SUPREME COURT
THIRD DIVISION

STOLT-NIELSEN MARINE SERVICES, INC.,
***Petitioner*,**

-versus-

G.R. No. 128395
December 29, 1998

NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER MANUEL R. CADAY and RENATO SIOJO,
***Respondents*.**
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D E C I S I O N

ROMERO, *J.*:

Before us is a Special Civil Action for Certiorari filed by the petitioner seeking to annul the decision of the labor arbiter and the resolution of the National Labor Relations Commission (NLRC) (Third Division, Quezon City) finding that petitioner illegally dismissed private respondent Renato Siojo from his employment. The labor arbiter ordered petitioner to pay Siojo the unexpired portion of his contract equivalent to three months' salaries and attorney's fees. On appeal, the NLRC affirmed the decision of the labor arbiter and later dismissed petitioner's motion for reconsideration.

The relevant facts are as follows:

Sometime in January 1994, private respondent Renato Siojo was hired as a Second Officer of Stolt Falcon, a vessel of petitioner Stolt-Nielsen Marine Services, Inc., for a period of nine months with a basic salary of US$1,024.00. He boarded the vessel on February 22, 1994, and immediately commenced to discharge his duties and responsibilities as Second Officer. After working for just two months, however, he was sent home and it was only upon his arrival in Manila that he learned of the reason for his termination.

For its part, petitioner claimed that after a month on board the Stolt Falcon, Siojo started committing acts of gross insubordination toward his superiors by refusing to communicate with them with regard to navigation, safety, and cargo. He also allegedly failed to acknowledge or relay to the relieving personnel/officer any bridge night order and wilfully refused to take part in cargo operations. Furthermore, on at least three occasions, he refused to wear his safety hat during mooring and unmooring, in violation of the company's safety procedures.

It was also alleged that Siojo refused to follow instructions given by the Chief Officer regarding cargo operations and did not read the Cargo Safety Data Sheets, such that, on one occasion, he blew the lines against a closed shore connection valve resulting in the spillage of 100 liters of cargo into the deck air compressor tank.

Thus, on March 28, 1994, Siojo was summoned to explain his attitude to the master of the vessel. He, however, allegedly became very agitated and rude, stating that he should not be made to sign any statement. Convinced that Siojo's acts of insubordination and hostile attitude were prejudicial to the safety and operations of the vessel, and finding that he failed to perform his duty as deck officer as confirmed by his unsatisfactory ratings, his superiors recommended his discharge.

On the other hand, Siojo insisted that all the acts imputed to him were fabricated by petitioner in order to avoid its liability for his illegal dismissal. In support of his allegations, Siojo submitted

photocopies of the ship's logbook for the period March 25 to April 11, 1994, showing that there was no report of any offense or violation of company rules he had supposedly committed. He pointed out that the logbook had no entries of the infractions he allegedly committed on March 27 and 28, 1994, respectively.

On June 21, 1996, Labor Arbiter Manuel Caday ruled that Siojo was dismissed without just cause and without being accorded due process. The dispositive portion of the decision reads:

> "WHEREFORE, premises considered, judgment is hereby rendered declaring the dismissal of the complainant illegal and ordering respondent Stolt Nielsen Marine Services, Inc. to pay the corresponding salaries for the unexpired portion of his contract but not exceeding the equivalent of three (3) months salaries or in the amount of $3,072.00 which under the current peso dollar exchange rate is equivalent to P80,486.40.
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> For having been compelled to hire the services of counsel to prosecute his valid and just claims, the respondent is further ordered to pay the complainant (sic), the equivalent of 10% of the recoverable award in this case.
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> All other claims are hereby dismissed for lack of merit.
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> SO ORDERED."[1]

Aggrieved by the labor arbiter's decision, petitioner appealed to the NLRC. The latter denied the appeal for lack of merit and affirmed the decision of the labor arbiter. The NLRC likewise denied petitioner's motion for reconsideration.

Hence, this petition for certiorari.

Petitioner claims that the labor arbiter and the NLRC committed grave abuse of discretion in not considering its evidence and in finding that Siojo was illegally dismissed.

On the labor arbiter's and NLRC's appreciation of the facts, it is worth reiterating the well-entrenched rule that when the conclusions of the

labor arbiter are sufficiently corroborated by the evidence on record, the same should be respected by appellate tribunals since he is in a better position to assess and evaluate the credibility of the contending parties.[2] Moreover, it should be noted that factual issues are not a proper subject for certiorari, as the power of the Supreme Court to review labor cases is limited to the issue of jurisdiction and grave abuse of discretion.[3]

In the case at bar, the findings of the labor arbiter that Siojo was dismissed without just cause and without being accorded due process is supported by the facts and evidence on record. In support of his denial of the infractions he allegedly committed, Siojo presented in evidence photocopies of the ship's official logbook entries for the period March 25 to April 11, 1994. Such entries failed to reflect any of the infractions allegedly committed by Siojo; neither did they contain any statement regarding the investigation supposedly conducted on board the vessel.

