SUPREME COURT
FIRST DIVISION

STOLT-NIELSEN MARINE SERVICES (PHILS.), INC. and STOLT-NIELSEN, INC.,
***Petitioners*,**

-versus-

G.R. No. 105396
November 19, 1996

NATIONAL LABOR RELATIONS COMMISSION, PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION and EDUARDO MONSALE,
***Respondents*.**
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D E C I S I O N

VITUG, *J.*:

In a Petition for *Certiorari*, Stolt-Nielsen Marine Services (Phils.), Inc., and Stolt-Nielsen Inc., seek to annul and set aside the resolutions of 27 January 1992 and 25 March 1992[1] of the National Labor Relations Commission ("NLRC") affirming the decision of 20 April 1990[2] of the Philippine Overseas Employment Administration ("POEA "), in POEA Case No. (M) 89-03-208, which has held both petitioners (herein) Jointly and severally liable for various monetary

awards in favor of private respondent, Eduardo S Monsale, their hired seaman.

Petitioner Stolt-Nielsen Marine Services (Phils.), Inc. (SNMSI for brevity), on 26 May 1977, took to its employ in various capacities private respondent Eduardo Monsale. His fealty to his employer for ten (10) continuous years earned for him an award, given on 28 June 1988, for dedicated service to the Stolt-Nielsen fleet. On 21 October 1988, SNMSI and private respondent executed a Contract of Shipboard Employment and Crew Agreement under which the latter, this time, was to serve as an engine fitter on board Stolt Crown Vessel for a period of ten months commencing on 09 December 1988. The contract provided that Monsale would get a monthly basic pay of five hundred twenty-five U.S. dollars (US$525.00), fixed overtime pay of two hundred fifty U.S. dollars (US$250.00), and longevity pay of sixty U.S. dollars (US$60.00), with leave benefits of six (6) days per month.[3]

On 09 December 1988, private respondent boarded the Stolt Crown vessel. Captain Erkiaga, a Spanish national, instantly ordered him to perform work connected with the berthing and unberthing maneuvers on the upper deck of the ship. Private respondent followed the captain's order despite his contract that called for a different assignment. Uneasy, however, about the change in his job detail, private respondent inquired- from Captain Erkiaga if his transfer had been communicated to the SNMSI. He was told that the new work assignment had been communicated to Stolt-Nielsen, Inc., which thereupon radioed back its approval.

On 29 January 1989, a Sunday and his scheduled rest day, private-respondent was ordered to clean the deck cargo tank using "toline " chemical, a toxic substance detrimental to the respiratory system. He was not provided with a protective mask. The risk to his health notwithstanding, private respondent again followed Captain Erkiaga's order. He worked for seventeen (17) hours from 5:00 that morning until 10:00 in the evening.

Due to his exposure to the pungent chemical, private respondent suffered from chest pains and dizziness. On 01 February 1989, he was unable to report for work but he informed First Engineer Juan J. Ruiz

about his physical condition. Ruiz, unfortunately, neither mentioned the matter to Captain Erkiaga nor summoned the vessel's resident physician to attend to him. Captain Erkiaga interpreted private respondent's failure to work to be an act of disobedience and immediately ordered him, along with some other seamen, to report on deck "within five minutes " to clean up the deck cargo tank. Despite his illness, private respondent tried to reach the deck on time but he was unable to make it. The incident was entered in the log book; viz:

> "0830 Fitter Eduardo Monsale and Alfonso Garino have refused to work in the tank cleaning when ordered to do so.
>
> "0845 They are informed of the above entry in the log book.
>
> "0845 They comment that they are not refusing to go to work but only to work in the tanks. They are informed their contract is terminated as to today, for repeated disobedience to lawful orders of their superiors."[4]

On 07 February 1989, private respondent was repatriated to the Philippines. Upon arrival in Manila two days later, private respondent went to the manning agent's physician, Dr. Fidel Chua, who found him to be suffering from bronchitis. On 10 February 1989, he made a written report on the circumstances of his case, furnishing with a copy thereof the manning agent's Capt. Maximiano Hernandez. The latter confirmed the termination of private respondent's employment.

On 13 March 1, 989, private respondent went to the bank to get his salary for the months of January and February 1989. He learned that his salary allotments were not remitted by petitioners. On 08 March 1989, private respondent filed with the POEA a complaint for illegal dismissal and contract substitution.

The POEA, ruling in favor of private respondent, held:

"WHEREFORE, premises considered, judgment is hereby-rendered ordering respondents Stolt-Nielsen Marine Services Philippines and Stolt-Nielsen, Inc. to pay jointly and severally complainant Eduardo S. Monsale the following:

"1. FIVE THOUSAND SIX HUNDRED SIXTEEN US DOLLARS (US$5,616.00) or its equivalent in Philippine Currency at the time of actual payment, representing complainant's salaries for the unexpired portion of his employment contract;

"2. FOUR HUNDRED NINETY NINE AND 20/100 US DOLLARS (US$499.20) or its equivalent in Philippine Currency at the time of actual payment, representing complainant's unremitted salary for the month of January 1989; and

"3. TWO THOUSAND TWO HUNDRED FIFTY US DOLLARS (US$2,250.00) or its equivalent in Philippine Currency at the time of actual payment, representing complainant's fixed overtime pay.

