ChanRobles Publishing Company

SUPREME COURT
FIRST DIVISION

ROLANDO DELA CRUZ,
***Petitioner*,**

-versus-

G.R. No. 121288
November 20, 1998

NATIONAL LABOR RELATIONS COMMISSION AND EMMANUEL LO,
Respondents.
x---x

D E C I S I O N

DAVIDE, JR., *J.*:

In this Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court, petitioner seeks to set aside, on ground of grave abuse of discretion, the Decision[1] of 17 March 1995 of the National Labor Relations Commission (NLRC) in NLRC Case No. V-0254-92 (RAB-06-09-50298-91) and its Resolution[2] of 19 May 1995 denying the motion for reconsideration. The former affirmed the 15 February 1994 Decision[3] of Labor Arbiter Rodolfo G. Lagoc ordering private respondent Emmanuel Lo to pay petitioner separation pay but dismissing all other claims of petitioner.

In a Complaint[4] filed on 5 September 1991 before Sub-Regional Arbitration Branch No. 6 of the NLRC, situated in Iloilo City,

petitioner charged private respondent Emmanuel Lo with unfair labor practice, illegal dismissal, underpayment of salary, non-payment of overtime pay, legal holiday pay, premium pay for holiday and rest day, and non-payment of wages or commission and separation pay. The case was docketed as SRAB Case No. 06-09-50298-91.

Private respondent filed his Answer[5] on 9 October 1991. Petitioner and private respondent then filed their Position Papers[6] on 4 November 1991 and 21 November 1991, respectively.

On 7 August 1992, after appropriate proceedings, Labor Arbiter Dennis D. Juanon rendered a Decision[7] dismissing the complaint for lack of merit due to the absence of an employer-employee relationship between petitioner and private respondent.

Petitioner seasonably appealed to the NLRC on 9 September 1992. The appeal was docketed as NLRC Case No. V-0254-92 (RAB-06-09-50298-91).

In its Resolution[8] of 22 October 1992, the NLRC granted petitioner's appeal and remanded the case to Labor Arbiter Juanon for appropriate proceedings. Upon petitioner's motion, Labor Arbiter Juanon inhibited himself from the case.[9] As such, the case was ultimately reassigned to Labor Arbiter Rodolfo G. Lagoc.

In his Decision[10] of 15 February 1994, Labor Arbiter Lagoc found that petitioner was an employee of private respondent and was illegally dismissed from the service, hence entitled to separation pay, but rejected the charge of unfair labor practice and dismissed, for lack of merit, petitioner's other monetary claims. The dispositive portion of the decision read as follows:

> WHEREFORE, premises considered judgment is rendered as follows:
>
> > Respondent Emmanuel Lo is hereby ordered to pay complainant the amount [of] P4,628.00 representing his separation pay.

All other claims are hereby dismissed.

SO ORDERED.

Labor Arbiter Lagoc summarized the factual contentions of the parties, thus:

> Complainant [petitioner herein] alleged in his position paper that he started working with respondent Emmanuel Lo in June 1988 as ordinary crew and received wages in cash from the share of the catch of the fishing boat of said respondent; that on January 1989, the complainant was promoted to light boat operator and the wages was [sic] increased from one (1) share as a crew [member] to five (5) shares; that in March 1989 the complainant was again promoted to 'secondo patron' with fixed salary of P200.00 in addition to five (5) shares of the catch and P1.00/fish box commission; that in November 1989, complainant became a full-pledged patron (Captain of respondent's fishing boat known as M/DCA 'Sheenly Joy 1'); that as captain, the complainant received a monthly salary of P450.00 and ten (10) shares of the fish catch plus P2.00/fish box commission; that on December 2, 1990, the undersigned complainant was dismissed by the respondent Emmanuel Lo illegally and unlawfully without notice and separation pay; that on December 13, 1990, the complainant came to the office of the undersigned counsel and the latter wrote respondent a letter of demand; that in 1988, when the complainant was employed by the respondent, the latter owned one fishing boat and when the complainant was dismissed in 1990, the respondent had increased his fishing boat to three (3) boats out of his profit from his first; that each of the respondent's fishing boat[s] went fishing for 22-23 days every month and all the fish catched [sic] on these days were sold everyday and the cash proceeds were kept by the respondent; that at the end of every 22-23 days of fishing, the fishing boat was cleaned by the crew, engine, net and light boat were repaired by the crew, helped and managed by the officers including the complainant; that these cleaning and repair [sic] were charged to the gross income of the month; that the monthly income of the crew would not be given unless these cleaning and repair [sic] were all done; that the system of

sharing of the monthly income of the fishing boat was done by the respondent in the following manner:

