

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**VIR-JEN SHIPPING AND MARINE
SERVICES, INC.,**

Petitioner,

-versus-

**G.R. No. L-58011-12
July 20, 1982**

**NATIONAL LABOR RELATIONS
COMMISSION, ROGELIO BISULA,
RUBEN ARROZA, JUAN GACUTNO,
LEONILO ATOK, NILO CRUZ, ALVARO
ANDRADA, NEMESIO ADUG,
SIMPLICIO BAUTISTA, ROMEO
ACOSTA, and JOSE ENCABO,**

Respondents.

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DECISION

BARREDO, J.:

Petition for Certiorari seeking the annulment or setting aside, on the grounds of excess of jurisdiction and grave abuse of discretion, of the decision of the National Labor Relations Commission in consolidated NSB Cases Nos. 2250-79 and 2252-79 thereof,^[1] the dispositive portion of which reads thus:

“WHEREFORE, the Decision appealed from should be, as it is hereby modified in this wise:

“Respondent Vir-jen Shipping and Marine Services, Inc., is hereby ordered to pay the following to the complainant Seamen who have not withdrawn from the case, namely: Capt. Rogelio H. Bisula, Ruben Arroza, Juan Gacutno, Leonilo Atok, Nilo Cruz, Alvaro Andrada, Nemesio Aduag, Simplicio Bautista, Romeo Acosta and Jose Encabo:

- “1. their earned wages corresponding to the period from 16 to 19 April 1979;
- “2. the wages corresponding to the unexpired portion of their contracts, as adjusted by the respondent Company effective 1 March 1979;
- “3. the adjusted representation allowances of the complainant Seamen who served as officers and who have not withdrawn from the case, namely: Capt. Rogelio Bisula, Ruben Arroza, Juan Gacutno, Leonilo Atok and Nilo Cruz;
- “4. their vacation pay equivalent to one-half (1/2) month’s pay after six (6) months of service and another one-half (1/2) month’s pay after the completion of the one-year contract;
- “5. their tanker service bonus equivalent to one-half (1/2) month’s pay; and
- “6. their earned overtime pay from 1 to 19 April 1979.

“The Secretariat of the National Seamen Board is also hereby directed to issue within five (5) days from receipt of this Decision the necessary clearances to the suspended Seamen.” (pp. 86-87, Record.)

The factual and legal background of these cases is related most comprehensively in the “Manifestation and Comment” filed by the Solicitor General. It is as follows:

“The records show that private respondents have a manning contract for a period of one (1) year with petitioner in representation of its principal Kyoei Tanker Co. Ltd. The terms and conditions of said contract were based on the standard contract of the NSB. The manning contract was approved by the NSB. Aware of the problem that vessels not paying rates imposed by the International Transport Workers Federation (ITF) would be detained or interdicted in foreign ports controlled by the ITF, petitioner and private respondents executed a side contract to the effect that should the vessel M/T Janu be required to pay ITF rates when it calls on any ITF controlled foreign port, private respondents would return to petitioner the amounts so paid to them.

“On March 23, 1979, the master of the vessel who is one of the private respondents sent a cable to petitioner, while said vessel was enroute to Australia which is an ITF controlled port, stating that private respondents were not contented with the salary and benefits stipulated in the manning contract, and demanded that they be given 50% increase thereof, as the ‘best and only solution to solve ITF problem.’ Apparently, reference to ‘ITF’ in private respondents’ cable made petitioner apprehensive since the vessel at that time was enroute to Australia, an ITF port, and would be interdicted and detained thereat, should private respondents denounce the existing manning contract to the ITF and should petitioner refuse or be unable to pay the ITF rates, which represent more than 100% of what is stipulated in the manning contract. Placed under such situation, petitioner replied by cable dated March 24, 1979 to private respondents, as follows:

‘WE ARE SURPRISED WITH THIS SUDDEN CHANGE OF ATTITUDE AND DEMANDS FOR WE HAVE THOROUGHLY EXPLAINED AND DISCUSSED ALL MATTERS PERTAINING TO YOUR PRESENT EMPLOYMENT AND BELIEVED THAT WE FULLY

UNDERSTOOD EACH OTHER. WE SHALL SUFFER AND ABSORB CONSIDERABLE AMOUNT OF LOSSES WITH YOUR DEMAND OF FIFTY PERCENT AS WE ARE ALREADY COMMITTED TO PRINCIPALS THEREFORE TO MINIMIZE OUR LOSSES WE PROPOSE AN INCREASE OF TWENTY FIVE PERCENT ON YOUR BASIC PAYS PLUS THE SPECIAL COMPENSATION FOR THIS PARTICULAR VOYAGE.’
(p. 7 Comment)

“On March 26, 1979, petitioner wrote a letter to the NSB denouncing the conduct of private respondents as follows:

“This is to inform you that on March 24, 1979, we received a cable from Capt. Rogelio Bisula, Master of the above-reference vessel reading as follows:

‘URINFO ENTIRE JANNU OFFICERS AND CREW NOT CONTENTED WITH PRESENT SALARY BASED ON VOLUME OF WORK TYPE OF SHIP WITH HAZARDOUS CARGO AND REGISTERED IN A WORLDWIDE TRADE STOP WHAT WE DEMAND IS ONLY FIFTY PERCENT INCREASE BASED ON PRESENT BASIC SALARY STOP THIS DEMAND THE BEST AND ONLY SOLUTION TO SOLVE PROBLEM DUE YOUR PRESENT RATES ESPECIALLY TANKERS VERY FAR IN COMPARISON WITH OTHER SHIPPING AGENCIES IN MANILA.’

to which we replied on March 24, 1979, as follows:

‘WE ARE SURPRISED WITH SUDDEN CHANGE OF ATTITUDE AND DEMANDS FOR WE HAVE THOROUGHLY EXPLAINED AND DISCUSSED ALL MATTERS PERTAINING TO YOUR PRESENT EMPLOYMENT AND BELIEVED THAT WE FULLY UNDERSTOOD EACH OTHER STOP FRANKLY SPEAKING WE SHALL SUFFER AND ABSORB CONSIDERABLE AMOUNT OF LOSSES WITH YOUR DEMAND OF FIFTY PERCENT AS WE ARE

COMMITTED TO PRINCIPALS THEREFORE TO MINIMIZE OUR LOSSES WE PROPOSE AN INCREASE OF TWENTY FIVE PERCENT ON YOUR BASIC PAY STOP YOUR UNDERSTANDING AND FULL COOPERATION WILL BE VERY MUCH APPRECIATED STOP PLS CONFIRM SOONEST.'

