

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
FIRST DIVISION**

**OFFSHORE INDUSTRIES, INC.,  
*Petitioner,***

***-versus-***

**G.R. No. 83108  
August 29, 1989**

**NATIONAL LABOR RELATIONS  
COMMISSION (5<sup>th</sup> DIVISION), LABOR  
ARBITER CORNELIO L. LINSANGAN  
and ALFREDO F. OSORIO,  
*Respondents.***

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**DECISION**

**GANCAYCO, J.:**

The validity of the dismissal of an employee is the principal issue in this special civil action for *certiorari*.

Petitioner Offshore Industries, Inc. is a business firm engaged in lighterage. Private respondent Alfredo F. Osorio had been an employee of the petitioner since 1982. At the time of his dismissal in 1987, the private respondent was the barge master of Barge 10002.

In December 1986, the Vill Integrated Transport Corporation chartered two barges owned by the petitioner, i.e., Barge 10002 and

another barge, the Masuda. The chartered vessels were to transport bags of sugar from Port Victorias in Negros Occidental to Manila. The charter agreement provides, among others, that the conditions recited in the Uniform Time Charter adopted in the Baltic and International Maritime Conference shall be incorporated therein.

On December 28, 1986, both barges were completely loaded. Barge Masuda was loaded with 14,000 bags of sugar. On the other hand, Barge 10002 was loaded with 19,000 bags of the said commodity. The two barges set out to leave the port despite the rough sea and the high winds that day.

On its way out of the port, Barge 10002 ran aground. A tugboat tried to pull the barge but it did not succeed in doing so. On account of the incident, the cargo of Barge 10002 had to be transferred to another barge. The petitioner incurred expenses as a result of the incident.

In a letter addressed to the petitioner, the Vill Integrated Transport Corporation reported the incident. Although the letter took note of the rough sea and the high winds when the two barges set out to leave the port, the unfortunate incident was nonetheless attributed to the negligence of the crew of Barge 10002, particularly the failure of the private respondent, as barge master, to release the anchor of the barge upon the signal of the tugmaster. In support of this contention, it was also pointed out that no untoward incident came upon Barge Masuda on the same occasion because her crew released the anchor of the said barge at the proper time.

It was also alleged in the letter that the Vill Integrated Transport Corporation lost eleven bags of sugar during an earlier voyage of Barge 10002 on account of the negligence of its barge master, the herein private respondent.

On January 19, 1987, the private respondent was replaced as barge master. On January 24, 1987, his employment was terminated. It appears that the petitioner did not conduct a thorough investigation of the incident.

On January 28, 1987, the private respondent filed a Complaint for illegal dismissal against the petitioner and the company president

with the National Labor Relations Commission. The private respondent also sought the payment of overtime pay, night shift differential pay, premium pay for holiday and rest day, as well as service incentive leave pay.

Both parties submitted their respective position papers and other pertinent pleadings.

The petitioner contended that the company conducted some inquiries regarding the incident and that it was eventually ascertained that the private respondent was indeed negligent on account of his failure to release the anchor of the barge at the appropriate time. The petitioner added that the negligence of the private respondent should not be ignored considering that as barge master, he was expected to exercise extreme care and diligence in the performance of his duties.

The petitioner also contended that the private respondent was already warned in the past that a repetition of his negligent behavior during an earlier voyage of Barge 10002 where the charterer lost eleven bags of sugar will result in his dismissal. In sum, the petitioner contended that the dismissal of the private respondent was justified. The petitioner likewise maintained that the money claims of the private respondent had already been paid. In support of the allegation, the petitioner submitted a personnel change memo and a check voucher.

For his part, the private respondent contended that the incident was not due to negligence attributable to him. He imputed the same to the overloading of Barge 10002 and the low tide. He also pointed out that the Masuda was able to negotiate the exit from Port Victorias despite the rough sea and the high winds because it was 5,000 bags of sugar lighter than Barge 10002 and that the difference in weight hampered the maneuverability of the latter.

The private respondent also invoked paragraphs 8 and 9 of the Uniform Time Charter which provide that the charterer is liable for damages incurred due to the overloading of the barge. The private respondent likewise alleged that his summary dismissal was arbitrary in character and was in violation of his right to due process. He averred that the petitioner has yet to pay his money claims.

In a Decision dated October 26, 1987, the labor arbiter assigned to the case ruled in favor of the private respondent. The pertinent portions of the said Decision are as follows —

“We are not impressed with the contention of complainant for it clearly appears that the incident was due to his failure to exercise necessary precaution and prompt action relative to the loading of sugar on his barge.

“Be that as it may, however, we find the penalty of dismissal imposed on complainant as harsh and excessive. A penalty of two or three months suspension would be more reasonable.

