

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
SECOND DIVISION**

**DIOSDADO TINGSON, JR.,  
GODOFREDO OBLEFIAS, CARMELO  
MOLINO, and GEORGE DRAPER,  
*Petitioners,***

*-versus-*

**G.R. No. 84702  
May 18, 1990**

**THE HONORABLE NATIONAL LABOR  
RELATIONS COMMISSION, FIRST  
DIVISION, THENMARIS (SHIP  
MANAGEMENT), INC., SEA PROUD  
SHIPPING COMPANY, and  
INTERMARE MARITIME AGENCIES,  
INC.,**

*Respondents.*

X-----X

**DECISION**

**SARMIENTO, J.:**

This Petition assails the Decision of the respondent National Labor Relations Commission which affirmed the decision of the Philippine Overseas Employment Administration (POEA) dismissing the complaint for illegal dismissal, recovery of unpaid salaries, and non-

payment of overtime and other benefits filed by the petitioners against the private respondents. The records show that:

Petitioners Diosdado Tingson, Jr., Godofredo Oblefias, Carmeno Molino and George Draper were members of the crew of the vessel M/V “Sea Princess” owned by Sea Proud Shipping of Greece. They were hired on April 1983 by Sea Proud Shipping, represented here in the Philippines by Intermare Maritime Agencies, Inc., as Chief Mate, Second Engineer, Fourth Engineer and Carpenter, respectively, for a contract period of 12 months. On 16 August 1983, while the vessel was at the port of Rosario, Argentina, they were ordered by the ship master Captain Manuel Tacata to disembark for repatriation to Manila.<sup>[1]</sup>

As a consequence, the petitioners, on December 5, 1983, filed a complaint with the POEA for illegal dismissal, recovery of unpaid salaries, and non-payment of benefits against the private respondents.

On January 24, 1984, the private respondents filed an answer alleging that the petitioners were repatriated “because they [had] committed acts of insubordination, incompetence and inefficiency, disrespect towards a superior officer and abandonment of post of [sic] duty without [having been] properly relieved.”<sup>[2]</sup>

On January 28, 1988, the overseas employment office rendered a decision sustaining the private respondents.<sup>[3]</sup>

On appeal to the National Labor Relations Commission, the latter affirmed the POEA Decision.

The petitioners<sup>[4]</sup> seasonably came to this Court assailing both rulings on the grounds, first, that no competent evidence had been presented to show insubordination, and second, that they were deprived of due process of law.

In his comment, the Solicitor General upholds the validity of the petitioner Diosdado Tingson’s dismissal for acts of insubordination. He, however, avers that the proofs presented against the petitioner

Godofredo Oblefias and Carmeno Molino constituted hearsay evidence.

Except for their claims of violation of due process, the petitioners' contentions relate to the evidence presented before the POEA. The well-settled principle, however, is that our jurisdiction is confined to questions of law,<sup>[5]</sup> and not of fact or evidence.

Be that as it may, we can not leave untouched the question of due process, which we indeed find to be present, and which appears to be the gravamen of this petition.

According to the petitioners, they were ordered to disembark at the port of Rosario, Argentina "within ten (10) minutes"<sup>[6]</sup> from the ship captain's order. The parties are indeed agreed that "[o]n August 16, 1983, while [M/V Sea Princess] was docked at Rosario, Argentina, the [petitioners] were informed by the ship captain that a telegram was received from the general manager of the respondent shipping firm, Intermare Maritime Agencies, Inc., ordering the four complainants to be sent home."<sup>[7]</sup>

The Solicitor General states, however, that the petitioner Tingson had, on the same day, gone to see the ship captain to demand an explanation. Furthermore, upon arriving in Manila, he saw Captain Francisco Adviento, general manager of Intermare Marine Agencies, Inc., who informed him of the cause for the petitioners' repatriation. "There is, therefore," so the Solicitor General submits, "substantial compliance with the requirements of due process."<sup>[8]</sup>

On the other hand, the private respondents aver that the petitioners had the opportunity to refute the charges against them before the POEA.<sup>[9]</sup>

Based upon these facts, the Court is of the opinion, and so holds, that the petitioners had been denied due process of law and consequently, they had been unlawfully terminated from work.