"On March 25, 1979 we received the following communication from the Master of said vessel:

'OFFICERS AND CREW HESITATING TO GIVE UP DEMAND OF FIFTY PERCENT INCREASE BUT FOR THE GOOD AND HARMONIOUS RELATIONSHIP ON BOARD AND RECONSIDERING YOUR SUPPOSED TO BE LOSSES IN CASE WE CONDITIONALLY COOPERATE WITH YOUR PROPOSED INCREASE AND TWENTY FIVE PERCENT BASED ON INDIVIDUAL BASIC PAY WITH THE FOLLOWING TERMS AND CONDITION STOP EFFECTIVITY OF TWENTY FIVE PERCENT INCREASE MUST BE MARCH/79 STOP INCREASE MUST BE COLLECTIBLE ON BOARD EFFECTIVE ABOVE DATE UNTIL DISEMBARKATION STOP ALLOTMENT TO ALLOTEES REMAIN AS IS STOP REASONABLE REPALLOWS FOR ALL OFFICERS BE GIVEN EFFECTIVE MARCH/79 STOP BONUS FOR 6 MONTHS SERVICES RENDERED BE COLLECTIBLE ON BOARD STOP OFFICERS/CREW 30 PCT O/T SHUD BE BASED NEW UPGRADED SALARY SCALE STOP MASTER/CHENGR/CHMATE SPECIAL COMPENSATION GIVE BY YOUR COMPANY PRIOR DEPARTURE MANILA REMAIN AS IS.'

to which we replied on March 25, 1979, as follows:

'WE AGREE ALL CONDITIONS AND CONFIRM IT SHALL BE PROPERLY ENFORCED STOP WILL PREPARE ALL REQUIRED DOCUMENTS AND WILL BE DELIVERED ON BOARD.'

“For your further information and guidance, the above-mentioned demands of the officers and crew (25% increase in basic pay, increase in overtime pay and increase in representation allowance) involve an additional amount of US\$3,096.50 per month, which our company is not in a position to shoulder.

“We are, therefore, negotiating with our Principals, Messrs. Kyoei Tanker Company, Limited, for the amendment of our agency agreement in the sense that our monthly fee be increased correspondingly. We have sent our Executive Vice-President, Mr. Ericson M. Marquez, to Japan to represent us in said negotiation and we will inform you of the results thereof.” (Annex ‘E ‘ of Petition)

“In view of private respondents’ conduct and breach of contract, petitioner’s principal, Kyoei Tanker Co., Ltd. terminated the manning contract in a letter dated April 4, 1979, which reads in part:

“This is with reference to your letter of March 26, 1979 and our conference with Mr. Ericson Marquez in Tokyo on March 29, 1979, regarding the unexpected and unreasonable demand for salary increase of your officers and crew on the above vessel.

“Frankly speaking, we fully agree with you that this action taken by your officers and crew in demanding increase in their salaries and overtime after being on board for only three months was very unreasonable. Considering the circumstances when the demand was made, we believe that their action was definitely abusive and plain blackmail.

“We regret to advise you that since this vessel is only under our management, we also cannot afford to grant your request for an increase of US\$3,096.50 effective March 1, 1979, as demanded by your crew. Your crew should respect their employment contracts which was approved by your government and your National Seamen Board should make sure that all seamen should follow their contracts.

“For your information, we have discussed this matter with the owners of the vessel, particularly the attitude and mentality of your crew on board. Our common and final decision is not to grant your request but also to terminate our Manning Agreement effective upon crew’s change when the vessel arrives at Japan or at any possible port about end April, 1979.

“We regret that we have to take this drastic step in order to protect ourselves from further problem if we continue with your present officers and crew because if their demand is granted, there is no guarantee that they will not demand further increase in salaries in the future when they have chance. Also, as you know the present freight market is very bad and we cannot afford an unexpected increase in cost of operations and more so with a troublesome and unreliable crew that you have on board.

“In view of the circumstances mentioned above, please consider this letter as our official notice of cancellation of our Manning Agreement effective upon the date of crew’s change.’ (Annex ‘F’ of Petition).

“On April 6, 1979, petitioner wrote the NSB asking permission to cancel the manning contract with petitioner, said letter reading as follows:

“This is with reference to our letter of March 26, 1979, informing you of the sudden and unexpected demands of the officers and crew of the above vessel for a twenty five percent (25%) increase in their basic salaries and overtime, plus an increase of the officers’ representation allowances, involving a total of US\$3,096.50 per month.

“As we have advised in our afore-mentioned letter, we have negotiated with our Principals, Messrs. Kyoei Tanker Co., Ltd., to amend our Agency Agreement by increasing our monthly fee by US\$3,096.50, and attached herewith is copy of our letter dated March 26, 1979 duly received by our Principals on March 31, 1979.

“In this connection, we wish to inform your good office that our Principals have refused to consider our request for an increase and have also advised us of their final decision to terminate our Manning Agreement effective upon vessel’s arrival in Japan on or about April 17, 1979.

“For your further information, we enclose herewith xerox copy of the Kyoei Tanker Co., Ltd. letter dated April 4, 1979, which we just received today via airfreight.

“This is the first time that a cancellation of this nature has been made upon us, and needless to say, we feel very embarrassed and disappointed but we have no other alternative but to accept the said cancellation.

“In view of the foregoing, we respectfully request your authority to cancel our Contracts of Employment and to disembark the entire officers and crew upon vessel’s arrival in Japan on or about 17th April, 1979.’ (Annex ‘G’, of Petition).

“On April 10, 1979, the NSB through its Executive Director Cresencio C. Dayao wrote petitioner authorizing it to cancel the manning contract. The NSB letter to petitioner reads:

“We have for acknowledgment your letter of 6 April 1979 in connection with the above-captioned subject.

“Considering the circumstances enumerated in your letter under reply (and also in your letter of March 1979), we authorize you to cancel your contracts of employment with the crewmembers of the M/T “Jannu” and you may now disembark the whole compliment upon the vessel’s arrival in Japan on or about April 17, 1979.

“We trust that you will not encounter any difficulty in connection with the disembarkation of the crewmembers.’ (Annex ‘H’ of Petition).

“The seamen were accordingly disembarked in Japan and repatriated to Manila. They then filed a complaint with the NSB

for illegal dismissal and non-payment of wages. After trial, the NSB found that the termination of the services of the seamen before the expiration of their employment contract was justified 'when they demanded and in fact received from the company wages over and above the contracted rates which in effect was an alteration and modification of a valid and existing contract.' (Annex 'D', Petition). The seamen appealed the decision to the NLRC which reversed the decision of the NSB and required the petitioner to pay the wages and other monetary benefits corresponding to the unexpired portion of the manning contract on the ground that the termination of the said contract by petitioner was without valid cause. Hence, the present petition." (Pp. 2-9, Manifestation & Comment)

In its petition which contains practically the same facts and circumstances above-quoted, petitioner submits for Our resolution the following issues:

"I. That the respondent NLRC acted without or in excess of its jurisdiction, or with grave abuse of discretion in said NSB Cases Nos. 2250-79 and 2252-79 when it adjudged the petitioner Vir-jen liable to the respondents-seamen for terminating its employment contracts with them despite the fact that prior authorization to terminate or cancel said employment contracts and to disembark the said respondents was first secured from, and was granted by, the National Seamen Board, the government agency primarily charged with the supervision and discipline of seamen and the approval and enforcement of employment contracts;

"II. That the respondent NLRC acted with grave abuse of discretion, or without or in excess of its jurisdiction, or contrary to law and the evidence when it concluded that 'there is nothing on record to show that respondents-seamen made any threat that they would complain or report to the ITF their low wage rates if their demand or proposal for a wage increase was not met', despite the fact that in their cable of March 23, 1979 to the petitioner, the said respondents made the following threats and impositions: 'WHAT WE DEMAND IS ONLY 50 PERCENT INCREASE BASED ON PRESENT BASIC SALARY STOP THIS

DEMAND THE BEST AND ONLY SOLUTION TO SOLVE ITF PROBLEMS', that there are other substantial and conclusive evidence to support the existence of such threats and intimidation which the respondent NLRC failed and refused to consider; and that the evidence substantially and conclusively shows that the petitioner Vir-jen was, in fact, threatened and intimidated into giving such salary increases due to such cabled threats and intimidation of the private respondents;