"All other claims are dismissed for lack of merit.

"SO ORDERED."[5]

On appeal, the NLRC, in its resolution of 27 January 1992, affirmed the POEA decision and ruled that the POEA had not gravely abused its discretion. The NLRC added that petitioners were afforded ample opportunity to present their side in the proceedings before the POEA. Petitioners' motion for reconsideration was denied.

In the petition for certiorari, instant, several submissions have been made but, as so encapsulized by the Solicitor General, the controversy really revolves around the following issues:

"I. WHETHER OR NOT PRIVATE RESPONDENT WAS ILLEGALLY DISMISSED.

"II. WHETHER OR NOT PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AWARDING PRIVATE RESPONDENT FIXED OVERTIME (PAY) IN THE AMOUNT OF US$2,500.00.

"III. WHETHER OR NOT THE PRESENT CONTROVERSY SHOULD HAVE BEEN REFERRED TO THE GRIEVANCE COMMITTEE PROVIDED UNDER THE COLLECTIVE BARGAINING AGREEMENT."[6]

It is averred that public respondents have failed to aptly consider petitioner's evidence showing private respondent's "repeated refusal to obey the orders of the master, "amounting" to serious misconduct and/or gross insubordination or disobedience,"[7] to be the real cause for the questioned dismissal. The argument is anchored on the evidentiary value of the log book entries,[8] and in the holdings of the Court in Haverton Shipping Ltd. vs. NLRC[9] and Abacast Shipping and Management Agency, Inc. vs. NLRC.[10]

It should be stressed at the outset that the employer has the burden of proving that the dismissal of an employee is for a just cause.[11] In an attempt to discharge this burden, petitioners have merely presented, by way of annexes to their position paper before the POEA and reply to private respondent's position paper, copies of log book abstracts In Abacast Shipping, the Court has ruled that entries in the ship's log book are prima facie evidence of the incident only if the logbook itself containing such entries or photocopies of the pertinent pages thereof are presented in evidence; hence —

> "The log book is a respectable record that can be relied upon to authenticate the charges filed and the procedure taken against the employees prior to their dismissal. Curiously, however, no entry from such log book was presented at all in this case. What was offered instead was the shipmasters report, which was later claimed to be a collation of excerpts from such book.
>
> "It would have been a simple matter, considering the ease of reproducing the same, to make photocopies of the pertinent pages of the log book to substantiate the petitioner's contention.

> Why this was not done is something that reasonably arouses the curiosity of this Court and suggests that there probably were no entries in the log book at all that could have proved the alleged offenses of the private respondents."[12]

The Court, no different from public respondents, finds it hard to believe, let alone to conclude, that private respondent has been guilty of willful disobedience to warrant dismissal. Willful disobedience of the employer's lawful order envisages the concurrence of at least two requisites: (a) The employee's assailed conduct must have been intentional and characterized by a "wrongful and perverse attitude;" and (b) the order violated must have been reasonable, lawful, and made known to the employee and should pertain to the duties which he has been engaged to discharge.[13] It is possible that private respondent may have indeed shown some reluctance to the captain's order; nevertheless, he ultimately did comply with the orders of the captain. Not the least insignificant is that the Captain's assignments have not been the contractually assigned tasks of private respondent.

Petitioners call attention to the "mutual assistance" proviso of the collective bargaining agreement; viz:

> "Sec. 6. Mutual assistance shall be exercised by all officers/ratings regardless of rank and position assisting each other in the working of the vessel both in engine room, deck and tank cleaning included. (sic)"[14]

As has been so correctly pointed out by the POEA, however, the above provision, falling under the general item, "Working Hours," is primarily for properly computing extra compensation, and it is not intended to coerce, compel or force the crew members to perform jobs other than what they have been contracted for.[15] The Court, even then, shares POEA's observation that —

> "Respondent's CBA provision on mutual assistance' should be applied with leniency. If respondent's defense will be given credence, then the job designations in the employment contract will be rendered inutile. All other members of the crew can be requested' to perform jobs other than what they are contracted for and if they refuse, they could be terminated for

> insubordination. Such defense, definitely, cannot be allowed for this is in square defiance of the institutional mandate of protection to labor."[16]

Providing assistance to other members of the crew in their jobs on board a vessel when needed or required is violative neither of labor laws nor of the employment contract except when such assistance becomes regularly imposed.

In his case, private respondent was made to perform various tasks other than his contractually assigned work from the very moment he boarded the vessel.

Even when an employee is found to have transgressed the employer's rules, in the actual imposition of penalties upon the erring employee, due consideration must still be given to his length of service and the number of violations committed during his employ.[17] The penalty must in no case be unduly harsh and grossly disproportionate.[18]

The law so requires, as a vital component of due process, an observance of the twin requirements of notice and hearing before the dismissal of an employee.

