

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**HAVERTON SHIPPING LTD. and OFSI
SERVICES, INC.,**

Petitioners,

-versus-

**G.R. No. 65442
April 15, 1985**

**THE NATIONAL LABOR RELATIONS
COMMISSION, THE HON. CRESENCIO
M. SIDDAYAO, in his capacity as
Officer-in-Charge of the NATIONAL
SEAMEN BOARD and ALFREDO
BENITEZ,**

Respondents.

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DECISION

MELENCIO-HERRERA, J.:

This Petition for *Certiorari* seeks to annul and set aside the Decision of the National Labor Relations Commission (First Division), dated August 17, 1983, affirming on appeal the Decision of the National Seamen's Board (NSB) in NSB Case No. 3716-82 entitled "Alfredo Benitez, complainant, vs. Haverton Shipping Ltd. and OFSI Services, Inc., respondents." The decretal portion of the NLRC Decision reads:

“WHEREFORE, all the foregoing premises considered, a decision is hereby rendered ordering the respondents, jointly and severally to pay to complainant the sum of US DOLLARS FOUR THOUSAND SIX HUNDRED SEVEN (US \$4,607.00) or its equivalent in the Philippine Currency, as salary for the unexpired portion of the employment contract.

“Counter-claim dismissed.”^[1]

On November 4, 1983, we issued a Temporary Restraining Order enjoining respondents from enforcing said Decision.

For resolution is the question of whether or not private respondent BENITEZ was terminated for just cause even before the expiration of his employment contract.

The records show that on March 12, 1982, Alfredo BENITEZ was hired by OFSI Services, the local manning agent of Haverton Shipping, as a boatswain on the M.V. Gold Alisa, owned and operated by the latter, for a period of one year with a monthly salary of US \$485.00. On May 24, 1982, while the vessel was berthed at the port of Durban, South Africa, a fight occurred between BENITEZ and his shipmates, Arnel Candelaria and Maximo Espiritu, as a result of which the latter suffered injury on the fingers of his left hand. An investigation of the incident was conducted by the Master who made a written report of his findings and decision in the ship’s “log book”. BENITEZ was found to have breached the disciplinary code of merchant service on several counts among which was “assault with a knife on a member of the ship’s crews,” which behavior “seriously detract(ed) from the safe and efficient working of the ship.” He was then repatriated to the Philippines after serving only two and a half months of his contract.

BENITEZ’s version of the incident, as set forth in his Affidavit submitted to the NSB, follows:

“On May 24, 1982, or thereabout, the ship M.V. Gold Alisa was in port at Durban, South Africa, I asked permission from my officer for shore leave and was granted. Espiritu and Candelaria

went also on shore leave but they arrived ahead of me. At that time I arrived late for my duty and upon arrival I changed on my working clothes to assume my work. I saw Espiritu in the mess hall with Candelaria and I noticed they were drunk. Espiritu asked me why I did not work on my duty, though he has no business to question me he being my immediate subordinate, but I answered him that he better go to sleep because he was drunk. Espiritu did not like my comment that he was drunk, he even called me some nasty words, then he went to the pantry, got a knife and attacked me. Candelaria tried to pacify him and separate us, in the process he was able to hit me at the right eyelid and on my right hand, these (2) injuries leaving scars on my hand and right eyelid. When Espiritu saw I was bleeding he ran away and locked himself in his cabin. After the incident the 1st officer and 2nd officer came and asked me about the incident and I told them everything what had happened. The following morning I told the Captain of the ship of the incident. I told the Captain that Espiritu and Candelaria were drunk, it was Espiritu who provoked me to a fight, it was Espiritu who got a knife and attacked me, I told him I did not have any knife with me during the incident and I was not able to inflict any injury on Espiritu as he was the one with a knife, and he and Candelaria were grappling with the knife as Candelaria was trying to get the knife from him. If ever Espiritu was injured, the same must have been caused by the knife he was holding when Candelaria tried to get it from him.”^[2]

On the other hand, petitioners presented before the NSB a copy of the Official Entry in the Ship’s Log Book, dated May 25, 1982, to wit:

“Place of Occurrence: Durban

“Date of Occurrence: 24th and 25th May 1982

“24th May 1982

1800. Bosun Alfredo Benitez did not report for duty when his watch commenced at 1800.

“25th May 1982

0200. It was reported to the Duty Officer, Mr. T. A. Andrews, that 'the bosun had returned and that there were problems.' Mr. Andrews proceeded to the crew messroom where he heard the bosun shouting loudly, and in an obviously highly excitable state, at A/B's Maximo Espiritu and Arnel Candelaria. The second officer noticed blood on the bosun's shirt. The bosun was quietened and led to his cabin. The second officer applied first aid to two cuts on the fingers of Maximo Espiritu's left hand. (Later required two stitches each.) It was stated by Espiritu that the bosun had attacked him with a knife and that he had grabbed the knife, causing the cuts on his fingers. Candelaria had then pulled the bosun away from Espiritu. The master found the injuries consistent with this allegation.

1100. The master received evidence from second officer T. A. Andrews.

1215. Hearing in the master's cabin. Present: The master, the chief officer, Bosun Alfredo Benitez and A/B's Maximo Espiritu and Arnel Candelaria.

"Statements were received from the two A/B's, who were then asked to leave.

"After a thorough and careful investigation of all the events, the master found that the Disciplinary Code of the British Merchant Service, and of the Filipino National Seaman's Board, to which Alfredo Benitez had agreed when he signed the Crew Agreement and his Company Contract, had been breached on the following counts.

- i) Absent from duty.
- ii) Assault with an offensive weapon (knife) on a member of the ship/s crew.
- iii) Intimidation, and interference with the work of a member of the ship's crew.

- iv) Behaviour which seriously detracts from the safe and efficient working of the ship.
- v) Behaviour which seriously detracts from the social well-being of any other person on board. (Maximo Espiritu. The bosun had threatened 'to kill him'. Afterwards, Espiritu was too frightened to sleep in his own cabin and had spent the night in the cabin of a shipmate.)

“The master then asked Alfredo Benitez if he had anything to say.

“Benitez replied that he admitted all the charges and that he was guilty of wielding a knife towards Espiritu and that the attack had been thwarted by Candelaria pulling him away. In mitigation he stated that he had on the previous day received a letter from home which had contained bad news; and this had placed him in a depressed state of mind. Benitez stated that he regretted the incident.

“The master said that, while he was aware that the initial argument was not solely caused by the bosun, his assault on Espiritu had nevertheless been no way to settle the dispute. The master found the bosun guilty of all the charges and bearing in mind possible problems between Benitez and the crew, especially during the long sea voyage to Singapore, the master had no alternative but to dismiss Benitez immediately from his service with the ship.

“Benitez’ Account of Wages was drawn up and the sum of United States Dollars 719.60 (Seven Hundred and Nineteen Dollars 60 cents,) the total payable under the account was paid to Benitez in cash. Arrangements were made with the company’s agents, Polaris Shipping, to receive Benitez and arrange for his repatriation to Manila. Benitez was then signed off the Crew Agreement.”^[3]

On June 7, 1982, BENITEZ filed with the NSB a complaint for illegal dismissal and unlawful termination of contract. On the basis of the

parties' position papers, decision was rendered adopting BENITEZ's version and ruling that the copy of the Official Entry in the Ship's Log Book was "purely hearsay and could not legally be binding."^[4] The NLRC also rejected the Affidavits of able seamen Candelaria and Espiritu for the reason that they were presented only when the case was already on appeal before it.

Generally, the rule is that findings of fact of the NLRC are entitled to great respect.^[5] But the judgment below can be reversed when public respondents have overlooked certain significant facts, which are sufficient to alter the questioned decision.^[6] That situation confronts us now.