“III. That the respondent NLRC acted with grave abuse of discretion or without or in excess of jurisdiction when it concluded, in effect, that the respondents-seamen acted within their rights when they imposed upon their employer, the herein petitioner, their demands for salary and wages increases, in disregard of their existing NSB-approved contracts of employment, notwithstanding the substantial and conclusive findings of the NSB, the trier of facts which is in the best position to assess the special circumstances of the case, that the said respondents breached their respective contracts of employment with the petitioner, without securing the prior approval of the NSB as required by the New Labor Code, as amended, and with the use of threats, intimidation and coercion, when they demanded and, in fact, received from the petitioner salaries or wages over and above their contracted rates which the petitioner was 'constrained to make' in order 'to prevent the vessel from being interdicted and/or detained by the ITF because at the time the demand for salary increase was made the vessel was enroute to Kwinana, Australia (via Senipah, Indonesia), a port were the ITF is strong and militant', 'for in the event the vessel would be detained and/or interdicted the company (petitioner) would suffer more losses than paying the seamen 25% increase of their salary',

“IV. That respondent NLRC committed a grave abuse of discretion or exceeded its jurisdiction or acted contrary to law when it failed and refused to admit and take into account the ADDENDUM AGREEMENT, dated December 27, 1978, entered into between the petitioner and the private respondents, which would have further enlightened the respondent NLRC on the 'ITF PROBLEMS' insinuated by the private respondents in their

cable of March 23, 1979 to threaten and intimidate the petitioner into granting the salary increases in question;

“V. That respondent NLRC committed a grave abuse of discretion or acted without or in excess of its jurisdiction or contrary to law when it ordered the petitioner Vir-jen to pay, among others, to the private respondents their ‘wages corresponding to the unexpired portion of their contracts’ the said petitioner having already lost its trust and confidence on the private respondents; that the employer cannot be legally compelled to continue with the employment of persons in whom it has already lost its trust and confidence; that payment to the private respondents of their wages corresponding to the unexpired portion of their contract would be tantamount to retaining their services after their employer, petitioner herein, had already lost its faith and trust in them;

“VI. That the respondent NLRC committed a grave abuse of discretion or exceeded its jurisdiction in still including and considering ROMEO ACOSTA as one of the appellants in the two (2) aforementioned NSB cases and making him a beneficiary of its decision, dated July 8, 1981, modifying the NSB decision, dated July 2, 1980, despite the fact that way back on October 23, 1980, Acosta had already filed in said NSB cases a pleading, entitled ‘SATISFACTION OF JUDGMENT’ in which he manifested that he was not appealing the NSB decision anymore as the judgment in his favor was already fully satisfied by the petitioner Vir-jen;

“VII. That the respondent NLRC had no more jurisdiction to entertain private respondents’ appeal because the NSB decision became final and executory for failure of said respondents to serve on the petitioner a copy of their ‘APPEAL AND MEMORANDUM OF APPEAL’ within the ten (10) day reglementary period for appeal and even after the expiration of said period;

“VIII. That the respondent NLRC had no jurisdiction to entertain the appeal by the private respondents based on the supposedly verified ‘APPEAL AND MEMORANDUM OF

APPEAL' because the supposed signature of the person purportedly verifying the same is forged; and that the new counsel appearing for the private respondents on appeal was not even authorized by some of the private respondents to appear for them;

“IX. That the respondent NLRC committed a grave abuse of discretion or acted without or in excess of jurisdiction or contrary to law when it misconstrued, misinterpreted and misapplied to the instant case the ruling of this Honorable Supreme Court in *Wallem Philippines Shipping, Inc. vs. The Hon. minister of Labor, et al.*, G.R. No. 50734, prom. February 20, 1981, despite distinct and fundamental differences in facts between the Wallem Case and the instant case;

“X. That the respondent NLRC committed a grave abuse of discretion or acted without or in excess of its jurisdiction or acted contrary to law when it failed and refused to consider and pass upon the substantial issues of jurisdiction, law and facts and matters of public interests raised by the petitioner in its URGENT MOTION/APPELLEE’S MEMORANDUM ON APPEAL, dated April 24, 1981, and in its MOTION FOR RECONSIDERATION AND/OR NEW TRIAL, dated July 20, 1981, filed in the two (2) cases;

“XI. That the respondent NLRC committed a grave abuse of discretion or acted without or in excess of jurisdiction or contrary to law when it failed and refused to reconsider and set aside its decision subject-matter of this petition for certiorari, considering that if allowed to stand, the said decision will open the floodgates for Filipino seamen to disregard NSB-approved contracts of employment with impunity, leading to the destruction of the Philippine manning industry, which is a substantial source of revenue for the Philippine government, as well as the image of the Filipino seamen who will undoubtedly become known far and wide as one prone to violate the solemnity of employment contracts, compounded with the use of threats, intimidation and blackmail, thereby necessitating a policy decision by this Honorable Supreme Court on the matter for the survival of the manning industry.” (Pp. 5-9, Record.)

We shall deal first with the jurisdictional issue (No. VII above) to the effect that the appeal of private respondents from the decision of the National Seamen's Board against them was filed out of time, considering that copy of said decision was received by them on July 9, 1980 and they filed their memorandum of appeal only on July 23, 1980 or fourteen (14) days later, whereas under article 223 of the Labor Code which governs appeals from the National Seamen's Board to the National Labor Relations Commission per Article 20(b) of the Code provides that such appeals must be made within ten (10) days.

In this connection, it is contended in the comment of private respondents that petitioner has overlooked that under Section 7, Rule XIII, Book V of the Implementing Rules of the Labor Code, the ten-day period specified in Article 223 refers to working days and that this Court has already upheld such construction and manner of computation in *Fabula vs. NLRC*, G.R. No. 54247, December 19, 1980. Now, computing the number of working days from July 9 to July 23, 1980, We find that there were exactly ten (10) days, hence, if We adhere to *Fabula*, the appeal in question must be held to have been made on time.

But petitioner herein maintains that the Minister of Labor may not, under the guise of issuing implementing rules of a law as authorized by the law itself, go beyond the clear and unmistakable language of the law and expand it at his discretion. In other words, since Article 223 of the Labor Code literally provides thus:

“Appeal. — Decisions, awards, or orders of the Labor Arbiters or compulsory arbitrators are final and executory unless appealed to the Commission by any or both of the parties within ten (10) days from receipt of such awards, orders, or decisions. Such appeal may be entertained only on any of the following grounds:

- (a) If there is a prima facie evidence of abuse of discretion on the part of the Labor Arbiter or compulsory arbitrator;

- (b) If the decision, order, or award was secured through fraud or coercion, including graft and corruption;
- (c) If made purely on questions of law; and(d) If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.

To discourage frivolous or dilatory appeals, the Commission or the Labor Arbiter shall impose reasonable penalty, including fines or censures, upon the erring parties.”

The implementing rules may not provide that the said period should be computed on the basis of working days. This, indeed, is a legal issue not brought up nor passed upon squarely in *Fabula*, and petitioner prays that this Court rule on the point once and for all.

