherwise put, there must be some breach of duty on the part of the employee and the same must be supported by substantial evidence.[21]

Not only must the reasons for dismissing an employee be substantiated, the manner of his dismissal must be in accordance with governing rules and regulations. Otherwise the termination itself would be grossly defective, and illegal.[22] This means that the requirements of due process must be observed. The employer is required to furnish the concerned employee with two written notices before his dismissal: (1) the notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice of the employer's decision to dismiss him.[23] This procedure is mandatory; otherwise the order of dismissal is void.[24]

Note that under Section 17 of what is termed the Standard Format, the "two – notice rule" is indicated. An erring seaman is given a written notice of the charge against him and is afforded an opportunity to explain or defend himself. Should sanctions be imposed, then a written notice of penalty and the reasons for it shall be furnished the erring seafarer. It is only in the exceptional case of clear and existing danger to the safety of the crew or vessel that the required notices are dispensed with; but just the same, a complete report should be sent to the manning agency, supported by substantial evidence of the findings.

Nothing on record supports petitioners' allegations that the giving of a notice to private respondent posed a clear and present danger to crew and vessel. He who invokes an exemption from a rule must by convincing and credible evidence show why the exemption should

apply to him. On this score, petitioners failed to adduce pertinent evidence. Further, nothing on record shows that the Master, who replaced private respondent, or any other officer of M/V Rita V or of petitioners, submitted "a complete report to the manning agency substantiated by witnesses, testimonies, and any other documents" supporting a finding of clear and existing danger to the ship and the company. Hence, we are constrained to agree that the manner of dismissal by petitioners of private respondent was devoid of due process, hence illegal.

Third, as pointed out by private respondent, the present petition raises no question of law. The errors assigned by petitioners concern findings of the appellate court that sustain the conclusion of the labor tribunal. In brief, what petitioners raise are questions of fact. There is a question of fact when the doubt or difference arises as to the truth or the falsehood of the alleged facts.[25] The Supreme Court is not a trier of facts, more so in labor cases,[26] in view of the dictum that findings of fact of the NLRC are accorded great respect and even finality by this Court. Rule 45 of the Rules of Court, Section 1,[27] provides that only questions of law shall be raised, which must be distinctly set forth in the petition. A question of law exists when there is doubt or controversy as to what the law is on a certain state of facts.[28] A question of law does not involve any examination of the probative value of the evidence submitted by the parties.[29] As a general rule, in a petition for review, it is not the function of the Supreme Court to weigh all over again the evidence already considered in proceedings below.

Private respondent, for his part, avers that the Court of Appeals erred in citing Section 10 of Republic Act No. 8042[30] as applicable to him.

Private respondent argues that his contract of employment was for six (6) months. However, he was able to work for only two (2) months because he was recalled by petitioners for transfer to another vessel. The transfer did not materialize for reasons known only to the petitioners. Hence, according to private respondent, the Court of Appeals erred when it sustained the ruling of the NLRC affirming the judgment of the Labor Arbiter that Section 10[31] of Republic Act No. 8042 applies to him. Private respondent submits that said ruling of the appellate court is contrary to prevailing jurisprudence, i.e., that

the award of claims for unpaid salaries should cover the entire unexpired portion of the employment contract, which is four months, and not just three months.

In Marsaman Manning Agency, Inc. vs. NLRC,[32] involving Section 10 of Republic Act No. 8042, we held:

> [W]e cannot subscribe to the view that private respondent is entitled to three (3) months salary only. A plain reading of Sec. 10 clearly reveals that the choice of which amount to award an illegally dismissed overseas contract worker, i.e., whether his salaries for the unexpired portion of his employment contract or three (3) months salary for every year of the unexpired term, whichever is less, comes into play only when the employment contract concerned has a term of at least one (1) year or more. This is evident from the words "for every year of the unexpired term" which follows the words "salaries for three months." To follow petitioners' thinking that private respondent is entitled to three (3) months salary only simply because it is the lesser amount is to completely disregard and overlook some words used in the statute while giving effect to some. This is contrary to the well-established rule in legal hermeneutics that in interpreting a statute, care should be taken that every part or word thereof be given effect since the lawmaking body is presumed to know the meaning of the words employed in the statute and to have used them advisedly. *Ut res magis valeat quam pereat*.[33]

It is not disputed that private respondent's employment contract in the instant case was for six (6) months. Hence, we see no reason to disregard the ruling in Marsaman that private respondent should be paid his salaries for the unexpired portion of his employment contract.[34]

WHEREFORE, the instant petition is **DENIED**. The assailed decision of the Court of Appeals dated June 29, 2000 in CA-G.R. SP No. 53079, and the resolution of the appellate court dated August 3, 2000, denying petitioners motion for reconsideration, are **AFFIRMED** with **MODIFICATION**. Petitioners Skippers United Pacific, Inc., and Skippers Maritime Services, Ltd., are hereby

ORDERED (1) to pay jointly and severally the heirs of deceased private respondent Manuel V. Mira – namely his surviving spouse, Delfa F. Mira, and their child, Anne Marie F. Mira – his salaries for four (4) months, representing the unexpired portion of his employment contract, at the rate US$1,900.00 monthly at its peso equivalent at the time of actual payment, and (2) reimburse to said heirs the private respondent's placement fee with twelve percent (12%) interest per annum conformably with Section 10 of Republic Act No. 8042, as well as (3) attorney's fees of ten percent (10%) of the total monetary award. Costs against petitioners.