1. From the monthly gross income, the respondent [would] deduct 25% for maintenance;

2. After deducting the 25%, the respondent and the officers/crew got 10% each (total 20%) from the remaining 75% of the gross, known as "sideline"; the officers/crew (about 24 men) shared[d] the sideline (10%) as follows:

    a. Captain 10 shares
    b. Engineer 8 shares
    c. Secondo Captain 8 shares
    d. Encargado 8 shares
    e. Light Boat Chief 6 shares
    f. Secondo Chief 5 shares
    g. Chief Lambatero 6 shares
    h. Secondo Lambatero 4 shares
    i. Lambatero 3 shares
    j. Chief Swimmer 6 shares
    k. Winch Operator 4 shares
    l. Other crew 2 shares

3. Out of the remaining 55 % of the remaining of the gross monthly earning, the expenses for the repairs of boat, net, engine, and light boat, oil and fuel, and food and ropes were charged [to the] remaining amount which expenses usually exceeded 55% of the monthly gross income and left nothing to the officers and crew like the complainant.

4. The Officers and crew, including the complainant received monthly income on 10% "sideline" aforementioned and commission P8.00/fish box sold every day which they shared, while the respondent who kept the record of the income and expenses got 35% of the gross monthly income, and free maintenance and repair of his fishing boat and equipment. He also control [sic] the selling price of the daily fish catch and [sic] unknown to the officers and crew.

The respondent was the one who hired the complainant. He made all the job promotions, paid the salaries and dismissed the complainant. The respondent directed personally the fishing operation, where to send the light boat, where to fish and when to [go] ashore. In other words he had complete control of his fishing boat, the officers and crew.

Respondent on the other hand, in [his] Answer and Position Paper, states that he is the owner and operator of three (3) fishing boats operating in the province of Antique; that complainant used to work as patron of one of the fishing vessels owned by the respondent; that the agreement between the complainant and respondent was for the former to share with the members of the crew [sic] and the respondent the catch of the fishing vessels with the respondent providing for fuel and oil, equipments [sic] and other [sic] which the complainant and the crew needs [sic] for a particular voyage; that the fishing vessels go out fishing at the initiative of the complainant and the crew members; that the respondent has no participation whatsoever in so far as the decision when to go out is concerned; that the respondent's only obligation is to provide for fuel and oil and the equipments [sic] needed by the crew; that the complainant was not paid any salary and his compensation consist [sic] only of his share in the catch of the fishing vessel everytime it goes out fishing; that the fishing vessel does not go out everyday nor the whole year round; that it is not true that the complainant receives [a] monthly salary of P450.00 per month because his only compensation is his share in the catch of the fishing vessel; that there is no employer-employee relationship which exist [sic] between the complainant and the respondent because as alleged patron of the respondent's fishing boat, the complainant is not under the orders of the respondent as regards his alleged employment; that the complainant and the crew go out to sea not upon the direction of the boat owner but upon their own volition as to when and how long and where to go fishing; that the latter perform no services for the boat owner but for their benefit; that the undertaking therefore is a joint venture with the respondent as boat owner, supplying the boat and its equipment and the patron (the complainant) and the crew members contributing necessary labor and the parties getting specific shares for their respective contributions.[11]

In determining the existence of an employer-employee relationship, Labor Arbiter Lagoc meticulously discussed the elements thereof, especially that of private respondent's power of control over petitioner with respect to the means and methods by which the work was to be accomplished, thus:

> Complainant's evidence that control and supervision is exercised by respondent, and certain amounts are given to him aside from his fish share in the catch is his testimony on cross-examination:
>
> "Q. As patron you also decide when to set on [sic] to go out fishing and usually this happen [sic] when the right start [sic]?
>
> A. Yes, it depends upon the order of the owner, we just obey." (p. 3, TSN 6 August 1993)
>
> x x x
>
> and in the re-direct examination, viz.:
>
> "Q. What about when you were patron of the fishing boat of Mr. Lo what you [would] get aside from your share of fish catch monthly or any other compensations [sic]?"
>
> "Labor Arbiter:
>
> Your question is already stated in your Position Paper, paragraph 4'
>
> 'Atty. Pefianco:
>
> Yes, Okey [sic] but I want to reiterate it now.
>
> A. P200.00 every month and two pesos per box and there are 15 of us.
>
> Q. That is in your position paper, you stated here P250.00 so which is correct Mr. Witness 250.00 or 500.00 a month?