After mature and careful deliberation, We have arrived at the conclusion that the shortened period of ten (10) days fixed by Article 223 contemplates calendar days and not working days. We are persuaded to this conclusion, if only because We believe that it is precisely in the interest of labor that the law has commanded that labor cases be promptly, if not peremptorily, dispose of. Long periods for any acts to be done by the contending parties can be taken advantage of more by management than by labor. Most labor claims are decided in their favor and management is generally the appellant. Delay, in most instances, gives the employers more opportunity not only to prepare even ingenious defenses, what with well-paid talented lawyers they can afford, but even to wear out the efforts and meager resources of the workers, to the point that not infrequently the latter either give up or compromise for less than what is due them.

All the foregoing notwithstanding, and bearing in mind the peculiar circumstances of this case, particularly, the fact that private respondents must have been misled by the implementing rules aforementioned. We have opted to just the same pass on the merits of the substantial issues herein, even as We admonish all concerned to henceforth act in accordance with our foregoing view. Verily, the Minister of Labor has no legal power to amend or alter in any material sense whatever the law itself unequivocally specifies or fixes.

We need not ponder long on the contention of petitioner regarding the alleged forgery of the signature of respondent Rogelio Bisula and the alleged lack of authority of the new counsel of respondents, Atty. B. C. Gonzales, to appear for them. Resolution of these minor points, considering their highly controversial nature, so much so that they could rationally to our mind, be decided either way, may be dispensed with in order that We may go to the more transcendently important main issues before Us.

As far as issue No. VI above regarding the inclusion of Romeo Acosta among the beneficiaries of the decision herein in question, there can be no reason why petitioner should not be sustained. It is undenied that Acosta has filed a formal satisfaction of judgment. Indeed, it is quite relevant to mention at this point that originally, there were twenty-eight (28) claimants against petitioner. This number was first reduced to fifteen (15) then to ten (10) and finally to nine (9) now, by withdrawal of the claimants themselves. These series of withdrawals lend no little degree to added enlightenment of the discussion hereunder of the adverse positions of the remaining claimants, on the one hand, and the petitioner, on the other.

To begin with, let it be borne in mind that seamen's contracts of the nature We have before Us now are not ordinary ones. There are special laws and rules governing them precisely due to the peculiar circumstances that surround them. Relatedly, We quote from the Manifestation and Comment of the Solicitor General:

“The employment contract in question is unlike any ordinary contract of employment, for the reason that a manning contract involves the interests not only of the signatories thereto, such as the local Filipino recruiting agent (herein petitioner), the foreign owner of the vessel, and the Filipino crew members (private respondents), but also those of other Filipino seamen in general as well as the country itself. Accordingly, Article 12 of the Labor Code provides that it is the policy of the State not only ‘to insure and regulate the movement of workers in conformity with the national interest’ but also ‘to insure careful selection of Filipino workers for overseas employment in order to protect the good name of the Philippines abroad’. The National Seamen

Board (NSB), which is the agency created to implement said state policies, is thus empowered pursuant to Article 20 of the Labor Code ‘to secure the best possible terms and conditions of employment for seamen, and to insure compliance thereof’ not only on the part of the owners of the vessel but also on the part of the crew members themselves.

“Conformably to the power vested in the NSB, the law requires that all manning contracts shall be approved by said agency. It likewise provides that ‘it shall be unlawful to substitute or alter any previously approved and certified employment contract without the approval of NSB’ (Section 35, Rules and Regulations in the recruitment and placement of Filipino seamen aboard foreign going ships) and authorizes the employer or owner of the vessel to terminate such contract for just causes (Section 32, Ibid). Among such just causes for termination are ‘bad conduct and unwanted presence prejudicial to the safety of the ship’ (Guidebook for shipping employers, page 8) and material breach of said contract.

“The stringent rules governing Filipino seamen aboard foreign-going ships are dictated by national interest. There are about 120,000 registered seamen with the NSB. Only about 50,000 of them are employed and 70,000 or so are still hoping to be employed. Those Filipino seamen already employed on board foreign-going ships should accordingly conduct themselves with utmost propriety and abide strictly with the terms and conditions of their employment contract, and the NSB should see to that, in order that owners of foreign-owned vessels will not only be encouraged to renew their employment contract but will moreover be induced to hire other Filipino seamen as against other competing foreign sailors.” (Pp. 15-17, Manifestation & Comment of the Solicitor General)

Pertinently, the Labor Code of the Philippines provides for the creation of a National Seamen Board (NSB) thus:

“ART. 20. National Seamen Board. — (a) A National Seamen Board is hereby created which shall developed and maintain a

comprehensive program for Filipino seamen employed overseas. It shall have the power and duty:

- (1) To provide free placement services for seamen;
- (2) To regulate and supervise the activities of agents or representatives of shipping companies in the hiring of seamen for overseas employment; and secure the best possible terms of employment for contract seamen workers and secure compliance therewith; and
- (3) To maintain a complete registry of all Filipino seamen.

(b) The Board shall have original and exclusive jurisdiction over all matters or cases including money claims, involving employer-employee relations, arising out of or by virtue of any law or contracts involving Filipino seamen for overseas employment. The decision of the Board shall be appealable to the National Labor Relations Commission upon the same grounds provided in Article 223 hereof. The decisions of the National Labor Relations Commission shall be final and inappealable.

The finality and unappealability of the decisions of the National Labor Relations Commission conferred by the above provisions in cases of the nature now before Us necessarily limits Our power in the premises to the exercise of Our plenary certiorari jurisdiction. And under the scheme of said Article 20, in relation to Article 223 of the same Code, the reviewing authority of the Commission is limited only to the following instances:

“Appeal. — Decisions, awards, or orders of the Labor Arbiters or compulsory arbitrators are final and executory unless appealed to the Commission by any or both of the parties within ten (10) days from receipt of such awards, orders, or decisions. Such appeal may be entertained only on any of the following grounds:

“(a) If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter or compulsory arbitrator;

“(b) If the decision, order or award was secured through fraud or coercion, including graft and corruption;

“(c) If made purely on questions of law; and

“(d) If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.

“To discourage frivolous or dilatory appeals, the Commission or the Labor Arbiter shall impose reasonable penalty, including fines or censures, upon the erring parties.

“In all cases, the appellant shall furnish a copy of the memorandum of appeals to the other party who shall file an answer not later than ten (10) days from receipt thereof.

x x x”

In the light of the foregoing perspective of law and policy, all the other issues raised by petitioner may be disposed of together. Anyway they revolve basically around the following questions:

1. In the event of conflict in the conclusions of the National Seamen Board, on the one hand, and the National Labor Relations Commission on the other, on a matter that is fundamentally an issue of fact, which one should prevail?
2. Under the facts of this case, was it legally proper for the Commission to disregard the permission granted by the NSB to the petitioner to disembark and discontinue the employment of herein respondents?

3. As a matter of fact, did respondent breach their contract with petitioner, so as to entitle the latter to take the punitive action herein complained of?
4. Was the conformity of petitioner to pay respondents additional compensation of 25% secured by said respondents thru threats of grave injury to petitioner who, therefore, acceded to such increase involuntarily?

We feel that the resolution of the instant controversy hinges on whether or not it was violative of law and policy in the light of the peculiar nature of the contracts in question as already explained at the outset of this opinion, for the respondents to make the demand for an increase of 50% of their respective wages stipulated in their NSB approved contracts while they were already in the midst of the voyage to Kwinana, Australia (an ITF controlled post), pointedly mentioning in their cablegram that such “demand (was) the best and only solution to solve ITF problem”?