In declaring that copy of the Official Entry in the Ship's Log Book was not legally binding for being hearsay, public respondents overlooked the fact that under our laws the ship's captain is obligated to keep a "log book" where, among others, he records the decisions he has adopted.^[7] Even according to the law of the vessel's registry, that book is also "required by law" as disclosed by the entry itself.^[8] There is no controversy as to the genuineness of the said entry. The vessel's log book is an official record and entries made by a person in the performance of a duty required by law are prima facie evidence of the facts stated therein.^[9]

That an investigation was conducted on the incident is admitted by BENITEZ.^[10] The reason, as stated in the entry, as to why BENITEZ was not given a copy before he disembarked from the vessel was that the vessel had sailed for Singapore on the same day and it was not possible in the short time available to provide BENITEZ with a copy of the entry.^[11]

The two cut wounds sustained by Espiritu in his fingers, which required two stitches each, conforms to his narration that BENITEZ lunged at him and tried to stab him with the knife and that in protecting himself he held the blade of the knife with his left hand and injured himself.^[12] As stated in the entry, "(T)he master found the injuries consistent with this allegation."^[13] Candelaria's Affidavit^[14] corroborates Espiritu's narrative of the incident.

It is true that the Affidavits of Candelaria and Espiritu, dated April 4 & 11, 1983, were submitted only when the case was on appeal to the NLRC. Still, that should not have precluded the NLRC from taking them into account. There was plausible reason for the delay in the submittal of their Affidavits in that the affiants were out of the country plying back and forth between the ports of the Far East and South and West Africa during the period from March 12, 1982 to March 16, 1983. It was only after the expiration of their contract of employment that they returned to the Philippines and executed their sworn statements before the Labor Arbiter.^[15] As the Labor Code specifically provides, rules of evidence prevailing in Courts of law shall not be controlling and every and all reasonable means to ascertain the facts in each case shall be used without regard to technicalities.^[16]

On the other hand, BENITEZ's claim that "(I)f ever Espiritu was injured, the same must have been caused by the knife he was holding when Candelaria tried to get it from him," stands uncorroborated.

Reliance was placed by the NSB on the Master's rating of BENITEZ upon his discharge that his ability and conduct was "very good," and that he was a good professional man.^[17] This rating was considered as offsetting the Master's entries in the log book, The Master, J.B. Cullen of M.V. Gold Alisa, explained this, however, in a transmittal letter dated June 10, 1982 to OFSI Services, thus: "Benitez in himself was not all that bad a person. But he had a few drinks ashore, and chose to settle his differences with a knife, which action is absolutely unacceptable aboard. Because I did not want to make Benitez bear the consequences of this incident for the rest of his sea career, I did not make any specific remark in his Seaman's Book — however, it goes without saying that he should not under any circumstances be appointed to a Haverton vessel again."^[18]

In the light of all the foregoing, the inevitable conclusion is that public respondents had misappreciated the significance of the entry in the vessel's official log book regarding the incident. The probative value of the facts stated therein has not been overcome by BENITEZ's submittals.

We are constrained to hold, therefore, that BENITEZ's actuations were tantamount to serious misconduct in connection with his work and is a just cause for termination of employment.^[19] As a consequence, he is not entitled to any salary for the unexpired portion of his employment contract.

WHEREFORE, the Petition for *Certiorari* is granted, the questioned Decisions are **REVERSED**, and the complaint dismissed. The Temporary Restraining Order heretofore issued is made permanent. No costs.

SO ORDERED.

Teehankee, Plana, Relova, Gutierrez, Jr., De la Fuente and Alampay, JJ., concur.

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- [1] Rollo, p. 23.
 - [2] Ibid., p. 181.
 - [3] Ibid., pp. 18-19.
 - [4] Ibid., p. 22.
 - [5] Genconsu Free Workers Union vs. Inciong, 91 SCRA 311 (1979).
 - [6] Philippine Jai-Alai & Amusement Corp. vs. Clave, 126 SCRA 299 (1983).
 - [7] Article 612, Code of Commerce.
 - [8] Rollo, p. 19.
 - [9] Section 38, Rule 130, Rules of Court.
 - [10] Rollo, p. 181.
 - [11] Ibid., p. 19.
 - [12] Affidavit of Maximo Espiritu; Rollo, p. 33.
 - [13] Rollo, p. 18.
 - [14] Ibid., p. 37.
 - [15] Ibid., p. 13.
 - [16] Article 221.
 - [17] NSB Decision, p. 3; Rollo, p. 22.
 - [18] Rollo, p. 17.
 - [19] Article 283, Labor Code.