Atty. Operiano:

I object that is not proper for re-direct.

A. P450.00"
(p. 19, TSN 6 August 1993)

Respondent's evidence on the same issue is his testimony, corroborated by Nismal and Tonding that it is complainant who decides when to sail out to the [sic] sea, where to fish, how long they will stay fishing [at] sea and when to go bank [sic] to the port.

Nismal is the fish dealer of Sheenly Joy 1 owned by respondent while Tonding works[s] as [a] crew member of respondent's boat Sheenly Joy 3.

No material inconsistencies were shown in all the witnesses [sic] testimonies during cross-examination. We are placed in a quandary since both parties may be assumed to be aware of the Supreme Court's ruling in [the] Pajarillo and Ruga cases and adopted their respective positions to conform with the facts of those two (2) cases.

But be that as it may, although respondent's declaration that he does not have supervision and control over the work of complainant is corroborated by witnesses Nismal and Tonding, We nevertheless find the testimonies of the corroborating witnesses as wanting in probative value since there are ties between the witnesses and respondent which under the natural course of things will cause them (witnesses) to take the side of respondent.

There is more probative value in complainant's testimony that respondent gave orders to set sail and that the patron and crew [would] merely obey.

Respondent ha[s] been in the fishing business for years. He first had only one boat. He infused hundreds of thousands, if not millions, as capital in the business and caused the acquisition of two (2) more boats.

This simply means the he is knowledgeable about the deep sea fishing business. Indeed, it is foolhardy for a businessman to invest this kind of money in a fishing boat and let somebody operate it without him exercising at the least the right to control the manner its [sic] going to be used in the work to be done although not actually exercising such right.

Complainant's testimony although uncorroborated is more [within] the realm of the actual facts surrounding the circumstances of this case. Moreover, the positive allegations of complainant prevails over the denials of respondent.

As to the issue concerning illegal dismissal, unfair labor practice and other money claims, Labor Arbiter Lagoc held:

> On the issue of illegal dismissal we find for the complainant. The charges of illegal dismissal was by invoking no employer-employee relationship, not refuted by respondent. Thus we find that the severance of [the] employer-employee relationship was caused by respondent. The dismissal not having been justified, perforce the same is not one for just cause or authorized under the law. Since complainant seeks separation pay as relief, then the same must be granted.
>
> Complainant served from 1988 to 1990 or two (2) years. He is thus entitled to two (2) months separation pay, this being a case of illegal dismissal. Since complainant failed to state his monthly income, the separation pay is therefore computed at the minimum basis daily rate provided for my [sic] law at the time of dismissal multiplied by the number of working days in a month, which according to complainant is 26 working days per month, and the result multiplied by 2 months. (P89.00/day x 26 working days x 2 months separation pay = P4,628.00)

With respect to complainant's charge of unfair labor practice the so-called unfair labor practice act was not specified thus the same must perforce fail.

Regarding the issues of money claims, complainant as Patron of the boat is a managerial employee thus he is excepted from the provision[s] of Book III, of the Labor Code.

Moreover, it is not disputed that complainant as Patron of the boat shares in the income of the sale "fish catch", and this sharing of income in the fish catch is even true when he was still a crew member of the fishing boat owned by respondent. Persons who are given shares in the fish caught are not covered by the Labor Standards Law which [complainant] charged herein [respondent] for violations [sic]. Thus, the herein complainant's money claims are likewise dismissed for lack of merit.

Both petitioner and private respondent appealed to the NLRC.