On these questions, the NSB found and held:

- “1. Whether or not the Seamen breached their respective employment contracts;
- “2. Whether or not the Seamen were illegally dismissed by the Company;
- “3. Whether or not the monetary claims of the seamen are valid and meritorious;
- “4. Whether or not the monetary claims of the Company are valid and meritorious;
- “5. Whether or not disciplinary action should be taken against the Seamen.

“With respect to the first issue, the Board believes that the answer should be in the affirmative. This is so for the Seamen demanded and in fact received from the Company wages over and above their contracted rates, which in effect is an alteration

or modification of a valid and subsisting contract; and the same not having been done thru mutual consent and without the prior approval of the Board the alteration or modification is contrary to the provisions of the New Labor Code, as amended, more particularly Art. 34 (i) thereof which states that:

“Art. 34. Prohibited practices. — It shall be unlawful for any individual, entity, licensee or holder of authority:

X X X

(i) To substitute or alter employment contracts approved and verified by the Department of Labor from the time of actual signing thereof by the parties up to and including the period of expiration of the same without the approval of the Department of Labor;’

X X X

“The revision of the contract was not done thru mutual consent for the Company did not voluntarily agree to an increase of wage, but was only constrained to make a counter-proposal of 25% increase to prevent the vessel from being interdicted and/or detained by the ITF because at the time the demand for salary increase was made the vessel was enroute to Kwinana, Australia (via Senipah, Indonesia), a port where the ITF is strong and militant. However, a perusal of the Cables (Exhs. ‘D’ & ‘F’, ‘3’ & ‘5’) coming from the Seamen addressed to the Company would show the threatening manner by which the desire for a salary increase was manifested, contrary to their claim that it was merely a request. Aforesaid cables are hereby quoted for ready reference:

‘RYCV-11-12-13-14 RECEIVED URINFO ENTIRE JANNU OFFICERS AND CREW NOT AGREEABLE WITH YOUR SUGGESTIONS THEY ARE NOT CONTENTED WITH PRESENT SALARY BASED IN VOLUME OF WORKS TYPE OF SHIP WITH HAZARDOUS CARGO AND REGISTERED IN A WORLD WIDE TRADE STOP REGARDING URCABV-14 OFFICERS AND CREW NOT

INTERESTED IN ITF MEMBERSHIP IF NOT ACTUALLY PAID WITH ITF RATE STOP WHAT WE DEMAND IS ONLY 50 PERCENT INCREASE BASED ON PRESENT BASIC SALARY STOP THIS DEMAND THE BEST AND ONLY SOLUTION TO SOLVE ITF PROBLEM DUE YOUR PRESENT RATE ESPECIALLY IN TANKERS VERY FAR IN COMPARISON WITH OTHER SHIPPING AGENCIES IN MANILA STOP LET US SHARE EQUALLY THE FRUITS OF LONELINESS SACRIFICES AND HARDSHIP WE ARE ENCOUNTERING ON BOARD WE REMAIN.'

'REURVIR-JEN-15 OFFICERS AND CREW HESITATING TO GIVE UP DEMAND OF 50 PERCENT INCREASE BUT FOR GOOD AND HARMONIOUS RELATIONSHIP ONBOARD AND RECONSIDERING YOUR SUPPOSE TO BE LOSSES IN CASE WE CONDITIONALLY COOPERATE WITH YOUR PROPOSE INCREASE OF 25 PERCENT BASED ON INDIVIDUAL MONTHLY BASIC PAY WITH FOLLOWING TERMS AND CONDITIONS AA EFFECTIVITY OF 25 PERCENT INCREASE MUST BE MARCH/79 PLUS SPECIAL COMPENSATION MENTIONED URCAB VIRJEN-14 BB NEW COMPANY CIRCULAR ON UPGRADED NEW SALARY SCALE DULY SIGNED AND APPROVED BE FORWARDED KWINANA AUSTRALIA OR HANDCARRIED BY YOUR REPRESENTATIVE TO DISCUSS MATTERS OFFICIALLY CC 25 PERCENT INCREASE MUST BE COLLECTABLE ONBOARD EFFECTIVE ABOVE DATE UNTIL DISEMBARKATION STOP ALLOTMENT TO ALLOTTEES REMAIN AS IS DD REASONABLE REPALLOWS FOR ALL OFFICERS BE GIVEN EFFECTIVE MARCH/79 EE BONUS FOR 6 MONTHS SERVICE RENDERED BE COLLECTIBLE ONBOARD FF OFFICERS/CREW 30 PERCENT' OT SHOULD BE BASED NEW UPGRADED SALARY SCALE GG MASTER/CHENGR/CHMATE SPECIAL COMPENSATION GIVE BY YOUR COMPANY PRIOR DEPARTURE MANILA BE REMAIN AS IS STOP THE ABOVE TERMS AND CONDITIONS SHOULD BE

PROPERLY ENFORCE AND DOCUMENTED ALSO
COPIES AND FORWARDED ONBOARD ON ARRIVAL
KWINANA AUSTRALIA CONFIRM.'

“While the Board recognizes the rights of the Seamen to seek higher wages provided the increase is arrived at thru mutual consent, it could not however, sanction the same if the consent of the employer is secured thru threats, intimidation or force. In the case at bar, the Company was compelled to accede to the demand of the Seamen for a salary increase to forestall the possibility of the vessel being interdicted by the ITF at Kwinana, Australia, for in the event the vessel would be detained and/or interdicted the Company would suffer more losses than paying the Seamen 25% increase of their salary.

“With respect to the second issue, the Board believes that the termination of the services of the Seamen was legal and in accordance with the provisions of their respective employment contracts. Considering the findings of the Board that the Seamen breached their contracts, their subsequent repatriation was justified. While it may be true that the Seamen were hired for a definite period their services could be terminated prior to the completion of the full term thereof for a just and valid cause.

“It may be stated in passing that Vir-jen Shipping & Marine Services, Inc., despite the fact that it was compelled to accede to a 25% salary increase for the Seamen, tried to convince its principal, Kyoei Tanker, Ltd. to an adjustment in their agency fee to answer for the 25% increase, but the latter not only denied the request but likewise terminated their Manning Agreement. The Seamen’s breach of their employment contracts and the subsequent termination of the Manning Agreement of Vir-jen Shipping & Marine Services, Inc. with the Kyoei Tanker, Ltd., justified the termination of the Seamen’s services.

“With respect to the third issue the following are the findings of the Board:

“As regards the claim of the Seamen for the payment of their salaries for the unexpired portion of their employment contracts the same should be denied. This is so because of the findings of the Board that their dismissal was legal and for a just cause. Awards of this nature is proper only in cases where a seafarer is illegally dismissed.” (Pp. 148-151, Record)

Disagreeing with the foregoing findings of the NSB, the NLRC held:

“The more important issue to be resolved in this case, however, is the question of whether the Seamen violated their employment contracts when they demanded or proposed and in fact accepted wages over and above their contracted rates. Stated otherwise, could the Seamen rightfully demand or propose the revision of their employment contracts? While they concede that they are bound by their contracts, the Seamen claim that their cable asking for the revision of their contract rates was a valid exercise of their right to grievance.

