SUPREME COURT
FIRST DIVISION

ROGELIO M. BANAWA,
***Petitioner*,**

-versus-

G.R. No. 111459
December 26, 1995

NATIONAL LABOR RELATIONS COMMISSION, GALILEE SHIPPING AND MANNING AGENCY and IOLCOS HELLENIC MARITIME,
***Respondents*.**
x----------x

D E C I S I O N

BELLOSILLO, *J.*:

ROGELIO M. BANAWA seeks to set aside the Decision of the National Labor Relations Commission (NLRC) modifying that of the Philippine Overseas Employment Administration (POEA) by deleting the award for salaries for the unexpired portion of petitioner's employment contract and attorney's fees.

On 23 October 1990, Rogelio M. Banawa, a licensed seaman, was hired by respondent Iolcos Hellenic Maritime (IOLCOS), a foreign shipping firm, through its crewing agent Galilee Shipping and Manning Agency (GALILEE) as second engineer of the cargo vessel

"M/V Iolcos Legend." Banawa was contracted for a stipulated period of twelve (12) months with a basic monthly salary of US$1,050.00, lump sum overtime pay of US$350.00 plus vacation leave with pay of three (3) days per month.[1]

On 14 February 1991 or after barely four (4) months on board Banawa was dismissed without prior notice and repatriated from Cairo, Egypt, to the Philippines. No explanation was given for his unceremonious discharge other than the notation on his Seaman's Book that he was "changed by Greek 2nd Engr."[2]

On 2 October 1991 Banawa filed a complaint with the POEA for illegal dismissal and nonpayment of wages, overtime pay and vacation leave pay against respondents GALILEE and IOLCOS.[3]

GALILEE in its answer contended that Banawa was discharged from the service because he "has no knowledge of ship engine and incapable of performing his job as second engineer;" and granting that he was illegally dismissed, GALILEE could not be held liable because it was IOLCOS which effected his termination.[4]

On 6 May 1992 the POEA found the dismissal of Banawa to be without just cause and effected without due process. Accordingly, GALILEE and IOLCOS were held solidarily liable to Banawa for US$13,066.60 representing his salaries for the unexpired portion of his contract, US$419.94 representing his vacation leave pay, and 10% thereof for attorney's fees.[5]

On 23 May 1992 GALILEE filed an "Appeal with Reservation to File Supplemental Memorandum" citing among others the incompetence and inefficiency of Banawa as well as his refusal on several occasions to follow instructions resulting in delay, loss and prejudice to the company. GALILEE stressed that Banawa's continuance in the service was inimical to its interests.

In his "Opposition to Appeal with Motion for Execution" Banawa countered that no evidence was presented in support of the contentions of GALILEE and that its appeal was not perfected for failure to post the appeal bond within the reglementary period.[6]

On 6 July 1992, GALILEE filed a "Supplemental Memorandum" attaching thereto a "Master's Statement" that Banawa was "unable to perform his duties as Second Engineer had very poor engine maintenance and used to be half-drunk during his services while in the engine room and for this reason all engine personnel did not respect him and could not cooperate with him."[7]

On 18 December 1992 the NLRC held that while Banawa's employment was terminated without due process his dismissal was nonetheless justified by reason of his inefficiency, incompetence and misbehavior, i.e., his drunkenness while in duty. Thus, as shown by his drunkenness the NLRC modified the appealed decision of the POEA —

> WHEREFORE, the Decision appealed from is hereby modified deleting the award of US$13,066.60 to the complainant representing his salaries for the unexpired portion of the contract and attorney's fees.
>
> Accordingly, the respondents are directed to pay jointly and severally, the complainant the following amounts:
>
> 1 US$419.94 representing his vacation leave pay; and,
>
> 2. P1,500.00 as penalty for respondents' infraction of procedural rules.[8]

His motion for reconsideration having been denied on 14 June 1993 Banawa sought the present recourse imputing to NLRC grave abuse of discretion.

There is no dispute as found by both POEA and NLRC that due process was not observed when Banawa was abruptly dismissed. He was never informed of the cause of his dismissal. No explanation likewise was offered on why he was summarily sent back to the Philippines other than the terse notation in his Seaman's Book that he was being "changed by a Greek 2nd Engr." There was not even a semblance of an investigation. The Court has declared often enough that "(t)he minimum requirement of due process in termination proceedings, which must be complied with even in respect of seamen

on board a vessel, consists of notice to the employees intended to be dismissed and the grant to them of an opportunity to present their own side of the alleged offense or misconduct which led to the management decision to terminate."[9] Article 277, par. (b), of the Labor Code as amended by Sec. 33, R. A. 6715 (Herrera-Veloso Law), provides:

> (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 285 of this Code 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 Department of Labor and Employment.

Simply put, the Labor Code does not require a formal trial type of proceeding before an erring employee may be discharged, which is particularly true in case of vessels plying the seas or in a foreign port. But the minimum requirement of due process in termination proceedings which consists of notice to the employee to be dismissed and the grant to him of the opportunity to explain his side must be observed.