In its Decision[12] of 17 March 1995, the NLRC dismissed both appeals for lack of merit. The NLRC rejected petitioner's claim for reinstatement and back wages because "it appears in the complaint filed on September 5, 1991 he only sought for the payment of his separation pay, among others," and under Section 3, Rule V of the Rules of the Commission, parties are not allowed to allege facts or present evidence to prove facts not referred to and any cause or causes of action not included in the complaint or position papers, affidavits and other documents.

Petitioner and private respondents separately moved for Reconsideration of the Decision,[13] which the NLRC denied in its Resolution[14] of 19 may 1995.

Before this Court, petitioner contends that the NLRC committed grave abuse of discretion in refusing to award his monetary claims, including back wages and other monetary benefits, in light of his having been dismissed without just cause.

The Office of the Solicitor General (OSG) filed a Manifestation In Lieu of Comment wherein it recommends that back wages be awarded to petitioner, pursuant to Article 279 of the Labor Code and the Decisions in Torillo vs. Leogardo,[15] Santos vs. NLRC[16] and General Baptist Bible College vs. NLRC.[17]

In its Comment which we required to be filed, the NLRC failed to address the issues raised in this petition.

In his comment, private respondent supported the stand of the labor arbiter in that petitioner was a managerial employee and, therefore, not covered by Book III of the Labor Code; hence, petitioner was not entitled to back wages and the other monetary claims he sought.

The sole issue before us is whether the NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed petitioner's claim for separation pay, back wages, allowances and damages.

The petition is meritorious as to the issue of back wages.

Grave abuse of discretion attended the refusal of the labor arbiter and the NLRC to award back wages to petitioner, simply because petitioner did not ask for such relief in his complaint. In so doing, the NLRC relied solely on Section 3 of Rule V of the Rules of Procedure of the NLRC.

This is a patently erroneous conclusion.

First, in his complaint, petitioner charged private respondent with, inter alia, illegal dismissal. He similarly prayed for back wages in his position paper and claimed back wages once more in his appeal before the NLRC.

We have also observed that the complaint was a pro-forma mimeographed from and petitioner merely put an "X" mark on the nature or description of the charge enumerated after the paragraph reading:

Complainant hereby charges respondent of:

> Among those marked with an "X" were "illegal dismissal" and "separation pay and/or retirement/resignation benefit." It must be noted that "back wages" was not among those enumerated. It is thus reasonable to suppose that petitioner was guided solely by what appeared in the pro-forma form when he did not

> specifically pray for "back wages." Therefore, it was entirely inaccurate for the NLRC to have held the petitioner only sought separation pay.

Second, and more importantly, both the labor arbiter and the NLRC concluded that petitioner was illegally dismissed. Conformably then with Article 279 of the Labor Code, he is entitled to an award of back wages since the Article expressly mandates that an employee who is unjustly dismissed from work shall be entitle to reinstatement without loss of seniority rights and other privileges and to full back wages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time compensation was withheld up to the time of actual reinstatement. The provision gives meaning to the laborer's constitutional guaranty of security of tenure and finds solid basis on the universal principles of justice and equity. The grant of back wages allows the unjustly and illegally dismissed employee to recover from the employer that which the former lost by way of wages as a result of his dismissal from employment.

It is evident that the award of back wages resulting from the illegal dismissal of an employee is a substantive right. Thus, the failure to claim back wages in a complaint for illegal dismissal has been held to be a mere procedural lapse which cannot defeat a right granted under substantive law.[18]

The present state of jurisprudence allows full recovery of back wages pursuant to the express provisions of Article 279 of the Labor Code, i.e., without any deduction of income the employee may have derived from employment elsewhere from the date of his dismissal up to his reinstatement.[19]

Petitioner would have, likewise, been entitled to reinstatement as a consequence of his illegal dismissal from employment. However, by expressly asking for separation pay, he is deemed to have opted for separation pay in lieu of reinstatement. This is the tenor of the holding in Reformist Union vs. NLRC[20] to the effect that separation pay is awarded as an alternative to reinstatement.

Corollary then to the foregoing is the matter of computing both the back wages and the separation pay due petitioner. To be reckoned for

the former is the period of putative service. This pertains to that period from the date petitioner was dismissed from employment on 2 December 1990 until he could have been reinstated which, taking into account the appeals separately interposed by petitioner and private respondent from the decision of the labor arbiter, and the filing of this case, could have been done only after the finality of this decision affirming the finding of the labor arbiter and the NLRC that petitioner was illegally dismissed from his employment by private respondent. As regards separation pay, the same must be computed from the time petitioner was first employed by private respondent until the finality of this decision.