Petitioner's evidence, on the other hand, consisting of the notice of investigation and notice of termination which were authenticated by the Honorary Consulate General of the Philippines in Rotterdam, Netherlands, appear to be irrelevant. The date of authentication appeared as "3/5/94" which the labor arbiter read as March 5, 1994. He correctly disregarded such evidence since it is obvious that said notices were authenticated even before the dates of the alleged infractions, that is, from March 26 to 28, 1994.

Petitioner explained that the date "3/5/94" actually stands for May 3, 1994, as it is customary in European countries to write dates in numbers with the first digit representing the day and the second digit, the month. In any case, the Philippine Consul General in Rotterdam would not have authenticated the documents if they were indeed anomalous or irregular.

On this point, it should be observed that entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts therein stated. This means that such evidence is satisfactory only if they are uncontradicted by contrary evidence. In the case at bar, the employee

refuted the authenticity of the notices of investigation and termination, presenting for his part photocopies of certain pages of the vessel's logbook showing that there was, in fact, no record of the violations he was accused of.

Furthermore, the labor arbiter's finding that "3/5/94" meant March 5, 1994, not May 3, 1994, is logical since the documents were authenticated by Philippine consular officials whose customary manner of writing dates in numbers is by making the first digit represent the month, the second digit the day, and the last digits the year. Second, petitioner could have presented other evidence to support its allegation that the documents were indeed authenticated on May 3, 1994, but it did not. It is a basic rule in evidence that each party must prove his affirmative allegation.[4] While technical rules are not strictly followed in the NLRC, this does not mean that the rules on proving allegations are entirely dispensed with. Bare allegations are not enough; these must be supported by substantial evidence at the very least.

Petitioner further asserts that even assuming that Siojo was not afforded the opportunity to explain his side, his discharge was not thereby rendered illegal since there was just cause for his removal, that is, gross insubordination. In support of this argument, petitioner relies on the ruling in Wenphil Corp. vs. NLRC,[5] as reiterated in Cathedral School of Technology vs. NLRC,[6] where it was held that an employee who was dismissed for just cause but was not given any notice and hearing is not entitled to reinstatement and back wages. In such case, the employer should only be made to pay an indemnity for his failure to observe the requirements of due process.

The rule is well established that in termination cases, the burden of proving just and valid cause for dismissing an employee rests on the employer and his failure to do so shall result in a finding that the dismissal is unjustified.[7] In the present case, petitioner failed to prove by substantial evidence that Siojo indeed committed acts of insubordination which would warrant his dismissal. Its reliance on Wenphil is, therefore, misplaced since in that case, there was just cause for the employee's dismissal.

Article 277 of the Labor Code provides, inter alia:

"(a) 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 notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of 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 Department of Labor and Employment."

In particular, Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code states:

"Section 2. Standards of due process: requirements of notice. — In all cases of termination of employment, the following standards of due process shall be substantially observed:

1. For termination of employment based on just causes as defined in Article 282 of the Code:

(a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;

(b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and

(c) A written notice of termination served on the employee indicating that upon due

> consideration of all the circumstances, grounds have been established to justify his termination.
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> x x x."

In sum, to effect a completely valid and unassailable dismissal, the employer must show not only sufficient ground therefor, but must also prove that procedural due process had been observed by giving the employee two notices.[8] In this, petitioner was remiss, hence, it should suffer the consequences.

WHEREFORE, premises considered, the instant petition is **DISMISSED**. Accordingly, the decision of the labor arbiter dated June 21, 1996, and the resolution of the NLRC dated November 14, 1996, are hereby **AFFIRMED** with the **MODIFICATION** that petitioner is ordered to pay private respondent Siojo his salary for the entire unexpired portion of the employment contract, that is, one thousand twenty-four US dollars (US$1,024.00) multiplied by seven months, for a total of seven thousand one hundred sixty-eight US dollars (US$7,168.00), or its equivalent in Philippine pesos, plus interest and attorney's fees. No pronouncement as to costs.

SO ORDERED.

Kapunan, Purisima and Pardo, *JJ.*, concur.

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[1] Rollo, p. 32.
[2] Philippine Telegraph & Telephone Corp. vs. NLRC, 183 SCRA 451 (1990).
[3] San Miguel Foods, Inc.- Cebu B-Meg Feed Plant vs. Laguesma, 263 SCRA 68 (1996).
[4] Jimenez vs. NLRC, 256 SCRA 84 (1996).
[5] 170 SCRA 69 (1989).
[6] 214 SCRA 551 (1992).
[7] Chua-Qua vs. Clave, 189 SCRA 117 (1990).
[8] Cocoland Development Corp. vs. NLRC, 259 SCRA 51 (1996).