Due process is so crucial in termination proceedings that it should not be lightly set aside, most especially in the case at bench where the incident transpired in a foreign land and the dismissed seaman was left alone to fend for himself. A manning contract involves the interest not only of the signatories thereto, such as the local Filipino recruiting agent, the foreign owner of the vessel and the Filipino seamen in general as well as the country itself. The stringent rules governing Filipino seamen aboard foreign-going ships are dictated by national interest.[10]

In an effort to show that Banawa deserved to be dismissed respondents presented the "Master's Statement"[11] and the "Deck Log

Extract"[12] which purportedly attested to the incapability of Banawa to handle engine maintenance. The "Master's Statement" alluded to his drunkenness while on duty. At best these documents are self-serving since they are prepared by those under the employ of respondents. It is to be noted that while the captain is the overall director of the vessel, Banawa as the second engineer is under the direct and immediate supervision of the chief engineer.[13] Interestingly, no testimony was ever heard from the chief engineer, the person in the best position to know whether Banawa was indeed deficient in his knowledge of ship engines.

GALILEE likewise maintains that as a mere crewing agent it should not be held solidarily liable with its principal IOLCOS. We cannot agree. It is settled rule that private employment agencies are jointly and severally liable with the foreign-based employer for any violation of the recruitment agreement or contract of employment. As a requirement for the issuance of a license to operate a private recruiting agency a verified undertaking is made that it will assume joint and solidary liability with the employer for all the claims and liabilities which may arise in connection with the implementation of the contract of employment.[14]

But a far more compelling factor militates against respondents and which convinces us that the instant petition is meritorious. It is obvious that no appeal was perfected from the decision of the POEA within the reglementary period, for which reason the decision sought to be appealed to the NLRC had become final and executory and therefore immutable.

Appeals from decisions of the POEA are governed by the following provisions of Rule V, Book VII, of the POEA Rules and Regulations —

> Sec. 1. Period of Appeal. — Decisions and/or awards of the Administration shall be final and executory unless appealed to the National Labor Relations Commission (NLRC) by any or both parties within ten (10) calendar days from receipt of such decisions and/or awards.
>
> x x x

> Sec. 5. Requisites for Perfection of Appeal. — The appeal shall be filed within the reglementary period as provided in Section 1 of this Rule; shall be under oath with proof of payment of the required appeal fee and the posting of a cash or surety bond as provided in Section 6 of this Rule; shall be accompanied by a memorandum of appeal.
>
> Sec. 6. Bond. — In case the decision of the Administration involves a monetary award, an appeal by the employer shall be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company accredited by the Commission in an amount equivalent to the monetary award.
>
> Sec. 7. No extension of Period. — No motion or request for extension of the period within which to perfect an appeal shall be allowed.

Thus it is clear that the appeal of any decision or award of the POEA to the NLRC shall be made within ten (10) calendar days from receipt of such decision or award, must be under oath with proof of payment of the required appeal fee and accompanied by a memorandum of appeal. In case the decision of the POEA involves a monetary award, the appeal is deemed perfected only upon the posting of a cash or surety bond also within ten (10) calendar days from receipt of such decision in an amount equivalent to the monetary award.[15] The mandatory filing of a bond for the perfection of an appeal is evident in the provision that the appeal may be perfected "only upon the posting of a cash or surety bond."

In the case at bench, respondent GALILEE filed its "Appeal with Reservation to File Supplemental Memorandum" with the NLRC on 23 May 1992 or nine (9) days from notice of the POEA decision in favor of Banawa. Paragraph 10 of page 4 thereof states "Galilee Shipping and Manning Agency will be filing an appeal bond to cover the monetary judgment under the appealed decision and without prejudice to the outcome of this appeal."[16] But the surety bond was executed only on 17 June 1992 or several weeks after the lapse of the period to appeal.[17] On this score alone the appeal of GALILEE should have been dismissed outright for not having been perfected on time. That the NLRC still entertained the appeal and even went to the

extent of modifying the questioned decision despite the fact that it had ipso facto attained finality indicates a blatant disregard of its own rules as well as those of the POEA. The Labor Tribunal has acted unquestionably in excess of jurisdiction for which the corrective writ of *certiorari* is warranted.

WHEREFORE, the Petition for *Certiorari* is **GRANTED**. The Decision of public respondent National Labor Relations Commission dated 18 December 1992 is **SET ASIDE** while that of the Philippine Overseas Employment Agency of 6 May 1992 is **REINSTATED**.

Padilla, Davide, Jr., Kapunan and Hermosisima, Jr., *JJ.*, concur.

---

[1] Annexes "A" to "C" of Banawa's position paper; Rollo, pp. 37-41.
[2] Annex "D," id., p. 42.
[3] Docketed as POEA Case No. 91-02-187.
[4] Galilee Shipping's Position Paper, Rollo, p. 44.
[5] Rollo, pp. 46-50.
[6] Appeal was made on 23 May 1992; appeal bond was filed only on 17 July 1992.
[7] Rollo, p. 60.
[8] Id., pp. 74-75.
[9] Klaveness Maritime Agency, Inc. vs. Palmos, G.R. Nos. 102310-12, 20 May 1994, 223 SCRA 457; Reta vs. NLRC, G.R. No. 112100, 27 May 1994, 232 SCRA 613.
[10] Agbayani, Aguedo, Commentaries and Jurisprudence on the Commercial law of the Philippines, Vol. IV, 1987 Ed., p. 227.
[11] See Note 7.
[12] Rollo, p. 115.
[13] Art. 632, Code of Commerce.
[14] Hellenic Philippine Shipping, Inc. vs. NLRC, G.R. No. 84082, 13 March 1991, 195 SCRA 186.
[15] JMM Promotions and Management, Inc., vs. NLRC, G.R. No. 109835, 22 November 1993, 228 SCRA 129.
[16] Rollo, p. 54.
[17] Id., p. 57.