As to petitioner's other monetary claims, significant to the resolution of said issue is Article 82 of the Labor Code, which provides:

> Article 82. Coverage. — The provisions of this Title shall apply to employees in all establishments and undertakings whether for profit or not, but not to government employees, managerial employees, field personnel, members of the family of the employer who are dependent on him for support, domestic helpers, persons in the personal service of another, and workers who are paid by results as determined by the Secretary of Labor in appropriate regulations.
>
> As used herein, "managerial employees" refer to those whose primary duty consists of the management of the establishment in which they are employed or of a department or subdivision thereof, and to other officers or members of the managerial staff.
>
> x x x
>
> A managerial employee is therefore excluded from the coverage of the law as regards conditions of employment which include hours of work, weekly rest periods, holidays, service incentive leaves and service charges.[21]

The labor arbiter classified petitioner as a managerial employee. We have not been provided with any compelling reason to overturn this factual finding. As chief patron of the M/DCA "Sheenly Joy 1," albeit

an unlicensed one,[22] petitioner was tasked to take complete charge and command of the vessel and perform the responsibilities and duties of a ship captain.[23] Petitioner, an employee who falls squarely within the category of "officers or members of a managerial staff," is thus exempted from payment of overtime pay, premium pay for holidays and rest days and service incentive leave pay.[24] Therefore, the labor arbiter was correct in holding that petitioner was not entitled to overtime pay, legal holiday pay, premium pay for holidays and rest days.

WHEREFORE, the instant Petition is hereby **GRANTED** in part. The Decision of the National Labor Relations Commission of 17 March 1995 and the Decision of the Labor Arbiter of 15 February 1994 in NLRC Case No. V-0254-92 (RAB-06-09-50298-91) are hereby **MODIFIED**. As modified, private respondent EMMANUEL LO is hereby **ORDERED** to pay back wages to petitioner ROLANDO DE LA CRUZ, for the period from the date the latter was illegally dismissed from service until finality of this decision, with interest at 6% per annum until this decision becomes final and executory, after which time, the interest rate shall be 12% per annum until the amounts due are actually paid or satisfied; and separation pay at the rate of one (1) month's pay for every year of service computed from the date he was first employed until the finality of this decision, with interest at 12% per annum from the date of promulgation of this decision until actually paid.

No pronouncement as to costs.

SO ORDERED.

Bellosillo, Vitug, Panganiban and Quisumbing, *JJ.*, concur.

---

[1] Rollo, 43-45. Per Presiding Commissioner Irenea E. Ceniza, with the concurrence of Commissioner Bernabe S. Batuhan and Commissioner Amorito V. Cañete.

[2] Id., 51-52.

[3] Id., 11-19.

[4] Original Record (OR), 1.

[5] Id., 5-6.

[6] Id., 11-14; 22-23.
[7] Id., 39-45.
[8] Id., 72-74.
[9] Id., 89.
[10] OR, 216-224; supra note 3.
[11] OR, 216-218.
[12] Supra note 1.
[13] OR, 343-346;349-358.
[14] Supra note 2.
[15] 197 SCRA 471 [1991].
[16] 1154 SCRA 166 [1987].
[17] 219 SCRA 549 [1993].
[18] L.T. Datu & Co., Inc. vs. NLRC, 253 SCRA 440, 453 [1996], citing General Baptist Bible College vs. NLRC, 219 SCRA 549 [1993].
[19] Philippine Airlines, Inc. vs. NLRC, 276 SCRA 391, 405-406 [1997].
[20] 266 SCRA 713, 728-729 [1997] (citations omitted).
[21] Articles 82-96, Title I, Book Three of the Labor Code.
[22] OR, 40.
[23] See Association of Marine Officers and Seamen of Reyes and Lim Co. vs. Laguesma, 239 SCRA 460, 467 [1994].
[24] See Salazar vs. NLRC, 256 SCRA 273, 283-286 [1996].

Philippine Copyright © 2005
ChanRobles Publishing Company
www.chanrobles.com