“With regard to the claim for overtime pay, no amplification was made. As such, the same will fail.

“On the claim for holiday pay and service incentive pay, suffice to say that respondent failed to present evidence of payment of the same. The presumption therefore, that necessarily follows is that there really was no payment made.

“WHEREFORE, Judgment is hereby rendered ordering the respondent company to reinstate complainant to his former or equivalent position and to pay him backwages effective 1 May 1987. Further, the respondent is ordered to pay complainant legal holiday pay and service incentive leave pay for the last three years.”<sup>[1]</sup>

The petitioner brought an appeal to the National Labor Relations Commission. In a Decision promulgated on March 18, 1988, the majority of the members of the Fifth Division of the respondent Commission<sup>[2]</sup> ruled that the private respondent was arbitrarily dismissed considering that he was never given the opportunity to be heard as mandated by the Labor Code. Thus, the respondent Commission held that the reinstatement of the private respondent was proper.

The respondent Commission was also of the view that the private respondent may not be considered negligent inasmuch as the charges

against him were not substantiated. The pertinent portions of the said Decision are as follows —

“However, we do not concur with the conclusion of the Labor Arbiter that complainant-appellee was to be blamed for the overloading and for the late release of the anchor for the simple reason that no evidence was adduced thereto. Under the aforesaid par. 9 of the Uniform Time Charter, the loading of the ship appears to be under the control of the charterer. The alleged late release of the anchor by the crew under complainant-appellee’s command was not shown to be his fault. This was merely an opinion of the charterer as stated in his letter. In fact, in its letter, the charterer acknowledged the high seas and heavy wind at the port’s entrance. There was no basis therefore for the Labor Arbiter’s finding that the barge patron merited suspension for three (3) months. The backwages awarded should thus be from January 24, 1987 the date of termination and not from May 1, 1987.

“Considering respondent-appellant’s failure to produce the payrolls that complainant-appellee was paid holiday pay and service incentive leave pay, we affirm the awards in favor of complainant appellee. It was incumbent for respondent-appellant to produce the appropriate documents (payrolls) to prove payment of said benefits instead of those presented (personnel change memo).

“WHEREFORE, in view of the foregoing, the Decision dated October 26, 1987 is hereby MODIFIED as above indicated and the appeal therefrom is DISMISSED for lack of merit.”<sup>[3]</sup>

Commissioner Danilo S. Lorredo, however, entered a dissenting vote. He was of the view that whatever happens to the barge is the responsibility of the barge master in the same way that a captain is responsible for his ship. He also stressed that while the private respondent should not be totally exonerated from any liability, his dismissal under the circumstances was too harsh. In his opinion, the private respondent should be reinstated without the payment of backwages, and that the period when he was jobless would amount to an appropriate penalty.<sup>[4]</sup>

Hence, the instant Petition.

The petitioner maintains that the position of barge master is a very sensitive position and that the negligence of the private respondent justifies his dismissal. The petitioner adds that the reinstatement of the private respondent will be extremely detrimental to its interest inasmuch as there will always be uncertainty and anxiety on the part of the petitioner everytime the private respondent is in charge of a barge.

The petitioner likewise pleads that the overloading of the barge could have been avoided if the private respondent was attentive to his duties and prerogatives. It pointed out that the private respondent could have stopped further loading of the bags of sugar when the barge had already exceeded its maximum capacity. Accordingly, the petitioner prays for the annulment of the questioned Decision, as well as other equitable reliefs.<sup>[5]</sup>

As instructed by the Court, the respondent Commission filed its Comment on the Petition, praying therein for the dismissal of the same for lack of merit.<sup>[6]</sup> Thereafter, the Court resolved to give due course to the instant Petition.<sup>[7]</sup> After the submission of simultaneous memoranda, the case was deemed submitted for decision.

After a careful examination of the entire record of the case, the Court finds the instant Petition devoid of merit.

Under Article 279 of the Labor Code, a worker is entitled to security of tenure, to wit —

“ART. 279. Security of tenure. — In case of regular employment, the employer shall not terminate the services of an employee except for a just cause.”

The procedure to be observed by an employer who seeks to dismiss an employee is recited in Rule XIV of the rules implementing the Labor Code, particularly Sections 1, 2 and 5, thereof, to wit —

“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.

“Section 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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“Section 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.”