The Court rejects the Solicitor General's contention that the petitioners had been given substantial due process. The fact that the petitioner Tingson had been granted an audience with the ship

captain and the ship agent's general manager is not the "due process" contemplated by law. We have held that prior to dismissal, the employer is obliged to observe the procedure laid down by the Labor Code. Thus:

"SUBJECT TO THE CONSTITUTIONAL RIGHT OF WORKERS TO SECURITY OF TENURE AND THEIR RIGHT TO BE PROTECTED AGAINST DISMISSAL EXCEPT FOR A JUST OR AUTHORIZED CAUSE AND WITHOUT PREJUDICE TO THE REQUIREMENT OF NOTICE UNDER ARTICLE 284 OF THIS CODE, THE CLEARANCE TO TERMINATE EMPLOYMENT SHALL NO LONGER BE NECESSARY."

"HOWEVER, 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 MINISTRY OF LABOR AND EMPLOYMENT. ANY DECISION TAKEN BY THE EMPLOYER SHALL BE WITHOUT PREJUDICE TO THE RIGHT OF THE WORKER TO CONTEST THE VALIDITY OR LEGALITY OF HIS DISMISSAL BY FILING A COMPLAINT WITH THE REGIONAL BRANCH OF THE NATIONAL LABOR RELATIONS COMMISSION. THE BURDEN OF PROVING THAT THE TERMINATION WAS FOR A VALID OR AUTHORIZED CAUSE SHALL REST ON THE EMPLOYER. THE MINISTRY MAY SUSPEND THE EFFECTS OF THE TERMINATION PENDING RESOLUTION OF THE CASE IN THE EVENT OF A PRIMA FACIE FINDING BY THE MINISTRY THAT THE TERMINATION MAY CAUSE A SERIOUS LABOR DISPUTE OR IS IN IMPLEMENTATION OF A MASS LAY-OFF."<sup>[10]</sup>

Failure to comply therewith taints the dismissal with illegality.

In another case, we held that the employer is bound to furnish the employee two notices, the written charge and the notice of dismissal, if after hearing dismissal is indeed warranted.<sup>[11]</sup>

We have also held that this procedure is mandatory, in the absence of which, any judgment reached by management is void and inexistent.<sup>[12]</sup>

The private respondents can not rely on the POEA proceedings to justify the dismissal of the petitioners. The hearing conducted by the POEA was on the petitioners' own complaint (for illegal dismissal). The fact, however, is at that time, they, the petitioners, had already been terminated. What the law (Batas Blg. 130) sets forth is the procedure prior to dismissal.

That there was evidence to justify termination is of no moment. For one thing, the Solicitor General himself says that insofar as the petitioners Oblefias and Molino are concerned, the proofs submitted against them were hearsay in character. For another, even if this were the case — that there was sufficient evidence against the petitioners — it does not justify the private respondents from unceremoniously dumping them, the petitioners, in strange shores without hearing them. The Court is thus convinced that the petitioners have been deprived of due process.

**WHEREFORE**, the Petition is **GRANTED**. The private respondents are ordered to PAY Diosdado Tingson, Jr., Godofredo Oblefias, and Carmeno Molino their wages they should have earned from August 16, 1983 until April 28, 1984, the date of expiration of the parties' crew agreement, as follows:

Diosdado Tingson, Jr.	US\$ 975.00 a month
Godofredo Oblefias	US\$ 975.00 a month
Carmeno Molino	US\$ 760.00 a month

in their equivalent in Philippine pesos, plus legal interest thereon at the rate of six (6%) per cent per annum reckoned from August 16, 1983 until fully and finally paid.

The private respondents are also **ORDERED** to pay overtime pay and other benefits allowed by law. Let this case be **REMANDED** to the Philippine Overseas Employment Administration for the computation of overtime pay and other unpaid benefits. Costs are adjudged against the private respondents.

**SO ORDERED.**

**Melencio-Herrera, Paras, Padilla and Regalado, JJ., concur.**

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[1] Rollo, 122-123.

[2] Id., 123.

[3] Id.

[4] It appears that the petitioner George Draper subsequently withdrew his complaint with the POEA. (See rollo, 100; also, 206.) Accordingly, the Court is deciding the case without the said petitioner.

[5] See *Bondoc vs. Court of Industrial Relations*, No. L-33955, January 26, 1989, 169 SCRA 379, one of the later cases on the matter.

[6] Rollo, id., 29-30, 154.

[7] Id., 95-96.

[8] Id., 177.

[9] Id., 188.

[10] *Batas Blg. 130*, sec. 13.

[11] *National Service Corporation vs. NLRC*, Nos. 69870 & 70295, November 29, 1988, 168 SCRA 122.

[12] *Ruffy vs. National Labor Relations Commission*, G.R. No. 84193, February 15, 1990.