

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**HELLENIC PHILIPPINE SHIPPING,
INC.,**

Petitioner,

-versus-

**G.R. No. 84082
March 13, 1991**

**EPIFANIO C. SIETE and NATIONAL
LABOR RELATIONS COMMISSION
(NLRC),**

Respondents.

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DECISION

CRUZ, J.:

Challenged in this Petition is the Decision of the respondent NLRC holding Hellenic Philippine Shipping Company liable for the illegal dismissal of Capt. Epifanio Siete, herein private respondent, and awarding him salaries and other benefits corresponding to the unexpired portion of his employment contract. Enforcement of this Decision has meanwhile been held in abeyance pursuant to our Temporary Restraining Order dated August 3, 1988.

Siete was employed on May 22, 1985, as Master of M/V Houda G by Sultan Shipping Co., Ltd., through its crewing agent, the herein

petitioner. He boarded the vessel on May 24, 1985, at Cyprus. From there, it sailed on June 1, 1985, to El Ferrol, Spain, where it loaded cargo that it subsequently discharged at Tripoli, Lebanon, from June 25-29, 1985. It then proceeded back to Cyprus, arriving there on June 30, 1985.

On July 8, 1985, Capt. Wilfredo Lim boarded the vessel and advised Siete that he had instructions from the owners to take over its command. These instructions were confirmed by a telex sent^[1] by Sultan Shipping to Siete on July 10, 1985. Neither Lim nor the telex indicated the reason for his relief. The private respondent claims this information was also withheld from him by the petitioner upon his repatriation to Manila.

On July 12, 1985, Siete filed a complaint against the petitioner for illegal dismissal and non-payment of his salary and other benefits under their employment contract. On September 6, 1985, the petitioner alleged in its answer that the complainant had been dismissed because of his failure to comply with the instruction of Sultan Shipping to erase the timber load line on the vessel and for his negligence in the discharge of the cargo at Tripoli that endangered the vessel and stevedores. Siete denied these averments in his reply dated September 23, 1985, and reiterated that he had not earlier been informed of the cause of his dismissal and repatriation, either in Cyprus or later in Manila.

After considering the position papers and documentary evidence of the parties, Administrator Tomas D. Achacoso of the Philippine Overseas Employment Administration (POEA) dismissed the complaint, holding that there was valid cause for Siete's removal.^[2] The decision placed much value on the various communications presented by the petitioner to show that Siete was indeed guilty of the charges that justified his separation.

On January 4, 1988, the private respondent appealed to the NLRC, contending that the records presented by the petitioner were prepared long after his dismissal and were especially suspect because they came from persons in the employ of Sultan Shipping. He insisted that he was dismissed without even being informed of the charges against him or given an opportunity to refute them. He added that,

even assuming he was negligent in the unloading of the cargo at Tripoli, this shortcoming did not warrant such a severe penalty as his dismissal.

In its Decision dated June 27, 1988,^[3] the public respondent reversed the POEA Administrator, holding that the dismissal violated due process and that the documents submitted by the petitioner were hearsay, self-serving, and not verified. Accordingly, it disposed as follows:

A new Decision is entered finding the dismissal of complainant as illegal. Respondent is hereby ordered to pay to the complainant his salaries, wages and other benefits corresponding to the unexpired portion of his employment contract with Sultan Shipping Company, Ltd., dated May 22, 1985.

The petitioner now faults this decision as having been reached with grave abuse of discretion. It contends that the private respondent had been instructed to erase the timber load line on the vessel; that he had indeed been negligent in supervising the unloading of the cargo at Tripoli, resulting in the replacement of certain damaged equipment; and that he had not been denied due process, considering the summary nature of the proceedings that had to be taken in view of the nature of his position. Moreover, assuming the awards were justified, there was a mistake in their computation because the amount of \$400.90 previously collected by Siete had not been deducted.

Certiorari is denied.

The findings of fact of public respondent are conclusive on this Court, there being no showing that they were reached arbitrarily. Substantial evidence has established that the private respondent was indeed not notified of the charges against him and that no investigation was conducted to justify his dismissal. Moreover, the petitioner has failed to prove that Siete had been instructed to erase the timber load lines and that he had been negligent in the cargo unloading at Tripoli.

The Court notes that the reports submitted by the petitioner to prove its charges were all prepared after the fact of Siete's dismissal and were signed by its own employees. 4 Their motives are necessarily suspect. The mere fact that they have made such reports does not itself prove the charges, which were investigated ex parte, if at all. It is not denied that Siete was not informed of the charges beforehand or that he was given an opportunity to refute them. Even after his arrival in Manila, he was kept in the dark about the reason for his dismissal. The excuse of the petitioner that it itself did not know why he was dismissed, being only a crewing agent of Sultan Shipping, deserves no comment.

The Labor Code provides as follows:

SECTION 1. Security of tenure and due process. — No worker shall be dismissed except for a just or authorized cause provided by law and after due process.

SEC. 2. Notice of dismissal. — Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omission constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address.

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SEC. 5. Answer and hearing.— The worker may answer the allegations stated against him in the notice of dismissal within a reasonable period from receipt of such notice. The employer shall afford the worker ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires.

SEC. 6. Decision to dismiss. — The employer shall immediately notify a worker in writing of a decision to dismiss him stating clearly the reasons therefor.

The petitioner argues that whatever defects might have tainted the private respondent's dismissal were subsequently cured when the charges against him were specified and sufficiently discussed in the

position papers submitted by the parties to the POEA. That argument is unacceptable. The issue before the POEA was in fact the lack of due process in Siete's dismissal. The law requires that the investigation be conducted before the dismissal, not after. That omission cannot be corrected by the investigation later conducted by the POEA. As the Solicitor General correctly maintained, the due process requirement in the dismissal process is different from the due process requirement in the POEA proceeding. Both requirements must be separately observed.