In *Philippine Movie Pictures Workers’ Association vs. Premiere Productions. Inc.*,<sup>[8]</sup> this Court explained the rationale behind the right of every worker to due process of law, to wit —

“The right to labor is a constitutional as well as a statutory right. Every man has a natural right to the fruits of his own industry. A man who has been employed to undertake certain labor and has put into it his time and effort is entitled to be protected. The right of a person to his labor is deemed to be property within the meaning of constitutional guarantees. That is his means of livelihood. He cannot be deprived of his labor or work without due process of law.”<sup>[9]</sup>

The guarantee of due process applies to all workers, including managerial employees.<sup>[10]</sup>

The record of the case is devoid of any indication that the private respondent was given an opportunity to present his side of the controversy in accordance with the procedure recited in the Labor Code and the implementing rules. At most, the contention of the petitioner to the contrary is an unsubstantiated allegation. Thus, the

Court is convinced that the dismissal of the private respondent was in violation of his right to due process and that, accordingly, his reinstatement is in order.

The said observation notwithstanding, it also appears that the imputation of negligence made against the private respondent has no sound basis. As pointed out by the private respondent, the incident can be attributed to the overloading of Barge 10002 and the low tide. The rough sea and the high winds made the situation more difficult for the crew to maneuver the said barge. The fact that Barge Masuda was able to negotiate the exit from Port Victorias despite the rough sea and the high winds is beside the point. Barge 10002 was heavier by 5,000 bags of sugar and this difference in weight adversely affected its maneuverability.

Under paragraphs 8 and 9 of the Uniform Time Charter, the private respondent, as barge master, must follow all orders given by the charterer, including instructions relating to the amount of cargo to be loaded on the vessel, and that the charterer is responsible for all consequences arising from the overloading of the vessel, viz. —

- “8. The whole reach and burthen of the Vessel, including lawful deck-capacity to be at the Charterers’ disposal, reserving proper and sufficient space for the Vessel’s Master, Officers, Crew, tackle, apparel, furniture, provisions and stores.
- “9. The Master to be under the orders of the Charterers as regards employment, agency, or other arrangements. The Charterers to indemnify the Owners against all consequences or liabilities arising from the Master, Officers or Agents signing Bills of Lading or other documents or otherwise complying with such orders, as well as from any irregularity in the Vessel’s papers or for over carrying goods.<sup>[11]</sup> (Emphasis supplied.)

An evaluation of the terms of the said Charter leads to the inevitable conclusion that the control of the charterer over the vessel is extensive and includes the power to determine how much cargo is to be loaded on the barge, and that any incident that may happen as a

consequence of the overloading of the barge is to be imputed to the charterer. To say that the incident could have been avoided if the private respondent objected to the continuous loading of the barge is to overlook the clear and express terms of the Uniform Time Charter.

In fine, the petitioner failed to show that the dismissal of the private respondent is for just cause. The burden of proof in termination cases rests upon the employer to show that the dismissal is for just cause and the failure to do so means that the dismissal is not justified and the employee is entitled to reinstatement.<sup>[12]</sup>

As to the issue regarding the propriety of the awards in favor of the private respondent, the petitioner failed to substantiate its allegation that the private respondent had already been paid his money claims. The personnel change memo and check voucher relied upon by the petitioner are not sufficient evidence of payment of the financial benefits to which the private respondent was entitled during the entire period of his employment. Actual receipts signed by the private respondent, if any, would have been more appropriate. The burden of proof rests on the party asserting the affirmative.<sup>[13]</sup> Since the petitioner failed to prove its assertion that the money claims of the private respondent had already been paid, the respondent Commission correctly resolved the matter in favor of the private respondent.

In sum, the Court finds no jurisdictional infirmity in the Decision of the respondent Commission. Accordingly, the writ of *certiorari* will not issue.

**WHEREFORE**, in view of the foregoing, the Petition is hereby **DISMISSED** for lack of merit. No pronouncement as to costs.

**SO ORDERED.**

**Narvasa, Cruz, Griño-Aquino and Medialdea, JJ., concur.**

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[1] Pages 35 to 37, Rollo.

- [2] The Fifth Division was then composed of Commissioners Lourdes C. Javier, Danilo S. Lorredo and Nestor C. Lim. Commissioner Lorredo wrote a dissenting opinion.
- [3] Pages 54 to 59, Rollo. The appeal was docketed as NLRC Case No. NCR-1-351-87.
- [4] Page 59, Rollo.
- [5] Pages 6 to 13, Petition; pages 7 to 14, Rollo.
- [6] Pages 60 to 69, Rollo.
- [7] Page 71, Rollo.
- [8] 92 Phil. 843 (1953).
- [9] Ibid, page 848.
- [10] De Leon vs. National Labor Relations Commission, 100 SCRA 691 (1980) and Dosch vs. National Labor Relations Commission, 123 SCRA 296 (1983).
- [11] Pages 24 and 25, Rollo.
- [12] Polymedic General Hospital vs. National Labor Relations Commission, 134 SCRA 420 (1985).
- [13] Ibid.