“The right to grievance is recognized in this jurisdiction even if there is a valid and subsisting contract, especially where there are supervening facts or events of which a party to the contract was not apprised at the time of its conclusion. As pointed out by the Supreme Court in the Wallem case, supra, it ‘is a basic right of all working men to seek greater benefits not only for themselves but for their families as well . . .’ and the ‘Constitution itself guarantees the promotion of social welfare and protection to labor.’ In this case, records show that it was impressed on the Seamen that their vessel would be trading only in Caribbean ports. This was admitted by the Company in its cable to the Seamen on 10 January 1979. After the conclusion of their contracts, however, and after they had boarded the vessel, the principals of the Company directed the vessel to call at different ports or to engage in ‘worldwide trade’ which is admittedly more difficult and hazardous than trading in only one maritime area. This is

a substantial change in the original understanding of the parties. Thus, in their cable asking for a wage increase, the Seamen expressed their dissatisfaction by informing the Company that they were ‘not contented with (their) present salary based on volume of work, type of ship with hazardous cargo and registered in world wide trade.’ (italics supplied.) With such change in the original agreement of the parties, we find that the Seamen were well within their rights in demanding for the revision of their contract rates.

“We also note that the Company was not exactly in good faith in contracting the service of the Seamen. During his briefing in Manila, the Company instructed the master of the vessel, complainant Bisula, to prepare two (2) sets of payrolls, one set reflecting the actual salary rates of the Seamen and the other showing higher rates based on Panamanian Shipping articles which approximate those prescribed by ITF for its member seafarers. In compliance with this instruction, Bisula prepared the latter payrolls. These payrolls were intended for the consumption of ITF if and when the vessel called on ports where ITF rates were operational, the evident purpose being to show ITF that the Company was paying the same rates prescribed by said labor federation and thereby prevent the interdiction of the vessel. And when the vessel was en route to Australia, an ITF-controlled port, the Company arranged for the Seamen’s membership with ITF and actually paid their membership fees without their knowledge and consent, thereby exposing them to the danger of being disciplined by the NSB Secretariat for having affiliated with ITF. All these have to be mentioned here to better understand the feelings of the Seamen when they asked for the revision of their wage rates.”^[2] (Pp. 83-85, Record)

Comparing these two decisions, We do not hesitate to hold that the NLRC overstepped the boundaries of its reviewing authority and was overlenient. Whether or not respondents had breached their contract with petitioner is a factual issue, the peculiar nuances of which were

better known to the NSB, the fact-finding authority. Indeed, even if it was nothing more than the interpretation of the cablegram sent by respondents to petitioner on March 23, 1979 that were the only question to be resolved, that is, whether or not it carried with it or connoted a threat which naturally panicked petitioner, which, to be sure, could be a question of law, still, as We see it, the conclusion of the NLRC cannot be justified.

The NLRC ruled that in the exercise of their right to present any grievances they had and in their desire to alleviate their condition, it was but well and proper for respondents to make a proposal for increase of their wages, which petitioner could accept or reject. We do not see it that way.

Definitely, the reference in the cablegram to the conformity of petitioner to respondents' demand was "the best and only solution to ITF problem" had an undertone which naturally placed petitioner hardly in a position to answer them with a flat denial. It would be the acme of naivete for Us to go along with the contention that the cablegram of March 23, 1979 was a mere proposal and had no trace nor tint of threat at all. Indeed, it is alleged in the petition and there is no denial thereof that on April 23, 1979, Chief Mate Jacobo Catabay of the M/T Jannu, who was among the claimants at first, revealed that:

"On April 23, 1979, Chief Mate Jacobo H. Catabay of the M/T Jannu, in a signed statement-report to the petitioner, marked and admitted in evidence as Exh. '10-A' during the trial, stated, as follows:

'On our departure at Keelung, we did not have destination until three (3) days later that Harman cabled us to proceed to Senipah, Indonesia to load full cargo to be discharged at Kwinana, Australia. Captain told everyone that if only we stayed so long with the ship, he will report to ITF personally in order to get back wages. In view that we only worked for three months so the back wages is so small and does not worth. From that time on, Chief Engr. and Captain have a nightly closed door conference until they arrived at the conclusion to ask for 50% salary

increase and they have modified a certain platforms. They certainly believe that Vir-jen have no choice because the vessel is going to ITF port so they called a general meeting conducted at the bridge during my duty hours in the afternoon. All engine and deck personnel were present in that meeting.’ “ (Pp. 19-20, Record.)

Well taken, indeed, is the Solicitor General’s observation that:

“Private respondents’ conduct is uncalled for. While employees may be free to request their employers to increase their wages, they should not use threat of such a nature and in such a situation as to put the employer at their complete mercy and with no choice but to accede to their demands or to face bankruptcy. This is what private respondents did, which is an act of bad conduct prejudicial to the vessel, and a material breach of the existing manning contract. It has adverse consequences that led not only to the termination of the existing manning contract but to the rejection by Kyoei Tanker Co. Ltd. of petitioner’s offer to supply crew members to three other vessels, thereby depriving unemployed Filipino seamen of the opportunity to work on said vessels. Thus, in a letter dated May 17, 1979, Kyoei Tanker Co. Ltd. wrote petitioner as follows:

‘This is with reference to your letter of Feb. 23, 1979, submitting your manning offers on our three (3) managed vessels for delivery as follows:

1. M/V ‘Maya’ — 26 crew, delivery end May, 1979,
2. M/T ‘Cedar’ — 28 crew, delivery end June, 1979,
3. M/T ‘Global Oath’ — 30 crew, delivery end, June 1979.

‘In this connection, we wish to advise you that, as a result of our unpleasant experience with your crew on the M/T ‘Jannu’, owners have decided to give the manning contracts on the above three vessels to other foreign crew instead of your company.

‘We deeply regret that although your crew performance on our other four (4) vessels have been satisfactory, we were unable to persuade owners to consider your Philippine crew because of the bad attitude and actuation of your crew manned on board M/T ‘Jannu’.

‘As we have already advised you, owners have spent more than US\$30,000.00 to replace the crew of M/T ‘Jannu’ in Japan last April 19, 1979 which would have been saved if your crew did not violate their employment contracts.’ (Annex ‘K’ of Petition).

“In the light of all the foregoing and the law and policy on the matter, it is submitted that there was valid justification on the part of petitioner and/or its principal to terminate the manning contract.” (Pp. 12-14, Manifestation and Comment of the Solicitor General.)

At first glance it might seem that the judgment of the NLRC should have more weight than that of NSB. Having in view, however, the set up and relationship of these two entities framed by the Labor Code, the NSB is not only charged directly with the administration of shipping companies in the hiring of seamen for overseas employment by seeing to it that our seamen “secure the best possible terms of employment for contract seamen workers and secure compliance therewith”. Its composition as of the time this controversy arose is worth noting — for it is made up of the Minister of Labor as Chairman, the Deputy Minister as Vice Chairman, and a representative each of the Ministries of Foreign Affairs, National Defense, Education and Culture, the Central Bank, the Bureau of Employment Service, a worker’s organization and an employee’s organization and the Executive Director of the Overseas Employment Development Board. (Article 23, Labor Code) It is such a board that has to approve all contracts of Filipino seamen (Article 18, Labor Code). And after such approval, the contract becomes unalterable, it being “unlawful” under Article 34 of the Code “for any individual, entity, licensee or holder of authority: (i) to substitute or alter employment contracts approved and verified by Department of Labor from the time of actual signing thereof by the parties up to and

including the period of expiration of the same without the approval of the Department of Labor.” In other words, it is not only that contracts may not be altered or modified or amended without mutual consent of the parties thereto; it is further necessary to have the change approved by the Department, otherwise, the guilty parties would be penalized.