While it is true that in *Wenphil Corp. vs. NLRC*^[5] and *Rubberworld (Phils.) vs. NLRC*,^[6] the lack of due process before the dismissal of the employee was deemed corrected by the subsequent administrative proceedings where the dismissed employee was given a chance to be heard, those cases involved dismissals that were later proved to be for a valid cause. The doctrine in those cases is not applicable to the case at bar because our findings here is that the dismissal was not justified.

The argument that the afore-quoted provisions are not applicable to the private respondent because he was a managerial employee must also be rejected. It is not correct to say that managerial employees may be arbitrarily dismissed, at any time and without cause as established in an appropriate investigation. Managerial employees, no less than rank-and-file laborers, are entitled to due process. Loss of confidence, which is the usual ground for the removal of the managerial employee, must be established like any other lawful cause.^[7] Even if it be assumed that Siete was a managerial employee — an issue which, incidentally, was not earlier raised or resolved — the petitioner has not satisfactorily proved the reason for its supposed loss of confidence in him.

It is not true that the vessel would be left unattended if the captain were to be placed under investigation because he would not have a ready replacement. The petitioner forgets that under Article 627 of the Code of Commerce:

Art. 627. The sailing mate, as the second chief of the vessel and unless the ship agent does not order otherwise, shall take

the place of the captain in case of absence, sickness or death and shall then assume all his powers, obligations and liabilities.

let alone the fact that in the particular case of Siete, there was actually a ready replacement for him. This was Capt. Lim who, on instruction of Sultan Shipping, boarded the vessel on July 8, 1985, purposely to take over its command from Capt. Siete.

The Court reiterates the ruling that private employment agencies are jointly and severally liable with the foreign-based employer for any violation of the recruitment agreement or the contract of employment.^[8] As a requirement for the issuance to it of a license to operate a private recruiting agency, a verified undertaking was made by the petitioner that it would “assume joint and solidary liability with the employer for all claims and liabilities which (might) arise in connection with the implementation of the contract of employment.” It cannot now contend that as a mere crewing agent it cannot be made to answer for the liabilities of Sultan Shipping.

The reason for the above-mentioned requirement is obvious. Were the rule otherwise, employees with legitimate demands against the employer would be helpless to enforce them because the latter has no office or properties in this jurisdiction. Violation of the employment contract would remain unredressed. It was precisely to correct this difficulty that the recruiting agent is now required, as a condition for the issuance to it of a license to operate, to assure the employee that he has remedies available in this country even if the culpable employer is beyond the reach of our courts.

It need only be noted that there was a slight error in the computation of the award due the private respondent which he himself acknowledges. This was the failure to deduct from his total award the amount of \$400.90 he admitted having earlier collected in Cyprus. As corrected, the computation of the total award should be as follows:

Monthly Basic Pay	US\$ 1,200.00
Monthly Allowance	<u>500.00</u>
Total Monthly Compensation	S\$ 1,700.00
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One-Year Salary & Allowance (US\$1,700.00 x 12)	US\$20,400.00
Plus: One-Month Leave Pay	<u>1,700.00</u>
	US\$22,100.00
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Less: Cash Advances:	
Manila	US\$ 600.00
Spain	64.70
Lebanon	<u>500.00</u>
	1,164.70
Slapchest	28.36
Bal. of ship cash fund	<u>400.90</u>
Total Deductions	<u>1,593.96</u>
Total Amount Due	US\$20,506.04
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We are not persuaded that the NLRC committed grave abuse of discretion in reversing the findings of the POEA sustaining the petitioner and dismissing the private respondent's complaint. On the contrary, we agree that the private respondent was illegally dismissed because, first, he was not accorded a fair investigation as required by law, and second, because the grounds invoked for his separation have not been proved by the petitioner.

WHEREFORE, the challenged Decision as above modified is **AFFIRMED** and the Petition **DISMISSED**, with costs against the petitioner. The Temporary Restraining Order dated August 3, 1988, is **LIFTED**.

SO ORDERED.

Narvasa, Gancayco, Griño-Aquino and Medialdea, JJ., concur.

[1] Annex B. Original Records, p. 19.

[2] Rollo, pp. 24-30.

[3] Ibid., pp. 47-57.

[4] Correspondence sent by Panos Sideris of the Sultan Lines on July 26, 1985, affirming Siete's omission to change the load line and to observe proper

discharging procedures while unloading their cargoes in Tripoli; letter from Mr. S.Y. Caramondanis Surveyor, Cyprus District, dated October 3, 1985, stating that he advised the master of M/V Houda G to delete the timber load lines on the vessel since they were already canceled from the Load Line Certificate; communication sent by Bilmer C. Buenconsejo, Chief Officer of the M/V Houda G, on September 16, 1985, who claimed that he was never instructed by Capt. Siete to paint out the timber load line marks; counter-affidavit executed on November 11, 1985, by Ioamis Filippou, attesting that Siete failed to delete the timber load line marks despite the advice given by Mr. Caramondanis and that during the discharging operation at Tripoli, the derricks were overloaded; dispatch sent by Capt. Padelis Arthemis on November 25, 1985, alleging Siete's failure to delete the load line marks and correct the improper discharge of the cargoes in Tripoli.

[5] 170 SCRA 69.

[6] 183 SCRA 421.

[7] Batongbacal vs. Associated Bank, 168 SCRA 600.

[8] Ambraque International Placement & Services vs. NLRC, 157 SCRA 430; Alga Moher International Placement Services vs. Hon. Atienza, 174 SCRA 166.