Thus, it could not be enough for his dismissal that private respondent was "advised of his infractions and given the opportunity to explain his side" after he had supposedly "refused to assist in the berthing and unberthing maneuvers, and that when he refused to clean the cargo tank, the "pertinent portion of the CBA on mutual assistance was read to him."[19] The procedure was far short of the legal mandate.

The Court has once said:

"On the issue of due process, the law requires the employer to furnish the worker whose employment is sought to be terminated a written notice containing a statement of the cause or causes for termination and shall afford him ample opportunity to be heard and to defend himself with the assistance of a representative. Specifically, the employer must furnish the worker with two (2) written notices before termination of employment can be legally effected: (a) notice which

apprises the employee of the particular acts or omissions for which his dismissal is sought; and (b) the subsequent notice which informs the employee of the employer's decision to dismiss him."[20]

In another case[21] the Court has explained:

> "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."[22]

> "We agree with petitioners, however, that private respondent is not entitled to the overtime pay awarded to him by the POEA. The ruling in National Shipyards and Steel Corporation vs. CIR and Malondras[23] is in point, and there the Court, through Justice J.B.L. Reyes, has said:

> > "We can not agree with the Court below that respondent Malondras should be paid overtime compensation for every hour in excess of the regular working hours that he was on board his vessel or barge each day, irrespective of whether or not he actually put in work during those hours. Seamen are: required to. stay on board their vessels by the very nature of their duties, and it is for this reason that, in addition to their regular compensation, they are given free living quarters and subsistence allowances when required

> to be on board; It could not have been the purpose of our law to require their employers to pay them overtime even when they are not actually working: otherwise, overtime even when they are not actually working: otherwise, every sailor on board a vessel would be entitled to overtime for sixteen hours each day, even if he had spent all those hours resting or sleeping in his bunk, after his regular tour of duty. The correct criterion in determining whether or not sailors are entitled to overtime pay is not, therefore, whether they were on board and can not leave ship beyond the regular eight working hours a day, but whether they actually rendered service in excess of said number of hours."[24]

Anent the matter on jurisdiction, the issue was mooted by petitioners active participation in the proceedings below. In Marquez vs. Secretary of Labor,[25] the Court said:

> "The active participation of the party against whom the action was brought, coupled with his failure to object to the jurisdiction of the court or quasi-judicial body where the action is pending, is tantamount to an invocation of that jurisdiction and a willingness to abide by the resolution of the case and will bar said party from later on impugning the court or body's jurisdiction."[26]

WHEREFORE, the herein questioned resolutions of the NLRC are **AFFIRMED** subject to the modification that the award of overtime pay in the amount of Two Thousand Two Hundred Fifty U.S. dollars (US S2,250.00) is deleted. No costs.

SO ORDERED.

Padilla, Bellosillo, Kapunan and Hermosisima, *JJ*., concur.

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[1] Both penned by Commissioner Domingo H. Zapanta and concurred in by Presiding Commissioner Edna Bonto-Perez and Commissioner Rustico L. Diokno.

[2] Penned by Deputy Administrator and Officer-in-Charge Manuel G. Imson.

[3] A collective bargaining agreement entered into by the company and the seamen increased private respondent's benefits as follows: basic monthly pay of US$624.00;. fixed overtime pay of US$250.00; vacation leave pay of US$125.00 a month; longevity pay of US$60.00 per month, and other related benefits (Rollo, p. 233).
[4] Ibid., p. 93.
[5] Ibid., pp. 38-39.
[6] Ibid., p. 121.
[7] Ibid., p. 12.
[8] Ibid., p. 18.
[9] 135 SCRA 685.
[10] 162 SCRA 541.
[11] Molave Tours Corporation vs. NLRC, 250 SCRA 325; Magnolia Corporation vs. NLRC, 250 SCRA 332.
[12] 162 SCRA 541, 545-555.
[13] Nuez vs. NLRC, 239 SCRA 518, San Miguel Corporation vs. Ubaldo, 218 SCRA 293, 300 citing Gold City Integrated Port Services, Inc. vs. NLRC, 189 SCRA 811.
[14] Rollo. p. 267.
[15] Rollo, p. 37.
[16] Ibid.
[17] Tanduay Distillery Labor Union vs. NLRC, 239 SCRA 1.
[18] See Radio Communications of the Philippines, Inc. vs. NLRC, 223 SCRA 656; Magnolia Corporation vs. NLRC, supra.
[19] Petition. p. 17.
[20] Jones vs. NLRC, 250 SCRA 668, 674-675.
[21] Reta vs. NLRC, 232 SCRA 613.
[22] At pp. 617-618.
[23] 113 Phil. 870; reiterated in Cagarnpan vs. NLRC, 195 SCRA 533.
[24] At p. 875.
[25] 171 SCRA 337.
[26] At p. 346.