The power of the NLRC in relation to the works and actuations of the NSB is only appellate, according to Article 20 (b), read in relation to Article 223, principally, over questions of law, since as to factual matters, it may exercise such appellate jurisdiction only “if errors in the findings of fact are raised which would cause grave or irreparable damage or injury to the appellant.” (par. d)

The NLRC has noted in its decision that respondents were originally made to believe that their ship would go only to the Caribbean ports and yet after completing trips to Inchon, Korea and Kuwait and Keelung, Taiwan, it was suddenly directed to call at Kwinana, Australia, an ITF controlled port. The record shows that this imputation is more apparent than real, for respondents knew from the very moment they were hired that world-wide voyages or destinations were contemplated in their agreement. So much so that corresponding steps had to be taken to avoid interference of or trouble about the ITF upon the ship’s arrival at ITF controlled ports. As already stated earlier, the ITF requires the seamen working on any vessel calling at ports controlled by them to be paid the rates fixed by the ITF which are much higher than those provided in the contracts signed here, to the extent of causing tremendous loss if not bankruptcy of the employer.

And so, as revealed to the NLRC later, in anticipation precisely of such peril to the employer and ultimate unemployment of the seamen, in the instant case, the usual procedure undeniably known to respondents of having two payrolls, one containing the actually agreed rates and the other ITF rates, the latter to be shown to the ITF in order that the ship may not be detained or interdicted in Kwinana, was followed. But according to the NLRC, this practice constitutes deception and bad faith, and worse, it is in effect within the prohibition against alteration of contracts approved by the NSB, considering there is nothing to show that NSB was made aware of the

so-called addendum or side agreement to the effect that should the ship manned by respondents be made to call at any ITF controlled port, the contract with ITF rates would be shown and, if for any reason, the respondents are required to be actually paid higher rates and they are so paid, the excess over the rates agreed in the NSB contract shall be returned to petitioner later.

It is of insubstantial moment that the side agreement or addendum was not made known to or presented as evidence before the NSB. We are persuaded that more or less the NSB knows that the general practice is to have such side contracts. More importantly, the said side contracts are not meant at all to alter or modify the contracts approved by the NSB. Rather, they are precisely purported to enforce them to the letter, making it clearer that even if the ships have to call at ITF controlled ports, the same shall remain to be the real and binding agreement between the parties, in intentional disregard of whatever the ITF may exact.

We hold that there was no bad faith in having said side contracts, the intent thereof being to put into effect the NSB directed arrangements that would protect the ship manning industry from unjust and ruining effects of ITF intervention. Indeed, examining the said side agreements, it is not correct to say that the respondents were caught unaware, or by surprise when they were advised that the ship would proceed to Kwinana, Australia, even assuming they had been somehow informed that they would sail to the Caribbean. Said side agreements textually provide:

“KNOW ALL MEN BY THESE PRESENTS:

“This Addendum Agreement entered into by and between KYOEI TANKER CO., LTD., Principals, of the vessel M.T. “JANNU”, represented herein by VIR-JEN SHIPPING & MARINE SERVICES, INC., Manila, Philippines, as Manning Agents (hereinafter referred to as the Company),

— *and* —

“The herein-mentioned officers and crew, and engaged by the Company as crewmembers of the vessel M/T ‘JANNU’ with their

positions, seaman certificate numbers and signatures (hereinafter referred to as the Crewmember), hereunder shown:

“WITNESSETH that:

- “1. WHEREAS, the Crewmember is hired and recruited as a member of the crew on board the vessel M/T ‘JANNU’ with the corresponding Contracts of Employment submitted to, verified and duly approved by the National Seamen Board; that the employment contract referred to, has clearly defined the rate of salary, wages, and/or employment benefits for a period of one (1) year (or twelve (12) months), and any extension thereof.

- “2. WHEREAS, the parties hereby further agree and covenant that should the above-mentioned vessel enter, dock or drop anchor in ports of other countries, the Crewmember shall not demand, ask or receive, and the Company shall have no obligation to pay the Crewmember, salaries, wages and/or benefits over and above those provided for in the employment contract submitted to, verified and approved by the National Seamen Board, which shall remain in full force and effect between the parties. The Company as well as the Owners, Charterers, Agents shall neither be held accountable nor liable for any amount other than what is agreed upon and stipulated in the aforesaid NSB-approved Contracts of Employment.

- “3. WHEREAS, the parties likewise agree that should the vessel enter, dock or drop anchor in any foreign port, and in the event that the Company (and/or its Owners, Charterers, Agents), are forced, pressured, coerced or compelled, in any way and for whatever cause or reason, to pay the Crewmember either directly or thru their respective allottees or other persons, salaries and benefits higher than those rates imposed in the NSB-approved contract, the Crewmember hereby agrees and binds himself to

receive the said payment in behalf of, and in trust for, the Company (and/or its Owners, Charterers, Agents), and to return the said amount in full to the Company or to its agent/s in Manila, Philippines immediately upon his and/or his allottees receipt thereof; the Crewmember hereby waives formal written demand by the Company or its agent/s for the return thereof. The Crewmember hereby fully understands that failure or refusal by him to return to the Company the said amount, will render him criminally liable for Estafa, as provided for in the Revised Penal Code of the Philippines, and in such case, the parties hereby agree that any criminal and/or civil action in connection therewith shall be within the exclusive jurisdiction of Philippine Courts.

- “4. WHEREAS, if, in order to avoid delays to the vessels, the Company is forced, pressured, coerced or compelled to sign a Collective Bargaining Agreement or any other Agreement with any foreign union, particularly ITF or ITF affiliated unions, and to sign new crews’ contract of employment stipulating higher wages, salaries or benefits than the NSB-approved contract, the said agreements and contracts shall be void from the beginning and the Crewmember shall be deemed to have automatically waived the increased salaries and benefits stipulated in the said agreements and employment contracts unto and in favor of the Company, and shall remain unalterably bound by the rates, terms, and conditions of the NSB-approved contract.
- “5. WHEREAS, the parties also agree that should the Company, as a precautionary or anticipatory measure for the purpose of avoiding costly delays to the vessel prejudicial to its own interest, decide to negotiate and/or enter into any agreement in advance with any foreign based union, particularly ITF or ITF affiliated unions, in any foreign port where the vessel involved herein may enter, dock or drop anchor, whatever

increases in salaries or benefits to the Crewmember that the Company may be compelled to give, over and above those stipulated in the NSB-approved employment contracts of the Crewmember, shall, likewise, be deemed ineffective or void from the beginning as far as the Crewmember is concerned, and any such increases in salaries or benefits which the Crewmember shall receive pursuant thereto shall be held by the Crewmembers in trust for the Company with the obligation to return the same immediately upon receipt thereof, at the Company's or its agent's office at Manila, Philippines. It is fully understood that the rates of pay and all other terms and conditions embodied in the NSB-approved employment contracts shall be of continuing validity and effectivity between the parties, irrespective of the countries or ports where the said vessel shall enter, dock or drop anchor, and irrespective of any agreement which the Company may enter or may have entered into with any union, particularly ITF or ITF affiliated unions.

- “6. WHEREAS, it is likewise agreed that any undertaking made by the Company and/or the National Seamen Board upon the request of the Company, imposed by any foreign union, particularly ITF or ITF affiliated unions, which will negate or render in effective any provisions of this agreement, shall also be considered null and void from the beginning.
- “7. WHEREAS, lastly, this Addendum Agreement is entered into for the mutual interest of both parties in line with the Company's desire to continue the service of the Filipino crewmembers on board their vessel and the Crewmembers' desire to keep their employment on board the subject vessel, thus maintaining the good image of the Filipino seamen and contributing to the development of the Philippine manning industry.