SO ORDERED.

Bellosillo, Mendoza, and Callejo, Sr., *JJ.*, concur.
Austria-Martinez, *J.*, on leave.

---

[*] Due to the double payment of docket fees, the petition was inadvertently assigned two docket numbers, namely: G.R. No. 144314 and 144889. Pursuant to our resolution dated November 20, 2000, the petition was consolidated under G.R. No. 144314 only and G.R. No. 144889 was deleted. In the footnoting, the rollo of the former G.R. No. 144889 shall be referred to as " I Rollo" and the rollo assigned docket number G.R. No. 144314 shall be referred to as "II Rollo."

[**] As per resolution of this Court dated June 18, 2001.

[1] CA Rollo, pp. 270-276. Penned by Villarama, Jr., J., and concurred in by Montoya, P.J., and Callejo, Sr., J.

[2] Id. at 30-45.

[3] I Rollo, p. 34.

[4] II Rollo, p. 16.

[5] Id. at 37.

[6] CA Rollo, p. 142.

[7] Id. at 143.

[8] CA Rollo, pp. 49-50.

[9] Id. at 45.

[10] Id. at 28.

[11] I Rollo, p. 31.

[12] There is no copy of the Standard Format extant in the records. Resort to the rollo shows the following at II Rollo, pp. 87-88: SEC. 17. DISCIPLINARY PROCEDURES. — The Master shall comply with the following disciplinary procedures against an erring seafarer:
A. The Master shall furnish the seafarer with a written notice containing the following:

1. Grounds for the charges as listed in Section 33 of this Contract or analogous act constituting the same;

2. Date, time and place for a formal investigation of the charges against the seafarer concerned.

B. The Master or his authorized representative shall conduct the investigation or hearing, giving the seafarer the opportunity to explain or defend himself against the charges. These procedures must be duly documented and entered into the ship's logbook.

C. If after investigation or hearing, the Master is convinced that imposition of a penalty is justified, the Master shall issue a written notice of penalty and the reasons for it to the seafarer, with copies furnished to the Philippine Agent.

D. Dismissal for just cause may be effected by the Master without furnishing the seafarer with a notice of dismissal if there is a clear and existing danger to the safety of the crew or the vessel. The Master shall send a complete report to the manning agency substantiated by witnesses, testimonies, and other documents in support thereof.

[13] I Rollo, p. 11.

[14] Id. at 29.

[15] Id. at 31.

[16] Garcia vs. National Labor Relations Commission, 180 SCRA 618, 622 (1989).

[17] Pacific Timber Export Corp., vs. National Labor Relations Commission, 224 SCRA 860, 863 (1993), citing Manggagawa ng Komunikasyon sa Pilipinas vs. National Labor Relations Commission, 194 SCRA 573 (1991); Reyes and Lim Co., Inc., vs. National Labor Relations Commission, 201 SCRA 772 (1991). See also CONST., Art. XIII, Sec. 3; LABOR CODE, Sec. 279.

[18] Quebec, Jr., vs. National Labor Relations Commission, 361 Phil. 555, 563 (1999).

[19] San Miguel Corporation vs. National Labor Relations Commission, 180 SCRA 281, 287 (1989).

[20] Ranises vs. National Labor Relations Commission, 262 SCRA 371, 378 (1996).

[21] Hernandez vs. National Labor Relations Commission, 176 SCRA 269, 276 (1989)

[22] Brahm Industries, Inc. vs. National Labor Relations Commission, 345 Phil. 1077, 1085 (1997).

[23] Pepsi Cola Bottling Co. vs. National Labor Relations Commission, 210 SCRA 277, 286 (1992).

[24] Ruffy vs. National Labor Relations Commission, 182 SCRA 365, 369 (1990).

[25] FERIA and NOCHE, II CIVIL PROCEDURE ANNOTATED (1st ed. 2001) 206-207.

[26] Ropali Trading Corp., vs. National Labor Relations Commission, 296 SCRA 309, 314 (1998).

[27] SEC. 1. Filing of petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts

whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

[28] China Road and Bridge Corporation vs. Court of Appeals, 348 SCRA 401, 408 (2000).

[29] Medina vs. Asistio, Jr., 191 SCRA 218, 223 (1990).

[30] The Migrant Workers and Overseas Filipinos Act of 1995.

[31] SEC. 10. Money Claims. — Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.

The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.

Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract.

Any compromise/amicable settlement or voluntary agreement on money claims inclusive of damages under this section shall be paid within four (4) months from the approval of the settlement by the appropriate authority.

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee with interest at twelve (12%) per annum, plus his salaries for the unexpired portion of his employment contract for three (3) months for every year of the unexpired term, whichever is less.

x x x

[32] 313 SCRA 88 (1999).

[33] Id. at p. 102.

[34] Id. last par. at p. 102.