“8. That both the Company and the Crewmember agree and bind themselves that this Agreement shall be considered an addendum to, or as part of, the NSB-approved employment contract entered into by the Company and the Crewmember.

IN WITNESS WHEREOF, we have hereunto affixed our signatures this December 28, 1978 at Manila, Philippines.

THE COMPANY
VIR-JEN SHIPPING & MARINE SERVICES, INC.

By:

(SGD.) CAPT. RUBEN R. BALTAZAR
Operations Dept.

THE CREWMEMBERS

	<i>Name</i>	<i>Position</i>	<i>SC#</i>	<i>Signature</i>
1.	Ruben Arroza	2nd Mate	104728	SGD.
2.	Cresenciano Abrazaldo	3rd Mate	91663	SGD.
3.	Salvador Caunan	Third Engr.	84995	SGD.
4.	Nilo Cruz	4th Engr.	157762	SGD.
5.	Pacifico Labios	A/B	139045	SGD.
6.	Ramon Javier	A/B	170545	SGD.
7.	Joaquin Cordero	A/B	96556	SGD.
8.	Rodolfo Crisostomo	O/S	162121	SGD.
9.	Renato Oliveros	O/S	137132	SGD.
10.	Rogelio Saraza	O/S	149635	SGD.
11.	Nemesio Adug	Pumpman	157215	SGD.
12.	Francisco Benemerito	Oiler	89467	SGD.
13.	Rufino Gutierrez	Oiler	173663	SGD.
14.	Juol Ram Malli	Oiler	84934	SGD.
15.	Steve Mariño	Wiper	146096	SGD.
16.	Simplicio Bautista	Chief Cook	169142	SGD.
17.	Romeo Acosta	Second Cook	159960	SGD.
18.	Delfin Dagohoy	Messman	144096	SGD.
19.	Jose Encabo	Messman	179551	SGD.”

(Pp. 99-103, Annex D-1 of Petition)

The NLRC has cited *Wallem Philippine Shipping Inc. vs. The Minister of Labor*, G. R. No. 50734-37, February 20, 1981 (102 SCRA 835). No less than the Solicitor General maintains that said cited case is not controlling:

“A careful examination of *Wallem Philippine Shipping Inc. vs. The Minister of Labor*, G.R. No. 50734-37, February 20, 1981 shows that the same is dissimilar to the case at bar. In the *Wallem* case, there was an express agreement between the employer and the ITF representative, under which said employer bound itself to pay the crew members salary rates similar to those of ITF. When the crew members in the *Wallem* case demanded that they be paid ITF rates, they were merely asking their employer to comply with what had been agreed upon With the ITF representative, which conduct on their part cannot be said to be a violation of contract but an effort to urge performance thereof. Such is not the situation in the case at bar. In the case at bar, petitioner and private respondents had a side agreement, whereby private respondents agreed to return to petitioner whatever amounts petitioner would be required to pay under ITF rates. In other words, petitioner and private respondents agreed that petitioner would not pay the ITF rate. When private respondents used ITF as threat to secure increase in salary, they violated the manning contract. Moreover, in the case at bar, petitioner terminated the manning contract only after the NSB authorized it to do so, after it found the grounds therefor to be valid. On the other hand, the termination of the manning contract in the *Wallem* case was without prior authorization from the NSB.

“It will be noted that private respondents sent a cable to petitioner demanding an increase of 50% of their basic salary as the only solution to the ITF problem at a time when the vessel M/T JANNU was enroute to Australia, an ITF port. The fact that private respondents mentioned ITF in their cable clearly shows that if petitioner would not accede to their demands, they would denounce petitioner to ITF. Thus, Chief Mate Jacobo Catabay in his report dated April 23, 1979 (Exh. 10-A) stated:

“On our departure at Keelung, we did not have destination until three days later that Harman cabled us to proceed to Senipah, Indonesia to load full cargo to be discharged at Kwinana, Australia. Captain told everyone that if only we stayed so long with the ship, he will report to ITF personally in order to get back wages. In view that we only worked for three months so the back wages is so small and does not worth. From that time on, Chief Engr. and Captain have a nightly closed door conference until they arrived at the conclusion to ask for 50% salary increase and they have modified a certain platforms. They certainly believe that Vir-jen have no choice because the vessel is going to ITF port so they called a general meeting conducted at the bridge during my duty hours in the afternoon. All engines and deck personnel were present in that meeting. (Italics supplied)

Reporting the wage scheme to the ITF would mean that the vessel would be interdicted and detained in Australia unless petitioner pay the ITF rates, which represent more than 100% of what is stipulated in the manning contract. Petitioner was thus forced to grant private respondents an increase of 25% in their basic salary. That such grant of a 25% increase was not voluntary is shown by the fact that petitioner immediately denounced the seamen’s conduct to NSB and subsequently asked said agency authority to terminate the manning contract.”(Pp. 10-12, Manifestation & Comment of Solicitor General)

Summarizing, We are convinced that since the NSB, considering its official role in matters like those now before Us, is the fact-finding body, and there is no sufficient cogency in the NLRC’s finding that there was no threat employed by respondents on petitioner, and, it appearing further that the well prepared Manifestation and Comment of the Solicitor General supports the decision of the NSB, which body, to Our mind, was in a better position than the NLRC to appraise the relevant nuances of the actuations of both parties, We are of the considered view that the decision of the NLRC under question constitutes grave abuse of discretion and should be set aside in favor of the NSB’s decision.

In *El Hogar Filipino Mutual Building and Loan Association vs. Building Employees Inc.*, 107 Phil. 473, citing *San Miguel Brewery vs. National Labor Union*, 97 Phil. 378, We emphasized:

“Much as we should expand beyond economic orthodoxy, we hold that an employer cannot be legally compelled to continue with the employment of a person who admittedly was guilty of misfeasance or malfeasance towards his employer, and whose continuance in the service of the latter is patently inimical to his interest. The law in protecting the rights of the laborer, authorizes neither the oppression nor self-destruction of the employer.” (Page 3, Record) (Italics supplied)

It is timely to add here in closing that situations wherein employers are practically laid in ambush or placed in a position not unlike those in a hijack whether in the air, land or mid-sea must be considered to be what they really are: acts of coercion, threat and intimidation against which the victim has generally no recourse but to yield at the peril of irreparable loss. And when such happenings affect the national economy, as pointed out by the Solicitor General, they must be treated to be in the nature of economic sabotage. They should not be tolerated. This Court has to be careful not to sanction them.

WHEREFORE, the petition herein is granted and the decision of the NLRC complained of hereby set aside; the decision of the NSB should stand.

No costs.

Concepcion Jr., Guerrero, Abad Santos, De Castro and Escolin, JJ., concur.

Aquino, J., concurs in the result.

[1] NSB Case No. 2250-79 is a complaint for illegal dismissal and non-payment of earned wages filed by 27 officers and crewmembers of the vessel M/T “Jannu” against herein petitioner while NSB-2252-79 is a complaint for breach of contract and recovery of excess salaries, overtime pay filed by petitioner against the complainants in the other case.

[2] Please see clarification of the point that respondents were misled as to whether they were hired for worldwide voyages or not in the latter part of this opinion.

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